

Annexe 14

Confidentielle *ex parte*

**Uniquement disponible aux participants et
au Women's Initiatives for Gender Justice**

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **3 October 2016**

TRIAL CHAMBER II

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO**

Public Document

Observations of the Women's Initiatives for Gender Justice on Reparations

Source: Women's Initiatives for Gender Justice

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

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I. Relevant Procedural Background

1. On 3 March 2015, the Appeals Chamber issued its judgment on the reparations appeals in the *Lubanga* case, including as an annex the amended order for reparations (hereinafter "Appeals Chamber Reparations Judgment" and "Amended Order for Reparation").¹
2. On 3 November 2015, the Trust Fund for Victims (hereinafter "Trust Fund") submitted its "Filing on Reparations and Draft Implementation Plan",² to which it annexed its draft implementation plan for collective reparations (hereinafter "Draft Implementation Plan").³
3. On 9 February 2016, the Trial Chamber instructed the Trust Fund to supplement the Draft Implementation Plan submitted on 3 November 2015, including preparing a file for each potential victim and to transmit a first batch of files to the Chamber by 31 March 2016, a second batch by 15 July and a third batch by 31 December 2016.⁴ The Chamber also instructed the Trust Fund to continue developing the programmes proposed and to transmit to the Chamber the complete details of the initial group of reparation programmes on 7 May 2016.⁵
4. On 31 May 2016, after being granted an extension of the time limit regarding the first aspect of the Order of 9 February 2016,⁶ the Trust Fund transmitted to the Chamber 12 files of victims who were potentially eligible to benefit from

¹ ICC-01/04-01/06-3129; ICC-01/04-01/06- 3129-AnxA.

² ICC-01/04-01/06-3177-Red.

³ ICC-01/04-01/06-3177-AnxA.

⁴ ICC-01/04-01/06-3198-tENG, paras 17-18 and p 12.

⁵ ICC-01/04-01/06-3198-tENG, paras 21-22 and p 12.

⁶ ICC-01/04-01/06-3205-tENG.

reparations, as well as its observations on those files.⁷ In the same document the TFV also requested that the approach set out in the Order of 9 February 2016 be reconsidered.

5. On 7 June 2016, after being granted a further extension of the time limit regarding the second aspect of the Order of 9 February 2016,⁸ the Trust Fund transmitted to the Chamber information concerning the procedural and operational implications on the development and implementation of the reparation projects.⁹
6. On 15 July 2016, the Trial Chamber issued the "Request Concerning the Feasibility of Applying Symbolic Collective Reparations" (hereinafter "Request of 15 July 2016"),¹⁰ in which it requested that the Trust Fund 'study the feasibility of developing a concrete project aiming at providing prompt symbolic reparations'.¹¹ The Trial Chamber observed that such a project could 'take the form of, *inter alia*, a commemoration and/or building a statue'.¹² Finally, the Trial Chamber requested that the Trust Fund include in its filing 'concrete information regarding: a) the estimated costs of such a project; b) the time frame for its completion; and c) any concrete proposal(s) related to this matter'.¹³
7. On 15 July 2016, the Trial Chamber also issued its "Order pursuant to rule 103 of the Rules of Procedure and Evidence",¹⁴ in which it decided to organise a public hearing, in the presence of the parties, the Trust Fund and the Registry,

⁷ ICC-01/04-01/06-3208.

⁸ ICC-01/04-01/06-3207.

⁹ ICC-01/04-01/06-3209.

¹⁰ ICC-01/04-01/06-3219.

¹¹ ICC-01/04-01/06-3219, para 12.

¹² ICC-01/04-01/06-3219, para 12.

¹³ ICC-01/04-01/06-3219, para 12.

¹⁴ ICC-01/04-01/06-3217.

on 11, 13 and 14 October 2016.¹⁵ Taking note of Rule 103 of the Rules of Procedure and Evidence (the 'Rules'), according to which if at any stage of the proceedings, it considers it desirable for the proper determination of the case, to invite or grant leave to 'a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate',¹⁶ the Chamber stated that 'it would be helpful if it obtained additional information and local expertise' with respect to collective reparation projects.¹⁷ Accordingly, the Chamber invited the 'States concerned, as well as any organisations which so wish (collectively "the participants"), to file submissions with the Chamber in writing and, where applicable, at the public hearing organised by the Chamber'.¹⁸ Firstly, the Chamber invited the participants 'to submit to the Chamber their observations on current or past collective projects for former child soldiers in the East of the Democratic Republic of the Congo, whether carried out by public or private actors', specifically to 'present it with a description of the partners who are responsible for the projects, the beneficiaries and the locations where they were developed, the timeline for their development and implementation as well as the evaluation of the projects'.¹⁹ Secondly, the Chamber invited the participants to present it with 'proposals for future collective projects to support the setting up of a range of collective reparation projects for the former child soldier victims of Mr Lubanga'.²⁰ The Chamber invited the participants to file their observations, limited to 30 pages, by 30 September 2016.²¹

8. On 20 September 2016, the Trust Fund submitted its "Filing regarding

¹⁵ ICC-01/04-01/06-3217, para 11.

¹⁶ ICC-01/04-01/06-3217, para 5.

¹⁷ ICC-01/04-01/06-3217, paras 6-7.

¹⁸ ICC-01/04-01/06-3217, para 8.

¹⁹ ICC-01/04-01/06-3217, para 8.

²⁰ ICC-01/04-01/06-3217, para 8.

²¹ ICC-01/04-01/06-3217, para 10 and page 7.

symbolic collective reparations projects with Confidential Annex: Draft Request for Proposals, ICC-01/04-01/06-3223-Conf",²² in which the Trust Fund provided the information requested by the Chamber concerning symbolic reparations in the present case, and concluded that it 'shares its view that the Court's approval of the proposed project framework for symbolic collective reparations, resulting in the use of financial resources from the aforementioned complement, effectively constitutes an approval of the relevant part of the Draft Implementation Plan'.²³

II. Observations

9. The Women's Initiatives for Gender Justice (Women's Initiatives) has monitored all of the filings and decisions in this case from the moment of Thomas Lubanga's arrest and transfer to the ICC in March 2006. We have also followed very closely all of the relevant decisions and filings with respect to reparations since the first Trial Chamber decision on this issue in August 2012.²⁴

10. In 2012, the Women's Initiatives for Gender Justice sought and was granted leave to address the Trial Chamber on reparations issues and the gender aspects of the case against Mr Thomas Lubanga in which we highlighted the harm caused to female child soldiers enlisted, conscripted and used by the Union des Patriotes Congolais/ Force patriotique pour la libération du Congo (UPC/FPLC) to actively participate in hostilities.²⁵

11. It has always been our view, that the reparations phase in this case, offers an important opportunity for the Court and all stakeholders to deepen our

²² ICC-01/04-01/06-3223-Red.

²³ ICC-01/04-01/06-3217, para 66.

²⁴ ICC-01/04-01/06-2904.

²⁵ ICC-01/04-01/06-2876.

collective understanding of the harms and horrors experienced by children, gendered in nature and impact, forced into militia groups or regular armies where they become dually victims and perpetrators without their consent and in circumstances beyond their control.

12. In May 2015, the Women's Initiatives for Gender Justice participated in the Expert Consultation meeting held by the ICC Trust Fund for Victims (Trust Fund or The Fund) regarding the Appeals Chamber Order on reparations in the Lubanga case.²⁶ This consultation was intended to inform the Trust Fund's design and development of its filing and draft implementation plan.²⁷ The Executive Director of the Women's Initiatives was asked by the Trust Fund to provide a presentation during the Consultation meeting on gender issues as they relate to the Lubanga case and specifically the reparations phase. The Executive Director participated in the meeting on a pro bono and voluntary basis as an expert on gender justice and the ICC including on the Lubanga case. She provided a presentation during the meeting drawing on the Women's Initiatives legal monitoring of the Lubanga case and our experience implementing local programmes in collaboration with grassroots partners in eastern DRC, including within Ituri since 2006.

13. Following the expert meeting, the Executive Director of the Women's Initiatives was invited by the Trust Fund to advise and assist them to integrate gender issues and the harm to female former child soldiers within the filing which was duly submitted by the Trust Fund to the Trial Chamber in November 2015.²⁸ The Executive Director undertook this work with the Trust Fund on a pro bono basis and at no time has she received any compensation from the Fund for the advice and assistance she provided to it.

²⁶ ICC-01/04-01/06-3177-Red, paras 46-47.

²⁷ ICC-01/04-01/06-3177-Red, paras 49-50.

²⁸ ICC-01/04-01/06-3177-Red.

14. The suggestions included in this submission draw on our experience in eastern DRC including within Ituri working with victims/survivors of the multiple forms of violence, including sexual and gender-based crimes in overlapping conflicts. We draw upon our documentation of over 112 interviews with victims/survivors of the conflict in Ituri specifically, inclusive of the 2002-2003 period most relevant to the commission of the war crimes for which Mr Lubanga was convicted. Our proposals are based on the circumstances in this case designed in response to the specificity of the context, the case, and the convicted person.

15. There are numerous aspects of the case and context which have already been considered in the filings and decisions on reparations. The additional contextual factors we wish to bring forward are the following:

- Mr Lubanga is currently completing his sentence within the DRC and as such he has returned to the country in which the war crimes for which he was convicted were perpetrated.²⁹ This is highly disturbing for victims/survivors of his crimes and presents an additional element with respect to actual or perceived security issues in Ituri and other locations to which victims of his crimes have relocated.
- Mr Lubanga will be released at the latest by 2019 which will coincide with the implementation of the reparative programmes. Victims have already expressed serious security and safety concerns regarding his release and their participation in reparations programmes linked to his conviction.
- The presence of Mr Lubanga in the country, combined with years of armed conflict in Ituri and in several of the near or neighbouring provinces in eastern DRC, creates a vortex of actual or perceived threats to security both at individual and communal levels.

²⁹ On 19 December 2015, Mr Lubanga was transferred to a prison facility in the DRC to serve his sentence of imprisonment. See ICC-CPI-20151219-PR1181.

- Mr Lubanga continues to enjoy support from the Hema community and the UPC remains an active political force within Ituri, including within the areas in which the reparations programmes will be implemented. The UPC exerts considerable influence within the Hema community and we note that in recent weeks, the UPC has been more visible with marches and public displays asserting its presence within Bunia.³⁰
- The limited safety the Government of the Democratic Republic of the Congo (DRC) has been and is able to afford its citizens in Ituri and other eastern provinces further underscores the vulnerability of the population at large, including areas within which the reparations programmes will be implemented.³¹

16. It is in bearing in mind the Appeals Chamber decision and these very specific factors - Mr Lubanga's presence in the country and his release within the DRC during the reparations phase, the limited safety and protection the DRC Government is able to afford its citizens in the east including within Ituri, and the active presence of the UPC within the areas in which the reparations programmes will be implemented - that we have formulated our submission.

17. The Women's Initiatives proposes that Mr Lubanga's financial responsibility should not be attached to reparative responses which require an individual harm assessment or services or programmes which respond to individualized needs of direct or indirect victims of the crimes for which Mr Lubanga was convicted. These are the kinds of programmes which would largely fall within the modalities of reparations described in the Appeals Chamber Order as

³⁰ Anecdotal reports from local organisations. Notes on file with the Women's Initiatives for Gender Justice.

³¹ See eg. 'World Report 2015: Democratic Republic of Congo', Human Rights Watch, available at <https://www.hrw.org/world-report/2015/country-chapters/democratic-republic-congo>; 'Human Rights Priority Country update report: January to June 2016', Foreign and Commonwealth Office, 21 July 2016, available at <https://www.gov.uk/government/publications/democratic-republic-of-the-congo-drc-human-rights-priority-country/human-rights-priority-country-update-report-january-to-june-2016>.

restitution, compensation and rehabilitation. They are also largely the kinds of programmes outlined within the Trust Fund for Victims Draft Implementation Plan.

18. These reparative modalities – restitution, compensation and rehabilitation – are typically conceptualized as service delivery or training programmes requiring an individual assessment of harm. Examples include, but are not limited to, programmes addressing psychological trauma, livelihood programmes, medical treatment for physical injuries, amongst others. Such programmes have a strong focus on rehabilitation and reintegration for individuals responding to individual needs and are critically important as part of the overall reparations package. Our proposal is that the Trust Fund for Victims should pay for such reparative programmes but that these should not form a part of Mr Lubanga's financial responsibility. It is perhaps assumed that these kinds of reparative modalities and their associated programmes should be linked to Mr Lubanga's financial responsibility. In other circumstances, we may share this view. However, given the specific context as described above, we are of the view that another route is possible and perhaps more desirable.

19. The Appeals Chamber's Order for Reparations stipulates that restitution, compensation and rehabilitation programmes should be included within the modalities of reparations in this case but it does not state that these modalities or these alone, must be the basis upon which Mr Lubanga's financial responsibility is determined and quantified. The Appeals Chamber order clearly provides the parameters of the reparative responses (restitution, rehabilitation, compensation, symbolic, preventative and transformative),³² and that the reparative programmes must address the direct and indirect victims of the crimes for which Mr Lubanga was convicted.³³

³² ICC-01/04-01/06-3129-AnxA, para 67.

³³ ICC-01/04-01/06-3129-AnxA, para 63.

20. The Order requires the Trust Fund to endeavour to design reparative awards for each of the modalities of reparations.³⁴ The Order also requires that Mr Lubanga's liability for reparations relates to the harm caused to victims of the crimes for which he was convicted.³⁵ However, the Appeals Chamber's Order does not state that it requires Mr Lubanga's financial liability to be connected to all forms of reparations nor does it prioritise which forms in particular he should most contribute to. Ideally, Mr Lubanga's financial responsibility should probably include all forms of reparations which respond to the harm caused to the direct and indirect victims of his crimes. However, this is not required and in the circumstances of this case and the context within which Mr Lubanga will be released from prison within the DRC during the implementation of the reparations programme, and in conjunction with the active presence of the UPC as a political movement in the areas where the programmes will be implemented, other ways of determining his financial liability are worthy of consideration and should be explored. In our view, this could include selecting the forms of reparations, within the parameters set by the Appeals Chamber, to which Mr Lubanga's financial responsibility is to be calculated and quantified.

21. We propose that the programmes which require individual eligibility and harm assessments should be detached from Mr Lubanga's financial liability. In our view this would reduce the actual or perceived security risks and concerns that have already been expressed by victims.³⁶ The confidence of victims in the reparations process including their confidence in being able to safely access reparative programmes is essential for the success of this process and may ultimately be the benchmark by which affected communities assess the value of international justice.

³⁴ ICC-01/04-01/06-3129-AnxA, para 70.

³⁵ ICC-01/04-01/06-3129-AnxA, para 60.

³⁶ ICC-01/04-01/06-3208, para 41.

22. In our view there are some important challenges with both forms of harm assessment currently under consideration with respect to quantifying Mr Lubanga's financial liability. The first model is the use of an individualised harm assessment process as the basis for calculating the convicted person's financial responsibility.³⁷ Given the security issues in this specific case as outlined above and the concerns already expressed by victims regarding their security,³⁸ providing Mr Lubanga with the opportunity to review such applications, even if redacted, may negatively affect victims confidence in the reparations process. Many have already indicated that they fear reprisals.³⁹ In addition, this process could be quite cumbersome if victims harm and eligibility assessments are submitted in batches or even on a regular basis as can be expected as gradually more victims are identified, assessed and the information is processed through the Trust Fund or Victims Participation and Reparations Section and in turn to the Defence and Chambers. By detaching the rehabilitation, restitution and compensation forms of reparations from Mr Lubanga's financial responsibility, the individual harm and eligibility assessments of direct or indirect victims who may potentially access programmes provided for individual victims would not need to be transmitted to the Defence.

23. The second model is that of recognizing Mr Lubanga's liability based on the general and overall extent of the damage and harm caused to victims that forms the basis of his conviction and sentence.⁴⁰ This approach utilizes a screening process to determine eligibility based on a collective assessment tool.⁴¹ Under this model, the proposal is for Mr Lubanga to not review

³⁷ ICC-01/04-01/06-3198-tENG, paras 17, 9 (1)(2).

³⁸ ICC-01/04-01/06-3208, eg para 46.

³⁹ ICC-01/04-01/06-3208, eg paras 68, 69. Supported by anecdotal reports from local organisations.

Notes on file with the Women's Initiatives for Gender Justice.

⁴⁰ ICC-01/04-01/06-3208, para 180.

⁴¹ ICC-01/04-01/06-3177-AnxA, paras 75-80.

individual applications, but rather to review the screening process itself.⁴² Presumably this would be a one-off review of the process which would appear to be more manageable than reviews of individual applications. However, it is highly unlikely that Mr Lubanga's review of the screening process will be motivated by the best interests of the victims given he is yet to acknowledge the crimes for which he has been convicted or issue an apology to victims of his crimes. One could also foresee a delay in reaching agreement on an acceptable screening process which may in the end further curtail those eligible for reparations. One may also foresee challenges from the Defence regarding the use of a general screening tool to determine Mr Lubanga's liability.

24. *If* Mr Lubanga's financial liability is not connected with the reparations programmes which are designed to address the needs of individual victims on an individual basis, then Mr Lubanga does not need to be informed in any way about the screening or eligibility process, assessment of harm, the number of beneficiaries or how much these programmes cost.
25. This approach would allow the design and ultimately the implementation of these forms of reparations to be determined by best practices with respect to technical programme design features, service delivery standards and optimize the positive outcomes for beneficiaries. It is also responsive to the very real concerns of victims to reprisals and being subjected to further harm. This approach would also allow the Trust Fund and its partners to conduct victim-centred harm assessments driven by the needs of the individual rather than victim/Lubanga-centred harm assessments driven by the dual needs of the victim and the requirement to document and quantify Mr Lubanga's financial responsibility.

⁴² ICC-01/04-01/06-3208, para 127.

26. We wish to stress that this proposal is not motivated by wanting to circumvent complex issues. Most/all reparations processes are likely to be complex and such issues will need to be resolved in this and future cases. Our proposal is in response to the specific circumstances in this case and context, specifically the release of Mr Lubanga within the DRC during the implementation phase of reparations and the presence of the UPC in areas in which the reparative programmes are likely to be implemented. We do not believe that adhering to an expectation that Mr Lubanga's financial liability should be applied to all forms of reparations, as principled as this may be, outweighs the safety of victims, their confidence in the reparations process and the potential benefits of the reparative programmes.

27. In addition to the Trust Fund providing the financial resources for the implementation of the programmes requiring individualized harm assessments, we also propose that the DRC Government should be required to contribute, even if a proportionately small amount, to the implementation of such programmes. It is clearly established within the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles), that 'the State shall provide reparation to victims'.⁴³ The Basic Principles call upon the State to endeavor to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.⁴⁴ It would be highly appropriate and in keeping with international standards, for the Trial Chamber to consider assigning a role to the DRC Government to

⁴³ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2016, para 15.

⁴⁴ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2016, para 16.

contribute to the restitution, rehabilitation and compensation of its citizens harmed by the crimes for which Mr Lubanga was convicted, recognising the failure of the State to protect its citizens from these violent crimes, and the lack of responsiveness to date by the Government to establish a reparations programme.

28. One of the advantages of this proposal is that it would allow the restitution, rehabilitation and compensation reparative programmes to proceed quite rapidly given the programmatic process, description and details already contained within the Trust Fund's Draft Implementation Plan.⁴⁵ It is highly likely that the Trust Fund will be able to readily supplement the Draft Plan with additional programme implementation plans along with budgets for each of the major programmes areas outlined therein. Based on our experience in eastern DRC and Ituri, we find the programmes outlined in the Draft Implementation Plan to be sound and responsive to the kinds of priorities and issues we have also noted in our work with former child soldiers. It also responds to the Appeals Chamber Order regarding the requirement for programmes to be gender-inclusive and sensitive.⁴⁶

29. In light of the very specific security issues in this case with the release of Mr Lubanga within the DRC during the implementation phase of reparations, the ongoing security challenges for the State and its inability to provide protection to its citizens especially in the east of the country, and that Mr Lubanga's supporters and the UPC continue to be active in the areas in which reparative programmes will be provided, we propose that Mr Lubanga's financial responsibility should be attached solely to symbolic, preventative and transformative reparations.

⁴⁵ ICC-01/04-01/06-3177-AnxA.

⁴⁶ ICC-01/04-01/06-3129-AnxA, para 18.

30. These kinds of reparations do not require individualised needs assessment or a screening process to determine individual eligibility as such programmes are not oriented towards addressing the specific harm caused to individual victims. Rather they address the harm to direct and indirect victims at the community and societal level. These forms of reparations are intrinsically collective and communal in nature and as such they can be effective responses to the widespread and large scale nature of the crimes for which Mr Lubanga was convicted. Symbolic, preventative and transformative reparations focus on the harm done to the relationship between direct victims and their families and communities,⁴⁷ and address the 'rupture the victimization created' between the victims/survivors and their society.⁴⁸ They are communal responses to collective harm.

31. Importantly, these programmes can be designed to address the ongoing harm experienced by victims including discrimination, stigma, community-rejection and marginalization. The consultations conducted by the Trust Fund for Victims in May and June 2015 revealed that issues of stigma, shame and discrimination feature prominently in the lives of former child soldiers.⁴⁹ They experience loss of social status with their peers and rejection by their families many of whom report feeling 'burdened by the crimes committed by their children' and face accusations from others in the community.⁵⁰ Our own work with young women formerly associated with militia groups in the DRC and Uganda ('former child soldiers'), confirms the powerful and debilitating effects of stigma, marginalization and discrimination experienced by returnees. They often feel powerless to address these issues. The experience of familial, tribal or community rejection exacerbates their sense of shame adding

⁴⁷ ICC-01/04-01/06-3129-AnxA, para 46.

⁴⁸ Yael Danieli, 'The right to restitution, compensation, and rehabilitation for victims of gross violations of human rights and fundamental freedoms: preliminary reflections from a psychological perspective', in Eduardo Vetere and Pedro David (eds), *Victims of Crime and Abuse of Power*, p. 261, New York, United Nations, 2005.

⁴⁹ ICC-01/04-01/06-3177-Red, para 94. See also paras 26-75 and 93.

⁵⁰ ICC-01/04-01/06-3177-Red, para 74.

to anxiety, depression and hopelessness. There is little doubt that the effects of marginalization and rejection they experience are significant obstacles to their recovery and to accessing services and programmes which may support their reintegration. Such issues are compounded for female former child soldiers especially if they return from the militia with children. The loss of virginity and evidence of sexual activity outside of marriage, regardless of the non-consensual nature of the acts, adds to the social and cultural stigma experienced by females with long term consequences. It also further separates these individuals from their families and communities,⁵¹ and hinders their acceptance and reintegration.

32. In turn, as also noted in the Trust Fund's filing of 3 November, 2015, former child soldiers may also display 'stigmatizing behaviour' which further creates a sense of rejection between them and the rest of the community.⁵² It is our view that symbolic, preventative and transformative reparations embody greater potential to foster community-based reconciliation of former child soldiers, than reparative responses which address the individual needs of individual victims. These approaches complement and enhance each other. Symbolic, preventative and transformative programmes acknowledge direct and indirect victims as members of their communities and recognize that successful reintegration cannot occur without the respect and acceptance of victims collectively by the community and its leaders. Such reparations programmes should be designed bearing in mind the victims as they were at the time the crimes occurred (as children) as well as the victims as they are now (as young adults).

33. It is clear within the Appeals Chamber Order that symbolic, preventative and transformative reparations are not considered as the soft edge of reparative responses nor as lesser than the reparative modalities of restitution,

⁵¹ ICC-01/04-01/06-3177-Red, paras 66, 67, 93, 94.

⁵² ICC-01/04-01/06-3177-Red, para 62.

compensation and rehabilitation.⁵³ In reality, symbolic, preventative and transformative reparations contribute to addressing discrimination, stigma and marginalization and thereby can reduce or remove obstacles enabling victims to more readily access the other forms of reparations responding to individual needs, such as those outlined in the Draft Implementation Plan, amongst others.

34. Symbolic, preventative and transformative reparations are highly visible to the community at large and can be designed to address the underlying attitudes, cultural beliefs and practices which enabled the enlistment, conscription and use of children and which fueled the narrative of ethnic conflict justifying the formation of the FPLC militia, without which the crimes committed against children in this case would not have occurred.
35. In keeping with the Order, the Trust Fund should provide Mr Lubanga with the opportunity to review the specific programmes designed as symbolic, preventative and transformative reparations. This could include the detailed plans of the design, the cost, the collective benefits of these programmes, the proposed number and locations of the memorial sites, the proposed dates of commemoration days, the purpose of community-based reconciliation campaigns and the length of time they will run, amongst other aspects, as determined by the Trial Chamber.
36. Symbolic Reparations: could include memorials in locations meaningful to the community both within Ituri and outside in locations where victims have relocated; commemoration days; an apology from Mr Lubanga and/or the UPC; an apology from the DRC Government for its failure to protect the children of Ituri- the apology should be both in written form and accompanied

⁵³ ICC-01/04-01/06-3129-AnxA.

by public ceremonies in locations meaningful to the community;⁵⁴ the creation of 'peace paths' in locations meaningful for the community; and the establishment of learning and training centres which may ultimately be sites in which the rehabilitation and restitution programmes are conducted.

37. Preventative Reparations: these forms, to be carried out across the affected communities within Ituri and outside in locations where victims have relocated, could include: antiviolence education promoting the rights of children and non-violent forms of communication and parenting; peace building campaigns highlighting non-violent approaches to resolving disputes; education campaigns informing cultural, traditional, civic and religious leaders of the Convention of the Rights of the Child including its optional protocol on the involvement of children in armed conflict.⁵⁵

38. Transformative reparations; these forms, to be carried out across the affected communities within Ituri and outside in locations where victims have relocated, could include: community-based reconciliation dialogues addressing the social marginalisation and discrimination of former child soldiers including the additional stigma and discrimination of young women who returned from the FPLC with children; peace building campaigns promoting tolerance, human rights and equality (addressing, inter alia, age, gender, ethnicity); community-wide campaigns on the rights of children and the rights of the girl child addressing the pre-existing inequalities which led to or facilitated the violence for which children in this case were targeted.⁵⁶

⁵⁴ Dyan Mazurana and Kristopher Carlson, 'Reparations as a Means for Recognizing and Addressing Harm', in *The Gender of Reparations*, ed Ruth Rubio-Marin, 2009, p 209.

⁵⁵ Original Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, A/RES/54/263, May 2000, entry into force, 12 February, 2002.
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>.

⁵⁶ ICC-01/04-01/06-2876, fn 26.

39. Given its most recent filing on 19 September, 2016 on symbolic reparations,⁵⁷ the Trust Fund is in a good position to be able to design and propose symbolic, preventative and transformative programmes for the Trial Chamber's approval. This could be accompanied by Terms of Reference, outlining the harm(s) being addressed by each programme, a detailed budget for each programme and an indication of the anticipated monetary amount of Mr Lubanga's financial responsibility for the Chamber's consideration.

40. We propose that the Trust Fund for Victims advance its resources in order to enable the implementation of these forms of reparations which, in compliance with the Appeals Chamber Order, the Trust Fund can later claim from Mr Lubanga.⁵⁸

III Statement of Interest

■ The Women's Initiatives for Gender Justice requests leave to present these proposals at the Public Hearing to be held on 11, 13 and 14 October on reparations in the Lubanga case. [REDACTED]

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[REDACTED]

⁵⁷ ICC-01/04-01/06-3223.
⁵⁸ ICC-01/04-01/06-3129-AnxA, para 62.

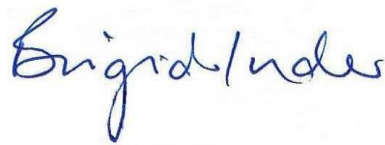
[REDACTED]

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44. The Women's Initiatives is an international women's human rights organisation that advocates for gender justice through the International Criminal Court ("ICC") and through domestic mechanisms, including peace negotiations and justice processes in both conflict and post-conflict countries, and works with women most affected by the conflict situations under investigation by the ICC. The Women's Initiatives has offices in: Amolotar, Uganda; and The Hague, the Netherlands. The Women's Initiatives has legal monitoring initiatives in most of the countries under ICC investigation, and country-based programmes in the Democratic Republic of the Congo, Uganda, and Libya.

45. The Women's Initiatives currently has over 6,000 grassroots members and direct partners in armed conflicts under investigation by the ICC. Members include women victims/survivors of gender-based and other crimes, women living in camps for Internally Displaced People, women's rights actors and organisations, development organisations, transitional and criminal justice partners, parliamentarians, and members of the security sector. In close cooperation with its country-based members and partners, the Women's Initiatives carries out programme activities including documentation of gender-based crimes, provision of support and assistance to victims/survivors of crimes within the jurisdiction of the Court, participation in peace talks, monitoring and implementation of peace agreements, and supporting

initiatives to align domestic sexual violence laws with Rome Statute standards.

A handwritten signature in blue ink that reads "Brigid Inder". The signature is written in a cursive, flowing style.

Brigid Inder, Executive Director
on behalf of
Women's Initiatives for Gender Justice

Dated this 3 October 2016

At The Hague, the Netherlands