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Date: **28 March 2012**

**TRIAL CHAMBER I**

**Before:** Judge Adrian Fulford, Presiding Judge  
Judge Elizabeth Odio Benito  
Judge René Blattmann

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

**PUBLIC**

**Women's Initiatives for Gender Justice request for leave to participate in  
reparations proceedings**

**Source:** The Women's Initiatives for Gender Justice

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

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

**Counsel for the Defence**

Ms Catherine Mabilie

Mr Jean-Marie Biju Duval

**Legal Representatives of Victims**

Mr Luc Walley

Mr Franck Mulenda

Ms Carine Bapita Buyangandu

Mr Joseph Keta Orwinyo

Mr Paul Kabongo Tshibangu

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms. Silvana Arbia

**Defence Support Section**

**Deputy Registrar**

Mr. Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

Mr Pieter de Baan, Executive Director,  
Trust Fund for Victims

## I. Introduction

1. The Women's Initiatives for Gender Justice ("the Women's Initiatives") respectfully seeks leave to participate in response to the Trial Chamber's "Scheduling order concerning timetable for sentencing and reparations" of 14 March 2012.<sup>1</sup>

## II. Application for Leave

2. The Women's Initiatives, an international women's human rights organisation, was established as a "Stichting" under the law of the Netherlands in January 2004.
3. The Chamber has invited submissions on a) the principles to be applied by the Chamber with regard to reparations and b) the procedure to be followed by the Chamber in the reparations proceedings in *The Prosecutor v. Thomas Lubanga Dyilo* ("the Case").<sup>2</sup>
4. For the reasons set out below, the Women's Initiatives requests leave to address two areas specified by the Chamber, in particular "i) whether reparations should be awarded on a collective or individual basis;" and "ii) depending on whether there should be individual or collective reparations (or both), to whom are they to be directed; how harm is to be assessed; and the criteria to be applied to the awards."<sup>3</sup> In particular, the Women's Initiatives seeks to assist the Court by providing observations on the gender dimensions of these specific factors including modalities for determining reparation programmes which are inclusive of girls and women.

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<sup>1</sup> Trial Chamber I, *Scheduling order concerning timetable for sentencing and reparations*, ICC-01/04-01/06-2844, 14 March 2012 (hereinafter 'Scheduling Order').

<sup>2</sup> Scheduling Order, para 8.

<sup>3</sup> Scheduling Order, para 8.

5. Further details of the Women's Initiatives and its interest in these proceedings are set out below in section V.

### III. Relevant Procedural Background

6. On 10 February 2006, Pre-Trial Chamber I issued an Arrest Warrant against Thomas Lubanga Dyilo<sup>4</sup> pursuant to a Prosecution request.<sup>5</sup>
7. Following his arrest on 16 March 2006 by the Democratic Republic of the Congo ("DRC"), Thomas Lubanga was surrendered to the Court and transferred to the Court's detention centre in The Hague.
8. On 20 March 2006, Mr Lubanga made his first appearance before Pre-Trial Chamber I.
9. The confirmation of charges hearing in the Case was held from 9 to 28 November 2006.
10. On 29 January 2007, Pre-Trial Chamber I issued a "Decision on the confirmation of charges". The Pre-Trial Chamber confirmed that there were substantial grounds to believe that:

Thomas Lubanga Dyilo is responsible, as co-perpetrator, for the charges of enlisting and conscripting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of Articles 8(2)(b)(xxvi) and 25(3)(a) of the Statute from early September 2002 to 2 June 2003.<sup>6</sup>

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<sup>4</sup> Pre-Trial Chamber I, *Warrant of Arrest*, ICC-01/04-01/06-2-tEN, 10 February 2006 (hereinafter 'Arrest Warrant'). The Arrest Warrant and related documents were unsealed on 17 March 2006 (ICC-01/04-01/06-37).

<sup>5</sup> ICC-01/04-98-US-Exp. The Prosecution request for an arrest warrant against Thomas Lubanga Dyilo was not made public.

<sup>6</sup> Pre-Trial Chamber I, *Decision on the confirmation of charges*, ICC-01/04-01/06-803-tEN, 29 January 2007, p 156 (hereinafter 'Confirmation Decision').

11. The Pre-Trial Chamber also confirmed that there were substantial grounds to believe that:

Thomas Lubanga Dyilo is responsible, as co-perpetrator, for the charges of enlisting and conscripting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a) of the Statute from 2 June to 13 August 2003.<sup>7</sup>

12. Between 26 January 2009 and 26 August 2011, Trial Chamber I heard evidence relating to the charges brought against Thomas Lubanga.

13. On 14 March 2012, Trial Chamber I issued a “Judgment pursuant to Article 74 of the Statute” (the “Judgment”) convicting Lubanga of the war crimes of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a) of the Statute from early September 2002 to 13 August 2003.<sup>8</sup> Judge Odio Benito issued a Separate and Dissenting Opinion. Judge Fulford appended a Separate Opinion.

14. On 14 March 2012, the Trial Chamber issued a “Scheduling order concerning timetable for sentencing and reparations” inviting other individuals or interested parties to apply in writing by 28 March 2012 for leave to participate in the proceedings should they wish to file observations.<sup>9</sup>

#### **IV. Issues on which the Women’s Initiatives seeks to make submissions**

15. The Women’s Initiatives’ proposed submissions will address issues identified by the Chamber from a gender perspective, including: how harm could be assessed; whether reparations should be awarded on a collective or

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<sup>7</sup> Confirmation Decision, p 157.

<sup>8</sup> Trial Chamber I, *Judgment pursuant to Article 74 of the Statute*, ICC-01/04-01/06-2842, 14 March 2012 (hereinafter ‘Judgment’).

<sup>9</sup> Scheduling Order, para 10.

individual basis; to whom reparations could be directed; and the criteria which could be applied to the awards.

### A. Assessing harm

16. The Women's Initiatives' proposed submission will address how harm could be assessed for the purposes of reparations. Specifically, we will forward the view that any harm which can be reasonably assessed to be a direct consequence of the crimes for which the accused has been convicted could legitimately be considered for inclusion in an order of reparations. As evident in the course of the trial for Mr Lubanga,<sup>10</sup> as stated in the Chambers Judgment of 14 March 2012<sup>11</sup> and as elaborated upon in the dissenting opinion of Judge Odio Benito,<sup>12</sup> sexual violence was integral to each of the three crimes for which Mr Lubanga has been convicted. Therefore the consequences of these acts form a component of the harm suffered by child soldiers and should be explicitly included in reparations proceedings and subsequent programmes.

17. In our view, all harm, including but not limited to physical and psychological harm, emotional suffering, economic loss or impairment suffered as a result

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<sup>10</sup> The Chamber heard witness testimony by a number of former child soldiers describing acts of sexual violence committed primarily against girl soldiers. While not all of this testimony was relied on by the Chamber in convicting Mr Lubanga, we note that the crimes described are exemplary of the experiences of girl soldiers within the UPC. Among the witnesses relied on by the Chamber, Witness 38 described that girls in the camps performed a myriad of roles, including providing sexual services (ICC-01/04-01/06-T-114-ENG, p 22 lines 16-19, p 82 lines 1-3). Witness 299 confirmed that 'the PMFs job was to take the commander's bags, and their other job was to be their wives' (ICC-01/04-01/06-T-122-ENG, p 26 lines 23-25). Witness 7 also confirmed that 'commanders took girls who were recruits and said "Today you will come and sleep with me"', and that the girls were not allowed to say no (ICC-01/04-01/06-T-148-ENG, p 49 lines 14-22). In response to questions from Judge Odio Benito about sexual violence committed against girl soldiers during the initial training phase, Witness 16 confirmed that 'out of here, being in the centre for the first time, the trainers and other guards in the centre took advantage of the situation and they would rape the recruits' (ICC-01/04-01/06-T-191-Red-ENG, p 15 lines 19-22). Witness 89 described that rape and sexual violence were commonly committed against girl soldiers. He testified that 'there were commanders who took girls as women. They would get them pregnant, and these girls then had to leave the camp and go to the village.' He also testified that this 'had to be accepted' when a commander wanted a girl (ICC-01/04-01/06-T-196-ENG, p 7 lines 23-24; p 8 lines 2-3, 6-16).

<sup>11</sup> Judgment, paras 630, 896.

<sup>12</sup> Judge Odio Benito, Separate and Dissenting Opinion of Judge Odio Benito, ICC-01/04-01/06-2842, 14 March 2012, (hereinafter 'Separate and Dissenting Opinion by Judge Odio Benito'), paras 18, 21.

of the crimes for which Thomas Lubanga has been convicted, can rightfully should be included in the reparations order.

18. The purposeful inclusion of gender-based crimes as among the harms suffered as a result of the enlistment, conscription, and use of children under the age of 15, for the purposes of reparations, is consistent with the Chamber's approach to the reparations phase of the Case. As the Chamber has noted in the Judgment, charges of gender-based crimes were not included by the Prosecutor in the charges against Mr Lubanga.<sup>13</sup> However, evidence of rape and other forms of sexual violence was put before the Chamber in that it was extensively referenced in Prosecution arguments, including the opening and closing statements, and in witness testimony throughout the trial.<sup>14</sup> The Chamber heard directly from former child soldiers and other witnesses that girls in the training camps served not only to fight, as bodyguards and to prepare food, but also for sexual services, and to serve as 'wives' to the commanders.<sup>15</sup>

19. These crimes were also referenced by the victims' legal representatives, especially those representing former girl soldiers.<sup>16</sup> In her opening statement, one Legal Representative representing former girl soldiers emphasised that:

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<sup>13</sup> Judgment, para 629.

<sup>14</sup> The following Prosecution witnesses testified about sexual violence committed against girl soldiers by the UPC: Witness 38 (ICC-01/04-01/06-T-114-ENG), Witness 299 (ICC-01/04-01/06-T-122-ENG), Witness 298 (ICC-01/04-01/06-T-123-ENG), Witness 213 (ICC-01/04-01/06-T-133-ENG), Witness 8 (ICC-01/04-01/06-T-138-ENG), Witness 11 (ICC-01/04-01/06-T-138-ENG), Witness 10 (ICC-01/04-01/06-T-144-ENG), Witness 7 (ICC-01/04-01/06-T-148-ENG), Witness 294 (ICC-01/04-01/06-T-151-ENG), Witness 17 (ICC-01/04-01/06-T-154-ENG), Witness 55 (ICC-01/04-01/06-T-178-Red-ENG), Witness 16 (ICC-01/04-01/06-T-191-Red2-ENG), Witness 89 (ICC-01/04-01/06-T-196-ENG), Witness 31 (ICC-01/04-01/06-T-202-ENG) and Witness 46 (ICC-01/04-01/06-T-207-ENG). The Prosecution also described the gendered aspects of the charges in its opening statements in January 2009 (ICC-01/04-01/06-T-107-ENG) and closing statements in August 2011 (ICC-01/04-01/06-T-356-ENG).

<sup>15</sup> Witness 38 (ICC-01/04-01/06-T-114-ENG, p 22 lines 16-19, p 82 lines 1-3), Witness 299 (ICC-01/04-01/06-T-122-ENG, p 26 lines 23-25), Witness 7 (ICC-01/04-01/06-T-148-ENG, p 49 lines 14-22), Witness 16, Witness 89 (ICC-01/04-01/06-T-196-ENG, p 7 lines 23-24; p 8 lines 2-3, 6-16), Witness 31 (ICC-01/04-01/06-T-202-ENG, p 10 lines 12-25, p 11 lines 1-3), Witness 46 (ICC-01/04-01/06-T-207-ENG).

<sup>16</sup> The Legal Representatives of Victims detailed the specific abuse of girl soldiers in their opening statements in January 2009 (ICC-01/04-01/06-T-107-ENG) and closing statements in August 2011 (ICC-01/04-01/06-T-356-ENG). In addition, in a Joint Application filed on 22 May 2009, the Legal Representatives of Victims also sought to change the legal characterisation of facts to include inhuman and cruel treatment and sexual slavery to the existing characterisation (Legal Representatives of Victims, *Joint Application of the Legal Representatives of*

rape began as soon as they were abducted and continued throughout their stay with the UPC. In fact, often the abuses were greatest in the initial stages of their abduction and in the training camps where they were trained to become militia soldiers. Many of these girls, victims of rape, suffer from psychological trauma. Many girls have been tortured, abused or imprisoned for refusing the sexual advances of their superiors which they then underwent against their will.<sup>17</sup>

This Legal Representative stated that these girls have been “denied the right to a childhood, to be schooled, a right to safety, a right to be protected, a right to physical integrity, a right to reproductive health and sexual autonomy.”<sup>18</sup>

20. While in the Judgment the Trial Chamber ruled that some of the witness testimony could not be considered in relation to the guilt or innocence of the accused, it reserved the right to address issues of sexual violence for the purposes of sentencing or reparations. The Chamber therefore included evidence of sexual violence in the Judgment for the purpose of “providing context”.<sup>19</sup> While not making any finding about the individual criminal responsibility of Thomas Lubanga for sexual violence, the Chamber has also noted that, “[r]egardless of whether sexual violence may properly be included within the scope of ‘using [children under the age of 15] to participate actively in hostilities’ as a matter of law... in due course, the Chamber will consider whether these matters ought to be taken into account for the purposes of sentencing and reparations”.<sup>20</sup>

21. Furthermore, Judge Odio Benito, in her Separate and Dissenting Opinion acknowledged that “[s]exual violence committed against children in the

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*Victims for the Implementation of the Procedure under Regulation 55 of the Regulations of the Court*, ICC-01/04-01/06-1891, 22 May 2009).

<sup>17</sup> ICC-01/04-01/06-T-107-ENG, p 53 lines 14-21.

<sup>18</sup> ICC-01/04-01/06-T-107-ENG, p 54 lines 13-16.

<sup>19</sup> Judgment, para 896.

<sup>20</sup> Judgment, para 630.



armed groups causes irreparable harm and is a direct and inherent consequence to their involvement with the armed group”.<sup>21</sup>

22. As further stated by Judge Odio Benito:

sexual violence or enslavement are illegal acts and in this case a harm directly caused by the illegality of the war crime of enlisting, conscripting and the use of children under the age of 15 in support of the combatants. Sexual violence and enslavement are the main crimes committed against girls and their illegal recruitment is often intended for that purpose (nevertheless they also often participate in direct combat).<sup>22</sup>

23. In the its Judgment, the Trial Chamber further makes reference to the submissions of Special Representative for Children and Armed Conflict Radhika Coomaraswamy, who gave submissions first as *amicus curiae* and subsequently as expert witness for the Chamber in the Case. As the Chamber notes, Ms Coomaraswamy suggested that “the use for sexual exploitation of boys and girls by armed forces or groups constitutes an ‘essential support function’”.<sup>23</sup> In her testimony, Ms Coomaraswamy further emphasised that the multiple roles played by child soldiers includes the role of ‘sex slave’,<sup>24</sup> and that girls and boys integrated into armed groups suffer rape on a regular basis, as well as forced marriage and sexual harassment.<sup>25</sup>

24. We also note the “Public Redacted Version of ICC-01/04-01/06-2803-Conf-Exp – Trust Fund for Victims’ First Report on Reparations” of 1 September 2011,<sup>26</sup> in which the Trust Fund for Victims (the “Trust Fund”) states that sexual violence was perpetrated widely against girl and boy soldiers during their

<sup>21</sup> Separate and Dissenting Opinion by Judge Odio Benito, para 18.

<sup>22</sup> Separate and Dissenting Opinion by Judge Odio Benito, para 21.

<sup>23</sup> Judgment para 630, footnote 1811, citing written submissions of Ms. Coomaraswamy (CHM=0003), EVD-CHM-00007, paras 23 and 24-26.

<sup>24</sup> ICC-01/04-01/06-T-223-ENG, p 30 lines 11-19.

<sup>25</sup> ICC-01/04-01/06-T-223-ENG, p 30 line 25; p 31 lines 1-9.

<sup>26</sup> Trust Fund for Victims, *Public Redacted Version of ICC-01/04-01/06-2803 – Trust Fund for Victims’ First Report on Reparations*, ICC-01/04-01/06-2803-Red, 1 September 2011 (hereinafter ‘Trust Fund for Victims Report on Reparations’).

conscription, enlistment and/or participation.<sup>27</sup> The Trust Fund further notes that in interviews carried out by the Trust Fund in 2010, over 48% of former child soldiers (of whom 66.7% were girls and 32.2% boys) indicated they had been subject to sexual violence and 35% of former boy child soldiers indicated they had been forced to commit sexual violence.<sup>28</sup>

25. Further, in the “Second Report of the Registry on Reparations” of 1 September 2011,<sup>29</sup> the Registry specifically includes sexual violence as a type of harm caused as a result of child conscription.<sup>30</sup> The Registry states that:

In addition, it is common for female child conscripts to be subjected to sexual violence, once conscripted. The physical and psychological consequences of sexual violence may well be considered to be part and parcel of the harm caused by the crime of child conscription in respect of which reparation is required, since if it had not been for the children’s forcible conscripted [sic] the acts of sexual violence in question could not have occurred. Indeed, in many instances the use of female child soldiers for sexual exploitation may have been a purpose underlying their conscription into armed forces in the first instance.<sup>31</sup>

26. The Women’s Initiatives submits that a factual finding of acts of sexual violence is not needed in order for the Trial Chamber to issue a reparations order referencing and responding to such acts as these flow directly from the crimes of enlistment, conscription and use of children under the age of 15 to participate actively in hostilities.

## **B. Designing collective and individual reparations with a gender perspective**

27. The Women’s Initiatives’ proposed brief intends to offer observations addressing the design of reparations programmes that includes a response to

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<sup>27</sup> Trust Fund for Victims Report on Reparations, paras 26, 159, 163.

<sup>28</sup> Trust Fund for Victims, Report on Reparations, para 163.

<sup>29</sup> Registrar, *Second Report of the Registry on Reparations*, ICC-01/04-01/06-2806, 1 September 2011 (hereinafter ‘Second Registry Report on Reparations’).

<sup>30</sup> Second Registry Report on Reparations, paras 88-89, 105, 208.

<sup>31</sup> Second Registry Report on Reparations, para 20.

gender-based crimes, given that acts of sexual violence, particularly committed against girl soldiers, were integral to all three crimes for which Mr Lubanga has been convicted.<sup>32</sup>

28. The proposed submissions will address from a gender perspective the importance of providing both collective and individual reparations in this Case, with an emphasis on collective reparations.<sup>33</sup> In particular, the proposed submissions will address ways in which collective reparations, such as rehabilitation programmes providing medical and psychosocial support to victims/survivors, specifically victims/survivors of gender-based crimes, or social rehabilitation and demobilisation programmes for former child soldiers, can address the broader aspects of the harms suffered by the community at large. The proposed submissions will focus in particular on the value of a combination of individual and collective reparations in contributing to the rehabilitation of victims of sexual violence.

29. In this regard, we note in particular the Trust Fund's observation that

by designing a comprehensive and integrated individual and collective award, reparations could address the multiple dimensions of victimisation due to the conscription, enlistment and participation of child soldiers including, but not limited to the fact that the child soldiers may have been engaged in active conflict as well as served as cooks, porters, or messengers [and] ... may also include girls and boys recruited [for] sexual abuse and/or forced marriage.<sup>34</sup>

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<sup>32</sup> Brigid Inder, 'The ICC, child soldiers and gender justice', November 2011, available at <http://viewer.zmags.com/publication/5ebbab6d?page=55#/5ebbab6d/55>. See also Women's Initiatives for Gender Justice, *Gender Report Cards 2008, 2009, 2010 and 2011*, available at <http://www.iccwomen.org/publications/index.php>. A redacted version of the letter submitted to the Office of the Prosecutor detailing our documentation of gender-based crimes in Ituri is available at [http://www.iccwomen.org/documents/Prosecutor\\_Letter\\_August\\_2006\\_Redacted.pdf](http://www.iccwomen.org/documents/Prosecutor_Letter_August_2006_Redacted.pdf). In her expert testimony, UN Under-Secretary General for Children in Armed Conflict Radhika Coomaraswamy also spoke to the multiple roles girl soldiers are forced to play during armed conflicts, which included participation in combat, scouting and portering, as well as forced marriage and sexual slavery (ICC-01/04-01/06-T-223-ENG).

<sup>33</sup> See also Trust Fund for Victims Report on Reparations, paras 26, 208-209, 289-293.

<sup>34</sup> Trust Fund for Victims Report on Reparations, para 26.

30. The Women's Initiatives notes that the eventual execution of any reparations order is likely to fall to the Trust Fund for Victims (the "Trust Fund") and will require consideration of its Rules for administering a reparations order, given that Lubanga is indigent.
31. We further note that due attention must be paid to the security issues faced by potential beneficiaries, particularly in light of the fact that even victims formally recognised by the International Criminal Court are not afforded specific protection measures by the Court. Given most of the recognised victims continue to live in insecure environments, disclosure of the identities of victims to the Defence during the reparation proceedings may potentially result in further vulnerability.
32. In situations where a convicted person has been determined indigent and has no assets to contribute to a reparations order, and the reparations order will thus be administered through the Trust Fund,<sup>35</sup> disclosure of victim identities to the Defence should not apply. A determination by the Chamber that victims' identities should be disclosed to the Defence, in our view, need only be considered if the convicted person is directly responsible for reparations.<sup>36</sup> As the Court has determined that Mr Lubanga is indigent, he has been deemed unable to contribute financially to any reparations. In this instance, therefore, any requirement that may exist to disclose to the defence the names of victims who are applying for reparations, would not apply.
33. The proposed submissions will also address the importance of including appropriate symbolic measures among the reparations ordered in circumstances where the convicted person is indigent. The Trial Chamber can include in its reparations order measures not necessitating any financial

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<sup>35</sup> Article 75(2) provides that '... Where appropriate, the Court may order that the award for reparations be made *through* the Trust Fund provided for in Article 79' (emphasis added).

<sup>36</sup> Article 75(2) provides that 'the Court may make an order *directly against* a convicted person specifying appropriate reparations to, or in respect of, victims, including restitutions, compensation and rehabilitation' (emphasis added).

contribution, such as an acknowledgement that harm was done, an act of atonement, or reconciliation measures involving the convicted person, or representatives thereof.

### **C. Consulting with victims/survivors to direct reparations appropriately**

34. The proposed submissions will address not only the importance of consultations by the Court with victims/survivors but the types and modalities of consultations to ensure that women and girls are included in the process of designing and identifying appropriate reparations, including victims/survivors of acts of gender-based violence. The integration of women and girls in reparations consultations is of particular importance. It is the experience of the Women's Initiatives and its work in armed conflicts since 2004, that women and girls have different views concerning the type and modalities of reparations that are meaningful to them. The types of crimes suffered by women and girls, the pre-existing and ongoing gender-inequalities, and their access to services and programmes for justice and recovery deserve particular attention to ensure that a reparations order does not have the unintended effect of replicating gender discrimination.

### **D. The award criteria**

35. Women's Initiatives' proposed brief also intends to provide observations on the criteria to be applied to the awards. Reparations should aim to help gain or restore the quality of life for the victims/survivors as well as for future generations. The proposed submissions specifically aim to address the value of: (i) reparations that are not only restorative, but also transformative; (ii) reparations that address existing gender inequalities within communities; and, (iii) reparations that contribute to advancing gender equality through the types of programmes funded and the type of support provided to victim

communities. These observations will assist Chambers and the Court in future reparations proceedings.

36. In addition, the proposed submissions also intend to address the value of reparations, particularly from a gender perspective, which may prevent the future commission and repetition of such acts. In addition to rehabilitation and re-building, reparation awards should support prevention strategies, particularly for the prevention of violence against women. By integrating these questions as a component of the design of the reparation awards, the Court will be able to respond to the violence that occurred and assist in preventing the repetition of gender-based violence in the ongoing context in the DRC.

## **V. Statement of Interest**

37. 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 works in the Democratic Republic of the Congo ("DRC"), Sudan, the Central African Republic, Uganda, Kenya, Libya, and Kyrgyzstan.

38. 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, participation in peace talks, monitoring of peace agreements and advocating for law reform initiatives.

39. The Women's Initiatives has been working in the DRC since 2006, and has 120 members and partners in Province Orientale, including Ituri, and in North and South Kivu, as well as three focal points. The Women's Initiatives works closely with victims/survivors in eastern DRC, including with former girl soldiers. Through our victim/survivor support and assistance initiatives in Ituri, we have provided victims/survivors of gender-based crimes with medical, psychosocial and material support. The support we provide to our partners also has included the temporarily relocation of over 25 women's human rights defenders and their families in eastern DRC, due to security concerns arising from their participation in victim/survivor support projects. We have an ongoing victims/assistance programme operational in other provinces of eastern DRC including South Kivu.<sup>37</sup> In addition to our victim/survivor support and assistance initiatives, we have a collaborative documentation programme with our partners, to generate reliable data and knowledge about the commission of gender-based crimes in the DRC.

40. The Women's Initiatives has been closely following the developments in the Prosecutor's investigations in the DRC, and in *The Prosecutor v. Thomas Lubanga Dyilo*, in particular with respect to the lack of charges for gender-based crimes. On 16 August 2006, the Women's Initiatives submitted a confidential report and a letter to the Office of the Prosecutor describing our

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<sup>37</sup> More recently, in September 2011 we initiated a support project together with one of our partners, with the establishment of a transit house to directly assist women victims/survivors in rural and remote areas within the Fizi region of South Kivu. This transit house provides victim/survivors with a place to rest while traveling for surgery and other medical treatment as a result of sexual and gender-based violence attacks by militia groups and/or the Congolese national army, and assists victim/survivors to travel to the nearest medical service.

grave concerns that gender-based crimes had not been adequately investigated in the case against Thomas Lubanga and providing information about the alleged commission of these crimes by the UPC.<sup>38</sup> In September 2006, the Women's Initiatives became the first organisation to file for leave to participate in the Case, in respect of the failure of the Prosecutor to fully investigate, and to bring charges for, gender-based crimes and the impact on girl soldiers and the larger community of victims of the narrow focus of the charges brought by the Office of the Prosecutor against Mr Lubanga.<sup>39</sup>

41. The Women's Initiatives provides a unique perspective and expertise in monitoring, critiquing, advocating for gender justice through the ICC, and has continually monitored and published analyses of the legal developments in this Case.<sup>40</sup> Given its long investment in the ICC, the Case, and with victims/survivors in eastern DRC, the Women's Initiatives is uniquely placed to assist the Chamber with observations in the present matter.

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<sup>38</sup> A redacted version of this confidential letter submitted to the Office of the Prosecutor is available at [http://www.iccwomen.org/documents/Prosecutor\\_Letter\\_August\\_2006\\_Redacted.pdf](http://www.iccwomen.org/documents/Prosecutor_Letter_August_2006_Redacted.pdf).

<sup>39</sup> On 7 September 2006, the Women's Initiatives requested leave to participate as amicus curiae in the Article 61 Confirmation of Charges proceedings ("Request"), requesting the Pre-Trial Chamber to review the Prosecutor's exercise of discretion in the selection of charges and to determine whether broader charges could be considered (Women's Initiatives for Gender Justice, *Request submitted pursuant to Rule 103(1) of the Rules of Procedure and Evidence for Leave to Participate as Amicus Curiae in the Article 61 Confirmation Proceedings (with Confidential Annex 2)*, ICC-01/04-01/06-403, 7 September 2006). On 26 September 2006, Pre-Trial Chamber I issued its decision on the Request holding that the Women's Initiatives' Request had no link with the case brought against Thomas Lubanga Dyilo by the Prosecutor (Pre-Trial Chamber I, *Decision on Request pursuant to Rule 103(1) of the Statute*, ICC-01/04-01/06-480, 26 September 2006). Instead the Pre-Trial Chamber invited the Women's Initiatives to re-file its Request to prepare an amicus in relation to the DRC situation rather than the case against the suspect. Following the invitation by the Pre-Trial Chamber, on 10 November 2006, the Women's Initiatives re-submitted its application to Pre-Trial Chamber I in relation to the situation in the Democratic Republic of the Congo (Women's Initiatives for Gender Justice, *Request submitted pursuant to Rule 103(1) of the Rules of Procedure and Evidence for leave to participate as amicus curiae with confidential annex 2*, ICC-01/04-313, 10 November 2006). On 17 August 2007, the Pre-Trial Chamber declined to grant leave to submit further submissions (Pre-Trial Chamber I, *Decision on the Request submitted pursuant to Rule 103(1) of the Rules of Procedure and Evidence*, ICC-01/04-373, 17 August 2007).

<sup>40</sup> See *Gender Report Card on the ICC 2008, 2009, 2010 and 2011*, available at <http://www.iccwomen.org/publications/index.php>; see also *Legal Eye on the ICC | Panorama légal de la CPI eLetter*, available at <http://www.iccwomen.org/news/index.php>.



## VI. Conclusion

42. For the foregoing reasons, the Women's Initiatives respectfully requests that the Chamber grant leave to submit observations.



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

Dated this 28 March 2012

At The Hague, the Netherlands