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No.: **ICC-02/04-01/15**
Date: **26 August 2024**

THE APPEALS CHAMBER

Before: **Judge Solomy Balungi Bossa, Presiding Judge**
Judge Luz del Carmen Ibáñez Carranza
Judge Tomoko Akane
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN UGANDA

IN THE CASE OF
THE PROSECUTOR v. DOMINIC ONGWEN

Confidential

Response of the Common Legal Representative of Victims to the "Defence Brief in Support of its Appeal of the Reparations Order dated 28 February 2024"

Source: **Office of Public Counsel for Victims**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence
Mr Charles Achaleke Taku
Ms Beth Lyons
Mr Thomas Obhof

Legal Representatives of the Victims
Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Common Legal Representatives for Victims
Ms Paolina Massidda

The Office of Public Counsel for Victims
Ms Paolina Massidda
Mr Orchlon Narantsetseg
Ms Ludovica Vetruccio

The Office of Public Counsel for the Defence
Ms Marie O'Leary

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

Victims Participation and Reparations Section
Mr Philipp Ambach

Trust Fund for Victims
Ms Deborah Ruiz Verduzco

I. INTRODUCTION

1. The Common Legal Representative of Victims (the "CLRV") hereby files her response to the Defence Brief in Support of its Appeal (the "Defence Appeal" or the "Appeal")[1] of the Reparations Order dated 28 February 2024 (the "Impugned Decision").[2] The CLRV opposes the Appeal in its entirety.

2. Preliminarily, the CLRV challenges the validity of the withdrawal of Grounds 10 and 15 of the Appeal and requests the Appeals Chamber to treat these grounds as definitively abandoned.

3. Furthermore, the Defence does not meet the necessary requirements to substantiate its arguments as prescribed by the Court's jurisprudence and the Appeal should be dismissed *in limine*. Should the Appeals Chamber entertain the merits of the Appeal, all Grounds should be dismissed because the Defence fails to show any error in the reasoning of Trial Chamber IX (the "Chamber") which could materially affect the Impugned Decision. In fact, the Defence merely disagrees with, misunderstands the Impugned Decision, and raises arguments already settled at trial.

II. PROCEDURAL BACKGROUND

4. On 4 February 2021, the Chamber issued its Judgment, finding Mr Ongwen guilty of 61 charges of war crimes and crimes against humanity.[3] On 6 May 2021, the

[1] See the "Defence Brief in Support of its Appeal of the Reparations Order dated 28 February 2024", No. ICC-02/04-01/15-2093-Conf A A3 and No. ICC-02/04-01/15-2093-Red, 24 June 2024 (the "Defence Appeal" or the "Appeal").
[2] See the "Reparations Order" (Trial Chamber IX), No. ICC-02/04-01/15-2074, 28 February 2024 (the "Impugned Decision").
[3] See the "Trial Judgment" (Trial Chamber IX), No. ICC-02/04-01/15-1762-Conf and No. ICC-02/04-01/15-1762-Red, 4 February 2021 (the "Judgment").

Chamber sentenced Mr Ongwen to 25 years of imprisonment.[4] On 15 December 2022, the Appeals Chamber confirmed the Judgment[5] and the Sentence.[6]

5. On 28 February 2024, the Chamber issued the Impugned Decision.[7]

6. On 1 March 2024, the Defence filed a request, seeking an extension of the time limit for filing its notice of appeal and appeal brief.[8] Pursuant to the Appeals Chamber's instruction,[9] the CLRV and Legal Representatives of Victims responded jointly to the request on 11 March 2024.[10] On 14 March 2024, the Appeals Chamber extended the time for filing of any notice of appeal to 22 April 2024.[11]

7. On 22 April 2024, the Defence filed its Notice of Appeal and requested suspensive effect of the Impugned Decision.[12] On the same day, the Appeals Chamber instructed the Trust Fund for Victims (the "TFV"), the Victims Participation and Reparations Section (the "VPRS") and both teams of Legal Representatives of Victims

[4] See the "Sentence" (Trial Chamber IX), No. ICC-02/04-01/15-1819-Conf and No. ICC-02/04-01/15-1819-Red (the "Sentence"), and the "Partly Dissenting Opinion of Judge Raul C. Pangalangan", No. ICC-02/04-01/15-1819-Anx, 6 May 2021.
[5] See the "Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled 'Trial Judgment'" (Appeals Chamber), No. ICC-02/04-01/15-2022-Red A, 15 December 2022.
[6] See the "Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled 'Sentence'" (Appeals Chamber), No. ICC-02/04-01/15-2023 A2, and "ANNEX 1: Partly Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza", No. ICC-02/04-01/15-2023-Anx1 A2, 15 December 2022.
[7] See the Impugned Decision, *supra* note 2.
[8] See the "Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Reparations Order pursuant to Rule 150(2) of the Rules of Procedure and Evidence", No. ICC-02/04-01/15-2075-Red A A3, 4 March 2024.
[9] See the "Order concerning the time limit for responses to the 'Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Reparations Order pursuant to Rule 150(2) of the Rules of Procedure and Evidence'" (Appeals Chamber), No. ICC-02/04-01/15-2077 A A3, 4 March 2024.
[10] See the "Legal Representatives of Victims Joint Response to the 'Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Reparations Order pursuant to Rule 150(2) of the Rules of Procedure and Evidence'", No. ICC-02/04-01/15-2078-Conf A A3, 11 March 2024. Pursuant to Appeal Chamber's Decision No. ICC-02/04-01/15-2080 A A3, dated 14 March 2014, this document is reclassified as "Public".
[11] See the "Decision on the Defence's request for time extension for the notice of appeal and appeal brief against Trial Chamber IX's 'Reparations Order'" (Appeals Chamber), No. ICC-02/04-01/15-2080 A A3, 14 March 2024.
[12] See the "Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for Suspensive Effect", No. ICC-02/04-01/15- 2084 A A3, 22 April 2024, paras. 8–12 (the "Notice").

to respond to the Defence Request for suspensive effect by 1 and 6 May 2024, respectively.[13]

8. On 1 May 2024, the Registry[14] and the TFV[15] filed their responses to the Defence Request for suspensive effect.

9. On 3 May 2024, the Trial Chamber issued a Decision on Registry Submissions pursuant to the Impugned Decision.[16]

10. On 6 May 2024, both teams of Legal Representatives of Victims responded to the Defence Request for suspensive effect,[17] while the Defence responded to the VPRS and TFV submissions.[18]

11. On 16 May 2024, the Appeals Chamber rejected the Defence Request for suspensive effect.[19]

12. On 24 June 2024, the Defence filed its Appeal Brief.[20]

13. On 12 July 2024, the Appeals Chamber issued a Decision replacing the Presiding Judge in the current appeal.[21]

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[13] See the "Order setting a time limit for submissions on the request for suspensive effect" (Appeals Chamber), No. ICC-02/04-01/15-2085 A A3, 24 April 2024.
[14] See the "Registry Submission on the Request for Suspensive Effect", No. ICC-02/04/01/15-2086 A A3, 1 May 2024.
[15] See the "Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence", No. ICC-02/04-01/15-2087 A A3, 1 May 2024.
[16] See the "Decision on Registry Submissions pursuant to Reparations Order ICC-02/04-01/15-2074" (Trial Chamber II), No. ICC-02/04-01/15-2088, 3 May 2024.
[17] See the "Victims' Response to the Defence Request for Suspensive Effect in its appeal against the Reparations Order", No. ICC-02/04-01/15-2089 A A3, 6 May 2024. See also, the "Victims' Response to the Defence Request for Suspensive Effect and to the Observations by the Trust Fund for Victims and Registry on the Request for Suspensive Effect", No. ICC-02/04-01/15-2090 A A3, 6 May 2024.
[18] See the "Defence Response to the Registry's and TFV's Submissions on Suspensive Effect and Rule 103 of the Rules and Procedure and Evidence", No. ICC-02/04-01/15-2091 A A3, 6 May 2024.
[19] See the "Decision on the Defence request for suspensive effect" (Appeals Chamber), No. ICC-02/04-01/15-2092 A A3, 16 May 2024.
[20] See the Defence Appeal, *supra* note 1.
[21] See the "Decision replacing the Presiding Judge of the Appeals Chamber in the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX entitled 'Reparations Order'" (Appeals Chamber), No. ICC-02/04-01/15-2094 A A3, 12 July 2024.

14. On 23 August 2024, the Legal Representatives of Victims filed their response to the Defence Appeal.[22]

III. CONFIDENTIALITY

15. In accordance with regulation 23*bis*(2) of the Regulations of the Court, the present submission is filed confidential following the classification chosen by the Defence. However, the CLRV indicates that it does not contain confidential information and can be reclassified as 'public'.

IV. SUBMISSIONS

1. Applicable law

16. In the *Ntaganda* case, the Appeals Chamber summarised the standard of review and for substantiating arguments related to the appeals of reparations orders.[23]

17. Concerning errors of law, the Appeals Chamber will not defer to the trial chamber's interpretation; rather, it will arrive at its own conclusions as to the applicable law and determine whether or not said chamber misinterpreted it.[24] If the trial chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the impugned decision.[25] A decision is materially affected by an error of law if the trial chamber would have rendered a ruling substantially different from the one affected by the error, had it not made such error.[26]

18. Concerning errors of fact, the Appeals Chamber will not interfere with factual findings of the first-instance chamber unless it is shown that the latter clearly

[22] See the "Victims' Response to the "Defence Brief in Support of its Appeal of the Reparations Order dated 28 February 2024", No. ICC-01/04-01/15-2095-Conf, 23 August 2024.
[23] 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, para. 28 (the "*Ntaganda* Appeals Judgment").
[24] *Idem*, para. 29.
[25] *Ibid.*
[26] *Ibid.*

misappreciated the facts, took into account irrelevant facts, or failed to take into account relevant facts.[27] As to the misappreciation of facts, the Appeals Chamber will not disturb a chamber's evaluation just because it might have come to a different conclusion.[28] It will interfere only where it cannot discern how the chamber's conclusion could have reasonably been reached from the evidence before it.[29]

19. With regard to presumptions of fact drawn by a trial chamber in reparations proceedings, the Appeals Chamber emphasised that the reasonableness of a factual presumption will depend upon the circumstances of the case.[30] Thus, a party challenging a factual presumption must demonstrate that no reasonable trier of fact could have formulated the presumption in question in light of the particular set of circumstances in that case.[31]

20. Concerning procedural errors, the Appeals Chamber will only reverse the decision, if it is materially affected by the error. Therefore, the appellant needs to demonstrate that, in the absence of such error, the impugned decision would have substantially differed from the one rendered.[32]

21. Regarding errors in discretionary decisions, the Appeals Chamber will not interfere with a chamber's exercise of discretion merely because, if it had the power, it might have made a different ruling.[33] The Appeals Chamber will only disturb the exercise of a chamber's discretion where it is shown that an error of law, fact or procedure was made and it will correct an exercise of discretion where it is based upon (i) an erroneous interpretation of the law; (ii) a patently incorrect conclusion of fact; or (iii) the decision amounts to an abuse of discretion.[34] An abuse of discretion will occur when the decision is so unfair or unreasonable as to force the conclusion that the

[27] *Idem*, para. 30.
[28] *Ibid*.
[29] *Ibid*.
[30] *Idem*, para. 32.
[31] *Ibid*.
[32] *Idem*, para. 33.
[33] *Idem*, para. 34.
[34] *Ibid*.

chamber failed to exercise its discretion judiciously.[35] The Appeals Chamber will also consider whether the chamber gave weight to extraneous or irrelevant considerations or failed to give weight or sufficient weight to relevant considerations in exercising its discretion.[36] Furthermore, once it is established that the discretion was erroneously exercised, the Appeals Chamber has to be satisfied that the improper exercise of discretion did materially affect the impugned decision.[37]

22. Lastly, on how to substantiate the relevant arguments, the Appeals Chamber recalled that an appellant is required to (i) refer to the relevant part of the record or any other document or source of information as regards any factual issue and to any relevant article, rule, regulation or other applicable law, and any authority cited in support thereof as regards any legal issue; (ii) identify the finding or ruling challenged in the decision with specific reference to the page and paragraph number; (iii) present cogent arguments that set out the alleged error and explain how the relevant chamber erred; (iv) in alleging that a factual finding is unreasonable, explain why this is the case — for example, by showing that it was contrary to logic, common sense, scientific knowledge and experience; (v) draw the attention of the Appeals Chamber to all the relevant aspects of the record or evidence in support of the respective submissions relating to the impugned factual finding; and (vi) demonstrate how the error materially affected the impugned decision.[38]

2. The validity of withdrawal of Grounds 10 and 15

23. In its Notice, the Defence listed 15 grounds of appeal. In its Appeal Brief, the Defence states that "[it] *decided to withdraw Grounds 10 and 15, but reserves the right to reinstate said grounds should Mr Ongwen decide after receiving the Acholi translation of the operative parts of the Impugned Decision*".[39]

[35] *Idem*, para. 35.
[36] *Ibid*.
[37] *Idem*, para. 34.
[38] *Idem*, paras. 36 and 37.
[39] See the Defence Appeal, *supra* note 1, para. 8.

24. The CLRV submits that this course of action is invalid. First, rule 152 of the Rules of Procedure and Evidence (the "Rules") only provides for the discontinuance of an appeal in its entirety.[40] However - although the Court's legal texts do not provide for a withdrawal limited to certain grounds of appeals -, the Appeals Chamber has previously found that failure "*to define the appealable issues and clarify his submissions in support of them*" shows that the appellant is in fact *disinclined* to proceed and leads to "*the irresistible conclusion*" that they have abandoned those issues.[41] Consequently, the abandoned grounds no longer constitute a live issue in the proceedings.

25. Second, a notice of discontinuance may be considered valid only when it does not contain reservations or conditions.[42] The Defence's claim that "[it may reserve] *the right to reinstate said grounds, should Mr Ongwen decide after receiving the Acholi translation of the operative parts of the Impugned Decision*", clearly constitutes a reservation or condition under the jurisprudence of the Appeals Chamber and thus, is invalid. Therefore, the Appeals Chamber should treat Grounds 10 and 15 as conclusively abandoned and reject as invalid the Defence's reservation.

26. Should the Appeals Chamber be minded to accept such condition, the CLRV reserves her right to respond to Grounds 10 and 15, if and when reinstated.

[40] See the "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled 'Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008'" (Appeals Chamber), No. ICC-01/04-01/06-1486 OA13, 21 October 2008, para. 16.
[41] See the "Decision on Thomas Lubanga Dyilo's Application for Referral to the Pre-Trial Chamber/ in the Alternative, Discontinuance of Appeal" (Appeals Chamber), No. ICC-01/04-01/06-393 OA2, 6 September 2006, para. 13. See also, the "Judgment on the appeal of the Prosecutor against the 'Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules' of Pre-Trial Chamber I" (Appeals Chamber), No. ICC-01/04-01/07-776 OA7, 26 November 2008, para. 5.
[42] See the "Decision on Prosecutor's notice of discontinuance of the appeal" (Appeals Chamber), No. ICC-02/17-216 OA5, 16 March 2023, para. 33.

3. Merits of the Appeal

27. As a preliminary matter, the CLRV notes that the Appeal does not meet the necessary requirements for substantiating the relevant arguments.[43] Indeed, the Defence fails to (i) identify the nature of its grounds of appeal and whether they allegedly constitute errors of law, procedure, fact or in the exercise of the Chamber's discretion; (ii) explain how the Chamber erred; and in turn (iii) demonstrate how the alleged errors materially affect the Impugned Decision.[44] On this basis alone, the Appeal should be dismissed *in limine*.

28. Should the Chamber be minded to address the merits of the Appeal, the CLRV submits the following observations. Since the Defence raises issues which are entwined, the relevant arguments are addressed *infra* in groups.

Grounds 1 and 7

29. The Defence argues that the Chamber erred by failing (i) to order the disclosure of the names of the individuals in the sample of the victims' dossier (the "Sample") (Ground 1); and (ii) to appreciate the need for the victims to provide medical documentation in support of their disabilities (Ground 7)[45] - thereby potentially increasing the number of estimated beneficiaries and Mr Ongwen's overall liability.[46] However, the Sample contained only the files of 205 individuals, representing a small fraction of the overall 49,772 estimated beneficiaries. Even if the Defence had successfully challenged the eligibility of all individuals included in the Sample, it would not have significantly impacted the overall reparations awarded or the convicted person's liability.

[43] See the *Ntaganda* Appeals Judgment, *supra* note 23, paras. 36 and 37.
[44] *Ibid*.
[45] See the Defence Appeal, *supra* note 1, paras. 9 and 88.
[46] *Ibid*.

30. The Defence further argues that its inability to make a thorough assessment of the Sample has directly impacted the Impugned Decision.[47] In this regard, the Defence did contest 27 applications in the Sample - amounting to 10% of the overall individuals. This shows, contrary to its assertions, that it was in a position to make informed comments on the applications. The Defence seems to also imply that it was the only or the best-suited party to cross-check the information in the applications against the "*material found in the case file*"[48] and to properly assess the "*claims made by potentially eligible victims about their welfare after their alleged injuries sustained during the attack*".[49] However, the Defence overlooks that the Chamber had full access to the entire case record and was well aware of the identities of all participating victims, including the 205 individuals in the Sample. Therefore, the Chamber made its findings with a comprehensive understanding of all relevant information.[50]

31. As regards the redactions in the applications included in the Sample, the Defence further contests the instructions "*to raise any challenge it may have to the redactions applied/maintained directly with the VPRS, seizing the Chamber only exceptionally when no agreement can be reached*".[51] Nevertheless, the Defence decided not to appeal said ruling and the procedure to be followed in such scenarios. It is therefore precluded from raising this issue at this stage of the proceedings, as a request from a party that failed to raise an issue at the first opportunity it encountered is dismissible for its untimeliness alone.[52] A party cannot remain silent on a matter only to raise it afterwards on appeal;[53] it is instead required to raise formally and timely any issue of contention - since failure to do so may result in the complainant having waived their

[47] *Idem*, paras. 18-19.
[48] *Idem*, para. 9.
[49] *Idem*, para. 89.
[50] See in this regard, the *Ntaganda* Appeals Judgment, *supra* note 23, para. 169.
[51] See the "Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample" (Trial Chamber IX), No. ICC-02/04-01/15-2027, 16 January 2023, para. 12.
[52] See the "Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision" (Trial Chamber IX), No. ICC-02/04-01/15-1147, 24 January 2018, para. 18.
[53] See ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgement (Appeals Chamber), 15 July 1999, para. 55.

right to raise the issue on appeal.[54] In fact, the appeal process is not designed to give parties a chance to remedy their own failings or oversights.[55] The Appeals Chamber endorsed this approach in the present case as well.[56]

32. The Defence also disagrees with the Chamber's redactions, arguing that they are "*completely unnecessary*" since "*Mr Ongwen did not and still does not have any animosity towards the victims or witnesses*".[57] Yet, victims continue to live in fear of reprisals from Mr Ongwen's inner circle and supporters, a fear that has been fuelled by years of unaddressed traumatic experiences.[58] Fully appraised of both perspectives, the Chamber committed no error in striking the appropriate balance and granting the redactions as the least intrusive measure necessary.

33. The Defence's arguments about the absence of medical records for some applicants, raised in Ground 7, merely reflect a disagreement with the Impugned Decision. The Defence fails to recognise that each person's health condition is unique, compounded by a variety of factors that result in specific medical conditions. In fact, the Defence lacks the expertise to assess claims of a medical nature made by the

[54] See ICTY, *Prosecutor v. Boškoski et al.*, Case No. IT-04-82-A, Judgement (Appeals Chamber), 19 May 2010, para. 244. See also, ICTY, *Prosecutor v. Naser Oric*, Case No. MICT-14-79, Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015 (Appeals Chamber), 18 February 2016, para. 14; and ICTR, *Prosecutor v. Nyiramasuhuko et al*, Case No. ICTR-98-42-A, Judgment (Appeals Chamber), 14 December 2015, para. 63.
[55] See ICTY, *Prosecutor v. Erdemović*, Case No. IT-96-22-A, Judgement (Appeals Chamber), 7 October 1997, para. 15. See also, ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgement (Appeals Chamber), 15 July 1999, para. 55; ICTY, *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence (Appeals Chamber), 16 February 1999, para. 20; ICTY, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Judgement (Appeals Chamber), 20 February 2001, para. 724; and ICTY, *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement (Appeals Chamber), 23 October 2001, para. 408.
[56] See the "Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled 'Trial Judgment'" (Appeals Chamber), No. ICC-02/04-01/15-2022-Red A, 15 December 2022, paras. 186- 187. See also, the "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber VII of 17 September 2018 entitled 'Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo' (Appeals Chamber), No. ICC-01/05-01/13-2351 A10, 27 November 2019, para. 23.
[57] See the Defence Appeal, *supra* note 1, para. 16.
[58] See the "Victims' Joint Submissions on sentencing", No. ICC-02/04-01/15-1808, 1 April 2021, paras. 8 and 115, footnotes 199-201.

victims, yet it nonetheless attempts to provide medical opinions.[59] Additionally, the Defence's belief that the relevant medical documentation would be easily or readily available to the victims or their legal representatives is based on a misinformed estimation.[60]

34. Accordingly, the Defence's arguments raised in Grounds 1 and 7 reflect mere disagreement with the Impugned Decision. The Defence has not shown how these alleged errors would materially affect the Impugned Decision. In fact, the CLRV recalls that the Defence's arguments in Grounds 1 and 7 pertain only to the 205 individuals in the Sample. Therefore, the Chamber's assessment of those applications cannot meaningfully impact the overall number of estimated beneficiaries, which totals nearly 50,000 individuals.

35. In light of the above, Grounds 1 and 7 should be dismissed.

Grounds 2 and 11

36. The Defence argues that the Chamber erred (i) in dismissing its arguments about Ugandan national proceedings related to reparations for individuals from Abok IDP Camp (Ground 2);[61] and (ii) in failing to recognise the relevance of the Acholi cultural reparation and restorative mechanisms, when determining the overall reparations measures (Ground 11).[62] Still, the Impugned Decision properly applies the statutory provisions relevant to the reparations regime before the Court. In the Order, the Chamber reiterated that, pursuant to article 75(6) of the Statute, domestic proceedings do not impact reparations awarded by the Court.[63] Once again, the Defence seems to be simply expressing its disagreement with the Chamber's findings.

[59] See the Defence Appeal, *supra* note 1, paras. 89, and 92-97.
[60] See the "Common Legal Representative of Victims' Submissions on Reparations", No. ICC-02/04-01/15-1923-Conf and No. ICC-02/04-01/15-1923-Red, 7 December 2021, paras. 55-59. See also, the "Legal Representatives of Victims Joint Submissions on the Sample Application Forms for reparations", No. ICC-02/04-01/15-2040, 17 April 2023, paras. 16-23.
[61] See the Defence Appeal, *supra* note 1, paras. 20-29.
[62] *Idem*, paras. 56 and 59-64.
[63] See the Impugned Decision, *supra* note 2, para. 49.

37. Contrary to the Defence's interpretation of the Court's regulatory framework,[64] the wording of article 75(6) of the Statute is clear: "*Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law*".[65] A prejudice could instead occur if the Chamber were to base its decisions on incomplete and speculative information from national proceedings, which have no bearing on its own processes.[66] In this regard, the Appeals Chamber observed that "*notwithstanding those general propositions, the Court is able to take into account any awards or benefits received by victims from other bodies in order to guarantee that reparations are not applied unfairly or in discriminatory manner*".[67] However, this does not impose an obligation on the Court to monitor or pronounce on compensation provided to victims by other entities. The phrase "*is able to*" clearly indicates a discretionary ability rather than a mandatory requirement. Furthermore, the Impugned Decision demonstrates the Chamber's approach in ensuring fairness in the reparations proceedings.

38. In fact, the Chamber considered the CLRV submissions in this regard which notably stated that: "*none of her clients have received to date any assistance nor compensation for the crimes committed by Mr Ongwen. None of them has ever received any judicial compensation nor any help of the sort envisaged in the reparations proceedings before this Court.* […] *Lastly, the CLRV verified whether some of her clients had already been in touch with any of the TFV's partners in the framework of the assistance programs put in place in Northern Uganda, and the response appears to be negative. Consequently, none of the harms her clients have been suffering from as a result of the crimes Mr Ongwen was convicted for has ever been addressed*".[68] Consequently, the Defence's argument that the Chamber should

[64] See the Defence Appeal, *supra* note 1, para. 20.
[65] See article 21 of the Statute.
[66] See article 75(6) of the Statute.
[67] See the "Amended Order for Reparations" (Appeals Chamber), No. ICC-01/04-01/06-3129 A A2 A3, 3 March 2015, para. 9 (the "*Lubanga* Amended Order for Reparations") (emphasis added).
[67] See the "Amended Order for Reparations" (Appeals Chamber), No. ICC-01/04-01/06-3129 A A2 A3, 3 March 2015, para. 9 (the "*Lubanga* Amended Order for Reparations") (emphasis added).
[68] See the "Common Legal Representative of Victims' Submissions on Reparations", *supra* note 60, paras. 112 to 114. See also, the "Common Legal Representative of Victims' Additional Submissions on Reparations", No. ICC-02/04-01/15-1990, 7 March 2022, paras. 28-29.

have further investigated the matter[69] is hard to justify since clear and verified information on the issue was already available before the Chamber.

39. The CLRV further emphasises that the duplications claimed by the Defence[70] do not exist. Moreover, in Northern Uganda, it is very common for several individuals to share the same name. Therefore, simply finding a person with the same name on a list of participating victims is not conclusive evidence of their identity. Concluding that two individuals with the same name are the same person is simplistic and speculative in this context.[71]

40. Similarly, the Defence misrepresents the Impugned Decision, claiming that the Chamber failed to recognise the relevance of Acholi cultural reparation and restorative mechanisms in determining the overall reparations measures (Ground 11).[72] The Defence merely disagrees with the Chamber's conclusions and reiterates arguments that have already been considered by the latter.[73]

41. In addition, the TFV should carefully scrutinise the extent to which certain modalities of reparations can incorporate some elements of the Lango, Acholi, and Teso traditional bylaws. This scrutiny is necessary to ensure that the fundamental principles of reparations are upheld, while also honouring the culture and traditions of the victims.[74] As already expressed in the proceedings: "*victims emphasise once more that any traditional ceremonies and rehabilitation rituals could only be followed separately from and eventually in addition to the sentencing proceedings, more adequately between Mr Ongwen's clan and the victims' clans and communities rather than between Mr Ongwen himself and the thousands of victims individually concerned by the crimes he committed. Such rituals in the victims' views should eventually complement reparations measures awarded by the Court and are not seen by the victims as incompatible with a sentence of life imprisonment.*

[69] See the Defence Appeal, *supra* note 1, paras. 21-22, 27.
[70] *Idem*, para. 27.
[71] *Idem*, paras. 21-22.
[72] *Idem*, paras. 56 and 59-64.
[73] *Idem*, paras. 56, 58-59 and 64- 66.
[74] See the Common Legal Representative of Victims' Submissions on Reparations, *supra* note 60, para. 92.

Because victims attach great importance to the judicial process, they do not share the Defence's attempt - through witnesses from the Ker Kwaro Acholi - to let the Chamber and everyone following these proceedings believe that there would only be one culturally appropriate way to respond to the situation of Mr Ongwen both for his rehabilitation and for the communities affected by his crimes, namely by surrendering him to them in lieu of any sentence of imprisonment. The thousands of victims consulted in the last month for the purpose of this sentencing hearing seem to approach the situation quite differently and to see other ways to move forward that would be culturally appropriate for them, their families and their communities. Referring to their tradition and the need for reconciliation, victims insisted on two key aspects: First, that the ceremonies could and should only happen after they have benefited from reparations and not as a part of the sentence; second, that said ceremonies could only happen if Mr Ongwen would sincerely ask for their forgiveness".[75]

42. As underlined by the Chamber in the Sentence, Mr Ongwen has not expressed any kind of remorse, which appears to be an essential component of any traditional measures.[76] In this regard, the jurisprudence of the Appeals Chamber is clear: "[w]*henever possible, reparations should reflect local cultural and customary practices unless these are discriminatory, exclusive or deny victims equal access to their rights*".[77] Moreover, the Chamber already recognised that in circumstances in which "*the Defence bases an argument on its own interpretation of the interests of the victims of the crimes for which Dominic Ongwen was convicted, it is appropriate to refer directly to the submissions of the victims as expression of their will and opinion*".[78]

43. In any event, no unfairness is likely to occur because none of the victims represented by the CLRV has received any form of compensation or reparations for the crimes committed by Mr Ongwen, whether through traditional or other sorts of restorative mechanisms. In the event that victims receive any kind of assistance which

[75] See the CLRV oral submissions at the hearing held on 14 April 2021, No. ICC-02/04-01/15-T-260-ENG ET WT, p. 60 lines 1-23 (emphasis added).
[76] See the Sentence, *supra* note 4, para. 42.
[77] See the *Lubanga* Amended Order for Reparations, *supra* note 67, para. 47 (emphasis added).
[78] See the Sentence, *supra* note 4, para. 38.

may improve their current situation, this will be taken into account at the time of the implementation of reparations measures. As a result, the reparations implemented will be proportionate, fair, and adequate to the situation of each beneficiary.

44. Lastly, since reparations in this case have been ordered on a collective community basis rather than individually,[79] a different interpretation of article 75(6) of the Statute would not have significantly affected the amount owed by Mr Ongwen. The Chamber already took into consideration the absence of any awards or benefits received by the victims from other entities, and all evidence and submissions on this topic that were already abundant in the case record. Therefore, remanding this issue to the Chamber for further consideration will not change the outcome of the Impugned Decision.

45. In light of the above, Grounds 2 and 11 should be dismissed.

Grounds 3, 4, 8 and 9

46. The Defence argues that the Chamber erred by (i) presuming that all residents of Pajule, Odek, Lukodi, and Abok IDP Camps and non-resident civilians present at the time of the events are victims of the crimes of an attack against the civilian population and persecution (Ground 3);[80] (ii) extending the potential pool of indirect victims by creating the "*African extended family exception*" (Ground 4);[81] (iii) failing to take into account that Mr Ongwen was not the brigade commander until 4 March 2004 (Ground 8);[82] and (iv) using the divisor of four in determining the number of victims of sexual and gender-based crimes and former child soldiers attributed to Mr Ongwen (Ground 9)[83] - thus significantly increasing the relevant number of beneficiaries. The common theme of these grounds is the accuracy of the number of eligible victims for reparations. In this regard, the Chamber held that, in making an order under article 75

[79] See the Impugned Decision, *supra* note 2, para. 778.
[80] See the Defence Appeal, *supra* note 1, para. 30.
[81] *Idem*, paras. 40 and 42.
[82] *Idem*, para. 100.
[83] *Idem*, paras. 113 and 115-116.

of the Statute, it does not have to set out the precise number of beneficiaries.[84] As held by the Appeals Chamber, a trial chamber is simply required to establish an *estimated number* of victims of the reparations award.[85]

47. First, regarding Ground 3 and the presumption of eligibility for residents of all four concerned IDP camps as victims of the crimes of attack against the civilian population and persecution,[86] the Defence fails to show that the Chamber committed any error. Contrary to the Defence's claim that said presumption "*defies common sense and logic*",[87] a resident can still be a victim of an attack without being physically present in the camp at the time of the event. Victims can suffer harm through the destruction and pillage of their property, violence against their family, friends, and community, and the psychological toll of such occurrences.

48. Similarly, the presence of a non-resident during massive, large-scale, and indiscriminate attacks - such as the destruction of entire IDP camps - strongly suggests that they were also a target of the attack, regardless of whether they were physically or financially harmed. Survivors of such an attack who did not suffer specific property destruction or physical injuries are uncommon. Nonetheless, it does not negate the psychological toll and moral harm endured from being part of the targeted group, feeling threatened, and witnessing widespread victimisation while fearing for their own lives and those of their family members. Accordingly, the factual assumptions made by the Chamber in this context are the most logical given the circumstances of this case and the type of crimes for which Mr Ongwen is convicted.

49. In relation to Ground 4 - and the Defence's argument on the concept of family in the Northern Ugandan culture[88] - it is incorrect to state that the Chamber did not

[84] See the Impugned Decision, *supra* note 2, para. 704.
[85] 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, paras. 90 and 223-224. See also, the *Ntaganda* Appeals Judgment, *supra* note 23, paras. 153, 165, 168 and 171.
[86] See the Defence Appeal, *supra* note 1, paras. 30-37.
[87] *Idem*, para. 34.
[88] *Idem*, para. 39.

rely on the evidence in the case record and adopted a broad concept inconsistent with it. When examining the evidence presented during the trial, it appears that the idea of family in Northern Uganda goes beyond the nuclear family found in Western countries. It rather includes members of the family or clan who hold a special role with respect to an individual or share a significant emotional connection with them. In addition to parents, siblings, and grandparents, other elderly relatives play crucial roles in childcare and upbringing in Northern Uganda.

50. In this regard, the Defence's own submissions regarding Mr Ongwen's family ties reflect the Northern Ugandan concept of the extended family, which aligns with the definition adopted by the Chamber. For instance, the Defence previously argued that Mr Ongwen has "*family relationships*" with numerous women, including D26-13, P-226, P-227, P-99, P-101, P-214, P-235, and P-236, who were subject to communications restrictions, which had allegedly violated his right to family life.[89] Moreover, the Defence argued that Mr Ongwen has fathered approximately 20 children and has fatherly duties towards them since "*his family*" is unable to take care of his children. The Defence noted in particular that (i) "*Mr Ongwen's aunt and uncle, his traditional parents as Mr Ongwen's biological parents have died*"; (ii) "*Mr Ongwen's brothers have children of their own*", and (iii) due to the recent death of another among Mr Ongwen's brothers "*there will be an increased burden placed on the family. Currently, the family must care for the children of Mr Ongwen's brother in addition to the children of Mr Ongwen*".[90] This clearly shows that the Defence itself, when it suited their purposes, adopted the same view as the Chamber regarding the definition of family in Northern Uganda.

51. Moreover, the Defence's arguments emphasising the importance of considering culture - as if this notion had been absent from the trial - are misplaced.[91] On the

[89] See the "Public redacted version of 'Defence Request to Lift Communication Restrictions Placed Upon Mr Ongwen' (ICC-02/04-01/15-1616-Conf), filed 27 September 2019, No. ICC-02/04-01/15-1616-Red, 23 October 2019. See also, the Judgment, *supra* note 3, paras. 116-120.
[90] See the "Public Redacted Version of "Corrected Version of 'Defence Brief on Sentencing', filed on 1 April 2021", No. ICC-02/04-01/15-1809-Corr-Red, 4 April 2021, paras. 135-148. See also, the "Sentence", *supra* note 4, paras. 117-124.
[91] See the Defence Appeal, *supra* note 1, paras. 38-54.

contrary, a significant portion of the discussions at trial focused on the particularities of the Acholi culture, highlighting its essential role.[92] As the Defence noted, "[t]*he kinship system is very strong among the Acholi and also the tendency to do things within the clan setting with clear respect for hierarchy and authorities*".[93] Furthermore, the Defence seems to contradict its own argument by noting that "[t]*he Chamber found* [that] *the information of the sample alleged that 1.06% of victims alleged to be indirect victims only. It is not clear how the concept of extended African family informed the indirect victims' projections in the reparation order*".[94] It would appear from this comment that, whichever concept of family the Chamber used, it had no major consequences on the number of indirect victims concerned by the reparations award, and therefore, does not prejudice Mr Ongwen's rights.

52. Regarding Ground 8 - alleging that the Chamber erred in failing to consider that Mr Ongwen was not the brigade commander until 4 March 2004 - the CLRV recalls that the same argument was discussed at trial and rejected.[95] In the Impugned Decision, the Chamber correctly underlined that Mr Ongwen is convicted for child soldiers related crimes for the period between 1 July 2002 and 31 December 2005, independently of his subsequent role as Sinia Brigade Commander.[96]

53. In addition, not only did the Chamber not commit any factual or legal error in its approach, but the calculations suggested by the Defence also lack foundation, in

[92] See the Judgment, *supra* note 3, para. 602 (discussing the expert evidence on Acholi culture); para. 2040 (discussing the evidence of P-0101 on the prohibition of rape in Acholi culture); paras. 2459-2461 (discussing the evidence provided by Defence experts about the impact of Acholi culture on Mr Ongwen's mental health); and para. 2652 (discussing the evidence of P-0209 about the understanding of spirituality in Acholi culture).
[93] See the Defence Appeal, *supra* note 1, para. 50 (emphasis added).
[94] *Idem*, para. 52.
[95] See the "Public Redacted Version of 'Corrected Version of 'Defence Closing Brief', filed on 24 February 2020, No. ICC-02/04-01/15-1722-Corr-Red, 13 March 2020, paras. 307-528. See also, the "Public Redacted Version of 'Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021', filed on 21 July 2021 as ICC-02/04-01/15-1866-Conf", No. ICC-02/04-01/15-1866-Red A, 19 October 2021, paras. 916-917, 926 and 984; the Judgment, *supra* note 3, paras. 137, 859-860, 875, 884-892, 964, 1075-1083, 1650, 1659, 1677, 2113, 2122, 2134, 2165, 2172, 2403, 2591-2592 and 2660; and the "Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled 'Trial Judgment'", *supra* note 5, paras. 640-674, 862-879, 921-927 and 1025-1040.
[96] See the Impugned Decision, *supra* note 2, para. 734 (citing the Judgment, para. 1076).

relation to both Grounds 8 and 9.[97] Beyond the number of victims of each of the 61 crimes for which Mr Ongwen is convicted, what matters for reparations is the nature of the harm they suffered and the appropriate measures to assist them. It is obvious that if the same person has been a victim of both the attack against one of the IDP camps and of the thematic crimes - namely, child soldiering and sexual and gender-based violence - their suffering is compounded. This exacerbates the harms and their consequences, as the impacts of each crime are distinct and cumulative.[98]

54. In relation to Ground 9, the Chamber chose to use a divisor of four, explicitly basing its decision on the findings in the Judgment that the LRA was divided into four brigades: Sinia, Stockree, Gilva, and Trinkle.[99] Pertaining to fact-finding at the reparations stage, the Chamber "*has remained within the confines of the Conviction Judgment and Sentence when awarding reparations in the present case. The Chamber is no longer open to the possibility of the parties [...] challenging findings that stem from or relate to the Conviction Judgment and Sentence*".[100] Additionally, regarding the application of evidence, the Chamber also noted that "*where it made a specific evidentiary finding in the Conviction Judgment or Sentence, it will, in the present Reparations Order, also rely on that finding. This is because, in such instances, the finding has already been established beyond a reasonable doubt - a higher standard of proof than that applicable to reparations proceedings*".[101] This reasoning is in line with the relevant Court's jurisprudence.[102]

55. Accordingly, the Chamber correctly relied on the findings in the Judgment when considering that the LRA was divided into four brigades and rendered the

[97] See the Defence Appeal, *supra* note 1, paras. 107-112 and 113-123.
[98] See the Common Legal Representative of Victims' Submissions on Reparations, *supra* note 60, paras. 15-23. See also, the Impugned Decision, *supra* note 2, paras. 65-66; the Sentence, *supra* note 4, paras. 145-177, 182-215, 220-250, 255-283, 286-324, and 331-373; and the "Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled 'Sentence'", *supra* note 6, paras. 133-139, 189-193, 308-324 and 336-372.
[99] See the Impugned Decision, *supra* note 2, para. 734.
[100] *Idem*, para. 20.
[101] *Idem*, para. 21.
[102] See the *Ntaganda* Appeals Judgment, *supra* note 23, para. 482. See also, 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'", *supra* note 85, para. 311.

Impugned Decision within the confines of its Judgment and Sentence. The Defence fails to show that the Chamber committed an error and that said alleged error is so manifest that the Appeals Chamber "*cannot discern how the Chamber's conclusion could have reasonably been reached from the evidence before it*".[103] Therefore, the Defence's argument lacks merit and should be rejected.

56. In light of the above, Grounds 3, 4, 8, and 9 should be dismissed.

Ground 5

57. The Defence argues that the Chamber erred by awarding €750 per victim as symbolic reparation, not as partial restitution or compensation for the harm suffered.[104] The Defence, however, does not contest the allocation of this amount to the beneficiaries, as its challenge pertains solely to the legal categorisation of the award, not its actual implementation. Therefore, even if the Appeals Chamber were to side with the Defence on this point, the provision of the symbolic award remains uncontested.

58. Contrary to the Defence's claims in this regard, rule 94 of the Rules merely specifies what the victim must provide when requesting reparations and does not bind the Court. What binds the Court regarding reparations is article 75 of the Statute. Therefore, the focus should be on article 75(1), rather than rule 94(1)(d)-(f) of the Rules. Regarding article 75(1), the Defence is misreading the provision. The phrase "*including restitution, compensation, and rehabilitation*" should be understood as illustrative, not exhaustive. This interpretation is supported not only by the ordinary literal meaning of the provision, but also by the Court's jurisprudence. In this regard, in the *Katanga* case, Trial Chamber II stated that "*the modalities of reparations are not confined to those set down in Article 75(1) of the Statute: restitution, compensation, and rehabilitation. It may*

[103] See the *Ntaganda* Appeals Judgment, *supra* note 23, para. 30.
[104] See the Defence Appeal, *supra* note 1, paras. 67-75.

transpire that other modalities of reparations are appropriate, for instance, those of symbolic, preventative or transformative value".[105]

59. More importantly the Statute does not specify how reparations should be issued, but rather mandates that the Court establish principles governing reparations. This indicates that article 75 grants the Court considerable discretion in issuing reparations orders. Given this discretion, the question arises whether awarding a symbolic €750 per victim, without intending it as partial restitution or compensation for harm suffered, exceeds the Chamber's authority in this case. The CLRV posits that this is not the case, as the Chamber's approach aligns with the well-established jurisprudence emphasising that "[t]*he distribution of a symbolic amount by way of compensation gives acknowledgement, in a personal and symbolic sense, of the harm done and suffering occasioned*".[106] This reasoning distinctly establishes the symbolic award as a form of compensation.

60. In addition, the "[symbolic] *award may provide some measure of relief for the harm suffered by the victims. It could help the victims become financially independent, by enabling them, for instance, to purchase tools or livestock, or to set up a small business*".[107] Said reasoning rejects the Defence's argument that it does not aim to "*repair the damage caused by the convicted person*".[108] The Defence argues that the Chamber's decision contradicts the jurisprudence established in the *Katanga* Reparations Order, where the symbolic award was issued as partial compensation for the victims' losses.[109] However, in said order, the symbolic award was not intended to serve as restitution or compensation on its own. The conclusion in the *Katanga* case was based on its

[105] See the "Order for Reparations pursuant to Article 75 of the Statute" with public Annex I and confidential *ex parte* Annex II (Trial Chamber II), No. ICC-01/04-01/07-3728-tENG, 24 March 2017, para. 297 (the "*Katanga* Reparations Order"). See also, the "Reparations Order" (Trial Chamber VIII), No. ICC-01/12-01/15-236, 17 August 2017, para. 46 (the "*Al Mahdi* Reparations Order"); and the "Reparations Order" (Trial Chamber VI), No. ICC-01/04-02/06-2659, 8 March 2021, para. 82 (the "*Ntaganda* Reparations Order").
[106] See the *Katanga* Reparations Order, *supra note* 105, para. 298.
[107] *Idem*, para. 300.
[108] See the Defence Appeal, *supra* note 1, para. 68.
[109] *Ibid.*

specific circumstances of, including considerations of other forms of reparations, particularly the feasibility of collective reparations due to the relatively small number of victims. Given the significant differences with the present case, the decision in the *Katanga* case cannot be directly transposed.

61. In conclusion, the Chamber committed no error, as the Impugned Decision aligns with the former jurisprudence that recognizes the symbolic award as a form of reparation. Therefore, Ground 5 should be dismissed.

Ground 6

62. The Defence argues that the Chamber erred by prioritising direct witnesses who were participating victims of the case over direct victims who did not participate.[110] Irrespective of any procedural error by the Chamber, this argument lacks merit. Such prioritisation does not affect the total number of beneficiaries or the total amount of reparations imposed on Mr Ongwen. Even without this prioritisation, the Impugned Decision would not have substantially differed from the one rendered.

63. The Defence asserts that this prioritisation contravenes the spirit of reparations, involves unfairness especially to the victims who wished to participate but missed the deadline for submitting the application form, and will prolong the time required to deliver reparations.[111] However, the Appeals Chamber endorsed the Chamber's approach: while all victims are to be treated fairly and equally, priority may need to be given to certain individuals who are in a particularly vulnerable situation or require urgent assistance.[112]

64. The Chamber's decision to prioritise direct participating victims does align with the spirit of reparations. A contravention would instead occur if the Chamber had considered the harm suffered by said prioritised victims to be greater or more

[110] *Idem*, para. 76.
[111] *Ibid.*
[112] See the *Lubanga* Amended Order for Reparations, *supra* note 67, para. 19.

significant than that suffered by other victims. The Chamber explicitly rejected this approach.[113] Conversely, not prioritising participating victims would undermine reparations by failing to address the urgent and dire needs of the most vulnerable. Identifying and assessing all potential beneficiaries is a time-consuming process. Participating victims are those for whom the said process has already been initiated and partially completed. Thus, prioritising them helps meet urgent needs and speeds up the overall implementation process of reparations. Ignoring the urgent needs of identified vulnerable victims in favour of other potential beneficiaries not yet identified would lead to greater unfairness than the Defence claims regarding victims who were unable to participate at trial.

65. Therefore, the Defence does not show that the Chamber committed any error in its approach. Accordingly, Ground 6 should be dismissed.

Grounds 12 and 13

66. The Defence argues that the Chamber erred by assuming that those victims who experienced spiritual attacks, cultural problems and *cen* suffered from mental illnesses, despite the lack of a diagnosis (Ground 12),[114] and by characterising mental health issues as moral health victimisation (Ground 13).[115] The Defence adds that these alleged errors significantly increased the number of potential beneficiaries and thus, the amount of Mr Ongwen's liability.[116] However, the Chamber determined on a balance of probabilities that direct victims of the attacks suffered moral harm - based on its factual findings in the Judgment and Sentence, which were confirmed by the Appeals Chamber.[117] Therefore, the Defence's arguments seek to reverse factual findings that have already been confirmed by the Appeals Chamber, and cannot be reconsidered in the current appeal.

[113] See the Impugned Decision, *supra* note 2, para. 658.
[114] See the Defence Appeal, *supra* note 1, paras. 57-59.
[115] *Idem*, paras. 124-143.
[116] *Ibid.*
[117] See the Impugned Decision, *supra* note 2, paras. 231-242.

67. As regards the Defence's arguments about *cen* developed under Ground 12,[118] the CLRV wishes to recall that, regardless of whether the Chamber's interpretation of "*cen*" aligns with Western medical systems, the reality for the victims remains unchanged. They endure long-term consequences from the attacks and thematic crimes that impact their mental and psychological well-being, overall health, and life opportunities. The aspect corresponding to *cen* in Acholi culture - which is a direct consequence of the crimes for which Mr Ongwen is convicted - not only "*disturbs*" the victims but also "*harms*" them and has "*long-term impacts*" on their lives.[119] Moreover, regardless of how *cen* manifests, the Chamber rightly concluded that all the victims suffer from moral and psychological harm due to the gruesome crimes they endured, the effects of which they continue to face today.[120] This same consideration shall also apply to the Defence's articulation of Ground 13.[121]

68. In addition, the Defence attempts to draw a parallel between the trauma suffered by Mr Ongwen and the victims of the crimes for which he is convicted. It argues that the mental health issues experienced by the victims are similar to those experienced by Mr Ongwen himself. This parallel is intended to challenge the reasonableness of the Chamber's findings on the victims' mental health issues as moral harm, given the Chamber's rejection of the defence of mental incapacity due to the long-lasting effects of being a former child soldier. However, this comparison is inapposite for several reasons.

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[118] See the Defence Appeal, *supra* note 1, paras. 57-59.
[119] See the Impugned Decision, *supra* note 2, para. 240.
[120] *Idem*, para. 242: "*Considering the findings beyond reasonable doubt reached by the Chamber in its Conviction Judgment and Sentence, the evidence heard during trial proceedings, and the information obtained from its assessment of the Sample, as summarised above, the Chamber is satisfied that it has been established on a balance of probabilities that direct victims of the attacks suffered moral harm as a result of the crimes committed in the context to the attacks against the Pajule, Odek, Lukodi, and Abok IDP camps, for which Mr Ongwen was convicted. The moral harm suffered by these victims includes: severe mental pain and suffering; trauma; feelings of fear, panic, helplessness, and distress; psychological abuse; psychological trauma; emotional harm; stress; recurring painful memories; nightmares; severe violation of dignity; suffering from being forced to leave their children behind; spiritual disturbances; and impaired psychosocial well-being and functioning. The Chamber acknowledges that the moral harm suffered by the direct victims of the attacks had long-lasting consequences*".
[121] See the Defence Appeal, *supra* note 1, paras. 124-133.

69. Firstly, the context and nature of the harms suffered by Mr Ongwen and the victims are distinct. The victims endured direct and severe physical, psychological, and moral harm from the crimes attributed to Mr Ongwen. In contrast, the Defence's argument regarding the convicted person's mental health focuses on the long-lasting effects of his experiences as a former child soldier, seeking to establish that said effects incapacitated him and should therefore mitigate his criminal responsibility.

70. Equating the findings on the victims' mental health with those concerning Mr Ongwen is legally incorrect. At the reparations stage, the Chamber's focus is on a different objective: establishing the prejudice suffered by the victims to ensure fair and equitable redress. This involves determining the extent of the harm caused to the victims as a result of the crimes committed by Mr Ongwen, which is assessed using a balance of probabilities standard. This standard is lower than the beyond a reasonable doubt standard used to establish criminal responsibility. Therefore, the purpose and criteria for assessing the long-lasting effects of the crimes suffered differ between the trial and the reparations proceedings. The Defence's attempt to draw a direct parallel between Mr Ongwen's mental health and the victims' suffering overlooks these fundamental distinctions in legal context and objectives. Since the Chamber's conclusions regarding the victims' suffering and Mr Ongwen's criminal responsibility operate under different legal frameworks and evidentiary standards, the Defence's parallel is inappropriate and misleading.

71. Secondly, victims are not referencing specific mental health disorders as argued by the Defence, but rather sufferings corresponding to psychological harm. The lower threshold applicable at the reparations stage and the evident psychological impact from the LRA's extreme cruelty, necessitate acknowledging this suffering across the majority of the victim population based on both factual evidence and legal principles.[122] To conclude otherwise would be to deny what is established and proven

[122] See the Impugned Decision, *supra* note 2, paras. 422 (for factual findings), 231-242, 259-269, 291-306, 319-326, 333-340, 358-369 and 379-382. See also, the "Order for Reparations" (Appeals Chamber), No. ICC-01/04-01/06-3129-AnxA A A2 A3, 3 March 2015, para. 65; the *Katanga* Reparations Order, *supra*

in the circumstances of this case: the "*extreme gravity*" of the "*extremely serious crimes*" for which Mr Ongwen is convicted,[123] and "*the very large extent of cumulative victimisation of the crimes committed by [Mr] Ongwen*".[124] No human being emerges unscathed from such experiences, certainly not Mr Ongwen's victims.

72. Mr Ongwen has faced his trial as an accused who was finally convicted for his responsibility in the relevant events. The sufferings he went through in his life have been recognised by the Chamber[125] but did not shield him from said responsibility. The Impugned Decision is about reparations for the victims of his crimes and is not the place where the Chamber ought to reassess Mr Ongwen's own sufferings. In addition, the Defence is barred from raising arguments on appeal that were previously addressed and rejected by both the Trial and Appeals Chambers.

73. The Chamber made no errors in evaluating the effects of the crimes, particularly concerning the psychological harm endured by the victims. Accordingly, Grounds 12 and 13 should be dismissed.

Ground 14

74. Lastly, the Defence argues that the Chamber erred in determining that four participating victims qualified, on a balance of probabilities, as victims of Mr Ongwen.[126] Of these four victims, the CLRV represents a/07032/15. Said individual

note 105, paras. 49-51; the *Al Mahdi* Reparations Order, *supra* note 105, para. 44; the *Ntaganda* Reparations Order", *supra* note 105, para. 136; and the "Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled 'Order for Reparations pursuant to Article 75 of the Statute'" (Appeals Chamber), No. ICC-01/04-01/07-3778-Red A3 A4 A5, 9 March 2018, para. 42.

[123] See the Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled 'Sentence', *supra* note 6, paras. 14 and 313.

[124] *Idem*, para. 313.

[125] *Idem*, para. 14: "*The Appeals Chamber acknowledges the difficult circumstances of Mr Ongwen's childhood and the Trial Chamber's reliance on these individual circumstances when determining the sentence, as well as the Trial Chamber's observation that the present case presents "a unique situation of a perpetrator who wilfully and lucidly brought tremendous suffering upon his victims, but who himself had previously endured grave suffering at the hands of the group of which he later became a prominent member and leader*".

[126] See the Defence Appeal, *supra* note 1, paras. 144-159.

was granted the status to participate already at the pre-trial stage of the proceedings,[127] and the Defence did not challenge such ruling at the time. Victim a/07032/15 was indeed amongst the 815 applications transmitted on 8 November 2015 that were not contested by the parties. The Defence claims that by finding those four individual eligible for reparations, the Chamber violated the *in dubio pro reo* principle.[128]

75. The Defence, however, fails to consider that in reaching its conclusion on the four concerned individuals, the Chamber reviewed the unredacted information provided by them against the balance of probabilities standard applicable at the reparations stage and took into account the Defence's relevant submissions. Accordingly, the Chamber acted properly and determined the issue "*on the basis of all of the facts and information that it had before it and/or deemed necessary to obtain*".[129]

76. In addition, the Chamber was mandated - and correctly applied - the balance of probabilities standard. This standard requires to determine whether it is more likely than not that a claim is true, which is a different and lower threshold than the beyond a reasonable doubt standard used to assess criminal liability. Instead, the principle of *in dubio pro reo* applies exclusively to criminal proceedings, ensuring that any reasonable doubt regarding the guilt of the accused results in acquittal. Therefore, the Chamber's determination that the four individuals qualified as victims of Mr Ongwen, based on the balance of probabilities, does not engage or violate the *in dubio pro reo* principle. The Chamber applied the correct legal standard for reparation proceedings, which appropriately focuses on the likelihood of harm rather than the stringent certainty required in criminal guilt determinations.[130] As such, the Defence's assertion reflects a mere disagreement, which does not constitute grounds for appeal.

77. Accordingly, the Chamber made no errors, and Ground 14 should be dismissed.

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[127] See the "Second decision on contested victims' applications for participation and legal representation of victims" (Pre-Trial Chamber II), No. ICC-02/04-01/15-384, 24 December 2015.
[128] See the Defence Appeal, *supra* note 1, para. 145.
[129] See the *Ntaganda* Appeals Judgment, *supra* note 23, para. 169.
[130] *Idem*, fn 309. See also *supra*, para. 70.

V. CONCLUSION

78. For the foregoing reasons, the CLRV respectfully requests the Appeals Chamber to dismiss the Defence Appeal in its entirety.

Paolina Massidda

Dated this 26th day of August 2024

At The Hague, The Netherlands