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TRIAL CHAMBER II

Before: Judge Chang-ho Chung, Presiding Judge
Judge Péter Kovács
Judge María del Socorro Flores Liera

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

Public

**Order for the implementation of the Judgment on the appeals against the decision of
Trial Chamber VI of 8 March 2021 entitled “Reparations Order”**

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

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Trial Chamber II of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘*Ntaganda* case’), having regard to articles 68 and 75 of the Rome Statute (‘Statute’), rules 85 to 98 of the Rules of Procedure and Evidence (‘Rules’), regulations 81, 86 to 88 of the Regulations of the Court (‘Regulations’), regulations 97 to 101, 104 to 110, and 114 to 118 of the Regulations of the Registry, issues this Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (the ‘Order’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI delivered the Reparations Order.¹ On 16 March 2021, Trial Chamber VI was dissolved and the case was assigned to Trial Chamber II.² Hereafter, both Trial Chamber VI and Trial Chamber II are referred to as the ‘Chamber’.

2. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (the ‘Appeals Judgment’).³ The Appeals Judgment remanded the matter to the Chamber, as it partially reversed the Reparations Order ‘to the extent that Trial Chamber VI failed to (i) make any appropriate determination in relation to the number of potentially eligible or actual victims of the award and/or to provide a reasoned decision in relation to its conclusion about that number; (ii) provide an appropriate calculation, or set out sufficient reasoning, for the amount of the monetary award against Mr Ntaganda; (iii) assess and rule upon victims’ applications for reparations; (iv) lay out at least the most fundamental parameters of a procedure for the Trust Fund for Victims to carry out the eligibility assessment; and (v) provide reasons in relation to the concept of transgenerational harm and the evidentiary guidance to establish such harm, the assessment of harm concerning the health centre in Sayo and the breaks in the chain of causation when establishing harm caused by the destruction of that health centre, and the presumption of physical harm for victims of the attacks.’⁴

¹ Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#).

² Presidency, Decision assigning judges to divisions and recomposing Chambers, 16 March 2021, [ICC-01/04-02/06-2663](#), p. 7.

³ Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Appeals Judgment’), 12 September 2022, [ICC-01/04-02/06-2782](#).

⁴ Appeals Judgment, [ICC-01/04-02/06-2782](#), p. 11.

II. ANALYSIS

3. At the outset, the Chamber underlines that the issues on remand, as included in the Appeals Judgment, shall be implemented in a way that ensures compliance with the principles of dignity, non-discrimination, and non-stigmatisation; a victim-centred approach; do no harm; and proportional, prompt and adequate reparations.⁵ In light of the above, the Chamber deems it appropriate to commence the process of implementation of the Appeals Judgment by issuing the following instructions:

a) Sample of victims' applications

4. The Appeals Judgment indicates that, in considering the matter of the number of beneficiaries and the amount of the award, the Chamber should take 'at least a sample of applications into account', which added 'to the other evidence that the Trial Chamber already has, or can subsequently obtain, would strengthen the basis for the award'.⁶ In what follows, the Chamber will explain its approach to the constitution of the sample using primarily the information already available on the record of the case and will elaborate on the methodology to be used to assemble the sample.

i. Sources of information to be analysed in the context of the Sample

(i) Existing victims' application for participation and 'joint forms'

5. The Chamber recalls that that 1,837 victims of the attacks – including 776 female and 1,061 male – and 284 victims of crimes against child soldiers – including 62 female and 222 male – participated in the trial proceedings.⁷ As informed by the Registry at the commencement of the reparations proceedings, only 38 of these victims have submitted a version of the application form which included a section specifically requesting reparations ('joint forms').⁸ These 38 joint forms were filed in the case record as part of the applications for participation. Fifteen of them were transmitted to the Defence during the pre-trial proceedings and the remaining to the Chamber only as part of Group A applications.⁹ A further 77 joint forms were

⁵ Reparations Order, [ICC-01/04-02/06-2659](#), paras 41-52, 89-91.

⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 346, footnote 732.

⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 22.

⁸ Registry's observations pursuant to the Single Judge's "Order for preliminary information on reparations" of 25 July 2019, ICC-01/04-02/06-2366, 5 September 2019, [ICC-01/04-02/06-2391](#), with public Annex 1, Registry Preliminary Observations on Reparations, [ICC-01/04-02/06-2391-Anx1](#) ('Registry Preliminary Observations'), para. 7.

⁹ Registry Preliminary Observations, [ICC-01/04-02/06-2391-Anx1](#), footnote 9.

submitted to the Registry but not filed in the case record, as applications for participation only were later submitted by these victims.¹⁰

6. Considering the very limited number of applications for reparations or joint forms filed in the case record, the Chamber has reviewed the content of a some applications for participation that were transmitted as part of the Group A of victims currently participating in the proceedings. The review permitted the Chamber to draw the following conclusions: (i) the applications for participation forms generally requested the victims to provide the information and documentation referred to at subparagraphs (a) to (d) and (g) of rule 94(1) of the Rules; (ii) the will of the victims to either apply or not for reparations upon conviction of the accused is also contained in the forms, the question is specifically asked and the victims have had the opportunity to express their intention; and (iii) details relating to the particulars referred to in subparagraphs (e) and (f) of rule 94(1) of the Rules have been entered into the case file by the submissions of the victims' Legal Representatives ('LRVs'), who have had numerous opportunities to file observations in relation to the types and modalities of reparations requested by their clients.

7. In light of the above, in order to avoid re-victimisation¹¹ and to proceed in the most expeditious manner possible, the Chamber considers that, when analysed together with the submissions from the LRVs, the applications for participation currently filed in the case record meet the formal requirements of applications for reparations, as much as the joint forms, allowing the Chamber to analyse and rule upon a representative sample of them.

8. In addition, the Chamber notes that the form developed by the Registry pursuant to regulation 88 of the Regulations of the Court is meant to *facilitate* the way in which victims submit their written requests for reparations pursuant to rule 94 of the Rules, but does not limit the way in which victims may request reparations and submit the relevant information. As also noted by the Chamber in its prior composition in the case of *The Prosecutor v. Germain Katanga* (the '*Katanga* case'), the forms should be used 'to the extent possible' by the victims and it should be up to the LRVs:

¹⁰ Registry Preliminary Observations, [ICC-01/04-02/06-2391-Anx1](#), footnote 9.

¹¹ In order to avoid having to ask the victims to recount their narratives, which could potentially lead to unnecessary re-traumatization, and rather rely on the previously submitted forms that already include the information they provided pertaining to the crime and the harm they suffered. For a similar approach see Registry's First Report on Reparations, 30 September 2020, [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'), para. 38.

to append to the request for reparations initially presented (whether it was filed together with a request to participate in the proceedings or in a separate form), or to the requests for participation initially presented, any supporting documentation within the meaning of rule 94(1)(g) of the rules, attesting, in particular, to the extent of the harm suffered and the causal link between the alleged harm and the crime committed'.¹²

9. As it would be explained in detail below, the Chamber will therefore rule on a limited but representative random sample of the applications in the case record after having given the LRVs the possibility to make submissions and complement the forms, in the terms referred above and to the extent possible and necessary. The Defence will be able to review the applications and supporting documentation and make submissions thereon, once the necessary redactions have been applied.

10. The Chamber notes however the current challenges in terms of access and communication with victims.¹³ In view of that, the Chamber stresses that all the victims that might be assessed as not eligible within the context of the sample exercise to be conducted by the Chamber – particularly in cases where their LRVs may not be able to locate them or to further complement their dossier within the limited timeframe that will be made available for

¹² Trial Chamber II, *The Prosecutor v. Germain Katanga*, Decision on the “Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve” and future stages of the proceedings, 8 May 2015, [ICC-01/04-01/07-3546-tENG](#), paras 16-17 [emphasis added].

¹³ See, *inter alia*, TFV’ Sixth Update Report on the Implementation of the Initial Draft Implementation Plan, ICC-01/04-02/06-2775-Conf (Public Redacted Version filed on 26 July 2022, [ICC-01/04-02/06-2775-Red](#)), 25 July 2022, paras 12-13; TFV’ Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, ICC-01/04-02/06-2767-Conf (Public Redacted Version filed on 20 July 2022, [ICC-01/04-02/06-2767-Red](#)), 24 May 2022, para. 12; Observations of the Common Legal Representative of the Former Child Soldiers on the ‘Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation, ICC-01/04-02/06-2754-Conf (Public Redacted Version filed on the same day, [ICC-01/04-02/06-2754-Red](#)), 20 May 2022, para. 20; TFV’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, ICC-01/04-02/06-2751-Conf (Public Redacted Version filed on 20 May 2022, [ICC-01/04-02/06-2751-Red](#)), 24 March 2022, para. 11; TFV’ Third Update Report on the Implementation of the Initial Draft Implementation Plan, ICC-01/04-02/06-2741-Conf (Public Redacted Version filed on the same day, [ICC-01/04-02/06-2741-Red](#)), 24 January 2022, para. 18; Response of Common Legal Representatives of the Former Child Soldiers to the Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan, ICC-01/04-02/06-2725-Conf (Public Redacted Version filed on the same day, [ICC-01/04-02/06-2725-Red](#)), 10 January 2022, para. 15, referring to TFV’ Second Update Report on the Implementation of the Initial Draft Implementation Plan”, ICC-01/04-02/062723-Conf (Public Redacted Version filed on the same day, [ICC-01/04-02/06-2723-Red](#)), 28 December 2022, paras. 8, 10; Joint Response of the Common Legal Representatives of Victims to the ‘Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan, 22 July 2021, [ICC-01/04-02/06-2694](#), para. 13, referring to TFV’ Request to Vary the Time Limit to Submit Draft Implementation Plan, 16 July 2021, [ICC-01/04-02/06-2693](#), para. 10; Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims, 23 June 2021, [ICC-01/04-02/06-2681](#), para. 25, 28; Report on TFV’ Preparation for Draft Implementation Plan, ICC-01/04-02/06-2676-Conf (Public Redacted Version filed on 14 June 2021, [ICC-01/04-02/06-2676-Red](#)), 08 June 2021, para. 40.

that purpose – will have an opportunity to supplement their dossiers and clarify their accounts at the implementation stage.¹⁴

(ii) Long and Short Forms Collected during the Mapping Exercise

11. The Chamber recalls that during the reparations proceedings it ordered the Registry to prepare a sample of ‘a limited but representative pool of beneficiaries’, in order to ‘collect updated information on the harm experienced by the victims and their current needs, so as to inform the reparations order’.¹⁵ It should be underlined that, as noted in the decision ordering the sample, the request for information on the victims’ *current needs* was directed at addressing the suggestion of the Trust Fund for Victims (‘TFV’) that ‘rather than asking the sampled victims about the types and modalities of reparations in the abstract, it may be more beneficial to ask them about their current needs and the challenges that they currently need to overcome *in relation to the harm suffered*, in line with the goals of reparations which is to be transformative’.¹⁶

12. For the purposes of completing the information on the sample and registering possible potential beneficiaries during the mapping exercise, the Chamber also invited the Registry to consult with the parties and the TFV on a proposed form specifically tailored to these purposes.¹⁷ Following the process outlined above, the Registry developed, in consultation with the parties and the TFV,¹⁸ a reparations consultation form used in the identification of new potential beneficiaries (‘long forms’) and a short version of it used to complement the information of participating victims (‘short forms’).¹⁹

13. As a result of this process, the Registry collected, *inter alia*, (i) 28 short forms of victims who participated in the trial proceedings and were considered by the Registry to fall within the scope of the conviction, including 5 former child soldiers and 23 victims of the attacks, 6 female – all victims of the attacks – and 22 male;²⁰ and (ii) 25 long forms of potential

¹⁴ In line with the Appeals Chamber similar approach in the Lubanga case, see 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’), paras 168-170.

¹⁵ First Decision on Reparations Process, 26 June 2020, [ICC-01/04-02/06-2547](#), para. 37 (‘First Decision’).

¹⁶ First Decision, [ICC-01/04-02/06-2547](#), footnote 89 [emphasis added].

¹⁷ First Decision, [ICC-01/04-02/06-2547](#), paras 35, 37.

¹⁸ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 22; see also Defence Observations on the Registry First Report on Reparations, ICC-01/04-02/06-2622-Conf (reclassified as public on 14 December 2020), [ICC-01/04-02/06-2622](#), para. 7.

¹⁹ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 38.

²⁰ Annex I to the Registry’s Second Report on Reparations, 15 January 2021, ICC-01/04-02/06-2639-Conf-AnxI (public redacted version of 10 February 2021), [ICC-01/04-02/06-2639-AnxI-Red](#) (‘Second Report’), para. 19.

new beneficiaries, including 16 women and nine men.²¹ It should be noted that this number appears to have subsequently grown, as more long forms seem to have continued to be completed in the course of the mapping exercise.²²

14. Since the forms were developed for the Registry's use in the mapping and sampling exercise, they have not been transmitted to the Chamber or the parties. However, an assessment of the template of forms used²³ permitted to reach the following conclusions: (i) the long forms requested individuals to provide all information and documentation referred to by rule 94(1) of the Rules; and (ii) the short forms allowed participating victims to provide any reparations related missing information in support of their previously submitted application forms.

15. As such, in order to avoid re-victimisation and to proceed in the most expeditious manner possible, the Chamber considers that the long forms collected during the Registry mapping exercise, that asked the victims to provide the necessary information required by rule 94 of the Rules, meet the formal requirements of applications for reparations allowing the Chamber to analyse and rule upon them as part of a sample of applications.

16. In addition, the short forms can be used to complement the dossier of the participating victims that have provided additional information in the context of the mapping exercise and can be also considered by the Chamber, in case any of these participating victims are randomly selected as part of the sample of applications to be analysed and ruled upon by the Chamber.

(iii) Victims assessed as eligible by the TFV and incorporated into the Initial Draft Implementation Plan programmes

17. The Chamber recalls that in the Reparations Order, it instructed the TFV 'to submit in the shortest time possible [...] an initial draft implementation plan focused exclusively on the options for addressing the most urgent needs of victims that require priority treatment'.²⁴ The Chamber notes that the Initial Draft Implementation Plan (the 'IDIP'),²⁵ was approved subject

²¹ Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), paras 39, 41, 44.

²² Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 58. See, e.g., TFV referring to 53 potential new beneficiaries identified during the mapping exercise, Public redacted version of the Annex A to "Trust Fund for Victims' submission of Draft Implementation Plan", ICC-01/04-02/06-2732, dated 17 December 2021, filed on 25 January 2022, [ICC-01/04-02/06-2732-AnxA-Red](#), para. 276.

²³ Long Form, Confidential Annex II to the Registry's First Report on Reparations, 1 October 2020, ICC-01/04-02/06-2602-Conf-AnxII; Short Form, Confidential Annex III to the Registry's First Report on Reparations, 1 October 2020, ICC-01/04-02/06-2602-Conf-AnxIII.

²⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 252.

²⁵ Report on Trust Fund's Preparation for Draft Implementation Plan (notified on 9 June 2021), ICC-01/04-02/06-2676-Conf, with Annex A, Initial Draft Implementation Plan with focus on Priority Victims, ICC-01/04-02/06-2676-Conf-AnxA (a corrigendum was filed on 14 June 2021 and a public redacted version of the cover filing and annex were filed on 15 June 2021, [ICC-01/04-02/06-2676-Red](#) and [ICC-01/04-02/06-2676-AnxA-Corr-Red](#)) (the 'IDIP').

to certain amendments,²⁶ is now fully operational and has not been affected by the Appeals Judgment.²⁷

18. In addition, the Chamber underlines that, as the conviction of Mr Ntaganda has been confirmed on appeal,²⁸ his liability to repair the harm caused to the victims of the crimes for which he was convicted is under no discussion. In effect, although the Appeals Judgment, *inter alia*, reversed ‘the part of the Impugned Decision setting the amount of the award’,²⁹ it found no error ‘for the Trial Chamber “to hold [Mr Ntaganda] liable for the full amount necessary to repair the harm” caused by the crimes of which he was convicted’.³⁰ The Chamber indeed recalls, as stressed elsewhere by the Appeals Chamber, ‘the overriding importance of delivering reparations to victims following the Trial Chamber’s decision on conviction and in circumstances in which that decision is final’.³¹ The Chamber also reiterates the Appeals Chamber’s consideration that, taking into account ‘the context of these reparations proceedings, which are taking place nearly two decades after the commission of the crimes of which Mr Ntaganda has been convicted [...] the need to repair the harm suffered by the victims of these crimes as expeditiously as possible is a relevant consideration’.³²

19. Notwithstanding the above, the Chamber shall ensure that all issues on remand for which the Appeals Chamber found errors in the Reparations Order, are also addressed in the IDIP context. Similarly, the Chamber shall take all measures to guarantee that ‘the reparation process proceeds as expeditiously as possible and is conducted with full respect for the rights of both the victims and the Defence.’³³ The Chamber recalls that, according to the latest information provided by the TFV, to date 69 victims have been considered eligible and referred for intake within the context of the IDIP, 24 former child soldiers and 45 victims of the attacks.³⁴ On this point, the Chamber notes that the Appeals Chamber found an error in the lack

²⁶ Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#) (‘Decision on the IDIP’).

²⁷ The Chamber deems necessary to provide this clarification in light of a recent filing from the Defence of Mr Ntaganda, Observations on behalf of the convicted person on the Trust Fund for Victims’ Seventh Update Report on the Implementation of the Initial Draft Implementation Plan, 7 October 2022, ICC-01/04-02/06-2785-Conf, paras 4-6.

²⁸ Appeals Chamber, Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, 30 March 2021, [ICC-01/04-02/06-2666-Red](#).

²⁹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 265.

³⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 271.

³¹ Appeals Chamber, Decision on the Defence request for suspensive effect, 2 July 2021, [ICC-01/04-02/06-2691](#), para. 21.

³² Decision on the Defence request for suspensive effect, [ICC-01/04-02/06-2691](#), para. 25.

³³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 758.

³⁴ Trust Fund for Victims’ Seventh Update Report on the Implementation of the Initial Draft Implementation Plan, 26 September 2022, ICC-01/04-02/06-2783-Conf (public redacted version filed on 25 October 2022, ICC-01/04-02/06-2783-Red), para. 21.

of judicial approval of the outcome of the TFV's administrative screening that finds victims eligible to benefit from reparations,³⁵ which the Chamber considers should be also addressed in the IDIP context.

20. In light of all the considerations above, the Chamber considers appropriate to include within the sample of applications to be assessed and ruled upon by the Chamber, all 69 victims applications and additional information and/or supporting documentation submitted by the victims that have so far been found eligible to benefit from the IDIP by the TFV. The TFV is therefore instructed to inform the VPRS about the identity of all 69 victims found to be eligible for the IDIP's purposes, and transmit all information and additional documentation available in relation to those victims to the VPRS, for it to assemble the relevant victims' dossiers and transmit them to the Chamber and the parties as part of the sample to be ruled upon.

21. The Chamber however underlines that all considerations taken into account when establishing the IDIP,³⁶ as an interim and emergency measure aimed at addressing the most urgent needs of the vulnerable victims requiring urgent assistance pending the development and implementation of the full Draft Implementation Plan, continue to be in full force. In view of the above, the Chamber stresses that, unless otherwise decided by the Chamber, the 69 victims referred above should continue to benefit from the IDIP programmes.

ii. Methodology for the selection of the remaining individuals to be included in the sample

(i) *Universe of Victims from where the remaining part of the sample will be extracted*

22. The Chamber recalls that, within the context of the mapping exercise, which had as one of its main purposes estimating the total number of potential beneficiaries of reparations, the sample of potential beneficiaries that the Chamber ordered the Registry to assemble at the time, included: (i) victims who participated in the trial proceedings and fall within the scope of the Judgment; (ii) victims who were also eligible for reparations in *The Prosecutor v. Thomas Lubanga Dyilo* case ('the Lubanga case'); and (iii) potential new identified beneficiaries.³⁷

23. Regarding the first group, the Chamber recalls that it referred only to participating victims that 'fall within the scope of the Judgment', since it was to be made in combination with the Chamber's instruction for the Registry to also carry out an assessment of the number of the participating victims that would still be potentially eligible for reparations given the

³⁵ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 387.

³⁶ Decision on the IDIP, [ICC-01/04-02/06-2696](#), paras 5-9.

³⁷ First Decision, [ICC-01/04-02/06-2547](#), para. 38.

scope of the conviction.³⁸ The Registry estimated that approximately 1,460 victims remained eligible for reparations.³⁹ However, the Chamber notes⁴⁰ that this calculation was an estimate and not a determination of eligibility, as the Chamber had projected that all eligibility determinations were to be conducted by the TFV during the implementation stage.⁴¹ This was made again clear by the Chamber when it ruled on the IDIP and instructed the TFV to focus first on the ‘priority victims in urgent need that participated in the trial proceedings’,⁴² without limiting it to the victims that the Registry had estimated as remaining within the scope of the conviction. Accordingly, as the Chamber is now required to rule on at least a sample of applications, it underscores that, in addition to the IDIP’s victims that will be necessarily included in the sample in accordance with the previous section, the remaining victims to be randomly included in the sample should be extracted from a universe that includes the totality of the victims that participated in the trial proceedings, without excluding the victims estimated not to be eligible by the Registry.

24. Regarding the second group previously included in the sample, taking into account that in the *Lubanga* case the relevant Chamber already ruled on a sample of applications, this Chamber does not consider it necessary to rule again on a sample of the applications of the same victims in this case, as it can rely on the assessments and findings already made in the *Lubanga* case, as required. Accordingly, individuals that qualify as victims in both, the *Lubanga* and the *Ntaganda* cases, shall not be included in the universe from where the randomised sample to be assembled by the Registry will be extracted. However, the Chamber stresses that all child soldier victims participating in the *Ntaganda* case that *do not* qualify as victims in the *Lubanga* case should be included in the universe of participating victims from where the remaining of the sample should be extracted, particularly the victims of sexual and gender based crimes.

25. Lastly, regarding the third group included in the previous sample, in order to proceed in the more expeditious manner possible while optimising the use of the information already

³⁸ Order setting deadlines in relation to reparations, 5 December 2019, [ICC-01/04-02/06-2447](#) (‘December 2019 Order’), para. 9(a)(ii).

³⁹ Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 9.

⁴⁰ In light of the submissions made by CLR2, *see* Public Redacted Version of the “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), 12 February 2021, [ICC-01/04-02/06-2642-Red](#), , paras 15-25; Public Redacted Version of the “Final Observations on Reparations of the Common Legal Representative of the Victims of the Attacks” (ICC-01/04-02/06-2633-Conf), 21 December 2020, [ICC-01/04-02/06-2633-Red](#), paras 109-110.

⁴¹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 253.

⁴² Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 29.

collected and avoid re-victimisation, the Chamber considers that the non-participating victims who have already submitted long forms to the Registry in the context of the mapping exercise, shall be considered as part of the universe from where the remaining of the present sample should be extracted. However, the Chamber underlines that the Registry is not expected to collect new applications for reparations and only the long forms already collected should be included in the universe of victims from where the randomised part of the sample will be extracted by the Registry.

26. In conclusion, the universe of victims on the basis of which the Registry will be expected to randomly extract the remaining of the sample of victims applications to be assessed and ruled upon by the Chamber (the ‘universe of victims’), should be comprised of: (i) all victims who participated in the trial proceedings, including those found not to be eligible by the Registry, but excluding the individuals who also qualify as victims in the *Lubanga* case and all 69 victims already found eligible for the IDIP purposes, as the later will be necessarily assessed and not randomly selected; and ii) all non-participating victims who have already submitted long forms to the Registry within the context of the mapping exercise.

(ii) Criteria for the selection of the remaining victims to be included in the sample

27. The Chamber recalls that the Appeals Judgment indicates that the sample ‘must be a representative one’.⁴³ In order to ensure that the sample of applications is sufficiently representative, the Chamber considers that, in addition to the victims found to be eligible for the purposes of the IDIP by the TFV, the Registry should randomly select further victims’ applications from the universe of victims referred above. In order to determine the methodology under which the remaining victims will be selected, the Chamber has considered the criteria applied in the Court’s previous cases, other national and international jurisdictions, and that used by the Registry when compiling the previous sample, as described below.

28. Regarding the Court’s previous cases, the Chamber notes that the system of ruling upon a sample of applications was applied in the *Lubanga* case.⁴⁴ In the *Lubanga* case, the representativeness of the individual applications included in the sample was not informed by particular criteria, but rather, by the number of applications received.⁴⁵ After conducting a

⁴³ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 10, 341.

⁴⁴ The Chamber recalls that in the Katanga case, the relevant Chamber ruled upon all 341 applications received, due to the limited nature of that case, *see* Trial Chamber II, *The Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute, [ICC-01/04-01/07-3728-t-ENG](#), 24 March 2017, para. 168.

⁴⁵ *See* Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Order instructing the Registry to provide aid and assistance to the Legal Representatives and the Trust Fund for Victims to identify victims potentially eligible for reparations, 15 July 2016, [ICC-01/04-01/06-3218-t-ENG](#), para. 8; Order relating to the request of the Office of

process of identification, Trial Chamber II as composed at the time, decided that the figure of 473 dossiers of potential victims it had received was sufficiently representative of all of the victims who suffered harm as a consequence of the crimes of which Mr Lubanga was convicted,⁴⁶ and ruled upon them. It should also be noted that, in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII stated that it had ‘received only 139 applications during the reparations phase, despite determining that collective harm was suffered across Timbuktu (a city of approximately 70,000 people around the time of the attack)’.⁴⁷ Without ruling on those applications, Trial Chamber VIII considered them all freely, as part of the evidence relevant for the assessment of harm and the types and modalities of reparations granted in the case.⁴⁸

29. In the context of mass claims under other international and national mechanisms, the United Nations Compensation Commission (‘UNCC’)⁴⁹ made use of the sampling methodology to process claims and pay compensation in the context of the Iraq invasion. The UNCC determined that in situations involving mass claims it is permissible, in the interest of effective justice, to apply methodologies and procedures which provide for an examination and determination of a representative sample.⁵⁰ In this context, samples were extracted from different groups of claims,⁵¹ with the size of the sample depending, *inter alia*, on the number of claims in a particular group.⁵² Similarly, in the United States, in the context of a class action

Public Counsel for Victims of 16 September 2016, 21 October 2016, [ICC-01/04-01/06-3252-t-ENG](#), para. 15; Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo, 22 February 2017, [ICC-01/04-01/06-3275-t-ENG](#), para. 12.

⁴⁶ Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Corrected version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, 21 December 2017, [ICC-01/04-01/06-3379-Red-Corr-t-ENG](#), para. 36; *see also* Decision on the Motion of the Office of Public Counsel for Victims for Reconsideration of the Decision of 6 April 2017, [ICC-01/04-01/06-3338-t-ENG](#), 13 July 2017, para. 10.

⁴⁷ Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, [ICC-01/12-01/15-236](#), 17 August 2017 (‘*Al Mahdi* Reparations Order’), para. 141.

⁴⁸ *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 57-59.

⁴⁹ UNCC was set up to process claims and pay compensation for losses and damage suffered as a direct result of Iraq’s unlawful invasion and occupation of Kuwait in 1990-1991. UNCC, Report and Recommendations made by the Panel of Commissioners concerning the first instalment of claims for departure from Iraq or Kuwait (Category ‘A’ claims), [S/AC.26/1994/2](#), 21 October 1994, p. 4.

⁵⁰ UNCC, Report and Recommendations made by the Panel of Commissioners concerning the fourth instalment of claims for departure from Iraq or Kuwait (Category ‘A’ claims), [S/AC.26/1995/4](#), 12 October 1995, p. 9.

⁵¹ In general terms, the approach relied on computerised support and entailed 1) the categorization and grouping of claims presenting similar factual and legal issues; 2) the individualized review of only sample claims from the relevant groupings; 3) the analysis of statistical data regarding the claims; 4) the extrapolation of findings with respect to sample claims to the non-sampled claims, and additional verification of individual claims only when necessary. UNCC, Report And Recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US\$100,000 (Category “C” Claims) (‘UNCC Report Category C Claims’), [S/AC.26/1994/3](#), 21 December 1994, p. 44.

⁵² UNCC Report Category C Claims, [S/AC.26/1994/3](#), p. 46.

case against the Estate of Ferdinand Marcos for damages resulting for human-rights abuses, a sample of 137 claims was randomly selected by computer from a total of 9,541 claims divided in subcategories based on the crimes suffered, and the results were found to be representative of the damages suffered by the entire class.⁵³

30. In the context of the preparation of the previous sample for the mapping exercise in this case, the Registry proposed and discussed with the parties the criteria and methodology to be used.⁵⁴ The methodology applied was informed by basic presumptions arising from the analysis of the information contained in all applications forms and the results of the VPRS's preliminary mapping exercise.⁵⁵ These basic presumptions allowed the Registry to determine the criteria for the selection of the victims to be included in the sample, which was meant to ensure that it captured the variety of harm and needs of the victims, while remaining limited in size and practical.⁵⁶ In preparing the sample matrix, the Registry opted for a stratified random sample method, based on crime location and crime type.⁵⁷ Different stratum were used for each

⁵³ The use of statistical sample of the class claims in determining compensatory damages was considered justified by the extraordinary unusual nature of the case, because the time and judicial resources required to rule on all claims would make the resolution of the case impossible. *See*, US District Court for the District of Hawaii, In Re Estate of Marcos Human Rights Litigation, 910 F. Supp. 1460 (D. Haw. 1995), No. MDL 840, 30 November 1995; US Court of Appeals, Ninth Circuit, *Maximo HILAO, Class Plaintiffs, Plaintiff-Appellee, v. ESTATE OF Ferdinand MARCOS, Defendant-Appellant*, No. 95-15779, 17 December 1996.

⁵⁴ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 22.

⁵⁵ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 25. The basic presumptions were as follows: (i) There are victims of each of the crimes confirmed in the Judgment; (ii) The majority of victims are between 17 and 54 years old; (iii) To date, more men than women have come forward as former child soldiers and as victims of the attacks; (iv) The harm reported in the application forms collected by the Registry and the LRVs between 2013 and 2017 may have evolved and may not fully reflect the current situation of victims to date; (v) There are victims residing in refugee or internally displaced persons camps in- and outside the DRC; (vi) Groups of victims may have been displaced since the Registry conducted its preliminary mapping exercise due to a recent uptick in violence; (vii) The majority of victims are extremely poor and do not occupy positions of influence within their communities save some exceptions; (viii) There is an ethnic component that has to be taken into consideration when measuring the harm: although the majority of victims of the attacks targeted by UPC were Lendu, there are also Hema victims and other victim groups, such as Ngiti, Alur and Nyali, who suffered harm and lost property. These Hema and other victim groups may have been targeted for having helped the Lendu or for being in mixed marriages. In the case of former child soldiers, Hema children were treated differently from children from the Alur group, with the latter group having fewer options to prevent having their children forcibly conscripted; (ix) There are victims whose advanced age and/or health conditions impair their mobility and living standards. This places them in an extremely vulnerable situation as this also impedes access to information and the possibility to undertake any income-generating activities; and (x) The current situation of conflict in Ituri and the COVID-19 pandemic result in a highly complex and dynamic environment with multiple risks materializing often at short notice.

⁵⁶ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 26. The criteria for the selection of victims included (i) Victims from each crime location confirmed in the Judgment; (ii) Victims of every crime type confirmed in the Judgment; (iii) Victims of every type of reported harm; (iv) Gender parity to the extent possible; (v) Victims from ages 17 to 32, 33 to 55, and 55+ (in separate age groups); and (vi) Representatives from the following groups of victims in a context of vulnerability, including but not limited to: i. Victims of rape and sexual slavery; ii. Former child soldiers; iii. Victims with psychological injuries, physical disability, terminal illness or chronic health conditions (such as hyper-tension, type II diabetes, HIV) traceable to the crimes; iv. Elderly (over 60), with restricted capacity of movement and opportunities to generate income; and v. Internally displaced or migrants.

⁵⁷ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 28. See in the same paragraph the Registry's elaboration on the reasons why it opted for a simplified random sample method.

category of victims depending on the information available.⁵⁸ The matrix was further refined following consultation with the LRVs, to increase the representativeness of the sample.⁵⁹

31. The LRVs did not have observations on Registry's methodology and matrix sample,⁶⁰ however the Defence took issue with i) the relative weight the 'basic presumptions' were attributed in the preparation of the sample, in light of the adoption by the Registry of the stratified random sample methodology; ii) the use of 'vulnerability' as a *stratum*, casting doubt on the genuine representativeness of the sample; and iii) its lack of access to the victims' applications, rendering it unable to ensure that the alleged harms suffered by the victims were related to the crimes for which Mr Ntaganda was convicted.⁶¹

32. The Chamber further notes that, based on the stratified random sample methodology referred above and all the identified strata, the Registry estimated that the total number of potential beneficiaries to be included in the sampling exercise would be approximately 80-100.⁶² However, the Registry faced significant limitations in terms of access and communication with victims, in light of restrictions associated with Covid-19 and the security situation in the field.⁶³ As a result, the Registry sample only included 28 short forms of victims who participated in the trial⁶⁴ and 25 long forms of potential new beneficiaries.⁶⁵ The challenges described above appear to continue to be relevant, as the TFV and the LRV have continued to report serious difficulties in accessing and contacting victims.⁶⁶

33. In light of all considerations above, particularly taking into account the objections from the Defence and the continuous challenges in terms of access and communication with victims, the Chamber considers that the current sample shall not be assembled considering all the different strata previously identified by the Registry. Instead, for the purposes of the current

⁵⁸ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), paras 29-37.

⁵⁹ First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 34.

⁶⁰ 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 (Public Redacted Version filed on 18 November 2020, [ICC-01/04-02/06-2620-Red](#)), 30 October 2020, para. 27; 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](#), 30 October 2020.

⁶¹ Defence Observations on the Registry First Report on Reparations, [ICC-01/04-02/06-2622](#), 30 October 2022, paras 60-74.

⁶² First Report, [ICC-01/04-02/06-2602-AnxI-Red](#), para. 27 and footnote 48, noting that 'many potential beneficiaries may be unavailable due to displacement, death, or broken lines of communication. Therefore, the VPRS included in its proposed sample as many examples as possible (within the given criteria) so as to account for this reality.'

⁶³ Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 58.

⁶⁴ Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 19.

⁶⁵ Second Report, [ICC-01/04-02/06-2639-AnxI-Red](#), paras 39, 41, 44.

⁶⁶ See footnote 13 above.

sample, the universe of victims⁶⁷ should be divided in two groups only, namely (i) victims of the attacks; and (ii) victims of crimes against child soldiers. After categorising the universe of victims between these two groups, the Registry shall prepare the sample on the basis of a simple random sampling method, selecting the remaining victims to be included in the sample at random, within each of the two categories.⁶⁸ In the current circumstances, the Chamber considers that using a simple random sampling method within the two main categories of victims in the case will ensure sufficient objectivity and statistical representativeness through the random and unbiased selection of individuals that will be part of the sample,⁶⁹ while ensuring that the proceedings are expeditious.

34. Accordingly, the Chamber decides to adopt the following approach on the constitution of the sample of victims applications to be assessed and ruled upon by the Chamber:

a. The Registry, through the VPRS, in its role as neutral organ of the Court, is entrusted to independently extract from the universe of victims divided only in the two categories above mentioned a simple random sample of victims whose applications and/or long forms and supporting documentation will be analysed and ruled upon by the Chamber, together with the applications and supporting documentation of the 69 victims that have so far been found eligible to benefit from the IDIP by the TFV;

⁶⁷ Which as noted above includes (i) all victims who participated in the trial proceedings, including those found not to be eligible by the Registry, but excluding the individuals who also qualify as victims in the *Lubanga* case and all 69 victims already found eligible for the IDIP purposes, as the later will be necessarily assessed and not randomly selected; and ii) all non-participating victims who have already submitted long forms to the Registry within the context of the mapping exercise.

⁶⁸ The Chamber notes that, in the *simple random sampling*, all individuals of the population have the equal and random chances to be selected as part of the sample in order to extract global and accurate conclusions about the features, needs or demands of the whole population or universe analysed. In the *stratified sampling*, the universe or whole population is partitioned in advance according to pre-established and heterogeneous features called strata. Once in each partition or strata, each member or individual has equal or random chances to be selected as a reference for giving to the whole strata its characteristics. After the universe has been categorized, each stratum is then independently sampled using either a simple random sample or a systematic sample. See J. W. Creswell, *Research design: qualitative, quantitative, and mixed methods approaches*. Fourth edition, international student edn. Los Angeles, Calif.: SAGE (2014), pp. 204-205; K. V. Jawale, 'Methods of Sampling Design in the Legal Research: Advantages and Disadvantages' in *Online International Interdisciplinary Research Journal II* (2012), pp. 185-186; G.T. Henry, Sampling techniques, in: 'Practical Sampling' in Newbury Park: Sage Publications (ed.), *21 Applied Social Research Methods Series (1990)*, pp. 2, 5-7; K. H. Smith, 'External Validity: Representativeness and Projectability in the Probative Value of Sample Surveys' in *35 Wayne Law Review* (1993), pp. 1488,1491; S. K. Thompson, 'Sampling' in Hoboken in N.J. John Wiley & Sons (ed.) (2012), pp. 11, 141.

⁶⁹ In effect, simple random sampling 'eliminates subjective bias in the selection process [...] Random does not mean arbitrary or haphazard. Random selection is a very careful, specific procedure that insures that the selection of each unit in the sample is independent of the selection of any other unit.' See K. H. Smith, 'External Validity: Representativeness and Projectability in the Probative Value of Sample Surveys' in *Wayne Law Review* 35 (1993), pp. 1488-1489.

- b. The appropriate sample size,⁷⁰ in the current circumstances, is 5% of the total universe of victims, in addition to the 69 victims found eligible by the TFV for the IDIP's purposes. Accordingly, the Registry should randomly select from the total universe of victims a 5% of the victims of the attacks and a 5% of the victims of crimes against child soldiers;
- c. Within ten days of the notification of the present Order, the TFV should inform the VPRS about the identity of all 69 victims found to be eligible for the IDIP's purposes, and transmit to the VPRS all information and documentation available in relation to those victims, for the VPRS to assemble the relevant dossiers of those victims to be transmitted as part of the sample;
- d. The list of individuals to be included in the sample should be compiled by the VPRS within fourteen days of the notification of the present Order and be transmitted to the Chamber only, in the first instance, including all details compiled in relation to those victims by the Registry in their databases;
- e. Within the same fourteen days of notification of the present Order, the parties, the VPRS, the OPCV, and the TFV can make submissions, if any, on the procedure for the constitution of the sample, as established by the Chamber in this Order;
- f. Once the list of individuals to be included in the sample is approved by the Chamber, the VPRS shall implement redactions to the victims' applications, long and/or short forms, if selected, and all supporting documentation ('victims' dossiers'), in accordance with the procedure outlined in the section below, and should transmit the redacted victims' dossiers to the parties, within thirty days of the approval of the list, at the latest;
- g. The LRVs will then have thirty days to make submissions and complement the victims' dossiers, appending any additional supporting documentation within the meaning of rule 94(1)(g) of the Rules, attesting in particular the extent of the harm suffered and the causal link between the alleged harm and the crime committed, to the extent possible and necessary;
- h. As to the 69 victims found eligible for the IDIP purposes by the TFV, their LRVs will also have thirty days to make submissions and complement their, in the way referred above. In

⁷⁰ The Chamber notes that there is no sample size that can fully ensure representativeness, and the size of the sample has been estimated in this case considering a number of factors including, among others, a tolerable margin of error regarding the global expected results. *See, inter alia*, J. W. Creswell, *Research design: qualitative, quantitative, and mixed methods approaches*. Fourth edition, International student edn. Los Angeles, Calif.: SAGE (2014). pp. 204-205; G.T. Henry, Sample size, in 'Practical Sampling' in Newbury Park: Sage Publications (ed.), 21 Applied Social Research Methods Series (1990), p. 2; K. H. Smith, 'External Validity: Representativeness and Projectability in the Probative Value of Sample Surveys' in *Wayne Law Review* 35 (1993), pp. 1484-1488; S. K. Thompson, 'Sampling' in Hoboken in N.J. John Wiley & Sons (ed.) (2012), pp. 53-56.

addition to that, within the same timeframe, the TFV shall also provide the Chamber with any relevant information or documentation taken into account when reaching the administrative decision on the victims' eligibility for the IDIP purposes;

i. In case any of the non-participating victims that submitted long forms are randomly selected as part of the sample, the OPCV, through the LRVs currently representing participating victims,⁷¹ or through a third counsel if the OPCV considers it necessary, shall provide support and assistance to the victims, making submissions on their behalf and assisting them in completing their dossiers, by appending any additional supporting documentation within the meaning of rule 94(1)(g) of the Rules, attesting in particular the extent of the harm suffered and the causal link between the alleged harm and the crime committed, to the extent possible and necessary; and

j. Afterwards, the Defence will have thirty days to make submissions on the victims' dossiers, before the Chamber rules on the sample of applications.

iii. Redactions

35. The Chamber notes that the Appeals Judgment clearly indicates that 'in granting the Defence access to the victims' applications, the necessary redactions shall be made to protect the victims' safety, physical and psychological wellbeing, dignity and privacy, pursuant to article 68 of the Statute'.⁷² In light of the above, and in accordance with the redactions protocol adopted in the case,⁷³ with a view to safeguard the rights of the Defence while providing for an appropriate measure of protection for the victims, as set forth in article 68(1) of the Statute, the Registry is instructed to redact any identifying information from the victims' dossiers before transmitting them to the parties, in accordance with paragraph 34(f) above.

36. The Chamber notes, however, that any information relating to the description of the harm suffered, the events that caused the harm, and the link between such harm and the crimes of which Mr Ntaganda has been convicted, should not be redacted, except for information that might reveal the identities of victims, current residence or other contact information that may be used to locate the victims.⁷⁴ Should there be any issues related to redactions, the parties and

⁷¹ In line with the Chamber's previous orders, *see* Decision on the IDIP, [ICC-01/04-02/06-2696](#), paras 40-41.

⁷² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 689. *See also* Lubanga Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), paras 249-254, 256.

⁷³ Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Decision Establishing Principles on the Victims' Application Process, [ICC-01/04-02/06-67](#), 28 May 2013, paras 42-43.

⁷⁴ For a similar approach, *see* Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo, 22 February 2017, [ICC-01/04-01/06-3275-tENG](#), paras 14, 18.

the Registry are instructed to bring it to the Chamber's attention at the time they make their submissions on the procedure for the sample in accordance with paragraph 34(e) above, upon which the Chamber will rule.

b) Additional information and submissions to be provided to the Chamber

i. Issues related to the estimation of the amount of the monetary award

37. The Chamber notes that the Appeals Judgment, *inter alia*, reversed 'the part of the Impugned Decision setting the amount of the award' and remanded the matter for the Chamber to 'assess and explain fully what the appropriate award for reparations should be in the present case, taking into account all known circumstances at the date of that assessment.'⁷⁵

38. The Chamber recalls the direct relationship between the *Lubanga* and the *Ntaganda* cases, as noted in the Reparations Order.⁷⁶ The Chamber further notes that, after the issuance of the Reparations Order, the implementation of the reparations programme in the *Lubanga* case commenced, with the ongoing integration of beneficiaries.⁷⁷ In light of the above, the Chamber considers it necessary to obtain updated information from the TFV as to the actual costs of running the rehabilitation programmes approved in the *Lubanga* case, in particular regarding the number of victims that can be included in the programmes, the types of services that the different categories of victims require, the overall costs per year, and any other relevant information for the estimation of the amount of the monetary award in this case.

ii. Issues related to transgenerational harm

39. The Chamber notes that the Appeals Judgment reversed, *inter alia*, the findings in the Reparations Order related to transgenerational harm and remanded the matter to the Chamber 'for it to assess and properly reason the matter based on submissions sought from the parties and having assessed the credibility and reliability of the expert evidence on the record and addressed the issue of evidentiary guidance on this issue.'⁷⁸

40. The Chamber considers it necessary to obtain further submissions and information for the parties and participants, including the VPRS, the TFV and, if available, the Appointed Experts, on the following issues⁷⁹: (i) the scientific basis for the concept of transgenerational

⁷⁵ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 265.

⁷⁶ Reparations Order, [ICC-01/04-02/06-2659](#), *inter alia*, paras 235, 244, 245.

⁷⁷ See, *inter alia*, Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Public Redacted version of Ninth Decision on the TFV's administrative decisions on applications for reparations and additional matters, 17 June 2022, ICC-01/04-01/06-3536-Conf, 22 September 2022, [ICC-01/04-01/06-3536-Red](#).

⁷⁸ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 493.

⁷⁹ In line with the indications of the Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 495.

harm; (ii) the evidence needed to establish it; (iii) what the evidentiary requirements are for an applicant to prove this type of harm; (iv) the need, if any, for a psychological examination of applicants and parents; (v) the need, if any, to exercise caution in assessing applications based on transgenerational harm; and (vi) whether Mr Ntaganda is liable to repair such harm in the specific context of the crimes of which he has been convicted, taking into consideration the impact, if any, that the protracted armed conflict in the DRC may have on the assessment as to whether the trauma associated with transgenerational harm was caused by Mr Ntaganda.

iii. Issues related to the Sayo health centre

41. The Chamber notes that the Appeals Judgment reversed, *inter alia*, the Reparations Order's findings in relation to the health centre in Sayo and remanded the matter for Chamber 'to address the matter again, taking into account submissions by the parties, addressing the issue of disclosure to the Defence of relevant information, and addressing the overall liability of the Mr Ntaganda for repair in this respect.'⁸⁰

42. The Chamber considers it necessary to receive further submissions and possible evidence, for all parties and participants, including the Office of the Prosecutor, the DRC Government and, if available, the Appointed Experts. The submissions and evidence should refer specifically to the issue of the actual damage and any harm caused to the health centre in Sayo, the individual victims, and the community as a whole for loss of adequate healthcare provision, and the causal nexus between any harm and the crime of intentionally directing attacks against protected objects, namely the health centre in Sayo, for which Mr Ntaganda was convicted.

43. In order to give full effect to the principle of publicity of the reparations proceedings and considering the Appeals Judgment findings, the Appointed Experts, if available, are also instructed to review the redactions to their Reports and additional information, indicating whether lesser redacted versions of the confidential and public redacted versions can be filed or justify the need to maintain their current classification.

⁸⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 549.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

INSTRUCTS the TFV to inform the VPRS the identity of all 69 victims found to be eligible for the IDIP's purposes and transmit to the VPRS all information and documentation available in relation to those victims, within ten days of the notification of the present Order;

INSTRUCTS the Registry, through the VPRS, to extract from the universe of victims a simple random sample equivalent to a 5% of the victims of the attacks and a 5% of the victims of crimes against child soldiers, in accordance with the criteria and methodology as detailed in the present Order;

INSTRUCTS the VPRS to transmit to the Chamber only, the list of individuals to be included in the sample and all details compiled in relation to those victims by the Registry in their databases, within fourteen days of the notification of the present Order;

INSTRUCTS the parties, the VPRS, the OPCV, and TFV to make submissions, if any, on the procedure for the constitution of the sample established by the Order, within fourteen days of the notification of the present Order;


INSTRUCTS the TFV to provide updated information as to the actual costs of running the rehabilitation programmes approved in the *Lubanga* case and all other relevant information, as detailed to in paragraph 38 above, within sixty days of the notification of the present Order;

INSTRUCTS the parties and participants, including the VPRS, the TFV, and, if available, the Appointed Experts, to provide further submissions and information on the issues related to transgenerational harm, as detailed to in paragraph 40 above, within sixty days of the notification of the present Order;

INSTRUCTS all parties and participants, including the Office of the Prosecutor, the DRC Government and, if available, the Appointed Experts, to provide further submissions and possible evidence, on the issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo, as detailed to in paragraph 42 above, within sixty days of the notification of the present Order; and

INSTRUCTS the Appointed Experts, if available, to review the redactions to their Reports and additional information, as detailed to in paragraph 43 above, within sixty days of the notification of the present Order.

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



Judge Chang-ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated this Tuesday, 25 October 2022

At The Hague, The Netherlands