

Reparations Hearing

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Reparations Hearing - Courtroom 1
9 Tuesday, 8 September 2026
10 (The hearing starts in open session at 9:32 a.m.)
11 THE COURT USHER: [9:32:07] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:32:32] Yes, good morning to all.
15 Madam Registrar -- ah, no, Mr Registrar, can you call the case, please.
16 THE COURT OFFICER: [9:32:51] Good morning, Madam President. Good morning,
17 your Honours.
18 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus Ali
19 Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
20 And for the record, we are in open session.
21 PRESIDING JUDGE KORNER: [9:33:04](Microphone not activated) This time we'll
22 start, please, with the representatives of the victims. I wasn't expecting to see you
23 there.
24 MS VON WISTINGHAUSEN: [9:33:23] I was seeing you looking over there. No, we
25 are here, Madam President. Good morning, Madam President, your Honours. Good

1 morning, colleagues. Good morning to everyone in and around the courtroom. And
2 special greetings to all of those who are following us in Darfur.

3 The participating victims this morning are represented by Maître Mélissa Beaulieu
4 Lussier, Kelsey Ryan, Saif Kassis, Mohammad Bitar, and myself Natalie von
5 Wistinghausen. Thank you.

6 PRESIDING JUDGE KORNER: [9:33:49] Yes. Thank you very much,
7 Ms von Wistinghausen.

8 Yes, the Defence.

9 MR LAUCCI: [9:34:00] Good morning, your Honours, your -- good morning,
10 Madam President. Good morning, your Honours. Good morning, colleagues.
11 Together with Mr Ali Muhammad Ali Abd-Al-Rahman present in the courtroom
12 today, Madam Navnitha Nair, our intern; Madam Haneen Ghali and Madam Marcela
13 Velarde; Madam Eva Kalb; and counsel, Iain Edwards. And myself, Cyril Laucci.

14 PRESIDING JUDGE KORNER: [9:34:27] Yes. Thank you, Mr Laucci.
15 And the Prosecution.

16 MR NICHOLLS: [9:34:32] Morning, Madam President. Good morning, your
17 Honours. Good morning to everybody. I'm here today with Hai Do Duc, Diana Saba,
18 Claire Sabatini, Alison Whitford, and Edward Jeremy. Thank you.

19 PRESIDING JUDGE KORNER: [9:34:46] Yes. Thank you, Mr Nicholls.
20 Right, I'm not -- well, the Registry next, yes.

21 MR AMBACH: [9:34:50] Good morning, Madam President. Good morning, your
22 Honours. Good morning everybody in and outside of the courtroom. I am joined
23 today by Madam Anne-Aurore Bertrand, head of the Judicial Cooperation Unit in the
24 Judicial Cooperation Support Section; Natalie Wagner of the Judicial -- Judicial
25 Coordinator in the Office of the Director in the Division of Judicial Services. I will be

1 joined by my colleague, Olivier Randon, associate legal officer in the Victim
2 Participation and Reparations Section. I myself am Philipp Ambach, heading the
3 Victim Participation Reparations Section on behalf of the Registrar. Good morning.
4 Thank you.

5 PRESIDING JUDGE KORNER: [9:35:26] Yes. Thank you very much, Mr Ambach.
6 Next, please, the Trust Fund for Victims.

7 MS RUIZ VERDUZCO: [9:35:32] Good morning, Your Honours.
8 The Trust Fund for Victims today is represented by Franziska Eckelmans, Aude Le
9 Goff; staff members of the legal team, Veena Suresh, Nicole Stark Rychter, Marcelo
10 Martoy, Maouloud Al Ansary; and myself, Deborah Ruiz, the executive director.
11 Thank you.

12 PRESIDING JUDGE KORNER: [9:35:54] Thank you very much.
13 Yes. Well, in no particular order, I think, except where they're sitting, can we start
14 with those who are present for the amicus curiae. First of all, GLAN.

15 MS SUTHERLAND: [9:36:10] Good morning, Madam President, your Honours. It's
16 a pleasure to be here, of course. I appear on behalf of our Sudanese partners, who
17 their -- sorry, whose identities must remain confidential. They are represented today
18 in the public gallery. And also on behalf of the Global Legal Action Network, who
19 are also represented in the public gallery today. And my name is Kirsty Sutherland.

20 PRESIDING JUDGE KORNER: [9:36:35] Thank you very much indeed.

21 No idea. Okay, let's just -- can we have the --

22 MS SUTHERLAND: [9:36:44] Forgive me, Madam President, I forgot to introduce our
23 expert, Dr Matthew Benson-Strohmayer, who is here on your invitation.

24 PRESIDING JUDGE KORNER: [9:36:53] Thank you very much. Yes.

25 MS SUTHERLAND: [9:36:53] Thank you.

1 PRESIDING JUDGE KORNER: [9:36:54] Next, can we have the General Coordination
2 Committee of the IDPs and Refugee Camps in Sudan.

3 MR MOHAMED: [9:37:09] Good morning, Madam President, your Honours. My
4 name is Abdul Basit Mohamed and I'm here on behalf of the General Coordination
5 Committee of the camps in Sudan.

6 PRESIDING JUDGE KORNER: [9:37:22] Thank you very much.

7 MR MOHAMED: [9:37:23] It's a pleasure.

8 PRESIDING JUDGE KORNER: [09:37:24] Then i-ACT.

9 MR TRALDI: [9:37:25] Good morning, Madam President. Arthur Traldi for i-ACT.
10 We're also represented in the public gallery.

11 PRESIDING JUDGE KORNER: [9:37:34] Thank you very much, Mr Traldi, been
12 a long time.

13 And finally REDRESS, please.

14 MS GOETZ: [9:37:39] Good morning, Madam President. My name is Mariana Goetz.
15 I'm with the Rights for Peace, but our coalition is REDRESS, Darfur Women Action
16 Group Uganda, Darfur Network for Human Rights, and Queen's University Belfast
17 Human Rights Centre. Thank you.

18 PRESIDING JUDGE KORNER: [9:37:56] Thank you very much.

19 Before I formally open this session, something that I hadn't thought of came to my
20 attention. It is likely that from time to time, the Court will have to go into private
21 session to deal with information that is necessary for us to make a decision, but
22 should not for various reasons be made public. So that those in the public gallery
23 understand, that means that you won't be able to hear what's being said. I emphasise
24 there are very good reasons for doing this and we're going to limit it as much as
25 possible, but it is clear from the written submissions that some aspects may require

1 private session.

2 A problem which I hadn't anticipated is this: All those who are counsel are bound by
3 the code of conduct, not only the one that applies here but in their own jurisdictions,
4 and that means that they know full well that anything discussed in private session is
5 confidential and may not be disclosed to anyone.

6 However, some of the organisations represented here are not represented by counsel
7 and therefore are bound, as far as we understand it, by no code of conduct to keep the
8 matter confidential.

9 In order to overcome the problem that otherwise would ensue - that they would have
10 to leave court like everybody else while confidential matters are discussed, subject to
11 any submissions that any of the parties, that is to say, the Legal Representative of
12 Victims or the Defence, and, I suppose, the Prosecution, who is not a party but
13 nonetheless has a duty to the Court - what we propose to say is that we are ordering
14 that the parties, the representative of the parties who will remain during private
15 session, the parts of the hearing that are in private session, must keep that
16 information confidential and may not discuss that information with anybody at all
17 who has not been present in court.

18 The -- I'm sure it won't be necessary but the penalty, if such information is disclosed,
19 is that proceedings for contempt of a court order can be taken.

20 So unless anybody wants to make any submissions on that, that is the order that we
21 intend to make.

22 Does anybody want to make submissions? No. Well, thank you very much.

23 Then, just before we hear the submissions, can I say a few words. The hearing, this
24 hearing, is the first in the proceedings against Ali Muhammad Ali Abd-Al-Rahman,
25 also known as Ali Kushayb, to have at its forefront the interests of the victims of the

1 crimes of which he was convicted, the details of which were fully set out in the Trial
2 Judgment. That change in focus is reflected by the fact that the Common Legal
3 Representatives of the Victims are a party and the Prosecution has the status of
4 a participant.

5 This Court came into existence not just to provide a forum where allegations of the
6 commission of the most serious international crimes could be adjudicated when no
7 other forum was available, but as importantly, to provide the victims of these crimes
8 with some hope of justice and eventual redress.

9 Many of the victims will be following these proceedings, either in the public gallery
10 or elsewhere, and it's important that we make it clear that we have received extremely
11 lengthy written documents from all parties and participants. All of those documents
12 have been carefully considered before this hearing and indeed, as a result of that
13 consideration, the Trial Chamber in advance of the hearing sent questions to the
14 parties and participants which we trust will be answered in oral submissions.

15 The Trial Chamber expects those submissions to be focused and succinct and it is not
16 necessary, nor expected, that submissions that have already been submitted in writing
17 will be repeated.

18 So, with those words, we'll turn straightaway to the first of those to address us, which
19 is the Legal Representative of the Victims.

20 MS VON WISTINGHAUSEN: [9:44:28] Yes, Madam President, thank you for this
21 introduction and for giving me the floor on behalf of the participating victims.

22 Before I start, just a very small housekeeping matter. We have prepared a PowerPoint
23 presentation that accompanies what I'm saying, which is kind of flowing over your
24 screen while I'm speaking. We wanted to send it to all parties and participants last
25 night which, for technical reasons, only reached the Defence but no one else. It was

1 spammed back to us or was called a spam from all the other sections; so this is why
2 we couldn't disclose it to you before, but we will find a way that you get an electronic
3 version after this hearing.

4 Now, in our submissions of 4 June 2026 and our response of 3 July that you just
5 mentioned, to the parties and amici, I hope to have made the victims' priorities and
6 expectations with regards to reparations very clear. They are based on, first, direct
7 consultations conducted by my team and, importantly, by my field assistants who
8 have accompanied these victims now for more than five years.

9 Second, two structured questionnaires administered in Arabic played a big role. So
10 far, we received 1,104 responses to the general questionnaire, which is annex 2B of
11 our submissions, which amounts to a response rate of 75 per cent of all my clients, the
12 participating victims, and 1,048 responses to the questionnaire designed specifically
13 for women. That is annex 3B of our submissions.

14 The responses given by these women, they are not all participating victims, but still
15 reflects specifically the situation of women in the IDP camps.

16 I will submit an updated versions of both annexes of our written submissions this
17 week and your Honours, I hope, may satisfy themselves that the questions weren't
18 leading. And when victims' views were divided, I have said so, rather than reporting
19 a consensus that actually doesn't always exist.

20 I also hope to have made my own views on the ICC reparations procedure clear,
21 developed after and based on discussions with my clients, endless exchanges and
22 debates with my teams, colleagues, and diligent research and observations on
23 reparations proceedings and procedures at the Court and other international
24 jurisdictions.

25 Other than responding to the Chamber's questions, which I will turn to second, I first

1 wish to briefly recall the most important points of our written submissions. They are
2 guided by one central principle above all: Reparations must be effective. And by
3 "effective", we mean capable of being experienced by these victims in their lifetimes as
4 a real change in the circumstances or standing.

5 Effectiveness is not opposed to symbolic reparation. A judicial recognition of
6 dispossession and of the right to return is, in itself, a powerful and a much desired
7 remedy, but symbolic and material measures alike must be designed so that they
8 actually reach the people they are meant to repair, rather than remaining a mere
9 paper entitlement.

10 Indeed, for the participating victims, recognition of their experience and harm by the
11 Chamber in the Trial Judgment, which you have already done, was itself an
12 important avenue of justice. But after more than two decades of displacement and
13 suffering, they now look to you, to the Court, for reparations that are real, timely and
14 responsive to their present circumstances and needs.

15 Their message is simple, and I want to quote: "We have waited long enough, and we
16 may not even be here to receive whatever comes".

17 This is very well encapsulated by participating victim V-003 who you --

18 THE INTERPRETER: [9:48:34] Message from the English booth.

19 MS VON WISTINGHAUSEN: [9:48:35] -- will, I hope, remember. He says --

20 THE INTERPRETER: [9:48:36] Can counsel be requested to slow down, please.

21 MS VON WISTINGHAUSEN: [9:48:39] There are victims --

22 PRESIDING JUDGE KORNER: [9:48:40] Did you hear that, Ms Von Wistinghausen?

23 MS VON WISTINGHAUSEN: [9:48:47] I got a nice note from Ms Beaulieu Lussier.

24 PRESIDING JUDGE KORNER: [9:48:49] I know --

25 MS VON WISTINGHAUSEN: [9:48:50] I have so much to say that I have to speed up,

1 because I know you're watching your clock, but I hope that you will be patient with
2 me for the last time.

3 PRESIDING JUDGE KORNER: [9:48:57] Yes. Sorry, Ms von Wistinghausen, I think,
4 however, the point is that it's important, obviously, that it's interpreted into the
5 language --

6 MS VON WISTINGHAUSEN: [9:49:05] Yes, yes.

7 PRESIDING JUDGE KORNER: [9:49:06] -- that the victims can understand, and if you
8 go too fast, it's not going to be.

9 MS VON WISTINGHAUSEN: [9:49:11] Absolutely. Thank for reminding me. I will
10 slow down. And I can already say that I will therefore need more time than I've said.
11 So, V-003, a participating victim, who appeared before your Honours, he says, and I
12 quote:

13 "There are victims and affected individuals who submitted their files and passed
14 away to the mercy of God. For the period from the year 2003 until today is very long,
15 and whoever was 20 years old has today become 40, and whoever was 30 has become
16 50. If we wait for more years, we may lose more victims, and the compensation funds
17 may return to the trust fund for lack of eligible beneficiaries."

18 So what is the consequence and what does this mean in practice?

19 I would like to emphasise four propositions above all others: effectiveness rather than
20 symbolism; urgency, because delay itself harms the victims; flexibility, because
21 Darfur circumstances are exceptional; and, fourth, tailored reparations to the
22 diverging preferences of the victims with return to ancestral land as the ultimate
23 objective.

24 We have been very transparent with the participating victims throughout all our
25 consultations about the limitations and uncertainties of the ICC reparation system. I

1 have deliberately avoided making promises that cannot be fulfilled to avoid causing
2 more harm to my clients.

3 An order that is purely theoretical risks creating further frustration and harm and this
4 should be avoided at any cost.

5 The concern is not with the concept of reparations per se, nor with the efforts of the
6 Court's different organs working with the victims, it's a structural concern.

7 In my view, the ICC faces fundamental tensions between: the very large number of
8 victims potentially entitled to reparations; the limited resources available for
9 implementation; the difficult and lengthy identification, eligibility assessment and
10 notification processes; security and logistical obstacles, like obviously, in Darfur; and
11 the absence of effective cooperation in some situations.

12 These difficulties were anticipated when the ICC reparations framework was created.

13 Our written submissions recount that the history of the drafting of Article 75 of the
14 Rome Statute which demonstrates that the feasibility of reparations for mass crimes
15 was a concern from the outset.

16 The structural tensions I described must not lead the Chamber to minimise victims'
17 rights or narrow the scope of reparations. Such a logic treats scarcity and insecurity
18 as reasons to narrow the right to reparations; namely, fewer beneficiaries, thinner
19 modalities, deferred delivery.

20 Rather, the present circumstances require the Chamber to exercise judicial creativity
21 and to design an order that is flexible, adaptable, while remaining the subject of
22 effective judicial oversight.

23 The practical difficulty of delivering a right should not be guiding for your Honours,
24 and won't be accepted by my clients. To the contrary, practical difficulty is a reason
25 to design the order carefully. It is not a reason to reduce what is owed. The extent of

1 a convicted person's liability is measured by the harm his crimes caused and not by
2 the capacity of the institutions that must give effect to it, and my clients trust your
3 Honours that you will do exactly that.

4 Therefore, the Chamber's obviously facing a challenging task, given the number of
5 potential beneficiaries and the scarce resources, not even to mention the difficulties in
6 access to the field in the present situation.

7 Moreover, the experience of recent ICC cases demonstrates the urgency for change to
8 the reparations process and illustrates the danger of delay, particularly in the face of
9 large numbers of beneficiaries to reparations.

10 In the Ongwen case, for instance, significant time has already elapsed after the
11 reparations order without implementation commencing and with only a small
12 proportion of potential beneficiaries identified. The consequence is particularly
13 serious for victims who are elderly, vulnerable, or otherwise at risk of passing before
14 reparations reach them.

15 This is not merely an administrative problem. Delay directly affects the substance of
16 victims' rights.

17 For an elderly or ailing victim, a reparations process measured in years is not a slower
18 remedy but, in substance, it's no remedy at all. Delay of this kind therefore does not
19 merely affect the timing of reparations, it defeats the harms and the rights -- and the
20 right the Chamber's Judgment recognised. That is why urgency is not a plea for
21 administrative efficiency but a component of the victims' substantive entitlement.

22 In general, the number of potential beneficiaries in recent ICC cases has increased
23 dramatically - and you can see it in the graph that we provided - while available
24 resources have not followed the same curve.

25 The Chamber should therefore take the implementation reality into account when

1 designing its order, not by lowering its ambition, but by ensuring that the order
2 contains mechanisms capable of adapting to the specific circumstances of this case
3 and producing actual benefits.

4 The circumstances in Darfur make this particularly important, given the exceptional
5 implementation challenges present in the region. The Chamber must anticipate,
6 among other things:

7 the ongoing armed conflict; the central importance of ancestral land to Fur
8 communities, and I will turn to that a bit later;

9 the fact that victims cannot presently return to their lands because those lands are
10 occupied; inadequate infrastructure for distributing reparations; limited or absent
11 cooperation from Sudanese authorities; the relative to significant insecurity prevailing
12 in Darfur and Chad; the limited presence of international assistance; and the very
13 different circumstances of victims remaining in Darfur, those in refugee camps in
14 Chad, and those living in the diaspora.

15 These factors mean that a uniform, rigid reparations model will not adequately
16 respond to the victims' personal situations.

17 Across participating victims, the most significant form of reparation is ultimately the
18 possibility of returning to their ancestral lands and receiving help to support their
19 integration upon their return.

20 We therefore propose that the Chamber consider a phased approach, the tension
21 being apparent - victims need real services now - yet they refuse anything that would
22 signal permanence in the camps. But this tension, we submit, can be resolved.

23 What victims reject is not durability but entrenchment; structures that treat
24 displacement as settled. The answer, which I develop below, is provision that is
25 effective yet inherently temporary and redeployable. Like, for instance, mobile

1 clinics, demountable classrooms and shelters that can be dismantled and carried
2 home when return becomes possible. Reparation can therefore be substantial now
3 without prejudicing return later.

4 Accordingly, reparations should provide immediate relief without prejudicing the
5 ultimate objective of return. More permanent forms of assistance can be deployed
6 when return becomes possible.

7 Also, the consultations with victims informed us that their needs and preferences
8 differ considerably from community to community. For victims in Darfur, preferred
9 modalities include:

10 symbolic financial compensation and collective and community-based reparations
11 like, for instance: income-generating activities; medical assistance; targeted support
12 for particularly vulnerable persons; and educational services.

13 These measures respond to the broad and continuing harms caused by crimes that
14 resulted in displacement lasting more than two decades.

15 For victims in Chad, the situation is different. They remain refugees in
16 a neighbouring country, often living in precarious conditions with restricted access to
17 employment, income and essential services, and facing discrimination.

18 However, their priorities are similar and include:

19 decent health care; education for children; food security and sustainability;
20 income-generating activities; and greater self-sufficiency.

21 Views on individual financial compensation are more divided. Some victims fear that
22 cash could generate tensions or be stolen in insecure camp environments. Others
23 urgently need money for medicine, education and other immediate necessities.

24 The Chamber should therefore avoid assuming that one modality of reparations will
25 suit all victims, and will have to adopt a flexible and actively supervised order. It

1 would be wrong to suggest that any reparations order can remedy all of the harm
2 suffered by these victims.

3 Rather, the Chamber should issue an order that is meaningful, of course, because it
4 responds to actual harms and needs; practical, because implementation realities are
5 taken seriously; flexible and adaptable, because the security and political situation in
6 Darfur may change, and we have to keep this in mind; victim-centred, because the
7 modalities should reflect victims' own views and circumstances, and we've given you
8 plenty of material of what this means; and actively supervised by this Chamber so
9 that implementations remain transparent and timely.

10 The Chamber should not allow the difficulties inherent in the ICC reparations system
11 to become a reason for limiting the rights of victims. Instead, those difficulties should
12 be seen as a challenge and inform the design of the order and the mechanism for its
13 implementation.

14 Ultimately, I request the Chamber to confront the reality that a reparations order has
15 value only if it can translate the Court's recognition of the victims' harms into
16 something they can actually experience during their lifetimes.

17 The victims now ask the Chamber to ensure that reparations are not merely a legal
18 conclusion, but a concrete and achievable form of justice, adapted to their realities of
19 Darfur and Chad in the diaspora and to the different circumstances of the
20 communities concerned.

21 Turning to the harms suffered, and regarding the harm suffered by my clients,
22 although it's at the heart of every step we take, we won't focus on it during today's
23 submissions. It is recognised and reflected in the Trial Chamber Judgment and
24 absolutely no doubt was left behind.

25 In our written submissions, we have demonstrated *in extenso* - and at every

1 opportunity given to us - that harm suffered by the participating victims operates at
2 three compounding levels: individual, family, and community, with long-term and
3 intergenerational consequences perpetuating cycles of poverty, marginalisation,
4 vulnerability.

5 All I can do at this stage is to pay my deepest respect to my clients and the entire Fur
6 community and to reiterate the immense suffering caused as a result of the crimes
7 committed by Mr Abd-Al-Rahman at every imaginable level of their lives, since 22
8 years and until this very day.

9 Your Honours must be satisfied that the harm resulted from these crimes and they
10 were a proximate cause of the harm. This is not a test of sole causation. Concurrent
11 causes do not break the chain, and the fact that others also caused harm does not
12 reduce the harm the crimes committed by the accused caused.

13 This is why I ask the Chamber to reaffirm that the displacement caused by
14 Mr Abd-Al-Rahman's crimes is a continuing harm subsisting to the date of the order.
15 Turning to modalities for reparations.

16 The Court's reparations framework envisages individual or collective awards. And
17 following consultations and the outcome of the questionnaires I've mentioned, it
18 became clear that a majority of victims - or those we've been able to consult with,
19 which are the participating victims - are favouring both operating together, with some
20 distinction by location.

21 This doesn't come as a surprise, given the diversity of individuals and their stories
22 and fate. Our submissions have sought to accurately capture the variety of requested
23 modalities and its feasibility between locations, because you also have to make the
24 difference between the four locations we are talking about, Bindisi, Kodoom, Mukjar
25 and Deleig. You can't all put it in one basket. But more than anything other, return to

1 the land has been the pre-eminent focus of my clients.

2 And I would like to play a video of one of our main interlocutors. I can't say more
3 about him, but I would like you to hear his words on this topic.

4 (Viewing of the video excerpt)

5 MS VON WISTINGHAUSEN: [10:07:01] It is against this backdrop that I'm turning to
6 the Chamber's question concerning its powers to order restitution of the land and
7 what practical ways it can address restitution and I would like to respond as follows.
8 To make my position very clear, the participating victims do not necessarily seek
9 a strict order for the restitution of land to be made by this Court. This is not because
10 they do not seek the return of their land. Make no mistake, this is their absolute
11 priority. Rather, they understand that the Court would be unable to enforce the
12 practical delivery of those lands. This is something that will ultimately be required to
13 be implemented by Sudanese authorities in a time of peace.

14 Instead, the participating victims seek a reparations order that provides a strong
15 foundation to safeguard the eventual return to their ancestral lands, when it is safe
16 and possible to do so. As such, they have expressed a desire for a meaningful judicial
17 decision that recognises their dispossession and right to return, while also expressing
18 the need for the Chamber to order practical steps that may help pave the way toward
19 full restitution in the future.

20 The Chamber recognised that the primary livelihood of the Fur people of the Wadi
21 Salih and Mukjar localities was farming, and that land ownership made up the fabric
22 of their lives. You say it in your Trial Judgment. The Sentencing Judgment held that
23 the displacement suffered as a result of the crimes, and I quote, "impacted the social
24 fabric and cultural practices of the Fur as those displaced could no longer hold
25 traditional celebrations and were deprived of land ownership".

1 Indeed, the judgment found that the displacement caused by the crimes "severed" the
2 ties that victims have with their land. Accordingly, this Chamber has found that the
3 participating victims' connection with their land is directly linked with their identity
4 and also their subsistence. This connection is rooted in intergenerational possession
5 and cultivation of the land. It is a place of belonging and attachment to culture,
6 identity and community, and you heard it first-hand in the video.

7 The jurisprudence of the human rights courts and other human rights resolutions
8 further provide, we submit, a basis for the Court to recognise the dispossession of the
9 land by the participating victims as traditional owners of the land and a right to their
10 return.

11 Both the Inter-American Court for Human Rights and the African Court of Human
12 and People's Rights have interpreted the right to property to be both individual and
13 collective in nature, in nature. I will provide the Trial Chamber with the authorities
14 for everything I'm saying.

15 As such, both courts have found that communities, and the members of that
16 community, with established traditional and ancestral connections to the land, have
17 enforceable rights to occupy and enjoy those lands. This right is not extinguished by
18 a lack of possession. The Inter-American Court has held that, and I quote, "the
19 members of indigenous peoples who have unwillingly left their traditional lands, or
20 lost possession thereof, maintain property rights thereto, even though they lack legal
21 title, unless the lands have been lawfully transferred to third parties in good faith".

22 Once land rights are proven to remain current, actions to return the land to the
23 members of the community must be taken.

24 In the present case, the Chamber has already recognised that the participating victims'
25 community have strong traditional connections to the land and, as such, their right to

1 such property must be respected by a right to return.

2 The Declaration on the Rights of Peasants and Other People Working in Rural Areas

3 issued by the UN General Assembly in 2018 would also be applicable to the

4 participating victims and the community, meeting the definition of any person who

5 engages or seeks to engage alone, or in association with others or as a community, in

6 small-scale agricultural production for subsistence, and who has a special

7 dependency on and attachment to the land. This is Article 1.

8 You will understand where I'm going. That declaration explicitly recognises that

9 those persons have a right "to return to their land of which they were arbitrarily or

10 unlawfully deprived, including in cases of natural disasters and/or armed conflict".

11 As such, the Chamber can recognise the rights of participating victims to return as

12 a fulfillment of their human right to such land. Recognise not to be mistaken for

13 order.

14 In answer to the Chamber's questions regarding the ability and power to make orders

15 of restitution, Article 70 (1) provides explicitly that the Court may establish principles

16 relating to reparations in respect of victims, which includes restitution. The Court's

17 jurisprudence has considered that restitution may include, and I quote, "returning lost

18 or stolen property". There has been no distinction so far, either in the jurisprudence

19 or the drafting history of the Rome Statute, regarding whether such property refers to

20 personal property or real property held by individuals or by a collective.

21 At the heart of the participating victims' request for practical measures is to ensure

22 the future -- the future restitution of the land, and this includes: participatory land,

23 village and livelihood mapping programme to document the pre-displacement space,

24 and I will explain further; and to preserve that information as a basis for future

25 restitution, voluntary return, reconstruction, livelihood restoration and other

1 appropriate reparative measures are taken.

2 This will ensure the community and its members are able to prove their relationship
3 to the land when it is necessary to do so. It will assist the victims to formalise
4 entitlements and ownership to land which can then be enforced and recognised later
5 on.

6 So what is the significance of all of this in practical terms? First, the victims do not
7 conceptualise "return" merely as like receiving a house. Participating victim, Ibrahim,
8 from Deleig, for instance, explains expressly that livelihood is tied to the farms left
9 behind. The displaced currently must rent farmland or surrender part of their
10 harvest, whereas their original areas contain the agricultural assets on which their
11 livelihoods depended. Victims consequently link rehabilitation, return, housing and
12 agricultural land together, and clearly distinguish between temporary assistance in
13 camps and durable reconstruction in the original villages. For them, permanent
14 housing in camps risk entrenching displacement, whereas the reconstruction in the
15 original areas would reconnect housing with farmland and livelihood.

16 Second, there is already an important social and documentary infrastructure that is
17 capable of supporting such mapping. Participating victims repeatedly describe
18 *sheikh*-level records that still exist, village and household registers, native
19 administration knowledge and historic victim databases. These already exist. *Sheikh*
20 records reportedly identify households and individual family members and are
21 consolidated through IDP leadership structures. Participating victims say records
22 have been maintained over many years and that comparable records exist for Bindisi,
23 Kodoom, Mukjar and Deleig and they are continuously updated for death, birth, and
24 movements.

25 PRESIDING JUDGE KORNER: [10:16:12] Can I just interrupt for one moment. Exist

1 where, in the villages?

2 MS VON WISTINGHAUSEN: [10:16:19] Absolutely, yes.

3 PRESIDING JUDGE KORNER: [10:16:20] Which at the moment is impossible for
4 anybody to get to.

5 MS VON WISTINGHAUSEN: [10:16:25] No, no, no, no. In -- where the participating
6 victims are now.

7 PRESIDING JUDGE KORNER: [10:16:30] All right. In Darfur?

8 MS VON WISTINGHAUSEN: [10:16:32] They are holding --

9 PRESIDING JUDGE KORNER: [10:16:33] In Darfur?

10 MS VON WISTINGHAUSEN: [10:16:34] In Darfur, yes, of course.

11 PRESIDING JUDGE KORNER: [10:16:35] I see.

12 MS VON WISTINGHAUSEN: [10:16:46] Third, the community structure has
13 survived displacement. Participating victims describe village communities remaining
14 socially identifiable and capable of collectively determining whether a person
15 belonged to a particular village.

16 They also recognise the danger that an individual *sheikh*, for instance, could favour
17 relatives and propose cross -- and therefore propose cross-checking with the
18 surrounding community. That is extremely useful for designing an evidentiary
19 methodology.

20 So I'm not saying, your Honours, not to cause a misunderstanding, that everything is
21 there, but there is still documentation and actually a lot of memory, and the assistance
22 the Court could provide is to accompany a more solid mapping and documentary
23 exercise.

24 The geographic displacement problem is manageable conceptually even though it is
25 operationally, of course, difficult. The consultations refer to an existing demographic

1 map showing where people dispersed and their principle current locations are, and
2 earlier databases can supplement that picture.

3 Finally, the evidence shows why land mapping must precede physical return rather
4 than depend upon it. Villages have been abandoned for approximately two decades
5 and, of course, vegetation has changed, wells and infrastructures have been destroyed
6 and security remains the principal impediment to return. So the participating victims
7 consistently condition permanent reconstruction and return upon sufficient security.

8 As to how to operationalise the programme, I will explain the different operational
9 levels and phasing of the reparatory programme, and I apologise for being so detailed
10 but I don't think it assists you when I don't explain to you how we heard from our
11 clients, it could potentially materialise.

12 The first layer would be to reconstruct the affected pre-displacement community
13 geography. For each relevant location of Bindisi, Kodoom, Deleig and Mukjar and,
14 where relevant, their associated villages. The exercise would identify the villages
15 existing before the attacks; approximate village boundaries; neighbourhoods or *sheikh*
16 jurisdictions; roads and traditional access routes; water points and wells; schools,
17 health centres, markets and other communal facilities; cemeteries, places of worship
18 and culturally significant locations; agricultural areas surrounding the villages;
19 grazing areas in other communal resource areas where relevant; rivers, wadis, trees,
20 hills and other enduring physical landmarks used locally to orientate land
21 boundaries.

22 This is particularly important because the victims indicate that the physical
23 environment has changed considerably, and where small trees have grown, wells and
24 infrastructure have disappeared and villages have remained abandoned for years.

25 Within the village map, a second layer could record the relationship between

1 households and land. The map should record use and relationship to land, not
2 impose an outside conception of registered individual ownership.

3 For participating households, the mapping form could record residential property,
4 being the family or the household associated with this residence; the approximate
5 location of the home; the neighbouring households; significant physical landmarks;
6 the approximate dimensions, where remembered, and the construction type and
7 principal structures.

8 And regarding the agricultural land, it could demonstrate the approximate location;
9 the household that is cultivating or controlling this land before displacement; the local
10 name of the agricultural area; neighbouring cultivators; the approximate size or
11 locally understood extent; the crops normally cultivated; wells, trees, irrigation or
12 other improvements; and whether land was individually, family or communally
13 used.

14 Other livelihood assets connected with the land like livestock areas, water sources,
15 storage areas, shops, workshops, and other productive assets could also be identified.

16 The third layer would connect each mapped feature I've described to establish this
17 household's relationship to this specific location before the displacement. The Court
18 could use for this: existing CLRV or VPRS information; historic *sheikh* household
19 registers that exist; IDP administration records that exist; native administration
20 records that exist; humanitarian or displacement records that exist; documentary
21 evidence possessed by the victims; testimony of the relevant *sheikh* or *umdah*;
22 neighbouring household confirmation; testimony of the village elders; family
23 witnesses; photographs, historic satellite imagery and other geographic material
24 where available, and identifiable physical landmarks.

25 The *sheikh* and community-based verification has historically been used because

1 village communities remain identifiable. But the suggestions we make could be
2 safeguard to not have a single *sheikh* have explicit authority over a particular area.
3 Timewise, we suggest the Chamber does not need to wait for a peace agreement, safe
4 access or actual return before ordering or supporting for this type of preparatory
5 work. Such database might help record the pre-displacement status, such as,
6 occupied or used by victim households; as well as the present status, such as,
7 unknown, abandoned, destroyed, cultivated by others, occupied or inaccessible.
8 All of this needs to be identified. Such order would be meaningful to the victims
9 now - this is what they tell us - without pretending that the ICC or the Trust Fund for
10 Victims can presently guarantee safe return.
11 The programme could therefore be divided into a phase 1, a remote and
12 displacement-based mapping now. Victims can reconstruct their villages and other
13 locations using historic maps, community knowledge, existing records, as I've
14 mentioned.
15 And a phase 2, which would be the physical verification when condition permits.
16 Once safe access becomes possible, community-based technical teams could visit the
17 mapped locations, record GPS coordinates, inspect surviving wells, trees and
18 structures, compare community maps with the current landscape, assess destruction,
19 document present land use, et cetera.
20 It cannot be overstated that the participating victims want to ensure active
21 community oversight throughout the reparations process. This includes being
22 involved in implementing the measures.
23 These restitution-enabling measures draw upon the jurisprudence of human rights
24 courts - and I've mentioned it - when faced with restoring the rights of recognised
25 traditional owners to land. The Inter-American Court of Human Rights has

1 repeatedly articulated clear and simple procedures to pave the way to restore the
2 collective right to property. And this has included ordering, for instance, the
3 delimitation, demarcation and titling of the property of those communities.
4 Of course, in those instances, that court may also make orders directly against the
5 State to implement the transfer of the land in question. And this is not possible in our
6 case, but the Government of Sudan can be called upon and encouraged to cooperate
7 with enabling the restitution of the land. And, however, the Court can draw on the
8 experience, I would suggest, of the Inter-American Court as a useful foundation - and
9 it's nothing more than a foundation - for its approach in determining applicable
10 restitution measures. It's better than doing nothing.

11 In relation to 82(4) of the Statute, which provides that a "bona fide" - or how you
12 pronounce it in -- *fide* in English - "bona fide owner of property adversely affected by"
13 a reparations order may appeal against the order. To be very honest, I respectfully do
14 not believe that this is a relevant consideration for the Chamber's current purpose.
15 The Chamber is tasked with considering what are the appropriate reparations to
16 repair the harms caused by Mr Abd-Al-Rahman for the crimes he's been convicted of,
17 and who may or may not appeal the eventual reparations order is not necessarily
18 a matter that should influence the Chamber's decision -- decision-making at this
19 juncture.

20 Finally, and to sum up on this point, the Court's jurisprudence has otherwise
21 considered that "restitution" aims, to the extent possible, at restoring the victims to
22 their circumstances before the crime was committed, even if full restitution will often
23 be unachievable for victims of the crimes in this case. The UN Basic Principles on the
24 Right to a Remedy and Reparations for Victims - I hadn't heard of it, probably like
25 you, before we worked on this topic, but it's, you know, it's worth reading and

1 mentioning it - it also considers restitution in broad terms; namely, it can include, and
2 I quote, "restoration of liberty, enjoyment of human rights, identity, family life and
3 citizenship, return to one's place of residence, restoration of employment and return
4 of property." It's Article 19.

5 It's not possible for the Court to fully restore the participating victims' circumstances
6 as they were before the crimes in 2003 and 2004. However, restitution can encompass
7 a wide-ranging set of orders and I hope we have made this a bit clearer. The
8 Chamber can make orders with a view of placing victims in the best position it can for
9 the future, including their ability to fully return to their land. This is what the
10 participating victims have requested and it is also reflected in the submissions of
11 other parties and participants who will address you later today.

12 A few remarks regarding the permanence of structures because this is also one of the
13 questions you posed. As the return to land is the ultimate goal of the participating
14 victims, they seek no measures which could perpetuate their displacement. They've
15 made this very clear, at least, the participating victims that we've been consulting.

16 In this respect, I turn to the Chamber's question concerning the permanence of
17 structures in refugee camps. Participating victims made it very clear, consistently
18 across the consultations, that they do not wish to see new permanent structures
19 erected in the camps where they currently reside. They expressed concern that such
20 structures would further entrench their displacement and create a sense of
21 permanence in circumstances they regard as temporary, even today.

22 Participants also emphasised their preference for the limited resources available to be
23 invested in flexible and reusable solutions - such as mobile homes or mobile
24 clinics - that could serve their immediate needs while remaining adaptable for future
25 use as well, including upon their eventual return to their ancestral land.

1 I would like to illustrate this issue. At the time of the -- of our response to the written
2 submissions of the parties and participants, we provided, in Annex 1 - I don't know if
3 you remember that - which was a table with an estimate of the cost of constructing
4 a four-by-four metre house. This was one example.

5 We just wanted you to have an idea of what things cost on the ground. In Chad, the
6 construction is approximately €2,300, while in Darfur it is approximately €2,100
7 (inaudible).

8 So we conducted research into the cost of constructing demountable shelters and
9 found that these can be provided at a comparable cost or even cheaper.

10 For instance, I'll just give you an example, Better Shelter is a Swedish project
11 developed in partnership with IKEA - all of us know IKEA I think - the IKEA
12 Foundation, and also working with the UNHCR, or the Refugee Housing Unit. They
13 launched about 15 years ago, a shelter initiative for displaced persons. The shelters
14 are designed to be rapidly assembled and can last for up to 10 years. The initial
15 emergency shelter is provided in a box and the walls are made of plastic panels, but
16 the frame can afterwards be upgraded and reinforced using locally available materials
17 for the walls. This is good in the circumstances in the sense that it might reduce the
18 dependency on international aid.

19 Once displaced persons are allowed to return home, the shelters can be dismantled,
20 reused and repurposed. Depending on the needs, the shelter can consist of different
21 configurations, including a roof and walls. The components are designed to be easy
22 to assemble and can be installed using local skills without the need for specialised
23 tools.

24 The shelters are powered by solar energy. They measure approximately 3 by 5
25 metres, which is about 17 square metres. It can be used not only as accommodation

1 for families - and I'm personally not looking that much at accommodation for
2 families - but also for essential community purposes, such as medical clinics. I know
3 clinic is a big word, but a medical station, classrooms, for instance, or a space for
4 communal therapy sessions.

5 In Iraq, these shelters were installed and they resisted overheating in the summer and
6 flooding during the rainy season, which is comparable with the needs of Chad and
7 Darfur. I don't want to make any advertisement for any of this in particular, I just
8 want to give you a concrete example of what exists and what it costs.

9 Such shelters therefore offer a practical temporary solution that can enhance the
10 dignity, security and comfort of victims while providing, at the same time, a relatively
11 affordable and adaptable form of accommodation.

12 Another example I want to give is a rainwater harvesting and retention tank is also
13 used by UNHCR in refugee camps. This allows for collecting and storing rainwater
14 in basins or cisterns -- cistern placed on roofs or buried underground. The collected
15 water can be used for irrigation, firefighting, toilets, sinks, showers, or laundry
16 making. It could also be located near cultivating areas and be used for
17 irrigating -- irrigation purposes. This could contribute to food security and the
18 conservation of local water resources.

19 Moreover, depending on how the stored water is treated, it may also be possible to
20 chlorinate it and use it as drinkable water. Such a system can be installed in less than
21 a month, requires relatively little investment and specialised expertise, and can last
22 for approximately 10 years. It reduces the need to construct a permanent well or a
23 major water management system, while providing an efficient and practical solution
24 for supplying water to both agricultural fields and households. These are only two
25 examples of what can be done to improve the victims' life while respecting their wish

1 not to have permanent structure built. And I suggest that this is not merely wishful
2 thinking, it is possible.

3 Moving to the difficult question of who should be considered as a victim for the
4 benefit of reparations, there is one aspect that the trust fund and the Registry
5 submissions has raised that I would like to address more in particular because it has
6 an impact on the eligibility process.

7 On the one hand, I want to make it very clear that I welcome the proposal put
8 forward by the Trust Fund for Victims and the Registry in their final observations to
9 recognise the existence of a group of victims meeting the definition set out in Rule 85
10 of the Rules. This means the Fur community is recognised as a victim. We don't
11 speak about the members of the Fur community. There is no doubt that the Fur
12 community as a whole has been impacted by the crimes for which
13 Mr Abd-Al-Rahman was convicted, and we do indeed urge the Trial Chamber to
14 acknowledge this victimhood of the entire Fur community in Darfur in the form of
15 a symbolic recognition, a declaration. The suffering inflicted upon the Fur
16 community by Mr Abd-Al-Rahman was, and remains, immense.

17 But at the same time, any suggestion we make on the assessment of the potential
18 beneficiaries of reparations must remain within the legal framework of the Court - at
19 least as we interpret it - and within the geographical, temporal and material scope of
20 the present case. I strongly believe that there is an important legal distinction to be
21 maintained between the recognition of a community as a collective group of victims
22 for symbolic purposes, on the one hand, and the identification of potential
23 beneficiaries for the purpose of reparations, linked to the liability of an individual in
24 a criminal trial, on the other hand -- in a criminal trial on the other hand.

25 PRESIDING JUDGE KORNER: [10:36:52] That is the point, isn't it? Reparations can

1 only be ordered as a result of the crimes of which the defendant was found guilty.

2 MS VON WISTINGHAUSEN: [10:37:03] This is certainly my position, your Honour.

3 It is -- I know there are other views on this. It -- it is debatable, but I'm, you know, I'm
4 trying to convince you by what we consider is legally correct.

5 Judge Ibáñez Carranza, your colleague, she delivered a separate opinion in the
6 Lubanga case where she considered that, and I would like to quote from what she
7 said:

8 "... a community becomes a collective victim whenever the collective rights that such
9 community enjoys are harmed because of the commission of the atrocious crime.

10 Such harm may affect the social fabric of communities to the extent that it violates
11 their collective rights". Fine.

12 Further research into the jurisprudence of the Inter-American and African regional
13 human rights tribunals also provides for this question insightful jurisprudence
14 concerning the recognition of a community collectively as a victim, and have
15 developed our position -- and we have developed our position in light of this
16 research.

17 In our view, while the Fur community as a whole has to be recognised as having been
18 impacted by the policy enacted by, *inter alia*, Mr Abd-Al-Rahman and his group, this
19 does not necessarily mean that every member of the Fur community in Darfur would
20 automatically qualify as an individual potential beneficiary of reparations. The
21 approach we take is that the potential beneficiaries for reparations in this case are
22 from the communities of the four affected locations - Bindisi, Kodoom, Mukjar and
23 Deleig - as a result of the crime of persecution and displacement.

24 And I submit that this approach is more likely to ensure the effective and inclusive
25 realisation of the victims' rights to reparation.

1 In other words, the recognition of a group of victims is intended to ensure inclusivity
2 and to acknowledge the individual experience of members of these communities in
3 relation to the crimes committed by Mr Abd-Al-Rahman, and the community harm
4 suffered. It is not meant to give rise to additional collective material reparations;
5 rather, its primary purpose is to address the issues relating to the recognition of
6 victim status in the context of mass crimes before this Court.

7 This approach -- and, again, apologies for, you know, going a bit into more details
8 with this question because I think it's an important debate to have, but this approach
9 also reflects the factors that has been expressed by other courts, like the
10 Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia.
11 The chamber there observed that, aside from those victims who participated in the
12 proceedings, thousands of victims, and, I quote, "would likely never be identified". It
13 therefore emphasised the need to design reparation measures in the most inclusive
14 manner possible, while avoiding unrealistic or utopian expectations. And I think this
15 is where it would lead to if we took the other route.

16 Also, it is well established in international jurisprudence that a judicial determination
17 constitutes, in itself, a form of reparation. The formal recognition of victims and of
18 the harm they have suffered, as you have done, is therefore an essential component
19 also of the reparative process, not only the Trial Judgment, but also the reparations
20 process, which will also respect the scope of the reparations proceedings envisaged by
21 the drafter of the Statute.

22 The findings of your Trial Judgment clearly established the enduring economic,
23 social, and cultural consequences of the destruction of the villages of Bindisi and
24 Kodoom, as well as the killing of the community leaders in Mukjar and Deleig. And
25 it is clear that each of those communities suffered in a different way as a result of Mr

1 Abd-Al-Rahman's crimes.

2 So the crimes affected not only the direct victims who lived in those locations, but also
3 the Fur, the Zaghawa, and the Masalit communities of the affected communities who
4 were targeted as ethnic groups collectively as they were identified as rebellious
5 non-Arab tribes.

6 And indeed, your Honours acknowledged that the conflict had an ethnic dimension,
7 as you call it, due to communities of the Fur, Zaghawa and Masalit being targeted and
8 attacked as enemy forces. Most, if not all, members of the non-Arab communities
9 have since been displaced.

10 This harm suffered by each community also undermines their recognised collective
11 human rights, in addition to the specific types of harms suffered by each locality. We
12 think that our submissions with regards to this question is consistent with this Court's
13 jurisprudence. The Appeals Chamber in the Lubanga Reparations Order recognised
14 that, and I quote, "certain crimes may have an effect on a community as a whole",
15 understood "as a group of victims".

16 The Al Mahdi case equally supports this approach even though it's not 100 per cent
17 clear. The Al Mahdi Chamber identified the population of Mali and the international
18 community as affected groups by the destruction of the protected buildings when
19 assessing the relevant victims of the crime, and recognised and granted them
20 a symbolic form of compensation. At the same time, however, the Chamber found
21 that the beneficiaries of reparations were to be identified within the community of
22 Timbuktu, given that its members were the most directly and severely affected by the
23 crimes.

24 So while broader groups may be affected by the crimes for which an accused has been
25 convicted and may, in appropriate circumstances, be recognised as such and receive

1 a symbolic form of compensation or redress, the potential beneficiaries of reparations
2 may nonetheless be identified within the group that was most directly and severely
3 affected by the crimes, for us being, those who lived in the four affected localities,
4 which would then be within the geographical and temporal and material scope of the
5 case and the Trial Judgment.

6 Lastly, in the Al Hassan case, the Chamber found that the entire population of
7 Timbuktu could potentially benefit from reparations as a result of the harm caused by
8 the crime of persecution on religious grounds as direct victims. However, the
9 Al Hassan Chamber also remained within the geographical and temporal scope of the
10 case by limiting the potential beneficiaries of reparations to people who were present
11 in the city at the time of the events.

12 This supports our position that potential beneficiaries of reparations should likewise
13 be confined to those most closely affected by the crimes within the parameters of the
14 present case. And for these reasons I consider that the recognition of the members of
15 the four communities accurately captures the pool of eligible victims for reparations
16 in this case.

17 I want to be very clear because it's important for us, but certainly for the participating
18 victims, this position adopted should not be understood at all as disregarding the
19 impact that the acts for which Mr Abd-Al-Rahman was convicted undoubtedly had
20 on the Fur community of Darfur as a whole, but rather is -- is anchored in the
21 framework of the Court. And at the same time, drawing on the approach adopted by
22 the Court in Al Mahdi, I consider that addressing the collective harm suffered by the
23 Fur community in the four affected locations, as groups, will also contribute
24 meaningfully to addressing the broader harm experienced by the Fur population in
25 Darfur.

1 And such an approach, we submit, is nothing but centred on the interests of the
2 victims, while remaining consistent with the Court's mandate and the practical
3 limitations of reparations proceedings in addressing mass victimisation in the context
4 of international crimes and by nature, and that's a difficulty, macro-criminality
5 PRESIDING JUDGE KORNER: [10:46:10] Ms von Wistinghausen, I'm sorry, and you
6 are obviously representing the victims, but we have a lot to get through today.
7 Although we said we could sit into tomorrow, I'm told there's a transport strike, so
8 that's going to have a knock-on effect.

9 There is one matter which we would like an answer to -- I mean, you've had way over
10 your allotted time, and even the time you asked for, so -- and we've got your written
11 submissions, but we would like you to deal with question 4.

12 MS VON WISTINGHAUSEN: [10:46:47] Question 4.

13 PRESIDING JUDGE KORNER: [10:46:49] Yes, which I think is going to require
14 private session.

15 MS VON WISTINGHAUSEN: [10:46:54] Oh, that's the private session.

16 PRESIDING JUDGE KORNER: [10:47:06] I mean, if you want -- I'm afraid the break
17 comes at 11 o'clock, and we will give you a cut-off point at the break I'm afraid.

18 MS VON WISTINGHAUSEN: [10:47:21] Well, I know I'm asking for a lot but my
19 clients have waited for 22 years and I would suggest that half an hour, more or less,
20 can't really make a difference.

21 My suggestion would be, because my colleague, Maître Beaulieu Lussier, was going
22 to address the question of eligibility, which is also important and we tried to
23 condense it as much as possible, but I think she would --

24 PRESIDING JUDGE KORNER: [10:47:55] I mean, on the point of eligibility, I think
25 nearly everybody agrees on --

1 MS VON WISTINGHAUSEN: [10:48:01] Well, you've asked us if we are --

2 PRESIDING JUDGE KORNER: [10:48:02] Yes.

3 MS VON WISTINGHAUSEN: [10:48:03] -- or, suggesting to depart from -- from the
4 Court's jurisprudence.

5 PRESIDING JUDGE KORNER: [10:48:04] Yes.

6 MS VON WISTINGHAUSEN: [10:48:05] So we are saying yes, but we want to explain
7 why.

8 PRESIDING JUDGE KORNER: [10:48:07] All right.

9 MS VON WISTINGHAUSEN: [10:48:08] And so if you would allow, she would
10 elaborate on that until the break, and I would address the part that needs to be held in
11 private session --

12 PRESIDING JUDGE KORNER: [10:48:24] All right.

13 MS VON WISTINGHAUSEN: [10:48:26] -- after the break, and see during the break
14 what else I can cut.

15 PRESIDING JUDGE KORNER: [10:48:32] But don't forget, as I made it clear at the
16 beginning, you've a lot of this in writing which we've read.

17 All right, then we'll give -- I'm sorry, who was it, your colleague?

18 MS VON WISTINGHAUSEN: [10:48:45] Maître Beaulieu Lussier.

19 PRESIDING JUDGE KORNER: [10:48:48] Yes, until 11 o'clock. Then we'll take the
20 break. And then we'll go into private session for -- it should take no more than
21 five minutes to deal with that question we asked you.

22 MS VON WISTINGHAUSEN: [10:48:55] (Microphone not activated)

23 PRESIDING JUDGE KORNER: [10:48:56] Yes, ever, ever hopeful. All right, very
24 well, yes, we'll hear from your colleague.

25 MS BEAULIEU LUSSIER: [10:49:09] Thank you, your Honour. I will stick to your

1 instructions. So the CLRV wishes to provide some remarks in relation to
2 the eligibility process and what would be the approach that is the most suited to the
3 case at hand.

4 You asked us if we should depart from the existing jurisprudence of Al Hassan,
5 Ntaganda and Ongwen, and the answer is simple, it is yes.

6 We ask the Chamber to apply the principle the Appeals Chamber has affirmed; that
7 reparations are inherently case by case, and the process must be tailored to the
8 circumstances of the case.

9 In our view, it is in the best interest of victims that the Chamber frames its order with
10 regards to the specificity of the case and the circumstances of the victims, rather than
11 to stick to a jurisprudence that has not proven to lead - in a reasonable time frame - to
12 effective reparations.

13 The timelines are contained in slide -- in slides 14 and 15 and they speak for
14 themselves.

15 We have seen, for example, how much time and resources it took Ntaganda -- in the
16 Ntaganda case to identify potential beneficiaries. People in Ituri moved as a result of
17 the ongoing conflict, while communication problems have made it particularly
18 difficult to the VPRS to reach out to potential beneficiaries.

19 Moreover, the trust fund itself has reported to the Ntaganda chamber that
20 establishing contact with victims found eligible by the VPRS has been a particularly
21 challenging and time-consuming process. Months have passed since the completion
22 of the identification and eligibility process by the VPRS was finished, and some of
23 those victims are no longer reachable, which means that ultimately, the resources
24 invested in the process at the first place is potentially wasted, not to mention the
25 unfulfilled expectation of victims.

1 More than five years have passed since the reparations was issued in Ntaganda, and
2 the victims of the attacks have not truly yet started to integrate programmes.

3 In the context of Darfur, we face many of the same challenges as you well know, your
4 Honours. Therefore, the situation calls for a more streamlined approach to eligibility
5 and implementation. Because if we follow the path that was followed in the other
6 cases, there is a real risk that we will face the same delays in delivering reparations to
7 victims and eventually causing potentially more harm.

8 So when the CLRV asks the Chamber to depart from the existing jurisprudence, this is
9 not without reason. We seek to avoid a lengthy and resource-intensive three-step
10 process that could take years to complete and delaying the meaningful delivery of
11 reparations to victims.

12 And this is where the Al Mahdi model can be useful, as it is suggested by our
13 colleagues of the trust fund in their written submissions. There, the reparations were
14 predominantly collective and community based, with the verification or screening
15 mechanism integrated into programmes, and based on a participatory mechanism
16 and community-based structures. This means that the verification and the
17 identification of the eligibility was done simultaneously with the intake in the
18 programmes.

19 A similar approach could be well-suited to Darfur, where a community-led process
20 based on a trusted local leadership structure could respond more effectively and more
21 quickly to the needs of the affected communities, as explained in our submissions at
22 paragraph 72 to 77 and are represented in the PowerPoint.

23 And from public filings in Al Mahdi, we can understand, for instance, that for an
24 income-generating project in the community of Timbuktu, once the programme was
25 ready to take in victims, individuals could apply for financial support and the related

1 advisory services tailored to their needs and capacities. The verification process was
2 then triggered by their application.

3 And this is very similar to what the participating have requested here in this present
4 case. For certain measures, eligibility could take the form of a verification mechanism
5 triggered by individual or group applications. With the support of trusted local
6 organisations and community leaders, programmes could be developed and then
7 identity and eligibility of applicants could be easily verified once a project is ready to
8 be implemented.

9 And should the Chamber also adopt individual compensation, the CLRV supports
10 integrating the eligibility process into the implementation as well from the outset. So
11 the administrative eligibility and the implementation should proceed concurrently,
12 rather than in a separate and sequential stages. And this is consistent also with the
13 position advanced by the trust fund in their submissions.

14 The CLRV also notes that the implementation of some collective measures aimed at
15 repairing community harm may not require a strict individual eligibility process. For
16 example, training and remunerating teachers or rehabilitating health clinics. The
17 children benefiting from those services would, of course, not have to go through an
18 individual eligibility process -- processes.

19 It is also inevitable that certain collective reparations will not only benefit eligible
20 beneficiaries, such as the restoration of schools and community service centres. The
21 participating victims themselves recognise this. They understand that members of
22 the host communities may also benefit, particularly where services are provided to
23 both refugee and host communities.

24 The side benefit of this is that it reduces the security risk that could arise from
25 publicly identifying beneficiaries and it helps avoid tensions between the refugee and

1 the host communities. As explained in our written submissions, refugee camps are
2 often located very closely to those villages.

3 The CLRV, therefore, respectfully submits that the particular circumstances of Darfur
4 require the Chamber to adopt a pragmatic and efficient approach capable of adapting
5 to realities on the ground and making use of local knowledge, rather than replicating
6 procedures that have provided -- that have proven, apologies, ineffective or
7 unnecessarily burdensome and potentially even more harmful to the victims.

8 And very quickly, I'm turning to the specific eligibility of beneficiaries in Mukjar and
9 Deleig, and the CLRV wishes to respond to certain arguments advanced by the
10 Defence in their response at paragraph 10 and 24.

11 The CLRV disagrees with the Defence argument respectfully, that not every witness
12 of the crimes committed in Mukjar and Deleig can be considered as victims on the
13 basis that such an interpretation would extend beyond the definition of Rule 85. The
14 CLRV also disagrees with the Defence submissions that the communities of Mukjar
15 and Deleig did not suffer as a whole because the villages were not attacked or
16 destroyed.

17 The CLRV has already addressed the reason why the communities of Mukjar and
18 Deleig as a whole qualify as victims. And to quickly answer the specific Defence
19 argument, the CLRV submits that the mere fact that the two villages were not
20 destroyed does not preclude a finding that the community as a whole -- as a whole
21 suffered harm.

22 On the contrary, it happened that the whole communities of these villages suffered as
23 a result of the crime of persecution and the subsequent displacement. And the
24 judgment was very clear -- very clear on this.

25 Turning specifically to the status of individuals who witnessed a crime as an indirect

1 victim. It is clear that Rule 85 does not preclude such an interpretation. The rule
2 defines a victim as a "natural person" who has suffered harm as a result of the
3 commission of a crime within the Court's jurisdiction. Accordingly, a witness to
4 a crime, being a natural person, may fall within the scope of Rule 85, provided that
5 this witness substantiate having personally suffered harm as a result of the crime to
6 the requisite standard of proof.

7 This interpretation is, in fact, in any event, supported by the Court's jurisprudence,
8 which is contained in our table of authorities that you will receive eventually today.
9 Now -- but this does not mean that the victims' status is presumed for every witness
10 of crimes. The Defence appears to conflate the two distinct concepts of identifying
11 a harm and the adoption of presumption.

12 In this case, there is sufficient evidence on the record for the Chamber to recognise in
13 a reparations order that harm was suffered by individuals who witnessed the
14 commission of crimes in Mukjar and Deleig. Indeed, for instance, the Trial Chamber
15 in its own judgment noted the impact that witnessing the torture of detainees at the
16 police station in Deleig had on P-94 -- P-994, my apologies, who described it as
17 a painful date that he would remember until the Day of Judgment.

18 And likewise, V-4 testified in front of the Court about the profound impact of
19 witnessing those events had on him, explaining that it took him some time before he
20 was able to speak about what he had seen and what he had heard.

21 The CLRV hopes that this clarifies the questions raised by the Chamber, and I will
22 allow everyone to take the break at 11 sharp.

23 PRESIDING JUDGE KORNER: [10:59:58] Thank you very much, indeed. Very well,
24 we will take the break at this stage, which is necessary obviously for the interpreters
25 as well as those writing, and when we return at 11.30, we'll go straight into private

1 session.

2 Roughly, Ms von Wistinghausen, how long would you think you will need to -- it's
3 simply the question of question 4, which I would've thought could be answered fairly
4 shortly.

5 MS VON WISTINGHAUSEN: [11:00:23] I think I would need something like 10
6 minutes --

7 PRESIDING JUDGE KORNER: [11:00:25] Yes, all right.

8 MS VON WISTINGHAUSEN: [11:00:26] -- to address the question. But maybe we can
9 discuss with the other parties and participants if it makes sense that if they have -- if
10 they also have submissions to make on the same topic --

11 PRESIDING JUDGE KORNER: [11:00:38] I think --

12 MS VON WISTINGHAUSEN: [11:00:39] -- it would be good -- good to group it --

13 PRESIDING JUDGE KORNER: [11:00:40] Yes, I have a feeling --

14 MS VON WISTINGHAUSEN: [11:00:41] -- I would suggest --

15 PRESIDING JUDGE KORNER: [11:00:42] I have a feeling --

16 MS VON WISTINGHAUSEN: [11:00:43] -- so we don't have to go in and out.

17 PRESIDING JUDGE KORNER: [11:00:47] -- that Ms Sutherland -- yes, Ms Sutherland,
18 on behalf of your organisation, that comes up in your -- or something like it comes up
19 in your submissions.

20 MS SUTHERLAND: [11:00:55] We're prepared to address that.

21 PRESIDING JUDGE KORNER: [11:00:59] Yes, all right.

22 MS SUTHERLAND: [11:01:00] Thank you.

1 PRESIDING JUDGE KORNER: [11:01:01] Well, in that case, we'll say 15 minutes.

2 And I think we'll discuss the further timing of all of this after the break.

3 Yes, very well, break till 11.30.

4 THE COURT USHER: [11:01:15] All rise.

5 (Recess taken at 11.01 a.m.)

6 (Upon resuming in private session at 11.34 a.m.)

7 THE COURT USHER: [11:34:15] All rise.

8 Please be seated.

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8 (Open session at 12.03 p.m.)

9 THE COURT OFFICER: [12:03:27] We're back in open session, Madam President.

10 PRESIDING JUDGE KORNER: [12:03:30] Yes.

11 MS VON WISTINGHAUSEN: [12:03:34] Thank you, Madam President.

12 I'm jumping a bit but coming to a last but important theme. On the broader -- on the
13 broader theme of implementation, we have proposed a phased approach and want to
14 explain again what we mean by that. While we do not wish to repeat the points
15 already made in previous submissions, we would emphasise that this issue is
16 particularly important in the present situation.

17 So what do we mean by phased implementation? The Chamber will have to consider
18 a phased implementation, and distinguish between immediate deliverable measures
19 from those currently impossible or dangerous, with mobile service providers as an
20 interim solution, financial compensation as a fallback where collective delivery
21 proves impossible, and the possibility of allocating only part of an award now while
22 preserving the remainder for when security is restored. The trust fund should be best
23 placed to inform the Chamber further on the matter.

24 But what we're also asking for is a continued Chamber monitoring, which is maybe
25 also a bit unusual or would be a first. Departing from the recent Trial Chamber

1 practice of disengaging and leaving the Trust Fund for Victims and the VPRS without
2 judicial oversight, we are urging the Chamber to remain actively involved through
3 regular status conferences, ideally every six months given Darfur's volatility, so the
4 order can be revisited as circumstances change.

5 Relatedly, I strongly advocate against the practice of ending the CLRV's role at
6 implementation, and I have explained that in writing -- it's not about us, I hope you
7 understand that. But we want to note that removing my team and its trusted field
8 assistants would sever a multi-year relationship of trust with victims who have no
9 established relationship with other entities of this Court so far. So, undoubtedly, I
10 consider continued legal representation to be in the victims' interests and not a major
11 resource issue.

12 In the event of a significant change of circumstances - and I think we should always
13 keep this in mind and not lose the hope that this is a possibility that would require
14 additional submissions and a review of certain positions - I would invite the Chamber
15 to consider the possibility of holding further hearings on reparations pursuant to Rule
16 143, upon request by the parties or participants. We anticipate that our clients' needs
17 and the feasibility of the implementation of reparations will change over time and
18 will depend heavily on how the conflict evolves. And we think that allowing an
19 avenue to revisit how certain modalities of reparations will or can be implemented
20 over time may be crucial.

21 So, Rule 143 appears to be broadly worded and could encompass a wide range of
22 matters arising within reparations proceedings as seized by the Trial Chamber.
23 This is maybe also important to say without prejudice to the rights of
24 Mr Abd-Al-Rahman, obviously, as we accept that the reparations order must provide
25 sufficient certainty of his personal liability.

1 We are also fully aware that the reparations order must, of course, include some type
2 of modalities of reparations, but we do not believe that the Court's framework allows
3 for the reparations order to be revisited, really legally revisited, unless by way of an
4 appeal.

5 However, hearings pursuant to Rule 143 could be utilised in the implementation
6 phase of those reparations, and in the context of the Chamber's decisions on the trust
7 fund's implementation plan.

8 And this would provide the Chamber with the ability to receive up-to-date
9 information on the needs of our clients and what reparations are capable of being
10 implemented at that time and in light of the conflict. So this may be a bit of a novel
11 submission, but I don't know why this isn't something that the Trial Chamber should
12 consider, and we assert that the Darfur situation is also a novel situation that
13 mandates an ongoing oversight and creative solutions that are, we submit, covered by
14 the ICC legal framework and ensure that reparations to victims have a chance of
15 becoming a reality despite the challenging circumstances on the ground.

16 So, now --

17 PRESIDING JUDGE KORNER: [12:08:08] Sorry, I'm -- despite saying we have only 10
18 minutes, I'm just trying to understand what you say. You're suggesting, are you, that
19 should matters change in Sudan, that we should hold further hearings to decide
20 whether to alter the order, because I'm not sure we can do that?

21 MS VON WISTINGHAUSEN: [12:08:27] No, well, unfortunately there is no
22 possibility of altering the order unless it is appealed.

23 PRESIDING JUDGE KORNER: [12:08:33] That's what I thought, yeah.

24 MS VON WISTINGHAUSEN: [12:08:35] However, I don't see why during now the,
25 I will call it, deliberation phase until the order is issued, further hearings could be

1 held. And even after the order has been rendered, we say that Rule 143 could apply
2 in the sense that when we are in the phase of the implementation of reparations, and
3 the Trial Chamber still has the oversight, there's no reason why we couldn't come
4 back together and maybe adapt on -- on the -- on -- on -- on how the modalities that
5 you will have decided upon can be shaped given the situation.

6 Imagine -- imagine -- because I prefer to think positive, imagine there is peace in
7 Sudan in six months. That completely changes the picture. So wouldn't it be a shame
8 not to be able to come back together and discuss it. And, again, I want to think
9 positively, but things can also get worse. It can't get much worse, but do you know
10 what I mean? So, I think this case is different, Madam President. It's -- it's different.
11 So it requires your ongoing oversight.

12 And considering the legal framework as it is - that, as you know, I think should be
13 reformed, but that's another story - we can't ask you to amend an order when it's
14 there. Or -- and not only us, you know. I mean the other parties and participants.
15 But there is this possibility of, you know, keeping some flexibility to adapt to the
16 situation.

17 PRESIDING JUDGE KORNER: [12:10:18] Well, it seems to me, I mean you've made a
18 very strong point, Ms von Wistinghausen, that the situation can change so
19 dramatically that one ought to have the ability to amend an order to meet the new
20 realities. And, I don't know, maybe your country or another country might like to do
21 an amendment to the Rome Statute.

22 MS VON WISTINGHAUSEN: [12:10:41] Well, it would be helpful if, you know, this
23 is something that would reflect in the reparations order, because you are the
24 decision-makers who are confronted with this situation and you can't -- you know,
25 you can't do a copy, paste from the other situation. So you have a lot of -- you can't

1 order such a thing, but you can -- it can reflect in your order that it's something that
2 needs to be addressed by those who bear the responsibility. And I think that's really
3 important that -- that you do that.

4 PRESIDING JUDGE KORNER: [12:11:12] So this is another declaration you're asking
5 for, is it?

6 MS VON WISTINGHAUSEN: [12:11:16] Yes. If you give me two -- the two or three
7 more minutes I've been asking for, I will come to a conclusion and I will tell you
8 exactly what I'm asking you to do.

9 PRESIDING JUDGE KORNER: [12:11:24] Yes. Well, you got -- all right, that's it.
10 Quarter past twelve and that's it.

11 MS VON WISTINGHAUSEN: [12:11:30] Yeah. Okay.

12 So, to conclude, I would like to return to my structural thesis: the documented
13 systemic challenges reinforce your responsibility not only to issue a comprehensive,
14 meaningful order, but to use its judicial authority - and I think you have this
15 authority - to address the system's shortcomings through creativity, supervision,
16 monitoring mechanism, reporting obligations, phased frameworks and
17 evidence-reducing presumptions, and by exercising your -- your discretion to call on
18 the States Parties for an internal review of the ICC's victims' participation and
19 reparations framework, potentially towards - in my view, ideally - towards reform.
20 And I have addressed this in detail in our written submissions.

21 Darfur offers a particularly apt context for this reflection, arising precisely when the
22 Court appears unable to deliver reparations consistent with its own jurisprudence. I
23 would like to express really my -- it's a real concern I have that victims and more
24 particularly the participating victims, my clients on whose behalf I'm speaking, they
25 will bear the consequences unless the -- the "reparations ship" is really steered

1 differently. And, therefore, I trust that particularly this Chamber will urge the States
2 Parties to support the Trust Fund for Victims, on which any order depends, and will,
3 as requested, retain active oversight given the evolving conditions.

4 So, for these reasons, I respectfully request that the Chamber, in its reparations order
5 recognises the four affected communities of Bindisi, Kodoom, Mukjar and Deleig, and
6 their members, as groups of victims, and symbolically recognise the harm to the
7 wider Fur community of Darfur. This goes back to what I said this morning, that's
8 important.

9 I request that you declare the victims' dispossession of and subsisting right to return
10 to their ancestral lands; to order the community-led documentation and mapping of
11 land holdings, and the documentation and preservation of mass grave sites and
12 evidence of violations; to adopt an integrated process in which eligibility or
13 community-based verification proceeds concurrently with implementation; and adopt
14 the Judgment-anchored presumptions set out in our written submissions. I didn't
15 mention those today.

16 And I ask you to order a phased implementation distinguishing immediately
17 deliverable measures from those presently impossible, prioritising the most
18 vulnerable, and using non-permanent, deployable provisions where structures are
19 needed.

20 We also ask you to retain active judicial oversight through Rule 143 hearings or status
21 conferences. We ask you to call upon the Government of Sudan and States Parties to
22 cooperate in establishing restitution, and to support the Trust Fund for Victims.

23 And last, but not least, I ask you to make your own observations and to request the
24 Assembly of States Parties and relevant stakeholders to review the current reparations
25 procedure and consider reforms if appropriate.

1 And none of the foregoing, I suggest, diminishes the liability of the convicted person,
2 which, of course, we need to keep in mind, and from which the obligation to repair
3 ultimately derives.

4 I thank you for your patience, and thank you for giving me far more time and to be
5 able to speak on behalf of the participating victims. Thank you.

6 PRESIDING JUDGE KORNER: [12:15:18] Thank you, Ms von Wistinghausen. I think
7 the Chamber would like to express its gratitude to you for everything you've done on
8 behalf of the victims, both in the trial and at this stage. I don't think anybody could
9 have spoken more eloquently than you, so thank you.

10 Yes. Then we come next to the Prosecution.

11 Mr Nicholls, you've made submissions. I'm not going to cut you off, obviously.

12 But if you could keep them really short, if there's anything you want to add.

13 MR NICHOLLS: [12:15:54] Yes, your Honour. Thank you. Mr Do Duc will make
14 submissions on behalf the Prosecution and we will be under our 10 minutes. Thank
15 you.

16 PRESIDING JUDGE KORNER: [12:16:09] Thank you very much.

17 Yes, Mr Do Duc. Right.

18 MR DO DUC: [12:16:20] Good afternoon, Madam President, your Honours.

19 I will be making the submission on behalf of the Prosecution.

20 In accordance with the Chamber's directions, the Prosecution will not repeat
21 arguments contained in its written submissions, but will briefly focus on three issues
22 which will last for less than five minutes: First, the financial amount of a symbolic
23 award; second, the prioritisation in the delivery of reparations; and, third, types and
24 modalities of reparations.

25 Regarding the financial amount of a symbolic award, the Prosecution notes the

1 submissions of the CLRV at paragraphs 109 to 126 of their filing number 1344. The
2 Prosecution agrees that such a calculation should be done on a case-by-case basis,
3 considering in particular the present situation of the victims. This symbolic award
4 should not be dependent on or constrained by amounts provided in prior cases which
5 may not be appropriate in this case.

6 Second, regarding the prioritisation of the delivery of reparations, the Prosecution
7 already provided its position on this issue in paragraphs 19 and 20 of our
8 submissions, filing number 1342. However, I want to take this opportunity to
9 emphasise the importance of this issue and the need to prioritise reparations for
10 particularly vulnerable victims. These include, in particular, those affected by sexual
11 and gender-based crimes, the elderly, persons with disabilities, and children born of
12 rape. Given the length of time that the victims had to wait for justice, the reparations
13 due to them must be delivered expeditiously.

14 In relation to children, the Prosecution further supports the CLRV submissions that
15 children should be given special consideration as victims of transgenerational harm.
16 The same filing 1344, at paragraph 257.

17 And, finally, regarding the types and modalities of reparations, the Prosecution
18 supports in principle the recommendations of the CLRV for the reasons outlined in
19 their filing at paragraphs 109-235. In particular, the Prosecution agrees that a method
20 must be identified to provide reparations in a safe, secure and expeditious manner.
21 The Prosecution will provide all appropriate support that it can to accomplish this
22 goal.

23 Madam President, your Honours, before the conclusion of these submissions, the
24 Prosecution takes this opportunity to reiterate its support for the victims in this case
25 who have been waiting for reparations for almost 25 years.

1 Finally, the Prosecution emphasises its willingness to provide its full support to the
2 relevant ICC organs in the implementation of the provision of reparations of this case.

3 Thank you, Madam President, your Honours. That concludes my submissions.

4 PRESIDING JUDGE KORNER: [12:19:50] Thank you very much, Mr Do Duc. That's
5 very helpful.

6 Yes, we turn next to the Trust Fund for Victims. We under -- I think some of the
7 questions -- a lot of the questions we asked were directed towards you, so we will
8 give you more time than was originally estimated of 30 minutes. What we'll say is
9 that we'll -- we propose to sit until 1:15, then take a break of one hour - not one hour
10 and a half, one hour - and sit again at 2:15. But if you could complete by 1:15, that
11 would be very helpful.

12 MS RUIZ VERDUZCO: [12:20:34] Your Honour, I will do my best to do so. I take
13 note we are -- you want to break at 1:15, so that gives us, at the moment,
14 45 -- 55 minutes, more or less, to conclude. And I will do my best to -- to do so and
15 stick to the time.

16 The trust fund is very grateful to have the opportunity to address the Chamber today
17 at this very important stage and to deliver their observations. We have heard with
18 great respect and consideration the interventions that have preceded us and, of
19 course, all the filings made by the parties and participants.

20 We participate in these proceedings with awareness and a sense of responsibility and
21 respect for the suffering endured by the victims of the crime for which

22 Mr Abd-Al-Rahman has been convicted. In September 2004, 22 years ago, the UN
23 Security Council decided to establish a commission of inquiry to investigate reports of
24 violations to humanitarian law and human rights law. We all know this. But it's
25 22 years ago this month.

1 The findings informed the UN Security Council determination to characterise the
2 situation in Darfur as constituting a threat to peace and security and, on this basis, it
3 was referred to ICC. In this landmark report, the centrality of reparations to
4 addressing both the individual harm, but also the impact at the international level of
5 the atrocities, was already recognised.

6 This reparation order, your Honours, that you will be issuing, will constitute,
7 therefore, an instrument both for the individuals, the communities, but also of
8 international community as a whole.

9 And on this morning, as the proceedings are being listened to by victims in the
10 courtroom and also outside of it around the world, we want to on behalf of the Board
11 of Directors, with utmost respect, convey our solidarity and recognition for their
12 resilience, agency and determination in the pursuit of justice.

13 As you know, the Trust Fund for Victims has varied mandates. We receive and make
14 available --

15 PRESIDING JUDGE KORNER: [12:23:01] Yeah. I'm --

16 MS RUIZ VERDUZCO: [12:23:03] It is -- it is -- I -- I understand maybe your comment
17 to succinct. It helps to the point -- to a point that I want to make.

18 PRESIDING JUDGE KORNER: [12:23:11] All right.

19 MS RUIZ VERDUZCO: [12:23:12] Thank you very much, your Honour.

20 PRESIDING JUDGE KORNER: [12:23:13] Quickly please.

21 MS RUIZ VERDUZCO: [12:23:17] We make available the resources from the
22 convicted persons and then we galvanise the plight of victims and activate a way to
23 be able to finance reparations when those resources are absent. We are also the
24 vehicle through reparations if the Chamber decides are delivered, of course, enabling
25 the participation of other entities.

1 And on the basis of these diverse functions we have this fourth function that brings us
2 here and which is to contribute to your considerations. We are, as you know, not a
3 party but a participant, but a special participant because we're going to be carrying
4 this order with us. So, my point in this -- in recalling this -- this mandate is to convey
5 also the position and the concerns that we carry today.

6 There are two questions that we want to make sure that we contribute to in addition
7 to addressing your own questions: the first one, does the Chamber have sufficient
8 information so that the order achieves its goal of crystallising the plight of victims;
9 and, secondly, will the order be implementable?

10 The second question is particularly important because, as you know, we have all
11 these feasibility concerns. I will not repeat them; the CLRV and the record shows it
12 very well. But what we have to emphasise, and we believe is very important, is that
13 we should not conflate feasibility with implementability. Feasibility is the situation at
14 hand today; implementability is what the order will say to enable it to survive across
15 time. And this is a very important point, particularly for the issue raised with respect
16 to the potential need to amend a reparation order.

17 So these two questions are guiding your Honours as I endeavour to respond to your
18 answers. They are not conflicting with each other. The plight of victims can actually
19 complement and support that implementability that the order needs to have.

20 After the consultations we held, we emerged cautious but optimistic. The trust fund
21 and we suggest a programme in which some measures can be implemented in the
22 first phase, while the reparations order will provide a framework for other measures
23 to be actively and progressively implemented in the future as circumstances permit.

24 And, in this submission, I would like to explain how does that look like.

25 Very importantly, we appeal that what is feasible today, therefore, should not inform

1 the first phase of implementation. It should not -- it should inform the first phase of
2 implementation, but it should not define the limits of the order. And that distinction
3 is very important to us.

4 We will address your questions, your Honour, by covering four points: the victims
5 and the nature of the harm; the community dimension of the harm; the issue of
6 eligibility; and, other implementation considerations that were asked for.

7 The trust fund has addressed the nature and extent of harm as well as other
8 submissions have done so. We know that the harm is multifaceted, that the crimes
9 were cause -- cause physical, psychological harm, loss of life, property, et cetera. We
10 know that also the harm is continuing. And we know that the harm is
11 interconnected -- that is, the land lost, a symbol of community, was also a livelihood
12 and has a socioeconomic impact, and so on and so forth.

13 Why I am pointing this out is because we are aware that victims, with whom we
14 consulted, or others are apprehensive about the order. They worry that the order will
15 be limiting what they receive. And what it is important to highlight is that the order
16 needs to be comprehensive, and that it should include a varied and diverse number of
17 measures that address the complex situation before it.

18 In particular, the Chamber asks how the order can practically address land restitution
19 claims in light of Article 82(4). We consider that the order, at the minimum, should
20 recognise the important safeguarding function of reparations -- that is, the
21 safeguarding function is that the continuing consequences of the crime are stopped to
22 protect any further loss before -- before fuller repair becomes possible.

23 What is this? What does this mean in practice? It means that through
24 implementation, we, for example, could preserve knowledge of ancestral land and
25 customary tenure of traditions and culture to support the transmission of community

1 identity, which is at risk of being further eroded by prolonged displacement. At the
2 same time, we are conscious that the full reparative response of the harms, including
3 land restitution, cannot be delivered by the Court and the trust fund alone. Some
4 dimensions, particularly concerned to safe return, do not belong to the mandate of
5 enforceability.

6 This doesn't mean that the objectives of the reparation order should fall outside the
7 reparations framework. As the CLRV indicated, it should be the guiding objective of
8 the reparation order.

9 The reparation order can also provide an authoritative point of reference for the
10 action of states and other actors whose involvement will be necessary to achieve a
11 fuller repair.

12 In relation to the return to ancestral land and community reconstitution, this is one
13 objective that victims have placed particularly clear before all of us -- the possibility of
14 returning. The significance of the return is also apparent from the nature of the harm.
15 Return by itself would not repair -- will not repair all the harm, but return and
16 community reconstitution provide a framework within what much of what was
17 destroyed will be ultimately revealed. For that reason, the trust fund submits that the
18 order should recognise return to ancestral land and community reconstitution as a
19 long-term objective.

20 PRESIDING JUDGE KORNER: [12:29:50] Can I pause you there, because we've had a
21 full -- we've been addressed fully by this matter -- I'm sorry, on this matter by
22 Ms von Wistinghausen, who has made various proposals and as to how we, without
23 obviously ordering that the land be returned, can at least insist in the future. Have
24 you got anything that you can -- firstly, do you agree with what she said and,
25 secondly, have you got anything further that you can add to assist us?

1 MS RUIZ VERDUZCO: [12:30:28] The Trust Fund for Victims agrees with the legal
2 representatives; however, the issue of community measures must be addressed in
3 clarification, particularly on the point of the recognition of the community dimension,
4 which is both linked to the return as well as to community measures, if I may. And
5 that is also a question from the Chamber.

6 The community dimension of the harm explains why the trust fund was invited
7 to -- has invited the Chamber to recognise the Fur community of Darfur. This
8 recognition is not simply terminological; it has a concrete reparative function. We
9 want to be very clear on this point. We are not proposing that in recognising the Fur
10 community every member of the Fur community be recognised as an individual
11 victim. This, as the CLRV says, would definitely exceed the scope of the case. We
12 agree with the CLRV.

13 The trust fund's proposal, however, is that it's necessary to recognise that the Fur
14 community was the object of persecution and suffers specific harm as a consequence.
15 That community harm extends beyond individual harm suffered by the victims of the
16 crimes committed in the four locations. Recognising and addressing the harm does
17 not extend beyond the scope of the case, but it allows a reparative response for the
18 crimes for which Mr Abd-Al-Rahman was convicted. There is no contradiction
19 between recognising the harms suffered by the community and separately providing
20 individual or individualised reparations for victims that fall in relation to other forms
21 of harm.

22 The practical consequence is not only the clarity, as the CLRV proposes, but it's
23 actually quite concrete; it's that the reparations' programme can actually include
24 community measures that can be directed specifically at repairing community harm
25 suffered by the community.

1 In the Al Mahdi case, when community measures were implemented, this included
2 planting of trees or even socioeconomic projects for the community as a whole. In the
3 case of Darfur, in this case, as we have documented from victims' wishes, it may
4 include documenting cultural traditions, documenting oral history, which, of course,
5 has participation of individuals who do not need to be individually selected and,
6 nevertheless, addresses the harm suffered by the community and preserving the
7 values that the order seeks to protect.

8 The point is not to choose between community and individual, but is to identify the
9 harm to be repaired and the appropriate reparative response.

10 These measures, of course, would not require individual eligibility, and where, in
11 contrary, if there is a measure providing individual or individualised benefit, the
12 appropriate eligibility requirements would depend on that measure based on that
13 other harm separated from the harm of community, harm of the Fur. So it was
14 important for us to make sure that our proposition was fully understood. And I hope,
15 your Honour, that we have addressed and clarified your question.

16 This brings me to the issue of eligibility, which is another question by the Chamber.

17 The second point of the trust fund is simple, and we agree with the legal
18 representative -- with the common legal representatives in the need for adaptation.

19 We would like to further elaborate what does that mean, also in line with the question
20 from the Chamber.

21 Eligibility is not an end in itself. It has a reparative function; individuals are seen and
22 recognised as victims and promised redress. It's also the conduit through which
23 individualised redress is delivered. The process must be legitimate, fair, ethical and
24 workable, and proportionate to the measures that are going to be imposed.

25 You have asked us whether we're seeking to depart from the jurisprudence. The

1 jurisprudence is complex. It contains several elements. The first one is that different
2 measures will require different eligibility procedures. That is the main point. And
3 this has also been the case in previous cases. There is no departure of jurisdiction -- of
4 jurisprudence. When the CLRV referred to the process of limiting conditions for
5 eligibility in the Al Mahdi case for a community measure, she was actually referring
6 to eligibility conditions for individualised measures, for individual measures; so, it is
7 important to set the record straight.

8 So that means that different measures will require different eligibility mechanisms,
9 community measures, no need for individual eligibility and so forth.

10 Now, the jurisprudence also sets out when is eligibility decided, and this is where the
11 trust fund supports a change in the practice.

12 At the moment, all the reparation orders have indicated the conditions or the criteria
13 for eligibility, and have set out the eligibility process as well at the order. The Trust
14 Fund for Victims posits that it is essential that the order contains the conditions for
15 eligibility, but that the condition -- the process for eligibility be set out once the draft
16 implementation plan is developed. Why is that? Because we need to understand
17 what type of modalities will the Chamber choose in the draft implementation plan.

18 The trust fund in collaboration with the communities, with the victims, with the
19 participants, will design the specific measures that correspond to the modalities, and
20 those measures will have these programmatic elements embedded in them -- that is,
21 that we also need to listen at the communities into what they consider to be fair, what
22 is proportional and what is feasible.

23 In this proposal, the trust fund is reinforcing this notion, your Honours, that the order
24 should be an instrument that provides a framework for the implementation of
25 reparations, the modalities of the reparations based on the harm that you will

1 recognise, and that it is at the stage of the draft implementation plan that further
2 measures in concrete would be developed with their corresponding eligibility
3 mechanisms. We are not seeking to depart from the jurisprudence in the division of
4 responsibilities between the trust fund and the Registry, in particular VPRS. So, the
5 design of the eligibility process for the specific measures at the specific time would be,
6 of course, under their leadership and designed as part of the programmatic
7 development.

8 This leads me, your Honour, two final issues concerning implementation.

9 The first one, your Honour, is the issue of the concept of the moments of -- of
10 implementation of the order. As I have spoken about, we're talking about not
11 feasibility, but an order that is implementable. What does that mean? It's an order
12 that can live throughout time and that provides the conditions that reflect the harms
13 suffered by the victims, and that enables through the draft implementation plan the
14 development of further points as well as throughout the implementation phase.

15 There is exceptional constraints in the present case. And what does this mean for the
16 victims concretely, is that we seek to develop the implementation plan within one
17 year of the issuance of the reparation order. This is a considerable extension from the
18 practice in the past. We consider that the circumstances in which victims are today
19 and the multitude of actors involved in the process - and, as we have heard, who can
20 contribute with creativity and ideas - need to be involved, and, therefore, time is
21 necessary to be able to involve those appropriately.

22 The trust fund proposes that the draft implementation plan will contain two elements.
23 One, a comprehensive plan that reflects the order as a whole and, the second one, a
24 specific plan for the first phase of implementation that looks at the existing conditions
25 today and addresses, from the order, what measures are actually feasible today. That

1 means that, as the CLRV has proposed, we are speaking about phased or a
2 progressive implementation that evolves as the conditions also allows us to.
3 It also addresses the issue of immediacy or urgency that the participating victims call
4 for.

5 In this first phase, we will look closely at where affected communities are located;
6 identify measures, implementing partners, operational modalities; assess access
7 security, available services. And this would allow us together, through consultations,
8 again as mentioned, to develop the specific eligibility measures.

9 In this way, as I said, in sum, there are two types of measures to be developed at the
10 IDP -- those that can begin immediately and those that form part of the reparative
11 framework in the future.

12 This brings us to the matter of oversight. For the record, it is essential to clarify that
13 Chambers exercise considerable oversight over the implementation of reparations
14 with very clear, demanding and close reporting obligations. The regulations of the
15 trust fund - 57 and 58 - provide for that accountability, and it is, of course, welcome to
16 see how this oversight can be reinforced and can be adapted to a situation that is
17 constantly changing.

18 In a framework that is implementable, there is flexibility, which the CLRV has called
19 for, and that flexibility allows us to come back to the Chamber when more
20 information is known to validate certain elements. This does not require a revision of
21 the reparation order; it is designing reparations orders, like it has been done already
22 in previous cases, with important flexibility components.

23 An important element of flexibility concerns the allocation of the overall liability
24 amount. This is extremely important for the trust fund. The Chamber should
25 determine the overall amount of Mr Abd-Al-Rahman's liability in line with the

1 reparations' principles; but, contrary to other cases, the trust fund submits that the
2 order should not predetermine fixed amounts to be allocated to each reparative
3 modality, except as insofar the Chamber determines a specific symbolic sum for
4 victims, for example. Previous orders have said that a portion with a very clear
5 amount will go to a certain type of modality and another portion of the liability will
6 go to another part of the modality. The need for design in consultation with the
7 victims necessarily means that the distribution of the overall liability amount needs to
8 be consulted on the basis of the specific measures that will respond to the modalities
9 decided by the judges.

10 That flexibility is not flexibility as to the harm recognised, as the reparative objectives
11 established by the Chamber order the overall amount of Mr Abd-Al-Rahman's
12 liability. It makes, simply, the reparation order implementable, with points of
13 consultation with the Chamber to revisit or clarify or validate or finalise any
14 final -- any decision.

15 Therefore, the reparation order should establish the harm to be repaired, the relevant
16 victims, the victims' groups, the reparative objectives, the range of modalities, and the
17 applicable criteria for eligibility, and also, in line with the reparations' principles, the
18 overall amount of liability.

19 In the next stage, the draft implementation plan will propose, after consultation, to
20 translate that framework into concrete measures, eligibility procedures and
21 verification arrangements, delivery models, sequencing costs, and proposed
22 allocations between modalities. This enables the reparation order not to be litigated,
23 but, at the same time, for parties and participants to provide input in relation to the
24 draft implementation plan.

25 Later on, once of the draft implementation plan is adopted, there is sufficient

1 flexibility for adjustments, as the CLRV has called for, to be incorporated based on the
2 feedback from victims and the specific circumstances, as they will certainly change.
3 And this, of course, will always be subject to the Chamber oversight as it is already.
4 This provides stability to the judicial determinations you will make while preserving
5 operational flexibility necessary to make those determinations work.
6 In relation to costs, your Honour, as it has been said, costing for measures that can
7 begin now is something that can be developed as part of the draft implementation
8 plan. For instance, the cost of medical or psychological rehabilitation depends on
9 where victims are located, what services will be brought to them, whether qualified
10 providers are available, what security and protection arrangements are necessary, and
11 what can follow -- what follow-up can realistically be provided in a concrete period of
12 time and, therefore, in this, for example, first phase for implementation.
13 We believe that in relation to funding it is also important to highlight that as long as
14 costs are clear and properly presented, this would not necessarily undermine the
15 prospects of funding -- that is, it will make the programme more expensive, but it
16 would not necessarily be the case that there is a discouragement to the cost as long as
17 donors are presented with clear budgets that correspond to operational realities. This
18 is something common in the humanitarian sector and in the context in which we
19 operate.
20 What we are altogether indicating is that measures that cannot presently be
21 implemented should not disappear from the reparative framework. Return and
22 related measures must remain part of the order, and if access, security cooperation, or
23 other conditions change materially, this can be adapted in the next versions of the
24 implementation plan, which are under Chamber's supervision.
25 In relation to funding, also to restate, funding constraints will certainly affect the pace

1 and sequencing of the implementation; however, they should not reduce the
2 reparative framework established by the Chamber. The present financial capacity of
3 the trust fund or the amount of voluntary funding presented available today should
4 not determine the scope of the harm to be recognised or the amount of
5 Mr Abd-Al-Rahman's liability. We are also certain that once the reparation order is in
6 place and there is clarity even further with the draft implementation plan, incentives
7 and interests from donors can be created around concrete measures. We need to
8 simply move towards this process.

9 Nearly concluding, your Honour: Roles of states and other actors.

10 The responsibility of Mr Abd-Al-Rahman is what is at stake at the moment in the
11 reparation order, but this order does not extinguish or replace or discharge any other
12 responsibility for reparations that the state may separately bear. As provided by the
13 Rome Statute, this is -- the reparation order will not prejudice the rights of victims
14 under national or international law. Therefore, the order should make clear
15 limits -- should make clear that the limits of the Court's reparations mechanisms
16 should not be understood as transferring those wider responsibilities to the trust fund
17 or to relieving the states or other actors from their own responsibilities.

18 The Chamber has also asked about implications of changed circumstances concerning
19 cooperation of bordering states. The Registry will address this matter separately, and
20 we have consulted with them on their position.

21 What I want to say is that from the trust fund's perspective what is essential that the
22 cooperation continues in neighbouring states or any other state where victims may be
23 located or where implementation is to take place. This could also be in other regions
24 or continents. Where any circumstances affecting such a cooperation change, this
25 needs to be considered at the feasibility stage, which is at moment of implementation,

1 not necessarily at the level of the order.

2 With this your Honour, I just wish to conclude. I will just switch files for this.

3 Thank you.

4 It is a historic moment where you're bridging the gap between the past and the future.

5 You will be crystallising this past. The order must document, identify and fully

6 recognise what was destroyed by the crimes committed by Mr Abd-Al-Rahman and

7 the consequences that those crimes continue to produce. But we also hope that the

8 order will be a forward-looking document that provides that framework for

9 implementation across time. The Rome Statute was ambitious in setting up the

10 reparative framework for massive crimes and the situation before us is one of large

11 scale, and the gap between harm and feasibility should not be resolved by narrowing

12 the reparation orders. The ambition of the reparative measures should correspond to

13 the nature and extent of the harm. We are both realistic as to the realities. We are

14 ambitious, but we are also hopeful on the creativity that exists around the situation.

15 We have heard it during the closed session. Many ideas, many initiatives, many

16 projects that can be borrowed from. This is the role at the level of implementation for

17 us to convene, to design together with the victims, and to bring forward for your

18 approval in a draft implementation plan.

19 We believe that this order is an instrumental tool for the future, as the Rome Statute

20 provides, in fact, for future generations, particularly the Darfuri victims' future.

21 Thank you, Madam President.

22 If you have any other questions that we were maybe failing to address, I stay. And

23 I'm still within the time.

24 PRESIDING JUDGE KORNER: [12:51:40] Yes, you are. Thank you very much,

25 indeed. You were very succinct.

1 Question 12 you have not dealt with, and I think we may need to go into private
2 session for that.

3 MS RUIZ VERDUZCO: [12:52:02] Yes, I indicated, your Excellencies, that the Registry
4 will be providing an answer to this question, that we have consulted, and we
5 highlighted the importance of cooperation of bordering states as well as any other
6 state where the victims reside. What I believe that this is for the Registry in the
7 format that they consider pertinent.

8 PRESIDING JUDGE KORNER: [12:52:22] Well, can we go -- can we go into private
9 session for just a moment.

10 (Private session at 12.52 p.m.)

11 THE COURT OFFICER: [12:52:40] We are in private session, Madam President.

12 (Redacted)

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Reparations Hearing

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12 (Open session at 1.01 p.m.)

13 THE COURT OFFICER: [13:01:39] We're back in open session, Madam President.

14 PRESIDING JUDGE KORNER: [13:01:46] Yes. I'm sorry. Just before we move to the
15 Registry. This is not a -- this question does not come from me.

16 If you would like to stand up, yes.

17 But could you elaborate, the TFV, on specific costs for the programmes that could be
18 implemented in this case?

19 I'm not -- I have to say I'm just asking that question without any clear idea of why I'm
20 asking it.

21 (Trial Chamber confers)

22 PRESIDING JUDGE KORNER: [13:02:20] Unfortunately, I can't say it.

23 Yeah. I mean, I think you set out the costs somewhere in your submissions.

24 MS RUIZ VERDUZCO: [13:02:32] Thank you, your Honour.

25 The trust fund did -- made some submissions in relation to costs.

1 PRESIDING JUDGE KORNER: [13:02:38] Yeah.

2 MS RUIZ VERDUZCO: [13:02:39] The main tenet of our answer is that the measures
3 need to -- you will be ordering and determining the harm that the victims suffered,
4 the different groups of victims. Hopefully, you will have individual victims who will
5 have collectives and you will have, as we have posited, a community to be
6 recognised. Then there are specific measures that will be developed as part of the
7 draft implementation plan. The Trust Fund for Victims has, as I stated in my earlier
8 intervention, is able to develop those costings depending on the particular measures
9 that will be developed: Are we going to implement in Chad in that particular camp
10 that specific measure that has been consulted as the phase 1 of the reparations plan
11 therefore, we can produce those costings in relation to those particular activities.
12 We recognise that in the past the liability of the convicted person has been -- the
13 determination has been informed by the costings that have been provided on what
14 the measures cost. Unfortunately, in this case, this exercise is not possible. The CLRV
15 has provided important costing information as well as other *amici*. This information
16 is very helpful from an operational perspective, but it is impossible to conduct a
17 hypothetical exercise of everything that may be possible. The principle of
18 participation in the reparations' principles indicates that we must design the measures
19 with the victims, with the affected communities. And once these measures are more
20 specifically determined, the costing exercise then is productive and that can inform
21 the funding mechanisms, which will, of course, fall within the broader scope of the
22 liability.

23 There is a scope in the jurisprudence of the Court. We have reparation orders where
24 the judges have sought to decide every single element in the reparation order and that
25 the entire process that has taken many years has sought to design by the judges every

1 single element.

2 Other reparation orders have provided a general framework with important
3 decisions. Ultimately, another reparation order, it gives us considerable flexibility.
4 We are suggesting to learn from the past experiences and seek an order that is not
5 declarative, but is in principle, and that provides a framework at which then the
6 implementation process and the design in phased stages can be further developed
7 with also more inclusivity beyond not only participating victims, but also others that
8 may be eligible or are recognised.

9 Thank you.

10 PRESIDING JUDGE KORNER: [13:05:19] Yeah. I see. All right. Yes, thank you. Yes,
11 thank you very much.

12 So we'll turn to the Registry now. And you've got 10 minutes before we break.

13 MR AMBACH: [13:05:32] Madam President, I just had one particular point whilst
14 we're still in private session, I take.

15 PRESIDING JUDGE KORNER: [13:05:37] No, we're not.

16 MR AMBACH: [13:05:38] We're not?

17 PRESIDING JUDGE KORNER: [13:05:40] We're in open session.

18 MR AMBACH: [13:05:42] In which case I will sit down again. Thank you.

19 PRESIDING JUDGE KORNER: [13:05:44] Well, no, you can stand up again now, Mr
20 Ambach, because it's the Registry's turn.

21 MR AMBACH: [13:05:47] Excellent. Thank you very much.

22 Madam President, your Honours, let me first start with an expression of our sincere
23 gratitude to the victims and the affected communities who have engaged with the
24 Registry throughout these proceedings. In particular, the Registry and VPRS
25 colleagues wish to acknowledge the commitment of its intermediaries, community

1 focal points, traditional leaders, survivors, women's groups, youth representatives
2 and other community members who contributed to the victim participation process
3 and the victim mapping exercise. Despite displacement, insecurity, communication
4 challenges and difficult living conditions, they remained in constant engagement with
5 the Registry and openly shared their experiences, knowledge and perspectives
6 whether from within Darfur, from IDP camps, refugee camps in Chad or from the
7 wider Darfuri diaspora. So our appreciation goes out there.

8 Coming quickly to the eligibility framework, Madam President, the Registry
9 considers that generally the framework adopted in the Ntaganda and the Ongwen
10 cases provides a sound approach for the Chamber also in the present case, with the
11 flexibility that would address the particularities of the present case where required.
12 Please remember that the Ongwen case, which has been referred to earlier on, was the
13 starting point for the victim identification exercise as such. A number of operational
14 improvements have been made and efficiency gains have been made in the meantime,
15 in particular through a much advanced IT posture in our operations, both
16 externally - that is, the victim data collection - which has, by the way, led to the
17 substantial amount of individual victim data collected in the present case, but also,
18 internally, in terms of a common data handling platform between VPRS and the trust
19 fund colleagues who will obviously be the ones that receive the data from VPRS for
20 the implementation of reparations.

21 So, where the individualisation of victims is a precondition for the implementation of
22 reparations, the Registry stands ready to apply this framework and suggests that if
23 this were to be the case, the identification be continued with immediate effect so as
24 not to lose time and to continue throughout the process.

25 Benefits that we would have from this are that the Registry already has the

1 established communication framework in the field. The network with partners on the
2 ground very much akin to what the Common Legal Representatives for Victims has
3 mentioned.

4 We also use a household form, so the capacity for a broader intake of victim group of
5 victim groups is there, and the approach works also in a simultaneous application of
6 implementation. It actually is designed, rather, around this idea.

7 This said, where reparations are directed at, say, all members of a community in the
8 affected locations, such as the Fur community, as mentioned earlier on, the Registry
9 acknowledges the general advantages of a community-based verification approach,
10 such as proposed by colleagues from the trust fund and the common legal
11 representatives.

12 A simplified verification scheme seems very sensible. This is all the more so in light
13 of the context of ongoing conflict and limited access. Registry stands ready to assist
14 here, too, as may be considered sensible by the trust fund and the Chamber
15 obviously.

16 Very briefly on the notification, a specific question that the Chamber had asked. The
17 Registry considers that a specific modality hinges on two key factors. The first would
18 be the exact modalities of the reparations in the reparations order and the categories
19 of beneficiaries concerned therein; and, second, the security situation on the
20 ground - constantly evolving - which presently represents also the main difference
21 from the Ongwen process.

22 I already mentioned improvements that we have made in terms of the general system,
23 which will obviously also have an impact on the notification which will benefit from a
24 much stronger IT posture. But --

25 PRESIDING JUDGE KORNER: [13:11:03] What does that mean? (Microphone not

1 activated) Sorry, Mr Ambach. What does a stronger -- a much "stronger IT posture"
2 mean?

3 MR AMBACH: [13:11:16] The fact that we will have -- so, from the beginning to now,
4 we've much evolved in terms of use of IT means in the collection of tools. Palpably
5 this means that we're using tablets in the field, that we have a data transfer that is no
6 longer the delivery of written documents from A to B, and the fact that we also have,
7 if you want, a data highway between ourselves and our database and the trust fund
8 through means that, actually, are supposed to much facilitate a quick transfer and a
9 quick analysis, and the transfer of said analysis, which ultimately will also lead to an
10 accelerated notification possibility after the legal assessment has been made.

11 That being said, I hope that --

12 PRESIDING JUDGE KORNER: [13:12:07] (Microphone not activated) Thank you.

13 MR AMBACH: [13:12:10] That being said, the key challenge that we're going to be
14 facing here is, again, the beneficiaries' whereabouts and contact details, because they
15 are subject to constant change owing to the circumstances on the ground. If we have
16 a longer lapse between, say, the Registry eligibility's determination and an initial
17 notification of a victim and an implementation measure that then comes much
18 thereafter, there is a high chance that the contact details will be outdated and we will
19 no longer know where relevant beneficiaries are. IT will potentially help in this, but
20 still this is a very important factor to consider, which is again why I would
21 respectfully beg the Chamber's indulgence that we will look into this closely. Once
22 there is a reparations order, we will know more exactly -- what exactly are the
23 measures to take and then we try to model something efficient also on the situation
24 on the ground at that point in time.

25 Quickly on the question of modalities of reparations --

1 PRESIDING JUDGE KORNER: [13:13:30] I tell you what, Mr Ambach, if you're
2 moving on to a separate issue, which I think you are, I think we'll take the break now.

3 MR AMBACH: [13:13:39] Fantastic.

4 PRESIDING JUDGE KORNER: [13:13:40] And we'll sit again, as I said, at 2:15.

5 THE COURT USHER: [13:13:47] All rise.

6 (Recess taken at 1.13 p.m.)

7 (Upon resuming in open session at 2.17 p.m.)

8 THE COURT USHER: [14:17:57] All rise.

9 Please be seated.

10 PRESIDING JUDGE KORNER: [14:18:26] Yes, thank you.

11 Mr Ambach.

12 MR AMBACH: [14:18:32] Thank you very much, Madam President, dear judges. I

13 continue my submission on the modalities of reparations, and in particular the
14 question concerning the land restitution.

15 Specific to the question whether the Court could order restitution of land under

16 Article 75 of the Statute, the Registry notes the powers of the Chamber under

17 Article 75(4), together with Article 93(1), to solicit State Party cooperation, including

18 on the seizure of property. Also, Article 75(5), together with Article 109, seems to vest

19 the Chamber with the power to bind a State Party to enforce the content of a

20 restitution order. It is submitted that a different, more restrictive reading of the

21 Chamber's power would risk to effectively leave the word "restitution" in Article 75

22 without practical application.

23 Furthermore, Security Council Resolution 1593 provides a legal basis for the Chamber

24 to actively seek cooperation from Sudan and other actors in support of

25 restitution-oriented measures.

1 Now, turning quickly to the practical ways in which a reparation order could address
2 victims' concerns, the Registry very much follows the very eloquent submissions of
3 the Legal Representative of Victims in this regard, first of all regarding the
4 recognition, the recognition of the displacement and the dispossession of victims,
5 recognition that restitution and return are appropriate forms of reparation for the
6 harm suffered. And, finally, also the immediate priorities of victims in terms of
7 documentation and preservation of land-related rights is something that the Registry
8 can confirm from its own data collected from victims is very much in the centre of
9 their needs, in terms of the also mentioned sequential approach.

10 Briefly on the mapping methodology, I'm coming now to question 6. The Chamber
11 requested clarification regarding the methodology underlying the population
12 estimates in the mapping record -- report for Kodoom and Bindisi. Here, I briefly
13 want to figure -- point out that, first, in order to estimate the number of Fur
14 households in each locality, the Registry relied on the UNHCR report cited in the
15 mapping report and before. This resulted in estimates of approximately 2,250 Fur
16 households in Bindisi, and 1,600 Fur houses in Kodoom.

17 The Registry did not use the completed victim application -- victim mapping forms
18 for this purpose because it did not consider them sufficiently complete or
19 representative to provide a census of the population.

20 Second, however, the Registry then did use the completed victim mapping forms to
21 better understand the household composition, the second point in the equation.

22 When reviewing the forms, the Registry observed that roughly 99 per cent of the
23 residents identified in Bindisi and Kodoom were Fur. The Registry then identified
24 individuals who appeared to be heads of household and examined the size of their
25 households. This analysis suggested an average household size of about seven

1 persons in Bindisi and eight persons in Kodoom, hence the slight difference in
2 location regarding the locations.
3 However, the Registry did not rely solely on those figures. It also considered
4 consultations with community leaders and external demographic data that it had
5 priorly received. After comparing all available information, the Registry then
6 adopted a cautious average estimate between 6.5 and seven persons per household.
7 Again, we're cognisant that no household can have 6.5 members, but this is obviously
8 then a statistical data figure.
9 The Registry therefore combined the UNHCR household estimates with its own
10 estimate of average household size to arrive at the population estimates set out in
11 paragraph 120.
12 The Registry is happy to also submit this in a written submission if there is any
13 remaining lack of clarity on the --
14 PRESIDING JUDGE KORNER: [14:23:42] Just this, Mr Ambach. I mean, you were
15 asked to break them down by location, and I think you have. I'm just reminding
16 myself. But this --
17 MR AMBACH: [14:23:54] It's still coming, Madam President.
18 PRESIDING JUDGE KORNER: [14:23:57] Right. But that somebody, and I'm trying
19 to remember who it is, there's criticism of your household form of assessment from
20 somebody, and I can't remember which of the submissions this comes from.
21 MR AMBACH: [14:24:16] I have just visually conferred with my colleague --
22 PRESIDING JUDGE KORNER: [14:24:20] Yeah.
23 MR AMBACH: [14:24:22] -- who likewise --
24 PRESIDING JUDGE KORNER: [14:24:25] Doesn't remember.
25 MR AMBACH: [14:24:26] -- does not remember.

1 MS RUIZ VERDUZCO: [14:24:27] Your Honour, it's from Yekatom, your Honour.

2 Here, the Trust Fund for Victims. From Yekatom. It's from the Yekatom file.

3 PRESIDING JUDGE KORNER: [14:24:34] Thank you very much, indeed.

4 Just so it's clear, I am in fact on the reparations case of Yekatom and there's a lot of
5 overlap in the submissions. I muddled up the two.

6 Yes, sorry about that, Mr Ambach, you're quite right, but if it's a criticism in Yekatom,
7 I wonder why it's not a criticism here. Anyhow, all right, thank you.

8 MR AMBACH: [14:24:57] Thank you, your Honour.

9 PRESIDING JUDGE KORNER: [14:24:58] Yes, if you would like to carry on, yes.

10 MR AMBACH: [14:25:02] Fantastic. Which leads me now to the next point, that is
11 question 7, witnesses to crimes.

12 Here, the Registry recognises that reparations jurisprudence in Ntaganda, Al Hassan
13 and Ongwen cases has characterised witnesses of the commission of a crime as
14 indirect victims. The Registry respectfully submits here that the Chamber may reach
15 a different conclusion because, in the Registry's view, the psychological harm suffered
16 by those who witnessed the crimes was inflicted directly upon them.

17 I say this because we see that these crimes were committed on purpose in the
18 presence of the victims, in the presence of wider communities, in places visible to
19 everybody, whether in public squares or central locations. Victims understood these
20 public acts of violence as a means of spreading terror throughout the community. In
21 other words, the onlooking victims were the target audience, not just a bystander,
22 which in turn should establish their direct victimhood. Or, again put differently,
23 victims didn't suffer as a result of harm suffered by a direct victim, but, rather,
24 independently and at the same time.

25 Turning now quickly to paragraph 8 or question 8, which is what Madam President

1 had in mind earlier on. Here the Chamber requested the Registry figures relating to
2 numbers and percentages of victims currently living in Sudan, Chad and/or other
3 countries and, in particular, the percentage of victims presently living in IDP and
4 refugee camps in Sudan or Chad.

5 As a disclaimer, the Registry's dataset contains information concerning roughly 68,000
6 persons connected with the four affected localities. This is, however, not complete
7 and stems from the completed victim application forms. Again, the Registry has
8 checked its figures with field interlocutors, including community leaders in Darfur
9 and Chad, on the numbers.

10 A total of 51,000 persons, or approximately 75 per cent, are recorded as residing in
11 Sudan. Roughly 3,900 persons, or approximately 6 per cent, are recorded as residing
12 in Chad. The rest of the total of 68,000 would be residing in other countries in the
13 diaspora, around 1 per cent; recorded as deceased, around 11 per cent; or otherwise in
14 an unknown current location, 7 per cent.

15 Turning to the specific question concerning the camps, who -- or how many of the
16 victims live at camps, we are looking at, again, for the full dataset of 68,000,
17 approximately 65 per cent are recorded as residing in IDP camps in Sudan. That is
18 roughly 44,600 persons, or almost 90 per cent of the persons residing in Sudan.
19 Approximately 5 per cent of the overall victim figure are recorded as residing in
20 refugee camps in Chad, representing more than 3,500 persons or, again, almost 90
21 per cent of the victim population present in Chad.

22 This concludes the Registry's remarks. Thank you very much, your Honours.

23 PRESIDING JUDGE KORNER: [14:29:01] Where does -- just remind me, where does
24 that information come from? Is that the Registry's own researches or is it other
25 databases, or what?

1 MR AMBACH: [14:29:15] So, we are looking at, number one, the victim application
2 forms and in particular the mapping forms that we have collected. We are looking at
3 then other reports that we already had at our dispossession through access to the case
4 file. We're looking at also consultations with field interlocutors, local leaders, yeah,
5 and the completed mapping forms are actually the main source.

6 PRESIDING JUDGE KORNER: [14:29:47] One last question, and this is not one we
7 have put to you before, but it's just occurred to me, so if you can't answer it, you can
8 always do it later. Are we talking about -- the numbers that you've identified, are
9 they all Fur or do they include members of the other tribes in this case?

10 MR AMBACH: [14:30:12] Madam President, we're looking at 99 per cent Fur --

11 PRESIDING JUDGE KORNER: [14:30:23] Right.

12 MR AMBACH: [14:30:24] -- Fur ethnicity -- ethnicity.

13 PRESIDING JUDGE KORNER: [14:30:26] Well, because we've also got the Masalit,
14 and the Zaghawa were mentioned. So, it's 99 per cent Fur.

15 MR AMBACH: [14:30:34] Yes, your Honour.

16 PRESIDING JUDGE KORNER: [14:30:35] Okay, thank you.

17 (Trial Chamber confers)

18 PRESIDING JUDGE KORNER: [14:31:00] Yes, well, I think you need -- you did deal
19 with this earlier, I think, but this question of direct or indirect victims. Is it your
20 position, or is it the Registry's position, rather, that all individuals who witnessed the
21 commission of crimes should be considered direct victims, the crimes in this case,
22 obviously, because that's what it flows from?

23 MR AMBACH: [14:31:35] Your Honour, we would respectfully submit that in
24 particular those victims that were -- that witnessed violence and crimes which was
25 intended to be seen by the perpetrators in order to achieve the goal of inflicting a

1 certain coercive regime, this is where the Registry will make the submission. For the,
2 say, bystander of a crime where the perpetrator is not intending a wider audience of
3 his or her crimes, I would submit that this then conforms with the jurisprudence of
4 the ICC, that these would be indirect victims.

5 PRESIDING JUDGE KORNER: [14:32:21] Well, part of the evidence in the case
6 related to men and boys, actually, being kept outside police stations, lying down
7 and being effectively in some way or another certainly the lowest ill-treated. Would
8 you say that those who witnessed that, because it was outside, not within the confines
9 of the police station, should be direct or indirect witnesses -- sorry, victims.

10 MR AMBACH: [14:32:55] Your Honour, I would assume, and the value of my
11 submission here is obviously what it is of the singular person, but I would assume
12 here that we're looking at a direct victimisation, because the purpose of bringing a
13 victim outside the direct premises is one of making the coercive regime visible to
14 others.

15 PRESIDING JUDGE KORNER: [14:33:16] Yes, all right. Yes, I think we've got the
16 point. Thank you. Yes, thank you very much.

17 Just before we -- thank you, Mr Ambach, that's, you know -- just before we go on to
18 the next organisation, can I return for a moment to the Trust Fund for Victims. It was
19 drawn to my attention over the adjournment, a short adjournment, that question 10
20 that we asked you about, which relates to paragraph 147 of your submissions, where
21 you propose a programme-embedded verification approach as an alternative to a
22 formal eligibility process, could you clarify that and explain what that actually
23 means?

24 MS RUIZ VERDUZCO: [14:34:09] Thank you, your Honour, for reminding us of this
25 point. If you allow me, I will let our legal adviser, Franziska Eckelmans, to answer.

1 PRESIDING JUDGE KORNER: [14:34:17] Certainly.

2 MS RUIZ VERDUZCO: [14:34:18] And if it is okay with you also, benefiting from the
3 extra minutes we didn't use, we notice during the pause that there has been some
4 misinterpretations about some of the statements we made that we believe are very
5 important to clarify. If you allow us two minutes after responding your question, or
6 at a later stage, if you want.

7 PRESIDING JUDGE KORNER: [14:34:38] You say misinterpretation.

8 MS RUIZ VERDUZCO: [14:34:36] Yeah.

9 PRESIDING JUDGE KORNER: [14:34:36] Do you mean misrecording on the live
10 note?

11 MS RUIZ VERDUZCO: [14:34:43] I don't think it's about the recording, I think it's
12 what we said that was understood in a way that is not what was intended.

13 PRESIDING JUDGE KORNER: [14:34:48] Oh, all right.

14 MS RUIZ VERDUZCO: [14:34:49] Thank you.

15 PRESIDING JUDGE KORNER: [14:34:50] Certainly. Yes.

16 MS RUIZ VERDUZCO: [14:34:49] I pass to my colleague, Franziska Eckelmans.
17 Thank you.

18 MS ECKELMANS: [14:35:02](Microphone not activated)

19 PRESIDING JUDGE KORNER: [14:35:13] Microphone. Microphone. Thank you.

20 MS ECKELMANS: [14:35:15] Thank you so much. I'm happy to indeed develop on
21 this question that refers specifically to our observations, and I will take a few minutes
22 to explain what we have proposed. Is that --

23 PRESIDING JUDGE KORNER: [14:35:29] As quickly as possible.

24 MS ECKELMANS: [14:35:31] Oh, okay.

25 So, basically, we addressed the question of eligibility in the sense of what does it

1 mean to be eligible. And eligibility is actually a matter that has -- you have a right to
2 reparations, that is what eligibility means. And we have proposed, indeed, that the
3 Fur community is an eligible victim just for matters that refer to, specifically, symbolic
4 and satisfaction measures. And we think that is a determination that can be and
5 should be taken by the Chamber, whether the Fur community is an eligible victim in
6 its own right.

7 Then we have basically said there is the community of victims of the four case
8 locations, made up of all the members - we have just heard 99 per cent Fur in these
9 four case locations - of these communities, and we have proposed that there should be
10 measures directed at this community, as such, at this collective of the four
11 communities. These measures should actually bring a benefit for these communities
12 and their members, and not every member of that community will have
13 specific -- will receive specific reparations. So we have developed this
14 programme-embedded approach by basically proposing that in implementing these
15 measures, specifically for the community of the four case locations, it would not be
16 possible to first determine all the members of this community, all the many victims
17 we just heard will be in this case, in a situation also where we have no access at the
18 moment and perhaps in the next few years.

19 So our proposal is to work with the communities. It's very similar to what the legal
20 representative has proposed earlier today with the four different steps already in a lot
21 of detail. We are not yet at this detail because we first want to discuss with the
22 community and the victims how this would look like.

23 And is that eligibility? Not really. It is basically determining who within, with every
24 measure -- every measure is in the end carried by someone, is directed at someone.

25 That is not a question of eligibility and the right to reparations. They are part of that

1 community, in our view. And that is where we are proposing that this is not
2 necessarily part of eligibility, but -- and this is where we are proposing that, together
3 with the VPRS, once we know exactly which measures at which stage of the
4 implementation process that will be faced, as the executive director has explained,
5 ideally, with your permission, of course, that at each of these steps, we will sit with
6 VPRS and say are these measures that are now directed at specific individuals or not?
7 How do we proceed? How do we make sure that this is all within the bigger eligible
8 criteria developed by the Chamber for the community of the four case locations.
9 Then there is a third. There is a third, there is a third part. It is complicated, perhaps,
10 and it's a bit -- but this is what we have done in Al Mahdi for the collective
11 reparations. There, we had basically several measures. Like, for example,
12 psychological support was directed at the groups -- or at groups and people
13 participated in that who were members of the community of Timbuktu. And they
14 were basically selected in a process that was led by the TFV to make sure, of course,
15 that these are not members of a different community. And, similarly, the economic
16 measures, they were in the end carried out by beneficiaries, you can say, by people of
17 the community who were selected in processes that involved victims and they got
18 funding to run a business. And this business was at the advantage of the community
19 as a whole. So these are the ideas behind it.

20 PRESIDING JUDGE KORNER: [14:40:40] Okay. Just -- I have a simple mind and I
21 like simple answers.

22 MS ECKELMANS: [14:40:48] Simple. Okay.

23 PRESIDING JUDGE KORNER: [14:40:49] Is what you're saying this: Instead of doing
24 individual eligibility verification, let's say, because there's an award to individuals, or
25 whatever, if the proposed mode of reparation is one that involves a community,

1 you've simply checked to see whether those who are eligible are, in fact, members of
2 this community and not members of another community? Is that what it comes down
3 to?

4 MS ECKELMANS: [14:41:32] Yes, in a way, with two small issues I want to address.

5 PRESIDING JUDGE KORNER: [14:41:36] Right.

6 MS ECKELMANS: [14:41:37] So, award, individual award, that's 98(2), we are 98(3),
7 so the award is a collective award and there can be individualised or more
8 community measures. We said this is a whole -- oh, I am too fast, my apologies. This
9 is a whole range of measures and different communities, we have to look at it, how it
10 looks under 98(3).

11 And the other one was -- now I forgot. But, yeah, so it is basically the idea that it's not
12 a question of eligibility in that sense; it is one where we say because the measure is
13 directed at the entire community, who actually in the end benefits might not
14 necessarily be a matter of eligibility.

15 So we are posing that as a question, rather, we haven't really completely drawn a
16 conclusion ourselves.

17 PRESIDING JUDGE KORNER: [14:42:37] I do follow that.

18 MS ECKELMANS: [14:42:40] And if you permit me, so, the third category basically is
19 that we are proposing that indeed we do eligibility, VPRS does eligibility for those
20 who are actually receiving, for example, cash awards, or those victims who have
21 suffered from rape and torture, and have persistent harm; that we indeed determine
22 their eligibility for specific measures.

23 So that is what we are proposing. And for that process, again, we are also saying it is
24 very important that this is -- who these people are is based in the community, and
25 also VPRS has helped with to determine who was there at the time. Because who can

1 determine that without documentation better than the victim community, as we have
2 also heard from the common legal representative, so that VPRS can rely and lead such
3 a process.

4 PRESIDING JUDGE KORNER: [14:43:48] All right.

5 MS ECKELMANS: [14:43:51] Thank you so much.

6 PRESIDING JUDGE KORNER: [14:43:52] Thank you very much. That's very helpful,
7 I think.

8 Yes, you want to make some corrections? I hope they can be quick, please.

9 MS RUIZ VERDUZCO: [14:44:01] Your Honour, I do not want to distract you from
10 the train of thought that you are following, so it would be going back to some other
11 points we mentioned. So we are in your hands whether to address it now or maybe at
12 a later stage, for a clarification. Because it doesn't concern the specific matter that
13 you're asking right now on eligibility?

14 PRESIDING JUDGE KORNER: [14:44:19] Well, yeah, I'm -- well, I'm not. I'm going to
15 go on to the next organisation. So, in fact, I think I'm going to leave whatever
16 corrections you want to make until we see where we've got to at the end of this
17 afternoon.

18 MS RUIZ VERDUZCO: [14:44:37] No problem.

19 PRESIDING JUDGE KORNER: [14:44:38] Okay. Thank you, yes. Very well, thank
20 you very much. So, that brings us to the GCC - its proper title I'm afraid I'm just
21 going to look up - the General Coordination Committee. Yes, thank you.

22 MR MOHAMED: [14:44:56] Thank you, your Honour. Madam President, your
23 Honours, my professional language and the common tongue of my people I represent
24 is Arabic. I will address you in English and I ask the Chamber's patience with my
25 voice. My name is Abdul Basit Mohamed. I'm a lawyer with the Wayamo

1 Foundation and I speak on behalf of the General Coordination Committee of the
2 camps in Sudan.

3 I am from Central Darfur, near Garsila, and I am a member of the Fur community.

4 This is not my first time representing my people in a courtroom. I used to do it
5 routinely during the Bashir regime when my people were arbitrarily arrested,
6 detained or worse, and when I won those cases, my reward would often be detention
7 and mistreatment in a Khartoum prison.

8 The locations in this case - Kodoom, Bindisi, Mukjar and Deleig - are not to me just
9 counts on an indictment, they are real towns where I have real memories, where
10 members of my family reside and where my ancestors were buried.

11 I will make two submissions, first on liability, and the second on what this Chamber's
12 findings mean on the ground.

13 I will also answer the Chamber's question on women and girls.

14 First, liability. Your Honour, I will begin with what the GCC asks for in one sentence,
15 so there is no doubt about it.

16 The GCC asks this Chamber to state in its reparations order that Mr Abd-Al-Rahman
17 is jointly and severally liable, together with the men who committed these crimes
18 with him -- that is, the individuals and the commanders who committed these crimes
19 with him. That is, the individuals at the time composed and commanded the forces of
20 the Government of Sudan, to repair in full the harm suffered by the victims of the
21 crimes which he was convicted. That is the request.

22 Let me explain what it means and what it does not mean.

23 It does not mean that the Chamber is asked to hold the State of Sudan liable. The
24 GCC has never asked that, and does not ask it now. Article 25(1) confines this Court
25 to natural persons, and the GCC's request names natural persons - individual

1 officials, individual commanders - each responsible for what he himself did. Where a
2 name is unknown, the shorthand of the GoS forces identifies them.

3 What it means is this: The Trial Judgment found that Mr Abd-Al-Rahman acted
4 together with GoS forces, he committed these crimes together with others. Under
5 Article 25(3)(a), what those others did is attributed to him through the common plan.
6 So, the harm he must repair is the whole harm, not a share of it. The GCC asks the
7 Chamber to say so, because it follows from the Chamber's own findings.

8 This Court has done exactly this before. In Ongwen, at paragraph 667 of reparations
9 order, Trial Chamber IX stated that Mr Ongwen and his co-perpetrators were all
10 jointly liable to repair in full the extent of the harm, that this did not diminish
11 Mr Ongwen's own liability to repair the harm in full, and that is -- and that he and his
12 co-perpetrators were jointly and severally liable, all remaining liable to reimburse the
13 trust fund.

14 The paragraph speaks of his co-perpetrators. Who they were is established by the
15 Trial Judgment in that case, Joseph Kony, indicted by this Court, and commanders
16 who were never indicted at all. The Appeals Chamber left this undisturbed.

17 The GCC asks this Chamber to mirror that paragraph, using its own findings. The
18 Trial Judgment defines the GoS forces at paragraph 278, and findings more than 80
19 times that Mr Abd-Al-Rahman committed these crimes jointly with them. We ask
20 only that responsibility is reflected in the reparation order.

21 Why are we asking for this? Because it fixes the debt truthfully. A debt caused by
22 many men is one debt, and the man before you owes all of it, not a share, not a
23 fraction. That has two consequences, and I will come back to the second at the end of
24 my submissions.

25 The first is inside this case. The amount is not reduced because other men are also

1 responsible, and it is not divided into shares that no one can calculate. There is one
2 figure and every sum ever raised is measured against it.

3 The second is outside this case. A debt that has been judicially established does not
4 disappear because it is not paid. It stays on the record. And Article 75(6) provides
5 that nothing in this reparations order prejudices the right of the victims under
6 national or international law, so what this Chamber determines remains available to
7 these communities wherever else those rights can be pursued.

8 This is not a novel idea. It is what the courts in every legal system do when several
9 people cause one harm together and only one of them is before the court. It is the law
10 of Sudan itself. The Chamber is not being asked to invent anything. It is being asked
11 to say plainly what its own judgment already found, and the GCC propose the
12 safeguard itself. Let the Chamber state that these findings are made for reparations
13 only and without prejudice to the innocence of any person not convicted.

14 The GCC can elaborate on the full legal basis should a final written submission be
15 permitted.

16 Second, land, and the Chamber's question on restitution.

17 The Chamber has asked what its powers are to order restitution of land under Article
18 75, in the light of Article 82(4), and in what practical ways an order can address the
19 victims' claims. The GCC welcomes the question and answers it from the ground. In
20 Wadi Salih, where Garsila lies, land is not property, it is *hawakeer*. The holding ties a
21 family a place across generation -- to a place across generations -- where you farm,
22 where you bury your loved one, and who you are. The Judgment order -- the
23 Judgment records that *sheikhs* and *umdahs* were killed. Those men were the land
24 registry: they held in memory which family held which land, and their word settled
25 every boundary dispute. To kill them was to burn the record. That is why the trust

1 fund has told the Chamber that returning became not only physically impossible, but
2 institutionally impossible.

3 Now, the Chamber's question. Article 75 names restitution first among the forms of
4 reparation. And Article 82(4) shows that drafters contemplate orders that touch
5 property. It grants a right of appeal to the bona fide owners of property adversely
6 affected by the reparations order. The Statute does not create appeal against order
7 that Court has no power to make. And the -- and it -- and the protection it grants
8 instructive in both directions: it shields owners in good faith and it does not shield
9 one who took land through these crimes, or knowing of them. From a crime, no right
10 can grow.

11 The GCC is equally honest about the limits. The Court cannot today put a family
12 back on its land in Sudan, and it cannot make orders against those who occupy that
13 land, for they are not before it. The GCC ask for neither.

14 The GCC ask the Chamber for what it can practically do. Four things. First,
15 adjudicate the dispossession: find that removal was wrongful, and the communities
16 are entitled in law to return.

17 Second, give that finding its effect as notice: from the date of this order, the criminal
18 origin of the dispossession stands judicially established, and whoever takes this land
19 afterwards will never be able to say he did not know. The second -- this order cannot
20 return the -- the order cannot return the land yet, it can protect the claim to it.

21 Third, the order -- third, order what restitution requires and what can be done now,
22 as part of the convicted person's liability: the community-led documentation and
23 mapping of villages and the *hawakeer*, rebuilding the registry the crimes destroyed. A
24 widow cannot produce a title deed to the land whose registry was killed, but her
25 community can say who she is and what she held.

1 Fourth, preserving, through Article 75(6), the victims' rights before whatever body
2 one day gives the entitlement effect: the land commission of Juba Agreement, the
3 compensation architecture of Doha Document, or a future claims mechanism.

4 The GCC can elaborate on each of these should a final written submission be
5 permitted.

6 These proceedings are likely the only opportunity to have these facts judged. The
7 finding of the -- the finding of entitlement is the foundation on which every future
8 land process in Darfur will build.

9 The Chamber's question on women and girls.

10 The Chamber asked what modalities the GCC proposes for the specific harm suffered
11 by women and girls, described at paragraph 22 of its observations. We put that
12 question to the representative of the GCC's women's group. The modalities they
13 identify, women's centres, psychological and rehabilitation service for the survivors of
14 sexual violence, and rebuilding community infrastructure, corresponding to what the
15 trust fund has already placed before the Chamber at paragraphs 95, 114, 117 and 120
16 of its observations. The GCC endorse them. The women add one thing for their own:
17 that individual award should wait until the war has ended because there is no
18 stability now. That is also the trust fund's position, at paragraph 119. The women
19 reached it independently and the GCC asks the Chamber to hear it as their considered
20 view.

21 Finally, I said I would return to the second consequences of the liability findings.

22 This is it.

23 Your Honours, a finding that these communities are entitled, in law, to return is not a
24 consolation of money that has not arrived. It is instrument that communities carried
25 into every future forum where someone can, in time, be made to pay. The Chamber is

1 being asked -- the Chamber is not being asked to look beyond its own case. It is being
2 asked not to look away from what its own Judgment already found, merely because
3 the truth has consequences outside this room.

4 The people of the camps have been promised much, by many, for over 20 years. They
5 can bear the truth that the money does not yet exist. What they cannot bear is another
6 promise that quietly disappears.

7 A finding of this Court cannot be stolen in a checkpoint. It cannot be diverted, or
8 ransomed, or made to depend on donors' goodwill. It will ring true in the camp on
9 the day it is pronounced, and it may be the truth that one day makes return to the
10 land a possibility.

11 Thank you, your Honour.

12 PRESIDING JUDGE KORNER: [15:01:45] Yes, thank you very much, Mr Mohamed,
13 for those eloquent words. Thank you.

14 Yes. We'll move then, please, to the next organisation, which on my list is i-ACT,
15 Mr Traldi.

16 MR TRALDI: [15:02:14] Thank you, your Honours. I'd had GLAN next on our
17 schedule, but I'm happy to go now.

18 PRESIDING JUDGE KORNER: [15:02:19] Yeah, I see, it's the appearances. I don't
19 mind -- well, I mean, I think you're likely to be shorter than GLAN, so why don't you
20 go first, Mr Traldi.

21 MR TRALDI: [15:02:29] I think so, too. And I appreciate your indulgence, Madam
22 President, and also Ms Sutherland's indulgence. I'm okay.

23 As this Chamber noted in your order inviting these submissions, the interests of
24 justice require that these proceedings advance as efficiently and expeditiously as
25 possible, particularly since you have already made many of the findings necessary to

1 issue a reparations order.

2 I mention this, knowing you're aware of it, because the point we heard most in our
3 consultations wasn't about what kind of reparations survivors would eventually get;
4 it was about the urgency they felt, not for everything to be done tomorrow, but to
5 know what reparations are going to be and how victims can access them. The
6 refugees i-ACT works with, after all, have been dealing with the harms of these
7 crimes and other similar ones for almost as long as this Court has existed. They have
8 been waiting for decades. Now the aid they receive is dwindling and they are too
9 often overlooked, even as their displacement and dispossession continue.

10 One refugee we spoke with told us about a man who had died and they believed he'd
11 died in part due to the mental trauma of always believing reparations would come
12 the next day and then the next day and then the next.

13 Beyond that initial observation, I will limit myself to four quick issues.

14 First, as to prioritisation of victims groups, we generally agree with the submissions
15 that have been made by the other participants, but emphasise two additional
16 considerations. First, the victims who are still in Darfur, or the 5 per cent of
17 participating victims living in Chad in refugee camps, should be prioritised because
18 of the challenging circumstances they live in, at least to the extent the distributing
19 reparations to them is presently possible.

20 Second, in going beyond those geographic categories, we agree with other
21 participants on prioritising elderly victims, victims with life-threatening conditions,
22 and victims of sexual and gender-based violence. We argue additionally that victims
23 who are children now should be included, as well as victims who were children at the
24 time of their victimisation. We say that victims who are children now should be
25 prioritised because it's something we heard from refugees in our consultations,

1 because considering the reparations, that lots of participants in this proceeding agree
2 are important, several are particularly needed for victims who have been born in
3 displacement, like birth registration and educational programming. We say it
4 because victims who are children now are particularly vulnerable, and we say it
5 because mitigating the harms they have suffered is essential to the future of the
6 communities whose members were targeted for the crimes.

7 Those harms are, in a clear sense, a result of the crimes of conviction, being born in
8 displacement, perhaps outside ancestral lands, perhaps as orphans, in conditions their
9 families were driven into, that this Chamber has described in the sentencing
10 judgment as "very harsh". We address this in paragraphs 20 and 24 of our brief. And
11 as we note in footnote 31, to the extent that this is properly characterised as
12 intergenerational harm, the Al Hassan Chamber's decision not to use such harm as a
13 basis for reparations dealt with different facts and so its reasoning, we respectfully
14 suggest, is not persuasive here.

15 Next, as to prioritisation of modalities, we note it seems clear that the groups all the
16 participants have spoken to have emphasised the urgency of practical modalities over
17 symbolic ones and we suggest that, subsequent to further conversations with the
18 victims themselves, the prioritisation should reflect that.

19 The only kind of technical note I'd attach to that is that many of the focus group
20 participants emphasised payments, which other Chambers have characterised as
21 stop-gap measures. A stop-gap measure, of course, has to be a high priority, has to
22 come first before other reparations are implemented. So, to the extent that the
23 Chamber may be inclined to characterise such payments as symbolic, we would say
24 our symbolic-measures-come-last approach does not apply to those payments.

25 Third, on question 2, which is directed in part to us, we agree with others that

1 declarations should be made acknowledging victims' rights to land that was lost as a
2 result of the crimes of conviction in this case.

3 We've noted that what the Lubanga judges termed "issuing certificates that
4 acknowledge the harm particular individuals experience" can be an important part of
5 the reparations process. We support the various mapping proposals, we just
6 understand certificates for individuals as a natural result of those
7 processes -- certificates for individuals or communities, wherever the appropriate
8 ownership and victim is.

9 Then finally, your Honour, I want to briefly pull together some strands of what we
10 have heard today. The extraordinary seriousness of the harm the victims in this case
11 have all suffered, which the Judgment properly terms "immense", which continues
12 and which is impossible to fully repair. We think of families of the more than 200
13 people murdered, according to the Trial Judgment, who still feel the profound
14 absence of their murdered family members. We think of the many thousands who
15 remain displaced, never recovered pillaged or destroyed property, the people living
16 with harms due to sexual and gender-based violence and the children born into
17 displacement and deprivation. Those strands together, in our submission, underscore
18 the importance of a robust and efficient reparation process.

19 Thank you.

20 PRESIDING JUDGE KORNER: [15:08:37] Thank you very much indeed, Mr Traldi.

21 Yes. Go back to the proper running order, sorry. I think your intervention, Mr Traldi,
22 was, as I hoped, short.

23 So we move, please, to it is now GLAN's opportunity.

24 MS SUTHERLAND: [15:09:00] I was just wondering, Madam President, whether
25 you'd prefer to hear from REDRESS first, in the interest of time?

1 PRESIDING JUDGE KORNER: [15:09:08] Is REDRESS likely to be relatively short?

2 MS SUTHERLAND: [15:09:12] I don't want to speak for them, but --

3 MS GOETZ: [15:09:15] Relatively, yes.

4 PRESIDING JUDGE KORNER: [15:09:16] All right. Yes. If you don't mind going
5 next.

6 MS GOETZ: [15:09:23] Thank you, Madam President, and your Honours.

7 This is -- again, I'm just thanking you again for the opportunity on behalf of victims
8 that we have consulted with. We held interactive two-day focus group discussions
9 with victims in six different locations inside Sudan, the majority, and also outside
10 Sudan, and it is on that basis that we made the submission.

11 I've got only four points, one of -- the fifth has already been dealt with in -- in
12 closed -- in the closed part of the hearing.

13 The first point really concerns acknowledgement of individual and collective harm.

14 The victims of the Ali Kushayb case have waited more than 20 years for some
15 semblance of justice, and in this time, their harms have only really become
16 compounded and aggravated.

17 It's also quite possible that this process will be the only opportunity they will have to
18 be awarded and to receive reparations, so it is really important to recognise the
19 practical and symbolic moment of the reparation order and to issue an order that is
20 really commensurate with this occasion.

21 At the same time, we submit that it is important to set out an approach that is
22 co-designed with the victims, that is practical and that is nimble, namely, that can
23 adapt as the situations evolve.

24 The importance of this acknowledgement and the recognition of individual and of the
25 collective harm suffered should not be overlooked. It's in and of itself a form of

1 satisfaction. And if it connects meaningfully with the harm suffered, it can have
2 important reparative value.

3 While we recommend collective reparation with individualised components, we also
4 stress the need for acknowledgement of the collective harm to the Fur as a group,
5 echoing the CVLR and the Trust Fund for Victims. This is as a result of the campaign
6 of persecution for which the defendant has been convicted.

7 Colombia provides a good example of acknowledgement of the collective harms of
8 groups or of peoples, and this also chimes with notions found in the African charter
9 and also in terms of the law in Sudan itself. This isn't just in terms of looking at
10 applicable laws that may be relevant, given the difficulties with the Rules of
11 Procedure in terms of defining victims as either individuals, natural persons
12 or groups.

13 In our case, crimes committed by Ali Kushayb against the Fur victims has caused
14 profound transgenerational harms affecting not only victims as individuals, but also
15 to the Fur community.

16 In this end -- to this end, we submit that it is important to be clear of the recognition
17 of the transgenerational impacts of the victims' displacement, the loss of their
18 ancestral harms, the targeted killing of their leaders, and also the destruction of the
19 social fabric. Collective reparation measures are required to address that collective
20 harm. This message is important to articulate in the reparations order not least as a
21 measure of satisfaction, but because it reflects the targeted nature of the pain and
22 suffering of the entire community.

23 So that is really about the first point, which is all about the importance of
24 acknowledgement and how that can be used to maximum effect.

25 The second point, really, very quickly, as it's been covered already, is factual

1 presumptions and eligibility.

2 As already submitted by the Trust Fund for Victims, the Chamber should avoid an
3 onerous multi-stage individual eligibility process for collective measures. I think that
4 point has been made quite well and clear.

5 The second point we had here was strong factual presumptions should apply for Fur
6 people resident in, or present at, the relevant crime locations, given the nature of the
7 targeted -- the targeting of the convicted crimes. Individual assessments should
8 remain available for individualised components where they are appropriate, but
9 given the urgency of victims' needs as well as the risks for mitigation, the risk -- as
10 well as risk mitigation, this process should not obstruct or delay the implementation
11 of community-based reparation.

12 The third point that I wanted to touch on again has been covered extensively, and that
13 regards land, that again we also echo others, it goes to the heart of the suffering of the
14 community.

15 We note that there are significant legal and practical obstacles to making specific
16 restitution orders to specific land. In this regard, we submit that Article 82(4) of the
17 Rome Statute on bona fide landowners is not an obstacle to the Chamber making
18 appropriate declarations or enabling complementary measures like some that have
19 already been elaborated by the CVLR.

20 So we just wanted to provide, so as not to repeat what others have already said, just
21 some maybe additional points about what declarations might include as a minimum.

22 From our point of view, declarations could specify that, number one, Kushayb's
23 crimes specifically targeted the Fur community on the basis of ethnicity.

24 Number two, that there is a clear causal link between the crimes and victims'
25 displacement and loss of land.

1 Number three, victims' dispossession of their land was unlawful and victims have a
2 right to safely return to their ancestral land.

3 And, finally, number four, because of the scale and public nature of victims'
4 displacement, subsequent occupiers would have been on constructive notice that the
5 land was acquired unlawfully, even in the case of third parties acting in good faith.

6 Now, I've mentioned Colombia before, but Colombia again provides useful
7 jurisprudence on how good faith has been applied. There is an excellent book written
8 by one organisation, Dejusticia, on the application of the concept of good faith with
9 respect to land restitution, and essentially a useful point to note is there is a reversal
10 of the burden of proof so that the third parties are the ones who need to prove that
11 they took sufficient steps to identify the rightful owners to establish indeed their
12 actual good faith.

13 As regards the complementary measures, we had also similar ideas and creative
14 solutions in our submission regarding the safeguarding of future claims, namely the
15 documentation of historic land rights through community gathering, but also satellite
16 data and other evidence, not just records that may stay with the communities, but
17 more broadly to provide a practical record of the ownership. And such a record
18 could also be a measure of satisfaction in and of itself if it was, for instance, published
19 as a book or as some kind of memory of the locations.

20 This brings me to my final point, which is about the Chamber's continued oversight
21 and of victim representation. This again has already been mentioned by others, but
22 just to reiterate that we are advocating for a nimble approach that is co-designed with
23 victims.

24 In response to the Defence, we note that this approach is not necessarily in tension
25 with any oversight role that the Chamber may wish to have at the implementation

1 stage. Indeed, we agree with the Defence that continued Chamber oversight would
2 be desirable, given the fluidity of the situation. And we also recognise the importance
3 of committing the Trust Fund for Victims to taking certain actions. Our submission is
4 rather that the language of the reparation order should not confine the trust fund to
5 only taking actions that are only feasible today, or that are based solely on
6 consultations that have already taken place to date. Therefore, the continued
7 oversight of the Chamber is part of this submission. The trust fund should have an
8 ability to adapt its strategy should the implementation situation improve or if its
9 engagement with victims raises novel opportunities, or indeed obstacles.

10 To this end, we suggest that the Common Legal Representative of Victims should
11 have a continued mandate to act in the present case, where implementation, security,
12 and changing circumstances require it, even once the draft implementation plan has
13 been approved. While we acknowledge that this is not existing practice of the Court
14 and would require changes to its Legal Aid Policy, we believe that this is necessary in
15 this case, which has several defining characteristics that justify a departure and
16 should set a precedent for similarly complex reparations. Some of these
17 characteristics include:

18 One, the targeted nature of the convicted crimes and the ongoing revictimisation of
19 many victims as well as the targeted group.

20 Two, the importance of co-designing implementation strategies with victims in order
21 to deliver meaningful and safe reparation.

22 Three, the strong relationships that the Common Legal Representative for Victims has
23 built with the participating victims over five years. And I just want to emphasise that,
24 for communities who have suffered significant amount of trauma as this one has, the
25 importance of trust and lasting relationships cannot be over emphasised.

1 And, finally, four, the importance of preserving and building trust with victims in a
2 fluid environment, amidst significant access and outreach challenges.

3 This brings me to the end of my contributions.

4 Finally, we just want to reiterate reparations should be -- are urgent and must be
5 feasible. The Chamber should issue an order that is ambitious, as well as pragmatic
6 and flexible, to avoid leaving victims without full reparation because the current
7 situation does not allow it or may not allow as much as would be urgently needed
8 right now.

9 We are grateful for this opportunity. Thank you.

10 PRESIDING JUDGE KORNER: [15:19:57] Thank you very much, Ms Goetz.

11 Right. Then we come now to GLAN and Ms Sutherland.

12 MS SUTHERLAND: [15:20:09] Many thanks, Madam President.

13 Can you hear me? Can everyone hear me?

14 We agree with everything that we've heard today, really, and want to emphasise, of
15 course, that Sudan and its peoples certainly cannot continue to be defined by a bitter,
16 predatory war, incalculable loss and the abject neglect of the international
17 community. We also agree that transforming abstract concepts of justice into tangible
18 rather than merely symbolic reparative interventions is essential.

19 As we've argued in our written submissions, strategic, well-designed and
20 implemented -- well implemented reparation processes hold the potential, we say, to
21 build and maintain the social conditions that deliver real repair to the lives and
22 futures of those who continue to suffer the consequences of the crimes identified by
23 this Chamber.

24 I will not repeat those here, but for all the reasons discussed therein and today, this
25 Chamber is very much encouraged to set, and the States Parties and wider

1 international community to meet, as Ms Goetz has put it, very ambitious funding
2 goals.

3 In this regard, I'd like to just clarify and emphasise that the sliding scale prepared by
4 Dr Benson-Strohmayer and Ms Maalla and reproduced at page 19 of our submissions,
5 was intended to serve as an illustration of the minimum points at which reparations
6 programmes could be considered practically advantageous and encourage
7 significantly higher investment to remedy such a long-running and horrific
8 humanitarian situation. Just to clarify, it was emphatically not intended to in any way
9 suggest a maximum threshold.

10 Addressing such a complex web of inter-linked, compounding, and intergenerational
11 arms in an unpredictable conflict environment as outlined in detail by the Common
12 Legal Representative for the Victims and by the Trust Fund for Victims, and as
13 mentioned by our fellow amici, requires, we agree, an iterative and flexible response
14 that remains sensitive to the views of -- and the needs of the affected communities.

15 We similarly submit that a reparations order must be guided by principles of
16 efficiency, urgency and flexibility, both with regard to programming and with regard
17 to continuing authoritative oversight, and that this must be tailored to engender and
18 preserve conditions to support eventual return rather than entrenching displacement.
19 We are in full agreement with that.

20 Despite the significant complex and dynamic obstacles posed by the ongoing conflict,
21 we recommend additionally that the reparations order is guided by a focus on
22 recalibrating and capitalising the economic environment of those impacted by
23 Mr Abd-Al-Rahman's crimes, including by utilising existing structures, in part what
24 was covered in closed session earlier today.

25 There has been a focus on the eligibility and eligibility verification process today and

1 we have submitted that the Chamber will gain efficiencies and avoid contributing to
2 social division by taking an expansive interpretation of victims to ensure that the
3 intergenerational and ongoing impact of these crimes, especially displacement and
4 persecution, are recognised and also encapsulate how harm is lived and experienced
5 today.

6 We have argued, as you know, that a presumption of victimhood for displaced
7 communities would help avoid funds being absorbed into cumbersome bureaucratic
8 processes, which are themselves inherently vulnerable to capture, and also heighten
9 the risk of failing genuine victims who may be excluded from such processes by
10 stigma, fear or the lack of basic legal documentation. In this way, we largely support
11 the arguments of the CLRV and the TFV regarding the Chamber's application of Rule
12 98(3), and note that they too refer to those born after the commission of the crimes.
13 However, our Sudanese partners do wish to emphasise that, for those victims in
14 Sudan, sensitivities remain in relation to characterising victim communities by tribal
15 identity. They have argued that this risks inviting further targeting of them as a
16 beneficiary group and potentially creating conflict within the displaced communities,
17 and that those communities themselves cannot -- often cannot be cleanly reduced to a
18 singular identity whether collectively or individually.

19 That said, I will emphasise that we do think a broad interpretation of victim will be
20 the most efficient approach holistically with -- on the programmatic implementation.

21 PRESIDING JUDGE KORNER: [15:25:32] Yeah, I'm not entirely clear what you are
22 saying there.

23 MS SUTHERLAND: [15:25:38] Just that --

24 PRESIDING JUDGE KORNER: [15:25:42] I mean, we -- appreciating that in these
25 camps there are refugees from other conflicts as well.

1 MS SUTHERLAND: [15:25:46] Yes, yes.

2 PRESIDING JUDGE KORNER: [15:25:47] But --

3 MS SUTHERLAND: [15:25:48] That's sort of easy to delineate, I suppose, but that's a
4 nationality question.

5 PRESIDING JUDGE KORNER: [15:25:53] Yes.

6 MS SUTHERLAND: [15:25:54] But the -- we, we were just -- I'm just the -- I'm just the
7 vehicle through which the concerns of the -- our Sudanese partners are being voiced;
8 that's their limited concern about the persons in camps within Sudan right now.

9 PRESIDING JUDGE KORNER: [15:26:12] Right. Within Sudan?

10 MS SUTHERLAND: [15:26:14] Within Sudan. Only within Sudan.

11 PRESIDING JUDGE KORNER: [15:26:17] Only within Sudan, all right.

12 MS SUTHERLAND: [15:26:20] Does that clarify?

13 PRESIDING JUDGE KORNER: [15:26:21] Yes.

14 MS SUTHERLAND: [15:26:23] Yes, that's good, thank you.

15 Madam President, and your Honours, turning to the specific questions that were
16 posed to us, as emphasised already by the Trust Fund for Victims, our observations
17 considered how the loss of male family members as a consequence of the crimes
18 committed by Abd-Al-Rahman means that women, I quote, "endure additional
19 burdens associated with lack of social status, protection and economic opportunities,
20 while also often bearing caring responsibilities and conditions of very precarious
21 labour".

22 We have also noted that fiscal and economic harms fall disproportionately on women
23 across all categories of harm, and that gender must therefore function as a
24 cross-cutting analytic dimension in the course of determining the modalities of your
25 reparations order.

1 We agree that these must be inclusive, responsible -- responsive, sorry, flexible,
2 victim-centred and shaped by the relevant communities, as we have outlined above.
3 And, as such, we propose that the modalities of those reparations best to address
4 those identified specific disproportionate harms must be determined by the affected
5 communities and that that would be achieved through the urgent and ongoing
6 consultations that have already been described by the Trust Fund for Victims.

7 PRESIDING JUDGE KORNER: [15:27:51] You can't suggest anything, you say
8 consultation should take place?

9 MS SUTHERLAND: [15:27:56] That's our primary suggestion. That said, I do have
10 some articulated potential remedies.

11 Those -- so the remedies for the loss of physical and legal protection and rights,
12 including those to ancestral land, associated with the loss of male family members
13 could, if so desired by the affected communities, include, for example, personal
14 documentation or certification of legal status -- that is, conferred without reliance on
15 the involvement of or approval of a male family member, which is historically been
16 an impediment to accessing such documentation.

17 Or, equitable access programs that, you know, ensure access to generative economic
18 activities and structures. That, of course, is detailed in our economic report.

19 The establishment of programmes geared towards ensuring that access to labour is
20 more stable with greater protection from sexual and other forms of violence. Again,
21 that's something that would be a very case-by-case pragmatic approach that would
22 require a lot of community engagement.

23 Those I represent today, along with their respective partners, would be very
24 happy - we have already discussed this with the Trust Fund for Victims - to provide
25 practical support for that ongoing programming and, of course, we remain at the

1 Court's disposal to assist in any practical way.

2 We can, in that regard, going forward. But fundamentally, we also submit that by

3 recalibrating the fiscal and economic environments of the displaced and targeted

4 populations as recommended in detail in our observations and, of course, the

5 economic report that you will hear more about in a moment, such measures would be

6 better supported and -- well, they have been inherently better supported and more

7 sustainable just by the sort of shift in the general economic architecture.

8 As regards the levels of financial support, such programming would require, the

9 costing, I will have to defer to Dr Benson-Strohmayer, who will discuss

10 commensurate efforts in other conflicts and the sort of rough financial investment

11 that's being required by those.

12 If you will permit me, I'd like to move to the second question that was directed to us.

13 In our written submissions, we suggested that access to education programmes could

14 be enhanced by a number of relatively cost-efficient interventions, including through

15 partnership with relevant local actors and/or international agencies. And we have

16 been asked to explain the basis on which a UN relief organisation could become

17 involved in the application of a reparations order. I will first address the legal basis

18 and then the practical basis, if that's where you were going.

19 PRESIDING JUDGE KORNER: [15:30:56] Yes.

20 MS SUTHERLAND: [15:30:58] Thank you. A legal basis is provided for under a

21 number of different provisions. Rule 98(4) of the Rules of Procedure and Evidence

22 provide: "Following consultations with interested States and the Trust Fund, the

23 Court may order that an award for reparations be made through the trust fund to

24 an intergovernmental, international or national organization approved by the trust

25 fund."

1 We submit that the Court is further empowered to seek cooperation and
2 programmatic support under the umbrella of the foundational Negotiated
3 Relationship Agreement between the International Criminal Court and the United
4 Nations. And, in that regard, I'd like to point you to Article 15(2), under which any
5 UN programme, fund or office "may agree to provide to the Court other forms of
6 cooperation and assistance compatible with the provisions of the Charter and [of] the
7 [Rome] Statute."

8 In this regard, I also invite you to consider Article 3 of the same agreement, which
9 mandates the Court and the UN to "cooperate closely, whenever appropriate, with
10 each other and [to] consult each other on matters of mutual interest pursuant to the
11 provisions of the present Agreement and in conformity with the respective provisions
12 of the Charter and the [Rome] Statute."

13 Article 9 of that agreement demands cooperation on use of "staff and services with a
14 view to avoiding the establishment and operation of overlapping facilities and
15 service[s]", which I argue also supports utilising pre-existing UN programs.

16 There are similar provisions in the OTP's policy on complementarity and cooperation,
17 but of course that's a different body.

18 I have, as I have mentioned, we have discussed matters with the Trust Fund for
19 Victims and they have noted that they are not aware of an intergovernmental or
20 national organisation that would be willing to carry out the reparations programme
21 pursuant to Rule 98(4).

22 Recognising that, however, there are -- turning to the practical basis, I'd like to
23 highlight that there are already local and regional initiatives that could be supported
24 directly by the Trust Fund for Victims as part of a reparations order. I certainly don't
25 want to tread on their capacities or authority, and I am mindful of the provision that it

1 has to be approved by the Trust Fund for Victims. But War Child, for example,
2 provides in Sudan right now, digital learning platforms, safe learning environments,
3 teacher training and support as well as catch-up and remedial classes, especially
4 designed for children and young people to recover education opportunities lost to
5 them as a consequence of displacement and conflict.

6 UNICEF, Save the Children and other partners supported by the Global Partnership
7 for Education, have recently launched the BRIDGES programme, which similarly
8 includes the same safe learning spaces and accelerated education for those who have
9 been excluded from their education due to the conflict.

10 As mentioned, we have discussed this and recognised the sensitivities associated with
11 agencies that may be seen to represent the international communities' radical neglect
12 of the victims of this criminality.

13 That said, our submission remains that supporting, enhancing or working from
14 established programmes, such as those outlined explicitly to reach children impacted
15 by the ongoing effects of the criminality recognised by the Chamber, would be more
16 efficient and effective than using resources to design parallel initiatives, and this
17 could be achieved either independently by the TFV or through consultation or
18 partnership with the relevant approved regional intergovernmental or international
19 organisation as accommodated by Rule 98(4).

20 Essentially, let's not reinvent wheels or create parallel or contradictory programming
21 where it's not necessary.

22 PRESIDING JUDGE KORNER: [15:35:27] Well, I understand all of that.

23 MS SUTHERLAND: [15:35:28] Yes.

24 PRESIDING JUDGE KORNER: [15:35:29] But part of the reason that we asked this
25 question is this. UNHCR and the other relief organisations, like the Red Cross or

1 whatever, all conduct their own programmes funding -- funded by other donors, or
2 whatever it is. Isn't it going to cause -- I won't say massive confusion, but difficulties,
3 at least, if any reparation programme is being run through a UN relief agency of some
4 kind or another, or any other relief agency, as to the mixing of funds and who is
5 providing what for whom? That's what occurs to me.

6 MS SUTHERLAND: [15:36:09] I think that's an inherent difficulty in anything, in any
7 programming, is it not, if you're --

8 PRESIDING JUDGE KORNER: [15:36:16] Well, I mean, I'm unaware of -- and the
9 Trust Fund for Victims can probably answer that, of any situation where this Court
10 has ordered reparations and it's been delivered in some form, whatever's been
11 delivered has been delivered in some form or another through another relief agency.
12 I mean, if that happens regularly, well, then, that allays my concerns. But it seems to
13 me that unless it does, you may face a problem with UNHCR saying, "Well, we can
14 help you, we give you the expertise, if you like, but we can't get involved because we
15 are funded by a completely different organisation".

16 MS SUTHERLAND: [15:37:05] Then I would direct you to non-UN bodies as well.

17 PRESIDING JUDGE KORNER: [15:37:07] Yes.

18 MS SUTHERLAND: [15:37:08] I think the point is that we don't -- we also don't know
19 how effective these programs are. I think it will come back to the -- if you will forgive
20 me for freestyling here, the -- and, again, I don't want to tread on the Trust Fund for
21 Victims' authority, but the -- sorry, my brain has stopped working. Utilising existing
22 programming and making sure that those funds are genuinely serving the many,
23 many children caught up in this - again, going back to that kind of presumption of
24 victimhood, which has been outlined both to cover children in the camps - then I
25 don't see any impediment to you seeking that kind of cooperation.

1 If UNHCR or UNICEF or whoever have a fundamental concern or can't ring-fence the
2 funding or direct the funding, fine, so be it, but I don't think that precludes you from
3 examining that as a possibility. And, like I said, there are other programmes so
4 that -- that would not be UN-reliant.

5 PRESIDING JUDGE KORNER: [15:38:23] Sorry, just finally on this, then, it's not that
6 you're suggesting that we order that there's cooperation between UNHCR as part of
7 the reparations delivery, if you like?

8 MS SUTHERLAND: [15:38:39] I'm afraid I don't think you have the authority to order
9 that.

10 PRESIDING JUDGE KORNER: [15:38:41] Well, that's --

11 MS SUTHERLAND: [15:38:42] Yes.

12 PRESIDING JUDGE KORNER: [15:38:43] I don't think I did either, I mean, we --

13 MS SUTHERLAND: [15:38:44] No.

14 PRESIDING JUDGE KORNER: [15:38:45] -- that we did.

15 MS SUTHERLAND: [15:38:44] No, but we've been arguing that one of the core
16 requests, or identified needs from the communities that we have been talking to, and
17 has been echoed by all of the others, aside from the land restitution, it's education and
18 healthcare provision. So there will have to be some recognition and steps taken to
19 make sure that that is, you know, enacted and explored, how that would happen. I
20 think the fundamental point that we were trying to make is don't reinvent the wheel
21 and don't create parallel and contradictory programming.

22 PRESIDING JUDGE KORNER: [15:39:27] Yes.

23 MS SUTHERLAND: [15:39:32] As regards the third of the questions directed to us,
24 which was tripartite in its nature, I believe the first part was answered this morning in
25 the relevant private session and that the latter will be covered by

1 Dr Benson-Strohmayer. And, with your permission, I'd like to hand over to him for
2 the remaining questions that were directed to --

3 PRESIDING JUDGE KORNER: [15:39:54] I think the remaining questions do actually
4 concern his report.

5 MS SUTHERLAND: [15:39:57] Absolutely.

6 PRESIDING JUDGE KORNER: [15:39:59] Yeah. Yes, thank you very much.

7 MS SUTHERLAND: [15:39:59] Thank you.

8 PRESIDING JUDGE KORNER: [15:40:40] Can I just remind you, please,
9 Dr Benson-Strohmayer, that you must not speak too fast. I think I'll ask

10 Ms Sutherland to --

11 MS SUTHERLAND: [15:40:11] I'm watching the interpreters closely. They are very
12 familiar with telling me off, so I'm quite glad I got through that session without it.

13 PRESIDING JUDGE KORNER: [15:40:20] Yes.

14 MR BENSON-STROHMAYER: [15:40:20] I will -- I'll do my very best, but I
15 don't -- yeah, I'll do my very best.

16 So, yeah, thank you very much. I've prepared some responses. I think the first one is
17 in relation to question 16, about the apparent contradiction. So this is between where
18 funds are severely constrained relative to the victim population, whether individual
19 monetary disbursement is the least efficient vehicle for achieving durable impact.

20 And then we argue that immediate individual cash transfers to victims, we still argue
21 for that. So, essentially, we don't see a contradiction between the two. We actually
22 see that these statements operate at different levels of allocation.

23 So, to break it down a little bit more, in paragraph 41, we address the strategic
24 architecture of the overall award, which is how the bulk of severely constrained funds
25 should be deployed to achieve durable and structural impact. And at that scale,

1 individual monetary transfers are inefficient because they're too small to change
2 anyone's economic circumstances and are quickly absorbed into daily consumption,
3 particularly if one of the smaller amounts is the one that the court decides to go with,
4 which we don't advocate for, I should say.

5 And then paragraphs 55 and 54 address a different question, which is that there's a
6 need for recognition and relief function of reparations at the point of disbursement.

7 So, immediate individual transfers serve as an acknowledgement function that
8 collective programming cannot replicate. So we want an acknowledgement of
9 reparations at the individual level. However, there's a -- there's a need to have
10 something that's very time sensitive. So I was thinking about testimony documents,
11 such as the direct plea to let us eat. So, I mean, it's really addressing the fact that the
12 communities are under immense duress. And it -- we really recommend a mixed
13 portfolio. So one that has a bulk of funds directed towards collective and structural
14 investment, with smaller deliberately bounded component for immediate individual
15 transfers.

16 And just to say that this has a precedent in the Ongwen case, in which €15 million
17 was granted for collective programming, alongside 37.4 million in individual
18 symbolic awards. So the two elements are not competing for the same purpose.
19 They're actually answering different questions that the Chamber is arguably seeking
20 to resolve.

21 And I should also say that the economic literature and post-conflict reconstruction
22 and transitional literature, justice reparations literature, is also consistent on this. So
23 really where funds are severely constrained relative to the victim population,
24 individual monetary disbursement is the least sufficient vehicle for achieving durable
25 impact.

1 And this has three compounding reasons, which is first that it's just a very small
2 amount for anything to take shape.

3 Secondly, that there's a huge transaction cost, as has more or less been acknowledged
4 throughout the course of the day, of identifying, verifying and disbursing individual
5 payments.

6 And then, third, individual cash distributions in severe -- in contexts of severe
7 scarcity, such as Darfur and Chad, carry a real risk of generating or exacerbating
8 intercommunity conflicts.

9 And then to move on to question 17, this is --

10 PRESIDING JUDGE KORNER: [15:43:39] Just before you do that --

11 MR BENSON-STROHMAYER: [15:43:40] Yes.

12 PRESIDING JUDGE KORNER: [15:43:41] -- in effect, given the reality of the situation
13 that exists at present, you would suggest that the more effective delivery of
14 reparations would be those which are community-based in one form or another,
15 rather than --

16 MR BENSON-STROHMAYER: [15:43:58] I think they are both effective and I think
17 they both need to take place. So there's a symbolic reparation -- you'd need cash
18 transfers on an individual level, but the most impactful on this larger scale is that that
19 is collective and one is collectively decided.

20 PRESIDING JUDGE KORNER: [15:44:14] Yeah. But you -- as you -- it is a bit
21 contradictory, because you've just said a moment ago that one of the problems with
22 delivering, you know, cash payments, as it were, is identifying who's actually
23 entitled, or getting them to them, exacerbating, as you say, community conflict. So
24 what would be the purpose of doing that? Why would you -- why would we want to
25 do that?

1 MR BENSON-STROHMAYER: [15:44:36] Well, it would -- the point would be to
2 really recognise that there is an individual harm that has taken shape and also a
3 collective one. So, I mean, I think it's to be able to show that. So, I mean,
4 it's -- it would be a small amount that's -- that's why the disbursal should go as little
5 as possible towards the individual cash transfer and more towards the larger cash
6 transfer -- larger programming on collective side. But I'm afraid I feel as though I'm
7 not accurately answering your question.

8 PRESIDING JUDGE KORNER: [15:45:02] Well, I think you are answering it, but --
9 (Counsel confer)

10 MR BENSON-STROHMAYER: [15:45:07] And, as Kirsty has corrected me, there's
11 really an acute need for -- I mean, communities are under huge duress on an
12 individual level, so there's a real need for something, anything. I mean, as
13 participants have said in one of their reports, I mean, there's a real need, people need
14 to literally eat. So there is a need. And not only that, but a huge thing that comes
15 with multi-donor trust funds across all types of post-conflict contexts is where you
16 can either crowd in or crowd out capacity. So if you have too much money at any one
17 time, people fight too long about how that money ought to be spent. Or if you've too
18 little, it doesn't go anywhere. So there's a real need to deliberate -- to get -- to show
19 something immediately and to show that the Court was actually taking seriously
20 what is taking shape on the ground and listening to 20-odd years of testimony and
21 of harm.

22 So there's a real need to show something immediately, even just symbolically, whilst
23 recognising that the larger process, as I will get into, when thinking about ways that
24 you can actually structure a far more deliberative and inclusive process would
25 actually enable different civic groups on the ground to decide how funds ought to be

1 decided.

2 So it's really recognising that, hey, here's one payment that's sort of -- it's not in any
3 way representative of what you've gone through, but we recognise that you're under
4 immense need. However, there's a much larger process, which is going to take time
5 and which you will lead -- that -- that you will -- that will be essential to this, and
6 that's where the larger discussion will take shape about how reparations ought to take
7 shape. But also, it's so important because it gives agency to those who have been
8 made agency-less throughout this entire process, and arguably that was the main
9 point of the crimes against humanity that took shape, was to make these individuals
10 and communities agency-less.

11 Does that help clarify?

12 PRESIDING JUDGE KORNER: [15:46:53] Yes. I mean, I still -- I still think what
13 you're actually saying is that it's community-based reparations that --

14 MR BENSON-STROHMAYER: [15:47:08] Absolutely.

15 PRESIDING JUDGE KORNER: [15:47:08] -- should start off.

16 MR BENSON-STROHMAYER: [15:47:09] My theory, really, is just that if
17 community-based reparations are -- are absolutely the way forward. However, if it's
18 the only way forward, it is going to be a slow process to a community. As my
19 colleagues have already pointed out, it's already a very slow and painful process.
20 People who were 20, are now 40. People who were 30 are now 50. We risk
21 replicating that if there's not something that takes shape immediately.

22 PRESIDING JUDGE KORNER: [15:47:26] Yeah. Yes.

23 MR BENSON-STROHMAYER: [15:47:30] Thank you.

24 So I will move on to question 17 now. So this is about channelling mechanisms for
25 direct beneficiary engagement.

1 And so the real key here - which actually comes to the point that was being made just
2 a moment ago - is to think about how there can be work through what's already on
3 the ground rather than creating a parallel instrument. And this isn't about replacing
4 what's on the ground, it's literally about working through it. And so there's a
5 concrete mechanism which I would recommend.

6 First and foremost, this would be something that is along the lines of a
7 woman-specific advisory or consultation service structure, which is separate from
8 mixed camps general leadership and it's modelled on the same methodology that was
9 actually used to gather the testimony that was -- that informed the report. So this is
10 direct gender-segregated engagement rather than engagement mediated through
11 elders, and this is to recognise that there is all types of intersectional tensions. It's
12 having any one --

13 THE INTERPRETER: [15:48:32] Note from the interpreter, can you slow down,
14 please.

15 MR BENSON-STROHMAYER: [15:48:36] Sorry, yeah. I will do my best. I'm
16 really -- I apologise.

17 It's really important -- there is -- to come up with a unified voice in any society,
18 especially one which has been afflicted by these kind of crimes, it takes time, there
19 are fractures amongst them, and so we really encourage a model of -- that centres or
20 at least takes -- gives women-specific adviser consultation its own lane, essentially.
21 And so this would be -- this would have protected representation on allocation or
22 oversight committee, which has reserve seats for women and, where relevant, for
23 survivors of sexual violence and persons with disabilities, rather than leaving the
24 composition to existing hierarchy. We recognise that a new type of hierarchy emerges
25 in the situation in which the victims are in, which is very unfavourable to certain

1 groups, particularly women and other -- and disabled individuals.

2 And third, we really encourage working through and resourcing structures that

3 already exist and are already trusted. I have to say this is probably the most

4 important point, which is really thinking through, first and foremost, as all of us will

5 be familiar with the current conflict, women-led emergency response rooms and

6 *takaya* networks, which are documented in the testimony, are extremely important as

7 delivery partners in their own right. And they've done this despite the lack of

8 international support in the country, and actually have done this through remittances

9 and the broader international diaspora, and so it would be really important to work

10 with these particular groups. And also, I will also say that in the current conflict,

11 particularly in the last year or so --

12 MS SUTHERLAND: [15:50:20] I'm just going to tell you that translating English into

13 Arabic, it involves a lot more words in Arabic.

14 MR BENSON-STROHMAYER: [15:50:26] All right. I'll go even slower to account for.

15 So, even in the midst of the current conflict, or especially in the midst of the current

16 conflict, it has now been possible to direct more humanitarian assistance

17 through -- from international -- the international community despite the pull-out of

18 USAID and these kind of things, working more in collaboration with emergency

19 response rooms. There has been more of an effort, that has been reasonably

20 successful, to actually connect international mechanisms, of which this would

21 certainly be in line with, to work through community groups that are on the ground

22 and recognise that these are delivery partners in their own right and they're not really

23 consultees.

24 And the fourth draws upon experiences from other conflicts, particularly the Syrian

25 conflict, where there is this civil society support room, which has been really

1 important for getting around 500 different civil society groups in Syria to come
2 together and deliberate about how humanitarian assistance could be delivered in an
3 active conflict.

4 And this took time. It was done under the umbrella of Staffan de Mistura, the UN
5 special envoy to Syria at the time, but it was a UN-led entity, and this enabled an
6 independent grievance and feedback channel, which was administered through the
7 implementing partner rather than through camp leadership. So it's actually a way
8 that you can kind of work with what's there whilst also leveraging the international
9 communities, so that the beneficiary who feels excluded or implementing
10 partner -- sorry, and a beneficiary that feels excluded or misallocated has a route that
11 does not require the endorsement of the same authority structure that may be the
12 source of the problem. So it's actually -- it tries its best to find a way to avoid conflicts
13 over how to disburse things to create a collective REDRESS.

14 And the Syrian Civil Society Support Room was really important for ensuring
15 community buy-in, as I've already argued. And I think one thing that's come up
16 really distinctly today, and I really want to assuage your concerns as much as
17 possible, though they are very reasonable and deeply important in the Sudanese
18 context, is that this is one way that you can work around the militarised capture
19 which defines the war in Sudan both 20 years ago and the war in Sudan now. This is
20 a militarised kleptocracy which -- the war is about being able to control resources,
21 many of which do not flow through the national budget and have not done so for
22 decades. And, of course, aid - of which anything that would come from this Court
23 would, in part, be a kind of aid - does get caught up in that.

24 So it's really thinking about how is it that you can decentre the armed men with guns
25 and actually centre civic group communities on the ground who are invested in a

1 Darfur and in a Sudan that is peaceful and does not fall trap to this enduring,
2 persistent, predatory political economy in Sudan, and especially Darfur, which does
3 not work for everyone and actually works very effectively for a small minority, for
4 those who can be entrepreneurs for violence, arguably, which is certainly what's
5 taken shape with -- in this particular case. So it's really thinking about how is it that
6 we can disrupt and create a kind of cocoon against this really predatory and coercive
7 and extortionate political economy. So I think --

8 MS SUTHERLAND: [15:54:05] They are not catching the nuance in the Arabic.

9 MR BENSON-STROHMAYER: [15:54:05] Okay, I will go even slower.

10 PRESIDING JUDGE KORNER: [15:54:18] And what's the answer? I will repeat --

11 MR BENSON-STROHMAYER: [15:54:15] Should I rephrase that again? Would that
12 be helpful?

13 PRESIDING JUDGE KORNER: [15:54:17] The question is, you say --

14 MS SUTHERLAND: [15:54:22] Sorry, Madam President, we are being told that the
15 full nuance is not being captured in the Arabic because of the speed, but we are -- so
16 he is suggesting he rephrases just to make sure that's captured.

17 PRESIDING JUDGE KORNER: [15:54:30] I see, all right.

18 MR BENSON-STROHMAYER: [15:54:34] Thank you. So, I will say it again, and I
19 sincerely apologise to the Arabic translators, it is especially important that this is
20 made across.

21 It's basically -- the way of working through something like the Syrian civil -- let's call
22 it a Darfur civil society support room, just for the time being. The whole point of this
23 would be to create a way that you can insulate the disbursement of any type of aid, in this
24 case reparations, that would actually not be subject to the capture which defines the
25 war in Sudan 20 years ago, of which one of the entrepreneurs who was very effective

1 at imposing violence at that time is here, but also forges a type -- a new type of society
2 that actually is trying its best to work for everybody, rather than those who are really
3 good at taking up arms, essentially. So I hope that reasonably -- yeah.

4 PRESIDING JUDGE KORNER: [15:55:36] Yes. Sorry, then can I go back to my
5 question, now that you've reexplained it.

6 How do you insulate the delivery of reparations? That's the answer that we're
7 looking for, if at all possible.

8 MR BENSON-STROHMAYER: [15:55:54] Okay. So, I know that some colleagues
9 have been very -- they want more of a principled response. I will give a few more sort
10 of relatively comparatively concrete examples to hopefully --

11 PRESIDING JUDGE KORNER: [15:56:09] Well, Syria -- I mean, you know, you've
12 given that example and you said that that's been effective. Do you know -- I mean,
13 you've been working in Sudan. Do you know of any organisation that either
14 presently exists or could be established to deal with that?

15 MR BENSON-STROHMAYER: [15:56:35] It's absolutely emergency support rooms.

16 PRESIDING JUDGE KORNER: [15:56:39] Emergency support rooms. All right.

17 MR BENSON-STROHMAYER: [15:56:09] They deserve the Nobel Peace Prize. They
18 won the Chatham House award just this year. They have done the impossible under
19 the most horrific circumstances. These have been women-led, enormously so, by
20 everyday people who are doing their utmost working through a diaspora, in many
21 instances providing funds, rather than the international community, because the
22 international community - as you rightfully raise objections about - fear that money
23 will go into the wrong hands. There has been -- there has been so little assistance in
24 what is literally the world's worst humanitarian crisis precisely for the reasons you
25 raise, which are entirely reasonable.

1 However, it has meant that the world has neglected the most pressing humanitarian
2 crisis, certainly in my lifetime, and hopefully within the rest of my lifetime. Though,
3 if we don't disrupt this trend we are at risk of reproducing it.

4 So I would say it's absolutely incumbent to take seriously those community groups
5 who have worked -- who are really doing all the things that my colleagues have
6 described, to think about how you can be both transparent and hidden in an active
7 conflict, how then can -- and not only that, but prior to the war they were actively
8 documenting this militarised kleptocracy that I have described and detail in my
9 academic work.

10 They were the ones at the forefront of that, of really saying these are military-held
11 businesses, we need to not work with them, we need to stop them, and so on. So it's
12 really building with what's there rather than actually trying to impose or create
13 something entirely different. I think that's not at all what would be discouraged.

14 (Counsel confers)

15 MR BENSON-STROHMAYER: [15:58:24] Yes, and I am making a clumsy distinction
16 here. Reparations are not humanitarian aid, I will say. I respect that. I'm just, as an
17 economic historian, thinking about resource flows more broadly. So it's analogous,
18 but it is not the same and I fully recognise that and I hope the Court does.

19 I will now move on to the third question which is for me to answer, which is about
20 Otash camp and whether Otash is really -- how indicative or sort of how
21 representative it is of Darfur. And so I will just say -- yes?

22 MS SUTHERLAND: [15:59:05] We might need to ask to go into private session. Can
23 you just be sensitive about that.

1 MR BENSON-STROHMAYER: [15:59:11] All right. I will just say in very general
2 terms without incident, to prevent having to go into a private session.

3 MS SUTHERLAND: [15:59:18] Madam President, I wonder if it is sensible to just
4 briefly dip into private session.

5 PRESIDING JUDGE KORNER: [15:59:23] Yes, all right.

6 MS SUTHERLAND: [15:59:24] Thank you.

7 PRESIDING JUDGE KORNER: [15:59:26] Let's go into private session.

8 MR BENSON-STROHMAYER: [15:59:30] Thank you.

9 (Private session at 3.59 p.m.)

10 THE COURT OFFICER: [15:59:42] We are in private session, Madam President.

11 (Redacted)

12 (Redacted)

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- 1 (Redacted)
- 2 (Open session at 4.02 p.m.)
- 3 MS RUIZ VERDUZCO: [16:02:22] Your Honour --
- 4 PRESIDING JUDGE KORNER: [16:02:23] Yes.
- 5 MS RUIZ VERDUZCO: [16:02:24] Sorry, would it be possible to address, now that we
- 6 are in closed session, a point in relation to humanitarian organisations?
- 7 PRESIDING JUDGE KORNER: [16:02:32] Yes.
- 8 MS RUIZ VERDUZCO: [16:02:33] Also because you referred that it may be relevant
- 9 for the trust, thank you.
- 10 Thank you very much. I think it is --
- 11 PRESIDING JUDGE KORNER: [16:02:43] No, I think we are back in open now, aren't
- 12 we?
- 13 THE COURT OFFICER: [16:02:45] Yes, we are in open session.
- 14 MS RUIZ VERDUZCO: [16:02:48] We are in open session?
- 15 PRESIDING JUDGE KORNER: [16:02:50] Yes.
- 16 THE COURT OFFICER: [16:02:52] Just one second. One moment.
- 17 MS RUIZ VERDUZCO: [16:02:54] We can wait for that.
- 18 PRESIDING JUDGE KORNER: [16:02:57] While we are going back and forth --
- 19 MS SUTHERLAND: [16:03:01] I can conclude very briefly.
- 20 PRESIDING JUDGE KORNER: [16:03:02] All right, but that brings me then -- we've
- 21 been now sitting for an hour and three quarters. Mr Laucci, how long do you think
- 22 you're going to be?
- 23 MR LAUCCI: [16:03:13] Well, the time allocated is 40 minutes.
- 24 PRESIDING JUDGE KORNER: [16:03:16] Yes.
- 25 MR LAUCCI: [16:03:17] I doubt I will be longer than 30.

1 PRESIDING JUDGE KORNER: [16:03:21] Right. Then --

2 MR LAUCCI: [16:03:25] Subject to your questions.

3 PRESIDING JUDGE KORNER: [16:03:26] Yes. With respect to the interpreters, I
4 think it is, if at all possible, preferable that we can finish this afternoon, simply
5 because of the problems that are going to ensue tomorrow. So, if they don't mind,
6 and Ms Sutherland's more or less finished, then we will sit through to finish. Thank
7 you.

8 (Private session at 4.03 p.m.)

9 THE COURT OFFICER: [16:03:51] Your Honours, we are in private session.

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1 (Redacted)

2 (Open session at 4.07 p.m.)

3 THE COURT OFFICER: [16:07:16] We are back in open session, Madam President.

4 MS SUTHERLAND: [16:07:19] I'll be extremely brief. I just want to say that we are

5 indebted to the tireless work of not only our Sudanese partners and

6 Dr Benson-Strohmayer and Ms Maalla, but also to the bravery and tenacity of all

7 those victims who were interviewed and engaged with this process, and all of you

8 who have been involved in the trial proceedings. I know how challenging the

9 evidence must have been.

10 Our simple argument, to conclude, is that we strongly advise that the reparations

11 order is iterative, flexible and pragmatic and that -- and fundamentally ambitious,

12 and truly reparative and that any -- the most ambitious it can be will be a clarion call

13 to the international community and that's fundamentally what we need. Thank you

14 very much.

15 PRESIDING JUDGE KORNER: [16:08:14] Thank you, Ms Sutherland. Yes, we have

16 come now to the Defence. Mr Laucci.

17 MR LAUCCI: [16:08:28] Yes, thank you, Madam President, your Honours. Because

18 we were in private session when this was discussed, I expect my submissions to be no

19 longer than 30 minutes.

20 PRESIDING JUDGE KORNER: [16:08:40] We have actually read your interesting

21 ideas, Mr Laucci, if I can put it that way.

22 MR LAUCCI: [16:08:47] The Defence for Mr Abd-Al-Rahman takes the floor before

23 you for the final time in this case.

24 In a full-circle moment, it does so on the very

25 first substantive issue it addressed over six years ago, on 17 July 2020, before Pre-Trial

1 Chamber II; that is, reparations.

2 Six years later, following the confirmation of charges, a full trial and your judgment of
3 conviction, now pending appeal, the Defence's stance on reparations has not shifted
4 by an inch.

5 Driven by the resolve of Mr Abd-Al-Rahman, who has repeatedly expressed himself
6 to this effect, the Defence addresses you one last time to demand, as it always has,
7 that the victims of the crimes committed in 2003 and 2004 in Kodoom, Bindisi, Mukjar
8 and Deleig, obtain reparations.

9 Whenever he spoke on this matter, Mr Abd-Al-Rahman was met with disbelief. His
10 words were discarded as simple lip-service and assigned no weight at all. I am not
11 here to challenge that determination today. The matter is currently pending before
12 the Appeals Chamber and it would be inappropriate to reopen it. Furthermore, it is
13 out of deference to the Appeals Chamber's ongoing deliberation that
14 Mr Abd-Al-Rahman will not speak today.

15 All that needed to be said has been said. He prays for the salvation of the victims and
16 demands that they --

17 MR NICHOLLS: [16:10:55] Your Honour, very sorry to object, but I don't have the
18 cites, because I did not see this coming, but you, I believe, in the past have been very
19 clear about counsel representing how much Mr Abd-Al-Rahman cares about the
20 victims, and have talked about that. The LRV has also spoken about the effect on the
21 victims' communities when we hear these submissions about how strongly
22 Mr Abd-Al-Rahman feels for the victims in Wadi Salih and Mukjar.

23 MR LAUCCI: [16:11:32] Your objection would have any merit if I was adding
24 anything to what was said repeatedly in this courtroom.

25 PRESIDING JUDGE KORNER: [16:11:40] Just a moment. Mr Nicholls, I appreciate

1 the objection. I was going to point out that we had already said we didn't accept this,
2 but Mr Laucci has already pointed out that we have said we do not accept what he
3 says in relation to the victims.

4 However, Mr Laucci, remembering that this is the one real occasion when the victims
5 of these attacks are listening in, I think, as a matter of, if nothing else, common
6 courtesy, it is probably better to move to another topic.

7 MR LAUCCI: [16:12:24] What has been said has been said and today the Defence
8 takes the floor to match these words with action.

9 The Chamber did not consider it necessary to address questions to the Defence
10 regarding its submissions on reparations. I infer from this that they are perfectly clear
11 and have been understood without any need to revisit them.

12 The Defence has articulated its submissions and proposals around the adoption of
13 three additional principles of reparation which the Defence asks the Chamber to
14 endorse under Article 75(1) of the Statute. I will not repeat them here.

15 The Defence has provided an extensive demonstration of the customary law nature of
16 these three principles. The demonstration of these three principles of customary
17 international law has been challenged by none of the participants in these
18 proceedings. Only the Office of the Prosecutor requested that you reject the Defence's
19 submissions on this aspect, yet without disputing either the substance of the
20 demonstration, nor its conclusion.

21 But the Office of the Prosecutor is fighting yesterday's battle.

22 In paragraphs 4 and 5 of its observations, the Prosecution relies on judgment OA4
23 delivered by the honourable Appeals Chamber in this case on 18 December 2020,
24 concluding that the Defence's submissions have already been ruled upon. No, they
25 have not.

1 The precise question decided by the Appeals Chamber in its OA4 judgment was
2 whether, as requested then by the Defence, preliminary reparations proceedings
3 could be opened as early as the pre-trial phase.

4 The adoption of the three principles of reparations proposed by the Defence was not
5 put forward in 2020, nor had the demonstration of their customary status been made.

6 What is now before your Chamber is, therefore, an entirely novel issue regarding the
7 adoption of these three new principles. Not a single submission presented before you
8 by the parties or participants disputes these principles. In fact, the LRV praises in her
9 filings the constructive and victim-friendly character of the Defence's submissions.

10 There is, therefore, a clear consensus surrounding the adoption of the principles we
11 advance, with the sole exception of the Prosecution's unsubstantiated objection that
12 runs counter to all its official statements in favour of victims.

13 In any case, the OTP will have no standing to appeal your reparation order under
14 Article 82(4) of the Statute, which reserves the right to appeal for the LRV, the
15 convicted person or a bona fide owner. It is hard to conceive how the LRV could
16 reconcile an appeal against these victim-friendly principles with the interests of her
17 client.

18 Adopt the three principles advanced by the Defence, your Honours, and your
19 reparations order will acquire the force of *res judicata* without delay. There will be no
20 appeal. It will stand as a landmark advancement for victims of international crimes,
21 redounding to the eternal credit of the institution we serve in this solemn hall, the
22 International Criminal Court.

23 In so doing, you will deliver the only interpretation of Article 75 of the Statute that is
24 compatible with international law, treaties, the practice of international organisations,
25 the jurisprudence of regional human rights courts and general State practice accepted

1 as law; that is, international custom applicable before this Court pursuant to Article
2 21(1)(b) of the Statute.

3 You will thus interpret Article 75 of the Statute as mandated by Article 21(3) of the
4 Statute; that is, in a manner "consistent with internationally recognised human rights".

5 First and foremost, the right of victims of international crimes to reparations. That
6 right is enshrined in the Bassiouni-Van Boven Principles and Guidelines on
7 Reparations. In doing so, you will achieve a giant leap forward for the International
8 Criminal Court and for victims in relation to what the Appeals Chamber identified in
9 the Lubanga case as, I quote, a "key feature of the Court, from which its success is, to a
10 large extent, linked".

11 This opportunity to achieve a landmark breakthrough and secure your place in the
12 history of international criminal law is made possible by an alignment of spheres
13 unique to this case, one in which the Defence, driven by Mr Abd-Al-Rahman's resort,
14 stands before you not merely endorsing, but calling upon you to adopt these three
15 principles in support of reparations. Such a moment is unprecedented and will not
16 recur any time soon for this Court.

17 I invite you, your Honours, not to miss this tryst with history brought before you in
18 this case by the Defence through its proposals and by the participants through their
19 absence of opposition. The opportunity is unique and time is of the essence.

20 The following words are not mine, nor are they those of the Defence. I quote: The
21 Court's activities "have gradually strayed from the original objectives, given its
22 modest track record and inconsistent effectiveness. Furthermore, other factors
23 resulting from the breakdown of the world order have compounded these inherent
24 flaws, thereby dealing a fatal blow to the credibility of the [ICC]".

25 These are evidently not the Defence words. What I have just read is an extract from

1 the notice of withdrawal from the Rome Statute issued by Chad on 27 July 2026.

2 Unless this process is revoked, Chad will cease to be a State Party on 27 July 2027, less
3 than 11 months from today. The Defence is committed to actively engaging with the
4 Chadian authorities to persuade them to halt this withdrawal process, yet Chad
5 remains a sovereign nation that will ultimately make its own determination, and
6 which, as matters stand, has decided to depart from this Court for the very reasons I
7 just cited.

8 On account of its geography, Chad has consistently served as a crucial pillar for the
9 Court's operation in Darfur. This holds even greater weight regarding the delivery of
10 reparations to victims, as a significant number of them presently live within its
11 borders and the country often provides the safest and most practical access route into
12 Darfur.

13 Sudan remains embroiled in war and refuses to cooperate, as your Chamber has
14 expressly observed. Sudan's answer to the Chamber's questions on reparations,
15 alongside with the complete absence of any Sudanese representatives at this hearing,
16 are unmistakable proof that no cooperation can be expected from that quarter. Bereft
17 of both Sudan and Chad, executing reparations, which is already a daunting task,
18 may well prove impossible.

19 Clock is thus ticking. We have under a year to execute the core reparations for
20 victims. Beyond that point, it is highly probable that every step will become infinitely
21 more challenging.

22 This is the reason why the Defence submitted concrete recommendations in
23 paragraphs 52 to 61 of its consolidated response, aiming for the rapid delivery of core
24 reparations to victims via a multi-phase approach. It is also why the Defence
25 requests, in paragraphs 13 to 18 of its response to the trust fund, that you reject the

1 trust fund's submissions seeking to expand reparations to the entirety of the Fur,
2 Masalit and Zaghawa communities of Darfur, while prioritising collective measures
3 and postponing individual compensation to a later date. With Chad's withdrawal
4 and Sudan's persistent non-cooperation, there will be, in all probability, no "later".
5 "Now" is already late enough when it comes to repairing harm inflicted back in 2003
6 and 2004.

7 The multi-phase approach advanced by the Defence places financial compensation for
8 the 1,592 participating victims represented by the LRV in this case at the very
9 forefront. This initial phase could have been launched immediately, had the trust
10 fund taken a proactive stance in securing funds for victims in Darfur. It failed to do
11 so. However, now is not the moment for blame, but for swift and determined action.
12 Your Chamber has made it known that it does not plan to deliver its reparations order
13 immediately. So be it. But this ought not stop the Chamber from directing the trust
14 fund, without delay -- from directing the trust fund without delay, ideally as this
15 hearing draws to a close, to mobilise all available resources toward fundraising for
16 Darfur's victims.

17 This multi-phase approach may require the delivery of a rolling order instead of a
18 one-off order to adapt as events unfold. Contrary to what was submitted earlier,
19 issuing such an order falls within the scope of your discretionary powers and does
20 not require an amendment to the Statute.

21 The Defence took initiative back in November 2025, securing some limited fruition,
22 and remains fully prepared to support the trust fund fundraising campaign in any
23 way needed. A three-month period seems a fair window to meet again and review
24 the sums the TFV has successfully gathered for the victims. Given that the next
25 session of the ASP is set to close on 17 December 2026, the Defence suggests that the

1 trust fund deliver its initial report on fundraising progress and State commitments
2 right after the ASP, around 21 December. Should the collected and pledged funds
3 suffice, the Chamber could then order the commencement of phase 1 reparations in
4 January 2027. Otherwise, the Chamber could grant an additional grace period for
5 fundraising to proceed.

6 Phase 1 will consist in paying financial compensation for the benefit of the 1,592
7 participating victims. The exact amount will depend on the funds raised and made
8 available by the trust fund, as well as the individual harm assessed for each victim
9 based on the schedule for *pretium doloris* proposed by the Defence at paragraph 31 of
10 its consolidated response of 3 July.

11 These financial compensations can be paid individually to each participating victim.

12 These victims are known, identified, are located and reachable. Their harm is
13 likewise documented.

14 There is therefore no reason to delay the payment of their compensation. Secure
15 money transfer mechanisms to Sudan, to which the Defence refers at paragraph 61 of
16 its consolidated response, do exist and can be utilised. These provide, in our view,
17 the simplest and most efficient response to your question, Madam President, about
18 insulating the delivery of reparation.

19 The objective the Defence asks the Chamber to set is for this phase 1 of reparations to
20 be completed before Chad's withdrawal, should it be confirmed, becomes effective;
21 namely, prior to 17 July 2027. The Defence will remain fully mobilised towards this
22 end.

23 Parallel to phase 1, the Defence submits that the Registry should undertake the
24 identification of all other direct and indirect victims of the attacks in Kodoom and
25 Bindisi, and of the detention's mistreatment and executions in Mukjar and Deleig.

1 The Registry should likewise assess the harm in preparation for a second phase of
2 reparations involving financial awards for their benefit. As soon as these other
3 victims are identified and their harm quantified, this phase 2 of reparations can be
4 considered, drawing upon additional resources raised by the TFV in the meantime.
5 Once all identified direct and indirect victims have received individual compensation
6 for their harm, the Chamber may order that further reparations of a more collective
7 nature be awarded, subject to the availability of remaining funds. That's the phase 3.
8 Orders regarding restitution, land recognition, and other modalities of reparations
9 can be issued at this stage.

10 If adopted by the Chamber, the multi-phase reparations framework proposed by the
11 Defence will ensure that effective implementation of reparations for the victims, at the
12 very least the 1,592 victims participating represented by the LRV, within a tight time
13 frame compatible with Chad's announced withdrawal.

14 If it is to succeed within the remaining window of time, this strategy cannot be put on
15 hold pending the Appeals Chamber's judgment on Mr Abd-Al-Rahman's conviction.

16 It must start now, ideally, at the close of this very hearing, for both the TFV's
17 fundraising campaign and the Registry's identification of additional victims.

18 Reparations operations must be set in motion without waiting to know whether the
19 conviction will acquire the force of *res judicata*.

20 The approach we advance demands that this Chamber affirm the first additional
21 principle proposed by the Defence, a principle that will liberate the grant of
22 reparations from the pre-condition of a finalised conviction and spare this Court a
23 rerun of the tragic breakdown seen in the Bemba case.

24 There is no prospect of this first principle being successfully appealed by the parties
25 holding standing under Article 2(4) of the Statute. It can thus be executed

1 immediately, free from any threat of being overturned.

2 To optimise the mobilisation of funds, triggering the responsibility of the Government
3 of Sudan and its members, while accessing assets frozen under Security Council
4 Resolution 1591, represents an available and practical solution that fully complies
5 with paragraph 2 of Security Council Resolution 1593.

6 Both the Court and the victims stand to benefit from the implementation of this
7 solution, in accordance with the second additional principle proposed by the Defence.

8 As with the first principle, no appeal is seriously conceivable under Article 82(4) of
9 the Statute, save by the bona fide owners of the funds drawn upon; namely, members
10 of the Sudanese government. It will then be up to those individuals, such as

11 Mr Al-Bashir, Mr Hussein or Mr Harun, to appear before this Court, should they so
12 choose, to appeal the Chamber's order placing their assets and property at the
13 disposal of reparations, as is their right under Article 82(4) of the Statute.

14 The absolute priority accorded to individual reparation measures, in the form of
15 financial compensation, is unanimously favoured across all submissions before this
16 Chamber. Even the trust fund concedes that victims "consistently and strongly
17 expressed a desire for direct individual financial recognition", it's a quote of
18 paragraph 110 of their submission, before going on to propose something else.

19 The award of individual financial compensation constitutes the sole direct and
20 immediate measure capable of prompt execution and subject to the outcome of the
21 trust fund's immediate fundraising under the first and second additional principles
22 proposed by the Defence, within less than a year. That is why the third additional
23 principle giving priority to individual measures is necessary, complementing the
24 preceding two additional principles to achieve the swift delivery of reparations.

25 Like the first two, the adoption of the third additional principle by the Chamber

1 carries no risk of appeal under Article 82(4). It can therefore be implemented

2 immediately, free from any threat of subsequent reversal.

3 International criminal justice is not a smooth journey. Yet, there are moments when

4 the stars of international criminal justice align perfectly to permit a monumental leap

5 forward. Thanks to the position chosen by Mr Abd-Al-Rahman and the instructions

6 conveyed to his Defence, such an alignment exists today in this very case. You have

7 before you, your Honours, an unobstructed path to interpret Article 75 of the Statute

8 in full accordance with internationally recognised human rights principles, most

9 notably the individual right of victims to individual reparations free from any

10 condition, as proclaimed in particular by the Bassiouni-Van Boven Principles and

11 Guidelines adopted by the UN General Assembly.

12 In so doing, you will exercise the discretion vested in you, strictly as mandated by

13 Article 21(3) of the Statute. You will guide this Court across a major milestone in

14 fulfilling the ICC mandate. Ultimately, you will achieve a monumental stride

15 forward for the victims of international crimes in Darfur, whose perpetrators the

16 Security Council entrusted this Court to prosecute in Resolution 1593, and you will

17 demonstrate that, despite the criticisms that I quote, the ICC remains worthy of the

18 magnificent mandate bestowed upon it by States in Rome in 1988, and it merits the

19 continued and unwavering commitment of States.

20 Seize this hour, your Honours. Seize this moment to forge an historic leap forward

21 for the victims in Darfur, for this Court, and for the future of international criminal

22 justice.

23 I thank you.

24 PRESIDING JUDGE KORNER: [16:36:29] All right. Mr Laucci, as you are well aware,

25 this hearing is being attended remotely - and I also think partly in the public

1 gallery - by victims or relatives of victims, and what you have just outlined to us very
2 fluently and eloquently, as is your wont, is a set of steps which you make sound as
3 though they can happen just like that, and that may have the effect of misleading
4 those who listen into thinking that is what may happen.

5 It is only right, I think, to point out that these reparation proceedings are, in effect,
6 against your client, Ali Muhammad Ali Abd-Al-Rahman, but he has absolutely no
7 means, as far as the Court knows, of ever meeting any such claims. And, accordingly,
8 any money that is going to be there for the meetings of any reparation -- to meet the
9 terms of any reparation order we make has to be, as you point out, raised by funding.

10 It is also well-known that that is a long and tortuous exercise and your proposed
11 reparation principles would have no effect whatsoever on that exercise. So, if the idea
12 is to persuade us that your principles mean that money will be more quickly raised,
13 then I have to say we do not accept that submission, and it would be quite wrong, as I
14 say, I believe, to mislead anyone who is listening to this that it is the simple ABC that
15 you seem to suggest. I want to make that quite clear.

16 MR LAUCCI: [16:39:08] Thank you, Madam President. The difficulties that you
17 mentioned are actually the perfect demonstration of the relevance of principles 1 and
18 2 proposed by the Defence, and I thank you for that.

19 Now, the solutions the Defence is asking you to implement, there is one thing that is
20 sure, that they have never been tried. And there is also another thing that is sure, that
21 all the parties and the participants in this room, who had full opportunity to explain
22 why the propositions of the Defence were stupid or could not be implemented, did
23 not do so.

24 So, I think you have all the elements before you and you will make your
25 determination, that's your role and I defer to it, but this is what we had to propose

1 and without any impression or doubt that we were misleading any victim listening to
2 us. What we are proposing is based on a very comprehensive - you know it, I could
3 not repeat it now - but a very comprehensive demonstration of international law and
4 especially customary international law. Article 21(3) requires the Rome Statute to be
5 interpreted in this light and this is what we are asking.

6 PRESIDING JUDGE KORNER: [16:40:33] Yes. As you point out, and that's why we
7 didn't ask any questions, nor did we expect any further submissions, this is a matter
8 of pure law and interpretation, and we understand full well what you are submitting
9 and it is our decision as to whether or not --

10 MR LAUCCI: [16:40:51] And I will be very glad if I assisted you in doing that.

11 PRESIDING JUDGE KORNER: [16:40:55] However, what I am pointing out,
12 Mr Laucci, is that even with your principles, were they to be adopted by the Court, it
13 would still take considerable time to raise any money that might be appropriate as
14 reparations in this case.

15 MR LAUCCI: [16:41:20] I don't want to remake the story, but that's why I regretted
16 that these fundraising efforts did not start earlier.

17 PRESIDING JUDGE KORNER: [16:41:30] Yes, well --

18 MR LAUCCI: [16:41:32] This is where we are. I think with strong rulings on your
19 side, on the side of your Chamber, the commitment of the States Parties to support
20 reparations for the Court is strong, as the trust fund told you. We can insist on the
21 urgency, including as a result of Chad's withdrawal and -- well, I cannot predict you
22 now that this -- the trust fund will be successful in raising enough money before the
23 end of December, and that's why I also suggested that this period could be --

24 PRESIDING JUDGE KORNER: [16:42:08] Yes, yes. Mr Laucci, I think we've dealt
25 with this. I've made the point and that is the point that I am most concerned about,

1 that nobody is misled in submissions by you. That's it. This is what you are
2 submitting can happen.

3 MR LAUCCI: [16:42:25] I hope that nobody is misled.

4 PRESIDING JUDGE KORNER: [16:42:27] Right. Thank you.

5 Yes.

6 MR LAUCCI: [16:42:31] Thank you, your Honour.

7 PRESIDING JUDGE KORNER: [16:42:32] Right. Thank you, Mr Laucci.

8 Yes, we have really sat -- I know -- (Microphone not activated) Sorry, microphone. I
9 really think we've sat long enough on this occasion.

10 So, firstly, can I thank all the parties to this hearing, the participants and the amici for
11 their helpful submissions. Contrary to Mr Laucci, I don't know where Mr Laucci got
12 the impression from that there was any chance -- or why he said that we were not
13 going to deliver our judgment straightaway, he is perfectly correct in that. As
14 everyone will have gathered, this is a complicated, an extremely complicated, set of
15 facts and submissions to consider, and, in particular, given the situation in Sudan,
16 how any reparations can be delivered.

17 We are, of course, aware of how long the victims have been waiting but, in the end,
18 we have to consider what is the best way of delivering those reparations.

19 Many of the victims, as I said earlier, have been following, or at least will be made
20 aware at some stage of what has happened in these proceedings. The Trial Chamber
21 wishes to make it plain that whatever the outcome of their deliberations, it fully
22 appreciates the pain and the suffering which the victims have undergone, and which,
23 as a result of the continuing seemingly intractable and regrettably under-publicised
24 conflict that still continues in Sudan, that pain and suffering has not only been further
25 exacerbated, but also in fact created a new body of such victims.

- 1 As Professor Benson-Strohmayr said a moment ago, this is the world's worst
- 2 humanitarian crisis and we are fully appreciative of that.
- 3 So, having said all that, we will now adjourn this hearing and we will have to
- 4 deliberate as quickly as we can to decide what is the best course of action to take.
- 5 So, with that, this hearing is adjourned.
- 6 THE COURT USHER: [16:45:55] All rise.
- 7 (The hearing ends in open session at 4.46 p.m.)