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No.: **ICC-01/04-02/06**

Date: **8 April 2021**

THE APPEALS CHAMBER

Before:

**Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659

Source: Defence Team of Mr Bosco Ntaganda

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

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Further to the *Reparations Order* issued by Trial Chamber VI on 8 March 2021 (“Order”)¹, Counsel representing Mr Ntaganda (“Defence”) hereby submits this:

Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659
 (“Defence Notice of Appeal”)

INTRODUCTION

1. On 8 March 2021, Trial Chamber VI issued a Reparations Order against Mr Ntaganda pursuant to article 75 of the Rome Statute (“Statute”). This Notice of Appeal is filed pursuant to rule 150(1) of the Rules of Procedure and Evidence (“rules”), which provides that an appeal against a Reparations Order issued under article 75 may be filed no later than 30 days from the date the party filing the appeal was notified of the said decision.

2. Regulation 57 of the Regulations of the Court (“regulations”) provides that for the purpose of rule 150, the appellant shall file a notice of appeal stating the following information:

- (a) The name and number of the case;
- (b) The title and date of the decision of conviction or acquittal, sentence or reparation order appealed against;
- (c) Whether the appeal is directed against the whole decision or part thereof;
- (d) The specific provision of the Statute pursuant to which the appeal is filed;
- (e) The grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision; and
- (f) The relief sought.

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

PROCEDURAL BACKGROUND

3. On 8 July 2019, Trial Chamber VI issued the Trial Judgement pursuant to article 74 of the Statute, finding Mr Ntaganda guilty of eighteen counts of crimes against humanity and war crimes.²

4. On 25 July 2019, the Single Judge acting on behalf of Trial Chamber VI (“Single Judge”) issued the Order for preliminary information on reparations (“Preliminary Order”) instructing the Registry to file preliminary observations on the reparations proceedings by 5 September 2019. Pursuant to the Preliminary Order, the parties and the Trust Fund for Victims (“TFV”) were invited to submit their responses to the Registry’s observations by 19 September 2019.³

5. On 5 September 2019 and 3 October 2019, the parties and participants filed their responses.⁴

6. On 5 December 2019, the Single Judge issued the “Order setting deadlines”, inviting the parties, the Registry, the TFV and other participants to submit observations on the reparations proceedings.⁵

7. On 28 February 2020, the Registry,⁶ the Defence,⁷ the Legal Representatives of Victims (“LRVs”),⁸ the Prosecution⁹ and the TFV¹⁰ respectively submitted observations on the reparations process.

² Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#) (“Trial Judgement”).

³ Order for preliminary information on reparations, 25 July 2019, [ICC-01/04-02/06-2366](#).

⁴ Registry’s observations, pursuant to the Single Judge’s “Order for preliminary information on reparation” of 25 July 2019, ICC-01/04-02/06-2366, 5 September 2019, [ICC-01/04-02/06-2391](#) (“Registry Preliminary Observations”); Joint Response of the Legal Representatives of Victims to the Registry’s Observations on Reparations, 3 October 2019, [ICC-01/04-02/06-2430](#); Response on behalf of Mr. Ntaganda to Registry’s preliminary observations on reparations, 3 October 2019, [ICC-01/04-02/06-2431](#); Prosecution Response to the Registry’s Observations, pursuant to the Single Judge’s “Order for Preliminary Observations on reparations” (ICC-01/04-02/06-2391-Anx1), 3 October 2019, [ICC-01/04-02/06-2429](#); Trust Fund for Victims’ response to the Registry’s Preliminary Observations pursuant to the Order for Preliminary Information on Reparations, 3 October 2019, [ICC-01/04-02/06-2428](#).

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

⁶ Registry’s Observations on Reparations, 28 February 2020, [ICC-01/04-02/06-2475](#), with Public Annex 1, [ICC-01/04-02/06-2475-Anx1](#) (“28 February 2020 Registry Submissions”).

8. On 14 May 2020, Trial Chamber VI appointed four experts for the purpose of the reparations process (“Appointed Experts”), ordering them to submit their expert reports to the Chamber, notifying the parties, the TFV, the Victims Participation and Reparations Section (“VPRS”) and the Prosecution by 28 August 2020.¹¹

9. On 26 June 2020, Trial Chamber VI issued the First Decision on Reparations Process (“First Decision”), instructing the Registry *inter alia*, to submit a report on reparations every three months, starting on 30 September 2020. The First Decision also invited parties, including the Defence, to submit their observations on any key legal and factual issues identified by the Registry.¹²

10. On 11 September 2020, further to the First Decision on Reparations, the Defence submitted a request seeking clarifications and/or further guidance on five identified issues arising from the proceedings on reparations along with a request for an extension of the applicable time limit to submit observations on the Registry 30 September Report (“Defence Request for Clarifications”).¹³

11. On 29 September 2020, Trial Chamber VI rejected the Defence Request for Clarifications in part, granting only the request to extend the time limit for the Defence

⁷ Defence submissions on reparations, 28 February 2020, [ICC-01/04-02/06-2479-Conf](#), (“28 February 2020 Defence Submissions”).

⁸ Submissions on Reparations on behalf of the Former Child Soldiers, 28 February 2020, [ICC-01/04-02/06-2474](#) with one public annex, (“28 February 2020 LRV1 Submissions”); Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations, 28 February 2020, [ICC-01/04-02/06-2477-Conf](#) (“28 February 2020 LRV2 Submissions”). A corrigendum version was filed on 20 November 2020, [ICC-01/04-02/06-2477-Conf-Corr](#) with Conf. Annex 1, [ICC-01/04-02/06-2477-Conf-Corr-Anx1](#).

⁹ Prosecution’s Observations on Reparations, 28 February 2020, [ICC-01/04-02/06-2478](#).

¹⁰ Trust Fund for Victims’ observations relevant to reparations, 28 February 2020, [ICC-01/04-02/06-2476](#), (“TFV’s Observations”).

¹¹ Decision appointing experts on reparations, 14 May 2020, [ICC-01/04-02/06-2528-Red](#).

¹² First Decision on Reparations Process, 26 June 2020, [ICC-01/04-02/06-2547](#) (“First Decision on Reparations”).

¹³ Defence request seeking clarifications and/or further guidance following the “First Decision on Reparations Process” and Request seeking an extension of time to submit observations on the Registry 30 September Report, 11 September 2020, [ICC-01/04-02/06-2578](#) (“Defence Request for Clarifications”).

and the LRVs to file their observations on the Registry First Report to 30 October 2020.¹⁴

12. On 30 September 2020, the Registry filed its First Report on Reparations.¹⁵

13. On 30 October 2020, the Defence¹⁶ and the LRVs¹⁷ submitted observations on the Registry First Report.

14. On 2 and 3 November 2020, in accordance with the Decision Appointing Experts on Reparations, the Registry filed the confidential redacted versions of the Experts' Reports.¹⁸

15. On 9 November 2020, the Legal Representative for the Victims of the Attacks ("LRV2") filed a request seeking Trial Chamber VI to issue an order instructing the Registry to collect data on the number of inhabitants of identified locations and for a specific time period.¹⁹

16. On 18 and 20 November 2020, the Registry²⁰ and the Defence²¹ submitted observations, opposing the LRV2 Request for an Order.

¹⁴ Decision on the Defence request seeking clarifications and/or further guidance following the 'First Decision on Reparations Process' and Request seeking an extension of time to submit observations on the Registry 30 September Report, 29 September 2020, [ICC-01/04-02/06-2601](#).

¹⁵ Registry First Report on Reparations, 30 September 2020, [ICC-01/04-02/06-2602-Anx1](#) ("Registry First Report").

¹⁶ Defence Observations on the Registry First Report on Reparations, 30 October 2020, [ICC-01/04-02/06-2622-Conf](#) ("30 October Defence Observations").

¹⁷ Observations of the Common Legal Representative of the Former Child Soldiers on the "Registry's First Report on Reparations", 30 October 2020, [ICC-01/04-02/06-2620-Conf](#); Observations of the Common Legal Representative of the Victims of the Attacks on the Registry's First Report on Reparations, 30 October 2020, [ICC-01/04-02/06-2621](#).

¹⁸ Registry Transmission of Appointed Experts' Reports, 30 October 2020, [ICC-01/04-02/06-2623](#) and [Annex 1](#) submitted on 2 November 2020 ("Joint Experts' Report") and [Annex II](#) submitted on 3 November 2020 ("Dr Gilmore's Report").

¹⁹ Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations, 9 November 2020, [ICC-01/04-02/06-2624](#) ("LRV2 Request for an Order").

²⁰ Registry's Observations on the "Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations" of 9 November 2020, ICC-01/04-02/06-2624, 18 November 2020, [ICC-01/04-02/06-2627](#).

17. On 15 December 2020, Trial Chamber VI issued its Decision on the issues raised in the Registry's First Report on Reparations.²²
18. On 18 December 2020, the Single Judge issued the Decision on the LRV2 Request for an Order, rejecting the request.²³
19. On the same day, the LRV's,²⁴ the TFV²⁵ and the Defence²⁶ submitted their final observations on reparations.
20. On 29 December 2020, the Defence filed a Request seeking the lifting of redactions applied to the Appointed Experts' reports.²⁷
21. On 15 January 2021, the Registry submitted the "Registry's Second Report on Reparations".²⁸
22. On 28 January 2021, the LRV2²⁹ and the Defence³⁰ submitted observations on the Registry Second Report.

²¹ Defence response to "Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations", 9 November 2020, ICC-01/04-02/06-2624, 20 November 2020, [ICC-01/04-02/06-2628](#).

²² Decision on issues raised in the Registry's First Report on Reparations, 15 December 2020, [ICC-01/04-02/06-2630](#) ("15 December Decision").

²³ Decision on the Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations, 18 December 2021, [ICC-01/04-02/06-2631](#) ("Decision Rejecting LRV2 Request for an Order").

²⁴ Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, [ICC-01/04-02/06-2632](#) ("LRV1 Final Submissions"); Final Observations on Reparations of the Common Legal Representative of the Victims of the Attacks, 18 December 2020, [ICC-01/04-02/06-2633-Conf](#) ("LRV2 Final Submissions").

²⁵ Trust Fund for Victims' Final Observations on the reparations proceedings, 18 December 2020, [ICC-01/04-02/06-2635-Conf](#) ("TFV's Final Observations").

²⁶ Public redacted version of "Defence Submissions on Reparations", 18 December 2020, ICC-01/04-02/06-2634-Conf, 11 January 2021, [ICC-01/04-02/06-2634-Red](#) ("Defence Final Submissions").

²⁷ Request on behalf of Mr Ntaganda seeking the lifting of redactions applied to the Appointed Experts' reports, 29 December 2020, [ICC-01/04-02/06-2636-Conf](#) ("Defence Request for Lifting of Redactions").

²⁸ Registry's Second Report on Reparations, 15 January 2021, ICC-01/04-02/06-2639, with the public-redacted version of the report contained in Annex I to the Registry's Second Report on Reparations, 10 February 2021, [ICC-01/04-02/06-2639-AnxI-Red](#) ("Registry Second Report").

²⁹ Observations of the Common Legal Representative of the Victims of the Attacks on the "Registry's Second Report on Reparations", 28 January 2021, [ICC-01/04-02/06-2642-Conf](#).

³⁰ Defence Observations on the Registry's Second Report on Reparations, 28 January 2021, [ICC-01/04-02/06-2643-Red](#) ("28 January Defence Observations").

23. On 8 March 2021, Trial Chamber VI issued the Reparations Order.³¹

24. On 30 March 2021, the Appeals Chamber delivered the Judgement on the appeals of Mr Ntaganda and the Prosecution.³²

NOTICE OF APPEAL

25. Pursuant to article 82(4) of the Statute, rule 150(1) and regulation 57 RoC, Mr Ntaganda (“Appellant”) hereby gives notice of appeal against the Reparations Order issued by Trial Chamber VI on 8 March 2021 in the *Situation in the Democratic Republic of Congo*, in the Case of *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-01/06-2659.

26. The appeal is directed against the whole decision.

27. The issues forming the basis of the Defence appeal against the Reparations Order are organised under 15 grounds of appeal, raising errors of law and fact as well as procedural errors committed by Trial Chamber VI, which invalidate the Reparations Order in its entirety. For the reasons that will be set out in detail in the Defence Appeal Brief, the Appellant respectfully requests the Appeals Chamber to either remand the Reparations Order to Trial Chamber VI or to issue an amended Reparations Order.

GROUND OF APPEAL

28. The Appellant intends to raise the following 15 grounds of appeal:

GROUND 1. Trial Chamber VI committed an error of law and procedure by issuing the Reparations Order prematurely.

29. Contrary to a most important principle advocated by the Registry, the Parties and the TFV during the period leading to the delivery of the Reparations Order - *i.e.*

³¹ [Order](#).

³² 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’, 30 March 2021, [ICC-01/04-02/06-2666-Red](#).

the need to avoid raising the expectations of victims - Trial Chamber VI erred by issuing the Reparations Order without having identified the number of potential beneficiaries,³³ let alone the number of potential new beneficiaries, with a sufficient degree of precision. The Trial Chamber also erred in failing to adjudicate several issues raised by the Defence during the period leading to the delivery of the Reparations Order, including *inter alia*, the Defence's repeated requests to be involved in the reparations process,³⁴ to have access to confidential and *ex parte* material³⁵ and, more importantly, to have access at a minimum to the *dossiers* of the participating victims.³⁶ The Trial Chamber also erred by determining an amount of 30 million US dollars as the convicted person's total liability before and without having the required information to establish this amount.

30. Furthermore, Trial Chamber VI erred by including in the Reparations Order, an implementation calendar which does not take into account the right of the convicted person to appeal the Reparations Order.

31. Taking into consideration the ongoing reparations process, the delays and difficulties resulting from the COVID-19 pandemic raised in numerous submissions and the adjudication of the Prosecution and Mr Ntaganda's appeals, the Trial Chamber's delivery of the Reparations Order on 8 March 2021 was not justified despite the end of the mandate of two of its members.

GROUND 2. Trial Chamber VI erred in law by issuing a Reparations Order providing insufficient justification and reasoning, thereby failing to "establish and inform the convicted person of his or her liability with respect to the reparations awarded in the order".³⁷

³³ [Order](#), para. 246.; [TFV's Final Observations](#), para. 70.

³⁴ [28 February 2020 Defence Submissions](#); [Defence Request for Clarifications](#); [30 October Defence Observations](#); [Defence Final Submissions](#).

³⁵ [Defence Request For Lifting of Redactions](#).

³⁶ [30 October Defence Observations](#), para.77; [Defence Final Submissions](#), para.144.

³⁷ [Order](#), para.23.

32. Trial Chamber VI erred by failing to provide the required legal and/or factual reasoning for numerous holdings in the Reparations Order, regarding *inter alia*, the types of harm suffered³⁸ by the victims, the use of presumptions,³⁹ the amount of the financial liability of the Appellant,⁴⁰ transgenerational harm,⁴¹ and more importantly, its determination that no ruling is required on victims' applications.⁴²

33. Trial Chamber VI's failure to provide sufficient reasons and justification materially affects the fairness of the Reparations Order and the rights of the convicted person to submit a meaningful appeal.

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

34. Trial Chamber VI failed to consider arguments put forward by the Defence regarding the consequences of the protracted and deteriorating security situation in Ituri.⁴³ While noting that the reparations process should "not create or exacerbate security concerns or tensions among communities"⁴⁴ Trial Chamber VI ignored the current situation and the real likelihood of exacerbating tensions between communities, thereby endangering and/or stigmatising victims.

GROUND 4. Trial Chamber VI erred in law by erroneously interpreting several concepts relating to the types of harm and applying a wrong standard of evidentiary proof, in relation to issues such as transgenerational harm,⁴⁵ harm suffered by children born out of rape,⁴⁶ and damage to the health centre of Sayo.⁴⁷

³⁸ [Order](#), paras.148 and ss.

³⁹ [Order](#), paras.145-147.

⁴⁰ [Order](#), paras.236-247.

⁴¹ [Order](#), para.182.

⁴² [Order](#), para.196.

⁴³ [Order](#), paras.50-52.

⁴⁴ [Order](#), para.51.

⁴⁵ [Order](#), paras.73 and 182.

⁴⁶ [Order](#), para.72.

35. More particularly, Trial Chamber VI failed to take into consideration the evidentiary burden of proof and the causal nexus requirements established in the *Katanga* case with regard to the demonstration of transgenerational harm. Trial Chamber VI failed to provide cogent reasons justifying departing from the established reasoning set out in the *Katanga* case on the same issue. Trial Chamber VI also erred when ruling that transgenerational harm can be established regardless of the date of birth of the alleged victim.⁴⁸

36. Moreover, erroneously relying on evidence provided by one of the Appointed Experts,⁴⁹ Trial Chamber VI failed to take into consideration the possible overcompensation in relation to the reparations ordered in the context of the Sayo health centre. Trial Chamber VI was not in a position to establish, on the basis of the evidence presented at trial, the extent of the damage caused to the health centre during the First Operation by the UPC/FPLC.⁵⁰ In doing so, Trial Chamber VI erred by granting reparations that do not respect the principle of proportionality, thereby warranting the intervention of the Appeals Chamber.

37. Furthermore, Trial Chamber VI erred in law by lowering the applicable burden of proof, holding that providing a coherent and credible account of the events would be sufficient for certain victims to meet the balance of probabilities standard of proof.⁵¹ The Trial Chamber's holding departs without justification from the balance of probabilities standard, adopting a *prima facie* standard as throughout the trial phase.⁵²

GROUND 5. Trial Chamber VI erred by adopting an erroneous definition of victims of the crime of attack against the civilian population and persecution.

⁴⁷ [Order](#), para.159.

⁴⁸ [Order](#), para.182.

⁴⁹ [Order](#), para.159.

⁵⁰ Sentencing Judgement, 7 November 2019, [ICC-01/04-02/06-2442](#), para. 153 ("Sentencing Judgement").

⁵¹ [Order](#), paras. 67, 139.

⁵² Decision on victims' participation in trial proceedings, 6 February 2015, [ICC-01/04-02/06-449](#), para.44.

38. The Trial Chamber adopted a flawed approach for the determination of victims of the crimes of attacks against the civilian population and persecution (Counts 3 and 10). The Chamber conflated the victims of the attacks with the victims of those specific crimes. To be granted reparations, the potential beneficiaries must establish that they have been victim of a crime for which Mr Ntaganda was convicted. Being present in a locality during an attack does not make someone a victim of the attack.⁵³ More particularly, victims of persecution must demonstrate that they have suffered an underlying crime listed by the Chamber in the Trial Judgment.⁵⁴

GROUND 6. Trial Chamber VI erred in law by holding that children born out of rape are included in the category of direct victims.

39. The Trial Chamber erroneously considered that children born out of rape suffered directly from the crime of rape and sexual slavery, as they were not personally victims of rape or sexual slavery.⁵⁵ To be considered as a direct victim, victims have to demonstrate that they have suffered harm as a result of one of the crimes Mr Ntaganda was convicted of, as listed in paragraphs 109 to 119 of the Reparations Order.

40. Trial Chamber VI erred in law when recognising children born out of rape as direct victims as a way of acknowledging “the particular harm they suffered” and the fact that it “may constitute an adequate measure of satisfaction”.⁵⁶ The determination of the status of a victim as direct or indirect is a legal finding; it should not be considered as a symbolic act or an acknowledgment of harm suffered. Victims’ satisfaction is not a criterion that can be considered in the process of determining if a victim is a direct or indirect victim of a crime.

GROUND 7. Trial Chamber VI erred in law in its interpretation of the term indirect victim, erroneously holding that “a person with whom they did not have a

⁵³ [Order](#), para.151.

⁵⁴ [Order](#), fn.312.

⁵⁵ [Order](#), para.122.

⁵⁶ [Order](#), para.123.

close personal relationship, but which nevertheless was of significant importance in their lives, may be entitled to reparations”.⁵⁷

41. The Trial Chamber’s holding constitutes an abuse of its discretion by creating a new category of indirect victims, which departs from the relevant jurisprudence and expands the scope of the definition of an indirect victim, without relying on any legal justification. In adopting this new legal definition, the Trial Chamber failed to define what constitutes “significant importance in their lives”. The Trial Chamber’s error will have a material impact on the genuine number of eligible reparations beneficiaries and result in confusion as to who can qualify as an indirect victim under count 1, particularly in relation to the death of the *Abbé Bwanalunga* in Mongbwalu.

42. Notably, Trial Chamber VI also erred in law by dismissing the Defence’s submissions regarding the definition of “family unit” without sufficient reasoning.⁵⁸ The vagueness of the Trial Chamber’s approach materially impacted the Reparations Order.

GROUND 8. Trial Chamber VI erred in law when resorting to presumptions of specific harms in relation to certain categories of victims, thereby unjustifiably departing from the relevant jurisprudence. Erroneous determinations by the Trial Chamber include, *inter alia*:

- a. The Trial Chamber’s holding that physical harm is to be presumed for victims of the attacks if they specifically experience the attacks.⁵⁹ Doing so the Chamber misapplied the Court’s jurisprudence;⁶⁰ and
- b. The Trial Chamber’s ruling that psychological harm is to be presumed for victims who lost their home or material assets with a significant effect

⁵⁷ [Order](#), para.127

⁵⁸ [Order](#), paras.124-127.

⁵⁹ [Order](#), para.146.

⁶⁰ [Order](#), para.146.

on their daily life⁶¹ contrary to the jurisprudence established by the Appeals Chamber in the *Katanga* case;

43. By resorting to such presumptions of harm, Trial Chamber VI abused its discretion, thereby unfairly impacting the rights of the convicted person without any tangible benefit for victims for whom difficulty in providing and gathering evidence is already acknowledged.⁶² Indeed, even if access to victims' applications by the Defence is granted, recourse to such presumptions improperly shifts the standard of proof onto the convicted person. At a minimum, a mechanism providing the Defence with a genuine opportunity to rebut such presumptions was required and should have been provided for in the Reparations Order. Trial Chamber VI erred by failing to allow the Defence access to victims' application forms and to provide the Defence with a genuine opportunity to challenge TFV administrative decisions on eligibility of victims.

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

44. The Trial Chamber misconstrued the arguments put forward by the Defence, failing to properly assess the possibility - in the context of the protracted armed conflict in Ituri – that the continuing harm suffered by many victims might not or no longer be the responsibility of Mr Ntaganda due to the occurrence of new incident(s) between the commission of crimes he was convicted for and today. The Trial Chamber erred by failing to consider the possibility that other crime(s) or event(s) occurred. The Trial Chamber's error materially impacted its determination and assessment of harms caused to victims as a result of crimes for which Mr Ntaganda was found guilty.

GROUND 10. Trial Chamber VI erred in law by failing to put in place a monitoring system of implementation.

⁶¹ [Order](#), para.147.

⁶² [Order](#), para.140.

45. Trial Chamber VI erred by adopting an unclear approach as to how it will exercise its judicial functions over administrative decisions to be taken by the TFV regarding individual applications. This error is compounded by the fact that the Chamber did not set clear criteria for victims' eligibility. The Chamber also disregarded the right of the Defence to challenge the administrative decisions taken by the TFV on the eligibility of victims, contrary to the jurisprudence of this Court.

46. Trial Chamber VI also erred by failing to even pronounce on the use of a reparations form, although it had requested the Registry to design and submit such an application form.

GROUND 11. Trial Chamber VI erred in law by entrusting the TFV with making legal determinations which were incumbent on the Trial Chamber VI to make.

47. Trial Chamber VI erred in law by delegating particular aspects of the Reparations Order to the TFV to be included in its Implementation Plan, which were incumbent on the Trial Chamber to make. Indeed, the Trial Chamber erred by delegating important components of the Reparations Order to be established in the Draft Implementation Plan, such as the amount of compensation and the modalities of reparations. Trial Chamber VI wrongly set out a "shopping list" of modalities for the TFV to pick from, instead of providing clear guidelines and criteria for the TFV to elaborate its implementation plan.⁶³ By doing so, the Chamber materially impeded the right of the Appellant to challenge elements pertaining to the Reparations Order without requesting a leave to appeal.

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

48. Trial Chamber VI erred by failing to assess any individual applications. Even if it is open to a trial chamber *not* to assess all application forms and to delegate this task

⁶³ [Order](#), paras.212-213.

in part to the TFV, the Chamber's failure to consider and assess any of the victims' application forms, thereby issuing the Reparations Order solely on the basis of conclusions in the Trial Judgment and Sentencing Judgement and the submissions of the parties and Appointed Experts submissions, constitutes a flawed approach as well as an error of law that vitiate the entire Reparations Order.

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

49. Trial Chamber VI erred by failing to provide sufficient justification and details as to how the individual components of the collective reparations are to be determined, for which crime and pursuant to what modalities.⁶⁴ The Trial Chamber provided a list of existing forms of reparations and general principles adopted by the ICC in other cases, or by other courts, without ruling on the appropriate forms of reparations in this specific case, in light of the victims' needs and available resources of the TFV. In doing so, Trial Chamber VI eluded its duty pursuant to article 75, thereby failing to provide the convicted person with sufficient notice of his liability pursuant to the Reparations Order against him. The Chamber's error materially impacted the entire Reparations Order.

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

50. While the Trial Chamber acknowledged the "importance to set the amount with precision, with caution, rely[ing] on estimates, after making every effort to obtain calculations that are as accurate as possible, weighing the need for accuracy of

⁶⁴ [Order](#), para.81.

estimates against the goal of awarding reparations without delay”,⁶⁵ Trial Chamber VI failed to abide by this standard. To provide but one example, the number of potential eligible victims put forward by the LRV2, *i.e.* 100,000 victims, was never supported by any evidence on the record.⁶⁶ The Trial Chamber also failed to properly consider other submissions put forward *inter alia*, by the VPRS and the Defence.⁶⁷

51. The Trial Chamber’s assessment and calculations are erroneously based on estimates and information lacking in precision, accuracy and proper foundation. Moreover, the Trial Chamber did not, contrary to what it set out to do, resolve any related uncertainty in favour of the convicted person.⁶⁸ The Trial Chamber’s error materially affects the Reparations Order.

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

52. The Trial Chamber failed to provide adequate and sufficient justification in support of its determination of Mr Ntaganda’s liability. The Trial Chamber also failed to justify how this total amount is proportional to Mr Ntaganda’s responsibility.

53. What is more, Trial Chamber VI erred when ruling – in relation to reparations to be granted to child soldiers – that Mr Lubanga and the Appellant’s liabilities are joint and that they shall both reimburse the TFV, without providing any guidelines as to how its ruling affects the final amount the Appellant is liable for.⁶⁹ This absence of reasoning materially affects the total amount of liability provided by the Chamber.

⁶⁵ [Order](#), para.228.

⁶⁶ [28 February 2020 LRV2 Submissions](#), para.72.

⁶⁷ [Defence Final Observations](#), para.115, [Registry Second Report](#), paras.39, 56; [28 January Defence Observations](#), paras.43-51.

⁶⁸ [Order](#), para.230.

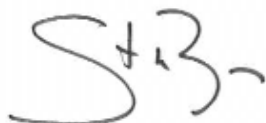
⁶⁹ [Order](#), para.221.

54. The Trial Chamber VI's error materially impacts the validity of the entire Reparations Order, warranting a reversal.

RELIEF SOUGHT

55. In light of the foregoing and as a result of Trial Chamber VI's errors of law, fact and procedure, set out in this Defence Notice of Appeal, the overall relief sought by the Defence is to remand the Reparations Order to Trial Chamber VI or, in the alternative, to issue an amended Reparations Order.

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF APRIL 2021

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands