

Public Annex II

Eligibility criteria for the VPRS administrative eligibility assessment for reparations of potential beneficiaries

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Introduction

1. On 11 August 2023, Trial Chamber II (“Chamber”) directed the Registry, through the VPRS, to conduct the administrative eligibility assessment of potential beneficiaries, including identification, collection of information, and eligibility determinations, (...) by 31 December 2025 at the latest (“First Decision”).¹
2. In this context, and unless ordered otherwise, the VPRS will apply the substantive and evidentiary criteria as described further below to determine the eligibility for reparations of potential beneficiaries. These criteria have been set out or applied by the Chamber in, notably: (i) the Addendum to the Reparations Order (“Addendum”),² and its Annexes I and II (respectively, “Addendum Annex I” and “Addendum Annex II”);³ (ii) the Reparations Order;⁴ (iii) the Decision on issues raised in the Registry’s First Report on Reparations (“2020 Decision”);⁵ and (iv) other relevant jurisprudence.⁶
3. The VPRS stands ready to adjust the application of these criteria and its methodology if the Chamber so orders, or in light of any other judicial development, including any appeals.⁷

¹ Trial Chamber II, “First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations”, 11 August 2023, ICC-01/04-02/06-2860-Conf. A public redacted version was filed on 30 August 2023. See Disposition (p. 66), and paras 181, 184 and 185.

² Trial Chamber II, “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659”, 14 July 2023, ICC-01/04-02/06-2858-Conf. A public redacted version was filed on the same day.

³ Public Annex I contains the scope of the conviction as to the victims of the attacks. As indicated by the Chamber in its public Addendum, Confidential Redacted Annex II contains the detailed conclusions regarding each of the victims’ dossiers in the sample assembled by the VPRS pursuant to the Chamber’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’”, 25 November 2022, ICC-01/04-02/06-2794 (“Sample”).

⁴ Trial Chamber VI, “Reparations Order”, 8 March 2021, ICC-01/04-02/06-2659 (“Reparations Order”).

⁵ Trial Chamber VI, “Decision on issues raised in the Registry’s First Report on Reparations”, 15 December 2020, ICC-01/04-02/06-2630.

⁶ As noted by the Chamber, “[i]n carrying out the assessment of the Sample and establishing the parameters for future eligibility assessments the Chamber also took into account the Court’s previous jurisprudence on the matter, particularly in the Lubanga and the Katanga cases (...)”. See Addendum, para. 30.

⁷ The VPRS notes the appeal briefs of, respectively, the Common Legal Representative for the Victims of the Attacks (“CLR2”) and the Defence, which may affect *inter alia* the eligibility criteria and the scope of the present case. See CLR2, “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659””, 30 October 2023, ICC-01/04-02/06-2875-Conf (“CLR2 Appeal Brief”). A public Redacted version was notified on 31 October 2023, ICC-01/04-02/06-2875-Red. See also Defence, “Defence Appellant Brief against the 14 July Addendum to the Reparations Order of 8 March 2021”, 30 October 2023, ICC-01/04-02/06-2876-Conf. (“Defence Appeal Brief”).

Preliminary observations**I. Applicable standard of proof and standard of causation**

4. To be eligible for reparations, victims must provide sufficient proof of: their identity, the harm suffered, and the causal link between the crime and the harm.⁸ In its assessment of the victims' claims for reparations, the VPRS will apply the standard of proof of "balance of probabilities", adopted by the Chamber for the reparations proceedings in the present case, in line with previous jurisprudence.⁹
5. The VPRS will apply the 'but/for' standard of causation to assess the causal link between the crimes and the harm, verifying that the crimes for which Mr Ntaganda was convicted were the 'proximate cause' of the harm for which reparations are sought. This entails "assessing, *inter alia*, whether it was reasonably foreseeable that the acts and conduct underlying the conviction would cause the resulting harm".¹⁰

II. Supporting documentation

6. When carrying out the administrative eligibility assessment, the VPRS will conduct "an appropriate enquiry, on a case-by-case basis, and ensure that the victims dossiers meet the appropriate standard of proof". In this respect, the VPRS will apply the same degree of flexibility the Chamber considered appropriate in the determination of what is to be considered 'sufficient' in terms of documents provided by an applicant for reparations.¹¹

III. Coherence and credibility of the victim's account

7. In its assessment of the victims' dossiers in Addendum Annex II, the Chamber assessed the information included in the victims' dossiers and supporting documents, verifying both the (intrinsic and extrinsic) coherence and credibility of the victims' accounts, including by searching for corroborating evidence that would verify the consistency of the accounts, notably with the other victims' dossiers.¹²

⁸ Addendum, para. 34.

⁹ *Id.*, para. 35.

¹⁰ *Id.*, para. 36.

¹¹ *Id.*, para. 54.

¹² *Id.*, para. 61.

8. The VPRS will apply the same methodology when assessing all victims' dossiers, and in particular will carefully verify the coherence of the victims' accounts with the Chamber's findings in the Conviction Judgement.¹³
9. With regard to the corroboration of the victims' accounts with other victims' dossiers, the VPRS notes that its internal process of eligibility determination includes several layers of reviews performed by different team members.¹⁴ Owing to the sheer amount of different dossiers and data, the search for corroboration for each victim dossier cannot be systematic beyond the key parameters of a victim's narrative as stipulated in regulation 86(2) of the Regulations of the Court. Nevertheless, the VPRS will look for corroboration with other applications for reparations whenever feasible. This is particularly so for instances where there is no other manner to verify the extrinsic coherence of a victim's dossier (against the Conviction Judgement), and/or in case there are elements that raise a doubt as to its credibility.

Eligibility criteria

10. The Chamber established that victims are eligible for reparations if they prove on a "balance of probabilities": (1) their identity; (2) their victim status (as direct and/or indirect victim);¹⁵ (3) the harm suffered; and (4) the causal link between the harm and the crimes.¹⁶
11. The VPRS notes that the criteria related to the first and fourth requirements are the same for both the victims of crimes against child soldiers and the victims of the attacks. The criteria related to the second and third requirements differ depending on whether the individual concerned is a victim of crimes against child soldiers or a victim of the attacks – see *infra* at paragraphs 13 and following.

I. First requirement: victim's identity

12. Firstly, the VPRS will verify that victims provide sufficient means of identification, whether these are official or unofficial identification documents, or any other means of

¹³ *Ibid.*

¹⁴ On this matter, refer to the VPRS submissions in fn. 35 of "Annex I Registry submission pursuant to ICC-01/04-02/06-2860-Red" ("Report").

¹⁵ Addendum, paras. 38(ii), 39(ii) and 40(ii).

¹⁶ *Id.*, para. 34.

demonstrating their identities.¹⁷ In the absence of any acceptable documentation, a statement signed by two credible witnesses (who provide their respective identity documents), establishing the identity of the victim and describing the relationship between the victim and any individual acting on their behalf will be accepted.¹⁸

II. Second requirement: victim status

13. Secondly, the VPRS will verify that the applicant for reparations is a victim falling within the scope of the case. This verification will imply different sub-verifications depending on whether the victim is a former child soldier or a victim of the attacks.

1) Victims of crimes against child soldiers

(i) Direct victims

14. The status of a direct victim of crimes against child soldiers is established if: (1) the direct victim was under the age of 15 years during the time-frame of the charges; and (2) the direct victim was conscripted or enlisted into the UPC/FPLC ranks between on or about 6 August 2002 and 31 December 2003, and/or was used to participate actively in hostilities between on or about 6 August 2002 and 30 May 2003.¹⁹

15. To confirm that the first condition is met, the VPRS will verify that the victim was born after 6 August 1987. The VPRS notes that it is not required that the exact age of the

¹⁷ Addendum, para. 64, referring to Reparations Order, para. 137. See also Annexes I and II to Registry, "Transmission to Pre-Trial Chamber II of a Registry report on proof identity documents available in the Democratic Republic of Congo", 26 April 2013, ICC-01/04-02/06-53-Anx1 and ICC-01/04-02/06-53-Conf-Exp-Anx2. The VPRS notes that in previous jurisprudence the following documents have been considered as sufficient means of identification: "(...) i) Official identification documents, such as a national identity card, a passport, a birth certificate, a death certificate, a marriage certificate, a family registration booklet, a will, a driving licence or a card from a humanitarian agency; ii) Non-official identification documents, such as a voting card, a student identity card, a pupil identity card, a letter from local authority, a camp registration card, documents relating to medical treatment, an employee identity card or a baptism card; iii) Other documents, such as a certificate or attestation of loss of specified official documents, school documents, a church membership card, an association or political party membership card ". See for example in *The Prosecutor v. Thomas Lubanga Dyilo* case, Trial Chamber I, "Decision on victim's participation", 18 January 2008, ICC-01/04-01/06-1119 ("*Lubanga* Decision 2008"), para. 87.

¹⁸ *Ibid.*, and *Lubanga* Decision 2008, paras 87-88.

¹⁹ Addendum, para. 68.

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victim be established, but only that the victim was under the age of 15 years during the time frame of the charges.²⁰

16. In relation to the second condition, the VPRS will conduct a qualitative rather than a quantitative assessment, meaning that the victim's eligibility will be determined by having regard to the quality of all the evidence the victim provides, assessed according to the standard of the balance of probabilities.²¹

17. Moreover, the VPRS will take into account the following considerations in its assessment:

- Child soldiers must have been recruited or conscripted into the UPC/FPLC, and not in any other armed group. In this respect, when a direct victim names at least one commander, or one of the training camps, this will suffice to establish that the victim belonged to the UPC/FPLC.²²
- Where applicable and relevant (and to the extent that the scope of the conviction in the Ntaganda case overlaps with the Lubanga case), the VPRS will also rely on findings in the Judgment against Mr Lubanga.²³
- References made by a victim to (a) UPC/FPLC training camp(s) or a commander whose name is not included in the Judgement may not exclude the applicant from receiving reparations, if the account is coherent and credible as to the facts alleged.²⁴
- Regarding the Mandro training camp, opened from May until the end of December 2002/beginning of January 2003,²⁵ a certain degree of flexibility will be implemented.
- Since the crime of conscription or enlistment is a continuous crime, the fact that a child soldier was enlisted or conscripted before the time frame of the charges does not necessarily mean that the enlistment or conscription did not extend into

²⁰ *Id.*, para. 70.

²¹ As noted by the Chamber, this approach "does not require that a set number of criteria needs to be met". See Addendum, para. 75.

²² *Id.*, para. 74.

²³ *Id.*, para. 76.

²⁴ *Id.*, paras 76 and 81. The camps mentioned in the Judgement include: Mandro and its several locations, Rwampara, Bule, Fataki, Largu, Bunia, and Lingo.

²⁵ *Id.*, para. 82.

the relevant time frame.²⁶ Likewise, a victim's credibility will not be affected even when they refer to dates outside the time frame, if they establish in a coherent and credible manner their enlistment, conscription and/or use to participate actively in hostilities at any time during the relevant time frame, and that they were under the age of 15 years at the relevant time.²⁷

18. Additional conditions apply if the direct victim was a **child soldier who was also a victim of rape and/or sexual slavery** between on or about 6 August 2002 and 31 December 2003, in Ituri, or is a child born out of the crime of rape or sexual slavery committed between on/or about 6 August 2002 and 31 December 2003. In this case, the direct victim must demonstrate: (1) the status of child soldier (of their mother, in case of a child born out of rape or sexual slavery); and (2) having been a victim of rape and/or sexual slavery between on/or about 6 August 2002 and 31 December 2003, in Ituri or that it was a child born out of the crime of rape or sexual slavery committed between on/or about 6 August 2002 and 31 December 2003.²⁸ To take into account the particular difficulties faced by children born out of rape or sexual slavery,²⁹ the VPRS will rely on elements such as (1) their date of birth (i.e. the child would have been born at the latest in September 2004 – i.e. nine months after the end of the temporal scope for the crime of rape and sexual slavery), and (2) information regarding their mother's victimization while she was enrolled in the UPC/FPLC within the temporal scope of the case.

(ii) Indirect victims

19. The VPRS will verify that the applicant meets the below conditions to establish their status as indirect victims of crimes against child soldiers, on the balance of probabilities:

(1) it must be verified that: (i) the direct victim is a child soldier; and, when applicable, that (ii) the direct victim is also a victim of rape and/or sexual slavery or is a child born out of rape or sexual slavery;

(2) it must be proven that the applicant falls within one of the categories of indirect victims recognised by the Appeals Chamber; and

²⁶ *Id.*, para. 78.

²⁷ *Id.*, para. 79.

²⁸ *Id.*, para. 83.

²⁹ The challenges faced by children born as a result of sexual violence who face rejection from their communities has been notably highlighted by the Chamber, see for example, Trial Chamber VI, "Sentencing judgment", 7 November 2019, ICC-01/04-02/06-2442, para. 113.

(3) it must be established that the applicant has personally suffered harm because of the commission of a crime against the direct victim.³⁰

20. Regarding the first condition, the same criteria as indicated *supra* in relation to direct victims are applicable, albeit without requiring the same level of detail as from the direct victims.³¹ The VPRS will therefore assess the information provided by indirect victims on a case-by-case basis, having regard to the indirect victim's credible and coherent account, and any other corroborating information or evidence.³²

21. Regarding the second condition, the VPRS will assess whether the applicant falls within one of the four following categories of indirect victim previously identified by the Appeals Chamber:³³

- family members of the direct victim;
- anyone who attempted to prevent the commission of one or more of the crimes under consideration;
- individuals who suffered harm when helping or intervening on behalf of direct victims; and
- other persons who suffered personal harm as a result of these offences.

22. Regarding the third condition, the VPRS will verify that the indirect victim has suffered personal harm as a result of the commission of a crime against the direct victim. This can be demonstrated, for example, through the 'close personal relationship' with the direct victim or, in case of persons who do not have a close personal relationship, demonstrating that the direct victim was nevertheless of significant importance in their lives.³⁴ To determine whether a direct victim was of significant importance to a person requesting to be recognised as an indirect victim, the VPRS will be guided by the criterion of "special bonds of affection or dependence connecting the applicant with the direct victim".³⁵ This relationship can be established through multiple types of documents, including: an electoral card where the parents' names appear; statements of two credible witnesses establishing that the indirect victim lived in the same household with the direct victim; an official document signed and stamped by a chief

³⁰ Addendum, para. 84.

³¹ *Id.*, para. 85. See also para. 14, *supra*.

³² *Ibid.*

³³ Addendum, para. 86. See also Appeals Chamber, "*Lubanga* Amended Reparations Order", 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 6(b).

³⁴ Addendum, para. 86.

³⁵ *Ibid.*

of locality demonstrating kinship; or any official or unofficial document demonstrating the special bond or dependence between the direct and indirect victim.³⁶

2) Victims of the attacks

(i) Direct victims

23. The VPRS will verify that the applicant is a direct victim of at least one of the crimes committed during the First Operation or Second Operation and for which Mr Ntaganda was convicted.³⁷ The VPRS notes that victims of the attacks can demonstrate their status, without necessarily having to provide additional supporting documentation, based on the content, coherence and credibility of their account.³⁸

24. The VPRS will accordingly verify that the following two conditions are met:

(1) the victim's account corresponds to the Chamber's findings as to the crimes for which Mr Ntaganda was convicted; and

(2) the victim's account is coherent and credible.³⁹

25. Regarding the first condition, the VPRS will make an assessment that is qualitative rather than quantitative, taking into account multiple factors rather than asking the victims to provide information on a predetermined set of specific criteria.⁴⁰

26. Specifically, in assessing the information provided in the victims' dossiers, the VPRS will verify whether the date, place and description of the events, as well as the victim's narrative regarding the perpetrators correspond to the Chamber's findings in the Judgment regarding the crimes for which Mr Ntaganda was found guilty.⁴¹ The VPRS

³⁶ Addendum, para. 87.

³⁷ According to the Judgment in the instant case, the First Operation includes assaults on a number of villages in the Banyali-Kilo collectivité in November/December 2002 and the Second Operation includes assaults on a number of villages in the Walendu-Djatsi collectivité in February 2003 (see Trial Chamber VI, "Judgment", 8 July 2019, ICC-01/04-02/06-2359, see pages 208 and 260).

³⁸ Addendum, para. 90.

³⁹ *Ibid.* For reasons explained above (see *supra* para. 9), the VPRS will verify the consistency with other victims' account only whenever feasible and necessary.

⁴⁰ Addendum, para. 91.

⁴¹ *Ibid.*

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will also take into account the clarifications provided by the Chamber in its 2020 Decision.⁴²

27. Accordingly, the VPRS will strictly take into account positive and negative findings as to Mr Ntaganda's criminal responsibility, as detailed in Addendum Annex I⁴³ and as applied in Addendum Annex II. This means that where the Chamber has made either no findings or has made negative findings in relation to the facts alleged by the victims, the VPRS will not consider the person to be a victim of the crimes for which Mr Ntaganda was convicted. To the contrary, if the Chamber has made a positive finding in relation to the facts alleged by the victims, the VPRS will consider the person to be a victim of the crimes for which Mr Ntaganda was convicted.⁴⁴
28. The VPRS notes, in particular, that where a direct victim names the UPC/FPLC soldiers or Hema civilians (in the case of pillaging in Mongbwalu) as being responsible for their suffering, this may, depending on the circumstances, suffice to establish that the victim suffered crimes at the hand of the UPC/FPLC.⁴⁵
29. In case of inconsistencies, contradictions and particularly inaccuracies as to dates (including the reference to the *Shika Na Mukono* operation), the VPRS will not automatically exclude victims from their eligibility to reparations, but rather will proceed with its assessment on a case-by-case basis, taking into account all aspects of the victim's dossier (including potential additional information if available), and with the same level of flexibility applied by the Chamber.⁴⁶
30. In relation to the second condition, there may be slight discrepancies or information that does not fully match in cases where victims submitted more than one application or have provided supplementary information. For the VPRS assessment, this does not, on its face, cast doubt on the victims' credibility, provided that the victim's dossier is overall coherent and essential facts match.⁴⁷

⁴² These clarifications were provided in various paragraphs of the 2020 Decision: in relation to the issues about the territorial scope of the case, see paras 18-20, 24-26, 30-31 and 33-34; in relation to the temporal scope, see paras 37-38, 42-43, and 47; and in relation to the subject-matter jurisdiction, see paras 51-56; 60-63.

⁴³ Addendum, para. 96.

⁴⁴ *Id.*, para. 99.

⁴⁵ *Id.*, para. 92.

⁴⁶ *Id.*, para. 98.

⁴⁷ *Id.*, para. 102.

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31. When assessing the victims' dossiers, the VPRS will pay close attention and assess the information as provided by the victims in their accounts, and will not make inferences as to possible crimes.⁴⁸
32. Lastly, when assessing victims' accounts, the VPRS will pay attention to their intrinsic coherence, their credibility, and, to the extent feasible and necessary, as detailed *supra*,⁴⁹ whether they are consistent with other victims' accounts in relation to the facts alleged.⁵⁰
33. The victim's coherent and credible account will be accepted as sufficient evidence to establish the eligibility on a balance of probabilities of **victims of the attacks who also suffered rape and/or sexual slavery, or are children born out of these crimes**.⁵¹

(ii) Indirect victims

34. The VPRS will verify that the applicant meets the below conditions to establish their status as indirect victims of the attacks:
 - (1) The victim status of the direct victim must be proven;
 - (2) it must be proven that the person falls within one of the categories of indirect victims recognised by the Appeals Chamber;⁵² and
 - (3) it must be proven that the applicant has personally suffered harm as a result of the commission of a crime against the direct victim.⁵³
35. As for the first condition, the same criteria as indicated *supra* in relation to the direct victims of the attacks are applicable, but, without requiring the same level of detail as from the direct victims.⁵⁴ The VPRS will therefore assess the information provided by indirect victims on a case-by-case basis, having regard to the indirect victim's credible and coherent account, and any other corroborating information or evidence.⁵⁵

⁴⁸ *Ibid.*

⁴⁹ See para. 9, *supra*.

⁵⁰ Addendum, para. 103.

⁵¹ *Id.*, para. 104.

⁵² See *supra* para. 21.

⁵³ Addendum, para. 105.

⁵⁴ *Id.*, para. 106. See also *supra* paras 23-24.

⁵⁵ *Id.*, para. 106.

36. Similarly, the VPRS further notes the following findings from the Addendum that it will apply when conducting eligibility assessments:

- Concerning the killing of people in Kobu and Sayo, it is more likely than not that the direct victims were civilians not actively taking part in hostilities or otherwise persons *hors de combat*;⁵⁶
- Regarding counts 1 to 3, a general presumption of civilian status under International Humanitarian Law ("IHL") applies; in case of doubt, a person shall be considered to be a civilian;⁵⁷
- The account of persons claiming to be victims of Mongbwalu, and Sayo in the context of the First operation, and Bambu, Jitchu, and Buli in the context of the Second operation, shall be assessed on a case-by-case basis in order to determine whether they are persons protected under IHL; therefore the absence of information concerning the occupation of the victims (or of their immediate family members) in their dossiers does not preclude a finding, on a balance of probabilities, that the victims are entitled to reparations.⁵⁸ In this regard, the VPRS will therefore proceed as follows: unless there is any indication, in the application itself, that the direct victim was an active combatant, they will be considered persons protected under IHL.

37. Regarding the other two conditions, the same criteria as indicated *supra* for victims of crimes against child soldiers⁵⁹ are applicable in relation to the victims of the attacks.⁶⁰

III. Third requirement: harm

38. Thirdly, the VPRS will verify that the victim has suffered harm.

1) Victims of crimes against child soldiers

39. Once the applicant has proven, on a balance of probabilities, to be a victim of the crimes against child soldiers as described above,⁶¹ the VPRS will proceed to assess the harm

⁵⁶ *Id.*, para. 108.

⁵⁷ *Id.*, paras 108-109.

⁵⁸ *Id.*, paras. 109-112.

⁵⁹ See *supra* paras 21-22.

⁶⁰ Addendum, para. 107.

⁶¹ See *supra* paras 14-22.

suffered, relying notably on the presumptions established by the Chamber. Specifically, the VPRS will presume material, physical and psychological harm for three categories of victims of crimes against child soldiers: (1) direct victims (i.e. former child soldiers); (2) direct victims of rape and sexual slavery; and (3) indirect victims who are close family members of direct victims of the crimes against child soldiers, rape, and sexual slavery.⁶²

40. For the last category (indirect victims), the VPRS notes that the above-mentioned presumption of harm applies only to “close family members of direct victims (...)”, i.e. parents, children, spouses, siblings, and other members of a family living within the same household of the direct victim”.⁶³ For indirect victims who are not close family members⁶⁴ and who lack any documentation to establish the existence of harm, the VPRS will verify the victims’ coherent and credible account as to the harm suffered.⁶⁵

2) Victims of the attacks

41. Once the applicant has proven, on a balance of probabilities, to be a victim of the attacks as described above,⁶⁶ the VPRS will proceed to assess the harm(s) suffered, relying on the presumptions established by the Chamber in the Reparations Order⁶⁷ and the Addendum.⁶⁸ In its assessment, the VPRS will apply the following presumptions of harm to the victims of the attacks:

- Presumption of material, physical and psychological harm, for (i) direct victims of rape and sexual slavery; and (ii) indirect victims who are close family members of direct victims of rape and sexual slavery.⁶⁹
- Presumption of 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.⁷⁰

⁶² Addendum, para. 123.

⁶³ *Id.*, paras 123-124.

⁶⁴ i.e. those members of a family beyond parents, children, spouses, siblings, and others not living within the same household.

⁶⁵ Addendum, para. 124.

⁶⁶ See *supra* paras 23-37.

⁶⁷ Reparations Order, paras. 146-147.

⁶⁸ Addendum, para. 125.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.* According to para. 255 of the Addendum, “direct victims of the following crimes committed during the attacks may have personally experienced the attack: Count 2 (attempted murder), Count 3 (attack against civilians), Counts 4 and 5 (rape), Counts 7 and 8 (sexual slavery), Count 10 (persecution),

- Presumption of 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.⁷¹

- Presumption of physical harm for (i) victims of forcible transfer and displacement, and persecution through the underlying acts constituting the crimes of forcible transfer and displacement;⁷² and (ii) victims of attempted murder.⁷³

42. Moreover, the VPRS notes that the Chamber made an express finding that no presumption of physical harm can be made for the following crimes:

- victims of count 3 (attack against civilian population);⁷⁴
- victims of count 11 (pillaging);⁷⁵
- victims of count 17 (attack against protected objects);⁷⁶ and
- victims of count 18 (destruction of property).⁷⁷

43. When victims allege that they have suffered other types of harm that are not covered by the presumptions above, the VPRS will assess the alleged harm(s) as follows:

- Material harm as a result of destruction of property and/or pillaging: The VPRS will not scrutinise the specifics of the material harm suffered by the victim, or determine its exact amount, in light of the nature of the aforementioned crimes that inherently presuppose material harm;⁷⁸
- Material harm as a result of murder of a direct victim, who is a family member of the indirect victim, and who became responsible for the care of the direct victim's surviving dependants: this harm will be considered by the VPRS if the person demonstrates a) the kinship between the deceased direct

Count 11 (pillaging), Counts 12 and 13 (forcible transfer, deportation and displacement), Count 17 (attack against protected objects), and Count 18 (destruction of property)."

⁷¹ Addendum, para. 125.

⁷² *Id.*, para. 267.

⁷³ *Id.*, para. 256.

⁷⁴ *Id.*, para. 258.

⁷⁵ *Id.*, para. 257.

⁷⁶ *Id.*, para. 258.

⁷⁷ *Id.*, para. 257.

⁷⁸ *Id.*, para. 127.

victim and their dependants; and b) that the applicant is a family member of the deceased direct victim who is taking care of the surviving dependants.⁷⁹

- Harm suffered by indirect victims who are not close family members of the direct victim (i.e. those not living in the same household): The VPRS will assess whether the victims' account is coherent and credible.⁸⁰

44. In accordance with the Chamber's conclusions, when victims allege any other harm(s) as a result of crimes not covered by presumptions, the VPRS will assess such harm on the basis on whether the victims' account of the harm suffered is credible and coherent.⁸¹

3) Transgenerational harm

45. The VPRS notes that only children - and "no other family members"- of direct victims will be entitled to reparations based on transgenerational harm in the present case.⁸²

46. An applicant claiming to have suffered this type of harm will need to prove, on a balance of probabilities, (i) that a direct victim suffered harm as a result of a crime for which Mr Ntaganda was convicted; (ii) that the child of the direct victim suffered harm; (iii) that the child's harm arises out of the harm suffered by the direct victim (causal link); and (iv) a parent-child relationship.⁸³

47. The VPRS will have to assess:

- regarding criterion (ii): whether a psychological assessment of the direct victim and/or the indirect victim is needed; the VPRS notes that the Chamber has set, as a general rule, that such psychological assessment is not mandatory for victims alleging transgenerational harm in order for them to prove their harm and that, in the event that a psychological evaluation may be required, access to it should be provided to the victims by the authority responsible for conducting the eligibility assessment;⁸⁴ and

⁷⁹ *Ibid.*

⁸⁰ Addendum, para. 129.

⁸¹ *Id.*, para. 130.

⁸² Addendum, para. 183.

⁸³ *Id.*, para. 185.

⁸⁴ *Id.*, para. 189.

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- regarding criterion (iii): whether the crime(s) suffered by the parent(s) – and for which Mr Ntaganda was convicted – is the proximate cause of a harm suffered by the child.⁸⁵

48. The above two assessments may include evaluations (notably of a psychological nature) that are beyond the area of expertise of the VPRS, and would be best carried out by experts. This may be in the context of an intake, to be organised if/as necessary in close collaboration with the TFV. As noted in the Report, the VPRS expects that one of the (main) ways in which victims who suffer from transgenerational harm will be identified is through the direct victim.⁸⁶ Once the direct victim and their family are identified and their eligibility established,⁸⁷ they will have the opportunity to provide to person(s) with the required expertise information on the extent of the harm they suffered and their needs during their intake assessment.⁸⁸ It is therefore expected that any transgenerational harm suffered by an indirect victim will be identified at the time of their intake by said expert(s), and taken into account for the TFV to decide on the reparations measures that are the most appropriate.
49. In respect of any indirect victims who would not have been identified and found eligible at the same time of the direct victim, or who does not qualify for reparations on the basis of having suffered from any other harm, the VPRS submits that the intake of their parent (as direct victim) could be used to support any (present or future) claim for reparations by their children on the basis of transgenerational harm, notably to establish requirements (i) to (iii).
50. Lastly, referring to the fourth requirement, the VPRS will assess the existence of the parent-child relationship on the basis of the same evidentiary criteria used to prove identity or kinship. Therefore, the VPRS will verify that the victim demonstrates

⁸⁵ *Id.*, para. 190. In particular, it needs to be established whether it is more likely than not that the direct victim passed the trauma to their child, based on objectively justifiable criteria such as the nature, intensity, extent and duration of the suffering of both the direct and the indirect victim. Such an evaluation should also take into account the date of birth of the child and the security situation in the area where the direct victim lived after the events.

⁸⁶ On this matter, refer to the VPRS submissions in paras 35 and 36 of the Report.

⁸⁷ It is envisaged that, for the great majority, children of direct victims will have the possibility to benefit from the general factual presumptions established in the reparations order. See Addendum, para. 186.

⁸⁸ Part of the victim's intake to be conducted under the TFV's responsibility consists in an assessment of the psychological needs of the beneficiaries and their families. See TFV, "Corrigendum of Public redacted version of the Annex 1 of ICC-01/04-02/06-2750-Conf-Anx1, notified on 25 March 2022", 14 April 2022, ICC-01/04-02/06-2750-Anx1-Red-Corr, para. 162.

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kinship through official or unofficial documents and, alternatively, through the signed statement of two individuals.⁸⁹

IV. Fourth requirement: causal link between the harm and the crimes

51. Finally, as indicated by the Chamber in the Addendum, “as long as the victims demonstrate their status as direct and indirect victims and whether, on that basis, their harm is presumed, or it has been established in the manner detailed above, the causal link between the harm and the crimes of which Mr Ntaganda was convicted is also established.”⁹⁰

Conclusion

52. The VPRS stands ready to adjust the application of the above criteria and methodology if the Chamber so orders, or in light of any further judicial development.

⁸⁹ Addendum, para. 191. See para. 12 *supra*.

⁹⁰ *Id.*, para. 134.