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TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN*

Public

Decision on the Registry Additional Information on Victims

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Colin Black

Counsel for the Defence

Mr Charles Achaleke Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Legal Representatives of Applicants

**Unrepresented Applicants for
Participation/Reparation**

Unrepresented Victims

The Office of Public Counsel for the Defence

**The Office of Public Counsel for
Victim**

Ms Paolina Massidda
Mr Orchlon Narantsetseg
Ms Adeline Bedoucha
Mr Walter Komakech

Trust Fund for Victims

Ms Franziska Eckelmans

States Representatives

REGISTRY

Registrar

Mr Peter Lewis

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Victims and Witnesses Unit

Mr Nigel Verrill

Trial Chamber IX of the International Criminal Court (the ‘ICC’ or the ‘Court’), in the case of *The Prosecutor v. Dominic Ongwen* (the ‘Ongwen case’), having regard to articles 68 and 75 of the Rome Statute (‘Statute’), rules 94, 97(1) and 98 of the Rules of Procedure and Evidence (‘Rules’), issues the following Decision on the Registry Additional Information on Victims (‘Decision’).

I. PROCEDURAL HISTORY

1. On 12 September 2022, in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), the Appeals Chamber issued a Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (the ‘Ntaganda Appeals Judgment’).¹ The *Ntaganda Appeals Judgment* remanded the matter to Trial Chamber II, as it partially reversed the Reparations Order to the extent that Trial Chamber VI failed to, *inter alia*, (i) ‘make any appropriate determination in relation to the number of potentially eligible or actual victims of the award’; (ii) ‘assess and rule upon victims’ applications for reparations’; and (iii) ‘provide reasons in relation to the concept of transgenerational harm and the evidentiary guidance to establish such harm’.²

2. On 27 September 2022, the Office of the Public Counsel for Victims (‘OPCV’) and the Legal Representatives of Victims (‘LRVs’) submitted a Joint Request in the present case seeking leave to submit supplementary observations on several issues that would arise from the *Ntaganda Appeals Judgment* (‘Joint Request’).³

3. On 7 October 2022, the Defence submitted its response to the Joint Request (‘Response’),⁴ requesting the Chamber to reject it or, should the Chamber decide to entertain further submissions, be granted the right to respond.⁵

¹ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Ntaganda Appeals Judgment’), 12 September 2022, [ICC-01/04-02/06-2782](#).

² *Ntaganda Appeals Judgment*, [ICC-01/04-02/06-2782](#), p. 11.

³ Joint Request on behalf of Victims for Leave to Submit Supplementary Observations on Reparations (‘Joint Request’), 27 September 2022, [ICC-02/04-01/15-2011](#).

⁴ Defence Response to the Joint Request of the Legal Representatives (‘Defence Response’), 7 October 2022, [ICC-02/04-01/15-2013](#).

⁵ Defence Response, [ICC-02/04-01/15-2013](#), para. 20.

4. On 25 October 2022, in the *Ntaganda* case, Trial Chamber II issued an Order⁶ informing that it had decided to implement the *Ntaganda* Appeals Judgment by, *inter alia*, (i) assessing and ruling upon a limited but representative sample of victims' dossiers of a) all victims that had been found eligible to benefit from the Initial Draft Implementation Plan by the Trust Fund for Victims ('TFV') and b) a randomly selected group of individuals amounting to 5% of the total universe of victims,⁷ initially divided between victims of the attacks and victims of crimes against child soldiers;⁸ and (ii) requesting submission from the parties and participants, including the Victims Participation and Reparations Section ('VPRS') and the TFV, on issues related to, *inter alia*, transgenerational harm.⁹

5. On 16 November 2022, the Chamber informed the parties, participants, and the Registry that it is considering to proceed in the present case in a similar fashion as the way Trial Chamber II is proceeding in the *Ntaganda* case.¹⁰ To this end, it ordered the Registry, through the VPRS, to provide information regarding: a) the total number of applications for participation and/or reparations received in the case; and b) the total representation, within the applications received, regarding gender, age, and the main groups of the victims of the case, namely: (i) victims of the attacks at or near the IDP camps of Pajule, Odek, Lukodi, and Abok; (ii) victims of sexual and gender-based crimes; and (iii) victims of the crimes of conscription and use of child soldiers.¹¹

6. On 22 November 2022, the Registry submitted the requested information on victims' applications in the case file ('Additional Information').¹²

⁶ Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order" ('*Ntaganda* Order'), 25 October 2022, [ICC-01/04-02/06-2786](#).

⁷ The total universe of victims in the *Ntaganda* case was composed 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 had submitted long forms to the Registry within the context of the mapping exercise. *See Ntaganda* Order, [ICC-01/04-02/06-2786](#), para. 26, footnote 67.

⁸ *Ntaganda* Order, [ICC-01/04-02/06-2786](#), para. 34.

⁹ *Ntaganda* Order, [ICC-01/04-02/06-2786](#), paras 39-40.

¹⁰ E-mail from Trial Chamber IX Communications, 16 November 2022, at 15:01.

¹¹ E-mail from Trial Chamber IX Communications, 16 November 2022, at 15:01.

¹² Registry Additional Information on Victims ('Registry Additional Information'), 21 November 2022 (notified on 22 November 2022), [ICC-02/04-01/15-2019](#).

II. ANALYSIS

A. Sample of victims' applications and its composition

7. At the outset, the Chamber underlines that it has yet to decide on the types and modalities of reparations it will award in the present case. In such scenario, the Chamber stresses that, in case it decides to grant collective reparations, no ruling on individual applications would be required.¹³ Nevertheless, only for the sake of completeness and to avoid any possible unnecessary litigation, the Chamber hereby details its approach for ruling on a limited but representative sample of applications currently in the case file.

i) Sources of information that would be analysed in the context of the sample

8. In its Additional Information, the Registry notes that a total of 4,143 'simplified forms' for participation were received in the case, containing the information required by Rule 85 of the Rules and a box for the applicants to tick indicating whether they intended to apply for reparations in case of a conviction.¹⁴ In addition, in the context of the Uganda situation, 47 'situation forms', containing questions about reparations, were identified as falling within the scope of the case.¹⁵ In total 4,141 applications were transmitted to the parties and the chambers at the pre-trial and trial stages, 4,094 simplified forms and 47 situation forms (together 'participation forms').¹⁶ In the course of the pre-trial and trial proceedings,¹⁷ and after having transmitted applications to the parties for submissions,¹⁸ 4,113 victims were granted participating status.¹⁹ Considering that 12 participating victims have so far died and no

¹³ *Ntaganda Appeals Judgment*, [ICC-01/04-02/06-2782](#), paras 7, 324-328, 336.

¹⁴ Registry Additional Information, [ICC-02/04-01/15-2019](#), para. 10.

¹⁵ Registry Additional Information, [ICC-02/04-01/15-2019](#), para. 11.

¹⁶ Registry Additional Information, [ICC-02/04-01/15-2019](#), paras 10-11, 14.

¹⁷ Pre-Trial Chamber II, *Prosecutor v. Dominic Ongwen*, Decision on contested victims' applications for participation, legal representation of victims and their procedural rights ('27 November 2015 Decision'), 27 November 2015, [ICC-02/04-01/15-350](#), paras 6-7, 10-15; Pre-Trial Chamber II, *Prosecutor v. Dominic Ongwen*, Second decision on contested victims' applications for participation and legal representation of victims ('24 December 2015 Decision'), 24 December 2015, [ICC-02/04-01/15-384](#), paras 5-6, 9, 10, 14, 15, 16; Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications ('26 September 2016 Decision'), 26 September 2016, [ICC-02/04-01/15-543](#), para. 6; Decision Concerning 610 Victim Applications (Registry Report ICC-02/04-01/15-544) and 1183 Victim Applications (Registry Report ICC-02/04-01/15-556), 4 November 2016, [ICC-02/04-01/15-586](#), paras 2, 7, 14.

¹⁸ The Chamber notes that the Prosecution was transmitted non-redacted versions, while the Defence was transmitted redacted versions. *See, for instance*, 27 November 2015 Decision, [ICC-02/04-01/15-350](#), paras 1, 2, 4. *See also* Pre-Trial Chamber II, *Prosecutor v. Dominic Ongwen*, Decision concerning the procedure for admission of victims to participate in the proceedings in the present case ('3 September 2015 Decision'), 3 September 2015, [ICC-02/04-01/15-299](#), para. 6.

¹⁹ Registry Additional Information, [ICC-02/04-01/15-2019](#), para. 14.

resumption of action has yet been granted, and 6 applications were duplicates, the current number of participating victims in the case stands at 4,095.²⁰

9. Having reviewed once again the content of some of the simplified forms, the Chamber is satisfied that it can follow the *Ntaganda* approach²¹ and similarly concludes that: (i) the simplified forms generally requested 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 contained in the same forms as 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 through submissions on behalf of victims, by the OPCV and the LRVs, who have had numerous opportunities to file observations in relation to the types and modalities of reparations requested by their clients.²² Regarding the situation forms, after having reviewed once again several of them, the Chamber concludes that they asked the victims to provide all the information and documentation referred to by rule 94(1) of the Rules.

10. In light of the above, in order to avoid re-victimisation and to proceed in the most expeditious manner possible, the Chamber considers that, when analysed together with the submissions from the OPCV and the LRVs, the participation forms currently filed in the case record meet the formal requirements of applications for reparations, allowing the Chamber to analyse and rule upon a representative sample of them.²³

11. The Chamber further notes that, unlike in the *Ntaganda* case, in the present case the Defence already had the opportunity to review redacted versions of the applications and make submissions thereon.²⁴ However, considering the different standard of proof applicable to determine the eligibility of victims for reparations, the Chamber considers that, when ruling on the sample, it would be appropriate to give the OPCV and the LRVs the possibility to make submissions and complement the participation forms, to the extent possible and necessary, with

²⁰ Registry Additional Information, [ICC-02/04-01/15-2019](#), paras 14-16.

²¹ *Ntaganda* Order, [ICC-01/04-02/06-2786](#), para. 6.

²² See, for instance, Common Legal Representative of Victims' Submissions on Reparations, 7 December 2021, [ICC-02/04-01/15-1923-Red](#); Victims' Further Submissions on Reparations, 7 February 2022, [ICC-02/04-01/15-1977](#).

²³ For a similar approach, see, *Ntaganda* Order, [ICC-01/04-02/06-2786](#), para. 6.

²⁴ See, for instance, the Defence's challenges and their consideration by the Pre-Trial Chamber II: 27 November 2015 Decision, [ICC-02/04-01/15-350](#), paras 10-15; 24 December 2015 Decision, [ICC-02/04-01/15-384](#), paras 9-18.

any 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 crimes for which Mr Ongwen was convicted.²⁵ At the same time, the OPCV and the LRVs shall consult with the victims as to whether they would consent that their identities are disclosed to the Defence at this stage of proceedings²⁶ and inform accordingly for the relevant redactions to be lifted in such a case. The Defence will be able to review again the applications and additional supporting documentation and make submissions thereon.

12. Notwithstanding the above, the Chamber stresses that all the victims that might be assessed as not eligible within the context of the sample – particularly in cases where their LRVs may not have been able to locate them or to further complement their dossier within the limited timeframe that would be made available for that purpose – shall have an opportunity to supplement their dossiers and clarify their accounts at the implementation stage.²⁷

13. The Chamber further notes that the Registry stresses in its Additional Information that during the mapping exercise in 2021 ('Mapping Report'), many of the victims met by the VPRS expressed interest in filling in reparations forms to express their current needs.²⁸ However, the Registry refrained from collecting individual applications for reparations pursuant to the Chamber's orders.²⁹ The Chamber is satisfied that the Registry indeed proceeded in line with the Chamber's orders. In effect, the Chamber does not consider it necessary or appropriate, in the context of the current proceedings, for the Registry to collect additional applications from participating victims. All information required to rule on their claims – i.e., the description of the harm suffered, the events that caused the harm, the extent of the harm, and the causal link between the alleged harm and the crimes of which Mr Ongwen has been convicted – is information the victims were already asked to provide when filing the application forms. In addition, the LRVs and the OPCV will be able to complement, to the extent possible and necessary, the information and documentation related to the victims included in the sample.

²⁵ For a similar approach, see 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.

²⁶ The Chamber notes that the victims have been previously consulted as to their consent to disclose their identity to the Defence for the purpose of their participation during the trial proceedings. See 3 September 2015 Decision, ICC-02/04-01/15-299, para. 6; see also 26 September 2016 Decision, [ICC-02/04-01/15-543](#), para. 2.

²⁷ 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. See also, *Ntaganda* Order, [ICC-01/04-02/06-2786](#), para. 10.

²⁸ Registry Additional Information, [ICC-02/04-01/15-2019](#), para. 13.

²⁹ Registry Additional Information, [ICC-02/04-01/15-2019](#), footnote 10.

Accordingly, the Chamber does not consider it necessary to collect, at this stage of the proceedings, additional information from other participating victims not included in the sample.

14. The same consideration above applies in relation to no-participating victims. In effect, in light of the do no harm principle and to avoid raising the victims' expectations, the Chamber does not consider it necessary or appropriate, at this moment in time, to start a process of collection of applications for reparations in the present case. In the view of the Chamber, information from additional victims shall be collected as close as possible to the moment in which the victims may actually commence benefiting from reparations.

15. Regarding one additional victim's application originally received by the Registry and erroneously not transmitted to the Chamber for a ruling on his participation,³⁰ the Chamber does not consider necessary for it to be transmitted at this stage of the proceedings. However, the Chamber consider that this victim should be included within the group of victims of the attack to the Pajule IDP camp from where the randomised sample will be extracted in accordance with the criteria described below.

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

16. The Chamber recalls that the sample must be a representative.³¹ As noted in the *Ntaganda* case, a random selection of victims' dossiers has the potential to yield a sufficiently representative sample of the potential total number of beneficiaries of reparations, meaning the individuals that are likely to come forward and receive reparations in the case, allowing the Chamber to reach statistical valid conclusions as to the victims that would receive reparations.³² The Chamber further notes that, as described in the Additional Information, the universe of participating victims from which the sample will be extracted by the Registry appears to elicit a fair representation of male and female victims and different age groups,³³ which the Chamber is satisfied would facilitate their fair representation when extracting a randomised sample. The Chamber therefore considers appropriate to follow in the present case a similar approach to that in the *Ntaganda* case.

³⁰ Registry Additional Information, [ICC-02/04-01/15-2019](#), footnote 11.

³¹ *Ntaganda* Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 10, 341.

³² See Trial Chamber II, The Prosecutor v. Bosco Ntaganda, Decision on the Registry submission in compliance with the "Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'" (*Ntaganda* Decision on the Sample Representativeness'), 25 November 2022, [ICC-01/04-02/06-2794](#), paras 23-24.

³³ Registry Additional Information, [ICC-02/04-01/15-2019](#), pp. 8-9.

17. Regarding the grouping of victims, the Chamber notes that, in order to provide the information requested by the Chamber, the Registry organised the 4,095 participating victims into six groups, four pertaining to the victims of the attacks against the internally displaced people ('IDP') camps, i.e., Pajule IDP camp, Odek IDP camp, Lukodi IDP camp, and Abok IDP camp; and two additional groups corresponding to thematic crimes, i.e., sexual and gender based crimes ('SGBC') and the conscription and use of child soldiers.³⁴ The Registry informs that each application has been allocated to one group, although in certain cases they could have fallen into more than one group.³⁵ The Chamber has no issues with the above categorisation, as it generally corresponds to the structure followed in the Judgment and Sentencing.³⁶

18. The Chamber notes that, in light of the categorisation of victims made by the Registry in the Additional Information, whereby applications from victims of both IDP camp crimes and thematic crimes were allotted to the respective thematic crimes, which the Chamber finds reasonable, the representation of individuals within the total universe of victims participating in the proceedings is as follows:

VICTIMS' GROUPS	NUMBERS OF PARTICIPATING VICTIMS	REPRESENTATION OF INDIVIDUALS WITHIN THE TOTAL UNIVERSE OF PARTICIPATING VICTIMS
PAJULE IDP camp	756+1 ³⁷	18.48%
ODEK IDP camp	656	16.02%
LUKODI IDP camp	1644	40.14%
ABOK IDP camp	838	20.46%
SGBC	145	3.54%
CHILD SOLDIERS	56	1.37%
TOTAL	4,096	100.00%

19. The Chamber notes however that, in accordance with the Registry's submissions, the above representation may not accurately reflect the actual proportion of victims who suffered harm as a result of the crimes in the case. In effect, the Registry explains that the high number of applications collected in relation to the Lukodi IDP camp (more than 40% of the total universe of participating victims) responds to the fact that, due to the limited initial scope of the case, access and work initially focused on that camp and only later the Registry could start

³⁴ Registry Additional Information, [ICC-02/04-01/15-2019](#), para. 18.

³⁵ Registry Additional Information, [ICC-02/04-01/15-2019](#), para. 18.

³⁶ See Trial Judgment, 4 February 2021, [ICC-02/04-01/15-1762-Red](#); Sentence, 6 May 2021, [ICC-02/04-01/15-1819-Red](#).

³⁷ The one additional victim is a/01426/16, which, according to the Registry, was not previously transmitted to the Chamber for assessment, nor included in the number provided by the Registry in Additional Information. See Registry Additional Information, [ICC-02/04-01/15-2019](#), footnotes 11, 16.

its work in relation to the other three IDP camps.³⁸ Similarly, despite efforts to reach out and collect applications from victims of the thematic crimes (which together represent less than 5% of the total universe of participating victims), the Registry submits that inhibitions due to potential social stigma may have prevented victims from coming forward, despite ‘tangible information that the number of these victims is actually much higher’.³⁹

20. In light of the above, the Chamber is of the view that the representation of victims in the sample should better reflect the proportion of victims’ representation within the potential total number of beneficiaries of reparations, meaning all potential victims that are likely to come forward and receive reparations in the case. For the purposes of assembling a sample that it is as representative as possible of the potential total number of beneficiaries of reparations, as known at the current stage of the proceedings, the Chamber considers appropriate to rely, for the purposes of assembling the sample only, on the estimates provided in the Mapping Report that was compiled by the Registry during the reparations proceedings, as instructed by the Chamber.⁴⁰ The Chamber further notes that the mapping was elaborated by the Registry with the aim to ‘produce a secure, ethical and survivor-centred mapping of victims potentially eligible for reparations in the present Case’,⁴¹ and it does not appear to be contested by the parties or participants, although they all agree that the numbers remain unknown and may never be ascertained.⁴²

21. Although stressing once again that this does not mean that the Chamber has decided to rely in full on the Registry’s Mapping Report to determine the number of potential beneficiaries in the case, the Chamber considers that the estimations made therein lend themselves a strong basis to ensure the representativeness of victims in the sample. In effect, the Chamber considers

³⁸ Registry Additional Information, [ICC-02/04-01/15-2019](#), para. 20.

³⁹ Registry Additional Information, [ICC-02/04-01/15-2019](#), para. 21.

⁴⁰ Order for Submissions on Reparations, 6 May 2021, [ICC-02/04-01/15-1820](#), para. 5(iv).

⁴¹ Annex I of Registry Report on the Mapping Exercise (‘Annex I’), 6 December 2021, [ICC-02/04-01/15-1919-AnxI](#), para. 2.

⁴² For instance, in its submission after the Registry’s Mapping Report, the Defence submits that the total number of victims may not be ascertained, *see* Public Redacted Version of ‘Corrected Version of “Defence Omnibus Response to the Submissions on Reparations”’, 7 March 2022, [ICC-02/04-01/15-1991-Red-Corr](#), para. 42; the OPCV agreed with the Defence that the exact number of victims may never be conclusively determined given the passage of time and the nature of the crimes, *see* Common Legal Representative of Victims’ Additional Submissions on Reparations, 7 March 2022, [ICC-02/04-01/15-1990](#), para. 17; the LRVs do not comment on the numbers provided by the Registry and submit that while they have collected numbers as to the victims in the Abok, Odek and Lukod IDP camps, they are yet to process and disaggregate this data, *see* Victims’ response to the amici curiae submissions on reparations, 7 March 2022, [ICC-02/04-01/15-1993](#), para. 3, the TFV indicates its appreciation for these Registry’s general estimates, although it submits that the final number of beneficiaries remains unknown, *see* Trust Fund for Victims’ Final Observations on Reparations, 7 March 2022, [ICC-02/04-01/15-1992](#), para. 27.

that the estimates in the Mapping Report provide a more robust illustration of the proportions of victims' representation in the estimated total number of potential beneficiaries of reparations.

22. In light of the above, the Chamber notes that, in accordance with the Registry's Additional Information,⁴³ the Mapping Report demonstrate that the representation of individuals within the estimated total number of potential beneficiaries of reparations should be, approximately, as follows:

VICTIMS' GROUP	REGISTRY'S ESTIMATE OF THE TOTAL NUMBER OF POTENTIAL BENEFICIARIES OF REPARATIONS	REPRESENTATION OF GROUPS WITHIN THE ESTIMATED TOTAL NUMBER OF POTENTIAL BENEFICIARIES OF REPARATIONS
PAJULE camp	30,000	44.98%
ODEK camp	7,700	11.54%
LUKODI camp	6,000	9.00%
ABOK camp	13,000	19.49%
SGBC + CHILD SOLDIERS	10,000 ⁴⁴	14.99%
TOTAL	66,700.00	100.00%

23. The Chamber notes that the table above shows indeed the discrepancy highlighted by the Registry in the Additional Information.⁴⁵ In effect, for example, the proportion of victims of the attack on the Lukodi IDP camp in the Mapping Report amounts to approximately 9% of the estimated total number of potential beneficiaries of reparations and not to a 40%, as they are represented in the total universe of participating victims.⁴⁶ Similarly, the victims of the thematic crimes represent approximately a 15% of the estimated total number of potential beneficiaries of reparations and not less than 5% as they are currently represented in the total universe of participating victims.⁴⁷ In light of the above, the Chamber is of the view that, in order for the sample of victims' dossiers to be assessed and ruled upon by the Chamber to be sufficiently representative, allowing the Chamber to reach statistical valid conclusions, the random selection of participating victims to be included in the sample shall reflect the above

⁴³ Registry Additional Information, [ICC-02/04-01/15-2019](#), footnotes 20-24.

⁴⁴ The Chamber relies on the most up-to-date number provided by the Registry in the Additional Information, while noting that in the Mapping Report this number was estimated at 10, 250 victims. Annex I, [ICC-02/04-01/15-1919-AnxI](#), para. 31.

⁴⁵ Registry Additional Information, [ICC-02/04-01/15-2019](#), paras 20-21.

⁴⁶ See table at para. 18 above.

⁴⁷ See table at para. 18 above.

proportion of victims' representation in the Registry's estimated number of potential beneficiaries of reparations.

24. In light of the above, the Chamber considers that, after categorising the universe of participating victims between the five groups indicated above – meaning that the participating victims of the thematic crimes shall be merged into one group, as in the Mapping Report – the Registry shall prepare the sample on the basis of a random sampling method. In the current circumstances, the Chamber considers that using a random sampling method to select the victims that will take part of the sample, within the five main categories of victims in the case, will ensure sufficient objectivity and statistical representativeness through the random and unbiased selection of individuals to be part of the sample, while ensuring that the proceedings are expeditious.⁴⁸

25. As to the size of the sample, after having considered different statistical options for a sample size that may provide a high degree of certainty and a margin of error as limited as possible, while ensuring efficient and expeditious proceedings, the Chamber is of the view that the limited sample of applications to be analysed and ruled upon should amount to 5% of the participating victims,⁴⁹ i.e., 205 victims. However, in light of the considerations above, the number of victims to be randomly extracted from each of the groups shall reflect the representativeness that the different groups of victims should have had if the applications would have been collected proportionally to the estimated representation of each group in the estimated total number of potential beneficiaries of reparations.

26. In effect, the Chamber notes that, if the representation of victims in the estimated total number of potential beneficiaries of reparations, as calculated in the Registry's mapping exercise, would have been proportionally reflected in the universe of participating victims in the case, the number of applications received for each of the groups would have been totally different. Following this logic, in order to extract a number of applications that would be proportionally representative of the estimated total number of potential beneficiaries of reparations, the Chamber has projected the proportional representation that victims should have had in each of the groups of participating victims and calculated the 5% of victims' dossiers to be assessed and ruled upon by the Chamber from that projection, resulting as follows:

⁴⁸ For a similar approach, *see*, Ntaganda Sample Order, [ICC-01/04-02/06-2786](#), para. 33.

⁴⁹ For a similar approach, *see*, Ntaganda Sample Order, [ICC-01/04-02/06-2786](#), para. 34(b).

VICTIMS' GROUP	REPRESENTATION OF GROUPS IN THE REGISTRY'S ESTIMATED TOTAL NUMBER OF POTENTIAL BENEFICIARIES OF REPARATIONS	PROJECTED PROPORTIONAL REPRESENTATION IN THE TOTAL UNIVERSE OF PARTICIPATING VICTIMS	5% OF THE PROJECTED PROPORTIONAL REPRESENTATION	NUMBER OF VICTIMS TO ASSESS AND RULE UPON
PAJULE	44.98%	1842.38	92.14	92
ODEK	11.54%	472.68	23.64	24
LUKODI	9.00%	368.64	18.44	18
ABOK	19.49%	798.31	39.93	40
SGBV + CHILD SOLDIERS	14.99%	613.99	30.71	31
TOTAL	100.00%	4,096.00	204.86	205

27. Accordingly, the Chamber considers that the following approach should be taken for the constitution of the sample of victims' dossiers to be assessed and ruled upon by the Chamber:

- a. The Registry, through the VPRS, in its role as neutral organ of the Court, shall be entrusted to independently extract from the universe of 4,095 participating victims in the case plus the extra one victim not timely transmitted, divided into the abovementioned five groups, a random sample of victims whose dossiers, i.e., applications for participation and supporting documentation that will be analysed and ruled upon by the Chamber;
- b. The appropriate size of the sample, in the current circumstances, is 5% of the total universe of participating victims, i.e., 205 applications;
- c. In accordance with the methodology described above, the Registry shall constitute the sample by randomly selecting from the total universe of participating victims: 92 victims from the Pajule IDP camp; 24 victims from the Odek IDP camp; 18 victims from the Lukodi IDP camp; 40 victims from the Abok IDP camp; and 31 victims from the thematic crimes;
- d. The list of individuals to be included in the sample should be compiled by the VPRS within twenty-one days from the notification of the present Decision 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. Once the list of individuals to be included in the sample is approved by the Chamber, the LRVs and the OPCV will have thirty days to (i) contact the victims they represent and consult with them as to whether they consent to their identities being disclosed to the Defence; and (ii)

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; and

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

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

28. In their Joint Request, the OPCV and the LRVs indicate that several findings in the *Ntaganda* Appeals Judgment are of critical relevance to the reparations proceedings in the present case, and request leave to complement their previous submissions on a number of issues.⁵⁰

29. In particular, the OPCV and the LRVs submit that additional observations, including, *inter alia*, more concrete statistics on the number of victims eligible for reparations and the type of harms they suffered from, would assist the Chamber in its determination of the nature, form, and scope of the reparations to be awarded.⁵¹ The OPCV and the LRVs submit that enabling them to submit additional observations would not affect the expeditiousness of proceedings, as they could be filed promptly and respecting the 20-page limit per team.⁵²

30. In its Response, the Defence asserts that the submissions in the Joint Request are premature and unnecessary.⁵³ It further argues that the OPCV and the LRVs want to use the *Ntaganda* Appeals Judgment as a pretext to circumvent the Chamber's strict deadlines regarding submissions in the reparations proceedings.⁵⁴ In addition, the Defence opposes the Joint Request on the basis that the OPCV and the LRVs had ample opportunity to argue the legal and factual issues ruled upon by the Appeals Chamber in the *Ntaganda* case, and they have failed to explain why none of them were included in their previous submissions.⁵⁵ Finally, the Defence asserts that the Chamber is capable of determining the issues arising from the *Ntaganda* Appeals Judgment without further input from the parties.⁵⁶ Nevertheless, the

⁵⁰ Joint Request, [ICC-02/04-01/15-2011](#), para. 12.

⁵¹ Joint Request, [ICC-02/04-01/15-2011](#), para. 13.

⁵² Joint Request, [ICC-02/04-01/15-2011](#), para. 13.

⁵³ Defence Response, [ICC-02/04-01/15-2013](#), para. 14.

⁵⁴ Defence Response, [ICC-02/04-01/15-2013](#), para. 18.

⁵⁵ Defence Response, [ICC-02/04-01/15-2013](#), para. 18.

⁵⁶ Defence Response, [ICC-02/04-01/15-2013](#), para. 19.

Defence submits that, if the Chamber decides to entertain further submissions, it should be granted the right to respond.⁵⁷

31. The Chamber notes that, while it does not consider necessary to receive submissions on all the issues raised in the Joint Request, in order to ensure that the forthcoming Reparations Order is supported by a strong evidential basis, it invites not only the LRVs and the OPCV, but also the Defence, the OTP, the Registry, and TFCV, to make any additional submissions, within sixty days from the notification of the present Decision, at the latest, on the following issues:

- a. the estimated total number of potential beneficiaries of reparations in the case and the methodology used to make such calculations; and
- b. issues related to the transgenerational harm, in particular:⁵⁸ (i) the scientific basis for the concept of transgenerational 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 Ongwen is liable to repair such harm in the specific context of the case.

32. The Defence shall be allowed to respond to such submissions within ninety days from the notification of the present Decision.

⁵⁷ Defence Response, [ICC-02/04-01/15-2013](#), para. 20.

⁵⁸ In line with the indications of the *Ntaganda* Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 495.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

INSTRUCTS the Registry, through the VPRS, to extract from the universe of 4,096 victims a random sample constituted of: 92 victims from the Pajule IDP camp; 24 victims from the Odek IDP camp; 18 victims from the Lukodi IDP camp; 40 victims from the Abok IDP camp; and 31 victims from the thematic crimes;

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 twenty-one days from the notification of the present Order;

INVITES the parties, the OTP, the Registry, and TFV to make any additional submissions, within sixty days from the notification of the present Decision, at the latest, on the estimated total number of potential beneficiaries of reparations and the methodology used to make such calculations and on the issues related to the transgenerational harm, as detailed at paragraph 31(b) above; and

INVITES the Defence to respond to the submissions above within ninety days from the notification of the present Decision.

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



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated this Friday, 16 December 2022

At The Hague, The Netherlands