

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

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

Date: **21 December 2022**

TRIAL CHAMBER II

Before: Judge Chang-ho Chung, Presiding Judge
Judge Péter Kovács
Judge María del Socorro Flores Liera

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Decision on the Application on behalf of Mr Bosco Ntaganda seeking leave to appeal
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’”**

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

Legal Representatives of Victims

Ms Sarah Pellet

Mr Tars van Litsenborgh

Mr Dmytro Suprun

Ms Fiona Lau

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon

Mr Benjamin Willame

Mr Jacopo Ricci

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

Office of the Prosecutor

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Ms Franziska Eckelmans

Others

Trial Chamber II of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), having regard to articles 82(1)(d) of the Rome Statute (‘Statute’), rule 155 of the Rules of Procedure and Evidence (‘Rules’), and regulation 65 of the Regulations of the Court (‘Regulations’) issues this Decision on the Application on behalf of Mr Bosco Ntaganda seeking leave to appeal 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’” (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI delivered the Reparations Order.¹
2. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (the ‘Appeals Judgment’).² The Appeals Judgment remanded the matter to the Chamber, as it partially reversed the Reparations Order to the extent that Trial Chamber VI failed to, *inter alia*, (i) ‘make any appropriate determination in relation to the number of potentially eligible or actual victims of the award and/or to provide a reasoned decision in relation to its conclusion about that number’; (ii) ‘provide an appropriate calculation, or set out sufficient reasoning, for the amount of the monetary award against Mr Ntaganda’; and (iii) ‘assess and rule upon victims’ applications for reparations’.³
3. On 25 October 2022, the Chamber issued an Order for the implementation of the Appeals Judgment (‘25 October 2022 Order’)⁴ instructing, *inter alia*: (i) the Registry, through the VPRS, to assemble a limited but representative sample composed of victims’ dossiers of: (a) all 69 victims so far been found eligible to benefit from the Initial Draft Implementation Plan (‘IDIP’) by the Trust Fund for Victims (‘TFV’); and (b) a randomly selected group from the total universe of victims,⁵ amounting to 5% of the victims of the attacks and a 5% of the

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

² Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Appeals Judgment’), 12 September 2022, [ICC-01/04-02/06-2782](#).

³ Appeals Judgment, [ICC-01/04-02/06-2782](#), p. 11.

⁴ Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘25 October 2022 Order’), 25 October 2022, [ICC-01/04-02/06-2786](#).

⁵ As noted in the 25 October 2022 Order, the universe of victims includes: (i) all victims who participated in the trial proceedings, including those found not to be eligible by the Registry, but excluding the individuals who also qualify as victims in the *Lubanga* case and all 69 victims already found eligible for the IDIP purposes, as the later will be necessarily assessed and not randomly selected; and ii) all non-participating victims who have already

victims of crimes against child soldiers, to be assessed and ruled upon by the Chamber;⁶ (ii) the Victims Participation and Reparations Section (‘VPRS’) to transmit to the Chamber only, the list of individuals included in the sample with all details compiled in relation to those victims by the Registry in their databases;⁷ and (iii) the parties, the VPRS, the Office of Public Counsel for Victims (‘OPCV’), and the TFV to make submissions, if any, on the procedure for the constitution of the sample established by the 25 October 2022 Order.⁸

4. On 16 November 2022, after considering the TFV’s reports and the parties submissions,⁹ the Chamber issued its Decision on the TFV’s Sixth and Seventh Update Reports on the Implementation of the IDIP (‘Decision on the Sixth and Seventh IDIP Reports’).¹⁰

5. On 25 November 2022, having analysed the Registry’s and the parties’ submissions,¹¹ the Chamber issued its Decision on the Registry submission in compliance with the 25 October 2022 Order (‘Impugned Decision’), *inter alia*, approving the sample as assembled by the VPRS as sufficiently representative of the universe of potential victims in the case.¹²

submitted long forms to the Registry within the context of the mapping exercise. 25 October 2022 Order, [ICC-01/04-02/06-2786](#), paras 26-27 and footnote 67.

⁶ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 34(a)-(b).

⁷ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 34(d).

⁸ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 34(e).

⁹ Trust Fund for Victims’ Sixth Update Report on the Implementation of the Initial Draft Implementation Plan, 25 July 2022, ICC-01/04-02/06-2775-Conf (public redacted version filed on the same day, [ICC-01/04-02/06-2775-Red](#)); Observations on behalf of the convicted person on the Trust Fund for Victims’ Sixth Update Report on the Implementation of the Initial Draft Implementation Plan, 5 August 2022, ICC-01/04-02/06-2780-Conf (public redacted version filed on 26 August 2022, [ICC-01/04-02/06-2780-Red](#)); Trust Fund for Victims’ Seventh Update Report on the Implementation of the Initial Draft Implementation Plan, 26 September 2022, ICC-01/04-02/06-2783-Conf (public redacted version filled on 25 October 2022, [ICC-01/04-02/06-2783-Red](#)); Observations on behalf of the convicted person on the Trust Fund for Victims’ Seventh Update Report on the Implementation of the Initial Draft Implementation Plan, 7 October 2022, ICC-01/04-02/06-2785-Conf (reclassified as public on 23 November 2022), [ICC-01/04-02/06-2785](#).

¹⁰ Decision on the TFV’s Sixth and Seventh Update Reports on the Implementation of the Initial Draft Implementation Plan (‘Decision on the Sixth and Seventh IDIP Reports’), 16 November 2022, [ICC-01/04-02/06-2792](#), para. 17.

¹¹ 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’” (ICC-01/04-02/06-2786), 8 November 2022, [ICC-01/04-02/06-2788](#); Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order (‘Defence Submission’), 9 November 2022, [ICC-01/04-02/06-2791](#), with Public Annex I, [ICC-01/04-02/06-2791-AnxI](#); Common Legal Representative of the Former Child Soldiers’ Submissions pursuant to 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’”, 9 November 2022, ICC-01/04-02/06-2790-Conf (public redacted version filed on 14 November 2022, [ICC-01/04-02/06-2790-Red](#)); Submissions of the Common Legal Representative of the Victims of the Attacks pursuant to 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’”, 9 November 2022, [ICC-01/04-02/06-2789](#).

¹² 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’” (‘Impugned Decision’), 25 November 2022, [ICC-01/04-02/06-2794](#).

6. On 2 December 2022, the Defence submitted an application seeking leave to appeal the Impugned Decision on four grounds ('Application').¹³

7. On 8 December 2022, the Legal Representatives ('LRVs') submitted a Joint Response to the Application ('Joint Response'), requesting the Chamber to reject it in its entirety.¹⁴

II. SUBMISSIONS

8. In its Application, the Defence raises the following four grounds of appeal (the 'Grounds of Appeal'), indicating that the Chamber erred by:

- a. assembling a sample of potential victims - incapable of assisting it in determining the actual or estimated total number of potential victims in the case - finding nonetheless the sample to be representative in light of its purpose, being "[...] not only to calculate the adequate compensation of victims [...] but also to help the Chamber project results to estimate the potential number of beneficiaries." (the 'First Ground of Appeal');¹⁵
- b. approving a sample of 173 potential victims assembled by the VPRS at its request, which includes 67 priority participating victims previously determined to be eligible for reparations by the TFV in the context of the IDIP, and 106 potential victims selected randomly, representing 5% of the so-called universe of potential victims, thereby assembling a sample that is biased as well as non-representative, thereby vitiating the sampling process (the 'Second Ground of Appeal');¹⁶
- c. approving a sample comprising 173 potential victims – 167 participating potential victims and 6 non-participating potential victims – and finding that it "[...] is fully satisfied that, from a quantitative and a qualitative point of view, the assembled sample is sufficiently representative of the universe of potential victims in the case" (the 'Third Ground of Appeal');¹⁷ and

¹³ Application on behalf of Mr Bosco Ntaganda seeking leave to appeal 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'" ('Application'), 2 December 2022, [ICC-01/04-02/06-2797](#).

¹⁴ Joint Response of the Common Legal Representatives of the Victims to the Defence Request for Leave to Appeal Trial Chamber II's Decision No. ICC-01/04-02/06-2794 dated 25 November 2022 ('Joint Response'), 8 December 2022, [ICC-01/04-02/06-2799](#).

¹⁵ Application, [ICC-01/04-02/06-2797](#), para. 18.

¹⁶ Application, [ICC-01/04-02/06-2797](#), para. 19.

¹⁷ Application, [ICC-01/04-02/06-2797](#), para. 20.

d. finding that 5% of the potential victims drawn from the so-called universe of potential victims – in addition to the 67 potential participating victims determined to be eligible by the TFV in the context of the IDIP - was sufficient for the sample assembled to be representative of the universe of potential victims, thereby ignoring the expert conclusions submitted by the Defence and failing to provide any scientific basis for its finding (the ‘Fourth Ground of Appeal’).¹⁸

9. The Defence submits that the alleged issues above constitute appealable issues as they are not mere disagreements with the Chamber’s approach, but identifiable errors at the centre of the Impugned Decision, which directly impact the next steps of the reparations phase, requiring their resolution.¹⁹

10. In their Joint Response, the LRVs submit that the alleged issues pertain to the methodology and criteria for the constitution of the sample of victims, which were addressed by the Chamber in the 25 October 2022 Order and in the Decision on the Sixth and Seventh IDIP Reports, but not in the Impugned Decision which merely implemented the 25 October 2022 Order.²⁰ The LRVs further posit that the Defence cannot be allowed to remedy its failure to previously seek leave to appeal by formulating the alleged issues as arising from the Impugned Decision, as they could have been reasonably anticipated in light of the methodology and criteria set out in the 25 October 2022 Order.²¹

11. The LRV also submit that assuming *arguendo* that the alleged issues do arise from the Impugned Decision, at this stage, the Defence is merely reiterating the substantive observations it had already made in its submissions on the sample in accordance with the 25 October 2022 Order, which were already addressed by the Chamber in the Impugned Decision.²² According to the LRVs, by reiterating its previous submissions the Defence demonstrates a mere disagreement with the Chamber’s Impugned Decision and attempts to re-litigate the matters previously set in the 25 October 2022 Order.²³

¹⁸ Application, [ICC-01/04-02/06-2797](#), para. 21.

¹⁹ Application, [ICC-01/04-02/06-2797](#), para. 23.

²⁰ Joint Response, [ICC-01/04-02/06-2799](#), para. 21.

²¹ Joint Response, [ICC-01/04-02/06-2799](#), paras 22-23.

²² Joint Response, [ICC-01/04-02/06-2799](#), para. 24.

²³ Joint Response, [ICC-01/04-02/06-2799](#), para. 24.

III. APPLICABLE LAW

12. The Chamber recalls the Court's previous jurisprudence regarding the application of article 82(1)(d) of the Statute.²⁴ In line with the above, in ruling on the Application and the matters raised therein, the Chamber has to assess whether: (i) the matter is an 'appealable issue'; (ii) the issue at hand would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and (iii) in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

13. The three criteria under article 82(1)(d) of the Statute are cumulative, therefore, failure to fulfil one or more of the criteria will result in dismissal of the Request.²⁵

14. In relation to the first criterion, the Appeals Chamber has held that

[a]n issue is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is a disagreement or conflicting opinion [...]. An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination. The issue may be legal or factual or a mixed one.²⁶

15. Accordingly, questions over which there is a mere disagreement or a conflict of opinion do not define an appealable issue.²⁷ Similarly, an appealable issue cannot be based on a misunderstanding of the decision,²⁸ or on the re-litigation of previously settled arguments.²⁹

²⁴ Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal ('DRC Appeals Judgment on Leave to Appeal'), 13 July 2006, [ICC-01/04-168](#), paras 9-20; Trial Chamber II, *Prosecutor v. Germain Katanga*, Decision on the "Defence Request for Leave to Appeal the Decision 3319" ('Katanga Decision'), 28 December 2012, [ICC-01/04-01/07-3327](#), paras 9-10; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Defence and Prosecution Requests for Leave to Appeal the Decision on Victims' Participation of 18 January 2008, 27 February 2008 ('Lubanga Decision'), [ICC-01/04-01/06-1191](#), paras 8-10; Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Decision on Defence request for leave to appeal the Chamber's decision on postponement of the trial commencement date, 4 August 2015, [ICC-01/04-02/06-760-Red](#), paras 20-21; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Defence request for leave to appeal the decision appointing experts on reparations ('Bemba Decision'), 29 June 2017, [ICC-01/05-01/08-3536](#), paras 4-7; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Defence Request for Leave to Appeal the Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b) ('Ongwen Decision'), 5 September 2018, [ICC-02/04-01/15-1331](#), para. 8.

²⁵ *Katanga* Decision, [ICC-01/04-01/07-3327](#), para. 10; *Lubanga* Decision, [ICC-01/04-01/06-1191](#), para. 10; *Bemba* Decision, [ICC-01/05-01/08-3536](#), para. 5; *Ongwen* Decision, [ICC-02/04-01/15-1331](#), para. 8.

²⁶ *DRC Appeals Judgment on Leave to Appeal*, [ICC-01/04-168](#), para. 9.

²⁷ See, *inter alia*, Decision on Defence request for leave to appeal the 'Decision on Defence request for extension of time to prepare for its presentation of evidence', 13 April 2017, [ICC-01/04-02/06-1860](#), para. 21.

²⁸ See, *inter alia*, Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Public redacted version of 'Decision on Defence request for reconsideration, or leave to appeal, "Decision on Defence request in relation to P-0626"' ('*Al Hassan* Decision'), 10 February 2021, [ICC-01/12-01/18-1295-Red](#), para. 14.

²⁹ See, *inter alia*, Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Prosecution Request for Leave to Appeal the Decision on Protocols at Trial, 11 November 2020, [ICC-01/14-01/18-726](#), para. 11; *Al Hassan* Decision, [ICC-01/12-01/18-1295-Red](#), para. 11.

IV. ANALYSIS

a) First Ground of Appeal

16. In the First Ground of Appeal, the Defence claims that the Chamber erred by assembling a sample ‘incapable of assisting it in determining the actual or estimated total number of potential victims in the case’, and nonetheless finding the sample to be representative in light of its purpose ‘to calculate the adequate compensation of victims’ and ‘help the Chamber project results’ to estimate the potential number of victims.³⁰ The Defence further alleges that the question of whether the sample established will contribute, in any way, to determining the potential number of beneficiaries and calculating the adequate compensation does not only arise from the Impugned Decision, but is central to the objective the Appeals Chamber was hoping to achieve by requiring a sampling process in the formulation of the revised Reparations Order.³¹

17. The LRVs submit that this issue appears to concern the entire methodology adopted by the Chamber, is framed in vague terms, and does not constitute an identifiable subject or topic requiring a decision but a question over which there is disagreement or conflicting opinion.³²

18. The Chamber notes that when referring to the need to rule on applications for reparations, the Appeals Judgment noted that, in certain cases, in light of the high number of potential beneficiaries:

a trial chamber may elect to rule only on a sample of applications for reparations and then proceed to estimate how many more potential beneficiaries will come forward in the future. [...] Ruling on applications from a sample, which must be a representative one, may allow a trial chamber to extrapolate the makeup of the entire group of beneficiaries, according to the types of harm suffered by victims of each sub-group. This, in turn, is relevant to the ultimate determination of the amount of the award.³³

19. The Chamber recalls that in the 25 October 2022 Order, which the Defence did not appeal, the Chamber clearly explained its approach to the constitution of the sample in compliance with the Appeals Chamber rulings and on how the analysis of the sample will be employed to support future findings as to the number of beneficiaries and the amount of award. Indeed, the Chamber recalls that in the 25 October 2022 Order, it reiterated the Appeals Judgment finding that, in considering the matter of the number of beneficiaries and the amount

³⁰ Application, [ICC-01/04-02/06-2797](#), para. 18.

³¹ Application, [ICC-01/04-02/06-2797](#), para. 24.

³² Joint Response, [ICC-01/04-02/06-2799](#), para. 25.

³³ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 10, 341.

of the award, the Chamber should take ‘at least a sample of applications into account’, which added ‘to the other evidence that the Trial Chamber already has, or can subsequently obtain, would strengthen the basis for the award’ and that the sample ‘must be a representative one’.³⁴ In keeping with the Appeals Judgment, the Chamber thereafter elaborated on its approach to the constitution of the sample and the methodology to be used to assemble it.³⁵ In addition, in the context of its Decision on the Sixth and Seventh IDIP Reports, which again the Defence did not appeal, the Chamber further explained how it will utilise the sample, clarifying that it will assess and rule on the sample after having given the parties the opportunity to make submissions, and that on the basis on its analysis of the sample, in addition to considering the other evidence and submissions in the case record, it will set the award on liability.³⁶

20. Therefore, the Chamber considers that the Defence’s allegation that the sample is *incapable* of assisting in the determination of the actual or estimated total number of potential victims in the case is simply a disagreement with the Chamber’s approach to the sample, which is specifically designed with the aim to assist the Chamber in these determinations, as ruled by the Appeals Chamber. In addition, the Chamber recalls that the Defence has already raised this concern in its previous submissions,³⁷ which the Chamber considered but ultimately dismissed in the Impugned Decision as being based on a misrepresentation of the facts and an apparent misunderstanding of the reasons for the constitution of a sample in the current circumstances.³⁸

21. For the reasons above, the Chamber considers that the First Ground of Appeal constitutes a mere disagreement with the Chamber’s approach to the sample and represents an attempt to re-litigate matters addressed in previous final decisions. Accordingly, the First Ground of Appeal does not constitute an appealable issue.

b) Second and Third Grounds of Appeal

22. In the Second and Third Grounds of Appeal, the Defence takes issue with the fact that the sample of 173 victims, which includes 67 IDIP victims and 106 potential victims selected randomly, would be ‘biased as well as non-representative, thereby vitiating the sampling process’ and that because the sample includes 167 participating and 6 non-participating

³⁴ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), paras 4, 27, referring to Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 10, 341, 346 and footnote 732.

³⁵ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), paras 5-34.

³⁶ Decision on the Sixth and Seventh IDIP Reports, [ICC-01/04-02/06-2792](#), para. 17.

³⁷ Defence Submission, [ICC-01/04-02/06-2791](#), with Public Annex I, [ICC-01/04-02/06-2791-AnxI](#), paras 8, 16.

³⁸ Impugned Decision, [ICC-01/04-02/06-2794](#), para. 15.

victims, the Chamber would have erred in finding that it was ‘sufficiently representative of the universe of potential victims in the case’.

23. The Defence alleges that both issues identify errors and bias in the formulation of the sample, which require remedying before the examination of applications can proceed.³⁹ The Defence submits that if the sample elicits bias towards the participating victims, is insufficiently large, and accordingly cannot be considered representative of the total beneficiaries in the case, then the process set forth by the Chamber whereby the parties will assess the applications in the sample is rendered effectively meaningless.⁴⁰ As such, according to the Defence, the resolution of these issues is essential for the determination of matters arising in the judicial cause under examination.⁴¹

24. The LRVs submit, as to the Second Ground of Appeal, that it is unclear whether the Defence takes issue with the size of the sample or with the fact that it includes the IDIP victims, matters which were addressed by the Chamber in the 25 October 2022 Order and in the Decision on the Sixth and Seventh IDIP Reports.⁴² Accordingly, the LRVs submit that it represents a mere disagreement with the Impugned Decision and it is likewise untimely.⁴³ On the Third Ground of Appeal, the LRVs submit that it lacks clarity and does not appear to differ from the previous issues, but if the Defence’s point is that non-participating victims were selected as part of the sample, the matter was similarly addressed in the 25 October 2022 Order and afterwards in the Impugned Decision, rendering it untimely.⁴⁴

25. The Chamber considers both grounds together, as they both contest the representativeness of the sample, in light of its size and composition. As noted by the LRVs, the size and the composition of the sample were addressed at length in the Chamber’s previous decisions.⁴⁵ In effect, the Chamber recalls that it clearly established in the 25 October 2022 Order all the parameters necessary for the composition of the sample by the Registry, indicating that the universe of victims from which the randomised part of the sample should be extracted would be comprised of both, participating and non-participating victims.⁴⁶ Therein, the Chamber also elaborated on the methodology for the selection and assembling of the sample,

³⁹ Application, [ICC-01/04-02/06-2797](#), para. 25.

⁴⁰ Application, [ICC-01/04-02/06-2797](#), para. 25.

⁴¹ Application, [ICC-01/04-02/06-2797](#), para. 25.

⁴² Joint Response, [ICC-01/04-02/06-2799](#), para. 26.

⁴³ Joint Response, [ICC-01/04-02/06-2799](#), para. 26.

⁴⁴ Joint Response, [ICC-01/04-02/06-2799](#), para. 27.

⁴⁵ Joint Response, [ICC-01/04-02/06-2799](#), paras 26-27.

⁴⁶ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 26.

which included 5% of the total universe of victims, in addition to the 69 victims already found eligible by the TFV for the IDIP's purposes.⁴⁷

26. The Chamber reiterated the same information in its Decision on the Sixth and Seventh IDIP Reports, where it explained once again that it will rule on a limited but representative sample composed of the victims' dossiers of (i) all 69 victims that have so far been found eligible to benefit from the IDIP by the TFV; and (ii) a randomly selected group from the total universe of victims, amounting to 5% of the victims of the attacks and a 5% of the victims of crimes against child soldiers.⁴⁸

27. The Chamber reiterates that the Defence did not appeal any of the previous decisions, and therefore the grounds of appeal based on either the size of the sample or its composition are untimely at this stage. In effect, the Chamber stresses that, once the sample was assembled by the Registry in accordance with the aforementioned methodology,⁴⁹ the Chamber in the Impugned Decision independently assessed the representativeness of the sample, in order to determine whether it was representative of the universe of potential victims regarding gender, age, alleged harm, alleged crimes, and alleged locations where the crimes would have occurred.⁵⁰ The Defence does not impugn in its Application the Chamber's assessment of the representativeness of the sample based on any of the criteria above, but the methodology and parameters under which the sample was assembled by the Registry, which had been decided in the previous decisions that were not subject to appeal. Accordingly, the Second and Third Grounds of Appeal do not constitute appealable issues as they do not arise from the Impugned Decision.

c) Fourth Ground of Appeal

28. In the Fourth Ground of Appeal, the Defence once again focuses on the size and composition of the sample and alleges that the Chamber erred by finding that 5% of the total number of victims in the universe of potential victims – in addition to the 67 priority victims – was sufficient for the sample to be representative, ignoring the expert conclusions submitted by the Defence and failing to provide any scientific basis for its finding.⁵¹ In the argument of the Defence, given that the determination as to the representativeness of the sample was made by ignoring the expert's conclusions submitted by the Defence, and in the absence of any

⁴⁷ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 34(b).

⁴⁸ Decision on the Sixth and Seventh IDIP Reports, [ICC-01/04-02/06-2792](#), para. 17.

⁴⁹ Impugned Decision, [ICC-01/04-02/06-2794](#), paras 9-24.

⁵⁰ Impugned Decision, [ICC-01/04-02/06-2794](#), paras 23-24.

⁵¹ Application, [ICC-01/04-02/06-2797](#), paras 18-21.

scientific basis, this error amounts to an appealable issue arising directly from the Chamber's reasoning.⁵²

29. The LRVs submit that it is unclear how the Fourth Ground differs from the Second Ground and reiterate that this matter was known since the 25 October 2022 Order, and was further addressed in the Impugned Decision.⁵³

30. In effect, the Chamber fails to understand how this ground would differ from the previous issues, which also attack the representativeness of the sample based on its size and composition, as opposed to the Chamber's assessment of its representativeness based on the specific criteria of gender, age, alleged harm, alleged crimes and alleged locations, which is what was addressed in the Impugned Decision. In addition, the Chamber notes that it did not ignore the Defence's submissions based on the conclusions of the actuary it consulted, but addressed them directly and specifically. In effect, the Chamber discussed at length the Defence's submission, *inter alia*, on the composition of the sample,⁵⁴ and its size.⁵⁵ However, the Chamber rejected the Defence's submissions noting that it emerged therein that 'no sample size would have ever been considered satisfactory' from the Defence's perspective and that no reasonable alternative was provided.⁵⁶ As such, the Fourth Ground of Appeal constitute a disagreement or conflicting opinion with the Chamber's finding and, accordingly, it is not an appealable issue.

31. Having found that the four Grounds of Appeal do not constitute 'appealable issues' and given that the requirements of article 82(1)(d) of the Statute are cumulative and failure to fulfil one or more of them shall result in the rejection of the application for leave to appeal, the Chamber will not consider the remainder of the requirements.

⁵² Application, [ICC-01/04-02/06-2797](#), para. 26.

⁵³ Joint Response, [ICC-01/04-02/06-2799](#), para. 28.

⁵⁴ Impugned Decision, [ICC-01/04-02/06-2794](#), paras 12-18.

⁵⁵ Impugned Decision, [ICC-01/04-02/06-2794](#), paras 19-20.

⁵⁶ Impugned Decision, [ICC-01/04-02/06-2794](#), para. 20.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,
REJECTS** the Application.

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



Judge Chang-ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated this Wednesday, 21 December 2022

At The Hague, The Netherlands