

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06 A6 A7**
Date: **10 January 2024**

THE APPEALS CHAMBER

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Document

Public redacted version of the “Response of the Common Legal Representative of the Former Child Soldiers to the Defence Appeal Brief against the Addendum to the Reparations Order”, No. ICC-01/04-02/06-2888-Conf, dated 2 January 2024

Source: Office of Public Counsel for Victims (CLR1)

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative”) hereby submits her response to the “Defence Appellant Brief against the 14 July Addendum to the Reparations Order of 8 March 2021” (the “Defence Appeal Brief” or the “Defence Appeal”).¹

2. Inasmuch as the Common Legal Representative of the Victims of the Attacks’ (the “CLR2”) Appeal Brief² specifically addresses issues concerning his clients and therefore has no impact on the victims she represents, the Legal Representative’s response will concentrate on the Defence Appeal solely. In the same vein, the Legal Representative will not entertain the Defence’s grounds of appeals and arguments that do not impact on the interests of the victims she represents and rather concern the victims of the attacks – notably grounds 9, 10, 11 and 12.

3. The Legal Representative submits that none of the Defence’s grounds of appeals are founded and therefore that the Defence Appeal should be rejected in full. Should the Appeals Chamber be minded to entertain some aspects of the Defence’s submissions, the Legal Representative underscores in the strongest terms that these renewed appeals proceedings ought to be conducted with the utmost celerity and that no suspensive effect should be associated to them.³ This is especially the case as victims not only have waited for over two decades to see justice being rendered and be granted support, but have also already navigated over four years of reparations proceedings before this Court, without accessing any reparations programmes – with the exception of the victims facing life-threatening situations who could access some of the services as priority victims. It is therefore obvious that the good practices and principles guiding the reparations proceedings – expeditiousness, dignity, victim-centred approach, ‘do no harm’ to cite but a few⁴ – have not been successfully implemented and have remained mainly theoretical so far. In this regard, the Legal Representative respectfully submits that the Court retains its responsibility towards the victims in accordance with article 68(3) of the Rome Statute

¹ See the “Defence Appellant Brief against the 14 July Addendum to the Reparations Order of 8 March 2021”, [No. ICC-01/04-02/06-2876-Conf A A7](#), 30 October 2023 (the “Defence Appeal Brief”). A public redacted version was filed on 12 December 2023, see [No. ICC-01/04-02/06-2876-Red](#).

² See the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the ‘Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659’”, [No. ICC-01/04-02/06-2875-Conf A A6](#) and [No. ICC-01/04-02/06-2875-Red A A6](#), 30 October 2023.

³ See the “Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect”, [No. ICC-01/04-02/06-2864-Conf A7](#) and [No. ICC-01/04-02/06-2864-Red A7](#), 16 August 2023.

⁴ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021, paras. 30 to 52.

(the “Statute”) and ought to correct the adverse impact of these protracted proceedings as expeditiously as possible.

II. PROCEDURAL BACKGROUND

4. On 8 July 2019, Trial Chamber VI convicted Mr Ntaganda of five counts of crimes against humanity and thirteen counts of war crimes,⁵ a conviction that was fully confirmed by the Appeals Chamber on 30 March 2021.⁶

5. On 7 November 2019, Trial Chamber VI issued the Sentencing Judgment, imposing individual sentences for each of the counts of which Mr Ntaganda had been convicted and a joint sentence of 30 years,⁷ a decision which was also entirely confirmed by the Appeals Chamber on 30 March 2021.⁸

6. On 8 March 2021, Trial Chamber VI issued the “Reparations Order”.⁹ Said Order was subsequently appealed by the CLR2¹⁰ and by the Defence,¹¹ which filed a request for suspensive effect with its appeal. On 9 August 2021, the Defence responded to the CLR2’s appeal,¹² the

⁵ See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

⁶ See the “Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red A2](#), 30 March 2021 with [AnxA](#) and [AnxB](#); as well as the “Separate opinion of Judge Howard Morrison and Judge Piotr Hofmański on the Prosecutor’s appeal”, [No. ICC-01/04-02/06-2666-Anx1 A2](#); the “Separate opinion of Judge Howard Morrison on Mr Ntaganda’s appeal”, [No. ICC-01/04-02/06-2666-Anx2 A2](#); the “Separate opinion of Judge Luz Del Carmen Ibáñez Carranza on Mr Ntaganda’s appeal”, [No. ICC-01/04-02/06-2666-Anx3 A2](#); the “Separate opinion of Judge Solomy Balungi Bossa on the Prosecutor’s appeal”, [No. ICC-01/04-02/06-2666-Anx4 A2](#); and the “Corrected version of partly concurring opinion of Judge Chile Eboe-Osuji”, [No. ICC-01/04-02/06-2666-Anx5-Corr A2](#).

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

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

⁹ See the “Reparations Order”, *supra* note 4.

¹⁰ See the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparation Order”, [No. ICC-01/04-02/06-2674 A4](#), 7 June 2021. See also the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2668 A4](#), 8 April 2021.

¹¹ See the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675 A4](#), 7 June 2021. See also the “Defence Notice of Appeal against the Reparations Order”, [No. ICC-01/04-02/06-2659](#), [No. ICC-01/04-02/06-2669 A5](#), 8 April 2021.

¹² See the “Response on behalf of Mr Ntaganda to the ‘Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order’”, [No. ICC-01/04-02/06-2702](#), 9 August 2021.

CLR2 responded to the Defence appeal,¹³ and the Legal Representative submitted her consolidated response to both appeals.¹⁴

7. The Appeals Chamber rejected the Defence request for suspensive effect,¹⁵ and issued its “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (the “Appeals Judgment” or the “Judgment”) on 12 September 2022, partially reversing the Reparations Order and remanding the matter to Trial Chamber II (the “Chamber”).¹⁶

8. On 14 July 2023, the Chamber issued its “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659” (the “Addendum”).¹⁷

9. On 11 August 2023, the Chamber issued its “First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations” (the “First Decision on the Updated DIP”), approving the Trust Fund for Victims’ (the “TFV”) updated draft implementation plan (the “Updated DIP”) subject to the conditions and directions set out in the Decision.¹⁸

10. On 16 August 2023, the CLR2¹⁹ and the Defence²⁰ filed their respective Notice of Appeal against the Addendum. The CLR2 included in his Notice of Appeal a request for suspensive effect in relation to the Chamber’s decision on the eligibility of four of his clients pending the Appeals Chamber’s determination of the appeal.²¹ Whereas, on the same day, the

¹³ See the “Response of the Common Legal Representative of the Victims of the Attacks to the Defence’s Appeal Brief (ICC-01/04-02/06-2675)”, [No. ICC-01/04-02/06-2701](#), 9 August 2021.

¹⁴ See the “Response of the Common Legal Representative of the Former Child Soldiers on Mr Ntaganda and the Victims of the Attacks’ Appeals against the Reparations Order (ICC-01/04-02/06-2659)”, [No. ICC-01/04-02/06-2700](#), 9 August 2021.

¹⁵ See the “Decision on the Defence request for suspensive effect” (Appeals Chamber), [No. ICC-01/04-02/06-2691 A4 A5](#), 2 July 2021.

¹⁶ See the “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (Appeals Chamber), [No. ICC-01/04-02/06-2782 A4 A5](#), and its [AnxA](#) and [AnxB](#), 12 September 2022 (the “Appeals Judgment”).

¹⁷ See the “Public Redacted Version of Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659” (Trial Chamber II), [No. ICC-01/04-02/06-2858-Red](#) and its [AnxI](#) and [AnxIII](#), 14 July 2023 (the “Addendum”).

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

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

²⁰ See the “Defence Notice of Appeal against the 14 July Addendum to the Reparations Order of 8 March 2021”, [No. ICC-01/04-02/06-2863-Conf](#) and [No. ICC-01/04-02/06-2863-Red](#), 16 August 2023.

²¹ See the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the ‘Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659’, and Request for Suspensive Effect in relation to Trial Chamber II’s Decision on the eligibility of Victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13”, *supra* note 19, paras. 37-43.

Defence filed a separate request for suspensive effect for the immediate suspension of the whole Addendum.²²

11. On 18 August 2023, the Appeals Chamber appointed Judge Gocha Lordkipanidze as the Presiding Judge in the appeals.²³

12. On 23 August 2023, the Appeals Chamber issued an order inviting the TFV to submit observations on the requests for suspensive effects, as well as inviting responses from both the Defence and the CLR2, by 7 September 2023.²⁴ The same day, prompted by the Legal Representative, the Presiding Judge informed her that, as a party to these appeals proceedings, she may as well, by the same deadline, file a response to the requests for suspensive effect submitted by the CLR2 and the Defence, and to the observations to be filed by the TFV.²⁵

13. On 31 August 2023, the TFV submitted its observations on the requests for suspensive effect.²⁶

14. On 7 September, the CLR2,²⁷ the Legal Representative,²⁸ and the Defence²⁹ respectively filed their responses to the requests for suspensive effect of the appeals submitted on 16 August 2023.

²² See the “Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect”, *supra* note 3.

²³ See the “Decision on the Presiding Judge of the Appeals Chamber in the appeals of the common legal representative of the victims of the attacks and of Mr Bosco Ntaganda against the decision of Trial Chamber II entitled ‘Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659’” (Appeals Chamber), [No. ICC-01/04-02/06-2865 A6 A7](#), 18 August 2023.

²⁴ See the “Order inviting the Trust Fund for Victims to submit observations on the requests for suspensive effect and setting a time limit for responses to the requests and observations” (Trial Chamber II), [No. ICC-01/04-02/06-2866 A6 A7](#), 23 August 2023.

²⁵ See the email from the Legal Adviser of the Appeals Chamber on behalf of the Presiding Judge in the Ntaganda A6, A7 appeals to the Legal Representative on 23 August 2023 at 17:13, entitled “Ntaganda A6, A7”.

²⁶ See the “Observations on Requests for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence”, [No. ICC-01/04-02/06-2867 A6 A7](#), 31 August 2023.

²⁷ See the “Response of the Common Legal Representative of the Victims of the Attacks to the ‘Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect’ and the Trust Fund for Victims’ ‘Observations on the Requests for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence’”, [No. ICC-01/04-02/06-2869 A6 A7](#), 7 September 2023 (reclassified as public pursuant to the Appeals Chamber’s instruction dated 13 September 2023).

²⁸ See the “Response of the Common Legal Representative of the Former Child Soldiers to the request for suspensive effect of the Addendum to the Reparations Order introduced by the Defence” (No. ICC-01/04-02/06-2864-Red), [No. ICC-01/04-02/06-2870 A6 A7](#), 7 September 2023.

²⁹ See the “Defence Response to the request for suspensive effect of the Common Legal Representative of the victims of the attacks and the observations of the Trust Fund for Victims”, [No. ICC-01/04-02/06-2871 A6 A7](#), 7 September 2023.

15. On 30 October 2023, the CLR2 and the Defence filed their respective appeal briefs.³⁰
16. On 3 November 2023, the [REDACTED]³¹ and the Registry (the Victims Participation and Reparations Section)³² filed their respective additional information regarding the implementation of the Updated DIP.
17. On 8 November 2023, the [REDACTED],³³ which was [REDACTED].³⁴ On 14 November 2023,³⁵ the Chamber rejected said request as well as the [REDACTED].³⁶
18. On 16 November 2023, the [REDACTED]³⁷ and the [REDACTED]³⁸ filed their respective [REDACTED].
19. On 1 December 2023, the Defence filed a “Statement provided by Mr Bosco Ntaganda on 30 November 2023 regarding reparations proceedings”, announcing Mr Ntaganda’s decision [REDACTED].³⁹

III. LEVEL OF CLASSIFICATION

20. Pursuant to regulation 23bis(1) of the Regulations of the Court, the present submission is filed as confidential, because it responds to a submission classified as confidential. A public redacted version will be filed in due course.

³⁰ See the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the ‘Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659’”, *supra* note 2; and the Defence Appeal Brief, *supra* note 1.

³¹ [REDACTED].

³² See the “Registry Submission pursuant to ICC-01/04-02/06-2860-Red”, [No. ICC-01/04-02/06-2878, Conf-AnxI, AnxII, AnxIII](#) and [Conf-AnxIV-Red](#), 3 November 2023. See also [AnxI-Red](#), filed on 22 November 2023.

³³ See the [REDACTED].

³⁴ See the [REDACTED].

³⁵ See the email sent on behalf of Trial Chamber II on 14 November 2023, at 14:18, entitled “The Prosecutor v. Bosco Ntaganda - [REDACTED]”.

³⁶ See the [REDACTED].

³⁷ See the [REDACTED].

³⁸ See the [REDACTED].

³⁹ See the [REDACTED] and [REDACTED]. *Contra*, the [REDACTED].

IV. SUBMISSIONS

1. Preliminary observations on the Defence Appeal Brief

21. The Legal Representative preliminarily observes that, once again, the Defence is launching itself in time-consuming re-litigations, which, short of adding any value to rehearsed arguments, simply demonstrate further its mere disagreements with the Chamber's decisions and with the course of reparations proceedings before the Court as a whole. As per the constant jurisprudence of this Court, mere disagreements do not constitute valid grounds of appeal.⁴⁰ Such an approach is all the more concerning given that the Defence purports to have the best interests of the victims at heart,⁴¹ when each and every procedural step it has taken is clearly detrimental to their very interests, and plainly runs against "*the overall objective of ensuring that reparations in this case are awarded to victims as expeditiously as possible*".⁴²

22. Noting that, at this stage of the proceedings, the Chamber is still seized with a request for suspensive effect of the Addendum introduced by the Defence,⁴³ the Legal Representative wishes to re-emphasise her 7 September submissions on the issue.⁴⁴ She reiterates that the Defence Appeal again only concerns disagreements with the *processes* of reparations contained in the Reparations Order and does not have any bearing on the content of the reparation *measures* the TFV has proposed in its Updated DIP. Consequently, the Legal Representative posits that none of the Defence's grounds of appeal require suspensive effect to be granted by the Chamber by virtue of their very procedural nature, not directly impacting the reparations programmes, nor the start of their implementation. To the contrary, in light of the relatively long processes at play between the identification of a potential beneficiary and their access to all of the programmes, it is of the utmost importance that purely procedural and theoretical debates do not impact the expeditiousness of these proceedings for a second time in four years.⁴⁵ As

⁴⁰ See, *inter alia*, the "Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled 'Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute'" (Appeals Chamber), [No. ICC-02/11-01/15-208 OA6](#), 8 September 2015, para. 73: "*The Appeals Chamber has further held that mere disagreement with the conclusions that the first-instance Chamber drew from the available information or the weight it accorded to particular factors does not suffice to establish an error*".

⁴¹ See, *inter alia*, the Defence Appeal Brief, *supra* note 1, paras. 3, 4, 5, 6, 11, 12; and the "Defence response to the TFV and Registry's submissions pursuant to the First Decision on Updated DIP (ICC-01/04-02/06-2860)", *supra* note 37, paras. 3, 43, 46, 62, 66, and 72.

⁴² See the Appeals Judgment, *supra* note 16, para. 756.

⁴³ See the "Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect", *supra* note 3.

⁴⁴ See the "Response of the Common Legal Representative of the Former Child Soldiers to the request for suspensive effect of the Addendum to the Reparations Order introduced by the Defence", *supra* note 28, paras. 22, 25, and 28.

⁴⁵ As articulated a few weeks ago by Trial Chamber V in another case before this Court and albeit at a different stage of the proceedings: "*the Chamber highlights that expeditiousness is an independent and important value in*

developed *infra*, this reasoning applies to this renewed appeal in its entirety, which the Legal Representative argues is groundless.

23. Once again, the Legal Representative repeats in the strongest possible terms that litigations on the Reparations Order ought to stop. The incessant back-and-forth at this stage is unreasonable, and clearly runs against the protected interests of the victims in the present case, who are the main persons concerned by reparations proceedings, now that the Defence's rights have been ascertained and sufficiently safeguarded.⁴⁶ The Legal Representative recalls that the Addendum has been issued "*bearing in mind the rights of the convicted person*" every step of the way,⁴⁷ and that all possible uncertainties have been "*resolved in favour of the convicted person*".⁴⁸ As further observed by the Chamber in its Addendum, "*it should strike a balance and ensure that safeguarding the rights of a convicted person is not made at the cost of impairing the legitimate right of victims to obtain reparations without delay*".⁴⁹ Further, in the Appeals Judgment, the Appeals Chamber recalled its own ruling in the *Katanga* Appeals Judgment on Reparations where it "*held that chambers have 'ample margin to determine how to best [...] deal with the matter before them', but noted that the reparations proceedings 'must be as expeditious and cost effective as possible', as well as 'avoid unnecessarily protracted, complex and expensive litigation'*".⁵⁰

24. Notwithstanding this, the Legal Representative will address, once again, the Defence's grounds of appeals in her submissions. For the reasons developed *infra*, she posits that none of the grounds of appeals put forward by the Defence are founded and that the Defence Appeal should therefore be rejected.

the Statute to ensure the proper administration of justice and is therefore more than just a component of the fair trial rights of the accused". See the "Public redacted version of Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence" (Trial Chamber V), [No. ICC-01/14-01/18-2016-Red](#), 6 September 2023, para. 50.

⁴⁶ See the First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations, *supra* note 18, para. 186: "*As to the Defence's involvement in the process of eligibility determinations and possible appeals, consistent with the Appeals Chamber's views, the Chamber considers that no intervention of the Defence is required as Mr Ntaganda's interests at this stage of the proceedings are limited. In effect, the Chamber has already set the convicted person's monetary liability and, as such, the results of the eligibility process will have no impact on his rights*" (emphasis added).

⁴⁷ See the Addendum, *supra* note 17, paras. 22, 193, 195, 323, 339, and 360.

⁴⁸ *Idem*, paras. 270, 293, 297, 318, 320, and 351.

⁴⁹ *Idem*, para. 22.

⁵⁰ See the Appeals Judgment, *supra* note 16, para. 325 (emphasis added).

2. GROUNDS 1, 2 and 3: Trial Chamber II committed errors of law and procedure by failing to render a new reparations order; by holding that the Initial Draft Implementation Plan submitted by the TFV on 24 March 2022 remained fully operational further to the Appeals Judgment; by failing to include compulsory provisions in the Impugned Decision; and by failing to consider that the Updated Draft Implementation Plan submitted by the TFV in March 2022 was also impacted by the cumulative errors identified in the Appeals Judgment (paras. 8 to 74)

25. The Legal Representative preliminarily notes that despite the fact that the Defence joined these three grounds of appeals and bears the responsibility to organise its arguments in an intelligible manner, the latter are repetitive and presented in a very confusing way, making any response very cumbersome. She nonetheless organises her response per group of concerns raised by the Defence.

26. The Legal Representative respectfully submits that the format in which the Chamber decided to file its Addendum hardly amounts to errors of law and procedure as claimed by the Defence. The Defence argues that the three errors corresponding to these three grounds of appeal “*are intertwined, and stem from one overarching error [that the Chamber would have committed] in deciding [...] that the 8 March Reparations Order remained in force*”.⁵¹

27. The Legal Representative submits that the Chamber did no such thing. To the contrary, it proceeded in accordance with the Appeals Chamber’s instructions “*to correct the errors identified in a way that both enables the order for reparations to be based upon an appropriately solid foundation and that causes minimum disruption to the overall reparation process*”;⁵² bearing in mind what the Appeals Chamber deemed “*imperative*”,⁵³ which is “*that the reparation process proceeds as expeditiously as possible and is conducted with full respect for the rights of both the victims and the Defence*”.⁵⁴ In this regard, the Chamber “*underline[d] that it should strike a balance and ensure that safeguarding the rights of a convicted person is not made at the cost of impairing the legitimate right of victims to obtain reparations without delay*”, and that, “[w]ithin this context, the Chamber will continue striving to advance these reparation proceedings in the most efficient and effective manner possible [...]”.⁵⁵

28. In implementing the Appeals Chamber’s instructions, the Chamber clearly indicated in its Addendum that the latter addresses only the five issues on remand for which the Appeals

⁵¹ See the Defence Appeal Brief, *supra* note 1, para. 9.

⁵² See the Appeals Judgment, *supra* note 16, para. 757 (emphasis added).

⁵³ *Idem*, para. 758.

⁵⁴ *Ibid.*

⁵⁵ See the Addendum, *supra* note 17, para. 22.

Chamber partially reversed the 8 March Reparations Order, whereas the rest of said Order remains valid, thereby forming, as clearly ruled by the Appeals Chamber, an appropriately solid foundation causing minimum disruption to the overall process.⁵⁶ The Legal Representative also notes that the fact that the Chamber, as correctly pointed out by the Defence, chose to follow a different course of action than Trial Chamber I in the *Lubanga* case following the Appeal Judgement in said case, not only is within the prerogative of a trial chamber, but also could be explained, once again as underlined by the Defence itself, by the fact that said course of action resulted in significant delays.⁵⁷

29. Such a course of action was entirely within the Chamber's discretion and the argument of the Defence that the former "*circumvented*"⁵⁸ the Appeals Judgment is therefore difficult to entertain. The fact that the Defence disagrees with the Chamber's implementation of this instruction cannot constitute a valid ground of appeal, no matter how the Defence attempts to conceal its dissatisfaction.⁵⁹

30. In addition, the blanket assessment by the Defence that a "*new order for reparations was required because the errors identified in the Appeals Judgment and the corrective actions required impacted every aspect of the reparations process and the 8 March Reparations Order [and, in fact, that] no individual section or paragraphs of the 8 March Reparations Order could be salvaged, other than by incorporating them in a new order for reparations*"⁶⁰ is plainly incorrect. Indeed, having due regard to the Reparations Order, almost half of it corresponds to the establishment of the principles on reparations,⁶¹ which remain undisturbed by the Judgment. Other significant parts correspond to considerations pertaining to the definition of direct and indirect victims, the definition of the types of harm suffered by the victims, and the types and modalities of reparations,⁶² which, equally, remain untouched by the Judgment. By all accounts, these very elements, making for two thirds of the Reparations Order, form the solid foundation

⁵⁶ *Idem*, paras. 15, 16, and 24.

⁵⁷ See the Defence Appeal Brief, *supra* note 1, para. 16.

⁵⁸ *Idem*, paras. 10, 23, and 24.

⁵⁹ The Defence's lexical consideration of the use of the term Addendum appears hardly relevant in as much as, as developed *supra*, what the Trial Chamber did in its Addendum was indeed "[to add] to an existing document in order to clarify or supplement the original content". See the Defence Appeal Brief, *supra* note 1, para. 25. In fact, as clarified by referenced Law dictionaries: "An Addendum is a document attached to clarify or modify a part of a contract" and "[I]n the civil law systems, addendum means any modification of a contract (for example an extension of the terms, change in payment currency, new collaterals), not just inclusion of additional attachments or exhibits" (emphasis added). See respectively the [Law Dictionary](#), and [the Legal Information Institute Wex Legal Dictionary and Legal Encyclopaedia at the Cornell Law School](#).

⁶⁰ See the Defence Appeal Brief, *supra* note 1, paras. 14, and 22 to 35.

⁶¹ See the "Reparations Order", *supra* note 4, pp. 12 to 40 (over 97 pages in total, the first 11 pages corresponding to the overview and the procedural history).

⁶² *Idem*, at least half of pp. 40 to 66, pp. 68 to 78, pp. 78 to 81, and pp. 94 to 97 (over 97 pages in total).

underpinning the reparations proceedings, which the Chamber intended to maintain and build upon.

31. Furthermore, when addressing arguments of the Defence's first appeal regarding elements in the Updated DIP, the Appeals Chamber noted that such grounds were premature and not part of the remit of the appeals against the Reparations Order, inasmuch as they concerned the *implementation* stage of the reparations.⁶³ Even more remarkably, the Appeals Chamber did not include in its Judgment any specific reference to the Updated DIP, nor any specific instructions to the Chamber with regard to the latter. In fact, the Appeals Chamber rather reaffirmed "*that a trial chamber conducting reparations proceedings has 'ample margin to determine how to best deal with the matter before [it]'. A myriad of circumstances may arise in future cases which are currently unknown and a trial chamber therefore needs considerable discretion to decide how it should best approach the differing eventualities that might come before it*".⁶⁴ This being said, in response to the Defence's concerns,⁶⁵ it is worthwhile underlining that: (i) the Chamber took into consideration the parties' submissions as to the Updated DIP in its Addendum,⁶⁶ and thereby highlighted that "*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*";⁶⁷ and (ii) immediately after issuing the Addendum, the Chamber indeed issued its First Decision on the Updated DIP itself,⁶⁸ giving focused and comprehensive instructions on the Updated DIP specifically, and notably requesting the TFV, but also the Registry and the parties, to provide supplementary information. By so doing, the Chamber further amended the eligibility process in pursuance of the Appeals Judgment. The Legal Representative therefore contends that the Chamber did in fact address the Defence's concerns as to the necessity of "*significant modifications [to the Updated DIP], taking into account observations by the parties, to bring it in line with the evolving situation, including the Appeals Judgment and the new order for reparations [...]*".⁶⁹ Moreover, the parties, as

⁶³ See the Appeals Judgment, *supra* note 16, para. 366.

⁶⁴ *Idem*, para. 337.

⁶⁵ See the Defence Appeal Brief, *supra* note 1, paras. 44 to 74.

⁶⁶ See the Addendum, *supra* note 17, para. 311.

⁶⁷ *Idem*, para. 362 (emphasis added). See also *idem*, paras. 34 to 148.

⁶⁸ See the "First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations", *supra* note 18. The Legal Representative notes that this decision comprises 66 pages, which provides another obvious explanation as to the choice of the Trial Chamber to issue a separate decision specifically on the DIP instead of including it in the Addendum, following the instructions of the Appeals Chamber to ensure a clear and solid foundation for the upcoming reparations proceedings.

⁶⁹ See the Defence Appeal Brief, *supra* note 1, para. 18.

underlined by the Defence, were able to make observations on the additional information requested by the Chamber on the Updated DIP.⁷⁰

32. The Legal Representative cannot but further notice that when the Defence advanced, on 16 August 2023, its grounds of appeal against the Addendum,⁷¹ it was already notified of the content of the Chamber's First Decision on the Updated DIP which was issued a few days after the Addendum and before its own notice of appeal (on 11 August),⁷² and indeed constituted a direct follow-up on said Addendum – as previously announced by the Chamber in the latter.⁷³ Yet, the Defence chose to continue laying down its arguments as if this important decision had not been issued and the Chamber had not, in application of the Appeals Judgment, re-determined the “*identity of the authority responsible for conducting the eligibility assessments*” as well as the whole procedure attached to it.⁷⁴ It is all the more confusing that the Defence itself recognises this in its Appeal, but keeps arguing that, short of being included in the Addendum, the Defence was deprived from its ability to include these very fundamental elements in its appeal against the Addendum – which it did anyway.⁷⁵ Now, this principle is correct to the extent that, according to the legal texts and consistent jurisprudence of this Court, an appeal against a decision can only address issues explicitly contained within that decision. Accordingly, the Defence cannot appeal issues not included in the Addendum, which it is nonetheless attempting to do. This also implies, however, that the parties – including the Defence – could very well have sought leave to appeal the First Decision on the Updated DIP, which the Defence chose not to. In this regard, the Legal Representative here again fails to see how this course of action by the Chamber created any prejudice for the Defence – and the parties for that matter – inasmuch as parties are responsible for choosing to assert their rights as the proceedings progress or, on the contrary, to relinquish to do so.

33. In other words, the Defence chose to ignore the relevant available procedure seeking leave to appeal the First Decision on the Updated DIP and, knowing fully well that this would have been the appropriate course of action, chose nonetheless to pursue its line of arguments in

⁷⁰ *Idem*, para. 20. See also, *inter alia*, the “Defence response to the TFV and Registry’s submissions pursuant to the First Decision on Updated DIP (ICC-01/04-02/06-2860)”, *supra* note 37.

⁷¹ See the “Defence Notice of Appeal against the 14 July Addendum to the Reparations Order of 8 March 2021”, *supra* note 20.

⁷² See the First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations, *supra* note 18.

⁷³ See the Addendum, *supra* note 17, para. 362: “*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*” (emphasis added).

⁷⁴ See the Defence Appeal Brief, *supra* note 1, para. 64. See also more generally paras. 44 to 74.

⁷⁵ *Idem*, para. 68.

its notice of appeal, and subsequently in its appeal against the Addendum. Although the Defence had a valid and available legal avenue to secure the rights of the convicted person and be heard, it knowingly chose to ignore it and to pursue arguments which, in addition to defeating their own purposes in a different context, also prejudiced the other party in the present proceedings – the victims – by wasting the Court’s increasingly precious time and resources. In doing so, the Defence cannot be said to have acted in good faith: it is one thing for the Defence to disagree with the course of action pursued by the Chamber, and to therefore exercise its right to seek leave to appeal the relevant decisions, but it is quite another to knowingly mislead the Court and pursue actions prejudicial to the ongoing proceedings.⁷⁶

34. Finally, the Legal Representative fails to see how the long and confusing developments of the Defence regarding what seems to rather correspond to its grounds 4 and 5 – the determination of the eligibility of potential victims and the assessment of a sample of victim dossiers taking into consideration the Defence’s observations⁷⁷ – are relevant here and therefore does not entertain them in response to grounds 1 to 3.

35. For the reasons developed *supra*, grounds 1, 2 and 3 of the Defence Appeal should be dismissed.

3. GROUND 4: Trial Chamber II erred in law by failing to include in the Impugned Decision parameters, criteria and instructions capable of properly guiding the verification body in carrying out a meaningful eligibility assessment of potential victims pursuant to the balance of probabilities standard of proof applicable in reparations proceedings (paras. 75 to 113)

36. The Legal Representative refers to her reasoning *supra* as to the development by the Chamber of the information regarding the parameters, criteria and instructions in relation to eligibility in a separate decision dedicated to the Updated DIP implementation, immediately after the issuance of the Addendum, in direct application of the Appeals Judgement.⁷⁸

37. In this regard, she specifically underlines that, in said Decision, the Chamber provided an explanation as to why everything related to the Updated DIP was treated separately. Indeed, for the Chamber, “[o]nce the reparations order becomes final, the judicial proceedings conclude and the stage of execution, implementation or enforcement of the order commences. The stage of implementation of the reparations order is then administrative in nature and is no longer

⁷⁶ See the Defence Appeal Brief, *supra* note 1, para. 72 in particular, and paras. 63 to 74.

⁷⁷ *Idem*, paras. 36 to 43.

⁷⁸ See *supra* paras. 26 to 33.

judicial".⁷⁹ Ground 4, like grounds 1 to 3, simply illustrates the disagreement of the Defence as to the way the Chamber decided to handle the proceedings following and in full respect of the Appeals Judgment. As articulated *supra*, disagreements do not constitute errors of law, nor valid grounds of appeal for that matter.⁸⁰

38. Moreover, the Legal Representative remains confused when reading the Defence's arguments. Ground 4 supposedly addresses the purported legal error made by the Chamber by failing to include in the Addendum parameters, criteria and instructions capable of properly guiding the verification body in carrying out a meaningful eligibility assessment of potential victims. However, the Defence notes in its appeal that "*Trial Chamber II's analysis of each dossier [of the sample] was conducted on the basis of the criteria and methodology set out in paragraphs 25 to 148 of the 14 July Addendum, also taking into account the Court's previous jurisprudence, particularly in the Lubanga and Katanga cases*".⁸¹ The Defence further emphasised that "[i]n the 14 July Addendum, Trial Chamber II spelled out a number of eligibility criteria for a potential victim to benefit from reparations by reference to the territorial, temporal and subject matter scope of the crimes for which Mr Ntaganda was convicted. The importance of these criteria cannot be underestimated as they represent the blueprint based on which the authority making the assessment [...] will determine the eligibility of thousands of applicants [...]".⁸² These elements, presumably, are the ones capable of guiding the verification body when carrying out assessments of new potential victims' dossiers. As such, the Legal Representative remains puzzled as to what argument to really address under this ground when the Defence itself contradicts its stance by responding to its own arguments. That the Defence is of the opinion that these criteria are not intelligible enough to be applied by the implementation body once again constitutes a disagreement advanced by the Defence, not meeting the criteria of a valid ground of appeal. This is all the more true since the relevant implementing body seemed to be satisfied with the criteria and methodology provided by the Chamber and not impeded in its task in this regard⁸³ – in direct contradiction with the Defence's contention that "*Trial Chamber II erred when setting out the eligibility determination criteria such that the authority making the*

⁷⁹ See the First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations, *supra* note 18, para 14.

⁸⁰ See *supra* para. 21, and note 40.

⁸¹ See the Defence Appeal Brief, *supra* note 1, para. 78.

⁸² *Idem*, paras. 82 and 83.

⁸³ See the "Trust Fund for Victims' Twelfth Update Report on the Implementation of the Initial Draft Implementation Plan", [No. ICC-01/04-02/06-2859-Conf](#) and [No. ICC-01/04-02/06-2859-Red](#), 31 July 2023. The TFV simply noted that it will thoroughly assess the findings of the Chamber with regard to the victims' dossiers in the sample together with the criteria and methodology attached, and that it stood ready to receive more transmissions of victims' applications. In this regard, see paras. 11 and 12.

assessment would be incapable of properly assessing the victims' dossiers, using these criteria".⁸⁴ This in turn demonstrates that the Chamber committed no such error in its Decision, contrary to the Defence's contention. This reading is further confirmed by the recent submissions made by the Registry, which is now responsible for eligibility assessments, in which it simply lays out its understanding of the criteria and methodology put forward by the Chamber in order to proceed with its new responsibility, without indicating any specific difficulty with the information laid down by the Chamber in the Addendum.⁸⁵

39. Furthermore, the other arguments put forward by the Defence do not seem to go to the essence of this ground of appeal as defined by the Defence itself, and rather appear to entertain disagreements with, *inter alia*: (i) the results of the assessments of the victims' dossiers made by the Chamber – while, once again and paradoxically indicating that “*the results of the assessment of the 171 victims' dossiers in the sample is not challenged per se*”;⁸⁶ (ii) the eligibility of priority victims;⁸⁷ and finally (iii) the criteria used, regarding which the Defence does not even try to disguise its disagreements and frustrations.⁸⁸ Indeed, the Defence notes that it “*suggested more precise and practical criteria and guidelines with a view to assisting the authority making the assessment in determining the eligibility of potential victims. Although Trial Chamber II referred to some of these suggestions, they were not retained as part of the determinations made by Trial Chamber II*”.⁸⁹ The Defence qualifies this stance taken by the Chamber as an error, while it is the Chamber's prerogative to accept or dismiss submissions made by the parties. Here again, the Legal Representative underlines that mere disagreements do not constitute legal errors, nor valid grounds of appeal.⁹⁰

40. Additionally, as previously argued in her 7 September 2023 submissions regarding suspensive effect, the Legal Representative recalls that extensive litigation on this topic has been ongoing now for more than two years.⁹¹ Indeed, the Defence Appeal is the second time that it expresses its disagreement with the eligibility procedure adopted by the Chamber, despite a first appeal having been adjudicated on the same topic and the Chamber having modified part of the

⁸⁴ See the Defence Appeal Brief, *supra* note 1, paras. 84 to 112.

⁸⁵ See the “Registry Submission pursuant to ICC-01/04-02/06-2860-Red”, *supra* note 32.

⁸⁶ See the Defence Appeal Brief, *supra* note 1, para. 80. It is also worth noting that *all* child soldiers' dossiers included in the Sample assessed by the Chamber were deemed admissible and genuine, contrary to the Defence's arguments in this regard.

⁸⁷ *Idem*, paras. 80 and 81.

⁸⁸ *Idem*, para. 80.

⁸⁹ *Idem*, para. 88.

⁹⁰ See *supra* para. 21, and note 40.

⁹¹ See the “Response of the Common Legal Representative of the Former Child Soldiers to the request for suspensive effect of the Addendum to the Reparations Order introduced by the Defence”, *supra* note 28, para. 24.

procedure following the Appeals Chamber's guidance. Continuous litigation on topics already adjudicated several times over two cases (*Lubanga* and *Ntaganda*), and already implemented in one of these two cases (*Lubanga*), not only contributes to the vulnerability experienced by victims, their families and their communities, but also undermines any hope of positive effect of the reparation measures. Such a strategy deprives the victims and the affected communities of any possible confidence in the Court, the TFV, and its implementing partners.

41. Finally, and quite importantly, in light of the recent submissions of the Defence on [REDACTED], filed concurrently and prior to this appeal, the Defence no longer [REDACTED]. Indeed, in said submissions, the Defence stated:

[REDACTED].⁹²

42. In other words, the Defence appears to contradict its stance and lengthy arguments on appeal, and the contentious issues put forward by the Defence could seemingly be solved without the intervention of the Appeals Chamber.

43. For the reasons developed *supra*, ground 4 of the Defence Appeal should be dismissed.

4. GROUND 5: Trial Chamber II erred in law by failing to provide the Defence with a meaningful opportunity to assess and make submissions on the victims' dossiers in the sample (paras. 114 to 148)

44. Primarily, and as previously argued by the Legal Representative,⁹³ the Appeals Chamber has already clearly emphasised that the Defence need no longer be involved once the liability of the convicted person is properly determined – as in the present case. And indeed, through its assessment of a sample of victims' dossiers, the Defence had a chance to provide its observations (a filing of 19 pages accompanied by an annexed detailed assessment of the victims' dossiers of 171 pages),⁹⁴ which were taken into account by the Chamber when issuing detailed guidance for future proceedings.⁹⁵

45. Additionally, addressing a similar ground raised by the Defence in its first appeal against the Reparations Order, the Appeals Chamber itself noted that the "*Defence* [had] *not*

⁹² See the [REDACTED].

⁹³ See the "Response of the Common Legal Representative of the Former Child Soldiers to the request for suspensive effect of the Addendum to the Reparations Order introduced by the Defence", *supra* note 28, para. 22.

⁹⁴ See the "Submissions on behalf of the convicted person on the dossiers of the victims included in the sample", [No. ICC-01/04-02/06-2851-Conf](#) and [Conf-AnxA](#), 1st May 2023. A public redacted version was filed on 8 June 2023, [No. ICC-01/04/02/06-2851-Red](#).

⁹⁵ See the Appeals Judgment, *supra* note 16, paras. 358-369.

demonstrated an error in the Trial Chamber’s approach to the Defence’s involvement in the assessment of the eligibility of victims, which was intended to be conducted at the implementation stage and which, following this judgment, may still need to be conducted, albeit with respect to a lower number of potential beneficiaries”.⁹⁶ In this second appeal, the Defence argues yet again that it was not given a meaningful opportunity to make observations on the victims’ dossiers comprising the sample, when such a statement is plainly incorrect and misleading.

46. In this regard, as mentioned *supra*,⁹⁷ the Defence *did* provide observations in relation to victims’ dossiers in the sample,⁹⁸ contrary to what it continues to argue.⁹⁹ Additionally, said submissions are a testament to the fact that the Defence has had opportunities to provide ample comments on the various aspect of the reparations processes, including all aspects regarding eligibility,¹⁰⁰ and has been doing so.

47. In fact, the Defence admits that it has used the avenues available to it in order to voice its concerns before the Chamber, but notes that the Chamber failed “*to strike an appropriate balance*” in favour of the rights of the accused by partly rejecting the Defence’s requests.¹⁰¹ It

⁹⁶ *Idem*, para. 369.

⁹⁷ See *supra* para. 44.

⁹⁸ See the “Decision on the Registry submission in compliance with the ‘Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (Trial Chamber II), [No. ICC-01/04-02/06-2794](#), 25 November 2022. In this decision, the Chamber did instruct the Defence to make submissions on the victims’ dossiers included in the sample. As a result, on 1 May 2023, the Defence did file lengthy observations on each and every victims’ dossiers contained in the sample (the annex of the Defence’s observations comprises 171 pages). See the Submissions on behalf of the convicted person on the dossiers of the victims included in the sample, *supra* note 94. In fact, the Defence even noted as follows: “Accordingly, and despite numerous obstacles faced throughout, the Defence has approached the task of assessing the victims’ dossiers with care, including in preparing these submissions to assist the Chamber in pronouncing on the eligibility of the 171 applicants in the sample. The aim of these Defence Submissions on Sample Victims is to state the Defence’s position regarding the eligibility of the victims, both generally as to the criteria to be considered on the standard, and specifically for each dossier. In fulfilment of its role, the Defence submissions will therefore address all facets of the eligibility determination and assess, in detail, the individual circumstances of each victim” (para. 2) (emphasis added).

⁹⁹ See the Defence Appeal Brief, *supra* note 1, paras. 79 and 114 to 1489 (Ground 5).

¹⁰⁰ See, *inter alia*, the Submissions on behalf of the convicted person on the dossiers of the victims included in the sample, *supra* note 94; the Defence response to the TFV and Registry’s submissions pursuant to the First Decision on Updated DIP (ICC-01/04-02/06-2860), *supra* note 37; the “Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order”, [No. ICC-01/04-02/06-2791](#), 9 November 2022; the “Observations on behalf of the convicted person on the Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility”, [No. ICC-01/04-02/06-2779](#), 1 August 2022; the “Observations on behalf of the convicted person on the Trust Fund for Victims’ Updated Draft Implementation Plan”, [No. ICC-01/04-02/06-2765-Conf](#) and [No. ICC-01/04-02/06-2765-Red](#), 18 May 2022; and the “Additional matters identified by the Defence in the Draft Implementation Plan that should be addressed by the Trust Fund for Victims”, [No. ICC-01/04-02/06-2740-Conf](#), [No. ICC-01/04-02/06-2740-Red](#) and [AnxA-Red](#), 24 January 2022. See also all Defence’s observations the TFV’s Update Reports, with the latest being the “Defence observations on the Trust Fund for Victims’ Thirteenth Update Report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2874-Conf](#), 20 October 2023 and the “Defence observations on the Trust Fund for Victims’ Fourteenth Update Report on the Implementation of the Initial Draft Implementation Plan”, *supra* note 39.

¹⁰¹ See the Defence Appeal Brief, *supra* note 1, paras. 116 and 117.

plainly follows from the Defence's own admissions that it simply disagrees with the Chamber's conclusions.

48. One of the two prongs of the Defence's fifth ground pertains to the redactions applied to the victims' dossiers.¹⁰² The Defence once again complains that the regime put in place is unnecessary to protect the victims and impeded its ability to comment on their applications. The Legal Representative finds these assertions peculiar, if not completely at odds with the repetitive submissions made in these proceedings by the Defence about the volatile security situation in Ituri and the formation of new militias, on the one hand;¹⁰³ and with its lengthy 171 pages of analysis of said dossiers, on the other hand.¹⁰⁴ The Legal Representative notes that all of these Defence's concerns were already raised before the Chamber,¹⁰⁵ which issued a decision referencing the Appeals Chamber's jurisprudence on this topic,¹⁰⁶ with which the Defence seems to disagree, even though it relinquished its right to seek leave to appeal this very decision when it was issued in April 2023. Still discontent with said decision, the Defence is now trying to circumvent the applicable procedure by introducing its reiterated disagreements through the back door, while appealing a totally different decision from which the issue of redactions does not stem, thereby rendering its ground of appeal moot.

49. The second prong of the Defence's ground of appeal relates to access to complete elements of information and documentation.¹⁰⁷ Here again, the Defence reiterates the arguments already put forward to the Chamber in March,¹⁰⁸ and which the Chamber then rejected in April 2023.¹⁰⁹ Once again, without concealing that its appeals arguments run in fact against said Decision¹¹⁰ and do not stem from the Addendum, the Defence is nonetheless advancing them

¹⁰² *Idem*, paras. 116, and 118 to 132.

¹⁰³ See the most recent Defence's observations the TFV's Update Reports, and notably the Defence observations on the Trust Fund for Victims' Thirteenth Update Report on the Implementation of the Initial Draft Implementation Plan, *supra* note 100, paras. 4 to 7. See also the Defence Appeal Brief, *supra* note 1, paras. 218, 219, 220, 225, 227, 228, and 230.

¹⁰⁴ See the "Submissions on behalf of the convicted person on the dossiers of the victims included in the sample", *supra* note 94, Conf-AnxA.

¹⁰⁵ See the "Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims' dossiers", [No. ICC-01/04-02/06-2838](#) and [Conf-AnxA](#), 29 March 2023.

¹⁰⁶ See the "Decision on the Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims' dossiers" (Trial Chamber II), [No. ICC-01/04-02/06-2847](#), 20 April 2023.

¹⁰⁷ See the Defence Appeal Brief, *supra* note 1, paras. 116 and 133 to 146.

¹⁰⁸ See the "Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims' dossiers", *supra* note 105.

¹⁰⁹ See the "Decision on the Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims' dossiers", *supra* note 106.

¹¹⁰ See the Defence Appeal Brief, *supra* note 1, para. 146.

again while circumventing the rules governing appeals before this Court. Issues under appeal must arise from the relevant decision and the Defence had a right to seek leave to appeal the Decision in April 2023 but relinquished it. The Defence must now act in good faith and spare the Court from fruitless re-litigations, rather than raising purported issues which do not arise from the Addendum and are therefore invalid.

50. Moreover, it is now clear that the Defence [REDACTED]. Indeed, in light of the recent declaration made by [REDACTED], it would appear that this ground of appeal is now moot, inasmuch [REDACTED] concluded that: “[REDACTED]”.¹¹¹

51. For all these reasons, ground 5 of the Defence Appeal should be dismissed.

5. GROUNDS 6, 7 and 8: Trial Chamber II committed a procedural error by failing to request submissions on transgenerational harm (paras. 149 to 159); having failed to consider expert evidence, Trial Chamber II committed a procedural error by failing to make necessary findings on the operation of transgenerational harm (paras. 160 to 173); and Trial Chamber II erred in law by failing to require a medical assessment for claims of transgenerational harm (paras. 174 to 182)

52. The Legal Representative responds to grounds 6, 7 and 8 under the same umbrella, although addressing them separately – as per the jurisprudence of the Court, as they intrinsically relate to one another and as this will allow for a more comprehensive response avoiding repetitions.

53. Regarding ground 6, the gist of the Defence’s renewed disagreements with the Chamber, acting upon the Appeals Chamber’s guidance, seems to be that the Chamber issued its Addendum without more expert submissions on the topic of transgenerational harm.¹¹² However, these arguments appear incongruent with the label of the ground of appeal chosen by the Defence which is that the Chamber would have committed a *procedural error by failing to request submissions* on said topic. In any case, whether one is addressing the arguments developed by the Defence under this ground or the label of the ground itself, the Defence’s submissions are plainly incorrect.

54. To be clear, in its implementation of the Judgment, the Chamber did invite the Appointed Experts, as well as the parties and participants, to provide further submissions and information

¹¹¹ See the [REDACTED].

¹¹² See the Defence Appeal Brief, *supra* note 1, paras. 149 to 159.

on the issues related to transgenerational harm.¹¹³ However, beyond this constituting yet again a mere disagreement with a previous decision of the Chamber, and having already had the opportunity to address its concerns with the Chamber directly, the Defence fails to admit that it could have advanced, along with the other parties and participants in these proceedings, new relevant material for consideration by the Chamber in its own submissions on transgenerational harm which were filed before the Chamber in February, March and June 2023, before the issuance of the Addendum.¹¹⁴ To deplore further down the line that the information provided was not relevant enough defeats the purpose of the Defence's submissions at the time, but also shows a lack of professional courtesy towards the submissions put forward on this topic by the other parties and participants, in particular by the two teams of legal representatives of victims. In this regard, the Legal Representative refers to her submissions on the matter filed in January 2023.¹¹⁵

55. The Legal Representative further underlines that the Appeals Chamber indeed remanded the issue related to transgenerational harm to the Chamber, by pointing out that more reasoning was needed, and by giving guidance to the Chamber as to what needed to be more clearly developed. In this regard, the Legal Representative notes that the Chamber had discretion on how to implement such guidance. The Appeals Chamber notably underlined that it is “*appropriate for the Trial Chamber to consider whether it needs to address such issues as [inter alia]: the matter of the basis for the concept of transgenerational harm [...]*”;¹¹⁶ and “*to assess and properly reason the matter based on submissions sought from the parties and having assessed the credibility and reliability of the expert evidence on the record [...]*”.¹¹⁷ The Legal Representative respectfully submits that the Chamber did just that in the Addendum, carefully

¹¹³ See the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”, [No. ICC-01/04-02/06-2786](#), 25 October 2022. See also the Addendum, *supra* note 17, para. 154: “*Following the October 2022 Order, the Registry informed via email that the Appointed Experts indicated that they were not in a position to provide further submissions and information on issues related to transgenerational harm*”.

¹¹⁴ See the “Public Redacted Version of ‘Defence further submissions on transgenerational harm and the estimated total number of potential beneficiaries’, dated 30 January 2023, ICC-01/04-02/06-2823-Conf”, [No. ICC-01/04-02/06-2823-Conf](#) and [No. ICC-01/04-02/06-2823-Red](#), 8 June 2023; the “Defence Response to the Additional Submissions on Beneficiaries and Transgenerational Harm”, [No. ICC-02/04-01/15-2035](#), 22 March 2023; and the “Defence Additional Submissions on Beneficiaries and Transgenerational Harm”, [No. ICC-02/04-01/15-2030](#), 17 February 2023.

¹¹⁵ See the “Common Legal Representative of the Former Child Soldiers’ additional submissions on the issue of transgenerational harm and on the estimated potential number of reparations beneficiaries”, [No. ICC-01/04-02/06-2821](#), 30 January 2023.

¹¹⁶ See the Appeals Judgment, *supra* note 16, para. 495.

¹¹⁷ *Idem*, para. 493.

referring to and assessing all the submissions made by the parties, participants and various experts and chambers on the topic, and applying it to the present case.¹¹⁸

56. Ground 6 is therefore unfounded and should be dismissed.

57. Furthermore, regarding ground 7, once again, behind the disguise of addressing a procedural error the Chamber would have committed by failing to make necessary findings on transgenerational harm, the Defence's arguments rather deal with its disagreements with how the Chamber interpreted the guidance in the Judgment as to the need to take into account the state of scientific researches and the potential limitations of this concept.¹¹⁹ Here again, all the Legal Representative can note is mere disagreements of the Defence with the interpretation of the scientific and expert material the Chamber assessed, and with the way the latter applied such information to the present case. The Legal Representative recalls, once more, that mere disagreements do not amount to valid grounds of appeals.¹²⁰

58. Ground 7 should therefore be dismissed.

59. Finally, regarding Ground 8, the Defence argues that the Chamber made a legal error in failing to require a medical assessment for claims of transgenerational harm. Short of demonstrating how the decision of the Chamber constitutes an error, the Defence once again presents arguments that illustrate its plain disagreement with the decision reached by the Chamber.¹²¹ Moreover, the Defence also puts forward a misleading projection of the Addendum. First of all, the Chamber did not rule out the possibility on a case-by-case basis to require a psychological assessment – which in fact, the Defence acknowledges in its submissions.¹²² The Chamber indeed specified that it could be an avenue to consider if the other ways to prove the existence of the harm and its *nexus* with the direct victims were to fail, thereby mentioning how this very proof could be presented and assessed,¹²³ as pointed out by the Defence,¹²⁴ by the authority in charge of the eligibility assessment of victims' dossiers.

60. The Legal Representative further recalls her previous submissions on the topic,¹²⁵ and underlines that the suggestion of requiring a medical assessment of each victim not only appears

¹¹⁸ See the Addendum, *supra* note 17, paras. 174 to 180.

¹¹⁹ See the Defence Appeal Brief, *supra* note 1, paras. 160 to 173.

¹²⁰ See *supra* para. 21, and note 40.

¹²¹ See the Defence Appeal Brief, *supra* note 1, paras. 174 to 182.

¹²² *Idem*, para. 179.

¹²³ See the Addendum, *supra* note 17, paras. 186 to 191.

¹²⁴ See the Defence Appeal Brief, *supra* note 1, para. 178.

¹²⁵ See the "Response of the Common Legal Representative of the Former Child Soldiers on Mr Ntaganda and the Victims of the Attacks' Appeals against the Reparations Order", *supra* note 14, para. 68.

to be in total contradiction with the reasoning underpinning the use of correlative presumptions – in relation to psychological, physical and material harm, but also with the evidentiary threshold at the reparations stage and with the ‘*do no harm*’ principle. Said principle would indeed suggest to avoid putting victims through psychological assessments without providing them with any direct support just for the purpose of an evidential step at the reparations stage; such a course of action would be erroneous and would put victims in harms’ way. The use made of such assessments in the *Katanga* case, as purported by the Defence, and already acknowledged and explained by the Chamber in its Addendum,¹²⁶ needs to be viewed in its proper context – in which the number of victims was much smaller, and their legal representative thought, in full knowledge of his clients and the context of said case, that it would be adequate and would cause them no further harm. The Legal Representative respectfully reiterates that establishing a diagnosis for legal proceedings is entirely distinct from establishing appropriate causal links during the administrative stage of reparations.

61. Ground 8 is therefore unfounded.

62. For these reasons, grounds 6, 7 and 8 of the Defence Appeal are unfounded and should be dismissed.

6. GROUND 13: Trial Chamber II erred in law and in fact by rejecting arguments raised by the Defence during the implementation of the TFV IDIP concerning the application of the do no harm principle to the eligibility determination of priority victims (paras. 218 to 241)

63. In a nutshell, the Defence argues that the Chamber does not take the security situation in Ituri seriously,¹²⁷ and that it does not sufficiently ensure the application of the ‘*do no harm*’ principle in the implementation of reparations. First and foremost, it is relevant to note that this ground is a complete repetition of ground 3 of the Defence’s first appeal against the Reparations Order, and that all the arguments put forward by the Defence were already rejected in full by the Appeals Chamber.¹²⁸ Nothing has changed since then except for the increased insecurity and volatility of the situation in Ituri, and these elements have been duly taken into account by the Chamber as the proceedings progressed.

¹²⁶ See the Addendum, *supra* note 17, paras. 189 and 190.

¹²⁷ See the Defence Appeal Brief, *supra* note 1, para. 218.

¹²⁸ See the Appeals Judgment, *supra* note 16, paras. 441 to 456. See also the Defence Appeal Brief, *supra* note 1, para. 226

64. Regarding the security situation,¹²⁹ it is important to note that the Defence refers to its multiple requests to the Chamber to take into consideration information that the Chamber assessed as mere speculations and premature and unfounded conclusions drawn by the Defence.¹³⁰ Therefore, fully aware of the perspective of the Defence and the information presented, the Chamber decided not to follow the Defence’s reasoning, a course of action with which the Defence disagrees. Unable to convince the Chamber of its theory around security and reparations potentially benefitting militias instead of genuine victims of the crimes for which its client was convicted, the Defence now tries its luck with the Appeals Chamber under the guise of the ‘do no harm’ principle. In this regard, the Legal Representative reiterates that unfounded arguments and disagreements do not form the subject of valid grounds of appeal before this Court.¹³¹

65. More specifically, the Legal Representative notes that this very ground of appeal has already been taken into consideration not only multiple times but also, importantly, while implementing the Appeals Judgment in the Chamber’s First Decision on the Updated DIP. In so doing, the Chamber underlined that:

“the implementation of any reparations programme must take into account the security situation on the ground at the time. As a result, the Chamber instructs the TFV to undertake a new security assessment closer to the time of implementation, taking into account the concerns raised by the Defence, to ensure that the implementation of reparations can be carried out safely and will not exacerbate conflict or tensions in the region”.¹³²

66. As previously underlined, the ‘do no harm’ principle is closely linked to the principles of dignity, non-discrimination and non-stigmatisation.¹³³ The Legal Representative underlines that, contrary to the Defence’s assertions, one of the fears mentioned by her clients relates to the future of their children, the risk that they would get abducted or otherwise be incited to join militias; and their primary wish is for them to have access to education in order to prevent a

¹²⁹ See the Defence Appeal Brief, *supra* note 1, para. 178.

¹³⁰ See, *inter alia*, the “Decision on the TFV’s Ninth to Twelfth Update Reports on the Implementation of the Initial Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2868](#), 31 August 2023, paras. 21 to 23.

¹³¹ See *supra* para. 21, and note 40.

¹³² See the “First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations”, *supra* note 18, para. 145.

¹³³ See the “Response of the Common Legal Representative of the Former Child Soldiers on Mr Ntaganda and the Victims of the Attacks’ Appeals against the Reparations Order (ICC-01/04-02/06-2659)”, *supra* note 14, paras. 51 to 53.

recurrence of similar traumatic events.¹³⁴ As such, it is imperative for the reparations programmes to commence swiftly, to provide these children with the opportunities they currently lack, thereby preventing their recruitment by militias. The Court’s outreach and the dissuasive message conveyed by the conviction of Mr Ntaganda – and of Mr Lubanga for that matter – certainly provide reparative value to victims, but what can and will really make a concrete difference in the life of the victims, their children, families and communities is the *support* provided by the reparations programmes. Options, support, choices and trust are amongst the key elements needed by the victims to rebuild their lives; defiance, confusion, discrimination and exclusion¹³⁵ are certainly not what they need right now.

67. Finally, the Legal Representative underlines her utmost concerns and vigilance when it comes to the security and well-being of her clients and of the victims more generally, and insists that these legitimate concerns should not be misused by the Defence. The latter is well aware that not only her but also the Court as a whole understand, as does the Defence, that “*in accordance with the do no harm principle, all measures should be taken to ensure that the implementation of reparations in this case do [not] do more harm than good to the population of Ituri*”.¹³⁶ However, the Legal Representative respectfully underlines that the Defence has exclusively advanced assumptions and speculations, instead of real cases in which the support offered by the TFV would have been detracted from its reparative course. The Defence did also not present any concrete information likely to demonstrate that the eligibility mechanism is not “*robust*” enough,¹³⁷ and/or does not permit “*to ensure that only legitimate victims are awarded reparations*”.¹³⁸ The Defence’s ground of appeal therefore amounts to mere speculations and disagreements with the reparations proceedings. As previously noted, unfounded arguments and mere disagreements do not constitute valid grounds of appeal.¹³⁹

68. For these reasons, ground 13 of the Defence Appeal should be dismissed.

69. Lastly, the Legal Representative wishes to draw the attention of the Appeals Chamber to her previous submissions as to the impact of reparations proceedings on her clients.¹⁴⁰

¹³⁴ See the “Common Legal Representative of the Former Child Soldiers’ additional submissions on the issue of transgenerational harm and on the estimated potential number of reparations beneficiaries”, *supra* note 115, para. 45.

¹³⁵ See the Defence Appeal Brief, *supra* note 1, para. 234.

¹³⁶ *Idem*, para. 233.

¹³⁷ *Idem*, para. 236.

¹³⁸ *Ibid* and para. 238.

¹³⁹ See *supra* para. 21, and note 40.


¹⁴⁰ See the “Response of the Common Legal Representative of the Former Child Soldiers to the request for suspensive effect of the Addendum to the Reparations Order introduced by the Defence”, *supra* note 28, para. 26.

Procedures and processes are already part of the reparation measures, and if they have the potential to support the agency and resilience of the victims concerned, they also have a strong potential of harming them further if not adequately implemented.

70. Additionally, the Legal Representative respectfully recalls that all the former child soldiers, as well as the victims of sexual and gender-based violence and the children born out of rape, have been recognised by the Chamber as particularly vulnerable.¹⁴¹ In this context, the Chamber stressed that priority ought to be given to them, notably, and they were referred for access to urgent assistance – which, some of them, received. Such a postulate is in sharp contrast with the delays caused by this second appeal and with the renewed request formulated by the Defence to suspend the entire procedure.

V. CONCLUSION

71. In an appeal pursuant to article 82(4) of the Statute, the Appeals Chamber may confirm, reverse or amend the Reparations Order.¹⁴² In the present case, the Legal Representative respectfully requests the Appeals Chambers to dismiss the Defence Appeal in its entirety and confirm the Addendum in full, with a view to implementing the completed Reparations Order without any further delays.



Sarah Pellet

Common Legal Representative of the
Former Child Soldiers

Dated this 10th day of January 2024

At The Hague, The Netherlands

¹⁴¹ See the “Reparations Order”, *supra* note 4, para. 214. See also the “Response of the Common Legal Representative of the Former Child Soldiers to the request for suspensive effect of the Addendum to the Reparations Order introduced by the Defence”, *supra* note 28, para. 27.

¹⁴² See rule 153(1) of the [Rules of Procedure and Evidence](#).