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TRIAL CHAMBER VI

Before: Judge Chang-Ho Chung, Presiding Judge
Judge Robert Fremr
Judge Olga Herrera Carbuca

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Joint Response of the Common Legal Representatives of Victims to the “Defence request seeking clarifications and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking an extension of time to submit observations on the Registry 30 September Report”

Source: Office of Public Counsel for Victims (CLR1 and CLR2)

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

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks and the Common Legal Representative of the Former Child Soldiers (jointly the “Legal Representatives”) submit that the “Defence request seeking clarifications and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking an extension of time to submit observations on the Registry’s 30 September Report” (the “Request”)¹ seeks reconsideration of certain aspects of the “First Decision on Reparations Process” (the “First Decision”)² where the stringent criteria for reconsideration are not fulfilled.

2. In particular, the First Decision – and indeed the earlier ‘Order setting deadlines in relation to reparations’ (the “5 December Order”)³ – clearly exclude the Defence from consultations pertaining to the list of participating victims potentially eligible for reparations given the scope of the Judgment. Having failed to file timely requests for leave to appeal said decisions, the Defence now seeks to reframe the issue as a request for clarification and/or further guidance. There is no basis for Trial Chamber VI (the “Chamber”) to either reconsider or clarify the relevant portion of the First Decision.

3. The Request misrepresents the scope of the First Decision in that the Chamber never ordered the transmission of victims’ application forms to the Defence. The Legal Representatives submit that no application forms should be transmitted to the Defence. There is no support in the Court’s jurisprudence that grants the Defence a right to access application forms at the present stage of the proceedings. Further, the Defence can meaningfully contribute to consultations concerning the “*sample of*

¹ See the “Defence request seeking clarifications and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking an extension of time to submit observations on the Registry 30 September Report”, [No. ICC-01/04-02/06-2578](#), 10 September 2020.

² See the “First Decision on Reparations Process” (Trial Chamber VI), [No. ICC-01/04-02/06-2547](#), 26 June 2020.

³ See the “Order setting deadlines in relation to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), 5 December 2019.

potential beneficiaries of reparations” without accessing the underlying victims’ application forms, and in any event its request for transmission of said forms is untimely and would cause undue delay in the reparations proceedings.

4. Further, the Legal Representatives aver that – contrary to the Defence’s assertion – it is unnecessary for the Chamber to rule on the Registry’s proposed ‘three-group system’ at this stage, particularly since any application forms collected by the Registry will not be the subject of an individual assessment by the Chamber at this point in time. As foreshadowed in the First Decision, a decision on this important issue, amongst others, should be taken with the benefit of full briefing by the parties and the TFV.

5. The Legal Representatives do not oppose the Defence’s request for an extension of time, provided the same extension is granted for their observations on the Report to be prepared by the VPRS pursuant to the First Decision (the “30 September Report”)⁴ and that other deadlines already set as part of the present reparations proceedings are maintained.

II. PROCEDURAL HISTORY

6. On 8 July 2019, the Chamber, in a different composition, found Mr Ntaganda guilty of 18 counts of war crimes and crimes against humanity.⁵

7. On 25 July 2019, Judge Chang-ho Chung, acting as Single Judge, issued the ‘Order for preliminary information on reparations’,⁶ requesting, *inter alia*, the Registry to submit information on, and any proposed methodology for, the identification of non-participating victims.

⁴ See the First Decision, *supra* note 2, para. 44.

⁵ See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

⁶ See the “Order for preliminary information on reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2366](#), 25 July 2019.

8. On 5 December 2019, the Single Judge issued the 5 December Order,⁷ instructing, *inter alia*, the parties, the Registry, and the TFV, and inviting the Prosecution, to make submissions on a number of issues related to reparations. The Single Judge also instructed the Registry, in consultation with the LRVs and/or the TFV, as appropriate: (i) to continue to carry out its preliminary mapping of potential new beneficiaries of reparations; (ii) to carry out an assessment of how many of the victims participating in the *Ntaganda* case may potentially be eligible for reparations given the scope of the Judgment; and (iii) to carry out an assessment of how many of the victims eligible for reparations as direct beneficiaries in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the “*Lubanga* case”) are also potentially eligible for reparations in the *Ntaganda* case.

9. On 14 May 2020, the Chamber appointed four experts for the purposes of the reparations proceedings and instructed them to submit by 28 August 2020 a report on four issues identified by the Chamber.⁸ The deadline for the submission of said report was subsequently postponed to 30 October 2020.⁹

10. On 26 June 2020, the Chamber issued the First Decision,¹⁰ instructing, *inter alia*, the Registry: (i) to finalise the assessment of how many of the participating victims may potentially be eligible for reparations given the scope of the Judgment, in consultation with the respective LRV, and the TFV, as appropriate; (ii) to finalise the assessment of how many victims eligible for reparations in the *Lubanga* case are also potentially eligible for reparations in the *Ntaganda* case; (iii) to finalise the mapping of potential new beneficiaries; (iv) to prepare, in consultation with the parties and the TFV, a sample of potential beneficiaries of reparations; and (v) to report to the Chamber on the aforementioned activities by 30 September 2020, and thereafter every three months.

⁷ See the 5 December Order, *supra* note 3.

⁸ See the “Public redacted version of ‘Decision appointing experts on reparations’” (Trial Chamber VI), [No. ICC-01/04-02/06-2528-Red](#), 14 May 2020.

⁹ See the “Decision on Request for an Extension of Time for Filing of Experts’ Report” (Trial Chamber VI), [No. ICC-01/04-02/06-2553](#), 20 July 2020.

¹⁰ See the First Decision, *supra* note 2.

11. On 6 July 2020, the Defence filed a request for an extension of time to submit a request for clarification, reconsideration, and/or leave to appeal the First Decision.¹¹ The following day, the LRVs jointly responded to the request, opposing it as untimely and for failing to show good cause for the requested extension.¹² On 14 July 2020, the Chamber rejected the Defence's request on the basis that good cause for the requested extension had not been shown.¹³

12. On 11 September 2020, the Defence filed the Request,¹⁴ which purports to seek clarification and/or further guidance from the Chamber in respect of: (i) the Defence's involvement in consultations concerning the list of participating victims potentially eligible for reparations; (ii) the Defence's access to application forms of participating victims, victims in the *Lubanga* proceedings and newly-identified potential beneficiaries of reparations; and (iii) the Chamber's possible adoption of the 'three-group system' proposed by the VPRS. Further, the Defence seeks an extension of the deadline to submit observations on the 30 September Report until 26 or 30 October 2020.

III. SUBMISSIONS

1. The Defence's involvement in consultations concerning the list of participating victims potentially eligible for reparations

13. The Request purports to seek "*clarification and/or further guidance from the Chamber regarding the involvement of the Defence in the identification of participating victims potentially eligible for reparation considering the scope of the Judgment*".¹⁵ Contrary

¹¹ See the "Expedited request on behalf of Mr. Ntaganda seeking a limited extension of time to submit a request for clarification, reconsideration and/or leave to appeal the 'First Decision on Reparations Process'", [No. ICC-01/04-02/06-2550-Conf](#), 6 July 2020.

¹² See the "Joint Response of the Common Legal Representatives of victims to the 'Expedited request on behalf of Mr. Ntaganda seeking a limited extension of time to submit a request for clarification, reconsideration and/or leave to appeal the First Decision on Reparations Process'", [No. ICC-01/04-02/06-2551-Conf](#), 7 July 2020.

¹³ See the "Corrigendum of Decision on Defence Request for an Extension of Time Limit" (Trial Chamber VI), [No. ICC-01/04-02/06-2552-Corr](#), 14 July 2020.

¹⁴ See the Request, *supra* note 1.

¹⁵ *Idem*, para. 12.

to the Defence's claim that "*the First Decision [...] omits to address the role envisaged, if any, for the Defence*",¹⁶ the First Decision is clear on this point. The Chamber deliberately envisaged different roles for the Registry's VPRS, the TFV and the LRVs on the one hand, that are required to "*fully collaborate and cooperate to facilitate the efficient and effective conduct of proceedings*",¹⁷ and on the other hand the Defence, that is simply "*invited to share its views with the Registry*" where "*appropriate*".¹⁸ The First Decision demonstrates that the Chamber specifically considered the role of the Defence at this stage of the reparations proceedings, and instructed that consultations be carried out with "*the parties and the TFV*" where appropriate, such as for the sample of potential beneficiaries to be prepared by the Registry,¹⁹ but not in relation to other matters such as the "*assessment of how many of the participating victims may potentially be eligible for reparations given the scope of the Judgment*", which is to be finalised "*in consultation with the respective LRV and the TFV*" only.²⁰

14. The First Decision clearly excludes the Defence from consultations pertaining to the list of participating victims potentially eligible for reparations. It reflects, in this respect, the 5 December Order, which similarly instructed the Registry, "*in consultation with the LRVs and/or the TFV*" only, to carry out an assessment of how many victims participating in the *Ntaganda* case may potentially be eligible for reparations given the scope of the Judgment.²¹ Both the First Decision and the 5 December Order are clear in this sense and do not require clarification or further guidance.

15. The Defence complains of its exclusion from the consultation process, and thus simply disagrees with – as opposed to seeking clarification of – the First

¹⁶ *Idem*, para. 11.

¹⁷ See the First Decision, *supra* note 2, para. 42.

¹⁸ *Ibid.*

¹⁹ *Idem*, p. 19, 4th bullet point.

²⁰ *Idem*, p. 19, 1st bullet point

²¹ See the 5 December Order, *supra* note 3, para. 9(a).

Decision. Having failed to file a timely request for leave to appeal the First Decision,²² and indeed any request for leave to appeal the 5 December Order, the Defence now attempts to reframe the matter as a request for clarification and/or further guidance.

16. Effectively, the Defence is requesting the Chamber to reconsider the relevant portion of the First Decision, but does not argue – let alone demonstrate – that the criteria for reconsideration are met. The Legal Representatives recall the Chamber’s finding that *“it is within its power to reconsider its own decisions”*, but that *“reconsideration is an ‘exceptional measure’ which should only be granted if a ‘clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice’”*.²³ The Appeals Chamber further held that the repetition of arguments already advanced by the moving party is *“not [...] a valid basis for a reconsideration request”*.²⁴

17. Finally, the Legal Representatives note that, as stated in the Request, Mr Ntaganda’s counsel was copied in the email communication of 3 September 2020 whereby the VPRS sought guidance from the Chamber in relation to its eligibility assessment of participating victims.²⁵ Following that email communication, the Chamber instructed the VPRS to address any legal and factual issues relevant to the eligibility assessment of potential beneficiaries in the 30 September Report²⁶ on which, according to the First Decision, the Defence will have an opportunity to provide observations.²⁷ Against this background, the Request fails to articulate what additional consultative role the Defence wishes to play at this stage. In essence, the

²² See the “Corrigendum of Decision on Defence Request for an Extension of Time Limit”, *supra* note 13.

²³ See the “Decision on Defence request seeking partial reconsideration of the ‘Decision on Defence request for admission of evidence from the bar table’” (Trial Chamber VI), [No. ICC-01/04-02/06-2241](#), 22 February 2018, para. 4, citing the “Decision on the Defence request for reconsideration and clarification” (Trial Chamber VI), [No. ICC-01/04-02/06-483](#), 27 February 2015, para. 13; and the “Decision on Prosecution request for reconsideration of, or leave to appeal, decision on use of certain material during the testimony of Mr Ntaganda” (Trial Chamber VI), [No. ICC-01/04-02/06-1973](#), 23 June 2017, para. 14.

²⁴ See the “Decision on Mr Ntaganda’s request for reconsideration of the decision on time and page extensions” (Appeals Chamber), [No. ICC-01/04-02/06-2426](#), 1 October 2019, para. 6.

²⁵ See the Request, *supra* note 1, para. 5, referring to the “Email from the VPRS to Trial Chamber VI Communications”, 3 September 2020, at 17:57.

²⁶ See the “Email from Trial Chamber VI Communications to the VPRS”, 8 September 2020, at 15:15.

²⁷ See the First Decision, *supra* note 2, paras. 43-44.

Defence's request for inclusion in the consultation process appears to boil down to an umpteenth attempt on its part to gain access to the application forms filed by various categories of victims. For the reasons set out in further detail *infra*, the Legal Representatives respectfully request the Chamber to reject said request.

2. The Defence's access to application forms of various categories of victims

18. In the Request, the Defence seeks "*clarification and/or further guidance from the Chamber regarding the timing of the transmission of all application forms to the defence*".²⁸ The Defence misrepresents the scope of the First Decision in that the Chamber did not instruct the VPRS to provide the Defence, nor indeed any other parties and participants, with application forms completed by the victims. No clarification of the First Decision is required in this respect, and the Request effectively amounts to a reiteration of repeated attempts by the Defence in the course of the present reparations proceedings to gain access to the application forms of all potential beneficiaries.²⁹ Once again, the Defence is requesting the Chamber to reconsider the relevant portion of the First Decision without demonstrating that the stringent criteria for reconsideration are met.³⁰

19. As for the merits of the Request in this respect, the Legal Representatives maintain their position that no application forms should be transmitted to the Defence. First, there is no support in the Court's jurisprudence as to a right of the Defence to access application forms at the present stage of the proceedings. Second, the Defence's involvement in consultations concerning the "*sample of potential beneficiaries of reparations*" in accordance with paragraphs 37-38 of the First Decision does not require transmission of the relevant application forms. Third, in any event,

²⁸ See the Request, *supra* note 1, para. 19.

²⁹ See e.g. the "Response on behalf of Mr. Ntaganda to Registry's preliminary observations on reparations", [No. ICC-01/04-02/06-2431](#), 3 October 2019, paras. 25, 36, and 38; and the "Public Redacted Version of 'Defence submissions on reparations'", 28 February 2020, ICC-01/04-02/06-2479", [No. ICC-01/04-02/06-2479-Red](#), 6 March 2020, paras. 39, 84, 88, and 103.

³⁰ See *supra*, para. 16.

the Request is untimely and would cause undue delay in the reparations proceedings.

a) The Defence is not entitled to access application forms at the present stage of the proceedings

20. The Defence requests the Chamber to order the Registry to transmit “the complete participating victims’ application forms and the victims in the Lubanga proceedings’ application forms”, as well as “the application forms of the newly identified potential beneficiaries of reparations, on a rolling basis when available”.³¹ The Court’s jurisprudence does not bestow upon the convicted person an unfettered right to access victims’ application forms, nor to challenge each individual’s entitlement to reparations. In fact, the Appeals Chamber has found that the convicted person’s fair trial right can be complied with where the Defence has the opportunity to challenge the key elements of the reparations scheme adopted by the Chamber, including in relation to the screening of victims and the draft implementation plan.³²

21. While in some earlier cases before the Court application forms were transmitted to the Defence, said access was much more limited than the Request suggests.³³

22. First, the transmission of application forms to the convicted persons should be confined to instances where individual reparations have been ordered.³⁴ As noted by the Chamber, some forms of collective reparations do not require any form of victim

³¹ See the Request, *supra* note 1, para. 7.

³² See the “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), [No. ICC-01/04-01/06-3129](#), 3 March 2015 (the “First Lubanga Appeal Decision”), paras. 167-168; and the “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 “Second Lubanga Appeal Decision”), para. 3. See also the “Decision on victims’ participation in trial proceedings” (Trial Chamber VI), [No. ICC-01/04-02/06-449](#), 6 February 2015, para. 30.

³³ See the Request, *supra* note 1, paras. 46 and 86.

³⁴ See e.g. the “Reparations Order” (Trial Chamber VIII), [No. ICC-01/12-01/15-236](#), 17 August 2017, para. 146(iv); and the “Decision on the ‘Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve’ and future stages of the proceedings” (Trial Chamber II), [No. ICC-01/04-01/07-3546-tENG](#), 8 May 2015.

screening,³⁵ and thus entail no right of the Defence to challenge each victim's reparations request,³⁶ nor to obtain their application form. Accordingly, the Legal Representatives submit that it would be premature for the Chamber to rule on the crucial issue of access to application forms prior to deciding on the types and modalities of reparations, and on whether they will include an individual component.

23. Second, at the reparations phase of proceedings, the convicted person is usually only granted access – in connection with an individual component of the relevant reparations scheme – to the application forms submitted by the relevant victims for the purposes of reparation.³⁷ By contrast, the Defence seeks access to the “*original application forms*” compiled by participating victims.³⁸ To date, the Chamber has not yet ruled on whether the “*form-based approach*” proposed by the VPRS³⁹ will be adopted – and, if so, for which victims – and has indicated that at the present stage “*participating victims are [...] not required to file a new application form in order to be considered as potential reparations beneficiaries*”,⁴⁰ that participating victims and victims to be eligible for reparations in the *Lubanga* case are to be “*presumed willing to be considered as potential beneficiaries of reparation*”,⁴¹ and that new potential beneficiaries are not “*required to fill in [an] application form*”.⁴² Far from granting the Defence an unfettered right to access all application forms submitted by participating victims, this aspect of the First Decision constitutes an additional factor militating against the transmission of *any* application forms to the Defence. Ultimately, such forms may

³⁵ See the First Decision, *supra* note 2, para. 35, citing the Second *Lubanga* Appeal Decision, *supra* note 32, paras. 82 and 85; the “Reparations Order”, *supra* note 34, para. 145; and the “Trust Fund for Victims’ observations relevant to reparations”, [No. ICC-01/04-02/06-2476](#), 28 February 2020, paras. 58-59.

³⁶ See the First *Lubanga* Appeal Decision, *supra* note 32, para. 164.

³⁷ See *e.g.* the “Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo” (Trial Chamber II), [No. ICC-01/04-02/06-3275-tENG](#), 22 February 2017.

³⁸ See the Request, *supra* note 1, para. 16.

³⁹ See the “Annex 1: Registry’s Preliminary Observations on Reparations”, [No. ICC-01/04-02/06-2391-Anx1](#), 5 September 2019, paras. 21-23.

⁴⁰ See the First Decision, *supra* note 2, para. 29.

⁴¹ *Idem*, para. 30-31.

⁴² *Idem*, para. 35-36.

cover only some of the victims entitled to reparations and may be of limited, if any, relevance to the Chamber's reparations award.

24. Finally, as regards the Defence's request to "*be provided with the application forms of the potential newly identified beneficiaries on a rolling basis*",⁴³ the Legal Representatives note that, according to the First Decision, both the mapping exercise and the registration of new beneficiaries fall within the exclusive responsibility of the Registry.⁴⁴ The parties and the TFV should only be consulted on a proposed draft application form,⁴⁵ and no involvement of the parties or the TFV in the assessment of new potential beneficiaries is foreseen by the First Decision at this stage. The Legal Representatives recall that, in the context of the *Lubanga* reparations proceedings, the Appeals Chamber found that the convicted person's rights were sufficiently safeguarded by virtue of the opportunity afforded to the Defence to make submissions on the *process* of locating new applicants and determining their eligibility,⁴⁶ even though the decision on the eligibility of new beneficiaries was subsequently delegated to the TFV without any involvement on the Defence's part.⁴⁷ Against this background, the Defence's request for transmission of new applications on a rolling basis is premature and should be dismissed.

b) The Defence's involvement in consultations concerning the sample does not require transmission of the relevant application forms

25. The Defence seeks access to "*the application forms of all potential beneficiaries*"⁴⁸ or "[i]n the alternative and at a minimum [...] *the application forms of all victims included in the sample/matrix*".⁴⁹ It argues that "*in order to play a meaningful role in the preparation of the sample, to be provided with the complete application forms of the three categories of*

⁴³ See the Request, *supra* note 1, para. 17.

⁴⁴ See the First Decision, *supra* note 2, paras. 32-36.

⁴⁵ *Idem*, para. 35.

⁴⁶ See the First *Lubanga* Appeal Decision, *supra* note 32, paras. 166-167.

⁴⁷ See the "Order to complete the process of identifying victims potentially eligible to benefit from reparations" (Trial Chamber II), [No. ICC-01/04-01/06-3267-tENG](#), 14 February 2017, para. 27.

⁴⁸ See the Request, *supra* note 1, para. 26.

⁴⁹ *Idem*, para. 18.

victims to be included in the sample".⁵⁰ The Legal Representatives submit that the consultative role to be played by the Defence in relation to the sample does not entail its involvement in each victim's selection for sampling purposes, and that the transmission of the relevant application forms to the Defence is neither provided for in the First Decision, nor required for it to make meaningful observations.

26. The Chamber ordered the Registry to prepare a sample of a *"limited but representative pool of potential beneficiaries"* in consultation with the parties and the TFV,⁵¹ but it did not instruct the Registry to provide either the Defence or the TFV with application forms. Nor does the First Decision contain any indication that the Defence should be involved in the selection or assessment of victims for sampling purposes, given in particular that a further assessment of the eligibility of said victims is not required at this stage.⁵² The selection of victims for sampling purposes is an administrative process delegated to the Registry as a neutral organ. The Legal Representatives assisted the VPRS in elaborating the proposed sample *"for Category I victim beneficiaries with a view to achieving the best representative value in the circumstances"*.⁵³ Such assistance was requested by the VPRS in light of *"the LRV's experience in the case, and their intimate familiarity with their clients and personal situation"*, given in particular the difficulties arising in contacting victims at the present time under the current COVID-19-related restrictions.⁵⁴ Mr Ntaganda's rights are not prejudiced since the selection of specific victims for sampling purposes does not concretely affect the extent of his liability.

27. In the context of said administrative process, the Defence's role should be limited to making observations on the methodology for designing the sample and the categories of information to be included, a task that can be meaningfully fulfilled without access to the underlying application forms. Indeed, the Legal

⁵⁰ *Idem*, para. 15.

⁵¹ See the First Decision, *supra* note 2, para. 37.

⁵² *Idem*, para. 29.

⁵³ See the document titled "Draft Bosco Methodology version 21 Sept", attached to the "Email from the VPRS to the Defence, the Legal Representatives and the TFV", 21 September 2020, at 7:24pm, para. 10.

⁵⁴ *Idem*, para. 19.

Representatives do not anticipate any difficulties in providing their observations on said questions even though they will not have access to the application forms of at least some of the victims included in the sample, such as the victims potentially eligible for reparations in the *Lubanga* case and the participation forms of the other legal representative's clients. The Defence has already started to comment on these matters as part of its consultations with the VPRS,⁵⁵ has received the draft methodology and the draft reparations form prepared for these purposes by the VPRS, accompanied by a request to provide comments to the VPRS by 24 September 2020,⁵⁶ and will be given a further opportunity to make additional observations before the Chamber following the 30 September Report.⁵⁷

c) The Request is untimely and would cause undue delay in the reparations proceedings

28. While reiterating Mr Ntaganda's commitment to contribute to the efficiency of the reparations process⁵⁸ and advocating for the need to avoid unnecessary delays,⁵⁹ the Defence's request for the transmission of application forms is untimely and, if granted, would generate significant and undue delays. The Defence has waited for over two months since the issuance of the First Decision before requesting transmission of the application forms of all potential beneficiaries.⁶⁰

29. If the Chamber were to grant the Defence's very late request for access to application forms, this would significantly delay the reparations proceedings, contrary to the Chamber's intention to ensure said proceedings to be as expeditious, effective, and efficient as possible in the current circumstances.⁶¹ The Legal Representatives note that the Defence initially argued that "*the circumstances of the*

⁵⁵ See the Request, *supra* note 1, para. 14 ("it would be advantageous to include additional information in the proposed matrix such as the date of the harm suffered by the victims included in the matrix and basic information identifying the link between the crime and the harm suffered").

⁵⁶ See the "Email from the VPRS to the Defence, the Legal Representatives and the TFV", *supra* note 53.

⁵⁷ See the Request, *supra* note 1, para. 14; and the First Decision, *supra* note 2, p. 19.

⁵⁸ See the Request, *supra* note 1, para. 2.

⁵⁹ *Idem*, para. 19.

⁶⁰ *Idem*, para. 16.

⁶¹ See the First Decision, *supra* note 2, para. 21.

present case justify that unredacted requests for reparations be transmitted to [it]”,⁶² but appears to have since abandoned said position and conceded that “necessary redactions” will need to be applied to the victims’ application forms prior to their transmission.⁶³ The Legal Representatives underscore in this context the Court’s jurisprudence confirming that the convicted person will have “sufficient access to information enabling him to contest the evidence produced against him, guaranteeing him a fair procedure [...] despite the fact that he had only access to redacted versions of individual applications for reparations”.⁶⁴

30. Accordingly, the VPRS would be required, at a minimum, to prepare redacted versions of more than 2000 application forms of participating victims, in addition to victims potentially eligible for reparations in the *Lubanga* case and to any further application forms compiled by potential new beneficiaries, before transmitting them to the Defence. The Defence would inevitably need to analyse all these applications before making its observations, and additional time will likely be required for possible litigation. Given that the Chamber has not yet determined the types and modalities of reparations,⁶⁵ and that some forms of collective reparations do not require any form of victim screening,⁶⁶ the Legal Representatives submit that this would be a highly inefficient use of the Court’s resources and would cause unnecessary further delays, to the detriment of victims who have been awaiting reparations for over 17 years already.

3. The adoption of the ‘three-group system’ proposed by the VPRS

31. As part of the present proceedings, the VPRS proposed the adoption of a “uniform system for the identification of potential new reparations beneficiaries that in

⁶² See the “Public Redacted Version of “Defence submissions on reparations”, 28 February 2020, ICC-01/04-02/06-2479”, *supra* note 29, para. 89.

⁶³ See the Request, *supra* note 1, para. 17. See the “Public redacted Judgment on the appeal of the victims against the ‘Reparations Order’” (Appeals Chamber), [No. ICC-01/12-01/15-259-Red2](#), 8 March 2018, paras. 91-95, with further references.

⁶⁴ *Idem*, para. 91.

⁶⁵ See the First Decision, *supra* note 2, para. 36.

⁶⁶ *Idem*, para. 35.

essence *mirrors the system adopted for participation at trial*”,⁶⁷ whereby the parties would only make observations on applications that cannot be clearly resolved by the Registry.⁶⁸ The Defence argues that *“in order to advance the reparation proceedings as expeditiously as possible, in particular in the context of the COVID-19 worldwide pandemic, it is essential for the Chamber to pronounce on this most important issue at this time”*.⁶⁹

32. The Legal Representatives disagree with the Defence’s submissions and aver that it is unnecessary for the Chamber to rule on the Registry’s proposed ‘three-group system’ at this stage, particularly since any application forms collected by the Registry will not be the subject of an individual assessment by the Chamber at this point in time.⁷⁰ Clearly, in the First Decision, the Chamber considered that this issue was not ripe for adjudication and decided that it would pronounce on it at a later stage of the proceedings. The Defence fails to point to any significant change in circumstances that would justify a reconsideration of said approach.

33. The Legal Representatives also note that, only a few days prior to the filing of the Request, the Chamber replied to an email communication from the VPRS seeking guidance on the scope of the judgment as follows:

“the Chamber does not wish to amend the procedure and calendar established in the First Decision on Reparations Process (paras 43-44). The Registry is therefore instructed to submit – together with its Report on the assessment of potential beneficiaries, mapping, identification, and sample – the list of any legal and factual issues relevant to the eligibility assessment of potential beneficiaries by 30 September 2020”.⁷¹

34. The Legal Representatives submit that the same approach should apply to the Request and that a decision on this important issue should be taken with the benefit

⁶⁷ See the “Annex 1: Registry’s Preliminary Observations on Reparations”, *supra* note 39, para. 10, referring to the “Decision on victims’ participation in trial proceedings”, *supra* note 32, para. 30.

⁶⁸ See the “Annex 1: Registry’s Preliminary Observations on Reparations”, *supra* note 39, paras. 13, and 24-27.

⁶⁹ See the Request, *supra* note 1, para. 22.

⁷⁰ See the First Decision, *supra* note 2, para. 36.

⁷¹ See the “Email from Trial Chamber VI Communications to the VPRS”, *supra* note 26.

of full briefing by the parties and participants, as well as the contributions of the experts.

4. The requested extension of time for observations on the Registry's 30 September Report

35. The Defence seeks an extension of the deadline to file observations on the 30 September Report until 26 October or, should the Chamber consider it more appropriate, 30 October 2020.⁷² Like the Defence, the Legal Representatives anticipate that until at least 14 October 2020 they will be fully involved in preparation for the upcoming hearings before the Appeals Chamber, in addition to dealing with numerous matters arising from the reparations proceedings. Accordingly, the Legal Representatives do not oppose the Defence's request for an extension of time, provided the same extension is granted for their own observations on the 30 September Report.

36. Sharing the Chamber's commitment to "*avoid unnecessary delays in the reparations proceedings taken as a whole*" and to "*ensure that the proceedings are as expeditious and effective as possible, leading to prompt, responsive and efficient reparations*",⁷³ the Legal Representatives respectfully request that other deadlines already set in the current reparations proceedings be maintained.

⁷² See the Request, *supra* note 1, paras. 24-25.

⁷³ See the First Decision, *supra* note 2, para. 22 (further references omitted).

IV. CONCLUSION

37. For the aforementioned reasons, the Legal Representatives respectfully submit that the Request should be rejected with the exception of the extension of time requested by the Defence, which the Legal Representatives do not oppose provided the same extension is granted for their own respective observations.

Respectfully submitted,



Sarah Pellet
Common Legal Representative of the
Former Child soldiers



Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks

Dated this 24th Day of September 2020

At The Hague, The Netherlands