

1 International Criminal Court
2 Appeals Chamber
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Marc Perrin de Brichambaut, Judge Piotr Hofmański,
6 Judge Luz del Carmen Ibáñez Carranza, Judge Solomy Balungi Bossa and
7 Judge Gocha Lordkipanidze
8 Appeals Judgment - Courtroom 2
9 Monday, 12 September 2022
10 (The hearing starts in open session at 4.31 p.m.)
11 THE COURT USHER: [16:31:37] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [16:32:16](Microphone not
15 activated)
16 THE COURT OFFICER: [16:32:18] Good afternoon, Mr President. Good afternoon,
17 your Honours.
18 This is the situation in the Democratic Republic of the Congo, in the case of The
19 Prosecutor versus Bosco Ntaganda, case reference ICC-01/04-02/06.
20 And for the record, we're in open session.
21 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [16:32:42](Interpretation)
22 My name is Marc Perrin de Brichambaut. I am the Presiding Judge in the case of
23 the Prosecutor v Bosco Ntaganda. My colleague judges, the plenary in this case,
24 including Judge Piotr Hofmański, Madam Judge Luz del Carmen Ibáñez Carranza,
25 Madam Judge Solomy Balungi Bossa and Mr Judge Gocha Lordkipanidze.

1 Could I ask the parties and participants to introduce themselves for the record,
2 starting with the Defence.

3 The Defence has the floor.

4 MS GIBSON: [16:33:35] Thank you very much, and good afternoon, Mr President,
5 your Honours. Appearing today for Mr Ntaganda is our lead counsel,
6 Stéphane Bourgon, who I believe is joining us via video link. And here in
7 The Hague, Judi Mionki, Mélissa Beaulieu-Lussier, Benjamin Willame and myself
8 Kate Gibson. Thank you very much.

9 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [16:34:06](Interpretation) Thank
10 you very much.

11 The group of victims number 2, please.

12 MR SUPRUN: [16:34:11](Interpretation) Good afternoon, your Honour,
13 your Honours. The victims of the attacks are represented by Fiona Lau, associate,
14 and myself Dmytro Suprun, counsel with the Office of Public Counsel for Victims.
15 Thank you.

16 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [16:34:27](Interpretation)
17 The group of victims number 1, please.

18 MS PELLET: [16:34:32](Interpretation) Thank you, your Honour. Ladies and
19 gentlemen, your Honours, the former child soldiers are represented by
20 Lars van Litsenborgh and by myself Sarah Pellet, counsel with
21 the Office of Public Counsel for Victims.

22 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [16:34:49](Interpretation) Thank
23 you very much.

24 The Trust Fund for Victims, please.

25 MR FALL: [16:34:54](Interpretation) Good afternoon, your Honour, your Honours.

1 On behalf of the Trust Fund for Victims today, in the absence of Franziska Eckelmans,
2 the executive director interim, whose apologies I present. Michele Gagliardini is
3 here and myself Cheikh Fall. Thank you.

4 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [16:35:20](Interpretation) Thank
5 you very much.

6 I note that Mr Ntaganda is also present in the courtroom.

7 The Appeals Chamber is issuing a judgment speaking about two groups of victims in
8 this case, with a reparations order by the order from 8 March. And I'm referring to
9 this order as being the Impugned Decision.

10 Due to the interconnection of the grounds raised in the two cases, I count to -- I intend
11 to deal with them in the same way as they are dealt with in the judgment.

12 On 8 March 2021, the Trial Chamber issued the Impugned Decision assessing
13 Mr Ntaganda's liability for reparations at \$30 million. This Impugned Decision was
14 issued following Mr Ntaganda's conviction for his conduct, as a high level member of
15 the *Union des Patriotes Congolaise* and its military wing, the *Forces patriotiques pour la*
16 *libération du Congo*, in the events that took place in Ituri district of the Democratic
17 Republic of Congo in 2002 and 2003.

18 Today's judgment by the Appeals Chamber addresses the appeals against
19 the Impugned Decision of both Mr Ntaganda and Victims Group 2.

20 In its appeal, the Defence raises 13 grounds of appeal against the Impugned Decision,
21 while Victims Group 2 raise seven. The various grounds of appeal allege errors as to
22 specific evidentiary issues related to how applications for reparations should be
23 assessed, in addition to those affecting broader issues challenging the very approach
24 taken by the Trial Chamber to the reparations proceedings in this case.

25 The appellants also argue that the Impugned Decision was premature, referring to

1 matters that will be addressed under different grounds of appeal. The issues raised
2 in the many grounds of appeal are both complex and contain extensive overlap, both
3 internally, within the individual appeals, but also between both appeals. Such issues
4 include allegations that many of the Defence submissions were overlooked and
5 according to which the Impugned Decision was not sufficiently reasoned, that it did
6 not have the opportunity to challenge the eligibility of victims to benefit from
7 reparations, as it neither had access to the applications of potential beneficiaries nor
8 the opportunity to make observations thereon. Other novel and complex issues
9 raised include those relating to questions of whether transgenerational harm should
10 be recognised, whether children born out of rape and sexual slavery are direct victims
11 of the crimes of which Mr Ntaganda was convicted, and whether persons to whom
12 a direct victim was of significant importance may qualify as indirect victims.
13 The Appeals Chamber's ruling, which I shall present now, is unanimous. As I shall
14 set out in more detail later, the Appeals Chamber has found that the Trial Chamber,
15 Trial Chamber I, committed the following errors in the issuance of the Impugned
16 Decision.

17 First, the Trial Chamber I erred in failing to make any appropriate determination in
18 relation to the number of potentially eligible or actual victims with a right to
19 reparations and/or to provide a reasoned decision in relation to the number.

20 Secondly, the Trial Chamber erred in failing to provide an appropriate calculation, or
21 to set out sufficient reasoning for the amount of the monetary award against
22 Mr Ntaganda.

23 Third, the Trial Chamber erred in issuing the Impugned Decision without having
24 assessed and ruled upon victims' applications for reparations, and that
25 the Trial Chamber did not lay out a procedure for the Trust Fund for Victims to carry

1 out an eligibility assessment while it ought to have set out at least the most
2 fundamental parameters of this procedure already in the Impugned Decision.
3 Fourth, the Trial Chamber erred in failing to provide reasons in relation to the concept
4 of transgenerational harm and the evidentiary guidance to establish such harm,
5 the assessment of harm concerning the health centre in Sayo and the breaks in
6 the chain of causation when establishing harm caused by the destruction of that
7 health centre, and, finally, the presumption of physical harm for victims of these
8 attacks.

9 The cumulative effect of these errors materially affects the Impugned Decision issued
10 in this case. This reparations order was made without having any concrete estimate
11 as to one of its fundamental parameters, namely the number of victims whose harm it
12 was intended to repair, and without ruling upon any requests of victims for
13 reparations. It is also not discernible from the reparations order how the sum of
14 US\$30 million was arrived at and, therefore, whether it is capable of appropriately
15 repairing the harms suffered by the victims or fairly establishing the liability of
16 Mr Ntaganda. Furthermore, the Trial Chamber did not provide sufficient reasoning
17 for some evidentiary issues.

18 In light of that, the Appeals Chamber deems it appropriate to reverse the findings of
19 the Trial Chamber on these matters and to remand them for the Trial Chamber to
20 issue a new reparations order taking into account the terms of the judgment that will
21 be notified at the close of this hearing.

22 I shall now turn to a more detailed summary of the findings.

23 The remainder of the arguments presented by the Defence of the group of victims is
24 rejected.

25 So, as I turn for a detailed summary of the findings of the Appeals Chamber, I ask for

1 a certain degree of patience because it's going to take quite long to enumerate them all.
2 With it concerns the applicability of the requirement to provide a reasoned opinion
3 at the reparations stage.

4 The Defence, in its second ground of appeal, argues that the Trial Chamber failed to
5 provide sufficient reasons to reach determinations on elements that were essential to
6 the Impugned Decision and other matters contained therein.

7 The Appeals Chamber finds it appropriate to address that question together with
8 the additional arguments that both the Defence and Victims Group 2 submit in the
9 grounds of appeal in which they both impugn and challenge the corresponding
10 findings as erroneous. This concerns, firstly, the alleged lack of reasoning in relation
11 to the Trial Chamber's determination not to rule on applications for reparations and
12 the Defence's role in that process; secondly, the alleged lack of reasoning in relation to
13 the number of beneficiaries; thirdly, the alleged lack of reasoning concerning
14 the amount of the reparations award; and fourth, the alleged lack of reasoning in
15 relation to additional categories of victims and further evidentiary matters.

16 Where it concerns the grounds of appeal relating to the number of potentially eligible
17 beneficiaries of the award for reparations, the Defence, under the fourteenth ground
18 of its appeal, argues that the Trial Chamber erred in the manner in which it
19 determined the number of potentially eligible beneficiaries of reparations.

20 Victims Group 2 challenges the same part of the Impugned Decision under the first,
21 third and fourth grounds of their appeal. The Appeals Chamber will address
22 the issues arising out of these grounds of appeal together.

23 The Appeals Chamber recalls its jurisprudence according to which the number of
24 victims will be an important parameter for determining what reparations are
25 appropriate; in its inquiry, a trial chamber must endeavour to obtain an estimate that

1 is as concrete as possible; and if the trial chamber resorts to estimates as to
2 the number of victims, such estimates must be based on a sufficiently strong
3 evidential basis; any uncertainties must be resolved in favour of the convicted person.

4 It is noted that Judge Ibáñez Carranza disagrees with the findings that any
5 uncertainties must automatically be resolved in favour of the convicted person. In
6 her view, this approach contradicts the fundamental rights of victims during
7 the reparation process.

8 The Appeals Chamber finds, therefore, in the circumstances of the present case, one of
9 the most fundamental parameters for setting the amount of reparations award is
10 the number of victims that it is intended to compensate.

11 The collective award for reparations that was made had "individualised components".
12 This was therefore not a "classic" case of collective reparations, in the sense of
13 community-based reparations in relation to which the potential number of
14 beneficiaries might, depending on the circumstance, not be of as much significance to
15 the setting of the amount of the award.

16 However, in the Impugned Decision, the Trial Chamber not only failed to
17 particularise how many "thousands of victims" there may be, but also at least gave
18 the impression that the relevant figure might be anywhere between "at least" 1,100 to
19 a "minimum of" 100,000. The Appeals Chamber cannot see that as forming a proper
20 basis upon which to fix the monetary award for reparations in this case.

21 Accordingly, the Appeals Chamber finds that the Trial Chamber failed in its duty to
22 establish an actual, or estimated, number of victims of the award that was as concrete
23 as possible and based upon a sufficiently strong evidential basis.

24 The Appeals Chamber finds that what was required was a determination of the issue
25 by the Trial Chamber. The Trial Chamber did not provide one. Accordingly,

1 the Trial Chamber committed an error in this regard.

2 The Appeals Chamber further notes that the Trial Chamber did not rule, or provide
3 any reasoning in relation to the third ground of the Victims Group 2's appeal, namely
4 the issue of whether and how the Trial Chamber considered that the number of actual
5 victims likely to come forward to claim reparations would be the same, or less than,
6 those potentially eligible so to do - and the effect that would have on any estimates
7 upon which it relied. The Trial Chamber should have carried out these evaluations.
8 Thus, it committed an error.

9 The Appeals Chamber furthermore recalls that there is an additional requirement
10 and -- there's an additional requirement where it comes to -- upon a trial chamber that
11 resorts to estimates in the number of victims, namely those must be resolved in
12 favour of the convicted person. In the present case, the Trial Chamber stated that it
13 had resolved "uncertainties in favour of the convicted person". However, the Trial
14 Chamber did not explain to which "uncertainties" it was referring; nor did it provide
15 any reasoning in relation to how any such uncertainties had been resolved "in favour
16 of the convicted person".

17 The Appeals Chamber therefore finds that the Trial Chamber erred, firstly, in failing
18 to make any appropriate determination of the potentially eligible or actual victims of
19 the award; furthermore by failing to provide a reasoned decision in relation to its
20 conclusion about that number; and, finally, in failing to provide any reason in relation
21 to the uncertainties that it stated it had resolved in favour of the convicted person.

22 The Appeals Chamber considers that the aforementioned errors had a material effect
23 on the Impugned Decision: the basis of one of its fundamental parameters, namely
24 the number of victims who would benefit from the award for reparations, was either
25 not appropriately determined or was insufficiently reasoned.

1 In light of the foregoing, the Appeals Chamber deems it appropriate to reverse
2 the findings of the Trial Chamber on those matters and to remand to it the issue of
3 how many victims are likely to come forward to benefit from reparations in
4 the present case.

5 With regards to the grounds of appeal challenging the amount of the award for
6 reparations.

7 The Appeals Chamber notes that both the Defence, in its second and fifteenth
8 grounds of appeal, and Victims Group 2, in their second, fourth and fifth grounds of
9 appeal, challenge the manner in which the Trial Chamber determined the amount of
10 the reparations award.

11 The Defence argues that the Trial Chamber erred in ruling that "the number of
12 potential beneficiaries is not a precondition to the issuance of the reparations order"
13 and thereby failed to establish an estimate of potential beneficiaries for the purpose of
14 setting the amount of liability.

15 The Appeals Chamber recalls that it has established that the Trial Chamber erred by
16 not providing at least an estimate of the number of victims that was as concrete
17 a possible and based upon a sufficiently strong evidential basis. In light of the fact
18 that the number of victims is, in the circumstances of the present case, one of its
19 fundamental parameters, it follows that setting the amount of the award without
20 reference -- without reference to any concrete estimate of the number of victims
21 whose harm it was intended to repair constitutes an error. That error materially
22 affected the Impugned Decision. Indeed, setting the amount of the award without
23 even having carried out an appropriately estimated number of victims makes it
24 impossible to know whether it will be both adequate to repair the harm of the victims
25 affected by the crimes and fair for Mr Ntaganda in respect of his total liability.

1 The Appeals Chamber notes that both the Defence and Victims Group 2 raise
2 the issue of lack of reasoning regarding the amount of the award for which
3 the Trial Chamber held Mr Ntaganda liable. The Appeals Chamber considers that
4 certain aspects of the Impugned Decision in relation to the amount of the award were
5 insufficiently reasoned.

6 The Appeals Chamber notes that the Trial Chamber did not provide any specific
7 information, any calculation or other reasoning as to how it reached the amount of
8 \$30 million. The Trial Chamber set out various costs to repair the harms of
9 the victims. However, when it set the amount of the award, it did not make any
10 concrete reference to the figures that it had earlier set out, nor did it provide any
11 breakdown or other explanation of the figure of \$30 million or any calculations
12 therefor.

13 The Appeals Chamber therefore finds that the Trial Chamber should have stated
14 more concretely whether it was appropriate to rely on the estimates as to the cost to
15 repair that it had received and the extent to which it had done so to arrive at its figure
16 of \$30 million.

17 Furthermore, it's not clear how the amount awarded was apportioned between
18 the two groups of victims in this case.

19 In sum, it is neither discernible how the Trial Chamber arrived at the amount of
20 \$30 million that it awarded nor how it was intended to apportion that amount
21 between the different groups of victims.

22 The Appeals Chamber further observes that the Trial Chamber stated that, in
23 establishing the total reparations award at \$30 million, it had set "an amount that it
24 considers fair and appropriate [...] resolving uncertainties in favour of the convicted
25 person and taking a conservative approach".

1 The Appeals Chamber finds that the Trial Chamber was required to elaborate upon
2 why it considered that the award of \$30 million was "fair" and in what way it was
3 "appropriate" and took -- how it had taken "a conservative approach". Due to the
4 Trial Chamber's failure so to do, the victims cannot know whether the amount
5 awarded is sufficient to repair the harm that they have suffered, nor can the Defence
6 know whether the amount of the award in fact represents a sum for which
7 the convicted person should be held liable.

8 Similarly, the Trial Chamber merely stated that it had resolved uncertainties in favour
9 of the convicted person without explaining what those "uncertainties" were, nor how
10 they had been resolved, nor how that resolution had been in favour of Mr Ntaganda.
11 The Trial Chamber should have done so.

12 In light of the absence of reasoning in relation to the amount of the award, it is not
13 clear whether the Trial Chamber intended to set the award on an *ex aequa et bono* basis,
14 whether in whole or in part. The Appeals Chamber therefore cannot further
15 consider whether it might have been appropriate. Yet what is clear is that
16 purporting to set an award for reparations *ex aequa et bono* - or on any other
17 basis - does not relieve a trial chamber from the requirement to provide the parties
18 with clear reasons for reaching its decision, which means, in reparations proceedings,
19 it has to provide a calculation or explanation which is intelligible of the award based
20 upon the available body of facts and information that the Trial Chamber has before it.
21 As has just been noted, the Trial Chamber did not provide any specific information,
22 explanation or calculation that would make it possible for the parties or the public to
23 understand how it reached the figure of \$30 million. The Appeals Chamber
24 considers that the Trial Chamber erred by proceeding in this manner.

25 The cumulative errors that have just been identified materially affected the Impugned

1 Decision. The part of the Impugned Decision setting the amount of the award is
2 therefore reversed and remanded to the Trial Chamber to assess and explain fully
3 what the appropriate award for reparations should be in the present case, taking into
4 account all known circumstances at the date of that assessment.

5 Under the second and fifteenth grounds of appeal, the Defence argues in general that,
6 despite the Defence's submissions on this matter, the Trial Chamber failed to indicate
7 how Mr Lubanga's and Mr Ntaganda's joint liability for reparations affects
8 the amount of financial liability.

9 The Appeals Chamber finds that the Trial Chamber correctly imposed joint and
10 several liability. Furthermore, the Trial Chamber correctly found that in relation to
11 the type of liability which it imposed on Mr Ntaganda, both he and Mr Lubanga
12 "remain liable to reimburse the funds that the Trust Fund for Victims may eventually
13 use to complement the reparation awards for their shared victims".

14 However, the Appeals Chamber has already found that the Trial Chamber erred in its
15 failure to specify the manner in which the award was arrived at and how it was to be
16 apportioned. As such, the Trial Chamber should specifically set out the manner in
17 which the imposition of joint liability impacts the overall amount and
18 the apportionment of the award as part of its reconsideration of these issues.

19 Where it concerns the grounds of appeal relating to applications for reparations,
20 the eligibility assessment and the delegations of functions to the Trust Fund for
21 Victims.

22 Under the first, second, tenth, eleventh and twelfth grounds of appeal, the Defence
23 challenges, firstly, the Trial Chamber's failure to examine applications for reparations
24 and, secondly, the Trial Chamber's failure to enable the Defence to meaningfully
25 challenge such applications. Both the Defence, under the aforementioned grounds

1 of appeal, and Victims Group 2, under the sixth ground of their appeal, also challenge
2 the Trial Chamber's delegation of powers to the Trust Fund for Victims.
3 This is in relation to the Trial Chamber's finding that, in light of the type of
4 reparations awarded, it saw "no need to rule on the merits of individual applications
5 for reparations, pursuant to Rule 94 of the Rules". The Trial Chamber found it
6 appropriate to establish the eligibility criteria for reparations rather than identifying
7 the victims eligible itself.
8 Regarding the Defence argument that the Trial Chamber did not assess any victims'
9 applications for reparations, the Appeals Chamber recalls that the Statute and
10 the Rules attach significant weight to applications for reparations. While it held in
11 the Katanga case that ruling on all applications for reparations is not necessary in
12 cases involving a large number of such applications, its Katanga decision must be
13 seen in light of the award for reparations made in that case, which was individual
14 reparations in that case. The Appeals Chamber finds that, in certain cases, it will be
15 desirable for a trial chamber to rule on the information contained in the applications.
16 They are an important source of information for the trial chamber's determination of
17 the award. In particular, information contained in applications for reparations "may
18 be crucial to assess the types of harm alleged", which, in turn, is relevant to
19 a determination of "the appropriate modalities for repairing the harm caused with
20 a view, ultimately, to assessing the costs of the identified remedy".
21 Reparations proceedings are judicial proceedings, resulting in a judicial order fixing
22 a monetary award for which the convicted person is held liable.
23 The Appeals Chamber therefore underscores that, irrespective of whether
24 a trial chamber makes individual findings on applications for reparations or not,
25 the paramount consideration is that its determination of the award for reparations

1 must be based on a sufficiently strong evidential basis.

2 In sum, while there may be instances where it's appropriate to proceed without ruling
3 on any applications, there may be cases in which the evidential basis other than that
4 contained in applications for reparations will be insufficient. In those circumstances,
5 a trial chamber is required to rule upon applications for reparations to determine
6 whether relevant alleged facts have been established to the applicable standard.

7 There may be circumstances in which, despite concrete efforts, it will not be possible
8 to receive applications from all potential beneficiaries within a given period of time,
9 but that they are likely to come forward in the future. In these circumstances,
10 a trial chamber may choose instead to rule only on a representative sample of
11 applications for reparations and then to proceed to estimate how many more potential
12 beneficiaries will come forward in the future. In such cases, the information
13 contained in the sample of applications for reparations may be essential to
14 a determination of the types of harm and the cost to repair the harm with respect to
15 all beneficiaries, including those who come forward only at the implementation stage
16 of the proceedings.

17 Turning to the present case, the Appeals Chamber is of the view that
18 the Trial Chamber ought to have examined at least a sample of applications prior to
19 arriving at its determinations of the number of potentially eligible victims for
20 reparations and the amount of the award, so as to have been able to base the award
21 on a stronger evidential basis.

22 The Appeals Chamber therefore concludes that the Trial Chamber erred by failing to
23 rule on at least a sample of applications and that this error necessarily materially
24 affected the Impugned Decision.

25 Turning to the tenth ground of appeal, the Defence submits that the Trial Chamber

1 erred by failing to give any role to the Defence in the process of assessing
2 the eligibility of victims.

3 As a result of the Trial Chamber's error in failing to rule on at least a sample of
4 applications for reparations, the Defence was unable to participate in the assessment
5 of the eligibility of victims to benefit from reparations, which the Trial Chamber
6 ought to have carried out as part of its review of the aforementioned sample.

7 The Trial Chamber erred in this respect.

8 The Defence further challenges the extent of the delegation of what it perceives to be
9 judicial functions to the Trust Fund for Victims in relation to the eligibility assessment
10 of beneficiaries. The Appeals Chamber notes that, in light of Regulation 62 of
11 the Regulations of the Trust Fund for victims, the delegation of authority in this
12 respect to the Trust Fund for Victims does not, on its own, constitute an error.

13 The Defence arguments also concern the absence of a procedure for the Trust Fund
14 for Victims to carry out the eligibility assessment. The Trial Chamber did not define
15 such a procedure and directed the Trust Fund for Victims to include in the draft
16 implementation plan "a detailed proposal as to the way in which it expects to conduct
17 the administrative eligibility assessment". The Appeals Chamber finds that
18 the Trial Chamber ought already to have set out at least the most fundamental
19 parameters of this procedure in the Impugned Decision. While an administrative
20 screening of eligibility can be carried out by the Trust Fund for Victims, the outcome
21 of any such screening must be judicially approved by the Trial Chamber. Those
22 whom the Trust Fund for Victims finds not to be eligible should be able to challenge
23 the Trust Fund for Victims' findings before the Trial Chamber. The Trial Chamber's
24 failure to indicate these parameters of the future procedure for the eligibility
25 assessment amounts to an error.

1 The Defence also argues, in the context of delegation of authority for the Trust Fund
2 for Victims, that the Trial Chamber merely lists harms suffered by indirect victims,
3 without linking them to the crimes that form part of the conviction.

4 The Appeals Chamber notes that the Trial Chamber made it clear that a link between
5 the harms suffered by the indirect victims and specific crimes of which Mr Ntaganda
6 was convicted must be established with respect to the direct victims.

7 The Appeals Chamber is thus not persuaded that the Trial Chamber failed to link
8 the harm suffered by indirect victims to the crimes that form part of the conviction.

9 The Defence argues that the Trial Chamber merely listed available modalities of
10 reparations, leaving the choice of options to the Trust Fund for Victims. The
11 Appeals Chamber recalls that "it is possible that not all the modalities will ultimately
12 be reflected in the awards for reparations". The Appeals Chamber is therefore
13 satisfied that it was not an error for the Trial Chamber to allow the Trust Fund for
14 Victims to design the implementation of the award for reparations on the basis of
15 some, rather than all, modalities which the Trial Chamber found to be appropriate.

16 Turning to the issue of the cost of the programmes which the Trust Fund for Victims
17 is tasked to design, the Appeals Chamber notes Victims Group 2's argument that
18 the Trial Chamber failed to provide guidance on the cost to repair the harm and on
19 the allocation of resources between various groups of victims, leaving "unfettered
20 discretion" to the Trust Fund for Victims and leading to unequal treatment. Without
21 prejudice to its findings on the calculation of the award, the Appeals Chamber notes
22 that the Trial Chamber referred to the cost estimates for various programmes made by
23 the Trust Fund for Victims and directed the Trust Fund for Victims to keep the costs
24 at a minimum. The Appeals Chamber is therefore satisfied that, although
25 the Trial Chamber did not set the specific amounts with respect to each reparations

1 programme, its guidelines for the Trust Fund for Victims, based on various cost
2 estimates, are sufficiently clear in the circumstances.

3 The Defence argues that the Trial Chamber erred by failing to put in place
4 a monitoring system over the Trust Funds for Victim's decisions on victims' eligibility.
5 Victims Group 2 contend that, as a result of the Trial Chamber's failure to set out
6 the basic parameters, it will be nearly impossible for the parties to challenge the Trust
7 Fund for Victim's proposals.

8 The Appeals Chamber notes that the applicable regulations of the Regulations of
9 the Trust Fund for Victims require the Fund in addition to submitting the draft
10 implementation plan for the Trial Chamber's approval, firstly, to consult
11 the Trial Chamber "on any questions that arise in connection with the implementation
12 of the award"; secondly, to provide updates on progress; thirdly, to submit a final
13 narrative and financial report. The Trial Chamber finds that these requirements
14 provide for sufficient oversight by the Trial Chamber of the implementation process,
15 including the design of reparations programmes by the Trust Fund for Victims and
16 their implementation.

17 For the foregoing reasons, the Appeals Chamber finds an error in the Trial Chamber's
18 failure to set out the requirement of a judicial approval of the Trust Fund for Victim's
19 findings on eligibility. It rejects the remainder of the Defence's and Victim 2's
20 grounds or sub-grounds of appeal concerning the extent of the Trial Chamber's
21 delegation of authority to the Trust Fund for Victims.

22 I am now coming to the grounds of appeal on evidentiary issues.

23 The Defence's third ground of appeal alleges that the Trial Chamber "committed
24 a mixed error of law and fact by adopting a new principle, i.e. 'do no harm', without
25 taking into consideration the current security situation and the rising tensions among

1 communities in Ituri". While it is not clear to the Appeals Chamber whether
2 the Defence is also challenging the legality of the do no harm principle as such, as
3 described by the Trial Chamber, the Appeals Chamber understands the Defence
4 argument to be, broadly, that the Trial Chamber erred in failing to take into account
5 the Defence's submissions as to the ongoing armed conflict in relation to the do no
6 harm principle.

7 The Appeals Chamber notes that indeed the Trial Chamber did not refer to
8 the Defence's submissions as to the protracted armed conflict, nor did it refer to
9 the Registry reports, which are also relied on by the Defence. The Trial Chamber did,
10 however, refer in different footnotes to some submissions related to the concerns that
11 victims should be equally treated during the reparations stage and the ongoing
12 insecurity in Ituri.

13 Although not identified by the Trial Chamber as concerning the principle of do no
14 harm, its language reflects the principle of do no harm, when it specifically referred to
15 the "unstable security situation on the ground", the Trial Chamber referred in
16 a footnote to the submissions of Victims Group 1, Victims Group 2 and the First
17 Experts Report as to insecurity in the region.

18 As a result, the Appeals Chamber finds that the Trial Chamber therefore clearly
19 admitted that the principle of do no harm required ongoing consideration by
20 the Trial Chamber itself, and the Trust Fund for Victims, during the implementation
21 process, in the process of identification and assessment of victims' applications, and in
22 the decision as to particular reparation projects.

23 Furthermore, the Appeals Chamber notes that, although the Trial Chamber could
24 have expressly referred to the Defence's submissions, the Defence has not indicated
25 how this information it points to would have affected Mr Ntaganda's liability for

1 reparations, or how it would have affected the Impugned Decision in general, and
2 what the result would have been if it had. In particular, the Defence has not shown
3 concretely how the Trial Chamber's approach would harm other communities or
4 victims of crimes for which Mr Ntaganda was not convicted.

5 Since the Defence has not demonstrated any error in Trial Chamber's approach to
6 the do no harm principle, the Appeals Chamber rejects the Defence's third ground of
7 appeal.

8 Under the fourth ground of appeal, the Defence challenges the Trial Chamber's
9 findings related to the issue of transgenerational harm and to documentary evidence
10 to be presented together with future applications for reparations. The Defence also
11 presents arguments related to the health centre in Sayo.

12 Regarding transgenerational harm, the Defence argues that the Trial Chamber erred
13 in law in its interpretation of the concept of transgenerational harm. It also argues
14 that the Trial Chamber erred in relation to the evidentiary criteria for
15 transgenerational harm. In addition, under its second ground of appeal, the Defence
16 states that the Trial Chamber failed to provide reasons regarding the Defence's
17 submissions on, *inter alia*, transgenerational harm.

18 For the reasons that follow, the Appeals Chamber finds that the Trial Chamber indeed
19 failed to provide sufficient reasoning regarding the concept of transgenerational harm
20 and the evidentiary criteria to prove it.

21 Although the Defence made these substantial submissions before the Trial Chamber,
22 they were not addressed in the Impugned Decision and the Trial Chamber gave no
23 indication of any caution the Trust Fund for Victims would need to exercise in
24 assessing applications claiming reparations as a result of transgenerational harm.

25 The Appeals Chamber also notes that the Impugned Decision lacks any substantial

1 guidance to the Trust Fund for Victims as to how it should assess an application for
2 reparations based on transgenerational harm. Further, as the Trial Chamber did not
3 rule upon any application, it failed to address this issue on the basis of any
4 applications that had been filed. The Appeals Chamber observes that
5 the Trial Chamber did not assess the reliability of two expert reports, nor did it
6 address the Defence's arguments regarding that evidence. The Appeals Chamber
7 finds that, in a case such as this, where the concept of transgenerational harm is
8 indeed novel, and due to the fact that it is still evolving, it was incumbent upon
9 the Trial Chamber to demonstrate that it had properly and fairly taken the parties'
10 submissions into account.

11 In the Appeals Chamber's view, the Trial Chamber's overall approach to the making
12 of findings as to the existence and characteristics of transgenerational harm renders
13 unclear the overall findings made by it and, as such, amounts to an error.

14 The Appeals Chamber finds that, by failing to properly assess the characteristics of
15 this form of harm, and by not taking into account the Defence's submissions,
16 the Trial Chamber failed to meet the requirement to provide a reasoned opinion on
17 the matter.

18 In these circumstances, the Appeals Chamber considers it appropriate to reverse
19 the Trial Chamber's findings in relation to transgenerational harm and to remand
20 the matter to the Trial Chamber for it to assess and properly reason the matter based
21 on submissions sought from the parties and having assessed the reliability and
22 credibility of the expert evidence on the record.

23 The Defence's further argument is that the Trial Chamber failed to require
24 documentary evidence in support of the applications for reparations. As noted
25 earlier, the Trial Chamber did not rule on any applications for reparations. Its

1 findings as to the documentary evidence required for applications were general in
2 nature. The Trial Chamber intended its findings to be applied by the Trust Fund for
3 Victims in the future, when presented with applications for reparations. As
4 discussed earlier, this matter will be remanded to the Trial Chamber for it to assess
5 requests for reparations that are received.

6 The Appeals Chamber emphasises that, when making a decision as to the eligibility of
7 a victim for reparations, the enquiry is whether the relevant facts have been
8 established to the applicable standard of proof. The standard of proof must be met,
9 regardless of whether or not a victim has been in a position to provide supporting
10 documentary evidence.

11 The Appeals Chamber notes that, in this case, the Trial Chamber required that victims
12 "provide sufficient proof of the causal link between the crime and the harm suffered,
13 based on the specific circumstances of the case". The Trial Chamber clarified that
14 "what is 'sufficient' for the purposes of a victim meeting the burden of proof, will
15 depend upon the specific circumstances of the case, including any difficulties
16 the victims may face in obtaining evidence".

17 The Appeals Chamber considers that what the Trial Chamber stated was, in general
18 terms, in keeping with the Appeals Chamber's previous jurisprudence.

19 It emphasises that, "to allow the trial chamber to properly reach a conclusion, it is in
20 the interest of the person who is unable to supply any documentation to explain his or
21 her reasons for this inability".

22 Although the Trial Chamber acknowledged that difficulties may exist for victims to
23 produce documentary evidence, this cannot be understood as providing *carte blanche*
24 to victims to come forward without supporting evidence.

25 In view of the foregoing, the Appeals Chamber finds that the Defence has not

1 demonstrated an error.

2 The Defence submits that "the Trial Chamber erred by relying on unreliable evidence
3 to meet the burden of proof in relation to the damage to the Sayo health centre".

4 The Appeals Chamber notes that Mr Ntaganda was convicted, under count 17, of
5 the crime of intentionally directing attacks against protected objects as a war crime,
6 namely against the health centre in Sayo, in the context of the First Operation, and
7 the Trial Chamber, in the Impugned Decision, found that reparations could be
8 awarded for direct victims who showed they had suffered harm as a result of this
9 crime. However, it did not rule, as indicated earlier, on any applications seeking
10 reparations, including any application regarding the harm to the health centre in
11 Sayo.

12 The Trial Chamber relied on an expert report, to which the parties filed observations.
13 However, neither the conviction judgment nor the sentencing judgment finds that, as
14 a result of the crime of directing attacks against protected objects, physical damage
15 was caused to the health centre. The health centre of Sayo.

16 The Trial Chamber did not address the issue of whether actual physical harm caused
17 to the health centre in Sayo indeed falls within the scope of the conviction and
18 sentencing judgments of Mr Ntaganda. The Trial Chamber should have done so.

19 Furthermore, the Trial Chamber erred in failing to properly assess the credibility and
20 reliability of the expert report, relied upon for the Trial Chamber's findings relating to
21 the health centre in Sayo.

22 The Appeals Chamber considers it appropriate to reverse the Trial Chamber's
23 findings in relation to the health centre in Sayo and to remand the matter to
24 the Trial Chamber for it to address the matter again.

25 On this point, Judge Ibáñez Carranza observes that, even if no individual applications

1 for reparations for the harm to the health centre of Sayo have been submitted,
2 the Trial Chamber should also consider that such harm affected the Sayo community,
3 and that the latter may be eligible for reparations as a collective victim.
4 The Defence submits that the Trial Chamber erred in relation to what it stated
5 generally as to possible breaks in the chain of causation.
6 The Appeals Chamber notes that, in the Impugned Decision, the Trial Chamber
7 observed that "it is required that the crimes for which a person was convicted were
8 the 'proximate cause' of the harm for which reparations are sought".
9 The Appeals Chamber can find no error. Contrary to the Defence's submissions, it is
10 also incorrect to state that the Trial Chamber failed to consider that the causal link
11 may be broken by other incidents; the Trial Chamber referred to the Defence
12 submissions according to which breaks in the chain of causation should be taken into
13 account, and it clearly stated that this indeed was the case, and that they should be
14 taken into account.
15 Turning to the submission that, "particularly in the context of a protracted armed
16 conflict", the Trial Chamber failed to consider that "the causal link may be broken by
17 other incidents", the Appeals Chamber notes that this submission is related to an
18 argument the Defence raised earlier under its third ground of appeal. As noted
19 earlier, and found by the Trial Chamber, harm cannot be attributed to a convicted
20 person if a break in the chain of causation is established in a particular case. If this
21 break is shown, based on the circumstances of the protracted armed conflict, then
22 causation will not have been established. The Trial Chamber and the Trust Fund for
23 Victims will be required to assess, when presented with claims for reparations,
24 whether the chain of causation has been established, and whether specifically alleged
25 events, as a result of the protracted armed conflict, break that chain; if it is not

1 established to the requisite standard that the harm alleged by a victim has been
2 caused by Mr Ntaganda, because of a break in the chain of causation related, for
3 example, to the protracted armed conflict, or for any other reason, then this claim
4 would have to be rejected.

5 Under its sixth and seventh ground of appeal, the Defence argues that
6 the Trial Chamber "erred in law when ruling on the status of certain victims". More
7 precisely, in its sixth ground of appeal, the Defence argues that the Trial Chamber
8 erred in law by holding that the harm suffered by children born out of rape and
9 sexual slavery is a direct result of the commission of such crimes and that these
10 children may thus qualify as direct victims. Under its seventh ground of appeal,
11 the Defence argues that the Trial Chamber erred in law by finding that a person who
12 did not have a close personal relationship with a direct victim, but was nevertheless
13 "of significant importance in their lives", may be an indirect victim.

14 As the definition of indirect victims pertains to both the sixth and seventh grounds of
15 appeal, the Appeals Chamber shall first examine the issue of indirect victims as
16 pertains to the seventh ground of appeal and, second, whether children born out of
17 rape and sexual slavery qualify as direct or indirect victims.

18 In the Impugned Decision, the Trial Chamber found that those for whom the direct
19 victim is of significant importance, but with whom they have no personal relationship,
20 may receive reparations as indirect victims. The Trial Chamber further stated that
21 "the indirect victim must nevertheless demonstrate to have suffered harm because of
22 the commission of a crime against the direct victim".

23 Although the Trial Chamber's precise finding on this issue is not explained further,
24 the Appeals Chamber considers that its references to the Appeals Chamber's
25 jurisprudence provides support to its conclusion. To the extent that the applicable

1 law, including the jurisprudence to which the Trial Chamber referred, in all five
2 paragraphs of this subsection of the Impugned Decision (regarding indirect victims),
3 can show that the definition of "indirect victims" includes "other persons who
4 suffered personal harm as a result of these offences", this amounts to sufficient
5 reasoning.

6 That notwithstanding, in the Appeals Chamber's view, the Trust Fund for Victims
7 requires guidance as to what the concept of "person of significant importance, with
8 whom the indirect victim did not have a close personal relationship" could encompass
9 and where the limits lay.

10 Therefore, to provide further guidance on this concept, particularly whether
11 the Trial Chamber's approach was correct to make the challenged finding,
12 the Appeals Chamber turns to address the rest of the arguments raised under this
13 ground of appeal.

14 Although it is a matter of evidence as to whether a claimant satisfies
15 the Trial Chamber, or the Trust Fund for Victims under the Trial Chamber's view, that
16 he or she meets the requisite standard of proof to establish both his or her harm and
17 relationship to the direct victim, the Appeals Chamber considers that, leaving
18 the concept of "significant importance" undefined could oblige the fund to have to
19 define this legal concept, before it can carry out its administrative administration task.

20 Thus, the Appeals Chamber finds that, in determining whether a direct victim was of
21 significant importance to an applicant requesting to be recognised as an indirect
22 victim, the Trial Chamber and the Trust Fund for Victims shall be guided by
23 the "criterion of special bonds of affection or dependence connecting the applicant
24 with the direct victim", which "captures the essence of interpersonal relations,
25 the destruction of which is conducive to an injury on the part of indirect victims".

1 Turning to the remainder of the Defence's arguments, the Appeals Chamber notes
2 the Defence goes on to argue that the confusion created by the Trial Chamber's failure
3 is illustrated by the Trial Chamber's findings as to the disappearance of
4 *Abbé Bwangelonga*. It submits that, although clearly his disappearance "may well be
5 a great loss for at community, this will not necessarily cause deep emotional distress
6 to everyone within his extended congregation". The Appeals Chamber notes that
7 the Trial Chamber did not make any conclusion linking its findings in relation to
8 the *Abbé Bwangelonga* and its finding that indirect victims may include those to
9 whom a direct victim represented a person of significant importance in their lives.
10 Second, as to what it stated about the *Abbé Bwangelonga*, the Trial Chamber
11 discussed the harm suffered by witnesses to the crimes and referred in particular to
12 the death of *Abbé Bwangelonga* in the subsequent paragraph. The Trial Chamber
13 did not clearly -- did not make a clear finding that persons could claim reparations
14 based on harm suffered as a result of what happened to *Abbé Bwangelonga* because
15 he was a person of significant importance to them. The Trial Chamber, as stated
16 earlier, having found that those to whom a direct victim is of significant importance
17 may receive reparations as indirect victims, stated that they "must nevertheless
18 demonstrate to have suffered harm because of the commission of a crime against
19 the direct victim". Therefore, it is not the case that the entire congregation of
20 *Abbé Bwangelonga* would automatically qualify as indirect victims.

21 Turning to the next ground, the Defence argues that, contrary to the submissions of
22 all the parties and experts' reports, the Trial Chamber nevertheless found, "without
23 sufficient justification", that children born out of rape and sexual slavery are direct
24 rather than indirect victims.

25 Although the reasoning provided by the Trial Chamber in the Impugned Decision is

1 sparse, the Appeals Chamber considers that the Trial Chamber nevertheless provided
2 a reason for why it took the approach it did, which was contrary to the assumption
3 put forward by the Defence.

4 The Trial Chamber found that "children born out of rape and sexual slavery may
5 qualify as direct victims", because "the harm they suffered is a direct result of
6 the commission of the crimes of rape and sexual slavery". The Defence challenges
7 this finding, arguing that, in light of the jurisprudence of this and other courts, "to be
8 considered as a direct victim, the applicant must be the direct object of the crime
9 which forms part of the conviction, and there must be a causal link to the harmed
10 alleged".

11 The Appeals Chamber notes that this ground of appeal raises the issue of
12 the determination of the extent of harm directly caused by the conduct for which
13 the convicted person was found criminally liable. In particular, it raises the issue of
14 whether, for purposes of reparations owed for a crime, persons who suffered harm as
15 a direct result of the crime, other than those against whom the convicted person
16 committed the crime, can be considered as a direct victim.

17 In the case at hand, the Trial Chamber found that, "for direct victims, a causal link
18 must exist between the harm suffered and the crimes of which an accused is found
19 guilty", while "indirect victims must establish that, because of their relationship with
20 the direct victim, the loss, injury, or damage suffered by the direct victim gives rise to
21 their harm". The Trial Chamber went on to note that "in light of the circumstances of
22 the case, children born out of rape and sexual slavery may qualify as direct victims, as
23 the harm they suffered is a direct result of the commission of the crimes of rape and
24 sexual slavery". For the following reasons, the Appeals Chamber finds no error in
25 this conclusion.

1 Firstly, the Appeals Chamber finds that, as correctly noted by the Trial Chamber,
2 the harm that children born out of rape and sexual slavery suffer - although emerging
3 only after being born - is a direct result of the commission of the crimes of rape and
4 sexual slavery. Such harm can include the children being psychologically affected as
5 a result of learning about the violent circumstances surrounding his or her conception,
6 and being socially stigmatised and rejected by the community, not knowing who their
7 fathers were. These children can suffer materially through, for example, loss of job
8 prospects and social exclusion. They can be physically injured, for example if they
9 suffer from HIV/AIDS or other illness transmitted by the offender. The harm is both
10 directly linked to the crime (as it would not have happened "but for" the crime) and
11 was entirely foreseeable at the time the crime was committed. This type of
12 victim - a child born out of rape or sexual slavery - is a unique type of victim, and also
13 one that has suffered a unique type of harm that merits being recognised for what it is:
14 direct harm inflicted on the child.

15 The Appeals Chamber considers that the circumstances surrounding the commission
16 of the crimes of rape and sexual slavery in this case, in particular, the fact that
17 pregnancies were unwanted, creates a direct causal link with the harm that these
18 children suffered after been born. Furthermore, it is noted that some victims of rape
19 and sexual slavery were minors, constantly threatened and unable to flee, including at
20 the times when they realised that they were pregnant, which provides for a causal
21 link between the circumstances of the crimes of rape and sexual slavery, and the birth
22 of the children.

23 For all these reasons, the Appeals Chamber finds that the Trial Chamber did not err in
24 finding that children born of rape and sexual violence can be classified as direct
25 victims.

1 I shall now turn to the eighth ground of the Defence's appeal, and I can reassure that
2 will be the last ground.

3 The Appeals Chamber notes that the overarching argument of the Defence is that
4 the Trial Chamber "erred in law when resorting to presumptions of specific harms in
5 relation to certain categories of victims". To challenge the Trial Chamber's approach
6 to adopt all presumptions in the case at hand, the Defence argues that, by adopting
7 these presumptions, the Trial Chamber abused its discretion because, contrary to
8 the relevant jurisprudence, it failed to counterbalance the victims' difficulties against
9 the right of due process of the convicted person.

10 The Appeals Chamber notes that the Trial Chamber made seven presumptions. It
11 observes that the Trial Chamber specifically invited the parties and the Trust Fund for
12 Victims to make submissions on, *inter alia*, "whether any type of harm suffered by
13 the victims of Mr Ntaganda's crime may be presumed". The Appeals Chamber
14 highlights that the Defence had the opportunity to submit, and in fact submitted, its
15 observations on the presumptions recommended by the experts and requested by
16 the victims.

17 The Appeals Chamber further notes that the Trial Chamber did not expressly refer to
18 the Defence's submissions. Although it would have been preferable for
19 the Trial Chamber to have referred to these submissions expressly,
20 the Appeals Chamber notes that the Trial Chamber duly referred to the information
21 on which it relied to make the seven presumptions, namely the conviction judgment,
22 the sentencing judgment, the expert reports, submissions from the Trust Fund for
23 Victims and Victims Group 2, as well as jurisprudence from the Appeals Chamber as
24 well as decisions from other chambers. Furthermore, the Defence was able to fully
25 challenge the expert report and the victims' and the Trust Fund for Victim's

1 submissions on which the Trial Chamber relied to make the presumptions in the case
2 at hand. In these circumstances, the Appeals Chamber does not find an error in
3 the way that the Trial Chamber adopted these presumptions.

4 In any event, considering that presumptions of fact are rebuttable, shifting the burden
5 of proof to those who wish to challenge their applicability, it is expected that
6 the Trial Chamber devices an avenue where the Defence is provided with
7 a reasonable opportunity to rebut them in proceedings before the trial chamber.

8 That can be done, for example, by having access to at least a minimum amount of
9 information contained in the applications for reparations, to make specific
10 submissions and provide evidence to rebut presumptions that may not be applicable
11 to such applications.

12 The Defence further raises arguments specifically addressing certain presumptions.
13 It argues that the Trial Chamber "erred in creating presumptions of physical harm for
14 victims of the attacks who personally experienced the attacks". The Defence argues
15 that the war crimes of pillaging, attacking protected objects, seizing enemy's property
16 and destroying or seizing enemy's property do not necessarily and automatically
17 imply physical and psychological harm, as none of them require infliction of physical
18 injury. It further argues that some of the underlying acts of persecution in this case,
19 such as pillaging and destruction of property, did not involve physical harm.

20 Although the Defence seems to be restricting the concept of "physical harm" to that of
21 "infliction of physical injury", the Appeals Chamber considers that the scarce
22 reasoning of the Trial Chamber allows for this interpretation. The Trial Chamber
23 considered it "unquestionable that direct victims that personally experienced
24 the crimes committed during the attacks endured physical suffering in connection
25 with the very nature of the context of armed conflict and the attack against the civilian

1 population against which the crimes were committed". On its face, this finding
2 appears to presume that all victims from the attacks were physically injured.
3 Considering that not every victim of an attack necessarily suffers a bodily injury, and
4 that the Trial Chamber did not provide sufficient reasoning to support this conclusion,
5 the Appeals Chamber is unable to assess whether no reasonable trier of fact would
6 have reached the same conclusion.

7 In light of the foregoing, the Appeals Chamber reminds -- remands the matter for
8 the Trial Chamber to address the submissions and to examine the Defence
9 submissions to provide sufficient reasons for its findings.

10 The Defence further argues that the Trial Chamber "erred in creating a presumption
11 of psychological harm for victims who lost their home or material assets with
12 significant impact [on] their lives". The Appeals Chamber notes that the Defence
13 challenges the Trial Chamber's presumption of "psychological harm" for, *inter alios*,
14 "victims who lost their home or material assets with a significant effect on their ... life".

15 The Appeals Chamber notes that the Trial Chamber recalled specific findings it made
16 in its sentencing judgment, and it further relied on one of the expert reports and
17 submissions from the Trust Fund for Victims.

18 Contrary to the Defence's assertion, the Appeals Chamber considers that
19 the Trial Chamber was clear in indicating the information on which it
20 relied -- indicating what the information was on which it relied to make the
21 challenged presumption. Having found in the sentencing judgment the particularly
22 distressing circumstances of victims who lost their homes or properties that are
23 significant in their lives, it was not unreasonable for the Trial Chamber to presume
24 that they suffered psychological harm. Therefore, the Defence has not demonstrated
25 that no reasonable trier of fact could have made the same presumption in

1 the particular circumstances of this case.

2 And I shall now come to my conclusion, which will be very brief.

3 For all the foregoing reasons, the Appeals Chamber decided to partially reverse

4 the Impugned Decision and to remand the matter to Trial Chamber II, which is

5 directed to issue a new order for reparations, taking into account the terms of

6 the judgment, which shall be notified shortly.

7 This brings us to the end of the summary of the Appeals Chamber's judgment.

8 I would like to thank all my judge colleagues of the Appeals Chamber, as well as

9 the legal officers and interns who have carried out huge amount of work to reach this

10 unanimous judgment of the Appeals Chamber. I would also like to thank all

11 Registry staff who assisted in enabling this hearing to proceed in a partially virtual

12 manner.

13 The hearing is adjourned.

14 THE COURT USHER: [17:48:23] All rise.

15 (The hearing ends in open session at 5.48 p.m.)