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TABLE OF CONTENTS

Introduction.....	2
I. Statement of facts.....	3
II. Why the Court has the Jurisdiction in this case.....	3
III. War crimes that were committed.....	5
IV. Victims place in the proceedings.....	6
A. Definition of victims.....	6
B. Victims interest to present their views and concerns.....	7
C. Victims` right to reparation.....	9
(1) Principles and Form of reparation.....	9
(2) Assistance of experts.....	11
(3) Reparations on collective or individual basic.....	11
(4) Protective measures for the purpose of forfeiture.....	12
(5) Publication of reparation proceedings.....	13
D. Victims and Witnesses Unit and protective measures.....	13
E. Notification and Assistance to victims.....	15
V. Conclusion.....	15
List of Authorities.....	16

Introduction

“Our hope is that, by punishing the guilty, the ICC will bring some comfort to the surviving victims and to the communities that have been targeted. More important, we hope it will deter future war criminals, and bring nearer the day when no ruler, no State, no junta and no army anywhere will be able to abuse human rights with impunity.”

Statement made by UN Secretary-General Kofi Annan

1. Establishment of this Court is of a major importance for many historical and legal reasons. This Court is the first permanent International criminal court, which will be authorized to bring legal proceedings against the alleged perpetrators of the most serious crimes of concern to the whole international community. It is also the first International tribunal that gave victims of those crimes a key role in the process, in order to ensure that justice is not only about punishment of those responsible for the crimes {See Vahida Nainar, Giving Victims a Voice in the International Criminal Court, 1999}, but also helps recognizing the gravity of crimes, victims interests, concerns and rights. Importance of the victims place under the Statute is indicated in the Preamble of the Statute of the International Criminal Court, by emphasizing that “during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity”.
2. Under the Rome Statute victims are also permitted to present directly to the Court their views and concerns and give their contribution to fact-finding and truth telling in the judicial process. Rule 89(1) provides right for victims to make a written application in order to participate in proceedings, and victims in this case decided to use this right. Victims also used the right defined in Rule 90(1) (2) and chose common legal representative, who wishes to participate in this legal process by representing their interests and concerns in this written application.
3. There are four issues that will be discussed in this application. First is jurisdiction of the Court, second is importance of the Security Council Resolution 1234 and “Article 98 Agreements”, third is dedicated to the war crimes and fourth is place of victims in this proceedings and their request for reparation. But first of all, it may be appropriate to inform this Court about the facts concerning this case.

I. Statement of facts

4. In September 2001, after four years of fighting in Vineland between the central government and three ethnic groups seeking independence, all the parties to the conflict signed a peace agreement. In January 2002, the Security Council authorized UNVINE to deploy military and civilian personnel to Vineland. Member States Katonia and Ridgeland both committed to contribute forces and deployed soldiers and paratroopers to the UNVINE mission in Vineland. In June 2002, the ANVA, ethnic group from the northern region broke away from coalition government. On 10 July 2002, unidentified armed group attacked UNVINE peacekeeping forces, and 10 Katonia and 15 Ridgeland soldiers were killed. Katonia and Ridgeland sent additional 200 paratroopers and launched, in retaliation, a ten-day aerial bombing of the general area of the attack; they cordoned off the surrounding areas and conducted house-to-house raids. During that action they committed various war crimes.

II. Why the Court has the Jurisdiction in this case

5. This Court has jurisdiction in this case because all the preconditions from the Rome Statute are fulfilled. War crimes that were committed fall within the jurisdiction of the Court, in accordance with Articles 5 and 8. The fact that the perpetrators are not nationals of State Party is of no significance, because crimes were committed on the territory of the State Party, Vineland, after entry into force of the Statute of the Court, so preconditions from the Articles 11 and 12 are fulfilled.

6. It should be emphasized that Vineland issued an official statement that it has no intention to exercise jurisdiction over the accused perpetrators, which means that it is “unwilling” to conduct proceedings, so principle of complementarity, defined in Article 17, is not violated.

7. Legal representative of the victims would also like to underline that the Security Council Resolution 1234 is not binding for this Court for number of reasons. Resolution 1234 is contrary to Article 16 which states that request to defer an investigation or prosecution must be an exceptional request in particular case, not the and not a request for blanket immunity in unknown, future situations. {See Human Rights Watch: Resolution 1422 Legal and Policy

Analysis, 2003; Council of Europe, Parliamentary Assembly Resolution 1336(2003); Report of International Law Association, Berlin Conference, 2004} “Its purpose is just to defer temporarily the exercise of the Court, where of jurisdiction its investigation or prosecution could hinder the Security Council in its efforts to arrive in a peaceful solution of situation constituting a treat or breach of international peace and security”. {See Pavel Sturma, International Criminal Court at a Crossroads or in an Impasse, 2004} Also, according to article 16, resolution must be adopted under Chapter VII of the Charter of the United Nations, so it must contain a determination that there is a treat to international peace and security, and resolution 1234 doesn’t. Security Council failed to make case-by-case determination. This means that resolution 1234 is ultra vires, and that it is inconsistent with the UN Charter {See Amnesty International Security Council must refuse to renew unlawful Resolution 1422, 2003}. Also “Article 16 was certainly not meant to provide a basic for the immunity of a whole group of actors in advance and irrespective of any concrete risk of indictment or prosecution”. {See British International Studies Association Annual Conference, 2003; International Association of Democratic Lawyers, Statement on the UN Security Council Resolution 1422, (2002)}. Resolution 1234 also violated Article 27 of the Rome Statute, which “expressly prohibits making distinction on the official capacity, in order to ensure that no person is above the law”. {See Council of Europe, Parliamentary Assembly Resolution 1336(2003)}

8. Because of all these reasons, this Court shouldn’t fulfill the request of the SC. Resolution 1234, after all, is only a request, and not the order to this Court, an independent judicial body. That is the only way in which the Court can show that it is not true that resolution 1234 “sent an unacceptable message that some people, peacekeepers...are above the law”. {See Paul Heinbecker, Duke University ICC}

9. Legal representative of the victims is also aware of the fact that, consistent with its policy to prevent its soldiers from falling under this Courts` jurisdiction, Katonia concluded so called “Article 98 Agreement” with Vinelend. This agreement is contrary to the Rome Statute, and is of no relevance to this Court. {See Coalition for International Criminal Court, US Bilateral Immunity or So-called “Article 98” Agreements, 2003}. It is obvious from the drafting history and the words of the Rome Statute that Article 98 wasn’t intended to permit possibility to a State non-Party to remove its nationals from this Court’s jurisdiction, and “only state parties can benefit from an agreement that allows them first chance at prosecuting their own nationals for

ICC crimes committed on the territory of another state”. {See Coalition for International Criminal Court, 2003} Only this interpretation of Article 98 is consistent with object and purpose of the Rome Statute: avoiding impunity for individuals or group of individuals and jurisdiction in accordance with principle of complementarity. {See Human Rights First: In the Matter of the Statute of International Criminal Court, 2003}

III. War crimes that were committed

10. Victims in this process claim that accused perpetrators committed war crimes. According to Statute the Court shall have jurisdiction in respect of war crimes in particular when committed as a plan or policy or as part of a large-scale commission of such crimes. A large-scale commission of war crimes existed in this case because of large number of victims and the extent of material damage.

11. In this case were committed war crimes that, in accordance with Article 8 of the Statute, present Grave breaches of the Geneva Conventions, and other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law.

12. Facts of the case show that perpetrators, here accused, committed following war crimes:

- Crime defined in article 8(2)(a)(ii). Military police officers committed this crime over four men that were taken to an isolated area of the camp where perpetrators inflicted severe physical and mental pain and suffering upon them for purpose of obtaining information, confession and intimidation based on their nationality.
- Crime defined in article 8(2)(a)(iv). This crime was committed by pilots while launching a ten day aerial bombing, starting 10 July, when thousands of acres of farmland were ruined and a large number of crops and livestock were destroyed.
- Crime defined in article 8(2)(a)(vii). This crime was committed while conducting house-to-house searches and detaining fifty men and twenty boys.
- Crime defined in article 8(2)(b)(i). This crime was committed by pilots that were bombing villages, aware that civilians not taking part in hostiles live in it. These are definitely not military objects.
- This ten day aerial bombing presents also Crime defined in Article 8(2)(b)(iv), because

perpetrators knew that the attack was such that it would cause incidental death or injury to civilians and damage to civilian objects, and because of numerous unexploded bombs lined up the roadsides and the fields which caused long term and severe damage to the natural environment.

- Crime defined in article 8(2)(b)(xvii). Military police officers committed this crime while conducting house-to-house searches, when they appropriated property of many families.

13. All the victims of these war crimes are persons protected under Geneva Convention Relative to the Protection of Civilian Persons in Time of War. The perpetrators were aware of the factual circumstances that established that protected status because they knew that these civilian victims belonged to an adverse party to the conflict, but that none of these civilians was person taking active part in the hostilities. The conduct took place in the context of and was associated with an international armed conflict and the perpetrators were aware of factual circumstances that established the existence of an armed conflict. This means that all requirements from Article 8 of the Elements of Crimes, concerning victims and perpetrators are fulfilled. {See Elements of Crimes, Article 8 }

IV. Victims place in the proceedings

A. Definition of victims

14. As it is already mentioned that, for the first time in history of international criminal law, Statute of this Court gave victims the opportunity to be active participants in criminal proceedings and to have independent role in the process, provided that they fulfill the conditions required for status of victim. But prior to the Rules of Procedure and Evidence, formulation of the status of victim under International Law is contained in UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which “reflects the collective will of the international community to establish a balance between the fundamental rights of suspects and offenders, and the rights and interest of victims”.

15. Statute of this Court continued with the promotion of the same values, but it even more emphasized rights of the victims and established various measures for their protection and restoring their dignity and, as one of its main aims, set providing justice for them. Definition of

the victims is stipulated Rule 85: "Victims means natural person who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court". It is already explained that crimes committed in this case are crimes are within jurisdiction of the Court. All victims are "natural persons", civilians that live in the northern part of the Vineland. They have also suffered harm that is a direct result of war crimes committed by perpetrators here accused. Pain caused by lost lives of their family members, serious injuries of body and health, destroying of their property are consequences of these crimes, which should easily be defined as "harm".

16. Hence, persons who fulfill the conditions required by this definition of victim in these criminal proceedings are: the ones who suffer mental harm as a caused by death of their close family members, the ones who suffer physical harm as a result of injuries and torture, the ones whose houses, livestock, corps and farmland were destroyed and the ones whose property was stolen.

B. Victims interest to present their views and concerns

17. Paragraph 3 of Article 68 of the Rome Statute provides that "where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the court and in a manner which is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial". This Article also gives criteria, which should be met in a case where participation of the victims is allowed, and here should be explained that they are fulfilled in this case.

18. (a) There is a personal interest of the victims to intervene in the proceedings.

Victims do have a personal interest to intervene in this process because they are the ones who are the most familiar with the events that occurred from 10. -20. July 2002. They feel that they should use the opportunities that are provided for them in the Statute, and tell this Court their experiences, in order to help with resolving problems with facts of the case (as well as to try to give the answers to the issues concerning legal side of the case, such are, jurisdiction of the Court, or qualification of the crimes, explained above).

19. Victims` testimonies are of big relevance for this process, because Courts success and ability to hold accused accountable for the crimes they committed depends on undoubtedly major

degree of victims' statements. In order to enable victims' statements Court has to ensure them to play active role in this process and to give their contribution to justice process. Victims in this case already showed how important is their help in criminal proceedings. Military police officers, accused here, were captured and surrounded to this Court, thanks to the fact that several female victims, whose husband and sons were taken away in house-to-house raids, recognized them.

20. Another reason why victims' interest in this process is affected is their right to apply for reparation. Therefore, they should express their views on that matter, which will be explained in further text.

21. (b) Victims views and concerns presented in this stage of the proceedings should be determined as appropriate by the Court.

This stage of the proceedings is highly appropriate for representing victim's views because Court should as soon as possible be familiar with victims' point of view on the case. The Judges of this Court can have whole and true picture of the relevant issues only when they are in the position to consider and victims' arguments and statements.

22. (c) Presenting victims' views and concerns are not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

Manner in which are presented views and concerns of the victims in this written application could not be in any way a threat to the rights of the accused, because their Defense Counsel will have the opportunity to answer to all the statements represented in it.

23. It should be emphasized that allowing victims to protect their personal interests in this process is an opportunity for this Court to promote its "victim-centered approach to international justice" {See Human Rights and Justice Sector reform in Africa: Individualizing International Justice in Africa} and to acknowledge right of the victims, not only as a witness, but also as persons whose interests are valid and appreciated. Because: "traditionally, victims have been the last in the line in terms of the weight given to their interest. On the international level, we have seen that often justice is treated for peace, leaving victims of horrendous atrocities without a much needed societal renunciation of the crimes committed against them". {See Women's Caucus for Gender Justice, Report for Panel Discussions on Appropriate Measures for Victim Participation and Protection in the ICC}

C. Victims` right to reparation

24. In this written application, victims express their desire to use this possibility provided in the Statute and they are applying for reparation {See International Rehabilitation Council for Torture Victims, The Right to Reparation, May 2004} in accordance with Rule 94. Victims in this case truly hope that this Court will recognize their needs and that it will, after punishing perpetrators, provide reparation for the harm they suffered as a result of the crimes committed and that it will take all necessary measures to remove the consequences of that harm.

(1). Principles and Form of reparation

25. Article 75(1) of the Statute stipulates that Court shall define principles of reparation, but neither the Statute, nor the Rules of Procedure and Evidence provided definition of the principles, and ICC Judges of this Court still didn't have a chance to establish them. Of decisive importance in this field is a document adopted by Human Right Commission, called "Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Violations of International Human Rights and Serious Violations of International Humanitarian Law". This Document proposes a framework for agreeing the standards on reparation issue. This Court should take into account principles and solutions that are proposed in it because of its great legal significance, its moral value and because it affirms that "the Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity", and such violations are present in this case. Proof for that is a large scale of commission of war crimes and a large number of victims, which suffered terrible atrocities.

26. Article 75 of the Statute states that Court may determine the scope and extend of any damage, loss and injury. Form and extend of reparation will depend on that determination of the Court. As it is proposed in the "Basic principles and Guidelines" reparation for the harm victims suffered should be: adequate, full, effective, prompt and, most of all, proportional to the gravity of the violations, which include damages, lost and injuries. Court should also take account of individual circumstances of each case, and according to Article 75 (3) the representations from

victims, who should be consulted before making order for reparations. In accordance to all that, victims in this process wish to propose this Court to order following forms of reparation: restitution, compensation and rehabilitation. {See Basic Principles and Guidelines on the Right to Remedy and Reparations} In the further text it will be explained why victims felt that these forms are adequate in present circumstances of this case.

a) Restitution

Restitution should “restore the victim to the original situation” {See Basic Principles and Guidelines} before the violation of their rights. Of all the measures it could include, return of property in the one appropriate in this case, because the perpetrators while conducting house-to-house searches stole property of the victims.

b) Compensation¹ {See Stef Vandeginste, Reconciliation after Violent Conflict, 2003}

Compensation “should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case”.{See Basic Principles and Guidelines} Victims in this case require compensation for:

- 1.) Physical harm they suffered because of brutal injuries of their body and health and torture they survived.
- 2.) Mental harm they suffered and as a result of fear for their lives because of ten-day non-stop bombing, fear for the lives of their mail family members who were taken away and tortured, fear for their property which could be destroyed or stolen and pain caused by death of their close family members.
- 3.) Material damage for destroyed houses, farmland, crops, livestock. This material damage has to be removed as soon as possible because a large number of people whose homes were destroyed still haven't found a permanent place to live. Those who were farmers lost their regular income and every opportunity to earn the living for themselves and their families.

c) Rehabilitation

Rehabilitation is intended to allow the victim to continue his or hers life as normally as is possible and it should “include medical and psychological care”. See{Basic Principles and Guidelines} It is also appropriate here as a form of reparation, because victims until this day

suffer because of injuries they suffered and the emotional distress they went through.

Compensation is absolutely necessary in this situation, but it is not enough. A large number of victims need some professional help in order to recover from the tragedy and a great misfortune that happened to them.

(2) Assistance of experts

27. Rule 97(2) allows the victims or their legal representative to request, and the Court to appoint appropriate experts to assist it in determining the scope, extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations. “This provision is crucial, in providing for the expertise the Court might not have, and also in view of the massive crimes it might not know, and to really adapt the reparation on the reality of the trauma and to the real needs of victims”. {See Karine Bonneau, Permanent Delegate of the International Federation of Human Rights Leagues before the ICC, Grotius Centre, 2003}

28. It would be appropriate that Court in this case considers using this possibility, and name appropriate experts who will make observation of the case and write report about form and type of reparations. Their contribution in resolving these issues could be of significant help to the Court because of the large number of the victims, the fact that the harm suffered is different for each victim or each group of victims, and that they all expect different form and the extend of reparation.

(3) Reparations on collective or individual basic

29. Rule 97(1) provides that, taking into account the scope and extends of any damage, loss and injury; the Court may award reparation on individualized basic, or where it deems appropriate, on a collective basic or both. Reparation on collective basic is “an important feature of reparation awards, particularly in scenarios of mass crimes, where individualized awards may be difficult, if not impossible to administer, or have less impact on victims”. {See Ensuring the Rights of Victims in the ICC, Specific Concerns and Recommendations relating to the Trust Fund for Victims, 2001} Situation in this case could be defined as “scenario of mass crimes”,

which is obvious from the gravity of a crimes committed, and the tragic consequences that were caused.

30. According to the Rule 98(3), Court may award for reparation trough the Trust Fund when the number of victims and the scope, form and modalities of reparation makes collective reparation more appropriate. Considering the fact that in this case there is a large number of victims, and that the harm they suffered is a result of a mass crime, Court should consider ordering an award for reparation on a collective basic. The following types of collective reparations could be ordered in this case: establishment of medical treatment facilities centers to treat the injuries of victims, establishing projects which contribute to an independent record of the truth of what occurred, such as the establishment of public sites for the preservation of materials or documentation related to the crime, official apology etc. {See Specific Concerns and Recommendations relating to the Trust Fund for Victims, 2001 }

31. Victims in this case would also like to emphasize the importance of the victims Trust Fund, which is established to reinforce the restorative and reparative function of the Court, for the benefit of victims and their families. Its main purpose is to channel money to victims, either to individuals or to a collectivity. Significance of the Trust Fund for victims is obvious in situation when perpetrators cannot provide compensation for injuries, and there is a limited amount of funds for reparation awards. If a situation like that occurs in this case Trust Fund can provide a relief to those victims for whom reparation orders had been awarded. “ The TFV is best placed to ensure equitable awards among different groups of victims and its flexibility can make a greater contribution to the goals of restoring victims dignity and trust that the more rigid procedures of the Court”. {See Marieke Vierda and Pablo de Greiff, Reparations and the International Criminal Court: A Prospective Role for the Trust Fund for Victims }

32. Ordering reparation on collective basis should not exclude the reparations on individual basic, in situations where Court or potential expert find it appropriate.

(4) Protective measures for the purpose of forfeiture

33. According to Article 75(1), which refers to article 93.1 the Court may, after the person is convicted of a crime, determine whether, in order to give the effect to an order of restitution, it is necessary to seek protective measures such as the identification, tracing and freezing or seizure

of proceeds, property and assets and instrumentalities of crimes. Victims in this process would like to seek preservation of the assets of the accused until the end of trial “to ensure that the accused has no opportunity to conceal or transfer his assets in order to avoid having to pay reparations”. {See Reporters without Borders, Victims` Guide to the International Criminal Court, page 83}

(5) Publication of reparation proceedings

34. Victims in this case would also like to call Registrar to take into account Rule 96, which stipulates that “Registrar shall... take all the necessary measures to give adequate publicity of the reparation proceedings before the Court, to the extent possible, to other victims, interested persons and interested States”.

35. Victims feel that appropriate publicity to reparation proceedings will enable all potential victims, who didn't apply for participation in this process until this moment, to make their application. Adequate publicity will provide the right to due process for victims, it will make the justice more accessible to them, and it will give due recognition to their involvement in the proceedings.

D. Victims and Witnesses Unit and protective measures

36. “Appearing before an international court of justice is very difficult for a victim. This means agreeing to recall traumatic acts that he or she either suffered personally, or witnessed. By agreeing to appear before a court, a witness is sometimes also risking his or her life”. {See Reporters without Borders, Victims` Guide to the International Criminal Court, page 67}

37. Victims in Vineland already experienced various traumatic and disastrous consequences caused by committed crimes (which were explained above). It should be also emphasized that Vineland is multiethnic state and victims in the case are from only one ethnic group. It also has a history of ethnic conflicts and sill presents unstable region. That's the reason Victims are afraid that their safety is still in danger, and that degree of that danger could be increased if they appear before this Court.

38. Previous experience of ICTY and ICTR showed that victims faced lack of protection and security. Statute of this Court is different from the Statutes of those two Courts in a way that it treats victims not only as a witness, but also as a person who has valid interest in the outcome. In order to enable victims to meaningfully participate in proceedings, they must receive adequate protection, even if that could, in expectable degree, reduce Courts` effectiveness and efficiency. Williness of the Court to ensure that protection could determine the extent to which victims will cooperate with the Court, which has to eliminate a fear of reprisals against them. {See Human Rights Watch Commentary to the Second Preparatory Commission on Rules of Procedure and Elements of Crime, 1999}

39. Article 68(1) of the Statute affirms general principle of victims` protection, stating that the “Court shall take appropriate measures to protect safety, physical and physiological well-being, dignity and privacy of victims and witness”. Victims` physiological and emotional protection must be addressed carefully and adequate effort must be made to avoid endangerment of victims.

40. To help victims face judicial process, without being traumatized by it, Article 43(6) provides for the establishment of a Victims and Witness Unit, which is “essential not to make victims and witness unnecessarily suffer twice. In many instances they will have to travel to a foreign country, appear before an alien court, participate in unfamiliar proceedings, in a language that is not their own, face the perpetrators, testify about horrendous experiences...” {See Thordis Ingadottir, Francoise Ngandahayo, Patricia Viseur Sellers: International Criminal Court, The Victims and Witness Unit, 2000} This Unit is supposed to deal primarily with victims` rights and to provide protective measures for the protection of victims` physical and psychological well-being, security arrangements, counseling and other appropriate assistance for victims (and their family members) that came before the Court and got involved in the proceedings. Hence “Victims and Witness Unit will prepare them (victims), both materially, physically and physiologically to withstand the trial”. The Article 68(4) specifies that the Unit may advise the Court on appropriate protective measures, security arrangements, counseling and assistance.

41. Rule 17 lists the duties of the Victims and Witness Unit toward such victims. Victims in this case would like to point out following duties of the Unit (because they find these duties very important concerning the situation they find themselves in):

- Proving them with adequate protective and security measures and formulating long and short term plans for their protection

- Recommending to the organs of the Court the adoption of protection measures and also advising relevant States of such measures
- Assisting them in obtaining medical, physiological and other appropriate assistance

E. Notification and Assistance to victims

42. There is one more right of the victims that is very important for them during the proceedings: right of notification. Article 92 contains rule on notification to victims and their legal representatives. Timely notification is very important if victims are to participate in the proceedings in a meaningful way. Victims truly hope that they will have a chance to take a part in these proceedings and that is why they would like to underline this right.

43. Victims also expect a help from the Registrar, who has very important role in helping victims during the process. Rule 16 provides that the Registrar should:

- provide notice or notification for victims and their legal representatives
- assist victims in participating in the different phases of the proceedings

44. Victims in this case expect that the Court will pay due attention to this rules, and once more recognize the contribution that victims can make to this criminal process.

V. Conclusion

45. Victims and their legal representative hope that they clearly expressed their views and concerns in this written application, and that the Judges of this Court will keep them in mind during these proceedings. They also hope that accused perpetrators will be found guilty for the cruel and brutal crimes they committed, and that the Court will fulfill victims request for reparation. In the end victims of those crimes would like one more time to underline that they expect that the Court, Victims and Witness Unit, Registrar, Victims Participation and Reparations Unit and the Trust Fund for Victims will take all the necessary measures in order to protect Victims rights in the proceedings and assist in their healing process.

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