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No. ICC-01/04-02/06 A4 A5

Date: 9 September 2021

THE APPEALS CHAMBER

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. BOSCO NTAGANDA

Public

Decision on various procedural issues

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

Legal Representatives of Victims

Ms Sarah Pellet
Ms Caroline Walter

Mr Dmytro Suprun
Ms Anne Grabowski

Counsel for the Defence

Mr Stéphane Bourgon
Ms Kate Gibson

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Peter Lewis

Victims Participation and Reparations

Section

Mr Philipp Ambach

The Appeals Chamber of the International Criminal Court,

In the appeals of the Defence of Mr Bosco Ntaganda and of the common legal representative of the victims of the attacks against the decision of Trial Chamber VI entitled “Reparations Order” of 8 March 2021 (ICC-01/04-02/06-2659),

Having before it the Trust Fund for Victims’ “Observations on the Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence” of 22 June 2021 (ICC-01/04-02/06-2679),

Having before it the Defence “Request on behalf on Mr Ntaganda seeking leave to reply to LRV1 and LRV2 Responses” of 13 August 2021 (ICC-01/04-02/06-2703),

Renders, by majority, Judge Luz del Carmen Ibáñez Carranza partly dissenting, the following

DECISION

1. The Defence may file a consolidated reply to the responses of the two groups of victims by 16h00 on 30 September 2021. The consolidated reply shall not exceed 20 pages, and its content must comply with paragraph 19 below.
2. The Trust Fund for Victims is invited to submit, by 16h00 on 30 September 2021, written observations on issues arising from the above-mentioned appeals, specifically responding to the questions set out in paragraph 28 below and, if it so desires, making observations on other matters related to the role of the TFV in the implementation process. Those observations shall not exceed 30 pages in total and shall be divided as follows: not more than 20 pages to respond to the questions set out in paragraph 28 below, and not more than 10 pages to make any additional observations related to the role of the TFV in the implementation process.

3. The parties may each submit written responses to the observations of the Trust Fund for Victims by 16h00 on 25 October 2021. Each response shall not exceed 30 pages.
4. The Appeals Chamber does not deem it necessary to hold a hearing in these appeals at the current stage of the proceedings.

REASONS

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI (hereinafter: “Trial Chamber”) issued its decision entitled “Reparations Order”¹ (hereinafter: “Impugned Decision”).
2. On 8 April 2021, the common legal representative of the victims of the attacks and the Defence filed their respective notices of appeal against the Impugned Decision.²
3. On 7 June 2021, the common legal representative of the victims of the attacks and the Defence filed their respective appeal briefs against the Impugned Decision.³
4. On 11 June 2021, the Appeals Chamber issued an order inviting the Trust Fund for Victims (hereinafter: “TFV”), pursuant to rule 103(1) of the Rules of Procedure and Evidence (hereinafter: “Rules”), to submit observations on the Defence request for suspensive effect; and set a time limit for the Defence and the legal representatives of victims, pursuant to rule 103(2) of the Rules, to respond to those observations.⁴

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

² [Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order](#), ICC-01/04-02/06-2668; [Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659](#), ICC-01/04-02/06-2669.

³ [Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order](#), ICC-01/04-02/06-2674 (hereinafter: “Victims Group 2’s Appeal Brief”); [Defence Appellant Brief against the 8 March Reparations Order](#), ICC-01/04-02/06-2675 (hereinafter: “Defence Appeal Brief”).

⁴ [Order setting a time limit for responses to the request for suspensive effect and invitation to the Trust Fund for Victims to submit observations on that request](#), ICC-01/04-02/06-2678.

5. On 22 June 2021, the TFV submitted its observations and requested that the Appeals Chamber grant it leave to make further submissions on the merits of the appeals⁵ (hereinafter: “TFV Request”).

6. On 25 June 2021, the Defence, the victims of the crimes of conscripting and enlisting children under the age of fifteen years into an armed group and using them to participate actively in hostilities (hereinafter: “Victims Group 1”), as well as the victims of the attacks (hereinafter: “Victims Group 2”) submitted their responses to, *inter alia*, the TFV Request.⁶

7. On 2 July 2021, the Appeals Chamber issued a decision on the Defence request for suspensive effect, noting, *inter alia*, that it would rule in due course on the TFV request for leave to make further submissions on the merits of the appeals pursuant to rule 103 of the Rules, and any other necessary procedural issues.⁷

8. On 9 August 2021, the Defence responded to Victims Group 2’s appeal, Victims Group 2 responded to the Defence appeal, and Victims Group 1 submitted a consolidated response to both appeals.⁸

9. On 13 August 2021, the Defence requested that the Appeals Chamber grant it leave to reply to six issues raised in the submissions made by Victims Group 1 and

⁵ [Observations on the Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence](#), ICC-01/04-02/06-2679, paras 32-34.

⁶ [Response on behalf of Mr Ntaganda to the Trust Fund for Victims’ Observations and Request](#), ICC-01/04-02/06-2686 (hereinafter: “Defence Response to the TFV Request”); [Response of the Common Legal Representative of the Former Child Soldiers to Mr Ntaganda Request for suspensive effect of the Reparations Order](#), ICC-01/04-02/06-2685 (hereinafter: “Victims Group 1’s Response to the TFV Request”); [Response of the Common Legal Representative of the Victims of the Attacks to the Defence Request for Suspensive Effect of the Reparations Order, to the TFV’s Observations on the Defence Request for Suspensive Effect, and to the TFV’s Request under rule 103 of the Rules](#), ICC-01/04-02/06-2684-Red (hereinafter: “Victims Group 2’s Response to the TFV Request”).

⁷ [Decision on the Defence request for suspensive effect](#), 2 July 2021, ICC-01/04-02/06-2691, para. 27.

⁸ [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”](#), 9 August 2021, ICC-01/04-02/06-2702 (hereinafter: “Defence Response”); [Response of the Common Legal Representative of the Victims of the Attacks to the Defence’s Appeal Brief \(ICC-01/04-02/06-2675\)](#), 9 August 2021, ICC-01/04-02/06-2701 (hereinafter: “Victims Group 2’s Response”); [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 \(ICC-01/04-02/06-2659\)](#), 9 August 2021, ICC-01/04-02/06-2700 (hereinafter: “Victims Group 1’s Response”).

Victims Group 2 in response to its appeal⁹ (hereinafter: “Defence Request for Leave to Reply”).

10. On 18 August 2021, Victims Group 1 and Victims Group 2 responded to the Defence Request for Leave to Reply and they each requested that it should be rejected.¹⁰

II. MERITS

11. The Appeals Chamber has before it a request from the Defence for leave to reply to the responses filed by Victims Groups 1 and 2 to the Defence Appeal Brief. It also has before it a request from the TFV for leave to submit observations in these appeals pursuant to rule 103 of the Rules.

12. In addition, the Appeals Chamber has itself considered whether to hold a hearing at this stage of the proceedings.

13. It is the above procedural issues that the Appeals Chamber will determine in this decision.

A. The Defence Request for Leave to Reply

I. Submissions of the parties

14. Pursuant to regulation 60 of the Regulations of the Court, the Defence seeks leave to reply to six issues raised in the submissions made by the two groups of victims in their responses to the Defence Appeal Brief, submitting that it is in the interests of justice for it to be permitted to do so.¹¹

⁹ [Request on behalf on Mr Ntaganda seeking leave to reply to LRV1 and LRV2 Responses](#), 13 August 2021, ICC-01/04-02/06-2703, para. 1, p. 14.

¹⁰ [Response of the Common Legal Representative of the Former Child Soldiers to Mr Ntaganda’s Request to be granted leave to file a reply to the LRVs’ Responses in the Appeals against the Reparations Order \(ICC-01/04-02/06-2703\)](#), 18 August 2021, ICC-01/04-02/06-2706 (hereinafter: “Victims Group 1’s Response to the Defence Request for Leave to Reply”), para. 26; [Response of the Common Legal Representative of the Victims of the Attacks to the “Request on behalf on Mr Ntaganda seeking leave to reply to LRV1 and LRV2 Responses” \(ICC-01/04-02/06-2703 A4 A5\)](#), 18 August 2021, ICC-01/04-02/06-2705 (hereinafter: “Victims Group 2’s Response to the Defence Request for Leave to Reply”), para. 17.

¹¹ [Defence Request for Leave to Reply](#), paras 1-2. *See also* paras 3-8.

- a. First, the Defence submits that, contrary to the assertion of Victims Group 1, it did not have access to all victims' application forms and it argues that "it is paramount for the Appeals Chamber to be fully aware of what victims-related information was accessible to the Defence from the beginning of the proceedings".¹²
- b. Second, the Defence contests Victims Group 1's submission that the recognition as direct victims of children born out of rape and/or sexual slavery does not have any legal consequences, as well as Victims Group 2's argument that, even if a legal error were established in this regard, the Defence has not demonstrated the material effect of any such error on the Impugned Decision.¹³ The Defence submits that it should be granted leave to reply to what it contends are unjustified and/or erroneous submissions.¹⁴
- c. Third, the Defence challenges Victims Group 2's argument that the Court's jurisprudence establishes that the involvement of the Defence in the screening of the eligibility of potential beneficiaries is neither foreseen nor warranted where collective reparations are awarded.¹⁵ The Defence submits that this argument misinterprets jurisprudence of the Appeals Chamber and goes beyond the finding of the Trial Chamber.¹⁶ The Defence avers that additional submissions in a reply may assist the Appeals Chamber in determining this issue.¹⁷
- d. Fourth, the Defence seeks leave to reply to arguments raised by Victims Group 2 so as to address the difference between individual and collective reparations where the latter contain individual components.¹⁸ The Defence

¹² [Defence Request for Leave to Reply](#), paras 20-22, referring to [Victims Group 1's Response](#), para. 43.

¹³ [Defence Request for Leave to Reply](#), paras 23-24, referring to [Victims Group 1's Response](#), paras 59-60 and [Victims Group 2's Response](#), para. 112.

¹⁴ [Defence Request for Leave to Reply](#), para. 24.

¹⁵ [Defence Request for Leave to Reply](#), paras 27-28, referring to [Victims Group 2's Response](#), paras 50, 93, 95, 165.

¹⁶ [Defence Request for Leave to Reply](#), paras 28-29.

¹⁷ [Defence Request for Leave to Reply](#), para. 30.

¹⁸ [Defence Request for Leave to Reply](#), paras 31-32, referring to [Victims Group 2's Response](#), para. 58.

argues that this difference impacts its role in the reparations process and that its additional submissions in a reply may assist the Appeals Chamber.¹⁹

- e. Fifth, the Defence requests leave to reply in order to address the concept of transgenerational harm.²⁰ It argues that determining the existence of a causal link between transgenerational harm and a specific crime is a fact-intensive inquiry that, contrary to the submission of Victims Group 2, must take into account certain basic facts such as the date of birth of the child.²¹ The Defence submits that transgenerational harm is a novel concept before the Court and that additional submissions would therefore assist the Appeals Chamber.²²
- f. Sixth, the Defence submits that Victims Group 2 misconstrue its arguments in relation to the destruction of the Sayo health centre and the manner in which the Trial Chamber relied on expert testimony in that regard.²³ The Defence contests Victims Group 2's argument that it would be "self-defeating if the Trial Chamber could not rely on the reports of the Experts it has appointed",²⁴ arguing that the Impugned Decision lacks an assessment of the experts' reports and a pronouncement on their probative value.²⁵

15. Victims Group 1 submit that the issues raised in the Defence Request for Leave to Reply "do not constitute new issues which the Defence could not have reasonably anticipated and thus the Appeals Chamber would not be assisted in receiving further submissions on the matter".²⁶ They therefore argue that granting the Defence leave to reply would not be in the interests of justice and that the request should be rejected.²⁷

16. Victims Group 2 similarly argue that the Defence Request for Leave to Reply should be rejected because granting leave would not be in the interests of justice.²⁸ They

¹⁹ [Defence Request for Leave to Reply](#), para. 32.

²⁰ [Defence Request for Leave to Reply](#), paras 33-37.

²¹ [Defence Request for Leave to Reply](#), paras 33, 35-36, referring to [Victims Group 2's Response](#), para. 89.

²² [Defence Request for Leave to Reply](#), para. 37.

²³ [Defence Request for Leave to Reply](#), paras 38-39, referring to [Victims Group 2's Response](#), para. 107.

²⁴ [Defence Request for Leave to Reply](#), para. 40, referring to [Victims Group 2's Response](#), para. 105.

²⁵ [Defence Request for Leave to Reply](#), para. 41.

²⁶ [Victims Group 1's Response to the Defence Request for Leave to Reply](#), para. 2. See also paras 20-22, 24.

²⁷ [Victims Group 1's Response to the Defence Request for Leave to Reply](#), paras 25-26.

²⁸ [Victims Group 2's Response to the Defence Request for Leave to Reply](#), paras 16-17.

submit that none of the issues identified by the Defence warrant further submissions, as they have already been addressed in the Defence Appeal Brief and/or amount to mere disagreements with the submissions in Victims Group 2's Response; as such, they argue that the Defence is seeking leave to reply so as to attempt to correct deficiencies in the Defence Appeal Brief.²⁹ They further contend that submissions made by the Defence on a preliminary matter should be dismissed *in limine* as the Appeals Chamber has not granted leave for them to be made.³⁰

2. *Determination of the Appeals Chambers*

17. The Appeals Chamber recalls that, pursuant to regulation 60(1) of the Regulations of the Court, it may order an appellant to file a reply whenever it considers it necessary in the interests of justice. Accordingly, the ordering of the filing of a reply lies within its discretion and is to be decided on a case-by-case basis.³¹ The Appeals Chamber has confirmed that “[a]lthough not specifically mentioned in regulation 60 of the Regulations of the Court, an appellant may request, and accordingly, trigger the powers of the Appeals Chamber to order the filing of a reply under said regulation”.³²

18. In the present case, the Appeals Chamber notes that, prior to setting out the six issues on which it requests leave to reply, the Defence purports directly to address the responses of both groups of victims on one other point in their submissions “[a]s a preliminary matter”.³³ The Defence should not have done so as it had not sought leave to reply to this matter. As such, its submissions on this matter will be disregarded.

19. At any rate, having given careful consideration to each of the six issues on which the Defence requests leave to reply, the Appeals Chamber considers it in the interests of justice to grant the Defence leave to reply to the specific issues identified in its request,

²⁹ [Victims Group 2's Response to the Defence Request for Leave to Reply](#), paras 2, 16. *See also* paras 11-15.

³⁰ [Victims Group 2's Response to the Defence Request for Leave to Reply](#), paras 2, 9, *referring to Defence Request for Leave to Reply*, para. 18.

³¹ *See The Prosecutor v. Bemba et al.*, [Decision on Mr Jean-Pierre Bemba Gombo's requests for leave to reply](#), 5 July 2019, ICC-01/05-01/13-2333 (A10), para. 20; *The Prosecutor v. Bemba et al.*, [Decision on requests for leave to reply to the Prosecutor's consolidated response to the documents in support of the appeal](#), 18 August 2017, ICC-01/05-01/13-2197 (A A2 A3 A4 A5), para. 18.

³² *See The Prosecutor v. Bemba et al.*, [Decision on Mr Jean-Pierre Bemba Gombo's requests for leave to reply](#), 5 July 2019, ICC-01/05-01/13-2333 (A10), para. 20; *The Prosecutor v. Bemba et al.*, [Decision on requests for leave to reply to the Prosecutor's consolidated response to the documents in support of the appeal](#), 18 August 2017, ICC-01/05-01/13-2197 (A A2 A3 A4 A5), para. 18.

³³ [Defence Request for Leave to Reply](#), para. 18.

by 16h00 on 30 September 2021. The Defence reply shall not repeat submissions already made in the Defence Appeal Brief or in its response to Victims Group 2's appeal brief. Furthermore, the Appeals Chamber considers it appropriate to limit the Defence reply to no more than 20 pages.

B. The TFV Request to make observations on the merits

1. Submissions of the parties and the TFV

20. The TFV requests leave to make observations on the merits of the appeals, pursuant to rule 103 of the Rules.³⁴ The TFV submits that a number of grounds of appeal raise fundamental questions concerning its role during the implementation phase; and that several grounds of appeal question its role in relation to the eligibility assessment of potential beneficiaries in a case of collective reparations.³⁵ It therefore requests leave to submit observations on those matters, in particular on issues raised in grounds 10 to 14 of the Defence appeal, such as the delegation of judicial functions to the TFV; the criteria for the assessment of eligibility; the role of the TFV in determining concrete implementation measures; and the monitoring role of the Trial Chamber of the TFV's functions.³⁶

21. The TFV further submits that it addressed issues relevant to reparations principles and the amount of the award before the Trial Chamber and that those matters arise in grounds 3 and 15 of the Defence appeal; and that other issues raised have an impact on the implementation of reparations, referring to grounds 4 to 9 of the Defence appeal by way of example.³⁷ The TFV submits that the Appeals Chamber may, in that regard, deem it appropriate to receive its observations on matters such as the application of the "do no harm" principle, alleged errors relevant to the verification of indirect victims, evidentiary issues and the standard of proof; and it notes that the appeal of Victims Group 2 may also require its observations.³⁸ The TFV states that it

is prepared to submit observations on all those issues insofar as invited by the Appeals Chamber. The Trust Fund respectfully observes that any delineation of

³⁴ See [TFV Request](#), paras 32-34.

³⁵ [TFV Request](#), para. 32.

³⁶ [TFV Request](#), para. 32.

³⁷ [TFV Request](#), para. 33.

³⁸ [TFV Request](#), para. 33.

such issues by the Appeals Chamber would assist the Trust Fund in submitting concise and relevant observations on the submissions of several parties.³⁹

22. Neither the Defence nor Victims Group 1 oppose the TFV's request to submit observations.⁴⁰ However, the Defence submits that "the time allotted to submit observations should be as short as possible" and that it should be given the opportunity to respond to any TFV submissions made;⁴¹ and Victims Group 1 "emphasises that said observations should be limited to issues directly touching upon [the TFV's] role and mandate".⁴²

23. Victims Group 2 submit that the Appeals Chamber should reject the TFV's request, noting "with concern [...] the very large extent of topics for which the TFV seeks leave to address" and emphasising that the TFV is not a party to these proceedings, but rather an entity responsible for implementing the Reparations Order.⁴³ Victims Group 2 further submit that if the TFV is authorised to make its submissions in September or later that would cause a delay in the appeals proceedings.⁴⁴ Victims Group 2 argue that observations from the TFV will not assist the Appeals Chamber; but that if the TFV's request is granted, the Appeals Chamber should limit the TFV's observations to topics pertaining directly to its functions and/or operational activities.

24. Both groups of victims also argue that it was not good practice for the TFV to have submitted its request under rule 103 within its response to the Defence request for suspensive effect;⁴⁵ and Victims Group 1 further submit that the TFV could have made its request earlier.⁴⁶

³⁹ [TFV Request](#), para. 33.

⁴⁰ [Defence Response to the TFV Request](#), para. 45; [Victims Group 1's Response to the TFV Request](#), para. 22.

⁴¹ [Defence Response to the TFV Request](#), paras 45-46.

⁴² [Victims Group 1's Response to the TFV Request](#), para. 22.

⁴³ [Victims Group 2's Response to the TFV Request](#), paras 43-44.

⁴⁴ [Victims Group 2's Response to the TFV Request](#), para. 44.

⁴⁵ [Victims Group 1's Response to the TFV Request](#), para. 21; [Victims Group 2's Response to the TFV Request](#), para. 42.

⁴⁶ [Victims Group 1's Response to the TFV Request](#), para. 21.

2. *Determination of the Appeals Chamber*

25. Rule 103 of the Rules provides, in relevant part:

1. At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

26. The Appeals Chamber recalls that its decision under rule 103(1) of the Rules is discretionary.⁴⁷ It may permit the filing of observations either by inviting such submissions *proprio motu* or following a request for leave to address the Appeals Chamber.⁴⁸

27. The Appeals Chamber notes the submissions of both groups of victims that the TFV should not have submitted its rule 103 request within its response to the Defence request for suspensive effect. Indeed, the Appeals Chamber finds that it would have been better practice for the TFV to have filed its request separately, but this does not have any practical consequences in the present case, given that the request has now been filed. Furthermore, the Appeals Chamber does not deem it appropriate to admonish the TFV based upon the criticism of Victims Group 1 that its rule 103 request could have been made earlier. The Appeals Chamber emphasises that any request under rule 103 should always be made expeditiously. However, in the circumstances of the present appeals, the Appeals Chamber does not regard it as unreasonable for the TFV to have filed its request within 15 days of the filing of the appeals briefs.

28. In respect of the merits of the TFV Request, the Appeals Chamber has given careful consideration to the submissions that have been made in the appeals briefs and the responses thereto. Having done so, the Appeals considers that, given the role of the TFV in reparations proceedings and the issues that arise in these appeals, it is desirable, for the proper determination of the case, to allow the TFV to submit observations, of

⁴⁷ See, e.g., *The Prosecutor v. Thomas Lubanga Dyilo*, [Scheduling order for a hearing before the Appeals Chamber and invitation to the Trust Fund for Victims to submit observations](#), 21 September 2018, ICC-01/04-01/06-3419 (A7 A8), para. 2.

⁴⁸ See, e.g., *The Prosecutor v. Thomas Lubanga Dyilo*, [Scheduling order for a hearing before the Appeals Chamber and invitation to the Trust Fund for Victims to submit observations](#), 21 September 2018, ICC-01/04-01/06-3419 (A7 A8), para. 2.

no more than 20 pages, on the below questions, and to grant it 10 additional pages to make any further observations that it might wish to make on other matters that arise in these appeals related to the role of the TFV in the implementation process, by 16h00 on 30 September 2021:

- a. Can the TFV determine the eligibility of the victims of Mr Ntaganda on the basis of the provisions of the Reparations Order? Would it require more explicit eligibility criteria in order to do so? How does the TFV plan to proceed in implementing the mandate it has received from the Trial Chamber on this issue? Will there be oversight of this process by Trial Chamber II?
- b. From the perspective of the TFV, can the Defence and/or the legal representatives of victims challenge the choice of victims entitled to the benefit of reparations which the TFV has been tasked to provide? Can the Defence and/or the legal representative of victims do so before Trial Chamber II? At what stage of the proceedings would this occur?
- c. Can the TFV identify and determine the specific modalities of the reparations to be implemented on the basis of the Reparations Order? Can the Defence make submissions in this regard?
- d. Can the TFV allocate the reparations between the child soldiers and the victims of the attacks on the basis of the Reparations Order?
- e. Does the TFV intend to request Trial Chamber II for further clarity on some of the aforementioned issues? What modality of dialogue with Trial Chamber II does it envisage?
- f. Is it of any consequence that Mr Ntaganda is not of Hema ethnicity in relation to the process of identification of child soldiers in terms of the number of child soldiers that might come forward in this case?
- g. How does the TFV intend to implement the Trial Chamber's determination to "adopt, for the purposes of reparations in this case, the reparation programmes ordered by Trial Chamber II in the *Lubanga*

case, in relation to the overlapping victims and harms of both cases”?
 How will it take into consideration the finding of the Trial Chamber that both convicted persons are jointly and severally liable for the overlapping victims?

29. The Appeals Chamber recalls that, in reparations proceedings, rule 103(2) of the Rules applies *mutatis mutandis* to the legal representatives of victims.⁴⁹ Accordingly, the Appeals Chamber determines that Victims Group 1 and Victims Group 2, as well as the Defence, may each respond to the observations of the TFV by 16h00 on 25 October 2021. Each response shall not exceed 30 pages.

C. A hearing

30. Having regard to paragraph 90 of the Chambers Practice Manual,⁵⁰ the Appeals Chamber has considered whether to hold a hearing at this stage of the proceedings. In this connection, the Appeals Chamber has had regard, *inter alia*, to the extensive submissions of the parties both in the appeals briefs and in the responses thereto. Having done so, the Appeals Chamber, Judge Ibáñez Carranza dissenting, does not deem it necessary to hold a hearing at this stage. Should it later appear during the course of the Appeals Chamber’s further deliberations on these appeals that additional submissions are necessary, whether oral or in writing, the Appeal Chambers will issue further directions at that time.

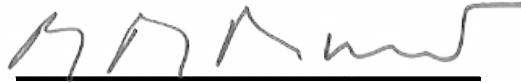
Judge Ibáñez Carranza will in due course file a partly dissenting opinion to this decision, indicating that, under article 14(1) of the International Covenant on Civil and Political Rights, the right to be heard in a public hearing, in the determination of the rights and obligations of a person, is an internationally recognised human right and that, under article 21(3) of the Statute, its application is mandatory and should not be

⁴⁹ See *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, [Directions on the conduct of the appeal proceedings](#), 7 November 2017, ICC-01/12-01/15-246, para. 3, referring to *Prosecutor v. Thomas Lubanga Dyilo*, [Decision on the admissibility of the appeals against Trial Chamber I’s ‘Decision establishing the principles and procedures to be applied to reparations’ and directions on the further conduct of proceedings](#), 14 December 2012, ICC-01/04-01/06-2953 (A A2 A3 OA21), para. 67; *Prosecutor v. Germain Katanga*, [Decision on the Trust Fund’s request for leave to file observations](#), 14 September 2017, ICC-01/04-01/07-3765 (A3 A4 A5), para. 8.

⁵⁰ [Chambers Practice Manual](#), 2019.

conditional upon further deliberations of the Appeals Chamber. She is of the view that this right is intrinsically linked to the guarantee of due process of law.

Done in both English and French, the English version being authoritative.



Judge Marc Perrin de Brichambaut
Presiding

Dated this 9th day of September 2021

At The Hague, The Netherlands