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Date: **8 June 2023**

TRIAL CHAMBER II

Before:

**Judge Chang-ho Chung, Presiding Judge
Judge Péter Kovacs
Judge Maria del Socorro Flores Liera**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

**Public
With Confidential Annex A**

**Public Redacted Version of “Submissions on behalf of the convicted person on the
dossiers of the victims included in the *sample*”, dated 1 May 2023, ICC-01/04-02/06-
2851-Conf**

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 Appeals Chamber’s “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”, dated 12 September 2022 (“Appeal Judgment”);¹ the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” issued by Trial Chamber II (“Trial Chamber”) on 25 October 2022 (“Implementation Order”);² the Trial Chamber’s “Decision on the Registry submission in compliance with the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”³ dated 25 November 2022 (“25 November Decision”); transmission to the Defence of 171 dossiers of the victims included in the sample, between 11 January 2023 and 6 February 2023;⁴ the submissions of the Legal Representatives of Victims (“LRVs”) on the dossiers of the victims included in the sample, on 3 March 2023;⁵ and the Decision issued by Trial Chamber II on 24 March 2023 extending the time limit until 1 May 2023 for the Defence to make submissions on the dossiers of victims included in the sample,⁶ Counsel for the Convicted Person (“Defence”) hereby submits these:

Submissions on behalf of the convicted person on the dossiers of the victims included in the sample

“Defence Submissions on Sample Victims”

¹ Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 12 September 2022, [ICC-01/04-02/06-2782](#) (“Appeal Judgment”).

² Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 25 October 2022, [ICC-01/04-02/06-2786](#) (“Implementation Order”).

³ Decision on the Registry submission in compliance with the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”, 25 November 2022, [ICC-01/04-02/06-2794](#) (“25 November Decision”).

⁴ First Transmission to the Defence of 28 Redacted Victim Dossiers pursuant to Trial Chamber II Decision ICC-01/04-02/06-2794, 11 January 2023, [ICC-01/04-02/06-2809](#); Second Transmission to the Defence of 50 Redacted Victim Dossiers pursuant to Trial Chamber II’s Decision ICC-01/04-02/06-2794, 20 January 2023, [ICC-01/04-02/06-2814](#); Third Transmission to the Defence of 92 Redacted Victim Dossiers pursuant to Trial Chamber II’s Decision ICC-01/04-02/06-2794, 27 January 2023, [ICC-01/04-02/06-2816](#); Transmission to the Defence of One Redacted Victim Dossier pursuant to Trial Chamber II’s Decision ICC-01/04-02/06-2813, 6 February 2023, [ICC-01/04-02/06-2825](#).

⁵ Common Legal Representative of the Former Child Soldiers’ submissions on the 34 applications constituting the sample, 3 March 2023, [ICC-01/04-02/06-2835](#) (“LRV1 Submissions on the victims’ dossiers”); Submissions by the Common Legal Representative of the Victims of the Attacks on the dossiers of the victims included in the Sample, 3 March 2023, [ICC-01/04-02/06-2836](#) (“LRV2 Submissions on the victims’ dossiers”).

⁶ Email sent by the Chamber to the Parties on 24 March 2023 at 08:28.

INTRODUCTION

1. The Defence is committed to playing a positive and active role in the reparations proceedings, whilst simultaneously safeguarding the rights and interests of Mr Ntaganda. The necessity of the Defence's role was recognised by the Appeals Chamber:⁷

since the amount of the award for reparations in this case should be based on information contained in, among other sources, at least a sample of applications for reparations, the Defence must be able to challenge this information by means of reviewing the applications and making representations thereon. The Defence must also be on notice as to the manner in which the Trial Chamber intends to assess the information.

2. Accordingly, and despite numerous obstacles faced throughout, the Defence has approached the task of assessing the victims' dossiers with care, including in preparing these submissions to assist the Chamber in pronouncing on the eligibility of the 171 applicants in the sample. The aim of these Defence Submissions on Sample Victims is to state the Defence's position regarding the eligibility of the victims, both generally as to the criteria to be considered and the standard, and specifically for each dossier. In fulfilment of its role, the Defence submissions will therefore address all facets of the eligibility determination and assess, in detail, the individual circumstances of each victim.⁸

3. The results of the Defence's review of the dossiers have been revealing. Indeed, the Defence concludes that 10 applicants are eligible to participate in reparations proceedings, 75 applicants are not eligible, and 86 applicants are not eligible unless additional relevant information is obtained and submitted. Strikingly, of the 67 priority victims in the *sample*, determined to be eligible by the Trust Fund for Victims ("TFV") pursuant to the Initial Draft Implementation Plan ("IDIP"), the Defence submits that 7 should be found eligible, 18 should be found not eligible, and 42 should be found not eligible unless additional relevant information is submitted. Moreover, of the 67 IDIP priority victims in the *sample*, [REDACTED] had previously been assessed by the Victims Participation and Reparations Section ("VPRS") and determined to be *not* eligible.⁹ The TFV nonetheless determined all of them to be eligible, limiting its assessment to whether the harm alleged results from a crime for which Mr Ntaganda has been convicted, without more.

⁷ [Appeal Judgment](#), para.363.

⁸ Contrary to the position advanced by LRV2, the Defence submits that the order relating to the implementation of collective reparations has no bearing on the current submissions.

⁹ [REDACTED].

CONFIDENTIALITY

4. The Defence Submissions are classified confidential pursuant to Regulation 23*bis* RoC, given that they refer to information included in the dossiers of victims included in the sample, which are classified as confidential.

PROCEDURAL BACKGROUND

5. On 12 September 2022, the Appeals Chamber issued its Judgment, setting out the errors made by Trial Chamber VI in the formulation of the Reparations Order.¹⁰ The Appeals Chamber found, *inter alia*, that Trial Chamber VI erred in issuing a decision without having assessed and ruled upon victims' application forms for reparations, and had failed to consider and assess even a sample of these forms.¹¹

6. On 25 October 2022, the Chamber issued an Order of implementation of the Appeal Judgment, in which it set out the methodology to assemble a sample of victims' applications. The Implementation Order also invited the parties to make submissions on the procedure for the constitution of the sample; as well as to bring to the attention of the Chamber any issues related to redactions of the victims' applications.¹²

7. On 9 November 2022, the Defence filed its submissions on the procedure for the constitution of the sample established by the Implementation Order.¹³

8. On 25 November 2022, the Chamber issued its Decision on the procedure for the constitution of the sample¹⁴ in which it, *inter alia*: (i) ruled on the constitution of the sample; (ii) set the procedure applicable for redactions; and (iii) set the calendar for the parties following the constitution of the sample, the last step being the Defence submissions on the dossiers of victims included in the sample.

¹⁰ Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", 12 September 2022, [ICC-01/04-02/06-2782](#) ("Appeal Judgment").

¹¹ [Appeal Judgment](#), paras.23,341-346,363-369,747.

¹² [Implementation Order](#), paras.34(e),36.

¹³ Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order, 9 November 2022, [ICC-01/04-02/06-2791](#).

¹⁴ Decision on the Registry submission in compliance with the "Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'", 25 November 2022, [ICC-01/04-02/06-2794](#) ("25 November Decision").

9. Following the TFV's submissions of information on certain victims selected in the sample,¹⁵ the Chamber issued a decision¹⁶ on 9 January 2023, in which it excluded 3 of the victims and requested the VPRS to randomly select other victims from the "victims of crimes against child soldiers". The VPRS complied on 12 January 2023.¹⁷

10. Between 12 December 2022 and 26 January 2023, the Legal Representatives for Victims informed the parties that [REDACTED] consulted victims included in the sample did not consent to disclose their identity to the Defence.¹⁸

11. Between 11 January 2023 and 27 January 2023, the Registry transmitted to the Defence 170 redacted dossiers of victims included in the sample.¹⁹ On 6 February 2023, the Registry transmitted to the Defence the last redacted dossier of the randomly selected victim on 12 January 2023.²⁰

12. On 2 March 2023, the Defence asked the VPRS, in accordance with the 25 November Decision, to lift certain redactions applied to the dossiers of the victims included in the sample. On 21 March 2023, VPRS communicated its position to the Defence regarding the redactions applied to the dossiers of the victims of the attacks in the sample, based on the views of LRV2. On 22 March 2023, VPRS communicated its position to the Defence regarding the redactions applied to child soldier victims in the sample, based on the views of LRV1.

13. On 3 March 2023, the Legal Representatives for Victims filed their submissions on the dossiers of victims constituting the sample.²¹

¹⁵ Trust Fund for Victims' submission of information on certain victims selected in Trial Chamber II's approved sample, 22 December 2022, [ICC-01/04-02/06-2807](#).

¹⁶ Decision on the Trust Fund for Victims' submission of information on certain victims selected in Trial Chamber II's approved sample, 9 January 2023, [ICC-01/04-02/06-2808](#).

¹⁷ Registry Transmission of One Victim Dossier in Compliance with the "Decision on the Trust Fund for Victims' submission of information on certain victims selected in Trial Chamber II's approved sample" (ICC-01/04-02/06-2808), 12 January 2023, [ICC-01/04-02/06-2810](#).

¹⁸ Emails sent by the LRVs to the Parties between 12 December 2022 and 26 January 2023.

¹⁹ First Transmission to the Defence of 28 Redacted Victim Dossiers pursuant to Trial Chamber II Decision ICC-01/04-02/06-2794, 11 January 2023, [ICC-01/04-02/06-2809](#); Second Transmission to the Defence of 50 Redacted Victim Dossiers pursuant to Trial Chamber II's Decision ICC-01/04-02/06-2794, 20 January 2023, [ICC-01/04-02/06-2814](#); Third Transmission to the Defence of 92 Redacted Victim Dossiers pursuant to Trial Chamber II's Decision ICC-01/04-02/06-2794, 27 January 2023, [ICC-01/04-02/06-2816](#).

²⁰ Annex 1 to Transmission to the Defence of One Redacted Victim Dossier pursuant to Trial Chamber II's Decision ICC-01/04-02/06-2813, 6 February 2023, [ICC-01/04-02/06-2810-Conf-Exp-Anx1-Red](#).

²¹ Common Legal Representative of the Former Child Soldiers' submissions on the 34 applications constituting the sample, 3 March 2023, [ICC-01/04-02/06-2835](#) ("LRV1 Submissions on the victims'").

14. On 7 March 2023, the Defence requested the LRVs in accordance with the 25 November Decision to lift certain redactions applied to their submissions on the dossiers of victims constituting the sample. On 10 March 2023, LRV2 responded to the Defence request, maintaining certain redactions applied and lifting some. On 13 March 2023, LRV1 responded to the Defence request, maintaining all redactions applied.

15. On 20 March 2023, the Defence sought a limited extension of the time limit to make submissions on the applications constituting the sample.²² The Chamber extended the time limit until 1 May 2023.²³

16. On 29 March 2023, in accordance with the 25 November Decision, the Defence asked the Chamber to lift certain redactions applied by the Registry and the CLRs on the dossiers of victims included in the sample (“Defence Request for TFV Material and for Lifting of Redactions”). In the same request, considering that the Defence has not received from the TFV any relevant information or documentation taken into account when reaching the administrative decision on the 67 victims already found eligible for the IDIP purposes, despite having been ordered to do so by the Chamber, the Defence also sought communication of such material.²⁴

17. On 11 April 2023, the TFV responded to the Defence request, stating that it had already transmitted the material to the VPRS, adding that it was not included in the process of transmitting and selecting the information to be shared with the Defence.²⁵ The following day, the Defence moved the Chamber for leave to reply to the TFV Response (“Defence Request for Leave to Reply”).²⁶

dossiers”); Submissions by the Common Legal Representative of the Victims of the Attacks on the dossiers of the victims included in the Sample, 3 March 2023, [ICC-01/04-02/06-2836](#) (“LRV2 Submissions on the victims’ dossiers”).

²² Defence request for a limited extension of the time limit set to make submissions on the dossiers of the victims included in the sample, 20 March 2023, [ICC-01/04-02/06-2837](#).

²³ Email sent by the Chamber to the Parties on 24 March 2023 at 08:28.

²⁴ Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims’ dossiers, 29 March 2023, [ICC-01/04-02/06-2838](#) (“Defence Request for TFV Material and for Lifting of Redactions”).

²⁵ Observations of the Trust Fund for Victims on the Defence Request of 29 March 2023, 11 April 2023, [ICC-01/04-02/06-2844](#).

²⁶ Defence request for leave to reply to the “Observations of the Trust Fund for Victims on the Defence Request of 29 March 2023”, 12 April 2023, [ICC-01/04-02/06-2846](#).

18. On 21 April 2023, the Chamber rejected the Defence Request for TFV Material and for Lifting of Redactions and the Defence Request for Leave to Reply.²⁷

SUBMISSIONS

I. Preliminary Issues

19. There are two preliminary issues the Defence wishes to note, related to the amount of time allocated to the Defence to conduct its review and analysis of the 171 victim dossiers, as well as the extent of the redactions applied. Notwithstanding these issues, which are discussed further below, the Defence is proceeding with the filing of its observations on the victims' dossiers to avoid the further delays that would be caused by additional litigation of these issues.

a. Impact of time allocated to the Defence

20. The Defence have had insufficient time to adequately review, investigate and validate the claims made in the 171 victims' dossiers. As outlined above, the Defence only started receiving the dossiers of victims included in the sample in January 2023, a process which was not completed until February 2023.²⁸ Prior to this time, the Defence had no information about the victims' dossiers, other than for applicants who are dual status witnesses, victims called to present evidence and victims called to present views and concerns (of which there are only 10). Consequently, the Defence had only two months in possession of all 171 victims' dossiers.

21. The time provided is inadequate for the Defence to complete a detailed review of 171 dossiers and conduct all necessary investigations into the claims made by the victim applicants. In order to fulfil its obligations and make informed submissions, for each of the victims included in the sample, the Defence is required to: (i) conduct an in-depth review of each dossier; (ii) consider whether the allegations made by the victim meet all the criteria required for admission, including conducting analysis and comparison with the findings in the various court documents; and (iii) conduct investigations into the allegations, including within the extensive array of evidence and on-the-ground (wherever possible). This is a labor-intensive process, which is not possible to be completed to the required standard for all victim applicants within the two-month time frame, especially in light of the limited resources allocated to the Defence during

²⁷ Decision on the Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims' dossiers, 20 April 2023, [ICC-01/04-02/06-2847](#) ("20 April Decision")

²⁸ See paragraphs 11 above, and the sources cited therein.

reparations proceedings. The result is that the Defence have been unable to complete this review and make thorough submissions on all victims' dossiers in the sample.

22. Notably, the Defence requested access to the participating victims' dossiers from the very beginning of the reparations proceedings,²⁹ as part of its role in the proceedings and to ensure Mr Ntaganda's rights were safeguarded. The inadequacy of the time given to the Defence now is therefore made more egregious in light of these previous requests for, and denials of access to, the victims' applications, stretching back years.

b. Impact of Redactions & Withholding of Information

23. Compounding the above lack of time, the Defence's review and analysis of the dossiers has been further hamstrung by the extent of the redactions applied thereto. This is an issue that has been raised repeatedly by the Defence, including in a recent request to have redactions lifted, which was denied by the Chamber.³⁰ In this decision, the Chamber concluded that "the redactions regime as previously established strikes the relevant balance required by article 68(1) of the Statute, enabling the Defence to make meaningful submissions on the victims' eligibility".³¹

24. The Defence disputes this finding, since its ability to make meaningful submissions has been severely impeded by the extent of the redactions. In particular, the redactions maintained in the dossiers go beyond the letter and essence of the redaction procedure set out by the Chambers. The result of the LRVs' expansive approach is the total redaction of *all* information that *might* reveal the identities of victims, including key "information relating 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 Ntaganda has been convicted".³² The Chamber considered that the Defence has not demonstrated how its ability to review and comment on the victims' dossiers in the sample is effectively affected by the redactions maintained therein.³³ The Defence respectfully submits that the prejudice from such an extensive redactions regime is clear and that it was set out in the annex to the Defence request seeking certain redactions to be lifted, not mentioned in the 20 April Decision. The Defence also takes issue with the argument raised by LRV1 that "[...] the redacted information is not necessary for the Defence in order to provide meaningful

²⁹ See for instance, Defence submissions on reparations, 28 February 2020, [ICC-01/04-02/06-2479](#), para.9; Defence Observations on the Registry First Report on Reparations, 30 October 2020, [ICC-01/04-02/06-2622](#), para.64.

³⁰ [20 April Decision](#), Disposition.

³¹ [20 April Decision](#), para.22.

³² [25 November Decision](#), para.30.

³³ [20 April Decision](#), para.22.

observations on the eligibility of the victims concerned, **particularly considering the collective nature of reparations in the present case**, thus not warranting close scrutiny of the harm suffered by the victims.”³⁴ Indeed and in short, the collective reparations with individual components ordered by Trial Chamber VI in the Reparations Order that was reversed do not lower the threshold or minimize the required scrutiny of the victims’ dossiers to determine their eligibility. The Defence deplores the LRVs raising yet again this argument.

25. The Defence reiterates that the victims’ lack of consent was the only factor militating in favour of continued, extensive redactions.³⁵ Indeed, the Chamber held that redactions to the identity of the victims’ dossiers in the sample could be lifted if the victims agreed to have their identity disclosed. Strikingly, no less than [REDACTED] victims in the sample did not have an opportunity to agree or not to the disclosure of their identity to the Defence.³⁶ Yet, the Chamber proceeded on the basis that [REDACTED] refused to have their identity disclosed. The Defence agrees that victims’ security concerns are paramount. However, in this case, no concrete evidence was ever adduced as to the genuine and objective security concerns which would validate the necessity of the redactions, particularly at this stage. Consequently, the balancing exercise required under Article 68(1) has gone awry: the measures adopted to protect the victims far outweighed the provision of the minimum information required to enable the Defence to meaningfully challenge the victims’ eligibility and ensure that only victims having suffered harm as a result of the crimes for which Mr Ntaganda was convicted are entitled to receive reparations.

26. Further, as previously submitted, the Defence never received the materials that the TFV was ordered by the Chamber to submit, regarding the information or documentation taken into account by the TFV when reaching the administrative decision on the 67 victims already found eligible for the IDIP.³⁷ Instead, the TFV stated that it had transmitted the information to the VPRS. The Chamber recently acknowledged this failure, noting its disapproval of the TFV’s practice and that it was “unhelpful to the proceedings and ultimately to the victims”.³⁸ Ultimately however, the Chamber reviewed the materials itself, and determined that “the Defence has received all available information and documentation required for it to assess and

³⁴ [20 April Decision](#), para.18.

³⁵ [Defence Request for TFV Material and for Lifting of Redactions](#), para.14.

³⁶ Emails sent by LRV1 to the Parties between 12 December 2022 and 26 January 2023 (out of the 34 child soldier victims constituting the sample, 13 have not been reached); Emails sent by LRV2 to the Parties between 12 December 2022 and 28 December 2022 (out of the 137 victims of the attacks constituting the sample, 55 have not been reached).

³⁷ [25 November Decision](#), para.34(f).

³⁸ [20 April Decision](#), para.14.

make meaningful submissions on the victims' dossiers".³⁹ In reaching this conclusion, thereby reversing its prior order to the TFV, the Chamber's decision did not contain any analysis of the materials it states having reviewed, and did not even specify the nature of the materials. The Defence therefore remains in the dark as to the materials relied upon and the assessments conducted by the TFV. The Defence submits again that, without this information, it was not possible to make meaningful submissions. Notably, if the TFV did obtain additional information from the applicants, which was not provided to the Defence contrary to the 25 November Decision - particularly the questionnaire which was the object of much debate⁴⁰ - then the opportunity given to the Defence to assess the victims' dossiers amounts to an ill-conceived procedure. This is even more important considering the victims determined to be eligible by the TFV, who had previously been considered not eligible by the VPRS⁴¹ in application of the Single Judge's Order⁴² and the December 2020 Decision.⁴³

II. The standard of 'sufficiently close in time to the relevant time frames'

27. The temporal scope set by the Chamber, namely 'sufficiently close in time to the relevant time frames',⁴⁴ is not precise enough for the reparations phase of proceedings. This standard was introduced by the Chamber as part of the procedure authorising victims to participate in the trial phase of proceedings. However, the Defence once again emphasises that the standard of proof to admit a victim to participate at trial, *i.e.*, *prima facie*,⁴⁵ differs significantly from the balance of probabilities standard of proof applicable during the

³⁹ [20 April Decision](#), para.15.

⁴⁰ See for instance, Annex 1 to Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan, 24 January 2022, [ICC-01/04-02/06-2741-Conf-Anx1](#); Defence observations on the Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan, 4 February 2022, [ICC-01/04-02/06-2744-Conf](#), paras.17-21; Annex 1 to Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 March 2022, [ICC-01/04-02/06-2751-Conf-Anx1](#), pp.16-18; Defence observations on the Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 7 April 2022, [ICC-01/04-02/06-2755](#), para.48.

⁴¹ a/00199/13; a/00212/13; a/00215/13; a/01566/13; a/01635/13; a/01636/13.

⁴² Order setting deadlines in relation to reparations, 5 December 2019, [ICC-01/04-02/06-2447](#), para.9(a).

⁴³ Decision on issues raised in the Registry's First Report on Reparations, 15 December 2020, [ICC-01/04-02/06-2630](#) ("December 2020 Decision").

⁴⁴ [December 2020 Decision](#), para.38.

⁴⁵ The standard of proof is *prima facie*, credible grounds to believe that the applicant has suffered harm as a result of a crime committed within the jurisdiction of the court: *The Prosecutor v. Thomas Lubanga*, Decision on Victims' Participation, 18 January 2008, [ICC-01/04-01/06-1119](#), para.99.

reparations phase.⁴⁶ The higher standard of the ‘balance of probabilities’ necessitates greater specificity in the temporal scope.

28. During the reparations phase, the VPRS initially proposed that the relevant time frame for victim participation should be clearly defined as a three-day window on either side of the dates for crimes mentioned in the judgment.⁴⁷ However, the Chamber disregarded this proposal, instead instructing the Registry to “continue applying the ‘sufficiently close in time to the relevant time frames’ standard, assessing victims’ applications on a case-by-case basis, focusing on the intrinsic consistency and reliability of their accounts and without limiting their eligibility to a strict three-day window.”⁴⁸

29. The ‘sufficiently close in time’ standard lacks the precision required to meet the balance of probabilities standard. While acknowledging the impact of the vestiges of time on the memory of victims, the Defence submits that careful scrutiny must be given to the timing of the harm alleged by victims, and the link with the crimes. The Defence recalls that Mr Ntaganda was charged with crimes committed in the context of the First Operation, from on or about 20 November 2002 and on or about 6 December 2002; in the context of the Second Operation, from on or about 12 February to on or about 27 February 2003; and for crimes related to child soldiers for the period between 6 August 2002 and 31 December 2003.⁴⁹ It is therefore clearly not sufficiently close in time for a victim to claim to have suffered harm prior to November 2002, or in March 2003 for the attack that took place in February.

30. The starting point for the Chamber’s analysis must be that the date of harm must be known to a genuine victim. Inconsistencies and contradictions as to timing should be considered in this context, and treated with an appropriate level of scrutiny.

31. This issue finds application in no less than 33 victims’ dossiers analyzed in Annex A.

III. The link between the harm mentioned and crime for which Mr Ntaganda was found guilty

32. The Defence stresses the importance of the Chamber’s findings regarding the necessary link between the harm allegedly suffered by the victim and the crime for which Mr Ntaganda

⁴⁶ Defence Observations on the Registry First Report on Reparations, 30 October 2020, [ICC-01/04-02/06-2622](#) ("Defence Observations"), para.3 and fn.4.

⁴⁷ [December 2020 Decision](#), para.35.

⁴⁸ [December 2020 Decision](#), para.38.

⁴⁹ [Defence Observations](#), para.11, and its associated footnotes.

was convicted. That is, in order to be entitled to reparations, “victims must have suffered harm as a result of a crime for which Mr Ntaganda has been convicted”.⁵⁰ The Chamber has also clarified that, the “assessment as to whether a person may be entitled to reparations in the Ntaganda case shall be based exclusively on the conviction and not on the Chamber’s prior decisions regarding the scope of the case brought to trial or the requirements for victims’ participation during the trial proceedings.”⁵¹

33. The result of these clear statements is that not all victims who suffered harm during the First or Second Operations are eligible for reparations. Instead, there must be a clear link to a crime for which Mr Ntaganda was convicted. For example, in relation to the Second Operation in Nyangaray, certain victims did not suffer harm as a result of crimes for which Mr Ntaganda was convicted in relation to this event, notwithstanding that the harm suffered may have taken place during the Second Operation. For instance, a/20125/13 claimed to have had his house destroyed, his belongings pillaged and his brother killed [REDACTED] during the second operation. He however must be found ineligible, as the Chamber has not made any positive finding regarding these three counts in the Trial Judgment. Further examples are found in Annex A to these Defence Submissions on Sample Victims.⁵² The Chamber also previously confirmed that allegations of deportation or forcible displacement had not been proven in relation to Nyangaray and limited the underlying acts of persecution for which victims may claim reparations, stating:⁵³

only victims of the underlying acts specifically referred to in the Chamber’s positive findings that lead to the conviction for persecution in Nyangaray, i.e. those that because of the UPC/FPLC taking control over Nyangaray resulted in individuals fleeing and hiding in the bush, where they stayed in difficult conditions, may be eligible for reparations in the Ntaganda case on the basis of this crime.

34. In addition, and as will be expanded upon below, the description of the harm suffered and how it was caused is also very important. A victim’s narrative which simply refers to harm suffered as a result of an attack by the UPC/FPLC is not sufficient; it must include details of who conducted the attack, when the attack was, where the attack was and how the harm was suffered. It must be possible to align an applicant’s narrative with the findings contained in the Trial Judgment. If no information is provided demonstrating the causal link, or if information

⁵⁰ [December 2020 Decision](#), para.11.

⁵¹ [December 2020 Decision](#), para.11 (emphasis added).

⁵² See *inter alia*, a/20127/13; a/00412/13; a/01250/13; a/30406/15; a/30309/15; a/20109/13.

⁵³ [December 2020 Decision](#), para.61.

is provided that is contrary to, or materially different from, findings in the Trial Judgment, the applicant cannot be found to be eligible.

35. Consequently, if the harm suffered by the applicant was not caused by the commission of a crime for which Mr Ntaganda was found guilty, the applicant is not eligible for reparations in these proceedings. This issue finds application particularly in no less than 105 victims' dossiers in the sample.

IV. Insufficiency of information and/or documentation supporting the applications

36. To be eligible to benefit from reparations, a victim applicant is required to submit sufficient evidence to meet the balance of probabilities standard for all aspects of his / her claim. 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.⁵⁴ However, at a minimum, the information provided must contain relevant details, and be verifiable. That is, applicants cannot simply state they are victims of a crime, without more. Annex A to these Defence Submissions on Sample Victims include many relevant examples, including applicant a/00116/13 who states that “ma maison brûlée avec tous les biens”⁵⁵ and applicant a/00907/13 who claims that “pendant les attaques, j’avais laissé ma mère vivante. Elle est tuée par le groupe arme de Hema.”⁵⁶

37. The minimum information, which must be provided by an applicant for the purpose of being determined eligible pursuant to the balance of probabilities standard is akin to the information that would be requested from any person seeking to benefit from an award following a ruling against a company for contaminating a river, in the context of a judicial class action. First, the ruling against the company to pay reparations to potential victims who suffered harm as a result of the contamination, is but the first step to the reparations process. Second, no applicant could benefit from reparations simply by saying that he or she suffered harm because of the contaminated water without more. Third, it would be necessary for an applicant to be found eligible pursuant to the balance of probabilities standard and to be eligible to receive a reparations award, to demonstrate, *inter alia*, where he lived at the time, where the water supplied to his residence came from, who lived with him at the time, who were his neighbors, how long he lived in that area, how long he and his family drank this water, whether he or his

⁵⁴ Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#), para.77.

⁵⁵ Annex 12 to Registry Transmission of 173 Unredacted Victims' Dossiers to the Chamber and the Legal Representatives of Victims, 28 November 2022, [ICC-01/04-02/06-2795-Conf-Exp-Anx12-Red](#).

⁵⁶ Annex 65 to Registry Transmission of 173 Unredacted Victims' Dossiers to the Chamber and the Legal Representatives of Victims, 28 November 2022, [ICC-01/04-02/06-2795-Conf-Exp-Anx65-Red](#).

family members experienced troubles due to the water and, when they stopped drinking that water. The information to be provided by an applicant would have to be detailed enough to align with the ruling against the company and be verifiable. Nothing more and nothing less is required from the applicants in this case.

38. The Defence submits that for a claim to be sufficiently detailed and verifiable, it must be supported by information or documents. Concerningly, the Defence notes that LRV2 states that all but two of the victims were unable to provide any documentary proof in support of the harm allegedly suffered.⁵⁷ Where an applicant fails to provide the required information or documents, they must provide an adequate justification for why the materials could not be obtained, which must itself be verifiable. While the Defence accepts that formal recognition of harm may not be possible (e.g. through a death certificate or hospital records),⁵⁸ it is not sufficient to simply stop the investigation there; some other proof must be furnished. Similarly, while it may be sufficient for a victim applicant to provide details of a neighbour or relative who could justify the unavailability of a specific document, simply stating something to the effect of “my former neighbours could confirm my narrative but I don’t know their names and I don’t have their contact details” is clearly not sufficient. Declarations from non-interested third parties can and should be provided to establish any details for which the sole source of information would otherwise be the applicant.

39. The Defence provides the following specific example, to illustrate the information required where there is an allegation of harm for the destruction of a victim’s house. To support this claim, the applicant must provide proof of ownership, in addition to either: (1) proof of this destruction, in the form of official records, other documentary evidence or the testimony of witnesses, relatives or others; or (2) if there is no proof of the destruction, evidence justifying why there is no proof of destruction, including any of the same forms of evidence. It is not sufficient to simply state that “j’avais des titres de propriété pour mes maisons, bien qu’elles aient été construites en paille, mais lesdits titres sont à ce jour perdus.”⁵⁹ Instead, the applicant must provide all known details of the relevant attack, as well as details of the original document and why it cannot be replaced. Similarly, a statement to the effect of “la destruction de mes [REDACTED] maisons et le pillage de mes biens pourraient être confirmés par mes voisins à

⁵⁷ [LRV2 Submissions on the victims’ dossiers](#), para.19.

⁵⁸ See, e.g., [LRV2 Submissions on the victims’ dossiers](#), paras.19-22.

⁵⁹ Annex 23 to LRV2 Submissions on the victims’ dossiers, 3 March 2023, [ICC-01/04-02/06-2836-Conf-Anx23-Red](#).

l'époque, par exemple [REDACTED], mais je n'ai plus leurs coordonnées"⁶⁰ is not sufficient. Instead, at a minimum, the applicant should provide the names and particulars of those who may be aware of the circumstances of the harm suffered. The information provided must be sufficient to identify and contact the individuals.

40. Further, in reviewing the information that is provided by the victim applicants, the focus must be on the essential elements of the crimes committed. Put simply, the information provided must demonstrate how, when and where the crime was committed, and the harm that was allegedly caused, based on the essential elements of the crimes for which Mr Ntaganda was convicted.⁶¹ Without such information, a victim applicant cannot be deemed eligible to benefit from reparations. For example, to prove harm suffered as a result of the war crime of intentionally attacking civilians, the Defence submits the applicant must provide the following types of information:⁶² (i) a description of the attack, including what the applicant personally saw, or did not see, in relation to the attack; (ii) the involvement of particular combatants, including the Lendu combatants; (iii) what the applicant did during the attack; (iv) the applicant's whereabouts before, during and after the attack; (v) who was with the applicant before, during and after the attack and whether these persons can confirm this; and (vi) whether the applicant possesses information revealing that he was actually present because only a person who was present would know this. While the required information does not need to be exhaustive, it must be sufficiently detailed and verifiable to establish, on the balance of probabilities, that the applicant was present and suffered harm.

41. The insufficiency of the information provided is also linked to the fact the Chamber did not require participating victims to complete a request for reparations (*'Formulaire de consultation à titre individuel aux fins des réparations'*). Rather, the Trial Chamber examined the type of information included in the victims' requests to participate in the proceedings and decided that the information included therein was sufficient for the purpose of determining the eligibility of the participating victims. While the Defence did not seek to challenge this decision,⁶³ the outcome is that many of the victims have not provided sufficient information to

⁶⁰ Annex 23 to LRV2 Submissions on the victims' dossiers, 3 March 2023, [ICC-01/04-02/06-2836-Conf-Anx23-Red](#).

⁶¹ The essential elements of the crimes for which Mr Ntaganda was convicted are set out by the Trial Chamber in the Trial Judgment: Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#), paras.860-862,903-904,950-952,988,1027-1030,1046-1047,1076,1103-1109,1135-1136,1150-1152.

⁶² For the legal elements of the war crime of intentionally attacking civilians, see [Judgment](#), para.903.

⁶³ Notwithstanding the fact that this decision may be in contravention of the requirements in Article 75(3) of the Rome Statute, which requires the Court to do the following: "Before making an order under

be deemed eligible to receive a reparations award. Since the standard to be admitted as a victim participating in proceedings is lower and less demanding, the information provided by the applicants in their requests for participation was often very limited and general. The LRVs have themselves recognised the limitations of the original information provided.⁶⁴ To that end, the information initially provided by some, but by far not all, applicants for the purpose of participating in proceedings has been supplemented in the LRVs' Submission on the dossiers filed pursuant of the victims included in the sample pursuant to the 25 November Decision.⁶⁵ Notably, the LRVs supplemented the victims' dossiers in 43 cases only.⁶⁶ Even with such supplementary information, and definitely without it, many of the applications do not meet the level of detail required for the balance of probabilities standard.

42. To provide but one example, applicant a/00828/13 stated in her application form to participate in the proceedings that her belongings were looted and that she fled to [REDACTED], [REDACTED]. In the supplementary submissions by LRV2, the applicant just added that her flight was hard by giving some examples and that her belongings pillaged included furniture, clothes, utensils and livestock.⁶⁷ She further stated that each of these two facts could be confirmed by someone for whom she does not have the contact details. No further documentation or explanation of the lack thereof is provided.⁶⁸

43. The information provided must allow the TFV, and ultimately the Chamber, to determine whether an applicant is a genuine victim. If the applicant has provided the requisite information, the Defence does not challenge their eligibility to benefit from reparations. If they have not, they should *not* be considered eligible. This issue finds application in no less than 110 victims' dossiers in the sample.

V. Coherence and credibility of the victim's account

44. The Legal Representatives for Victims have submitted that the eligibility for reparations for victims should be determined in accordance with the standard of whether the concerned

this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States".

⁶⁴ See, for example, [LRV2 Submissions on the victims' dossiers](#), paras.23-25,31-34.

⁶⁵ See, for example, the annexes to the [LRV2 Submissions on the victims' dossiers](#).

⁶⁶ LRV1 supplemented on victim's dossier; LRV2 supplemented 42 victims' dossiers.

⁶⁷ Annex 58 to Registry Transmission of 173 Unredacted Victims' Dossiers to the Chamber and the Legal Representatives of Victims, 28 November 2022, [ICC-01/04-02/06-2795-Conf-Exp-Anx58-Red](#).

⁶⁸ Annex 10 to LRV2 Submissions on the victims' dossiers, 3 March 2023, [ICC-01/04-02/06-2836-Conf-Anx10-Red](#).

victim's account is "credible and coherent".⁶⁹ The consequence of this approach is that anyone applying for reparations with a 'good' narrative could be deemed eligible to participate. Indeed, such an expansive interpretation could result in a finding that there are hundreds of thousands of victims in this case and an order of more than 30 million in reparations.

45. The Defence objects to the use of such an overly simplistic interpretation, and submits that it is an incorrect standard which should not be adopted by the Chamber. Instead, the Chamber should consider the following criteria when assessing the coherence and credibility of a victim's account.

46. *First*, a victims' account must be assessed on the basis of the information provided, and how it fits with the events established in the existing evidence. The plausibility of the narrative provided by a victim is one of the most important factors to be considered when assessing the weight which can be attributed to their application. In order to be plausible, the victim applicant must provide details regarding the events as they unfolded.

47. *Second*, there must be no significant inconsistencies or contradictions in the victim's narrative. In particular, if a narrative contains descriptions which clearly do not match the evidence on the record, in part or in whole, it cannot be considered coherent and credible. For example, numerous discrepancies were revealed as part of the testimonies of dual status witnesses or victims during trial proceedings, which clearly have an impact on the reliability of their current application materials. Further, any material change in the information provided by an applicant at the beginning of the process, for example when submitting an application to participate in the proceeding, and information provided subsequently when contacted again during the process, must be explained. If supplementary information was submitted through the application of the LRVs, which adds new details or alleges new crimes, this should be justified. By way of specific example: one applicant requested to participate as a victim in proceedings in 2013. In [REDACTED] application,⁷⁰ the applicant identified that [REDACTED] house had been pillaged, with many items taken. No details were provided about the state of the house itself. Then, in supplementary submissions filed by LRV2, the same applicant alleges for the first time that [REDACTED] house was destroyed.⁷¹ Inconsistencies such as these clearly have

⁶⁹ [LRV2 Submissions on the victims' dossiers](#), para.30; [LRV1 Submissions on the victims' dossiers](#), para.13. See also [Reparations Order](#), para.139.

⁷⁰ Annex 2 to Registry Transmission of 173 Unredacted Victims' Dossiers to the Chamber and the Legal Representatives of Victims, 28 November 2022, [ICC-01/04-02/06-2795-Conf-Exp-Anx2-Red](#).

⁷¹ Annex 2 to LRV2 Submissions on the victims' dossiers, 3 March 2023, [ICC-01/04-02/06-2836-Conf-Anx2-Red](#).

a significant impact on the reliability of **all** the information provided by the applicant, as well as the investigative efforts required by the Defence.

48. *Third*, it is important for all parties to avoid engaging in speculation about the account given by the victim applicant. To provide but one example, LRV2 submits that that “it is more likely than not that the victim [a/30285/15] was due to flee from his village to hide in forest/bush surrounding [REDACTED]”,⁷² although the applicant never claimed that he had fled to the bush or the forest. Such speculation actually transforms the narrative and removes it from the realm of the victims’ own story-telling. Again, speculation reduces the coherence and credibility of the victims’ account. This is even more important if such speculation was not even discussed with the applicant.

49. This issue finds application particularly in no less than 33 victims’ dossiers in the sample.

RELIEF SOUGHT

50. In light of the foregoing, the Defence respectfully requests the Chamber to take note of these Defence Submissions on Sample Victims, and carefully consider all of the above criteria when reaching its determination as to the eligibility of the 171 applicants assessed in Annex A.

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF JUNE 2023



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⁷² Annex 1 to LRV2 Submissions on the victims’ dossiers, 3 March 2023, [ICC-01/04-02/06-2836-Conf-Anx1-Red](#), p.63.