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**International
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Date: **14 July 2023**

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 Redacted

(with Public Annex I, Confidential *ex parte* and Confidential Annex II, Public Annex III)

Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659

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Trial Chamber II of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), having regard to articles 68(1) and 75 of the Rome Statute (‘Statute’), rules 85, 86, 96 to 98 and 150 of the Rules of Procedure and Evidence (‘Rules’), and regulations 97 to 118 of the Regulations of the Registry, issues this Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659 (the ‘Addendum’).¹

I. PROCEDURAL HISTORY

1. On 8 July 2019, Trial Chamber VI issued the Judgment,² convicting Bosco Ntaganda (‘Mr Ntaganda’) of five counts of crimes against humanity and thirteen counts of war crimes (‘Conviction Judgment’).

2. On 7 November 2019, Trial Chamber VI issued the Sentencing Judgment, imposing on Mr Ntaganda a joint sentence of thirty years of imprisonment.³

3. On 14 May 2020, Trial Chamber VI appointed four experts (the ‘Appointed Experts’) and instructed them to report on issues related to reparations.⁴

4. On 30 October 2020, the Registry transmitted⁵ (i) the ‘Experts Report on Reparation’, submitted by Dr Karine Bonneau, Mr Eric Mongo Malolo, and Dr Norbert Wühler (the ‘First Experts Report’),⁶ and (ii) the ‘Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare’, submitted by Dr Sunneva Gilmore (the ‘Second Expert Report’ or ‘Dr Gilmore Report’).⁷

¹ To the extent that the present Addendum refers to confidential documents, the Chamber considers that the reference to these documents does not undermine the confidentiality of the information concerned.

² Judgment (‘Conviction Judgment’), 8 July 2019, [ICC-01/04-02/06-2359](#) (with Annexes A, B, and C).

³ Sentencing Judgment, 7 November 2019, [ICC-01/04-02/06-2442](#) (with Annex).

⁴ Decision appointing experts on reparations, 14 May 2020, ICC-01/04-02/06-2528-Conf, public redacted version same date, [ICC-01/04-02/06-2528-Red](#). The issues to be reported by the Appointed Experts had been identified in the Order setting deadlines in relation to reparations, 5 December 2019, [ICC-01/04-02/06-2447](#), para. 9.

⁵ Registry Transmission of Appointed Experts’ Reports, 30 October 2020, [ICC-01/04-02/06-2623](#) (with two Confidential *ex Parte* Annexes, available only to the Registry).

⁶ Annex 1 to the Registry Transmission of Appointed Experts’ Reports (‘First Experts Report’), public lesser redacted version 21 December 2022, [ICC-01/04-02/06-2623-Anx1-Red4](#).

⁷ Annex 2 to the Registry Transmission of Appointed Experts’ Reports (‘Second Expert Report’), public lesser redacted version 21 December 2022, [ICC-01/04-02/06-2623-Anx2-Red4](#).

5. On 8 March 2021, Trial Chamber VI delivered the Reparations Order.⁸ On 16 March 2021, Trial Chamber VI was dissolved, and the case assigned to Trial Chamber II.⁹ Hereafter, both Trial Chamber VI and Trial Chamber II are referred to as the ‘Chamber’.

6. On 30 March 2021, the Appeals Chamber confirmed in full both, the Conviction Judgment and the Sentencing Judgment.¹⁰

7. 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’).¹¹ The Appeals Judgment remanded the matter to the Chamber, and it partially reversed the Reparations Order considering that ‘Trial Chamber VI failed to (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; (iii) assess and rule upon victims’ applications for reparations; (iv) lay out at least the most fundamental parameters of a procedure for the Trust Fund for Victims to carry out the eligibility assessment; and (v) provide reasons in relation to the concept of transgenerational harm and the evidentiary guidance to establish such harm, the assessment of harm concerning the health centre in Sayo and the breaks in the chain of causation when establishing harm caused by the destruction of that health centre, and the presumption of physical harm for victims of the attacks.’¹²

8. On 25 October 2022, the Chamber issued its Order for the implementation of the Appeals Judgment (‘October 2022 Order’)¹³ instructing, *inter alia*, (i) the Registry, through the Victims Participation and Reparations Section (‘VPRS’), to assemble a limited but representative sample of victims’ dossiers (‘Sample’) to be assessed and ruled upon by the Chamber; (ii) the Trust Fund for Victims (‘TFV’) to provide updated information as to the

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

⁹ Presidency, Decision assigning judges to divisions and recomposing Chambers, 16 March 2021, [ICC-01/04-02/06-2663](#), p. 7.

¹⁰ Appeals Chamber, 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 Judgment on Conviction’), 30 March 2021, [ICC-01/04-02/06-2666-Red](#); Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled ‘Sentencing judgment’ (‘Appeals Judgment on Sentencing’), 30 March 2021, [ICC-01/04-02/06-2667-Red](#).

¹¹ 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](#).

¹² Appeals Judgment, [ICC-01/04-02/06-2782](#), p. 11.

¹³ Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘October 2022 Order’), 25 October 2022, [ICC-01/04-02/06-2786](#).

actual costs of running the rehabilitation programmes approved in the case of *The Prosecutor v. Thomas Lubanga Dyilo* ('Lubanga case') and any other information relevant to the estimation of the monetary award in the *Ntaganda* case; (iii) the parties and participants, including the VPRS, the TFV, and, if available, the Appointed Experts, to provide further submissions and information on issues related to transgenerational harm; and (iv) all parties and participants, including the Office of the Prosecutor ('Prosecution'), the Democratic Republic of the Congo ('DRC') Government and, if available, the Appointed Experts, to provide further submissions and possible evidence, on issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo.

9. On 25 November 2022, the Chamber issued a decision ('November 2022 Decision'),¹⁴ *inter alia*, approving the Sample assembled by the VPRS, as sufficiently representative of the universe of potential victims in the case and instructing the (i) Legal Representatives of Victims ('LRVs') to consult with the victims as to the disclosure of their identities to the Defence; (ii) VPRS to transmit redacted victims' dossiers to the Defence; (iii) LRVs to make submissions and complement the victims' dossiers; (iv) TFV to provide information relevant to the administrative decision of the victims included in the Initial Draft Implementation Plan ('IDIP'); (v) Defence to make submissions on the victims' dossiers; and (vi) parties, TFV, Registry, and Prosecution, to further complement their submissions on the estimated total number of potential beneficiaries of reparations, along with the methodology used to provide such estimate.

10. On 19 January 2023, after having excluded two victims and replaced one,¹⁵ the Chamber issued a Decision,¹⁶ *inter alia*, confirming that the sample remained sufficiently representative of the universe of potential victims as regards gender, age, alleged harm, alleged crimes, and alleged locations where the crimes would have occurred.

¹⁴ 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'" ('November 2022 Decision'), 25 November 2022, [ICC-01/04-02/06-2794](#), with Annex 1, [ICC-01/04-02/06-2794-Anx1](#).

¹⁵ Decision on the Trust Fund for Victims' submission of information on certain victims selected in Trial Chamber II's approved sample, 9 January 2023, [ICC-01/04-02/06-2808](#).

¹⁶ Decision on the Registry Transmission of One Victim Dossier in Compliance with the "Decision on the Trust Fund for Victims' submission of information on certain victims selected in Trial Chamber II's approved sample" (ICC-01/04-02/06-2808) ('January 2023 Decision'), 19 January 2023, [ICC-01/04-02/06-2813](#).

11. On 30 January 2023, the TFV,¹⁷ the Common Legal Representative for the Victims of the Attacks ('CLR2'),¹⁸ the Common Legal Representative for the Former Child Soldiers ('CLR1'),¹⁹ the Registry,²⁰ the Defence,²¹ and the Appointed Experts,²² filed submissions in accordance with the Chamber's instructions.

12. On 7, 13, and 22 February 2023, the Prosecution,²³ the DRC,²⁴ the Defence,²⁵ and the CLR2,²⁶ filed submissions on issues related to the health centre in Sayo.

13. On 3 March 2023, the CLR1²⁷ and the CLR2²⁸ made their submissions on the dossiers of the victims included in the sample.

¹⁷ Trust Fund for Victims' Submission pursuant to Trial Chamber II's decisions on the implementation of the Appeals Chamber Judgment against the Reparations Order ('TFV January 2023 Submissions'), 30 January 2023, [ICC-01/04-02/06-2819](#).

¹⁸ Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the October 2022 Order and November 2022 Decision ('CLR2 January 2023 Submissions'), 30 January 2023, [ICC-01/04-02/06-2820](#).

¹⁹ 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 ('CLR1 January 2023 Submissions'), 30 January 2023, [ICC-01/04-02/06-2821](#).

²⁰ 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) ('Registry January 2023 Submissions'), 30 January 2023, [ICC-01/04-02/06-2822](#), with confidential *ex parte* Annex (ICC-01/04-02/06-2822-Conf-Exp-Anx) and public redacted Annex ([ICC-01/04-02/06-2822-Anx-Red](#)).

²¹ Defence further submissions on transgenerational harm and the estimated total number of potential beneficiaries ('Defence January 2023 Submissions'), 30 January 2023, ICC-01/04-02/06-2823-Conf, public redacted version filed on 8 June 2023, [ICC-01/04-02/06-2823-Red](#).

²² Transmission of Appointed Expert Sunneva Gilmore's views on the Defence Request to disclose material relied upon in her Report (ICC-01/04-02/06-2812-Conf), 30 January 2023, ICC-01/04-02/06-2818-Conf, reclassified as public on 8 February 2023, [ICC-01/04-02/06-2818](#), with public redacted Annex, [ICC-01/04-02/06-2818-Anx-Red](#).

²³ Prosecution's 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'" ('Prosecution February 2023 Submissions'), 7 February 2023, ICC-01/04-02/06-2827-Conf, public redacted version filed on 8 February 2023, [ICC-01/04-02/06-2827-Red](#).

²⁴ Corrigendum of "Transmission of the Democratic Republic of Congo on the issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo (ICC-01/04-02/06-2830)", 15 February 2023, [ICC-01/04-02/06-2830-Corr](#) (with three Confidential Annexes).

²⁵ Defence further submissions on issues related to the Sayo Health Centre ('Defence February 2023 Submissions'), 22 February 2023, ICC-01/04-02/06-2833-Conf, public redacted version filed on 9 February 2023, [ICC-01/04-02/06-2833-Red](#).

²⁶ Submissions by the Common Legal Representative of the Victims of the Attacks on the harm caused as a result of the attack on the health centre in Sayo ('CLR2 February 2023 Submissions'), 22 February 2023, ICC-01/04-02/06-2834-Conf, public redacted version filed on 15 June, [ICC-01/04-02/06-2834-Red](#), with public redacted version of Annexes 1-3 [ICC-01/04-02/06-2834-Anx1-Red](#), [ICC-01/04-02/06-2834-Anx2-Red](#), [ICC-01/04-02/06-2834-Anx3-Red2](#).

²⁷ Common Legal Representative of the Former Child Soldiers' submissions on the 34 applications constituting the sample ('CLR1 March 2023 Submissions'), 3 March 2023, [ICC-01/04-02/06-2835](#) (with Confidential *ex parte* and confidential redacted Annex 1).

²⁸ Submissions by the Common Legal Representative of the Victims of the Attacks on the dossiers of the victims included in the Sample ('CLR2 March 2023 Submissions'), 3 March 2023, [ICC-01/04-02/06-2836](#) (with Confidential *ex parte* and confidential redacted annexes 1-43).

14. On 1 May 2023, the Defence²⁹ filed its submissions on the sample.

II. INTRODUCTION

15. At the outset, the Chamber recalls³⁰ that the Appeals Judgment only partially reversed the Reparations Order and remanded it for the Chamber to address five specific issues.³¹ Accordingly, and following previous practice,³² the present Addendum shall be considered an integral part of the Reparations Order, to be read in conjunction with it, and be understood as complementing and replacing therefrom only the specific issues that are dealt with hereafter.

16. As to the Appeals Judgment's reference to a 'new order for reparations',³³ the Chamber notes that it was linked to the need to guarantee the parties' right to appeal pursuant to article 82(4) of the Statute.³⁴ The Chamber underlines that the parties will indeed have a fresh right to appeal the present Addendum, as an integral part of the Reparations Order, directly before the Appeals Chamber pursuant to rules 150 to 153 of the Rules.

17. In light of the parties' submissions, the Chamber deems it necessary to underline that, within the context of mass-atrocities that the countries under investigation by the Court have generally experienced – which may involve thousands of victims – reparations proceedings

²⁹ Submissions on behalf of the convicted person on the dossiers of the victims included in the sample ('Defence May 2023 Submissions'), 1 May 2023, ICC-01/04-02/06-2851-Conf, public redacted version of 8 June 2023, [ICC-01/04-02/06-2851-Red](#) (with Confidential Annex A).

³⁰ As noted in the October 2022 Order, [ICC-01/04-02/06-2786](#), para. 17; Decision on the TFV's Sixth and Seventh Update Reports on the Implementation of the Initial Draft Implementation Plan, 16 November 2022, ICC-01/04-02/06-2792-Conf (reclassified as public on 24 November 2022, [ICC-01/04-02/06-2792](#)), para. 9.

³¹ See Appeals Judgment, [ICC-01/04-02/06-2782](#), *inter alia*, p. 11, number 1, noting that the Reparations Order was '*partially reversed*' to the extent that Trial Chamber VI failed to '(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; (iii) assess and rule upon victims' applications for reparations; (iv) lay out at least the most fundamental parameters of a procedure for the Trust Fund for Victims to carry out the eligibility assessment; and (v) provide reasons in relation to the concept of transgenerational harm and the evidentiary guidance to establish such harm, the assessment of harm concerning the health centre in Sayo and the breaks in the chain of causation when establishing harm caused by the destruction of that health centre, and the presumption of physical harm for victims of the attacks.' [emphasis added]; para. 750, stressing that the Appeals Chamber deemed '*appropriate to reverse the findings of the Trial Chamber on the aforementioned matters*' [emphasis added]; para. 757, noting that '[i]n light of the findings of the Appeals Chamber that require *fundamental aspects* of the Impugned Decision to be reversed, the objective at this stage of the proceedings must be 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.' [emphasis added]; para. 759, noting that the Reparations Order was '*partially reversed*' [emphasis added].

³² See, *inter alia*, Trial Chamber I, *Prosecutor v. Ali Muhammad Abd-Al-Rahman ('Ali Kushayb')*, Addendum to Directions on the Conduct of Proceedings Motion for Acquittal, 24 January 2023, [ICC-02/05-1/20-855](#).

³³ See Appeals Judgment, [ICC-01/04-02/06-2782](#), *inter alia*, p. 11, number 2) and paras 365, 759 and footnote 1672.

³⁴ See Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 752, 758.

before the ICC deal with the very limited duty of a convicted person to repair the harm caused to the victims of the crimes for which the person was ultimately convicted. This ensures realisation of the right of the direct and indirect victims included in the conviction to obtain reparative justice. However, as much as the Chamber would like to see the reparative right of all victims of the situation fully realised, the scope of these reparations proceedings is strictly limited in reach and scope to the terms of the conviction. As noted by commentators, also in the context of reparations the role of international criminal justice is only to complement domestic justice systems.³⁵

18. In order to better illustrate the Chamber's findings and provide further support to the eligibility process to be conducted during the implementation stage, the Chamber has detailed in Annex I to the present Addendum the scope of the conviction in relation to the victims of the attacks. This document specifies the crimes and underlying acts included in the conviction *per* location, as well as recalling the negative findings in relation to the underlying incidents and locations that, although included in the charges brought against Mr Ntaganda, were dismissed for lack of sufficient evidence.

19. Within this context, the Chamber underscores that the Reparations Order, of which this Addendum is an integral part, provides the general framework and guidance for the implementation by the TFV of the collective reparations with individualised components awarded to the victims of the case.³⁶ These types of reparations are meant to holistically address the multi-faceted harm that the victims suffered on a collective basis, while focusing on the individual members of the group by responding to their specific needs in their current situation.³⁷ They aim to provide victims with sustainable and long-term livelihood means, while addressing the concerns of the victims to receive equal reparations among different groups.³⁸

20. Regarding the modalities of reparations, as noted in the Reparations Order, due to the multiple, diverse, and multi-faceted nature of the harms suffered by the victims it would be difficult – if not impossible – to reinstate them to the situation they were before the commission

³⁵ F. Lattanzi, *The International Criminal Court: Comments on the Draft Statute*. Editoriale Scientifica, pages. 269-270); *see also* T. Hamilton and G. Sluiter, *Principles of Reparations at the International Criminal Court: Assessing Alternative Approaches*, in *Max Planck Yearbook of United Nations Law Online*, 23 December 2022, p. 316, *referring to* the principle of 'reparative complementarity'.

³⁶ Reparations Order, [ICC-01/04-02/06-2659](#), paras 186-194.

³⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 189.

³⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 194.

of the crimes.³⁹ Nevertheless, the victims' various harms can be satisfactorily addressed by a combination of different modalities of reparations that can be integrated as part of the different individualised components of the collective reparations awarded.⁴⁰ In particular, taking into account the wish of the victims to receive equal reparations to avoid jealousy, animosity, or stigmatisation among affected communities and different groups of victims,⁴¹ the Chamber has considered it appropriate to follow the approach taken in the *Lubanga* case providing all victims with service-based collective reparations with individualised components directed at their physical, mental, and socio-economic rehabilitation, together with other collective modalities of reparations, which include symbolic and community measures.

21. The Chamber once again reiterates that Mr Ntaganda's conviction is final and thus his liability to repair the harm caused to the victims of the crimes for which he was convicted is under no discussion.⁴² Further, the Chamber underscores that the convicted person has been found to be indigent⁴³ and, as such, it has encouraged the TFV to complement the reparations award, to the extent possible.⁴⁴ The Chamber stresses that, although the convicted person's indigence is neither an obstacle to the imposition of liability for reparations nor does it give the person any right to benefit from reduced liability,⁴⁵ it is a fact that cannot be completely ignored.

22. The Chamber further underlines 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. Within this context, the Chamber will continue striving to advance these reparation proceedings in the most efficient and effective manner possible, protecting the rights of the convicted person while ensuring that the victims

³⁹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 198.

⁴⁰ Reparations Order, [ICC-01/04-02/06-2659](#), paras 198-211.

⁴¹ Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations ('CLR2 February 2020 Submissions'), 28 February 2020, ICC-01/04-02/06-2477-Conf (public redacted version of the same date, corrigendum 20 November 2020, [ICC-01/04-02/06-2477-Red-Corr](#)), paras 16; Final Observations on Reparations of the Common Legal Representative of the Victims of the Attacks ('CLR2 December 2020 Submissions'), 18 December 2020, ICC-01/04-02/06-2633-Conf (with Public Annex 1, public redacted version notified on 21 December 2020, [ICC-01/04-02/06-2633-Red](#)), paras 54, 100; Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers ('CLR1 December 2020 Submissions'), 18 December 2020, [ICC-01/04-02/06-2632](#), para. 78.

⁴² October 2022 Order, [ICC-01/04-02/06-2786](#), para. 18, *referring to Appeals Judgment*, [ICC-01/04-02/06-2782](#), para. 271 and Appeals Chamber, Decision on the Defence request for suspensive effect ('Decision on suspensive effect'), 2 July 2021, [ICC-01/04-02/06-2691](#), paras 21, 25.

⁴³ Reparations Order, [ICC-01/04-02/06-2659](#), para. 254.

⁴⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 257.

⁴⁵ Reparations Order, [ICC-01/04-02/06-2659](#), paras 97, 223

of his crimes receive the reparations they are entitled to, and for which they have waited for more than two decades, without further delay.

23. Lastly, the Chamber underlines that, consistent with its approach at trial,⁴⁶ it will not address in this Addendum all of the arguments raised by the parties and every item of evidence in the record. When it does not refer to certain evidence, even if contradictory to its findings, the Chamber stresses that it has assessed and weighed the evidence but concluded that it did not prevent it from arriving at the finding made. That said, the Chamber emphasises that it has discussed hereafter the evidence and submissions that it considers necessary to provide its full and reasoned findings and conclusions. In this regard, the Chamber notes that, in certain cases, it has explicitly set out the considerations underlying its assessment of the evidence and submissions. In other cases, despite having carefully scrutinized the evidence to ascertain that it is credible and reliable to form the basis of a specific finding, it has not necessarily referred to every detail of its assessment in writing

24. In light of the issues on remand, the Chamber hereafter addresses the following topics: a) sample of victims' dossiers and procedure for carrying out the eligibility assessment of victims at the implementation stage; b) issues related to transgenerational harm; c) issues related to the health centre in Sayo; d) presumption of physical harm for the victims of the attacks; e) number of potentially eligible victims; f) calculation of the monetary award against Mr Ntaganda; and g) implementation of reparations.

⁴⁶ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 52, referring to Trial Chamber III, *The Prosecutor v Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, [ICC-01/05-01/08-3343](#), para. 227 and noting that this approach has been upheld by the Appeals Chamber 'provided that it indicates with sufficient clarity the basis for its decision' in Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba et al*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", 8 March 2018, [ICC-01/05-01/13-2275-Red](#), paras 105-106; Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81", 14 December 2006, [ICC-01/04-01/06-773](#), para. 20; and Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba et al*, Judgment on the appeal of Mr Jean-Jacques Mangenda Kabongo against the decision of Pre-Trial Chamber IT of 17 March 2014 entitled "Decision on the 'Requete de mise en liberte' submitted by the Defence for Jean-Jacques Mangenda", 11 July 2014, [ICC-01/05-01/13-560](#), para. 116; *See also*, Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 239.

III. ANALYSIS

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

1. Introduction

25. The Chamber recalls that, in light of the type of reparations awarded, in the Reparations Order it did not find it necessary to rule on the merits of individual applications for reparations pursuant to rule 94 of the Rules.⁴⁷ Instead, the Chamber found it appropriate to establish the eligibility criteria for reparations rather than identifying itself the victims eligible to benefit from reparations.⁴⁸ The Chamber thereafter proceeded to (i) indicate the characteristics of the categories of eligible victims, in order to enable their identification during the implementation stage;⁴⁹ (ii) define the types of harm caused to direct and indirect victims;⁵⁰ and (iii) set out the criteria to be applied by the TFV when designing the awards for reparations in its draft implementation plan ('DIP').⁵¹ Consequently, the Chamber instructed the TFV to include in its DIP a detailed proposal as to the way in which it expected to conduct the administrative eligibility assessment, based on the eligibility requirements established by the Chamber.⁵²

26. In the Appeals Judgment, the Appeals Chamber found that the Trial Chamber erred in failing to rule on a sample of applications, which it found would have an impact on the eligibility assessment to be conducted during implementation.⁵³ Nevertheless, the Appeals Chamber indicated that:

there may be circumstances in which, despite concrete efforts, it will not be possible to receive applications from all potential beneficiaries within a given period of time, but that they are likely to come forward in the future. In such circumstances, considering that judicial proceedings must come to an end within a reasonable period of time, a trial chamber may elect instead 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. In such cases, the information contained in the sample of applications for reparations may be essential to a determination of the types of harm and the cost to repair the harm with respect to all beneficiaries, including those who come forward only at the implementation stage of the proceedings. 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 from each

⁴⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 196.

⁴⁸ Reparations Order, [ICC-01/04-02/06-2659](#), paras 105.

⁴⁹ Reparations Order, [ICC-01/04-02/06-2659](#), paras 105-128.

⁵⁰ Reparations Order, [ICC-01/04-02/06-2659](#), paras 148-183.

⁵¹ Reparations Order, [ICC-01/04-02/06-2659](#), paras 129-183.

⁵² Reparations Order, [ICC-01/04-02/06-2659](#), para. 253.

⁵³ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 365, 386.

sub-group. This, in turn, is relevant to the ultimate determination of the amount of the award. In this context, the Appeals Chamber notes that the meaning of the term “sample” is twofold: it may mean a representative part from a larger group of applications already in possession of a trial chamber during the reparations proceedings. However, it may also mean all of the applications that a trial chamber has received at the reparations stage, but where it is determined that there is a strong evidential basis to conclude that those applications do not represent the total number of potential beneficiaries and that there are therefore further potential beneficiaries, who will come forward by a set date during the implementation stage and who should benefit from the award.⁵⁴

27. As to the Chamber’s decision not to examine individual applications while establishing the eligibility criteria,⁵⁵ the Appeals Chamber held that, while it is not an error in itself for a trial chamber to delegate the identification of (some of) the beneficiaries and the verification of their eligibility, the Chamber erred by not having set out at least the most fundamental parameters of the future procedure for the eligibility assessment.⁵⁶

28. In light of this – while trying to avoid re-victimisation and proceed in the most expeditious manner possible, and in compliance with the principles of dignity, non-discrimination, and non-stigmatisation; victim-centred approach; do no harm; and proportional, prompt and adequate reparations⁵⁷ – in the October 2022 Order, the Chamber decided to rule on a Sample of applications for participation/joint forms/long forms, additional information and/or supporting documentation (‘victims’ dossiers’) of: (a) all victims so far found eligible to benefit from the IDIP by the TFV; and (b) a randomly selected group from the total universe of victims,⁵⁸ amounting to 5% of the victims of the attacks and a 5% of the victims of crimes against child soldiers.⁵⁹ The Chamber further decided that it would rule on the victims’ dossiers, after having given the LRVs the opportunity to supplement them and the Defence the opportunity to make submissions thereon.⁶⁰ Having reviewed the information collected in the Registry’s databases, the Chamber indicated that it was satisfied that the assembled sample of 171 victims was sufficiently representative of the universe of potential

⁵⁴ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 341, *see also*, para. 10.

⁵⁵ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 386.

⁵⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 387.

⁵⁷ October 2022 Order, [ICC-01/04-02/06-2786](#), paras 3, 7, 15, 25.

⁵⁸ As noted in the 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 submitted long forms to the Registry within the context of the mapping exercise. October 2022 Order, [ICC-01/04-02/06-2786](#), paras 26-27 and footnote 67.

⁵⁹ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 34(a)-(b).

⁶⁰ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 34, disposition.

victims as regards gender, age, and alleged harm, crimes, and locations where the crimes would have occurred.⁶¹

29. Consequently, the Chamber proceeded to assess each of the 171 victims' dossiers, conducting its own assessment of the facts alleged by the victims, while taking into account the parties' submissions on the Sample,⁶² and the additional information they provided.⁶³ This allowed the Chamber to reach conclusions on the Sample and set out the parameters for the future eligibility assessments to be conducted at the implementation stage.

30. In carrying out the assessment of the Sample and establishing the parameters for future eligibility assessments the Chamber also took into account the Court's previous jurisprudence on the matter, particularly in the *Lubanga* and the *Katanga* cases,⁶⁴ noting that the regime established in the *Katanga* case referred to individual, as opposed to collective reparations, as awarded in the *Ntaganda* case.

31. The Chamber notes that, as a preliminary remark in its submissions on the Sample, the Defence takes issue with the amount of time allocated to conduct the review and analysis of the 171 victims' dossiers.⁶⁵ According to the Defence, in order to make informed submissions for each of the victims included in the Sample, it was required to: (i) conduct an in-depth review of each dossier; (ii) consider whether the allegations made by the victims meet all the criteria required for admission, including conducting analysis and comparison with the findings in the various court documents; and (iii) conduct investigations into the allegations, including within the extensive array of evidence and on-the-ground (wherever possible).⁶⁶ The Defence submits that this is a labour-intensive process, and that it is not possible to complete it to the required standard within the two-month time frame allocated, especially in light of the limited resources allocated to the Defence during reparations proceedings. This resulted in the Defence being

⁶¹ November 2022 Decision, [ICC-01/04-02/06-2794](#), para. 24; January 2023 Decision, [ICC-01/04-02/06-2813](#), para. 8.

⁶² CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#); CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#); Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#).

⁶³ Annex 1 to the CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835-Conf-Anx1-Red](#); Annex 1 to the CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836-Conf-Anx1-Red](#); Annex A to the Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Conf-AnxA](#).

⁶⁴ See Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable ('*Lubanga* Decision on Size of the Reparations Award'), 21 December 2017, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 65-189; Trial Chamber II, *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute ('*Katanga* Reparations Order'), 24 March 2017, [ICC-01/04-01/07-3728-tENG](#), paras 65- 167.

⁶⁵ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), paras 19-22.

⁶⁶ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 21.

unable to complete this review and make thorough submissions on all victims' dossiers in the sample.⁶⁷

32. The Chamber previously granted, pursuant to Regulation 35(2) of the Regulations,⁶⁸ the Defence's request for an extension of the time limit to make its submissions on the Sample which, as the Defence itself submitted, 'would strike an appropriate balance between the rights of the Convicted Person and the need to proceed as expeditiously as possible'.⁶⁹ The Chamber notes that nothing precluded the Defence from submitting a subsequent request for an extension of the time limit, if, in its opinion, additional time was required to complete its review and analysis of the 171 victims' dossiers to the required standard. Having failed to do so, the Chamber considers the Defence complaint, at this stage, is moot. Nonetheless, having reviewed the Defence's submissions on the Sample⁷⁰ and its attached Confidential Annex A,⁷¹ which includes extensive submissions on a victim-by-victim basis, the Chamber is satisfied that the Defence's right to make submissions and meaningfully comment on the Sample has been fully safeguarded.

33. In what follows, the Chamber will elaborate on the conditions of eligibility and relevant evidentiary criteria and the results of its assessment of the Sample for both groups of victims, i.e., victims of crimes against child soldiers and victims of the attacks.

2. Evidentiary criteria and standard of proof

34. The Chamber recalls that in the Reparations Order, it clearly stated that victims eligible for reparations must provide sufficient proof of identity, of the harm suffered, and of the causal link between the crime and the harm.⁷²

35. In addition, the Chamber indicated that reparations proceedings require a less exacting standard of proof than trial proceedings and, in line with previous jurisprudence, it adopted the 'balance of probabilities' test as the appropriate standard of proof in reparations proceedings.⁷³

⁶⁷ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 21.

⁶⁸ Email from the Chamber's Legal Officer, 24 March 2023, 8:28.

⁶⁹ Defence request for a limited extension of the time limit set to make submissions on the dossiers of the victims included in the sample, 20 March 2023, [ICC-01/04-02/06-2837](#), para. 14.

⁷⁰ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#).

⁷¹ Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA.

⁷² Reparations Order, [ICC-01/04-02/06-2659](#), para. 137.

⁷³ Reparations Order, [ICC-01/04-02/06-2659](#), para. 136.

36. In relation to the causal link, the Chamber adopted the ‘but/for’ standard of causation as to the relationship between the crimes and the harm.⁷⁴ Moreover, the Chamber indicated that it is required that the crimes for which a person was convicted were the ‘proximate cause’ of the harm for which reparations are sought.⁷⁵ The Chamber underlined that the ‘proximate cause’ is one that is legally sufficient to result in liability, assessing, *inter alia*, whether it was reasonably foreseeable that the acts and conduct underlying the conviction would cause the resulting harm.⁷⁶

3. Conditions of eligibility

i. Victims of crimes against child soldiers

37. Regarding child soldiers, in light of the overlap between the *Ntaganda* and the *Lubanga* cases, in order to ensure equal treatment of victims of the same crimes, the Chamber decides to adopt the same eligibility criteria as the one developed in the *Lubanga* case.⁷⁷ This mechanism is however adapted to the specific characteristics of the *Ntaganda* case, which include, *inter alia*, the expanded temporal scope and the additional sexual and gender based crimes suffered by the child soldiers.⁷⁸ Consequently, following a similar approach to that of the *Lubanga* case, the Chamber underlines that a precondition for a victim – direct or indirect – to be eligible for reparations, is that the conscription or enlistment of children under the age of 15 years into the UPC/FPLC ranks, between on or about 6 August 2002 and 31 December 2003, and/or their use to participate actively in hostilities, between on or about 6 August 2002 and on or about 30 May 2003, be established on a balance of probabilities.⁷⁹

38. As such, the ‘child soldier status’ is the essential condition that the direct or indirect victim must prove.⁸⁰ Therefore, in the case of a potentially eligible direct or indirect victim of crimes against child soldiers, the following conditions should be verified at the required standard of proof:

i. First requirement: their identity;

⁷⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 132.

⁷⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 132.

⁷⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 133.

⁷⁷ See *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 60-190; see also CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 13.

⁷⁸ See also Reparations Order, [ICC-01/04-02/06-2659](#), para. 222.

⁷⁹ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 66.

⁸⁰ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 66.

ii. Second requirement:

1. for direct victims: whether the victim has established, on a balance of probabilities, the child soldier status; and
2. for indirect victims:
 - a. whether the victim has established, on a balance of probabilities, the child soldier status of the direct victim; and
 - b. whether the indirect victim demonstrated to fall within at least one of the four categories of indirect victims recognised by the Chamber and that he or she has personally suffered harm because of the commission of a crime against the direct victim.⁸¹

iii. Third requirement: whether the victim has established, on a balance of probabilities, the existence of the alleged harm; and

iv. Fourth requirement: whether the victim has established, on a balance of probabilities, the causal link between the alleged harm and the crimes for which Mr Ntaganda was convicted.

39. Regarding child soldiers who are also victims of sexual or gender-based crimes, children born out of rape or sexual slavery, and indirect victims of these crimes, the Chamber follows the same approach as above but also verifying, on a balance of probabilities, the status of the direct victim as a victim of the sexual or gender based crimes or a children born out of the crime of rape or sexual slavery. As such, the following conditions should be verified at the required standard of proof:

i. First requirement: their identity;

ii. Second requirement:

1. for direct victims: whether the victim has established, on a balance of probabilities, the child soldier status and having been a victim of rape or sexual slavery between on or about 6 August 2002 and 31 December 2003, in Ituri or having been a children born out of the crime of rape or sexual

⁸¹ Reparations Order, [ICC-01/04-02/06-2659](#), paras 36-38, 124-128.

slavery committed between on or about 6 August 2002 and 31 December 2003; and

2. for indirect victims:

- a. whether the victim has established, on a balance of probabilities, the child soldier status of the direct victim and that the direct victim was also a victim of rape or sexual slavery between on or about 6 August 2002 and 31 December 2003, in Ituri or a children born out of the crime of rape or sexual slavery committed between on or about 6 August 2002 and 31 December 2003; and
- b. whether the indirect victim demonstrated to fall within at least one of the four categories of indirect victims recognised by the Chamber and that he or she has personally suffered harm because of the commission of a crime against the direct victim.⁸²

iii. Third requirement: whether the victim has established, on a balance of probabilities, the existence of the alleged harm; and

iv. Fourth requirement: whether the victim has established, on a balance of probabilities, the causal link between the alleged harm and the crimes for which Mr Ntaganda was convicted.

ii. Victims of the attacks

40. Similarly, for victims of the attacks, and as will be explained further below, the Chamber considers that the precondition for a victim of the attacks to be eligible for reparations, is that they establish their status as direct or indirect victims of any of the crimes committed during the attacks for which Mr Ntaganda was convicted, on a balance of probabilities. Therefore, the following conditions should be verified at the required standard of proof:

i. First requirement: their identity;

ii. Second requirement:

1. for direct victims: whether the victim has established, on a balance of probabilities, to be a direct victim of at least one of the crimes committed

⁸² Reparations Order, [ICC-01/04-02/06-2659](#), paras 36-38, 124-128.

during the First/or the Second Operation and for which Mr Ntaganda was convicted (as detailed in Annex I to the present Addendum); and

2. for indirect victims:

- a. whether the victim has established, on a balance of probabilities, the victim status of the direct victim; and
- b. whether the indirect victim demonstrated to fall within at least one of the four categories of indirect victims recognised by the Chamber and that he or she has personally suffered harm because of the commission of a crime against the direct victim.⁸³

iii. Third requirement: whether the victim has established, on a balance of probabilities, the existence of the alleged harm; and

iv. Fourth requirement: whether the victim has established, on a balance of probabilities, the causal link between the alleged harm and the crimes for which Mr Ntaganda was convicted.

4. Issues on the victims' eligibility arising from the analysis of the Sample

a) Supporting documentation

i. Appeals Judgment findings

41. The Chamber notes that the Appeals Chamber emphasises that, as found in its previous jurisprudence, when making a decision as to the eligibility of a victim for reparations, the enquiry is whether the relevant facts have been established to the applicable standard of proof.⁸⁴ According to the Appeals Chamber, this standard of proof must be met, regardless of whether or not a victim has been in a position to provide supporting documentary evidence.⁸⁵

42. The Appeals Chamber thereafter recalled its findings in the *Lubanga* case, regarding rule 94(1)(g) of the Rules,⁸⁶ whereby it stated that:

⁸³ Reparations Order, [ICC-01/04-02/06-2659](#), paras 36-38, 124-128.

⁸⁴ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 508.

⁸⁵ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 508.

⁸⁶ As noted by the Chamber in the Reparations Order, this rule is applicable to proceedings leading to individual reparations and is of less relevance in relation to collective reparations, *see* Reparations Order [ICC-01/04-02/06-2659](#), para. 140, *referring to* Decision establishing the principles and procedures to be applied to reparations ('*Lubanga* Judgment on Principles'), 7 August 2012, [ICC-01/04-01/06-3129](#), para. 149 and Appeals Chamber,

The Appeals Chamber considers that the requirement to provide, to the extent possible, supporting documents and information under rule 94(1)(g) of the Rules, both serves to assist a trial chamber in its assessment of a claim while also providing the convicted person with an opportunity to challenge the requests submitted. However, *the rule also allows for the possibility that a request that is not supported by relevant documentation may nevertheless be filed*. In this regard, and as correctly noted by the Trial Chamber, rule 94(1)(g) of the Rules acknowledges that *victims are not always in a position to provide supporting documentation*. Consequently, the Appeals Chamber considers that *the fact that potential victims generally did not submit documents in support of their written allegations does not lead inexorably to the conclusion that the Trial Chamber was prevented from finding that their victimhood was established to a balance of probabilities*.⁸⁷

43. The Appeals Chamber further recalled that ‘what is [...] “sufficient” for purposes of an applicant meeting the burden of proof will depend upon the circumstances of the specific case’, and trial chambers enjoy ‘a certain amount of flexibility in the assessment of claims that have been submitted’, in the sense that ‘an assessment of the “sufficiency” of the evidence is not limited to the evidence submitted by the victim in question’.⁸⁸

44. Referring to its findings in the *Lubanga* case, it reiterated that:

[...] corroboration may come from extrinsic evidence, including the testimonial and documentary evidence entered into the record and the statements of other victims in their requests. In the exercise of its discretion, *a trial chamber may consider that a victim’s account has sufficient probative value in light of the totality of the evidence so as to find that the allegations therein satisfy the burden of proof, even in the absence of supporting documents*. A trial chamber may also consider the significance of the allegation sought to be proven. In this respect, some allegations are critical to the overall assessment of the person’s eligibility and, unless they are otherwise corroborated, the trial chamber may decline to find the person eligible without documentation supporting those allegations.⁸⁹

[...]

The Appeals Chamber notes that, as just discussed, *a trial chamber may find a person eligible for reparations, even where he or she has not supplied any documentation*. It also recalls that *the difficulty victims may face in obtaining supporting documentation can be taken into consideration when determining the appropriate standard of proof in reparations proceedings*. The Appeals Chamber considers that a trial chamber is also not prevented from finding a person eligible for reparations in circumstances where he or she did not give reasons for his or her inability to provide supporting documentation. However, to allow the trial chamber to properly reach a conclusion, it is in the interest of the person who is unable to

The Prosecutor v. Thomas Lubanga Dyilo, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’ (*‘Lubanga Judgment on Size of Reparations Award’*), 18 July 2019, [ICC-01/04-01/06-3466-Red](#), paras 87-88.

⁸⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 511 [emphasis added], referring to *Lubanga Judgment on Size of Reparations Award*, [ICC-01/04-01/06-3466-Red](#), para. 202.

⁸⁸ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 512, referring to *Lubanga Judgment on Size of Reparations Award*, [ICC-01/04-01/06-3466-Red](#), para. 203.

⁸⁹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 512 [emphasis added], referring to *Lubanga Judgment on Size of Reparations Award*, [ICC-01/04-01/06-3466-Red](#), para. 203.

supply any documentation to explain his or her reasons for this inability. *At any rate, the trial chamber's enquiry is whether the relevant facts have been established to the applicable standard of proof.* Such was the Trial Chamber's enquiry in the present case. The Appeals Chamber also notes the Trial Chamber's finding that, in most cases the potentially eligible victims were not in a position to submit supporting documentation to prove their allegations, and its reference to the circumstances in the DRC and the many years that have elapsed since the material events.⁹⁰

45. The Appeals Chamber further emphasised that, 'to allow the trial chamber to properly reach a conclusion, it is in the interest of the person who is unable to supply any documentation to explain his or her reasons for this inability'.⁹¹ The Appeals Judgment further indicated that, ultimately, the enquiry is whether the relevant facts have been established to the applicable standard of proof, and that this consideration will govern the assessment of an application.⁹²

46. At the same time, the Appeals Chamber stressed that the Chamber must now assess the information that may or may not be available to victims and decide whether it is necessary to provide further guidance to prospective victims as to what documentation or proof it will require.⁹³ According to the Appeals Chamber, this cannot be understood as providing *carte blanche* to victims to come forward without supporting evidence, and the Chamber is expected to conduct an appropriate enquiry, on a case-by-case basis, and to ensure that what it receives meets the appropriate standard of proof, that is, proving harm and the causal nexus.⁹⁴

ii. Parties submissions

47. In their submissions on the Sample, the LRVs inform that they have been generally unable to collect additional documentation to complement the victims' dossiers, as in the current circumstances in Ituri obtaining official or unofficial documents is simply unfeasible.⁹⁵ According to the CLR1, the resurgence of the conflict, the insecurity, and the resulting large displacement of the population are such that no evidence can be obtained today or in the near future.⁹⁶ Similarly, the CLR2 informs that the victims of the attacks that he consulted – with

⁹⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 513 [emphasis added], referring to Lubanga Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 204.

⁹¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 515.

⁹² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 515.

⁹³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 516.

⁹⁴ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 516.

⁹⁵ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 16; see also CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 25-26, 29.

⁹⁶ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 16.

the exception of only two – were unable to provide any documentary information to support the harm they suffered.⁹⁷

48. As to the extent to which the LRVs were able to contact their clients and collect supplementary information, the CLR2 reports that he could only reach 42 victims amid the conflict and displacement of population in Ituri,⁹⁸ while the CLR1 contacted only one victim, as in her view this was the only occurrence where the information available was insufficient to reach a final conclusion as to eligibility.⁹⁹ The LRVs indicate that the information obtained only provided clarification on certain points or supplemented the victims' accounts in their respective dossiers.¹⁰⁰ The CLR2 further indicates that, although some victims mentioned witnesses who would be able to corroborate their stories, he was not in a position to collect statements due to the ongoing insecurity and significant displacement of population.¹⁰¹ The CLR2 emphasized that, if the victims had continued to reside in their respective villages, it would have been more feasible to collect documents and other evidence on a community basis.¹⁰²

49. Regarding the specific difficulties of the victims to provide documentary proof in support of their claims, the CLR2 provided the following explanations:

- a. as to victims of murder, the CLR2 indicates that indirect victims were unable to obtain death certificates, as they were not issued during the war, and in some cases the corpses of the deceased family members were never found.¹⁰³ The CLR2 further informs that the victim's kinship with parents can be evidenced from the identification document attached to the application, and that only in two instances the victims were able to provide statements of two witnesses confirming the death of relatives;¹⁰⁴
- b. as to victims of rape and sexual slavery, the CLR2 indicates that they could not provide any proof of rape, as either the victim did not go to hospital, or the available medical documents were destroyed in subsequent attacks;¹⁰⁵

⁹⁷ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 19.

⁹⁸ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 16.

⁹⁹ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 23.

¹⁰⁰ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), paras 23, 26-27; *see also* CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 23.

¹⁰¹ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 25.

¹⁰² CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 26.

¹⁰³ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 19.

¹⁰⁴ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 19.

¹⁰⁵ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 20.

- c. as to victims of destruction of property, the CLR2 explains that they did not have any ownership documentation, as per the local practice in small villages.¹⁰⁶ According to the CLR2, the few victims who did possess documentation regarding ownership lost it, either during the war or afterwards, and after the war their victimisation or harm was not processed and acknowledged in any formal manner by the local or national authorities.¹⁰⁷ The CLR2 contends that victims who have had their homes destroyed and/or their property pillaged were unable to have such crimes formally recognised;¹⁰⁸ and
- d. as to victims of the attacks who suffered crimes affecting their entire villages, such as intentionally directing attacks against civilians, persecution, forcible transfer and displacement, the CLR2 argues that they are unable to provide any documentation to prove that they left their homes to hide in the bush/forest while living in harsh conditions because of these crimes.¹⁰⁹

50. Consequently, both LRVs submit that evidentiary standards and procedures should account for the above difficulties and circumstances were collecting documentary evidence to substantiate the victims' claims is unfeasible. As such, the LRVs submit that a 'coherent and credible' account should suffice to satisfy the standard and burden of proof to make a positive finding of their eligibility.¹¹⁰ The CLR2 further indicates that a 'coherent and credible' account would be informed by the intrinsic quality, coherence, and consistency of the victims' statements/accounts.¹¹¹

51. In its submissions, the Defence indicates that to be eligible to benefit from reparations, victims are required to submit sufficient evidence to meet the 'balance of probabilities' standard for all aspects of their claim.¹¹² It submits that what is sufficient for the purposes of a victim meeting the burden of proof will depend upon the specific circumstances of the case, including any difficulties the victims may face in obtaining evidence.¹¹³ In the argument of the

¹⁰⁶ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 19, 21.

¹⁰⁷ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 21.

¹⁰⁸ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 21.

¹⁰⁹ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 21.

¹¹⁰ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2835](#), paras 16-17; CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 29-30.

¹¹¹ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 30.

¹¹² Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 36.

¹¹³ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 36.

Defence, at a minimum, the information provided must contain relevant details, and be verifiable, and the victims cannot simply state they are victims of a crime, without more.¹¹⁴

52. The Defence further indicates that for a claim to be sufficiently detailed and verifiable, it must be supported by information or documents. Alternatively, the victims must provide an adequate justification as to why the materials could not be obtained, which must itself be verifiable.¹¹⁵ The Defence maintains that detailed information is required to verify the victims' claims, generally indicating that the following information is required:

- a. victims of murder and attempted murder (Counts 1 and 2): (i) death certificates or specific reason(s) as to why death certificates are not available; (ii) information regarding the occupation at the time of the persons allegedly murdered (whether they or members of their immediate family took part in the fighting); and at a minimum, (iii) document(s) or a declaration from a non-interested third party should have been provided;¹¹⁶
- b. victims of attacks against civilians (Count 3): (i) where the applicant was when the attack began; (ii) what the applicant saw and how the attack unfolded; (iii) who was with the applicant when fleeing who could confirm his narrative; (iv) whether the applicant possesses information, which, when compared with the evidence, reveals that he was actually present, to determine that the applicant was a genuine victim of attack against civilians; and (v) names and contact details of non-interested third party(ies) and declaration(s) must be provided;¹¹⁷
- c. victims of rape (Counts 4 and 5): when and how it happened and the subsequent consequences;¹¹⁸
- d. victims of persecution (Count 10): at a minimum, names and contact details persons who were with the applicant must be provided;¹¹⁹

¹¹⁴ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 36.

¹¹⁵ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 38.

¹¹⁶ See, for instance, Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 32, 35, 58, 77, 87, 104, 109, 114, 127, 136, 138, 139, 151..

¹¹⁷ See, for instance, Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 6, 9, 33-34, 48-49, 51-52, 54-58, 92, 101-103, 106-107, 109, 112, 114, 118-120, 137-139, 147, 149-151, 159, 168.

¹¹⁸ See, for instance, Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 137, 140, 142, 160.

¹¹⁹ See, for instance, Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 67, 68, 71, 83, 98, 123, 128, 129, 157.

- e. victims of pillaging (Count 11): (i) information concerning the items pillaged; (ii) whether the applicant saw the looting of the items; (iii) the last time the items were seen by the applicant and the time the looting was noticed;¹²⁰
- f. victims of forcible transfer, deportation, and ordering the displacement of the civilian population (Counts 12 and 13): (i) where the applicant went; (ii) information regarding the travelling; and at a minimum, (iii) names and contact details of non-interested third party(ies) and declaration(s);¹²¹
- g. victims of enlistment, conscription and use in hostilities (Counts 14, 15, 16): (i) information concerning the applicant's commanders, unit within UPC/FPC; (ii) when the applicant demobilised; (iii) how the applicant demobilised; (iv) the applicant's involvement in the different battles he mentioned, who was with him, etc; (v) and at the minimum, names and contact details of others, child soldiers or not, who were with him should be provided, and information concerning the units and the commanders involved;¹²² and
- h. victims of destruction of property (Count 18): (i) proof of ownership or specific reason(s) as to why no proof of ownership is available must be provided; and at a minimum, (ii) document(s) or a declaration from a non-interested third party regarding the place where applicant lived.¹²³

iii. Chamber determination

53. The Chamber recalls that, in order to determine whether the victims in the Sample have complied with the criteria outlined above,¹²⁴ it applies the standard of 'a balance of probabilities'.¹²⁵ In addition, as recalled by the Appeals Chamber¹²⁶ and the parties,¹²⁷ what is

¹²⁰ See, for instance, Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 10-11, 14, 16, 20-21, 27, 30, 34, 48-49, 51, 53-57, 59, 68, 77, 87, 89-91, 93, 100-102, 104, 107-108, 110, 113-114, 117-120, 137-138, 143, 147, 149-150, 152-153, 160, 169-170.

¹²¹ See, for instance, Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 10, 12, 22, 30, 51, 53-56, 58-59, 77, 93, 105, 113, 115, 136-137, 140, 143, 147, 149-150, 152, 160, 167, 169.

¹²² See, for instance, Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 26, 39-47, 81-82, 84-86, 110, 112, 130, 132-133, 135, 144-146, 158-160.

¹²³ See, for instance, Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 7, 10, 12, 14, 16, 18, 22, 30, 50, 56, 63, 68, 74, 77, 80, 87, 90-91, 94, 100-102, 107-108, 110, 116-120, 127, 132, 138, 169.

¹²⁴ See Section III.A.2 above.

¹²⁵ See Section III.A.2 above.

¹²⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 512.

¹²⁷ See CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), paras 16-17; CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 29-30; Defence Submissions on the Sample, [ICC-01/04-02/06-2851-Red](#), para. 36.

necessary to satisfy this evidentiary standard and what is reasonable to expect from the victims in support of their claims,¹²⁸ depends on the specific circumstances of the case.¹²⁹

54. As noted in the Appeals Judgment, the Chamber enjoys a certain amount of flexibility in the assessment of the dossiers and a determination that they are ‘sufficient’ is not necessarily made only on the basis of the evidence.¹³⁰ However, this is not to be understood as providing *carte blanche* to victims to come forward without supporting documentation. The Chamber is expected to conduct an appropriate enquiry, on a case-by-case basis, and ensure that the victims dossiers meet the appropriate standard of proof.¹³¹ While it is in the interest of the person who is unable to supply any documentation to explain the reasons for this inability,¹³² the Chamber is not prevented from finding a person eligible for reparations in circumstances where the person did not provide such justifications.¹³³

55. The Chamber notes that, during the reparations proceedings in the present case, it has been made aware of the challenges the victims may face in producing documentary evidence to support their claims, noting in particular the victims’ difficulties in obtaining or producing copies of official documents in the DRC.¹³⁴ The Chamber further recalls that in its October 2022 Order, it indicated that it would rule on the victims’ applications selected as part of the sample, after having given the LRVs the possibility to make submissions and complement the forms with any supporting documentation, *to the extent possible and necessary*.¹³⁵ Similarly, the Chamber noted the challenges in terms of access and communication with victims, and stressed that all the victims that might be assessed as not eligible within the context of the Sample, particularly in cases where their LRVs may not be able to locate them or further complement their dossier, will have an opportunity to supplement and clarify their accounts at the implementation stage.¹³⁶

56. The Chamber observes that, in the *Lubanga* case, in a similar situation, the relevant Chamber ruled that rule 94(1)(g) of the Rules makes allowance for the fact that potentially

¹²⁸ For a similar approach, see *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-t-ENG](#), para. 65.

¹²⁹ See also, *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 203.

¹³⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 512.

¹³¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 516.

¹³² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 515.

¹³³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 513, referring to *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 204.

¹³⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 138.

¹³⁵ October 2022 Order, [ICC-01/04-02/06-2786](#), paras 8-9.

¹³⁶ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 10.

eligible victims are not always in a position to furnish documentary evidence in support of their applications, given the circumstances in the DRC and the many years that have elapsed since the events took place.¹³⁷

57. The Chamber further stresses that, in 2020, the Registry reported that in its consultations with stakeholders from the locations where the victims of the attacks used to reside,¹³⁸ it was informed that hardly any official documents had survived the 2002-2003 period.¹³⁹ In the same report, the Registry indicated the possibility for victims of certain locations to obtain some supporting documentation.¹⁴⁰ While this could be an option in certain cases, the Chamber notes that the average cost for the documents referred by the Registry is 10 USD per document.¹⁴¹ At the same time, the Chamber underscores that the current security situation is marked by a resurgence of the conflict, where victims are difficult to reach.¹⁴² As such, the Chamber considers that placing this additional financial and logistical burden on the few victims that may be able to obtain documentation would be unreasonable in the current circumstances and unfair as the burden will not be equally imposed on all victims.¹⁴³ Accordingly, the Chamber does not consider this to be a feasible and appropriate course of action. Moreover, the Chamber notes that it is unclear whether the possibility to obtain documentations in certain locations still exists, considering that the information was provided in February 2020,¹⁴⁴ and the security situation in the DRC has worsened since.¹⁴⁵

¹³⁷ See *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 61.

¹³⁸ Annex II to Registry's Observations on Reparations ('Annex II – Registry's February 2023 Observations'), 28 February 2020, [ICC-01/04-02/06-2475-AnxII-Red3](#), paras 1-2.

¹³⁹ Annex II – Registry's February 2023 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), for Banyali-Kilo collectivity, the Registry informs that no official documentation has survived the 2002-2003 war: for Mongbwalu and Sayo, *see* pp. 7-8, for Nzebi, *see* p. 9, for Kilo (Mission/Etat), *see* p. 10; for Walendu-Djatsi collectivity, the Registry informs that no or almost no documentation has survived the 2002-2003 war: for Kobu, *see* p. 12, for Bambu, *see* p. 13, for Tsili, *see* p. 14, for Lipri, *see* p. 15, for Nyangaray, *see* p. 16, for Sangi, *see* p. 17, for Jitchu, *see* p. 18, for Buli, *see* p. 19.

¹⁴⁰ Annex II – Registry's February 2023 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), pp. 7-19.

¹⁴¹ Annex II – Registry's February 2023 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), for Mongbwalu, *see* p. 7; for Sayo, *see* p. 8; for Nzebi, *see* p. 9; for Kilo-Etat/Kilo-Mission, *see* p. 10; for Kobu, *see* p. 12; for Bambu, *see* p. 13; for Tsili, *see* p. 14; for Lipri, *see* p. 15; for Nyangaray, *see* p. 16; for Sangi, *see* p. 17; for Jitchu, *see* p. 18; for Buli, *see* p. 19. for Buli, *see* p. 19.

¹⁴² CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 16; CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 25-26.

¹⁴³ This could even be considered to be against the principle of dignity, non-discrimination, and non-stigmatisation as provided for in the Reparations Order, [ICC-01/04-02/06-2659](#), paras 41-44.

¹⁴⁴ Annex II – Registry's February 2023 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), pp. 7-19.

¹⁴⁵ For the latest reports on the security situation in Ituri *see*, Trust Fund for Victims' Eleventh Update Report on the Implementation of the Initial Draft Implementation Plan ('TFV's Eleventh Report'), 30 May 2023, [ICC-01/04-02/06-2854-Red](#), para. 11; Trust Fund for Victims' Tenth Update Report on the Implementation of the Initial Draft Implementation Plan, dated 30 March 2023, ICC-01/04-02/06-2839-Conf, 30 March 2023, [ICC-01/04-02/06-](#)

58. Having carefully assessed the LRVs' and the Defence's submissions in light of the Appeals Judgment considerations, as detailed above, the Chamber has concluded that, in light of the time elapsed since the commission of the crimes, the resurgence of the conflict, and the continuous displacement of the victims,¹⁴⁶ it is extremely difficult, if not impossible, for the victims to obtain additional documentary evidence in the current circumstances. In keeping with the Appeals Chamber's findings as to the importance of reasoning,¹⁴⁷ the Chamber further underlines the extensive submissions put forward by the LRVs as to the impossibility of obtaining documentary evidence,¹⁴⁸ in the case of the CLR2 on a crime-by-crime basis.¹⁴⁹ Furthermore, the Chamber notes that 27 out of the 42 victims that the CLR2 managed to reach, provided information as to the impossibility to produce the documentation.¹⁵⁰

59. The Chamber is therefore satisfied that the victims, directly or through the LRVs, have amply explained the reasons for their inability to produce additional documents, which, as detailed above, is corroborated by multiple sources.¹⁵¹

b) Compliance with the 'balance of probabilities' standard

60. Notwithstanding the above, the Chamber underlines that the matter for its consideration is what is necessary to satisfy the 'balance of probabilities' standard.¹⁵² The Chamber notes that the LRVs submit that a 'coherent and credible' account should suffice to satisfy the standard and burden of proof and allow the Chamber to make positive findings on the victims' eligibility.¹⁵³ Further, the Chamber recalls that the CLR2 argues that 'a coherent and credible' account, would be informed by the intrinsic quality, coherence, and consistency of the victims' statements/accounts.¹⁵⁴ As noted above, the Defence submits that a mix of supporting

[2839-Red](#), paras 11-13; Trust Fund for Victims' Ninth Update Report on the Implementation of the Initial Draft Implementation Plan, dated 30 January 2023, ICC-01/04-02/06-2817-Conf, 30 January 2023, [ICC-01/04-02/06-2817-Red](#), paras 19-21.

¹⁴⁶ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 16.

¹⁴⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 515.

¹⁴⁸ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 16; *see also* CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 25-26, 29.

¹⁴⁹ CLR2 March 2023 Submissions e, [ICC-01/04-02/06-2836](#), paras 19-22.

¹⁵⁰ That is the case for applicants: a/00021/13; a/00802/13; a/00880/13; a/00891/13; a/01720/13; a/00910/13; a/00436/13; a/00795/13; a/00140/13; a/01711/13; a/30286/15; a/01659/13; a/00438/13; a/20194/14; a/01605/13; a/01566/13; a/30003/15; a/01269/13; a/00090/13; a/00256/13; a/30248/15 & a/30271/15; a/30282/15; a/40042/21; a/00075/13; a/01678/13; a/01679/13; and a/00096/13.

¹⁵¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 515.

¹⁵² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 508.

¹⁵³ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), paras 16-17; CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 29-30.

¹⁵⁴ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 30.

documentation (i.e., death certificates, proof of ownership, and/or other documents and declarations from non-interested third parties) and extensive factual information are necessary to meet the balance of probabilities standard.¹⁵⁵

61. The Chamber details below its reasoning as to the required information regarding each of the conditions of eligibility and the application of the relevant standard of ‘balance of probabilities’. At the outset, the Chamber underlines that, in order to reach its conclusions, it assessed the information included in the victims’ dossiers and all supporting documents, to the extent available, verifying the intrinsic coherence and credibility of the account. In addition, the Chamber checked the extrinsic coherence and credibility of the victims’ accounts by searching for corroborating evidence that would verify the consistency of the accounts with the Chamber’s previous findings in the Conviction Judgment and with other victims’ dossiers in the Sample. Where one victim has filed more than one application, or has provided supplementary information upon being contacted by the LRVs and the information in both documents does not fully overlap or presents slight discrepancies, the Chamber does not consider that this, on its face, may necessarily cast doubt on the victims’ credibility.¹⁵⁶

i. Issues related to the first requirement: identity

62. The Chamber notes that the CLR1 submitted that the victims’ identity could be demonstrated through official or unofficial proof of identification or, alternatively, through the signed statements of two individuals, as per the Court’s consistent case-law.¹⁵⁷ Furthermore, in their submissions, both LRVs state that all the victims in the Sample established their identity by providing a valid proof of identity.¹⁵⁸ As such, the CLR1 submits that all of the 34 child soldiers she represents provided either a copy of their *carte d’électeur* or an *attestation de carence*, an *attestation* of the *chef de collectivité*, *officier d’état civil*, or the *chef de groupement* or an *attestation de naissance*.¹⁵⁹ In addition, the CLR2 submits that the 137 victims of the attack that he represents had already attached to their application form their identity cards.¹⁶⁰

¹⁵⁵ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), paras 36, 38; *see also* para. 52 above and corresponding footnotes.

¹⁵⁶ *See also* Lubanga Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 64; Katanga Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 70.

¹⁵⁷ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 19.

¹⁵⁸ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 19; CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 19.

¹⁵⁹ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 19.

¹⁶⁰ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 19.

63. In its submissions, the Defence takes issue with the redactions applied to the victims' dossiers.¹⁶¹ In particular, the Defence challenges the LRVs' approach to redact all information that might reveal the identities of victims, including, in the Defence's opinion, 'key information relating to the description of the harm suffered, the events that caused the harm and the link between such harm and the crimes of which Mr Ntaganda has been convicted'.¹⁶² The Defence indicates that while, as per Chamber's instructions, the victims' lack of consent to have their identity disclosed was the only factor justifying continued extensive redactions, [REDACTED] of the victims included in the Sample did not have the opportunity to express their preference as they could not be reached by their LRVs. Nonetheless, the Chamber 'proceeded on the basis that all 171 victims refused to having their identity disclosed'.¹⁶³

64. The Chamber recalls that in the Reparations Order it indicated that victims may use official or unofficial identification documents, or any other means of demonstrating their identities.¹⁶⁴ In the absence of acceptable documentation, a statement signed by two credible witnesses establishing the identity of the victim and describing the relationship between the victim and any individual acting on their behalf is acceptable.¹⁶⁵

65. As to the Defence's submission that not all victims were reached to express their preference, the Chamber notes the LRVs' submissions on the impossibility to reach 68 victims due to the current security situation in Ituri, which is characterised by the resurgence of the conflict and large displacement of the population.¹⁶⁶ The Chamber further recalls that all the other victims that refused to have their identity disclosed to the Defence did so precisely out of concern for their security, and the dire security situation in Ituri, which the Chamber previously found to be genuine and objective.¹⁶⁷ In light of the above, the Chamber reiterates that the redactions implemented by the LRVs to the victims' dossiers, including information that might reveal their identity, strikes the necessary balance required by article 68(1) of the Statute. In addition, as will be elaborated further below, the Chamber considers that, notwithstanding the

¹⁶¹ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 25.

¹⁶² Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 24.

¹⁶³ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 25.

¹⁶⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 137.

¹⁶⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 137.

¹⁶⁶ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 16; *see also* CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 25-26, 29.

¹⁶⁷ 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, 20 April 2023, [ICC-01/04-02/06-2847](#), para. 22; *see also* paras 18-20.

redactions, the Defence has been able to make meaningful submissions on the victims' eligibility.

66. Upon consideration of the official and unofficial documents provided to prove the victims' identity included in the dossiers, the Chamber is satisfied that all 137 victims of the attacks provided proof of identity, consisting in a copy of their *carte d'électeur*. All 34 victims of crimes against child soldiers provided proof of identity, consisting of in either a copy of their *carte d'électeur*, or an *attestation de carence* or an *attestation* of the *chef de collectivité, officier d'état civil*, or the *chef de groupement* or an *attestation de naissance*. However, the Chamber finds that the quality of some of these documents is such that it did not allow it to precisely establish the victims' identity. The Chamber therefore concludes that 134 victims of the attacks and 32 child soldiers have successfully established their identity. Annex II details which victims are yet to establish their identity,¹⁶⁸ which – as previously decided¹⁶⁹ – can be done by the victims at the implementation stage, by submitting legible identity documents.

ii. Issues related to the second requirement: direct or indirect victim status

67. As noted above, the Chamber considers that the precondition for victims to be eligible for reparations is to demonstrate, on a balance of probabilities, that they were direct or indirect victim of the crimes for which Mr Ntaganda was convicted. In what follows, the Chamber will detail the way in which it has conducted this assessment for both, victims of crimes against child soldiers and victims of the attacks.

(a) *Victims of crimes against child soldiers*

Potentially eligible direct victims: child soldier status

68. The Chamber notes that for a direct victim's child soldier status to be established on a balance of probabilities the victim must have demonstrated to have been under the age of 15 years when conscripted or enlisted into the UPC/FPLC ranks between on or about 6 August 2002 and 31 December 2003, and/or used to participate actively in hostilities between on or about 6 August 2002 and on or about 30 May 2003.¹⁷⁰ The Chamber will now turn to these two criteria.

¹⁶⁸ Namely, victims a/30069/15, a/30408/20, a/30438/20, a/30282/15, a/30286/15.

¹⁶⁹ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 10.

¹⁷⁰ See *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 78.

- 1) The direct victim was under the age of 15 years of age during the time-frame relevant to the charges

69. In its submissions, the CRL1 indicates that all 34 victims she represents have established, to the required standard, that they were under the age of 15 when recruited into the UPC/FPLC between 6 August 2002 and 31 December 2003, and/or when they were used to participate actively in hostilities, and/or when they were raped while serving in the UPC/FPLC, between 6 August 2002 and 30 May 2003.¹⁷¹ The CRL1 further submits that, while some of the victims were unable to provide a specific date of birth, all of them demonstrated to fall within the required age range. In addition, the CLR1 indicates that it is sufficient to take into account the specific facts and circumstances of the case, and those of the victim, to determine that a victim meets the age requirement, as it has been established in the *Lubanga* case.¹⁷²

70. The Chamber notes that for a direct victim to have been under the age of 15 years during the time frame of the charges, he or she must have been born after 6 August 1987. The Chamber further recalls the Appeals Chamber's finding in the *Lubanga* case that it is not required that the exact age of the victim be established, but only that the victim was under the age of 15 years.¹⁷³

71. Having reviewed all the child soldiers' dossiers, with a view to verifying whether they fulfil this criterion, as further elaborated in Annex II, the Chamber concludes that all child soldiers in the sample have demonstrated to have been below the age of 15 at some point during the relevant time frame, i.e., between on or about 6 August 2002 and 31 December 2003.

- 2) The direct victim was conscripted or enlisted into the UPC/FPLC ranks between on or about 6 August 2002 and 31 December 2003, and/or used to participate actively in hostilities between on or about 6 August 2002 and 30 May 2003

72. In its submissions, the CLR1 informs that all 34 victims in the sample have demonstrated to have been recruited and/or used to participate actively in hostilities by the UPC/FPLC during the relevant time frame.¹⁷⁴ According to the CLR1, although the level of details provided by the victims varies, all victims have provided sufficient information for the

¹⁷¹ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 20.

¹⁷² CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 21.

¹⁷³ Appeals Chamber, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction ('Lubanga Appeals Judgment on Conviction'), 1 December 2014, [ICC-01/04-01/06-3121-Red](#), para. 198.

¹⁷⁴ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 22.

purpose of determining their eligibility, either in the victim application itself or upon providing supplementary information.¹⁷⁵ The CLR1 further submits that, as also determined in the *Lubanga* case, to meet the standard of proof and be found eligible, an applicant does not need to provide information on a predetermined set of specific criteria, but multiple factors can be taken into account, such as the victims' ability to describe their training camp, the battles they participated, the other chores they performed, and/or the names of certain commanders.¹⁷⁶

73. In its submission, the Defence generally challenges the child soldier status of the victims in the Sample, indicating that the information provided in their dossiers does not provide sufficient information regarding the victim's commanders and unit within UPC/FPC, when and how the victim demobilised, the victim's involvement in the different battles he mentioned, or who was with him.¹⁷⁷ According to the Defence, a thorough description of the battles should also be provided, including the armed groups involved, the locations, the outcome, and at a minimum, names and contact details of others who were with them, as well as information concerning the units and the commanders involved.¹⁷⁸ Relatedly, the Defence challenges the victims' eligibility by contesting the information provided in their dossiers on the grounds that some of the alleged battles either did not take place or are not mentioned in the Judgment.¹⁷⁹

74. The Chamber recalls that, in light of his conviction, Mr Ntaganda cannot be held liable for the recruitment and conscription of child soldiers into other armed groups, but only into the UPC/FPLC.¹⁸⁰ In that respect, the Chamber considers that, where a direct victim names at least one commander, or one of the training camps, that, depending on the circumstances, may suffice to establish that the victim did belong to the UPC/FPLC.¹⁸¹

75. As in the *Lubanga* case, the Chamber notes that its assessment of this aspect is qualitative rather than quantitative, as it does not require a set number of criteria to be met.¹⁸²

¹⁷⁵ As mentioned above, the CLR1 informed that it contacted only one victim to provide supplementary information, as she deemed this to be the only instance where the information available was insufficient to inform the eligibility, *see* CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), paras 18, 22-23, 26.

¹⁷⁶ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 25.

¹⁷⁷ *See* Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 26, 35-38, 39-47, 81-82, 84-86, 110, 112, 130, 132-135, 145-146, 158-159, 161-162, 164, 166.

¹⁷⁸ Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 26, 35-38, 39-47, 81-82, 84-86, 110, 112, 130, 132-135, 145-146, 158-159, 161-162, 164, 166.

¹⁷⁹ *See, for instance*, Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 26, 35, 39, 40-46, 82, 84-85, 87, 130, 132, 144-146, 158-160, 164, 166.

¹⁸⁰ Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 1116-1132.

¹⁸¹ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 89.

¹⁸² *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 90.

As such, the victim's eligibility is determined by having regard to the quality of all the evidence the victim provides, assessed according to the relevant standard, i.e. balance of probabilities.¹⁸³ The Chamber however underlines that it is not in a position to verify the veracity of the information provided, as it is not in a position to check if a certain commander was in fact part of the UPC/FPLC's hierarchy, as some may have been mentioned during the case by their nickname or not even mentioned.¹⁸⁴

76. The Chamber notes that the Judgment on the conviction of Mr Ntaganda, which sets out the scope of Mr Ntaganda's criminal responsibility and liability for reparations,¹⁸⁵ and was fully confirmed by the Appeals Chamber,¹⁸⁶ clearly delineates *the crimes* against child soldiers of which Mr Ntaganda was convicted, and the *time frame* of the charges, i.e. for enlistment or conscription, between on or about 6 August 2002 and 31 December 2003, and for use to participate actively in hostilities between on or about 6 August 2002 and 30 May 2003. The Judgment does not, however, exclusively enumerate the sites of the crimes committed or all Mr Ntaganda's co-perpetrators.¹⁸⁷ In addition, to the extent that the scope of the conviction in the present case overlaps with the *Lubanga* case,¹⁸⁸ the Chamber indicates that it will also rely, where applicable and relevant, to findings in the Judgment pursuant to Article 74 of the Statute against Mr Lubanga,¹⁸⁹ which was also confirmed by the Appeals Chamber.¹⁹⁰

77. The Defence submits that some victims who provide as date of conscription or enlistment a date outside the scope of the case, for instance, July 2002, raise the issue as to whether they were a member of the UPC/FPLC under the age of 15 years during the relevant time frame, arguing that what was sufficient to obtain participating victim status, but is not necessarily sufficient to obtain reparations.¹⁹¹ As such, the Defence draws attention to the scope of the charges and submits that inconsistencies and contradictions as to timing should be considered in this context, and treated with an appropriate level of scrutiny.¹⁹²

¹⁸³ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 90.

¹⁸⁴ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 90.

¹⁸⁵ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1199.

¹⁸⁶ Appeals Judgment on Conviction, [ICC-01/04-02/06-2666-Red](#).

¹⁸⁷ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 91.

¹⁸⁸ See also Reparations Order, [ICC-01/04-02/06-2659](#), paras 219-221.

¹⁸⁹ See Trial Chamber I, *The Prosecutor v Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute ('*Lubanga* Conviction Judgment'), 14 March 2012, [ICC-01/04-01/06-2842](#).

¹⁹⁰ *Lubanga* Appeals Judgment on Conviction, [ICC-01/04-01/06-3121-Red](#).

¹⁹¹ See, for instance, Annex A to the Defence May 2023 Submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 42, 43, 44, 84, 85, 86.

¹⁹² Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 30.

78. The Chamber recalls that conscription or enlistment is a continuous crime,¹⁹³ and consequently, the fact that a child soldier was enlisted or conscripted before the time frame of the charges does not necessarily mean that the enlistment or conscription did not extend into the relevant time frame.¹⁹⁴ It suffices that the child was enlisted or conscripted or that the child participated actively in hostilities during the time frame of the charges.¹⁹⁵

79. It follows that, even when the potentially eligible victims refer to dates outside the time frame for which Mr Ntaganda was convicted, it does not affect their credibility, for as long as the victim establishes in a coherent and credible manner their enlistment, conscription and/or use to participate actively in hostilities at any time during the relevant time frame, and that they were under the age of 15 years at the relevant time.¹⁹⁶

80. The Defence also challenges the victims' dossiers in relation to the training camps where victims allegedly trained, indicating that: (i) the Chamber did not make specific findings regarding Nioka training camp;¹⁹⁷ and (ii) victims could not have trained in Madro camp in February 2003¹⁹⁸ or April 2003¹⁹⁹ as the camp was closed as of the end of December 2002/beginning of January 2003.

81. Regarding the locations of training camps, the Chamber recalls that in the Judgment, the Chamber found that the UPC/FPLC operated different training camps, which included Mandro and its several locations, Rwampara, Bule, Fataki, Largu, Bunia, and Lingo.²⁰⁰ However, the Chamber underlines that it did not mean to be exhaustive in relation to the locations of the training camps enumerated in the Judgment, as illustrated by its use of the word 'including' when referring to such locations.²⁰¹ It follows that allegations by victims as to trainings in camps not included in the Judgment will be taken into considerations where the accounts are coherent and credible as to the facts alleged.²⁰²

¹⁹³ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1104.

¹⁹⁴ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 89.

¹⁹⁵ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 89.

¹⁹⁶ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 94.

¹⁹⁷ See, for instance, Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, p. 36.

¹⁹⁸ Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, p. 26.

¹⁹⁹ Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, p. 135.

²⁰⁰ Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 364-370.

²⁰¹ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 370.

²⁰² For a similar approach, see, *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 142.

82. As to the closure of Mandro camp, the Chamber recalls that in its Judgment, on the basis of the testimony of a witness, it found that the training camp became functional in May 2002, and was closed by the end of December 2002/beginning of January 2003.²⁰³ In addition, the Chamber notes that in the *Lubanga* case, referring to Mandro camp, a witness testified that when he ‘returned to Mandro in March 2003, it had been attacked and the recruits had left, leaving only soldiers who had taken up combat positions in the camp, including one “young” soldier who was a bodyguard for one of the commanders’.²⁰⁴ In light of the foregoing, the Chamber underlines that it will pay particular attention to allegations by victims as to their training in the Mandro camp, taking into account its findings above as to the months of operation.

- 3) The direct victim was a child soldier who was also a victim of rape and/or sexual slavery between on or about 6 August 2002 and 31 December 2003, in Ituri or a child born out of the crime of rape or sexual slavery committed between on or about 6 August 2002 and 31 December 2003

83. The Chamber notes that for the child soldiers who were also victims of rape and/or sexual slavery or children born out of these crimes, the direct victim must demonstrate, on a balance of probabilities, the status of child soldier, and additionally, having been a victim of rape and/or sexual slavery between on or about 6 August 2002 and 31 December 2003, in Ituri or that it was a child born out of the crime of rape or sexual slavery committed between on or about 6 August 2002 and 31 December 2003.

Potentially eligible indirect victims

84. The Chamber reiterates that, to qualify as indirect victim of the crimes against child soldiers, the person must prove, on a balance of probabilities: a) the child soldier status of the direct victim and, when applicable, that the direct victim was also a victim of rape and/or sexual slavery or was a child born out of rape or sexual slavery; and b) that the person falls within one of the categories of indirect victims recognised by the Chamber and that he or she have personally suffered harm because of the commission of a crime against the direct victim.

85. The Chamber indicates that the same criteria as indicated above are applicable to prove the child soldier status of the direct victim and where applicable, that they were also a victim

²⁰³ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 365.

²⁰⁴ The Chamber notes that Trial Chamber I found this witness’s testimony as credible and consistent, *Lubanga* Conviction Judgment, [ICC-01/04-01/06-2842](#), paras 809, 811.

of rape and/or sexual slavery or a children born out of rape or sexual slavery. However, as in the *Lubanga* case, the Chamber considers that it cannot require the same level of detail as from the direct victims, and as such, it will consider the information provided by indirect victims on a case-by-case basis, having regard to the indirect victims' credible and coherent account, and any other corroborating information or evidence.²⁰⁵

86. Regarding indirect victim status, the Chamber reiterates that in the Reparations Order it recognised the four categories of indirect victims previously identified in the *Lubanga* case,²⁰⁶ as upheld on appeals.²⁰⁷ In addition, the Chamber underlined that the key aspect is for indirect victims to prove that they suffered personal harm because of the commission of a crime against the direct victims.²⁰⁸ This can be demonstrated, for example, through the 'close personal relationship' with the direct victim or, in case of persons who do not have a close personal relationship, demonstrating that the direct victim was nevertheless of significant importance in their lives.²⁰⁹ The Chamber further notes that this approach was confirmed by the Appeals Chamber, which additionally found that in determining whether a direct victim was of significant importance to a person requesting to be recognised as an indirect victim, eligibility shall be guided by the criterion of 'special bonds of affection or dependence connecting the applicant with the direct victim', which 'captures the essence of inter-personal relations, the destruction of which is conducive to an injury on the part of indirect victims'.²¹⁰

87. The Chamber considers that, concretely, this could be established through multiple types of documents, including an electoral card where the parents' names appear, or by statements of two credible witnesses establishing that the indirect victim lived in the same household with the direct victim,²¹¹ or by an official document signed and stamped by a chief of locality demonstrating kinship, or any official or unofficial document demonstrating the special bond or dependence between the direct and indirect victim.

²⁰⁵ See also, *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 161, 163, 165.

²⁰⁶ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 139.

²⁰⁷ *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 6.

²⁰⁸ See Reparations Order, [ICC-01/04-02/06-2659](#), paras 125-128.

²⁰⁹ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 127.

²¹⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 628.

²¹¹ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 145.

Chamber determination

88. Having analysed the 34 dossiers of victims of crimes against child soldier crimes, using the aforementioned criteria, the Chamber has come to the conclusion that (i) 32 of them have established, on a balance of probabilities, their eligibility as direct victims of conscription or enlistment into the UPC/FPLC between on or about 6 August 2002 and 31 December 2003, and/or used to participate actively in hostilities between on or about 6 August 2002 and on or about 30 May 2003; (ii) 16 victims have additionally established, on a balance of probabilities, their eligibility as direct victims of rape and/or sexual slavery between on or about 6 August 2002 and 31 December 2003, in Ituri; and (iii) two victims have provisionally established, on a balance of probabilities, their eligibility as direct victims of conscription or enlistment into the UPC/FPLC between on or about 6 August 2002 and 31 December 2003, and/or used to participate actively in hostilities between on or about 6 August 2002 and on or about 30 May 2003. The Chamber notes that the two victims deemed provisionally eligible victims will be entitled to benefit from reparations, following the submission of legible documents to establish their identity at the implementation stage.²¹²

89. The Chamber notes that no victims in the Sample claimed to be an indirect victim of the crimes against child soldiers.

(b) Victims of the attacks

Potentially eligible direct victims

90. As noted above, regarding the second requirement, victims of the attacks will need to demonstrate, on a balance of probabilities, to be a direct victim of at least one of the crimes committed during the First or Second Operation and for which Mr Ntaganda was convicted.²¹³ In addition, the Chamber recalls that the victims have amply explained the reasons for their inability to produce additional documents, which has been corroborated by multiple other sources.²¹⁴ Accordingly, the Chamber will verify (i) whether the victims' account corresponds to the Chamber's findings as to the crimes for which Mr Ntaganda was convicted; and (ii) the coherence and credibility of the victims' account, and whether it is consistent with other victims' accounts. The Chamber will now turn to these two criteria.

²¹² October 2022 Order, [ICC-01/04-02/06-2786](#), para. 10.

²¹³ See section III.A.3.b) above.

²¹⁴ See section III.A.4.a)iv. above.

- 1) Whether the victims' account corresponds to the Chamber's findings as to crimes for which Mr Ntaganda was convicted.

91. The Chamber notes that, as it held regarding child soldiers, its assessment of this requirement is qualitative rather than quantitative. Victims do not need to provide information on a predetermined set of specific criteria, but rather multiple factors can be taken into account. In its assessment, the Chamber will pay attention to the information provided in the victims' dossier, to verify whether the date of the event, village/town, description of events as pertaining to the various types of crimes, and perpetrators correspond to the Chamber's findings in its Judgment regarding the crimes for which Mr Ntaganda was found guilty, in light of the clarifications provided in its decision from 15 December 2020 (the 'December 2020 Decision').²¹⁵

92. To this end, the Chamber recalls that, in light of his conviction, Mr Ntaganda cannot be held liable for crimes committed by other armed groups, but only by the UPC/FPLC.²¹⁶ In that respect, the Chamber considers that, where a direct victim names the UPC/FPLC soldiers or Hema civilians, in the case of pillaging in Mongbwalu,²¹⁷ as being responsible for their suffering, that might, depending on the circumstances, suffice to establish that the victim suffered crimes at the hand of the UPC/FPLC.²¹⁸

93. Regarding the scope of the case, the Chamber notes that the CLR2 submits that, in light of the Chamber's findings in the Conviction and Sentencing Judgments as to the widespread and systematic nature and scale of the crimes committed by Ntaganda, the case record sufficiently demonstrates that, on a balance of probabilities, almost all victims of the attacks included in the Sample suffered from the crimes they described.²¹⁹ The CLR2 also argues that this is further corroborated by the similarities of the account of the different victims of the attacks.²²⁰

94. The CLR2 also draws the Chamber's attention to a common characteristic in the supplementary information provided by the victims, in that the majority of inhabitants of each

²¹⁵ Decision on issues raised in the Registry's First Report on Reparations ('December 2020 Decision'), 15 December 2020, [ICC-01/04-02/06-2630](#).

²¹⁶ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1199, disposition.

²¹⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 114; Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 1199, 1032, 1035-1036; for factual findings, *see* paras 512, 514-517.

²¹⁸ *See Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 89.

²¹⁹ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 35-37.

²²⁰ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 37.

of the affected villages were forced to flee the attacks and to hide in the nearby bush/forest for safety, where they endured difficult conditions for extensive periods of time.²²¹ The CLR2 posits that the continuing persecution in the bush/forest did not just affect the victims who originated from villages for which the Chamber rendered ‘positive findings’, but that the persecution also affected victims from villages in which no ‘positive findings’ were determined.²²² The CLR2 posits that victims who fled their village before the start of attacks may also be found eligible provided that they personally suffered harm as a result of being forced to flee and hide in the bush/forest around the locations for which the Chamber reached ‘positive findings’.²²³

95. In its submissions, the Defence stresses that not all victims who suffered harm during the First or Second Operations are eligible for reparations, and that, instead, there must be a clear link to a crime for which Mr Ntaganda was convicted, as set forth in the Judgment.²²⁴

96. At the outset, the Chamber notes, as discussed in more detail below, that it was not proven at trial that Mr Ntaganda was responsible for crimes committed against the entirety of the 13 communities included in the conviction.²²⁵ Further, the Chamber recalls that, for the sake of clarity, it has detailed in Annex I to the present Addendum the specific crimes and locations for which Mr Ntaganda was convicted, particularly in relation to the victims of the attacks. On this point, as noted by the Defence,²²⁶ not all victims who suffered harm during the First or Second Operations are eligible for reparations. In effect, the Chamber will strictly take into account its positive and negative findings as to Mr Ntaganda’s criminal responsibility, as included in the Judgment, in light of the aspects further clarified in the December 2020 Decision.²²⁷ Detailed conclusions regarding each of the victims in the sample are included in Annex II.

97. As to the alleged date of the events and the ‘*Shika Na Mukono*’ operation, the Chamber notes the Defence’s submissions that the standard of ‘sufficiently close in time to the relevant time frames’, introduced by the Chamber for participation purposes is not precise enough for reparations, and that the standard of the ‘balance of probabilities’ necessitates greater

²²¹ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 24.

²²² CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 24.

²²³ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 24.

²²⁴ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), paras 32-33, 35.

²²⁵ See Section III.E.2 below.

²²⁶ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), paras 32-33, 35.

²²⁷ December 2020 Decision, [ICC-01/04-02/06-2630](#).

specificity in the temporal scope.²²⁸ While the Defence acknowledges the impact of the passing of time on the memory of victims, it submits that careful scrutiny must be given to the timing of the harm alleged by the victims, and the link with the crimes.²²⁹ According to the Defence, the starting point for the Chamber's analysis must be that the date of the harm must be known to a genuine victim, and inconsistencies and contradictions as to the timing should be considered in this context, and treated with an appropriate level of scrutiny.²³⁰ In addition, the Defence takes issue with the victims' general indication of the time of the alleged crimes during 'Shika Na Mukono', which it alleges is insufficient to obtain reparations.²³¹

98. As to the dates of alleged events and the reference to the 'Shika Na Mukono' operation, the Chamber recalls that in its Conviction Judgment and in the December 2020 Decision, it addressed the matter of inconsistencies and inaccuracies regarding dates in the victims' accounts.²³² Therein, the Chamber acknowledged that although it considered the testimony of dozens of witnesses credible and reliable regarding the occurrence and details of the events, in light of 'the time elapsed since the relevant events took place, as well the likely impact of the events on the witnesses' ability to remember specific dates', it did not rely on their testimonies to establish the precise dates of the attacks.²³³ As such, the Chamber reiterates that inconsistencies, contradictions and particularly inaccuracies as to dates, including the reference to the Shika Na Mukono operation, do not automatically exclude victims from their eligibility to reparations, and the assessment should be made on a case-by-case basis, depending on the victim's personal circumstances, and taking into account all aspects of their victims' dossiers, as elaborated above.

99. As to the facts as pertaining to the various types of crimes, the Chamber recalls that in its Conviction Judgment, it set out in detail, based on its factual findings, the underlying acts for each of the 18 counts for which Mr Ntaganda was convicted. As such, in assessing the victims' dossiers, the Chamber has taken into consideration the victims' accounts as a whole, paying attention to facts alleged by the victims, including the dates, village, description of events, and verifying whether they correspond to the crimes included in the Conviction

²²⁸ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 27.

²²⁹ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 29.

²³⁰ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 30.

²³¹ *See, for instance*, Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 12-13, 15-17, 60-64, 131, 140-141, 148, 152-153, 155, 166-167.

²³² Conviction Judgment, [ICC-01/04-02/06-2359](#), footnote 1391; December 2020 Decision, [ICC-01/04-02/06-2630](#), paras 37, 42.

²³³ Conviction Judgment, [ICC-01/04-02/06-2359](#), footnote 1391.

Judgment, as specified in the December 2020 Decision. If the Chamber has made either no findings or has made negative findings in relation to the facts alleged by the victims, the Chamber cannot consider the person to be a victim of the crimes for which Mr Ntaganda was convicted. To the contrary, if the Chamber has made a positive finding in relation to the facts alleged by the victims, the Chamber will proceed to assess the information in the victims' dossier, particularly, the intrinsic coherence and credibility of the victims' account and whether it is consistent with the accounts other victims, in order to determine whether the person has established, on a balance of probabilities, to be a victim of the crimes for which Mr Ntaganda was convicted.

2) The coherence, credibility, and consistency of the victims' accounts

100. As outlined above, the CLR2 submits that a series of factors should be considered when determining what constitutes 'a coherent and credible' in relation to the victims of the attacks.²³⁴ In its submissions, the Defence takes issue with the CLR2's submission that the eligibility of victims should be determined in accordance with the standard of 'credible and coherent' account, warning about the risk that anyone applying for reparations with a 'good' narrative could be deemed eligible.²³⁵

101. The Defence submits that, instead, the Chamber should consider the following criteria when assessing the victim's coherence and credibility: (i) the victims' account must be assessed on the basis of the information provided, and how it fits with the events established in the existing evidence. The plausibility of the narrative provided by a victim is one of the most important factors to be considered when assessing the weight which can be attributed to their application, which can be deducted from the details regarding the events as they unfolded; (ii) there must be no significant inconsistencies or contradictions in the victim's narrative, and in particular, if a narrative contains descriptions which clearly do not match the evidence on the record, in part or in whole, it cannot be considered coherent and credible; and (iii) all parties must avoid engaging in speculation. The Defence notes that the CLR2 alleged that 'is more likely than not' that some victims suffered certain crimes, although the applicant never having suffered the crimes, and submits that this amounts to speculation.²³⁶

²³⁴ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 30.

²³⁵ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 44.

²³⁶ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), paras 45-48.

102. As to the Defence's concern on the Chamber's assessment of the dossiers and approach to the standard of 'credible and coherent' account, the Chamber recalls its findings above as to the applicable standard. Furthermore, the Chamber reiterates that, in accordance with the Court's previous jurisprudence,²³⁷ slight discrepancies or information that do not fully overlap when victims submitted more than one application or have provided supplementary information, does not, on its face, cast doubt on the victims' credibility. Regarding alleged speculations as to whether the victims have in fact suffered certain crimes, the Chamber reiterates that when assessing the victims' dossiers, it pays close attention and assesses the information as provided by the victims in their accounts and does not make inferences as to possible crimes.²³⁸

103. As such, when assessing the victims' accounts, the Chamber has paid attention to their intrinsic coherence and credibility, and whether they are consistent with other victims' accounts in relation to the facts alleged. Thereafter, having regard to the victims' account and in light of its own findings in the Conviction Judgment, as specified in the December 2020 Decision, the Chamber concludes whether the applicant has established, on a balance of probabilities, to be a direct victim of the crimes for which Mr Ntaganda was convicted.²³⁹

3) Victims of rape and/or sexual slavery

104. The Chamber notes that the victims of the attacks may have also suffered rape and/or sexual slavery for which Mr Ntaganda's was convicted or be children born out of these crimes.²⁴⁰ In accordance with the Reparations Order's findings,²⁴¹ which were accepted by the Appeals Chamber,²⁴² the victim's coherent and credible account shall be accepted as sufficient evidence to establish their eligibility on a balance of probabilities.

Potentially eligible indirect victims

105. The Chamber reiterates that, to qualify as an indirect victim of the attacks, the person must prove, on a balance of probabilities: a) the victim status of the direct victim; and b) that the person falls within one of the categories of indirect victims recognised by the Chamber and

²³⁷ See also *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 64; *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 70.

²³⁸ For the Chamber's detailed approach see Annex I.

²³⁹ For a similar approach, see, *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 50.

²⁴⁰ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1199.

²⁴¹ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 139.

²⁴² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 714.

that he or she have personally suffered harm because of the commission of a crime against the direct victim.

106. The Chamber notes that the same criteria as indicated above are applicable to prove the victim's status of the direct victim. However, as it was also held in the case of child soldiers, the Chamber considers that it cannot require the same level of detail as from the direct victims, and as such, it will consider the information provided by indirect victims on a case-by-case basis, having regard to the indirect victims' credible and coherent account, and any other corroborating information or evidence.²⁴³

107. Regarding the indirect victim status and the personal harm suffered by the indirect victim because of the commission of a crime against the direct victim, the Chamber notes that the same criteria as indicated above for child soldiers are applicable in relation to the victims of the attacks.²⁴⁴

Issues related to the status of victims

108. In its submissions, the Defence challenges the eligibility of victims in relation to Counts 1 and 2, and Count 3.²⁴⁵ Specifically, regarding counts 1 and 2, the Defence indicates that the occupation at the time of the persons allegedly murdered must be provided, to understand whether the victims or members of the immediate family took place in fighting, referring to victims allegedly murdered in Kobu and Sayo.²⁴⁶ The Chamber recalls that in its Judgment, it found beyond reasonable doubt that people protected under international humanitarian law ('IHL') were killed in Kobu and Sayo.²⁴⁷ In light of the positive findings made in the Conviction Judgment, the Chamber considers that, on a balance of probabilities, it is more likely than not that, if the victims' applications concern the killing of people in Kobu and Sayo, that the direct victims were civilians not actively taking part in hostilities or otherwise persons *hors de combat*.

²⁴³ See also, *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 161, 163, 165.

²⁴⁴ See section III.A.4.b.ii.(a) above.

²⁴⁵ See, for instance, Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 6, 9, 11, 20, 21, 33, 35, 49, 77, 87, 92, 101-104, 106, 108, 109, 114, 118-120, 127, 149, 151, 168.

²⁴⁶ See, for instance, Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 11, 20, 33, 35, 49, 77, 87, 104, 109, 114, 127, 151, 168.

²⁴⁷ For the Chamber's positive findings in relation to Kobu and Sayo, see Annex I to the Addendum.

109. The Chamber further recalls the general presumption of civilian status under IHL and that, in case of doubt, a person shall be considered to be a civilian.²⁴⁸ The present proceedings do not concern the determination of guilt of an accused beyond reasonable doubt, for which findings were already made in the Conviction Judgment. The Chamber therefore does not consider that the absence of information in the applications, concerning the occupation of the victims (or of their immediate family members) at the time of the alleged murder, precludes it from finding on a balance of probabilities that the victims are entitled to reparations. In this regard, whether the applications actually fall within the scope of the positive findings made in the Conviction Judgment for Kobu and Sayo will ultimately depend on the Chamber's assessment of the victims' account, as well as their coherence, credibility, and consistency.

110. The Chamber notes that the Defence also made similar submissions regarding the status and occupation of victims and/or their family members in relation to Count 3.²⁴⁹ The Chamber recalls that in its Conviction Judgment, it found beyond reasonable doubt that attacks against civilians as a war crime were carried out in Mongbwalu and Sayo in the context of the First Operation, and in Bambu, Jitchu, and Buli, in the context of the Second Operation.²⁵⁰

111. With regard to Mongbwalu and Sayo, the Chamber notes that the Conviction Judgment found beyond reasonable doubt that the UPC/FPLC indiscriminately attacked all Lendu, civilians and fighters alike. It also recalled that the incidents under Count 3 relate to the intended object of the attacks and not to who was actually killed as a result of armed force,²⁵¹ and as such found that the UPC/FPLC directed an attack against civilians.²⁵² Similarly, the Chamber found that the UPC/FPLC soldiers fired indiscriminately against civilians in Bambu, and that no reasonable person could have believed that the civilians shot at during the assaults on Jitchu²⁵³ and Buli were directly participating in hostilities.²⁵⁴

²⁴⁸ See Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 883.

²⁴⁹ See, for instance, Annex A to the Defence's submissions, ICC-01/04-02/06-2851-Conf-AnxA, pp. 6, 9, 92, 101-103, 106, 108, 109, 114, 118-120, 149.

²⁵⁰ For the Chamber's positive findings in relation to attacks against civilians as a war crime, see Annex I to the Addendum.

²⁵¹ The Chamber notes that with regard to three applications, the Defence submissions encompassed both Counts 1 and/or 2, and Count 3. See the Annex, ICC-01/04-02/06-2851-Conf-AnxA, in particular, applications a/00547/13 and a/000795/13, at pp. 33, 49-50, respectively.

²⁵² See Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 923.

²⁵³ The Chamber notes that the Defence's submissions encompassed Counts 1, 2 and 3 with regard to application a/01720/13. See the Annex, ICC-01/04-02/06-2851-Conf-AnxA, pp. 110-111.

²⁵⁴ See Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 926-927.

112. In light of the findings made in the Conviction Judgment and taking into account the presumption of civilian status under IHL, the Chamber considers that the account of persons claiming to be victims of Mongbwalu, Sayo, Bambu, Jitchu, and Buli shall be assessed on a case-by-case basis in order to determine whether they are persons protected under IHL. Consequently, the Chamber does not consider that the absence of information concerning the occupation of the victims (or of their immediate family members) in their dossiers precludes a finding, on a balance of probabilities, that the victims are entitled to reparations.

Chamber determination

113. Having analysed the 137 dossiers of victims of the attacks using the aforementioned criteria, the Chamber has come to the conclusion that (i) 89 of them have established, on a balance of probabilities, their eligibility as direct victims of the attacks; a (ii) 27 of them have established, on a balance of probabilities, their eligibility as indirect victims of the attacks;²⁵⁵ (iii) eight have provisionally established, on a balance of probabilities, their eligibility as direct victims of the attacks;²⁵⁶ and iv) 39 victims have not established, on a balance of probabilities, their eligibility as direct or indirect victims of the attacks. The Chamber notes that the eight victims that have provisionally established their eligibility, will be entitled to benefit from reparations following the submission of legible documents to establish their identity,²⁵⁷ or after the Registry establishes the relevant distance between the victims' village and the location for which the Chamber made a positive finding in the Conviction Judgment, as elaborated in Annex II.²⁵⁸ As previously held, the victims assessed as not eligible will have the opportunity to supplement their dossiers and clarify their accounts at the implementation stage.²⁵⁹

iii. Issues related to the third requirement: harm

(a) Reparations Order

114. The Chamber recalls that in its Reparations Order, after the Chamber has considered all relevant information before it - including the Conviction Judgment, the Sentencing Judgment, the evidence submitted during the trial and sentencing proceedings, observations by the parties and other participants in the proceedings, including the Registry, the TFCV, and the Appointed

²⁵⁵ The Chamber clarifies that 26 victims have established to be both direct and indirect victims of certain crimes.

²⁵⁶ The Chamber clarifies that in fact one of these victims, a/01635/13, has a provisional status as both direct and indirect victim.

²⁵⁷ See, victims a/30069/15, a/30282/15, and a/30286/15.

²⁵⁸ See, victims a/01200/13, a/01269/13, a/30003/15, a/01566/13, a/01635/13.

²⁵⁹ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 10.

Experts²⁶⁰ - it defined the different types of harm caused to direct and indirect victims of crimes against child soldiers²⁶¹ and of the attacks.²⁶²

115. In addition, in light of the harms identified and being mindful of the difficulties to obtain or produce evidence to substantiate them, the Chamber decided that the use of presumptions was appropriate,²⁶³ once a victim has proved, on a balance of probabilities, to be a victim of the crimes for which Mr Ntaganda was convicted.²⁶⁴ Accordingly, in the Reparations Order, the Chamber presumed: 1) material, physical, and psychological harm for (i) former child soldiers; (ii) direct victims of rape and sexual slavery; and (iii) indirect victims who are close family members of direct victims of the crimes against child soldiers, rape, and sexual slavery;²⁶⁵ 2) physical and psychological harm for (i) direct victims of attempted murder; and (ii) direct victims of the crimes committed during the attacks, who personally experienced the attacks;²⁶⁶ and 3) psychological harm for (i) victims who lost their home or material assets with a significant effect on their daily life; and (ii) indirect victims who are close family members of direct victims of murder.²⁶⁷

(b) Appeals Chamber findings

116. Regarding the presumptions of harm established in the Reparations Order, the Appeals Judgment noted that the Chamber ‘duly referred to the information on which it relied to make the seven presumptions, i.e. the Conviction Judgment, the Sentencing Judgment, the expert reports, submissions from the TFV and Victims Group 2, and jurisprudence from the Appeals Chamber as well as decisions from other chambers’.²⁶⁸ Furthermore, the Appeals Chamber noted that the Defence was able to fully challenge the expert reports and the submissions of the victims and the TFV on which the Chamber relied to make the presumptions in the case at hand. As such, it concluded that it did not find an error in the way that the Chamber adopted these presumptions.²⁶⁹ However, as it will be addressed in detail below, regarding the presumption of physical harm for the victims of the attacks, the Appeals Chamber found that

²⁶⁰ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 148.

²⁶¹ See Reparations Order, [ICC-01/04-02/06-2659](#), paras 161-1176, 181, 183.

²⁶² See Reparations Order, [ICC-01/04-02/06-2659](#), paras 148-160, 177-182.

²⁶³ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 145.

²⁶⁴ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 143.

²⁶⁵ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 145.

²⁶⁶ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 146.

²⁶⁷ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 146.

²⁶⁸ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 688.

²⁶⁹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 688.

the Chamber erred in reaching, without more, its conclusions²⁷⁰ and remanded the matter for the Chamber to address the Defence's submissions and provide sufficient reasoning for its findings.²⁷¹

117. At the same time, the Appeals Chamber observed that the aforementioned is without prejudice to the Defence's right to challenge the applicability of presumptions for the purposes of the Sample and in relation to the procedure that the Chamber will eventually adopt for the screening of victims' eligibility at the implementation stage.²⁷² As the Appeals Chamber further indicated, considering that presumptions of fact are rebuttable, and shift the burden of proof to those who wish to challenge their applicability, it is expected that the Chamber will devise an avenue whereby the Defence is provided with a reasonable opportunity to rebut presumptions in proceedings before the Chamber.²⁷³ This would be complied, the Appeals Chamber noted, by granting the Defence access, when the Chamber assesses the Sample, to at least a minimum amount of information contained in the applications, with the necessary redactions, so as to allow it to make specific submissions and provide evidence to rebut the presumptions.²⁷⁴

(c) Parties submissions

118. In their submissions, the LRVs refer to the presumptions to establish certain harms as included in the Reparations Order, which in their view have not been disturbed by the Appeals Chamber and remain applicable.²⁷⁵ In particular, the CLR2 submits that insofar as the victims of the attacks satisfy the standard of eligibility, they should be found eligible for reparations, since the Chamber held that presumptions are applicable regarding their harm.²⁷⁶ The CLR2 further submits that presumptions can apply when circumstances are such that obtaining or providing evidence other than by providing a coherent and credible narrative would be extremely onerous or impossible, and indicated its support for the presumptions as established by the Chamber.²⁷⁷ The CLR2 further submits that contrary to the *Katanga* case, where individual reparations were ordered which required the specific assessment of individual harm, in light of the type of reparations awarded in this case, i.e. collective reparations with

²⁷⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 701.

²⁷¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 701.

²⁷² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 689.

²⁷³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 689.

²⁷⁴ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 689.

²⁷⁵ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 10; *see also* CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 38.

²⁷⁶ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 38.

²⁷⁷ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 38.

individualised components, this is not required in the present case.²⁷⁸ Instead, the CLR2 argues, for victims of destruction of property, pillaging, or those who were forced to flee the violence and hide in the bush/forest, establishing exactly how the victim was disadvantaged is not required for the purposes of the eligibility assessment, as the majority, if not all victims, suffered ‘multi-dimensional harm’ due to the ‘mass victimisation’ involved.²⁷⁹

119. In its submissions, the Defence indicates that the description of the harm suffered and how it was caused is important, and a victim’s narrative which simply refers to harm suffered as a result of an attack by the UPC/FPLC is not sufficient.²⁸⁰ The Defence reiterates that for a claim to be sufficiently detailed and verifiable, it must be supported by information or documents, and where an applicant fails to provide the required information or documents, they must provide an adequate justification for why the materials could not be obtained, which must itself be verifiable.²⁸¹ The Defence further indicates that, while it accepts that formal recognition of harm may not be possible (e.g., through a death certificate or hospital records), it is not sufficient to simply stop the investigation there, some other proof must be furnished, including, at a minimum, declarations from non-interested third parties to establish any details for which the sole source of information would otherwise be the applicant.²⁸²

120. Furthermore, the Defence exemplifies the information that should be required where there is an allegation of harm for the destruction of a victim’s house.²⁸³ In support of this allegation, the Defence submits that the applicant must provide proof of ownership, in addition to either: (i) proof of this destruction, in the form of official records, other documentary evidence or the testimony of witnesses, relatives or others; or (ii) if there is no proof of the destruction, evidence justifying why there is no proof of destruction, including any of the same forms of evidence.²⁸⁴ According to the Defence, it is not sufficient for the victims to state that they have lost the property title or that the fact that their house was destroyed could be confirmed by the neighbours at that time whose location is not known.²⁸⁵ Instead, the applicant must provide all known details of the relevant attack, as well as details of the original document

²⁷⁸ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), paras 39-40.

²⁷⁹ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 40.

²⁸⁰ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 34.

²⁸¹ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 38.

²⁸² Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 38.

²⁸³ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 39.

²⁸⁴ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 39.

²⁸⁵ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 39.

and why it cannot be replaced, and at minimum, the applicant should provide the names and particulars of those who may be aware of the circumstances of the harm suffered.²⁸⁶

(d) Chamber determination

121. At the outset, the Chamber notes that, in accordance with the Appeals Judgment,²⁸⁷ the Defence has received all the victims' dossiers included in the Sample, with the appropriate redactions, and has had the opportunity to make submissions and comment on them.

122. In addition, the Chamber notes that in their submissions on the Sample, the LRVs support the use of presumptions as established in the Reparations Order.²⁸⁸ The Defence did not challenge, as such, the use of presumptions, but reiterated what is in its view needed to demonstrate the existence of any type of harm.²⁸⁹ In light of the above, the Chamber maintains its use of presumptions as adopted in the Reparations Order, with the exception of the presumption of physical harm for victims of the attacks, which is addressed by the Chamber in section D below.

Victims of crimes against child soldiers

123. The Chamber maintains its presumptions of material, physical, and psychological harm for (i) former child soldiers; (ii) direct victims of rape and sexual slavery; and (iii) indirect victims who are close family members of direct victims of the crimes against child soldiers, rape, and sexual slavery.²⁹⁰ The Chamber recalls that close family members apart from parents, children, spouses, and siblings²⁹¹ are those members of a family living within the same household.

124. Regarding the harm of indirect victims who are not close family members, i.e. those members of a family beyond parents, children, spouses, siblings, and others not living within the same household,²⁹² the Chamber recalls that what is essential for indirect victims to demonstrate is that they have suffered personal harm as a result of the commission of the crimes

²⁸⁶ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 39.

²⁸⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 689.

²⁸⁸ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 10; *see also* CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 38.

²⁸⁹ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), paras 34, 38.

²⁹⁰ *See* Reparations Order, [ICC-01/04-02/06-2659](#), para. 145.

²⁹¹ As adopted at the pre-trial stage in the same case by the Single Judge, *see* Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, 15 January 2014, [ICC-01/04-02/06-211](#), para. 48.

²⁹² *See* Reparations Order, [ICC-01/04-02/06-2659](#), para. 145.

committed against the direct victim.²⁹³ To establish that, in light of the lack of the proof of documentation to establish the existence of harm, and taking into account that the victims will first have to establish their eligibility as direct/indirect victims on the basis of the elements elaborated above, the Chamber will have regard to the victims' coherent and credible account as to the harm suffered.

Victims of the attacks

125. Similarly, the Chamber maintains its presumptions of 1) material, physical, and psychological harm for (i) direct victims of rape and sexual slavery; and (ii) indirect victims who are close family members of direct victims of rape, and sexual slavery;²⁹⁴ 2) psychological harm for (i) direct victims of attempted murder; and (ii) direct victims of the crimes committed during the attacks, who personally experienced the attacks;²⁹⁵ and 3) psychological harm for (i) victims who lost their home or material assets with a significant effect on their daily life; and (ii) indirect victims who are close family members of direct victims of murder.²⁹⁶

126. In addition to the presumptions above, the Chamber notes that in their dossiers, the victims allege that they have also suffered other types of harm as a result of the crimes for which Mr Ntaganda was found guilty. Having carefully analysed the victims' allegations, confronted with the same problem of lack of documentation to support the existence of harm, and taking into account that the victims will first have to establish their eligibility as direct/indirect victim on the basis of the elements elaborated above, the Chamber has decided to approach the various types of harm that are not covered by presumptions as set out below.

127. Regarding material harm: i) as a result of destruction of property and/or pillaging, the Chamber notes that, once a victim has established on a balance of probabilities to be a direct victim of destruction of property and/or pillaging, the Chamber does not consider it necessary to scrutinise the specifics of the material harm suffered by the victim, or determine its exact amount, in light of the nature of these crimes (that inherently presuppose material harm) and the type of reparations awarded in this case – service-based collective reparations with individualised components, as opposed to individual reparations; ii) when as a result of the murder of a direct victim who is a family member of the indirect victim who became

²⁹³ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 125.

²⁹⁴ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 145.

²⁹⁵ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 146.

²⁹⁶ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 146.

responsible for the care of the surviving dependants of the direct victim of murder, the Chamber considers that the victim has also suffered material harm as a result of their relative's death, as long as the person can demonstrate a) the kinship between the deceased direct victim and their dependants; and b) that the applicant is a family member of the deceased direct victim who is taking care of the surviving dependants.

128. Regarding transgenerational harm, as set out in more detail below, a child of a direct victim claiming to have suffered transgenerational harm, would generally need to prove: (i) that a direct victim suffered harm as a result of a crime for which Mr Ntaganda was convicted; (ii) that the child of the direct victim suffered harm; (iii) that the child's harm arises out of the harm suffered by the direct victim; and (iv) the parent-child relationship.

129. Regarding the harm of indirect victims who are not close family members, i.e., those members of a family not living within the same household,²⁹⁷ the Chamber recalls that what is essential for indirect victims to demonstrate is that they have suffered personal harm as a result of the commission of the crimes committed against the direct victim.²⁹⁸ To establish that, the Chamber will assess whether the victim's account of the harm suffered is coherent and credible.

130. Regarding any other harm as a result of crimes not covered by presumptions, the Chamber notes that once an applicant has established on a balance of probabilities to be a direct or indirect victim of any of the crimes included in the Conviction Judgment, the Chamber will assess whether the victims' account of the harm suffered is credible and coherent.

iv. Issues related to the fourth requirement: causal link between the harm and the crimes

131. The Chamber recalls that in its Conviction Judgment it has found Mr Ntaganda guilty as direct perpetrator and as an indirect co-perpetrator of 18 counts of war crimes and crimes against humanity, which affected child soldiers, victims of the attacks, their families, and other indirect victims.²⁹⁹

132. The Chamber recalls that preconditions to qualify as a i) victim of crimes against child soldiers, direct or indirect, is to establish on a balance of probabilities that a child under the age of 15 years was conscripted or enlisted into the UPC/FPLC or was used by the UPC/FPLC to

²⁹⁷ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 145.

²⁹⁸ See Reparations Order, [ICC-01/04-02/06-2659](#), para. 125.

²⁹⁹ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1199, disposition.

participate actively in hostilities during the relevant time frame; and ii) victim of attacks, direct or indirect, is to establish on a balance of probabilities to have suffered as a result of any of the crimes committed during the attacks and for which Mr Ntaganda was found guilty.

133. The Chamber further recalls its use of presumptions of harm in the case of both victims of the crimes against child soldiers and victims of the attacks, as long as the applicant has demonstrated to be a direct or indirect victim of the crimes for which Mr Ntaganda was found guilty. For instances where presumptions of harm do not apply, the Chamber will scrutinise and establish the alleged harm in accordance with the criteria established above. In the case of indirect victims other than close family members, as stated above, the Chamber will assess whether they suffered personal harm as a result of the commission of the crimes committed against the direct victim.

134. As such, the Chamber concludes that as long as the victims demonstrate their status as direct and indirect victims and whether, on that basis, their harm is presumed, or it has been established in the manner detailed above, the causal link between the harm and the crimes of which Mr Ntaganda was convicted is also established.³⁰⁰

c) Additional issues arising from the analysis of the Sample

i. Deceased victims

135. In its submissions, the CLR2 informs that four victims in the Sample passed away, and that no requests for a resumption of action were filed by their family members.³⁰¹ The CLR2 submits that this fact should not preclude the Chamber from determining the eligibility of the concerned victims' dossiers, and that if an eligible victim for reparations dies before receiving reparations, the victim's descendants or successors shall be equally entitled to them.³⁰² Regarding the victims that passed away, the Defence submits that people willing to receive reparations as indirect victims need to provide a proof of kinship.³⁰³

136. The Chamber recalls that in the Reparations Order it established that in the event that a victim who was found eligible for reparations dies before receiving them, the victim's descendants or successors shall be equally entitled to them.³⁰⁴ The Chamber also clarified that

³⁰⁰ For a similar approach *see*, *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 186-189; *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), paras 164-167.

³⁰¹ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 17.

³⁰² CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 18.

³⁰³ *See, for instance*, Annex A to the Defence May Submissions, ICC-01/04-02/06-2851-Conf-AnxA, p. 52.

³⁰⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 40.

indirect victims who suffered personal harm are entitled to reparations in their own right, regardless of whether they are the rightful successors of the deceased victim.³⁰⁵ The Chamber notes that these findings were not disturbed by the Appeals Judgment.³⁰⁶

137. Having regard to the parties' submissions, in order to expedite the process of potential resumption of actions that might be submitted in the future by family members of deceased beneficiaries, the Chamber considers it appropriate to set out a system whereby reparations may be passed down by deceased beneficiaries to relevant designated family members. Consequently, and in accordance with the Court's jurisprudence,³⁰⁷ the Chamber rules that the successor to reparations needs, to establish: (i) the beneficiary status of the deceased victim, i.e. establish his or her identity, status as direct or indirect victim, the harm suffered, and the causal link; (ii) the death of the victim beneficiary; (iii) his or her family relationship with the victim; and (iv) his or her appointment by family members granting him or her authority to act on behalf of the deceased victim. Once these conditions have been met, the successor becomes entitled to the reparations awarded to the deceased beneficiary.

138. The Chamber notes that for deceased victims in the Sample that the Chamber already found eligible,³⁰⁸ the successors will need to prove only the remainder of the conditions as established above.

139. As to the evidence required to prove the elements above, the Chamber considers that the status as beneficiary of the deceased victim must be established in accordance with the applicable evidentiary criteria.³⁰⁹ Conditions two to four must be proved through the use of official or non-official documents, including through or by the statements of two credible witnesses or by an official document signed and stamped by a chief of locality demonstrating the kinship with the deceased victim and the appointment by family members granting authority to the successor to act on behalf of the deceased victim.

³⁰⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 40.

³⁰⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#).

³⁰⁷ See, for instance, Trial Chamber II, *The Prosecutor v. Germain Katanga*, Decision on the Application for Resumption of Action brought by family members of deceased victim a/0195/08, 9 November 2021, [ICC-01/04-01/07-3891](#); Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on the Request of the Legal Representative of Victims for Resumption of Action for Deceased Victims a/11180/21 and a/11182/21, 21 December 2021, [ICC-01/12-01/15-437](#).

³⁰⁸ See, for instance, applicants a/00820/13 and a/20125/14.

³⁰⁹ See sections III.A.2. and III.A.3. above.

ii. IDIP victims

140. The Defence posits that, according to its own assessment of the 67 IDIP victims included in the Sample determined to be eligible by the TFV, 7 should be found eligible, 18 should be found not eligible, and 42 should be found not eligible unless additional relevant information is submitted.³¹⁰ The Defence submits that of the 67 IDIP priority victims in the sample, [REDACTED] had previously been assessed by the VPRS and determined to be not eligible, but the TFV nonetheless determined all of them to be eligible, limiting its assessment to whether the harm alleged results from a crime for which Mr Ntaganda has been convicted, without more.³¹¹ In addition, the Defence takes issue once more with the fact that it has not received the information or documentation taken into account by the TFV when reaching the administrative decision on the 67 IDIP victims, indicating that it ‘remains in the dark’ as to TFV’s assessments.³¹² The Defence also notes that if the TFV did obtain additional information from victims that was not shared with the Defence, then it amounts to an ‘ill-conceived procedure’.³¹³

141. In their submissions, the LRVs make reference to the methodology articulated by the TFV to determine the eligibility of victims for the IDIP purposes,³¹⁴ which was approved by the Chamber in May 2022, and in the CLR2’s view remains applicable following the Appeals Judgment.³¹⁵ The CLR2 further indicates that 45 of his clients who are victims included in the IDIP received a positive determination on their eligibility by the TFV.³¹⁶

142. In light of the Appeals Judgment’s finding that the Chamber erred by not having set out the most fundamental parameters of the future procedure for the eligibility assessment,³¹⁷ the Chamber established above the parameters for future eligibility assessments. On this basis, the Chamber ruled on the 171 victims in the Sample, including the 67 IDIP victims. As indicated above, in ruling on the eligibility of these victims, the Chamber relied on the victims’ dossiers, the parties’ submissions on the sample, and any additional information they provided. The

³¹⁰ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 3.

³¹¹ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 3.

³¹² Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 26.

³¹³ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 26.

³¹⁴ CLR1 March 2023 Submissions, [ICC-01/04-02/06-2835](#), para. 11; CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 28.

³¹⁵ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 28.

³¹⁶ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 18.

³¹⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 387.

Chamber notes that, contrary to the Defence's submission that it was 'kept in the dark',³¹⁸ the Defence had access to all the relevant information – with the necessary redactions in accordance with article 68(1) of the Statute. Finally, the Chamber underlines that this eligibility mechanism shall hereafter be applied to verify the eligibility of all potential beneficiaries.

143. In regard to the eligibility of the 67 IDIP victims, having carried out the relevant assessment, the Chamber reached the following conclusions: 59 victims have established their eligibility, four victims have been found provisionally eligible,³¹⁹ and four victims have not established their eligibility.³²⁰ Consequently, the Chamber hereby rules that (i) the 59 victims that have established their eligibility are entitled to benefit from the reparations awarded in this case, to the extent that their harm has not been fully addressed in the context of the IDIP; (ii) similarly, the four victims found to be provisionally eligible would be entitled to benefit from the reparations awarded in this case, to the extent that their harm has not been fully addressed in the context of the IDIP, and for as long as the relevant missing information as detailed in Annex II is provided at the implementation stage; and (iii) the four victims that have not established their eligibility shall not be entitled to benefit from the reparations awarded in this case, and the reparations they received within the IDIP should be considered, for administrative and budgetary purposes, as having been received in the context of the assistance mandate of the TFV.³²¹

5. Conclusions as to the Sample

144. The Chamber notes that of the assembled Sample of 171 victims' dossiers, including 137 victims of the attacks and 34 child soldiers' victims,³²² it has undertaken an individual analysis of each dossier, on the basis of the criteria and methodology laid out above. As indicated, the analysis and detailed information that was extracted from the sample, is included in Annex II to this Addendum to the Reparations Order. The Chamber is satisfied that 132 of the 171 victims have established on a balance of probabilities their eligibility as victims – direct

³¹⁸ Defence May 2023 Submissions, [ICC-01/04-02/06-2851-Red](#), para. 26.

³¹⁹ Namely, a/01566/1, a/01635/13, a/30282/15, and a/30286/15.

³²⁰ Namely, a/00199/13, a/00212/13, a/00215/13, and a/01636/13.

³²¹ Decision on the TFV's initial draft implementation plan with focus on priority victims ('Decision on the IDIP'), 23 July 2021, [ICC-01/04-02/06-2696](#), paras 25, 26; *see also* Appeals Chamber, 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, 11 June 2021, [ICC-01/04-02/06-2678](#), para. 6; and 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](#), 22 June 2021, para. 29.

³²² *See* November 2022 Decision, [ICC-01/04-02/06-2794](#), para. 24; and January 2023 Decision, [ICC-01/04-02/06-2813](#).

or indirect – of the crimes for which Mr Ntaganda was convicted, and accordingly, are entitled to benefit from reparations in the present case.

145. The Chamber notes that the above total of 132 victims that have established their eligibility includes 10 victims deemed to be provisionally eligible pending the submission of a legible identification document, or the confirmation by the Registry of the relevant distance between the victims' village and the place for which positive findings were made in the Conviction Judgment, as elaborated above. These victims will be entitled to benefit from reparations, for as long as the relevant missing information as detailed in Annex II is provided at the implementation stage.

146. The Chamber has found that 39 out of the 171 victims in the Sample have not established on a balance of probabilities their eligibility as direct or indirect victims of the crimes for which Mr Ntaganda was convicted and are therefore not entitled to benefit from reparations in the present case.

147. As to the 67 IDIP victims including in the Sample, included in the total referred to above, the Chamber found that 59 victims have established their eligibility, four victims have been found provisionally eligible, and four victims have not established their eligibility.

148. Regarding the victims that have not established their eligibility the Chamber reiterates, as previously held in its October 2022 Decision,³²³ that they will have the opportunity to supplement their dossiers and clarify their accounts at the implementation stage.

B. Issues related to transgenerational harm

1. Previous findings and submissions

a) Reparations Order, Appeals Judgement, and implementing orders

149. In the Reparations Order, the Chamber made findings as to transgenerational harm regarding the following topic: (i) within the principles applicable to reparations, as one of the various permutations and combinations of the different layers of harm that the victims may have suffered.³²⁴ The Chamber provided a definition of its understanding of this type of harm, based on the parties' submissions, prior jurisprudence, the experts' reports and other

³²³ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 10.

³²⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 71.

international jurisprudence.³²⁵ The Chamber also indicated that, for the purposes of reparations, this type of harm shall be personally suffered by the victim and the causal nexus between the harm and the crime for which the defendant was convicted needs to be established,³²⁶ and (ii) as one of the types of harm suffered by the indirect victims of the crimes for which Mr Ntaganda was convicted,³²⁷ specifically by the children of direct victims.³²⁸

150. The Appeals Judgment found that the Chamber failed to provide sufficient reasoning regarding both the concept and the evidentiary criteria to prove transgenerational harm.³²⁹ Regarding the concept, the Appeals Judgment held that the Chamber did not refer to the potential scientific uncertainties or the potential limitations of the concept and did not refer to the relevant Defence's submissions on the issue.³³⁰ Addressing the Defence's submissions, the Appeals Judgment considered the reference to the *Katanga* case in the Reparations Order, noting that, although the issue of transgenerational harm had been discussed, the requests for reparations based on transgenerational harm in the *Katanga* case were ultimately rejected.³³¹ Regarding the two expert reports relied upon, the Appeals Judgment observed that the Reparations Order did not assess their reliability, the underlying basis for the submissions of the experts, nor the Defence's arguments, and that the Chamber's approach was insufficient for several reasons.³³²

151. On the evidentiary criteria, the Appeals Judgment found that the Chamber should have provided further guidance, particularly regarding the caution the TFV would need to exercise in assessing applications claiming reparations due to transgenerational harm.³³³ Stressing that in awarding reparations the Chamber must remain within the confines of the conviction and sentencing decisions, the Appeals Chamber noted that in the Sentencing Judgment the Chamber

³²⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 73, indicating that 'Transgenerational harm refers to a phenomenon, whereby social violence is passed on from ascendants to descendants with traumatic consequences for the latter. It is characterised by the existence of an intergenerational cycle of dysfunction that traumatised parents set in motion, handing-down trauma by acting as violent and neglectful caretakers deforming the psyche and impacting the next generation. Traumatized parents, who live in constant and unresolved fear, unconsciously adopt a frightening behaviour. This affects their children's emotional behaviour, attachment, and well-being, increasing the risk that they will suffer post-traumatic stress disorders, mood disorders, and anxiety issues. It is argued that the noxious effects of trauma may be transmitted from one generation to the next, with a potential impact on the structure and mental health of families across generations, *see also* footnotes 188 to 193.

³²⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 75.

³²⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 182.

³²⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 183(d)(vi).

³²⁹ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 471-472.

³³⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 474-477.

³³¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 478.

³³² Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 485-492.

³³³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 473, 479-481.

did not consider the issue, stressing ‘the complex questions of causation involved in determining this type of harm to a beyond reasonable doubt standard and the very general nature in which this type of harm has been referred to by the LRVs’.³³⁴ Accordingly, the Appeals Chamber held that it would have expected the Chamber to have fully considered the issue at the reparations stage.³³⁵

152. In light of the above, the Appeals Chamber reversed the Chamber’s findings as to transgenerational harm and remanded the matter to the Chamber for it to assess and properly reason it based on submissions sought from the parties and, for example, experts, and after having assessed the credibility and reliability of the expert evidence on the record, and addressed the issue of evidentiary guidance on this issue.³³⁶ In particular, the Appeals Chamber deemed necessary for the Chamber to:

‘[...] consider the issue of scientific certainty as to the concept of transgenerational harm and whether it is appropriate to award reparations therefor at this Court and, if so, what the evidentiary requirements are for an applicant to establish that type of harm. Furthermore, if there is sufficient scientific certainty as to the concept of transgenerational harm, the Trial Chamber is directed to assess whether Mr Ntaganda is liable to repair such harm in the specific context of the crimes of which he has been convicted and taking into consideration the impact, if any, that the protracted armed conflict in the DRC may have as to the possibility of establishing that the trauma associated with transgenerational harm was caused by Mr Ntaganda.

[...] consider whether it needs to address such issues as: the matter of the basis for the concept of transgenerational harm; the evidence needed to establish it; what the evidentiary requirements are for an applicant to prove this type of harm; the need, if any, for a psychological examination of applicants and parents; the need, if any, to exercise caution in assessing applications based on transgenerational harm; whether Mr Ntaganda is liable to repair such harm in the specific context of the crimes of which he has been convicted and taking into consideration the impact, if any, that the protracted armed conflict in the DRC may have as to the possibility of establishing that the trauma associated with transgenerational harm was caused by Mr Ntaganda.’³³⁷

153. In the October 2022 Order, the Chamber directed the parties and participants, including the VPRS and the TFV and, if available, the Appointed Experts, to provide further submissions on: (i) the scientific basis for the concept of transgenerational harm; (ii) the evidence needed to establish it; (iii) what the evidentiary requirements are for an applicant to prove this type of harm; (iv) the need, if any, for a psychological examination of children and parents; (v) the

³³⁴ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 482-283, *referring to* Sentencing Judgment, [ICC-01/04-02/06-2442](#) footnote 317.

³³⁵ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 484.

³³⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 493, 497.

³³⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 494-495.

need, if any, to exercise caution in assessing applications based on transgenerational harm; and (vi) whether Mr Ntaganda is liable to repair such harm in the specific context of the crimes of which he has been convicted, taking into consideration the impact, if any, that the protracted armed conflict in the DRC may have on the assessment as to whether the trauma associated with transgenerational harm was caused by Mr Ntaganda.³³⁸

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.³³⁹

b) LRVs submissions

155. In their submissions, the LRVs note that it does not fall within their mandate nor abilities – nor within those of any legal professional – to take a position as to which theory better explains the phenomenon of transgenerational harm with most accuracy.³⁴⁰ Suffice to say, the LRVs argue, that the existence of transmission of trauma from trauma-exposed parents to their children, who were not exposed, is not disputed and scientific debates solely focus on the mechanisms of the phenomenon, i.e., on how the trauma is passed on from one generation to the other, without questioning the fact that it is transmitted.³⁴¹ In effect, both LRVs submit that clinicians, physicians, and specialists agree that heightened levels of distress and psychopathology are found in the children of victims of trauma, even when the children themselves were not exposed to traumatic stress.³⁴² This finding, the LRVs explain, led scientists to research the mechanisms on how trauma is transmitted, with the first school of thought relying on the social transmission theory, which focuses on the impact of upbringing, and the second school, which complements rather than contradicts the first, attributing the intergenerational transmission of trauma to the trauma-related neurobiological and psychophysiological alterations that are passed from one generation to the next.³⁴³

³³⁸ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 40.

³³⁹ Email from VPRS to the Chamber's Legal Officer, 21 November 2022, at 12:38 hrs; and Email from VPRS to the Chamber's Legal Officer, 7 February 2023, at 16:48 hrs.

³⁴⁰ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 2, 20; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 14.

³⁴¹ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 19-20. CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), paras 13-14.

³⁴² CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 17; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 20.

³⁴³ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 18; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 12.

156. Regarding the way to establish transgenerational harm in the *Ntaganda* case, the CLR1 argues that it should be presumed for the children and grandchildren of all direct victims of the case, regardless of their date of birth, and provided that they can establish that they are the child of a direct victim.³⁴⁴ Recalling that presumptions can be resorted to when the circumstances are such that adducing evidence in a form other than by providing a coherent and credible narrative would prove nearly impossible, the CLR1 notes that the Reparations Order established that certain harms can be presumed, a finding that was not disturbed on appeal.³⁴⁵ Accordingly, the CLR1 posits, there is no reason to depart from this approach when considering transgenerational harm, particularly taking into account the complex and multi-faceted nature of this harm that makes recourse to presumptions even more justified.³⁴⁶

157. The CLR2 notes that the criteria proposed in the *Katanga* case required that (i) the direct victim suffered psychological harm as a result of a crime committed by the convicted person; (ii) the child of the direct victim suffers psychological harm; and (iii) the child's psychological suffering arises out of the trauma suffered by the parents.³⁴⁷ The CLR2 posits that these criteria are only partly apposite in the present case.³⁴⁸ Regarding the first criterion, in light of the presumptions of psychological harm included in the Reparations Order, which have not been overruled by the Appeals Chamber, virtually all victims of the attacks suffered psychological harm and, therefore, this harm does not need to be proved further.³⁴⁹ Regarding the second and third criteria, the CLR2 submits that the most appropriate legal test regarding the transmission of transgenerational trauma should be 'whether it is more likely than not that the direct victim passed his or her trauma to his or her child and/or this child's future off-spring, on the balance of probabilities'.³⁵⁰ In order to establish the likelihood of the transmission of trauma, the CLR2 submits, the main factors to consider are the nature, intensity, extent and duration of the direct victim's psychological suffering.³⁵¹ The CLR2 submits that the evidence available on the record is sufficient for the Chamber to conclude that it is more likely than not

³⁴⁴ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 21.

³⁴⁵ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 22.

³⁴⁶ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 24.

³⁴⁷ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 16.

³⁴⁸ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 17.

³⁴⁹ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 17.

³⁵⁰ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 18.

³⁵¹ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 18.

that virtually all direct victims of the attacks passed their psychological trauma to their children.³⁵²

158. The LRVs further submit that all scholars, regardless of their field of expertise, have found that this phenomenon is likely to occur in contexts of extreme violence and mass-victimisation, which is precisely the case in the present situation, noting that this has been acknowledged by other international tribunals confronted with situations of mass-victimisation.³⁵³ In the present case, the LRVs argue, the case-record is replete with evidence demonstrating the mass-victimisation and extreme violent *modus operandi* used in the commission of the crimes and there is absolutely no evidence that intervention took place to alleviate the suffering of direct victims as they carried on with their life, increasing the risks associated with intergenerational transmission of trauma.³⁵⁴ Accordingly, the LRVs submit that the Chamber should conclude, on the standard of balance of probabilities, that transgenerational harm is more likely than not to have been suffered by the children of direct victims.³⁵⁵

159. Further, the CLR1 argues that, due to the passage of time, the psychological evaluation of the applicant or the direct victims would be wholly unnecessary.³⁵⁶ The CLR2 posits that the nature and intensity of the harm suffered by the child requires an evaluation of his or her personal circumstances, as opposed to a psychological evaluation, if only for the purposes of determining the appropriate reparations.³⁵⁷ The CLR2 further reiterates his previous submissions that transgenerational harm can encompass not only psychological trauma but can also manifest itself in various other forms of harmful effects on the individual, family and community levels.³⁵⁸ Consequently, the CLR2 submits that, for the purpose of the determination of the eligibility of an applicant alleging transgenerational harm, it will be incumbent on the TFV to first establish whether it is more likely than not that the direct victim passed the trauma to his or her child, based on objectively justifiable factors such as the nature, intensity, extent and duration of the direct victim's psychological suffering; and, in the

³⁵² CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 19.

³⁵³ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 25; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 20.

³⁵⁴ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 26-30; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), paras 21-27.

³⁵⁵ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 32; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 27.

³⁵⁶ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 31.

³⁵⁷ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 28.

³⁵⁸ CLR2 January 2023 Submission, [ICC-01/04-02/06-2820](#), para. 29.

affirmative, proceed with evaluating the applicant's personal circumstances in order to determine his or her contemporaneous needs at the time of receiving reparations, applying a holistic approach.³⁵⁹ For the holistic evaluation, the CLR2 argues, the date of birth of the child and the security situation in the area where the direct victim lived after the events would be of relevance.³⁶⁰ The closer the date of the child's birth to the crimes the higher the likelihood that the parent's trauma was transmitted to the child.³⁶¹

160. As to whether Mr Ntaganda can be held liable for transgenerational harm, the LRVs submit that it is established, at the required standard, that Mr Ntaganda is the proximate cause of the transgenerational harm suffered by the children of direct victims and that it is sufficient to hold him liable.³⁶² Noting that the standard of causation determined in the Reparations Order was not disturbed in appeals, the LRVs stress that, contrary to the Defence's submissions, the Court's jurisprudence makes it clear that the standard of causation does not require that the act be the *sole* cause of the harm.³⁶³ Further, the LRVs note that in evaluating whether a convicted person can be deemed to be the proximate cause of a harm, a chamber must assess whether the acts are 'closely connected' and 'significant enough' to have caused the harm.³⁶⁴ On this last point, the LRVs argue that this issue only arises in relation to children born after the resurgence of the conflict in 2017.³⁶⁵ As to events that may have happened before the crimes, the CLR1 argues that the level of trauma experienced as a result of being forced to join the militia is substantially higher than anything the victims may have suffered before.³⁶⁶ In addition, the CLR1 argues that the facts that other incidents occurred subsequently to the crimes does not necessarily break the chain of causation, provided in addition to the above that Mr Ntaganda could have reasonably foreseen that his crime would cause harm to the direct victims and their children.³⁶⁷ On this point, the LRVs argue that the Chamber should take into account that, unlike Mr Katanga, who was convicted for a modest contribution (provision of weapons to the

³⁵⁹ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 30.

³⁶⁰ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 31.

³⁶¹ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 31.

³⁶² CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 33; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 33.

³⁶³ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 34-36; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 34-36.

³⁶⁴ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 37-38; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 37.

³⁶⁵ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 42; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 40.

³⁶⁶ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 43.

³⁶⁷ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 39.

militia that attacked Bogoro) to the commission of a crime by a group of persons – which was the reason that prevented a finding that the standard of causation was satisfied –, Mr Ntaganda was convicted for his essential contribution to the common plan consisting of raising an army of children and the destruction and disintegration of the Lendu community.³⁶⁸

161. Regarding the appropriate type of reparations to address this harm and the need to exercise caution when evaluating the applications, the CLR1 reiterates her submission that this harm is most appropriately repaired by way of a collective reparation measure aimed at ensuring access to education for the former child soldiers, their siblings, and their children.³⁶⁹ The CLR2 posits that victims who suffered transgenerational harm should be provided with collective reparations with individualised components, like any other victims in the case, as transgenerational harm is not limited to psychological harm only.³⁷⁰ Further, the CLR1 adds that reparations could serve as a form of symbolic recognition by the Court that these children are also victims of Mr Ntaganda and constitutes a way to acknowledge the moral harm suffered by direct victims.³⁷¹ Lastly, the CLR1 submits that direct victims tend to indicate that, 20 years after the commission of the crimes, alleviating the harm they suffered has become nearly impossible.³⁷² However, most of them consider that the most appropriate form of reparations for their suffering would be to ensure that their children will never suffer from a similar life experience and that they can study, as they are terrified that their children may be abducted or otherwise incited to join militias.³⁷³ Regarding the lack of applications alleging this type of harm, the LRVs note that the reparations model set in the Reparations Order is not application based, and applications were not collected in order to avoid raising the victims' expectations, in consistency with the do no harm principle.³⁷⁴ The CLR1 nevertheless notes that contacts with her clients reveal that their children do suffer the consequences of the crimes suffered by their parents, as ample demonstrated by the evidence in the case.³⁷⁵

³⁶⁸ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 40-41; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), paras 38-39.

³⁶⁹ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 44.

³⁷⁰ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 41.

³⁷¹ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 44.

³⁷² CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 45.

³⁷³ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 45.

³⁷⁴ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 46; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), paras 42-43.

³⁷⁵ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 46.

c) Defence submissions

162. The Defence argues that the concept of transgenerational harm is unsettled from a scientific and medical perspective, with scepticism and uncertainty about its scope, existence, and transmission, even among experts in the field.³⁷⁶ Importantly, the Defence underlines, there is no prior practice of reliance on transgenerational harm as a basis for reparations at the Court.³⁷⁷ The Defence further argues that the Appeals Judgment mandatorily directed the Chamber to ‘solicit and consider additional expert submissions’, arguing that none of the Appointed Experts have expertise in the area and their opinion is only based on academic literature.³⁷⁸ The Chamber’s failure to seek additional expert evidence, the Defence submits, risks undermining any subsequent reparations award to the extent that it seeks to address alleged transgenerational harm in the case.³⁷⁹ In the argument of the Defence, with no expert evidence and no new material in the case record, the parties and participants will simply reiterate or reframe their previous submissions, the Chamber will remain without a sufficiently reliable basis to make findings on the issue, and the order will again be exposed to criticism, and potential revision.³⁸⁰

163. The Defence further refers to the definition advanced in the *Katanga* case, and the fact that the Chamber in that case noted the uncertainties regarding how the harm is transmitted, describing the explanations advanced in the scientific debate by the epigenetic transmission and the social transmission theories.³⁸¹ In the argument of the Defence, none of the parties or participants have indicated which theory should be adopted, nor do they have expertise to do so.³⁸² However, the Defence submits that the Appeals Chamber directed the Chamber to consider the issue of the scientific certainty as to the concept and whether it is appropriate to award reparations for transgenerational harm at the Court.³⁸³ Referring to the argument of the CLR1 that the two competing theories do not make the concept uncertain but reinforces it and provides explanations for two distinct ways trauma is transmitted, the Defence argues that the Appeals Chamber’s question is not directed to the likelihood of otherwise generational

³⁷⁶ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 7.

³⁷⁷ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 7.

³⁷⁸ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 7-9.

³⁷⁹ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 10.

³⁸⁰ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 11-13.

³⁸¹ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 15-18.

³⁸² Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 19.

³⁸³ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 20.

transmission but ‘rather it is asking about “scientific certainty” about how trauma is allegedly transmitted’.³⁸⁴

164. As to the type of evidence and requirements needed to establish this harm, the Defence argues that the lack of certain scientific basis gives rise to further problems, noting that an epigenetic approach will require to establish the physical transmission of PTSD stemming from epigenetic modifications.³⁸⁵ What is clear, the Defence submits, is that the Chamber’s approach was flawed and the Appeals Chamber’s criticisms cannot be circumvented by arguments based in that reparations are collective and thus the Chamber was not required to adopt a specific criteria for evidentiary purposes.³⁸⁶ Whether reparations are collective or individual, the Defence submits, any potential award based on transgenerational harm requires sufficient proof of the causal nexus between the harm of the applicant and the harm for which the defendant was convicted.³⁸⁷ Based on requirements referred to in the *Katanga* case and by one of the Appointed Experts, the Defence submits that the just and fair limits on the consequences of the crimes that can be attributed to the convicted person requires that at least basic facts must be obtained – namely, the date of birth of the child and other potentially traumatic events that have affected both the direct victim and the applicant – and the causal nexus must be demonstrated.³⁸⁸ The above would, in the argument of the Defence, preclude the reliance on the presumption of transgenerational harm for family members, noting that the Appeals Chamber clearly anticipated a process of individual assessment of applications.³⁸⁹

165. As to the need for psychological evaluation of the children and parents, the Defence reiterates its prior submissions that, in order for transgenerational harm to be established, there must first be a diagnosis of psychological harm for the parents, which must be reassessed on a rolling basis as diagnosis fluctuates and evolves over time.³⁹⁰ Based on the submissions of experts in the *Lubanga* and the *Bemba* cases and the evidence provided in the *Katanga* case, the Defence reiterates that consistent prior practice of the Court requires medical diagnosis and reiterates its position on the inapplicability of presumptions for transgenerational harm.³⁹¹

³⁸⁴ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 21.

³⁸⁵ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 22-23.

³⁸⁶ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 24-25.

³⁸⁷ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 26.

³⁸⁸ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 26-31.

³⁸⁹ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 29.

³⁹⁰ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 33.

³⁹¹ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 33-35.

166. As to whether Mr Ntaganda can be held liable to repair such harm, the Defence submits that the applicant is required to establish a causal nexus between the alleged transgenerational harm, and the crimes for which Mr Ntaganda was convicted.³⁹² The Defence submits that it is not the case that simply because the applicant is a family member of a direct victim Mr Ntaganda would be automatically liable for any and all psychological or other harm exhibited by the applicant.³⁹³ Noting the recurrent violent conflict that has taken place in Ituri for over 20 years as from 1999 onwards, as detailed in the case record, and the fact that Mr Ntaganda was convicted for crimes that occurred between approximately 6 August 2002 and 31 December 2003, the Defence argues that the causal link is all but impossible to establish, as the facts and context preclude a credible assessment of transgenerational harm in the case.³⁹⁴ Considering that the eligibility assessment would be conducted ‘without the assistance of professional or experts qualified to assess claims of transgenerational harm’, the Defence submits that Mr Ntaganda should not be liable to pay reparations for such harm and, should applications be assessed on that basis, caution must be exercised in scrutinising them.³⁹⁵

d) TFV observations

167. As to the scientific basis for the concept of transgenerational harm, the TFV recalls the Chamber’s findings in the Reparations Order, the academic and scientific literature revealing the two leading schools of thought regarding the transmission of the transgenerational trauma – the epigenetic and the social theories – and the findings made in the *Katanga* case.³⁹⁶

168. As to the assessment of transgenerational harm, the TFV first (i) recalls the standard of proof for reparations – balance of probabilities –; (ii) notes the standard of causation – the ‘but-for’ test combined with the requirement of the ‘proximate cause’ –; and (iii) recalls that in the *Katanga* case the Court deemed appropriate to rely on presumptions when it is difficult for the children to gather evidence to establish the causal nexus.³⁹⁷ In light of the above, the TFV supports the LRVs’ views that the causal nexus between transgenerational harm suffered by a child and the crimes for which Mr Ntaganda was convicted should be presumed when it has been demonstrated that the harm suffered by one of the child’s parents is linked to the crimes

³⁹² Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 36.

³⁹³ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 36.

³⁹⁴ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 37-41.

³⁹⁵ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 42-43.

³⁹⁶ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 26-30.

³⁹⁷ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 31-32.

included in the conviction.³⁹⁸ Arguing that in the *Katanga* case the Appeals Chamber did not close the door for Chambers to rely on presumptions for transgenerational harm, the TFV observes that the Chamber could adopt them in the present case.³⁹⁹ This, the TFV adds, particularly when the direct victims have received no appropriate psychological support to mitigate the negative effects on the next generation, aggravated by the lack of infrastructure for psychological support services in the ongoing conflict situation in the Eastern DRC.⁴⁰⁰

169. In that case, the TFV observes, the applicant would have to demonstrate: (i) personal psychological suffering; (ii) psychological harm of his/her parent(s); (iii) the causal nexus between the harm of the applicant's parent(s) and the crimes for which Mr Ntaganda was convicted; and (iv) their parent-child relationship.⁴⁰¹ When successfully done, the TFV suggests, that the applicant's transgenerational harm could be presumed by the Chamber on the basis of this parent-child relationship.⁴⁰² The TFV further argues that in the *Katanga* case the Chamber relied on medical certificates and an expert report because those were the supporting documents submitted to it.⁴⁰³ Further, the TFV notes that the *Katanga* case is very different than the present one when it comes to the number of victims, and that it would be highly costly and time intensive in a case of this magnitude to collect medical certificates and/or psychological expertise for each potential applicant.⁴⁰⁴ Rather, the TFV suggests that psychological support can be provided to the direct victims, through group or family therapy, as first essential step to mitigating transgenerational harm, allowing the implementing partner(s)'s psychologists to assess whether descendants require psychological treatment and provide it, if the scope of the programme (availability of funds) so allows.⁴⁰⁵

170. If a determination of eligibility of the descendants was considered necessary, the TFV adds, it could proceed to a legal assessment on the basis of the information provided by the implementing partner's psychologist(s); however, the TFV reiterates that it strongly favours a presumption of transgenerational harm in this case and a practical approach to their eligibility

³⁹⁸ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 33.

³⁹⁹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 34-35.

⁴⁰⁰ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 35.

⁴⁰¹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 36.

⁴⁰² TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 36.

⁴⁰³ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 37.

⁴⁰⁴ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 38.

⁴⁰⁵ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 39.

and to how best address the psychological harm suffered by the descendants of the direct victims.⁴⁰⁶

171. As to Mr Ntaganda's liability, the TFV argues that it is reasonable to consider that Mr Ntaganda could have reasonably foreseen the impact of the crimes he committed on the direct victims' descendants.⁴⁰⁷ Similarly, the TFV is of the view that it is not unreasonable to assume that the closer the child's birth date to the date of the crimes the more likely it is that it had an impact on the applicant; however, an expert psychologist on transgenerational harm may be best suited to advise on the matter.⁴⁰⁸ In addition, the TFV argues that the fact that over time the population in Ituri has gone through several cycles of violence cannot be used to justify that is not just and fair to consider that the crimes committed by the convicted person are the proximate cause of even a part of the transgenerational harm suffered by the victims of several waves of crimes; otherwise, no one could be held responsible for transgenerational harm in the DRC.⁴⁰⁹

e) Registry observations

172. On the issue of the evidentiary requirements to prove transgenerational harm, the Registry recalls its observations regarding the non-availability of documentary evidence, as provided in the context of its preliminary mapping, and the difficulties – in terms of cost and time – that would represent for victims to obtain them.⁴¹⁰ The Chamber notes that, as part of the Preliminary Mapping exercise, the Registry reported in 2020 that almost no contemporaneous supporting documentation survived from the 2002-2003 conflict in Ituri and that the obtention of any form of documentation is likely to be costly for victims and time consuming for the registration process.⁴¹¹

2. Chamber determination

173. In light of the issues on remand,⁴¹² the Chamber details below its reasoning regarding both the concept and the evidentiary criteria to prove transgenerational harm.

⁴⁰⁶ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 40-41.

⁴⁰⁷ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 42.

⁴⁰⁸ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 42.

⁴⁰⁹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 43.

⁴¹⁰ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 15, *referring to* Annex I to Registry's Observations on Reparations ('Annex I – Registry February 2020 Observations'), [ICC-01/04-02/06-2475-AnxI](#), paras 23-24, 43-45; and Annex II - Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#).

⁴¹¹ Annex I - Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxI](#), paras 23-24.

⁴¹² Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 471-472, 493, 494-495, 497.

a) Concept of transgenerational harm

174. Regarding *scientific certainty as to the concept* of transgenerational harm, the Chamber is satisfied that, as argued by the LRVs⁴¹³ and the TFV,⁴¹⁴ within the current stage of advance in the academic and scientific research, experts from different disciplines agree on the *existence* of ‘a phenomenon, whereby social violence is passed on from ascendants to descendants with traumatic consequences for the latter’.⁴¹⁵

175. The Chamber’s assessment of the *Katanga* Reparations Order,⁴¹⁶ the *Katanga* 2018 Decision on Transgenerational Harm,⁴¹⁷ the Reparations Order,⁴¹⁸ the scientific and academic

⁴¹³ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 17; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 20.

⁴¹⁴ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 26-30.

⁴¹⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 73, referring to Trial Chamber II, *The Prosecutor v. Germain Katanga*, Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgment of 8 March 2018 (‘*Katanga* Decision on Transgenerational Harm’), 19 July 2018, [ICC-01/04-01/07-3804-Red-tENG](#), para. 10; *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 132; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red4](#), para. 111; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), para. 53.

⁴¹⁶ *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 132, referring to an expert report submitted in that case by the legal representative of victims on the evaluation of the mental health of child victims, resulting from the work carried out by the neuropsychiatrist Espérance Kashala Abotes, see Trial Chamber II, *The Prosecutor v. Germain Katanga*, Transmission du « Rapport d’expertise sur l’évaluation de l’état psychique des enfants victimes de l’attaque de Bogoro du 24 février 2003 » (‘*Katanga* Transmission of Expert Report’), 31 May 2016, [ICC-01/04-01/07-3692-Red2](#).

⁴¹⁷ *Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), paras 10-14, referring to submissions from the legal representative of victims and annex therein with a list of academic and scientific articles referring to the phenomenon of transgenerational trauma, see Trial Chamber II, *The Prosecutor v. Germain Katanga*, Observations du Représentant légal déposées conformément à l’Ordonnance enjoignant au Représentant légal des victimes et à l’équipe de la défense de Germain Katanga de déposer des observations suite à l’arrêt de la Chambre d’appel sur les réparation, 13 April 2018, [ICC-01/04-01/07-3788-Red](#), and Annex, [ICC-01/04-01/07-3788-Anx](#); further submissions from the legal representative of victims referring to an expert testimony provided by Dr Daryn Reicherter, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, whose analysis and conclusions were rooted in the same methodology as the neuropsychiatrist that produced the report in the *Katanga* case, arguing that expert witnesses in the Bemba case ‘showed that there is an intergenerational handing down of harm suffered’, see Addendum to the document entitled “Transmission du ‘Rapport d’expertise sur l’évaluation de l’état psychique des enfants victimes de l’attaque de Bogoro du 24 février 2003’” (ICC-01/04-01/07-3692-Conf-Red), 10 June 2016, ICC-01/04-01/07-3698-Conf-tENG, para. 9, and public annexes accompanying the transcripts of the testimony of Dr Daryn Reicherter in the Bemba case between 16 and 17 May 2016, [ICC-01/04-01/07-3698-Anx1](#) and [ICC-01/04-01/07-3698-Anx2](#).

⁴¹⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 73.

literature referred to by the Defence,⁴¹⁹ by the LRVs,⁴²⁰ and by the TFV;⁴²¹ of the different experts who have submitted reports or provided testimony before this Court,⁴²² and decisions

⁴¹⁹ As for the literature cited in Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), footnote 11, *see* S.G. Matthews and D.I.W. Phillips, 'Minireview: Transgenerational Inheritance of the Stress Response: A New Frontier in Stress Research' in *Endocrinology* (2010), 151(1): 7–13, available [online](#), which is a study on the impact of prenatal environment on the stress axis function throughout life, noting that 'there is an *emerging consensus* that maternal stress is linked with a range of [...] perturbations in the offspring and associated adverse developmental outcomes', p. 8, although stressing that '[t]here is still very limited evidence for transgenerational inheritance in humans beyond the first generation', p. 9; C.S.M. Cowan et al, 'The lasting impact of early-life adversity on individuals and their descendants: potential mechanisms and hope for intervention' in *Genes, Brain and Behavior* (2016) 15: 155–168, available [online](#), noting that '[i]t is *widely recognised* that early experiences often have a profound impact on individuals' functioning across their life span', p. 155, that 'it is clear that early-life stress alters the neuroendocrine system in children', p. 156, further '[t]he intergenerational transmission of the effects of stress is also evident when trauma exposure occurs outside gestation [...]. Adult children of Holocaust survivors born after the war, or after their parents had escaped to safety, exhibit higher lifetime prevalence rates of depression, PTSD and other anxiety disorders compared with Jewish individuals who did not have a parent who was a Holocaust survivor [...]. Together, these studies highlight the inflated risk of psychiatric disorders in offspring of parents exposed to trauma. Further, they provide *evidence for intergenerational transmission of stress in humans*, such that individuals can acquire biological and behavioral phenotypes that match their parent's risky environment', p. 158; S. Alhassen et al, 'Intergenerational trauma transmission is associated with brain metabotranscriptome remodeling and mitochondrial dysfunction' in *Communications Biology* (2021) 4:783 1-15, available [online](#), noting that '[i]ntergenerational trauma increases lifetime susceptibility to depression and is a major risk factor for developing multiple neuropsychiatric disorders such as post-traumatic stress disorder (PTSD), autism spectrum disorder (ASD), and schizophrenia[...]. Human natural experiments provide *evidence* for the devastating health consequences in offspring as a result of exposure during pregnancy to existential and acute trauma such as war and natural disasters. Whether intergenerational trauma transmission and its negative outcomes are a consequence of in utero foetal neurodevelopment disruptions or from poor maternal care by traumatized mothers is still largely ambiguous', p. 2; J. Švorcová, 'Transgenerational Epigenetic Inheritance of Traumatic Experience in Mammals' in *Genes* (2023), 14, 120:1-20, available [online](#), noting that studies shows, for instance 'that the offspring of Holocaust survivors have a higher prevalence of PTSD and other psychiatric diagnoses than the controls do, although these descendants did not experience traumatic events themselves. Another study showed a similar effect for grandchildren of Holocaust survivors [...]. In the case of Holocaust, the effects can be just as easily explained by behavioural transmission, which can likewise leave an epigenetic mark. It is highly likely that, in natural systems, the processes of social transmission and epigenetic modifications mutually reinforce and feed into each other. In humans, it is extremely difficult to exclude explanation by social transmission.', p. 10; B. Horsthemke, 'A critical view on transgenerational epigenetic inheritance in humans' in *Nature Communications* (2018) 9:2973 1-4, available [online](#), study that does not focus on the intergenerational transmission of trauma but on the transmission of epigenetic information across generations in general, arguing that cultural inheritance cannot be excluded, p. 3; M. Fargas-Malet and K. Dillienburger, 'Intergenerational transmission of conflict-related trauma in Northern Ireland: A behaviour analytic approach' in *Journal of Aggression, Maltreatment & Trauma* (2016) 1-26, available [online](#), noting that '[i]ntergenerational transmission of trauma has become a key term to describe the impact that traumatic events personally experienced by one generation can have for the subsequent generation', the study focuses on the process of transmission of trauma and the role of parent-child communication about traumatic events; U. Iyengar et al, 'Unresolved trauma in mothers: intergenerational effects and the role of reorganization' in *Frontiers in Psychology* (2014) 5:966 1-9, available [online](#), detailing the results of an empirical research on how a mother's unresolved trauma interfere with her ability to sensitively respond to her infant, thus affecting the development of attachment in her own child, and contributing to the intergenerational transmission of trauma and insecure attachment, p. 5; P. Fossion et al, 'Transgenerational transmission of trauma in families of Holocaust survivors: The consequences of extreme family functioning on resilience, Sense of Coherence, anxiety and depression' in *Journal of Affective Disorders* (2015) 171:48-53, available for purchase [online](#), detailing the results of an empirical research investigating the possible transmission of the effects of an earlier major trauma from one generation to the next, identifying the possible mechanisms explaining the transmission of trauma in families of former hidden Jewish children who spent WWII in various hideaway shelters accord Nazi-occupied Europe. The study, *inter alia*, concludes that Holocaust survivor families present a higher percentage of the 'extreme' type

than in the general population, characterised as being more pathological and with a higher percentage of first generation major trauma, becoming more problematic over time, with children having grown in these damaged family types presenting, as adults, higher levels of depressive and anxiety disorders and less abilities to cope with adversity; and S.A. Ridhuan et al, 'Advocating for a Collaborative Research Approach on Transgenerational Transmission of Trauma' in *Journal of Child & Adolescent Trauma* (2021) 14:527–531, available [online](#), indicating that the psychological and physical result of distressing experiences is *known* to affect more than just the primary experiencers of such trauma and can span over several generations, indicating that the different mechanisms by which trauma is transmitted between generations spans biological, psychological, and sociological factors, and its study requires elements from each of these fields in order to facilitate a holistic understanding, advocating for an interdisciplinary model.

⁴²⁰ As for the literature cited in CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), footnote 18 and CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), footnote 19, see Y. Danieli et al, 'Multigenerational Legacies of Trauma: Modeling the What and How of Transmission' in *American Journal of Orthopsychiatry* (2016) 86:6 639-651, available [online](#), detailing the findings of an empirical research through a multidimensional integrative model that demonstrate that survivors' experiences during and life circumstances after the Holocaust do indeed affect their children and do so primarily through parents' post-trauma adaptational styles; R. Yehuda et al, 'Relationship of parental trauma exposure and PTSD to PTSD, depressive and anxiety disorders in offspring' in *Journal of Psychiatric Research* (2001) 35:5 261-270, available for purchase [online](#), detailing the findings of an empirical research in the adult offspring of Holocaust survivors that demonstrate a specific association between parental PTSD and the occurrence of PTSD in offspring and that parental trauma (Holocaust) exposure, more than parental PTSD, was found to be significantly associated with lifetime depressive disorder. Further, the total number of lifetime psychiatric disorders was found to be substantially higher in offspring of Holocaust survivors than in comparison subjects, with depressive disorders reported with greatest frequency (at pp. 266-267); R. Yehuda et al, 'Holocaust exposure induced intergenerational effects on FKBP5 methylation' in *Biological Psychiatry* (2016) 80:5 372-380, available [online](#), detailing the findings of a larger sample of Holocaust survivors, offspring, and comparison subjects which supports an intergenerational epigenetic priming of the physiological response to stress in offspring of highly traumatized individuals.

⁴²¹ As for the literature cited in TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), footnote 16, see E. Dozio et al, 'The Transgenerational Transmission of Trauma: The Effects of Maternal PTSD in Mother-Infant Interactions' in *Frontiers in Psychiatry* (2020) 11:480690 1-12, available [online](#), which, while noting that trauma exposure is extremely common in countries affected by conflict or natural disasters and that several studies have pointed to intergenerational trauma transmission in countries affected by massive traumatic events, focused in the Central African Republic in order to identify the direct specific processes of mother-to-infant trauma transmission.

⁴²² See views of experts presented in the *Lubanga* case, Ms Elisabeth Schauer, a clinical psychologist PhD, who testified in that case on 7 April 2009, and who (i) defined a traumatic event as 'an experience where the person has either self-experienced or witnessed or was confronted with an event that involved actual or threatened death, serious injury, or threat to the physical integrity of yourself or others' ([T-166-ENG](#) p. 18, ls 15-18); (ii) described as a recent finding the determination that 'traumatic events alters the epigenetic development meaning that, if you are traumatised you might give the impact of this traumatisation not just to your children but to your children's children' (see [T-166-ENG](#) p. 30, ls 14-21), and (iii) noted how traumatised mothers treat their children differently (see [T-166-ENG](#) p. 75, l. 22 to p. 76 l. 16). Furthermore, in the *Bemba* case, Dr Daryn Scott Reicherter, a clinical psychiatrist who testified in that case on 16 May 2016 on the mental outcomes of rape, mass rape and other forms of sexual violence, explained that his affirmation – namely: '[t]hese assaults [...] resulted in appalling damage to the populace's mental and physical health. The science also predicts that this damage will be long-term and inter-generational, harming impacted communities well beyond the individual victim' – is backed by dozens of references and 'decades of deep scientific data that predicts this exact same thing' (see [T-368](#) p. 81, l. 23 to p. 83, l. 15) He also referred to the impact of trauma in children, indicating that '[i]n populations that are studied well where the parental generation was the survivor of traumatic experience, their offspring, not necessarily the survivors of traumatic experience, went on to have greatly exaggerated rates of mental health disorders.' (see [T-368](#) p. 98, ls 7-16). Dr Scott further described his professional experience with the issue of intergenerational transmission of trauma in different contexts and detailed the science behind what he calls 'pretty clear, second generation of traumatised people, second generation of people with trauma related mental health disorders tend to also have a higher rate of developing mental health disorders [...] the thing that's most clear is that that's a fact [...] there is a number of different ideas that, you know, have a very different profound base in the science as to why that might be, but I think the fact of the matter is that it is a -- it is true.' (see [T-368](#) p. 99, l. 11 to p. 100, l. 13). He noted that a person who is raped has lasting and potential permanent changes in their brain and will 'almost

issued by other international jurisdictions,⁴²³ leads it to conclude that experts from different disciplines *agree on the existence of the phenomenon of transgenerational harm* in which ‘traumatised parents set in motion [an intergenerational cycle of disfunction], handing-down trauma’.⁴²⁴

176. Without prejudice to the clear existence of the phenomenon, the Chamber notes that science has advanced different explanations as to the way transgenerational harm is transmitted

certainly affect the way that they parent children, that can affect another generation and even, you know a generation to come after that.’ (see [T-368](#) p. 102, ls 8-22), reiterating that PTSD ‘is but one mental health outcome that’s possible after a traumatic experience’ (see [T-368](#) p. 103, ls 21-22), and explaining the phenomenon of epigenetics (see [T-368](#) p. 109, l. 24 to p. 111, l. 7). Moreover, in the *Katanga* case, Dr Abotnes, PhD, a certified physician and neuropsychiatrist, indicated that ‘[i]l est probable que le traumatisme subi par les parents d’enfants nés après l’attaque ait eu des implications sur la période anté, péri et postnatale de ces enfants, affectant non seulement leur développement psychomoteur et comportemental, mais aussi l’aspect affectif, la relation mère-enfant (père-enfant) et la dynamique familiale. En effet, plusieurs études suggèrent une relation entre le traumatisme subi des parents et le comportement des enfants n’ayant pas directement vécu l’attaque’, referring, for instance, to H. Main et al., *Attachment in the Preschool Years: Theory, Research, and Intervention*. Chicago: University of Chicago Press, 1990: pp. 161-182 (see Expert Report on the Evaluation of the Mental Health of Child Victims of the Attack on Bogoro of 24 February 2003, ICC-01/04-01/07-3692-Conf-Anx1-Red, p. 21) (the Chamber notes that, while this report is still confidential, no information requiring confidential treatment is disclosed by referring to the experts’ findings above). Furthermore, in the present case, the Appointed Experts Dr Karine Bonneau, qualified lawyer MA and PhD, Mr Eric Mongo Malolo, agricultural engineer, and Dr Norbert Wühler, qualified lawyer and PhD, who in their report relying on the scientific writings of Y. Danieli, stressed that, as a general principle, victims may suffer multiple types of harm which can affect succeeding generations, noting that international crimes are likely to result in psychological harm where the victims develop serious mental health problems that influence parenting and affect children’s psychological development and adaptation, thereby becoming intergenerational (see First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red4](#), paras 16, 33, 36). Similarly, in the report submitted by Dr Sunneva Gilmore, medical doctor in obstetrics and gynaecology, relying on the scientific writings, *inter alia*, detailing results of studies conducted with survivors of the Holodomor Genocide in Ukraine, the Khmer Rouge Regime in Cambodia, the Holocaust, and the Troubles in Northern Ireland, she noted the increasing research indicating the intergenerational harms of gross violations and conflict on victims, noting that the noxious effects of trauma and conflict can be transmitted from one generation to the next, noting in particular the strong prevalence of this trauma for all children of victims of sexual violence (see Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), paras 53-57).

⁴²³ See, *inter alia*, expert opinion presented before the IACtHR in the case *Rochac Hernández et al. v. El Salvador*, where the expert Martha de la Concepción Cabrera Cruz referred to the ‘principle of systematic and transgenerational psychological trauma- whereby a mother who has suffered trauma and has not healed inevitably transmits that experience to her son or daughter in one way or another. Therefore, a traumatic experience continues to have effects on the next generations.’ IACtHR, *Case of Rochac Hernández et al. v. El Salvador*, Judgment (Merits, Reparations and Costs), 14 October 2014, [Series C No 285](#), para. 114, referring to the expert opinion “Secuelas transgeneracionales de las desapariciones forzadas” (‘Transgenerational after-effects of forced disappearances’) rendered by Martha de la Concepción Cabrera Cruz, in March 2014 (merits file, volume I, folio 747-748); before the Extraordinary Chambers in the Courts of Cambodia, civil party applications based on transgenerational harm have been considered admissible, without prejudice of further determinations on causality, ECCC, Office of Co-Investigating Judges, *Case File No: 003/07-09-2009-ECCC-OCIJ Prosecutor v. MEAS Muth*, Order on Admissibility of Civil Party Applications, 28 November 2018, [D269](#), para. 32 and footnote 47 and ECCC, Office of Co-Investigating Judges, *Case File No: 004/07-09-2009-ECCC-OCIJ*, Order of Civil Party Applications, 28 June 2019, [D384](#), para. 33 and footnote 49; in the Kosovo Specialist Chambers, transgenerational harm was recognised as a type of harm that entitles victims to receive reparations, KSC, Trial Panel I, *The Specialist Prosecutor v. Salih Mustafa*, Corrected version of Public redacted version of Reparation Order against Salih Mustafa, 6 April 2023, [KSC-BC-2020-05/F00517/RED/COR](#), paras 92, 187.

⁴²⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 73.

from traumatised parents to their children, who were not directly exposed to the parents' traumatic experience. As detailed in the *Katanga* 2018 Decision on Transgenerational Harm,⁴²⁵ the two leading schools of thought that explain how exposure to trauma is transmitted from parent to child are the epigenetic and the social transmission theories. The former focuses on the 'parent-to-child transmission of epigenetic marks that retain a memory of traumatic events experienced by the parents'. The latter focuses on 'the impact of upbringing and emotional learning on the child's emotional development'.⁴²⁶ The Chamber further notes that most recent studies suggest that the process of social transmission and epigenetic modifications mutually reinforce and feed into each other and that a holistic understanding of the intergenerational mechanisms and effects of trauma requires an interdisciplinary biopsychosocial approach.⁴²⁷ The Chamber has considered the above theories and the current state of the scientific debate as to the way transgenerational harm is transmitted.

177. On this basis, the Chamber rejects the Defence submissions that the concept of transgenerational harm is 'unsettled from a scientific and medical perspective' and that there is 'scepticism and uncertainty about its scope, [and] existence'.⁴²⁸ To the contrary, as noted above, the concept of transgenerational harm, as defined in the Reparations Order,⁴²⁹ is rooted in the common understanding of the notion and scope of the phenomenon by the scientific and academic community. In the Chamber's view, the ongoing scientific debate on the mechanisms of transmission simply reinforces the very existence of the phenomenon. The Chamber further notes that the Defence misinterprets the Appeals Judgment when submitting that it requires the Chamber's assessment of the "scientific certainty" about how trauma is allegedly *transmitted*'.⁴³⁰ In the Chamber's understanding, the Appeals Judgment was clear that the Chamber should 'consider the issue of *scientific certainty as to the concept* of transgenerational harm',⁴³¹ not about its transmission.

⁴²⁵ *Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), paras 11-14.

⁴²⁶ *Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), para. 11.

⁴²⁷ See, *inter alia*, J. Švorcová, 'Transgenerational Epigenetic Inheritance of Traumatic Experience in Mammals' in *Genes* (2023), 14, 120:1-20, available [online](#), p. 10; and S.A. Ridhuan et al, 'Advocating for a Collaborative Research Approach on Transgenerational Transmission of Trauma' in *Journal of Child & Adolescent Trauma* (2021) 14:527-531, available [online](#), p. 529.

⁴²⁸ Defence January 2023 Submissions, ICC-01/04-02/06-2823-Conf, para. 7.

⁴²⁹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 73.

⁴³⁰ Defence January 2023 Submissions, ICC-01/04-02/06-2823-Conf, para. 21 [emphasis added].

⁴³¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 494 [emphasis added].

178. As to the Appeals Judgment’s criticism of the reference to the *Katanga* case when defining intergenerational harm,⁴³² the Chamber considers that the concept itself, as advanced in the *Katanga* case, was not undermined by the rejection of applications based on transgenerational harm. In effect, the conceptual understanding of a phenomenon is not negated when the assessment of the facts in a case lead to the conclusion that the requirements of a notion, as legally defined, are not satisfied. In the *Katanga* case, the Chamber rejected the requests for reparations based on transgenerational harm not due to any uncertainties in its concept or in the way it is transmitted, but because the causal nexus between the psychological harm suffered by the applicants and the crimes for which Mr Katanga was convicted was not established.⁴³³ The Chamber even acknowledged that ‘[a]pplicants are, *in all likelihood*, suffering from transgenerational psychological harm’.⁴³⁴ The Chamber further notes, as recalled by the LRVs,⁴³⁵ that the finding above in the *Katanga* case was made in light of the applicable standard of causation (but-for relationship between the harm and the crime), the proximate cause standard, the possible breaks in the chain of causation, and the type of contribution for which Mr Katanga was convicted.⁴³⁶

179. Lastly, as to the Appeals Judgment conclusions that the Chamber relied upon the two reports of the Appointed Experts without assessing their reliability, the underlying basis for their submissions, and the Defence’s arguments,⁴³⁷ the Chamber, following previous practice at the reparation stage of the proceedings,⁴³⁸ did not consider it necessary to make explicit its determinations within this context.

180. In determining that the Appointed Experts’ reports were credible and their evidence reliable, the Chamber followed its consistent approach to expert’s evidence in the case. The reports were assessed against and relied upon depending on ‘factors such as the established competence of the particular witness in his or her field of expertise, the methodologies used, the extent to which the expert’s findings were consistent with other evidence on the trial record,

⁴³² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 478.

⁴³³ *Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), para. 141.

⁴³⁴ *Katanga* Reparations Order, ICC-01/04-01/07-3728-tENG, para. 134 [emphasis added].

⁴³⁵ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 36-40; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), paras 36-38.

⁴³⁶ *Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), paras 15-18.

⁴³⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 485-492.

⁴³⁸ The Chamber notes that, in the *Al Mahdi* case, Trial Chamber VIII relied on and/or discussed the evidence and methodology used by appointed experts, but without making a general finding on the reliability of the experts or their reports. See *Al Mahdi* Reparations Order, ICC-01/12-01/15-236, paras 6, 53-55, 76, 80-81, 119, 121-126.

and the general reliability of the expert's evidence'.⁴³⁹ In effect, in light of their expertise, the details provided about their sources and methodology, and considering that in their reports the experts clearly indicated their reliance on the academic and scientific opinions of other experts on the issue as the source for their submissions,⁴⁴⁰ the Chamber, within its discretion, was satisfied that they were sufficiently substantiated and adequate, taken together with the jurisprudence of other international jurisdictions, to support the definition provided for in the *Katanga* case.⁴⁴¹ However, as with any other evidence in the case, the Chamber proceeded with caution, relying on the reports to the extent that they were consistent with the Chamber's holistic assessment of the evidence and information regarding transgenerational harm.

b) Evidentiary criteria to prove transgenerational harm

181. Regarding the Appeals Judgment holding that reparations must remain within the confines of the conviction and sentence and noting that in the Sentencing Judgment the Chamber declined to pronounce itself on the issue of transgenerational harm,⁴⁴² the Chamber notes the different standard of proof applicable to reparations, on the one hand, and to trial proceedings, on the other. For the purposes of sentencing, the Chamber indeed declined to rule on the issue in light of the 'complex questions of causation involved in determining [...] [inter- or transgenerational harm] to a beyond reasonable doubt standard'.⁴⁴³ However, for the purposes of reparations, the 'balance of probabilities' standard of proof applies,⁴⁴⁴ the 'but/for' standard of causation, and the requirement that the crimes for which the person was convicted

⁴³⁹ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 54. *See also*, Decision on Defence preliminary challenges to Prosecution's expert witnesses, 9 February 2016, [ICC-01/04-02/06-1159](#), para. 9.

⁴⁴⁰ *See* report submitted by Dr Karine Bonneau, qualified lawyer MA and PhD, Mr Eric Mongo Malolo, agricultural engineer, and Dr Norbert Wühler, qualified lawyer and PhD, who clearly indicate to be relying on the scientific writings of Y. Danieli, the report of Dr Gilmore, and the report submitted by Ms Elisabeth Schauer in the *Lubanga* case, when making their submissions on intergenerational harm (*see* First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red4](#), paras 16, 33, 36, 111 and footnotes 9, 44, 52, 146-149); similarly, in the report submitted by Dr Sunneva Gilmore, medical doctor in obstetrics and gynaecology, she relies on the scientific writings of several individuals detailing results of their studies in different contexts, including B. Bezo, S. Maggi, N. Field, S. Muong, V. Sochanvimean, P. Fossion, C. Leys, C. Vandeleur, C. Kempnaers, S. Braun, P. Verbanck, P. Linkowski, H. Wiseman, and J. Barber, noting the increasing research indicating the intergenerational harms of gross violations and conflict on victims (*see* Second Experts Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), paras 53-57).

⁴⁴¹ Reparations Order, [ICC-01/04-02/06-2659](#), footnotes 189-193.

⁴⁴² Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 482-283, *referring to* Sentencing Judgment, [ICC-01/04-02/06-2442](#), footnote 317.

⁴⁴³ Sentencing Judgment, [ICC-01/04-02/06-2442](#), footnote 317 [emphasis added]. The Chamber also notes that the Sentencing Judgment declined to address the issue of transgenerational harm given 'the very general nature in which this type of harm has been referred to by the LRVs'. The Chamber is of the view that, contrary to the sentencing stage in the *Katanga* case, by the time the Reparations Order and the present Addendum are issued, this type of harm has sufficiently been discussed in reparations proceedings before the Court.

⁴⁴⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 136.

had to be the ‘proximate cause’ of the harm for which reparations are sought.⁴⁴⁵ The Chamber clearly indicated that transgenerational harm had to be personally suffered by the victim and that the causal nexus between the harm and the crime needs to be established.⁴⁴⁶ This can only be understood as requiring to establish the harm at the appropriate standard of proof and causation for the purposes of reparations. The Chamber considers therefore that the Reparations Order remains within the confines of the judgment and sentence.

182. As to the evidentiary requirements to establish transgenerational harm, the Chamber firstly notes that the only matter related to presumptions that has been affected by the Appeals Judgment is the presumption of physical harm for the victims of the attacks,⁴⁴⁷ while all other findings of presumptions in the Reparations Order are final.⁴⁴⁸ Accordingly, the Chamber will not entertain the submissions of the CLR1⁴⁴⁹ and the TFV⁴⁵⁰ regarding the need to adopt an additional presumption of transgenerational harm.

183. The Chamber observes that, when defining the types of harm suffered by the victims, it considered all relevant information before it⁴⁵¹ and concluded that the *children* of direct victims suffered transgenerational harm.⁴⁵² Accordingly, contrary to the submissions of CLR1 and the TFV, the Chamber underlines that no other family members are entitled to reparations in this case based on transgenerational harm.⁴⁵³

184. In addition, as pointed out by the CLR2,⁴⁵⁴ the Chamber notes that the Reparations Order did not restrict transgenerational harm to psychological harm only. Accordingly, children of direct victims who can demonstrate to have suffered transgenerational harm should be

⁴⁴⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 132.

⁴⁴⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 75.

⁴⁴⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 701-705.

⁴⁴⁸ See Reparations Order, [ICC-01/04-02/06-2659](#), paras 144-147.

⁴⁴⁹ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 21-24.

⁴⁵⁰ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 32-36.

⁴⁵¹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 148.

⁴⁵² Reparations Order, [ICC-01/04-02/06-2659](#), para. 183(d)(vi) [emphasis added].

⁴⁵³ This determination is relevant in the assessment of the CLR1 submission that siblings of former child soldiers would be entitled to education as a reparation for this type of harm (CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 44) and for the calculations of the approximate number of victims made by the TFV regarding the number of indirect victims that would qualify for reparations has having suffered transgenerational harm, which seems to include other family members as its counted in addition to the number of close family member of direct victims, Corrigendum of Public redacted version of the Annex 1 to the Trust Fund for Victims’ second submission of Draft Implementation Plan (‘Updated DIP’), 14 April 2022, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 94, 109-110.

⁴⁵⁴ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 41.

provided with collective reparations with individualised components, to the extent of the individual harm suffered as a result of the crimes for which Mr Ntaganda was convicted.

185. In concrete terms, a child of a direct victim claiming to have suffered transgenerational harm, would generally need to prove (i) that a direct victim suffered harm as a result of a crime for which Mr Ntaganda was convicted; (ii) that the child of the direct victim suffered harm; (iii) that the child's harm arises out of the harm suffered by the direct victim, i.e., the causal-link; and (iv) a parent-child relationship. As to the evidence required to prove the elements above, the Chamber considers that the same evidentiary criteria applicable in order to prove identity, the harm suffered, and the causal link between the crime and the harm, as for any other victims in the case, applies to victims claiming transgenerational harm.⁴⁵⁵

186. Regarding the first two requirements, i.e., harm of the direct victim and harm of the direct victim's child, the Chamber considers that, although no presumption of transgenerational harm applies, the general factual presumptions established in the Reparations Order to the extent that are not affected by the Appeals Judgment still apply, meaning that, once direct victim status has been proven, (i) children of former child soldiers and of victims of rape and sexual slavery benefit from the presumption of material, physical, and psychological harm in relation to them (as close family members) and in relation to their parents (as direct victims);⁴⁵⁶ (ii) children of direct victims of attempted murder and of direct victims of crimes committed during the attacks who personally experienced the attacks, benefit from the presumption of psychological harm in relation to their parents (as direct victims);⁴⁵⁷ and (iii) children of direct victims who lost their home or material assets with a significant effect on their daily life, benefit from the presumption of psychological harm in relation to their parents (as direct victims).⁴⁵⁸

187. Regarding the issue as to whether a psychological examination of the children and the parents is required,⁴⁵⁹ the Chamber notes that, as recalled by the TFV,⁴⁶⁰ in the *Katanga* case the Chamber relied on medical certificates and in an expert report not because they are the generally required documents to prove this type of harm, but because those were the supporting documents submitted thereto. In effect, it was the legal representative of victims in that case

⁴⁵⁵ See Reparations Order, [ICC-01/04-02/06-2659](#), paras 137-147.

⁴⁵⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 145.

⁴⁵⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 146.

⁴⁵⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 147.

⁴⁵⁹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 495.

⁴⁶⁰ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 37.

who considered it necessary to be provided with the assistance of an expert and, it was at his request that an expert was appointed by the Registry pursuant to Regulation 83(3) of the Regulations.⁴⁶¹ Accordingly, the Defence's submission that 'consistent prior practice of the Court' requires medical diagnosis,⁴⁶² is dismissed.

188. Further, as noted above and recalled by the CLR2,⁴⁶³ most direct victims who are former child soldiers, victims of rape and sexual slavery, victims of attempted murder, victims who personally experienced the attacks, or victims who lost their homes or material assets with a significant effect on their daily life, may be entitled to benefit from the presumption of psychological harm established in the Reparations Order. Accordingly, for most parents no psychological examination is required. Regarding the Defence's submission that a diagnosis of psychological harm for the parents should always exist and be reassessed, relying on the testimony of Dr Reicherter in the *Bemba* case⁴⁶⁴ and of Dr Schauer in the *Lubanga* case,⁴⁶⁵ having reassessed both testimonies, the Chamber dismisses the arguments as selective and

⁴⁶¹ *Katanga* Transmission of Expert Report, [ICC-01/04-01/07-3692-Red2](#), paras 5-7. See also Decision on the request of the common legal representative of victims for assistance from the Victims and Witnesses Unit, 9 October 2015, [ICC-01/04-01/07-3608-tENG](#), para. 10.

⁴⁶² Defence January 2023 Submissions, ICC-01/04-02/06-2823-Conf, para. 34.

⁴⁶³ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 17.

⁴⁶⁴ As to the testimony of Dr Reicherter in the *Bemba* case, the Defence selects a section of his testimony provided during cross-examination by the Defence in that case, when the expert was prompted by counsel to indicate that he had worked with information obtained 10 years before and that, indeed, psychiatric diagnosis evolve over time and would have to be reconsidered, even when 'we're pretty sure that it has a chronic and longitudinal outcome, we'd still want to reassess that diagnosis' (see [T-369](#) p. 6, ls 10-13). However, the Chamber notes that Dr Reicherter only gave a professional answer indicating that, logically, a diagnosis may evolve over time and even if it is chronic and the prediction is that it will last – as it has been the case with the patients he cares for – a professional would want to reassess, as with any medical diagnosis (see [T-369](#) p. 7 ls 9-19). The Chamber also notes that this part of the testimony should be assessed within the context of the entirety of testimony, noting, for example, sections where he explained trends in scientific evidence in relation to mental health trauma in cases of rape and mass rape, indicating that '[f]rom the time psychiatry has been considered a science it's quite clear that extensive trauma tends to cause bad mental health outcomes [...] science has evolved in that we've become better at identifying it, creating good statistics around it, but the theory has not evolved much. It's pretty straightforward, we're aware that very traumatic experiences cause bad mental health outcomes' (see [T-368](#) p. 86, l. 14 to p. 87, l. 5); of similar relevance are sections of his testimony where he noted that surveys about PTSD symptoms can be limiting and miss something else that is present as 'somebody who walks away from a severe crime like rape and somehow does not develop the disorder that we call PTSD, it is not the case that that person is therefore well [...] Being gang raped almost always cause some very bad psychological outcome. Whether it's something that we can diagnose or not is a different question.' (see [T-368](#) p. 88, l. 9 to p. 89, l. 9); or where he noted the limitations of psychiatric interviews and the need to conduct more comprehensive mental health assessments (see [T-368](#) p. 90, l. 11 to p. 91, l. 6).

⁴⁶⁵ As to the testimony of Dr Schauer, the defence selects a section of her testimony where she specifically referred to PTSD and indicated that indeed, a medical evaluation is required to have a diagnosis, but fails to refer to the rest of her testimony, where she clearly indicated that PTSD, which has certain specific symptoms, was only one of the possible mental outcomes of a traumatic experience (see [T-166-ENG](#) p. 19, l. 2 to p. 21, l. 17; p. 22, l. 2 to p. 26, l. 7); or where Dr Schauer explained how traumatic experiences do not only impact the mental health of victims but it may equally affect the neuronal, endocrine, and immune system, causing also physical diseases (see [T-166-ENG](#) p. 26, l. 8 to p. 30, l. 12).

taken out of context.⁴⁶⁶ In addition, as noted above, the Chamber considers that transgenerational harm may not only be psychological and should, therefore, be holistically assessed and addressed, depending on the victims' harm, through the different rehabilitation measures to be included within the individualised components of the collective reparations granted in this case.

189. The need for a psychological assessment of the direct victim (parent) and/or the indirect victim (child) claiming transgenerational harm shall be determined on a case-by-case basis, depending on whether any of the general presumptions of harm apply for the child and/or the parent(s) and the type of harm claimed. The Chamber notes that no victim included in the sample claimed to have suffered transgenerational harm. Accordingly, the decision as to whether any examination will be required as part of the further victims' eligibility assessment of victims, shall be taken on a case-by-case basis. Nevertheless, taking into account the submissions from the Registry and the TFV,⁴⁶⁷ the Chamber underlines that victims should not be required to obtain psychological expertise in order to prove the harm and, in the event that a psychological evaluation may be required, access to it should be provided to the victims by the authority responsible for conducting the eligibility assessments.

190. Regarding the third requirement that the child's harm arises out of the harm suffered by the direct victim, i.e., the causal link between the crime and the harm, this should be determined at the time of the eligibility assessment by the authority responsible for conducting the assessment. It will need to be established whether it is more likely than not that the direct victim passed the trauma to his or her child, based on objectively justifiable criteria such as the nature, intensity, extent and duration of the suffering of both, the direct and the indirect victim.⁴⁶⁸ This evaluation should be made considering the evidence as a whole,⁴⁶⁹ and, as suggested by the CLR2 and the TFV, the date of birth of the child and the security situation in the area where the direct victim lived after the events, would be key elements to consider.⁴⁷⁰ Consistent with the approach taken in the *Katanga* case, the closer the date of the child's birth to the crimes for which Mr Ntaganda was convicted, the higher the likelihood that the parent's trauma was

⁴⁶⁶ See two previous footnotes.

⁴⁶⁷ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 15; TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 38.

⁴⁶⁸ For a similar suggestion, see CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 30.

⁴⁶⁹ *Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), para. 28.

⁴⁷⁰ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 31; TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 42.

transmitted to the child.⁴⁷¹ As suggested by the CLR2, the Chamber also considers relevant to take into account whether, after having suffered the crimes, the direct victim(s) lived and had a child in a relatively safe area or not, in order to account for the possible breaks in the chain of causation.⁴⁷² In effect, the authority making the assessment would need to determine on a case-by-case basis whether the crimes suffered by the parent(s) – and for which Mr Ntaganda was indeed convicted – are the proximate cause of a harm suffered by the child, assessing whether the crime is ‘closely connected’ and ‘significant enough’ to have caused the harm.⁴⁷³

191. Regarding the fourth requirement, the parent-child relationship, the same evidentiary criteria to prove identity applies. Accordingly, the kinship can be demonstrated through official or unofficial documents and, alternatively, through the signed statement of two individuals.⁴⁷⁴

192. As to the question whether it is appropriate to award reparations for transgenerational harm in this case,⁴⁷⁵ the Chamber reiterates that, when identifying and defining the types of harm suffered by the victims in this case, it took into account all relevant information at its disposal⁴⁷⁶ and concluded that, indeed, it was more likely than not that the children of direct victims of the crimes for which Mr Ntaganda was convicted suffered from transgenerational harm.⁴⁷⁷ In effect, as noted by the LRVs,⁴⁷⁸ and partly by the TFV,⁴⁷⁹ the record of the case is abundant in evidence demonstrating (i) the mass victimisation and extreme violence suffered by the victims of the crimes included in the conviction; and (ii) that the victims received no support or treatment alleviating their suffering as they carried on with their lives. Accordingly, the Chamber concluded that it was more likely than not that the children of direct victims would be suffering from transgenerational harm. Victims claiming to have suffered from transgenerational harm shall be assessed on a case-by-case basis by the authority in charge of conducting the eligibility assessment.

⁴⁷¹ *Katanga* Decision on Transgenerational Harm, [ICC-01/04-01/07-3804-Red-tENG](#), para. 29. *See also* CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 31.

⁴⁷² CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 31.

⁴⁷³ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 37-38; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 37.

⁴⁷⁴ *See* section III.A.4.b(i).

⁴⁷⁵ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 494.

⁴⁷⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 148.

⁴⁷⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 183(d)(vi).

⁴⁷⁸ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), paras 26-30; CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), paras 21-27.

⁴⁷⁹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 35.

193. Regarding the issue of whether Mr Ntaganda should be liable to repair transgenerational harm in the specific context of the crimes for which he was convicted and taking into account the impact of the protracted armed conflict in the DRC,⁴⁸⁰ the Chamber notes that sufficient safeguards to the rights of the convicted person are included in the Reparations Order. As detailed above, no factual presumption for transgenerational harm has been recognised and as claimed by the Defence.⁴⁸¹ The Chamber underlined that any potential award based on transgenerational harm required sufficient proof of the causal nexus between the child's harm and the harm caused to the parent(s) for which Mr Ntaganda was convicted. As noted above, the standard of causation recognised in this case is the 'but/for' standard and it is further required that the crimes for which the person was convicted had to be the 'proximate cause' of the harm for which reparations are sought.⁴⁸² Nevertheless, the Chamber underlines that, as noted by the expert from the *Bemba* case⁴⁸³ and recalled by the Defence,⁴⁸⁴ the harm caused by a traumatic experience makes a person far more vulnerable to suffering from any subsequent trauma, and the outcomes for the person would be worse because of the previous trauma. Accordingly, the issue of the impact of the protracted armed conflict in the DRC is a matter of evidence that has to be decided on a case-by-case basis as part of the eligibility assessments. Caution should certainly be exercised when assessing whether victims who claim transgenerational harm are eligible to benefit from reparations.

194. As to the Defence's submission that the Appeals Judgment mandatorily directed the Chamber to solicit and consider additional expert evidence,⁴⁸⁵ the Chamber notes that the Defence seems to have misapprehended the Appeals Judgment findings. In the view of the Chamber, the use of the wording 'e.g.,' (for example) when referring to experts on this matter,⁴⁸⁶ makes it clear that the Appeals Chamber presented the Chamber with an option to be resorted upon at the Chamber's discretion.

195. Lastly, the Chamber underlines that, in most cases, children of direct victims may qualify as indirect victims of the crimes without the need to claim that they suffered from transgenerational harm. In effect, as is the practice in other cases before the Court at the

⁴⁸⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 494-495.

⁴⁸¹ Defence January 2023 Submissions, ICC-01/04-02/06-2823-Conf, para. 26.

⁴⁸² Reparations Order, [ICC-01/04-02/06-2659](#), para. 132.

⁴⁸³ See testimony of Dr Reicherter in the *Bemba* case, [T-369](#) p. 19 ls 2-8 and p. 31 ls 3-16.

⁴⁸⁴ See, *inter alia*, Defence January 2023 Submissions, ICC-01/04-02/06-2823-Conf, paras 33-34.

⁴⁸⁵ Defence January 2023 Submissions, ICC-01/04-02/06-2823-Conf, paras 7-9.

⁴⁸⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 497.

reparation stage of the proceedings,⁴⁸⁷ they will either benefit from a presumption⁴⁸⁸ or be able to demonstrate that they have suffered personal harm as a result of the crimes committed against their parent(s).⁴⁸⁹ Nevertheless, the Chamber finds it essential to acknowledge the existence of the phenomenon of transgenerational harm and the personal suffering that children of victims of unimaginable atrocities may also experience. In the view of the Chamber, this approach is further justified in light of the fundamental principle of the ‘best interests of the child’, which should guide reparations decisions concerning children.⁴⁹⁰ A sensitive approach to the rights of children that – while ensuring that the rights of the convicted person are fully respected – also carefully promotes the protection of children and recognises the distinct personal harm that they may have suffered, in itself, may already constitute a measure of satisfaction.⁴⁹¹

3. Conclusion on transgenerational harm

196. In light of the above, the Chamber reiterates its previous findings in the Reparations Order as to (i) the various permutations of harm; (ii) the concept of transgenerational harm; (iii) the fact that transgenerational harm should be personally suffered by the victim and the causal nexus needs to be established; and (iv) the fact that Mr Ntaganda should be held liable to repair such harm, as one of the types of harm suffered by the children of direct victims of the crimes for which he was convicted.⁴⁹²

197. A child of a direct victim claiming to have suffered transgenerational harm, will generally need to prove (i) that a direct victim suffered harm as a result of a crime for which Mr Ntaganda was convicted; (ii) that the child of the direct victim suffered harm; (iii) that the child’s harm arises out of the harm suffered by the direct victim; and (iv) the parent-child relationship. These requirements are without prejudice to the application of the general presumptions as determined in the Reparations Order and subject to the same evidentiary

⁴⁸⁷ See, for example, in the *Lubanga* case where material, physical, and psychological harm was presumed in relation to all indirect victims ‘owing to their close personal relationship with the direct victim’, *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 180-185.

⁴⁸⁸ Reparations Order, [ICC-01/04-02/06-2659](#), paras

⁴⁸⁹ Reparations Order, [ICC-01/04-02/06-2659](#), paras 35-38.

⁴⁹⁰ Reparations Order, [ICC-01/04-02/06-2659](#), para. 54. See also ECOSOC Resolution 2005/20 of 22 July 2005, [Guidelines on Justice Matters Involving Child Victims and Witnesses of Crime](#) (the ‘Guidelines on Child Victims and Witnesses’), p. 6, para. 9(c): “[j]ustice process” encompasses [...] post-trial procedures, regardless of whether the case is handled in a national international or regional criminal justice system’.

⁴⁹¹ For a similar approach, see CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 44. See also [Guidelines on Child Victims and Witnesses](#), p. 5, para. 8 (c): ‘[w]hile the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration’.

⁴⁹² Reparations Order, [ICC-01/04-02/06-2659](#), paras 71, 73, 75, 182, and 183(d)(vi).

criteria and standard of causation applicable to all victims. Victims claiming to have suffered from transgenerational harm shall be assessed on a case-by-case basis by the authority in charge of conducting eligibility assessments at the implementation stage.

C. Issues related to the health centre in Sayo

1. Previous findings and submissions

a) Judgment, Sentence, Reparations Order, Appeals Judgement, and implementing orders

198. In the Conviction Judgment, the Chamber found Mr Ntaganda responsible, *inter alia*, for intentionally directing attacks against protected objects as a war crime pursuant to article 8(2)(e)(iv) of the Statute, specifically in relation to the health centre in Sayo, in the context of the First Operation.⁴⁹³ When detailing the applicable law to the war crime of attacking protected objects, the Chamber clearly indicated that the crime ‘only requires the perpetrator to have *launched* an attack against a protected object and it need not be established that the attack caused any damage or destruction to the object in question.’⁴⁹⁴ As such, the Chamber recalled its factual findings beyond reasonable doubt that ‘during the UPC/FPLC advance into Sayo, UPC/FPLC soldiers fired projectiles at the health centre’.⁴⁹⁵ The Chamber also determined that the Sayo health centre was in use at the time of the attack as a medical facility, as persons seeking medical treatment were there.⁴⁹⁶ Further, the Chamber found that the UPC/FPLC were aware of the status of the building and yet made it the object of an attack, as soldiers who used heavy weapons in Sayo referred to the centre as a ‘dispensary’, thus being aware that it served a medical purpose.⁴⁹⁷ Based on his conduct and actions prior, during and after the commission of the crimes,⁴⁹⁸ the Chamber also concluded beyond reasonable doubt that Mr Ntaganda meant for the UPC/FPLC soldiers to indiscriminately attack, among other structures, a protected object in Sayo, knowing that medical facilities are protected against attack under IHL.⁴⁹⁹

⁴⁹³ Conviction Judgment, [ICC-01/04-02/06-2359](#), page 538 (disposition), para. 1199 (p. 529).

⁴⁹⁴ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1136 and footnote 3148, *referring to* Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Judgment and Sentence (‘*Al Mahdi* Judgment and Sentence’), 27 September 2016, [ICC-01/12-01/15-171](#), footnote 29.

⁴⁹⁵ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1138 and footnote 3151, *referring to* para. 506 and recalling para. 526 and footnote 1563, where the Chamber indicated that it was unable to establish [beyond reasonable doubt] that the UPC/FPLC looted the health centre in Sayo.

⁴⁹⁶ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1147 and footnote 3159, *referring to* para. 228.

⁴⁹⁷ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1147 and footnote 3160, *referring to* footnote 1474.

⁴⁹⁸ Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 1177-1187.

⁴⁹⁹ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1188.

199. The Chamber further notes that, in its factual findings in the Conviction Judgment it was found proven that, prior to the attack on or about 24 November 2002, the health centre in Sayo received injured people who had been wounded in Mongbwalu.⁵⁰⁰ Having considered the Defence's challenges and submissions,⁵⁰¹ the Chamber also found beyond reasonable doubt that two persons present at the health centre when it was attacked by UPC/FPLC soldiers fled because of the danger, three seriously injured men and a Lendu woman with her child were left behind, and the woman was killed during the assault.⁵⁰²

200. In the Sentencing Judgment, the Chamber recalled that injured persons were present in the health centre at the time it was attacked.⁵⁰³ In addition, the Chamber found that by launching an attack against the health centre, a facility that cares for patients, the perpetrators accepted the consequential severe impact on the welfare and/or lives of any patients present at the centre and disrupted the medical care for persons in need.⁵⁰⁴ In the Sentencing Judgment, the Chamber also found that, while more than one projectile was fired at the health centre and the centre was intentionally made the object of the attack, it was not clear on the basis of the evidence whether the weapon used destroyed the health centre in full or merely damaged it.⁵⁰⁵ Lastly, the Chamber found that the people left behind at the centre were particularly defenceless, as they were unable to leave by themselves and were left without medical care.⁵⁰⁶

201. In the Reparations Order, the Chamber identified among the direct victims eligible for reparations, natural and legal persons that could demonstrate, at the relevant standard of proof, that they suffered harm as a result of, among other crimes, the attack against the health centre in Sayo.⁵⁰⁷ When defining the types of harm suffered by the victims, after having considered all the information before it,⁵⁰⁸ the Chamber recalled that injured persons were present in the health centre at the time of the attack and that the attack had a severe impact on the welfare and

⁵⁰⁰ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 476, *referring to* individuals wounded during the failed assault on Mongbwalu on or about 9 November 2002, and para. 495, *referring to* people wounded during the assault on Mongbwalu on or about 20 November 2002.

⁵⁰¹ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 506 and footnotes 1474, 1478, 1482-1484.

⁵⁰² Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 506.

⁵⁰³ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 144, *referring to* Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 506.

⁵⁰⁴ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 144, *referring to* the finding that three seriously injured men and a woman and her child were left behind at the centre, Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 506.

⁵⁰⁵ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 153, *referring to* Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 506.

⁵⁰⁶ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 154.

⁵⁰⁷ Reparations Order, [ICC-01/04-02/06-2659](#), paras 108, 116.

⁵⁰⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 148.

lives of the patients.⁵⁰⁹ Referring to the Second Expert Report, the Chamber noted that (i) the attack not only damaged its physical structures, but also caused harm to its service provision and exacerbated the vulnerability and suffering of the civilian population;⁵¹⁰ (ii) after the attack the services ceased, regaining functionality soon after but at a reduced capacity;⁵¹¹ and (iii) to date, the number of beds is still reduced, there is a lack of skilled personnel, and simply providing material assets or repairing structures would not reinstate their prior level of healthcare available.⁵¹² Accordingly, the Chamber concluded that harm to direct victims included damage to the health centre in Sayo and loss of adequate healthcare provision to the community that benefitted from it.⁵¹³

202. When identifying the most appropriate modalities of reparations, based on the specific circumstances of the case, the Chamber directed the TFV to consult with the victims as to whether, as a symbolic measure, a sign could be installed on the health centre in Sayo, indicating that the building enjoys special protection under international humanitarian law.⁵¹⁴ Lastly, when considering the costs of repairing the harms caused to the victims of this attack, relying on the report from one of the Appointed Experts, Dr Gilmore, the Chamber noted that, at the time of the Reparations Order the centre was operational, as repairs were made through an NGO in 2005 with money raised locally.⁵¹⁵ The Chamber further recalled the views of the Appointed Expert that focusing only on rebuilding the infrastructure would not address the harm caused or the level of service provision available.⁵¹⁶ Lastly, the Chamber noted that the Appointed Expert had quantified the appropriate total cost for repairing the harm caused by the attack on the Sayo health centre at a total sum of USD 130,000.⁵¹⁷

⁵⁰⁹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 158, *referring to* Sentencing Judgment, [ICC-01/04-02/06-2442](#), paras 144, 154 and Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 506.

⁵¹⁰ Reparations Order, [ICC-01/04-02/06-2659](#), para. 158, *referring to* Second Experts Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), paras 160-161, 168.

⁵¹¹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 158, *referring to* Second Experts Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), para. 169.

⁵¹² Reparations Order, [ICC-01/04-02/06-2659](#), para. 158, *referring to* Second Experts Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), para. 169.

⁵¹³ Reparations Order, [ICC-01/04-02/06-2659](#), para. 183(a)(x).

⁵¹⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 208, *referring to* Second Experts Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), para. 174 and CLR2 December 2020 Submissions, [ICC-01/04-02/06-2633-Red](#), paras 72, 75.

⁵¹⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 242, *referring to* Second Experts Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), para. 168 and footnote 663.

⁵¹⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 242, *referring to* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), paras 168-169.

⁵¹⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 242, *referring to* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), paras 169, 172-173, footnotes 669, 686.

203. The Appeals Judgment reversed the findings in the Reparations Order in relation to the health centre in Sayo and remanded it for the Chamber to address it anew, considering that the Chamber failed to meet the requirement to provide a reasoned opinion on the matter.⁵¹⁸ The Appeals Chamber held that neither the Conviction Judgment nor the Sentencing Judgment found that, as a result of that crime, damage was caused to the health centre or loss of adequate healthcare provision was caused to the community.⁵¹⁹ Accordingly, the Appeals Judgment concluded that the Chamber should have first considered whether, and on what basis, the cost to repair the damage to the centre could be included within the order for reparations and should have given the parties an opportunity to make submissions on this issue.⁵²⁰ In the Appeals Chamber's view, the Chamber simply adopted the conclusion of the Appointed Expert, but erred in failing to properly assess her credibility, the reliability of her report, and the basis for her findings, and erred in failing to explain how it reached its findings as to causation and harm to the centre.⁵²¹

204. Therefore, in the view of the Appeals Chamber, to make such findings evidence would need to have been presented, establishing to the appropriate standard of proof, that the damage exists, that there is a causal nexus between that damage and Mr Ntaganda's crimes and that, as a result, Mr Ntaganda's liability to pay for repair to this centre has been established.⁵²² The Appeals Judgment also indicated that the Chamber should address the issue of disclosure to the Defence of relevant information,⁵²³ and assess the Defence's submissions as to the chain of causation establishing that Mr Ntaganda is responsible for the harm caused to the health centre in Sayo.⁵²⁴ Lastly, Judge Ibáñez Carranza observed that, if no individual applications for reparations have been submitted, the Chamber should consider repairing the harm suffered by the community as a collective victim.⁵²⁵

205. In the October 2022 Order, the Chamber instructed all parties and participants, including the OTP, the DRC and, if available, the Appointed Experts, to provide further submissions and possible evidence, on issues relevant to the assessment of the actual damage

⁵¹⁸ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 549.

⁵¹⁹ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 539-540, 548.

⁵²⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 541.

⁵²¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 544-545, 548.

⁵²² Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 548-549.

⁵²³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 549.

⁵²⁴ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 581.

⁵²⁵ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 550, *referring to* her separate opinion in the *Lubanga* case, Separate Opinion of Judge Luz del Carmen Ibáñez Carranza ('*Lubanga* Separate Opinion Judge Ibáñez'), 16 September 2019, [ICC-01/04-01/06-3466-AnxII](#), paras 138, 140.

and harm caused to the health centre in Sayo. In particular, the Chamber instructed them to refer specifically to the issue of the actual damage and any harm caused to the health centre in Sayo, the individual victims, and the community as a whole for loss of adequate healthcare provision, and the causal nexus between any harm and the crime.⁵²⁶ The Chamber further instructed the Appointed Experts to review the redactions to their Reports and additional information.⁵²⁷

206. Following this, lesser redacted versions of the Second Expert Report were submitted in consultation with the Appointed Experts,⁵²⁸ while the Registry informed that the Appointed Experts had indicated not to be in a position to provide further submissions and information on issues related to the health centre in Sayo.⁵²⁹ Similarly, in its submissions, the DRC stated that [REDACTED].⁵³⁰ The Chamber considers below the submissions presented by the parties, the Prosecutor, the TFV and the Registry, and provides its reasoned findings on this issue.

b) CLR2 submissions

207. In his submissions, the CLR2 argues that available evidence on the case record and recently collected demonstrates that the attack on the Sayo health centre resulted in a disruption of which the centre and the community has never recovered, with the provision of medical services never returning to its pre-attack levels.⁵³¹ In the CLR2's argument, the disruption unfolded in three phases: (i) full interruption of the medical services for a period of about six months; (ii) extremely limited resumption of activities until 2005; and (iii) broadening – yet at reduced capacity – in the delivery of medical services from 2005 until today.⁵³²

208. As to the evidence available in the record, the CLR2 notes that, based on the testimony of witnesses, the Chamber established beyond reasonable doubt that a woman was killed during the attack and patients, who were particularly defenceless, were left without medical care.⁵³³ Although the Chamber could not establish that the centre was looted or physically damaged as

⁵²⁶ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 42.

⁵²⁷ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 43.

⁵²⁸ On 21 December 2022, a confidential lesser redacted version of the Second Expert Report was filed together with the public lesser redacted version thereof (ICC-01/04-02/06-2623-Conf-Anx2-Red3).

⁵²⁹ Email from VPRS to the Chamber's Legal Officer, 21 November 2022, at 12:38 hrs; and Email from VPRS to the Chamber's Legal Officer, 7 February 2023, at 16:48 hrs.

⁵³⁰ Annex III to the Registry's Transmission of the Democratic Republic of Congo on the issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo, ICC-01/04-02/06-2830-Conf-AnxIII.

⁵³¹ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), para. 12.

⁵³² CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), para. 12.

⁵³³ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), para. 14.

a result of the crime, it found that the UPC/FPLC disrupted the medical care for persons in need.⁵³⁴ As to the fact that no application has been presented for the Chamber's consideration, as noted by the Appeal Chamber, the CLR2 posits that this should not preclude the Chamber from awarding reparations for the harm caused as a result of the attack, as the evidence is sufficient to do so on the standard of balance of probabilities.⁵³⁵

209. Regarding additional evidence, the CLR2 collected statements from witnesses who described the situation of the health centre before, during, and after the attack and fully corroborate each other's accounts.⁵³⁶ The witnesses, the CLR2 notes, make comprehensive statements on the impact of the attack on the Sayo health centre and provided coherent and credible accounts.⁵³⁷ The CLR2 argues that, together with the evidence on the record, this new evidence demonstrates, on a balance of probabilities, that it is more likely than not that the attack led to the disruption of medical services in which resulted in a six months full cessation of services, followed by a resumption of services at reduced capacity until today.⁵³⁸

210. In the CLR2's submission, the standard of causation is met, as by launching the attack Mr Ntaganda – knowing or reasonably expected to know the context of very limited medical resources – could have reasonably foreseen that the provision of medical care would be disrupted for at least some period of time, either because of physical damage or looting or because of the staff fleeing.⁵³⁹ Further, the CLR2 argues that although external intervention contributed only partly to elevating the level of services, any sort of rehabilitation provided by external stakeholders does not diminish the convicted person's liability to fully repair the harm.⁵⁴⁰ Further, noting that the medical services remain to date reduced because of the lack of equipment and qualified staff and absent any evidence that the centre suffered any other harm, the CLR2 submits that no issue of break of the chain of causation arises.⁵⁴¹

211. Regarding the harms caused as a result of the attack, the CLR2 argues that it caused material harm to the health centre as a legal entity, as its core business – the provision of

⁵³⁴ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), para. 14.

⁵³⁵ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), para. 15.

⁵³⁶ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), paras 16-18, *relying on* [ICC-01/04-02/06-2834-Anx1-Red](#) and [ICC-01/04-02/06-2834-Anx2-Red](#).

⁵³⁷ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), para. 19.

⁵³⁸ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), para. 19.

⁵³⁹ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), paras 20-21.

⁵⁴⁰ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), para. 21, *referring to Al Mahdi Reparations Order*, [ICC-01/12-01/15-236](#), para. 65.

⁵⁴¹ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), para. 21.

medical services – was disrupted with a subsequent loss of clientele, since patients are still being referred to another facility.⁵⁴² Relying on the findings in the *Al Mahdi* case that attacks against protected objects cause various types of collective harms, the CLR2 argues that the attack caused collective socio-economic and moral harm to the community of Sayo, as the overall well-being of the community, both morally (distress) and in terms of provision of medical services (disruption) was affected.⁵⁴³ The CLR2 also argues that individual patients suffered physical, socio-economic, and moral harm, in light of the findings in the Conviction Judgment that (i) three men and a woman with her baby were left behind in the centre and the woman was killed, which is confirmed by recent statements; (ii) by launching the attack the perpetrators accepted the consequential severe impact on the welfare and lives of any patients present at the centre, it is more likely than not that the denial of medical treatment caused physical and moral harm to sick or wounded patients (which could be a maximum of 25 people) and at least psychological suffering to their relatives.⁵⁴⁴ Lastly, the CLR2 argues that, as acknowledged in the Sentencing Judgment, medical personnel had to flee to protect their lives and abandon patients to their fate, and they would have also suffered a particular type of moral harm by being deprived of their right and duty to providing medical care to the sick and wounded.⁵⁴⁵

212. As to the appropriate types and modalities of reparations to address the above harms, the CLR2 reiterates his previous submissions and, relying on the *Al Mahdi* case, also requests that a *lump sum* be awarded to repair the Sayo health centre as a legal entity and the community of Sayo, increasing the existing healthcare capacities as suggested by the Appointed Expert Dr Gilmore.⁵⁴⁶ Regarding the individual harm suffered by patients, their relatives and medical

⁵⁴² CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), paras 13, 22-24.

⁵⁴³ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), paras 13, 25-31, *referring to Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), paras 16, 56, footnote 29; *to Appeals Judgment*, [ICC-01/04-02/06-2782](#), para. 550; *to Lubanga Separate Opinion Judge Ibáñez*, [ICC-01/04-01/06-3466-AnxII](#), paras 134-140; and *to jurisprudence from the IACtHR*.

⁵⁴⁴ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), paras 13, 32-36, *referring to Conviction Judgment*, [ICC-01/04-02/06-2359](#), paras 506, 535; *to Sentencing Judgment*, [ICC-01/04-02/06-2442](#), paras 144, 154; *to Al Mahdi Reparations Order*, [ICC-01/12-01/15-236](#), para. 97; and *to International Committee of the Red Cross, Health Care Law Factsheet*, March 2021.

⁵⁴⁵ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), paras 13, 37-40, *referring to the Sentencing Judgment*, [ICC-01/04-02/06-2442](#), para. 144; Word Medical Association, International Code of Medical Ethics, available [online](#); and Customary International Humanitarian Law (IHL) - Rule 110. Treatment and Care of the Wounded, Sick and Shipwrecked, available online.

⁵⁴⁶ CLR2 February 2023 Submissions, [ICC-01/04-02/06-2834-Red](#), paras 41-44, *referring to CLR2 December 2020 Submissions*, [ICC-01/04-02/06-2633-Red](#), paras 69-72, 77, 118; *to Al Mahdi Reparations Order*, [ICC-01/12-01/15-236](#), paras 65, 116-118; *to Al Mahdi Decision on Updated DIP*, [ICC-01/12-01/15-324-Red](#), paras 66, 72, 77-78; and *to Second Expert Report*, [ICC-01/04-02/06-2623-Anx2-Red4](#), para. 173.

personnel, the CLR2 suggest that they be addressed through collective reparations with individualised components, as with any other individual victims of the case.⁵⁴⁷

c) Defence submissions

213. In its submissions, the Defence argues that the Appeals Chamber recalled the following principles applicable to reparations: (i) the purpose of reparations is for the Chamber to quantify the harm caused by the crimes for which Mr Ntaganda was convicted, to the appropriate standard of proof and based on evidence of a causal nexus between the crimes and the harm alleged;⁵⁴⁸ (ii) in order to protect the rights of the convicted person, ensure that reparations are not awarded to remedy harms that are not the result of the crimes and protect the victims' right to appeal, the Chamber shall clearly define the harms;⁵⁴⁹ (iii) the Court's statutory framework provides for the convicted person to be able to challenge any evidence that could potentially be relied upon in the reparations order;⁵⁵⁰ and (iv) harm cannot be attributed to the convicted person if a break in the chain of causation is established.⁵⁵¹

214. As to Dr Gilmore Report, the Defence submits that, in the absence of recordings and unavailability of her notes, it is not possible to assess the credibility of her sources, or the reliability and probative value that can be accorded to her report.⁵⁵² Further, the Defence argues that Dr Gilmore undermined her own conclusions in the report and neither established, or stated when the health centre became functional again.⁵⁵³ However, in the argument of the Defence, evidence adduced at trial establishes pursuant to the applicable balance of probabilities standard, that the Sayo health centre became functional again 'during this period'.⁵⁵⁴ Accordingly, the Defence submits that the expert's conclusions regarding the extent of Mr Ntaganda's liability for loss of adequate healthcare provisions to the community must be

⁵⁴⁷ CLR2 February 2023 Submissions, ICC-01/04-02/06-2834-Red, para. 45, *referring to* CLR2 December 2020 Submissions, [ICC-01/04-02/06-2633-Red](#), paras 62-64.

⁵⁴⁸ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 22, *referring to* Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 531.

⁵⁴⁹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 22, *referring to* Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 531.

⁵⁵⁰ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 22, *referring to* Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 531.

⁵⁵¹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 22, *referring to* Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 15.

⁵⁵² Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 23-25.

⁵⁵³ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 27.

⁵⁵⁴ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 27, *relying on* [REDACTED]; P-0886 at T-40 pp. 16-17 and Logbook of radio communications DRC-OTP-0017-0033, at 0036, 0042, 0044, 0045, 0047, 0048, 0053-0059, 0061, 0063-0069, 0071, 0075, 0077, 0084-0088, 0093, 0097, 0098, 0100.

disregarded.⁵⁵⁵ The Defence also submits that the expert's statements about the population's vulnerability relied in modern day examples and is not related to the alleged damage in 2002.⁵⁵⁶ The expert's conclusion that the damage to the health centre was extensive and caused by the UPC/FPLC is, according to the Defence, baseless.⁵⁵⁷ Lastly, the Defence submits that the report is contradictory when it asserts that it would be inappropriate and disproportionate to make Mr Ntaganda liable for the full cost of a new health centre, but then concludes that he should be liable for the full costs of several items, omitting consideration to the break in the chain of causation.⁵⁵⁸

215. As to the actual damage and harm caused by the attack to the health centre, the Defence argues that to determine Mr Ntaganda's liability it is necessary to begin by establishing the state and functioning of the centre *before* the attack.⁵⁵⁹ Based on testimony heard at trial, the Defence submits that (i) the Sayo health centre was a very rudimentary and basic structure, with only a section of a single room dedicated to treatment of the wounded; (ii) later interventions on the structure did not resolve in renovation of the existing buildings, but added new buildings which were not present in November 2002; and (iii) at the time of the attack, the centre had very limited functionality, as demonstrated by the scarce personnel employed, and the absence of any doctor at the premises.⁵⁶⁰

216. Regarding material damage to the centre, the Defence reiterates that the Conviction and Sentencing Judgments did not find that damage was caused, and recall testimonies indicating that the only visible damage was to doors and windows but that it could not be concluded that they were damaged during the events of November 2002.⁵⁶¹ Similarly, it could not be established who took the equipment, mattresses and medication that had been taken from the centre.⁵⁶² Accordingly, the defence argues that no damage to the interior can be established with precision, even on a balance of probabilities standard.⁵⁶³

⁵⁵⁵ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 27.

⁵⁵⁶ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 28.

⁵⁵⁷ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 29.

⁵⁵⁸ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 30, *referring to* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), paras 169, 173, 175.

⁵⁵⁹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 31.

⁵⁶⁰ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 31-33, *relying on* [REDACTED].

⁵⁶¹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 34-36, *relying on* P-0800 at T-68, pp. 52, 81; P-0813 at T-76, p. 60; and D-300 at T-217, pp. 50-51.

⁵⁶² Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 37, *relying on* [REDACTED]; P-815 at T76, p. 62

⁵⁶³ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 37.

217. As to the information gathered by Dr Gilmore, the Defence argues that it comes from unknown individuals and no useful information is provided, with the sources not demonstrating that any material damage was caused to the centre at the relevant time.⁵⁶⁴ No other information suggesting that the health centre suffered any material damage is available and, accordingly, the Defence submits that the Chamber cannot impute any liability to Mr Ntaganda beyond the entrance doors and windows.⁵⁶⁵

218. As to the damage to individual victims, the Defence recalls evidence that only five people were being treated at the health centre at the time of the attack and notes that no application of other victims is included in the sample.⁵⁶⁶ While not opposing reparations being awarded to individual victims, if any, who suffered a harm as a result of being deprived healthcare, the Defence submits that victims must be held to a strict evidentiary standard, noting that the prevailing circumstances at the time are crucial and must be considered.⁵⁶⁷

219. As to the damage caused to the community as a whole for loss of adequate healthcare provisions, the Defence argues that the Appeals Chamber's findings yield the conclusion that the civilian population did not suffer any such harm.⁵⁶⁸ As to the Prosecution's submissions, the Defence submit that they are assertions unsupported by any existing or new evidence and omits to consider the break in the chain of causation.⁵⁶⁹ Discussing different evidence presented at trial and the Dr Gilmore Report, the Defence submits that no evidence or information currently available supports a finding of harm suffered by the community as a whole.⁵⁷⁰

220. Regarding the causal link and breaks in the chain of causality, the Defence recalls the Appeals Chamber findings and submits that, even if the Chamber were to impute any responsibility to Mr Ntaganda for harm caused to the health centre, individual civilians or the community as a whole, a break in the chain of causality significantly limits such liability.⁵⁷¹ Referring to evidence presented at trial, the Defence submits that the UPC/FPLC was chased

⁵⁶⁴ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 38-40, *referring to* Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), footnotes 663, 668 and para. 168.

⁵⁶⁵ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 41.

⁵⁶⁶ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 42, *relying on* [REDACTED].

⁵⁶⁷ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 43-44, *relying on* [REDACTED]; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), para. 170.

⁵⁶⁸ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 45, *referring to* Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 544, 548.

⁵⁶⁹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 46.

⁵⁷⁰ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 47-52, *referring to on* [REDACTED]; P-0886 at T-38, p.78, at T-39, pp. 25-30, 54; P-907 at T-91, p. 31; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), para. 169 and footnote 667.

⁵⁷¹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 53-55.

out by force from Sayo and Mongbwalu by other armed groups in early March 2003 and thus cannot be held accountable, from that moment on, for any harm caused as a result of the attack in November 2002.⁵⁷² In the argument of the Defence, the counter offensive launched in March 2003 breaks the chain of causality in respect of the November 2002 attack in the health centre in Sayo and Mr Ntaganda should not and cannot be held liable for reparations in relation to everything that happened in Ituri during the past 20 years.⁵⁷³

d) Prosecution observations

221. The Prosecution observes that the evidence shows that the UPC/FPLC's attack on the health centre in Sayo caused damage to the physical structure of the centre, in the form of broken doors and windows as well as bullet holes in some of its walls.⁵⁷⁴ Moreover, the Prosecution notes that the attack resulted in a complete loss of medical equipment, staff and supplies, which caused a severe and prolonged disruption of the health centre's services and deprived the community of these essential services.⁵⁷⁵

222. The Prosecution describes the events noting that (i) when the UPC/FPLC attacked Mongbwalu, injured people fled the town and went to seek medical assistance in the Sayo health centre; (ii) as the UPC/FPLC advanced through Sayo, it deliberately fired projectiles at the health centre, wounding a guard and causing people present at the centre to flee because of the danger; (iii) some patients were unable to flee, three seriously injured men as well as a Lendu woman and her child were left behind, the woman was killed and her child died in this context; (iv) some days after the attack, 27 partly decomposing bodies of dead men were found to have been left underneath the beds inside a room of the Sayo health centre; (v) some four months later, the health centre was still closed and there were traces of bullets on the walls, its doors and windows were broken and everything inside had been pillaged, including medical

⁵⁷² Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 56-57, *referring to* [REDACTED]; D-300 at T-221, pp. 38-39, 41, 69-72; Declarations Floribert Kisembo DRC-OTP-0161-3038 and DRC-OTP-2055-1674, p. 27. The Chamber notes these two references could not be examined since, regarding the first document which contains 130 pages, the Defence made reference only to page 3039 which contains the name of the persons present during the interview, regarding the second document, which only contains 4 pages, the Defence made reference to page 27.

⁵⁷³ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 58-60.

⁵⁷⁴ Prosecution February 2023 Submissions, [ICC-01/04-02/06-2827-Red](#), para. 7, *relying on* P-0800 at T-68, pp. 51-52 and witness statement DRC-OTP-2058-1115, pp. 1119-1120.

⁵⁷⁵ Prosecution February 2023 Submissions, [ICC-01/04-02/06-2827-Red](#), para. 7, *relying on* the testimony of P-0815 at T-76, p. 60; and P-0800 at DRC-OTP-2058-1115, pp. 1119-1120.

equipment, medication, money and mattresses, the floor was covered by blood and there were bullet cases.⁵⁷⁶

223. Accordingly, the Prosecution is of the view that the evidence shows that the attack caused significant interruption of services both during the attack and for a considerable period thereafter, depriving the community of adequate health services for a significant time after the attack due to the loss of medical personnel, equipment, and supplies.⁵⁷⁷ The Prosecution notes to be unaware that the centre ever recovered its full operational capacity after the attack.⁵⁷⁸

224. The Prosecution further argues that the evidence also established that the intentional attack on the health centre was the ‘proximate cause’ for the harm described above.⁵⁷⁹ While based on the evidence the Chamber could not find beyond reasonable doubt that the soldiers looted the health centre, Mr Ntaganda was individually responsible to the attack on the health centre and it was reasonable foreseeable that it would result in (i) medical personnel and patients fleeing or attempting to flee; (ii) damage to the centre physical structure; and (iii) the looting of its equipment and supplies, especially in the context of systematic pillaging.⁵⁸⁰ Accordingly, the Prosecution argues that it was reasonably foreseeable that the attack would cause the disruption of services and a capacity loss.⁵⁸¹

2. Chamber determination

225. In light of the findings, submissions, and evidence above detailed, the Chamber hereafter provides its reasoning regarding the following aspects related to the attack on the Sayo health centre: (i) whether harm resulting from a conviction for the war crime of attack against protected objects under article 8(2)(e)(iv) of the Statute can be included in the Reparations Order, without it having been proven and quantified at trial; (ii) whether harm resulting from the attack on the Sayo health centre is sufficiently proven for the purposes of reparations; (iii) whether a causal nexus between the harm resulting from the attack on the Sayo

⁵⁷⁶ Prosecution February 2023 Submissions, [ICC-01/04-02/06-2827-Red](#), paras 8-9, *relying on* the testimony of P-0800 at T-68, pp. 28, 51-52, 56 and DRC-OTP-2058-1115, pp. 1117-1120; P-0815 at T-76, pp. 31, 51, 60 and DRC-OTP-2062-2260, p. 2265; [REDACTED].

⁵⁷⁷ Prosecution February 2023 Submissions, [ICC-01/04-02/06-2827-Red](#), para. 10.

⁵⁷⁸ Prosecution February 2023 Submissions, [ICC-01/04-02/06-2827-Red](#), para. 10.

⁵⁷⁹ Prosecution February 2023 Submissions, [ICC-01/04-02/06-2827-Red](#), para. 11, *referring to* Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 133.

⁵⁸⁰ Prosecution February 2023 Submissions, [ICC-01/04-02/06-2827-Red](#), para. 11.

⁵⁸¹ Prosecution February 2023 Submissions, [ICC-01/04-02/06-2827-Red](#), para. 11.

health centre and Mr Ntaganda's liability is established; and (iv) quantification of the harm resulting from the attack on the Sayo health centre.

- a) Whether harm resulting from a conviction for the crime of attack against protected objects under article 8(2)(e)(iv) of the Statute can be included in the Reparations Order, without it having been proven and quantified at trial

226. As to this issue that arises out of the Appeals Chamber's considerations,⁵⁸² and the Defence submissions,⁵⁸³ the Chamber notes that the lack of findings regarding possible damage to the centre or the community in the Conviction and the Sentencing Judgments is explained by the nature of crime under analysis. As determined in the Conviction Judgment, following prior jurisprudence,⁵⁸⁴ the war crime of attack against protected objects in article 8(2)(e)(iv) of the Statute is a conduct crime, not a results crime. Conduct crimes,⁵⁸⁵ do not require a result in terms of infliction of any harm or damage. The crime is committed, and a person can be found liable, for as long as the attack is launched against a protected object. Accordingly, the Prosecutor did not need to prove, and the Chamber was not required to make any determination beyond reasonable doubt for the purposes of conviction or sentence as to whether any harm was actually inflicted as a consequence of the crime. In this context, the Chamber is not prevented from making findings at the reparation stage of the proceedings, to the extent that the actual infliction of harm is proven at the applicable standard of proof of balance of probabilities.

- b) Whether harm resulting from the attack on the Sayo health centre is sufficiently proven for the purposes of reparations

227. Having holistically assessed the evidence in the case record, together with the additional evidence provided by the CLR2, the Chamber has concluded, on a balance of probabilities, that it was demonstrated that harm as a consequence of the attack against the health centre in Sayo

⁵⁸² Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 535, 539-540, 548.

⁵⁸³ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 34.

⁵⁸⁴ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1136 and footnote 3148, *referring to Al Mahdi Judgment and Sentence*, [ICC-01/12-01/15-171](#), footnote 29.

⁵⁸⁵ *See, inter alia*, ICC jurisprudence on the crime of attack against the civilian population, Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Sentence, 6 May 2021, [ICC-02/04-01/15-1819-Red](#), para. 149; or the crime of corruptly influencing a witness, Pre-Trial Chamber A, *The Prosecutor v. Paul Gicheru*, Decision on the confirmation of charges against Paul Gicheru, 15 July 2021, [ICC-01/09-01/20-153-Red](#), para. 49 and Pre Trial Chamber II, *The Prosecutor v. Jean-Pierre Bemba Gombo et al*, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 11 November 2014, [ICC-01/05-01/13-749](#), para. 30.

was inflicted.⁵⁸⁶ The Chamber is of the view that the victims of this crime include the Sayo health centre as a legal entity, the individual victims (patients that were receiving ongoing in-hospital and ambulatory care at the time of the attack, the health centre staff, and indirect victims of both the above), and the community of Sayo and its surroundings as a whole.

228. As suggested by the Defence, in order to better appreciate the scope of the harm caused by the attack, it is necessary to consider the situation of the health centre before it was attacked.⁵⁸⁷ The parties and the Prosecution refer to different pieces of evidence already in the case record and recently obtained, which, although mostly consistent, appear to show minor discrepancies as to the exact number of beds and staff working at the centre at the time of the attack. Having analysed the evidence as a whole, the Chamber concludes, on a balance of probabilities, that although the centre was a medical facility of a small size – one building divided in two rooms, i.e. a dispensary and a maternity ward,⁵⁸⁸ its personnel consisted of around six people,⁵⁸⁹ and there were around 14 beds placed in the two rooms⁵⁹⁰ – it was not a ‘very rudimentary and basic structure’ with ‘very limited functionality’, as argued by the Defence.⁵⁹¹ To the contrary, the evidence demonstrates that the centre actively supported the community of Sayo and its surroundings, taking care, on a daily basis, of the sick and wounded and of mothers and babies during delivery.⁵⁹²

229. As to the Defence argument that the community of Sayo did not suffer harm, as prior to the attack the health centre was mainly used to treat wounded combatants,⁵⁹³ the Chamber notes the findings beyond reasonable doubt in the Conviction Judgment indicating that ‘members of the population, [...] were still present when the attack started and subsequently fled’.⁵⁹⁴ In effect, the evidence recalled by the Defence in support of its submissions

⁵⁸⁶ As noted above, *see supra* para. 23, the Chamber underlines that, despite having carefully scrutinized all evidence and submissions, it will detail in this section only what it considers necessary to explain its reasoning.

⁵⁸⁷ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 31.

⁵⁸⁸ [REDACTED]; and ICC-01/04-02/06-T-69-CONF-ENG CT, p. 34 lns 1-6.

⁵⁸⁹ [REDACTED]. However, the Chamber notes that in the statements recently collected by the CLR2 the two witnesses are consistent in indicating that there were six members of personnel working at the health centre in Sayo prior to the attack, *see* [ICC-01/04-02/06-2834-Anx1-Red](#), p. 3 and [ICC-01/04-02/06-2834-Anx2-Red](#), p. 2.

⁵⁹⁰ [REDACTED].

⁵⁹¹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 33.

⁵⁹² *See, inter alia*, findings beyond reasonable doubt in the Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 476, *referring to* the health centre in Sayo receiving injured individuals wounded during the failed assault on Mongbwalu on or about 9 November 2002 and para. 495, *referring to* a number of people wounded during the assault on Mongbwalu on or about 20 November 2002 having sought medical help at the health centre in Sayo; [REDACTED].

⁵⁹³ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 47.

⁵⁹⁴ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 504 and footnote 1465.

demonstrates that civilians were still present and only left Sayo during the attack, when the town was taken by the UPC.⁵⁹⁵

230. The Chamber further notes that it found beyond reasonable doubt in the Conviction Judgment that all persons present at the time of the attack in the health centre fled, leaving behind the sick and wounded who could not flee— three seriously injured men, a woman and her baby – and at least the woman was killed by UPC/FPLC forces.⁵⁹⁶ The Chamber also found beyond reasonable doubt in the Sentencing Judgment that although more than one projectile was fired at the centre, and the centre was intentionally made the object of the attack, it was not clear whether the weapon destroyed the centre in full or merely damaged it.⁵⁹⁷ Consistent with the findings above, having reassessed the evidence as a whole, the Chamber finds that the evidence clearly demonstrates that, although the centre may not have been fully destroyed by the shelling, it lost its doors and windows, and received impacts on its walls, provoking such fear in its personnel that they fled, essentially abandoning the building, as well as patients that could not even run on their own.⁵⁹⁸

231. The Chamber further underlines that the Sentencing Judgment found, also beyond reasonable doubt, that, by launching an attack against the health centre, a facility that cares for patients, the perpetrators accepted the consequential *severe impact on the welfare and/or lives of any patients present at the centre and disrupted the medical care for persons in need*.⁵⁹⁹ As noted above, having its doors and windows destroyed, the centre was abandoned during the attack. The evidence further demonstrates that, once abandoned, the centre ceased providing medical services.⁶⁰⁰ Afterwards, all its belongings were pillaged by unknown individuals,⁶⁰¹ and dead bodies and blood stains were discovered in the centre some months after the attack

⁵⁹⁵ See, *inter alia*, testimony of P-0886 relied by the Defence to argue that Sayo was the HQ of the lendu militia, Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), footnote 83, referring to T-38-CONF-ENG p. 78. However, the Chamber notes that the witness clearly indicated, in cross-examination, that civilians were still present when the UPC took over Sayo and left afterwards, see ICC-01/04-02/06-T-38-CONF-ENG CT2, p. 79 ln. 7 to p. 80 ln. 9.

⁵⁹⁶ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 506.

⁵⁹⁷ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 153.

⁵⁹⁸ See, *inter alia*, ICC-01/04-02/06-T-68-CONF-ENG CT, [REDACTED], p. 52 ln. 8-15, p. 81, ln. 5-14; DRC-OTP-2058-1115-R02, at 1118, para. 17 and at 1120, para. 28; ICC-01/04-02/06-T-76-CONF-ENG CT, p. 60 ln. 2-17; ICC-01/04-02/06-2834-Anx1-Red, pp. 2-3; ICC-01/04-02/06-2834-Anx2-Red, p. 2.

⁵⁹⁹ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 144 [emphasis added].

⁶⁰⁰ See, *inter alia*, ICC-01/04-02/06-2834-Anx1-Red, p. 3; ICC-01/04-02/06-2834-Anx2-Red, p. 2.

⁶⁰¹ See, *inter alia*, Conviction Judgment, [ICC-01/04-02/06-2359](#), footnote 1563, relying on the evidence of P-0886 and P-0800; [ICC-01/04-02/06-2834-Anx1-Red](#), p. 2; [ICC-01/04-02/06-2834-Anx2-Red](#), p. 2; ICC-01/04-02/06-T-76-CONF-ENG CT, p. 60, ln. 2-21; DRC-OTP-2062-2260 at 2265, para. 26.

when the population returned to Sayo.⁶⁰² Accordingly, the Chamber finds established, on a balance of probabilities, that as a consequence of the attack the medical care for persons in need within the community of Sayo and its surrounding areas was severely disrupted. The Chamber notes that the evidence also demonstrates that the centre remained closed and only resumed limited activities about six months after the attack,⁶⁰³ and was only partly rehabilitated when a new building was constructed by an NGO in 2005.⁶⁰⁴ However, as discussed below, relying on the findings in the *Al Mahdi* case, the Chamber notes that subsequent remedial efforts by third parties do not alter the damage originally done, the harm actually caused, and the corresponding reparations required to remedy it.⁶⁰⁵

232. In the view of the Chamber, this assessment of the evidence reaffirms the previous findings in the Sentencing Judgment⁶⁰⁶ and in the Reparations Order⁶⁰⁷ that the attack had a *severe impact on the welfare and lives of the patients present at the centre and disrupted the medical care for persons in need*. Further, although the Chamber relied on the specific wording of Dr Gilmore to note in the Reparations Order that the attack ‘caused harm to its service provision and exacerbated the vulnerability and suffering of the civilian population’,⁶⁰⁸ as noted above, such determination is not only supported by the expert’s report, but it is a conclusion that, on a balance of probabilities, is supported by the evidence assessed as a whole. Accordingly, the Chamber rejects the Defence submission that the expert statement was based on present day information,⁶⁰⁹ as inapposite.

233. In the interests of completeness in light of the Appeals Judgment findings, the Chamber reiterates that, as noted in the previous section,⁶¹⁰ it did assess the credibility, reliability, and the basis for the reports of the Appointed Experts. Accordingly, having assessed the Defence’s submissions and challenges to the Second Expert’s Report,⁶¹¹ taking into account Dr Gilmore’s

⁶⁰² See, *inter alia*, [REDACTED].

⁶⁰³ See, *inter alia*, [ICC-01/04-02/06-2834-Anx1-Red](#), p. 3; [ICC-01/04-02/06-2834-Anx2-Red](#), p. 2; [REDACTED].

⁶⁰⁴ See, *inter alia*, [ICC-01/04-02/06-2834-Anx1-Red](#), p. 3; [REDACTED].

⁶⁰⁵ *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 65.

⁶⁰⁶ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 144.

⁶⁰⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 158, *referring to* Sentencing Judgment, [ICC-01/04-02/06-2442](#), paras 144, 154 and Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 506.

⁶⁰⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 159.

⁶⁰⁹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), para. 28.

⁶¹⁰ See *supra* para. 180.

⁶¹¹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 23-30 and Defence Submissions on Reparations (‘Defence December 2020 Submissions’), 18 December 2020, ICC-01/04-02/06-2634-Conf, paras 30, 119-120, 126, 136.

expertise and the details provided about her sources and methodology in the report, within its discretion, the Chamber considered the expert credible and her report generally reliable. However, as with any other evidence in the case, the Chamber proceeded with caution, relying on the report only to the extent that it is consistent with the Chamber's holistic assessment of the evidence regarding the harm caused as a consequence of the attack to the Sayo health centre.

234. The Chamber therefore reaffirms its findings in the Reparations Order that the attack to the health centre caused 'damage to the health centre in Sayo and loss of adequate healthcare provision to the community that benefitted from it'.⁶¹² In concrete terms, the Chamber considers that the victims of this attack, who should be able to benefit from reparations in this case, include (i) the Sayo health centre as a legal entity, as its doors and windows were destroyed, the building was partially damaged, and was abandoned during the attack, which brought as a consequence that it was pillaged and could not continue providing regular medical services; (ii) individual victims, including: a) patients that were receiving ongoing in-hospital and ambulatory care at the time of the attack, as they were not able to continue receiving treatment and those who were not able to run by themselves were abandoned on-site, which had a severe impact on the welfare and/or lives of the patients;⁶¹³ b) the health centre's staff, as they were forced to run for their lives and abandon patients to their fate and were not able to fulfil their right and duty to providing medical care to the sick and wounded; and c) indirect victims of the patients and health centre staff referred above; and (iii) the community of Sayo and surroundings as a whole, as the medical services were suspended for at least six months as a consequence of the attack, affecting the overall well-being of the community.⁶¹⁴

- c) Whether a causal nexus between the harm resulting from the attack on the Sayo health centre and Mr Ntaganda's liability is established

235. The Chamber recalls that the causal nexus is to be determined 'in light of the specific circumstances of a case',⁶¹⁵ and that the standard of causation adopted in the case is the 'but/for' relationship between the crimes and the harm.⁶¹⁶ Moreover, it is also required that the crimes for which the person was convicted be the 'proximate cause' of the harm, and it is necessary

⁶¹² Reparations Order, [ICC-01/04-02/06-2659](#), para. 183(a)(x).

⁶¹³ As already found beyond reasonable doubts, *see* Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 144.

⁶¹⁴ As noted by Judge Ibáñez Carranza, Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 550, *referring to* her separate opinion in the *Lubanga* case, Separate Opinion of Judge Luz del Carmen Ibáñez Carranza ('*Lubanga* Separate Opinion Judge Ibáñez'), 16 September 2019, [ICC-01/04-01/06-3466-AnxII](#), paras 138, 140.

⁶¹⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 131.

⁶¹⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 132.

to assess whether it was reasonably foreseeable that the acts and the conduct underlying the conviction would cause the resulting harm.⁶¹⁷

236. The Chamber further recalls that in the Conviction Judgment it found beyond reasonable doubt that *Mr Ntaganda meant for* the UPC/FPLC soldiers to indiscriminately attack the health centre in Sayo, *knowing that* medical facilities are protected against attack under IHL.⁶¹⁸ Similarly, the Chamber reiterates that, in the Sentencing Judgment, it was found beyond reasonable doubt that by launching an attack against the health centre, a facility that cares for patients, the perpetrators *accepted the consequential* severe impact on the welfare and/or lives of any patients present at the centre and disrupted the medical care for persons in need.⁶¹⁹ Further, the Chamber found the people left behind at the centre were particularly defenceless, as they were unable to leave on their own and were left without medical care.⁶²⁰

237. In light of the findings above beyond reasonable doubt and the conclusions that can be derived from the evidence as reassessed at the current stage of the proceedings, the Chamber is satisfied that the standard of causation is met. In effect, in the view of the Chamber it has been demonstrated, on a balance of probabilities, that, by launching the attack against the health centre, Mr Ntaganda could have reasonably foreseen that the building would be damaged, patients would be severely affected, and the provision of medical care would be suspended, either because of damage to the facilities, pillaging, or because of the staff fleeing or having been harmed. In the view of the Chamber, but for the attack, the harm would not have occurred; thus, the crime of attack against a protected object for which Mr Ntaganda was convicted is the proximate cause of the harm caused to the centre, individual victims, and the community of Sayo and surroundings as a whole.

238. As to the Defence's submissions regarding the alleged breaks in the chain of causality, the Chamber notes that it was established that the crime for which Mr Ntaganda was convicted is the proximate cause of the harm caused as a direct consequence of the attack. The Chamber has not considered the current situation of the health centre in order to determine the extent of the harm. As noted above, in order to determine the harm and identify the victims that may qualify to receive reparations, the Chamber assessed the evidence to determine the extent of the harm at the time of the attack and the immediate aftermath. Furthermore, it is precisely the

⁶¹⁷ Reparations Order, [ICC-01/04-02/06-2659](#), paras 132-133.

⁶¹⁸ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1188 [emphasis added].

⁶¹⁹ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 144 [emphasis added].

⁶²⁰ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 154.

timeframe indicated by the Defence, i.e., November 2002 to March 2003,⁶²¹ which the Chamber considered most relevant to determine the extent of the harm caused to the health centre, individual victims, and the community as a whole. The Chamber underlines that Mr Ntaganda's liability is limited to the harm caused as a direct consequence of the crimes for which he was convicted. He is not being held liable for reparations 'in relation to everything that happened in Ituri during the past 20 years', as alleged by the Defence.⁶²² Given that no further incidents other than those indicated above were taken into account, and recalling that a finding beyond reasonable doubt as to the perpetration of the attack has already been made in the context of the Conviction Judgment, the Chamber considers the Defence's submissions about an alleged break in the chain of causation misplaced. .

d) Quantification of the harm resulting from the attack on the Sayo health centre

239. The Chamber recalls the findings in the *Al Mahdi* case, where it was found that the fact that buildings may have been restored by others has no impact on whether the convicted person is liable for the damage caused.⁶²³ As stressed in the *Al Mahdi* case:

Remedial efforts by a third party in the time elapsed between the destruction and the issuance of the reparations order do not alter the amount of damage originally done. To place undue weight on this fact would be to understate the amount of harm actually caused and the corresponding reparations required to remedy it.⁶²⁴

240. As noted above, it was shown at the required threshold for reparations purposes that, as a consequence of the attack to the health centre, harm was inflicted on the centre, individual victims, and the community of Sayo and surroundings as a whole. Because of the harm caused as a consequence of the attack, the centre completely ceased to provide medical services for at least six months and services were severely disrupted afterwards. The disruption lasted for at least three years, but only due to the intervention of a third party that built certain facilities in 2005, which helped to alleviate the harms abovementioned. However, the Chamber underlines that Mr Ntaganda made no efforts to repair the harm caused by the attack or to alleviate the

⁶²¹ Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 56-57, referring to on [REDACTED]; D-300 at T-221, pp. 38-39, 41, 69-72; Declarations Floribert Kisembo DRC-OTP-0161-3038 and DRC-OTP-2055-1674, p. 27. The Chamber notes these two references could not be examined since, regarding the first document which contains 130 pages, the Defence made reference only to page 3039 which contains the name of the persons present during the interview, regarding the second document, which only contains 4 pages, the Defence made reference to page 27.

⁶²² Defence February 2023 Submissions, [ICC-01/04-02/06-2833-Red](#), paras 58-60.

⁶²³ *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 65.

⁶²⁴ *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 65.

victims' suffering. The fact that the centre resumed services months or three years later due to the intervention of third parties is irrelevant. The Chamber's only role at this point is to decide on the convicted person's liability, taking into account the scope and extent of the damage, loss or injury caused by the attack.⁶²⁵

241. Considering that at the time of the attack the centre was a small-size medical facility – consisting of one building divided in two rooms, with 14 beds and a personnel of around six people –, the Chamber continues to be satisfied that, as suggested by Dr Gilmore within her expertise, a total amount of USD 130,000 appears to fairly compensate the material and immaterial harms caused to the centre due to the attack, which caused the destruction of doors and windows and panic, leading to the abandonment of the centre and consequent suspension in the provision of medical services. Most importantly, this amount is meant to compensate both the material and immaterial harm caused collectively to the community of Sayo and its surroundings as a whole, for the distress and additional expenses they had to incur due to the severe disruption of the medical care for persons in need within the community.

242. The above, the Chamber recalls,⁶²⁶ is estimated as a fair quantification of the harms inflicted on the health centre and the community by the attack and, as such, is not focused on rebuilding the facility that was not fully destroyed during the attack. The Chamber underlines that this estimation does not take into account any harm that might have been caused by third parties in the aftermath of the attack, as previously stressed. While relying on the estimates provided by Dr Gilmore when determining the total amount of USD 130,000,⁶²⁷ as a fair reparation for the harms caused by the attack on the health centre, Mr Ntaganda is not being held liable for material losses in relation to which he was not found guilty. Rather, the Chamber has considered this estimate as the most appropriate indicator, under the current circumstances, to effectively measure and quantify to the extent possible the harm caused by the attack to the health centre and the community as a whole, especially in relation to the *immaterial* harm.⁶²⁸

⁶²⁵ As also found in the *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 65.

⁶²⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 242.

⁶²⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 242, *referring to* Second Expert Report, ICC-01/04-02/06-2623-Conf-Anx2-Red3, paras 168-169, 172-173.

⁶²⁸ The Chamber recalls that, although some forms of harms are essentially unquantifiable in financial terms – such as that suffered by the community as a result of the of a fully operational health centre in Sayo –, compensation is aimed at addressing, in a proportionate and appropriate manner, the harm that has been inflicted. See Reparations Order, [ICC-01/04-02/06-2659](#), para. 84.

243. Without prejudice to the above, and as suggested by the CLR2,⁶²⁹ the Chamber considers that the amount may be awarded as an appropriate way of repairing the harm caused to the Sayo health centre as a legal entity and to the community of Sayo and its surroundings, and be used to increase its existing healthcare capacities, in consultation with the local healthcare practitioners.⁶³⁰ In addition, as instructed in the Reparations Order,⁶³¹ to the extent that the community and individual victims agree, as a symbolic measure, a sign could be placed in the health centre indicating that the building enjoys special protection under international humanitarian law. Regarding the harm suffered by individual victims, meaning patients and medical personnel and indirect victims of the above – which the Chamber estimates would be in total approximately between 25 to 33 people⁶³² –, they are entitled to receive collective reparations with individualised components as any other victims of the attacks, as long as they satisfy the relevant evidentiary criteria.

3. Conclusion on the health centre in Sayo

244. In light of the above, the Chamber reiterates its previous findings in the Reparations Order regarding Mr Ntaganda's liability to repair the harm caused as a consequence of the attack to the Sayo health centre, which is estimated regarding the harm to the centre and the community in the total of USD 130,000.⁶³³

245. In addition, victims of this crime include: (i) the Sayo health centre as a legal entity, (ii) individual victims (patients that were receiving ongoing in-hospital and ambulatory care at the time of the attack, the health centre staff and indirect victims of the above), and (iii) the community of Sayo and its surroundings as a whole.

⁶²⁹ CLR2 February 2023 Submissions, ICC-01/04-02/06-2834-Red, para. 44.

⁶³⁰ The Chamber notes that, within its discretion, it finds reasonable to follow Dr Gilmore's estimation of Mr Ntaganda's liability for the material and immaterial harm caused to the centre and the community for this attack to be estimated by projecting the costs of improving the healthcare provision of the health centre as currently required. Reparations Order, [ICC-01/04-02/06-2659](#), para. 242, *relying on* the Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), paras 168-173.

⁶³¹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 208, *referring to* Second Experts Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), para. 174 and CLR2 December 2020 Submissions, [ICC-01/04-02/06-2633-Red](#), paras 72, 75.

⁶³² As noted below, this estimation is included in the Chamber's calculation of the estimated total number of victims of the attacks and has been estimated considering that, at the time of the attack, (i) 6 members of personnel worked at the centre; (ii) the health centre had 14 beds, thus it is estimated that between 14 to 20 patients would have been receiving ambulatory and/or in-hospital care; and (iii) approximately 25% of the number of direct victims may qualify as indirect victims.

⁶³³ Reparations Order, [ICC-01/04-02/06-2659](#), para. 242.

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

1. Reparations Order and Appeals Judgement

246. In the Reparations Order, the Chamber found that it was ‘unquestionable that direct victims that personally experienced the crimes committed during the attacks endured physical suffering in connection with the very nature of the context of armed conflict and the attack against the civilian population within which the crimes were committed.’⁶³⁴ Similarly, the Chamber recalled a finding in the *Katanga* case that ‘it is inherent to human nature that all those subjected to brutal acts [...] experience intense suffering, anguish, terror and insecurity’.⁶³⁵ Consequently, the Chamber did not consider necessary to scrutinise, *inter alia*, the specific physical harm alleged by each potential eligible direct victim of the attacks once their eligibility had been established on a balance of probabilities.⁶³⁶ Accordingly, the Chamber established, *inter alia*, a presumption of physical harm for ‘direct victims of the crimes committed during the attacks, who personally experienced the attacks’.⁶³⁷

247. The Appeals Chamber found, resolving one of the grounds of appeal of the Defence,⁶³⁸ that the Chamber erred in reaching, without more, its presumption that victims of the attacks suffered physical harm⁶³⁹ and remanded the matter for the Chamber to address the Defence’s submissions and provide sufficient reasoning for its findings.⁶⁴⁰ The Appeals Chamber recalled the Defence submission that ‘the war crimes of pillaging, attacking protected objects, and destroying or seizing the property of an adversary do not necessarily and automatically imply physical and psychological harm, as none of them require infliction of physical injury.’⁶⁴¹ The Appeals Chamber further noted the Defence argument ‘that some of the underlying acts of persecution in this case, such as pillaging and destruction of property, do not involve physical harm’.⁶⁴² Similarly, it noted the Defence’s submission that, for the crime of attack against the

⁶³⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 146, recalling a similar approach in the *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 184.

⁶³⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 146, *referring to Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 128.

⁶³⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 146.

⁶³⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 146.

⁶³⁸ Defence Appellant Brief against the 8 March Reparations Order (‘Defence Appellant Brief’), 7 June 2021, [ICC-01/04-02/06-2675](#), paras 159-165.

⁶³⁹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 701.

⁶⁴⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 705.

⁶⁴¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 702, *referring to* Defence Appellant Brief, [ICC-01/04-02/06-2675](#), para. 164.

⁶⁴² Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 702, *referring to* Defence Appellant Brief, [ICC-01/04-02/06-2675](#), para. 164.

civilian population, the number of civilians injured is limited and not all instances resulted in injuries.’⁶⁴³

248. The Appeals Chamber recalled that the ‘concept of “harm”, while not defined in the Statute or the Rules, denotes ‘hurt, injury and damage’, and that it ‘may be material, physical and psychological’.⁶⁴⁴ It further noted that, according to the Supreme Court of the Extraordinary Chambers in the Court of Cambodia’s (‘ECCC’), the concept of ‘physical injury’ denotes ‘biological damage, anatomical or functional’, and ‘may be described as a wound, mutilation, disfiguration, disease, loss or dysfunction of organs, or death’.⁶⁴⁵ Although not endorsing it, the Appeals Chamber noted that the Defence ‘seems to be restricting the concept of “physical harm” to that of “infliction of physical injury”’, but concluded that ‘the scarce reasoning of the Trial Chamber allowed for this interpretation’.⁶⁴⁶

249. The Appeals Chamber further indicated that, on its face, the Chamber’s finding appears to presume that all victims of the attacks were physically injured.⁶⁴⁷ However, ‘[c]onsidering that not every victim of an attack necessarily suffers a *bodily injury*’, and that the Chamber did not provide sufficient reasoning to support this conclusion, the Appeals Chamber found itself unable to assess whether no reasonable trier of fact would have reached the same conclusion.⁶⁴⁸

2. Chamber determination

250. In light of the findings above the Chamber hereafter provides its reasoning regarding the following aspects related to presumption of physical harm for victims of the attacks: (i) scope of the concept of physical harm; (ii) assessment of the information available as to the physical harm suffered by the victims of the different crimes committed during the attacks; and (iii) conclusions.

⁶⁴³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 702, referring to Defence Appellant Brief, [ICC-01/04-02/06-2675](#), para. 165.

⁶⁴⁴ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 703, referring to Lubanga Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 10.

⁶⁴⁵ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 703, referring to ECCC, Appeal Chamber, *The Prosecutor v KAING Guek Eav alias Duch*, Appeals Judgement (‘*Duch Appeals Judgment*’), 03 February 2012, [001/18-07-2007-ECCC/SC](#), para. 415.

⁶⁴⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 704.

⁶⁴⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 704.

⁶⁴⁸ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 704.

a) Scope of the concept of physical harm

251. In the view of the Chamber, whilst the concept of physical harm may encompass physical or bodily injury, the notion as a whole, as developed and consistently applied at the reparation stage of the proceedings before the Court is clearly broader in scope and is not restricted to the ‘infliction of a physical injury’. In the *Lubanga*,⁶⁴⁹ *Katanga*,⁶⁵⁰ and *Al-Mahdi*⁶⁵¹ cases, the concept of physical harm was not strictly defined to mean ‘infliction of physical injury’. In the present case, the Chamber adopted the definition of harm developed in the *Lubanga* case,⁶⁵² which indicates that the concept of harm is not limited to ‘injury’, but also includes ‘hurt’ and ‘damage’.⁶⁵³ The Chamber notes that a similar approach was followed by other international criminal jurisdictions.⁶⁵⁴ The ECCC approach, which is deeply rooted in the Cambodian domestic legislation,⁶⁵⁵ seems to be the exception rather than the rule.

⁶⁴⁹ *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 10.

⁶⁵⁰ *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), para. 74.

⁶⁵¹ *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 43.

⁶⁵² Trial Chamber I, *The Prosecutor v Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations (*‘Lubanga Decision on Principles’*), 7 August 2012, [ICC-01/04-01/06-2904](#), para. 228, where Trial Chamber I made its finding in line with the previous approach for participation throughout the case, *see* Trial Chamber I, *The Prosecutor v Thomas Lubanga Dyilo*, Decision on victims’ participation, 18 January 2008, [ICC-01/04-01/06-1119](#), para. 92, where it noted that victims may suffer from harm in a variety of different ways, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights. It also noted that whilst the Statute framework does not provide a definition of harm, under Rule 85 of the Rules, Principle 8 of the ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights law and Serious Violations of International Humanitarian Law,’ provided appropriate guidance when assessing harm. As outlined by Principle 8: victims are persons who individually or collectively suffer harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law (Adopted by the United Nations General Assembly, resolution 60/147, 16 December 2005). When ruling on an appeal to that decision, the Appeals Chambers found no error in the Trial Chamber I’s reference to using Principle 8 for the purposes of guidance when assessing harm. It further noted that the word ‘harm’ in its ordinary meaning ‘denotes hurt, injury and damage’, that it ‘carries the same meaning in legal texts’ and can be material, physical and psychological if suffered personally by the victim, *see* Appeals Chamber, *The Prosecutor v Thomas Lubanga Dyilo*, Judgment on the appeals of the Prosecutor and the Defence against Trial Chamber’s Decision on Victims’ Participation, 11 July 2008, [ICC-01/04-01/06-1432](#), paras 31-33.

⁶⁵³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 703 referring to *Lubanga* Amended Reparations Order, [ICC-01/04-01/06-3129-AnxA](#), para. 10.

⁶⁵⁴ For example, when dealing with this very same issue for the purposes of participation in the proceedings, the Appeals Chamber of the Special Tribunal for Lebanon (‘STL’) rejected the ECCC’s interpretation of physical harm as a synonym for physical injury, arguing that the ordinary meaning of physical harm includes ‘physical injury, impairment of the body, pain and illnesses. The Appeals Chamber of the STL concluded that physical harm, as understood in its Rules, did not require proof of such gravity established by the ECCC’s definition of physical injury. *See* STL, Appeals Chamber, *The Prosecutor v. Salim Jamil Ayyash*, Decision on Appeal by Victim Applicant V1001 against the Pre-Trial Judge’s Decision of 17 April 2020 (*‘Ayyash Decision on Appeal’*), [STL-18-10/PT/AC/AR86.1](#), paras 35, 38.

⁶⁵⁵ ECCC *Duch* Appeals Judgment, [001/18-07-2007-ECCC/SC](#), paras 409-410, 413-415.

252. A contextual interpretation of the Court's statutory framework does not support establishing a limitation on the concept of 'physical harm' focused on 'bodily injury' for the purposes of reparations. Such an interpretation may have the unintended effect of limiting access to reparations for the physical pain or suffering endured by victims of, *inter alia*, the crimes of torture, other inhumane acts, inhuman treatment, wilfully causing great suffering, cruel treatment, for which bodily injury is not required.⁶⁵⁶

253. The Chamber recalls that, in adopting its presumption of physical harm in the Reparations Order, it relied on, *inter alia*, similar presumptions made in the *Lubanga* case.⁶⁵⁷ In that case, it was found that any direct victim who was conscripted or enlisted into an armed group or who participated in combat, suffered physical harm.⁶⁵⁸ Similarly, the relevant chamber concluded that indirect victims, owing to their close personal relationship with the direct victim, suffered 'in some cases, [in] a physical sense as a result of the direct victim's enlistment'.⁶⁵⁹ Accordingly, it was determined as 'unquestionable [the fact] that victims endure physical suffering in connection with the very nature of armed conflicts in which they were involved'.⁶⁶⁰ As such, the Chamber saw no need to scrutinize the specific harm alleged by each potentially eligible, direct and indirect, victim.⁶⁶¹ It is worth noting that, when assessing the alleged harm in the *Lubanga* case,⁶⁶² the relevant chamber relied on submissions indicating that victims reported 'physical injuries and/or diseases contracted and developed as a result of the extremely harsh living condition in the militia' which, among other things, included 'little food, very poor sleep conditions and extremely poor sanitary conditions'.

254. Accordingly, the Chamber concludes that the concept of physical harm is not restricted to the infliction of physical or bodily injury only. This concept is clearly broader in scope in

⁶⁵⁶ See Elements of Crimes, articles 7(1)(f), 8(2)(a)(ii)-1, and 8(2)(c)(i)-4 Crime against humanity and War Crime of torture, conduct requires 'severe physical or mental pain or suffering'; 7(1)(k) Crime against humanity of other inhumane acts, conduct requires 'great suffering, or serious injury to body or to mental or physical health'; 8(2)(a)(ii)-2 War crime of inhuman treatment, conduct requires 'severe physical or mental pain or suffering'; 8(2)(a)(iii) War crime of wilfully causing great suffering, conduct requires 'great physical or mental pain or suffering to, or serious injury to body or health'; 8(2)(c)(i)-3 War crime of cruel treatment, conduct requires 'severe physical or mental pain or suffering'.

⁶⁵⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 146 and footnote 377.

⁶⁵⁸ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 180.

⁶⁵⁹ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 178.

⁶⁶⁰ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 184.

⁶⁶¹ *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 185.

⁶⁶² *Lubanga* Decision on Size of the Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 173 referring to *Lubanga* OPCV Observations on Reparations, 25 April 2017, [ICC-01/04-01/06-3293-Red-tENG](#), para. 28.

the sense that hurt, pain or suffering otherwise not caused by a bodily injury can also amount to physical harm.

- b) Assessment of the information available in the present case as to the physical harm suffered by the victims of the different crimes committed during the attacks

255. The Chamber recalls that, within the terms of the conviction, direct victims of the following crimes committed during the attacks may have personally experienced the attack: Count 2 (attempted murder), Count 3 (attack against civilians), Counts 4 and 5 (rape), Counts 7 and 8 (sexual slavery), Count 10 (persecution), Count 11 (pillaging), Counts 12 and 13 (forcible transfer, deportation and displacement), Count 17 (attack against protected objects), and Count 18 (destruction of property).⁶⁶³

256. The Chamber notes that the direct victims of the crimes included in Counts 2, 4, 5, 7, and 8 are covered by presumptions of physical harm specific to the direct victims of attempted murder, rape and sexual slavery.⁶⁶⁴ Accordingly, the Chamber shall determine whether it has sufficient information to presume physical harm in relation to the direct victims of the remaining crimes who personally experienced the attack.

257. Regarding Count 11 (pillaging) and Count 18 (destruction of property), the Chamber notes that in the Conviction and Sentencing Judgments it did not make finding as to physical harm suffered by victims in this context. However, in relation to pillaging, the Chamber found beyond reasonable doubt in the Conviction Judgment that the persons from whom the goods were taken, who were present at the time of the attack, were not in a position to agree freely to the UPC/FPLC taking their property, because of the coercive circumstances in which they had no choice but to give up their property to the physical perpetrators.⁶⁶⁵ The Chamber notes that no additional information as to physical harm of the victims of these two counts could be found in the Sample. As such, although the Chamber considers that such coercive circumstances may have amounted to physical harm, pain, or suffering, in light of the information at its disposal, it concludes that no presumption of physical harm can be reached in relation to Count 11 (pillaging) and Count 18 (destruction of property).

⁶⁶³ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 1199; *see also* Reparations Order, [ICC-01/04-02/06-2659](#), paras 109-117.

⁶⁶⁴ *See* Reparations Order, [ICC-01/04-02/06-2659](#), paras 145-146.

⁶⁶⁵ Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 1036, 1040.

258. Similarly, in relation to Count 3 (attack against civilians) and Count 17 (attack against protected objects), although both are conduct crimes that do not require any actual harm to civilians to ensue from the attack, the Chamber did make several findings as to physical harm. Regarding attacks against civilians in the Conviction Judgment, the Chamber noted instances of when civilians were shot at, beaten and injured with, *inter alia*, rifles, bayonets and machetes, or killed as the attacks unfolded.⁶⁶⁶ However, the Chamber acknowledges that these findings were limited to some instances and locations. Regarding attacks against protected objects, the Chamber found that during the attack against the health centre in Sayo at least one woman was killed.⁶⁶⁷ [REDACTED].⁶⁶⁸ The Chamber notes that no additional information as to physical harm of the victims of these two counts could be found in the Sample. The Chamber considers that, in addition to the physical injuries that the victims personally experienced they likely suffered physical harm, pain, or suffering. However, in light of the information at its disposal, the Chamber concludes that no presumption of physical harm can be reached in relation to Count 3 (attack against civilians) and Count 17 (attack against protected objects).

259. Regarding Count 10 (persecution) and Counts 12 and 13 (forcible transfer and displacement), the Chamber notes that extensive findings and information exists about the physical harm suffered by the victims. Regarding persecution, the Chamber recalls its finding that it presupposes a severe attack on fundamental rights such as the right to life, liberty and the security of person, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the right not to be subjected to arbitrary arrest, detention or exile.⁶⁶⁹ In addition, the Chamber recalls its findings that by being subjected to, *inter alia*, forcible displacement in certain locations, some people lived in dire conditions, stayed in makeshift shelters or in abandoned houses, had no money and insufficient food and water and no access to medical care,⁶⁷⁰ resulting in a severe deprivation of their fundamental rights, including their right to life, and bodily integrity.⁶⁷¹

260. Regarding forcible transfer and displacement, the Chamber notes its findings in the Conviction Judgment, where it determined that in the First Operation, during the assault on Mongbwalu, many people who were present in the town as the assault unfolded, fled to the

⁶⁶⁶ See, for instance, Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 911-912, 914-915.

⁶⁶⁷ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 506.

⁶⁶⁸ [REDACTED].

⁶⁶⁹ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 991.

⁶⁷⁰ Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 996, 1000, 1002.

⁶⁷¹ Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 999, 1008.

bush and to other places.⁶⁷² Some were forced to stay in makeshift shelters or in abandoned houses where they had no money, insufficient food and water, and no access to medical care.⁶⁷³ Similarly, during the unfolding of the Second Operation and the assault on Lipri and surrounding villages, the Chamber recalled that the predominantly Lendu population of Lipri and Tsili, sought refuge in the bushes.⁶⁷⁴ The Chamber noted that people who fled found themselves in difficult conditions as they had very limited access to food and slept outside.⁶⁷⁵ The Chamber also determined that on or around 22 February 2003, after the message about the pacification meeting was conveyed to the Lendu in various locations,⁶⁷⁶ the Lendu people accepted the invitation given that living in the bush without access to food, clothes, and medicine was difficult to bear for those who had been displaced.⁶⁷⁷ The Chamber also recalled that part of the population of Bambu and Kobu fled towards Mpetsi and Gola due to fighting and were forced to endure harsh conditions, living in the bush without adequate food or shelter.⁶⁷⁸ In addition, it recalled that following the UPC/FPLC assaults on Kobu and Bambu on or about 18 February 2003, a number of individuals of Lendu ethnicity fled in the direction of Gutsi, and that those hiding in the bush and that were staying in difficult conditions with limited shelter and food.⁶⁷⁹

261. In the Sentencing Judgment, the Chamber recalled that some of those who fled Mongwalu, Lipri, Kobu and Bambu and Tsili went into the bush had to endure harsh conditions, they did not have adequate shelter and had insufficient food and water.⁶⁸⁰ The Defence asserted that the conditions endured by those forcibly transferred must be measured against the general conditions of deprivation prevailing at the time which were unrelated to the commission of the crime.⁶⁸¹ Having considered the Defence's challenges and submissions, the Chamber determined that the fact that individuals had to leave their homes against their will, put them in a worse situation than they were in to begin with, and therefore, caused them harm.⁶⁸²

⁶⁷² Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 497.

⁶⁷³ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 497.

⁶⁷⁴ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 568.

⁶⁷⁵ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 568.

⁶⁷⁶ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 591.

⁶⁷⁷ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 591.

⁶⁷⁸ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 612.

⁶⁷⁹ Conviction Judgment, [ICC-01/04-02/06-2359](#), para. 616.

⁶⁸⁰ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 162.

⁶⁸¹ Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 162.

⁶⁸² Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 162.

262. In the Reparations Order, the Chamber recalled that for victims of the crimes of forcible transfer, deportation, and ordering the displacement of the civilian population, in some cases, individuals were forcibly displaced for a prolonged period.⁶⁸³ The Chamber further stressed that some of the victims who went to the bush had to endure harsh living conditions without adequate shelter, sufficient food and water, having to hide with no money and no access to medical care.⁶⁸⁴ It recalled the evidence given by one witness who testified that while fleeing their family suffered a great deal, that they did not have access to any medication and found it very difficult to find anything to eat, because they had to move around in order to find food in the fields.⁶⁸⁵

263. The Chamber further assessed the testimony of a number of witnesses who through the trial provided detailed accounts of the harsh and extreme living conditions they endured when forcibly displaced. For example, P-805 indicated that it was extremely difficult for them to find anything to eat and that they had to move around in the fields in order to find food,⁶⁸⁶ that children were malnourished and had vitamin C deficiencies,⁶⁸⁷ that malaria was present in the bush due to the mosquitos,⁶⁸⁸ and that they were not able to access medication.⁶⁸⁹ P-0863 confirmed that they went into the bush where there was no food,⁶⁹⁰ no shelter, and they spent the night in the open air,⁶⁹¹ burring people who had died of malnutrition.⁶⁹² P-0018 indicated that their life in the bush was very hard, that they found it ‘difficult to find food’⁶⁹³ and that they ‘could spend the whole day without eating’,⁶⁹⁴ and that there were no houses in the bush.⁶⁹⁵ P-0019 also testified that their ‘health wasn’t good and there wasn’t enough food for everyone’.⁶⁹⁶

⁶⁸³ Reparations Order, [ICC-01/04-02/06-2659](#), para. 154, *referring to* Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 536, 585, 722; *see also* Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 161.

⁶⁸⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 154; Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 536, 585, 722; *see also* Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 161.

⁶⁸⁵ Reparations Order, [ICC-01/04-02/06-2659](#), paras 154; Transcript of hearing 16 September 2015, [ICC-01/04-02/06-T-26-Red2-ENG](#), p. 27, lines 5-8.

⁶⁸⁶ P-0805, T-26, [ICC-01/04-02/06-T-26-Red2-ENG](#), p. 27, lines 5-10.

⁶⁸⁷ P-0805, T-26, [ICC-01/04-02/06-T-26-Red2-ENG](#), p. 28, line 7-9.

⁶⁸⁸ P-0805, T-26, [ICC-01/04-02/06-T-26-Red2-ENG](#), p. 28, lines 7-9.

⁶⁸⁹ P-0805, T-26, [ICC-01/04-02/06-T-26-Red2-ENG](#), p. 27, lines 5-10.

⁶⁹⁰ P-0863, T-180, [ICC-01/04-02/06-T-180-Red2-ENG](#), p. 34, line 13.

⁶⁹¹ P-0863, T-180, [ICC-01/04-02/06-T-180-Red2-ENG](#), p. 34, lines 13-14.

⁶⁹² P-0863, T-180, [ICC-01/04-02/06-T-180-Red2-ENG](#), p. 34, line 20.

⁶⁹³ P-0018, T-110, [ICC-01/04-02/06-T-110-Red2-ENG](#), p. 60, line 22.

⁶⁹⁴ P-0018, T-110, [ICC-01/04-02/06-T-110-Red2-ENG](#), p. 61, line 09.

⁶⁹⁵ P-0018, T-110, [ICC-01/04-02/06-T-110-Red2-ENG](#), p. 61, lines 5-6.

⁶⁹⁶ P-0019, T-115, [ICC-01/04-02/06-T-115-Red2-ENG](#), p. 18, line 8.

264. In light of the considerations above, the Chamber determines that the sustained pain, suffering, and physical hurt caused by enduring extreme living conditions, such as prolonged hunger or lack of access to shelter or healthcare, and the diseases contracted and developed as a result of the extremely harsh living conditions in the bush can amount to physical harm. Considering the harsh conditions that the victims of forcible transfer, deportation, displacement, and persecution through the same underlying acts had to endure, the Chamber finds that it is more likely than not that those who were forced to flee and hide in the bush experienced physical harm due to the harsh living conditions they had to experience. In light of this, the Chamber considers it appropriate to maintain a presumption of physical harm for all victims of forcible transfer and displacement (Counts 12 and 13) and persecution (Count 10) through the underlying acts of forcible transfer and displacement that personally experienced the crimes.

265. However, for all the other victims of the attacks who may have suffered physical harm, which is not presumed, the Chamber underlines that it can be established through evidence demonstrating the (i) existence of physical harm; and (ii) the causal link between the physical harm and the crimes experienced.

3. Conclusion as to the issues regarding the presumption of physical harm for victims of the attacks

266. In light of the above, the Chamber concludes that no presumption of physical harm shall be applied to victims of Count 3 (attack against the civilian population), Count 11 (pillaging), Count 17 (attack against protected objects), and Count 18 (destruction of property).⁶⁹⁷

267. However, recalling the harsh conditions that the victims of forcible transfer and displacement and persecution through the underlying acts of forcible transfer and displacement had to endure, the Chamber concludes that the presumption of physical harm for all victims of forcible transfer and displacement (Counts 12 and 13) and persecution (Count 10) through the underlying acts of forcible transfer and displacement should be maintained. As in all cases, for the presumption to apply the victim will first need to establish, on a balance of probabilities, to be a direct victim of the crime of forcible transfer and displacement, for which Mr Ntaganda was convicted.

⁶⁹⁷ This is without prejudice to the presumptions of physical harm specific to Counts 1 and 2 (murder and attempted murder), Counts 4 and 5 (rape), and Counts 7 and 8 (sexual slavery).

268. Regarding all the other victims of the attacks who may have suffered physical harm, and who fall out outside the scope of the presumption, the Chamber recalls that the harm may in any event be established by showing the (i) existence of physical harm; and (ii) the causal link between the physical harm and the crimes for which Mr Ntaganda was convicted.

E. Number of potentially eligible victims

1. Previous findings and submissions

a) Reparations Order, Appeals Judgement, and implementing orders

269. In the Reparations Order, the Chamber noted (i) the substantially different estimations regarding the number of potential beneficiaries of reparations – provided by the Registry (1,100 new potential victims of the attacks), the Appointed Experts (3,500 direct victims in general) and the CLR2 (at least 100,000 victims of the attacks across all locations);⁶⁹⁸ (ii) the number of participating victims (2,121) and the Registry's estimations of those remaining within the scope of the conviction (1,460);⁶⁹⁹ and (iii) that all victims recognised as beneficiaries in the *Lubanga* case (933 at the time) will also be eligible for reparations in the *Ntaganda* case.⁷⁰⁰ On this basis, noting that thousands of victims may be eligible for reparations in the case, the Chamber concluded that it was impossible to predict in advance how many victims may ultimately come forward to benefit from reparations, particularly considering the widespread, systematic, and large-scale nature of the crimes for which Mr Ntaganda was convicted.⁷⁰¹ Lastly, the Chamber noted that, at that stage, concrete numbers existed only regarding the victims authorised to participate in the case and the beneficiaries for reparations in the *Lubanga* case, but a significant number of potentially eligible victims for which no reliable figures were available were yet to be identified.⁷⁰²

270. The Appeals Chamber found that, in the circumstances of the case – where collective reparations with individualised components were awarded – one of the most fundamental parameters for setting the amount of the reparations award is the number of victims that it is intending to compensate.⁷⁰³ In the view of the Appeals Chamber, the Chamber failed in its duty to establish an actual, or estimated, number of victims of the award that was as concrete as

⁶⁹⁸ Reparations Order, [ICC-01/04-02/06-2659](#), paras 232-233.

⁶⁹⁹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 234.

⁷⁰⁰ Reparations Order, [ICC-01/04-02/06-2659](#), para. 235.

⁷⁰¹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 246.

⁷⁰² Reparations Order, [ICC-01/04-02/06-2659](#), para. 246.

⁷⁰³ Appeals Judgement, [ICC-01/04-02/06-2782](#), paras 157-164.

possible and based upon a sufficiently strong evidential basis.⁷⁰⁴ The Appeals Judgment indicated that, although the Chamber clearly set out the various estimates, along with the number of participating victims and the number of victims recognised in the *Lubanga* case, it did not expressly rule upon which of the varying estimates and numbers it found more persuasive.⁷⁰⁵ Accordingly, the Appeals Chamber found that the Chamber erred in failing: (i) to make any appropriate determination in relation to the number of potentially eligible or actual victims of the award; and/or (ii) to provide a reasoned decision in relation to its conclusion about that number; and (iii) to provide any reasoning in relation to the uncertainties that it stated it had resolved in favour of the convicted person.⁷⁰⁶

271. In the November 2022 Decision, the Chamber directed the parties and participants to complement their submissions regarding the estimated total number of potential beneficiaries of reparations, along with an explanation of the methodology used to provide such an estimate. In the paragraphs below, the Chamber details the submissions made by the parties and participants regarding the number of potentially eligible victims, before turning to its considerations.

b) CLR1 submissions

272. The CLR1 recalls her previous filings where she indicates to have set out the factors to be taken into account in order to reach a reliable estimate.⁷⁰⁷ In her previous submissions, the CLR1 indicated that the number of potential beneficiaries estimated by the Appointed Experts, i.e. 3,500 direct victims including both child soldiers and victims of the attacks, was ‘far from being realistic’.⁷⁰⁸ With regards to child soldiers, the CLR1 noted that the Appointed Experts only took into account the fact that 283 child soldiers participated in the *Ntaganda* case and 425 victims were initially determined eligible in the *Lubanga* case.⁷⁰⁹ However, the estimated *Lubanga* victims, at the time, were approximately 3,000 victims and she argued that it would be reasonable to assume that additional former UPC/FPLC child soldiers, particularly from the Hema community might be willing to come forward and seek reparations in the *Ntaganda* case, as additional individuals tend to come forward when they know the potential content of

⁷⁰⁴ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 165-168.

⁷⁰⁵ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 168-170.

⁷⁰⁶ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 171-172.

⁷⁰⁷ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 47, *referring to* CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), paras 34-43.

⁷⁰⁸ CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), paras 34-35.

⁷⁰⁹ CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), para. 34.

reparations.⁷¹⁰ Accordingly, the CLR1 submitted that ‘while a precise estimate of the total number of former UPC/FPLC child soldiers eligible for reparations in the present case cannot be calculated at the present stage, the figure is likely to exceed 3,000 individuals, both direct and indirect victims.’⁷¹¹ Regarding former child soldiers who were also victims of rape and sexual slavery, without advancing any estimated additional numbers, the CLR1 stressed in her previous submissions that they may be particularly reluctant to come forward due to the high levels of trauma and stigmatisation.⁷¹²

273. The CLR1 argues that the number of victims previously advanced should be adjusted to take into account the fact that children of direct victims should be considered as indirect victims of the case.⁷¹³ Regarding the number of indirect victims, the CLR1 estimates that, on average, her clients have approximately four children.⁷¹⁴ However, she indicates that open sources data, which she considers to be more reliable, show that, on average, women have at least six children.⁷¹⁵

c) CLR2 submissions

274. The CLR2 reiterates in full his previous submissions, the rationale behind them, and his estimated total number of potential beneficiaries.⁷¹⁶ The CLR2 argues that the most efficient and pragmatic method to estimate the number of potential beneficiaries eligible as *direct victims* is to rely on the population size of the affected villages at the time the crimes were committed.⁷¹⁷ In effect, the CLR2 has argued throughout the reparation proceedings that entire village communities were targeted and victimised, and therefore, all those who were residing

⁷¹⁰ CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), paras 35-36.

⁷¹¹ CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), para. 37.

⁷¹² CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), paras 38-43.

⁷¹³ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 48.

⁷¹⁴ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 48.

⁷¹⁵ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 48 *referring to* the data collected by the World Bank, which indicates that the fertility rate in the DRC from 1960 to 2020, available at: https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=CD&most_recent_year_desc=true.

⁷¹⁶ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 44, *referring to* CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), paras 71-72; Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the “Order to provide information on the impact of COVID-19 measures on operational capacity” (‘CLR2 April 2020 Submissions’), 21 April 2020, ICC-01/04-02/06-2518-Conf-Exp (confidential redacted and public redacted versions of same date, ICC-01/04-02/06-Conf-Red2, [ICC-01/04-02/06-2518-Red](#)), paras 15-16; CLR2 December 2020 Submissions, [ICC-01/04-02/06-2633-Red](#), paras 112-115; Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations (‘CLR2 November 2020 Request’), 9 November 2020, [ICC-01/04-02/06-2624](#), paras 17-30; and Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order (‘CLR2 Appeal Brief’), 7 June 2021, [ICC-01/04-02/06-2674](#), paras 60, 64-73, 77, 81-82.

⁷¹⁷ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 45.

or otherwise present at the locations of the crimes at the time of the events should be considered as potential beneficiaries of reparations.⁷¹⁸

275. The CLR2 submits that his approach is supported by the following four factors. First, as determined by the Chamber (i) Mr Ntaganda was convicted for, *inter alia*, mass-crimes affecting 13 communities, which forced inhabitants to flee; (ii) a great number of people who fled Mongbwalu arrived in the Walendu-Djatsi *collectivité* and were concentrated in Lipri, Kobu, and Bambu; (iii) while the objective of the operation in the villages was to destroy the triangle, the crimes were premediated and aimed to drive out the Lendu, who constituted the majority of inhabitants of Mongbwalu and Sayo and predominated in the villages of the Walendu-Djatsi *collectivité*, and prevent their return.⁷¹⁹ Second, there are publicly available figures on the estimated population size of Mongbwalu in 2002 and 2004, which show that a population of around 80,000 – with Lendu constituting the majority – shrunk to 26,174.⁷²⁰ Third, the Registry provided estimations in the number of inhabitants at the time of the events in some other affected villages.⁷²¹ Fourth, there is an estimated 60,000 persons displaced in the *shika na mukono* operation according to the evidence on record.⁷²² Accordingly, the CLR2 reiterates his submission that the total number of potential beneficiaries as *direct victims* is at least 100,000, which the Chamber is in a position to roughly estimate based on the evidence available on the record.⁷²³

⁷¹⁸ CLR2 April 2020 Submissions, [ICC-01/04-02/06-2518-Red](#), para. 15; *see also* CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), para. 71; CLR2 November 2020 Request, [ICC-01/04-02/06-2624](#), para. 20.

⁷¹⁹ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 45, *referring, inter alia, to* the Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 497, 505, 537, 549, 558, 571, 573, 585-586, 603, 604, 612, 615-617, 640.

⁷²⁰ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 45, *referring to* CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), para. 71, which relies on DRC-OTP-0074-0422, United Nations Organization Mission in the Democratic Republic of the Congo, Special Report on the events in Ituri, January 2002-December 2003, 16 July 2003, S/2004/573 ('DRC-OTP-0074-0422, S/2004/573'), para. 98, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/430/63/IMG/N0443063.pdf?OpenElement>; and World Gazetteer, Congo (Dem. Rep): largest cities and towns and statistics of their population ('World Gazetteer, Congo'), available at: <https://archive.ph/20130210151812/http://world-gazetteer.com/wg.php?x=&men=gcis&lng=en&des=gamelan&srt=npan&col=abcdefghijklmnoq&msz=1500&geo=-46>.

⁷²¹ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 45, *referring to* figures provided in Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), pp. 12-13.

⁷²² CLR2 January 2023 Submission, [ICC-01/04-02/06-2820](#), para. 45, also mentioned in CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), para. 71, footnote 73, *relying on* DRC-OTP-0074-0422, [S/2004/573](#), para. 70.

⁷²³ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 46.

276. The CLR2 further submits that the likely very high number of victims originating from other locations should also be taken into account, where they suffered harm in the forest or bush surrounding the affected locations, as determined by the Chamber.⁷²⁴ Finally, regarding *indirect victims*, the CLR2 reiterates that the estimation should be based on the average family composition in light of the notion of family in the DRC, which includes both close and remote relatives, which the Chamber could estimate based on the information contained in the dossiers of the victims included in the Sample.⁷²⁵

d) Defence submissions

277. The Defence submits that, first, the Chamber may consider the information available in terms of the numbers as it has evolved since the Reparations Order was issued.⁷²⁶ What has not changed, the Defence notes, is the number of: (i) participating victims (2121), (ii) potential victims assessed as eligible by the TFV (69), (iii) participating victims of the attacks assessed by the Registry as being beyond the scope of the Conviction Judgment (661), (iv) potential beneficiaries having filed long forms (53), (v) potential beneficiaries who have never been in contact with the Court (39), and (vi) the Registry's approximate estimate of individuals who may qualify as new potential victims of the attacks (1,100).⁷²⁷ What has changed during this period according to the Defence is: (i) the number of victims of crimes against child soldiers found eligible in the *Lubanga* case (2,479) and (ii) the new victims mapped by the Registry (780) believed to be included in the earlier estimate of 1,100.⁷²⁸

278. Second, the Defence notes that the Chamber decided to consider a sample of potential beneficiaries, which the Defence challenges as being incapable of addressing the ultimate issue on remand.⁷²⁹ In effect, even assuming *arguendo* that the sample is representative, and might thus be used to draw conclusions on the types of harm, the Defence submits that no conclusion can be drawn therein concerning the number of potential beneficiaries in the case.⁷³⁰ In the argument of the Defence, the sample in this case cannot be compared with that assembled in the *Lubanga* case, which was put together during a period of 14 months and included all

⁷²⁴ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 46, *referring* in general terms to the Conviction Judgment, [ICC-01/04-02/06-2359](#); and the Decision on issues raised in December 2020 Decision, [ICC-01/04-02/06-2630](#).

⁷²⁵ CLR2 January 2023 Submission, [ICC-01/04-02/06-2820](#), para. 47.

⁷²⁶ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 51.

⁷²⁷ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 51.

⁷²⁸ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 52.

⁷²⁹ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 53-56.

⁷³⁰ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 56.

participating and the non-participating victims identified during that period.⁷³¹ Accordingly, the Defence submits that the appropriate way forward would have been for the VPRS to conduct a detailed mapping exercise, as expeditiously as possible, with a view to identifying new potential beneficiaries and collect new application forms.⁷³²

279. Regarding the CLR2's estimate of 100,000 potential victims, the Defence submits that it is unreliable as an important distinction must be made between official figures regarding the population of a given municipality before the conflict and the number of persons not taking active part in the hostilities present at the time of the crimes.⁷³³ Lastly, regarding indirect victims, the Defence recalled that in the *Lubanga* case the Chamber established that the ratio of indirect to direct victims was around 25%, thus no multiplying factor should be used when attempting to determine or extrapolate the number of indirect victims from direct ones.⁷³⁴

e) TFV observations

280. The TFV observes that any current exercise to determine the number of potential beneficiaries prior to the implementation of reparations will be inexact.⁷³⁵ In its experience, potential beneficiaries come forward at various stages, including during outreach campaigns and later in time, when other beneficiaries actually start receiving reparations.⁷³⁶ It argues that at the present stage of the proceedings, any number submitted will be nothing more than an *educated guess*, made on the basis of information from various sources and stakeholders.⁷³⁷ The TFV reiterates its support of the Chamber's indication in the Reparations Order that it was impossible to predict in advance how many victims may ultimately come forward to benefit from collective reparations.⁷³⁸

281. The TFV further notes that, as reported when submitting the DIP, consultations did not shed much more light on the potential number of beneficiaries when it comes to victims of the attacks.⁷³⁹ In its consultations with leaders of certain affected localities, the TFV learned that

⁷³¹ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 57-58.

⁷³² Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), paras 59-60.

⁷³³ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 60.

⁷³⁴ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 61.

⁷³⁵ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 44.

⁷³⁶ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 44.

⁷³⁷ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 44 [emphasis added].

⁷³⁸ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 45; Trust Fund for Victims' second submission of Draft Implementation Plan ('Submission of Updated DIP'), 25 March 2022, [ICC-01/04-02/06-2750](#), para. 91.

⁷³⁹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 45; Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 92.

around the time of the attacks more than 100,000 persons from all different ethnic groups, i.e. Hema, Lendu, etc., lived in the affected areas.⁷⁴⁰ However, the TFV observes that, at the time of the attacks, most inhabitants had already left, and thus, do not appear to necessarily fall within the scope of the conviction.⁷⁴¹

282. In light of the above and considering the need to work with concrete numbers in developing the DIP, the TFV calculated that at least about 21,500 individuals could be beneficiaries of reparations as direct and indirect victims of the attacks.⁷⁴² As to the former child soldiers, the TFV notes that there is not much debate about their numbers, as the Chamber made very detailed findings in the *Lubanga* case.⁷⁴³

283. In its Updated DIP, submitted at the Chamber's instruction,⁷⁴⁴ the TFV indicated that it assumed that, at the very least, about 7,500 beneficiaries belong to the categories of victims of the attacks who have suffered forms of material, psychological and possibly physical harm, as: (i) direct victims of all crimes; (ii) close family members of victims of murder and rape or sexual slavery; (iii) indirect victims of all crimes insofar as they attempted to prevent the commission of one or more of the crimes under consideration or intervened on behalf of direct victims and who were 'further harmed as a result of the relevant crime'.⁷⁴⁵ In addition, the TFV indicated that, on the basis of the abovementioned figure, it considered that an important number of indirect victims, likely going beyond 14,000 individuals, belonged to the groups of persons who suffered harm as a result of what they witnessed during and after the attacks and persons who suffered transgenerational harm, who would have primarily suffered psychological harm.⁷⁴⁶

284. Regarding victims of crimes against child soldiers, in the Updated DIP the TFV recalled that Mr Ntaganda's conviction covers a longer time-period than Mr Lubanga's, but noted that it has yet to see the application of a victim that would fall only within the temporal scope of

⁷⁴⁰ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 45; Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 92.

⁷⁴¹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 45.

⁷⁴² TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 45.

⁷⁴³ TFV January 2023 Submission, [ICC-01/04-02/06-2819](#), para. 47, referring to *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#).

⁷⁴⁴ Decision on the 'Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims' Draft Implementation Plan' and additional request by the TFV, 21 January 2022, [ICC-01/04-02/06-2739](#).

⁷⁴⁵ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 93, referring to Reparations Order, [ICC-01/04-02/06-2659](#), para. 183(d)(ii) detailing a Chamber's findings as to the type of harm suffered by indirect victims.

⁷⁴⁶ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 94, referring to Reparations Order, [ICC-01/04-02/06-2659](#), paras 177-182, detailing the Chamber's findings as to the type of harm suffered by indirect victims.

the *Ntaganda* case.⁷⁴⁷ Accordingly, the TFV argued that applications falling within the temporal scope of the *Ntaganda* case only will likely be exceptional.⁷⁴⁸ Taking into account that Mr Ntaganda was also convicted of rape and sexual slavery of child soldiers,⁷⁴⁹ and that the *Lubanga* programme is already active, for the purposes of the DIP the TFV assumed that there would be approximately 3,000 victims who suffered material, psychological and often physical harm, considering: (i) direct victims, including children born out of rape and sexual slavery; (ii) close family members of direct victims; and (iii) indirect victims who intervened in the commission of the crime.⁷⁵⁰ In addition, the TFV assumed that for the purposes of the DIP that there will be at least 6,000 indirect victims of the crimes against child soldiers suffering transgenerational harm.⁷⁵¹

f) Registry observations

285. The Registry notes that following its preliminary mapping exercise carried out in 2019, it estimated that at least approximately 1,100 new potential applicants, belonging to the group of victims of the attacks, may come forward to claim reparations.⁷⁵² The Registry further reported in 2022 that it had mapped out approximately 780 potential new applicants, who were mostly already accounted for in the context of the preliminary mapping.⁷⁵³ However, the Registry notes that these estimates were conservative, collated in the context of a limited targeted approach aimed at identifying individuals for whom it could be said with a relative degree of certainty – based only on secondary sources – that they were victims of the case.⁷⁵⁴ Further, the Registry notes that the figures provided in the preliminary mapping related to potential beneficiaries who resided or had returned to the localities relating to the First and Second Operation.⁷⁵⁵ However, the Registry observes that more than 70% of the pre-conflict population of these localities still had not returned.⁷⁵⁶

⁷⁴⁷ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 100-101.

⁷⁴⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 101.

⁷⁴⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 104.

⁷⁵⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 109.

⁷⁵¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 110.

⁷⁵² Registry January 2023 Submission, [ICC-01/04-02/06-2822](#), para. 17, referring to Annex I to the Registry Observations on Reparations, 28 February 2020 ('Annex I – Registry February 2020 Observations'), [ICC-01/04-02/06-2475-AnxI](#), para. 25.

⁷⁵³ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 17, referring to Registry Observations on Updated DIP, [ICC-01/04-02/06-2766-Red](#), para. 19.

⁷⁵⁴ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 18.

⁷⁵⁵ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 19.

⁷⁵⁶ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 19.

286. The Registry indicates that it now concurs with the CLR2 submission that some crimes – such as attack against the civilian population, forcible transfer, and displacement – are likely to have victimised large portions of the population living at the time in these localities.⁷⁵⁷ Accordingly, the Registry notes that it sought additional information by undertaking consultations in the field,⁷⁵⁸ and provides the following details of the population purportedly living in the crime localities before the attacks: (i) *Collectivity of Banyalo-Kilo*: a) Mongbwalo, Sayo and Nzebi, including most populated neighbourhoods of Sayo and Nzebi (Kilo-Moto), but excluding villages around the periphery of Mongbwalo: 102,000 inhabitants; b) Kilo Mission: 3,800 inhabitants, including the population of its 27 surrounding villages and Kilo Etat: 6,350 inhabitants, including the population of its 14 villages surrounding villages; (ii) *Collectivity of Walendu-Djatsi*, excluding Sangi, Jitsu, Buli, Tsili and Gola: a) Kobu: between 15,000 – 18,000 inhabitants; b) Bambu: between 12,000 – 13,000 inhabitants; c) Lipri and vicinity: 4,246 inhabitants, including the population of the following surrounding villages located within a range of five kilometres from Lipri Centre: Ngongo, Tuduchabo, Gamangilo, Ekolo, Makabo Ngongo, Simbabo, Ndigadu, Kishiga, Godu, Kabisabo, Nganda, Solasola, Anjabo, Waga, Kisiga II, Kalonga and Waga II, but excluding Lipri Centre; and d) Nyangaray and vicinity: Nyangaray centre: 3,200 inhabitants and Nyangaray *groupement*: 33,112 inhabitants.⁷⁵⁹

2. Chamber determination

a) Introduction

287. The Chamber first notes that, although specifically directed to do so,⁷⁶⁰ the Prosecutor did not make submissions as to the number of potential beneficiaries of reparations in the case. On this point, the Chamber underlines that, while not a party to the reparation proceedings, the Prosecutor remains the impartial organ of justice responsible for conducting investigations and prosecutions, who should have formulated the charges in a clear, unambiguous, exhaustive and

⁷⁵⁷ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 20.

⁷⁵⁸ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 21.

⁷⁵⁹ Annex – Registry January 2023 Submissions, [ICC-01/04-02/06-2822-Anx-Red](#). The Chamber notes that although the Registry noted that Nyangaray was both a locality and a *groupement*, comprised of 42 villages, with the Dembu, Tonabo, Ngoto, Sindani and Bwegwe located within 5 kilometres or less from Nyangaray Centre, it did not specify whether the number given was only for these five villages or related to the 42.

⁷⁶⁰ November 2022 Decision, [ICC-01/04-02/06-2794](#), para. 37 and disposition, directing among others to the Prosecutor to provide ‘any additional information or documentation they might have as to the estimated total number of potential beneficiaries of reparations in the present case, along with an explanation of the methodology used to provide such estimate’.

self-contained way, with the required level of specificity depending on the nature of the case.⁷⁶¹ Even if not required to identify or indicate the exact number of victims in cases involving mass-crimes, the Prosecutor is still expected to have a clear understanding of the parameters of the case for which a conviction was requested and obtained. As such, it should have been able to provide the Chamber with, at least, an approximate number of potential beneficiaries in the case and should have not failed to comply with the Chamber's clear instructions. At a minimum the Chamber expected the Prosecutor to explain the lack of submission on this point.

288. In the paragraphs below, the Chamber provides its reasoned conclusions as to the estimated number of potential beneficiaries of reparations, based on the submissions made throughout the reparation proceedings, the information and evidence in the case file, and the conclusions that can be reached from the analysis of the Sample.

b) Direct and indirect child soldiers' victims

289. The Chamber recalls that the CLR1 reiterated her prior submissions wherein she argued that the number *could not be calculated*, but that it is likely to exceed 3,000 individuals, covering both direct and indirect victims.⁷⁶² The TFV indicated to have assumed – as required for the purposes of the DIP – that approximately 3,000 victims suffered material, psychological and often physical harm as a result of crimes against child soldiers, and that, in addition, at least 6,000 indirect victims would have suffered transgenerational harm.⁷⁶³ However, the Chamber notes that TFV again stressed that the numbers submitted were *nothing more than an educated guess* and stressed in that any current exercise to determine the number of beneficiaries will be *inexact*.⁷⁶⁴

290. The Chamber notes that, according to the terms of the conviction and sentence,⁷⁶⁵ this group of victims includes: (i) the overlapping direct and indirect victims between the *Ntaganda* and *Lubanga* cases; and (ii) the additional *Ntaganda* only victims, including: a) child soldiers falling under the temporal scope of the *Ntaganda* case only, i.e., beyond the temporal scope of

⁷⁶¹ Chambers Practice Manual, Sixth Edition, adopted following the judicial retreat of 2021, available at: <https://www.icc-cpi.int/sites/default/files/2022-11/chamber-manual-eng-v.6.pdf>, para. 35, 37-38. *See also*, Conviction Appeals Judgment, ICC-01/04-02/06-2666-Red, para. 326.

⁷⁶² CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 47, *referring to* CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), paras 34-43.

⁷⁶³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 109-110.

⁷⁶⁴ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 44-45.

⁷⁶⁵ Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 974-986, 1117-1133, 1190-1198, 1199 at p. 528-529; Sentencing Judgment, [ICC-01/04-02/06-2442](#), paras 108-113, 178-185.

the *Lubanga* case; b) child soldiers who are also victims of sexual and gender based crimes and children born out of rape and sexual slavery against child soldiers ('SGBV child soldiers victims'); and d) indirect victims of all the above.⁷⁶⁶

291. As for the overlapping direct and indirect victims between the *Ntaganda* and *Lubanga* cases, the Chamber notes that the final number of beneficiaries found eligible in the *Lubanga* case amounts to 2,476 direct and indirect victims.⁷⁶⁷

292. The Chamber has taken into account the CLR1 argument that the total number of child soldiers was likely to exceed the 3,000 estimated *Lubanga* victims, as it was 'reasonable to assume' that additional child soldiers 'may be willing to come forward and seek reparations' in the *Ntaganda* case, particularly from the Hema community, and because additional individuals tend to come forward when they know the potential content of reparations.⁷⁶⁸ However, the Chamber notes that the final deadline for victims to come forward in the *Lubanga* case was publicly extended in April 2021 to 1 October 2021,⁷⁶⁹ after the content of the reparations programme in that case was judicially approved and made public.⁷⁷⁰ Similarly, the fact that the content of the reparations programme in the *Ntaganda* case is the same as in the *Lubanga* case for all the overlapping victims, has been publicly known since the issuance of the Reparations Order in March 2021.⁷⁷¹

293. Although more than two years have passed, no additional overlapping victims seem to have come forward. In effect, neither the LRVs, nor the TFV,⁷⁷² nor the VPRS have provided

⁷⁶⁶ Reparations Order, [ICC-01/04-02/06-2659](#), paras 118-128.

⁷⁶⁷ Twenty-first progress report on the implementation of collective reparations as per Trial Chamber II's decisions of 21 October 2016 ('*Lubanga* TFV's Twenty-first Report'), 6 April 2017 and 7 February 2019, 6 June 2023, ICC-01/04-01/06-3919-Conf, para. 10, pending Chamber's confirmation of 14 applicants positively assessed by the TFV's Board of Directors.

⁷⁶⁸ CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), paras 35-36.

⁷⁶⁹ Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the submissions by the Legal Representative of Victims V01 in its Response to the Twelfth Report of the Trust Fund for Victims on the implementation of collective reparations, filing ICC-01/04-01/06-3500-Conf-Exp, 26 March 2021, reclassified as public on 13 April 2021, [ICC-01/04-01/06-3508](#); See also, ICC Press Release: 13 April 2021. [Lubanga case: Chamber sets new final deadline for victims to request reparations to 1 October 2021](#).

⁷⁷⁰ Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Décision faisant droit à la requête du Fonds au profit des victimes du 21 septembre 2020 et approuvant la mise en œuvre des réparations collectives prenant la forme de prestations de services, 14 December 2020, public redacted version of 4 March 2021, [ICC-01/04-01/06-3495-Red](#).

⁷⁷¹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 220.

⁷⁷² The Chamber notes that in the Updated DIP, the TFV indirectly referred to '[m]ore than a thousand additional direct and indirect victims who have not come forward before the [Lubanga] cut-off date, partly due to the security situation, are expected to request access to the Ntaganda reparation programme', see Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 108. However, the Chamber notes that the reference above did not affect the total estimation made by the TFV in the subsequent paragraph of the total of 3,000 direct and indirect victims who would have suffered material, psychological and often physical harm, including the *Lubanga* victims.

concrete evidence or information as to the existence of additional victims. Similarly, none of these potential additional victims have requested, at a minimum, to temporarily benefit from the IDIP in the *Ntaganda* case. In light of this, interpreting this particular uncertainty in favour of the convicted person, the Chamber considers it reasonable to conclude that the likelihood of additional overlapping *Lubanga/Ntaganda* victims coming forward in the *Ntaganda* case would only be limited to exceptional cases, if at all.

294. *Regarding additional Ntaganda-only victims*, i.e., child soldiers victims exceeding the temporal scope of the *Lubanga* case and their indirect victims, the Chamber notes that no concrete estimate or submissions has been provided by the CLR1 or VPRS. In the DIP, the TFV however submitted that it has yet to see the application of a victim that would fall only within the temporal scope of the *Ntaganda* case and that it expects their coming forward to likely be exceptional.⁷⁷³ The Chamber finds merit in the TFV's assessment on this point and concludes that the likelihood of child soldiers victims exceeding the temporal scope of the *Lubanga* case and their indirect victims coming forward in the *Ntaganda* case would only be limited to exceptional cases, if at all.

295. *Regarding the SGBV child soldiers victims*, the Chamber notes that the CLR1 indicates that they may be particularly reluctant to come forward,⁷⁷⁴ but did not advance any concrete estimates or a sufficient methodology that may help the Chamber in determining how many victims belonging to this subset within the child soldiers group may come forward. Similarly, regarding indirect victims of the above, although noting the average children of some of her clients and the average fertility rate in the DRC,⁷⁷⁵ the CLR1 did not provide the Chamber with a concrete estimate or sufficient methodology that may help the Chamber determining the number of potential indirect victims of these crimes. In addition to the family of some of the victims, it would have been helpful for the Chamber to be provided with information concerning the victims' family composition, average number of dependants, or approximate number of family members living within the same household.⁷⁷⁶

296. Considering the lack of further information or estimations and in light of the Appeals Chamber's findings,⁷⁷⁷ the Chamber has relied on the results of the Sample to make projections

⁷⁷³ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 100-101.

⁷⁷⁴ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 48.

⁷⁷⁵ CLR1 January 2023 Submissions, [ICC-01/04-02/06-2821](#), para. 48.

⁷⁷⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 145.

⁷⁷⁷ *See, inter alia*, Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 346.

on the estimated number of the currently unknown potential victims for this last subset. The Chamber notes that the results from the Sample indicate,⁷⁷⁸ *inter alia*, that: (i) approximately 18.2% of the total number of victims found eligible (including provisionally eligible), qualify as SGBV victims;⁷⁷⁹ and (ii) approximately 20.5% of the total number of victims found eligible (including provisionally eligible), qualify as indirect victims.⁷⁸⁰ As found above, (i) the only concrete number of child soldiers victims in the case is the total number of direct and indirect victims found eligible in the *Lubanga* case (2,476); and (ii) additional direct and indirect overlapping *Lubanga/Ntaganda* victims and victims exceeding the temporal scope of the *Lubanga* case who would only be limited to exceptional cases, if at all. Considering these known values and the projections that can be made on the basis of the Sample, the Chamber estimates that (i) the potential additional child soldiers SGBV victims would amount to approximately 451 additional individuals (18.2% of 2,476); and (ii) their indirect victims would amount to approximately 92 additional individuals (20.5% of 451). The total number of child soldier victims in the case can, therefore, be estimated to approximately 3,019 victims.

297. The Chamber notes that the estimation above regarding victims of crimes against child soldiers, closely coincides with the conservative estimate advanced by the TFV in the DIP regarding direct and indirect victims who suffered material, psychological and often physical damage, loss or injury as a result of these crimes. Accordingly, in light of all considerations above and explicitly resolving all uncertainties mentioned in this section in favour of the convicted person, the Chamber estimates that the approximate number of direct and indirect victims of crimes against child soldiers in the case as referred to in Counts 6, 9, 14, 15, and 16 of the Conviction Judgment, i.e., including all overlapping *Ntaganda* and *Lubanga* victims and any *Ntaganda*-only victims, would amount to approximately 3,000 individuals in total.

298. As to the TFV's additional estimate that at least 6,000 indirect victims would require psychological treatment as a consequence of transgenerational harm, as detailed in section III.B above, the Chamber has clearly indicated that only children of direct victims may qualify as beneficiaries of reparations when claiming to have suffered transgenerational harm. As such,

⁷⁷⁸ The Chamber notes that it has decided to rely on the results of the full Sample for this calculation, for the sake of consistency. In effect, although the proportion of SGBV victims within the child soldiers' group in the Sample is higher than in the total Sample, the same subgroup did not include any indirect victims. As such, the Chamber found appropriate to make projections starting from the same basis (the full Sample).

⁷⁷⁹ See Annex II, p. 3.

⁷⁸⁰ See Annex II, p. 2. The Chamber notes that the percentage of indirect victims from the total number of victims found eligible in the *Lubanga* case is approximately 23% which is very close to the results of the Sample.

these victims would be already included in the previous calculation of the TFV which referred to 3,000 direct and indirect victims of these crimes. Consequently, the Chamber does not consider such estimate to require further consideration.

c) Direct and indirect victims of the attacks

299. The Chamber notes that the parties and participants primarily reiterated their previous submission. The Chamber once again finds itself in a situation where no reliable estimates based on a solid methodology was provided regarding the total number of victims belonging to this group.

300. The Chamber notes that the CLR2 mostly reiterates its previous submissions relying on the population size of the affected (13) villages at the times the crimes were committed.⁷⁸¹ On this point, and without attempting to diminish the serious gravity and wide scope of the crimes for which Mr Ntaganda was convicted – which indeed affected thousands of people and entire communities – the Chamber first notes that it was not proven at trial that Mr Ntaganda was liable for crimes committed against the entirety of the 13 communities included in the conviction. As noted above,⁷⁸² for the sake of clarity, the Chamber has detailed in Annex I to the present Addendum the crimes and locations for which Mr Ntaganda was specifically convicted in relation to the victims of the attacks.

301. Accordingly, the methodology for calculating the total number of victims of the attacks proposed by the CLR2 cannot be relied upon in relation to all 13 villages included in the conviction, as this would include individuals that cannot be considered victims of the crimes for which Mr Ntaganda was convicted. Notwithstanding the above, the Chamber acknowledges that, as detailed in Annex I, an important part of the population located at the time of the attacks in several villages are to be considered when estimating the total number of potential beneficiaries of reparations. However, this calculation should be made with caution, as the Chamber finds merit in the arguments of the Defence and the TFV that a distinction should be made between official figures and the number of persons not taking a direct part in hostilities likely present at the time of the crimes at the different villages,⁷⁸³ when many inhabitants had already left and do not appear to necessarily fall within the scope of the conviction.⁷⁸⁴

⁷⁸¹ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), paras 44-45.

⁷⁸² See Section II above.

⁷⁸³ Defence January 2023 Submissions, [ICC-01/04-02/06-2823-Red](#), para. 60.

⁷⁸⁴ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 45.

302. As to the information at the Chamber's disposal regarding the individuals present at the time of the attacks in the affected villages, the Chamber has also assessed the CLR2's submission.⁷⁸⁵ However, the Chamber notes that the documents referred to by the CLR2 do not exactly necessarily indicate that the population of Mongbwalu shrunk. The UN report referred by the CLR2 – which, as noted in the Conviction Judgment⁷⁸⁶ and consistently by the Court's jurisprudence,⁷⁸⁷ has a low probative value – does not cite any source or reference to the affirmation that the population in Mongbwalu amounted to around 80,000 people in 2002. Further, the statistics included in the internet link to the 'world gazetteer', apart from not containing any reference in support to the source of information on the estimate it includes for the year 2004, does not contain data from previous census for Mongbwalu. As such, based on these pieces of evidence the Chamber cannot conclude that the population in Mongbwalu shrunk between 2002 and 2004 or rely on these figures for Mongbwalu to project estimations as to the total number of beneficiaries of reparations in the case. Similarly, the UN estimate as to the persons displaced in the *shika na mukono* operation relied by the CLR2⁷⁸⁸ is not supported by any reference to the source of information.⁷⁸⁹ In addition, this estimate cannot be relied upon by the Chamber as Mr Ntaganda was not convicted for the crimes committed within the context of the entire *shika na mukono* operation.

303. The CLR2 also makes reference to the estimates provided by the Registry regarding the population at the time of the events in the affected villages.⁷⁹⁰ The Chamber notes that in 2020 the Registry submitted information related to the number of potential beneficiaries and

⁷⁸⁵ CLR2 January 2023 Submission, [ICC-01/04-02/06-2820](#), para. 45, referring to CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), para. 71, relying on DRC-OTP-0074-0422, [S/2004/573](#), para. 98; and World Gazetteer, [Congo](#).

⁷⁸⁶ Conviction Judgment, [ICC-01/04-02/06-2359](#), footnote 132, noting that the probative value of, among others, reports from UN sources, is often too low to serve as the only factual basis for a factual finding and served mainly as corroboration for other credible and reliable evidence.

⁷⁸⁷ See, *inter alia*, Trial Chamber II, *The Prosecutor v. Germain Katanga*, Decision on the Prosecutor's Bar Table Motions, 12 May 2011, [ICC-01/04-01/07-2635](#), para. 29, noting that 'Insofar as [Reports by UN agencies] emanate from independent observers who were direct observers of the facts being reported, the Chamber considers them to be *prima facie* reliable. However, if the author's identity and the sources of the information provided are not revealed with sufficient detail, the Chamber is unable to determine whether the contents of the report have been imparted by an eyewitness or some other reliable source. If such particulars are not available, either from the reports themselves or from their author(s), the Chamber cannot assess the reliability of the content of the reports; it is therefore unable to qualify those documents as sufficiently reliable to be admitted into evidence. Moreover, where such reports are based, for the most part, on hearsay information, especially if that information is twice or further removed from its source, the reliability of their content is seriously impugned'.

⁷⁸⁸ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 45.

⁷⁸⁹ See DRC-OTP-0074-0422, [S/2004/573](#), para. 70.

⁷⁹⁰ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 45, referring to Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), pp. 12-13.

estimates of residents in certain locations, which it informed to have obtained in consultations in the field and cross-checked with third parties.⁷⁹¹ The Chamber notes that the Registry reported that (i) ‘just before the conflict, roughly 8,000 people lived in Kobu’;⁷⁹² (ii) regarding Bambu ‘just before the conflict roughly 5,000 people lived in the area and [...] roughly 6,000 people in the Yalala *groupement* suffered from the conflict and remain in the area.’;⁷⁹³ (iii) as to Tsili ‘most of those affected by the conflict completed participation forms but that as many as 300 have not (though this number includes villages no longer within the scope of the case)’;⁷⁹⁴ (iv) as to Lipri ‘many have already completed forms, some did not during the participation phase out of fear.’;⁷⁹⁵ (v) as to Nyangaray ‘35 people were injured and more than 70 were killed during the conflict [...] as many as 400 people living in Nyangaray have completed the form for participation. [...] The discrepancy may result from the “in or around” concept that included neighbouring villages at Trial.’;⁷⁹⁶ and (vi) as to Sangi ‘13 were killed during the conflict and an additional 130 were affected (who still reside in Sangi).’⁷⁹⁷

304. As to the reliability of the above figures, the Chamber notes with surprise that in its most recent filing the Registry sharply deviates from its prior consistent submissions, indicating that those estimates were ‘conservative’ and collected in the context of a ‘limited and carefully targeted approach aimed at identifying individuals [...] for whom it could be said with a relative degree of certainty – still based only on secondary sources consulted – that they suffered harm as a result of at least one of the crimes subject to conviction’.⁷⁹⁸ The Registry notes that the prior figures related to potential beneficiaries who resided or had returned to the localities but that more than 70% still had not returned.⁷⁹⁹ Nevertheless, the Chamber notes that this affirmation is not supported by any concrete source but only by a vague reference to ‘information collected in the field by Registry staff’.⁸⁰⁰ However, when submitting the results of the preliminary mapping exercise in 2020, the Registry clearly identified the sources of information for each location. The Chamber notes that the information providers referred to in the 2020 mapping report do not appear to be only ‘secondary sources’, as they are now referred

⁷⁹¹ Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), para. 2.

⁷⁹² Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), p. 12.

⁷⁹³ Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), p. 13.

⁷⁹⁴ Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), p. 14.

⁷⁹⁵ Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), p. 15.

⁷⁹⁶ Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), p. 16.

⁷⁹⁷ Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), p. 17.

⁷⁹⁸ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 18.

⁷⁹⁹ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 19.

⁸⁰⁰ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), footnote 22.

to by the Registry, but individuals who were mostly present during the conflict and had experienced it.⁸⁰¹

305. As to the latest numbers provided by the Registry regarding the population purportedly living in the localities before the attacks, the Chamber notes that, when compared to the information also provided by the Registry as a result of the preliminary mapping exercise in 2020: (i) the sources of information consulted in 2023 seem to be markedly less (only four individuals, compared to 19 who seem to have been consulted in 2020) and only limited and vague information is provided about them;⁸⁰² (ii) the grouping of population made in order to provide estimates in 2023 seem to include villages/locations excluded from the conviction⁸⁰³ or in relation to which the conviction is limited to specific acts only;⁸⁰⁴ (iii) there are considerable (unexplained) differences regarding the only two locations for which concrete numbers were provided in 2020. In effect, for Kobu the numbers went up from ‘roughly 8,000 people’ to ‘between 15,000 to 18,000’, with the source of information in 2020 appearing to be more related to the facts than those referred to in 2023.⁸⁰⁵ For Bambu the numbers went up from ‘roughly 5,000 people’ to ‘between 12,000 to 13,000’, with the source of information appearing to have been exactly the same.

306. Further, the Chamber notes that, precisely in response to a request from the CLR2 for the Registry to obtain further information on the numbers of victims, the Registry affirmed in November 2020 that (i) in the course of the mapping exercise, it had sought to obtain approximate figures and basic information regarding the pre-war population in the case locations, as well as the linkage between relevant individuals and groups of crimes for which

⁸⁰¹ Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), *inter alia*, pp. 12, 15, 17, 18, 19.

⁸⁰² See ICC-01/04-02/06-2822-Conf-Anx, [REDACTED], see Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), pp. 6, 11.

⁸⁰³ See, for example, Nzebi, included by the Registry in the numbers for the population of the Collectivity of Bayalo-Kilo, Annex – Registry January 2023 Submissions, [ICC-01/04-02/06-2822-Anx-Red](#), p. 2, but for which negative findings were made in the Conviction in relation to murder, forcible transfer of population and ordering the displacement of civilians, Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 887, 1049, 1078. Similarly, Ngongo, included by the Registry in the calculation of population in Lipri, Annex – Registry January 2023 Submissions, [ICC-01/04-02/06-2822-Anx-Red](#), p. 3, but for which negative findings were made for murder and persecution, Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 871, 989. For more examples, see Annex II.

⁸⁰⁴ See, for example, Nyangaray, included in the total counting of population by the Registry, Annex – Registry January 2023 Submissions, [ICC-01/04-02/06-2822-Anx-Red](#), p. 3, but for which negative findings were made in relation to intentionally attacking civilians, forcible transfer and ordering the displacement of the civilian population and destroying the adversary’s property and for which positive findings were made in the conviction for persecution only with a very specific underlying act, Conviction Judgment, [ICC-01/04-02/06-2359](#), paras 640, 905, 1000, 1008, 1055, 1068, 1078, 1155. For more examples, see Annex II.

⁸⁰⁵ ICC-01/04-02/06-2822-Conf-Anx, [REDACTED], see Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#), pp. 11-12.

Mr Ntaganda was convicted; (ii) it consulted authorities during the exercise, who ‘*were not in a position to link any more individuals to the crimes for which Mr Ntaganda was convicted*’; and (iii) although more applicants may come forward later ‘*it [did] not anticipate the number to be exponentially higher than the one established thus far during the mapping exercise*’.⁸⁰⁶

307. Accordingly, in light of these uncertainties, the Chamber is unable to rely on the recent numbers provided by the Registry to project estimations as to the total number of beneficiaries of reparations in the case. Similarly, the Chamber cannot agree with the CLR2’s submission that that the total number of potential beneficiaries should be roughly estimated by the Chamber as at least 100,000 people ‘based on the evidence available on the record’,⁸⁰⁷ since, as detailed above, the evidence on the record does not support such a conclusion.⁸⁰⁸ However, as will be discussed in more detail below, the Chamber will take into consideration the Registry’s observation that its previous estimations only included potential beneficiaries who resided in or had returned to the relevant localities.⁸⁰⁹

308. The Chamber did not find feasible the Defence’s suggestion that the appropriate way forward would have been for the VPRS to conduct a detailed mapping exercise, to identify new potential beneficiaries and collect new application forms.⁸¹⁰ As noted by the Defence itself on several occasions,⁸¹¹ and as publicly known, the current security situation in the DRC, and particularly in Ituri, is extremely volatile and unpredictable.⁸¹² Accordingly, when considering

⁸⁰⁶ Registry’s Observations on the “Request of the Common Legal Representatives of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations” of 9 November 2020, ICC-01/04-02/06-2624 (‘Registry November 2020 Submissions’), 18 November 2020, [ICC-01/04-02/06-2627](#), para. 18.

⁸⁰⁷ CLR2 January 2023 Submissions, [ICC-01/04-02/06-2820](#), para. 46.

⁸⁰⁸ The Chamber notes that it has analysed a number of documents that are part of the evidence of the case, *see inter alia*, United Nations, Office for the Coordination of Humanitarian Affairs, Integrated Regional Information Network, 18 December 2002, DRC: Special report on Ituri District, north-eastern DRC (DRC-OTP-0100-0278), United Nations, August 2010, REPUBLIQUE DEMOCRATIQUE DU CONGO, 1993-2003 Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo (DRC-OTP-1061-0212), Amnesty International Report, March 2003, Democratic Republic of Congo On the precipice: the deepening human rights and humanitarian crisis in Ituri (DRC-OTP-0154-1301), Amnesty International Report, 21 October 2003, Democratic Republic of Congo Ituri: a need for protection, a thirst for justice (DRC-OTP-0019-0153), , searching for additional information on concrete numbers, but has assessed the information as being too general in nature, and therefore, not reliable Forfor the purposes of determining the number of victims of the crimes for which Mr Ntaganda was convicted. The Chamber notes that it has not been made aware of any other information or document which provides more authoritative figures on the concrete number of potentially eligible victims of the attacks.

⁸⁰⁹ Registry January 2023 Submissions, [ICC-01/04-02/06-2822](#), para. 19.

⁸¹⁰ Defence January 2023 Submission, ICC-01/04-02/06-2823-Conf, paras 59-60.

⁸¹¹ For the most recent submission on the issue, *see* Defence observations on the Trust Fund for Victims’ Eleventh Update Report on the Implementation of the Initial Draft Implementation Plan, 12 June 2023, ICC-01/04-02/06-2855-Conf, paras 6-10 and Annex A, [ICC-01/04-02/06-2855-AnxA](#).

⁸¹² *See, inter alia*, TFFV’s Eleventh Report, [ICC-01/04-02/06-2854-Red](#), para. 11.

its approach to the implementation of the Appeals Judgment, taking into account the security situation and that the Court as a whole is currently operating at a heavily reduced capacity on the field in the DRC,⁸¹³ the Chamber concluded that the conditions did not allow for a mapping exercise to be carried out in a safe and expeditious manner.

309. In addition, as noted in the October 2022 Order, the Chamber considers it key that the issues on remand in the Appeals Judgment shall be implemented in a way that ensures compliance with the principles of reparations upheld in the case, avoids re-victimisation, and in the most expeditious manner possible.⁸¹⁴ The Chamber particularly takes into account ‘the context of these reparations proceedings, which are taking place nearly two decades after the commission of the crimes of which Mr Ntaganda has been convicted [...] the need to repair the harm suffered by the victims of these crimes as expeditiously as possible is a relevant consideration’.⁸¹⁵ Lastly, taking into account that in this case collective reparations have been granted, in exercising its discretion, the Chamber reiterates that it found it unwarranted to collect application forms from potential beneficiaries of reparations before deciding on the award,⁸¹⁶ as suggested by the Defence.

310. Having discounted the possibility of relying on the most recent estimates provided by the parties and the Registry, the Chamber will now assess the calculations provided by the TFV in light of the rest of the evidence and information available in the case file. The Chamber recalls that the TFV specified that its calculations were not exact estimations, qualifying them as an ‘educated guess’.⁸¹⁷ However, the Chamber notes that the TFV projected them considering the need to work with concrete numbers for the DIP’s purposes, and elaborated the plan taking into account the information obtained during its consultations with various sources and stakeholders, the scope of the conviction, and applying a very conservative approach.⁸¹⁸ Within this context, the TFV projected that, at the very least, about 7,500 direct and indirect victims of the attacks would qualify as beneficiaries who have suffered certain forms of

⁸¹³ See, *inter alia*, International Criminal Court, Assembly of States Parties, Report on the Activities of the International Criminal Court, 20 October 2022, [ICC-ASP/21/9](#), paras 55-56, 58, noting, *inter alia*, that the Country Office in Kinshasa closed its physical premises in 2021 and only one staff member remained on the ground to conduct residual outreach function and serve as a liaison with the Government, that outreach activities were reduced due, among others, the ongoing conflict in Ituri and that missions to meet victims identified by intermediaries could not take place due to lack of financial resources.

⁸¹⁴ October 2022 Order, [ICC-01/04-02/06-2786](#), paras 3, 7, 15, 18, 25, and 33.

⁸¹⁵ Decision on suspensive effect, [ICC-01/04-02/06-2691](#), para. 25.

⁸¹⁶ See Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 336.

⁸¹⁷ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 44 [emphasis added].

⁸¹⁸ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), paras 92-93.

material, psychological and possibly physical harm.⁸¹⁹ Further, the TFV estimated that an important number of indirect victims, likely going beyond 14,000 individuals, would have suffered primarily from psychological harm.⁸²⁰ Lastly, the TFV noted that it was capable of accommodating these numbers within the amount of liability set by the Chamber and provide them with services that are equal to those that former child soldiers may receive through the *Lubanga* reparation programme.⁸²¹

311. Although the TFV was cautious in noting that the calculations were imprecise, recalling all the uncertainties noted above, the Chamber finds merit in the TFV's projection that approximately 7,500 direct and indirect victims of the attacks may qualify as beneficiaries having suffered material, psychological and possibly physical harm. The Chamber notes that, in reaching the above conclusion, it has taken into account the parties' submissions as to the DIP. The Chamber notes that the Defence submitted that the proposed figure of 21,500 victims of the attacks 'is not only unsupported and speculative [but] completely detached from reality', as the currently available figures would point at a very limited number of victims of the attacks 'which does not go beyond the number of 2,500'.⁸²² As to these arguments, the Chamber notes that (i) it is not relying on the full 21,500 potential victims of the attacks projected by the TFV, but only on the projection of 7,500 direct and indirect victims that would have suffered psychological, physical and material harm; and (ii) as will be discussed below, contrary to the Defence's submission, the evidence in the case record points to more than 2,500 victims of the attacks having already been identified/mapped in the course of the proceedings.

312. The Chamber also notes the submissions of the CLR2, who takes issue with the TFV's 'very conservative approach' arguing that the TFV solely refers to 'meetings and consultations' held when projecting numbers but 'provides no basis or identifiable source'.⁸²³ The Chamber notes the CLR2 submission that the TFV did not provide a list of identifiable sources and only referred to having held meetings and consultations which, together with other information, informed its calculations. Although agreeing with the CLR2 that it would have been better for

⁸¹⁹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 93. The above included: (i) direct victims of all crimes; (ii) close family members of victims of murder and rape or sexual slavery; (iii) indirect victims of all crimes insofar as they attempted to prevent the commission of one or more of the crimes under consideration or intervened on behalf of direct victims and who were 'further harmed as a result of the relevant crime'.

⁸²⁰ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 94, *referring to* indirect victims who had suffered harm for what they witnessed during and after the attacks and persons who suffered transgenerational harm.

⁸²¹ Updated DIP, [ICC-01/04-02/06-2750-Anx1-Red-Corr](#), para. 96.

⁸²² Defence Observations on Updated DIP, [ICC-01/04-02/06-2765-Red](#), para. 53.

⁸²³ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 17.

the TFV to provide additional information as to the sources it consulted, the Chamber notes that the TFV held consultations and meetings with different individuals, which served to inform its projections as to the number of victims. Further, the Chamber took into account that the TFV itself acknowledged that its projections were not objective estimates but simple calculations. Accordingly, while not being submitted as ‘objective estimate’, the Chamber is satisfied that the basis provided by the TFV is sufficient for the Chamber’s assessment of such calculations.

313. The CLR2 expressed ‘great concern’ that the TFV’s approach does not provide estimates for the numbers of victims but a calculation of what the TFV would be capable of accommodating within the amount of liability set by the Chamber, noting that when providing reparations the TFV has no discretion to restrict reparations to available resources.⁸²⁴ To a certain extent, the Chamber understands and shares the CLR2’s concern as to the possible overlapping in the TFV’s understanding of its role. As a general rule, the CLR2 is correct when indicating that the TFV does not have discretion to limit reparations to available resources. However, although not at the discretion of the TFV, it is indeed for the Chamber to determine the total amount that it considers fair and appropriate to repair the harm caused to the victims of the crimes for which Mr Ntaganda has been convicted. Within the amount set by the Chamber, reparations may be provided to all beneficiaries found eligible to benefit from them, for as long as they have come forward voluntarily during the timeline to be set by the Chamber for such purposes.

314. However, it should be stressed that this would only be true for as long as the convicted person complies with its obligation and pays the award or the TFV is able to complement it in full. Accordingly, although the amount of liability set by the Chamber is indeed the maximum limit of resources that can be used for the purposes of repairing the harm caused to the victims of the crimes for which Mr Ntaganda was convicted, neither the estimations as to the number of victims provided by the Chamber in the present decision is a limit as to the maximum number of individuals that may come forward and be able to benefit from the award, nor is the TFV obliged to fully complement the award.⁸²⁵ The ultimate responsible to pay is and continues to be the convicted person. As such, the Chamber finds appropriate for the TFV to have made a projection as to the number of victims that could benefit from reparations within the amount of

⁸²⁴ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, paras 18-20.

⁸²⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 257.

liability set by the Chamber. This is so, particularly considering that the calculation was not only made taking into account the amount of liability set by the Chamber, but also the information collected in consultations with different stakeholders as to the number of potential beneficiaries within the terms of the conviction.

315. Lastly, the CLR2 submits that the TFFV cannot reasonably justify being in no position to provide an estimate as this ‘can and should be obtained by the TFFV as part of a mapping exercise in the framework of an outreach campaign’.⁸²⁶ The Chamber recalls that, as noted above when addressing a similar suggestion by the Defence, this argument is currently untenable. In effect, in light of the security situation and the overriding need to commence providing reparations as expeditiously as possible, no mapping exercise can or shall be done at this stage. This, particularly considering that the victims have waited more than 20 years for justice and reparations,⁸²⁷ and, as explained by the CLR2 himself, ‘the ongoing unstable security situation in Ituri and the current significant displacement of the population’⁸²⁸ demands that the Chamber acts promptly. As such, in view of the particular circumstances of the case, the Chamber considers that the outreach campaign and victims’ location and identification shall be conducted in parallel with the commencement of the process of implementation of reparations.

316. In assessing the reliability of the projections made by the TFFV, the Chamber also considered the Registry’s work during the preliminary mapping exercise and the estimations provided by the Appointed Experts. As to the Registry’s estimations, the Chamber notes that the results of the consultations conducted during the preliminary mapping led the Registry to consistently indicate that ‘at least’ approximately 1,100 individuals would qualify as new potential victims of the attacks (in addition to the eligible participating victims of the attacks, which the Registry estimated in approximately 1,176)⁸²⁹ and that it was not to be anticipated

⁸²⁶ CLR2 Observations on Updated DIP, ICC-01/04-02/06-2764-Conf, para. 21.

⁸²⁷ Decision on suspensive effect, [ICC-01/04-02/06-2691](#), para. 25. *See also* Public Redacted Version of the “Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan” (ICC-01/04-02/06-2680-Conf), 28 June 2021, [ICC-01/04-02/06-2680-Red](#), para. 57; Response of the Common Legal Representative of the Former Child Soldiers to the TFFV Initial Draft Implementation Plan with focus on Priority Victims, 23 June 2021, [ICC-01/04-02/06-2681](#), para. 2.

⁸²⁸ CLR2 March 2023 Submissions, [ICC-01/04-02/06-2836](#), para. 26.

⁸²⁹ Public Redacted Version of Annex I (ICC-01/04-02/06-2639-Conf-AnxI) notified on 15 January 2021 Registry Second Report on Reparations (Registry’s Second Mapping Report’), 10 February 2021, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 9.

that the final number would be exponentially higher.⁸³⁰ Similarly, the Chamber notes that the Appointed Experts estimated that, at least, 3,500 direct victims of the attacks were potentially eligible for reparations, while the number of indirect victims could not be ascertained by them.⁸³¹ Having also assessed the parties submissions related to these estimates,⁸³² the Chamber is satisfied that both the Registry in 2020⁸³³ and the Appointed Experts⁸³⁴ held consultations with different stakeholders in order to inform their views. As such, the Chamber is satisfied that both estimations, in the Registry's preliminary mapping exercise and by the Appointed Experts, as reflected in their reports, lend sufficient basis for the Chamber to rely on these estimates in order to conclude that, at the very least, a minimum of 3,500 direct victims of the attacks will qualify as potential beneficiaries of reparations in the present case.

317. Considering that the estimate above is indeed a minimum, the Chamber has also taken into account the Registry's recent submission that the identification and tracking of potential beneficiaries during the preliminary mapping exercise was particularly challenging, due to the population displacements, and that more than 70% of the pre-conflict population has still not returned to their localities of origin.⁸³⁵ The Chamber has assessed this submission in order to consider the different possible estimates and calculations. The Chamber understands the current argument from the Registry to imply that the estimations provided as a result of the preliminary mapping exercise would have corresponded to approximately 30% of the total number of potential victims of the attacks, and thus, approximately a 70% extra needs to be added in order to obtain the final number of potential victims of the attacks. this lead the Chamber to consider the number of potential new victims of the attacks advanced by the

⁸³⁰ Annex I – Registry February 2020 Submissions, [ICC-01/04-02/06-2475-AnxI](#), para. 25; Annex II – Registry February 2020 Observations, [ICC-01/04-02/06-2475-AnxII-Red3](#); Registry November 2020 Submissions, [ICC-01/04-02/06-2627](#), paras 17-18; Public Redacted Version of Annex I (ICC-01/04-02/06-2639-Conf-AnxI) notified on 15 January 2021 Registry Second Report on Reparations, 10 February 2021, [ICC-01/04-02/06-2639-AnxI-Red](#), para. 39.

⁸³¹ First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red4](#), paras 29, 283, p. 107.

⁸³² CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), paras 35-37; CLR2 Appeal Brief, [ICC-01/04-02/06-2674](#), para. 53; Defence Appellant Brief against the 8 March Reparations Order, 07 June 2021, [ICC-01/04-02/06-2675](#), paras 230-231.

⁸³³ As detailed in Annex II – Registry February 2020 Observations (confidential redacted version), ICC-01/04-02/06-2475-Conf-AnxII-Red2.

⁸³⁴ See First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red4](#), paras 9-11, containing the details of the methodology employed by the experts when informing their views contained in the report, which includes not only the case file but also the information obtained from meetings with victims and other stakeholders (conducted remotely using digital communication tools in light of restrictions due to the COVID-19 pandemic and the security situation in Ituri), a roundtable with a number of NGOs active in Ituri who have experience working with victims of the conflict there, including with victims of Mr. Ntaganda and desk research of relevant literature on key issues relevant for the report.

⁸³⁵ Registry January 2023 Submission, [ICC-01/04-02/06-2822](#), para. 19.

Registry within the context of the preliminary mapping (1,100) which added to the number of participating victims of the attacks that the Registry estimated as remaining within the scope of the conviction (1,176), provides the result that the Registry now appears to indicate that would have corresponded to approximately 30% of the potential victims of the attacks: 2,276 individuals. From that number the Chamber can now calculate that the 70% purportedly remaining would amount to approximately 5,311 individuals, with the total number of potential direct and indirect victims of the attacks, following this reasoning, amounting to 7,587 individuals.

318. The Chamber notes that the calculation above regarding victims of the attacks, once again closely coincides with the conservative estimate advanced by the TFV in the DIP of approximately 7,500 direct and indirect victims who suffered material, psychological and possibly physical damage, loss or injury as a result of these crimes. Accordingly, in light of all considerations above and having explicitly resolved all uncertainties mentioned in this section in favour of the convicted person, the Chamber estimates that the approximate number of direct and indirect victims of the attacks in the case as referred to in Counts 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 17, and 18 of the Conviction Judgment, would amount to approximately 7,500 individuals in total.

319. As noted in relation to child soldiers, the Chamber will not consider any further the TFV's estimation at least 14,000 indirect victims who would have suffered primarily psychological harm would qualify as victims having suffered transgenerational harm.

3. Conclusions as to the number of potentially eligible victims

320. In light of the above, based on the evidence and submissions above detailed, and explicitly resolving all uncertainties mentioned in this section in favour of the convicted person, the Chamber concludes that the approximate number of direct and indirect (i) victims of crimes against child soldiers in the case, as referred to in Counts 6, 9, 14, 15, and 16 of the Conviction Judgment, would amount to approximately 3,000 individuals in total; and (ii) victims of the attacks in the case, as referred to in Counts 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 17, and 18 of the Conviction Judgment, would amount to approximately 7,500 individuals in total.

F. Calculation of the monetary award against Mr Ntaganda

1. Previous findings and submissions

a) Reparations Order

321. When determining Mr Ntaganda's financial liability in the Reparations Order, the Chamber indicated that, to reach conclusions as to the scope and extent of the damage, it needed to establish the types and categories of harm caused by the crimes,⁸³⁶ and define the appropriate modalities of reparations.⁸³⁷ The Chamber further stressed that, rather than attempting to determine the 'sum total' of the harm, the exercise should focus on the cost to repair it, with the goal of setting an amount that is fair and properly reflects the rights of the victims and those of the convicted person.⁸³⁸ When the information available does not allow it to set the amount with precision, the Chamber recalled, it may, with caution, rely on estimates, weighing the need for accuracy against the goal of awarding reparations without delay.⁸³⁹ Even when awarding collective reparations, the Chamber noted, the number of potentially eligible beneficiaries is an important parameter for determining the scope of the convicted person's liability.⁸⁴⁰ Although relevant, the Chamber considered that the number of potential beneficiaries was not a precondition to the issuance of the reparations order.⁸⁴¹ When there is uncertainty as to the number of victims, the Chamber recalled, a collective approach should ensure that reparations reach unidentified victims.⁸⁴²

322. Regarding the number of victims potentially eligible for reparations, having assessed the different estimations provided throughout the proceedings, and being aware that thousands of victims may be eligible, the Chamber concluded that it was impossible to predict in advance

⁸³⁶ Reparations Order, [ICC-01/04-02/06-2659](#), para. 227, *relying on* Appeals Chamber, *The Prosecutor v. Germain Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled 'Order for Reparations pursuant to Article 75 of the Statute' ('*Katanga* Judgment on Reparations Order'), 8 March 2018, [ICC-01/04-01/07-3778-Red](#), para. 70.

⁸³⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 227, *relying on* *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 200.

⁸³⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 228, *relying on* *Katanga* Judgment on Reparations Order, [ICC-01/04-01/07-3778-Red](#), para. 72 and *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), paras 107-108.

⁸³⁹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 228, *relying on* *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 108.

⁸⁴⁰ Reparations Order, [ICC-01/04-02/06-2659](#), paras 229-230, *referring to* *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), paras 89, 224.

⁸⁴¹ Reparations Order, [ICC-01/04-02/06-2659](#), para. 231.

⁸⁴² Reparations Order, [ICC-01/04-02/06-2659](#), para. 231, *referring to* Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, [ICC-01/04-01/06-2904](#), para. 219 and *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 90.

how many victims may ultimately come forward to benefit from reparations in the case, particularly considering the widespread, systematic, and large-scale nature of the crimes for which Mr Ntaganda was convicted.⁸⁴³

323. As to the costs to repair the harm caused to the victims, the Chamber considered the preliminary estimates and indicative figures of collective projects provided by the TFV, the submissions of the Appointed Experts, and the calculations reached in the *Lubanga* and the *Katanga* cases.⁸⁴⁴ The Chamber further noted that the victims suffered different kinds of harm and, in the context of collective reparations with individualised components, the cost to repair the harm for each victim may substantially differ from one to another. In light of this, the Chamber decided to set the total reparations award for which Mr Ntaganda is liable to USD 30,000,000. The Chamber considered this amount to be fair and appropriate, in light of the circumstances of the case and bearing in mind the rights of the convicted person. Having reached its conclusions on the basis of all information before it, relied on conservative estimates, and weighed the need for accuracy against the goal of awarding reparations without delay.⁸⁴⁵

324. As to the shared liability of Mr Ntaganda and his co-perpetrators, including Mr Lubanga, the Chamber stressed that they are all jointly and severally liable *in solidum* to repair the full extent of the harm caused to the victims and remain liable to reimburse the funds that the TFV may eventually use to complement the reparation awards for their shared victims.⁸⁴⁶

b) Appeals Judgement

325. The Appeals Chamber determined that setting the amount of the award without reference to any concrete estimate of the number of victims whose harm it was intended to repair was an error, which, in the view of the Appeals Chamber, made it impossible to know whether it will be adequate to repair the harm of the victims affected by the crimes and fair for Mr Ntaganda in respect of his total liability.⁸⁴⁷ The Appeals Chamber also found that the Chamber erred by failing to address the Defence's submission on the matter,⁸⁴⁸ and by not providing any specific information, calculation or other reasoning as to how it reached the

⁸⁴³ Reparations Order, [ICC-01/04-02/06-2659](#), paras 232-235, 245-246.

⁸⁴⁴ Reparations Order, [ICC-01/04-02/06-2659](#), paras 236-244.

⁸⁴⁵ Reparations Order, [ICC-01/04-02/06-2659](#), para. 247.

⁸⁴⁶ Reparations Order, [ICC-01/04-02/06-2659](#), paras 219-221.

⁸⁴⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 235.

⁸⁴⁸ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 240-241.

amount of 30 million USD, finding merits in the parties' arguments that the reasoning to set the reparations award was not clear.⁸⁴⁹ Referring to the figures set out in the Reparations Order, the Appeals Chamber concluded that it was neither discernible how the Chamber arrived at the amount of 30 million USD nor how it was intended to apportion that amount between the different groups of victims.⁸⁵⁰

326. The Appeals Chamber further found that the Chamber should have elaborated upon why it considered the award to be 'fair', in what way it was 'appropriate', how it took 'a conservative approach', and what 'uncertainties' were resolved in favour of Mr Ntaganda.⁸⁵¹ Lastly, the Appeals Chamber found that it was not clear whether the Chamber intended to set the award on an *ex aequo et bono* basis and the reasons for reaching such decision.⁸⁵² Accordingly, the part of the Reparations Order setting the amount of the award was therefore reversed by the Appeals Chamber and remanded to the Chamber to assess and explain fully what the appropriate award for reparations should be in the present case, taking into account all known circumstances at the date of that assessment.⁸⁵³

c) Implementing order

327. In light of the findings in the Appeals Judgment, recalling the direct relationship between the *Lubanga* and the *Ntaganda* cases and that after the issuance of the Reparations Order the implementation of the reparations programme in the *Lubanga* case commenced, in the October 2022 Order the Chamber instructed the TFV to provide updated information as to the actual costs of running the rehabilitation programmes approved in the *Lubanga* case.⁸⁵⁴ In particular, the Chamber requested information regarding the number of victims that can be included in the programmes, the types of services that the different categories of victims require, the overall costs per year, and any other information relevant for the estimation of the monetary award in the case.⁸⁵⁵

⁸⁴⁹ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 243.

⁸⁵⁰ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 248-256.

⁸⁵¹ Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 257-260.

⁸⁵² Appeals Judgment, [ICC-01/04-02/06-2782](#), paras 261-264.

⁸⁵³ Appeals Judgment, [ICC-01/04-02/06-2782](#), para. 265.

⁸⁵⁴ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 38.

⁸⁵⁵ October 2022 Order, [ICC-01/04-02/06-2786](#), para. 38.

d) TFV observations

328. In line with the Chamber's instructions, the TFV submitted updated information as to the actual costs of running the rehabilitation programmes approved in the *Lubanga* case.⁸⁵⁶ The TFV indicates that, in March 2021, it concluded the contracting process for a five-year reparation programme with one implementing partner, which sub-contracts other organisations active in the region to provide collective service-based reparations to the *Lubanga* victims.⁸⁵⁷ According to the TFV, this reparation programme – active in five territories within Ituri – aims to ensure that the various kinds of harm suffered by the victims are addressed at an individual level, by providing, physical and psychological rehabilitation and various form of socio-economic measures, such as vocational training, assistance with income generating activities, and the payment of school fees and pensions.⁸⁵⁸

329. Further, the TFV explains that in the *Lubanga* case the intake process commences, once a beneficiary is referred to the implementing partner, with an initial in-depth individualised needs assessment in terms of rehabilitation, followed by tailored psychological or physical treatment.⁸⁵⁹ During treatment, beneficiaries may receive financial support to compensate transportation costs and loss of earnings; activities are organised close to the victims' locations, but more complicated treatment may require transfers to other facilities.⁸⁶⁰ In such cases treatment limits the beneficiaries' ability to care for themselves, transfers to suitable care facilities are arranged and, in parallel, education support for beneficiaries and their dependents is provided.⁸⁶¹ Once beneficiaries are considered physically and mentally fit, they may begin access to socio-economic activities, which start with a lump sum allowing them to have the necessary financial support to attend vocational training and literacy courses, if needed.⁸⁶² After training, beneficiaries are guided to set a business plan for their income generating activities, they receive a kit and a cash grant for the first year of implementation, which is the same for all beneficiaries.⁸⁶³ Lastly, the TFV informs that advice, support, and monitoring of the effectiveness of the rehabilitation measures continues for the duration of the programme.⁸⁶⁴

⁸⁵⁶ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 9-24.

⁸⁵⁷ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 10.

⁸⁵⁸ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 10.

⁸⁵⁹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 11.

⁸⁶⁰ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 11.

⁸⁶¹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 11.

⁸⁶² TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 12.

⁸⁶³ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 12.

⁸⁶⁴ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 12.

330. Before outlining the details of the costs for the services abovementioned, the TFV underlines that certain parameters should be taken into account when assessing the costs of the *Lubanga* rehabilitation programme in the context of the *Ntaganda* reparations.⁸⁶⁵

331. First, the TFV stresses that ‘programmes are not designed *per capita*’, thus it does not simply suffice to take the numbers provided and multiply them by any number of victims.⁸⁶⁶ The TFV underlines that the cost of programmes are *not based on per head costs* and, in their experience, a high number of beneficiaries may lower the *per capita* costs with regard to general expenses.⁸⁶⁷ Second, the TFV underlines that the numbers provided are based on the first year of implementation, which is generally more expensive in direct and indirect costs, due to the programme’s launching and readjustments, and should not apply to *Ntaganda* beneficiaries if they are included in the *Lubanga* programme early enough.⁸⁶⁸ The TFV further explains that there is now a much higher level of experience in the DRC regarding the implementation of reparations programmes, which will greatly contribute to the budgetary efficiencies of any new programme.⁸⁶⁹

332. Third, the TFV notes that the *Lubanga* programme addresses, in its vast majority, direct victims who are not of the same family, reducing the possibility to reduce costs for certain types of services.⁸⁷⁰ This will be different in the present case, particularly in relation to victims of the attacks, where the family dimension will need to be taken into account and mutualising socio-economic and psychological support could affect the *per capita* cost of rehabilitation programmes.⁸⁷¹ Fourth, the TFV recalls that in the *Lubanga* case almost all of the victims have cumulatively suffered physical, psychological and socio-economic harm, which most likely will not be the case for all victims of the *Ntaganda* case, thus the cost *per capita* could also be lower.⁸⁷² Fifth, and last, the TFV indicates that the extent of victims who suffered serious physical and psychological harm, for which expensive care outside Bunia is required, cannot be projected, thus this impact on the *per capita* cost remains unpredictable at this stage.⁸⁷³

⁸⁶⁵ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 14.

⁸⁶⁶ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 15 [emphasis added].

⁸⁶⁷ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 15 [emphasis added].

⁸⁶⁸ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 16.

⁸⁶⁹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 16.

⁸⁷⁰ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 17.

⁸⁷¹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 17.

⁸⁷² TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 18.

⁸⁷³ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 19.

333. Having clarified the above, the TFCV informs that, for year one of implementation of the *Lubanga* rehabilitation programme, the average cost per capita is USD 3,229, direct and indirect costs included.⁸⁷⁴ Based on projections made by the TFCV, the average costs *per capita* for a full rehabilitation in the *Lubanga* case is USD 4,000.61 USD, direct and indirect costs included.⁸⁷⁵

334. In the interest of clarity regarding the direct costs of services, the TFCV provides an overview regarding mental and physical health support, that the Chamber has summarised in the table below:⁸⁷⁶

TYPE AND LEVEL OF CARE	MENTAL HEALTH		PHYSICAL HEALTH	
	Average cost <i>per capita</i> in USD	% of victims that require each level of care	Average cost <i>per capita</i> in USD	% of victims that require each level of care
PRIMARY	\$388.64	100%	\$241.09	41.77%
SECONDARY	\$658.69	26.47%	\$315.15	32.36%
SPECIALISED	\$1,541.33	1.33%	\$3,128.88	3.83%

335. Lastly, regarding the costs of socio-economic support, the TFCV details that, excluding indirect costs, the costs *per capita* are as follows: (i) schooling USD 200 per year; (ii) university scholarship USD 400; (iii) vocational training USD 460 on average; and (iv) income generating activities USD 875.⁸⁷⁷

2. Chamber determination

336. At the outset, the Chamber notes that, throughout the reparations proceedings, the parties, the participants, and Appointed Experts have made extensive submissions as to the scope of Mr Ntaganda liability for reparations, which the Chamber has thoroughly and carefully considered.⁸⁷⁸ In light of the findings and submissions referred to above, the Chamber

⁸⁷⁴ TFCV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 20.

⁸⁷⁵ TFCV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 20.

⁸⁷⁶ TFCV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 21-23. The Chamber notes that, according to the information provided by the TFCV, these amounts exclude indirect costs.

⁸⁷⁷ TFCV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 24.

⁸⁷⁸ See, *inter alia*, Submissions on Reparations on behalf of the Former Child Soldiers (with public Annex) ('CLR1 February 2020 Submissions'), 28 February 2020, [ICC-01/04-02/06-2474](#), paras 52-64; Trust Fund for Victims' observations relevant to reparations ('TFCV February 2020 Submissions'), 28 February 2020 [ICC-01/04-02/06-2476](#), paras 129-136; CLR2 February 2020 Submissions, [ICC-01/04-02/06-2477-Red-Corr](#), paras 68-87; Prosecution's Observations on Reparations (with public Annex A), 28 February 2020, [ICC-01/04-02/06-2478](#),

hereafter provides its reasoned conclusions as to the following aspects relevant to the calculation of the monetary award for which Mr Ntaganda is liable: (i) amount required to repair the overlapping victims and harms between the *Ntaganda* and the *Lubanga* cases; (ii) amount required to repair the additional *Ntaganda* only victims of crimes against child soldiers; (iii) amount required to repair the harms caused to the victims of the attacks; and (iv) amount required to repair the harm caused as a consequence of the attack to the Sayo health centre.

a) Amount required to repair the overlapping victims and harms between the *Ntaganda* and the *Lubanga* cases

337. As noted in the Reparations Order, Mr Ntaganda and Mr Lubanga are jointly and severally liable *in solidum* to repair the full extent of the harm caused to the victims of the crimes for which they were both convicted.⁸⁷⁹ Consequently, both individuals are liable for the full amount of reparations owed to the victims of the crimes for which they were convicted. Only in the event that one of them pays or reimburse to the TFCV the amount required to provide reparations to their overlapping victims, in full or in part, does the issue of recovering from the other co-perpetrator(s) their proportional share arise. Therefore, this is an issue to be dealt with by the co-perpetrators among themselves and does not impact on the liability to be imposed by the Court.

338. The Chamber notes that Mr Lubanga's total financial liability for reparations was set at USD 10,000,000.⁸⁸⁰ The Chamber also recalls that the final number of beneficiaries found eligible in the *Lubanga* case amounted to 2,476 direct and indirect victims.⁸⁸¹ The TFCV has projected that the average costs *per capita* for a full rehabilitation in the *Lubanga* case would be approximately USD 4,000.61 USD, direct and indirect costs included.⁸⁸² Taking the TFCV latest projections into account, the Chamber notes that the full rehabilitation of all victims found eligible in the *Lubanga* case would amount to approximately USD 9,905,510.36.

paras 17-21; Defence submissions on reparations ('Defence February 2020 Submissions'), 28 February 2020, ICC-01/04-02/06-2479-Conf (reclassified as confidential on 6 March 2020, public redacted version of the same date) [ICC-01/04-02/06-2479-Red](#), paras 62-66; First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red4](#), paras 175-184, 206, 220-226, 251-253; Second Expert Report, [ICC-01/04-02/06-2623-Anx2-Red4](#), paras 64-175; CLR1 December 2020 Submissions, [ICC-01/04-02/06-2632](#), paras 18-29; CLR2 December 2020 Submissions, [ICC-01/04-02/06-2633-Red](#), paras 54-55, 62, 95, 118; Defence December 2020 Submissions [ICC-01/04-02/06-2634-Red](#), paras 108-109, 130-131, 152-154; Trust Fund for Victims' Final Observations on the reparations proceedings ('TFV December 2020 Submissions'), 21 December 2020, [ICC-01/04-02/06-2635-Red](#), paras 47-48, 56-70.

⁸⁷⁹ Reparations Order, [ICC-01/04-02/06-2659](#), paras 219-221.

⁸⁸⁰ *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 279-281.

⁸⁸¹ *Lubanga* TFCV's Twenty-first Report, ICC-01/04-01/06-3919-Conf, para. 10, pending Chamber's confirmation.

⁸⁸² TFCV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 20.

339. The Chamber notes that the above projection was made by the TFV during the second year of implementation of the collective service-based reparations programme in the *Lubanga* case, which is planned to last for five years.⁸⁸³ The Chamber also notes that, to date, only 872 victims are in the process of receiving reparation services in the *Lubanga* case, as opposed to the totality of the victims found entitled to benefit from reparations in the case.⁸⁸⁴ As such, the average *per capita* calculated by TFV may not account for the possible impact of the unpredictable possibility that an important number of victims may end up requiring expensive mental or physical health support outside Bunia.⁸⁸⁵ At the same time, the Chamber notes that the average amount calculated by the TFV is made on the basis of the costs as calculated and projected during the first year of implementation.⁸⁸⁶ Thus, the calculated average may also not account for the possible impact of inflation or the financial impact that the continuous deterioration of the security situation in the region may have on the implementation of the service-based programme. In addition, the Chamber considers that although it has found that the likelihood of additional overlapping victims between the two cases coming forward in the *Ntaganda* case only would be limited to exceptional cases, some limited funds should still be reserved to provide for such event. The Chamber is therefore satisfied that setting the amount of liability of Mr Ntaganda regarding the overlapping victims and harms with the *Lubanga* case at the same amount of USD 10,000,000 set for Mr Lubanga, is fair, equitable, and appropriate and takes into account the rights of the victims and those of the convicted person.

b) Amount required to repair the additional Ntaganda only victims of crimes against child soldiers

340. As to the additional *Ntaganda* only victims of crimes against child soldiers – i.e., child soldiers victims exceeding the temporal scope of the *Lubanga* case, former child soldiers who are also victims of rape and sexual slavery and children born out of these crimes, as well as the indirect victims of all of them – the Chamber recalls that it has concluded above that the approximate number of direct and indirect victims of crimes against child soldiers in the case, including all overlapping *Ntaganda* and *Lubanga* victims and any *Ntaganda*-only victims, would be approximately 3,000 individuals in total.⁸⁸⁷ Having concluded that the *Lubanga*

⁸⁸³ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 10.

⁸⁸⁴ *Lubanga* TFV's Twenty-first Report, ICC-01/04-01/06-3919-Conf, para. 11.

⁸⁸⁵ As warned by the TFV, see TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 19.

⁸⁸⁶ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 20.

⁸⁸⁷ See Section III.E.2.b).

victims amounted to 2,476, the Chamber considers that this sub-group of victims will likely not exceed 524 victims in total.

341. The Chamber notes that, following prior jurisprudence, in the Reparations Order the Chamber presumed material, physical, and psychological harm regarding former child soldiers, direct victims of rape and sexual slavery, and indirect victims who are close family members of the above.⁸⁸⁸ Accordingly, all the victims in this sub-group would, in principle, be entitled to a full rehabilitation program which, as noted above, it is projected to cost in average, *per capita*, 4,000.61 USD, direct and indirect costs included.⁸⁸⁹ Taking these projections into account, the Chamber notes that the full rehabilitation of the estimated *Ntaganda*-only victims of crimes against child soldiers would cost approximately USD 2,096,320.⁸⁹⁰

c) Amount required to repair the harms caused to the victims of the attacks.

342. At the outset, regarding the basis to be used to calculate the cost to repair the harms suffered by the victims of the attacks, the Chamber notes that, having assessed the different estimations submitted throughout the reparations proceedings,⁸⁹¹ it considers that the most reliable estimates, at this stage of the proceedings, are the calculations recently provided by the TFV regarding the *Lubanga* case. In particular, the Chamber considers these estimates to be a reliable basis for the calculations as they are based on the actual costs of a reparations programme that has been designed to repair the harms of victims that although not of the same crimes they are all victims from the same region and were affected by the same armed conflict. In addition, the Chamber recalls that in accordance with the principles of dignity, non-discrimination, and non-stigmatisation and to ensure fair and equal treatment of all victims during the reparation process, it has decided that all victims should be treated equally and should receive equivalent services as part of the collective reparations with individualised components, even if they are implemented by different partners.⁸⁹² As such, the Chamber considers fair and appropriate to use the *Lubanga* estimations based on the actual costs of

⁸⁸⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 145, referring to, *inter alia*, *Lubanga* Decision on the Size of Reparations Award, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), paras 179-185 and *Katanga* Reparations Order, [ICC-01/04-01/07-3728-tENG](#), paras 112-122.

⁸⁸⁹ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 20.

⁸⁹⁰ The Chamber notes that, to facilitate the understanding of the calculations, it has decided to round all the results approximating the decimal values up or down to the closest integer number.

⁸⁹¹ See Reparations Order, [ICC-01/04-02/06-2659](#), paras 236-242.

⁸⁹² See, *inter alia*, Decision on the IDIP, 23 July 2021, [ICC-01/04-02/06-2696](#), para. 19.

implementation as the basis to calculate the approximate costs of repair the harms suffered by the victims of the attacks in the *Ntaganda* case.

343. As to the estimated number of victims of the attacks, the Chamber recalls that it has concluded above that they would amount to approximately 7,500 individuals in total.⁸⁹³ The Chamber further notes that the results of the Sample of victims' dossiers assessed by the Chamber provide reliable points of reference to project the calculations of the total costs to repair the different kinds of harm suffered by the victims of the attacks. Accordingly, the Chamber details below its reasoning and calculations of the amounts it considers would be required to repair the harms suffered by the victims of the attacks, distinguishing between the costs necessary to provide victims with (i) mental care; (ii) physical care; and (iii) socio-economic support.⁸⁹⁴

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

344. The Chamber notes that the results of the Sample of victims' dossiers analysed in the present case indicate that 100% of the victims of the attacks that were found eligible within the Sample, are to be considered to have suffered from psychological harm.⁸⁹⁵ This calculation coincides with the results of the first year of implementation of the reparations programme in the *Lubanga* case, where 100% of beneficiaries underwent primary mental care. As such, the Chamber considers that it can be safely estimated that a similar percentage of victims of the attacks will require secondary and specialised mental care as those required by victims in the first year of implementation of the *Lubanga* reparations programme. Accordingly, the Chamber relies on the same percentages of the required different levels of mental care in the *Lubanga* case to project the needs that will likely present themselves in terms of mental care for the victims of the attacks in the *Ntaganda* case.

345. The Chamber notes that the TFV indicated that the average costs recently provided did not include indirect costs.⁸⁹⁶ The Chamber recalls that, following the TFV's request,⁸⁹⁷ in the Reparations Order the Chamber considered the programme support costs as part of the costs of

⁸⁹³ See Section III.E.2.c).

⁸⁹⁴ The Chamber is satisfied that this different type of care holistically addresses the different harms suffered by the victims of the attacks, as recognised in the Reparations Order.

⁸⁹⁵ See Annex III.

⁸⁹⁶ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 22.

⁸⁹⁷ TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), paras 131-136; TFV December 2020 Submissions, [ICC-01/04-02/06-2635-Red](#), para. 67.

repair, while directing the TFV, to the extent possible, to resort to pre-existing structures, programmes and partners to keep the costs at minimum.⁸⁹⁸ The Chamber maintains its view that, particularly considering the type and modalities of reparations ordered in the present case, meaning collective reparations with individualised components, which are service-based rehabilitation programmes, the costs required for the implementing partner to be able to actually provide the services required by the victims necessarily need to be included in the costs of repair. The Chamber recalls that the TFV has previously noted that indirect costs should not exceed 15% of the total direct project costs.⁸⁹⁹ Accordingly, the Chamber has included in its calculations an extra 15% accounting for the maximum amount to be spent on indirect costs, including monitoring and evaluation.

346. In light of the above, as detailed and itemised in the table below, the Chamber estimates that the total amount required to provide mental care to victims of the attacks in the *Ntaganda* case would be approximately \$5,032,898.⁹⁰⁰

TYPE AND LEVEL OF CARE	MENTAL CARE			
	Average cost per type of care in the <i>Lubanga</i> case	% of victims that required each type of care in the <i>Lubanga</i> case	Number of victims of the attacks that would require each type of care when <i>Lubanga</i> case % are applied to the estimated total	Costs of different types of care for the entire group of victims of the attacks in the <i>Ntaganda</i> case
PRIMARY CARE	\$388.64	100%	7,500	\$2,914,800
SECONDARY CARE	\$658.69	26.47%	1,985	\$1,307,500
SPECIALISED CARE	\$1,541.33	1.33%	100	\$154,133
TOTAL DIRECT PROJECT COSTS				\$ 4,376,433
INDIRECT COST 15%				\$656,465
TOTAL				\$5,032,898

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

347. The Chamber notes that the results of the Sample of victims' dossiers analysed in the present case indicate that 43.9% of the victims of the attacks that were found eligible within the Sample, are to be considered to have suffered from physical harm.⁹⁰¹ This calculation is very close and almost coincides with the results of the first year of implementation of the

⁸⁹⁸ Reparations Order, [ICC-01/04-02/06-2659](#), para. 213.

⁸⁹⁹ TFV February 2020 Submissions, [ICC-01/04-02/06-2476](#), para. 134.

⁹⁰⁰ The Chamber reiterates that the calculations below have been rounded, approximating decimal values up or down to the closest integer number.

⁹⁰¹ See Annex III.

reparations programme in the *Lubanga* case, where 41.77% of beneficiaries underwent primary physical care. As such, the Chamber considers that it can be safely estimated that similar percentages of victims of the attacks will require secondary and specialised physical care as those required by victims in the first year of implementation of the *Lubanga* reparations programme. Accordingly, the Chamber will also rely on the same percentage of the required levels of physical care in the *Lubanga* case to project the needs that will likely present themselves in terms of physical care for the victims of the attacks in the *Ntaganda* case.

348. As it was the case regarding mental care, the Chamber has included in its calculations an extra 15% accounting for the maximum amount to be spent in indirect costs, which was not included in the TFV's most recent calculations.

349. In light of the above, as detailed and itemised in the table below, the Chamber estimates that the total amount required to provide physical care to victims of the attacks in the *Ntaganda* case would be approximately \$2,780,922.⁹⁰²

TYPE AND LEVEL OF CARE	PHYSICAL CARE			
	Average cost per type of care in the <i>Lubanga</i> case	% of victims that required each type of care in the <i>Lubanga</i> case	Number of victims of the attacks that would require each type of care when <i>Lubanga</i> % are applied to the estimated total	Costs of different types of care for the entire group of victims of the attacks in the <i>Ntaganda</i> case
PRIMARY CARE	\$241.09	41.77%	3,133	\$755,335
SECONDARY CARE	\$315.15	32.36%	2,427	\$764,869
SPECIALISED CARE	\$3,128.88	3.83%	287	\$897,989
TOTAL DIRECT PROJECT COSTS				\$2,418,193
INDIRECT COST 15%				\$362,729
TOTAL				\$2,780,922

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

350. The Chamber notes that regarding socio-economic support, the TFV provided average costs but did not provide statistics as to the number of beneficiaries that have benefited from this component of the service-based reparations programme in the *Lubanga* case.⁹⁰³ Nevertheless, the Chamber considers that the results of the Sample of victims' dossiers analysed in the present case provide the Chamber with sufficient information to project

⁹⁰² The Chamber reiterates that the calculations below have been rounded, approximating decimal values up or down to the closest integer number.

⁹⁰³ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), para. 24.

estimated costs, particularly considering that the results of the Sample have been shown to fairly correspond with the results of the first year of implementation of the reparations programme in the *Lubanga* case regarding psychological and physical harm, as noted in the two sections above. As such, the Chamber finds that it can safely project the needs in terms of socio-economic support of the victims of the attacks relying on the results of the Sample of victims' dossiers analysed by the Chamber.

351. As to the first component of the measures of socio-economic support quantified by the TFV, i.e., schooling and university scholarship, the Chamber notes that the TFV details the costs *per capita* and indicates that schooling costs USD 200 per year and university scholarship USD 400. However, the Chambers notes that the TFV does not indicate whether the 'university scholarship' covers yearly fees or the entire university education. In these circumstances, interpreting uncertainties in favour of the convicted person, the Chamber considers that it is fair to assume that the yearly schooling costs for the entire five years of the programme, will equally cover the need of those beneficiaries that may require university scholarships.

352. Not having other parameters allowing the Chamber to estimate with more certainty how many beneficiaries would qualify to receive support for schooling, the Chamber has decided, within its discretion, to estimate for the purposes of calculations that all indirect victims would likely qualify to receive schooling support. The Chamber is of the view that schooling support should be provided for the entire five years of duration of the programme to be devised for the victims of the attacks in similar conditions to the one that deals with the victims of the crimes against child soldiers. As such, noting that according to the results of the Chamber's assessment of the Sample of victims' dossiers 27.6% of the victims of the attacks would be eligible as indirect victims,⁹⁰⁴ the Chamber estimates that the same percentage of victims in the estimated total of victims of the attacks in the *Ntaganda* case would likely require schooling support.

353. Regarding vocational training and income generating activities ('IGA'), the Chamber considers it fair to estimate that all victims that have suffered material harm would likely require to benefit from vocational training and IGA activities. Noting that according to the results of the Chamber's assessment of the Sample of victims' dossiers 76.5% of victims of the attacks are to be considered to have suffered from material harm,⁹⁰⁵ the Chamber estimates that

⁹⁰⁴ See Annex III.

⁹⁰⁵ See Annex III.

the same percentage of victims in the estimated total of victims of the attacks in the *Ntaganda* case would likely require vocational training and IGA activities.

354. As for mental and physical care, the Chamber has included in its calculations an extra 15% accounting for the maximum amount to be spent in indirect costs, which was not included in the TFV's most recent calculations.

355. In light of the above, as detailed and itemised in the table below, the Chamber estimates that the total amount required to provide socio-economic support to victims of the attacks in the *Ntaganda* case would be approximately \$11,189,765.⁹⁰⁶

TYPE OF SERVICE	SOCIO-ECONOMIC SUPPORT			
	Average cost per type of care in the <i>Lubanga</i> case	% of victims in the sample	Number of victims likely to require services	Costs of different types of care for the entire group of victims of the attacks in the <i>Ntaganda</i> case
EDUCATION GRANT (UDS 200 per year)	\$1,000 (5 years)	27.6%	2,070	\$ 2,070,000
VOCATIONAL TRAINING	\$460	76.5%	5,738	\$ 2,639,480
IGA ACTIVITIES	\$875	76.5%	5,738	\$ 5,020,750
TOTAL DIRECT PROJECT COSTS				\$ 9,730,230
INDIRECT COSTS 15%				\$ 1,459,535
TOTAL				\$11,189,765

d) amount required to repair the harm caused as a consequence of the attack to the Sayo health centre

356. As described above, the Chamber found Mr Ntaganda liable to repair the harm caused as a consequence of the attack to the Sayo health centre, which is estimated regarding the harm to the centre and the community in the total of USD 130,000.⁹⁰⁷

357. Regarding individual victims, i.e., patients who were receiving ongoing in-hospital and ambulatory care at the time of the attack, the health centre staff, and the indirect victims of the above, which the Chamber estimated would amount to between 25 to 33 victims, the Chamber notes that they are considered above within the general estimation of approximately 7,500 victims of the attacks. No further calculations are required in relation to these victims.

⁹⁰⁶ The Chamber reiterates that the calculations below have been rounded, approximating decimal values up or down to the closest integer number.

⁹⁰⁷ See Section III.C.3 above.

3. Conclusion as to the total amount of Mr Ntaganda liability for reparations

358. In light of the above, as consolidated and itemised in the table below, the Chamber estimates, that the total amount required to provide reparations to all victims of the crimes for which Mr Ntaganda was convicted would be approximately the total amount of USD 31,229,905.

GROUP/HARM	TOTAL
OVERLAPPING <i>LUBANGA/NTAGANDA</i> VICTIMS	\$ 10,000,000
<i>NTAGANDA</i> -ONLY CHILD SOLDIERS/SGBV VICTIMS	\$ 2,096,320
PSYCHOLOGICAL HARM (VICTIMS OF THE ATTACK)	\$ 5,032,898
PHYSICAL HARM (VICTIMS OF THE ATTACK)	\$ 2,780,922
MATERIAL HARM (VICTIMS OF THE ATTACK)	\$ 11,189,765
SAYO HEALTH CENTRE	\$ 130,000
TOTAL	\$ 31,229,905

359. The Chamber notes that it has considered in detail the parameters underlined by the TFV when projecting the cost to repair the harms caused to the victims of the crimes for which Mr Ntaganda was convicted based on the costs of the *Lubanga* programme.⁹⁰⁸ Accordingly, the Chamber has made the above calculations mindful that, in general terms, programmes are not designed *per capita* and that, in the context of the *Ntaganda* reparations, general costs can be lower due to (i) savings in launching and readjustments for child soldiers victims integrated in the *Lubanga* programme; (ii) budgetary efficiencies in new projects due to the experience gained implementing reparations in the DRC; (iii) the family dimension that may bring further savings in relation to the victims of the attacks; and (iv) the specificity of the individual harms suffered by the *Ntaganda* victims. Nevertheless, the Chamber has concluded that the *Lubanga* costs are the most reliable estimates in which to base the Chamber's decision, as they are the actual costs of the reparation programme that will benefit an important part of the victims of the case. As such, the *Lubanga* programme will be the basis under which the programme for the victims of the attacks should be designed in order to ensure fair and equal treatment of all victims. In addition, the Chamber notes that all other estimates provided during the reparation proceedings are either only estimates or are costs of programmes devised for a different purpose, assistance for example, or within a different context.⁹⁰⁹ As such they do not provide such a strong basis for calculation as the actual costs of running the *Lubanga* programme do.

⁹⁰⁸ TFV January 2023 Submissions, [ICC-01/04-02/06-2819](#), paras 14-19.

⁹⁰⁹ Reparations Order, [ICC-01/04-02/06-2659](#), paras 236-241.

360. The Chamber recalls that the calculations above made for the purposes of the *Ntaganda* reparations do not account for the possible expensive mental or physical health support that certain victims may require and were calculated and projected using values of the first year of implementation of a five-year plan, and thus, may not account for inflation or the financial impact of the ongoing security situation. Lastly, the Chamber reiterates that the estimated number of victims is based on projections with an uncertain basis and thus any possible savings may serve to provide for the funds required to repair additional victims that may come forward and be found eligible to benefit from reparations. Accordingly, the Chamber is satisfied that setting the amount of Mr Ntaganda's liability for reparations at the total of USD 31,300,000 is fair, equitable, and appropriate, and takes into account the rights of the victims⁹¹⁰ and those of the convicted person.

IV. IMPLEMENTATION

361. As previously indicated,⁹¹¹ since this Addendum is an integral part of the Reparations Order, the parties will have a fresh right to appeal it directly before the Appeals Chamber pursuant to article 82(4) of the Statute and rules 150 to 153 of the Rules.

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.

363. Pursuant to regulation 117 of the Regulations, the Chamber reiterates the request for the Presidency's assistance, with the support of the Registry, to continue exploring whether Mr Ntaganda possesses any undiscovered assets and to monitor Mr Ntaganda's financial situation on an ongoing basis in order to enforce the Reparations Order to which this Addendum is an integral part.

⁹¹⁰ See paras 20, 342 above.

⁹¹¹ See Section II above.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

ISSUES this Addendum to the Reparations Order against Mr Ntaganda;

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

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

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

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

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

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

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

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

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

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

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

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 Friday, 14 July 2023

At The Hague, The Netherlands