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TRIAL CHAMBER I

Before

**Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public Document

**Defence response to all the observations filed by the parties and the participants
in relation to the procedure and principles to be applied at the reparations stage**

Source: Defence team for Mr Thomas Lubanga

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

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BACKGROUND

1. On 14 March 2012, Trial Chamber I delivered its Judgment pursuant to article 74 in the case against Mr Thomas Lubanga.¹
2. On 18 April 2012, the Prosecutor,² the Defence,³ the Registry,⁴ the OPCV⁵ and the Legal Representatives of Victims⁶ filed their observations on the principles and procedure to be applied to reparations.
3. On 20 April 2012,⁷ the Chamber granted various organisations leave to file their observations by 10 May 2012 in accordance with the order of 14 March 2012,⁸ inviting the parties and participants to respond no later than 25 May 2012.⁹
4. On 25 April 2012, the Defence received the observations of the Trust Fund for Victims (“the TFV”).¹⁰
5. On 10 May 2012 at 3.11 p.m., Women’s Initiatives for Gender Justice (“WIGJ”) filed their observations.¹¹ The observations of *Justice-plus*, *Terre des Enfants*, Centre Pelican-Training For Peace and Justice/*Journalistes en action pour la Paix*, the *Fédération des jeunes pour la Paix Mondiale* and ASF (“ASF and others”)¹² were received on the same day at 4.52 p.m.

¹ ICC-01/04-01/06-2842.

² ICC-01/04-01/06-2867.

³ ICC-01/04-01/06-2866.

⁴ ICC-01/04-01/06-2865.

⁵ ICC-01/04-01/06-2863.

⁶ ICC-01/04-01/06-2869 and ICC-01/04-01/06-2864.

⁷ ICC-01/04-01/06-2870.

⁸ ICC-01/04-01/06-2844, para. 8.

⁹ ICC-01/04-01/06-2870, para. 23.

¹⁰ ICC-01/04-01/06-2872.

¹¹ ICC-01/04-01/06-2876.

¹² ICC-01/04-01/06-2877.

6. The United Nations Children's Fund ("UNICEF") and the International Center for Transitional Justice ("ICTJ") filed their observations on 11 May 2012 at 3.21 p.m. and 6.29 p.m. respectively.
7. The *Fondation Congolaise pour la Promotion des Droits Humains et de la Paix* has not yet filed its observations.¹³

OBSERVATIONS

8. The Defence refers to its observations of 18 April 2012 and submits the following additional observations:

1 – Concept of "*victim*"

- Broadening of the concept of victim

9. Various participants request that the Chamber broaden the concept of victim so that a greater number of victims of crimes committed during the Ituri conflict will be able to obtain reparations, either by extending the Chamber's jurisdiction for the purposes of the reparations stage, so as to include all the alleged victims of the crimes with which the UPC¹⁴ were charged, or in general, by acknowledging the suffering of all victims in Ituri.¹⁵
10. However, in the present case, the Prosecutor purposely¹⁶ limited the prosecution to Thomas Lubanga and to the crimes of conscripting or enlisting children under the age of fifteen years or using them to participate in the

¹³ FOCDP sought leave to submit its observations (See ICC-01/04-01/06-2855, Annex 1). That request was granted by the Chamber (See ICC-01/04-01/06-2870).

¹⁴ See, for example, ICC-01/04-01/06-2867, para. 6 (Prosecutor).

¹⁵ ICC-01/04-01/06-2879, para. 67 (ICTJ).

¹⁶ In particular: ICC-01/04-01/06-2867, para. 2(a). See also: Interview with the Deputy Prosecutor, Ms Fatou Bensouda, in which she stated "I think we went for the charges for which we had the evidence". See: <http://www.lubangatrial.org/2009/07/31/interview-with-fatou-bensouda-icc-deputy-prosecutor/>.

hostilities, thus sparing those who bear the greatest responsibility for the crimes committed during the conflict in Ituri.

11. The Prosecutor cannot now reasonably argue that that political choice should not prejudice the right of other victims to seek reparation and that it would consequently be reasonable to compensate as many of the victims of the various crimes as possible.¹⁷
12. The Prosecutor states that he selected the charges to be brought against Mr Lubanga in order to render the proceedings efficient and the trial fair.¹⁸ It would equally be unfair at the reparations stage to pursue charges against the convicted person in respect of which he has not been formally charged and against which he has not had the opportunity to raise defences. There is no evidence that those crimes were committed and Mr Lubanga's responsibility has not been established beyond all reasonable doubt.
13. Mr Lubanga's conviction for the crimes under article 8(2)(e)(vii) is no justification for blaming him for all the suffering in Ituri.
14. Lastly, contrary to the interpretation suggested by UNICEF AND WGIJ, far from implying the broadening of the concept of victim at the reparations stage,¹⁹ article 75(6) merely confirms that a victim who is compensated under article 75 is not prevented from seeking reparation in other courts for the harm suffered. Rule 96 provides that victims not already participating in the proceedings but who are able to demonstrate harm suffered as a result of the commission of any of the crimes with which Mr Lubanga was charged must be informed of their right to seek reparation.

¹⁷ ICC-01/04-01/06-2867, para. 2-a (Prosecutor).

¹⁸ *Idem*.

¹⁹ ICC-01/04-01/06-2878, para. 11(a) (UNICEF) and ICC-01/04-01/06-2876, para. 42 (WIGJ).

- The discriminatory nature of reparations

15. Many participants argue that the victims belong to the Hema community and that it would be unfair on other ethnic groups if that community alone were to be compensated by the Court. They state, further, that such an injustice would fuel tension in Ituri.²⁰
16. Those statements would appear to be unfounded. Although the ethnic group and place of residence of the 85 applicants have been redacted, the Defence is in a position to note that many victims come from Mahagi territory, where the vast majority of inhabitants are Alur.
17. Moreover, there is no evidence that existing tensions between communities in Ituri might be stoked by compensating victims belonging for the most part to the same ethnic group.
18. In any event, even if all the beneficiaries seeking compensation belonged to the same ethnic group, such an imbalance could not be relied on at this stage in order to widen the category of natural person entitled to reparation.

- Information provided by participants

19. Certain information contained in the reports cited by some participants is not evidence in the instant case. The Defence contests in particular the veracity of the information provided at paragraphs 22 to 24 of the ICTJ's observations.²¹ The same is true of the statistics quoted by UNICEF and by the TFV.²² In that regard, the Defence refers to the Chamber's findings in its judgment, in which

²⁰ ICC-01/04-01/06-2863, para. 13 (OPCV); ICC-01/04-01/06-2878, para. 36 (UNICEF); ICC-01/04-01/06-2879, para. 67 (ICTJ); ICC-01/04-01/06-2877, para. 37 (ASF and others); ICC-01/04-01/06-2864, para. 16 (Victim Group V01).

²¹ See, for example, ICC-01/04-01/06-2879, paras. 22-24 (ICTJ).

²² ICC-01/04-01/06-2878, paras. 4 and 9 (UNICEF); ICC-01/04-01/06-2872, para. 106 (TFV).

it noted the unreliability of numerous documents identifying individuals who had been demobilised and the fact that individuals had lied to the authorities in charge of demobilisation (for example, CONADER and MONUC).²³

20. As the TFV itself acknowledges, no accurate data is available on the number of children under the age of fifteen years recruited into the FPLC.²⁴ The TFV is merely able to assert that “the number of victims currently participating in Court proceedings seems to be a small, and not necessarily representative sample of victims, who may potentially benefit from reparations in this case.”²⁵

2- Rights of the Defence

21. Some participants consider that the convicted person should be excluded from discussions concerning reparations.²⁶ The OPCV even submits that if reparation measures were financed in full by the TFV, the convicted person would not have the required standing to appeal against the decision rendered under article 75.²⁷
22. The Defence refers in this connection to paragraphs 8 to 17 and would like to clarify the following points:
23. Firstly, the basic texts of the ICC clearly provide for the participation of the convicted person at the reparations stage and there is no provision which allows for his or her exclusion. Therefore, the convicted person is entitled to receive the notifications provided for in rules 94(2) and 95(1) and is consequently entitled to file observations under article 75(3). He or she may

²³ See, in particular, ICC-01/04-01/06-2842, paras. 736 *et seq.* and 267 *et seq.*

²⁴ ICC-01/04-01/06-2872, para. 106 (TFV).

²⁵ ICC-01/04-01/06-2872, para. 107 (TFV).

²⁶ ICC-01/04-01/06-2806, paras. 159 and 168 (Registry) and ICC-01/04-01/06-2869, para. 42 (The VO2 group of victims). The VO1 group of victims believes that the Defence should be heard as to matters concerning the extent of the harm and the appropriate reparations. ICC-01/04-01/06-2864, para. 45.

²⁷ ICC-01/04-01/06-2863 (OPCV), para. 135.

also request that experts be called to assist the Court on any issue concerning reparations.

24. Secondly, article 82(4) expressly grants the convicted person the right to appeal against the order under article 75, thus confirming that he or she is directly affected by any decision made under that article.
25. As a result, the convicted person must, in all fairness, have the opportunity to be heard on all aspects concerning reparations before the Chamber makes its order under article 75.

3 – Examination of the application for reparations

- Application form for reparations

26. To enable the Trial Chamber to satisfy itself that victims seeking reparations are able to show evidence of harm which is directly linked to one of the crimes with which Mr Lubanga was charged, it is vital that each of them forward to the Court a reparations form containing at least the necessary information referred to in rule 94. That information will also enable the Defence and the relevant bodies of the Court (for example, VPRS) to verify the identity of the applicant and assess the extent of the alleged harm.
27. In this regard, it is important to distinguish the form referred to in rule 89 (Participation) from that referred to in rule 94 (Reparation). Unlike the participation form, the reparations form includes a section (Section F) concerning reparations in which the applicant must state the type of reparations sought and the nature of the harm, loss or damage suffered.
28. Contrary to the claims of ASF and others,²⁸ the possibility of receiving reparations for the harm suffered is not open exclusively to victims

²⁸ ICC-01/04-01/06-2877, para. 9 (ASF and others).

authorised to participate in the proceedings at the trial stage. All applications for reparations must be formalised by submitting a special form at the reparations stage in accordance with rule 94,²⁹ and they are not subject to a prior decision of the Chamber granting the applicant leave to participate in the proceedings at the trial stage.³⁰ The same applies to the “beneficiaries” referred to in article 75(1) who must complete a reparations form and state in Section B, questions 9 and 10, the name of the victim, their connection with the victim and the harm suffered as a result of the commission of any of the crimes of which Mr Lubanga was found guilty.³¹ The need to complete that form is endorsed by the V01 group of victims.³²

29. The Defence endorses the observations of the OPCV and the ICTJ in so far as it would be advisable for the Chamber to set a deadline for the filing of reparations forms.³³

- Standard of proof applicable at the reparations stage

30. A number of participants request the Chamber to accept applications from victims having provided *prima facie* evidence of their identity, the harm suffered and the causal link between that harm and the crimes with which Mr Lubanga was charged.³⁴
31. Experience has shown that that standard of proof is insufficient. In the instant case, in all those cases in which it had full particulars of the identity of a victim and the alleged circumstances of his or her enlistment, the Defence’s investigations revealed that the victim had provided the Court with false

²⁹ ICC-01/04-101, para. 67, footnote 62.

³⁰ The modalities for participation and reparations are covered by different rules; in particular, see rules 89 and 94.

³¹ ICC-01/04-01/06-2877, para. 17.

³² ICC-01/04-01/06-2864, para. 25.

³³ ICC-01/04-01/06-2879, para. 173 (ICTJ) and ICC-01/04-01/06-2863, para. 15 (OPCV).

³⁴ ICC-01/04-01/06-2867, para. 24 (Prosecutor) and ICC-01/04-01/06-2863, paras. 39 and 44 (OPCV).

information.³⁵ On the basis of information gathered by the Defence, the Chamber withdrew the authorisation of all those victims to participate in the proceedings.³⁶

32. It is not possible, therefore, to claim that the statements of the applicants alone are sufficient to establish their identity and their status as victims of the crimes with which Mr Lubanga was charged.

33. Lastly, the Defence refers to its observations concerning this matter, notably as regards the jurisprudence of the ECCC which are mandated to compensate the victims of war crimes, crimes against humanity and genocide.³⁷

4 – Procedure applicable to the reparations stage

34. In this connection, the Defence refers to its observations filed on 18 April 2012.³⁸

5 – Nature of compensation and determination of harm

- Concept of reparations

35. The Defence would point out that the form of reparations must not be confused with the type of beneficiaries of the reparations.

36. The issue of the form of reparations – individual or collective – arises only once the victims of the crimes of which the accused has been found guilty have been accurately identified and acknowledged as such. Victims are identified according to a strict procedure and criteria laid down by the Rules. Therefore, victim status can be granted only to those natural persons falling

³⁵ The Defence considers that it has also proved that Victims a/0049/06 and a/0051/06, introduced by Intermediary W-00143, made false statements to the Office of the Prosecutor. See, in particular, documents EVD-D01-00763 and EVD-D01-00765.

³⁶ See ICC-01/04-01/06-2842, paras. 222-288; 430-441; and 485-502.

³⁷ ICC-01/04-01/06-2866, paras. 40-44.

³⁸ ICC-01/04-01/06-2866, paras. 46-50.

within the definition set forth in rule 85(a) or those legal persons satisfying the criteria of rule 85(b). In accordance with rule 97(1), the Chamber shall then determine the most appropriate form of reparations. As a result, collective reparations can only be awarded to a group of natural persons having been specifically identified and having been granted victim status in advance.

37. It follows that before arguing that the concept of collective reparations covers reparations for the harm suffered by the “community”,³⁹ care should be taken to ensure that the “community” is indeed a victim within the meaning of rule 85(a) or rule 85(b). It is clear that the “community” is not a natural person within the meaning of rule 85(a). It cannot be considered to be an “organisation or institution” within the meaning of rule 85(b), a provision which, moreover, limits the scope of the harm for which compensation is payable to direct harm suffered by the legal person concerned and which is directly attributable to the crimes of which the convicted person has been found guilty.
38. Furthermore, the Defence also notes that to date, no “community” has filed an application form for reparations, which is a pre-condition for the award of reparations.
39. The Defence would point out, however, that it has no objection to the TFV implementing projects and support programmes, or even making payments to more people than just those victims identified in accordance with the procedure laid down by the Regulations, provided that such projects are devised and executed outside the legal framework of this case, that they are in

³⁹ ICC-01/04-01/06-2876, para. 11 (WIGJ); ICC-01/04-01/06-2879, paras. 15-56 (ICTJ); ICC-01/04-01/06-2872, para. 154 (Trust Fund for Victims); ICC-01/04-01/06-2869, para. 34 (V02 group of victims); ICC-01/04-01/06-2878, para. 35(b) (UNICEF); ICC-01/04-01/06-2867, para. 5 (Prosecutor); ICC-01/04-01/06-2877, para. 24 (ASF and others) which mentions the “collective suffering” endured by “whole groups or categories of people”.

no circumstances described as being related to this case and that they are not the result of an order made against Mr Lubanga.

- Form of reparations

40. The Defence defers to the discretion of the Chamber as to the form of reparations – individual or collective. That having been said, whatever form the reparations take, the Defence considers that the measures ordered against Mr Lubanga should be proportionate to the number of victims and reflect only the harm that has been established. However, in so far as the TFV will probably have to stand in for Mr Lubanga on account of his indigence, it cannot be ruled out that should Mr Lubanga's financial situation improve in the future, he will be asked to reimburse any amounts paid out by the TFV.⁴⁰ Thus, to order payment of exorbitant amounts not proportionate to the harm actually established would amount to punishment manifestly incompatible with the aim pursued by the reparations.

- Determination of the harm in respect of which compensation is payable

a- Exclusion of harm resulting from rape or sexual violence

41. A reparations order is intended to make reparation for harm resulting from the crime or crimes of which the accused has been convicted.⁴¹ That or those crimes must have been established beyond all reasonable doubt,⁴² after the defence has been able to present evidence and submit observations.⁴³ That assessment is moreover endorsed by the Prosecutor.⁴⁴

⁴⁰ Regulation 117 of the Regulations of the Court provide "The Presidency shall (...) monitor the financial situation of the sentenced person on an ongoing basis, even following completion of a sentence of imprisonment, in order to enforce (...) reparation orders".

⁴¹ See, in this sense, ICC-01/04-01/06-1432, paras. 63-66.

⁴² Statute, article 66(3).

⁴³ Statute, article 67(1).

⁴⁴ ICC-01/04-01/06-2867, para. 17 (Prosecutor).

42. It is undisputed that sexual violence is not one of the crimes of which Mr Lubanga was found guilty, or for which he was even prosecuted. Furthermore, the Defence has not submitted any evidence in defence of those crimes and neither has it cross-examined the witnesses for the prosecution referred to by the Chamber at paragraphs 890 to 896 of the relevant Judgment, with the exception of one question put to P-0016 for the sole purpose of showing a clear contradiction between his statement of 2005 and his testimony before the Court.⁴⁵ The Chamber, moreover, drew no conclusions in relation to those charges for the purposes of establishing Mr Lubanga's responsibility.⁴⁶ Consequently, since no acts of sexual violence were prosecuted, established or held against Mr Lubanga, contrary to the arguments of the majority of the parties and participants,⁴⁷ they cannot serve as a basis for reparation by Mr Lubanga of any harm resulting therefrom.
43. The Appeals Chamber confirmed that the Trial Chamber's jurisdiction should be limited to the charges confirmed by the Pre-Trial Chamber and that any determination of the Chamber "in relation to a victim's status and/or participatory rights which is unrelated to the specific charges against the accused would fall outside this framework."⁴⁸
44. Moreover, it cannot be validly argued that conscripting, enlisting or using children under the age of fifteen years necessarily entails the commission of sexual violence against them. In fact, such an argument does not withstand scrutiny:

⁴⁵ This element significantly affects the credibility of this witness as regards his statements concerning sexual violence: Witness P-0016 had stated in 2005 that he was unaware of any rape of a soldier by another soldier within the FPLC. Statement of 2005, para. 232; cited at T-191-CONF-FRA CT, p. 10, lines 5-6.

⁴⁶ ICC-01/04-01/06-2842, para. 896.

⁴⁷ ICC-01/04-01/06-2863, para. 36 (OCPV); ICC-01/04-01/06-2864, para. 29 (V01 group of victims); ICC-01/04-01/06-2869, paras. 24 and 27 (V01 group of victims); ICC-01/04-01/06-2876, para. 15 (WIGJ); ICC-01/04-01/06-2878, para. 26 (UNICEF); ICC-01/04-01/06-2879, para. 17 (ICTJ); ICC-01/04-01/06-2872, para. 40-42 (TFV).

⁴⁸ ICC-01/04-01/06-1432, para. 63.

- Article 8(2)(e)(vii) and the Elements of Crimes which amplify it contain no reference to the commission of sexual violence; likewise, article 8(2)(e)(vi) establishes no link between the commission of sexual violence and the status of child soldier. In law, the two categories of offence are wholly independent and, apart from the context of armed conflict, have no constituent element in common.
- International criminal courts dealing with cases involving the crime of the enlistment, conscription or use of children under the age of fifteen years have never considered the fact of being subjected to sexual violence as capable of characterising child soldier status.⁴⁹ Such acts of violence, even when committed against young recruits by soldiers within an armed group, clearly have no link with hostilities, are in no way connected to military duties illegally imposed on young children, and do not come within the framework of activities required in order for the armed group to operate.
- No international convention, nor any principle or rule of international law has expressly or implicitly made sexual violence one of the constituents of the crime of enlistment, conscription or use of children under the age of fifteen years. The same applies to national legislations.

45. Accordingly, there is no reason for the harm arising out of sexual violence to give rise to reparations within the framework of a conviction for the crime of the enlistment, conscription or use of children under the age of fifteen years.

⁴⁹ See on this point all the decisions of the SCSL. In particular, none of the decisions of the SCSL establishes sexual slavery as one of the forms of the status of a child soldier.

b- Exclusion of harm arising out of crimes of torture or inhuman or degrading treatment

46. The Defence submits that the arguments set out in paragraphs 41 to 45 apply, *mutatis mutandis*, to the alleged harm arising out of acts similar to torture.⁵⁰

c- Harm in relation to “life plans”

47. Certain participants argue that compensation should be awarded⁵¹ in respect of harm in connection with “life plans” or “loss of opportunity.”⁵² In the Defence’s view, that type of harm falls within the notion of “loss of opportunity” which it has argued in its previous submissions.⁵³
48. In that connection, it must be emphasised that by virtue of that notion, a victim may secure reparations for harm consisting of loss of the opportunity for a favourable event to occur as a result of the commission of the crime, provided that the existence of the opportunity pre-dated the crime and that the opportunity was not in doubt.⁵⁴
49. Moreover, the jurisprudence cited by the OPCV does not contradict that analysis in that it affirms that the “life plan” is an “expectation that is both reasonable and attainable in practice” or an “anticipated and expected result.”⁵⁵ In his dissenting opinion in the case of *Tibi v. Ecuador*, Judge García-Ramírez further observed that the “life plan” transcended the boundaries of mere opportunity, chances or hopes and involved “reasonable goals, well-founded hopes, accessible projects, which together constitute the course for the individual’s development, one that is deliberate and feasible, based on

⁵⁰ See, for example, ICC-01/04-01/06-2879, para. 56 (ICTJ).

⁵¹ ICC-01/04-01/06-2863, para. 47-61 (OPCV).

⁵² ICC-01/04-01/06-2878, para. 21 (UNICEF).

⁵³ See ICC-01/04-01/06-2866, para. 65.

⁵⁴ French Court of Cassation, Criminal Chamber: Crim., 16 February 1981, no. 80-92326.

⁵⁵ IACHR, *Loyaza v. Peru*, Reparations, Judgment of 27 November 1998, para. 150.

certain conditions that support and justify it.”⁵⁶ That jurisprudence shows that mere hopes thwarted by the commission of a crime do not justify reparation of the harm on the basis of a life plan or loss of opportunity.

50. It follows that, contrary to the contentions of the OPCV,⁵⁷ evidence of harm linked to a life plan must be provided. In particular, it is incumbent upon the victim to show that the personal or professional plans that he or she had reasonably made had a serious chance of success. Conversely, if the situation of the victim before the commission of the crime were to suggest that the realisation of such projects would be compromised,⁵⁸ reparation of the harm linked to the loss of opportunity could not give rise to compensation. Likewise, as argued by the Defence in its earlier submissions,⁵⁹ account must be taken of certain contextual circumstances existing before commission of the crime or beyond the control of the perpetrator, in so far as they could also thwart the realisation of a victim’s “life plan”.⁶⁰

d- No accumulation of compensation

51. The Defence would emphasise that by virtue of the principle of full reparation, there must be no accumulation of reparations.⁶¹ The Defence notes that the TFV shares this view, arguing that the Chamber should take into account any benefits already granted to victims through national or international processes such as the Disarmament, Demobilisation and Reintegration

⁵⁶ Separate concurring opinion of Judge Sergio García-Ramírez in the Judgment of the Inter-American Court of Human Rights in the *Case of Tibi v. Ecuador*, 7 September 2004, para. 85.

⁵⁷ ICC-01/04-01/06-2863, para. 60.

⁵⁸ See in this sense ECHR, *Campbell and Cosans v. United Kingdom*, Application no. 7511/76; 7743/76, Judgment, 22 March 1983, para. 26.

⁵⁹ ICC-01/04-01/06-2866, para. 67.

⁶⁰ ECHR, *Campbell and Cosans v. United Kingdom*, *op. cit.*, para. 26.

⁶¹ ICC-01/04-01/06-2866, paras. 68-69.

programme.⁶² The Defence is however of the view that this should also include programmes implemented and executed by the TFV.⁶³

6 – The Defence’s right to respond

52. The Defence would like the opportunity to file, as necessary, written observations in response to all the observations filed by the participants relating to the procedure and principles applicable at the reparations stage.

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER I TO:

NOTE these observations and the observations of the Defence of 18 April 2012;

ORDER the disclosure of unredacted versions of the reparations application forms and of all related documents filed by victims having sought to intervene during the reparations stage and having applied for compensation in respect of harm;

ADJUDGE AND DECLARE that only victims having properly applied to the Chamber and having shown on the balance of probabilities the existence of real, current and certain personal harm in respect of which no reparation has yet been made may benefit from reparations, in accordance with the provisions of rule 94;

ADJUDGE AND DECLARE that only those victims able to evidence personal harm arising directly out of one of the crimes with which the convicted person was charged are entitled to claim reparations;

ADJUDGE AND DECLARE that on the contrary, under rule 98(1) only orders granting individual reparation may be made against the convicted person;

⁶² ICC-01/04-01/06-2872, para. 54 (Trust Fund).

⁶³ See ICC-01/04-01/06-2866, paras. 70-72.

And

ADJUDGE AND DECLARE that the Prosecutor has no grounds on which to intervene in any way whatsoever in the context of the reparations procedures.

[signed]

Ms Catherine Mabilie, Counsel

Dated this 15 May 2012

At The Hague, The Netherlands