

Public Redacted Version of

ANNEX 1

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Report on applications for reparations in accordance with

Trial Chamber II's Order of 27 August

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The Registry's Report on applications for reparations in accordance with Trial Chamber II's Order of 27 August 2014

I. Introduction

1. In its Order of 27 August 2014, Trial Chamber II ("the Chamber") ordered the Registry to contact victims who had applied for participation and/or reparations during the proceedings in order to receive additional and up-to-date information on the harm suffered and reparations measures sought by the victims, and to file a report thereon. Consequently, the Victims Participation and Reparations Section of the Registry (the "VPRS"), in close consultation and collaboration with the Legal Representative of the Victims (the "LRV"), met with 305¹ of the 365² victims who had submitted applications.³ Of these, 223 also attended group meetings.
2. In addition, in accordance with paragraph 11 of the 27 August 2014 Order, and pursuant to Regulation 110(2) of the Regulations of the Registry (the "RoR"), the Registry also made preliminary inquiries and met with certain interlocutors on the ground with a view to including recommendations regarding the types and

¹ Among the 305 victims consulted, 203 are male, 101 are female and one is an organisation. The Registry consulted four of the seven persons authorised by the Chamber to succeed deceased victims, and consulted four persons seeking to be recognized as successors of victims who were recently deceased (a/0170/08, a/0294/09, a/0354/09, a/0321/09). The Registry, in consultation with the legal representative, decided to meet these persons on the basis of the LRV's indication that a request for them to be recognized as successors would follow). One victim was met whose application for participation was deferred by the Chamber on the basis that supplementary information to complete the application (a proof of identity document) would be provided by the LRV (a/0284/09). The reasons why 59 victims could not be met are as follows: 11 were reported to the LRV to have recently died, 35 could not be reached by the LRV (including 3 victims seriously sick and 3 victims traveling abroad), 3 persons authorised by the Chamber as successors of deceased victims could not be reached by the LRV, 5 victims whose death had been already reported by the LRV to the Chamber but for whom no request for recognition of a successor had been introduced (ICC-01/04-01/07-3483-Red, para. 10), and 5 victims from [REDACTED] could not be met due to logistical issues faced at the end of the mission by the Registry). In addition, victim [REDACTED] was met but interviewed only on community related-issues.

² This number comprises 353 victims authorised to participate in the proceedings and in relation to whom the crimes suffered were recognized as committed by the accused in the final Judgement (some of whom have also submitted applications for reparations), and 14 applicants for reparations not participating as victims in the proceedings. One duplicate was identified during the mission (a/0208/09 is a duplicate of a/0210/08) and one victim requested to withdraw from the proceedings (a/0317/09, see the further notification submitted by the LRV: ICC-01/04-01/07-3509).

modalities of reparations and factors relating to the appropriateness of awarding reparations on an individual or collective basis, as well as any measures already taken to redress the harm caused by the attack on Bogoro of 24 February 2003. Additional steps taken included, *inter alia*, contacting the Trust Fund for Victims ("TFV") and seeking information from them prior to the field mission, following up on information provided by victims during interviews concerning specific projects that had been carried out since the attack on Bogoro of 24 February 2003, and contacting a small number of project implementers. These local and international aid organisations were contacted and asked about their experience in implementing measures involving victims of the case, and whether there were other victims of the case who had not sought to apply to the Court for participation or reparations so far and, if so, how they might be identified.⁴ The Registry also sought input from a small number of local community leaders⁵ on issues pertaining to the appropriateness and feasibility of certain types of reparations, and other potential victims. Due to the tight schedule of victim interviews there was however limited staff time to reach out more widely, so the individuals and organisations contacted were limited, and consequently the Registry does not consider that it has been able thus far to conduct detailed inquiries into these matters.

3. The data presented in the report also incorporates additional updated information provided recently by some victims to supplement their applications and transmitted by the LRV.⁶ This information has been included in Annex 2.
4. The purpose of the present report is to present the information collected and recommendations arising from the consultation exercise carried out in accordance with the 27 August 2014 Order.

⁴ A request for cooperation was sent to [REDACTED] on 12 November 2014 seeking their assistance to identify other potential applicants for reparations among [REDACTED]. This request is pending.

⁵ The Registry notes that local community leaders, who are part of the scheme of traditional authorities in the DRC, are not elected but follow customary rules (family succession lines) and are recognized by the administrative authorities through an official administrative process. They have a role and some legal legitimacy before the traditional tribunals. Their powers vary from one region to another. See *Pouvoir traditionnel et pouvoir d'Etat en République Démocratique du Congo*, 2010, <http://orbi.ulg.ac.be/bitstream/2268/80554/1/Pvoir%20traditionnel%20et%20pvoir%20d'Etat%20en%20R.D.pdf>.

⁶ As per the Chamber's order, this includes any updated information on the crime or harm suffered as well as any additional documents provided to establish the identity of the victims and the harm they have suffered.

II. Conduct of the Victim Consultation Exercise ordered by the Chamber

5. Following the Order of 27 August 2014, the Registry worked in close consultation and collaboration with the LRV to prepare and conduct the victim consultation exercise required to collect the updated information from the victims who had applied to participate in the proceedings or for reparation. From the outset and throughout, the LRV showed a strong willingness to provide his assistance, which in Registry's view was extremely beneficial to the implementation of the 27 August 2014 Order. The Registry recognises in particular that the LRV and his team provided an important assistance in properly informing the victims as to the goals of the consultation exercise and in managing the victims' expectations.
6. This exercise involved the following steps:
 - (i) Initial consultations with the TFV in order to identify viable reparations measures;
 - (ii) Preparation and development of a questionnaire;
 - (iii) Implementation of a field mission for the purpose of meeting with victims;
 - (iv) Development of a data management tool for reporting.⁷
7. The LRV was consulted at each stage through meetings, emails and phone conversations.⁸ These exchanges were characterised by a constructive approach on both sides. Bearing in mind each other's duties and functions, both the Registry and the LRV made every effort to consider each other's proposals and, as often as possible, to reach an agreement.
8. Victims were met between [REDACTED] and [REDACTED] 2014. Throughout the consultations, the Registry remained mindful of the Chamber's instruction to carefully manage the expectations of the victims who were interviewed. The Registry recognises that victim consultation processes such as that ordered by the Chamber, allowing the victims to contribute actively at this important stage of the process, is of value in and of itself.⁹

⁷ The LRV was not consulted on this aspect.

⁸ Two preparatory meetings were held in The Hague on 3 and 10 September 2014, and numerous emails were exchanged between the LRV and the VPRS following the Order of 27 August 2014.

⁹ See *The International Journal of Transitional Justice*, Vol. 7, 2013, 518-535 ("Adequate consultation with victims is important [...]"). See also ICC-ASP/12/39 (Report of the Court on principles relating to victim's reparations, explaining that "the Court should consult with victims on reparations issues such as the identity of beneficiaries, priorities and obstacles to securing reparations").

(i) *Initial Consultations with the TFV in order to Identify Viable Reparations Measures*

9. As directed by the Chamber, as a first step the Registry consulted the TFV in order “to set out and present the victims with examples of measures which might be viable means for reparations” and “to describe any measures that may already have been taken by the TFV or any other organisations to redress the damage and harm caused by the attack of Bogoro of 24 February 2003” (. At a meeting with the TFV held on 11 September 2014, the TFV indicated that it would be happy to respond to questions along the way during the consultation process and to share tools and methodologies related to victim consultation processes.¹⁰ However, as regards the specific information requested under the Order of 27 August 2014, the TFV indicated that it would not be in a position to provide the Registry with the abovementioned examples because the TFV was not aware which victims fall within the scope of the case nor was it aware of their current locations. Similarly, in relation to the Chamber’s request that the recommendations provided by the Registry pursuant to regulation 110(2) of the RoR should take into consideration and describe any measures that may already have been taken by the TFV, the TFV indicated that it was not in a position to provide this information for the same reason. In the absence of such examples of concrete and viable measures, the Registry developed, for the purpose of the consultation with victims, a set of five broad categories of potential reparation awards, sourced in a general way from international human rights texts and bodies. These categories were illustrated by examples of reparations measures identified in consultation with the LRV.
10. During the meeting the TFV also said it considered that the sample of victims to be consulted, which was limited to the victims who had come forward and applied to participate in the proceedings, does not sufficiently represent the broader population affected by the attack. In particular, women and children are under-represented. The TFV explained that it would itself be able to conduct a more comprehensive consultation with a broader range of qualifying victims and their affected communities based on its methodology, and that this could be done at a later date following a decision on reparations. This would be presented as

¹⁰ The TFV provided the Registry and the LRV with internal and open sourced methodologies on how to consult with victims and organise focus group consultations as well as a copy of the TFV’s strategic plan and a draft version of their internal questionnaire.

part of a draft implementation plan, contingent on the order, in accordance with regulations 54, 55, 59, 60 and 61 of the Regulations of the TFV.¹¹

(ii) Preparation of the consultation exercise and development of a questionnaire

11. In close consultation with the LRV, in order to prepare for the victim consultation exercise, the VPRS developed a mission plan, questionnaire and set of standard operating procedures to clarify in detail the manner in which the interviews were to be conducted.
12. The VPRS prepared an initial draft questionnaire as a tool for the individual interviews with applicants in order to collect the information requested by the Chamber, and designed to enable the information to be entered into a database for analysis and reporting purposes. The VPRS held detailed consultations with the LRV on the draft questionnaire. A number of amendments were made in light of the LRV's previous experience with victims, the need to protect the victims' well-being, the goal of ensuring a neutral consultation and time constraints.¹²
13. Standard operating procedures ("SOPs") were prepared for the individual interviews¹³ and the collective meetings.¹⁴ These SOPs aimed to ensure standardisation in the way that the process was explained and the questions were asked, as well as to ensure that as far as possible the meetings would be conducted in such a manner as to protect the well-being of the victims, maintain neutrality and maximise the quality of the information collected. The SOPs,

¹¹ Email from the Legal Adviser, TFV to the VPRS dated 11 November 2014.

¹² This included for example an agreement on how to confirm with the victim the facts as described in the application form in such a way as to avoid as far as possible re-traumatising the victim, the addition of question 3 "What does the victim think could be done to redress the harm he/she has suffered as a result of the attack of Bogoro on 24/02/2003?" and the list of examples of reparations measures presented in question 4.

¹³ The standard operating procedures for individual interviews highlight that during the individual interviews it should be made very clear to the victims that their views will be conveyed to the Trial Chamber, which will make its determination on the appropriate forms of reparations taking into account the views expressed as well as the circumstances of the case; and that therefore there was no guarantee that the victim's views and interests would be fulfilled.

¹⁴ Considering the type of information to be collected in accordance with the Order of 27 August 2014, and based on the Registry's experience in meeting with victims, the Registry decided that before meeting the victims individually, collective meetings should be organised in consultation and collaboration with the LRV. The main purposes of the collective meetings were for the LRV to introduce Registry representatives to his clients so as to create trust, explain the purpose and conduct of the consultation, and inform victims about the individual interviews. Four collective meetings were organised, on [REDACTED] 2014 in [REDACTED] with the victims living in [REDACTED] on [REDACTED] 2014 in [REDACTED] with the victims living in [REDACTED] and on [REDACTED] 2014 in [REDACTED] with the victims living there. 223 victims were met altogether during these collective meetings.

finalised following consultations between the Registry and the LRV, include step-by-step instructions on the conduct of interviews, and clarify the roles and responsibilities of those involved.¹⁵ Revisions were also made to the methodology necessary to respond to the realities in the field as the mission progressed.

14. The questionnaire included questions designed to meet three main objectives set out in the Order of 27 August 2014: obtaining an update on harm suffered; obtaining updated information on the reparations measures sought; and obtaining information concerning any measures already taken to redress the harm.

➤ **Obtaining an update on harm suffered**

15. The questionnaire was designed to obtain an update of the victim's situation and facilitate a better understanding of the impact of the crimes, eleven years after the attack on Bogoro of 24 February 2003.¹⁶ The goal was to collect more information on the harm suffered and discover whether, and if so, how, the crimes for which Mr. Katanga was convicted continue to impact the victims' lives today. Key indicators were used to facilitate the dialogue including: the victims' financial/economic situation, physical health, psychological well-being, security situation, family situation, socio-political/communal situation and the land/housing situation. The general trends arising from the responses to these questions are reported below in part III of this report, while the standardised individual responses are reported in Annex 2 along with the additional information requested by the Chamber in paragraph 8 of the 27 August 2014 Order.

➤ **Obtaining updated information on the reparations measures sought**

16. Second, the questionnaire included questions aimed at obtaining more complete information on the reparations measures sought by applicants. As noted above, following consultation with the TFV it was not possible to identify specific examples of reparations considered by the TFV to be viable in the context of the case. Consequently, and always mindful of the duty to manage expectations, the Registry developed a set of five broad categories of potential reparation awards to present to victims in a neutral manner "in order to gauge their views on

¹⁵ Standard Operating Procedures on the reparations consultation process with victims as per Trial Chamber II's Order ICC-01/04-01/07-3508, and Script and Key Messages for Collective Meetings.

¹⁶ See 27 August 2014 Order, para. 7.

different possible types of reparations” as ordered in paragraph 10 of the 27 August 2014 Order. Sourced from international human rights instruments and bodies,¹⁷ the measures presented to victims comprised the following five categories:

- A. Economic Development / Financial Measures
- B. Memory / Commemoration Measures
- C. Measures Aimed at Publishing/Establishing the Truth
- D. Medical/Psychological Care Measures
- E. Peace/Reconciliation Measures

17. Considering the general nature of the abovementioned measures, taking into account the input of the LRV, and with a view to enhancing the victims’ understanding of the different forms of reparations, the Registry compiled a list of corresponding examples that could be provided to victims to describe the types of awards that could be ordered under each measure. In developing the list, the Registry relied on available information on the types of programmes organised or funded by the TFV as well as standard awards issued by other international human rights bodies. The specific examples, listed under question 4 of the questionnaire attached hereto as Annex 3, include projects that benefit individuals as well as projects that benefit the community. In presenting these to the victims, VPRS staff ensured that the different types of reparations were presented to the victims in as neutral a manner as possible. They reiterated that these were merely examples and that the Judges would ultimately decide on the type and modalities of any reparations that would be awarded.
18. The VPRS found nevertheless that when presenting the general measures and examples, it was necessary to adapt to the flow of the interview and how the victim responded. In some interviews where the victim displayed clear disinterest or signs of potential re-traumatisation (for example with respect to Mr. Katanga’s apologies), the interviewer was not able to present the entire list of examples under each general measure to the victim.
19. Mindful that the Chamber had asked the Registry to manage victims’ expectations with extreme care and to present questions in a neutral fashion and the need for caution in this context when framing open ended questions on

¹⁷ These include the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian adopted by the United Nations General Assembly on 16 December 2005 (A/RES/60/147), as well as jurisprudence from the Inter-American Court of Human Rights. The Registry took also into account publically available information regarding the projects implemented by the Trust Fund for Victims through its assistance mandate.

reparations, it was decided, based on the LRV's suggestion, to ask an open ended question followed by a detailed one. It was further decided that the open question would always be introduced by an explanation that what was requested might not be what would be eventually awarded. The open and detailed questions comprise questions 3 and 4 respectively of the questionnaire (Annex 3).

➤ **Obtaining information concerning any measures already taken to redress the harm**

20. In accordance with the Chamber's Order, the questionnaire also included two questions, questions 5 and 6, asking whether the victim was aware of projects or proposals that had benefited the victims or their communities, including any measures that had already been taken to redress the damage and harm caused by the attack on Bogoro of 24 February 2003, and how those measures were perceived by victims.

(iii) Implementation of a Field Mission for the Purpose of Meeting with Victims

21. A joint field mission was organised by the Registry and LRV that lasted from 25 September 2014 until 17 November 2014. The experience of the LRV that was brought to bear in organising the meetings with victims was extremely helpful as it enabled almost all the participating victims and applicants who had submitted applications for reparations in the proceedings to be met,¹⁸ other than a small number who were deceased or could not be reached. A total of 305 interviews were conducted. The continuous input and comments from the LRV and his team were duly taken into account by the Registry throughout the mission to improve the working methods during the interviews and the victims' understanding of the reparations measures presented. Individual interview teams (the "interviewing teams") were formed so that each interview was conducted by one member of the Registry in the presence of one member of the LRV team, if necessary with the assistance of an interpreter. An average of 12 victims were met per day. Each interview took approximately one and a half to two hours. The completed questionnaires were entered into the VPRS database for the purpose of generating statistics in preparation of the present report.

¹⁸ It was agreed that the LRV would be responsible for organising the logistical arrangements of contacting his clients and bringing them to the meeting venue, while meetings rooms, transport, security and budgetary arrangements would be organised by the Registry.

III. Issues that may affect the results

22. The Registry notes that when it comes to field missions of this nature, the best laid plans can come up against difficult and unforeseen challenges. A number of issues arose during the implementation of the consultation that required adaptation and practical common sense. The following factors are thus reported since they may have affected the results of the consultation.

(i) *Challenges in making concepts and examples understood*

23. During the course of the interviews with victims the VPRS encountered challenges in making the concepts and examples of reparations clearly understood whether because victims required further explanations and concrete examples of some of the measures, in order to relate them to their own lives and cultural background, because some examples sounded to the victims to be similar to each other and hard to differentiate, or because they found the interviews long and exhausting.

24. Similarly, the Registry believes that some victims may have had – for various reasons, including their cultural background and the examples of reparations measures presented - difficulty in distinguishing clearly between this type of harm and suffering resulting from poverty, insecurity and their general situation. This is an element that should be taken into account at the stage of implementing reparations awards.

(iv) *Translation/Terminology Issues*

25. The VPRS has encountered difficulties in many Court's situation countries in translating the legal concept of "reparations" (in French, "*réparations*") into languages spoken by victims. The Oxford English Dictionary defines the term "reparation" as "something done to make up for a wrong" and article 75 of the Rome Statute provides examples of categories of reparations including restitution, compensation and rehabilitation. The VPRS notes that the term *reparations* in the Court's context has a layered legal characteristic that, even in English or French, requires further clarification with the majority of audiences before it is understood, particularly as it may not always have a vernacular analogue.

26. Aware of this issue, when communicating with victims and affected communities in Eastern DRC, the relevant Registry sections are very careful in the way they

explain the notion of reparations.¹⁹ The official ICC term for *reparations* in Swahili is “*malipo*”,²⁰ and this was thus initially used by the interpreters during the interviews. However, adjustments had to be made during the mission to ensure that the concept of reparations was conveyed accurately. Two weeks after the start of the mission, in an effort to communicate more effectively, after exchanges between the LRV, the interpreters and VPRS, it was concluded that the best way to proceed was to avoid using one specific term, either “*malipo*” or “*kutengeneza*” (which literally means to repair in the context of repairing a damaged house or a car) and ensure as far as possible that the concept of reparations be explained in a way that could be best understood by the victims. VPRS thus requested the interpreters to initially introduce reparations by using a phrase that roughly translates as “repairing the harm that was done to you”.²¹ The VPRS considered that while this approach may take a little more time at the outset to explain, it enabled the interviewer to go on to present a series of proposals in a more neutral manner without prejudicing the responses from the start. Following this experience, the VPRS will follow up with the relevant sections within the Registry with a view to standardising Court terminology on the subject of reparations.

(v) *Variations in the approach used during the field mission*

27. Some adjustments needed to be made during the course of the mission in light of experience. For instance, the order of asking questions 3 and 4 was sometimes changed. The inclusion of the open question “What does the victim think could be done to redress the harm he/she has suffered as a result of the attack of Bogoro on 24/02/2003?” was intended to allow the victim to say precisely what he or she considered to be meaningful reparation. However, during the course of the initial interviews, it was sometimes noted that the placement of the question ahead of the presentation of specific measures and examples resulted in a difficult exchange, as the victim considered that he or she had already told the Court what form of reparation they wished for, and appeared to be concerned that their responses to the categories of measures presented might undermine

¹⁹ The Registry’s outreach unit uses the Kiswahili phrase “*kurudishhsa haki*”, meaning “to return/give back a right/justice” in audio and video materials it produces. The VPRS tends to use the French term “*réparations*” which in its experience is a term most commonly used and understood in Ituri to refer to reparations in the ICC context, and the Section’s field staff explain its meaning by giving examples.

²⁰ Terminology Bulletin, Rome Statute of the International Criminal Court in Swahili; Terminology Bulletin, Phraseology in the Courtroom in Arabic, English, French, Lingala, Sango, Swahili (Congo) and Swahili (Standard).

their initial answer in response to the open question. As a result, in some instances, the order of questions 3 and 4 was changed.

28. Another adjustment that was made was to stop using the example under “Measures aiming at establishing and publishing the truth”, of “Publicising previous apologies from Mr. Katanga”, due to the strong reaction that it provoked amongst victims. Some victims became so emotional that the interview had to be stopped, while others conveyed anger at the Court process in general and became dissatisfied with the interview. The LRV indicated that in previous collective meetings with his clients, similar reactions were observed.²² Those who explained their reaction said that they did not consider Mr. Katanga’s apology to be genuine, or suggested it had been motivated by self-interest.²³ Others expressed the view that presenting the dissemination of an apology as a possible reparations measure was inconsiderate towards victims.²⁴ In light of these responses, and in an effort to protect the psychological well-being and dignity of the victims, the Registry, in consultation with the LRV, decided to avoid the use of this example in the remaining interviews.
29. The VPRS notes that with seven different persons conducting interviews with victims during the course of the mission, some variation is unavoidable. Despite steps taken to maintain standardisation, the same questions may be posed by interviewers in slightly different ways depending on the flow of the interview, the responsiveness of the victim, and the experience of the interviewer. The decision to proceed with the interviews without significant time for training and testing in order to have time to meet as many as possible of the victims may also have had an impact. Equally, despite efforts to standardise the recording of the victims’ responses, statements may be interpreted or recorded in somewhat different ways, particularly when an interpreter is involved. To mitigate these effects to the extent possible, de-briefing sessions were held on a weekly basis and as needed with VPRS and LRV staff involved to discuss *inter alia* issues of standardisation arising from the different interviews conducted. When processing the data from the questionnaires afterwards, adjustments were made in consultation with the LRV, and the VPRS developed detailed internal

²² The Registry notes that the LRV already predicted during the preparation of the mission that the victims would react badly to this measure.

²³ See for example [REDACTED] « Excuses pas sincères juste pour le jugement »); [REDACTED] (« Je doute de la sincérité des excuses de Katanga »).

²⁴ See for example [REDACTED] (« Si publication excuses précédents, c’est comme une moquerie, la Communauté Héma ne peut pas accepter les excuses facilement, ce serait une moquerie »); [REDACTED] (« Excuses de GK sont des moqueries »).

guidelines to ensure that the information was interpreted, scored and recorded in a systematic and standardised fashion.²⁵ For instance, a field was added in the VPRS database entitled “Financial Compensation” to capture the fact that many victims had requested the measure, despite the fact it had not been presented as an option.

(vi) *Victims’ Prior Experience with Collective Programs*

30. The VPRS notes that the responses of many victims to examples presented of collective reparations were very influenced by their prior experience of aid projects targeted at the community as a whole. Most expressed a negative impression about their effectiveness.²⁶ Collective ownership projects were most frequently cited as ineffective, in that they resulted in conflict amongst beneficiaries over management decisions, unfair distribution of the award itself amongst the group, or ultimately the death, theft or disappearance of the benefit to the detriment of the entire group. Victims cited other problems including theft and corruption by contractors, and expressed concern that non-victims or persons perceived as perpetrators might also benefit from projects aimed at communal development.

IV. Analysis of Information Received Through Individual Consultation

31. The views and information conveyed by the victims interviewed are presented in Annex 2. A summary of the findings and general trends are summarised in the paragraphs that follow, including any particular tendencies that seemed to be linked to the gender of the victims, the harm suffered or the localities where the victims currently reside. Although a total of 305 out of 365 victim applicants were consulted for the purpose of this exercise, not all the victims were consulted on each example of the reparations measures listed under question 4 of the questionnaire, for the reasons already explained above. The statistics mentioned in this part of the report thus include only responses from victims who gave

²⁵ The Registry notes in particular that the answers provided by the victims under question 3 were analysed together with the answers provided under question 4, to ensure a consistent and coherent scoring of the victims’ views on reparations (for example, if the victim was asking under question 3 for compensation for cows lost during the attack of Bogoro of 24 February 2003, the Registry has recorded this under the “ support for farming/agriculture/livestock/craft/other”, added that it was to receive compensation for the cows lost during the attack and scored the victim’s interest in this measure as “ high”, even if the victim did not repeat this answer under question 4).

²⁶See Below: Figure 1.6.

their view on the specific reparations measure in question. The number of victims who provided views on each reparations measure is provided in the relevant footnotes to explain how the statistic was generated.

32. The Registry staff conducting the consultations focused on achieving three main objectives in each interview:

- a. Achieve a better understanding of how the crimes continue to impact the lives of the victims eleven years after the attacks and identify the current needs and general situation of the victims;
- b. Facilitate the expression of interest into what the victim considers to be meaningful reparations in light of the harm suffered;
- c. Appreciate what measures have already been taken by aid organisations to redress the damage and harm caused by the attack on Bogoro of 24 February 2003 and how those measures were perceived by victims.

(i) General Statistics and Location

33. The vast majority of the victims falling within the scope of the case belong to the Hema ethnic community.²⁷ Of all victims consulted, 203 of the victims were men and 101 were women. As regards age, 66% of the participants are aged between 35 and 64.²⁸ So far as current location is concerned, 93% of the victims consulted currently reside in [REDACTED] and only 7% of the population consulted currently reside outside Irumu Territory.²⁹

²⁷ Hema/Gegere , 280/305 (92%); [REDACTED]

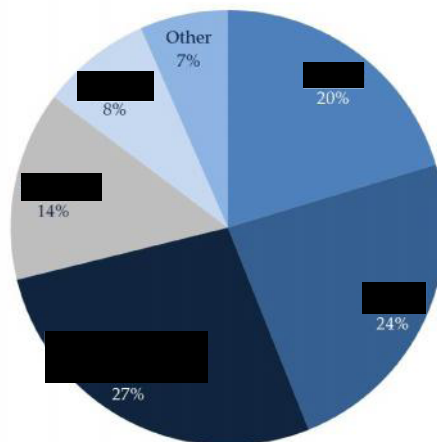
[REDACTED] Not indicated, 4/305 (1%)..

²⁸ The age breakdown is as follows: 65+(15%); 64-51(26%); 50-35(41%); 35-18(19%); less than 18 (0%). There was one questionnaire filled in on behalf of an organisation. The Registry noted no trends in the responses given, relating to the age of the victim.

²⁹ In Figure 1.1, [REDACTED] includes: [REDACTED]

[REDACTED] includes also [REDACTED] includes [REDACTED] Other Localities includes: [REDACTED]

Figure 1.1 Percentage of Victims Interviewed, by Location



(vii) Crimes

34. Over 98% of the victims reported having suffered from each of the crimes characterised as “Attack on a Civilian Population”; “Pillage”; and “Destruction of Property,” with a further 74% reporting having suffered from the loss of a loved one due to the crime of “Murder”.³⁰ Based on the results of the consultation, the Registry notes that 69% of the victims who reported the murder of a loved one also reported persistent psychological harm resulting from the attack on Bogoro of 24 February 2003.³¹ The victims who reported murder were also more likely to [Redacted], with only 23% of those who reported the murder of a loved one [Redacted].³²

(viii) Updated Information on Harm Suffered

35. Considering that eleven years have passed since the commission of the crimes in question, the Registry sought to provide the Chamber with up-to-date information on the harm suffered by asking the victims whether, and if so, how the crimes continue to impact their lives today.³³ Victims were asked whether or not the crimes continue to impact their financial situation, physical health, psychological well-being, security situation, family situation, socio-communal situation and/or their land and housing situation. Indeed, during the

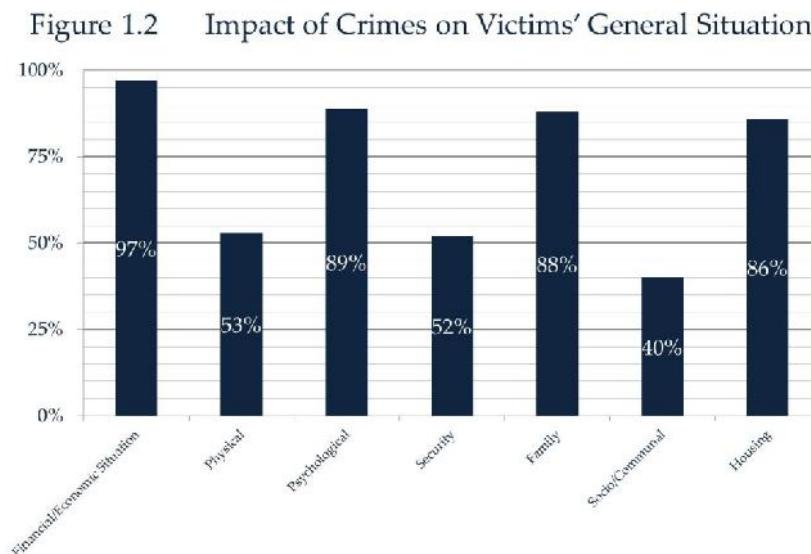
³⁰ Crime Breakdown: Attack on Civilian Population – 303/305; Pillage – 299/305; Destruction of Property – 298/305; Murder – 238/305.

³¹ Results from General Situation (Psychology) & Crime (Murder), 209/305.

³² Results from Crime (Murder) & ICC Summary Address [Redacted], 55/238.

³³ 27 August Decision 2014, para 7.

consultations many confirmed that things had changed as a result of the attack. For example one victim said: “There is a difference between life before and after the war, in many respects: commercially, agriculturally, even relations with surrounding populations changed.”³⁴ The Registry considers the responses to these series of questions, taken together, to constitute the updated information on the harm suffered requested by the Chamber. The impact of the crimes on the victims is presented individually in Annex 2 and summarised below:



36. Following the consultations, the Registry has recognised strong correlations between the victims' answers to the questions on the impact of the crimes and their requests for reparations. As indicated above in Figure 1.2, the Registry notes that 95% of the victims have indicated that the crimes committed in Bogoro on 24 February 2003 continue to have a strong impact on their financial and economic situation today. A majority of these victims remarked that, as a result of the attack, they had lost their source of income, property or livelihood and that this was the reason for their persistent suffering.³⁵ Many of the victims interviewed lamented the loss of their former way of life, particularly in relation to the raising and management of cattle, and consider the transition to a more agrarian based subsistence mode of living (in the villages) to be a constant and painful reminder. This trend is supported by the fact that of the 89% of victims who reported that the crimes continue to impact their psychological well-being, only 23% indicated that this was due to the loss of a loved one or the events witnessed during the

³⁴ Collective Meeting, [REDACTED]

³⁵ Results from General Situation (Financial/Economic), Comments, 231/289, 80%.

attack in 24 February 2003.³⁶ As one community leader noted, “if you kill one of my family members, it is fate. But if you steal my cow, you steal my identity.”³⁷

37. The Registry notes that while the lives of the victims continue to be impacted by the crimes, the data suggests that the lives of their families also continue to be affected. Of the 88% of victims who indicated that the crimes continue to negatively affect their families, the vast majority ascribe the various forms of harm to their persistent economic struggle.³⁸ The most common responses include:

- Children of the victims are not attending school or difficulties keeping them in school;
- Increased economic burden associated with the number of additional dependents (especially when a family member was killed and the surviving family member assumes parental responsibilities over the deceased’s children);
- Death of the breadwinner or other family members;
- Breakup of the family unit;
- Children of victims assigned adult responsibilities due to economic necessity.

38. Some victims mentioned that their children have been unable to officially marry because they could not afford the dowry. Those victims reported this to be a great source of shame in the eyes of the community which is exacerbated when, out of necessity, the children cohabitate with their partners and bear children despite not officially being married.³⁹ Other victims mentioned that the stress associated with providing for large families after losing everything has resulted in one partner or the other abandoning the family unit.⁴⁰ The Registry notes that the impact of the crimes on the family appears to have particularly affected women, 96% of whom reported some form of continual harm.⁴¹

39. Another important indicator to come out of the general situation analysis is the impact of the crimes on the victims’ general sense of security. The Registry notes that in Figure 1.2, the proportion citing the crimes as continuing to have an

³⁶ Results from General Situation (Psychological Well-being), Comments: 63/271, 17%

³⁷ [REDACTED]

³⁸ Results from General Situation (Family), 269/305; General Situation (Family), Comments 261/305, 86%

³⁹ Results from General Situation (Family), Comment.

⁴⁰ Results from General Situation (Family), Comment.

⁴¹ Results from General Situation (Family) & Gender (Female), 97/101.

impact on their security is comparatively low compared to other indicators mentioned under question 2 of the questionnaire (52%).⁴² However, there are three important factors that the Registry considered when analysing the victims' responses under question 2 in relation to security, including:

- The relationship between the victims' sense of security at the village level and within their own communities and their general sense of (in)security in the region;
- Victims views on security vary dramatically based on where they live; and
- Many more victims referred to security concerns during other parts of the interviews.

40. At the village level, 60% of the victims indicated that the crimes *no longer* have any impact on village life, with the vast majority of respondents reporting peaceful coexistence within their respective villages and between the various ethnic communities within the village.⁴³ On the other hand, the overall results show that when describing their ongoing security situation, the majority of the consulted victims who indicated persistent security concerns tended to report a general fear of returning to Bogoro or a general fear of renewed conflict in the region, which seems to reflect a wider sense that peace and reconciliation are yet to be attained in the region.⁴⁴ According to the responses overall, there appears to be a sense of communal solidarity at the village level, and at the same time a sense that there is insecurity from "outside"⁴⁵ the village; as one of the victims put it, [REDACTED]⁴⁶

41. However, when the issue of security was traced throughout the course of the interview, the percentage of victims who referred to security concerns in relation to, for example, the implementation of reparations awards, increased by 25%.⁴⁷ This increase appears to indicate a more pronounced and persistent concern amongst victims in relation to security. There also appears to be a direct correlation between where the victims currently reside and their concerns over security. In [REDACTED] for example, 89% of the victims responded that the crimes

⁴² Results from General Situation (Security), 152/305.

⁴³ Results from General Situation (Social/Political/Communal), 184,305; General Situation (Social/Political/Communal), Comment.

⁴⁴ Results from General Situation (Security), Comment.

⁴⁵ Results from General Situation (Security), Comment, (Only 5/160 reported fear of criminality in their present location).

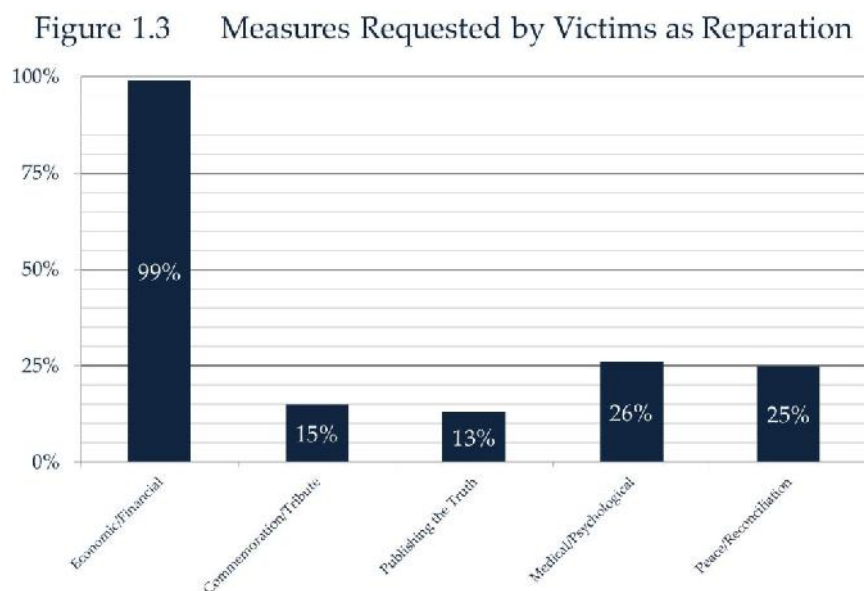
⁴⁶ Results from General Situation (Security), Comment [REDACTED].

⁴⁷ Results from General Situation (Security) & Comments on "Insecurity", 228/305.

continue to impact their sense of security.⁴⁸ Rather than harbour a general concern about renewed conflict as was more common in other locations, the victims living in [REDACTED] reported fears of an “imminent” attack.⁴⁹ The Registry notes the contrast with those currently living in [REDACTED] [REDACTED] or other localities outside Irumu Territory, where security was cited as a persistent concern by 42%, 35% and 35% of the victims respectively.⁵⁰

(ix) Reparation Preferences: Measures and Examples

42. The Registry notes at the outset that the clearest trend emerging from the entire consultation exercise is the victims’ overwhelming preference for some form of economic development or financial measure to be awarded individually as reparations to redress the harm that they suffered.



43. The results above, in Figure 1.3, show that over 99% of the victims consider that economic development and financial measures would be the most appropriate form of reparations. The figures presented above correspond to the percentage of victims who conveyed a “high” level of interest in the measures listed above. The other scoring options include “low”, “against”, and “not applicable” and were

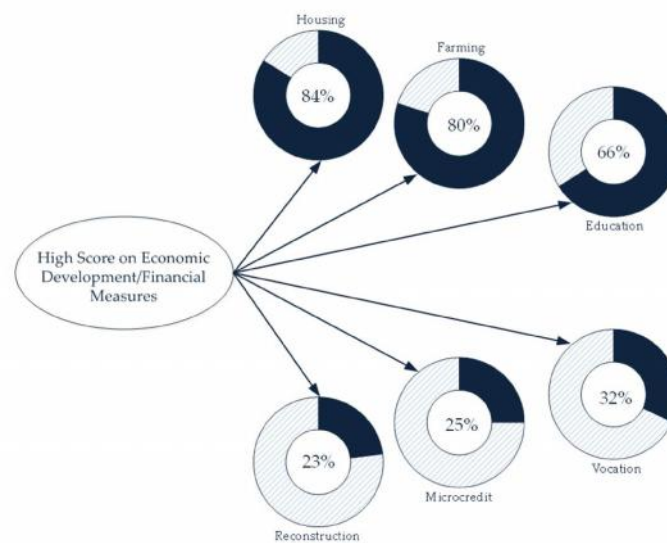
⁴⁸ The Registry notes that security was also a factor for the residents of [REDACTED] (63%), Results from General Situation (Security), Location ([REDACTED] 55/62, [REDACTED] 27/43.

⁴⁹ Results from General Situation (Security), Location ([REDACTED], 51/62; General Situation (Security), Location ([REDACTED]) Comment, 34/62.

⁵⁰ Results from General Situation (Security), Location ([REDACTED], 30/72; Location ([REDACTED] [REDACTED], 29/83; Location (Other Localities), 7/20.

marked by the interviewer depending on the level of interest shown by the victims in the examples used to describe the measure. To describe the economic development and financial measure, Registry staff used six different examples⁵¹ to help describe what types of awards may fall under this category. The victims' preferences in relation to the different examples of economic development and financial measures are as follows:

Figure 1.4 Examples of Economic Development/Financial Measures Requested by Victims as Reparation



➤ **Support for Housing**

44. As expressed above in Figure 1.4, the most commonly requested example under the economic development and financial measure among all victims consulted was support for housing. One victim stated in the collective meeting held in [REDACTED] "Katanga's men coming to kill us and steal from us is a strong memory to this day that we pass on to the next generation. It would be better to pass on something else, like a house." Of the 86% of victims who identified housing as a need, 60%⁵² reported that they currently have no house of their own and 43%⁵³ reported having to pay rent for housing. The Registry is aware of two different housing projects that have been implemented in [REDACTED] to benefit distinct classes of victims namely; [REDACTED]

⁵¹ The examples used to describe Economic Development and Financial Measures include: 1) Support for primary/secondary education for children of victims; 2) Support for housing; 3) Support for farming/agriculture/livestock/craft/other professional activities; 4) Vocational training; 5) Reconstruction of shared facilities (schools, hospitals, buildings, etc.); 6) Microcredit programmes.

⁵² Results from General Situation (Land/Housing), Comment, 158/262, 60%.

⁵³ Results from General Situation (Land/Housing), Comment, 113/262, 43%.

██████████⁴ One such housing project reportedly provided what it terms “shelter kits” which consisted of construction materials such as corrugated iron sheets, roofing and carpentry nails, doors and windows.⁵⁵ According to victims, the aid organisation would assist the beneficiary to build a two bedroom house but the victims would have to provide materials for the walls. The Registry notes that a the majority of the victims who benefitted from these housing projects expressed appreciation for the support and found it appropriate.⁵⁶ However, a sizeable minority of the beneficiaries complained that the houses were too small to accommodate the size of their families or that the materials that were used to construct the houses were of poor quality.⁵⁷ Among those who identified housing as a need, 30%⁵⁸ responded that their current living space does not meet their needs, 55% of whom come from either ██████████.⁵⁹

45. The Registry notes that women in particular have identified housing as a key concern. The number of women saying that their housing situation has been affected by the crimes and requesting support for housing registering higher than the results for all victims interviewed.⁶⁰ The Registry also notes that the request for housing, though strong in each location, appears particularly acute in the locations where victims have had to resettle following their displacement. Indeed the Registry notes the strongest trends for requesting housing emanating from towns like ██████████ (92%), ██████████ (91%), and other localities outside Irumu Territory (90%) where victims reported difficulties securing employment, paying rent and adjusting to life outside the village.⁶¹ When comparing the victims’

⁵⁴ The Registry notes that this information comes from the victims interviewed, community leaders and open sources. The Registry has been unable to officially corroborate the accounts with the organisations themselves. The ██████████ reportedly implemented a housing project ██████████ to benefit ██████████. The ██████████ has reportedly also built houses in ██████████ and other locations.

⁵⁵ See description of a similar project on the ██████████ Website: ██████████

⁵⁶ In response to question 5, 53 victims found the ██████████ housing project appropriate.

⁵⁷ In response to question 6, 19 victims found the ██████████ housing project to be inappropriate due to, among other things, ██████████. Many more victims voiced dissatisfaction along similar lines but were unable to name the aid organisation who implemented the project.

⁵⁸ Results from General Situation (Land/Housing), Comment, 78/262.

⁵⁹ Results from General Situation (Land/Housing), Comment & Location (██████████), (██████████), 43/78.

⁶⁰ Results from General Situation (Land/Housing) & Gender (Female), 93/101 (92%); Measure (Economic Development/Financial) & Example (Support for Housing), 90/101, (89%).

⁶¹ Results from General Situation (Land/Housing), Location (██████████) 66/72, (██████████) 39/43, (Other Localities) 18/20. As an example, a victim living in ██████████ said that “I was a tenant but I was not able to pay the rent, so I have been thrown out with my 8 children and grand-children; the church offered us temporary asylum and today I am living in a half built house, where I am living makes me feel

almost universal request for economic development and financial measures, and their broad support for housing in particular, with the victims' responses on the impact of the crimes today, the Registry notes a strong correlation between the needs identified by the victims and their requests for reparations.⁶²

➤ **Support for Farming, Agriculture, Livestock or Other Professional Activities**

46. The Registry notes that the second most popular example under the economic development and financial measure is support for farming, agriculture, livestock and other professional activities (Figure 1.4). The details emphasised by Registry staff when describing this particular example varied depending on the occupation and general interests of the victim. As an example, where victims who reported in the interview that they used to raise and make a living from cattle before the attack the interviewer would give a relevant example such as the possibility to help the victim re-establish him/herself as a cattle herder through the provision of cows or veterinary support for cattle herders. Likewise, a victim who was a tailor or seamstress before the attack would be informed of programs to help the victim re-establish his/her trade through the provision of a sewing machine and materials. The strong support for this category suggests that the victims are seeking to reassert their economic independence by receiving as reparation the necessary tools to re-establish their trade, whether through the provision of animals,⁶³ [REDACTED],⁶⁴ sewing machines⁶⁵ or maize grinders.⁶⁶ When presented with the example, many victims suggested that a programme like this would have to be applied on a case by case basis, because "everyone has their own gift"⁶⁷ and the responses are largely reflective of this diversity, with the most commonly specified request (cows) reported in only 44% of the interviews.⁶⁸

ashamed" and indicated that for reparation, receiving money to buy land and build a house will assist her and her family "to not wander as I do today."

⁶² The Registry notes that 97% of the victims reported that the crimes continue to impact their economic situation and 99% of the victims requested economic development and financial measures be considered as possible reparation awards. There are also strong correlations between the victims' who reported that their housing situation continues to be impacted by the crimes (86%) and those who request support for housing as a form of reparation (84%). The trend is even stronger in the locations of [REDACTED].

⁶³ See for Example: [REDACTED]

⁶⁴ See For Example: Inhabitants of [REDACTED]

⁶⁵ See for Example: [REDACTED]

⁶⁶ See for Example: [REDACTED]

⁶⁷ See for Example: [REDACTED]

⁶⁸ Results from Measure (Economic Development/ Financial) & Example (Support for farming/agriculture/livestock/craft/other professional activities), Comments on (Cows), 134/305.

47. Once again, preferences differ depending on the victims' current location. The farming example was the second most popular economic development descriptor overall, as well as in most of the individual locations. However, it was the most popular example in [REDACTED] (90%) and in [REDACTED] (85%).⁶⁹ In [REDACTED], most notably [REDACTED] cows were specified as the request in 77% of the interviews where this example of farming and agricultural support was chosen by the victim, over 35% higher than among all victims surveyed.⁷⁰ Again, the security situation in certain areas appears to play a role in how victims have responded to reparations proposals. In the [REDACTED] the Registry notes the lowest reported concerns as to security, with 35% of the victims reporting it as a persistent issue.⁷¹ In [REDACTED] however, 85% of the victims reported having persistent security concerns, particularly in relation to renewed militia attacks, and only 27% requested cows in response to the farming example.⁷² As will be discussed further below, the Registry considers that the role security plays in determining the appropriateness of issuing certain awards is complex and may require further information to appropriately assess.

➤ **Support for Education**

48. The Registry notes that victims also indicated that the attack on Bogoro of 24 February 2003 had an impact on their ability to educate their children. Of those who indicated that the economic development and financial measure was a high priority, 66% expressed the need for educational support for their children.⁷³ The Registry notes that this figure takes into account scores of both "high" and "low" interest in order to more effectively communicate the needs of the victims.

⁶⁹ Results from Measure (Economic Development/ Financial) & Example (Support for farming/agriculture/livestock/craft/other professional activities), Location ([REDACTED]) 73/83, ([REDACTED]) 22/25.

⁷⁰ Results from Measure (Economic Development/ Financial) & Example (Support for farming/agriculture/livestock/craft/other professional activities), Location ([REDACTED]) 64/83 77%, ([REDACTED]) 16/21 76%.

⁷¹ Results from General Situation (Security), Location ([REDACTED]) 29/83, ([REDACTED]) 30/72 42%.

⁷² In [REDACTED], where 63% of the victims cited security concerns, only 21% (9/43) requested cows for the farming example.

⁷³ Results from Measure (Economic Development/Financial) Example (Education) (202/305)

➤ **Requests for Individual Compensation**

49. The Registry would like to stress that no example of “compensation” was put to the victims who were consulted, and that Registry staff, with the assistance of the LRV, made every effort to manage expectations in relation to the viability of an individual compensation award by highlighting the fact that Mr. Katanga has been shown to be indigent (and therefore unable to finance the award himself) and by stressing that the ICC’s Trust Fund for Victims has limited resources that must be utilised in a manner that benefits as many qualifying victims as possible. Despite this information, 58% of the victims maintained that they would prefer individual compensation to any of the examples posed with many asserting that compensation would put them in a position to address their most pressing needs themselves.⁷⁴ Consequently, it seems evident that had individual compensation been given as an example under the economic development and financial measure it would have been the most favoured. Based on the interviews, it was apparent that financial support for housing or farming were considered to be the most appropriate way to compensate for their losses caused by the attack of Bogoro of 24 February 2003 by the vast majority of victims.⁷⁵
50. In the interviews many victims expressed concerns over the administration and long-term implementation of certain programs such as education or medical support (often citing their own past experiences) and considered individual compensation as a way to ensure that the intended beneficiaries actually receive the intended award.⁷⁶ An additional factor in certain localities was the perception of insecurity. As has been mentioned, 74% of those consulted referred to security concerns over the course of the interview and many hinted at the importance of “portability” in relation to any award for reparation in the event that the violence returns to their community.⁷⁷

⁷⁴ Results from Measure (Economic Development/Financial) & Example (Compensation) 177/305.

⁷⁵ The Registry notes that in each of the group meetings held in [REDACTED] victims expressed their preference for individual compensation. In a meeting with victims from [REDACTED], victims said the following: “even if the ICC would provide victims with \$100 each we would be more satisfied than receiving collective reparation in any form”; “I want individual compensation, even if it is small, this way I will be responsible and can take care of my family myself.”

⁷⁶ Collective Meeting, [REDACTED], “Even if the amount of money was small, we would prefer this symbolic gesture to other measures that might benefit people who are not really victims.”

⁷⁷ Collective Meeting, [REDACTED], “What if the militias come back and destroy everything again?” “Militias are only [REDACTED] away from here and they will not like seeing something nice and new in [REDACTED] They will surely come and destroy it.”; “My son was killed and left orphans behind. I am for individual measures. We don’t even know if the war is over. Can you (the ICC) tell me that the war is over?”.

51. Victims provided information on the local purchase price of cows (juvenile and adult) or the costs associated with building strong and stable houses (with materials such as bricks).⁷⁸ Many of the victims who requested compensation mentioned that they would use the money to buy either cows or build a house.⁷⁹ The Registry notes that many victims questioned whether the money necessary for collective awards like the reconstruction of shared facilities might not instead be divided and distributed to the victims individually.⁸⁰ The appropriateness of individual awards and their potential viability will be discussed in part IV of this report below.

➤ **Medical and Psychological Assistance**

52. On the topic of medical and psychological support, the Registry notes that a majority of victims indicated that they suffered from persistent medical and psychological issues following the attacks, yet the majority did not request programs aimed at redressing those issues when presented with the option. Even in particular locations like [REDACTED] where some victims who were displaced reported that [REDACTED] has led many to fall ill from malaria and other illnesses, the victims nevertheless showed little support for medical programs as a form of reparation.⁸¹ On this point, the Registry noted that many victims seemed to draw a distinction between what they considered to be “assistance” and what they considered to be “reparation”. While only 26% overall responded that medical and psychological measures were a high priority in terms of a potential reparation award, when the score of “low” interest (victims who may be interested in this measure in addition to, but not instead of, measures which they view as a higher priority, often economic development and financial measures) is also taken into account the number increases to 67% (and 86% in [REDACTED]).⁸² The Registry is aware that

⁷⁸ See for example (Cows) [REDACTED] [Average Price Range: Adult Cow \$350-500, Juvenile Cow \$200-250, Goat \$35-60, Chicken \$5-10]; (House) [REDACTED] [Average House Range: \$1000-3000].

⁷⁹ Results from Measure (Economic Development/Financial) & Example (Compensation) , Comment on (Cows) 19%, (House) 21%.

⁸⁰ Collective Meeting, [REDACTED] “If there is a school or hospital built, who will benefit? I have no children and I am not sick so how will this benefit me? Can you give me my portion of what it will cost to implement the school or medical program?”; “Rather than reconstruct buildings, divide the money for the project and give it to the victims individually.”

⁸¹ Results from Measure (Medical, Psychological and Social), Location ([REDACTED]), 15/43 35%.

⁸² Results from Measure (Medical, Psychological and Social), (78/305); Measure (Medical, Psychological and Social)& Example (Medical Care/ Assistance Services) & Score (High/Low), (203/305); Measure (Medical, Psychological and Social)& Example (Medical Care/ Assistance Services) & Location ([REDACTED]) 37/43.

the scoring of measures is necessarily somewhat subjective, and determining whether a victim considers the measure to be of low or high interest can be difficult in certain circumstances.

53. The Registry also notes that only 17% of the victims reporting physical health problems indicated that these were directly related to injuries sustained during the attack of Bogoro of 24 February 2003.⁸³ The Registry notes that it may be difficult in some cases for the victims to distinguish between needs arising from specific injuries or psychological harm caused by the attack, and more general health needs. These factors, together with time that has elapsed since the attack (eleven years), and the reported medical and psychological support interventions of humanitarian aid organisations may be among the factors influencing the victims' responses.⁸⁴

➤ **Results on other Measures and Examples**

54. The Registry has focused in this part of the report only on the measures and examples that have had the highest resonance with the victims consulted. However, in the interests of transparency, the Registry also presents below a table (Figure 1.5) listing the scores recorded as a result of the consultation by measure and by example.⁸⁵

⁸³ Results from General Situation (Physical Health), Comment, 27/162.

⁸⁴ See part IV of the report, in which the victims' experience of previous projects as factors affecting the appropriateness of awarding reparations on an individual or collective basis is presented.

⁸⁵ Should the Chamber require further analysis on any other measure or example, the Registry stands ready to supplement the present report with the information requested.

Figure 1.5 Total Number of Registered Responses on the Measures and Examples

Measure		Against	N/A	Low	High
Economic Development/Financial Measures		0	0	1	304
Remember What happened/Commemorations and Tribute to Victims		105	22	108	47
Establishing and Publishing the Truth		103	47	84	40
Medical, Psychological and Social measures		42	38	125	78
Peace and reconciliation initiatives		49	62	85	75
Incomplete		0	47	0	0

Measure	Measure Items	Against	N/A	Low	High
Economic Development/Financial Measures	1. Support for Primary/Secondary Education for Children of Victims	32	19	59	143
	2. Support for Housing	8	9	28	229
	3. Support for Farming/Agriculture/Livestock/Craft/Other Professional Activities	12	11	12	232
	4. Vocational Training	39	28	27	69
	5. Reconstruction of Shared Facilities	62	22	28	42
	6. Microcredit Programmes	111	24	26	50
	6.a. Financial Compensation	1	1	14	163
Remember What happened/Commemorations and Tribute to Victims	7. Memorials (buildings, school, etc.)	49	6	47	18
	8. Commemorative Events (recognising victimhood)	61	8	51	27
	9. Monuments (sculptures, plaques, etc.)	71	11	60	32
	10. Burials Services & Provision of Tombstones for Deceased Relatives	30	13	32	23
Establishing and Publishing the Truth	11. Tracing Missing/Deceased Persons	84	27	18	13
	12. Explaining/Publicising/Disseminating/Translating Trial Process	87	21	72	35
	13. Publicising Previous Apology	12	2	4	0
Medical, Psychological and Social measures	14. Medical Care/Assistance	31	14	114	70
	15. Psychological Care/Assistance	28	13	89	53
	16. Sensitization and Stigmatization in Relation to Sexual Violence and Other Crimes	9	8	34	18
Peace and reconciliation initiatives	17. Organise Events to Discuss Issues that Lead to Conflict and Insecurity	15	10	69	69
	18. Encourage Victims to Join Groups & Train them to Facilitate Dialogue and Therapy sessions with Others in the Community	12	10	57	48
	19. Sensitize Communities on Human Rights	6	3	37	43

55. To summarise, the main tendencies emanating from the consultation process and shown in the table above are the following:

- a clear preference (“high interest”) for economic development and financial measures, with the top five examples being: support for farming, agricultural, livestock and other professional activities, support for housing, , support for financial compensation, support for education, and, less of a high priority as a measure, medical, psychological and social measures;
- Least interest, and in some instances a clear rejection, of measures the following measures: remember what happened/commemorations and tribute to victims, establishing and publishing the truth;

- The specific examples under the five measures that are least favoured are: microcredit,⁸⁶ explaining and publicising/disseminating/translating trial process,⁸⁷ tracing missing/deceased persons,⁸⁸ monuments,⁸⁹ reconstruction of shared facilities and monuments.⁹⁰

V. Factors Relating to the Appropriateness of Awarding Reparations on an Individual or Collective Basis

56. In accordance with paragraph 11 of the 27 August Order and regulation 110(2) of the RoR, the Registry has been able to identify several factors relating to the appropriateness of different types of awards, and in particular, of awarding reparations on an individual or collective basis. The information presented below was collected primarily through the interviews with victims (both individually and collectively in group sessions), and in particular the answers to questions 5 and 6 of the questionnaire regarding previously implemented projects, which asked the victims whether they were aware of projects or proposals that had benefited the victims or their communities and projects or proposals that had not been beneficial. This was supplemented by information collected in the course of contact with some other interlocutors on the ground. The information includes a number of measures already taken by aid organisations to redress the harm caused by the attack on Bogoro of 24 February 2003.

Victims' Attitudes Towards Awarding Reparations on a Collective Basis

57. Most victims who indicated having had prior experience with "collective" projects, or who had heard about them from others, expressed a negative opinion about their effectiveness. What came through most strongly from the interviews was that the victims' prior experience with projects organised by various aid organisations had a significant influence on their perception of the measures presented by the Registry and/or perceived by the victims as "collective". These

⁸⁶ As examples, some victims indicated their fears to not be able to pay back the credit if something happened to them (sickness, war, business not working).

⁸⁷ As examples some victims mentioned that the information about the trial process was already provided to them by the legal representative of victims or in general by the ICC.

⁸⁸ As examples some victims mentioned the fact that after eleven years it will be impossible to trace the bodies, and even if it were possible, it could lead to re-traumatization.

⁸⁹ As an example some victims indicated that it does not respond to their needs, that it could lead to re-traumatization, that monuments already exist, or that they could be vandalized.

⁹⁰ As examples some victims mentioned that if the reconstruction is done in Bogoro and not where they are currently living they will not benefit; some are worried that services would be created that they would not be able to access in practice, or that would be destroyed if the conflict is renewed.

experiences seemed to be perceived universally as negative. The Registry noted that many victims associated certain proposals aimed at benefitting the entire community with their experiences with collective *ownership* projects: projects where multiple beneficiaries are made to jointly own or manage a single award. Many victims who expressed their views on such projects conveyed a negative opinion in relation to collective ownership projects either through first-hand experience or as a result of having heard about such projects in their community.

58. The most common examples cited by victims were projects where aid organisations reportedly tried to foster economic development by distributing a grant or benefit to a group of beneficiaries on the basis of collective ownership/management. Some examples reported include animals (cows, goats, and chickens) [REDACTED] The results, according to the victims, were unanimously negative. The victims noted that the projects failed when they had a collective implementation element, and some explained further that they had led to fighting amongst the intended beneficiaries over management decisions and ownership rights and,⁹¹ in the case [REDACTED] distribution project, resulted in the theft or death of all of the [REDACTED]⁹² According to the victims, many projects like these were implemented in [REDACTED] and in other locations by various aid organisations involving the provision of cows, goats, chickens, eggs, pigs, wood workshops, sewing workshops and [REDACTED] cooperatives, in each case on the basis that it would be collectively owned and/or managed by the group of beneficiaries. As related by the victims, in each instance the outcome had been the same - collective ownership projects failed to produce an economic benefit for the intended beneficiaries and only served to create tension and conflict amongst the community.⁹³

⁹¹ Victims mentioned issues on the management itself of the project, that the benefits of the project did not profit to the initial beneficiaries or disappeared, that the beneficiaries have conflict together or fight over the profit of the products or over the property rights of the tools, materials, animals, money given to a group and not individually [REDACTED]

⁹² [REDACTED] Similar views were expressed in relation to the [REDACTED] and the [REDACTED] and it was said that both had resulted in conflict amongst the beneficiaries, mismanagement and eventually the destruction or theft of the materials received.

⁹³ The same reasons as mentioned in footnote 91 were cited [REDACTED], [REDACTED] regarding a [REDACTED]

59. During the group meetings, Registry staff endeavoured to decouple “collective” initiatives from “collective ownership” projects, so that during the individual consultations victims could make informed decisions on their preference for reparations. However, the Registry noted that the victims’ perceptions of their prior experience of projects they viewed as “collective” were not limited to projects involving collective ownership and/or management, and that many reported negative experiences based on other forms of collective awards as well.
60. For example, another factor that came out strongly during the interviews as regards projects perceived as “collective” was a lack of confidence in and mistrust of short-term interventions, and of local administration and project implementation in general. The Registry noted that many victims were inquisitive as to how certain measures and examples would be implemented, particularly those relating to education and medical support. They would acknowledge the need for medical or educational support, but expressed concerns in relation to implementation and sustainability. They indicated that this was because they had already been involved in a number of projects resembling the measures and examples presented during the interviews which had in their view failed. During the group meeting in [REDACTED] one victim stated, *“You know, building a school or hospital for the community is good but in Congo we have difficulties. If you build a hospital, people will be asked to pay for treatment. What if they cannot pay? Then, the building will be useless. The same goes for schools.”*⁹⁴
61. In relation to education, victims gave examples of schools built by aid organisations but not sustained financially resulting in the children (in one case, orphans) being sent home again.⁹⁵ In relation to medical support, some reported how hospitals and clinics have been built by aid organisations without providing support for doctors and medicines, resulting in the doctors charging fees that only “the rich” could afford or the facilities being abandoned altogether.⁹⁶ Other

[REDACTED] see also [REDACTED] and another victims regarding a [REDACTED]

⁹⁴ [REDACTED] Victims raised this concern in collective meetings, as well as concerns regarding the inability for victims to manage the burden of having to pay the salary of doctors.

⁹⁵ [REDACTED] reported that financial support for education was not transferred on time and concerns were raised by victims during collective meetings on the inability for parents to manage the burden of paying the salary of teachers. Applicant [REDACTED] suggested that support for school education for a limited time could actually be disruptive due to the fact that many of the victims’ children have already had to discontinue their education for reasons related to the attack, and the process of re-enrolment was reported to be difficult due to the stigma associated with older children re-entering school at a lower level than their peers.

⁹⁶ [REDACTED] in light of infrastructure available in [REDACTED] several victims in the collective meeting mentioning the existing local health centre in [REDACTED] but indicated *“that even if there is a doctor [the*

victims expressed the opinion that medical voucher programs would be difficult to implement because they feared that the doctors would provide those victims with inferior care or inferior medicines, would ask the victim to pay anyway, or would refuse to accept vouchers altogether as soon as the implementing organisation stopped monitoring the situation.⁹⁷

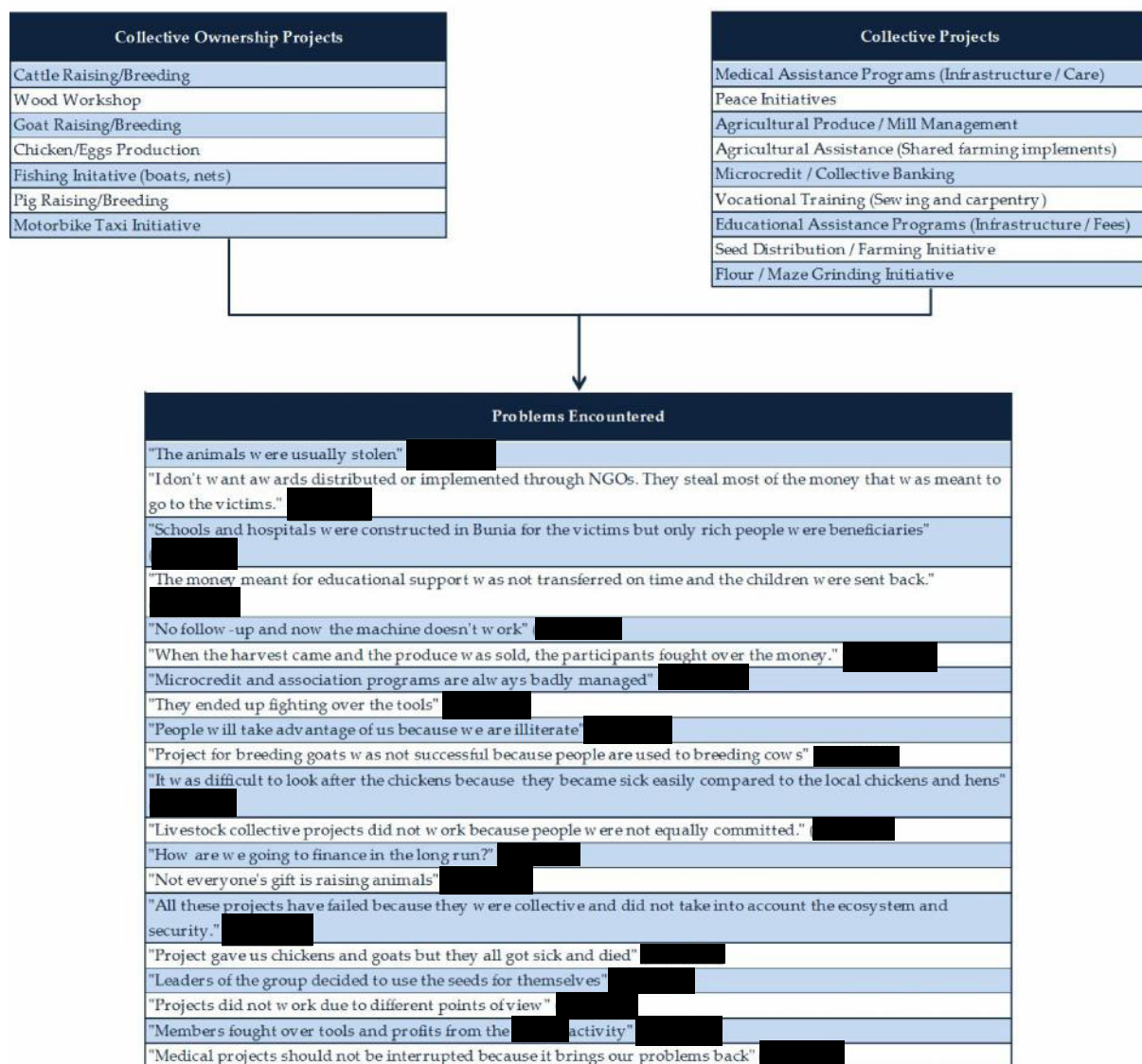
62. In sum, the Registry found that the victims were wary of measures that they saw as unsustainable and were concerned about the negative impact this would have on the victims, their families and/or community. Figure 1.6 lists collective ownership projects and other collective projects intended to benefit [REDACTED] [REDACTED] following the attack of Bogoro of 24 February 2003 that were mentioned during the interviews, along with some representative examples of the victims' comments in relation to these projects.⁹⁸

victims indicated that currently they are waiting for a doctor], *there are no medications available and they cannot pay for it anyway*", and a building that could not function was useless. The [REDACTED] [REDACTED] mentioned that the community cannot have access to medical care, even if there is a health centre, as there is not enough medical staff and medical equipment, no medicine and that there is no free access to the medical services.

⁹⁷ See for example, [REDACTED]

⁹⁸ These are projects that were perceived and presented by the victims as collective, regardless of how they might be categorised in legal terms. The sometimes blurred line between individual and collective measures is discussed below.

Figure 1.6 Collective Projects and Related Issues



63. In light of the above, it appears that victims remain unconvinced that measures focused on communal development perceived as "collective" will have the desired economic effect of redressing the economic impact of the Bogoro attack of 24 February 2003 and restoring them to the position that they were in before the attack. The Registry notes that even when collective measures presented clearly corresponded to their identified needs, the majority nevertheless rejected the measure because of their prior negative experiences. It appeared to the Registry that in the way the victims understood the distinction between individual and collective awards, they clearly favoured the provision of individual awards.

Victims' Attitudes Towards Awarding Reparations on an Individualised Basis

64. Based on the information provided by the victims in response to the questionnaires, the Registry notes the victims' overwhelming preference for reparation awards that would benefit them individually. Three attitudes in particular could be discerned:

- i. Victims themselves know best how to reconstruct their lives;
- ii. Victims consider the harm that they suffered to be personal and individual and thus consider that only a personal and individual award for reparations would be meaningful;
- iii. Due to the ongoing insecurity in the area, community projects or other more visible projects are viewed as unsustainable, and victims see material awards in which they receive an individual benefit as the main way they would be able to benefit meaningfully.

As one victim noted in a group meeting in [REDACTED], *"There is always conflict when something is shared with several persons, it creates problems. Everyone should be put in a situation to be responsible for his or her own success or failure."*

65. Some victims referred to various aid projects as having been good, but that their cessation *"brings our problems back"*; or that a project was good, but *"was just one-off support"*.⁹⁹ Rather than representing a desire to be dependent on foreign aid, such statements seemed to the Registry to represent frustration that the promise of economic recovery and self-sufficiency has remained elusive for the vast majority of victims for the past eleven years. A typical response to examples of measures presented, including educational support for children, support for farming, medical support initiatives, microcredit projects and even burial services, was *"the Court could give me money to build a house and prepare my old age and rebuild my life (...), the rest of the money will be for school fees and to organise a mourning ceremony"*.¹⁰⁰ During the interviews, many of the victims would recall their former way of life before the attack when they were able to rely on their cows to meet their needs as well as confront problems as they arose. It was this economic and social status of self-sufficiency that many appeared to be seeking to reclaim and that they identified as being the aim that any award for reparation should achieve.

66. The Registry also noted a tendency during the interviews to insist that any award should cater to victims' specific needs or *"gifts"*. During the group meeting in

⁹⁹ [REDACTED] This was also raised in a collective meeting.

¹⁰⁰ [REDACTED]

“Training programs require the person to be a willing participant. They may be given tools of the trade and then just sell them when the NGO isn’t looking. Many won’t continue with the vocation that they have been trained to do. A lot of projects like this have been done before [REDACTED] and not brought the desired results. This happens particularly when people are obliged to sign up for projects like this for lack of other options. Projects have to fit the individual’s unique gifts. You cannot train a cow herder here to do business. You need to equip him to cow herd.”

Other community leaders noted that some aid projects had failed to take the needs or abilities of the beneficiaries into account; one stated that in his village *“they provided animals to people who do not raise animals.”* Another one recalled that *“someone who lost a child or parent, you do not repair him/her with a school.”*

68. The results of the interviews with victims show a strong preference for awards of reparations where the victims will receive individual material benefits, over those involving collective ownership projects or benefitting the community as a whole. The victims expressed overwhelmingly negative views of collective projects they had experienced or heard about, which they viewed as having either failed to produce the intended benefit at all or the benefit not been sustained, or had created tension and conflict amongst the community. In addition, they expressed mistrust of local administration and project

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implementation in general. There was overwhelming preference for individual awards, which many seemed to feel was the only way to allow them to assert control over their lives and make decisions for themselves, ensure that they got what they needed and restore their self-sufficiency. Further, in a context of ongoing insecurity in the region, it seemed to them the only way to ensure they could obtain a tangible benefit.

VI. Other Factors Relevant to the Types and Modalities of Reparations to be Awarded

69. In the Registry's submission, the way reparations are addressed in any case before the Court need to be tailored to the particular circumstances of that case. In considering how to address reparations in the specific context of the Katanga case, in the Registry's view a number of additional factors specific to this case need to be taken into account. These include:

- Nature of the charges and of the harm suffered;
- Backdrop of ethnic conflict and ongoing insecurity in the region;
- The fact that not all qualifying victims have presented applications for participation or reparations or been identified;
- The lack of resources belonging to Mr. Katanga;
- Terminology: individual and collective awards.

(i) Nature of the charges and of the harm suffered

70. The crimes for which Mr. Katanga has been convicted are murder as a crime against humanity, and murder, attacking a civilian population, destruction of property and pillaging as war crimes, all in the context of an attack on Bogoro of 24 February 2003. The victims of the case, in accordance with rule 85 of the Rules of Procedure and Evidence ("RPE") and the Court's jurisprudence, are victims who suffered direct or indirect personal harm as a result of those crimes in the context of the attack of Bogoro of 24 February 2003.

71. It follows from this that the majority of those victims were present in Bogoro at the time of the attack.¹⁰² However, as shown in Figure 1.1, at least among the victims who have presented applications for participation and/or reparations, the majority are now located [REDACTED] In the eleven years that have elapsed

¹⁰² Among the indirect victims there could be persons, such as family members of those who were killed, or those who owned property in the village that was pillaged, who were not present in Bogoro at the time of the attack.

since the crimes of which Mr. Katanga was convicted were committed, many have relocated elsewhere, either in the vicinity or further afield (other victims who have not presented applications for participation or reparations to date are believed to be located outside Ituri or the country).

72. The nature of the crimes also means that entire households would have suffered from the attack. Consequently, the victims of the case involve all generations, from children to the elderly, and can be expected to include people with various vulnerabilities.
73. From their applications for participation and/or reparations as well as further information collected during the consultation exercise, the Registry concludes that the harm suffered by the victims as a result of the attack of Bogoro of 24 February 2003 covers all the types of harm: physical or mental injury, emotional suffering, economic loss or substantial impairment of fundamental rights. Many victims suffered from multiple forms of harm.
74. Further, it appears to the Registry that the victims may have suffered both from individual and from communal or collective harm as a result of the attack of Bogoro of 24 February 2003. Beyond the individual harm (suffered in particular as a result of the crimes of murder, pillage and destruction of property), the Registry submits that the attack of 24 February 2003 may have resulted in collective harm to the community of Bogoro includes harm to its institutions and other important community interests such as the social, cultural or spiritual life of the community.¹⁰³
75. The Registry submits that the factors outlined above need to be taken into account when determining what types and modalities of reparations are appropriate in the present case.

¹⁰³ The UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985(UNGA Res.40/34 of 29 November 1985) defines “victims” in Article 1 as “persons who, individually or collectively, have suffered harm ...”. In the Lubanga case, citing this provision the Trial Chamber found that the meaning of harm in rule 85(a) of the RPE may include harm suffered either individually or collectively with others (Decision on Victims’ Participation, 18 January 2008, ICC-01/04-01/06-1119, paras 91-92). The Inter-American Court of Human Rights has ordered collective reparations in order to address collective forms of harm suffered by a collectively of victims such as a victimized village or ethnic community. For example, *Moiwana Community v. Suriname*, Merits, Reparations and Costs, 15 June 2005, Inter-American Court of Human Rights, Series C. No. 124, para. 194-201. The Extraordinary Chambers in the Courts of Cambodia found that the mass atrocities committed in the Cambodia context caused collective injury or damage to the whole of a society or parts thereof (ECCC, Ang Udom et al, Decision on Appeals against orders of the Co-Investigating Judges on the admissibility of civil party applications, 24 June 2011, 002/19-09-2007-ECCC/OCIJ, para. 68).

(ii) Backdrop of ethnic conflict and ongoing insecurity in the region

76. The fact that the underlying causes of the conflict that formed the backdrop to the case remain largely unresolved means that insecurity continues in some areas (particularly in [REDACTED] and [REDACTED] and there is a risk of re-victimization and that crimes will be repeated. As noted in the Judgement, the crimes for which Mr. Katanga was convicted took place in the context of ethnic conflict in the region that existed at the time,¹⁰⁴ and as confirmed during the interviews with victims presented in this report, that remains largely unresolved. This has significant consequences as regards the potential impact of reparations awards in the case.
77. A first consequence relates to the nature of the charges brought in the other case linked to the same conflict area, namely the case of The Prosecutor v. Thomas Lubanga Dyilo. Since in that case the charges were limited to enlisting and conscripting children under the age of 15 into armed forces and using them to participate actively in hostilities, the victims in both cases are primarily from the Hema community. The result is that reparations awarded by the Court in both cases are likely to benefit victims from one side of an ethnic conflict in which both sides perceive that they suffered harm.
78. Second, in such a context there is a risk that the provision of reparation to victims of the present case could exacerbate, rather than alleviate, tensions between ethnic groups in the area. The attack on Bogoro of 24 February 2003 took place in the context of wider hostilities in which other communities, including some in the immediate vicinity of Bogoro, also suffered harm. Awards of reparations, if not carefully managed, could fuel rivalries between communities and go against attempts at reconciliation. As already noted concerns regards security vary from one location to another. In [REDACTED], the location with the highest recorded security concerns, victims voiced their concerns with one victim stating, *"for me, what is essential in [REDACTED] is to solve the ongoing insecurity issues that have persisted since the war."*¹⁰⁵ Others were concerned that development projects might bring unwanted attention to the village with one person stating, *"what if the militias come back and destroy everything again?"* and another commenting *"militias are only [REDACTED] away from here and they will not like seeing something nice and new in [REDACTED] They will come to destroy it."*

¹⁰⁴The Prosecutor v. Germain Katanga, Jugement rendu en application de l'article 74 du Statut, 7 mars 2014, ICC-01/04-01/07-3436, paras. 696- 718 ("Motivations ethniques des commandants et des combattants ngiti").

¹⁰⁵ Collective meeting, [REDACTED].

79. These factors clearly influenced the attitudes of the victims interviewed towards the form of reparation that should be awarded. A victim in ██████ said *"my son was killed and left orphans behind. I am more for individual (compensation). We don't even know if the war is over."* A community leader from the village remarked that *"something for the community would be good, but it is not safe in ██████"* Similarly, ██████ noted:

"I've tried to explain to my people the benefits of both collective and individual – people are afraid that if the Lendu-Bindi see large collective projects done to foster development – they won't be happy with that and they will come to destroy them. They will say 'why are they building our schools with sticks when in ██████ they use stone.' That is why victims are concerned about big infrastructural collective projects. The individual award may be less visible than a school or administrative building."

80. The land disputes that are a key underlying cause of the conflict are also relevant in this context. One aid organisation assisting victims in ██████ contacted by the Registry noted that *"Cows are for the Hema community a traditional and cultural symbol, a symbol of wealth, also a symbol of superiority."*¹⁰⁶ The same organisation was of the opinion that a combination of individual and collective awards would be ideal to mitigate conflict within the community, but that the provision of large numbers of cows (for example) might spark conflict over land because the raising of cows and the pastoralist lifestyle in general necessarily entails movement across land.

81. For victims who were displaced from Bogoro and have settled in other communities, reparations awards could cause divisions in their new communities. For instance, victims who settled in ██████ reported that they now suffer from malaria and other illnesses due to ██████. If services to address these illnesses were to be provided only to the victims ██████ this could potentially cause resentment among the other inhabitants of ██████ who suffer from the same illnesses.

¹⁰⁶ This was raised also during collective meetings in ██████ and individual interviews, for example a victim indicated that *"In the Hema culture we are cow herders, we sell cattle or cattle products and with the income it could help the needs of the family"*. Others said *"If we have no cows we are not recognized in our community"* or *"in Hema Society"*, *"In Hema tradition, we have to be cow herder, it is important"*. People are relying on their cows to generate products and income for daily needs, but also as savings: by selling a cow they would be able to cope with specific and sometimes unforeseen needs, for example fees for organising burial ceremonies, marriages or medical treatment. One victim said that in addition to providing for the daily needs of the family *"cows mean wealth because if there is any problem, we can sell one and face it"*.

82. In light of the above, the impact of any measure of reparation on intra- and inter-community relations, and the wider conflict, must be carefully assessed, and steps taken to avoid, or at least to mitigate, potentially harmful effects.

(iii) The fact that not all qualifying victims have presented applications for participation or reparations

83. Since the case was opened and including during the course of the current exercise, the Registry has made efforts to reach victims who may potentially be linked to the case, inform them of the possibility to apply to participate in the proceedings and apply for reparations, and enable them to do so if they wish. This is in accordance with the Registry's duty to assist victims in relation to their participation in proceedings and reparations.

84. Nevertheless, the Registry believes that not all victims who may potentially qualify as victims of the case in accordance with rule 85 of the RPE and wish to request reparations in the present case have presented applications for participation and/or reparations to date. Indeed, the Registry is informed that there may be some persons who may qualify as victims of the case who are still displaced outside Ituri or outside the DRC, and notes that these persons may also have different needs and requests that reflect their different circumstances.

85. During the recent field mission the Registry tried to make preliminary inquiries as to how to identify other qualifying victims. From the responses received, the Registry has concluded that it is very likely that other qualifying victims do exist both in the immediate area and dispersed elsewhere, including some outside the DRC. At the same time, it is evident that an exercise to identify and verify other potentially qualifying victims would be challenging, and would require consultations on the ground and careful management.

(iv) The lack of resources belonging to Mr. Katanga

86. During early stages of the proceedings, the Court has not identified assets belonging to Mr. Katanga that could be used for the purposes of reparations awards.¹⁰⁷ If this information is confirmed in the context of reparations proceedings, any reparations award against the convicted person under article

¹⁰⁷ ICC-01/04-01/07-79, Décision du Greffier sur les demandes d'aide judiciaire aux frais de la Cour déposées par M. Germain Katanga (23-11-2007); ICC-01/04-01/07-3453, Observations du Greffe relatives à la solvabilité, l'indemnisation des victimes et au comportement en détention de Germain Katanga (20-03-2014); ICC-01/04-01/07-3484, Décision relative à la peine (article 76 du Statut), para. 169 (23-05-2014).

75(2) of the Rome Statute is likely to be mostly or entirely reliant on funds raised by the TFV.¹⁰⁸

87. While it remains unclear at this stage what will be feasible, it seems likely that the resources available for reparations for victims in the case will not be sufficient to remedy all the harm caused by the crimes and re-establish the situation prevailing previously for all the victims concerned.¹⁰⁹ If this is the case, criteria may need to be established for prioritising the use of the resources that are available. A number of questions would need to be addressed in this context, such as the basis on which any such prioritisation should be done.. For instance, should the limited resources be used to benefit those who were most seriously affected by the crimes at the time, or those most vulnerable or most in need now.¹¹⁰ Alternatively, should the resources be used to provide something, however little (that could be the same or according to different levels), for everyone, which may seem more appropriate in this case in light of the clear preference expressed by the victims interviewed to receive an individual material benefit rather than shared. International practice provides useful examples and experience on these questions.¹¹¹ The Registry notes that the updated information

¹⁰⁸ It should nevertheless be borne in mind that an award of reparations is made against a convicted person, and that should Mr. Katanga come into assets at a later date, he would be expected to apply them for reparations. See Report of the Court and the Trust Fund for Victims on the rules to be observed for the payment of reparations, ICC-ASP/13/7, 23 May 2014, para. 18, in which the TFV notes that where it is ordered to complement a reparations order made against a person found not to possess the necessary means to pay the award at the time of the final judgment, this can be viewed as an advance payment, and could be reimbursable to the TFV (should assets of the convicted person come to light at a later date).

¹⁰⁹ The Registry recalls that, as instructed by the Chamber, during the meetings with victims the VPRS made every effort to manage the expectations of the victims with extreme care, which included emphasising the likelihood that there would be limited resources available for reparations.

¹¹⁰ In the Lubanga case, in its principles on reparations, Trial Chamber I recognized in similar circumstances that priority may need to be given to certain victims who are in a particularly vulnerable situation or who require urgent assistance (ICC-01/04-01/06-2904, para. 200). The Registry notes that among the victims participating and/or requesting reparations are some who have suffered from rape and sexual slavery, or have suffered as indirect victims of this crime committed to their relatives. During the consultation, some local community leaders mentioned that in their community “Some people are still suffering and are not able to move on due to their trauma that still persists or serious injury that left them disabled” and “many vulnerable victims, in particular raped women and indigents, required special care”.

¹¹¹ Possible Approaches to Prioritization Include: Prioritization according to the vulnerability of victims; Prioritization according to the needs of victims; Prioritization according to the nature of the unlawful act or the nature and/or gravity of harm inflicted; Prioritization in order to maximize the impact of limited resources; For a comprehensive digest on comparative experiences on prioritization see Paola Limon *et al.* (Clara Sandoval ed.), *Prioritizing Victims to provide Reparations: Relevant Experiences*, Essex University, Reparations Unit, Briefing Paper No. 3, August 2011, and Conor McCarthy, *Reparations and Victim Support in the International Criminal Court*, Cambridge University Press, 2012, chapter 8.

regarding the harm suffered as a result of the crimes and the reparations requests of the victims presented in this report could form a useful basis for considering these questions.

(v) *Terminology: Individual and Collective Awards*

88. The Registry notes that in practice the concepts of “individual” or “collective” are neither entirely distinct nor mutually exclusive. The distinction between individual and collective awards is often a source of confusion, especially so when awards are made that target a group of victims.
89. For the purpose of the present report and recommendations, individual awards are defined as awards benefiting victims fulfilling the criteria provided under rule 85 of the RPE only. The individual award may target individual victims or a group of victims, but in both cases, verification that the beneficiaries fulfill rule 85 criteria shall be required. On the other hand, collective awards are defined as awards benefitting an affected community as a whole, without the need for verification that each and every member of that community qualifies as a victim under rule 85 of the RPE. The present definitions are naturally subject to further determination by the Chamber. This appears to be borne out by the design of the Regulations of the TFV which provide, at regulations 62 to 65, a verification procedure for individual awards only, whereas collective awards are not subject to such verification pursuant to regulations 69 to 75.
90. It cannot be excluded, though, that collective awards, as defined above, may result in individual benefits for victims, as members of the affected community. The fact that the victims expressed unambiguous preference for receiving individual benefits from reparations should certainly be interpreted as a preference for individual awards, but may also mean that they would not be opposed to receiving individual benefits from certain forms of collective measures.
91. Regarding the applicable standard of proof, the Registry notes that the Trial Chamber in the Lubanga case decided that the standard of proof for the purposes of an order for reparations directed against a convicted person should be “a balance of probabilities”, and where reparations are awarded from the resources of the TFV or from any other source, a wholly flexible approach to determining factual matters is appropriate.¹¹² This in line with international mass claims processes have adopted flexible and variable standards of proof with regard to

¹¹² ICC-01/04-01/06-2904, paras. 251-254.

victims' claims, taking cognizance of the very difficult circumstances they may face in establishing the harm they have suffered.

92. The Registry notes that in the present case, such a flexible approach was adopted in relation to the available forms of documentation to establish identity and other claims in relation to the victims' right to participate in proceedings.¹¹³ As noted in the case and in other proceedings before the Court pertaining to Eastern DRC, most victims have not had access to official records establishing the death of family members or property records establishing with precision the property that was allegedly pillaged or destroyed during the attack.¹¹⁴ When establishing principles on reparations in the Lubanga case, Trial Chamber I decided to adopt the same approach to proof of identity documents in reparations proceedings as had been used during the trial for establishing identity in the context of applications for participation.¹¹⁵ Considering the lack of available documentary evidence and considering the limited resources that will likely be available to fully restore victims to the economic position they were in before the attack on Bogoro of 24 February 2003, the Registry considers that the burden of proof

¹¹³ Decision by PTCI in Katanga case 01/07-579 (10-06-2008), para 45: The Chamber has also recognised the need for the presentation of proper identification documents for all victims who apply to participate in the early stage of Court proceedings. However, in taking cognizance of certain difficulties in obtaining the required proof of identity, kinship, guardianship and legal guardianship, the Chamber has stated that "in regions which are or have been ravaged by conflict, not all civil status records may be available, and if available, may be difficult or too expensive to obtain."

¹¹⁴ *Ntaganda* case, ICC-01/04-02/06-53, Anx1, General observation on the difficulties encountered by the Congolese population in providing documents. In addition to the limitations in the availability of certain documents already noted, Congolese citizens may face additional difficulties in providing copies of such documents to the Court. These include administrative, historical and social, geographical and material factors. Administrative obstacles can be significant. These include the cumbersome nature and complexity of the processes for obtaining documents, corruption amongst civil servants, lack of resources on the part of the administration and the prohibitive cost of obtaining some documents. Historical and social factors are also relevant. In general, the DRC does not have a culture of written documentation in the sense that many, especially those living in remote territories in rural areas, do not see the use for such documents in their daily lives. Conflicts, particularly in the East of the country, have undermined the administrative system and in some cases led to the loss or destruction of documents. The geographical size of the DRC is also significant in that the great distances that have to be covered, coupled with the lack of transport and security problems, complicate all these procedures. Lastly, material and resource limitations also affect the ability of applicants to submit documents. As indicated above, poverty levels are high, and local intermediaries that assist them also have very limited or no financial resources. Paying to obtain a document, to travel to the place where the document may be obtained, or to photocopy it, can be an insurmountable obstacle. Furthermore, outside major urban areas, it is difficult to find places to make photocopies, especially in eastern DRC.

¹¹⁵ ICC-01/04-01/06-2904, para. 198.

typically required for awards of *restitution*¹¹⁶ need not apply in the present case and instead recommends the more context appropriate standard, applied under rule 85 for the purposes of participation during the trial, be applied for victims seeking to qualify for individual awards for the harm that they suffered. The Registry notes that subject to any stipulations set out in the Order of the Chamber, the standard of proof for a verification process to be carried out by the TFV shall be determined by the TFV Board of Directors pursuant to regulation 63 of the TFV regulations.

93. The Registry recalls that out of the 365 victims who have come forward and requested reparations and the 305 of whom were consulted, all suffered from forms of direct or indirect harm and qualify as victims according to the definition in rule 85 of the RPE. As noted above, despite its best efforts to pinpoint the number of other victims who may qualify as direct or indirect victims in the case it has not, up until now, been able to do so. It is therefore up to the Chamber to determine whether it wishes to reopen a period for the collection of new applications for reparations. Should the Chamber decide to reopen applications, the Registry considers that a temporarily re-opened application or registration process for victims fulfilling criteria set by the Chamber could enable the Registry to ensure that as many qualifying victims as possible are identified and verified.¹¹⁷ The Registry remains cognizant of the time that has elapsed since the attack on Bogoro of 24 February 2003 and since the commencement of proceedings in the case and during the interviews some victims stated that they had already waited a long time for the trial process to be completed. It therefore suggests that while adequate time be given to allow as many qualifying victims as possible to come forward, this should be done without undue delay.

¹¹⁶ According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian adopted by the United Nations General Assembly on 16 December 2005 (A/RES/60/147), restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred (principle 19).

¹¹⁷ The LRV informed VPRS that based on reliable and corroborated information, approximately a hundred other victims who may qualify as direct or indirect victims of the attack of Bogoro of 24 February 2003 [REDACTED]

VII. Recommendations of the Registry on the Types and Modalities of Reparations

94. Based on the information presented in this report and in accordance with paragraph 11 of the 27 August Order and regulation 110(2) of the RoR, the Registry respectfully makes the following recommendations.

- a. *While noting that the legal options are both individual and collective reparations, the Registry recommends that the Chamber takes into account the clear preference of the victims for receiving individual benefits from reparations measures.* The results of the consultations with victims show that individual material benefits are seen as vitally important to victims, both natural and legal persons, to repair the harm suffered, and are overwhelmingly their preferred option. These may be granted by way of individual awards or by way of collective awards framed in such a way as they may result in providing individual benefits. Victims expressed strong and consistent concerns about awards that they view as collective. Should the Chamber wish to award reparations on a collective basis, these should confer individual material benefits to victims, or, if they do not, be in addition to individual awards and not instead of them. All awards should be framed in such a way as to avoid identified risks of exacerbating tensions and causing re-victimization.
- b. *Any awards of reparations ordered, whether on an individual or a collective basis, should reflect the preferences expressed by victims.* In the course of the consultations the results of which are presented in this report, victims conveyed what would constitute meaningful reparations at this point in time in order to redress the harm suffered. Significantly the largest proportion – 97% - requested economic development and financial measures, notably housing and farming/agriculture and support for education, with most wanting this to be provided through financial compensation. The second most requested measure was medical/psychological support, and accordingly an award of rehabilitation would be appropriate, although as an additional measure to the other measures considered to be the highest priority by the victims interviewed.
- c. *Individual reparations under rule 98(1) of the RPE should be awarded to victims who are able to demonstrate that they are direct or indirect victims in accordance with rule 85 of the RPE.*¹¹⁸ In order to reflect the

¹¹⁸ The Registry notes that in the Lubanga case, in this context Trial Chamber I determined that for the purposes of establishing who is an indirect victim to be included in a reparations scheme, and

clear and strong preference expressed by the victims, such awards should provide them with material benefits.¹¹⁹ In the event that Mr. Katanga is found not to have assets to meet such awards, the TFV could be requested to complement the award of reparations under regulation 56 of the TFV Regulations.

- d. *In addition to victims who have already applied to participate in the proceedings or for reparations, it is believed that there are other qualifying victims who have not yet been identified who may be considered for individual reparation.* In order to allow other victims who may potentially be qualifying victims and who wish to request reparations, the Chamber should decide whether to open a new period not exceeding six months for submitting applications for reparations.¹²⁰ Alternatively or in addition, the Chamber may decide to proceed in respect of such additional victims on its own motion under rule 95 of the RPE, and order the Registry to notify its intention accordingly. In both cases, the Chamber would define the requirements for qualifying as a direct or indirect victim in the case and direct the Registry to proceed with notification and to identify and register all those who qualify within a specified period of time.¹²¹
- e. *In awarding individual reparation, the Chamber should consider whether all victims should receive the same award, or whether distinctions should be made based on type of harm, the needs of victims or other criteria.* The Registry notes in this regard that in light of the time that has elapsed, the difficulty in establishing accurate records and other contextual factors noted in this report, it would not be easy to distinguish between those who suffered different types and levels of harm. If in light of the resources available it is decided that priorities must be identified, consideration

whether a close personal relationship existed between the direct and indirect victim, the Court ought to have regard to the applicable social and familial structures, and take into account the widely accepted presumption that an individual is succeeded by his/her spouse and children (ICC-01/04-01/06-2904, paras. 194-195).

¹¹⁹ Such awards could be in the form of individual cash payments or other forms of material benefit.

¹²⁰ The Registry notes that Trial Chamber I in establishing principles on reparations in the Lubanga case, citing victims' entitlement to fair and equal treatment throughout the proceedings, found that it would be inappropriate to limit reparations to the victims that participated in the trial and those who applied for reparations (ICC-01/04-01/06-2904, paras. 187-188).

¹²¹ It is relevant in this regard that the TFV indicated to the Registry that it is not aware of who are the victims of the case.

should be given, therefore, to prioritising based on other factors such as vulnerability, following further consultations by the TFV.

- f. *Collective reparations may also be awarded under rule 98(3).* These other forms of reparation need not involve an application or registration process, and could potentially benefit a wider group of victims and affected communities, as identified by the TFV. Subject to the concerns and risks identified by victims during the consultation, adequately framed collective measures provided to the victims' communities in addition to individual awards may have a positive impact on the general situation of the affected communities. The Registry recommends that, should the Chamber order such collective awards, these should be in addition to, and not instead of, individual awards and should be carefully designed to address the risks identified in the present report. Such awards could be made through the TFV in accordance with Article 75(2) of the Statute. Under rule 98(5) of the RPE the TFV may use other resources for the benefit of victims and their families, with no requirement for them to be linked to the case specifically, so potentially allowing victims other than those who qualify for participation in the case to qualify.¹²² Further, since the Registry considers that the victims of the attack of Bogoro of 24 February 2003 may have suffered collective harm to the community as such, an award made to address such harm would also allow the wider affected community to benefit.¹²³
- g. *Considering that victims have highlighted the fact that the conflict remains largely unresolved and the ongoing insecurity in the region which may lead to repetition of crimes, the Chamber may wish to consider whether measures aimed at promoting reconciliation could be awarded in addition to the above mentioned awards.* In this regard, the Registry draws attention to suggestions raised by some in the course of the consultations that the Court contribute in some way to promoting

¹²² According to regulation 46 of the TFV Regulations, resources collected from the convicted person for an award of reparations and transferred to the TFV must be used for victims affected directly or indirectly by the crimes committed by the convicted person; this does not apply to "other resources of the Trust Fund" (not collected from awards of reparations, fines and forfeitures), which according to regulation 48 must be used to benefit victims as defined in rule 85 of the RPE and their families, without the requirement of link to the case.

¹²³ While this was not necessarily touched on in detail during the consultations, the TFV would be able to conduct further consultations, as it has indicated it would do following a Reparations Order. Email from the Legal Adviser, TFV to the VPRS dated 11 November 2014.

reconciliation and addressing the underlying causes of the conflict.¹²⁴ The Registry also recommends that other forms of reparation, aimed at avoiding repetition of the crimes, be considered, including publication of the Judgment, outreach and education, to contribute to preventing future victimisation and conflict.¹²⁵ These would require further consultations.

- h. Reparations awards for legal persons should be made on the same basis as those for natural persons* One legal person participating as a victim in the proceedings was interviewed during the consultation, and others may be identified if other victims who have not submitted applications to date are to be permitted to benefit from reparations.
- i. Order the TFV to use the resources it has set aside for the present case for the implementation, as appropriate, of individual and collective awards of reparations*

¹²⁴ The Registry notes for example the proposal of [REDACTED] that the Court might, as a measure of reparation, arrange for different parties to be brought together to settle land disputes. [REDACTED]

[REDACTED] The initiative proposed by [REDACTED] to bring together relevant parties to settle land disputes is supported by the results of the consultation. Indeed the Registry notes that 31% of all victims consulted considered peace initiatives to be a high priority and a viable form of reparations. Among these, several victims mentioned that the ICC should be involved by encouraging the authorities to settle land borders which could bring peace and security. During the victims' consultation the ongoing problem of land in Ituri was mentioned as one reason for the conflict. The Chamber recognized this aspect in its Judgment, citing a United Nations (MONUC) Report (see ICC-01/04-01/07-3436, paras 442, 699-700). For example [REDACTED] mentioned that "Government, MONUSCO and ICC should discuss together to find a solution to the land delimitation between the communities"; [REDACTED] asks the ICC to "organise meetings with chiefs to agree on territorial boundaries"; [REDACTED] mentions a previous attempt which failed and said "if the ICC were involved it might succeed. People need to bring the maps and agree on the border" (see also [REDACTED]). Other victims in a broader manner mentioned the land issue ([REDACTED] and the need for a peace initiative involving ICC and government representatives ([REDACTED]). For an international example, see *Awas Tingni v. Nicaragua*, in which the Inter-American Court of Human Rights ordered the state to demarcate and grant title to land (Inter-American Court of Human Rights Judgment of 31 August 2001, Ser.C, Case No. 79)

¹²⁵ The Prosecutor v Thomas Lubanga Dyilo, TC I, Decision establishing the principles and procedures to be applied to reparations, 7 August-2012, ICC-01/04-01/06-2904, para. 239. In its decision the Chamber found that although article 75 of the Statute only lists restitution, compensation and rehabilitation as forms of reparations, this list is not exclusive, and other types of reparations, such as those with symbolic, preventive or transformative value, may also be appropriate (para.222).

j. Issue a Decision establishing the following:

- i. If the Chamber so decides, open an application process for reparations for a period not exceeding six months, or directions to the Registry to register qualifying victims according to criteria established by the Chamber;
- ii. In any event, the criteria to be applied in establishing who may be considered a beneficiary for the purposes of individual reparation and who may be considered a beneficiary for the purposes of collective reparation

95. The Registry respectfully submits the following recommendations relevant to implementation of reparations awards, based on information obtained during the course of the victim consultations.

- a. As reparations should secure, whenever possible, reconciliation between the convicted person,¹²⁶ the victims of the crimes and the affected communities, they should avoid as far as possible the risk of causing or exacerbating tensions and divisions. The impact of any measures should be carefully assessed in order to avoid, or at least mitigate, causing harm to intra- or inter-community divisions or in the context of the wider conflict. The TFV could be requested to present a set of concrete proposals to which the victims could respond.
- b. As a result of victims' perceptions of past failures of projects perceived as "collective", it will be important to build in to any awards, as a confidence building measure, monitoring and other elements intended to ensure sustainability and full implementation, as well as consultations with communities and others, including organisations involved in past projects targeting the victim population, regarding implementation.
- c. Preparation, design and implementation of reparations awards will need to be accompanied by outreach and careful explanations targeting the victim populations and wider communities, particularly in light of the contextual factors relevant to the types and modalities of reparations to be awarded, outlined in this report.
- d. The Chamber could state that the cooperation from the DRC government could be sought if necessary for the implementation of any of the awards.
- e. A gender-inclusive approach should guide the design and implementation of principles and procedures to be applied to reparations, in order to

¹²⁶ICC-01/04-01/06-2904, paras.193 and 244.

ensure that they are accessible to all victims in their implementation,¹²⁷ further, since victims of the case involve all generations including some vulnerable victims, this should also be taken into account.

¹²⁷ ICC-01/04-01/06-2904, para. 202.