



Original: English

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

Date: 7 April 2025

THE APPEALS CHAMBER

Before:

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

SITUATION IN UGANDA

IN THE CASE OF THE PROSECUTOR v. DOMINIC ONGWEN

Public document

Judgment

**on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX
of 28 February 2024 entitled “Reparations Order”**

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

☐ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☒ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☒ **The Office of Public Counsel for
Victims**

☐ **The Office of Public Counsel for the
Defence**

☐ **States' Representatives**

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Mr Osvaldo Zavala Giler

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☒ **Victims Participation and Reparations
Section**

☒ **Other**
Trial Chamber IX
Trust Fund for Victims

JUDGMENT	6
I. KEY FINDINGS	6
II. INTRODUCTION	7
III. PROCEDURAL HISTORY	9
A. Proceedings before the Trial Chamber	9
B. Proceedings before the Appeals Chamber	10
IV. STANDARD OF REVIEW	11
A. Errors of law	11
B. Errors of fact	11
C. Procedural errors	12
D. Abuse of discretion	12
E. Substantiation of arguments	13
V. PRELIMINARY ISSUE	13
VI. MERITS	14
A. First ground of appeal: Alleged erroneous refusal to disclose the names of victims	14
1. Relevant background and part of the Impugned Decision	14
2. Summary of the submissions	16
3. Determination by the Appeals Chamber	17
B. Second ground of appeal: Alleged errors in the Trial Chamber's findings relating to domestic proceedings	22
1. Relevant background and part of the Impugned Decision	23
2. Summary of the submissions	24
3. Determination by the Appeals Chamber	25
C. Third ground of appeal: Alleged erroneous presumption regarding residents of IDP camps and non-residents present at the time of the attacks	29
1. Relevant part of the Impugned Decision	29

2.	Summary of the submissions	30
3.	Determination by the Appeals Chamber	31
D.	Fourth, eleventh and twelfth grounds of appeal: Alleged errors concerning the Trial Chamber's consideration of the Acholi traditional and cultural factors and mechanisms.....	36
1.	Relevant part of the Impugned Decision	37
2.	Summary of the submissions	38
3.	Determination by the Appeals Chamber	40
E.	Fifth ground of appeal: Alleged error in the Trial Chamber's decision to award a symbolic cash payment of EUR 750 to each victim	49
1.	Relevant part of the Impugned Decision	49
2.	Summary of the submissions	50
3.	Determination by the Appeals Chamber	51
F.	Sixth ground of appeal: Alleged error in prioritising participating direct victims over non-participating direct victims	58
1.	Relevant part of the Impugned Decision	58
2.	Summary of the submissions	59
3.	Determination by the Appeals Chamber	60
G.	Seventh ground of appeal: Alleged error in failing to require medical documentation.....	62
1.	Relevant part of the Impugned Decision	62
2.	Summary of the submissions	63
3.	Determination by the Appeals Chamber	63
H.	Eighth ground of appeal: Alleged errors concerning the scope of Mr Ongwen's liability in relation to his time as the commander of the Sinia brigade	65
1.	Relevant part of the Impugned Decision	65
2.	Summary of the submissions	66
3.	Determination by the Appeals Chamber	67

I.	Ninth ground of appeal: Alleged errors concerning the Trial Chamber’s use of the divisor of four, instead of five, in relation to the number of LRA brigades	70
1.	Relevant part of the Impugned Decision	70
2.	Summary of the submissions	71
3.	Determination by the Appeals Chamber	72
J.	Thirteenth ground of appeal: Alleged erroneous assessment of moral harm...	73
1.	Relevant background and part of the Impugned Decision	74
2.	Summary of the submissions	76
3.	Determination by the Appeals Chamber	77
K.	Fourteenth ground of appeal: Alleged errors concerning the Trial Chamber’s eligibility assessment of four victims in the Sample	81
1.	Relevant background and part of the Impugned Decision	82
2.	Summary of the submissions	83
3.	Determination by the Appeals Chamber	84
VII.	APPROPRIATE RELIEF	89

The Appeals Chamber of the International Criminal Court,

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

After deliberation,

Unanimously,

Delivers the following

JUDGMENT

The “Reparations Order” is confirmed.

REASONS

I. KEY FINDINGS

1. The phrase in article 75(1) of the Statute that “[t]he Court shall establish principles relating to reparations to, or in respect of victims, *including* restitution, compensation and rehabilitation” should not be understood as exhaustive. It is clear that a trial chamber may order modalities of reparations beyond restitution, compensation and rehabilitation, including those with a symbolic value.

2. Rule 94(1) of the Rules specifies what victims must provide when requesting reparations and it does not in any way limit a trial chamber’s choice of modalities or types of reparations which it may award. Furthermore, rule 94(1) of the Rules enables the Court to consider victims’ requests not only for restitution, compensation and rehabilitation, but also for “other forms of remedy” not explicitly provided for in article 75(1) of the Statute.

3. The Appeals Chamber’s determination that “collective reparations can include the payment of sums of money to individuals to repair harm suffered” does not mean that any such payment *must* be considered as a compensation.

II. INTRODUCTION

4. Mr Ongwen was convicted, on 4 February 2021, of crimes against humanity and war crimes.¹ On 28 February 2024, the Trial Chamber issued the Impugned Decision,² which the Defence subsequently appealed.

5. In its appeal, the Defence raises 11 grounds of appeal against the Impugned Decision. These grounds of appeal raise the issues of:

- i. non-disclosure of the names of the potential beneficiaries in the Sample (first ground of appeal);³
- ii. the alleged “dual claimants”, who, in the view of the Defence, benefit both from an award made by the High Court of Uganda and from the award made in the Impugned Decision (second ground of appeal);⁴
- iii. presumptions concerning residents of the IDP camps and non-residents present in these camps at the time of the attacks (third ground of appeal);⁵
- iv. Acholi traditional and cultural factors and mechanisms (joint fourth, eleventh and twelfth grounds of appeal);⁶
- v. the legal basis for a symbolic cash award (fifth ground of appeal);⁷
- vi. criteria for prioritisation of victims at the implementation stage (sixth ground of appeal);⁸

¹ [Conviction Decision](#).

² [Impugned Decision](#).

³ [Appeal Brief](#), paras 9-19.

⁴ [Appeal Brief](#), paras 20-29.

⁵ [Appeal Brief](#), paras 30-37.

⁶ [Appeal Brief](#), paras 38-66.

⁷ [Appeal Brief](#), paras 67-75.

⁸ [Appeal Brief](#), paras 76-87.

- vii. medical documentation to support applications of two victims (seventh ground of appeal);⁹
 - viii. the impact of the time when Mr Ongwen was not the commander of the Sinia brigade on the estimation of the number of victims of SGBC (eighth ground of appeal);¹⁰
 - ix. the impact of the number of LRA operational units on the estimation of the number of victims (ninth ground of appeal);¹¹
 - x. psychological evidence and/or examination required to prove moral harm (thirteenth ground of appeal);¹² and
 - xi. the Trial Chamber's findings on the eligibility of four victims (fourteenth ground of appeal).¹³
6. In response to the Defence's appeal, Victims Group 1 and Victims Group 2 invited the Appeals Chamber to reject the Defence's arguments and confirm the Impugned Decision.¹⁴
7. Prior to entering the merits of the grounds of appeal, the Appeals Chamber will first address a preliminary issue that arose in this appeal.
8. The Annex to this judgment contains a list of the materials cited and designations used therein.¹⁵

⁹ [Appeal Brief](#), paras 88-99.

¹⁰ [Appeal Brief](#), paras 100-112.

¹¹ [Appeal Brief](#), paras 113-123.

¹² [Appeal Brief](#), paras 124-143.

¹³ [Appeal Brief](#), paras 144-159.

¹⁴ [Victims Group 1's Response](#), [Victims Group 2's Response](#).

¹⁵ See [Annex: Table of designations and cited materials](#).

III. PROCEDURAL HISTORY

A. Proceedings before the Trial Chamber

9. On 4 February 2021, the Trial Chamber found Mr Ongwen guilty of crimes against humanity and war crimes, committed in Northern Uganda between 1 July 2002 and 31 December 2005.¹⁶

10. On 6 May 2021, the Trial Chamber sentenced Mr Ongwen to a total period of 25 years of imprisonment as a joint sentence.¹⁷ On the same day, the Trial Chamber instructed the Defence, Victims Group 1, Victims Group 2, the Registry and the TFV to make submissions on certain issues concerning reparations.¹⁸

11. On 16 December 2022, the Trial Chamber instructed the Registry to draw a list of randomly selected victims, in order to create a sufficiently representative sample of beneficiaries of reparations, and transmit such a list to the Trial Chamber.¹⁹

12. On 16 January 2023, following the Registry's transmission of the proposed list of victims to be included in the Sample,²⁰ the Trial Chamber issued a decision in which it, *inter alia*, approved the Sample and established a procedure for the VPRS to transmit the victims' redacted dossiers to the Defence, and for the Defence, Victims Group 1 and Victims Group 2 to make submissions on the dossiers in the Sample.²¹

13. On 17 April 2023 and 19 May 2023, Victims Group 1, Victims Group 2²² and the Defence²³ filed their submissions on the Sample, respectively.

14. On 28 February 2024, the Trial Chamber issued the Impugned Decision, containing an order for reparations against Mr Ongwen, awarding collective

¹⁶ [Conviction Decision](#). On 15 December 2022, the Appeals Chamber confirmed the Conviction Decision: see [Conviction Appeal Judgment](#).

¹⁷ [Sentencing Decision](#). On 15 December 2022, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza partly dissenting, confirmed the Sentencing Decision: see [Sentencing Appeal Judgment](#).

¹⁸ [Order for Submissions on Reparations](#), p. 6.

¹⁹ [Decision on the Sample](#), p. 16.

²⁰ [Registry's Transmission of List of Individuals and Relevant Information for Reparation Sample](#).

²¹ [Decision Approving the Sample](#), pp. 12-13.

²² [Victims' Joint Submissions of 17 April 2023](#); [Victims Group 2's Submission of Information Related to the Sample Applications](#).

²³ [Defence's Submissions of 19 May 2023](#).

community-based reparations to the eligible victims and assessing Mr Ongwen's liability for reparations at approximately EUR 52,429,000.²⁴

B. Proceedings before the Appeals Chamber

15. On 4 March 2024, the Appeals Chamber appointed Judge Luz del Carmen Ibáñez Carranza as the Presiding Judge in the present appeal.²⁵

16. On 12 March 2024, the Presidency assigned Judge Tomoko Akane and Judge Erdenebalsuren Damdin to the Appeals Division.²⁶

17. On 14 March 2024, the Appeals Chamber extended the time limit for the filing of any notice of appeal and the Defence's appeal brief.²⁷

18. On 22 April 2024, the Defence filed its notice of appeal against the Impugned Decision and a request for suspensive effect thereof.²⁸

19. On 16 May 2024, having received submissions and observations on the Defence's request,²⁹ the Appeals Chamber rejected the request for suspensive effect and invited the TFV and the Registry to adopt certain measures for the continuing implementation of the Impugned Decision.³⁰

20. On 12 July 2024, the Appeals Chamber reassigned the role of Presiding Judge to Judge Solomy Balungi Bossa.³¹

21. On 17 July 2024, the Defence submitted its Appeal Brief with four annexes.³²

²⁴ [Impugned Decision](#).

²⁵ [Decision on the Presiding Judge of the Appeals Chamber](#), p. 3.

²⁶ [Decision Assigning Judges to Divisions and Recomposing Chambers](#), pp. 3-4.

²⁷ [Decision on Extension of Time for Notice of Appeal and Appeal Brief](#), p. 3, para. 12. *See also* [Defence's Request for Extension of Time for Notice of Appeal and Appeal Brief](#); [Legal Representatives of Victims' Joint Response to Defence's Request for Suspensive Effect](#).

²⁸ [Notice of Appeal](#).

²⁹ [Registry's Submissions on Defence's Request for Suspensive Effect](#); [TFV's Observations on Defence's Request for Suspensive Effect and Rule 103 Request](#); [Victims Group 1's Response to Defence's Request for Suspensive Effect and TFV's and Registry's Observations](#); [Victims Group 2's Response to Defence's Request for Suspensive Effect](#); [Defence's Response to Registry's and TFV's Submissions and TFV's Rule 103 Request](#). *See also* [Order Setting Time Limit for Submissions on Defence's Request for Suspensive Effect](#).

³⁰ [Decision on Defence's Request for Suspensive Effect](#).

³¹ [Decision Replacing the Presiding Judge of the Appeals Chamber](#).

³² [Appeal Brief](#).

22. On 23 August 2024 and 26 August 2024, Victims Group 1³³ and Victims Group 2³⁴ filed their respective responses to the Appeal Brief.

23. On 17 September 2024, with the leave of the Appeals Chamber,³⁵ the TFV submitted its observations on the Appeal Brief.³⁶

24. On 27 September 2024, the Defence filed its response to the TFV's Observations.³⁷

IV. STANDARD OF REVIEW

25. In its appeal, the Defence alleges errors of law, fact and procedure, as well as an abuse of discretion.

A. Errors of law

26. With respect to alleged errors of law:

[T]he Appeals Chamber will not defer to the Trial Chamber's interpretation of the law. Rather, it will arrive at its own conclusions as to the appropriate law and determine whether or not the Trial Chamber misinterpreted the law. If the Trial Chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the Impugned Decision.

[An impugned decision] is "materially affected by an error of law" if the Trial Chamber "would have rendered a [decision] that is substantially different from the decision that was affected by the error, if it had not made the error".³⁸

B. Errors of fact

27. With respect to alleged errors of fact:

[The Appeals Chamber] will not interfere with factual findings of the first-instance Chamber unless it is shown that the Chamber committed a clear error, namely, misappreciated the facts, took into account irrelevant facts, or failed to take into account relevant facts. As to the "misappreciation of facts", the Appeals Chamber has also stated that it "will not disturb a Pre-Trial or Trial Chamber's evaluation of the facts just because the Appeals Chamber might have come to a different conclusion. It will interfere only in the case where it cannot

³³ [Victims Group 1's Response](#).

³⁴ [Victims Group 2's Response](#).

³⁵ [Decision on the TFV's Request for Leave to Make Observations](#).

³⁶ [TFV's Observations](#).

³⁷ [Defence's Response to TFV's Observations](#).

³⁸ [Ntaganda A6 A7 Judgment](#), para. 14, referring to, *inter alia*, [Ntaganda A4 A5 Judgment](#), para. 29; [Lubanga A7 A8 Judgment](#), para. 28; [Katanga A3-A5 Judgment](#), para. 39.

discern how the Chamber's conclusion could have reasonably been reached from the evidence before it".³⁹

28. The Appeals Chamber notes in this regard that the Trial Chamber applied the standard of proof of a balance of probabilities.⁴⁰ It recalls that this standard is different from that of "beyond reasonable doubt" (in accordance with article 66(3) of the Statute), in light of which trial chambers enter factual findings in decisions under article 74 of the Statute.⁴¹ Therefore, while the aforementioned standard of appellate review for errors of fact was set out primarily for decisions under article 74 of the Statute, the Appeals Chamber will apply it bearing in mind the different standard of proof applied to the present reparation proceedings.⁴²

C. Procedural errors

29. With respect to alleged procedural errors:

[S]uch errors may occur in the proceedings leading up to an impugned decision. [...] However, as with errors of law, the Appeals Chamber will only reverse [the Impugned Decision] if it is materially affected by the procedural error. In that respect, the appellant needs to demonstrate that, in the absence of the procedural error, the [Impugned Decision] would have substantially differed from the one rendered.⁴³

D. Abuse of discretion

30. In respect of the abuse of discretion, the Appeals Chamber has stated:

[T]he Appeals Chamber may interfere with a discretionary decision [when it] amounts to an abuse of discretion. Even if an error of law or of fact has not been identified, an abuse of discretion will occur when the decision is so unfair or unreasonable as to "force the conclusion that the Chamber failed to exercise its discretion judiciously". The Appeals Chamber will also consider whether the first instance Chamber gave weight to extraneous or irrelevant considerations or failed to give weight or sufficient weight to relevant considerations in exercising its

³⁹ [Ntaganda A6 A7 Judgment](#), para. 15, referring to, *inter alia*, [Ntaganda A4 A5 Judgment](#), para. 30; [Lubanga A7 A8 Judgment](#), para. 30; [Katanga A3-A5 Judgment](#), para. 41.

⁴⁰ [Impugned Decision](#), para. 422.

⁴¹ [Ntaganda A6 A7 Judgment](#), para. 16, referring to [Ntaganda A4 A5 Judgment](#), para. 31.

⁴² See [Katanga A3-A5 Judgment](#), para. 42; [Lubanga A7 A8 Judgment](#), para. 33; [Ntaganda A6 A7 Judgment](#), para. 16, referring to [Ntaganda A4 A5 Judgment](#), para. 31.

⁴³ [Ntaganda A6 A7 Judgment](#), para. 17, referring to, *inter alia*, [Ntaganda A4 A5 Judgment](#), para. 33; [Lubanga A7 A8 Judgment](#), para. 29; [Katanga A3-A5 Judgment](#), para. 40.

discretion. The degree of discretion afforded to a Chamber may depend upon the nature of the decision in question.⁴⁴

E. Substantiation of arguments

31. As to the issue of substantiation of arguments, the Appeals Chamber notes that regulation 58(2) of the Regulations requires the appellant to 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. It also stipulates that the appellant must, where applicable, identify the finding or ruling challenged in the decision with specific reference to the page and paragraph number. In addition to these formal requirements, an appellant is obliged to present cogent arguments that set out the alleged error and explain how the trial chamber erred.⁴⁵

V. PRELIMINARY ISSUE

32. The Defence listed 15 grounds of appeal in its Notice of Appeal.⁴⁶ However, in the Appeal Brief, the Defence stated that it “decided to withdraw Grounds 10 and 15” while “reserv[ing] the right to reinstate said grounds should Mr Ongwen [so] decide after receiving the Acholi translation of the operative parts of the Impugned Decision”.⁴⁷ Victims Group 2 submit that “this course of action is invalid” as, *inter alia*, “a notice of discontinuance may be considered valid only when it does not contain reservations or conditions”.⁴⁸

33. The Appeals Chamber recalls that when granting an extension of time for the filing of the Appeal Brief, it allowed the Defence to “seek, under regulation 61 of the [Regulations], a variation of grounds of appeal within 14 days of the receipt by Mr Ongwen of an Acholi translation of the operative parts of the [Impugned Decision]”.⁴⁹ It appears that the Defence intended the aforementioned discontinuance of two grounds of appeal to be subject to the reservation that the Defence might apply for a variation of grounds of appeal within the time limit set by the Appeals Chamber. However, as

⁴⁴ [Ntaganda A6 A7 Judgment](#), para. 19, referring to, *inter alia*, [Ntaganda A4 A5 Judgment](#), para. 35; [Lubanga A7 A8 Judgment](#), para. 32; [Katanga A3-A5 Judgment](#), para. 44.

⁴⁵ [Ntaganda A6 A7 Judgment](#), para. 21, referring to, *inter alia*, [Ntaganda A4 A5 Judgment](#), para. 37.

⁴⁶ [Notice of Appeal](#), para. 28(b).

⁴⁷ [Appeal Brief](#), para. 8.

⁴⁸ [Victims Group 2’s Response](#), paras 23-25.

⁴⁹ [Decision on Extension of Time for Notice of Appeal and Appeal Brief](#), p. 3.

the Defence did not apply for a variation within the said time limit and the discontinuance of the two grounds is thus not subject to any reservation, the issue of validity of such reservation is moot.

VI. MERITS

A. First ground of appeal: Alleged erroneous refusal to disclose the names of victims

34. Under this ground of appeal, the Defence submits that the Trial Chamber erred by refusing to order the disclosure of the names of the potential beneficiaries in the Sample,⁵⁰ which affected the Defence's ability to assess their applications.⁵¹ The Defence argues that there were no credible instances of threats to victims and that redactions to their applications were thus unnecessary.⁵²

1. Relevant background and part of the Impugned Decision

35. On 16 January 2023, the Trial Chamber rendered a decision in which it, *inter alia*, set out a procedure for the disclosure of victims' dossiers:

[E]ven if the victims do not consent to their identities being disclosed to the Defence, the Registry should maintain redactions only related to identifying information. [...] [A]ny information relating to the description of the harm suffered, the events that caused the harm, and the link between such harm and the crimes of which Mr Ongwen has been convicted, should not be redacted and redactions already applied should therefore be lifted, except for information that might reveal the identities of victims, current residence or other contact information that may be used to locate the victims. If the victims have provided their consent to their identities being disclosed to the Defence, the Registry should proceed to lift further redactions on the victims' dossiers keeping redacted only the information that might reveal the current residence or other contact information that may be used to locate the victims.

[...] The Defence should 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.⁵³

36. On 29 March 2023, the Defence requested the lifting of redactions in 164 applications which had been disclosed to it pursuant to the Decision Approving the

⁵⁰ [Appeal Brief](#), para. 9.

⁵¹ [Appeal Brief](#), paras 9, 18-19.

⁵² [Appeal Brief](#), paras 15-17, 19.

⁵³ [Decision Approving the Sample](#), paras 11-12 (footnote omitted).

Sample.⁵⁴ The Defence expressed concerns about its ability to review and comment on the dossiers of the victims in the Sample, noting that some allegations made by victims could only be verified if their names were provided to the Defence.⁵⁵ It also submitted that there was “no objectively justifiable risk” to the victims concerned, as there had not been a single incident of interference.⁵⁶

37. On 20 April 2023, the Trial Chamber rejected the Defence’s Request for the Lifting of Redactions, noting the submissions of the legal representatives of victims with respect to the victims’ continued concern for their safety.⁵⁷ The Trial Chamber held that the Defence had failed to demonstrate that the non-disclosure of the victims’ names unduly affected its ability to review and comment on the Sample.⁵⁸

38. Subsequently, the Defence requested the lifting of redactions with respect to 13 victims.⁵⁹ However, the Trial Chamber dismissed that request *in limine*, noting that the Defence was “trying to relitigate an issue that [had been] conclusively ruled upon in the [Decision on Request for the Lifting of Redactions]”.⁶⁰

39. In the Impugned Decision, the Trial Chamber stated that it “decided to rule upon a limited but representative sample of victims’ dossiers in the case file, amounting to 5% of the universe of participating victims”.⁶¹ It found that the Sample was “a fair representation of the individuals who are likely to come forward to benefit from reparations” and that its assessment allowed the Trial Chamber “to reach statistically valid conclusions as to the victims entitled to benefit from reparations as a result of the crimes for which Mr Ongwen was convicted”.⁶² The Trial Chamber indicated that it “analysed the victims’ dossiers included in the Sample by conducting its own assessment of the facts, as alleged by each of the potential beneficiaries, while taking into account the parties’ submissions and the additional information they provided”.⁶³ In its analysis of the Sample, the Trial Chamber “elaborate[d] on the relevant

⁵⁴ [Defence’s Request for the Lifting of Redactions](#), paras 1, 12, 24.

⁵⁵ [Defence’s Request for the Lifting of Redactions](#), paras 20-21.

⁵⁶ [Defence’s Request for the Lifting of Redactions](#), paras 22-23.

⁵⁷ [Decision on Request for the Lifting of Redactions](#), para. 18, p. 10.

⁵⁸ [Decision on Request for the Lifting of Redactions](#), para. 19.

⁵⁹ [Defence’s Second Request for the Lifting of Redactions](#), paras 1, 24-43, 45(a).

⁶⁰ [Decision on Second Request for the Lifting of Redactions](#), para. 21, p. 10.

⁶¹ [Impugned Decision](#), para. 427.

⁶² [Impugned Decision](#), para. 428.

⁶³ [Impugned Decision](#), para. 432.

evidentiary criteria, conditions of eligibility, and the results of its assessment of the Sample”.⁶⁴

2. *Summary of the submissions*

40. The Defence submits that the Trial Chamber erred in law by refusing to order the disclosure of the names of the potential beneficiaries in the Sample.⁶⁵ The Defence avers that, as a result, it was “unable to make a fair assessment” of the applications of victims, “with material found in the case file”.⁶⁶ It also argues that the redactions authorised by the Trial Chamber were “completely unnecessary”, as there were no credible instances of threats to victims or witnesses and Uganda is a “rather safe” country.⁶⁷ The Defence requests the Appeals Chamber to remand this issue to the Trial Chamber so that it releases all the identifying information to the Defence and allows the Defence to review the relevant applications.⁶⁸

41. Victims Group 1 submit that the issue raised under this ground of appeal does not arise out of the Impugned Decision, as it was addressed in the Decision Approving the Sample and the Decision on Request for the Lifting of Redactions.⁶⁹ They argue that the Defence fails to demonstrate an error, since it was able to make observations on victims’ applications without the disclosure of the victims’ names, and the Trial Chamber itself assessed the victims’ dossiers.⁷⁰

42. Victims Group 2 submit that the Defence is precluded from raising an issue related to the procedure set out in the Decision Approving the Sample, because it chose not to appeal that decision.⁷¹ They argue that the victims in the Sample were “a small fraction” of all victims and, therefore, even if the Defence had successfully challenged their applications, that would not have significantly impacted the overall award of reparations.⁷² Victims Group 2 contend that, contrary to its assertion, the Defence was in a position to make comments on the victims’ applications, and the Trial Chamber made its findings thereupon “with a comprehensive understanding of all relevant

⁶⁴ [Impugned Decision](#), para. 432.

⁶⁵ [Appeal Brief](#), para. 9.

⁶⁶ [Appeal Brief](#), paras 9, 18-19.

⁶⁷ [Appeal Brief](#), paras 15-17, 19.

⁶⁸ [Appeal Brief](#), para. 19.

⁶⁹ [Victims Group 1’s Response](#), paras 18-19.

⁷⁰ [Victims Group 1’s Response](#), paras 20-23.

⁷¹ [Victims Group 2’s Response](#), para. 31.

⁷² [Victims Group 2’s Response](#), para. 29.

information”.⁷³ Victims Group 2 submit that the redactions authorised by the Trial Chamber are necessary as victims continue to live in fear of reprisals.⁷⁴

3. *Determination by the Appeals Chamber*

a. **Preliminary issues**

43. Victims Group 1 submit that the Defence may not raise in the present appeal the matter of redactions, as this issue does not arise out of the Impugned Decision, but out of the Decision Approving the Sample and the Decision on Request for the Lifting of Redactions.⁷⁵ However, the Appeals Chamber notes that the Trial Chamber addressed the Defence’s concerns regarding the allegedly excessive redactions in Confidential *ex parte* Annex I to the Impugned Decision. The Trial Chamber did so with respect to specific victims’ dossiers. For instance, when addressing the Defence’s arguments regarding a potential beneficiary’s dossier, the Trial Chamber noted that, having reviewed the redactions implemented in that dossier, it “[did] not consider them to be prejudicial to the Defence”.⁷⁶ Similarly, in relation to another victim’s dossier, the Trial Chamber addressed the Defence’s contentions that the “potential beneficiary’s failure to disclose necessary and vital information create[d] an unfair and prejudicial circumstance against Mr Ongwen”, and “that the failure to disclose [did] not create a causal link”.⁷⁷ The Trial Chamber held that, having reviewed the redactions in the potential beneficiary’s dossier, it was “satisfied that the redactions [we]re necessary to ensure the potential beneficiary’s safety”.⁷⁸ The Appeals Chamber therefore rejects Victims Group 1’s argument that the Defence is precluded from raising the issue of redactions in the present appeal.

44. Victims Group 2 submit that the Defence is precluded from raising an issue relating to the procedure for lifting redactions, set out in the Decision Approving the Sample, as the Defence chose not to appeal that decision.⁷⁹ According to Victims Group 2, the issue the Defence has raised in this regard concerns the requirement that

⁷³ [Victims Group 2’s Response](#), para. 30.

⁷⁴ [Victims Group 2’s Response](#), para. 32.

⁷⁵ [Victims Group 1’s Response](#), paras 18-19.

⁷⁶ Confidential *ex parte* Annex I to Impugned Decision, para. 2924. Although this document and some of the other documents referred to in this judgment are marked confidential, the Appeals Chamber makes reference to them, as nothing in the cited excerpts is considered confidential.

⁷⁷ Confidential *ex parte* Annex I to Impugned Decision, para. 2940.

⁷⁸ Confidential *ex parte* Annex I to Impugned Decision, para. 2940.

⁷⁹ [Victims Group 2’s Response](#), para. 31.

the Defence should communicate its objections to redactions directly to the VPRS.⁸⁰ However, the Defence does not challenge the Decision Approving the Sample in this respect. In the relevant part of its Appeal Brief, the Defence submits that, rather than making “an independent decision on lifting the redaction for which the Defence asked”, the VPRS “raised the request with the [legal representatives of victims] and followed their advice”.⁸¹ The Defence “asserts [that this] violates the spirit of the [Decision Approving the Sample]”.⁸² It is thus not the Decision Approving the Sample that the Defence challenges in this submission, but the manner in which the VPRS implemented that decision. Furthermore, the Defence does not allege any error in this regard. Rather, it observes that this is “noteworthy”.⁸³ Therefore and without prejudice to the question of whether the Defence’s failure to seek leave to appeal the Decision Approving the Sample prevents it from raising issues with respect to that decision,⁸⁴ the Appeals Chamber dismisses Victims Group 2’s present argument.

b. Merits

45. The Defence’s main argument is that the Trial Chamber’s refusal to order the disclosure of the names of the victims in the Sample affected the Defence’s ability to assess the victims’ applications therein.⁸⁵

46. The Appeals Chamber recalls that, consistent with article 75(3) of the Statute and rule 94(2) of the Rules, “[t]he convicted person must be given a sufficient opportunity to make submissions” in reparation proceedings.⁸⁶ It also recalls that “the right to

⁸⁰ [Victims Group 2’s Response](#), para. 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’” (footnote omitted)).

⁸¹ [Appeal Brief](#), para. 11.

⁸² [Appeal Brief](#), para. 11.

⁸³ [Appeal Brief](#), para. 11.

⁸⁴ The Appeals Chamber has held that “not seeking leave to appeal a matter arising in the proceedings leading up to another decision subsequently impugned on appeal does not necessarily preclude the appellant from bringing that matter in the appeal” ([Ntaganda A4 A5 Judgment](#), para. 738. *See also* [Ntaganda A6 A7 Judgment](#), para. 201). The Appeals Chamber also held that “an appellant is not precluded from raising in an appeal under article 82(1)(a) of the Statute errors which arise out of a decision issued in the proceedings leading up to the decision impugned on appeal and which ‘may be germane to the legal correctness or procedural fairness of the Chamber’s decision [impugned on appeal]’” ([Ntaganda A4 A5 Judgment](#), para. 738, fn 1650, referring to [Kony et al. OA3 Judgment](#), para. 46. *See also* [Ntaganda A6 A7 Judgment](#), para. 201).

⁸⁵ [Appeal Brief](#), paras 9, 18-19.

⁸⁶ [Ntaganda A4 A5 Judgment](#), paras 359-361, referring to [Lubanga A7 A8 Judgment](#), para. 90. *See also* [Ntaganda A6 A7 Judgment](#), para. 218.

receive information in proceedings at this Court may be limited in certain circumstances”.⁸⁷ In this regard,

the guiding principle for trial chambers must be to ensure that the convicted person, as a party to the litigation, has a meaningful opportunity to challenge the information on the basis of which a chamber will make an award against him or her. [...] [A] trial chamber should [...] take into account the relevance of the information at issue and the purpose for which it will be relied upon, including whether, in reality, its non-disclosure affects the convicted person’s rights.⁸⁸

47. In the present case, as an example of the alleged prejudice to the rights of Mr Ongwen, the Defence submits that the Trial Chamber found eligible seven out of the 13 persons⁸⁹ with respect to whom the Defence had sought the disclosure of names.⁹⁰ The Appeals Chamber notes, however, that the mere fact that the Trial Chamber found victims eligible to benefit from reparations, despite the Defence’s objections to the non-disclosure of those victims’ names, is not, in and of itself, indicative of undue prejudice to the Defence. The Appeals Chamber notes in this regard that in the Defence’s Second Request for the Lifting of Redactions, the Defence sought the disclosure of the names of 13 persons.⁹¹ The Trial Chamber’s detailed analysis of those persons’ eligibility, including its careful consideration of the submissions of the Defence, which, in substance, reiterate the arguments from the Defence’s Second Request for the Lifting of Redactions,⁹² clearly indicates that the Defence was able to make its observations on their dossiers.⁹³ In as many as five cases, out of the 13 to which the Defence now refers, the Trial Chamber found the persons not to be eligible, taking into account the arguments set out in the Defence’s filings.⁹⁴ The Defence has therefore failed to demonstrate that it was “unable to make a fair assessment”⁹⁵ and that its right to conduct a meaningful review of the victims’ dossiers was unduly affected.

⁸⁷ [Lubanga A7 A8 Judgment](#), para. 254; [Ntaganda A6 A7 Judgment](#), para. 224.

⁸⁸ [Lubanga A7 A8 Judgment](#), para. 256; [Ntaganda A6 A7 Judgment](#), para. 224.

⁸⁹ The Defence submits that it requested the disclosure with respect to 12 persons. However, 13 persons are listed in the request to which it refers ([Defence’s Second Request for the Lifting of Redactions](#), paras 25-42. See also [Decision on Second Request for the Lifting of Redactions](#), para. 17).

⁹⁰ [Appeal Brief](#), para. 14.

⁹¹ [Defence’s Second Request for the Lifting of Redactions](#), paras 25-42.

⁹² Confidential *ex parte* Annex I to Impugned Decision, paras 1015, 1042-1043, 1358, 2711, 2826, 2839, 2854-2855, 2871, 2881, 2904, 2924, 2940, 2998.

⁹³ The Defence contested the eligibility of all but one potential beneficiary to whom the Defence’s Second Request for the Lifting of Redactions related (see Confidential *ex parte* Annex I to Impugned Decision, para. 1353).

⁹⁴ Confidential *ex parte* Annex I to Impugned Decision, paras 2831, 2842, 2874, 2885, 3004.

⁹⁵ [Appeal Brief](#), paras 9, 18.

48. In the same vein, the Appeals Chamber recalls that “[i]t is inherent in any situation in which redactions are authorised that the quality of the submissions of the party to whom the redactions apply may be impacted by the fact that information has been redacted”.⁹⁶ Therefore, even if it was indeed the case that the Defence “would have been able to conduct a much [more] thorough search of the case material”, had it been granted access to the victims’ names,⁹⁷ it does not automatically lead to a finding that the Trial Chamber failed to ensure Mr Ongwen’s right to conduct a meaningful review in this regard.

49. The Appeals Chamber also takes note of the purpose of the Trial Chamber’s assessment of the Sample, which was to reach conclusions as to the victims entitled to benefit from reparations⁹⁸ and “[elaborate] on the relevant evidentiary criteria”.⁹⁹ The direct impact of that assessment on the ultimate amount of the award for reparations appears to have been less significant than in other cases. In light of the “extremely large number of victims”, the Trial Chamber awarded “collective community-based reparations”,¹⁰⁰ rather than “collective reparations with an individualised component”, which it considered to be “resource-intensive, time consuming, and [...] disproportionate to what could be achieved”.¹⁰¹ The Trial Chamber also awarded a symbolic cash award of “the same *ex aequo et bono*” amount to each victim.¹⁰² The purpose for which the information contained in the victims’ dossiers was relied upon was thus a relevant consideration.¹⁰³

50. In light of the foregoing considerations and the purpose of the Trial Chamber’s assessment of the dossiers of persons in the Sample, the Appeals Chamber considers that the Defence has not demonstrated that the Trial Chamber’s refusal to order the lifting of redactions unduly affected Mr Ongwen’s “meaningful opportunity to

⁹⁶ See [Ntaganda A6 A7 Judgment](#), para. 250.

⁹⁷ [Appeal Brief](#), para. 18.

⁹⁸ [Impugned Decision](#), para. 428.

⁹⁹ [Impugned Decision](#), para. 432.

¹⁰⁰ [Impugned Decision](#), para. 663.

¹⁰¹ [Impugned Decision](#), para. 580; see also para. 787.

¹⁰² [Impugned Decision](#), para. 623.

¹⁰³ See [Lubanga A7 A8 Judgment](#), para. 256; [Ntaganda A6 A7 Judgment](#), para. 224.

challenge the information on the basis of which [the Trial Chamber] [made the] award against him”.¹⁰⁴

51. In this context, the Appeals Chamber further notes the Defence’s contention that due to its inability to properly investigate, it “only contested 27 victim applications”.¹⁰⁵ However, other than making a general statement that “it was denied the chance to conduct a proper investigation”,¹⁰⁶ the Defence does not explain why it could contest the eligibility of only 27 potential beneficiaries. Furthermore, it did not rely upon any purported difficulties in the conduct of its investigations when informing the Trial Chamber that it chose not to contest the eligibility of the remaining 178 potential beneficiaries. Rather, the Defence submitted before the Trial Chamber that “these applicants meet the lower threshold of presenting a causal link to the crimes for which Mr Ongwen was convicted”.¹⁰⁷ The Appeals Chamber therefore rejects this argument of the Defence as unsubstantiated.

52. Finally, the Appeals Chamber turns to the Defence’s argument that the redactions authorised by the Trial Chamber were unnecessary, as there were no credible instances of threats to victims or witnesses, and Uganda is “rather safe”, “without any significant LRA activity”.¹⁰⁸

53. The Appeals Chamber recalls in this regard that when ruling on requests for redactions in the reparations proceedings,

a trial chamber must take into account and balance the rights and interests of the parties as per article 68 of the Statute, which provides that “[t]he Court shall take appropriate measures to protect the safety [...] of victims and witnesses. [...] These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”.¹⁰⁹

54. In balancing the appropriate factors, a trial chamber must take into consideration, *inter alia*, “the danger that the disclosure of the identity of the person may cause” and

¹⁰⁴ See [Lubanga A7 A8 Judgment](#), para. 256.

¹⁰⁵ [Appeal Brief](#), para. 14; see also para. 18.

¹⁰⁶ [Appeal Brief](#), para. 14.

¹⁰⁷ [Defence’s Submissions of 19 May 2023](#), para. 21.

¹⁰⁸ [Appeal Brief](#), paras 15-17, 19.

¹⁰⁹ [Al Mahdi A Judgment](#), para. 90.

“whether [the protective measure] is the least intrusive measure necessary to protect the person concerned”.¹¹⁰

55. When rejecting the Defence’s request for disclosure and deciding to maintain the redactions applied to the potential beneficiaries’ dossiers, the Trial Chamber referred to the legal representatives of victims’ submission that “the victims continue[d] to fear Mr Ongwen and [...] remain[ed] concerned for their safety and that of their family members upon his return after serving the sentence”.¹¹¹ In their submissions, upon which the Trial Chamber relied, Victims Group 1 also referred to the “real fears that victims harbour against Dominic Ongwen and his friends in the LRA who have not renounced rebellion or fighting and accordingly still pose threats”.¹¹² The Trial Chamber thus identified the danger that the disclosure of the identity of potential beneficiaries might cause. Furthermore, the Trial Chamber found that “the Defence ha[d] not demonstrated how its ability to review and comment on the victims’ sample [was] affected by not knowing all the victims’ names, especially since [...] the Defence ha[d] been in fact able to review and comment on some of the victims’ eligibility”.¹¹³ Having regard to the limited impact of the redactions in question on the quality of the Defence’s submissions, as discussed above, the Appeals Chamber finds that the Defence has not demonstrated that the Trial Chamber erred by failing to “[strike] the required balance demanded by article 68(1) of the Statute” and in finding that it “enabl[ed] the Defence to make meaningful submissions on the victims’ eligibility”.¹¹⁴ Accordingly, the Defence’s arguments in this regard are rejected.

56. Having rejected all arguments of the Defence, the Appeals Chamber rejects the first ground of appeal.

B. Second ground of appeal: Alleged errors in the Trial Chamber’s findings relating to domestic proceedings

57. Under this ground of appeal, the Defence submits that the Trial Chamber erred in law by misinterpreting article 75(6) of the Statute when it rejected the Defence’s request

¹¹⁰ [Al Mahdi A Judgment](#), para. 90, referring to [Katanga and Ngudjolo OA5 Judgment](#), para. 35. See also [Ntaganda A6 A7 Judgment](#), para. 223.

¹¹¹ [Decision on Request for the Lifting of Redactions](#), para. 18, p. 10.

¹¹² [Victims Group 1’s Submissions of 11 April 2023](#), para. 15.

¹¹³ [Decision on Request for the Lifting of Redactions](#), para. 19.

¹¹⁴ See [Decision on Request for the Lifting of Redactions](#), para. 20.

concerning “dual claimants”, who, in the view of the Defence, benefit both from an award made by the High Court of Uganda and from the award made in the Impugned Decision.¹¹⁵ The Defence argues that the Trial Chamber thereby significantly increased the amount of Mr Ongwen’s liability and failed to uphold its obligation to ensure fairness to the victims and Mr Ongwen.¹¹⁶

1. Relevant background and part of the Impugned Decision

a. Relevant submissions of the Defence before the Trial Chamber

58. In the Defence’s Submissions of 22 March 2023, the Defence notified the Trial Chamber, the parties and the participants of the Uganda High Court Decision of 21 February 2023.¹¹⁷ According to the Defence, by this decision, the High Court of Uganda awarded compensation to former owners of property on which many IDP camps, including Abok IDP camp, were located from 2003 to 2007.¹¹⁸ The Defence requested the Trial Chamber to “order [Victims Group 1], [Victims Group 2] and Registry to determine if any victims are beneficiaries of this award”.¹¹⁹

59. In the Defence’s Notification of 24 October 2023, the Defence notified the Trial Chamber of the list of names of the persons who would benefit from the aforementioned decision of the High Court of Uganda, noting that “several names [...] are either identical or very similar to persons from victim applications for participation from Abok”.¹²⁰ The Defence requested the Trial Chamber to consider this list “when determining reparations for persons from Abok IDP camp”.¹²¹

b. Relevant part of the Impugned Decision

60. In relation to the Defence’s Notification of 24 October 2023, the Trial Chamber rejected the Defence’s request concerning the Uganda High Court Decision of 21 February 2023, “reiterat[ing] that pursuant to article 75(6) of the Statute, domestic proceedings do not impact reparations before the Court”.¹²²

¹¹⁵ [Appeal Brief](#), paras 20, 22, 27, 29.

¹¹⁶ [Appeal Brief](#), paras 20, 26, 28-29.

¹¹⁷ [Defence’s Submissions of 22 March 2023](#), para. 17.

¹¹⁸ [Defence’s Submissions of 22 March 2023](#), para. 17.

¹¹⁹ [Defence’s Submissions of 22 March 2023](#), para. 17.

¹²⁰ [Defence’s Notification of 24 October 2023](#), paras 12-13; Annex A to [Defence’s Notification of 24 October 2023](#).

¹²¹ [Defence’s Notification of 24 October 2023](#), para. 12.

¹²² [Impugned Decision](#), para. 49.

2. *Summary of the submissions*

61. The Defence submits that the Trial Chamber erred in law by misinterpreting article 75(6) of the Statute when it rejected the Defence’s request to take into account the Uganda High Court Decision of 21 February 2023, which, in its view, may potentially concern victims from the IDP camp in Abok.¹²³ In support, the Defence contends that: (i) “there shall be an overlap between the victims participating in the proceedings before the Court and individuals receiving reparations in national civil suit cases”;¹²⁴ and that (ii) on the basis of the exception established by the Court’s jurisprudence to “the general propositions regarding the complementary nature of reparations”, the Trial Chamber has “an obligation to investigate and adjust the reparations accordingly to ensure fairness to the victims and Mr Ongwen”.¹²⁵ The Defence avers that the Trial Chamber’s failure to consider the domestic proceedings in Uganda will lead to unfairness among the victims, some of whom may “be enriched more than others”,¹²⁶ and will significantly increase the amount of Mr Ongwen’s liability.¹²⁷

62. Victims Group 1 submit that the Trial Chamber correctly interpreted article 75(6) of the Statute, and that the finding in the *Lubanga* Reparation Decision upon which the Defence relies “does not stand in contrast” with the Impugned Decision.¹²⁸ Referring to “legal accountability of the convicted person [...] for violations of the [Statute] and harms arising from such violations”, Victims Group 1 aver that the scope of the Impugned Decision is limited to the Conviction Decision, and the Uganda High Court Decision of 21 February 2023, which addresses “other harms, committed by other people” and not “violations of the [Statute]”, cannot have an impact on the Impugned Decision.¹²⁹ Victims Group 1 argue that, even if there was an overlap between the present proceedings and the domestic proceedings, as the Defence claims, “the victims in issue would be seeking reparations for a different harm”.¹³⁰

¹²³ [Appeal Brief](#), paras 20, 28-29, referring to [Impugned Decision](#), para. 49.

¹²⁴ [Appeal Brief](#), para. 28.

¹²⁵ [Appeal Brief](#), paras 23-26, 28-29, referring to [Lubanga Reparation Decision](#), para. 201; [Lubanga Amended Reparation Order](#), para. 9; [Ntaganda First Decision on Implementation](#), para. 191.

¹²⁶ [Appeal Brief](#), para. 28.

¹²⁷ [Appeal Brief](#), paras 20, 29.

¹²⁸ [Victims Group 1’s Response](#), paras 26-28.

¹²⁹ [Victims Group 1’s Response](#), paras 28-29.

¹³⁰ [Victims Group 1’s Response](#), para. 29.

63. Victims Group 2 submit that this ground of appeal should be “dismissed”,¹³¹ as the Defence merely seems to express its disagreement with the Trial Chamber’s findings in the Impugned Decision.¹³² Victims Group 2 argue that the wording of article 75(6) of the Statute is clear, and that the finding of the Appeals Chamber in the *Lubanga* Amended Reparation Order upon which the Defence relies clearly indicates “a discretionary ability”, rather than “a mandatory requirement”, of the Court “to take into account any awards or benefits received by victims from other bodies”.¹³³ They also submit that remanding this issue to the Trial Chamber would not change the outcome of the Impugned Decision, considering that reparations in the present case have been ordered on a collective community basis rather than individually, and that the Trial Chamber already took into account “the absence of any awards or benefits received by the victims from other entities”, as well as the relevant evidence and submissions.¹³⁴

3. *Determination by the Appeals Chamber*

64. Under this ground of appeal, the Defence submits that the Trial Chamber misinterpreted article 75(6) of the Statute in declining to consider whether there are any “dual claimants” benefiting from the Uganda High Court Decision of 21 February 2023 and the Impugned Decision, and in holding that “pursuant to article 75(6) of the Statute, domestic proceedings do not impact reparations before the Court”.¹³⁵

65. The Appeals Chamber recalls at the outset that pursuant to article 75(6) of the Statute, “[n]othing in [article 75 of the Statute] shall be interpreted as prejudicing the rights of victims *under national or international law*”.¹³⁶ With respect to this provision, the Appeals Chamber found that “[a] decision of the Court on reparations should not operate to prejudice the rights of victims under national and international law”,¹³⁷ and that the “principles and the order for reparations [set out in the *Lubanga* case] are not intended to affect the rights of victims to reparations *in other cases*, whether before the Court or national, regional or other international bodies”.¹³⁸ In the same vein, Trial

¹³¹ [Victims Group 2’s Response](#), para. 45.

¹³² [Victims Group 2’s Response](#), para. 36.

¹³³ [Victims Group 2’s Response](#), para. 37, referring to [Lubanga Amended Reparation Order](#), para. 9.

¹³⁴ [Victims Group 2’s Response](#), para. 44.

¹³⁵ [Appeal Brief](#), paras 20-22, 29, referring to [Impugned Decision](#), para. 49.

¹³⁶ Emphasis added.

¹³⁷ [Lubanga Amended Reparation Order](#), para. 9.

¹³⁸ [Lubanga Amended Reparation Order](#), para. 4 (emphasis added).

Chamber II, in the *Katanga* Reparation Order, found that “[a]n order for reparations does not [...] relieve States Parties of the responsibility to award reparations to victims pursuant to other treaties or domestic legislation”.¹³⁹ Article 75(6) of the Statute thus mainly concerns any prejudice that the Impugned Decision may cause to the victims’ rights in the national proceedings.

66. The Defence appears to propose a broader interpretation of article 75(6) of the Statute in that a trial chamber has “an obligation to investigate and adjust the reparations” to account for any awards or benefits received by victims in other proceedings.¹⁴⁰ In support of its proposition, the Defence refers to: (i) the finding in the *Lubanga* Reparation Decision and the *Lubanga* Amended Reparation Order that “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”,¹⁴¹ and (ii) the finding in the *Ntaganda* First Decision on Implementation that “if victims have had their harm rectified or mitigated through other means of assistance in the [Democratic Republic of the Congo], then this will be taken into account *during their intake assessments*, when it is being determined which treatments they require”.¹⁴²

67. In the view of the Appeals Chamber, these findings do not support the Defence’s proposed interpretation of article 75(6) of the Statute. They do not indicate that a trial chamber, when issuing a reparation order, has an obligation to investigate and consider any awards or benefits that victims may have received from other bodies. Rather, as clearly pronounced in the *Lubanga* Amended Reparation Order, “decisions by other bodies, whether national or international, do not affect the rights of victims to receive reparations pursuant to article 75 of the Statute”.¹⁴³

68. Furthermore, the Appeals Chamber recalls that an order for reparations is “intrinsically linked to the *individual* whose criminal responsibility is established in a

¹³⁹ [Katanga Reparation Order](#), para. 323.

¹⁴⁰ [Appeal Brief](#), para. 28; *see also* para. 27 (“it was desirable that the [Trial] Chamber investigates about other forms of reparations [that] were being given”).

¹⁴¹ [Appeal Brief](#), paras 23-24, *referring to* [Lubanga Reparation Decision](#), para. 201 (emphasis added); [Lubanga Amended Reparation Order](#), para. 9 (emphasis added).

¹⁴² [Appeal Brief](#), para. 25, *referring to* [Ntaganda First Decision on Implementation](#), para. 191 (emphasis added).

¹⁴³ [Lubanga Amended Reparation Order](#), para. 9.

conviction and whose culpability for those criminal acts is determined in a sentence”.¹⁴⁴ Therefore, “at the reparations stage, the focus is [...] on repairing the harm that has resulted from the crimes in question”.¹⁴⁵ Even in cases where other individuals may also have contributed to the harm, “it is not, *per se*, inappropriate to hold the person liable for the full amount necessary to repair the harm”.¹⁴⁶

69. In light of the above, the Appeals Chamber considers that the Defence does not demonstrate that in the case at hand the Trial Chamber was under any “obligation to investigate and adjust the reparations accordingly”¹⁴⁷ in relation to national proceedings concerning compensation from state authorities. The Appeals Chamber notes in this regard that, in concluding that “domestic proceedings do not impact reparations before the Court”,¹⁴⁸ the Trial Chamber correctly noted that “[t]he right of victims to obtain reparations before the ICC is linked to their rights under international criminal law – as the source and origin of this right – and is to be distinguished from the victims’ rights under domestic law or international human rights law”.¹⁴⁹ The Trial Chamber also duly considered that “reparations proceedings [before the Court] [are] strictly limited in reach and scope to the terms of the conviction”.¹⁵⁰ Accordingly, the Appeals Chamber finds that the Defence has failed to show any error in the Trial Chamber’s interpretation of the relevant legal framework.

70. Moreover, the Appeals Chamber recalls that “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”.¹⁵¹ However, other than asserting that “there shall be an overlap” between the individuals who may receive compensation from the government of Uganda and the victims participating in the reparation proceedings before the Court,¹⁵² the Defence does not demonstrate that there is any overlap that the Trial Chamber might have been able to take into account. In this regard, the Appeals Chamber first notes Victims Group 1’s

¹⁴⁴ [Lubanga A-A3 Reparations Judgment](#), para. 65 (emphasis in original); [Lubanga Amended Reparation Order](#), para. 20 (emphasis in original).

¹⁴⁵ [Katanga A3-A5 Appeal Judgment](#), para. 179.

¹⁴⁶ [Katanga A3-A5 Appeal Judgment](#), para. 178.

¹⁴⁷ [Appeal Brief](#), para. 28.

¹⁴⁸ [Impugned Decision](#), para. 49.

¹⁴⁹ [Impugned Decision](#), para. 48.

¹⁵⁰ [Impugned Decision](#), para. 49.

¹⁵¹ [Lubanga Amended Reparation Order](#), para. 9 (emphasis added).

¹⁵² [Appeal Brief](#), para. 28.

submission that the Uganda High Court Decision of 21 February 2023 concerns “other harms” which do not arise out of a violation of the Statute.¹⁵³ Indeed, the Appeals Chamber observes that the decision of the High Court of Uganda addresses harms arising out of an alleged violation, by the government of Uganda, of the land owners’ “right to property and to a clean environment”,¹⁵⁴ and not from any crimes under the Statute.

71. In this context, the Appeals Chamber additionally notes the submission of Victims Group 2 that the existence of the same names on the list of participating victims is “not conclusive evidence” of the overlap claimed by the Defence, considering that it is very common for several individuals to share the same name in Northern Uganda.¹⁵⁵ The Appeals Chamber also notes that the plaintiffs in the aforementioned case before the High Court of Uganda are the owners of the land on which IDP camps were set.¹⁵⁶ In their civil suit, the plaintiffs indicate that “[t]he big population of IDPs destroyed the plaintiffs’ environment”.¹⁵⁷ This appears to suggest that they were not IDPs themselves, unlike the most of the victims in the present case before this Court.

72. In view of the foregoing, the Appeals Chamber rejects, as unsubstantiated and in any event irrelevant, the Defence’s contentions regarding the alleged overlap between the plaintiffs in the case before the High Court of Uganda and the victims in the present case.

73. Having rejected all of the Defence’s arguments, the Appeals Chamber rejects the second ground of appeal.

¹⁵³ [Victims Group 1’s Response](#), para. 29.

¹⁵⁴ [Uganda High Court Decision of 21 February 2023](#), p. 4. The Appeals Chamber notes that this decision concerned the government of Uganda’s “policy of creation of IDP camps” between 2003 and 2007 on the land of the land owners in Lango ([Uganda High Court Decision of 21 February 2023](#), p. 1). In this decision, the High Court of Uganda ordered the government of Uganda to pay the land owners, *inter alia*, (i) “compensation for the arbitrary and unlawful deprivation of the right to a clean and sustainable environment, land that has been rendered infertile” ([Uganda High Court Decision of 21 February 2023](#), p. 6); (ii) “general damages for the suffering they [had] been undergoing” ([Uganda High Court Decision of 21 February 2023](#), p. 7); (iii) “exemplary damages” for “the acts and conduct of the [government of Uganda]” which were “oppressive, arbitrary and unconstitutional” ([Uganda High Court Decision of 21 February 2023](#), p. 8); and (iv) “the cost of restoring the environment” ([Uganda High Court Decision of 21 February 2023](#), p. 9).

¹⁵⁵ [Victims Group 2’s Response](#), para. 39.

¹⁵⁶ [Uganda High Court Decision of 21 February 2023](#), p. 1.

¹⁵⁷ [Uganda High Court Decision of 21 February 2023](#), p. 2.

C. Third ground of appeal: Alleged erroneous presumption regarding residents of IDP camps and non-residents present at the time of the attacks

74. Under this ground of appeal, the Defence submits that the Trial Chamber erred in law and in fact by presuming that civilian residents of Pajule, Odek, Lukodi and Abok IDP camps and non-residents who were present in these camps at the time of the attacks were victims of the war crime of attack against the civilian population and persecution.¹⁵⁸

1. Relevant part of the Impugned Decision

75. In relation to the crimes of attack against the civilian population and persecution through the underlying act of attack against the civilian population as such, the Trial Chamber adopted separate presumptions concerning victimhood and harm.¹⁵⁹

76. Regarding the presumption of victimhood, the Trial Chamber found that

all individuals who can establish, on a balance of probabilities, that they were present in or who were camp residents at the time of the attacks on the Pajule, Odek, Lukodi, and Abok IDP camps, shall be presumed to be victims of the crimes of an attack against the civil population as such and persecution, through the underlying act of attack against the civilian population as such.¹⁶⁰

77. The Trial Chamber “consider[ed] it evident that every camp resident, even if not physically present at the exact moment of the attacks, would have been severely impacted by the attacks on their community, homes, relatives, and neighbours, and would have, as a result, suffered [...] from the attacks”.¹⁶¹

78. The Trial Chamber also adopted a presumption of moral harm with respect to

all individuals who have established, on a balance of probabilities, to have personally experienced the attacks and are direct victims of crimes against persons committed during and in the aftermath of the attacks, including attacks against the civilian population as such; [...] and persecution, through [*inter alia*] the underlying acts of attack against the civilian population as such.¹⁶²

¹⁵⁸ [Appeal Brief](#), paras 30-37.

¹⁵⁹ [Impugned Decision](#), paras 136-165, 518-557.

¹⁶⁰ [Impugned Decision](#), para. 165; *see also* paras 103, 111, 163-164, 713, 718, 725.

¹⁶¹ [Impugned Decision](#), para. 163.

¹⁶² [Impugned Decision](#), para. 525.

79. The Trial Chamber therefore pointed out that “individuals who were not present and did not personally experience the attacks will have to demonstrate that they suffered moral harm as a result of the attacks”.¹⁶³

2. *Summary of the submissions*

80. The Defence submits that the Trial Chamber abused its discretion when adopting the presumption that every resident of the four IDP camps, even if not present at the time of the attacks, and all non-residents who were present during the attacks are victims of an attack against the civilian population and persecution, and requests the Appeals Chamber to overturn this “presumption of harm”.¹⁶⁴ It avers that “[r]esidents of an IDP camp who were not present for the attack should not be presumed victims”, as “one cannot be attacked if he or she is not present”.¹⁶⁵ Similarly, it submits that persons who were present in one of the four IDP camps during the attack but did not have any interactions with the LRA or the UPDF should not be presumed victims.¹⁶⁶ The Defence contends that, in both scenarios, if such persons “cannot prove some other harm, they should not be eligible for reparations”.¹⁶⁷

81. Victims Group 1 argue that the Defence “misinterprets and or misconstrues” the Trial Chamber’s findings regarding residents of the IDP camps and other persons present during the attacks.¹⁶⁸ They submit that the Defence’s allegations in this regard are “wrong both in fact and in law”, considering “the nature of the attacks, their dynamic and circumstances”.¹⁶⁹ Victims Group 1 further aver that the Defence failed to establish “what error of law was occasioned” and “that no reasonable trier of fact could have formulated” the aforementioned presumption.¹⁷⁰

82. Victims Group 2 submit that the Defence fails to show that the Trial Chamber committed any error.¹⁷¹ They contend that residents of IDP camps, even if not present in the camps at the time of the attacks, can suffer harm “through the destruction and pillage of their property, violence against their family, friends, and community, and the

¹⁶³ [Impugned Decision](#), para. 525 (emphasis added).

¹⁶⁴ [Appeal Brief](#), para. 33.

¹⁶⁵ [Appeal Brief](#), para. 34.

¹⁶⁶ [Appeal Brief](#), para. 35.

¹⁶⁷ [Appeal Brief](#), paras 34-35.

¹⁶⁸ [Victims Group 1’s Response](#), para. 31; *see also* para. 34.

¹⁶⁹ [Victims Group 1’s Response](#), para. 35.

¹⁷⁰ [Victims Group 1’s Response](#), para. 36.

¹⁷¹ [Victims Group 2’s Response](#), para. 47.

psychological toll of such occurrences”.¹⁷² Victims Group 2 argue that “the presence of a non-resident during [the] attacks [...] strongly suggests that they were also a target of the attack, regardless of whether they were physically or financially harmed”.¹⁷³ Victims Group 2 submit that the presumptions adopted by the Trial Chamber are therefore “the most logical” in the circumstances of this case.¹⁷⁴

3. *Determination by the Appeals Chamber*

a. Whether the Trial Chamber erred in presuming that all residents of the IDP camps were victims of the crimes

83. The Defence submits that the Trial Chamber abused its discretion when adopting the presumption that every resident of the four IDP camps, even if not present during the attack, is a victim of the crimes of an attack against the civilian population and persecution through the underlying act of an attack against the civilian population.¹⁷⁵

84. At the outset, the Appeals Chamber recalls that, “bearing in mind the standard of review, 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”.¹⁷⁶

85. Under the presumption of victimhood adopted by the Trial Chamber, “individuals who were [...] residents of the four IDP camps at the time of the attacks on said camps” are presumed to be “victims of the crimes of attack against the civil[ian] population as such and persecution through the underlying act of attack against the civilian population”, if they “establish, on a balance of probabilities, that they were either a resident of or physically present in one of the camps at the time of the attacks”.¹⁷⁷ This presumption also applies to residents who were “not physically present at the exact moment of the attacks”.¹⁷⁸

86. The Appeals Chamber notes that in support of this presumption of victimhood, the Trial Chamber noted that “the attack against the civilian population [...] is a conduct

¹⁷² [Victims Group 2’s Response](#), para. 47.

¹⁷³ [Victims Group 2’s Response](#), para. 48.

¹⁷⁴ [Victims Group 2’s Response](#), para. 48.

¹⁷⁵ [Appeal Brief](#), paras 33-34, 36.

¹⁷⁶ [Katanga A3-A5 Judgment](#), para. 77; [Ntaganda A4 A5 Judgment](#), paras 32, 696.

¹⁷⁷ [Impugned Decision](#), para. 164.

¹⁷⁸ [Impugned Decision](#), paras 163-164.

crime, meaning that the completion of the act itself is sufficient to qualify as a criminal violation, and as such, does not depend on a particular result”.¹⁷⁹ Furthermore, the Trial Chamber pointed out that “the attack against a civilian population does not necessarily require or depend on the presence of all or even a large number of residents at the camps, but simply that the residents were in fact residing in the targeted camps”.¹⁸⁰ The Trial Chamber further found that “every camp resident, even if not physically present at the exact moment of the attacks, would have been severely impacted by the attacks on their community, homes, relatives, and neighbours, and would have, as a result, suffered all the same from the attacks themselves”.¹⁸¹ In making this finding, it relied upon the Conviction Decision which “highlighted the densely populated nature of the IDP camps, with houses often being built less than a metre apart”.¹⁸² In addition, when describing the context of the attacks, the Trial Chamber referred to findings in the Conviction Decision concerning the large number of people living in the camps: 15,000 to 30,000 in the Pajule IDP camp,¹⁸³ between 2,000 and 3,000 in the Odek IDP camp,¹⁸⁴ “a large contingent of civilians” in the Lukodi IDP camp¹⁸⁵ and “at least 7,000 to just over 13,000” in the Abok IDP camp.¹⁸⁶ The Trial Chamber recalled its findings in the Sentencing Decision that “[t]he attacks were executed by a large number of LRA fighters armed with an assortment of weapons, including firearms”.¹⁸⁷ The Trial Chamber also referred to “the poor living conditions in the camps due to lack of food and access to water and adequate health facilities”.¹⁸⁸

87. The Appeals Chamber notes in this regard that the Defence did not specifically oppose the adoption of this presumption when it was proposed by the Registry before the Trial Chamber.¹⁸⁹ The Defence only alluded to this issue in its submissions on the estimated number of victims, without clearly voicing its concerns regarding the

¹⁷⁹ [Impugned Decision](#), para. 163.

¹⁸⁰ [Impugned Decision](#), para. 163.

¹⁸¹ [Impugned Decision](#), para. 163.

¹⁸² [Impugned Decision](#), para. 163, referring to [Conviction Decision](#), paras 1536, 1540.

¹⁸³ [Impugned Decision](#), para. 98, referring to [Conviction Decision](#), paras 144, 1174. See also [Impugned Decision](#), fn 730, referring to [Sentencing Decision](#), para. 150.

¹⁸⁴ [Impugned Decision](#), para. 99, referring to [Conviction Decision](#), paras 159, 1384. See also [Impugned Decision](#), fn 730, referring to [Sentencing Decision](#), para. 185.

¹⁸⁵ [Impugned Decision](#), para. 100, referring to [Conviction Decision](#), paras 178, 1644.

¹⁸⁶ [Impugned Decision](#), para. 101, referring to [Conviction Decision](#), paras 190, 1858.

¹⁸⁷ [Impugned Decision](#), para. 210, referring to [Sentencing Decision](#), paras 143, 149, 185, 223, 258-259.

¹⁸⁸ [Impugned Decision](#), para. 163, referring to [Conviction Decision](#), para. 1105.

¹⁸⁹ [Impugned Decision](#), para. 160. See also [Defence’s Submissions of 7 March 2022](#), paras 35-41.

presumption proposed by the Registry. It argued that any increase in the number of potential beneficiaries resulting from visits to the Pajule IDP camp for a festivity was negated by “residents [who] left the camp to celebrate with friends and family at other camps”.¹⁹⁰ It is therefore inappropriate that the Defence raises these concerns only on appeal, despite having had the opportunity to bring them to the attention of the Trial Chamber such that it could consider them when deciding on whether to adopt that presumption.¹⁹¹

88. In any event, the Defence fails to demonstrate that the above presumption of victimhood is unreasonable. In support of its argument, the Defence only asserts that “one cannot be attacked if he or she is not present” and that “[i]t defies common sense and logic” to “[require] Mr Ongwen to pay reparations to persons who never saw an attack”.¹⁹² The Defence does not refer to any of the aforementioned considerations, upon which the Trial Chamber relied, and does not explain why they “def[y] common sense and logic”.

89. The Appeals Chamber further notes that the Defence appears to confuse the above-mentioned presumption of victimhood with a presumption of harm adopted by the Trial Chamber with respect to the victims of the same crimes. Indeed, the Defence requests the Appeals Chamber to overturn “the presumption of *harm* for persons who lived at the IDP camps at the time of the attack and those persons who were present” and “rule that all persons must prove to the appropriate standard that they suffered some sort of harm”.¹⁹³

90. The Appeals Chamber notes in this regard that the Trial Chamber clearly considered victimhood and harm as two distinct elements of a reparation order.¹⁹⁴ Accordingly, the Trial Chamber discussed the aforementioned presumption of

¹⁹⁰ [Defence’s Submissions of 22 March 2023](#), para. 19.

¹⁹¹ See [Sentencing Appeal Judgment](#), para. 108; [Ongwen OA3 Judgment](#), para. 45. See also [Blaškić Appeal Judgment](#), para. 222.

¹⁹² [Appeal Brief](#), para. 34.

¹⁹³ [Appeal Brief](#), para. 37 (emphasis added).

¹⁹⁴ [Impugned Decision](#), para. 89 (“[A] reparations order must contain, at a minimum, five essential elements: [...] (ii) it must identify the victims eligible to benefit from the awards for reparations or set out the criteria of eligibility based on the link between the harm suffered by the victims and the crimes for which the person was convicted (‘Second Element: Victims’); (iii) it must define the harm caused to direct and indirect victims as a result of the crimes for which the person was convicted [...] (‘Third Element: Harm’); [...]”).

victimhood in the section of the Impugned Decision concerning the “Second element: Victims”¹⁹⁵ and the above-mentioned presumption of harm in the section concerning the “Third element: Harm”.¹⁹⁶ Each of these presumptions relates to a distinct condition of eligibility. The presumption of victimhood relates to the issue of “whether the victim’s account corresponds to the [Trial] Chamber’s findings as to the crimes for which Mr Ongwen was convicted”.¹⁹⁷ By contrast, the said presumption of harm relates to the requirement that “the person [must] [establish], on a balance of probabilities, the existence of the alleged harm”.¹⁹⁸ The Trial Chamber makes it clear that both these requirements must be met in order for a person to be eligible to benefit from reparations.¹⁹⁹

91. It follows that, under the Trial Chamber’s approach, individuals who are presumed to be victims of the crimes in question are not automatically considered to be eligible for reparations. Rather, they still need to prove that they suffered harm caused by those crimes. Among the persons who benefit from the aforementioned presumption of victimhood, only those who “have personally experienced the attacks” will benefit from the above-mentioned presumption of moral harm.²⁰⁰ By contrast, “individuals who were not present and did not personally experience the attacks” will not benefit from that presumption of harm.²⁰¹ Rather, they will “have to demonstrate, at the required balance of probabilities threshold, that they suffered moral harm as a result of the attacks”.²⁰²

92. The Appeals Chamber therefore finds that the Trial Chamber was mindful of the possibility that some residents of the IDP camps who were absent from the camps at the time of the attacks might have suffered no moral harm. It decided not to adopt a

¹⁹⁵ [Impugned Decision](#), paras 163-165.

¹⁹⁶ [Impugned Decision](#), paras 524-525.

¹⁹⁷ [Impugned Decision](#), para. 457.

¹⁹⁸ [Impugned Decision](#), para. 435.

¹⁹⁹ [Impugned Decision](#), para. 435 (“In order to be found eligible to benefit from reparations, victims need to comply with the following requirements: [...]”).

ii. Second requirement: [...] whether the person has established, on a balance of probabilities, to be a direct victim of at least one of the crimes committed in the context of the attacks against the Pajule, Lukodi, Odek, or Abok IDP camps, and for which Mr Ongwen was convicted; and or of at least one of the thematic crimes for which Mr Ongwen was convicted. [...]

iii. Third requirement: whether the person has established, on a balance of probabilities, the existence of the alleged harm; [...]).

²⁰⁰ [Impugned Decision](#), para. 524.

²⁰¹ [Impugned Decision](#), para. 525.

²⁰² [Impugned Decision](#), para. 525.

presumption of moral harm for all residents of the IDP camps, including those who were absent. Having carefully considered the presumption of victimhood in question, together with this presumption of moral harm, the Appeals Chamber finds that the Defence has failed to show that these presumptions are “overarching” and would “[open] the floodgates to abuse of the reparations system” by “frivolous claims”.²⁰³

93. In light of the above, the Appeals Chamber considers that the Defence has not demonstrated that no reasonable trier of fact could have formulated the presumption that all residents of Pajule, Odek, Lukodi and Abok IDP camps were victims of the crimes of attack against the civilian population as such and persecution through the underlying act of attack against the civilian population. The Appeals Chamber rejects the Defence’s argument in this regard.

b. Whether the Trial Chamber erred in presuming that all persons present in the IDP camps at the time of the attack were victims of the crimes

94. The Defence argues that persons who did not suffer from any interactions with the LRA or the UPDF and “did not experience any of the attack” should not be presumed victims.²⁰⁴

95. In addition to the aforementioned residents of the four IDP camps, the presumption of victimhood adopted by the Trial Chamber applies to “individuals who were present in [...] the four IDP camps at the time of the attacks on said camps”.²⁰⁵ In order to benefit from this presumption, potential beneficiaries must “establish, on a balance of probabilities, that they were [...] physically present in one of the camps at the time of the attacks”.²⁰⁶

96. The Appeals Chamber recalls the considerations upon which the Trial Chamber relied to support the presumption of victimhood in this respect.²⁰⁷

97. As indicated above, the Defence also appears to challenge the presumption of harm adopted by the Trial Chamber with respect to victims of the same crimes. In this

²⁰³ [Appeal Brief](#), para. 36.

²⁰⁴ [Appeal Brief](#), para. 35.

²⁰⁵ [Impugned Decision](#), para. 164.

²⁰⁶ [Impugned Decision](#), para. 164.

²⁰⁷ See paragraph 86 above.

respect, when discussing presumptions of harm related to victims of Mr Ongwen's crimes, including attacks against the civilian population and persecution, the Trial Chamber took into account its assessment of the Sample which allowed it "to estimate that a very high percentage of these victims indeed suffered moral harm, with approximately 90% of all direct victims of the attacks and of each of the crimes having demonstrated [...] to have suffered moral harm".²⁰⁸ The Trial Chamber considered that "it is inherent to human nature that all those subjected to brutal acts [...] experience intense suffering, anguish, terror and insecurity".²⁰⁹

98. The Appeals Chamber considers that the Defence has not identified any error in the Trial Chamber's adoption of the aforementioned presumptions of victimhood and harm. The Defence merely asserts that the individuals in question "should not be presumed victims", without engaging with any of the foregoing considerations.²¹⁰ Having regard to the factors which the Trial Chamber took into consideration, the Appeals Chamber finds that the Defence has not demonstrated that no reasonable trier of fact could have formulated the presumptions of victimhood and harm concerning individuals present at the four IDP camps at the time of the attacks. It therefore rejects the Defence's argument in this regard.

c. Overall conclusion

99. Having rejected all arguments of the Defence, the Appeals Chamber rejects the third ground of appeal.

D. Fourth, eleventh and twelfth grounds of appeal: Alleged errors concerning the Trial Chamber's consideration of the Acholi traditional and cultural factors and mechanisms

100. At the outset, the Appeals Chamber notes that the Defence has grouped the fourth, eleventh and twelfth grounds of appeal without making a distinction between "the legal and/or factual reasons in support of each ground of appeal", as required by regulation 58(2) of the Regulations. As a result, it is unclear which arguments relate to which ground of appeal. The Appeals Chamber reiterates that this practice infringes on

²⁰⁸ [Impugned Decision](#), para. 523 (footnotes omitted).

²⁰⁹ [Impugned Decision](#), para. 523, referring to [Ntaganda Addendum to Reparation Order](#), para. 146; [Katanga Reparation Order](#), para. 128.

²¹⁰ [Appeal Brief](#), para. 35.

regulation 58(2) of the Regulations and reminds the Defence of its duty to comply, at all times, with the procedural regime applicable before the Court.²¹¹ Nevertheless, in order to prevent any prejudice to Mr Ongwen's rights, the Appeals Chamber will address these arguments together.

101. Under these grounds of appeal, the Defence, in essence, submits that the Trial Chamber's allegedly erroneous consideration of the Acholi traditional and cultural factors and mechanisms significantly increased the number of indirect victims of the Pajule, Odek, Lukodi and Abok attacks, as well as the scope of Mr Ongwen's liability.²¹²

1. Relevant part of the Impugned Decision

102. The Trial Chamber recognised "the family members of direct victims" as a category of indirect victims.²¹³ The Trial Chamber noted that "due regard ought to be given" to the "social and familial structures in the affected communities" with the understanding that the concept of family may extend "beyond the strict frame of a couple and their children".²¹⁴ However, the Trial Chamber underscored that the family members of direct victims must "demonstrate to have suffered personal harm as a result of the commission of the crime against the direct victim and a causal link between their harm and the crimes", in order to establish an indirect victim status.²¹⁵

103. The Trial Chamber also found that "the crimes of pillaging and destruction of property for which Mr Ongwen was convicted" caused harm to the victims of the attacks, as these crimes prevented the victims from "engaging in and performing traditional rituals and customs that are culturally important to them".²¹⁶

104. The Trial Chamber considered evidence of the phenomenon of *cen*, which "represents the vengeful spirits of those who have died a violent death".²¹⁷ The Trial Chamber concluded that it had been established, on a balance of probabilities, that

²¹¹ See [Conviction Appeal Judgment](#), para. 38.

²¹² [Appeal Brief](#), paras 39-40, 42, 52-59, 65-66.

²¹³ [Impugned Decision](#), para. 128.

²¹⁴ [Impugned Decision](#), para. 131.

²¹⁵ [Impugned Decision](#), paras 128, 132.

²¹⁶ [Impugned Decision](#), para. 398.

²¹⁷ [Impugned Decision](#), para. 240.

direct and indirect victims of the attacks and direct victims of the crimes against child soldiers suffered moral harm which includes “spiritual disturbances”.²¹⁸

2. *Summary of the submissions*

a. **Defence’s submissions**

105. The Defence submits that the Trial Chamber erred in law by failing to provide a reasoned opinion with respect to the concept of the “African extended family”,²¹⁹ and in fact by applying its “overly broad” understanding of the concept in its determination concerning indirect victims of the attacks.²²⁰ According to the Defence, the Trial Chamber’s errors in this regard increased the number of victims eligible for reparations, and thereby the scope of Mr Ongwen’s liability.²²¹

106. The Defence also submits that when finding that the crimes of pillaging and destruction of property caused harm to the victims of the attacks by preventing them from performing traditional rituals, the Trial Chamber failed to “explicitly recognise” the “complementarity role” of the Acholi traditional and cultural mechanisms of restorative justice such as *mato oput*, despite “overwhelming evidence” concerning their relevance.²²² Lastly, it alleges that the Trial Chamber mischaracterised *cen* by “equating it to mental illness in Western medicine”.²²³

107. The Defence requests that the Appeals Chamber reverse the Trial Chamber’s decision on the “African extended family” and remand the issue back to it for further investigations on the “cultural and social dynamics of the Acholi people [...] in the different regions in [N]orthern Uganda”.²²⁴

b. **Victims Group 1’s submissions**

108. With respect to the concept of the “African extended family”, Victims Group 1 submit that the Defence’s arguments in this regard are “erroneous and placed out of context” of the Impugned Decision, as the Trial Chamber’s consideration of the concept was “strictly” in the context of the category of “the family members of direct victims”,

²¹⁸ [Impugned Decision](#), paras 242, 269, 369, 414(a)(ii), 414(b)(i), 414(f)(ii); *see also* paras 240, 368.

²¹⁹ [Appeal Brief](#), paras 39, 41-42, 65.

²²⁰ [Appeal Brief](#), paras 40, 52, 54, 65.

²²¹ [Appeal Brief](#), paras 42, 52, 54, 65.

²²² [Appeal Brief](#), paras 58-59.

²²³ [Appeal Brief](#), paras 55, 57.

²²⁴ [Appeal Brief](#), para. 66.

and not indirect victims in general.²²⁵ Moreover, in their view, the Defence's allegations concerning the concept demonstrate its failure to comprehend the Impugned Decision which imposes an obligation on each indirect victim "to demonstrate that they have suffered harm on a balance of probabilities as result of the crime on the direct victim".²²⁶ Regarding the Trial Chamber's presumption of harm to all inhabitants and non-inhabitants of the four IDP camps, Victims Group 1 aver that the Defence makes "a false allegation", since the Trial Chamber reached this conclusion on the basis of the evidence in the record of the case and the Sample, as well as the relevant jurisprudence of the Appeals Chamber.²²⁷

109. Victims Group 1 also submit that the Defence's arguments regarding the complementarity role of the Acholi cultural mechanisms are "of no factual relevance" to the Trial Chamber's determination of reparations under the Statute.²²⁸ As regards the Defence's submissions concerning *cen*, Victims Group 1 contend that the Defence fails to substantiate its argument,²²⁹ and that the Trial Chamber's findings relating to moral harm suffered by victims are based on the relevant findings in the Conviction Decision and the evidence from the trial proceedings.²³⁰

c. Victims Group 2's submissions

110. Victims Group 2 submit that these grounds of appeal "should be dismissed" for the following reasons.²³¹ As regards the concept of the "African extended family", Victims Group 2 contend that (i) the Trial Chamber did not adopt a broad concept that is inconsistent with the evidence in the case record;²³² (ii) the particularities of the Acholi culture were addressed at trial;²³³ and (iii) whichever concept of family the Trial Chamber adopted, it had no major consequences on the number of indirect victims.²³⁴

111. In respect of the relevance of the Acholi traditional and cultural mechanisms, Victims Group 2 argue that the Defence misrepresents the Impugned Decision, merely

²²⁵ [Victims Group 1's Response](#), para. 39.

²²⁶ [Victims Group 1's Response](#), paras 40, 44.

²²⁷ [Victims Group 1's Response](#), para. 45.

²²⁸ [Victims Group 1's Response](#), para. 48.

²²⁹ [Victims Group 1's Response](#), para. 50.

²³⁰ [Victims Group 1's Response](#), para. 49.

²³¹ [Victims Group 2's Response](#), paras 45, 56, 73.

²³² [Victims Group 2's Response](#), paras 49-50.

²³³ [Victims Group 2's Response](#), para. 51.

²³⁴ [Victims Group 2's Response](#), para. 51.

disagrees with the Trial Chamber's conclusions and attempts to re-litigate the issues that have already been considered by the Trial Chamber.²³⁵ Concerning the alleged mischaracterisation of *cen*, Victims Group 2 aver that the Defence seeks to reverse the factual findings of the Trial Chamber that have already been confirmed on appeal.²³⁶ They emphasise that, regardless of how *cen* manifests itself, the Trial Chamber correctly found that the victims in the present case suffered moral harm as a direct consequence of the crimes of which Mr Ongwen was convicted.²³⁷

3. *Determination by the Appeals Chamber*

112. Under these grounds of appeal, the Defence alleges errors in relation to the Trial Chamber's consideration of the concept of extended family,²³⁸ as well as the Acholi traditional and cultural mechanisms and factors such as *mato oput* and *cen*, the complementarity role of which, it submits, the Trial Chamber failed to explicitly recognise.²³⁹ The Appeals Chamber will address these arguments in turn.

a. **Alleged errors concerning the concept of extended family**

i. *Alleged failure to provide any evidential basis for the concept of extended family*

113. The Appeals Chamber notes the Defence's submission that the Trial Chamber relied solely upon the *Ntaganda* Reparation Order and failed to provide any "credible evidential basis" with respect to the concept of extended family.²⁴⁰ In this regard, the Appeals Chamber notes that the Trial Chamber recalled "its understanding of the concept of extended family in the Acholi cultural practice" from the Conviction Decision, "whereby a woman may refer to all of the children born into her husband's family as her own children, and that children born into the same extended family may refer to each other as siblings".²⁴¹ Contrary to the Defence's contention,²⁴² the finding in the Conviction Decision, to which the Trial Chamber referred, was supported by the evidence on the record of this case.²⁴³ Moreover, the Trial Chamber took into account

²³⁵ [Victims Group 2's Response](#), para. 40.

²³⁶ [Victims Group 2's Response](#), para. 66.

²³⁷ [Victims Group 2's Response](#), para. 67.

²³⁸ [Appeal Brief](#), paras 39, 40-42, 52-54, 65.

²³⁹ [Appeal Brief](#), paras 55, 57-59.

²⁴⁰ [Appeal Brief](#), paras 39, 41-42, 65.

²⁴¹ [Impugned Decision](#), para. 129, referring to [Conviction Decision](#), para. 483, fn 837.

²⁴² [Appeal Brief](#), para. 42.

²⁴³ [Conviction Decision](#), para. 483, fn 837.

the relevant submissions of the parties and the participants,²⁴⁴ as well as previous jurisprudence of the Court.²⁴⁵

114. Regarding the Defence's argument that the Trial Chamber ought to have sought expert evidence on the concept of extended family,²⁴⁶ the Appeals Chamber notes that the Defence did not request the Trial Chamber to seek such evidence.²⁴⁷ The Defence also does not explain how expert evidence would have informed the Trial Chamber's decision on the eligibility criteria for indirect victims. The Appeals Chamber recalls that the Trial Chamber required family members of direct victims to demonstrate personal harm and a causal link,²⁴⁸ while pointing out that "it is not relevant whether the family member is close or distant to the direct victim in the abstract".²⁴⁹ It is unclear from the Defence's submissions how the criteria formulated in this manner would have been different, had the Trial Chamber received expert evidence.

115. In light of the foregoing, the Appeals Chamber rejects the Defence's argument that the Trial Chamber's understanding of the concept of extended family is not supported by the evidence on the record of this case or by expert evidence.

ii. *The Trial Chamber's allegedly "overly broad" understanding of the concept of extended family*

116. As regards the Defence's allegations of the Trial Chamber's "overly broad" understanding of the concept of extended family and failure to define the concept in the case at hand,²⁵⁰ the Appeals Chamber notes that the Defence raised a similar argument before the Trial Chamber, in relation to "the family members of direct victims" as a category of indirect victims in the present case. The Defence, while accepting that "the definition of family must be culturally adapted to go beyond the western notion of a nuclear family", averred that the concept of extended family "must be defined for the purpose of this case, rather than encompassing an unlimited number of individuals based on a broad definition".²⁵¹ The Trial Chamber addressed these submissions of the

²⁴⁴ [Impugned Decision](#), paras 129-131.

²⁴⁵ [Impugned Decision](#), para. 131, referring to [Ntaganda Reparation Order](#), para. 124.

²⁴⁶ [Appeal Brief](#), para. 41.

²⁴⁷ See [Defence's Submissions of 7 March 2022](#), paras 44-47; [Defence's Submissions of 19 May 2023](#), paras 17-18.

²⁴⁸ [Impugned Decision](#), paras 128, 132.

²⁴⁹ [Impugned Decision](#), para. 132.

²⁵⁰ [Appeal Brief](#), paras 40, 42, 54, 65.

²⁵¹ [Impugned Decision](#), para. 130, referring to [Defence's Submissions of 7 March 2022](#), paras 44-45, 47.

Defence, as well as the relevant submissions of the parties and the participants, and noted that “due regard ought to be given to the applicable social and familial structures in the affected communities” in that “broadly, in the African continent, including in Uganda, the concept of family goes beyond the strict frame of a couple and their children, to include their father and mother, brothers and sisters, and other relatives”.²⁵² However, the Trial Chamber emphasised that, in the context of the instant reparation proceedings, the family members of direct victims, “in order to be entitled to receive reparations”, “must always demonstrate to have suffered personal harm” as a result of the convicted person’s crime against the direct victim and “a causal link between their harm and the crimes”.²⁵³ In this regard, the Trial Chamber recalled that “it is not relevant whether the family member is close or distant to the direct victim in the abstract”, provided that they can demonstrate personal harm and the causal link, as noted above.²⁵⁴

117. In this context, the Appeals Chamber notes that the Defence raises again the contention that indirect victims in the present case must prove “a very close relationship” with the direct victims and the harm resulting from the crimes of which Mr Ongwen was convicted.²⁵⁵ In the Impugned Decision, the Trial Chamber dismissed a similar argument of the Defence that “indirect victims must prove the existence of a ‘strong relationship [...]’ [...] with the direct victim”.²⁵⁶ Recalling the relevant jurisprudence of the Appeals Chamber, the Trial Chamber found that “proving the nature of the bond with the direct victim cannot and does not constitute a pre-condition to establish an indirect victim status”, because “demonstrating the existence of a ‘close *personal* relationship’ is just *one* way of proving the moral harm suffered, resorting to a presumption”.²⁵⁷

118. The Appeals Chamber also notes that the Defence does not substantiate its argument that the Trial Chamber ought to have limited the category of indirect victims to “members of the nuclear family of direct victims who can prove a very close

²⁵² [Impugned Decision](#), paras 129-131.

²⁵³ [Impugned Decision](#), paras 128, 132.

²⁵⁴ [Impugned Decision](#), para. 132, referring to, *inter alia*, [Ntaganda Reparation Order](#), para. 125.

²⁵⁵ [Appeal Brief](#), para. 53.

²⁵⁶ [Impugned Decision](#), para. 486, referring to [Defence’s Submissions of 19 May 2023](#), paras 17-18.

²⁵⁷ [Impugned Decision](#), para. 486 (emphasis in original), referring to [Ntaganda A4 A5 Appeal Judgment](#), paras 608-640; [Katanga A3-A5 Appeal Judgment](#), para. 116.

relationship with the direct victims”.²⁵⁸ Notably, the Defence does not refer to any relevant evidence in this regard. It is noted that none of the authorities cited by the Defence support the point which the Defence seems to be making.²⁵⁹ In any event, the Defence does not appear to have submitted these authorities in the proceedings before the Trial Chamber. Furthermore, the Defence does not explain why, in its view, the Trial Chamber’s requirement of demonstrating personal harm and a causal link is insufficient with regard to family members outside of the nuclear family.²⁶⁰ The Appeals Chamber notes in this regard that the Defence itself acknowledged before the Trial Chamber that “families in [N]orthern Uganda generally live in the same or very close compounds with cousins, nephews, aunts and uncles”.²⁶¹

119. In light of the above, the Appeals Chamber considers that the Defence has failed to show any errors in relation to the Trial Chamber’s understanding of the concept of extended family in its determination on indirect victims of “the family members of direct victims”. Accordingly, the Appeals Chamber rejects the Defence’s arguments in this regard.

iii. *The Trial Chamber’s alleged reliance on the concept of extended family in its determinations on indirect victims of the attacks*

120. The Defence argues that the Trial Chamber failed to provide how its understanding of the extended family in the Acholi culture “informed” its projections as to the number of indirect victims.²⁶² In relation to the Trial Chamber’s determination on presumption of harm with respect to all residents and non-residents who were present at the four IDP camps during the attacks,²⁶³ the Defence avers that the Trial Chamber’s reliance on the concept of extended family “opens the door for reparation claims which are not premised on direct victims’ families defined in the [Impugned Decision]”, thereby going beyond the scope of the harm resulting from the crimes of which Mr Ongwen was convicted.²⁶⁴ However, the Appeals Chamber notes that the Trial Chamber’s understanding of the extended family in the Acholi culture did not

²⁵⁸ [Appeal Brief](#), para. 53.

²⁵⁹ See [Appeal Brief](#), paras 43-51.

²⁶⁰ [Impugned Decision](#), paras 128, 132.

²⁶¹ [Defence’s Submissions of 19 May 2023](#), para. 17.

²⁶² [Appeal Brief](#), para. 52.

²⁶³ [Appeal Brief](#), paras 52, 54, referring to [Impugned Decision](#), paras 103, 164, 518-522.

²⁶⁴ [Appeal Brief](#), paras 52, 54.

form “the basis” of its determination on indirect victims in the category of “the family members of direct victims”.²⁶⁵

121. As noted above, the Trial Chamber emphasised the requirement of personal harm as a result of the commission of the crime against the direct victim and a causal link between their harm and the crimes.²⁶⁶ Moreover, in respect of presumptions of harm related to indirect victims of the attacks, the Trial Chamber clearly indicated that “close family members for the purposes of presuming their harm are understood to be *all those members of a family living within the same household*”.²⁶⁷ It is also significant that the Trial Chamber adopted this presumption only with respect to moral harm, noting that it “[did] not have sufficient information to reach a similar conclusion in relation to the physical, psychological, and material harm suffered by persons who witnessed the attacks”.²⁶⁸ In addition, the Appeals Chamber notes that the Defence did not make any specific objections before the Trial Chamber with respect to presumptions of harm in this regard.²⁶⁹

122. The Appeals Chamber also notes that for the purpose of assessing the Sample, the Trial Chamber “refrained from resorting to presumptions”.²⁷⁰ As a result, “a potential beneficiary alleging to be an indirect victim need[ed] to establish that they ha[d] suffered personal harm under the same conditions as direct victims, i.e. on a balance of probabilities”.²⁷¹ Therefore, to the extent that the Defence may be understood to argue that the Trial Chamber’s consideration of the concept of extended family expanded its estimation of the number of indirect victims of the attacks,²⁷² the Appeals Chamber considers that the Defence miscomprehends the Impugned Decision. Since the Trial Chamber did not presume harm with respect to indirect victims in the

²⁶⁵ See [Appeal Brief](#), para. 40.

²⁶⁶ [Impugned Decision](#), paras 128, 132.

²⁶⁷ [Impugned Decision](#), para. 541 (emphasis added).

²⁶⁸ [Impugned Decision](#), para. 542.

²⁶⁹ See [Impugned Decision](#), paras 518, 521, 539. The Appeals Chamber notes that the Defence opposed the adoption of presumptions of intergenerational harm, SGBC and loss of unborn children (see [Defence’s Submissions of 7 March 2022](#), paras 35-41).

²⁷⁰ [Impugned Decision](#), para. 487.

²⁷¹ [Impugned Decision](#), para. 487.

²⁷² See [Appeal Brief](#), para. 52.

Sample, there is nothing to suggest that it unduly expanded the scope of the harm resulting from the crimes of which Mr Ongwen was convicted.²⁷³

123. Therefore, the Appeals Chamber rejects all of the Defence's submissions concerning the concept of extended family in relation to the Trial Chamber's determination and projections on indirect victims of the attacks.

b. Alleged errors relating to the Acholi cultural mechanisms

124. At the outset, the Appeals Chamber notes that the Defence alleges, once more, the “complementarity role” of the Acholi traditional and cultural mechanisms such as *mato oput* practices.²⁷⁴ The Appeals Chamber recalls that the Trial Chamber, in the Sentencing Decision, rejected the Defence's similar submission proposing an incorporation of elements of Acholi traditional system of justice, including *mato oput*.²⁷⁵ The Trial Chamber found that, in light of the principle of legality and the relevant jurisprudence of the Appeals Chamber, it was “precluded from introducing ‘unregulated penalties or sentencing mechanisms not otherwise foreseen in the legal framework of the Court’”.²⁷⁶ In the same vein, the Appeals Chamber recalls that, in the Sentencing Appeal Judgment, it rejected the Defence's argument that the Trial Chamber failed to apply the principle of complementarity to the Acholi traditional rituals as follows:

[W]hile respectful of the cultural beliefs advanced by the Defence and mindful of their significance, the Appeals Chamber considers that the question of incorporation of the Acholi traditional judicial system into the Court's statutory framework has no bearing on complementarity [...] matters.²⁷⁷

125. In light of the above, to the extent that the Defence argues that the principle of complementarity should apply to the reparation proceedings such that the traditional and cultural mechanisms would be incorporated into the Court's statutory framework, its argument has already been rejected on appeal.

126. In the instant reparation proceedings, the Defence contends that the Trial Chamber failed to “explicitly recognise the complementarity role of cultural

²⁷³ See [Appeal Brief](#), paras 52, 54.

²⁷⁴ [Appeal Brief](#), paras 58-59.

²⁷⁵ See [Sentencing Decision](#), paras 15-23, 25-43; [Defence's Sentencing Brief](#), paras 27, 31-39, 182-183.

²⁷⁶ [Sentencing Decision](#), para. 26, referring to [Bemba et al. Sentencing Appeal Judgment](#), para. 77.

²⁷⁷ [Sentencing Appeal Judgment](#), para. 109.

mechanisms [...] for *cen* spirit possessions”.²⁷⁸ In the specific circumstances of the case and in light of the aforementioned findings of the Trial Chamber and the Appeals Chamber relating to the Acholi cultural mechanisms, the Appeals Chamber considers that the Defence does not demonstrate that the Trial Chamber was required to “explicitly recognise” the role of the Acholi traditional and cultural mechanisms in the Impugned Decision. In particular, the Defence does not explain how these mechanisms should be incorporated into the reparation system under the Court’s legal texts and how such incorporation would affect the scope of Mr Ongwen’s liability for reparations.

127. The Appeals Chamber also notes that the Trial Chamber, in the Impugned Decision, duly addressed the proposal of ARLPI to include, *inter alia*, “[r]econciliation ceremonies (mato oput)” in the design of collective reparations,²⁷⁹ noting that the Defence welcomed ARLPI’s observations on traditional ceremonies.²⁸⁰ The Trial Chamber considered that the suggested measures could assuage “tensions” that may arise between the victims in the present case and “victims of the war in general, who may be able to incidentally benefit from these community-based symbolic measures only”.²⁸¹ On this basis, the Trial Chamber found it appropriate to include in the design of the collective reparations in the case at hand “other community-based satisfaction or symbolic measures” proposed by ARLPI,²⁸² and instructed the TFV that it may “consider implementing, based on its consultations with the victims”, measures such as, *inter alia*, “reconciliation and cleansing ceremonies”.²⁸³ In this regard, the Trial Chamber emphasised that “the fact that victims of the war in general may incidentally benefit from symbolic reparations has no impact on the liability of the convicted person”.²⁸⁴ The Appeals Chamber further observes that the Trial Chamber, in awarding “other community-based symbolic and satisfaction measures”, considered the projected costs of the symbolic measures provided by ARLPI.²⁸⁵ Therefore, it is clear from the

²⁷⁸ [Appeal Brief](#), para. 59.

²⁷⁹ [ARLPI’s Observations of 30 November 2021](#), pp. 11, 13; [Impugned Decision](#), paras 607, 635.

²⁸⁰ [Impugned Decision](#), paras 766, 791, referring to [Defence’s Submissions of 7 March 2022](#), para. 26.

²⁸¹ [Impugned Decision](#), para. 635.

²⁸² [Impugned Decision](#), para. 635.

²⁸³ [Impugned Decision](#), para. 635, referring to, *inter alia*, [ARLPI’s Observations of 30 November 2021](#), pp. 9-12.

²⁸⁴ [Impugned Decision](#), para. 635.

²⁸⁵ [Impugned Decision](#), paras 766, 791, referring to [ARLPI’s Observations of 30 November 2021](#), pp. 13-14.

Impugned Decision that the Trial Chamber gave due consideration to the measures of the Acholi traditional and cultural mechanisms in its award of collective reparations.

128. Turning to the Defence’s submission concerning the harm caused by the inability of the victims of the attacks to perform traditional and cultural rituals as a result of the crimes of pillaging and destruction of property,²⁸⁶ the Appeals Chamber understands the Defence’s argument to be that the Trial Chamber should have taken into account the role of the Acholi cultural mechanism of *cen* healing, *mato oput*, in its assessment of the harm. The Appeals Chamber notes in this respect that the Trial Chamber, recalling its relevant finding in the Conviction Decision,²⁸⁷ found that “the pillaging and destruction of goods and livestock significantly impaired the victims’ ability to carry out traditional rituals and customs”.²⁸⁸ It referred to evidence of goods and livestock being used, *inter alia*, to “heal health conditions” and to bury deceased persons.²⁸⁹ The Trial Chamber considered “evidence about how the failure to bury family members in accordance with rituals may result in [...] ‘*cen*’”.²⁹⁰ The Defence does not identify any error in these findings of the Trial Chamber. It also does not explain the significance of the Acholi cultural mechanism of *mato oput* in the present context. Accordingly, the Appeals Chamber dismisses the Defence’s arguments as unsubstantiated.

c. Alleged mischaracterisation of “spiritual disturbances (*cen*)” as “mental illness”

129. As a preliminary matter, the Appeals Chamber observes that the Defence, in the Notice of Appeal and the heading of the twelfth ground of appeal in the Appeal Brief, indicates the alleged error as the Trial Chamber’s characterisation of *cen* as mental illnesses “without a clinical basis of its diagnosis”.²⁹¹ However, in the Appeal Brief, the Defence does not develop any arguments pertaining to the purported failure of the Trial

²⁸⁶ [Appeal Brief](#), para. 58.

²⁸⁷ [Impugned Decision](#), para. 394, referring to [Conviction Decision](#), paras 150, 165, 185, 195.

²⁸⁸ [Impugned Decision](#), paras 394, 398.

²⁸⁹ [Impugned Decision](#), paras 394-397.

²⁹⁰ [Impugned Decision](#), para. 397.

²⁹¹ See [Notice of Appeal](#), para. 24; [Appeal Brief](#), p. 13, heading F (“Ground 12: Trial Chamber IX erred in law and fact when it decided the victims suffered spiritual attacks, cultural problems and *cen*, while characterising the conditions as mental illnesses *without a clinical basis of its diagnosis*” (emphasis added)).

Chamber to provide “a clinical basis”.²⁹² In the absence of any substantiation, the Appeals Chamber will limit its review to the alleged factual error of the Trial Chamber’s mischaracterisation of *cen*.

130. The Appeals Chamber notes that the Defence misunderstands the Impugned Decision in arguing that the Trial Chamber “misrepresented” *cen*.²⁹³ Contrary to the Defence’s claim,²⁹⁴ the Trial Chamber did not “equate” *cen* to “mental illness in Western medicine”. Rather, the Trial Chamber found that, on a balance of probabilities, direct and indirect victims of the attacks and direct victims of the crimes against child soldiers suffered “moral harm” which includes “spiritual disturbances (*cen*)” that had long-lasting consequences.²⁹⁵ In reaching this conclusion, the Trial Chamber considered the relevant findings in the Conviction Decision and the Sentencing Decision, the evidence heard during the trial proceedings and the information obtained from its assessment of the Sample.²⁹⁶ In particular, the Trial Chamber took note of the following evidence:

[S]ome of the witnesses and victims referred to ‘spiritual disturbances’ or claimed to have experienced [...] ‘*cen*’. In relation to this, the Chamber considered the evidence that ‘*cen*’ represents the vengeful spirits of those who have died a violent death, and are commonly used to interpret what western medicine would call ‘mental illnesses’. Dr Atim’s report noted that 67% of her survey participants stated that they had been ‘harmed by spirits of the dead in relation to the LRA attacks’ and a number of the victim participants in her survey gave detailed explanations of the long term impacts they believe the spirits continue to have on them.

[...]

[...] [T]he Expert [Witness Professor Wessels] recognised that a ‘significant number’ of those children who had been abducted and integrated into the LRA, suffered from a range of issues including anxiety and depression, aggressive behaviours, PTSD, everyday distress, as well as spiritual disturbances (*cen*). [...] The Expert indicated that ‘*cen*’ was a significant source of suffering and social

²⁹² See [Appeal Brief](#), paras 55 (“The Chamber determined [...] that victims suffered from a phenomenon known as *cen*, which the Chamber interpreted to equate to ‘mental illness’ in ‘Western medicine’”), 57 (“The Chamber misrepresented the *cen* psychotic disorder, which is steeped in the spiritualism of the Acholi culture by equating it to mental illness in Western medicine”).

²⁹³ [Appeal Brief](#), paras 55, 57.

²⁹⁴ See [Appeal Brief](#), paras 55, 57.

²⁹⁵ [Impugned Decision](#), paras 242, 269, 369, 414(a)(ii), 414(b)(i), 414(f)(ii).

²⁹⁶ [Impugned Decision](#), paras 242, 269, 369, 414(a)(ii), 414(b)(i), 414(f)(ii).

isolation, and that families often feared that returning children might bring ‘*cen*’ into the household, and that it would harm family members.²⁹⁷

131. The aforementioned findings clearly indicate that the Trial Chamber did not consider *cen* to equate to “mental illness in the Western medicine” as the Defence claims. Accordingly, the Appeals Chamber rejects the Defence’s argument concerning *cen*.

d. Overall conclusion

132. Having dismissed or rejected all of the Defence’s arguments, the Appeals Chamber rejects the fourth, eleventh and twelfth grounds of appeal.

E. Fifth ground of appeal: Alleged error in the Trial Chamber’s decision to award a symbolic cash payment of EUR 750 to each victim

133. Under this ground of appeal, the Defence submits that the Trial Chamber erred in law and procedure by awarding a symbolic cash payment of EUR 750 to each victim, specifically not intending this award to constitute a partial restitution or compensation for the harm suffered.²⁹⁸ The Defence argues that the Trial Chamber acted *ultra vires*, as such an award is not provided in the Statute or the Rules.²⁹⁹

1. Relevant part of the Impugned Decision

134. The Trial Chamber determined that it would be “appropriate for each eligible direct and indirect victim in the case to receive a symbolic award of [EUR 750]”.³⁰⁰ In reaching this determination the Trial Chamber took into consideration: (i) that most victims had expressed a preference to receive a monetary award;³⁰¹ (ii) the “nearly impossible” task of determining the value of the harms suffered by the large number of

²⁹⁷ [Impugned Decision](#), paras 240, 368 (footnotes omitted).

²⁹⁸ [Appeal Brief](#), paras 67-68, 74.

²⁹⁹ [Appeal Brief](#), paras 67, 70-73, 75.

³⁰⁰ [Impugned Decision](#), para. 621 (emphasis in original omitted).

³⁰¹ [Impugned Decision](#), para. 622. The Trial Chamber referred in particular to the victims’ expectations to receive monetary awards for: (i) the loss of life and persons who were missing or unaccounted for, consistent with the Acholi/Lango cultures; (ii) victims of SGBC; (iii) former child soldiers; and (iv) victims of the attacks. The Trial Chamber also referred to similar submissions made by Victims Group 2 and the Registry.

victims;³⁰² (iii) the time for rehabilitation programmes to commence;³⁰³ and (iv) that “victims are best placed to address their own immediate needs”.³⁰⁴

135. The Trial Chamber emphasised that “the symbolic monetary payment awarded to the victims in the present case is not intended as restitution, nor as a compensation for the harm, as it was, at least in part, in the *Katanga* case”.³⁰⁵ The Trial Chamber also considered that the symbolic payment awarded in this case is not a form of individual reparations, but part of collective community-based reparations.³⁰⁶

136. In determining the amount of the symbolic payment, the Trial Chamber took the symbolic payment of USD 250 awarded in the *Katanga* Reparation Order as a point of reference.³⁰⁷ It made a number of adjustments in light of the circumstances of the present case.³⁰⁸ In light of the convicted person’s indigency, the Trial Chamber also acknowledged that the payment of the symbolic award will be subject to a decision of the TFCV’s Board of Directors and the TFCV’s ability to complement the reparation award.³⁰⁹

2. Summary of the submissions

137. The Defence submits that the Trial Chamber acted *ultra vires* when granting the symbolic award of EUR 750 to each victim, as such an award “does not fall under any of the categories” of reparations outlined in article 75(1) of the Statute or rule 94(1)(d)-(f) of the Rules.³¹⁰ It contends that granting this award “seriously inflated the amount of reparations ordered in the Impugned Decision”.³¹¹ The Defence argues that, as the Trial Chamber itself admitted, this award was not intended to be restitution

³⁰² [Impugned Decision](#), para. 623.

³⁰³ [Impugned Decision](#), para. 624.

³⁰⁴ [Impugned Decision](#), para. 625.

³⁰⁵ [Impugned Decision](#), para. 626.

³⁰⁶ [Impugned Decision](#), para. 631. In taking this approach, the Trial Chamber rejected the TFCV’s submission that symbolic payments could be granted only to specific groups of victims, such as victims of SGBC ([Impugned Decision](#), para. 632, referring to [TFV’s Observations of 6 December 2021](#), paras 99, 111).

³⁰⁷ [Impugned Decision](#), para. 626, referring to [Katanga Reparation Order](#), para. 300.

³⁰⁸ [Impugned Decision](#), paras 626-630.

³⁰⁹ [Impugned Decision](#), para. 633.

³¹⁰ [Appeal Brief](#), paras 67-68, 70-73, 75.

³¹¹ [Appeal Brief](#), para. 67.

or compensation, contrary to the purposes of article 75 of the Statute.³¹² It requests the Appeals Chamber to reverse the symbolic reparation award of EUR 750 per victim.³¹³

138. Victims Group 1 argue that there is nothing in the Trial Chamber’s exercise of its discretion or in its assessment “that points to an error of law and procedure”.³¹⁴ They further submit that the order of a symbolic award is “properly rooted in the principles of reparations”.³¹⁵

139. Victims Group 2 argue that the Trial Chamber committed no error and that “the Impugned Decision aligns with the former jurisprudence that recognizes the symbolic award as a form of reparation”.³¹⁶

140. The TFV observes that, in light of the specific circumstances of the present case, the Trial Chamber’s approach in awarding the symbolic payment of EUR 750 is appropriate and in line with the prior jurisprudence of the Court.³¹⁷ The TFV refers to the Appeals Chamber’s ruling that “collective reparations can include the payment of sums of money”, emphasising that “[t]he Appeals Chamber did not indicate that any such payment must be considered as a compensation”.³¹⁸

3. *Determination by the Appeals Chamber*

a. **Whether article 75(1) of the Statute and rule 94(1)(f) of the Rules limit reparations to restitution, compensation and rehabilitation**

141. The main submission of the Defence is that by making a symbolic award of EUR 750, the Trial Chamber acted *ultra vires*, as article 75(1) of the Statute does not allow types of reparations other than restitution, compensation and rehabilitation.³¹⁹ It further argues that “other forms of remedy” referred to in rule 94(1)(f) of the Rules are limited to forms of rehabilitation and do not include a symbolic cash award.³²⁰

³¹² [Appeal Brief](#), para. 74; [Defence’s Response to TFV’s Observations](#), paras 13-16.

³¹³ [Appeal Brief](#), para. 75.

³¹⁴ [Victims Group 1’s Response](#), para. 54.

³¹⁵ [Victims Group 1’s Response](#), para. 55.

³¹⁶ [Victims Group 2’s Response](#), para. 61.

³¹⁷ [TFV’s Observations](#), paras 18-20.

³¹⁸ [TFV’s Observations](#), para. 20, referring to [Lubanga A7 A8 Judgment](#), para. 40.

³¹⁹ [Appeal Brief](#), paras 67-68, 73, 75.

³²⁰ [Appeal Brief](#), para. 69, referring to [Lubanga Reparation Decision](#), para. 233 (“Rehabilitation shall include the provision of medical services and healthcare (particularly in order to treat HIV and Aids);

142. The Appeals Chamber recalls that article 75(1) of the Statute provides that “[t]he Court shall establish principles relating to reparations to, or in respect of victims, *including* restitution, compensation and rehabilitation”.³²¹ The Appeals Chamber agrees with Victims Group 2 that this phrase should not be understood as exhaustive.³²²

143. As regards rule 94(1) of the Rules, the Appeals Chamber notes that this provision foresees that victims requesting reparations shall include in their requests for reparations: a description of items for restitution,³²³ “[c]laims for compensation”,³²⁴ and “[c]laims for rehabilitation *and other forms of remedy*”.³²⁵ As noted by Victims Group 2, rule 94(1) of the Rules “merely specifies what the victim must provide when requesting reparations”.³²⁶ It does not in any way limit a trial chamber’s choice of modalities or types of reparations which it may award. Furthermore, rule 94(1) of the Rules enables the Court to consider victims’ requests not only for restitution, compensation and rehabilitation, but also for “other forms of remedy” not explicitly provided for in article 75(1) of the Statute.

144. The aforesaid interpretation of article 75(1) of the Statute and rule 94(1) of the Rules is in line with the Appeals Chamber’s jurisprudence. In this regard, the Appeals Chamber recalls that in the *Lubanga A-A3 Judgment*, it found no error in respect of the following determination on the modalities of reparations by Trial Chamber I:

[T]he Trial Chamber decided that the appropriate modalities of reparation awards in the circumstances of the *Lubanga* case are: restitution, compensation, rehabilitation, *as well as others with a symbolic, transformative and preventative value*. With respect to modalities of reparations *apart from restitution, compensation and rehabilitation*, the Appeals Chamber finds that the Trial Chamber defined these other modalities of reparations [...] as “measures to address the shame felt by some former child soldiers” and held that reparations programmes should “be directed at preventing future conflicts and raising awareness that the effective reintegration of these children requires eradicating the victimisation, discrimination and stigmatisation of young people in these circumstances”.³²⁷

psychological, psychiatric and social assistance to support those suffering from grief and trauma; and any relevant legal and social services” (footnotes omitted)).

³²¹ Article 75(1) of the Statute (emphasis added).

³²² [Victims Group 2’s Response](#), para. 58.

³²³ Rule 94(1)(d) of the Rules.

³²⁴ Rule 94(1)(e) of the Rules.

³²⁵ Rule 94(1)(f) of the Rules.

³²⁶ [Victims Group 2’s Response](#), para. 58.

³²⁷ [Lubanga A-A3 Judgment](#), para. 202 (footnote omitted and emphasis added).

145. Moreover, in the *Lubanga* Amended Reparation Order, the Appeals Chamber held that “[r]eparations are not limited to restitution, compensation and rehabilitation, as listed in article 75 of the Statute”, and that other types of reparations include those “with a symbolic, preventative or transformative value”.³²⁸

146. Considering the above, it is clear that a trial chamber may order modalities of reparations beyond restitution, compensation and rehabilitation, including those with a symbolic value. Furthermore, in the case at hand, and although the Trial Chamber labelled the cash payments as symbolic measures, it determined that they “are intended to help contribute to the process of rehabilitation”.³²⁹ Therefore, the Defence has failed to demonstrate that the symbolic award is contrary to the statutory framework or that the Trial Chamber acted *ultra vires*.

147. Accordingly, the Appeals Chamber finds that the Trial Chamber did not err in ordering a symbolic award and the Defence’s argument is thus rejected.

b. Whether the Trial Chamber erred when it determined that the EUR 750 symbolic award is not intended as restitution or compensation

148. In the Impugned Decision the Trial Chamber decided that “the symbolic monetary payment awarded to the victims in the present case is not intended as restitution, nor as a compensation for the harm”.³³⁰ The Defence takes issue with this statement.³³¹

149. The Defence submits in this regard that the present case is different from the *Katanga* case, since in that case the parties agreed to a symbolic award of EUR 1 per victim, but Trial Chamber II increased the amount to USD 250.³³² It argues that the appeal against the *Katanga* Reparation Order concerned Trial Chamber II’s decision to increase the amount of the symbolic award, rather than the legality of such an award.³³³ Thus, the Defence appears to suggest that the Trial Chamber erred in “specifically reject[ing] this notion” of a symbolic award intended, as in the *Katanga* case, as “partial

³²⁸ [Lubanga Amended Reparation Order](#), paras 34, 67.

³²⁹ [Impugned Decision](#), para. 620.

³³⁰ [Impugned Decision](#), para. 626.

³³¹ [Appeal Brief](#), para. 74; [Defence’s Response to TFV’s Observations](#), paras 13-16.

³³² [Appeal Brief](#), para. 74, referring to [Katanga Reparation Order](#), para. 300.

³³³ [Appeal Brief](#), para. 74.

compensation for the losses of the victims”.³³⁴ The issue raised by the Defence thus appears to be whether it is appropriate for a trial chamber to award a monetary payment intended solely as a symbolic reparation.

150. The Appeals Chamber recalls that in the *Lubanga* Amended Reparation Order, it did not define what symbolic reparations are, but simply referred to modalities of reparations that have a “symbolic [...] value”.³³⁵ It further provided two examples of symbolic reparations, when it determined that “symbolic reparations, *such as commemorations and tributes*, may also contribute to the process of rehabilitation”.³³⁶ In doing so, the Appeals Chamber did not limit symbolic reparations solely to “commemorations and tributes”. Rather, it gave examples of possible modalities of reparations with a symbolic value, consistent with the examples previously foreseen by Trial Chamber I.³³⁷

151. Moreover, the Appeals Chamber previously determined that “collective reparations can include the payment of sums of money to individuals to repair harm suffered”.³³⁸ However, as noted by the TFCV,³³⁹ this does not mean that any such payment *must* be considered as a compensation. Rather, “many permutations [are] possible, which will also be dependent on the facts of particular cases”.³⁴⁰

152. The determination of whether a given modality of reparations is appropriate must be decided on a case-by-case basis. The Appeals Chamber recalls that in the *Lubanga* A-A3 Judgment, it determined that a trial chamber “must identify the most appropriate modalities of reparations, based on *the specific circumstances of the case at hand*”.³⁴¹ Moreover, the determination of what is an appropriate modality of reparations must be grounded in the determination of the harms caused.³⁴² In this

³³⁴ [Appeal Brief](#), para. 74, referring to [Impugned Decision](#), para. 626; [Katanga Reparation Order](#), para. 300.

³³⁵ [Lubanga Amended Reparation Order](#), para. 67.

³³⁶ [Lubanga Amended Reparation Order](#), para. 67(v) (emphasis added).

³³⁷ [Lubanga Reparation Decision](#), para. 236.

³³⁸ [Lubanga A7 A8 Judgment](#), para. 40.

³³⁹ [TFV’s Observations](#), para. 20, referring to [Lubanga A7 A8 Judgment](#), para. 40.

³⁴⁰ [Lubanga A7 A8 Judgment](#), para. 40. See also [Lubanga Separate Opinion of Judge Ibáñez Carranza](#), p. 4 (“[e]conomic compensation is not the most important aspect of reparations. The ultimate goal of reparations consists of restoring human dignity and restructuring the human being both in his or her individual and social dimensions”).

³⁴¹ [Lubanga A-A3 Judgment](#), para. 200 (emphasis added).

³⁴² [Lubanga A-A3 Judgment](#), para. 200.

regard, in the *Katanga* A3-A5 Judgment, the Appeals Chamber determined that “trial chambers should seek to define the harms and to determine the appropriate modalities [of reparations] for repairing the harm caused”.³⁴³

153. The Appeals Chamber further notes that both Victims Group 2³⁴⁴ and the Defence³⁴⁵ correctly submit that, although relevant, the aforementioned findings in the *Katanga* Reparation Order may not be directly applied to the circumstances of this case. In assessing the correctness of the Impugned Decision in this regard, while bearing in mind the Trial Chamber’s references to the *Katanga* Reparation Order,³⁴⁶ the Appeals Chamber will proceed on the basis that the Trial Chamber ought to be guided principally by the specific circumstances of this case.

154. The Appeals Chamber recalls that the principles under article 75(1) of the Statute are the basis for any reparation order.³⁴⁷ Accordingly, when assessing the correctness of the symbolic cash award in this case, the Appeals Chamber will have regard to the reparations principles adopted by the Trial Chamber.

155. The Appeals Chamber notes in this regard that in the Impugned Decision the Trial Chamber adopted the principles set out in the *Ntaganda* Reparation Order,³⁴⁸ with some amendment to, among others, the principle on types and modalities of reparations.³⁴⁹ The Trial Chamber specifically held that “payments that are not proportional and appropriate to address the harm can *only be regarded as symbolic*”.³⁵⁰ It thus adopted the following principle on types and modalities of reparations:

[T]he principle is amended as required to include the following: First, the Chamber notes that rehabilitation measures may not only be aimed at addressing the medical and psychological conditions of the victims. They can also be aimed at improving the socio-economic conditions of victims, seeking to enable the maximum possible self-sufficiency and to restore, as much as possible, victims’

³⁴³ [Katanga A3-A5 Judgment](#), para. 72.

³⁴⁴ [Victims Group 2’s Response](#), para. 60.

³⁴⁵ [Appeal Brief](#), para. 74.

³⁴⁶ [Impugned Decision](#), paras 626-630.

³⁴⁷ Article 75(1) of the Statute reads in its relevant part: “The Court shall establish principles relating to reparations [...]. *On this basis*, in its decision the Court may [...] determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles *on which* it is acting” (emphasis added). See also [Lubanga A-A3 Judgment](#), para. 53.

³⁴⁸ [Impugned Decision](#), paras 57, 59, referring to [Ntaganda Reparation Order](#), paras 30-103. See also [Impugned Decision](#), paras 77, 87, 167, 570, 612, 655.

³⁴⁹ [Impugned Decision](#), paras 71(v), 78.

³⁵⁰ [Impugned Decision](#), para. 71(v) (emphasis added).

independence and vocational ability, facilitating their inclusion and participation in society. Measures of socio-economic rehabilitation may include a wide array of inter-disciplinary activities, including, *inter alia*, housing, social services, vocational training and education, micro-credits, income generating opportunities, or sustainable work that promote a meaningful role in society. *Second, considering that compensation is aimed at addressing in a proportionate and appropriate manner the harm inflicted, payments that are not proportional and appropriate to address the harm can only be regarded as symbolic.* Third, measures of satisfaction and guarantees of non-repetition can also be included as appropriate modalities of reparations, particularly in the context of collective reparations.³⁵¹

156. The Appeals Chamber notes that the Defence does not appear to challenge the aforesaid principle. Moreover, this principle, and the Trial Chamber's approach further analysed below, is in line with the Appeals Chamber's jurisprudence that compensation should be considered "when i) the economic harm is sufficiently quantifiable; ii) an award of this kind would be *appropriate and proportionate* (bearing in mind the gravity of the crime and the circumstances of the case); and iii) in view of the availability of funds, this result is feasible".³⁵²

157. The relevant findings in the Impugned Decision must be seen in the context of this particular case. In this regard, the Appeals Chamber notes that in reaching its decision to award a symbolic payment, the Trial Chamber was guided by the aforementioned principle, but also appears to have taken into consideration and balanced the different interests and views of those concerned, namely: (i) the TFV's suggestion to grant a symbolic payment to certain types of victims (for instance, victims of SGBC and their children);³⁵³ (ii) the submissions of Victims Group 1 requesting a symbolic award of USD 1,429;³⁵⁴ (iii) the submissions of Victims Group 2 requesting individual reparations and arguing that the symbolic payment suggested by the TFV would be modest and its impact limited, leading to tensions in the community;³⁵⁵ and (iv) the Defence's submissions that conflict might arise if different monetary awards

³⁵¹ [Impugned Decision](#), para. 78 (emphasis added and footnotes omitted).

³⁵² [Lubanga Amended Reparation Order](#), para. 37 (emphasis added).

³⁵³ [Impugned Decision](#), para. 593, referring to [TFV's Observations of 6 December 2021](#), para. 111.

³⁵⁴ [Impugned Decision](#), para. 590, referring to [Victims Group 1's Submissions of 7 February 2022](#), para. 33.

³⁵⁵ [Impugned Decision](#), para. 593, referring to [Victims Group 2's Submissions of 7 March 2022](#), para. 47; [Victims Group 2's Submissions of 6 December 2021](#), para. 80.

are granted to victims, and that an extensive amount of time would be required to determine exact amounts per victim.³⁵⁶

158. The Trial Chamber also noted that a large number of victims were “likely to have suffered extensive multi-layered harms”,³⁵⁷ and that this would make “the task of determining the value of each of the harms suffered [...] a nearly impossible undertaking”.³⁵⁸ In order to mitigate the Defence’s concerns in this regard, the Trial Chamber “decided to set the same *ex aequo et bono* symbolic award for all direct and indirect victims”.³⁵⁹

159. The Trial Chamber took into account that individual reparations suggested by the victims may not be feasible, “may take decades to implement or may never be implemented”³⁶⁰ “for approximately 49,772 victims” in this case.³⁶¹ It also noted that “it would be impossible, given the high number of victims and the amount of time since the crimes occurred to assess individual economic loss”.³⁶² However, in granting a symbolic award where the individual circumstances of victims have no bearing on their eligibility to receive such an award or on its amount,³⁶³ the Trial Chamber still awarded a modality of reparations that, albeit collective, may already help individual victims address some of their immediate needs arising out of the harm they suffered.³⁶⁴ The Appeals Chamber agrees with the TFV³⁶⁵ that the Trial Chamber’s determination that the symbolic measures in this case are directed at addressing all harms was appropriate in the specific circumstances of this case.

160. In this regard, the Appeals Chamber notes that the Trial Chamber recognised that the payment, even if symbolic: (i) may “serve as a ‘stopgap’ for victims”,³⁶⁶ before they can start benefiting from other reparations measures, given that it may take years for

³⁵⁶ [Impugned Decision](#), para. 623, referring to [Defence Submissions of 7 March 2022](#), para. 63.

³⁵⁷ [Impugned Decision](#), para. 623.

³⁵⁸ [Impugned Decision](#), para. 623.

³⁵⁹ [Impugned Decision](#), para. 623.

³⁶⁰ [Impugned Decision](#), para. 579.

³⁶¹ [Impugned Decision](#), para. 579.

³⁶² [Impugned Decision](#), para. 614; see also para. 775 (“endeavouring to value each harm in order to provide restitution or compensation to each individual victim is simply an impossible undertaking”).

³⁶³ [Impugned Decision](#), para. 631.

³⁶⁴ [Impugned Decision](#), para. 625.

³⁶⁵ [TFV’s Observations](#), para. 19, referring to [Impugned Decision](#), para. 620.

³⁶⁶ [Impugned Decision](#), para. 624.

the relevant programmes to commence;³⁶⁷ (ii) will allow victims to “address their own immediate needs” so they can be “in a better position to contribute to and engage in the consultations required” for the collective community-based reparations;³⁶⁸ and (iii) will allow victims to “make their own decisions regarding how to best address their own circumstances”.³⁶⁹ The Appeals Chamber notes that the Defence does not specifically challenge any of the above considerations.

161. Accordingly, the Defence’s argument is rejected, as it has failed to demonstrate that the Trial Chamber erred when it made a symbolic monetary award on the basis of the aforesaid principle on modalities of reparations,³⁷⁰ and bearing in mind the circumstances of this case.

c. Overall conclusion

162. Having rejected all arguments of the Defence, the Appeals Chamber rejects the fifth ground of appeal.

F. Sixth ground of appeal: Alleged error in prioritising participating direct victims over non-participating direct victims

163. Under this ground of appeal, the Defence submits that the Trial Chamber erred by prioritising participating direct victims over non-participating direct victims.³⁷¹

1. Relevant part of the Impugned Decision

164. In the Impugned Decision, the Trial Chamber set out criteria for prioritisation among victims in the reparation process. The Trial Chamber gave first priority to “the vulnerable victims who are in dire need of urgent assistance”, second priority to the vulnerable direct victims who have participated in the Court’s proceedings, and third priority to “all remaining vulnerable victims”.³⁷² The remaining “non-vulnerable

³⁶⁷ [Impugned Decision](#), para. 624.

³⁶⁸ [Impugned Decision](#), para. 625. The Trial Chamber also noted that, different from the *Ntaganda* case, where Trial Chamber II had rejected a similar proposal by the TFV, “the symbolic payment is intended to allow victims to engage in the required consultations to design and develop a programme that does not exist” ([Impugned Decision](#), fn 2181, referring to [Ntaganda First Decision on Implementation](#), paras 40-46).

³⁶⁹ [Impugned Decision](#), para. 630.

³⁷⁰ See paragraph 155 above.

³⁷¹ [Appeal Brief](#), paras 76-87.

³⁷² [Impugned Decision](#), paras 659-661; see also para. 665.

victims” are to receive reparations after all the aforementioned categories of victims received reparations.³⁷³

2. *Summary of the submissions*

165. The Defence submits that the Trial Chamber’s “decision to prioritise one direct victim (not in dire need) over another goes against the spirit of reparations and shall extend the time needed to disseminate reparations”.³⁷⁴ It further avers that this prioritisation is “against the fundamental fairness of the victims, especially those who desired to participate in the proceedings, but were unable to file their victim participation forms before the deadline set by [the] Trial Chamber”.³⁷⁵ In the Defence’s view, “the only diversion from the principle of treating each direct victim equal should be [with respect to] those who are in dire need”.³⁷⁶

166. Victims Group 1 submit the Defence fails to substantiate this ground of appeal, focusing “on victims’ applications which are unrelated to the basis of prioritisation”.³⁷⁷ They further argue that in any event, the Defence lacks standing to make the present challenge, as it “fails to show how Dominic Ongwen’s rights are affected by the [Trial] Chamber’s decision to prioritise certain categories of victims”.³⁷⁸

167. Victims Group 2 submit that the Defence’s argument under this ground “lacks merit”, as “[s]uch prioritisation does not affect the total number of beneficiaries or the total amount of reparations”, and “the Impugned Decision would not have substantially differed from the one rendered”, even without the prioritisation in question.³⁷⁹ They contend that the Trial Chamber’s decision to “prioritise direct participating victims [...] align[s] with the spirit of reparations”, as this approach “helps meet urgent needs and speeds up the overall implementation process of reparations”.³⁸⁰

³⁷³ [Impugned Decision](#), para. 662.

³⁷⁴ [Appeal Brief](#), para. 76.

³⁷⁵ [Appeal Brief](#), paras 76, 79-87.

³⁷⁶ [Appeal Brief](#), para. 86.

³⁷⁷ [Victims Group 1’s Response](#), para. 60.

³⁷⁸ [Victims Group 1’s Response](#), para. 61.

³⁷⁹ [Victims Group 2’s Response](#), para. 62.

³⁸⁰ [Victims Group 2’s Response](#), para. 64.

168. The TFV submits that it “cannot discern from the submission what kind of error has been alleged [...], as it is labelled a procedural error, while the Appeal Brief recounts facts and alleges unfairness in general terms”.³⁸¹

169. In its response to the TFV’s Observations, the Defence argues that the TFV has not given any substantive arguments as to “why Ground 6 of the Defence’s Appeals Brief is not an appropriate measure”.³⁸²

3. *Determination by the Appeals Chamber*

170. Under this ground of appeal, the Defence submits that the Trial Chamber erred in prioritising participating direct victims over non-participating direct victims.³⁸³ The Appeals Chamber notes at the outset that, as observed by the TFV,³⁸⁴ it is unclear from the Appeal Brief what error is alleged. The Defence alleges an interference with “the fundamental fairness of the victims”³⁸⁵ without describing any prejudice to Mr Ongwen. Moreover, the Appeals Chamber recently held that an urgency screening to determine victims’ urgent needs did not affect the rights of the defence, as it concerned “which victims should receive reparations first during the course of the implementation process”, rather than “whether they were *eligible for reparations*”.³⁸⁶ The Appeals Chamber held in that case that the victims’ “eligibility for reparations [...] was [...] of relevance for the [d]efence [but] not the question of whether they should receive any reparations [...] as a matter of priority”.³⁸⁷ It is therefore unclear why the Defence is raising a matter related to the prioritisation and what relief it seeks.

171. Furthermore, the Appeals Chamber notes that the Defence misrepresents the Impugned Decision by focusing its arguments on the victims’ participation status alone,³⁸⁸ without having due regard to the fact that this is merely a part of the prioritisation scheme that the Trial Chamber developed, which in fact sets out the priority primarily according to the victims’ vulnerability and needs. Indeed, the Trial Chamber gave first priority to “vulnerable victims who are in dire need of urgent

³⁸¹ [TFV’s Observations](#), para. 24.

³⁸² [Defence’s Response to TFV’s Observations](#), paras 18-21.

³⁸³ [Appeal Brief](#), paras 76-87.

³⁸⁴ [TFV’s Observations](#), para. 24.

³⁸⁵ [Appeal Brief](#), paras 76, 79-87.

³⁸⁶ [Ntaganda A6 A7 Judgment](#), para. 274 (emphasis in original); *see also* para. 136.

³⁸⁷ [Ntaganda A6 A7 Judgment](#), para. 274.

³⁸⁸ [Appeal Brief](#), para. 76.

assistance”, second priority to “vulnerable direct participating victims”, and third priority to “all remaining vulnerable victims”, before distributing reparations to “non-vulnerable victims”.³⁸⁹ Contrary to the Defence’s submission, the Trial Chamber, in the Impugned Decision, merely took the victims’ participation in the proceedings into account as a secondary consideration to further distinguish between victims who were already determined to be vulnerable but not in dire need of urgent assistance.

172. Based on the above reading of the Impugned Decision, the Appeals Chamber understands the Defence’s arguments to pertain to the differentiation between the second and third priority groups. In this regard, the Appeals Chamber notes the Trial Chamber’s finding that “victims who have participated in the Court’s proceedings have done so for nearly a decade, making important contributions to the search for truth and justice through their active participation before the Court”.³⁹⁰ The Appeals Chamber takes further note of Victims Group 2’s pertinent submissions that “[i]dentifying and assessing all potential beneficiaries is a time-consuming process” and that “[p]articipating victims are those for whom the said process has already been initiated and partially completed”.³⁹¹ In light of these considerations, the Appeals Chamber rejects as unsubstantiated the Defence’s argument that the prioritisation adopted by the Trial Chamber “shall extend the time needed to disseminate reparations”.³⁹²

173. For the foregoing reasons, the Appeals Chamber finds that, irrespective of whether the Defence can actually claim that any interests of Mr Ongwen are affected by the prioritisation of victims in the present case, it is clear that the Trial Chamber prioritised victims primarily based on their vulnerability and needs,³⁹³ whereas their prior participation in the proceedings only had a secondary significance and was, in any event, a factor related to the expeditiousness of the implementation process. The Appeals Chamber therefore finds that the Defence has not demonstrated an error in the Trial Chamber’s approach to the prioritisation of participating direct victims over non-participating direct victims. Accordingly, the Appeals Chamber rejects the sixth ground of appeal.

³⁸⁹ [Impugned Decision](#), paras 658-662.

³⁹⁰ [Impugned Decision](#), para. 660 (footnote omitted).

³⁹¹ [Victims Group 2’s Response](#), para. 64.

³⁹² [Appeal Brief](#), para. 76.

³⁹³ [Impugned Decision](#), paras 655-662.

G. Seventh ground of appeal: Alleged error in failing to require medical documentation

174. Under this ground of appeal, the Defence submits that the Trial Chamber erred by failing to require two persons in the Sample (hereinafter: “Two Victims”) to provide medical documentation to prove their disabilities.³⁹⁴

1. Relevant part of the Impugned Decision

175. In the Impugned Decision, the Trial Chamber considered the issue of availability of supporting documentation.³⁹⁵ It examined submissions of the victims’ representatives to conclude that “in light of the time elapsed since the commission of the crimes, the displacement of the victims, and the lack of official records, it is extremely difficult for the victims to obtain additional documentary evidence in support of their claims”.³⁹⁶

176. In the section of the Impugned Decision concerning the requirement of causal link between the harm and the crimes, the Trial Chamber addressed the Defence’s submission regarding the Two Victims’ failure to provide medical reports.³⁹⁷ Having regard to the aforementioned difficulties, which the victims had in obtaining additional documentary evidence in support of their claims,³⁹⁸ the Trial Chamber “dismissive[d] the Defence’s reasoning” and held that “the causal link between the harms [victims] allegedly suffered and the crimes for which Mr Ongwen was convicted can be established through a credible, coherent, and consistent account”.³⁹⁹

177. In Annex I to the Impugned Decision, the Trial Chamber set out its assessment of eligibility to benefit from reparations with respect to, among others, the Two Victims.⁴⁰⁰ The Trial Chamber rejected the Defence’s objections to the lack of medical documentation to support the two applications.⁴⁰¹

³⁹⁴ [Appeal Brief](#), paras 88-99.

³⁹⁵ [Impugned Decision](#), paras 436-443.

³⁹⁶ [Impugned Decision](#), para. 442.

³⁹⁷ [Impugned Decision](#), paras 505-506.

³⁹⁸ [Impugned Decision](#), para. 506, *referring to* para. 442.

³⁹⁹ [Impugned Decision](#), para. 506.

⁴⁰⁰ Confidential *ex parte* Annex I to Impugned Decision, paras 1006-1021, 1035-1049.

⁴⁰¹ Confidential *ex parte* Annex I to Impugned Decision, paras 1014-1015, 1043-1044.

2. *Summary of the submissions*

178. The Defence submits that the Trial Chamber “failed to understand” the Defence’s requests for medical documentation from the Two Victims,⁴⁰² whose claims were “questionable” and thus required “a heightened level of review”.⁴⁰³ Referring to the Appeals Chamber’s jurisprudence,⁴⁰⁴ the Defence argues that there was no need for the Trial Chamber to resort to presumptions in these instances, as the Two Victims must have seen a medical professional and medical documentation should have been produced.⁴⁰⁵ The Defence requests the Appeals Chamber to remand the matter and “to change the presumption that where documentation is readily or easily available to show harm caused by the crime, the victim applicant must produce said documentation”.⁴⁰⁶

179. Victims Group 1 submit that the Trial Chamber did not need to grant the Defence’s request for documentation, as its duty was to set out general criteria.⁴⁰⁷ Victims Group 1 contend that the Defence does not demonstrate how the Trial Chamber erred in this regard.⁴⁰⁸

180. Victims Group 2 submit that the Defence’s arguments under this ground “merely reflect a disagreement with the Impugned Decision”.⁴⁰⁹ They argue that the Defence “lacks the expertise” to express opinions on the victims’ allegations of a medical nature.⁴¹⁰ Victims Group 2 aver that the alleged error “cannot meaningfully impact” the overall estimated number of beneficiaries.⁴¹¹

3. *Determination by the Appeals Chamber*

181. The Defence’s main argument under this ground is that the Two Victims “should without a doubt have medical documentation” for their injuries, as they “would have undoubtedly seen a medical professional”.⁴¹² The Appeals Chamber notes in this regard that the Defence did not raise the issue of lack of medical documentation when making

⁴⁰² [Appeal Brief](#), para. 88.

⁴⁰³ [Appeal Brief](#), paras 89, 92-95, 97.

⁴⁰⁴ [Appeal Brief](#), paras 90-91, referring to [Lubanga Amended Reparation Order](#), paras 22, 65; [Katanga A3-A5 Judgment](#), para. 75.

⁴⁰⁵ [Appeal Brief](#), paras 92-96, 98.

⁴⁰⁶ [Appeal Brief](#), para. 99.

⁴⁰⁷ [Victims Group 1’s Response](#), para. 65.

⁴⁰⁸ [Victims Group 1’s Response](#), para. 66.

⁴⁰⁹ [Victims Group 2’s Response](#), paras 33-34.

⁴¹⁰ [Victims Group 2’s Response](#), para. 33.

⁴¹¹ [Victims Group 2’s Response](#), para. 34.

⁴¹² [Appeal Brief](#), paras 92-94; see also para. 96.

its general observations on the Sample before the Trial Chamber. Victims Group 1 and Victims Group 2, in their joint submissions on the Sample, had averred that most of the relevant documentation had been destroyed and that, given the distance between the IDP camps and the main cities and towns, it was impossible for victims to obtain any documentation.⁴¹³ However, as noted by the Trial Chamber, the Defence did not contest the victims' representatives submissions regarding the lack of supporting documentation.⁴¹⁴

182. It appears that in the proceedings before the Trial Chamber, as in the current appeal proceedings, the Defence raised the lack of medical documentation only with respect to the Two Victims,⁴¹⁵ whereas as many as 49 persons alleged to have suffered harm as a result of physical injuries.⁴¹⁶

183. The Trial Chamber found that each of the Two Victims suffered physical harm after having fallen during the attack.⁴¹⁷ The Appeals Chamber notes that the Two Victims, in their applications, make no mention of either of them having received assistance from a medical professional.⁴¹⁸ The Defence does not explain why it believes that the Two Victims received such assistance. Nor does the Defence substantiate its assertion that the Two Victims have medical documentation concerning their injuries, despite difficulties which many victims had in obtaining and keeping such documentation, as acknowledged by the Trial Chamber.⁴¹⁹ In finding the Two Victims eligible to benefit from reparations, the Trial Chamber duly considered such difficulties, as well as the coherence and credibility of the Two Victims' accounts, and their consistency with the Conviction Decision and the accounts of other victims.⁴²⁰

184. For the foregoing reasons, the Appeals Chamber finds that the Defence has not demonstrated that the Trial Chamber erred by not requiring the Two Victims to support

⁴¹³ [Victims' Joint Submissions of 17 April 2023](#), para. 16. *See also* paragraph 224 below.

⁴¹⁴ [Impugned Decision](#), para. 442.

⁴¹⁵ [Defence's Submissions of 19 May 2023](#), paras 29, 31.

⁴¹⁶ [Impugned Decision](#), para. 506.

⁴¹⁷ Confidential *ex parte* Annex I to Impugned Decision, paras 1018, 1046.

⁴¹⁸ Transmission to the Defence of 63 Redacted Victim Dossiers pursuant to Trial Chamber IX Decision ICC-02/04-01/15-2027, 15 March 2023, ICC-02/04-01/15-2034-Conf-Exp-Anx20; ICC-02/04-01/15-2034-Conf-Exp-Anx21.

⁴¹⁹ [Impugned Decision](#), para. 506, *referring to* para. 442.

⁴²⁰ Confidential *ex parte* Annex I to Impugned Decision, paras 1014-1015, 1043-1044.

their claims with medical documentation.⁴²¹ Accordingly, the Appeals Chamber rejects the seventh ground of appeal.

H. Eighth ground of appeal: Alleged errors concerning the scope of Mr Ongwen's liability in relation to his time as the commander of the Sinia brigade

185. Under this ground of appeal, the Defence submits that the Trial Chamber erred in fact in its estimation of the number of victims of SGBC and child soldiers,⁴²² by failing to take into account that Mr Ongwen was not the commander of the Sinia brigade for 47.62% of the temporal scope of the case.⁴²³ According to the Defence, the Trial Chamber's error significantly increased the estimated number of victims of the thematic crimes and, in turn, the amount of reparations imposed on Mr Ongwen.⁴²⁴

1. Relevant part of the Impugned Decision

186. The Trial Chamber noted that, in awarding reparations in the instant case, it remained within the confines of the Conviction Decision and the Sentencing Decision, in accordance with the jurisprudence of the Court.⁴²⁵ The Trial Chamber further noted that:

[A]t this juncture of the proceedings, the Chamber is no longer open to the possibility of the parties raising new issues or challenging findings that stem from or relate to the [Conviction Decision] and [Sentencing Decision], nor has the Chamber entertained reparations for acts and conduct whose authorship or causation was not determined beyond reasonable doubt in the [Conviction Decision] and [Sentencing Decision].⁴²⁶

187. In respect of the use of evidence from the trial proceedings, the Trial Chamber noted that:

[W]here it made a specific evidentiary finding in the [Conviction Decision] or [Sentencing Decision], it will, in the present [Impugned Decision], also rely on that finding. This is because, in such instances, the finding has already been

⁴²¹ [Appeal Brief](#), paras 88-89, 93-96, 98.

⁴²² [Appeal Brief](#), para. 100.

⁴²³ [Appeal Brief](#), para. 107; *see also* paras 100, 102.

⁴²⁴ [Appeal Brief](#), para. 100; *see also* para. 111.

⁴²⁵ [Impugned Decision](#), para. 20, referring to [Ntaganda A4 A5 Appeal Judgment](#), para. 482; [Lubanga A7 A8 Judgment](#), para. 311.

⁴²⁶ [Impugned Decision](#), para. 20.

established beyond reasonable doubt – a higher standard of proof than the one applicable to reparations proceedings.⁴²⁷

188. In relation to the Defence’s submission that the estimated number of victims of the thematic crimes of which Mr Ongwen was convicted “should be discounted by 52.38%” in order to reflect the 22-month period during which he “controlled” the Sinia brigade,⁴²⁸ the Trial Chamber reiterated that “Mr Ongwen’s conviction for conscripting and use in hostilities of children under the age of 15 pertained to the period *between 1 July 2002 and 31 December 2005*”, and dismissed the Defence’s argument.⁴²⁹

2. *Summary of the submissions*

189. The Defence submits that the Trial Chamber erred in fact in its estimation of the number of victims of the thematic crimes by failing to take into account that Mr Ongwen was not the commander of the Sinia brigade “during the entire jurisdiction of the case”,⁴³⁰ as he was appointed the commander of the brigade on 4 March 2004.⁴³¹ It contends that the Trial Chamber’s error resulted in “a significant increase in the amount of reparations owed by Mr Ongwen”.⁴³² The Defence requests that the Appeals Chamber overturn these findings and order the Trial Chamber to adopt its estimation of the number of victims of the thematic crimes based on “new calculations”.⁴³³

190. Victims Group 1 submit that the Defence cannot raise the same argument that it made before the Trial Chamber concerning Mr Ongwen’s role as the commander of the Sinia brigade in relation to the temporal scope of the case.⁴³⁴ They refer in this regard to the Trial Chamber’s findings that: (i) the Impugned Decision remains within the confines of the Conviction Decision and the Sentencing Decision; and that (ii) the Trial Chamber relied upon the evidential findings established beyond reasonable doubt in the Conviction Decision as evidence.⁴³⁵ Victims Group 1 aver that, in light of the clear

⁴²⁷ [Impugned Decision](#), para. 21.

⁴²⁸ [Impugned Decision](#), para. 734, referring to [Defence’s Submissions of 17 February 2023](#), paras 17, 19; [Defence’s Submissions of 22 March 2023](#), para. 14.

⁴²⁹ [Impugned Decision](#), para. 734 (emphasis added), referring to [Conviction Decision](#), p. 1076.

⁴³⁰ [Appeal Brief](#), para. 100; see also paras 102-107.

⁴³¹ [Appeal Brief](#), para. 102, referring to [Conviction Decision](#), paras 137, 1077.

⁴³² [Appeal Brief](#), para. 100; see also paras 103-105.

⁴³³ [Appeal Brief](#), paras 111-112 (emphasis in original omitted); see also paras 108-110.

⁴³⁴ [Victims Group 1’s Response](#), para. 69.

⁴³⁵ [Victims Group 1’s Response](#), para. 69, referring to [Impugned Decision](#), paras 20-21.

findings of the Trial Chamber, there is no basis for the Defence’s estimates and the Defence fails to identify the alleged error.⁴³⁶

191. Victims Group 2 submit that the Trial Chamber rejected the same argument of the Defence at trial and, in the Impugned Decision, correctly found that Mr Ongwen has been convicted of the child-soldier related crimes for the period between 1 July 2002 and 31 December 2005, “independently of his subsequent role as Sinia [b]rigade [c]ommander”.⁴³⁷

3. *Determination by the Appeals Chamber*

192. Under this ground of appeal, the Defence submits that the Trial Chamber failed to take into account that “Mr Ongwen was not the commander of Sinia [b]rigade for 47.62% of the temporal scope of the case”,⁴³⁸ since he only “became responsible for the abductions and SGBC committed by persons operating in Sinia [b]rigade” on 4 March 2004, when he was appointed as the commander of the brigade, rather than on 1 July 2002.⁴³⁹

193. The Appeals Chamber notes that, as correctly observed by Victims Group 1 and Victims Group 2,⁴⁴⁰ the Defence attempts to re-litigate an issue that was considered and ruled upon by the Trial Chamber in the Conviction Decision and confirmed on appeal. Contrary to its own statement that it does not contest Mr Ongwen’s conviction of the conscription of children under the age of 15 years and their use in armed hostilities from 1 July 2002 to 31 December 2005,⁴⁴¹ the Defence’s present argument, in fact, attempts to challenge, once more, the scope of Mr Ongwen’s conviction in this regard.⁴⁴²

194. In particular, the Trial Chamber, in the Conviction Decision, found Mr Ongwen to be criminally responsible of, *inter alia*, “the war crime of conscripting children under the age of 15 into an armed group and using them to participate actively in hostilities, pursuant to [a]rticles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute, *between 1 July 2002*

⁴³⁶ [Victims Group 1’s Response](#), paras 71-72.

⁴³⁷ [Victims Group 2’s Response](#), para. 52, referring to [Impugned Decision](#), para. 734.

⁴³⁸ [Appeal Brief](#), paras 100, 107.

⁴³⁹ [Appeal Brief](#), para. 102.

⁴⁴⁰ [Victims Group 1’s Response](#), para. 67; [Victims Group 2’s Response](#), para. 52.

⁴⁴¹ See [Appeal Brief](#), para. 103.

⁴⁴² [Appeal Brief](#), paras 100, 107.

and 31 December 2005 in Northern Uganda”,⁴⁴³ and the sexual and gender-based crimes, including forced marriage, torture, rape, sexual slavery, enslavement, forced pregnancy and outrage upon person dignity “between 1 July 2002 and 31 December 2005” in Northern Uganda.⁴⁴⁴ When addressing a similar argument which the Defence raised in its appeal against the Conviction Decision, the Appeals Chamber noted that the Trial Chamber, in reaching this conclusion, considered Mr Ongwen’s different formal positions within the Sinia brigade.⁴⁴⁵ The Appeals Chamber also took note of the Trial Chamber’s findings, not challenged by the Defence at the time, that prior to becoming the brigade commander of the Sinia brigade on 4 March 2004, Mr Ongwen was the battalion commander of the Oka battalion until 17 September 2003, when he was appointed second-in-command of the Sinia brigade; and on 15 November 2003, he was promoted to the rank of lieutenant colonel.⁴⁴⁶

195. In the same vein, the Appeals Chamber, in the Conviction Appeal Judgment, rejected the Defence’s contention that Mr Ongwen could not be held criminally responsible for the conscription and use in armed hostilities of children under the age of 15 years and for forced marriage prior to 4 March 2004.⁴⁴⁷ It found that the Defence’s argument was “based on a misunderstanding of the charges confirmed in this case”, given that the charges against Mr Ongwen were “not limited to the period when he was the Sinia brigade commander”, but “covered the entire period between 1 July 2002 and 31 December 2005”.⁴⁴⁸ The Appeals Chamber also found that the Defence had not demonstrated any error in the Trial Chamber’s findings on Mr Ongwen’s criminal responsibility in this context.⁴⁴⁹

196. The Defence raised a similar issue in the reparations proceedings. In the Impugned Decision, the Trial Chamber dismissed that argument of the Defence, reiterating that Mr Ongwen has been convicted of conscription of children under the age of 15 years and their use in armed hostilities in “the period between 1 July 2002

⁴⁴³ [Conviction Decision](#), paras 3115-3116, p. 1076 (emphasis added).

⁴⁴⁴ [Conviction Decision](#), paras 3026, 3034, 3043, 3049, 3055, 3062, 3068, 3100, pp. 1073-1076.

⁴⁴⁵ [Conviction Appeal Judgment](#), para. 923, referring to [Conviction Decision](#), paras 1013-1083.

⁴⁴⁶ [Conviction Appeal Judgment](#), para. 923, referring to [Conviction Decision](#), paras 134, 136. See also [Conviction Decision](#), para. 137.

⁴⁴⁷ [Conviction Appeal Judgment](#), paras 921, 925, 1031, 1033.

⁴⁴⁸ [Conviction Appeal Judgment](#), para. 1033.

⁴⁴⁹ See [Conviction Appeal Judgment](#), para. 922 (footnotes omitted), referring to [Conviction Decision](#), paras 3106-3114; [Conviction Appeal Judgment](#), paras 926-927.

and 31 December 2005”.⁴⁵⁰ Moreover, as the Trial Chamber correctly noted,⁴⁵¹ “in awarding reparations, a trial chamber must remain within the confines of the conviction and sentencing decisions”.⁴⁵² Therefore, the Appeals Chamber’s findings with respect to the Defence’s argument seeking to limit Mr Ongwen’s criminal responsibility are relevant to the Defence’s present contention concerning the alleged limitation of the scope of his liability for reparations. The Trial Chamber thus correctly dismissed the Defence’s argument regarding the time of Mr Ongwen’s appointment as the commander of the Sinia brigade.

197. The Appeals Chamber notes that the Defence merely disagrees with the Trial Chamber’s findings, without identifying any error. In this regard, the Appeals Chamber notes with concern the Defence’s statement that “Mr Ongwen cannot be held responsible for *crimes* [...] as the brigade commander until he [became the commander of the Sinia brigade]”.⁴⁵³ As discussed above, the Defence raised the same issue in its appeal against the Conviction Decision and the Appeals Chamber rejected its arguments. The Appeals Chamber finds it inappropriate that the Defence attempts to re-litigate a matter that has already been settled in previous appellate proceedings and that it does so without even mentioning the Appeals Chamber’s findings made in those proceedings.

198. With respect to the effect of Mr Ongwen’s time spent in sickbay on the exercise of his authority, the Appeals Chamber observes that the Defence submits a hypothetical example of a child under the age of 15 years who could have been conscripted and used in armed hostilities during the time Mr Ongwen was in sickbay, and escaped in early 2003.⁴⁵⁴ As with the previous argument under this ground of appeal, the Defence omits to mention that it made a similar argument in its appeal against the Conviction Decision. In addressing that argument, the Appeals Chamber recalled the findings in the Conviction Decision that during the period when Mr Ongwen was injured and placed in sickbay, he “retained command” and “maintained communication with other high commanders of the LRA”, and that “any disruption to [Mr] Ongwen’s exercise of his

⁴⁵⁰ [Impugned Decision](#), para. 734, referring to [Conviction Decision](#), p. 1076.

⁴⁵¹ [Impugned Decision](#), para. 20.

⁴⁵² [Ntaganda A4 A5 Appeal Judgment](#), para. 482; [Lubanga A7 A8 Judgment](#), para. 311.

⁴⁵³ [Appeal Brief](#), para. 100 (emphasis added).

⁴⁵⁴ [Appeal Brief](#), para. 106.

powers as Oka battalion commander was limited in time”, as “he was again exercising his authority as battalion commander as early as December 2002”.⁴⁵⁵ The Appeals Chamber therefore concluded that the fact that Mr Ongwen was in sickbay during the time of the victims’ abduction “does not negate his responsibility so long as he retained command as a military commander in the LRA”.⁴⁵⁶

199. In light of the foregoing, the Appeals Chamber finds that the Defence has failed to demonstrate any error in the Trial Chamber’s dismissal of the Defence’s submission that the estimated number of victims of the thematic crimes should be discounted to reflect that Mr Ongwen was appointed as the commander of the Sinia brigade on 4 March 2004. Accordingly, the Defence’s arguments in this regard are rejected. As a result, the Appeals Chamber will not entertain the Defence’s submissions on its “new calculations”⁴⁵⁷ of the estimated number of victims of the thematic crimes.

200. Accordingly, the Appeals Chamber rejects the eighth ground of appeal.

I. Ninth ground of appeal: Alleged errors concerning the Trial Chamber’s use of the divisor of four, instead of five, in relation to the number of LRA brigades

201. Under this ground of appeal, the Defence submits that the Trial Chamber erred in fact in its estimation of the number of victims of SGBC and child soldiers,⁴⁵⁸ by failing to take into consideration that there were five, rather than four, LRA operational units, including Control Altar.⁴⁵⁹ According to the Defence, the Trial Chamber’s error significantly increased the estimated number of victims of the thematic crimes and Mr Ongwen’s liability.⁴⁶⁰

1. Relevant part of the Impugned Decision

202. In addressing the Defence’s submission that the Registry, in its estimation of the number of victims, should have applied a divisor of six to reflect that there were six LRA units at the relevant level, including Control Altar and Jogo division, during the

⁴⁵⁵ [Conviction Appeal Judgment](#), para. 1034, referring to [Conviction Decision](#), paras 1037-1038, 1044.

⁴⁵⁶ See [Conviction Appeal Judgment](#), para. 1034.

⁴⁵⁷ [Appeal Brief](#), paras 109-111.

⁴⁵⁸ [Appeal Brief](#), para. 113.

⁴⁵⁹ [Appeal Brief](#), paras 113-116.

⁴⁶⁰ [Appeal Brief](#), paras 100, 113.

period relevant to the charges in this case,⁴⁶¹ the Trial Chamber dismissed the Defence's arguments, recalling the relevant findings in the Conviction Decision and its overall conclusion that the LRA was divided into four brigades.⁴⁶²

2. *Summary of the submissions*

203. The Defence submits that the Trial Chamber erred in fact by failing to take into account that "Control Altar was an operational unit",⁴⁶³ and using the divisor of four, instead of five, in estimating the number of victims of SGBC and child-soldier related crimes attributed to Mr Ongwen.⁴⁶⁴ According to the Defence, the Trial Chamber's failure in this respect significantly increased the estimated number of victims of those crimes.⁴⁶⁵ The Defence requests that the Appeals Chamber "overturn [these findings] and order" the Trial Chamber to adopt an estimation of the number of victims based on "new calculations", using a divisor of five: "1,379 persons, not 2,377 as the Chamber calculated", which renders "an 988-person difference, equating to a €748,500 difference in the amount of reparations".⁴⁶⁶

204. Victims Group 1 submit that the figures provided by the Defence under this ground of appeal are based on "an incorrect appreciation" of the Impugned Decision and the suggested divisor of five "lacks basis and merit".⁴⁶⁷

205. Victims Group 2 submit that the Defence's argument under this ground of appeal "lacks merit and should be rejected", considering that the Trial Chamber correctly relied upon the relevant findings in the Conviction Decision that the LRA was divided into four brigades, and thus remained within the confines of the Conviction Decision and the Sentencing Decision.⁴⁶⁸

⁴⁶¹ [Impugned Decision](#), para. 734, referring to [Defence's Submissions of 17 February 2023](#), paras 14-15.

⁴⁶² [Impugned Decision](#), para. 734, referring to [Conviction Decision](#), paras 123, 856-857, 862, 2799; [T-105](#), p. 57, lines 7-11, p. 62, lines 15-20; [T-160](#), p. 9, lines 10-12; [T-240](#), p. 32, lines 18-20; [T-154](#), p. 20, lines 19-22, p. 21, lines 21-23; [T-111](#), p. 50, lines 2-9.

⁴⁶³ [Appeal Brief](#), para. 113.

⁴⁶⁴ [Appeal Brief](#), paras 113, 116.

⁴⁶⁵ [Appeal Brief](#), para. 113.

⁴⁶⁶ [Appeal Brief](#), paras 122-123 (emphasis in original omitted).

⁴⁶⁷ [Victims Group 1's Response](#), para. 76.

⁴⁶⁸ [Victims Group 2's Response](#), paras 54-55.

3. *Determination by the Appeals Chamber*

206. Under this ground of appeal, the Defence submits that the Trial Chamber erred in fact by dividing the estimated number of former child soldiers and victims of SGBC in the LRA during the temporal jurisdiction of the case by four, instead of five, since there were four brigades and Control Altar, which “acted as a brigade”.⁴⁶⁹

207. Similar to its submissions under the eighth ground of appeal,⁴⁷⁰ the Defence merely disagrees with the Trial Chamber’s findings, without identifying any error. Furthermore, the Defence does not mention that it, in fact, raised the same argument before the Trial Chamber and that the Trial Chamber dismissed it. The Appeals Chamber recalls in this regard that when raising on appeal an issue which the appellant previously raised before the trial chamber and on which the trial chamber ruled, he or she must identify alleged errors in the relevant ruling of the trial chamber, to the extent that that ruling deals with that issue raised on appeal.⁴⁷¹ In this context, the Appeals Chamber observes that the Trial Chamber, in the Impugned Decision, considered and dismissed a similar argument of the Defence that Control Altar and Jogo division “operated the same as the Sinia, Trinkle, Stockree and Gilva [b]rigades”.⁴⁷² As correctly noted by the Trial Chamber,⁴⁷³ the factual findings in the Conviction Decision on the structure of the LRA clearly indicate that “the LRA was divided into four brigades: Sinia, Stockree, Gilva and Trinkle”,⁴⁷⁴ and that Control Altar was described as the “headquarters” of the LRA, “the high command”, “the overall group” and “the big group where most senior commanders [were]”.⁴⁷⁵ The Trial Chamber further noted the absence of any evidence or information in support of the Defence’s assertion.⁴⁷⁶

208. In the present appeal, the Defence contends again that Control Altar, “[f]or all intent and purposes, [...] acted as a brigade, fighting the UPDF, abducting persons and taking forced wives”,⁴⁷⁷ without demonstrating any error of the Trial Chamber in its reasoning or conclusion dismissing the Defence’s argument in this regard. The Appeals

⁴⁶⁹ [Appeal Brief](#), paras 113, 115-117.

⁴⁷⁰ See paragraph 197 above.

⁴⁷¹ [Ntaganda A A2 Judgment](#), para. 95; [Conviction Appeal Judgment](#), para. 131.

⁴⁷² [Impugned Decision](#), para. 734, referring to [Defence’s Submissions of 17 February 2023](#), paras 14-15.

⁴⁷³ [Impugned Decision](#), para. 734, referring to, *inter alia*, [Conviction Decision](#), paras 123, 856-857, 2799, 2807; [T-160](#), p. 9, lines 10-12; [T-240](#), p. 32, lines 18-20.

⁴⁷⁴ [Conviction Decision](#), paras 123, 857, 2799, 2807.

⁴⁷⁵ [Conviction Decision](#), paras 123, 855-857, 2799.

⁴⁷⁶ [Impugned Decision](#), para. 734.

⁴⁷⁷ [Appeal Brief](#), para. 115.

Chamber notes that the Defence refers in support to the passages in the Prosecutor’s Application for Warrants of Arrest and Document Containing the Charges, as well as the Confirmation Decision.⁴⁷⁸ However, the Appeals Chamber recalls that the factual findings in the Conviction Decision upon which the Trial Chamber relied have been established beyond reasonable doubt,⁴⁷⁹ which is a different and higher standard of proof than that required for a pre-trial chamber’s issuance of a warrant of arrest⁴⁸⁰ and confirmation of charges.⁴⁸¹ The Defence does not refer to any evidence or the Trial Chamber’s findings in the Conviction Decision to support its proposition that the Trial Chamber’s use of the divisor of four was erroneous.

209. In light of the foregoing, the Appeals Chamber finds that the Defence has not shown that the Trial Chamber’s use of the divisor of four, taking into account that there were four LRA brigades, was unreasonable. Accordingly, the Defence’s argument is rejected. Consequently, the Appeals Chamber will not address the Defence’s submissions on its “new calculations”⁴⁸² of the estimated number of victims of the thematic crimes.

210. Accordingly, the Appeals Chamber rejects the ninth ground of appeal.

J. Thirteenth ground of appeal: Alleged erroneous assessment of moral harm

211. Under this ground of appeal, the Defence submits that the Trial Chamber erred in fact in determining that victims suffered moral harm, without requiring medical, psychological and/or psychiatric evidence⁴⁸³ and/or the examination of at least some of the victims in the Sample by an expert psychiatrist or psychologist.⁴⁸⁴ The Defence avers that it was a “double standard” for the Trial Chamber to refuse to recognise

⁴⁷⁸ [Appeal Brief](#), paras 114-115.

⁴⁷⁹ See [Impugned Decision](#), para. 21.

⁴⁸⁰ The Appeals Chamber notes that pursuant to article 58 of the Statute, a pre-trial chamber shall, upon the Prosecutor’s application, issue a warrant of arrest of a person, if it is satisfied that “[t]here are *reasonable grounds to believe* that the person has committed a crime within the jurisdiction of the Court” and “[t]he arrest of the person appears necessary” (emphasis added).

⁴⁸¹ The Appeals Chamber notes that pursuant to article 61(7) of the Statute, a pre-trial chamber shall determine “whether there is *sufficient* evidence to establish *substantial grounds to believe* that the person committed each of the crimes charged” (emphasis added).

⁴⁸² [Appeal Brief](#), paras 120-122.

⁴⁸³ [Appeal Brief](#), paras 125-126, 143.

⁴⁸⁴ [Appeal Brief](#), paras 133-136.

Mr Ongwen's victimhood, while addressing similar victimhood with respect to victims of the LRA.⁴⁸⁵

1. *Relevant background and part of the Impugned Decision*

212. In the Conviction Decision, the Trial Chamber found, based on expert evidence and other corroborating evidence, that "Dominic Ongwen did not suffer from a mental disease or defect at the time of the conduct relevant under the charges" and that, therefore, "[a] ground excluding criminal responsibility under Article 31(1)(a) of the Statute is not applicable".⁴⁸⁶ In addressing the issue of whether duress as a ground excluding criminal responsibility under article 31(1)(d) of the Statute applied, the Trial Chamber found that "there is no basis in the evidence to hold that Dominic Ongwen was subjected to a threat of imminent death or imminent or continuing serious bodily harm to himself or another person at the time of his conduct underlying the charged crimes".⁴⁸⁷

213. In the Conviction Appeal Judgment, the Appeals Chamber rejected all grounds of the Defence's appeal relating to the Trial Chamber's findings on Mr Ongwen's mental disease or defect.⁴⁸⁸ It also concluded that "the Defence ha[d] not demonstrated any error that would warrant the Appeals Chamber's intervention in relation to the Trial Chamber's findings on duress as a ground for excluding criminal responsibility".⁴⁸⁹

214. In the Impugned Decision, the Trial Chamber found that "[m]oral harm may include psychological harm or trauma, mental pain and anguish, emotional distress, psychosocial harm, and loss of life plan".⁴⁹⁰ In concluding that the victims of the present case experienced moral harm,⁴⁹¹ the Trial Chamber relied upon, *inter alia*, the findings in the Conviction Decision and the Sentencing Decision that some victims were forced to kill people⁴⁹² and others were forced to watch someone being killed.⁴⁹³ The Trial

⁴⁸⁵ [Appeal Brief](#), paras 127-132, 140-142.

⁴⁸⁶ [Conviction Decision](#), para. 2580.

⁴⁸⁷ [Conviction Decision](#), para. 2668.

⁴⁸⁸ [Conviction Appeal Judgment](#), paras 1277, 1288, 1340, 1384.

⁴⁸⁹ [Conviction Appeal Judgment](#), para. 1598.

⁴⁹⁰ [Impugned Decision](#), para. 168 (emphasis in original omitted and footnotes omitted); *see also* paras 269, 369, 414.

⁴⁹¹ [Impugned Decision](#), para. 414(a)(ii), (b)(i), (c)(ii), (d)(ii), e(i), (f)(ii), (g)(i).

⁴⁹² [Impugned Decision](#), paras 236, 293, 297, 362.

⁴⁹³ [Impugned Decision](#), paras 236, 266, 362.

Chamber also recalled its findings on the long-lasting psychological suffering caused by such experience.⁴⁹⁴

215. The Trial Chamber analysed all dossiers of victims contained in the Sample to conclude that all 198 victims, who had established their victimhood, also established, on a balance of probabilities: (i) “to have suffered harm falling within the scope of the harms defined by the Chamber as those caused to direct and indirect victims of the crimes for which Mr Ongwen was convicted”;⁴⁹⁵ and (ii) “the causal link between the harm and at least one of the crimes for which Mr Ongwen was convicted”.⁴⁹⁶

216. Regarding moral harm, the Trial Chamber stated that

[t]he assessment of the Sample also allow[ed] [it] to estimate that a very high percentage of these victims indeed suffered moral harm, with approximately 90% of all direct victims of the attacks and of each of the crimes having demonstrated, to the requisite standard of proof, to have suffered moral harm.⁴⁹⁷

217. The Trial Chamber further recalled “that ‘it is inherent to human nature that all those subjected to brutal acts [...] experience intense suffering, anguish, terror and insecurity’”.⁴⁹⁸ Accordingly, the Trial Chamber considered “that it shall not be necessary to scrutinise the specific moral harm alleged by each potential direct victim of crimes against persons committed during and in the aftermath of the attacks, once their victimhood has been established on a balance of probabilities”.⁴⁹⁹ The Trial Chamber “presume[d] moral harm for all individuals who have established, on a balance of probabilities, to have personally experienced the attacks and are direct victims of crimes against persons committed during and in the aftermath of the attacks”.⁵⁰⁰

218. Regarding the former child soldiers in the Sample, the Trial Chamber referred to its findings, “based on abundant evidence”, as to “the extensive, severe, and long-lasting consequences” of, *inter alia*, the moral harm suffered by former child

⁴⁹⁴ [Impugned Decision](#), paras 236, 238, 242, 269, 369.

⁴⁹⁵ [Impugned Decision](#), para. 502.

⁴⁹⁶ [Impugned Decision](#), para. 507.

⁴⁹⁷ [Impugned Decision](#), para. 523 (footnotes omitted).

⁴⁹⁸ [Impugned Decision](#), para. 523, referring to [Ntaganda Reparation Order](#), para. 146.

⁴⁹⁹ [Impugned Decision](#), para. 524.

⁵⁰⁰ [Impugned Decision](#), para. 525; see also para. 556(a)(i).

soldiers.⁵⁰¹ The Trial Chamber noted that those victims suffered physical and moral harms, *inter alia*, due to the exposure to violence and “being forced to commit and witness the commission of crimes”.⁵⁰²

2. *Summary of the submissions*

219. The Defence submits that the Trial Chamber erred in determining that “unproven mental health issues” amounted to moral harm related to the attacks.⁵⁰³ It argues that moral harm, as defined by the Trial Chamber, comprises conditions which can only be ascertained by medical, psychological and/or psychiatric evidence.⁵⁰⁴ The Defence avers that the Trial Chamber erred in failing to establish the causal link between the harms and the victims, based on the actual examination of at least some of the victims in the Sample by an expert psychiatrist or psychologist.⁵⁰⁵ The Defence contends that the Trial Chamber applied a “‘double standard’ on victimhood” by refusing to consider Mr Ongwen’s abduction at the age of nine as relevant to the affirmative defences of mental disease or defect and duress, while addressing such harm with respect to victims of the LRA.⁵⁰⁶ The Defence submits that the Trial Chamber applied “distorted logic” by embracing in the Impugned Decision the notion of long-lasting consequences of child soldiering, despite having rejected a report on such consequences in the Conviction Decision.⁵⁰⁷

220. Victims Group 1 submit that this ground of appeal should be rejected, because: (i) the Defence re-litigates issues that were conclusively determined in the Conviction Decision;⁵⁰⁸ (ii) the Trial Chamber’s definition of moral harm and its adoption of presumptions are consistent with the Court’s case-law;⁵⁰⁹ and (iii) the Defence’s argument that the Trial Chamber ought to have applied its findings on moral harm to Mr Ongwen is unsupported by the Statute or any other law.⁵¹⁰

⁵⁰¹ [Impugned Decision](#), para. 550.

⁵⁰² [Impugned Decision](#), para. 550.

⁵⁰³ [Appeal Brief](#), para. 124.

⁵⁰⁴ [Appeal Brief](#), paras 125-126, 143.

⁵⁰⁵ [Appeal Brief](#), paras 133-136.

⁵⁰⁶ [Appeal Brief](#), paras 127-132, 140-142.

⁵⁰⁷ [Appeal Brief](#), paras 137-139.

⁵⁰⁸ [Victims Group 1’s Response](#), para. 79.

⁵⁰⁹ [Victims Group 1’s Response](#), para. 80.

⁵¹⁰ [Victims Group 1’s Response](#), para. 84.

221. Victims Group 2 submit that the Defence seeks to reverse factual findings made in the Conviction Decision and the Sentencing Decision, and confirmed on appeal.⁵¹¹ They argue that the comparison between the trauma suffered by Mr Ongwen and the trauma suffered by the victims is “inapposite”, as the legal contexts in which these traumas were considered are distinct,⁵¹² and victims do not seek to establish that they suffer from mental health disorders, but to demonstrate that they suffer psychological harm.⁵¹³ Victims Group 2 submit that the Trial Chamber, while recognising the suffering of Mr Ongwen, did not consider that this suffering could “shield him from [criminal] responsibility”.⁵¹⁴

3. *Determination by the Appeals Chamber*

222. The Defence’s main argument under this ground of appeal is that in order to determine whether victims suffered moral harm,⁵¹⁵ the Trial Chamber ought to have required medical, psychological and/or psychiatric evidence⁵¹⁶ and/or the examination of at least some of the victims in the Sample by an expert psychiatrist or psychologist.⁵¹⁷

223. The Appeals Chamber notes at the outset that the Defence does not appear to have raised this argument before the Trial Chamber, despite being on notice that the victims of the present case claimed to have suffered psychological harm and that they requested the Trial Chamber to adopt factual presumptions in this regard. From the onset of the reparations proceedings in this case, Victims Group 1 and Victims Group 2 argued that psychological harm should be presumed for, among other victims, former child soldiers and victims of the attacks.⁵¹⁸ In its submissions before the Trial Chamber, the Defence addressed a number of the arguments made by the victims, but not these specific arguments.⁵¹⁹

224. The Appeals Chamber also notes that the Defence did not raise the issue of lack of psychological examination or psychological evidence with respect to the victims

⁵¹¹ [Victims Group 2’s Response](#), paras 66, 72.

⁵¹² [Victims Group 2’s Response](#), paras 68-70.

⁵¹³ [Victims Group 2’s Response](#), para. 71.

⁵¹⁴ [Victims Group 2’s Response](#), para. 72.

⁵¹⁵ [Appeal Brief](#), para. 124.

⁵¹⁶ [Appeal Brief](#), paras 125-126, 143.

⁵¹⁷ [Appeal Brief](#), paras 133-136.

⁵¹⁸ [Victims Group 1’s Submissions of 6 December 2021](#), paras 51-54; [Victims Group 2’s Submissions of 6 December 2021](#), paras 63, 66.

⁵¹⁹ See [Defence’s Submissions of 7 March 2022](#), para. 39.

concerned: (i) when Victims Group 1 and Victims Group 2, in their joint submissions on the Sample, averred that victims had difficulties in obtaining evidence of the harms which they suffered and that, therefore, “certain harms should be presumed”,⁵²⁰ nor (ii) when it was provided with copies of the applications and given an opportunity to make submissions on the Sample, which included a number of victim applications that specifically described the type of harm, for which, in the view of the Defence, a psychological examination should have been required.⁵²¹ In fact, the Defence stated that it did not contest those applications.⁵²²

225. It thus appears that the Defence raises this issue for the first time on appeal. Having received the submissions of Victims Group 1 and Victims Group 2 on the adoption of presumptions of moral harm, the Defence could have reasonably raised its concerns in the proceedings before the Trial Chamber. It did not do so. As a result, the Trial Chamber did not have an opportunity to consider the Defence’s arguments in this respect and make a finding thereupon. Given the nature of these arguments, the Appeals Chamber finds that, if it were to examine them, this would exceed the scope of its appellate review, as there is no specific finding of the Trial Chamber to review in this regard.⁵²³ The Appeals Chamber therefore dismisses these arguments of the Defence.

226. As regards the Defence’s contention that the Trial Chamber employed a “double standard” by refusing to consider Mr Ongwen’s victimhood caused by his abduction at the age of nine, while addressing such victimhood with respect to victims of the LRA,⁵²⁴ the Appeals Chamber notes that the Defence raised some aspects of this argument before the Trial Chamber. It argued that, being himself a victim, “Mr Ongwen should be accorded the same privileges that will accrue to all the other former child soldiers in these reparations proceedings”.⁵²⁵ The Trial Chamber, in the Impugned Decision, dismissed the Defence’s submission, recalling that Mr Ongwen’s age at the time of his

⁵²⁰ [Victims’ Joint Submissions of 17 April 2023](#), para. 17.

⁵²¹ *See, for example*, Confidential *ex parte* Annex I to Impugned Decision, paras 650, 660, 676, 879, 1225, 2973, 2986.

⁵²² [Defence’s Submissions of 19 May 2023](#), para. 21.

⁵²³ *See* paragraph 87 above, *referring to* [Sentencing Appeal Judgment](#), para. 108; [Ongwen OA3 Judgment](#), para. 45; [Blaškić Appeal Judgment](#), para. 222.

⁵²⁴ [Appeal Brief](#), paras 127-132, 140-142.

⁵²⁵ [Defence’s Submissions of 6 December 2021](#), paras 31-36.

own abduction was not relevant to the charges against him and noting that “he committed the relevant crimes when he was a fully responsible adult”.⁵²⁶

227. The Appeals Chamber recalls, once more, that when raising on appeal an issue which the appellant previously raised before the trial chamber and on which the trial chamber ruled, he or she must identify alleged errors in the relevant ruling of the trial chamber, to the extent that that ruling deals with that issue raised on appeal.⁵²⁷ Therefore, to the extent that the Defence’s present contention is similar to the aforementioned argument which the Defence made before the Trial Chamber, the Defence should have referred to the Trial Chamber’s relevant findings and identified any alleged error in those findings.

228. In any event, the Appeals Chamber is not persuaded that any parallel can be drawn between the Trial Chamber’s findings in the Conviction Decision concerning grounds excluding criminal responsibility and its findings on moral harm in the Impugned Decision. The former findings were made with a view to determining whether Mr Ongwen suffered from a mental disease or defect at the time of the relevant crimes and whether a ground excluding criminal responsibility under article 31(1)(a) of the Statute was applicable.⁵²⁸ Similarly, the Trial Chamber examined the issue of whether duress as a ground excluding criminal responsibility under article 31(1)(d) of the Statute applied.⁵²⁹ The Trial Chamber also considered the significance of Mr Ongwen’s abduction by the LRA and concluded that

while acknowledging that indeed Dominic Ongwen had been abducted at a young age by the LRA, the Chamber notes that Dominic Ongwen committed the relevant crimes when he was an adult and, importantly, that, in any case, the fact of having been (or being) a victim of a crime does not constitute, in and of itself, a justification of any sort for the commission of similar or other crimes – beyond the potential relevance of the underlying facts to the grounds excluding criminal responsibility expressly regulated under the Statute.⁵³⁰

⁵²⁶ [Impugned Decision](#), para. 127.

⁵²⁷ See paragraph 207 above, referring to [Ntaganda A A2 Judgment](#), para. 95; [Conviction Appeal Judgment](#), para. 131.

⁵²⁸ [Conviction Decision](#), para. 2580. See also [Conviction Appeal Judgment](#), paras 1277, 1288, 1340, 1384.

⁵²⁹ [Conviction Decision](#), para. 2668. See also [Conviction Appeal Judgment](#), para. 1598.

⁵³⁰ [Conviction Decision](#), para. 2672 (footnote omitted).

229. The Trial Chamber’s findings in the Conviction Decision were made in order to determine whether Mr Ongwen was criminally responsible. This is materially different from the present reparation proceedings, where the Trial Chamber’s enquiry was whether victims are eligible to benefit from the awards for reparations based on the link between the harm they suffered and the crimes of which Mr Ongwen was convicted.⁵³¹

230. Furthermore, when determining whether the alleged ground excluding criminal responsibility under article 31(1)(a) of the Statute was applicable, the Trial Chamber examined whether Mr Ongwen, “at the time of [his] conduct”, “suffer[ed] from a mental disease or defect”.⁵³² By contrast, in the present reparations proceedings, the Trial Chamber defined moral harm as including “psychological harm or trauma, mental pain and anguish, emotional distress, psychosocial harm, and loss of life plan”.⁵³³ Under such a definition of moral harm, it was not necessary for the Trial Chamber, as correctly observed by Victims Group 2,⁵³⁴ to require victims to demonstrate that they suffered from “a mental disease or defect” in order to establish that they suffered moral harm.

231. The Appeals Chamber also notes the Defence’s argument concerning the Trial Chamber’s rejection in the Conviction Decision of a report on the enduring effect on the mental health of having been a child soldier, while accepting in the Impugned Decision that child soldiering may have long-lasting consequences.⁵³⁵ The Appeals Chamber notes that the Trial Chamber examined the report to which the Defence refers, as part of its determination “of whether Article 31(1)(a) or (d) of the Statute are fulfilled”.⁵³⁶ In light of the foregoing considerations, the rejection of that report in the Conviction Decision cannot thus be compared to the Trial Chamber’s general acceptance in the context of the present reparations proceedings that former child soldiers endured long-lasting consequences of the moral harm they suffered.⁵³⁷

232. The Appeals Chamber therefore rejects these arguments of the Defence.

⁵³¹ [Impugned Decision](#), para. 89.

⁵³² Article 31(1)(a) of the Statute.

⁵³³ [Impugned Decision](#), para. 168 (footnotes omitted); *see also* paras 269, 369, 414.

⁵³⁴ [Victims Group 2’s Response](#), para. 71.

⁵³⁵ [Appeal Brief](#), paras 137-139.

⁵³⁶ [Conviction Decision](#), para. 612.

⁵³⁷ [Impugned Decision](#), paras 369, 550.

233. To the extent that the Defence may be understood to challenge as “inconceivable” the Trial Chamber’s failure to acknowledge Mr Ongwen’s victimhood in the Impugned Decision,⁵³⁸ the Appeals Chamber notes that it is unclear from the Defence’s submissions what, in its view, the Trial Chamber should or could have done to this end. As mandated by article 75 of the Statute, the Trial Chamber assessed in the Impugned Decision the harm suffered by victims as a result of the crimes of which Mr Ongwen was convicted.⁵³⁹ The Trial Chamber was not concerned in these reparations proceedings with any harm that Mr Ongwen himself may have suffered.

234. Furthermore, while, for the reasons just stated, the Trial Chamber did not make findings on Mr Ongwen’s victimhood in the Impugned Decision, it did acknowledge his childhood experience in other proceedings. In its determination of individual sentences, the Trial Chamber decided to give “certain weight” to the mitigating circumstances relating to Mr Ongwen’s childhood, “his abduction as a child by the LRA, the interruption of his education, the killing of his parents [and] his socialisation in the extremely violent environment of the LRA”.⁵⁴⁰ The Appeals Chamber confirmed, by majority, the joint sentence of 25 years’ imprisonment imposed on Mr Ongwen.⁵⁴¹ The Appeals Chamber therefore rejects this argument of the Defence.

235. Having rejected or dismissed all arguments raised by the Defence, the Appeals Chamber rejects the thirteenth ground of appeal.

K. Fourteenth ground of appeal: Alleged errors concerning the Trial Chamber’s eligibility assessment of four victims in the Sample

236. Under this ground of appeal, the Defence submits that the Trial Chamber erred in its assessment of the dossiers of four victims of thematic crimes in the Sample

⁵³⁸ [Appeal Brief](#), para. 132; *see also* paras 129, 142.

⁵³⁹ *See* [Impugned Decision](#), para. 49.

⁵⁴⁰ [Sentencing Decision](#), paras 87-88.

⁵⁴¹ [Sentencing Appeal Judgment](#), p. 6, para. 374. *See also* [Partly Dissenting Opinion of Judge Ibáñez Carranza to the Sentencing Appeal Judgment](#), para. 196(c).

(hereinafter: “Four Victims”),⁵⁴² because it did not meet the standard of balance of probabilities,⁵⁴³ and violated Mr Ongwen’s fair trial rights.⁵⁴⁴

1. Relevant background and part of the Impugned Decision

237. In the Conviction Decision, the Trial Chamber found Mr Ongwen to be criminally responsible for, *inter alia*, sexual and gender based crimes, including the crimes of forced marriage, torture, rape, sexual slavery and enslavement, not directly perpetrated by him, “from at least 1 July 2002 until 31 December 2005” in Northern Uganda (Counts 61 to 68).⁵⁴⁵

238. On 20 April 2023, the Trial Chamber rejected the Defence’s Request for the Lifting of Redactions, holding that the Defence had failed to demonstrate that the refusal to lift redactions in the applications unduly affected its ability to review and comment on the Sample.⁵⁴⁶ On 1 November 2024, the Trial Chamber dismissed the Defence’s Second Request for the Lifting of Redactions *in limine*, noting the Defence’s attempt to “relitigate an issue that [had been] conclusively ruled upon in the [Decision on Request for the Lifting of Redactions]”.⁵⁴⁷

239. In confidential *ex parte* Annex I to the Impugned Decision, the Trial Chamber assessed the accounts of the Four Victims in light of the relevant findings in the Conviction Decision, the submissions of the parties and the accounts of other individuals in the Sample who were victims of the same crimes.⁵⁴⁸ The Trial Chamber

⁵⁴² [Appeal Brief](#), paras 146-148 (victim a/07032/15), 149-150 (victim a/07053/15), 151-154 (victim a/07090/15), 155-157 (victim a/07093/15).

⁵⁴³ [Appeal Brief](#), paras 148 (victim a/07032/15), 150 (victim a/07053/15).

⁵⁴⁴ [Appeal Brief](#), paras 153 (victim a/07090/15), 156 (victim a/07093/15).

⁵⁴⁵ [Conviction Decision](#), paras 3100, 3116, pp. 1075-1076 (“the crime of forced marriage, an inhumane act of a character similar to the acts set out in [a]rticle 7(1)(a)-(j), as a crime against humanity, pursuant to [a]rticles 7(1)(k), and 25(3)(a) of the [Statute]” (Count 61); “the crime against humanity of torture, pursuant to [a]rticles 7(1)(f) and 25(3)(a) of the [Statute]” (Count 62); “the war crime of torture, pursuant to [a]rticles 8(2)(c)(i) and 25(3)(a) of the [Statute]” (Count 63); “the crime against humanity of rape, pursuant to [a]rticles 7(1)(g) and 25(3)(a) of the [Statute]” (Count 64); “the war crime of rape, pursuant to [a]rticles 8(2)(e)(vi) and 25(3)(a) of the [Statute]” (Count 65); “the crime against humanity of sexual slavery, pursuant to [a]rticles 7(1)(g) and 25(3)(a) of the [Statute]” (Count 66); “the war crime of sexual slavery, pursuant to [a]rticles 8(2)(e)(vi) and 25(3)(a) of the [Statute]” (Count 67); “the crime against humanity of enslavement, pursuant to [a]rticles 7(1)(c) and 25(3)(a) of the [Statute]” (Count 68)).

⁵⁴⁶ [Decision on Request for the Lifting of Redactions](#), paras 19-20, p. 10. *See also* paragraph 37 above.

⁵⁴⁷ [Decision on Second Request for the Lifting of Redactions](#), para. 21, p. 10. *See also* paragraph 38 above.

⁵⁴⁸ *See* Confidential *ex parte* Annex I to Impugned Decision, paras 2843-2846, 2848-2860, 2896-2899, 2901-2910, 2917-2918, 2915-2916, 2920-2926, 2931-2934, 2936-2942.

concluded that the Four Victims were eligible for reparations as victims of the crimes of which Mr Ongwen was convicted.⁵⁴⁹

2. *Summary of the submissions*

240. The Defence submits that the Trial Chamber erred in its determinations on the eligibility of the Four Victims, and as a result, increased the number of SGBC victims.⁵⁵⁰ Specifically, concerning victim a/07032/15, the Defence argues that the Trial Chamber's decision is based on "loose evidence and speculation", and does not meet the standard of balance of probabilities.⁵⁵¹ Similarly, the Defence alleges that the Trial Chamber's decision on the eligibility of victim a/07053/15 "falls [...] below the balance of probabilities standard" because it failed to make "any concrete decision as to who abducted" the victim.⁵⁵² Lastly, with respect to victim a/07090/15 and victim a/07093/15, the Defence contends that the Trial Chamber's refusal to lift redactions in their applications "violated Mr Ongwen's right to fair proceeding".⁵⁵³ It requests the Appeals Chamber to (i) overturn the Trial Chamber's decisions concerning victim a/07032/15 and victim a/07053/15;⁵⁵⁴ (ii) order the Trial Chamber to lift redactions to the applications of victim a/07090/15 and victim a/07093/15;⁵⁵⁵ and (iii) order the Trial Chamber to review and adjust the estimated number of victims of thematic crimes.⁵⁵⁶

241. Victims Group 1 submit that this ground of appeal should be rejected, as the Trial Chamber took into consideration the Defence's relevant submissions and its conclusions are "grounded in" the Conviction Decision.⁵⁵⁷

242. Victims Group 2 submit that this ground of appeal should be dismissed, because the Defence's argument thereunder reflects "a mere disagreement".⁵⁵⁸ They aver that the Trial Chamber's conclusions on the Four Victims are based upon its consideration

⁵⁴⁹ Confidential *ex parte* Annex I to Impugned Decision, paras 2864, 2914, 2930, 2946.

⁵⁵⁰ [Appeal Brief](#), paras 144-153, 155-156.

⁵⁵¹ [Appeal Brief](#), paras 146-148.

⁵⁵² [Appeal Brief](#), para. 150.

⁵⁵³ [Appeal Brief](#), paras 151-153, 155-156.

⁵⁵⁴ [Appeal Brief](#), paras 148, 150.

⁵⁵⁵ [Appeal Brief](#), paras 154, 157.

⁵⁵⁶ [Appeal Brief](#), para. 159.

⁵⁵⁷ [Victims Group 1's Response](#), paras 86, 107.

⁵⁵⁸ [Victims Group 2's Response](#), paras 76-77.

of the Defence's relevant submissions and unredacted information provided by these victims against the balance of probabilities standard.⁵⁵⁹

3. *Determination by the Appeals Chamber*

a. **Alleged violation of the principle of *in dubio pro reo***

243. At the outset, the Appeals Chamber notes that, other than merely stating that the Trial Chamber, in its assessment of the dossiers of the Four Victims, “violated the legal maxim of *in dubio pro reo*”, the Defence does not develop any arguments in support of its submission.⁵⁶⁰ Notably, the Defence does not refer to any provision of the Court's legal texts which, in its view, was violated.

244. Accordingly, the Defence's submission in this regard is dismissed.

b. **Victim a/07032/15**

245. The Defence argues that the Trial Chamber, in its determination on the eligibility of victim a/07032/15, erroneously relied upon the testimony of P-0205 and made a “highly speculative” finding concerning the abductors of the victim.⁵⁶¹ In the view of the Defence, victim a/07032/15 could not have been the person to whose abduction witness P-0205 referred in his testimony, as the events described by each of them occurred at different times.⁵⁶² However, the Appeals Chamber notes that there is no suggestion in the Trial Chamber's findings that a/07032/15 was the person to whom the testimony of P-0205 relates. That testimony, corroborated by other evidence on the record, merely served the Trial Chamber to observe that “it was a common practice” for members of the Sinia brigade who were in this particular area to abduct girls.⁵⁶³ The Defence misrepresents the Trial Chamber's findings and fails to demonstrate that it was an error for the Trial Chamber to rely upon the testimony of P-0205 in this context.

246. Furthermore, the Appeals Chamber notes that the Trial Chamber's consideration of P-0205's testimony was not determinative to its conclusion. Rather, the Trial Chamber considered this testimony in addition to its assessment of the account of the

⁵⁵⁹ [Victims Group 2's Response](#), para. 75.

⁵⁶⁰ See [Appeal Brief](#), para. 145.

⁵⁶¹ [Appeal Brief](#), paras 146-148.

⁵⁶² [Appeal Brief](#), para. 146.

⁵⁶³ Confidential *ex parte* Annex I to Impugned Decision, para. 2852.

victim, the relevant findings in the Conviction Decision and the joint submissions of victims, as well as the relevant submissions of the Defence.⁵⁶⁴

247. In particular, the Trial Chamber duly addressed the Defence's arguments, which are raised again on appeal, concerning the proximity of the location of the Sinia brigade to the date and location of the victim's abduction and rape.⁵⁶⁵ In this regard, the Trial Chamber recalled its findings in the Conviction Decision that: (i) "Mr Ongwen was convicted of abducting 'women and girls in Northern Uganda'",⁵⁶⁶ (ii) "to be a victim of rape as a crime against humanity and as a war crime (Counts 64 and 65), it is sufficient that the [victim] was abducted from at least 1 July 2002 until 31 December 2005" in Northern Uganda and "was 'distributed' to members of the Sinia brigade";⁵⁶⁷ and that (iii) Mr Ongwen was convicted of SGBC crimes that were not directly perpetrated by him provided that the facts occurred within the Sinia brigade.⁵⁶⁸ It also recalled the finding in the Conviction Decision that the Sinia brigade's location of the preparation before the attack on Odek IDP camp was not precise, "but rather only that the gathering [which] took place right before the attack [...] was in the bush, [...] northwest of Odek".⁵⁶⁹ In this context, the Trial Chamber noted that the location of the abduction of the victim was "in the same district as Odek IDP [c]amp".⁵⁷⁰

248. The Defence seeks to challenge these findings of the Trial Chamber on the basis that "[i]t is just as likely that [a/07032/15] was abducted by members from Gilva, Trinkle or Stockree Brigades, [given that] Gilva sickbay was operating" in the area.⁵⁷¹ However, the Defence's submission is speculative and does not refer to any evidence supporting this proposition. Moreover, it does not explain why the alleged location of Gilva sickbay in that area is indicative of the presence of members of brigades other

⁵⁶⁴ See Confidential *ex parte* Annex I to Impugned Decision, paras 2848-2860.

⁵⁶⁵ Confidential *ex parte* Annex I to Impugned Decision, para. 2850, referring to [Defence's Submissions of 19 May 2023](#), paras 75-79.

⁵⁶⁶ Confidential *ex parte* Annex I to Impugned Decision, para. 2855 (footnote omitted), referring to [Conviction Decision](#), para. 212.

⁵⁶⁷ Confidential *ex parte* Annex I to Impugned Decision, paras 2850, 2855-2856, referring to [Conviction Decision](#), paras 212, 3116, 3079-3080, p. 1076.

⁵⁶⁸ Confidential *ex parte* Annex I to Impugned Decision, para. 2850, referring to [Conviction Decision](#), para. 2094.

⁵⁶⁹ Confidential *ex parte* Annex I to Impugned Decision, para. 2850, referring to [Conviction Decision](#), para. 1406.

⁵⁷⁰ Confidential *ex parte* Annex I to Impugned Decision, para. 2851. See also [T-47](#), p. 44, lines 14-17 ("The distance between Odek and the [gathering], where the standby was, it took one day to walk to there").

⁵⁷¹ [Appeal Brief](#), para. 147.

than the Sinia brigade in the area at the relevant time. The Defence does not demonstrate that such alleged presence in the area makes it more likely than not that members of those other brigades committed the crimes against victim a/07032/15. The Appeals Chamber therefore rejects this argument as unsubstantiated.

249. As regards the Defence's contention concerning the Trial Chamber's finding that it was more likely than not that the victim was abducted by soldiers from the Sinia brigade who did not participate in the attack on Odek IDP camp,⁵⁷² the Appeals Chamber notes that this finding of the Trial Chamber is based on the trial testimony of former LRA members that the fighters sent to attack the Odek IDP camp were only "*part of the Sinia brigade*".⁵⁷³ The Defence does not identify any error in this finding.

250. In light of the above, the Appeals Chamber rejects the Defence's arguments concerning victim a/07032/15.

c. Victim a/07053/15

251. The Defence alleges that the Trial Chamber made a determination as to who abducted victim a/07053/15 merely on the basis that "her accounts were similar to other victim applicants on the record", "without any true evidence or connection to Sinia [b]rigade".⁵⁷⁴ The Appeals Chamber notes that the Defence misrepresents the Trial Chamber's findings in this regard. Contrary to the Defence's contention, the Trial Chamber carefully assessed the victim's account in light of not only the accounts of other individuals in the Sample who were victims of the same crimes, but also the findings in the Conviction Decision, the joint submissions of victims and the relevant submissions of the Defence.⁵⁷⁵

252. In respect of the Defence's claim that the Trial Chamber "expanded the definition of SGBC victims beyond the [Conviction Decision]",⁵⁷⁶ the Appeals Chamber notes that the Defence does not develop any arguments pertaining to this submission. The Defence appears to re-litigate its argument before the Trial Chamber that a/07053/15 is

⁵⁷² [Appeal Brief](#), paras 147-148, referring to Confidential *ex parte* Annex I to Impugned Decision, para. 2853.

⁵⁷³ Confidential *ex parte* Annex I to Impugned Decision, para. 2853 (emphasis added), referring to [Conviction Decision](#), para. 1410. See also [T-148](#), p. 42, lines 14-19.

⁵⁷⁴ [Appeal Brief](#), para. 150.

⁵⁷⁵ See Confidential *ex parte* Annex I to Impugned Decision, paras 2901-2910.

⁵⁷⁶ [Appeal Brief](#), para. 144.

“not a victim of a SGBC for which Mr Ongwen was convicted”, as the “SGBC [she] described is not one which involves abduction and enslavement for the purpose of doing household chores or becoming a sexual slave to a male member of the LRA”.⁵⁷⁷ The Appeals Chamber notes in this regard that the Trial Chamber dismissed the same argument of the Defence and recalled the following relevant findings in the Conviction Decision:

[F]or forced marriage as a crime against humanity (Count 61), it is sufficient that a wom[a]n or girl was abducted as so called ‘wives’, [...] for torture as a crime against humanity and as a war crime (Counts 62 and 63), it is sufficient that the wom[a]n or girl abducted was subjected to severe physical and mental pain, for rape as a crime against humanity and as a war crime (Count[s] 64 and 65) [...] abducted women and girls who had been distributed were regularly forced into sexual intercourse.⁵⁷⁸

253. The Defence does not identify any error in these findings of the Trial Chamber. It only states that victim a/07053/15’s “story is similar to nearly everyone who was abducted by every brigade in the LRA”.⁵⁷⁹ However, the Defence does not point to any brigade, other than the Sinia brigade, which, in its view, abducted the victim. It fails to explain why the manner in which crimes were committed against victim a/07053/15 is such that they cannot be attributed to the Sinia brigade.

254. In light of the above, the Appeals Chamber rejects the Defence’s arguments concerning victim a/07053/15.

d. Victims a/07090/15 and a/07093/15

255. With respect to victim a/07090/15 and victim a/07093/15, the Defence contends that the Trial Chamber’s refusal to disclose the redacted information in the dossiers of these victims violated Mr Ongwen’s fair trial rights as he is “the best person in the case” to verify and determine coherency of all information provided by the victims.⁵⁸⁰

256. At the outset, the Appeals Chamber notes that it has already considered and rejected the Defence’s arguments relating to the Trial Chamber’s refusal to disclose the

⁵⁷⁷ See [Defence’s Submissions of 19 May 2023](#), paras 93, 95-96.

⁵⁷⁸ Confidential *ex parte* Annex I to Impugned Decision, para. 2903 (footnotes omitted), *referring to Conviction Decision*, paras 213-221, 2124-2309, 3070-3071, 3073-3080, 3100, 3116, pp. 1075-1076.

⁵⁷⁹ [Appeal Brief](#), para. 150.

⁵⁸⁰ [Appeal Brief](#), paras 151-157.

redacted information, namely the victims' names, in the Sample, including in the dossiers of victim a/07090/15 and victim a/07093/15.⁵⁸¹

257. The Defence's present arguments regarding victims a/07090/15 and a/07093/15 are that, had it received access to the unredacted information in the dossiers of these victims, it would have been able to verify whether these victims suffered harm as a result of sexual and gender based crimes perpetrated by individuals or groups in the Sinia brigade under Mr Ongwen's command.⁵⁸² In this respect, the Appeals Chamber notes that the Trial Chamber considered and dismissed the Defence's similar arguments relating to the redactions of the names of (i) the group which abducted victim a/07090/15, its commander and the victim's forced husband;⁵⁸³ and (ii) victim a/07093/15's forced husband, her commander and the escort of her forced husband.⁵⁸⁴ In reaching its conclusion to dismiss these arguments of the Defence,⁵⁸⁵ the Trial Chamber recalled the scope of Mr Ongwen's conviction for SGBC not directly perpetrated by him (Counts 61 to 68), and reviewed the redactions implemented in their dossiers.⁵⁸⁶ It concluded that the redactions in the dossier of victim a/07090/15 were not prejudicial to the Defence,⁵⁸⁷ and those in the dossier of victim a/07093/15 were necessary to ensure the victim's safety.⁵⁸⁸ Indeed, the Appeals Chamber has already noted, under the first ground of appeal, that the Trial Chamber's consideration of the submissions of the Defence on the dossiers of, among others, victims a/07090/15 and a/07093/15, shows that the Defence was able to make its observations, despite the redactions.⁵⁸⁹

258. In relation to the Defence's claim that Mr Ongwen is "the best person in the case" to verify and determine coherency of all information provided by the victims,⁵⁹⁰ the Appeals Chamber notes that the Trial Chamber, in its assessment of the Sample, had

⁵⁸¹ See paragraphs 45-56 above.

⁵⁸² See [Appeal Brief](#), paras 18, 153, 156.

⁵⁸³ Confidential *ex parte* Annex I to Impugned Decision, paras 2918, 2924, referring to [Defence's Submissions of 19 May 2023](#), paras 98-99. See also [Appeal Brief](#), para. 152.

⁵⁸⁴ Confidential *ex parte* Annex I to Impugned Decision, paras 2934, 2940, referring to [Defence's Submissions of 19 May 2023](#), para. 102. See also [Appeal Brief](#), para. 155.

⁵⁸⁵ Confidential *ex parte* Annex I to Impugned Decision, paras 2924, 2940.

⁵⁸⁶ Confidential *ex parte* Annex I to Impugned Decision, paras 2924, 2938, 2940.

⁵⁸⁷ Confidential *ex parte* Annex I to Impugned Decision, para. 2924.

⁵⁸⁸ Confidential *ex parte* Annex I to Impugned Decision, para. 2940.

⁵⁸⁹ See paragraph 47 above.

⁵⁹⁰ [Appeal Brief](#), paras 153, 156.

before it the unredacted accounts of all victims in the Sample and that, on this basis, it was able to determine coherency and credibility of accounts of victims a/07090/15 and a/07093/15, as well as consistency of their accounts with the relevant findings in the Conviction Decision and the accounts of other individuals in the Sample who were victims of the same crimes.⁵⁹¹

259. In light of the above, the Appeals Chamber rejects the Defence's submissions in this regard.

260. Lastly, the Appeals Chamber notes the Defence's submission that the Trial Chamber was required to find that the man assigned as "husband" to victim a/07090/15 "was definitely" under Mr Ongwen's command.⁵⁹² However, the Defence does not explain why the Trial Chamber ought to have made its finding to a standard that appears to be different from the standard of balance of probabilities, which the Trial Chamber applied in these proceedings. As such, the Appeals Chamber rejects the Defence's argument.

e. Overall conclusion

261. Having dismissed or rejected all arguments of the Defence with respect to the Four Victims, and noting the absence of any substantiation pertaining to its request for review and adjustment of the estimated number of victims of thematic crimes,⁵⁹³ the Appeals Chamber rejects the fourteenth ground of appeal in its entirety.

VII. APPROPRIATE RELIEF

262. In an appeal pursuant to article 82(4) of the Statute, the Appeals Chamber may confirm, reverse or amend a reparation order.⁵⁹⁴ In the present case it is appropriate to confirm the Impugned Decision.

⁵⁹¹ See Confidential *ex parte* Annex I to Impugned Decision, paras 2920-2926, 2936-2942.

⁵⁹² [Appeal Brief](#), para. 153.

⁵⁹³ See [Appeal Brief](#), paras 158-159.

⁵⁹⁴ Rule 153(1) of the Rules.

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



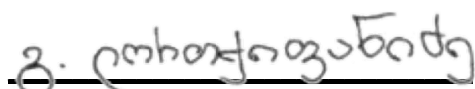
Judge Solomy Balungi Bossa
Presiding



Judge Tomoko Akane



Judge Luz del Carmen Ibáñez Carranza



Judge Gocha Lordkipanidze



Judge Erdenebalsuren Damdin

Dated this 7th day of April 2025

At The Hague, The Netherlands