

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



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No.: **ICC-01/04-02/06**

Date: **8 March 2021**

**TRIAL CHAMBER VI**

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. BOSCO NTAGANDA***

**Public**

**Reparations Order**

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

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**TRIAL CHAMBER VI** (the ‘Chamber’) of the International Criminal Court (the ‘Court’), in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’, or the ‘case’), having regard to articles 75 and 79 of the Rome Statute (the ‘Statute’), rules 85, 86, and 94 to 99 of the Rules of Procedure and Evidence (the ‘Rules’), regulation 117 of the Regulation of the Court (the ‘Regulations’), and regulations 118 of the Regulations of the Registry, issues this Reparations Order (the ‘Order’).<sup>1</sup>

## I. OVERVIEW

1. The reparations phase of the proceedings marks a critical juncture in the administration of justice. To some extent, the success of the Court is linked to the success of its reparations system.<sup>2</sup> In effect, the victims’ rights to truth, justice, and reparations are all part of the victims’ right to a remedy.<sup>3</sup>
2. Reparations fulfil two main purposes that are enshrined in the Statute: they oblige those responsible for serious crimes to repair the harm they have caused and enable the Court to ensure that offenders account for their acts.<sup>4</sup>
3. Reparations also aim, to the extent possible and achievable, to relieve the suffering caused by serious crimes, afford justice to the victims by addressing the consequences of the

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<sup>1</sup> To the extent that the present Order refers to confidential documents, the Chamber considers that the reference to these documents does not undermine the confidentiality of the information concerned.

<sup>2</sup> Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, [ICC-01/04-01/06-2904](#) (‘Lubanga Reparations Decision’), para. 178; Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, [ICC-01/04-01/06-3129](#) (‘Lubanga Judgment on Principles’), Annex A, Order for Reparations (amended), [ICC-01/04-01/06-3129-AnxA](#), (‘Lubanga Amended Reparations Order’), para. 3; Trial Chamber II, *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute (with public Annex I and confidential ex parte Annex II), 24 March 2017, [ICC-01/04-01/07-3728](#) (‘Katanga Reparations Order’), para. 14.

<sup>3</sup> United Nations, General Assembly (‘UNGA’), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, [UN Doc A/RES/60/147](#) (‘Basic Principles on Reparations’), para. 11; United Nations, Economic and Social Council (‘UNESCO’), Set of Principles for the Protection and Promotion of Human Rights through action to Combat Impunity, 2 October 1997, [E/CN.4/Sub.2/1997/20/Rev.1](#), p. 5; see also Pre-trial Chamber I, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, 13 May 2008, [ICC-01/04-01/07](#), paras 31-36, 39, 37-44.

<sup>4</sup> *Lubanga Amended Reparations Order*, [ICC-01/04-01/06-3129-AnxA](#), para. 2; *Lubanga Judgment on Principles*, [ICC-01/04-01/06-3129](#), para. 65; *Katanga Reparations Order*, [ICC-01/04-01/07-3728](#), para. 15.

wrongful acts committed by the convicted person, deter future violations, and enable the victims to recover their dignity.<sup>5</sup>

4. The Chamber acknowledges that the meaning of justice and fairness for victims, and the extent to which they may be achieved, depend on a multitude of factors, including, *inter alia*, age, gender, social context, and victims' needs and expectations.<sup>6</sup> Their understanding may also change over time and should be constructed in light of the particular circumstances and context of each case.<sup>7</sup> A victim-centred approach shall guide the reparations proceedings,<sup>8</sup> and the Court should strive to ensure that reparations are prompt and meaningful to the victims.<sup>9</sup>

5. Considering that the mandate of two of the Chamber's three Judges comes to an end on 10 March 2021, including that of the Judge who presided over the trial, the Chamber has decided to issue this Order prior to the issuance of the appeals judgment on the conviction and sentence.<sup>10</sup> In that respect, the Chamber recalls (i) the victims' right to prompt reparations;<sup>11</sup> (ii) that the crimes for which Mr Bosco Ntaganda ('Mr Ntaganda') was convicted took place almost two decades ago and most victims have received little to no assistance so far;<sup>12</sup> and (iii)

<sup>5</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 71; Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, [ICC-01/12-01/15-236](#) ('*Al Mahdi* Reparations Order'), para. 28; *see also* *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 15.

<sup>6</sup> *See, for instance*, United Nations, Human Rights Council ('HR Council'), Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, 9 August 2012, [A/HRC/21/46](#) ('Report of the Special Rapporteur Pablo de Greiff'), paras 58-59; UNGA, Resolution 40/34, [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), 29 November 1985, para. 6; European Union Fundamental Rights Agency, 'Victims' Rights As Standards Of Criminal Justice: Justice for victims of violent crime, Part I', 24 April 2019, p. 17.

<sup>7</sup> *See, for instance*, International Center for Transitional Justice, '[Victims Fighting Impunity Transitional Justice in the African Great Lakes Region](#)' (March 2017), p. 10; R. Letschert and S. Parmentier, 'Repairing the Impossible: Victimological Approaches to International Crimes' in Inge Vanfraechem et. al. (eds.), in *Justice for Victims: Perspectives on rights, transition and reconciliation* (2014), p. 218.

<sup>8</sup> *See infra* Principle 1.iii. 'Victim-centred approach: Accessibility and consultations with victims'.

<sup>9</sup> *See Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 15; *see* Principle. 1.iii. 'Victim-centred approach: Accessibility and consultations with victims'.

<sup>10</sup> The Chamber notes that, in two prior cases, reparations orders have been issued by this Court after the Judgment on Conviction has become final, *see Katanga* Reparations Order, [ICC-01/04-01/07-3728](#); *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#). However, in the *Lubanga* case, the order on reparations was issued before the Appeals Judgment on Conviction, *see Lubanga* Reparations Decision, [ICC-01/04-01/06-2904](#). In addition, the common practice in other international criminal jurisdictions is to issue reparation orders together with the conviction, *see, inter alia*, ECCC, Trial Chamber, *Case 002/01*, Judgement, 7 August 2014, [002/19-09-2007/ECCC/TC](#); Chambre africaine extraordinaire d'assises d'appel ('EAAC'), *Le Procureur v. Hisein Habré*, Arrêt, 27 avril 2017 ('*Prosecutor v. Hisein Habré*').

<sup>11</sup> Submissions on Reparations on behalf of the Former Child Soldiers, [ICC-01/04-02/06-2474](#) (with public Annex) ('CLR1 February 2020 Submissions'), para. 36; Annex 1 to the Registry Transmission of Appointed Experts' Reports, 3 November 2020, [ICC-01/04-02/06-2623-Anx1-Red2](#) ('First Experts Report'), para. 48; *see infra*, Principle 3.ii. 'Proportional, prompt, and adequate reparations'.

<sup>12</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 274-276; *see also* Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 43; Defence Submissions on Reparations, ICC-01/04-02/06-2634-Conf (public

that, due to their particular vulnerability, some victims may require urgent assistance.<sup>13</sup> The Chamber considers that issuing this Order now may contribute to more expeditious reparations proceedings.<sup>14</sup>

6. The Chamber has taken into account the submission that the victims' expectations should not be unduly raised before the outcome of the appeals on Mr Ntaganda's conviction and sentence.<sup>15</sup> The Chamber acknowledges the need to take into account and manage the victims' expectations, while respecting their agency and capacity as parties to the proceedings, and stresses that their right to prompt reparations is of paramount importance.<sup>16</sup> After the issuance of this Order, it will be the duty of the Court as a whole, including the Registry as appropriate, and of all those who assist its work, including the Legal Representatives of Victims (the 'LRVs') and the Trust Fund for Victims (the 'TFV'), depending on their roles, to manage the victims' expectations through proper outreach and communication.<sup>17</sup>

7. After detailed consideration of the submissions of the parties and other participants in the proceedings,<sup>18</sup> reports from the Registry and the Appointed Experts, the TFV, relevant case records, and the applicable legal framework, the Chamber has concluded that awarding

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redacted version filed on 11 January 2021, [ICC-01/04-02/06-2634-Red](#)) ('Defence Final Submissions'), para. 127; *see also, infra*, Principle 3.ii. 'Proportional, prompt, and adequate reparations'.

<sup>13</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 163; *see also* Lubanga Reparations Decision, [ICC-01/04-01/06-2904](#), para. 200; Katanga Reparations Order, [ICC-01/04-01/07-3728](#), para. 310.

<sup>14</sup> *See* Appeals Chamber, *Prosecutor v. Germain Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled 'Order for Reparations pursuant to Article 75 of the Statute', 8 March 2018, [ICC-01/04-01/07-3778-Red](#) ('Katanga Judgment on Reparations Order'), para. 142.

<sup>15</sup> *See* Defence submissions on reparations, ICC-01/04-02/06-2479-Conf (initially filed as public, reclassified as confidential 6 March 2020, public redacted version notified on same date, [ICC-01/04-02/06-2479-Red](#)) ('Defence February 2020 Submissions'), para. 38; Final Observations on Reparations of the Common Legal Representative of the Victims of the Attacks, ICC-01/04-02/06-2633-Conf (with Public Annex 1, public redacted version notified on 21 December 2020, [ICC-01/04-02/06-2633-Red](#)) ('CLR2 Final Submissions'), para. 111. The Chamber notes the CLR2's prior submission that, before the conviction has been affirmed by the Appeals Chamber, the Chamber should refrain from identifying all beneficiaries or set in motion any identification procedure, only setting out the relevant criteria of eligibility for the assessment of beneficiaries during the implementation phase, *see* Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations, ICC-01/04-02/06-2477-Conf (public redacted version notified on the same date, [ICC-01/04-02/06-2477-Red](#)) ('CLR2 February 2020 Submissions'), paras 17-20, 24, 27.

<sup>16</sup> Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, [ICC-01/04-02/06-2632](#) ('CLR1 Final Submissions'), para. 14; Trust Fund for Victims' observations relevant to reparations, [ICC-01/04-02/06-2476](#) ('TFV February 2020 Submissions'), para. 122; Annex I, *annexed to* Registry's Observations on Reparations, [ICC-01/04-02/06-2475-AnxI](#) ('Registry February 2020 Submissions'), para. 11.

<sup>17</sup> *See* Defence February 2020 Submissions, [ICC-01/04-02/06-2479-Red](#), paras 40-42; Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), paras 54-57; *see infra* Principle 1.iii. 'Victim-centred approach: Accessibility and consultations with victims', Principle 6.ii. 'Publicity of the proceedings', and Principle 1.iv. 'Do no harm'; [Final Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System](#), 30 September 2020 ('Independent Experts Final Report'), R346.

<sup>18</sup> Including the Prosecutor, the IOM, and the DRC.

collective reparations with individualised components is the most appropriate course of action in the present proceedings.<sup>19</sup>

8. The Chamber reached the above conclusion in light of (i) the scope of the case; (ii) the potentially large number of unidentified eligible victims; (iii) the extent of the harm the victims suffered; and (iv) the scope, types, and modalities of reparations the Chamber considers appropriate to address such harm, in the circumstances of the case.<sup>20</sup> In effect, the Chamber notes that the potential number of victims of all crimes for which Mr Ntaganda was convicted may be significantly higher than the number of victims currently known. The exact number may never be determined given the passage of time, the widespread and systematic nature of the crimes committed, and the specific context of the Democratic Republic of the Congo (the ‘DRC’), and particularly Ituri.

9. The Chamber stresses that in reaching this decision it particularly took into account the victims’ wish not to be granted any form of memorialisation or other forms of symbolic reparations unless they serve practical purposes,<sup>21</sup> and their wish to receive awards aiming at supporting sustainable and long-term livelihood and well-being, rather than simply addressing their needs on a short-term basis.<sup>22</sup> The Chamber has thus concluded that collective reparations with individualised components are the most appropriate way of addressing the harms caused by the crimes for which Mr Ntaganda was convicted and the long-term needs of the victims.

## II. PROCEDURAL HISTORY

10. On 8 July 2019, the Chamber issued its Judgment, convicting Mr Ntaganda of five counts of crimes against humanity and thirteen counts of war crimes, namely: murder and attempted murder, rape, sexual slavery, persecution, forcible transfer of population, intentionally directing attacks against civilians, pillage, ordering the displacement of the civilian population, conscripting and enlisting children under the age of 15 years into an armed group and using them to participate actively in hostilities, intentionally directing attacks against protected objects, and destroying the adversary’s property.<sup>23</sup>

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<sup>19</sup> On the definition of ‘collective reparations with individualised components’, *see infra* Principle 3.i. ‘Types and modalities of reparations’.

<sup>20</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 148(e).

<sup>21</sup> CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 15; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 73, 87.

<sup>22</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 57.

<sup>23</sup> Judgment, [ICC-01/04-02/06-2359](#) (with Annexes A, B, and C) (‘Judgment’).



11. On 25 July 2019, Judge Chang-ho Chung (the ‘Single Judge’), issued an Order for the Registry to provide information relevant to the reparations proceedings.<sup>24</sup> On 5 September 2019, the Registry submitted its preliminary observations,<sup>25</sup> and responses thereto were filed on 3 October 2019, by the Office of the Prosecutor (the ‘Prosecutor’),<sup>26</sup> the Defence,<sup>27</sup> the LRVs,<sup>28</sup> and the TFV.<sup>29</sup>
12. On 7 November 2019, the Chamber issued the Sentencing Judgment, imposing on Mr Ntaganda a joint sentence of thirty years of imprisonment.<sup>30</sup>
13. On 5 December 2019, the Single Judge issued an Order (the ‘December 2019 Order’), *inter alia*, instructing the parties, the Registry, and the TFV, and inviting the Prosecutor, to make submissions on issues related to reparations.<sup>31</sup> The Single Judge also instructed the Registry to (i) continue to carry out a preliminary mapping of potential new beneficiaries of reparations; (ii) carry out an assessment of how many participating victims in the case may potentially be eligible for reparations; (iii) carry out an assessment of how many of the victims eligible for reparations in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the ‘Lubanga case’) are also potentially eligible for reparations in the *Ntaganda* case; and (iv) submit a list of proposed experts on five issues relevant for the reparations proceedings.<sup>32</sup>

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<sup>24</sup> Order for preliminary information on reparations, [ICC-01/04-02/06-2366](#).

<sup>25</sup> Registry’s observations, pursuant to the Single Judge’s “Order for preliminary information on reparations” of 25 July 2019, ICC-01/04-02/06-2366, [ICC-01/04-02/06-2391](#) (with public [Annex I](#) and confidential Annex II).

<sup>26</sup> Prosecution’s response to the Registry’s observations, pursuant to the Single Judge’s “Order for preliminary information on reparations” (ICC-01/04-02/06-2391-Anx1), 3 October 2019, [ICC-01/04-02/06-2429](#).

<sup>27</sup> Response on behalf of Mr. Ntaganda to Registry’s preliminary observations on reparations, [ICC-01/04-02/06-2431](#).

<sup>28</sup> Joint Response of the Legal Representatives of Victims to the Registry’s Observations on Reparations, [ICC-01/04-02/06-2430](#).

<sup>29</sup> Trust Fund for Victims’ response to the Registry’s Preliminary Observations pursuant to the Order for Preliminary Information on Reparations, [ICC-01/04-02/06-2428](#).

<sup>30</sup> Sentencing Judgment, 7 November 2019, [ICC-01/04-02/06-2442](#) (with Annex of list of decisions and authorities) (‘Sentencing Judgment’).

<sup>31</sup> Order setting deadlines in relation to reparations, [ICC-01/04-02/06-2447](#) (‘December 2019 Order’).

<sup>32</sup> December 2019 Order, [ICC-01/04-02/06-2447](#), para. 9 (a) and (b). The issues identified by the Chamber were (i) the scope of liability of the convicted person; (ii) the scope, extent, and evolution of the harm suffered by both direct and indirect victims, including the long-term consequences of the crimes on the affected communities and including the potential cost of repair; (iii) appropriate modalities of reparations; (iv) sexual violence, in particular sexual slavery, and the consequences thereof on direct and indirect victims; and (v) any other matter deemed relevant after the aforesaid consultation.

14. On 28 February 2020, the Defence,<sup>33</sup> the LRVs (hereafter the ‘CLR1’<sup>34</sup> or the ‘CLR2’<sup>35</sup>),<sup>36</sup> the Registry,<sup>37</sup> the Prosecutor,<sup>38</sup> and the TFV<sup>39</sup> made their respective submissions on reparations. The Chamber also received observations from the government of the DRC,<sup>40</sup> and the International Organization for Migration (the ‘IOM’).<sup>41</sup>

15. On 14 May 2020, the Chamber appointed four experts (the ‘Appointed Experts’) and instructed them to submit a report on the issues identified in the December 2019 Order.<sup>42</sup>

16. On 26 June 2020, the Chamber issued the ‘First Decision on Reparations Process’ (the ‘First Decision’),<sup>43</sup> noting that it had decided to adopt an approach to reparations that sought to rely on the full collaboration and cooperation of the Registry’s VPRS and the TFV, as well as that of the LRVs, to benefit from their combined knowledge, expertise, and experience.<sup>44</sup> The Chamber stressed that it considered that the Registry, through the VPRS, was the right entity to lead the identification of potential new beneficiaries, due to its familiarity with the case and its field presence in the DRC.<sup>45</sup> However, in light of the impact of the COVID-19 pandemic on the operations of the Court in the field and on the expected timeline of the reparations proceedings, the Chamber noted that it had decided to adapt its approach to the proceedings.<sup>46</sup> Accordingly, it instructed the Registry to (i) finalise, as soon as practicable, the assessments and mapping; (ii) prepare, in consultation with the parties and the TFV, a sample of potential beneficiaries of reparations; (iii) report to the Chamber on the aforementioned

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<sup>33</sup> Defence February 2020 Submissions, [ICC-01/04-02/06-2479-Red](#).

<sup>34</sup> Common Legal Representative of the former child soldiers.

<sup>35</sup> Common Legal Representative of the victims of the attacks.

<sup>36</sup> CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#); and CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#).

<sup>37</sup> Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#).

<sup>38</sup> Prosecution’s Observations on Reparations, [ICC-01/04-02/06-2478](#) (with public Annex A) (‘Prosecution February 2020 Submissions’).

<sup>39</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#).

<sup>40</sup> Annex (confidential), *annexed to* Transmission des observations de la République démocratique du Congo, 2 March 2020, [ICC-01/04-02/06-2480](#) (‘DRC February 2020 Submissions’).

<sup>41</sup> 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, 6 March 2020, [ICC-01/04-02/06-2483](#) (‘IOM February 2020 Submissions’).

<sup>42</sup> Decision appointing experts on reparations, ICC-01/04-02/06-2528-Conf (public redacted version notified on the same date [ICC-01/04-02/06-2528-Red](#)).

<sup>43</sup> First Decision on Reparations Process, [ICC-01/04-02/06-2547](#) (‘First Decision’).

<sup>44</sup> First Decision, [ICC-01/04-02/06-2547](#), para. 25.

<sup>45</sup> First Decision, [ICC-01/04-02/06-2547](#), para. 27.

<sup>46</sup> First Decision, [ICC-01/04-02/06-2547](#), para. 28.

activities, together with any request for guidance as to any legal and factual issues, by 30 September 2020, and thereafter every three months.<sup>47</sup>

17. On 30 September 2020, the Registry Filed its ‘First Report on Reparations’ (the ‘First Report’),<sup>48</sup> containing (i) an update on the Registry assessment exercise for participating victims; (ii) a list of key legal and factual issues relevant to the eligibility assessment; (iii) an update on the victims in the *Lubanga* case; and (iv) a report on the methodology for the sample and mapping, including identifying and registering potential new beneficiaries. On 30 October 2020, as authorised by the Chamber,<sup>49</sup> the LRVs<sup>50</sup> and the Defence<sup>51</sup> submitted their observations on the First Report.

18. On 30 October 2020, the Registry transmitted<sup>52</sup> (i) the ‘Experts Report on Reparation’, submitted by Dr Karine Bonneau, Mr Eric Mongo Malolo, and Dr Norbert Wühler (the ‘First Experts Report’),<sup>53</sup> and (ii) the ‘Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare’, submitted by Dr Sunneva Gilmore (the ‘Second Expert Report’).<sup>54</sup>

19. On 15 December 2020, the Chamber issued a Decision on the issues raised in the First Report (the ‘Decision on the First Report’),<sup>55</sup> *inter alia*, instructing the Registry to conclude, by 15 January 2021 at the latest, the assessment of potentially eligible victims. At the request of the Registry, the Chamber also provided a series of clarifications related to the territorial,

<sup>47</sup> First Decision, [ICC-01/04-02/06-2547](#), paras 43-44.

<sup>48</sup> Registry’s First Report on Reparations, [ICC-01/04-02/06-2602](#) (With Confidential Annexes I-V, public redacted version of Annex I notified on 1 October 2020, [ICC-01/04-02/06-2602-AnxI-Red](#)) (‘First Report’).

<sup>49</sup> 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, [ICC-01/04-02/06-2601](#); *see also* Defence request seeking clarifications and/or further guidance following the “First Decision on Reparations Process” and Request seeking an extension of time to submit observations on the Registry 30 September Report, [ICC-01/04-02/06-2578](#); Joint Response of the Common Legal Representatives of Victims to the “Defence request seeking clarifications and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking an extension of time to submit observations on the Registry 30 September Report”, [ICC-01/04-02/06-2600](#).

<sup>50</sup> Observations of the Common Legal Representative of the Former Child Soldiers on the “Registry’s First Report on Reparations”, ICC-01/04-02/06-2620-Conf (a public redacted version was filed on 18 November 2020), [ICC-01/04-02/06-2620-Red](#); Observations of the Common Legal Representative of the Victims of the Attacks on the Registry’s First Report on Reparations, [ICC-01/04-02/06-2621](#).

<sup>51</sup> Defence Observations on the Registry First Report on Reparations, ICC-01/04-02/06-2622-Conf (reclassified as public on 14 December 2021), [ICC-01/04-02/06-2622](#).

<sup>52</sup> Registry Transmission of Appointed Experts’ Reports, [ICC-01/04-02/06-2623](#) (with two Annexes, Confidential *Ex Parte*, available only to the Registry, public redacted versions notified on 3 November 2020).

<sup>53</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#).

<sup>54</sup> Annex 2 to the Registry Transmission of Appointed Experts’ Reports, 3 November 2020, [ICC-01/04-02/06-2623-Anx2-Red2](#) (‘Second Expert Report’).

<sup>55</sup> Decision on issues raised in the Registry’s First Report on Reparations, [ICC-01/04-02/06-2630](#) (‘Decision on the First Report’).

temporal, and subject matter scope of the conviction, which it instructed the Registry to take into account when continuing its assessment of eligibility of potential beneficiaries of reparations.

20. On 18 December 2020, the Defence,<sup>56</sup> the LRVs,<sup>57</sup> and the TFV<sup>58</sup> submitted their final observations on reparations.

21. On 15 January 2021, the Registry filed its Second Report on Reparations (the ‘Second Report’),<sup>59</sup> containing (i) the results of the Registry assessment exercise for participating victims; (ii) an update on the victims in the *Lubanga* case; and (iii) an update on the sample and mapping of potential new beneficiaries.<sup>60</sup> On 28 January 2021, the CLR2<sup>61</sup> and the Defence<sup>62</sup> submitted their observations to the Second Report.

22. The Chamber notes that 1,837 victims of the attacks, including 776 female victims and 1061 male victims, and 284 victims of crimes against child soldiers, including 62 female victims and 222 male victims, participated in the trial proceedings.<sup>63</sup> Their views and concerns were presented and considered throughout the proceedings.

### III. ELEMENTS AND SCOPE

#### A. The elements of a reparations order

23. As determined by the Appeals Chamber, a reparations order must contain, at a minimum, five essential elements: (i) it must be directed against the convicted person; (ii) it must establish and inform the convicted person of his or her liability with respect to the reparations awarded in the order; (iii) it must specify and provide reasons for the type of reparations ordered, be they collective, individual, or both; (iv) it must define the harm caused

<sup>56</sup> Defence Final Submissions, [ICC-01/04-02/06-2634-Red](#).

<sup>57</sup> CLR1 Final Submissions, [ICC-01/04-02/06-2632](#); CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#).

<sup>58</sup> Trust Fund for Victims’ Final Observations on the reparations proceedings, ICC-01/04-02/06-2635-Conf (public redacted version notified on 21 December 2020, [ICC-01/04-02/06-2635-Red](#)) (‘TFV Final Submissions’).

<sup>59</sup> Registry’s Second Report on Reparations, [ICC-01/04-02/06-2639](#) (With Confidential Annexes I-III).

<sup>60</sup> Annex I to the Registry’s Second Report on Reparations, ICC-01/04-02/06-2639-Conf-AnxI (public redacted version filed on 10 February 2021), [ICC-01/04-02/06-2639-AnxI-Red](#) (‘Second Report’).

<sup>61</sup> Observations of the Common Legal Representative of the Victims of the Attacks on the “Registry’s Second Report on Reparations”, ICC-01/04-02/06-2642-Conf (public redacted version filed on 12 February 2021) [ICC-01/04-02/06-2642-Red](#) (‘CLR2 Observations on the Second Report’).

<sup>62</sup> Defence Observations on the Registry’s Second Report on Reparations, ICC-01/04-02/06-2643-Conf (public redacted version filed on 15 February 2021) [ICC-01/04-02/06-2643-Red](#).

<sup>63</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 9; email from the VPRS to the Legal Advisor of the Trial Division, 05 March 2021, at 15:56 hrs.

to direct and indirect victims as a result of the crimes of which the person was convicted, as well as identify the modalities of reparations that the Chamber considers appropriate in the circumstances of the specific case before it; and (v) it must identify the victims eligible to benefit from the awards for reparations or set out the criteria of eligibility based on the link between the harm suffered by the victims and the crimes of which the person was convicted.<sup>64</sup>

24. The inclusion of these five elements in an order for reparations is vital to its proper implementation. It ensures that the critical elements of the order are subject to judicial control, in light of rule 97(3) of the Rules, and is also of significance with respect to the right to appeal, provided for in article 82(4) of the Statute.<sup>65</sup>

## **B. Scope of the case**

25. The Chamber recalls that the crimes in this case were committed in the context of at least one non-international armed conflict between the *Union des Patriotes Congolais* (UPC) with its military wing, the *Forces Patriotiques pour la Libération du Congo* (FPLC), and the UPDF,<sup>66</sup> as well as between the UPC/FPLC and opposing organised armed groups, specifically the APC and its allies, the FNI/FRPI and Lendu fighters, in the Ituri district of the DRC, from on or about 6 August 2002 to on or about 31 December 2003.<sup>67</sup> The Chamber also found that the UPC/FPLC conducted a widespread and systematic attack against the civilian population between August 2002 and May 2003.<sup>68</sup> These crimes were committed pursuant to a common plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC military campaign against the RCD-K/ML,<sup>69</sup> and to prevent them from returning to the assaulted localities.<sup>70</sup>

26. Within this context, the Chamber found that the UPC/FPLC committed a series of crimes during both the First Operation, in the Banyali-Kilo *collectivité* in November/December 2002,<sup>71</sup> and the Second Operation, in the Walendu-Djatsi *collectivité* in February/March 2003.<sup>72</sup> The UPC/FPLC also conscripted and enlisted children under the age of 15 years

<sup>64</sup> *Lubanga Judgment on Principles*, [ICC-01/04-01/06-3129](#), para. 32; Katanga Reparations Order, [ICC-01/04-01/07-3728](#), para. 31; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 38.

<sup>65</sup> *Lubanga Judgment on Principles*, [ICC-01/04-01/06-3129](#), para. 34.

<sup>66</sup> For the acronyms of the different armed groups, see Judgment, Annex C, [ICC-01/04-02/06-2359-AnxC](#).

<sup>67</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 725, 730.

<sup>68</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 690, 694-695.

<sup>69</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 808-809.

<sup>70</sup> Judgment, [ICC-01/04-02/06-2359](#), para. 809.

<sup>71</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 486-548.

<sup>72</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 562-640.

between on or about 6 August 2002 and 31 December 2003,<sup>73</sup> and used them to participate actively in the hostilities between on or about 6 August 2002 and on or about 30 May 2003.<sup>74</sup>

27. Mr Ntaganda, who was the Deputy Chief of Staff of the UPC/FPLC,<sup>75</sup> was found guilty of five counts of crimes against humanity, namely, murder and attempted murder, rape, sexual slavery, persecution, and forcible transfer of population; and thirteen counts of war crimes, namely, murder and attempted murder, intentionally directing attacks against civilians, rape, sexual slavery, pillage, ordering the displacement of the civilian population, conscripting and enlisting children under the age of 15 years into an armed group and using them to participate actively in hostilities, intentionally directing attacks against protected objects, and destroying the adversary's property.<sup>76</sup>

#### IV. PRINCIPLES ON REPARATIONS

##### A. Introductory remarks

28. Article 75(1) of the Statute provides that:

[t]he Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

29. Principles on reparations, which are to be distinguished from the order for reparations, are general concepts that, while formulated in light of the circumstances of a specific case, can nonetheless be applied, adapted, expanded upon, or added to by future trial chambers.<sup>77</sup> As such, the Chamber adopts the principles established by different chambers of the Court in previous cases, as it considers them to be of general application.<sup>78</sup> It has also adapted and

<sup>73</sup> Judgment, [ICC-01/04-02/06-2359](#), disposition p. 538, para. 1117, n. 3096.

<sup>74</sup> Judgment, [ICC-01/04-02/06-2359](#), disposition p. 538, para. 1125.

<sup>75</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 321, 784.

<sup>76</sup> Judgment, [ICC-01/04-02/06-2359](#), para. 1199, disposition pp. 535-538.

<sup>77</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 55; *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 5.

<sup>78</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), paras 1-49, principles established drawing on, *inter alia*, UNGA, Basic Principles on Reparations, [UN Doc A/RES/60/147](#); *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), paras 29-30; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), paras 26-50.



expanded them, identifying additional principles,<sup>79</sup> and has rearranged them as necessary in light of the specific circumstances of the present case.

## **B. Principles on reparations**

30. At the outset, the Chamber notes that there may be some overlap between the principles below. That is due to their complementary nature, which requires that they are considered as a whole and not in isolation, in order to adequately assess and address the victims' harms in a holistic manner.<sup>80</sup> The parties and participants mostly concur with the principles established in the *Lubanga* case, although they make additional submissions on a number of issues.<sup>81</sup> The Chamber addresses these submissions below, to the extent necessary for the purposes of this Order.

### *1. VICTIMS*

#### *i. Beneficiaries of reparations*

31. Pursuant to rule 85 of the Rules, both natural and legal persons may qualify as victims. In order to be eligible for reparations, victims need to meet the following criteria:

- a. their identity as a natural person, or its creation or registration as a legal entity, must be established;
- b. they must have suffered or sustained harm;
- c. the crime from which the harm arises must be one for which the defendant was convicted; and
- d. there must be a direct causal nexus between the crime and the harm.<sup>82</sup>

<sup>79</sup> The Chamber has adopted all principles identified by the Appeals Chamber in the *Lubanga* case, and has additionally identified six new principles in this Order. For the methodology applied to identify new principles, see, *inter alia*, International Law Commission, First report on general principles of law, 5 April 2019, [A/CN.4/732](#).

<sup>80</sup> For a similar approach, see United Nations, Secretary General ('UNSG'), The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, Report of the Secretary-General, 23 August 2004, [S/2004/616](#), para. 26; United Nations, Office of the United Nations High Commissioner for Human Rights, [Rule-of-Law Tools for Post-Conflict States, Reparations Programmes](#), 2008, pp. 9, 34; see also *infra* Principle 1.iv. 'Do-no-harm'.

<sup>81</sup> See, *inter alia*, Defence February 2020 Submissions, [ICC-01/04-02/06-2479-Red](#), paras 7, 17; Prosecution February 2020 Submissions, [ICC-01/04-02/06-2478](#), para. 2; CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), para. 2; CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#), para. 15; Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), para. 3; TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 20; IOM February 2020 Submissions, [ICC-01/04-02/06-2483](#), paras 30-31; DRC February 2020 Submissions, [ICC-01/04-02/06-2480-Conf-Anx](#), p. 7.

<sup>82</sup> See, *inter alia*, Katanga Reparations Order, [ICC-01/04-01/07-3728](#), paras 36-37; Decision on the First Report, [ICC-01/04-02/06-2630](#), para. 11; and Pre-Trial Chamber I, *Situation in Democratic Republic of the Congo*, Corrigendum to the 'Decision on the Applications for Participation Filed in Connection with the Investigation in

32. As provided for in rule 85(b) of the Rules, legal entities must have sustained direct harm and they must be an organisation or institution whose property is dedicated to religion, education, art or science or charitable purposes, a historical monument, hospital, or other place or object for humanitarian purpose. Legal persons or entities ‘may include, *inter alia*, non-governmental, charitable and non-profit organisations, statutory bodies including government departments, public schools, hospitals, private education institutes [...], companies, telecommunications firms, institutions that benefit members of the community [...] and other partnerships’.<sup>83</sup>

33. Natural persons may be direct or indirect victims,<sup>84</sup> provided they suffered a personal, but not necessarily direct, harm.<sup>85</sup> However, a causal link must always exist between the crimes for which the person was convicted and the harm alleged by both, direct and indirect victims.<sup>86</sup>

34. Direct victims are those whose harm is the result of the commission of a crime for which the defendant was convicted.<sup>87</sup> As such, a causal link must exist between the crimes for which the person was convicted and the victims’ harm: the injury, loss, or damage suffered by the victims must be a result of the crimes for which the person was convicted.<sup>88</sup>

35. Indirect victims are those who suffer harm as a result of the harm suffered by the direct victims.<sup>89</sup> Accordingly, they must establish that, ‘as a result of their relationship with the direct victim, the loss, injury, or damage suffered by the latter gives rise to harm to them’.<sup>90</sup> It follows

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the Democratic Republic of the Congo by a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 and a/0241/06 to a/0250/06’, 31 January 2008, [ICC-01/04-423-Corr-tENG](#), para. 140.

<sup>83</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 8; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 41.

<sup>84</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 6; *see also* Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on victims’ participation, 18 January 2008, [ICC-01/04-01/06-1119](#), para. 91.

<sup>85</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 6; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 40; Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, 11 July 2008, [ICC-01/04-01/06-1432](#) (‘*Lubanga* Judgment on Victims’ Participation’), para. 32; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 39.

<sup>86</sup> Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Redacted version of ‘Decision on ‘indirect victims’, 8 April 2009, [ICC-01/04-01/06-1813](#) (‘*Lubanga* Decision on Indirect Victims’), para. 45.

<sup>87</sup> *Lubanga* Decision on Indirect Victims, [ICC-01/04-01/06-1813](#), para. 44; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 37.

<sup>88</sup> For a similar approach regarding victims’ participation, *see Lubanga* Decision on Indirect Victims, [ICC-01/04-01/06-1813](#), para. 47.

<sup>89</sup> *Lubanga* Decision on Indirect Victims, [ICC-01/04-01/06-1813](#), para. 44.

<sup>90</sup> *Lubanga* Decision on Indirect Victims, [ICC-01/04-01/06-1813](#), para. 49.



that the harm suffered by indirect victims must arise out of the harm suffered by direct victims, brought about by the commission of the crimes for which the defendant was convicted.<sup>91</sup>

36. There may be four categories of indirect victims:

- a. the family members of direct victims;<sup>92</sup>
- b. anyone who attempted to prevent the commission of one or more of the crimes under consideration;
- c. individuals who suffered harm when helping or intervening on behalf of direct victims; and
- d. other persons who suffered personal harm as a result of these offences.<sup>93</sup>

37. The concept of ‘family’ may have many cultural variations and the Court ought to have regard to the applicable social and familial structures. The Court should take into account the widely accepted presumption that individuals are succeeded by their spouses or partners and their children.<sup>94</sup>

38. The key consideration in order to determine if a person qualifies as an indirect victim is whether they have suffered personal harm as a result of the commission of a crime against another person, and for which the defendant was convicted.<sup>95</sup>

39. A person may qualify simultaneously as a direct and as an indirect victim, on the basis of different crimes for which the defendant was convicted, and therefore may seek reparations for the different harms suffered.<sup>96</sup>

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<sup>91</sup> Decision on the First Report, [ICC-01/04-02/06-2630](#), para. 56.

<sup>92</sup> The Chamber notes that, in certain situations, family members may not share blood ties, or that other persons may act as parents. See IACtHR, *Case of Juan Humberto Sánchez v. Honduras*, Judgment (Interpretation of the Judgment of Preliminary Objection, Merits, Reparations, and Costs), 26 November 2003, [Series C No. 102](#) (‘*Case of Juan Humberto Sánchez v. Honduras*’), para. 59, referring to IACtHR, *Case of the Caracazo v. Venezuela*, Judgment (Reparations and Costs), 29 August 2002, [Series C No. 95](#) (‘*El Caracazo case*’), para. 91: ‘compensation were granted by [...] to [...], parents or those who had had an affective relationship of a similar nature, either as stepfather, aunts, uncles or grandparents’.

<sup>93</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 6(b).

<sup>94</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 7; see also *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 121; CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 103. For the non-discrimination based on birth, marital, or any other status, see Principle 1.ii. ‘Dignity, non-discrimination, and non-stigmatisation’.

<sup>95</sup> Decision on the First Report, [ICC-01/04-02/06-2630](#), paras 53-56; see also Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings, 15 January 2014, [ICC-01/04-02/06-211](#), para. 49.

<sup>96</sup> Decision on the First Report, [ICC-01/04-02/06-2630](#), para. 51.

40. In the event that a victim who was found eligible for reparations dies before receiving them, the victim's descendants or successors shall be equally entitled to them.<sup>97</sup> However, indirect victims who suffered personal harm are entitled to reparations on their own right, regardless of whether they are the rightful successors of the deceased victim.<sup>98</sup>

*ii. Dignity, non-discrimination, and non-stigmatisation*

41. All victims are to be treated fairly and equally during the reparations process, irrespective of whether they participated in the trial proceedings.<sup>99</sup> This includes equal access to information relating to reparations proceedings.<sup>100</sup>

42. In all matters related to reparations, the Court shall take into account the needs of the victims and shall treat them with humanity, respecting their dignity and human rights. The Court shall also take into account that certain victims may present continued vulnerability. It shall implement appropriate measures to ensure the victims' safety, physical, and psychological well-being and privacy.<sup>101</sup> Reparations shall be granted to victims without adverse distinction on the grounds of sex, gender identity, age, race, colour, language, religion or belief, political

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<sup>97</sup> For a similar approach regarding victims' participation, see Pre-Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Fourth Decision on Victims' Participation, 12 December 2008, [ICC-01/05-01/08-320](#), paras 44-50, referring to, *inter alia*, IACtHR, *Case of Aloeboetoe et al. v. Suriname*, Judgment (Reparations and Costs), 10 September 1993, [Series C No. 15](#) ('*Case of Aloeboetoe et al. v. Suriname*'), para. 54: '[t]he damages payable for causing loss of life represent an inherent right that belongs to the injured parties. It is for this reason that national jurisprudence generally accepts that the right to apply for compensation for the death of a person passes to the survivors affected by that death'; EAAC, *Le Procureur v. Hissein Habré*, paras 589, 606; Fourth decision on victims' participation in trial proceedings, 1 September 2015, [ICC-01/04-02/06-805](#), para. 8; Trial Chamber II, *Prosecutor v. Germain Katanga*, Decision on the Application for Resumption of Action Submitted by a Relative of Deceased Victim a/0265/09 and the Appointment of a New Representative for Victim A/0071/08, 12 December 2016, [ICC-01/04-01/07-3721-tENG](#), para. 7; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 21.

<sup>98</sup> See for example IACtHR, *Case of Juan Humberto Sánchez v. Honduras*, [Series C No. 102](#), para. 66.

<sup>99</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 12.

<sup>100</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 13; see also *infra* Principle 1.iii. 'Victim-centred approach: Accessibility and consultations with victims'.

<sup>101</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 15; see also UNSG, Guidance note of the Secretary-General: Reparations for Conflict-Related Sexual Violence, June 2014, [ST/SG\(02\)/R425](#) ('Guidance Note'), p. 4.

or other opinion, sexual orientation, national, ethnic or social origin, wealth, birth,<sup>102</sup> marital,<sup>103</sup> or other status.<sup>104</sup>

43. Practices and procedures for obtaining reparations must be inclusive and sensitive to gender,<sup>105</sup> age, and cultural diversity.<sup>106</sup> They must take into account the individuals' specific circumstances, as well as their dignity, privacy, and safety.<sup>107</sup>

44. Reparations need to address any underlying injustices and avoid replicating discriminatory practices or structures that predated the commission of the crimes,<sup>108</sup> and which prevented equal opportunities to victims.<sup>109</sup> The Court should avoid further stigmatisation of the victims and reinforcing discrimination by their families and communities.<sup>110</sup> In particular, reparations awards must avoid creating tensions, jealousy, or animosity among affected communities and between cohabiting groups.<sup>111</sup>

*iii. Victim-centred approach: Accessibility and consultations with victims*

45. In line with rule 86 of the Rules, the Court shall adopt a 'victim-centred' approach to reparations. In general terms, a 'victim-centred' approach accords due consideration to the

<sup>102</sup> In relation to children born out of wedlock, see IACtHR, *Case of Garrido and Baigorria v. Argentina*, Judgment (Reparations and Costs), 27 August 1998, [Series C No. 39](#) ('*Case of Garrido and Baigorria v. Argentina*') paras 54-54: '[m]r. Baigorria's police record, introduced into evidence before this Court, shows that he had two children born out of wedlock [...]; the Court considers that Mr. Raúl Baigorria's two natural children are his heirs. The victims' siblings are family and will have the right to receive compensation to the extent that they meet the requirements already established by this Court's case law'; UNESCO, General Comment No. 20, 2 July 2009, [E/C.12/GC/20](#) ('General Comment No. 20'), para. 26.

<sup>103</sup> See IACtHR, *El Caracazo case*, [Series C No. 95](#), para. 91(b): 'the compensation must be paid to whoever was the spouse, companion or permanent companion of the victim, at the time of the latter's demise'; IACtHR, *Case of El Amparo v. Venezuela*, Judgment (Reparations and Costs), 14 September 1996, [Series C No. 28](#), para. 40: 'the Court notes that one of the victims, Julio Pastor Ceballos, had a female companion as well as a wife, and had fathered children with both. As far as they are concerned, the Court deems it just to divide the indemnity between the two'; UNESCO, General Comment No. 20, [E/C.12/GC/20](#), para. 31; see also CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), paras 103-104, on the social and practical realities of marriage in Ituri, and the references contained therein concerning the treatment given to unmarried partners by the IACtHR and ECtHR for reparations purposes.

<sup>104</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 16; see also [Nairobi Declaration of the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence, International Meeting on Women's and Girls' Right to a Remedy and Reparation](#), Nairobi, 19 to 21 March 2007 ('Nairobi Declaration'), principle 1(A); see *infra* Principle 1.vi. 'Gender-inclusive and sensitive approach to reparations'.

<sup>105</sup> See *infra* Principle 1.vi. 'Gender-inclusive and sensitive approach to reparations'.

<sup>106</sup> See *infra* Principle 3.ii. 'Proportional, prompt, and adequate reparations'.

<sup>107</sup> See *infra* Principle 1.vii. 'Sexual and Gender-Based Violence'.

<sup>108</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 17, referring to [Nairobi Declaration](#), principle 2; see *infra* Principle 3.iv. 'Transformative reparations'.

<sup>109</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 105.

<sup>110</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 17; see *infra* Principle 3.ii. 'Proportional, prompt, and adequate reparations', and Principle 1.iv. 'Do no harm'.

<sup>111</sup> See CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), paras 16, 23; see *infra* Principle 3.ii. 'Proportional, prompt, and adequate reparations', and Principle 1.iv. 'Do no harm'.

victims, properly involving them in the criminal justice process, so that their rights to truth, justice, and reparations are respected and enforced.<sup>112</sup> It requires the involvement of victims at all stages of the proceedings, allowing them to gain a sense of ownership and recognising their active contribution to the process.<sup>113</sup> A ‘victim-centred’ approach is necessary in order for reparations to be impactful and successful.<sup>114</sup> It requires full and meaningful consultation and engagement with victims, giving them a voice in the design and implementation of reparations programmes and allowing them to shape the reparation measures according to their needs.<sup>115</sup>

46. Direct and indirect victims should be able to participate throughout the reparations process, and receive adequate support in order to make their participation substantive and effective.<sup>116</sup> In particular, attention should be paid to women, children, the elderly, persons with disabilities, vulnerable, discriminated, or stigmatised victims,<sup>117</sup> and displaced victims or persons residing in remote areas.<sup>118</sup>

47. Consultations with victims and outreach activities are crucial to ensure that reparations have a broad and real significance, are meaningful to victims, have the intended impact, and are perceived as such.<sup>119</sup> They are also necessary to promote ownership of the process, and to prevent any group of victims from being excluded or marginalised.<sup>120</sup> Consultations and outreach activities should take into account the victims’ diversity, different needs, and

<sup>112</sup> See A. McDonald, ‘The Development of a Victim-Centred Approach to International Criminal Justice for Serious Violations of International Humanitarian Law’ in J. Carey, W.V. Dunlap, and R.J. Pritchard (eds.), *International Humanitarian Law: Prospects* (2006) (‘International Humanitarian Law: Prospects’), p. 241.

<sup>113</sup> See A. McDonald in *International Humanitarian Law: Prospects*, p. 241.

<sup>114</sup> Report of the Special Rapporteur Pablo de Greiff, [A/HRC/21/46](#), para. 54; IOM February 2020 Submissions, [ICC-01/04-02/06-2483](#), para. 31.

<sup>115</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), paras 8, 11; see IOM February 2020 Submissions, [ICC-01/04-02/06-2483](#), para. 31; see also generally M. Urban Walker, ‘Making Reparations Possible: Theorizing Reparative Justice’ in C. Corradetti et. al. (eds.), *Theorizing Transitional Justice* (2015), p. 219; T. Antkowiak, ‘An Emerging Mandate For International Courts: Victim Centered Remedies And Restorative Justice’ in 47 *Stanford Journal Of International Law* 279 (2011), pp. 282-292.

<sup>116</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 29; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 30.

<sup>117</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 11; see also *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 266; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 127.

<sup>118</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 11.

<sup>119</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 31; UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 10; see also Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), para. 4; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 132, 133, referring to HR Council, Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Report on Reparation, 14 October 2014, [A/69/518](#) (‘Report on Reparation’), para. 76: ‘[v]ictim participation in reparation programmes is not possible without effective outreach, information and access’.

<sup>120</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 10; see also Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), para. 4.

interests,<sup>121</sup> including sensitivities associated with sexual violence.<sup>122</sup> Consultations should include ‘gender- and ethnic-inclusive programmes’ that take into account the legal, cultural, economic, and other obstacles victims may face in coming forward and expressing their views.<sup>123</sup>

48. The Court should consult with victims on issues relating to, *inter alia*, the identity of the beneficiaries and their priorities.<sup>124</sup> Whenever possible, it should also consult with victims as to the modalities of reparations to be awarded. Interactions with victims should proceed with caution, avoiding re-traumatisation and managing their expectations sensitively.<sup>125</sup> Engagement with victims should be made in accessible and understandable terms.<sup>126</sup>

49. Reparations are entirely voluntary and the informed consent of the recipient is necessary prior to any award of reparations, including participation in any reparations programme.<sup>127</sup>

*iv. ‘Do no harm’*

50. The ‘do no harm’ principle stems from the field of international humanitarian assistance.<sup>128</sup> It is an internationally recognised principle that complements the humanitarian principles of humanity, impartiality, neutrality, and independence.<sup>129</sup> It requires humanitarian

<sup>121</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), principle 6; *see also* CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 47; IOM February 2020 Submissions, [ICC-01/04-02/06-2483](#), para. 14.

<sup>122</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 11; *see also* UNSG, Guidance Note, [ST/SG\(02\)/R425](#), principle 3, particularly on the safeguards during consultation processes as well as the role played by partners, such as civil society organisations and other groups or individuals; *see also* IOM February 2020 Submissions, [ICC-01/04-02/06-2483](#), para. 42.

<sup>123</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 31; UNSG, Guidance Note, [ST/SG\(02\)/R425](#), principle 6, which also notes that measures must be taken to ensure that victims can participate in the reparation process in ways that are acceptable to their culture and religion; *see also* [Nairobi Declaration](#), principle 1(D); UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 18; *see infra* Principle 1.vi. ‘Gender-inclusive and sensitive approach to reparations’ and Principle 1.vii. ‘Sexual and Gender-Based violence’.

<sup>124</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 32.

<sup>125</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 132.

<sup>126</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 11; *see also* CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 49.

<sup>127</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 30.

<sup>128</sup> OECD, [Do No Harm, International Support for Statebuilding](#), 24 December 2009, p. 147: ‘[t]he idea of premising international intervention on the edict “do no harm” originates with the pioneering humanitarian work of Mary Anderson and her organisation, Collaborative for Development Action (CDA), on how well-intentioned donor assistance to promote peace can result in either achieving that objective or in fact contributing to the prolongation or exacerbation of war’; UNDP, [A Principled Approach to Conflict Sensitive Do No Harm Programming in the context of Federal Iraq and the Kurdistan Region](#), 7 January 2016, p. 2.

<sup>129</sup> UNGA, Resolution 46/182, Strengthening the Coordination of Humanitarian Emergency Assistance of the United Nations, 19 December 1991, [A/RES/46/182](#); UNGA, Resolution 58/114, Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations, 17 December 2003, [A/RES/58/114](#); UNHCR, [Emergency Handbook, Humanitarian Principles](#), p. 1.



actors to anticipate, monitor, and address the potential or unintended negative effects of their actions.<sup>130</sup> Considering the object and purpose of reparations, the ‘do no harm’ principle shall be applicable throughout the proceedings.

51. When deciding on the types and modalities of reparations, the Court shall ensure that reparation measures themselves do no harm.<sup>131</sup> At a minimum, this includes taking all steps necessary to ensure that access to justice and reparations by victims and affected communities does not lead to further or secondary victimisation,<sup>132</sup> that they do not create or exacerbate security concerns or tensions among communities,<sup>133</sup> and that victims are not endangered or stigmatised as a result.<sup>134</sup> The Court should ensure that particular attention is paid to victims belonging to groups that are more vulnerable.<sup>135</sup>

52. This principle should have particular application (i) when conducting victim identification and eligibility screening; (ii) when developing reparations orders and plans; and (iii) when carrying out the approved reparations measures.<sup>136</sup> In addition, the observance of the

<sup>130</sup> OCHA, [Guidance Note on OCHA CMCoord Support to Protection Outcomes](#), October 2020, p. 2; European Commission, Directorate-General for Humanitarian Aid – ECHO (‘DG ECHO’), [Humanitarian Protection, DG ECHO’s funding guidelines](#), p. 5; *see also* The Sphere Handbook, [Core Humanitarian Standard on Quality and Accountability](#), 2014, Commitment No. 3: ‘[c]ommunities and people affected by crisis are not negatively affected and are more prepared, resilient and less at-risk as a result of humanitarian action’; OECD, [Principles for Good International Engagement in Fragile States & Situations](#), April 2007, para. 2.

<sup>131</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 5: ‘[i]n any initiative designed to fulfil the victims of sexual violence right to reparations, it is vital that appropriate attention be paid to any on-going protection concerns for victims and to ensuring that initiatives themselves “do no harm”’.

<sup>132</sup> UNGA, Basic Principles on Reparations, [UN Doc A/RES/60/147](#), principle 10: ‘[t]he State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation’; *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67: ‘[t]he rehabilitation measures ought to include the means of addressing the shame that child victims may feel, and they should be directed at avoiding further victimisation of the boys and girls who suffered harm as a consequence of their recruitment’; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 67.

<sup>133</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 33; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 65, 123; CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), paras 16, 23.

<sup>134</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 56; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 67.

<sup>135</sup> United Nations, Committee Against Torture (‘CAT’), General Comment No. 3, 13 December 2012, [CAT/C/GC/3](#) (‘General Comment No. 3’), para. 34; *see further*, in relation to women: IACtHR, *Case of Fernández Ortega et al. v. Mexico*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 30 August 2010, [Series C No. 215](#), para. 196; IACtHR, *Case of Espinoza González v. Peru*, Judgment (Preliminary Objections, Merits, Reparations, and Costs), 20 November 2014, [Series C No. 289](#), para. 256; in relation to children: IACtHR, *Case of V.R.P., V.P.C. et al. v. Nicaragua*, Judgment (Preliminary Objections, Merits, Reparations, and Costs), 8 March 2018, [Series C No. 350](#), paras 163-164; in relation to LGBTIQI people: IACtHR, *Case of Azul Rojas Marín et al. v. Peru*, Judgment (Preliminary Objections, Merits, Reparations, and Costs), 12 March 2020, [Series C No. 402](#), para. 243.

<sup>136</sup> TFF February 2020 Submissions, [ICC-01/04-02/06-2476](#), paras 30-31.

‘do no harm’ principle should guide, to the extent possible, the application of the other relevant principles stated in the present order, as they interact with each other.<sup>137</sup>

v. *Child victims*

53. One of the relevant factors to be considered in reparation proceedings is the age of the victims, in accordance with article 68(1) of the Statute. The Court shall particularly take account of the age of the victims who were children at the relevant time and their needs, pursuant to rule 86 of the Rules. The differential impact of crimes on boys and girls must be taken into account.<sup>138</sup>

54. In reparation decisions concerning children, the Court should be guided, *inter alia*, by the Convention on the Rights of the Child<sup>139</sup> and the fundamental principle of the ‘best interests of the child’ enshrined therein. Decisions in this context should reflect a gender-inclusive and sensitive perspective.<sup>140</sup>

55. When dealing with reparations concerning children, the Court must be mindful of the need to take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; and armed conflicts.<sup>141</sup> Such recovery and reintegration should take place in an environment which fosters the health, self-respect, and dignity of the child.<sup>142</sup>

56. Reparation orders and programmes in favour of former child soldiers, should guarantee the development of the victims’ personalities, talents, and abilities fully and, more broadly, they should ensure the development of respect for human rights and fundamental freedoms.<sup>143</sup> Former child soldiers should be helped to live responsibly in a free society, recognising the

<sup>137</sup> See for instance the interaction between consultation and other principles in First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 148, which in turn contributes to the respect of the ‘do no harm’ principle.

<sup>138</sup> Lubanga Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 23.

<sup>139</sup> [Convention on the Rights of the Child](#), adopted and opened for signature, ratification and accession by General Assembly Resolution No. 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49 (‘Convention on the Rights of the Child’).

<sup>140</sup> [Convention on the Rights of the Child](#), article 3; Lubanga Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 24; see *infra* Principle 1.vi. ‘Gender-inclusive and sensitive approach to reparations’.

<sup>141</sup> Lubanga Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 25.

<sup>142</sup> Lubanga Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 25; [Convention on the Rights of the Child](#), article 39.

<sup>143</sup> Lubanga Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 26; see also [Convention on the Rights of the Child](#), article 29.

need for a spirit of understanding, peace and tolerance, showing respect for equality between the sexes and valuing friendship between all peoples and groups.<sup>144</sup>

57. The Court shall inform child victims, their parents, guardians, and legal representatives about the procedures and programmes that are to be applied to reparations, in a form that is comprehensible for the victims and those acting on their behalf.<sup>145</sup>

58. The views of the child victims are to be considered when decisions about reparations that concern them are made, bearing in mind their circumstances, age, and level of maturity. The Court shall also reflect the importance of rehabilitating former child soldiers and reintegrating them into society in order to end the successive cycles of violence that have formed an important part of past conflicts. These measures must be approached on a gender-inclusive basis.<sup>146</sup>

59. In its reparation orders and programmes, the Court must address the particular needs of victims who were children at the time of the crimes, bearing in mind the long-term effects these may have had in their development as adults.<sup>147</sup> Reparations for children should, in particular, contemplate and address the loss of their life plan.<sup>148</sup> Reparations should include measures to prevent the ostracism and discrimination of children,<sup>149</sup> as well as promoting their reintegration into society.<sup>150</sup>

*vi. Gender-inclusive and sensitive approach to reparations*

60. A gender-inclusive and sensitive approach or perspective should guide the design and implementation of reparations at the Court and every step of the reparation process.<sup>151</sup> Due

<sup>144</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 26; [Convention on the Rights of the Child](#), article 29.

<sup>145</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 27.

<sup>146</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 28; [Convention on the Rights of the Child](#), articles 12, 29; *see infra* Principle 1.vi. ‘Gender-inclusive and sensitive approach to reparations’.

<sup>147</sup> *See inter alia* First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 90-93; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 51; *see infra* Principle 2.i. ‘Concept and types of harm’.

<sup>148</sup> Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, 18 July 2019, [ICC-01/04-01/06-3466-Red](#) (*‘Lubanga Judgment on Size of Reparations Award’*), para. 38; *see infra* Principle 2.1. ‘Concept and types of harm’.

<sup>149</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 113; *see supra* Principle 1.ii. ‘Dignity, non-discrimination, and non-stigmatisation’.

<sup>150</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 113; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 57.

<sup>151</sup> A gender and sensitive approach or perspective involves the duty to consider and address the views, experiences, and needs of all individuals with diverse sexual orientation and gender identities, while acknowledging the complexity and intersectionality of their experiences and maintaining a holistic and relational focus. *See inter alia* UNGA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and



consideration should be given to address the specific needs of individuals based on their sex, and their real or perceived gender expression or identity, and reparations should be fulfilled without discrimination on that basis.<sup>152</sup> A gender-inclusive and sensitive perspective should integrate intersectionality as a core component.<sup>153</sup>

61. The Court should take into account the existence of previous gender and power imbalances,<sup>154</sup> as well as the differentiated impact of harm depending on the victim's sex or gender identity.<sup>155</sup> It is thus necessary to identify and address specific harms that victims may suffer because of their gender.<sup>156</sup>

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guarantees of non-recurrence, Fabián Salvioli, 17 July 2020, [A/75/174](#) ('Report of the Special Rapporteur Fabián Salvioli'), paras 4-5; P. Schulz, 'Towards Inclusive Gender in Transitional Justice: Gaps, Blind-Spots and Opportunities', in 14 *Journal of Intervention and Statebuilding* 691 (2020), pp. 696, 701; S. Gilmore et. al., 'Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes', Queen's University of Belfast, 2020, p. 13.

<sup>152</sup> See article 21(3) of the Statute; UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 4, stating that for all victims '[t]heir right to a remedy and reparation should be fulfilled without discrimination on the basis of sex, gender identity'; UNESCO, General Comment No. 20, [E/C.12/GC/20](#), para. 32: 'gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations'; ACmHRP, [Guidelines on Sexual Violence](#), pp. 17-18: '[s]tates must take the necessary measures to prevent all forms of sexual violence and its consequences, particularly by eliminating the root causes of that violence, including sexist and homophobic discrimination, patriarchal preconceptions and stereotypes about women and girls, and/or preconceptions and stereotypes based on gender identity, real or perceived sexual orientation, and/or certain preconceptions of masculinity and virility, irrespective of their source'. For discrimination based on perceptions of sexual orientation, influenced by behaviours that may not correspond to traditional or stereotypical gender expressions, see also IACtHR, *Case of Azul Rojas Marín et al. v. Peru*, Judgment (Preliminary Objections, Merits, Reparations, and Costs), 12 March 2020, [Series C No. 402](#), paras 90-94.

<sup>153</sup> ACmHRP, [Guidelines on Sexual Violence](#), pp. 16-17; UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 3; UNESCO, General Comment No. 20, [E/C.12/GC/20](#), para. 17. Noting that not every multiple discrimination may amount to intersectionality, see IACtHR, *Case of Gonzales Lluy et al. v. Ecuador*, Judgment (Preliminary Objections, Merits, Reparations, and Costs), 1 September 2015, [Series C No. 298](#), para. 290, including Concurring Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, paras 5-12; for a definition of intersectionality, see para. 11; see also IACtHR, *Case of the Employees of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 15 July 2020, [Series C No. 407](#), paras 191-197, noting that the intersection of different factors of discrimination increase the victims' comparative disadvantages, for a concept of intersectionality, see paras 22-31 of the concurring opinion of Judge Ricardo C. Pérez Manrique; see also IOM February 2020 Submissions, [ICC-01/04-02/06-2483](#), para. 42; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 15; UNGA, Report of the Special Rapporteur Fabián Salvioli, [A/75/174](#), para. 40; K. Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' 43 *Stanford Law Review* 1241 (1991), pp. 1250-1251; F. Ní Aoláin and E. Rooney, 'Underenforcement and Intersectionality: Gendered Aspects of Transition for Women' in 1 *International Journal of Transitional Justice* 338 (2007), pp. 338-354.

<sup>154</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 4; Office of the Prosecutor ('OTP'), [Policy Paper on Sexual and Gender-Based Crimes](#), June 2014 ('Policy Paper'), p. 3.

<sup>155</sup> IACtHR, *Case of González et al. ('Cotton Field') v. Mexico*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 16 November 2009, [Series C No. 205](#), ('Cotton Field case'), para. 451(vi); OTP, [Policy Paper](#), p. 3; see also TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 29, nn. 22 and 23, where it describes its experience working with victims of SGBV crimes and how greatly the consequences of such crimes may differ depending on their gender.

<sup>156</sup> See Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 20, explaining the different impact of the harm suffered by women and men.

62. Affirmative action should be taken as appropriate at every step of the reparation process, to adequately identify and measure the harm suffered by the victims and design appropriate types and modalities of reparations that effectively address them.<sup>157</sup> Similarly, at the implementation stage, attention should be paid to avoid reinforcing any type of discrimination or take any action that might be perceived as contributing to the marginalisation of discriminated groups.<sup>158</sup>

vii. *Sexual and Gender-Based violence*

63. Gender-based crimes are those committed against persons because of their sex and/or gender expression or identity.<sup>159</sup> They are not always manifested as a form of sexual violence.<sup>160</sup>

64. The Court's legal framework accords a special status to sexual violence crimes and the victims thereof.<sup>161</sup> All victims, regardless of their sex and gender expression or identity, may be affected by sexual and gender-based crimes.<sup>162</sup>

<sup>157</sup> OTP, [Policy Paper](#), p. 3; Prosecution February 2020 Submissions, [ICC-01/04-02/06-2478](#), para. 3, referring to UNSG, Guidance Note, [ST/SG\(02\)/R425](#), pp. 5, 17; *see also* UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 4.

<sup>158</sup> CAT, General Comment No. 3, [CAT/C/GC/3](#), para. 33: '[w]ith respect to sexual or gender-based violence and access to due process and an impartial judiciary, the Committee emphasizes that in any proceedings, civil or criminal, to determine the victim's right to redress, including compensation, rules of evidence and procedure in relation to gender-based violence must afford equal weight to the testimony of women and girls, as should be the case for all other victims, and prevent the introduction of discriminatory evidence and harassment of victims and witnesses'.

<sup>159</sup> *See* C.K. Hall et. al., 'Article 7, Paragraph 3: Definition of gender', in O. Triffterer and K. Ambos (ed.), *Commentary to the Rome Statute of the International Criminal Court* (2015), p. 293: '[i]n United Nations usage, 'gender' refers to the socially constructed roles played by women and men that are ascribed to them based on their sex. The word 'sex' is used to refer to physical and biological characteristics of women and men, while 'gender' is used to refer to the explanations for observed differences between women and men based on socially assigned roles [...]'; *see also* V. Oosterveld, 'Gender-based crimes against humanity' in L. N. Sadat (ed.), *Forging a Convention for Crimes against Humanity*, Cambridge University Press, 2011 ('*Forging a Convention for Crimes against Humanity*'), pp. 79-80, noting that some definitions employed by the United Nations contrast 'gender' with 'sex' and others do not; *see also* IACtHR, *Gender identity, and equality and non-discrimination with regard to same-sex couples, State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights)*, Advisory Opinion OC-24/17, 24 November 2017, [Series A No. 24](#), para. 32, and the references contained in n. 44; *see also* IACtHR, *Case of Azul Rojas Marín et al. v. Peru*, Judgment (Preliminary Objections, Merits, Reparations, and Costs), 12 March 2020, [Series C No. 402](#), paras 90-94.

<sup>160</sup> OTP, [Policy Paper](#), p. 3; *see also* V. Oosterveld in *Forging a Convention for Crimes against Humanity*, p. 100.

<sup>161</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 95, referring to, *inter alia*, articles 36(8)(b), 42(9), 43(6), 54(1)(b) and 68(1) and (2) of the Statute; and Rules 16(1)(d), 17(2)(a)(iv), 17(2)(b)(iii), 17(3), 19(f), 63(4), 70, 72(1), 86, 88(1), 88(5) and 112(4) of the Rules; *see also* United Nations, Security Council, Resolution 2467, 23 April 2019, [S/RES/2467](#), para. 15.

<sup>162</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 3: '[w]omen and girls are affected by conflict-related sexual violence in greater number than men and boys. However, men and boys are also victims of conflict-related sexual violence; UNESCO, General Comment No. 20, [E/C.12/GC/20](#), para. 32; ACmHPR, [Guidelines on Sexual Violence](#), p. 16: '[w]omen and girls are particularly vulnerable to sexual violence due to ongoing discrimination [...].

65. In line with rule 86 of the Rules, the Court has the obligation to adopt all necessary and appropriate measures to ensure that victims of sexual and gender-based violence come forward for the purposes of claiming reparations.<sup>163</sup> The Court should not operate on the assumption that victims of sexual and gendered-based violence are unable or unwilling to come forward.<sup>164</sup>

66. When designing reparations for victims of sexual and gender-based violence, the especially grave nature and consequences of sexual violence crimes, in particular against children, must be recognised.<sup>165</sup> Reparations should reflect and address the multifaceted harm suffered by victims, noting that both their relatives and their communities may be impacted.<sup>166</sup> Reparation measures should take into account the potential obstacles, including stigma and ostracism, involved in seeking and obtaining access to reparations.<sup>167</sup> It is paramount that they do not reinforce pre-existing discriminatory patterns, but rather seek to transform them to ensure that everyone has equal access to reparations.<sup>168</sup> In addition, while stressing the

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Gender-based violence against women is defined as any act of violence against a woman because of her sex or gender, or any act of violence that disproportionately affects women. Sexual violence also affects men and boys, and may take specific forms intended to affect the masculinity or virility of the victim as perceived by the perpetrator. Like sexual violence against women and girls, sexual violence against men and boys is often used as a means of dominating, subordinating or humiliating the victim and/or the group to which the victim belongs. Due to stereotypes associated with masculinity, men and boys who are victims of sexual violence face particular challenges in reporting such violence and receiving appropriate assistance. This phenomenon remains largely under-documented'; ACmHPR, [General Comment No. 4](#), para. 59: '[a]cts of sexual violence against [...] persons with psychosocial disabilities, and lesbian, gay, bisexual, transgender and intersex persons are of equal concern, and must also be adequately and effectively addressed by State Parties'.

<sup>163</sup> The Chamber recalls the testimony Expert Witness P-0938, psychotherapist with expertise in trauma, who testified during the trial proceedings and highlighted that allegations of rape are often underreported or reported with a delay, primarily due to the shame and stigma attached to rape. The underreporting might be further compounded by the strong cultural stigma within families and communities and the fear of being ostracised. The Expert Witness further stated that the underreporting of rape is an universal phenomenon, and a multitude of factors may play a role in it, including: a) psychological factors, b) social considerations, c) criminal justice factors, d) incident characteristics, and e) other reasons. Transcript of hearing, 30 June 2016, ICC-01/04-02/06-T-113-Red2-ENG, p. 56, lines 18-25, p. 57, lines 1-2, p. 65, lines 5-25, p. 66, lines 1-6, p. 67, lines 16-20; *see also* Judgment, [ICC-01/04-02/06-2359](#), para. 88; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 20.

<sup>164</sup> *See* IOM February 2020 Submissions, [ICC-01/04-02/06-2483](#), para. 42.

<sup>165</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), paras 95-96; ACmHPR, [Guidelines on Sexual Violence](#), p. 16.

<sup>166</sup> ACmHPR, [Guidelines on Sexual Violence](#), p. 42; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 67; UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 3; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 24.

<sup>167</sup> ACmHPR, [General Comment No. 4](#), para. 60; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 20; *Lubanga* Reparations Decision, [ICC-01/04-01/06-2904](#), para. 208; *see supra* Principle 1.iii. 'Victim-centred approach: Accessibility and consultations with victims'.

<sup>168</sup> For a similar approach, *see Lubanga* Reparations Decision, [ICC-01/04-01/06-2904](#), para. 209; ACmHPR, [Guidelines on Sexual Violence](#), p. 42; [Nairobi Declaration](#), principle 2(C) ; *see supra* Principle 1.ii. 'Dignity, non-discrimination, and non-stigmatisation' and Principle 3.iv. 'Transformative reparations'.

importance of broad rehabilitation measures,<sup>169</sup> that include a cultural perspective,<sup>170</sup> the Court should also adopt a gender-sensitive approach in relation to all other modalities, such as compensation.<sup>171</sup>

67. Evidentiary standards and procedures should be sensitive to the difficulties faced by victims of sexual and gender-based violence to obtain and produce evidence and documentation,<sup>172</sup> without prejudice to the rights of the convicted person.<sup>173</sup> An intrinsically consistent, credible, and reliable account from a victim of sexual and gender-based violence may have sufficient probative value, in light of the circumstances of the case, for the allegations therein to satisfy the burden of proof, even in the absence of supporting documents.<sup>174</sup>

## 2. HARM

### i. Concept and types of harm

68. The concept of harm denotes ‘hurt, injury and damage’; it may be material, physical, and/or psychological.<sup>175</sup>

69. The harm does not need to be direct, but it has to be personal to the victim. In contrast, the harm suffered by legal entities is different from that of natural persons,<sup>176</sup> as they must demonstrate direct harm to their properties.<sup>177</sup>

<sup>169</sup> ACmHPR, [Guidelines on Sexual Violence](#), p. 43, noting that it ‘may require community therapy and awareness-raising activities for members of their communities, with a view to reducing the stigmatization of victims, encouraging a sense of trust and promoting peaceful coexistence. Providing training to members of the community to lead this type of activity will make it possible to guarantee long-lasting reparation. Income-generating and community solidarity initiatives can promote the social rehabilitation of victims’.

<sup>170</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 19; CAT, General Comment No. 3, [CAT/C/GC/3](#), para. 15.

<sup>171</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 17.

<sup>172</sup> For a similar approach, see *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), n. 376.

<sup>173</sup> See CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 101, referring to UNODC, [Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism](#), 2019, p. 189: ‘[s]pecific evidentiary rules [...] may need to be adopted [...]. Victims may encounter significant challenges in meeting stringent evidentiary requirements, including in cases in which acts of sexual and gender-based violence are committed in armed conflict [...] or as a result of the time that has passed since the commission of the crime and the destruction of evidence. These concerns should be taken into account when establishing the required standard of proof, without prejudice to the rights of the accused’.

<sup>174</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 203; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 81.

<sup>175</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 10.

<sup>176</sup> *Lubanga* Judgment on Victims’ Participation, [ICC-01/04-01/06-1432](#), para. 30.

<sup>177</sup> Rule 85(b) of the Rules; see also *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 43.

70. Psychological or moral harm<sup>178</sup> may include both, the suffering and affliction caused to direct victims and their family members and the impairment of values of great significance for the individual, as well as the alterations of a non-pecuniary character in the living conditions of the victims or their family.<sup>179</sup> Psychological or moral harm should be estimated without consideration to the economic situation of the local population.<sup>180</sup>

71. When assessing the extent of harm suffered by victims, the Court must take into account that various permutations and combinations of different layers of the aforementioned types of harm are possible, which can be manifested, *inter alia*, in damage to their life plan, transgenerational harm, or in harm suffered by persons as members of a family or community.<sup>181</sup>

72. Damage to the life plan or project of life,<sup>182</sup> which can be manifested in relation to both adults and children,<sup>183</sup> differs from loss of earnings, and refers to the lack of self-realisation of a person who, in light of their vocations, aptitudes, circumstances, potential, and aspirations, may have reasonably expected to achieve certain things in their life.<sup>184</sup> The life project is therefore expressed in the expectations of personal, professional, and familial development that are possible under normal circumstances.<sup>185</sup> This damage implies loss or severe diminution of

<sup>178</sup> On how these terms may be used interchangeably, see *Katanga Reparations Order*, [ICC-01/04-01/07-3728](#), para. 57, n. 103.

<sup>179</sup> IACtHR, *Case of Urrutia Laubreaux v. Chile*, Judgment (Preliminary Objections, Merits, Reparations, and Costs), 27 August 2020, [Series C No. 409](#), para. 161; IACtHR, *Case of the 'Street Children' (Villagrán Morales et al.) v. Guatemala*, Judgment (Reparations and Costs), 26 May 2001, [Series C No. 77](#), para. 84.

<sup>180</sup> *Katanga Reparations Order*, [ICC-01/04-01/07-3728](#), para. 189; see also *Al Mahdi Reparations Order*, [ICC-01/12-01/15-236](#), para. 43.

<sup>181</sup> The Chamber notes that the notion of loss of life plan has been used by the IACtHR as one of many elements to assess moral harm or 'non-pecuniary' damage; see *inter alia* IACtHR, *Case of Gelman v. Uruguay*, Judgment (Merits and Reparations), 24 February 2011, [Series C No. 221](#), paras 294-296; IACtHR, *Case of Anzualdo Castro v. Peru*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 22 September 2009, [Series C No. 202](#), paras 219, 222; IACtHR, *Case of Tibi v. Ecuador*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 7 September 2004, [Series C No. 114](#) ('*Case of Tibi v. Ecuador*'), paras 244-246.

<sup>182</sup> *Lubanga Judgment on Size of Reparations Award*, [ICC-01/04-01/06-3466-Red](#), para. 38, referring to *Lubanga Amended Reparations Order*, [ICC-01/04-01/06-3129-AnxA](#), para. 58(a); *Lubanga Amended Reparations Order*, [ICC-01/04-01/06-3129-AnxA](#), n. 24; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 103-105; see also IACtHR, *Case of Loayza-Tamayo v. Peru*, Judgment (Reparations and Costs), 27 November 1998, [Series C No. 42](#) ('*Case of Loayza-Tamayo v. Peru*'), paras 147-148, 150.

<sup>183</sup> When addressing the loss of life plan, the Chamber notes that the Appeals Chamber made an express observation with regards to children. See *Lubanga Judgment on Size of Reparations Award*, [ICC-01/04-01/06-3466-Red](#), para. 38. The Chamber notes that, as developed by the jurisprudence of the IACtHR, this concept is also applicable to adults. See IACtHR, *Case of Loayza-Tamayo v. Peru*, [Series C No. 42](#), para. 71: '[a]t the time of her detention, [the victim] was 36.'

<sup>184</sup> IACtHR, *Case of Álvarez Ramos v. Venezuela*, Judgment (Preliminary Objection, Merits, Reparations, and Costs) 30 August 2019, [Series C No. 380](#) ('*Case of Álvarez Ramos v. Venezuela*'), para. 225, and the references mentioned therein.

<sup>185</sup> IACtHR, *Case of Álvarez Ramos v. Venezuela*, [Series C No. 380](#), para. 225.



prospects for personal development, in a manner that is irreparable or reparable only with great difficulty,<sup>186</sup> but that can be addressed through particular modalities of reparations.<sup>187</sup>

73. Transgenerational harm<sup>188</sup> refers to a phenomenon, whereby social violence is passed on from ascendants to descendants with traumatic consequences for the latter.<sup>189</sup> It is characterised by the existence of an intergenerational cycle of dysfunction that traumatised parents set in motion, handing-down trauma by acting as violent and neglectful caretakers deforming the psyche and impacting the next generation.<sup>190</sup> Traumatized parents, who live in constant and unresolved fear, unconsciously adopt a frightening behaviour.<sup>191</sup> This affects their children's emotional behaviour, attachment, and well-being, increasing the risk that they will suffer post-traumatic stress disorders, mood disorders, and anxiety issues.<sup>192</sup> It is argued that the noxious effects of trauma may be transmitted from one generation to the next, with a potential impact on the structure and mental health of families across generations.<sup>193</sup>

74. More often than not, the inherent features of the crimes under the jurisdiction of the Court also result in mass victimisation, affecting victims as members of families and entire communities.<sup>194</sup> Members of families and communities may be affected by traumatic events

<sup>186</sup> IACtHR, *Case of Álvarez Ramos v. Venezuela*, [Series C No. 380](#), para. 225.

<sup>187</sup> See *inter alia* IACtHR, *Case of Cantoral Benavides v. Peru*, Judgment (Reparations and Costs), 3 December 2001, [Series C No. 88](#), para. 80.

<sup>188</sup> TFF February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 111, also referring to *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), paras 274-275; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 44-45; Defence Final Submissions, [ICC-01/04-02/06-2634-Red](#), para. 157; CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), paras 47-48, 58-64; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 37, 47, 69, 80, 101, 111-114; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), paras 53-54.

<sup>189</sup> Trial Chamber II, *Prosecutor v. Germain Katanga*, Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgment of 8 March 2018, 19 July 2018, [ICC-01/04-01/07-3804-Red-tENG](#) ('*Katanga* Decision on Transgenerational Harm'), para. 10; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 132; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 111; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 53.

<sup>190</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), n. 148.

<sup>191</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), n. 148.

<sup>192</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), n. 148.

<sup>193</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 53. In a similar perspective, the IACtHR recognised that the harm suffered by victims may impact future generations over time. See IACtHR, *Case of Gómez Palomino v. Peru*, Judgment (Merits, Reparations, and Costs), 22 November 2005, [Series C No. 136](#), para. 146: '[t]he Court takes into account that serious violations of human rights as that at issue in the instant case, leave lingering after-effects on the victims and next of kin directly harmed, which also affect the new generations. Thus, the predicament of the current generations, directly affected by the violation of their human rights, affects future generations in different ways'; in relation to sexual violence specifically, see IACtHR, *Case of Rosendo Cantú et al. v. Mexico*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 31 August 2010, [Series C No. 216](#), paras 138, 139, 257, where the court acknowledged the inter-generational consequences on a few months-old child of the rape suffered by her mother.

<sup>194</sup> TFF February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 111; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 37; see also, *inter alia*, R. Letschert and T. van Boven, 'Providing Reparation in Situations of Mass Victimization Key Challenges Involved' in R. Letschert et.al. (eds.), *Victimological Approaches to International Crimes: Africa* (2011) p. 165; S. Parmentier and E. Weitekamp, 'Political Crimes and Serious

suffered collectively by the individual members of the group, by reasons of the group's disintegration, breaking up, or scattering.<sup>195</sup>

75. For the purposes of reparations, the harm manifested in the form of loss of life plan, transgenerational trauma, as well as that suffered collectively by individual members of a family or community, shall be personally suffered by the victim. Moreover, the causal nexus between the alleged harm and the crime for which the defendant was convicted needs to be established.<sup>196</sup>

*ii. Causation*

76. Reparations are to be awarded based on the harm suffered as a result of the commission of a crime within the jurisdiction of the Court for which the defendant was convicted. The causal link between the crime and the harm for the purposes of reparations is to be determined in light of the specific circumstances of the case.<sup>197</sup>

*iii. Standard and burden of proof*

77. In reparation proceedings, the victims shall provide sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case.<sup>198</sup> What the 'appropriate' standard of proof is and what is 'sufficient' for the purposes of a victim meeting the burden of proof, will depend upon the specific circumstances of the case, including any difficulties the victims may face in obtaining evidence.<sup>199</sup>

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Violations of Human Rights: Towards a Criminology of International Crimes' in S. Parmentier and E. Weitekamp (eds.), *Crime and Human Rights* (2015), p. 118.

<sup>195</sup> See for example IACtHR, *Case of Tibi v. Ecuador*, [Series C No. 114](#), paras 161, 205, and Separate Concurring Opinion of Judge Sergio García-Ramírez, paras 91-93; IACtHR, *Case of the Río Negro Massacres v. Guatemala*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 4 September 2012, [Series C No. 250](#), para. 162, stating that 'the massacres that occurred during the internal armed conflict in Guatemala, added to the displacement of the members of the community of Río Negro and their resettlement in the Pacux settlement, in precarious conditions, led to the destruction of their social structure, the disintegration of the families'.

<sup>196</sup> See *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), paras 236, 255; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 212-214.

<sup>197</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 11.

<sup>198</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 22.

<sup>199</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 81.

### 3. TYPES AND MODALITIES OF REPARATIONS

#### i. Types and modalities of reparations

78. Pursuant to rule 97(1) of the Rules, reparations can be individual or collective.<sup>200</sup> These types are not mutually exclusive and can be awarded concurrently.<sup>201</sup> When it is appropriate to award both types of reparations concurrently, individual and collective reparations should, to the extent possible, aim to complement and reinforce one another.<sup>202</sup>

79. Individual reparations are those where the ensuing benefit is afforded directly to an individual to repair the harm the person suffered as a consequence of the crimes for which the defendant was convicted, conferring upon a victim a benefit to which they are exclusively entitled.<sup>203</sup> Individual reparations should be awarded in a way that avoids creating or adding tensions and divisions within the relevant communities.<sup>204</sup>

80. Collective reparations refer to their nature (type of goods or services distributed or mode of their distribution) or their recipients (communities or groups).<sup>205</sup> They differ from individual reparations in that they benefit a group or category of persons who have suffered a shared harm.<sup>206</sup> The group need not be vested with prior legal personality or a collective right and the shared harm does not necessarily pre-supposes the violation of a collective right.<sup>207</sup> When collective reparations are awarded, these should address the harm the victims suffered on an individual and a collective basis.<sup>208</sup>

81. While several permutations are possible,<sup>209</sup> there are primarily two forms of collective reparations.<sup>210</sup> The first category of collective reparations (‘community reparations’) is

<sup>200</sup> As to the conceptual distinction between ‘types’ and ‘modalities’ of reparations, see *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), paras 265-295, 296-305; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 1, specifying ‘the type of reparations ordered, either collective, individual or both [...]’.

<sup>201</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 33; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), paras 256, 283; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 45.

<sup>202</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), principle 3, p. 7.

<sup>203</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 271.

<sup>204</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 33; see *supra* Principle 1.iv. ‘Do no harm’.

<sup>205</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 273, referring to HR Council, Report on Reparation, [A/69/518](#), para. 38.

<sup>206</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 275; see also *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), paras 59, 67.

<sup>207</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 276; see also *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), paras 83, 90.

<sup>208</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 33.

<sup>209</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 40.

<sup>210</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para 278.



intended to benefit the community as a whole and does not specifically address individual members thereof.<sup>211</sup> The second category ('collective reparations with individualised components') focuses on the individual members of the group. Although they are collective in nature, they result in individual benefits, to respond to the needs and current situation of the individual victims in the group.<sup>212</sup>

82. The 'modalities' of reparations are the specific means identified to address the types of harm subject to reparations.<sup>213</sup> Article 75 of the Statute sets out a non-exhaustive list of modalities, including restitution, compensation, and rehabilitation.<sup>214</sup> Reparations may also have a symbolic, preventative, or transformative value,<sup>215</sup> and may assist in promoting reconciliation between the victims of the crime, the affected communities, and the convicted person.<sup>216</sup>

83. Restitution is directed at the restoration of an individual's life, restoring the victim to the original situation, whenever possible, including a return to one's family, home, previous employment, providing continuing education, or the returning of lost or stolen property.<sup>217</sup> Restitution may also be apposite for legal bodies such as schools or other institutions.<sup>218</sup> In light of the challenges posed by the notion of *restitutio in integrum*,<sup>219</sup> particularly given the types of crimes under the jurisdiction of the Court and the type of harm that may be inflicted

<sup>211</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 279, indicating that '[f]or example, the building of a school or hospital may be of general help to the community [...]; some modalities of collective reparations, such as symbolic reparations in the form of a memorial, provide an inherently collective benefit of sharing memory and may not be conceived in individual terms'.

<sup>212</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 280, indicating that '[t]hat could be said of healthcare which is provided to all members of the group but which is specialized and addresses each victim individually'.

<sup>213</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 46.

<sup>214</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 46; *see also* *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 297.

<sup>215</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 34; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 297; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 49; *see infra* Principle 3.iv. 'Transformative reparations'.

<sup>216</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 28; *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 71; *see infra* Principle 3.ii. 'Proportional, prompt, and adequate reparations' and Principle 3.iv. 'Transformative reparations'.

<sup>217</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 35; UNGA, Basic Principles on Reparations, [UN Doc A/RES/60/147](#), para. 19; ACmHPR, *Mbiankeu Geneviève v. Cameroon*, Decision, 1 August 2015, [Communication No. 389/10](#), para. 131.

<sup>218</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 36.

<sup>219</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 121, 168, stressing the fact that *restitutio in integrum*, especially for former child soldiers, may actually not be possible; IACtHR, *Case of Aloeboetoe et al. v. Suriname*, [Series C No. 15](#), para. 49: 'the rule of *in integrum restitutio* refers to one way in which the effect of an international unlawful act may be redressed, but it is not the only way in which it must be redressed, for in certain cases such reparation may not be possible, sufficient or appropriate' (emphasis in the original text).

as a consequence of those crimes, the Court should contemplate modalities of reparations that strive, to the extent possible, to redress the harm caused to the victims.<sup>220</sup>

84. Compensation is a form of economic relief, consisting usually in the award of monetary funds or any other act ordered by the Court, as payment for the damages suffered.<sup>221</sup> It can pertain to pecuniary and non-pecuniary losses.<sup>222</sup> It is a substitute remedy provided as a means of redress when there is no way to undo the effects of the violation through other measures. Compensation by itself cannot restore or replace rights that have been violated.<sup>223</sup>

85. Although some forms of harms are essentially unquantifiable in financial terms, compensation is aimed at addressing, in a proportionate and appropriate manner, the harm that has been inflicted.<sup>224</sup> Compensation should be considered when (i) the economic harm is sufficiently quantifiable; (ii) an award of this kind would be appropriate and proportionate (bearing in mind the gravity of the crime and the circumstances of the case); and (iii) in view of the availability of funds, this result is feasible.<sup>225</sup> To repair certain types of harm, compensation alone may not be sufficient.<sup>226</sup>

86. Compensation requires a broad application, to encompass all forms of damage, loss, and injury.<sup>227</sup> As stated above, collective reparations may also include measures that are individualised, including, for example, ‘the payment of sums of money to individuals to repair harm suffered’.<sup>228</sup>

<sup>220</sup> While noting the substantial differences between the reparations system at the ICC and in international human rights courts, see IACtHR, *Case of Atala Riffo and daughters v. Chile*, Judgment (Merits, Reparations, and Costs), 24 February 2012, [Series C No. 239](#) (*‘Case of Atala Riffo and daughters v. Chile’*) para. 241: ‘[w]here [*restitutio in integrum*] is not feasible, as happens in the majority of cases involving human rights violations, the Court shall decide measures to guarantee the infringed rights, repair the damage caused by the violations and establish an amount in compensation to make good on the damage caused. Therefore, the Court has considered the need to order several measures of reparation in order to fully redress the damage caused, and therefore, in addition to pecuniary compensation, the measures of restitution, satisfaction and guarantees of non-repetition are especially relevant’; EAAC, *Prosecutor v. Hisssein Habré*, para. 842.

<sup>221</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 40; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 47; ACtHPR, [Comparative Study on the Law and Practice of Reparations for Human Rights Violations](#), September 2019 (*‘Comparative Study on Reparations’*), p. 51.

<sup>222</sup> European Commission (*‘EC’*), [Strengthening Victims’ Rights: from Compensation to Reparation](#), March 2019 (*‘Report on Reparations’*), p. 3; ACtHPR, [Comparative Study on Reparations](#), p. 52; IACtHR, *Case of Velásquez Rodríguez v. Honduras*, Judgment (Reparations and Costs), 21 July 1989, [Series C No. 7](#) (*‘Case of Velásquez Rodríguez v. Honduras’*), para. 26.

<sup>223</sup> ACtHPR, [Comparative Study on Reparations](#), p. 51; EC, [Report on Reparations](#), p. 3.

<sup>224</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 40.

<sup>225</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 37.

<sup>226</sup> CAT, General Comment No. 3, [CAT/C/GC/3](#), para. 9; EC, [Report on Reparations](#), p. 3.

<sup>227</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 39.

<sup>228</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 40; see also TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), paras 83-84.

87. Rehabilitation measures are aimed at addressing the medical and psychosocial conditions of the victims.<sup>229</sup> It is crucial to provide victims with opportunities for rehabilitation.<sup>230</sup> Rehabilitation may include, for instance, medical services and healthcare, psychological, psychiatric, and social assistance, as well as any relevant legal and social services.<sup>231</sup> A holistic approach to rehabilitation shall be aimed at creating a context of confidence and trust in which assistance can be provided. Confidential services should be provided as appropriate.<sup>232</sup>

88. Satisfaction refers to measures that acknowledge the violation and aim to safeguard the dignity and reputation of the victim.<sup>233</sup> They may also be appropriate to repair non-pecuniary harms,<sup>234</sup> and include a wide array of measures.<sup>235</sup> Similarly to convictions and sentences, reparations orders themselves are also ‘likely to have significance for the victims, their families and communities’.<sup>236</sup> The publication of reparations orders, which contain an assessment of the types of harms and of the measures to address them, may also serve to raise awareness about the extent of the damage caused and result in a recognition thereof.<sup>237</sup> Certain measures of satisfaction,<sup>238</sup> require especial consultation with victims, particularly regarding victims of gender and sexual-based violence.<sup>239</sup>

<sup>229</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 48; *see also* CAT, General Comment No. 3, [CAT/C/GC/3](#), 13 December 2012, para. 11; IACtHR, [Annual Report](#), 2011, p. 19; UNGA, Basic Principles on Reparations, [UN Doc A/RES/60/147](#), para. 21; ACtHPR, [Comparative Study on Reparations](#), pp. X, 55.

<sup>230</sup> ACtHPR, [Comparative Study on Reparations](#), p. 55.

<sup>231</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 48; *see also* UNGA, Basic Principles on Reparations, [UN Doc A/RES/60/147](#), para. 19; *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 42; CAT, General Comment No. 3, [CAT/C/GC/3](#), para. 11; ACtHPR, [Comparative Study on Reparations](#), pp. 56-58, and the references contained therein.

<sup>232</sup> ACmHPR, [General Comment No. 4](#), para. 42.

<sup>233</sup> ACtHPR, [Comparative Study on Reparations](#), p. 58.

<sup>234</sup> *See* IACtHR, [Annual Report](#), 2011, p. 19.

<sup>235</sup> *See* UNGA, Basic Principles on Reparations, [UN Doc A/RES/60/147](#), para. 22.

<sup>236</sup> *See Lubanga* Reparations Decision, [ICC-01/04-01/06-2904](#), para. 237; *see also Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 15; *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 43; ACtHPR, *The beneficiaries of the late Norbert - Zongo Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo v. Republic of Burkina Faso*, Judgment on Reparations, 5 June 2015, [Application No. 013/2011](#), para. 98; ACtHPR, [Comparative Study on Reparations](#), p. 58.

<sup>237</sup> *See* First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 59; *see also Lubanga* Reparations Decision, [ICC-01/04-01/06-2904](#), para. 238; *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 43.

<sup>238</sup> ACmHPR, [General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment \(Article 5\)](#), 4 March 2017 (‘General Comment No. 4’), para. 44: ‘[s]atisfaction also includes [...] verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim’.

<sup>239</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), pp. 17-18; ACmHPR, [Guidelines on Combatting Sexual Violence and its Consequences in Africa](#), 5 November 2017 (‘Guidelines on Sexual Violence’), p. 43: ‘[s]atisfaction is intended to promote the recognition of the damages undergone by the victims of sexual violence. This type of

ii. *Proportional, prompt, and adequate reparations*

89. To promote justice for victims,<sup>240</sup> reparations should be appropriate, adequate, and prompt.<sup>241</sup> The awards ought to be proportionate to the harm, injury, loss, and damage as established by the Court.<sup>242</sup> The reparation process should be as expeditious and cost effective as possible and avoid unnecessarily protracted, complex, and expensive litigation, especially when a considerable number of years have elapsed since the commission of the crime(s).<sup>243</sup>

90. Reparations should aim at reconciling the victims with their families and the affected communities.<sup>244</sup> Whenever possible, reparations should reflect local cultural and customary practices, unless these are discriminatory or exclusionary or deny victims' equal access to their rights.<sup>245</sup> In addition, their implementation must be responsive to local conditions while being consistent with the Court's reparations principles, including the principle of non-discrimination.<sup>246</sup>

91. Reparations should support programmes that are self-sustainable to enable victims, their families, and their communities to benefit from measures over an extended period of time.<sup>247</sup> Reparations must be effective and should strive to meet the victims' expectations,

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reparation can include verification that the acts of sexual violence took place; full and public disclosure of the truth inasmuch as this does not cause new injury to the victims, especially in terms of stigmatization, and does not threaten the safety or interests of the victims and the witnesses; an official declaration or a court decision that restores the rights of the victims; public apologies from the perpetrators of the violence, especially acknowledgement of the facts and acceptance of responsibility; administrative and court-ordered sanctions against the perpetrators; commemorations and homages to the victims'; *see supra* Principle 1.iv. 'Do no harm'.

<sup>240</sup> *See supra* Section I. 'Overview'.

<sup>241</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 44; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 33; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 267; *see also* Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), para. 11, also referring to, *inter alia*, UNGA, Basic Principles on Reparations, [UN Doc A/RES/60/147](#), principle 9, para. 15; *see also* Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Transcript of hearing, 11 October 2016, [ICC-01/04-01/06-T-367-ENG](#), pp. 45-46; Trial Chamber II, *Prosecutor v. Germain Katanga*, Communication du Représentant Legal, 17 December 2018, [ICC-01/04-01/07-3819-Red](#), p. 7; [Independent Experts Final Report](#), paras 884, 887.

<sup>242</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 45.

<sup>243</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 64; *see also* CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 14, referring to First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 118; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), paras 18, 129; [Independent Experts Final Report](#), para. 879; *see also* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 91.

<sup>244</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 46.

<sup>245</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 47; *see supra* Principle 1.ii. 'Dignity, non-discrimination, and non-stigmatisation' and *infra* Principle 3.iv. 'Transformative reparations'.

<sup>246</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 148.

<sup>247</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 48.

particularly when preference has been expressed for reparations that are meaningful, transformative, and self-sustainable, rather than symbolic or charitable in nature.<sup>248</sup>

### iii. Prioritisation

92. All victims are to be treated fairly and equally.<sup>249</sup> However, priority may need to be given to certain victims who are in a particularly vulnerable situation or require urgent assistance.<sup>250</sup> As such, the Court may adopt measures in order to guarantee equal, effective, and safe access to reparations for particularly vulnerable victims.<sup>251</sup>

93. When determining priorities, attention should be given to individuals who require immediate physical and/or psychological medical care, victims with disabilities and the elderly, victims of sexual or gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers.<sup>252</sup>

### iv. Transformative reparations

94. In general terms, the transformative purpose of reparations aims at producing both a restorative and a corrective effect and to promote structural changes, dismantling discriminations, stereotypes, and practices that may have contributed to create the conditions for the crime to occur.<sup>253</sup> Reparations should thus strive<sup>254</sup> to be transformative in their design, implementation, and impact,<sup>255</sup> and to have a rectification effect.<sup>256</sup>

<sup>248</sup> See CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 15; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 57.

<sup>249</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 12.

<sup>250</sup> *Lubanga* Reparations Decision, [ICC-01/04-01/06-2904](#), para. 200; *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 19; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 310; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 140.

<sup>251</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 19.

<sup>252</sup> The Chamber notes the suggestion made by Dr Gilmore, who outlines ‘some relevant principles that the Chamber may want to consider incorporating or developing the Lubanga principles further’. It thus considers appropriate to develop this principle separately, see Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 4, and, *inter alia*, paras 9, 128; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 215; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 81.

<sup>253</sup> IACtHR, *Cotton Field case*, [Series C No. 205](#), paras 450-451; IACtHR, *Case of Atala Rizzo and daughters v. Chile*, [Series C No. 239](#), para. 267.

<sup>254</sup> The Chamber notes however the challenges involved in addressing ambitious transformative programmes to tackle conditions of structural injustice, especially in the absence of State and civil society action, and the nature of reparations in the Court’s context. See Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 14.

<sup>255</sup> UNSG, Guidance Note, [ST/SG\(02\)/R425](#), principle 4, pp. 8-9, acknowledging that ‘reparations have the potential to trigger important changes even if they alone cannot transform the root causes’; see also [Nairobi Declaration](#), p. 2, and principle 3(H).

<sup>256</sup> *Lubanga* Reparations Decision, [ICC-01/04-01/06-2904](#), para. 240; see also IACtHR, *Cotton Field case*, [Series C No. 205](#), para. 450; IACtHR, *Case of Atala Rizzo and daughters v. Chile*, [Series C No. 239](#), para. 267; see *supra* Principle 1.ii. ‘Dignity, non-discrimination, and non-stigmatisation’.



95. In defining the scope of transformative reparations, the Court should focus on confronting social exclusion by prioritising a participatory process over outcomes and by challenging unequal power relations.<sup>257</sup> The process of obtaining reparations should in itself be empowering and transformative and give victims the opportunity to assume an active role in obtaining reparations.<sup>258</sup>

#### 4. LIABILITY

##### *i. Liability of the convicted person*

96. Reparation orders are intrinsically linked to the individual whose criminal liability is established in the conviction and whose culpability for the criminal acts is determined in a sentence.<sup>259</sup> The convicted person's liability for reparations must be proportionate to the harm caused, in the specific circumstances of the case.<sup>260</sup> The responsibility of other persons, organisations, or State responsibility is irrelevant to this determination.<sup>261</sup>

97. In light of the principle of 'accountability for the offender',<sup>262</sup> an order for reparations shall be issued in all circumstances against the convicted person,<sup>263</sup> regardless of the person's indigence.<sup>264</sup> The convicted person's financial situation,<sup>265</sup> as well as any potential resources available to the TFCV to complement a reparations award, are irrelevant to the determination of the scope of the person's liability for reparations.<sup>266</sup>

98. The imposition of liability, including its precise scope, determines the extent of the obligations imposed on the convicted person.<sup>267</sup> In determining the amount of the convicted

<sup>257</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 15.

<sup>258</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 131; *see also* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 16: 'reparations can modestly contribute to transformation by allowing victims to participate in the proceedings and respecting their agency to choose appropriate reparations for their harm'; R. Uprimny Yepes, 'Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice' in 27 *Netherlands Quarterly of Human Rights* 625 (2009) ('Transformative Reparations'), p. 640; F. Ní Aoláin et. al., *On the Frontlines: Gender, War, and the Post-Conflict Process* (2011), p. 254; *see supra* Principle 1.iii. 'Victim-centred approach: Accessibility and consultations with victims'.

<sup>259</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 20; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 65.

<sup>260</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 21.

<sup>261</sup> *See Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), paras 6, 178.

<sup>262</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 68-69.

<sup>263</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 76; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 69.

<sup>264</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 70.

<sup>265</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 114; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 102-105.

<sup>266</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 112.

<sup>267</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 237.

person's liability, the primary consideration should be the extent of the harm and the costs to repair it.<sup>268</sup> Other criteria, such as modes of liability, gravity of the crimes, or mitigating factors are not relevant to this determination.<sup>269</sup>

ii. *No over-compensation*

99. Reparations may neither 'enrich' nor 'impoverish' the victim,<sup>270</sup> but adequately repair the harm caused, to the extent possible. Granting multiple modalities of reparations for the same harm suffered by the victims shall not be regarded as over-compensation.<sup>271</sup>

100. The goal of reparations is not to punish the convicted person but to repair the harm caused to others.<sup>272</sup> Where the Court considers the application of joint and several liability or responsibility *in solidum*, victims shall not be over-compensated for the harm they have suffered.<sup>273</sup>

## 5. RIGHTS OF THE DEFENCE

101. Nothing in these principles shall prejudice or be inconsistent with the rights of the convicted person to fair and impartial reparation proceedings.<sup>274</sup>

<sup>268</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), paras 2, 72.

<sup>269</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 184.

<sup>270</sup> Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), paras 17-18, referring to, *inter alia*, ECtHR, Chamber, *Piersack v Belgium*, Judgment, 26 October 1984, [Application no. 8692/79](#), para. 15: '[w]hilst [the applicant] certainly ought not to suffer financially for the failure to observe the requirements of the Convention found to have occurred in his case, neither should he profit therefrom'; IACtHR, *Case of La Cantuta v. Peru*, Judgment (Merits, Reparations, and Costs), 29 November 2006, [Series C No. 162](#), para. 202: '[r]eparations are measures aimed at removing the effects of the violations [...]. These measures may neither enrich nor impoverish the victim or the victim's beneficiaries, and they must bear proportion to the breaches declared as such in the Judgment'; IACtHR, *Cotton Field case*, [Series C No. 205](#), para. 451: 'the Court will [...] ensure that [reparation measures] do not make the beneficiaries richer or poorer'.

<sup>271</sup> IACtHR, *Cotton Field case*, [Series C No. 205](#), paras 449, 451: '[o]ne or more measures can repair a specific damage, without this being considered double reparation'.

<sup>272</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 184; *see also* IACtHR, *Case of Garrido and Baigorria v. Argentina*, [Series C No. 39](#), para. 44.

<sup>273</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 308; *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 178. For a definition of joint and several liability and obligations *in solidum*, *see* United States, Supreme Court, *Terry Michael Honeycutt v. United States*, 5 June 2017, 137 S.Ct. 1626, II: '[i]f two or more defendants jointly cause harm, each defendant is held liable for the entire amount of the harm; provided, however, that the plaintiff recover only once for the full amount'; United States, Restatement (Second) of Torts, 1979, section 875; Black's Law Dictionary (2019), Joint and several, and Solidary; European Group on Tort Law, [Principles of European Tort Law](#), May 2005, article 9:101: '(1) [l]iability is solidary where the whole or a distinct part of the damage suffered by the victim is attributable to two or more persons [...]; (2) [w]here persons are subject to solidary liability, the victim may claim full compensation from any one or more of them, provided that the victim may not recover more than the full amount of the damage suffered by him'.

<sup>274</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 49.

## 6. OTHER PRINCIPLES

### i. States and other stakeholders

102. In the process of enforcement of reparation orders, States Parties have the obligation to cooperate fully, and they are enjoined not to prevent the enforcement of reparation orders or the implementation of awards. Reparations awarded pursuant to this order do not interfere with the primary responsibility of States to address the harms suffered and award reparations to victims pursuant to their obligations under other treaties or national law.<sup>275</sup>

### ii. Publicity of the proceedings

103. Reparation proceedings shall be transparent and measures should be adopted to ensure that victims have detailed and timely notice of these proceedings and access to any awards.<sup>276</sup> The Registrar is responsible for taking all the necessary measures in this context, including outreach activities with the national authorities, local communities, and the affected populations, in order to publicise these principles and any reparation proceedings before the Court.<sup>277</sup>

## V. ORDER FOR REPARATIONS AGAINST MR NTAGANDA

104. The present order is for collective reparations against Mr Ntaganda to be made through the TFV pursuant to rules 97(1) and 98(3) of the Rules.

<sup>275</sup> *Lubanga Amended Reparations Order*, [ICC-01/04-01/06-3129-AnxA](#), para. 50; *see also Katanga Reparations Order*, [ICC-01/04-01/07-3728](#), paras 323-324; [ICCPR](#), articles 2(1), 2(3); HR Committee, *Adrien Mundy Busyo, Thomas Osthudi Wongodi, René Sibu Matubuka et al. v. Democratic Republic of the Congo*, Views, 19 September 2003, Communication No. 933/2000, [UN Doc CCPR/C/78/D/933/2000](#), para. 6(3); [ACHPR](#), articles 1, 4, 7(1); ACmHPR, *Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Zimbabwe*, Decision, 2 May 2012, [Communication No. 295/04](#), paras 127, 139, 143; ACmHPR, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Decision, 15 May 2006, [Communication N0. 245/02](#), para. 213; ACmHPR, [General Comment No. 3 on the African Charter on Human and Peoples' Rights: the Right to Life \(article 4\)](#), paras 7, 17; ACmHPR, [General Comment No. 4](#), para. 73; ACmHPR, [Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa](#), 29 May 2003, principle C(b)(2); *see also* IACtHR, *Case of Velásquez Rodríguez v. Honduras*, Judgment (Merits), 29 July 1988, [Series C No. 4](#), para. 174; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 275; UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 10, stressing the role of States in reparations programmes as an obligation, being distinct from international assistance and cooperation.

<sup>276</sup> *Lubanga Amended Reparations Order*, [ICC-01/04-01/06-3129-AnxA](#), para. 51; *see also* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 10; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 136: '[i]t is important to keep in mind that the lack of information helps to spread rumours and misunderstandings which are creating expectations and tensions including between communities'.

<sup>277</sup> *Lubanga Amended Reparations Order*, [ICC-01/04-01/06-3129-AnxA](#), para. 52; *see also Katanga Reparations Order*, [ICC-01/04-01/07-3728](#), para. 345; *see supra* Principle 1.iii. 'Victim-centred approach: Accessibility and consultation with victims'.



## A. RELEVANT VICTIMS

### 1. General Considerations

105. In light of the type of reparations to be awarded, the Chamber finds it appropriate to establish the eligibility criteria for reparations rather than identifying the victims eligible itself.<sup>278</sup> Accordingly, the Chamber hereafter indicates the characteristics of the categories of eligible victims, in order to enable their identification by the TFV.

106. The Chamber recalls that ‘reparations orders are intrinsically linked to the individual whose criminal liability is established in the conviction and whose culpability for those criminal acts is determined in a sentence’.<sup>279</sup> Accordingly, eligibility for reparations in the present proceedings is to be determined by reference to the territorial, temporal, and subject matter scope of the crimes for which Mr Ntaganda was convicted.<sup>280</sup>

107. Regarding the scope of the conviction,<sup>281</sup> the Chamber recalls its findings in the Decision on the First Report.<sup>282</sup> The Chamber further notes that the eligibility criteria for victims to receive reparations is unrelated to their official place of residence at the time the crimes were committed,<sup>283</sup> as long as they can demonstrate that they suffered harm as a result of a crime for which Mr Ntaganda was convicted. In addition, the Chamber notes that,<sup>284</sup> the victims who claim to have suffered harm in the forest or bush surrounding locations for which

<sup>278</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 205.

<sup>279</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 65; *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 20.

<sup>280</sup> Judgment, [ICC-01/04-02/06-2359](#), para. 1199.

<sup>281</sup> See *supra* Section III.B. ‘Scope of the case’. The Chamber underscores that the Judgment on conviction is the only authoritative document as to the scope of the case and its details.

<sup>282</sup> Decision on the First Report, [ICC-01/04-02/06-2630](#).

<sup>283</sup> See CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 64; CLR2 Observations on the Second Report, [ICC-01/04-02/06-2642-Red](#), paras 17-19, arguing that as a result of the UPC/FPLC taking control over the area, civilians massively fled throughout the Banyali-Kilo and Walendu-Djatsi *collectivités*, taking refuge in surrounding villages, hills, forests and bushes and that although originating from villages outside the scope of the conviction, they may have nonetheless suffered harm in the forest or bush surrounding locations for which the Judgment made findings. In relation to that allegation see Judgment, [ICC-01/04-02/06-2359](#), paras 476, 497, 567, 568, 571-573, 583, 585, 603, 604, 617, 618, 640, 996, 1000, 1002, 1006, 1050, 1052, 1054.

<sup>284</sup> See CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 107-109; CLR2 Observations on the Second Report, [ICC-01/04-02/06-2642-Red](#), para. 16; see also Judgment, [ICC-01/04-02/06-2359](#), paras 1071-1072 (regarding the lawful status of the victims of forcible displacement who were present in the affected areas, where they had sought refuge and were residing, even if the house in which they resided was not theirs), para. 1000 (regarding the fact that when the attack in Kobu took place, non-residents were present because they had sought refuge there following the UPC/FPLC violence in the region), paras 603-606 (regarding the fact that people who fled other locations were present in Buli and its surrounding bush when the UPC/FPLC chased, shot at, and captured them), paras 617, 1006 (regarding the fact that people fled Kobu, Bambu and the pacification meeting, taking refuge in Jitchu and its surrounding forest, where UPC/FPLC soldiers chased them after the pacification meeting).

findings were made in the Judgment, may be eligible for reparations, where the Chamber entered convictions based on underlying acts having occurred in the forest or bush surrounding those locations.<sup>285</sup>

## 2. *Direct victims*

108. Natural and legal persons are eligible for reparations as direct victims if they can demonstrate, at the relevant standard of proof, that they suffered harm as a result of at least one of the following crimes:

### *i. Victims of the attacks*

109. Counts 1 and 2: victims of murder and attempted murder as a crime against humanity and as a war crime in Mongbwalu, Nzebi, Sayo, and Kilo in the context of the First Operation, and in Kobu, Sangi, and Bambu in the context of the Second Operation.<sup>286</sup> Specifically (i) in the context of the First Operation: *Abbé Bwanalunga* in Mongbwalu;<sup>287</sup> a woman in front of the health centre in Sayo;<sup>288</sup> people in Mongbwalu and Sayo during *ratissage* operations,<sup>289</sup> including a Lendu woman and persons killed at the *Appartements* camps;<sup>290</sup> two Lendu persons in Nzebi;<sup>291</sup> and Lendu persons,<sup>292</sup> a Ngiti man, a pregnant Lendu woman, and a Nyali man in Kilo;<sup>293</sup> (ii) in the context of the Second Operation: at least two fleeing children in Kobu,<sup>294</sup> and people during the *ratissage* operation that followed;<sup>295</sup> nine hospital patients in Bambu;<sup>296</sup> a woman who was raped and P-0018's sister-in-law, in the bushes surrounding Sangi;<sup>297</sup> at least 49 persons in a banana field near the Paradiso building in Kobu;<sup>298</sup> and some men who were raped by UPC/FPLC soldiers in Kobu;<sup>299</sup> and (iii) in the context of the First and Second

<sup>285</sup> Decision on the First Report, [ICC-01/04-02/06-2630](#), para. 19(f).

<sup>286</sup> Judgment, [ICC-01/04-02/06-2359](#), p. 535 and para. 1199.

<sup>287</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 737-742, 532-533.

<sup>288</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 875, 888, 506.

<sup>289</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 889, 512-513, 526.

<sup>290</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 890-891, 513, 528.

<sup>291</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 892, 510.

<sup>292</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 893, 543.

<sup>293</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 894-895, 545-547.

<sup>294</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 896, 573; *see also* Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 40.

<sup>295</sup> Judgment, [ICC-01/04-02/06-2359](#) paras 1199, 873, 896, 577.

<sup>296</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 897, 587.

<sup>297</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 899, 600.

<sup>298</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 898, 628, 633.

<sup>299</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 876, 899, 623.

Operation: the attempted murder of P-0018, P-0019, P-0022, P-0108,<sup>300</sup> and a patient of Bambu hospital.<sup>301</sup>

110. Count 3: victims of the crime of intentionally directing attacks against civilians as a war crime in Mongbwalu and Sayo in the context of the First Operation, and in Bambu, Jitchu, and Buli, in the context of the Second Operation.<sup>302</sup>

111. Counts 4 and 5: victims of rape as a crime against humanity and as a war crime in Mongbwalu and Kilo in the context of the First Operation, and in Kobu, Sangi, and Buli, in the context of the Second Operation.<sup>303</sup> Specifically (i) in the context of the First Operation: women and girls during and in the aftermath of the UPC/FPLC assault on Mongbwalu<sup>304</sup> including a number of women in the *Appartements* camp<sup>305</sup> and girls in Kilo;<sup>306</sup> and (ii) in the context of the Second Operation: detained women and men in Kobu;<sup>307</sup> women in Sangi;<sup>308</sup> and P-0113 in Buli.<sup>309</sup>

112. Counts 7 and 8: P-0113<sup>310</sup> and an 11-year-old girl,<sup>311</sup> as victims of sexual slavery as a crime against humanity and as a war crime, in Kobu and Buli in the context of the Second Operation.

<sup>300</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 878, 880-882, 899, 546, 601, 622, 628, 632.

<sup>301</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 873, 897, 587.

<sup>302</sup> Judgment, [ICC-01/04-02/06-2359](#), pp. 535-536, and paras 1199, 906-908, 911, 914-915, 918, 922-923, 926-927, 415, 486, 488, 491, 493, 494-496, 500-502, 506-508, 585, 603-605, 617. For crimes committed in the forest or bush surrounding Jitchu and Buli, see Judgment, [ICC-01/04-02/06-2359](#), paras 914, 915, 922, 927, 604-606, 617; Sentencing Judgment, [ICC-01/04-02-06-2442](#), paras 55 and 85 (the Chamber considered the killing of at least one person by UPC/FPLC soldiers while being chased in the surrounding bush of Buli as an aggravating factor in the crime of attacking civilians); Judgment, [ICC-01/04-02/06-2359](#), para 495, regarding the attack in Mongbwalu resulting in people getting killed or wounded by the use of heavy weapons, such as by shelling and gunshots; n. 1416 referring to the testimony of P-0963: T-78, pp. 82-83 (the witness testified that the UPC/FPLC soldiers attacked the civilians in Mongbwalu, shot at everybody and could use heavy weapons to fire at a target, even if it was just one single individual. The soldiers had to ensure that the bombs would destroy the house and the people in it), n. 1437 referring to the testimony of P-0010: T-50, p. 61 (the witness stated that the UPC/FPLC soldiers often fought in inhabited areas and people usually hid in their homes. The soldiers could destroy these buildings with mortars or bullets and these people would be hit as a result, which was often the case in Mongbwalu); Sentencing Judgment, [ICC-01/04-02-06-2442](#), n. 158.

<sup>303</sup> Judgment, [ICC-01/04-02/06-2359](#), p. 536 and paras 1199, 940-941, 945-948, 518-523, 535, 545, 548, 579, 599-601, 607, 622-623, 629. For crimes committed in the bush surrounding Sangi, see Judgment, [ICC-01/04-02/06-2359](#), paras 944, 599-601.

<sup>304</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 940-948, 518-523.

<sup>305</sup> Judgment, [ICC-01/04-02/06-2359](#), para. 535; see Sentencing Judgment, [ICC-01/04-02-06-2442](#), n. 255.

<sup>306</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 940-948, 545, 548; see Sentencing Judgment, [ICC-01/04-02-06-2442](#), n. 255.

<sup>307</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 940-948, 579, 622-623, 629.

<sup>308</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 940-948, 599-601.

<sup>309</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 940-948, 607, 627, 629, and n. 2730.

<sup>310</sup> Judgment, [ICC-01/04-02/06-2359](#), pp. 536-537 and paras 1199, 954-956, 959-961, 606-608, 611, 629, 631.

<sup>311</sup> Judgment, [ICC-01/04-02/06-2359](#), pp. 536-537 and paras 1199, 954-956, 954, 956, 579.

113. Count 10: victims of persecution as a crime against humanity in Mongbwalu, Nzebi, Sayo, and Kilo in the context of the First Operation, and in Nyangaray, Lipri, Tsili, Kobu, Bambu, Sangi, Gola, Jitchu, and Buli, in the context of the Second Operation.<sup>312</sup>

114. Count 11: victims of pillage as a war crime in Mongbwalu and Sayo in the context of the First Operation; and in Kobu, Lipri, Bambu, and Jitchu in the context of the Second Operation.<sup>313</sup>

115. Counts 12 and 13: victims of forcible transfer and deportation as a crime against humanity and ordering the displacement of the civilian population as a war crime in Mongbwalu, in the context of the First Operation; and in Lipri, Tsili, Kobu, and Bambu, in the context of the Second Operation.<sup>314</sup>

116. Count 17: victims of the crime of intentionally directing attacks against protected objects as a war crime, namely against the health centre in Sayo, in the context of the First Operation.<sup>315</sup>

117. Count 18: victims of the crime of destroying the adversary's property as a war crime in Mongbwalu and Sayo, in the context of the First Operation; and in Lipri, Tsili, Kobu, Jitchu, Buli, and Sangi, in the context of the Second Operation.<sup>316</sup>

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<sup>312</sup> Judgment, [ICC-01/04-02/06-2359](#), p. 537 and para. 1199, for the underlying acts of persecution in Mongbwalu, *see* paras 746-752, 995-996, 999, 486, 488, 491, 493, 494, 496, 497, 512, 514-517, 528, 532-533, 535, 906, 907; for the underlying acts of persecution in Nzebi, *see* paras 997, 999, 510; for the underlying acts of persecution in Sayo, *see* paras 997, 999, 500-503, 506-508, 526; for the underlying acts of persecution in Kilo, *see* paras 998, 999, 543-548; for the underlying acts of persecution in Nyangaray and its surrounding bush, *see* paras 1000, 1008, 640; for the underlying acts of persecution in Lipri, Tsili and in or around Kobu, *see* paras 1000-1002, 1008, 543, 567-569, 571-573, 577-579, 599, 609, 613, 616, 622-623, 628, 629, 632-633; for the underlying acts of persecution in Bambu, *see* paras 1000, 1002, 1008, 583, 585, 587, 589; for the underlying acts of persecution in and around Sangi and in its surrounding bush, *see* paras 1003-1004, 1008, 597-602, 620, 621; for the underlying acts of persecution in Gola and in its surrounding bush, *see* paras 1005, 1007, 1008, 613; for the underlying acts of persecution in Jitchu and Buli and in their surrounding bushes, *see* paras 1006-1008, 603-609, 611, 617-619, 627, 629, 631; *see also* Decision on the First Report, [ICC-01/04-02/06-2630](#), paras 19, 61.

<sup>313</sup> Judgment, [ICC-01/04-02/06-2359](#), p. 537 and paras 1199, 1032, 1036-1041; for pillage in Mongbwalu by UPC/FPLC soldiers and Hema civilians, paras 512, 514-517; for pillage in Sayo, para. 526; for pillage in Kobu, para. 578; for pillage in Bambu, para. 589; for pillage in Lipri, para. 569; for pillage in Jitchu, para. 617.

<sup>314</sup> Judgment, [ICC-01/04-02/06-2359](#), pp. 537, 538 and paras 1199, 1050-1055, 1057-1067, 1070-1074, 1079, 1084-1088, 1095-1096, 1099, 1101; for forcible transfer in Mongbwalu, paras 476, 497; for forcible transfer in Lipri and Tsili, para. 567-568; for forcible transfer in Kobu, paras 572-573; for forcible transfer in Bambu, paras 583, 585.

<sup>315</sup> Judgment, [ICC-01/04-02/06-2359](#), p. 538 and paras 1199, 1138, 1145-1148, 506.

<sup>316</sup> Judgment, [ICC-01/04-02/06-2359](#), p. 538 and paras 1199, 1156, 1159, 1161, 1163, 1167, 1168, 496, 503, 569, 578, 602, 609, 619; for crimes committed in or around Kobu, paras 1157, 1159, 578; and for crimes committed in or around Sangi, paras 1157, 1159, 602; *see also* Decision on the First Report, [ICC-01/04-02/06-2630](#), para. 19.

ii. *Child soldiers victims*

118. Counts 14, 15, and 16: victims of conscription and enlistment of children under the age of 15 years into an armed group between on or about 6 August 2002 and 31 December 2003, and their use to participate actively in hostilities between on or about 6 August 2002 and on or about 30 May 2003, with respect to the participation of children under the age of 15 in the First Operation and in the UPC/FPLC assault on Bunia in May 2003; the use of children under the age of 15 as bodyguards for UPC/FPLC soldiers and commanders; and the use of children under the age of 15 to gather information about the opposing forces and MONUC personnel, as war crimes.<sup>317</sup>

119. Counts 6 and 9: victims of rape and sexual slavery of child soldiers as war crimes, against children under the age of 15 years incorporated into the UPC/FPLC between on or about 6 August 2002 and 31 December 2003, in Ituri. Specifically, the rape of Nadège, an approximately nine-year-old girl at Camp Lingo and the rape and sexual slavery of P-0883, a girl under 15 years of age, at Camp Bule and Mave, and a girl under the age of 15 years assigned to Floribert Kisembo.<sup>318</sup> As noted in the Sentencing Judgment, although the Chamber made findings in relation to three individuals regarding the crimes of rape and sexual slavery against child soldiers,<sup>319</sup> ‘this is not representative of the number of female UPC/FPLC victims who were subjected to rape and sexual violence, which was a common practice in the UPC/FPLC during this time period’.<sup>320</sup>

iii. *Children born out of rape and sexual slavery*

120. The Chamber recalls its finding that a number of female members of the UPC/FPLC, including girls under the age of 15, became pregnant during their time in the UPC/FPLC, as ‘they were regularly raped and subjected to sexual violence’.<sup>321</sup> In addition, children may have been born as a result of rapes and sexual slavery committed against the civilian population.<sup>322</sup>

<sup>317</sup> Judgment, [ICC-01/04-02/06-2359](#), p. 538 and paras 1199, 1124-1130, 655.

<sup>318</sup> Judgment, [ICC-01/04-02/06-2359](#), pp. 536-537 and paras 1199, 968, 969, 976-980, 407-409.

<sup>319</sup> The Chamber made the following findings which served as the basis for the conviction on the war crimes of rape and sexual slavery: ‘the repeated rapes of P-0883, a girl under 15 years of age, by UPC/FPLC soldiers at Camp Bule; the rapes of Mave, a girl under the age of 15 who was assigned to Floribert Kisembo, who was raped by UPC/FPLC soldiers on a regular basis; and the rape of Nadège, a girl of approximately nine years old, who was raped at the Lingo training camp’; Judgment, [ICC-01/04-02/06-2359](#), para. 974.

<sup>320</sup> Sentencing judgment, [ICC-01/04-02-06-2442](#), para. 108.

<sup>321</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 407-409; Sentencing judgment, [ICC-01/04-02/06-2442](#), para. 113.

<sup>322</sup> In line with TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 33; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 80.

121. In determining the status of children born out of rape and sexual slavery, the Chamber recalls the difference between the definition of direct and indirect victims.<sup>323</sup> For direct victims, a causal link must exist between the harm suffered and the crimes of which an accused is found guilty.<sup>324</sup> Indirect victims must establish that, because of their relationship with the direct victim, the loss, injury, or damage suffered by the direct victim gives rise to their harm.<sup>325</sup>

122. The parties argue that children born out of rape should qualify as indirect victims.<sup>326</sup> However, the Chamber concluded that, in light of the circumstances of the case, children born out of rape and sexual slavery may qualify as direct victims, as the harm they suffered is a direct result of the commission of the crimes of rape and sexual slavery. In contrast, other children who were not born out of rape and sexual slavery, but who are children of women and girls who were victims of rape or sexual slavery within the context of the crimes for which Mr Ntaganda was convicted, may be considered as indirect victims of such crimes, as they may have suffered harm as a consequence of the harm suffered by the direct victims.

123. The Chamber notes that recognising children born out of rape and sexual slavery as direct rather than indirect victims, is an acknowledgment of the particular harm they suffered and may constitute an adequate measure of satisfaction, in addition to other forms of reparations that may be awarded to them.<sup>327</sup>

### 3. *Indirect victims*

124. As stated in previous decisions, the Chamber relies on the Appeals Chamber jurisprudence and recognises as indirect victims all categories identified in the *Lubanga* case.<sup>328</sup> Regarding family members of the direct victims, the Chamber notes that the First Experts Report indicates that the concept of ‘family’ in the DRC includes both the nuclear family and extended family.<sup>329</sup> The CLR2 concurs with this and stresses the importance of recognising the local traditions and family structures to honour the victim’s culture.<sup>330</sup> The Defence acknowledges the need to adapt the definition of ‘family member’ to the local culture, beyond

<sup>323</sup> See *supra* Principle 1.i. ‘Beneficiaries of reparations’.

<sup>324</sup> *Lubanga* Decision on Indirect Victims, [ICC-01/04-01/06-1813](#), para. 47; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 191.

<sup>325</sup> *Lubanga* Decision on Indirect Victims, [ICC-01/04-01/06-1813](#), para. 49; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 190-191.

<sup>326</sup> See CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 44; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 31-33; and Defence Final Submissions, [ICC-01/04-02/06-2634-Red](#), para. 107.

<sup>327</sup> See UNGA, Basic Principles on Reparations, [UN Doc A/RES/60/147](#), para. 22.

<sup>328</sup> Decision on the First Report, [ICC-01/04-02/06-2630](#), paras 52-56.

<sup>329</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 19.

<sup>330</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 37-38.



the nuclear family members, but argues that ‘extended’ or ‘remote’ family must be construed as strictly as possible for the purposes of this case.<sup>331</sup> The Chamber stresses that due regard ought to be given to the applicable social and familial structures in the affected communities.<sup>332</sup> For example, the Chamber notes that the Extraordinary African Chambers held that, ‘in Chad, and more broadly in the African continent, the family goes beyond the strict frame of a couple and their children, it includes their father and mother, brothers and sisters and other relatives’.<sup>333</sup>

125. In addition, the Chamber stresses that, as noted by the Appeals Chamber in the case of *The Prosecutor v. Germain Katanga* (the ‘Katanga case’), the definition of victims under rule 85(a) of the Rules emphasises the requirement of the existence of a harm, rather than how close or distant the family member is from the direct victim.<sup>334</sup> To receive reparations, family members must always have suffered personal harm,<sup>335</sup> which may stem, for instance, from the ‘[p]sychological suffering experienced as a result of the sudden loss of a family member’.<sup>336</sup> The Appeals Chamber in the *Katanga* case further held that, demonstrating the existence of a ‘close personal relationship’ with the direct victim, is one way in which the applicant can prove the harm suffered and that the harm resulted from the crimes of which the person in question was convicted, thereby satisfying both eligibility requirements.<sup>337</sup> It follows that, contrary to the Defence’s submission,<sup>338</sup> it is not relevant whether the family member is close or distant to the direct victim in the abstract, as long as the indirect victim can demonstrate they have suffered personal harm as a result of the commission of the crime committed against the direct victim.

126. Additionally, the Chamber stresses that the concept of indirect victims shall not lead to the discrimination of individuals on the basis of birth or marital status.<sup>339</sup> Unmarried partners and children born out of wedlock may also qualify as indirect victims and be eligible to benefit

<sup>331</sup> Defence Final Submissions, [ICC-01/04-02/06-2634-Red](#), paras 141-143.

<sup>332</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 7; *see also supra* Principle 1.ii. ‘Dignity, non-discrimination, and not-stigmatisation’.

<sup>333</sup> EAAC, *Le Procureur v. Hisssein Habré*, para. 586.

<sup>334</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 115.

<sup>335</sup> *Lubanga* Judgment on Victims’ Participation, [ICC-01/04-01/06-1432](#), para. 32.

<sup>336</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 58.

<sup>337</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 116.

<sup>338</sup> Defence February 2020 Response, [ICC-01/04-02/06-2479-Red](#), para. 22.

<sup>339</sup> *See supra* Principle 1.ii. ‘Dignity, non-discrimination, and not-stigmatisation’.

from reparations, subject to demonstrating that they suffered personal harm at the required standard of proof.

127. Similarly, the Chamber notes that individuals who suffered personal harm as a result of the commission of a crime against a person with whom they did not have a close personal relationship, but which nevertheless was of significant importance in their lives, may be entitled to reparations. The indirect victim must nevertheless demonstrate to have suffered harm because of the commission of a crime against the direct victim.<sup>340</sup>

128. Finally, the Chamber recalls that in its Sentencing Judgment, it held that in some instances, crimes may irreversibly impact not only direct victims but also those who witnessed the crimes being committed.<sup>341</sup> These indirect victims are also eligible for reparations under the present Order, insofar as their personal harm is demonstrated pursuant to the required standard of proof.

## **B. HARM**

### *1. General Considerations*

129. In this section, the Chamber defines the different types of harm caused to direct and indirect victims and sets out the criteria to be applied by the TFCV to design the awards for reparations in its draft implementation plan.<sup>342</sup>

130. The Chamber stresses that the approach of clearly defining the harms that result from the crimes for which Mr Ntaganda was convicted aims at protecting the rights of the convicted person and the rights of the victims of these crimes. It ensures that reparations are not awarded to remedy harms beyond the crimes for which Mr Ntaganda was convicted.<sup>343</sup>

### *2. Causal link*

131. The Chamber recalls that the causal link between the crime and the personal harm for the purposes of reparations is to be determined in light of the specific circumstances of a case.<sup>344</sup>

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<sup>340</sup> *Lubanga* Decision on Indirect Victims, [ICC-01/04-01/06-1813](#), para. 49.

<sup>341</sup> Sentencing judgment, [ICC-01/04-02/06-2442](#), para. 52.

<sup>342</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 181-184, 200.

<sup>343</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 184.

<sup>344</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 80.

132. The Chamber adopts the ‘but/for’ standard of causation as to the relationship between the crimes and the harm. Moreover, it is required that the crimes for which a person was convicted were the ‘proximate cause’ of the harm for which reparations are sought, as established in the *Lubanga* case.<sup>345</sup>

133. The Chamber underlines that the ‘proximate cause’ is one that is legally sufficient to result in liability, assessing, *inter alia*, whether it was reasonably foreseeable that the acts and conduct underlying the conviction would cause the resulting harm.<sup>346</sup>

134. The Chamber notes the Defence’s submissions that attention should be paid to the possible breaks in the chain of causation.<sup>347</sup> The Chamber acknowledges that causation between an act and its result may be broken by a subsequent event which the person who committed the initial act could not have reasonably foreseen.<sup>348</sup> However, the Chamber notes that, as long as the relevant victims fall within the scope of the conviction and meet the applicable evidentiary standard, the issue does not arise.<sup>349</sup>

135. Furthermore, the Chamber stresses that the applicant shall provide sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case.<sup>350</sup>

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<sup>345</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 59; in line with Prosecution February 2020 Submissions, [ICC-01/04-02/06-2478](#), para. 16; Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), para. 48.

<sup>346</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 44; *see also Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), para. 16.

<sup>347</sup> While acknowledging that protracted violence can affect potential beneficiaries, the Defence submits that, for instance, the conflict that erupted again in Ituri in 2017 constitutes a break in the chain of causation and Mr Ntaganda cannot be held responsible for its effects on the victims of the case, *see* Defence Observations on the Registry’s Second Report on Reparations, 28 January 2021, ICC-01/04-02/06-2623-Conf, paras 57-58.

<sup>348</sup> *See Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), para. 17; United Kingdom, Court of Appeal (Civil Division), *Rahman v Arearose Ltd & Anor*, 15 June 2000, [2000] EWCA Civ 190, paras 27-29; England and Wales, Court of Appeal (Civil Division), *Knightley v. Johns & Ors*, 27 March 1981 [1981] EWCA Civ 6; Canada, Supreme Court of Canada, *R. v. Maybin* 2012, 18 May 2012 [2012] 2 S.C.R. 30, paras 60-61.

<sup>349</sup> *See also Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), para. 17; Reports on International Arbitral Awards, Eritrea-Ethiopia Claims Commission, *Final Award - Ethiopia's Damages Claims*, 17 August 2009, Volume XXVI, pp. 634-635, 656-657; Recueil des Sentences Arbitrales, Responsabilité de l’Allemagne à raison des dommages causés dans les colonies portugaises du sud de l’Afrique (sentence sur le principe de la responsabilité) (Portugal contre Allemagne), 31 juillet 1928, Volume II, p. 1031.

<sup>350</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 81.

### 3. *Evidentiary criteria*

136. The Chamber notes that reparations proceedings require a less exacting standard of proof than trial proceedings. In line with the previous jurisprudence, the Chamber adopts the ‘balance of probabilities’ test as the appropriate standard of proof in reparations proceedings.<sup>351</sup>

137. Victims eligible for reparations must provide sufficient proof of identity, of the harm suffered, and of the causal link between the crime and the harm.<sup>352</sup> Victims may use official or unofficial identification documents, or any other means of demonstrating their identities. In the absence of acceptable documentation, a statement signed by two credible witnesses establishing the identity of the victim and describing the relationship between the victim and any individual acting on their behalf is acceptable.<sup>353</sup>

138. The Chamber is aware of some of the difficulties the victims may face in producing the relevant information. For instance, the Chamber notes that one of the consequences of the crimes against property for which Mr Ntaganda was convicted is the loss of important documents, such as diplomas, identity cards, and land ownership titles.<sup>354</sup> In addition, the Chamber notes that victims may often have difficulties obtaining or producing copies of official documents in the DRC.<sup>355</sup>

139. The Chamber also emphasises the need to adopt a gender-inclusive and sensitive approach when applying the ‘balance of probabilities’ standard to sexual crimes. In this regard, the Chamber recalls rule 63(4) of the Rules and stresses that this prohibition should be translated into taking into account the additional difficulties that these victims may face in obtaining or producing evidence to demonstrate that they were victims of rape and/or sexual slavery. Accordingly, the Chamber considers that the victim’s coherent and credible account shall be accepted as sufficient evidence to establish their eligibility as victims on a balance of probabilities.<sup>356</sup>

<sup>351</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 65; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), paras 49-51; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 44; *see also* *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 42.

<sup>352</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 22; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 45.

<sup>353</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 57.

<sup>354</sup> *See* TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 90.

<sup>355</sup> Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), para. 44.

<sup>356</sup> *See* *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 204; Trial Chamber II, *Prosecutor v. Germain Katanga*, Judgment pursuant to Article 74 of the Statute, 7 March 2014, [ICC-01/04-01/07-3436-tENG](#), para. 110; *see also* CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 36.

140. Furthermore, the Chamber recalls that rule 94(1)(g) of the Rules, which is applicable to proceedings leading to individual reparations, requires victims to furnish supporting documentation to bolster their applications for reparations '[t]o the extent possible'. The rule makes allowance for the difficulties the victims may encounter in gathering evidence, including the passage of time since the crimes were committed.<sup>357</sup> Although this rule is of less relevance in relation to collective reparations,<sup>358</sup> the Chamber finds that the principle behind it is applicable to the eligibility screening to be carried out at the implementation stage.

141. In addition, in the particular circumstances of this case, where applicants lack direct proof, the Chamber considers that factual presumptions shall be relied upon in order to consider certain fact to be established to the requisite standard of proof.<sup>359</sup>

142. The Chamber recalls that the Appeals Chamber in the *Katanga* case held that the trial chambers should approach with caution the issue of whether to adopt a presumption of psychological harm for victims who have suffered material harm, but not personally experienced the attack.<sup>360</sup>

143. Considering the difficulties to obtain or produce evidence, as mentioned above, and the severe harms suffered by the victims as a result of the types of crimes committed, the Chamber finds that certain harms may be presumed,<sup>361</sup> once a victim has proved, on a balance of probabilities standard, to be a victim of the crimes for which Mr Ntaganda was convicted.<sup>362</sup>

144. The Chamber notes that in the *Lubanga* case, it was determined that 'any child who was conscripted or enlisted into an armed group or who participated in combat suffers psychologically, as well as in a physical and material sense'.<sup>363</sup> Trial Chamber II also found

<sup>357</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 60; *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 61.

<sup>358</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 149; *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), paras 87-88.

<sup>359</sup> See *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), paras 4, 75; *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 61.

<sup>360</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 149.

<sup>361</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 48, arguing that, taking into account the lack of documentary evidence, the amount of time required to assess each individual harm, the nature of the crimes, and the amount of time elapsed since the commission of the crimes, the form and extent of the harm suffered by former child soldiers and victims of the attacks should be presumed, and n. 218, 272, arguing that harms do not need to be proven by every individual victim of the attacks. Rather they are to be presumed, considering the types of the crimes committed, the circumstances in which the harms and losses occurred, and the time that has elapsed since they were suffered.

<sup>362</sup> CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#), para. 31; see also *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 179-185.

<sup>363</sup> *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 180.

that, owing to their close personal relationship with the direct victim, indirect victims ‘suffered personally in an emotional, material and, in some cases, a physical sense as a result of the direct victim’s enlistment’.<sup>364</sup> Accordingly, Trial Chamber II decided that there was ‘no need to scrutinize the specific harm alleged by each potential eligible victim’ and applied a presumption of harm to each direct and indirect victim once child soldier status (in the case of a direct victim) and close personal relationship with a child soldier (in the case of an indirect victim) have been established on a balance of probabilities.<sup>365</sup>

145. The Chamber finds the same reasoning above to apply in the present case in relation to former child soldiers, victims of rape and sexual slavery, and their close family members. The Chamber recalls its previous findings as to the ‘physical, psychological, psychiatric, and social consequences (ostracisation, stigmatisation and social rejection), both in the immediate and longer term’,<sup>366</sup> suffered by victims of rape and sexual slavery, while some were deprived of liberty,<sup>367</sup> captured, physically restrained, and/or hurt by their perpetrators.<sup>368</sup> In addition, the Chamber established the impact on school attendance,<sup>369</sup> and generally notes the socio-economic implications of these crimes for the victims and their families.<sup>370</sup> Accordingly, the Chamber presumes material, physical, and psychological harm for (i) former child soldiers;<sup>371</sup> (ii) direct victims of rape and sexual slavery;<sup>372</sup> and (iii) indirect victims who are close family members of direct victims of the crimes against child soldiers, rape, and sexual slavery.<sup>373</sup>

<sup>364</sup> *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 180.

<sup>365</sup> *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 185.

<sup>366</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 130; *see also* Judgment, [ICC-01/04-02/06-2359](#), paras 943-944.

<sup>367</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 130; *see also* Judgment, [ICC-01/04-02/06-2359](#), paras 959-960.

<sup>368</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 99; *see also* Judgment, [ICC-01/04-02/06-2359](#), para. 977.

<sup>369</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 104.

<sup>370</sup> *See* TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 27; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 70.

<sup>371</sup> For a similar approach, *see Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 180, 184-185.

<sup>372</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 48, 66, and n. 218; CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), para. 30; *see also Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 179-185.

<sup>373</sup> *See Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), paras 112-122; *see also* CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), 37; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 16; *see Lubanga* TFV Information on collective reparations, [ICC-01/04-01/06-3273](#), paras 86, 88, approved by *Lubanga* Order approving framework for collective reparations, [ICC-01/04-01/06-3289](#); *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 180, 185.



Close family members for the purposes of presuming their harm are understood to be all those members of a family living within the same household.<sup>374</sup>

146. The Chamber recalls its findings that victims of the attacks, particularly the victims of attempted murder still bear permanent scars with serious consequences,<sup>375</sup> including trauma, psychological harms, and extensive physical scarring.<sup>376</sup> The Chamber also considers unquestionable that direct victims that personally experienced the crimes committed during the attacks endured physical suffering in connection with the very nature of the context of armed conflict and the attack against the civilian population within which the crimes were committed.<sup>377</sup> Similarly, ‘it is inherent to human nature that all those subjected to brutal acts [...] experience intense suffering, anguish, terror and insecurity’.<sup>378</sup> Consequently, the Chamber is of the view that it is not necessary to scrutinise the specific physical and psychological harm alleged by each potential eligible direct victim of the attacks once their eligibility has been established on a balance of probabilities.<sup>379</sup> Accordingly, the Chamber presumes physical and psychological harm for (i) direct victims of attempted murder;<sup>380</sup> and (ii) direct victims of the crimes committed during the attacks,<sup>381</sup> who personally experienced the attacks.

147. Lastly, the Chamber recalls its findings regarding the suffering experienced by close family members of direct victims of murder,<sup>382</sup> and those who lost their home or material assets with significant impact in their lives.<sup>383</sup> The Chamber also considers that it is not necessary to scrutinise the specific psychological harm alleged by those victims once their eligibility has been established on a balance of probabilities. Accordingly, the Chamber also presumes

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<sup>374</sup> For the non-discrimination based on birth, marital, or any other status, *see supra* Principle 1.ii. ‘Dignity, non-discrimination, and non-stigmatisation’

<sup>375</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 49.

<sup>376</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 50; *see also* Judgment, [ICC-01/04-02/06-2359](#), n. 1975 and 1867.

<sup>377</sup> For a similar approach, *see Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-t-ENG](#), para. 184.

<sup>378</sup> *See Katanga* Reparations Order, [ICC-01/04-01/07-3728-t-ENG](#), para. 128, referring to, *inter alia*, IACtHR, *Pueblo Bello Massacre v. Colombia*, Judgment (Merits, Reparations, and Costs), 31 January 2006, [Series C No. 140](#), para. 255.

<sup>379</sup> For a similar approach, *see Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-t-ENG](#), para. 185; *Katanga* Reparations Order, [ICC-01/04-01/07-3728-t-ENG](#), paras 129, 131.

<sup>380</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 48.

<sup>381</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 48 and n. 218; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 108; *see also Katanga* Reparations Order, [ICC-01/04-01/07-3728-t-ENG](#), paras 123-131.

<sup>382</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 44; *see also Katanga* Reparations Order, [ICC-01/04-01/07-3728-t-ENG](#), paras 112-122.

<sup>383</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), paras 137, 139, 146.

psychological harm for (i) victims who lost their home or material assets with a significant effect on their daily life;<sup>384</sup> and (ii) indirect victims who are close family members of direct victims of murder.

#### *4. Definition of the types of harm suffered by the victims*

148. As described in detail below, in order to reach its conclusions as to the definition of the types of harm suffered by direct and indirect victims, the Chamber has considered all relevant information before it, including the Judgment, the Sentencing Judgment, evidence submitted during the trial and sentencing proceedings,<sup>385</sup> observations by the parties and other participants in the proceedings, including the Registry, the TFV, and the Appointed Experts.<sup>386</sup>

##### *i. Harm suffered by the direct victims*

###### *a) Victims of the attacks*

149. At the outset, the Chamber notes that the victims in the present case suffered multi-dimensional harm due to the nature of the crimes, which entailed mass victimisation.<sup>387</sup>

150. Victims of the crime of murder and attempted murder (Counts 1 and 2): The Chamber recalls that some of these crimes were committed with particular cruelty, which ‘caused additional physical and psychological suffering to those who were subject to them before being killed and those who survived the injuries inflicted’.<sup>388</sup> The Chamber held that some individuals who survived their attempted murder still bear permanent scars with serious consequences,<sup>389</sup> including trauma and other psychological harms, long-term memory loss, neurological disturbances, and extensive physical scarring.<sup>390</sup> In this regard, the Chamber found instances where the physical scarring affected the victim’s self-image and made them embarrassed of their own bodies.<sup>391</sup> Similarly, the Appointed Experts note that victims of attempted murder,

<sup>384</sup> See TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 89; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 48, 73, 76.

<sup>385</sup> See *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 186-187.

<sup>386</sup> See also *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 70; *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 57.

<sup>387</sup> CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#), para. 39; TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 111.

<sup>388</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 81.

<sup>389</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 49.

<sup>390</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 50; see also Judgment, [ICC-01/04-02/06-2359](#), n. 1975 and 1867.

<sup>391</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 50.

who suffered from physical harm with long-term consequences, had their standard of living and development of opportunities affected.<sup>392</sup>

151. Victims of the crimes of intentionally directing attacks against civilians and persecution (Counts 3 and 10): Apart from the harm caused by the underlying acts as described in this section,<sup>393</sup> victims of these crimes were also beaten and injured by the UPC/FPLC.<sup>394</sup> In addition, the Appointed Experts report that all victims of the attacks were traumatised by the ordeal they went through and that, to date, many may have not been able to overcome this trauma.<sup>395</sup> The Registry also submits that most victims still suffer from psychological harm, including painful memories, anxiety symptoms, and sleeping disorders.<sup>396</sup> Similarly, the TFV indicates that the victims, both children and adults, who suffer from behavioural disorders because of the psychological harm, in turn, suffered from or in many cases continue to suffer from, loss of productive capacity, and reduced socio-economic opportunities.<sup>397</sup>

152. Victims of the crime of pillage (Count 11): The Chamber notes that the UPC/FPLC pillaged, *inter alia*, furniture, mattresses, radio and television sets, clothing, livestock, corrugated roofing sheets, and gold.<sup>398</sup> As noted in the Judgment and Sentencing Judgment, although there was ‘some disparity in the value of the looted items [...] these items represented the bulk of the victims’ possessions, [and] played an important role in the victims’ day-to-day lives and/or their business’.<sup>399</sup> Pillaging was committed on a large scale, affecting many victims, who sometimes returned home to find out that they had been left without anything.<sup>400</sup>

153. The Appointed Experts report that as a result of the crimes of destruction of the enemy’s property and pillaging, the victims suffered physical injuries<sup>401</sup> and lost documents such as identity cards, birth certificates, diplomas, and property ownership titles. Inventory and household goods were destroyed together with the houses, or they were looted before the

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<sup>392</sup> See First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 62; see also CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#), para. 42.

<sup>393</sup> See Judgment, [ICC-01/04-02/06-2359](#), section V.C.4.f) Persecution as a crime against humanity (Count 10).

<sup>394</sup> See Judgment, [ICC-01/04-02/06-2359](#), paras 1003 (for the relevant positive legal findings) and 597 (for the relevant factual findings).

<sup>395</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 197.

<sup>396</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 21.

<sup>397</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 80.

<sup>398</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 514, 526, 569; Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 139.

<sup>399</sup> Judgment, [ICC-01/04-02/06-2359](#), para. 1044; Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 139.

<sup>400</sup> Judgment, [ICC-01/04-02/06-2359](#), para. 517; Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 139.

<sup>401</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 73; see also CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#), para. 65.

houses were burnt or destroyed. Often the items lost represented the bulk, if not all, of the victims' possessions.<sup>402</sup> Their report further explains that most of the population was engaged in subsistence farming or small-scale businesses, meaning that the pillage of tools and livestock and the destruction of crops caused livelihood stress due to the lack of food and inability to generate income.<sup>403</sup> According to the Appointed Experts, the victims still struggle today to support themselves and their families.<sup>404</sup> Furthermore, the TFV submits that these crimes caused psychological harm when the loss of material assets had a significant effect on the victim's daily life.<sup>405</sup>

154. Victims of the crime of forcible transfer and deportation and the crime of ordering the displacement of the civilian population (Counts 12 and 13): The Chamber notes that, as a result of these crimes, people were forcibly excluded 'from the economic and social life of their communities'.<sup>406</sup> Additionally, the Chamber stresses that, in some cases individuals were forcibly displaced for a prolonged period.<sup>407</sup> Some of those who went to the bush had to endure harsh living conditions, without adequate shelter, sufficient food and water, having to hide with no money and no access to medical care.<sup>408</sup> The Chamber held that 'the effect of individuals having to leave their homes against their will put them in a worse situation than they were in to begin with, and therefore caused them harm'.<sup>409</sup> One witness testified that while fleeing, 'my family and myself suffered a great deal. We did not have access to any medication. And we found it very difficult to find anything to eat, because we needed to move around in order to find food in the fields'.<sup>410</sup>

<sup>402</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para.73; *see also* TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 91.

<sup>403</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para.73; *see also* Judgment, [ICC-01/04-02/06-2359](#), para. 1044; Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 139; TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 91.

<sup>404</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para.75.

<sup>405</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 89; *see also* First Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 76.

<sup>406</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 158.

<sup>407</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 536, 585, 722; *see also* Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 161.

<sup>408</sup> Judgment, [ICC-01/04-02/06-2359](#), paras 497, 577, 568, 585, 597, 604, 612, 613, 616-618, 620, 621, 640 996, 1000, 1002-1007; *see also* Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 162. The Chamber notes that some victims of the crimes of attacking the civilian population and persecution may also have suffered these harms, *see* Judgment, [ICC-01/04-02/06-2359](#), paras 996, 1000, 1002.

<sup>409</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 162.

<sup>410</sup> Transcript of hearing 16 September 2015, [ICC-01/04-02/06-T-26-Red2-ENG](#), p. 27, lines 5-8.

155. The CLR2 submits that these victims were exposed to continuous violence, danger and threats, or stayed in difficult conditions, and suffered harm, including moral harm.<sup>411</sup> The Registry reports that the victims referred to the persistent physical harm as a result of the crimes they suffered.<sup>412</sup>

156. The Appointed Experts explain that, because of the displacement, families were permanently separated. Many of the victims themselves and/or their children had to give up or could not start schooling or vocational training, which affected their future opportunity to engage in income generating activities.<sup>413</sup> In effect, the Registry indicates that one of the recurrent harm expressed by the victims is the continuing adverse effects of being displaced.<sup>414</sup> On this point, the Chamber recalls that a witness whose testimony was submitted during the sentencing proceedings indicated that there is a high rate of illiteracy among children, especially girls. The witness explained how when families lost their farmland, women became breadwinners and were taken out of school from a young age to trade and earn money for the family.<sup>415</sup>

157. The Appointed Experts submit that the harm suffered by these victims is both material and psycho-social,<sup>416</sup> as these crimes affected not only the individuals' sense of belonging and identity, but also their means of life and safety.<sup>417</sup> The Appointed Experts report that, after they made their way to other villages or towns further afield, many victims found themselves without means to satisfy their basic needs and those of their families and many were traumatised by their ordeal, some even up to this day.<sup>418</sup>

158. Victims of the crime of intentionally directing attacks against protected objects (Count 17): The Chamber established that injured persons were present in the health centre in Sayo at the time, as could have been expected in times of armed conflict.<sup>419</sup> The attack against the health centre, a facility that provided care for patients, had a severe impact on the welfare

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<sup>411</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 108.

<sup>412</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 49; see also First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 71 (reporting *inter alia* the physical injury victims suffered while fleeing).

<sup>413</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 79.

<sup>414</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 49.

<sup>415</sup> ICC-01/04-02/06-2394-Conf-AnxB, para. 41.

<sup>416</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 78.

<sup>417</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 80.

<sup>418</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 172.

<sup>419</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 144; *see also* Judgment, [ICC-01/04-02/06-2359](#), para. 506.

and/or lives of any patients present at the centre at the relevant time.<sup>420</sup> These patients were unable to leave on their own and were left without medical care.<sup>421</sup>

159. According to the Second Expert Report, the attack on the health centre in Sayo not only damaged its physical structures, but also caused harm to its service provision<sup>422</sup> and exacerbated the vulnerability and suffering of the civilian population.<sup>423</sup> After the attack, the centre ceased services, regaining functionality soon after, but at reduced capacity. To date, the number of beds is still reduced, and there is still a lack of skilled personnel. However, the Appointed Experts report that simply providing material assets or repairing its structures would not reinstate the prior level of healthcare provision.<sup>424</sup>

160. Victims of the crime of destroying the adversary's property (Count 18): The Chamber notes that one of the attacks' goals was to disintegrate the adversary's community, by destroying entire villages, to prevent the return of their inhabitants.<sup>425</sup> As such, the destruction of houses does not only entail the loss of structures, but also the destruction of people's homes – 'a place where the victims ought to have been able to feel shielded and safe',<sup>426</sup> and with their homes, often their livelihoods. Therefore, the destruction of houses may 'be a crime against property, but it does not merely impact that property; the crime also deprives civilians of a private place, a shelter and a sense of security'.<sup>427</sup> As noted in the Sentencing Judgment, '[w]hen someone's dwelling is burned down, the allegedly low value of rebuilding the structure does not change the fact that someone's home was destroyed, and that the lives of those living in the dwelling were significantly disrupted'.<sup>428</sup> The Chamber notes its previous finding that the underlying rules of international humanitarian law protect the fact that these structures belong to civilians who live in them rather than their monetary value.<sup>429</sup> The Registry indicates that most of the victims consulted mention the loss of their house and their possessions, and

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<sup>420</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 154.

<sup>421</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 154.

<sup>422</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), paras 161, 168.

<sup>423</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 160.

<sup>424</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 169.

<sup>425</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), paras 34, 147, 210, 214, 215. The Chamber notes that some victims of the crimes of attacking the civilian population and persecution may also have suffered these harms, *see* Judgment, [ICC-01/04-02/06-2359](#), paras 906, 995, 997, 999, 1001, 1004, 1006.

<sup>426</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 137.

<sup>427</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 137.

<sup>428</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 146.

<sup>429</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 146.



that many of the victims whose houses were destroyed have not been able to rebuild them since the conflict in 2003.<sup>430</sup>

*b) Child soldiers victims*

161. Victims of the crimes of conscription and enlistment of children under the age of 15 years into an armed group and their use to participate actively in hostilities (Counts 14, 15, and 16): The Chamber recalls that in its Sentencing Judgment it held that the impact of the crimes against child soldiers ‘is undoubtedly very serious; it subjects them to combat and the associated risks to the children’s life and well-being entailed therein, including being wounded or killed’.<sup>431</sup> As recalled therein, the child soldiers’ lives at the UPC/FPLC training camps, ‘included harsh living conditions, and being subjected to threats, including to their life, monitoring of movement, and severe punishments, including beatings and executions, sometimes without apparent reason’.<sup>432</sup> In addition, ‘the removal of children from their families – sometimes forcibly – for the purpose of undergoing military training and for actively participating in hostilities undoubtedly caused such children harm and put them in a worse position than they would have been to begin with’,<sup>433</sup> causing long-term repercussions on their lives and future.<sup>434</sup>

162. Witnesses described to the Chamber that the children referred to as ‘*kadogos*’ were ‘deprived of their family education’, taken away from their mothers and fathers, and cut-off from their school education.<sup>435</sup> As a consequence, ‘they had become wicked, thieves, murderers, pitiless [...] They have lost the sense of sacredness of human life’.<sup>436</sup> They also explained that these children were confronted with drug/substance abuse problems, which for some persists to this day,<sup>437</sup> lack of psychological support, gaps in education, and difficult attitudes.<sup>438</sup>

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<sup>430</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 48.

<sup>431</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), paras 179, 181.

<sup>432</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 193.

<sup>433</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 185.

<sup>434</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 184.

<sup>435</sup> ICC-01/04-02/06-2394-Conf-AnxA, para. 44.

<sup>436</sup> ICC-01/04-02/06-2394-Conf-AnxA, para. 44.

<sup>437</sup> ICC-01/04-02/06-2394-Conf-AnxA, para. 46; ICC-01/04-02/06-2394-Conf-AnxB, para. 39.

<sup>438</sup> ICC-01/04-02/06-2394-Conf-AnxB, paras 39-41.

163. In addition, the Appointed Experts indicate that child soldiers suffered physical harm, which resulted in permanent scars and suffered intense permanent or chronic diseases.<sup>439</sup> The Registry also highlights the physical harm suffered by the victims due to scars and injuries, persistent pain, disabilities, and sexually transmitted diseases.<sup>440</sup>

164. The Appointed Experts indicate that the child soldiers suffered psychological harm, as the children's separation from their families and rupture of their lives provoked an immediate state of anxiety and sadness, as well as having a long-term psychological impact,<sup>441</sup> including depression, dissociation, suicidal or violent behaviour that tend to persist, potentially for the remainder of the individual's life.<sup>442</sup> In addition, child soldiers suffered rejection and stigmatisation by the community and their own families,<sup>443</sup> which is reinforced by their perceived lower status and absence of real opportunities for improving their professional and private life.<sup>444</sup> Due to their trauma, child soldiers often become aggressive with their families, who in turn may not recognise them as the children they had before the events, with repercussions for the children's quality of life.<sup>445</sup> As a result, the impact of these crimes goes beyond the children affected.<sup>446</sup>

165. The Registry points out the child soldiers' loss of schooling, difficulty socialising, and breakup of the family unit.<sup>447</sup> The Appointed Experts also refer to the concept of 'loss of life plan' and agree with the CRL1 that recognition of that suffering is particularly relevant to reflect aspects of the harm endured by former child soldiers.<sup>448</sup> These former child soldiers, today adults, nevertheless suffered long-term and possibly life-long physical and psychological consequences as a result of the crimes they suffered, witnessed and perpetrated.

166. Furthermore, the Appointed Experts and the CLR1 submit that child soldiers suffered material and economic harm and face 'difficulty to participate in the economic activities of their communities' as a result of the multiple types of harm suffered, including the loss of childhood and interruption of the schooling, which added to their stigmatisation and therefore

<sup>439</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 88-90; *see also* CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), para. 40.

<sup>440</sup> Second Report, [ICC-01/04-02/06-2639-Anx1-Red](#), p. 16.

<sup>441</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 95; *see also* CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), para. 40.

<sup>442</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 96.

<sup>443</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 99.

<sup>444</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 101.

<sup>445</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 99.

<sup>446</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 95.

<sup>447</sup> Second Report, [ICC-01/04-02/06-2639-Anx1-Red](#), p. 17.

<sup>448</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 103-105; *see also* CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), paras 43-45; CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 47.

lack of support by families and communities.<sup>449</sup> The Registry also notes the material harm suffered by child soldiers due to, *inter alia*, the increased economic burden associated with dependents, unemployment, and loss or lack of housing and livestock.<sup>450</sup>

167. Lastly, the Chamber recalls the Appeals Chamber findings in the *Lubanga* case, that the child soldiers' non-development of 'civilian life skills' resulted in these victims being placed at a disadvantage, particularly as regards employment.<sup>451</sup>

*c) Victims of rape and sexual slavery*

168. Victims of rape and sexual slavery (Counts 4, 5, 6, 7, 8, and 9): The Chamber recalls the Sentencing Judgment, which concluded that 'the rape and sexual slavery of civilians and of female UPC/FPLC members under the age of 15 in this case are very serious crimes. The victims of these crimes suffered physical, psychological, psychiatric, and social consequences (ostracisation, stigmatisation, and social rejection), both in the immediate and longer term.'<sup>452</sup> One dual-status victim of rape indicated that '[t]o this very day my family continues to reject me because they believe that I belong to the militia'.<sup>453</sup>

169. In relation to the child soldiers who were also victims of rape and sexual slavery, the Chamber held that 'the victims suffered physical consequences, and contracted sexually transmitted diseases, as a result of the treatment that they were subjected to'.<sup>454</sup> The Chamber also held that these victims suffered psychological and social consequences, highlighting that some victims 'had no choice but to stay in close vicinity of their abusers, in the coercive environment of the UPC/FPLC training camps or as escorts'.<sup>455</sup>

170. In relation to the other victims of rape and sexual slavery, the Chamber similarly found that they suffered severe physical violence.<sup>456</sup> In addition, the cruelty of some rapes was considered an aggravating circumstance, specifically regarding the UPC/FPLC soldiers' use of

<sup>449</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 106-107; *see also* CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 49.

<sup>450</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), paras 22, 48, p. 14.

<sup>451</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 58(a); *see also* Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), p. 17.

<sup>452</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 130; *see also* TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 27; CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), paras 49-51; CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#), para. 44.

<sup>453</sup> Transcript of hearing 30 November 2016, ICC-01/04-02/06-T-168-CONF-ENG, p. 61, lines 20-23.

<sup>454</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 111.

<sup>455</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 112. On the use of force and threats of child soldiers below 15 to engage in sexual intercourse with UPC/FPLC soldiers, *see* Judgment, [ICC-01/04-02/06-2359](#), para. 977.

<sup>456</sup> Judgment, [ICC-01/04-02/06-2359](#), para. 943; Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 99.

pieces of wood to penetrate the genital openings of some women and the anal openings of some men, and the fact that some rapes were committed in the presence of other persons, thereby heightening the victims' humiliation.<sup>457</sup> Some victims also experienced threats and long-lasting fear,<sup>458</sup> which affected their school attendance and some still suffer from post-traumatic stress disorder.<sup>459</sup>

171. The Chamber also recalls the testimonies heard during the trial proceedings to the effect that rape resulted in fear of stigma and ostracism for the victims within their families and communities, as well as fear of abandonment by their partner if information about the rapes would become known.<sup>460</sup> In the Sentencing Judgment the Chamber recalled that one witness testified that 'it was very difficult for female victims of sexual violence to be reintegrated into their family and communities', due to the stigma associated with rape for women across all communities without distinction, and the fact that young girls would be less respected in their family and would not be able to find a husband because 'no man would like to marry them', and that a raped person would be considered to be 'of lesser status'.<sup>461</sup>

172. Testimonies of witnesses heard during the trial proceedings account for victims having 'difficult[ies] to stay with everybody',<sup>462</sup> and that the crime affected the victim's personal development and life plan.<sup>463</sup> A victim also recounted that after her rape she 'was torn inside and out', was seriously injured,<sup>464</sup> for a long time,<sup>465</sup> explaining that the 'abuse instilled a lot of fear in me. I could no longer go to school'.<sup>466</sup> The victim 'was traumatised in [her] heart for a very long time.'<sup>467</sup> An expert witness testified at trial that 'typically, women or indeed men who have been sexually violated will feel contaminated, dirty, and unclean, because of the nature of the violation, the very private violation that they have experienced.'<sup>468</sup> The expert

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<sup>457</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 123.

<sup>458</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), paras 100, 104.

<sup>459</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), paras 104-107.

<sup>460</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 107.

<sup>461</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 107, n. 288; *see also* CLR1's submissions discussing the harm suffered by male victims of rape and sexual slavery, CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 42.

<sup>462</sup> Transcript of hearing 19 April 2016, ICC-01/04-02/06-T-85-CONF-ENG, p. 31, line 3.

<sup>463</sup> Transcript of hearing 19 April 2016, ICC-01/04-02/06-T-85-CONF-ENG, p. 31, lines 3-7.

<sup>464</sup> Transcript of hearing 6 October 2016, ICC-01/04-02/06-T-148-CONF-ENG, p. 67, lines 14-15.

<sup>465</sup> Transcript of hearing 6 October 2016, ICC-01/04-02/06-T-148-CONF-ENG, p. 67, line 18.

<sup>466</sup> Transcript of hearing 6 October 2016, ICC-01/04-02/06-T-148-CONF-ENG, p. 77, lines 9-14.

<sup>467</sup> Transcript of hearing 6 October 2016 ICC-01/04-02/06-T-148-CONF-ENG, p. 78, line 5.

<sup>468</sup> Transcript of hearing 1 July 2016, ICC-01/04-02/06-T-114-CONF-ENG, p. 8, lines 7-9.

witness indicated that she noticed that victims she interviewed felt ‘extreme anger’, which ‘affected their children’.<sup>469</sup>

173. The Appointed Experts similarly emphasise the shame, stigma, and rejection within the families and communities of victims who suffered rape and sexual slavery, especially for those who returned from the bush with children or with sexually transmitted diseases.<sup>470</sup>

174. The Chamber also highlighted the situation of children born out of rape and sexual slavery, as follows:

Particular difficulties were faced by female children under the age of 15 who had been associated with an armed group in returning to their families and communities where they returned with a child and where the communities assumed that these young women had undergone sexual abuses; [...] Children born as a result of sexual violence, as well as their mothers, faced rejection from their communities.<sup>471</sup>

175. Furthermore, the Chamber recalls the TFV’s submissions that crimes of a sexual nature inherently strike at the core of human dignity and the physical integrity of victims, who suffer complex and long-lasting multidimensional harm of physical, psychological, social, and economic nature.<sup>472</sup> In this regard, the DRC submits that these crimes result in harm to individual dignity, because of the various humiliations suffered and objectification experienced.<sup>473</sup> As highlighted, the social stigma, the experience of trauma, and, in many cases, the persistent feelings of personal and social shame often lead victims not to acknowledge that they have suffered from a sexual crime, even if this may negatively affect their ability to access reparations.<sup>474</sup> The TFV also highlights the long-lasting socio-economic implications, as stigma and psychological harm affect many victims so severely that they are no longer able to undertake income generating activities in the same way that they would have been able to before, leading to a loss of opportunities and income for themselves and for their immediate family.<sup>475</sup>

<sup>469</sup> Transcript of hearing 1 July 2016, ICC-01/04-02/06-T-114-CONF-ENG, p. 9, lines 11-12, 19-20.

<sup>470</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 44, 66-67; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), paras 52, 58, 60.

<sup>471</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 113.

<sup>472</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 27.

<sup>473</sup> DRC February 2020 Submissions, ICC-01/04-02/06-2480-Conf-Anx, para.

<sup>474</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 27.

<sup>475</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 87.

176. The Chamber notes that the Appointed Experts and the LRVs similarly draw attention to the harm of children born out of rape and sexual slavery,<sup>476</sup> who were often rejected by their mothers, as well as by the community and nicknamed ‘snake children’.<sup>477</sup> It is noted that they do not have legal status and therefore may not have the Congolese nationality, which in itself can be discriminatory.<sup>478</sup> In addition, due to multiple factors (rejection on multiple levels, discrimination from employment, feelings of frustration, marginalisation, and vulnerability to conscription or enlistment); these children are viewed as ‘time bombs’ in Iturian communities.<sup>479</sup>

*ii. Harm suffered by the indirect victims*

177. Regarding the indirect victims of murder and attempted murder, the Chamber recalls that, as held in the Sentencing Judgment regarding murder, ‘relatives and dependants left behind are deprived of a family member, and thereby of love and care, and, depending on the situation, of support, be it financial, physical, emotional, psychological, moral, or otherwise’.<sup>480</sup>

178. In this regard, the Chamber emphasises its previous finding that due to the particularly cruel nature of some of the murders and attempted murders,<sup>481</sup> those who witnessed them or found the bodies later on, including of their family members, were also deeply affected.<sup>482</sup> Some individuals who witnessed these crimes are still traumatised by what they witnessed.<sup>483</sup> For instance, the Chamber found that following the massacre in Kobu, people often found the mutilated bodies of those killed, including of those they had known and of their family

<sup>476</sup> See also CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), paras 49-51; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 17-28.

<sup>477</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 69, 113; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 55.

<sup>478</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 113; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 54.

<sup>479</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 57.

<sup>480</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 44.

<sup>481</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 78; see also Judgment, [ICC-01/04-02/06-2359](#), para. 633.

<sup>482</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), paras 51-52, 78-81; see also Judgment, [ICC-01/04-02/06-2359](#), para. 275, where the Chamber established that the witnesses who found the bodies in the banana fields in Kobu provided their personal and unique narratives of what they felt there when seeing the bodies of those murdered, including those of people they knew and their families members (see, for instance, P-0100: T-131, p. 67; P-0105: T-135, pp. 42-43; and T-134, p. 21; P-0121: T-173, p. 17; P-0790: T-54, p. 16; P-0792: T-150, p. 68; P-0805: T-26, p. 8, and 31-32; P-0857: T-193, pp. 79-80); Closing Brief of the Common Legal Representative of the Victims of the Attacks, 7 November 2018, [ICC-01/04-02/06-2275-Corr-Red](#), para. 403.

<sup>483</sup> Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 49.



members.<sup>484</sup> Several witnesses testified seeing the corpses at the banana field in Kobu,<sup>485</sup> one of them explaining that they were traumatised because of ‘the manner in which those people had found their death. They had died in a horrible way’.<sup>486</sup>

179. In particular, the Chamber noted in the Sentencing Judgment the deep psychological impact that the death of *Abbé* Bwanalonga (who served as a priest for 40 years and was well known in Ituri) had on those who witnessed the crime. This included not only the people who knew him, but also the clergy, and the population in general, particularly within the Lendu/Ngiti community.<sup>487</sup> A witness recalled the impact that the murder of *Abbé* Bwanalonga had on the population, expressing that it was ‘a great loss and it affected many people of all ethnicities’.<sup>488</sup>

180. Regarding the harm suffered by family members of the deceased, the Chamber notes the CLR2 submission as to the need to recognise the local traditions and family structures in order to honour the victims’ culture and recognise their emotional ties and the reality of large family units.<sup>489</sup> As noted by the Appointed Experts, where the family member was the provider or contributed to providing for the family, their relatives were deprived from their contribution, sometimes altogether losing the means to support themselves.<sup>490</sup> The Registry also indicates that some victims continue to suffer material harm due to the increased economic burden associated with having to provide for the family members of a deceased person.<sup>491</sup> It notes that family members of the deceased victim had to provide for their dependants’ primary needs and were unable to send their children to school, disrupting their education.<sup>492</sup> These crimes impacted women and children to a larger extent, as they had to assume alone the entire charge of the family after losing the family’s main financial provider.<sup>493</sup>

<sup>484</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 51; *see also* Judgment, [ICC-01/04-02/06-2359](#), n. 1867.

<sup>485</sup> Transcript of hearing 16 September 2015, [ICC-01/04-02/06-T-26-Red2-ENG](#); Transcript of hearing 19 January 2016, [ICC-01/04-02/06-T-54-Red-ENG](#); Transcript of hearing 14 September 2016, [ICC-01/04-02/06-T-131-Red-ENG](#); Transcript of hearing 7 February 2017, [ICC-01/04-02/06-T-193-Red-ENG](#); Transcript of hearing 16 January 2017, [ICC-01/04-02/06-T-180-Red2-ENG](#).

<sup>486</sup> Transcript of hearing, 16 September 2015, [ICC-01/04-02/06-T-26-Red2-ENG](#), p. 31, lines 17-20, 22, 25, and p. 32, line 1.

<sup>487</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), para. 46, n. 130; *see* First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 63; TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 79.

<sup>488</sup> Transcript of hearing 17 November 2015, [ICC-01/04-02/06-T-51-Red2-ENG](#), p. 35, lines 23-25, p. 36, line 1.

<sup>489</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 38.

<sup>490</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 62; *see also* Katanga Reparations Order, [ICC-01/04-01/07-3728](#), para.113; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 191; *Lubanga* Decision on Indirect Victims, [ICC-01/04-01/06-1813](#), para. 50.

<sup>491</sup> *See* Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 22.

<sup>492</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 48.

<sup>493</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 48.

181. The Appointed Experts also indicate that the psychological harm experienced by the indirect victims may still seriously affect them and may have resulted in a range of long-lasting behavioural disorders, such as trauma, depression, suicidal tendencies, and feelings of hatred.<sup>494</sup> Intense psychological trauma may also lead victims to develop medical conditions and alter their capabilities.<sup>495</sup> The TFV notes in particular the impact these murders had on the development of victims who were children at the time, either because their parent died or because they witnessed atrocious murders.<sup>496</sup> The Chamber also takes note of the DRC's submissions regarding orphans, who are perceived as a sign of bad luck within their communities and are thus socially rejected.<sup>497</sup> Children whose parents were victims of murder may have suffered social rejection and its consequences, similarly to the case of 'snake children' mentioned above.

182. Regarding transgenerational harm,<sup>498</sup> the Chamber considers that given the short and long-term consequences of certain crimes, as discussed above, children of the direct victims may have suffered transgenerational trauma regardless of the date when they were born, if they can show that their harm is a result of the crimes for which Mr Ntaganda was found guilty.<sup>499</sup> In addition, the Chamber highlights that although children born out of rape are considered direct victims, they may have also suffered transgenerational harm as indirect victims.<sup>500</sup>

*iii. Chamber's determination*

183. On the basis of the above, the Chamber defines the harms suffered by the victims as a result of the crimes committed by Mr Ntaganda as follows:

**a) Harms suffered by the direct victims of the attacks:**

**i. Material harm;**

<sup>494</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 109; TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 80.

<sup>495</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 109; *see also* TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 80.

<sup>496</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 80.

<sup>497</sup> DRC February 2020 Submissions, ICC-01/04-02/06-2483-Conf, p. 10.

<sup>498</sup> *See supra* Principle 2.i. 'Concept and types of harm'.

<sup>499</sup> *See* First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 69; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 54.

<sup>500</sup> In line with CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), para. 48; *see also* First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 113, 244; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 80.

- ii. Physical injury and trauma, including memory loss, neurological disturbances, and extensive physical scarring;
- iii. Psychological trauma and the development of psychological disorders, such as, *inter alia*, suicidal tendencies, depression, and dissociative behaviour;
- iv. Psychosocial trauma, due to exclusion from and disintegration of families and communities;
- v. Loss of productivity capacity, reduced standard of living and socio-economic opportunities;
- vi. Interruption and loss of schooling and vocational training;
- vii. Exposure to an environment of violence and fear;
- viii. Loss of childhood;
- ix. Loss of life plan; and
- x. Damage to the health centre in Sayo and loss of adequate healthcare provision to the community that benefitted from it.

**b) Harm suffered by direct victims of crimes against child soldiers:**

- i. Material harm;
- ii. Physical injury and trauma;
- iii. Psychological trauma and the development of psychological disorders, such as, *inter alia*, suicidal tendencies, depression, and dissociative behaviour;
- iv. Psychosocial trauma, due to exclusion from and disintegration of families and communities;
- v. Interruption and loss of schooling and vocational training;
- vi. Separation from families;
- vii. Loss of childhood;
- viii. Loss of life plan;
- ix. Exposure to an environment of violence, fear, and threats;
- x. Difficulties socialising within their families and communities, including rejection and stigmatization;
- xi. Difficulties in controlling aggressive impulses; and
- xii. Non-development of 'civilian life skills' resulting in the victim being at a disadvantage, particularly as regards employment.

**c) Harm suffered by direct victims of rape and sexual slavery, including child soldiers and children born out of rape and sexual slavery:**

- i. Physical, psychological, psychiatric, psychosocial, and economic harm (including injuries, trauma, ostracism, stigma, and social rejection), in immediate and longer term, in the case of the direct victims of rape and sexual slavery; and
- ii. Physical, psychological, psychosocial, and economic harm (including rejection at multiple levels, discrimination, and marginalisation) in the case of children born out of rape and sexual slavery.

**d) Harm suffered by indirect victims:**

- i. Material deprivation that accompanies the loss of the family member's contributions;
- ii. Loss, injury or damage suffered by person intervening to attempt to prevent the direct victims from being further harmed as a result of the relevant crime;
- iii. Psychological harm experienced as a result from the sudden loss of a family member, including behavioural disorders, such as trauma, depression, suicidal tendencies and feelings of hatred;
- iv. Psychological harm and trauma as a result of what they witnessed during or after the attacks;
- v. Psychological, psychosocial, and material harm resulting from aggressive behaviour by former child soldiers reunited with their families and communities; and
- vi. Transgenerational harm of children of direct victims.

## **C. TYPES AND MODALITIES OF REPARATIONS**

### *1. Types of reparations*

184. The Chamber notes that, taking into account the scope and extent of any damage, loss or injury, it must specify, and provide reasons for, the type of reparations ordered, either collective, individual or both, pursuant to rules 97(1) and 98 of the Rules.<sup>501</sup>

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<sup>501</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 32.

185. Rule 98(3) of the Rules provides the factors that are relevant for a determination as to whether a collective award is ‘more appropriate’, namely, ‘the number of victims and the scope, forms and modalities of reparations’.<sup>502</sup>

186. In the present case, for the reasons explained herein, the Chamber considers that collective reparations with individualised components are the most appropriate type of reparations, to appropriately address the harm suffered by the victims of the crimes for which Mr Ntaganda was convicted.

187. The assessment of what reparations are ‘appropriate’ must take into account the rights of the convicted person.<sup>503</sup> The Chamber notes that the present Order does not go beyond the crimes for which Mr Ntaganda was convicted.<sup>504</sup> Mr Ntaganda was given the opportunity to make submissions, *inter alia*, on the scope of reparations, the scope of victimhood to be repaired, and the types of reparations to be awarded.

188. The Chamber has already illustrated above the complex and multi-faceted types of harm suffered by the victims of the present case. The Chamber thus concurs with the TFV’s submission that the occurrence of group victimisation beyond individual levels of harm is a relevant feature of the nature of harm in this case, requiring reparations that are collective in character.<sup>505</sup> As the TFV argues,<sup>506</sup> mass victimisation shapes and transcends individual damage by integrating a layer of harm that makes the complete pattern of harm become greater than the sum of individual harms. This occurs, for example, when the victims are bound by a shared identity which predates the commission of the crime, and/or when they become victims of the same crime and thus are bound by the experience of shared harm, as in the present case.<sup>507</sup> The Chamber notes, that the CLR2 does not oppose compensation for victims of the attacks, provided that they are of equal value for all victims and complemented with collective reparations with individualised components.<sup>508</sup> In addition, the CLR2 submits that the victims’ harm and specific needs can be addressed through collective reparations with individualised components, if designed in a cost-effective manner to address, to the extent possible, the harm

<sup>502</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 148(d) and (e).

<sup>503</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 90.

<sup>504</sup> On the Defence’s submissions on this point, *see* Defence Observations on the Registry’s Second Report on Reparations, ICC-01/04-02/06-2643-Conf (public redacted version filed on 15 February 2021) [ICC-01/04-02/06-2643-Red](#), paras 35-40.

<sup>505</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 112.

<sup>506</sup> *See supra* Principle 2.i. ‘Concept and types of harm’.

<sup>507</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 111.

<sup>508</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 53.

suffered by a potentially very high number of victims, while also responding to the realities in the field.<sup>509</sup>

189. The Chamber further recalls that collective reparations may address the harm that victims suffered on an individual and collective basis.<sup>510</sup> Despite their collective nature, due to their individualised components, the collective reparations in this case will also focus on the individual members of the group and include individual benefits that respond to the specific needs and current situation of individual victims within the group.<sup>511</sup>

190. The Chamber notes that the number of victims is an important factor for determining the type of reparations that is appropriate.<sup>512</sup> However, victims eligible to receive reparations in this case are not limited to the individuals who may have requested reparations or those allowed to participate in the trial proceedings. Instead, it rather encompasses a much greater number of potential victims, in light of the findings in the Judgement and the Sentencing Judgment as to the scope and particularly the widespread and systematic nature of the crimes committed.<sup>513</sup> In particular, the Chamber recalls its finding in the Sentencing Judgment that the crimes committed in the context of the attacks, in several instances, were committed on a large scale,<sup>514</sup> and against a large number of victims.<sup>515</sup> Regarding child soldiers, the Chamber recalls its Sentencing Judgment where it noted that the number of victims on which the Chamber made specific findings does not reflect the full extent of the UPC/FPLC's recruitment and use of child soldiers.<sup>516</sup> Similarly, the Chamber recalls its findings in the Sentencing Judgment, indicating that rape and sexual violence was a common practice within the UPC/FPLC.<sup>517</sup>

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<sup>509</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 60; TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 102.

<sup>510</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 33.

<sup>511</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 280.

<sup>512</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 89.

<sup>513</sup> For a similar approach see *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 148(f).

<sup>514</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), paras 47, 56, 88, 98, 139-140, 145, 182.

<sup>515</sup> Sentencing Judgment, [ICC-01/04-02-06-2442](#), paras 78, 81, 86, 160.

<sup>516</sup> Sentencing, [ICC-01/04-02/06-2442](#), para. 182. The Chamber also recalls the similar findings in regard to the crimes against child soldiers in the *Lubanga* case. *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 153.

<sup>517</sup> Sentencing judgment, [ICC-01/04-02-06-2442](#), para. 108.



191. The Chamber has taken into account the submissions of the Appointed Experts,<sup>518</sup> the CLR1,<sup>519</sup> and the Defence,<sup>520</sup> who consider that individual reparations in the form of compensation complemented by collective reparations are the most appropriate types of reparations in this case. the Chamber has also considered the CLR2 proposal of adding potential individual compensation awards to an award of collective reparations with individualised components, which would also fulfil the victims' wishes to be provided with the life opportunities they have lost.<sup>521</sup> The Registry highlights that a clear trend in its mapping exercise to date elicits the victims' preference for forms of economic development or financial measures to be awarded individually to redress the harm that they suffered, while also noting their wish for collective reparations, albeit to a lower extent.<sup>522</sup>

192. The Chamber has also considered that, as noted by the Appointed Experts, the compensation awards they propose would not be more than 'a symbolic payment',<sup>523</sup> as 'the numbers of victims in the present case are so high and the extent of the harm they suffered is so varied that any attempt to extract a satisfactory amount to all or even to most will be counter-productive and will require more time which will, in turn, further delay the distribution of reparations'.<sup>524</sup> At the same time, the Chamber takes note of the LRVs' submissions that victims do not see any value in reparations that are symbolic or charitable, unless they serve a practical purpose.<sup>525</sup> Moreover, the Chamber notes the CLR2's and TFFV's remarks on the safety risks that may arise for both victims and communities in case of a predominantly compensation-based approach, taking into account the local dynamics.<sup>526</sup>

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<sup>518</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 181-184, 216; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), paras 84, 86, 87, 146, 152, 175.

<sup>519</sup> The Chamber notes that the child soldiers overwhelmingly expressed a preference for individual reparations, although they would also accept collective reparations with an individual component. CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), para. 69; CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 32.

<sup>520</sup> The Chamber notes that the Defence submitted that individual reparations should be awarded in account of harm caused by certain crimes such as pillage, destroying, or seizing the enemy's property, while collective reparations should be awarded in account of harm caused by crimes such as rape, persecution, and the conscription, enlistment and use of child soldiers. Defence February 2020 Submissions, [ICC-01/04-02/06-2479-Red](#), paras 109-111.

<sup>521</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 60.

<sup>522</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), paras 26, 56, p. 17.

<sup>523</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 175.

<sup>524</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 179.

<sup>525</sup> CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 15; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 73.

<sup>526</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 56, 100; TFFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 105.

193. In addition, the Chamber agrees with the TFV's and CLR2's suggestion that compensation awards proposed by the Appointed Experts appear collective in character and can fall within the category of collective reparations with individualised components.<sup>527</sup> In effect, '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>528</sup> The Chamber also took into account the Defence's submission that harm of a physical or psychological nature, such as that caused by rape, persecution, conscription, enlistment, and use of children under the age of 15 in the conduct of hostilities, as stated in the *Lubanga* case, can be better repaired by awarding collective reparations.<sup>529</sup>

194. In light of the above, the Chamber has concluded that collective reparations with individualised components are the most appropriate in the present case, as they may provide a more holistic approach to the multi-faceted harm suffered by the victims.<sup>530</sup> This award ensures a more efficient, prompt, and practical approach,<sup>531</sup> as the potential large number of victims would make an individual assessment of their harm for the purposes of granting individual reparations, resource-intensive, time consuming, and, in the end, disproportionate to what could be achieved.<sup>532</sup> In addition, collective reparations with individualised components aim to provide victims with sustainable and long-term livelihood means rather than simply addressing their daily needs on a short-term basis.<sup>533</sup> At the same time, this approach addresses the concerns that victims should receive equal reparations to avoid awards being a source of jealousy, animosity, or stigmatisation among the affected communities and between inter-ethnic groups,<sup>534</sup> especially given the unstable security situation on the ground.<sup>535</sup> As such, this

<sup>527</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 52; TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 83.

<sup>528</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 40.

<sup>529</sup> Defence February 2020 Submissions, [ICC-01/04-02/06-2479-Red](#), paras 34-35, 109-111.

<sup>530</sup> CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), para. 69; *see also* EAAC, *Le Procureur v. Hissein Habré*, para. 842.

<sup>531</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 179.

<sup>532</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), paras 66-69; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 150.

<sup>533</sup> For CLR2's elaboration on this approach *see* CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 57-58.

<sup>534</sup> CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), paras 16, 23; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 54, 100; CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 78; *see also* UNSG, Note by the Secretary-General: The Gender Perspective in Transitional Justice Processes, 17 July 2020, [A/75/174](#) ('Note on Gender Perspective'), para. 35.

<sup>535</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), pp. 20-22; TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 102; CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 11.

approach may avoid creating perceptions of hierarchy between victims and of placing a higher value on some harms,<sup>536</sup> while ensuring that reparations respond to the victims' harms and needs.

195. Collective reparations with individualised components also appear the most appropriate type of reparations to address the harm caused by rape and sexual slavery,<sup>537</sup> taking into account the submissions regarding the potential reluctance of these victims to come forward if they were to be singled out for specific awards,<sup>538</sup> due to their rejection and stigmatisation at the family and community levels.<sup>539</sup> For the same reasons, this type of reparations is also appropriate for former child soldiers, who may equally be reluctant to be identified as victims of these crimes within their communities or with their families.

196. Considering its decision to award collective reparations with individualised components, the Chamber sees no need to rule on the merits of individual applications for reparations, pursuant to rule 94 of the Rules.<sup>540</sup>

## *2. Modalities of reparations*

197. The Chamber notes that, in the present order, it must identify the most appropriate modalities of reparations, based on the specific circumstances of the case. As noted by the Appeals Chamber, identifying the harm caused to direct and indirect victims as a result of the crimes for which a person was convicted is inter-linked with identifying the appropriate modalities of reparations in the specific case.<sup>541</sup> In effect, the appropriateness of a modality of reparations can only be determined by reference to the harms suffered and which the reparations seek to remedy.<sup>542</sup>

<sup>536</sup> CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), para. 16.

<sup>537</sup> See also International Centre for Transnational Justice, [‘The Rabat Report: Concept and Challenges of Collective Reparations’](#), February 2009, p. 10; UNSG, Guidance Note, [ST/SG\(02\)/R425](#), p. 7; S. Gilmore et. al., ‘Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Repatriation Programmes’, Queen’s University of Belfast, 2020, p. 56; R. Rubio-Marín, ‘Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue’ 19 William & Mary Journal of Race, Gender, and Social Justice 69 (2012), pp. 95-98.

<sup>538</sup> See TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 88.

<sup>539</sup> CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 38; TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), paras 118-119; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 67; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 67.

<sup>540</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 152; *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), paras 87-88.

<sup>541</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 200.

<sup>542</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 200.

198. At the outset, the Chamber acknowledges that the multiple, diverse, and multi-faceted nature of the harms suffered by the victims in this case, makes it difficult to reinstate the victims to the situation they were in before the commission of the crimes.<sup>543</sup> In order to address the various harms suffered by the victims in the best manner possible, a combination of the different modalities of reparations available should be applied.<sup>544</sup>

199. As set out above, the modalities of reparations may include measures of restitution, compensation, rehabilitation, and satisfaction, which may incorporate, when appropriate, a symbolic, preventative, or transformative value. The reparation awards must be designed in consultation with victims.

200. With the principles concerning modalities of reparations in mind, as detailed above, the Chamber considers that, in principle, the following modalities of reparation appear appropriate to address the harms caused to the direct and indirect victims as a result of the crimes for which Mr Ntaganda was convicted:

201. Restitution aims, to the extent possible, at restoring the victims to their circumstances before the crime was committed, even if full restitution will often be unachievable for victims of the crimes in this case.<sup>545</sup>

202. Compensation, as a form of economic relief consists in the award of monetary funds for an economically assessable damage and may be appropriate to redress certain harms which cannot be addressed by other means. In this regard, the Chamber endorses the TFV's request for sufficient flexibility to prepare an implementation plan that is responsive to the needs of the victims and adjusted to the field realities.<sup>546</sup> The Chamber also considered the CLR2' submissions that harms should be addressed in a cost efficient manner, while responding to the realities in the field.<sup>547</sup> Accordingly, the Chamber instructs the TFV to include in its draft implementation plan a recommendation as to compensation, including the amount of compensation, if any.<sup>548</sup> The Chamber will then determine whether compensation for any harm may be appropriate in this case.

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<sup>543</sup> See *supra* Principle 3.i. 'Types and modalities of reparations'; see also CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), para. 55.

<sup>544</sup> Similarly, see EAAC, [Le Procureur v. Hissein Habré](#), para. 842.

<sup>545</sup> See *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(i); First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 168, 210.

<sup>546</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 102.

<sup>547</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 60.

<sup>548</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 84.

203. Rehabilitation measures are directed at facilitating victims' reintegration into society, taking into account the differences of impact these crimes have on victims of different genders.<sup>549</sup> Rehabilitation should aim at the restoration of a function or the acquisition of new skills required as a result of the changed circumstances of a victim due to the crimes.<sup>550</sup> It should seek to enable to the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment.<sup>551</sup> Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social, and vocational ability; and full inclusion and participation in society.<sup>552</sup> Measures of rehabilitation may include a wide range of inter-disciplinary activities, such as providing preventative, curative, and rehabilitative medical services<sup>553</sup> (including psychiatric and psychological care); assistance as regards general rehabilitation and housing;<sup>554</sup> psychosocial rehabilitative services, including a component of treatment for those who suffer from any addiction;<sup>555</sup> re-integrative and social services; community and family-oriented assistance and services, including mediation; vocational training and education, along with micro-credits, income generating opportunities or sustainable work that promote a meaningful role in society.<sup>556</sup>

204. Trauma-based counselling provided to victims may be important to respond to their psychological rehabilitation needs. It is also important to undertake such measures at an early stage in order to improve the victims' understanding and coping capacities, so that they may take full advantage of other rehabilitative services.<sup>557</sup> As such, psychological support should be extended to victims, both at the entry point and during their participation in such a reparation programme.<sup>558</sup>

205. The steps taken to rehabilitate and reintegrate victims may also involve their communities, to the extent that reparations programmes are implemented where their

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<sup>549</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(iii).

<sup>550</sup> CAT, General Comment No. 3, [CAT/C/GC/3](#), para. 11.

<sup>551</sup> CAT, General Comment No. 3, [CAT/C/GC/3](#), para. 11.

<sup>552</sup> CAT, General Comment No. 3, [CAT/C/GC/3](#), para. 11; *see also* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 93.

<sup>553</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 94.

<sup>554</sup> *See Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 69.

<sup>555</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 243.

<sup>556</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(iii); *see* CAT, General Comment No. 3, [CAT/C/GC/3](#), para. 13; *see also* First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 193, 195-198, 207.

<sup>557</sup> *Lubanga* TFV Information on collective reparations, [ICC-01/04-01/06-3273](#), para. 92.

<sup>558</sup> *See Lubanga* TFV Information on collective reparations, [ICC-01/04-01/06-3273](#), para. 86, approved by *Lubanga* Order approving framework for collective reparations, [ICC-01/04-01/06-3289](#).

communities are located. Programmes that have transformative objectives, however limited, can help prevent future victimisation.<sup>559</sup>

206. Rehabilitation measures ought to include the means of addressing the shame that victims, particularly former child soldiers and victims of rape and sexual slavery may feel, and they should be directed at avoiding further victimisation of all victims who suffered harm as a consequence of the crimes.<sup>560</sup> In addition, the rehabilitation measures should, in part, be directed at preventing future conflicts and raising awareness that the effective reintegration of these victims requires eradicating their victimisation, discrimination, and stigmatisation.<sup>561</sup> Rehabilitation must be construed as a means to help victims overcome their exclusion and marginalisation by regaining self-confidence and trust, leaving behind their status of victim and growing a sense of belonging to the community.<sup>562</sup>

207. Satisfaction measures, aimed at acknowledging the violations and safeguard the dignity and reputation of the victims, may include establishing or assisting campaigns that are designed to improve the position of the victims; issuing certificates that acknowledge the harm individual victims experienced; setting up outreach and promotional programmes to inform victims of the outcome of the trial; and educational campaigns that aim at reducing the stigmatisation and marginalisation of victims of rape and sexual slavery and children born out of rape, as well as child soldier victims.<sup>563</sup> These steps can contribute to society's awareness of the crimes committed by Mr Ntaganda, the need to foster improved attitudes towards crimes of this kind, and ensure that victims play an active role within their communities.<sup>564</sup> In particular, awareness and sensitisation about the meaning, realities, and consequences of the crimes committed in the context of this case, including crimes against former child soldiers, may support the rehabilitation and reintegration of the victims, and be an important part of satisfaction, while also contributing to reducing the stigma attached to these crimes and acknowledging the harms suffered by the victims.<sup>565</sup>

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<sup>559</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(v); *see also* UNSG, Note on Gender Perspective [A/75/174](#), paras 37-38.

<sup>560</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(iv).

<sup>561</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(iv).

<sup>562</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 93; *see also* *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(iv).

<sup>563</sup> Second Report, [ICC-01/04-02/06-2639-Conf-AnxI](#), para. 28.

<sup>564</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 207; *see* *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(vi).

<sup>565</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 247.



208. Symbolic reparations may also contribute to the process of rehabilitation.<sup>566</sup> One of the symbolic measures proposed is the construction of a community centre to be named after *Abbé Bwanalunga* —to honour his memory, but also to serve as a means to foster reconciliation between the different sectors of the community that the *Abbé* worked with. This may be one of the measures the TFCV could explore to be included in the draft implementation plan in consultation with the victims to ensure general consensus and avoid tensions.<sup>567</sup> Similarly, the TFCV should consult with the victims, as to whether as a symbolic measure, a sign could be installed on the health centre in Sayo, indicating that the building enjoys special protection under international humanitarian law.<sup>568</sup> Such symbolic reparations must bear in mind the victims' views that any symbolic measure must also serve a practical purpose.

209. As to the transformative value of reparation measures, they should strive to tackle the cultural meaning and understanding of violence as well as the structural barriers leading to victims' stigmatisation, for instance, to enable all victims of sexual violence to come forward, seek help, and engage in the reparations process, which in turn should contribute to undermine the underlying causes of violence.<sup>569</sup>

210. Mr Ntaganda may also contribute to this process by way of a voluntary apology to individual victims or to groups of victims, on a public or confidential basis. However, victims must first be consulted in order to determine whether such a measure, and if so, in what manner, would be welcome and appropriate in this case.

211. The Chamber considers that other measures of satisfaction in the present case include Mr Ntaganda's conviction, sentencing, and the present Order, which acknowledges and details the crimes that harmed the victims of the present case, and hold Mr Ntaganda accountable for the serious crimes committed and the harms caused to the victims of those crimes.<sup>570</sup>

<sup>566</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 67(v).

<sup>567</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 202; *see also* CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), para. 74.

<sup>568</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 174; CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 72, 75.

<sup>569</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 131; *see also* R. Rubio-Marín, 'Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue' in 19 William & Mary Journal of Race, Gender, and Social Justice 69 (2012), p. 102; F. Ni Aolain et. al., *On the Frontlines: Gender, War, and the Post-Conflict Process* (2011), p. 187; R. Uprimny Yepes in *Transformative Reparations*, p. 640.

<sup>570</sup> *See* IACtHR, *Case of the Miguel Castro Castro Prison v. Peru*, Judgment (Merits, Reparations, and Costs), 25 November 2006, [Series C No. 160](#), para. 440; IACtHR, *Case of Neira Alegría et al. v. Peru*, Judgment (Reparations and Costs), 19 September 1996, [Series C No. 29](#), para. 56; *see also* UNGA, Basic Principles on Reparations, [UN Doc A/RES/60/147](#), para. 22(b), (d), (f).

212. The Chamber orders the TFV to design an implementation plan on the basis of all the identified modalities of reparations, in consultation with the victims. It is possible that not all the modalities outlined above may ultimately be included in such a plan. In this respect, should the TFV consider that any of the above modalities of reparations is not appropriate, it is instructed to include in its draft implementation plan an explanation regarding the reasons.

213. As to the programme support costs,<sup>571</sup> the Chamber directs the TFV, to the extent possible, to resort to pre-existing structures, programmes, and partners to optimise the implementation of reparations so that their cost is kept at the minimum.

### *3. Prioritisation*

214. The Chamber stresses that priority ought to be given to victims who are in a particularly vulnerable situation or require urgent assistance. In particular, priority should be given to individuals who require immediate physical and/or psychological medical care, victims with disabilities and the elderly, victims of sexual or gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers.<sup>572</sup>

## **D. SCOPE OF MR NTAGANDA'S LIABILITY FOR REPARATIONS**

### *1. General Considerations*

215. The Chamber notes that Mr Ntaganda is liable to repair the harm caused to all, direct and indirect, victims of the crimes for which he was convicted. Reparation orders are intrinsically linked to the individual whose criminal liability is established in the conviction and must be proportionate to the harm caused.<sup>573</sup> As such, in light of the principle of accountability of the offender, this Order is made against the convicted person.<sup>574</sup>

216. The Chamber will set out its approach to certain issues raised during the proceedings and will then proceed to determine the scope of Mr Ntaganda's liability for reparations, in light of the specific circumstances of the case.

<sup>571</sup> On the issue, *see* TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), paras 131-136.

<sup>572</sup> *See supra* Principle 3.iii. 'Prioritisation'; *see also* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 9.

<sup>573</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 65, 99; and *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 21.

<sup>574</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 69.

## 2. Modes of liability and victims entitled to reparations in other cases

217. The Chamber notes that the Appeals Chamber originally indicated that the ‘convicted person’s liability for reparations must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case’.<sup>575</sup> The Appeals Chamber later clarified that ‘this does not mean, however, that the amount of reparations for which the convicted person is held liable must reflect his or her relative responsibility for the harm in question *vis-à-vis* others who may also have contributed to the harm’.<sup>576</sup> To the contrary, ‘in principle, the question of whether other individuals may also have contributed to the harm resulting from the crimes for which the person has been convicted is irrelevant to the convicted person’s liability to repair that harm’.<sup>577</sup> Accordingly, ‘it is not, *per se*, inappropriate to hold the person liable for the full amount necessary to repair the harm’.<sup>578</sup> The focus, in all cases, should be the extent of the harm caused by the crimes for which the person was convicted and the cost to repair such harm, rather than the person’s role in the commission of the crimes and the mode(s) of liability for which the person was convicted.<sup>579</sup>

218. Accordingly, the Chamber finds Mr Ntaganda liable to repair the full extent of the harm caused to the direct and indirect victims of all crimes for which he was convicted, regardless of the different modes of liability relied on in the conviction<sup>580</sup> and regardless of whether others may have also contributed to the harm.<sup>581</sup>

219. As to the shared liability of Mr Ntaganda and his co-perpetrators in the crimes for which he was convicted, including Mr Thomas Lubanga, the Chamber notes that they are all jointly liable *in solidum* to repair the full extent of the harm caused to the victims. Responsibility *in*

<sup>575</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 118; and *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 21.

<sup>576</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 175.

<sup>577</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 178, *see also* para. 6.

<sup>578</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 178; *see also* *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 308.

<sup>579</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), paras 179-180, 182.

<sup>580</sup> *See* Defence Final Submissions, [ICC-01/04-02/06-2634-Red](#), paras. 152-154, arguing that the scope of liability should reflect the fact that Mr Ntaganda was convicted as an indirect co-perpetrator pursuant to articles 25(3)(a) and 24(3)(f) of the Statute for the crimes committed during the Second Operation, and that the Chamber recognised that his degree of participation was lesser than in the First Operation; *see also* First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 259-265, 270-277, stressing the very important military function and determinative role of Mr Ntaganda in the UPC/FPLC and the key and active role played by him in the commission of the crimes.

<sup>581</sup> *See* Defence February 2020 Submissions, [ICC-01/04-02/06-2479-Red](#), paras 57, 60-62; CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), paras 18-22; CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), paras 85-86, 93; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 27, Section 5, p. 110

*solidum*, as noted by the Appointed Experts,<sup>582</sup> entails the corresponding right for any of the co-perpetrators who may have repaired, in full or in part, the harms caused to the direct and indirect victims, to seek to recover from the co-perpetrators their proportionate share.

220. The Chamber has further taken into account the TFV's submission that the reparation programme it implements in the *Lubanga* case is a collective award aimed at comprehensively repairing the harm suffered by all direct and indirect victims.<sup>583</sup> In light of this, and considering the principle of 'no over-compensation' set out above,<sup>584</sup> the Chamber considers reasonable to follow the CLR1 suggestion.<sup>585</sup> It will thus adopt, for the purposes of reparations in this case, the reparation programmes ordered by Trial Chamber II in the *Lubanga* case,<sup>586</sup> in relation to the overlapping victims and harms of both cases. Accordingly, the reparation programmes implemented in the *Lubanga* case, which comprehensively repair the harm caused to the overlapping direct and indirect victims of both cases, should be understood to repair the victims' harm on behalf of both, Mr Lubanga and Mr Ntaganda.

221. It should be stressed however that this, under no circumstances, diminishes Mr Ntaganda's liability to repair in full the harm caused to all victims of the crimes for which he was convicted. To the contrary, Mr Lubanga and Mr Ntaganda are jointly and severally liable to repair in full the harm suffered by the overlapping victims and both remain liable to reimburse the funds that the TFV may eventually use to complement the reparation awards for their shared victims.<sup>587</sup>

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<sup>582</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 259-260; *see also supra* Principle 4.vi. 'No over-compensation'.

<sup>583</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 72, also indicating that the reparation programme it implements in the *Lubanga* case is based on individual services provided to victims, the purpose of which is to repair comprehensively the harm suffered by all direct and indirect victims of the crimes for which Mr Lubanga was convicted. *See also* para. 75, where the TFV indicated that, being highly likely that the implementing agency of the reparation award in the *Ntaganda* case will also be the TFV, the Chamber should take into account that running two reparation programmes in parallel for (nearly) the same victims and the same harm would be a challenge in terms of operation and fundraising.

<sup>584</sup> *See also* TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 84; *see supra* Principle 4.vi. 'No over-compensation'.

<sup>585</sup> CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), para. 24, suggesting that, as to the victims that overlap, the Chamber may adopt the programs ordered by Trial Chamber I in the *Lubanga* case.

<sup>586</sup> Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Version publique expurgée de la Décision faisant droit à la requête du Fonds au profit des victimes du 21 septembre 2020 et approuvant la mise en oeuvre des réparations collectives prenant la forme de prestations de services, [ICC-01/04-01/06-3495-Red-Corr](#), 14 December 2020 (public redacted version filed on 4 March 2021, corrigendum filed on 5 March 2021) ('*Lubanga* Décision approuvant la mise en oeuvre des réparations collectives'), paras 117-118, stating that the programmes proposed by the TFV comply with most of the objectives of reparations as established by the Appeals Chamber and are appropriate as they address the diverse and evolving needs of the victims according to their specific circumstances, in a flexible manner.

<sup>587</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 115-116.

222. As to the additional harm suffered by the victims of rape and sexual slavery within the UPC/FPLC and victims of recruitment beyond the temporal scope of the *Lubanga* case, for which Mr Ntaganda bears sole liability,<sup>588</sup> additional reparation measures should be implemented.

### 3. Indigence, funds available to the TFV, and other criteria

223. The Chamber stresses that, as clarified by the Appeals Chamber, the indigence of the convicted person at the time of the issuance of the reparations order is neither an obstacle to the imposition of liability for reparations,<sup>589</sup> nor does it give the convicted person any right to benefit from reduced liability.<sup>590</sup> In effect, the order imposing the person's liability can be implemented when the monitoring of the financial situation reveals that the person has the means to comply with the order.<sup>591</sup> As noted by Trial Chamber VIII, although the convicted person's financial circumstances may affect the way in which reparations are implemented, enforcement is a responsibility of the Presidency,<sup>592</sup> and goes beyond the setting of Mr Ntaganda's liability for reparations.<sup>593</sup>

224. As to the submission that the liability assessment should also take into account, *inter alia*, the gravity of the crimes and the extent of the harm caused,<sup>594</sup> as noted above, when determining the liability of the convicted person for reparations the primary consideration is the extent of the harm and the cost to repair it, thus criteria such as the gravity of the crimes are not relevant to this question.<sup>595</sup> Most importantly, as stressed by the Appeals Chamber, the

<sup>588</sup> See CLR1 Final Submissions, [ICC-01/04-02/06-2632](#), paras 25-29; Defence February 2020 Submissions, [ICC-01/04-02/06-2479-Red](#), para. 62.

<sup>589</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 103-104; *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 189; see also CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), para. 56.

<sup>590</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 190.

<sup>591</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 104; *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 189.

<sup>592</sup> See Regulation 117 of the Regulations of the Court.

<sup>593</sup> *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 114.

<sup>594</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 261; see also paras 266-267, noting the severe gravity of the crime of murder with the great suffering of the victims' next of kin; and paras 268-269, stressing the grave consequences of pillaging, committed in a systematic manner and in connection with 'ratissage' operations and the particular gravity and irreparable harm caused by sexual violence to victims, their families, the next generations, and their communities.

<sup>595</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 184; see also TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 129.

goal of reparations is not to punish the person but indeed to repair the harm caused to others, the objective of reparation proceedings being remedial and not punitive.<sup>596</sup>

225. As to the concurrent responsibility of others,<sup>597</sup> the Chamber recalls that, as noted in the *Lubanga* case, a provision empowering the Court to make a reparations order or recommendations against a State, although originally included in the draft, was eventually not retained in the Statute.<sup>598</sup> Nonetheless, the Chamber notes that State Parties have the obligation to cooperate fully in the implementation of the present Order. Likewise, the present Order is without prejudice to the primary responsibility of relevant States, particularly the DRC, to address the harms suffered and award reparations to victims pursuant to their obligations under international and domestic law.<sup>599</sup>

#### *4. Amount of Mr Ntaganda's financial liability*

226. The Chamber details below the elements it has taken into account in order to determine Mr Ntaganda's financial liability, which includes the applicable law, as interpreted by the Appeals Chamber, the estimated number of potentially eligible victims, and the cost to repair the harms they suffered. Regarding the estimates, the Chamber has considered the detailed information and evidence provided by the Registry, the TFV, the Appointed Experts, and the parties, and has also relied on the figures and assessments made by other chambers of the Court in similar cases.

##### *i. Applicable Law*

227. Pursuant to article 75(2) of the Statute, the Court may make an order directly against the convicted person, through the TFV, 'specifying appropriate reparations to, or in respect of, victims'. Paragraph 1 of the same provision indicates that the Chamber is required to 'determine the scope and extent of any damage, loss and injury to, or in respect of, victims'. As noted by the Appeals Chamber, in making this determination, the Chamber should, generally speaking, 'establish the types and categories of harm' caused by the crimes for which the person was convicted.<sup>600</sup> The identification of the harm caused to victims is interlinked with

<sup>596</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), paras 184-185; see also, *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), paras 314-135.

<sup>597</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 261, 273, 280.

<sup>598</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 105; *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 189.

<sup>599</sup> *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 50; see also *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 323, and *supra* Principle 6.i. 'States and other stakeholders'.

<sup>600</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 70.



the determination of the appropriate modalities of reparations, assessments that must be made by the Chamber in light of the specific circumstances of the case.<sup>601</sup>

228. When determining the extent of harm, ‘rather than attempting to determine the “sum-total” of the monetary value of the harm caused’, the Chamber should seek to define the harms and the appropriate modalities for repairing them, ‘with a view to, ultimately, assessing the costs of the identified remedy’.<sup>602</sup> It is indeed appropriate for the Chamber to focus on the cost to repair, depending on the circumstances of the case and bearing in mind the overall purpose of reparations.<sup>603</sup> The Chamber should determine the cost to repair,<sup>604</sup> ultimately, with the goal of setting an amount that is fair and properly reflects the rights of the victims, bearing in mind the rights of the convicted person.<sup>605</sup> If the available information does not allow the Chamber to set the amount with precision it may, with caution, rely on estimates, after making every effort to obtain calculations that are as accurate as possible, weighing the need for accuracy of estimates against the goal of awarding reparations without delay.<sup>606</sup>

229. The Chamber further recalls that pursuant to rule 98(3) of the Rules, the Court may award collective reparations through the TFV when it seems more appropriate, in light of the factors laid down therein.

230. Despite the collective nature of the reparations ordered above, the number of potentially eligible beneficiaries is an important parameter for determining the scope of the convicted person’s liability.<sup>607</sup> This determination can be made based on a series of factors, including, the number of individual applicants, the number of victims at the time the crimes were committed, and the number of victims likely to come forward to benefit from the reparations programmes during the implementation stage.<sup>608</sup> However, when the Chamber resorts to estimates as to the number of victims, it must endeavour to obtain an estimate that is as concrete as possible, based on a sufficiently strong evidential basis. Any uncertainties must be resolved in favour of the convicted person.<sup>609</sup>

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<sup>601</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 200.

<sup>602</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 72.

<sup>603</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 107.

<sup>604</sup> *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 72.

<sup>605</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 108.

<sup>606</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 108.

<sup>607</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 89.

<sup>608</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), paras 89, 224.

<sup>609</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), paras 90, 223-224.

231. Although relevant for determining the scope of liability, the number of potential beneficiaries is not a precondition to the issuance of the reparations order. In particular, the Chamber stresses that, as noted in the Court's jurisprudence, when there is uncertainty as to the number of victims, 'the Court should ensure that there is a collective approach that ensures reparations reach those victims who are currently unidentified'.<sup>610</sup>

*ii. Victims potentially eligible for reparations*

232. The Chamber notes that, following a preliminary mapping exercise, conducted for the purposes of estimating the number of potentially eligible victims, the Registry has consistently indicated that it estimates that approximately 1,100 individuals may qualify as new potential victims of the attacks, and that it does not anticipate the final number to be exponentially higher.<sup>611</sup> The Appointed Experts estimate that, at least, 3,500 direct victims are potentially eligible for reparations and note that the number of indirect victims could not be ascertained by them.<sup>612</sup>

233. The CLR2 opposes the suggestion that the 'cost to repair' be solely based on the number of potential beneficiaries identified thus far by the Registry.<sup>613</sup> The CLR2 argues that new beneficiaries will be numbering at least 100,000 people across all locations,<sup>614</sup> reiterating that 'in the circumstances of the present case where thirteen villages throughout Ituri were found to be affected as a whole', the Registry's estimates appear too marginal compared to the size of the population.<sup>615</sup> In particular, the CLR2 recalls that (i) publicly available records indicate that the population of Mongbwalu alone in 2002 was around 80,000 people;<sup>616</sup> (ii) data on the case-record provided by the Registry indicate that, just before the conflict, roughly 8,000 people

<sup>610</sup> *Lubanga* Reparations Decision, [ICC-01/04-01/06-2904](#), para. 219; see also, *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 90, stressing that '[t]his finding was not overturned by the Appeals Chamber'.

<sup>611</sup> Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), para. 25; Annex II, *annexed to* Registry's Observations on Reparations, 28 February 2020, ICC-01/04-02/06-2475-Conf-Exp-AnxII; Registry's Observations on the "Request of the Common Legal Representatives of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations" of 9 November 2020, ICC-01/04-02/06-2624, 18 November 2020, [ICC-01/04-02/06-2627](#) ('Registry's Observations on Request for information'), paras 17-18; Second Report, [ICC-01/04-02/06-2639- AnxI-Red](#), para. 39.

<sup>612</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 29, p. 107.

<sup>613</sup> CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 95-97, arguing that miscalculations may undermine the meaningfulness of reparation proceedings.

<sup>614</sup> CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#), para. 72.

<sup>615</sup> CLR2 Observations on the Second Report, [ICC-01/04-02/06-2642-Red](#), para. 27; see also Request of the Common Legal Representatives of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations, 9 November 2020, [ICC-01/04-02/06-2624](#).

<sup>616</sup> CLR2 Observations on the Second Report, [ICC-01/04-02/06-2642-Red](#), para. 27 and n. 59; see also CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#), para. 71.

lived in Kobu and 5,000 people lived in the Bambu area;<sup>617</sup> and (iii) according to the UN, during the *shika na mukongo* operation, around 60,000 civilians were forced to flee to the bush surrounding the affected villages.<sup>618</sup> The CLR1 also stresses that the Chamber should take into account that more child soldiers may be willing to participate in reparation programmes in this case as, unlike Mr Lubanga, Mr Ntaganda is not of Hema ethnicity.<sup>619</sup>

234. The Chamber notes that 2,121 victims participated in the trial proceedings, including 1,837 victims of the attacks and 284 victims of crimes against child soldiers victims.<sup>620</sup> As ordered by the Chamber, the Registry assessed the eligibility of participating victims. Although noting that it had taken a conservative approach, it estimated that approximately 1,460 participating victims of the attacks remain eligible to receive reparations.<sup>621</sup> The CLR2 contests this assessment, reiterating that the victims considered as no longer fulfilling the eligibility criteria should be provided with an opportunity to clarify their account at a later stage, either through an individual assessment or screening.<sup>622</sup>

235. Regarding the former child soldiers, the Registry's assessment is that the 284 participating victims in the *Ntaganda* case have not been impacted by the scope of the conviction,<sup>623</sup> and that all victims recognised to date as potential beneficiaries in the *Lubanga* case are also potentially eligible for reparations in the *Ntaganda* case.<sup>624</sup> The Chamber notes that, although Trial Chamber II initially found that 425 victims in the sample it analysed qualified for reparations in the *Lubanga* case, it estimated that 'hundreds and possibly thousands more victims suffered harm as a consequence of the crimes for which Mr Lubanga was convicted'.<sup>625</sup> However, although a cut-off date has been established for all new applicants to make themselves known in order to be considered for reparations in the *Lubanga* case,<sup>626</sup> as

<sup>617</sup> CLR2 Observations on the Second Report, [ICC-01/04-02/06-2642-Red](#), para. 27 and n. 60.

<sup>618</sup> CLR2 Observations on the Second Report, [ICC-01/04-02/06-2642-Red](#), para. 27 and n. 61; *see also* CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 106-108.

<sup>619</sup> CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), para. 64.

<sup>620</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 9.

<sup>621</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), paras 8-9.

<sup>622</sup> CLR2 Observations on the Second Report, [ICC-01/04-02/06-2642-Red](#), paras 15-25; *see also* CLR2 Final Submissions, [ICC-01/04-02/06-2633-Red](#), paras 109-110.

<sup>623</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 7.

<sup>624</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 31.

<sup>625</sup> *Lubanga* Decision on the Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 278-279, 292.

<sup>626</sup> Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations, 7 February 2019 (public redacted version issued on 4 March 2019), [ICC-01/04-01/06-3440-Red-tENG](#), para. 42.

of December 2020, Trial Chamber II had recognised 933 beneficiaries for reparations in the *Lubanga* case.<sup>627</sup>

iii. *Cost to repair the victims' harms*

236. As to the costs to repair the harms caused to the victims of the crimes for which Mr Ntaganda was convicted, the Chamber notes that the TFV has provided preliminary estimates, as follows:

(i) *physical rehabilitation*, referring to the costs of medical treatment for severe physical injury at USD 3,000 per victim and the costs to treat infections and chronic diseases at USD 450 per victim, including medical costs, transport, cost for stay, and food while at hospital;<sup>628</sup>

(ii) *psychological rehabilitation*, referring to rehabilitation for severe mental trauma, including behavioural disorders, isolation, suicidal tendencies, and loss of childhood at USD 2,000 per victim per year;<sup>629</sup>

(iii) *individual socio-economic reintegration*, referring to a total of USD 3,000 per person, which includes USD 2,000 for a reinsertion kit, USD 500 for vocational training, and USD 500 for one year of coaching per person. It also refers to programmes such as microcredit schemes with individual coaching at USD 500 per person, per year, suggesting two to three years to yield expected results, and the costs of recovering important documents lost or destroyed during the conflict at USD 300 in fees;<sup>630</sup>

(iv) *programmes to address the loss of physical infrastructure*, referring to building a school or health centre at USD 50,000, building a market at USD 100,000 and establishing a source of drinking water at USD 6,000;<sup>631</sup> and

(v) *programme support costs*, referring to indirect administrative and management costs incurred by a partner organisation in support of project implementation at approximately

<sup>627</sup> *Lubanga* Décision approuvant la mise en œuvre des réparations collectives, [ICC-01/04-01/06-3495-Red-Corr](#), para. 106; see also TFV, *Prosecutor v. Thomas Lubanga Dyilo*, Douzième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 (ICC-01/04-01/06-3251) et 6 avril 2017 (ICC-01/04-01/06-3289) et la Décision du 7 février 2019 (ICC-01/04-01/06-3440-Red), 21 January 2021, [ICC-01/04-01/06-3497](#), para. 14, indicating that 510 administrative decisions had been already transmitted to the Chamber and para. 19, indicating that it transmits 92 dossiers of potential new beneficiaries of reparations in the *Lubanga* case.

<sup>628</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 130(a).

<sup>629</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 130(b).

<sup>630</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 130(c).

<sup>631</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 130(d).

15% of the direct project costs and to the costs of monitoring, evaluation, and reporting by partner organisations at approximately 3% of the direct costs.<sup>632</sup>

237. In trying to assign a monetary value to the harms suffered, the Appointed Experts rely on research on more than 50 recent cases in DRC courts, where perpetrators of war crimes and crimes against humanity were condemned to pay damages to victims, with awards in a number of cases applying a standardised amount of USD 5,000.<sup>633</sup> The research also found that almost USD 28,000,000 was awarded to more than 3,300 victims, but the Appointed Experts note that due to the cumbersome procedures and high costs of enforcement, ‘to date none of these victims have managed to obtain any of these amounts’.<sup>634</sup> Regarding customary justice in the DRC, the Appointed Experts note that, in Ituri, most rural victims are familiar with a system of compensation quantified by a specific number of cows, with loss of life being negotiated with a minimum of ten cows and the burning down of a house or another loss of property typically starting with six cows, with the value of a cow being between USD 500 and USD 600.<sup>635</sup>

238. As to compensation for rape and sexual violence, the Second Expert Report notes that the Congolese military courts have quantified it variously, awarding amounts that range from USD 55 to USD 50,000, with an emerging standard of USD 5,000 being awarded for each rape in nine cases involving multiple child victims.<sup>636</sup> However, contrary to traditional settlements, the Appointed Experts note that the amounts awarded ‘are unrealistic and payment often does not materialise’.<sup>637</sup>

239. The Appointed Experts stress that they ‘hesitate themselves to put forward a specific figure’ and assign a pecuniary value to an adequate standard of living for the totality of the harms inflicted on the universe of victims,<sup>638</sup> as they have ‘no reliable way of measuring what the minimum living costs would be in particular in Ituri where most of the victims are still located’.<sup>639</sup> They also stress that they propose a standardised compensation for moral harm due to the inherent difficulty of quantifying such harm, as ‘there is no amount that can correspond to the indignity, suffering and non-pecuniary damage they themselves underwent or

<sup>632</sup> TFFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), paras 130(e), 131-136.

<sup>633</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 176.

<sup>634</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), n. 228.

<sup>635</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 177.

<sup>636</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 77.

<sup>637</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 77.

<sup>638</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 180.

<sup>639</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 181, 221.

experienced’.<sup>640</sup> As such, the Appointed Experts acknowledge that the standard compensation amount they propose for material harm and moral damage ‘will not be more than a symbolic payment’.<sup>641</sup>

240. The Appointed Experts suggest that the standard compensation amounts they recommend should be complemented by a set of collective reparations, including schooling and vocational training, medical and psychological care and support, sustainable means of livelihood, and participation in symbolic reparation processes.<sup>642</sup> They however note that they are ‘not in a position to assess themselves the costs of the collective reparations’,<sup>643</sup> but point out that the aggregated value of similar services in the *Lubanga* case was determined *ex aequo et bono* at an average amount of USD 8,000 per victim.<sup>644</sup>

241. Considering the difficulties expressed by the Appointed Experts in quantifying the cost of collective reparations, the TFV provided some indicative figures for reparation projects that, while collective, are ‘highly individual in nature, tailored to the need of each victim (victim-centred), and to the realities in Ituri’.<sup>645</sup> After gathering field and desk information related to the potential costs of various rehabilitation programmes, addressing the multi-dimensional harm of the individual beneficiaries and with the ability to reach victims in all territories in Ituri, the TFV provided some examples of figures in terms of costs of services.<sup>646</sup> In particular, the TFV provided figures for 10 projects conducted in Ituri since July 2020 under its assistance mandate, which, it submits, are comparable to a collective reparation programme with individualised components, unlike projects run for humanitarian purposes.<sup>647</sup> These projects intend to reach 17,245 victims, of which 445 are direct beneficiaries of rehabilitation programmes and 16,800 beneficiaries of education activities, for an estimated combined cost of USD 741,000 for the first year. The projects are intended to run for five years by an average amount of USD 200,000 per project per year, with a target of 50,000 beneficiaries.<sup>648</sup> The TFV

<sup>640</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 182-183, 222, 226.

<sup>641</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 175, 181, 183, 220, 221.

<sup>642</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 192-193, 232-234.

<sup>643</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 193, 234.

<sup>644</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), n. 248.

<sup>645</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 44.

<sup>646</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), paras 46-64.

<sup>647</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 59.

<sup>648</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 60.



emphasises that these figures are indicative and do not include the extra costs applicable to the eligibility screening of potential beneficiaries.<sup>649</sup> The examples provided by the TFV include:

- (i) a project for victims of conflicts in the Djugu, Aru, Mahagi and Irumu territories in Ituri, which provided physical rehabilitation (medical referrals and medical support), psychological rehabilitation (counselling and family mediation), and material support (income generating activities, vocational training, and saving schemes cooperatives), reaching 80 direct beneficiaries for a total budget of USD 150,000 for the first year;<sup>650</sup>
- (ii) a similar project for victims of conflicts in the Djugu and Mahagi territories in Ituri, which provided psychological rehabilitation and material support, such as community based conflict mediation, peace building education, income generating activities, vocational training, and capacity building, reaching 125 direct beneficiaries for a total budget of USD 150,000 for the first year;<sup>651</sup>
- (iii) a project for victims of sexual crimes in the Irumu territory (Shari, Bogoro, Kasenyi and Nyakunde), which provided a holistic package that includes medical referrals, counselling, family mediation, school assistance for dependants and young child soldiers, material support including vocational training, income generating activities, and support for saving scheme cooperatives, reaching 120 direct beneficiaries for a total budget of USD 150,000 for the first year;<sup>652</sup>
- (iv) a project for the youth victims in the Djugu, Mahagu, Irumu, Aru, and Mambasa territories, which provided psychological rehabilitation through education for peace, youth sensitization, capacity building of youth organisations, creation of peace clubs and other outreach activities, reaching 120 direct beneficiaries and potentially numerous indirect beneficiaries as most activities are conducted via media outlets for a total budget of USD 140,000 for the first year;<sup>653</sup> and
- (v) a project for children and communities in the Bunia, Irumu, Djugu, Mahagi territories of Ituri province, which provided peace education in schools, memory healings, community

<sup>649</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), paras 59.

<sup>650</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 60.

<sup>651</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 60.

<sup>652</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 61.

<sup>653</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 62.

dialogues, reaching 16,800 beneficiaries for a total budget of USD 150,000 for the first year.<sup>654</sup>

242. As to the cost of repairing the health centre in Sayo, the Second Expert Report notes that the centre is operational today as repairs were made through the NGO Mediar in 2005, with money raised locally.<sup>655</sup> It recalls that the TFV estimated the cost of a new health care facility to be USD 50,000.<sup>656</sup> In the view of the Expert, Dr Gilmore, to focus only on rebuilding infrastructure ‘does not correspond to the harm caused or the level of service provision’, as the centre ceased services following the attack, but soon after regained functionality at a reduced capacity and there is lack of skilled personnel.<sup>657</sup> Focusing on the costs of reinstating the level of healthcare provision, Dr Gilmore attempts to quantify the appropriate total cost for repair the attack on the Sayo health centre, suggesting the total sum of USD 130,000.<sup>658</sup> This would include the damage caused to the health centre (USD 5,000), large equipment (USD 40,000),<sup>659</sup> transport (USD 5,000), maintenance for five years (USD 10,000), equipment and essential medications (USD 10,000),<sup>660</sup> and the costs for one doctor and two nurses for five years<sup>661</sup> (USD 60,000).<sup>662</sup>

243. In the *Katanga* case, which the Chamber finds relevant in light of its temporal, geographical, and subject matter scope, as it relates to an attack which took place on 24 February 2003 on the village of Bogoro in Ituri,<sup>663</sup> Trial Chamber II assigned a monetary value to the extent of the material, physical, and psychological harm suffered by the victims of that case, taking into account information contained in applications for reparations and observations

<sup>654</sup> TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 63.

<sup>655</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 168 and n. 663.

<sup>656</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 168.

<sup>657</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), paras 168-169.

<sup>658</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 173.

<sup>659</sup> Following a ‘rudimentary review of potentially required equipment’, the Second Expert Report indicates that the approximate costs are: ECG machine, USD 2,000-3,500; portable ultrasound machine, USD 1,500-2,000; neonatal incubator USD 1,600 upwards; small mobile X-Ray machine USD 20,000-35,000. *See* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 172.

<sup>660</sup> Dr Gilmore notes, for example, that disposable equipment for uncomplicated pregnancies such as a delivery kit cost USD 18 and a perineal repair kit USD 30, other reusable equipment like episiotomy scissors USD 80-100, neonatal bag-mask resuscitator including training USD 55. Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 172 and n. 686.

<sup>661</sup> The Second Report notes that the cost for a doctor in Sayo would amount to USD 600 and for a nurse USD 200 per month. *See* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 169 and n. 669.

<sup>662</sup> Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), para. 173.

<sup>663</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 19, *see also* para. 28, noting that Mr Katanga was convicted of the charges of murder as a crime against humanity and as a war crime, attack against a civilian population as a war crime, destruction of enemy property as a war crime and pillaging as a war crime.

of the parties and the TFFV.<sup>664</sup> It concluded that the monetary value per unit of head of harm was as follows: (i) *regarding material harm*, USD 600 per house, USD 100 per outbuilding, USD 500 per furniture, USD 300 per business premises of unknown building material, USD 800 per business premises of durable material, USD 3,000 per hotel, USD 100 per wares, USD 75 per personal effects, USD 524 per average total livestock kept, USD 400 per cow, USD 50 per goat, and USD 150 per harvest/fields; (ii) *regarding physical harm*, USD 250 per bullet wound; and (iii) *regarding psychological harm*, USD 8,000 as a result of the death of a near relative, USD 4,000 as a result of the death of a distant relative, and USD 2,000 connected to the experience of the attack.<sup>665</sup>

244. In the *Lubanga* case, whose recognised victims are all also potentially eligible for reparations in the *Ntaganda* case for the harm resulting of the crimes committed against child soldiers,<sup>666</sup> having regard to the submissions of the parties, Congolese decisions with comparable values, the findings in the *Katanga* case, and the results of a sample of 473 potentially eligible victims, Trial Chamber II calculated *ex aequo et bono* the harm suffered by each victim, direct or indirect, at USD 8,000.<sup>667</sup> The CLR1 noted that as of February 2020, the anticipated costs taken into account in the *Lubanga* case to reach the above calculation remain up-to-date.<sup>668</sup> The Chamber also notes that the above conclusion as to the costs of repair the harm in the *Lubanga* case, was taken by Trial Chamber II after approving the programmatic framework for collective service-based reparations proposed by the TFFV.<sup>669</sup> The TFFV's framework for collective reparations in the *Lubanga* case was conceived as an integrated rehabilitation programme to provide relevant services to each eligible victim (direct and indirect) based on their own individual requirements. It was directed at addressing the multiple layers of needs that victims require to recover as a result of the different harms they suffered, whether psychological, physical, or socio-economic in nature.<sup>670</sup>

<sup>664</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), paras 190-239.

<sup>665</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), para. 239.

<sup>666</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 31.

<sup>667</sup> *Lubanga* Decision on the Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 259.

<sup>668</sup> CLR1 February 2020 Submissions, [ICC-01/04-02/06-2474](#), para. 63.

<sup>669</sup> Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Order approving the proposed programmatic framework for collective service-based reparations submitted by the Trust Fund for Victims, 6 April 2017, [ICC-01/04-01/06-3289](#), paras 15-16.

<sup>670</sup> TFFV, *Prosecutor v. Thomas Lubanga Dyilo*, Information regarding Collective Reparations, 13 February 2017, [ICC-01/04-01/06-3273](#), para. 83, noting that victims 'may avail themselves of multiple service based rehabilitation projects depending on their individual injury recovery requirements. For example, a victim may receive trauma counselling, participate in vocational training, and subsequently become a member of a village savings and loan association group in their home community. Or, a victim may for example receive psychosocial support, medical treatment, and participate in symbolic reconciliatory activities.'; *see also* TFFV Final

iv. *Conclusion*

245. The Chamber recalls the large scope of the case in terms of the crimes for which Mr Ntaganda was convicted and the potentially large number of victims of such crimes eligible to receive reparations. The Chamber notes that it has carefully considered the information and evidence provided by the Registry, the TFV, the Appointed Experts, and the parties, all of whom have made substantial efforts in helping the Chamber to reach accurate estimates as to the number of potentially eligible victims and the cost to repair the harms they have suffered. The Chamber also notes that the figures and assessments made by Trial Chamber II in the *Lubanga* and *Katanga* cases, related to crimes committed in Ituri during the same time-frame, are highly relevant to the Chamber's assessment of the cost to repair the harm caused by the crimes for which Mr Ntaganda was convicted.

246. Based on the above, the Chamber has concluded that thousands of victims may be eligible for reparations in the present case.<sup>671</sup> However, the Chamber is cognisant of the impossibility to predict in advance how many victims may ultimately come forward to benefit from collective reparations with individualised components during the implementation stage, particularly considering the widespread, systematic, and large-scale nature of the crimes for which Mr Ntaganda was convicted. The Chamber notes the estimation made by the Appointed Experts that at least 3,500 direct victims are potentially eligible for reparations, but that the number of indirect victims could not be ascertained by them.<sup>672</sup> The Chamber notes that a total of 2,121 victims were admitted for participation at the trial stage, including 1,837 victims of the attacks and 284 former child soldier victims.<sup>673</sup> The Registry has also reported that, in relation to the victims of the attacks, there may be at least 1,100 new potential applicants.<sup>674</sup> As of December 2020, Trial Chamber II has recognised 933 beneficiaries for reparations in the *Lubanga* case, all eligible for reparations in the *Ntaganda* case.<sup>675</sup> However, the numbers detailed above do not reflect the totality of the potential beneficiaries of reparations in the case.

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Submissions, [ICC-01/04-02/06-2635-Red](#), para. 72. *See also*, *Lubanga* Décision approuvant la mise en oeuvre des réparations collectives, [ICC-01/04-01/06-3495-Red](#), paras 117-118.

<sup>671</sup> For a similar approach, *see Lubanga* Decision on the Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 278-279, 292.

<sup>672</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), para. 29, p. 107.

<sup>673</sup> Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 9.

<sup>674</sup> Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), para. 25; Annex II, ICC-01/04-02/06-2475-Conf-Exp-AnxII; Registry's Observations on Request for information, [ICC-01/04-02/06-2627](#), paras 17-18; Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 39.

<sup>675</sup> *Lubanga* Décision approuvant la mise en oeuvre des réparations collectives, [ICC-01/04-01/06-3495-Red](#), para. 106.

It is clear that there is still a significant number of as yet unidentified potentially eligible victims, for which no reliable figures are available. In effect, estimates vary greatly and range from ‘at least approximately 1,100’ to ‘a minimum of 100,000 across all locations affected by Mr Ntaganda’s crimes’.<sup>676</sup>

247. As to the costs to repair the harm, as detailed above, the Chamber has also relied on the conservative estimates made by the TFV<sup>677</sup> and the Appointed Experts.<sup>678</sup> The Chamber has equally considered the figures and assessments made by Trial Chamber II in the context of the *Katanga*<sup>679</sup> and *Lubanga*<sup>680</sup> cases, in light of their similarities with the present case, as they relate to crimes committed in Ituri during the same time-frame, and the types and modalities of reparations envisaged by the Chamber. Nevertheless, the Chamber notes that the victims of the case suffered different kinds of harm and, in the context of collective reparations with individualised components, the cost to repair the harm for each victim may substantially differ from one to another. Having considered the Appeals Chamber’s jurisprudence,<sup>681</sup> the Chamber sets an amount that it considers fair and appropriate, in light of the circumstances of the case and bearing in mind the rights of the convicted person. The Chamber has reached its conclusion on the basis of all the information before it, at this point in time, on the basis of conservative estimates, and weighing the need for accuracy of estimates against the goal of awarding reparations without delay.<sup>682</sup> Taking all the above considerations into account, resolving uncertainties in favour of the convicted person and taking a conservative approach, the Chamber sets the total reparations award for which Mr Ntaganda is liable at USD 30,000,000 (thirty million dollars).

<sup>676</sup> CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red](#), para. 72.

<sup>677</sup> TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), paras 130-136; TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), paras 44-64.

<sup>678</sup> First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 176-177; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red2](#), paras 77, 168-169.

<sup>679</sup> *Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), paras 190-239. The Chamber notes that the monetary value assigned to the extent of the harm in the *Katanga* case has been relevant to the determination of the ‘cost to repair’ even if individual reparations were awarded in that case.

<sup>680</sup> *Lubanga* Decision on the Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 259.

<sup>681</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 237, 242.

<sup>682</sup> *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 108.

## VI. IMPLEMENTATION

### A. Procedure for the adoption of the implementation plan

248. In this Order, the Chamber has defined the harms caused to direct and indirect victims of the crimes for which Mr Ntaganda was convicted, set out the relevant criteria of eligibility, types and modalities of reparations, and the scope of Mr Ntaganda liability. Accordingly, and in line with the jurisprudence of the Appeals Chamber, the Chamber will seek the assistance of the TFV, for it to ‘design the award for reparations’ and ‘determin[e] the size and nature of the reparation awards’.<sup>683</sup>

249. In light of the above, pursuant to rule 98(3) of the Rules and regulations 54 and 69 of the Regulations of the TFV, the Chamber hereby orders the TFV to prepare a draft implementation plan and submit it for the Chamber’s approval within six months. The draft implementation plan shall clearly specify the objectives, outcomes, and activities identified as necessary in order to give effect to the present order. In particular, the TFV shall describe the reparation projects it intends to develop, indicating the details of the proposed collective awards, each of the collective projects with individualised components, and the modalities of reparations identified in this Order considered appropriate to address each of the harms. The TFV should also clearly indicate the methods of implementation, steps to be taken, direct and indirect costs, the expected amount that the TFV will use to complement the awards, and the expected timeline necessary for the projects’ development and implementation. The TFV should, to the extent possible, resort to pre-existing structures, programmes, and partners to optimise the costs of implementation of reparations.

250. As recalled above, consultations with victims should also take place for the purposes of designing and implementing reparations awards. In line with regulation 70 of the Regulations of the TFV, the Chamber instructs the TFV to consult with the victims and, where possible, with their families, on the nature of the collective awards and the methods of implementation. The TFV shall take into account their views and proposals when designing the reparation awards. The TFV shall ensure that consultations are conducted in compliance with the ‘do no harm’ principle, guarantee accessibility and meaningful participation of victims, respect for their diversity as to their particular needs and interests, including gender-

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<sup>683</sup> *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 184, 200.



specific considerations, and take into account any obstacles victims may face in coming forward and expressing their views.

251. In line with the Chamber's First Decision,<sup>684</sup> the TFV shall rely on the Registry and the LRVs, as appropriate in light of their mandate and expertise,<sup>685</sup> in order to ensure that the implementation process and consultations with victims comply with all Principles on Reparations, as established in the present Order.

252. As to the prioritisation established in this Order, the TFV is hereby instructed to submit in the shortest time possible and within three months of the issuance of the present order at the latest, an initial draft implementation plan focused exclusively on the options for addressing the most urgent needs of victims that require priority treatment, relying as much as possible on existing mechanisms, identified intermediaries, and partnerships already established.

253. The TFV is instructed to include in its draft implementation plan a detailed proposal as to the way in which it expects to conduct the administrative eligibility assessment, based on the eligibility requirements established by the Chamber in the present order. The TFV shall ensure that its proposals ensure a fair, efficient, and expeditious process, taking into consideration the Registry's capacity to assist.

#### **B. Mr Ntaganda's indigence and monitoring of his financial situation**

254. The Chamber notes that Mr Ntaganda was found indigent for the purposes of the proceedings instituted against him,<sup>686</sup> and that, according to the information provided by the Registry, no property and assets belonging to Mr Ntaganda have been identified to date.<sup>687</sup> Accordingly, the Chamber finds Mr Ntaganda indigent for the purposes of reparations.

255. Pursuant to regulation 117 of the Regulations, the Chamber requests the Presidency's assistance, with the support of the Registry, to continue exploring whether Mr Ntaganda possesses any undiscovered assets and to monitor Mr Ntaganda's financial situation on an ongoing basis in order to enforce the present Order.<sup>688</sup>

<sup>684</sup> First Decision, [ICC-01/04-02/06-2547](#), para. 25.

<sup>685</sup> Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations, 7 February 2019, [ICC-01/04-01/06-3440-Red-t-ENG](#), paras 20-21, 23.

<sup>686</sup> Annex to Enregistrement de la "Décision du Greffier sur la demande d'aide judiciaire aux frais de la Cour déposée par M. Bosco Ntaganda", 12 April 2013, [ICC-01/04-02/06-48-Anx](#).

<sup>687</sup> Registry's Report on the Financial Situation of Mr Bosco Ntaganda, 26 February 2021, ICC-01/04-02/06-2655-Conf-Exp.

<sup>688</sup> See TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 68.

256. The Chamber stresses that, pursuant to Parts IX and X of the Statute, States Parties have a duty to cooperate fully with the Court. The Chamber will consider in due course whether it needs to seek the assistance of States Parties to give effect to the present order for reparations pursuant to article 75(4) of the Statute.

257. Noting Mr Ntaganda's indigence, the Chamber encourages the TFV to complement the reparation awards to the extent possible and engage in additional fundraising efforts to the extent necessary to complement the totality of the award. Nevertheless, the Chamber acknowledges that in order to fully complement the award, substantial fundraising will need to take place. Accordingly, the Chamber stresses that, depending on the information to be provided by the TFV in its draft implementation plans, it may need to allow for phased and flexible approaches to implementation, including by allowing additional prioritisation and adjustments according to the availability of funds.<sup>689</sup>

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<sup>689</sup> See TFV Final Submissions, [ICC-01/04-02/06-2635-Red](#), para. 70.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY, UNANIMOUSLY**

**ISSUES** an Order for Reparations against Mr Ntaganda;

**ORDERS** collective reparations with individualised components to be awarded to direct and indirect victims of the crimes for which Mr Ntaganda was convicted, as specified in the present Order;

**ASSESESSES** Mr Ntaganda's liability for these reparations at USD 30,000,000;

**SETS** the deadlines for the TFV to submit its general draft implementation plan to 8 September 2021, and the deadline for the TFV to submit an urgent plan for the priority victims to 8 June 2021, at the latest;

**FINDS** Mr Ntaganda indigent for the purposes of reparations at the time of the present Order;

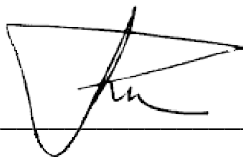
**REQUESTS** the Presidency's assistance, with the support of the Registry, to continue exploring whether Mr Ntaganda possesses any undiscovered assets and to monitor Mr Ntaganda's financial situation on an ongoing basis; and

**VACATES** the deadline for the Registry to report to the Chamber, as set out in the First Decision.

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



**Judge Chang-ho Chung, Presiding Judge**



**Judge Robert Fremr**



**Judge Olga Herrera Carbuccion**

Dated this Monday, 8 March 2021

At The Hague, The Netherlands