

**Cour
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**International
Criminal
Court**

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

Date: 16 August 2023

THE APPEALS CHAMBER

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

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

Source: Office of Public Counsel for Victims (CLR2)

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I. INTRODUCTION

1. The Victims of the Attacks regret that despite the Appeals Chamber's directions, Trial Chamber II (the "Chamber") failed to accurately estimate the number of potential beneficiaries of reparations amongst the victims of the attacks and thus, to properly establish the scope of Mr Ntaganda's liability for reparations. Victims are also concerned with respect to the Chamber's assessment of the eligibility of the victims included in the Sample who suffered harm in the forest or bush surrounding the villages for which positive findings were entered. In this regard, the Chamber disregarded or misapplied its findings on the territorial scope of the reparations in the present case and the relevant eligibility criteria, as established in its previous decisions.

2. Accordingly, pursuant to article 82(4) of the Rome Statute (the "Statute"), rules 150(1) and 150(3) of the Rules of Procedure and Evidence (the "Rules") and regulation 57 of the Regulations of the Court (the "Regulations"), the Common Legal Representative of the Victims of the Attacks (the "Legal Representative"), hereby provides his Notice of Appeal against Parts A, E and F of the "Addendum to the Reparations Order of 8 March 2021" (the "Addendum" or the "Impugned Decision"),¹ including Annex II,² - namely the "Sample of victims' dossiers and procedure for carrying out the eligibility assessment of victims at the implementation stage", the "Number of potentially eligible victims" and the "Calculation of the monetary award against Mr Ntaganda".³

3. It is the Legal Representative's submission that the Chamber committed a number of errors of law, fact and procedure which materially affect the Impugned Decision, warranting the intervention of the Appeals Chamber. As set out below, the

¹ See the "Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659" (Trial Chamber II), [No. ICC-01/04-02/06-2858-Conf](#), 14 July 2023. A public redacted version was issued on the same date as [No. ICC-01/04-02/06-2858-Red](#) (the "Impugned Decision" or the "Addendum").

² See the "Annex II to the Addendum to the Reparations Order of 8 March 2021, ICC-01/04-01/02-2659", [No. ICC-01/04-02/06-2858-Conf-Exp-AnxII](#), 14 July 2023. A confidential redacted version was issued on the same date as [No. ICC-01/04-02/06-Conf-AnxII-Red](#) (the "Annex").

³ See the Impugned Decision, *supra* note 1, pp. 13-57 and 115-155.

Legal Representative will appeal against Parts A, E and F of the Addendum, including the Annex⁴ containing the Chamber's eligibility assessment of the victims included in the Sample. As regards the relief sought, the Legal Representative respectfully requests the Appeals Chamber to vacate the contested findings, correct the errors identified under Grounds 1-3 below and amend the Impugned Decision without remanding the corresponding matters to the Chamber – in order to expedite the proceedings and avoid any further delay.

4. Finally, pending the determination of the present Appeal, the Legal Representative respectfully requests the Appeals Chamber to grant suspensive effect of his Appeal in relation to the Chamber's decision on the eligibility of victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13 – who were already found eligible for reparations by the Trust Fund for Victims (the "TFV") and included in the Initial Draft Implementation Plan (the "IDIP").

II. PROCEDURAL BACKGROUND⁵

5. On 8 July 2019, Trial Chamber VI found Mr Bosco Ntaganda guilty of 18 counts of war crimes and crimes against humanity.⁶

6. On 7 November 2019, Mr Ntaganda was sentenced to 30 years of imprisonment.⁷

7. On 8 March 2021, Trial Chamber VI issued the "Reparations Order", ordering collective reparations with individualised components to be awarded to direct and indirect victims of the crimes for which Mr Ntaganda has been convicted and setting the total reparations award for which Mr Ntaganda is liable at 30 million USD.⁸

⁴ See the Annex, *supra* note 2.

⁵ The procedural background provided in the present submissions is limited to the main procedural steps preceding the Impugned Decision. It does not reflect the entire record of the reparations proceedings during the mentioned period.

⁶ See the "Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

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

⁸ See the "Reparations Order" (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021 (the "Reparations Order").

8. On 16 March 2021, the Presidency assigned the present case to a newly constituted Trial Chamber II.⁹
9. On 30 March 2021, the Appeals Chamber upheld the Judgment and the Sentencing Judgment.¹⁰
10. On 8 April 2021, the Legal Representative and the Defence filed their respective notices of appeal against the Reparations Order.¹¹
11. On 7 June 2021, the Legal Representative and the Defence filed their respective appeal briefs against the Reparations Order.¹²
12. On 23 July 2021, the Chamber issued its “Decision on the TFV’s initial draft implementation plan with focus on priority victims”.¹³
13. On 12 September 2022, the Appeals Chamber issued its “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (the “*Ntaganda* Appeals Judgment”).¹⁴ The Appeals Chamber partially remanded the Reparations Order to the Chamber finding that Trial Chamber VI failed, *inter alia* 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

⁹ See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

¹⁰ See the “Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red A A2](#), 30 March 2021, and the “Public redacted version of Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled ‘Sentencing judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2667-Red A3](#), 30 March 2021.

¹¹ See the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2668](#), 8 April 2021, and the “Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659”, [No. ICC-01/04-02/06-2669](#), 8 April 2021.

¹² See the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2674](#), 7 June 2021, and the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675](#), 7 June 2021.

¹³ See the “Decision on the TFV’s initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2696](#), 23 July 2021.

¹⁴ See the “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (Appeals Chamber), 12 September 2022, [No. ICC-01/04-02/06-2782 A4 A5](#) (the “*Ntaganda* Appeals Judgment”).

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 TFV 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 the 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.¹⁵

14. On 25 October 2022, the Chamber issued an Order for the implementation of the *Ntaganda* Appeals Judgment,¹⁶ which set in motion processes to address and implement said Judgment.

15. On 14 July 2023, the Chamber issued the Impugned Decision.¹⁷

III. NOTICE OF APPEAL

16. Pursuant to article 82(4) of the Statute, a legal representative affected by an order under article 75 may appeal against the order for reparations. According to rules 150(1) and 150(3) of the Rules, the appeal must be filed with the Registrar not later than 30 days from the date of the notification of the reparations order. Under regulation 57 of the Regulations, the notice of appeal shall state the name and number of the case, the title and date of the decision under appeal, whether the appeal is directed against the whole decision or part thereof, the grounds of appeal specifying the alleged errors and how they affect the appealed decision, as well as the relief sought.

¹⁵ *Idem*, p. 11.

¹⁶ See the "Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order" (Trial Chamber II), [No. ICC-01/04-02/06-2786](#), 25 October 2022.

¹⁷ See the Impugned Decision, *supra* note 1.

17. The Legal Representative hereby provides his notice of appeal against Parts A, E and F, including the Annex,¹⁸ of the “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659”, No. ICC-01/04-02/06-2858-Conf issued by Trial Chamber II on 14 July 2023 in the Case of *The Prosecutor v. Bosco Ntaganda*, No. ICC-01/04-02/06 – namely the “Sample of victims’ dossiers and procedure for carrying out the eligibility assessment of victims at the implementation stage”, the “Number of potentially eligible victims” and the “Calculation of the monetary award against Mr Ntaganda”.¹⁹ The Appeal is made on the three following Grounds.

IV. GROUNDS OF APPEAL

1. **Ground 1: The Chamber committed a combination of errors of law, fact and procedure in its estimation of the number of potential beneficiaries of reparations amongst the victims of the attacks**

a) Sub-Ground 1.1: The Chamber erred in law and in the exercise of its discretion by failing to provide estimates as concrete as possible

18. Contrary to the applicable law²⁰ and the Appeals Chamber’s directions,²¹ the Chamber failed to provide estimates as concrete as possible, based upon a sufficiently strong evidential basis, on the number of either potential or actual beneficiaries of reparations amongst the victims of the attacks. The Chamber was provided with concrete and mutually corroborative figures by the Legal Representative²² and the Registry,²³ which were obtained from different and identifiable sources. Nonetheless, the Chamber ultimately relied on the 7,500 figure provided by the TFV, which was obtained from unidentifiable sources.²⁴ The Chamber did so despite the TFV’s

¹⁸ See the Annex, *supra* note 2.

¹⁹ As indicated by the Trial Chamber, since the Addendum is an integral part of the Reparations Order, the parties have a fresh right to appeal it directly before the Appeals Chamber pursuant to article 82(4) of the Statute and rules 150 and 153 of the Rules. See the Impugned Decision, *supra* note 1, para. 361.

²⁰ See the “Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’” (Appeals Chamber), [No. ICC-01/04-01/06-3466-Red](#), 18 July 2019, paras. 89 and 224.

²¹ See the *Ntaganda* Appeals Judgment, *supra* note 14, paras. 168-169 and 172.

²² See the Impugned Decision, *supra* note 1, para. 275.

²³ *Idem*, para. 286.

²⁴ *Idem*, paras. 311-312.

indication that it was “*in no position to provide an estimate*”,²⁵ and that “*the figures provided are therefore not estimates*” but instead they were “*numbers that the Trust Fund currently considers that it is capable of accommodating within the amount of liability set by the Trial Chamber*”,²⁶ and were merely an “*educated guess*”²⁷ based on a “*very conservative approach*”.²⁸

19. Accordingly, although being required by the applicable law to provide an estimate as concrete as possible and based upon a sufficiently strong evidential basis, the Chamber provided a purely speculative figure which bears no evidential value and it is irrelevant to the determination of the pool of potential beneficiaries of reparations. In this regard, the Chamber merely acknowledged that “*the estimated number of victims is based on projections with an uncertain basis*”.²⁹

b) Sub-Ground 1.2: The Chamber committed a combination of errors of fact and procedure by taking into account irrelevant information, and by failing to take into account relevant information, facts and evidence and/or by misappreciating relevant facts

20. By relying on the 7,500 figure of potential beneficiaries of reparations as victims of the attacks, the Chamber not only erred in law,³⁰ but also committed a combination of errors of fact and procedure. In fact, when relying on a purely speculative figure to estimate the number of potential beneficiaries, the Chamber took into account irrelevant information without ascertaining, or at least inquiring into, the sources of said information and the methodology of its gathering.³¹

²⁵ See the “Corrigendum of Public redacted version of the Annex 1 of ICC-01/04-02/06-2750-Conf-Anx1, notified on 25 March 2022”, [No. ICC-01/04-02/06-2750-Anx1-Red-Corr](#), 14 April 2022, para. 96.

²⁶ *Ibid.*

²⁷ See the “Trust Fund for Victims’ Submission pursuant to Trial Chamber II’s decisions on the implementation of the Appeals Chamber Judgment against the Reparations Order”, [No. ICC-01/04-02/06-2819](#), 30 January 2023, para. 44.

²⁸ *Idem*, para. 46.

²⁹ See the Impugned Decision, *supra* note 1, para. 360.

³⁰ See *supra*, Ground 1.1, paras. 18-19.

³¹ See the Impugned Decision, *supra* note 1, para. 312.

21. In an attempt to corroborate the TFV's figure, the Chamber referred to the data resulting from the Registry's preliminary mapping exercise³² and the numbers respectively provided by the Appointed Experts.³³ The Registry indicated that more than 70% of the pre-conflict population was still displaced at the time of its 2019 mapping.³⁴ However, the strictly mathematical approach that the Chamber took in this regard³⁵ is inapposite. The fact that VPRS could identify 2,276 victims in the 30% of the population that was not displaced, does not mean that the number of potentially eligible direct and indirect victims amongst the remaining 70% of the population, can be reasonably established based on a simple mathematical projection. This is particularly the case, when one considers that 70% of the population was displaced as a result of the attacks and as such, those individuals are much more likely to have directly and indirectly suffered from some of the crimes for which Mr Ntaganda was convicted. Accordingly, the 7,587 figure of potential beneficiaries obtained by the Chamber is unsubstantiated and highly speculative.

22. In addition, the Chamber referred to – but failed to draw the appropriate conclusions from – the VPRS's indication that its estimates were “*conservative*”³⁶ and were collected “*in the context of a limited and carefully targeted approach aimed at identifying individuals who did not participate in the Case proceedings, and for whom it could be said with a relative degree of certainty - but still based only on secondary sources consulted - that they suffered harm as a result of at least one of the crimes subject to conviction in the Case*”.³⁷ The

³² See 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’”(ICC-01/04-02/06-2786)”, [No. ICC-01/04-02/06-2822](#), 30 January 2023, para. 17.

³³ See the Impugned Decision, *supra* note 1, para. 316.

³⁴ See 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’”(ICC-01/04-02/06-2786)”, *supra* note 32, para. 19.

³⁵ See the Impugned Decision, *supra* note 1, para. 317.

³⁶ *Idem*, para. 285. See also 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’”(ICC-01/04-02/06-2786)”, *supra* note 32, para. 18.

³⁷ See the Impugned Decision, *supra* note 1, para. 285. See also 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’”(ICC-01/04-02/06-2786)”, *supra* note 32, para. 18.

Chamber also disregarded the VPRS's more recent submissions that "*some crimes for which Mr Ntaganda was convicted [...] are likely to have victimized large portions of the populations living at that time in [the respective] localities*".³⁸

23. In turn, the Appointed Experts' 3,500 figure of direct victims was based on the Registry's same 2019 estimate and therefore does not constitute an independently verified number.³⁹ In addition, the Appointed Experts were unable to ascertain the number of potential indirect victims.⁴⁰

24. Accordingly, the Chamber erred in taking into account speculative, and thus irrelevant information, but also in failing to take into account relevant information, facts and evidence provided by the Legal Representative and the Registry which were obtained from identifiable sources and were mutually corroborative.⁴¹ The Chamber rejected them all as being unreliable, contradictory or not referring to concrete sources.⁴² Yet, even if considered with caution, the provided information offers a stronger evidential basis for an estimate of the potential beneficiaries of reparations than the hypothetical figures the Chamber ultimately relied upon. By giving weight to purely speculative figures, and thus to extraneous and irrelevant information, and by failing to take into account relevant information, facts and evidence before it, the Chamber erred in the exercise of its discretion amounting to an abuse of discretion.

25. Alternatively, the Chamber mis-appreciated the abovementioned relevant facts, information and evidence that provided a sufficiently strong basis to believe that the number of potential beneficiaries of reparations is at least several tens of thousands and in any event a much higher number than the figures the Chamber relied upon.

³⁸ See 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'" (ICC-01/04-02/06-2786)", *supra* note 32, para. 20.

³⁹ See the "Experts Report on Reparation", [No. ICC-01/04-02/06-2623-Anx1-Red2](#), 3 November 2020, p. 107.

⁴⁰ *Idem*, para. 29.

⁴¹ See the Impugned Decision, *supra* note 1, paras. 274-276 and 286.

⁴² *Idem*, paras. 299-307.

2. Ground 2: The Chamber committed a combination of errors of law, fact and procedure in determining the cost to repair for the victims of the attacks

a) Sub-Ground 2.1: The Chamber erred in law and/or fact and procedure by failing to establish a proper basis for its approach

26. The errors under the present Ground are closely linked to, and result from the Chamber's errors identified under Ground 1 above. In determining the cost to repair for the victims of the attacks, the Chamber relied on the speculative estimate of a total number of 7,500 direct and indirect potentially eligible victims of the attacks,⁴³ rather than on estimates as concrete as possible based upon a sufficiently strong evidential basis.⁴⁴ By failing to properly establish the fundamental parameter of the number of potentially eligible beneficiaries *based* on a sufficiently strong evidential basis, the Chamber was therefore unable to determine a justified, fair and appropriate cost to repair for the victims of the attacks.

b) Sub-Ground 2.2: The Chamber erred in fact and procedure by establishing the cost to repair for the victims of the attacks based on the TFV's projections related to former child soldiers

27. The Chamber committed an error of fact and procedure by determining the cost to repair for the victims of the attacks on the basis on the TFV's projections related to former child soldiers. In fact, the Chamber referred first to the results of the first year of implementation of the reparations programme in the *Lubanga* case, according to which 100% of the beneficiaries underwent primary mental care, and 41,77% of them underwent primary physical care.⁴⁵ The Chamber then noted that amongst the victims of the attacks included in the Sample, 100% of them suffered psychological harm, and 43,9% suffered physical harm.⁴⁶ The Chamber further noted that both groups of the

⁴³ *Idem*, para. 343.

⁴⁴ See the *Ntaganda* Appeals Judgment, *supra* note 14, paras. 168-169 and 172.

⁴⁵ See the Impugned Decision, *supra* note 1, paras. 344 and 347.

⁴⁶ *Ibid.*

victims are from the same region and were affected by the same armed conflict,⁴⁷ and assumed that the victims of the attacks will need the same type of mental and physical care.⁴⁸

28. The Chamber's approach is erroneous because the two groups of victims suffered different types of harms for both short and long-term. Moreover, the fact that the eligible former child soldiers *effectively underwent* mental and physical care does not mean that the eligible victims of the attacks would need such care as a form of reparations. In fact, today – twenty years after the events – only a limited number of the victims of the attacks who suffered psychological and physical harm need mental support and physical care. Instead, they all need that the multi-dimensional harm that they suffered to be addressed primarily through socio-economic rehabilitative measures. Accordingly, if any, the relevant projections for the victims of the attacks could have been rather based for instance on the results of the reparations programme in the *Katanga* case – where the victims suffered from similar crimes, committed in the same region and within the same timeframe.

c) Sub-Ground 2.3: The Chamber erred in law, fact and/or procedure by failing to explain how and to which extent the costs to repair for the victims of the attacks are 'fair' and 'appropriate'

29. The Appeals Chamber found that the Chamber should have elaborated upon why it considered the award to be '*fair*' and '*appropriate*'.⁴⁹ In the Impugned Decision, the Chamber failed to elaborate on the matter a second time. The Chamber concluded that "*setting the amount of Mr Ntaganda's liability for reparations at the total of USD 31,300,000 is fair, equitable, and appropriate*".⁵⁰ However, it failed to give a reasoned opinion on what it is '*fair*', '*equitable*' and '*appropriate*' for the purpose of its determination of the cost to repair – in light of the circumstances of the case and

⁴⁷ *Idem*, para. 342.

⁴⁸ *Idem*, paras. 344 and 347.

⁴⁹ See the *Ntaganda* Appeals Judgment, *supra* note 14, paras. 257-258.

⁵⁰ See the Impugned Decision, *supra* note 1, para. 360.

bearing in mind the rights of the victims and the overall goal of reparations. In this regard, a cost to repair cannot be ‘*appropriate*’ if it corresponds to the lowest possible figure. An award cannot be ‘*fair*’ when the lowest number of potentially eligible victims is taken as a basis for its estimation, thereby reducing the overall resources at disposal. Accordingly, the Chamber erred in the exercise of its discretion.

3. Ground 3: The Chamber erred in law and in the exercise of its discretion by disregarding or misapplying its previous findings on the territorial scope of the reparations

30. The Chamber committed an error of law and in the exercise of its discretion by disregarding or misapplying its findings on the territorial scope of the reparations in the present case and the relevant eligibility criteria, as established in its previous decisions. In particular, the Chamber failed to duly apply the eligibility requirement for reparations to the victims who suffered harm in the forest or bush surrounding the villages for which positive findings were entered. Trial Chamber VI had in fact clarified that “*victims alleging to have suffered harm in the forest or bush surrounding locations for which positive findings were included in the Judgment may be eligible for reparations for any of the crimes for which the Chamber entered convictions on the basis of the relevant corresponding conduct having occurred in the forest or bush surrounding those locations*”.⁵¹

31. The same considerations were reiterated in the Reparations Order,⁵² where Trial Chamber VI also found that “*the eligibility criteria for victims to receive reparations is unrelated to their official place of residence at the time the crimes were committed, as long they can demonstrate that they suffered harm as a result of a crime for which Mr Ntaganda was convicted*”.⁵³ Said findings were incorporated in the TFV’s Eligibility Criteria⁵⁴ as

⁵¹ See the “Decision on issues raised in the Registry’s First Report on Reparations” (Trial Chamber VI), [No. ICC-01/04-02/06-2630](#), 15 December 2020, para. 19(f).

⁵² See the Reparations Order, *supra* note 8, para. 107. The Trial Chamber further recalled the same findings in the “Decision on the TFV’s Fourth Update Report on the Implementation of the Initial Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2761](#), 27 June 2022, para. 25.

⁵³ See the Reparations Order, *supra* note 8, para. 107.

⁵⁴ See the “Annex 1 to Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2751-Conf-Anx1](#), 25 March 2022, para. 31.

approved by the Chamber,⁵⁵ and served a basis for the TFV's eligibility assessment of the victims admitted to the IDIP.

32. Nonetheless, when assessing the eligibility for reparations of the victims of the attacks included in the Sample, the Chamber, contrary to the previously established eligibility criteria, applied a restrictive approach to the territorial scope of the reparations. The Chamber found that several victims who suffered harm when fleeing and hiding in the forest or bush surrounding villages for which positive findings were entered, are not eligible for reparations. The Chamber did not provide any reason why it applied a restrictive approach to the territorial scope of the reparations and why the previously established eligibility criteria in relation to this specific aspect was not applied. As a result, a total of 31 victims of the attacks were found ineligible for reparations,⁵⁶ including victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13 – who were earlier positively assessed by the TFV on the basis of the Chamber's eligibility criteria and admitted to the IDIP. By disregarding or misapplying its previous findings regarding the territorial scope of the reparations and failing to provide a reasoned opinion in this regard, the Chamber committed a combination of errors of law and in the exercise of its discretion amounting to an abuse of discretion.

4. The errors identified under the three Grounds of Appeal materially affect the Impugned Decision

33. The errors identified under the three Grounds of Appeal, either separately or taken together, materially affect the Impugned Decision. The errors lie at the heart of the Chamber's determination of the scope of Mr Ntaganda's liability for reparations *vis-à-vis* the victims of the crimes for which he was convicted. The scope of Mr Ntaganda's liability is the key finding of the Impugned Decision and ultimately

⁵⁵ See the "Decision on the TFV's Fourth Update Report on the Implementation of the Initial Draft Implementation Plan", *supra* note 52, paras. 20-27.

⁵⁶ The concerned victims are a/00072/13, a/00412/13, a/00653/13, a/00973/13, a/01116/13, a/01128/13, a/20109/14, a/20127/14, a/20194/14, a/30309/15, a/00115/13, a/00136/13, a/01013/13, a/01193/13, a/01224/13, a/20029/14, a/30087/15, a/30433/15, a/01250/13, a/01585/13, a/01677/13, a/00215/13, a/00486/13, a/00494/13, a/00914/13, a/30285/15, a/01469/13, a/01605/13, a/00199/13, a/00212/13 and a/01636/13. See the Annex, *supra* note 2.

dictates the extent to which the harm can be repaired. In light of the foregoing, the errors committed warrant the intervention of the Appeals Chamber.

34. In particular, and as described above, the manner in which the Chamber has estimated the number of potential beneficiaries of reparations amongst the victims of the attacks and calculated the cost to repair is fraught with errors. The Chamber took into account irrelevant information, failed to take into account relevant information, facts and evidence, mis-appreciated relevant information, disregarded or misapplied its own findings, failed to set a proper basis for its approach and to give a reasoned opinion on key matters, and committed numerous errors in the exercise of its discretion amounting to an abuse of discretion. These errors invalidate the Chamber's findings on said matters.

35. Moreover, in failing to provide estimates as concrete as possible on the number of potential beneficiaries of reparations amongst the victims of the attacks and in setting the cost to repair on the basis of purely speculative figures, the Chamber has created uncertainty as to whether and to what extent the overall cost to repair is sufficient to address the harm suffered by the victims of the attacks in a meaningful way. This would be entirely dependent on the unpredictable number of eligible victims who will ultimately come forward, which would have a bearing on the adequacy of any programmes designed by the TFV to meet the needs of the victims of the crimes committed by Mr Ntaganda.

36. Finally, by disregarding or misapplying its own findings on the territorial scope of the reparations and the previously established eligibility criteria – which the Legal Representative understood to be based on its literal meaning and conveyed to his clients accordingly – the Chamber has created legal uncertainty as to the eligibility of the victims who suffered harm in the forest or bush surrounding the villages for which positive findings were entered. In this regard, the Legal Representative notes that said eligibility criteria were understood in the same way by the TFV and applied accordingly in the context of its assessment of the victims for the purpose of their

admission to the IDIP. In fact, victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13 were found eligible based on said criteria and admitted to the IDIP. They now would have to be excluded from the programme while being provided with relevant assistance – which stands in stark contrast with the ‘do no harm’ principle. The other concerned victims who had legitimate expectations to benefit from reparations in the present case on account of harm they suffered in the forest or bush, will now be told the opposite – which will certainly have a negative impact on their wellbeing and their trust in the overall reparations programme.

V. REQUEST FOR SUSPENSIVE EFFECT

37. Under the legal framework of the Court, “[a]n appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules [...]”,⁵⁷ and “[w]hen filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3”.⁵⁸

38. The Appeals Chamber found that “a request for suspensive effect of a reparation order must be made in the notice of appeal”⁵⁹ and “the determination of whether suspensive effect should be ordered is left to its discretion”.⁶⁰ It has summarised the circumstances in which it has exercised its discretion to grant suspensive effect as follows:

*“In past decisions, the Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (i) ‘would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant’, (ii) would lead to consequences that ‘would be very difficult to correct and may be irreversible’, or (iii) ‘could potentially defeat the purpose of the appeal’”.*⁶¹

⁵⁷ See article 82(3) of the Statute.

⁵⁸ See rule 156(5) of the Rules of Procedure and Evidence.

⁵⁹ See the “Decision on the Defence request for suspensive effect” (Appeals Chamber), [No. ICC-01/04-02/06-2691 A4 A5](#), 2 July 2021, para. 14.

⁶⁰ *Idem*, para. 20.

⁶¹ *Idem*, para. 21. See also the “Decision on request for suspensive effect” (Appeals Chamber), [No. ICC-02/05-01/20-134 OA](#), 25 August 2020, para. 6; the “Decision on the Prosecutor’s request for suspensive effect” (Appeals Chamber), [No. ICC-01/13-81 OA2](#), 31 January 2019, para. 10; the “Decision on Jordan’s request for suspensive effect of its appeal against the decision on the non-compliance by Jordan with the request for the arrest and surrender of Mr Omar Al-Bashir” (Appeals Chamber), [No. ICC-02/05-01/09-333 OA2](#), 6 April 2018, para. 8.

39. Under Ground 3 *supra*, the Legal Representative argues that the Chamber erred in law and in the exercise of its discretion by disregarding or misapplying its previous findings related to the eligibility for reparations of the victims who suffered harm in the forest or bush surrounding the villages for which positive findings were entered. As a result, a total of 31 victims of the attacks who suffered harm in the forest or bush have been found ineligible – including four victims, a/01636/13, a/00212/13, a/00199/13 and a/00215/13, who were already admitted to the IDIP by the TFV.

40. The Chamber had first indicated that “*the victims assessed as not eligible will have the opportunity to supplement their dossiers and clarify their accounts at the implementation stage*”.⁶² Nonetheless, in relation to victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13, it held then that “*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*”.⁶³ The implementation outright of the Chamber’s decision on their sudden ineligibility will require to immediately undertake the following steps with respect to the four concerned victims.

41. First, they should be informed that despite being previously admitted to the IDIP, they are now excluded and as a consequence they will only be eligible to receive some limited services in the context of the TFV’s assistance mandate. Second, those services which have already been provided or were expected to be provided in the context of the IDIP, will now be either reduced or abandoned. Third, although provided with some assistance in the context of the IDIP, they will be unable to benefit from comprehensive rehabilitative measures under the main reparations implementation plan. This course of action would unavoidably have a negative impact on the wellbeing of the four concerned victims, and possibly cause to the victims psychological harm to various extents – which would be very difficult to correct and may be irreversible.

⁶² See the Impugned Decision, *supra* note 1, para. 113.

⁶³ *Idem*, para. 143.

42. In this regard, the Legal Representative posits that said negative impact cannot be prevented or mitigated through a measure other than granting suspensive effect of the present Appeal. In addition, the services that would have been provided to the concerned victims in the context of the IDIP, although labelled as such by the Chamber,⁶⁴ cannot be deemed ‘reparations’ given the limited purpose of the IDIP to only address “*the most urgent needs of victims*”.⁶⁵ Furthermore, any services that could be provided to the concerned victims in the context of the TFV’s assistance mandate are hypothetical and very limited when compared to comprehensive rehabilitative measures under the main reparations implementation plan.

43. Accordingly, in order to protect the interests and to ensure the wellbeing of the four concerned victims in line with the ‘*do no harm*’ principle, the Legal Representative respectfully requests the Appeals Chamber to grant suspensive effect of his Appeal in relation to the Chamber’s decision on the eligibility of victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13, pending its determination of the Appeal.

VI. RELIEF SOUGHT

44. Pursuant to article 82(4) of the Statute and rule 153(1) of the Rules, the Legal Representative respectfully requests the Appeals Chamber to:

- **VACATE** the contested findings as referred to in paragraphs 18 to 32 of the present submissions;
- **CORRECT** the errors identified under Grounds 1-3 above; and
- **AMEND** the Impugned Decision without remanding the matters to the Chamber in order to expedite the proceedings and avoid any further delay.

45. Furthermore, pursuant to article 82(3) of the Statute and rule 156(5) of the Rules, the Legal Representative respectfully requests the Appeals Chamber to:

⁶⁴ *Ibid.*

⁶⁵ See the “Decision on the TFV’s initial draft implementation plan with focus on priority victims”, *supra* note 13, para. 6.

- **GRANT** suspensive effect of the present Appeal in relation to the Chamber's decision on the eligibility of victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13, pending the Appeals Chamber's determination of the Appeal.



Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 16th day of August 2023
At The Hague, The Netherlands