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**TRIAL CHAMBER I**

**Before:** Judge Adrian Fulford, Presiding Judge  
Judge Elizabeth Odio Benito  
Judge René Blattmann

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Public Document**

**Response of the V02 group of victims to the observations of the amicus curiae,  
parties and participants on reparations**

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**OBSERVATIONS OF THE VO2 TEAM OF LEGAL REPRESENTATIVES OF VICTIMS  
IN RESPONSE TO THE SUBMISSIONS OF THE AMICUS CURIAE AND THE DEFENCE ON  
REPARATIONS**

**I - BACKGROUND**

Noting the 20 April 2012 decision of the Chamber, inviting responses, if any, from the parties and participants to the various submissions concerning reparations.<sup>1</sup>

Noting the 28 March 2012<sup>2</sup> and 10 May 2012<sup>3</sup> submissions of the Women's Initiatives for Gender Justice.

Noting the 28 March 2012<sup>4</sup> and 14 May 2012<sup>5</sup> submissions of the International Center for Transitional Justice (“ICTJ”).

Noting the 29 March 2012 submissions of UNICEF, *Avocats Sans Frontières*, *Justice-Plus*, *Terre des Enfants*, *Centre Pélican* – Training for Peace and Justice, *Journalistes en Action pour la Paix*, the *Fédération des Jeunes pour la Paix Mondiale* and the *Fondation Congolaise pour la Promotion des Droits Humains et la Paix* (“FOCDP”)<sup>6</sup> and their 11 May 2012 observations.<sup>7</sup>

Noting the 18 April 2012 observations of the OPCV.<sup>8</sup>

Noting the 18 April 2012 observations of VO1 team of legal representatives.<sup>9</sup>

Noting the 18 April 2012 observations of the Registry.<sup>10</sup>

Noting the 18 April 2012 observations of the Defence wherein it set forth submissions on the principles and procedure to be applied to reparations.<sup>11</sup>

Noting the 18 April 2012<sup>12</sup> observations of the VO2 team of legal representatives of victims.

Noting the 4 April 2012<sup>13</sup> and 25 April 2012<sup>14</sup> submissions of the Trust Fund for Victims.

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<sup>1</sup> ICC-01/04-01/06-2870, para. 23.

<sup>2</sup> ICC-01/04-01/06-2853.

<sup>3</sup> ICC-01/04-01/06-2876.

<sup>4</sup> ICC-01/04-01/06-2854.

<sup>5</sup> ICC-01/04-01/06-2879.

<sup>6</sup> ICC-01/04-01/06-2855.

<sup>7</sup> ICC-01/04-01/06-2877.

<sup>8</sup> ICC-01/04-01/06-2863.

<sup>9</sup> ICC-01/04-01/06-2864-tENG.

<sup>10</sup> ICC-01/04-01/06-2865.

<sup>11</sup> ICC-01/04-01/06-2866-tENG.

<sup>12</sup> ICC-01/04-01/06-2869.

<sup>13</sup> ICC-01/04-01/06-2856.

<sup>14</sup> ICC-01/04-01/06-2872.

Noting the 11 May 2012 submissions of UNICEF.<sup>15</sup>

Noting the 14 May 2012 observations of the VO1 team of legal representatives of victims.<sup>16</sup>

Noting the 14 May 2012 observations of the VO2 team of legal representatives of victims.<sup>17</sup>

Pursuant to the order of 20 April 2012,<sup>18</sup> the VO2 group of victims hereby responds to the aforesaid observations.

## **II - Responses to the various observations of the parties, participants and amicus curiae**

### **A - Response to the observations of the Defence on reparations (ICC-01/04-01/06-2866-tENG)**

1. The Defence observations on **the principles applicable to reparations** are founded on the notion of victim, respect for the rights of the defence or the fairness of the trial, and the adjudication of the applications for reparations.
2. **As to the notion of victim**, the Defence contends that only those individuals within the purview of the rule 85 definition and who filed an application for reparations within the meaning of rule 94 are eligible to apply to the Chamber for an award in respect of their harm.<sup>19</sup>
3. The VO2 group of victims would counter that the notion must not be restrictively construed.
4. The Chamber must remain mindful that a victim is any natural or legal person who at the material time suffered harm of some form, without necessarily filing an application for the award of reparations.
5. In fact, a victim may be recognised as such without necessarily being awarded compensation. Such recognition implies compensation or better non-pecuniary reparation which may afford the victim a modicum of relief.
6. **As to the fairness of the trial**, the Defence is of the view that at the reparations stage, with victim participation now at an end, continued total anonymity and

<sup>15</sup> ICC-01/04-01/06-2878.

<sup>16</sup> ICC-01/04-01/06-2880.

<sup>17</sup> ICC-01/04-01/06-2882.

<sup>18</sup> ICC-01/04-01/06-2870, para. 23.

<sup>19</sup> ICC-01/04-01/06-2866-tENG, para. 7.

partial concealment of the circumstances alleged in support of their applications would render the trial manifestly unfair (para. 17).

7. In so arguing, the Defence seeks the lifting of all of the redactions to <sup>2</sup> sections A (save for questions 14 and 15), B (save for question 6), D, E, F, I and J of the forms, as well as the corresponding information in the additional statements, the follow-up sheets, the requests for further information and the supporting documentation appended to the applications for reparations and, where effected, redactions to the applications for participation (para. 34) so that it may advance submissions on each application for reparations, namely on the information pertaining to *the civil status of the applicants, the description of the alleged crimes, the identity of persons acting on behalf of the victim and of those who assisted him or her to complete the forms and identity of the intermediaries who were in contact with the victims (paras. 18-19)*.
8. As concerns this request, the VO2 group of victims is of the opinion that the redactions in no way prejudice the rights of the Defence insofar as it can discern information from the forms such as the age of the victim, the alleged acts, the material period and the harm suffered, absent even the identities of the applicant, the person acting on his or her behalf and the intermediary.
9. Furthermore, in its arguments on the procedure applicable to reparations, the Defence expressly acknowledges that "[TRANSLATION] *the forms from 85 victims wherein they set out their harm*"... (para. 48).
10. ***As to the adjudication of the applications for reparations***, the Defence contends that the victims must produce proof on the balance of probabilities of their identity, their date of birth, their enlistment into the FPLC or their participation in the hostilities as FPLC soldiers during the period from September 2002 to 13 August 2003, and the existence of harm connected to these events.
11. To that the VO2 group of victims responds by reminding the Defence that the victims produced all of the proof pertaining to its concerns when applying to participate in the proceedings, absent which the Chamber would not have granted them victim status and authorised their participation in the trial.
12. However, the VO2 group of victims concurs that at the reparations stage victims are duty-bound to prove the existence of the harm and the causal link between the harm and the crimes of which Mr Thomas Lubanga Dyilo has been found guilty.
13. As regards the **applicable procedure at the reparations stage**, the Defence observations hinge on the jurisdiction of the Chamber in respect of reparations, the nature of the award or form of reparations, the determination of the harm and the presentation of evidence pertaining to the reparations stage.

14. ***As to the competence of the Chamber in respect of reparations***, the Defence takes the view that the Registry's proposal that the functions of the Trial Chamber as regards reparations could be delegated to another forum, such as the Pre-Trial bench, a single judge or even the Registry runs counter to articles 39(2)(b)(ii) and 74(1) of the Statute (paras. 46 and 47).
15. The VO2 group of victims invites the Chamber to dispose of this matter, as it is so empowered by the instruments in force at the Court.
16. ***As to the nature of the award or form of reparations***, the Defence, whilst recognising collective and/or individual reparations, is of the view, contrary to the position of the Registry, that a distinction must be drawn between a "collective award", aimed at the collective reparation of harm individually suffered by several victims recognised by the Court, and an award aimed at a "community" claiming to be victim of a crime in the Ituri region, without any individual identification of its members (para. 51 *et seq.*).
17. In this respect, the VO2 group of victims recalls its position as set forth in its submissions on the determination of the sentence and reparations (ICC-01/04-01/06-2869, para. 20 *et seq.*).
18. ***As to the determination of the harm***, the Defence considers that the only harm amenable to reparation is personal harm which has actually come into being, or is certain, and has not heretofore accrued reparation (para 60).
19. Here too, the VO2 group of victims refers to the position stated in its submissions on the determination of the sentence and reparations (ICC-01/04-01/06-2869, para. 24 *et seq.*).
20. ***As to the presentation of evidence pertaining to the reparation stage***, the Defence suggests that the rules applicable to the presentation of evidence at trial enshrined in rules 63 *et seq.* of the Rules of Procedure and Evidence are applicable to the reparations stage, thereby affording the opportunity to cross-examine the witnesses, to adduce the evidence it deems relevant at this stage of the trial, to contest the credibility of the evidence tendered and supporting material appended to any application for reparation and to challenge any expert report (ICC-01/04-01/06-2866-tENG, para. 75 *et seq.*).
21. The VO2 group of victims would also restate the position set out in its submissions on the determination of the sentence and reparations, specifically as regards experts (ICC-01/04-01/06-2869, para. 29 *et seq.*).

**B - Response to the observations of the Trust Fund for Victims (ICC-01/04-01/06-2872)**

22. Recalling paragraph 20 of ICC-01/04-01/06-2869 specifying the nature of reparations – both individual (restitution and compensation) and collective (rehabilitation in the community) – the VO2 group reiterates that, in respect of individual reparation, regard must be had to the specific nature of the harm, in particular stigmatisation in the case of survivors of sexual violence, whereas in relation to collective reparations, account must be taken of local cultural practices and traditional practices.
23. As regards the assessment of damage, the use of Court experts was argued at paragraph 32 of those same submissions, detailing the modalities of their in-court appearance.
24. At paragraphs 250 and 251 of its submissions, the TFV acknowledges that its resources may be used for reparations; the victims consider that the order of priority advanced by the TFV must be amended to:
- a. “eligible individual victims” (giving precedence to individual harm, in this instance the 129 victims participating in the case);
  - b. “collective award” (collective harm).
25. At paragraphs 256 to 262, the TFV recommends that the Chamber take a collective reparations approach as point of departure and propounds two scenarios:
- a. Court-appointed experts;
  - b. Consultation of TFV experts’ reports.
26. The VO2 group refers to its proposal in ICC-01/04-01/06-2869 and favours the first scenario, since the TFV is an organ of the Court; thus, appointment by the Chamber of non-TFV experts would imbue the proceedings with fairness and impartiality.
27. “An award to an organisation” (harm to an institution).
28. At paragraphs 258 to 262, the TFV suggests the appointment of experts by the parties and other interested participants. The VO2 group considers that at the reparations stage, the two parties (Prosecution and Defence) are cast a passive role and are therefore not afforded the opportunity to propose experts to the Chamber; the victims submit that the Chamber should appoint experts, to whose reports the TFV may respond.

**C - Response to the observations of the Women's Initiatives for Gender Justice (ICC-01/04-01/06-2876)**

29. At paragraphs 9 to 17, the NGO responded to the issue framed by rule 97(1) of the Rules of Procedure and Evidence by raising the option of two modes of reparations (individual and collective). Specifically at paragraph 13 the NGO places an emphasis on an inductive approach (with collective damage as the point of departure for addressing individual damage): "...we consider the community-based approach to be a mechanism for delivering reparations programmes..."
30. The VO2 group is of the view that the Chamber could instead adopt a deductive approach to reparations (departing from the particular to arrive at the general); otherwise put, the Chamber could draw on individual cases of participating victims to form an opinion and elicit general principles to guide reparations.
31. At paragraph 17, the NGO advocates the rehabilitation and restoration of the rights of victims of sexual violence; in ICC-01/04-01/06-2869, the victims argued for restitution and compensation as individual reparation and rehabilitation into the community as collective reparation.

**D - Response to the submissions of Justice-Plus and other NGOs (ICC-01/04-01/06-2877), UNICEF (ICC-01/04-01/06-2878) and five NGOs (ICC-01/04-01/06-2879)**

32. At paragraph 17, the NGO advocates the rehabilitation and restoration of the rights of victims of sexual violence; in ICC-01/04-01/06-2869, the victims argued for restitution and compensation as individual reparation, and rehabilitation into the community as collective reparation.
33. The VO2 team generally concurs with UNICEF's views as regards collective reparations.
34. The aforementioned NGOs consider it possible to dispense with a strictly individualised appraisal of every instance of damage sustained by those victims authorised to participate in the proceedings and to move away from a quantitative assessment of past damage occasioned by a violation towards a qualitative assessment of current needs.
35. The NGOs' stance is essentially to argue that the Chamber should explore such possibilities.



**a – APPROPRIATE REPARATION**

36. The NGOs take the view that the forms and modalities of reparation must be adequate and fitting, given the nature of the violations and damage suffered by both the victims and the wider community.
37. The NGOs argue for collective reparation to be considered as more desirable and fitting than an award in respect of individual damage.
38. The VO2 group underscores that the view advanced by these NGOs reflects that of community leaders, most of whom were somehow involved in the conflicts in Ituri.
39. The pursuance of restored social cohesion through social reparation must not detract from the personal harm suffered by the victims participating in the proceedings.
40. In light of the widespread and systematic nature of the crimes committed by Mr Thomas Lubanga Dyilo's militia, regard must be had to those victims who continue to be afflicted by physical after-effects such as disabilities, amputations, sexual violence resulting in HIV infection, and the killing of child soldiers on the battlefield etc. These victims must be rehabilitated and individual reparation is imperative.
41. Those other victims participating in the proceedings who did not sustain physical after-effects could be grouped together with the other vulnerable child soldiers and hence accrue collective reparations.

**b – REHABILITATION**

42. The VO2 group endorses the NGOs' position, emphasising that rehabilitation must encompass medical, psychological, legal and social care. Account must be taken of the financial compensation to be awarded to those sole victims participating in the proceedings and suffering from the after-effects of their time in the UPC.

**c – COLLECTIVE MEASURES *STRICTO SENSU***

43. The VO2 group submits that collective reparations should be awarded to the Hema, Lendu, Alur and other communities who fell victim to armed hostilities in Ituri because the UPC recruited children from those communities.
44. Collective reparation with a material focus benefitting all communities in Ituri should not be ruled out.

**d – SYMBOLIC REPARATION MEASURES**

45. The VO2 group concurs that the idea of symbolic reparation for all of the affected communities would reflect acknowledgement by the local and international community of the egregious events that scarred Ituri and mark their decision to commemorate them through a symbol at one of the sites of the events, thus calling to mind the recruitment and enlistment of child soldiers and honouring the memory of those who perished on the battlefield.

**FOR THESE REASONS****May it please the Chamber:**

To entertain and grant in part the observations of the amicus curiae, with due consideration for the observations of the VO2 group of victims.

Done at Kinshasa and Tours,

This 25 May 2012

[signed]

Ms Carine Bapita Buyangandu

[signed]

Mr Paul Kabongo Tshibangu

[signed]

Mr Joseph Keta Orwinyo