

**Cour
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**International
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Court**

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Date: 9 August 2021

THE APPEALS CHAMBER

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
 Judge Piotr Hofmański
 Judge Luz del Carmen Ibáñez Carranza
 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

**Response of the Common Legal Representative of the Victims of the Attacks to the
 Defence's Appeal Brief (ICC-01/04-02/06-2675)**

Source: Office of Public Counsel for Victims (CLR2)

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

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby submits his response to the “Defence Appellant Brief against the 8 March Reparations Order” (the “Defence’s Appeal Brief”).¹

2. The Legal Representative notes that there are a number of commonalities between the issues identified by the Defence and his own Appeal. Both parties have identified errors in relation to key aspects of the Reparations Order (the “Impugned Decision”)² that ultimately relate to the quantum of Mr Ntaganda’s liability.

3. However, a number of matters raised in the Defence’s Appeal Brief do not meet the required threshold of demonstrating that the error allegedly committed by the Trial Chamber materially affects the Impugned Decision in the way the Defence contends. The present response will thus set out which aspects of the Defence’s Appeal the Legal Representative supports and which he opposes.

4. Regrettably, the Defence has dispensed with the structure of its Grounds of Appeal identified in its Notice of Appeal, which impacts on the Legal Representative’s ability to respond to its arguments in relation to these different Grounds as required by regulation 59(1)(a) of the Regulations of the Court. To the extent possible, the Legal Representative will address the Defence’s Grounds separately, as identified in the Defence’s Notice of Appeal.³

¹ See the “Defence Appellant Brief against the 8 March Reparations Order”), [No. ICC-01/04-02/06-2675](#), 7 June 2021 (the “Defence’s Appeal Brief”).

² See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021 (the “Impugned Decision”).

³ See the “Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659”, [No. ICC-01/04-02/06-2669](#), 8 April 2021 (the “Defence’s Notice of Appeal”).

II. PROCEDURAL BACKGROUND

5. On 8 July 2019, Trial Chamber VI (the “Trial Chamber”) found Mr Bosco Ntaganda guilty of 18 counts of war crimes and crimes against humanity.⁴

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.⁵

7. On 5 September 2019, the Registry filed its observations pursuant to the Single Judge’s order of 25 July 2019,⁶ in which it, *inter alia*, suggested a methodology for the preliminary mapping of potentially eligible beneficiaries for reparations.⁷

8. On 3 October 2019, the Common Legal Representatives,⁸ the Prosecution,⁹ the Defence,¹⁰ and the Trust Fund for Victims (the “TFV”)¹¹ filed their respective observations on the Registry’s observations of 5 September 2019.

9. On 7 November 2019, Mr Ntaganda was sentenced to 30 years of imprisonment.¹²

⁴ See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019 (the “Ntaganda Judgment”).

⁵ 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.

⁶ See the “Registry’s observations, pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, ICC-01/04-02/06-2366”, [No. ICC-01/04-02/06-2391](#), 5 September 2019.

⁷ See Annex I to the “Registry’s observations, pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, ICC-01/04-02/06-2366”, [No. ICC-01/04-02/06-2391-AnxI](#), 5 September 2019.

⁸ See the “Joint Response of the Legal Representatives of Victims to the Registry’s Observations on Reparations”, [No. ICC-01/04-02/06-2430](#), 3 October 2019.

⁹ See the “Prosecution’s response to the Registry’s observations, pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ ICC-01/04-02/06-2391-Anx1,” [No. ICC-01/04-02/06-2429](#), 3 October 2019.

¹⁰ See the “Response on behalf of Mr. Ntaganda to Registry’s preliminary observations on reparations”, [No. ICC-01/04-02/06-2431](#), 3 October 2019.

¹¹ See the “Trust Fund for Victims’ response to the Registry’s Preliminary Observations pursuant to the Order for Preliminary Information on Reparations”, [No. ICC-01/04-02/06-2428](#), 3 October 2019.

¹² See the “Sentencing Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019 (the “Sentencing Judgement”).

10. On 5 December 2019, the Single Judge issued an order providing directions and setting deadlines with respect to the conduct of the reparations proceedings.¹³

11. On 28 February 2020, the Legal Representative filed his submissions on reparations.¹⁴ The Common Legal Representative of the Former Child Soldiers,¹⁵ the Defence,¹⁶ the TFV,¹⁷ the Prosecution¹⁸ and the Registry¹⁹ also filed their respective submissions on reparations.

12. On 3 March 2020, the Registry transmitted the DRC authorities' observations on reparations.²⁰

13. On 6 March 2020, in accordance with the Single Judge's decision,²¹ the International Organization for Migration filed its *amicus curiae* "Submission of observations on the issues identified under paragraph 9 (c) (i), (ii) and (iii) pursuant to the 'Order setting deadlines in relation to reparations' No. ICC-01/04-02/06".²²

¹³ 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.

¹⁴ 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.

¹⁵ See the "Submissions on Reparations on behalf of the Former Child Soldiers", [No. ICC-01/04-02/06-2474](#), 28 February 2020.

¹⁶ 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](#).

¹⁷ See the "Trust Fund for Victims' observations relevant to reparations", [No. ICC-01/04-02/06-2476](#), 28 February 2020.

¹⁸ See the "Prosecution's Observations on Reparations", [No. ICC-01/04-02/06-2478](#), 28 February 2020.

¹⁹ 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.

²⁰ See the "Transmission des observations de la République démocratique du Congo", [No. ICC-01/04-02/06-2480](#), 3 March 2020, with Confidential Annex, [No. ICC-01/04-02/06-2480-Conf-Anx](#).

²¹ See the "Decision on request for leave to submit *Amicus Curiae* observations" (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2460](#), 17 January 2020.

²² See the "Submission of observations on the issues identified under paragraph 9 (c) (i), (ii) and (iii) pursuant to the 'Order setting deadlines in relation to reparations' No. ICC-01/04-02/06", [No. ICC-01/04-02/06-2483](#), 6 March 2020.

14. On 9 April 2020, the Single Judge issued an order, whereby the parties and participants were instructed to provide information on the impact of the COVID-19 measures on their ability to carry out their duties in relation to the reparations proceedings by 21 April 2020.²³

15. On 21 April 2020, the Legal Representative filed the “Submissions [...] pursuant to the ‘Order to provide information on the impact of COVID-19 measures on operational capacity’”.²⁴ On the same day, the other parties and participants filed their respective submissions on the impact of the COVID-19 measures.²⁵

16. On 14 May 2020, the Trial Chamber issued the “Decision appointing experts on reparations”.²⁶

17. On 26 June 2020, the Trial Chamber issued the “First Decision on Reparations Process”,²⁷ whereby it provided further instructions to the Registry and set out that the ordinary response deadlines would be applicable to any observations on the Registry’s forthcoming 30 September 2020 report.²⁸ In this Decision, the Trial Chamber further invited the parties and the TFV to include observations on (i) whether any type of harm suffered by the victims of Mr Ntaganda’s crimes may be presumed; (ii) whether, as

²³ See the “Order to provide information on the impact of COVID-19 measures on operational capacity” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2507](#), 9 April 2020, paras. 4-5.

²⁴ See 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-Conf-Exp](#), 21 April 2020. A public redacted version was filed the same day as [No. ICC-01/04-02/06-2518-Red](#). A confidential redacted version was filed on 8 July 2020 as [No. ICC-01/04-02/06-2518-Conf-Red2](#).

²⁵ See the “Defence observations pursuant to ‘Order to provide information on the impact of COVID-19 measures on operational capacity’”, [No. ICC-01/04-02/06-2515](#), 21 April 2020; the “Observations on the impact of COVID-19 measures on operational capacity on behalf of the former child soldiers”, [No. ICC-01/04-02/06-2516](#), 21 April 2020; the “Trust Fund for Victims’ observations on the impact of COVID-19 on operational capacity”, [No. ICC-01/04-02/06-2517](#), 21 April 2020; the “Registry Submissions pursuant to the ‘Order to provide information on the impact of COVID-19 measures on operational capacity’”, [No. ICC-01/04-02/06-2507](#), [No. ICC-01/04-02/06-2519-Conf](#), 21 April 2020. A public redacted version was filed the same day as [No. ICC-01/04-02/06-2519-Red](#).

²⁶ See the “Public redacted version of the ‘Decision appointing experts on reparations’” (Trial Chamber VI), [No. ICC-01/04-02/06-2528-Red](#), 14 May 2020.

²⁷ See the “First Decision on Reparations Process” (Trial Chamber VI), [No. ICC-01/04-02/06-2547](#), 26 June 2020 (the “First Decision on Reparations”).

²⁸ *Idem*, para. 44.

regards the crimes of rape and sexual slavery, children born out of rape should be presumed as having suffered harm as a result of the commission of said crimes, and (iii) whether a lower burden of proof should be retained in cases of sexual violence.²⁹

18. On 20 July 2020, the Trial Chamber granted a request from the Experts, whereby they sought an extension of time to file their report, and set the new deadline for 30 October 2020.³⁰

19. On 11 September 2020, the Defence filed a “[...] [R]equest seeking clarification and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking extension of time to submit observations on the Registry 30 September Report”.³¹

20. On 24 September 2020, the Common Legal Representatives filed a joint response to the Defence’s 11 September 2020 Request, opposing the request for clarification and supporting the request for an extension of time.³²

21. On 29 September 2020, the Single Judge rejected the Defence’s request for clarification and granted the request for extension of time, ordering the Defence and the Common Legal Representatives to file their observations in relation to any key legal and factual issues identified in the Registry’s report on reparations by 30 October 2020.³³

²⁹ *Idem*, para. 46.

³⁰ See the “Decision on Request for an Extension of Time for Filing Experts’ Report” (Trial Chamber VI), [No. ICC-01/04-02/06-2553](#), 20 July 2020.

³¹ See the “Defence request seeking clarification and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking extension of time to submit observations on the Registry 30 September Report”, [No. ICC-01/04-02/06-2578](#), 11 September 2020.

³² See the “Joint Response of the Common Legal Representatives of Victims on the ‘Defence request seeking clarification and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking extension of time to submit observations on the Registry 30 September Report’”, [No. ICC-01/04-02/06-2600](#), 24 September 2020.

³³ See the “Decision on the Defence request seeking clarifications and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking an extension of time to submit observations on the Registry 30 September Report” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2601](#), 29 September 2020, para. 8.

22. On 1 October 2020, the Registry filed its “[...] First Report on Reparations” (the “Registry’s First Report on Reparations”).³⁴
23. On 30 October 2020, the parties filed their observations on the Registry’s First Report on Reparations.³⁵
24. On the same day, the Trial Chamber granted the Registry a short adjournment for the filing of the Experts’ Reports.³⁶
25. On 2 November 2020, the Registry filed its “[...] Transmission of Appointed Experts’ Reports” with two ‘confidential *ex parte* Registry only’ Annexes.³⁷ It also filed confidential redacted versions of the Experts’ Reports.³⁸
26. On 3 November 2020, the Registry filed public redacted versions of the Experts’ Reports.³⁹

³⁴ 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](#).

³⁵ 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.

³⁶ See the Email communication from the Trial Chamber to the Registry and the parties, on 30 October 2020 at 15:56.

³⁷ See the “Registry Transmission of Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623](#), 3 October 2020.

³⁸ See the “Annex 1 to the Registry Transmission of Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Conf-Anx1-Red](#), 2 November 2020; and the “Annex 2 to the Registry Transmission of Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Conf-Anx2-Red](#), 2 November 2020.

³⁹ See the “Annex 1 to the Registry Transmission of the Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Anx1-Red2](#), 3 November 2020; and the “Annex 2 to the Registry Transmission of the Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Anx2-Red2](#), 3 November 2020.

27. On 9 November 2020, the Legal Representative filed a request for an order to the Registry to collect information relevant to the reparations proceedings.⁴⁰

28. On 18 and 20 November 2020, respectively, the Registry and the Defence filed their observations in response to the Legal Representative's 9 November request.⁴¹

29. On 15 December 2020, the Trial Chamber issued the "Decision on issues raised in the Registry's First Report on Reparations".⁴²

30. On 18 December 2020, the Single Judge issued the "Decision on the Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations".⁴³

31. On the same day, the Legal Representative filed his Final Observations on Reparations.⁴⁴ The Common Legal Representative of the Former Child Soldiers,⁴⁵ the Defence,⁴⁶ and the TFV⁴⁷ also filed their final observations on reparations the same day.

⁴⁰ See the "Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations", [No. ICC-01/04-02/06-2624](#), 9 November 2020.

⁴¹ See the "Registry's Observations on the 'Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations' of 9 November 2020, ICC-01/04-02/06-2624", [No. ICC-01/04-02/06-2627](#), 18 November 2020. See also the "Defence response to 'Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations', 9 November 2020, ICC-01/04-02/06-2624", [No. ICC-01/04-02/06-2628](#), 20 November 2020.

⁴² See the "Decision on issues raised in the Registry's First Report on Reparation", [No. ICC-01/04-02/06-2630](#), 15 December 2020.

⁴³ See the "Decision on the Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations" (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2631](#), 18 December 2020.

⁴⁴ 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](#) (the "CLR2's Final Submissions on Reparations").

⁴⁵ 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.

⁴⁶ 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](#).

⁴⁷ 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](#).

32. 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.⁴⁸

33. On 16 March 2021, the Presidency assigned the present case to a newly constituted Trial Chamber II.⁴⁹ Judge Chang-ho Chung was subsequently elected Presiding Judge of Trial Chamber II.⁵⁰

34. On 30 March 2021, the Appeals Chamber upheld the Judgment⁵¹ and the Sentencing Judgment.⁵²

35. On 8 April 2021, the Legal Representative filed the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”.⁵³ On the same day, the Defence filed the “Defence Notice of Appeal against the Reparations Order”.⁵⁴

36. On 9 April 2021, the Appeals Chamber rendered the “Decision on the Presiding Judge of the Appeals Chamber in the appeals against the decision of Trial Chamber VI entitled ‘Reparations Order’”,⁵⁵ whereby it designated Judge Marc Perrin de Brichambaut as the Presiding Judge in said appeals.

⁴⁸ See the Impugned Decision, *supra* note 2, p. 97.

⁴⁹ See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

⁵⁰ 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.

⁵¹ 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 (the “Ntaganda Appeals Judgment”).

⁵² 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.

⁵³ See the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2668 A4](#), 8 April 2021.

⁵⁴ See the Defence’s Notice of Appeal, *supra* note 3.

⁵⁵ See the “Decision on the Presiding Judge of the Appeals Chamber in the appeals against the decision of Trial Chamber VI entitled ‘Reparations Order’” (Appeals Chamber), [No. ICC-01/04-02/06-2670 A4 A5](#), 9 April 2021.

37. On 7 June 2021, the Legal Representative⁵⁶ and the Defence⁵⁷ filed their respective appeal briefs.

38. In its Appeal Brief, the Defence further requested suspensive effect of the Impugned Decision.⁵⁸

39. On 11 June 2021, the Appeals Chamber issued an order whereby it invited the TFV to provide observations on the Defence's request for suspensive effect and set a deadline for the Common Legal Representatives and the Defence to respond. The Common Legal Representatives were invited to respond to both the request and the TFV's observations by the set date.⁵⁹

40. On 22 June 2021, the TFV submitted its observations on the Defence's request for suspensive effect.⁶⁰

41. On 25 June 2021, the Legal Representative and the Common Legal Representative of the Former Child Soldiers filed their respective responses to the TFV's observations and the Defence's request for suspensive effect.⁶¹

42. Also on 25 June 2021, the Defence responded to the TFV's observations.⁶²

⁵⁶ See the "Appeal Brief of the Common Legal Representative of the Victims of the Attacks", [No. ICC-01/04-02/06-2674](#), 7 June 2021 (the "CLR2's Appeal Brief").

⁵⁷ See the Defence's Appeal Brief, *supra* note 1.

⁵⁸ *Idem*, paras. 260-272.

⁵⁹ See the "Order setting a time limit for responses to the request for suspensive effect and invitation to the Trust Fund for Victims to submit observations on that request" (Appeals Chamber), [No. ICC-01/04-02/06-2678 A4 A5](#), 11 June 2021.

⁶⁰ See the "Observations on the Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence", [No. ICC-01/04-02/06-2679](#), 22 June 2021.

⁶¹ See the "Response of the Common Legal Representative of the Former Child Soldiers to Mr Ntaganda Request for suspensive effect of the Reparations Order", [No. ICC-01/04-02/06-2685](#), 25 June 2021; "Public Redacted Version of the 'Response of the Common Legal Representative of the Victims of the Attacks to the Defence Request for Suspensive Effect of the Reparations Order, to the TFV's Observations on the Defence Request for Suspensive Effect, and to the TFV's Request under rule 103 of the Rules (ICC-01/04-02/06-2684-Conf)'" , [No. ICC-01/04-02/06-2684-Red](#), 30 June 2021.

⁶² See the "Response on behalf of Mr Ntaganda to the Trust Fund for Victims' Observations and Request", [No. ICC-01/04-02/06-2686](#), 25 June 2021.

43. On 2 July 2021, the Appeals Chamber rejected the Defence's request for suspensive effect.⁶³

44. Pursuant to regulation 59 of the Regulations of the Court, the Legal Representative herewith submits his response to the Defence's Appeal Brief.

III. SUBMISSIONS

Defence Ground of Appeal 1: Trial Chamber VI committed an error of law and procedure by issuing the 8 March Reparations Order prematurely.

45. The Legal Representative first recalls that, according to the applicable standards of appellate review, not all alleged errors warrant the intervention of the Appeals Chamber, but only those which materially affect the impugned decision.⁶⁴ Also, an appellant is obliged to present cogent arguments that set out the alleged error and explain how the trial chamber erred. Furthermore, an appellant is required to demonstrate how the error materially affected the impugned decision.⁶⁵ Finally, an appellant is required to formulate an alleged error with a sufficient degree of precision.⁶⁶

46. As a preliminary remark, the Legal Representative posits that the Defence's Ground of Appeal 1 is formulated in a very vague manner. While stating that the Impugned Decision was issued prematurely, the Defence advances scattered arguments in relation to various matters dealt with in the Impugned Decision, rather than providing cogent arguments that would clearly set out the alleged errors and the

⁶³ See the "Decision on the request for suspensive effect" (Appeals Chamber), [No. ICC-01/04-02/06-2691 A4 A5](#), 2 July 2021, para. 26.

⁶⁴ 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 A7 A8](#), 18 July 2019, para. 28 (the "*Lubanga* 2019 Judgment").

⁶⁵ See the *Ntaganda* Appeals Judgment, *supra* note 51, para. 48.

⁶⁶ See e.g. the "Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I on jurisdiction and stay of the proceedings" (Appeals Chamber), [No. ICC-02/11-01/11-321 OA2](#), 12 December 2012, para. 44.

material impact thereof on the Impugned Decision. In proceeding this way, the Defence fails to comply with the applicable standards of appellate review.

47. The Legal Representative submits that, as explained in several Grounds of his own Appeal, the Trial Chamber indeed erred by failing to address a number of key matters prior to issuing the Impugned Decision, but not in the way and not for the reasons articulated by the Defence in the present Ground of Appeal.

48. In particular, the Defence's arguments that issuing the Impugned Decision prematurely "*impacted the fairness of Trial Chamber VI's determination of Mr Ntaganda's liability for reparations*" and "*also inappropriately raised the expectations of the potential beneficiaries of reparations and prejudiced the implementation of the reparations process, which is likely to be delayed as a result*",⁶⁷ and "*is also very likely to impact the activities of the TFV*"⁶⁸ in principle accord with the submissions of the Legal Representative as set out in his own Appeal Brief. However, the Defence's submissions in this regard remain vague and unarticulated. They do not demonstrate *how* the fairness *vis-à-vis* the convicted person was allegedly impacted, *how* the implementation of the reparations process was prejudiced and *how* the TFV's activities were likely to be impacted by the error.

49. The Defence further contends that it was incumbent upon the Trial Chamber to entertain the Defence's arguments on the need (i) to assess the participating victims, to identify new potential beneficiaries, and to meet the participating victims;⁶⁹ (ii) to involve the Defence in the assessment of requests for reparations⁷⁰ and in the VPRS's assessment of the participating victims;⁷¹ (iii) the need for the Defence to have access to the application forms of all participating victims and to the application forms of newly identified potential beneficiaries of reparations; and (iv) the need to pronounce on the VPRS's proposed 'three group system'.⁷² These arguments somewhat permeate

⁶⁷ See the Defence's Appeal Brief, *supra* note 1, para. 44.

⁶⁸ *Idem*, para. 59.

⁶⁹ *Idem*, para. 45.

⁷⁰ *Ibid.*

⁷¹ *Idem*, para. 47.

⁷² *Idem*, para. 49.

the entire Defence's Appeal and are opposed by the Legal Representative for the reasons that will be set out in more detail under the Defence's Grounds of Appeal 10-15 below. Under the present Ground of Appeal, it is submitted that, contrary to the Defence's contentions, the Trial Chamber was not required to adjudicate these issues prior to the issuance of the Impugned Decision, since it had determined that reparations in the present case would be collective in nature. Moreover, the Defence fails to demonstrate how the Trial Chamber's alleged failure to adjudicate these matters materially affects the Impugned Decision.

50. In particular, in accordance with the jurisprudence of the Court, in case of collective reparation awards, the Defence's involvement in the screening of the eligibility of potential beneficiaries of reparations is neither foreseen nor warranted. Indeed, the Appeals Chamber in the *Lubanga* case concluded that only in case of direct and individual reparations, the Defence has a right to review and comment on the beneficiaries' applications.⁷³ No such right exists when the reparation award is collective in nature and the beneficiaries are to be screened for eligibility by the TFC pursuant to rule 98 of the Rules of Procedure and Evidence (the "Rules"). In the latter case, the right of the convicted person is sufficiently safeguarded by affording him or her the opportunity to provide comments on the criteria for the standard of proof and causation for determining the person's eligibility in a collective award.⁷⁴ In the *Al Mahdi* case, the role of the convicted person in the assessment of beneficiaries of reparations was limited to the individual reparations for direct financial loss of a small number of individuals.⁷⁵ In that case, it has been further clarified that administrative

⁷³ See the "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2" (Appeals Chamber), [No. ICC-01/04-01/06-3129 A A2 A3](#), 3 March 2015, para. 164 (the "*Lubanga* 3 March 2015 Judgment").

⁷⁴ *Idem*, paras. 166-168.

⁷⁵ See the "Reparations Order" (Trial Chamber VIII), [No. ICC-01/12-01/15-236](#), 17 August 2017, para. 146(iv) (the "*Al Mahdi* Reparations Order").

decisions as to the eligibility of persons claiming individual reparations cannot be challenged by the Defence,⁷⁶ but by the relevant victim applicants only.⁷⁷

51. As regards the Defence's arguments that the Trial Chamber failed "*to take into consideration the ongoing COVID-19 pandemic and the difficulties encountered by the VPRS, inter alia, in collecting sufficient information*",⁷⁸ and to "*take into consideration the current security situation in Ituri*",⁷⁹ the Defence again fails to demonstrate how the Trial Chamber's error of issuing the Impugned Decision at that stage materially affects the Impugned Decision. While the Legal Representative concurs that the Trial Chamber failed to give adequate consideration to the circumstances of the COVID-19 pandemic and how they impacted the Registry's operations,⁸⁰ the Defence fails to substantiate its contentions as it leaves unaddressed whether the Trial Chamber was meant to wait until the end of the pandemic and/or the end of the ongoing insecurity in Ituri, or what kind of information it expected to be further collected by the VPRS. Moreover, the Defence's contention that the information collected by the VPRS was not sufficient contradicts its own subsequent submissions made under Grounds of Appeal 10-15, according to which "*the Trial Chamber had sufficient information to have made a credible and reasonable assessment of potential beneficiaries*".⁸¹

52. The Defence's contention that it was incumbent on the Trial Chamber to "*establish the potential number of beneficiaries of reparations with a sufficient degree of precision*" before issuing the Impugned Decision⁸² also finds no support in the Court's jurisprudence. It is submitted that the Trial Chamber was merely required to arrive at

⁷⁶ *Idem*, para. 146(v).

⁷⁷ See the "Judgment on the appeal of the victims against the "Reparations Order"" (Appeals Chamber), [No. ICC-01/12-01/15-259-Red2_A](#), 9 March 2018, para. 72 (the "*Al Mahdi Appeals Judgment on Reparations*").

⁷⁸ See the Defence's Appeal Brief, *supra* note 1, para. 43.

⁷⁹ *Ibid.*

⁸⁰ See the CLR2's Appeal Brief, *supra* note 56, **Ground of Appeal 1**.

⁸¹ See the Defence's Appeal Brief, *supra* note 1, para. 230.

⁸² *Idem*, para. 43.

an *estimate* that was *as accurate as possible*,⁸³ as opposed to the precise establishment of that number.

53. The Defence's contentions that the Trial Chamber failed to "*set out clearly the eligibility criteria and the parameters of any administrative screening process to be conducted by the TFV*" and to "*design an implementation calendar*",⁸⁴ also fall short of substantiating that the Impugned Decision was issued prematurely. Rather, these contentions pertain to the scope of the responsibilities delegated to the TFV for the purpose of the implementation of the Impugned Decision. This is a distinct issue which is addressed by the Defence in its Grounds of Appeals 10-15.⁸⁵

54. Finally, the Legal Representative concurs with the Defence's contention that the Trial Chamber erred when it took the end of the mandate of two of its members into account in the Impugned Decision.⁸⁶ However, he submits that in contrast to his respective submissions put forth in his Appeal Brief,⁸⁷ the Defence fails to demonstrate how the alleged error materially affects the Impugned Decision, in limiting itself to the very general contention that "*issuing the 8 March Reparations Order before the end of the judicial mandate [...] was much less important than ensuring the fairness of the reparations proceedings*".⁸⁸ The Legal Representative therefore invites the Appeals Chamber to base itself, as regards this specific issue, on the submissions he puts forth under **Ground 7** of his own Appeal.

55. As regards the remainder of the present Ground of Appeal, the Legal Representative submits that the Defence's submissions are not only unsubstantiated, but for the reasons set out under Grounds 10-15 below, the Defence is erroneously claiming that the Trial Chamber should have taken into account certain considerations that it was actually not required to consider. In this regard, the Defence fails to

⁸³ See the *Lubanga* 2019 Judgment, *supra* note 64, para. 108.

⁸⁴ See the Defence's Appeal Brief, *supra* note 1, para. 43.

⁸⁵ *Idem*, paras. 201-209.

⁸⁶ *Idem*, para. 57.

⁸⁷ See the CLR2's Appeal Brief, *supra* note 56, paras. 136-148.

⁸⁸ See the Defence's Appeal Brief, *supra* note 1, para. 58.

demonstrate that the alleged errors materially affect the Impugned Decision and accordingly, the Defence's Ground of Appeal 1 should be dismissed.

Defence Ground of Appeal 2: Trial Chamber VI failed to provide a reasoned opinion and/or to consider Defence submissions on behalf of the Convicted Person.

56. The Legal Representative partially supports the Defence's Ground of Appeal 2. In particular, the Legal Representative agrees with the general principles referred to by the Defence underpinning the right to a reasoned opinion, including the Defence's contention that the latter is equally applicable throughout the reparations proceedings.⁸⁹ He wishes to stress, however, that fair trial guarantees do not constitute the prerogative of the convicted person, but equally find applicability to the rights of victims who are elevated to the status of 'party' to the reparations proceedings.

57. While not disputing that the Trial Chamber failed to consider some of the submissions put forth by the Defence,⁹⁰ the Legal Representative submits that the Defence's contentions under the present Ground of Appeal must be approached with caution, as they do misrepresent the type of the reparations ordered and they go far beyond the scope of the Trial Chamber's obligation to adjudicate relevant matters when collective reparations are ordered.

58. In particular, the Defence argues that the Trial Chamber failed to explain how the collective reparations with individual components could equate to collective reparations.⁹¹ It is submitted that the Trial Chamber was not required to provide an explanation in that regard. Rules 97(1), and 98(2) and (3) of the Rules are clear insofar as they foresee only two types of reparations: collective or individual. Whether collective reparations have individual components or otherwise tailored features does not make them any less collective than 'ordinary' collective reparations. The bottom line of collective reparations is that they target a group of persons and may be ordered

⁸⁹ *Idem*, paras. 62-68.

⁹⁰ See the CLR2's Appeal Brief, *supra* note 56, para. 57.

⁹¹ See the Defence's Appeal Brief, *supra* note 1, para. 74.

*“where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate”.*⁹² Individual components only describe specific features of such collective awards, such as targeting a common need of the group or targeting a group of victims with a common characteristic. Contrary to the Defence’s contention, ‘individual components’ do not transform a collective award into individual awards.⁹³

59. Both in the *Lubanga* and the *Katanga* cases it has been recognised that “[w]hen collective reparations are awarded, these should address the harm the victims suffered on an individual and collective basis”⁹⁴ and that “to receive collective reparations a group or category of persons may be bound by a shared identity or experience, but also by victimization by dint of the same violation or the same crime with the jurisdiction of the Court”.⁹⁵ The *Lubanga* Trial Chamber therefore recognised that collective reparations “must benefit a group or category of persons who have characteristics in common and/or have suffered shared harm”.⁹⁶

60. Collective reparations with individual components also find support in the international human rights jurisprudence. In the case of *Ituango Massacres v. Colombia*, the Inter-American Court of Human Rights (the “IACtHR”) included the provision of free medical services, *inter alia* counselling, to victims next-of-kin and a programme to provide housing for individual beneficiaries as part of its ‘collective’ reparations award.⁹⁷ Even though these processes do not seek to redress collective harm in its narrow sense, with victims benefiting individually rather than as a group, such processes are nevertheless described as ‘collective’ reparations,⁹⁸ as interpreted in their

⁹² See rule 98(3) of the [Rules of Procedure and Evidence](#).

⁹³ See submissions in relation to Ground of Appeal 13 below.

⁹⁴ See the “Corrected version of the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’” (Trial Chamber II), [No. ICC-01/04-01/06-3379-Red-Corr-tENG](#), 21 December 2017, para. 192 (the “*Lubanga* 2017 Decision on Reparations Award”).

⁹⁵ *Idem*, para. 193.

⁹⁶ *Idem*, para. 194.

⁹⁷ See IACtHR, *Ituango Massacres v. Colombia*, [Merits, Reparations and Costs](#), 1st July 2006, para. 397.

⁹⁸ *Ibid.*

larger sense. Also, a reparations measure may be collective when the beneficiaries form a specific group of people, in contrast to a community.⁹⁹

61. As already submitted above, it was not incumbent upon the Trial Chamber to entertain the Defence's arguments on the need (i) for the Defence to access to the *dossiers* of the participating victims, to the application forms of potential new beneficiaries, and to the *dossiers* of victims included in the sample; (ii) to involve the Defence in the assessment of requests for reparations and in the VPRS's assessment of the participating victims, and (iii) the need to pronounce on the VPRS's proposed 'three group system'. Accordingly, it is submitted that, contrary to the Defence's contentions,¹⁰⁰ the Trial Chamber was not required to give a reasoned opinion on the above issues given the collective nature of the reparations ordered. In any event, the Defence fails to demonstrate that the Impugned Decision would substantially differ from the one rendered had the alleged error not been committed.

62. In the same vein, and contrary to the Defence's contention,¹⁰¹ the Trial Chamber was not required to give a reasoned opinion on its decision not to rule on the merits of individual applications given the collective nature of reparations ordered. The matter will be further addressed below.

63. However, as regards the "[e]rror in the determination of the number of potential eligible victims",¹⁰² the Legal Representative largely concurs with the Defence's arguments. Strikingly, both the Defence and the Legal Representative have identified an error in the Trial Chamber's approach and decision as regards the estimated number of beneficiaries,¹⁰³ even though their views on what the number of beneficiaries will ultimately be could not be further apart. This all the more underlines

⁹⁹ See IACtHR, '*Juvenile Institute*' v. Paraguay, [Preliminary Objections, Merits, Reparations and Costs](#), Series C No. 112, 2 September 2004; and *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, [Preliminary Objection, Merits, Reparations and Costs](#), Series C No. 150, 5 July 2006.

¹⁰⁰ See the Defence's Appeal Brief, *supra* note 1, paras. 75-76.

¹⁰¹ *Idem*, para. 73.

¹⁰² *Idem*, p. 25.

¹⁰³ See the CLR2's Appeal Brief, *supra* note 56, **Ground of Appeal 1**.

the significance of the Trial Chamber's error on the overall decision and in itself demonstrates that it significantly affects the outcome of the Impugned Decision.

64. In particular, the Legal Representative shares the Defence's argument that, despite correctly referring to the *Lubanga* principles, namely that it must establish an estimated number, the Trial Chamber merely set a *range* from 1,000 to 100,000 without justifying or explaining its approach.¹⁰⁴ Although the Legal Representative fundamentally disagrees with the estimates and views offered by the Defence as regards the numbers of potential beneficiaries in the present case, he concurs with the Defence that it appears that the Trial Chamber did not take these submissions into account.¹⁰⁵ Rather than taking *all* submissions before it into account and order the discovery of further directly relevant information,¹⁰⁶ the Trial Chamber reached a non-decision by merely considering that there were no reliable numbers and that the likely number of potential beneficiaries was in the thousands. It is submitted that this is insufficient to satisfy the requirement set by the Appeals Chamber in the *Lubanga* case. The Trial Chamber erred and this error carries over into numerous other connected errors as identified in the Legal Representative's Appeal Brief.

65. With respect to the Defence's arguments regarding the "[f]inancial liability of the Convicted Person",¹⁰⁷ the Legal Representative also largely concurs with these submissions. In particular, he concurs with the contention that the Trial Chamber set an arbitrary award it failed to reason.¹⁰⁸ The Defence's submissions on the Trial Chamber's erroneous approach in considering various unrelated figures and simply arriving at an unexplained final amount,¹⁰⁹ in essence, mirror those of the Legal Representative set out in his **Ground of Appeal 2.1**.

¹⁰⁴ See the Defence's Appeal Brief, *supra* note 1, para. 77. See also the CLR2's Appeal Brief, *supra* note 56, para. 59.

¹⁰⁵ See the Defence's Appeal Brief, *supra* note 1, para. 79.

¹⁰⁶ See the CLR2's Appeal Brief, *supra* note 56, **Ground of Appeal 1.2**.

¹⁰⁷ See the Defence's Appeal Brief, *supra* note 1, p. 27.

¹⁰⁸ *Idem*, para. 80. See also the CLR2's Appeal Brief, *supra* note 56, para. 89. See more generally, the CLR2's Appeal Brief, *supra* note 56, **Ground of Appeal 2**.

¹⁰⁹ See the Defence's Appeal Brief, *supra* note 1, paras. 81-84.

66. As regards the “[e]rrors in the interpretation and application of various concepts and principles”, the Legal Representative does not disagree with the Defence’s contention that the Trial Chamber failed to provide a reasoned opinion and to take into account *some* of the submissions on behalf of the convicted person.¹¹⁰ However, for the reasons set out below,¹¹¹ the Legal Representative disagrees with the submissions made to support the main contention. These matters are dealt with in detail and separately under Grounds 4-9 of the Defence’s Appeal Brief.

67. Accordingly, the Legal Representative concurs with the Defence’s contentions under the Ground of Appeal 2 that the Trial Chamber committed an error by failing to give a reasoned opinion in relation to (i) the determination of the number of potentially eligible victims, and (ii) the financial liability of the convicted person. As regards the remaining submissions under the present Ground, it is submitted that the Defence fails to demonstrate any error and/or the material impact of the alleged error on the Impugned Decision.

68. Therefore, the Defence’s Ground of Appeal 2 should only be granted in part.

Defence Ground of Appeal 3: Trial Chamber VI committed a mixed error of law and fact by adopting a new principle, i.e. ‘do no harm’, without taking into consideration the current security situation and the rising tensions among communities in Ituri.

69. The Defence submits that, in addition to the established reparations principles, the Trial Chamber also adopted the ‘do no harm’ principle¹¹² in relation to which it held that the “Court shall ensure that reparation measures themselves do no harm”.¹¹³ The Defence then argues that the Trial Chamber erred when it did not take into account the Defence’s submissions on on-going tensions in Ituri, including the creation of new community-affiliated armed groups.¹¹⁴ It then, essentially, reiterates its previous

¹¹⁰ *Idem*, para. 86.

¹¹¹ See paragraphs 76-145 below in relation to the Defence’s Grounds of Appeal 4-9.

¹¹² See the Defence’s Appeal Brief, *supra* note 1, para. 92.

¹¹³ *Idem*, para. 93.

¹¹⁴ *Idem*, paras. 94-95.

submissions on the difficult security situation in Ituri,¹¹⁵ contending that the implementation of reparations to one side of the community only is likely to exacerbate tensions, likely leading to “*yet another full-blown community conflict*”.¹¹⁶

70. The Legal Representative contends that it is unclear which error exactly the Defence alleges under the present Ground of Appeal. On the one hand, it states that the Trial Chamber erred in not taking into account its submissions on the nature of the on-going conflict.¹¹⁷ On the other hand, it submits that the ‘do no harm’ can “*meaningfully inform*” the reparations process by ensuring that the extent of the harm take into account the circumstances of the on-going conflict, stating that it would be “*most important when determining whether there was a break in the chain of causation*”.¹¹⁸ In other words, the Defence seems to be arguing that likely hardly any victims qualify for reparations in the present case because other conflicts are on-going in the region in which they reside. This is an unacceptable stance. It is absolutely unclear how this allegation is relevant to the application of the ‘do no harm’ principle. In any event, it is submitted that the fact that the victims in the present case may have also been victims of other crimes and in different periods of time, does not negate their victim status as regards the crimes for which Mr Ntaganda has been convicted.

71. The Defence further argues that “*the ICC reparations scheme is ill-designed to address this situation as it focusses on the harm suffered by victims who belong to one side of a protracted armed conflict*”, and that “*it certainly cannot be said that the ICC reparations scheme is driven by the humanitarian principles of humanity, impartiality, neutrality and independence*”.¹¹⁹ It is submitted that the Defence’s contentions are of a general nature and constitute a mere disagreement with the reparations system under the Rome Statute (the “Statute”) as a whole. The Defence fails to demonstrate how the Trial Chamber erred in this regard.

¹¹⁵ *Idem*, paras. 96-99.

¹¹⁶ *Idem*, para. 100.

¹¹⁷ *Idem*, paras. 94-95.

¹¹⁸ *Idem*, para. 102.

¹¹⁹ *Idem*, para. 99.

72. The Legal Representative contends that the Trial Chamber was neither entitled nor required to deal with possible deficiencies of the ICC reparations system as such. The Trial Chamber rightly adopted the ‘do no harm’ principle. This key principle must apply at all stages of the reparations process. The modalities of the application of this principle are case specific, and it is incumbent on the TFV to comply with this principle for the purpose of the implementation of the Reparations Order with due regard to specific circumstances of the present case, including the security situation in the affected locations.

73. While the Defence might be right in stating that the ‘do no harm’ principle militates in favour of engaging victims belonging to other sides of the conflict parties and accordingly in favour of the implementation of assistance programmes directed at all victims who suffered during the conflict,¹²⁰ the Trial Chamber was neither entitled nor required to order such a measure. The Legal Representative also repeatedly submitted that implementing the reparations in the present case along with putting in place relevant assistance programmes in locations where Lendu and Hema communities live side by side and/or where only a selected part of the inhabitants would benefit from reparations would be the most optimal way to mitigate risks of tensions, jealousy and animosity.¹²¹ Thus, the TFV should consider this option as part of its implementing strategy subject to the availability of resources and operational capacities.

74. In conclusion, it is submitted that beyond arguing that the Trial Chamber failed to take into account the Defence’s submissions in relation to the ‘do no harm’ principle,¹²² the Defence does not set out *what* exactly the alleged error is and, more importantly, *how* it is alleged to materially affect the Impugned Decision and in what way.

¹²⁰ *Idem*, para. 103.

¹²¹ See e.g. the “Public Redacted Version of the “Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan” (ICC-01/04-02/06-2680-Conf)”, [No. ICC-01/04-02/06-2680-Red](#), 28 June 2021, para. 55.

¹²² See the Defence’s Appeal Brief, *supra* note 1, para. 104.

75. Accordingly, given that the Defence's Ground of Appeal 3 is entirely unsubstantiated, it should be dismissed as such.

*Defence Ground of Appeal 4: Trial Chamber VI erred in law by erroneously interpreting several concepts relating to the types of harm and applying a wrong standard of evidentiary proof, in relation to issues such as transgenerational harm, harm suffered by children born out of rape, and damage to the health centre of Sayo.*¹²³

A. Interpretation of the concept of transgenerational harm

76. With regard to transgenerational harm, the Defence posits that (i) the Trial Chamber failed to take into consideration the evidentiary burden of proof and the causal nexus requirements established in the *Katanga* case in relation to the demonstration of transgenerational harm, (ii) the Trial Chamber failed to provide cogent reasons justifying departing from the established reasoning set out in the *Katanga* case on the same issue, and (iii) the Trial Chamber also erred in law by failing to specify certain elements of this harm needed to be established by the potential beneficiary, namely the date of birth of the child.¹²⁴

77. The Defence argues that the concept of transgenerational harm is an evolving concept, and although it has been discussed in previous cases before the Court, it did not form part of the reparations award in the *Lubanga* case, and victims alleging transgenerational harm were rejected in the *Katanga* case.¹²⁵ According to the Defence, “the Trial Chamber’s citation to the *Katanga* definition of ‘transgenerational harm’ gives the impression that it is an established and uncontested concept within the ICC’s reparations practice. By failing to acknowledge its novelty, Trial Chamber VI also failed to consider the limitations and shortcomings of this category of harm, which was an error”.¹²⁶

¹²³ See the Defence’s Notice of Appeal, *supra* note 3, p. 10.

¹²⁴ See the Defence’s Appeal Brief, *supra* note 1, para. 132.

¹²⁵ *Idem*, para. 118.

¹²⁶ *Idem*, para. 119.

78. The Legal Representative submits that the Defence fails to demonstrate that by endorsing the concept of transgenerational harm, the Trial Chamber committed an error which materially affects the Impugned Decision.

79. First, in Part VI(2)(i) of the Impugned Decision, the Trial Chamber discussed at the outset the general concept and the definitions of various types of harm.¹²⁷ In discussing the concept of transgenerational harm, the Trial Chamber referred to or relied on various sources, including the submissions made by the parties, the TFV, the Appointed Experts' Reports, the relevant decisions in the *Katanga* case, and the jurisprudence developed by the IACtHR.¹²⁸ It then went on to discuss the harm suffered by the indirect victims in the present case more specifically,¹²⁹ and held that “given the short and long-term consequences of certain crimes, as discussed above, children of the direct victims may have suffered transgenerational trauma regardless of the date when they were born, if they can show that their harm is a result of the crimes for which Mr Ntaganda was found guilty”.¹³⁰ It is submitted that by finding that persons who can provide proof that they are children of direct victims in the present case *may* have suffered transgenerational harm, the Trial Chamber did not commit any error, because it did not categorically find that specific persons *have* suffered harm. It made the entitlement to reparations under this head dependent on these persons having to (i) establish that they are children of direct victims, and (ii) that the harm suffered by the direct victim resulted from the crimes for which Mr Ntaganda has been found guilty.

80. Second, and contrary to the Defence's contention, in discussing the concept of transgenerational harm, the Trial Chamber relied on various sources, and not solely on the definition developed in the *Katanga* case. Moreover, even if this were the case, the Trial Chamber was free to adopt a concept that was acknowledged by other Chambers of the Court. Nothing in the other sources the Trial Chamber discussed in this part of the Impugned Decision indicated that the concept as discussed in the

¹²⁷ See the Impugned Decision, *supra* note 2, paras. 68-75.

¹²⁸ *Idem*, paras. 73-74.

¹²⁹ *Idem*, paras. 177-182.

¹³⁰ *Idem*, para. 182 (emphasis added).

Katanga case needed to be revised or otherwise adapted in the circumstances of the present case.

81. Third, the Trial Chamber was not required to discuss either “*the scientific uncertainty and the ongoing debate around the idea of transgenerational harm*”, or “*the different schools of scientific thought which have developed around the impact of transgenerational trauma*”.¹³¹ Contrary to the *Katanga* Trial Chamber, the Trial Chamber in the present case did not decide to individually assess applications by victims alleging transgenerational harm, including the causal nexus between the crimes for which the convicted person has been found guilty and the psychological harm suffered by the applicants concerned.¹³² Instead, the Trial Chamber ordered collective reparations which made the application-based procedure redundant.

82. Fourth, the Defence further argues that the concept of transgenerational harm was not mentioned in the *Lubanga* reparations order, and that applications by victims claiming transgenerational harm were rejected in the *Katanga* case¹³³. It is submitted that the facts that victims in the *Lubanga* case did not claim reparations for transgenerational harm, or that victims in the *Katanga* case were unable to present the proof required, are matters relevant to the specifics of said cases, and are extraneous to the specifics of the present case. The fact that victims have not been able to establish the nexus to the required threshold in the *Katanga* case – which used an application-based procedure – does not invalidate the general concept formulated by the Trial Chamber in that case. Since the concept as such also remained undisturbed by the *Katanga* Appeals Judgment,¹³⁴ the Trial Chamber in the present case, within its

¹³¹ See the Defence Appeal Brief, *supra* note 1, para. 119.

¹³² See the “Public Redacted Version of Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgment of 8 March 2018” (Trial Chamber II), [No. ICC-01/04-01/07-3804-Red](#), 19 July 2018, paras. 6-8 and 15 (the “*Katanga* Decision on Transgenerational Harm”).

¹³³ See the Defence Appeal Brief, *supra* note 1, para. 118.

¹³⁴ See the “Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled ‘Order for Reparations pursuant to Article 75 of the Statute’” (Appeals Chamber), [No. ICC-01/04-01/07-3778-Red A3 A4 A5](#), 8 March 2018, paras. 235-236 (the “*Katanga* Appeals Judgment on Reparations”). The Appeals Chamber did not consider the concept as such, but rather the alleged error of fact, namely

discretionary power under article 75 of the Statute, was therefore entitled to rely on this concept. Whether the concept was ‘new’ or not is of no relevance to the matter at hand. Concretely, the Defence fails to show how the adoption and application of the notion of transgenerational harm impacts the outcome of the Impugned Decision.

83. It is therefore submitted that, in essence, the Defence’s contentions under the present Ground of Appeal do not rise beyond a mere disagreement with the Trial Chamber’s endorsement of the concept of transgenerational harm as developed in the various sources it relied upon. What is more, this challenge would only concern the Impugned Decision if the Trial Chamber had ordered an application-based process for assessing the eligibility of beneficiaries in the first place. However, the Defence fails to show that the Trial Chamber’s endorsement of what can constitute transgenerational harm was an error of law.

84. Since the Defence fails to demonstrate an error, this part of the Defence’s Ground of Appeal 4 should be dismissed.

B. Evidentiary criteria for transgenerational harm

85. The Defence further argues that the “*Trial Chamber erred in relation to the evidentiary criteria for transgenerational harm*”,¹³⁵ and more specifically that it “*erred in law by failing to specify certain [sic] element of this harm that need to be established by the potential beneficiary, namely the date of birth of the child*”.¹³⁶

86. In the Impugned Decision, the Trial Chamber held that:

*“[f]or the purposes of reparations, [...] transgenerational trauma, [...], shall be personally suffered by the victim. Moreover, the causal nexus between the alleged harm and the crime for which the defendant was convicted needs to be established”.*¹³⁷

whether or not there was sufficient evidence before Trial Chamber II upon which it could have found that the applicants established the required nexus.

¹³⁵ See the Defence’s Appeal Brief, *supra* note 1, paras. 131-133.

¹³⁶ *Idem*, para. 132.

¹³⁷ See the Impugned Decision, *supra* note 2, para. 75.

87. The Legal Representative notes that the Appeals Chamber in the *Katanga* case referred to the same evidentiary criteria in relation to transgenerational harm,¹³⁸ without pointing to any specific elements which ought to be demonstrated in order to qualify as a victim of transgenerational harm.

88. As regards the *Katanga* Trial Chamber's approach relied on by the Defence,¹³⁹ said Trial Chamber adopted that approach for the purpose of its assessment of individual applications by victims alleging transgenerational harm and in light of *specific evidence and material brought before it*, including statements, supporting material and mental health certificates.¹⁴⁰

89. It is submitted that, in the present case, the Trial Chamber decided that reparations would be of a collective nature, which in turn does not involve the assessment of individual victims' applications, as set out in detail in response to the Defence's Grounds of Appeal 1 and 10-15. Accordingly, the Trial Chamber was also not required to adopt any specific criteria, such as the date of birth of a child for evidentiary purposes. The Impugned Decision is sufficiently clear with respect to the relevant criteria: (i) kinship and (ii) the harm being the result of the crimes for which Mr Ntaganda has been found guilty.¹⁴¹

90. As regards the Defence's contention that the Appointed Experts did not directly examine the victims concerned,¹⁴² the Legal Representative submits that in its assessment of harm suffered by the victims, a trial chamber is not limited to the evidence submitted by the victims themselves. Rather, corroboration may come from extrinsic evidence, including the testimonial and documentary evidence entered into the record and the statements of other victims.¹⁴³ Thus, in holding that children of the direct victims in the present case *may* have suffered transgenerational harm subject to

¹³⁸ See the *Katanga* Appeals Judgment on Reparations, *supra* note 134, paras. 236 and 255.

¹³⁹ See the Defence's Appeal Brief, *supra* note 1, paras. 131 and 133.

¹⁴⁰ See the *Katanga* Decision on Transgenerational Harm, *supra* note 132, para. 28.

¹⁴¹ See the Impugned Decision, *supra* note 2, para. 182.

¹⁴² See the Defence's Appeal Brief, *supra* note 1, para. 132.

¹⁴³ See the *Lubanga* 2019 Judgment, *supra* note 64, para. 203.

relevant proof,¹⁴⁴ the Trial Chamber was not required to assess individual applications. The Trial Chamber, by deciding that collective reparations were the most appropriate in this case, only acknowledged that children of direct victims *may* have suffered such harm; the individual eligibility assessment has been delegated to the TFV. It is submitted that the Defence fails to demonstrate that by relying on the submissions and evidence before it along with various other sources in finding that persons who have suffered transgenerational harm could potentially benefit from reparations in the present case if they establish that they are children of direct victims and affected by Mr Ntaganda's crimes, the Trial Chamber committed a discernible error.

91. Since the Defence fails to demonstrate an error, this part of the Defence's Ground of Appeal 4 should also be dismissed.

C. Standard of proof for victims of sexual violence

92. The Defence argues that "*the Trial Chamber erred in lowering the burden of proof in accepting that a coherent and credible account is sufficient in relation to victims of sexual violence*".¹⁴⁵ While recognising that this is the established standard before the Court, the Defence contends that said standard was lowered by the Trial Chamber simultaneously adopting a presumption of harm for the same victims, and thus precluding the Defence from challenging their eligibility.¹⁴⁶

93. As argued in other submissions pertaining to the Defence's Grounds of Appeal 1, and 10-15,¹⁴⁷ in case of collective reparation awards, the Defence's involvement in the screening of the eligibility of potential beneficiaries of reparations is neither foreseen nor warranted. As regards the Trial Chamber's decision on the use of

¹⁴⁴ See the Impugned Decision, *supra* note 2, para. 182.

¹⁴⁵ See the Defence's Appeal Brief, *supra* note 1, paras. 122-123.

¹⁴⁶ *Idem*, para. 123.

¹⁴⁷ See paragraphs 45-55 above in relation to the Defence's Ground of Appeal 1, and paragraphs 146-176 below in relation to the Defence's Grounds of Appeal 10-15.

presumptions, as will be argued below, the Defence fails to demonstrate an error in that regard and the material impact of the alleged error on the Impugned Decision.

94. Under the present Ground of Appeal, the Legal Representative notes that, when discussing the harm suffered by victims of sexual violence in the present case, the Trial Chamber referred to its findings contained in the Judgment and the Sentencing Judgment. It also referred to the submissions made by the Common Legal Representatives, the TFV and the Appointed Experts as regards the various types of physical, psychological, psychiatric, and social consequences, both in the immediate and longer term, suffered by victims of sexual violence.¹⁴⁸ The Trial Chamber in fact recounted testimony it had received from victims, witnesses and experts on the harm and harmful impact crimes of a sexual nature have and concretely had on victims in general and specific victims in this case.¹⁴⁹ It is submitted that, based on the evidence on the record and given the very nature of the victimisation, there cannot be any doubt that victims of sexual violence in the present case have suffered at least *some* type of harm, *i.e.* psychological and emotional.

95. The Trial Chamber also held that, given the collective nature of the reparations ordered, an individual assessment of harm is not necessary.¹⁵⁰ In light of the Trial Chamber's findings on the nature of harm suffered by victims of sexual violence,¹⁵¹ which in no uncertain terms set out that these victims have typically suffered various forms of harm,¹⁵² it is submitted that the Defence fails to demonstrate how the introduction of the presumption of *harm* purportedly lowers the standard of proof of a coherent credible account, the latter of which it accepts. The Defence offers no argument that there are victims who have suffered no harm following rape or sexual slavery, because it cannot. It has not demonstrated that the Trial Chamber's reliance

¹⁴⁸ See the Impugned Decision, *supra* note 2, paras. 168-176.

¹⁴⁹ *Idem*, paras. 171-174.

¹⁵⁰ *Idem*, para. 194.

¹⁵¹ *Idem*, paras. 168-176.

¹⁵² *Idem*, paras. 169 and 170-172.

on the testimony of witnesses and experts as regards the harm commonly and universally suffered by victims of sexual violence was erroneous.

96. Since the Defence fails to demonstrate an error, this part of the Defence's Ground of Appeal 4 should also be dismissed.

D. Documents in support of the victim's application for reparations

97. The Defence argues that the Trial Chamber erred by failing to envisage the need to provide documents in support of the victim's application for reparations.¹⁵³ It specifies that the Trial Chamber erred by failing to identify the type of documents that would be sufficient to meet the burden of proof,¹⁵⁴ and to rule on individual victim applications.¹⁵⁵

98. First, since the Defence refers to a "*victim's application for reparations*",¹⁵⁶ the Legal Representative recalls that in contrast to the other cases before the Court in which reparations have been ordered, no application-based process pursuant to rule 94 of the Rules as such has been envisaged at any stage of the reparations process in the present case. Instead, the Registry was ordered to develop an application form to be "*used for the identification of potential new beneficiaries in the context of mapping exercise*".¹⁵⁷

99. The Trial Chamber specifically held that "[c]onsidering its decision to award collective reparations with individualised components, the Chamber sees no need to rule on the merits of individual applications for reparations, pursuant to rule 94 of the Rules".¹⁵⁸ The Legal Representative therefore submits that since the Trial Chamber decided not to entertain any individual application for reparations under rule 94 of the Rules, it was

¹⁵³ See the Defence's Appeal Brief, *supra* note 1, p. 42.

¹⁵⁴ *Idem*, para. 124.

¹⁵⁵ *Idem*, para. 126.

¹⁵⁶ *Idem*, p. 42.

¹⁵⁷ See the First Decision on Reparations, *supra* note 27, para. 35.

¹⁵⁸ See the Impugned Decision, *supra* note 2, para. 196.

not required to specify “*any relevant supporting documentation*” referred to in para. 1(g) of that provision. Indeed, it would not be logical to find that there exists an obligation to specify relevant supporting documents for victims’ applications for reparations if there is no application-based procedure in place given the collective nature of the reparations ordered. As will be argued below,¹⁵⁹ the Defence fails to demonstrate that the Trial Chamber committed a discernible error in deciding not to rule on the merits of individual applications for reparations.

100. It is submitted that in accordance with the Court’s practice, a Trial Chamber is under no obligation to specify which supporting documents must be provided by victims to meet the burden of proof. In this regard, the Appeals Chamber held that “*a trial chamber may find a person eligible for reparations, even where he or she has not supplied any documentation*”.¹⁶⁰ In the present case, the Trial Chamber found that “[v]ictims eligible for reparations must provide sufficient proof of identity, of the harm suffered, and of the causal link between the crime and the harm”,¹⁶¹ and further clarified that “[w]hat the ‘appropriate’ standard of proof is and what is ‘sufficient’ for the purpose of a victim meeting the burden of proof, will depend upon the specific circumstances of the case, including any difficulties the victims may face in obtaining evidence”.¹⁶² It is therefore submitted that the Trial Chamber addressed the matter to the necessary extent, bearing in mind that it had ordered collective reparations, the eligibility system for which would be administered by the TFCV. By considering the relevant standards of proof, it set out which burden a victim presenting himself or herself to the relevant administrative body would have to meet. It is submitted that doing so was sufficient. In light of the collective nature of the reparations, the Trial Chamber was under no obligation to provide a detailed analysis of which specific documents would satisfy the burden of proof.

¹⁵⁹ See paragraphs 155-159 below in relation to the Defence’s Ground of Appeal 12.

¹⁶⁰ See the *Lubanga* 2019 Judgment, *supra* note 64, para. 204.

¹⁶¹ See the Impugned Decision, *supra* note 2, para. 137.

¹⁶² *Idem*, para. 77.

101. Moreover, it is submitted that the Defence also misrepresents the case law it refers to when it argues that “*Trial Chamber VI should have provided guidance as to which documents could be provided, as has been done by other trial chambers*”. Contrary to the Defence’s contention, in the *Katanga* case, Trial Chamber II did not provide guidance as to which documents had to be submitted in support of the victims’ applications for reparations, but directed the legal representative to collect, *to the extent possible*, documentation to support the extent of the harm suffered and the causal nexus between the harm alleged and the crime committed.¹⁶³ In the *Katanga* Order for Reparations, Trial Chamber II then simply noted which types of documents the victims had actually been able to present in support of their requests for reparations.¹⁶⁴ It therefore cannot be deduced from this, that there is an obligation on a trial chamber to provide a list of documents which victims must present in support of their application for reparations. The Defence’s assertion that other Chambers have provided guidance as to which documents could be presented is not supported either by the practice in the *Lubanga*¹⁶⁵ and the *Al Mahdi*¹⁶⁶ cases to which the Defence refers in its Appeal Brief.¹⁶⁷

102. Finally, and contrary to the Defence’s contention,¹⁶⁸ the Trial Chamber did not presume the impossibility for victims to provide documents. Instead, and as already argued above, the Trial Chamber made it clear that eligible victims must provide sufficient proof,¹⁶⁹ but pointed to difficulties the victims *may* encounter in gathering

¹⁶³ See the “Decision on the ‘*Demande de clarification concernant la mise en oeuvre de la Règle 94 du Règlement de procédure et de preuve*’ and future stages of the proceedings” (Trial Chamber II), [No. ICC-01/04-01/07-3546-tENG](#), 8 May 2015, para. 17.

¹⁶⁴ See the “Order for Reparations pursuant to Article 75 of the Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3728-tENG](#), 24 March 2017, para. 55 (the “*Katanga* Reparations Order”).

¹⁶⁵ The Appeals Chamber quoted Trial Chamber II’s observation of the types of documents the victims had been able to present in support of their applications, see the *Lubanga* 2019 Judgment, *supra* note 64, paras. 182-183.

¹⁶⁶ Trial Chamber VIII held that it “*it has freely considered all submissions, applications, supporting materials, expert reports and other relevant information*”, without specifying which documents it had deemed necessary, see the *Al Mahdi* Reparations Order, *supra* note 75, para. 57 (emphasis added).

¹⁶⁷ See the Defence’s Appeal Brief, *supra* note 1, fn. 181.

¹⁶⁸ *Idem*, paras. 128-130.

¹⁶⁹ See the Impugned Decision, *supra* note 2, para. 137.

evidence, including the loss of important documents as a result of the crimes against property for which Mr Ntaganda has been convicted, difficulties in obtaining or producing copies of official documents in the DRC,¹⁷⁰ and the passage of time since the crimes were committed.¹⁷¹ It held that said difficulties ought to be taken into consideration for the purpose of the eligibility screening to be carried out at the implementation stage.¹⁷² These considerations of the Trial Chamber do not constitute or amount to a ‘presumption’ as argued by the Defence.

103. Accordingly, it is submitted that the Defence fails to show that the Trial Chamber committed an error of law in relation to the burden of proof. Since the Defence fails to demonstrate an error, this part of the Defence’s Ground of Appeal 4 should also be dismissed.

E. Burden of proof in relation to the damage to the Sayo health centre

104. The Defence argues under the present Ground of Appeal that the Trial Chamber erred by relying on unreliable evidence to meet the burden of proof in relation to the damage to the Sayo health centre.¹⁷³ In particular, it contends that the Trial Chamber erred in considering the cost of repair as suggested by one of the Appointed Experts.¹⁷⁴

105. The Legal Representative recalls that the Trial Chamber appointed the Experts for the specific purpose of being able to rely on their expertise in order to assist its determinations during the reparations proceedings.¹⁷⁵ It would thus be self-defeating if the Trial Chamber could not rely on the reports of the Experts it has appointed. Moreover, as the Defence itself indicated, the conclusions of Dr Gilmore’s Report on

¹⁷⁰ *Idem*, para. 138.

¹⁷¹ *Idem*, para. 140.

¹⁷² *Ibid.*

¹⁷³ See the Defence’s Appeal Brief, *supra* note 1, paras. 134-139.

¹⁷⁴ *Idem*, para. 139.

¹⁷⁵ See the “Decision appointing experts on reparations” (Trial Chamber VI), No. ICC-01/04-02/06-2528-Conf, 14 May 2020. A public redacted version was notified on the same day as [No. ICC-01/04-02/06-2528-Red](#). See also 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(b).

the damage caused to the Sayo health centre is based on a variety of sources.¹⁷⁶ While criticising Dr Gilmore's approach, the Defence does not explain how the Expert was supposed to further proceed for the purpose of her assessment of the cost to repair the harm related to the damage to the Sayo health centre.

106. The Defence also argues that Dr Gilmore's Report cannot sustain a finding that meets the "*causal nexus that the damage to the centre was extensive, and was caused by the UPC/FPLC*",¹⁷⁷ and that the Trial Chamber's reliance of said report was an error.¹⁷⁸

107. In essence, the Defence is alleging that the Trial Chamber abused its discretion when considering the cost to repair the Sayo health centre as suggested by Dr Gilmore. However, it is submitted that the Defence fails to demonstrate that the criteria for establishing an abuse of judicial discretion have been met. Particularly, the Defence fails to show that the Trial Chamber's reliance on Dr Gilmore's Report was "*so unfair or unreasonable as to force the conclusion that the Chamber failed to exercise its discretion judiciously*".¹⁷⁹ In this regard, the Legal Representative notes that while referring to Dr Gilmore's assessment of the cost to repair the damage to the Sayo health centre, the Trial Chamber did not make any finding as to whether and to which extent it endorsed said assessment. In setting the overall cost to repair, the Trial Chamber did not set specific amounts of money aimed at addressing different types of harm. It provided the TFV with discretion on the matter. Whether and to which extent the Trial Chamber erred in delegating tasks to the TFV will be addressed in the discussion of the Defence's Ground of Appeal 10 below.

108. In conclusion, since the Defence fails to demonstrate any error, the Defence's Ground of Appeal 4 should be dismissed in its entirety.

¹⁷⁶ See the Defence's Appeal Brief, *supra* note 1, paras. 137.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Idem*, para. 139.

¹⁷⁹ See the "Judgment on the Prosecutor's appeal against Trial Chamber V(B)'s 'Decision on Prosecution's application for a finding of non-compliance under Article 87(7) of the Statute'" (Appeals Chamber), [No. ICC-01/09-02/11-1032 OA5](#), 19 August 2015, para. 25. See also the *Katanga* Appeals Judgment on Reparations, *supra* note 134, para. 44.

Defence Ground of Appeal 6: Trial Chamber VI erred in law by holding that children born out of rape are included in the category of direct victims.¹⁸⁰

109. In relation to children born out of rape, the Defence argues that the Trial Chamber erroneously considered that children born out of rape are direct victims.¹⁸¹ It submits that by making this finding, the Trial Chamber committed an error of law that materially affects the reparations process.¹⁸² In this regard, the Defence further contends that “*as direct victims, of sexual violence, children born out of rape would appear to benefit from the same presumptions [...] of evidentiary proof*”.¹⁸³

110. The Legal Representative recalls that in deciding the status of children born out of rape committed as part of the crimes for which Mr Ntaganda has been convicted, the Trial Chamber recalled its findings contained in the Judgment where it held that child soldiers and women belonging to the civilian population became pregnant as a result of rape and sexual slavery committed against them by the UPC/FPLC troops, and that children may have been born as a result of the crimes committed against these women and girls.¹⁸⁴ It then recalled the difference between indirect and direct victims,¹⁸⁵ as well as the submissions of the parties on the matter¹⁸⁶ and concluded that “*in light of the circumstances of the case, children born out of rape and sexual slavery may qualify as direct victims, as the harm they suffered is a direct result of the commission of the crimes of rape and sexual slavery*”.¹⁸⁷

111. It is submitted that there is nothing in the finding of the Trial Chamber that suggests that it committed a discernible error of law. To the contrary, the Trial Chamber explained that, in its appreciation, the child conceived by virtue of the sexual

¹⁸⁰ See the Defence’s Notice of Appeal, *supra* note 3, p. 12

¹⁸¹ See the Defence’s Appeal Brief, *supra* note 1, para. 111.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ See the Impugned Decision, *supra* note 2, para. 120.

¹⁸⁵ *Idem*, para. 121.

¹⁸⁶ *Idem*, para. 122.

¹⁸⁷ *Ibid.*

violence committed is the direct consequence of the criminal act.¹⁸⁸ The Defence, discussing the concept of direct harm thus far developed by trial chambers of the Court as well as those developed in the international jurisprudence,¹⁸⁹ does not demonstrate that the Trial Chamber committed a legal error by, basically, finding that the conception in such specific circumstances in itself constituted the harm. By acknowledging that the statutory texts do not set out a definition of direct victims,¹⁹⁰ it even basically conceded that a trial chamber has discretionary leeway in defining the parameters according to the circumstances of the case before it. This is what the Trial Chamber did in the present case.

112. The Legal Representative makes the following submissions in the event the Appeals Chamber were convinced by the Defence's contentions. Even if a legal error was committed, the Defence fails to show how the Trial Chamber's finding that children born out of rape are direct rather than indirect victims materially affects the Impugned Decision. Indeed, the Defence has not even attempted to show that the Trial Chamber would have rendered a decision that is substantially different from the decision that was affected by the error, had it not made the error, as required by the applicable standard of appellate review.¹⁹¹

113. The Defence further alleges that qualifying children born out of rape as direct victims would materially affect the reparations process because this group of victims would benefit from a presumption of harm as direct victims, which they would not if they had been categorised as indirect victims.¹⁹² However, it is submitted that the Defence's contention ignores the fact that indirect victims may also benefit from a

¹⁸⁸ *Idem*, paras. 121-122.

¹⁸⁹ See the Defence's Appeal Brief, *supra* note 1, paras. 107-108.

¹⁹⁰ *Idem*, para. 107.

¹⁹¹ See the "Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction" (Appeals Chamber), No. ICC-01/04-01/06-3121-Conf A5, 1 December 2014, paras 18-19. A public redacted version was issued on the same day as [No. ICC-01/04-01/06-3121-Red A5](#).

¹⁹² See the Defence's Appeal Brief, *supra* note 1, para. 111.

presumption of harm.¹⁹³ Therefore, as presumptions of harm are not exclusive to direct victims, whether children born out of rape are recognised as direct or indirect victims, would not in fact materially affect the reparation process.

114. The Defence also posits that “*packaging [children born out of rape] into the same category as direct victims and affording them the same presumptions of physical harm is an unsound approach, which may preclude an accurate characterisation of the harm suffered*”.¹⁹⁴ It is submitted that the Defence’s contention is highly speculative as it suggests that the Trial Chamber or the TFV would wrongly characterise the harm suffered by children born out of rape or would somehow mix up the harm suffered by raped or sexually enslaved women and the harm suffered by the children born thereof. Granting two different groups of victims the same lowered evidentiary standard, namely the presumption of harm, does not mean recognising that they have suffered the same harm. The Defence’s argument seems to conflate these two and is therefore unpersuasive.

115. According to the Defence, recognising children born out of rape as direct rather than indirect victims would “*necessarily lead to an inaccurate number of direct victims, with the resultant presumptions of harms artificially enlarging the financial liability of the Convicted Person*”.¹⁹⁵ It is submitted that the Defence’s assumption is misguided as in the present case all victims are expected to receive collective reparations. In particular, the victims are expected to receive equal reparations so as to avoid creating perceptions of hierarchy between them and of placing a higher value on some forms of harm, and they are meant to be provided with sustainable and long-term livelihood means.¹⁹⁶ Accordingly, when benefiting from a certain type of reparation, it will not matter whether the victim is a direct or indirect one. Moreover, since the Trial Chamber

¹⁹³ See the *Lubanga* 2017 Decision on Reparations Award, *supra* note 94, para. 185. See also the CLR2’s Final Submissions on Reparations, in which it is argued that children born out of rape should benefit from a presumption of harm, even as indirect victims, *supra* note 44, paras. 12 and 30.

¹⁹⁴ See the Defence’s Appeal Brief, *supra* note 1, para. 112.

¹⁹⁵ *Idem*, para. 113.

¹⁹⁶ See the Impugned Decision, *supra* note 2, para. 194.

did not allocate a certain amount to direct victims and another to indirect victims, the differentiation has no bearing on the financial liability of Mr Ntaganda. Thus, whether children born out of rape are recognised as direct or indirect victims, Mr Ntaganda's financial liability will remain the same.

116. The Legal Representative submits that the Defence fails to demonstrate that the Trial Chamber committed a discernible error when it found that children born out of rape are direct rather than indirect victims. If the Appeals Chamber were nevertheless persuaded by the Defence's arguments in this regard, it is submitted that such error, if indeed committed, does not materially affect the outcome of the Impugned Decision. For all these reasons, the Defence's Ground of Appeal 6 should be dismissed in its entirety.

Defence Ground of Appeal 7: Trial Chamber VI erred in law in its interpretation of the term indirect victim, erroneously holding that "a person with whom they did not have a close personal relationship, but which nevertheless was of significant importance in their lives, may be entitled to reparations".¹⁹⁷

117. The Defence argues that the Trial Chamber's erred in holding that indirect victims who suffered personal harm as a result of the commission of a crime against a person with whom they did not have a close personal relationship, but which nevertheless was of significant importance in their lives, may be entitled to reparations. According to the Defence, the Trial Chamber's finding that indirect victims can establish the harm suffered in relation to a person of 'significant importance in their lives' departs from the standard set in the *Lubanga* case, without any justification, constituting an error of law.¹⁹⁸

118. The Defence further argues that this ruling constitutes an abuse of the Trial Chamber's discretion by creating a new category of indirect victims, which departs

¹⁹⁷ See the Defence's Notice of Appeal, *supra* note 3, p. 12.

¹⁹⁸ See the Defence's Appeal Brief, *supra* note 1, para. 114.

from the relevant jurisprudence, introducing a level of subjectivity into the process of the assessment of indirect victims.¹⁹⁹

119. It is submitted that, contrary to the Defence's contention, the Trial Chamber did not depart, but rather complemented the existing definition of indirect victims. In particular, the Trial Chamber used the word "similarly", which denotes likeness and not a contrast of the existing definition of indirect victims.²⁰⁰ The Trial Chamber's approach is in line with the Appeals Chamber's reasoning in the *Katanga* case, where the Defence's arguments in support of a limited definition of 'indirect victim' were rejected. In that case, it was held that "*the approach of human rights courts does not create a principle that would constrain a trial chamber's discretion in its assessment of harm under article 75(1) of the Statute. Rather, the approach is case-specific and focuses on the existence of harm*".²⁰¹ Similarly, in the Impugned Decision, the Trial Chamber clearly and explicitly focused on the need to show personal harm, rather than proving one belonging to a specific category of persons, by stating that "[t]he indirect victim must nevertheless demonstrate to have suffered harm because of the commission of a crime against the direct victim".²⁰²

120. Thus, the Defence's contention that these indirect victims "*would only need to state that the [direct] victim was subjectively of significant importance to them*",²⁰³ is inaccurate. In fact, they would still need to show that they suffered harm as a result of the commission of a crime against the direct victim for which Mr Ntaganda has been convicted. The Defence argues in relation to the murder of Abbé Bwanalunga in Mongbwalu that "[w]hile it is clear that the disappearance of the priest may well be a great loss for the community, this will not necessarily cause deep emotional distress to everyone within his extended congregation".²⁰⁴ While this is true, the Trial Chamber made it clear

¹⁹⁹ *Idem*, para. 117.

²⁰⁰ See the Impugned Decision, *supra* note 2, para. 127.

²⁰¹ See the *Katanga* Appeals Judgment on Reparations, *supra* note 134, para. 120.

²⁰² See the Impugned Decision, *supra* note 2, para. 127.

²⁰³ See the Defence's Appeal Brief, *supra* note 1, para. 117.

²⁰⁴ *Idem*, para. 115.

that only the persons who can prove on a balance of probabilities that the priest had a significant importance in their lives and that they suffered harm as a consequence of his murder may be entitled to reparations.²⁰⁵

121. In conclusion, it is submitted that under the present Ground of Appeal the Defence fails to demonstrate that the Trial Chamber committed a discernible error. Accordingly, the Defence's Ground of Appeal 7 should be rejected.

*Defence Ground of Appeal 8: Trial Chamber VI erred in law when resorting to presumptions of specific harms in relation to certain categories of victims, thereby unjustifiably departing from the relevant jurisprudence.*²⁰⁶

122. The Defence argues that the Trial Chamber erred in its general approach to presumptions.²⁰⁷ Particularly, it argues that the Trial Chamber erred in finding that physical harm is to be presumed for victims of the attacks if they specifically experienced the attacks.²⁰⁸ The Defence also argues that the Trial Chamber erred in finding that psychological harm is to be presumed for victims who lost their home or material assets with a significant effect on their daily life contrary to the jurisprudence established by the Appeals Chamber in the *Katanga* case.²⁰⁹

123. Before discussing the three issues raised under the present Ground of Appeal, the Legal Representative first recalls the Appeals Chamber's findings on factual presumptions at the reparations stage, according to which: (i) the reasonableness of a factual presumption drawn by a trial chamber in reparation proceedings will depend upon the circumstances of the case, and (ii) a party challenging a factual presumption must demonstrate that no reasonable trier of fact could have formulated the presumption in question in light of the particular set of circumstances in that case.²¹⁰

²⁰⁵ See the Impugned Decision, *supra* note 2, para. 127.

²⁰⁶ See the Defence's Notice of Appeal, *supra* note 3, p. 13.

²⁰⁷ See the Defence's Appeal Brief, *supra* note 1, p. 51.

²⁰⁸ *Idem*, p. 55.

²⁰⁹ *Idem*, p. 57.

²¹⁰ See the *Katanga* Appeals Judgment on Reparations, *supra* note 134, paras. 76-77.

A. *The Trial Chamber's approach to presumptions*

124. The Defence argues that “*there was no assessment of alleged evidentiary difficulties arising for specific types of harm*”.²¹¹ It is submitted that the Defence’s implied contention that a trial chamber must assess alleged evidentiary difficulties arising for *specific* types of harm, finds no support in the Court’s practice in the *Lubanga* and *Katanga* cases as will be discussed below. Instead, and as done in the Impugned Decision, the Trial Chamber pointed in general terms to difficulties the victims may encounter in gathering evidence, including the loss of important documents as a result of the crimes against property for which Mr Ntaganda has been convicted, difficulties in obtaining or producing copies of official documents in the DRC,²¹² and the passage of time since the crimes were committed.²¹³ It held that said difficulties ought to be taken into consideration for the purpose of the eligibility screening to be carried out at the implementation stage.²¹⁴

125. The Trial Chamber further pointed to the additional difficulties that victims may face in obtaining or producing evidence to demonstrate that they were victims of rape and/or sexual slavery.²¹⁵

126. The Legal Representative notes that in referring to said difficulties, the Trial Chamber relied, *inter alia*, on submissions made by two neutral bodies, namely the TFV and the Registry, as well as on the Court’s practice in the *Lubanga* and *Katanga* cases that pertain to crimes committed in the same region during the same time frame. In light of this, and given the collective nature of the reparations ordered, it is submitted that contrary to the Defence’s contention,²¹⁶ the adoption of presumptions in the present case was both necessary and justified. The Defence fails to demonstrate that it was unreasonable for the Trial Chamber to consider the difficulties in obtaining

²¹¹ See the Defence’s Appeal Brief, *supra* note 1, para. 152.

²¹² See the Impugned Decision, *supra* note 2, para. 138.

²¹³ *Idem*, para. 140.

²¹⁴ *Ibid.*

²¹⁵ See the Impugned Decision, *supra* note 2, para. 139.

²¹⁶ See the Defence’s Appeal Brief, *supra* note 1, para. 158.

evidence in general terms rather than identify the specific difficulties per harm. This part of the Defence's Ground of Appeal 8 should therefore be dismissed.

B. Presumptions of physical harm for victims of the attacks who personally experienced the attacks

127. The Defence argues that the Trial Chamber erred in creating presumptions of physical harm for victims of the attacks who personally experienced the attacks.²¹⁷ Relying on the *Katanga* case, the Defence contends that the trial chamber in that case “decided that the victims of the Bogoro attack should benefit from a presumption of psychological harm after having established, on a balance of probabilities, that they suffered another type of harm”.²¹⁸ The Legal Representative submits that this is a misconstruction of the *Katanga* Trial Chamber's findings. In fact, the trial chamber in that case held that the fact alone of having been in Bogoro on 24 February 2003 during the attack and of having seen or fled the massacres and atrocities perpetrated had major ramifications for the mental health of the persons present that day.²¹⁹

128. The Defence again misrepresents the findings in the *Katanga* case, when it argues that in the Impugned Decision, the Trial Chamber had “removed the requirement that victims of the attack should first prove ‘another type of harm’ in order to benefit from a presumption of psychological harm”.²²⁰ In fact, the *Katanga* Trial Chamber did not require victims to first prove ‘another type of harm’ in order to benefit from a presumption of psychological harm. It made a finding on the existence of psychological harm connected to the experience of the attack, irrespective of any other psychological harm²²¹ and, *separately*, that if a victim alleged physical or material harm, psychological harm would then be presumed even if he or she made no explicit allegation of psychological harm.²²²

²¹⁷ *Idem*, paras. 159-165.

²¹⁸ *Idem*, para. 160.

²¹⁹ See the *Katanga* Reparations Order, *supra* note 164, para. 125.

²²⁰ See the Defence's Appeal Brief, *supra* note 1, para. 162.

²²¹ See the *Katanga* Reparations Order, *supra* note 164, paras. 125 and 131.

²²² *Idem*, paras. 129.

129. With regard to the presumption of physical harm for direct victims of attempted murder and of the crimes committed during the attacks, who personally experienced the attacks, the Trial Chamber in the present case followed the decision of Trial Chamber II in the *Lubanga* case, which held that “*it is unquestionable that victims endure physical suffering in connection with the very nature of the armed conflicts in which they were involved*”.²²³ Therefore, and contrary to the Defence’s contention, the Trial Chamber’s finding on the presumption of physical harm is supported by the Court’s previous case law.

130. Since the Defence fails to demonstrate an error, this part of the its Ground of Appeal 8 should also be dismissed.

C. Presumption of psychological harm for victims who lost their home or material assets with significant impact in their lives

131. The Defence further argues that the Trial Chamber erred in creating a presumption of psychological harm for victims who lost their home or material assets with significant impact in their lives.²²⁴ According to the Defence, the Trial Chamber provided no justification as to why this presumption was adopted.²²⁵

132. The Legal Representative submits that the Defence’s contentions mischaracterise the Impugned Decision. The Trial Chamber explicitly referred to its own findings in the Sentencing Judgement regarding the suffering experienced by the victims who lost their home or material assets with significant impact in their lives.²²⁶ Indeed, in the Sentencing Judgment, the Trial Chamber found, *inter alia*, that:

“[a]s far as destroying the adversary’s property is concerned, when destruction of property concerns houses, the perpetrators do not merely destroy structures, but they also destroy people’s homes – a place where the victims ought to have been able to feel shielded and safe. Destruction of houses may therefore be a crime against property, but

²²³ See the *Lubanga* 2017 Decision on Reparations Award, *supra* note 94, para. 184.

²²⁴ See the Defence’s Appeal Brief, *supra* note 1, paras. 166-168.

²²⁵ *Idem*, para. 168.

²²⁶ See the Impugned Decision, *supra* note 2, para. 147.

it does not merely impact that property; the crime also deprives civilians of a private place, a shelter and a sense of security.

[...]

The Chamber found that although there was ‘some disparity in the value of the looted items [...] these items represented the bulk of the victims’ possessions, played an important role in the victims’ day-to-day lives and/or their business’. In addition, the pillage of harvest affected the victims’ ‘livelihood and availability of food until new crops would have grown and could be harvested’. Many civilians were affected by the looting and were sometimes left without anything.

[...]

In addition, the Chamber notes that the lives of the civilians living in these places were severely impacted by these acts. The Defence submits that only thatched-roof houses were burned down and that this type of houses could be re-built ‘in a day’. The Chamber considers that the Defence improperly attempts to downplay the impact of the destruction. The monetary value of a structure is not what is protected by the underlying rules of IHL; rather what is protected is the fact that these structures belong to the civilians who live in them. When someone’s dwelling is burned down, the allegedly low value of rebuilding the structure does not change the fact that someone’s home was destroyed, and that the lives of those living in the dwelling were significantly disrupted”.²²⁷

133. It is submitted that by ignoring the abovementioned findings of the Trial Chamber, the Defence fails to properly substantiate the alleged error of law. Furthermore, the Defence makes no attempt to demonstrate how the alleged error materially affects the Impugned Decision warranting the intervention of the Appeals Chamber.

134. Considering the above, the Legal Representative contends that the Defence fails to demonstrate that no reasonable trier of fact could have formulated the abovementioned presumptions in light of the particular set of circumstances in the present case. Accordingly, the Defence’s Ground of Appeal 8 should therefore be rejected in its entirety.

²²⁷ See the Sentencing Judgment, *supra* note 12, paras. 137, 139 and 146.

Defence Ground of Appeal 9: Trial Chamber VI erred in law in applying a wrong standard for the establishment of the causal link, with regard to the possible breaks in the chain of causation.

135. The Defence argues that the Trial Chamber failed to consider that, particularly in the context of a protracted armed conflict, the causal link may be broken by other incidents, which may impact the extent and type of harm suffered by the victims, or the extent and scope of damage to property.²²⁸ The Defence particularly takes issue with the Trial Chamber's approach to the establishment of a causal link in relation to transgenerational harm²²⁹ and the damage caused to the Sayo health centre.

136. It is submitted that the Defence contradicts itself by first recognising that the Trial Chamber has correctly held that "*causation between an act and its result may be broken by a subsequent event which the person who committed the initial act could not have reasonably foreseen*",²³⁰ but later stating that the Trial Chamber "*failed to even consider whether the chain of causation between an act and its result had been broken by a subsequent unforeseeable event*".²³¹

137. Second, contrary to the Defence's contention,²³² the Trial Chamber did not negate that the harm suffered by the victim must be attributable to the convicted person. In fact, the Trial Chamber stressed "*that the applicant shall provide sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case*".²³³

138. The Defence refers to transgenerational harm as an example of the Trial Chamber's alleged failure to consider whether there was a break in the chain of

²²⁸ See the Defence's Appeal Brief, *supra* note 1, para. 140.

²²⁹ *Idem*, paras. 142-146.

²³⁰ *Idem*, para. 140.

²³¹ *Idem*, para. 141.

²³² *Idem*, para. 140.

²³³ See the Impugned Decision, *supra* note 2, para. 135.

causation.²³⁴ It argues that the Trial Chamber departed from the Court's practice, namely that established in the *Katanga* case.²³⁵

139. It is submitted that the Defence's reliance on the *Katanga* practice on transgenerational harm in support of its contentions is inapposite. Indeed, and as already argued above, contrary to the *Katanga* case, the Trial Chamber in the present case decided that reparations should be collective in nature, which consequently meant that it did not have to individually assess victims' applications alleging transgenerational harm. The Trial Chamber sufficiently explained *how* transgenerational harm may occur, and made it clear that the causal nexus between the alleged harm and the crimes for which the defendant was convicted needs to be established.²³⁶

140. The Defence also argues that the Trial Chamber erred by finding that the date of birth of the applicant was not a relevant factor.²³⁷ The Legal Representative submits that this is a misrepresentation of the Trial Chamber's holding. In the Impugned Decision, the Trial Chamber found that "*children of the direct victims may have suffered transgenerational trauma regardless of the date when they were born, if they can show that their harm is a result of the crimes for which Mr Ntaganda was found guilty*".²³⁸ Thus, the Trial Chamber did not find that the date of birth of a child was an irrelevant factor. This factor may be relevant amongst others but it is not the sole factor that should be taken into account. What is crucial is that the victim concerned is able to demonstrate that he or she suffered transgenerational harm as a result of the crimes for which Mr Ntaganda has been convicted. In finding so, the Trial Chamber did not commit any error.

²³⁴ See the Defence's Appeal Brief, *supra* note 1, paras. 142-145.

²³⁵ *Idem*, paras. 142-146.

²³⁶ See the Impugned Decision, *supra* note 2, paras. 73-75.

²³⁷ See the Defence's Appeal Brief, *supra* note 1, para. 146.

²³⁸ See the Impugned Decision, *supra* note 2, para. 182.

141. With regard to the establishment of the causal link between the damage caused to the Sayo health centre and the UPC/FPLC, the Defence argues that “*in the context of a protracted conflict in Ituri, it is impossible to establish on the basis of the proximate cause standard that any damage to the Sayo health centre was caused by the UPC/FPLC in 2002*”.²³⁹

142. The Legal Representative recalls that Mr Ntaganda has been found guilty for intentionally directing attacks against protected objects as a war crime against the health centre in Sayo in the context of the First Operation.²⁴⁰ Accordingly, Mr Ntaganda is liable to repair harm incurred to the Sayo health centre.

143. Under the present Ground of Appeal, in essence, the Defence takes issue with the extent of the harm to be repaired by Mr Ntaganda.²⁴¹ As already argued above, while referring to Dr Gilmore’s assessment of the cost to repair the damage to the Sayo health centre, the Trial Chamber did not make any finding as to whether and to which extent it endorsed said assessment. In setting the overall cost to repair, the Trial Chamber did not specify any amount of money aimed at concretely addressing different types of harm. The Defence even seems to acknowledge that the Trial Chamber did not rule on the quantum to be paid.²⁴² Instead, the Trial Chamber provided the TFV with discretion on the matter. Whether and to which extent the Trial Chamber erred in delegating tasks to the TFV will be addressed in the discussion of the Defence’s Ground of Appeal 10 below.

144. However, under the present Ground of Appeal, it is submitted that contrary to the Defence’s contention, the Trial Chamber took into consideration the Defence’s submission that attention should be paid to the possible breaks in the chain of causation, and acknowledged that causation between an act and its result may be broken by a subsequent event which the person who committed the initial act could

²³⁹ See the Defence’s Appeal Brief, *supra* note 1, para. 147.

²⁴⁰ See the *Ntaganda* Judgement, *supra* note 4, para. 1199.

²⁴¹ See the Defence’s Appeal Brief, *supra* note 1, paras. 147-148.

²⁴² *Idem*, para. 148.

not have reasonably foreseen.²⁴³ The Defence's contentions to the contrary amount to no more than a mere disagreement with the Trial Chamber's ruling, which is not sufficient to establish an error.

145. In conclusion, the Legal Representative submits that, for the reasons set out above, the Defence's Ground of Appeal 9 should be dismissed.

*Defence Ground of Appeal 10: Trial Chamber VI erred in law by failing to put in place a monitoring system of implementation.*²⁴⁴

146. The Defence argues that the Trial Chamber erred by delegating the assessment process to the TFV without any guidelines or criteria in place.²⁴⁵ The Legal Representative concurs with this characterisation of the Trial Chamber's decision to delegate the administrative eligibility screening to the TFV.²⁴⁶ The Legal Representative further concurs with the Defence's argument that the Trial Chamber went on to make concrete pronouncements on the precise quantum of Mr Ntaganda's liability without any understanding of how many victims were entitled to reparations, or on what basis.²⁴⁷ While the Legal Representative opposes the Defence's contention that the screening should be an application-based process, he concurs with the proposition that the absence of any criteria and guidelines makes challenges of the TFV's decisions impossible. However, in this regard, it is important to note that the Defence mistakenly avers that the convicted person enjoys a procedural right to challenge decisions on the eligibility of individual victims.

147. Victims have been accorded the right to challenge negative eligibility decisions by the TFV, whereas the Defence does not have such a right. The Legal Representative therefore only concurs with the Defence's challenge as regards the materiality of the

²⁴³ See the Impugned Decision, *supra* note 2, para. 134.

²⁴⁴ See the Defence's Notice of Appeal, *supra* note 3, p. 14.

²⁴⁵ See the Defence's Appeal Brief, *supra* note 1, paras. 177.

²⁴⁶ See the CLR2's Appeal Brief, *supra* note 56, paras. 129-131 and 133.

²⁴⁷ See the Defence's Appeal Brief, *supra* note 1, para. 177.

error committed by the Trial Chamber, however, he opposes the Defence's submission that this error resulted in the Defence being deprived of a possibility to challenge the TFV's assessments. In the *Al Mahdi* case, it has been made clear that a right to request review is vested solely in the victim applicants, not the convicted person.²⁴⁸

148. Accordingly, the Legal Representative submits that the Defence's Ground of Appeal 10 should only be granted in part, namely that the Appeals Chamber find that the Trial Chamber erred in failing to set criteria and guidelines for the TFV's eligibility assessment, insofar as it is providing the TFV with unfettered discretion in the matter.²⁴⁹ The remainder of this Ground of Appeal should be rejected as the Defence does not demonstrate that it was prejudiced by the Trial Chamber's error. Rather, the Trial Chamber's error resulted in victims being deprived of the right to challenge negative eligibility assessments, as set out in **Ground of Appeal 6** of the Legal Representative's Appeal.²⁵⁰

*Defence Ground of Appeal 11: Trial Chamber VI erred in law by entrusting the TFV with making legal determinations which were incumbent on the Trial Chamber VI to make.*²⁵¹

149. While the Legal Representative has also identified errors in the way and extent to which the Trial Chamber has delegated tasks to the TFV,²⁵² he partially opposes the Defence's present Ground of Appeal and only partially concurs with the arguments presented in support thereof. Specifically, the Legal Representative merely concurs with the general proposition that the Trial Chamber erred in the way in which it delegated certain decision-making functions to the TFV. He thus opposes the Defence's contention that delegation in and of itself was erroneous. In particular, the Legal Representative opposes the Defence's submissions with respect to the delegation

²⁴⁸ See the *Al Mahdi* Appeals Judgment on Reparations, *supra* note 77, para. 72. See also the *Al Mahdi* Reparations Order, *supra* note 75, para. 146(v).

²⁴⁹ See the CLR2's Appeal Brief, *supra* note 56, **Ground of Appeal 6**.

²⁵⁰ *Idem*, paras. 130-132.

²⁵¹ See the Defence's Notice of Appeal, *supra* note 3, p. 15.

²⁵² See the CLR2's Appeal Brief, *supra* note 56, **Ground of Appeal 6**.

of the eligibility screening to the TFV as such.²⁵³ Common ground between the Defence's and his own Appeal as regards the delegation of judicial powers is only found as regards the *manner* in which the Trial Chamber proceeded to delegate.

150. Specifically, the Legal Representative concurs with the Defence that the “*extent of the abdication of judicial functions to the TFV in the Ntaganda case is entirely unprecedented*”²⁵⁴ and adds that it is equally erroneous as unprecedented. As set out in his own **Ground of Appeal 6**, the Trial Chamber erred in delegating to the TFV a number of judicial functions while failing to set clear guidelines as regards the execution of administrative tasks, such as the eligibility assessment, which is the only matter that can and should be delegated to the TFV.²⁵⁵ It is submitted that the Defence correctly points out that the Trial Chamber, contrary to the *Al Mahdi* precedent, failed to set out any criteria for the administrative screening.²⁵⁶ Yet, the Legal Representative decidedly opposes the Defence's contention that there exists a requirement to involve the Defence in the assessment process.²⁵⁷ Therefore, the Legal Representative only concurs with the Defence to the extent that it has identified the error the Trial Chamber committed when it left the *design* of the eligibility screening, *including* criteria and timeline, up to the TFV and only for scrutiny of the Trial Chamber once suggested to the latter.²⁵⁸

151. Thus, the Legal Representative concurs with the Defence that, “[a]t a minimum, the Trial Chamber should have set out a clear procedure for the TFV to follow, at least with the same level of detail as in *Al Mahdi*”.²⁵⁹

²⁵³ See the Defence's Appeal Brief, *supra* note 1, paras. 202-204.

²⁵⁴ *Idem*, para. 205.

²⁵⁵ See the CLR2's Appeal Brief, *supra* note 56, **Ground of Appeal 6**.

²⁵⁶ See the Defence's Appeal Brief, *supra* note 1, para. 206.

²⁵⁷ *Idem*, para. 207.

²⁵⁸ *Ibid*.

²⁵⁹ *Idem*, para. 208.

152. A further point of common ground between the Defence's and the Legal Representative's appeals is the error both parties identified in relation to the missing link between the harm the Trial Chamber listed and the award it ultimately set.²⁶⁰

153. Notwithstanding the identified general error in the manner decision-making powers were delegated, the Legal Representative submits that the present Ground of Appeal as formulated by the Defence is deficient in that it fails to demonstrate how the rights of the convicted person were materially affected by the Trial Chamber's error. As set out above, the convicted person has no role in the administrative assessment of potential beneficiaries where the award is of a collective nature. Furthermore, there could not have been any expectation of the Trial Chamber disregarding the previously established basic principles as regards reparations. What the Defence is asserting that the Trial Chamber should have done is, however, precisely that.

154. For all these reasons, the Legal Representative only partially supports the arguments presented under the present Ground of Appeal. The Defence's Ground of Appeal 11 as formulated by the Defence should therefore only be partially granted.

*Defence Ground of Appeal 12: Trial Chamber VI erred in law by holding – in light of the collective nature of the reparations awarded – that there was no need to rule on the merit of individual applications for reparations.*²⁶¹

155. The Defence advances a number of arguments with respect to its overarching complaint that the Trial Chamber should have established an application-based eligibility regime whereby victims would have to actively submit application forms to 'express their consent' for obtaining reparations.²⁶² It argues that in the *Lubanga* proceedings certain victims did not wish to partake in the reparations process and that it could not be presumed that victim communities hold the same views '*en bloc*'.²⁶³

²⁶⁰ See the Defence's Appeal Brief, *supra* note 1, para. 209. See also the CLR2's Appeal Brief, *supra* note 56, **Ground of Appeal 6**, para. 132.

²⁶¹ See the Defence's Notice of Appeal, *supra* note 3, p. 15.

²⁶² See the Defence's Appeal Brief, *supra* note 1, paras. 171-173.

²⁶³ *Idem*, paras. 172-173.

156. At its core, the Defence's argument concerns the Trial Chamber's discretion in setting out the modalities of collective reparations. However, the Defence fails to identify or illustrate how – in its appreciation – the Trial Chamber erred in the exercise of its discretion. As such, the Defence's submissions do not rise beyond a mere disagreement with the decision on the modalities of collective reparations. As outlined above, the jurisprudence of the Court confirms that in cases where collective reparations are ordered, administrative screening is understood to be the most efficient and effective way of deciding the eligibility of beneficiaries, whereas an application-based procedure has been found to be too time and resource intensive in such circumstances.²⁶⁴

157. Moreover, the Appeals Chamber in the *Lubanga* case specifically held that:

*“The factor of the number of “victims” under rule 98(3) of the Rules of Procedure and Evidence is not limited to the number of individuals who have requested reparations or to the number of victims approved to participate as victims in the trial proceedings pursuant to rule 89 of the Rules of Procedure and Evidence, but rather encompasses the findings thereon in the decisions on conviction and sentence. In this respect, the Appeals Chamber notes that, pursuant to rule 145(1)(c) of the Rules of Procedure and Evidence, a convicted person's sentence is based, inter alia, on the extent of the damage and the harm caused to victims and their families, which is determined by reference to the evidence presented at trial and the factual findings made thereon”.*²⁶⁵

158. The Appeals Chamber further considered the Court's legal texts to provide for two distinct procedures for awards for reparations. The first, which relates to individual reparation awards, is primarily application (“request”) based and is mainly regulated by rules 94 and 95 of the Rules. The second relates to collective reparation awards and is regulated in relevant part by rules 97(1) and 98(3) of the Rules.²⁶⁶

159. Moreover, the argument that an eligibility screening fails to take into account whether victims actually wish to obtain reparations²⁶⁷ is without merit. Eligible victims will present themselves personally to those carrying out the eligibility screening in the

²⁶⁴ See the *Katanga* Appeals Judgment on Reparations, *supra* note 134, para. 71.

²⁶⁵ See the *Lubanga* 3 March 2015 Judgment, *supra* note 73, para. 148(f).

²⁶⁶ *Idem*, para. 149.

²⁶⁷ See the Defence's Appeal Brief, *supra* note 1, paras. 173 and 181-182.

field. This act as such is indicative of a person's wish to receive reparations. The Legal Representative further takes issue with the suggestion that the views of victims have not adequately been reflected in the reparations process to date and submits that it is not the Defence's prerogative to convey any views or concerns of the victims to the Court. In all his submissions to date, the Legal Representative has reflected the views of the majority of victims alongside the views of those of his clients that differed from that of the majority. Moreover, the suggestion that "*Victim communities cannot be presumed to exist en bloc and hold identical views as to how the crimes against them can be repaired*"²⁶⁸ is an insufficient reason for requiring all victims to fill out application forms. Besides, the differences are sufficiently taken into account by the Trial Chamber's decision that the collective reparations it ordered shall have individualised components. It is submitted that the Defence fails to show that the Trial Chamber reached a decision no reasonable trial chamber could have reached in light of the facts before it. The Defence's Ground of Appeal 12 should therefore be dismissed.

*Defence Ground of Appeal 13: Trial Chamber VI committed a mixed error of law and fact by concluding that collective reparations with individualised components is the most appropriate type of reparations to address the harms caused by the crimes for which Mr Ntaganda was convicted.*²⁶⁹

160. The Defence argues that collective reparations with individualised components are not the same as collective reparations.²⁷⁰ In essence, it contends that by emphasising that individualised components of collective reparations would target the needs of individuals within the group, the collective reparations are rendered individual and therefore warrant an application-based process.²⁷¹ It is submitted that the purported difference between collective reparations and collective reparations with individualised components is purely semantic and constructed. The legal texts of the Court, as argued above, distinguishes between individual reparations – reparation awards made in favour of few, identifiable persons whose individual losses are easily

²⁶⁸ *Idem*, para. 173.

²⁶⁹ See the Defence's Notice of Appeal, *supra* note 3, p. 16.

²⁷⁰ See the Defence's Appeal Brief, *supra* note 1, p. 63.

²⁷¹ *Idem*, para. 186.

quantifiable – and collective reparations, where the “*number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate*”.²⁷² The Legal Representative argues that the *modalities* mentioned in the legal texts allow the relevant chamber to design case-specific kinds of collective reparations. In other words, individualised components are merely features of collective reparations found to be adequate to address the harm of the victims in a specific case, such as the present case. Since a range of harm caused to a great number of victims has to be targeted by a collective award, the statutory texts foresee that collective awards must be appropriately tailored to the requirements of the case at hand. In the present case, the Trial Chamber chose to accommodate the needs of the individuals who make up the group.

161. It is submitted that there was nothing erroneous in the Trial Chamber’s decision to order collective reparations with individualised components. Moreover, the individualised components did not render the award *individual* as such. They seek to address commonly identifiable specific needs within the large group of victims in the present case to better and more specifically address the needs of these persons, or otherwise conceptually identified ‘sub-groups’. It is erroneous to characterise the Trial Chamber’s decision as one that orders specific awards to individuals without assessing their application forms.²⁷³

162. The Defence also mischaracterises the jurisprudence when it effectively argues that the collective awards with individual components in the *Katanga* case were only acceptable because the Trial Chamber had screened all the underlying individual components.²⁷⁴ The Legal Representative recalls in this regard that, in fact, the Appeals Chamber criticised the *Katanga* Trial Chamber for conducting an application-based process given the time it took to do so.²⁷⁵ Accordingly, the Defence’s contention that a

²⁷² See rule 98(3) of the [Rules of Procedure and Evidence](#).

²⁷³ See the Defence’s Appeal Brief, *supra* note 1, para. 188.

²⁷⁴ *Idem*, para. 187.

²⁷⁵ See the *Katanga* Appeals Judgment on Reparations, *supra* note 134, para. 3.

trial chamber has an “*obligation to assess individual applications for reparations*”²⁷⁶ is at odds with the Court’s jurisprudence on the matter. It is submitted, likewise, that the Defence mischaracterises the *Al Mahdi* Reparations Order when it attempts to argue that in the *Al Mahdi* case, reparations were collective with some individual awards to a number of persons.²⁷⁷ In that case, the Trial Chamber ordered both individual *and* collective reparations.²⁷⁸ The modalities of the reparation awards in the present case are entirely different and do not go beyond collective awards as foreseen in the legal texts of the Court. They are simply a different kind of collective award that seeks to reach an array of different victims and repair an equally broad range of harm suffered.

163. Going back to the Defence’s distorted semantics in relation to the *Al Mahdi* Reparations Order, it is unsurprising that the Defence again seeks to argue that an application-based process is required, as was the case in the *Al Mahdi* case.²⁷⁹ The reparations ordered in the present case and the *Al Mahdi* reparations simply cannot be compared in this way. The application-based process made sense in the latter case because the number of victims was small and the harm suffered was similar in kind. The application forms to which the Defence had access in that case were those pertaining to the few individuals who were awarded individual reparation awards for consequential economic loss because their economic activity exclusively depended on the protected buildings that were destroyed.²⁸⁰ The situation of the victims in the present case is entirely distinguishable, which is what the Trial Chamber rightfully recognised.

164. Although it is argued that the Trial Chamber failed to estimate the number of potentially eligible beneficiaries,²⁸¹ the very minimum number of already established victims in the present case, namely the number of victims who participated in the

²⁷⁶ See the Defence’s Appeal Brief, *supra* note 1, para. 187.

²⁷⁷ *Ibid.*

²⁷⁸ See the *Al Mahdi* Reparations Order, *supra* note 75, p. 60: “*ORDERS individual, collective and symbolic reparations [...]*”.

²⁷⁹ See the Defence’s Appeal Brief, *supra* note 1, para. 187.

²⁸⁰ See the *Al Mahdi* Reparations Order, *supra* note 75, paras. 81 and 146(iv).

²⁸¹ See CLR2’s Appeal Brief, *supra* note 56, **Grounds of Appeal 1-3**.

proceedings, was already at more than two thousand²⁸² and thus vastly exceeding the numbers of eligible beneficiaries in all three prior cases reaching the reparations phase before the Court to date. Dispensing with an application-based process was therefore entirely reasonable in light of the Appeals Chamber's jurisprudence on the efficacy of such an approach in cases where there are 'more than a very small number' of victims.²⁸³

165. It is submitted that the above juxtaposition also adequately addresses the Defence's complaint that the eligibility-screening regime prevents Mr Ntaganda from having any role in the assessment of the eligibility of victims.²⁸⁴ As previously argued,²⁸⁵ no such role is foreseen in an eligibility screening carried out by the TFV where collective reparations are ordered. Accordingly, the Defence's contentions do not demonstrate any error in the Trial Chamber's discretionary decision to order collective reparations and to set out modalities thereof. The Defence's submissions do not rise beyond mere disagreements and its Ground of Appeal 13 should therefore be dismissed.

*Defence Ground of Appeal 14: Trial Chamber VI erred in ruling on the number of potential beneficiaries by referring to an unreasonably wide range and relying on inaccurate estimates and information to do so.*²⁸⁶

166. The Defence argues that the Trial Chamber did not weigh the accuracy of the estimates against the goal of rewarding reparations without delay.²⁸⁷ The Legal Representative concurs with this assessment of the Trial Chamber's decision in relation to the estimated number of potential beneficiaries. This alleged error is being dealt with in his own Appeal under **Grounds 1-3** and in fact constitutes one of the main and overarching errors contained in the Impugned Decision that affect other key

²⁸² See the Impugned Decision, *supra* note 2, para. 234.

²⁸³ See the *Katanga* Appeals Judgment on Reparations, *supra* note 134, para. 71.

²⁸⁴ See the Defence's Appeal Brief, *supra* note 1, para. 189.

²⁸⁵ See para. 50 *supra*.

²⁸⁶ See the Defence's Notice of Appeal, *supra* note 3, p. 16.

²⁸⁷ See the Defence's Appeal Brief, *supra* note 1, para. 226.

aspects of the Reparations Order. In this regard, the Legal Representative also concurs with the Defence's submission that it is not reasonable to set a *range* of nearly 100,000 people and that this number is manifestly imprecise²⁸⁸ and that it cannot be accepted as a reasonable basis on which to design any meaningful award for reparations.²⁸⁹

167. Notwithstanding the above, the Legal Representative nevertheless opposes the Defence's submissions that the Trial Chamber had sufficient information in the form of the Registry's and the Appointed Experts' estimates before it.²⁹⁰ As set out in his Appeal under **Ground 1**,²⁹¹ the Legal Representative submits that it would not have been reasonable for the Trial Chamber to simply accept the Registry's estimate as constituting the most accurate estimate of potentially eligible beneficiaries. In light of the inherent problems caused by the COVID-19 pandemic on the Registry's field operations and the highly differing other estimates offered, the Trial Chamber was under a duty to conduct further enquiries to fulfil its obligation of arriving at the most accurate possible estimates as mandated by the *Lubanga* jurisprudence.²⁹²

168. Accordingly, while the Legal Representative opposes some of the Defence's submissions under its Ground of Appeal 14, he submits that it should be granted in part in so far as it accords with his own Appeal submissions on these matters.

*Defence Ground of Appeal 15: Trial Chamber VI erred in assessing Mr Ntaganda's liability for the purpose of reparations at USD 30,000,000. This amount is not proportional to Mr Ntaganda's responsibility, lacks in justification, is of a punitive nature and is based on information lacking in accuracy and precision.*²⁹³

169. The Defence submits that the Trial Chamber erred in setting the amount of Mr Ntaganda's liability at 30 million USD.²⁹⁴ The Legal Representative concurs that the

²⁸⁸ *Idem*, para. 227.

²⁸⁹ *Idem*, para. 229.

²⁹⁰ *Idem*, para. 230.

²⁹¹ See the CLR2's Appeal Brief, *supra* note 56, paras. 50-61.

²⁹² *Idem*, paras. 52-55.

²⁹³ See the Defence's Notice of Appeal, *supra* note 3, p. 17.

²⁹⁴ See the Defence's Appeal Brief, *supra* note 1, para. 239.

setting of the aforementioned amount was erroneous. However, he only partially concurs with the argumentation of the Defence in this regard.

170. Specifically, the Legal Representative concurs with the Defence that the amount set by the Trial Chamber is untethered to the considerations it was required to take into account, and incompatible with the practice of the Court.²⁹⁵ The Legal Representative concurs that the Trial Chamber, while correctly identifying the applicable law, failed to apply the same.²⁹⁶ He however opposes the proposition of the Defence that the Trial Chamber must determine a finite number of eligible beneficiaries.²⁹⁷ The Trial Chamber, while under the obligation to arrive at an *estimate* that is *as accurate as possible*, is not required to first settle the question of how many beneficiaries precisely will be entitled to reparations. In this regard, the Defence is again trying to introduce an application-based process through the backdoor when this is neither required nor justified by the previous jurisprudence of the Court, or the application of its statutory provisions.

171. The foregoing notwithstanding, the Legal Representative concurs with the Defence that a defined number of potentially eligible beneficiaries is an essential parameter for setting a monetary award, because “*the primary function of a reparations award is to repair the harms arising from the crimes*”.²⁹⁸ The Defence also recognises that the Trial Chamber “*should [...] set a reasonable estimate of the number of potential victims before setting an amount*”.²⁹⁹ The Legal Representative concurs with this proposition. He further concurs that by relieving itself of the burden of estimating the number of potential beneficiaries, the Trial Chamber erred in law and the amount set should be quashed by the Appeals Chamber.³⁰⁰

²⁹⁵ *Idem*, para. 240. See also the CLR2’s Appeal Brief, *supra* note 56, **Ground of Appeal 2.1**, para. 89.

²⁹⁶ See the Defence’s Appeal Brief, *supra* note 1, paras. 241-242. See also the CLR2’s Appeal Brief, *supra* note 56, **Ground of Appeal 2.1**, paras. 84 and 86-88.

²⁹⁷ See the Defence’s Appeal Brief, *supra* note 1, paras. 241-242.

²⁹⁸ *Idem*, para. 243.

²⁹⁹ *Idem*, para. 244.

³⁰⁰ *Ibid.*

172. The Legal Representative further concurs with the Defence that the Trial Chamber erred in relying on estimates without proper basis in relation to the cost of reparations programmes,³⁰¹ that the ‘estimates’ provided by the Appointed Experts and the TFV have no relation to the overall amount the Trial Chamber arrived at,³⁰² and that merely citing numbers presented to it was meaningless in the absence of an explanation as to how these figures related to the overall amount set.³⁰³

173. However, the Defence fails to demonstrate that only if the Trial Chamber had estimated the cost of repairing the harm of the potential victims, the Defence could have meaningfully appealed the decision.³⁰⁴ This assertion is baseless. Nevertheless, the materiality of the error committed by the Trial Chamber in setting an abstract overall liability is not disputed by the Legal Representative for the reasons set out in his own Appeal Brief under **Ground of Appeal 2**.³⁰⁵

174. Indeed, because of the complete lack of reasoning in this part of the Impugned Decision, it remains unclear whether and to which extent the Trial Chamber adopted an *ex aequo e bono* approach.³⁰⁶ The Legal Representative concurs with the Defence with respect to the fact that the Trial Chamber did not apply the approach of the *Lubanga* proceedings, where the trial chamber set out which specific factors, *i.e.* the number of beneficiaries and which sum of money per victim, it took into consideration when calculating the overall amount of the convicted person’s liability.³⁰⁷ Likewise, and as set out in his own Appeal Brief, the Legal Representative concurs with the Defence that in the present case the Trial Chamber was not in a position to proceed with a calculation because it had failed to establish the factors that would have to be calculated³⁰⁸ and that therefore, the amount set was ultimately an arbitrary amount.

³⁰¹ *Idem*, paras. 245-246.

³⁰² *Idem*, paras. 247.

³⁰³ *Idem*, para. 249.

³⁰⁴ *Idem*, para. 248.

³⁰⁵ See the CLR2’s Appeal Brief, *supra* note 56, **Ground of Appeal 2.1**.

³⁰⁶ See the Defence’s Appeal Brief, *supra* note 1, para. 251.

³⁰⁷ *Idem*, para. 252.

³⁰⁸ *Idem*, para. 254.

175. The Defence's submissions on the joint liability between Mr Lubanga and Mr Ntaganda³⁰⁹ in fact also touch upon the issue of the Trial Chamber's failure to clearly set out how the overall award is supposed to be divided and allocated between the victims of the attacks and the former child soldiers. While the Defence makes unsubstantiated submissions that essentially demonstrate its disagreement with the joint and several liability of Mr Lubanga and Mr Ntaganda which the Legal Representative opposes as such, the point remains that the Trial Chamber erred by failing to set out how the overall amount of Mr Ntaganda would be divided and how it related to the victims of the attacks on the one hand and the former child soldiers on the other.³¹⁰ By abstaining from pronouncing itself on this fundamental aspect of Mr Ntaganda's liability *vis-à-vis* all victims, the Trial Chamber effectively delegated this decision to the TFV. Doing so was an error that materially affects the Impugned Decision by laying the groundwork for unequal treatment of victims in the present case.

176. Accordingly, while the Legal Representative opposes some of the Defence's submissions under its Ground of Appeal 15, he submits that it should be granted in part in so far as it accords with his own Appeal submissions on these matters.

IV. CONCLUSION

177. The Legal Representative respectfully requests that the Appeals Chamber dismiss Ground of Appeal 1 as the Defence fails to demonstrate that the alleged errors materially affect the Impugned Decision. With respect to Ground of Appeal 2, the Legal Representative respectfully requests that the Appeals Chamber partly grant the Ground, as the Legal Representative concurs with the Defence's contentions that the Trial Chamber committed an error by failing to give a reasoned opinion in relation to a number of matters. The Legal Representative further requests that the Appeals Chamber dismiss Ground of Appeal 3, given that it is entirely unsubstantiated.

³⁰⁹ *Idem*, para. 256.

³¹⁰ See the CLR2's Appeal Brief, *supra* note 56, **Ground of Appeal 5**.

178. With regards to Grounds of Appeal 4, 6, 7, 8 and 9, the Legal Representative respectfully requests that the Appeals Chamber dismiss these Grounds in their entirety, since the Defence fails to demonstrate any discernible error committed by the Trial Chamber under these respective grounds.

179. The Legal Representative also respectfully requests that the Appeals Chamber only partially grant Ground of Appeal 10 and find that the Trial Chamber erred in failing to set criteria and guidelines for the TFV's eligibility assessment, but reject the remainder of this ground. The Legal Representative further respectfully requests that the Appeals Chamber only partially grant Ground of Appeal 11, as he only partially supports the arguments presented by the Defence under that ground.

180. The Legal Representative respectfully requests that the Appeals Chamber dismiss Grounds of Appeal 12 and 13 as the Defence's contentions do not demonstrate any error committed by the Trial Chamber.

181. Finally, the Legal Representative respectfully requests that the Appeals Chamber only partially grant Grounds of Appeal 14 and 15, in so far as the Defence's contentions accord with his own Appeal submissions.

RESPECTFULLY SUBMITTED



Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 9th Day of August 2021

At The Hague, The Netherlands