

**Cour
Pénale
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**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 7 September 2023

THE APPEALS CHAMBER

Before: Judge Gocha Lordkipanidze, Presiding Judge
Judge Piotr Hofmánski
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Confidential

**Response of the Common Legal Representative of the Victims of the Attacks to the
“Request for the Defence appeal against the Addendum issued by Trial Chamber
II on 14 July 2023 to be given suspensive effect” and the Trust Fund for Victims’
“Observations on the Requests for Suspensive Effect and Request under rule 103 of
the Rules of Procedure and Evidence”**

Source: Office of Public Counsel for Victims (CLR2)

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby submits his Response to the “Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect” (the “Defence Request”),¹ with reference to the grounds of appeal raised in the “Defence Notice of Appeal against the 14 July Addendum to the Reparations Order of 8 March 2021” (the “Defence Notice”).²

2. It is submitted that granting suspensive effect of the Defence Appeal in relation to any of the 13 grounds of appeal raised by the Defence either has no substantive basis, or does not meet the threshold of the criteria required for suspensive effect. In particular, the issues raised by the Defence in its grounds of appeal 2, 5 and 13, including the issue on the presumption of civilian status, were previously adjudicated by Trial Chamber VI and/or Trial Chamber II (the “Chamber”), and do not arise from the “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659” (the “Impugned Decision”).³ Even if the Defence grounds of appeal 1, 3-4, 6-8 and 11 would be successful before the Appeals Chamber, the implementation of the Impugned Decision would not create an “*irreversible situation*” that could not be corrected. Finally, the Defence grounds of appeal 9-10 and 12 are based on a clear misrepresentation of the Chamber’s previous findings, and accordingly there is no basis for granting suspensive effect in relation to said grounds.

¹ See the “Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect”, [No. ICC-01/04-02/06-2864-Conf](#), 16 August 2023. A public redacted version was filed on 21 August 2023 as [No. ICC-01/04-02/06-2864-Red](#) (the “Defence Request”).

² See the “Defence Notice of Appeal against the 14 July Addendum to the Reparations Order of 8 March 2021”, [No. ICC-01/04-02/06-2863-Conf](#), 16 August 2023. A public redacted version was filed on 22 August 2023 as [No. ICC-01/04-02/06-2863-Red](#) (the “Defence Notice”).

³ See the “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659” (Trial Chamber II), [No. ICC-01/04-02/06-2858-Conf](#), 14 July 2023. A public redacted version was issued on the same date as [No. ICC-01/04-02/06-2858-Red](#) (the “Impugned Decision”).

3. As regards the Trust Fund for Victims (the “TFV”) submissions,⁴ the Legal Representative will limit his observations by responding only to the TFV’s Request under rule 103 of the Rules of Procedure and Evidence (the “Rules”).⁵ The Legal Representative is of the view that the Appeals Chamber will not be assisted by the TFV’s observations in relation to any issue raised in the parties’ appeals, and respectfully requests the Appeals Chamber to reject the TFV’s Request under rule 103 of the Rules. In the alternative, if the Appeals Chamber were inclined to grant the TFV’s Request, it is submitted that the TFV should only be authorised to make observations on a limited number of topics which directly pertain to its functions and/or operational activities, and the parties should be allowed to respond to said observations within a reasonable timeframe.

II. PROCEDURAL BACKGROUND

4. On 8 July 2019, Trial Chamber VI found Mr Bosco Ntaganda guilty of 18 counts of war crimes and crimes against humanity.⁶

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

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

7. On 16 March 2021, the Presidency assigned the present case to a newly constituted Trial Chamber II.⁹

⁴ See the “Observations on Requests for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence”, [No. ICC-01/04-02/06-2867](#), 31 August 2023 (the “TFV’s Submissions”).

⁵ *Idem*, para. 32.

⁶ See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

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

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

⁹ See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

8. On 30 March 2021, the Appeals Chamber upheld the Judgment and the Sentencing Judgment.¹⁰

9. On 8 April 2021, the Legal Representative and the Defence filed their respective notices of appeal against the Reparations Order.¹¹

10. On 7 June 2021, the Legal Representative and the Defence filed their respective appeal briefs against the Reparations Order.¹²

11. On 23 July 2021, the Chamber issued its “Decision on the TFV’s initial draft implementation plan with focus on priority victims”.¹³

12. On 12 September 2022, the Appeals Chamber issued its “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (the “*Ntaganda* Appeals Judgment”).¹⁴ The Appeals Chamber partially remanded the Reparations Order to the Chamber finding that Trial Chamber VI failed, *inter alia* to: (i) make any appropriate determination in relation to the number of potentially eligible or actual victims of the award and/or to provide a reasoned decision in relation to its conclusion about that number; (ii) provide an appropriate calculation, or set out sufficient reasoning, for the amount of the monetary award against Mr Ntaganda; (iii) assess and rule upon victims’ applications for reparations; (iv) lay out at least the most fundamental parameters of a procedure for the TFV to carry out the

¹⁰ See the “Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red A A2](#), 30 March 2021, and the “Public redacted version of Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled ‘Sentencing judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2667-Red A3](#), 30 March 2021.

¹¹ See the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2668](#), 8 April 2021, and the “Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659”, [No. ICC-01/04-02/06-2669](#), 8 April 2021.

¹² See the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2674 A4](#), 7 June 2021, and the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675 OA4](#), 7 June 2021.

¹³ See the “Decision on the TFV’s initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2696](#), 23 July 2021.

¹⁴ See the “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (Appeals Chamber), 12 September 2022, [No. ICC-01/04-02/06-2782 A4 A5](#) (the “*Ntaganda* Appeals Judgment”).

eligibility assessment; and (v) provide reasons in relation to the concept of transgenerational harm and the evidentiary guidance to establish such harm, the assessment of the harm concerning the Sayo Health Centre and the breaks in the chain of causation when establishing harm caused by the destruction of that health centre, and the presumption of physical harm for victims of the attacks.¹⁵

13. On 25 October 2022, the Chamber issued an Order for the implementation of the *Ntaganda* Appeals Judgment,¹⁶ which set in motion processes to address and implement said Judgment.

14. On 14 July 2023, the Chamber issued the Impugned Decision.¹⁷

15. On 11 August 2023, the Chamber issued its “First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations” (the “Decision on the TFFV’s DIP”).¹⁸

16. On 16 August 2023, the Legal Representative submitted a “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659”, and Request for Suspensive Effect in relation to Trial Chamber II’s Decision on the eligibility of Victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13”.¹⁹

17. On the same date, the Defence submitted the Defence Notice and the Defence Request.²⁰

¹⁵ *Idem*, p. 11.

¹⁶ See 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” (Trial Chamber II), [No. ICC-01/04-02/06-2786](#), 25 October 2022.

¹⁷ See the Impugned Decision, *supra* note 3.

¹⁸ See the “First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations” (Trial Chamber II), [No. ICC-01/04-02/06-2860-Conf](#), 11 August 2023 (the “Decision on the TFFV’s DIP”).

¹⁹ See the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the ‘Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659’, and Request for Suspensive Effect in relation to Trial Chamber II’s Decision on the eligibility of Victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13”, [No. ICC-01/04-02/06-2862](#), 16 August 2023.

²⁰ See the Defence Notice, *supra* note 2, and the Defence Request, *supra* note 1.

18. On 18 August 2023, the Appeals Chamber assigned Judge Gocha Lordkipanidze as the Presiding Judge in the Legal Representative's and Defence's appeals against the Impugned Decision.²¹

19. On 23 August 2023, the Appeals Chamber issued its "Order inviting the Trust Fund for Victims to submit observations on the requests for suspensive effect and setting a time limit for responses to the requests and observations".²² In particular, the Appeals Chamber invited the TFCV to submit observations on issues arising from the parties' requests for suspensive effect, by 31 August 2023.²³ It further invited the Legal Representative and the Defence to submit a response to the opposing party's request for suspensive effect and the TFCV's observations by 7 September 2023.²⁴

20. On 31 August 2023, the TFCV submitted its "Observations on Requests for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence".²⁵

III. CLASSIFICATION

21. Pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court, the present submissions are classified as confidential, since they refer to the Defence Request, which is likewise classified as confidential.

²¹ See the "Decision on the Presiding Judge of the Appeals Chamber in the appeals of the common legal representative of the victims of the attacks and of Mr Bosco Ntaganda against the decision of Trial Chamber II entitled 'Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659'" (Appeals Chamber), [No. ICC-01/04-02/06-2865 A6 A7](#), 18 August 2023.

²² See the "Order inviting the Trust Fund for Victims to submit observations on the requests for suspensive effect and setting a time limit for responses to the requests and observations" (Appeals Chamber), [No. ICC-01/04-02/06-2866 A6 A7](#), 23 August 2023.

²³ *Idem*, para. 7.

²⁴ *Idem*, paras. 8-9.

²⁵ See the TFCV's Submissions, *supra* note 4.

IV. SUBMISSIONS

1. Applicable legal framework

22. Article 82(3) of the Rome Statute (the “Statute”) and rule 156(5) of the Rules apply to requests for suspensive effect of appeals against reparations orders. The Appeals Chamber has previously stated that “[s]uspension involves the non-enforcement of a decision, the subject of an appeal” and “maintains the position as it was prior to the issuing of the Impugned Decision”.²⁶ The Appeals Chamber’s decision to order that an appeal has suspensive effect is discretionary, and in determining a request for suspensive effect, it “will consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under these circumstances”.²⁷ Such factors in the past have included whether the implementation of the decision under appeal: (i) “would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant”; (ii) “would lead to consequences that would be very difficult to correct and may be irreversible”; or (iii) “could potentially defeat the purpose of the appeal”.²⁸

2. Response to the Defence Request

- (a) **In its grounds of appeal 2, 5 and 13, the Defence attempts to re-litigate issues which were already adjudicated in previous decisions and which do not arise from the Impugned Decision**

23. In its grounds of appeal 2, 5 and 13, the Defence raises issues regarding the validity of the Initial Draft Implementation Plan (the “IDIP”) and its access to information on victims. However, these issues were already adjudicated by the

²⁶ See, *inter alia*, the “Decision on request for suspensive effect” (Appeals Chamber), [No. ICC-02/05-01/20-134 OA](#), 25 August 2020, para. 5; the “Decision on the request of the Prosecutor of 19 December 2012 for suspensive effect” (Appeals Chamber), [No. ICC-01/04-02/12-12 OA](#), 20 December 2012, para. 17; and the “Decision on the Prosecutor’s ‘Application for Appeals Chamber to Give Suspensive Effect to Prosecutor’s Application for Extraordinary Review’” (Appeals Chamber), [No. ICC-02/04/01/05-92 OA](#), 13 July 2006, para. 3.

²⁷ See the “Decision on suspensive effect” (Appeals Chamber), [No. ICC-01/13-43 OA](#), 6 August 2015, para. 7.

²⁸ *Ibid.*

Chamber in its previous decisions, and therefore do not arise from the Impugned Decision. The Defence did not request leave to appeal said decisions as per rule 155 of the Rules at the time the issues arose, and has therefore forfeited its right to appeal. By raising the same issues and putting forward the same arguments, the Defence attempts to re-litigate the matters which were already adjudicated upon. In doing so, the Defence demonstrates nothing more than a mere disagreement with the Chamber's previous decisions.

24. For instance, in its ground of appeal 2, the Defence alleges that *"Trial Chamber II committed an error of law and procedure by holding that the Initial Draft Implementation Plan submitted by the TFV on 24 March 2022 remained fully operational further to the Appeals Judgment"*.²⁹ However, it raised the same arguments in its previous submissions of 9 November 2022³⁰ and 7 October 2022,³¹ and the Chamber addressed and rejected these arguments in a prior decision with reference to the Appeals Chamber's findings.³²

25. The Chamber recalled that the Appeals Judgment only partially reversed the Reparations Order and remanded it for the Chamber to only address specific issues, which do not include the IDIP.³³ The Appeals Chamber found that the Reparations Order:

"[...] represented the start of the implementation process of the award for reparations, rather than an aspect of the proceedings that has remained static and unchanged since that decision was issued. The TFV has already undertaken steps in relation to the implementation of the order for reparations; and the parties are able to make submissions

²⁹ See the Defence Notice, *supra* note 2, p. 8.

³⁰ See the "Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order", [No. ICC-01/04-02/06-2791](#), 9 November 2022, paras. 13-15.

³¹ See the "Observations on behalf of the convicted person on the Trust Fund for Victims' Seventh Update Report on the Implementation of the Initial Draft Implementation Plan", [No. ICC-01/04-02/06-2785](#), 7 October 2022, paras. 15-16, which have been reclassified as public pursuant to Trial Chamber II's instruction dated 23 November 2022.

³² See the "Decision on the TFV's Sixth and Seventh Update Reports on the Implementation of the Initial Draft Implementation Plan" (Trial Chamber II), [No. ICC-01/04-02/06-2792](#), 24 November 2022, para. 9, which has been reclassified as public pursuant to Trial Chamber II's instruction dated 24 November 2022.

³³ *Ibid.*

in relation to those further developments during the course of the implementation process. Those developments are outside the scope of the present appeal [...]."³⁴

26. Accordingly, the issues raised by the Defence in its ground of appeal 2 were already adjudicated by both the Chamber and the Appeals Chamber, and there is no basis for re-litigating upon said issues. The Defence did not request leave to appeal the Decision of 24 November 2022 in due course and cannot remedy its failure to do so retroactively by raising the same issues as part of its Appeal almost a year later — particularly where said issues do not arise from the Impugned Decision.

27. In its ground of appeal 5, the Defence complains that its previous requests for access to victims' dossiers, the lifting of redactions, and for access to the information in the TFV's possession concerning the victims were all rejected.³⁵ The Defence effectively self-acknowledges that it previously raised the very same issues with the Chamber and admits that the issues were already addressed. Since the Defence did not seek leave to appeal the relevant decisions in a timely manner, by raising the same issues and bringing the same arguments, it attempts to re-litigate identical issues which were already adjudicated.

28. Likewise, in its ground of appeal 13, in raising the issues of access to the TFV's questionnaire and the application of the *do no harm* principle in relation to the eligibility determination of potential victims, the Defence acknowledges that it raised the same issues previously and submits that its arguments were rejected by the Chamber.³⁶ Again, since the Defence did not seek leave to appeal the relevant decisions, by raising the same issues and bringing the same arguments, it attempts to re-litigate issues which were already adjudicated.

29. Consequently, the issues raised by the Defence in its grounds of appeal 2, 5 and 13 were previously adjudicated by decisions other than the Impugned Decision. Since

³⁴ See the *Ntaganda* Appeals Judgment, *supra* note 14, para. 755.

³⁵ See the Defence Notice, *supra* note 2, paras. 35-37.

³⁶ *Idem*, paras. 62-63.

said issues do not arise from the Impugned Decision, granting suspensive effect to the Defence appeal with respect to said grounds has no basis.

(b) The implementation of the Impugned Decision would not create an “irreversible situation” that could not be corrected should the Defence grounds of appeal 1, 3-4, 6-8 and 11 be successful

30. The implementation of the Impugned Decision would not create an “*irreversible situation*” that could not be corrected should the Defence grounds of appeal 1, 3-4, 6-8 and 11 be successful. Regarding the Defence grounds of appeal 1 and 3 — even if the Chamber erred by failing to issue a new reparations order instead of the Impugned Decision,³⁷ and/or to include in the Impugned Decision provisions for the specific judicial approval of the administrative screenings³⁸ — the Chamber, and as acknowledged by the Defence,³⁹ effectively provided said provisions in its Decision on the TFV’s DIP.⁴⁰

31. If the Defence was in disagreement with said provisions, it could have requested leave to appeal against the Decision on the TFV’s DIP, but it opted not to do so. Should the Defence grounds of appeal 1 and 3 be successful, the only consequence will be that the Chamber’s same substantive findings only needs to be incorporated in a single decision to be called “a new reparations order” with no bearing on the content. This consequence cannot be deemed irreversible as it is a matter of formatting, rather than substance.

32. Regarding the Defence ground of appeal 4, it is based on the premise that since the Chamber allegedly erred in its assessment of the dossiers of the victims included in the Sample, the verification body will be unable to carry out a meaningful eligibility assessment of any potential victims based on set criteria.⁴¹ This assumption is

³⁷ *Idem*, para. 21.

³⁸ *Idem*, para. 26.

³⁹ *Ibid.*

⁴⁰ See the Decision on the TFV’s DIP, *supra* note 13.

⁴¹ See the Defence Notice, *supra* note 2, para. 32.

speculative as it fails to acknowledge that both of these steps can be carried out independently from each other.

33. Indeed, in the Impugned Decision, the Chamber has set out in detail the evidentiary criteria, standard of proof and conditions on the eligibility of victims.⁴² In its Decision on the TFV's DIP, the Chamber held that the VPRS will be responsible for carrying out the administrative eligibility assessment,⁴³ and eligibility determinations will be judicially approved by the Chamber.⁴⁴ There is no indication that the VPRS will be unable to comprehensively apply the relevant eligibility criteria and standard when assessing any *new* potential beneficiaries of reparations, while being aware of any deficiencies in the Chamber's eligibility assessment of the victims *already* included in the Sample. In case of doubt and should there be an apparent issue, the VPRS will always be able to address the Chamber in order to seek further guidance. In any event, the VPRS's positive determinations will be subject to judicial scrutiny, and its negative determinations may be appealed before the Chamber by the legal representatives of victims.⁴⁵ Even if the Chamber erred in its eligibility assessment of some of the victims included in the Sample, this will not necessarily have a bearing on the eligibility assessment of any new potential victims.

34. Since the VPRS is expected to start the administrative eligibility process on 1 January 2024,⁴⁶ it can be reasonably anticipated that the first assessment outcomes will be ready in the next few months, and the inclusion of the first victims in the Draft Implementation Plan can only take place after this. Given the time the whole process is likely to take, the implementation of reparations measures for new eligible victims is unlikely to start before the Appeals Chamber's judgment on the Defence appeal. Accordingly, should the Defence's ground of appeal 4 be successful, the

⁴² See the Impugned Decision, *supra* note 3, para. 33. See also paras. 34 to 46; 53 to 148 which set out in detail the Chamber's reasoning and analysis applied to the victims in the Sample and deceased victims.

⁴³ See the Decision on the TFV's DIP, *supra* note 13, para. 185(a).

⁴⁴ *Idem*, para. 185(f).

⁴⁵ *Idem*, para. 185(d).

⁴⁶ *Idem*, para. 187.

implementation of the Impugned Decision would not create an irreversible situation that could not be corrected.

35. Regarding the Defence grounds of appeal 6, 7, and 8, the Chamber held that:

“in most cases, children of direct victims may qualify as indirect victims of the crimes without the need to claim that they suffered from transgenerational harm. In effect, as is the practice in other cases before the Court at the reparation stage of the proceedings, they will either benefit from a presumption or be able to demonstrate that they have suffered personal harm as a result of the crimes committed against their parent(s).”⁴⁷

36. Indeed, it can be reasonably anticipated that at the very beginning of the eligibility process, only a limited number of potential beneficiaries if at all, will claim to have suffered *only* transgenerational harm. Even if the Chamber erred in its approach to transgenerational harm, pending the Appeals Chamber’s determination of the Defence appeal, the need for the verification body to address claims for such harm is unlikely to arise, as such individuals can also have their harm recognised as indirect victims.

37. Regarding the Defence ground of appeal 11, it is important to recall that the Chamber awarded reparations for the harm caused to the Sayo Health Centre based on its *“holistic assessment of the evidence regarding the harm”*.⁴⁸ Moreover, the Chamber did not just rely on the Second Expert Report, but also on the additional evidence provided by the Legal Representative.⁴⁹ It further emphasised that it relied on said report *“only to the extent that it is consistent with the Chamber’s holistic assessment of the evidence regarding the harm caused as a consequence of the attack to the Sayo health centre”*.⁵⁰ Since the Second Expert Report was not a decisive piece of evidence relied upon by the Chamber, even if the Chamber erred in relying on said report, such a conclusion would not undermine the reliability of other relevant evidence. Accordingly, the implementation

⁴⁷ See the Impugned Decision, *supra* note 3, para. 195.

⁴⁸ *Idem*, para. 233.

⁴⁹ *Idem*, para. 227.

⁵⁰ *Idem*, para. 233.

of the Impugned Decision would not create an irreversible situation that could not be corrected.

38. Consequently, even if the Defence grounds of appeal 1, 3-4, 6-8 and 11 would be successful before the Appeals Chamber, the implementation of the Impugned Decision would not create an “*irreversible situation*” that could not be corrected. Accordingly, granting suspensive effect to the Defence appeal with respect to said grounds is not warranted.

(c) In its grounds of appeal 9-10, and 12, the Defence misrepresents the Chamber’s previous findings

39. Regarding the Defence grounds of appeal 9 and 10, while the Defence is correct that in awarding reparations “*a trial chamber must remain within the confines of the conviction and sentencing decisions*”,⁵¹ the Defence’s subsequent reasoning pertaining to these grounds of appeal are flawed. The Judgment and Sentencing Judgment found that regarding the attack on the Sayo Health Centre, it was “*not clear*” on the basis of the evidence whether the weapon used destroyed the health centre in full or just damaged it, thus it is also unclear whether the centre was damaged as a result of the crime.⁵² Nevertheless, Trial Chamber VI found that the UPC/FPLC’s attack disrupted the medical care for persons in need.⁵³ This resulted in certain persons unable to leave by themselves due to their medical condition, and were also left without medical care and were “*particularly defenceless*”.⁵⁴

40. Therefore, contrary to the Defence’s submission, the Chamber did not make any additional findings beyond the scope of the conviction and sentencing decisions. The Defence clearly misrepresents Trial Chamber VI’s findings contained in the Judgment and Sentencing Judgment according to which the harm caused to the Sayo Health Centre consisted in the disruption of the medical care for persons in need – which goes

⁵¹ See the Defence Notice, *supra* note 2, para. 48.

⁵² See the Sentencing Judgment, *supra* note 7, para. 153.

⁵³ *Idem*, para. 144, referencing the Judgment at para. 506.

⁵⁴ *Idem*, para. 154.

far beyond damage to the centre's physical structure. The Defence's respective ground of appeal is manifestly ill-founded as it is based on a misrepresentation of the Chamber's findings.

41. Regarding the Defence ground of appeal 12, the Defence misrepresents the Impugned Decision. Contrary to the Defence's submission, the Chamber did address the question of breaks in the chain of causation in relation to the Sayo Health Centre.⁵⁵ The Defence arguments are nothing more than a mere disagreement with the Chamber's findings. Furthermore, in limiting its submissions that it was not clear whether the Sayo Health Centre was physically damaged, the Defence again misrepresents the Judgment and Sentencing Judgment, in which it was unambiguously held that the harm caused to the Sayo Health Centre consisted in the disruption of crucial medical care for persons in need, a finding which goes far beyond damage to the centre's physical structure.⁵⁶

42. Consequently, the Defence grounds of appeal 9-10 and 12 are based on a clear misrepresentation of the Chamber's previous findings, and accordingly there is no basis for granting suspensive effect in relation to said grounds.

(d) The Defence attempts to re-litigate the applicability of the presumption of civilian status under IHL, which does not arise from the Impugned Decision

43. The Defence firstly refers to the Chamber's determination that it does not consider that the absence of information concerning the occupation of the victims, or those of their immediate family members, in their dossiers precludes a finding on the balance of probabilities that the victims are entitled to reparations.⁵⁷ However, the Defence then submits that it "*is appealing this determination on the basis inter alia that the IHL presumption of civilian status does not find application in relation to the issue at hand*".⁵⁸

⁵⁵ See the Impugned Decision, *supra* note 3, para. 238.

⁵⁶ See *supra*, para. 39.

⁵⁷ See the Defence Request, *supra* note 2, para. 16.

⁵⁸ *Ibid.*

Yet the Defence does not explain the Chamber's alleged error(s) and how it affects the Impugned Decision in relation to the presumption of civilian status under a specific ground of appeal as required pursuant to regulation 57(e) of the Regulations of the Court.

44. In any event, in the Judgment, Trial Chamber VI already found that the general presumption of protection under IHL – that *“in case of doubt whether a person is a civilian, that person shall be considered to be a civilian”*, applies to non-international armed conflicts.⁵⁹ Furthermore, the Chamber also addressed this issue with respect to the Judgment by stating that *“taking into account the presumption of civilian status under IHL, the Chamber considers that the account of persons claiming to be victims [...] shall be assessed on a case-by-case basis in order to determine whether they are persons protected under IHL”, and that it “does not consider that the absence of information concerning the occupation of the victims (or of their immediate family members) in their dossiers precludes a finding, on a balance of probabilities, that the victims are entitled to reparations”*.⁶⁰

45. In raising the issue of the presumption of civilian status again, the Defence attempts to re-litigate a matter that was already adjudicated in the Judgment. Since the issue does not arise from the Impugned Decision, there is no merit in this ground of appeal and nor is there a basis for granting suspensive effect.

3. Response to the TFV's Submissions

46. As regards the TFV's Submissions,⁶¹ the Legal Representative will limit his observations by responding only to the TFV's Request under rule 103 of the Rules.⁶²

47. The Legal Representative notes that the TFV does not specify the issues raised in the parties' appeals it seeks leave to address. He stresses that the TFV is not a party

⁵⁹ See the Judgment, *supra* note 6, para. 883.

⁶⁰ See the Impugned Decision, *supra* note 3, para. 112.

⁶¹ See the TFV's Submissions, *supra* note 4.

⁶² *Idem*, para. 32.

in the present proceedings, but an entity in charge of the implementation of the Reparations Order.

48. The Legal Representative is of the view that the Appeals Chamber will not be assisted by the TFV's observations in relation to any issue raised in the parties' appeals and respectfully requests the Appeals Chamber to reject the TFV's Request under rule 103 of the Rules. However, if the Appeals Chamber were inclined to grant the TFV's Request, it is submitted that the TFV should only be authorised to make observations on a limited number of topics which directly pertain to its functions and/or operational activities, and the parties should be allowed to respond to said observations within a reasonable timeframe.⁶³

V. RELIEF SOUGHT

49. The Legal Representative respectfully requests that the Appeals Chamber:

- **REJECT** the Defence Request for suspensive effect of its appeal; and
- **REJECT** the TFV's Request under rule 103 of the Rules.

50. In the alternative, if the Appeals Chamber were inclined to grant the TFV's Request under rule 103 of the Rules, the Legal Representative respectfully requests that the Appeals Chamber:

- **AUTHORISE** the TFV to make observations *only* on a limited number of topics which directly pertain to the latter's functions and/or operational activities; and
- **AUTHORISE** the parties to respond to the TFV's observations within a reasonable timeframe.

⁶³ In this regard, the Appeals Chamber has held that in reparations proceedings, rule 103(2) of the Rules applies *mutatis mutandis* to the legal representatives of victims. See the "Decision on various procedural issues" (Appeals Chamber), [No. ICC-01/04-02/06-2708 A4 A5](#), 9 September 2021, para. 29.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'D. Suprun', with a long vertical stroke extending downwards.

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 7th day of September 2023
At The Hague, The Netherlands