

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/04-01/15 A3

Date: 16 May 2024

THE APPEALS CHAMBER

Before:

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

SITUATION IN UGANDA

IN THE CASE OF THE PROSECUTOR v. DOMINIC ONGWEN

Public document

Decision on the Defence request for suspensive effect

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

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor
Ms Helen Brady

Counsel for the Defence

Chief Charles Achaleke Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

The Office of Public Counsel for Victims

Ms Paolina Massidda
Mr Orchlon Narantsetseg

Trust Fund for Victims

Ms Deborah Ruiz Verduzco

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX entitled “Reparations Order” of 28 February 2024 (ICC-02/04-01/15-2074),

Having before it the “Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for Suspensive Effect” of 22 April 2024 (ICC-02/04-01/15-2084),

Renders the following

DECISION

1. The aforementioned request for suspensive effect is rejected. Nevertheless, the Trust Fund for Victims and the Registry are invited to consider the adoption of measures set out in this decision for the continuing implementation of the “Reparations Order”.
2. The Appeals Chamber will rule in due course on the Trust Fund for Victims’ request to make observations on the appeal.

REASONS

I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX (hereinafter: “Trial Chamber”) convicted Mr Ongwen of crimes against humanity and war crimes.¹
2. On 28 February 2024, the Trial Chamber issued the “Reparations Order” (hereinafter: “Impugned Decision”).²
3. On 22 April 2024, the Defence filed its notice of appeal (hereinafter: “Notice of Appeal”), containing, *inter alia*, a request for the Appeals Chamber to “suspend the

¹ [Trial Judgment](#), ICC-02/04-01/15-1762-Red (confidential version notified on the same day, ICC-02/04-01/15-1762-Conf).

² [ICC-02/04-01/15-2074](#), with a confidential *ex parte* Annex I and two public Annexes II and III.

implementation of the Impugned Decision until it renders a judgment on the appeal” (hereinafter: “Request for Suspensive Effect”).³

4. On 24 April 2024, the Appeals Chamber issued the “Order setting a time limit for submissions on the request for suspensive effect”, in which it invited the Trust Fund for Victims (hereinafter: “TFV”) to submit its observations and the Victims Participation and Reparations Section (hereinafter: “VPRS”) to make submissions on the Request for Suspensive Effect, and set a time limit for each submission and the parties’ possible responses thereto.⁴

5. On 1 May 2024, the Registry filed the “Registry Submission on the Request for Suspensive Effect” (hereinafter: “Registry Submission”).⁵

6. On the same day, the TFV filed its “Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence” (hereinafter: “TFV Observations”).⁶

7. On 6 May 2024, the Defence, the Common Legal Representatives of Victims (hereinafter: “CLR V”), and the Legal Representatives of Victims (hereinafter: “LR V s”) filed their responses to the Registry Submission and the TFV Observations (hereinafter: “Defence Response”, “CLR V Response”, and “LR V Response”, respectively).⁷

II. BACKGROUND

8. In the Impugned Decision, the Trial Chamber awarded “collective community-based reparations focused on rehabilitation and symbolic and satisfactory measures to the direct and indirect eligible victims” and estimated the number of such victims to be approximately 49,772.⁸ Mr Ongwen’s total liability for reparations was

³ [Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for Suspensive Effect](#), ICC-02/04-01/15-2084, para. 12.

⁴ [ICC-02/04-01/15-2085](#).

⁵ [ICC-02/04-01/15-2086](#).

⁶ [ICC-02/04-01/15-2087](#).

⁷ [Defence Response to the Registry’s and TFV’s Submissions on Suspensive Effect and Rule 103 of the Rules and Procedure and Evidence](#), ICC-02/04-01/15-2091; [Victims’ Response to the Defence Request for Suspensive Effect in its appeal against the Reparations Order](#), ICC-02/04-01/15-2089; [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](#), ICC-02/04-01/15-2090.

⁸ [Impugned Decision](#), p. 360.

assessed to be approximately EUR 52,429,000, including a symbolic award of EUR 750 per eligible direct and indirect victim in the case.⁹

9. To this end, the Trial Chamber instructed, *inter alia*, “the TFV to prepare a [draft implementation plan] [...] and submit it for the Chamber’s approval by 3 September 2024, at the latest”, and encouraged it to complement the reparation awards and engage in additional fundraising efforts to the extent necessary to complement the totality of the award.¹⁰ It further instructed the Registry, through the Public Information and Outreach Section (hereinafter: “PIOS”) and the VPRS, to design and conduct the required outreach campaign for the purpose of the reparations proceedings, as well as to identify potential beneficiaries and assess their eligibility, with a view to completing the administrative eligibility process within two years of the Impugned Decision.¹¹

10. With respect to the symbolic award of EUR 750 for each victim, the Trial Chamber authorised the TFV to “begin distributing the symbolic cash payment without waiting for the approval of the [draft implementation plan], as soon as practicable after it receives the relevant information regarding eligible victims from the VPRS”.¹²

11. Regarding the timing and likelihood of a full implementation of the award for reparations, in case individual reparations were awarded, the Trial Chamber noted:

The Chamber is mindful that Mr Ongwen is indigent and the TFV has limited resources, which means that in conjunction with the number of victims, prompt and effective implementation of individual reparations is unlikely to be possible. The Chamber does not consider it feasible to order individual reparations for approximately 49,772 victims when that remedy, in all probability, may take decades to implement or may never be implemented at all.¹³

12. The Trial Chamber noted that “in order for the TFV to be able to fully complement the award, substantial fundraising will need to take place”.¹⁴ The Trial Chamber acknowledged that “there will be a delay between the issuance of [the Impugned Decision] and the commencement of implementation of both modalities of

⁹ [Impugned Decision](#), paras 621, 795; p. 360.

¹⁰ [Impugned Decision](#), pp. 360-361.

¹¹ [Impugned Decision](#), pp. 360-361.

¹² [Impugned Decision](#), para. 806.

¹³ [Impugned Decision](#), para. 579.

¹⁴ [Impugned Decision](#), para. 819.

the collective community-based reparations awarded”.¹⁵ The Trial Chamber instructed PIOS to inform the victims “that it will take time before any payments are actually distributed to them and some victims may only get payments when sufficient funds may be raised”.¹⁶

13. The Trial Chamber set out prioritisation principles, according to which two groups of victims are to be assessed as to their eligibility and referred to the TFV “as soon as practicable and on a rolling basis”: (i) “the first priority group (vulnerable victims in dire need of urgent assistance)”, including both participating victims and non-participating victims in dire need of urgent assistance identified by the VPRS, and (ii) all participating victims.¹⁷

14. In its recent decision on the Registry’s submissions pursuant to the Impugned Decision, the Trial Chamber took note of the Registry’s undertaking “to finalise its eligibility and urgency assessment regarding all victims that participated in the *Ongwen* trial proceedings by the end of 2024, or the first months of 2025 at the latest”.¹⁸

III. MERITS

A. Summary of the submissions

1. *Defence Request for Suspensive Effect*

15. Referring to article 82(3) of the Statute and rule 156(5) of the Rules of Procedure and Evidence (hereinafter: “Rules”), the Defence requests the Appeals Chamber to suspend the implementation of the Impugned Decision until it renders a judgment on the appeal.¹⁹ In support of its request, the Defence argues that the implementation of the Impugned Decision at this stage would “render the appeal moot and nugatory”,²⁰ and “could result in considerable time being spent and resources being allocated by the [TFV], as well as unnecessarily raising expectations of victims”, despite the “real” likelihood of its reversal or amendment.²¹ It further avers that the “possible outcome of

¹⁵ [Impugned Decision](#), para. 820.

¹⁶ [Impugned Decision](#), para. 821.

¹⁷ [Impugned Decision](#), para. 810(b).

¹⁸ [Decision on Registry Submissions pursuant to Reparations Order ICC-02/04-01/15-2074](#), 3 May 2024, ICC-02/04-01/15-2088 (hereinafter: “Decision on Registry Report”), para. 3, p. 6.

¹⁹ [Notice of Appeal](#), paras 2, 8-12, 28(a).

²⁰ [Notice of Appeal](#), para. 12.

²¹ [Notice of Appeal](#), para. 11.

the appeal will inevitably reduce the total number of victims [...] and ease the process of identification of the real victims”.²²

2. *TFV Observations*

16. The TFV outlines the tasks Trial Chamber had given them as follows: (i) fundraising; (ii) preparation of the draft implementation plan; and (iii) implementation of the Impugned Decision.²³ The TFV submits that, once the victims receive the symbolic payment of EUR 750 or services as approved in the draft implementation plan, reversing any such measures would be “*de facto* difficult” and it “would have to take various measures to address the financial and contractual implications of [...] a reversal or amendment of the [Impugned Decision]”.²⁴ In respect of the requested suspensive effect, it observes that “preparatory steps relevant to the implementation” of the Impugned Decision could continue “without causing adverse effects for victims”,²⁵ and that “a number of activities”, including fundraising and outreach, “will continue independently from the [Impugned Decision] and the appeal process”.²⁶

17. In the event that the Appeals Chamber grants suspensive effect, the TFV submits that “clarity on the relevant part of the [Impugned Decision] and a clear articulation of the consequences of any such suspension would assist the TFV in taking any steps that mitigate the effects of the suspension on the timeline for implementation”.²⁷ Should the Appeals Chamber reject the Request for Suspensive Effect and find that “considered progress [...] of implementation is the more appropriate course”, as it did in the *Ntaganda* case, the TFV “welcomes any guidance [...] on how to proceed”.²⁸

18. In addition, the TFV seeks leave to make observations pursuant to rule 103 of the Rules on the “numerous issues” the Defence raised in the Notice of Appeal, “some of which have a number of practical implications in the implementation of the [Impugned

²² [Notice of Appeal](#), para. 12.

²³ [TFV Observations](#), paras 10-19.

²⁴ [TFV Observations](#), paras 21-22.

²⁵ [TFV Observations](#), para. 23.

²⁶ [TFV Observations](#), para. 24.

²⁷ [TFV Observations](#), para. 25.

²⁸ [TFV Observations](#), para. 26, referring to Appeals Chamber, *The Prosecutor v. Bosco Ntaganda, Decision on the requests for suspensive effect and other procedural issues*, 5 February 2024, ICC-01/04-02/06-2892 (A6 A7) (hereinafter: “*Ntaganda* A6 A7 Suspensive Effect Decision”), para. 49.

Decision]”. In particular, it seeks to address issues “such as the symbolic payment of EUR 750 or the prioritization of victims”.²⁹

3. *Registry Submission*

19. The Registry submits that suspensive effect of the Impugned Decision would still allow the VPRS to proceed with the internal eligibility assessment of all participating victims,³⁰ and “preparatory steps in the field”, including the identification of beneficiaries and the collection of information.³¹

20. However, noting that the VPRS is tasked with various mandates relating to beneficiaries within “the two-year timeframe given by the Trial Chamber”, which is “extremely tight”,³² the Registry submits that the requested suspensive effect would (i) “slow down Registry efforts and thereby exacerbate challenges in identifying potential beneficiaries and processing their information at the scale as near to the Trial Chamber’s estimation as possible”;³³ and (ii) “impact all steps beyond system design and initial information collection”, including the eligibility assessment of potential new victims, which “would trigger procedural steps and deadlines which could be difficult to reverse”, “particularly so for any victim that would (have to) be informed on their status as reparation beneficiary”.³⁴ According to the Registry, the absence of suspensive effect, in turn, would enable the Registry “to move beyond its preparatory activities in a swift fashion, and proceed to the eligibility assessments”, “which [...] will be fundamental to a speedy reparations process once the appeal has been disposed of”.³⁵

4. *CLRV Response*

21. The CLRV submits that the Request for Suspensive Effect should be rejected as the Defence has not demonstrated that the implementation of the Impugned Decision “will create an irreversible situation, lead to consequences that would be very difficult to correct, or potentially defeat the purpose of the Defence Appeal”.³⁶ The CLRV avers that, contrary to the Defence’s arguments, granting suspensive effect of the Impugned

²⁹ [TFV Observations](#), paras 27-28.

³⁰ [Registry Submission](#), para. 13.

³¹ [Registry Submission](#), paras 10-13, 16.

³² [Registry Submission](#), paras 10, 14.

³³ [Registry Submission](#), para. 14.

³⁴ [Registry Submission](#), para. 13, fn 20.

³⁵ [Registry Submission](#), paras 15-16.

³⁶ [CLRV Response](#), paras 2, 31, 33.

Decision would (i) “result in the disruption of the initial steps to be undertaken by the VPRS and the TFV”, “trigger[ing] substantial delay in the implementation of the reparations *vis-à-vis* any pool of beneficiaries that might be re-defined by a successful Defence [a]ppeal”;³⁷ and (ii) be “inconsequential for the purposes of the Defence [a]ppeal”, as “many preliminary steps are yet to be taken prior to implementing any substantive measures” and the actual implementation “will take years”.³⁸ Furthermore, the CLRV argues that the grounds of appeal, as set out in the Notice of Appeal, are not likely to succeed or have an impact on the estimated number of beneficiaries.³⁹

22. In relation to the award of EUR 750 per beneficiary, the CLRV submits that given “the limited resources of the TFV at present”, the “unprecedented” amount of the symbolic award “would require considerable endeavours by the TFV to conduct fundraising activities”.⁴⁰ In this regard, the CLRV refers to the Trial Chamber’s finding in the Impugned Decision that, “given Mr Ongwen’s indigency, distribution of such cash payments and implementation of reparations in general, are subject to the availability of resources that the TVF might be able to raise and assign to complement the award”, and that “it will take time before any payments are actually distributed to them and some victims may only get payments when sufficient funds may be raised”.⁴¹ The CLRV submits that any implementing measure depends on the eligibility assessment, which will only be completed in the next two years.⁴²

23. Considering that the TFV and the VPRS have “use[d] their discretion in both managing the expectations of the victims and moving forward with the implementation process in general”, the CLRV avers that “making progress rather than immediately suspending the implementation is the more appropriate course” so that the victims’ right to prompt reparation is not jeopardised.⁴³

³⁷ [CLR V Response](#), para. 15.

³⁸ [CLR V Response](#), paras 2, 31; *see also* para. 12.

³⁹ [CLR V Response](#), paras 16-30.

⁴⁰ [CLR V Response](#), paras 14, 25, 26.

⁴¹ [CLR V Response](#), para. 26, *quoting* [Impugned Decision](#), paras 819, 821, 822.

⁴² [CLR V Response](#), para. 24, *referring to* [Decision on Registry Report](#), p. 6.

⁴³ [CLR V Response](#), paras 3, 16, 32; *see also* para. 15.

5. *LRV Response*

24. The LRVs submit that none of the criteria for granting suspensive effect are met in the present case and, since Mr Ongwen’s conviction has been confirmed on appeal, a reduction in the number of victims eligible to benefit from reparations is unlikely.⁴⁴ The LRVs argue that the Defence has no standing to request suspensive effect, as the implementation of the Impugned Decision pending the resolution of the present appeal does not affect any interests of Mr Ongwen.⁴⁵ The LRVs submit that granting suspensive effect “would be counterproductive” for victims who are vulnerable, have dire needs and require urgent attention.⁴⁶ They contend that the administrative process, carried out by the TFV and the VPRS, should continue to ensure “a timely deliverance of at least the symbolic award to the first priority category of victims”.⁴⁷

6. *Defence Response*

25. In response to the Registry Submission, the Defence submits that many of the preparatory activities can continue even if the implementation of the Impugned Decision is suspended and thus the requested “[s]uspensive effect should have only a minimal inconvenience on the Registry’s ability to perform its functions if the job is done efficiently and logically”.⁴⁸ The Defence submits that, “when identifying potential beneficiaries, [the Registry] must keep a record of each potential beneficiary and how each person qualifies as a victim and beneficiary”.⁴⁹ In response to the TFV Observations, it avers that, even if suspensive effect were granted, the TFV can continue many of its activities, apart from the disbursement of the symbolic payment of EUR 750 per beneficiary.⁵⁰

26. Concerning the TFV’s Rule 103 Request, the Defence requests the Appeals Chamber to reject it as premature, considering that “[t]he Defence has not made its legal, factual and procedural submissions on the proposed topics of the TFV, and said submissions are not due until 24 June 2024”.⁵¹

⁴⁴ [LRV Response](#), paras 14-15.

⁴⁵ [LRV Response](#), paras 18, 19, 21, 25.

⁴⁶ [LRV Response](#), para. 26.

⁴⁷ [LRV Response](#), para. 28.

⁴⁸ [Defence Response](#), paras 12-13.

⁴⁹ [Defence Response](#), para. 12.

⁵⁰ [Defence Response](#), paras 14-15.

⁵¹ [Defence Response](#), para. 17.

B. Determination of the Appeals Chamber

1. Request for Suspensive Effect

27. Article 82(3) of the Statute provides:

An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.

28. The Appeals Chamber recalls that the decision on a request for suspensive effect is within the discretion of the Appeals Chamber.⁵² When examining such a request, the Appeals Chamber “will consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under these circumstances”.⁵³ The Appeals Chamber has summarised the circumstances in which it may exercise its discretion to grant suspensive effect as follows:

In past decisions, the Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (i) “would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant”, (ii) would lead to consequences that “would be very difficult to correct and may be irreversible”, or (iii) “could potentially defeat the purpose of the appeal”.⁵⁴

29. In the context of reparations proceedings, the Appeals Chamber has previously held that these criteria “should be rigorously applied in view of the overriding importance of delivering reparations to victims” when the decision on the person’s

⁵² *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision on suspensive effect](#), 19 April 2021, ICC-01/12-01/18-1417 (OA3), para. 6, referring to *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the Request of the Prosecutor for Suspensive Effect](#), 3 September 2009, ICC-01/05-01/08-499 (OA2), para. 11.

⁵³ *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Decision on the Prosecutor’s urgent request for suspensive effect of the “Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido” of 21 October 2014](#), 22 October 2014, ICC-01/05-01/13-718 (OA9), para. 5, referring to previous jurisprudence.

⁵⁴ *The Prosecutor v. Bosco Ntaganda*, [Decision on the Defence request for suspensive effect](#), 2 July 2021, ICC-01/04-02/06-2691 (A4 A5) (hereinafter: “*Ntaganda* A4 A5 Suspensive Effect Decision”), para. 21, referring to *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the “Decision on the Admissibility and Abuse of Process Challenges”](#), 9 July 2010, ICC-01/05-01/08-817 (OA3), para. 11. See also *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, [Decision on request for suspensive effect](#), 25 August 2020, ICC-02/05-01/20-134 (OA), para. 6; *Situation on registered vessels of the Union of the Comoros, The Hellenic Republic and the Kingdom of Cambodia*, [Decision on the Prosecutor’s request for suspensive effect](#), 31 January 2019, ICC-01/13-81 (OA2), para. 10.

conviction has been upheld on appeal.⁵⁵ Furthermore, in this regard, the Appeals Chamber has held that “the need to repair the harm suffered by the victims [...] as expeditiously as possible is a relevant consideration in determining whether the Impugned Decision must be suspended”.⁵⁶

30. The Appeals Chamber notes that the parties, the TFV, and the Registry appear to agree that a number of activities undertaken by the TFV and the VPRS pursuant to the Impugned Decision can continue during the present appellate proceedings without creating an irreversible situation or leading to consequences that would be very difficult to correct.⁵⁷

31. Two aspects of the implementation of the Impugned Decision, however, warrant careful consideration. First, the Registry notes that the VPRS intends to inform victims about their status as beneficiaries after conducting the eligibility assessment.⁵⁸ While the Trial Chamber directed the VPRS to complete the administrative eligibility process within two years of the Impugned Decision,⁵⁹ eligibility assessments with respect to all victims who participated in the trial proceedings may be completed by the end of 2024 or in the first months of 2025.⁶⁰ The Appeals Chamber notes that 4,096 victims participated in the trial proceedings.⁶¹ However, in the circumstances of this case, it is a relatively small group of victims, as the estimated number of all victims of the crimes for which Mr Ongwen was convicted is approximately 49,772.⁶²

32. Second, the Appeals Chamber notes that the Trial Chamber authorised the TFV to begin distributing the symbolic cash payment of EUR 750 for each victim “without waiting for the approval of the [draft implementation plan], as soon as practicable after it receives the relevant information regarding eligible victims from the VPRS”.⁶³ The Appeals Chamber takes note of the TFV’s submission that once the implementation of

⁵⁵ [Ntaganda A6 A7 Suspensive Effect Decision](#), para. 41.

⁵⁶ [Ntaganda A6 A7 Suspensive Effect Decision](#), para. 46, citing [Ntaganda A4 A5 Suspensive Effect Decision](#), para. 25.

⁵⁷ [TFV Observations](#), paras 23-24; [Registry Submission](#), paras 10-13; [CLR V Response](#), paras 2, 12, 31; [Defence Response](#), paras 12-15.

⁵⁸ [Registry Submission](#), para. 13, fn. 20.

⁵⁹ [Impugned Decision](#), p. 361.

⁶⁰ [CLR V Response](#), para. 24, referring to [Decision on Registry Report](#), p. 6.

⁶¹ [Impugned Decision](#), para. 16.

⁶² [Impugned Decision](#), p. 360.

⁶³ [Impugned Decision](#), para. 806.

this aspect of the Impugned Decision begins, “it becomes *de facto* difficult to reverse any measures taken”.⁶⁴ However, the Appeals Chamber notes that the disbursement of these symbolic cash payments is not likely to proceed swiftly. The Trial Chamber indicated that “in order for the TFV to be able to fully complement the award, substantial fundraising will need to take place”.⁶⁵ The Trial Chamber acknowledged that “there will be a delay”⁶⁶ and directed that the victims be informed “that it will take time before any payments are actually distributed to them and some victims may only get payments when sufficient funds may be raised”.⁶⁷ The Appeals Chamber also takes note of the CLRV’s submission that the amount awarded for symbolic cash payments (EUR 37,329,000⁶⁸) is “unprecedented and would require considerable endeavours by the TFV to conduct fundraising activities”,⁶⁹ and that, therefore, the implementation of the Impugned Decision “will take years”.⁷⁰

33. The Appeals Chamber finds that it has not been demonstrated that these aspects of the implementation of the Impugned Decision (i) “would create an irreversible situation that could not be corrected”, (ii) would lead to consequences that “would be very difficult to correct and may be irreversible”, or (iii) “could potentially defeat the purpose of the appeal”.⁷¹ The Appeals Chamber notes in this respect that any potential disadvantage caused by the continuing implementation of the Impugned Decision is mitigated by the relatively low number of victims who may be affected. Indeed, the timeline for eligibility assessments shows that only a limited number of victims is likely to be deemed eligible before the completion of the present appellate proceedings. Furthermore, the slow progress anticipated in the TFV’s fundraising activities means that only a limited number of victims may start benefiting from reparations before the Appeals Chamber’s judgment is rendered.

34. The Appeals Chamber also notes the victims’ submission that suspending the implementation of the Impugned Decision will jeopardise the victims’ right to prompt

⁶⁴ [TFV Observations](#), para. 21.

⁶⁵ [Impugned Decision](#), para. 819.

⁶⁶ [Impugned Decision](#), para. 820.

⁶⁷ [Impugned Decision](#), para. 821.

⁶⁸ [Impugned Decision](#), para. 790.

⁶⁹ [CLRV Response](#), para. 25.

⁷⁰ [CLRV Response](#), para. 31.

⁷¹ See paragraph 28 above.

reparation.⁷² The Appeals Chamber further takes note of the Registry's submission that granting suspensive effect would "slow down Registry efforts and thereby exacerbate challenges in identifying potential beneficiaries and processing their information".⁷³

35. For the foregoing reasons, the Appeals Chamber rejects the Request for Suspensive Effect.

36. The Appeals Chamber, however, points out that it is mindful of the dynamic nature of the reparations proceedings, especially in the present case, in view of the large number of victims who, in the estimate of the Trial Chamber, are potentially eligible to benefit from the reparations. It therefore encourages the Board of Directors of the TFV to consider, in the exercise of its mandate under regulation 50(a) of the Regulations of the Trust Fund, the possibility of using its resources to cover the expenses incurred in case the Appeals Chamber's judgment on the present appeal necessitates any change to the status as beneficiaries of victims who have meanwhile received cash payments or benefited from participation in any community-based measures or programmes. In this respect, the Appeals Chamber takes note of the TFV's reference to measures which it would have to take "to address the financial and contractual implications of [...] a reversal or amendment of the [Impugned Decision]".⁷⁴

37. The Appeals Chamber instructs the TFV and the Registry to communicate clearly to the victims concerned that an appeal in this case is pending, and that changes to an eventual implementation plan or to any eligibility assessment may therefore be required. Such actions taken as part of the TFV and the Registry's outreach strategy should assist in managing the expectations of victims and would be in line with the do no harm principle.

2. *Rule 103 Request*

38. The Appeals Chamber notes that the TFV seeks leave to submit observations pursuant to rule 103 of the Rules on issues raised in the Notice of Appeal.⁷⁵ However, the Appeals Chamber finds that, as correctly noted by the Defence,⁷⁶ the grounds of

⁷² [CLR Response](#), paras 3, 15, 16, 32; [LRV Response](#), para. 28.

⁷³ [Registry Submission](#), para. 14.

⁷⁴ [TFV Observations](#), para. 22.

⁷⁵ [TFV Observations](#), paras 27-28.

⁷⁶ [Defence Response](#), para. 17.

appeal set out in the Notice of Appeal are not yet fully developed. Only when the Defence files its appeal brief, it will become clear whether TFV observations on any of the issues on appeal will be desirable for the proper determination of the appeal. The Appeals Chamber will therefore rule on the Rule 103 Request in due course.

Done in both English and French, the English version being authoritative.



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 16th day of May 2024

At The Hague, The Netherlands