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Landmark ICC decision recognises reparation is a right owed to victims

7 August 2012 – Today, Trial Chamber I of the International Criminal Court (ICC) delivered a landmark decision on reparations. The decision outlines the principles to be applied in relation to reparation for victims in the case of Thomas Lubanga, who was found guilty in March of the war crimes of enlisting and using child soldiers in armed conflict in eastern Democratic Republic of the Congo in the first-ever ICC verdict.

In its decision, the Trial Chamber considered that reparations to victims are to be understood in a broad and flexible manner, allowing the Chamber to approve “the widest possible remedies for the violations of the rights of the victims and the means of implementation”. The Chamber ordered that proposals for collective reparations be collected by the Trust Fund for Victims (TFV) and presented to a newly-constituted Trial Chamber I for approval. Individual application forms for reparations received thus far by the Registry will be transmitted to the TFV. Reparations will be implemented through the resources of the TFV.

The Chamber also recommended that the TFV appoint a multidisciplinary team of experts to help assess the harm suffered by the victims, the effect that the crimes had on their families and communities and the most appropriate forms of reparations.

“This is a landmark decision. The judges have recognised that reparation is a key feature of the Rome Statute and vital to the overall success of the ICC. They have also recognised that reparation is a right owed to victims, and that reparation must be appropriate, adequate and prompt. It is now up for the Trust Fund for Victims to fulfil the vision of this decision,” said Carla Ferstman, director of REDRESS.

The Chamber considered that it is of utmost importance to ensure that the victims of the crimes, together with their families and their communities, are able to participate in the reparation process. Importantly, it also highlighted the need to consult with victims, so they are able to communicate their priorities and concerns, and to conduct outreach activities.

“In order for reparations to be meaningful to victims, but also to avoid fuelling tensions on the ground, the process will be as important as the result. This is the next step that the Court and the Trust Fund for Victims will need to ‘get right’. It is crucial for victims to be fully consulted about what measures of reparations might be most appropriate, and the best way to implement them. Involving victims in the process leading to reparations is the first step in helping to re-establish their dignity and agency,” said Carla Ferstman, director of REDRESS. “This decision is the beginning of a process that victims have been awaiting for many years. The Court should extend its outreach to explain what will happen next and to ensure that victims can be involved,” added Ferstman.

It is also positive that the decision considers the need to ensure that reparations are implemented without any discrimination regarding age, ethnicity or gender and that reparation measures are devised to take into account the age of victims and the sexual violence they may have suffered. Equally encouraging is the judges’ determination that

reparations should not be limited to the relatively small group of victims that participated in the trial and those who applied for reparations.

The Trial Chamber determined that in the present case reparations will be implemented through the TFV, which has limited resources. The Chamber indicated that in order for reparations to have effect, “the ICC requires the cooperation of States Parties and non-state parties”, and the TFV will need to receive enough voluntary contributions to implement a meaningful and efficient reparations programme.

“Now is the time to provide financial support to the Trust Fund for Victims, so that it can develop meaningful reparations programmes that will have an impact in affected communities,” said Ferstman.

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Note: REDRESS was founded by a British torture survivor in 1992. Since then, it has consistently fought for the rights of torture survivors and their families in the UK and abroad. REDRESS, along with others, played a role in ensuring that key provisions for victims were incorporated into the Rome Statute which established the ICC. We are also currently the informal coordinator of the Victims' Rights Working Group, a network of 400 national and international organisations and experts that advocates on victim's issues before the ICC (www.vrwg.org).