

**Cour
Pénale
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**International
Criminal
Court**

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

Date: 6 May 2024

THE APPEALS CHAMBER

Before:

**Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
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

**Victims' Response to the Defence Request for Suspensive Effect in its appeal
against the Reparations Order**

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**

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I. INTRODUCTION

1. The Common Legal Representative of Victims (the “CLR V”) hereby files her response to the Defence Request for Suspensive Effect (the “Defence Request”) included in its Notice of Appeal (the “Defence Appeal”)¹ against the Reparations Order (the “Impugned Decision”);² the Trust Fund for Victims’ (the “TFV”) “Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence” (the “TFV’s Observations”)³ and the “Registry Submission on the Request for Suspensive Effect” (the “Registry’s Submission”).⁴

2. The CLR V opposes the Defence Request as the relevant criteria for granting suspensive effect are not met. The Defence has not demonstrated that unless the Impugned Decision is suspended, its implementation would create an irreversible situation, lead to consequences that would be very difficult to correct, or potentially defeat the purpose of the Defence Appeal. The Defence also fails to consider the various phases and length that the implementation of the Impugned Decision requires. Considering that the TFV has just started the consultation process with the victims, and many preliminary steps are yet to be taken prior to implementing any substantive measures, no irreversible situation could possibly result from denying suspensive effect.

3. In addition, the CLR V recalls that these reparations proceedings are taking place more than two decades after the commission of the crimes for which Mr Ongwen

¹ 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 (the “Defence Appeal”). The request for suspensive effect is referred to as the “Defence Request”.

² See the Reparations Order (Trial Chamber IX), [No. ICC-02/04-01/15-2074](#), 28 February 2024 (the “Impugned Decision”).

³ 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 (the “TFV’s Observations”).

⁴ See the “Registry Submission on the Request for Suspensive Effect”, [No. ICC-02/04-01/15-2086 A A3](#), 1 May 2024 (the “Registry’s Submission”).

has been convicted. Victims have never received any type of assistance and thus, suspending the Impugned Decision would further delay obtaining reparations. In the interest of the victims, efforts to advance the reparations process should continue while the Appeals Chamber adjudicates the Defence Appeal. The need to repair the harm suffered by the victims as expeditiously as possible should underpin the Appeals Chamber's determination that the Impugned Decision must not be suspended.

II. PROCEDURAL BACKGROUND

4. On 4 February 2021, Trial Chamber IX issued its Judgment, finding Mr Ongwen guilty of 61 charges of war crimes and crimes against humanity.⁵ On 6 May 2021, the Chamber sentenced Mr Ongwen to 25 years of imprisonment.⁶ On 15 December 2022, the Appeals Chamber confirmed the Judgment⁷ and the Sentence.⁸

5. On 28 February 2024, the Chamber issued the Impugned Decision.⁹

6. On 1 March 2024, the Defence filed a request, seeking an extension of time limit for filing its notice of appeal and appeal brief (the "Extension Request").¹⁰ Pursuant to the Appeals Chamber's instruction,¹¹ the CLRV and Legal Representatives of Victims

⁵ 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").

⁶ See the "Sentence" (Trial Chamber IX), [No. ICC-02/04-01/15-1819-Conf](#) and [No. ICC-02/04-01/15-1819-Red](#), 6 May 2021, as well as the "Partly Dissenting Opinion of Judge Raul C. Pangalangan", [No. ICC-02/04-01/15-1819-Anx](#).

⁷ 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](#), 15 December 2022.

⁸ 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](#), and "ANNEX 1: Partly Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza", [No. ICC-02/04-01/15-2023-Anx1](#), 15 December 2022.

⁹ See the Impugned Decision, *supra* note 2.

¹⁰ 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. (the "Extension Request")

¹¹ 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.

responded jointly to the Extension Request on 11 March 2024.¹² On 14 March 2024, the Appeals Chamber extended the time for the filing of any notice of appeal to 22 April 2024.¹³

7. On 22 April 2024, the Defence filed its Notice of Appeal and requested suspensive effect of the Impugned Decision.¹⁴ The same day, the Appeals Chamber instructed the TFV, the Victims Participation and Reparations Section (the “VPRS”) and both Legal Representatives of victims to respond to the Defence Request by 1 and 6 May 2024, respectively.¹⁵

8. On 1 May 2024, the Registry/VPRS¹⁶ and TFV¹⁷ filed their responses to the Defence Request.

9. On 3 May 2024, the Trial Chamber issued a decision on the Registry’s submissions pursuant to the Impugned Decision.¹⁸

III. SUBMISSIONS

1. Applicable law

10. According to article 82(3) of the Rome Statute (the “Statute”), 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. The Appeals

¹² 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](#), dated 14 March 2024, this document is reclassified as “Public”.

¹³ 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’”, [No. ICC-02/04-01/15-2080 A A3](#), 14 March 2024.

¹⁴ See the Defence Request, *supra* note 1.

¹⁵ 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.

¹⁶ See the Registry’s Submission, *supra* note 4.

¹⁷ See the TFV’s Observations, *supra* note 3.

¹⁸ 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.

Chamber held that the wording of this provision is clear and that the default position is the lack of suspensive effect of decisions under appeal unless and until the Appeals Chamber rules to the contrary.¹⁹

9. The Appeals Chamber has further summarised the circumstances in which it has exercised 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’”.*²⁰

10. The Appeals Chamber also previously considered that said criteria should be rigorously applied in view of *“the overriding importance of delivering reparations to victims following the Trial Chamber’s decision on conviction and in circumstances in which that decision is final”*.²¹

2. Merits of the Request

11. In its Request, the Defence submits that the *“likelihood of the Impugned Decision being reversed or amended by the Appeals Chamber is real given the glaring nature of errors raised in this notice of appeal [...]. Therefore, implementation of the Impugned Decision at this*

¹⁹ See the “Decision on the requests for suspensive effect and other procedural issues” (Appeals Chamber), [No. ICC-01/04-02/06-2892 A A6 A7](#), 5 February 2024, para. 38.

²⁰ See the “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” (Appeals Chamber), [No. ICC-01/05-01/08-817 OA 3](#), 9 July 2010, para. 11. See also the “Decision on Mr William Samoei Ruto’s request for suspensive effect” (Appeals Chamber), [No. ICC-01/09-01/11-1370 OA7 OA8](#), 17 June 2014, para. 6; the “Decision on suspensive effect” (Appeals Chamber), [No. ICC-01/13-43 OA](#), 6 August 2015, para. 7; the “Decision on Jordan’s request for suspensive effect of its appeal against the decision on the non-compliance by Jordan with the request for the arrest and surrender of Mr Omar Al-Bashir” (Appeals Chamber), [No. ICC-02/05-01/09-333 OA2](#), para. 8; the “Decision on the Prosecutor’s request for suspensive effect” (Appeals Chamber), [No. ICC-01/13-81 OA2](#), 31 January 2019, para. 10; and the “Decision on request for suspensive effect” (Appeals Chamber), [No. ICC-02/05-01/20-134 OA](#), 25 August 2020, para. 6.

²¹ See the “Decision on the Defence request for suspensive effect” (Appeals Chamber), [No. ICC-01/04-02/06-2691 A4 A5](#), 2 July 2021, para. 21.

*stage could result in considerable time being spent and resources being allocated by the Trust Fund for Victims, as well as unnecessarily raising expectations of victims, for something that has a real chance of not being implemented".*²²

12. This assumption is inapposite. Regardless of its correctness, the Impugned Decision is no way near to its implementation stage. In this regard, the Trial Chamber acknowledged the significant time, submissions and judicial decisions that were required to review and approve Draft Implementation Plans (the "DIP") in past cases.²³ Taking into consideration said realities in implementing reparations orders, the Trial Chamber instructed the TFV to prepare a DIP including the details of the rehabilitation and symbolic measures within the reparations awarded and to submit it for approval within six months from the delivery of the Impugned Decision.²⁴ Moreover, the Trial Chamber instructed the VPRS and the Public Information and Outreach Section (the "PIOS") to work together to ensure that the administrative eligibility process - including outreach, identification, and eligibility assessment - is completed within two years.²⁵

13. As noted by the Registry, the VPRS at present (i) is merely in the process of setting up the system for identifying victims and collecting information for their eligibility assessment; (ii) foresees over the next months to create a solid support network on the ground which will carry out victims' identification tasks in multiple key locations; and (iii) is designing trainings for staff in the field and drafting key documents to inform interlocutors about the details of the process, scope of the case and steps ahead.²⁶

14. In this regard, the TFV also recalled that *"any implementation of the Reparations Order depends on the administrative eligibility assessment by the Registry/VPRS"*.²⁷ In

²² See the Defence Request, *supra* note 1, para. 11.

²³ See the Impugned Decision, *supra* note 2, para. 801.

²⁴ *Idem*, para. 797.

²⁵ *Idem*, para. 813.

²⁶ See the Registry's Submission, *supra* note 4, paras. 12-13.

²⁷ See the TFV's Observations, *supra* note 3, para. 10.

addition, as discussed in detail below, the TFV is yet to gather the necessary resources to complement the payment of the symbolic monetary award to the beneficiaries. In other words, it is currently impossible to foresee when the proper implementation of the Impugned Decision will start, given the limited resources of the TFV at present.

15. In light of the above, granting suspensive effect would result in the disruption of the initial steps to be undertaken by the VPRS and the TFV. It would thus trigger a substantial delay in the implementation of the reparations *vis-à-vis* any pool of beneficiaries that might be re-defined by a successful Defence Appeal. According to the Registry's submission, if suspensive effect were to be granted: (i) many activities relating to the eligibility assessment of potential new beneficiaries would have to be paused - in particular, the communication of any VPRS assessments to the TFV would trigger procedural steps and deadlines which could be difficult to reverse; (ii) considering the average duration of appeal proceedings of comparable scope and complexity, granting the Defence Request would impact all steps beyond system design and initial information collection; and (iii) the two-year timeframe given by the Trial Chamber to identify the total number of potentially eligible victims has started running and is extremely tight in light of the extensive scope of this case. Thus, VPRS's efforts would slow down and exacerbate challenges in identifying potential beneficiaries and processing their information.²⁸

16. Moreover, all grounds of appeal – except for Grounds 5 and 6 – allege errors affecting the Trial Chamber's determination of the number of eligible victims under the Impugned Decision. However, in each of the situation envisioned by the Defence, there are measures that might be taken by the TFV to mitigate any potential disruption in the implementation of the Impugned Decision. As held by the Appeals Chamber, in line with the *do no harm* principle, the TFV and the VPRS do normally, in consultation with the Trial Chamber where appropriate, use their discretion in both managing the expectations of the victims and moving forward with the implementation process in

²⁸ See the Registry's Submission, *supra* note 4, paras. 12-13.

general.²⁹ Thus, making progress rather than immediately suspending the implementation is the more appropriate course in the present circumstances.³⁰

17. Nonetheless, the CLRV addresses below the merits of the Defence Request in relation to the specific grounds raised in its Notice of Appeal, by grouping the grounds that appear to be inter-connected and inclusive of each other.

Grounds 1 and 7

18. The Defence argues that the Trial Chamber erred (i) in refusing to order the disclosure of the names of persons in the sample of victims' dossier (the "Dossier") (Ground 1); and (ii) in failing to appreciate the need for these victims to provide medical documentation in support of their disabilities (Ground 7).³¹ The Defence adds that these two alleged errors increased the number of estimated beneficiaries and thus, Mr Ongwen's overall liability.³² Yet, the Dossier was composed of only 205 individuals. Hence, whichever be the number of the victims challenged by the Defence, it cannot meaningfully increase the number of estimated beneficiaries and Mr Ongwen's overall liability, counted against the total number of 49,772 beneficiaries. In addition, even if the Defence were to obtain an active role in the process, the relevant verification processes can be retroactively amended and would not create a situation difficult to correct or in any way irreversible.³³

Grounds 2 and 11

19. The Defence argues that the Trial Chamber erred (i) in dismissing the Defence's arguments about Ugandan national proceedings related to reparations for persons from Abok IDP Camp (Ground 2);³⁴ and (ii) in failing to recognise the relevance of the

²⁹ See the "Decision on the requests for suspensive effect and other procedural issues", *supra* note 19, paras. 47-48.

³⁰ *Ibid.*

³¹ See the Defence Request, *supra* note 1, paras. 13 and 19.

³² *Ibid.*

³³ See the "Decision on the Defence request for suspensive effect", *supra* note 21, para. 24.

³⁴ See the Defence Request, *supra* note 1, para. 14.

Acholi cultural reparation and restorative mechanisms when determining the overall reparations (Ground 11).³⁵ Yet, the Impugned Decision exclusively deals with the statutory provisions relevant to the reparations regime before the Court. The Chamber reiterated the fact that, pursuant to article 75(6) of the Statute, domestic proceedings do not impact reparations awarded before the Court.³⁶ Consequently, these arguments are not likely to succeed and cannot be relied upon to support a request for suspensive effect.

Grounds 3, 4 and 8 to 10

20. The Defence further argues that the Trial 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 attack are victims of the crimes of an attack against the civilian population and persecution (Ground 3);³⁷ (ii) extending the potential indirect victims pool by creating the “*African extended family exception*” (as Ground 4);³⁸ (iii) failing to take into account that Mr Ongwen was not the brigade commander until 4 March 2004 (Ground 8);³⁹ and using the divisor of four in determining the number of victims of sexual and gender based crimes and child soldiers attributed to Mr Ongwen (Ground 9) –⁴⁰ thus significantly increasing the relevant number of said categories of victims; and (iv) by miscalculating the population estimates in the four IDP camps (Ground 10).⁴¹

21. The common theme of these grounds is the accuracy of the number of eligible victims for reparations. Yet, the Trial Chamber held that, in making an order under article 75 of the Statute, it does not have to set out the precise number of beneficiaries.⁴² As held by the Appeals Chamber, a Trial Chamber is simply required to establish an

³⁵ *Idem*, para. 23.

³⁶ See the Impugned Decision, *supra* note 2, para. 49.

³⁷ See the Defence Request, *supra* note 1, para. 15.

³⁸ *Idem*, para. 16.

³⁹ *Idem*, para. 20.

⁴⁰ *Idem*, para. 21.

⁴¹ *Idem*, para. 22.

⁴² See the Impugned Decision, *supra* note 2, para. 704.

estimated number of victims of the award.⁴³ In any case, whether the Chamber committed errors in estimating the number of the beneficiaries is a question going directly to the merit of the Defence Appeal. Hence, the Defence fails to substantiate that not suspending the Impugned Decision now will lead to a high number of victims having their eligibility determinations revisited or reversed.

Ground 5

22. The Defence argues that the Trial Chamber erred by awarding € 750 per victim as symbolic reparation, not as partial restitution or compensation for the harm suffered.⁴⁴ The Defence however does not contest the allocation of this amount to the beneficiaries. Therefore, even if the Appeals Chamber were to side with the Defence on this point, providing the monetary award to the beneficiaries would not create an irreversible situation.

23. In relation to the payment of the symbolic award, the TFV indicated that *“once the implementation of the Reparations Order starts by providing victims with 750 EUR or with services as approved in the DIP, it becomes de facto difficult to reverse any measures taken; any reversal of the Reparations Order would likely lead to adverse effects for the victims and be problematic in light of the do no harm principle. In addition, the TFV submits that after the start of provision of EUR 750 or of services to victims, if the appeal was successful in full or part, the TFV would have to take various measures to address the financial and contractual implications of such a reversal or amendment of the Reparations Order”*.⁴⁵

24. However, the CLRV recalls that any implementing measure, including the monetary award, is dependent on the overall eligibility assessment – which will only

⁴³ 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; and 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](#), paras. 153, 165, 168 and 171.

⁴⁴ See the Defence Request, *supra* note 1, para. 17.

⁴⁵ See the TFV’s Observations, *supra* note 3, paras. 21-22.

be concluded by the VPRS in the next two years.⁴⁶ The Trial Chamber recently took note of “*the VPRS’ undertaking to finalise its eligibility and urgency assessment of all participating victims by the end of 2024 or the first months of 2025 at the latest*”.⁴⁷

25. Moreover, the TFV’s Observations give the impression that the latter is at present financially able – and in fact ready – to distribute the total amount of the symbolic award of € 37,329,000 (€ 750 multiplied by 49,772) to the beneficiaries. However, the CLRV notes that this sum is unprecedented and would require considerable endeavours by the TFV to conduct fundraising activities. In fact, in its observations before the Trial Chamber, the TFV repeatedly indicated that it has limited (or even “*scarce*”) financial resources and is in need of significantly fundraising to complement its resources for the purposes of implementing any reparations order.⁴⁸

26. In light of these considerations, the Trial Chamber held in the Impugned Decision that:

“[...] noting Mr Ongwen’s indigence, the Chamber acknowledges that it would be for the TFV’s Board of Directors to determine whether and when to use its ‘other resources’ to complement the reparations awarded in the present case. The Chamber encourages the TFV to complement the reparation awards, to the extent possible, and engage in additional fundraising efforts to the extent necessary to complement the totality of the award. Nevertheless, the Chamber understands that, in order for the TFV to be able to fully complement the award, substantial fundraising will need to take place. [...] Further, the Chamber notes the importance of managing victims’ expectations regarding the implementation of the Reparations Order. As such, the Chamber instructs the PIOS to inform victims that, while a symbolic initial cash payment has been awarded in this case, the PIOS and the VPRS require time to design and implement the outreach, identification, and eligibility processes to be conducted in order for such payments to be executed. At the same time, victims should be made aware of the fact that, given Mr Ongwen’s indigency, distribution of such cash payments and implementation of reparations in general, are

⁴⁶ See the Impugned Decision, *supra* note 2, para. 813.

⁴⁷ See the “Decision on Registry Submissions pursuant to Reparations Order ICC-02/04-01/15-2074”, *supra* note 18, p. 6.

⁴⁸ See the Trust Fund for Victims’ Observations relevant to Reparations, [No. ICC-02/04-01/15-1920](#), 6 December 2021, paras. 62, 111 and 125. See also the “Trust Fund for Victims’ Final Observations on Reparations”, [No. ICC-02/04-01/15-1992](#), 7 March 2022, paras. 36 and 61.

subject to the availability of resources that the TVF might be able to raise and assign to complement the award. Accordingly, victims should be duly 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. [...] Lastly, the Chamber recalls that as soon as the TFV is able to commence implementing the reparations awarded in this Reparations Order, which the Chamber acknowledges may take time, priority shall be given to the payment of the symbolic monetary awards over the rehabilitation and other symbolic measures. The Chamber also reiterates that additional priorities have been established in this Order, which imply that not all victims would receive the symbolic amount at the same time and payments would be issued depending on the victims' urgent needs and vulnerability and the capacity of the TFV to complement the award depending on the availability of resources. As such, the Chamber underlines that victims cannot expect payments to be executed soon after the issuance of this Reparations Order. Moreover, in light of the convicted person's indigency, the Chamber acknowledges that there is the concrete risk that awards may not be paid if the TFV does not manage to raise sufficient funds to complement the award".⁴⁹

27. Considering the timeline for the identification of the eligible victims by the VPRS and for the TFV to gather the necessary funds, the arguments raised by the Defence under Ground 5 do not support the suspension of the Impugned Decision.

Ground 6

28. The Defence argues that the Trial Chamber erred by prioritising direct witnesses who were participating victims of the case over direct victims who did not participate in the case.⁵⁰ Yet, the Appeals Chamber itself confirmed this approach – while all victims are to be treated fairly and equally, priority may need to be given to certain victims who are in a particularly vulnerable situation or require urgent assistance.⁵¹ In any case, as mentioned above, the implementation of the Impugned Decision is at its early stage and will likely take years to translate into reality, regardless of any prospects to apply prioritisation to the beneficiaries of reparations.

⁴⁹ See the Impugned Decision, *supra* note 2, paras. 819, 821 and 822 (emphasis added).

⁵⁰ See the Defence Request, *supra* note 1, para. 18.

⁵¹ See the "Amended Order for Reparations" (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA A A2 A3](#), 03 March 2015, para. 19.

Grounds 12 and 13

29. The Defence further argues that the Trial Chamber erred by assuming that those victims who experienced spiritual attacks, cultural problems and *cen* suffered from a mental illnesses, despite the lack of a diagnosis (Ground 12),⁵² and by characterising mental health issues as a moral health victimisation (Ground 13).⁵³ The Defence adds that these errors significantly increased the amount of potential beneficiaries and thus, the amount of Mr Ongwen's liability.⁵⁴ Yet, the Trial Chamber found on a balance of probabilities that direct victims of the attacks suffered moral harm after having mainly considered its factual findings already made in the Judgment and Sentence – which were confirmed by the Appeals Chamber.⁵⁵ Thus, neither of these grounds is likely to succeed and therefore they do not support the need for suspending the effects of the Impugned Decision.

Grounds 14 and 15

30. Lastly, the Defence argues that the Trial Chamber erred (i) in determining that four participating victims qualified, on a balance of probabilities, as victims of Mr Ongwen (Ground 14);⁵⁶ and (ii) in applying the balance of probabilities test throughout the Impugned Decision (Ground 15).⁵⁷ The Defence claims that the Chamber's failure to apply the correct standard would cause significant financial harm to Mr Ongwen.⁵⁸ Yet, the Trial Chamber had already found Mr Ongwen indigent for the purposes of the reparations proceedings.⁵⁹ Therefore, the absence of suspensive effect cannot possibly affect his financial situation at this or any further stage of the process in the foreseeable future.

⁵² See the Defence Request, *supra* note 1, para. 24.

⁵³ *Idem*, para. 25.

⁵⁴ *Ibid.*

⁵⁵ See the Impugned Decision, *supra* note 2, paras. 231 to 242.

⁵⁶ See the Defence Request, *supra* note 1, para. 26.

⁵⁷ *Idem*, para. 27.

⁵⁸ *Ibid.*

⁵⁹ See the Impugned Decision, *supra* note 2, para. 815.

31. To conclude, the Defence fails to demonstrate that, unless the Impugned Decision is suspended, its implementation will create an irreversible situation, lead to consequences that would be very difficult to correct or potentially defeat the purpose of its appeal. Since the implementation phase of the reparations measures awarded will take years, suspending the Impugned Decision at this early phases of the proceedings is inconsequential for the purposes of the Defence Appeal. In fact, the Defence did not substantiate its central contention that the immediate suspension of the Impugned Decision is the only available avenue to avoid severe and potentially irreparable prejudice to Mr Ongwen. Consequently the Request for suspensive effect of the Impugned Decision must be dismissed.⁶⁰

32. More importantly, the suspension of the Impugned Decision would be detrimental to the right of the victims to expeditious reparations proceedings. It would postpone the victims' access to reparative justice, be prejudicial to their best interests and would unequivocally jeopardise their right to prompt reparation – for which they have been waiting for more than two decades. Therefore, the need to repair the harm suffered by the victims as expeditiously as possible should underpin the Appeals Chamber's determination that the Impugned Decision must not be suspended.⁶¹

⁶⁰ See the "Decision on the requests for suspensive effect and other procedural issues", *supra* note 19, para. 45.

⁶¹ *Idem*, para. 46.

IV. CONCLUSION

33. For the foregoing reasons, the CLRV respectfully requests the Appeals Chambers to reject the Defence Request for suspensive effect of the Impugned Decision.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda

Dated this 6th day of May 2024

At The Hague, The Netherlands