

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **30 January 2023**

**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**

**Trust Fund for Victims' Submission pursuant to Trial Chamber II's decisions on the implementation of the Appeals Chamber Judgment against the Reparations Order**

**Source:** The Trust Fund for Victims

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**Legal Representatives of Victims**

Ms Sarah Pellet  
Mr Tars Van Litsenborgh

Mr Dmytro Suprun  
Ms Cherine Luzaisu  
Ms Fiona Lau

**Counsel for the Defence**

Mr Stéphane Bourgon  
Ms Kate Gibson  
Mr Benjamin Willame

**Trust Fund for Victims**

Ms Franziska Eckelmans

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Other**

Ms Jelena Vukasinović

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

## I. BACKGROUND

1. On 8 July 2019, Trial Chamber VI (the “Trial Chamber”) issued its Judgment, convicting Mr Bosco Ntaganda of five counts of crimes against humanity and thirteen counts of war crimes.<sup>1</sup>
2. On 8 March 2021, the Trial Chamber issued an order for reparations against Mr Ntaganda (“Reparations Order”).<sup>2</sup>
3. On 12 September 2022, the Appeals Chamber issued its judgment on the Reparations Order (“Appeals Judgment”).<sup>3</sup>
4. On 25 October 2022, Trial Chamber II (the “Trial Chamber”) issued its Order for the implementation of the Judgment on the appeals against the Reparations Order (“Order on the Appeals Judgment’s Implementation”).<sup>4</sup> In its order, the Trial Chamber instructed, *inter alia*, (i) the Trust Fund for Victims (“TFV” or “Trust Fund”) to provide updated information as to the actual costs of running the rehabilitation programmes approved in the case of *The Prosecutor vs. Thomas Lubanga Dyilo* (“Lubanga”) and all other relevant information for the estimation of the amount of the monetary award in the present case (“Trial Chamber’s Query 1”); (ii) the parties and participants, including the Victims Participation and Reparations Section (“VPRS”), the Trust Fund, and, if available, the Appointed Experts, to provide further submissions and information on issues related to transgenerational harm, within sixty days of the notification of the Order (“Trial Chamber’s Query 2”); and (iii) the parties and participants, including the Office of the Prosecutor (“OTP”), the Democratic Republic of Congo (“DRC”) Government and, if available, the Appointed Experts, to provide further submissions and possible evidence, on issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo, within the same deadline (“Trial Chamber’s Query 3”).

---

<sup>1</sup> Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#).

<sup>2</sup> Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#), paras 249-253 and 257, and disposition.

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

<sup>4</sup> Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 25 October 2022, [ICC-01/04-02/06-2786](#), (“Order on the Appeals Judgment Implementation”).

5. On 25 November 2022, the Trial Chamber issued its 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’” (“Decision on Sample”).<sup>5</sup> In its decision, the Trial Chamber invited the parties, the TFV, the Registry, and the OTP, to further complement their submissions due within sixty days from the notification of the Order, providing any additional information or documentation they might have as to the estimated total number of potential beneficiaries of reparations in the present case, along with an explanation of the methodology used to provide such estimate (“Trial Chamber’s Query 4”).

6. On 6 December 2022, the Defence submitted its Request for an extension of the time limit to file the abovementioned submissions.<sup>6</sup> On 8 December 2022, the Trust Fund submitted its Response to the request,<sup>7</sup> and the Legal Representatives of Victims (“LRVs”) submitted their Joint Response to the Request.<sup>8</sup> On 12 December 2022, the Trial Chamber granted the Defence’s Request and extended all aforementioned deadlines to 30 January 2023.<sup>9</sup>

7. On 16 January 2023, the Defence submitted its Request for disclosure of material relied upon in the Gilmore Expert Report, in which it requested the Chamber, *inter alia*, to adjust the deadline for Defence submissions on the Sayo health centre to allow for litigation and adjudication of its request.<sup>10</sup> The Trial Chamber temporarily suspended the deadline for further submissions and possible evidence on issues relevant to the health centre in Sayo for the Defence,

---

<sup>5</sup> 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’”, 25 November 2022, [ICC-01/04-02/06-2794](#).

<sup>6</sup> Defence request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II, 6 December 2022, ICC-01/04-02/06-2798-Conf. A public redacted version was filed on 7 December 2022: [ICC-01/04-02/06-2798-Red](#).

<sup>7</sup> Joint Response of the Common Legal Representatives of Victims to the “Defence request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II”, 8 December 2022, [ICC-01/04-02/06-2800](#).

<sup>8</sup> Trust Fund for Victims’ Response to the “Defence request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II” dated 6 December 2022, ICC-01/04-02/06-2798-Red, 8 December 2022, [ICC-01/04-02/06-2801](#).

<sup>9</sup> Decision on the Defence request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II, 12 December 2022, [ICC-01/04-02/06-2803](#).

<sup>10</sup> Request on Behalf of Mr Ntaganda for disclosure of material relied upon the Gilmore Expert Report, 16 January 2023, ICC-01/04-02/06-2812-Conf.

on 17 January 2023,<sup>11</sup> and on request for clarification by the CLR2,<sup>12</sup> for all parties and participants, including the Trust Fund, on 20 January 2023.<sup>13</sup>

## **II. SUBMISSION**

8. The Trust Fund hereby submits (A) updated information as to the actual costs of running the rehabilitation programmes; (B) submissions and information on issues related to transgenerational harm; (C) observations regarding the estimated total number of potential beneficiaries of reparations.

### **A. TRIAL CHAMBER'S QUERY 1 – LUBANGA REHABILITATION PROGRAMME COSTS**

9. The Trust Fund hereby provides updated information as to the actual costs of running the rehabilitation programmes approved in *Lubanga* (2) and relevant information to take into account if these costs were to be used for the justification of the amount of the monetary award in the present case (1).

#### **1. Contextual information regarding the Lubanga rehabilitation programme costs**

10. As a reminder, the Trust Fund concluded on 15 March 2021 the contracting process for a five-year reparation programme with one implementing partner. This partner is sub-contracting other organisations active in the region to provide collective service-based reparations to the victims of the *Lubanga* case who belong to the same group of Former Child Soldiers as those in the *Ntaganda* case. This reparation programme aims at ensuring that the various kinds of harm suffered by Former Child Soldiers in the *Lubanga* case are addressed at an individual level, in particular by providing, according to their needs, physical and psychological rehabilitation and, according to their individual situations, various forms of socio-economic measures, such as vocational training, assistance with income generating activities, as required, and the payment of

---

<sup>11</sup> Email received on 17 January 2023 at 12:40.

<sup>12</sup> Email received on 20 January 2023 at 10:56.

<sup>13</sup> Email received on 20 January 2023 at 16:04.

school fees and pensions. The programme is active in the five territories within Ituri Province: Mambasa, Irumu, Djugu, Mahagi and Aru.

11. For the sake of clarity, the Trust Fund describes below the beneficiaries' intake process in *Lubanga*. Firstly, once a beneficiary is referred to the implementing partner, the intake starts with an initial in-depth individualised needs assessment; the beneficiaries' needs and wishes are paramount to their satisfaction with the measures they receive, and this assessment reveals the extent of the needs of the beneficiary in terms of rehabilitation. Following the assessment, the beneficiary may start immediately receiving tailored psychological or physical treatment depending on the intensity of their needs in terms of these two components. During such medical and psychological treatment, beneficiaries may receive financial support to meet immediate needs as a way to compensate transportation costs and the caused loss of earnings. Activities are organised as closely as feasible to victims' locations. More complicated treatment may require transfers to facilities within or outside Ituri. In cases requiring treatment limiting the ability of beneficiaries to care for themselves, transfers to suitable care facilities are arranged with adequate financial support, as required. In parallel, education support for beneficiaries and their dependents is provided.

12. As soon as the beneficiary is considered physically and mentally sufficiently fit, they may begin to access socio-economic activities. This component starts with a lump sum that allows the beneficiaries the necessary financial support to attend a vocational training and literacy course, if they want or need. A kit for the training is available to the victim. Once the training ends and beneficiaries are ready to set a business plan and receive advice, they are guided through the start of their income generating activities and receive a kit and a cash grant for the first year of implementation. The cash grant is the same for all beneficiaries. The direct guidance of the implementing partner continues for a minimum of three months. The advice and support of the implementing partner remains accessible to the beneficiaries thereafter for the duration of the programme. The implementing partner monitors the effectiveness of the rehabilitative activities and adopts remedial measures, where needed.

13. The *Lubanga* rehabilitation programme is currently in its second year of implementation. New beneficiaries are joining the programme while beneficiaries that have already integrated into the programme continue to benefit from measures to be implemented in the long term, mainly the psychological and education support and in certain instances the medical support, or measures they did not yet benefit from.

14. Before delving into numbers, the Trust Fund highlights the fact that there are a number of parameters to take into account when analysing the costs of running the *Lubanga* rehabilitation programme. The Trust Fund is of the view that if the Trial Chamber intends to use the costs presented, the following factors should be considered in the likelihood that the below factors may influence similar numbers provided in the context of the *Ntaganda* reparations.

15. First, programmes are not designed *per capita*. Therefore, the Trust Fund is of the view that it does not simply suffice to take the numbers provided in the present submission and multiply them by any number of victims, a number which may not potentially match the final and real number of victims at the moment of the implementation. Costs of programmes are not based on per head costs. In the Trust Fund's experience, a high number of beneficiaries for instance may lower the *per capita* costs with regard to general expenses. In the context of the Victims of the Attacks for instance, considering the expected greater number of beneficiaries, the Trust Fund is of the view that the *per capita* costs would be necessarily lower for the abovementioned reason, but also for the reasons addressed in the paragraphs below.

16. Second, the numbers provided are based on the first year of implementation: the first year is generally more expensive than subsequent years of implementation, both in direct and indirect costs for reasons directly related to the launch of the programme, but also due to necessary programme readjustments required during the first year of implementation of a programme. The Trust Fund observes that there is now a much higher level of experience in DRC regarding the implementation of reparations programmes. In the implementation of the *Lubanga* rehabilitation programme, there were a number of organisations involved, who were resultantly able to familiarise themselves with the implementation of Court-ordered reparations. The Trust Fund is confident that such experience will greatly feed the budgetary efficiencies of any new Court-

ordered reparations programme to be implemented in the DRC, in particular in relation to the costs of the launch of a potential new programme for Victims of the Attacks. The Trust Fund also notes that including *Ntaganda* beneficiaries in the *Lubanga* programme should not incur launch and readjustment costs if they are included in the programme early enough.

17. Third, the *Lubanga* rehabilitation programme addresses in vast majority direct victims who are not of the same family, which reduces in turn the possibility to compress costs for certain types of services. In the Trust Fund's understanding, despite the high number of counts, many Victims of the Attacks have suffered several layers of crimes during the attacks in such way that a victim can be a direct victim and an indirect victim at the same time. Their family members may have directly or indirectly suffered similar crimes. Contrarily to the *Lubanga* rehabilitation reparative measures, which are tailored to individuals benefitting from services in the context of reparations under rule 98(3) RPE, the Trust Fund considers that the family dimension will need to be taken into account, when designing and implementing reparations under rule 98(3) RPE to Victims of the Attacks. Mutualising socio-economic and psychological support could affect the per capita cost of the rehabilitation programme for Victims of the Attacks.

18. Fourth, in *Lubanga* almost all victims have cumulatively suffered physical, psychological and socio-economic harm. Most likely, physical harm has not been suffered by all direct Victims of the Attacks and also indirect victims in this case may not have suffered all such types of harm. Therefore, the cost *per capita* could also be lower in regard to this parameter as well.

19. Fifth, the extent of the beneficiaries who suffered certain physical and psychological harm for which the seriousness requires very expensive care outside of Bunia cannot be precisely projected. This aspect is one of the main variation points of the *per capita* cost. The impact of this factor on the cost is, therefore, unpredictable at this stage.

## **2. Updated information as to the actual costs of running the rehabilitation programmes approved in *Lubanga***

20. *Per capita cost of the Lubanga rehabilitation programme* – For year one only of implementation of the *Lubanga* rehabilitation programme, the average cost per capita is USD



3,229<sup>13</sup>, direct and indirect costs included. Based on projections made by the Trust Fund, the average costs *per capita* for a full rehabilitation in *Lubanga* is USD 4,000.61 USD, direct and indirect costs included.

21. For a better idea regarding the costs of services, and the percentage of beneficiaries receiving each of them, the Trust Fund provides the below overview by category of services.

22. *Per capita costs of mental health support (excluding indirect costs)* – Mental health activities are divided in three types of services based on the severity of the harm to remedy: primary care, secondary care and specialised care. On average, full primary care (screening, psychosocial activities, follow-up meetings, recreational activities, mediations) costs USD 388.64 *per capita*. 100% of beneficiaries have benefitted from one or several forms of primary care. On average, full secondary care (psychosomatic outpatient or residential care) costs USD 658.69 *per capita*. 26.47% of beneficiaries have required secondary care so far. On average, full specialised care (in specialised structures in or outside Ituri) costs USD 1,541.33 *per capita*. 1.33% of beneficiaries have required specialised care so far.

23. *Per capita costs of physical health support (excluding indirect costs)* – Physical health activities are designed in a similar fashion as mental health activities, with primary care, secondary care and specialised care. On average, full primary care costs so far USD 241.09 *per capita*. 41.77% of beneficiaries screened for physical health have benefitted from primary care. On average, full secondary care costs USD 315.15 *per capita*. 32.36% beneficiaries have required secondary care so far. On average, full specialised care (in specialised structures in or outside Ituri) costs USD 3,128.88 *per capita*. 3.83% of beneficiaries have required specialised care so far. It is noteworthy that in some instances specialised care has cost over USD 8,000 for the treatment of one beneficiary.

24. *Per capita costs of socio-economic support (excluding indirect costs)* – Socio-economic activities can be divided in four main areas: schooling, university scholarships, vocational training, and income generating activities. Schooling costs USD 200 per year *per capita*, university scholarships (when applicable) cost USD 400 *per capita*, vocational training amounts to USD 460 on average, and income generating activities USD 875.

## **B. TRIAL CHAMBER’S QUERY 2 – TRANSGENERATIONAL HARM**

25. The Trial Chamber instructed the Trust Fund to provide further submissions and information on the following issues related to transgenerational harm: (1) the scientific basis for the concept of transgenerational harm; (2) the evidence needed to establish it; what the evidentiary requirements are for an applicant to prove this type of harm; the need, if any, for a psychological examination of applicants and parents; the need, if any, to exercise caution in assessing applications based on transgenerational harm; and (3) 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.<sup>14</sup>

### **1. The scientific basis for the concept of transgenerational harm**

26. The Trust Fund recalls the Trial Chamber’s finding in its Order for Reparations against Mr Katanga that transgenerational harm can be circumscribed as “a phenomenon, whereby social violence is passed on from ascendants to descendants with traumatic consequences for the latter”.<sup>15</sup>

27. Academic and scientific literature on the phenomenon of transgenerational harm reveals two leading schools of thought regarding the scientific basis of transgenerational transmission of trauma, namely the epigenetic transmission theory and the social transmission theory. Both theories advance a scientific explanation as to how a parent’s exposure to trauma can be transmitted from parent to child, who was not directly exposed to the parent’s traumatic experience.<sup>16</sup>

---

<sup>14</sup> Order on the Appeals Judgment Implementation, paras 39-40.

<sup>15</sup> *The Prosecutor v. Germain Katanga*, Order for Reparations, 24 March 2017, [ICC-01/04-01/07-3728-t-ENG](#), para. 132 (“Order for Reparations”).

<sup>16</sup> *The Prosecutor v. Germain Katanga*, Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgment of 8 March 2018, 19 July 2018, [ICC-01/04-01/07-3804-Red-t-ENG](#), paras. 11-13 (“Decision on the Matter of Transgenerational Harm”); E. Dozio,

28. The epigenetic transmission theory focuses on the study of transgenerational transmission of epigenetic marks that are retained in our genetic material as a result of traumatic events experienced by parents.<sup>17</sup> In this regard, multiple studies conducted by different researchers have demonstrated an increased risk for children to develop post-traumatic stress disorder (“PTSD”) as adults in the situation where their parents are suffering from PTSD themselves.<sup>18</sup> However, some researchers have warned that “it is not possible to attribute intergenerational effects in humans to a single set of biological or other determinants at this time”.<sup>19</sup>

29. The social transmission theory, on the other hand, focuses on the impact traumatic experiences of parents as main caregivers may have on their child’s emotional development during the period of upbringing.<sup>20</sup> In doing so, this theory explains how caregiving behaviour of parents is impacted by their traumatic experience and how this directly affects the child’s emotional conduct.<sup>21</sup> In this regard, the social transmission school shows that when a child is raised by a parent suffering from a psychopathology or exposed to trauma, the likelihood of the child showing the same symptoms of trauma as the parent, and responding with disorganised attachment behaviour and emotional and behavioural disorganisation, increases considerably.<sup>22</sup>

---

M. Feldman, C. Bizouerne, E. Drain, M. Laroche Joubert, M. Mansouri, M. Roso Moro and L. Ouss, “The Transgenerational Transmission of Trauma: The Effects of Maternal PTSD in Mother-Infant Interactions”, 11 *Frontiers in Psychiatry* (2020), p. 1, at p. 2.

<sup>17</sup> *Katanga*, Decision on the Matter of Transgenerational Harm, para. 11; P. Gacka, “Remote Victimisation and the Proximate Cause. Transgenerational Harms Before the International Criminal Court”, 22 *International Criminal Law Review* (2022), p. 438, at p. 445. See also R. Yehuda and A. Lehrner, “Intergenerational Transmission of Trauma Effects: Putative Role of Epigenetic Mechanisms”, 17 *World Psychiatry* (2018), pp. 243-257.

<sup>18</sup> S. Matthews and D. Phillips, “Minireview: Transgenerational inheritance of the stress response: A new frontier in stress research”, 151 *Endocrinology* (2010), pp. 7-13. R. Yehuda, J. Schmeidler, E. Labinsky, A. Bell, A. Morris, S. Zelman and R. Grossman, “Ten-year follow-up study of PTSD diagnosis symptom severity and psychosocial indices in aging Holocaust survivors”, 119 *Acta Psychiatrica Scandinavica* (2009), pp. 25-34.

<sup>19</sup> R. Yehuda and A. Lehrner, “Intergenerational Transmission of Trauma Effects: Putative Role of Epigenetic Mechanisms”, 17 *World Psychiatry* (2018), p. 243, at p. 243.

<sup>20</sup> *Katanga*, Decision on the Matter of Transgenerational Harm, para. 11.

<sup>21</sup> *Katanga*, Decision on the Matter of Transgenerational Harm, para. 13; P. Gacka, “Remote Victimisation and the Proximate Cause. Transgenerational Harms Before the International Criminal Court”, 22 *International Criminal Law Review* (2022), p. 438, at p. 446.

<sup>22</sup> E. Dozio, M. Feldman, C. Bizouerne, E. Drain, M. Laroche Joubert, M. Mansouri, M. Roso Moro and L. Ouss, “The Transgenerational Transmission of Trauma: The Effects of Maternal PTSD in Mother-Infant Interactions”, 11 *Frontiers in Psychiatry* (2020), p. 1, at p. 2. See also M. Bosquet Enlow, B. Egeland, E. Carlson, E. Blood and R. Wright, “Mother-Infant Attachment and the Intergenerational Transmission of Posttraumatic Stress Disorder”, 26

30. The Trust Fund notes that the Trial Chamber already referred to these two theories during the reparations phase in the *Katanga* case.<sup>23</sup>

## 2. Matters regarding the assessment of transgenerational harm

31. Regarding the required standard of proof for reparations, the Trust Fund notes that the standard of the “balance of probabilities”, according to which “the applicant must show that it is more probable than not that he or she suffered harm as a consequence of one of the crimes of which [...] was convicted”<sup>24</sup>, is well-settled in the Court’s case law today.<sup>25</sup> As regards the standard of causation, the Court has systematically relied, in its jurisprudence, on the “but-for” test, combined with the requirement that “the crimes of which the person was convicted were “the proximate cause” of the harm for which the reparations are sought”.<sup>26</sup>

32. Furthermore, the Trust Fund notes that in the Reparations Order in the *Katanga* case, the Court – by having regard to the case law of the Inter-American Court of Human Rights and the United Nations Claims Commission - deemed it appropriate to rely on presumptions in cases where it is difficult for applicants to gather evidence needed to establish the causal nexus between the harm suffered and the crime.<sup>27</sup>

33. In this regard, the Trust Fund wants to draw the Trial Chamber’s attention to one of the arguments invoked by the Legal Representative of Victims Document in Support of the Appeal against the Order for Reparations in the *Katanga* case. They submitted that the Trial Chamber should have presumed the establishment of a causal nexus between the transgenerational harm

---

*Development and psychopathology* (2014), pp. 41-65. See also F. Calicis, “La transmission transgénérationnelle des traumatismes et de la souffrance non dite”, *27 Thérapie familiale* (2006), pp. 229-242.

<sup>23</sup> *Katanga*, Decision on the Matter of Transgenerational Harm, paras. 11-14.

<sup>24</sup> *Katanga*, Order for Reparations, para. 50.

<sup>25</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Order for Reparations, 3 March 2015, [ICC-01/04-01/06-3129-AnxA](#), para. 65 (“Order for Reparations”). *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, [ICC-01/04-01/06-3129](#), paras 81-84. *Katanga*, Order for Reparations, paras 47-50. *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, [ICC-01/12-01/15-236](#), para. 44 (“Reparations Order”).

<sup>26</sup> *Lubanga*, Order for Reparations, para. 59. *Katanga*, Order for Reparations, paras 162-163. *Al Mahdi*, Reparations Order, para. 44.

<sup>27</sup> *Katanga*, Order for Reparations, paras 57-61.

suffered by a child and the crimes for which the accused was convicted in the event that the harm suffered by one or both of the child's parents is linked to the crimes convicted.<sup>28</sup> The justification relied upon was that “a parallel could be drawn with the reasoning, predominantly accepted at the Court, that the death of a close person to the indirect victim causes the victim harm provided a close relationship is established with the direct victim – whose death has to be proven”.<sup>29</sup> In other words, the harm suffered by the victim is *presumed* to be established by virtue of such a relationship in the given situation. By applying this reasoning *mutatis mutandis* to the situation of transgenerational harm, the psychological harm suffered by a child should be presumed on the basis of the establishment of the harm suffered by the child's parent(s) - i.e. the direct victim(s) - whose psychological harm has been established, and the establishment of a parent-child relationship. Accordingly, it is this close relationship between the child and the child's parent(s) that leads to the presumption that the psychological harm suffered by the child is linked to the harm suffered by the child's parent(s) of which a causal link had been established with the crimes for which the person was convicted.

34. Despite the fact that the Appeals Chamber, in its Judgment on the appeals against the *Katanga* Reparations Order, was unconvinced with the LRV's argument that the Trial Chamber should have presumed a causal link between the children's psychological harm and the crimes for which the person was convicted and considered that, in order to succeed with his argument on appeal, “the LRV would have had to demonstrate that, based on the evidence before the Trial Chamber, no reasonable trier of fact could have refused to draw such a presumption”,<sup>30</sup> the Appeals Chamber underlined that its finding must not be understood as a definite conclusion that it would have been *wrong* for the Trial Chamber to make such a presumption: the question before

---

<sup>28</sup> *The Prosecutor v. Germain Katanga*, Document in Support of the Appeal against the Order for Reparations under Article 75 of the Statute with its Annex II, 27 June 2017, [ICC-01/04-01/07-3745-t-ENG](#), paras 46-49 (“Document in Support of the Appeal”).

<sup>29</sup> *Ibid.*, para. 47.

<sup>30</sup> *The Prosecutor v. Germain Katanga*, Public redacted Judgment on the appeals against the order of the Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, 8 March 2018, [ICC-01/04-01/07-3778-Red](#), para. 236.

the Appeals Chamber was *only* whether it was wrong for the Trial Chamber not to have done so.<sup>31</sup>

35. Correspondingly, considering that the Appeals Chamber in the *Katanga* case did not close the door for Trial Chambers to rely on said presumption in similar cases in the future, the Trust Fund submits that the reasoning explained above could be adopted by the Trial Chamber in the present case. This, in particular in a situation, where the direct victims did not receive any kind of appropriate psychological support to mitigate the negative transgenerational effects on the next generation, aggravated by a lack of infrastructure for psychological support services, as in the ongoing conflict situation in the Eastern Democratic Republic of the Congo,

36. In that case, the applicant would have to demonstrate a) his or her psychological suffering; b) the psychological harm suffered by the applicant's parent(s); c) the causal nexus between the applicant's parent(s)'s harm and the crimes for which Mr Ntaganda was convicted; and d) their parent-child relationship. When successfully done, the applicant's transgenerational harm could be presumed by the Trial Chamber on the basis of this parent-child relationship. Given that the psychological effects of transgenerational harm may only manifest late in life, the Trial Chamber may wish to consider whether it is sufficient to demonstrate points b) to d).

37. In the *Katanga* Reparations Order, the Trial Chamber relied on (1) the medical certificates attached to the applications for reparations and on (2) an Expert Report.<sup>32</sup> This has been interpreted as meaning that “[t]he only limitation on the scope of transgenerational victimisation identified and put into practice by the Court so far is that victim-applicants should be able to produce and submit an evidentiary material properly supporting their claims”.<sup>33</sup> The Trust Fund recalls that the *Katanga* Trial Chamber relied on medical certificates and an Expert report because those were the supporting documents submitted to it.

---

<sup>31</sup> *Ibid.*, para. 236.

<sup>32</sup> *Katanga*, Document in Support of the Appeal, para. 31.

<sup>33</sup> See P. Gacka, “Remote Victimisation and the Proximate Cause. Transgenerational Harms Before the International Criminal Court”, 22 *International Criminal Law Review* (2022), p. 438, at p. 473.

38. It is important to note that the *Katanga* case is very different to the present case when it comes to the number of victims that applied for reparations in comparison to the potential size of the victim population *Ntaganda*. The Trust Fund is of the view that it would be highly costly and time intensive in a case of this magnitude to collect medical certificates and/or psychologist expertise for each potential applicant.

39. Rather, the Trust Fund considers that providing psychological support to the direct victims, which may be provided by way of group or family therapy, is a first essential step to mitigating transgenerational harm for the next generations. The programme can be, in addition, established in a way that allows the implementing partner(s)'s psychologists to assess whether descendants of the direct victims require psychological treatment and to provide such treatment, if the scope of the programme (availability of funds) so allows.

40. If a determination of eligibility of the descendants was considered necessary by the Trial Chamber, the Trust Fund could proceed to a legal assessment of the indirect victims who suffered transgenerational harm, on the basis of the information provided by the implementing partner's psychologist(s) and submit a list of positively assessed beneficiaries for the Trial Chamber's approval.

41. To conclude, the Trust Fund strongly favours a presumption of transgenerational harm in this case and a practical approach to their eligibility to the programme and to how best address the psychological harm suffered by the descendants of the direct victims.

### **3. Mr Ntaganda's liability to repair transgenerational harm in the context of his conviction**

42. In the Trust Fund's view, it is reasonable to consider that Mr Ntaganda could have, when committing the crimes for which he has been convicted, reasonably foreseen the impact this would have on direct victims' descendants. The Trust Fund considers that it is not unreasonable to assume that the closer the date of birth of the Applicant to the date of the Attack, the more

likely it is that the Attack had an impact on the applicant concerned.<sup>34</sup> However, an expert psychologist on transgenerational harm may be best suited to advise on the matter.

43. In addition, the Trust Fund considers that the fact that over the time the population in Ituri has gone through several cycles of violence cannot be used as the way to justify that it is not just and fair to consider that crimes committed by the convicted are not the proximate cause of even a part of transgenerational harm suffered by victims of several waves of crimes. Doing so would simply mean that no one can be held responsible for transgenerational harm in DRC.

### **C. TRIAL CHAMBER’S QUERY 4 – NUMBER OF VICTIMS**

44. The Trust Fund is of the view that any current exercise to determine numbers of potential beneficiaries in Ntaganda prior to the implementation of reparations will be inexact. The Trust Fund’s experience working with victims and reparation programming has shown that there are various stages when potential beneficiaries come forward and can thus be identified. One such stage is during an outreach campaign of identifying potential beneficiaries. Another stage is when beneficiaries actually start receiving reparations. At that stage, victims other than the participating victims may realise that the reparation programme is operational and also come forward. The Trust Fund is cognisant that the Trial Chamber requires at least a general estimate of the number of potential beneficiaries in order to determine the amount of liability. At this stage, any number of potential beneficiaries submitted will be an educated guess on the basis of various sources of information collected from various sources and stakeholders.

45. The Trial Chamber itself held that it is impossible “in advance” to predict how many victims may ultimately come forward to benefit from collective reparations.<sup>35</sup> The Trust Fund concurs once more with this assessment of the Trial Chamber. As mentioned in its draft implementation plan, consultations of the Trust Fund did not shed much more light on the potential number of beneficiaries when it comes to Victims of the Attacks. The Trust Fund has learned from consultations with leaders of certain affected localities that around the time of the two attacks a

---

<sup>34</sup> *Katanga*, Decision on the Matter of Transgenerational Harm, para. 29.

<sup>35</sup> Reparations Order, para. 246.



very high number of persons lived in the affected areas. The number given at the time was above 100,000 and included persons from all different groups living in Ituri (e.g. Hema, Lendu etc.). At the time the attacks took place, most of the inhabitants had already left the relevant areas and, thus, do not appear therefore to necessarily fall in the scope of the conviction. Given the very limited geographical and temporal scope of the conviction in particular for the crimes of forcible transfer and deportation, the Trust Fund considers that those victims who had already left cannot be considered eligible for these crimes. However, their property may have been subject to pillage or they may have been subject to persecution as a crime against humanity. It may also be considered that many of the victims may have been victims of both attacks, others may have fled the area of Mongbwalu before the attacks and entered the later affected area, becoming victims of the second attack.

46. Taking these considerations into account, and keeping in mind the need for the Trust Fund to work with more concrete numbers in developing a plan, including based on cost assumptions, the Trust Fund had decided to work on the basis of an estimate for the purposes of its DIP only and applying a very conservative approach. It assumed that at the very least about 21,500 individuals (including direct and indirect victims) could be beneficiaries of reparations as Victims of the Attacks. This remains the Trust Fund's educated guess.

47. As for Former Child Soldiers, the Trust Fund does not see much debate considering the fact that Trial Chamber II itself made very detailed findings in relation to this specific topic, taking into account the Trust Fund's views.<sup>36</sup>

#### **FOR THE FOREGOING REASONS,**

The Trust Fund respectfully submits the present submission and stands ready to provide further clarifications.

---

<sup>36</sup>

*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-tENG](https://www.ictj.org/sites/default/files/2017/12/ICC-01-04-01-06-3379-Red-Corr-tENG).



---

Franziska Eckelmans  
Acting Executive Director of the Trust Fund for Victims,

Dated this 30<sup>th</sup> Day of January 2023  
At The Hague, The Netherlands