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TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

IN THE CASE OF
THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN
("ALI KUSHAYB")

PUBLIC

With Public Redacted Version of Annex 1 and Public Annex 2

Public Redacted Version of Defence Submission on Reparations

Source: Defence for Mr Ali Muhammad Ali Abd-Al-Rahman

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PREAMBLE

1. During the drafting of the present submission, the Defence team was saddened to learn of the passing, on 9 May 2026, of [Professor Theo van Boven](#), whose work with the late Professor Cherif Bassiouni was a central source of inspiration. Their loss is deeply regretted. Although this was never the original intent, the present submission is also respectfully submitted *in memoriam*.

I. INTRODUCTION

2. This is the submission made on behalf of Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”) by his Defence (“the Defence”) in response to the “Order for Submissions on Reparations” (“the Order”)¹ issued by the Honourable Trial Chamber I (“the Trial Chamber”) on 9 December 2025.

3. Taking into account the Trial Chamber’s invitation to full cooperation on issues of reparations,² the Defence registers its submission as early as possible and in advance of the extended time limit of 4 June 2026 for the filing of submissions on reparations,³ in order to give an opportunity to the Parties, participants and *amici curiae* to address it in their respective submissions, should they so wish.

4. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this submission is classified “Confidential” as it refers to filings currently under the same classification. Annexes 1 and 2 are also classified “Confidential”. Annex 2 is the Table of Authorities and will be reclassified as “Public” once the public redacted version of the submission and its Annex 1 are filed.

5. From items (i) to (x) to which the Trial Chamber invited submissions, the Defence limits itself to address items (ii), (vi), (viii), (ix) and (x). The Defence takes no position on other aspects at this stage and may address these in its response to the Parties’, participants’ or *amici curiae*’s submissions.

6. The most substantive submissions of the Defence are related to the Principles of Reparations that the Trial Chamber will have to rely on in its forthcoming Reparation Order pursuant to Article 75(1) of the Statute. Although the Order calls for no specific submissions on the Principles of Reparations and the Chamber may elect to rely on Principles previously

¹ [Order for Submissions on Reparations](#).

² [Order for Submissions on Reparations](#), para. 8.

³ [Decision on the CLRV request for extension of time and extension of page limit and scheduling a hearing before the Chamber](#).

established in other cases,⁴ the Defence requests the Trial Chamber, pursuant to Article 75(1) of the Statute, to consider the adoption of two Additional Principles of Reparations on:

- (a) the existence of an individual right of victims of international crimes to reparations in the principles and rules of international law, including the established principles of the law of armed conflict applicable before the Court under Article 21(1)(b) of the Statute; and
- (b) the existence under the same principles and rules of international law of a positive obligation of Sudan to contribute to these reparations in favour of victims in the present case, notwithstanding the reparations provided by the Trust Fund for Victims (“TFV”), and possibly through it.

These are addressed in response to item (x), but may be considered as the Defence’s contribution to and request for the establishment by the Trial Chamber of additional principles of reparations under Article 75(1) of the Statute.

II. SUBMISSIONS ON ITEM (ii)

7. The Trial Chamber invited the Defence to make submissions on “(ii) *any factual or legal issues relevant to the identification of eligible victims*”.⁵

8. The Defence contends that it is necessary to focus the reparations proceedings on eligible victims who have suffered harm as a result of the crimes covered in this case in Kodoom, Bindisi on 15-16 August 2003 and in Mukjar and Deleig by late February-early March 2004. Although the Defence is fully aware of the large extent of the crimes committed in Darfur as part of the counterinsurgency of 2003-2004, and although it would be tempting to extend reparations to all victims over that period, the Defence submits that any such extension would run counter to the requirement of a nexus between the crimes of the case and harm under the case law of this Court⁶ and would ultimately be detrimental to the victims of the crimes in this case by protracting the delays in the identification of victims, design of reparations measures and implementation of the reparations orders and putting too much pressure on the limited means that the TFV will be able to collect and rely on for the purpose of reparations. The Defence is of the view that providing meaningful reparations to the victims of the crimes in this case is better than providing symbolic reparations to a wider group of victims of the 2003-2004 violence in Darfur. Therefore, the

⁴ *Lubanga*, [AC Principles on Reparations](#); *Katanga*, [Order for Reparations](#), paras 29-34; *Al Mahdi*, [Reparations Order](#), paras 23-50; *Ntaganda*, [Reparations Order](#), paras 30-103; *Ongwen*, [Reparations Order](#), paras 56-87; *Al Hassan*, [Reparations Order](#), paras 21-25.

⁵ [Order for Submissions on Reparations](#), para. 6(a)(ii).

⁶ *Ntaganda*, [Reparations Order](#), para. 31.

Defence requests the Trial Chamber to authorise reparations only for direct and indirect victims⁷ of the crimes of which Mr Abd Al Rahman was convicted, with a direct causal nexus between the crime and the harm⁸ and within the terms of the Trial judgment.⁹

9. The Defence is also aware of the distinction made by the Court in other cases between the judicial phase, running up to the issuance of the reparations order by a Trial Chamber, and the subsequent administrative phase of its implementation and has no intention to challenge it.

10. However, in the *Ongwen* case, the administrative nature of the second phase implied no further judicial oversight by the Trial Chamber, with an assessment conducted entirely by the Registry.¹⁰ The Trial Chamber in *Ongwen* intended to follow the approach to the eligibility assessment adopted in the *Ntaganda* order.¹¹ But the *Ntaganda* approach on this specific aspect was subsequently overturned by the Appeals Chamber, which found that: “*while an administrative screening of eligibility can be carried out by the TFV, the outcome of any such screening must be judicially approved by the Trial Chamber. Those who the TFV finds not to be eligible should be able to challenge the TFV’s findings before the Trial Chamber*”.¹² The *Ongwen* Order was not appealed on this aspect, with the consequence that the erroneous ruling on the modalities of the eligibility assessment of victims was not redressed. The *Al Hassan* Reparations Order has since adopted the same erroneous approach,¹³ in breach of the Appeals Chamber ruling in *Ntaganda*.

11. The *Ongwen* approach on this aspect was wrong. An issue of such importance as the eligibility assessment of victims for reparations is crucial to the credibility and fairness of the whole reparations phase. Denying reparations to eligible victims would be as detrimental to the entire credibility and fairness of the process as granting reparations to ineligible victims. This process is too critical to escape proper judicial scrutiny, with a possibility given to the LRV and to the Defence to assist the Trial Chamber in its consideration of the matter. Entrusting the assessment of eligibility to the TFV without judicial review would be wrong, as the TFV would be placed in the position of both judge and party, as the ones ultimately supporting the reparations to victims. Even if that assessment was entrusted to a neutral entity, such as the Registry, the

⁷ Indirect victims must establish that, ‘as a result of their relationship with the direct victim, the loss, injury, or damage suffered by the latter gives rise to harm to them’, *See Lubanga*, [Decision on ‘Indirect Victims’](#), para. 49; *Al Hassan*, [Reparations Order](#), para. 67.

⁸ *Ntaganda*, [Reparations Order](#), para. 31.

⁹ [Trial Judgment](#), paras 819, 820, 822, 836, 910, 917, 923, 927.

¹⁰ *Ongwen*, [Reparations Order](#), paras 810-813.

¹¹ *Ongwen*, [Reparations Order](#), para. 807.

¹² *Ntaganda*, [Judgment on the Appeals against the ‘Reparations Order’](#), para. 387.

¹³ *Al Hassan*, [Reparations Order](#), para. 257.

requirement for proper judicial scrutiny would remain, in order to ensure that the process remains fair and that no error is made. Reparations proceedings cannot be dealt with as unimportant, residual matters. The Court would fail to uphold the promise made in Rome with the insertion of Article 75 of the Statute. Because the ICC is a court of law and reparations fall within its mandate, it must approach this matter in the way a court of law should, by following a judicial approach with all guarantees of fairness.

12. The Defence therefore submits that, in compliance with the Appeals Chamber's ruling in the *Ntaganda* case, the Trial Chamber should continue to exercise a judicial review of the eligibility assessment of victims for reparations throughout the process, including in the second phase of implementation of the future Reparations Order. This judicial review should apply irrespective of the body entrusted with the initial administrative assessment, be it the TFV or the Registry.

III. SUBMISSIONS ON ITEM (vi)

13. The Trial Chamber invited the Defence to make submissions on “(vi) *types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes of which Mr Abd-Al-Rahman has been convicted*”.¹⁴

14. The types and modalities of reparations for victims of crimes of International Humanitarian Law (“IHL”) and gross violations of international human rights law (“HRL”) include the following: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁵ The first three aspects are those specifically mentioned in Article 75(1) of the Statute and relied upon by the Appeals Chamber in *Lubanga* AC Principles of Reparations.¹⁶ But the use of “including” in this list of three in Article 75(1) clearly shows that it is illustrative, not exclusive, leaving the door open to “*other modalities of reparations*”.¹⁷

15. Restitution “*is directed at the restoration of an individual's life, including a return to his or her family, home and previous employment; providing continuing education; and returning lost or stolen property.*”¹⁸ Restitution is a highly relevant form of reparation in the present case, where the crimes often resulted in victims being deprived of their land, houses, cattle and essential possessions. Such deprivation had a massive impact on the well-being and conditions

¹⁴ [Order for Submissions on Reparations](#), para. 6(a)(vi).

¹⁵ See [Bassiouni-Van Boven Principles](#), Principles 18 to 23; See also OHCHR, “[Reparations](#)”.

¹⁶ *Lubanga*, [AC Principles on Reparations](#), paras 35-42.

¹⁷ *Lubanga*, [AC Principles on Reparations](#), paras 35-42.

¹⁸ *Lubanga*, [AC Principles on Reparations](#), para. 35, referring to [Bassiouni-Van Boven Principles](#), Principle 19 and [UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime](#), para. 37.

of living of the victims. The impact was actually so massive that the harm suffered can hardly be fully and properly repaired by any mean other than actual restitution of the stolen land, house, cattle and possessions, whenever feasible. Any alternative measure of reparation would at best provide the victims with limited relief for the essential harm that consisted in the loss of their land, house, cattle and possessions. In the present case, such restitution can only come from the Government of Sudan (“GoS”). This issue is further addressed under item (x) below, under the second Additional Principle of Reparations that the Defence invites the Trial Chamber to adopt.

16. Compensation “*is a form of economic relief that is aimed at addressing, in a proportionate and appropriate manner, the harm that has been inflicted*”. Compensation can be offered for physical harm, moral and non-material damage, material damage, lost opportunities and costs.¹⁹ As addressed under items (viii) and (ix) below, in the absence of contributive capacity of the convicted person, compensation is the principal, most direct, most effective form of reparations that can be implemented without delay through the TFV, with subsequent ongoing monitoring under Regulation 117 of the RoC. For the reasons addressed under item (x) below, under the first Additional Principle of Reparations that the Defence invites the Trial Chamber to adopt, the Defence submits that the individual right of victims to reparations primarily calls for compensation provided on an individual basis, rather than collective reparations; and that, whenever collective forms of reparations are contemplated in addition to individual ones, these should not only address the harm suffered by victims on a collective basis, but also, and as a priority, the harm suffered on an individual basis.²⁰

17. Rehabilitation may encompass “*the provision of medical services and healthcare, psychological, psychiatric and social assistance to support those suffering from grief and trauma; and any relevant legal and social services.*”²¹ For victims who need and express an interest in rehabilitation measures, these could be envisaged as a complement to restitution and compensation.

18. Although not specifically listed under Article 75(1) of the Statute, other reparation measures may, as with rehabilitation, come as a complement to the principal forms of reparations consisting in restitution and compensation. These include satisfaction and guarantees of non-repetition.

19. Under the UN Basic Principles on Reparations, satisfaction may encompass “*(a) effective measures aimed at the cessation of hostilities; (b) verification of the facts and public disclosure*

¹⁹ Lubanga, [AC Principles on Reparations](#), para. 40, referring to [Bassiouni-Van Boven Principles](#), principle 20.

²⁰ Lubanga, [AC Principles on Reparations](#), para. 33.

²¹ Lubanga, [AC Principles on Reparations](#), para. 42.

*of the truth [...]; (c) the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed [...]; (d) an official declaration or a judicial decision restoring the dignity and the reputation and the rights of the victim and of persons closely connected to the victims; (e) public apology, including acknowledgement of the facts and acceptance of responsibility; (f) judicial and administrative sanctions against persons liable for the violations; (g) commemorations and tributes to the victims; (h) inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and educational material at all levels.”*²² Without prejudice to the pending appeal against the Article 74 Decision, the Defence is of the view that the Court has already provided the best contribution it could within the strict parameters of the present case under items (b), (d) and (f). Item (a) unfortunately falls outside its scope of action. Items (c), (g) and (h) also essentially fall outside the scope of the Court’s action, but may form part of the measures that the TFV may elect to promote and support as part of its contribution to reparations. The Defence team is already engaged in the ICC’s Outreach activities and will carry on contributing thereto and any other similar initiatives whenever solicited in the future. With respect to item (e), Mr Abd-Al-Rahman went as far as the preservation of his presumption of innocence and any defendant’s rights allowed through his various statements before the Pre-Trial and Trial Chambers. Whether he may consider appropriate to do more after the final determination of his case only depends on him and should not be taken into account in the Trial Chamber’s determination on reparations.

20. Under the UN Basic Principles on Reparations, guarantees of non-repetition should include measures “(a)ensuring effective civilian and military control of military and security forces; (b) ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) strengthening the independence of the judiciary; (d) protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) reviewing and reforming

²² [Bassiouni-Van Boven Principles](#), principle 22.

laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.”²³ These measures clearly aim at preventing repetition by others and in future instances of the kind of crimes that Mr Abd-Al-Rahman has been convicted of; these have nothing to do with guarantees of non-repetition by Mr Abd-Al-Rahman himself, which are in any event not relevant in the present case, *inter alia* because of his advanced age. Most of these measures fall outside the ICC’s mandate and realm of action, but may form part of the measures that the TFV may elect to promote and support as part of its contribution to reparations. The Defence stands ready to contribute to and support the implementation of such measures by the TFV, whenever solicited.

21. Finally, whatever the means and modalities of reparations that the Trial Chamber will consider ordering, the Defence submits that what are needed are measures which are straightforward and easy to implement, such as the making of financial awards to individual victims, over more complex, less direct collective awards that would cause additional delays and indirect costs for implementation, such as reparations measures requiring the identification of implementing partners and seconding the concrete implementation of the reparations measures to third parties. The victims have waited too long since 2003-2004. The Court should make simplicity, efficiency and celerity an utmost priority.

IV. SUBMISSIONS ON ITEM (viii)

22. The Trial Chamber invited the Defence to make submissions on “(viii) *information as to whether the victims of the crimes of which Mr Abd-Al-Rahman was convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes*”.²⁴

23. The following submissions are without prejudice to the Defence’s submissions under its Ground of Appeal 6 in the Defence Sentencing Appeal Brief with respect to efforts deployed by Mr Abd-Al-Rahman and his Defence to compensate the victims.²⁵

24. In its Order, the Trial Chamber invited the GoS to make observations on reparations, including on the present item (viii).²⁶ [REDACTED]²⁷ [REDACTED].²⁸ Two reasonable assumptions [REDACTED] are that (i) Darfur victims have benefited from no compensation, no reparations scheme or measures from the GoS which (ii) has no intention to offer them

²³ [Bassiouni-Van Boven Principles](#), principle 23.

²⁴ [Order for Submissions on Reparations](#), para. 6(a)(viii).

²⁵ [Defence Sentencing Appeal Brief](#), paras 71-85.

²⁶ [Order for Submissions on Reparations](#), para. 6(c), referring to, *inter alia*, para. 6(a)(viii).

²⁷ [REDACTED]

²⁸ [REDACTED].

reparations. In light of the Sudan authorities' longstanding tradition of systematic disregard for and gross violation of human rights, of its ongoing non-cooperation with the Court and of the current state of affairs in that country since, at least, 15 April 2023, this is disappointing but in no way surprising.

25. On 4 November 2025, the Defence team had a meeting with representatives of the TFV. At that meeting, the Defence inquired whether there was any assistance and/or reparation programme ongoing for the benefit of victims in Darfur. The answer was in the negative. Based on that information, it appears that the TFV has not implemented any assistance or reparation programme for the benefit of Darfur victims yet. To date, Darfur victims thus have received no compensation or reparations from the TFV either.

26. At the same meeting of 4 November 2025 with the TFV, the Defence also enquired about any ongoing earmarked fundraising efforts for reparations for victims in Darfur. The answer was that the TFV would only engage into earmarked fundraising efforts after issuance of the Trial Chamber's Reparations Order. After verification that its initiative would not impede, nor conflict with, TFV's action, the Defence addressed letters inviting States to contribute to reparations for victims in Darfur by making a voluntary earmarked contribution through the TFV. These letters were sent in two batches: 56 Non-States Parties on 11 November 2025 prioritised on the basis of the consultation with the TFV;²⁹ 112 States Parties on 14 November 2025,³⁰ for a total of 168 States approached. The Defence has received responses from a number of these States and has been still following up with these on an individual basis. [REDACTED] expressed its interest in making the requested earmarked contribution for the benefit of Darfur victims. The Defence has put [REDACTED] in touch with the TFV for the finalization of that contribution.³¹ Thanks to [REDACTED] and, potentially, other States' contributions, the efforts deployed by Mr Abd-Al-Rahman and his Defence to compensate victims are about to come to some fruition, under the condition that the TFV follows up as required.

(V) SUBMISSIONS ON ITEM (ix)

27. The Trial Chamber invited the Defence to make submissions on “(ix) *any considerations the Chamber should take into account when assessing Abd-Al-Rahman's liability for reparations*”.³²

²⁹ On 11 November 2025: [REDACTED] (total 56).

³⁰ On 14 November 2025: [REDACTED] (total 118).

³¹ Annex 1: Letter from the Defence to the TFV Executive Director, 21 November 2025.

³² [Order for Submissions on Reparations](#), para. 6(a)(ix).

28. Mr Abd-Al-Rahman has appealed the Trial Judgment convicting him. The appeal proceedings are pending. Should the Appeals Chamber reverse his convictions, as requested, and acquit him, the Defence is of the view, as fully exposed under **Item (x)** below, that his acquittal should be no bar to reparations for victims implemented through the TFV on the basis of States' voluntary contributions, pursuant to Articles 75(1) and 79(1) of the Statute.

29. In the event the Appeals Chamber would confirm, fully or partially, his convictions, Mr Abd-Al-Rahman will accept liability for reparations for victims, as provided under Article 75(2) of the Statute and will engage in that process.

30. However, in its consideration of future reparations, the Trial Chamber should be aware of the absence of any contributive capacity of Mr Abd-Al-Rahman for the purpose of reparations. Since 18 July 2020, the Defence has repeatedly and consistently made the point that Mr Abd-Al-Rahman is a person of extremely humble condition with no financial means whatsoever.³³ At the request of the Trial Chamber, the Prosecution stated in January 2026 that "*it is not in possession of any additional information regarding Mr Abd-Al-Rahman's current financial situations*".³⁴ Mr Abd-Al-Rahman remains of course willing to cooperate with the ongoing monitoring of his financial situation by the Court under Regulation 117 of the RoC.

31. Mr Abd-Al-Rahman's indigency should be no bar to the right of victims to reparations under Article 75 of the Statute. The drafters of the Rome Statute anticipated that situation by specifying in Article 75(2) that "[w]here appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79." Denying reparations to victims on the sole ground of Mr Abd-Al-Rahman's financial incapacity to contribute thereto would, in most cases before the Court including this one, deprive the reparation scheme enshrined in Article 75 of the Statute of any effectiveness. It would also amount to operating an adverse distinction among victims on the ground of the wealth of the person found guilty of the crimes committed against them, in breach of Article 21(3) of the Rome Statute. The Defence therefore submits that Mr Abd-Al-Rahman's incapacity to contribute financially to reparations bears no relevance on (i) his liability and (ii) the right of victims to receive reparations for their harm through the TFV, subject to any future change in Mr Abd-Al-Rahman's contributing capacity.

(VI) SUBMISSIONS ON ITEM (x)

³³ [Request and Observations on Reparations Pursuant to Article 75\(1\)](#), para. 4; T-165, pp. 75-78.

³⁴ E-mail from the Prosecution to the Trial Chamber and the Parties and Participants, 12 January 2026, 15h12.

32. As announced in the introduction to these observations, the Defence takes advantage of the opportunity offered to it to address the Trial Chamber on “*any additional information relevant to reparations*”³⁵ to request it, pursuant to Article 75(1) of the Statute, to adopt, in complement to the existing principles of reparations developed, so far, by the Court in previous cases,³⁶ the following two additional principles of reparations with respect to: (a) the recognition of the existence of an individual right of victims of international crimes to reparations in Customary International Law, that is not conditioned by the identification, prosecution, conviction or capacity of the offender to contribute to these (“the First Proposed Principle”); and (b) the existence of a positive obligation of Sudan to contribute to these reparations in favour of victims in the present case, notwithstanding the reparations provided by and/or through the TFV (“the Second Proposed Principle”). The Defence will first address the applicable law on the basis of which the two Proposed Principles rely, prior to addressing these in the same order.

A - Applicable Law

33. Article 75(1) of the Statute provides that “*the Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.*”

34. The Trial Chamber is the competent and appropriate authority to state the principles of reparations. Its competence and authority stems from the plain wording of Article 75(1) of the Statute and from the unanimous ruling issued by the Appeals Chamber in this case proceedings OA4 (“Appeals Chamber OA4 Ruling”) at paragraph 16, summarising the Separate Opinion of Honourable Judge Ibáñez Carranza on the matter: “*While a pre-trial chamber can address issues relating to victim participation and protection, among others, and preliminary issues related to reparations such as screening of victims, cooperation, seizures, and so forth [this is the Majority Opinion of the Appeals Chamber stated at paragraph 15], what it cannot do is settle principles that entail concrete aspects of the reparations itself or its implementation. The latter are the domain of trial chambers.*”³⁷ The Appeals Chamber thus unanimously held that the Trial Chamber was competent to exercise the power of the Court to state the principles of reparations under Article 75(1), thereby confirming its earlier ruling that the principles of reparations “*while*

³⁵ [Order for Submissions on Reparations](#), para. 6(a)(x).

³⁶ *Lubanga*, [AC Principles on Reparations](#); *Katanga*, [Reparations Order](#), paras 29-34; *Al Mahdi*, [Reparations Order](#), paras 23-50; *Ntaganda*, [Reparations Order](#), paras 30-103; *Ongwen*, [Reparations Order](#), paras 56-87; *Al Hassan*, [Reparations Order](#), paras 21-25.

³⁷ [Appeals Chamber OA4 Ruling](#), para. 16.

formulated in light of the circumstances of a specific case, can nonetheless be applied, adapted, expanded upon, or added to by future Trial Chambers”.³⁸

35. Still pursuant to Article 75(1) of the Statute, the Trial Chamber can state the principles of reparations *proprio motu* or upon request. In the present case, the Trial Chamber is asked to adopt the two Proposed Principles upon request from the Defence.

36. Article 75(2) further provides that “*the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79.*”

37. Under Article 21(1)(b) of the Statute, “*applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflicts*” form part of the applicable law before the Court.

38. Under Article 21(3) of the Statute, “*the application and interpretation of [the applicable law before the Court] must be consistent with internationally recognized human rights*”. This provision applies to the interpretation of Articles 75(1) and (2).

39. Beyond these provisions of the Statute, the Defence will briefly expose some key provisions of (i) treaty law and (ii) UN Declarations on the Rights of Victims before turning to a demonstration of the (iii) customary international law nature of its two Proposed Principles.

(i) Treaty Law

40. The right of victims to reparations predates the drafting of Article 75 of the Statute in 1998. It has its origins in general International Law, in particular International Humanitarian Law (“IHL”), or “*the law of armed conflicts*” as referred to in Article 21(1)(b) of the Statute. The consolidation of the right of victims to reparations has been gradual, moving progressively from the affirmation of the traditional principle of State responsibility in Public International Law to that of the right of individual victims to reparations for harm suffered as a result of the commission of international crimes. The Defence briefly outlines the main stages of this consolidation, without claiming to be exhaustive, in order to determine what “*the applicable treaties and principles and rules of international law, including established principles of international law of armed conflict*” and “*internationally recognised human rights*” provide to guide the interpretation of Article 75(1) and (2) of the Statute.

³⁸ Lubanga, [AC Principles on Reparations](#), para. 5.

41. As early as 1907, Article 3 of the Hague Convention (IV) respecting the Laws and Customs of War on Land stated: “*A belligerent party which violates the provisions of the said Regulations [respecting the laws and customs of war on land and annexed to the Convention] shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.*”³⁹

42. Articles 51, 52, 131 and 148 of the 1949 Geneva Conventions I to IV respectively provide as follows: “*No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article [relating to grave breaches of the Geneva Conventions].*”⁴⁰

43. The 1977 Additional Protocol (I) to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts provides, in its Article 91, a provision equivalent to Article 3 of the Hague Convention (IV) of 1907 above.⁴¹

44. The Defence is fully aware that these three instruments merely codify the usual grounds for compensation between States under Public International Law and are related to International Armed Conflicts, as opposed to non-international conflicts. Their consideration is nevertheless relevant to the assessment of the progressive development of the right to reparations for individual victims of armed conflicts.

45. In the field of International Human Rights, the International Covenant on Civil and Political Rights of 19 December 1966 (“ICCPR”) is much more specific regarding the right of victims of violations to compensation. In Article 2(3), it states: “*Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.*”⁴²

³⁹ [Hague Convention \(IV\)](#), art. 3.

⁴⁰ [Geneva Convention I](#), art. 51; [Geneva Convention II](#), art. 52; [Geneva Convention III](#), art. 131; [Geneva Convention IV](#), art. 148. Sudan has ratified the four 1949 Geneva Conventions on [23 September 1957](#).

⁴¹ [Protocol I](#), 8 June 1977, art. 91. Sudan has ratified Additional Protocol I on [7 March 2006](#). The Defence submits that the fact that Protocol I entered into force for Sudan in 2006 is no bar to the application of the principle of reparations to victims under its Article 91 to eligible victims of 2003-2004, insofar as reparations fall outside the scope of Articles 22-24 of the Statute.

⁴² [International Covenant on Civil and Political Rights](#), art. 2(3). Sudan ratified the ICCPR in [1986](#).

46. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (“Convention against Torture”) provides in Article 14(1): *“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”*⁴³

47. Article 5(5) of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) provides that: *“everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.”* Its Article 41 further provides: *“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”*⁴⁴

48. The American Convention on Human Rights (“American HR Convention”) is particularly protective of victims’ right to compensation, which it accompanies with an expedited procedure. Article 63 provides as follows: *“1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party. 2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”*⁴⁵

49. The Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (“Protocol to the African HR Convention”) provides for a mechanism equivalent to that of the Inter-American Court in Article 27: *“1. If the Court finds that there has been violation of a human or peoples’ right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation. 2. In*

⁴³ [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), art. 14(1). Sudan ratified the Convention against Torture in 2021. The Defence submits that the fact that the Convention against Torture entered into force for Sudan in 2021 is no bar to the application of the principle of reparations to victims under its 14(1) to eligible victims of 2003-2004, insofar as reparations fall outside the scope of Articles 22-24 of the Statute.

⁴⁴ [European Convention on Human Rights](#), art. 5(5), 41.

⁴⁵ [American Convention on Human Rights](#), art. 63. Sudan is not a State Party to the American Convention.

*cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.”*⁴⁶

50. Article 2 of the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983 (“1983 European Convention”) for the first time operated a reversal of priority from the convicted person to the State in terms of the burden of compensation for victims: under that provision, the State contributes to the compensation of victims whenever *“compensation is not fully available from other sources”* and *“even if the offender cannot be prosecuted or punished”*.⁴⁷ The same reversal has since been followed in subsequent declarations on the rights of victims adopted by the United Nations, starting with the 1985 Declaration.

(ii) UN Declarations on the Rights of Victims

51. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by Resolution 40/34 of the United Nations General Assembly on 29 November 1985 (the “1985 Declaration”) enshrines in sections 12 and 13 the principle of State substitution to guarantee compensation for victims: *“Compensation - 12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization. 13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.”*⁴⁸ Although the 1985 Declaration is not binding, it has played an important role in the gradual establishment of victims’ right to reparation. The reversal of the burden of reparations from the convicted person to the State through available compensation schemes already operating in the 1983 European Convention is repeated in the 1985 Declaration.

52. The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (“Guidelines on Child Victims”) also extend the right to reparation for child victims from *“compensation ordered by the criminal court against the offender”* to *“assistance*

⁴⁶ [ACHPR Court Protocol](#), art. 27. Sudan has signed the Protocol on [9 June 1998](#), but did not ratify it.

⁴⁷ [European Convention on the Compensation of Victims of Violent Crimes](#), art. 2. Sudan is not a State Party to the convention.

⁴⁸ [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), sect. 12-13.

*from state-administered victim compensation programs and [the] payment of damages ordered by a civil court.”*⁴⁹ The United Nations Office on Drugs and Crime and UNICEF recommend, with a view to implementing the Guidelines on Child Victims, the development of “*State compensation schemes for those children who cannot obtain restitution from their offenders. These schemes may be financed, for example, through subrogation procedures to get the compensation reimbursed, in full or in part, by the offender(s) or other responsible bodies, through public funding, confiscation of the perpetrator’s assets, fines or other sources, such as a tax imposed on insurance contracts*”.⁵⁰

53. “Chapter IX – *Reparation for the harm suffered*” of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted on 16 December 2005 by Resolution 60/147 of the United Nations General Assembly, also known as the Bassiouni-Van Boven Principles in honor of the two special rapporteurs who drafted them (“Bassiouni-Van Boven Principles”)⁵¹ confirms the reversal of the traditional priority given to reparation by the convicted person in favor of the new priority given to reparations provided by the State already operating in the 1983 European Convention, in the 1985 Declaration and in the Guidelines on Child Victims. The principle of this reversal is complemented and strengthened by the possibility for the State to take recourse action against the criminal in the event of conviction: “*In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.*”⁵² The Bassiouni-Van Boven Principles also encourage States to “*establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.*”⁵³ The forms of reparation provided for include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁵⁴ The Bassiouni-Van

⁴⁹ UN Economic and Social Council, [Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime](#), sect. 35-37.

⁵⁰ C. Laucci, [Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime](#), UNODC/UNICEF, p. 99.

⁵¹ [Bassiouni-Van Boven Principles](#).

⁵² [Bassiouni-Van Boven Principles](#), sect. 15.

⁵³ [Bassiouni-Van Boven Principles](#), sect. 16.

⁵⁴ [Bassiouni-Van Boven Principles](#), sect. 19-23.

Boven Principles are extensively relied upon in the ICC's elaboration of its Principles on Reparations under Article 75(1) of the Statute.⁵⁵

(iii) Customary International Law

54. In 2006, the International Committee of the Red Cross ("ICRC") established Rule 150 of Customary International Humanitarian Law, which states that "*A State responsible for violations of International Humanitarian Law is required to make full reparation for the loss or injury caused*" ("CIHL Rule 150").⁵⁶ CIHL Rule 150 applies equally in situations of international and non-international armed conflict. The authority of the ICRC to identify the existing rules of Customary International Humanitarian Law is based on the specific mandate given to it by the 26th International Conference of the Red Cross and Red Crescent in 1995⁵⁷ and stems from its statutory role as default substitute to protecting powers in charge of the authentic interpretation of the 1949 Geneva Conventions pursuant to Common Articles 10-11 of Geneva Conventions I-III and 11-12 of Geneva Convention IV.⁵⁸

55. The inclusion of CIHL Rule 150 in the ICRC Report authoritatively consecrated the existence of a principle of reparation for victims of IHL violations in Customary International Law. This conclusion was the outcome of a comprehensive study of the domestic practice of States from around the world and of authorities demonstrating the existence of a corresponding *opinio juris*. Any attempt to reproduce this study in the limited number of pages allowed is beyond the scope of these observations. The Defence incorporates by reference the entirety of the relevant sources relied upon by the ICRC at pages 3530 to 3610 of its Report.⁵⁹

56. For the purpose of the present observations, the Defence has selected a number of sources specifically endowing individual victims with a positive right to reparations: these include (a) treaties and other international instruments, (b) national practice, (c) the practice of international organisations and conferences, and (d) the practice of international judicial and quasi-judicial bodies.

⁵⁵ Lubanga, [AC Principles on Reparations](#), paras 13-16, 35, 37, 39, 41-44.

⁵⁶ [CIHL - Vol. I: Rules](#), Rule 150. See also [CIHL - Vol. II: Practice - Part 2](#), pp. 3530-3610.

⁵⁷ ICRC, [Resolution I](#), June 1995, Recommendation II: "*the ICRC be invited to prepare with the assistance of experts in IHL representing various geographical regions and different legal systems, and in consultation with experts from governments and international organisations, a report on customary rules of IHL applicable in international and non-international armed conflicts, and to circulate the report to States and competent international bodies.*" (emphasis added).

⁵⁸ [Geneva Convention I](#), art. 10-11; [Geneva Convention II](#), art. 10-11; [Geneva Convention III](#), art. 10-11; [Geneva Convention IV](#), art. 11-12.

⁵⁹ [CIHL - Vol. II: Practice - Part 2](#), pp. 3530-3610.

57. The Defence's experience throughout the proceedings in the present case has bitterly shown that an excessive demonstration of legal knowledge, especially on this very issue of reparations, may be misperceived as over-academic or pedantic. The Defence hereby prays the readers, in the first place the Trial Chamber, the Prosecution and the LRVs, to exclude any such perception and read the Defence's observations, below, as nothing more than a humble, laborious attempt to demonstrate the customary international law nature of its two Proposed Principles.

58. Under Article 38(1)(b) of the Statute of the International Court of Justice ("ICJ"), international custom is defined as "*evidence of a general practice accepted as law*".⁶⁰ The demonstration that the right of victims to reparations forms part of Customary International Law thus needs to rely on a general practice and its acceptance as corresponding to the law, i.e. *opinio juris*. The practice should ideally be both at the national and international levels; it does not need to be perfect, but shall be sufficiently "*constant and uniform*".⁶¹ What matters is that such practice is followed by States out of a belief that they have an obligation to follow it: "*Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the opinio juris sive necessitatis. The States concerned must therefore feel that they are conforming to what amounts to a legal obligation.*"⁶²

59. The Defence thus has no choice but to demonstrate a consistent practice accepted as law (*opinio juris*),⁶³ i.e. the emergence of customary rules establishing (i) a positive right of individual victims to reparations for serious violations of IHL and gross violations of Human Rights and (ii) a corresponding positive obligation of the State responsible for these violations to provide reparations. The Defence invites the Trial Chamber to consider these for that very purpose and forgive the lengthiness and detail of its submissions on these issues.

(a) Peace Settlement Treaties and other international instruments

60. Relevant peace settlement treaty provisions supporting the emergence of customary rules establishing (i) a positive right of individual victims to reparations for serious violations of IHL and gross violations of Human Rights and (ii) a corresponding positive obligation of the State responsible for these violations to provide reparations are presented in chronological order.

⁶⁰ [Statute of the International Court of Justice](#), art. 38(1)(b).

⁶¹ ICJ, [Asylum Case](#), Judgment, p. 14.

⁶² ICJ, [North Sea Continental Shelf Cases](#), Judgment, para. 77.

⁶³ [Statute of the International Court of Justice](#), art. 38(1)(b).

61. Article 8 of the 1946 Paris Agreement on Reparation from Germany designed a scheme for the allocation of a reparation share to non-repatriable victims of German action considered as “*true victims of Nazi persecution*”, as well as their families and dependents.⁶⁴

62. The 1951 Peace Treaty for Japan provided the transfer of Japanese funds to the ICRC “*for the benefit of former prisoners of war and their families on such basis as it may determine equitable*.”⁶⁵

63. Article 1(1) to Chapter Four of the 1952 Convention on the Settlement of Matters Arising out of the War provided as follows: “*The Federal Republic acknowledges the obligation to assure in accordance with the provisions of paragraphs 2 and 3 of this Chapter adequate compensation to persons persecuted for their political convictions, race, faith or ideology, who thereby have suffered damage to life, limb, health, liberty, property, their possessions or economic prospects (excluding identifiable property subject to restitution). Furthermore, persons persecuted by reason of nationality, in disregard of human rights, who are now political refugees and no longer enjoy the protection of their former home country shall receive adequate compensation where permanent injury has been inflicted on their health*.”⁶⁶ Similarly, Article 4(1) of Chapter Five to the same Convention provided for compensation of victims whenever they right to have their properties restituted could no longer be complied with as a result of these having been utilised, consumed, destroyed, stolen or otherwise disposed of.⁶⁷

64. Protocol I to the Agreement of 10 September 1952 between Israel and Germany provides the direct payment of compensation “*to persons who suffered losses as officials or employees of Jewish communities or public institutions within the boundaries of the German Reich as of December 31, 1937*”, to “[p]ersons who were persecuted because of their political convictions, race, faith or ideology” and to “[p]ersons who were persecuted for their political convictions, race, faith or ideology during the National-Socialist regime of terror and who are at present stateless or political refugees and who were deprived of liberty by National-Socialist terror acts”.⁶⁸

65. Article 26(1) of the 1955 of the Austrian State Treaty re-establishing the State of Austria after its annexing by Nazi Germany in 1938 (*Anschluß*) provides: “*in all cases where property, legal rights or interests in Austria have since 13th March, 1938, been subject of forced transfer or measures of sequestration, confiscation or control on account of the racial origin or religion*

⁶⁴ [1946 Paris Agreement on Reparation from Germany](#), art. 8.

⁶⁵ [Treaty of Peace with Japan](#), art. 16.

⁶⁶ [Convention No. 4762](#), art. 1(1), p. 262.

⁶⁷ [Convention No. 4762](#), art. 4(1), p. 271.

⁶⁸ [Protocol I to the Agreement between Israel and Germany](#), art. I: Compensation, paras 9, 12 and 14 (pp. 274-276).

*of the owner, the said property shall be returned and the said legal rights and interests shall be restored together with their accessories. Where return or restoration is impossible, compensation shall be granted for losses incurred by reason of such measures to the same extent as is, or may be, given to Austrian nationals generally in respect of war damage.”*⁶⁹ Part IV (“*Claims arising out of the War*”, art. 21-24) and Part V (“*Property, Rights and Interests*”, art. 25-28) of the same treaty provide for detailed and comprehensive settlement of all property claims.

66. Article 1(1) of Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina of 21 November 1995 (the Dayton Accords) on Refugees and Displaced Persons provides that all refugees and displaced persons shall “*have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.*”⁷⁰ The Agreement established a Commission in charge of compensating victims: “*Any person requesting the return of property who is found by the Commission to be the lawful owner of that property shall be awarded its return. Any person requesting compensation in lieu of return who is found by the Commission to be the lawful owner of that property shall be awarded just compensation as determined by the Commission.*”⁷¹ Compensation awards consisted of “*a monetary grant or a compensation bond for the future purchase of real property.*”⁷²

67. The OAU Framework Agreement on Eritrea and Ethiopia of 1998 provided the creation of a neutral Claims Commission competent to determine, through binding arbitration, claims for loss, damages or injury by, *inter alia*, nationals, including both natural and legal persons, that are related to the armed conflict and result from violations of IHL, including the 1949 Geneva Conventions and other violations of international law.⁷³

68. The 1998 Comprehensive Agreement on Respect of Human Rights and IHL in The Philippines provides that victims and their families have a right to receive adequate compensation or indemnification, restitution and rehabilitation.⁷⁴

⁶⁹ [State Treaty for the Re-establishment of an Independent and Democratic Austria](#), art. 26(1) (p. 279).

⁷⁰ [Annex 7: Agreement on Refugees and Displaced Persons, General Framework Agreement for Peace in Bosnia and Herzegovina](#), 21 November 1995, art. I(1).

⁷¹ [Annex 7: Agreement on Refugees and Displaced Persons, General Framework Agreement for Peace in Bosnia and Herzegovina](#), 21 November 1995, art. XII(2).

⁷² [Annex 7: Agreement on Refugees and Displaced Persons, General Framework Agreement for Peace in Bosnia and Herzegovina](#), 21 November 1995, art. XII(6).

⁷³ Organisation of African Unity, [Agreement Between the Government of the Federal Democratic Republic of Ethiopia And the Government of the State of Eritrea](#), 18 June 2000, art. 5.

⁷⁴ [1998 Comprehensive Agreement on Respect of Human Rights and IHL in The Philippines](#), Part III, art. 2(3).

69. In 2020, the GoS signed the Juba Peace Agreement with the various warring parties in Sudan. The Darfur section of the Juba Peace Agreement included Chapter 4 providing a *Compensation and Reparations Protocol*.⁷⁵ That Protocol relied on a number of principles, that include the following:

1. Victims of the conflict in Darfur shall have the right to have unimpeded access to effective justice and redress mechanisms, including the right to an adequate, effective, and prompt remedy or reparation for damages arising from the conflict in Darfur and for violations of international human rights law and international humanitarian law.

2. Victims of the conflict in Darfur shall have the right to reparations in the form of compensation, restitution, rehabilitation, and/or satisfaction, and commemoration.

3. All individuals and communities in Darfur who suffered direct or indirect damage as a result of the conflict in Darfur or other grave human rights violations during the conflict in Darfur shall have a right to reparations.

[...]

11.1. All victims of the conflict in Darfur shall have an equal right to seek compensation for the losses and damages suffered by them or their families as a result of the Darfur conflict or of other arbitrary or illegal actions that occurred during the conflict in Darfur.

11.2. Reparations shall include, but not be limited to, the right to seek compensation for lost property, lost livelihood, death in the family, personal injury, and other trauma or damages, whether psychological or physical, resulting from the conflict in Darfur.

11.3. Individuals shall have the right to seek restoration of property or compensation for their lost or seized property resulting from the conflict in Darfur.

[...]

11.6. Individuals and communities have the right to restitution of lands lost resulting from the conflict in Darfur.

11.8. All persons affected by the conflict in Darfur have the right to have restored to them any housing, land, and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated adequately for the loss of their housing, land, and/or property, in accordance with international principles, the Peace Agreement provisions and traditional norms. Accordingly:

11.8.1. Assets and property confiscated and looted from individuals, institutions and communities in Darfur shall be returned or restituted to their rightful owners, and in cases where the return of such property is impossible, a just compensation shall be provided.

11.8.2. Displaced persons and refugees who were displaced because of the conflict in Darfur shall enjoy this right whether they choose to return to their places of origin or not.

[...]

12.1. The Parties agree to establish the Compensation and Reparations Fund in Darfur within 90 (ninety days) of the date of signing this Agreement to receive and address compensation and reparation decisions issued by relevant bodies.

⁷⁵ [Juba Agreement for Peace in Sudan](#), Title 2, Chapter 4, pp. 33-35.

(b) National Practices

70. The Defence focuses on practices creating a positive right for individual victims to reparations, irrespective of the identification, arrest, prosecution, conviction and/or capacity of the offender(s) to contribute to the reparations. National practices are reviewed in alphabetical order.

71. In **Argentina**, a reparations programme for victims of human rights violations was established. This programme includes a component relating to monetary reparations. Laws No. 24.043,⁷⁶ 24.411,⁷⁷ 25.192,⁷⁸ and 25.914⁷⁹ provide for a system of financial compensation for victims and their beneficiaries, independent of criminal proceedings concerning the crimes that caused their harm, and brought before an administrative authority subject to judicial review by a court distinct from the one that would have had jurisdiction over any potential criminal proceedings. According to legal scholarship, 22,234 claims for reparations were submitted under Law No. 24.043, of which 9,776 resulted in the granting of reparations; 10,123 claims were submitted under Law No. 24.411, of which 7,781 were successful; 31 claims were submitted under Law No. 25.192, of which 25 were successful; and 1,618 claims were submitted under Law No. 25.914, of which 619 were successful.⁸⁰ Individual responsibility of the perpetrators of the crimes is also contemplated within the Argentinian program, but in the context of non-monetary reparations and in response to Report 28/92 of the Inter-American Commission on Human Rights of 2 October 1992,⁸¹ which declared that Laws No. 23.492⁸² and 23.521,⁸³ which had put an end to criminal prosecutions against perpetrators of crimes committed during the dictatorship, violated the American Convention on Human Rights. Criminal proceedings against the perpetrators of the violations therefore remain separate and have no effect on the reparations procedure benefiting victims.

⁷⁶ Argentina, [*Ley no. 24.043 Beneficios a las personas que hubieran sido puestas a disposición del P.E.N. durante la vigencia del estado de sitio, o siendo civiles hubiesen sufrido detención en virtud de actos emanados de tribunales militares*](#), 23 December 1991.

⁷⁷ Argentina, [*Ley no. 24.411 Beneficios que tendrán a percibir por medio de sus causahabientes, personas que se encuentren en tal situación*](#), 28 December 1994, (English version not available).

⁷⁸ Argentina, [*Ley no. 25.192 Beneficio destinado a los causahabientes de las personas que fallacieron entre el 9 y el 12 de junio de 1956, con motivo de la represión del levantamiento cívico militar de esas jornadas o de su disidencia política*](#), 24 November 1999, (English version not available).

⁷⁹ Argentina, [*Ley no. 25.914 Indemnización para niños y niñas nacidos en cautiverio*](#), 25 August 2004, (English version not available).

⁸⁰ A. Gualde, N. Luterstein, *The Argentinian Reparations Programme for Grave Violations of Human Rights Perpetrated during the Last Military Dictatorship (1976-1983)*, in C. Ferstman, M. Goetz, A. Stephens (Eds.), *Reparations for Victims of Genocide, War crimes and Crimes against Humanity*, Brill, 2009, pp. 415-434.

⁸¹ IACoMHR, [*Report no. 28/92*](#).

⁸² Argentina, [*Ley no. 23.492 Ley de Punto Final*](#), 24 December 1986.

⁸³ Argentina, [*Ley no. 23.521 Ley de Obediencia Debida*](#), 8 June 1987, (English version not available).

72. In **Australia**, compensation programs for victims of violent crime are state- or territory-based. Each of Australia's six states and one territory administers its own programme in accordance with its own statutes. Claims must be lodged within 2 to 3 years from the date of the crime. There is no condition of identification, arrest, prosecution or conviction of the perpetrators. The programmes provide compensation according to a schedule of injuries that specifies the compensation amount for a particular injury. Compensation is paid by the State.⁸⁴

73. **Austria** has a government programme that provides financial assistance for nationals of the European Economic Area who are victims of crime. In addition, the Weisser Ring, an independent non-profit organisation, provides assistance and compensation to victims of crime, including foreign citizens. Victims should report crimes to the relevant Austrian social services office (*Bundessozialamt*). An application must be filed within 2 years, with no precondition of identification, arrest, prosecution or conviction of the offenders. The programme is administered/implemented by the Austrian social services offices (*Bundessozialämter*). The Ministry for Social Affairs acts as a technical supervisory body (*Bundesministerium für Sozial Sicherheit und Generationen*).⁸⁵ With respect to Nazi crimes, the Austrian National Fund Law of 1995 established a specific compensation scheme for victims “*who were persecuted by the National Socialist regime political grounds, grounds of origin, religion, nationality, sexual orientation, on grounds of a physical or mental handicap or on grounds the basis of accusations of so called asociality, or who in other way fell victim to typically National Socialist injustice or left the country to escape such persecution*”.⁸⁶

74. In **Belgium**, the Law of 1 August 1985 containing fiscal and other measures⁸⁷ establishes a Special Fund for Assistance to Victims of Intentional Acts of Violence and to Occasional Rescuers (Art. 28). This Special Fund is financed through a mandatory contribution of €25 levied on all persons sentenced to principal criminal or correctional penalties, as well as through an increase in fines for violations of road traffic legislation (Art. 29). Reparations are granted by judicial decision of a Special Commission (Art. 30), subject to review by the Belgian Council of State (Art. 34 *quater*). The Commission grants compensation to the victim where “reparation for the harm cannot be effectively and sufficiently ensured by the perpetrator or the person civilly liable, by a social security scheme or private insurance, or in any other manner” (Art. 31 *bis* (5)).

⁸⁴ For Australia, see US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation Programs 2004-2005](#).

⁸⁵ For Austria, see US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation programmes 2004-2005](#).

⁸⁶ Austria, [Federal Act on the National Fund of the Republic of Austria for the Victims of National Socialism](#), 1995, sect. 2(1)(1).

⁸⁷ Belgium, [Loi portant des mesures fiscales et autres](#), 1 August 1985, art. 28-41.

75. In **Bosnia and Herzegovina**, the Human Rights Chamber ordered the authorities of the *Republika Srpska* to pay reparations in relation to victims of enforced disappearances.⁸⁸

76. In **Canada (Province of Quebec)**, the Act Respecting Assistance for Victims of Crime of 1988 created the Crime Victims Assistance Fund.⁸⁹ This Fund is intended for any “*natural person who suffers physical or psychological injury or material loss by reason of a criminal offence committed in Québec, whether or not the perpetrator is identified, apprehended, prosecuted or convicted*” (s.1). Originally, the Fund was funded exclusively through voluntary appropriations voted by Parliament and allocated by the government, as well as voluntary contributions from individuals or legal persons (s.12). A subsequent amendment added to these sources of funding a mandatory contribution consisting of a \$10 surcharge on penal fines imposed for offences under the laws of Quebec, with the exception of offences under municipal by-laws.⁹⁰

77. In **Colombia**, Law 975 on Justice and Peace of 25 July 2005⁹¹ establishes a Fund for the Reparation of Victims of crimes committed by the illegal armed groups to which it applies (Art. 54). This Fund intervenes at the request of the criminal courts, particularly in cases where the perpetrator of the crimes has not been identified, while the harm suffered by the victims and its causal link with the activities of the illegal armed groups have been verified (Art. 42).

78. **Cyprus** has a crime victim compensation programme to provide financial compensation for victims of violent crime. Claims should be made within two years from the date of the offence, with no precondition of identification, arrest, prosecution or conviction of the offenders. Awards are allocated by the Director of Social Insurance. The programme is funded through general revenue of the Republic of Cyprus.⁹²

79. In the **Czech Republic**, the Law of 31 July 1997 on Compensation for Victims⁹³ extends the right to reparation by the State to cases in which the prosecuted person is acquitted and to those in which no criminal proceedings could take place due to the failure to identify the

⁸⁸ Human Rights Chamber for Bosnia and Herzegovina, [Avdo and Esmā Palić v. The Republika Srpska](#), Decision on Admissibility and Merits, Case No. CH/99/3196, 11 January 2001, paras 90-91; Human Rights Chamber for Bosnia and Herzegovina, [Ferida Selimović and 48 others v. The Republika Srpska](#), Decision on Admissibility and Merits, Case No. CH/01/8565 and others, 7 March 2003, paras 203-220.

⁸⁹ Canada (Province of Quebec), [Act Respecting Assistance for Victims of Crimes](#), Chapter A-13.2., 1988.

⁹⁰ Canada (Province of Quebec), [Chapter C-25.1, Code of Criminal Procedure](#), s. 8.1, amended by [Law of 17 March 2020, 1987](#).

⁹¹ Colombia, [Ley 975 de 2005](#), 25 July 2005, (English version not available).

⁹² For Cyprus, see US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation Programs 2004-2005](#). See also: [European e-Justice Portal](#).

⁹³ Czech Republic, Law 209/1997 Sb. On Compensation for Victims, 31 July 1997, also referred to in US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation programmes 2004-2005](#).

perpetrator of the crimes or where the law bars criminal prosecution, for example after the expiration of the limitation period (Article 5(2)).

80. In the **Democratic Republic of Congo**, the military courts have recognised the liability of the State for the payment of damages to victims of crimes and their beneficiaries on the basis of Article 260, paragraph 3 of the Congolese Civil Code.⁹⁴

81. **Denmark** has a crime victim compensation programme to provide financial compensation for victims who suffer serious criminal injuries. Claims should be made within two years from the date of the offence, with no precondition of identification, arrest, prosecution or conviction of the offenders. Awards are granted by a Criminal Injuries Compensation Board (*Erstatningsnaevnet*). The programme is funded by State appropriations.⁹⁵

82. In **Estonia**, Law RT I 2004, 2, 3 of 17 December 2003⁹⁶ establishes a national compensation mechanism for victims of certain crimes, providing for a maximum amount of €9,590 per victim (Art. 15). Compensation is obtained through autonomous proceedings conducted in parallel with the criminal proceedings, if any take place (Art. 19). Compensation may be suspended in the particular circumstance where it is evident that the person responsible for the harm intends to make compensation and has the means to do so (Art. 21(1)(2)); however, even in such a case, an advance on the amount of compensation may still be paid (Art. 22). Payment of compensation by the State transfers to it the right to seek compensation from the perpetrator of the crime that caused the harm through a recourse action for an amount not exceeding that of the compensation paid to the victim (Art. 31).

83. In **Finland**, Act No. 935/1973 on Compensation for Crime Damage⁹⁷ establishes a similar Fund for compensation for crime-related damage (Sec. 1), up to a maximum amount of €47,934 (Sec. 7). Any other damages paid by the offender are subsequently deducted from the amount of compensation borne by the State (Sec. 3(3)). Compensation is paid by the State even in the absence of a complaint by the victim (Sec. 12). The Fund is not bound by court decisions concerning reparations (Sec. 14(1)). The Fund is vested with the same right to bring a recourse action against the offender for the amount of compensation paid (Sec. 19).

⁹⁴ See [ICC-01/04-01/07-1198-Anx](#): Avocats Sans Frontières, *Étude de jurisprudence – L'application du Statut de Rome de la Cour pénale internationale par les juridictions de la République démocratique du Congo, mars 2009*, pp. 98-105, (English version not available), in particular the following cases : Cour militaire du Katanga, affaire *Ankoro*, 20 décembre 2004, RP 01/2003 et RP 02/2004 ; Tribunal Militaire de Garnison de Kindu, affaire *Kalonga*, 26 octobre 2005, RP 011/05, p. 7 ; Tribunal Militaire de Garnison de Mbandaka, affaire *Mutins de Mbandaka*, p. 41 ; Cour Militaire de l'Équateur, affaire *Songo Mboyo*, 7 juin 2006, RPA 014/06.

⁹⁵ For Denmark, US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation Programs 2004-2005](#).

⁹⁶ Estonia, [Victim Support Act, RT I 2004, 2, 3](#), 12 December 2003.

⁹⁷ Finland, [Act no. 935/1973 on Compensation for Crime Damage](#), 1973.

84. In **France**, Articles 706-3 to 706-15 of the Code of Criminal Procedure⁹⁸ grant the right to full compensation for harm resulting from personal injury to any person who has suffered damage arising from intentional or unintentional acts (Art. 706-3). These articles establish an autonomous compensation mechanism governed by its own rules, the proceedings of which are conducted before a civil jurisdiction ruling at first and last instance, namely the Commission for the Compensation of Victims of Offences (“CIVI”) (Art. 706-4). Article 706-7 specifies that where criminal proceedings have been initiated, the decision of the CIVI may be rendered before the public prosecution has been adjudicated. The only exception is when there is a suspicion that the victim may have contributed to the materialisation of the damage (Art. 706-7 (2), referring to Art. 706-3 *in fine*). Where the criminal court awards damages in an amount greater than the compensation fixed by the CIVI, the victim may return before the CIVI to request supplementary compensation (Art. 706-8). The reparations ordered are financed through a Fund for Victims of Acts of Terrorism and Other Offences (“FGTI”), governed by Articles L. 422-1 to 6 and R. 422-1 to 10 of the Insurance Code⁹⁹ and funded through a levy imposed on premiums and contributions under property insurance contracts (Art. L. 422-1 of the Insurance Code). Once the compensation has been paid, the FGTI is subrogated to the rights of the victim in order to obtain reimbursement of that compensation from the persons responsible for the harm. Compensation obligations ordered against the perpetrator of the offence are enforced for the benefit of the FGTI (Art. 706-11).

85. **Germany** has a crime victim compensation programme to provide financial compensation to victims of violent or personal crime. Although there is no fixed time limit, claims are usually made within one year from the date of the offence, with no precondition of identification, arrest, prosecution or conviction of the offenders. Awards are granted by a local war pension office (*Versorgungsamt*). The programme is funded by the State.¹⁰⁰ Also, with respect to Nazi and other World War II crimes, “Germany has adopted several laws relative to the indemnification of victims of the war and the Holocaust, such as: the Law on the Equalization of Burdens as amended (1952); the Law for the Compensation of the Victims of National Socialist Persecution as amended (1953); the Federal Restitution Law as amended (1957) which provides for compensation in case restitution was not possible; the Law on the Reparation of Losses as

⁹⁸ France, [Titre XIV: Du recours en indemnité ouvert à certaines victimes de dommages résultant d'une infraction](#), Code de Procédure Pénale, art. 706-3 to 706-15.

⁹⁹ France, [Chapitre II: Le fonds de garantie des victimes des actes de terrorisme et d'autres infractions](#), Code des Assurances, art. L. 422-1 to 6 and R. 422-1 to 10.

¹⁰⁰ For Germany, see US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation Programs 2004-2005](#).

*amended (1969); the Law on the Settlement of Open Property Matters as amended (1990); and the Law on Indemnification of Victims of Nazism as amended (1994).”*¹⁰¹

86. Since 2008, **India** has developed its own Victim Compensation Scheme by insertion of new section 375A into its Code of Criminal Procedure. It is administered at the level of each State government and is open to victims without condition of identification, arrest, prosecution or conviction of the offender. Paragraph 3 specifies that the victim remains eligible to receive reparations even when the offender is acquitted or discharged.¹⁰²

87. **Iraq** has established a Central Commission for Compensation for the benefit of victims of military operations, military mistakes and terrorist operations and their family. It is administered by the State and is independent from damages that the victims may receive in court from their offenders.¹⁰³ Another law of 2021 creates a separate compensation scheme for Yazidi women survivors of “*sex abuse crimes like kidnapping, sex enslavement, selling her in the slave market, separating her from her parents, forcing her to change her religion, forced marriage, pregnancy and forced abortion*” committed by members of the *Da’esh* Group. It establishes a General Directorate for Female Yazidi Survivors’ Affairs competent to award “(1) *compensation, financially and morally, for the female survivors that are covered by this law and to secure a decent life for them; (2) rehabilitation and care of the female survivors that are covered by this law, and to make the necessary procedures to integrate them into society and prevent the recurrence of the violations that took place against them.*” Those benefits are independent from and not conditioned by the prosecution of individual *Da’esh* offenders.¹⁰⁴

88. **Ireland** also has a crime victim compensation programme to provide financial compensation for victims of violent or personal crime. Claims should be made within three months from the date of the offence, with no precondition of identification, arrest, prosecution or conviction of the offenders. Awards are granted by a Criminal Injuries Compensation Tribunal. The programme is funded by tax revenue.¹⁰⁵

89. In **Italy**, a body of legislative and regulatory texts establishes various compensation mechanisms for the benefit of victims of different forms of criminality, such as Law No. 466 of 13 August 1980 concerning victims killed or injured in the line of duty and victims of

¹⁰¹ International Committee of the Red Cross, [Customary International Humanitarian Law, Vol. II: Practice, Part 2](#), 2005, p. 3556.

¹⁰² India, [Section 375A](#), Victim Compensation Scheme, [Code of Criminal Procedure](#).

¹⁰³ Iraq, [Federal Law no. 20 of 2009 on Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations](#), 28 December 2009.

¹⁰⁴ Iraq, [Law No. 8 of 2021](#) on Yazidi Female Survivors, 2 March 2021.

¹⁰⁵ For Ireland, see US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation Programs 2004-2005](#).

terrorism,¹⁰⁶ Law No. 302 of 20 October 1990 establishing measures in favour of victims of terrorism and organised crime,¹⁰⁷ Decree-Law No. 419 concerning the creation of a Support Fund for Victims of Extortion,¹⁰⁸ Law No. 512 establishing a Solidarity Fund for Victims of Mafia Crimes,¹⁰⁹ and Law No. 228 concerning measures against human trafficking, establishing a Fund for Anti-Trafficking Measures and a special assistance programme for victims of criminal acts referred to in Articles 600 and 601 of the Criminal Code.¹¹⁰ These measures share the common characteristic of not being linked to, nor conditional upon, criminal proceedings against the perpetrators of the crimes.

90. **Japan** also has a “Benefit System for Crime Victims” open to victims of violent crimes who have suffered serious injuries, as well as for the beneficiaries of deceased victims. As in other countries, compensation is granted through proceedings autonomous from the criminal action, before a Prefectural Public Safety Commission. The only requirement is that the offence has been recorded by the police. The offender does not even need to be identified for the victim to benefit from this programme. This procedure is additional to any ordinary compensation that may subsequently be ordered by the court against the offender at the conclusion of the criminal trial.¹¹¹ In 1995, Japan launched a project called the “*Asian Peace and Friendship Foundation for Women*”, establishing a Foundation in charge of raising funds and supporting medical, welfare and other similar programmes of service to former wartime “*comfort women*”; the government further expressed its national feelings of sincere remorse and apology to the former wartime comfort women.¹¹²

91. In 2022, **Mali** has promulgated a Law on Reparation for Serious Violations of Human Rights. The law precisely governs reparations awarded outside any judicial process. According to that law, reparation is a fundamental right of victims.¹¹³

¹⁰⁶ Italy, [Legge n. 466, Speciali elargizioni a favore di categorie di dipendenti pubblici e di cittadini vittime del dovere o di azioni terroristiche](#), 13 August 1980.

¹⁰⁷ Italy, [Legge n. 302, recante norme a favore delle vittime del terrorismo e della criminalità organizzata](#), 20 October 1990

¹⁰⁸ Italy, [Decreto Legge n. 419, recante istituzione del Fondo di sostegno per le vittime di richieste estorsive, convertito dalla legge 18 febbraio 1992](#), n. 172, 31 December 1991.

¹⁰⁹ Italy, [Legge n. 512, Istituzione del Fondo di rotazione per la solidarietà alle vittime dei reati di tipo mafioso](#), 22 December 1999.

¹¹⁰ Italy, [Legge n. 228, recante misure contro la tratta di persone, che istituisce il Fondo per le misure anti-tratta e uno speciale programma di assistenza per le vittime dei reati previsti dagli articoli 600 e 601 of the Criminal Code](#), 11 August 2003.

¹¹¹ Japan, Ministry of Justice, [Victim Protection and Victim Support](#), March 2026, p. 57; See also US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation Programs 2004-2005](#).

¹¹² [Murayama Statement](#), 15 August 1995.

¹¹³ Mali, [Loi no. 2022-41 fixant les règles générales relatives à la réparation des préjudices causés par les violations graves des droits de l'Homme](#), 15 November 2022.

92. In **Mexico**, the Law on Assistance and Support for Victims of Crimes within the Federal District of 22 April 2003¹¹⁴ also establishes a Fund for Assistance and Support to Victims, financed by the government and voluntary contributions (Art. 23).

93. The Equity and Reconciliation Commission settled in **Morocco** as part of a Truth and Reconciliation Initiative included a victim reparation programme for the benefit of victims of gross violations of human rights, in particular arbitrary detention, torture, forceful disappearances, execution, forced exile and sexual assaults committed in the context of civil disturbances in the country over a number of years. The Final Report of that Commission describes in great detail the mandate and achievements of that Commission. Of a total of 16,861 files open by the Commission, 9,779 (58%) were found admissible and were granted reparations, including financial compensation for 8,280 of them (49% of total).¹¹⁵

94. **The Netherlands** also has a crime victim compensation programme to provide financial compensation for victims of violent or personal crime. It is administered by a Criminal Injuries Compensation Fund (*Commissie Schadefonds Geweldsmisdrijven*). There is no time limit for the filing of claims. There is no precondition of identification, arrest, prosecution or conviction of the offenders. The programme is funded by the Dutch Ministry of Justice.¹¹⁶ On 13 April 1949, the District Court of The Hague issued its judgment in the *J. T. Case*, whereby it ordered reparations measures for a plaintiff arrested by the police during the occupation of The Netherlands by Germany, despite the absence of liability of the Dutch State.¹¹⁷

95. In **Pakistan**, an Act of 2014 establishes a reparation scheme for victims of terrorism in Balochistan.¹¹⁸ It created a Civilian Victims Fund financed by the government of Pakistan. Under that Act, victims could receive financial compensation, healthcare and rehabilitation. That reparation scheme was not conditioned by the identification, arrest, prosecution or conviction of the perpetrators.

96. **The Philippines** has also developed a compensation scheme funded by the government for the benefit of victims of violent or personal crime and unjust imprisonment or detention. Claims must be lodged within six months of the date of the harm, with no precondition of

¹¹⁴ Mexico, [Ley de atención y apoyo a las víctimas del delito para el distrito federal](#), 22 April 2003.

¹¹⁵ Morocco, Equity and Reconciliation Commission, [Final Report Vol. 3: Justice and Reparations for Victims](#), pp. 66, 86-124, 2009.

¹¹⁶ For The Netherlands, see US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation Programs 2004-2005](#).

¹¹⁷ Netherlands, District Court of The Hague, [J. T. Case](#), Judgment, 13 April 1949; see also [CIHL - Vol. II: Practice - Part 2](#), p. 3601.

¹¹⁸ Pakistan, [Balochistan Civilian Victims of Terrorism Act 2014](#), 28 February 2014.

identification, arrest, prosecution or conviction of the offenders.¹¹⁹ Philippines also promulgated a *Joint Circular on Adherence to IHL and Human Rights* providing an obligation to repair damages to private properties caused in the course of legitimate security/police operations.¹²⁰

97. In **Portugal**, Law No. 31/2006 on Compensation for Victims of Crimes¹²¹ allows victims of violent crimes to seek compensation from the State, independently of any criminal proceedings (Art. 1).

98. In **Russia**, the right of victims of crimes and abuses of power to compensation for damage is enshrined in the Constitution.¹²² A series of national bills deal with various aspects of reparations for victims of IHL and Human Rights violations: these include: the Law on Rehabilitation of the Repressed Nations¹²³; the Law on Rehabilitation of Victims of Political Persecution;¹²⁴ the Decree on the Law on Rehabilitation of the Repressed Nations in Relation to the Cossacks (1992); the Resolution on Compensation for Persons Having Suffered Nazi Persecution (1994); the Resolution on Return of Property and Compensation for Victims of Political Persecution (1994); the Resolution on Compensation for Destruction of Property for Citizens Having Suffered from the Settling of the Crisis in Chechnya and Having Left Chechnya Irrevocably (1997).¹²⁵

99. In **South Africa**, Act No. 34/1995 on the Promotion of National Unity and Reconciliation of 19 July 1995 establishes a Presidential Fund financed by Parliament and voluntary contributions (Art. 42(1)) for the payment of reparations (Art. 42(2)) to victims of gross human rights violations committed during the Apartheid period.¹²⁶

100. In **Switzerland**, the Federal Act on Assistance to Victims of Offences of 23 March 2007¹²⁷ recognizes the right of victims to reparations “*whether the offender (a) has been identified or not; (b) acted culpably or not; (c) acted intentionally or negligently*” (Art. 1(3)). The canton that pays the compensation is subrogated to claims of the same nature that the victim may assert as a result of the offence, up to the amount of the benefits paid (Art. 7).

¹¹⁹ For The Philippines, see US Department of Justice, Office for Victims of Crime, [Directory of International Crime, Victim Compensation Programs 2004-2005](#).

¹²⁰ Philippines, [Joint Circular on Adherence to IHL and Human Rights](#), 1991, para. 2(a)(4); see also [CIHL - Vol. II: Practice - Part 2](#), p. 3531.

¹²¹ Portugal, [Lei no. 31/2006 relative aindemnização das vítimas da criminalidade](#), 21 July 2006.

¹²² Russia, [Constitution of the Russian Federation](#), 12 December 1993, Art. 52-53.

¹²³ Russia, [Law on Rehabilitation of the Repressed Nations](#), 26 April 1991.

¹²⁴ Russia, [Law on Rehabilitation of Victims of Political Persecution](#), 18 October 1991, as amended on 7 January 2024.

¹²⁵ See [CIHL - Vol. II: Practice - Part 2](#), pp. 3558-3559.

¹²⁶ South Africa, s. 42(1)-(2), [Promotion of National Unity and Reconciliation Act 34 of 1995](#), 19 July 1995.

¹²⁷ Switzerland, [Federal Act RS 312.5 on Support for Victims of Crime](#), 23 March 2007 (last amended 1st January 2025).

101. In **Trinidad and Tobago**, the Criminal Injuries Compensation Act of 1999¹²⁸ established a Criminal Injuries Compensation Board (s.5). There is no precondition of identification, arrest, prosecution or conviction of the offenders (s. 25) and the Board is not bound by the rules of evidence or legal procedure (s. 26). The Act specifies that “*Notwithstanding the incapacity of the person responsible for the injury or death by reason of age, insanity, or otherwise, compensation may be payable under this Act*” (s. 35). After awarding compensation, the Board becomes subrogated to all rights of the compensated victims for purpose of recovery action against the persons bearing liability for the crimes (s. 39). If the compensated victims later receive settlement by way of damages or an award, they may also have to repay to the Board an amount equal to the compensation received (s. 36).

102. **Tunisia’s** Organic Law on Transitional Justice makes reparations for victims of violations “*a right guaranteed by law*” and provides that “*the State shall take sufficient and efficient reparations measures in line with the seriousness of the violation and the situation of every victim.[...] Reparation is a system based on moral and material compensation, rehabilitation, apology, restoration of rights, and reintegration. It may be individual as well as collective and shall take into consideration the situation of the elderly, of women, of children, of the disabled and individuals with special needs, patients as well as of vulnerable groups.*”¹²⁹

103. In the **United Kingdom**, a Criminal Injuries Compensation Scheme was established by the Criminal Injuries Compensation Act 1995¹³⁰ and strengthened in 2012. It provides that the Secretary of State may award compensatory damages to victims of violent crimes on the basis of funds allocated for that purpose by Parliament (Art. 9(6)). The amount of compensation is determined by the Criminal Injuries Compensation Authority, with the possibility of appeal before the Criminal Injuries Compensation Tribunal. The British Overseas Territory of Bermuda has its own crime victim compensation programme to provide financial compensation for victims of violent or personal crime. It is funded through tax revenue.¹³¹

104. In the **United States**, section 3525 of the U.S. Code¹³² establishes a Federal Victims Compensation Fund on the basis of which the Attorney General of the United States may offer

¹²⁸ Trinidad-and-Tobago, [Criminal Injuries Compensation Act](#), 1999, Chapter 5:31.

¹²⁹ Tunisia, [Organic Law no. 2013-53](#) on Establishing and Organizing Transitional Justice, 15 December 2013, art. 11.

¹³⁰ United Kingdom, [Criminal Injuries Compensation Act](#), 1995; Also referred to in US Department of Justice, Office for Victims of Crime, [Directory of International Crime, Victim Compensation Programs 2004-2005](#).

¹³¹ For Bermuda, see US Department of Justice, Office for Victims of Crime, [Directory of International Crime Victim Compensation Programs 2004-2005](#).

¹³² United States of America, [18 U.S. Code § 3525.Victims Compensation Fund](#), 12 October 1984; See also [Congressional Research Service Report R42672](#), “The Crime Victims Fund (CVF): Federal Support for Victims of Crime”, 21 May 2024.

victims of crimes (§ 3525(a)) restitution or compensation in an amount not exceeding \$50,000, provided that they have attempted to obtain reparation through the exercise of a civil action (§ 3525(d)). The California Code of Civil Procedure provides a specific scheme for slave labour victims of World War II by which they or their heirs are eligible to individual compensation.¹³³

105. The limited examples drawn from the legislation and national practice of the 33 countries, including seven Non-States Parties – India, Iraq, Morocco, Pakistan, Philippines, Russia, United States – mentioned above, representing various legal systems of the world, thus show that a positive and unqualified right of victims to reparations for harm suffered as a direct result of crimes, especially more violent and serious crimes, is recognised. Such a right is not dependent on the identification, prosecution, conviction of the perpetrators. It is also not dependent on perpetrators' capacity to contribute. National compensation programmes are financed directly by the State, by voluntary contributions and/or by a Fund specifically provided for this purpose. In the most developed systems, the authority bearing the financial burden of compensation is subrogated to the victim with regard to criminal compensation and has the possibility of a recourse action against the perpetrator of the crimes, if he is known and convicted.

(c) Practice of International Organisations

106. UN Security Council Resolution 471 (1980) calls upon the government of Israel to provide victims with adequate compensation for the damages suffered as a result of three assassination attempts falling under the application of 1949 Geneva Convention IV.¹³⁴

107. UN Security Council Resolution 687 (1991) provided compensation for claims for injury to, *inter alia*, nationals and corporations resulting from Iraq's violations of international law, including environmental damage and the depletion of natural resources during its occupation of Kuwait.¹³⁵ UN Security Council Resolution 692 (1991) later established a special United Nations Compensation Fund and the United Nations Compensation Commission responsible for awarding compensation for violations of IHL suffered by individual victims.¹³⁶ In its Decision No. 3, the United Nations Compensation Commission clarified that it would provide compensation for (a) a spouse, child or parent of the deceased victim; (b) individuals who

¹³³ United States (State of California), [Code of Civil Procedure, s. 354.6\(b\)](#).

¹³⁴ UNSC, [Resolution 471](#), para. 3.

¹³⁵ UNSC, [Resolution 687](#), para. 16.

¹³⁶ UNSC, [Resolution 692](#), para. 3.

suffered serious personal injury; and (c) individuals who suffered sexual assault, aggravated assault or torture.¹³⁷

108. UN Security Council Resolution 827 (1993) creating the UN International Criminal Tribunal for the Former Yugoslavia provided that its work “*shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of IHL*”.¹³⁸

109. The UN Declaration on the Protection of all Persons from Enforced Disappearance adopted under UN General Assembly Resolution 47/133 provides in Article 19 that “*the victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible*.”¹³⁹

110. UN General Assembly Resolution 48/153 on the Situation of human rights in the territory of the former Yugoslavia “*recognizes the right of victims of "ethnic cleansing" to receive just reparation for their losses, and urges all parties to fulfil their agreements to this end*”.¹⁴⁰ The same principle was recognized again by the UN General Assembly in its Resolution 49/196.¹⁴¹

111. In 1993, referring to Article 91 of Additional Protocol I, the ICRC stated that “*this article confirms a rule which is today accepted as being part of customary law and was already stated, in almost identical terms, in Article 3 of the Hague Convention No. IV of 1907*”. The ICRC recommended that procedures be set up to provide reparation for damages inflicted on victims of IHL violations, “*so as to enable them to receive the benefits to which they are entitled*.”¹⁴²

112. In 1995, the UN Commission on Human Rights called upon the GoS to provide just compensation to the families of the victims of the killing of Sudanese employees of foreign relief organisations.¹⁴³

113. With respect to Kosovo, UNMIK Regulation no. 2000/60 provides the right of any person whose property rights were lost between 23 March 1989 and 24 March 1999 as a result of discrimination to restitution, which may take the form of restoration of the property right or compensation.¹⁴⁴

(d) Practice of international judicial and quasi-judicial bodies, including the ICC

¹³⁷ UN Compensation Commission, [Personal Injury and Mental Pain and Anguish](#), Decision S/AC.26/1991/3, 23 October 1991.

¹³⁸ UNSC, [Resolution 827](#), para. 7.

¹³⁹ UNGA [Resolution 47/133](#), art. 19.

¹⁴⁰ UNGA, [Resolution 48/153](#), para. 13.

¹⁴¹ UNGA, [Resolution 49/196](#), para. 13.

¹⁴² ICRC, [Report on the Protection of War Victims](#), June 1993, sect. 4.3, p. 437.

¹⁴³ UNCHR, [Resolution 1995/77](#), 8 March 1995, para. 17.

¹⁴⁴ UNMIK, [Regulation no. 2000/60](#), 31 October 2000, section 2(2).

114. By its 2000 Judgment in the case *Monsignor Oscar Arnulfo Romero y Galdámez v. El Salvador*, the Interamerican Commission for Human Rights found that the State's failure "to carry out its duty to investigate seriously and in good faith the violation of rights recognized by the American Convention, to identify the persons responsible for that violation, place them on trial, punish them, and make reparations for the human rights violations" amounted to a violation of the victims' relatives right to judicial guarantees under Article 8(1) of the American Convention.¹⁴⁵

115. In the so-called *Street Children v. Guatemala* case of 2001, the Inter-American Court of Human Rights affirmed the positive rights of victims and their next-of-kin to reparation for violations of the Convention: "In its consistent jurisprudence, this Court has reiterated that it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to make adequate reparation. [...] Reparation of the damage resulting from the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the reestablishment of the previous situation. If this is not possible, as in the instant case, the international court must determine a series of measures, which, in addition to guaranteeing the rights that have been violated, make reparation for the consequences of the violations, and must also order the payment of an indemnity as compensation for the caused. [...] The respondent State may not invoke provisions of domestic law in order to modify or fail to comply with the obligation to make reparation – all aspects of which (scope, nature, forms and determination of the beneficiaries) are regulated by international law. [...] As the Court has indicated, Article 63(1) of the American Convention codifies a rule of common law that is one of the fundamental principles of contemporary international law on State responsibility. When an unlawful act occurs that may be attributed to a State, the international responsibility of the latter is immediately engaged for the violation of an international law, with the resulting obligation to make reparation and to ensure that the consequences of the violation cease."¹⁴⁶

116. The European Court of Human Rights finds that there is a violation of Article 5(5) of the Convention in every situation where a victim of unlawful arrest or detention is deprived of the possibility to make an enforceable claim for compensation before the national courts,¹⁴⁷ thus making the right of victims to reparations a protected right under the Convention.

¹⁴⁵ IAComHR, [Monsignor Oscar Arnulfo Romero y Galdámez v. El Salvador](#), para. 122.

¹⁴⁶ IACHR, [Villagran-Morales & others \("Street Children"\) v. Guatemala](#), paras 59-62. See also para. 68 for the right to reparation of the victim's next-of-kin.

¹⁴⁷ ECHR, [Brogan and others v. United Kingdom](#), para. 67; ECHR, [Fox, Campbell and Hartley v. the United Kingdom](#), para. 46; ECHR, [Tsirlis and Kouloumpas v. Greece](#), para. 66; ECHR, [Hood v. United Kingdom](#), para.

117. One of the most compelling, unambiguous affirmations of the customary international law nature of the right of victims to reparations and of its content is found in the case of the African Court of Human and Peoples' Rights ("ACHPR"). At paragraph 27 of its Judgment of 13 June 2014 on Reparations in the Case of *Reverend Christopher R. Mtikila v. Tanzania*, the Court found as follows: "*One of the fundamental principles of contemporary international law on State responsibility, that constitutes a customary norm of international law, is that, any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation.*" At paragraph 28, the ACHPR found that the principle enshrined in Article 27(1) of its Statute was a direct illustration of that Customary International Law principle,¹⁴⁸ thus crossing the bridge from the usual obligation of States to provide reparations to other States to an obligation of reparation towards individual victims. The same ruling was made in subsequent judgments¹⁴⁹ embodying what is now accurately described as persistent, consistent and solid case law of the ACHPR according to which victims have a right to reparations under Customary International Law.

118. In the elaboration of the Principles of Reparations applicable before the Court pursuant to Article 75(1) of the Statute, the Appeals Chamber also referred to "*the rights of victims to receive reparations*".¹⁵⁰ But the Court is yet to affirm, as previously done in the clearest terms by the African Court on Human and Peoples' Rights, the Customary International Law nature and value of that principle. The Defence hopes the Trial Chamber will find the above demonstration convincing enough to make up for lost time in that respect.

B – First Proposed Principle of Reparations: The Right of Victims to Reparations under Customary International Law

119. On the basis of the above recitation of applicable law, and pursuant to Article 75(1) of the Statute, the Defence requests that the Trial Chamber determine that, under customary "*principles and rules of international law, including the established principles of the international law of armed conflicts*" applicable before the Court under Article 21(1)(b) of the Statute, victims have a general right to reparations that is not conditional on the outcome of criminal proceedings against their offender(s).

69; ECHR, Grand Chamber, *A. and others v. United Kingdom*, para. 229; ECHR, *Houtman and Meeus v. Belgium*, paras 43-47.

¹⁴⁸ ACHPR, *Reverend Christopher R. Mtikila v. Tanzania*, paras 27-28.

¹⁴⁹ See e.g. ACHPR, *Beneficiaries of late Norbert Zongo & Others v. Burkina Faso*, paras 20-23; ACHPR, *Ingabire Victoire Umuhoza v. Rwanda*, paras 19-20; ACHPR, *Anudo Ochieng Anudo v. Tanzania*, paras 16-19; ACHPR, *African Commission on Human and Peoples' Rights v. Kenya ("Ogiek People Case")*, paras 37-39.

¹⁵⁰ *Lubanga*, *AC Principles of Reparations*, para. 9.

120. Although the Proposed Principle is a general concept, it is directly linked to the unique circumstances of this case and thus falls within the parameters of the Trial Chamber's competence and authority under Article 75(1).¹⁵¹ The case against Mr Abd-Al-Rahman is a case in which the Defence has never challenged the materiality of the tragic events that form the context of the crimes: the attack on Kodoom and Bindisi on 15-16 August 2003 and the arrests and executions in Mukjar and Deleig in February-March 2004. As announced in the introduction to its final arguments on sentencing¹⁵² and as confirmed since in its Appeal Brief against the Article 74 Trial Judgment,¹⁵³ out of the 60 grounds of appeal raised by the Defence, not a single one challenged the occurrence of these events. The Defence Appeal is confined to challenging the role of Mr Abd-Al-Rahman in these. The Trial Chamber's findings describing the events in Kodoom, Bindisi, Mukjar and Deleig and the suffering of the victims are not challenged, and are not the subject of appeal. The condition that the victims have suffered harm is thus fulfilled as a result of the findings made by the Trial Chamber in its Article 74 Judgment. These are final and will be unaffected by the outcome of the Defence Appeal. These form the basis to opening a right to reparations to victims. The absence of Defence challenge against the materiality of the crimes and the suffering of the victims is a noteworthy circumstance of the present case justifying the affirmation of the First Proposed Principle.

121. Another relevant circumstance of the present case is the uncontroversial incapacity of Mr Abd-Al-Rahman to contribute to the reparations financially, as addressed under Item (ix) above. Even if Mr Abd-Al-Rahman's conviction were to be confirmed, in whole or in part, on appeal, and a reparation order were to be issued by the Trial Chamber against him, he cannot contribute to it. Whatever the outcome of the Appeal, the reparations in this case will have to be made through the TFV on the basis of financial resources coming from third parties, in particular States' voluntary contributions as raised by the Defence (see Item (viii) above). The Second Proposed Principle of Reparations addressed below explores in particular the possibility of a contribution from the GoS to reparations. In the absence of any financial capacity on the part of Mr Abd-Al-Rahman to contribute to the reparations, making these contingent on the confirmation of one or more convictions by the Appeals Chamber is simply irrational. Under the First Proposed Principle, the burden borne by the TFV to find resources on the basis of which financing reparations for victims will be the same, irrespective of the Appeals Chamber's final ruling on his guilt or innocence. The affirmation of a general right of victims to reparations is relevant to

¹⁵¹ [Lubanga, AC Principles of Reparations](#), para. 5.

¹⁵² T-164, p. 72.

¹⁵³ [Defence Appeal Brief](#).

address that situation of financial incapacity of Mr Abd-Al-Rahman, as it will break any possible link between a convict's financial capacity and an award of reparations to the victims. By affirming the Customary International Law nature of the unconditional right of victims to reparations for the harm suffered, the Trial Chamber will also break that link once and for all.

122. The existence of a right of victims to reparations under Customary International Law is supported, *inter alia*, by the following practice:

- At the international level:
 - IHL treaties provide an international responsibility of States to provide reparations for IHL violations (see paras. 41-44 above);¹⁵⁴
 - Various post-conflict peace settlement treaties also provide an obligation on States responsible for IHL violations to provide reparations to individual victims (see paras. 60-69 above);¹⁵⁵
 - Human Rights treaties also provide for a right of victims, including natural persons, to receive reparations for the harm suffered as a result of human rights violations (see paras. 45-50 above).¹⁵⁶ The 1983 European Convention specifically provides a right to reparations of victims of violent crimes whenever “*compensation is not fully available from other sources*” and “*even if the offender cannot be prosecuted or punished*”;¹⁵⁷
 - UN Declarations on the rights of victims all include their right to reparations, including in the absence of identification, prosecution, conviction or capacity of offenders to contribute (see paras. 51-53 above);¹⁵⁸
 - Under CIHL Rule 150, “*A State responsible for violations of International Humanitarian Law is required to make full reparation for the loss or injury*

¹⁵⁴ [Hague Convention \(IV\)](#), art. 3; [Geneva Convention I](#), art. 51; [Geneva Convention II](#), art. 52; [Geneva Convention III](#), art. 131; [Geneva Convention IV](#), art. 148; [Protocol I](#), art. 91.

¹⁵⁵ [1946 Paris Agreement on Reparation from Germany](#), art. 8; [Treaty of Peace with Japan](#), art. 16; [Convention No. 4762](#), art. 1(1) and 4(1), pp. 263, 270; [Protocol I to the Agreement between Israel and Germany](#), Art. I, paras 9, 12 and 14, pp. 274-276; [State Treaty for the Re-establishment of an Independent and Democratic Austria](#), art. 26(1), p. 279; [Annex 7: Agreement on Refugees and Displaced Persons, General Framework Agreement for Peace in Bosnia and Herzegovina](#), art. I(1), XII(2), XII(6); [Agreement Between the Government of the Federal Democratic Republic of Ethiopia And the Government of the State of Eritrea](#), art. 5; [1998 Comprehensive Agreement on Respect of Human Rights and IHL in The Philippines](#), Part III, Art. 2(3); [Juba Agreement for Peace in Sudan](#), Title 2, Chapter 4, pp. 33-35.

¹⁵⁶ [International Covenant on Civil and Political Rights](#), art. 2(3); [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), art. 14(1); [European Convention on Human Rights](#), art. 5(5) and 41; [American Convention on Human Rights](#), art. 63; [ACHPR Court Protocol](#), art. 27; [European Convention on the Compensation of Victims of Violent Crimes](#), art. 2.

¹⁵⁷ [European Convention on the Compensation of Victims of Violent Crimes](#), art. 2.

¹⁵⁸ [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), sect. 12-13; [Guidelines on Child Victims](#), sect. 35-37; [Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime](#), p. 99; [Bassiouni-Van Boven Principles](#), sect. 15-16, 19-23.

caused”¹⁵⁹ (see paras. 54-55 above). States’ responsibility to provide reparations for violations of IHL already forms part of Customary International Law. What the Defence requests the Trial Chamber to determine is the customary international law nature of the corresponding right of victims to receive reparations;

- The practice of international organisations, including binding resolutions from the UN Security Council (see paras. 106-113 above);¹⁶⁰
- At the national level: the legislation and State practice of the 33 countries from different regions and legal traditions of the world, including seven non-States Parties,¹⁶¹ have established compensation schemes for victims to implement their right to reparations without condition of identification, prosecution, conviction or capacity of the offender to contribute (see paras. 70-105 above).

123. This practice is perceived as mandatory as a matter of law (*opinio juris sive necessitatis*), as demonstrated by the rationales and modalities of this practice itself and by the rulings of regional human rights courts (see paras. 114-117 above). The ECtHR considers the deprivation of the right of a victim to make an enforceable claim for compensation before the national courts a violation of the European Convention of Human Rights.¹⁶² The IACHR has recognized the existence of “a principle of international law that any violation of an international obligation that has produced damage entails the obligation to make adequate reparation” and rules that Article 63(1) of its Statute on the award of reparations “codifies a rule of common law that is one of the fundamental principles of contemporary international law on State responsibility”.¹⁶³ And

¹⁵⁹ *CIHL - Vol. I: Rules*, Rule 150. ; *CIHL - Vol. II: Practice – Part 2*, pp. 3530-3610.

¹⁶⁰ UNSC, *Resolution 471*, para. 3; UNSC, *Resolution 687*, para. 16; UNSC, *Resolution 692*, para. 3; United Nations Compensation Commission, Governing Council, *Decision 3: Personal injury and mental pain and anguish*, S/AC.26/1991/3, 23 October 1991; UNSC, *Resolution 827*, 25 May 1993, para. 7; UNGA, *Resolution 47/133*, art. 19; UNGA, *Resolution 48/153*, 7 February 1994, para. 13; UNGA, *Resolution 49/196*, para. 13; International Committee of the Red Cross, *Report on the Protection of War Victims*, June 1993, sect. 4.3; UNCHR, *Resolution 1995/77*, para. 17; UNMIK, *Regulation no. 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission*, 31 October 2000, sec. 2(2).

¹⁶¹ 26 States Parties: Argentina, Australia, Austria, Belgium, Bosnia-Herzegovina, Canada (Quebec), Colombia, Cyprus, Czech Republic, Democratic Republic of Congo, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Japan, Mali, Mexico, Netherlands, Portugal, South Africa, Switzerland, Trinidad-and-Tobago, Tunisia, United Kingdom (including Bermuda Overseas Territory); 7 Non-States Parties: India, Iraq, Morocco, Pakistan, Philippines, Russia, United States.

¹⁶² ECHR, *Brogan and others v. United Kingdom*, para. 67; ECHR, *Fox, Campbell and Hartley v. the United Kingdom*, para. 46; ECHR, *Tsirlis and Kouloumpas v. Greece*, para. 66; ECHR, *Hood v. United Kingdom*, para. 69; ECHR, Grand Chamber, *A. and others v. United Kingdom*, para. 229; ECHR, *Houtman and Meeus v. Belgium*, paras 43-47.

¹⁶³ IACHR, *Villagran-Morales & others (“Street Children”) v. Guatemala*, paras 59, 62.

the ACHPR has proclaimed in the clearest terms the international customary law nature of the right of victims to adequate reparation.¹⁶⁴

124. All these authorities and precedents concur in demonstrating that “*the rights of victims to receive reparations*” referred to by the Appeals Chamber at paragraph 9 of its *Lubanga Principles of Reparations*¹⁶⁵ have become and now constitute a principle of Customary International Law. The Defence prays the Trial Chamber to make that determination and add it as a guiding principle of reparations before the Court under Article 75(1) of the Statute.

125. The adoption of the Proposed Principle acknowledging that victims enjoy a general right to reparations under Customary International Law will serve at least three purposes.

126. First, acknowledging the customary nature of victims’ right to reparations under International Law is a form of recognition that will contribute to restoring to applicant victims their dignity and legitimacy. Though a general concept, as most principles of reparations are,¹⁶⁶ it will send to victims the strong message that awarding them reparations is not a favour conceded to them, but the direct consequence and implementation of their right and entitlement to benefit from reparations. The Defence submits that such recognition in and of itself enters, without of course being enough, into the reparations process under the category of non-financial, satisfactory measures.

127. Second, by affirming the customary law nature of the right of victims to reparations, the Court will make up for lost time, compared to the notable case law of regional Human Rights Courts, in the first place the ACHR and the ACHPR, in the recognition of that principle. The ACHR affirmed it in 2001,¹⁶⁷ before the ICC was even created; the ACHPR in 2014,¹⁶⁸ only eight years after its establishment in 2006. The Court was established “*Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.*”¹⁶⁹ Though aware that the reparations scheme provided for in the Statute is “*a key feature*” of the Court and that “*the success of the Court is, to some extent, linked to the success of its system of reparations*”,¹⁷⁰ the Court is yet to affirm the existence of a general right of victims to reparations under Customary International Law, as

¹⁶⁴ ACHPR, [Reverend Christopher R. Mtikila v. Tanzania](#), paras 27-28; ACHPR, [Beneficiaries of late Norbert Zongo & Others v. Burkina Faso](#), paras 20-23; ACHPR, [Ingabire Victoire Umuhoza v. Rwanda](#), paras 19-20 ; ACHPR, [Anudo Ochieng Anudo v. Tanzania](#), paras 16-19; ACHPR, [African Commission on Human and Peoples’ Rights v. Kenya \(“Ogiek People Case”\)](#), paras 37-39.

¹⁶⁵ *Lubanga*, [AC Principles of Reparations](#), para. 9.

¹⁶⁶ *Lubanga*, [AC Principles of Reparations](#), para. 5.

¹⁶⁷ IACHR, [Villagran-Morales & others \(“Street Children”\) v. Guatemala](#), paras 59, 62.

¹⁶⁸ ACHPR, [Reverend Christopher R. Mtikila v. Tanzania](#), paras 27-28.

¹⁶⁹ [Rome Statute](#), Preamble, para. 2.

¹⁷⁰ *Lubanga* [AC Principles of Reparations](#), para. 3.

regional courts have done. In order to remain the beacon of international justice that it was created to embody, the Court cannot lag behind, and should use the present opportunity that is offered to it to add this principle to its existing list of principles of reparations.¹⁷¹

128. Finally, the affirmation of the general right of victims to reparations in Customary International Law will contribute to restoring the exact meaning and scope of Article 75(2)'s reference to "*a convicted person*". This will be a much-needed interpretation of that provision which was too often interpreted as meaning that victims had no right to reparations in the absence of a conviction. This restrictive interpretation sets a dangerous precedent at the international level, one that may be invoked domestically to justify imposing similar limitations and conditions on victims' right to reparations, thereby undermining the protective framework that took nearly 50 years to develop, particularly through the contributions of the late Professors Theo van Boven and Cherif Bassiouni. This restrictive interpretation depriving the victims from reparations in the event of a subsequent acquittal on appeal is not supported by "*the applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict*"¹⁷² and is not "*consistent with internationally recognised human rights*"¹⁷³ summarised above. It should thus be excluded once and for all.

129. This interpretation relied in particular on the ruling of Trial Chamber III in the *Bemba* case that no reparations order could be made "*against Mr Bemba*" under Article 75 of the Statute after his acquittal by the Appeals Chamber ("*Bemba Final Decision*").¹⁷⁴ The finding that, after his acquittal, Mr Bemba could no longer be found liable for reparations was correct. But the conclusion that his acquittal meant that the victims in the *Bemba* case no longer had a right to reparations was not necessarily sound. It would have depended on whether the judgment of acquittal on appeal removed the factual basis for the victims' harm. In the present case, an acquittal of Mr Abd-Al-Rahman by the Appeals Chamber will have no impact on the factual basis for the victims' harm. Their right to reparations should thus remain untouched, as submitted by the Defence in the introduction to its Sentencing Arguments, and it should be honoured.

130. Article 75(2)'s reference to "*a convicted person*" cannot be interpreted as making a final finding of guilt against the accused a condition for awarding reparations to victims. Such condition does not exist in international law; it goes against the consistent domestic practice of States; and it is unfair to victims who are discriminated against in their right to reparations on the

¹⁷¹ *Lubanga*, [AC Principles of Reparations](#), para. 5.

¹⁷² Statute, Article 21(1)(b).

¹⁷³ Statute, Article 21(3).

¹⁷⁴ *Bemba*, [Final Decision on the Reparations Proceedings](#), para. 3.

basis of their offender's finding of guilt, over which they have no control. The proper way of reconciling the principles and rules of international law with the wording of Article 75(2) was suggested by the Appeals Chamber at paragraph 20 of its OA4 Ruling: "*The Appeals Chamber notes, in particular, that one aspect of the procedure for reparations at the Court provides that the final decision on the scope of damage and the determination of modalities for reparations take place after the trial has concluded.*"¹⁷⁵ That ruling suggests that the relevance of Article 75(2)'s reference to "*a convicted person*" is primarily limited to providing an indication as to the correct sequencing of the proceedings before the Court, that is, completion of the trial first, with reparations after, and not, as the Defence had proposed in its initial submission on reparations before the Pre-Trial Chamber,¹⁷⁶ the two moving forward in parallel.

131. This interpretation of Article 75(2) as a mere indication that reparation proceedings should take place after completion of the trial phase and issuance of the Article 74 Decision alleviates the essential tension between that provision and "*the applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict*"¹⁷⁷ summarised above. It is also "*consistent with internationally recognised human rights*",¹⁷⁸ principally, the right of victims to reparations.

132. It is also supported by a close review of the *travaux préparatoires* that led to the adoption of Article 75(2). The initial proposal formulated by Special Rapporteur Doudou Thiam of the International Law Commission referred to "compensation" to be invoked by States or International Organisations and explained that the compensation proceedings "*may be brought concurrently with the criminal proceedings, or separately*". His proposal was totally independent from the liability or guilt of the accused and even contemplated the possibility of an action to seek compensation before the International Court of Justice which, however, is clearly not competent to award compensation against an individual.¹⁷⁹ Draft Article 66 [45bis] "Compensation to Victims" inserted in the Zutphen Report of 1998 contained various propositions essentially articulated on a referral to States' domestic courts on the issue of compensation to victims.¹⁸⁰ Article 75(6) of the Statute is a direct result of this phase of the negotiation. The proposals did not distinguish between domestic procedures allowing victims to

¹⁷⁵ [Appeals Chamber OA4 Ruling](#), para. 20.

¹⁷⁶ [Request and Observations on Reparations Pursuant to Article 75\(1\)](#), para. 100, in particular Additional Principles no. 7 and 9.

¹⁷⁷ Statute, Article 21(1)(b).

¹⁷⁸ Statute, Article 21(3).

¹⁷⁹ United Nations, *Tenth report on the draft Code of Crimes against the Peace and Security of Mankind*, by Mr. Doudou Thiam, Special Rapporteur, 20 March 1992, [UN Doc. A/CN.4/442](#), paras. 51-55.

¹⁸⁰ United Nations, General Assembly, *Report of the Inter-Sessional Meeting from 19 to 30 January 1998 in Zutphen, The Netherlands*, 4 February 1998, [UN Doc. A/AC.249/1998/L.13](#), pp. 122-124.

receive compensation directed against the convicted person, and others supported by special funds or the State, as identified in the review of domestic practice above. There was thus no condition that compensation for victims should necessarily depend on the accused being convicted at that stage of the negotiation. The final text adopted by the Preparatory Committee and submitted to the Rome Conference of Plenipotentiaries proposed in its draft Article 73 “Reparations to Victims” three alternative options for the granting of reparations to victims: one of them, under draft paragraph 2(a) was directed against the convicted person, whereas the two others under draft paragraphs 2(b) and 2(c) provided reparations by States.¹⁸¹ Paragraph 2(b) specifically provided reparation by State “*if the convicted person is unable to do so by himself/herself*” and “*if the convicted person was, in committing the offence, acting on behalf of that State in an official capacity, and within the course and scope of his/her authority*”. The insertion of these two conditions confirm that the reparations awarded to victims were not conditioned by the offender’s capacity to contribute to these. Paragraph 2(c) makes no mention of a “convicted person” as a condition for reparations.

133. In Rome, the final version of “Article 73, Reparations to Victims” that was adopted came with a footnote 5 added to guide its future interpretation, which referred directly to “*the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34 of 29 November 1985, annex) and the examples in paragraphs 12 to 15 of the revised draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law (E/CN.4/Sub.2/1996/17)*.”¹⁸² These two documents, namely the 1985 Declaration¹⁸³ and the then as-yet unfinalized Bassiouni-Van Boven Principles¹⁸⁴, are reviewed at paragraphs 51 and 53 above. These are precisely those confirming the reversal of the traditional priority given to reparations by the convicted person in favour of the new priority given to reparations provided by the State or reparations schemes already operated in the 1983 European Convention. With that footnote 5, the negotiators of the Rome Statute thus left a clear indication that their intention was not to limit the right of victims to reparations to those depending on accused being convicted.

134. This amounts to confirmation that Article 75(2)’s reference to “*a convicted person*” should be interpreted as an indication of the phase of the proceedings at which the Court should

¹⁸¹ United Nations, *Report of the Preparatory Committee on the Establishment of an International Criminal Court*, 14 April 1998, [UN Doc. A/CONF.183/2/Add.1](#), pp. 116-118.

¹⁸² United Nations, Committee of the Whole, *Report of the Working Group on Procedural Matters*, 13 July 1998, [UN Doc. A/Conf.183/C.1/WGPM/L.2/Add.7](#), p. 5, footnote 5.

¹⁸³ [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), sect. 12-13.

¹⁸⁴ [Bassiouni-Van Boven Principles](#), sect. 15-16.

address reparations under the Rome Statute procedural framework, that is after conclusion of the trial and issuance of the Article 74 Decision, not before.

135. Interpreting the reference to “*a convicted person*” as making reparations for victims conditional on the conviction of the accused person, and excluding reparations following acquittal would amount to an over-rigid interpretation at odds with the principles and rules of international law governing the matter. This over-rigid interpretation would also disregard the permissive nature of Article 75(2) and the discretion left by the negotiators of the Rome Statute by the words “the Court *may*...”.¹⁸⁵ A more persuasive and compatible interpretation is that the reference to “*a convicted person*” is a strong indication that, in the mind of the negotiators, convicted persons should bear the primary responsibility for reparations, to the limit of their individual capacities and complemented, in whole or in part, by other sources through the TFV. Coupled with the use of the word “*may*”, this interpretation suggests that the negotiators also left the door open to reparations for victims in acquittal cases, as the Trial Chamber may determine appropriate in all the circumstances of a given case. Where, as in the present case, the materiality of the criminal events and of the suffering of the victims is not challenged, awarding reparations to victims would thus be appropriate and consistent with their unconditional right to reparations under general international law, even in the case of an acquittal.

136. The First Proposed Principle of Reparations will thus reconcile the interpretation of Article 75(2) with the intention of the Rome Statute negotiators and the unconditional right of victims to reparations under international law. It will align the case law of the ICC with the most progressive jurisprudence of the ACHR and the ACHPR. It will convey to victims the strong message that reparations is not a favour accorded to them, but a right. And it will remove the risk that reparations proceedings are halted by an acquittal on appeal, as in the *Bemba* case.

C – Second Proposed Principle of Reparations: Sudan’s Obligation to Contribute to Reparations in Favour of Victims

137. The Trial Judgment clearly established that the crimes in Kodoom, Bindisi, Mukjar and Deleig were perpetrated in the context of a counter-insurgency ordered, organised and implemented by the GoS: its National Security Council adopted the “*National Security Council 2004 Plan for Ending the Rebellion in the States of Darfur*”.¹⁸⁶ High representatives of the GoS,

¹⁸⁵ D. Donat-Cattin, “Article 75”, in O. Triffterer (Ed.), *Commentary on the Rome Statute of the International Criminal Court – Observers’ Notes, Article by Article*, Beck-Hart-Nomos, 2nd ed., (2008), pp. 1406 at 16.

¹⁸⁶ [Trial Judgment](#), paras 279, 285-289.

including ministers¹⁸⁷ and high-ranking military officers¹⁸⁸ went to Darfur to convey the orders and oversee their implementation. It was implemented by GoS forces, namely the Sudanese Armed Forces, Popular Defence Forces, Central Reserve Forces, Popular Police Forces and Border Guards, together described as the *Janjaweed*.¹⁸⁹ These factual findings are not challenged on appeal. After the issuance of the Trial Judgment, the GoS gave no reaction to deny or challenge the findings of the Trial Chamber. These findings are thus both unchallenged and final. The direct involvement and liability of the GoS for the crimes constitutes a relevant circumstance of this case for the purpose of setting the principles governing reparations.¹⁹⁰

138. In response to the Trial Chamber's invitation to submit observations on reparations, including on items "(vi) *types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes of which Abd-Al-Rahman was convicted*", "(viii) *information as to whether the victims of the crimes of which Abd-Al-Rahman was convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes*" and "(ix) *any considerations the Chamber should take into account when assessing Abd Al-Rahman's liability for reparations*",¹⁹¹ the GoS responded [REDACTED].¹⁹² Even prompted by the Trial Chamber, the GoS [REDACTED] on the types and modalities of reparations, which include restitution and financial compensation, nothing to report with respect to reparations received by victims so far and no comment as to whether Mr Abd-Al-Rahman alone should be held liable for reparations or if liability may also be found somewhere else. [REDACTED] is another relevant circumstance of this case for the purpose of setting the principles governing reparations that the Trial Chamber should consider.

139. As demonstrated in the above review, under general International Law, including treaties ratified by Sudan (paras. 41-44 above), UN Declarations on the rights of victims (paras. 51-53 above) and Customary IHL (paras. 54-55 above), States bear the primary responsibility for reparations of harm caused to victims as a result of IHL and Human Rights violations.

140. In the specific case of Sudan, the GoS' liability for reparations of the harm caused by IHL and Human Rights violations committed by its own forces and under its direct authority is further provided under the Juba Peace Agreement of 3 October 2020, which covers reparations for victims of crimes committed, *inter alia*, over the relevant period and in the relevant areas of the

¹⁸⁷ [Trial Judgment](#), paras 340, 353, 367.

¹⁸⁸ [Trial Judgment](#), paras 583-584.

¹⁸⁹ [Trial Judgment](#), paras 280, 291-333.

¹⁹⁰ *Lubanga*, [AC Principles of Reparations](#), para. 5.

¹⁹¹ [Order for Submissions on Reparations](#), paras 6(a)(vi), (viii) and (ix).

¹⁹² [ICC-02/05-01/20-1327-Conf-AnxII](#).

crimes in this case (para. 69 above).¹⁹³ In addition of its general responsibility under International Law, the GoS thus has specifically committed to provide reparations for victims, including those who suffered harm as a result of the crimes of this case. The reparations that the GoS has committed to provide include “*compensation,¹⁹⁴ restitution,¹⁹⁵ rehabilitation, and/or satisfaction, and commemoration*”.¹⁹⁶ In its Observations to the Trial Chamber,¹⁹⁷ Sudan provides no indication that it is released from its commitment to provide reparations to victims under the Juba Agreement. Whatever the possible violations of the Juba Agreement since 2020, the commitment made by the GoS in its Chapter 4: Compensation and Reparations Protocol was made towards the victims of its violations of IHL and Human Rights, not towards the other parties to the conflict. These commitments thus remain valid and binding on the GoS and constitute another relevant circumstance of this case for the purpose of setting the principles governing reparations that the Trial Chamber should consider.

141. On the basis of the above and pursuant to Article 75(1) of the Statute, the Defence requests the Trial Chamber to rule that Sudan bears liability for and shall contribute to reparations to victims in this case. This Proposed Principle comes in addition to existing Principles of Reparations elaborated so far by the Court. Reparations through the TFCV based on other resources should remain the default solution, in case the funds, properties and assets obtained from Sudan, including through measures identified below, would prove to be insufficient to fully comply with Darfur victims’ right to reparations.

142. Under paragraph 2 of UN Security Council Resolution 1593, “*the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognising that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organisations to cooperate fully*”.¹⁹⁸ This paragraph has been constantly relied upon by the Court as forming the legal basis obliging Sudan, a non-State Party, to cooperate with the Court. This obligation makes no exception for reparations for victims, which form part of the mandate and activities of the Court. Quite the opposite, Resolution 1593 is specifically “*Recalling Articles 75 and 79 of the Rome Statute and encouraging States to contribute to the ICC Trust Fund for Victims*”¹⁹⁹ in its Preamble.

¹⁹³ [Juba Agreement for Peace in Sudan](#), Title 2, Chapter 4, sect. 1-3, 11.1-11.3, 11.6, 11.8, 12.1, pp. 33-35.

¹⁹⁴ *Ibid.*, sect. 11.1-11.3.

¹⁹⁵ *Ibid.*, sect. 11.6, 11.8.

¹⁹⁶ *Ibid.*, sect. 2.

¹⁹⁷ [ICC-02/05-01/20-1327-Conf-AnxII](#).

¹⁹⁸ UNSC, [Resolution 1593](#), 31 March 2005, para. 2.

¹⁹⁹ UNSC, [Resolution 1593](#), 31 March 2005, Preamble, para. 3.

Reparations thus clearly form part of Sudan's obligation to cooperate with the Court under Resolution 1593.

143. As a result of paragraph 2 of Resolution 1593, not only Sudan but also "*all States*", in the first place the States Parties to the Rome Statute, "*concerned regional and other international organisations*" have an obligation to "*cooperate fully*" with the Court, including on issues of reparations for victims in the Situation in Darfur, Sudan.

144. About Sudan's obligation to cooperate with the Court under Resolution 1593, the Appeals Chamber has ruled that "[u]nder article 25 of the UN Charter, Sudan – a Member State of the United Nations – is obliged to accept and carry out decisions of the UN Security Council. Resolution 1593 therefore creates an obligation to 'fully cooperate' that is legally binding on Sudan" and that "*the fact that Sudan is obliged to fully cooperate with the Court, as per Resolution 1593, means that the cooperation regime for States Parties to the Rome Statute is applicable to Sudan's cooperation with the Court*".²⁰⁰ The cooperation regime for States Parties is provided in Part IX and, for enforcement, Part X of the Rome Statute.

145. With respect to reparations for victims, in particular, the obligation to "*cooperate fully*" includes under Parts IX and X the provision of the following assistance:

- "*the execution of searches and seizures*";²⁰¹
- "*the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties*";²⁰² and
- "[p]roperty, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgment of the Court shall be transferred to the Court".²⁰³

146. Under Article 93(1)(h) and (k), the Court may, on the basis of Sudan's liability for reparations for victims under International Law, request any State Party to conduct searches and seizures, identify, trace, freeze or seize property and assets belonging to the GoS or its members for the purpose of their forfeiture in view of their utilisation for the benefit of reparations for victims. Such orders would follow the special procedure and requirements set up under Rules 217 to 222 of the Rules of Procedure and Evidence ("RPE") and Regulation 116 of the RoC. The

²⁰⁰ *Al-Bashir*, [AC Judgment in the Jordan Referral re Al-Bashir Appeal](#) paras 140-141. But at para. 142, the Appeals Chamber specifies that "*this does not make Sudan a State Party to the Rome Statute, with all the attendant obligations and powers*", such as those under Article 4 of the Statute with respect to the Court's activities on Sudan's territory ([ICC-02/05-01/20-1303 A](#), Grounds of Appeal 6-7, paras 46-59).

²⁰¹ Statute, Article 93(1)(h).

²⁰² Statute, Article 93(1)(k).

²⁰³ Statute, Article 109(3).

GoS would be under an obligation to “*cooperate fully*” with these activities of the Court under paragraph 2 of Resolution 1593. In case *bona fide* third parties would be impacted by such measures, they would have full standing to make representations before the Court for the purpose of protecting their rights and interests.

147. Sudan is, in particular, uniquely well-placed to offer to victims the first modality of reparations contemplated under Article 75(1), namely restitution, that is, the return of confiscated lands and properties from where the victims have been chased out in 2003-2004. Affirming the liability of Sudan for reparations in this case will thus provide a unique opportunity to order the restitution of their ancestral lands to the Fur victims. The Trial Chamber may usefully find example in the approach followed by the ACHPR in *Ogiek People Case*²⁰⁴ for that purpose.

148. Two days prior to the adoption of Resolution 1593, the UN Security Council also issued its Resolution 1591 on the Situation in Sudan.²⁰⁵ In that Resolution, the UN Security Council *Deplores Strongly* the action of the GoS, rebel forces and all armed groups, including the *Janjaweed*, in the continuation of the armed violence, human rights and IHL violations and other atrocities²⁰⁶ and decides that “*all States shall freeze all funds, financial assets and economic resources that are on their territories on the date of adoption of this resolution or at any time thereafter, that are owned or controlled, directly or indirectly, by the persons designated by [a Sanctions Committee established under Resolution 1591], or that are held by entities owned or controlled, directly or indirectly, by such persons or by persons acting on their behalf or at their direction, and decides further that all States shall ensure that no funds, financial assets or economic resources are made available by their nationals or by any persons within their territories to or for the benefit of such persons or entities*”.²⁰⁷ The Sanctions Committee established under Resolution 1591 is still alive nowadays. On 12 September 2025, the UN Security Council renewed its mandate and the sanctions imposed under Resolution 1591 until 12 September 2026²⁰⁸ and there is no indication that this Committee should be discontinued any time soon. The updated list of persons currently on the Resolution 1591 Sanctions List is public.²⁰⁹ Depending on the link and position of these persons within the GoS and the military or paramilitary forces acting under its authority in 2003-2004, their properties and assets may

²⁰⁴ ACHPR, [African Commission on Human and Peoples' Rights v. Kenya \(“Ogiek People Case”\)](#), paras 37-39.

²⁰⁵ UNSC, [Resolution 1591](#), 29 March 2005.

²⁰⁶ UNSC, [Resolution 1591](#), 29 March 2005, para. 1.

²⁰⁷ UNSC, [Resolution 1591](#), 29 March 2005, para. 3(e). The Sanction Committee mentioned in that paragraph is established under para. 3(a) of the Resolution.

²⁰⁸ UNSC, [Resolution 2791](#), 12 September 2025.

²⁰⁹ The updated list is available on the webpage of the Resolution 1591 Sanctions Committee: [Sanctions List Materials | Security Council](#).

arguably fall within the category of “*proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture*” under Rule 93(1)(k) of the RPE. The Trial Chamber may thus consider ordering the seizure of the assets frozen under Resolution 1591 and their transfer to the Court for the purpose of reparations for victims. If appropriate, the affected persons would have full standing to appear before the Court to protect their rights as *bona fide* owners.

149. Under Article 87(6) of the Statute, Articles 3 and 15 of the Negotiated Relationship Agreement between the ICC and the United Nations and the duty to “*cooperate fully*” bearing on the United Nations under paragraph 2 of Resolution 1593, the Court may also request the Resolution 1591 Sanctions Committee to disclose information over the current location and custody of frozen properties and assets for the purpose of their forfeiture in view of their utilisation for the benefit of reparations for victims. The GoS would again be under an obligation to “*cooperate fully*” with these activities of the Court under paragraph 2 of Resolution 1593. This would come in addition to the request addressed to States Parties under paragraph 146 above.

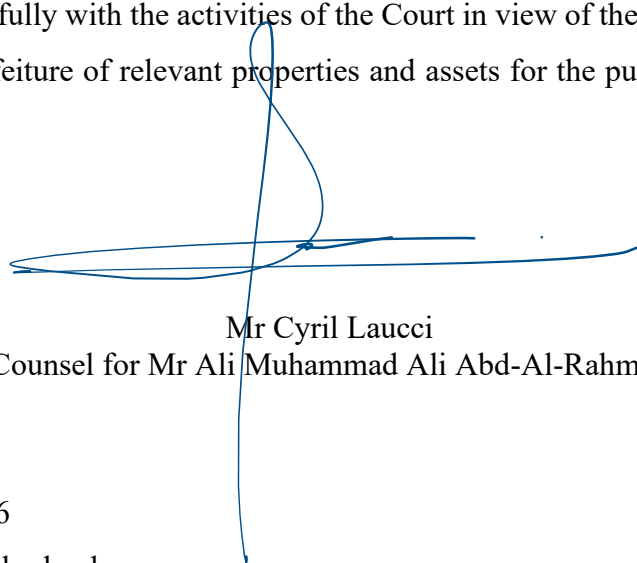
150. The Second Proposed Principle of Reparations thus opens a wide range of possibilities for the purpose of raising funds to support reparations for victims, moving the financing of reparations from the domain of voluntary contributions by States through the TFCV to a compulsory obligation of Sudan to “*cooperate fully*” with the Court under paragraph 2 of Resolution 1593, if necessary with the cooperation of other States Parties and of the Resolution 1591 Sanctions Committee to identify, trace, seize and transfer Sudan’s properties and assets to the Court to fund reparations for victims. The First Proposed Principle aimed at moving reparations for victims from the domain of a favour made to them to the implementation of a positive right they enjoy; the Second Proposed Principle aims at finding compulsory means of enforcing that right.

151. The Defence is aware that its proposals are both innovative and ambitious, and that they may require the Court to explore new approaches to enforcing victims’ right to reparations. Yet this “*key feature*” of the Court, from which its success is, to some extent, linked,²¹⁰ calls for the Court to step outside of its comfort zone and demonstrate determination, innovation and courage in favour of those for whom it was ultimately established. The Defence fully trusts that the Trial Chamber will rise to this challenge.

²¹⁰ *Lubanga*, [AC Principles of Reparations](#), para. 3.

FOR THE FOREGOING REASONS, THE DEFENCE REQUESTS THE TRIAL CHAMBER TO CONSIDER the present observations and, **PURSUANT TO ARTICLE 75(1) OF THE STATUTE:**

- **STATE** that victims enjoy a right to receive reparations of the harm they have suffered under Customary International Law, that is not conditioned by the conviction of the offender;
- **STATE** that Sudan bears liability for reparations to victims under International Law and shall cooperate fully with the activities of the Court in view of the identification, tracing, seizure and forfeiture of relevant properties and assets for the purpose of reparations to victims.



Mr Cyril Laucci
Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 22 May 2026

At The Hague, The Netherlands.