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TRIAL CHAMBER II

Before: Judge Chang-Ho Chung, Presiding Judge
Judge Péter Kovács
Judge María del Socorro Flores Liera

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**With Confidential *Ex Parte* Annexes 1-43 available only to the CLR2
and Confidential Redacted Annexes 1-43**

**Submissions by the Common Legal Representative of the Victims of the Attacks
on the dossiers of the victims included in the Sample**

Source: Office of Public Counsel for Victims (CLR2)

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

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I. INTRODUCTION

1. Pursuant to Trial Chamber II's "Decision on the Registry submission in compliance with the 'Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'", the Common Legal Representative of the Victims of the Attacks (the "Legal Representative") herewith presents his submissions on the dossiers of the victims of the attacks included in the sample ordered by Trial Chamber II (the "Sample")¹ within thirty days from the last transmission of the victims' dossiers to the Defence.² He notes in this regard that although the Registry's last transmission to the Defence of redacted victim dossiers was dated 27 January 2023,³ all the redacted annexes were only made available to the Defence on 31 January 2023,⁴ such that this latter date should be the reference point for counting the thirty days from the last transmission to the Defence, for the purposes of complying with Trial Chamber II's Decision of 25 November 2022.

II. PROCEDURAL BACKGROUND

2. On 8 March 2021, Trial Chamber VI issued the "Reparations Order",⁵ after receiving submissions from the parties and participants, the Trust Fund for Victims

¹ See the "Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order" (Trial Chamber II), [No. ICC-01/04-02/06-2786](#), 25 October 2022 (the "Order of 25 October 2022").

² See the "Decision on the Registry submission in compliance with the 'Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'" (Trial Chamber II), [No. ICC-01/04-02/06-2794](#), 25 November 2022 (the "Decision of 25 November 2022"), p. 23, with public Annex 1, [No. ICC-01/04-02/06-2794-Anx1](#).

³ See the "Third Transmission to the Defence of 92 Redacted Victim Dossiers pursuant to Trial Chamber II's Decision ICC-01/04-02/06-2794", [No. ICC-01/04-02/06-2816](#), 27 January 2023, with confidential *ex parte* Annexes 18 to 97 only available to the Legal Representative and the Defence (the "Third Transmission of Redacted Victim Dossiers").

⁴ See the Email correspondence from the Court Management Section (the "CMS"), dated 27 January 2023 at 16:20 and 31 January 2023 at 15:47.

⁵ See the "Reparations Order" (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021.

(the “TFV”), the Government of the Democratic Republic of the Congo (the “DRC”) and two reports from the independent experts.⁶

3. On 16 March 2021, the Presidency assigned the present case to the newly constituted Trial Chamber II (the “Chamber”).⁷

4. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeals against the Reparations Order (the “*Ntaganda* Appeals Judgment”).⁸ The Appeals Chamber remanded the Reparations Order to the Chamber to the extent that it found that Trial Chamber VI failed to, *inter alia*, “make any appropriate determination in relation to the number of potentially eligible or actual victims of the award and/or to provide a reasoned decision in relation to its conclusion about that number”; “assess and rule upon victims’ applications for reparations”; and “lay out at least the most fundamental parameters of a procedure for the Trust Fund for Victims to carry out the eligibility assessment”⁹ (the “Issues pertaining to the Sample”).

5. On 25 October 2022, the Chamber issued an Order for the implementation of the Appeals Judgment¹⁰ (the “Order of 25 October 2022”), which set in motion processes to address and implement the *Ntaganda* Appeals Judgment. This included a procedure for the constitution of a Sample in addition to instructions for submissions, if any, from the parties and participants to address the Issues pertaining to the Sample.

6. On 8 November 2022, the Registry filed its submissions in compliance with the Order of 25 October 2022.¹¹

⁶ See the redacted version of the “Experts Report on Reparation”, [No. ICC-01/04-02/06-2623-Anx1-Red2](#), 3 November 2020 and the redacted version of the “Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare”, [No. ICC-01/04-02/06-2623-Anx2-Red2](#), 3 November 2020.

⁷ See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

⁸ See the “Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (Appeals Chamber), [No. ICC-01/04-02/06-2782 A4 A5](#), 12 September 2022 (the “*Ntaganda* Appeals Judgment”).

⁹ *Idem*, p. 11.

¹⁰ See the Order of 25 October 2022, *supra* note 1.

¹¹ See the “Registry submission in compliance with the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”

7. On 9 November 2022, the Defence, the Common Legal Representative of the Former Child Soldiers and the Legal Representative filed their respective submissions on the procedure for the constitution of the Sample.¹²

8. On 25 November 2022, the Chamber issued a decision (the “Decision of 25 November 2022”) directing *inter alia* that (i) the legal representatives of victims (the “LRVs”) immediately proceed to contact their clients included in the Sample and to consult with them as to whether they consent to their identities being disclosed to the Defence, and to inform the Victims Participation and Reparations Section (the “VPRS”) and the Defence of the results on a rolling basis and within thirty days from the notification of the present decision; (ii) the VPRS implements redactions to the victims’ dossiers as appropriate and transmits them to the Defence on a rolling basis and within thirty days from the date it receives the information from the LRVs; and (iii) the LRVs provide submissions and complement the victims’ dossiers within thirty days of the last transmission of the victims’ dossiers to the Defence.¹³

9. On 12 December 2022,¹⁴ 21 December 2022¹⁵ and 28 December 2022,¹⁶ the Legal Representative informed the Defence and the Registry that: (i) he had consulted 12, 50 and 10 of his clients respectively; (ii) none of them agreed to have their identities disclosed to the Defence; and (iii) the identities of 10 of the victims included in the Sample is already known to the Defence, as these individuals are either dual status

(ICC-01/04-02/06-2786)”, [No. ICC-01/04-02/06-2788](#), 8 November 2022, with Confidential *ex parte* Annexes 1 and 2.

¹² See the “Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order”, [No. ICC-01/04-02/06-2791](#), 9 November 2022; the “Common Legal Representative of the Former Child Soldiers’ Submissions pursuant to the ‘Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”, [No. ICC-01/04-02/06-2790-Conf](#), 9 November 2022; and the “Submissions of the Common Legal Representative of the Victims of the Attacks pursuant to the ‘Order for the implementation of the Judgement on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled Reparations Order’”, [No. ICC-01/04-02/06-2789](#), 9 November 2022.

¹³ See the Decision of 25 November 2022, *supra* note 2, p. 23.

¹⁴ See the Email correspondence from the Legal Representative dated 12 December 2022 at 13:40.

¹⁵ See the Email correspondence from the Legal Representative dated 21 December 2022 at 08:13.

¹⁶ See the Email correspondence from the Legal Representative dated 28 December 2022 at 10:33.

individuals, victims called to present evidence, or victims called to present views and concerns.¹⁷

10. On 11 January 2023, the Registry transmitted 12 redacted dossiers pertaining to the victims of the attacks to the Defence.¹⁸

11. On 23 January 2023, the Registry transmitted 50 redacted dossiers pertaining to the victims of the attacks to the Defence.¹⁹

12. On 27 January 2023, the Registry transmitted 79 redacted dossiers pertaining to the victims of the attacks to the Defence.²⁰

13. On the same date, the Court Management Section informed the Chamber that the 92 redacted annexes will be fully available the next week.²¹ On 31 January 2023, it informed the Chamber that all the redacted annexes were available.²²

III. CONFIDENTIALITY

14. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, Annexes 1-43 to the present submissions are filed Confidential *Ex Parte* available only to the CLR2 as they contain information that the other parties have no access to, in particular the identifying information of the victims, victims' family members and individuals referred to by the victims as witnesses. Confidential redacted versions of the Annexes are filed simultaneously. A public redacted version of the Annexes will be filed in due course.

¹⁷ See the Email correspondence from the Legal Representative dated 28 December 2022 at 10:33.

¹⁸ See the "First Transmission to the Defence of 28 Redacted Victim Dossiers pursuant to Trial Chamber II Decision ICC-01/04-02/06-2794", [No. ICC-01/04-02/06-2809](#) (11 January 2023), with 12 confidential *ex parte* annexes available to the Legal Representative and the Defence.

¹⁹ See the "Second Transmission to the Defence of 50 Redacted Victim Dossiers pursuant to Trial Chamber II's Decision ICC-01/04-02/06-2794", [No. ICC-01/04-02/06-2814](#), 20 January 2023, with 58 confidential *ex parte* annexes available to the Legal Representative and the Defence.

²⁰ See the Third Transmission of Redacted Victim Dossiers, *supra* note 3.

²¹ See the Email correspondence from the CMS dated 27 January 2023 at 16:20.

²² See the Email correspondence from the CMS dated 31 January 2023 at 15:47.

IV. SUBMISSIONS

15. The Legal Representative herewith provides his submissions on the general outcomes of his activities with respect to the victims of the attacks included in the Sample in order to complement their respective dossiers, and the applicable standard of proof to assess the eligibility of the victims for reparations in light of the unavailable documentary evidence.

1. General considerations

(a) *Eligibility table*

16. In Annex 1 the Legal Representative provides a table containing a detailed analysis of each concerned victim's dossier with available supporting material and/or evidence. In particular, Column 3 of Annex 1 only refers to the crimes for which positive findings were made in the Judgment,²³ including the crime of the destruction of property regarding the houses burnt in the five kilometre radius around Kobu and Sangi, and the crime of persecution regarding harm suffered by victims in the bush/forest surrounding the villages for which positive findings were made in the Judgment.²⁴ Column 4 reflects different types of harm suffered by the victim personally, and Column 5 further reflects the available information on different types of harm suffered by the victim's family members. Column 6 reflects the available material and/or additional evidence in support of the victim's dossier recently collected. Annexes 2-43 contain supplementary information collected from the concerned victims.

²³ See the "Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2359, 8 July 2019](#) (the "Ntaganda Trial Judgment"), paras. 910, 911, 912, 914, 1002, 1008, 1054, 1157 and 1159.

²⁴ See the "Decision on issues raised in the Registry's First Report on Reparations" (Trial Chamber VI), [No. ICC-01/04-02/06-2630](#), 15 December 2020 (the "Decision of 15 December 2020"), paras. 19(e)-(f) and 26.

(b) *Deceased victims*

17. The Legal Representative managed to contact 42 victims out of the 137 victims of the attacks included in the Sample, to determine if the victims are in a position to provide any additional supporting documentation within the meaning of rule 94(1)(g) of the Rules of Procedure and Evidence (the “Rules”), attesting in particular the harm suffered and the causal link between the alleged harm and the crime committed, to the “*extent possible and necessary*”.²⁵ Four victims passed away,²⁶ and no requests for a resumption of action were filed by their family members. The Legal Representative could not inquire with the concerned victims, or their relatives, regarding the availability of additional documentation in support of the respective dossiers.

18. Notwithstanding the above, it is submitted that the fact that four victims included in the Sample are now deceased should not preclude the Chamber from determining the eligibility of the concerned victims’ dossiers. Indeed, according to the Reparations Order, if an eligible victim for reparations dies before receiving them, “*the victim’s descendants or successors shall be equally entitled to them*”.²⁷ This part of the Reparations Order was not overturned by the Appeals Chamber, and is therefore still authoritative regarding the eligibility for reparations of deceased victims’ descendants or successors. In the same vein, the Chamber should also not be precluded from determining the eligibility of certain victims the Legal Representative could not reach at this stage in order to adduce supporting documentation. In both instances, the Chamber will be able to determine the eligibility of the concerned victims in accordance with the “*coherent and credible account*” criteria, which will be addressed below. Further, the purpose of the determination of the Sample is not only to establish the eligibility of the concerned victims, but to also assist the Chamber in establishing an actual number of eligible victims, and to more concretely estimate the further number of currently

²⁵ See the Decision of 25 November 2022, *supra* note 2, p. 23.

²⁶ The concerned victims are: a/00820/13, a/20125/14, a/01250/13 and a/20160/14.

²⁷ See the Reparations Order, *supra* note 5, para. 40.

unknown beneficiaries.²⁸ Accordingly, it is submitted that the Chamber will be assisted on its estimations of beneficiaries through the availability of the dossiers of the victims, as the victims' dossiers are a useful source of relevant information pertaining to the profiles of the victims in general.

2. The availability of supporting documentation

19. The Legal Representative notes that the identities of all the victims of the attacks included in the Sample are established. Their identity cards were attached to their original victim application forms and therefore are already part of the respective dossier of each victim. However, he wishes to inform the Chamber that the victims of the attacks consulted by him — with the exception of two victims²⁹ — were unable to provide any documentary proof in support of the harms they suffered, in light of the individual compelling and legitimate reasons provided. For example, the indirect victims of murder informed the Legal Representative that they were unable to obtain a death certificate of their family members, as such certificates could not be issued during the war.³⁰ In some instances, death certificates could not be issued because the corpses of the murdered family members were never found.³¹ The concerned victim's kinship with the murdered mother or father is evidenced from the identification document attached to the application form where the names of the parents appear.³² Only in two cases, were the victims able to provide the statements of two witnesses confirming the death of the family members.³³

20. Similarly, both the direct and indirect victims of rape or sexual slavery explained that they could not provide any proof of the rape, as for example, the direct

²⁸ See the Decision of 25 November 2022, *supra* note 2, para. 35, which refers to the *Ntaganda* Appeals Judgment, *supra* note 8, para. 346.

²⁹ See a/30397/20 and a/40042/21. These victims were only able to provide two witnesses' statement confirming the death of their family members.

³⁰ See for instance a/00802/13, a/01720/13, a/00910/13, a/00256/13 and a/00096/13, a/40042/21, a/01659/13 and a/00140/13.

³¹ See for instance a/00795/13, a/30278/15, a/30282/15, a/00004/13, a/00795/13, a/30282/15 and a/00090/13.

³² See for instance a/00910/13, a/00907/13, a/20207/14, a/01467/13, a/20027/14, a/30397/20, a/30282/15, a/01530/13, a/01654/13 and a/00053/13.

³³ See a/30397/20 and a/40042/21.

victim did not go to the hospital but was instead treated with traditional medicine. In another example, the available medical documents were destroyed as a result of the CODECO's recent attack on the respective village.³⁴

21. Likewise, the majority of the victims who had their homes destroyed did not have documentation regarding ownership of property, as such documentation was not routinely issued in small villages.³⁵ Moreover, the few victims who did possess documentation regarding ownership of property do not have such documentation in their possession as it was lost during the war or subsequently.³⁶ After the war, no formal recognition of harm suffered by the victims during the war has been processed and acknowledged by local or national authorities. This means that victims who have had their homes destroyed and/or their property pillaged were unable to have such crimes formally recognised.

22. The victims of the attacks who suffered from crimes affecting their entire villages, such as intentionally directing attacks against civilians, persecution, forcible transfer and displacement — through no fault of theirs — are unable to provide any documentation to prove that they left their homes to hide in the bush/forest while living in harsh conditions, as a result of these crimes.

3. The availability of supplementary information

23. The victims who were able to be contacted by the Legal Representative were in a position to provide relevant supplementary information. This information was helpful insofar as it provided clarification on certain points, or supplemented the accounts of the victims contained in their respective dossiers.

24. The Legal Representative wishes to draw the Chamber's attention to a common characteristic in the supplementary accounts provided by the victims: the majority of

³⁴ See a/30286/15.

³⁵ See for instance a/01566/13, a/30003/15, a/01269/13, a/00075/13, a/00795/13, a/00436/13, a/00438/13, a/01678/13, a/01679/13 and a/20194/14.

³⁶ See for instance a/00021/13, a/00891/13, a/00256/13 and a/00096/13.

the inhabitants of each affected village were forced to flee the attacks on their respective villages, and to hide in the nearby bush/forest for safety. They were forced to remain there in difficult conditions, on average, for several weeks to avoid violence, and to leave all their belongings and possessions behind. They were also further persecuted while hiding in the bush/forest. This continuing persecution in the bush/forest did not just affect the victims who originated from the villages under Trial Chamber VI's "*positive findings*" pertaining to certain villages/areas,³⁷ but such persecution also affected victims from villages in which no "*positive findings*" were determined.³⁸ Upon their return, these victims discovered that their houses had been destroyed and/or all their belongings had been pillaged. The victims who did not manage to flee were killed, raped or injured. While there may be some victims who fled their village before the start of the attacks, in accordance with the Decision of 15 December 2020,³⁹ these victims can nevertheless be found eligible for reparations provided that they personally suffered harm as a result of being forced to flee and hide in the bush/forest around the eligible locations under the Chamber's "*positive findings*" at the relevant time.⁴⁰

4. Difficulties in contacting witnesses mentioned by certain victims

25. As part of their supplementary accounts, many victims referred to one or more witnesses who could confirm their harm. For example, some victims mentioned witnesses who could confirm the harm they personally suffered, such as their destroyed or pillaged property,⁴¹ and even the necessity of the victim to flee for safety

³⁷ See the *Ntaganda* Trial Judgment, *supra* note 23, para. 990.

³⁸ See for instance a/01636/13, a/00215/13, a/00199/13, a/00212/13, a/30309/15 and a/30411/15.

³⁹ See the Decision of 15 December 2020, *supra* note 24, para. 19(f) which states "*the Chamber considers it important to clarify that victims alleging to have suffered harm in the forest or bush surrounding locations for which positive findings were included in the Judgment may be eligible for reparations for any of the crimes for which the Chamber entered convictions on the basis of the relevant corresponding conduct having occurred in the forest or bush surrounding those locations*".

⁴⁰ See the *Ntaganda* Trial Judgment, *supra* note 23, paras. 990-1025.

⁴¹ See for instance a/00021/13, a/00802/13, a/00891/13, a/00824/13, a/00910/13, a/00552/13, a/01566/13, a/00256/13, a/30280/15, a/00075/13 and a/00096/13.

and hide in the bush/forest.⁴² One victim provided the written statements of two witnesses confirming her kinship with the murdered family member (*i.e.* the victim's father).⁴³ However, regarding many of these mentioned witnesses, the relevant victims were not able to provide further contact details, or the relevant witness had passed away. For the few witnesses mentioned by the victims with sufficient contact details, the Legal Representative was not in a position to collect these witness statements due to the current and ongoing insecurity in Ituri which has caused significant displacement of the population, being the main reason why the Legal Representative was unable to reach several of his clients in order to seek supplementary documentation or information.

26. The Legal Representative wishes to emphasise that had the victims of the attacks *continued* to reside in their respective villages, this would make it *more* feasible to collect some of the relevant documentation or other evidence in support of the harm suffered by the victims on a community basis. This would have included, for example, statements of other residents and/or the respective chiefs of villages who were witnesses to certain events, and/or knew the victim in question and were aware about harm suffered. However, the ongoing unstable security situation in Ituri and the current significant displacement of the population renders this scenario simply impossible.

5. The eligibility assessment

27. The Legal Representative submits that the abovementioned contextual circumstances should be accounted for in the eligibility assessment of the victims of the attacks. He recalls that the standard of proof applicable at the reparations stage is the

⁴² See for instance a/00021/13, a/00802/13, a/00880/13, a/00891/13, a/00910/13, a/00552/13, a/30107/15, a/01566/13, a/30003/15, a/01269/13, a/30280/15, a/00096/13, a/01095/13, a/01636/13, a/00215/13, a/00199/13 and a/00212/13.

⁴³ See a/40042/21.

balance of probabilities. This standard was consistently applied in other cases before the Court,⁴⁴ and also recently upheld in the present case.⁴⁵

28. In the present case, the TFV has already articulated a methodology to apply the administrative eligibility criteria provided by the Chamber for the victims of the attacks for the purpose of their inclusion into the Initial Draft Implementation Plan (the “IDIP Eligibility Criteria”).⁴⁶ In the IDIP Eligibility Criteria, the TFV provided its applicable guidelines regarding the eligibility of the victims of the attacks in which it indicated that it would follow the same approach as applied in the *Lubanga* case regarding proof of identification, and its approach for addressing the lack of documents in light of the account of facts provided by the victim.⁴⁷ The IDIP Eligibility Criteria were approved by Trial Chamber II,⁴⁸ and they still remain applicable following the *Ntaganda* Appeals Judgment.⁴⁹ While the TFV has not yet articulated administrative eligibility criteria for the purpose of the Draft Implementation Plan (the “DIP”), it is submitted that there is no reason why the IDIP Eligibility Criteria cannot also be applied for the assessment of

⁴⁴ See the “Corrected version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable” (Trial Chamber II), [No. ICC-01/04-01/06-3379-Red-Corr-tENG](#), 21 December 2017, para. 43 (the “*Lubanga* Decision”), which refers to the “Amended Order for Reparations” (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA](#), 3 March 2015, paras. 22 and 65. See also, the “Order for Reparations pursuant to Article 75 of the Statute”, [No. ICC-01/04-01/07-3728-tENG](#), 24 March 2017, paras. 49-51 (the “*Katanga* Reparations Order”); the “Reparations Order”, [No. ICC-01/12-01/15-236](#), 17 August 2017, para. 44 (the “*Al Mahdi* Reparations Order”). See also, the Reparations Order, *supra* note 5, para. 136; and the “Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled ‘Order for Reparations pursuant to Article 75 of the Statute’” (Appeals Chamber), [No. ICC-01/04-01/07-3778-Red](#), 8 March 2018, para. 42 (the “*Katanga* Appeals Chamber Judgment on Reparations”).

⁴⁵ See the Reparations Order, *supra* note 5, para. 136.

⁴⁶ See Annex 1, [No. ICC-01/04-02/06-2751-Conf-Anx1](#), 25 March 2022 (the “IDIP Eligibility Criteria”).

⁴⁷ *Idem*, paras. 7-10.

⁴⁸ See the “Decision on the TFV’s Fourth Update Report on the Implementation of the Initial Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2761](#), 12 May 2022, para. 27.

⁴⁹ The Appeals Chamber did not find an error in the TFV’s IDIP Eligibility Criteria. Rather, it found an “error in the Chamber’s failure to set out the requirement for judicial approval of the TFV’s findings on eligibility”, or in other words, the failure to indicate the “parameters of the future procedure for the eligibility assessment amounts to an error”. According to the Appeals Chamber, Trial Chamber VI should have set a procedure for ineligible victims of reparations, as determined by the TFV, to challenge the TFV’s findings before Trial Chamber VI. This is distinguishable from the adoption of the TFV’s administrative eligibility criteria, in other words, Trial Chamber VI’s delegation of authority to the TFV in which no error was found. See the *Ntaganda* Appeals Judgment, *supra* note 8, para. 419.

the victims included in the Sample, given that said criteria are consistent with the practice in the other cases.

29. In the IDIP Eligibility Criteria, the TFV referred to Trial Chamber VI's findings in the Reparations Order regarding the need to consider the general widespread lack of records and the difficulties of producing supporting documents. Such difficulties also apply to the proof of sexual and gender-based crimes and the additional difficulties these victims may face in obtaining or producing evidence to demonstrate they were victims of such crimes. Evidentiary standards and procedures should account for the difficulties of victims to obtain and produce evidence and documentation, such that it is not a strict requirement that victims substantiate their claims with supporting documents, but instead, a consistent, credible and reliable account of facts is sufficient to satisfy the standard and burden of proof regarding eligibility.⁵⁰ The Appeals Chamber has also held that discrepancies do not, on the face of them, cast doubt on the credibility of the victim's account, which is an approach supported by the TFV in their IDIP Eligibility Criteria.⁵¹

30. Consequently, the Legal Representative submits that the eligibility for reparations of the victims of the attacks should be determined, on a balance of probabilities, in accordance with the following standard: whether the concerned victim's account is "*credible and coherent*".⁵² It is submitted that the following factors should be considered when determining what is "*credible and coherent*" for the victims

⁵⁰ See the IDIP Eligibility Criteria, *supra* note 46, para. 10 which refers to the "Public redacted Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'" (Appeals Chamber), [No. ICC-01/04-01/06-3466-Red](#), 18 July 2019 (the "Lubanga Appeals Chamber Decision"), para. 202 which states: "rule 94(1)(g) of the Rules acknowledges that victims are not always in a position to provide supporting documentation. Consequently, the Appeals Chamber considers that the fact that potential victims generally did not submit documents in support of their written allegations does not lead inexorably to the conclusion that the Trial Chamber was prevented from finding that their victimhood was established to a balance of probabilities". See also, the Reparations Order, *supra* note 5, paras. 139-140.

⁵¹ See the Lubanga Appeals Chamber Decision, *supra* note 50, paras. 210 and 212-213. See also the IDIP Eligibility Criteria, *supra* note 46, para. 25.

⁵² See the IDIP Eligibility Criteria, *supra* note 46, para. 25. See also the Lubanga Decision, *supra* note 44, para. 101.

of attacks in the Sample: (i) the intrinsic quality and coherence of the victims' statements; (ii) consistency with the accounts of other victims; and (iii) consistency of the victims' accounts with the findings in Trial Chamber VI's Judgment and Sentencing Judgment regarding the widespread and systematic scale of the crimes for which Mr Ntaganda was convicted.

31. Further to the application forms, 47 concerned victims also provided supplementary information, some of them on several occasions. In addition, the dual status victims, and the victims called by the Legal Representative to present evidence, or views and concerns, recounted their victimisation as a result of the crimes committed.⁵³

32. The Legal Representative submits that the concerned victims' accounts as provided in their original application forms and as further supplemented should be sufficient for the Chamber to determine whether said accounts are "*credible and coherent*". For the victims where supplementary information could not be collected, it is submitted that the Chamber should take into account whether the accounts provided in their original application forms are consistent with the accounts of other victims who either originated from the same villages, or suffered from crimes in similar circumstances, while applying the same "*coherent and credible*" standard to their accounts.

33. The Legal Representative emphasises that, in relation to 45 of his clients who are victims included in the IDIP — their victim applications in addition to some supplementary information collected from a number of them — were deemed sufficient by the TFV for the purpose of reaching a positive determination on their eligibility. However, in light of the Chamber's instruction to adduce additional documentation to the extent possible, the Legal Representative took the opportunity to discuss with the concerned victims and to collect further details concerning their

⁵³ The concerned victims are a/00802/13 (P-0894), a/00880/13 (P-0892), a/00910/13 (P-0887), a/00436/13 (P-0805), a/01711/13 (P-0863), a/00090/13 (P-0113), a/01635/13, a/30286/15 and a/00256/13 (V-1).

dossiers. These details are provided to the Chamber to assist its comprehension of the extent of harms suffered by the victims.

34. Lastly, the Legal Representative takes note of the Chamber's decision that victims who may be assessed as ineligible will have an opportunity to supplement their dossiers and to clarify their accounts at the implementation stage,⁵⁴ which is particularly applicable to the realities of the current situation in the DRC where challenges in terms of access and communication with victims still persist.

35. Regarding the nature and scale of the crimes committed, Trial Chamber VI found that the objective of the UPC/FPLC's military operations was to drive out all the Lendu from the localities targeted with the aim of "*the destruction and disintegration of the Lendu community*".⁵⁵ Mr Ntaganda was convicted for, *inter alia*, mass-crimes affecting 13 communities which forced inhabitants to flee.⁵⁶ In particular, Mr Ntaganda was convicted for intentionally directing attacks against civilians in Mongbwalu, Sayo, Bambu Jitchu and Buli;⁵⁷ persecution in Mongbwalu, Nzebi, Sayo, Kilo, Nyangaray, Lipri, Tsili, Bambu, Kobu, Sangi, Gola, Jitchu and Buli;⁵⁸ forcible transfer of the population in Mongbwalu, Lipri, Tsili, Kobu and Bambu;⁵⁹ and ordering the displacement of civilians from Mongbwalu, Lipri, Tsili, Kobu and Bambu.⁶⁰

36. More specifically, Trial Chamber VI found that the scale of the crime of intentionally attacking civilians was either "*relatively large*" or "*significant*".⁶¹ It also found that the number of persons affected by forcible transfer was "*significant*",⁶² and that some of those who fled Mongbwalu, Lipri, Tsili, Kobu and Bambu went into the bush and had to "*endure harsh living conditions*" and "*did not have adequate shelter and had*

⁵⁴ See the Decision of 25 October 2022, *supra* note 10, para. 10.

⁵⁵ See the *Ntaganda* Trial Judgment, *supra* note 23, para. 808.

⁵⁶ *Idem*, paras. 497, 505, 537, 549, 571, 573, 585-586, 603, 604, 612, 615-617 and 640.

⁵⁷ *Idem*, pp. 535-536.

⁵⁸ *Idem*, p. 537.

⁵⁹ *Ibid.*

⁶⁰ *Idem*, p. 538.

⁶¹ See the "Sentencing Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019, paras. 56, 88 and 98 (the "*Ntaganda* Sentencing Judgment").

⁶² *Idem*, para. 160.

insufficient food and water".⁶³ Trial Chamber VI also considered that the effect on the victims of having to leave their homes against their will "*put them in a worse situation than they were in to begin with, and therefore caused them harm*".⁶⁴ As regards the crime of murder, Trial Chamber VI considered this to be of a "*large*" scale.⁶⁵ It found in particular that this crime was committed "*regularly and repeatedly during the course of the First and Second Operation, each operation lasting for over a week, in several different locations*", in which Mongbwalu,⁶⁶ Sayo,⁶⁷ Kilo,⁶⁸ Nzebi,⁶⁹ Kobu⁷⁰ and Sangi⁷¹ were affected.⁷² Regarding acts of sexual violence, Trial Chamber VI held that "*the unfolding of the operations shows that these acts were, like the acts of killings and other acts of physical violence, a tool used by UPC/FPLC soldiers and commanders alike to achieve their objective to destroy the Lendu community in the localities under assault*".⁷³ It also found that, by way of these acts of violence, the UPC/FPLC also intended "*to subject victims to [...] consequences that would go beyond the sexual violence itself*".⁷⁴ Trial Chamber VI found that pillage was committed on a "*significant scale*",⁷⁵ and that during the *ratissage* operations in Mongbwalu and Sayo, "*house-to-house*" searches were conducted for items to loot and in certain instances, were the total belongings of the victims,⁷⁶ such that Trial Chamber VI considered the crime of pillage for which Mr Ntaganda has been convicted, to be of "*serious gravity*".⁷⁷ Similarly, Trial Chamber VI considered that the crime of the destruction of houses in or around the eight different villages of — Mongbwalu,⁷⁸

⁶³ *Idem*, para. 162.

⁶⁴ *Ibid.*

⁶⁵ *Idem*, para. 47.

⁶⁶ See the *Ntaganda* Trial Judgment, *supra* note 23, paras. 512, 513 and 528.

⁶⁷ *Idem*, para. 526.

⁶⁸ *Idem*, para. 543.

⁶⁹ *Idem*, para. 510.

⁷⁰ *Idem* para. 577.

⁷¹ *Idem*, para. 600.

⁷² See the *Ntaganda* Sentencing Judgment, *supra* note 61, para. 48.

⁷³ See the *Ntaganda* Trial Judgment, *supra* note 23, para. 805.

⁷⁴ *Idem*, para. 806.

⁷⁵ See the *Ntaganda* Sentencing Judgment, *supra* note 61, para. 140.

⁷⁶ See the *Ntaganda* Trial Judgment, *supra* note 23, paras. 512 and 526.

⁷⁷ See the *Ntaganda* Sentencing Judgment, *supra* note 61, para. 143.

⁷⁸ See the *Ntaganda* Trial Judgment, *supra* note 23, para. 496.

Sayo,⁷⁹ Lipri,⁸⁰ Tsili,⁸¹ Kobu,⁸² Sangi,⁸³ Buli⁸⁴ and Jitchu⁸⁵ — had been committed on a “significant scale” with a “considerable geographical spread of the criminal conduct”, such that the lives of the civilians living in these places were “severely impacted”.⁸⁶

37. In light of Trial Chamber VI’s abovementioned findings — which were not overturned on appeal — it is submitted that the case record more than sufficiently demonstrates that on the balance of probabilities, almost all the victims of the attacks included in the Sample,⁸⁷ suffered from the crimes they described given the widespread or systematic scale of the crimes committed by Mr Ntaganda. This is further corroborated by the similarities of the accounts of the victims of the attacks.

6. No specific assessment of harm required and the applicability of presumptions

38. It is submitted that insofar as the victims of the attacks included in the Sample satisfy the above standard of proof for eligibility, they should be found eligible for reparations, since Trial Chamber VI has held that presumptions are applicable regarding their harm. The Legal Representative recalls that presumptions can apply when the circumstances are such that obtaining or providing evidence in a form other than by providing a coherent and credible narrative would be extremely onerous or impossible.⁸⁸ Indeed, Trial Chamber VI recognised seven presumptions. The first group of these presumptions includes “material, physical, and psychological harm for (i) former child soldiers; (ii) direct victims of rape and sexual slavery; and (iii) indirect victims who are

⁷⁹ *Idem*, para. 503.

⁸⁰ *Idem*, para. 569.

⁸¹ *Idem*, para. 569.

⁸² *Idem*, para. 578.

⁸³ *Idem*, para. 602.

⁸⁴ *Idem*, para. 609.

⁸⁵ *Idem*, para. 619.

⁸⁶ See the *Ntaganda* Sentencing Judgment, *supra* note 61, paras. 145-146.

⁸⁷ See a/30406/15, which is the only victim represented by the Legal Representative where the application form without more, does not fully detail the harms caused to the victim.

⁸⁸ See the Reparations Order, *supra* note 5, paras. 141-147 and the *Ntaganda* Appeals Judgment, *supra* note 8, p. 11. See also, the “Order for Reparations pursuant to Article 75 of the Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3278-tENG](#), 24 March 2017, paras 57-61; and the *Lubanga* Decision, *supra* note 27, para. 185.

close family members of direct victims of the crimes against child soldiers, rape, and sexual slavery”.⁸⁹ The second group of these presumptions include “physical and psychological harm for (i) direct victims of attempted murder; and (ii) direct victims of the crimes committed during the attacks, who personally experienced the attacks”.⁹⁰ The last group of presumptions include “psychological harm for (i) victims who lost their home or material assets with a significant effect on their daily life; and (ii) indirect victims who are close family members of direct victims of murder”.⁹¹ While the Appeals Chamber considered that Trial Chamber VI erred with respect to its finding presuming that all victims of attacks were physically injured since not every victim of an attack necessarily suffers a bodily injury,⁹² it did not overturn the other presumptions outlined above, and as established by Trial Chamber VI.⁹³

39. Furthermore, contrary to the *Katanga* reparations proceedings where individual reparations were ordered which required the specific assessment of individual harm,⁹⁴ Trial Chamber VI decided that collective reparations with individualised components are the most appropriate in the present case to provide a “more holistic approach to the multi-faceted harm suffered”, and accordingly, an individual assessment of such harm suffered by the victims would be “resource intensive, time consuming” and “disproportionate to what could be achieved”.⁹⁵ Trial Chamber VI only instructed the TFV to provide a detailed proposal as to the way in which the latter expects to conduct the administrative eligibility assessment, based on the eligibility requirements established in the Reparations Order.⁹⁶ The *Ntaganda* Appeals Judgment did not overturn this part of the Reparations Order.

⁸⁹ See the Reparations Order, *supra* note 5, para. 145.

⁹⁰ *Idem*, para. 146.

⁹¹ *Idem*, para. 147.

⁹² See the *Ntaganda* Appeals Judgment, *supra* note 8, para. 704-705.

⁹³ *Idem*, paras. 686-708.

⁹⁴ See the *Katanga* Reparations Order, *supra* note 44, paras 62-64.

⁹⁵ See the Reparations Order, *supra* note 5, para. 194.

⁹⁶ *Idem*, para. 253.

40. Indeed, regarding reparations for victims who had their property destroyed or pillaged, and/or were forced to flee the violence and hide in the bush/forest, the Legal Representative submits that establishing precisely what was pillaged or destroyed, how each individual victim was specifically disadvantaged during his/her time in the bush, is not required for the purposes of the eligibility assessment given that the majority of the victims, if not all, suffered “*multi-dimensional harm*” due to the “*mass victimisation*” involved.⁹⁷ Rather, pursuant to the definition of collective reparations with individualised components, the individual and specific harms suffered by the victims of the attacks should be taken into account by the TFV at the implementation stage when determining appropriate modalities of reparations to repair the harm suffered by the concerned victims in accordance with their specific needs.

V. CONCLUSION

41. The victims of the attacks included in the Sample with “*coherent and credible*” accounts and therefore demonstrating on the balance of probabilities that they suffered from the crimes for which Mr Ntaganda was convicted, should be found eligible for reparations, even in the absence of documentary or other corroborative evidence. Their harm should be presumed in accordance with the provisions of the Reparations Order which were not overturned by the Appeals Chamber. No specific scrutiny of the harm suffered by the victims is required for the purpose of the eligibility assessment. In accordance with the implementation of collective reparations with individualised components, the different types of harms suffered by the victims should instead be taken into consideration by the TFV at the implementation stage for the purpose of determining appropriate modalities of reparations to repair the harm suffered by the concerned victims pursuant to their specific needs.

⁹⁷ *Idem*, para. 149.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a long horizontal stroke extending to the right.

Dmytro Suprun
Common Legal Representative of the Victims of Attacks

Dated this 3rd day of March 2023
At The Hague, The Netherlands