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No.: **ICC-01/04-02/06**
Date: **25 January 2024**

THE APPEALS CHAMBER

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR v. BOSCO NTAGANDA

Public

Public Redacted Version of the "Response of the Common Legal Representative of the Victims of the Attacks to the 'Defence Appellant Brief against the 14 July Addendum to the Reparations Order of 8 March 2021' (No. ICC-01/04-02/06-2876-Conf)" (ICC-01/04-02/06-2887-Conf, dated 2 January 2024)

Source: **Office of Public Counsel for Victims (CLR2)**

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I. INTRODUCTION

1. Pursuant to regulation 59 of the Regulations of the Court (the "Regulations"), the Common Legal Representative of the Victims of the Attacks (the "Legal Representative" or the "CLR2") presents his Response to the "Defence Appellant Brief against the 14 July Addendum to the Reparations Order of 8 March 2021" (the "Defence Appeal Brief"),[1] which is set out, to the extent possible, in the same order as in the Defence Appeal Brief.[2] He submits that all Thirteen Defence Grounds of Appeal should be dismissed for the reasons set out in his below submissions.

II. PROCEDURAL BACKGROUND[3]

2. On 8 July 2019, Trial Chamber VI found Mr Bosco Ntaganda guilty of 18 counts of war crimes and crimes against humanity.[4]

3. On 7 November 2019, Mr Ntaganda was sentenced to 30 years of imprisonment.[5]

4. 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.[6]

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[1] See the "Defence Appellant Brief against the 14 July Addendum to the Reparations Order of 8 March 2021", No. ICC-01/04-02/06-2876-Conf A7, 30 October 2023. A public redacted version was filed on 5 December 2023 as No. ICC-01/04-02/06-2876-Red A7 (the "Defence Appeal Brief").
[2] See regulation 59(2) of the Regulations of the Court.
[3] 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.
[4] See the "Judgment" (Trial Chamber VI), No. ICC-01/04-02/06-2359, 8 July 2019.
[5] See the "Sentencing Judgment" (Trial Chamber VI), No. ICC-01/04-02/06-2442, 7 November 2019.
[6] See the "Reparations Order" (Trial Chamber VI), No. ICC-01/04-02/06-2659, 8 March 2021 (the "Reparations Order").

5. On 16 March 2021, the Presidency assigned the present case to a newly constituted Trial Chamber II (the "Chamber").[7]

6. On 30 March 2021, the Appeals Chamber upheld the Judgment and the Sentencing Judgment.[8]

7. On 8 April 2021, the Legal Representative and the Defence filed their respective notices of appeal against the Reparations Order.[9]

8. On 7 June 2021, the Legal Representative and the Defence filed their respective appeal briefs against the Reparations Order.[10]

9. On 23 July 2021, the Chamber issued the "Decision on the TFV's initial draft implementation plan with focus on priority victims".[11]

10. On 12 September 2022, the Appeals Chamber issued the "Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'" (the "*Ntaganda* Appeals Judgment").[12] The Appeals Chamber partially remanded the Reparations Order to the Chamber finding that Trial Chamber VI failed,

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

[8] 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 (the "Appeals Conviction Judgment"); 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 (the "Appeals Sentencing Judgment").

[9] 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.

[10] 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 A4, 7 June 2021 (the "CLR2 Appeal Brief of 2021"); and the "Defence Appellant Brief against the 8 March Reparations Order", No. ICC-01/04-02/06-2675 A5, 7 June 2021.

[11] 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.

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

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 decision in relation to its conclusion about that number; (ii) provide an appropriate calculation, or set out sufficient reasoning, for the amount of the monetary award against Mr Ntaganda; (iii) assess and rule upon victims' applications for reparations; (iv) lay out at least the most fundamental parameters of a procedure for the Trust Fund for Victims (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 Sayo health centre 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.[13]

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

12. On 14 July 2023, the Chamber issued the Impugned Decision.[15]

13. On 25 November 2022, the Chamber issued a decision, *inter alia*, approving the sample of victims (the "Sample") as assembled by the Victims Participation and Reparations Section (the "VPRS").[16]

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[13] *Idem*, paras. 745-748.
[14] 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 (the "Decision of 25 October 2022").
[15] See the "Public Redacted 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-Red, 14 July 2023 (the "Impugned Decision"), with Public Annex I, No. ICC-01/04-02/06-2858-AnxI (the "Public Annex I"), Confidential *ex parte* and Confidential Redacted Annex II, No. ICC-01/04-02/06-2858-Conf-AnxII-Red (the "Confidential Annex II"), and Public Annex III, No. ICC-01/04-02/06-2858-AnxIII, 14 July 2023.
[16] See the "Decision on the Registry submission in compliance with the "Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'" (Trial Chamber II), No. ICC-01/04-02/06-2794, 25 November 2022 (the "Decision of 25 November 2022"), p. 23; with Annex 1, No. ICC-01/04-02/06-2794-Anx1.

14. On 11 August 2023, the Chamber issued the "First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations" (the "Decision on the TFV's DIP").[17]

15. On 16 August 2023, the Legal Representative submitted his Notice of Appeal against the Impugned Decision, including a request for suspensive effect of his appeal in relation to the Chamber's decision on the eligibility for reparations with respect to four victims.[18]

16. On the same date, the Defence submitted its Notice of Appeal against the Impugned Decision and its Request for suspensive effect of its appeal.[19]

17. On 18 August 2023, the Appeals Chamber assigned Judge Gocha Lordkipanidze as the Presiding Judge in the Legal Representative's and Defence's appeals against the Impugned Decision.[20]

18. On 23 August 2023, the Appeals Chamber issued the "Order inviting the Trust Fund for Victims to submit observations on the requests for suspensive effect and

[17] See the "First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations" (Trial Chamber II), No. ICC-01/04-02/06-2860-Conf, 11 August 2023. A public redacted version was filed on 30 August 2023 as No. ICC-01/04-02/06-2860-Red (the "Decision on the TFV's DIP").
[18] See the "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", No. ICC-01/04-02/06-2862, 16 August 2023 (the "CLR2's Notice of Appeal").
[19] See the "Defence Notice of Appeal against the 14 July Addendum to the Reparations Order of 8 March 2021", No. ICC-01/04-02/06-2863-Conf, 16 August 2023. A public redacted version was filed on 22 August 2023 as No. ICC-01/04-02/06-2863-Red; and the "Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect", No. ICC-01/04-02/06-2864-Conf, 16 August 2023. A public redacted version was filed on 22 August 2023 as No. ICC-01/04-02/06-2864-Red (the "Defence Notice of Appeal and Request for Suspensive Effect").
[20] See the "Decision on the Presiding Judge of the Appeals Chamber in the appeals of the common legal representative of the victims of the attacks and of Mr Bosco Ntaganda against the decision of Trial Chamber II entitled 'Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659'" (Appeals Chamber), No. ICC-01/04-02/06-2865 A6 A7, 18 August 2023.

setting a time limit for responses to the requests and observations".[21] In particular, the Appeals Chamber invited the TFV to submit observations on issues arising from the parties' requests for suspensive effect, by 31 August 2023.[22] It further invited the Legal Representative and the Defence to submit a response to the opposing party's request for suspensive effect and the TFV's observations, by 7 September 2023.[23]

19. On 31 August 2023, the TFV submitted its "Observations on Requests for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence".[24]

20. On 7 September 2023, the "Response of the Common Legal Representative of the Former Child Soldiers to the request for suspensive effect of the Addendum to the Reparations Order introduced by the Defence (No. ICC-01/04-02/06-2864-Red)"was submitted.[25] On the same day, the "Defence Response to the request for suspensive effect of the Common Legal Representative of the victims of the attacks and the observations of the Trust Fund for Victims"[26] and the "Response of the Common Legal Representative of the Victims of the Attacks to the 'Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect' and the Trust Fund for Victims' 'Observations on the Requests for

[21] See the "Order inviting the Trust Fund for Victims to submit observations on the requests for suspensive effect and setting a time limit for responses to the requests and observations" (Appeals Chamber), No. ICC-01/04-02/06-2866 A6 A7, 23 August 2023.
[22] *Idem*, para. 7.
[23] *Idem*, paras. 8-9.
[24] See the "Observations on Requests for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence", No. ICC-01/04-02/06-2867 A6 A7, 31 August 2023.
[25] See the "Response of the Common Legal Representative of the Former Child Soldiers to the request for suspensive effect of the Addendum to the Reparations Order introduced by the Defence (No. ICC-01/04-02/06-2864-Red)", No. ICC-01/04-02/06-2870 A6 A7, 7 September 2023.
[26] See the "Defence Response to the request for suspensive effect of the Common Legal Representative of the victims of the attacks and the observations of the Trust Fund for Victims", No. ICC-01/04-02/06-2871 A6 A7, 7 September 2023.

Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence'"[27] (the "CLR2's 7 September 2023 Response"), were submitted.

21. On 13 September 2023, the Appeals Chamber issued the "Order concerning reclassification",[28] the Legal Representative responded by email on the same day,[29] and the CLR2's 7 September 2023 Response was also reclassified as public on the same day.[30]

22. On 29 September 2023, the Defence submitted, by email, a request for extension of time to submit its appeal brief against the Impugned Decision until 30 October 2023.[31] On 2 October 2023, the Legal Representative submitted, by email, his response to the Defence's request for extension of time wherein he did not oppose the request provided that the same extension of time is also granted to him.[32]

23. On the same day, the Common Legal Representative of the Former Child Soldiers (the "CLR1") informed the Appeals Chamber, by email, that she did not oppose the Defence's request for an extension of time, nor she did oppose the CLR2's similar request.[33]

24. On 5 October 2023, the Appeals Chamber decided that the: (i) time limit for the filing of the appeal briefs for the Defence and the CLR2 is extended to 30 October 2023

[27] See the "Response of the Common Legal Representative of the Victims of the Attacks to the 'Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect' and the Trust Fund for Victims' 'Observations on the Requests for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence'", No. ICC-01/04-02/06-2869-Conf A6 A7, 7 September 2023 (reclassified as Public pursuant to the Appeals Chamber's instructions dated 13 September 2023) (the "CLR2's 7 September 2023 Response").
[28] See the "Order concerning reclassification" (Appeals Chamber), No. ICC-01/04-02/06-2872 A6 A7, 13 September 2023.
[29] See the Email correspondence from the CLR2 dated 13 September 2023 at 11:32.
[30] See the Email correspondence from the CMS dated 13 September 2023 at 18:30.
[31] See the Email correspondence from the Defence dated 29 September 2023 at 19:03.
[32] See the Email correspondence from the CLR2 dated 2 October 2023 at 12:10.
[33] See the Email correspondence from the CLR1 dated 2 October 2023 at 12:30 and at 14:34.

at 16:00; and (ii) responses may be filed within 60 days of notification of the appeal briefs, pursuant to regulation 59 of the Regulations.[34]

25. On 6 October 2023, the TFV inquired with the Legal Representative for instructions regarding the processing of the dossiers of [REDACTED] victims he previously referred to the TFV for inclusion in the Initial Draft Implementation Plan (the "IDIP") programme, who are in a similar situation to the four victims whose eligibility was negatively determined by the Chamber, noting that said decision is the subject of the Legal Representative's current Appeal Brief and that the CLR2's request for suspensive effect is currently pending before the Appeals Chamber.[35]

26. On 9 October 2023, the Legal Representative requested the TFV to put the dossiers of the concerned [REDACTED] victims on hold pending the Appeals Chamber's determination of his request for suspensive effect and further clarity on the matter.[36]

27. On 30 October 2023, the Legal Representative[37] and the Defence[38] filed their Appeal Briefs against the Impugned Decision.

III. CLASSIFICATION

28. Pursuant to regulation 23*bis*(2) of the Regulations, the present submissions are classified as confidential following the classification of the Defence Appeal Brief. A public redacted version will be filed in due course.

[34] See the Email correspondence from the Appeals Chamber dated 5 October 2023 at 15:21.
[35] See the Email correspondence from the TFV dated 6 October 2023 at 12:45.
[36] See the Email correspondence from the CLR2 dated 9 October 2023 at 09:26.
[37] See the "Appeal Brief 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'", No. ICC-01/04-02/06-2875-Conf A6, 30 October 2023. A public redacted version was filed on 31 October 2023 as No. ICC-01/04-02/06-2875-Red A6 (the "CLR2 Appeal Brief").
[38] See the Defence Appeal Brief, *supra* note 1.

IV. APPLICABLE LAW

29. According to the standards of appellate review, not all alleged errors of the first instance Chamber warrant the intervention of the Appeals Chamber, but only those that "*materially affected the impugned decision*".[39] As held by the Appeals Chamber, where an appellant alleges that a factual finding is unreasonable, they must explain why this is the case, for example, by demonstrating that it was "*contrary to logic, common sense, scientific knowledge and experience*".[40] An appellant is also obliged to present "*cogent arguments*" which set out the alleged error and explain how the first instance Chamber erred.[41] Furthermore, an appellant is required to demonstrate *how* the alleged error materially affected the impugned decision.[42] The Appeals Chamber also held that "*whether an error or the material effect of that error has been sufficiently substantiated will be determined on a case-by-case basis*".[43] Finally, an appellant must formulate an alleged error with a sufficient degree of precision.[44]

30. The above requirements are in addition to the formal conditions stipulated in regulation 58(2) of the Regulations, which requires the appellant: (i) to refer to "*the relevant part of the record or any other document or source of information as regards any factual issue*"; (ii) to set out each legal reason with reference "*to any relevant article, rule,*

[39] 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 A7 A8, 18 July 2019 (the "*Lubanga* 2019 Judgment"), para. 28.
[40] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 37.
[41] See the Appeals Conviction Judgment, *supra* note 8, para. 48.
[42] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 37, and the Appeals Conviction Judgment, *supra* note 8, para. 48.
[43] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 37 *referring* to 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, para. 74; the Appeals Conviction Judgment, *supra* note 8, para. 48; the Appeals Sentencing Judgment, *supra* note 8, para. 33; and the Public Redacted "Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction" (Appeals Chamber), No. ICC-01/04-01/06-3121-Red A5, 1 December 2014, para. 44.
[44] See *e.g.* the "Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I on jurisdiction and stay of the proceedings" (Appeals Chamber), No. ICC-02/11-01/11-321 OA2, 12 December 2012, para. 44.

regulation or other applicable law, and any authority cited in support thereof"; and (iii) to identify where applicable, the finding or ruling challenged in the decision "*with specific reference to the page and paragraph number*".

V. SUBMISSIONS

1. Preliminary remark

31. As a preliminary remark, the Legal Representative notes that the Defence has varied its grounds of appeal without the Appeals Chamber's approval. Indeed, in its Appeal Brief, the Defence states that "*the alleged failure of Trial Chamber II to order the TFV to provide information to the Defence in relation to the use of a questionnaire designed to obtain information from priority victims, mentioned in the first part of Ground 13 in the Defence Notice of Appeal, is not argued herein*" and that "[t]*he Defence no longer intends to pursue this alleged error, which is addressed in part in Ground 5*".[45] However, pursuant to regulation 61 of the Regulations, an appellant who wishes to vary their grounds of appeal shall present an application before the Appeals Chamber for leave to do so and shall specify the variation sought and the reasons in support thereof.[46] The Defence failed to submit such an application in the present instance. Nevertheless, the Legal Representative will respond to the varied Grounds of Appeal as presented in the Defence Appeal Brief.

2. Defence Grounds of Appeal 1, 2 and 3

32. Under its Grounds of Appeal 1, 2 and 3, the Defence alleges that the Chamber committed errors of law and procedure by failing to render a new reparations order; by holding that the IDIP submitted by the TFV on 24 March 2022 remained fully operational further to the Appeals Judgment; by failing to include compulsory provisions in the Impugned Decision; and by failing to consider that the Updated

[45] See the Defence Appeal Brief, *supra* note 1, para. 2.
[46] See regulation 61(1) of the Regulations of the Court.

Draft Implementation Plan (the "Updated DIP") submitted by the TFV in March 2022 was also impacted by the cumulative errors identified in the Appeals Judgment.[47] As the Defence Grounds of Appeal 1, 2 and 3 are argued cumulatively in the Defence Appeal Brief, the Legal Representative will address them to the extent possible following the same order, pursuant to regulation 59(2) of the Regulation.

a) Defence Ground of Appeal 1

33. Under its Ground of Appeal 1, the Defence alleges that "[i]*ssuing the 14 July Addendum was an error*". [48]

34. The Legal Representative recalls at the outset that the Appeals Chamber reversed Trial Chamber VI's findings contained in the Reparations Order on a number of specific matters and remanded them to the Chamber to issue a 'new reparations order' taking into account the terms of the *Ntaganda* Appeals Judgment.[49] It emphasised in this regard that "*the* [Reparations Order] *is partially reversed and remanded*"[50] and clarified that "*the objective at this stage of the proceedings must be* [for the Chamber] *to correct the errors identified in a way that both enables the order for reparations to be based upon an appropriately solid foundation and that causes minimum disruption to the overall reparation process*".[51] Being essentially concerned with "*the significance of the remand, and the changes required*" and the importance to ensure that "*each party will have a fresh right to appeal*", the Appeals Chamber went to conclude that "*the new decision of the Trial Chamber* […] *will* […] *in essence constitute a new 'order for reparations' within the meaning of article 82(4) of the Statute* […]".[52]

[47] See the Defence Appeal Brief, *supra* note 1, Heading 'GROUNDS 1, 2 and 3', p. 5.
[48] *Idem*, Heading, p. 10.
[49] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 750.
[50] *Idem*, para. 759.
[51] *Idem*, para. 757.
[52] *Idem*, para. 758.

35. It is submitted that in light in particular of the Appeals Chamber's last conclusion, it appears therefore that should all matters within the scope of the remand be addressed *de novo* by the Chamber, the latter's '*new decision*' will in essence constitute a '*new reparations order*' the Chamber was directed to issue, and thus regardless of the title of the new decision. The Appeals Chamber did not direct the Chamber to revise and/or complement Trial Chamber VI's other findings contained in the Reparations Order which fall outside the scope of the remand and/or the scope of the appeals against the Reparations Order. Doing otherwise would be against the very objective of the proceedings on appeal before the Court which is corrective in nature, conducted with the purpose of reviewing the proceedings before the first instance chamber,[53] and limited to the specific grounds of appeal raised.[54]

36. The Legal Representative is of the view that contrary to the Defence's contentions,[55] the Chamber did in substance comply with the Appeals Chamber's instructions. Indeed, the Defence does not seem to be disputing that the Chamber did address all the matters within the scope of the remand. The Chamber issued '*a new decision*' which, although entitled "Addendum to the Reparations Order of 8 March 2021", is in essence '*a new reparations order*', and which provides the parties with a fresh right to appeal within the meaning of article 82(4) of the Statute.[56] The Chamber was also correct in finding that "*the present Addendum shall be considered an integral part of the Reparations Order, to be read in conjunction with it, and be understood as complementing and replacing therefrom only the specific issues that are dealt with hereafter*".[57] It should be emphasised again that the Chamber was not required to revise and/or complement Trial Chamber VI's other findings contained in the Reparations Order

[53] See *e.g.*, the "Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's 'Authorisation pursuant to article 18(2) of the Statute to resume the investigation'" (Appeals Chamber), No. ICC-01/21 OA, 18 July 2023, para. 49.
[54] See the "Judgment on Lubanga's Interim Release Appeal" (Appeals Chamber), No. ICC-01/04-01/06-824 OA7, 13 February 2007, para. 71.
[55] See the Defence Appeal Brief, *supra* note 1, paras. 22-27.
[56] See the Impugned Decision, *supra* note 15, para. 16.
[57] *Idem*, para. 15.

which fall outside the scope of the remand and/or the scope of the appeals against the Reparations Order.

37. The Defence takes issue with "*the creation of a patchwork of concurrently operative decisions and implementation plans, thereby complicating and compromising the reparations process for those who seek to implement it, or benefit from it*".[58] However, it fails to demonstrate how such a situation causes any prejudice to the Defence and/or Mr Ntaganda. In fact, the Defence's role is limited at the present stage[59] and is minimum, if at all, at the implementation stage of the reparations, since the Defence will not be involved in the assessment of the eligibility for reparations of the victims.[60] It is submitted that although it would have been preferable for practical reasons to have a single decision governing the design and implementation of the reparations proceedings, there is no indication that the relevant stakeholders will be unable to properly understand and/or apply the relevant criteria of the legal framework of the reparations in the present case, regardless of the fact that said criteria are provided in several decisions.

38. In an attempt to demonstrate "*the concrete prejudice stemming from the Trial Chamber's refusal to implement the Appeals Chamber's direction to issue a new order for reparations* […]",[61] the Defence refers to the Legal Representative's submissions concerning 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.[62] The Legal Representative submits that the Defence misrepresents his submissions. Indeed, as argued by the Legal Representative in his Appeal Brief, the

[58] See the Defence Appeal Brief, *supra* note 1, para. 29.
[59] See the "Decision on the TFV's First Progress Report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Directors' decision pursuant to regulation 56 of the Regulations of the Trust Fund" (Trial Chamber II), No. ICC-01/04-02/06-2718-Conf, 29 October 2021 (dated 28 October 2021), para. 20. A public redacted version was filed on the same date as No. ICC-01/04-02/06-2718-Red.
[60] See the *Ntaganda* Appeals Judgment, *supra* note 12, paras. 366-369.
[61] See the Defence Appeal Brief, *supra* note 1, para. 38.
[62] *Idem*, para. 37.

Chamber committed said errors because it disregarded or misapplied Trial Chamber VI's and its own findings on the territorial scope of the reparations and the previously established eligibility criteria,[63] and clearly not because of the Chamber's refusal to issue a '*new reparations order*'. Said errors are a matter of substance and not of formatting.

39. Consequently, it is submitted that by issuing the Impugned Decision being an integral part of the Reparations Order, and by not issuing a decision entitled "New Reparations Order", the Chamber committed no error. Even assuming that the Chamber erred by technically not issuing a decision entitled "New Reparations Order", this alleged error is not material warranting the intervention of the Appeals Chamber. The Legal Representative recalls in this regard that not all alleged errors of the first instance Chamber warrant the intervention of the Appeals Chamber, but only those that "*materially affected the impugned decision*".[64] Should the Defence's approach under its Ground of Appeal 1 be followed, the relief will imply the need for either the Chamber or the Appeals Chamber to compile within a new single reparations order all previous relevant decisions rendered by Trial Chamber VI and the Chamber. From the procedural perspective, it would be at odds to compile in a new single decision not only the Chamber's relevant findings which were reversed by the Appeals Chamber, but also the parts of the respective decisions which were not reversed and have continued to be valid and/or operative. Moreover, needless to say that the entire exercise will take months, if not years, of working process and will further delay the implementation of the reparations the victims have been waiting for already 20 years. This will be in stark contrast with "*the overall objective of ensuring that reparations in this case are awarded to victims as expeditiously as possible*".[65]

[63] See the CLR2 Appeal Brief, *supra* note 37, para. 36.
[64] See the *Lubanga* 2019 Judgment, *supra* note 39, para. 28.
[65] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 756.

40. Accordingly, it is submitted that since the Defence failed to demonstrate that the Chamber committed any discernible error which materially affected the Impugned Decision, its Defence Appeal Ground 1 should be dismissed. The Legal Representative is of the view that instead of resetting to zero the design of the entire reparations process in the present case as requested by the Defence, the Appeals Chamber should correct the Chamber's discrete errors as identified under the Three Grounds in his Appeal Brief to unable the implementation of reparations on a reasonably sound basis.

b) Defence Ground of Appeal 2

41. Under its Ground of Appeal 2, the Defence alleges that "[t]*he prejudice resulting from Trial Chamber II issuing the 14 July Addendum as opposed to a new order for reparations is compounded by its ruling that the IDIP remained fully operational following the Appeals Judgment*".[66]

42. The Legal Representative notes that although the Defence attempts to link its contentions under the present Ground of Appeal to the alleged prejudice resulting from the Chamber's alleged failure to issue a '*new reparations order*', in effect the Defence challenges the validity of the IDIP following the *Ntaganda* Appeals Judgment. It is submitted that by doing so, the Defence attempts to re-litigate issues which have already been adjudicated upon by the Chamber.

43. Indeed, the Defence previously raised its challenges against the validity of the IDIP on several occasions and based on the same contentions, in particular in its Submissions of 7 October 2022[67], 9 November 2022[68] and more recently in its Notice of

[66] See the Defence Appeal Brief, *supra* note 1, Heading, p. 17.
[67] See the "Observations on behalf of the convicted person on the Trust Fund for Victims' Seventh Update Report on the Implementation of the Initial Draft Implementation Plan", No. ICC-01/04-02/06-2785-Conf, 7 October 2022 (reclassified as public pursuant to Trial Chamber II's instruction dated 23 November 2022) (the "Defence Submissions of 7 October 2022"), paras. 15-17.
[68] See the "Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order", No. ICC-01/04-02/06-2791, 9 November 2022 (the "Defence Submissions of 9 November 2022"), paras. 13-15.

Appeal and Request for Suspensive Effect on 7 September 2023 and now in its Appeal Brief.[69] In its submissions of 7 October 2022, the Defence argued that "*the TFV's* [IDIP] *and the steps taken pursuant to the IDIP, were based on the authority granted to the TFV in the Reparations Order, which has now been remanded*", such that "*Trial Chamber II has been ordered to issue a new reparations order taking into account the errors identified in the Appeal Judgment*", and "[u]*ntil Trial Chamber II issues a new order for reparations within the meaning of Article 82(4) of the Statute, implementation of the IDIP cannot proceed*".[70] In its Submissions of 9 November 2022, the Defence argued that "*the IDIP continues to be operational, but without any reasoning given as to* why *this is the case*".[71] The Defence's contentions have already been addressed by the Chamber partially in its Decision of 25 October 2022[72] and in its subsequent Decision of 16 November 2022 with reference to the Appeals Chamber's findings regarding the impact of the *Ntaganda* Appeals Judgment on the operation of the IDIP.[73]

44. Indeed, in its Decision of 25 October 2022, the Chamber recalled that "*in the Reparations Order, it instructed the TFV 'to submit in the shortest time possible* […] *an initial draft implementation plan focused exclusively on the options for addressing the most urgent needs of victims that require priority treatment'*" and further noted that "*the Initial Draft Implementation Plan (the 'IDIP'), was approved subject to certain amendments, is now fully operational and has not been affected by the Appeals Judgment*".[74] The Chamber also reiterated "*the Appeals Chamber's consideration that, taking into account 'the context of these*

[69] See the Defence Notice of Appeal and Request for Suspensive Effect, *supra* note 19, paras. 23-25; and the Defence Appeal Brief, *supra* note 1, paras. 44-62.
[70] See the Defence Submissions of 7 October 2022, *supra* note 67, paras. 15-16.
[71] See the Defence Submissions of 9 November 2022, *supra* note 68, paras. 13-15.
[72] See the Decision of 25 October 2022, *supra* note 14.
[73] See the "Decision on the TFV's Sixth and Seventh Update Reports on the Implementation of the Initial Draft Implementation Plan" (Trial Chamber II), No. ICC-01/04-02/06-2792-Conf, 16 November 2022 (reclassified as public pursuant to Trial Chamber II's instruction dated 24 November 2022) (the "Decision of 16 November 2022"), para. 9.
[74] See the Decision of 25 October 2022, *supra* note 14, para. 17, which *refers* to footnote 27 where the Chamber indicated that it "*deems necessary to provide this clarification*" in light of the Defence Submissions of 9 October 2022 mentioned therein.

reparations proceedings, which are taking place nearly two decades after the commission of the crimes of which Mr Ntaganda has been convicted […] *the need to repair the harm suffered by the victims of these crimes as expeditiously as possible is a relevant consideration*'".[75]

45. In its Decision of 16 November 2022, the Chamber, as it had noted in its Decision of 25 October 2022,[76] rejected the Defence's contentions that the TFV's Seventh Report and the IDIP as a whole "*is based on a flawed premise*" as "[t]*he IDIP and the measures taken in its implementation stem directly from the Reparations Order, which has been reversed*".[77] It emphasised that "*the Appeals Judgment only partially reversed the Reparations Order and remanded it for the Chamber to address specific issues, which do not include the IDIP*".[78] The Appeals Chamber found in this regard that the Reparations Order:

> "[…] *represented the start of the implementation process of the award for reparations, rather than an aspect of the proceedings that has remained static and unchanged since that decision was issued. The TFV has already undertaken steps in relation to the implementation of the order for reparations; and the parties are able to make submissions in relation to those further developments during the course of the implementation process.* Those developments are outside the scope of the present appeal […]".[79]

46. It is submitted that by making these findings, the Appeals Chamber acknowledged that, first, it was not concerned with the matters of the reparations proceedings which fall outside the scope of the appeals before it, and second, despite the remanding of specific matters to the Chamber, the other matters or processes outside the scope of the appeals, including the validity of the IDIP, continued to be valid and/or operative.

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[75] *Idem*, para. 18.
[76] *Idem*, paras. 17-18.
[77] See the Decision of 16 November 2022, *supra* note 73, para. 9.
[78] *Idem*, para. 9 and footnote 28, which *refers* to the *Ntaganda* Appeals Judgment, *supra* note 12, paras. 750, 757 and 759.
[79] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 755 (emphasis added by the Chamber).

47. The Chamber was not required to address the validity of the IDIP in the Impugned Decision as the respective findings were not reversed by the *Ntaganda* Appeals Judgment. Since the matter was not addressed in the Impugned Decision, it does not arise from the latter, and accordingly, the Defence cannot raise this matter as part of its Appeal under article 82(4) of the Statute.

48. As argued above, the Defence's contentions on the validity of the IDIP were previously raised before the Chamber and have already been adjudicated upon in its Decisions of 25 October 2022 and 16 November 2022. The Defence did not request leave to appeal said decisions in accordance with rule 155 of the Rules of Procedure and Evidence (the "Rules") at the time it disagreed with the Chamber's respective findings, and has therefore forfeited its right to appeal. By raising the same issues and putting forward the same arguments, the Defence attempts to re-litigate this matter, which has already been adjudicated upon. In doing so, the Defence demonstrates nothing more than a mere disagreement with the Chamber's previous decisions, rather than putting forward a valid ground of appeal, and there is no basis for re-litigating upon said issues. The Defence cannot remedy its failure to challenge the Chamber's findings in due course by raising the same issues as part of its Appeal a year later —particularly where said issues do not arise from the Impugned Decision.

49. Consequently, it is submitted that since the Defence attempts to re-litigate the issues which have already been adjudicated upon in the Chamber's previous decisions and which do not arise from the Impugned Decision, its Ground of Appeal 2 should be dismissed.

c) Defence Ground of Appeal 3

50. Under its Ground of Appeal 3, the Defence alleges that "[t]*he prejudice resulting from Trial Chamber II issuing the 14 July Addendum as opposed to a new order for reparations is further compounded by its failure to consider that the Updated Draft Implementation Plan*

submitted the TFV on 24 March 2022 required substantial modifications further the Appeals Judgment".[80]

51. The Legal Representative notes that similarly to its Ground of Appeal 2, although the Defence attempts to link its contentions under the present Ground of Appeal to the alleged prejudice resulting from the Chamber's alleged failure to issue '*a new reparations order*', in effect the Defence (i) challenges the validity of the Updated DIP insofar as it was submitted by the TFV before the *Ntaganda* Appeals Judgment,[81] and also takes issue with the fact that (ii) the parties did not have an opportunity to make submissions for the purpose of modifying the Updated DIP in terms of the *Ntaganda* Appeals Judgment,[82] and that (iii) the parties have been deprived of the ability to appeal some aspects of the reparations process insofar as they were addressed in the Decision on the TFV's DIP rather than in the Impugned Decision.[83]

52. As argued above,[84] the Chamber was only required to address *de novo* in the Impugned Decision specific matters which were remanded to it by the *Ntaganda* Appeals Judgment, and was not required to revise and/or complement Trial Chamber VI's other findings contained in the Reparations Order which fall outside the scope of the remand and/or the scope of the appeals against the Reparations Order.

53. It is submitted that since the validity of the Updated DIP and the aspects of the reparations process referred to by the Defence[85] were not addressed in the Impugned Decision, they do not arise from the latter, and accordingly, the Defence cannot raise these issues as part of its Appeal under article 82(4) of the Statute. The Defence acknowledges that all relevant information was provided in the Decision on the TFV's

[80] See the Defence Appeal Brief, *supra* note 1, Heading, p. 23.
[81] *Idem*, para. 69.
[82] *Idem*, para. 70.
[83] *Idem*, para. 68.
[84] See *supra* paras. 34-35.
[85] See the Defence Appeal Brief, *supra* note 1, para. 64.

DIP.[86] Had the Defence have an issue with the validity of the Updated DIP and/or with the fact that the parties did not have an opportunity to make submissions for the purpose of modifying the Updated DIP in terms of the *Ntaganda* Appeals Judgment and/or been in disagreement with the Chamber's findings contained in its Decision on the TFV's DIP, it could have requested leave to appeal the Decision on the Updated DIP in accordance with rule 155 of the Rules, but it opted not to do so. The Defence cannot remedy its failure to challenge the Chamber's findings in due course and in accordance with the applicable procedure by raising the same issues as part of its Appeal—particularly where said issues do not arise from the Impugned Decision. The Defence cannot arguably claim of being deprived of "*the ability to appeal, as of right*",[87] when it opted not to exercise its right to request leave to appeal against the Decision on the TFV's DIP in accordance with rule 155 of the Rules, and has therefore forfeited its right to appeal. In addition, while being put on notice about the Chamber's intention "*to rule on all aspects of the Draft Implementation Plan*" without "*further submissions from the TFV or the parties*",[88] the Defence as a party to the present proceedings had an opportunity to raise the issue of the validity of the Updated DIP, but again opted not to do so.

54. Consequently, it is submitted that since the Defence attempts to re-litigate the issues which have already been adjudicated upon in the Chamber's previous decisions and which do not arise from the Impugned Decision, its Ground of Appeal 3 should be dismissed.

3. Defence Ground of Appeal 4

55. The Legal Representative submits that contrary to the Defence's contentions,[89] the Chamber did in fact, include in the Impugned Decision the relevant parameters,

[86] *Idem*, para. 68.
[87] *Ibid*.
[88] See the Impugned Decision, *supra* note 15, para. 362.
[89] See the Defence Appeal Brief, *supra* note 1, Heading 'GROUND 4', p. 27.

criteria and instructions capable of properly guiding the verification body in carrying out a meaningful eligibility assessment of potential victims pursuant to the balance of probabilities standard of proof applicable in reparations proceedings.

a) Evidentiary and eligibility criteria

56. In accordance with the Appeals Chamber's directions,[90] the Chamber has set out in detail in the Impugned Decision the evidentiary criteria, standards of proof and conditions of the eligibility of victims with reference to the parts of the Reparations Order which were not reversed by the Appeals Chamber, and to other relevant decisions.[91]

57. Indeed, regarding the evidentiary criteria and standards of proof, the Chamber recalled that in the Reparations Order, "*it clearly stated that victims eligible for reparations must provide sufficient proof of identity, of the harm suffered, and of the causal link between the crime and the harm*".[92] Furthermore, the Chamber indicated that "*reparations proceedings require a less exacting standard of proof than trial proceedings and, in line with previous jurisprudence, it adopted the 'balance of probabilities' test as the appropriate standard of proof in reparations proceedings*".[93] In relation to the causal link element, the Chamber "*adopted the 'but/for' standard of causation as to the relationship between the crimes and the harm*",[94] and held that it is "*required that the crimes for which a person was convicted were the 'proximate cause' of the harm for which reparations are sought*".[95] It also emphasised that "*the 'proximate cause' is one that is legally sufficient to result in liability, assessing,* inter

[90] See the *Ntaganda* Appeals Judgment, *supra* note 12, paras. 10 and 341.
[91] See the Impugned Decision, *supra* note 15, para. 33. See also paras. 34-46 and 53-148, which set out in detail the Chamber's reasoning and analysis applied to the victims in the Sample and deceased victims.
[92] See the Impugned Decision, *supra* note 15, para. 34, which *refers* to the Reparations Order, *supra* note 6, para. 137.
[93] *Idem,* para. 35, which *refers* to the Reparations Order, *supra* note 6, para. 136.
[94] *Idem*, para. 36, which *refers* to the Reparations Order, *supra* note 6, para. 132.
[95] *Ibid*.

alia, *whether it was reasonably foreseeable that the acts and conduct underlying the conviction would cause the resulting harm*".[96]

58. The Chamber then turned to the conditions of eligibility for reparations, and as far as direct and indirect victims of the attacks are concerned, established the four requirements which should be met at the required standard of proof.[97]

59. As regards the first eligibility requirement 'Supporting documentation', after having referred to the Appeals Chamber's jurisprudence on the matter[98] and to the parties' respective submissions,[99] the Chamber held that: "*what is necessary to satisfy the evidentiary standard* [of a balance of probabilities] *and what is reasonable to expect from the victims in support of their claims, depends on the specific circumstances of the case*";[100] "*the Chamber has a certain amount of flexibility in the assessment of the dossiers and a determination that they are 'sufficient' is not only made on the basis of the evidence* [but] *this is not to be understood as providing* "carte blanche" *to victims to come forward without supporting documentation*";[101] "[t]*he Chamber is expected to conduct an appropriate enquiry, on a case-by-case basis, and ensure that the victims dossiers meet the appropriate standard of proof*";[102] and "[w]*hile it is in the interest of the person who is unable to supply any documentation to explain the reasons for this inability, the Chamber is not prevented from finding a person eligible for reparations in circumstances where the person did not provide such justifications*".[103]

60. The Chamber recalled then that, on the one hand, victims may face challenges in producing documentary evidence to support their claims, noting in particular the victims' difficulties in obtaining or producing copies of official documents in the

[96] *Idem*, para. 36, which *refers* to the Reparations Order, *supra* note 6, para. 133.
[97] *Idem*, para. 40.
[98] *Idem*, paras. 41-46.
[99] *Idem*, paras. 47-52.
[100] *Idem*, para. 53.
[101] *Idem*, para. 54.
[102] *Ibid*.
[103] *Ibid*.

Democratic Republic of the Congo (the "DRC"), and, on the other hand, the Common Legal Representatives of Victims (the "CLRV") may also face challenges in terms of access and communication with victims.[104] The Chamber specifically referred to some challenges victims may have in producing documentary evidence, in particular: hardly any official documents had survived the 2002-2003 period; the average cost for the documents is 10 USD per document; the deterioration of the security situation where victims are difficult to reach; and lack of clarity whether the possibility to obtain documentations in certain locations still exists.[105] Having referred to the similar situation in the *Lubanga* case, where "*potentially eligible victims are not always in a position to furnish documentary evidence in support of their applications*",[106] and noting that "*27 out of the 42 victims that the CLR2 managed to reach, provided information as to the impossibility to produce the documentation*",[107] the Chamber went to conclude that "*in light of the time elapsed since the commission of the crimes, the resurgence of the conflict, and the continuous displacement of the victims, it is extremely difficult, if not impossible, for the victims to obtain additional documentary evidence in the current circumstances*".[108]

61. As regards the second eligibility requirement 'Compliance with the balance of probabilities standard', the Chamber emphasised at the outset that the matter for its consideration is "*what is necessary to satisfy the 'balance of probabilities' standard*".[109] It then articulated on the methodology it relied upon to reach its conclusions on each of the conditions of eligibility, and held in this regard that for that purpose it: "*assessed the information included in the victims' dossiers and all supporting documents, to the extent available, verifying the intrinsic coherence and credibility of the account*", and "*checked the extrinsic coherence and credibility of the victims' accounts by searching for corroborative*

[104] *Idem*, para. 55.
[105] *Idem*, para. 57.
[106] *Idem*, para. 56.
[107] *Idem*, para. 58.
[108] *Ibid*, which *refers* to the "Common Legal Representative of the Former Child Soldiers' submissions on the 34 applications constituting the sample", No. ICC-01/04-02/06-2835, 3 March 2023, para. 16.
[109] *Idem*, para. 60.

evidence that would verify the consistency of the accounts with the Chamber's prior findings in the Conviction Judgment and with other victims' dossiers in the Sample".[110] It also emphasised that in cases when the information in the same victims' several accounts "*does not fully overlap or presents slight discrepancies*", this does not "*necessarily cast doubt on the victims' credibility*".[111]

62. Regarding identity, the Chamber recalled at the outset that "*in the Reparations Order it indicated that victims may use official or unofficial identification documents, or any other means of demonstrating their identities*", and that "[i]*n the absence of acceptable documentation, a statement signed by two credible witnesses establishing the identity of the victim and describing the relationship between the victim and any individual acting on their behalf is acceptable*".[112]

63. Regarding the non-disclosure of the identity of the victims in the Sample to the Defence, the Chamber noted that, although [REDACTED] victims could not be reached, the remaining victims refused to have their identity disclosed to the Defence "*out of concern for their security, and the dire security situation in Ituri, which the Chamber previously found to be genuine and objective*".[113] It went to conclude that "*redactions implemented by the LRVs to the victims' dossiers, including information that might reveal their identity, strikes the necessary balance required by article 68(1) of the Statute*", and that "*notwithstanding the redactions, the Defence has been able to make meaningful submissions on the victims' eligibility*".[114]

64. Regarding the status of direct or indirect victims of the attacks, the Chamber emphasised at the outset that "*victims of the attacks will need to demonstrate, on a balance*

[110] *Idem*, para. 61.
[111] *Ibid*.
[112] *Idem*, para. 64, which *refers* to the Reparations Order, *supra* note 6, para. 137.
[113] *Idem*, para. 65.
[114] *Ibid*.

of probabilities, to be a direct victim of at least one of the crimes committed during the First or Second Operation and for which Mr Ntaganda was convicted".[115]

65. Having recalled its earlier finding that "*the victims have amply explained the reasons for their inability to produce additional documents, which has been corroborated by multiple other sources*",[116] the Chamber then set up in detail the manner in which the eligibility assessment of the direct and indirect victims of the attacks should be carried out in accordance with the two criteria,[117] namely *"(i) whether the victims' account corresponds to the Chamber's findings as to the crimes for which Mr Ntaganda was convicted; and (ii) the coherence and credibility of the victims' account, and whether it is consistent with other victims' accounts*".[118] For the purpose of its assessment of the eligibility for reparations of the victims of the attacks included in the Sample, the Chamber referred to the scope of Mr Ntaganda's conviction,[119] the dates of alleged events,[120] and the facts as pertaining to the various types of crimes.[121] It also addressed the issue of the coherence, credibility and consistency of the victims' accounts,[122] in particular of the victims of rape and/or sexual slavery,[123] and the criteria for the eligibility assessment of indirect victims of the attacks.[124] It went to conclude on the eligibility for reparations of [REDACTED] victims of the attacks included in the Sample,[125] as elaborated in detail in Annex II,[126] in emphasising that "*the victims assessed as not eligible will have the opportunity to supplement their dossiers and clarify their accounts at the implementation*

[115] *Idem*, para. 90.
[116] *Ibid*.
[117] *Idem*, paras. 90-107.
[118] *Idem*, para. 90.
[119] *Idem*, paras. 92-96.
[120] *Idem*, paras. 97-98.
[121] *Idem*, para. 99.
[122] *Idem*, paras. 100-103.
[123] *Idem*, para. 104.
[124] *Idem*, paras. 105-107.
[125] *Idem*, para. 113.
[126] See the Confidential Annex II, *supra* note 15.

stage".[127] Finally, the Chamber has detailed in Annex I to the Impugned Decision[128] "*the specific crimes and locations for which Mr Ntaganda was convicted, particularly in relation to the victims of the attacks*".[129]

66. As regards the third eligibility requirement 'Harm', after having referred to the Reparations Order, the *Ntaganda* Appeals Judgment and the parties' respective submissions,[130] the Chamber noted at the outset that "*the Defence has received all the victims' dossiers included in the Sample, with the appropriate redactions, and has had the opportunity to make submissions and comment on them*",[131] and held that it "*maintains its use of presumptions as adopted in the Reparations Order, with the exception of the presumption of physical harm for victims of the attacks*".[132] The Chamber reiterated the presumptions of harm it maintained with respect to the victims of the attacks,[133] and turned then to address "*the various types of harm that are not covered by presumptions*",[134] and in particular material harm,[135] transgenerational harm,[136] harm of indirect victims who are not close family members,[137] and other harm as a result of crimes not covered by presumptions.[138]

67. As regards the fourth eligibility requirement 'Causal link between the harm and the crimes', the Chamber recalled at the outset the modes of liability on which Mr Ntaganda was convicted.[139] It further recalled that the precondition to qualify as "*victim of attacks, direct or indirect, is to establish on a balance of probabilities to have suffered*

[127] See the Impugned Decision, *supra* note 15, para. 113.
[128] See the Public Annex I, *supra* note 15.
[129] See the Impugned Decision, *supra* note 15, para. 96.
[130] *Idem*, paras. 114-120.
[131] *Idem*, para. 121.
[132] *Idem*, para. 122.
[133] *Idem*, para. 125.
[134] *Idem*, para. 126.
[135] *Idem*, para. 127.
[136] *Idem*, para. 128.
[137] *Idem*, para. 129.
[138] *Idem*, para. 130.
[139] *Idem*, para. 131.

as a result of any of the crimes committed during the attacks and for which Mr Ntaganda was found guilty".[140]

68. Having further briefly recalled the manner the eligibility of the victims will be determined, either with the use of presumptions or not,[141] the Chamber went to conclude that "*as long as the victims demonstrate their status as direct and indirect victims and whether, on that basis, their harm is presumed, or it has been established in the manner detailed above, the causal link between the harm and the crimes of which Mr Ntaganda was convicted is also established*".[142]

69. Finally, and before proceeding with its conclusions as to the Sample,[143] the Chamber addressed the eligibility for reparations of relatives of the deceased victims, and of the victims admitted to the IDIP.[144]

70. While it is the Legal Representative's position that, as demonstrated *supra*, the Chamber has set out in detail in the Impugned Decision the evidentiary criteria, standards of proof and conditions of the eligibility of victims with reference to the parts of the Reparations Order which were not reversed by the Appeals Chamber as well as to the other relevant decisions, it is also his position that, as demonstrated in his Appeal Brief, the Chamber committed a number of errors by, *inter alia*, misinterpreting the scope of Mr Ntaganda's conviction, and thus of reparations,[145] and by disregarding or misapplying Trial Chamber VI's and its own previous findings on 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 in the Judgment.[146]

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[140] *Idem*, para. 132.
[141] *Idem*, para. 133.
[142] *Idem*, para. 134.
[143] *Idem*, paras. 144-148.
[144] *Idem*, paras. 135-143.
[145] See the CLR2 Appeal Brief, *supra* note 37, paras. 57-60.
[146] *Idem*, Ground 3, paras. 107-123.

71. The Legal Representative also notes that the Defence acknowledges that the Chamber "*spelled out a number of eligibility criteria for a potential victim to benefit from reparations by reference to the territorial, temporal and subject matter scope of the crimes for which Mr Ntaganda was convicted*",[147] but nevertheless contends, by pointing to the Chamber's alleged unproper assessment of the victims' dossiers included in the Sample,[148] that "*the authority making the assessment would be incapable of properly assessing the victims' dossiers, using these criteria*".[149]

72. The Legal Representative submits that the Defence's assumption is speculative. Indeed, as argued above, in the Impugned Decision, the Chamber has set out in detail the evidentiary criteria, standards of proof and conditions on the eligibility of victims.[150] In its Decision on the TFV's DIP, the Chamber held that the VPRS will be responsible for carrying out the administrative eligibility assessment,[151] and eligibility determinations will be judicially approved by the Chamber.[152] There is no indication that the VPRS will be unable to comprehensively apply the relevant eligibility criteria and standards when assessing any *new* potential beneficiaries of reparations, while being aware of any deficiencies in the Chamber's eligibility assessment of the victims *already* included in the Sample. In case of doubt and should there be an apparent issue, the VPRS will always be able to address the Chamber in order to seek further guidance. In any event, the VPRS's positive determinations will be subject to judicial scrutiny, and its negative determinations may be appealed before the Chamber by the CLRV.[153] Even if the Chamber erred in its eligibility assessment of some of the victims included in the Sample, this will not necessarily have a bearing on the eligibility

[147] See the Defence Appeal Brief, *supra* note 1, para. 82.
[148] *Idem*, para. 86.
[149] *Idem*, para. 84.
[150] See the Impugned Decision, *supra* note 15, para. 33. See also paras. 34-46 and 53-148, which set out in detail the Chamber's reasoning and analysis applied to the victims in the Sample and deceased victims.
[151] See the Decision on the TFV's DIP, *supra* note 17, para. 185(a).
[152] *Idem*, para. 185(f).
[153] *Idem*, para. 185(d).

assessment of any new potential beneficiaries. In this regard, the Legal Representative notes that while criticising the Chamber's assessment of the dossiers of some victims included in the Sample, the Defence indicates that "*the results of the assessment of the [REDACTED] victims' dossiers in the sample in not challenged* per se".[154]

73. Instead, the Defence challenges the eligibility criteria and guidelines contained in the Decision of 15 December 2020, in arguing that said criteria and guidelines should have been included in a new order for reparations.[155]

74. As argued in his observations on the Defence Grounds of Appeal 1-3 above, the Legal Representative reiterates here again that in the Impugned Decision the Chamber was not required to revise and/or complement Trial Chamber VI's other findings contained in the Reparations Order which fall outside the scope of the remand and/or the scope of the appeals against the Reparations Order. In the Impugned Decision, the Chamber was also not required to reiterate in full or supplement the eligibility criteria contained in Trial Chamber VI's or its own previous decisions, including the Decision of 15 December 2020, as they were not subject to appeal, and thus have continued to be fully valid and/or operative. Had the Defence been in disagreement with Trial Chamber VI's findings contained in the Decision of 15 December 2020, it could have requested leave to appeal said decision in accordance with rule 155 of the Rules, but opted not to do so. By raising the issue as part of its Ground of Appeal 4, the Defence attempts to re-litigate the matter which has already been adjudicated upon, and which does not arise from the Impugned Decision.

75. Finally, on the eligibility matter, the Legal Representative submits that the Defence impermissibly misrepresents the Impugned Decision by arguing that the Chamber's assessment of the eligibility of the [REDACTED] IDIP victims included in the Sample was incomplete, because of the Chamber's alleged failure to determine

[154] See the Defence Appeal Brief, *supra* note 1, para. 80.
[155] *Idem*, para. 88.

"*that the priority victim fulfils the urgency requirement as defined by Trial Chamber II*".[156] It is submitted that the Chamber was not required to make such an assessment. Indeed, as directed by the Appeals Chamber, the Chamber needed to rule on a sample of applications for reparations in order to be assisted "*in establishing an actual number of eligible victims based upon those individuals who are already known to the Trial Chamber (including the victims who participated at trial and overlapping victims with those in the* Lubanga *case); in establishing the types of harms suffered and their cost to repair; and it might have assisted in more concretely estimating a further number of currently unknown beneficiaries*".[157]

b) "Sufficiently close in time" criterion

76. The "*sufficiently close in time*" criterion was incorporated by Trial Chamber VI in the Decision of 15 December 2020.[158] In particular, Trial Chamber VI held as follows:

> "*The Chamber notes that, particularly regarding the unfolding of the First Operation and the specific date of the attack on Mongbwalu, the Chamber noted in the Judgment that 'the majority of witnesses placed the attack towards the end of 2002, between September and December 2002'. Although relying on the testimony of dozens of witnesses it considered credible and reliable regarding the details of the events, the Chamber specified that, in light of 'the time elapsed since the relevant events took place, as well the likely impact of the events on the witnesses' ability to remember specific dates, the Chamber relies on Mr Ntaganda's testimony in relation to the date when the attack commenced'. Accordingly, inconsistencies, contradictions and particularly inaccuracies as to dates, shall not automatically exclude victims from their eligibility to reparations, and the assessment should be made on a case-by-case basis, depending on the victim's personal circumstances.*
>
> *In light of the above, the Chamber instructs the Registry to continue applying the 'sufficiently close in time to the relevant time frames' standard, assessing victims' applications on a case-by-case basis, focusing on the intrinsic consistency and reliability*

[156] *Idem*, para. 80.
[157] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 341.
[158] 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 (the "Decision of 15 December 2020"), paras. 37-38 and 43, as applied to the Victims of the Attacks.

of their accounts and without limiting their eligibility it to a strict three-day window".[159]

77. The Legal Representative notes that the Defence challenges the above findings contained in the Decision of 15 December 2020. It is submitted that had the Defence been in disagreement with the Decision of 15 December 2020, it could have requested leave to appeal said decision in accordance with rule 155 of the Rules, but it opted not to do so. By raising the issue as part of its Ground of Appeal 4, the Defence attempts to re-litigate the matter which has already been adjudicated upon and which does not arise from the Impugned Decision. Accordingly, the Defence's all arguments to the '*sufficiently close in time*' criterion should be rejected outright.

c) The status of potential victims and the presumption of civilian status under IHL

78. It is submitted that the Appeals Chamber should dismiss in entirety the Defence's contentions against the applicability of the presumption of civilian status under international humanitarian law ("IHL")[160] according to which in case of a doubt regarding whether a person is a civilian or not, that person shall be considered a civilian. In effect, the Defence attempts to re-litigate the applicability of the presumption of civilian status under IHL as it applies to victims during the present proceedings. The applicability of this presumption was already challenged by the Defence earlier during the trial phase of the proceedings without success[161] and the Defence's repeated challenge raised again as part of its Ground of Appeal 4 should be equally dismissed by the Appeals Chamber outright, as the issue has already been adjudicated upon in the present case.

[159] *Idem*, paras. 37-38.
[160] See the Defence Appeal Brief, *supra* note 1, paras. 97-105.
[161] See the Judgment, *supra* note 4, para. 883, and the Impugned Decision, *supra* note 15, para. 112 for Trial Chamber VI's and the Chamber's respective findings on the applicability of the presumption of civilian status in IHL to non-international armed conflicts.

79. Indeed, Trial Chamber VI already found in the Judgment that the general presumption of protection under IHL applies to the present proceedings. In particular, it found:

> "*Under IHL, during a non-international armed conflict, civilians are persons who are not members of State armed forces or organised armed groups of a party to the conflict. Article 50(1) of Additional Protocol I further provides, in relation to the expected conduct of a member of the military, that '[i]n case of doubt whether a person is a civilian, that person shall be considered to be a civilian'. This general presumption of protection under IHL also applies during non-international armed conflicts. However, in the context of a criminal trial, the burden is on the Prosecution to establish the status of the victim as someone taking no active part in the hostilities. Pursuant to the Elements of Crimes, the killing of civilians only qualifies as murder so long as they are taking no active part in hostilities at the relevant time. Under IHL, civilians are protected and they lose that protection only through active participation in hostilities and for such time they participate*".[162]

80. Furthermore, during the present reparations proceedings, the Chamber took into account Trial Chamber VI's abovementioned considerations made in the Judgment regarding this general presumption of civilian status under IHL in non-international armed conflicts as applied to the reparations proceedings by stating that: "*taking into account the presumption of civilian status under IHL, the Chamber considers that the account of persons claiming to be victims* […] shall be assessed on a case-by-case basis *in order to determine whether they are persons protected under IHL*", and that it "*does not consider that the absence of information concerning the occupation of the victims (or of their immediate family members) in their dossiers precludes a finding, on a balance of probabilities, that the victims are entitled to reparations*".[163]

81. The Legal Representative disagrees with the Defence's challenge to the Chamber's consideration of the applicability of the presumption of civilian status at the reparations stage. Contrary to the Defence's contention that "[t]*he balance of probabilities standard is to be applied to the information in the victim's dossier and certainly*

[162] See the Judgment, *supra* note 4, para. 883 (footnotes omitted).
[163] See the Impugned Decision, *supra* note 15, para. 112 (emphasis added by the CLR2).

not beforehand as a blanket criterion" in which the "*Trial Chamber cannot pre-judge the eligibility determination that will be made by the authority making the assessments*"[164] – it is submitted that there is nothing in the Chamber's findings which indicates that the victims' dossiers will not be assessed on a "*case by case basis in order to determine whether they are persons protected under IHL*".[165] There is also no suggestion that the Chamber is intending or expecting the VPRS to apply a pre-determined "*blanket criterion*" on all victims' dossiers before it. Therefore, the Chamber committed no error.

82. Rather, the Chamber has appropriately counterbalanced the victims' reasonably anticipated difficulties in obtaining certain pieces of information to prove their occupation as civilian victims – as opposed to those directly participating in hostilities – against the convicted person's right to due process. It has done so by stating that the absence of information regarding the occupation of the victims (or of their immediate family members) in their dossiers does not necessarily preclude a finding, on a balance of probabilities, that the victims are entitled to reparations.[166] It is submitted that contrary to the Defence's contention,[167] the absence of this information does not undermine the balance of probabilities standard, given the practical and logistical difficulties faced by victims to obtain such information in a country that is still in conflict and has been affected by previous conflicts, and the ongoing displacement of the population.[168] Rather, to fail to recognise the difficulties victims will face when obtaining this information, and to make such a requirement mandatory would be against the constant practice of the Court and would amount to an incorrect use of any Chamber's discretion as there will be no balancing of the victims' difficulties *vis-à-vis* the convicted person's right to due process.

[164] See the Defence Appeal Brief, *supra* note 1, para. 100.
[165] See the Impugned Decision, *supra* note 15, para. 112.
[166] *Ibid*.
[167] See the Defence Appeal Brief, *supra* note 1, para. 100.
[168] See the Impugned Decision, *supra* note 15, para. 58.

83. The Defence contends that the presumption of civilian status as applied during armed conflicts was not designed for the "*purpose of administrative decision making*"[169] and that consideration of this presumption is "*entirely different from the issue at hand* i.e. *whether a person claiming to be a victim in this case was taking an active part in the hostilities at the relevant time*".[170] The Legal Representative disagrees with the Defence's rhetorical assessment of the irrelevance of this presumption for Mr Ntaganda's individual criminal responsibility for the pain and suffering of the victims, given the large extent of the victimisation caused by the crimes for which Mr Ntaganda was convicted regarding the 13 villages affected. Mr Ntaganda's convictions and sentence were upheld on appeal.[171]

84. Due to the nature and extent of Mr Ntaganda's crimes in the non-international armed conflict at stake, the presumption of civilian status assists in assessing whether a potential victim is eligible to benefit from reparations, especially in situations where victims cannot provide documentary proof of their occupation. It was therefore not unreasonable for the Chamber to appropriately take into account the presumption of civilian status in non-international armed conflicts for the eligibility assessment on a balance of probabilities standard regarding victims' claims for reparations — based on the information in their dossiers and with regard to the findings made in the Judgment and the Sentencing Judgment.

85. Accordingly, the Legal Representative submits that the Chamber committed no error in finding that the presumption of civilian status under IHL applies to the present reparations proceedings.

[169] See the Defence Appeal Brief, *supra* note 1, para. 102.
[170] *Ibid*.
[171] See the Judgment, *supra* note 4, the Appeals Conviction Judgment, and the Appeals Sentencing Judgment, *supra* note 8.

d) Causal link

86. The Legal Representative submits that as regards the requirement of "*causal link*", the Defence attempts to re-litigate the issue which has already been adjudicated upon by the Appeals Chamber, and therefore the Defence's contentions should be dismissed outright. The Appeals Chamber already clearly stated that it could not find any error in relation to what Trial Chamber VI generally found in the Reparations Order regarding possible breaks in the chain of causation.[172] Moreover, the Defence fails to provide the full reasoning of the Appeals Chamber when it found that Trial Chamber VI committed no error as regards the requirement of "*causal link*". Indeed, the Appeals Chamber found as follows:

> *"The Appeals Chamber can find no error. Contrary to the Defence's submissions, and as seen above, the Trial Chamber did refer to the proximate cause standard. It is also incorrect to state that the Trial Chamber failed to consider that the causal link may be broken by other incidents; the Trial Chamber referred to the Defence's submissions that breaks in the chain of causation should be taken into account, and it stated clearly that this was indeed the case, and that they should be taken into account. This will be assessed further when addressing specifically the two examples raised by the Defence.*
>
> *The Defence also argues that the Trial Chamber erred in finding that the issue of breaks in the chain of causation does not arise, "as long as the relevant victims fall within the scope of the conviction and meet the applicable evidentiary standard". To the extent that this could be read as stating that breaks in the chain of causation are irrelevant, it would be incorrect. However, in this context, the Appeals Chamber notes that the Trial Chamber, in the sentence immediately preceding this, clearly stated that breaks in the chain of causation must be taken into account. This sentence must be read in that light: that is, that the issue will not arise if an applicant falls within the scope of the Conviction Judgment, meets the evidentiary threshold, and provides sufficient proof of the causal link, with any alleged breaks in the chain of causation having been assessed. In this regard, the Trial Chamber explicitly stressed that the applicant shall provide sufficient proof of the causal link. Furthermore, in so doing, the Trial Chamber relied on the jurisprudence of the Appeals Chamber that the sufficiency of evidence to establish the causal link between the crime and the harm suffered depends on the specific circumstances of the case. As a result, the Defence's arguments on this point are rejected*".[173]

[172] See the *Ntaganda* Appeals Judgment, *supra* note 12, paras. 564 and 569.
[173] *Idem*, paras. 569-570.

87. Accordingly, the Appeals Chamber already found that Trial Chamber VI relied on the correct legal basis and jurisprudence when determining the sufficiency of evidence to establish the causal link between the crime and the harm suffered when assessing victims' eligibility for reparations. As regards the requirement of "*causal link*", in the Impugned Decision, the Chamber referred to the previous decisions in the *Lubanga* and *Katanga* cases, and reiterated Trial Chamber VI's findings contained in the Reparations Order and the Judgment which were already subject of scrutiny by the Appeals Chamber, and where no error was found. The Defence demonstrates nothing more than a mere disagreement with Trial Chamber VI's and Appeals Chamber's findings, and attempts to re-litigate the issues which have already been adjudicated upon and which do not arise from the Impugned Decision.

88. Consequently, it is submitted that the Defence Ground of Appeal 4 should be dismissed because the Defence either misrepresents the Impugned Decision or attempts to re-litigate the issues which have already been adjudicated upon in the Chamber's previous decisions and which do not arise from the Impugned Decision, and demonstrates nothing more than a mere disagreement with the Impugned Decision without however showing that the Chamber committed any discernible error.

4. Defence Ground of Appeal 5

89. Under its Ground of Appeal 5, the Defence alleges that the Chamber failed to provide the Defence with a meaningful opportunity to assess and make submissions on the victims' dossiers in the Sample,[174] as the Defence's previous requests for access to victims' dossiers, the lifting of redactions, and for access to the information in the TFV's possession concerning the victims were all rejected.[175]

[174] See the Defence Appeal Brief, *supra* note 1, para. 114.
[175] *Idem*, paras. 121, 131, and 143-144.

90. It is submitted that the Defence effectively self-acknowledges that it previously raised the very same issues with the Chamber and admits that the issues were already addressed. Since the Defence did not seek leave to appeal the relevant decisions in accordance with rule 155 of the Rules, by raising the same issues and bringing the same arguments, it attempts to re-litigate the issues which have already been adjudicated upon and which do not arise from the Impugned Decision.

91. Indeed, in its requests dated 9 November 2022,[176] and 29 March 2023[177] the Defence sought access to victims' dossiers, the lifting of redactions and access to information in the TFV's possession. In its Decision of 25 November 2022,[178] the Chamber established a procedure for the transmission of the victims' dossiers by the VPRS to the Defence with the necessary redactions, depending on the victims' consent, in addition to establishing a procedure for the Defence to challenge the applied redactions. It held in particular that:

> "[…] *if the victims consent to their identities being disclosed to the Defence, the Registry should proceed to redact from the victims' dossiers only the information that might reveal the current residence or other contact information that may be used to locate the victims. These provisions confer the appropriate protection for the victims' while enabling the Defence to meaningfully challenge the victims' eligibility, and ensure that only victims having suffered harm as a result of the crimes for which Mr Ntaganda was convicted are entitled to receive reparations. In light of the above, the Chamber reiterates its instruction to the Registry, as supported by the LRVs to only apply uniformly to all victims' dossiers the limited redactions as detailed in the Order and in the present Decision. The Chamber further directs the Defence to raise any challenge it may have to the redactions applied directly with the VPRS, seizing the Chamber only exceptionally when no agreement can be reached*".[179]

[176] See the Defence Submissions of 9 November 2022, *supra* note 68, paras. 47-55.
[177] See the "Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims' dossiers", No. ICC-01/04-02/06-2838, 29 March 2023 (the "Defence Request of 29 March 2023), paras. 1-2 and 11-23.
[178] See the Decision of 25 November 2022, *supra* note 16.
[179] *Idem*, para. 30.

92. In its Decision of 20 April 2023[180] the Chamber in particular held that:

> "*The Chamber is of the view that, in light of the dire security situation in Ituri, the victims' security concerns genuine and objective. The Chamber also considers that the Defence has not demonstrated how its ability to review and comment on the victims' Sample is effectively affected by the redactions maintained in the victims' dossiers. Accordingly, the Chamber maintains that the redactions regime as previously established strikes the relevant balance required by article 68(1) of the Statute, enabling the Defence to make meaningful submissions on the victims' eligibility.* Consequently, the Chamber rejects the Request".[181]

93. The Chamber also recalled that when establishing the procedure applicable to redactions to the victims' dossiers, it considered the Appeals Chamber's jurisprudence,[182] which clearly stated that "*in granting the Defence access to the victims' applications, the necessary redactions shall be made to protect the victims' safety, physical and psychological wellbeing, dignity and privacy, pursuant to article 68 of the Statute*".[183] The Chamber further elaborated that "*with a view to safeguard the rights of the Defence while providing for an appropriate measure of protection for the victims, as set forth in article 68(1) of the Statute, in its 25 October 2022 Order and 25 November 2022 Decision, the Chamber established the procedure applicable to redactions for both, the situation when the victims consent or do not consent to their identities being disclosed to the Defence*".[184]

94. The Chamber also addressed the Defence's request for access to information in the TFV's possession and went to conclude that after "*having reviewed the victims' dossiers transmitted to the Defence and the* ex-parte *annexes referred to by the TFV, the*

[180] See the "Decision on the Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims' dossiers", No. ICC-01/04-02/06-2847, 20 April 2023 (the "Decision of 20 April 2023").
[181] *Idem*, para. 22.
[182] See the Decision of 25 October 2022, *supra* note 14, para. 35.
[183] See the Decision of 20 April 2023, *supra* note 180, para. 21, which *refers* to the *Ntaganda* Appeals Judgment, *supra* note 12, para. 689.
[184] See the Decision of 20 April 2023, *supra* note 180, para. 21.

Chamber is satisfied that the Defence has received all available information and documentation required for it to assess and make meaningful submissions on the victims' dossiers".[185]

95. The Defence did not seek leave to appeal said decisions under rule 155 of the Rules, and now attempts to re-litigate the same issues which have already been adjudicated upon by the Chamber and which do not arise from the Impugned Decision. The Defence demonstrates nothing more than a mere disagreement with the Chamber's findings contained in its previous decisions. The Defence could have requested leave to appeal said decisions, but opted not to do so.

96. Consequently, it is submitted that since the Defence attempts to re-litigate the issues which have already been adjudicated upon by the Chamber in its previous decisions and which do not arise from the Impugned Decision, its Ground of Appeal 5 should be dismissed.

5. Defence Ground of Appeal 6

97. Under its Ground of Appeal 6, the Defence alleges that the Chamber committed a procedural error by failing to request submissions on transgenerational harm,[186] and in particular expert evidence.[187] The Legal Representative submits that the Defence misapprehends the *Ntaganda* Appeals Judgment and fails to demonstrate that the Chamber committed any error when addressing the issues pertaining to transgenerational harm. The Defence's contentions on the matters are nothing more than a mere disagreement with the Impugned Decision.

98. The Appeals Chamber reversed Trial Chamber VI's findings in relation to transgenerational harm and remanded the matter to the Chamber "*for it to assess and properly reason the matter based on submissions sought from the parties and having assessed*

[185] *Idem*, para. 15.
[186] See the Defence Appeal Brief, *supra* note 1, Heading 'GROUND 6', p. 57.
[187] *Idem*, para. 156.

the credibility and reliability of the expert evidence on the record and addressed the issue of evidentiary guidance on this issue".[188] It found "*it appropriate for the Trial Chamber to request submissions from the parties and, e.g., experts*",[189] and specified the issues it found "*it appropriate for the Trial Chamber to consider whether it needs to address* [them]".[190] More generally, by remanding this and other specific matters to the Chamber, the Appeals Chamber did not find "*it to be appropriate, in the circumstances of the present case, itself to address the questions on which it has found errors, because the Trial Chamber, in the Impugned Decision, either failed appropriately to determine the issues and/or to provide appropriate reasoning in relation to them*".[191] It further emphasised that in "*its reconsideration of the fundamental issues being remanded, the Trial Chamber will no doubt exercise its discretion in that regard as well*".[192]

99. In accordance with the Appeals Chamber's direction, in the Order of 25 October 2022, the Chamber directed the parties and participants, which included the VPRS and the TFV, and if available, the Appointed Experts, to provide further submissions on the issues specified by the Appeals Chamber,[193] namely: "*(i) the scientific basis for the concept of transgenerational harm; (ii) the evidence needed to establish it; (iii) what the evidentiary requirements are for an applicant to prove this type of harm; (iv) the need, if any, for a psychological examination of applicants and parents; (v) the need, if any, to exercise caution in assessing applications based on transgenerational harm; and (vi) whether Mr Ntaganda is liable to repair such harm in the specific context of the crimes of which he has been convicted, taking into consideration the impact, if any, that the protracted armed conflict in the DRC may have on the assessment as to whether the trauma associated with transgenerational harm was caused by Mr Ntaganda*".[194]

[188] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 493.
[189] *Idem*, para. 497.
[190] *Idem*, para. 495.
[191] *Idem*, para. 752.
[192] *Idem*, para. 757.
[193] *Idem*, para. 495.
[194] See the Decision of 25 October 2022, *supra* note 14, para. 40.

100. The Legal Representative submits that, contrary to the Defence's contentions,[195] the Chamber was not required to request submissions from experts on the issues pertaining to transgenerational harm, but instead it was within the Chamber's discretion to consider whether calling experts on the matter was appropriate in the particular circumstances of the case. The Legal Representative agrees with the Chamber's interpretation of the *Ntaganda* Appeals Judgment that "*the use of the wording 'e.g.,' (for example) when referring to experts on this matter, makes it clear that the Appeals Chamber presented the Chamber with an option to be resorted upon at the Chamber's discretion*",[196] and with its conclusion that "*the Defence seems to have misapprehended the Appeals Judgment findings*".[197] By repeatedly claiming that expert evidence on transgenerational harm was needed,[198] the Defence puts forward the same arguments it advanced in its previous submissions,[199] without however demonstrating that the Chamber committed an error in the exercise of its discretion when it opted not to call any expert. The Legal Representative submits that no experts on transgenerational harm were needed to be called given the scope of the issues the Chamber was required to address for the purpose of the present reparations proceedings on a balance of probabilities standard, and also given that the Chamber was not required to establish which of the two theories on transgenerational harm was correct or how precisely this harm is transmitted. This will be further addressed under the Defence Ground of Appeal 7.

101. Consequently, it is submitted that since the Defence failed to demonstrate that the Chamber committed any error when it opted not to call any experts on transgenerational harm, its Ground of Appeal 6 should be dismissed.

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[195] See the Defence Appeal Brief, *supra* note 1, paras. 154-159.
[196] See the Impugned Decision, *supra* note 15, para. 194.
[197] *Ibid*.
[198] See the Defence Appeal Brief, *supra* note 1, paras. 154-159.
[199] See the "Public Redacted Version of 'Defence further submissions on transgenerational harm and the estimated total number of potential beneficiaries', dated 30 January 2023, ICC-01/04-02/06-2823-Conf", No. ICC-01/04-02/06-2823-Red, 8 June 2023 (the "Defence Submissions of 30 January 2023"), paras. 11-21.

6. Defence Ground of Appeal 7

102. Under its Ground of Appeal 7, the Defence alleges that having failed to consider expert evidence, the Chamber committed a procedural error by failing to make necessary findings on the operation of transgenerational harm.[200] The Legal Representative submits that again the Defence misapprehends the *Ntaganda* Appeals Judgment and fails to demonstrate that the Chamber committed any error when addressing the issues pertaining to transgenerational harm. The Defence's contentions on the matters are nothing more than a mere disagreement with the Impugned Decision.

103. The Appeals Chamber found that Trial Chamber VI "*failed to provide sufficient reasoning regarding (i) the concept of transgenerational* [harm] *and (ii) the evidentiary criteria to prove it*",[201] and considered "*it appropriate to reverse the Trial Chamber's findings in relation to transgenerational harm and to remand the matter to the Trial Chamber for it to assess and properly reason the matter based on submissions sought from the parties and having assessed the credibility and reliability of the expert evidence on the record and addressed the issue of evidentiary guidance on this issue*".[202] The Appeals Chamber directed the Chamber to consider "*the issue of scientific certainty as to the concept of transgenerational harm and whether it is appropriate to award reparations therefor at this Court and, if so, what the evidentiary requirements are for an applicant to establish that type of harm*".[203] More specifically, the Chamber was directed "*to consider whether it needs to address such issues as: the matter of the basis for the concept of transgenerational harm; the evidence needed to establish it; what the evidentiary requirements are for an applicant to prove this type of harm; the need, if any, for a psychological examination of applicants and parents; the need, if any, to exercise caution in assessing applications based on transgenerational harm; whether Mr*

[200] See the Defence Appeal Brief, *supra* note 1, Heading 'GROUND 7', p. 61.
[201] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 471.
[202] *Idem*, para. 493.
[203] *Idem*, para. 494.

Ntaganda is liable to repair such harm in the specific context of the crimes of which he has been convicted and taking into consideration the impact, if any, that the protracted armed conflict in the DRC may have as to the possibility of establishing that the trauma associated with transgenerational harm was caused by Mr Ntaganda".[204]

104. The Legal Representative submits that in accordance with the *Ntaganda* Appeals Judgment and contrary to the Defence's contentions,[205] the Chamber, after having sought[206] and examined further submissions from the parties and participants, properly addressed the issues pertaining to transgenerational harm within the scope of the remanded matter and to the sufficient extent as required for the purpose of the present reparations proceedings.

105. As directed by the Appeals Chamber, the Chamber addressed the issue of scientific certainty as to the concept of transgenerational harm. Indeed, the Chamber assessed the *Katanga* Reparations Order,[207] the *Katanga* 2018 Decision on Transgenerational Harm,[208] and the Reparations Order;[209] the relevant scientific and academic literature,[210] including the one referred to by the Defence,[211] the CLRV,[212] the TFV,[213] and the different experts who have submitted reports or provided testimony before the Court;[214] as well as decisions issued by other international jurisdictions.[215]

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[204] *Idem*, para. 495.
[205] See the Defence Appeal Brief, *supra* note 1, paras. 160-173.
[206] See the Decision of 25 October 2022, *supra* note 14, para. 40.
[207] See the Impugned Decision, *supra* note 15, para. 175, which *refers* to the "Order for Reparations pursuant to Article 75 of the Statute" (Trial Chamber II), No. ICC-01/04-01/07-3728-tENG, 24 March 2017, para. 132.
[208] See the Impugned Decision, *supra* note 15, para. 175, which *refers* to the "Public Redacted Version of Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgment of 8 March 2018" (Trial Chamber II), No. ICC-01/04-01/07-3804-Red-tENG, 19 July 2018 (the "*Katanga* Decision on Transgenerational Harm"), paras. 10-14.
[209] See the Impugned Decision, *supra* note 15, para. 175
[210] *Idem*, para. 175 and footnotes 419-421.
[211] *Idem*, para. 175 and footnote 419.
[212] *Idem*, para. 175 and footnote 420.
[213] *Idem*, para. 175 and footnote 421.
[214] *Idem*, para. 175 and footnote 422.
[215] *Idem*, para. 175 and footnote 423.

This wealth of specialist knowledge and opinion led the Chamber to correctly conclude that "*experts from different disciplines* agree on the existence of the phenomenon of transgenerational harm *in which 'traumatised parents set in motion [an intergenerational cycle of dysfunction], handing-down trauma*".[216]

106. The Chamber further observed that "*science has advanced different explanations as to how transgenerational harm is transmitted from traumatised parents to their children, who were not directly exposed to the parents' traumatic experience*",[217] and referred in this regard to the two leading schools of thought — the epigenetic and the social transmission theories — which explain how exposure to trauma is transmitted from parent to child.[218] It further observed that the most recent studies suggest that the "*process of social transmission and epigenetic modifications mutually reinforce and feed into each other and that a holistic understanding of the intergenerational mechanisms and effects of trauma requires an interdisciplinary biopsychosocial approach*".[219]

107. Having considered the parties' and participants' submissions, the two leading theories, and the current state of the scientific debate as to how transgenerational harm is transmitted, the Chamber was correct to reject the Defence's contention that the concept of transgenerational harm is "*unsettled from a scientific and medical perspective*", such that there is "*scepticism and uncertainty about its scope,* [and] *existence*".[220]

108. It is submitted that it was reasonable for the Chamber to conclude within its discretion that, due to the abundance of supporting evidence before it, the "*ongoing scientific debate on the mechanisms of transmission simply reinforces the very existence of the*

[216] *Idem*, para. 175, which *refers* to the Reparations Order *supra* note 6, para. 73.
[217] *Idem*, para. 176.
[218] *Ibid*, which *refers* to the *Katanga* Decision on Transgenerational Harm, *supra* note 208, para. 11.
[219] See the Impugned Decision, *supra* note 15, para. 176, which *refers* to J. Švorcová, 'Transgenerational Epigenetic Inheritance of Traumatic Experience in Mammals' in Genes (2023), 14, 120:1-20, available online, p. 10; and S.A. Ridhuan et al, 'Advocating for a Collaborative Research Approach on Transgenerational Transmission of Trauma' in Journal of Child & Adolescent Trauma (2021) 14:527–531, available online, p. 529.
[220] See the Impugned Decision, *supra* note 15, para. 177.

phenomenon".[221] The Chamber was also correct to find that the Defence misinterpreted the *Ntaganda* Appeals Judgment when contending that the Chamber was required to assess the "'*scientific certainty' about how trauma is allegedly transmitted*".[222] The Legal Representative shares the Chamber's understanding that the *Ntaganda* Appeals Judgment was clear that the Chamber should "*consider the issue of scientific certainty as to the concept of transgenerational harm*", rather than the scientific certainty regarding its exact method of transmission.[223] Contrary to the Defence's contentions, the Chamber was not required to consider "*which of the two theories* […] *as being more correct*",[224] or how transgenerational harm is transmitted more precisely from traumatised parents to their children.[225] This is simply because taking a position on a scientific matter would be outside the Chamber's competence, and would amount to an error in itself. As previously argued by the CLRV, it is not within their mandate or competence, nor those of any legal professional, to decide which theory better explains the phenomenon of transgenerational harm with more accuracy.[226]

109. It is submitted that for the purpose of the present reparations proceedings it does not matter *which* of the two theories is more correct and *how* transgenerational harm is as such transmitted. For this reason alone, calling any experts on those issues would not have assisted the Chamber in its determination. Instead, what matters in these proceedings is *whether* it is more likely than not that transgenerational harm has been transmitted from traumatised parents to their children in the circumstances of

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[221] *Ibid*.
[222] *Idem*, para. 177, which *refers* to the Defence Submissions of 30 January 2023, *supra* note 199, para. 21.
[223] See the Impugned Decision, *supra* note 15, para. 177, which *refers* to the *Ntaganda* Appeals Judgment, *supra* note 12, para. 494.
[224] See the Defence Appeal Brief, *supra* note 1, para. 163.
[225] *Idem*, para. 164.
[226] See the "Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the 25 October 2022 Order and 25 November 2022 Decision", No. ICC-01/04-02/06-2820, 30 January 2023 (the "CLR2 Submissions of 30 January 2023"), para. 14, and the "Common Legal Representative of the Former Child Soldiers' additional submissions on the issue of transgenerational harm and on the estimated potential number of reparations beneficiaries", No. ICC-01/04-02/06-2821, 30 January 2023 (the "CLR1 Submissions of 30 January 2023"), paras. 2 and 20.

the present case. This determination is very case specific as it requires considering the specific experience and suffering of the direct victims, which cannot be made in abstract and/or through experts evidence, but only by the body in charge of the eligibility assessment at the implementation phase. While criticising the Chamber for the alleged failure to ascertain the scientific certainty as to the concept of transgenerational harm, the Defence omits to mention that the Chamber addressed in detail, as directed by the Appeals Chamber, the evidentiary criteria to prove transgenerational harm,[227] which should be relied upon by the body in charge of the assessment of the eligibility for reparations of victims claiming to have suffered transgenerational harm.

110. Contrary to the Defence's contention that the Chamber only compiled "*a footnote, which spans several pages, of what appears to be a list of all academic and scientific research cited by the parties or judges before the ICC, as well as those issued by other international jurisdictions*" without any analysis,[228] the Chamber has provided short and succinct summaries for most of the referenced sources[229] — which when read with the main body of the Impugned Decision, constituted an analysis.

111. Likewise, the Chamber has provided short and succinct summaries for the different experts who have submitted reports or provided testimony before the Court,[230] and for the decisions regarding transgenerational harm issued by other international jurisdictions.[231] Contrary to the Defence's contentions,[232] the Chamber also properly addressed the appropriateness of awarding reparations for transgenerational harm in the present case in the specific context of the crimes for which Mr Ntaganda was convicted and taking into account the impact of the

[227] See the Impugned Decision, *supra* note 15, paras. 181-197.
[228] See the Defence Appeal Brief, *supra* note 1, para. 162.
[229] See the Impugned Decision, *supra* note 15, para. 175 and footnotes 419-421.
[230] *Idem*, para. 175 and footnotes 420-422.
[231] *Idem*, para. 175 and footnote 423.
[232] See the Defence Appeal Brief, *supra* note 1, paras. 165-173.

protracted armed conflict in the DRC.[233] In so doing, the Chamber referred to the record of the case which "*is abundant in evidence demonstrating (i) the mass victimisation and extreme violence suffered by the victims of the crimes included in the conviction; and (ii) that the victims received no support or treatment alleviating their suffering as they carried on with their lives*".[234] It also emphasised that "*the issue of the impact of the protracted armed conflict in the DRC is a matter of evidence that has to be decided on a case-by-case basis as part of the eligibility assessments. Caution should certainly be exercised when assessing whether victims who claim transgenerational harm are eligible to benefit from reparations*".[235] The Defence's contentions constitute nothing more than a mere disagreement with the Chamber's findings. The Legal Representative reiterates in full by reference his previous submissions pertaining to transgenerational harm presented before the Chamber,[236] and respectfully requests the Appeals Chamber to take them into consideration for the purpose of its determination on the Defence Ground of Appeal 7.

112. Consequently, it is submitted that since the Defence failed to demonstrate that the Chamber committed any error in its determination of the issues pertaining to the operation of transgenerational harm, its Ground of Appeal 7 should be dismissed.

7. Defence Ground of Appeal 8

113. Under its Ground of Appeal 8, the Defence alleges that the Chamber erred in law by failing to require a medical assessment for claims of transgenerational harm.[237]

114. As part of its determination of the evidentiary criteria to prove transgenerational harm, the Chamber declined "*to adopt an additional presumption of*

[233] See the Impugned Decision, *supra* note 15, paras. 192-193.
[234] *Idem*, para. 192.
[235] *Idem*, para. 193.
[236] See the CLR2 Submissions of 30 January 2023, *supra* note 226, paras. 9-43.
[237] See the Defence Appeal Brief, *supra* note 1, Heading 'GROUND 8', p. 66.

transgenerational harm",[238] and emphasised that "*no other family members* [other than children of direct victims] *are entitled to reparations in this case based on transgenerational harm*".[239] The Chamber then set out in detail the evidentiary criteria to prove transgenerational harm to be relied upon by the body in charge of the eligibility assessment.[240]

115. In addressing the issue as to whether a psychological examination of the children and the parents is required, the Chamber noted that "*in the* Katanga *case the Chamber relied on medical certificates and in an expert report not because they are the generally required documents to prove this type of harm, but because those were the supporting documents submitted thereto*",[241] and on this basis dismissed "*the Defence's submission that 'consistent prior practice of the Court' requires medical diagnosis*".[242] It then noted that "*most direct victims* […] *may be entitled to benefit from the presumption of psychological harm established in the Reparations Order*" and concluded that "*for most parents no psychological examination is required*".[243] The Chamber dismissed the Defence's contention that "*a diagnosis of psychological harm for the parents should always exist and be reassessed*", as being "*selective and taken out of context*".[244] Having considered that "*transgenerational harm may not only be psychological and should, therefore, be holistically assessed and addressed*",[245] the Chamber went to conclude that "[t]*he need for a psychological assessment of the direct victim (parent) and/or the indirect victim (child) claiming transgenerational harm shall be determined on a case-by-case basis, depending on whether any of the general presumptions of harm apply for the child and/or the parent(s) and the type of harm claimed*".[246]

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[238] See the Impugned Decision, *supra* note 15, para. 182.
[239] *Idem*, para. 183.
[240] *Idem*, paras. 185-192.
[241] *Idem*, para. 187.
[242] *Ibid*.
[243] *Idem*, para. 188.
[244] *Ibid*.
[245] *Ibid*.
[246] *Idem*, para. 189.

116. In this regard, the Legal Representative reiterates in full by reference his previous submissions pertaining to the evidentiary criteria to assess transgenerational harm, including on the need for a psychological assessment of the parents and the children,[247] and respectfully requests the Appeals Chamber to take them into consideration for the purpose of its determination on the Defence Ground of Appeal 8.

117. He submits in addition that the Chamber's adopted approach regarding the need for a psychological assessment pertaining to claims of transgenerational harm is justified and reasonable. Indeed, the Chamber, on the one hand, did not adopt the presumption of transgenerational harm,[248] and on the other, did not exclude as such the need for a psychological assessment of the children claiming such harm and/or of their parents, but confined it to a case-by-case basis,[249] in emphasising that "*in the event that a psychological evaluation may be required, access to it should be provided to the victims by the authority responsible for conducting the eligibility assessments*".[250] While not making mandatory a psychological assessment in all instances, the Chamber set out objectively justifiable criteria to be taken into consideration by the assessment body when determining on the existence of the causal link between the crimes for which Mr Ntaganda was convicted and transgenerational harm claimed by indirect victims, in particular, "*the nature, intensity, extent and duration of the suffering of both, the direct and the indirect victim*", and "*the date of birth of the child and the security situation in the area where the direct victim lived after the events*".[251]

118. The Chamber's adopted approach is also fully consistent with the standard of proof applicable to the reparations proceedings, in which it is not required for harm

[247] See the CLR2 Submissions of 30 January 2023, *supra* note 226, paras. 21-31.
[248] See the Impugned Decision, *supra* note 15, para. 182.
[249] *Idem*, para. 189.
[250] *Ibid*.
[251] *Idem*, para. 190.

— which includes transgenerational harm — to be proven beyond reasonable doubt, but only the likelihood thereof on a balance of probabilities.

119. The Legal Representative submits that the Chamber properly addressed the Defence's arguments on the need for a medical assessment of the parents and the children, and dismissed them. Under its Ground of Appeal 8, the Defence puts forward the same arguments it already advanced in its previous submissions,[252] without however demonstrating that the Chamber committed any error on the matter. In effect, the Defence's contentions constitute nothing more than a mere disagreement with the Impugned Decision.

120. Consequently, it is submitted that since the Defence failed to demonstrate that the Chamber committed any error in its determination on the need for a psychological assessment of the parents and the children claiming transgenerational harm, its Ground of Appeal 8 should be dismissed.

8. Defence Grounds of Appeal 9 and 10

121. Under its Grounds of Appeal 9 and 10, the Defence alleges that the Chamber committed an error of law by making additional findings outside the confines of the Judgment and Sentencing Judgment, and by relying on a distinction between "conduct" crimes and "results" crimes in order to do so.[253] The Legal Representative submits that the Defence ignores the very nature of the crime under article 8(2)(e)(iv) of the Statute and Trial Chamber VI's findings made in the Judgment and Sentencing Judgment.

122. The Appeals Chamber found that Trial Chamber VI's findings in relation to the harm caused as a result of the attack on the Sayo health centre were inadequate[254] in

[252] See the Defence Submissions of 30 January 2023, *supra* note 199, paras. 33-35.
[253] See the Defence Appeal Brief, *supra* note 1, Heading 'GROUNDS 9 and 10', p. 69.
[254] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 549.

that the harm caused was not established to the requisite standard due to the Reparations Order's excessive reliance on the Second Expert Report without sufficiently evaluating its credibility.[255] The Appeals Chamber also found that "*the Trial Chamber did not address the issue of whether actual damage caused to the health centre in Sayo indeed falls within the scope of the conviction and sentencing judgments, and whether Mr Ntaganda could therefore be held liable to repair any such harm*", and emphasized in that regard that "*in awarding reparations, a trial chamber must remain within the confines of the conviction and sentencing decisions*".[256]

123. In the Impugned Decision, the Chamber at the outset emphasized, with reference to the Judgment and the established jurisprudence of the Court, that "*the war crime of attack against protected objects in article 8(2)(e)(iv) of the Statute is a conduct crime, not a results crime. Conduct crimes, do not require a result in terms of infliction of any harm or damage. The crime is committed, and a person can be found liable, for as long as the attack is launched against a protected object*".[257] This finding as such does not seem to be challenged by the Defence. Rather, the Defence takes issue with the Chamber's awarding reparations for the harm caused as a result of the attack on the Sayo health centre, with reference to Trial Chamber VI's finding in the Sentencing Judgment,[258] according to which "*it is* […] *not clear whether the centre was damaged as a result of the crime*".[259] Since in paragraph 153 of the Sentencing Judgment, Trial Chamber VI earlier held that "*it is not clear* […] *whether the weapon used destroyed the health centre in full or merely damaged it*",[260] it appears clear that Trial Chamber VI specifically referred only to damage to the physical structure of the centre. By referring to said finding, the Defence seems to suggest that in the absence of clearly recognized physical damage, no reparations can be awarded as a result of the attack on the Sayo health centre.

[255] *Idem*, paras. 530-549.
[256] *Idem*, para. 540.
[257] See the Impugned Decision, *supra* note 15, para. 226.
[258] See the Defence Appeal Brief, *supra* note 1, para. 186.
[259] See the Sentencing Judgment, *supra* note 5, para. 153.
[260] *Ibid*.

124. The Legal Representative submits that unlike crimes such as the destruction of property, the crime of attack against a protected object under article 8(2)(e)(iv) of the Statute attributes criminal responsibility, regardless of whether partial or total physical damage occurs as a consequence. It is the special nature of the object protected by this provision that warrants the special protection accorded by international humanitarian law, and in particular by the Statute.[261] The attack on the Sayo health centre caused multidimensional harm which goes far beyond damage to the health centre's physical structure, and includes at the very least, harm caused to the very existence of medical facilities and to the community of Sayo who ordinarily benefitted from and relied on such services, "*because of the role these objects, such as medical facilities and school, play in the daily life and welfare*".[262]

125. It should be noted in this respect that article 8(2)(e)(iv) of the Statute specifically protects medical facilities and cultural and religious buildings. In the *Al Mahdi* case, Trial Chamber VIII found that the attack against the protected objects (cultural and religious buildings) caused various types of harms — mostly of a collective nature — which warranted reparations. Trial Chamber VIII proceeded to define the victim entitled to reparations as the "*community of Timbuktu*", that is "*organisations or persons ordinarily residing in Timbuktu at the time of the commission of the crimes or otherwise so closely related to the city that they can be considered to be part of this community at the time of the attack*".[263]

126. Given the very nature of the crime under article 8(2)(e)(iv) of the Statute and the multidimensional harm this crime caused, the Chamber was correct to find in accordance with the *Al Mahdi* Reparations Order , that the beneficiaries of reparations should include the Sayo health centre as a legal entity. This is because apart from the

[261] See the Judgment, *supra* note 4, para. 1136. See also the "Judgment and Sentence" (Trial Chamber VIII), No. ICC-01/12-01/15-171, 27 September 2016, para. 16 and footnote 29.
[262] See the Sentencing Judgment, *supra* note 5, para. 138.
[263] See the "Reparations Order" (Trial Chamber VIII), No. ICC-01/12-01/15-236, 17 August 2017, para. 56.

physical damage, it "*was abandoned during the attack, which brought as a consequence that it was pillaged and could not continue providing regular medical services*", and also the community of Sayo and surroundings as a whole "*as the medical services were suspended for at least six months as a consequence of the attack, affecting the overall well-being of the community*".[264]

127. Not only is the Chamber's approach consistent with the very nature of the crime under article 8(2)(e)(iv) of the Statute and the previous jurisprudence of the Court, but it also remained within the confines of the Judgment and Sentencing Judgment. Contrary to the Defence's contentions,[265] the Chamber made no new findings at the reparations phase which exceed the confines of the Judgment and Sentencing Judgment.

128. Indeed, in its Judgment and Sentencing Judgment, Trial Chamber VI found beyond reasonable doubt that: the Sayo health centre was in use at the time of the attack as a medical facility, as persons seeking medical treatment were there;[266] during the UPC/FPLC advance into Sayo, UPC/FPLC soldiers fired projectiles at the health centre;[267] two persons present at the health centre when it was attacked by UPC/FPLC soldiers fled because of the danger, three seriously injured men and a Lendu woman with her child were left behind, and the woman was killed during the assault; the people left behind at the centre were particularly defenseless, as they were unable to leave by themselves and were left without medical care;[268] and the medical personnel fled the Sayo health centre to protect their lives and had to abandon the patients to their fate.[269] It emphasized that "[t]*he objects listed in Article 8(2)(e)(iv)* […] *deserve special protection* ***because of the role these objects****, such as medical facilities and schools,* ***play in***

[264] See the Impugned Decision, *supra* note 15, para. 234.
[265] See the Defence Appeal Brief, *supra* note 1, para. 189.
[266] See the Judgment, *supra* note 4, para. 1147 and footnote 3159.
[267] *Idem*, para. 1138 and footnote 3151.
[268] See the Sentencing Judgment, *supra* note 5, para. 154.
[269] See the Judgment, *supra* note 4, para. 506.

the daily life and welfare of the civilian population",[270] and "*launching an attack against the health centre, a facility that cares for patients,* [had] *the consequential severe impact on the welfare and/or lives of any patients present at the centre and disrupted the medical care for persons in need*".[271]

129. It is submitted that within the confines of Trial Chamber VI's said findings, and consistent with the very nature of the crime under article 8(2)(e)(iv) of the Statute and the previous jurisprudence of the Court, it was reasonable for the Chamber to conclude on a balance of probabilities standard that "*the victims of this crime include the Sayo health centre as a legal entity, the individual victims (patients that were receiving ongoing in hospital and ambulatory care at the time of the attack, the health centre staff, and indirect victims of both the above), and the community of Sayo and its surroundings as a whole*".[272]

130. By substantiating its contentions merely based on Trial Chamber VI's finding according to which "*it is* […] *not clear whether the centre was damaged as a result of the crime*",[273] the Defence ignores the fact that the harm caused to the Sayo health centre as a protected building goes far beyond the centre's physical structure. Therefore, regardless of the extent of physical damage, Mr Ntaganda is liable to repair the entirety of the multidimensional harm caused as a result of the attack on the health centre. The Defence demonstrates nothing more than a mere disagreement with the Chamber's findings without showing that the Chamber committed any discernible error.

131. Even assuming that the Chamber erred in finding that the Sayo health centre "*lost its doors and windows, and received impacts on its walls*",[274] such an alleged error did

[270] See the Sentencing Judgment, *supra* note 5, para. 138 (emphasis added by the CLR2).
[271] See the Judgment, *supra* note 4, para. 506. See also the Sentencing Judgment, *supra* note 5, para. 144.
[272] See the Impugned Decision, *supra* note 15, para. 227.
[273] See the Sentencing Judgment, *supra* note 5, para. 153.
[274] See the Impugned Decision, *supra* note 15, para. 230.

not materially affect the Impugned Decision warranting the intervention of the Appeals Chamber for two reasons. First, it is submitted that this ensuing harm can be reasonably inferred on a balance of probabilities from Trial Chamber VI's finding that the UPC/FPLC soldiers fired projectiles at the health centre.[275] Second, the Chamber included the Sayo health centre as a legal entity amongst the beneficiaries of reparations not for the sole reason that the centre was physically damaged, but also because it "*was abandoned during the attack, which brought as a consequence that it was pillaged and could not continue providing regular medical services*".[276]

132. Furthermore, the Chamber awarded a fixed amount of 130,000 USD "*to compensate both the material and immaterial harm caused collectively to the community of Sayo and its surroundings as a whole, for the distress and additional expenses they had to incur due to the severe disruption of the medical care for persons in need within the community*".[277] Accordingly, had the physical damage not been included into the overall harm to be compensated, this would not have any significant impact on the total amount of the award, given the limited extent of the recognised physical damage.

133. As regards the Defence's reference to the *Lubanga* case to demonstrate its understanding of what it means to "*remain within the confines of the conviction and sentencing decisions*" in the context of an award for reparations,[278] it is submitted that the Defence misapplies and misinterprets the *Lubanga* Appeals Chamber[279] on this point. Indeed, the Appeals Chamber found that Mr Lubanga had *not* demonstrated how his previous submissions before the Trial Chamber had any *impact on the harm* the victims suffered.[280] Rather, the Appeals Chamber noted that on appeal, Mr Lubanga merely repeated his arguments before the Trial Chamber, and that it was

[275] See the Judgment, *supra* note 4, para. 1138 and footnote 3151.
[276] See the Impugned Decision, *supra* note 15, para. 234.
[277] *Idem*, para. 241.
[278] See the Defence Appeal Brief, *supra* note 1, para. 183.
[279] *Idem*, para. 185, which *refers* to the *Lubanga* 2019 Judgment, *supra* note 39, paras. 310-312.
[280] See the *Lubanga* 2019 Judgment, *supra* note 39, para. 312.

"*not clearly substantiated* […] *how Mr Lubanga intends for those submissions to affect the current reparations proceedings, especially how his actions could in any event have had an impact on the cost to repair the harm*".[281] Far from demonstrating that Mr Lubanga's appeal illustrated the Appeals Chamber's decision to reject evidence from the convicted person which fell outside the conviction and sentencing decisions in that case, it only demonstrated that Mr Lubanga's appeal submissions were repetitive and had no relevance or bearing in the reparations proceedings.[282]

134. Consequently, it is submitted that since the Defence failed to demonstrate that the Chamber committed any discernible error which materially affected the Impugned Decision in its determination on the harm caused as a result of the attack on the Sayo health centre, its Grounds of Appeal 9 and 10 should be dismissed.

9. Defence Ground of Appeal 11

135. Under its Ground of Appeal 11, the Defence alleges that the Chamber committed a procedural error by relying on Dr Gilmore's Report, despite being unable to assess its credibility, reliability, and the basis for its findings.[283] The Legal Representative submits that the Defence misrepresents the Impugned Decision and ignores Trial Chamber VI's findings made in the Judgment and Sentencing Judgment.

136. The Appeals Chamber found that Trial Chamber VI erred in failing to properly assess the credibility and reliability of the Second Expert Report, and the basis for its

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[281] *Ibid*.

[282] See the Defence Appeal Brief, *supra* note 1, para. 185, which *refers* to the *Lubanga* 2019 Judgment, *supra* note 39, para. 312: "*In this regard, the Appeals Chamber notes that on appeal Mr Lubanga merely repeats his arguments before the Trial Chamber, referring,* inter alia*, to his closing submissions during his criminal trial before Trial Chamber I and to evidence, which was presented during that stage of the proceedings, on the issue of demobilisation and disarmament of children in self-defence groups. It is not clearly substantiated, however, how Mr Lubanga intends for those submissions to affect the current reparations proceedings, especially how his actions could in any event have had an impact on the cost to repair the harm. The Appeals Chamber therefore rejects these arguments by Mr Lubanga*".

[283] See the Defence Appeal Brief, *supra* note 1, Heading 'GROUND 11', p. 73.

findings, and that it erred in failing to explain how it reached its finding as to causation and harm to the centre.[284]

137. With respect of the Appointed Experts' reports, the Chamber indicated at the outset that in accordance with previous practice at the reparations stage of the proceedings,[285] it did not consider it necessary to make explicit in the Reparations Order its determinations on the reliability of the experts or their reports.[286] However, in accordance with the Appeals Chamber's directions,[287] the Chamber made its determinations on the matter in the Impugned Decision in holding that:

> "*In determining that the Appointed Experts' reports were credible and their evidence reliable, the Chamber followed its consistent approach to expert's evidence in the case. The reports were assessed against and relied upon depending on 'factors such as the established competence of the particular witness in his or her field of expertise, the methodologies used, the extent to which the expert's findings were consistent with other evidence on the trial record, and the general reliability of the expert's evidence'. In effect, in light of their expertise, the details provided about their sources and methodology, and considering that in their reports the experts clearly indicated their reliance on the academic and scientific opinions of other experts on the issue as the source for their submissions, the Chamber, within its discretion, was satisfied that they were sufficiently substantiated and adequate, taken together with the jurisprudence of other international jurisdictions, to support the definition provided for in the* Katanga *case*".[288]

138. More specifically with respect to Dr Gilmore's report, the Chamber held that "*having assessed the Defence's submissions and challenges to the Second Expert's Report, taking into account Dr Gilmore's expertise and the details provided about her sources and methodology in the report, within its discretion, the Chamber considered the expert credible and her report generally reliable*".[289] It emphasised in this regard that "[h]*owever, as with any other evidence in the case, the Chamber proceeded with caution, relying on the report only*

[284] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 548.
[285] See the Impugned Decision, *supra* note 15, footnote 438.
[286] *Idem*, para. 179 and footnote 438.
[287] *Idem*, para. 179.
[288] *Idem*, para. 180.
[289] *Idem*, para. 233.

to the extent that it is consistent with the Chamber's holistic assessment of the evidence regarding the harm caused as a consequence of the attack to the Sayo health centre".[290]

139. Therefore, contrary to the Defence's contentions,[291] the Chamber did assess the credibility, reliability and basis of Dr Gilmore's report and did address the concerns raised by the Defence regarding Dr Gilmore's report. Contrary to the Defence's further contentions,[292] for the purpose of its assessment and in accordance with "*its consistent approach to expert's evidence in the case*",[293] the Chamber was not required to scrutinise the underlying material and information relied upon Dr Gilmore. The Defence demonstrates nothing more than a mere disagreement with the Chamber's assessment without showing that the Chamber committed any error.

140. The Defence also takes issue with the Chamber's 'sole' reliance on the specific wording of Dr Gilmore's report for its conclusion that the attack on the Sayo health centre "*caused harm to its service provision and exacerbated the vulnerability and suffering of the civilian population*".[294] In fact, the Chamber made it clear that its "*determination is not only supported by the expert's report, but it is a conclusion that, on a balance of probabilities, is supported by the evidence assessed as a whole*".[295] In making this finding, the Chamber remained within the confines of the Judgment and Sentencing Judgment. In this regard, the Defence ignores that the Chamber's said conclusion is fully consistent with Trial Chamber VI's finding according to which "*launching an attack against the health centre, a facility that cares for patients,* [had] *the consequential severe impact on the welfare and/or lives of any patients present at the centre and disrupted the medical care for persons in need*".[296]

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[290] *Ibid*.
[291] See the Defence Appeal Brief, *supra* note 1, para. 201.
[292] *Idem*, paras. 200-202.
[293] See the Impugned Decision, *supra* note 15, para. 180.
[294] See the Defence Appeal Brief, *supra* note 1, para. 203.
[295] See the Impugned Decision, *supra* note 15, para. 232.
[296] See the Judgment, *supra* note 4, para. 506. See also the Sentencing Judgment, *supra* note 5, para. 144.

141. The Chamber's said conclusion is also supported by the additional evidence presented by the Legal Representative and relied upon by the Chamber, according to which "*the centre was abandoned during the attack*", "*once abandoned, the centre ceased providing medical services*", and "*the centre remained closed and only resumed limited activities about six months after the attack, and was only partly rehabilitated when a new building was constructed by an NGO in 2005*".[297] In accordance with Trial Chamber VI's said finding, and further to the one that "*all* [the centre's] *belongings were pillaged by unknown individuals*",[298] were based on the evidence before it, it was reasonable for the Chamber to conclude "*on a balance of probabilities, that as a consequence of the attack the medical care for persons in need within the community of Sayo and its surrounding areas was severely disrupted*",[299] which caused harm not only to the Sayo health centre as a legal entity but also to individual victims and the community of Sayo and its surrounding areas as a whole.[300]

142. Even assuming that the Chamber erred by relying on the Second Expert Report that the attack on the Sayo health centre "*caused harm to its service provision and exacerbated the vulnerability and suffering of the civilian population*",[301] such an alleged error did not materially affect the Impugned Decision, since, as demonstrated *supra*, the Chamber's determination was consistent with Trial Chamber VI's findings made in the Judgment and Sentencing Judgment and supported by the additional evidence presented by the Legal Representative.

143. Finally, contrary to the Defence's contention,[302] the Chamber's conclusion that the Sayo health centre was abandoned during the attack was based not only on the additional evidence presented by the Legal Representative, but also on Trial Chamber

[297] See the Impugned Decision, *supra* note 15, para. 231.
[298] See the Judgment, *supra* note, 4, para. 530 and footnote 1563.
[299] See the Impugned Decision, *supra* note 15, para. 231.
[300] *Idem*, para. 234.
[301] *Idem*, para. 232.
[302] See the Defence Appeal Brief, *supra* note 1, para. 205.

VI's finding made in the Judgment according to which the medical personnel fled the Sayo health centre to protect their lives and had to abandon the patients to their fate.[303]

144. Consequently, it is submitted that since the Defence failed to demonstrate that the Chamber committed any discernable error which materially affected the Impugned Decision, its Ground of Appeal 11 should be dismissed.

10. Defence Ground of Appeal 12

145. Under its Ground of Appeal 12, the Defence alleges that the Chamber erred in law by failing to address the question of breaks in the chain of causation in relation to the Sayo health centre.[304] The Legal Representative submits that the Defence misrepresents the Impugned Decision and ignores the very nature of the crime under article 8(2)(e)(iv) of the Statute as well as Trial Chamber VI's findings made in the Judgment and Sentencing Judgment.

146. The Appeals Chamber found that Trial Chamber VI erred in failing to properly reason its decision as to the chain of causation establishing that Mr Ntaganda is responsible for the harm caused to the health centre in Sayo.[305]

147. In the Impugned Decision, the Chamber referred at the outset to the applicable standard of causation.[306] The Chamber recalled that "*in the Conviction Judgment it found beyond reasonable doubt that* Mr Ntaganda meant *for the UPC/FPLC soldiers to indiscriminately attack the health centre in Sayo,* knowing that *medical facilities are protected against attack under IHL*" and that "*in the Sentencing Judgment, it was found beyond reasonable doubt that by launching an attack against the health centre, a facility that cares for patients, the perpetrators* accepted the consequential *severe impact on the welfare and/or*

[303] See the Judgment, *supra* note 4, para. 506.
[304] See the Defence Appeal Brief, *supra* note 1, Heading 'GROUND 12', p. 79.
[305] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 581.
[306] See the Impugned Decision, *supra* note 15, para. 235.

lives of any patients present at the centre and disrupted the medical care for persons in need".[307] It further recalled that "*the Chamber found the people left behind at the centre were particularly defenceless, as they were unable to leave on their own and were left without medical care*".[308] The Chamber found that "*it has been demonstrated, on a balance of probabilities, that, by launching the attack against the health centre, Mr Ntaganda could have reasonably foreseen that the building would be damaged, patients would be severely affected, and the provision of medical care would be suspended, either because of damage to the facilities, pillaging, or because of the staff fleeing or having been harmed*" and that "*the crime of attack against a protected object for which Mr Ntaganda was convicted is the proximate cause of the harm caused to the centre, individual victims, and the community of Sayo and surroundings as a whole*".[309] In light of said findings, the Chamber went to conclude that "*the standard of causation is met*".[310]

148. The Chamber then turned to the analysis of the Defence's submissions regarding the alleged breaks in the chain of causality.[311] The Chamber noted at the outset that "*it was established that the crime for which Mr Ntaganda was convicted is the proximate cause of the harm caused as a direct consequence of the attack*" and that it "*has not considered the current situation of the health centre in order to determine the extent of the harm*", but instead it "*assessed the evidence to determine the extent of the harm at the time of the attack and the immediate aftermath*".[312] The Chamber underlined that "*Mr Ntaganda's liability is limited to the harm caused as a direct consequence of the crimes for which he was convicted*".[313] Having found that "[g]*iven that no further incidents other than those indicated above were taken into account, and recalling that a finding beyond reasonable doubt as to the perpetration of the attack has already been made in the context of the Conviction*

[307] *Idem*, para. 236.
[308] *Ibid*.
[309] *Idem*, para. 237.
[310] *Ibid*.
[311] *Idem*, para. 238.
[312] *Ibid*.
[313] *Ibid*.

Judgment", the Chamber went to conclude that "*the Defence's submissions about an alleged break in the chain of causation* [are] *misplaced*".[314]

149. It is submitted that contrary to the Defence's contentions,[315] and in accordance with the Appeals Chamber's directions, the Chamber addressed the question of the chain of causation establishing that Mr Ntaganda is responsible for the harm caused to the Sayo health centre, properly reasoned its decision and specifically addressed the Defence's submissions regarding the alleged breaks in the chain of causality. Thus, the Defence's contentions under the present Ground of Appeal constitute nothing more than a mere disagreement with the Chamber's findings without however demonstrating that the Chamber committed any error.

150. In effect, like under its Grounds of Appeal 9 and 10, by alleging the lack of evidence on the record to support the Chamber's finding that the Sayo health centre lost its doors and windows, and received impacts on the wall,[316] the Defence again seems to suggest that in the absence of clearly recognized physical damage, Mr Ntaganda cannot be liable for reparations as a result of the attack on the health centre. It further alleges under the present Ground of Appeal that any physical damage eventually caused to the Sayo health centre cannot be attributed to the UPC/FPLC as they were "*chased out by force from Sayo and Mongbwalu, by other armed groups*".[317]

151. As argued above in his submissions on the Defence Grounds of Appeal 9 and 10, the Legal Representative reiterates that the attack on the Sayo health centre caused multidimensional harm which goes far beyond damage to the health centre's physical structure and includes at the very least harm caused to the very existence of medical facilities and to the community of Sayo who ordinarily benefitted from and relied on such facilities, "*because of the role these objects, such as medical facilities and school, play in*

[314] *Ibid*.
[315] See the Defence Appeal Brief, *supra* note 1, para. 215.
[316] *Idem*, para. 216.
[317] *Idem*, para. 214.

the daily life and welfare".[318] Within the confines of Trial Chamber VI's findings made in the Judgment and Sentencing Judgment, and consistent with the very nature of the crime under article 8(2)(e)(iv) of the Statute and the previous jurisprudence of the Court, it was reasonable for the Chamber to conclude on a balance of probabilities standard that "*the victims of this crime include the Sayo health centre as a legal entity, the individual victims (patients that were receiving ongoing in hospital and ambulatory care at the time of the attack, the health centre staff, and indirect victims of both the above), and the community of Sayo and its surroundings as a whole*".[319]

152. It is submitted that the harm to the victims of the crime at stake as correctly identified by the Chamber was caused immediately by the very attack on the Sayo health centre, which is supported by Trial Chamber VI's findings in the Judgment and Sentencing Judgment, and accordingly no issue of the break in the chain causality even arises. Even assuming that the Chamber committed an error in not sufficiently addressing the likelihood of the break in the chain of causality with respect to physical damage caused to the Sayo health centre as a legal entity, such an alleged error did not materially affect the Impugned Decision, given that in any case "*launching an attack against the health centre,* […] *disrupted the medical care for persons in need*".[320]

153. Consequently, it is submitted that since the Defence failed to demonstrate that the Chamber, when addressing the question of the chain of causation with respect to the Sayo health centre, committed any discernable error which materially affected the Impugned Decision, its Ground of Appeal 12 should be dismissed.

11. Defence Ground of Appeal 13

154. Under its Ground of Appeal 13, the Defence alleges that the Chamber erred in law and in fact by rejecting arguments raised by the Defence during the

[318] See the Sentencing Judgment, *supra* note 5, para. 138.
[319] See the Impugned Decision, *supra* note 15, para. 227.
[320] See the Judgment, *supra* note 4, para. 506. See also the Sentencing Judgment, *supra* note 5, para. 144.

implementation of the TFV's IDIP concerning the application of the '*do no harm*' principle to the eligibility determination of priority victims.[321]

155. The Legal Representative recalls at the outset that the Appeals Chamber reversed Trial Chamber VI's findings contained in the Reparations Order on a number of specific matters and remanded them to the Chamber to issue a '*new reparations order*' taking into account the terms of the Appeals Judgment.[322] The application of the '*do no harm*' principle to the eligibility determination of priority victims is not amongst the issues which were remanded to the Chamber. As argued above in his observations on the Defence Ground of Appeal 1,[323] the Legal Representative reiterates that the Appeals Chamber did not direct the Chamber to revise and/or complement Trial Chamber VI's other findings contained in the Reparations Order which fall outside the scope of the remand and/or the scope of the appeals against the Reparations Order.

156. Accordingly, since the Chamber did not touch upon the question of the application of the '*do no harm*' principle to the eligibility determination of priority victims, this question does not arise from the Impugned Decision, and the Defence Ground of Appeal 13 should be dismissed for this reason alone.

157. Furthermore, as acknowledged by itself,[324] the Defence previously raised before the Appeals Chamber the question of the application of the '*do no harm*' principle to the present reparations proceedings under its Ground of Appeal 3 of its appeal against the Reparations Order, and the Appeals Chamber dismissed said Ground in finding that "*the Defence has not demonstrated any error in the Trial Chamber's approach to the 'do no harm' principle*".[325]

[321] See the Impugned Decision, *supra* note 15, Heading 'GROUND 13', p. 82.
[322] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 750.
[323] See *supra* paras. 34-35.
[324] See the Defence Appeal Brief, *supra* note 1, para. 222.
[325] See the *Ntaganda* Appeals Judgment, *supra* note 12, para. 456.

158. The Defence contends that "[w]*hereas the do no harm principle was previously addressed in Ground 3 of* [its] *appeal against the 8 March Reparations Order, the submission of this Ground 13, also dealing with the* do no harm *principle, is justified by the significant developments taking place since the 8 March Reparations Order was issued and the decisions issued by Trial Chamber II on the updated reports submitted by the TFV*".[326]

159. However, the Defence self-acknowledges that after the *Ntaganda* Appeals Judgment it repeatedly raised the '*do no harm*' principle related issues with the Chamber and admits that its arguments were rejected by the Chamber in its decisions on the TFV's update reports.[327]

160. It is submitted that since the Defence did not seek leave to appeal the relevant decisions under rule 155 of the Rules, by raising the same issues and bringing the same arguments, it attempts to re-litigate the same issues which have already been adjudicated upon by the Appeals Chamber and the Chamber.

161. The Legal Representative notes in this regard that while the Chamber, within its discretion, systematically rejected the implementation of measures proposed by the Defence in relation to the security situation in Ituri, this does not mean that the Chamber has been turning a blind eye to the security situation on the ground. Indeed, the TFV has periodically provided the Chamber with updates on the security situation and thus the Chamber has continuously followed the developments. So far, the Chamber has not found that the security situation in Ituri has an impact on the implementation of the IDIP. In its last decision on the TFV's Update Report, the Chamber concluded that it was "*satisfied that the programme implementation in the IDIP context continues to remain generally unaffected*" in light of the current information.[328] Similarly, in its most recent Update Report, the TFV recalled the Chamber's finding

[326] See the Defence Appeal Brief, *supra* note 1, para. 226.
[327] *Idem*, para. 227.
[328] See the "Decision on the TFV's Ninth to Twelfth Update Reports on the Implementation of the Initial Draft Implementation Plan" (Trial Chamber II), No. ICC-01/04-02/06-2868, 31 August 2023, para. 20.

that the risk of beneficiaries' possible association with, or involvement in, the activities of armed groups is "*extremely limited and almost negligible*", and following a recent assessment, the TFV considered that there are no indicators that this security risk has increased since the Chamber's referred decision.[329]

162. The Defence did not seek leave to appeal said and previous similar decisions of the Chamber. By raising the same issues before the Appeals Chamber, the Defence attempts to re-litigate the issues which have already been adjudicated upon by the Chamber and which do not arise from the Impugned Decision.

163. Consequently, it is submitted that since the Defence attempts to re-litigate the issues which have already been adjudicated upon in the Chamber's previous decisions and which do not arise from the Impugned Decision, its Ground of Appeal 13 should be dismissed.

VI. CONCLUSION

164. The Legal Representative submits that the Defence Ground of Appeal 1 should be dismissed because the Defence failed to demonstrate that the Chamber committed any discernible error which materially affected the Impugned Decision. The Defence Grounds of Appeal 2, 3, 5 and 13 should be dismissed because the Defence attempts to re-litigate the issues which have already been adjudicated upon in the Chamber's previous decisions and which do not arise from the Impugned Decision.

165. The Defence Ground of Appeal 4 should be dismissed because the Defence either misrepresents the Impugned Decision or attempts to re-litigate the issues which have already been adjudicated upon in the Chamber's previous decisions and which do not arise from the Impugned Decision, and demonstrates nothing more than a mere

[329] See the "Trust Fund for Victims' Fourteenth Update Report on the Implementation of the Initial Draft Implementation Plan", No. ICC-01/04-02/06-2885-Conf, 11 December 2023, para. 9.

disagreement with the Impugned Decision without however showing that the Chamber committed any discernible error.

166. The Defence Grounds of Appeal 6, 7 and 8 should be dismissed because the Defence either misapprehends the *Ntaganda* Appeals Judgment or demonstrates nothing more than a mere disagreement with the Impugned Decision without however showing that the Chamber committed any error.

167. The Defence Grounds of Appeal 9, 10 and 12 should be dismissed because the Defence ignores the very nature of the crime under article 8(2)(e)(iv) of the Statute and Trial Chamber VI's findings made in the Judgment and Sentencing Judgment, and demonstrates nothing more than a mere disagreement with the Impugned Decision without however showing that the Chamber committed any discernible error which materially affected the Impugned Decision.

168. Finally, the Defence Ground of Appeal 11 should be dismissed because the Defence misrepresents the Impugned Decision and ignores Trial Chamber VI's findings made in the Judgment and Sentencing Judgment, and demonstrates nothing more than a mere disagreement with the Impugned Decision without however showing that the Chamber committed any discernible error which materially affected the Impugned Decision.

169. Consequently, the Legal Representative respectfully requests the Appeals Chamber to dismiss in their entirety the Defence Thirteen Grounds of Appeal as set out in its Appeal Brief.

RESPECTFULLY SUBMITTED,

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 25th Day of January 2024
At The Hague, The Netherlands