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**International
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Court**



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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***

Public

Decision on issues raised in the Registry's First Report on Reparations

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Trial Chamber VI (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), having regard to article 75 of the Rome Statute (the ‘Statute’), rules 85, 97 and 98 of the Rules of Procedure and Evidence (the ‘Rules’), regulation 35 of the Regulations of the Court (the ‘Regulations’), and regulation 110 of the Regulations of the Registry, issues this Decision on issues raised in the Registry’s First Report on Reparations (the ‘Decision’).

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 8 July 2019, the Chamber issued its Judgment, convicting Mr Bosco Ntaganda (‘Mr Ntaganda’) of five counts of crimes against humanity and thirteen counts of war crimes.¹
2. On 7 November 2019, the Chamber issued the Sentencing Judgment, imposing on Mr Ntaganda a joint sentence of thirty years of imprisonment.²
3. On 5 December 2019, following a first round of submissions,³ the Single Judge, issued the ‘Order setting deadlines in relation to reparations’ (the ‘December 2019 Order’),⁴ *inter alia*, instructing the Registry, in consultation with the LRVs and/or the Trust Fund for Victims (the ‘TFV’), as appropriate, to (i) continue to carry out a preliminary mapping of potential new beneficiaries of reparations; (ii) carry out an assessment of how many participating victims in the case may potentially be eligible for reparations; and (iii) carry out an assessment of how many of the victims eligible for reparations in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the ‘Lubanga case’) are also potentially eligible for reparations in the *Ntaganda* case.⁵

¹ Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#) (with Annexes A, B, and C).

² Sentencing judgment, 7 November 2019, [ICC-01/04-02-06-2442](#) (with Annex of list of decisions and authorities).

³ See Order for preliminary information on reparations, 25 July 2019, [ICC-01/04-02/06-2366](#); Registry’s observations, pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, ICC-01/04-02/06-2366, 5 September 2019, [ICC-01/04-02/06-2391](#) (with public Annex I and Confidential Annex II) (‘Registry September 2019 Observations’); Response on behalf of Mr. Ntaganda to Registry’s preliminary observations on reparations, 3 October 2019, [ICC-01/04-02/06-2431](#); Joint Response of the Legal Representatives of Victims to the Registry’s Observations on Reparations, 3 October 2019, [ICC-01/04-02/06-2430](#); Prosecution’s response to the Registry’s observations, pursuant to the Single Judge’s “Order for preliminary information on reparations” (ICC-01/04-02/06-2391-Anx1), 3 October 2019, [ICC-01/04-02/06-2429](#); and, Trust Fund for Victims’ response to the Registry’s Preliminary Observations pursuant to the Order for Preliminary Information on Reparations, 3 October 2019, [ICC-01/04-02/06-2428](#).

⁴ Order setting deadlines in relation to reparations, 5 December 2019, [ICC-01/04-02/06-2447](#) (‘December 2019 Order’).

⁵ December 2019 Order, [ICC-01/04-02/06-2447](#), para. 9(a).

4. On 26 June 2020, the Chamber issued the ‘First Decision on Reparations Process’ (the ‘First Decision on Reparations’),⁶ *inter alia*, instructing the Registry to (i) finalise, as soon as practicable, in consultation with the respective LRV and TFV, as appropriate, the assessments and mapping instructed in the December 2019 Order; (ii) prepare, in consultation with the parties and the TFV, a sample of potential beneficiaries of reparations; (iii) report to the Chamber on the aforementioned activities, together with any request for guidance as to any legal and factual issues, by 30 September 2020, and thereafter every three months.⁷ The Chamber also indicated that the parties may submit observations in relation to any key legal and factual issues identified by the Registry within the regular time limits in accordance with regulation 34 of the Regulations.⁸
5. On 30 September 2020, the Registry submitted its ‘First Report on Reparations’ (the ‘First Report’),⁹ providing, *inter alia*, the Victims Participation and Reparations Section (the ‘VPRS’) first (i) update on the assessment exercise for participating victims; (ii) key legal and factual issues relevant to the eligibility assessment; (iii) update on victims in the *Lubanga* case; and (iv) report on the methodology applied in the preparation of the sample and the completion of mapping of potential new beneficiaries.
6. On 30 October 2020, as authorised by the Chamber,¹⁰ the LRVs¹¹ and the Defence¹² submitted their observations to the First Report.

⁶ [ICC-01/04-02/06-2547](#) (‘First Decision on Reparations’).

⁷ First Decision on Reparations, [ICC-01/04-02/06-2547](#), paras 43-44.

⁸ First Decision on Reparations, [ICC-01/04-02/06-2547](#), para. 44.

⁹ First Report, [ICC-01/04-02/06-2602](#) (with confidential Annexes I to V. A public redacted version of Annex I was filed on 26 October 2020, [ICC-01/04-02/06-2602-AnexI-Red](#)).

¹⁰ Decision on the 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, Defence Request, [ICC-01/04-02/06-2601](#). *See also* 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, [ICC-01/04-02/06-2578](#); and, Joint Response of the Common Legal Representatives of Victims to the “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”, [ICC-01/04-02/06-2600](#).

¹¹ Observations of the Common Legal Representative of the Former Child Soldiers on the “Registry’s First Report on Reparations”, 30 October 2020, [ICC-01/04-02/06-2620-Conf](#) (a public redacted version was filed on 18 November 2020, [ICC-01/04-02/06-2620-Red](#)), (‘CLR1 Observations’); and Observations of the Common Legal Representative of the Victims of the Attacks on the Registry’s First Report on Reparations, 30 October 2020, [ICC-01/04-02/06-2621](#) (‘CLR2 Observations’).

¹² Defence Observations on the Registry First Report on Reparations, 30 October 2020, [ICC-01/04-02/06-2622-Conf](#) (the document was reclassified as public on 14 December 2020, [ICC-01/04-01/06-2622](#); ‘Defence Observations’).

7. Regarding the issues raised by the Registry relevant to the eligibility assessment, the Defence makes a series of observations anchored on the principle 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 for which Mr Ntaganda was convicted.¹³ It further notes that the standard of proof applicable to grant the status of participating victim significantly differs from the standard applicable during the reparations phase.¹⁴
8. The LRV of the former child soldiers (the 'CLR1'), submits observations on two legal issues which directly relate to the personal interests of the victims she represents, related to (i) the window to be applied on both sides of the temporal scope of the case; and (ii) whether direct victims of the attacks may also qualify as indirect victims of the crimes of recruitment and use of child soldiers.¹⁵
9. The LRV of victims of the attacks (the 'CLR2'), submits observations regarding legal and factual issues related to the territorial scope,¹⁶ temporal scope,¹⁷ subject matter jurisdiction¹⁸ and other matters relevant to the eligibility assessment of participating victims.¹⁹ The CLR2 argues that a resolution of the legal and factual matters brought to the Chamber's attention is necessary to advance the reparation proceedings, as the Chamber's determination will authoritatively rule on the relevant boundaries for eligibility of both participating victims and new potential beneficiaries of reparations.²⁰

II. ANALYSIS

A. Key legal and factual issues relevant to the potential eligibility assessment

10. As instructed by the Chamber,²¹ in the First Report the Registry identifies a series of key legal and factual issues relevant to the eligibility assessment of potential beneficiaries of reparations, which it divides into the following three categories: (i) territorial scope; (ii) temporal scope; and (iii) subject-matter jurisdiction.²²

¹³ Defence Observations, [ICC-01/04-02/06-2622](#), paras 2, 9-58.

¹⁴ Defence Observations, [ICC-01/04-02/06-2622](#), para. 3.

¹⁵ CLR1 Observations, [ICC-01/04-02/06-2620-Red](#), paras 2-5.

¹⁶ CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 17-28.

¹⁷ CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 29-30.

¹⁸ CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 31-35.

¹⁹ CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 36-38.

²⁰ CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 36-38.

²¹ First Decision on Reparations, [ICC-01/04-02/06-2547](#), para. 43.

²² First Report, [ICC-01/04-02/06-2602-Anxl-Red](#), para. 5.

11. At the outset, the Chamber notes that, in order to be entitled to reparations in the *Ntaganda* case, victims must have suffered harm as a result of a crime for which Mr Ntaganda has been convicted.²³ As stressed by the Appeals Chamber, ‘reparation 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.’²⁴ Accordingly, the assessment as to whether a person may be entitled to reparations in the *Ntaganda* case shall be based exclusively on the conviction and not on the Chamber’s prior decisions regarding the scope of the case brought to trial or the requirements for victims’ participation during the trial proceedings.
12. Before turning to the specific issues raised by the Registry, the Chamber emphasises that the purpose of this Decision is to provide guidance to the Registry in the context of its assessment of the potential eligibility of victims with a view to determining the overall number of victims that may be potentially eligible for reparations. Further guidance will be provided, as necessary, in the reparations order.

a) Territorial scope

i. Issue 1

13. The first issue concerns the situation of victims authorised to participate in the trial proceedings under the ‘immediate neighbouring villages’ definition, as articulated by the Chamber in its decision on the updated document containing the charges.²⁵ The Registry

²³ Trial Chamber II, *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute (with public Annex I and confidential ex parte Annex II), 24 March 2017, [ICC-01/04-01/07-3728](#) (*‘Katanga Reparations Order’*), para. 37; Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, [ICC-01/12-01/15-236](#) (*‘Al Mahdi Reparations Order’*), para. 42.

²⁴ Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, ICC-01/04-01/06-3129 (hereafter *‘Lubanga Judgment on Principles’*), para. 65 and Annex A, Order for Reparations (amended), [ICC-01/04-01/06-3129-AnxA](#), (*‘Lubanga Amended Reparations Order’*), para. 20.

²⁵ First Report, [ICC-01/04-02/06-2602-AnXI-Red](#), para. 6, referring to the Decision on the updated document containing the charges, 06 February 2015, [ICC-01/04-02/06-450](#), para. 74, that held ‘[...] use of the word ‘in’ in paragraph 36 of the Confirmation Decision was intended to encompass crimes committed in the surroundings of the villages in question, noting that the precise limits of the villages may not be clearly ascertainable. It therefore finds that the Prosecution’s alternative wording of ‘in or around’ is appropriate. The Chamber finds that this should be understood as also encompassing, where further specific locations are either upheld in the Confirmation Decision or are pleaded in the DCC and not ruled upon in the Confirmation Decision, the geographic areas between the villages in question and, in certain exceptional cases, immediately neighbouring villages within that geographic area. Although such explicit qualifying language is not present in respect of each count, the Chamber considers that, given the lack of differentiation by the Pre-Trial Chamber in this regard, it is appropriate to apply this interpretation consistently across paragraph 36 of the Confirmation Decision.’

seeks the Chamber's guidance as to how to interpret the expressions 'surrounding area(s)' and 'surrounding villages' used in the Judgment for the geographic description of certain relevant events, noting that in the disposition, the language 'in or around' with respect to villages of the attacks is not repeated. In addition, the Registry seeks the Chamber's guidance as to whether the same interpretation for 'immediately neighbouring villages' applied for the participation of victims at trial, which considered a five kilometres radius, continues to apply.²⁶

14. The Defence takes issue with the Registry's proposition, arguing that it amounts to extending the territorial scope of the Judgment to localities not named in the disposition, beyond what is permissible and speculating as to the Chamber's intention.²⁷ In contrast, the CLR2 submits that not only the thirteen – main – villages specifically referred to in the 'positive findings' of the Judgment should be included in the territorial scope, but also all sub-villages, *quartiers*, villages and settlements surrounding or closely neighbouring the main villages.²⁸
15. The CLR2 argues that an inclusive approach is supported by the scope of the charges brought to trial and the Chamber's findings regarding the widespread and systematic nature of the military operations carried out by the UPC/FPLC, which targeted entire locations in a prolonged and continuous manner, from different directions and simultaneously.²⁹ It further argues that excluding small locations would lead to artificially drawing boundaries where there are none and ultimately result in causing feelings of injustice among the population, which should be avoided in keeping with the '*do no harm*' principle.³⁰ Accordingly, the CLR2 suggest the adoption of an inclusive approach, applying a certain margin of appreciation, such as a five kilometres radius, when interpreting 'in or around' and 'surrounding area' findings of the Chamber.³¹
16. As to how the Judgment should be interpreted, the Chamber notes that, after analysing the evidence submitted and discussed before it at trial and reaching relevant factual findings,

²⁶ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), paras 6-7, referring to Judgment, [ICC-01/04-02/06-2359](#), pp. 353-359 (disposition) and paras 526, 566, 1054, 569, 578.

²⁷ Defence Observations, [ICC-01/04-02/06-2622](#), paras 12-17.

²⁸ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 17.

²⁹ CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 18-23.

³⁰ CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 24-27.

³¹ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 28.

the Chamber made positive and negative legal findings indicating whether it was able to establish that the alleged crimes, as referred to in the Confirmation Decision, occurred and/or were attributable to Mr Ntaganda or the UPC/FPLC.³² Allegations resulting in negative findings were not taken into account in the Chamber's conclusions as to the crimes for which Mr Ntaganda was convicted.³³

17. In effect, the Chamber notes that, in relation to a number of locations referred to in the Confirmation Decision, the Chamber specifically indicated in the Judgment that because 'the Prosecutor did not produce any evidence', the Chamber did 'not make any findings on these villages'.³⁴ In particular, it noted:

[...] The Chamber further recalls its above finding that some locations referred to in the Confirmation Decision may have been understood by witnesses to be part of a larger village or town, because of close proximity to the larger locality. This may also have been the case for other villages included in the Confirmation Decision but, in the absence of relevant information, the Chamber cannot make any specific findings in this regard. The Chamber also notes that for some locations, no relevant evidence was provided, and the locations were only mentioned by a witness in passing, or in a general way, without specification about any alleged criminal conduct having occurred there.³⁵

18. Accordingly, negative findings clearly indicate that persons alleging to be victims of those events are not entitled to reparations in the *Ntaganda* case. In light of the above, the Chamber stresses that, for victims who claim to have suffered a harm in a location surrounding an area or village to be potentially entitled to reparations, the Chamber must have made explicit findings in relation to these surrounding places and these findings must have served as a basis for convicting Mr Ntaganda.
19. As noted in the First Report, terms such as 'in or around', 'surrounding area(s)', or 'surrounding villages' are not included in the disposition section of the Judgment, which summarises the counts for which Mr Ntaganda was found guilty. Regarding the instances identified in the First Report where the terms 'in or around', 'surrounding area(s)', or 'surrounding villages' were used in the Judgment,³⁶ the Chamber notes the following:

³² Judgment, [ICC-01/04-02/06-2359](#), *see inter alia*, paras 754, 871, 905, 939, 953, 970, 989, 1031, 1049, 1078, 1114, 1137, 1155.

³³ Judgment, [ICC-01/04-02/06-2359](#), *see inter alia*, paras 754, 872, 953, 970, 989, 1031, 1115.

³⁴ Judgment, [ICC-01/04-02/06-2359](#), para. 641.

³⁵ Judgment, [ICC-01/04-02/06-2359](#), para. 641.

³⁶ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), footnote 8.

- a. As to the reference to the ‘assault on Mongbwalu *and the surrounding areas*’, at paragraph 526 of the Judgment, the Chamber notes that it is to be understood within the context in which such phrase is used. In effect, the entire first phrase of paragraph 526 reads as follows: ‘[i]n the immediate aftermath of the assault on Mongbwalu *and the surrounding areas*, members of the UPC/FPLC and Hema “civilians” continued the *ratissage* operation in Sayo, looting and killing people during house-to-house searches.’ As such, the use of the wording ‘surrounding areas’ within the context of paragraph 526 serves as introductory language, aimed at contextualising the findings that follow it by referring to the areas through which the troops advanced through Mongbwalu towards Sayo in the context of the unfolding of the First Operation, as specifically mentioned in the preceding sections and paragraphs.³⁷ The phrase ‘assault on Mongbwalu and the surrounding areas’ at paragraph 526 of the Judgment did not serve as the basis to a positive finding leading to convicting Mr Ntaganda for any crime with a geographical scope that may have included the surrounding areas of Mongbwalu.³⁸
- b. As to the reference to ‘Lipri and *surrounding villages*’ at paragraph 566 of the Judgment, the Chamber notes that the Judgment clearly indentify in the same paragraph Tsili, Ngongo, Djuba, Katho, Avetso, and Dhepka as villages or *groupements* that surrounded Lipri. However, the Chamber specified at footnote 1730 of the Judgment that it had made separate findings on each individual location.³⁹ In particular, the Chamber notes that, in the Judgment, it indicated that it could not make any findings, *inter alia*, on Avetso and Dhekpa, on the basis of the very limited evidence brought before it and that, with regard to, *inter alia*, Djuba and Katho, the findings are limited to population fleeing from those locations.⁴⁰ As such, in light of

³⁷ Judgment, [ICC-01/04-02/06-2359](#). In effect, the referenced phrase is to be found within section IV. ‘Factual Findings’ (starting at para. 285), related to IV.B ‘Operations involving the UPC/FPLC’ (starting at para. 433), regarding IV.B.7 ‘First Operation: Assaults on a number of villages in the Banyali-Kilo collectivité in November/December 2002’ (starting at para. 467), IV.B.7.d) ‘Unfolding of the First Operation’ (starting at para. 486), which includes, *inter alia*, IV.B.7.a).1 the ‘Assault on Mongbwalu’ (paras 486-499), IV.B.7.a).2 the ‘Assault on Sayo’ (paras 500-508), IV.B.7.a).3 the ‘Assault on Nzebi’ (paras 509-510), and IV.B.7.a).5 the ‘Aftermath of the assault’ (paras 512-536), which in itself contains IV.B.7.a).5.(a) ‘Mongbwalu (paras 512-524), IV.B.7.a).5.(b) ‘Sayo’ (paras 525-526), IV.B.7.a).5.(c) ‘Appartements camp’ (paras 527-535), and IV.B.7.a).5.(d) ‘Return of the population to Mongbwalu and Sayo’ (para. 536).

³⁸ See Judgment, [ICC-01/04-02/06-2359](#), paras 906-908, where positive findings as to the war crime of attacking civilians during the First Operation only includes the attack in Mongbwalu and Sayo.

³⁹ Judgment, [ICC-01/04-02/06-2359](#), footnote 1730.

⁴⁰ Judgment, [ICC-01/04-02/06-2359](#), para. 645.

the evidence submitted and discussed before it at trial, the Chamber entered (i) negative findings regarding (a) the war crime of attacking civilians, among other locations, in Djuba, Katho, Avetso, and Dhepka, in the context of the Second Operation;⁴¹ and (b) persecution as a crime against humanity, among other locations in Ngongo, Djuba, Katho, Avetso and Dhepka;⁴² and (ii) positive findings regarding Lipri and Tsili only for the war crime persecution (Count 10).⁴³ The Chamber notes that, although initial positive findings were reached in relation to the war crime of attacking civilians (Count 3) for Lipri and Tsili,⁴⁴ they were later excluded.⁴⁵ The Chamber further notes that, at paragraph 566 of the Judgment, the term ‘surrounding villages’ was only used to indicate that ‘persons living in Lipri *and surrounding villages* at the relevant time were, as found above, predominantly Lendu’. As such, the wording in paragraph 566 of the Judgment cannot be referred to as a justification to include within the scope of the victims entitled to reparations in the *Ntaganda* case, in general terms, persons located in the villages surrounding Lipri at the time of the events.

- c. As to the reference to ‘Lipri *and its surrounding villages*’ at paragraph 1054 of the Judgment, the Chamber notes that the relevant sentence indicates that ‘on or about 18 February 2003, when the UPC/FPLC’s second assault on Lipri and its surrounding villages, including Tsili, commenced, the predominantly Lendu population of Lipri and Tsili, including Lendu fighters, fled and sought refuge in the bush’. A footnote directs the reader to paragraphs 567 and 568. At paragraph 567, the Chamber indicates that ‘[o]n or about 18 February 2003, the UPC/FPLC returned to attack Lipri, Tsili and *other villages in the area*’. Footnote 1736 to that sentence explains that the Chamber refers to the coordinated assault on Bambu, Kobu and Lipri, locations in relation to which the Chamber had also made individual separate findings in the Judgment.⁴⁶ Paragraph 568 describes the Lendu fighters present in Lipri and details where the population fled. As such, the wording in paragraph 1054 of the

⁴¹ Judgment, [ICC-01/04-02/06-2359](#), para. 905.

⁴² Judgment, [ICC-01/04-02/06-2359](#), para. 989.

⁴³ Judgment, [ICC-01/04-02/06-2359](#), paras 1000-1008.

⁴⁴ Judgment, [ICC-01/04-02/06-2359](#), para. 909.

⁴⁵ Despite the explicit findings at para. 909, the Chamber later found that, in relation to Lipri and Tsili, ‘the established facts do not allow for an unequivocal conclusion that the civilian population as such or individual civilians not taking direct part in hostilities were the object of the attack.’ Judgment, [ICC-01/04-02/06-2359](#), paras 928, 1199 and Disposition.

⁴⁶ Judgment, [ICC-01/04-02/06-2359](#), *see inter alia*, paras 909-911, 1000-1008.

Judgment cannot be referred to as a justification to include within the scope of the victims entitled to reparations in the *Ntaganda* case, in general terms, persons located in the villages surrounding Lipri at the time of the events.

- d. As to the reference to looting of ‘harvest and crops in Lipri *and its surrounding area*’ at paragraph 569 of the Judgment, the Chamber reiterates that, as stressed at footnote 1730 of the Judgment, although at trial the Prosecutor and CLR2 made submissions related to Count 11 (pillage) indicating that a series of smaller Lendu villages were in or around Lipri, the Chamber specifically indicated that ‘for the purposes of the factual findings in this section’, to which paragraph 569 belongs, the Chamber has made separate findings on each individual location. The Chamber further notes that, when read in the context of the relevant legal findings,⁴⁷ it is clearer that, with reference to paragraph 569, the Chamber entered a conviction against Mr Ntaganda for looting harvest and crops in Lipri only. The wording at paragraph 569 of the Judgment cannot be referred to as a justification to include within the scope of the victims entitled to reparations in the *Ntaganda* case, in general terms, persons located in the villages surrounding Lipri at the time of the events.
- e. As to the reference to burning of houses ‘in and around Kobu’ at paragraph 578 of the Judgment, the Chamber notes that it indeed made a factual finding in that paragraph that the UPC/FPLC have torched and burned down some houses in and around Kobu, which was the basis for a positive legal finding regarding the war crime of destroying the adversary’s property (Count 18)⁴⁸ and persecution as a crime against humanity (Count 10).⁴⁹ As such, although for Counts 10 and 18 the disposition of the Judgment only refer to Kobu, considering that the conclusions reached by the Chamber were made ‘on the basis of all the findings reached in the present Judgment’,⁵⁰ the Chamber notes that victims of houses burned down ‘in and around Kobu’ may be entitled to reparations in the *Ntaganda* case.
- f. Although not mentioned by the Registry, the Chamber also notes that, similar to the last reference above, in the Judgment the Chamber made factual findings as to houses

⁴⁷ Judgment, [ICC-01/04-02/06-2359](#), *see, inter alia*, paras 1032, 1038.

⁴⁸ Judgment, [ICC-01/04-02/06-2359](#), paras 1157, 1159.

⁴⁹ Judgment, [ICC-01/04-02/06-2359](#), paras 1001, 1008.

⁵⁰ Judgment, [ICC-01/04-02/06-2359](#), para. 1199.

having been burned down by the UPC/FPLC ‘in or around Sangi’,⁵¹ which was also the basis for positive legal findings regarding the war crime of destroying the adversary’s property (Count 18)⁵² and persecution as a crime against humanity (Count 10)⁵³. As such, and for the same reasons as above, although for Counts 10 and 18 the disposition of the Judgment only refers to Sangi, victims of houses burned down ‘in or around Sangi’ may be entitled to reparations in the *Ntaganda* case. Moreover, the Chamber considers it important to clarify that victims alleging to have suffered harm in the forest or bush surrounding locations for which positive findings were included in the Judgment may be eligible for reparations for any of the crimes for which the Chamber entered convictions on the basis of the relevant corresponding conduct having occurred in the forest or bush surrounding those locations.⁵⁴

20. As to the margin of appreciation to determine the extent to which victims of houses burned down ‘in or around Kobu’ and ‘in or around Sangi’ would be entitled to reparations, the Chamber considers that the five kilometres radius proposed by the Registry,⁵⁵ and supported by the CLR2,⁵⁶ seems to be a reasonable standard to be applied in these particular cases.

ii. Issue 2

21. The second issue raised by the Registry concerns whether, in light of the findings made by the Chamber in its Judgment, the standard set forth in a decision on victims participation at trial, that authorised 39 victims to participate in the proceedings, should continue applying during the reparations phase.⁵⁷ The Registry indicates that the participation of those 39 victims raises the question as to whether harm suffered in Kilo, Kilo-Mission, and other localities that can be found two to five kilometres away from Kobu, can result from crimes allegedly committed in Kobu, in the context of the attack against the Walendu-Djatsi *collectivité* between on or about 12 February and on or about 27 February 2003.⁵⁸ The

⁵¹ Judgment, [ICC-01/04-02/06-2359](#), para. 602.

⁵² Judgment, [ICC-01/04-02/06-2359](#), paras 1157, 1159.

⁵³ Judgment, [ICC-01/04-02/06-2359](#), paras 1004, 1008.

⁵⁴ See, *inter alia*, Judgment, [ICC-01/04-02/06-2359](#), paras 898, 913-15, 959, 1005-07, 1054, 1063.

⁵⁵ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), footnote 9.

⁵⁶ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 28.

⁵⁷ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), paras 8-9.

⁵⁸ Second decision on victims’ participation in trial proceedings, 16 June 2015, [ICC-01/04-02/06-650](#) (‘Second Decision on Participation’), para. 20.

Chamber notes that it authorised the victims to participate in the trial proceedings on the basis that they submitted having suffered harm allegedly caused by the UPC/FPLC soldiers: (i) sufficiently close in time to the relevant timeframes specified in the charges; and (ii) in locations sufficiently proximate to those listed in the Confirmation Decision.⁵⁹

22. The Defence argues that, in the Judgment, the Chamber defined the Second Operation as an assault against villages located in the Walendu-Djatsi *collectivité*, limiting the list of villages to Kobu, Bambu, Lipri, Tsili Jitchu, Dhekpa, Nyangaray, Buli and Gutsi, without mention of Kilo or Kilo-Mission.⁶⁰ The Defence also notes that references to Kilo in the context of the Second Operation can only be found in relation to actions prior to the beginning of it, placing a briefing or the direction from where the attack on Kobu was launched, but without findings as to any specific criminal behaviour having occurred in Kilo or Kilo-Mission.⁶¹ As such, the Defence submits that individuals having suffered harm in Kilo or Kilo-Mission cannot be eligible for reparations in the context of the Second Operation.⁶²
23. The CLR2 argues that an inclusive approach among the main villages should be applied, as they are traditionally viewed as the ‘centre’ and smaller settlements in close proximity are deemed to be part thereof. The CLR2 argues that they encompass the small sub-villages and/or *quartiers* that surround them, a reality that should adequately be recognised.⁶³ In particular, the CLR2 submits that Kilo is composed of Kilo Mission and Kilo Etat and Bambu is also known as Kilo Moto, which is actually a set of at least four sub villages.⁶⁴
24. The Chamber notes that, within the context of the Second Operation, Kilo is mentioned in the Judgment in a few instances,⁶⁵ but no factual findings that criminal acts were committed

⁵⁹ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 8, referring to Second Decision on Participation, [ICC-01/04-02/06-650](#), para. 22.

⁶⁰ Defence Observations, [ICC-01/04-02/06-2622](#), para. 23.

⁶¹ Defence Observations, [ICC-01/04-02/06-2622](#), para. 24, referring to Judgment, [ICC-01/04-02/06-2359](#), including para. 555 ‘On 13 February 2003, Mr Ntaganda was copied on a message [...] reporting confrontations in Kilo’; para. 558 ‘In a briefing to UPC/FPLC troops in Kilo prior to the Second Operation’; para. 561 ‘In a further briefing in Kilo, on or about the morning of 18 February 2003’; and para. 562 ‘Different UPC/FLPC units attacked from different sides, notably: Salumu Mulenda’s brigade attacked Kobu from Kilo’.

⁶² Defence Observations, ICC-01/04-02/06-2622-Conf, paras 25-27.

⁶³ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 24.

⁶⁴ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 26 and footnote 49.

⁶⁵ Judgment, [ICC-01/04-02/06-2359](#), paras 555, 556, 558, 561, 562, 563, 572. *See also* footnote 1752.

in Kilo and/or Kilo-Mission during the Second Operation can be found in the Judgment and, consequently, no positive legal findings related to Kilo and/or Kilo-Mission during the Second Operation served as basis for the conviction of Mr Ntaganda.⁶⁶

25. As such, victims authorised to participate in the trial proceedings alleging to have suffered harm in Kilo and/or Kilo-Mission during the Second Operation between on or around 18 February and on or about 26 February 2003 are not eligible for reparations in the *Ntaganda* case.

26. In addition, reiterating that the Chamber specifically rejected entering findings as to villages and quarters for which no evidence was submitted and, as discussed in the section above, only retained the language ‘in or around’ in relation to the burning of houses in two specific locations, the Chamber stresses that the margin of appreciation of a five kilometres radius can only be applied in relation to the harm caused to victims of houses burned down ‘in or around Kobu’ and ‘in or around Sangi’.

iii. Issue 3

27. The third issue raised by the Registry concerns the situation of an applicant authorised to participate in the trial proceedings as victim of an alleged murder in the village of Gutsi. The Registry notes that the victim was authorised to participate in the proceedings because of the close territorial proximity between Gutsi and Bambu, where murder was indeed included.⁶⁷

28. The Defence submits that individuals reporting having suffered harm in relation to murders in Gutsi should not be considered as potentially eligible for reparations.⁶⁸ In particular, the Defence notes that the crime of murder in Gutsi was not included in the Confirmation Decision or as a crime for which Mr. Ntaganda was convicted.⁶⁹ In addition, the Defence submits that the Chamber was clear regarding murders committed in the context of the Second Operation and found Mr. Ntaganda guilty of murder solely in the villages of Kobu, Bambu and Sangi.⁷⁰ Regarding murders in Bambu, the Defence notes that the Chamber

⁶⁶ Judgment, [ICC-01/04-02/06-2359](#), para. 578.

⁶⁷ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 10, referring to Second Decision on Participation, [ICC-01/04-02/06-650](#), para. 25-27.

⁶⁸ Defence Observations, [ICC-01/04-02/06-2622](#), para. 33.

⁶⁹ Defence Observations, [ICC-01/04-02/06-2622](#), para. 29.

⁷⁰ Defence Observations, [ICC-01/04-02/06-2622](#), para. 30.

made very specific findings and did not mention any killings in Gutsi.⁷¹ Lastly, the Defence stresses that the Chamber clearly rejected instances of murder when no evidence was presented.⁷²

29. The CLR2 submits that Kobu either encompasses or is surrounded by, and not limited to, *inter alia*, Gutsi.⁷³ It also submits that, while the Chamber referred to, among others, Gutsi in its negative findings in relation to some crimes,⁷⁴ Gutsi, as other locations, should not automatically be excluded from the territorial scope of the case, as these locations are located in or around main villages where other crimes were found to have been committed.⁷⁵
30. The Chamber notes that, in the Judgment, it found that Gutsi was located near the Shari River, a few kilometres north of Bambu.⁷⁶ Although no findings for murder in Gutsi were made in the Judgment, negative findings were entered for a killing of a woman and her child and a woman captured and killed in Bambu.⁷⁷ Positive legal findings in relation to murder in Bambu were only established in relation to the killing of nine hospital patients.⁷⁸
31. The Chamber considers that neither the language in the Judgment nor the factual or legal findings entered therein may support a determination that victims who claim having suffered from murder in Gutsi are entitled to reparations in the *Ntaganda* case.

iv. Additional Issue regarding territorial scope

32. The Registry also refers, in support of issues related to the territorial scope, to Wadza, which the Chamber found to be ‘in or near the centre of Kobu’.⁷⁹ The same example is used by the CLR2 to illustrate the necessity of an inclusive approach to the territorial scope of the case, indicating that Wadda/Wadza is ‘in or near the centre of Kobu’.⁸⁰ In particular, the CLR2 argues that, while negative findings were made in relation to Wadda/Wadza

⁷¹ Defence Observations, [ICC-01/04-02/06-2622](#), para. 32.

⁷² Defence Observations, [ICC-01/04-02/06-2622](#), para. 31, referring to Judgment, [ICC-01/04-02/06-2359](#), footnotes 1740, 1806.

⁷³ CLR2 Observations, [ICC-01/04-02/06-2621](#), footnote 49.

⁷⁴ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 27, referring to Judgment, [ICC-01/04-02/06-2359](#), para. 989, among others.

⁷⁵ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 27.

⁷⁶ Judgment, [ICC-01/04-02/06-2359](#), para. 614.

⁷⁷ Judgment, [ICC-01/04-02/06-2359](#), para. 871.

⁷⁸ Judgment, [ICC-01/04-02/06-2359](#), para. 873.

⁷⁹ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), footnote 9.

⁸⁰ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 27.

regarding the crimes of attack against civilians, persecution, and destruction of property, the Chamber referred to Kobu-Wadza in relation to the massacre in the banana field.⁸¹ The CLR2 submits that victims who suffered in Wadda/Wadza from the crimes the Chamber found to have been committed in Kobu, i.e., attack against civilian population, persecution, destruction of property, murder and attempted murder, rape, sexual slavery, pillage, forcible transfer, and forced displacement, should be eligible for reparations, insofar as Wadda/Wadza is a part of Kobu.⁸²

33. The Chamber notes that, in the Judgment, it specifically indicated that some witnesses referred to events as having taken place in Kobu or in ‘Wadza’ / ‘Wasa’ / ‘Watsa’, the various spelling of which the Chamber considered to pertain to the same location.⁸³ The Chamber notes that the Judgment also indicated that the evidence demonstrated that ‘Wadza’ is ‘in or near the centre of Kobu’; therefore, the Chamber found that ‘they refer to approximately the same location and uses these terms interchangeably’.⁸⁴ The Chamber also notes, however, that the location for which the Chamber entered negative findings regarding Counts 3,⁸⁵ 10,⁸⁶ and 18⁸⁷ is ‘Wadda’ and not ‘Wadza’ / ‘Wasa’ / ‘Watsa’, which the Chamber found to also correspond to Kobu.

34. Accordingly, victims alleging to have suffered harm in ‘Wadza’ / ‘Wasa’ / ‘Watsa’ – unlike those alleging to have suffered harm in Wadda – are eligible for reparations for any of the crimes that the Chamber convicted Mr Ntaganda thereof in Kobu, as the terms were used interchangeably in the Judgment.

b) Temporal scope

i. Issue 1

35. In relation to the temporal scope of the Judgment, the first question raised by the Registry relates to the interpretation of the terms ‘on or about’ and whether the ‘sufficiently close in time to the relevant time frames’ guidance given by the Chamber for the purposes of victims’ participation continues to apply and can more clearly be defined as a three-day

⁸¹ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 27.

⁸² CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 27.

⁸³ Judgment, [ICC-01/04-02/06-2359](#), footnote 1935.

⁸⁴ Judgment, [ICC-01/04-02/06-2359](#), footnote 1935.

⁸⁵ Judgment, [ICC-01/04-02/06-2359](#), para. 905.

⁸⁶ Judgment, [ICC-01/04-02/06-2359](#), para. 989.

⁸⁷ Judgment, [ICC-01/04-02/06-2359](#), para. 1155.

window on either side of the dates mentioned in the Judgment.⁸⁸ In particular, the Registry notes that the temporal scope of the First Operation in the Bayali-Kilo locations remains between ‘on or about’ 20 November 2002 and ‘on or about’ 6 December 2002.⁸⁹

36. The Defence submits that, although the Chamber did use the language ‘in or about 20 November 2020’ for the beginning of the First Operation, the evidence relied upon does not support a three-day window as suggested by the Registry.⁹⁰ It further argues that no such information exist as to the aftermath of the attack.⁹¹ Accordingly, it submits that the approach adopted regarding victims participation at trial should not be adopted for this phase.⁹²

37. The Chamber notes that, particularly regarding the unfolding of the First Operation and the specific date of the attack on Mongbwalu, the Chamber noted in the Judgment that ‘the majority of witnesses placed the attack towards the end of 2002, between September and December 2002’.⁹³ Although relying on the testimony of dozens of witnesses it considered credible and reliable regarding the details of the events, the Chamber specified that, in light of ‘the time elapsed since the relevant events took place, as well the likely impact of the events on the witnesses’ ability to remember specific dates, the Chamber relies on Mr Ntaganda’s testimony in relation to the date when the attack commenced’.⁹⁴ Accordingly, inconsistencies, contradictions and particularly inaccuracies as to dates, shall not automatically exclude victims from their eligibility to reparations, and the assessment should be made on a case-by-case basis, depending on the victim’s personal circumstances.

38. In light of the above, the Chamber instructs the Registry to continue applying the ‘sufficiently close in time to the relevant time frames’ standard, assessing victims’ applications on a case-by-case basis, focusing on the intrinsic consistency and reliability of their accounts and without limiting their eligibility it to a strict three-day window.

⁸⁸ First Report, [ICC-01/04-02/06-2602-AnXI-Red](#), para. 11, referring to Second Decision on Participation, [ICC-01/04-02/06-650](#), para. 22.

⁸⁹ First Report, [ICC-01/04-02/06-2602-AnXI-Red](#), para. 11.

⁹⁰ Defence Observations, [ICC-01/04-02/06-2622](#), paras 34-36.

⁹¹ Defence Observations, [ICC-01/04-02/06-2622](#), para. 37.

⁹² Defence Observations, [ICC-01/04-02/06-2622](#), para. 38.

⁹³ Judgment, [ICC-01/04-02/06-2359](#), footnote 1391.

⁹⁴ Judgment, [ICC-01/04-02/06-2359](#), footnote 1391.

ii. Issue 2

39. The second issue raised by the Registry regarding the temporal scope refers to the Second Operation in the Walendu-Djatsi *collectivité*, which the Registry submits appears to have commenced on or about 18 February 2003 and concluded in early March 2003, at least for Lipri.⁹⁵ As to the Banyali-Kilo locations, the Registry requests the Chamber's guidance as to the contours of the temporal scope of the Second Operation. In particular, the Registry asks the Chamber whether general descriptions provided by victims, such as during '*shika na mukono*', or the 'pacification meeting', or 'in February 2003', or 'around February 2003', or 'in February/March', 'the beginning of March' or 'March' would be acceptable to assess an application within the scope of the Judgment.⁹⁶ The Registry further suggests to apply a three-day window on either side of the relevant temporal scope mentioned in the Judgment.⁹⁷
40. The Defence submits that the same reasoning that applies to the First Operation should govern the Second Operation.⁹⁸ In particular, it alleges that, since the Chamber placed the beginning of the Second Operation after the failed assault on Lipri (which took place on 17 February 2003), and that according to the evidence the assaults on Kobu, Bambu and Lipri occurred on the same day (on or about 18 February 2003), harm suffered as a result of crimes committed before 17 February 2003, at a minimum, cannot be attributed to Mr Ntaganda.⁹⁹ In addition, the Defence argues that, even if a victim refers to 'the pacification meeting', the event must still remain within the remit of the dates established by the Chamber, i.e. on or about 22 February 2003.¹⁰⁰ With regard to the end of the Second Operation, the Defence submits that the Chamber clearly intended to limit the temporal scope to 'early March 2003' at most, at least for Lipri, and opposes the inclusion of the entire month of March.¹⁰¹
41. The CLR2 agrees with the Registry's approach that these applications that either refer to well-known events, such as '*shika na mukono*', 'pacification meeting', or that otherwise

⁹⁵ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 12.

⁹⁶ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 12.

⁹⁷ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 12.

⁹⁸ Defence Observations, [ICC-01/04-02/06-2622](#), para. 40.

⁹⁹ Defence Observations, [ICC-01/04-02/06-2622](#), paras 41-2.

¹⁰⁰ Defence Observations, [ICC-01/04-02/06-2622](#), para. 44.

¹⁰¹ Defence Observations, [ICC-01/04-02/06-2622](#), para. 45, referring to Judgment, [ICC-01/04-02/06-2359](#), footnote 1751.

satisfy the applicable time frame of February-March 2003 should fall within the scope of the conviction.¹⁰² With regard to applications that refer to either January or April 2003, or to dates outside the suggested three-day window, the CLR2 submits that their assessment should be deferred until the victim has been able to provide clarifications, particularly taking into account that, due to the period of time elapsed, the victims concerned may not have been able to precisely recall the dates of the events and/or the information contained in their application forms may have been inaccurately recorded.¹⁰³

42. The Chamber notes that, as with the First Operation, when establishing dates regarding the Second Operation, the Chamber noted in the Judgment that witnesses had difficulties to remember dates and timeframes.¹⁰⁴ For example, regarding the date of the pacification meeting, the Chamber noted in the Judgment that there were

certain discrepancies in the various witnesses' testimony with respect to the date as well as the exact day of the week of the 'pacification meeting' [...]. Considering the time elapsed since the relevant events, the likely impact of the events on the witnesses' ability to remember specific dates or weekdays, as well as the fact that some witnesses had been living in very difficult conditions in the bush for some time prior the 'pacification meeting' which could also affect their perception of time, the Chamber considers that these inconsistencies do not affect its overall finding on the date of the 'pacification meeting' or the credibility and reliability of the aforementioned witness accounts.¹⁰⁵

43. Accordingly, as for the Issue 1 (temporal scope), the Chamber instructs the Registry to continue applying the 'sufficiently close in time to the relevant time frames' standard, assessing victims' applications on a case-by-case basis and depending on the victim's personal circumstances, focusing on the intrinsic consistency and reliability of their accounts without limiting their eligibility to a strict three-day window.

iii. Issue 3

44. The third question posed by the Registry relates to the temporal scope of the crime of using child soldiers actively in the hostilities. More specifically, as to whether a three-day window on either side of 'on or about 6 August 2002' and 'on or about 30 March 2003'

¹⁰² CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 29.

¹⁰³ CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 29-30.

¹⁰⁴ Judgment, [ICC-01/04-02/06-2359](#), *see, inter alia*, footnotes 1668, 1879, 1936.

¹⁰⁵ Judgment, [ICC-01/04-02/06-2359](#), footnote 1832.

would be acceptable, and whether applications citing periods beyond that frame, such as July 2002 or mid-June 2003, should be assessed as outside the scope of the case.¹⁰⁶

45. The Defence relies on the Chamber's ruling that the crime of actively using child soldiers in hostilities 'is temporary in nature under IHL' to submit that both the nature of the charge and the specific language used by the Chamber in framing of the scope of this crime leave no place for speculation.¹⁰⁷ Accordingly, the Defence opposes the inclusion of victims who report having suffered harm three days before or after the temporal scope set by the Chamber in the list of potential beneficiaries.¹⁰⁸
46. The CLR1 supports a flexible – yet consistent – approach to the interpretation of the expression 'on or about' and submits that, based on the approach adopted by the Chamber in the Judgment and relevant jurisprudence from other Chambers of the Court and other international jurisdictions, a fixed window of time should be applied on both sides of the temporal scope.¹⁰⁹ The CLR1 considers that a window of at least three days would be reasonable, but invites the Chamber to consider that, in light of the circumstances of the case, a more extensive window of time may be more appropriate to ensure that victims 'sufficiently close in time to the relevant timeframes specified in the charges' will be considered for reparations.¹¹⁰
47. The Chamber notes that the temporal scope of the war crime of using children actively in the hostilities was established by the Chamber in the Judgment in direct relation to the period of military operations conducted by the UPC/FPLC relevant to Mr Ntaganda's conviction. Therefore, the same considerations as for other issues as to the time elapsed since the events and the traumatic consequences they had for victims shall apply, in particular, noting also the young age of the victims of this crime at the time of the events. Moreover, recalling that the war crimes of conscription and enlistment (Counts 14 and 15) were found to have occurred between on or about 6 August 2002 and 31 December 2003,¹¹¹ the Chamber considers that the same conclusion applies to these crimes. As such, the

¹⁰⁶ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 13.

¹⁰⁷ Defence Observations, [ICC-01/04-02/06-2622](#), paras 48-49, referring to Judgment, [ICC-01/04-02/06-2359](#), para. 1113.

¹⁰⁸ Defence Observations, [ICC-01/04-02/06-2622](#), paras 49-50.

¹⁰⁹ CLR1 Observations, [ICC-01/04-02/06-2620-Red](#), paras 14-21.

¹¹⁰ CLR1 Observations, [ICC-01/04-02/06-2620-Red](#), para. 21, referring to Second Decision on Participation, [ICC-01/04-02/06-650](#), para. 22.

¹¹¹ Judgment, [ICC-01/04-02/06-2359](#), para. 1199.

Registry shall continue applying the ‘sufficiently close in time to the relevant time frames’ standard, assessing victims’ applications on a case-by-case basis and depending on the victim’s personal circumstances, focusing on the intrinsic consistency and reliability of their accounts and without limiting their eligibility to a strict three-day window.

c) Subject-Matter Jurisdiction

i. Issue 1

48. The first issue related to the subject-matter jurisdiction raised by the Registry refers to who may qualify as an indirect victim of child soldiers related crimes.¹¹² In particular, the Registry notes that for the purposes of victims participation at trial, the Chamber granted victim status to a person qualifying as both victim of the attacks and indirect victim of the crime of enlisting child soldiers.¹¹³ Noting the principles established by the Appeals Chamber in the *Lubanga* case related to indirect victims, the Registry suggests applying the same principles to all potential beneficiaries in the case.¹¹⁴
49. The Defence relies on its prior submissions,¹¹⁵ were it took issue, in particular, with the second category of indirect victims identified in the *Lubanga* case as ‘anyone who attempted to prevent the commission of one or more of the crimes under consideration’,¹¹⁶ arguing that their harm does not arise out of the harm suffered by direct victims.¹¹⁷ The Defence further argued in its prior submissions that ‘family members of direct victims’ should qualify as indirect victims only if they were close family members, such as spouses and children, and that the category of ‘other persons who suffered personal harm’ should include only persons demonstrating a close personal relationship with the direct victim.¹¹⁸

¹¹² First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 14.

¹¹³ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 14, referring to Second Decision on Participation, [ICC-01/04-02/06-650](#), para. 24.

¹¹⁴ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 14, referring to Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Amended Order for Reparations, [ICC-01/04-01/06-3129-AnxA](#), para. 6(b) (*‘Lubanga Reparations Order’*).

¹¹⁵ Defence Observations, [ICC-01/04-02/06-2622](#), para. 51, referring to Defence submissions on reparations, 28 February 2020, ICC-01/04-02/06-2479-Conf (public redacted version filed on 6 March 2020, [ICC-01/04-02/06-2479-Red](#), (*‘Defence February 2020 Response’*)).

¹¹⁶ Defence February 2020 Response, [ICC-01/04-02/06-2479-Red](#), paras 18, 23.

¹¹⁷ Defence February 2020 Response, [ICC-01/04-02/06-2479-Red](#), para. 20, referring to Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Redacted version of “Decision on ‘indirect victims’”, ICC-01/04-01/02-1813, 8 April 2009 (*‘Lubanga Decision on Indirect Victims’*), para. 6.

¹¹⁸ Defence February 2020 Response, [ICC-01/04-02/06-2479-Red](#), paras 20-22.

50. At the outset, the CLR1 notes that the situation the Registry seeks guidance on should be distinguished from the separate issue of whether those who suffered harm as a result of the conduct of direct victims may qualify as ‘indirect victims’, which has been the subject of litigation before the Court.¹¹⁹ Regarding the example recalled by the Registry, the CLR1 submits that there is no legal impediment, nor conceptual or practical difficulties, for the same person to qualify simultaneously as a direct and indirect victim in these circumstances, as the crimes affect different legally protected interests, cause diverse harm, and are likely addressed by different types and modalities of reparations.¹²⁰ Lastly, the CLR1 agrees with the Registry’s suggestion that the definition of ‘indirect victim’ adopted by the Appeals Chamber in the *Lubanga* case should equally be applied in the present proceedings.¹²¹
51. As to whether a person may qualify simultaneously as a direct and an indirect victim based on a different crime for which Mr Ntaganda is convicted, the Chamber notes that there is no legal or practical obstacle that may prevent victims from seeking reparations for the different harm they have suffered and, thus, no impediment exists to regard them as eligible for reparations.
52. Regarding the concept of indirect victims, the Chamber notes that the definition or interpretation of ‘indirect victim’ will be addressed by the Chamber in the Reparations Order. In accordance with the jurisprudence of the Appeals Chamber, indirect victims include four categories of victims: (i) the family members of direct victims; (ii) anyone who attempted to prevent the commission of one or more of the crimes under consideration; (iii) individuals who suffered harm when helping or intervening on behalf of direct victims; and (iv) other persons who suffered personal harm as a result of these offences.¹²² The Chamber sees no reason to depart from the Appeals Chamber jurisprudence in this respect.
53. As for the Defence’s arguments related to the concept of ‘family’ included under the first category, the Chamber notes that the concept must be assessed in the specific cultural context, bearing in mind the local, social, and familial structures.¹²³ In this respect, the

¹¹⁹ CLR1 Observations, ICC-01/04-02/06-2620-Conf, para. 23, referring to *Lubanga* Decision on Indirect Victims, [ICC-01/04-01/06-1813](#), paras. 44-52.

¹²⁰ CLR1 Observations, [ICC-01/04-02/06-2620-Red](#), paras 24-25.

¹²¹ CLR1 Observations, [ICC-01/04-02/06-2620-Red](#), para. 26.

¹²² *Lubanga* Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 6(b).

¹²³ *Lubanga* Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 7.

Chamber does not find support in the Defence's submission that the concept should comprise only close family members, such as spouses and children.¹²⁴ In effect, the Chamber notes that, having suffered harm through, e.g., the loss of a spouse or a child, or of a parent where the indirect victims was a child at the time of the relevant events, can generally be presumed. An individual may have also suffered harm due to the commission of (a) crime(s) against a more distant family member, depending on the direct and indirect victims' factual circumstances.

54. In relation to the Defence's argument related to the second category (i.e., 'anyone who attempted to prevent the commission of one or more of the crimes under consideration'), that these persons should not be considered indirect victims as the harm they claim does not arise from the harm suffered by direct victims,¹²⁵ the Chamber considers that, as long as these victims can demonstrate that they have suffered personal harm, such individuals need not be excluded from the category of indirect victims.
55. In relation to the Defence's argument that the fourth category should only include persons demonstrating a close personal relationship with the direct victim,¹²⁶ the Chamber notes that scenarios can be envisaged where individuals have suffered personal harm as a result of the commission of a crime against a person with whom they did not have a close personal relationship, but which nevertheless was of significant importance in their lives. Such individuals should not be barred, without more, from receiving reparations, should they be able to demonstrate that they have suffered a harm as a result of the commission of a crime against the direct victim.
56. The Chamber further notes that instances can be envisaged where the difference between the aforementioned four categories is not entirely clear. While some individuals may fall under more than one of these categories, the Chamber considers that what is of importance when assessing whether they qualify as indirect victims is the fact that they have suffered personal harm as a result of the commission of a crime against another person, and for which Mr Ntaganda was convicted.

¹²⁴ Defence February 2020 Response, [ICC-01/04-02/06-2479-Red](#), para. 22.

¹²⁵ Defence February 2020 Response, [ICC-01/04-02/06-2479-Red](#), paras 18, 23.

¹²⁶ Defence February 2020 Response, [ICC-01/04-02/06-2479-Red](#), para. 22.

ii. Issue 2

57. Lastly, the Registry requests guidance as to whether victims of underlying acts of persecution as a crime against humanity (such as murder, attempted murder, rape, sexual slavery, forced displacement, pillage and destruction of property) could be considered as falling within the scope of the Judgment, despite the fact that those actions were ultimately subject to a negative finding as separate crimes in the Judgment. For instance, the Registry inquires as to whether a victim of forced displacement in the village of Nyangaray would still be eligible for reparations under the crime of persecution, in spite of the fact that forced displacement in Nyangaray was subject to a negative finding.¹²⁷
58. The Defence submits that, although the underlying acts forming the factual basis of persecution are indeed similar to the crime of forcible transfer of population, it is significant that the Chamber did not find Mr Ntaganda guilty of this crime.¹²⁸ The Defence also argues that, in light of the principle that victims can only be awarded reparations for the harm suffered as a result of a crime for which Mr Ntaganda was convicted, it would be incorrect to grant reparations to victims having purportedly suffered from acts for which the accused was not convicted, even if the acts could legally qualify as an underlying act of persecution.¹²⁹
59. The CLR2 submits that the Registry's preliminary assessment of the eligibility of victims should be based on a holistic assessment of the information contained in the application forms and should be focused on the description of the relevant underlying acts and the harm suffered, rather than the reference to the crimes, as the victims could hardly understand the distinction between crimes from a legal perspective.¹³⁰ Regarding the crime of persecution, the CLR2 submits that the Chamber held that the commission of any act considered to be a crime against humanity will, in principle, result in the deprivation of fundamental rights and meet the minimum level of severity required.¹³¹ As to Nyangaray, the CLR2 indicates that the Chamber's findings in the Judgment support the submission that the inhabitants from Nyangaray who at the relevant time suffered from crimes which either led them to

¹²⁷ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 15.

¹²⁸ Defence Observations, [ICC-01/04-02/06-2622](#), para. 54.

¹²⁹ Defence Observations, [ICC-01/04-02/06-2622](#), paras 55-58.

¹³⁰ CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 31-32.

¹³¹ CLR2 Observations, [ICC-01/04-02/06-2621](#), para. 33, referring to Judgment, [ICC-01/04-02/06-2359](#), para. 994.

flee from the violence or from crimes that were committed while victims were fleeing, should be deemed eligible for reparations.¹³²

60. The Chamber reiterates that reparations 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 sentence.¹³³ Accordingly, only victims of underlying acts that served as the basis for the Chamber to convict Mr Ntaganda for the crime of persecution are eligible for reparations.
61. In relation to Nyangaray, the Chamber notes that the Chamber clearly delimited the underlying acts that lead to the conviction for persecution in that village as: '[a]t the start of the Second Operation, the UPC/FPLC took control over Nyangaray. The population fled and hid in the bush, where they stayed in difficult conditions'.¹³⁴ The Chamber had previously noted that, although witnesses testified that killings had occurred in fields of or near Nyangaray, 'rape, sexual slavery, and murder have not been charged for Nyangaray'.¹³⁵ The Chamber clearly stated that it 'cannot make any finding on the alleged killings and (potential) attempted killing. In addition, the Chamber recalls that as with the other incident, murder is not charged in relation to Nyangaray'.¹³⁶ Accordingly, only victims of the underlying acts specifically referred to in the Chamber's positive findings that lead to the conviction for persecution in Nyangaray, i.e. those that because of the UPC/FPLC taking control over Nyangaray resulted in individuals fleeing and hiding in the bush, where they stayed in difficult conditions, may be eligible for reparations in the *Ntaganda* case on the basis of this crime.
62. The Chamber further notes that, while Mr Ntaganda was not convicted for the crime of forced displacement in Nyangaray, the Chamber found that 'persons present in Nyangaray [and other villages] were displaced during and in the immediate aftermath of the UPC/FPLC assaults on those villages between the beginning of the Second Operation and on or about 25 February 2003'.¹³⁷ As detailed in the Judgment, however, because 'the

¹³² CLR2 Observations, [ICC-01/04-02/06-2621](#), paras 34-35, referring to Judgment, [ICC-01/04-02/06-2359](#), paras 1000-1008.

¹³³ *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 20.

¹³⁴ Judgment, [ICC-01/04-02/06-2359](#), para. 1000, *see also* para. 640.

¹³⁵ Judgment, [ICC-01/04-02/06-2359](#), footnote 2041.

¹³⁶ Judgment, [ICC-01/04-02/06-2359](#), footnote 2041.

¹³⁷ Judgment, [ICC-01/04-02/06-2359](#), para. 1055.

evidence on the record [did] not establish the reasons for the population's flight from the village as the UPC/FPLC took control over the village, the conditions prevailing in the village following the UPC/FPLC takeover, or whether the population had the possibility to return' the Chamber was not able to 'establish that the first element of the crime against humanity of deportation or forcible transfer of population is fulfilled in relation to Nyangaray'.¹³⁸

63. Accordingly, the Chamber notes that, although the underlying act relevant to deportation or forced displacement was found to have occurred, the existence of the crime was not demonstrated because other legal elements for that underlying act to constitute the crime against humanity of deportation or forced displacement had not been proven.

B. Other matters

64. The Chamber notes that it expects the Registry to conclude the assessment of how many of the victims authorised to participate in the proceedings may potentially be eligible for reparations given the scope of the Judgment, as soon as practicable, and no later than 15 January 2021.
65. As to the assessment of how many of the (potential) beneficiaries in the *Lubanga* case may also be eligible in the *Ntaganda* case, an initial review of the Judgments in both cases appears to show that not all victims eligible for reparations in the *Lubanga* case may also be eligible for reparations in the *Ntaganda* case. The Chamber therefore expects the Registry to conclude the assessment of how many victims potentially eligible for reparations in the *Lubanga* case may also potentially be eligible for reparations in the *Ntaganda* case, no later than 15 January 2021, on the basis of the scope of both judgments, with a view to providing an overall figure of how many potentially eligible victims are currently known.
66. Pursuant to Regulation 35(2) of the Regulations, the Chamber hereby decides to extend the time limit for the Registry to file its Second Report on Reparations,¹³⁹ to 15 January 2021.

¹³⁸ Judgment, [ICC-01/04-02/06-2359](#), para. 1068.

¹³⁹ First Decision on Reparations, [ICC-01/04-02/06-2547](#), paras 43-44.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

INSTRUCTS the Registry to conclude, by 15 January 2021, at the latest, the assessment of how many victims authorised to participate in the proceedings may potentially be eligible for reparations and inform the Chamber accordingly;

INSTRUCTS the Registry to conclude, by 15 January 2021, at the latest, the assessment of how many victims potentially eligible for reparations in the *Lubanga* case may also potentially be eligible for reparations in the *Ntaganda* case and inform the Chamber accordingly;

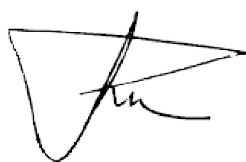
DIRECTS the Registry to take into account the clarifications provided in the present Decision when assessing eligibility of potential beneficiaries of reparations;

DECIDES to extend the deadline for the Registry to file its Second Report on Reparations to 15 January 2021.

Done in both English and French, the English version being authoritative.



Judge Chang-ho Chung, Presiding Judge



Judge Robert Fremr



Judge Olga Herrera Carbuccion

Dated this Tuesday, 15 December 2020

At The Hague, The Netherlands