

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/04-02/06

Date: 8 April 2021

THE APPEALS CHAMBER

Before:

**Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Notice of Appeal of the Common Legal Representative of the Victims of the
Attacks against the Reparations Order**

Source: Office of Public Counsel for Victims (CLR2)

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Helen Brady

Counsel for the Defence

Mr Stéphane Bourgon
Ms Kate Gibson

Legal Representatives of the Victims

Mr Dmytro Suprun
Ms Anne Grabowski
Ms Nadia Galinier

Legal Representatives of the Applicants

Ms Sarah Pellet
Ms Caroline Walter

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

I. INTRODUCTION

1. The Victims of the Attacks, while generally welcoming the Reparations Order issued by Trial Chamber VI (the “Trial Chamber”) on 8 March 2021 (the “Reparations Order” or the “Impugned Decision”),¹ have expressed grave concerns with respect to the manner in which the Trial Chamber established the scope of Mr Ntaganda’s liability for reparations. They have in particular expressed doubt that the overall cost to repair set by the Trial Chamber is likely to meaningfully address the multi-dimensional harm suffered by a potentially very high number of victims; the latter not being accurately estimated to date. It is the Victims’ view that, although the established cost to repair might be fair and appropriate to address the harm suffered by 5,000 victims, it will be insufficient *vis-à-vis* 50,000 beneficiaries and purely symbolic for possible 100,000 eligible victims.

2. Accordingly, pursuant to article 82(4) of the Rome Statute (the “Statute”), rules 150(1) and 150(3) of the Rules of Procedure and Evidence (the “Rules”) and regulation 57 of the Regulations of the Court (the “Regulations”), the Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby provides his notice of appeal against Part V(D) of the Reparations Order, namely the “Scope of Mr Ntaganda’s Liability for Reparations”.²

3. As set out below, the Legal Representative will appeal against the Reparations Order in part and request that the Appeals Chamber vacate certain findings of the Trial Chamber and remand the corresponding matters back to the newly constituted Trial Chamber II to which the present case has been assigned.³

¹ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021 (the “Reparations Order”).

² *Idem*, Part V(D).

³ See the “Decision assigning judges to divisions and recomposing Chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

4. In the Legal Representative's submission, the Trial Chamber committed a number of errors of law, fact and procedure which materially affect the Impugned Decision warranting the intervention of the Appeals Chamber.

II. PROCEDURAL BACKGROUND⁴

5. On 8 July 2019, the Trial Chamber found Mr Bosco Ntaganda guilty of 18 counts of war crimes and crimes against humanity.⁵

6. On 25 July 2019, the Trial Chamber issued an order whereby it designated the Single Judge for the purpose of the reparations phase of proceedings.⁶

7. On 7 November 2019, Mr Ntaganda was sentenced to 30 years of imprisonment.⁷

8. On 5 December 2019, the Single Judge issued an order providing directions and setting deadlines with respect to the conduct of the reparations proceedings.⁸

9. On 28 February 2020, the Legal Representative filed his submissions on reparations.⁹ The Common Legal Representative of the Former Child Soldiers,¹⁰ the

⁴ The procedural background recalled in the present submissions is limited to the main procedural steps preceding the Impugned Decision. It does not reflect the entire record of the reparations proceedings during the mentioned period.

⁵ See the "Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019

⁶ See the "Decision notifying the designation of a Single Judge" (Trial Chamber VI), [No. ICC-01/04-02/06-2365](#), 25 July 2019, para. 3.

⁷ See the "Sentencing Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019.

⁸ See the "Order setting deadlines in relation to reparations" (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), 5 December 2019, para. 9.

⁹ See the "Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations", [No. ICC-01/04-02/06-2477-Conf](#), 28 February 2020. A public redacted version was filed on the same day as [No. ICC-01/04-02/06-2477-Red](#). A corrigendum was filed on 20 November 2020. See the "Corrigendum of the 'Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations'", [No. ICC-01/04-02/06-2477-Conf-Corr](#), 20 November 2020 and the corresponding public redacted version of "Corrigendum of the 'Public redacted version of the 'Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations'", [No. ICC-01/04-02/06-2477-Red-Corr](#), 20 November 2020.

¹⁰ See the "Submissions on Reparations on behalf of the Former Child Soldiers", [No. ICC-01/04-02/06-2474](#), 28 February 2020.

Defence,¹¹ the Trust Fund for Victims (the “TFV”),¹² the Prosecution¹³ and the Registry¹⁴ also filed their respective submissions on reparations.

10. On 1 October 2020, the Registry filed its “[...] First Report on Reparations”.¹⁵

11. On 30 October 2020, the parties filed their observations on the Registry’s First Report on Reparations.¹⁶

12. On 18 December 2020, the Legal Representative filed his Final Observations on Reparations.¹⁷ The Common Legal Representative of the Former Child Soldiers,¹⁸ the Defence,¹⁹ and the TFV²⁰ also filed their final observations on reparations the same day.

¹¹ See the “Defence Submissions on Reparations”, [No. ICC-01/04-02/06-2479-Conf](#), 28 February 2020. A public redacted version was filed on 6 March 2020 as [No. ICC-01/04-02/06-2479-Red](#).

¹² See the “Trust Fund for Victims’ observations relevant to reparations”, [No. ICC-01/04-02/06-2476](#), 28 February 2020.

¹³ See the “Prosecution’s Observations on Reparations”, [No. ICC-01/04-02/06-2478](#), 28 February 2020.

¹⁴ See the “Registry’s Observations on Reparations”, [No. ICC-01/04-02/06-2475](#), with Public Annex 1, [No. ICC-01/04-02/06-2475-Anx1](#), and Confidential *Ex Parte* Annex II, [No. ICC-01/04-02/06-2475-Conf-Exp-AnxII](#), 28 February 2020.

¹⁵ See the “Registry’s First Report on Reparations”, [No. ICC-01/04-02/06-2602](#), 1 October 2020, with Confidential Annex I, [No. ICC-01/04-02/06-2602-Conf-AnxI](#), Confidential Annex II, [No. ICC-01/04-02/06-2602-Conf-AnxII](#), Confidential Annex III, [No. ICC-01/04-02/06-2602-Conf-AnxIII](#), Confidential Annex IV, [No. ICC-01/04-02/06-2602-Conf-AnxIV](#), and Confidential Annex V, [No. ICC-01/04-02/06-2602-Conf-AnxV](#).

¹⁶ See the “Observations of the Common Legal Representative of the Former Child Soldiers on the “Registry’s First Report on Reparations””, [No. ICC-01/04-02/06-2620-Conf](#), 30 October 2020. A public redacted version was filed on 18 November 2020 as [No. ICC-01/04-02/06-2620-Red](#); the “Observations of the Common Legal Representative of the Victims of the Attacks on the Registry’s First Report on Reparations”, [No. ICC-01/04-02/06-2621](#), 30 October 2020; and the “Defence Observations on the Registry First Report on Reparations”, [No. ICC-01/04-02/06-2622](#), 30 October 2020.

¹⁷ See the “Final Observations on Reparations of the Common Legal Representative of the Victims of the Attacks”, [No. ICC-01/04-02/06-2633-Conf](#), 18 December 2020. A public redacted version was filed on 20 December 2020 as [No. ICC-01/04-02/06-2633-Red](#).

¹⁸ See the “Observations on the Appointed Experts’ Reports and further submissions on reparations on behalf of the Former Child Soldiers”, [No. ICC-01/04-02/06-2632](#), 18 December 2020.

¹⁹ See the “Defence Submissions on Reparations”, [No. ICC-01/04-02/06-2634-Conf](#), 18 December 2020. A public redacted version was filed on 11 January 2021 as [No. ICC-01/04-02/06-2634-Red](#).

²⁰ See the “Trust Fund for Victims’ Final Observations on the reparations proceedings”, [No. ICC-01/04-02/06-2635-Conf](#), 18 December 2020. A public redacted version was filed on the same day as [No. ICC-01/04-02/06-2635-Red](#).

13. On 8 March 2021, the Trial Chamber issued the Reparations Order, ordering collective reparations with individualised components to be awarded to direct and indirect victims of the crimes for which Mr Ntaganda has been convicted and setting the total reparations award for which Mr Ntaganda is liable at 30 million USD.²¹

14. On 16 March 2021, the Presidency assigned the present case to a newly constituted Trial Chamber II.²² Judge Chang-ho Chung was subsequently elected Presiding Judge of Trial Chamber II.²³

15. On 30 March 2021, the Appeals Chamber upheld the Judgment²⁴ and the Sentencing Judgment.²⁵

III. NOTICE OF APPEAL

16. Pursuant to article 82(4) of the Statute, a legal representative affected by an order under article 75 may appeal against the order for reparations. According to rules 150(1) and 150(3) of the Rules, such appeal must be filed not later than 30 days from the date of the notification of the reparation order. Under regulation 57 of the Regulations, the notice of appeal shall state the name and number of the case, the title and date of the decision under appeal, whether the appeal is directed against the whole decision or part thereof, the grounds of appeal specifying the alleged errors and how they affect the appealed decision, as well as the relief sought.

²¹ See the Reparations Order, *supra* note 1, p. 97.

²² See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

²³ See the “Decision on the Election of the Presiding Judge” (Trial Chamber II), [No. ICC-01/04-02/06-2664](#), 22 March 2021, para. 2.

²⁴ See the “Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red A A2](#), 30 March 2021.

²⁵ See the “Public redacted version of Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled ‘Sentencing judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2667-Red A3](#), 30 March 2021.

17. The Legal Representative hereby provides his notice of appeal against Part V(D), namely the “Scope of Mr Ntaganda’s Liability for Reparations”, of the “Reparations Order”, No. ICC-01/04-02/06-2659, issued by Trial Chamber VI on 8 March 2021 in the Case of *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06.

18. The Legal Representative will appeal against the Reparations Order on the seven following Grounds.

Ground 1: The Trial Chamber committed a combination of errors of law, fact and/or procedure in setting the overall cost to repair by failing to inquire into and to obtain an accurate estimate of the number of potential beneficiaries for reparations, and by failing to give a reasoned opinion on the estimates provided by the parties and participants.

Sub-Ground 1.1: The Trial Chamber misinterpreted the applicable law.

19. While correctly referring to the relevant applicable law, as established by the Appeals Chamber in the *Lubanga* and *Katanga* cases, the Trial Chamber misinterpreted the law.

20. According to the applicable law, given that the number of victims constitutes an important parameter for determining the scope of a convicted person’s liability for reparations,²⁶ a trial chamber ought to determine whether the crimes for which the conviction was entered resulted in the victimisation of one hundred, one thousand or one hundred thousand individuals.²⁷ If a trial chamber resorts to estimates as to the number of victims, such estimates must be based on a sufficiently strong evidential basis,²⁸ and a trial chamber must endeavour to obtain an estimate that is as concrete as possible.²⁹ The Legal Representative repeatedly submitted³⁰ that the Trial Chamber

²⁶ See the “Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’” (Appeals Chamber), [No. ICC-01/04-01/06-3466-Red](#), 18 July 2019 (the “*Lubanga* 2019 Appeal Judgment”), para. 89.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ See the *Lubanga* 2019 Appeal Judgment, *supra* note 26, para. 224.

³⁰ See the “Corrigendum of the ‘Public Redacted Version of the ‘Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations (ICC-01/04-02/06-2477-Red)’”, [No. ICC-](#)

should take steps to obtain more accurate estimates of the local population at the time of the events that could inform the overall estimate of potential beneficiaries for the purposes of ascertaining the extent of Mr Ntaganda's liability. However, having had before it a very wide range of estimates provided by the parties and participants and despite the Legal Representative's submissions on the matter, the Trial Chamber failed to endeavour to obtain an estimate as concrete as possible of the number of potentially eligible victims in order to establish a sufficiently strong evidential basis, and further failed to determine *at least* the range of the potentially eligible victims that significantly differentiated, between 'at least approximately 1,100' and 'a minimum 100,000'.³¹

Sub-Ground 1.2: The Trial Chamber erred in fact by failing to take into account relevant information, facts and evidence and/or by misappreciating the relevant facts.

21. The Legal Representative has repeatedly submitted that the number of potential beneficiaries for reparations is extremely high as entire villages were affected by the crimes for which Mr Ntaganda was convicted.³² He referred for instance to publicly available figures on the number of inhabitants at the time of the events in some villages (e.g. Mongbwalu)³³ and further pointed to the UN estimates of the number of victims affected by the *shika na mukono* operation.³⁴ The Registry in turn provided figures on the number of inhabitants at the time of the events in other affected villages (e.g. Kobu and Bambu).³⁵ The Trial Chamber erred in fact by failing to take into account relevant

[01/04-02/06-2477-Red-Corr](#), 20 November 2020, para. 71; the "Public Redacted Version of the 'Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the 'Order to provide information on the impact of COVID-19 measures on operational capacity'", [No. ICC-01/04-02/06-2518-Red](#), 21 April 2020, paras. 14-16; the "Public Redacted Version of the 'Final Observations on Reparations of the Common Legal Representative of the Victims of the Attacks ' (ICC-01/04-02/06-2633-Conf)", [No. ICC-01/04-02/06-2633-Red](#), 21 December 2020, paras. 96 and 112.

³¹ See the Reparations Order, *supra* note 1, para. 246.

³² See *supra* note 30.

³³ See the "Corrigendum of the 'Public Redacted Version of the 'Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations (ICC-01/04-02/06-2477-Red)'"', [No. ICC-01/04-02/06-2477-Red-Corr](#), 20 November 2020, para. 71.

³⁴ *Ibid.*

³⁵ See Annex II to the "Registry's Observations on Reparations", [No. ICC-01/04-02/06-2475-Conf-AnxII-Red](#), 28 February 2020, pp. 12-13.

facts and evidence which were crucial for the purpose of the determination of the scope of Mr Ntaganda's liability for reparations, namely the overall cost to repair.

22. Moreover, the Trial Chamber denied the Legal Representative's request for the discovery of a population census in the affected villages at the time of the events on the basis that the information was not necessary at the stage prior to a decision on the modalities of the reparations being issued.³⁶

23. Alternatively, the Trial Chamber misappreciated the relevant facts and evidence that provided a sufficiently strong basis to believe that the number of potential beneficiaries of reparations may be at least several tens of thousands.

Sub-Ground 1.3: The Trial Chamber erred in fact and/or procedure by failing to give a reasoned opinion in relation to the estimated numbers of potentially eligible victims submitted by the parties and the participants.

24. While referring to the different and highly varying estimates advanced by the parties and participants,³⁷ the Trial Chamber failed to give a reasoned opinion as to which estimates it accepted, rejected or otherwise used for its determination of Mr Ntaganda's overall liability for reparations. Accordingly, it erred in the exercise of its discretion on the matter.

Ground 2: The Trial Chamber committed a combination of errors of law, fact and procedure in determining the cost to repair by failing to establish a proper basis for its approach, and by failing to give a reasoned opinion on the principles it relied upon.

Sub-Ground 2.1: The Trial Chamber erred in law and/or fact by failing to establish a proper basis for its approach.

25. For the purpose of its determination of the cost to repair, the Trial Chamber was guided by the goal of setting an amount that is fair and appropriate, and properly

³⁷ See the Reparations Order, *supra* note 1, para. 246.

reflects the rights of the victims, bearing in mind the rights of the convicted person.³⁸ While acknowledging the similarities of the present case with the *Lubanga* and *Katanga* cases,³⁹ and referring to figures and assessments made by Trial Chamber II in said cases,⁴⁰ deemed highly relevant to its assessment,⁴¹ it however opted not to proceed with an individual assessment of harm as in the *Katanga* case, nor did it identify an average *per capita* cost to repair as in the *Lubanga* case. Accordingly, the Trial Chamber misinterpreted the law it purportedly relied upon. By failing to establish a proper basis for its approach as part of its judicial functions, the Trial Chamber erred in the exercise of its discretion.

Sub-Ground 2.2: The Trial Chamber erred in fact and/or procedure by failing to give a reasoned opinion on what constituted the 'fairness', 'appropriateness' and the 'conservative approach' it purportedly relied upon for the purpose of its determination of the cost to repair.

26. The Trial Chamber, for the purpose of its determination of the cost to repair, purportedly resorted to the principles of 'fairness' and 'appropriateness', and further referred to a 'conservative approach'.⁴² However, the Trial Chamber erred by failing to give a reasoned opinion on *what* exactly said principles and approach constituted for the purpose of its determination of the cost to repair in light of the particular circumstances of the present case and *how* they influenced its determination bearing in mind the rights of the victims and the overall goal of reparations. Accordingly, the Trial Chamber erred in the exercise of its discretion.

Ground 3: The Trial Chamber committed a combination of errors of law, fact and procedure by failing to obtain estimates that are as accurate as possible on the number of victims likely to come forward for reparations, and by failing to give a reasoned opinion on its conclusions on the matter.

27. The Trial Chamber misinterpreted the applicable law by failing to give due regard to its duty to make every effort to obtain estimates as accurate as possible in the

³⁸ *Idem*, paras. 228 and 247.

³⁹ *Idem*, para. 247.

⁴⁰ *Ibid.*

⁴¹ *Idem*, para. 245.

⁴² *Idem*, para. 247.

circumstances of the case⁴³ in relation to the number of victims likely to come forward for reparations. While correctly referring to the *dicta* set out by the Appeals Chamber in the *Lubanga* case that not all eligible victims might come forward for reparations,⁴⁴ the Trial Chamber, however, erred when it failed to apply the main principle of making every effort to ascertain this number.

28. The Trial Chamber further erred in fact and/or procedure by failing to provide a reasoned opinion as regards the basis for its conclusions that not all victims would come forward to benefit from reparations in the present case,⁴⁵ and why it found impossible to predict that number in advance.⁴⁶

29. Finally, the Trial Chamber erred in fact and/or procedure by disregarding its own findings that the victims have not benefited from any sort of support and assistance since the events,⁴⁷ and in light of this factor combined with the prevailing poverty in the region, it failed to inquire into and to give a reasoned opinion on possible reasons for which potentially eligible victims would not come forward for reparations. Accordingly, it erred in the exercise of its discretion.

*Ground 4: The Trial Chamber committed an error of law and/or fact by failing to give a reasoned opinion in relation to the way it purportedly 'resolved uncertainties in favour of the convicted person'.*⁴⁸

30. The Trial Chamber, while correctly identifying the legal principle set by the Appeals Chamber in the *Lubanga* case that requires a chamber to resolve uncertainties in the numbers of potential beneficiaries in favour of the convicted person (for instance, by assuming a lower number of victims, or by discontinuing the amount of liability),⁴⁹ erred in law and/or fact by failing to give a reasoned opinion as to how it

⁴³ See the *Lubanga* 2019 Appeal Judgment, *supra* note 26, para. 108.

⁴⁴ *Idem*, para. 89.

⁴⁵ See the Reparations Order, *supra* note 1, paras. 230 and 246.

⁴⁶ *Idem*, para. 246.

⁴⁷ *Idem*, para. 5.

⁴⁸ *Idem*, para. 247.

⁴⁹ See the *Lubanga* 2019 Appeal Judgment, *supra* note 26, para. 90.

applied this requirement in the circumstances of the present case. In particular, the Trial Chamber erred by failing to provide reasons as to how said requirement was weighed against other competing interests and requirements, in particular the rights and interests of the victims, the fairness of the proceedings and the overall goal of reparations, namely to strive, to the extent possible, to redress the harm caused to the victims.⁵⁰ Accordingly, it erred in the exercise of its discretion.

Ground 5: The Trial Chamber erred in procedure in setting the overall cost to repair jointly for both groups of victims by failing to give due regard to the overlap with the Lubanga reparations proceedings.

31. The Trial Chamber erred in procedure in setting the overall cost to repair jointly for both groups of victims without providing any indication how the overlap with the *Lubanga* reparations proceedings should be dealt with by the TFV at the implementation stage. It further failed to give due regard to risks of potential unequal treatment of the Former Child Soldiers on the one hand and the Victims of the Attacks on the other, while addressing harm of both categories of victims without distinction for the purposes of its assessment of Mr Ntaganda's monetary liability. In particular, the Trial Chamber failed to consider the distinct nature of the harm occasioned to the two groups of victims and the fact that they are situated in different circumstances, which required different approaches of addressing the harm. In contrast to the Victims of the Attacks, the harm suffered by the Former Child Soldiers has been primarily addressed in the *Lubanga* case based on an average *per capita* cost to repair, with all of them being placed under a prioritised category of beneficiaries in the present case.⁵¹

⁵⁰ See the Reparations Order, *supra* note 1, para. 83.

⁵¹ *Idem*, para. 214.

Ground 6: The Trial Chamber erred in fact and/or procedure in reaching conflicting findings which impacted on the internal coherence of the Reparations Order, thus undermining the fairness and legal certainty of the overall reparations regime as adopted.

32. The Trial Chamber made a number of findings in that it held that (i) the victims suffered multi-faceted harm; (ii) an individual assessment of harm was not necessary; (iii) victims should be provided with sustainable and long-term livelihood means; and (iv) that victims should receive equal reparations so as to avoid creating perceptions of hierarchy between victims and of placing a higher value on some forms of harm.⁵² Nevertheless, the Trial Chamber ultimately held that the cost to repair the harm for each victim may substantially differ from one to another.⁵³ Thus, the Trial Chamber erred in fact and/or procedure in reaching a conclusion that was inconsistent with its own findings. As a result, it *de facto* provided the TFV with the discretion to first assess the value of the harm suffered by each victim, and then to determine the individual cost to repair depending on said value.

33. The Trial Chamber further erred in procedure by failing to set out the applicable criteria, to be followed by the TFV in its assessment.

34. By failing to do so, the Trial Chamber ultimately created a system in which (i) a non-judicial body will assess the individual cost to repair based on its full discretion and (ii) victims will ultimately be treated unequally. This directly contravenes the ‘do no harm’ principle,⁵⁴ and in particular the Trial Chamber’s endeavour to ensure that victims receive equal reparations to avoid awards being a source of jealousy, animosity, or stigmatisation amongst the affected communities.⁵⁵

⁵² *Idem*, para. 194.

⁵³ *Idem*, para. 247.

⁵⁴ *Idem*, paras. 50-52.

⁵⁵ *Idem*, para. 194.

Ground 7: The Trial Chamber erred in fact and/or procedure by taking into account extraneous factors and unduly prioritising the expeditiousness over the fairness of the determination of the scope of Mr Ntaganda's liability for reparations.

35. The Trial Chamber erred in fact and/or procedure by taking into account extraneous factors that led it unduly expediting the reparations process with prejudice to the fairness of its determination of the scope of Mr Ntaganda's liability for reparations, in particular the overall cost to repair. Indeed, in issuing the Reparations Order, the Trial Chamber took into consideration (i) that the judicial mandate of two of the Trial Chamber's judges came to an end on 10 March 2021; and (ii) the fact that the mandate of the Judge who presided over the trial came to an end on that day.⁵⁶ The Trial Chamber erred in the exercise of its discretion. There is no bar in the Statute to the extension of judicial mandates; to the contrary, the Presidency has the responsibility to ensure the proper administration of justice, which bestows upon it the power to extend judicial mandates.⁵⁷

36. The Trial Chamber, being guided by the need to issue the reparations order prior to 10 March 2021, thus failed to give appropriate consideration to several factors that were highly relevant to the fair determination of the scope of Mr Ntaganda's liability for reparations, in particular the overall cost to repair, as set out in the previous Grounds of the present appeal.

IV. THE ERRORS MATERIALLY AFFECT THE IMPUGNED DECISION

37. Each of the above Grounds of Appeal either separately or taken together, materially affect the Impugned Decision. The errors lie at the heart of the Trial Chamber's determination of the scope of Mr Ntaganda's liability for reparations *vis-à-vis* the victims of the crimes for which he was convicted. The scope of Mr Ntaganda's liability is the key finding of the Reparations Order and ultimately dictates the extent

⁵⁶ *Idem*, para. 5.

⁵⁷ See article 38(3)(a) of the Statute.

to which the harm can be repaired. In light of the foregoing, the errors committed warrant the intervention of the Appeals Chamber.

38. In particular, and as described above, the manner in which the Trial Chamber has set the scope of Mr Ntaganda's liability for reparations is fraught with errors. The Trial Chamber misinterpreted the applicable law, and/or failed to set a relevant legal basis and/or failed to take into account relevant factual circumstances and evidence and/or failed to give a reasoned opinion on key matters. Moreover, the Trial Chamber's numerous errors in the exercise of judicial discretion have given rise to the risk of unequal treatment of different categories of victims, and perceptions of hierarchy between victims by differentiating and placing a higher value on some types of harm. These errors invalidate as such the Trial Chamber's findings and conclusions on these matters.

39. Moreover, by failing to ascertain the most accurate estimates possible as regards the number of potential beneficiaries, failing to provide an average *per capita* cost to repair, and, instead by establishing the overall cost to repair *in abstracto* rather than in a comprehensive manner, the Trial Chamber has created uncertainty as to whether and to which extent the overall cost to repair will be able to address the harm suffered by the Victims of the Attacks in an effective and meaningful way, since this will entirely depend on an unforeseen number of potentially eligible victims who will ultimately come forward.

V. RELIEF SOUGHT

40. Pursuant to article 82(4) of the Statute and rule 153(1) of the Rules, the overall relief sought by the Legal Representative is the reversal of the Trial Chamber's findings and conclusions pertaining to the determination of the scope of Mr Ntaganda's liability for reparations as contained in Part V(D) of the Reparations Order, and remanding these matters to the newly constituted Trial Chamber II for a new determination.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a long vertical stroke extending downwards from the bottom of the signature.

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 8th Day of April 2021

At The Hague, The Netherlands