

1 International Criminal Court
2 Appeals Chamber
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Gocha Lordkipanidze, Judge Tomoko Akane,
6 Judge Luz del Carmen Ibáñez Carranza, Judge Solomy Balungi Bossa and
7 Judge Erdenebalsuren Damdin
8 Appeals Judgment on Reparations - Courtroom 1
9 Friday, 1 November 2024
10 (The hearing starts in open session at 9.35 a.m.)
11 THE COURT USHER: [9:35:00] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE LORDKIPANIDZE: [9:35:44] Good morning.
15 Would the court officer please call the case.
16 THE COURT OFFICER: [9:35:57] Good morning, Mr President. Good morning,
17 your Honours.
18 This is the situation in the Democratic Republic of the Congo, in the case of
19 The Prosecutor versus Bosco Ntaganda, case reference ICC-01/04-02/06.
20 And for the record, we are in open session.
21 PRESIDING JUDGE LORDKIPANIDZE: [9:36:18] Thank you.
22 I am Judge Gocha Lordkipanidze, presiding in this appeal arising from the case
23 of The Prosecutor versus Bosco Ntaganda. My fellow Judges in the appeal are
24 Judge Tomoko Akane, Judge Luz del Carmen Ibáñez Carranza, Judge Solomy
25 Balungi Bossa and Judge Erdenebalsuren Damdin.

1 Prior to asking the parties to introduce themselves, I note for the record that
2 the Appeals Chamber was informed that two counsel for the Defence wished to
3 attend this hearing remotely and that the Appeals Chamber decided to authorise such
4 attendance.

5 May I now ask the parties to introduce themselves for the record, please, starting with
6 the Defence.

7 MS GIBSON: [9:37:20] Good morning, Mr President. Good morning,
8 your Honours. And to colleagues around the courtroom. Appearing today on
9 behalf of Mr Bosco Ntaganda is lead counsel, Stéphane Bourgon, appearing via video
10 link; legal assistant Benjamin Willame, also appearing via video link; and myself,
11 Kate Gibson, associate counsel here in The Hague. Thank you.

12 PRESIDING JUDGE LORDKIPANIDZE: [9:37:52] Thank you.

13 MR SUPRUN: [9:37:56] Good morning, Mr President. Good morning,
14 your Honours. The victims of the attacks are represented today by
15 Amina Merrouche, just behind me, and on my right, Anne Grabowski, Fiona Lau, and
16 myself, Dmytro Suprun. Thank you.

17 PRESIDING JUDGE LORDKIPANIDZE: [9:38:11] Thank you.

18 MS PELLET: [9:38:15](Interpretation) Thank you, your Honour.
19 The former child soldiers are represented by Ana Peña and by myself Sarah Pellet,
20 counsel with the Office of Public Counsel for Victims. Thank you.

21 MS RUIZ VERDUZCO: [9:38:34] Good morning, Mr President.

22 Representing the Trust Fund for Victims today are the legal adviser,
23 Mrs Franziska Eckelmans; assistant legal officers, Mrs Veena Suresh and Nicole Stark
24 Rychter; visiting professional Maria Emilia Gelmi, and myself, Deborah Ruiz
25 Verduzco, executive director of the Trust Fund for Victims.

1 PRESIDING JUDGE LORDKIPANIDZE: [9:39:05] Thank you very much.
2 For the record, I note that Mr Ntaganda is appearing remotely.
3 The Appeals Chamber is today delivering its judgment in the appeals filed by
4 the Defence and one of the two groups of victims in this case, to whom I shall refer as
5 "Victims Group 2", against the decision of Trial Chamber II of 14 July 2023 entitled
6 "Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659".
7 I shall refer to the decision as the "Impugned Decision".
8 This is a non-authoritative summary of the Appeals Chamber's written judgment in
9 the appeal. The written judgment, together with the separate opinion of
10 Judge Ibáñez Carranza that is appended to it, will be notified after this hearing.
11 On 8 March 2021, the Trial Chamber issued an order for reparations, which I shall
12 refer to as the "2021 Reparations Order". That order was subsequently appealed.
13 On appeal, it was partially reversed and replanned to the Trial Chamber by what I
14 shall refer to as the "2022 Appeals Chamber Judgment", on 12 September 2022.
15 Thereafter, on 14 July 2023, the Trial Chamber issued the Impugned Decision to
16 address the issues on remand. This Appeals Chamber judgment concerns appeals
17 filed against that decision by the Defence, which raises thirteen grounds of appeal,
18 and by Victims Group 2, who raise three grounds of appeal.
19 Today's Appeals Chamber judgment is unanimous. For reasons that I shall proceed
20 to outline, the Appeals Chamber rules that the Impugned Decision is amended to
21 the extent that it should be read as incorporating paragraphs 185-186 of the "First
22 Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations"
23 (ICC-01/04-02/06-2860-Red). Save as aforesaid, the Impugned Decision is confirmed.
24 Ground of appeal 1: Alleged error in issuing the Impugned Decision.
25 Under its first ground of appeal, the Defence submits that, in issuing

1 the Impugned Decision, the Trial Chamber erred in law and procedure by failing to
2 comply with the direction of the Appeals Chamber that it should issue "a new order
3 for reparations".

4 For the reasons that I shall outline, the Appeals Chamber does not find any error in
5 this regard. For the reasons that Judge Ibáñez Carranza will later outline, she
6 disagrees and finds that the Trial Chamber erred in issuing an "Addendum" as
7 opposed to a new order for reparations.

8 The Defence alleges that the Trial Chamber committed an "overarching error" in
9 deciding that the 2021 Reparations Order remained in force despite the terms of
10 the 2022 Appeals Chamber Judgment; and that the Impugned Decision shall be
11 considered an integral part of, and read in conjunction with, it, and be understood as
12 complementing and replacing therefrom only the specific issues with which it dealt.
13 However, the Appeals Chamber observes that the 2021 Reparations Order was only
14 partially reversed by the 2022 Appeals Chamber Judgment. Parts of the 2021
15 Reparations Order that were not reversed remained unaffected by the Judgment.
16 Furthermore, the Trial Chamber, during the course of the Impugned Decision, also
17 made specific reference to parts of the 2021 Reparations Order that remained valid.
18 Furthermore, the Appeals Chamber notes that the references in the 202
19 Appeals Chamber Judgment to the issuance of a new order for reparations must be
20 seen in context.

21 First, the Appeals Chamber directed the Trial Chamber to "issue a new order for
22 reparations, taking into account the terms of this judgment". Those terms necessarily
23 included the fact that this was a partial reversal, in which five specific issues were
24 remanded.

25 Second, the Appeals Chamber stated that the "new decision" that the Trial Chamber

1 was directed to issue would "in essence constitute a new 'order for reparations'",
2 thereby making clear that the new decision was to be treated as an order for
3 reparations, so as to safeguard each party's right to appeal the new decision under
4 Article 82(4) of the Statute.

5 Third, the Appeals Chamber granted the Trial Chamber additional directions and
6 discretion in relation to how it would conduct its proceedings further to the 2022
7 Appeals Chamber Judgment, referring, among other things, to ensuring "that
8 the reparation process can continue as expeditiously as possible" and to the objective
9 at that stage of the proceedings being to correct the errors identified "in a manner that
10 causes minimum disruption to the overall reparation process".

11 Against the above background, the Trial Chamber exercised its discretion in a manner
12 that was not inconsistent with the directions of the Appeals Chamber.

13 The Appeals Chamber observes that, in principle, all the essential elements required
14 to make up an order for reparations should be contained in a single, unified
15 document. That is the ordinary and preferable course. However, there is no legal
16 prohibition on having those elements contained in more than one document,
17 particularly in circumstances such as the present case, in which there has been
18 a partial reversal.

19 It is also noted that, by issuing a new decision dealing only with the specific matters
20 referred to it, the subject matter of the new appeal thereafter is appropriately and
21 clearly limited to the specific matters that had been remanded for reconsideration
22 rather than potentially opening up for appeal matters contained within the initial
23 order for reparations that were final.

24 The Appeals Chamber finds that the mere fact that all of the essential elements of
25 the order for reparations in the present case were contained in more than one

1 document is not, in itself, a reason to find that the Trial Chamber erred by proceeding
2 as it did.

3 The Appeals Chamber therefore turns to the arguments that the Defence raises about
4 the prejudice that it avers was caused by the issuance of the Impugned Decision.

5 The Appeals Chamber finds, with Judge Ibáñez Carranza disagreeing on this point,
6 that the Defence has failed to substantiate that any prejudice has been caused.

7 Importantly, there is no doubt that the Trial Chamber complied with the directions of
8 the Appeals Chamber to reconsider those issues that were reversed in the 2022

9 Appeals Chamber Judgment. In that context, it is recalled that

10 the Impugned Decision, over 157 pages, addresses each of the issues that

11 the Appeals Chamber remanded. There is also, among other things, a 561-page

12 confidential annex, which comprises the Trial Chamber's findings on the 171 victims

13 in the Sample which the Trial Chamber obtained and ruled upon in compliance with

14 the direction of the Appeals Chamber. Indeed, it is of note that the Defence in this

15 ground is not alleging that the Trial Chamber did not, in substance, address what

16 the Appeals Chamber had remanded to it.

17 Furthermore, the Defence has failed to substantiate that any substantive finding in

18 the Impugned Decision would have been different had it been placed within what

19 the Defence terms "a new order for reparations". It has also not substantiated that

20 there are specific parts of the 2021 Reparations Order or the Impugned Decision that

21 are clearly contradictory or impossible to understand when read together. Indeed,

22 in arguing that prejudice was caused by the issuance of the Impugned Decision,

23 the Defence gives few examples of specific prejudice. The Appeals Chamber is

24 unpersuaded by those occasions on which the Defence is more specific.

25 For the reasons that Judge Ibáñez Carranza will outline, she concludes that this did

1 not have any material effect.

2 The Appeals Chamber therefore unanimously rejects the Defence's first ground of
3 appeal.

4 Ground of appeal 2:

5 The validity of the Initial Draft Implementation Plan.

6 Under its second ground of appeal, the Defence submits that the prejudice from
7 the failure to issue a new order for reparations is compounded by the Trial Chamber's
8 error in finding that the Initial Draft Implementation Plan remained fully operational
9 and unaffected by the 2022 Appeals Chamber Judgment.

10 For the reasons that are set out in more detail in the judgment, the validity of
11 the Initial Draft Implementation Plan was neither addressed in, nor constituted one of
12 the issues remanded to the Trial Chamber by, the 2022 Appeals Chamber Judgment.

13 It is for that reason that its validity is not considered in the Impugned Decision, does
14 not arise out of it and cannot be raided in this appeal. The Appeals Chamber
15 therefore dismisses *in limine* the Defence's second ground of appeal.

16 Judge Ibáñez Carranza respectfully disagrees that this ground of appeal should be
17 dismissed *in limine*. She observes that there is an inherent link between the effect of
18 the 2022 Appeals Chamber Judgment upon the 2021 Reparations Order, which was
19 addressed in the Impugned Decision, and upon the Initial Draft Implementation Plan.
20 She therefore considers it appropriate to address this ground on its merits.

21 Judge Ibáñez Carranza would reject this ground on its merits. In her view, the Initial
22 Draft Implementation Plan did not automatically become invalid as a result of
23 a partial reversal of the 2021 Reparations Order. She finds that it was not an abuse of
24 the discretion of the Trial Chamber to have proceeded on the basis that it remained
25 operational so as to meet the most urgent needs of vulnerable victims while taking

1 into account the 2022 Appeals Chamber Judgment in determining how to proceed.

2 Judge Ibáñez Carranza further finds that, in any event, the Defence has failed to

3 demonstrate the material effect of any alleged error.

4 Ground of appeal 3:

5 Under its third ground of appeal, the Defence submits that the Trial Chamber erred

6 by not including in the Impugned Decision elements of the procedure for

7 the eligibility assessment.

8 The elements of the procedure for the eligibility assessment were contained in what I

9 shall refer to as the "First Decision on Implementation", which was issued

10 subsequently to the Impugned Decision. The Trial Chamber therefore did not follow

11 the direction of the Appeals Chamber in the 2022 Appeals Chamber Judgment to

12 include this in "the future order for reparations".

13 The Appeals Chamber therefore finds that the Trial Chamber erred and that the errors

14 materially affected the Impugned Decision. By way of relief, the Appeals Chamber

15 deems it appropriate to amend the Impugned Decision, so that paragraphs 185-186 of

16 the First Decision on Implementation, which set out the relevant procedure, should be

17 read to be incorporated within the Impugned Decision.

18 The Appeals Chamber further finds that the Defence's additional arguments under

19 this ground of appeal that relate to information included in the Updated Draft

20 Implementation Plan at the time that it was ruled upon in the First Decision on

21 Implementation, or its alleged inability to file observations on the Updated Draft

22 Implementation Plan after the Impugned Decision was issued, do not arise out of

23 the Impugned Decision, but relate to matters that post-date it. The Defence's

24 arguments under this part of its third ground of appeal are therefore dismissed

25 *in limine*.

1 Ground of appeal 4:

2 Under its fourth ground of appeal, the Defence submits that the Trial Chamber erred
3 by, among other things, setting out criteria for the eligibility assessment that are not
4 appropriate or otherwise not suitable for the purpose.

5 For instance, the Defence challenges the Trial Chamber's adoption of the criterion of
6 "sufficiently close in time" for the assessment of whether the dates of events resulting
7 in the harm suffered by victims correspond to the time frames specified in the charges.

8 The Appeals Chamber notes that the Trial Chamber relied in this regard on its
9 previous findings concerning "the time elapsed since the relevant events took place,
10 as well as the likely impact of the events on the witnesses' ability to remember specific
11 dates". The Trial Chamber decided to make its assessment "on a case-by-case basis",
12 take into account "the victim's personal circumstances" in light of "all aspects of
13 [the] victims' dossiers". The Appeals Chamber therefore rejects the Defence's
14 arguments with respect to the "sufficiently close in time" criterion.

15 The Defence also challenges the Trial Chamber's finding that, once a person
16 demonstrates his or her status as a victim, and harm to that person is presumed or
17 established, the causal link is also established. In that context the Trial Chamber
18 clearly indicated that "victims eligible for reparations must provide sufficient proof of
19 [...] the causal link between the crime and the harm". The Trial Chamber also
20 addressed the issue of potential breaks in the chain of causation.

21 The Appeals Chamber therefore rejects the Defence's arguments regarding the causal
22 link.

23 The Appeals Chamber also rejects the Defence's other arguments under the fourth
24 ground of appeal and, therefore, rejects the entire ground.

25 Ground of appeal 5:

1 Under its fifth ground of appeal, the Defence divides its submissions into two
2 categories of error, which the Appeals Chamber considers in turn.

3 First, the Defence avers that the finding in the Impugned Decision that the Defence
4 had received the victims' dossiers with appropriate redactions and had had
5 the opportunity to make meaningful submissions on them was incorrect.

6 The Appeals Chamber finds that the Defence has not established any of the six
7 specific errors that it alleges in relation to the rejection of a Defence request for
8 redactions to be lifted in a decision leading up to the Impugned Decision.

9 The Appeals Chamber further finds that the Defence has not substantiated its broad
10 assertion that the Trial Chamber erred in holding that it was able to make meaningful
11 submissions notwithstanding the redactions, observing, amongst other things, that it
12 made extensive submissions on the sample of victims in a 19-page filing accompanied
13 by a 171-page confidential annex containing its submissions on a victim-by-victim
14 basis.

15 Second, the Defence submits that the Trial Chamber erred by dismissing the Defence's
16 request for the disclosure of information in the possession of what I shall call
17 the "TFV", namely the Trust Fund for Victims. The Appeals Chamber finds that
18 the Defence has not demonstrated that there was anything unreasonable about
19 the Trial Chamber relying upon the victims' dossiers, supplemented by
20 the submissions and additional information provided by their legal representatives.

21 The Appeals Chamber underlines that the Trial Chamber expressly noted that
22 the Defence had access to all relevant information upon which the Trial Chamber
23 relied in ruling upon the Sample, albeit in redacted form. The Defence has not
24 substantiated on appeal that it was necessary for it to be provided with any further
25 information to be able to make submissions on the eligibility of the victims for

1 reparations.

2 The Appeals Chamber further finds that the Trial Chamber's purpose in ruling upon
3 the victims' dossiers in the Impugned Decision was to determine whether they were
4 eligible for reparations. It was not to rule upon whether any of those potentially
5 eligible victims had urgent needs, which was the issue that the TFV's questionnaires,
6 which were sought by the Defence, addressed. As such, the Defence has not
7 substantiated in its appeal brief why it was essential for it to have access to any
8 questionnaires that may have been in the possession of TFV in order to be able to
9 make meaningful submissions on the eligibility of the victims in the Sample.

10 The Appeals Chamber finds that the Defence has not established any error and rejects
11 the Defence's fifth ground of appeal.

12 Under its sixth, seventh, and eighth grounds of appeal, the Defence submits that
13 the Trial Chamber failed to assess and properly reason the concept of
14 transgenerational harm and the evidentiary criteria to prove such harm, disregarding
15 the Appeals Chamber's directions set forth in the 2022 Appeals Chamber Judgment.

16 First, contrary to the Defence's contention that it was mandatory for
17 the Trial Chamber to seek additional submissions from experts, the Appeals Chamber
18 finds that it is clear from the 2022 Appeals Chamber Judgment that the Trial Chamber
19 had discretion over whether to request further expert evidence or to rely upon
20 "the expert evidence on the record". The Appeals Chamber also finds that
21 the Trial Chamber duly considered the credibility and reliability of the expert
22 evidence upon which it relied. Accordingly, the Appeals Chamber rejects
23 the Defence's arguments in this regard.

24 Second, the Appeals Chamber notes that the Defence misrepresents
25 the Impugned Decision in its submissions that the Trial Chamber failed to make

1 necessary findings and/or provide sufficient reasoning concerning: the "scientific
2 certainty as to the concept of transgenerational harm and whether it is appropriate to
3 award reparations therefor at this Court"; any "potential limitations to the concept of
4 transgenerational harm"; whether "Mr Ntaganda could be liable to repair such harm";
5 and its instruction that the victims should not be required to obtain psychological
6 expertise. Therefore, the Appeals Chamber rejects these arguments of the Defence.
7 Having rejected all arguments of the Defence under these grounds of appeal,
8 the Appeals Chamber rejects the Defence's sixth, seventh and eighth grounds of
9 appeal.

10 Under its ninth and tenth grounds of appeal, the Defence generally disputes
11 the lawfulness of "new evidence" being examined and "new findings" being made on
12 the harm inflicted at the reparation stage that was not specified in either a conviction
13 decision or a sentencing decision. In this regard, the Defence submits that "the
14 reparations process is not a new evidential process in itself" and as such
15 a trial chamber is confined to the factual findings in the conviction and sentencing
16 decisions and is not permitted, during the reparation, to make additional findings on
17 the harm inflicted that were already made in the conviction and sentencing decisions.
18 The Appeals Chamber finds that the Defence is misdirected in its interpretation of
19 the principle that "in awarding reparations, a trial chamber must remain within
20 the confines of the conviction and sentencing decisions". The Appeals Chamber
21 considers that the conviction and sentencing decisions define the parameters of
22 the convicted person's liability to repair the harm. Thus, in awarding reparations
23 a trial chamber is restricted to relying upon evidence and making factual findings on
24 the harm that is caused by the crimes of which the person is convicted, as set out in
25 the conviction and sentencing decisions. This limitation on a trial chamber's factual

1 findings in defining or identifying the harm does not, however, preclude
2 the introduction of evidence or other factual findings that were not considered for
3 the purposes of the conviction and sentencing decisions.

4 Against the Court's legal framework, particularly Article 75(1) and Rule 94 of
5 the Rules, the Appeals Chamber finds that it is not "impermissible" in awarding
6 reparations for a trial chamber to define the harms, which resulting from the crimes of
7 which the person was convicted, based upon evidence and findings that may not
8 have been specified in either the conviction decision or the sentencing decision.

9 Importantly, and contrary to the Defence's argument, the introduction of such
10 reparation-specific evidence and factual findings during the reparation process does
11 not "expand the scope of the conviction and sentence on the basis of the lower
12 standard of proof", rather in reparation proceedings it is the harm suffered and not
13 the crimes of which the person has been convicted that is further defined or
14 elaborated upon.

15 Turning to the Defence's more specific argument that the Trial Chamber erred in law
16 by entering additional findings on the damage caused to the health centre in Sayo and
17 the affected community thereby exceeding the scope of the Conviction and
18 Sentencing Decisions, the Appeals Chamber is not persuaded. The Defence's
19 argument is premised on the understanding that the finding in the Sentencing
20 Decision, namely, that the damage to the health centre was "unclear", amounted to
21 a finding, beyond reasonable doubt, that no harm was inflicted on the health centre as
22 a result of the crime of which Mr Ntaganda was convicted. Contrary to
23 the Defence's argument, the Appeals Chamber remanded this matter to the
24 Trial Chamber because it did not consider the relevant finding in the Sentencing
25 Decision, to amount to a finding, beyond reasonable doubt, that the health centre had

1 not been damaged. In the absence of a finding, beyond reasonable doubt, at the trial
2 stage concerning the actual harm caused, the Trial Chamber was not precluded from
3 establishing during the reparation stage, on the basis of all of the evidence before it
4 that, on a balance of the probabilities, "the attack [on] the health centre caused
5 damage to the health centre". Thus, the Trial Chamber was not prohibited from
6 defining the harm caused at the reparation stage by making further findings based on
7 upon the presentation of relevant evidence.

8 For reasons more fully elaborated upon in the Judgment, the Appeals Chamber rejects
9 the Defence's ninth and tenth grounds of appeal.

10 Under its eleventh ground of appeal, the Defence challenges the reliability of
11 the Trial Chamber's finding that the attack on the Sayo health centre "caused harm to
12 its service provision and exacerbated the vulnerability and suffering of the civilian
13 population". In this respect, the Defence disputes the Trial Chamber's reliance on
14 Dr Gilmore's Report. For reasons more fully explained in the Judgment, the Appeals
15 Chamber finds that the Trial Chamber's approach to this issue was reasonable in
16 the circumstances. The Trial Chamber did not err in the exercise of its discretion
17 when it concluded that Dr Gilmore was credible and her report reliable.

18 The Defence's arguments in this regard are therefore rejected.

19 Furthermore, the Defence takes issue with the evidence relied upon by
20 the Trial Chamber for its findings in relation to whether the attack on the health
21 centre caused harm to the civilian population of Sayo and the surrounding
22 community. In reviewing the evidence assessed by the Trial Chamber and its related
23 findings, the Appeals Chamber notes that the Trial Chamber arrived at its conclusion
24 by assessing: (i) submissions from the parties and the Prosecutor; (ii) evidence already
25 in the case record and some that had been recently obtained; and (iii) findings from

1 the Conviction Decision and the Sentencing Decision that had been established
2 beyond a reasonable doubt. The Appeals Chamber considers that the Trial Chamber
3 assessed this evidence holistically and concluded on a balance of probabilities that
4 "the attack [on] the health centre caused damage to the health centre in Sayo and loss
5 of adequate health care provision to the community that benefitted from it".

6 The Defence's argument is therefore rejected.

7 For reasons more fully elaborated upon in the Judgment, the Appeals Chamber rejects
8 the Defence's eleventh ground of appeal.

9 Under its twelfth ground of appeal, the Defence submits that the Trial Chamber erred
10 in law by finding the causal nexus between the harm resulting from the attack on
11 the health centre in Sayo and Mr Ntaganda's liability was established. The Defence
12 contends that the Trial Chamber found that the health centre had suffered harm as a
13 result of the attack despite the fact that the evidence it relied upon did not

14 demonstrate that this physical harm had occurred "during the period of

15 November 2002", when the attack of which Mr Ntaganda was convicted took place,

16 "or even before 6 March 2003" when the UPC/FPLC were chased from Bunia. In

17 assessing how the Trial Chamber addressed causation in this respect,

18 the Appeals Chamber finds no discernible error in the Trial Chamber's approach.

19 Instead, the Appeals Chamber notes that the Defence's claim is unsubstantiated.

20 The Appeals Chamber considers that there is no evidence on the record, nor has

21 the Defence pointed to any, that demonstrates that other actors committed attacks

22 that resulted in damage to the health centre during the relevant time frame.

23 The argument is therefore rejected.

24 The Appeals Chamber therefore rejects the Defence's twelfth ground of appeal.

25 Under its thirteenth ground of appeal, the Defence submits that, in the context of

1 the "deteriorating and dire security situation in Ituri", the Trial Chamber erred by
2 rejecting its requests for measures to be taken to ensure that the implementation of
3 reparations would adhere to the "do no harm" principle for the benefit of legitimate
4 victims. In particular, the Defence challenges the Trial Chamber's finding that
5 the implementation of the Initial Daft Implementation Plan "continues to remain
6 generally unaffected" by the security situation in Ituri.

7 The Appeals Chamber finds that this issue does not arise out of
8 the Impugned Decision. As correctly argued by Victims Group 2, this issue was not
9 one of the "five specific issues" that were remanded to the Trial Chamber by
10 the Appeals Chamber in the 2022 Appeals Chamber Judgment. The Trial Chamber
11 addressed the issue in the context of the implementation process which was ongoing
12 before and is continuing after the issuance of the Impugned Decision. As the matter
13 was not addressed in the Impugned Decision the Defence cannot raise it in
14 the context of this appeal. The thirteenth ground of appeal is therefore dismissed
15 *in limine*.

16 Appeal of Victims Group 2.

17 Ground of appeal 1:

18 Under their first ground of appeal, Victims Group 2 submit that the Trial Chamber
19 erred in its estimation of the number of potential beneficiaries of reparations amongst
20 the victims of the attacks. The Appeals Chamber has divided the allegations into
21 three categories and rejects them for the following reasons:

22 First, Victims Group 2 submit that the Trial Chamber erred in disregarding what they
23 understood to be the most efficient and pragmatic method to estimate the number of
24 potential beneficiaries of reparations, namely to rely upon the "population size" of
25 the 13 affected villages at the time that the crimes were committed.

1 The Appeals Chamber rejects the argument raised by Victims Group 2 that
2 distinguishing between the population size and the population of the attacked
3 villages contradicts the "presumption of civilian status" under international
4 humanitarian law. The distinction between persons taking a direct part in the
5 hostilities and those not taking part was made, in the relevant section of
6 the Impugned Decision, for purposes that neither concerned nor contradicted
7 the presumption of civilian status under international humanitarian law.

8 The Appeals Chamber equally rejects Victims Group 2's arguments against
9 the finding that most of the inhabitants had already left the relevant areas before
10 the attacks, and therefore could not be considered victims in the case. Although
11 the submissions upon which this finding was made could have included more
12 information setting out the relevant sources, they were based upon consultations with
13 community leaders.

14 Second, Victims Group 2 challenge the Trial Chamber's rejection of documents
15 containing information about the population size in relevant villages.

16 The Appeals Chamber finds that, having determined that it was not unreasonable for
17 the Trial Chamber to reject the population size method, the documents relied upon by
18 Victims Group 2 in support of the population size would have no bearing upon the
19 estimation.

20 Third, Victims Group 2 aver that the Trial Chamber erred by relying upon
21 the submissions of the Trust Fund for Victims and the Defence, and provided
22 insufficient reasoning, leading to the estimate that 7,500 individuals are potentially
23 eligible beneficiaries as victims of the attacks.

24 The Appeals Chamber finds that the Trial Chamber followed a clear methodology
25 that involved mathematical projections from known information in the case file as

1 well as from estimates that it found, within its discretion, to be consistent and reliable.
2 In relation to Victims Group 2's request for more reliable figures, including through
3 a victims' mapping exercise, the Appeals Chamber finds no error in the manner in
4 which the Trial Chamber weighed the interests at stake and exercised its discretion,
5 while remaining mindful that its estimates must be as concrete as possible and based
6 upon a sufficiently strong evidential basis.

7 Ground of appeal 2:

8 Under their second ground of appeal, Victims Group 2 submit three sub-grounds.

9 First, Victims Group 2 argue that the Trial Chamber failed to establish a proper basis
10 for its approach to the cost to repair the harm suffered by victims of the attacks.

11 According to Victims Group 2, a significantly greater number than 7,500 victims of
12 the attacks are likely to come forward to benefit from reparations leading, by
13 implication, to an incorrect calculation of the cost to repair.

14 However, since the Appeals Chamber rejects the arguments raised against
15 the conclusion that 7,500 individuals are potentially eligible beneficiaries as victims of
16 the attacks, the present sub-ground of appeal is also rejected.

17 Second, Victims Group 2 allege that the Trial Chamber erred in establishing the cost
18 to repair for the victims of the attacks based upon the projections related to former
19 child soldiers in the Lubanga case.

20 The Appeals Chamber disagrees, finding that the Trial Chamber weighed pertinent
21 factors in its decision to rely on the Lubanga precedent, including costs, budget, and
22 non-discrimination.

23 Victims Group 2 further argue that the Trial Chamber should have considered
24 the Katanga reparations programme as a benchmark for comparison, as the crimes
25 were of a more similar nature.

1 The Appeals Chamber notes that the findings in the Katanga case were in fact
2 relevant to the calculations in the Lubanga case, that the Trial Chamber ultimately
3 considered as part of the calculation in the present case.

4 Moreover, Victims Group 2 submit that the harm suffered by the victims of
5 the attacks should be addressed by of socio-economic measures rather than mental
6 and physical care.

7 The Appeals Chamber finds that it was not unreasonable for the Trial Chamber to
8 consider the victims' psychological and physical suffering as part of the harm to be
9 repaired; and that socio-economic measures, including schooling support, vocational
10 training and income generating activities have been incorporated in
11 the Impugned Decision.

12 Third, Victims Group 2 submit that the established cost to repair may be "fair and
13 appropriate" if 7,500 victims of the attacks come forward; but not if a significantly
14 higher number of eligible victims come forward.

15 The Appeals Chamber reiterates that having rejected the arguments raised by
16 Victims Group 2 against the estimate that 7,500 individuals are potentially eligible
17 beneficiaries as victims of the attacks, the present sub-ground of appeal also is
18 rejected.

19 Under their third ground of appeal, Victims Group 2 submit that the Trial Chamber
20 erred in disregarding or misapplying its previous findings on the territorial scope of
21 the reparations. They aver that the Trial Chamber should have accepted victims
22 who suffered harm in the forest or the bush surrounding the villages for which
23 positive findings were entered in the Conviction Decision, whether they originated
24 from the Main Villages or "from any village".

25 The Appeals Chamber notes that the Trial Chamber clarified in four decisions what it

1 considered to be the territorial scope of reparations. These decisions all coincide in
2 that victims must demonstrate to have suffered harm as a result of the crimes of
3 which Mr Ntaganda was convicted. Those who claim to have suffered harm in
4 the forest or the bush surrounding the 13 Main Villages may be eligible for
5 reparations, provided that the Trial Chamber entered convictions based upon
6 underlying acts having occurred in the forest or the bush surrounding those locations.
7 Contrary to the allegation that the Trial Chamber failed to provide proper reasoning
8 for its conclusions rejecting specific applicants, the Appeals Chamber underlines that
9 the Trial Chamber provided, in a 561-page Annex to the Impugned Decision,
10 a detailed case-by-case analysis and justification. The Appeals Chamber finds no
11 error in the manner in which the Trial Chamber proceeded to apply the eligibility
12 criteria to the victims in the Sample.

13 Accordingly, the Appeals Chamber finds that the Trial Chamber was not
14 unreasonable in its findings concerning the territorial parameters of reparations and
15 the application of these parameters in the Impugned Decision and therefore rejects
16 Victims Group 2's third ground of appeal.

17 In relation to the four victims who could not establish their eligibility but had already
18 received reparations as part of the Initial Draft Implementation Plan,
19 the Appeals Chamber reiterates that the Trust Fund for Victims may provide any
20 additional services needed under its assistance mandate.

21 In respect of the individuals contacted by Victims Group 2 and found to be ineligible
22 for reparations in the Impugned Decision, given their limited number and the unique
23 circumstances surrounding these proceedings, the Appeals Chamber encourages
24 the Board of the Trust Fund to provide additional services while recognising that
25 the provision of the services under the Trust Fund for victim's assistance mandate is

1 ultimately at the discretion of its Board.

2 Furthermore, it is important to emphasise that reparations within the ICC must be
3 viewed as part of the broader system. Not all victims of the Ituri conflict are entitled
4 to receive reparations from Mr Ntaganda. ICC reparations must be viewed within
5 a wider framework that includes: (i) the Trust Fund for Victim's assistance mandate;
6 (ii) compensation potentially offered by national legal systems; and (iii) the role of
7 local, regional and international organisations in implementing programmes to
8 support victims of the conflict.

9 That concludes the summary of the judgment of the Appeals Chamber in these
10 appeals.

11 And I would now give the floor to Judge Ibáñez who will now present a summary of
12 her separate opinion on ground one of the Defence appeal.

13 JUDGE IBÁÑEZ CARRANZA: [10:26:27] Thank you, Mr Presiding Judge.

14 I issue this Separate Opinion, as I find that the Trial Chamber committed errors of law
15 and procedure when it issued an addendum instead of new order for reparations.

16 At the outset, I underline that the Appeals Chamber could not have been clearer in
17 relation to the instruction it provided to the Trial Chamber, leaving no room for
18 discretion. Given the significance of the remand and the changes required, which
19 affected virtually all essential elements of an order for reparations,

20 the Appeals Chamber specifically directed the Trial Chamber to issue a new order for
21 reparations.

22 The Trial Chamber issued an Addendum, an auxiliary document, which is contrary to
23 the provisions of the Rome Statute. A procedural step that is not provided for in the
24 legal framework of the Court and cannot be applied to decisions that, by their legal
25 nature, determine substantive rights and obligations for both the Defence and

1 the Victims. The only means by which a convicted person can be held accountable
2 for reparations, pursuant to the legal framework of the Court, is through a reparations
3 order.

4 When the law sets out specific proceedings, it establishes general and mandatory
5 norms of binding character, with objective validity, applied impersonally to any
6 individual under the circumstances it defines. The Judges have the duty to adhere to
7 it without deviation. Opting for an alternative procedure, under the premise that it
8 is "not prohibited", risks the creation of a *lacune* where none exists and the arbitrary
9 affectation of due process guarantees. Non-observance of the norms and forms
10 prescribed by the law make the procedural act null and void.

11 Instead of issuing a new reparations order, the Trial Chamber integrated
12 the Impugned Decision in the former, largely overturned, the 2021 Reparations Order
13 leaving it open to the parties to reconcile, read in conjunction and replace parts of
14 the different decisions at stake, to discern what the order for reparations is.

15 This course contradicted the requirement for judicial decisions to be fully reasoned
16 and self-explanatory, meaning that their grounds and conclusions be sufficiently clear
17 and understandable with no need for external clarification. Certainty and clarity are
18 at the core of judicial decision-making. They are indispensable requirements of
19 fairness. This principle applies in particular to decisions that conclude a stage of
20 the judicial process, as the reparations order, which decides on the parties'
21 substantive rights and obligations.

22 Moreover, only a clear reasoned decision enables an understanding of the basis of
23 a judicial determination and the exercise of the right to appeal. In turn,
24 the Appeals Chamber's review can only be carried out if it is in a position to
25 understand the Trial Chamber's reasoning and findings.

Judgments of the Appeals Chamber are binding and must be complied with as it is crucial to maintaining the authority and integrity of the judicial process. This applies in particular to those orders and instructions contained in the operative part of the judgment. When the Appeals Chamber confirms, reverses or amends an order for reparations pursuant to Rule 153(1) of the Rules, its decisions are of mandatory implementation. If compliance with decisions of the Appeals Chamber were not mandatory, its review function would lose its purpose and the protections enshrined as part of the Court's judicial architecture would become superfluous.

Therefore, in my view and for reasons that I expand in my Separate Opinion, it is clear that the Trial Chamber made errors of law and procedure.

However, upon thorough examination of the case and its concrete circumstances, and pursuant to Article 83(2) of the Statute and in application of the Appeals Chamber's standard of review I conclude that the errors have no material effect on the Impugned Decision. Indeed, even if a full and self-contained order for reparations had been issued, there would have been no "substantial" changes as to the five elements remanded for determination. I note:

First, the Trial Chamber adequately addressed the five issues remanded for a new determination.

Second, whilst the issuance of the Addendum introduced unnecessary confusion and contributed to judicial uncertainty and unreliability, the Appeals Chamber, in the Common Judgment, has made efforts to reconstruct the essential elements of the reparations order, and to establish how such reconstruction might be undertaken, based on a number of cross-references.

Finally, taking into account the specific nature of reparations proceedings, where other important rights must be weighed, I feel compelled to balance the procedural

1 rights and guarantees to judicial certainty, fairness and reliability discussed in my
2 Separate Opinion against a fundamental and substantive victims' right and
3 entitlement to reparations and its prompt implementation. Indeed, I am convinced
4 that any further delays in the delivery of reparations would only exacerbate the harm
5 suffered by victims, who have been waiting reparations for more than two decades in
6 the case at hand.

7 To conclude, I would like to remind that reparations are not merely acts of charity or
8 assistance; they constitute a fundamental human right.

9 Accordingly, I agree with my colleagues that the first ground of the Defence's appeal
10 must be rejected.

11 Thank you.

12 PRESIDING JUDGE LORDKIPANIDZE: [10:34:43] Thank you, Judge Ibáñez.

13 That leads us to a conclusion of this hearing today, and I should like to end by
14 thanking all of the staff of the Registry who have assisted with today's hearing.

15 There is a lot of work that goes on behind the scenes to ensure that these hearings run
16 smoothly, and the Appeals Chamber, and me included, Presiding Judge, is very
17 grateful to all those involved.

18 The hearing is adjourned.

19 THE COURT USHER: [10:35:31] All rise.

20 (The hearing ends in open session at 10.35 a.m.)