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TRIAL CHAMBER VI

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Confidential

Defence Observations on the Registry First Report on Reparations

Source: Defence Team of Mr Bosco Ntaganda

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Further to the First Decision on Reparations Process issued by Trial Chamber VI ("Chamber") on 26 June 2020 ("First Decision")¹ and the Registry's First Report on Reparations ("Registry Report"),² Counsel representing Mr Ntaganda ("Mr Ntaganda" or "Defence") hereby submits this:

Defence Observations on the Registry First Report on Reparations

"Defence Observations"

INTRODUCTION

1. *First*, with a view to finalizing the list of participating victims at trial who are eligible for reparations, the Registry seeks clarifications from the Chamber concerning the territorial and temporal scope of the Judgment as well as in relation to the subject-matter jurisdiction. Thus, in Annex I to the Registry Report, the Registry seeks guidance from the Chamber as to whether the (flexible) approach adopted at trial to assess victim application forms is still the appropriate approach to follow during the reparations phase.

2. The Defence Observations on this issue are mainly anchored on one principle, namely that the eligibility of a victim to receive reparations depends on whether this individual reported harm suffered as a result of the commission of a crime Mr Ntaganda was convicted of.³

3. The Defence takes this opportunity to emphasise, as underscored in previous submissions,⁴ that the standard of proof applicable to grant the status of participating victim at trial, *i.e. prima facie*, differs significantly from the balance of probabilities standard of proof applicable during the reparations phase.

¹ First Decision on Reparations Process, 26 June 2020, [ICC-01/04-02/06-2547](#) ("First Decision").

² Registry's First Report on Reparations, 30 September 2020, [ICC-01/04-02/06-2602](#), notified on 1st October 2020.

³ *Lubanga*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, 3 March 2015, [ICC-01/04-01/06-3129](#), para.1 ("*Lubanga* First Appeals Judgment").

⁴ Response on behalf of Mr. Ntaganda to Registry's preliminary observations on reparations, 3 October 2019, [ICC-01/04-02/06-2431](#), paras.23-24; *See also*, Defence submissions on reparations, 28 February 2020, [ICC-01/04-02/06-2479-Conf](#), paras.31-32 ("28 February Defence Submissions").

4. Prior decisions authorizing victims to participate in trial proceedings are without prejudice to the determination of a potential victim's eligibility to receive reparations. Indeed, the Chamber has already indicated that "[v]ictim eligibility determinations do not delineate, and are without prejudice to, the parameters of the charges, the admission of any items into evidence or the Chamber's ultimate decision on the merits."⁵

5. *Second*, the Registry explains that the sample requested by the Chamber was prepared pursuant to the stratified random sample ("SRS") method, based on two distinct *stratums*: crime locations and types of crimes. In addition, the Registry states that in preparing the sample, it ensured that gender equality and age representation were respected.

6. The Defence notes that, while claiming that applications were randomly selected, the Registry also explains that consultations with the Legal Representatives of Victims ("LRVs") were very helpful, in order to *refine* the sample in relation to crime/location/vulnerability representativeness. Not only is this contrary to the intrinsic purpose of the SRS method, it also significantly impedes the neutrality of the exercise and casts legitimate doubt on the genuine representativeness of the sample.

7. Lastly, at this stage, the Defence takes no position regarding the forms proposed by the Registry (Annex II and III) as well as on the Registry Updated Security Assessment (Annex V).

CONFIDENTIALITY

8. The Defence Observations are filed confidentially pursuant to Regulation 23bis(2) of the Regulations of the Court, as it responds to a document bearing the same classification.

⁵ Second decision on victims' participation in trial proceedings, 16 June 2015, [ICC-01/04-02/06-650](#), para.18 ("Second Decision on Victims' Participation").

SUBMISSIONS

I. Update on the Registry's reassessment exercise for participating victims (Annex I)

9. In the *Lubanga* reparation proceedings, the Appeals Chamber held that the eligibility of a victim must be assessed in light of the crime the accused has been convicted of:

211. The Appeals Chamber recalls that only victims within the meaning of rule 85 (a) of the Rules of Procedure and Evidence and regulation 46 of the Regulations of the Trust Fund, who suffered harm as a result of the commission of the crimes of which Mr Lubanga was found guilty, may claim reparations against Mr Lubanga. It follows that where an award for reparations is made to the benefit of a community, only members of the community meeting the relevant criteria are eligible.

212. The Appeals Chamber notes that certain crimes may have an effect on a community as a whole. The Appeals Chamber considers that, if there is a sufficient causal link between the harm suffered by members of that community and the crimes of which Mr Lubanga was found guilty, it is appropriate to award collective reparations to that community, understood as a group of victims.⁶

10. It follows that, when assessing the eligibility of potential beneficiaries, the Registry must assess whether the potential victim suffered harm **that resulted from the crimes for which Mr Ntaganda was found guilty**, within the meaning of Rule 85 (a) of the Rules of Procedure and Evidence and Regulation 46 of the Regulations of the Trust Fund for Victims.

11. Accordingly, as already highlighted by the Chamber, the scope of the Judgment should be understood strictly.⁷ In this regard, the Defence recalls that Mr Ntaganda was charged with crimes committed in the context of the First Operation, from on or

⁶ *Lubanga First Appeals Judgment*, paras.211-212. See also *Katanga*, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, [ICC-01/04-01/07-3728-tENG](#), para.37.

⁷ Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#), paras.33-43 ("TJ").

about 20 November 2002 and on or about 6 December 2002;⁸ in the context of the Second Operation, from on or about 12 February to on or about 27 February 2003;⁹ and for crimes related to child soldiers for the period between 6 August 2002 and 31 December 2003.¹⁰ The Chamber therefore convicted Mr Ntaganda for crimes committed in these specific timeframes.¹¹

II. Territorial scope

A. Issue I

12. The Registry's Victims Participation and Reparations Section ("VPRS") is seeking guidance from the Chamber regarding the territorial scope of the Judgment. Although the expression "in or around" is used in the Judgment, albeit sparingly, VPRS is nonetheless suggesting to accept participating victims from "surrounding area(s)" or "surrounding villages".¹²

13. The Defence takes issue with this proposition, which amounts to extending the territorial scope of the Judgment, in relation to the admissibility of potential victims, beyond the localities named in the disposition of the Judgment.

14. Notably, a similar argument was presented in the *Lubanga* case by the Trust Fund for Victims ("TFV") and the Office of Public Counsel for Victims, concerning the use of the terms "including" and "elsewhere" in the trial judgment when naming the localities where the crimes for which Mr Lubanga was convicted occurred.¹³ The Appeals Chamber concluded that, by exhaustively naming the localities and the witnesses on which it relied upon, the Trial Chamber did not wish to extend the territorial scope beyond the named localities in the trial judgment and in the localities specifically referred to by the listed witnesses. The Appeals Chamber thus held that

⁸ Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014, [ICC-01/04-02/06-309](#), para.29 ("Confirmation Decision").

⁹ [Confirmation Decision](#), para.29.

¹⁰ [Confirmation Decision](#), para.74.

¹¹ [TJ](#), para.33.

¹² Annex I to the Registry First Report on Reparations, 30 September 2020, [ICC-01/04-02/06-2602-Conf-AnxI](#), para.7 ("Registry Report"), notified on 1st October 2020.

¹³ [Lubanga First Appeals Judgment](#), para.219.

the scope of localities should be limited to the localities expressly mentioned in the Judgment as well as in the witnesses' evidence.¹⁴

15. Pursuant to the Appeals Chamber's reasoning in the *Lubanga* case, it is noteworthy that the testimony of the witnesses referred to in the Judgment for the First Operation concern specific villages, namely Monbgwalu and Sayo. The evidence referred to in relation to paragraph 526 of the Judgment, refers specifically to the towns of Mongbwalu and Sayo.¹⁵

16. It is also significant that in the disposition of the Judgment, the Chamber did not use the expression "surrounding area(s)" or "surrounding villages", but instead made an exhaustive list of localities where the crimes for which Mr Ntaganda has been convicted took place.

17. On this basis, the Defence posits that including unnamed localities would extend the scope of the Judgment beyond what is permissible and speculate as to the Chamber's intention.

18. Turning to the Registry's request for clarification in relation to the assault on Lipri,¹⁶ the Defence underscores that the Chamber did clarify the localities it referred to:¹⁷

Noting P-0105's testimony in this regard, the Chamber considers, for the purpose of the factual findings in this section, the villages Tsili, Ngongo, Djuba, Katho, Avetso, Dhepka are in such close proximity to Lipri that some witnesses may consider them as part of it. The Chamber therefore accepts that witnesses may sometimes have referred only to Lipri, while the relevant conduct in fact took place in one of the aforementioned locations. Nevertheless, the Chamber notes that para. 36 of the Confirmation Decision, besides to Lipri, explicitly refers to, *inter alia*, Tsili, Ngongo, Djuba, Katho, Avetso,

¹⁴ [Lubanga First Appeals Judgment](#), paras.226-228.

¹⁵ [TJ](#), fn.1562. **P-0017**: [T-58](#), pages 79 to 80; and [T-61](#), page 105; **P-0768**: [T-33](#), pages 50 to 51; and **P-0963**: [T-79](#), pages 14 to 16. *See also* **P-0886**: [T-37](#), pages 12 to 18; and [T-40](#), pages 18 to 19.

¹⁶ [Registry Report](#), fn.8.

¹⁷ [TJ](#), fn.1730.

and Dhepka. The Chamber therefore makes separate findings on these individual locations.

19. The Chamber thus clarified the villages that might be understood as part of the attack on Lipri, while noting that they have been specifically referred to in relation to certain crimes. In this case, the territorial scope should not go beyond and should be read with paragraphs 641 to 646 of the Judgment.

20. With regards to the UPC/FPLC looting of harvest in Lipri, the Defence underscores that the Chamber only referred to Lipri in the positive factual findings on the matter.¹⁸

21. Consequently, individuals reporting having suffered harm outside this scope should not be considered as participating victims potentially eligible for reparations in this case.

B. Issue II

22. The Registry is requesting clarification as to whether the 39 victims authorized to participate at trial who have suffered harm in Kilo, Kilo-Mission and other localities which can be found two to five kilometers away, could be considered to fall within the remit of the case in the context of the attack on Kobu.¹⁹

23. *First*, the Chamber defined the Second Operation as an assault against villages located in the Walendu-Djatsi *collectivité*, as charged by the Prosecution. The Chamber then lists a number of those villages in paragraph 549, namely Kobu, Bambu, Lipri, Tsili, Jitchu, Dhekpa, Nyangaray, Buli and Gutsi.²⁰ There is no mention of Kilo, or Kilo-Mission. The same applies for the disposition of the Judgment in relation to crimes committed in localities found in the Walendu-Djtasi *collectivité*.

24. *Second*, references to Kilo in the context of the Second Operation can be found in relation to actions prior to the beginning of the Second Operation. The Chamber did

¹⁸ [TJ](#), para.1032.

¹⁹ [Registry Report](#), paras.8-9.

²⁰ [TJ](#), para.549.

mention confrontations in Kilo that would have allegedly occurred on 13 February 2003.²¹ Considering that the timeframe for the beginning of the Second Operation is set on or about 18 February 2003, the events that unfolded in Kilo do not fall into the scope of the Second Operation as set out in the Judgment. The Chamber even found that briefings to UPC/FPLC troops took place in Kilo *prior to the Second Operation*²² and that the attack on Kobu was launched by Salumu Mulenda, *from Kilo*.²³ The Chamber made no findings on any specific criminal behavior having occurred in Kilo or Kilo-Mission in the context of the Second Operation.

25. The only reasonable conclusion that can be drawn from these findings is that Kilo was not a village targeted as part of the Second Operation.

26. Mr Ntaganda was convicted for crimes that occurred *in* the context of the Second Operation. Consequently, crimes allegedly committed prior to the established timeframe for the Second Operation, whether inside or outside of the Walendu-Djatsi *collectivité* cannot be considered as crimes for which Mr Ntaganda was convicted of.

27. As a result, individuals having suffered harm in Kilo or Kilo-Mission can be eligible victim if the reported harm suffered happened during the context of the First Operation for crimes Mr Ntaganda was convicted of. Outside this context, these individuals should not remain on the list of participating victims potentially eligible for reparations.

C. Issue III

28. The Registry is seeking clarification concerning victims who reported having suffered harm in relation to murders in Gutsi, as authorized by the Chamber during the trial.²⁴

²¹ [TJ](#), para.555.

²² [TJ](#), paras.558 and 561. The Chamber carefully dated the briefing “on or about the morning of 18 February 2003, just before the assault on Kobu”.

²³ See also [TJ](#), para.562.

²⁴ [Registry Report](#), para.10.

29. The crime of murder in Gutsi was not included in the Confirmation Decision, let alone as a crime for which Mr Ntaganda was convicted of. This alone should be sufficient to resolve the Registry's concern exposed under this Issue.

30. While the Registry aims to adopt a flexible approach, allowing to find an individual eligible for reparations for the harm suffered as a result of a crime committed in a village "proximate" to a village where Mr Ntaganda was found guilty of having committed a crime, the Defence underscores that the Chamber was clear regarding murders committed in the context of the Second Operation. Indeed, the Chamber found Mr Ntaganda guilty of murder in the context of the Second Operation **solely** in the villages of Kobu, Bambu and Sangi.

31. It is noteworthy that the Chamber clearly rejected instances of murder when no evidence was presented, both in footnotes 1740 and 1806. The Chamber specifically ruling on the murders committed during the Second Operation:²⁵

Generally, **in relation to alleged killings in the context of the Second Operation**, the Chamber notes that some witnesses (*e.g.* P-0105: T-133, pages 53 to 55) referred to persons having been killed in a time frame that would match that of the Second Operation, **at places that are not referred to in the Confirmation Decision, or otherwise discussed by the parties, and the location of which is not clarified in the relevant evidence. In these circumstances, and given the lack of information provided as to the circumstances of these alleged killings, the Chamber does not make any findings in this regard.**

32. What is more, the Chamber made very specific findings in relation to killings in Bambu, citing specific individual victims,²⁶ while not mentioning any killings in Gutsi.

33. Hence, individuals reporting having suffered harm in relation to murders in Gutsi should not be considered as participating victims potentially eligible for reparations.

²⁵ [TJ](#), fn.1740 (emphasis added).

²⁶ [TJ](#), para.586, fn.1806.

III. Temporal scope

A. Issue I

34. The Registry is seeking clarifications as to the temporal scope of the First Operation, and more precisely, on the application of the Second Decision on Participation's approach ("sufficiently close in time to the relevant timeframes") to be interpreted as including a 3-day window on both sides of the 20 November 2002 and 6 December 2002.²⁷

35. The Defence notes that the Chamber did use the language in or about 20 November 2002 for the beginning of the First Operation. However, it stems from the evidence the Chamber relied upon that the launching of the assault on Mongbwalu was ordered by Mr Ntaganda on 19 November 2002,²⁸ and that the attack on Pluto had already begun on 20 November 2002.²⁹

36. Considering the evidence on the record and the fact that no witnesses have testified that the First Operation would have begun three days before the 20 November, it can be concluded that the Chamber did not intend to place the beginning of the First Operation three days before 20 November.

37. There is no such information about the aftermath of the attack either.

38. Hence, the approach adopted in the Second Decision on Victims' Participation should not be repeated for this phase.³⁰

B. Issue II

39. The Registry is seeking clarification as to the temporal scope of the Second Operation, to include 3-day windows on either side of 18 February 2003, and to

²⁷ [Registry Report](#), para.11.

²⁸ [TJ](#), para.485.

²⁹ [TJ](#), fn.1391.

³⁰ [Registry Report](#), para.11; *See also*, [Second Decision on Victims' Participation](#), para.22.

include potential victims having suffered harm during “*shika na mukono*”, or the “pacification meeting” or “in February 2003”.³¹

40. The same reasoning that applies to the First Operation should govern the Second Operation.

41. The Chamber placed the first date on the failed assault on Lipri on 17 February and the beginning of the Second Operation after this failed attempt.³² The Chamber clearly established that, before the UPC/FPLC attack on Lipri, the village was under the control of the APC.³³

42. Harm suffered as a result of crimes therefore cannot be attributed to Mr Ntaganda before the 17 February 2003, at a minimum. The Chamber found that the evidence establishes that assaults on Kobu, Bambu and Lipri occurred on the same day, on or about 18 February 2003.³⁴

43. It is therefore incorrect to include victims that reported having suffered harm three days before the 18 February.

44. What is more, the Chamber placed the “Pacification meeting” of Sangi on or about the 22 February 2003.³⁵ Hence, even if a potential victim refers to the “pacification meeting”, the event referred to must remain in the remit of the dates established by the Chamber.

45. With regard to the end of the Second Operation, the Chamber clearly intended to limit the temporal scope to maximum “early March 2003” at least for the village of Lipri. Indeed, the Judgment refers to a witness who testified that the UPC/FPLC was

³¹ [Registry Report](#), para.12.

³² [TJ](#), paras.566-567.

³³ [TJ](#), para.566.

³⁴ [TJ](#), paras.583,911,1000.

³⁵ [TJ](#), para.590.

occupying Lipri for about two weeks, and left in early March.³⁶ To include the entire month of March would therefore be incorrect.

46. The scope of the Second Operation should therefore be interpreted in order to respect the determined scope of the Judgment.

C. Issue III

47. The Registry is seeking the Chamber's guidance for the crime of using child soldiers actively in hostilities to interpret the temporal scope set by the Chamber at "on or about 6 August 2002 and on or about 30 May 2003" to include a 3-day window on both sides of this timeframe.³⁷

48. The Chamber ruled that the crime of actively using child soldiers in hostilities "is temporary in nature under IHL and that individuals cease to actively participate when not engaged in combat related activities."³⁸

49. The Chamber significantly continues and decides that:

Any charge of active participation must therefore be framed in a more specific way. The Chamber notes that the Confirmation Decision indeed does so. Paragraph 74 of the Confirmation Decision, one of the operative bolded paragraphs which set out the parameters for counts related to alleged child soldiers, including Count 16, sets out the temporal scope of the charge, *i.e.* from 6 August 2002 to 30 May 2003, whereas paragraphs 93 to 96 set out types of conduct, locations, and time frames specific to this charge.³⁹

50. It follows that the nature of the charge and the specific language used by the Chamber in framing the scope of this crime leaves no place for speculation. An interpretation that would allow to include victims reporting having suffered harm three days before the 6 August 2002 or after the 30 May 2003 should not be included on the list of potential beneficiaries for reparations.

³⁶ [TL](#), fn.1751, citing witness P-0127.

³⁷ [Registry Report](#), para.13.

³⁸ [TL](#), para.1113.

³⁹ [TL](#), para.1113 (footnotes omitted).

IV. Subject-matter jurisdiction

A. Issue I

51. The Defence recalls and hereby relies on its 28 February Observations at paragraphs 18, 20, 22⁴⁰, which will not be repeated here.

B. Issue II

52. The Registry is seeking clarification in order to assess victim's applications that refer to crimes for which Mr Ntaganda was not convicted of, but relate to underlying acts of persecution as crime against humanity.⁴¹

53. Concerning the village of Nyangaray, the Chamber found Mr Ntaganda guilty only of the crime of persecution.

54. Although the underlying acts forming the factual basis on which the Chamber relied to find Mr Ntaganda guilty of persecution are indeed similar to the crime of forcible transfer of population⁴² and this was a crime confirmed against Mr Ntaganda, it is significant that the Chamber did not find Mr Ntaganda guilty of this crime.

55. Again, in light of the principle that victims can only be awarded reparations for the harm suffered as a result of the commission of crimes for which the accused has been convicted, it would be incorrect to include victims having purportedly suffered from murder in Nyangaray, even if murder might be an underlying act of persecution.

56. In this regard, the Defence recalls that the crime of persecution requires the proof of an act or omission committed with a discriminatory intent based on a listed ground.⁴³ However, the underlying acts must be specified by the Chamber in order to

⁴⁰ [28 February Defence Submissions](#), paras.18,20,22.

⁴¹ [Registry Report](#), para.15.

⁴² [Confirmation Decision](#), para.36.

⁴³ [TJ](#), para.1206.

fall in the remit of the case.⁴⁴ Although the crime of persecution is considered as an “umbrella” crime, the material elements must be as detailed as for any other crimes⁴⁵ and must not be assumed as encompassing any type of acts depriving an individual of a fundamental right. This is the reasoning applied by the Chamber in paragraphs 995 to 1008.

57. The Registry cannot simply assume that, because the Chamber found Mr Ntaganda guilty of persecution, all crimes that could be underlying acts of persecution can fit under the crime of persecution.

58. Potential victims for crimes that found no factual basis in the Judgment should not be eligible to receive reparations, even though the purported harm could legally qualify as an underlying act of persecution.

V. Lubanga victims

59. The Defence recalls its 28 February Observations, which are incorporated by reference and relied upon here.⁴⁶

VI. The methodology for the preparation of the sample

60. The Registry explains that it opted for a stratified random sample in preparing the sample and the sample matrix (“Matrix”) contained in Annex IV of the Registry Report, because of the tendency for this sampling method to be more representative than a purely random sample.⁴⁷ The strata used to prepare the sample are the crime locations and the types of crimes confirmed in the Judgment for the victim of the attacks (Category I) and crime locations for the former child soldiers (Category II). The victims’ applications were subsequently selected on a random basis. However, the Registry added one more “filter” to the sample, namely vulnerabilities.⁴⁸

⁴⁴ *Popović*, Case No.IT-05-88-A, [Judgement](#), 30 January 2015, para.761.

⁴⁵ *Kupreškic et al*, Case No. IT-95-16-A, [Judgement](#), 23 October 2001, para.98.

⁴⁶ [28 February Defence Submissions](#), paras.57-66.

⁴⁷ [Registry Report](#), para.28.

⁴⁸ *Id.*, para.34.

61. It remains unclear, what weight the “basic presumptions”⁴⁹ were attributed in the preparation of the sample, especially in light of the adoption by the Registry of the stratified random sample methodology. The Defence questions how they predicated the sample, considering that they are not all included in the Matrix presented in Annex IV.

62. In the same vein, the Registry acknowledges that certain elements, such as “terminal illness or chronic health conditions”,⁵⁰ should inform the sample as some of those elements were taken into consideration as a result of consultations between the VPRS and the LRVs, “in light of their experience and their intimate familiarity with their clients’ personal situation, in order to increase the representative value of the sample.”⁵¹

63. The selectiveness of applications in light of the vulnerabilities of the victim casts doubt on the genuine representativeness of the sample. Adopting the SRS method offers no benefit if it is to pick the most vulnerable victims among the categories afterward.

64. What is more, most of the information contained in the applications is still unknown to the Defence. The Defence can therefore not meaningfully comment on the relevance of the sampling method adopted without being provided the applications and ensured that the alleged harms suffered by the victims are related to the crimes for which Mr Ntaganda was convicted of.

65. The Defence also wishes to underline the Registry’s claim that “the vast majority of victims have not received any sort of support or assistance since the events.”⁵²

66. In the *Katanga* case, both the LRVs and the Defence made observations on the fact that victims from the Bogoro events, having already benefited from reparations

⁴⁹ *Id.*, para.25.

⁵⁰ [Registry Report](#), para.26(vi)(iii), fn.45.

⁵¹ [Registry Report](#), para.34.

⁵² [Registry Report](#), fn.40.

programs implemented in the village – some of which were implemented by the TFV – should not benefit from reparations in the proceedings against Mr Katanga.⁵³

67. The Defence agrees with this argument and refers to the TFV activities in Ituri, especially for the benefit of former child soldiers and victims of sexual violence.⁵⁴ Thousands of victims have received assistance through the numerous TFV's projects, since 2008.⁵⁵ In light of the above, the Defence finds difficult to accept that the participating victims at trial did not benefit at all from those programs.

68. What is more, the Registry explains that, in defining the methodology to be adopted and preparing the sample, it engaged in *ex parte* consultations with the experts selected by the Chamber.⁵⁶ The Defence posits that this was inappropriate. Although the experts might constitute a great source of information, the Chamber reached out for experts in order to have reports on specific matters.⁵⁷

69. Regarding the Matrix, the Defence notes that Registry included in the vulnerability column rape for the crime of rape. Not only is this redundant, it yields no added value.

70. Also, the Defence notes that the Registry included age as a specific vulnerability for the crime of enlisting, conscripting and actively using child soldiers.⁵⁸ The Defence submits that this factor is already taken into consideration in the crime itself.

71. With regard to Category III of the Sample, the Defence acknowledges that the Chamber did instruct the Registry to include a group of potential new identified

⁵³ *Katanga*, Defence Response to the Legal Representative of Victims and the Trust Fund for Victims' Submissions on the Monetary Value of the Alleged Harm, 13 October 2016, [ICC-01/04-01/07-3715](#), para.19; *Katanga*, Defence Response to the *Propositions des victimes sur des modalités de réparation dans la présente affaire*, 30 December 2016, [ICC-01/04-01/07-3722](#), paras.21-22.

⁵⁴ TFV, [Annual Report 2017](#), pp.31-33.

⁵⁵ TFV, [Annual Report 2017](#), p.26.

⁵⁶ [Registry Report](#), para.24, fn.32.

⁵⁷ Decision appointing experts on reparations, 14 May 2020, [ICC-01/04-02/06-2528-Conf](#), para.1.

⁵⁸ Annex IV to the Registry First Report on Reparations, 30 September 2020, [ICC-01/04-02/06-2602-Conf-AnxIV](#), notified on 1st October 2020.

beneficiaries.⁵⁹ However, the Defence takes the view that in the present circumstances, considering the current lack of information on potential beneficiaries due to the worldwide pandemic and the large pool of participating victims already at the disposition of the Registry, the first two categories should be sufficient to create a representative sample and achieve its aim for the purpose of the reparations order.

72. The Defence recalls that the sample created in *Lubanga* was considered by the Chamber to be 'representative' without the parties and participants having to select the most representative – and the most vulnerable – victims from the pool of potential victims available.⁶⁰

73. What is more, in order to constitute the sample, the Trial Chamber in *Lubanga* did allow the Defence to have access to the applications of the potential victims and an opportunity to make observations on them.⁶¹ This is of the utmost importance considering that the files included in the Sample, will be the basis for the Chamber to set out eligibility criteria and inform its decision on Mr Ntaganda's liability for reparations. The Defence sees no reason that would preclude the Chamber to do the same in the current proceedings. In this regard, the Defence refers to its Defence Request for Clarifications, submitted on 11 September 2020.⁶²

74. Lastly, the Defence submits that a timeframe should be established to end the mapping exercise.

⁵⁹ [First Decision](#), para.38.

⁶⁰ *Lubanga*, Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable, 21 December 2017, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para.36.

⁶¹ *Lubanga*, Decision on the Motion of the Office of Public Counsel for Victims for Reconsideration of the Decision of 6 April 2017, 13 July 2017, [ICC-01/04-01/06-3338-tENG](#), para.9. *Lubanga*, Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo, 22 February 2017, [ICC-01/04-01/06-3275-tENG](#), para.12.

⁶² Defence request seeking clarifications and/or further guidance following the "First Decision on Reparations Process" and Request seeking an extension of time to submit observations on the Registry 30 September Report, 11 September 2020, [ICC-01/04-02/06-2578](#), paras.17-19 ("Defence Request for Clarifications").

CONCLUSION

75. The Chamber took 539 pages to convict Mr Ntaganda of various crimes committed in several localities. The Chamber's findings should not be extended for the purpose of the reparations. Mr Ntaganda should be held liable for the harm suffered as a result of the crimes he was convicted of, and no more.

76. In the same vein, the preparation of the sample should be an exercise of representativeness and should be carried out with neutrality. The sample should not be an opportunity to reflect only the most vulnerable potential beneficiaries.

77. Moreover, in light of the foregoing and as previously argued, the Defence reiterates its request for access to Category I and Category II application forms, in a redacted form if necessary.⁶³

78. Lastly, the Defence does not wish to disclose any additional evidence at this stage, as per the Chamber's 5 December 2019 and the 14 May 2020 Orders.⁶⁴

RESPECTFULLY SUBMITTED ON THIS 30TH DAY OF OCTOBER 2020



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The Hague, The Netherlands

⁶³ *Ibid.*

⁶⁴ Order setting deadlines in relation to reparations, 5 December 2019, [ICC-01/04-02/06-2447](#), para.9(b); Decision appointing experts on reparations, 14 May 2020, [ICC-01/04-02/06-2528-Conf](#), para.20.