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**International  
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**TRIAL CHAMBER VI**

**Before: Judge Chang-ho Chung, Single Judge**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

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

**Public**

**Public Redacted Version of the “Final Observations on Reparations of the  
Common Legal Representative of the Victims of the Attacks” (ICC-01/04-02/06-  
2633-Conf)**

**Source: Office of Public Counsel for Victims (CLR2)**

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## **I. INTRODUCTION**

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby files his final observations on reparations pursuant to the “Order setting deadlines in relation to reparations” of 5 December 2019 (the “5 December 2019 Order”).<sup>1</sup> In particular, the Legal Representative will make observations on the following matters: (i) the use of presumptions of harm in the present proceedings; (ii) the standard of proof and the use of presumptions of harm with regard to victims of sexual violence; (iii) the use of presumptions of harm with regard to children born out of rape; (iv) the Expert Reports; (v) reparations submissions presented by the other parties and participants; (vi) the assessment of the potential eligibility of the victims; and (vii) concluding remarks and way forward.

## **II. CONFIDENTIALITY**

2. The present submissions are classified as confidential pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court, since they refer to the content of documents likewise classified as confidential. A public redacted version of these submissions will be filed in due course.

## **III. SUBMISSIONS**

### **1) ON THE USE OF PRESUMPTIONS OF HARM**

3. As regards the presumptions of harm, the Legal Representative maintains his previous submissions that the nature of the crimes committed in the present case is such that harm should be presumed, given in particular that the victims suffered multi-dimensional harm by virtue of the fact that entire communities were targeted in the perpetration of these crimes. The focus of the inquiry should not be on the victims

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<sup>1</sup> See the “Order setting deadlines in relation to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), 5 December 2019 (the “5 December 2019 Order”), para 9(f).

proving harm, but rather on the victim proving, on a balance of probabilities standard, that he or she qualifies as a victim of the crimes for which Mr Ntaganda has been found guilty, and if so, should be presumed to have suffered harm.<sup>2</sup> Harm should be presumed for all direct victims of all crimes at stake, but also for indirect victims: both close and remote family members and for entire family units, as regards the crimes of murder, destruction of property and pillage; and for close relatives, as regards the crimes of rape and sexual slavery.<sup>3</sup> Harm should also be presumed for children born out of rape,<sup>4</sup> the matter being discussed in more detail *infra*.

4. The Legal Representative notes that his submissions on presumptions of harm either accord with, or are supported by, the Expert Reports.<sup>5</sup> Further to his references to the Court's and international jurisprudence and to the *Bemba* Reparations Experts report in support of his submissions related to presumptions of harm,<sup>6</sup> the Legal Representative points below to additional relevant international jurisprudence as established by the Inter American Court of Human Rights (the "IACtHR").

5. As a general rule, the IACtHR presumes that moral harm has been suffered by the direct victim and their next of kin in cases related to gross violations of human

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<sup>2</sup> See the "Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations", [No. ICC-01/04-02/06-2477-Conf](#), 28 February 2020. A public redacted version was filed on the same day as [No. ICC-01/04-02/06-2477-Red](#). Corrigenda of these submissions were filed on 20 November 2020. See the "Corrigendum of the 'Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations'", [No. ICC-01/04-02/06-2477-Conf-Corr](#), 20 November 2020 and the corresponding public redacted version "Corrigendum of the 'Public redacted version of the 'Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations''", [No. ICC-01/04-02/06-2477-Red-Corr](#), 20 November 2020 (the "CLR2 Submissions on Reparations"), paras. 39 and 47-49.

<sup>3</sup> *Idem*, paras. 33-53.

<sup>4</sup> *Idem*, para. 38.

<sup>5</sup> The Expert Reports will be discussed in more detail *infra*.

<sup>6</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, paras. 36 and 50-52.

rights,<sup>7</sup> because such harm and suffering are “evident”.<sup>8</sup> Recently, the IACtHR has stated that the presumption of moral harm can be applied to any human rights violation regardless of whether it is grave or not.<sup>9</sup> The presumption of moral harm has also been applied in cases of enforced disappearances.<sup>10</sup>

6. While it is generally acknowledged that material damage is easier to assess than moral harm, the IACtHR has also invoked the use of presumptions when assessing material damage, such as for instance, in cases of loss of prospective earnings. In this regard, the IACtHR usually presumes that a victim who has attained the age of majority “carries out productive activities and perceives, at least, an income equivalent to the minimum legal wage in the country involved”.<sup>11</sup> In line with this, if the plaintiffs cannot prove that they have received a fixed income, the IACtHR will calculate the damage presuming that the victims’ income was, at least, the minimum wage.<sup>12</sup>

7. In the context of the IACtHR, the presumption principle is believed to be in the interest of promoting justice.<sup>13</sup> In this light, when the claimant cannot substantiate his

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<sup>7</sup> See IACtHR, *Aloeboetoe et al. v. Surinam*, [Judgment of 10 September 1993](#), Series C, No. 15, para. 76; “White Van” (*Paniagua Morales et al.*) *v. Guatemala*, [Judgment of 25 May 2001](#), Series C, No. 76, paras. 124 and 158; “White Van” (*Paniagua Morales et al.*) *v. Guatemala*, [Judgment of 25 May 2001](#), Series C, No. 76, Separate opinion of Judge De Roux Rengifo, p. 1; *La Cantuta v. Peru*, [Judgment of 29 November 2006](#), Series C, No. 162, paras. 217-218; *Caracazo v. Venezuela*, [Judgment of 29 August 2002](#), Series C, No. 95, para. 50(e); *Pueblo Bello Massacre v. Colombia*, [Judgment of 31 January 2006](#), Series C, No. 140, para. 257; *Maripán Massacre v. Colombia*, [Judgment of 25 September 2005](#), Series C, No. 134, paras. 143-146.

<sup>8</sup> See IACtHR, *Río Negro Massacres v. Guatemala*, [Judgment of 4 September 2012](#), Series C, No. 250, para. 307; *Rodríguez Vera et al. (The disappeared from the Palace of Justice) v. Colombia*, [Judgment of 14 November 2014](#), Series C, No. 287, para. 533; *Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v. Guatemala*, [Judgment of 30 November 2016](#), Series C, No. 329 (only available in Spanish), para. 324.

<sup>9</sup> See IACtHR, *Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v. Guatemala*, *supra* note 8, para. 324.

<sup>10</sup> See IACtHR, *Ticona Estrada et al. v. Bolivia*, [Judgment of 27 November 2008](#), Series C, No. 191, para. 133. In this paragraph, the IACtHR cites several other cases in which it had made a similar ruling.

<sup>11</sup> See IACtHR, *Caracazo v. Venezuela*, *supra* note 7, para. 50(d); “Street Children” (*Villagrán-Morales et al.*) *v. Guatemala*, [Judgment of 26 May 2001](#), Series C, No. 77, para. 79; *El Amparo v. Venezuela*, [Judgment of 14 September 1996](#), Series C, No. 28, para. 28.

<sup>12</sup> See ODIER-CONTRERAS (D.), *Collective Reparations. Tensions and Dilemmas Between Collective Reparations with the Individual Right to Receive Reparations*, Intersentia, Cambridge, 2018, p. 110.

<sup>13</sup> See BARKER (J.), “The different forms of reparation: compensation”, in CRAWFORD (J.), PELLET (A.), OLLESON (S.) (Eds.), *The Law on International Responsibility*, Oxford University Press, Oxford, 2010, p. 602.

or her reparation claim with documentary evidence, the IACtHR could presume the existence of damage based on the merits and assess this damage based on the principle of equity.<sup>14</sup> The IACtHR applies the principle of “*sana crítica*”, which has been translated into English as “*sound criticism*”, “*competent analysis*”, “*judgment based on admissible evidence*”, “*healthy criticism*”, “*reasonable credit*”, “*sound judgment*”, “*sound judicial discretion*”, etc.<sup>15</sup> The *sana crítica* principle refers to “*a system for evaluating the weight of evidence [...] in accordance with the rules of logic and experience*”,<sup>16</sup> and is commonly used when a tribunal lacks specific rules prescribing a particular weight to certain pieces of evidence.<sup>17</sup> This principle requires judges to explain the considerations on which they relied to weight evidence, and thereby represents a middle point between rigidity regarding evidentiary rules on one hand and arbitrary decisions on the other hand.<sup>18</sup>

8. The Legal Representative submits that in the circumstances of the present reparations proceedings, where victims will encounter extreme difficulties in producing evidence as regards their harm and losses suffered as a result of attacks against civilians and/or forced displacement and/or forcible transfer and/or persecution, the destruction and/or pillage of their belongings, or a lack of civil administration, the use of presumptions of harm will be necessary to achieve equity.

## **2) ON THE STANDARD OF PROOF AND THE USE OF PRESUMPTIONS OF HARM WITH REGARD TO VICTIMS OF SEXUAL VIOLENCE**

9. The Legal Representative maintains his previous submissions that the standard applicable to the present reparations proceedings should be a balance of probabilities as interpreted and developed by the jurisprudence of the Court,<sup>19</sup> and in particular by

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<sup>14</sup> See IACtHR, *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, [Judgment of 21 November 2007](#), Series C, No. 170, para. 232.

<sup>15</sup> See PAUL (A.), “Sana Crítica: The System for Weighing Evidence Utilized by the Inter-American Court of Human Rights”, *Buffalo Human Rights Law Review*, vol. 18, 2012, pp. 193-194.

<sup>16</sup> *Idem*, p. 193.

<sup>17</sup> *Idem*, pp. 205 and 212.

<sup>18</sup> *Idem*, pp. 208, 212-213 and 220.

<sup>19</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, paras. 32-34 and 47.

the Appeals Chamber in the *Lubanga* case which held that the victims' "coherent and credible" accounts did not offend its application of the burden of the balance of probabilities, and that documents or other proof, although desirable, are not strictly required to satisfy the burden.<sup>20</sup>

10. In particular, the Legal Representative maintains his submissions that in light of the standard of a balance of probabilities as interpreted by the above jurisprudence of the Court, persons should be found eligible if they credibly state that they have been victims of rape or sexual slavery and the circumstances of their allegations fit the parameters of the conviction in terms of time, place, and the perpetrator being affiliated with the UPC/FPLC. Producing supporting documents, although desirable, in particular in relation to victims of sexual violence, should not be a requirement,<sup>21</sup> in light of the particular circumstances of the present case.<sup>22</sup> In this regard, the Legal Representative disagrees with the Second Expert Report that additional documents are needed to support reparations requests of victims of sexual and gender-based violence (the "SGBV").<sup>23</sup>

11. In line with his previous submissions,<sup>24</sup> the Legal Representative submits that as long as a victim's account of the circumstances surrounding the time, place, and alleged perpetrator satisfies the Chamber's standard on a balance of probabilities, the ensuing harm should be presumed. As the Chamber has heard from both expert

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<sup>20</sup> See the "Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'" (Appeals Chamber), [No. ICC-01/04-01/06-3466-Red A7 A8](#), 18 July 2019 (the "*Lubanga* 2019 Judgment"), paras. 198-204.

<sup>21</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 38.

<sup>22</sup> *Idem*, para. 33.

<sup>23</sup> The matter will be discussed in more detail *infra*.

<sup>24</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 38.

witnesses,<sup>25</sup> fact witnesses,<sup>26</sup> and participating victims,<sup>27</sup> stigma, fear, and trauma frequently deter victims of sexual violence from reporting their rapes or seeking medical care. It is submitted that, coupled with the circumstances of an armed conflict, attacks against civilians and/or forced displacement and/or forcible transfer and/or persecution, as well as the absence of medical infrastructures, often make it impossible for victims of sexual violence to report these crimes and/or seek medical assistance and care. In these circumstances, it is all the more necessary to acknowledge the suffering of such victims by using presumptions of harm.

### **3) ON THE USE OF PRESUMPTIONS OF HARM WITH REGARD TO CHILDREN BORN OUT OF RAPE**

12. The Legal Representative maintains his previous submissions that children born out of the rape should also be eligible for reparations, as indirect victims, and their harm resulting from the crimes of rape and sexual slavery should be presumed.<sup>28</sup>

13. Although it is estimated that there are possibly hundreds of thousands of children born of wartime sexual and gender-based violence,<sup>29</sup> and there is growing academic research and literature on the subject,<sup>30</sup> these children have received little to no attention in international criminal law. It has been argued by some commentators that children born out of wartime rape “represent a unique category of war-affected

<sup>25</sup> See MAEVE LEWIS, the transcript of the hearing held on 30 June 2016, [No. ICC-01/04-02/06-T-113-Red-ENG-WT](#), pp. 35-56, and 65-66; and the transcript of the hearing held on 1 July 2016, [No. ICC-01/04-02/06-T-114-CONF-ENG CT](#), pp. 8-12. See also JOHN YUILLE, [DRC-OTP-2085-0103](#), p. 2085-0107.

<sup>26</sup> See e.g. P-0912, the transcript of the hearing held on 6 October 2016, [No. ICC-01/04-02/06-T-148-CONF-ENG CT](#), p. 77. See also [REDACTED], the transcript of the hearing held on 5 October 2016, [No. ICC-01/04-02/06-T-147-CONF-ENG CT](#), pp. 36-37. See also [REDACTED], the transcript of the hearing held on 23 September 2016, [No. ICC-01/04-02/06-T-138-CONF-ENG CT](#), pp. 99-100.

<sup>27</sup> See e.g. a/30286/15, the transcript of the hearing held on 1 March 2017, [No. ICC-01/04-02/06-T-198-Red2-ENG](#), p. 60. See also [REDACTED], the transcript of the hearing held on 1 March 2017, [No. ICC-01/04-02/06-T-198-CONF-ENG ET](#), pp. 42-43.

<sup>28</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 38.

<sup>29</sup> See SETO (D.), *No Place for a War Baby: The Global Politics of Children Born of Wartime Sexual Violence*, Ashgate, Farnham, 2013, p. 15.

<sup>30</sup> See MOCHMANN (I.C.), “[Children Born of War - A Decade of International and Interdisciplinary Research](#)”, *Historical Social Research*, vol. 42(1), 2017, pp. 320-346. See also the [International Network for Interdisciplinary Research on Children Born of War](#) (INIRC-CBOW) and the [Children Born of War](#) (CBOW).



*children: in contrast to child soldiers, who are directly affected by the conflict, the suffering and indeed the existence of children born of sexual and gender-based violence is brought about by the original crime perpetrated against their mother”*.<sup>31</sup>

14. The Legal Representative fully agrees with the Second Expert Report insofar it explains the devastating effects of rape on children born thereof :

*“These children [...] face stigma and social exclusion that can result in poverty and social deprivation as they are pushed to the margins of society. Combined with the psychological issues these children can face, such factors can lead to poor health outcomes including malnutrition, vulnerability to abuse, and susceptibility to disease”*.<sup>32</sup>

15. The Reparations Experts in the *Bemba* case made similar observations:

*“[C]hildren born of rape are also mocked, discriminated against and stigmatized in school or other sociocultural and religious settings [...] and, as a result, are deprived of education and normal childhood and adolescent friendships. In the absence of the abandoning parent, they often grow up in a one- (ill or depressed) parent household, and are subjected to all the consequent related losses of the parental functions they are deprived of and of normal opportunities for advancement”*.<sup>33</sup>

16. The United Nations Secretary-General has held that children born of wartime rape:

*“constitute another vulnerable group, who are often labelled by communities as the ‘bad blood’ of political, ethnic or religious enemies. These children are stigmatized at birth and may suffer a lifetime of detrimental consequences. They may lack access to community resources, family protection and education or livelihood activities. They are often prime targets for recruitment by armed groups and terrorist organizations. Aside from stigmatization and social exclusion, they may also face routine but critical administrative challenges in registering their births, their legal names or their rights to citizenship”*.<sup>34</sup>

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<sup>31</sup> See DOWDS (E.) (accepted/in press), “Children Born of Sexual and Gender-Based Violence in Conflict: Exploring the Boundaries of International Criminal Law”, in ASCHAUER (W.), BUCKLEY (J.), EMBACHER (H.), LICHTBLAU (A.), STEINERT (D.) and PONTERA (G.) (Eds.), *Children and War Past and Present, Volume III*, Helion Publishing, forthcoming, p. 2.

<sup>32</sup> See the “Annex 2 to the Registry Transmission of the Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Anx2-Red2](#), 3 November 2020 (the “Second Expert Report”), para. 54.

<sup>33</sup> See the “Public Redacted Version of ‘Annex, 28 November 2017, ICC-01/05-01/08-3575-Conf-Exp-Anx-Corr2””, [No. ICC-01/05-01/08-3575-Anx-Corr2-Red](#), 30 November 2017, para. 118.

<sup>34</sup> See UN, the *Report of the United Nations Secretary-General, Conflict Related Sexual Violence* (29 March 2019), [S/2019/280](#), para. 20.

17. The Legal Representative avers that, based on expert evidence presented in various cases before the Court and current research on the topic, children born of wartime rape may suffer three types of harm: psychological harm, physical harm and material harm.

18. *First*, it is submitted that children born of conflict-related sexual violence suffer psychological harm as a result of their mother's rape or sexual slavery. This harm can be caused in different ways: 1) rape survivors and children born out of rape may be rejected by their community, 2) the traumatized mother may pass her trauma onto her child, 3) the child may suffer conflicting identities, and 4) the trauma may have a negative impact on the mother's parenting abilities.

19. According to the Second Expert Report, victims of rape and sexual slavery face stigmatization within their communities,<sup>35</sup> and children born of rape and sexual slavery also face stigma and social exclusion.<sup>36</sup> Evidently, the stigmatization is all the more heightened when the victim has given birth following her rape, as the child is living proof of the crime committed against her. According to Prof. Reicherter, “[w]omen who become pregnant following incidents of rape may face the scorn of their community. [...] The child can become a reminder of the trauma suffered by the entire community, and some have postulated that traumatized societies will reject the sexually-assaulted woman and any child she conceives because they serve as constant reminders of the harm caused to the community”.<sup>37</sup> He also found that children born to rape survivors were nearly uniformly scorned and mocked, which led to depression within many of the children.<sup>38</sup> Taking the example of the conflict in Northern Uganda, Prof. Reicherter held that:

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<sup>35</sup> See P-0938, the transcript of the hearing held on 30 June 2016, [No. ICC-01/04-02/06-T-113-Red2-ENG](#), pp. 49-50.

<sup>36</sup> See the [Second Expert Report](#), *supra* note 32, para. 54.

<sup>37</sup> See Witness UGA-PCV-0001, *Mental Health Outcomes of Rape, Mass Rape, and other Forms of Sexual Violence and Forced Marriage and Forced Pregnancy*, UGA-PCV-0001-0020, p. 33 (the “Reicherter Report”). See also the Prosecution's oral submissions in the *Ongwen* case where it was observed that “children born in captivity resulting from these forced marriages, [...] sometimes face hostility and taunts as a result of their parentage”, [No. ICC-02/04-01/15-T-26-ENG](#), 6 December 2016, p. 35, lines 18-21.

<sup>38</sup> See the Reicherter Report, *supra* note 37, p. 25.

*“[i]n Uganda, forced pregnancy causes the mother and child stigma in their communities. Children of forced pregnancies serve as a symbol and reminder of the history of atrocities committed by the LRA, and are therefore subjects of blame, scorn, and rejection in their communities, often being automatically labelled as a criminal, rebel, or murderer [...] children born of LRA-forced pregnancies are deeply affected by their biological origins and subsequent treatment by society. [...] children’s status as ‘war babies’ may foster direct and indirect forms of violence by individuals, families and communities including stigma, exclusion, abandonment, and infanticide”.*<sup>39</sup>

20. The Legal Representative points in particular to the Second Expert Report according to which *“practitioners often referred to these children as a ‘time bomb’ in Iturian communities, given their marginalisation and risk of being recruited by armed groups”.*<sup>40</sup>

21. Research further indicates that negative labels are often attached to children conceived through wartime sexual violence by their communities, such as *“children of bad memories”* or *“children of hate”* in Rwanda, *“children of shame”* in Kosovo or *“children of the enemy”* in East Timor.<sup>41</sup> In Ituri, children born of wartime rape are sometimes referred to as *‘snake’* or *‘serpent children or the children of serpents’*, and *“grow up in an atmosphere of hate, which is not conducive to their wellbeing”.*<sup>42</sup> Consequently, *“[t]hese labels can have a detrimental impact on a child’s social and behavioural development”.*<sup>43</sup>

22. Children born of wartime rape may also suffer psychological harm if their mother transmits her trauma to them. According to the Second Expert Report, *“[i]ntergenerational trauma can be explicit when children are born as a result of rape”.*<sup>44</sup> Prof. Wessells held a concurring view in the *Ongwen* case and stated that *“mothers who experience trauma [may] actually transmit some of their stress and trauma to their offspring*

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<sup>39</sup> *Idem*, p. 33.

<sup>40</sup> See the [Second Expert Report](#), *supra* note 32, para. 57. See also the [Report of the United Nations Secretary-General, Conflict Related Sexual Violence \(29 March 2019\)](#), *supra* note 34, para. 20.

<sup>41</sup> See THEIDON (K.), [“Hidden in Plain Sight Children Born of Wartime Sexual Violence”](#), *Current Anthropology*, vol. 56 (12), December 2015, p. 193. See also SETO (D.), *No Place for a War Baby: The Global Politics of Children Born of Wartime Sexual Violence*, *supra* note 29, pp. 19-20.

<sup>42</sup> See the [Second Expert Report](#), *supra* note 32, para. 55.

<sup>43</sup> See DOWDS (E.), [“Children Born of Sexual and Gender-Based Violence in Conflict: The International Criminal Court, Ecological Environments and Human Development”](#), *Children & Society*, Volume 33(3), 2019, p. 4.

<sup>44</sup> See the [Second Expert Report](#), *supra* note 32, para. 54.

through hormonal mechanisms".<sup>45</sup> He further held that "there is a biochemical set of mechanisms that actually mediate the transmission of the traumatic reaction" as well as "evidence of genetic transmission".<sup>46</sup>

23. Another source of psychological trauma may stem from the child's lack of identity or group membership. Some researchers have observed that children born of wartime sexual violence may suffer from conflicting identities<sup>47</sup> as they might feel rejected by the mother's community due to the stigmatisation *and* by the father's community due to the nature of the crime committed, effectively having the feeling of belonging nowhere. Moreover, where "the child is unaware of the origins of their birth or the identity of their father, the child may suffer from a lack of identity and consequently a lack of citizenship".<sup>48</sup> The United Nations Secretary-General has held in this regard that "[c]hildren conceived through wartime rape often struggle with issues of identity and belonging for decades after the guns have fallen silent".<sup>49</sup>

24. Children born as a result of rape may be rejected, not only by their communities, but also by their often highly traumatized mother. According to the Second Expert Report, "[s]ome girls and women may neglect, reject, harm or kill the child born out of their rape, who can be a constant reminder of the violation and a clear indicator of their suffering".<sup>50</sup> It has also been observed that rape and sexual violence increase risk for PTSD and depression, which, in turn, have a negative impact on parenting and that "[p]arents who are depressed and suffering from PTSD have greater difficulty comforting their children, are more likely to ask children to take on an adult role, are less likely to bond well with their children, and are more likely to abuse and neglect their children".<sup>51</sup> According to the World

<sup>45</sup> See Witness UGA-PCV-0002, [No. ICC-02/04-01/15-T-176-ENG](#), p. 23, lines 1-6.

<sup>46</sup> *Idem*, p. 24, lines 2-4.

<sup>47</sup> See SETO (D.), *No Place for a War Baby: The Global Politics of Children Born of Wartime Sexual Violence*, *supra* note 29, p. 17 and 20-21.

<sup>48</sup> See DOWDS (E.) (accepted/in press), "Children Born of Sexual and Gender-Based Violence in Conflict: Exploring the Boundaries of International Criminal Law", *supra* note 31, p. 9.

<sup>49</sup> See UN, the [Secretary-General's message on the International Day for the Elimination of Sexual Violence in Conflict – 'The Plight and Rights of Children Born of War'](#), 19 June 2018.

<sup>50</sup> See the [Second Expert Report](#), *supra* note 32, para. 55.

<sup>51</sup> See the Reicherter Report, *supra* note 37, p. 30.

Health Organisation, children born of rape “*may be neglected, stigmatized, ostracized or abandoned. Infanticide may occur*”.<sup>52</sup>

25. It is clear that the stigma attached the conception and the very existence of children born of wartime rape can have “*life-long effects and constitute a significant obstacle to the realization of their basic human rights*”.<sup>53</sup>

26. *Second*, the Legal Representative submits that children born as a result of rape may also suffer physical harm as a result of their mother’s rape or sexual slavery. Considering the extremely distressing circumstances in which they were conceived, born and, in instances of sexual slavery, raised for the first years of their lives, it is hardly surprising that children born of wartime rape may also suffer physical harm.<sup>54</sup>

Prof. Wessells has opined in this regard that:

*“[d]uring the crucial first 1000 days of life when extensive brain development and neuronal interconnections occur and when there is a high level of neuroplasticity, exposure to high levels of stress can have adverse effects on brain development. For example, high levels of stress can impair the oxytocin system that helps to regulate social memory and cognition, and enables healthy empathy and attachment [...]. Exposure to toxic stress also has negative effects on the development of brain areas such as the amygdala, the hippocampus, and the pre-frontal cortex, which are important in learning, memory, mood regulation, and ‘executive functions’ such as planning”.*<sup>55</sup>

27. Children born as a result of sexual slavery often suffer from difficult living conditions while in captivity with their mothers during their essential first years of life, such as lack of food, sleeping facilities, sanitation, clothing and mistreatment.<sup>56</sup>

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<sup>52</sup> See WHO, Department of Reproductive Health and Research, [Reproductive health during conflict and displacement: a guide for programme managers](#), 2000, p. 113.

<sup>53</sup> See DOWDS (E.) (accepted/in press), “Children Born of Sexual and Gender-Based Violence in Conflict: Exploring the Boundaries of International Criminal Law”, *supra* note 31, p. 9.

<sup>54</sup> See SETO (D.), *No Place for a War Baby: The Global Politics of Children Born of Wartime Sexual Violence*, *supra* note 29, pp. 17-19.

<sup>55</sup> See Witness UGA-PCV-0002, *The Consequences of the Abduction of Children under 15: Implications for Individuals, Families, Communities and Acholi Society*, UGA-PCV-0002-0076, p. 17.

<sup>56</sup> See the “Public redacted version of Common Legal Representative of Victims’ Closing Brief (ICC-02/04-01/15-1720-Conf)”, [No. ICC-02/04-01/15-1720-Red](#), 28 February 2020, para. 95 and footnote 283.

28. Finally, it is argued that children born of wartime rape may also suffer material harm as a result of the sexual violence committed against their mother. This harm may take many forms: the children may have “*no lineage in the patriarchal or patrilineal society, which also implies no land*”<sup>57</sup> or they may have no or lesser access to health, education, and employment as a consequence of being rejected by their community.<sup>58</sup>

29. Considering the above, one cannot but conclude that children born as a result of wartime rape or sexual slavery inevitably suffer harm resulting from the crime or crimes committed against their mother. The Legal Representative therefore advances that if and when a woman has been recognised as a victim of rape or sexual slavery in the present case, the child or children born of those crimes should be eligible for reparations based on a presumption of harm.<sup>59</sup>

30. Trial Chamber II in the *Lubanga* case applied a presumption of harm “*to each direct and indirect victim once child-soldier status (in the case of a direct victim) and a close personal relationship with a child soldier (in the case of an indirect victim) [was] established on a balance of probabilities*”.<sup>60</sup> The Legal Representative advocates for a similar approach for the direct victims of rape and sexual slavery (the mother) and the indirect victims (the child born as a result of rape) in the present case. Children born as a result of rape or sexual slavery should thus be included in the reparations scheme based on the fact that they have suffered harm as a result of the crimes for which Mr Ntaganda has been convicted.<sup>61</sup>

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<sup>57</sup> *Idem*, para. 91.

<sup>58</sup> See the Reicherter Report, *supra* note 37, p. 33.

<sup>59</sup> See the “Public Redacted Version of ‘Annex, 28 November 2017, ICC-01/05-01/08-3575-Conf-Exp-Anx-Corr2’”, [No. ICC-01/05-01/08-3575-Anx-Corr2-Red](#), 30 November 2017 (the “*Bemba* Reparations Experts Report”), paras. 18-21.

<sup>60</sup> See the “Corrected version of the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’” (Trial Chamber II), [No. ICC-01/04-01/06-3379-Red-Corr-tENG](#), 21 December 2017, para. 185. See also “Order for Reparations pursuant to Article 75 of the Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3728-tENG](#), 24 March 2017, p. 62, where the Chamber proceeded on presumptions and relied on circumstantial evidence in satisfying itself of certain facts in the case.

<sup>61</sup> See the “Order for Reparations” (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA](#), 3 March 2015, para. 63.

31. It has been established in the *Lubanga* case that “[i]n order to determine whether a suggested ‘indirect victim’ is to be included in the reparation scheme, a determination should be made as to whether there was a close personal relationship between the indirect and direct victim”.<sup>62</sup> Although said finding pertains to a relationship between a child soldier and his or her relatives, it is submitted that the same approach should equally apply to a relationship between a mother and her child born out of rape, where the close personal link between the two is obvious. It is further argued that the presumed harm consists, for both direct and indirect victims, of a psychological component, a physical component and a material component.<sup>63</sup>

32. Children born of wartime rape have been awarded reparations in a number of national jurisdictions. Indeed, children born of wartime rape have been deemed eligible, subject to conditions, for reparations in East Timor,<sup>64</sup> Chile, Peru and Sierra Leone.<sup>65</sup> Reparations for children born of wartime rape have already been recommended before the Court, notably in the *Bemba* case,<sup>66</sup> and now also in the present case.<sup>67</sup>

33. The Legal Representative cannot stress enough that with the case at hand, the Chamber is presented with the opportunity to finally include a group of vulnerable victims that is all too often forgotten. The Rome Statute recognises a wide range of sexual and gender-based crimes, including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, constituting crimes against humanity or war crimes.<sup>68</sup> The Legal

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<sup>62</sup> *Ibid.*

<sup>63</sup> See the [“Corrected version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”](#), *supra* note 60, para. 185.

<sup>64</sup> See the *Final Report of the Commission for Reception, Truth and Reconciliation in East Timor*, Part 11, [“Recommendations”](#), p. 41.

<sup>65</sup> See MAZURANA (D.) and CARLSON (K.), [“Children and reparation: past lessons and new directions”](#), UNICEF Innocenti Research Centre, Innocenti Working Papers, 2010, pp. 10-12.

<sup>66</sup> See the [Bemba Reparations Experts Report](#), *supra* note 59, paras. 156-175, where the experts recommended that “HIV-positive victims of rape who are, including HIV-positive children born of rape should be prioritized” for reparations.

<sup>67</sup> See the [Second Expert Report](#), *supra* note 32, *Recommendations*.

<sup>68</sup> See articles 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(vi) of the Rome Statute.

Representative argues that it would be a natural development for the Court to also recognise the children born out of these crimes. The restorative impact this recognition would have cannot be understated. Indeed, “[t]he possibility of reparations is particularly important in light of the long-term difficulties often experienced by children born of SGBV and the potential impact on their development”.<sup>69</sup>

#### **4) OBSERVATIONS ON THE EXPERT REPORTS**

##### **a) General Eligibility**

34. In line with his previous submissions<sup>70</sup> and as reiterated *supra*,<sup>71</sup> the Legal Representative concurs with the Experts’ conclusions that: as a general principle, both direct and indirect victims of serious international crimes may suffer multiple types of harm which can affect them individually as well as their families, communities and succeeding generations;<sup>72</sup> each of the crimes committed by Mr Ntaganda caused some form of harm to a person or persons subjected thereto, and accordingly there is no need to identify and prove specific harm for the purpose of a person’s eligibility for reparations;<sup>73</sup> an assessment of each individual victim’s harm and the extent of the harm is not desirable, because of the lack of documentary evidence of harm and the length of time it would take to determine each individual claim adequately;<sup>74</sup> and harm should be presumed for every person who suffered harm as a result of one of Mr Ntaganda’s crimes,<sup>75</sup> including victims of rape and sexual slavery.<sup>76</sup>

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<sup>69</sup> See DOWDS (E.), “Children Born of Sexual and Gender-Based Violence in Conflict: The International Criminal Court, Ecological Environments and Human Development”, *supra* note 43, p. 2. See also NEENAN (J.), “[Closing the protection gap for children born of war: Addressing stigmatisation and the intergenerational impact of sexual violence in conflict](#)”, The London School of Economics and Political Science, Centre for Women, Peace and Security, 2018, p. 31.

<sup>70</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 47.

<sup>71</sup> See *supra*, paras. 3-8.

<sup>72</sup> See the “Annex 1 to the Registry Transmission of the Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Anx1-Red2](#), 3 November 2020 (the “First Expert Report”), para. 16.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Idem*, paras. 48-56.

<sup>75</sup> *Idem*, para. 16.

<sup>76</sup> *Idem*, para. 81



35. Regarding the Second Expert Report in particular, the Legal Representative concurs with the Expert that: eligible victims need to show that they fall within the temporal and geographical scopes identified in the “*convicted person’s charges*”; there should then be an evidential presumption that if they can provide a sworn statement confirming that they were raped within the scope of the “*convicted person’s charges*”; and supporting medical evidence may be impossible for most of the victims to produce due to a number of reasons, including stigma, the passage of time and on-going insecurity.<sup>77</sup> However, the Legal Representative does not support the Expert’s suggestion that corroborating evidence should be provided through a supporting letter [REDACTED].<sup>78</sup>

36. In this regard, the Legal Representative maintains his previous position, as reiterated *supra*,<sup>79</sup> that a statement from the victim about the victimisation should suffice, and submitting further supporting documents should not be a requirement, particularly in relation to victims of rape and sexual slavery.<sup>80</sup> If the statement establishes on a balance of probabilities that the temporal and geographical criteria are fulfilled, ensuing harm should be presumed.<sup>81</sup>

37. In the First Expert Report, the Experts further outline that the discussions on various forms of harm suffered by direct and indirect victims also requires a careful understanding of the concept of ‘family’ prevalent in the DRC,<sup>82</sup> and conclude that the concept of ‘family’ in the context of the DRC includes both the immediate or nuclear family *and* the extended family.<sup>83</sup>

38. The Legal Representative concurs with this understanding of the ‘family’ unit, as being fully reflective of the family structures in which the victims live. Indeed, it is

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<sup>77</sup> See the [Second Expert Report](#), *supra* note 32, para. 81.

<sup>78</sup> *Ibid.*

<sup>79</sup> See *supra*, paras. 9-11.

<sup>80</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 38.

<sup>81</sup> *Idem*, para. 47.

<sup>82</sup> See the [First Expert Report](#), *supra* note 72, para. 17.

<sup>83</sup> *Idem*, para. 19.

important to recognise the local traditions and family structures in order to honour the victims' culture and to recognise their emotional ties and the reality of large family units for economic reasons. It is the reality in the field that people live together in larger family units and have obligations in relation not only to their own children but also towards nephews and nieces and other relatives with whom they live and for whom they provide a living.

39. The Experts suggest that in case a victim passes away prior to the compensation award being paid out, family members should be entitled to this compensation,<sup>84</sup> and further suggest considering two pay-out options, namely payments to each eligible family member or otherwise payments to a surviving spouse or adult children with the obligation to pay out respective shares to other family members.<sup>85</sup>

40. The Legal Representative agrees<sup>86</sup> with the Experts that the second option will be difficult to monitor<sup>87</sup> and therefore favours equal pay-outs to each eligible family member instead. The Legal Representative further submits that such equal pay-outs will also ensure a gender-inclusive approach, as women and men, old and young, will receive equal shares.

41. Regarding the number of potentially eligible persons, the Experts conclude that *at least* 3,500 victims of Mr Ntaganda's crimes are potentially eligible for reparations and that they are still as yet unidentified potentially eligible victims, but no precise figures are available. They find themselves unable to ascertain how many indirect victims may be eligible in addition.<sup>88</sup>

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<sup>84</sup> *Idem*, para. 21.

<sup>85</sup> *Idem*, para. 23.

<sup>86</sup> The Legal Representative's submission on this specific matter should be considered in light of his general observations on the Experts' recommendation for SRP/SCA awards to be discussed *infra*.

<sup>87</sup> See the [First Expert Report](#), *supra* note 72, para. 23.

<sup>88</sup> *Idem*, paras. 28-29.

42. The Legal Representative recalls that the Chamber instructed the Experts to provide their report on *inter alia* the scope of liability of the convicted person,<sup>89</sup> and further clarified that “*the decision on the amount of Mr Ntaganda’s liability will be based on the extent of the harm suffered by the victims and the cost to repair it*”.<sup>90</sup> He notes that the Experts did not, however, engage in the estimation of the total number of at least direct victims who may qualify as potential beneficiaries of reparations. They also did not make any recommendation on the total cost to repair. As regards the number of indirect victims who also may qualify for reparations, while it is true that the exact number of this category of potential beneficiaries cannot be accurately ascertained as this number depends on the composition of the direct victims’ families, it is the Legal Representative’s view that with the assistance of the victim sample consultation form which contains information [REDACTED]<sup>91</sup> an approximate estimation is nevertheless possible based on an average household size and composition.

#### **b) Harm and Presumption of Harm**

43. As already indicated *supra*, the Legal Representative concurs with the Experts that instead of an assessment of each individual victim’s harm, and taking into account the evidence available concerning the situation of the victims as a whole, the form and extent of the harm suffered by the victims, harm should be presumed for every person who was subjected to one of Mr Ntaganda’s crimes, including victims of rape and sexual slavery.<sup>92</sup>

44. In relation to the scope, extent and evolution of the harm suffered by the victims, the Experts *inter alia* submit that since the victims’ families may also experience damage as a result of an international crime, ‘family harm’ could

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<sup>89</sup> See the [5 December 2019 Order](#), *supra* note 1, para. 9(b).

<sup>90</sup> See the “Public redacted version of the ‘Decision appointing experts on reparations’” (Trial Chamber VI), [No. ICC-01/04-02/06-2528-Red](#), 14 May 2020, para. 13.

<sup>91</sup> See Annex III to the First Registry Report on Reparations, [No. ICC-01/04-02/06-2602-Conf-AnxIII](#), 1 October 2020, p. 4.

<sup>92</sup> See the [First Expert Report](#), *supra* note 72, paras. 16 and 48-56. See also the [Second Expert Report](#), *supra* note 32, para. 81.

additionally be considered as a separate heading, and conclude that an award of reparation to individual members of the family for family harm could coexist with reparations for harm suffered by the family unit as such.<sup>93</sup>

45. In line with his previous submissions,<sup>94</sup> the Legal Representative has no objection to awarding reparations for family harm as suggested by the Experts, provided that this form of reparations is combined with, or complemented by, other reparative measures with individualised components addressing the specific needs of victims. The Legal Representative concurs with the Experts' elaborations regarding the absence of assistance to date,<sup>95</sup> the notion of the loss of life plan,<sup>96</sup> the multiplicity<sup>97</sup> and the extent of harm suffered by the victims of Mr Ntaganda's crimes.<sup>98</sup> He particularly supports the Experts' conclusion that the crimes committed have entailed long-term consequences going beyond negative economic impact, causing psycho-social harm and grief over the loss of the victims' homes and means of life, cultural infrastructure and social and community-related network, and thus causing transgenerational harm beyond the victims themselves.<sup>99</sup>

### **c) Objectives of Reparations and Consultation with Victims**

46. The Legal Representative concurs with the Experts that: measures of reparation should be aimed at restoring victims' rights and helping them to deal with the consequences of the harm, the impact on their lives and promote social reintegration,<sup>100</sup> the Court should attempt to find ways to help transform the social and economic circumstances of the victims' community or society so as to ensure both their livelihood and well-being;<sup>101</sup> reparations should be prompt, and complex processes

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<sup>93</sup> See the [First Expert Report](#), *supra* note 72, para. 37.

<sup>94</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, paras. 52-66.

<sup>95</sup> See the [First Expert Report](#), *supra* note 72, para. 44.

<sup>96</sup> *Idem*, para. 48.

<sup>97</sup> *Idem*, para. 55.

<sup>98</sup> *Idem*, paras. 60-84. See also the [Second Expert Report](#), *supra* note 32, paras. 24-60.

<sup>99</sup> See the [First Expert Report](#), *supra* note 72, paras. 80-84.

<sup>100</sup> *Idem*, para. 122.

<sup>101</sup> *Idem*, para. 124.

should be minimised;<sup>102</sup> and a gender-sensitive and inclusive approach to reparations should be taken at the design, access and implementation stages.<sup>103</sup>

47. The Legal Representative further concurs with the Experts that: achieving the objective of reparation will necessitate a meaningful consultation process with the victims concerned;<sup>104</sup> said consultation should be carried out by raising awareness through focus groups, individual and collective consultations that must be inclusive of all victims, literate or not;<sup>105</sup> and a victim consultation process can provide insights into on-going harm and challenges that victims face, and such consultations may unveil high levels of psychological trauma and physical harm.<sup>106</sup>

48. However, the Legal Representative wishes, at this stage, once again to caution against any consultation or outreach activities prior to the outcome of the appeals proceedings in the present case. Setting a consultation process in motion may raise undue expectations. The governing 'do no harm' principle firmly militates against premature widespread consultation processes.

49. Moreover, the Legal Representative has concerns about the suggested heavy reliance on modern technology in conducting consultations set out in the Second Expert Report.<sup>107</sup> It is submitted that employing the mentioned means of communication may not be feasible considering that many victims do not even own a phone and/or reside in areas with no network coverage. To communicate, many victims often borrow the phones of others or communicate altogether via the proxy of a relative or other person with telephone access. Furthermore, these patterns of conducting communications would be entirely inappropriate where personal and intimate details about their harm and well-being are discussed and shared.

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<sup>102</sup> See the [Second Expert Report](#), *supra* note 32, para. 18.

<sup>103</sup> *Idem*, para. 19.

<sup>104</sup> See the [First Expert Report](#), *supra* note 72, para. 126.

<sup>105</sup> *Idem*, para. 136.

<sup>106</sup> See the [Second Expert Report](#), *supra* note 32, para. 12.

<sup>107</sup> *Idem*, para. 10.

#### d) Individual Reparation Awards

50. In the First Expert Report, the Experts recommend a standard reparation package (SRP) for each victim of the attacks. This package includes a standard compensation amount (SCA) to cover material harm, an amount for livelihood assistance, and an amount to cover the moral damage suffered by each victim. The Experts consider that both the similarity of harm suffered as well as the large number of expected beneficiaries militates in favour of such a standardised award.<sup>108</sup> It is recommended that SCA be an award of [REDACTED] which should account for an award for material damage [REDACTED] and moral harm [REDACTED] to be supplemented by an additional payment of [REDACTED] to allow associating in the “Mutuelle de solidarité” (“MUSO”) system.<sup>109</sup> The Experts further underline that any attempt to extract a satisfactory amount to all or even to most victims will be counterproductive and will require more time.<sup>110</sup> They thus hesitate to put forward a specific figure and underscore that the suggested SCA represents a more of a “floor” amount for compensation.<sup>111</sup>

51. In the Second Expert Report, the Expert suggests that direct victims of rape and sexual violence should be provided with a higher compensation award compared to other victims of the attacks, namely [REDACTED], so as to reflect the aggravating circumstances of sexual violence,<sup>112</sup> and further suggests differentiated amounts for indirect victims of rape and sexual slavery.<sup>113</sup> She asserts that providing compensation to victims gives them flexibility to spend or invest the money as they see fit and also discusses the possibility of monthly ‘pension’ payments as another form of empowering sexual violence victims to respond to ongoing conditions of stigma and difficulty in accessing livelihoods.<sup>114</sup>

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<sup>108</sup> See the [First Expert Report](#), *supra* note 72, para. 173.

<sup>109</sup> *Idem*, paras. 179-183.

<sup>110</sup> *Idem*, para. 179.

<sup>111</sup> *Idem*, paras. 180-181.

<sup>112</sup> See the [Second Expert Report](#), *supra* note 32, para. 84.

<sup>113</sup> *Idem*, pp. 73-74.

<sup>114</sup> *Idem*, para. 84.

52. The Legal Representative first notes that the Experts refer to the suggested SRP/SCA awards as individual compensation measure while acknowledging that they will not be more than a symbolic payment meant to allow victims to alleviate at least some of the ongoing consequences and most pressing needs.<sup>115</sup> While the Experts opted not to engage “*in the sometimes overly dogmatic and theoretical debate about the distinction between collective and individual reparations*”,<sup>116</sup> the Legal Representative is of the view that the suggested awards appear collective in character and can fall within the category of either a symbolic individual compensation award as ordered in the *Katanga* case,<sup>117</sup> or as collective reparations with an individualised component since “*collective reparations can include the payment of sums of money to individuals to repair harm suffered and the possibility for individuals to participate in particular programmes that address the specific harm that those individuals have suffered*”.<sup>118</sup>

53. As a matter of principle, the Legal Representative is not opposed to the SRP/SCA awards being ordered, provided they are of *equal value for all victims* as suggested in the First Expert Report, and in light of the Experts’ further recommendation to complement these awards with collective reparations that have individualised components, such as medical and psychological support, support for income-generating activities, vocational training and the like.<sup>119</sup> This approach is in full accordance with the victims’ wish to be provided with equal awards to repair the harm inflicted, regardless of the type of harm suffered.<sup>120</sup> This is also in line with the victims’ wishes that the Legal Representative cannot support the SRP/SCA awards of a higher value *only* for victims of rape and sexual slavery as suggested by the Second Expert Report as compared to other victims of the attacks who suffered multi-dimensional harm.

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<sup>115</sup> See the [First Expert Report](#), *supra* note 72, para. 175.

<sup>116</sup> *Idem*, para. 153.

<sup>117</sup> See the “[Order for Reparations pursuant to Article 75 of the Statute](#)”, *supra* note 60, para. 300.

<sup>118</sup> See the [Lubanga 2019 Judgment](#), *supra* note 20, para. 40.

<sup>119</sup> See the [First Expert Report](#), *supra* note 72, paras. 192-197.

<sup>120</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, paras. 16 and 54-66.

54. Indeed, the Legal Representative reiterates the victims' concerns that if differentiated awards were to be made based on different heads of harm assessed on an harm-type basis, feelings of unfairness, animosity and renewed stigma between beneficiaries would be inevitable. In this regard, it could be deemed unfair if a higher compensation amount is awarded to a victim of sexual violence in contrast to, for example, a female victim who lost her husband, three children, her house and all means of livelihood in addition to having been persecuted and/or forcibly displaced or transferred.

55. While not opposing SRP/SCA awards with equal value being paid to all victims of the attacks, the Legal Representative wishes to point to a number of relevant factors he invites the Chamber to weigh against the appropriateness of such reparations awards with due regard to the victims' wishes and in light of the victims' particular situation, the 'do no harm' principle and overall objectives of reparations.

56. *First*, the actual disbursement of money to the victims has the high potential to create safety issues for the victims themselves. Although, as explained by the Experts, there exist ways in which money could be securely disbursed to the victims,<sup>121</sup> the fact that victims receive money cannot be concealed or 'camouflaged' since they will start spending the money and will hence easily be identified, which in turn can lead to them becoming the target of criminal attacks. Furthermore, the disbursement of money to a potentially very high number of victims simultaneously, as it is expected, is likely to even worsen the prevailing general insecurity in the affected communities and thus it is hardly reconcilable with the 'do no harm' principle.

57. *Second*, it should be recalled that the victims in the present case have remained with no support or assistance for over 17 years now, and expressed their wish to be provided with life opportunities they have lost as a result of the harm suffered,<sup>122</sup> in the form of educational assistance and vocational training, housing assistance, support

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<sup>121</sup> See the [First Expert Report](#), *supra* note 72, paras. 185-191.

<sup>122</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 55.



to income-generating activities in addition to medical and psychological rehabilitation and assistance.<sup>123</sup> Bearing in mind that reparations must be appropriate, adequate and also perceived as meaningful by the victims,<sup>124</sup> it is submitted that the main focus of reparations awards, either individual or collective, should be to provide the victims with a sustainable and long-term livelihood and well-being rather than simply addressing their daily needs on a short-term basis.

58. Being deprived of any sort of assistance and support for many years, the victims will undoubtedly welcome individual compensation awards. However, given the prevailing poverty in the region, it can be reasonably anticipated that only a few victims will invest in development opportunities, income-generating activities or medical and psychological care, while the vast majority will prefer using the award to satisfy immediate needs, such as food, clothing, and other daily needs. In turn, this will mean, that the award will be spent in a short period of time without any sustainable benefit.

59. Therefore, the Legal Representative submits that in order to both mitigate safety risks for the victims and the affected communities and create sustainable means of guaranteeing long-term livelihood and well-being, it might be preferable to direct compensation awards to victims through centralised implementing agencies to be mandated with advising the victims as appropriate, although not obliging them, with due regard to their particular situation, as also recommended by the Experts,<sup>125</sup> for instance through cooperatives in particular solidarity funds such as MUSO or AVEC.<sup>126</sup>

60. As an alternative option, rather than making cash-payment with all above-mentioned risks, SRP/SCA awards could be added *per capita* to an award of collective reparations with individualised components, in the form of medical and psychological rehabilitation, educational and vocational training assistance, housing assistance and

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<sup>123</sup> *Idem*, para. 54.

<sup>124</sup> See the [“Order for Reparations pursuant to Article 75 of the Statute”](#), *supra* note 60, paras. 267-268.

<sup>125</sup> See the [Second Expert Report](#), *supra* note 32, para. 78.

<sup>126</sup> See the [First Expert Report](#), *supra* note 72, para. 184.

support to income-generating activities, as this form of reparations is similarly meant to address the victims' harm and specific needs, and can be designed in a cost-effective manner to address, to the extent of possible, the harm suffered by a potentially very high number of victims. This form of collective reparations, if comprehensively designed and implemented, is also meant to address the Experts' concern that providing only collective measures could 'cheapen' the effects of reparations, especially when victims want individual measures in order to alleviate their own and personal suffering.<sup>127</sup> Indeed, individual reparations awards are not the only available means of effecting reparations, especially when properly considered in light of the realities in the field.

#### e) Collective Reparations with Individualised Components

61. The Experts recommend that SRP/SCA awards should be complemented by a set of collective reparations with individualised components,<sup>128</sup> such as schooling and vocational training, medical and psychological care, a sustainable means of livelihood,<sup>129</sup> support for income-generating activities by providing for instance start-up kits, farming tools and seeds, or through cooperative activities.<sup>130</sup> They suggest providing collective reparations based on *per capita* amounts or cost of the service.<sup>131</sup>

62. In line with his previous submissions,<sup>132</sup> the Legal Representative supports the Experts' recommendation for awarding collective reparations with individualised components to address specific harm and needs of the victims. He notes however that the Experts do not provide any estimation of either *per capita* amounts or costs of services, except for the cost of rehabilitation of the Sayo health centre. Indeed, while the Experts refer to an average *per capita* amount of 8000 USD as set in the *Lubanga*

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<sup>127</sup> See the [Second Expert Report](#), *supra* note 32, para. 61.

<sup>128</sup> See the [First Expert Report](#), *supra* note 72, para. 192.

<sup>129</sup> *Idem*, para. 193.

<sup>130</sup> *Idem*, para. 196.

<sup>131</sup> *Idem*, p. 109.

<sup>132</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, paras. 54-57.

case,<sup>133</sup> it is not clear whether they recommend the same amount to be set in the present case. The Legal Representative maintains his previous submissions that in the present case an average *per capita* cost to repair should be 10 000 USD to cover costs of collective reparations with individualised components.<sup>134</sup>

63. The Legal Representative concurs with the Experts that collective reparations should cover at least one year of access to medical and mental health services.<sup>135</sup> However, he favours implementation of said measures through specialised NGOs, preferably national NGOs, rather than through state-run services as recommended by the Experts.<sup>136</sup> Indeed, similar assistance programs previously realised in Ituri by the Trust Fund for Victims (the “TFV”) could serve as a blueprint for rendering this crucial kind of assistance as part of collective reparations with individualised components to the victims of Mr Ntaganda’s crimes.

64. As regards the Experts’ concerns that collective reparations in the form of cooperatives or microfinancing may not be feasible or useful for the victims, given that they are scattered [REDACTED], or may be undermined by ongoing insecurity in [REDACTED],<sup>137</sup> the Legal Representative wishes to underscore that collective reparations with individualised components are not meant to be solely tied to the original villages or towns affected by the crimes. As previously submitted,<sup>138</sup> this form of collective reparations can and should be provided to families and groups of persons with similar needs in the locations in which they reside, rather than focusing exclusively on the affected locations as such. The locations where the crimes took place and unfolded are relevant in order to identify eligible victims. However, the victims who, at the time, resided in these locations and who were victimised, must receive reparations anywhere, including in the locations to which they have moved for any

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<sup>133</sup> See the [First Expert Report](#), *supra* note 72, para. 193, footnote 248.

<sup>134</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 75.

<sup>135</sup> See the [First Expert Report](#), *supra* note 72, para. 197, and p. 109.

<sup>136</sup> *Idem*, para. 197.

<sup>137</sup> See the [Second Expert Report](#), *supra* note 32, para. 79.

<sup>138</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 54.

reasons. The suggested collective reparations being made to such family units or groups could also include start-up kits, vocational training, housing and schooling assistance, to name but a few.

65. As regards the ongoing insecurity in Ituri, the Legal Representative agrees that this factor, along with many others, is an important factor to be taken into account in designing and implementing reparations programmes. The Legal Representative trusts in the experience of the TFV in the realisation of relevant projects in Ituri and elsewhere with due regard to volatile security situations. Further, as previously suggested, the Court should consider learning from the experience of international financial institutions in the realisation of socio-economic development projects in Eastern DRC, and in particular on how to better design and implement programmes with due regard to the security situation and other factors.<sup>139</sup>

#### **f) Community Based Collective Reparations**

66. The Experts conclude that the crimes committed have entailed long-term consequences, causing psycho-social harm to entire communities, to cultural infrastructures and social and community-related networks, and thus causing transgenerational harm beyond the victims themselves.<sup>140</sup> They suggest implementing collective reparations that will strengthen the infrastructure and capacity of existing entities or even build new ones which would also benefit other members of the community and therefore reduce divisions and foster reconciliation and healing.<sup>141</sup> In order to ensure access to schooling and vocational training, they recommend achieving this through the free use of existing institutions or the creation of new opportunities.<sup>142</sup> They also suggest that a water pump or other access to water as a collective reparation could, as a shared resource, contribute to reconciliation.<sup>143</sup>

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<sup>139</sup> *Idem*, paras. 63-64.

<sup>140</sup> See the [First Expert Report](#), *supra* note 72, paras. 80-84.

<sup>141</sup> *Idem*, para. 194.

<sup>142</sup> *Idem*, para. 195.

<sup>143</sup> *Idem*, para. 196, footnote 250.

67. The Legal Representative welcomes the Experts' conclusions and recommendations. He submits that in order to address long-term harm suffered by entire communities, a comprehensive approach is needed with an aim to foster the communities' recovery and resilience. He reiterates in this regard his suggestion to consider learning from the project based on community-driven development programmes realised in Eastern DRC.<sup>144</sup> The implementation of such programmes, combined with reparations awards with the TFV's broader assistance projects, as previously suggested,<sup>145</sup> might be of particular value in the affected locations in which Lendu and Hema communities cohabitate, insofar as they could contribute to reconciliation and sustainable peace.

68. In more concrete terms, and in line with the victims' wishes, the Legal Representative supports the Experts' recommendation to establish a water pump or other access to water, provided this community-based collective measure is implemented in all affected communities in accordance with equal treatment and non-discrimination principles. Furthermore, he concurs with the Experts that ordering collective reparations with individualised components in the form of schooling and vocational training opportunities would require building new infrastructures or rehabilitating existent ones in order to extend their capacities. The same holds true for the implementation of other forms of collective reparations with individualised components, such as medical and psychological rehabilitation, which would also require relevant infrastructure facilities.

69. As a collective measure, the Experts further recommend that the full rehabilitation of the Sayo health centre be ordered, and that the persons and entities who contributed to the progressive repair works since 2005 be reimbursed for their contributions.<sup>146</sup> The reparation must go beyond the restoration of medical supplies,

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<sup>144</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 64.

<sup>145</sup> *Idem*, para. 23.

<sup>146</sup> See the [First Expert Report](#), *supra* note 72, para. 201.

and should be aimed at providing additional capacities, including training and the provision of dedicated healthcare practitioners to operate medical equipment.<sup>147</sup>

70. In line with the views expressed by the victims following recent consultations, the Legal Representative supports the Experts' recommendation regarding the rehabilitation of the Sayo health centre, except for the suggestion to reimburse third parties for their contributions to repair works since 2005. Indeed, reparations awards in the present case should only be used to repair harm suffered by the victims and affected communities, and accordingly eventual reimbursements can only be provided to contributors who are either individual victims or entities qualifying as victims under rule 85(b) of the Rules of Procedure and Evidence (the "Rules").

71. The consulted victims also expressed their disagreement with the alternative option suggested by the Second Expert Report according to which [REDACTED].<sup>148</sup> In this regard, the victims underscored the importance of the rehabilitation of the Sayo health centre as a reparative measure, since such a measure will also address the harm suffered by the Sayo community as a whole caused by the disruption in access to health facilities. The Legal Representative echoes the views expressed by the victims by recalling that the harm caused by attacks against protected buildings and objects, including the Sayo health centre, is not limited to the harm to their fabric and capacities, but also extends to the moral harm suffered by the community concerned as a whole. Nonetheless, it is the Legal Representative's view that the alternative option suggested by the Experts should be considered as a community-based collective measure aimed at increasing infrastructure facilities in [REDACTED], and eventually mirrored in the other affected communities, to ensure the implementation of collective reparations with individualised components in the form of medical and psychological rehabilitation.

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<sup>147</sup> See the [Second Expert Report](#), *supra* note 32, paras. 169-172.

<sup>148</sup> *Idem*, paras. 170-171.

72. The Legal Representative also cannot support the Experts' recommendation to name the Sayo health centre after the victims or to install a memorial garden or attach a name plaque with the names of the persons who were killed at that location.<sup>149</sup> He cautions against such measures as they may create tensions where Lendu and Hema communities cohabitate. Rather, a neutral sign stating that the building enjoys special protection under international humanitarian law could instead be put up on the Sayo health centre.

### **g) Symbolic Reparations**

73. The Legal Representative recalls that the victims have expressed the view that they do not see any added value in symbolic measures<sup>150</sup> unless they serve a practical purpose.<sup>151</sup> They rather expect and seek concrete assistance as a remedy for their harm.

74. Following the practical approach and in line with his previous submissions,<sup>152</sup> the Legal Representative welcomes the Experts' recommendation that a community centre be built and named after the deceased *Abbé Bwanalungwa*.<sup>153</sup> Since the victims expressed diverging views on where such a community centre should preferably be built, in particular whether in the *Abbé's* original village or the village where he was serving as a priest and killed, the Legal Representative suggests that a further consultation involving a larger population is needed on the matter to ensure general consensus and to avoid tensions in the respective communities. It should be underscored again that these enhanced consultations should only be carried out once the scope and extent of the convictions have been determined by the Appeals Chamber.

75. If the Chamber were willing to follow the Experts' recommendation to order other symbolic reparations measures, the Legal Representative submits that such

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<sup>149</sup> *Idem*, paras. 166-167.

<sup>150</sup> Only a limited number of the victims expressed views in support of establishing a monument to commemorate victims of the Kobu massacre.

<sup>151</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 67.

<sup>152</sup> *Ibid.*

<sup>153</sup> See the [First Expert Report](#), *supra* note 72, para. 202.

measures should be primarily aimed at providing guarantees of non-repetition and promoting peace and reconciliation, and should in all instances be designed and implemented with due regard to the victims' wishes and in compliance with the 'do no harm' principle.

#### **h) Cost of Collective and Symbolic Reparations**

76. Except for the cost of rehabilitation of the Sayo health centre,<sup>154</sup> the Experts did not provide an estimation of costs of the recommended collective and symbolic reparations measures.

77. The Legal Representative reiterates his previous submissions that the cost of collective reparations with individualised components should be calculated on an average *per capita* basis of 10 000 USD.<sup>155</sup> This amount should further be supplemented with the cost of community-based collective measures and of symbolic measures, including the cost of building a community centre named after *Abbé Bwanalungwa* and the suggested cost of the rehabilitation of the Sayo health centre. The TFV provided its preliminary estimation on the cost to repair to cover physical and psychological rehabilitation, individual socio-economic reintegration, and loss of physical infrastructure,<sup>156</sup> and thus this could serve as a reference.

#### **i) Prioritisation of Reparations**

78. The Experts recommend prioritising SGBV suffering from HIV contracted through these crimes, the victims' children born with HIV and the victims' partners infected with HIV for the awarding of reparations.<sup>157</sup> It is recommended that they should be provided with lifetime access to vital antiretroviral medication, food assistance for twelve months, and access to mental health rehabilitation provided by local services, such as state-run services and civil society providers.<sup>158</sup> The Second

<sup>154</sup> See the [Second Expert Report](#), *supra* note 32, paras. 173-175.

<sup>155</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 75.

<sup>156</sup> See the "Trust Fund for Victims' observations relevant to reparations", [No. ICC-01/04-02/06-2476](#), 28 February 2020 (the "TFV Submissions on Reparations"), para. 130.

<sup>157</sup> See the [First Expert Report](#), *supra* note 72, para. 160.

<sup>158</sup> *Idem*, para. 162.



Expert Report, on the other hand, sees no enhanced benefit in this relatively short-term food assistance measure and rather recommends increasing the overall award to victims of sexual violence who have been infected with HIV.<sup>159</sup>

79. The Experts also note that victims of advanced age, those with disabilities and those with health conditions that impair their mobility and living standards could potentially benefit from urgent reparations on a priority basis.<sup>160</sup> The Second Expert Report equally acknowledges that interim or prioritised reparations may be made to vulnerable victims, such as those who have suffered sexual violence, children, disabled or elderly victims to help mitigate their harm.<sup>161</sup>

80. The Legal Representative wishes to underscore again that the vast majority of victims have remained in extreme poverty for over 17 years, with no assistance and with very limited, if any, access to healthcare services and income-generating opportunities. Thus, all victims expect meaningful and prompt reparations with no delay. Nonetheless, the Legal Representative is not opposed to the Experts' recommendation to provide reparations on a prioritised basis to the most vulnerable categories of victims, particularly victims with disabilities and/or with major physical and/or mental health issues, elderly victims, and SGBV who contracted HIV as a result of the crimes, their children born with HIV and their partners infected with HIV. As regards victims infected with HIV as a result of the events at stake, the Legal Representative notes, however, that he is not aware of a single victim falling in this category, and thus wonders whether the Experts' recommendations in that regard were reflective of the reality in the field, or were rather issued in the abstract to mirror similar recommendations made by the *Bemba* Reparations Experts.<sup>162</sup> Indeed, the Second Expert Report acknowledges that given the time elapsed since the events, it is

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<sup>159</sup> See the [Second Expert Report](#), *supra* note 32, para. 85.

<sup>160</sup> See the [First Expert Report](#), *supra* note 72, para. 165.

<sup>161</sup> See the [Second Expert Report](#), *supra* note 32, para. 9.

<sup>162</sup> See the [Bemba Reparations Experts Report](#), *supra* note 59, paras. 156-169.

highly likely that victims who contracted HIV as a result of those crimes have since passed away if they did not receive adequate treatment.<sup>163</sup>

81. Concerning the Experts' recommendations on reparations measures for victims with HIV, the Legal Representative notes that there already exists a national programme for HIV/AIDs in the DRC which includes free treatments.<sup>164</sup> He is of the view that the relevant assistance needed should be focused on establishing cooperation mechanisms with the relevant national agencies and/or NGOs to ensure *actual access* to this treatment. Moreover, victims with HIV along with the other abovementioned categories of the most vulnerable victims should also be prioritised for the eventual payments of SRP/SCA awards, if ordered by the Chamber, as well as for access to health and mental health services and support for income-generating activities as part of collective reparations programmes with individualised components.

## **5) OBSERVATIONS ON THE REPARATIONS SUBMISSIONS OF THE OTHER PARTIES AND PARTICIPANTS**

### **a) General Principles and Eligibility**

82. At the outset, the Legal Representative wishes to underscore that he stands by his Submissions on Reparations,<sup>165</sup> which, as outlined *supra*, are generally aligned with the recommendations of the Experts. As regards the submissions made by the other parties and participants in these proceedings, the Legal Representative generally concurs with those submissions that are in line with his own and consequently opposes those that cannot be reconciled with his prepositions. Therefore, the Legal Representative will not generally reiterate his previous submissions, but rather focus on individual aspects of recommendations and submissions made by the other parties and participants in these proceedings.

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<sup>163</sup> *Idem*, para. 104.

<sup>164</sup> *Idem*, para. 121.

<sup>165</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2.

83. The Legal Representative is opposed to the Defence's submissions on the general approach to be taken in the present reparations proceedings in their entirety. As such, the Defence's suggested approach cannot be reconciled with the one suggested by the Legal Representative. It also finds no support in the Experts' recommendations. To address a few matters in particular, the Legal Representative, for instance, opposes the Defence's submission that indirect victims should be limited to close family members of direct victims, such as spouses and children only.<sup>166</sup> He notes that in its recent decision,<sup>167</sup> the Chamber did not find support in the Defence's submission on the matter.<sup>168</sup>

84. The Defence advocates for a form-based approach to establish eligibility according to which every participating and every new victim must fill out an application form.<sup>169</sup> It argues that it should be given a genuine opportunity to challenge the applications of both participating victims and new applicants,<sup>170</sup> and points to the need to transmit all victims' applications to the Defence.<sup>171</sup> As regards the Defence's right to challenge individual applications, the Legal Representative recalls that the Single Judge did not grant the Defence any right to review and challenge applications prior to any reparations order being issued.<sup>172</sup> As regards such a right after the issuance of a reparations order, the Legal Representative submits that no such right should be granted if the process is not an application form based. He maintains his previous submissions that no individual assessment should take place given the widespread

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<sup>166</sup> See the "Defence Submissions on Reparations", [No. ICC-01/04-02/06-2479-Conf](#), 28 February 2020. A public redacted version was filed on 6 March 2020 as [No. ICC-01/04-02/06-2479-Red](#), (the "Defence Submissions on Reparations"), para. 22.

<sup>167</sup> See the "Decision on issues raised in the Registry's First Report on Reparations" (Trial Chamber VI), [No. ICC-01/04-02/06-2630](#), 15 December 2020 (the "15 December 2020 Decision").

<sup>168</sup> *Idem*, para. 53.

<sup>169</sup> *Idem*, para. 33.

<sup>170</sup> *Idem*, para. 39.

<sup>171</sup> *Idem*, para. 88.

<sup>172</sup> See the "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" (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2601](#), 29 September 2020, para. 5.

victimisation and the impracticability of such process given the large number of victims in the present case.<sup>173</sup>

85. The Defence submits that participating victims who have not previously expressed their wish to participate in reparations proceedings should not be presumed to want reparations.<sup>174</sup> The Legal Representative recalls that the Chamber has already decided that in principle it is appropriate to consider that persons who have not expressed views should be presumed willing to receive reparations and that consent should more appropriately be sought at the implementation phase.<sup>175</sup>

86. As regards the Registry's submissions on the principles to be applied to reparations,<sup>176</sup> the Legal Representative generally concurs with the Registry's approach where it does not contradict his own submissions. However, he is opposed to the suggested approach to eligibility being established through an application process.<sup>177</sup> Moreover, the Registry's suggested approach as regards the course of the reparations process appears to imply that several steps should be taken prior to the issuance of a reparations order.<sup>178</sup> While recalling the Chamber's findings that 1) a further assessment of the eligibility of the participating victims is not required at this stage, 2) the participating victims are also not required to file a new application form,<sup>179</sup> and 3) the period prior to the issuance of the reparations order should be used for the purpose of identifying as many potential beneficiaries of reparations as possible,<sup>180</sup> the Legal Representative maintains his position that there should not be any collection of application forms for reparations at any stage.<sup>181</sup>

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<sup>173</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 20.

<sup>174</sup> See the [Defence Submissions on Reparations](#), *supra* note 166, para. 33.

<sup>175</sup> See the "First Decision on Reparations Process" (Trial Chamber VI), [No. ICC-01/04-02/06-2547](#), 26 June 2020 (the "First Decision on Reparations"), para. 30.

<sup>176</sup> See the "Registry's Observations on Reparations", [No. ICC-01/04-02/06-2475](#), with Public Annex 1, [No. ICC-01/04-02/06-2475-Anx1](#), and Confidential *Ex Parte* Annex II, [No. ICC-01/04-02/06-2475-Conf-Exp-AnxII](#), 28 February 2020 (the "[Registry Submissions on Reparations](#)"), paras. 4-16.

<sup>177</sup> *Idem*, paras. 28-39.

<sup>178</sup> *Idem*, p. 21.

<sup>179</sup> See the [First Decision on Reparations](#), *supra* note 175, para. 29.

<sup>180</sup> *Idem*, para. 33.

<sup>181</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 28.

87. With respect to the TFV's submissions on the proposed principles and eligibility,<sup>182</sup> the Legal Representative concurs in large part with the TFV. The TFV for instance requests that in addition to the criteria established by the Appeals Chamber in the *Lubanga* case, a number of other principles be observed in the reparation process, namely one for the eligibility screening, one governing the treatment of sexual violence victims, the 'do no harm' principle to inform the overall conduct of the proceedings, the choice of types of modalities and the advisability of their practical implementation, and a 'restorative agency principle' to guide memorialisation principles.<sup>183</sup> This last principle is the only suggested principle the Legal Representative cannot agree with. He reiterates that the vast majority of his clients, with only few exceptions, have made it clear they do not want any form of memorialisation initiatives or other forms of symbolic reparations unless they serve some practical purpose. Instead of symbolic intangible measures, the victims seek and expect concrete support and assistance.

88. As regards the eligibility screening process, the Legal Representative concurs with the TFV's advocating against the suggested application-based screening approach put forth by the Registry,<sup>184</sup> and agrees with the TFV's identification of the difficulties that would arise, should the Registry's application-based method be implemented.<sup>185</sup>

89. The Legal Representative further concurs with the TFV's proposal for the latter being tasked with the design of methodology (in consultation with the LRVs) and the administration of eligibility screening of potential beneficiaries of reparations to be carried out post-order, *i.e.* implementation stage,<sup>186</sup> and welcomes the TFV's commitment to fully cooperate with the LRVs to ensure the fair and expeditious implementation of reparations awards.<sup>187</sup> It is submitted that delegating said tasks

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<sup>182</sup> See the [TFV Submissions on Reparations](#), *supra* note 156, paras. 17-36.

<sup>183</sup> *Idem*, para. 20.

<sup>184</sup> *Idem*, para. 45.

<sup>185</sup> *Idem*, paras. 46-60.

<sup>186</sup> *Idem*, paras. 67-72.

<sup>187</sup> *Idem*, para. 72.

along with the design of a draft implementation plan with subsequent implementation of reparations to a single body will benefit the effectiveness of the reparations proceedings and will prevent overlapping activities between different actors. An additional benefit will be that victims deemed ineligible by the TFV for reparations, might still be deemed eligible for some of the TFV's assistance programmes and subsequently included therein with no further assessment.

**b) Harm**

90. The Defence avers that the overall harm caused to victims can only be evaluated once all victims have been identified.<sup>188</sup> Contrary to the Defence's assertion, the Legal Representative reiterates his submissions that the cost to repair the harm caused can be determined on the basis of estimates while the precise cost of specific programmes can be determined at an ulterior stage of implementation.<sup>189</sup>

91. The Legal Representative also disagrees with the Defence's suggestion that the number of new beneficiaries of reparations will be very small.<sup>190</sup> In particular, the Defence contends that while the crimes of enlistment and conscription of children under 15 into armed groups and of their active use in hostilities are of a continuous nature, the extent of victimisation suffered by victims of the attacks is more delimited and confined<sup>191</sup> by specific dates and locations.<sup>192</sup> In this regard, the Legal Representative reiterates his earlier submissions supported by the Chamber's findings on the widespread and systematic nature of the UPC/FPLC's operations that were carried out in targeting entire locations in a prolonged and continuous manner, from different directions simultaneously,<sup>193</sup> and that thus all the persons residing or otherwise present in the affected communities at the time of the events should be

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<sup>188</sup> See the [Defence Submissions on Reparations](#), *supra* note 166, para. 45.

<sup>189</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, paras. 68-70.

<sup>190</sup> See the [Defence Submissions on Reparations](#), *supra* note 166, paras. 98, 104.

<sup>191</sup> *Idem*, para. 99.

<sup>192</sup> *Idem*, para. 70.

<sup>193</sup> See the "Observations of the Common Legal Representative of the Victims of the Attacks on the Registry's First Report on Reparations", [No. ICC-01/04-02/06-2621](#), 30 October 2020, paras. 21-23.

deemed as potential beneficiaries of reparations as direct victims.<sup>194</sup> In addition, family members of direct victims of murder, rape, sexual slavery, destruction of property and pillage should also be deemed potential beneficiaries as indirect victims.<sup>195</sup> Given the traditional family composition in DRC includes both close and remote relatives,<sup>196</sup> the total number of beneficiaries could easily triple the number of direct victims.

### c) Liability

92. The Defence argues that reparations should be awarded with due regard to Mr Ntaganda's different degree of participation in the First and Second Operations in mind.<sup>197</sup> The Legal Representative recalls the jurisprudence established by the Appeals Chamber according to which:

*“the responsibility to repair harm under article 75 of the Statute arises from a criminal conviction. The modes of individual criminal responsibility which may underpin such a conviction are, [...] relevant for capturing criminal responsibility. However, at the reparations stage, the focus is, as set out above, on repairing the harm that has resulted from the crimes in question. [...] [I]n some cases it may be appropriate for a trial chamber to take into account the role of the convicted person vis-à-vis others in the commission of the crimes when deciding on a reparations order against that person. For example, if more than one person is convicted by the Court for the same crimes at the same time, it may be appropriate to apportion liability for the costs to repair. Nevertheless, the focus in all cases should be the extent of the harm and cost to repair such harm, rather than the role of the convicted person. [...] The goal of reparations is not to punish the person but indeed to repair the harm caused to others”.*<sup>198</sup>

93. In particular, insofar the question whether the person was convicted for principal or accessory responsibility<sup>199</sup> as well as his individual participation in the

<sup>194</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, paras. 31-33.

<sup>195</sup> *Idem*, paras. 36-38 and 52.

<sup>196</sup> *Idem*, para. 52.

<sup>197</sup> See the [Defence Submissions on Reparations](#), *supra* note 166, para. 30.

<sup>198</sup> See the “Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute””, [No. ICC-01/04-01/07-3778-Red A3 A4 A5](#), 9 March 2018, paras. 179-180 and 184.

<sup>199</sup> See the [“Corrected Version of the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”](#), *supra* note 60, paras 272-273. See also the “Reparations Order” (Trial Chamber VIII), [No. ICC-01/12-01/15-236](#), 17 August 2017, para. 50.

crime or crimes<sup>200</sup> may be relevant for the purposes of reparations proceedings, the Legal Representative recalls that in the *Lubanga* case, Trial Chamber II relied on the fact that the convicted person's contributions to the common plan were essential to the common plan which he and his co-perpetrators shared and which resulted in the commission of the crimes on a large scale and in a widespread manner.<sup>201</sup> It is submitted that the same considerations undertaken by Trial Chamber II when determining Mr Lubanga's liability in terms of reparations are pertinent in the present case. Indeed, Mr Ntaganda, similar to Mr Lubanga, was convicted as a principal perpetrator, namely a co-perpetrator who agreed to and participated in a common plan,<sup>202</sup> and the harm caused was deemed extensive by the Chamber.<sup>203</sup>

94. The Registry for its part agrees that the liability should cover the "*cost to repair*" rather than "*the sum total of the monetary value of the harm caused*".<sup>204</sup> However, it appears to argue that the cost to repair should be determined based on the number of potential beneficiaries already identified without engaging with an estimation of the number of victims who may ultimately qualify.<sup>205</sup> This is notwithstanding that it recognises that further beneficiaries may be found at later stages, including the implementation phase.<sup>206</sup> The Registry suggests to "*insert them into any reparations programmes in a flexible manner*",<sup>207</sup> without elaborating, however, how the matter could be addressed, should the number of further beneficiaries be significant.

95. The Legal Representative is opposed to the Registry's suggested approach that the cost to repair be solely based on the number of potential beneficiaries identified

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<sup>200</sup> See the "[Order for Reparations pursuant to Article 75 of the Statute](#)", *supra* note 60, para. 257. See also the "[Corrected Version of the 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'](#)", *supra* note 60, para. 269.

<sup>201</sup> See the "[Corrected Version of the 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'](#)", *supra* note 60, para. 278.

<sup>202</sup> See the "Sentencing Judgment" (Trial Chamber VI), No. [ICC-01/04-02/06-2442](#), 7 November 2019, paras. 34-37.

<sup>203</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 87, footnote 89.

<sup>204</sup> See the [Registry Submissions on Reparations](#), *supra* note 176, para. 49.

<sup>205</sup> *Idem*, para. 50.

<sup>206</sup> *Idem*, para. 15 and footnote 54.

<sup>207</sup> See the [Registry Submissions on Reparations](#), *supra* note 176, footnote 54.



thus far and without due regard to the potentially very high number of affected victims that may only come forward during the implementation phase. If those not yet identified are not taken into account for the purpose of estimating the ‘cost to repair’ the harm suffered, the amount thus identified will fall short of the actual cost and thereby undermine the meaningfulness of the reparations in the present case. Indeed, if the cost to repair were estimated based on the approximately 3,500 victims identified to date and at the implementation phase this number were to rise to, for instance, 50 000, the reparations awards eventually ordered will simply be meaningless since the inaccurately estimated cost to repair will not reach a level where the harm suffered can be adequately repaired *vis-à-vis* all eligible victims.

96. The Legal Representative wishes to underscore that the newly identified 1100 potential beneficiaries<sup>208</sup> cannot serve as an accurate estimate of the real number of potentially eligible victims, given that the Registry’s field activities have been restricted due to the global COVID-19 pandemic<sup>209</sup> and bearing in mind the significant number of displaced persons in Ituri in 2019-2020,<sup>210</sup> and also because at this stage the Registry was only requested “*to focus mainly on its mapping exercise*”,<sup>211</sup> and thus no outreach activities have yet been carried out to inform potentially eligible victims on their rights and to encourage them to come forward for registration purposes.

97. As rule 97(1) of the Rules provides that the Chamber shall take into account the “*scope and extent of any damage, loss or injury*”,<sup>212</sup> the Legal Representative reiterates that the number of potential beneficiaries as direct victims is intrinsically linked with the number of inhabitants of the attacked villages at the time of the commission of the

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<sup>208</sup> *Idem*, para. 25.

<sup>209</sup> See the “Registry Submissions pursuant to the ‘Order to provide information on the impact of COVID-19 measures on operational capacity’, ICC-01/04-02/06-2507”, [No. ICC-01/04-02/06-2519-Conf](#), 21 April 2020. A public redacted version of the Registry’s submissions was filed the same day as [No. ICC-01/04-02/06-2519-Red](#), paras. 4-10 and 15-18.

<sup>210</sup> See OCHA, [Note d’information sur la situation humanitaire dans l’Ituri](#), 17 September 2020. See also MSF, [Nearly 200,000 people forced from homes as violence surges in northeast DRC](#), 4 June 2020. See also THE GUARDIAN, [Uganda reopens border to thousands of people fleeing violence in DRC](#), 24 June 2020.

<sup>211</sup> See the [First Decision on Reparations](#), *supra* note 175, para. 33.

<sup>212</sup> Emphasis added.

crimes, and should therefore be estimated based thereon.<sup>213</sup> This necessitates that official and authoritative figures of the relevant census of inhabitants be obtained as soon as possible as only these numbers will allow an accurate forecast of the number of potential beneficiaries as direct victims. The additional number of potential beneficiaries as indirect victims can be estimated based on an average composition of the direct victims' family being part of the Registry's sample.

#### **d) Types and Modalities of Reparations**

98. The Defence submits that individual reparations seem appropriate in relation to pillage or destruction of property, whereas psychological and physical harm sustained as a result of the crimes, such as rape, appears to be better addressed through collective reparations.<sup>214</sup>

99. Since the Defence does not provide any detail on the nature and modalities of suggested reparations, and given the Defence's preference to submit additional observations in this regard in its final submissions,<sup>215</sup> the Legal Representative is not in a position to make meaningful observations on the Defence's approach on the matter at this stage.

100. The Legal Representative generally concurs with TFV's submissions on types and modalities of reparations to be ordered in the present case,<sup>216</sup> and particularly shares the TFV's concerns on risks that may arise for both victims and communities in case of a predominantly compensation-based approach.<sup>217</sup> He concurs in particular that in the present case collective reparations should be awarded in the form of community-based and service-based reparations with individualised components.<sup>218</sup> However, in line with his previous submissions and the victims' wishes to be provided

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<sup>213</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 68.

<sup>214</sup> See the [Defence Submissions on Reparations](#), *supra* note 166, para. 109.

<sup>215</sup> *Idem*, para. 116.

<sup>216</sup> See the [TFV Submissions on Reparations](#), *supra* note 156, paras. 101-107.

<sup>217</sup> *Idem*, para. 105.

<sup>218</sup> *Idem*, para. 113.

with equal reparation awards,<sup>219</sup> the Legal Representative cannot support the TFV's suggestion to provide individual awards to only some categories of victims.<sup>220</sup> As submitted *supra*, it is reiterated that if the Chamber were to decide to order individual compensation awards, they should be of equal value and should be provided to all victims as suggested by the First Expert Report, although with due regard to all entailing risks and factors. Specific harm suffered by particular victims, including SGBV, can and should be addressed through collective reparations with individualised components, and not necessarily only with individual awards.

101. The Legal Representative takes note of TFV's concern that branding reparations as 'individual' rather than 'collective', may have an impact of the Fund's fund-raising capacities and its overall ability to complement the awards.<sup>221</sup> In this regard, he recalls that in the *Katanga* case, Trial Chamber II addressed the TFV's similar concerns and held that it "*does not see any provisions in the Regulations [of the TFV] to bar the Board of Directors of the TFV from managing its resources to complement the individual reparations*",<sup>222</sup> and that it "*is of the view that the 'other resources' could also be used for the individual reparations it has awarded*".<sup>223</sup> In any event, if the Chamber were inclined to order SRP/SCA awards as suggested by the Experts, such awards, although called 'individual', appear 'collective' in character.<sup>224</sup>

102. As regards the TFV's estimations on the cost to repair some categories of harm,<sup>225</sup> the Legal Representative notes that the suggested estimations are only preliminary,<sup>226</sup> and while trusting in the TFV's operational experience in the matter, he is of the view that corresponding costs are necessarily subject to variation depending on the victims' residence. Regarding the TFV's suggestion to deem programme

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<sup>219</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 54.

<sup>220</sup> See the [TFV Submissions on Reparations](#), *supra* note 156, paras. 114-115.

<sup>221</sup> *Idem*, paras. 123-128.

<sup>222</sup> See the "[Order for Reparations pursuant to Article 75 of the Statute](#)", *supra* note 60, para. 337.

<sup>223</sup> *Idem*, para. 341.

<sup>224</sup> See *supra*, para. 52.

<sup>225</sup> See the [TFV Submissions on Reparations](#), *supra* note 156, para. 130.

<sup>226</sup> *Ibid.*

support costs as part of the cost to repair,<sup>227</sup> the Legal Representative posits that these costs cannot be known at this stage as they would depend on the nature, scope and modalities of the reparation measures, and therefore can hardly be included in the cost to repair which is expected to be established in a reparations order. In any case, it is submitted that programme support costs should not be deducted from the average *per capita* cost to repair suggested by the Legal Representative.

#### e) Post-Order Implementation Phase

103. According to the Defence, the post-order implementation phase begins with the relevant actors, namely the Registry and the TFV, carrying out their tasks, such as the identification of new potential beneficiaries.<sup>228</sup> The Defence further states that in that phase of the proceedings, the monetary amount necessary to remedy the harm suffered by the beneficiaries caused by the crimes for which Mr Ntaganda was convicted can be anticipated.<sup>229</sup>

104. The Legal Representative disagrees with this approach. Indeed, the Defence's approach is premised on the suggestion that the reparations order should not establish the cost to repair, and that this cost should be determined by the TFV at a later stage. However, the reparations order is meant to determine *inter alia* the scope of the convicted person's liability for reparations, and thus the cost to repair. The TFV should then, at a later stage, provide specific information on the cost of specific programmes and projects that accord with the overall set amount of the cost to repair.

105. Following the reparations order, the TFV should then carry out the eligibility screening, in accordance with the eligibility criteria established by the Chamber, in consultation with the LRVs as far as their clients are concerned. Insofar collective reparations, with individualised components and/or community-based, are ordered, no role is foreseen for the Defence in the eligibility screening by the Court's legal texts

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<sup>227</sup> *Idem*, para. 136.

<sup>228</sup> See the [Defence Submissions on Reparations](#), *supra* note 166, para. 100.

<sup>229</sup> *Ibid.*

or otherwise supported by the Court's practice in other cases. Rather, the Defence will have the opportunity to make observations on the draft implementation plan to be designed and submitted by the TFV.

#### 6) ON THE ASSESSMENT OF THE POTENTIAL ELIGIBILITY OF VICTIMS

106. In its 15 December 2020 Decision, the Chamber provided "*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*".<sup>230</sup> In particular, it clarified 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*".<sup>231</sup>

107. The Legal Representative submits that in accordance with the Chamber's said guidance and absent of any further indication, any victim who has suffered harm in the forest or bush surrounding locations under 'positive findings' *regardless of the relevant victim's original location* can be eligible for reparations. This is of high relevance for the purpose of the estimation of the number of potential beneficiaries of reparations as direct victims. Indeed, in addition to persons who were residing or lawfully present at the affected locations under 'positive findings' at the time of the events, in light of the Chamber's guidance, a potentially high number of victims originating *from any other location* can also be eligible for reparations as direct victims, provided they suffered harm in the forest or bush surrounding the affected locations at the time of the events.

108. In this regard, the Legal Representative underscores that according to the United Nations, during the *shika na mukono* operation, around 60,000 civilians were forced to flee to the bush surrounding the affected locations in the Walendu-Djatsi

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<sup>230</sup> See the [15 December 2020 Decision](#), *supra* note 167, para. 12.

<sup>231</sup> *Idem*, para. 19(f).

*collectivité*.<sup>232</sup> He also reiterates his previous submissions that moral harm should be presumed for any person subjected to any kind of aggression and abuse,<sup>233</sup> including when fleeing and/or hiding in the forest or bush to escape violence, given in particular that in the present case, while in the forest or bush, the victims in addition to staying in difficult conditions<sup>234</sup> in some cases for a prolonged period,<sup>235</sup> continued to be chased,<sup>236</sup> searched<sup>237</sup> and captured,<sup>238</sup> and thus were exposed to continuous violence, danger and threats, which resulted in harm.<sup>239</sup>

109. As regards the Registry's assessment of the eligibility of the participating victims, the Legal Representative reiterates his previous submissions that the assessment should be based on a holistic approach requiring a *substantive assessment* of the entire content of the application forms and should thus be focused on the description of the relevant underlying events as well as of the harm suffered.<sup>240</sup> In light of the Chamber's said guidance, the victims' accounts should not be solely assessed based on the victims' original locations at the time, but also with due regard to the harm eventually suffered in the forest or bush when fleeing and/or hiding, and to the proximity of the respective forest or bush to the locations under 'positive findings'.

110. He also reiterates his previous submissions that those participating victims who may be categorised by the Registry as no longer fulfilling of the eligibility criteria, should not be found to be ineligible as such, but rather be placed in a separate category, namely one that allows for a further assessment following an opportunity for

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<sup>232</sup> See DRC-OTP-0074-0422, the [Special Report on the events in Ituri, January 2002-December 2003](#), 16 July 2004, S/2004/573, para. 70. See also the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 71.

<sup>233</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, paras. 50-51.

<sup>234</sup> See the "Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019 (the "Trial Judgment"), paras. 996, 1000, 1002,

<sup>235</sup> *Idem*, paras. 536, 585 and 722.

<sup>236</sup> *Idem*, paras. 914 and 1006.

<sup>237</sup> *Idem*, paras. 913-915.

<sup>238</sup> *Idem*, paras. 898, 959, 1005-1007 and 1063.

<sup>239</sup> See the "Sentencing Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019, para. 162.

<sup>240</sup> See the ["Observations of the Common Legal Representative of the Victims of the Attacks on the Registry's First Report on Reparations"](#), *supra* note 193, para. 31.

clarification at later stage of the reparations process, either through an individual assessment or screening.<sup>241</sup>

## 7) CONCLUDING REMARKS AND WAY FORWARD

111. The Legal Representative underscores once more the importance of a reparations order only being issued after the close of the appeals proceedings in the present case when the full and final extent of Mr Ntaganda's convictions will be known.

112. Although the number of potential beneficiaries cannot be ascertained at this stage, it can be reasonably anticipated that this number will be very high. The estimated number of potential beneficiaries should be as accurate as possible to ensure that the fixed overall amount will indeed meaningfully cover the cost to repair. Otherwise, no meaningful reparation will be possible to remedy the harm suffered by the victims, both direct and indirect.

113. The estimation of the number of potential beneficiaries of reparations as *direct victims* should be based on authoritative figures on the number of inhabitants in the affected locations under 'positive findings' prior to the events, and bearing in mind that victims originating from any other location can also be eligible for reparations, provided they suffered harm in the forest or bush surrounding the affected locations at the time of the events. It should be taken into account that, at the time of the attacks, Lendu constituted the majority of the population of the affected locations in the Banyali-Kilo *collectivité*, in particular Mongbwalu, Sayo and surrounding areas.<sup>242</sup> Inhabitants of Kilo were composed of different ethnic groups, including Nyali and Lendu, with the Nyali constituting the majority;<sup>243</sup> while the inhabitants of the villages in the Walendu-Djatsi *collectivité*, notably Kobu, Bambu, Lipri, Tsili, Jitchu, Dhekpa and Nyangaray, were predominantly Lendu.<sup>244</sup>

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<sup>241</sup> *Idem*, para. 38.

<sup>242</sup> See the [Trial Judgment](#), *supra* note 234, para. 470.

<sup>243</sup> *Idem*, para. 537.

<sup>244</sup> *Idem*, para. 549.

114. The estimation of the number of further potential beneficiaries of reparations as *indirect victims* should be based on an average family composition of the victims included in the Registry's sample, with due regard to the traditional notion of family in DRC which includes both close and remote relatives. This category of potential beneficiaries of reparations should thus include: both close and remote family members and entire family units, as regards the crimes of murder, destruction of property and pillage; and close relatives, as regards the crimes of rape and sexual slavery, including children born out of rape.

115. Crucially, the estimation of the number of potential beneficiaries should not be limited to the number of currently participating victims and the limited number identified so far by the Registry in the context of its mapping exercise.

116. If the Chamber were to order individual compensation awards as recommended by the Experts, the Legal Representative respectfully requests the Chamber to consider the appropriateness of such reparations awards with due regard to the victims' views and concerns, and in light of the victims' particular situation, the 'do no harm' principle and overall objectives of reparations.

117. The eventual individual compensation awards should in any case be complemented with collective reparations with individualised components, in the form of medical and psychological rehabilitation, educational and vocational training assistance, housing assistance and support to income-generating activities; community-based collective reparations to address harm suffered by entire communities and to establish community infrastructures needed for the implementation of collective awards with individualised components; and eventually symbolic measures aimed at providing guarantees of non-repetition and promoting peace and reconciliation.

118. The cost of collective reparations with individualised components should be determined based on the estimation of the number of potential beneficiaries of



reparations, both direct and indirect victims, multiplied by an average *per capita* cost to repair, which should be no less than 10 000 USD *per capita*. This cost should further be supplemented with the cost of community-based collective reparations and of symbolic reparations, including the cost of building a community centre named after *Abbé Bwanalungwa* and the cost of rehabilitation of the Sayo health centre.

119. Once the reparations order is issued, the Registry should be ordered to conduct a widespread outreach campaign in the DRC and bordering regions of Uganda. The activities should be followed by the screening and registering of potential beneficiaries of reparations in locations in which they currently reside. Reasonable time should be allocated to these activities, especially in view of the restrictions related to the COVID-19 pandemic. The Chamber is further invited to consider involving the United Nations High Commissioner for Refugees and/or the International Organisation for Migration (the “IOM”) with regard to the identification of displaced victims formerly residing in the affected communities at the relevant time.

120. In this regard, the Legal Representative points to the IOM’s submission that [REDACTED],<sup>245</sup> and that [REDACTED].<sup>246</sup> Accordingly, in the context of its post-order outreach campaign, the Registry should explain the eligibility requirements as well as the types and modalities of the reparations as awarded. This outreach should be designed in a way to reach as many persons as possible in the affected locations and elsewhere and to encourage potentially eligible victims to come forward. Their contact details and current places of residence should then be recorded which will enable the TFV, based on this information, to start screening potential beneficiaries in cooperation with the LRVs as far as their clients are concerned. The TFV should then design and submit a draft implementation plan.

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<sup>245</sup> See the “Submission of observations on the issues identified under paragraph 9 (c) (i), (ii) and (iii) pursuant to the ‘Order setting deadlines in relation to reparations’ No. ICC-01/04-02/06”, [No. ICC-01/04-02/06-2483-Conf](#), 6 March 2020, para. 35.

<sup>246</sup> *Idem*, para. 32.

121. In the reparations order, the TFV should be urged to engage in its fundraising efforts,<sup>247</sup> to diversify its funding sources and develop its fundraising capacity,<sup>248</sup> and to explore all possible ways to cooperate with all relevant stakeholders to ensure the meaningfulness of the reparations proceedings in the present case, including the DRC authorities and other States Parties. It should also be urged to further its endeavours in exploring and developing innovative funding schemes,<sup>249</sup> and to engage with international and regional financial institutions, in particular the World Bank Group and the African Development Bank, and/or international humanitarian agencies such as the UN Food and Agriculture Organisation, with a view to exploring possibilities of engaging resources, experience and expertise of these institutions.

122. Furthermore, the reparations order should clearly set out the roles of all different actors, and in particular the respective roles of the Registry and the TFV, so as to avoid overlap in their tasks and to ensure the efficient use of resources.

123. The Legal Representative cannot stress enough that reparations in the present case must not be the source of animosity, stigmatisation and tensions in the affected communities, but to the contrary should have healing and restorative effect and promote reconciliation.<sup>250</sup> Accordingly, the TFV should be urged to implement broader assistance programmes<sup>251</sup> in the locations that are ethnically mixed and/or where only a selected part of the inhabitants would benefit from reparations, including small villages or settlements surrounding the locations eligible for reparations, and in any event in the locations eventually excluded from the scope of the conviction following the outcome of the appeals.

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<sup>247</sup> See the [“Reparations Order”](#), *supra* note 199, para. 138.

<sup>248</sup> See REDRESS, [No Time to Wait: Realising Reparations for Victims before the International Criminal Court](#), pp. 34-35.

<sup>249</sup> See ASP, the *Report to the Assembly of States Parties on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2017 to 30 June 2018*, [ICC-ASP/17/14](#), 23 July 2018, p. 3.

<sup>250</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, paras. 16 and 23.

<sup>251</sup> See the [“Reparations Order”](#), *supra* note 199, para. 108.

124. In line with the concept of reparative complementarity,<sup>252</sup> the Chamber should further consider calling upon the DRC and other States Parties to meaningfully contribute to reparations in the present case as a sign of commitment to their engagement under the Rome Statute to guarantee lasting respect for and the enforcement of international justice.<sup>253</sup> Furthermore, it should be recalled that “[a]n order for reparations does not [...] relieve State Parties of the responsibility to award reparations to victims pursuant to other treaties or domestic legislation”,<sup>254</sup> and that States Parties have a duty to fully cooperate with the Court including the enforcement of orders for reparations and the implementation of reparations.<sup>255</sup>

125. Accordingly, and since the ongoing insecurity in Ituri has the potential to significantly undermine the overall success of the reparations proceedings in the present case, the Government of the DRC should be called on to facilitate the enforcement of the reparations awards ordered by the Chamber, in particular – and echoing the wishes of all the victims – to intensify their efforts aimed at improving the security situation in and around the affected locations by encouraging the victims to return to their original places of residence and facilitating the implementation of reparations awards for the benefit of both the individual victims and the affected communities as a whole.

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<sup>252</sup> See the [CLR2 Submissions on Reparations](#), *supra* note 2, para. 80.

<sup>253</sup> See the Preamble to the Rome Statute.

<sup>254</sup> See the [“Order for Reparations pursuant to Article 75 of the Statute”](#), *supra* note 60, para. 323.

<sup>255</sup> *Idem*, para. 324.

**RESPECTFULLY SUBMITTED**

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a period at the end.

Dmytro Suprun  
Common Legal Representative of the Victims of the Attacks

Dated this 21<sup>st</sup> Day of December 2020

At The Hague, The Netherlands