

## JUDGMENT

In his letter of 16 May 2023 addressed to and received by the registry of the UVIRA Garrison Military Court on 18 May of the same year, the defendant N. lodged an appeal against judgment in case no 1687/22 passed by said Court on 15 May 2023, sentencing him by the combined effect of Article 78(3) of the Rome Statute and Article 7 of the Military Penal Code (CPM) to penal servitude for life for the crimes against humanity of rape, murder, sexual slavery, imprisonment, torture, forced pregnancy and other similarly inhumane actions; for participation in an insurrection movement and for armed robbery.

He was also sentenced jointly with the Congolese State to pay damages and interests for all types of damage and harm caused to the various civil parties mentioned above, to the equivalent in Congolese Francs of amounts varying between five and seven thousand United States dollars. Under Article 82 of the internal regulations of the general prosecutor's office and military prosecutors' offices, the Public Prosecutor lodged an appeal against the above judgment for all relevant purposes.

Having been submitted in the forms and within the deadlines stipulated by the law, the appeals of the defendant N. and of the Public Prosecutor will be heard.

At the hearing of 23 May 2024 at which this case was called on an adversarial basis, argued and taken under advisement, the defendant and the civil parties appeared as follows: the defendant N. in person, assisted by his counsels Mssrs M. and E., both lawyers from the SK bar, as well as Captain M., a Military defence lawyer approved by the Military Court of SK; the civil parties all represented by their counsels, Mssrs G., D., M. and ....., all lawyers registered with the SK bar.

While the DRC, the civilly liable party, although regularly cited, was not represented by any person.

The procedure was therefore regular: adversarial as regards all of the parties present or represented and by default as regards the DRC, the civilly liable party.

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## ***CONCERNING THE FACTS***

Based on the documents in the case file and the investigation before the trial court as before this present court, the facts of the present case may be summarised as follows:

From 2010 to 2017, the province of South Kivu was prey to armed groups wreaking havoc, particularly in the SHABUNDA, KALEHE and WALUNGU territories, the horrors of which were such that some analysts asserted that it was one of the worst humanitarian crises of the era.

The main group responsible for laying waste to this region, causing death and desolation in the civilian population was the Front of Patriots for Peace (*Force Populaire pour la Paix* – FPP), subdivided into two groups, namely:

- RAIYA MUTOMBOKI;
- MAHESHE;
- BRALIMA and
- AMISI ALIMASI, Alias KOKO-di-KOKO.

Following the death of its supreme leader M., the RAIYA MUTOMBOKI group was placed under the command of the self-proclaimed General N., who is now appearing before this jurisdiction, the Military Court of South Kivu. He had under his command more than 160 elements and numerous weapons including AK47s, PKMs, rocket launchers and 60mm mortars and occupied the territory comprising the villages of BUSOLO, LIKIGI, MILEMBA, LUNTUKULU, KABOGOZA, JERUSALEM, KOZE, KIMBILI, NAHAZI, BWANGAMA, LUSUKU, KASELA, SANTAMA, NYARUBEMBA, CHULWE and the surrounding area where numerous atrocities had been committed against the civilian populations which condemned them both in the context of crimes against humanity, rape, murder, torture, sexual slavery, forced pregnancy and imprisonment; and for ordinary crimes, notably their participation in the insurrection movement and armed robbery, as well as other similarly inhumane acts.

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Understood from minutes setting out the acts of which he is accused but nevertheless recognises his membership of an armed group RAI A MUTOMBOKI and that he is the supreme commander thereof.

As regards the objective of his movement, he maintains that it was to combat the FDLR, which was wreaking terror and desolation on the civilian population by killing, raping, pillaging and burning.

## *IN LAW*

### **1. On the jurisdiction of the Court**

This Court is bound to assess its jurisdiction *ex officio* or on objection under Article 246, first subparagraph of the Military Judicial Code.

It therefore bases its competence on: Article 6, third subparagraph *et seq.* of Organic Law No 13/011-B of 11 April 2013 on the organisation, functioning and competence of the ordinary courts; and Article 76, first subparagraph, Article 84, second subparagraph and Article 278, first subparagraph, second indent, of the Military Judicial Code, given that in this case it is sitting before an appeal against the judgment pronounced by the UVIRA Garrison Military Court, a lesser jurisdiction, sentencing the defendant N. for acts committed in breach of the Military Penal Code, notably Participation (Article 136 to 137 CPM).

### **2. On the admissibility of the appeals**

The appellants in the case under examination reproach the decision as a failure of justice as follows:

#### **For the Public Prosecutor:**

For all intents and purposes, because the defendant has been sentenced to penal servitude for life and also because it considers that the first [trial court] failed to  
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comply with Article 80 of the Rome Statute and Article 20 of the first book of the Ordinary Penal Code in that they applied the penalties of 25 years for [the] crime against humanity of Torture and 30 years for [the] crime against humanity of Imprisonment.

For all of these reasons, the Public Prosecutor requests that the present Court apply Article 107 of the Code of Criminal Procedure (CPP).

### **For the defendant N.:**

He considers that he is innocent and that the trial court judge wrongly pronounced him guilty.

He thus submits five objections against the contested decision:

1. Erroneous reason. On this subject, he maintains that it is difficult to cite him as a perpetrator of crime against the peace of a zone in which there are multiple armed groups; therefore there are contradictions and inaccuracies in the victims' declarations.
2. Insufficient reason. On this point, they highlight the fact that the trial court failed to demonstrate clearly that the facts of the present case bear any direct relation to the provisions of Article 7 of the Rome Statute.
3. Absence of evidence. On this subject, he maintains that, in relation to rape, the trial court took into account a medical report from 2022, even though the facts of the present case are from 2018. In relation to murder, the trial court sentenced him without proving the death of the victims; therefore the existence of the civil parties has not been proven. The defendant had decided to turn himself in, so the trial court should have applied the absolute excuse. They had also applied two forms of responsibility for a single defendant without demonstrating that the defendant assumed the responsibility of their hierarchical superior.
4. The trial court ruled *ultra petita*. He maintains that the trial court sentenced him for armed robbery without investigation.

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It also sentenced him for torture and destruction of property without any [investigation].

#### 5. Procedural default

For all of these reasons, the defence requests that this court annul the decision of the trial court in all of its provisions and that, by evocation, it re-examine the alleged facts against the defendant, N., declare them not established in fact and in law, discharging the defendant from all further proceedings.

Returning to the arguments of the defendant, the civil complainants, supported by the Public Prosecutor, maintain the following:

- For the first and second argument, the Public Prosecutor and the civil parties consider the two arguments to be mutually exclusive, either the reasoning is flawed or the reasoning is insufficient. For them, the trial court thoroughly reasoned its decision.
- For the third and fourth arguments, the Public Prosecutor and the counsels for the civil parties emphasise that widespread attack is evidenced by the multitude of victims and that 18 items of evidence were accepted by the trial court, the conviction of the judge and the testimonies of the victims and witnesses.

Also in criminal matters, the evidence is free and the judge is active. For them, the trial court pronounced lawfully in accepting both forms of responsibility, because not only was the defendant N. acting alone, he was also commanding over 160 elements in the area.

- For the last argument, the Public Prosecutor and the counsels of the civil parties consider that before seeking not to proceed, the defence should submit a single brief.

In conclusion, the civil parties as well as the Public Prosecutor request that this court reject the appeal arguments of the defendant and confirm his guilt.

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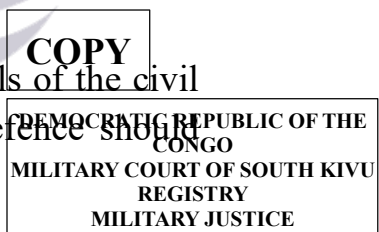
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For the Court, as regards all of the arguments of the appellants presented above, it observes that the trial court seized of the acts of crimes against humanity: murder, torture, rape, Sexual slavery, forced pregnancy, imprisonment and other similarly inhumane acts, participation in an insurrection movement and armed robbery as ordinary crimes against one hundred and twenty-three civil parties, omitted civil party F007 from its decision.

This conduct by the trial court shows that they not only ruled *ultra petita*, but also broke the law by omitting victim F007.

For this reason, the court will annul the decision of the trial court in all of its provisions and express itself in accordance with Article 107 of the Code of Criminal Procedure.

Examination of the other arguments invoked by the Public Prosecutor and the defendant, also seeking annulment of the contested decision, has proved superfluous.

Therefore, it will rule the appellants' arguments partially founded, cancel the judgment adopted under all of its provisions and express itself by doing what the trial court should have done.

This being done, the Court will have to proceed to analyse the offences with which the defendant is charged.

### **ON CRIMES AGAINST HUMANITY**

Examining the legal provisions adopted as a basis for indictments, the Court notes that, in order to establish that there has been a crime against humanity, the following elements must collectively apply:

#### **(a) CONTEXTUAL ELEMENTS**

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These have been drawn from Article 7 of the Rome Statute of the International Criminal Court, which provides that: ‘For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.

There must have been a widespread or systematic attack directed against the civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack; the link between the acts in question and the attack; the attack must be launched against the civilian population and with knowledge of the attack (Article 7(2)(a)).

### A1. ON THE ATTACK

- The existence of an attack need not necessarily be military; it must be widespread or systematic.
- A widespread attack is one that is massive, frequent and collective in nature, with considerable gravity for a multiplicity of victims (attack either committed by multiple perpetrators or which has multiple victims).

It has been waged collectively by multiple elements under the command of the defendant, N., and has resulted in a number of victims, 122 in total.

A systematic attack is one necessitating a plan or a preconceived policy, even if unknown to the State authorities (ICTR, RUTAGANA case).

This is what is important, not the number of agents or a specific quality that they should possess to perpetrate mass crimes, but that it should consist of an carried out over a large geographical area or an attack in a small geographical area directed against a large number of civilians (ICC, Pre-Trial Chamber II, v. J.P. BEMBA GOMBO, paragraph 83).

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## **A2. ON THE ATTACK DIRECTED AGAINST THE CIVILIAN POPULATION**

(Article 7(2)RS)

All of these victims were neither police nor military and did not participate in the operations; the majority were fishers, farmers or peasants.

### **Evidence:**

- Victims' declarations

The attack must be directed against the civilian population, understood to mean persons not directly participating in the hostilities, including members of the armed forces who have laid down their arms, and persons who have been excluded from combat by illness, injury or other causes (ICTR, chamber, first instance, F., prosecutor against PAUL AKAYESU, No ICTR-96-4-T, judgment of 2 September 1998, paragraph 592);

The entire population need not have been affected, it is sufficient to show that enough individuals were targeted in the course of the attack (T. Dix, prosecutor against Stakic, ch., Trust II, 31 July 2003. IT-97-24, §624).

### **A3. Policy of a State or an organisation:**

There is no requirement that this policy must be adopted formally as the policy of a State. There must however be some kind of preconceived plan or policy. (ICTR, prosecutor against AKAYESU, paragraph 580), in this sense ICC, Pre-Trial Chamber II, J.P. BEMBA GOMBO case, No ICC 01/05-01/08 of 15 June 2009, paragraph 81, the policy need not be formalised (ICTR, the prosecutor against TADIC, trial Chamber II, Case No IT-94-1, judgment of 7 May 1997, paragraph 658);

This rationale holds that organised individuals with de facto power are capable of implementing a policy of terror on a large scale and committing massive atrocities (Philippe CURRAT, *les crimes internationaux* [International

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*Crimes]* in S.R.L.G.DJ, 2008, 102, cited in *Recueil de jurisprudence congolaise en matière des crimes internationaux* [Congoese case-law on international crimes], ed. AST, December 2013, p.57);

## **KNOWLEDGE OF THE ATTACK AND INTENTION TO COMMIT IT**

The defendant knew of the attack because he declared that he was sending men under his command under the pretext of attacking whereas it was the civilian population that was victim to rape, pillaging, murder, extortion, torture, kidnapping, imprisonment and other inhumane acts;

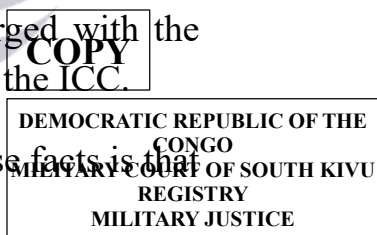
He had decided to adopt dishonourable behaviour and knew that the atrocities were bound to happen as his troops were operating with weapons of war and not with other instruments.

He organised attacks on three fronts with a head of mission.

The perpetrator must at a minimum have been aware that he was taking part in a common plan (Article 30 RS of the ICC) and must have engaged in concrete conduct such that the consequence was a foreseeable outcome in the ordinary course of events. Therefore, he must know that the widespread and systematic attacks directed against the civilian populations were part of the organisation's policy; the act must have been part of the attack, the perpetrator must have wanted to adopt criminal behaviour, have known that the attack was against civilian populations.

By examining the contextual elements revealed above in the light of the facts of this case, the Court is persuaded that the defendant may be charged with the crimes against humanity set out in Article 7 of the Rome Statute of the ICC.

The second question that the Court has to address in relation to these facts is that of knowing who were the perpetrators.



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The consistent declarations of the victims, the defendant, witnesses and information show that the facts took place between 2012 and 2020, a period in which the defendant recognises having deployed his men in the above-mentioned sectors.

## INDICATIONS AND PRESUMPTIONS

The men of the defendant N. were operating with arms and the victims recognised some of them, lived with them in the villages.

### On the attack:

Attacks were made by the defendant N. and the elements under his command in the villages of LUKUGI, BUSQ1XL KABOGOZA, KOZE, LUTUKULU, JERUSALEM, KATUKULU, KIMBILI, NAHAZI, BWANGAMA, LUSUKU, KASELA, SANTAMA, NYARUBUMBA, TSHILWE and the surrounding area in the WALUNGU, MWENGA and SHABUNDA territory;

- a. The victims' declarations at their hearings in the pre-jurisdictional phase, nos: 181, 182, 183, 185, 187 et seq., minutes of the Officer of the Public Prosecutor (OMP) and those gathered during the hearing of 31 May 2024. The latter declare that N.'s elements went everywhere, committing all kinds of atrocities (rape, murder, theft, extortion, torture, pillaging), to name only these, and of which for certain victims, notably S064, F081, F033, H020, etc., presented lists of material property, namely: list of property stolen, pillaged, extorted, etc., abducted by the men under the command of the defendant N.
- b. Declaration of the defendant, who does not recognise having arrested any person or detaining anybody whatsoever at his [REDACTED];

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These attacks were made widespread by:

1. The massive nature, waged collectively, and their gravity. Such was the case for S048, F035, F034, F029, F020, F015, F010 and F019,
- 2.
3. F033, F081, S016, S017, S018, S021, S042, S044, S046, S048, S050, S056, S058, S062, S064 raped by the defendant N. and elements under his command; F033 suffered first-degree burns to her left leg, she was raped and tortured;
4. Systematic: There was a plan that consisted primarily in hunting down victims and anyone presenting themselves as belonging to the commander's following based on a list pre-established by the Public Prosecutor the guides operating from their stronghold under his instruction.

Evidence;

- Testimony of the defendant;
- Victims' declaration;
- Witnesses;
- Village heads;

### **The multiplicity of victims;**

The Court has enumerated one hundred and twenty-three (123) victims who have become civil parties (see the confidential list), some of whom bear the marks of scars of tortures and have children born from these attacks.

These attacks were also systematic in terms of the choice of targets: the perpetrators targeted [REDACTED], [REDACTED] on market day, Monday, victims of the pillaging of their valuables including: 5g of gold, mattresses, pagnes, panels, money, cases of beer, persons with money, the girls and women distributed to the men of the group for their sexual needs.

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These attacks were directed against the civilian population; the men, women and girls were not soldiers, police, or armed militia. They [were] often attacked at night and often while fast asleep, in quarries, villages, etc., by these aggressors.

### **In execution of the policy of a State or an organisation**

Having explained what should be understood by policy, the Court notes that the programme does not necessarily have to be so developed or supported by official literature. It may be deduced from the manner in which the actions have been committed, precisely whether they are general or systematic in nature.

The case-law affirms that the forces responsible for the acts committed need not necessarily be those of the legitimate government but who exercise de facto control over a particular territory or are able to move around freely (ICTR, TARDIC case, paragraph 654).

In this case, in each attack, the modus operandi was the same and the choice of victims based on the same criteria. This was part of the policy conceived by the group and the acts were committed according to the consistent declarations of the witnesses that constitute a body of evidence, free from persons released after payment of the ransom and those who escaped by [sic] the armed men declaring themselves to belong to the movement led by the defendant N., self-proclaimed General of the RAIYA MUTOMBOKI, FRONT OF PATRIOTS FOR PEACE group, a movement that occupied the sector and moved freely around it.

### **Knowledge of the attack by the perpetrators:**

The aggressors identify themselves, were operating on behalf of their movement and were well aware that they were committing irregular, unjustified attacks against the harmless population in a deliberate and conscious manner and boasted of being liberators after committing each act.

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## The causal link between the attacks and the acts

According to the consistent testimonies, it was during these attacks that victims **S048, F035, F034, F029, F020, F015, F010, F019, F033, F081, S016, S017, S018, S021, S042, S044, S046, S048, S050, S056, S058, S062, S064** were raped by the defendant N. and elements under his command and **F019, F010, T001 and S044** detained as sexual slaves in their [REDACTED] in [REDACTED], and others like **T001, F033 and S023** were tortured.

## Existence of the organisation

The policy or the plan was conceived by the defendant N. and a group of persons under his command that he had entrusted to the defendant as a guide, the policy consisted in tracking down populations that were opposed to integrating his movement. They were arresting them and taking them to his [REDACTED], where he had already prepared a torture dungeon, the others were paying one or more goats and money before being freed to create terror in their hearts.

On this occasion carrying off goats to give to his troops to assuage their passions.

### Evidence:

- Victims' declarations: T001, F033, S023
- Witnesses' declarations
- Accused's declaration nos: 181 to 185, OMP minutes;

The Court deduces the existence of the organisation from the declarations of the defendant himself and those of the persons having lived with

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him and the victims and witnesses freed or escaped from the administrative organisation attested in writing.

In the hearing of 28/05/2024, it is consistently affirmed:

1. The defendant affirms that there was a movement called: RAIYA MUTOMBOKI, FRONT OF PATRIOTS FOR PEACE under his command, whose objective was to combat the FDLR and that this movement was structured and the defendant [was the] self-proclaimed General, the General Chief of Staff in [REDACTED];

The defendant claims not to have been its commander but affirms that he had an active role within the movement as a Brigade commander, occupying the fourth position, D. as president of the movement M. (deceased), second figure, M. as third figure.

He added that, even after the retreat of FDLR elements in the SHABUNDA territory, his fiefdom, his group continued to exist; words of the defendant himself during all submission phases both pre-trial, no: 181, OMP minutes dated 15 November 2021 and before the judicial investigation at the hearing of 28/05/2024.

To support his argument, the defendant in his words and arguments recorded in his hearing statement before the officer of the Public Prosecutor, no 182, that before the Court at the same hearing, that indeed, the elements of the group under his command had, in various attacks, pillaged, extorted property from peaceful citizens, but had never killed or raped; [that] would violate the ideology of the movement

This Court will conclude that this movement was organised, commanded by the defendant N. and affirms that the various attacks were targeted in the villages, notably: KAMBILI, NYALUBEMBA, NYEMBE, MAIMINGI, KIBANDA, MANGOBO and LUBIMBE.

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The Court notes that this organisation was also confirmed by the victims: T001, F033, S023, S052, H020, F038, F081, F015, S044, F019, F010 and 035.

The defendant claims not to have been the commander but affirms that he was obliged to assume this position, these words do not in any way diminish the organisation to which he gives structure; brigade commander in his capacity as self-proclaimed General; K. the deputy commander; M. (Major) S1, responsible for administration; T., S3 responsible for training; W., S4 responsible for supplies; the brothers, friends and neighbours responsible for intelligence and research (BU II) and Major M., who had a high level among them, D6, was the only one among them who held the role of judicial police officer, according to the ideology of protecting the civilian population; political branches until 2021, he affirms even having accomplished his mission to fight the FDLR until they left.

### **ELEMENTS OF THE CRIME**

Crimes against humanity provided for and punished in Articles:

- 25(3)(a) [RS]; 7(1)(g)-1., (g)-2 [of Elements of Crimes] and 77 of the Rome Statute of the International Criminal Court for rape and sexual slavery;
- 25(3)(a); 7(1)(k). of the Rome Statute of the International Criminal Court for inhumane, cruel and degrading treatment;
- 25(3)(a); 7(1)(a); 77; of the Rome Statute of the International Criminal Court for murder; (the individual criminal responsibility of the defendant)
- 28(1)(a), (b); 7(1)(a); 77 of the Rome Statute of the International Criminal Court for murder,
- 28 (1)(a)-(b) [RS]; 7(1)(g)-1. [of Elements of Crimes] and 77 of the Rome Statute of the International Criminal Court for rape,
- 28(1)(a), (b); 7(1)(f); and 77 of the RS of the International Criminal Court for torture, (responsibility of the military commander).

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- 136–139 of the Military Penal Code for participation in an insurrection movement and;
- 5 of the Military Penal Code; 21c of Book II of the Penal Code; 79–81a idem. for armed robbery.

**a/ CRIME AGAINST HUMANITY OF RAPE (Article 25(3)(a), 7(1)(g)-1. and 77) COMMITTED BY THE DEFENDANT N.**

Provided for under Article 7(1)(g)-1 of [Elements of Crimes of] the Rome Statute of the International Criminal Court, there is rape according to this provision if the following constituent elements drawn from case-law and encountered in the elements of crime have been established:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of an intimate part of the body of the victim or of the perpetrator with any object or any other part of the body;
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent;
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population;
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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In this case, in these attacks the insurgents invaded the victims' bodies and put their sexual organs in theirs. The Court has accepted the following evidence against the defendant.

The declarations of the defendant from all of the hearings, that the latter has acknowledged having had to set up his headquarters in LUKIGI with a makeshift dungeon in which the above-mentioned rape victims were guarded.

Thus this Court will apply against him the relevant provisions of rules 70 and 71 of the Rules of Procedure and Evidence, which affirm the following principles:

- a. Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- b. Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- c. Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
- d. Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

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Therefore, the Court will not admit any evidence relating to the victims' prior or subsequent sexual conduct; far less will it validate the hypothesis of true love between the victim and the defendant, as touted in the latest consistent testimonies of the victims, although the Rome Statute or other international

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instruments, nothing permits us to assert that the rape victim passes for a first witness because having herself lived through the act committed, chambers do not impose the legal obligation to corroborate evidence for crimes falling within the court's jurisdiction, particularly sexual violence (Rules 63, paragraph 9); the case-law affirms however that the rape victim passes for a first witness because [of] having herself lived through the act committed – in the SONGOMBOYO judgment).

The Court will accept these testimonies as evidence.

It appears from all these victims' declarations that the latter were placed in a coercive environment at his [REDACTED] in the [REDACTED], and could neither resist nor refuse the demands of these militiamen or freely consent to the sexual relations imposed upon them by the aggressors.

The consistency, the constancy of all this evidence will be accepted against the defendant.

The testimonies of third parties raped in the presence of their parents, children, who testified to the fact: S064, who witnessed her rape and that of her daughter-in-law at the [REDACTED]

Witnesses of the rape of her daughter-in-law,

- F034: declares that, after the death of her husband, killed by elements under the command of the defendant N., the victim aged [REDACTED] was raped by the defendant alone, who put his fingers in her anus, in 2018;
- F033: states that during the night while she was sleeping with her children, her husband out having fun had still not returned home, the defendant, taking advantage of the victim's husband's absence, had broken into the house, forcing the victim into sexual intercourse, despite the resistance displayed by the victim, who closed her legs, the defendant resolved to burn the victim's left leg with fire, he was successful in this crime, introducing his sexual organ into that of the victim. Because he who sent the men under his command after his elements brought him the girls, he chooses his own, the defendant knew perfectly well that this conduct was part of the attack,

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that he was planning directed against the civilian population of these various villages and his behaviour constituted a breach of the fundamental rules of international law.

Material evidence:

- The child born of the rape of victim S042 to the defendant N., in the place in which she was detained, sufficiently proves;
- The expert medical assessment for certain injuries at the hospital, recourse to a medical expert to certify the injuries and identify the causes were considerable reports in administration of the evidence (medical report of victims: F001, F006, F027, F035, KF028, F075, F039, F032, F027, written up by the Medical Director of [REDACTED] hospital in KIGULUBE dated 20/02/2022;

During these attacks, there cannot be the least shadow of doubt that there were successive rapes against multiple victims by elements declaring that they belonged to the Mai Mai Movement RAIYA MUTOMBOKI, FRONT OF PATRIOTS FOR PEACE, which controlled the sector during these affairs and the willingness to commit these acts is revealed by their declarations tending to invent and identify themselves.

The Court will declare that these elements are responsible for all these acts even where they have not been seen imposing sexual relations on the victims.

a) **CRIME AGAINST HUMANITY OF OTHER INHUMANE ACTS OF A SIMILAR CHARACTER INTENTIONALLY CAUSING GREAT SUFFERING, OR SERIOUS INJURY TO BODY OR TO MENTAL OR PHYSICAL HEALTH (Article: 25(3)(a); 7(1); (77)**

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**Elements of crimes**

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- The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.
- Such act was of a character similar to any other act referred to in Article 7(1) of the Rome Statute;
- The perpetrator was aware of the factual circumstances that established the character of the act;
- The conduct was committed as part of a widespread or systematic attack directed against a civilian population;
- The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population;
- Character or characteristic is understood to refer to the nature of the gravity of the act.

### Specific Elements

The persons bound by a cord known as H029 indicates [sic] that the assailants had tied him up with the mosquito net and lashed him multiple times causing great suffering and driving his wife to give 30g that were kept in his house that had been harvested from the site under their supervision;

H005, was taken into the bush, tied to a tree and beaten half to death;

F032, indicates that the site was attacked by elements of RAIYA MUTOMBOKI, of the armed group N. and some of this group broke [REDACTED] and there they took turns to rape her[;] after this act, the assailants left her tied to a tree completely naked;

F033, despite her resistance in terms of refusal, the assailants burned her left leg, succeeded in their crime, forcing her to have sexual intercourse;

It was in the same context in full awareness of the facts that they did this and the defendant knew that these acts were part of these attacks;

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And transporting property seized in the attacks, keeping it in [REDACTED] of the Military staff in the [REDACTED] known as [REDACTED], are inhumane acts.

- Persons victims of extortion, Kidnapping, pillaging, arson, destruction.
- Victim F012: struck by bullets in her left shoulder and right hip, followed by her daughter struck by a bullet in the left thigh, was pillaged of all her kitchen utensils and her house set on fire;
- [REDACTED]: burned with liquid from a hot can poured on her right leg, then her house was set on fire and machete wound to her right hand;
- F022; mobilised on a tree in the bush next to their [REDACTED] base;
- H001; robbed of [REDACTED], 10 mattresses, 15 mosquito nets, six basins, 02 parcels containing the mosquito nets, six [REDACTED] (nos: 180–187, OMP minutes) and fire [REDACTED].

It was in the same context in full awareness of the facts that they did this and the defendant knew that these acts were part of these attacks.

S050 are in the [REDACTED] in the village of [REDACTED], around [REDACTED] was searched for by the defendant N., accompanied by her father, [who] was punched, forcing him to hand over 15g of gold, a mother not otherwise identified undressed;

The victim's aunt, a [REDACTED] not otherwise identified, fingers were put into her vagina in a search for gold, which still causes her pain every month, the victim herself, although having been treated by the [REDACTED] in [REDACTED], no longer has any feminine sensation following this treatment she suffered through the bad conduct of N.'s men;

- These five (05) commercially produced motors were burned by the team comprising: B., M. and M. in the village of [REDACTED], including the rape of his sister, this was a [REDACTED], in February 2018;

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- Still with the same men under the command of the defendant N., with victim S054 (in 2015) [REDACTED] years of age, in the village of [REDACTED], around 23.30, saw around 16 elements appear, each carrying a gun, he was tied up, tortured, pillaged of his clothes, solar panels, 04g of gold, his mother received a blow to the neck with a pestle, killing her instantly;
- His wife was systematically raped;
- During the same situation, once in the village of [REDACTED], the assailants killed a father not otherwise identified using a machete, once back in the forest, the victim was tied up against a tree, blindfolded so as not to see in which direction he was being led, [they] abandoned [him] in the bush following gunshots, killed by FARDC elements coming to the rescue, the assailants were dispersed, at which point the villagers who had seen them came to release them and see that they were safe, after having suffered inhumane and degrading treatments;
- While making their way, once in the village of [REDACTED], they found the motionless body of a FARDC element killed by the elements under the control of the defendant N. when she arrived at his house in the village, the victim found that his mother had already been buried having been killed with a pestle;

### **C) CRIME AGAINST HUMANITY OF MURDER** **Specific Elements (Article 25(3)(a), 7(1)(a) and 77)**

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Not defined by the Rome Statute, murder is understood according to the case-law of the International Courts to be the fact of causing death with intention to kill (AKAYESU judgment, paragraph 031, cited by NYABIRUNGU MWENESONGA, *Droit Pénal International, Crime contre la Paix et la sécurité*

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*de l'humanité*, [International Criminal Law, Crime against Peace and the Security of Humanity] *éd, Droit et société*, 'DES', Kinshasa 2013, Page. 254)

For this offence to exist and to be committed, according to the Rome Statute, the perpetrator must kill one or more persons and the behaviour must form part of a widespread or systematic attack directed against a civilian population;

The perpetrator must know that this behaviour formed part of a widespread or systematic attack directed against a civilian population or understood that it formed part thereof.

Thus, it must be the case that in the context of illegal conduct; the agent has caused the death of the victim, by a premeditated act or mission of the defendant or their subordinate, with intention to kill a person or with the intention of provoking serious physical harm to a person (ICTY, prosecutor against KAYISHAMA and RUZIDANA, page 136–140). Therefore the perpetrator knew that this behaviour formed part of a widespread or systematic attack directed against a civilian population or understood that it formed part thereof.

In this case, the elements of the file attest that during the attacks on the various villages, notably: in the village of [REDACTED] at the [REDACTED] in 2015, a FARDC soldier had died, whose body was recovered by the villagers when calm was restored;

In the village of [REDACTED], in 2015, the death of the son of victim H020 aged [REDACTED], whose body was found after three days, confirmed by H020; no: 205 (OMP minutes);

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In the village of [REDACTED], in 2012, the death of the father of victim H042

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These deaths were the work of combatants who declared that they belonged to N.'s RAIYA MUTOMBOKI, Front of Patriots for Peace movement.

And the fact of boasting about it proves the intention, the knowledge, the conscience that they wanted to take the lives of civilians and that this happened on the occasion of widespread or systematic attacks.

The declarations, the language spoken, their presence at the places are serious and consistent indications that together with the testimonies constitute evidence that these acts were committed by them. He was tried even though the defendant had not actually been seen killing but the militia who aggressed in 2016 were members of the RAIYA MUTOMBOKI, Front of Patriots for Peace militia, commanded by the defendant N. in the sector under his control thus they will be declared responsible for this fact.

The evidence that a person has been killed need not necessarily derive from the evidence that the body of that person has been found, it may be deduced from the circumstances and all of the elements of proof presented before the Tribunal (ICTY, prosecutor against KRNO JOLAC, Ch.1 trial, 15 March 2002, (IT-97-25).

Thus, the statement of victim H042 herself who confirmed the death of her father, not though her fault but when he went to recover his daughter who was being held at [REDACTED];

The consistent and constant declarations of witnesses H020, H042.

Elements of RAIYA MUTOMBOKI, Front of Patriots for Peace, of which the defendant N. was in command, that of the General commandant operations zone. Recorded in nos 181 to 185 of the OMP minutes.

**d) CRIME AGAINST HUMANITY OF SEXUAL SLAVERY**  
**Specific Elements (Article 25(3)(a).[Rome Statute], 7(1)(g)-2 and 7(1)(g)-7)**

Definition: According to the Rome Statute, enslavement means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

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Enslavement implies that the perpetrator materially treats the person subjugated to them like an object (NYABIRUNGU MWANESONGA, op. cit., p.256). The constituent elements below shall be accepted against the defendant:

**Elements of the Crime:**

- ❖ The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty;
- ❖ The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
- ❖ The conduct was committed as part of a widespread or systematic attack directed against a civilian population;
- ❖ The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

In this case, the investigation carried out at the hearing revealed that when the attacks were launched, victims were abducted from their respective villages then led to the [REDACTED] of the defendant, transporting property, pillaged objects, having arrived, the women were separated from the men and once the elements of the RAIYA MUTOMBOKI Front of Patriots for Peace armed group had triaged some women of their choice and the others left to the choice of the defendant N., their commander, for sexual relations while the others came out of the situation pregnant.

In this sense, there are consistent testimonies in the file and numerous children are born of this carnal trade. Such are the cases of: S042, spent two years in the [REDACTED] in which the [REDACTED] is located, gave birth to a child known as A., held in sexual slavery by the defendant N. himself;

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F010, Detained and guarded for two months, F019; detained for three days before escaping, F042, detained for two days while subjected to sexual intercourse by the defendant himself; F015, detained in slavery by the escort of the defendant N. by the name of R., birth of the two children;

Since it was he who assigned women to his elements and used them like objects or chattels that he could dispose of as it suited him, after choosing his, the defendant was aware that his behaviour formed part of the attack that he planned and directed against the civilian population of these various villages and his behaviour is that of a landlord exercising his attributions of ownership over these women.

The Court will also declare this offence established against him

**e) CRIME AGAINST HUMANITY OF RAPE (Articles 28(1)(a), (b)); 7(1)(g)–1; and 77**

**Elements of the Crime:**

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body;
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent;
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population;
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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**In this case:**

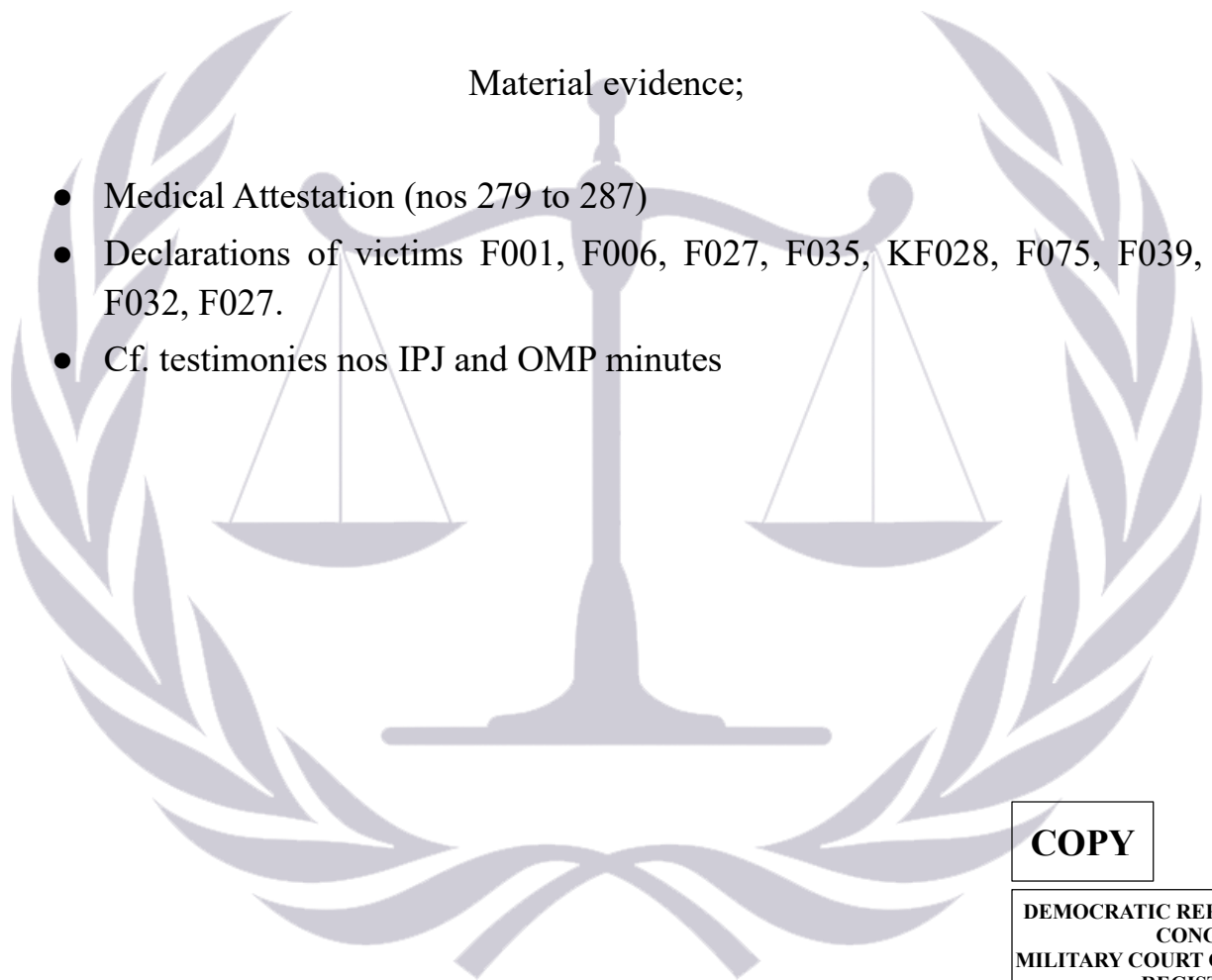
- Medical sheet
- Code: F001, F006, F027, F035, KF028, F075, F039, F032, F027.
- Consistent declaration and testimonies from victims F001, F006, F027, F035, KF028, F075, F039, F032, F027;

**Specific Elements**

Rape (Article 7(1)(g)-1 of [Elements of Crimes of] the ICC Rome Statute);

Material evidence;

- Medical Attestation (nos 279 to 287)
- Declarations of victims F001, F006, F027, F035, KF028, F075, F039, F032, F027.
- Cf. testimonies nos IPJ and OMP minutes



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1. KF016, raped by THREE persons in [REDACTED] in her own house;
2. F033, raped by the defendant N. in [REDACTED], he even burned the victim's left leg to succeed in his crime; for the first time she was raped by S.;
3. KF028, their daughter was raped by 03 persons in [REDACTED];
4. F034, raped by N. when she was leaving for [REDACTED] in [REDACTED], sel. the defendant[,] who had inserted his fingers in her anus;
5. KF027, raped by 03 persons in her house in front of her husband and their children in [REDACTED];
6. F009, raped by 01 person in [REDACTED] and it was K.;
7. F006, raped by N. in the village of [REDACTED];
8. F020 raped by two of N.'s elements, including S., in the [REDACTED] between [REDACTED] and J.;
9. F076, raped near the village of [REDACTED] by S. and R., where she was recovered by the village chief after one night;
10. F036, raped by the defendant alone, she has a child with the latter, whose name is R., she also recognised C., S. and S.;
11. F016, raped by R. armed with his weapon in the village of [REDACTED];
12. KH029; his mother was raped in front of him in [REDACTED] and he was obliged to transport plunder as far as the [REDACTED];
13. F049, raped by S. and K. in the village of [REDACTED];
14. KF013, raped by two men during the night in [REDACTED], who put their fingers in her vagina;

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15. F039, raped together with her five colleagues as they were returning from the [REDACTED], the assailants putting their fingers in their vaginas looking for money;

16. F030, raped by R. in [REDACTED] and M.

17. F025, raped with her friends by D. and another whose name she did not know in [REDACTED] [,] that they left for the fields, they spent three days in the bush;

18. F047, raped by elements of RM in the [REDACTED] in front of her husband;

19. KF005, raped by two men in her [REDACTED] in [REDACTED];

20. KF020, raped by elements of N., M, and K. in [REDACTED] in [REDACTED];

21. S044, raped by S. in the village of [REDACTED] when she went out to draw water;

22. KF023, raped by N.'s elements in [REDACTED], who put their fingers in her vagina and anus looking for gold;

23. F001, raped by N.'s elements, who put sachets in her anus looking for mineral substances in the [REDACTED];

24. F028, raped by an unknown RM element, following this rape her husband abandoned her and her children, this was in the [REDACTED];

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25. F084, raped by 05 of N.'s elements, of which she only recognised K., on [REDACTED] in the village of [REDACTED] at [REDACTED];

26. F018, raped by two assailants of RM one after the other on her way back from the [REDACTED] in [REDACTED];

27. F011, raped by K. in the village of [REDACTED] around 21.00;

28. F081, raped by 03 elements of RM in [REDACTED] on her way back from the [REDACTED] in [REDACTED];

29. F008, raped by N.'s elements in her house in the village of [REDACTED];

30. F004, raped by N.'s elements in the village of [REDACTED];

31. F029, raped by two persons in the [REDACTED];

32. F017, raped by 03 of N.'s elements, including S., Z. and M. in her [REDACTED] in the village of [REDACTED];

33. KF014, raped by elements of RM who put their fingers in her vagina looking for gold;

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34. F010, raped by M. who did with the victim 2 months [sic] in their [REDACTED] in the village of [REDACTED];

35. S058, raped by N.'s elements in [REDACTED] in [REDACTED];

36. F005, raped by M. in the fields in the village of [REDACTED];

37. KH017, his wife was raped by N. in [REDACTED], and two other elements, the victim agreed to testify with N.;

38. F031, raped by 03 of N.'s men at the [REDACTED], including N. and his [REDACTED] B.;

39. F032, raped by more than 5 persons at the [REDACTED] at around 04.00;

40. F027, raped by N.'s elements in front of her husband in the field located at [REDACTED];

41. KF033, raped with her daughter by S. in [REDACTED] in [REDACTED];

Cf. IPJ and OMP minutes

f) **CRIME AGAINST HUMANITY OF MURDER**

Specific Elements (Articles 28(1)(a), (b); 7(1)(a); and 77)

For it to be committed:

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The perpetrator killed one or more persons;  
In this case, in the following villages: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], the men under the authority and control of the defendant N. killed: 05 persons in 2015, 2017, 2020, as the following victims declare: H020, S040, S044, S054, S056

Moreover, this is an opportunity to further stigmatise public appeals to the government and other security services for the rest a largely eloquent testimony on this subject and they return in great detail to the case of persons [who have] died or – more accurately – been killed by the men under N,'s authority and control.

### Elements of the Crime:

- The behaviour forming part of a widespread or systematic attack directed against the civilian population, launching their attack against the aforementioned villages in particular, the defendant knew that these men under his authority and control were implementing their plan for a widespread or systematic attack against a civilian population;
- The perpetrator knew that the conduct was part of a widespread or systematic attack directed against a civilian population or one that was not directly involved and understood that it formed part thereof;
- Concerning the intentional element, Article 30 of the Rome Statute of the International Criminal Court requires the perpetrator to have acted with knowledge and the intent to take the life of another;
- Article 169(1) of the Military Penal Code identifies murder as one of the acts constituting crime against humanity, if it is committed in the context of a widespread or systematic attack launched against the civilian population or against the Republic

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- In summary, the perpetrator's intent must have been to kill or to inflict serious bodily injury on the victim without regard for their life, it being understood that murder is the fact [of] a delinquent taking the life of a born and living person.

The intention is not to demonstrate with regard to the documents in the file, the investigation at the hearing and the statements of the victims: H020, S040, S044, S054, S056

And witnesses H020, S040, S044, S054, S056

But also the modus operandi of the defendant N. sufficiently proves the death of multiple persons including the deceased H020, S040, S044, S054 and S056

In the villages of [REDACTED], [REDACTED], [REDACTED], [REDACTED], AND [REDACTED], killed by machete blows, her [their – sic] photo[s] in the file further attesting to this.

The Court will accept this offence committed by his men.

### **g) CRIME AGAINST HUMANITY OF TORTURE**

#### **Specific Elements**

Articles 28(1)(a), (b); 7(1)(f); and 77 of the RS of the ICC

Article 7(2)(e) of the RS of the ICC defines torture as follows: “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the defendant, except that torture shall not include pain or suffering arising only from, incidental to, or incidental to, lawful sanctions’.

From this provision we draw the following elements for the commission of this offence;

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## Elements of the Crime:

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons;
2. Such person or persons were in the custody or under the control of the perpetrator;
3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population;
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

In the case in point,

Victim F033 was burned in the left leg with a melted can for resisting payment of a ransom demanded when the latter broke into her house

T001 whipped, on the journey, while transporting the spoils of pillaging, for having attempted to escape from that environment;

S023; whose submissions in SWAHILI [, the] language of her choice at her appearance interpreted by a sworn expert, was tied up, mobilised on a tree for some on the one hand for not having agreed to join their organisation, RAIYA MUTOMBOKI FRONT OF PATRIOTS FOR PEACE, the case of F012 while fleeing with her daughter she was struck by a bullet in her left shoulder and in the right hip and her daughter was struck by a bullet in the thigh and the left buttock;

H002 arrested by the assailants and led to the [REDACTED] in [REDACTED] where their commander N. was installed who had ~~GOPY~~ the arrest of the latter and held in their dungeon until payment of a ransom of \$500 and a cow.

For the rest of the victims see the specific table, as the list is exhaustive  
F033, KF027, F053, KF011, KF010, KF028, F035, F014, F006, F076, KH003, KF032, KF004, H002, F022, KH029, H018, F058, H019, H034, F092, F021, F025, KF025, KF 022, H003, H017, H004, KF024, F028, F008, F004, KF015,

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KH031, KF014, KF002, KF021, F0038, F010, F005, KF018, F012, F064, F059, H029, F052, H023, KF019, F093, H001, F032

The assailants doing so consciously and boasting about it, this took place during these attacks described above.

The Court, will once more declare this criminality established, according to the consistent elements dissected above, intentionally causing great suffering or serious injury to body or to mental or physical health notably to the above-mentioned persons.

**h) CRIME AGAINST HUMANITY OF IMPRISONMENT OR OTHER SEVERE DEPRIVATION OF LIBERTY IN VIOLATION OF FUNDAMENTAL RULES OF INTERNATIONAL LAW**

**Specific elements (Article 7(1)(e).**

Imprisonment is an attack against freedom in breach of the rights of the human person, or, to use the terminology of the Rome Statute, in violation of fundamental rules of international law.

‘Other severe deprivation of physical liberty’ means any other deprivation or restriction of physical liberty. And it must have gravity to constitute a crime against humanity (NYABIRUNGU MWENE SONGA, *op. cit.* page 257).

**Elements of the crime**

For it to be committed, this criminality requires all of the following elements to be present:

1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty;
2. The gravity of the conduct was such that it was in violation of fundamental rules of international law;
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct;

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4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population;
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Since the contextual elements have been established as shown above, there can be no shadow of a doubt regarding intent, consisting in the defendant's awareness that the acts formed part of a widespread or systematic attack directed against the civilian population.

The declarations of the defendant himself attest to the existence of a dungeon in which men brought by his elements were held after transporting the spoils of pillaging.

The consistent testimonies of: F033, F053, KF028, F050, F006, H016, FÜ36, H003, F022, KH029, H018, H019, F025, KF005, F054, H005, H020, H006, H017, F001, F051, KF015, F057, F023, F038, F010, H015, KF004, F032, F052 attesting in particular that it was in this dungeon at their [REDACTED] that some were tortured with whips and others held until payment of the ransom (deprived of the freedom to leave and return) held in a dungeon in [REDACTED] persons constitute [sic] a severe deprivation of their physical liberty, moreover constituting a serious violation of fundamental rules of international law.

**i) CRIME AGAINST HUMANITY OF FORCED PREGNANCY**

**Specific elements Article 7(1)(g)-4:**

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The Law of 31 December 2015 – Law No 15/024, amended and supplemented Article 174 k of the Decree of 30 January 1940 on the Code of Criminal Procedure: ‘any party found to have detained one or more women made pregnant by force or by ruse shall be sentenced to penal servitude of Ten to twenty years’.

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International criminal law defines ‘forced pregnancy’ as ‘the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy’;

The perpetrator is not interested in rape or illegal confinement which he surely commits as an ethnic offence against a population or simply against his own family. He confines the victim because he wants to ensure that the child is born and that he can incorporate it into the community of his choice, should he so wish.

## CONTEXTUAL ELEMENTS

For it to be committed, the following elements must be present:

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law;
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population;
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

In this case, the case file and the investigation at the hearing of 09, 10, 11, 12 and 13 show that the victims:

- **F007:** sent by her older sister to buy palm oil, accompanied by her two older brothers, en route from the village of [REDACTED] to [REDACTED], saw elements of the defendant N. appear, in this case S. and S. from the [REDACTED], into which the victim was abducted and led to the [REDACTED] of the RAIYA MUTOMBOKI, FRONT OF PATRIOTS FOR PEACE rebel group, where she fell prey to the defendant N. for two years, she left with a child to this day, aged [REDACTED]

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before she escaped, and was aged [REDACTED] at the time of the facts, namely in 2018;

- The Court will declare this criminality established against the defendant N.

## **ON THE CRIMINAL RESPONSIBILITY OF THE DEFENDANT**

Article 25(3), .9 covers the concepts of direct perpetration (commission jointly with another person) and indirect perpetration (commission of a crime through another person) regardless of whether that other person is criminally responsible.

### **a. On the individual responsibility of the defendant based on Article 25(3)(a)**

Examination of the file and its elements gathered during the investigation at successive hearings informing that the defendant N. had committed crimes against humanity as an individual perpetrator, jointly with another person and through another person under Article 25 of the Rome Statute of the International Criminal Court.

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In the statute and case-law of the ICC, the principle of individual criminal responsibility is presented in Article 25 of the Statute of that Court as follows:

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
  - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
  - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
  - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
  - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
    - (e) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
    - (f) Be made in the knowledge of the intention of the group to commit the crime, the fact that the defendant is able to present in detail the topography of all of the locations linked to the facts, his recognition of the voices of group members, their families and relations, the details and clarifications of the dates of the facts, constitute a credible and coherent body of evidence that will lead this court to presume that all

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of the acts committed are not strange to him and that he must have participated in them to some degree.

### **On Indirect Criminal Responsibility or the responsibility of the Person acting as a military commander (Article 28(1) of the Rome Statute of the ICC.**

Under Article 28(1) of the Rome Statute of the ICC, a military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

105) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(b) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution;

By the expression ‘person effectively acting as a military commander’, Chamber II of the ICC considers this term to cover a distinct as well as a broader category of commanders. This category refers to those who are not elected by law to carry out a military commander’s role, yet they perform it **COPY** by exercising effective control over a group of persons through a chain of command. **DEMOCRATIC REPUBLIC OF THE CONGO  
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MILITARY JUSTICE** It is therefore, the chamber argues, a category of military-like commanders who may generally encompass superiors who have authority and control over regular government forces such as armed police units or irregular forces (non-government forces) such as rebel groups, paramilitary units including, inter alia,

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armed resistance movements and militias that follow a structure of military hierarchy or a chain of command; incidentally, as international case-law shows, the fact that a defendant's responsibility is engaged ... Is no obstacle to a declaration (4) ICC, Pre-Trial Chamber II, J.P. BEMBA GOMBO case, Decision of 15 June 2009, paragraph 409.

(5) ICC, J.P. BEMBA GOMBO already cited, paragraph 410 Repository of additional or alternative international guilt criteria in the capacity of military commander or person acting as military commander, the two forms of responsibility are not mutually exclusive.

Examination of each of the two forms of responsibility is necessary in order to take full account of the guilt of the defendant in light of the facts.

Therefore, the defendant N., commander of a rebel group called RAIYA MUTOMBOKI, FRONT OF PATRIOTS FOR PEACE, unquestionably embodies the characterisation of a person acting as a rebel commander. And as such, he could not be acquitted.

His indirect and derivative (command) criminal responsibility is absolutely engaged in this cause as, since these men were under his authority and effective control, he knew, or, due to the circumstance, should have known that these forces ... Were going to commit crimes, of which he was even receiving the spoils, as the victims affirmed before the trial court and before this Court, F033, F053, KF028, F050, F006, H016, F036, H003, F022, KH029, H018, H019, F025, KF005, F054, H005, H020, H006, HG17, F001, F051, KF015, F057, F023, F038, F010, H015 And witnesses SU64, S052 and T001.

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Acts denounced declared that at the end of his operations [sic] [...] Although part of the spoils were reserved for him as an authority, namely one of two hens, cocks, money, cows, money, clothing, valuables (gold, etc.) ; miscellaneous or as the case may be;

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## The possible symbiosis [of] internal legal standards and the Rome Statute of the ICC,

The Court that relies on the detailed confessions given by the defendant himself at the preliminary inquiry and at the judicial investigation, such as the words gathered from the defendant N. himself at all of the hearings[,] to demonstrate that the ignoble acts were committed in the aforementioned localities; has no doubt regarding his individual or indirect responsibility, being one of the assailants in this case.

### Attack under his command

The victims' declarations show that he gave the order to pillage, set fires, abduct persons in the aforementioned localities; in the territory of WALUNGU, SHABUNDA, MWENGA and part of KALEHE. To detain the stubborn ones in his dungeon at his [REDACTED] in [REDACTED], to whip some of them, he distributed the women to his subordinates and his allies after himself, the women in one house;

At the public audience of the Court, all of the victims who passed in turn before the court confirmed that the defendant had constrained the women abducted during the attacks under his command to use them for sexual acts, he and the members of his armed group.

He himself recognised that his subordinates, after the acts of pillaging, extortion and robbery, made the survivors transport the spoils to his [REDACTED], confirmed by all of the witnesses, that the defendant himself did this, triaging the persons according to their physical strength after each attack to transport the effects and the weak were led to his [REDACTED], freed through payment of the ransom.

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## 105) Commission of Crime by coaction founded on control exercised

### Jointly over the Crime

The notion of coaction founded on control exercised jointly over the Crime originates in the principle of the division of essential tasks with a view to the commission of a crime to be two or more persons acting in a concerted manner.

Thus, although none of these persons have control over all of the offence, because they each depend on the other for its commission, they all share the control as each of them could compromise commission of the crime if they did not perform their task. (Decision Thomas LUBANGA relating to commission of the charges, 29 January 2007, 333, cited by NYABIRUNGU MWENESONGA, *Droit pénal international, crime contre la paix et la sécurité de l'humanité*. Edition et société, Kinshasa 2013, page 54 et seq.);

Agreement to the common plan is therefore needed between two or more persons to begin implementing the common plan to achieve a non-criminal goal, and only to commit the crime if certain conditions have been collectively met or if the co-perpetrators are conscious of the risk of implementation, of the common plan that is specifically used to achieve a non-criminal goal through the perpetration of the crime and accept such a result.

This is what is known in internal law as **the theory of conditional intent (*dolus eventualis*)**.

The agreement need not necessarily explained and its existence to be deduced from the concerted action subsequently taken by the co-perpetrators.

Same decision, 33, summary of the judgment passed in the Thomas LUBANGA case, on 14 March 2012, paragraph 33, confirmation of the charges

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29 January 2007, 344, cited by NYABIRUNGU MWENESONGA, idem page 585).

In this case, the agreement between the defendant N. and his men concerned ideology, to convince the population that they were liberators, come to liberate them and protect them against the FDLR, whereas in fact they came to harm peaceful civilians by erecting roadblocks to prevent persons from moving freely, confiscating items necessary for survival and establishing bases in villages to intimidate the population and consolidate their rule.

Each time they wanted supplies, they had to attack the villages, **pillage, extort, steal victuals and other items, rape** girls and women, **kill**, obtain the porters arrested by them, some tied up with a rope kept in a makeshift dungeon at their [REDACTED] in the [REDACTED] (consistent testimonies of the aforementioned victims' witnesses, victim witnesses);

An essential and coordinated contribution from each member, resulting in the achievement of the objective elements of the crime(II), it was judged that if the objective elements of an offence are committed by a plurality of persons acting within the framework of a common plan, only those to whom essential tasks have been assigned – and who, consequently, have the power to frustrate the commission of the crime by not performing their tasks – can be said to have joint control over the crime (Thomas LUBANGA decision relating to confirmation of the charges, 29 January 2007, cited by NYABIRUNGU MWENESONGA, ibidem, page 566).

In the case under examination, the crimes could not have been carried out if the elements had not attacked the civilian population, the women would not have been raped if they had not been led to [REDACTED], their [REDACTED] the spoils of the attacks would not have arrived [REDACTED] if there had not been a selection of porters tied up with a rope and it would have been difficult to distribute the women to maintain the troops' morale if no one had been made

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responsible for sending them to the defendant N. and discipline would have been compromised if there had not been control to detain and correct the undisciplined.

In [REDACTED], the defendant N. and his group knew that it was impossible for each villager to supply the movement in a regular and significant manner with victuals, medicines, weapons, ammunition and women.

The resulting precarious conditions made civilian resistance or refusal likely, yet they deliberately chose to proceed with these operations.

The Court will declare the subjective element established.

### **Commission through another person**

The commission of a crime through another person, a theory accepted by multiple legal systems worldwide whereby the main perpetrator, [the] intellectual perpetrator[,] uses the agent (direct perpetrator) as a simple tool or instrument to commit the crime.

Theory of the direct perpetrator, the perpetrator covered by Article 25(3)(a) of the Rome Statute cited by NYABIRUNGU MWENESONGA, op. cit., p. 567)

### **The conditions are as follows:**

1. Control over the organisation;
2. Apparatus for organised and hierarchised; [sic]
3. Execution of the crimes assured by a quasi-automatic obedience to orders.

(The case of the public prosecutor against Germain KATANGA and Mathieu NGUDJOLO CITU, decision relating to commission of the charges, 30 September 2008, paragraph 514).

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The defendant N. is the head of the organisation of the rebel movement RAIYA MUTOMBOKI FRONT OF PATRIOTS FOR PEACE, whose [REDACTED] was in [REDACTED] as shown above, with organised and structured power;

The crimes are carried out almost automatically, nothing more than attacks on the aforementioned villages;

His men acted in his absence and pillaged the effects of: peaceful citizens They detained men, women, children; tortured, abducted, raped, bound, pillaged, robbed, killed, set fires, etc.; as if they were robots adhering to the same modus operandi. Such was the case of the above villages, having asked for money to the negative response of the population to the demand to give in to their soliciting for criminal carnal relations, they were raped by the defendant and his subordinates;

The Court will accept his criminal responsibility for having committed[,] through his elements, offences of the crimes against humanity of rape, torture, murder, sexual slavery, forced pregnancy, other similar inhuman acts, imprisonment, on the one hand armed robbery; on the other hand, participation in an insurrection movement as an ordinary crime in the aforementioned villages;

The evidence is the combined testimonies of all of the victims of rapes, murder, tortures, sexual slavery, imprisonment, robbery, and other inhumane acts, etc...

Following its analyses, the court finds that the defendant's responsibility is engaged in the commission of the various acts constituting crimes against humanity, as bases for indictment, and will Declare it established in fact and in law.

All of this criminality analysed above caused material, physical and ~~GOBY~~ harm to multiple persons who are demanding fair and equitable reparations.

## EXAMINATION OF THE CIVIL ACTIONS AND THE CIVIL RESPONSIBILITY OF THE CONGOLESE STATE

### ON THE CIVIL ACTIONS

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123 persons previously listed constituted civil parties during the procedure engaged in the first instance where their actions were declared admissible, by virtue of the stipulations of Articles 226 of the Military Justice Code (CJM), 69 and 122 of the CPP.

All of the civil parties, through their lawyers, lodged cross-appeals against the bench in accordance with Article 98 of the CPP.

This court will pronounce these actions admissible, because [they were] submitted in accordance with the law.

### **ON THE CIVIL RESPONSIBILITY OF THE CONGOLESE STATE**

The basis for this responsibility is Article 260 of the Congolese Civil code, Book III, which establishes responsibility for the acts of others and not Article 259 of the above Code, as supported by the counsels of the civil parties.

As commander of the group RAIYA MUTOMBOKI FRONT OF PATRIOTS FOR PEACE, the defendant N. is not an agent of the State, as a result there is no link between agent and principal.

The Democratic Republic of Congo will be exonerated, it cannot be called in guarantee for the acts carried out by the commander of the group RAIYA MUTOMBOKI FRONT OF PATRIOTS FOR PEACE. The latter alone will be ordered individually to pay damages to the above-mentioned civil parties.

Since it concerns harms suffered by civil party F007 omitted by the trial court, the court does not have objective elements for evaluation, reparation rates will be established according to equity and common sense.

The Court estimates that the sum of USD 5 000, payable in Congolese francs, will be assigned to Civil party F007;

Regarding its 22 civil parties, the Court reaffirms the reparation amounts retained by the trial court, as follows.

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The Military Court of South Kivu, sitting publicly and hearing the appeal in adversarial proceedings, decided by majority vote of its members in secret ballots;

Having heard the Public Prosecutor;

Having regard to the Constitution, as amended by Law No 011/002 of 20 January 2011 revising certain articles of the constitution of the Democratic Republic of Congo of 18 February 2006 in Articles 18, 19, 20, 21, 153 in fine et seq. thereof; Having regard to Articles 1, 12 to 17, 27, 31 to 33, 38, 41, 55, 56, 61, 67, 73, 77, 84, 106, 129, 222, 226, 228 to 275, 317 to 320 of the Military Judicial Code;

Having regard to Articles: 25(3)(a), 28(1), 7(1)(g) and 77(7)(1), (k) and 77(7)(l)(f) and 77, 30, 68, 78, 80 of the Rome Statute of the International Criminal Court and rules 87 and 88 of the Rules of Procedure and Evidence;

Having regard to the Law of 31 December 2015 – Law No 15/023, amending Articles: 5, 7, 136, 139 et seq. of Law No 024/2002 of 18 November 2002 on the Military Penal Code;

Having regard to Articles: 21b, 79 and 81a et seq. of the Law of 31 December 2015 – Law No 15/024, amending and supplementing the Decree of 30 January 1940 on the Ordinary Congolese Penal Code;

Having regard to Article[s]: 74, 75 et seq. of the Law of 31 December 2015 – Law No 15/022, amending and supplementing the Decree of 6 August 1959 on the Code of Criminal Procedure;

Having regard to the Congolese Civil Code, Book III, Article 258;

The civilly liable party having been heard;

The Civil parties having been heard;

The defendants having been heard;

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## DECIDES AS FOLLOWS

The Court declares that it is competent to hear this case;  
Declares the appeal by the Public Prosecutor admissible and well founded;  
Declares the appeal by the defendant admissible and partially well founded;  
Declares the cross-appeal admissible and partially well founded;  
Partially annuls the decision of the trial court, reforming it accordingly

### **Ruling on the public action:**

**Declares all of the offences of which the defendant N. is charged established in fact and in law [and] consequently convicts him on that count:**

- to **life** for the crime against humanity of rape;
- to **life** for the crime against humanity of murder
- to **20 years** for the crime against humanity of sexual slavery;
- to **20 years** for the crime against humanity of other similar inhumane acts;
- to **20 years** for the crime against humanity of imprisonment;
- to **life** for the crime against humanity of forced pregnancy;
- to **20 years** for the crime against humanity of torture;
- to **20 years** for participation in an insurrection movement;
- to **20 years** for armed robbery;

Pursuant to Article 7 of the Military Penal Code, sentences him to the harshest form of penal servitude, namely **life**; [the] penalty attached to the crimes against humanity of murder, rape and forced pregnancy by the combined effect of material and ideal concurrence.

The Court further sentences him to pay FC 1 000 000 in court costs, payable within fifteen days or to six months' detention in the event of non-payment within this deadline.

**Confirms his detention;**

Ruling on the civil actions:

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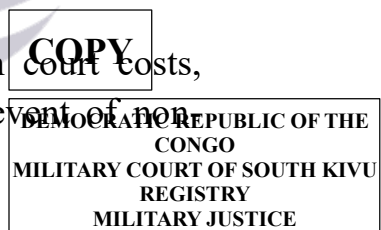
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The court declares them admissible and well founded, consequently orders the defendant N., jointly and severally with the State of the Democratic Republic of Congo, to pay the 123 civil parties damages as follows:



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