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Pénale
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**International
Criminal
Court**

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TRIAL CHAMBER V

Before: Judge Beti Hohler , Presiding Judge
Judge Joanna Korner
Judge Keebong Paek

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

***IN THE CASE OF THE PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public Document

Defence submissions pursuant to the "Order for Submissions on Reparations"

Source: Defence of Patrice-Edouard Ngaïssona

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I. INTRODUCTION

1. On 8 October 2025, Trial Chamber V ('the Chamber') filed its "Order for Submissions on Reparations"¹ ('the Order') whereby it instructed the CLRV2, the Defence for Mr Yekatom, the Defence for Mr Ngaïssona ('the Defence'), the Registry and the Trust Fund for Victims ('the TFV') to make submissions on any or all of the following issues:

- a) estimated total number of direct and indirect victims of the crimes for which Mr Yekatom and Mr Ngaïssona were convicted, who may be potentially eligible for reparations;
- b) any factual or legal issues relevant to the identification of eligible victims;
- c) any victims or groups of victims who may require prioritisation in the reparations process;
- d) specification of the types and extent of the harm suffered by the victims of the crimes for which Mr Yekatom and Mr Ngaïssona were convicted;
- e) whether recourse to factual presumptions should be considered;
- f) types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes for which Mr Yekatom and Mr Ngaïssona were convicted;
- g) estimates as to the costs to repair the harms suffered by the victims in light of the appropriate modalities for repairing them;
- h) information as to whether the victims of the crimes for which Mr Yekatom and Mr Ngaïssona were convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes;
- i) any considerations the Chamber should take into account when assessing liability for reparations of each of the convicted persons with

¹ ICC-01/14-01/18-2821.

respect to the crimes for which both Mr Yekatom and Mr Ngaïssona were convicted;

- j) information about the numbers of the members of the Muslim population residing at the relevant time in: (i) Bangui, notably in the neighbourhoods of Boeing and Cattin, (ii) the town of Bossangoa, including the Boro neighbourhood, and (iii) the villages along the PK9-Mbaïki axis; and
- k) any additional information relevant to reparations.

2. In accordance with the Order, the Defence hereby provides its observations on the issues identified above and will address each in turn.
3. At the outset, the Defence recalls that it filed its “Ngaïssona Defence Appeal Brief against the Trial Judgment” (‘Appeal Brief’)² on 25 November 2025, whereby it requested Mr Ngaïssona’s acquittal on all counts.³ Therefore, the present submissions are made without prejudice to the pending appeal. Nothing in the Defence’s engagement in the reparations stage should be read as accepting the Chamber’s determinations of guilt until the Appeals Chamber has rendered its judgment. Therefore, the Defence approaches reparations in a manner that is necessarily appeal-aware and strictly anchored in the scope of the convictions as they currently stand.⁴ Should the Trial Judgment (‘Judgment’)⁵ be reversed or amended by the Appeals Chamber, the Defence’s observations may be subject to change.

² ICC-01/14-01/18-2847-Conf.

³ ICC-01/14-01/18-2784-Conf.

⁴ *The Prosecutor v. Lubanga*, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, ICC-01/04-01/06-3129, para. 65, para. 151; *The Prosecutor v. Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, para. 31, para. 251; *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, ICC-01/04-01/07-3778-Red, para. 153; *The Prosecutor v. Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, paras 96, 106, 215; *The Prosecutor v. Ongwen*, Reparations Order, ICC-02/04-01/15-2108, para. 68; *The Prosecutor v. Ongwen*, Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 28 February 2024 entitled “Reparations Order”, ICC-02/04-01/15-2108, para. 68.

⁵ ICC-01/14-01/18-2784-Conf.

4. The Defence understands that the reparations are a lengthy phase of the proceedings and understands the Chamber's obligation to avoid unnecessary delays.⁶ For this reason, the Defence engages constructively with the reparations process and submits these observations with a view to assisting the Chamber in identifying a reparations framework that is principled and capable of effective implementation.⁷
5. Since the Defence does not have access to the same information as the CLRV2, the Registry and the TFV, the Defence does not wish to prematurely make submissions on certain issues that have yet to become ripe. Therefore, the Defence's position on them will be further articulated in its responses to the different participants' and stakeholders' observations

II. PROCEDURAL HISTORY

6. On 24 July 2025, the Chamber, in its previous composition, rendered its Judgment whereby it convicted Mr Ngaïssona of fifteen (15) counts of crimes against humanity and of twelve (12) counts of war crimes, and Mr Yekatom of eleven (11) counts of crimes against humanity and of eight (8) counts of war crimes.⁸ Mr Ngaïssona was acquitted for the war crime of pillaging (count 34), for the war crime of directing an attack against a building dedicated to religion (count 35),⁹ and for the crime of rape as a war crime and crime against humanity (counts 40 and 41).¹⁰
7. At the same time, the Chamber sentenced Mr Ngaïssona to twelve (12) years of imprisonment¹¹ and Mr Yekatom to fifteen (15) years of imprisonment.¹²

⁶ ICC-01/14-01/18-2821, para. 5.

⁷ Rome Statute of the International Criminal Court ("Statute"), art. 75; Rules of Procedure and Evidence ("Rules"), rule 97.

⁸ ICC-01/14-01/18-2784-Red.

⁹ ICC-01/14-01/18-2784-Red, para. 4049.

¹⁰ ICC-01/14-01/18-2784-Red, paras 4126-4132.

¹¹ ICC-01/14-01/18-2784-Red, para. 4841.

¹² ICC-01/14-01/18-2784-Red, para. 4662.

8. On 26 September 2025, the Defence filed its “Notice of Appeal against the Trial Judgment”.¹³
9. On 8 October 2025, the Chamber rendered its “Order for Submissions on Reparations”¹⁴ whereby it instructed the parties and participants to make submissions on reparations by 27 March 2026.
10. On 25 November 2025, the Defence filed its Appeal Brief requesting the reversal of the Judgment on Mr Ngaïssona’s conviction and sentence and requesting an acquittal on all counts.¹⁵ On the same day, the Prosecution filed its “Prosecution Appeal Brief” whereby it requested the Appeals Chamber to find Mr Ngaïssona responsible for counts 40, 41, 42 for contributing to the Anti-Balaka’s commission of rape and persecution by rape and to amend the sentence accordingly.¹⁶
11. On 27 February 2026, the Defence, the Prosecution and the CLRV2 filed their responses to the Appeal Briefs.¹⁷
12. On 23 February 2026, the CLRV2 requested an extension of time to submit observations on reparations.¹⁸
13. On 5 March 2026, the Chamber granted the CLRV2’s request to extend the deadline to make observations on reparations and extended the deadline to 13 April 2026. The Chamber extended the deadline to all the parties and participants.¹⁹
14. On 27 March 2026, the Human Rights Centre, Queen's University Belfast, filed their “Submission on Reparations”.²⁰

¹³ ICC-01/14-01/18-2815.

¹⁴ ICC-01/14-01/18-2821.

¹⁵ ICC-01/14-01/18-2847-Conf.

¹⁶ ICC-01/14-01/18-2846-Conf.

¹⁷ Respectively: ICC-01/14-01/18-2886-Conf; ICC-01/14-01/18-2885-Conf; ICC-01/14-01/18-2884-Conf.

¹⁸ ICC-01/14-01/18-2883-Conf.

¹⁹ ICC-01/14-01/18-2889.

²⁰ ICC-01/14-01/18-2895.

III. SUBMISSIONS

15. The Defence makes the following observations in accordance with the Order and follows the topics as listed therein.

A. Estimated total number of direct and indirect victims of the crimes for which Mr Yekatom and Mr Ngaïssona were convicted, who may be potentially eligible for reparations

16. The Defence is not in a position to present estimates to the Chamber. However, the Defence wishes to recall that, while estimates are permissible, they must be based on a sufficiently strong evidentiary basis.²¹ The Appeals Chamber has found that, while it is in the discretion of the trial chamber to resort to estimates, it should do so cautiously and “make every effort to obtain estimates that are as accurate as possible in the circumstances of the case”.²² Moreover, an additional requirement is imposed on trial chambers, which is that “any uncertainties must be resolved in favour of the convicted person (for instance, by assuming a lower number of victims, or by discounting the amount of liability)”.²³

B. Any factual or legal issues relevant to the identification of eligible victims

17. The Defence raises four sub-topics related to factual and legal issues relevant to the identification of eligible victims: (i) issues pertaining to the qualification of indirect victims; (ii) issues pertaining to documentation probative of identity; (iii) issues pertaining to the timing of victims’ eligibility assessments; and (iv) exclusion of eligibility.

²¹ *The Prosecutor v. Lubanga*, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, ICC-01/04-01/06-3466-Red, paras 90, 223.

²² *Ibid.*, para. 108.

²³ *The Prosecutor v. Ntaganda*, Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’, ICC-01/04-02/06-2782, para. 171 *citing Lubanga*, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, ICC-01/04-01/06-3466-Red, para. 90 (footnotes omitted).

1. Issues pertaining to the qualification of indirect victims

18. Particular caution is required when assessing claims of indirect victimhood.

Indirect victims are those victims who can “demonstrate to have suffered personal harm as a result of the commission of the crime against the direct victim and a causal link between their harm and the crimes.”²⁴

19. The categories of indirect victims should be identified to the full extent possible so as not to create litigation that can be avoided. For example, in *The Prosecutor v. Ntaganda*, while the Appeals Chamber upheld the possibility that indirect victim status may arise where the direct victim was “a person of significant importance” to the indirect victim,²⁵ it did recognise the need to provide guidance as to the parameters of such a relationship.²⁶ The Appeals Chamber found that when determining whether the indirect victim falls within this category, the TFV shall be guided by the “criterion of special bonds of affection or dependence connecting the applicant with the direct victim”, which “captures the essence of inter-personal relations, the destruction of which is conducive to an injury on the part of indirect victims”.²⁷

2. Issues pertaining to documentation probative of identity

20. In 2019, the Registry submitted its “Registry Report on Proof of Identity Documents Available in the Central African Republic” (‘Registry Report on Proof of Identity’).²⁸ The Registry explained that the difficulties in obtaining documents probative of identity in the Central African Republic (‘CAR’), which had been identified in the context of the *Bemba* case, continued to be an issue.²⁹

²⁴ *The Prosecutor v. Ongwen*, Reparations Order, ICC-02/04-01/15-2074, para. 128.

²⁵ *The Prosecutor v. Ntaganda*, Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’, ICC-01/04-02/06-2782, para. 625.

²⁶ *Ibid.*, para. 626.

²⁷ *Ibid.*, para. 628 citing Case 001 Appeal Judgment, para. 447.

²⁸ ICC-01/14-01/18-133.

²⁹ ICC-01/14-01/18-133-AnXI, para. 5 (“In 2008, the Registry submitted its *Bemba* Report on proof of identity documents, which identified a list of documents available to victims to provide as proof of identification in the context of the Court’s proceedings. The Registry considers that the content of its *Bemba* Report continues to be valid”).

The Registry therefore requested that the Chamber adopt a flexible approach to documents probative of identity. As such, the Registry asked the Chamber to:

- a) accept the types of identity documents indicated in the *Bemba* report and those which were accepted by the Pre-Trial Chamber in the *Bemba* case;³⁰
- b) accept additional forms of identification as accepted by the Trial Chamber in the *Bemba* case;³¹
- c) consider for acceptance any other documents appended by future applicants which have similar features as those already authorised in the *Bemba* case following assessments and recommendations provided by the Registry to that effect as appropriate.³²

21. The situation in CAR, although still volatile, has changed since 2019. The government and various international actors took measures to provide further access to identification documents, for various reasons such as the presidential elections,³³ or to ensure the administrative registration of returnees.³⁴ With this in mind, the Defence requests that the list of documents required to establish proof of identity be reviewed in light of the current political and administrative situation.

22. The Registry Report on Proof of Identity notes that “[t]he current administrative dysfunction results in the quasi-total absence of administration and functional

³⁰ The following non-exhaustive list of documents was admitted: i) “certificat de nationalité”, (ii) “permis de conduire”, (iii) “passeport”, (iv) “livret de famille”, (v) “extrait d'acte de mariage”, (vi) “acte de mariage”, (vii) “extrait d'acte de décès”, (viii) “acte de décès”, (ix) “jugement supplétif”, (x) “extrait d'acte de naissance”, (xi) “acte de naissance”, (xii) “nouvelle carte d'identité”, (xiii) “ancienne carte d'identité qui n'est plus en vigueur”, (xiv) “carte professionnelle”, (xv) “carte d'association”, (xvi) “récépissé de dépôt de demande de carte nationale d'identité”, (xvii) “carte de commission d'emploi”, (xviii) “carte de député”, (xix) “déclaration de naissance”, (xx) “carte d'identité pastorale”, (xxi) “testament”, and (xxii) “livret de pension”.

³¹ The Single Judge admitted in addition that where it is not possible for a victim applicant to acquire or produce a document of the kind set out above, he will consider a statement signed by two witnesses - and accompanied by their proof of identity - attesting to the identity of the victim applicant.

³² Additionally, whenever the documents appended by the applicants had similar features to the ones listed in the Bemba Report, the Chamber accepted them as proof of identity.

³³ <https://corbeaunews-centrafrique.org/centrafrique-le-prix-des-cartes-didentite-enfin-reduit-apres-cinq-ans-de-violations-criminelles/>.

³⁴ <https://rodakar.iom.int/news/project-reducing-tensions-and-strengthening-social-cohesion-among-returnees-and-host-communities-through-access-identity-documents-livelihoods-and-transitional-justice-process>.

tribunals outside of Bangui”.³⁵ The Defence acknowledges that in areas outside of Bangui, obtaining documents may be more difficult and therefore accepts that a degree of flexibility is warranted. However, in Bangui, the administrative structures are comparatively stronger, even if they remain imperfect, and therefore access to documentation is facilitated.

23. The Defence further notes that “mobile judicial hearings”³⁶ were organised to mitigate some of the difficulties persons living outside of Bangui faced in accessing judicial/administrative institutions. An update as to the current state of access to judicial/administrative institutions in the provinces is warranted in order to assess whether access to documents in the provinces continues to be an issue after the last 2019 assessment made by the Registry in this case.

3. Issues pertaining to timing of victims’ eligibility assessments

24. The administrative eligibility process for victims, which includes outreach, identification, and eligibility should be executed within a reasonable timeframe.³⁷ In both *Ntaganda* and *Ongwen*, the respective Trial Chambers determined that two years from the date of the issuance of the reparations order was a reasonable timeframe for the completion of this administrative eligibility process.³⁸ The Defence would not be opposed to such an approach being adopted in the instant case.

4. Exclusion from eligibility

25. The Defence recalls the principle that “reparations orders are intrinsically linked to the *individual* whose criminal liability is established in the conviction and whose culpability for those criminal acts is determined in a sentence” (emphasis

³⁵ ICC-01/14-01/18-133-AnxI, para. 16.

³⁶ ICC-01/14-01/18-133-AnxI, para. 20.

³⁷ *The Prosecutor v. Ongwen*, Reparations Order, ICC-02/04-01/15-2074, para. 813.

³⁸ *Ibid*; *The Prosecutor v. Ntaganda*, First Decision on the Trust Fund For Victim’s Draft Implementation Plan for Reparations, ICC-01/04-02/06-2860-Conf, ICC-01/04-02/06-2860-Red, para. 187.

added).³⁹ This principle reflects the individualised nature of the reparations proceedings and ensures that any measure remains firmly anchored in the specific findings of the Chamber. Consequently, the scope of any reparations order cannot extend beyond the contours of the conviction and the Chamber is bound by the parameters of the Judgment.⁴⁰

26. As such, the Defence recalls Mr Ngaïssona’s acquittal on counts 34 (war crime of pillaging) and 35 (war crime of directing an attack against a building dedicated to religion).⁴¹ Therefore, these crimes can no longer be part of the scope of the reparations ordered in this case.

27. In addition, the Defence recalls that Mr Ngaïssona was acquitted of charges relating to rape and other forms of sexual violence.⁴² Until the Appeals Judgment on the Prosecution’s appeal is rendered, references to such conduct, including when framed as elements of persecution, must be excluded and cannot form part of the basis of reparations attributable to Mr Ngaïssona. Consequently, the Defence will not make any observations on the harm caused by these counts save in the event the Appeals Chamber reverses Mr Ngaïssona’s acquittal.

³⁹ *The Prosecutor v. Lubanga*, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, ICC-01/04-01/06-3129, para. 65, para. 151; *The Prosecutor v. Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, para. 31, para. 251; *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, ICC-01/04-01/07-3778-Red, para. 153; *The Prosecutor v. Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, paras 96, 106, 215; *The Prosecutor v. Ongwen*, Reparations Order, ICC-02/04-01/15-2108, para. 68; *The Prosecutor v. Ongwen*, Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 28 February 2024 entitled “Reparations Order”, ICC-02/04-01/15-2108, para. 68.

⁴⁰ See *The Prosecutor v. Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, para. 146; *The Prosecutor v. Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, para. 106; *The Prosecutor v. Ongwen*, Reparations Order, ICC-02/04-01/15-2074, para. 96. See also *The Prosecutor v. Lubanga*, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, ICC-01/04-01/06-3129, para. 182; *The Prosecutor v. Al Mahdi*, Reparations Order, ICC-01/12-01/15-236, para. 110.

⁴¹ ICC-01/14-01/18-2784-Conf, para. 4049, para. 4847.

⁴² ICC-01/14-01/18-2784-Conf, paras 4126-4131, para. 4847.

C. Any victims or groups of victims who may require prioritisation in the reparations process

28. The Defence does not have any submissions at this time on groups who may require prioritisation.

D. Specification of the types and extent of the harm suffered by the victims of the crimes for which Mr Yekatom and Mr Ngaïssona were convicted

29. The Defence does not have any observations at the present time on the types and extent of the harm suffered.

E. Whether recourse to factual presumptions should be considered

30. The Defence recognises that, in principle, the Chamber may have recourse to factual presumptions at the reparations stage.⁴³ Such presumptions, however, constitute an exception to the general requirement of proof. Therefore, a Chamber's "discretion is not unlimited and a trial chamber must respect the rights of victims as well as the convicted person when resorting to presumptions".⁴⁴

31. As such, presumptions must be rebuttable. As held by the Appeals Chamber in *Ntaganda*, "it is expected that the Trial Chamber will devise an avenue whereby the Defence is provided with a reasonable opportunity to rebut presumptions in proceedings before the Trial Chamber, for example, by having access to at least a minimum amount of information contained in the applications for reparations, so as to be able to make specific submissions and provide evidence to rebut presumptions that may not be applicable to such applications".⁴⁵ Accordingly,

⁴³ *The Prosecutor v. Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, para. 61.

⁴⁴ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", ICC-01/04-01/07-3778-Red, paras 4. 75.

⁴⁵ *The Prosecutor v. Ntaganda*, Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", ICC-01/04-02/06-2782, para. 689.

any presumption must be accompanied by sufficient access to evidence and reasoning to enable the Defence to effectively challenge it.

F. Types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes for which Mr Yekatom and Mr Ngaïssona were convicted

32. The Defence does not wish to make any submissions at this time on the types and modalities of reparations.

G. Estimates as to the costs to repair the harms suffered by the victims in light of the appropriate modalities for repairing them

33. The Defence does not have any observations as to the specific costs of the appropriate modalities for repairing the harm suffered by victims at this time. However, the Defence respectfully requests the Chamber, when determining the quantum of the award, to consider whether its implementation can be guaranteed or be at the least probable.

34. The Defence is cognizant of the Court's precedent that the primary consideration in determining reparations is the extent of the harm and the cost to repair it.⁴⁶ Further, the Defence acknowledges that the Court has generally found that a convicted person's indigence has no relevance to their liability for any reparations awarded.⁴⁷ For example, while in *Katanga* the Appeals Chamber acknowledged that Mr Katanga's indigence may affect how the reparations order is enforced, it did not find this consideration affected the reasonableness of the reparations order itself.⁴⁸

⁴⁶ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", ICC-01/04-01/07-3778-Red, paras 180, 182, 184.

⁴⁷ *The Prosecutor v. Al Mahdi*, Reparations Order, ICC-01/12-01/15-236, para. 114., *The Prosecutor v. Lubanga*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, ICC-01/04-01/06-3129, paras 102, 105.

⁴⁸ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", ICC-01/04-01/07-3778-Red, para. 190.

35. Since *Katanga*, reparations orders have only grown in size. While in *Al Mahdi*, the Appeals Chamber upheld a reparations award of EUR 2.7 million,⁴⁹ in *Ntaganda*, the initial award of USD 30 million was set aside on appeal,⁵⁰ following which, the trial chamber awarded USD 31,300,000 million in reparations.⁵¹ In *Ongwen*, the Appeals Chamber confirmed the reparations order of EUR 52,420,000 million.⁵² Given the indigence of Mr Al Mahdi, Mr Ongwen and Mr Ntaganda, the TFV will have to provide the funding for these awards, which all together amount to over EUR 80 million.

36. It is unlikely that the TFV will ever be able to fundraise this amount.⁵³ For example, Germany's recent donation of EUR 40,000,⁵⁴ which was specifically earmarked for the implementation of Court-ordered reparations, while noble, does not even represent 1% of these awards. The TFV is currently actively appealing to State Parties and other entities "to contribute to the delivery of reparations to victims in dire need, particularly in relation to the *Ntaganda* and *Ongwen* cases".⁵⁵ This lack of funds is further reflected in Sweden's contributions as the TFV's largest donor – EUR 12.3 million since 2006, which equals 22% of total voluntary contributions received by the TFV.⁵⁶ Even were this money to have been earmarked for reparations, this sum, which has been collected over the past twenty years from Sweden, would only cover 15% of the reparations

⁴⁹ *The Prosecutor v. Al Mahdi*, Reparations Order, ICC-01/12-01/15-236, para. 134. The Appeals Chamber did not reverse the award amount. *The Prosecutor v. Al Mahdi*, Judgment on the appeal of the victims against the "Reparations Order", ICC-01/12-01/15-259-Red2.

⁵⁰ *The Prosecutor v. Ntaganda*, Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order', ICC-01/04-02/06-2782, para. 758.

⁵¹ *The Prosecutor v. Ntaganda*, Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659, ICC-01/04-02/06-2858-Red, para. 360. This award was confirmed on appeal. *The Prosecutor v. Ntaganda*, Judgment on the appeals against the decision of Trial Chamber II of 14 July 2023 entitled 'Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659', ICC-01/04-02/06-2908-Red.

⁵² *The Prosecutor v. Ongwen*, Reparations Order, ICC-02/04-01/15-2074, para. 795. The Appeals Chamber confirmed the Reparations Order. *The Prosecutor v. Ongwen* Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 28 February 2024 entitled "Reparations Order", ICC-02/04-01/15-2108.

⁵³ See e.g. *The Prosecutor v. Ongwen*, Reparations Order, ICC-02/04-01/15-2074, para 819 (acknowledging that substantial fundraising would need to be done by the TFV).

⁵⁴ <https://www.icc-cpi.int/news/germany-bolsters-its-position-leading-donor-and-lends-support-implementation-court-ordered>.

⁵⁵ <https://www.icc-cpi.int/news/liechtenstein-augments-its-voluntary-contributions-2025-and-continues-its-long-standing>.

⁵⁶ https://trustfundforvictims.org/en/news/sweden-continues-champion-reparative-justice-victims-crimes-against-humanity-and-war-crimes?utm_source=chatgpt.com.

ordered in *Al Mahdi*, *Ntaganda*, and *Ongwen*. While the award amounts in *Ntaganda* and *Ongwen* may be considered reasonable under the aforementioned Appeals Chamber's precedent in *Katanga*, the TFV's lack of sufficient funding raises real concerns as to whether they can be effectively implemented.

37. The need for effective reparations in the face of financial constraints was squarely before the Special Criminal Court in the Central African Republic ('the SCC').⁵⁷ The SCC is an international criminal tribunal that has been established under CAR's domestic law and is physically located in the country.⁵⁸ In the first appeals judgment on reparations before the SCC,⁵⁹ the Appeals Chamber determined that trial chambers should not order reparation measures whose implementation cannot be guaranteed or in the very least be made probable.⁶⁰ Thus, contrary to the ICC's practice, the SCC Appeals Chamber reasoned that a trial chamber must take into account the indigence of a convicted person along with the willingness of potential third parties to provide or finance reparations measures.⁶¹ In light of these factors, the Appeals Chamber found no error in the amount of the award ordered for the rape victims, as it appeared probable that, given the available resources, such an award could be implemented.⁶² While the civil parties had requested over EUR 30,000 per rape victim, the Appeals Chamber confirmed the Trial Chamber's award of approximately EUR 1, 524 for rape victims who were minors at the time of the crime, and EUR 1,067 for the other rape victims.⁶³

⁵⁷ SCC, *SP v. Adoum Issa Sallet alias Bozizé et al.*, Arrêt no 13 relatif à l'appel interjeté contre le jugement no 001-2023 du 16 juin 2023 de la Première Section d'Assises ('*Sallet Reparations Appeal*'), 23 October 2023, No13-2023, paras 98-100.

⁵⁸ Organic Law for the Creation, Organisation and Functioning of the Special Criminal Court, ('Organic Law 15/003'), 3 June 2015, articles 1-3.

⁵⁹ *Sallet Reparations Appeal*, para. 6.

⁶⁰ *Ibid.*, para. 100.

⁶¹ *Ibid.*

⁶² *Ibid.*, para. 167.

⁶³ *Ibid.* The award amounts were given in CFA francs. The civil parties requested 20,000,000 CFA francs per victim whereas the Appeals Chamber confirmed the awards of 1,000,000 CFA francs for rape victims who were minors at the time of the crimes and 700.000 CFA francs for the other rape victims. *Ibid.*

38. The Defence respectfully requests the Chamber to adopt the SCC Appeals Chamber's approach when setting the quantum of the award by considering Mr Ngaïssona's indigence and the availability of funds at the TFV. It would be completely within the discretion of this Chamber to do so. Under Article 21 of the Statute, the Court is allowed to apply, when appropriate, "the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognised norms and standards".
39. The SCC could have had jurisdiction over Mr Ngaïssona's case given that the tribunal's mandate to prosecute, among others, crimes against humanity and war crimes committed in CAR since 2003.⁶⁴ Further, the determination first articulated in *Lubanga* – that the convicted person's indigence is irrelevant to the assessment of reparations – is not expressly provided for in any specific article, rule, or regulation of the Court.
40. While the Court's regulatory framework permits reparations awards against an indigent convicted person, it can reasonably be interpreted as allowing trial chambers to take into account the resources of the convicted person and the TFV when determining the quantum of the award.
41. Such an interpretation is not against the Statute, international law and internationally recognised norms and standards. Indeed, the SCC Appeals Chamber reasoned that the implementation of reparations awards must at least be probable when it found that the right to an effective remedy is an internationally recognised principle of law.⁶⁵
42. Given Mr Ngaïssona's indigence and the millions of euros the TFV is lacking to be able to implement the Court's reparations orders, the Chamber should not only consider the harm caused and the cost to repair it. Like the SCC, the

⁶⁴ Organic Law 15/003, Article 3.

⁶⁵ *Sallet* Reparations Appeal, paras 99-100.

Chamber should have due regard to the resources available in the TFV's current reparations budget when determining the costs of reparations in the instant case. As stated above, even with the generous contributions from States such as Sweden, it is unlikely that the TFV will ever be able to cover the totality of these reparation awards in a reasonable time, especially in the *Ongwen* and *Ntaganda* cases. State parties, many of which are in default for their obligatory yearly contributions, are unlikely to voluntarily provide such significant sums.⁶⁶

43. These considerations are relevant at the time the Chamber issues its order, and should not be disregarded as issues to be dealt with upon enforcement of the reparations.⁶⁷ An award that is unlikely to be implemented does not serve the interests of the victims. Reparations must be adequate, effective, and prompt;⁶⁸ an unenforceable award undermines this principle and may cause further harm.⁶⁹

H. Information as to whether the victims of the crimes for which Mr Yekatom and Mr Ngaïssona were convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes

44. The Defence does not wish to make any submissions at this time on the compensation or reparations already received by victims.

⁶⁶ Article 115 of the Statute obliges onto state parties to contribute to the Court's expenses. An overview of the outstanding sums of most state parties shows that most are in default in terms of their contributions. This includes CAR, which is relevant to the instant case. Assembly of State Parties, Financial statements of the International Criminal Court for the year ended 31 December 2024, ICC-ASP/24/12, 29 July 2025, page 44.

⁶⁷ See *contra The Prosecutor v. Al Mahdi*, Reparations Order, ICC-01/12-01/15-236, para. 114 ("But the enforcement of reparations awards is under the auspices of the Presidency and is beyond the current question of setting Mr Al Mahdi's personal liability").

⁶⁸ United Nations 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 Law, United Nations General Assembly, Resolution A/RES/60/147, 16 December 2005, para.1(c).

⁶⁹ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", ICC-01/04-01/07-3778-Red, para. 185.

I. Any considerations the Chamber should take into account when assessing liability for reparations of each of the convicted persons with respect to the crimes for which both Mr Yekatom and Mr Ngaïssona were convicted

45. In assessing liability for reparations, the Chamber should limit Mr Ngaïssona's liability rather than holding him liable for the full amount necessary to repair the harm caused by the crimes that are common to Mr Ngaïssona and Mr Yekatom (*i.e.* Bangui, Yamwara and the PK9-Mbaïki axis), as well as for the crimes committed in Bossangoa for which only Mr Ngaïssona was convicted. First, excluding the counts relating to Bossangoa, Mr Ngaïssona and Mr Yekatom were both convicted of the same crimes at the same time. In *Katanga*, the Appeals Chamber found that in such instances where more than one person is convicted by the Court for the same crimes at the same time, liability may have to be apportioned.⁷⁰ Second, in light of the lack of findings in the Judgment on the degree to which Mr Ngaïssona's contribution may have assisted in the commission of the crimes, it would be inappropriate to hold him liable for the full cost to repair the harm caused by the crimes, including the counts pertaining to Bossangoa.

46. Pursuant to Article 75, the Chamber has broad discretion in determining the principles applicable to the reparations phase. The Defence acknowledges that the central focus at this stage of the proceedings is on repairing the harm that has resulted from the crimes.⁷¹ However, certain cases may require that the trial chamber tie the convicted person's liability for reparations to his degree of participation in the crimes.⁷² Mr Ngaïssona's case requires considering the Chamber's findings or lack thereof regarding his relevant participation and

⁷⁰ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", ICC-01/04-01/07-3778-Red, para. 180.

⁷¹ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", ICC-01/04-01/07-3778-Red, para. 182, *see also* paras 179-180.

⁷² *See The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", ICC-01/04-01/07-3778-Red, para. 178 ("While a reparations order must not exceed the overall cost to repair the harm caused, it is not, *per se*, inappropriate to hold the person liable for the full amount necessary to repair the harm").

intent. Only such an approach would enable the Chamber to issue a decision that is fair, proportionate and individualised.

1. Overlapping crimes

47. In *Katanga*, the Appeals Chamber found that “[w]hile reparations orders must not exceed the overall cost to repair the harm caused, it is not, *per se*, inappropriate to hold the person liable for the full amount necessary to repair the harm”.⁷³ The Appeals Chamber did not identify the cases in which it would be appropriate to hold a person liable for the full amount necessary to repair the harm. However, it did provide an example of a case where it could be “appropriate for a trial chamber to take into account the role of the convicted person *vis-à-vis* others in the commission of the crimes when deciding on a reparations order against that person”.⁷⁴ Specifically, the Appeals Chamber determined that “if more than one person is convicted by the Court for the same crimes at the same time, it may be appropriate to apportion liability for the costs to repair”.⁷⁵

48. In the case at hand, excluding the crimes committed in Bossangoa, Mr Yekatom and Mr Ngaïssona were convicted for the same crimes at the same time.⁷⁶ The convictions against Mr Ngaïssona and Mr Yekatom were rendered in the context of a joint trial. Accordingly, the example identified in *Katanga* as an instance where liability could be apportioned, applies to this case.

49. Since there is no allegation that Mr Ngaïssona and Mr Yekatom were co-perpetrators who formed a common plan or acted in concert to commit the crimes, such that either could have prevented their commission, it is appropriate to apportion liability in this case. The Chamber should take into account the

⁷³ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, ICC-01/04-01/07-3778-Red, para. 6.

⁷⁴ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, ICC-01/04-01/07-3778-Red, para. 180.

⁷⁵ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, ICC-01/04-01/07-3778-Red, para. 180.

⁷⁶ Namely the crimes contained in counts 1-6, 8, 11-17, 24-28, see Judgment, from para. 3949.

differences in participation and intent of Mr Ngaïssona and Mr Yekatom, as found in the Judgment.⁷⁷ Such an approach would better align with the principles of fairness, proportionality, and individualised responsibility.

50. Applying joint and several liability and holding Mr Ngaïssona liable for the full extent of the harm caused and the cost to repair it would be unfair given the differences the Chamber found regarding the respective roles Mr Ngaïssona and Mr Yekatom played in the commission of the crimes. While the multiplicity of actors does not, in itself, preclude holding a single convicted person liable to the full extent of the harm caused and the cost to repair it, the aforementioned differences between Mr Yekatom and Mr Ngaïssona's participation and intent warrant an apportionment of Mr Ngaïssona's liability.

2. Mr Ngaïssona's relative contribution to the crimes

51. Regardless of whether Mr Yekatom was convicted for the same crimes at the same time, Mr Ngaïssona's liability should reflect the undefined qualification of his participation and intent in the crimes as found in the Judgment.
52. In *Lubanga*, the Appeals Chamber determined that "the scope of a convicted person's liability for reparations may differ depending on, for example, the mode of individual criminal responsibility established with respect to that person and on the specific elements of that responsibility".⁷⁸ The Chamber formulated this finding as the following principle: "reparation orders are intrinsically linked to the *individual* whose criminal liability is established in a conviction and whose culpability for the criminal acts is determined in a

⁷⁷ Compare Mr Ngaïssona's intent and participation for the crimes occurring in Bangui, including Boeing and Cattin, Yamwara and PK9-Mbaïki axis, with Mr Yekatom's intent and participation for these same crimes. Across all counts, the Chamber found that it could "not find any circumstances which would qualify Mr Ngaïssona's participation or intent as particularly high or low". Judgment, paras. 4711, 4736, 4791, 4810. On the other hand, for Mr Yekatom, the Chamber qualified his participation and intent for the counts pertaining Bangui, including Boeing and Cattin as high. Judgment, para. 4498. For the counts related to the Yamwara incident, the Chamber qualified Mr Yekatom's participation as "significant" noting *inter alia* his full control over the elements and his intent as high. Judgment, paras 4553, 4555. With respect to the counts occurring along the PK9-Mbaïki axis, the Chamber assessed Mr Yekatom's participation and intent as high. Judgment, paras 4606, 4608.

⁷⁸ *The Prosecutor v. Lubanga*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, ICC-01/04-01/06-3129, para. 118.

sentence” (emphasis added).⁷⁹ Accordingly, “[t]he convicted person’s liability for reparations must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case”.⁸⁰ With the exception of the *Ongwen* case, this principle was recalled by the Trial Chambers in all subsequent cases with relation to liability.⁸¹ As outlined below and save for *Ongwen*, all Chambers assessed the role of the convicted person in the crimes when issuing reparations orders.

53. In *Lubanga*, the Trial Chamber analysed the factual and legal elements of Mr Lubanga’s participation in the commission of the crimes to determine the size of the award.⁸² The Chamber retained that Mr Lubanga’s contributions were essential to a common plan, that Mr Lubanga shared the common plan with his co-perpetrators. It additionally relied on the gravity of the crimes in question and the fact that they were perpetrated on a large scale and in a widespread manner.⁸³

54. In *Katanga*, the Chamber considered *inter alia* his conviction pursuant to article 25(3)(d) and⁸⁴ how Mr Katanga lent his assistance.⁸⁵ Specifically, in reducing Mr Katanga’s liability, the Chamber emphasised that he “made his contribution in the context of a criminal purpose harboured by many persons”, reflecting that

⁷⁹ *The Prosecutor v. Lubanga*, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, ICC-01/04-01/06-3129, paras 65, 151. *See also*, AMENDED order for reparations (Annex A), ICC-01/04-01/06-3129-AnxA, para. 20.

⁸⁰ *The Prosecutor v. Lubanga*, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, ICC-01/04-01/06-3129, paras 6, 118. *See also*, AMENDED order for reparations (Annex A), ICC-01/04-01/06-3129-AnxA, para. 21.

⁸¹ *The Prosecutor v. Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, paras 251-252; *The Prosecutor v. Al Mahdi*, Reparations Order, ICC-01/12-01/15-236, para. 50; *The Prosecutor v. Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, para. 96. The principle was also relied upon in the *Ongwen* in the context of identification of eligible victims. *See The Prosecutor v. Ongwen*, Reparations Order, ICC-02/04-01/15-2074, para. 96.

⁸² *The Prosecutor v. Lubanga*, Corrected version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, ICC-01/04-01/06-3379-Red-Corr-tENG, paras 274-275.

⁸³ *The Prosecutor v. Lubanga*, Corrected version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, ICC-01/04-01/06-3379-Red-Corr-tENG, para. 278.

⁸⁴ *The Prosecutor v. Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, para. 254.

⁸⁵ *The Prosecutor v. Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, para. 258.

others bore concurrent responsibility.⁸⁶ While the Chamber established the cost of the harm caused was USD 3,752,620, it set the sum-total of Mr Katanga's liability for reparations at USD 1,000,000 in light of the factual and legal elements of his participation.⁸⁷

55. Similarly, in *Al Mahdi*, the Chamber assessed Mr Al Mahdi's participation in the crimes and took into consideration that "(i) Mr Al Mahdi [was] convicted as a co-perpetrator, pursuant to Article 25(3)(a) of the Statute; (ii) Mr Al Mahdi organised the attack on the Protected Buildings and (iii) Mr Al Mahdi directly participated in the attacks on five of the Protected Buildings".⁸⁸

56. Finally in *Ntaganda*, although the Chamber did not conduct a detailed assessment of Mr Ntaganda's participation in the crimes, it referred to the First Experts Report,⁸⁹ which characterised his role as a very important military function and that Mr Ntaganda had a determinative role in the UPC/FPLC and a key and active role in the commission of the crimes.⁹⁰

57. The Chamber concluded that Mr Ntaganda was liable for the full extent of the harm caused regardless of the different modes of liability relied on in the conviction and regardless of whether others may have also contributed to the harm.⁹¹ However, the Chamber made these findings in the context of co-perpetration. It held that "[r]esponsibility *in solidum* [...] entails the corresponding right for any of the *co-perpetrators* who may have repaired, in full or in part, the harms caused to the direct and indirect victims, to seek to recover from the co-perpetrators their proportionate share" (emphasis added).⁹²

⁸⁶ *The Prosecutor v. Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, para. 261.

⁸⁷ *The Prosecutor v. Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, para. 264.

⁸⁸ *The Prosecutor v. Al Mahdi*, Reparations Order, ICC-01/12-01/15-236, para. 110.

⁸⁹ *The Prosecutor v. Ntaganda*, Registry Transmission of Appointed Experts' Reports, ICC-01/04-02/06-2623-Anx1-Red2, paras 259-265, 270-277.

⁹⁰ *The Prosecutor v. Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, para. 218, footnote 580 ("stressing the very important military function and determinative role of Mr Ntaganda in the UPC/FPLC and the key and active role played by him in the commission of the crimes").

⁹¹ *The Prosecutor v. Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, para. 218.

⁹² *The Prosecutor v. Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, para. 219.

Therefore, in cases of perpetration, the different modes of such perpetration are irrelevant to the finding that the convicted person is jointly and severally liable. Consistent with this principle, it is unsurprising that the Trial Chamber in *Ongwen* made no reference to Mr Ongwen's participation in the crimes when determining the amount of the award since he was convicted as a principal under article 25(3)(a).⁹³

58. To the contrary, in cases of accessory liability, the specific participation and role of the convicted person may be relevant. Here, like Mr Katanga and unlike Mr Ntaganda and Mr Al-Mahdi, Mr Ngaïssona was convicted as an accessory pursuant to article 25(3)(c). As recalled by the Chamber in the Judgment, "[l]iability under Article 25(3)(c) of the Statute is dependent on the commission or attempted commission of an offence by the principal perpetrator".⁹⁴ This requirement thus establishes a structural link between the accessory's contribution and the necessary existence of a crime committed by the principal. Applying a different degree of liability at the reparation stage between a principal and an accessory would not give rise to an inequitable outcome. Such a distinction is consistent with their respective roles and degrees of responsibility and takes into account the fact that the crimes committed by the accessory are inevitably dependent upon the existence of a principal perpetrator.

59. Accordingly, the application of joint and several liability upon a principal (and among co-perpetrators such as in the *Ntaganda* case) reflects the autonomous character of their participation in the crimes. However, joint and several liability may be inappropriate when applied to an accessory for which it is evident that the crime would not have happened without a principal perpetrator. In *Katanga*, the Appeals Chamber did not identify in what instances an accomplice should

⁹³ *The Prosecutor v. Ongwen*, Reparations Order, ICC-02/04-01/15-2074, para. 667 (noting that Mr Ongwen along with his co-perpetrators are all jointly liable *in solidum* to repair the full extent of the harm caused to the victims).

⁹⁴ ICC-01/14-01/18-2784-Conf, para. 3878. See also *The Prosecutor v. Lubanga*, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07-3436-tENG, para. 1385 ("[a]n accessory can be held criminally liable as such, only where a person commits or attempts to commit a crime within the jurisdiction of the Court. Principal liability, however, imports in essence autonomy as it does not hinge on the liability of a third person").

be held liable for the entirety of the reparations award. Even though Mr Katanga was found to have had a significant influence on the crimes,⁹⁵ the Appeals Chamber refrained from determining whether the trial chamber erred in apportioning Mr Katanga's liability.⁹⁶

60. In the case at hand, not only was Mr Ngaïssona convicted as an accessory, the Chamber did not make any determinative assessments as to how those contributions operated in relation to the commission of the crimes, beyond general statements, in relation to Bangui and Bossangoa, such as that they had a "positive effect" on the crimes.⁹⁷

61. This lack of specificity is reflected in the Chamber's characterisation of Mr Ngaïssona's degree of participation and intent for each of the crimes, which it assessed as being neither particularly high or low.⁹⁸ These findings stand in stark contrast to the findings in *Katanga* where the Trial Chamber was able to precisely qualify the contribution as significant and determine that without his contribution the attack on Bogoro would not have been possible.⁹⁹ The Chamber's decision to not specify the degree of Mr Ngaïssona's contribution and intent should be interpreted in his favour. This decision was deliberate considering that the Chamber was able and did specify Mr Yekatom's degree of participation and intent with precision for the crimes occurring in and around Bangui, Yamwara school, and the PK9-Mbaïki.¹⁰⁰

⁹⁵ *The Prosecutor v. Katanga*, Decision on Sentence pursuant to article 76 of the Statute, para. 65.

⁹⁶ *The Prosecutor v. Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", ICC-01/04-01/07-3778-Red, para. 186.

⁹⁷ ICC-01/14-01/18-2784-Conf, para. 4037.

⁹⁸ ICC-01/14-01/18-2784-Conf, para. 4711, 4736, 4791, 4810.

⁹⁹ *The Prosecutor v. Katanga*, Decision on Sentence pursuant to article 76 of the Statute, ICC-01/04-01/07-3484-tENG-Corr, para. 65.

¹⁰⁰ For Mr Yekatom, the Chamber qualified his participation and intent for the counts pertaining Bangui, including Boeing and Cattin as high. Judgment, para. 4498. For the counts related to the Yamwara incident, although Mr Yekatom was removed from the crimes, the Chamber qualified his intent as high and participation as "significant" noting *inter alia* his full control over the elements. Judgment, paras 4553, 4555. With respect to the counts occurring along the PK9-Mbaïki axis, the Chamber assessed Mr Yekatom's participation and intent as high, paras 4606, 4608.

62. More generally, the Chamber characterised the link between Mr Ngaïssona's contributions and their consequences on the crimes in either abstract or negative terms, emphasising what was not required (no causal link, no minimum threshold, no specific target, no direct contact or detailed knowledge),¹⁰¹ rather than identifying the concrete connection between his conduct, the commission of the crimes and the resulting harm, leaving the basis for attributing that harm undefined.

63. Additionally, the Chamber recalled that "it is not required [...] to assess, as a matter of law, whether Mr Ngaïssona's actions had any effect on such crimes".¹⁰² It separately held that "the Chamber need not require a causal link between Mr Ngaïssona's aid and assistance to the Anti-Balaka and the crimes committed by them".¹⁰³ This lack of specification is reflected across the different crime sites. For Bangui and Bossangoa, the Judgment refers in general terms to the fact that the contributions had "some" effect without further reasoning.¹⁰⁴ For Yamwara and the PK9-Mbaïki axis, the Chamber did not identify how these contributions relate to the crimes or to the resulting harm.¹⁰⁵

64. In these circumstances, the findings do not permit a clear determination of the extent to which the harm resulting from the crimes can be attributed to Mr Ngaïssona's conduct.

¹⁰¹ See for example ICC-01/14-01/18-2784-Conf, para. 3879: the contribution "does not need to meet a specific, minimum, threshold". See also, para. 4038: "the Chamber need not require a causal link between Mr Ngaïssona's aid and assistance to the Anti-Balaka and the crimes committed by them", "no minimum threshold of such assistance was necessary, as a matter of law", "financial or psychological assistance generally to the Anti-Balaka, without identifying any specific element or group, was sufficient", "Mr Ngaïssona need not have been personally in contact with Mr Yekatom or his group, or indeed with any of the Anti-Balaka elements on the ground, to have assisted the commission of the crimes by them.", and the Chamber had to look "at such crimes on a macro-level".

¹⁰² ICC-01/14-01/18-2784-Conf, para. 4037. See also *ibid.*, para. 3879.

¹⁰³ ICC-01/14-01/18-2784-Conf, para. 4038.

¹⁰⁴ For Bangui see ICC-01/14-01/18-2784-Conf, para. 4037 ("the Chamber has indeed considered Mr Ngaïssona's financial aid and psychological support, in the very least, to have had a positive effect on the commission of the crimes during the Bangui Attack"). See also para. 4042 ("Mr Ngaïssona's financial support made it possible for at least some of the elements to participate in the attacks during the advance and during the seminal attacks on Bangui and Bossangoa"). For Bossangoa, see ICC-01/14-01/18-2784-Conf, para. 4119 ("Mr Ngaïssona's financial support made it possible for at least some of the elements to participate in the attacks during the advance and during the seminal attacks on Bangui and Bossangoa"). See also ICC-01/14-01/18-2784-Conf, para. 4113, 4115.

¹⁰⁵ For Yamwara see ICC-01/14-01/18-2784-Conf, paras 4281, 4291. For the PK9-Mbaïki axis, see ICC-01/14-01/18-2784-Conf, paras 4372-4373.

65. This is reflected in the Chamber's approach to count 6, despite finding that the "destruction of the Boeing Mosque by the civilian population and the further harm resulting therefrom was objectively foreseeable to Mr Ngaïssona", it declined "to attribute the full extent of these consequences to Mr Ngaïssona".¹⁰⁶ The Chamber's finding should be reflected in its assessment of liability for reparations for this crime.
66. Similarly, the lack of unanimity between the judges in relation to the Yamwara incidents, specifically Saint Cyr's torture and murder (counts 12, 13, 15 and 16)¹⁰⁷ further illustrate the uncertainty surrounding the connection between Mr Ngaïssona's intent and the crimes in question.
67. In these circumstances, the scope of Mr Ngaïssona's liability must reflect the limited and general nature of the findings on his contributions, with a view to reducing liability for all the crimes for which Mr Ngaïssona was convicted. It would be manifestly disproportionate to hold Mr Ngaïssona liable for the entire cost to repair the harm resulting from crimes whose connection to his conduct was not precisely identified.
68. Reducing Mr Ngaïssona's liability will not be unfair to the victims of the Bossangoa crimes in comparison to victims of the other crimes (*i.e.* Bangui, the PK9-Mbaïki axis and Yamwara). Mr Ngaïssona's conviction cannot serve as a basis to expand the scope of reparations beyond the limits set by the Court's regulatory framework. Under Article 75 of the Statute and Rule 98(1) of the Rules, reparations can only be ordered against the convicted person. While the disappointment experienced by victims in situations of acquittal or in cases involving a limitation of liability, such as in the *Katanga* case, is understandable, such considerations must be balanced against Mr Ngaïssona's rights pursuant to Rule 97(3) of the Rules. Allowing perceptions of unfairness to take precedence over fundamental principles of individual criminal responsibility would risk

¹⁰⁶ ICC-01/14-01/18-2784-Conf, para. 4726.

¹⁰⁷ ICC-01/14-01/18-2784-Conf, para. 4794.

undermining the legal certainty and fairness that must govern reparations proceedings.

69. The Court has anticipated responding to victims who may have suffered harm regardless of whether there has been a conviction or whether a suspect has been apprehended. For this reason, it entrusted the TFV with a distinct assistance mandate,¹⁰⁸ separate from its reparations mandate. This mandate enables the provision of support to victims independently of a conviction. Accordingly, the TFV retains the capacity to address the needs of victims through this assistance mandate, regardless of whether liability is limited. This ensures that victims receive assistance, while preserving the integrity of the reparations process.

J. Information about the numbers of the members of the Muslim population residing at the relevant time in: (i) Bangui, notably in the neighbourhoods of Boeing and Cattin, (ii) the town of Bossangoa, including the Boro neighbourhood, and (iii) the villages along the PK9-Mbaïki axis

70. The Defence does not wish to make any submissions at this time on the numbers of the members of the Muslim population residing in the areas specified by the Chamber.

K. Any additional information relevant to reparations

71. The Defence respectfully requests that any order on reparations be issued after the appeals judgment has been rendered in the present case. This is the only reasonable procedural approach, given that both the Defence and the Prosecution have appealed the Judgment. If the Appeals Chamber reverses the Judgment in part or in full, it could have a direct impact on the scope of the reparations ordered and may even halt the reparations proceedings altogether. Issuing a reparations order before the appellate proceedings are concluded risks

¹⁰⁸ See <https://www.trustfundforvictims.org/en/about/two-mandates-tfv/assistance>.

creating further delays in the proceedings, and is thus against the principle that reparations must be adequate, prompt and effective.

Respectfully submitted,



Geert-Jan Alexander Knoop
on behalf of
Patrice-Edouard Ngaïssona

Dated this 13 April 2026

At The Hague, the Netherlands