



The Prosecutor vs. Bosco Ntaganda

Summary of the Addendum to the Reparations Order of 8 March 2021 (ICC-01/04-01/06-2659), 14 July 2023

This document is a Summary of the Addendum to the Order on Reparations to Victims under article 75 of the Rome Statute in the case of *The Prosecutor vs Bosco Ntaganda*, prepared for the purposes of outreach and information. Only the written Addendum to the Reparations Order is authoritative.

I. INTRODUCTION

The Chamber notes that the Appeals Chamber remanded the matter, as it partially reversed the Reparations Order considering that Trial Chamber VI failed to:

- (i) make an 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 Trust Fund for Victims to carry out the eligibility assessment; and
- (v) provide reasons in relation to:
 - a. the concept of transgenerational harm and the evidentiary guidance to establish such harm,
 - b. the assessment of harm concerning the health centre in Sayo and the breaks in the chain of causation when establishing harm caused by the destruction of that health centre, and
 - c. the presumption of physical harm for victims of the attacks.

As such, the present Addendum shall be considered an integral part of the Reparations Order, to be read in conjunction with it, and be understood as



complementing and replacing therefrom only the specific issues that are dealt with hereafter.

The Chamber notes that the parties will have a fresh right to appeal the present Addendum, as an integral part of the Reparations Order, directly before the Appeals Chamber pursuant to rules 150 to 153 of the Rules.

The Chamber underlines that reparations proceedings before the ICC are strictly limited in reach and scope to the terms of the conviction. To better illustrate the Chamber's findings and support the eligibility process, the Chamber has detailed in Annex I to the Addendum the scope of the conviction in relation to the victims of the attacks.

II. ANALYSIS

The Chamber will now summarise its conclusions on the issues on remand:

A. Sample of victims' dossiers and procedure for carrying out of the eligibility assessment of victims at the implementation stage

The Chamber has assembled and ruled upon a Sample of victims' dossiers composed of 171 victims, which included:

- a) all victims so far found eligible to benefit from the Initial Draft Implementation Plan, ('IDIP'), by the Trust Fund for Victims ('TFV'); and
- b) a randomly selected group from participating victims and victims known to the Court, amounting to 5% of the victims of the attacks and 5% of the victims of crimes against child soldiers.

The Chamber found that this Sample was sufficiently representative of the universe of potential victims of the case as regards gender, age, alleged harm, crimes, and locations.

As described in the Addendum, when ruling on the Sample, taking into account the parties submissions and additional information, the Chamber reached conclusions allowing it to set out the parameters for the future eligibility assessments to be conducted at the implementation stage.



To be eligible for reparations victims must provide sufficient proof of identity, of the harm suffered, and of the causal link between the crime and the harm.

‘Balance of probabilities’ is the appropriate standard of proof in reparations and ‘but/for’ is the standard of causation. It is required that the crimes were the ‘proximate cause’ of the harm, which includes an assessment as to whether it was ‘reasonably foreseeable’ that the acts and conduct underlying the conviction would cause the resulting harm.

The Chamber elaborates on the specific parameters that must be met in the Addendum.

Having analysed the Sample on the basis set out in the Addendum and as detailed in Annex II, the Chamber concluded that:

- 132 of the 171 victims in the Sample, have established on a balance of probabilities their eligibility as direct or indirect victims of the crimes for which Mr Ntaganda was convicted, and accordingly, are entitled to benefit from reparations in the present case;
- 10 out of the 132 victims above have been deemed to be provisionally eligible. These victims will be entitled to benefit from reparations, for as long as the relevant missing information, as detailed in Annex II, is provided at the implementation stage;
- 39 out of the 171 victims in the Sample, have not established on a balance of probabilities their eligibility as direct or indirect victims of the crimes for which Mr Ntaganda was convicted, and are therefore not entitled to benefit from reparations in the present case; and
- As to the 67 victims in the Sample that are benefiting from the IDIP, which are accounted for in the totals referred above, the Chamber found that 59 victims have established their eligibility, four victims have been found provisionally eligible, and four victims have not established their eligibility.

All victims that have not established their eligibility will have the opportunity to supplement their dossiers and clarify their accounts at the implementation stage.



B. Issues related to transgenerational harm

In light of the findings of the Appeals Chamber, the Chamber detailed its reasoning regarding both the concept and the evidentiary criteria required to prove transgenerational harm.

First, the Chamber concluded that experts from different disciplines do agree on the existence of the phenomenon of transgenerational harm. This conclusion was reached after having assessed the jurisprudence of the Court, the scientific and academic literature referred to by the parties and participants, and by taking into account the evidence provided by other experts in other proceedings before the Court, as well as decisions issued by other international jurisdictions.

The Chamber also considered the different theories and the current state of the scientific debate as to the way transgenerational harm is transmitted, which in the Chamber's view simply reinforces the existence of the phenomenon.

As to the evidentiary criteria to prove transgenerational harm, the Chamber indicated that a child of a direct victim claiming to have suffered transgenerational harm would generally need to prove the following:

- (i) that a direct victim suffered harm as a result of a crime for which Mr Ntaganda was convicted;
- (ii) that the child of the direct victim suffered harm;
- (iii) that the child's harm arises out of the harm suffered by the direct victim, the causal-link; and
- (iv) the parent-child relationship.

As to the evidence required to prove the elements above, the Chamber considers that the same evidentiary criteria that is applicable in order to prove identity, harm suffered, and the causal link between the crime and the harm, as for any other victims in the case, applies to victims claiming transgenerational harm.

The Chamber provides further detailed guidance with regard to each of these four points in the Addendum, noting that although no presumption of transgenerational



harm applies, the general factual presumptions established in the Reparations Order to the extent that are not affected by the Appeals Judgment still apply.

The Chamber further reiterated that it was appropriate to award reparations for transgenerational harm in this case and that Mr Ntaganda should be liable to repair this type of harm in the specific context of the crimes for which he was convicted. However, the impact of the protracted armed conflict in the DRC is a matter of evidence that has to be decided on a case-by-case basis as part of the eligibility assessments.

Finally, the Chamber found that it is essential to acknowledge the existence of the phenomenon of transgenerational harm and the personal suffering that children of victims of unimaginable atrocities may also experience. In the view of the Chamber, this approach is further justified in light of the fundamental principle of the best interests of the child, which should guide reparations decisions concerning children, while ensuring that the rights of the convicted person are fully respected.

C. Issues related to the health centre in Sayo

The Chamber first noted that, for conviction and sentencing purposes, the nature of the crime of attack against protected objects – which is a conduct crime as opposed to a results crime – did not require it to make any determination beyond reasonable doubt as to whether harm was actually inflicted as a consequence of the crime. However, at the reparations stage of the proceedings the Chamber may make findings as to the harm inflicted as a consequence of the crime, on a balance of probabilities.

Having assessed the evidence and submissions, the Chamber concluded that harm as a consequence of the attack against the health centre in Sayo was indeed established, and that the victims include (i) the Sayo health centre as a legal entity; (ii) individual victims, namely patients that were receiving ongoing in-hospital and ambulatory care at the time of the attack, the health centre staff and indirect victims of the above; and (iii) the community of Sayo and its surroundings as a whole. The Chamber further detailed its findings as to the type of harm caused to each of the victims.

The Chamber was satisfied that the standard of causation was met on a balance of probabilities, underlining that Mr Ntaganda's liability is limited to the harm caused as a direct consequence of the crimes for which he was convicted.



Finally, the Chamber detailed its reasoning when determining the total amount of Mr Ntaganda's liability at USD 130,000. The Chamber concluded that this estimate was the most appropriate indicator, under the current circumstances, to effectively measure and quantify, to the extent possible, the harm caused by the attack to the health centre and the community as a whole, especially in relation to immaterial harm.

D. Presumption of physical harm for the victims of the attacks

In light of the findings of the Appeals Chamber, the Chamber provided its reasoning regarding the scope of the concept of physical harm, and the assessment of the information available as to the physical harm suffered by the victims of the different crimes committed during the attacks.

The Chamber first noted that, in its view, the jurisprudence and legal framework of the Court does not restrict the concept of physical harm to the infliction of physical or bodily injury only. The concept is clearly broader in scope, in the sense that hurt, pain, or suffering otherwise not caused by a bodily injury can also amount to physical harm.

Having assessed the information available in the present case as to the physical harm suffered by the victims of the different crimes committed during the attacks, the Chamber concluded that no presumption of physical harm could be reached in relation to Count 11 (pillaging), Count 18 (destruction of property), Count 3 (attack against civilians), and Count 17 (attack against protected objects).

However, recalling the harsh conditions that the victims of forcible transfer and displacement and persecution through the underlying acts of forcible transfer and displacement had to endure, the Chamber maintained the presumption of physical harm for all victims of Counts 12 and 13 (forcible transfer and displacement) and Count 10 (persecution).

Lastly, regarding all the other victims of the attacks who may have suffered physical harm and who fall outside the scope of the presumption, the Chamber recalled that the harm may be established by showing the existence of physical harm and the causal link between the harm and the crimes for which Mr Ntaganda was convicted.

E. Number of potentially eligible victims



In light of the issues on remand, the Chamber provided its reasoned conclusions as to the estimated number of potential beneficiaries of reparations, based on the submissions made throughout the reparation proceedings, the information and evidence in the case file, and the conclusions that could be reached from the analysis of the Sample.

Regarding the direct and indirect child soldiers' victims, according to the terms of the conviction and sentence, the Chamber notes that this group of victims includes:

- (i) overlapping direct and indirect victims between the *Ntaganda* and *Lubanga* cases; and
- (ii) the additional *Ntaganda* only victims, including:
 - a. child soldiers falling under the temporal scope of the *Ntaganda* case only, meaning beyond the temporal scope of the *Lubanga* case;
 - b. child soldiers who are also victims of sexual and gender-based crimes and children born out of rape and sexual slavery against child soldiers ('SGBV child soldiers' victims'); and
 - c. indirect victims of all the above.

As for the overlapping direct and indirect victims between the *Ntaganda* and *Lubanga* cases, the Chamber notes that the final number of beneficiaries found eligible in the *Lubanga* case amounts to 2,476 direct and indirect victims.

Having assessed the submissions and information available and interpreting uncertainties in favour of the convicted person, the Chamber concluded that the likelihood of additional overlapping *Lubanga/Ntaganda* victims coming forward in the *Ntaganda* case and child soldiers' victims exceeding the temporal scope of the *Lubanga* case and their indirect victims coming forward in the *Ntaganda* case would only be limited to exceptional cases, if at all.

Regarding the SGBV child soldiers' victims and their indirect victims, the Chamber relied on the results of the Sample, which indicates that (i) approximately 18.2% of the total number of victims found eligible qualify as SGBV victims; and (ii) approximately 20.5% of the total number of victims found eligible qualify as indirect victims.



Considering these known values, the Chamber was able to estimate that (i) the potential additional SGBV child soldiers' victims would amount to approximately 451 additional individuals (18.2% of 2,476); and (ii) their indirect victims would amount to approximately 92 additional individuals (20.5% of 451). In light of this, the total number of child soldier victims in the case can be estimated to amount to approximately 3,019 victims. This estimation closely coincides with the conservative estimate of 3,000 victims advanced by the TFV regarding direct and indirect victims who suffered material, psychological and often physical damage, loss or injury as a result of these crimes.

Accordingly, in light of all considerations above and explicitly resolving uncertainties in favour of the convicted person, the Chamber estimated that the approximate number of direct and indirect victims of crimes against child soldiers in the case as referred to in Counts 6, 9, 14, 15, and 16 of the Conviction Judgment, would amount to approximately 3,000 individuals in total.

Regarding the total number of potential direct and indirect victims of the attacks, as described in detail in the Addendum, the Chamber assessed the submissions and evidence and determined that it was unable to rely on the estimations provided by the CLR2 or the most recent calculations provided by the Registry. However, the Chamber took into account the Registry's submissions as to the limitations of the preliminary mapping exercise as it did not consider more than 70% of the population who had not returned.

As to the Defence submission that the appropriate way forward would have been for the VPRS to conduct a detailed mapping exercise, the Chamber concluded that the conditions to safely and expeditiously conduct such mapping exercise were not present.

Having assessed the remaining information and evidence in the case file, the Chamber concluded that, based on the Registry's preliminary mapping exercise and the information provided by the Appointed Experts, there was sufficient basis to conclude that, at the very least, a minimum of 3,500 direct victims of the attacks will qualify as potential beneficiaries of reparations in the present case.



In order to reach a conclusion on the total number of direct and indirect victims of the attacks, the Chamber considered the Registry's recent submissions that previous estimations only included potential beneficiaries who resided in or had returned to the relevant localities. Accordingly, the Chamber understood that the previous Registry's estimate of 2,276 individuals would have corresponded to approximately 30% of the potential victims of the attacks. From that number the Chamber calculated that the 70% purportedly remaining would amount to approximately 5,311 individuals, with the total number of potential direct and indirect victims of the attacks, following this reasoning, amounting to 7,587 individuals.

The Chamber notes that this calculation once again closely coincides with the estimate advanced by the TFV of approximately 7,500 direct and indirect victims who suffered material, psychological and possibly physical damage, loss or injury as a result of these crimes.

Accordingly, in light of all considerations above and explicitly resolving uncertainties in favour of the convicted person, the Chamber estimates that the approximate number of direct and indirect victims of the attacks in the case as referred to in Counts 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 17, and 18 of the Conviction Judgment, would amount to approximately 7,500 individuals in total.

F. Calculation of the monetary award against Mr Ntaganda

Having thoroughly and carefully considered the submissions made throughout the reparations proceedings by the parties, the participants, and Appointed Experts, the Chamber reached the following conclusions:

1. Amount required to repair the overlapping victims and harms between the *Ntaganda* and the *Lubanga* cases

Mr Ntaganda and Mr Lubanga are jointly and severally liable to repair the full extent of the harm caused to the victims of the crimes for which they were both convicted. Only in the event that one of them pays or reimburse to the TFV the amount required to provide reparations, does the issue of recovering from the other co-perpetrator(s) their proportional share arise.



Mr Lubanga's total financial liability for reparations was set at USD 10,000,000. The final number of beneficiaries found eligible in the *Lubanga* case is 2,476 direct and indirect victims. The TFV has projected that the average costs per capita for a full rehabilitation in the *Lubanga* case would be approximately USD 4,000.61, direct and indirect costs included. Taking into account these projections, the full rehabilitation of all victims found eligible in the *Lubanga* case would amount to approximately USD 9,905,510.36.

The Chamber considered the fact that the TFV projections were made during the second year of a five-year programme with not all victims yet participating. As such, the average calculated by TFV may not account for an important number of victims requiring expensive mental or physical health support outside Bunia or the possible impact of inflation or the security situation on the costs of implementation of the service-based programme.

The Chamber is therefore satisfied that setting the amount of liability of Mr Ntaganda regarding the overlapping victims and harms with the *Lubanga* case at the same amount of USD 10,000,000, as it was set for Mr Lubanga, is fair, equitable, and appropriate, and takes into account the rights of the victims and those of the convicted person.

2. Amount required to repair the additional *Ntaganda*-only victims of crimes against child soldiers

Having concluded that the approximate number of direct and indirect victims of crimes against child soldiers would be approximately 3,000 individuals, excluding the *Lubanga* victims, this sub-group of victims will likely not exceed 524 victims in total.

Following prior jurisprudence, in the Reparations Order the Chamber presumed material, physical, and psychological harm regarding former child soldiers, direct victims of rape and sexual slavery, and indirect victims who are close family members of the above.

Accordingly, all the victims in this sub-group would, in principle, be entitled to a full rehabilitation program which, as noted above, it is projected to cost in average, per capita, USD 4,000.61, direct and indirect costs included.



Taking these projections into account, the full rehabilitation of the estimated *Ntaganda*-only victims of crimes against child soldiers would cost approximately USD 2,096,320.

3. Amount required to repair the harms caused to the victims of the attacks

Having assessed the different estimations submitted throughout the proceedings, the Chamber considers that the most reliable estimates, at this stage, are the calculations recently provided by the TFV regarding the *Lubanga* case, as they are based on the actual costs of a reparations programme designed for victims from the same region affected by the same armed conflict.

To ensure fair and equal treatment, all victims should receive equivalent services, even if implemented by different partners. As such, the Chamber considers fair and appropriate to use the *Lubanga* estimations based on the actual costs of implementation as the basis to calculate the approximate costs to repair the harms suffered by the victims of the attacks in the *Ntaganda* case.

The Chamber recalls that it has concluded that the victims of the attacks would amount to approximately 7,500 individuals in total. The Chamber further notes that the results of the Sample assessed by the Chamber provide reliable points of reference to project the calculations of the total costs to repair the different kinds of harm suffered by the victims of the attacks.

i. Costs required to cover measures directed at providing mental care to victims of the attacks

The results of the Sample indicate that 100% of the victims of the attacks that were found eligible within the Sample, are to be considered to have suffered from psychological harm. This calculation coincides with the results of the first year of implementation of the reparations programme in the *Lubanga* case, where 100% of beneficiaries underwent primary mental care.

As such, the Chamber considers that it can be safely estimated that similar percentages of victims of the attacks will require secondary and specialised mental care as those required by victims in the first year of implementation of the *Lubanga* reparations programme.



In light of this, as detailed and itemised in the Addendum, the Chamber estimates that the total amount required to provide mental care to victims of the attacks in the *Ntaganda* case would approximately amount to USD 5,032,898.

ii. Costs required to cover measures directed at physical care of victims of the attacks

The results of the Sample indicate that 43.9% of the victims of the attacks that were found eligible are to be considered to have suffered from physical harm. This calculation is very close and almost coincides with the results of the first year of implementation of the reparations programme in the *Lubanga* case, where 41.77% of beneficiaries underwent primary physical care.

As such, the Chamber considers that it can be safely estimated that similar percentages of victims of the attacks will require secondary and specialised physical care as those required by victims in the first year of implementation of the *Lubanga* reparations programme.

In light of the above, as detailed and itemised in a table included in the Addendum, the Chamber estimates that the total amount required to provide physical care to victims of the attacks in the *Ntaganda* case would approximately amount to USD 2,780,922.

iii. Costs required to cover measures directed at socio-economic support of victims of the attacks

Regarding socio-economic support, the TFV provided average costs but did not provide statistics as to the number of beneficiaries that have benefited from this component of the service-based reparations programme in the *Lubanga* case.

Nevertheless, the results of the Sample provide the Chamber with sufficient information to project estimated costs, particularly considering that the results of the Sample have been shown to fairly correspond with the results of the first year of implementation of the reparations programme in the *Lubanga* case regarding psychological and physical harm.

As to the first component of the measures of socio-economic support quantified by the TFV, education support, not having other parameters allowing the Chamber to



estimate with more certainty how many beneficiaries would qualify to receive it, the Chamber decided, within its discretion, to estimate for the purposes of calculations that all indirect victims would likely qualify to receive schooling support.

Noting that according to the results of the Sample 27.6% of the victims of the attacks would be eligible as indirect victims, the Chamber estimates that the same percentage would likely require schooling support.

Regarding vocational training and income generating activities ('IGA'), the Chamber considers fair to estimate that all victims that have suffered material harm would likely require vocational training and IGA activities.

Noting that according to the results of the Sample 76.5% of victims of the attacks are to be considered to have suffered material harm, the Chamber estimates that the same percentage of victims in the estimated total of victims of the attacks in the *Ntaganda* case would likely require vocational training and IGA activities.

In light of this, as detailed and itemised in the Addendum, the Chamber estimates that the total amount required to provide socio-economic support to victims of the attacks in the *Ntaganda* case would approximately amount to USD 11,189,765.

4. Amount required to repair the harm caused as a consequence of the attack to the Sayo health centre

As described above, the Chamber found Mr Ntaganda liable to repair the harm caused as a consequence of the attack to the Sayo health centre, which is estimated regarding the harm to the centre and the community in the total of USD 130,000.

Regarding individual victims, patients, health centre staff, and indirect victims, the Chamber notes that they are considered above within the general estimation of approximately 7,500 victims of the attacks. No further calculation is required in relation to these victims.

5. Conclusion as to the total amount of Mr Ntaganda's liability for reparations

In light of the above, as consolidated and itemised in the Addendum, the Chamber estimates, that the total amount required to provide reparations to all victims of the



crimes for which Mr Ntaganda was convicted would approximately amount to USD 31,229,905.

The Chamber considered all parameters underlined by the TFV when projecting the cost based on the *Lubanga* programme and took into account the need to provide for extra costs due to inflation, the financial impact of the ongoing security situation, and additional victims that may come forward and be found eligible to benefit from reparations.

In light of this, the Chamber is satisfied that setting the amount of Mr Ntaganda's liability for reparations at the total of USD 31,300,000, is fair, equitable, and appropriate, and takes into account the rights of the victims and those of the convicted person.

G. Implementation of reparations

In line with the Chamber's approach to these proceedings, following this Addendum the Chamber will rule on all aspects of the Draft Implementation Plan that do not require further submissions from the TFV or the parties, including the procedural aspects of the mechanism for the determination of the victims' eligibility.

Lastly, the Chamber reiterates that Mr Ntaganda's conviction is final and his liability to repair the harm caused to the victims of his crimes is under no discussion.

As such, the Chamber will continue striving to advance these reparation proceedings in the most efficient and effective manner possible, protecting the rights of the convicted person while ensuring that the victims of his crimes receive the reparations they are entitled to, and for which they have waited for more than two decades, without further delay.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY, UNANIMOUSLY ISSUES this Addendum to the Reparations Order against Mr Ntaganda;



FINDS that 132 out of the 171 victims in the Sample have established, on a balance of probabilities, their eligibility as victims of the crimes for which Mr Ntaganda was convicted;

FINDS that 39 out of the 171 victims in the Sample have not established, on a balance of probabilities, their eligibility as victims of the crimes for which Mr Ntaganda was convicted;

REITERATES that the victims that have not established their eligibility will have the opportunity to supplement their dossiers and clarify their accounts at the implementation stage;

REITERATES its findings in the Reparations Order as to transgenerational harm;

REITERATES its findings in the Reparations Order as to Mr Ntaganda's liability to repair the harm caused as a consequence of the attack to the Sayo health centre, which is estimated regarding the harm to the centre and the community in the total of USD 130,000;

CONCLUDES that no presumption of physical harm shall be applied to victims of Count 3 (attack against the civilian population), Count 11 (pillaging), Count 17 (attack against protected objects), and Count 18 (destruction of property);

CONCLUDES that the presumption of physical harm for all victims of forcible transfer and displacement (Counts 12 and 13) and persecution (Count 10) through the underlying acts of forcible transfer and displacement should be maintained;

ESTIMATES that the approximate number of direct and indirect victims of crimes against child soldiers, as referred to in Counts 6, 9, 14, 15, and 16 of the Conviction Judgment, would amount to approximately 3,000 individuals in total;

ESTIMATES that the approximate number of direct and indirect victims of the attacks, as referred to in Counts 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 17, and 18 of the Conviction Judgment, would amount to approximately 7,500 individuals in total;

ASSESES Mr Ntaganda's liability for reparations at USD 31,300,000;



REITERATES its request for the Presidency's assistance, with the support of the Registry, to continue exploring whether Mr Ntaganda possesses any undiscovered assets and to monitor Mr Ntaganda's financial situation on an ongoing basis.