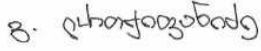




To   À	All judges of the Court	From   De	 Judge Gocha Lordkipanidze
Date	17 August 2021	Through   Via	
Ref.		Copies	
Subject   Objet	Observations of Judge Gocha Lordkipanidze on the “Request seeking Judge Lordkipanidze to recuse himself or be disqualified to adjudicate the appeals against the Reparations Order issued by Trial Chamber VI on 8 March 2021” in the <i>Ntaganda</i> case, dated 2 July 2021 (ICC-01/04-02/06-2690)		

## I. INTRODUCTION

1. The Defence for Mr Ntaganda has requested my disqualification<sup>1</sup> from the appeals against the Reparations Order issued by Trial Chamber VI in the *Ntaganda* case<sup>2</sup> (“*Ntaganda* Reparations Appeals”) before the plenary of judges, pursuant to article 41(2)(b) of the Rome Statute (“Statute”) and rule 34(1)(c) of the Rules of Procedure and Evidence (“Rules”). The Defence argues that my membership of the Board of Directors of the Trust Fund for victims of crimes within the jurisdiction of the International Criminal Court (“Trust Fund”), prior to being sworn in as a judge of the International Criminal Court (“Court”) and being assigned to the Appeals Division, creates a reasonable apprehension of bias on my part in the *Ntaganda* Reparations Appeals.<sup>3</sup>

<sup>1</sup> [Request seeking Judge Lordkipanidze to recuse himself or be disqualified to adjudicate the appeals against the Reparations Order issued by Trial Chamber VI on 8 March 2021](#), 2 July 2021, ICC-01/04-02/06-2690, para. 3.

<sup>2</sup> Referring to the appeals filed by the Common Legal Representative of the Victims of the Attacks ([Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order](#), 8 April 2021, ICC-01/04-02/06-2668) and by the Defence for Mr Ntaganda ([Defence Notice of Appeal against the Reparations Order, ICC-01/04-02/06-2659](#), 8 April 2021, ICC-01/04-02/06-2669) against the [Reparations Order](#) issued by Trial Chamber VI in *Prosecutor v. Bosco Ntaganda*, 8 March 2021, ICC-01/04-02/06-2659.

<sup>3</sup> [Request seeking Judge Lordkipanidze to recuse himself or be disqualified to adjudicate the appeals against the Reparations Order issued by Trial Chamber VI on 8 March 2021](#), 2 July 2021, ICC-01/04-02/06-2690, para. 3.

2. Citing rule 34(1)(a) and (c) of the Rules, the Defence, in its request for my disqualification from the *Ntaganda* Reparations Appeals (“Disqualification Request”), points to the following as relevant grounds for disqualification: having a “professional relationship, or a subordinate relationship, with any of the parties” in a case; and the “[p]erformance of functions, prior to taking office, during which [the judge] could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality”.<sup>4</sup>

3. These are my observations on the Disqualification Request, in accordance with article 41(2)(c) of the Statute and rule 34(2) of the Rules.<sup>5</sup> They are public and should be disseminated.

## II. BACKGROUND

4. The Disqualification Request stems from the following facts: my election as a member of the Board of Directors for the Trust Fund on 5 December 2018, with a term commencing on the same date;<sup>6</sup> my election as a judge of the Court on 18 December 2020, with a term commencing on 11 March 2021;<sup>7</sup> and my resignation on 2 February 2021 from the Board of Directors of the Trust Fund, with immediate effect.<sup>8</sup>

5. No response to the Disqualification Request was made by the two groups of victims participating in the *Ntaganda* Reparations Appeals.

## III. THE REQUEST

6. The Disqualification Request is made on two grounds.

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<sup>4</sup> [Disqualification Request](#), para. 13.

<sup>5</sup> Filed within the timeline set out in the Presidency’s [Order concerning the ‘Request seeking Judge Lordkipanidze to recuse himself or be disqualified to adjudicate the appeals against the Reparations Order issued by Trial Chamber VI on 8 March 2021’ dated 2 July 2021 \(ICC-01/04-02/06-2690\)](#), 8 July 2021, ICC-01/04-02/06-2692.

<sup>6</sup> Assembly of States Parties, Seventeenth session, 5-12 December 2018, Official Records, ICC-ASP/17/20, vol. I, Part 1, B, (10. *Election of the Board of Directors of the Trust Fund for Victims*, paras 30-31).

<sup>7</sup> Assembly of States Parties, Nineteenth session, First and Second Resumptions, Official Records, 17-23 December 2020 and 12 February 2021, Official Records, ICC-ASP/19/20/Add.1 Part. I, B, (6. *Election of six judges*, paras 21, 27).

<sup>8</sup> See Decisions of the Bureau of the Assembly of States Parties, 18 February 2021 (2. *Election to fill a vacancy on the Board of Directors of the Trust Fund for Victims*).

## A. First Ground

7. First, it is argued that the role of the Trust Fund is a “live issue” in the *Ntaganda* Reparations Appeals<sup>9</sup> and that the Trust Fund is itself an “active litigant”<sup>10</sup> in the appeals, requesting to intervene on substantive and procedural matters,<sup>11</sup> as opposed to “an impartial and disinterested participant”.<sup>12</sup> Referring to the Trial Chamber’s delegation to the Trust Fund of the responsibility for assessing the eligibility of victims and designing the reparations award,<sup>13</sup> the Defence defines the *Ntaganda* Reparations Appeals as proceedings in which the “propriety and legality” of the mandate extended to the Trust Fund by the Trial Chamber are being questioned and in which “[j]udges hearing the Reparations Appeals will necessarily be required to rule on the proper mandate, scope and capacity of the Trust Fund, and whether Trial Chamber VI’s near-wholesale reliance on this administrative body was an impermissible designation of its judicial functions”.<sup>14</sup>

## B. Second Ground

8. Second, it is argued that there is a “direct overlap” between my work in the Trust Fund and the *Ntaganda* Reparations Appeals pending before the Appeals Chamber;<sup>15</sup> in that I was an “active member of the [Trust Fund]” during the reparations phase in the *Ntaganda* case, participating in “matters that directly impact the issues in dispute in the present Reparations Appeals”.<sup>16</sup> In making its case, the Defence refers to the three sets of observations made by the Trust Fund on behalf of its Board of Directors in the *Ntaganda* case when I was still a member of the Board of Directors of the Trust Fund.<sup>17</sup> The Defence also refers to the assessments on the eligibility of victims made by the

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<sup>9</sup> [Disqualification Request](#), paras 17, 21.

<sup>10</sup> [Disqualification Request](#), para. 19.

<sup>11</sup> [Disqualification Request](#), para. 19.

<sup>12</sup> [Disqualification Request](#), para. 20.

<sup>13</sup> [Disqualification Request](#), para. 17.

<sup>14</sup> [Disqualification Request](#), para. 21.

<sup>15</sup> [Disqualification Request](#), para. 22.

<sup>16</sup> [Disqualification Request](#), para. 22.

<sup>17</sup> [Disqualification Request](#), para. 23, referring to [Trust Fund for Victims’ response to the Registry’s Preliminary Observations pursuant to the Order for Preliminary Information on Reparations](#), 3 October 2019, ICC-01/04-02/06-2428; [Trust Fund for Victims’ observations relevant to reparations](#), 28 February 2020, ICC-01/04-02/06-2476; and [Trust Fund for Victims’ Final Observations on the reparations proceedings](#), 18 December 2020, ICC-01/04-02/06-2635-Conf (public redacted version filed on 21 December 2020: ICC-01/04-02/06-2635-Red).

Trust Fund on behalf of its Board of Directors in the *Lubanga* case when I was still a member of the Board of Directors of the Trust Fund.<sup>18</sup>

#### IV. OBSERVATIONS

9. From the outset, it should be noted that the Defence was fully entitled to raise its concerns over these matters, which go to the very heart of the principle of justice and public confidence in the Court, as well as the legitimacy and effectiveness of the international judicial process.<sup>19</sup> Judicial impartiality is enshrined in article 41 of the Statute, rule 34 of the Rules and article 4 of the Code of Judicial Ethics of the Court.

10. For that reason, no attempt should be made, in my view, to consider the Disqualification Request purely on the question of whether it was properly made “as soon as there [was] knowledge of the grounds on which it is based”, in accordance with rule 34(2) of the Rules, as, in my view, the question raised by the Defence and the test for disqualification would remain the same at any point in time at which a request for judicial disqualification was made. The matters raised by the Defence warrant due consideration.

11. Following the filing of the Disqualification Request, I have carefully considered my continuing participation in the *Ntaganda* Reparations Appeals and confirm my earlier estimation that there is no need for my recusal therefrom. It is my conviction that in the *Ntaganda* Reparations Appeals, as in any appeal with which the Appeals Chamber has been seised during my short tenure at the Court, I am able to retain an open mind and adjudicate the matters before me impartially in accordance with the applicable law and procedure set out in the Statute and the Rules. I shall not favour one party or participant, or a particular result above another in the *Ntaganda* Reparations Appeals.

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<sup>18</sup> [Disqualification Request](#), para. 25, referring to four filings made by the Trust Fund before Pre-Trial Chamber II “deciding on new applicants for reparations”, as recorded in its following three decisions: [Decision concerning the First and Second Transmissions of Administrative Decisions on New Applications for Reparations Taken by the Trust Fund for Victims](#), 20 May 2020, ICC-01/04-01/06-3476-tENG, paras 5-6; [Troisième décision sur les décisions administratives du Fonds au profit des victimes portant sur de nouvelles demandes en réparation ainsi que les demandes a/30314/19, a/30077/20 et a/30103/20](#), 1 December 2020, ICC-01/04-01/06-3494, para. 11; [Fourth Decision on Administrative Decisions of the Trust Fund for Victims regarding New Applications for Reparations and Application a/30213/20](#), 3 February 2021, ICC-01/04-01/06-3499, para. 10.

<sup>19</sup> [Code of Judicial Ethics](#), Preamble, para. 3.

12. It has not been argued by the Defence that the mere fact of my previous membership of the Board of Directors of the Trust Fund should, in and of itself, and without more, lead to my disqualification. The States Parties elected me in full knowledge of my activities with the Trust Fund, which could be considered as an experience that contributed to my election. Indeed, the fact that I was a member of the Board of Directors of the Trust Fund could also be said to furnish me with particular expertise in the field of reparations without necessarily revealing any actual or apparent bias in a particular case.

13. Nor do the Defence seek to establish actual bias.<sup>20</sup> The argument of the Defence is that my involvement in the *Ntaganda* and *Lubanga* cases whilst on the Board of Directors of the Trust Fund gives rise to an appearance of bias in the *Ntaganda* Reparations Appeals before the Appeals Chamber, given the issues that arise therein.

14. Respectfully, however, it is not that every level of previous involvement in a case may disqualify a judge from sitting in the same case. Automatic disqualification is not the approach taken in contemplating article 41 of the Statute.

15. The stated law, as developed at this Court is whether the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.<sup>21</sup> Furthermore, the question is whether any such apprehension of bias is itself objectively reasonable.<sup>22</sup> Such fair-minded and informed observer is not to be confused with the applicant<sup>23</sup> and the fair-minded and informed observer's consideration of facts and circumstances includes the nature of a judge's profession.<sup>24</sup>

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<sup>20</sup> [Disqualification Request](#), paras 4, 30.

<sup>21</sup> [Decision of the plenary of the judges on the "Defence Request for the Disqualification of a Judge" of 2 April 2012](#), 5 June 2012, ICC-02/05-03/09-344-Anx ("Banda and Jerbo Disqualification Decision"), para. 11; [Decision of the plenary of judges on the Defence Application of 20 February 2013 for the disqualification of Judge Sang-Hyun Song from the case of \*The Prosecutor v. Thomas Lubanga Dyilo\*](#), 11 June 2013, ICC-01/04-01/06-3040-Anx ("*Lubanga* 2013 Disqualification Decision"), paras 9, 34.

<sup>22</sup> [Banda and Jerbo Disqualification Decision](#), para. 13; [Lubanga 2013 Disqualification Decision](#), para. 10.

<sup>23</sup> [Lubanga 2013 Disqualification Decision](#), para. 35.

<sup>24</sup> [Lubanga 2013 Disqualification Decision](#), para. 36; [Decision of the Plenary of Judges on the Defence Request for the Disqualification of Judge Kuniko Ozaki from the case of \*The Prosecutor v. Bosco Ntaganda\*](#), 20 June 2019, ICC-01/04-02/06-2355-AnxI-Red ("*Ntaganda* Disqualification Decision"), para. 32.

16. Moreover, a high threshold must be satisfied in order to rebut the strong presumption of impartiality which attaches to judicial office; “such high threshold functioning to safeguard the interests of the sound administration of justice”.<sup>25</sup> As stated by the High Court of Australia and reiterated both by the International Criminal Tribunal for the former Yugoslavia and by this Court:

There may be many situations in which previous decisions of a judicial officer on issues of fact and law may generate an expectation that he is likely to decide issues in a particular case adversely to one of the parties. But this does not mean either that he will approach the issues in that case otherwise than with an impartial and unprejudiced mind in the sense in which that expression is used in the authorities or that his previous decisions provide an acceptable basis for inferring that there is a reasonable apprehension that he will approach the issues in this way.<sup>26</sup>

17. Applying the aforementioned considerations in requests for disqualification at this Court, a trial judge’s dissent on the conviction of the accused did not render her biased or partial, or prevent her continued participation in the reparations phase of the proceedings;<sup>27</sup> and a judge’s prior position as a senior member of the Office of the Prosecutor of the Court did not preclude her from sitting in a sentence review panel, as the nature of the sentence review was distinguishable from proceedings concerning the attribution of criminal responsibility and her previous functions in the prosecution were therefore deemed irrelevant to the sentence review.<sup>28</sup> Their previous judicial or other participation in the same case did not constitute a ground on which their impartiality might be reasonably have been doubted.

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<sup>25</sup> [Banda and Jerbo Disqualification Decision](#), para. 14; [Lubanga 2013 Disqualification Decision](#), para. 10 (see also para. 37); [Ntaganda Disqualification Decision](#), para. 31.

<sup>26</sup> *High Court of Australia, Re JRL; Ex parte CJL* (1986) 161 CLR 342 at 352 per Mason J (later Mason CJ) (also adopted unanimously by the High Court of Australia in *Re Polites; Ex parte Hoyts Corporation Pty Ltd* (1991) 65 ALJR 444 at 448); *ICTY*, Trial Chamber II, [Decision on application by Momir Talic for the Disqualification and withdrawal of a judge](#), 18 May 2000, para. 18; *ICC*, Presidency, [Decision on the request of Judge Ekaterina Trendafilova of 16 March 2012 to be excused from participating in the appeal “OA4” in the case of The Prosecutor v. Callixte Mbarushimana, pursuant to article 41 of the Rome Statute and rules 33 and 35 of the Rules of Procedure and Evidence](#), 21 March 2012, ICC-01/04-01/10-503-AnxII, p. 4.

<sup>27</sup> [Decision of the Plenary of Judges on the Application of the Legal Representative for Victims for the disqualification of Judge Christine Van den Wyngaert from the case of The Prosecutor v Germain Katanga](#), 22 July 2014, ICC-01/04-01/07-3504-Anx, para. 51.

<sup>28</sup> [Decision of the Plenary of Judges on the Defence Application for the Disqualification of Judge Silvia Fernández de Gurmendi from the case of The Prosecutor v. Thomas Lubanga Dyilo](#), 3 August 2015 (notified on 4 August 2015), ICC-01/04-01/06-3154-AnxI (“Lubanga 2015 Disqualification Decision”), para. 36.

18. In the context of requests for recusal on grounds of previous involvement in a case at this Court, attention has been paid to the “degree of congruence” between the legal issues in question and to whether factual determinations would be “based on the same evidence”,<sup>29</sup> with the result that a pre-trial judge’s participation in the issuance of the arrest warrant did not prevent her participation in the appellate proceedings in the same case, due to the differing standards of proof between the two stages;<sup>30</sup> and the limited pre-trial involvement by judges in a discrete procedural motion did not prevent their participation in the appellate proceedings in the same case.<sup>31</sup>

19. Thus, the capacity leading to disqualification or recusal with which article 41(2)(a) of the Statute is concerned is not *every* capacity of previous involvement in the case, but one which gives rise to a reasonable ground to doubt the impartiality of a judge.<sup>32</sup> However, the law can only take one so far in the particular circumstances of this case. The question in this Disqualification Request is a factual one. The entire context of the *Ntaganda* Reparations Appeals must be taken into account and the matter considered in some detail.<sup>33</sup>

20. The first matter raised by the Defence is that the role of the Trust Fund is a live issue in the reparations appeals. That is correct. However, I note that I was no longer a member of the Board of Directors of the Trust Fund when the Trial Chamber filed its Reparations Order on 8 March 2021, having resigned on 2 February 2021. I have therefore necessarily not played any role in the responsibilities given to the Trust Fund further to the Reparations Order; the impugned decision in the *Ntaganda* Reparations Appeals. Without more, I therefore do not see any reason presented in the Defence’s First Ground that would require me to recuse or be disqualified from sitting as a judge in the Appeals Chamber in this case. The Defence concludes its arguments under its

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<sup>29</sup> [Lubanga 2015 Disqualification Decision](#), para. 31.

<sup>30</sup> [Decision on the request of Judge Akua Kuenyehia of 18 February 2010 to be excused from participating in the exercise to reclassify documents in the appeals proceedings related to the case of \*The Prosecutor v. Bosco Ntaganda\* and in all appeals in the case](#), 24 September 2010, ICC-01/04-584-Anx3 and [ICC-01/04-02/06-30-Anx4](#) (notified on 11 November 2010), pp. 4-5.

<sup>31</sup> [Decision on the requests of Judge Akua Kuenyehia and Judge Anita Usacka of 14 July 2011 to be excused from the appeal in the case of the \*Prosecutor v. Abdallah Banda Abakaer Nourain and Salah Mohammed Jerbo Jamus\*](#), 1 August 2011, ICC-02/05-03/09-191-Anx2 (notified on 8 August 2011), p. 4.

<sup>32</sup> See also [Lubanga 2015 Disqualification Decision](#), para. 30.

<sup>33</sup> [Lubanga 2013 Disqualification Decision](#), para. 38, citing the Supreme Court of Canada in *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 36 per L’Heureux-Dubé J and McLachlin J (later McLachlin CJ).



First Ground by stating that the judges of the Appeals Chamber “will be required to rule on the proper mandate, scope and capacity of the [Trust Fund]” and the extent of the Trial Chamber’s delegation of responsibility to it.<sup>34</sup> Again, I do not see any reason why I cannot consider such matters as a judge of the Appeals Chamber; the fact that I was a previous member of the Board of Directors of the Trust Fund certainly does not prevent me from addressing such arguments with an open mind. As alluded to above,<sup>35</sup> my previous position on the Board of Directors of the Trust Fund could be said to give me particular experience and expertise from which to address such questions in an informed manner.

21. In respect of the Defence’s Second Ground, there is no dispute that the three sets of observations made by the Trust Fund in the *Ntaganda* case<sup>36</sup> and the eligibility assessments made by the Trust Fund in the *Lubanga* case<sup>37</sup> were made on behalf of its Board of Directors or that I was a member of the Board of Directors of the Trust Fund at the time that they were made. That said, as per the internal division of work in the Trust Fund, during my role as a member of its Board of Directors, my main responsibility was for matters related to the *Al Mahdi* case.

22. In any event, turning to the role of the Trust Fund in the *Lubanga* case, whilst the Trust Fund conducted assessments of the eligibility of victims in that case using the eligibility criteria established by Trial Chamber II for that purpose, as amended by the

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<sup>34</sup> See above, para. 7.

<sup>35</sup> See above, para. 8.

<sup>36</sup> See above, fn. 17.

<sup>37</sup> See above, fn. 18 (the filings of the Trust Fund being: (1) [Addendum au Huitième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 \(ICC-01/04-01/06-3251\) et 6 avril 2017 \(ICC-01/04-01/06-3289\) et la Décision du 7 février 2019 \(ICC-01/04-01/06-3440-Red\)](#), 25 February 2020, ICC-01/04-01/06-3473; (2) [Annexe A au Neuvième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 \(ICC-01/04-01/06-3251\) et 6 avril 2017 \(ICC-01/04-01/06-3289\) et la Décision du 7 février 2019 \(ICC-01/04-01/06-3440-Red\)](#), 21 April 2020, ICC-01/04-01/06-3474-Conf-Exp-AnxA (public redacted version filed the same day: ICC-01/04-01/06-3474-AnxA-Red); (3) [Annexe A au Onzième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 \(ICC-01/04-01/06-3251\) et 6 avril 2017 \(ICC-01/04-01/06-3289\) et la Décision du 7 février 2019 \(ICC-01/04-01/06-3440-Red\)](#), 21 October 2020, ICC-01/04-01/06-3491-AnxA; and (4) [Annexe A au Douzième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 \(ICC-01/04-01/06-3251\) et 6 avril 2017 \(ICC-01/04-01/06-3289\) et la Décision du 7 février 2019 \(ICC-01/04-01/06-3440-Red\)](#), 21 January 2021, ICC-01/04-01/06-3497-Conf-Exp-AnxA (public redacted version filed on 12 May 2021: ICC-01/04-01/06-3497-AnxA-Red)).



Appeals Chamber,<sup>38</sup> I do not understand the assessments of the eligibility of victims that were undertaken by the Trust Fund in the *Lubanga* case to be directly challenged in the present *Ntaganda* Reparations Appeals. It is my understanding that the issues under consideration in the *Ntaganda* Reparations Appeals are, *inter alia*: the effect of the joint financial liability of Mr Lubanga and Mr Ntaganda on the amount of reparations for victims;<sup>39</sup> the potential implications of the adoption, in the *Ntaganda* case, of the reparations programme in the *Lubanga* case, specifically, of the *per capita* cost to repair established for each of the direct victims in the *Lubanga* case;<sup>40</sup> the manner of delegation of the victim eligibility assessments to the Trust Fund in the *Ntaganda* case supposedly without any guiding criteria for the Trust Fund having been established by Trial Chamber VI therefor;<sup>41</sup> and the alleged impediment that the Reparations Order poses to the right of Mr Ntaganda to challenge the eligibility of victims who may benefit from a reparations award against him.<sup>42</sup> That there may be some overlap between the victims in the *Lubanga* and *Ntaganda* cases does not mean that I have determined the eligibility of victims in the *Ntaganda* case currently on appeal before the Appeals Chamber or that issues decided with respect to reparations in *Lubanga* fall to be re-considered in the *Ntaganda* Reparations Appeals. I also do not see it as relevant that the Trust Fund was, at that time, involved in an assistance mandate programme in Ituri, as I do not believe that programme to be under direct challenge in these appeals.<sup>43</sup> Thus, the issues settled in the *Lubanga* case do not appear to be under consideration in the *Ntaganda* Reparations Appeals. Furthermore, no victim eligibility assessments were made by the Trust Fund in the *Ntaganda* case whilst I was a member of the Board of Directors for the Trust Fund.

23. As for the role of the Trust Fund in the *Ntaganda* case, the fact that it made observations before the Trial Chamber in the case on three occasions during my tenure on its Board of Directors, does not mean that I cannot participate in the *Ntaganda* Reparations Appeals objectively. I do not read the Trust Fund to have made definitive

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<sup>38</sup> [Annex A to Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 order for reparations \(amended\)](#), 3 March 2015, ICC-01/04-01/06-3129-AnxA, paras 54 *et seq.*

<sup>39</sup> [Defence Appeal Brief](#), Ground 15 (paras 255-256).

<sup>40</sup> [Appeal Brief of the Common Legal Representative of the Victims of the Attacks](#), paras 120-121.

<sup>41</sup> [Defence Appeal Brief](#), Grounds 11-12 (paras 177, 205-214).

<sup>42</sup> [Defence Appeal Brief](#), Ground 10 (paras 177, 189-195).

<sup>43</sup> See [Disqualification Request](#), para. 24.

submissions on wholly identical points that arise in the appeals briefs before the Appeals Chamber. Thus, I cannot have prejudged the issues on appeal in a manner in which I would be precluded from approaching the appeals with an open mind. To avoid predetermining any of the issues on appeal, I will not delve into the matter further in these observations, although the Plenary of Judges may wish to engage in a substantive assessment of my reading of the issues on appeal.

24. Finally, it cannot be ignored that the previous capacity in which I could be said to have been involved with the *Ntaganda* case was *administrative* in nature (the Trust Fund being an administrative body); a role incomparable with the nature of my judicial duties in the Appeals Chamber in the *Ntaganda* Reparations Appeals.

25. The onus of demonstrating the existence of an objectively reasonable appearance of bias in the eyes of a well-informed observer rests on the applicant seeking the disqualification.<sup>44</sup> From the above, it is not my view that a fair-minded and informed observer would apprehend bias on my part whilst sitting on the *Ntaganda* Reparations Appeals. It is my view that the questions posed by the Defence in paragraph 33 of the Disqualification Request can be answered in the affirmative.

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<sup>44</sup> [Ntaganda Disqualification Decision](#), para. 33.