

1 International Criminal Court
2 Appeals Chamber
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
5 Presiding Judge Solomy Balungi Bossa, Judge Tomoko Akane,
6 Judge Luz del Carmen Ibáñez Carranza, Judge Gocha Lordkipanidze and Judge
7 Erdenebalsuren Damdin
8 Delivery of Judgment on the Appeal on the Reparation Order - Courtroom 1
9 Monday, 7 April 2025
10 (The hearing starts in open session at 2.29 p.m.)
11 THE COURT USHER: [14:29:15] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE BOSSA: [14:30:10] Good afternoon, everyone.
15 Would the court officer please call the case.
16 THE COURT OFFICER: [14:30:22] Good afternoon, Madam President.
17 Situation in the Republic of Uganda, in the case The Prosecutor versus Dominic
18 Ongwen, case reference ICC-02/04-01/15.
19 And for the record, we are in open session.
20 PRESIDING JUDGE BOSSA: [14:30:40] Thank you.
21 My name is Solomy Balungi Bossa, I'm presiding in this appeal arising from the case
22 of The Prosecutor v. Dominic Ongwen. My fellow Judges in this appeal are
23 Judge Tomoko Akane, on my immediate left -- right, sorry; Judge Luz del Carmen
24 Ibáñez Carranza, on my immediate left; Judge Gocha Lordkipanidze, on the extreme
25 right; and Judge Erdenebalsuren Damdin, on the extreme left.

1 I note for the record that Mr Ongwen is attending this hearing remotely. I note
2 the presence of the Defence team, the Legal Representatives of Victims, the Office of
3 Public Counsel for the Victims, the Trust Fund for Victims, Victims Participation and
4 Reparations Section and the Office of the Prosecutor. I also note for the record that
5 some of the Legal Representatives of Victims are attending this hearing remotely with
6 the authorisation of the Appeals Chamber. I take it that the attendees are the same
7 as the ones appearing on the list which the court officer kindly provided to
8 the Chamber before the hearing. If the composition of any of the teams has changed,
9 please notify the court officer by email.

10 The Appeals Chamber is today delivering its judgment in the appeal filed by
11 the Defence against the decision of Trial Chamber IX of 28 February 2024 entitled
12 "Reparations Order". I shall refer to that decision as the "Impugned Decision".
13 This is a non-authoritative summary of the Appeals Chamber's written judgment in
14 the appeal. The written judgment is the authoritative text and it will be notified after
15 this hearing.

16 Background to the appeal proceedings.

17 Mr Ongwen was convicted, on 4 February 2021, of crimes against humanity and war
18 crimes and sentenced to 25 years of imprisonment. On 28 February 2024,
19 the Trial Chamber issued the Impugned Decision, which the Defence subsequently
20 appealed. The Defence raises eleven grounds of appeal.

21 Today's Appeals Chamber judgment is unanimous. For the reasons that I shall
22 proceed to outline, the Impugned Decision is confirmed.

23 The appeal.

24 A. Ground of appeal number 1: Alleged erroneous refusal to disclose the names of
25 victims.

1 Under the first ground of appeal, the Defence submits that the Trial Chamber erred
2 by refusing to order the disclosure of the names of potential beneficiaries of
3 reparations.

4 The Appeals Chamber notes, when deciding to maintain the redactions applied to
5 the potential beneficiaries' dossiers, the Trial Chamber referred to the victims'
6 concerns for their safety upon Mr Ongwen's return after serving the sentence. In
7 their submissions to the Trial Chamber, the victims also referred to the threat which,
8 in their view, the Lord's Resistance Army still poses. The Trial Chamber thus
9 identified the danger that the disclosure of the identity of potential beneficiaries
10 might cause.

11 Furthermore, the Appeals Chamber notes that, despite this nondisclosure,
12 the Defence was able to make its observations on the victims' dossiers and the
13 Defence has therefore failed to demonstrate that it was "unable to make a fair
14 assessment" and that it is right to conduct a meaningful review of the victims'
15 dossiers -- and its right to conduct a meaningful review of victims' dossiers was
16 unduly affected. The Appeals Chamber rejects the first ground of appeal.

17 B. Ground of appeal number 2: Alleged errors in the Trial Chamber's findings
18 relating to domestic proceedings.

19 Under the second ground of appeal, the Defence submits that the Trial Chamber erred
20 in rejecting the Defence's request concerning "dual claimants", who, in the view of
21 the Defence, will benefit both from an award made by the High Court of Uganda and
22 from the award made in the Impugned Decision.

23 The Appeals Chamber observes that the decision of the High Court of Uganda
24 addresses harms arising out of an alleged violation, by the government of Uganda, of
25 the landowners' "right to property and to a clean environment", and not from any

1 crimes under the Statute. It therefore rejects the Defence's contentions regarding
2 the alleged overlap between the plaintiffs in the case before the High Court of Uganda
3 and the victims in the present case.

4 The Appeals Chamber rejects the second ground of appeal.

5 Ground of appeal 3: Alleged erroneous presumption regarding residents of
6 IDP camps and nonresidents present at the time of the attacks.

7 Under the third ground of appeal, the Defence submits that the Trial Chamber erred
8 by presuming that civilian residents of camps for internally displaced persons, as well
9 as nonresidents who were present in the camps at the time of the attacks were victims
10 of the war crime of attack against the civilian population and persecution.

11 The Appeals Chamber observes that the Defence appears to confuse
12 the aforementioned presumption of victimhood with a presumption of harm adopted
13 by the Trial Chamber with respect to the victims of the same crimes.

14 The Trial Chamber, however, clearly considered victimhood and harm as two distinct
15 elements, both of which must be cumulatively met in order for a person to be eligible
16 to benefit from reparations. Furthermore, the Defence has not identified any error in
17 the Trial Chamber's adoption of the aforementioned presumptions of victimhood and
18 harm.

19 The Appeals Chamber rejects the third ground of appeal.

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

23 Under the fourth, eleventh and twelfth grounds of appeal, the Defence alleges errors
24 in relation to the Trial Chamber's consideration of the concept of extended family. It
25 also raises issues concerning the complementarity role of the Acholi traditional and

1 cultural mechanisms and factors such as *mato oput* and *cen*.

2 The Appeals Chamber considers that the Defence has failed to show any errors in
3 relation to the Trial Chamber's understanding of the concept of extended family in its
4 determination and projections on indirect victims of the attacks.

5 Regarding the principle of complementarity, to the extent that the Defence argues that
6 the traditional and cultural mechanisms should be incorporated into the Court's
7 statutory framework, its argument has already been rejected on appeal.

8 Furthermore, the Defence has failed to explain how these mechanisms should be
9 incorporated into the reparation system under the Court's legal texts and how such
10 incorporation would affect the scope of Mr Ongwen's liability for reparations.

11 Contrary to the Defence's claim, the Trial Chamber did not "equate" *cen* to "mental
12 illness in Western medicine". Rather, the Trial Chamber found that victims of
13 the attacks and direct victims of the crimes against child soldiers suffered "moral
14 harm" which includes "spiritual disturbances, [that is] *cen*" that had long-lasting
15 consequences.

16 The Trial Chamber, therefore, rejects the fourth, eleventh and twelfth grounds of
17 appeal.

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

20 Under the fifth ground of appeal, the Defence submits that the Trial Chamber erred
21 by awarding a symbolic cash payment of €750 to each victim, as such an award is not
22 provided for in the Statute or the Rules.

23 The Appeals Chamber finds that a trial chamber may order modalities of reparations
24 beyond restitution, compensation and rehabilitation, including those with a symbolic
25 value.

1 The Appeals Chamber previously determined that "collective reparations can include
2 the payment of sums of money to individuals to repair harm suffered". This does
3 not mean that any such payment must be considered as a compensation.

4 The determination of whether a given modality of reparations is appropriate must be
5 decided on a case-by-case basis. It must be grounded in the determination of
6 the harms caused.

7 The Defence has failed to demonstrate that the Trial Chamber erred when it made
8 a symbolic monetary award. The Appeals Chamber rejects the fifth ground of
9 appeal.

10 F. Sixth ground of appeal: Alleged error in prioritising participating direct victims
11 over nonparticipating direct victims.

12 Under the sixth ground of appeal, the Defence submits that the Trial Chamber erred
13 by prioritising participating direct victims over nonparticipating direct victims.

14 The Appeals Chamber notes that the Defence misrepresents the Impugned Decision
15 by focusing its arguments on the victims' participation status alone. However, this is
16 merely a part of the prioritisation scheme, which in fact sets out the priority primarily
17 according to the victims' vulnerability and needs. The Appeals Chamber rejects
18 the sixth ground of appeal.

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

21 Under the seventh ground of appeal, the Defence submits that the Trial Chamber
22 erred by failing to require two persons in the Sample to provide medical
23 documentation to prove their disabilities.

24 The Appeals Chamber notes that these two victims, in their applications, make no
25 mention of either of them having received assistance from a medical professional.

1 The Defence does not explain why it believes that they received such assistance. Nor
2 does the Defence substantiate its assertion that these two victims have medical
3 documentation concerning their injuries.

4 The Appeals Chamber rejects the seventh ground of appeal.

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

7 Under the eighth ground of appeal, the Defence submits that the Trial Chamber erred
8 in its estimation of the number of victims of the thematic crimes by failing to take into
9 account that Mr Ongwen was appointed as the commander of the Sinia brigade on
10 4 March 2004.

11 The Appeals Chamber finds it inappropriate that the Defence attempts to re-litigate
12 the same issue that has already been settled in the previous appellate proceedings
13 with respect to the Conviction Decision. The Appeals Chamber finds that
14 the Defence has failed to demonstrate any error in the Trial Chamber's dismissal of
15 the Defence's submission in this regard.

16 The Appeals Chamber rejects the eighth ground of appeal.

17 Ninth ground of appeal: Alleged errors concerning the Trial Chamber's use of
18 the divisor of four, instead of five, in relation to the number of LRA brigades,
19 Lord's Resistance Army brigades.

20 Under the ninth ground of appeal, the Defence submits that the Trial Chamber erred
21 by dividing the estimated number of former child soldiers and victims of sexual and
22 gender-based crimes in the Lord's Resistance Army by four, instead of five.

23 The Appeals Chamber notes that the Defence contends again that there were four
24 LRA brigades and Control Altar, which also "acted as a brigade", without
25 demonstrating any error by the Trial Chamber. The Appeals Chamber finds

1 the Defence has not shown that the Trial Chamber's use of the divisor of four was
2 unreasonable.

3 The Appeals Chamber rejects the ninth ground of appeal.

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

5 Under the thirteenth ground of appeal, the Defence submits that the Trial Chamber
6 erred in determining that victims suffered moral harm, without requiring
7 psychological evidence or the examination of victims by a psychologist.

8 However, the Defence raises this issue for the first time on appeal. It did not raise its
9 concerns in the proceedings before the Trial Chamber. As a result,

10 the Trial Chamber did not have an opportunity to consider the Defence's arguments
11 in this respect and make a finding thereupon. If the Appeals Chamber were to
12 examine them, this would exceed the scope of its appellate review. Therefore,
13 the Trial Chamber dismisses these arguments of the Defence.

14 The Defence also avers that it was a "double standard" for the Trial Chamber to refuse
15 to recognise Mr Ongwen's victimhood, while addressing similar victimhood with
16 respect to victims of the Lord's Resistance Army, LRA. However, the Trial Chamber
17 made findings on Mr Ongwen's victimhood in order to determine whether he was
18 criminally responsible. This is materially different from the present reparation
19 proceedings, where the Trial Chamber's enquiry was whether victims are eligible to
20 benefit from the awards for reparations.

21 The Appeals Chamber rejects the thirteenth ground of appeal.

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

24 Under the fourteenth ground of appeal, the Defence submits that the Trial Chamber
25 erred in its assessment of the dossiers of four victims, because it did not meet

1 the standard of balance of probabilities.

2 In respect of the first and second victims, the Appeals Chamber notes that the Defence
3 misrepresents the Trial Chamber's relevant findings and fails to identify any error of
4 the Trial Chamber therein.

5 Regarding the third and fourth victims, the Appeals Chamber notes that the Defence
6 was able to make its observations on their dossiers, despite the redactions applied to
7 some of the information. Furthermore, the Trial Chamber had before it
8 the unredacted accounts of all victims in the Sample and, on this basis, it was able to
9 determine coherency and credibility of their accounts.

10 The Appeals Chamber rejects the fourteenth ground of appeal.

11 V. Final remarks.

12 I should like to end by thanking my colleagues on the bench, counsels of the Defence,
13 the Victims Groups, the Trust Fund for Victims, the Victims Participation and
14 Reparations Section, as well as the staff of the Chamber who worked on this judgment,
15 all of the staff of the Registry, including the transcribers, interpreters and security
16 personnel, who have assisted with today's hearing. There is a lot of work that goes
17 on behind the scenes to ensure that these hearings run smoothly and
18 the Appeals Chamber is very grateful to all those involved.

19 This marks the end of these proceedings.

20 THE COURT USHER: [14:50:42] All rise.

21 (The hearing ends in open session at 2.50 p.m.)