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TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Public Document
With Two Public Annexes**

**Submissions on the Evidence Admitted in the Proceedings for the Determination of Thomas
Lubanga Dyilo's Liability for Reparations**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. On 13 July 2017, Trial Chamber II (“Chamber”) issued an order instructing the Legal Representatives of Victims (“LRVs”) to file submissions on the evidence admitted in the case at bar for the determination of Thomas Lubanga Dyilo’s (“Mr Lubanga”) liability for reparations.¹ The deadline for doing so was ultimately set at 8 September 2017 following a request for an extension of time filed by the Principal Counsel of the Office of Public Counsel for Victims (“Legal Representative” and “OPCV”, respectively).² The Chamber ordered the Defence to file its response to the LRVs’ submissions by 29 September 2017, and authorized the LRVs and the Defence to submit documents of 30 and 45 pages, respectively, for their observations.³

2. The Legal Representative has complied with the Chamber’s instructions to provide a per capita assessment of each type of harm, as well as a general assessment, relying on current case law – both national (in particular, Congolese) and international – and which could be transposed to the harm resulting from the crimes of which Mr Lubanga was convicted. She nevertheless points out the complexity of such a task given the wholly collective nature of the reparations, which entail the implementation of services for potentially eligible victims, rather than the payment of individual amounts according to the proposed assessments.

¹ “Order Instructing the Parties to File Submissions on the Evidence Admitted for the Determination of Thomas Lubanga Dyilo’s Liability for Reparations” (Trial Chamber II), ICC-01/04-01/06-3339-tENG, 13 July 2017.

² “Decision on the Application of the Office of Public Counsel for Victims for an extension of the time limit set by the Order of 13 July 2017” (Trial Chamber II), ICC-01/04-01/06-3345-tENG, 21 July 2017. See also “*Demande de prorogation du délai aux fins de dépôt des observations sur les éléments admis dans la présente procédure en vue de fixer le montant des réparations auxquelles est tenu M. Thomas Lubanga Dyilo*”, ICC-01/04-01/06-3341, 17 July 2017 and the “*Réponse des Représentants légaux des victimes à ‘Demande de prorogation du délai aux fins des observations sur les éléments admis dans la présente procédure en vue de fixer le montant des réparations auquel est tenu Mr Thomas Lubanga Dylo’*”, ICC-01/04-06/01-3342, 18 July 2017.

³ “Decision Granting the Request of the Office of Public Counsel for Victims for Extension of Page Limit” (Trial Chamber II), ICC-01/04-01/06-3356-tENG, 6 September 2017.

3. The purpose of the assessments is therefore to provide useful guidance in determining the amount of reparations for which Mr Lubanga will be liable. Given the particular circumstances of this case, the gravity of the crimes of which Mr Lubanga was convicted and his lack of demonstrated compassion for the victims, the Legal Representative is of the opinion that Mr Lubanga must be held liable for the entire amount proposed.

II. PROCEDURAL HISTORY

4. On 5 April 2012, Trial Chamber I issued its “Decision on the OPCV’s request to participate in the reparations proceedings”,⁴ by which it instructed the Registry to appoint the OPCV (i) as the legal representative of certain applicants; and (ii) to represent the interests of victims who have not submitted applications but who may fall within the scope of an order for reparations.

5. On 3 March 2015, the Appeals Chamber handed down its judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” (“Judgment”) and its annex “Order for Reparations (amended)” (“Order”), directing the Trust Fund for Victims (“Trust Fund”) to submit a draft implementation plan for reparations within six months.⁵ The Trust Fund submitted its draft plan on 3 November 2015.⁶

⁴ “Decision on the OPCV’s request to participate in the reparations proceedings” (Trial Chamber I), ICC-01/04-01/06-2858, 5 April 2012.

⁵ “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2” (Appeals Chamber), ICC-01/04-01/06-3129 A and ICC-01/04-01/06-3129-AnxA, A2 A3, 3 March 2015 (“Judgment” and “Order”).

⁶ “Filing on Reparations and Draft Implementation Plan”, ICC-01/04-01/06-3177-Conf and two annexes, 3 November 2015.

6. On 9 February 2016, the Chamber ordered the Trust Fund to supplement its draft plan.⁷ On 7 June 2016, the Trust Fund submitted additional information.⁸ On 8 December 2016, the Chamber ordered the Trust Fund to file specific information concerning the collective reparations programmes⁹ being considered; this information was finally filed on 13 February 2017¹⁰ and approved by the Chamber on 6 April 2017.¹¹

7. On 22 December 2016, the Chamber issued the “Order to complete the process of identifying victims potentially eligible to benefit from reparations”,¹² setting 31 March 2017 as the deadline for transmitting all the collected applications for reparations to the Chamber.¹³

8. On 13 April 2017, the Legal Representative filed information on the identified needs of the potential victim-beneficiaries with respect to reparations.¹⁴

9. In compliance with the Chamber’s Orders relating to the collection of a representative sample of applications from potential beneficiaries of reparations¹⁵

⁷ “Order instructing the Trust Fund for Victims to supplement the draft implementation plan” (Trial Chamber II), ICC-01/04-01/06-3198-tENG, 9 February 2016.

⁸ “Additional Programme Information Filing”, ICC-01/04-01/06-3209, 7 June 2016.

⁹ “Order instructing the Trust Fund for Victims to Submit Information regarding Collective Reparations” (Trial Chamber II), ICC-01/04-01/06-3262, 8 December 2016.

¹⁰ “Information regarding Collective Reparations”, ICC-01/04-01/06-3273 and annexes, 13 February 2017.

¹¹ “Order approving the proposed programmatic framework for collective service-based reparations submitted by the Trust Fund for Victims” (Trial Chamber II), ICC-01/04-01/06-3289, 6 April 2017.

¹² “Order to complete the process of identifying victims potentially eligible to benefit from reparations” (Trial Chamber II), ICC-01/04-01/06-3267-tENG, 22 December 2016.

¹³ This date was subsequently not extended. See “Decision on Requests for the Extension of Time submitted by the Office of Public Counsel for Victims, the Registry and the Legal Representatives of V02 Victims” (Trial Chamber II), ICC-01/04-01/06-3290-tENG, 6 April 2017.

¹⁴ “Information regarding the Issues as well as the Concerns and Wishes of the Potentially Eligible Victims in the Reparations Proceedings”, ICC-01/04-01/06-3293-Conf, 13 April 2017.

¹⁵ “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, footnote 7, above; “Order instructing the Registry to provide aid and assistance to the Legal Representatives and the Trust Fund for Victims to identify victims potentially eligible for reparations” (Trial Chamber II), ICC-01/04-01/06-3218-tENG, 15 July 2016 and “Order relating to the request of the Office of Public Counsel for Victims of 16 September 2016” (Trial Chamber II), ICC-01/04-01/06-3252-tENG, 21 October 2016.

and pursuant to their respective mandates, the Trust Fund and the LRVs transmitted the files prepared by the victims, as they became ready, to the Chamber by 31 March 2017.

10. On 13 July 2017, the Chamber specified that the files of other potentially eligible victims that had not yet been prepared could be considered for reparations, but that their eligibility would be examined by the Trust Fund at the implementation stage of the reparations.¹⁶

11. On the same day, the Chamber also issued its order¹⁷ instructing the parties to file submissions with the aim of assessing the monetary value of the harm suffered by the victims and determining the amount of reparations for which Mr Lubanga is liable (“Chamber’s Order”).

III. SUBMISSIONS

12. As referred to above,¹⁸ the analysis requested by the Chamber involves (A) conducting a monetary assessment, on the basis of the current context in Ituri, of the individual harm suffered by the victims and caused by the crimes of which Mr Lubanga was convicted, and their needs deriving from that harm. (B) The Legal Representative reiterates, moreover, that the issue of the reparations amount for which Mr Lubanga is personally liable is fundamental for the interests of the victims in these proceedings.

¹⁶ “*Décision relative à la demande de réexamen du Bureau du conseil public pour les victimes de la Décision du 6 avril 2017*” (Trial Chamber II), ICC-01/04-01/06-3338, 13 July 2017, paras. 11-13.

¹⁷ “Order Instructing the Parties to File Submissions on the Evidence Admitted for the Determination of Thomas Lubanga Dyilo’s Liability for Reparations”, footnote 1, above. See also “Decision on the Application of the Office of Public Counsel for Victims for an extension of the time limit set by the Order of 13 July 2017”, footnote 2, above.

¹⁸ “*Demande de prorogation du délai aux fins de dépôt des observations sur les éléments admis dans la présente procédure en vue de fixer le montant des réparations auxquelles est tenu M. Thomas Lubanga Dyilo*”, footnote 2, above.

A. Estimated monetary value of the harm caused to the potentially eligible victims

13. First and foremost, the Legal Representative recalls that the potential beneficiaries will not be offered any sum of money as a form of an individual response to the suffering and/or harm that the victims have endured in connection with the crimes of which Mr Lubanga was convicted.

14. The Legal Representative also stresses that there will inevitably be discrepancies between, on the one hand, the costs of public and regular services for access to education and care for an ordinary citizen living in Ituri, and, on the other hand, the budgets for reparations programmes to be implemented by the Trust Fund for ad hoc and specific services whose *modus operandi* and content will be designed for certain beneficiaries in highly specific situations. As an example, the Legal Representative has observed that school fees paid by a family for a 10-year-old child enrolled in primary school would not correspond to the underlying costs for the implementation of remedial education programmes for adults by local organizations specifically mandated to receive a limited number of beneficiaries for a given geographical area.

15. In any event, and in accordance with the Chamber's Order, the Legal Representative has established a per capita estimate of the monetary value of each of the types of harm identified (initial assessment method considered by the Chamber) and an aggregate estimate of the monetary value of the harm caused to all the potentially eligible victims (third assessment method considered by the Chamber).¹⁹ The Legal Representative notes that the second assessment method proposed by the Chamber, whereby a per capita estimate is made of the monetary value of the harm caused to a victim (all types of harm combined), is in fact reflected in the calculation proposed in Annex 1 to these submissions and will therefore not be detailed below.

¹⁹ "Order Instructing the Parties to File Submissions on the Evidence Admitted for the Determination of Thomas Lubanga Dyilo's Liability for Reparations", footnote 1, above, para. 10.

16. Using the definition given by the Appeals Chamber of harm caused to direct and indirect victims in the instant case,²⁰ the Legal Representative has established the requested estimate for each category of harm being considered (identified during victim interviews)²¹ and resulting from the crimes of which Mr Lubanga was convicted.

a) Principles established by the Appeals Chamber

17. The Legal Representative firstly recalls the principles to be applied to reparations set forth by the Appeals Chamber, in particular with regard to direct victims: (1) the harm must be assessed in the light of the victims' ages, and due consideration given to the differential impact that these crimes may have on boys and girls;²² (2) measures taken by the Court must take place in an environment which fosters the health, self-respect and dignity of the victims;²³ (3) reparations programmes should guarantee the development of the victims' personalities, talents and abilities;²⁴ (4) the victims should be helped to live responsibly in a free society, recognizing the need for a spirit of understanding, peace and tolerance, showing respect for equality between the sexes;²⁵ and (5) access to reparations programmes that might be implemented must take account of each victim's individual circumstances, age and level of maturity.²⁶ Essentially, in the case at bar, implementation of the collective reparations must guarantee an individual, positive and sustainable impact that is appropriate to each of the victim-beneficiaries, especially with regard to their age, sex, situation and needs, as well as their own wishes, talents and abilities.

²⁰ Order, footnote 5, above, para. 58.

²¹ "Information regarding the Issues as well as the Concerns and Wishes of the Potentially Eligible Victims in the Reparations Proceedings", footnote 14, above.

²² Order, footnote 5, above, para. 23.

²³ *Ibid.*, para. 25.

²⁴ *Ibid.*, para. 26.

²⁵ *Idem.*

²⁶ *Ibid.*, para. 28.

18. In addition, the Appeals Chamber recognized for all the victims that moral damage could cause physical, mental and emotional suffering.²⁷ It is also worth noting that the Appeals Chamber has indicated that the priorities expressed by the victims during preliminary consultations must be taken into account to ensure that reparations have real significance.²⁸

19. With respect to the harm suffered by direct victims, the Appeals Chamber has distinguished the following categories:²⁹ (1) physical injury and trauma; (2) psychological trauma and disorders; (3) interruption and loss of schooling; (4) separation from families; (5) exposure to an environment of violence and fear; (6) difficulties socializing within their families and communities; (7) difficulties in controlling aggressive impulses; and (8) non-development of civilian life skills, therefore placing the victim at a disadvantage, in particular as regards employment. The Legal Representative recalls that the children of former child soldiers also suffer repercussions from the ordeals endured by their parents in connection with the crimes of which Mr Lubanga was convicted; this is a result not only of the recognized transgenerational nature of the harm in question in the instant case,³⁰ but also of the precarious situation in which the former child soldiers find themselves, in addition to the associated hurdles they must overcome as parents who, more than anything else, wish for their children the possibilities and opportunities they themselves were denied. It is therefore vital that this factor be taken into consideration in the proposed reparations programmes in order to break the cycle of ramifications stemming from the crimes of which Mr Lubanga was convicted.

²⁷ Order, footnote 5, above, para. 40.

²⁸ *Ibid.*, paras. 31-32.

²⁹ Judgment, footnote 5, above, paras. 189-191. See also Order, footnote 5 above, paras. 40 and 58.

³⁰ See Martz, E. (ed.), *Trauma Rehabilitation After War and Conflict*, Springer, 2010, Chapter 14: *The Psychological Impact of Child Soldiering*, Schauer, Elisabeth and Elbert, Thomas, pp. 338-340. See also Elisabeth Schauer's testimony at the hearing of 7 April 2009, ICC-01/04-01/06-T-166-ENG CT WT, pp. 30 *et seq.*

20. As for indirect victims, it is clear that the nature of the harm to be considered is different, since they were not enlisted and did not serve in the ranks of the UPC/FPLC.³¹ The Legal Representative echoes the Appeals Chamber³² in submitting that the types of harm identified – and which could reasonably be presumed to be a consequence of the crimes of which Mr Lubanga was convicted – are as follows: (1) psychological suffering and trauma; (2) physical harm; and (3) material damage and deprivation. The Legal Representative also reiterates the concerns of some families about the lack of information on their children who were forcibly conscripted and never returned, and again submits that, in the proposed programmes, the Trust Fund should try to address their suffering caused by this absence of information.

21. It is the Legal Representative's view that access to reparations programmes implemented by the Trust Fund should enable victim-beneficiaries to restore their human and civil dignity (as full members of their families and their communities), through physical and psychological rehabilitation, but also through the enhancement of their status and role in their communities.

22. The funds secured for the implementation of each of the programmes will be decisive in the quality of the services proposed and their accessibility (necessary geographical distribution of all the services in the many scattered areas),³³ as well as their sustainability. Because the specific type of services sought in the reparations programmes in the instant case either is available, but limited, or otherwise simply inexistent, it would appear critical that these programmes be adequately funded. In that respect, the Legal Representative recalls the Chamber's instruction that

³¹ Order, footnote 5, above, para. 6, in which the Appeals Chamber defines what is covered by the term "indirect victims". Given the different categories of persons concerned, ranging from family members to other people who have suffered personal harm as a result of these crimes, it is indisputable that the nature of the harm considered varies greatly depending on the person.

³² Judgment, footnote 5, above, paras. 189-191. See also Order, footnote 5, above, paras. 40 and 58.

³³ Order, footnote 5, above, para. 31, in which the Appeals Chamber stresses that reparations must have "broad and real significance".

reparations programmes must be designed in such a way that they are available to the greatest number of victims.³⁴

23. Generally, the programmes must factor in the complexity of the “healing” process, understood in the broadest sense, as an underlying issue so that the victims can obtain a suitable response to their suffering after they have made use of the relevant services. Likewise, it is worth recalling that the victims have been suffering for the past 15 years and their rehabilitation will naturally require time. The Legal Representative therefore lays emphasis on the need to put in place programmes that address this aspect, rather than merely offering victims a temporary – and thus, inadequate – response. Reparations programmes must offer a suitable and appropriate response to the harm suffered in order for their benefits to produce long-lasting and constructive effects.³⁵

b) Factors considered for the monetary assessment of harm

24. The Legal Representative has consulted related national and international case law (and the fixed per capita scales for crimes of an equivalent nature) and also collected information in the field regarding current economic conditions in Ituri.

(i) Related case law

25. The Legal Representative first examined the submissions filed by the common legal representative for victims in *Katanga*,³⁶ as some of the harm suffered by the victims in the instant case was similar to the harm in that case. Those submissions are

³⁴ “Order instructing the Trust Fund for Victims to supplement the draft implementation plan”, footnote 7, above, para. 21.

³⁵ See the reparations principles set out by the Appeals Chamber and referred to by the Trust Fund in its submissions regarding reparations.

³⁶ “*Observations des victimes sur la valeur monétaire des préjudices allégués (Ordonnances ICC-01/04-01/07-3702 et ICC-01/04-01/07-3705)*”, ICC-01/04-01/07-3713 and seven Annexes (in particular, Annex 1), 30 September 2016; “*Propositions des victimes sur des modalités de réparation dans la présente affaire (Article 75 du Statut et norme 38-1-f du Règlement de la Cour)*”, ICC-01/04-01/07-3720 and Annex, 8 December 2016.

relevant because a task similar to the one in the instant case was undertaken, giving rise to case law concerning reparations before the Court, and what is more, in the context of the Congo, and specifically Ituri. Therefore, after considering the estimates given for *Katanga* and the underlying case law (Belgian and French, in particular), the Legal Representative is of the opinion that the following elements are notably important for this case as well: physical injury (USD 300); psychological trauma and disorders (USD 25,000); interruption and loss of schooling (USD 300); loss of family member(s), depending on the nature of the relationship and the degree of proximity (USD 6,000 to USD 50,000); loss of social status (USD 200); forced exile (USD 2,000); loss of standard of living (USD 500); and increase in number of dependent(s) (USD 200).

26. Admittedly, the context in *Katanga* differs from that of the instant case; yet, the crimes concerned are also seen as being among the most serious, and were likewise committed in the context of armed conflict in Ituri, contemporaneous with the events in the case at bar, and for which harm was assessed for the first time before the Court.

27. The Legal Representative also relied on existing case law derived from Congolese military tribunals,³⁷ which have also had to rule on reparations amounts to be awarded to victims of international crimes committed in the Congolese context. She has consulted the available case law starting from the very first cases (2006) to the most recent decisions (2014), as accessible at 8 September 2017. The cases

³⁷ The Legal Representative refers mainly to reports of the following organizations: ASF, *“La réparation des crimes internationaux en droit congolais. Analyse des pratiques indemnitaires des juridictions militaires au regard du Statut de Rome de la Cour pénale internationale”*, Brussels, December 2014: http://www.asf.be/wp-content/uploads/2015/09/ASF_RDC_R--parationCrimesInternat_201509.pdf; FIDH, *“RDC : Les victimes de crimes sexuels obtiennent rarement justice et jamais réparation. Changer la donne pour combattre l’impunité”*, October 2013: https://www.fidh.org/IMG/pdf/rapport_rdc.pdf; ICTJ, Briefing, Judgment Denied, The Failure to Fulfill Court-Ordered Reparations for Victims of Serious Crimes in the Democratic Republic of the Congo, February 2013: <https://www.ictj.org/sites/default/files/ICTJ-Briefing-DRC-Reparations-2012-ENG.pdf>; ASF, *“Recueil de jurisprudence congolaise en matière de crimes internationaux”*, Édition critique, Brussels, December 2013, pp. 100-125: http://www.asf.be/wp-content/uploads/2013/12/ASF_RDC_JurisprudenceCrimesInternat_201312.pdf.

considered brought to the fore the following information: assessment of harm in connection with inhumane treatment and outrages upon human dignity (USD 2,000³⁸ – USD 5,000³⁹); deprivation of physical liberty (USD 3,000);⁴⁰ and murder (USD 10,000⁴¹ – USD 100,000⁴²). The Legal Representative also notes that the case law of Congolese military tribunals had a bearing in *Katanga*.

28. The Legal Representative identified other examples of compensation offered to victims of crimes considered particularly serious, in national or international forums, and used information from those proceedings as a basis, including: the scales developed before the Victims of Crime Assistance Tribunal⁴³ in Victoria, Australia (USD 500 – USD 1,300 for serious injuries; USD 100 – USD 650 for harm resulting from the deprivation of liberty; USD 500 – USD 1,300 for harm resulting from death threats or life-endangering behaviour); and those developed by the European Court of Human Rights (“ECtHR”) or the Human Rights Commission of Uganda⁴⁴

³⁸ Military Court of South Kivu, *Affaire Kabala*, 20 May 2013. The crimes considered were war crimes of pillaging (105 people) and outrages upon human dignity and rape (9 people). For the purposes of the instant case, the Legal Representative considered only the assessments proposed concerning outrages upon human dignity.

³⁹ Military Court of South Kivu, *Affaire Kibibi*, 21 February 2011. The crimes considered were crimes against humanity of rape (55 people) and crimes against humanity of other inhumane acts (16 people). For the purposes of the instant case, the Legal Representative considered only the assessments proposed concerning acts of inhumane and degrading treatment.

⁴⁰ Military Garrison Tribunal of Bukavu, *Affaire Kizima*, 29 December 2014. The crimes considered were crimes against humanity of rape and murder (74 people). For the purposes of the instant case, the Legal Representative considered only the assessments proposed concerning acts of inhumane and degrading treatment.

⁴¹ High Military Court, *Affaire Kakwavu*, 7 November 2014. The crimes considered were war crimes of rape (two people) and murder (9 people). For the purposes of the instant case, the Legal Representative considered only the assessments proposed concerning murder.

⁴² Military Operational Court of North Kivu, *Affaire Minova*, 5 May 2014. The crimes considered were war crimes of rape (two people), murder (one person) and pillaging (three people). For the purposes of the instant case, the Legal Representative considered only the assessments proposed concerning murder.

⁴³ See Victims of Crime Assistance Tribunal, established by the Victims of Crime Assistance Act 1996, Victoria, Australia: <https://www.vocat.vic.gov.au/how-apply/who-can-apply>. See the scales set by this Tribunal: <https://www.vocat.vic.gov.au/sites/default/files/publication/2016-09/SFA%20Table%20-%20%20%28final%29.pdf> and the corresponding case law:

<https://www.vocat.vic.gov.au/resources/relevant-review-cases#anchor6>.

⁴⁴ *The Uganda Human Rights Commission at Jinja*, Judgment (Decision) in *Irene Nakimera v. AG*, No. JJA 66 of 2006, 22 August 2012, available at: <http://uhrc.ug/tribunal-decisions>.

(25,000 Ugandan Shillings, equivalent to USD 12,500⁴⁵ for the loss of murdered family members).

29. The Legal Representative calls particular attention to ECtHR case law concerning harm in connection with the interruption of schooling and with the associated lost opportunities.⁴⁶ The ECtHR has recalled that

the applicant must be regarded as having suffered some non-pecuniary loss. In addition to his mental anxiety, he must have felt himself to be at a disadvantage as compared with others in his age-group. Furthermore, his failure to complete his schooling perforce deprived him of some opportunity to develop his intellectual potential. The extent to which [...] suffered material damage is even more problematical. It is true that, in the normal course of events, an individual who has not had the full benefit of educational opportunities will be likely to encounter greater difficulties in his future career than one who has.⁴⁷

It should be noted that in its determination of the amount of satisfaction afforded to the applicant in that judgment (GBP 3,000, equivalent to USD 4,408.50),⁴⁸ the ECtHR also took into account the fact that the harm suffered in connection with the interruption of education did not have one single cause. It also considered the economic situation at that time of those who had finished their studies and training and who nevertheless experienced difficulties in finding employment.⁴⁹ In that regard, it is plain to see that the difficulties encountered by former child soldiers today in terms of employment and the development of their abilities are not solely attributable to the interruption of their schooling as a result of having been forcibly enlisted into the UPC/FPLC and the associated loss of opportunities. This event has nonetheless had an impact that is ongoing and direct – even principal, for some – on their current situations. In this respect, the ECtHR has stated that the making of

⁴⁵ Rate applied for August 2012, 1 Uganda shilling = USD 0.5000. See: <https://www.poundsterlinglive.com/best-exchange-rates/us-dollar-to-ugandan-shilling-exchange-rate-on-2012-08-07>.

⁴⁶ Order, footnote 5, above, para. 40.

⁴⁷ ECtHR, Judgment, *Campbell and Cosans v. The United Kingdom* (Article 50), 22 March 1983, para. 26, p. 9, available at: <http://hudoc.echr.coe.int/eng?i=001-57454>.

⁴⁸ Rate applied on 22 March 1983 by the Bank of England: GBP 1 = USD 1.4695. See: <https://www.poundsterlinglive.com/bank-of-england-spot/historical-spot-exchange-rates/gbp/GBP-to-USD-1983>.

⁴⁹ ECtHR, *Campbell and Cosans v. The United Kingdom*, footnote 47, above.

decisions concerning access to a profession is a central element in shaping one's life plans.⁵⁰

30. Lastly, the ECtHR also made a monetary assessment for a year of separation between a mother and her daughter caused by circumstances beyond their control (GBP 10,000, equivalent to USD 14,226),⁵¹ which it analysed as a loss of opportunity, as well as non-pecuniary damage due to distress, anxiety and feelings of frustration and injustice which they certainly suffered.⁵²

31. On the basis of the case law cited above, the Legal Representative has established lump-sum amounts for each type of harm recognized by the Appeals Chamber, having given due consideration to the specific context of the case, the nature of the crimes of which Mr Lubanga was convicted and the consequences of these crimes, as identified in potential beneficiaries of the reparations programmes. For the purposes of this assessment, the Legal Representative has made a distinction between the harm caused to direct victims and that caused to indirect victims. In so doing, the Legal Representative was able to establish an amount per capita and per type of harm, an aggregate per capita amount per victim (direct and indirect), and lastly, an aggregate amount for all the potential beneficiaries she represents, i.e. **392 people**.⁵³ The total amount ranges from **USD 16,556,000 to USD 21,706,000**, depending on whether the victims have or have not lost a family member (loss resulting from the crimes of which Mr Lubanga was convicted).

32. The Legal Representative points out, nevertheless, that it would not seem unreasonable to propose to the Chamber that it consider only this amount in the

⁵⁰ ECtHR, Judgment, *Thlimmenos v. Greece*, 6 April 2000, para. 70, available at: <http://hudoc.echr.coe.int/eng?i=001-58561>.

⁵¹ See the rate applied for 10 May 2001 by the Bank of England: 1 GBP = USD 1.4226. See: <https://www.poundsterlinglive.com/bank-of-england-spot/historical-spot-exchange-rates/gbp/GBP-to-USD-2001>.

⁵² ECtHR, Judgment, *T.P. and K.M. v. The United Kingdom*, 10 May 2001, paras. 112-117, available at: <http://hudoc.echr.coe.int/eng?i=001-59456>.

⁵³ See Annex 1 to the present submissions.

context of the instant case given that the reparations are collective and will be implemented through educational, occupational and medical services made available to the eligible victims. The given amounts are therefore proposed as reference amounts in order to set the final amount of reparations.

(ii) Field information concerning the economic context in Ituri

33. The Legal Representative has therefore also undertaken consultations in Ituri about the current economic context in the *localités* concerned. To do so, the Legal Representative transmitted a questionnaire⁵⁴ to resource persons – in particular intermediaries, teachers, and chiefs of *localités*, chosen for their field knowledge and their involvement with potential beneficiaries. The Legal Representative focused her research on education (including vocational training) and health, areas in which the reparations programmes will be rolled out, so that it could be used to provide additional reference points in the assessment requested by the Chamber.

34. The information collected concerns annual education fees (primary, secondary and university levels); the costs of associated school supplies; the number of pupils per class at each level considered; the costs of literacy⁵⁵ and language courses; fees associated with vocational training; average costs associated with the exercise of certain occupations; average costs related to housing;⁵⁶ and costs associated with various types of medical consultations and care, as well as those associated with medical treatment and various medical fees (such as the cost of medication). Lastly, the Legal Representative sought to conduct a situational analysis of educational (including vocational training) and health infrastructures currently available in the

⁵⁴ See Annex 2 to the present submissions.

⁵⁵ With regard to the costs of literacy courses, the Legal Representative informs the Chamber that this issue was discussed separately with her resource persons, given that it had not been originally included in the questionnaire in Annex 2.

⁵⁶ The Legal Representative is not reporting on the data collected on this matter in the present submissions, as she was unable to use them in her assessment. These data are nevertheless available should the Chamber or the Trust Fund wish to consult them.

localités concerned by the instant case, to complement the investigations presented by the Trust Fund in its previous submissions.⁵⁷

35. Upon compiling the information obtained, the Legal Representative notes – for informational purposes only – the following costs: average annual school fees at the primary level (including the snack for the teachers, school entrance fees, snack for the pupil and school supplies – bearing in mind that the fees vary depending on the *localité* and on the school's management method, i.e. private or public): USD 150; average annual school fees at the secondary level (using the same parameters): USD 260; moreover, there are additional fees for end-of-cycle final exams, without which diplomas cannot be obtained; annual university tuition (again, with variations depending on the area of studies): on average between USD 350 and USD 580, in addition to fees for university supplies, of an average amount of USD 400, totalling between USD 750 and USD 980, depending on the area of studies considered annually; literacy courses: between USD 100 and USD 200, depending on the *localité*; language training: between USD 10 and USD 50 per month, depending on the *localité* and the facilities available.

36. The Legal Representative is of the view that all of her clients who are direct victims have suffered harm in connection with the interruption of their education; the consequences of such harm vary from person to person, depending on the victim's age at the time of recruitment, the time spent in the militia, physical and psychological repercussions of the time spent in the militia and the family circumstances that may or may not have enabled the victims to continue their education upon their return, either partially or fully.

37. As for the education of former child soldiers (direct victims), the reparations programmes are designed to enable them to have access, depending on their personal situation, to literacy and mathematics courses, remedial courses or training

⁵⁷ "Information regarding Collective Reparations", footnote 10, above.

modules to allow them to continue their schooling/studies whereby they can subsequently be trained in a trade corresponding to their desires and abilities. In that sense, the Legal Representative submits that it would be neither realistic nor appropriate to add up all these identified costs since the potential beneficiaries would not be returning to the school classroom, in the traditional sense, year after year. Therefore, on the basis of the given amounts, the Legal Representative has established an average sum per potential beneficiary, for two years (part time, to allow them to continue exercising an income-generating activity elsewhere), which would enable them to catch up sufficiently so as to be better equipped to reintegrate into their communities, and also to be able to be trained in a trade thereafter. The lump sum thus calculated amounts to USD 800, i.e. USD 1,600 for two years, per capita.

38. With regard to vocational training, the Legal Representative submits – for informational purposes only – the following costs: from USD 40 to USD 120, depending on the vocational training and the facilities offering it, with costs ranging from USD 10 to USD 400 for the supplies needed for the given professional activity. The Legal Representative has also determined a lump sum of USD 220 per capita in the light of the context of this case and the nature of the reparations programmes under consideration. Again, the Legal Representative submits that all of her clients who are direct victims are potential beneficiaries of the proposed programmes.

39. In addition, on the basis of the presumption of psychological harm admitted in the instant case and on the victims' identified needs, the Legal Representative has also asked her resource persons for information on the costs of access to psychological care, where available. Such costs seem to range between USD 30 and USD 50 per month. For a hypothetical one-year minimum, the lump sum established for the purposes of the assessment could amount to USD 1,200 per capita. This amount would also be valid for all her clients (direct and indirect victims).

40. Lastly, the Legal Representative has established a lump sum corresponding to fees for medical care required for almost all her clients (direct and indirect victims). This amount is, as a starting point, USD 300 per capita, including both the normal costs of a medical consultation (from USD 3 to USD 10, depending on the *localité* and the host facility), the care administered (from USD 10 to USD 250, depending on the infrastructure available, the *localité* and the nature of the care), hospitalization days, where necessary (USD 6 to USD 11 per day, depending on the host facility and the *localité*), and the costs of the necessary medication, where applicable (whose unit prices may vary from USD 1 to USD 100, depending on the medication and the medical condition).

41. The Legal Representative also notes that some additional fees would apply for victims who require help with detoxification (related to cannabis or alcohol addiction). According to the information obtained from her resource persons, the costs amount to USD 150 per month for programmes generally lasting at least four months, i.e. a lump sum of USD 600 per capita as the starting point for the people concerned.

42. Thus, on the basis of the current costs mentioned above and after adding said costs and multiplying them by the number of potential beneficiaries – estimated at approximate 1,500⁵⁸ (this figured may be revised during the implementation), the Legal Representative notes that the aggregate amount of the lump sums is approximately USD 3,000.000. Taking into account the figure of 3,000 potential beneficiaries estimated by the Trust Fund, the said amount would rise to USD 6,000,000. The Legal Representative nevertheless notes that these estimates do not seem to correspond to the actual costs of implementing the projects in facilities

⁵⁸ This figure, lower than the 3,000 proposed by the Trust Fund, includes the direct and indirect victims who are potential beneficiaries represented by the OPCV, estimated potential beneficiaries not yet interviewed and victims represented by other LRV teams. It is the Legal Representative's opinion that direct victims account for at least 75 per cent of the total number of potential beneficiaries.

that sometimes already exist or may need to be created depending on a given *localité*, so as to enable real access to the reparations programmes. On the basis of the information available on the already existing programmes implemented by the Trust Fund in the DRC⁵⁹ and by other organizations, these amounts seem to be well below the actual costs which will need to be incurred. Thus, the amount of USD 6,000,000 seems to correspond to the minimum sum for reparations in the instant case.

43. On that matter, the Legal Representative notes the examples of programme funding recently identified and similar to those concerned in the instant case. As an example, for information only, the Congolese Government donated USD 10,000 to a local NGO based in Ituri at the time of the inauguration of its new hospital offering holistic care for victims of sexual violence, to enable them to obtain essential medication (only).⁶⁰ In 2013, the United Nations Development Programme supported the creation of five vocational training centres throughout the district of Ituri (Mongbwalu, Komanda, Bunia, Fataki and Mahagi). The Legal Representative notes that the centre in Mongbwalu, for example, has 350 students in training in all specializations (tailoring/sewing, IT, baking, literacy and languages) and that it cost approximately USD 218,200 to set up the centre as part of the joint Community Empowerment and Peacebuilding project (ACCPI), which received USD 4,998,897 in funding. According to the information available, these centres are currently operational for the long term to train young people in their respective communities.⁶¹

⁵⁹ See, *inter alia*, the Trust Fund for Victims 2016 Annual Report, available at: https://trustfundforvictims.org/sites/default/files/reports/summary_EN_ONLINE.pdf.

⁶⁰ See the article discussing this partnership on website of the Office of the Personal Representative of the Head of State tasked with combating sexual violence and the recruitment of child soldiers in the DRC at: http://stopdrcsexualviolence.com/wp-content/uploads/2017/04/Bulletin-trimestriel-janv_fevr_mars-2017.pdf.

⁶¹ See the article describing this project and on the implementation of the Mongbwalu centre, available on the United Nations Development Programme website: <http://www.cd.undp.org/content/rdc/fr/home/ourwork/povertyreduction/successstories/ituri-cap-mongbwalu.html>. The Legal Representative recalls the budgetary information submitted by COOPI, in particular in its table submitted in Annex 1 (confidential). See “Order issued pursuant to Rule 103 of the Rules of Procedure and Evidence”, ICC-01/04-01/06-3234-tENG, Annex 1,

44. Lastly, the Legal Representative has taken note of the Trust Fund's submissions on the existing infrastructure in Ituri and the various costs which apply depending on whether or not such infrastructure can be used to implement the reparations projects.⁶² In that respect, she submits the information received on the infrastructures which currently exist in the areas considered (education, vocational training, medical care) in the relevant *localités* of the instant case, and which were identified from the consultations conducted the previous month with her resource persons. In Bunia, the following were identified: 10 university institutions, 5 primary and secondary schools, 6 vocational training centres, 1 general hospital, 5 private polyclinics, 14 hospitals, 51 clinics and 17 health centres; in Centrale Solenyama and surroundings: 5 primary schools, 2 secondary schools, 1 vocational training centre, 1 health centre; in Rwampara and surroundings: 6 primary schools, 1 secondary school, 2 universities, 1 tailoring/sewing training centre, 1 hairdressing training centre and 1 referral hospital; in Shari and surroundings: 4 primary schools, 2 secondary schools, 3 tailoring/sewing training centres, 3 hairdressing training centres, 1 health centre and 2 clinics; in Kunda and surroundings: 2 primary schools, 1 secondary school and 1 health centre; in Mandro and surroundings: 2 primary schools, 1 secondary school, 1 clinic and 1 health centre; in Kasenyi and surroundings: 2 secondary schools and 3 health posts; in Marabo and surroundings: 2 secondary institutes and 2 clinics (and 1 hospital in Nyakunde); in Tchomia and surroundings: 1 hospital; in Kilo and surroundings: 7 primary schools, 3 secondary schools, 5 vocational training centres, 1 general hospital, 1 hospital centre and 4 health centres; in Mongbwalu and surroundings: 13 primary schools, 10 secondary schools, 20 vocational training centres, 1 hospital centre and 15 health centres; in Mahagi and surroundings: 32 primary schools, 22 secondary schools, 1 higher institute for social development (ISTAS), 1 higher institute of teacher training,

30 September 2016. See also "Joint Submission by the United Nations containing observations on collective projects for former child soldiers in the East of the Democratic Republic of the Congo pursuant to Rule 103 of the Rules of Procedure and Evidence", ICC-01/04-01/06-3240-Anx15, 5 October 2016.

⁶² "Information regarding Collective Reparations", footnote 10, above, paras. 51 to 57.

5 universities, 3 vocational training centres (but only one in Mahagi for tailoring/sewing and automobile mechanics), 7 clinics/health centres and 3 hospitals; in Ngote and surroundings: 66 educational structures, 18 clinics and 2 hospitals.

c) Monetary estimate of the harm to direct and indirect victims for the purposes of collective service-based reparations

45. It is difficult to provide a precise assessment of the amounts needed to repair the harm suffered, owing to a great many imponderables. The greater the number of years elapsed between the victimization and the assessment thereof, the harder it becomes to establish a definite link between them. It will thus be up to the Chamber to determine, at its discretion, the assessment it considers most equitable.⁶³

46. To engage in the exercise requested by the Chamber, the Legal Representative compared the aggregate amount of the proposed lump sums per type of harm and per capita for the number of potential beneficiaries she represents (up to USD 21,706,000 for 392 victims) with the aggregate amount that would seem to result from calculations based on information from the field, reflecting the current situation in Ituri (USD 3,000,000 for 1,500 potential beneficiaries, i.e. USD 6,000,000 for the 3,000 potential beneficiaries envisaged by the Trust Fund).

47. The Legal Representative would also like to recall that the Chamber has reserved the right to order changes to the reparations programmes proposed by the Trust Fund so as to ensure that they best address the needs expressed by the victims in relation to the harm suffered and in accordance with the requirements set out in the Judgment and in the Appeals Chamber's amended Order for Reparations.⁶⁴ Accordingly, the Legal Representative submits that the amount proposed by the

⁶³ See, *inter alia*, ECtHR, Judgment, Grand Chamber, *Kurić and others v. Slovenia*, 12 March 2014, para. 82.

⁶⁴ In this connection, the Legal Representative would like to draw the Chamber's attention, again, to the specific needs of indirect victims and to the need for the proposed reparations programmes to take them properly into account. See "Information regarding the Issues as well as the Concerns and Wishes of the Potentially Eligible Victims in the Reparations Proceedings", footnote 14, above.

Trust Fund⁶⁵ is grossly insufficient (EUR 1 million, with only EUR 730,000 now left over for implementation) and does not measure up to the needs and realities observed among the victims. Also, the Trust Fund's currently available resources are irrelevant to determining Mr Lubanga's personal liability.⁶⁶ The Trust Fund's Board of Directors has an obligation to manage its resources so that it is in a position to adequately complement any order for reparations, with collective reparation awards taking priority.⁶⁷

48. To assist the Chamber with its estimate, the Legal Representative recalls that, in addition to the 392 potential beneficiaries who were able to complete an application transmitted to the Chamber, she estimates – as previously noted – that her teams were unable to meet at least an equivalent number of potential beneficiaries residing in areas to which they did not have time to travel.⁶⁸ As the Chamber has suggested, those victims could be put in touch with the Trust Fund, which could check their eligibility and potentially admit them into the reparations programmes.⁶⁹

49. Lastly, the Legal Representative would like to underscore the particular circumstances of the instant case, i.e. the harm arising from the crimes of which Mr Lubanga stands convicted and which both the Court and the international community view as extremely serious, namely the enlistment, conscription and

⁶⁵ "Information regarding Collective Reparations", footnote 10, paras. 69 *et seq.*

⁶⁶ "Reparations Order" (Trial Chamber VIII), ICC-01/12-01/15-236, 17 August 2017, para. 112.

⁶⁷ "Notification pursuant to regulation 56 of the TFV Regulations regarding the Trust Fund Board of Director's decision relevant to complementing the payment of the individual and collective reparations awards as requested by Trial Chamber II in its 24 March 2017 order for reparations", ICC-01/04-01/07-3740, 17 May 2017, paras. 26 and 43.

⁶⁸ "Demande de réexamen de la 'Décision portant sur les demandes de prorogation de délai présentées par le Bureau du conseil public pour les victimes, le Greffe et les Représentants légaux du groupe de victimes V02' (ICC-01/04-01/06-3290)", ICC-01/04-01/06-3292, 12 April 2017, para. 17; "Second Request for an Extension of the Time Limit for Filing Additional Applications for Reparations of Potential Beneficiaries", ICC-01/04-01/06-3279-Conf-tENG, 20 March 2017, para. 16.

⁶⁹ "Décision relative à la demande de réexamen du Bureau du conseil public pour les victimes de la Décision du 6 avril 2017", footnote 16, above, paras. 11-13.

forced recruitment of children under the age of 15 into an armed group.⁷⁰ Such crimes have a profound impact on the lives of the children affected, on the lives of their loved ones, and on the communities from which they were originally taken and which they have subsequently attempted to rejoin. The enlistment of these children, who were under the age of 15 at the time, into the UPC/FPLC militia under Mr Lubanga had a massive impact on them and on their communities and families, both at the time of enlistment and in ways that have continued over the years since, resulting in the transgenerational and communal nature of the harm observed, with particularly extensive ramifications (see the “multifaceted nature of harms”⁷¹).⁷²

50. In conclusion, the Legal Representative submits that neither of the proposed methods of assessment appears truly apt to the current purpose of determining a realistic amount for the award of reparations in the instant case. Nevertheless, having consulted with the other LRV teams, who propose their own methods of calculation, and in the interest of demonstrating the requisite intellectual honesty before the Chamber, the Legal Representative submits that the overall amount of at least USD 6,000,000 to implement the collective reparations programmes for the potential beneficiaries seems reasonable. This figure is based on the needs observed in connection with the harm made out in the present case; a survey of domestic and international case law; the actual expenses and costs of the initiatives under consideration in Ituri; and the Court’s recent rulings in other cases that have reached the reparations stage.

B. Assessment of the evidence admitted in these proceedings for the determination of Mr Lubanga’s liability for reparations

⁷⁰ Judgment, footnote 5, above, paras. 189-190 and 199.

⁷¹ “Information regarding Collective Reparations”, footnote 10, above, para. 82.

⁷² The Legal Representative also notes the Appeals Chamber’s conclusion that “it is appropriate for the draft implementation plan to include a referral process to other competent NGOs in the affected areas that offer services to victims of sexual and gender-based violence.” In accordance with the Appeals Chamber’s conclusions, the assessments offered in these submissions are exclusive, obviously, of the harm resulting from the crimes of sexual violence also suffered by certain potential beneficiaries. See Judgment, footnote 5, above, para. 199.

51. The Appeals Chamber has stated as follows:

Reparations fulfil two main purposes that are enshrined in the Statute: they oblige those responsible for serious crimes to repair the harm they caused to the victims and they enable the Court to ensure that offenders account for their acts.⁷³

In cases where the convicted person is unable to immediately comply with an order for reparations for reasons of indigence, the Trust Fund may advance its “other resources” pursuant to regulation 56 of the Regulations of the Trust Fund, but such intervention does not exonerate the convicted person from liability. The convicted person remains liable and must reimburse the Trust Fund.⁷⁴

52. The Legal Representative submits that Mr Lubanga’s participation in the reparations in the instant case⁷⁵ will be a public and societal acknowledgement of the crimes perpetrated against the victims.⁷⁶ It will also have an undeniable psychological impact on them.⁷⁷ Public acknowledgement of the harm caused to victims, by the person convicted of the crimes at the root of their victimization, is a concept worth stressing. By contributing to reparations, the convicted person acknowledges that the victims’ suffering is real and compelling. This kind of process is central to restoring the victims’ dignity – irrespective of the size of the personal contribution decided – and makes it possible, as underscored by the Appeals Chamber, to go beyond the notion of punitive justice.⁷⁸

53. It should also be noted that, contrary to the apprehensions of the Defence, eligible victims are in no position to enrich themselves at the convicted person’s

⁷³ Order, footnote 5, above, para. 2.

⁷⁴ Judgment, footnote 5, above, para. 5.

⁷⁵ “Order for Reparations pursuant to Article 75 of the Statute” (Trial Chamber II), ICC-01/04-01/07-3728-tENG, 24 March 2017, para. 15.

⁷⁶ See also “*Observations de la Ligue pour la Paix, les Droits de l’Homme et la Justice (LIPADHOJ) présentées conformément à l’ordonnance de la Chambre de céans du 15 juillet 2016 rendue en application de la règle 103 du règlement de procédure et de preuve*”, ICC-01/04-01/06-3232, 29 September 2016, pp. 10 *et seq.*

⁷⁷ Order, footnote 5, above, para. 43: “[T]he conviction and the sentence [including the convicted person’s liability] are likely to have significance for the victims, their families and communities [...]”; see also the observations of *Fédération des Jeunes pour la Paix Mondiale*, ICC-01/04-01/06-3240-Anx1-Red, p. 6.

⁷⁸ Order, footnote 5, above, para. 1.

expense or in excess of the reparations in the matter of his conviction.⁷⁹ Likewise, any infrastructure set up for the implementation of reparations programmes cannot “[TRANSLATION] exceed the scope of Mr Lubanga’s liability”.⁸⁰ Clearly the only point of providing reparations to the victims 15 years after the events – when the impact on their lives has been such that many have disappeared or died, and most have seen their lives take drastically different turns than those of all the other children and families who were not victimized – is to try and repair the irreparable. It is not about rebuilding Ituri’s medical, educational or occupational infrastructure. However, in order to function and to guarantee access for all eligible victims, in view of the types of services planned, the reparations programmes implemented will need the favourable conditions that only appropriate and durable facilities can provide. Moreover, because this process will take place under the Chamber’s supervision, the necessary safeguards for a fair process are in place. That being the case, in other words, “[the] convicted person’s liability [...] [will] be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case”.⁸¹

54. The purpose of reparations in this case is to address the often precarious and difficult situations in which the (direct and indirect) victims now find themselves and which stem directly from the harm suffered as a result of the crimes of which Mr Lubanga stands convicted. That is to say that the reparations should be aimed at alleviating those situations of precariousness and extreme instability and transforming them into situations of proportionate and equitable – albeit modest – security. It is now past time for the potential beneficiaries to cast off their status as victims and at last regain the road to a “normal” life in Ituri.⁸² In other words, and to

⁷⁹ See the transcripts of the hearings held on 11 and 13 October 2016, respectively (Trial Chamber II): ICC-01/04-01/06-T-367-FRA ET WT, p. 78, lines 11-15 and 23-28; ICC-01/04-01/06-T-368-Red-FRA WT, p. 72, line 9 to p. 76, line 5.

⁸⁰ Transcript of the hearing of 13 October 2016, previous footnote, lines 1-8.

⁸¹ Judgment, footnote 5, above, para. 6. See also Order, footnote 5, above, para. 21.

⁸² Order, footnote 5, above, para. 26: “Former child soldiers should be helped to live responsibly in a free society, recognising the need for a spirit of understanding, peace and tolerance, showing respect for equality between the sexes and valuing friendship between all peoples and groups.” See also *ibid.*,

take the Defence's own statement, "[TRANSLATION] now is the time to truly help these young adults rebuild their lives".⁸³

55. The convicted person's participation in funding the reparations programmes also endows them with a social component that is itself an integral part of the necessary reconciliation also sought by the Court in the instant case. As stated by the Appeals Chamber:

Reparations should aim at reconciling the victims with their families and the affected communities. [...]

Reparations can assist in promoting reconciliation between the convicted person, the victims of the crimes and the affected communities. [...]

Reparations should secure, whenever possible, reconciliation between the convicted person, the victims of the crimes and the affected communities.⁸⁴

The Appeals Chamber was referring here not only to symbolic reparations but also to proper collective reparations.

56. At the hearing of 11 October 2016, the Defence said that the convicted person:

[TRANSLATION] would like to make a personal contribution to the reparations phase. [...] Mr Lubanga proposes that there should be a ceremony [...] which is regularly done [...] in Ituri [...] during which the perpetrator sincerely apologizes to the family who suffered from the crimes that took place [...] which seals the reconciliation. [...] It is highly symbolic.⁸⁵

The Defence reiterated at the hearing of 13 October 2016:

[TRANSLATION] We were looking for an effective and expeditious form of symbolic reparation; here it is – the one Mr Thomas Lubanga is proposing. This personal, physical participation in a ceremony of apology, reconciliation, healing. That's what Thomas Lubanga is proposing. So the effective solution – the effective and expeditious form of symbolic reparation, well, you have it here. [...] here it is, a simple, sincere, peaceful, conciliatory meeting between Thomas Lubanga and the people whose childhoods were shattered by the war.⁸⁶

This initiative on Mr Lubanga's part is the only one put forward by the Defence so far. It also falls within the scope of the symbolic reparations ordered in the instant

para. 28: "The Court shall also reflect the importance of rehabilitating former child soldiers and reintegrating them into society in order to end the successive cycles of violence that have formed an important part of past conflicts."

⁸³ Transcript of the hearing of 11 October 2016, footnote 79, above, p. 85, lines 9-11.

⁸⁴ Judgment and Order, footnote 5, above, para. 215 and paras. 46, 71 and 72, respectively.

⁸⁵ Transcript of the hearing of 11 October 2016, footnote 79, above, p. 84, lines 14-28, and p. 85, lines 1-15.

⁸⁶ Transcript of the hearing of 13 October 2016, footnote 79, above, p. 76, lines 14-23.

case and not the scope of the planned collective reparations.⁸⁷ Moreover, this type of initiative seems unresponsive to the victims' wishes and is unrealistic under the current circumstances. Mr Lubanga remains in detention in the DRC, which is, in fact, what the victims want, as they fear that his possible release from prison during the reparations implementation period may make it impossible for them to participate in the programmes offered.

57. Furthermore, since the start of the proceedings, Mr Lubanga has shown no intention of acknowledging the suffering caused to victims. He has also spent the entire reparations process challenging the standing of the potential beneficiaries. In the Legal Representative's view, all of these factors should be taken into account in the determination of the amount of Mr Lubanga's liability. The Legal Representative further notes that the amount determined will send a strong message from the Court about the importance of affirming the gravity of the crimes involved in the instant case.⁸⁸

58. Accordingly, in the light of the specific circumstances of the case – i.e. the nature of the crimes involved as well as Mr Lubanga's confirmed role in their perpetration – and the Court's recent case law regarding reparations⁸⁹ and personal liability,⁹⁰ the Legal Representative submits that Mr Lubanga should be held liable in full for the proposed award of USD 6,000,000. In the Legal Representative's view, the gravity of the crimes committed by the convicted person and his failure to demonstrate any compassion for the victims justify holding him liable for the

⁸⁷ See also "Order for Reparations pursuant to Article 75 of the Statute", footnote 75, above, para. 316.

⁸⁸ See excerpt from Order, footnote 77, above.

⁸⁹ In *The Prosecutor v. Germain Katanga*, Trial Chamber II assessed the extent of the harm suffered at USD 3,752,620. See "Order for Reparations pursuant to Article 75 of the Statute", cited above.

⁹⁰ In *The Prosecutor v. Germain Katanga*, Trial Chamber II set the amount of Mr Katanga's liability for reparations at USD 1,000,000; see above. In *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII set the amount of Mr Al Mahdi's liability for reparations at EUR 2.7 million; see "Reparations Order", footnote 66, above.

full amount. As various Chambers of the Court have noted, the convicted person's current indigence is of no relevance to the determination of his financial liability.⁹¹

59. The Legal Representative informs the Chamber that this proposal has been put to consultation and represents a consensus of the various legal representation teams. The Legal Representative is aware of Mr Lubanga's apparent indigence at this time⁹² and calls for regular monitoring of the situation in accordance with the Court's core instruments⁹³ so that he can potentially assume all or part of his liability and reimburse any amounts at his disposal to the Trust Fund.

IV. CONCLUSION

60. For these reasons, the Legal Representative respectfully requests the Chamber to make an award of collective reparations in the present case amounting to at least USD 6,000,000 and to hold the convicted person liable for the entirety of that award.

[signed]

Paolina Massidda
Principal Counsel

Dated this 8 September 2017
At The Hague, Netherlands

⁹¹ Judgment, footnote 5, above, paras. 102-105. See also "Reparations Order", cited above, paras. 113-115. See also "Order for Reparations pursuant to Article 75 of the Statute", footnote 75, above, paras. 241, 245 and 246.

⁹² The Legal Representative reiterates that the convicted person's current situation cannot be regarded as material to the determination of the size of the reparations award for which he is liable. See "Order for Reparations pursuant to Article 75 of the Statute", footnote 75, above, para. 246.

⁹³ Regulation 117 of the Regulations of the Court. See also "Order for Reparations pursuant to Article 75 of the Statute", cited above, para. 329.