



Summary

Judgment of the Appeals Chamber

in

The Prosecutor v. Bosco Ntaganda

1 November 2024

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I. INTRODUCTION

1. The Appeals Chamber delivered today its judgment in the appeals filed by the Defence and one of the two groups of victims in this case (“Victims Group 2”), against the decision of Trial Chamber II of 14 July 2023 entitled “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659” (the “Impugned Decision”).
2. This is a non-authoritative summary of the Appeals Chamber’s written judgment in the appeal. The written judgment, together with the separate opinion of Judge Ibáñez Carranza that is appended to it, was notified after the hearing in which the present summary was read by Presiding Judge Gocha Lordkipanidze.

II. BACKGROUND TO THE APPEAL PROCEEDINGS

3. On 8 March 2021, the Trial Chamber issued an order for reparations, (the “2021 Reparations Order”). That order was subsequently appealed. On appeal, it was partially reversed and remanded to the Trial Chamber (the “2022 Appeals Chamber Judgment”), on 12 September 2022. Thereafter, on 14 July 2023, the Trial Chamber issued the Impugned Decision to address the issues on remand. This Appeals Chamber judgment concerns appeals filed against that decision by the Defence, which raises thirteen grounds of appeal, and by Victims Group 2, who raise three grounds of appeal.

III. THE APPEALS CHAMBER'S JUDGMENT

4. The Appeals Chamber's judgment is unanimous. For reasons outlined below, the Appeals Chamber rules that the Impugned Decision is amended to the extent that it should be read as incorporating paragraphs 185-186 of the "First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations" (ICC-01/04-02/06-2860-Red). Save as aforesaid, the Impugned Decision is confirmed.

IV. APPEAL OF THE DEFENCE

A. Ground of appeal 1: Alleged error in issuing the Impugned Decision

5. Under its first ground of appeal, the Defence submits that, in issuing the Impugned Decision, the Trial Chamber erred in law and procedure by failing to comply with the direction of the Appeals Chamber that it should issue "a new order for reparations".
6. For the reasons outlined below, the Appeals Chamber does not find any error in this regard. For the reasons that Judge Ibáñez Carranza outlines in her separate opinion, she disagrees and finds that the Trial Chamber erred in issuing an "Addendum" as opposed to a new order for reparations.

1. The alleged failure to issue a "new order for reparations"

7. The Defence alleges that the Trial Chamber committed an "overarching error" in deciding that the 2021 Reparations Order remained in force despite the terms of the 2022 Appeals Chamber Judgment; and that the Impugned Decision shall be considered an integral part of, and read in conjunction with, it, and be

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understood as complementing and replacing therefrom only the specific issues with which it dealt.

8. However, the Appeals Chamber observes that the 2021 Reparations Order was only *partially* reversed by the 2022 Appeals Chamber Judgment. Parts of the 2021 Reparations Order that were not reversed remained unaffected by that Judgment. Furthermore, the Trial Chamber, during the course of the Impugned Decision, also made specific reference to parts of the 2021 Reparations Order that remained valid.
9. Furthermore, the Appeals Chamber notes that the references in the 2022 Appeals Chamber Judgment to the issuance of a new order for reparations must be seen in context.
10. First, the Appeals Chamber directed the Trial Chamber “to issue a new order for reparations, *taking into account the terms of this judgment*”. Those terms necessarily included the fact that this was a *partial* reversal, in which five specific issues were remanded.
11. Second, the Appeals Chamber stated that the “new decision” that the Trial Chamber was directed to issue would “*in essence constitute a new ‘order for reparations’*”, thereby making clear that the new *decision* was to be *treated as an order for reparations*, so as to safeguard each party’s right to appeal the new decision under article 82(4) of the Statute.
12. Third, the Appeals Chamber granted the Trial Chamber additional directions and discretion in relation to how it would conduct its proceedings further to the

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2022 Appeals Chamber Judgment, referring, among other things, to ensuring “that the reparation process can continue as expeditiously as possible” and to the objective at that stage of the proceedings being to correct the errors identified “in a manner that causes minimum disruption to the overall reparation process”.

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

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

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

16. The Appeals Chamber finds that the mere fact that all of the essential elements of the order for reparations in the present case were contained in more than one document is not, in itself, a reason to find that the Trial Chamber erred by proceeding as it did.

2. *The alleged prejudice caused by the issuance of the Impugned Decision*

17. The Appeals Chamber therefore turns to the arguments that the Defence raises about the prejudice that it avers was caused by the issuance of the Impugned Decision. The Appeals Chamber finds, with Judge Ibáñez Carranza disagreeing on this point, that the Defence has failed to substantiate that any prejudice has been caused.

18. Importantly, there is no doubt that the Trial Chamber complied with the directions of the Appeals Chamber to reconsider those issues that were reversed in the 2022 Appeals Chamber Judgment. In that context, it is recalled that the Impugned Decision, over 157 pages, addresses each of the issues that the Appeals Chamber remanded. There is also, among other things, a 561-page confidential annex, which comprises the Trial Chamber's findings on the 171 victims in the Sample which the Trial Chamber obtained and ruled upon in compliance with the direction of the Appeals Chamber. Indeed, it is of note that the Defence in this ground is not alleging that the Trial Chamber did not, in substance, address what the Appeals Chamber had remanded to it.

19. Furthermore, the Defence has failed to substantiate that any substantive finding in the Impugned Decision would have been different had it been placed within what the Defence terms "a new order for reparations". It has also not substantiated that there are specific parts of the 2021 Reparations Order or the Impugned Decision that are clearly contradictory or impossible to understand when read together. Indeed, in arguing that prejudice was caused by the issuance of the Impugned Decision, the Defence gives few examples of specific

prejudice. The Appeals Chamber is unpersuaded by those occasions on which the Defence is more specific.

20. For the reasons that Judge Ibáñez Carranza sets out in her separate opinion, she concludes that 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 and therefore the errors identified have no material effect. Moreover, in her view, any unfairness, uncertainty and unreliability, upon a careful balance of the rights involved, is outweighed by the victims’ right to receive timely reparations.
21. The Appeals Chamber therefore unanimously rejects the Defence’s first ground of appeal.

B. Ground of appeal 2: The validity of the Initial Draft Implementation Plan

22. Under its second ground of appeal, the Defence submits that the prejudice from the failure to issue a new order for reparations is compounded by the Trial Chamber’s error in finding that the Initial Draft Implementation Plan remained fully operational and unaffected by the 2022 Appeals Chamber Judgment.
23. For the reasons that are set out in more detail in the judgment, the validity of the Initial Draft Implementation Plan was neither addressed in, nor constituted one of the issues remanded to the Trial Chamber by, the 2022 Appeals Chamber Judgment. It is for that reason that its validity is not considered in the Impugned Decision, does not arise out of it, and cannot be raised in this appeal. The

Appeals Chamber therefore dismisses *in limine* the Defence's second ground of appeal.

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

25. Judge Ibáñez Carranza would reject this ground on its merits. In her view, the Initial Draft Implementation Plan did not automatically become invalid as a result of a *partial* reversal of the 2021 Reparations Order. She finds that it was not an abuse of the discretion of the Trial Chamber to have proceeded on the basis that it remained operational to meet the most urgent needs of vulnerable victims, while taking into account the 2022 Appeals Chamber Judgment in determining how to proceed. Judge Ibáñez Carranza further finds that, in any event, the Defence has failed to demonstrate the material effect of any alleged error.

C. Ground of appeal 3: Alleged failure to include compulsory provisions in the Impugned Decision and to consider that modifications were required to the Updated Draft Implementation Plan

26. Under its third ground of appeal, the Defence submits that the Trial Chamber erred by not including in the Impugned Decision elements of the procedure for the eligibility assessment.

27. The elements of the procedure for the eligibility assessment were contained in the “First Decision on Implementation”, which was issued subsequently to the Impugned Decision. The Trial Chamber therefore did not follow the direction of the Appeals Chamber in the 2022 Appeals Chamber Judgment to include this in “the future order for reparations”.
28. The Appeals Chamber therefore finds that the Trial Chamber erred and that the errors materially affected the Impugned Decision. By way of relief, the Appeals Chamber deems it appropriate to amend the Impugned Decision, so that paragraphs 185-186 of the First Decision on Implementation, which set out the relevant procedure, should be read to be incorporated within the Impugned Decision.
29. The Appeals Chamber further finds that the Defence’s additional arguments under this ground of appeal that relate to information included in the Updated Draft Implementation Plan at the time that it was ruled upon in the First Decision on Implementation, or its alleged inability to file observations on the Updated Draft Implementation Plan after the Impugned Decision was issued, do not arise out of the Impugned Decision, but relate to matters that post-date it. The Defence’s arguments under this part of its third ground of appeal are therefore dismissed *in limine*.

D. Ground of appeal 4: Alleged errors in the criteria for the eligibility assessment

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

31. For instance, the Defence challenges the Trial Chamber’s adoption of the criterion of “sufficiently close in time” for the assessment of whether the dates of events resulting in the harm suffered by victims correspond to the timeframes specified in the charges. The Appeals Chamber notes that the Trial Chamber relied in this regard on its previous findings concerning “the time elapsed since the relevant events took place, as well as the likely impact of the events on the witnesses’ ability to remember specific dates”. The Trial Chamber decided to make its assessments “on a case-by-case basis”, taking into account “the victim’s personal circumstances” in light of “all aspects of [the] victims’ dossiers”. The Appeals Chamber therefore rejects the Defence’s arguments with respect to the “sufficiently close in time” criterion.

32. The Defence also challenges the Trial Chamber’s finding that, once a person demonstrates his or her status as a victim, and harm to that person is presumed or established, the causal link is also established. In that context the Trial Chamber clearly indicated that “victims eligible for reparations must provide sufficient proof of [...] the causal link between the crime and the harm”. The Trial Chamber also addressed the issue of potential breaks in the chain of causation. The Appeals Chamber therefore rejects the Defence’s arguments regarding the causal link.

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

E. Ground of appeal 5: Alleged failure to provide the Defence with a meaningful opportunity to assess and make submissions on the dossiers of the victims in the Sample

34. Under its fifth ground of appeal, the Defence divides its submissions into two categories of error, which the Appeals Chamber considers in turn.
35. First, the Defence avers that the finding in the Impugned Decision that the Defence had received the victims' dossiers with appropriate redactions and had had the opportunity to make meaningful submissions on them was incorrect.
36. The Appeals Chamber finds that the Defence has not established any of the six specific errors that it alleges in relation to the rejection of a Defence request for redactions to be lifted in a decision leading up to the Impugned Decision.
37. The Appeals Chamber further finds that the Defence has not substantiated its broad assertion that the Trial Chamber erred in holding that it was able to make meaningful submissions notwithstanding the redactions, observing, among other things, that it made extensive submissions on the sample of victims in a 19-page filing accompanied by a 171-page confidential annex containing its submissions on a victim-by-victim basis.
38. Second, the Defence submits that the Trial Chamber erred by dismissing the Defence's request for the disclosure of information in the possession of the Trust Fund for Victims (the "TFV"). The Appeals Chamber finds that the Defence has not demonstrated that there was anything unreasonable about the Trial Chamber relying upon the victims' dossiers, supplemented by the submissions and additional information provided by their legal representatives. The Appeals Chamber underlines that the Trial Chamber expressly noted that

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

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

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

F. Grounds of appeal 6-8: Alleged errors concerning the Trial Chamber's findings on transgenerational harm

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

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

43. Second, the Appeals Chamber notes that the Defence misrepresents the Impugned Decision in its submissions that the Trial Chamber failed to make necessary findings and/or provide sufficient reasoning concerning: the “scientific certainty as to the concept of transgenerational harm and whether it is appropriate to award reparations therefor at this Court”; any “potential limitations to the concept of transgenerational harm”; whether “Mr Ntaganda could be liable to repair such harm”; and its instruction that victims should not be required to obtain psychological expertise. Therefore, the Appeals Chamber rejects these arguments of the Defence.

44. Having rejected all arguments of the Defence under these grounds of appeal, the Appeals Chamber rejects the Defence’s sixth, seventh and eighth grounds of appeal.

G. Grounds of appeal 9-10: Alleged errors related to the Trial Chamber’s finding of damage caused by the attack on the Sayo health centre

45. Under its ninth and tenth grounds of appeal, the Defence generally disputes the lawfulness of “new evidence” being examined and “new findings” being made on the harm inflicted at the reparation stage that was not specified in either a conviction decision or a sentencing decision. In this regard, the Defence submits that “the reparations process is not a new evidential process in itself” and as such a trial chamber is confined to the factual findings in the conviction and sentencing decisions and is not permitted, during the reparation process, to make additional findings on the harm inflicted that were already made in the conviction and sentencing decisions.

46. The Appeals Chamber finds that the Defence is misdirected in its interpretation of the principle that “in awarding reparations, a trial chamber must remain within the confines of the conviction and sentencing decisions”. The Appeals Chamber considers that the conviction and sentencing decisions define the parameters of the convicted person’s liability to repair the harm. Thus, in awarding reparations a trial chamber is restricted to relying upon evidence and making factual findings on the harm that is caused by the crimes of which the person is convicted, as set out in the conviction and sentencing decisions. This limitation on a trial chamber’s factual findings in defining or identifying the harm does not, however, preclude the introduction of evidence or other factual findings that were not considered for the purposes of the conviction and sentencing decisions.

47. Against the Court’s legal framework, particularly article 75(1) of the Statute and rule 94 of the Rules, the Appeals Chamber finds that it is not “impermissible” in awarding reparations for a trial chamber to define the harms, which resulted from the crimes of which the person was convicted, based upon evidence and findings that may not have been specified in either the conviction or the sentencing decision. Importantly, and contrary to the Defence’s argument, the introduction of such reparation-specific evidence and factual findings during the reparation process does not “expand the scope of the conviction and sentence on the basis of the lower standard of proof”, rather in reparation proceedings it is the harm suffered and not the crimes of which the person has been convicted that is further defined or elaborated upon.

48. Turning to the Defence’s more specific argument that the Trial Chamber erred in law by entering additional findings on the damage caused to the health centre in Sayo and the affected community thereby exceeding the scope of the Conviction and Sentencing Decisions, the Appeals Chamber is not persuaded. The Defence’s argument is premised on the understanding that the finding in the Sentencing Decision, namely, that the damage to the health centre was “unclear”, amounted to a finding, beyond reasonable doubt, that no harm was inflicted on the health centre as a result of the crime of which Mr Ntaganda was convicted. Contrary to the Defence’s argument, the Appeals Chamber remanded this matter to the Trial Chamber because it did not consider the relevant finding in the Sentencing Decision, to amount to a finding, beyond reasonable doubt, that the health centre had not been damaged. In the absence of a finding, beyond reasonable doubt, at the trial stage concerning the actual harm caused, the Trial

Chamber was not precluded from establishing during the reparation stage, on the basis of all of the evidence before it that, on a balance of probabilities, “the attack [on] the health centre caused damage to the health centre”. Thus, the Trial Chamber was not prohibited from defining the harm caused at the reparation stage by making further findings based upon the presentation of relevant evidence.

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

H. Ground of appeal 11: Alleged errors in the Trial Chamber’s reliance upon Dr Gilmore’s report and other evidence for its findings of harm caused to the Sayo health centre and the community

50. Under its eleventh ground of appeal, the Defence challenges the reliability of the Trial Chamber’s finding that the attack on the Sayo health centre “*caused harm to its service provision and exacerbated the vulnerability and suffering of the civilian population*”. In this respect, the Defence disputes the Trial Chamber’s reliance on Dr Gilmore’s Report. For reasons more fully explained in the judgment, the Appeals Chamber finds that the Trial Chamber’s approach to this issue was reasonable in the circumstances. The Trial Chamber did not err in the exercise of its discretion when it concluded that Dr Gilmore was credible and her report reliable. The Defence’s arguments in this regard are therefore rejected.

51. Furthermore, the Defence takes issue with the evidence relied upon by the Trial Chamber for its findings in relation to whether the attack on the health centre caused harm to the civilian population of Sayo and the surrounding community.

In reviewing the evidence assessed by the Trial Chamber and its related findings, the Appeals Chamber notes that the Trial Chamber arrived at its conclusion by assessing: (i) submissions from the parties and the Prosecutor; (ii) evidence already in the case record and some that had been recently obtained; and (iii) findings from the Conviction Decision and the Sentencing Decision that had been established beyond a reasonable doubt. The Appeals Chamber considers that the Trial Chamber assessed this evidence holistically and concluded on a balance of probabilities that “the attack [on] the health centre caused damage to the health centre in Sayo and loss of adequate healthcare provision to the community that benefitted from it”. The Defence’s argument is therefore rejected.

52. For reasons more fully elaborated upon in the judgment, the Appeals Chamber rejects the Defence’s eleventh ground of appeal.

I. Ground of appeal 12: Alleged failure to address the question of breaks in the chain of causation in relation to the Sayo health centre

53. Under its twelfth ground of appeal, the Defence submits that the Trial Chamber erred in law by finding that the causal nexus between the harm resulting from the attack on the health centre in Sayo and Mr Ntaganda’s liability was established. The Defence contends that the Trial Chamber found that the health centre had suffered harm as a result of the attack despite the fact that the evidence it relied upon did not demonstrate that this physical harm had occurred “during the period of November 2002”, when the attack of which Mr Ntaganda was convicted took place, “or even before 6 March 2003” when the UPC/FPLC were chased from Bunia. In assessing how the Trial Chamber addressed

causation in this respect, the Appeals Chamber finds no discernible error in the Trial Chamber’s approach. Instead, the Appeals Chamber notes that the Defence’s claim is unsubstantiated. The Appeals Chamber considers that there is no evidence on the record, nor has the Defence pointed to any, that demonstrates that other actors committed attacks that resulted in damage to the health centre during the relevant timeframe. The argument is therefore rejected.

54. The Appeals Chamber therefore rejects the Defence’s twelfth ground of appeal.

J. Ground of appeal 13: Alleged errors in the application of the “do no harm” principle during the implementation of the Initial Draft Implementation Plan

55. Under its thirteenth ground of appeal, the Defence submits that, in the context of the “deteriorating and dire security situation in Ituri”, the Trial Chamber erred by rejecting its requests for measures to be taken to ensure that the implementation of reparations would adhere to the “do no harm” principle for the benefit of legitimate victims. In particular, the Defence challenges the Trial Chamber’s finding that the implementation of the Initial Draft Implementation Plan “continues to remain generally unaffected” by the security situation in Ituri.

56. The Appeals Chamber finds that this issue does not arise out of the Impugned Decision. As correctly argued by Victims Group 2, this issue was not one of the “five specific issues” that were remanded to the Trial Chamber by the Appeals Chamber in the 2022 Appeals Chamber Judgment. The Trial Chamber addressed the issue in the context of the implementation process which was ongoing before and is continuing after the issuance of the Impugned Decision.

As the matter was not addressed in the Impugned Decision the Defence cannot raise it in the context of this appeal.

57. The Defence’s thirteenth ground of appeal is therefore dismissed *in limine*.

V. APPEAL OF VICTIMS GROUP 2

A. Ground of appeal 1: Alleged errors in the estimation of the number of potential beneficiaries of reparations amongst the victims of the attacks

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

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

60. The Appeals rejects the argument raised by Victims Group 2 that distinguishing between the population size and the population of the attacked villages contradicts the “presumption of civilian status” under international humanitarian law. The distinction between persons taking a direct part in the hostilities and those not taking part was made in the relevant section of the

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Impugned Decision, for purposes that neither concern nor contradict the presumption of civilian status under international humanitarian law.

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

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

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

64. Third, Victims Group 2 aver that the Trial Chamber erred by relying upon the submissions of the TFV and the Defence, and provided insufficient reasoning, leading to the estimate that 7,500 individuals are potentially eligible beneficiaries as victims of the attacks.

65. The Appeals Chamber finds that the Trial Chamber followed a clear methodology that involved mathematical projections from known information in the case file as well as from estimates that it found, within its discretion, to be consistent and reliable.

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

B. Ground of appeal 2: Alleged errors in determining the cost to repair for the victims of the attacks

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

68. First, Victims Group 2 argue that the Trial Chamber failed to establish a proper basis for its approach to the cost to repair the harm suffered by victims of the attacks. According to Victims Group 2, a significantly greater number than 7,500 victims of the attacks are likely to come forward to benefit from reparations leading, by implication, to an incorrect calculation of the cost to repair.

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

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

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71. The Appeals Chamber disagrees, finding that the Trial Chamber weighed pertinent factors in its decision to rely upon the *Lubanga* precedent, including costs, budget, and non-discrimination.
72. Victims Group 2 further argue that the Trial Chamber should have considered the *Katanga* reparation programme as a benchmark for comparison, as the crimes were of a more similar nature.
73. The Appeals Chamber notes that the findings in the *Katanga* case were in fact relevant to the calculations in the *Lubanga* case that the Trial Chamber ultimately considered as part of the calculation in the present case.
74. Moreover, Victims Group 2 submit that the harm suffered by the victims of the attacks should be addressed by way of socio-economic measures rather than mental and physical care.
75. The Appeals Chamber finds that it was not unreasonable for the Trial Chamber to consider the victims' psychological and physical suffering as part of the harm to be repaired; and that socio-economic measures, including schooling support, vocational training and income generating activities have been incorporated in the Impugned Decision.
76. Third, Victims Group 2 submit that the established cost to repair may be "fair and appropriate" if 7,500 victims of the attacks come forward; but not if a significantly higher number of eligible victims come forward.
77. The Appeals Chamber reiterates that having rejected the arguments raised by Victims Group 2 against the estimate that 7,500 individuals are potentially

eligible beneficiaries as victims of the attacks, the present sub-ground of appeal is also rejected.

C. Ground of appeal 3: Alleged error of law and in the exercise of discretion by the Trial Chamber disregarding or misapplying its previous findings on the territorial scope of the reparations

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

79. The Appeals Chamber notes that the Trial Chamber clarified in four decisions what it considered to be the territorial scope of reparations. These decisions all coincide in that victims must demonstrate to have suffered harm as a result of the crimes of which Mr Ntaganda was convicted. Those who claim to have suffered harm in the forest or the bush surrounding the 13 Main Villages may be eligible for reparations, *provided that the Trial Chamber entered convictions based upon underlying acts having occurred in the forest or the bush surrounding those locations*.

80. Contrary to the allegation that the Trial Chamber failed to provide proper reasoning for its conclusions rejecting specific applicants, the Appeals Chamber underlines that the Trial Chamber provided, in a 561-page Annex to the Impugned Decision, a detailed case-by-case analysis and justification. The

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Appeals Chamber finds no error in the manner in which the Trial Chamber proceeded to apply the eligibility criteria to the victims in the Sample.

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

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

83. In respect of the individuals contacted by Victims Group 2 and found to be ineligible for reparations in the Impugned Decision, given their limited number and the unique circumstances surrounding these proceedings, the Appeals Chamber encourages the Board of the Trust Fund to provide additional services while recognising that the provision of services under the TFV's assistance mandate is ultimately at the discretion of its Board.

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

SUMMARY OF SEPARATE OPINION OF JUDGE LUZ DEL

CARMEN IBÁÑEZ CARRANZA

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

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

87. The Trial Chamber issued an Addendum, an auxiliary document, which is contrary to the provisions of the Rome Statute. A procedural step that is not provided for in the legal framework of the Court and cannot be applied to decisions that, by their legal nature, determine substantive rights and obligations for both the defence and the victims. The only means by which a convicted person can be held accountable for reparations, pursuant to the legal framework of the Court, is through a reparation order.

88. When the law sets out specific proceedings, it establishes general and mandatory norms of a binding character, with objective validity, applied impersonally to any individual under the circumstances it defines. The judges have a duty to adhere to it without deviation. Opting for an alternative procedure, under the premise that it is “not prohibited”, risks the creation of a

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lacune where none exists and the arbitrary affectation of due process guarantees. Non-observance of the forms prescribed by the law make the procedural act null and void.

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

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

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

92. Judgments of the Appeals Chamber are binding and must be complied with as this 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.

93. 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.

94. 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 these 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 that:

1. the Trial Chamber adequately addressed the five issues remanded for a new determination.
2. 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, or to establish how such reconstruction may be undertaken, based on a number of cross-references.

95. Finally, taking into account the specific nature of reparation proceedings, where other important rights must be weighed, I feel compelled to balance the procedural rights and guarantees to judicial certainty, fairness and reliability discussed in my Separate Opinion against a fundamental and substantive victims’ right and entitlement to the prompt implementation of reparations.

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Indeed, I am convinced that any further delays in the delivery of reparations would only exacerbate the harm suffered by the victims, who have been waiting for reparations for more than two decades in the case.

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

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