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THE APPEALS CHAMBER

Before: Judge Marc Pierre 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 on behalf of Mr Ntaganda to the Trust Fund for Victims'
observations on the Reparations Appeals**

Source: Defence Team of Mr Bosco Ntaganda

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

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Further to the Reparations Order issued by Trial Chamber VI on 8 March 2021 (“8 March Reparations Order”),¹ the appeals lodged by the Legal Representative of Victims of the Attacks (“LRV2”)² and by the Defence³ on 8 April 2021 (“LRV2 Appeal” or “Defence Appeal”, together “Reparations Appeals”), the Appeals Chamber’s Decision on various procedural issues dated 9 September 2021 (“9 September Decision”)⁴ and the Trust Fund for Victims (“TFV”)’s “Observations in relation to the ‘Defence Appellant Brief Against the 8 March Reparations Order’ and the ‘Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order’” (“TFV Observations”),⁵ Counsel for Mr Ntaganda (“Defence” or “Mr Ntaganda”) hereby submit this:

**Response on behalf of Mr Ntaganda to the Trust Fund for Victims’
observations on the Reparations Appeals**

“Defence Response”

INTRODUCTION AND OVERVIEW

1. The TFV Observations are difficult to reconcile with the TFV’s stated aim when requesting the Appeals Chamber to grant it leave to make further submissions on the merits of the Reparations Appeals. Indeed, whereas the TFV submitted that a number of grounds of appeal raise fundamental questions concerning its role⁶ – and on this basis sought leave to submit observations on matters including its role during

¹ Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#) (“8 March Reparations Order”).

² Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order, 8 April 2021, [ICC-01/04-02/06-2668](#) (“LRV2 Notice of Appeal”); Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order, 7 June 2021, [ICC-01/04-02/06-2674](#) (“LRV2 Appeal”).

³ Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659, 8 April 2021, [ICC-01/04-02/06-2669](#) (“Defence Notice of Appeal”); Defence Appellant Brief against the 8 March Reparations Order, 7 June 2021, [ICC-01/04-02/06-2632](#) (“Defence Appeal”).

⁴ Decision on various procedural issues, 9 September 2021, [ICC-01/04-02/06-2708](#).

⁵ Observations in relation to the ‘Defence Appellant Brief Against the 8 March Reparations Order’ and the ‘Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order’, 30 September 2021, [ICC-01/04-02/06-2713](#).

⁶ Observations on the Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure, 22 June 2021, [ICC-01/04-02/06-2679](#) (“TFV Observation on Suspensive Effect”), para.32.

the implementation phase; its role in relation to the eligibility assessment of potential beneficiaries in a case of collective reparations; the delegation of judicial functions to the TFV; the criteria for the assessment of eligibility; the role of the TFV in determining concrete implementation measures; and the monitoring role of the Trial Chamber of the TFV's functions⁷ - the TFV Observations support and agree with the 8 March Reparations Order, without addressing the merits of the parties' grounds of appeal.

2. As acknowledged by the TFV in its Initial Draft Implementation Plan submitted on 8 June 2021, Trial Chamber VI left ample discretion to the TFV in the design of the draft implementation plan ("DIP").⁸ So much discretion in fact, that when submitting its Report on Trust Fund's preparation for Draft Implementation Plan with Annex A - Initial Draft Implementation Plan with focus on priority victims ("TFV Report on Preparations for DIP") it was necessary for the TFV to look for guidance from the criteria laid out by Trial Chamber VIII in a different case.⁹ In these circumstances, the TFV's support in favor of the 8 March Reparations Order does not come as a surprise.

3. The Defence acknowledges that the TFV Observations are to a certain extent tailored to respond to the Appeals Chamber's questions set out in the 9 September Decision. Nonetheless, the TFV was granted leave to address the merits of certain grounds of appeal but unfortunately declined to do so.

⁷ *Ibidem*.

⁸ Annex A to the Public redacted version of "Report on Trust Fund's Preparation for Draft Implementation Plan", submitted on 8 June 2021, 14 June 2021, [ICC-01/04-02/06-2676-AnxA-Corr-Red](#), para.3.

⁹ Public redacted version of "Report on Trust Fund's Preparation for Draft Implementation Plan", submitted on 8 June 2021, 14 June 2021, [ICC-01/04-02/06-2676-Red](#), para.23, citing *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on the Updated Implementation Plan from the Trust Fund for Victims, 4 March 2019, [ICC-01/12-01/15-324-Red](#), paras.16-17.

4. To be sure, the role of the TFV in reparations proceedings - going beyond its core fundraising function - and its growing involvement in the implementation of reparation orders, remain to this day, controversial. To provide but one example, in its final report dated 30 September 2020, the Independent Expert Review - mandated by the Assembly of State Parties (“ASP”) in December 2019 to “identify ways to strengthen the ICC and the Rome Statute system in order to promote universal recognition of their central role in the global fight against impunity and enhance their overall functioning”¹⁰ having examined the role and involvement of the TFV in reparation proceedings from the beginning, observed that the TFV operates more like an NGO and not as an independent and subsidiary body of the ASP,¹¹ and went as far as recommending that “increased efficiency and effectiveness could be gained if the TFV is focused on its original mission as a trust fund, with functions restricted to fundraising, administration of the funds, and release of the funds as ordered by the Court.”¹² Yet, Trial Chamber VI - despite being praised for its “First decision on reparations”¹³ in the final report of the Independent Expert Review for purposely designating the Registry / VPRS rather than the TFV, as the appropriate entity to lead the identification of potential beneficiaries,¹⁴ made a complete *volte-face* in the 8 March Reparations Order, entrusting the TFV with unprecedented functions and powers.

5. As argued in the Defence Appeal and reiterated herein, that was an error. The error is not the Trial Chamber’s selection of the TFV as the lead implementing agency but rather the Trial Chamber entrusting the TFV with all facets of the reparations process – including *inter alia*, the identification of potential beneficiaries of reparations, the eligibility assessment of potential beneficiaries, the identification of the modalities of reparations, the separation of reparation awards between the

¹⁰ Independent Expert Review of the International Criminal Court and the Rome Statute System - Final Report, 30 September 2020, ICC-ASP/19/16, para.1 (“IER Report”), available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/IER-Final-Report-ENG.pdf.

¹¹ [IER Report](#), para.928.

¹² [IER Report](#), para.943 and R354.

¹³ First Decision on Reparations Process, 26 June 2020, [ICC-01/04-02/06-2547](#).

¹⁴ [IER Report](#), para.913.

victims of crimes against child soldiers and victims of the attacks and the design and implementation of reparation awards – without, *inter alia*, providing clear eligibility criteria, identifying the modalities of reparations, providing the required minimum guidance and setting out any judicial control / oversight mechanism or process.

6. Notwithstanding the above, should the TFV remain as the overall implementing agency for reparations in this case, the Defence commits, on behalf of Mr Ntaganda, to work with, cooperate and provide assistance to the TFV, as required.

7. Whereas the TFV Observations address the seven questions set out in the Appeals Chamber's 9 September Decision, this Defence Response focusses on the first four of these questions, which are the most important regarding the role of the TFV and the conduct of the eligibility assessment delegated to it by Trial Chamber VI. As for questions five, six and seven, observations deemed appropriate and necessary are included in this Introduction and Overview, but they are not addressed independently below.

8. In response to the Appeals Chamber's first question, the TFV claims that the eligibility criteria *appear* clear and that it is able to apply these criteria to determine who the victims of Mr Ntaganda's crimes are.¹⁵ Not only does the TFV omit to consider the related submissions in the Defence Appeal,¹⁶ the TFV also fails to consider that the determination as to whether a victim falls within the scope of crimes for which Mr Ntaganda was convicted, is not sufficient to determine the eligibility of that victim for the purpose of reparations. Notably, this exercise was done by the VPRS for participating victims¹⁷ but not before having obtained

¹⁵ [TFV Observations](#), para.7.

¹⁶ [Defence Appeal](#), paras.201-209.

¹⁷ Registry's Second Report on Reparations, 15 January 2021, [ICC-01/04-02/06-2639](#) ("Registry Second Report"), paras.1-4; Public Redacted Version of Annex I (ICC-01/04-02/06-2639-Conf-AnxI) notified on 15 January 2021 of the Registry Second Report on Reparations, 10 February 2021, [ICC-01/04-02/06-2639-AnxI-Red](#).

additional guidance from Trial Chamber VI¹⁸ and without the Defence being involved in any way.¹⁹ Whether a victim meets the eligibility criteria, including the burden of proof and required causal link is a different exercise.

9. The fact that the TFV does not consider necessary to obtain more explicit eligibility criteria from Trial Chamber II, while referring to *Al Mahdi* in which the trial chamber provided ample guidance and additional eligibility criteria, is a matter of concern.

10. As for the implementation of the mandate the TFV was entrusted with by Trial Chamber VI, very little information is provided other than the fact that TFV is currently in the process of determining an appropriate model for the process leading to the administrative eligibility assessment.²⁰ Considering that the TFV has already had two opportunities – both inconclusive - to develop a model when submitting its IDIP, this is also a source of concern. In the Defence's view, the absence of eligibility criteria and guidance in the 8 March Reparations Order is directly linked to the inability of the TFV to design an eligibility assessment process.

11. Lastly, on the issue of judicial control / oversight over the administrative eligibility assessment process, the TFV's omission to even consider the absence of provisions on this topic in the 8 March Reparations Order evinces its misunderstanding of the issue. So does its interpretation of its own regulations regarding the responsibility of the judiciary in relation to its role. Clearly, the TFV conflates the issue of judicial control / oversight with the provision of reports and information to the judges at various stages of the reparations process.

¹⁸ Decision on issues raised in the Registry's First Report on Reparations, 15 December 2020, [ICC-01/04-02/06-2630](#).

¹⁹ [Defence Appeal](#), para.53.

²⁰ [TFV Observations](#), para.10.

12. The TFV Observations in response to the Appeals Chamber's second question are unequivocal; the TFV foresees no involvement of the Defence whatsoever in the eligibility assessment process, at any stage. In this regard, the TFV neither addresses the submissions of the Defence on appeal *nor* provides reasons *why* the Defence should be excluded from the process. While the TFV grounds its position on the nature of the reparations, *i.e.* collective, it provides no cogent reasons why the Defence would be involved in eligibility assessment of beneficiaries of individual reparations but not in the eligibility assessment of beneficiaries of collective reparations that entail individual benefits. If the reparations process before the Court is to remain a judicial process, the TFV's views cannot be upheld.

13. Furthermore, although the TFV takes the view that victims found ineligible by the TFV may challenge this ruling, the TFV considers they must do so before the TFV and not Trial Chamber II.²¹ The position of the TFV, aiming (again) to avoid any judicial control or oversight by the Judges, illustrates its views regarding the object and purpose of judicial oversight, which is a source of concern.

14. Regarding the third question in the Appeals Chamber's 9 September Decision, the TFV Observations conflate the judicial process of identifying modalities of reparations with the administrative process of designing awards for reparations. In this regard, the TFV misconstrues its own regulations.²² As previously argued in the Defence Appeal,²³ Trial Chamber VI erred by failing to identify the modalities of reparations as it was required to do. Consequently, the TFV is presently developing a draft implementation plan ("DIP"), including the design of awards for reparations, in the absence of modalities set by Trial Chamber VI.

²¹ [TFV Observations](#), para.17; Public redacted version of "Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director's decision pursuant to regulation 56 of the Regulations of the Trust Fund", submitted on 23 September 2021, 7 October 2021, [ICC-01/04-02/06-2710-Red](#) ("TFV First Progress Report"), para.53.

²² See *infra*, paras.57-59, referring to Regulations 63,66,68-71.

²³ [Defence Appeal](#), paras.210-214.

15. In respect of the fourth question put to the TFV by the Appeals Chamber, it is unsure whether the TFV properly understood the question or simply intended to raise different matters. Nonetheless, the TFV Observations comprise two relevant submissions, namely that (i) estimates of costs and their division within the amount of liability relevant to the two groups – child soldier and victims of the attacks – may also change over time and adapt to the realities in the field; and (ii) it is likely that there will be more victims of attacks than child soldiers.²⁴

16. In other words, the TFV is not able to allocate / divide the reparations awards between the child soldiers and the victims of the attacks on the basis of the 8 March Reparations Order.

17. The Defence takes the view that the TFV's inability in this regard is illustrative of Trial Chamber VI's error in setting the liability of Mr Ntaganda at \$ 30,000,000.00, in the absence of a determination regarding the number of potential beneficiaries and/or reliable estimates as argued in the Defence Appeal.²⁵

18. In response to the fifth question posed by the Appeals Chamber, the TFV Observations are clear: "[t]he TFV has no intention to seek clarification from the Trial Chamber as the Reparations Order is sufficiently clear for it to proceed".²⁶ Notably, the TFV Observations do not address the merits of Defence submissions on appeal, which highlight numerous errors committed by Trial Chamber VI in the 8 March Reparations Order as well as many areas where further direction and guidance was required.

²⁴ [TFV Observations](#), para.29.

²⁵ [Defence Appeal](#), paras.239-254.

²⁶ [TFV Observations](#), para.30.

19. As for the modality of communications with Trial Chamber II, the TFV Observations refer to the bi-monthly reports the TFV has been instructed to provide²⁷ as well as to the Regulations of the Trust Fund (“TFV Regulations”), which provide for regular progress updates to the Trial Chamber and the opportunity for the TFV to address the Trial Chamber on any issue arising in the implementation.²⁸ Considering that the TFV has no intention at this stage to seek clarification from the Trial Chamber – also bearing in mind the TFV’s understanding of the object and purpose of judicial control as opposed to the provision of progress updates - it appears evident that unless the TFV is directed, instructed or guided by the Trial Chamber *proprio motu*, it intends to act in *solo*. Once again, this underscores the deficiencies in the 8 March Reparations Order and Trial Chamber VI’s error by failing to provide the required guidance and instructions to the TFV, if only regarding the exercise of judicial oversight.

20. Regarding the sixth question, the TFV notes that it has been difficult in the Lubanga case to convince victims to be involved both at the trial and reparation stage.²⁹ Then, despite the absence of objective indicators in this regard, the TFV Observations give credit to the idea that Mr Ntaganda’s ethnicity and his level of influence in the Hema community should not prevent victims from coming forward to benefit from reparations.³⁰ Thus, despite its unsupported subjective statement, the TFV Observations do not support the ‘idea’ put forward by the LRV³¹ that more child soldier victims will come forward because Mr Ntaganda is not of Hema ethnicity. To be sure, child soldier victims have had ample opportunities to come forward since the proceedings against Thomas Lubanga began³² and there is no

²⁷ Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#) (“Decision on the IDIP”), paras.30,46 and Disposition.

²⁸ [TFV Observations](#), para.31.

²⁹ [TFV Observations](#), para.33.

³⁰ *Ibidem*.

³¹ Observations on the Appointed Experts’ Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, [ICC-01/04-02/06-2632](#), paras.36,79; Transcript [ICC-01/04-02/06-T-24-ENG ET WT](#), 3 September 2015, p. 5, lines 4-8.

³² [Defence Appeal](#), para.235, referring to *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the submissions by the Legal Representative of Victims V01 in its Response to the Twelfth Report of the

objective reason to believe that more will come forward because of Mr Ntaganda's ethnicity.

21. Concerning the seventh and last question posed by the Appeals Chamber, the TFV concludes that it will propose to make use of the existing Lubanga collective service-based programme according to a methodology to be set out in the DIP.³³ Notably, Trial Chamber VI has already decided to "adopt, for the purpose of reparations in this case, the reparation programmes ordered by Trial Chamber II in the Lubanga case, in relation to the overlapping victims and harms of both cases."³⁴

22. Even though in its response to the seventh question the TFV also refers to the importance of the Trial Chamber's finding because "[...] it forms the foundation for allowing the Trust Fund to use the existing Lubanga reparation programme for the purposes of the case of *Ntaganda*",³⁵ the TFV Observations neither address *nor* explain the practical consequences of Trial Chamber VI's finding that "Mr Ntaganda and his co-perpetrators, including Mr Lubanga, are all 'jointly liable *in solidum* to repair the full extent of the harm caused to the victims'"³⁶ regarding the use of the sum represented by Mr Ntaganda's total liability, *i.e.* \$ 30,000,000.00, for child soldier victims and the division of these funds between child soldiers and victims of the attacks. Notably, as argued in the Defence Appellant Brief,³⁷ this information is not provided in the 8 March Reparations Order, which further evinces the arbitrary nature of the amount set by Trial Chamber VI.

Trust Fund for Victims on the implementation of collective reparations, filing ICC-01/04-01/06-3500-Conf-Exp, 26 March 2021, [ICC-01/04-01/06-3508](#).

³³ [TFV Observations](#), para.36.

³⁴ [8 March Reparations Order](#), para.220.

³⁵ [TFV Observations](#), para.35.

³⁶ [8 March Reparations Order](#), para.219.

³⁷ [Defence Appeal](#), paras.255-256.

SUBMISSIONS

I. First Question– 9 September Decision, para. 28(a)

23. The Appeals Chamber’s first question addresses three important issues regarding the reparations process, namely: (i) whether the TFV could determine the eligibility of the victims on the basis of the Reparations Order and whether it required more explicit eligibility criteria; (ii) how the TFV intends to proceed in implementing its mandate in this regard; and (iii) whether there would be oversight of the process by Trial Chamber II.³⁸

24. In its observations, the TFV posits that the 8 March Reparation Order, together with the Trial Judgment and the Judgement on Appeals, provide a firm basis to determine “which victims fall within the scope of the crimes for which Mr Ntaganda was convicted”.³⁹ The TFV then states that the eligibility criteria “appear clear” because the 8 March Reparation Order sets out categories of direct and indirect victims with reference to each of the crimes for which Mr Ntaganda was convicted, as well as the applicable standard of proof.⁴⁰

25. At the outset, the Defence observes that TFV seems to conflate the determination of whether a victim falls within the scope of the crimes for which Mr Ntaganda was convicted, with the assessment of eligibility for reparations, an exercise which requires a different and ulterior assessment of the applicant’s narrative regarding the harm suffered and the required causal *nexus*, with the applicable burden of proof falling on the applicant.⁴¹ As argued in the Defence Appeal, the 8 March Reparation Order does not provide sufficient criteria, guidelines

³⁸ [9 September Decision](#), para.28(a).

³⁹ [TFV observations](#), para.6.

⁴⁰ [TFV observations](#), paras.6-7.

⁴¹ [8 March Reparations Order](#), para.77,135,137. *See also Prosecutor v. Thomas Lubanga Dyilo*, 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, 3 March 2015, [ICC-01/04-01/06-3129](#) (“Lubanga 2015 Appeals Decision on Reparations”), para.81.

and instructions to allow the TFV to perform this exercise in a fair and efficient manner.⁴²

26. First, the Defence reiterates and insists on the fact that the Court's reparations process is and should remain a judicial process.⁴³ As such, the eligibility assessment, which determines whether a potential beneficiary will be entitled to reparations, should also remain judicial in nature.⁴⁴ Accordingly, the Chamber must maintain a primary role, as was clarified by the Appeals Chamber in *Lubanga*: "[t]he Chamber must identify the victims eligible to benefit from the awards for reparations or set out the criteria of eligibility based on the link between the harm suffered by the victims and the crimes of which the person was convicted."⁴⁵ In the case at hand, Trial Chamber VI did neither.

27. Regarding the eligibility assessments to be performed by the TFV, the 8 March Reparation Order provides no guidance as to, *inter alia*, the applicable timeline, the various phases of the assessment, the level of involvement of the parties, the role of the Chamber, the possibility to challenge the TFV's decisions, and the applicable procedure for participating victims and new applicants. To the contrary, Trial Chamber VI simply instructed the TFV to "include in its draft implementation plan a detailed proposal as to the way in which **it expects** to conduct the administrative

⁴² [Defence Appeal](#), paras.124-130,201-209.

⁴³ [8 March Reparations Order](#), para.24; *Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, [ICC-01/04-01/06-2904](#) ("Lubanga Reparations Order"), para.260; [Lubanga 2015 Appeals Decision on Reparations](#) paras.34,237; *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, [ICC-01/04-01/07-3728-tENG](#) ("Katanga Reparations Order"), para.18; *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Public redacted Judgment on the appeal of the victims against the "Reparations Order", 8 March 2018, [ICC-01/12-01/15-259-Red2](#) ("Al Mahdi Appeals Judgement on Reparations"), paras.66,98; *Prosecutor v. Thomas Lubanga Dyilo*, Separate Opinion of Judge Eboe-Osuji, 18 July 2019, [ICC-01/04-01/06-3466-AnxI](#) ("Separate Opinion of Judge Eboe-Osuji"), para.10 and Separate Opinion of Judge Luz del Carmen Ibáñez Carranza, [ICC-01/04-01/06-3466-AnxII](#), ("Separate opinion of Judge Ibáñez Carranza"), para.89, both filed as an annex to *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable', 18 July 2019, [ICC-01/04-01/06-3466-Red](#) ("Lubanga 2019 Appeals Decision on Reparations").

⁴⁴ [Separate opinion of Judge Ibáñez Carranza](#), paras.4,25,27,82.

⁴⁵ [Lubanga 2015 Appeals Decision on Reparations](#), paras.32,205. See also [Katanga Reparations Order](#), para.31(2).

eligibility assessment”,⁴⁶ without setting any parameter to follow. This is concerning, considering that it is through procedural safeguards that the Chamber can ensure that the rights of the convicted person and the victims are protected.⁴⁷

28. Notably, the Chamber’s approach departs from the previous practice at the Court. Albeit in the context of individual reparations, the Trial Chamber in *Katanga* took control of the eligibility assessment process and included its determinations in the Reparations Order.⁴⁸ In other cases, even when trial chambers delegated the eligibility assessment to the TFV, detailed guidelines were provided. Remarkably, the Trial Chamber in *Al Mahdi* set out a step-by-step procedure for the TFV to follow, containing a number of safeguards to protect the rights of both the victims and the convicted person throughout the process.⁴⁹ This did not happen in this case.

29. Consequently, the TFV’s assertion that it does not require more explicit eligibility criteria or guidance should be disregarded.

30. In this respect, the Defence takes issue with the TFV’s assertion that the eligibility process for victims “falls arguably within ‘the methods for its/their implementation’ referred to in Regulation 69 of the Regulations of the Trust Fund” and, as such, is left to the TFV to design at the implementation phase.⁵⁰ This is incorrect. Regulation 69 does not address to **whom** the awards shall be accorded, but only refers to the TFV’s role in shaping and designing, in practice, the projects through which Court-ordered reparations will be implemented on the ground. The eligibility assessment process is a separate and different procedure, which naturally precedes the implementation of the reparation measures.⁵¹

⁴⁶ [8 March Reparations Order](#), para.253 (emphasis added).

⁴⁷ Articles 64(2) and 64(3)(a) of the Statute. *See also Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, [ICC-01/12-01/15-236](#) (“Al Mahdi Reparations Order”), para.146, referencing Rule 97(3) of the Rules.

⁴⁸ [Katanga Reparations Order](#), Disposition.

⁴⁹ [Al Mahdi Reparations Order](#), para.146. On this point, see [Defence Appeal](#), para.206.

⁵⁰ [TFV Observations](#), para.9.

⁵¹ [Separate Opinion of Judge Eboe-Osuji](#), para.12: “The procedure for the demonstration of eligibility should be the natural and logical antecedent to the reparation award” (footnotes omitted).

31. In the absence of a specific provision in the Court's legal framework, the eligibility assessment remains regulated by the general principle enshrined in Rule 97(3) of the Rules, according to which, in its assessment of reparations, "the Court shall respect the rights of victims and the convicted person".⁵² Reducing the eligibility assessment to an unregulated exercise entirely delegated to the TFV without providing the necessary guidelines, does not accord with this principle.

32. With regard to the applicable standard of proof and causality *nexus*, the 8 March Reparation Order falls short of the minimum required to allow the TFV to determine the eligibility of potential beneficiaries of reparations. As set out in the Defence Appeal,⁵³ the Chamber spelled out the applicable standard of proof in the abstract,⁵⁴ but failed to explain how this standard should be applied in practice,⁵⁵ holding only that "[w]hat the 'appropriate' standard of proof is and what is 'sufficient' for the purposes 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".⁵⁶ This, once again, inexplicably departs from the previous practice of the Court.⁵⁷

33. Despite repeated references to harms of highly technical nature, such as physical, psychological, psychiatric, psychosocial, economic and material harm (including transgenerational harm),⁵⁸ the Chamber left a number of important issues unaddressed, including, *ex multis*: (i) what documentation the TFV should require to substantiate each type of harm; (ii) what criteria should be considered to assess the reliability of supporting documents; (iii) how the TFV should assess discrepancies

⁵² Rule 97(3) of the Rules. See also Article 64(2) of the Statute.

⁵³ [Defence Appeal](#), paras.124-130.

⁵⁴ [8 March Reparations Order](#), para.136.

⁵⁵ On this point, see also [Defence Appeal](#), paras.124-125.

⁵⁶ [8 March Reparations Order](#), paras.77,135.

⁵⁷ See, for example, [Katanga Reparations Order](#), paras.55,138; *Prosecutor v. Thomas Lubanga Dyilo*, Corrected version of the "Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable", 21 December 2017, [ICC-01/04-01/06-3379-Red-Corr-t-ENG](#), paras.44,62-64; [Lubanga 2019 Appeals Judgment on Reparations](#), paras.182-184.

⁵⁸ [8 March Reparations Order](#), para.183.

between different applications; (iv) if, and to what extent, applicants can integrate the supporting documents at a later stage; (v) if, and to what extent, an applicant who is unable to provide supporting documents should justify his/her inability to do so, as was the case in *Lubanga*.⁵⁹

34. Similar considerations apply to the requirement of causality between the harm suffered and the crimes for which Mr Ntaganda was convicted. The Chamber simply held 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”.⁶⁰ No other indication is given to the TFV as to how to assess the existence, or not, of a causal link.

35. Further, the Chamber superficially dismissed the issue of possible breaks in the chain of causation, holding that “as long as the relevant victims fall within the scope of the conviction and meet the applicable evidentiary standard, the issue does not arise”.⁶¹ Possible breaks in causation are crucial when assessing the eligibility of a potential beneficiary. By avoiding the matter, the Chamber wholly shifted the responsibility for this assessment to the TFV without providing guidelines.

36. The TFV’s consideration of such complex issues is likely to impact its decisions. Yet, the TFV is a non-judicial body, which is why clear and objective guidelines must be set by the Trial Chamber.

37. The inadequacy of the 8 March Reparation Order becomes evident in the TFV’s two proposals in the context of submitting an “Initial Draft Implementation Plan” (“IDIP”). On the basis of the 8 March Reparation Order, the TFV submitted a first proposal for the eligibility assessment and urgency screening of potential beneficiaries, in which it intended to sub-delegate the assessment to its implementing

⁵⁹ [Lubanga 2019 Appeals Judgment on Reparations](#), para.204.

⁶⁰ [8 March Reparations Order](#), para.135.

⁶¹ [8 March Reparations Order](#), para.134.

partners.⁶² Trial Chamber II found the proposal to be “not appropriate”⁶³ and rejected it *in toto*.⁶⁴ The situation did not improve with the second proposal presented by the TFV which, as highlighted by the Defence before Trial Chamber II, is equally vague and defective.⁶⁵ This is symptomatic of the lack of clear eligibility criteria and guidance in the 8 March Reparations Order.

38. The last question posed by the Appeals Chamber pertains to the role of the Chamber in the eligibility assessment, and specifically to judicial oversight. The TFV argues that “the Trial Chamber has broad discretion in moulding its judicial oversight role”⁶⁶ and that, in any case, the Chamber will have to scrutinise and approve the TFV’s upcoming draft implementation plan (“DIP”).⁶⁷ In essence, the TFV takes the view that the Chamber’s oversight role can be limited to the approval of the DIP. For other issues and thereafter, the TFV posits that providing updates and reports, and addressing the Chamber only if issues arise, is sufficient.⁶⁸

39. In the Defence’s view, the TFV’s effort to belittle the Chamber’s role to that of a mere observer misconstrues the object and purpose of judicial oversight. As argued above,⁶⁹ reparations are a judicial process, and this requires that the Chamber maintains a primary role before, during and after the eligibility assessment.⁷⁰

⁶² Annex A to the Public redacted version of “Report on Trust Fund’s Preparation for Draft Implementation Plan”, submitted on 8 June 2021, 14 June 2021, [ICC-01/04-02/06-2676-AnxA-Corr-Red](#), paras.76-90.

⁶³ [Decision on the IDIP](#), para.36.

⁶⁴ [Decision on the IDIP](#), paras.36-38.

⁶⁵ Defence observations on the TFV First Progress Report on the implementation of the Initial Draft Implementation Plan, 4 October 2021, [ICC-01/04-02/06-2714-Conf](#), paras.5-7,28-45.

⁶⁶ [TFV Observations](#), para.16.

⁶⁷ [TFV Observations](#), para.12.

⁶⁸ [TFV Observations](#), para.12.

⁶⁹ *Supra*, para.26.

⁷⁰ [Lubanga Reparations Order](#), paras.260,262,286,289; [Separate opinion of Judge Ibáñez Carranza](#), paras.25,27; with regard to individual reparations, see [Al Mahdi Appeals Judgement on Reparations](#), paras.59,66. For more detailed submissions on this point, see [Defence Appeal](#), paras.217-225.

40. In particular, during the assessment, the Chamber should exert its supervision either by carrying out the assessment itself, as was the case in *Katanga*,⁷¹ or through the implementation of a system whereby the TFV's decisions can be challenged before the Chamber.⁷² This was the case in *Al Mahdi*⁷³ and *Lubanga*.⁷⁴

41. Furthermore, once the TFV's assessment is completed, the Trial Chamber must be able to carry out a *proprio motu* review of the TFV's determination. On this point, the reliance by the TFV on the *Al Mahdi* Appeals Chamber's decision⁷⁵ is baffling, considering that in the same decision, albeit with regard to individual reparations, it is stated that:

[...] the oversight of the Trial Chamber exercising judicial control over the screening process shall include that the Trial Chamber finally endorse the results of the screening, with the possibility of amending the conclusions of the TFV on the eligibility of applicants for individual reparations, upon request of those applicants, or *proprio motu* by the Trial Chamber.⁷⁶

42. The same approach was adopted in *Lubanga* in the context of collective reparations in the form of service-based programmes. Trial Chamber II, with regard to new applicants, clearly held that:

[T]he Trust Fund must inform the Chamber of the decisions taken by its Board of Directors on new applicants for reparations- whether it finds them eligible or not- by including in the quarterly report a list of the names of the persons concerned and their particulars. The Chamber will then issue, on a rolling basis, a final decision on the approval of that list of new applicants determined to be eligible by the Trust Fund's Board of Directors. The Chamber underlines that only upon the

⁷¹ [Katanga Reparations Order](#), Disposition.

⁷² [Defence Appeal](#), paras.217-225.

⁷³ [Al Mahdi Appeals Judgement on Reparations](#), paras.69-72,98.

⁷⁴ [Lubanga Reparations Order](#), paras.262,286; [Lubanga 2015 Appeals Decision on Reparations](#), para.235; *Prosecutor v. Thomas Lubanga Dyilo*, Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations, 7 February 2019, [ICC-01/04-01/06-3440-tENG](#) ("Lubanga Decision on New Applicants"), paras.30,47; *Prosecutor v. Thomas Lubanga Dyilo*, Order instructing the Trust Fund for Victims to supplement the draft implementation plan, 9 February 2016, [ICC-01/04-01/06-3198-tENG](#), paras.14-15,18.

⁷⁵ [TFV Observations](#), para.14, citing [Al Mahdi Appeals Judgement on Reparations](#), para.72.

⁷⁶ [Al Mahdi Appeals Judgement on Reparations](#), para.69. *See also*, [Al Mahdi Appeals Judgement on Reparations](#), para.98.

Chamber's decision will the new applicants become beneficiaries of the reparations.⁷⁷

43. None of this is envisioned in the 8 March Reparation Order. The Chamber ignored the previous practice of the Court and, without any explanation, did not foresee any monitoring or review mechanism.

44. Notably, the TFV's stated intention to provide updates and reports to the Trial Chamber is insufficient and unsatisfactory. The TFV seems to mistake the process allowing chambers to be updated through regular reports, as set out in regulation 58 of the TFV Regulations, with the Trial Chamber's duty to supervise the process. The two are distinct, and the exercise of the former by the TFV does not satisfy the latter. Ignoring the Independent Experts Report's recommendation that the role of the TFV and the Chamber should be separated, and that the TFV should limit its functions to fundraising and disbursement,⁷⁸ the system described in the TFV Observations equates, in practice, to a complete takeover by the TFV of the Trial Chamber's function. This simply does not meet the requirements of a judicial process. A new or significantly amended Reparations Order is thus required.

II. Second Question - 9 September Decision, para. 28(b)

45. The second question from the Appeals Chamber relates to the role of the Defence, LRV's, and the Trial Chamber at the reparations stage, and in particular, whether parties can challenge the choice of victims entitled to the benefit of reparations and whether such a challenge could be made before Trial Chamber II. In its Observations, the TFV categorically excludes both the Defence and the Chamber. It then goes further, suggesting to assume the role of arbiter.

⁷⁷ [Lubanga Decision on New Applicants](#), para.47 (emphasis added and footnotes omitted). *See also* [Lubanga Decision on New Applicants](#), para. 30.

⁷⁸ [IER Report](#), R354,R358 (located after para.947).

46. Reparation proceedings, and indeed the process of enrolling victims in reparation programmes, must continue to pay credence to the rights of the convicted person. Thus far there has been a consistent exclusion of the Defence from having any role in the assessment of the eligibility of victims. The Defence submits that this fails to ensure basic principles of fairness. In this regard, the Defence points to the parameters developed in *Al Mahdi* in relation to the involvement of the Defence in reparation proceedings. Trial Chamber VIII held:

“Both the applicant, on his or her own or through a legal representative, and the Defence must be given an opportunity to make representations before the TFV assesses any applicant’s eligibility. In assessing eligibility, the TFV may base itself only on information made available and to which the Defence has had an opportunity to access and respond.”⁷⁹

47. In its Observations, the TFV avails this opportunity only to the victim (on his or her own or thorough a legal representative),⁸⁰ but fails to do the same for the Defence. The Trial Chamber in *Al Mahdi* held that it is “appropriate that [the Defence] be afforded an opportunity to present informed views and concerns regarding the individuals claiming to be owed individual reparations” which will in turn “increase the accuracy of the screening itself and ensure the integrity of the overall procedure”.⁸¹ While the Appeals Chamber ruled on the confidentiality of identifying information, the Defence remained involved in the screening process. These aspects of Defence involvement in the *Al Mahdi* ruling were not disturbed on appeal,⁸² and should, at minimum, remain the basis for reparations proceedings at the Court.

⁷⁹ [Al Mahdi Reparations Order](#), para.146(iii).

⁸⁰ [TFV Observations](#), para.17.

⁸¹ [Al Mahdi Reparations Order](#), para.146(iv).

⁸² [Al Mahdi Appeals Judgement on Reparations](#), para.83.

48. As argued in the Defence Appellant brief,⁸³ while the TFV asserts that the nature of the awards in this case is collective,⁸⁴ the Defence underscores the hybrid nature of the awards ordered by Trial Chamber VI. While this remains a matter of contention on appeal, the Defence reiterates, as set out in *Al Mahdi*,⁸⁵ that an individualised component / award that entails concrete individual benefits necessitates the involvement of the Defence on behalf of the convicted person, in the eligibility assessment process. The Defence contends that purely collective awards do not require an eligibility assessment and thus do not necessitate the involvement of the parties. As the Defence has previously submitted to the Appeals Chamber, collective awards such as the construction of a monument or the building of a school, benefit the group as a whole and do not require a ruling on the merits of individual requests submitted by members of the group.⁸⁶ However, a distinction must be made between such collective awards, and those that will benefit members of the group individually.

49. As it stands, the TFV is conducting eligibility assessments in the process of enrolling victims and it is the view of the Defence that it should be provided the opportunity to assess these applications and provide observations. In *Lubanga*, involving collective reparations similar to the collective reparations with individualized components ordered in this case, it is highly relevant that Mr Lubanga was given access to a ‘sample ‘of victims’ applications for reparations. The Trial Chamber held that “the names of the victims who may be eligible and other identifying information about them could be useful to the Defence when it examines

⁸³ [Defence Appeal](#), paras.74,185-188.

⁸⁴ [TFV Observations](#), para.18.

⁸⁵ *Supra*, para.47.

⁸⁶ Reply to LRV1 and LRV2 Responses to Mr Ntaganda’s Appellant Brief, 30 September 2021, [ICC-01/04-02/06-2712](#) (“Defence Reply”), para.35.

the eligibility of said victims and the reliability of their claims”.⁸⁷ On redacted forms, Trial Chamber II held:

“[...] information describing the harm suffered and the incidents that caused it may also be useful in enabling the Defence to gauge the extent of the harm alleged. Consequently, the Chamber considers that any information relating strictly to the description of the harm suffered, the events that caused the harm, and the link between such harm and the crimes of which Mr Lubanga has been convicted, should not be redacted, except for information that might reveal the identities of victims who may be eligible who have refused to disclose that information to the Defence.”⁸⁸

50. This provided the Defence, at minimum, the opportunity to make representations on the applications made by potential beneficiaries before any determination of eligibility was made. Indeed, this sample of dossiers represented a bare minimum within which the reparations stage of proceedings can be seen as respecting the rights of the convicted person by affording each party in the proceedings a reasonable opportunity “to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the other party”.⁸⁹

51. Again, the Defence deems appropriate to emphasize the level of exclusion it has faced, at every stage of the proceedings, with regard to the evaluation of victim applications. As demonstrated elsewhere,⁹⁰ there has been a consistent lack of access to victim applications – even for participation – at a level previously unseen in this Court, which has impeded the ability of the Defence to play a meaningful role in the reparations process, and which goes against the fairness of proceedings. That this information has been unavailable to the Defence during previous stages makes it even more pertinent for the Appeals Chamber to correct the course of the reparations process and allow the Defence the opportunity for meaningful engagement.

⁸⁷ *Prosecutor v. Thomas Lubanga Dyilo*, Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo, 22 February 2017, [ICC-01/04-01/06-3275-tENG](#), para.15. See also, *idem*, para.16.

⁸⁸ *Idem*, para.18.

⁸⁹ [Lubanga 2019 Appeals Judgment on Reparations](#), para.248.

⁹⁰ [Defence Reply](#), paras.2-9.

52. The Defence appreciates that there must be an appropriate cut-off point of engagement during the implementation phase and does not oppose such a demarcation. This issue was addressed during the Independent Expert Review.⁹¹ According to the Experts, the competent Chamber should have available for its consideration, at the commencement of the reparations proceedings, all applications (requests) for reparations and their supporting documentation, complemented by the VPRS' legal assessment of applications.⁹² Further, the Experts remarked that "the Defence has the right and incentive to robustly contest any claim for reparations"⁹³ and encouraged mutually agreed protocols between "the parties, participants and the VPRS/TFV",⁹⁴ all with the aim of making the reparations stage more efficient and enabling it to reach a "point during the implementation phase, when it can safely and confidently be held that the stage has been reached when the project management is solely for the oversight authority".⁹⁵

53. However, emphasis is placed at this stage on a system that allows for active participation of the Defence, on behalf of the convicted person, in the reparations proceedings. In so doing, the Appeals Chamber will guarantee that the reparations stage of proceedings remains a judicial process in which the convicted person is a party, entitled to participate and make meaningful submissions towards the determination of his or her liability for reparations.

54. It is important to note that the TFV proposes a system where a victim found ineligible can petition the TFV for an administrative review.⁹⁶ The question posed by the Appeals Chamber is whether the Defence and/or the legal representative of victims can challenge the choice of victims before Trial Chamber II. The system as proposed by the TFV does not envision any role for the Trial Chamber, and actually excludes the Chamber completely. As the Defence has argued in these submissions,

⁹¹ [IER Report](#), para.922.

⁹² [IER Report](#), para.904.

⁹³ [IER Report](#), para.919.

⁹⁴ [IER Report](#), para.919.

⁹⁵ [IER Report](#), para.922.

⁹⁶ [TFV Observations](#), para.17.

the role of the Chamber must remain primary. Where the Court delegates administrative decision-making power to the TFV, ultimate control remains with the Court. Oversight by the Trial Chamber remains essential in guarding the rights of the convicted person.

III. Third Question - 9 September Decision, para. 28(c)

55. In its Observations relating to the third question, that is, whether the TFV can identify and determine the specific modalities of the reparations to be implemented on the basis of the Reparations Order, the TFV assumes a judicial role that goes beyond its intended functions.

56. The Defence submits that a distinction must be made between the identification of modalities of reparations on the one hand, and the designing of awards for reparations on the other. The identification of modalities relates to a judicial procedure, whereas the design of awards relates to the practicalities. The Appeals Chamber has been clear in this regard;

[...] [I]n the order for reparations, at a minimum, the Trial Chamber must **identify** those modalities of reparations which it considers appropriate based on the circumstances of the specific case before it. The Trust Fund shall **design** awards for reparations on the basis of all or some of those modalities and should link the relevant modalities to the award for reparations in its draft implementation plan, in order for the Chamber to review the determinations made in this respect [Emphasis added].⁹⁷

57. While the TFV cites to this Appeals Judgment in its Observations,⁹⁸ it goes on to conflate the judicial process of identifying modalities of reparations, with the administrative process of designing awards for reparations. First, it cites to Regulation 66 of the Trust Fund which provides that the ‘Trust Fund shall determine the modalities for the disbursement of reparations awards to beneficiaries taking into account their present circumstances and locations’.⁹⁹ While the word ‘modalities’ is used in the TFV’s Regulations, it speaks to the designing of the awards and not to the

⁹⁷ [Lubanga 2015 Appeals Decision on Reparations](#), para.200.

⁹⁸ [TFV Observations](#), para.21.

⁹⁹ [TFV Observations](#), para 22.

identification of modalities of reparations. In fact, the wording in Regulation 66 is a recognition of the TFV's ability to make logistical decisions regarding the distribution of reparation awards, due to its presence on the ground.¹⁰⁰

58. The TFV further cites to Regulation 63 but fails to do so in its entirety. Regulation 63 states:

Subject to any stipulations set out in the order of the Court, the Board of Directors shall determine the standard of proof for the verification exercise, having regard to the prevailing circumstances of the beneficiary group and the available evidence.

This is yet another indication of the TFV's misinterpretation. Regulation 63 deals with evidential issues of reparations, that is, the documents required to prove victimhood and thus satisfy a claim, in the absence of guidance by the Trial Chamber. Regulation 63 however, does not deal with the modalities of reparations, and thus, contrary to the TFV's claim, does not give the TFV the power to conduct a judicial determination.

59. In its observations on its role on collective awards, the TFV refers to Regulations 68 – 71 of the Trust Fund and correctly refers to its role 'to design the collective reparation awards, subject to the approval of the trial chamber'.¹⁰¹ This supports the assertion that the practical nature of designing the award is under the TFV's purview. However, the legal character of reparations means that the Court plays an important role in determining their modalities through the application of legal principles. In this way, the Appeals Chamber found that *at a minimum*, the Trial Chamber **must** identify modalities of reparations.¹⁰²

¹⁰⁰ McCarthy, C. (2012), The provision of reparations and victim support through the Trust Fund, in *Reparations and Victim Support in the International Criminal Court* (Cambridge Studies in International and Comparative Law, pp.225-296), p.252.

¹⁰¹ [TFV Observations](#), para.23.

¹⁰² [Lubanga 2015 Appeals Decision on Reparations](#), para.200.

60. The Defence reiterates its submissions in this regard, that is, that the Trial Chamber failed to adequately identify the modalities of reparations, and instead, provided a list of available options and left the determination to the TFV.¹⁰³ The modalities remain unclear and have been left to an administrative body to identify. This is contrary to the Appeals Chamber's ruling in *Lubanga*, and it is also contrary to other reparation proceedings before the Court.¹⁰⁴

61. It is important to note that an administrative institution that receives too little guidance from a court may fail to properly discharge its mandate or to adequately address various legal requirements.¹⁰⁵ It is imperative that the Trial Chamber play a strong role in reparation proceedings and *at a minimum*, provide clear guidelines and criteria for the TFV to elaborate its implementation plan.

62. The Defence thus submits that the TFV misinterprets a legal matter that requires judicial determination, with a practical matter that requires an administrative determination. Left unadjudicated, the TFV is granted power that goes beyond its intended functions.

IV. Fourth Question - 9 September Decision, para. 28(d)

63. In response to the Appeals Chamber's question on whether the TFV can allocate reparations between the child soldiers and the victims of the attacks on the basis of the 8 March Reparations Order, the TFV does not give a definite answer, but simply asserts that "the estimates of cost and their division within the amount of liability relevant to the two groups [...] may also change over time and adapt to the realities of the field."¹⁰⁶ The TFV did not address whether that the 8 March Reparations Order provides sufficient guidance in this regard and simply recalled

¹⁰³ [Defence Appeal](#), para.212.

¹⁰⁴ [Defence Appeal](#), paras.218–221.

¹⁰⁵ McCarthy, C. (2012), The provision of reparations and victim support through the Trust Fund, in *Reparations and Victim Support in the International Criminal Court* (Cambridge Studies in International and Comparative Law, pp.225-296), p.242.

¹⁰⁶ [TFV Observations](#), para.29.

the Chamber's prognosis that there will be more victims of the attacks than child soldiers.¹⁰⁷

64. In this context, the Defence recalls its previous submissions that (i) the Trial Chamber erred in determining the number of potential beneficiaries by relying on unreasonable and imprecise estimates;¹⁰⁸ and (ii) the Trial Chamber erred and abused its discretion in setting the amount of Mr Ntaganda's liability at \$ 30,000,000.00 a number which is arbitrary, based on unclear calculations and incompatible with the principle of proportionality.¹⁰⁹

65. Accordingly, the Defence reiterates that all determinations contained in the 8 March Reparations Order relating to the scope of Mr Ntaganda's liability should be quashed.¹¹⁰

66. Nonetheless, the Defence notes that the issue of how the amount of liability should be divided among the different groups of victims is left unaddressed in the 8 March Reparations Order. Once again, and without any explanation, the Trial Chamber abdicated its judicial functions in favour of the TFV.

CONCLUSION

67. The TFV Observations were meant to address the merits of the Reparations Appeals, more particularly the Defence submissions. In light of the foregoing, the Defence respectfully notes the general nature of the TFV Observations, focusing on its perception of its role, which do not specifically address submissions in support of the Defence Appeal.

68. While this concludes the briefing of the Reparations Appeals, the Defence underscores that the reparations process is presently proceeding on the basis of the 8 March Reparations Order, which is the object of numerous grounds of appeal raised

¹⁰⁷ [TFV Observations](#), paras.27,29.

¹⁰⁸ [Defence Appeal](#), paras.226-238.

¹⁰⁹ [Defence Appeal](#), paras.239-254.

¹¹⁰ [Defence Appeal](#), paras.238,244,254,256,259.

by the LRV2 and the Defence that challenge live issues related to the IDIP and DIP. In this regard, the Defence deems appropriate to suggest that swift resolution of the Reparations Appeals is in the interest of both the victims and the convicted person.

69. While the Defence maintains its grounds of appeal and reiterates the need for a new or substantially modified reparations order to be issued, the Defence stands ready to assist the reparations process in any way deemed appropriate by the Appeals Chamber.

RESPECTFULLY SUBMITTED ON THIS 25th DAY OF OCTOBER 2021

A handwritten signature in black ink, appearing to read 'StB-'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda
The Hague, The Netherlands