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**TRIAL CHAMBER VI**

**Before:** Judge Chang-ho Chung, Presiding Judge  
Judge Olga Herrera Carbuccion  
Judge Robert Fremr

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF  
*THE PROSECUTOR V. BOSCO NTAGANDA***

**Public**

**Public Redacted Version of "Defence submissions on reparations", 28 February  
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Further to the Single Judge's *Order setting deadlines in relation to reparations* of 5 December 2019 ("Order"),<sup>1</sup> Counsel representing Mr. Ntaganda ("Defence") hereby submit this:

## **Defence submissions on reparations**

### **INTRODUCTION**

1. The Appeals Chamber has previously underscored that "[t]he reparation scheme provided for in the Statute is not only one of the Statute's unique features. It is also a key feature. The success of the Court is, to some extent, linked to the success of its system of reparation."

2. Judging from the implementation of the International Criminal Court ("ICC" or "Court") system of reparations in *Lubanga*,<sup>2</sup> *Al Mahdi*,<sup>3</sup> *Katanga*,<sup>4</sup> and *Bemba*<sup>5</sup> and even more so from the panoply of recommendations found in the preliminary submissions of the Registry through the Victims Participation and Reparation Section ("VPRS"),<sup>6</sup> and the submissions of the Legal Representatives of Victims ("LRVs"),<sup>7</sup> the Trust Fund for Victims ("TFV"),<sup>8</sup> the Prosecution<sup>9</sup> and the Defence in response thereto,<sup>10</sup> it has to be acknowledged that the ICC system of reparations is still very much in its development stage.

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<sup>1</sup> Order setting deadlines in relation to reparations, 5 December 2019, [ICC-01/04-02/06-2447](#) ("Order Setting Deadlines").

<sup>2</sup> ICC-01/04-02/06.

<sup>3</sup> ICC-01/12-01/15.

<sup>4</sup> ICC-01/04-01/07.

<sup>5</sup> ICC-01/05-01/08.

<sup>6</sup> Registry Observations, pursuant to the Single Judge's Order "Order for preliminary information on reparations" of 25 July 2019, ICC-01/04-02/06-2366, 5 September 2019, [ICC-01/04-02/06-2391](#) ("Registry Preliminary Observations").

<sup>7</sup> Joint Response of the Legal Representatives of Victims to the Registry's Observations on Reparations, 3 October 2019, [ICC-01/04-02/06-2430](#) ("LRVs Preliminary Observations").

<sup>8</sup> Trust Fund for Victims' response to the Registry's Preliminary Observations pursuant to the Order for Preliminary Information on Reparations, 3 October 2019, [ICC-01/04-02/06-2428](#) ("TFV Preliminary Observations").

<sup>9</sup> Prosecution Response to the Registry's Observations, pursuant to the Single Judge's "Order for Preliminary Observations on reparations" (ICC-01/04-02/06-2391-Anx1), 3 October 2019, [ICC-01/04-02/06-2429](#) ("Prosecution Preliminary Observations").

<sup>10</sup> Response on behalf of Mr. Ntaganda to Registry's preliminary observations on reparations, 3 October 2019, [ICC-01/04-02/06-2431](#) ("Defence Preliminary Observations").

3. VPRS for one, advocates a form-based reparations system drawing on the method used to authorize victims to participate in the proceedings with the aim of expediting the issuance of a reparations order, thereby avoiding long delays experienced in other cases. While the VPRS's aim to hasten the implementation of reparations to victims has certain merits and is commendable, it nonetheless comprises deficiencies further addressed in these submissions.

4. The reparations system suggested by the LRVs taking into account the fact that the Judgment has been appealed and that "[l]ogically, the prospect of mitigating these risks [victims' re-traumatisation] is greater if victims are asked to come forward for screening only once Mr Ntaganda's conviction and the extent of his responsibility have been finally confirmed"<sup>11</sup> also has merits. The LRVs' proposed system however, drawing heavily on the methodology used in *Lubanga*, including a reparations order issued pursuant to Article 75 of the Statute that does not identify/list the eligible victims but only sets out criteria of eligibility and "contacting a representative sample of victims from which information can be elicited for the Chamber to decide on the five essential elements of the reparations order to be issued"<sup>12</sup> also presents deficiencies addressed in these submissions.

5. Without surprise, the reparations system put forward by the TFV would allow the Fund to lead the entire process, including the identification of eligible beneficiaries – drawn from both participating victims and potential new beneficiaries – during the implementation phase. This system, which appears to go way beyond the TFV's reparations mandate pursuant to Article 50 (b) of the Regulations of the Trust Fund for Victims ("Regulations of the TFV"),<sup>13</sup> has proven to be a very lengthy and cumbersome procedure. Suffice it to consider in this regard the eight-month period required by the TFV to produce a draft implementation plan in the *Lubanga* case, later found to be

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<sup>11</sup> [LRVs Preliminary Observations](#), para.24.

<sup>12</sup> [LRVs Preliminary Observations](#), paras.2,26.

<sup>13</sup> [Resolution ICC-ASP/4/Res.3](#), dated 3 December 2005.

incomplete,<sup>14</sup> and the 16-month plus period to provide the Chamber with the list of potential beneficiaries it requested.<sup>15</sup> Such a reparations system considered in conjunction with the TFV assistance mandate pursuant to Article 50 (a) of the Regulations of the TFV, if triggered, demonstrates that the TFV should be entrusted with less rather than more responsibilities in this case.

6. As for the Prosecution, it welcomes the VPRS action plan and supports “the Registry’s recommendation that the Chamber issue a preliminary decision setting out the approach and procedure for these reparations proceedings”,<sup>16</sup> adding that such a “decision cannot be directly appealed under article 82(4) of the Statute”.<sup>17</sup> The Prosecution also suggests that “the Chamber would also benefit from being informed of the criteria and information relied upon by the VPRS to estimate the number of potential new beneficiaries.”<sup>18</sup> Subject to observations concerning the VPRS action plan discussed in these submissions, the Defence generally agrees with the Prosecution position.

7. While generally concurring with most of the principles on reparations established by the Appeals Chamber in *Lubanga*, as detailed in these submissions, the Defence proposes a somewhat different reparations system that is efficient, cost-effective, will avoid lengthy delays, is comparatively of short duration, prevents victims expectations and re-traumatisation and makes it possible to identify victims genuinely deserving of reparations.

8. Taking stock of the advantages and disadvantages of reparations proceedings implemented thus far in other cases, as well as of the specific circumstances of the

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<sup>14</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Order instructing the Trust Fund for Victims to supplement the draft implementation plan, 9 February 2016, [ICC-01/04-01/06-3198-tENG](#), para.10 (“Order to Supplement the TFV Draft Implementation Plan”).

<sup>15</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Filing on Reparations and Draft Implementation Plan, 3 November 2015, [ICC-01/04-01/06-3177-Red](#) and *The Prosecutor v. Thomas Lubanga Dyilo*, “Seventh Transmission to Trial Chamber II of Confidential Applications for Reparations and the Report Thereon”, 15 June 2017, [ICC-01/04-01/06-3329](#).

<sup>16</sup> [Prosecution Preliminary Observations](#), para.2.

<sup>17</sup> [Prosecution Preliminary Observations](#), para.12.

<sup>18</sup> [Prosecution Preliminary Observations](#), para.7.

*Ntaganda* case the reparations system proposed by the Defence is divided in two phases namely, the pre-reparations order phase and the post-reparations order implementation phase. The pre-reparations order phase would begin with the Chamber issuing a Decision establishing the principles and procedures to be applied to reparations pursuant to Article 75(1) of the Statute. Pursuant to this order, VPRS would be required to submit to the Chamber, with the possibility for parties to make observations, an updated list of participating victims, taking into account the new parameters set by the trial Judgment; the LRVs would be required to consult with the victims authorized to participate in the *Ntaganda* proceedings (*i.e.* their clients) to confirm that they indeed request reparations and consent to have their particulars communicated to the Defence as part of the reparations process; the Registry would be ordered to transmit redacted versions of each participating victim's dossier to the Defence; the VPRS would be invited to carry out a thorough preliminary mapping of potential new beneficiaries for reparations; the parties would be ordered to submit observations regarding the eligibility of participating victims to reparations; and VPRS and the parties would be required to submit final observations on issues to be considered by the Chamber in issuing its reparations order.

9. The post-reparations order implementation phase would begin with the Chamber issuing its reparations order – at the earliest after and taking stock of the Appeals Judgments on Mr. Ntaganda's conviction and sentence – fulfilling all five elements set out in the 3 March 2015 *Lubanga* Appeals Judgment.<sup>19</sup> More particularly, this reparations order would include: ordering the VPRS, in consultation with the TFV, to collect applications reparations from potential new beneficiaries based on the mapping carried out in the pre-order phase and to seek their consent to have their particulars forwarded to the parties; ordering the Registry to transmit redacted versions of each new application collected by the VPRS to the parties; ordering the parties to make observations regarding the eligibility of new potential beneficiaries;

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<sup>19</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, 3 March 2015, [ICC-01/04-01/06-3129](#) ("First *Lubanga* Appeal Judgment").



ordering the TFV to submit a draft implementation plan comprising, *inter alia*, the list of beneficiaries certified by the Chamber – including both participating victims and new beneficiaries – and the anticipated monetary amount that it considers necessary to remedy the harms caused by the crimes for which Mr. Ntaganda was convicted; ordering the parties to submit final observations regarding the TFV draft implementation plan, including on the anticipated monetary amount that it considers necessary to remedy the harms caused by the crimes for which Mr. Ntaganda was convicted.

10. Taking into consideration that the Appeals Judgments will likely be rendered between January and June 2021 at the latest,<sup>20</sup> the TFV draft implementation plan could be approved by the Chamber as early as March 2022, *i.e.* less than 3 years following the delivery of the trial Judgment.

## PROCEDURAL BACKGROUND

11. On 8 July 2019, the Trial Chamber VI (the “Chamber”) issued the trial Judgment pursuant to Article 74 of the Statute, finding Mr. Ntaganda guilty of five counts of crimes against humanity and thirteen counts of war crimes.<sup>21</sup>

12. On 25 July 2019, the Single Judge issued the *Order for preliminary information on reparations*, whereby he requested observations from the Registry on: “i. information on, and any proposed methodology for, the identification of victims (not yet participating); ii. observations on whether experts may be usefully appointed to assist the Chamber pursuant to Rule 97 of the Rules of Procedure and Evidence and, if so, submit a list of relevant experts available to assist the Chamber; and iii. an update on the security situation in the Democratic Republic of the Congo based on information currently available.”<sup>22</sup>

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<sup>20</sup> A maximum of 10 months following oral arguments on Appeals, likely to be schedule in September 2020, three months after the filing of the last submission on Appeal.

<sup>21</sup> Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#) (with Annexes A, B and C) (“TJ”).

<sup>22</sup> Order for preliminary information on reparations, 25 July 2019, [ICC-01/04-02/06-2366](#), para.4 (“First Order Setting Deadlines”).

13. On 5 September 2019, the Registry filed its *Registry's observations, pursuant to the Single Judge's "Order for preliminary information on reparations" of 25 July 2019, ICC-01/04-02/06-2366*.<sup>23</sup>

14. On 3 October 2019, the LRVs, the Defence, the Prosecution and the Trust Fund for Victims ("TFV") responded to the Registry Observations.<sup>24</sup>

15. On 5 December 2019, the Single Judge issued the Order, instructing the parties, the Registry and the TFV to make submissions on the following issues:

- i. whether the principles on reparations established by the Appeals Chamber in the *Lubanga* case need to be amended or supplemented in light of the circumstances of the *Ntaganda* case;
- ii. the criteria and the methodology to be applied in the determination and the assessment of: (i) the eligibility of victims; (ii) the relevant types and scope of harm; and (iii) the scope of liability of Mr Ntaganda, including the determination of the precise extent of the (monetary) obligations to be imposed on him;
- iii. the types and modalities of reparations appropriate to address the types of harm relevant in the circumstances of the *Ntaganda* case, including factors relating to the appropriateness of awarding reparations on an individual basis, a collective basis, or both;
- iv. for the parties and the TFV, any responses to the Registry's identification of potential experts; and
- v. any other issue the parties, the Registry, and the TFV wish to bring to the attention of the Chamber.<sup>25</sup>

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<sup>23</sup> [Registry Preliminary Observations](#).

<sup>24</sup> [LRVs Preliminary Observations](#); [Defence Preliminary Observations](#); [Prosecution Preliminary Observations](#); [TFV Preliminary Observations](#).

<sup>25</sup> [Order Setting Deadlines](#), para.9(c).

## SUBMISSIONS

### I. Whether the principles on reparations established by the Appeals Chamber in the *Lubanga* case need to be amended or supplemented in light of the circumstances of the *Ntaganda* case.

16. Principles on reparations were established by the Appeals Chamber in two Decisions in the *Lubanga* case: the Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations”, comprising an Amended Order for reparations, rendered on 3 March 2015 (“First Appeals Decision”),<sup>26</sup> and the Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, rendered on 18 July 2019 (“Second Appeal Decision”).<sup>27</sup>

17. The Defence concurs with most of the principles set out in the First Appeal Decision. However, the Defence takes issue with (i) the procedure set by the Trial Chamber and affirmed in the Second Appeal Decision, whereby the number of eligible beneficiaries was estimated on the basis of a sample and documents; and (ii) to a certain extent the delegation to the TFV of the decision making authority on the eligibility of new applicants at the implementation phase of the reparations, without the Defence being involved. Nonetheless, the Defence acknowledges that these principles have been already applied in the *Lubanga* case in which reparations phase are already being implemented. Since the crimes for which Mr. Lubanga was convicted overlap the crimes for which Mr. Ntaganda was convicted, the estimated number of victims and the reparations beneficiaries in the case are likely to be similar, at least in respect of the harm caused by one category of crimes, namely those crimes related to child soldiers. Accordingly, the reparations already being implemented in the *Lubanga* case could benefit the potential former child soldiers in the present case.

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<sup>26</sup> [First Lubanga Appeal Judgment](#).

<sup>27</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, 18 July 2019, [ICC-01/04-01/06-3466-Red](#) (“Second *Lubanga* Appeal Judgment”).

## A. Principles set out in the Amended Order

### 1. First Principle: Beneficiaries of reparation

18. In the *Lubanga* Order for Reparations, the Appeals Chamber defined indirect victims as including:

- i. The family members of direct victims,
- ii. Anyone who attempted to prevent the commission of one or more of the crimes under consideration,
- iii. Individuals who suffered harm when helping or intervening on behalf of direct victims, and
- iv. Other persons who suffered personal harm as a result of these offences.<sup>28</sup>

For the following reasons, the Defence disagrees with the second category of indirect victims identified in paragraph 20 (ii) above by the Appeals Chamber for the reasons below.

19. Rule 85(a) of the Rules of Procedure and Evidence (“Rules”) defines ‘victims’ as “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”. Rule 85(a) applies to both direct and indirect victims.<sup>29</sup>

20. The harm suffered by victims must be personal, direct or indirect, and caused as a result of the crimes for which Mr. Ntaganda has been convicted. Direct victims are persons who are victimized directly as a result of the crimes for which the convicted person was held criminally responsible. Indirect victims must establish that “as a result of their relationship with the direct victim, the loss, injury, or damage suffered

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<sup>28</sup> *The Prosecutor v. Thomas Lubanga Dyilo Lubanga*, Order for Reparations, 3 March 2015, [ICC-01/04-01/06-3129-AnxA](#), para.6 (“*Lubanga* Amended Order for Reparations”).

<sup>29</sup> Rule 85(b) further precises that “[v]ictims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes”.

by the latter gives rise to harm to them. It follows that the harm suffered by indirect victims must arise out of harm suffered by direct victims”<sup>30</sup> and this must be brought about by the commission of the crimes Mr. Ntaganda has been convicted of. Furthermore, a close personal relationship, such as the one between parents and children, is a precondition of participation by indirect victims.<sup>31</sup>

21. Accordingly, the Defence submits that the indirect victims who may be granted reparations from Mr. Ntaganda are limited to:

- Family members of direct victims;
- Individuals who suffered harm when helping or intervening on behalf of direct victims; and
- Other persons who suffered personal harm<sup>32</sup> as a result of these offences.

22. For the purpose of this case, “family members of direct victims” can qualify as indirect victims only if they are “close family members”, such as spouses and children, if they demonstrate the harm they have suffered.<sup>33</sup> Moreover, “other persons who suffered personal harm as a result of these offences” should be limited to a person demonstrating a ‘close personal relationship’ with the direct victim, if they can substantiate their claim with documents proving they have suffered harm that results from the crimes, pursuant to the applicable jurisprudence on victim participation.<sup>34</sup>

23. Contrary to the *Lubanga* Amended Reparations Order, those who “attempted to prevent the commission of one or more of the crimes” for which Mr. Ntaganda has

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<sup>30</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Redacted version of “Decision on ‘indirect victims’”, 8 April 2009, [ICC-01/04-01/06-1813](#), para.49.

<sup>31</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of the Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, 11 July 2008, [ICC-01/04-01/06-1432](#) OA9 OA10, para.32.

<sup>32</sup> Harm, as defined in paragraph 10 of the *Lubanga* Amended Reparations Order “[...] denotes “hurt, injury and damage”. The harm does not necessarily need to have been direct, but it must have been personal to the victim. Harm may be material, physical and psychological.”

<sup>33</sup> [Lubanga Amended Reparations Order](#), para.7.

<sup>34</sup> *The Prosecutor v. Germain Katanga*, Judgment on the appeals of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, 8 March 2018, [ICC-01/04-02/06-3778-Red](#), paras.115-120

been convicted should not be considered as indirect victims who may be granted reparations from Mr. Ntaganda.<sup>35</sup> Indeed, there is no reference to any harm suffered by these persons, and they cannot as a result be qualified as indirect victims.

## 2. Third Principle: Causation

24. The third principle developed at paragraph 3 of the Amended Order is the principle of causation: “[r]eparation is to be awarded based on the harm suffered as a result of the commission of any crime within the jurisdiction of the Court.”<sup>36</sup> The Defence agrees with this principle which is all the more important in light of the dual mandate of the TFV: its assistance mandate, and its reparations mandate. Only harm suffered as a result of crimes for which Mr. Ntaganda has been convicted can be part of the TFV reparations mandate. Moreover, it is only for this harm that Mr. Ntaganda can be held liable to repair.

25. In contrast, the assistance mandate of the TFV pursuant of Regulation 50(a) of the Regulations of the TFV provides that the TFV can “provide physical or psychological rehabilitation or material support for the benefit of victims and their families”, even when the harm suffered by these victims was not caused by the crimes Mr. Ntaganda was convicted of.<sup>37</sup>

26. Consequently, establishing a clear causal link between the harm suffered by a victim and the crimes is the main way to distinguish between what will be reparation programs against Mr. Ntaganda and assistance programs to the benefit of victims in the Democratic Republic of Congo (“DRC”) at large.

## 3. Fourth Principle: Dignity, non-discrimination and non-stigmatisation

27. The Defence concurs with the *Lubanga* Principles that all victims should be treated fairly and equally. That said, for the reasons set out below, the Defence underlines that the assessment of requests for reparations emanating from persons

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<sup>35</sup> [Lubanga Amended Reparations Order](#), para.6.

<sup>36</sup> [Lubanga Amended Reparations Order](#), para.11.

<sup>37</sup> [Lubanga Amended Reparations Order](#), para.55.

who did not request to participate in trial proceedings must be approached with special care.

28. The Defence also concurs with the need for reparations to be implemented in a way that ensures all victims' safety and well-being. That said, careful balance must be struck between measures designed to ensure the safety and well-being of victims and the protection of the convicted person's fundamental rights. This matter, which arises in particular when addressing the need for redactions in victims' applications for reparations is further discussed below.<sup>38</sup>

#### **4. Fifth Principle: The liability of the convicted person**

29. The fifth principle developed by the Appeals Chamber is the liability of the convicted person, noting in particular that: "[r]eparation orders are intrinsically linked to the *individual* whose criminal liability is established in a conviction"<sup>39</sup> and that: [t]he convicted person's liability for reparations must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty".<sup>40</sup>

30. The Defence agrees with these principles. They are especially important in this case since the crimes related to the conduct of hostilities Mr. Ntaganda was convicted of are different in nature from the crimes underlying Mr. Lubanga's conviction. In addition, the Defence deems necessary to underscore that Mr. Ntaganda's participation in the commission of the crimes is different for the First and the Second Operation. The reparations which will be awarded must thus reflect this difference, and be proportionate to Mr. Ntaganda's degree of participation in the crimes committed during the First and the Second Operation.

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<sup>38</sup> See paras.89-92.

<sup>39</sup> [Lubanga Amended Reparations Order](#), para.20.

<sup>40</sup> [Lubanga Amended Reparations Order](#), para.21.

## 5. Sixth Principle: Standard and burden of proof

31. The Appeals Chamber held that “[i]n determining the appropriate standard of proof in reparation proceedings, various factors specific to the case should be considered, including the difficulty victims may face in obtaining evidence in support of their claim due to the destruction or unavailability of evidence”.<sup>41</sup>

32. The Defence understands that victims may face difficulties in obtaining documents supporting their claim. Nevertheless, just like in the *Lubanga* case, the standard of “balance of probabilities” must be applied.<sup>42</sup> In this regard, difficulties victims may face in obtaining certain documents must not be perceived by victims as a *carte blanche* allowing them to submit insufficiently substantiated files without a *bona fide* attempt being made and/or providing sufficient justification.

## 6. Eighth Principle: Accessibility and consultation with victims

33. The Defence supports the principle that “[r]eparations are entirely voluntary and the informed consent of the recipient is necessary prior to any award of reparations, including participation in any reparations programme.” The corollary to this principle militates in favour of a form-based approach, which requires every participating victim and new victim to submit an application for reparations, expressing clearly their will to benefit from reparations awarded. Pursuant to this principle, the Defence disagrees and takes issue with the LRV suggestion that “victims already authorized to participate in the proceedings who have not expressed views on their wish to receive reparations shall be presumed to be willing to receive them with no need to be recontacted for this purpose, unless there are specific reasons to believe they might not be interested.”<sup>43</sup> The fact that only 38 victims participating in the case submitted an application form, which included a section devoted to requesting

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<sup>41</sup> [Lubanga Amended Reparations Order](#), para.22.

<sup>42</sup> [Lubanga Amended Reparations Order](#), para.65.

<sup>43</sup> [LRVs Preliminary Observations](#), para.32.



reparations in accordance with Rule 94<sup>44</sup> does not justify departing from this eight principle established by the Appeals Chamber.

## **7. Ninth Principle: Modalities of reparations**

34. The Defence agrees with the principle set out in paragraph 33, namely that individual and collective reparations are not mutually exclusive and may be awarded concurrently.

35. Indeed, in the present case, the Defence submits that individual and collective reparations should be awarded concurrently. For the reasons expressed below, while collective reparations appear to be the most appropriate form of reparations to address the harm suffered by former child soldiers, collective reparations appear to be the most appropriate form of reparations to address the harms suffered by victims of conduct of hostilities crimes with the possible exception of victims of the numerous killings in Kobu in February 2003.

36. The Defence also agrees with the principle set out in paragraph 40, namely that compensation is a form of economic relief that is aimed at addressing, in a proportionate and appropriate manner, the harm that has been inflicted.

37. In evaluating the amount of compensation, the Chamber must thus assess whether the harm suffered by the victims have already been addressed and compensated through other means, such as NGO programs, assistance programs implemented by the TFV or reparations awarded in other cases. Lastly, the Defence notes that it will sometimes be very difficult to compensate certain harms which occurred more than 17 years ago.

## **8. Tenth Principle: Proportional and adequate reparations**

38. The Defence concurs with the principle that reparations should be appropriate, adequate and prompt. However, the Defence reiterates that the reparations phase

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<sup>44</sup> [Registry Preliminary Observations](#), para.7.

should be implemented without prejudice to the convicted person's right of appeal. This principle militates in favour of expediting as much as possible the reparations process but without unduly raising the victims' expectations before Mr. Ntaganda's conviction and sentence have been affirmed or overturned on appeal.

### **9. Eleventh Principle : Rights of the defence**

39. The Defence agrees with the principle that the reparations process must not "prejudice or be inconsistent with the rights of the convicted person to a fair and impartial trial".<sup>45</sup> In order to be fair with the convicted person and ensure that reparations awarded are proportional to the harm suffered by victims for which the convicted person is accountable, it is essential for the Defence to be provided with a genuine opportunity to challenge all applications submitted by participating victims and new potential beneficiaries alike. This principle militates in favour of the Defence being provided with the *dossiers* of each victim requesting reparations.

### **10. Thirteenth Principle : Publicity of these Principles**

40. The Defence is in agreement with the principle that reparations proceedings shall be transparent and that measures should be adopted to ensure that genuine victims have detailed and timely notice of these proceedings as well as access to reparations awarded, whether individually or collectively. That said, the outreach activities should be carried out rigorously, in particular at this stage of the proceedings following the delivery of the Trial Judgment, which provides a detailed picture of the circumstances in which the crimes Mr. Ntaganda was convicted of were committed.

41. The reparations process must not be perceived as an opportunity for persons other than genuine victims, to obtain unwarranted reparations.

42. Accordingly, outreach activities and information campaigns undertaken by the Registry and the TFV in relation to the reparations process must be implemented responsibly.

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<sup>45</sup> [Lubanga Amended Reparations Order](#), para.49.

**B. The procedure used to determine the number of potentially eligible victims to reparation and the monetary amount of Mr. Lubanga's liability.**

43. The Defence agrees with the concept of a Draft implementation plan as long as the parties are provided with an opportunity to submit observations. In its Decision on the "Request for extension of time to submit the draft implementation plan on reparations", the Chamber reiterated that the Draft implementation plan must (i) identify the victims eligible to benefit from the reparations; (ii) evaluate the extent of the harm caused to the victims; and (iii) determine the appropriate modalities and forms of reparations on the basis of the criteria and principles adopted in the Order.<sup>46</sup>

44. Having received the TFV draft implementation plan on 3 November 2015,<sup>47</sup> the Chamber considered it to be incomplete insofar as it did not comply with the instructions of the Chamber and the Appeals Chamber since, *inter alia* the TFV had not identified any potential victim. Accordingly, the Chamber requested the TFV to *inter alia* include a list of victims potentially eligible to benefit from the reparations in its Implementation Plan.<sup>48</sup> The Chamber instructed the TFV to prepare a file for each potential victim, including copies of supporting documents and the TFV's conclusions with regard to the victim's status.<sup>49</sup>

45. The Chamber further acknowledged that "the TFV will not be able to evaluate the overall harm caused to the victims until all of the potential victims have been identified."<sup>50</sup> The Defence agrees with the Chamber's conclusion.

46. Yet, in its 15 July 2016 Order, instructing the Registry to provide aid and assistance to the LRVs and the TFV to identify victims potentially eligible for reparations, the Chamber explained for the first time that the files were meant to

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<sup>46</sup> Decision on the "Request for extension of time to submit the draft implementation plan on reparations", 14 August 2015, [ICC-01/04-01/06-3161-t-ENG](#).

<sup>47</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Filing on Reparations and Draft Implementation Plan, 3 November 2015, [ICC-01/04-01/06-3177-Red](#).

<sup>48</sup> [Order to Supplement the TFV draft implementation plan](#), paras.12-18.

<sup>49</sup> [Order to Supplement the TFV draft implementation plan](#), para.17.

<sup>50</sup> [Order to Supplement the TFV draft implementation plan](#), para.25.

constitute no more than a sample of potential victims. From 31 May 2016 until 31 March 2017, the TFV, with the assistance of the LRV and the OPCV transmitted to the Chamber 474 potential victims' files.<sup>51</sup> Redacted versions of these files were transmitted to the Defence which had the opportunity to submit observations between 10 April and 29 June 2017.<sup>52</sup>

47. Based on the sample, as well as on certain "documents to be submitted to it for consideration in its determination of the amount of Mr Lubanga's liability for reparations",<sup>53</sup> the Chamber instructed the parties to submit an estimate of the total number of victims,<sup>54</sup> and to provide an estimate of the monetary amount that it considers necessary to remedy the harms caused by the crimes for which Mr. Lubanga was convicted of.<sup>55</sup>

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<sup>51</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, "Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo", 22 February 2017, [ICC-01/04-01/06-3275-tENG](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "First submission of victim dossiers With Twelve confidential, ex parte annexes, available to the Registrar, and Legal Representatives of Victims V01 only", 31 May 2016, [ICC-01/04-01/06-3208](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "Second submission of victim dossiers With Eleven confidential, ex parte annexes, available to the Registrar, and Legal Representatives of Victims V02 and OPCV only", 14 July 2016, [ICC-01/04-01/06-3216](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "Third submission of victim dossiers", 22 December 2016, [ICC-01/04-01/06-3268](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "First Transmission and Report on Applications for Reparations", 22 December 2016, [ICC-01/04-01/06-3269](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "Second Transmission and Report on Applications for Reparations", 20 January 2016, [ICC-01/04-01/06-3270](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "Third Transmission and Report on Applications for Reparations", 31 March 2017, [ICC-01/04-01/06-3287](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "Fourth Transmission to Trial Chamber II of Confidential Applications for Reparations and the Report Thereon", 4 May 2017, [ICC-01/04-01/06-3304](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "Fifth Transmission to Trial Chamber II of Confidential Applications for Reparations and the Report Thereon", 18 May 2017, [ICC-01/04-01/06-3312](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "Sixth Transmission to Trial Chamber II of Confidential Applications for Reparations and the Report Thereon", 1 June 2017, [ICC-01/04-01/06-3323](#); *The Prosecutor v. Thomas Lubanga Dyilo*, "Seventh Transmission to Trial Chamber II of Confidential Applications for Reparations and the Report Thereon", 15 June 2017, [ICC-01/04-01/06-3329](#).

<sup>52</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, "Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo", 22 February 2017, [ICC-01/04-01/06-3275-tENG](#).

<sup>53</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Order Instructing the Parties to File Submissions on the Evidence Admitted for the Determination of Thomas Lubanga Dyilo's Liability for Reparations, 13 July 2017, [ICC-01/04-01/06-3339-tENG](#), para.11 ("Lubanga Order to Submit Evidence").

<sup>54</sup> [Lubanga Order to Submit Evidence](#), para.11.

<sup>55</sup> [Lubanga Order to Submit Evidence](#), para.10.

48. On 21 December 2017, the Chamber issued its Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable.<sup>56</sup> The Chamber found that 425 out of the 473 potentially eligible victims were victims of the crimes for which Mr. Lubanga was convicted, entitled to reparations awarded in the case.<sup>57</sup> Based on this sample and other documents submitted,<sup>58</sup> the Chamber estimated that “along with the 425 victims in the sample, hundreds and possibly thousands more victims were affected by the crimes of which Mr Lubanga was convicted”,<sup>59</sup> namely conscripting and enlisting children under the age of 15 years into the UPC/FPLC and using them to participate actively in hostilities, as co-perpetrator, between 1 September 2002 and 13 August 2003.<sup>60</sup>

49. Relying on the specificity of the *Lubanga* case, Mr. Lubanga’s individual responsibility, and the harm suffered by the estimated “hundreds to thousands” of victims, based on a sample and certain documents, the Chamber set the total reparations award for which Mr. Lubanga was liable at USD 10,000,000.<sup>61</sup>

50. Concerning the other potentially eligible victims, the Chamber recalled that “persons who had not been in a position to submit a dossier by 31 March 2017 would be screened by the Trust Fund for eligibility at the implementation stage of the reparations”.<sup>62</sup>

51. On 7 February 2019, the Chamber approved the proposals of the TFV on the process for locating new applicants and determining their eligibility for reparations, namely: first, locating and collecting victim files with the assistance of interviewers mandated by the TFV Secretariat, VPRS and the LRVs; second, transmitting the files to VPRS for its review and the submission of recommendations to the TFV on the

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<sup>56</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Corrected version of the “Decision setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, 21 December 2017, [ICC-01/04-01/06-3379-Red-Corr](#) (“*Lubanga* First Decision Setting the Size of Reparations Award”).

<sup>57</sup> [Lubanga First Decision Setting the Size of Reparations Award](#).

<sup>58</sup> [Lubanga First Decision Setting the Size of Reparations Award](#).

<sup>59</sup> [Lubanga First Decision Setting the Size of Reparations Award](#), paras.243-244.

<sup>60</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment, 5 April 2012, [ICC-01/04-01/06-2842](#), p.591.

<sup>61</sup> [Lubanga First Decision Setting the Size of Reparations Award](#), para.281.

<sup>62</sup> [Lubanga First Decision Setting the Size of Reparations Award](#), para.293.

eligibility of victims; and third determining the eligibility of the new applicants for reparations by way of an administrative decision.<sup>63</sup>

52. The TFV was further instructed to report to the Chamber on these administrative decisions rendered on the eligibility of new applicants for reparations for it to issue a final decision.<sup>64</sup> The Chamber set a cut-off date by which persons wishing to apply for reparations must come forward to the TFV. This date is redacted to the Defence.<sup>65</sup>

53. The Chamber also decided that “the process for locating *new applicants* and determining their eligibility for reparations will now have no bearing on Mr Lubanga’s liability for reparations or on the size of the award that the Chamber set in its Decision of 15 December 2017”. It follows that TFV decisions concerning the eligibility of potential new beneficiaries could be rendered without the Defence being involved.<sup>66</sup>

54. For the reasons expressed below, the Defence disagrees and takes issue with this procedure and submits that a different process should be implemented in this case.

55. Nevertheless, the Defence acknowledges that the crimes Mr. Lubanga was convicted of largely overlap with some of the crimes for which Mr. Ntaganda was convicted, namely conscripting and enlisting children under the age of 15 years into the UPC/FPLC and using them to participate actively in hostilities.

56. Accordingly and for the reasons set out below, the Defence submits that the reparations already in place or in the process of being implemented as a result of the

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<sup>63</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Public redacted version of Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations, 4 March 2019, [ICC-01/04-01/06-3440-Red-tENG](#), para.29 (“*Lubanga Decision on the TFV proposals*”).

<sup>64</sup> [Lubanga Decision on the TFV proposals](#), para.30.

<sup>65</sup> [Lubanga Decision on the TFV proposals](#), paras.41-42.

<sup>66</sup> [Lubanga Decision on the TFV proposals](#), para.27.

*Lubanga* reparations proceedings could benefit the eligible former child soldiers in the present case.

### C. Proposed procedure for the potentially eligible former child soldiers

57. As held by the Chamber, there is an “uncontested 'overlap' between the *Ntaganda* case and *Lubanga* case with respect to the geographical, temporal and material scope of the charges”.<sup>67</sup> Indeed, there is an overlap on the temporal scope of the charges, the UPC/FPLC armed group to which both Mr. Lubanga and Mr. Ntaganda belonged to, as well as the child soldiers who were members of the UPC/FPLC. VPRS also noted the “close similarities between the territorial, temporal and subject matter scope of both the *Lubanga* case and the present Case in relation to conscripting, enlisting and using child soldiers to participate actively in hostilities.”<sup>68</sup>

58. Mr. Lubanga was convicted for “having committed jointly with others the crimes of conscripting and enlisting children under the age of fifteen years into the UPC/FPLC and using them to participate actively in hostilities in Ituri, DRC, between early September 2002 and 13 August 2003, in the context of a non-international armed conflict.”<sup>69</sup> In relation to child soldiers, Mr. Ntaganda was convicted of “conscripting and enlisting children under the age of 15 years into [the UPC/FPLC] between on or about 6 August 2002 and 31 December 2003, and using them to participate actively in hostilities between on or about 6 August 2002 and on or about 30 May 2003 as war crimes” and “rape [...] and sexual slavery as a war crime [...] against children under the age of 15 years incorporated into the UPC/FPLC between on or about 6 August 2002 and 31 December 2003, in Ituri”.<sup>70</sup> Both of Mr. Lubanga and Mr. Ntaganda were convicted as co-perpetrators, pursuant to Article 25(3)(a) of the Statute.

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<sup>67</sup> Order on Defence access to confidential material in the *Lubanga* case, 1 September 2015, [ICC-01/04-02/06-806](#), para.11.

<sup>68</sup> Registry Preliminary Observations, para.9.

<sup>69</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, [ICC-01/04-01/06-3121-Red](#), para.529.

<sup>70</sup> [II](#), pp.535-538.

59. It follows that with the exception of the enlistment, conscription and use of child soldiers for the period between 6 August 2002 to 1 September 2002 and 13 August 2003 to 31 December 2003, and the crimes of rape and sexual slavery of child soldiers, the convictions in the two cases largely overlap.

60. Accordingly, eligible victims of the crimes of 'conscripting and enlisting children under the age of 15 years into the UPC/FPLC and using them to participate actively in hostilities' in the *Lubanga* case will necessarily be eligible victims in the present case, since they have suffered from the same harm resulting from the same crimes.

61. Considering the principle that reparations are meant to repair the harm suffered, while avoiding cumulative benefits,<sup>71</sup> and that the harm suffered by the victims in the *Lubanga* case are in the process of being repaired, these victims should not be awarded further compensation in this case. It is therefore necessary to identify those who have already obtained reparations in the *Lubanga* case, in line with the Single Judge's Order addressed to the VPRS to "carry out an assessment of how many of the victims eligible for reparations as direct victim beneficiaries in the case of *The Prosecutor v. Thomas Lubanga Dyilo* ('*Lubanga* case') are also potentially eligible for reparations in the *Ntaganda* case".<sup>72</sup> This will make it possible to avoid awarding reparations to victims twice in respect of the harm suffered as a result of the same crimes. It follows that the Defence takes issue with the argument put forward by VPRS that child soldiers who have obtained reparations in the *Lubanga* case can also obtain reparations in this case.<sup>73</sup>

62. In concrete terms, the Defence contends that the liability of Mr. Ntaganda must be shared with Mr. Lubanga. To the extent that the total reparations award for which Mr. Lubanga was found liable, i.e. USD 10,000,000.000 was considered appropriate

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<sup>71</sup> [Lubanga Amended Reparations Order](#), para.9; *The Prosecutor v. Bemba*, Public redacted version of Defence observations on reparations, 1 November 2016, [ICC-01/05-01/08-3458-Red](#), paras.98-99, referring to observations from the TFV in the *Lubanga* Case, [ICC-01/04-01/06-2872](#), paras.53-54.

<sup>72</sup> [Order Setting Deadlines](#), para. 9(a)(iii).

<sup>73</sup> [Registry Preliminary Observations](#), para.9.



and sufficient to remedy the harms suffered by the beneficiaries caused by the crimes for which Mr. Lubanga was convicted of, Mr. Ntaganda should not be held accountable for an additional amount other than in respect of the harms caused by the different crimes he was convicted of. Rather, the reparations award of USD 10,000,000.000 must be shared between Mr. Lubanga and Mr. Ntaganda. This raises a very important question, namely how to determine the respective liability of Mr. Lubanga and Mr. Ntaganda in conformity with the principle that “the convicted person’s liability for reparations **must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes** for which he or she was found guilty, in the specific circumstances of the case.”<sup>74</sup>

63. Further, in determining the reparations award for which Mr. Ntaganda is liable in respect of the harm resulting from crimes committed in a different temporal and material scope than in the *Lubanga* case, the Defence suggests that only former child soldiers enrolled in the UPC/FPLC between 6 August 2002 to 1 September 2002 and 13 August 2003 to 31 December 2003 be authorised to request reparation to the TFV, and be included in the reparations programs being implemented following the *Lubanga* case. Concerning child soldiers who were also victims of sexual violence, they should be authorized to request reparations, and their files should reflect the specific harm they suffered as a result of these crimes.

64. The Defence notes that the Trial Chamber in the *Lubanga* case set a redacted cut-off date to receive applications from alleged child soldiers. The Defence suggests that a similar cut-off date be set in the present case to allow new applicants to come forward and request reparations once Mr. Ntaganda’s conviction has been confirmed or overturned on appeal.

65. Needless to say the above observations relate solely to the reparation of harms caused to former child soldiers.

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<sup>74</sup> [Lubanga Amended Reparations Order](#), para.21.

66. Concerning the victims of the other crimes Mr. Ntaganda was convicted of, the Defence submits that the circumstances of the *Ntaganda* case, and the nature of the crimes committed, warrant reparations of a different type.

## **II. The criteria and methodology to be applied leading to the reparations order to be issued by the Chamber**

67. In light of the discussion in the previous section on the principles on reparations established by the Appeals Chamber in the *Lubanga* case, few modifications are required to adapt these principles to the *Ntaganda* proceedings.

68. Indeed, the Defence concurs with the substance of most of these principles to the extent that they are applied taking into consideration observations in the preceding section, which are based to a large extent on the similarities and differences between the *Lubanga* proceedings and the *Ntaganda* case.

69. The main similarity between the *Lubanga* and *Ntaganda* proceedings arises from the fact that in both cases convictions were entered in relation to the enlistment, conscription and use during the hostilities of child soldiers. It follows in this regard that the criteria to determine the eligibility of beneficiaries of reparations used in *Lubanga* find application for the most part in these proceedings. There are nonetheless differences between the findings entered by the respective Trial Chambers regarding *inter alia* the temporal scope of the convictions and the localities where the crimes Mr. Ntaganda has been convicted of have been committed.

70. The main difference between the *Lubanga* and *Ntaganda* proceedings relates to convictions entered against Mr. Ntaganda for crimes within the jurisdiction of the Court entirely different from the enlistment, conscription and use during the hostilities of child soldiers. Whereas the latter constitute continuous crimes committed over a period of time in various localities – with the exception of the use of child soldiers during the hostilities, where the location must be identified with more precision – crimes within the jurisdiction of the Court related to the conduct of hostilities Mr.

Ntaganda was convicted of, are committed on a **specific date**, within a **precise time-frame** and in a **particular location**.

71. As a result, the determination of the eligibility of a potential beneficiary of reparations for harms suffered as a result of a crime related to the conduct of hostilities necessarily involves different criteria and possibly the submission of more detailed evidence by an applicant to prove the casual link between the harm and the crime suffered.

72. The additional crimes Mr. Ntaganda was convicted of heightens the requirement for the Defence to have the possibility to review and challenge individual applications for reparations. The different nature of these additional crimes is also likely to impact the type of reparations that are more appropriate in the circumstances.

73. The present submissions are filed pursuant to the Single Judge's 5 December 2019 Order Setting Deadlines in relation to reparations. In its Order, the Single Judge also refers to 28 August 2020 as the deadline by which "the parties are to have disclosed any additional information they wish for the Chamber to consider in its reparations order"<sup>75</sup> as well as to 30 October 2020 as the deadline for the parties to file a 50-page "submissions on the reports/information presented, the submissions of other participants, and any other last arguments they wish the Chamber to consider before rendering of its reparations order."<sup>76</sup>

74. Regarding the 28 August 2020 deadline, considering that this date coincides with the submission of expert reports, if any, the purpose and content of the additional information the parties might "wish for the Chamber to consider in its reparations order" are unclear to the Defence.

75. As for the 30 October 2020 deadline, the purpose of the final submissions to be filed by the parties, more particularly, whether they include observations on any

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<sup>75</sup> [Order Setting Deadlines](#), para.9(b).

<sup>76</sup> [Order Setting Deadlines](#), para.9(f).

individual applications for reparations, which might be submitted by participating victims, respectfully requires clarification.

76. The Defence understands from the Single Judge's Order (or respectfully suggests as the case may be) that the Chamber intends to issue a preliminary decision, taking into consideration all submissions due to be filed by VPRS, LRVs, TFV, Prosecution and Defence today, establishing the principles and procedures to be applied to reparations in this case.

77. The Defence also understands from the Registry List of Proposed Experts on Reparations Pursuant to Trial Chamber VI's Order of 5 December 2019, submitted on 19 February 2020<sup>77</sup> read in conjunction with the Single Judge's Order, that the Chamber intends to issue a decision appointing experts, if any, to submit reports on specific topics deemed necessary for the purpose of later issuing its reparations order.

78. In light of the foregoing, the Defence respectfully proposes a reparation system somewhat different from that applied in *Lubanga* and other cases, which best serves the interest of victims and the interests of justice while protecting the rights of Mr. Ntaganda.

#### **A. Eligibility of victims**

79. In light of the specific circumstances of the *Ntaganda* case highlighted above, including in particular, the additional and different crimes Mr. Ntaganda was convicted of, and taking stock of the advantages and disadvantages of reparations proceedings implemented thus far in other cases, the Defence takes the view that the reparations system implemented in *Lubanga* is *not* appropriate and should not be applied in this case without substantial modifications.

80. Consequently, the Defence proposes a reparations system divided in two phases, namely the pre-reparations order phase and the post-reparations order implementation phase.

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<sup>77</sup> This list contains no less than 34 proposed experts.

## 1. The pre-reparations order phase

81. To be sure, the key to a reparations system that is efficient, cost-effective, fair and expeditious is to ensure that everything that can be done during the pre-reparations order phase is accomplished without delay, by those who are best placed to do so, namely VPRS, LRVs and Defence while protecting the rights of Mr. Ntaganda and avoiding unduly raising expectations of potential beneficiaries.

82. The first step in the Defence's view is to quickly compile an updated list of potential beneficiaries based on the existing list of participating victims, taking into account the new parameters set by the trial Judgment (such as removing the locations in the Updated Document Containing the Charges for which no convictions were entered). VPRS is best placed to quickly submit such an updated list of potential beneficiaries for the Chamber's approval with the possibility for the parties to make submissions.

83. On the basis of the updated list approved by the Chamber, the LRVs are best placed to consult with the participating victims on this list, *i.e.* their clients, to confirm that they indeed request reparations and consent to have their particulars communicated to the Defence as part of the reparations process. This step addresses the VPRS submission that as of today only 38 participating victims have actually filed an application for reparations while the other 2000 plus participating victims have yet to do so. Although asking a potential beneficiary to submit an application for reparations at this time, before Mr. Ntaganda's conviction and the extent of his responsibility have been finally confirmed might unduly raise his or her expectations, surely this can be explained to the participating victims by the counsel who represent them, *i.e.* the LRVs. The same cannot be implemented however regarding potential **new** beneficiaries who are not represented by counsel, which is why the Defence submits that applications for reparations should only be obtained from potential **new** beneficiaries during the post-reparations order implementation phase.

84. The next measure that can be taken during the pre-reparations order phase would be to order the Registry to transmit to the Defence redacted versions of each participating victim's dossier. The purpose of this measure is to protect the rights of the convicted person by allowing the parties (LRVs and the Defence) to review and possibly challenge application forms submitted by individual victims.

85. As was underscored by the LRVs and the TFV in their 3 October 2019 submissions "[c]learly, victims' participation at trial is distinct from reparations proceedings *inter alia* because the standard of proof may not be the same."<sup>78</sup> For this reason, the Defence takes issue with the screening process proposed by the VPRS based on the separation of applicants in three groups (Group A – applicants who have been clearly identified as beneficiaries; Group B – applicants who have been clearly identified as not qualifying as beneficiaries of reparations; and Group C – applicants for whom the Registry could not make a clear determination), where only Group C applications would be transmitted to the Defence.

86. Such a procedure is prejudicial and contrary to Mr. Ntaganda's rights. In *Lubanga* and *Katanga*, all applications for reparations were transmitted to the Defence, which was given an opportunity to make submissions on the merits thereof.<sup>79</sup> In *Al Mahdi*, VPRS was requested to make a preliminary assessment. When the VPRS Preliminary Assessment was positive or unclear, the Defence was requested to make observations on the eligibility of potential beneficiaries. When the VPRS Preliminary Assessment was negative, the LRVs could make observations and the Defence was able to respond.<sup>80</sup>

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<sup>78</sup> [LRVs Preliminary Observations](#), para.17. See also [TFV Preliminary Observations](#), para.18.

<sup>79</sup> *The Prosecutor v. Thomas Dyilo Lubanga*, Order for the transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo, 22 February 2017, [ICC-01/04-01/06-3275-tENG](#); *The Prosecutor v. Thomas Dyilo Lubanga*, Decision on the "Defence Request for the Disclosure of Unredacted or Less Redacted Victim Applications", 1 September 2015, [ICC-01/04-01/07-3583-tENG](#).

<sup>80</sup> *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on Trust Fund for Victims' Draft Implementation Plan for Reparations, 12 July 2018, [ICC-01/12-01/15-273-Red](#), paras.40-42.

87. As explained by the Appeals Chamber, the convicted person is ultimately liable for the awards of reparation.<sup>81</sup> Moreover, “[a] convicted person’s liability for reparations must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case.”<sup>82</sup>

88. Accordingly, the Registry should be ordered to transmit all applications to the Defence. This includes the dossiers of applicants who requested to participate in the proceedings who were ultimately not authorized to do so by the Chamber. The reason for this is obvious, should one of these applicants later submit an application for reparations as a new potential beneficiary, the Defence must be in a position to analyse his or her application taking into consideration the initial application that was denied.

89. Regarding the application of redactions by the Registry before transmitting the victims’ dossiers to the Defence, the circumstances of the present case justify that unredacted requests for reparations be transmitted to the Defence. In particular, the Defence must have access to the identity of the applicants. Accordingly, no redaction to identifying information of authorized participating victims at the pre-trial and trial phase should be applied.<sup>83</sup>

90. In *Lubanga*, the Chamber held that “the modalities of redaction ordered in *The Prosecutor v. Germain Katanga* also apply to this case”.<sup>84</sup> In *Katanga*, the Chamber ordered that once victims were admitted to participate in the proceedings, their identity had to be disclosed to the Defence.

91. Identifying information is necessary for the Defence to be in a position to submit meaningful observations on the applications for reparations, as well as to conduct proper investigations, if necessary. Mr. Ntaganda must have a genuine

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<sup>81</sup> [First Lubanga Appeal Judgment](#), para.117.

<sup>82</sup> [First Lubanga Appeal Judgment](#), para.118.

<sup>83</sup> Redaction to the identifying information of applicants had been ordered by the Pre-Trial Chamber: Decision Establishing Principles on the Victims’ Application Process, 28 May 2013, [ICC-01/04-02/06-67](#), para.43.

<sup>84</sup> [Order to Supplement the TFV draft implementation plan](#), fn.31.

opportunity to submit observations on the requests. Meaningful observations can only be based on a thorough review of the applications, including the personal situation of the applicants and the harm allegedly suffered for which Mr. Ntaganda would be responsible.

92. In addition, considering that various intermediaries are also widely used by the VPRS and the LRVs to reach victims, especially in remote areas of the DRC, it is necessary for the identity of intermediaries to be disclosed to the Defence. In *Lubanga*, the identity of certain intermediaries was indeed given to the Defence, on the basis that their security would not be affected.<sup>85</sup>

93. Pursuant to the decision establishing the principles and procedure to be applied to reparations issued by the Chamber which signals the beginning of the pre-reparations order phase, the parties would then be ordered to make submissions on the eligibility of participating victims to be included in the list of beneficiaries for the Chamber's approval. The Defence posits that the submission of observations by the parties on every individual application would allow to quickly making a list of certified beneficiaries of reparations, which would be of significance assistance to the Chamber for the purpose of issuing its reparations order. Significantly, this procedure not only would this procedure be efficient and cost-effective, it could be completed before Mr. Ntaganda's conviction and sentence are final and confirmed or overturned.

94. Meanwhile, as the LRVs are collecting applications for reparations from their clients and the Defence is reviewing the same, the VPRS would be able to carry out a thorough preliminary mapping of potential new beneficiaries for reparations, also, before the Chamber issues its reparations order. Preliminary mapping entails field missions and communications with local community leaders in all relevant case locations and possibly NGOs. It does not entail direct encounters with potential beneficiaries thereby avoiding unduly raising the expectations of persons who have yet to file applications for reparations. In this regard, the Defence underscores the

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<sup>85</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Redacted Decision on Intermediaries, 31 May 2010, [ICC-01/04-01/06-2434-Red2](#).



difference in the additional crimes Mr. Ntaganda was convicted of in comparison with Mr. Lubanga, which implies that the preliminary mapping needs only to be conducted in specific locations where the different crimes were committed pursuant to the trial Judgment.

95. Implementation of the above mentioned measures would allow the Chamber to order the VPRS, parties, TFV and Prosecution to submit final observations on issues to be considered by the Chamber in issuing its reparations order.

96. It also stems from the above that during the pre-reparations order phase the involvement of the TFV in the reparations procedure would be limited. The Defence posits that this is consistent with the TFV's reparations mandate pursuant to Article 50(b) of the Regulations of the TFV. Moreover, the involvement of the TFV in the *Lubanga* reparations proceedings before the implementation phase demonstrates that the Fund is **not** best placed to perform these measures. From the moment Mr. Ntaganda was transferred in the custody of the ICC and the beginning of the proceedings in his case, the VPRS and to a certain extent the OPCV and the LRVs have been involved in outreach activities, mapping endeavours, identification of and support to participating victims. There are no cogent reasons justifying the departure from the form-based approach implemented since the beginning – involving the VPRS, parties and Prosecution subject to the Chamber's authorization – to empower the TFV to carry out the identification of reparations beneficiaries using a different methodology. The VPRS advocates maintaining the form-based approach and the Defence concurs.

97. That does not prevent the TFV, however, from getting involved before the Chamber issues its reparations order pursuant to Article 50(a) of the Regulations of the TFV. This nonetheless requires the TFV Board of Directors to conclude that it is necessary to provide physical or psychological rehabilitation or material support for the benefit of victims and their families, and that pursuant to Article 50(a)(i) the TFV Board formally notifies the Court of its conclusion to undertake specified activities for this purpose. To this day, the Defence is unaware of any decision by the TFV Board

formally notified to the Court pursuant to Article 50(a)(ii). Furthermore, considering that any physical or psychological rehabilitation or material support provided by the TFV pursuant to its assistance mandate need not be linked to or limited by the parameters of a conviction in a specific case before the Court, it is essential that a clear distinction be made between the activities of the TFV pursuant to its assistance mandate and its activities pursuant to its reparations mandate. The best way to ensure this distinction is to limit the activities of the TFV pursuant to its reparations mandate, to the implementation phase.

98. Lastly, implementing the reparations procedure suggested by the Defence would allow to identify the majority of the victims eligible to receive reparations on the basis of the victims authorized to participate in the proceedings. While this list is not exhaustive as there will undoubtedly be new reparations beneficiaries who have not participated in the *Ntaganda* proceedings, the latter will in all likelihood constitute a small minority.

99. To this day, 2132 victims have been authorised to participate in the *Ntaganda* proceedings. These participating victims now have an opportunity to submit an application for reparations in accordance with the principles established by the Appeals Chamber. Since the beginning of the proceedings, the Registry through the VPRS, OPCV, and LRVs have multiplied field missions to disseminate in all relevant case locations the possibility for victims to participate in the proceedings and to obtain reparations in the process. These activities have allowed all interested victims, other than in exceptional or isolated cases, to request to participate in the trial proceedings. Consequently, the Defence takes issue with the LRVs' assertion that "[i]t is safe to assume that only a fraction of the potential victims in the present case have been identified to date, given in particular that entire villages across Ituri were affected."<sup>86</sup> While the Chamber in *Lubanga* determined that the total number of victims was much higher than the number of victims who requested to participate in the proceedings – which in and of itself is astonishing considering the evidence adduced during the

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<sup>86</sup> [LRVs Preliminary Observations](#), para.16.

proceedings – this can certainly be attributed to the nature of the crimes for which Thomas Lubanga was convicted, *i.e.* the enlistment, conscription and use during the hostilities of child soldiers, a continuous crime not necessarily committed in a specific location, while necessarily involving a very high number of indirect victims (parents and others). The number of victims of the different crimes Mr. Ntaganda was convicted of is not affected by such factors and it is unlikely that the total number of victims will be much higher than the number of participating victims.

## **2. Post-reparations order implementation phase**

100. In the Defence's view, the post-reparations order implementation phase begins when the Chamber issues its reparations order – at the earliest after and taking stock of the Appeals Judgments on Mr. Ntaganda's conviction and sentence judgments – fulfilling all five elements set out in the 3 March 2015 *Lubanga* Appeal Judgment.<sup>87</sup> To ensure that this phase is efficiently implemented in a cost-effective, fair and expeditious manner, it is essential that the tasks to be performed be accomplished by those best placed to do so on the basis of their capabilities and experience, *i.e.* the VPRS and the TFV, and to a lesser extent the parties. Activities to be accomplished during this phase include the identification of potential new reparations beneficiaries, certification of eligible beneficiaries by the Chamber and determination of the anticipated monetary amount necessary to remedy the harms suffered by the beneficiaries caused by the crimes for which Mr. Ntaganda was convicted.

101. In practical terms, the reparations order should first include ordering the VPRS, in consultation with the TFV, to collect applications for reparations from potential new beneficiaries based on the mapping carried out in the pre-reparations order phase and to seek their consent to have their particulars forwarded to the parties.

102. As recommended by the VPRS in its 5 September submissions, the form-based approach should be maintained. Moreover, the LRV should not be involved in identifying and/or collecting applications forms from new potential reparations

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<sup>87</sup> [First Lubanga Appeal Judgment](#).

beneficiaries. The reasons for this are obvious. First, at this stage, new potential reparations beneficiaries are not represented by Counsel; they will be once their status as beneficiaries has been certified by the Chamber. Second, as the LRVs will later be ordered to submit observations on the eligibility of the new potential reparations beneficiaries identified, they should not be involved in identifying the latter in the first place. As was the case in *Lubanga*, a fixed period of time ending with a definite deadline should be determined for new potential reparations beneficiaries to come forward and/or be identified by the VPRS in consultation with the TFV. This is all the more essential as explained above considering the nature of the additional conduct of hostilities crimes Mr. Ntaganda was convicted of.

103. The reparations order issued by the Chamber should also instruct the Registry to transmit redacted versions of all application forms collected from **new** potential reparations beneficiaries to the parties. Observations made above concerning the redaction of application forms submitted by participating victims during the pre-reparations order phase apply *mutatis mutandis* to the redaction of application forms collected from potential **new** reparations beneficiaries during this phase. Application forms should also be transmitted to the Defence on a rolling basis to ensure the Defence benefits from a genuine opportunity to review and possibly challenge these applications.

104. Moreover, the Defence deems appropriate to reiterate that in the specific circumstances of this case, taking into consideration the nature of the additional and different crimes Mr. Ntaganda was convicted of, it is unlikely that the number of **new** reparations beneficiaries will be significant in comparison to the number of victims authorized to participate in the proceedings who are likely to request reparations.

105. Further to the Registry's transmission of application forms submitted by potential new reparations beneficiaries, the parties should be ordered to submit observations regarding the eligibility of these applicants. To ensure that the rights of Mr. Ntaganda are adequately protected, sufficient time should be provided to the parties to submit their observations to the Chamber.

106. In conjunction with the above-mentioned measures, the reparations order issued by the Chamber should include ordering the TFV to submit a draft implementation plan including, *inter alia*, the list of beneficiaries certified by the Chamber – drawn from both participating victims and new beneficiaries – and the anticipated monetary amount that it considers necessary to remedy the harms suffered by the beneficiaries caused by the crimes for which Mr. Ntaganda was convicted.

107. In *Lubanga*, the Chamber ordered the TFV to submit a similar draft implementation plan. However, the Chamber neither requested the TFV to include a list of victims potentially eligible to benefit from the reparations nor to anticipate the monetary amount that it considered necessary to remedy the harms caused by the crimes for which Mr. Lubanga was convicted.

108. As a result, the TFV draft implementation plan was determined to be incomplete and the TFV was requested to supplement its plan with both a list of victims potentially eligible to benefit from the reparations and submissions regarding the monetary amount. The fact that the TFV was required to supplement its draft implementation plan with a list of victims potentially eligible to benefit from reparations – an undertaking which required 16 months to complete – caused very long delays, which must be avoided in this case for the benefit of reparations beneficiaries as well as to protect the rights of Mr. Ntaganda. Notably, the *Lubanga* Chamber requested the TFV to submit a list of potential beneficiaries even though it had already decided that only collective reparations would be awarded and despite the Appeals Chamber holding that “[w]hen only collective reparations are awarded pursuant to rule 98 (3) of the Rules, a Trial Chamber is not required to rule on the merits of the individual requests for reparations.”<sup>88</sup>

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<sup>88</sup> [First Lubanga Appeal Judgment](#), para.7.

### III. Types and modalities of reparations appropriate to address the types of harm relevant in the circumstances of the *Ntaganda* case

109. The determination of the type and modalities of reparations to be awarded rest first and foremost on the choice between individual and collective reparations. Although the Defence has not been privy to many victim applications to participate in the proceedings, it appears from the forms consulted by the Defence that victims in general prefer individual as opposed to collective reparations. In the Defence's view, the choice between individual as opposed to collective reparations depends on the nature of the harm suffered by the victim(s) which is related to the characteristics of the crime. The harm caused by certain crimes such as pillage, destroying or seizing the enemy's property – crimes committed during the conduct of hostilities – can best be repaired through individual reparations, the aim of which is to restore the victim to his or her circumstances before the crime was committed. As for other crimes which cause harm of a physical or psychological nature, such as rape and persecution, these can best be repaired by awarding collective reparations.

110. In *Lubanga*, collective reparations were considered most appropriate to address the harm suffered by former child soldiers due to its continuing nature and long-term psychological consequences. Moreover, awarding individual reparations to a child soldier is unlikely to efficiently repair the harm suffered.

111. Accordingly, the Defence generally concurs that collective reparations appear more appropriate to address the harm suffered as a result of the crimes of conscription, enlistment and use of child soldiers.

112. The *Lubanga* Order states that "[w]hen collective reparations are awarded, these should address the harm the victims suffered on an individual and collective basis."<sup>89</sup> In this regard, the Defence takes the view that a distinction should be drawn between "collective compensation", aimed at compensating collectively for harm suffered individually by several victims recognised by the Court, and compensation aimed at

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<sup>89</sup> [Lubanga Amended Reparations Order](#), para.33.

compensating a "community" claiming to be a victim of a crime in the Ituri region, without the members of the community being individually identified.

113. The Registry has recognised that the community cannot be qualified as a victim within the meaning of Rule 85.<sup>90</sup> In *Lubanga*, the Appeals Chamber explained that:

Only victims within the meaning of rule 85 (a) of the Rules of Procedure and Evidence and regulation 46 of the Regulations of the Trust Fund, who suffered harm as a result of the crimes for which Mr Lubanga was found guilty, are eligible to claim reparations against Mr Lubanga. Where an award for reparations is made to the benefit of a community, only members of the community meeting the relevant criteria are eligible.<sup>91</sup>

114. Moreover, reparations must be awarded to persons who have suffered harm as a result of the crimes for which Mr. Ntaganda has been convicted. The issue of not identifying individually the beneficiary victims could lead to reparations being awarded to victims who have not suffered harm as a result of the crimes for which Mr. Ntaganda was convicted.

115. Thus, even in the case of collective reparations, it will be necessary to identify individually the beneficiary victims recognized as such in the context of the trial against Mr. Ntaganda.

116. Notably, as previously underscored, the harms caused to victims in this case was caused by additional and different crimes Mr. Ntaganda was convicted of. For some of these crimes, in particular pillage and destruction and seizure of the enemy's property, the Defence submits that individual reparations would most appropriately address the harms suffered by these victims. It follows that in the specific circumstances of this case, the Defence submits that both collective and individual reparations should be awarded. The Defence undertakes to submit additional observations in this regard in its final submissions before the Single Judge before the Chamber issues its reparations order.

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<sup>90</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Second Report of the Registry on Reparations, 1 September 2011, [ICC-01/04-01/06-2806](#), para.68.

<sup>91</sup> [First Lubanga Appeal Judgment](#), para.8.

#### IV. Response to the Registry identification of potential experts

117. On 19 February 2020, as requested by the Single Judge in the Second Order on Reparations, the Registry, through the Director of the Division of Judicial Services, submitted a list of 34 potential experts.<sup>92</sup>

118. As mentioned in paragraph 77 above, the Defence understands that the Chamber intends to issue a decision appointing experts, if any, to submit reports on specific topics deemed necessary for the purpose of later issuing its reparations order.

119. In this regard, taking into consideration that experts appointed should be neutral and carry out their mandate with impartiality and independence,<sup>93</sup> the Defence takes issue with the following four proposed experts who should not be considered by the Chamber for appointment as experts in this case

- a. Jelena Aparac<sup>94</sup> : The Applicant worked [REDACTED].

This is sufficient to affect the neutrality of this applicant and to dismiss this application at this stage.

- b. Jean Ambayi Bwatshia<sup>95</sup>: Contrary to the Applicant's assertion in his application documents submitted to the Registry in the present procedure, the Applicant did not testify as a witness in the *Ntaganda* case. His testimony in accordance with Rule 68(2)(b) was explicitly rejected by the Chamber.<sup>96</sup> The Chamber considered "to be apparent deficiencies in the reports [submitted by Mr. Ambayi Bwatshia],

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<sup>92</sup> Registry List of Proposed Experts on Reparations Pursuant to Trial Chamber VI's Order of 5 December 2019, 19 February 2020, [ICC-01/04-02/06-2472](#) ("Registry List").

<sup>93</sup> [Defence Preliminary Observations](#), para.46.

<sup>94</sup> [Annex 3 to the Registry List](#).

<sup>95</sup> [Annex 20 to the Registry List](#).

<sup>96</sup> Decision on Prosecution application for admission of prior recorded testimony of Witnesses P-0020, P-0057 and P-0932 under Rule 68(2)(b), 18 January 2017, [ICC-01/04-02/06-1730-Conf](#), para.23.



including in respect of methodology and identification of sources, which significantly impacts their probative value.”<sup>97</sup>

There is no reason to believe that the Applicant will adopt an appropriate and trustworthy methodology in the context of this expertise. For this reason, this Application should be dismissed at this stage.

- c. Lynn Lawry<sup>98</sup>: The Applicant was an expert witness for the Prosecution in the present case (P-0453).

This is sufficient to affect the neutrality of this applicant and to dismiss this application at this stage.

- d. Eric Mongo Malolo<sup>99</sup>: The Applicant works as Coordinator of the Réseau Haki na Amani in Ituri and meet with communities of victims of crimes for which Mr. Ntaganda was convicted. More specifically, Mr. Mongo Malolo worked with the communities of Nyali Kilo *chefferie* and Lendu Djatsi *chefferie* since 2009.

This proximity with victims from the affected villages of the *Ntaganda* Case is sufficient to affect the neutrality of the Applicant. This amounts to the work VPRS and the TFV will be carrying for the reparation phase. For this reason, this application should be dismissed at this stage.

120. Moreover, regarding the necessity or not to appoint experts in this case, the Defence respectfully submits that expert reports submitted in a context of reparations proceedings in other cases should be considered before appointing new experts to provide reports at the cost of the court on similar topics. Should the Chamber consider

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<sup>97</sup> Decision on Prosecution application for admission of prior recorded testimony of Witnesses P-0020, P-0057 and P-0932 under Rule 68(2)(b), 18 January 2017, [ICC-01/04-02/06-1730-Conf](#), para.23.

<sup>98</sup> [Annex 23 to the Registry List](#).

<sup>99</sup> [Annex 27 to the Registry List](#).

that one or more of these reports can be of assistance for the purpose of later issuing its reparations order, these should be transmitted to VPRS and the parties for the purpose of providing observations on their applicability in the specific circumstances of this case. Expert report(s) focusing on the harm caused and long-term consequences for victims of sexual violence submitted in the context of the *Bemba* reparations proceedings fall in the category of reports which could be considered by the Chamber.

121. Furthermore, the Defence recalls, as a general principle, that “[a]n expert witness is a person who, by virtue of some specialised knowledge, skill or training can assist the Chamber to understand an issue of a technical nature that is in dispute, without undue difficulty.”<sup>100</sup> In addition, the Defence posits that any expert report requested by the Chamber should fall within the expertise of the witness without usurping the functions of the Chamber as the ultimate arbiter of fact and law.<sup>101</sup> In this regard, the Defence takes issue with the possibility of the Chamber to appoint an expert to submit a report on the scope of liability of the convicted person considering that the Chamber is well equipped and capable of assessing the extent of the liability of Mr. Ntaganda.

122. Lastly, should the Chamber decide to appoint one or more experts at this stage, the Defence respectfully submits that their mandate, *i.e.* the objective of their report should be strictly circumscribed. As for the letters of instructions which would then have to be addressed to the experts, in all likelihood by the VPRS, the Defence respectfully requests that the parties be consulted in their production.

## **V. Other relevant issues**

123. The Defence deems necessary to address one further issue in the context of the present submissions, namely the sample approach adopted by the Chamber in the *Lubanga* reparations proceedings.

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<sup>100</sup> *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, 7 August 2013, [ICC-01/09-01/11-844](#), para.11.

<sup>101</sup> *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, 7 August 2013, [ICC-01/09-01/11-844](#), para.12

124. The Defence takes issue and opposes the adoption of a sample approach in the current proceedings.

125. In *Lubanga*, the TFV omitted to include a list of victims potentially eligible to benefit from reparations despite having been instructed by the Chamber to do so. As a result of the TFV later compiling this list over a 16 months period – during which the TFV required the assistance of VPRS, OPCV and LRVs – only 473 applications were transmitted to the Defence and ultimately to the Chamber for approval. Consequently, the Chamber decided to treat this list as no more than a sample to be considered in conjunction with other documents to determine the scope of liability of Mr. Lubanga. The Chamber's conclusion regarding the liability of Mr. Lubanga, *i.e.* that hundreds if not thousands of additional victims existed demonstrates the little weight attributed to the said sample.

126. The Defence disagrees with the use of the sample approach, which can only result in the amount of Mr. Ntaganda's liability being set arbitrarily without a proper foundation regarding the accurate number of victims who have suffered harms caused by the crimes for which Mr. Ntaganda was convicted.

#### **CONFIDENTIALITY**

127. Pursuant to Regulation 23bis(1) of the Regulations of the Court, the present submissions are classified as confidential since they refer to confidential material. The Defence undertakes to submit a public redacted version in due course.

**RESPECTFULLY SUBMITTED ON THIS 6<sup>TH</sup> DAY OF MARCH 2020**



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

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