

**Cour
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**International
Criminal
Court**



Original: **English**

No.: **ICC-02/04-01/15**
Date: **17 September 2024**

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

Trust Fund for Victims' Observations on the "Defence Appeal Brief in Support of its Appeal of the Reparations Order dated 28 February 2024" submitted on 24 June 2024, ICC-02/04-01/15-2093-Conf

Source: Trust Fund for Victims

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

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Section**

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BACKGROUND

1. On 28 February 2024, Trial Chamber IX issued an order for reparations (“Impugned Decision”) against Mr Ongwen, ordering collective community-based reparations focused on rehabilitation, and symbolic and satisfaction measures to the direct and indirect victims of the crimes for which he was convicted, through the Trust Fund for Victims (“TFV”). The Trial Chamber set Mr Ongwen’s liability at EUR 52,429,000, and instructed the TFV to develop a draft implementation plan (“DIP”) for reparations.¹
2. The Reparations Order seized the TFV pursuant to rule 98(3) of the Rules of Procedure and Evidence and regulations 50(b) and 54 of the Regulations of the Trust Fund for Victims (“TFV Regulations”).
3. On 22 April 2024, the Defence of Mr Ongwen filed a notice of appeal against the Reparations Order pursuant to article 82 (4) of the Rome Statute (the “Statute”),² setting out 15 grounds of appeal and requesting suspensive effect of the appeal pursuant to article 82 (3) of the Statute (“Notice of Appeal”).
4. On 1 May 2024, the TFV filed its “Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence”, preemptively requesting leave to make observations on issues arising from the Defence’s appeal.³
5. On 6 May 2024, the Defence requested the Appeals Chamber to reject the TFV Request as premature.⁴
6. On 16 May 2024, the Appeals Chamber deferred its ruling on the TFV Request, as the grounds of appeal had not yet been fully developed.⁵

¹ Reparations Order, 28 February 2024, ICC-02/04-01/15-2074 (“Reparations Order”).

² Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for Suspensive Effect, 22 April 2024, [ICC-02/04-01/15-2084](#).

³ Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence, 1 May 2024, [ICC-02/04-01/15-2087](#), paras 27-28.

⁴ Defence Response to the Registry’s and TFV’s Submissions on Suspensive Effect and Rule 103 of the Rules of Procedure and Evidence, 6 May 2024, [ICC-02/04-01/15-2091](#), paras 17-18.

⁵ Decision on the Defence request for suspensive effect, 16 May 2024, [ICC-02/04-01/15-2092](#), para. 38.

7. On 24 June 2024, the Defence filed its appeal brief (“Appeal Brief”).⁶
8. On 12 July 2024, the Appeals Chamber issued its “Decision replacing the Presiding Judge of the Appeals Chamber in the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX entitled ‘Reparations Order’”.⁷
9. On 23 and 26 August 2024 the Legal Representative of Victims (“Victims Group 1”) and the Common Legal Representative of Victims (“Victims Group 2”) filed their respective responses to the Appeal Brief.⁸
10. On 3 September 2024, the Appeals Chamber issued its “Decision on the Trust Fund for Victims’ request for leave to make observations”, granting leave for the TFV to make observations on the issues of the symbolic award under the fifth ground of appeal, on the prioritisation of victims under the sixth ground of appeal, and on other matters arising in the appeal related to the role of the TFV in the implementation process by 16h00 on 17 September 2024 (“Invitation”).⁹

OBSERVATIONS

11. In accordance with the Invitation, the TFV hereby provides its observations on issues arising from the Defence’s Notice of Appeal and Appeal Brief.¹⁰ In providing its observations, the TFV acts, considering that it is not a party to the proceedings and that pursuant to article 75(2) of the Statute, it has been ordered by the Trial Chamber to propose a draft implementation plan for reparations, and will implement the approved plan. The TFV’s observations are also

⁶ Defence Brief in Support of its Appeal of the Reparations Order dated 28 February 2024, ICC-02/04-01/15-2093-Conf, with confidential Annex A and public Annexed B-D (public redacted version registered on 17 July 2024 ([ICC-02/04-01/15-2093-Red](#))) (Appeal Brief).

⁷ Decision replacing the Presiding Judge of the Appeals Chamber in the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX entitled ‘Reparations Order’, [ICC-02/04-01/15-2094](#), 12 July 2024.

⁸ Victims’ Response to the “Defence Brief in Support of its Appeal of the Reparations Order dated 28 February 2024”, 23 August 2024, ICC-02/04-01/15-2095-Conf (public redacted version registered on 6 September 2024 ([ICC-02/04-01/15-2095-Red](#))); Response of the Common Legal Representative of Victims to the “Defence Brief in Support of its Appeal of the Reparations Order dated 28 February 2024”, 26 August 2024, [ICC-02/04-01/15-2096](#) (reclassified as public on 3 September 2024).

⁹ Decision on the Trust Fund for Victims’ request for leave to make observations, 3 September 2024, [ICC-02/04-01/15-2098](#), paras 11-12.

¹⁰ Invitation, paras 11-12.

informed by its experience due to its prior role in the various reparations proceedings before the Court.

12. Pursuant to the Invitation, and after considering all of the Defence’s grounds of appeal, the TFV provides observations limited to two issues pertaining directly to its mandate: (1) Ground 5, i.e. the symbolic payment of EUR 750 and (2) Ground 6, i.e. the prioritisation of victims.

1. Observations on Ground 5 of the Defence’s Appeal related to symbolic award of €750

13. In the Impugned Decision, the Trial Chamber ordered collective community-based reparations focused on rehabilitation and symbolic/satisfaction measures, the latter including, but not limited to, a symbolic payment of €750 to each victim.¹¹ The Trial Chamber held that “[w]hile compensation and restitution modalities were proposed by the parties and some participants, the Chamber concludes that they are not appropriate in this case.”¹²

14. The Defence argues under Ground 5 of its Appeal Brief that the Trial Chamber “erred in law and procedure by issuing the symbolic award of €750 per victim, specifically not intending this award to act as partial restitution or compensation for harm suffered”.¹³

15. This ground of appeal raises the legal issue of whether payments (i.e. cash disbursements) to victims can only fall under the modality of reparations called “compensation” or whether they can be categorised as symbolic payments different from compensation.

16. The TFV understands this ground of appeal to question the legal basis for awarding reparations. As set out in article 75 (1) of the Statute, the principles relating to reparations (“principles on reparations”¹⁴) form the legal basis for: a) determining “the scope and extent of any damage, loss and injury to, or in respect of, victims”, and b) awarding the reparation

¹¹ Impugned Decision, paras 613, 621.

¹² Impugned Decision, para. 614 [footnotes omitted].

¹³ Appeal Brief, para. 67.

¹⁴ See for terminology *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Amended Order for Reparations, 3 March 2025, [ICC-01/04-01/06-3129-AnxA](#), p.1, Heading A.

modalities pursuant to article 75 (2) of the Statute. The principles applied need to be clearly stipulated by the Trial Chamber and applied in the Impugned Decision.¹⁵

17. The TFV respectfully submits that the following three issues appear to be of relevance to the resolution of this ground of appeal:

18. First, after considering what modalities of reparations to order in the circumstances of the specific case, the TFV understands that the Trial Chamber, taking into account the high number of victims, the extent of the multi-layered harm suffered by the victims and the consideration that the implementation of reparations must be probable, decided not to award compensation as an applicable modality.¹⁶ As a consequence thereof and in line with the principles of reparations enunciated in the Impugned Decision,¹⁷ the Impugned Decision does not contain an assessment in monetary terms of the economic or moral damage suffered by the victims, to which any compensation award would need to be appropriate and proportional. The TFV considers that this approach of awarding only certain modalities of reparations in light of the circumstances of the specific case is in line with the prior jurisprudence of the Court.¹⁸

19. Second, the Impugned Decision establishes in the principles on reparations that payments may be symbolic measures, thereby building on the principle [on reparations] that reparations measures may have symbolic value.¹⁹ The Trial Chamber determined that “symbolic and satisfaction measures in this case are directed at addressing all harms”.²⁰ The TFV respectfully

¹⁵ *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, 3 March 2025, [ICC-01/04-01/06-3129](#), paras 52, 53.

¹⁶ Impugned Decision, paras. 612, 613, 623.

¹⁷ Impugned Decision, paras 59 (adopting the principles of reparations as established by the Court’s jurisprudence in the case *Ntaganda*, and 71 (v)), see also *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Amended Order for Reparations, 3 March 2025, ICC-01/04-01/06-3129-AnxA, paras 37 to 40, the latter stating: “Although some forms of damage are essentially unquantifiable in financial terms, compensation is a form of economic relief that is aimed at addressing, in a proportionate and appropriate manner, the harm that has been inflicted”

¹⁸ See *Prosecutor v. Germain Katanga*, Appeals Chamber, Judgement on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, ICC-01/04-01/07-3778-Red, para. 72.

¹⁹ Impugned Decision, paras 59 (adopting the principles of reparations as established by the Court’s jurisprudence in the case *Ntaganda*, and 71 (v)), see also *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Amended Order for Reparations, 3 March 2025, ICC-01/04-01/06-3129-AnxA, para. 34.

²⁰ Impugned Decision, para. 620.

submits that such an approach to symbolic reparations measures in the specific circumstances of the *Ongwen* case appears appropriate.

20. Third, whether cash payments can qualify as one of the modalities to repair the harm suffered by victims in the context of collective reparations has been addressed by prior jurisprudence. The Appeals Chamber held that “collective reparations can include the payment of sums of money”.²¹ The Appeals Chamber did not indicate that any such payment must be considered as a compensation. Furthermore, the Appeals Chamber acknowledged the “many permutations possible [in the context of collective reparations], which will also be dependent on the facts of particular cases”.²² The TFV therefore respectfully submits that the Trial Chamber in awarding a symbolic payment as part of collective reparations determined and applied the principles on reparations in line with prior jurisprudence and by reference to the specific circumstances of the *Ongwen* case. In this context, the TFV notes that approaching the matter from the perspective of whether compensation is a form of individual reparations²³ is a legal issue which appears not relevant to this ground of appeal.

21. The TFV notes that the amount of the symbolic payment and the considerations underlying its determination are not on appeal and accordingly does not submit arguments in this regard.

2. Observations on Ground 6 of the Defence’s Appeal based on prioritisation

22. In the Impugned Decision, the Trial Chamber ruled that prioritisation, in line with the relevant principle on reparations, may need to be provided for certain victims who are in a particularly vulnerable situation or require urgent assistance.²⁴ The Impugned Decision motivates the prioritisation by, on the one hand highlighting “that it does not consider that the harm suffered by a certain category of victims is greater, more important, or more significant

²¹ *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, 18 July 2019, [ICC-01/04-01/06-3466-Red](#), para. 40.

²² *Ibid.*

²³ Impugned Decision, para. 614, which reads: “Restitution and compensation are forms of individual reparation, which the Chamber has already ruled is not appropriate due to the extremely high number of victims in this case.”

²⁴ Impugned Decision, para. 655.

than others”, while on the other hand explaining that in making its determination it “merely endeavours to provide a workable framework on the circumstances of the present case, while ensuring that victims who are in the most *urgent* need of dire assistance, whose lives are at an increased risk of danger, receive particular attention in the near term”.²⁵ In conclusion, with respect to prioritisation among victims as to the order in which they will receive reparations, the Trial Chamber determined: “first priority should be given to vulnerable victims who are in dire need of urgent assistance; second priority should be given to vulnerable direct participating victims; and third priority should be given to all remaining vulnerable victims. Lastly, all remaining non-vulnerable victims should receive reparations”.²⁶

23. The Defence argues under Ground 6 of the Appeal Brief that the Chamber “erred in procedure by prioritising direct victims who were participating victims of the case over direct victims who did not participate in the case”.²⁷

24. The TFV cannot discern from the submission what kind of error has been alleged in this ground of appeal, as it is labelled a procedural error, while the Appeal Brief recounts facts and alleges unfairness in general terms.

25. In relation to this ground of appeal, as the body implementing the reparations, the TFV respectfully submits that it treats the prioritisation established by the Impugned Decision as binding on the way it will implement all modalities of reparations. It also notes that information about the prioritisation is provided to victims and communities via outreach and other informational activities including by the TFV during the consultations with victims.²⁸ Accordingly, the TFV has developed its plans on the assumption that it will first focus on victims in dire need of urgent assistance, while the Registry proceeds with the identification and verification process. Should, in the application of the prioritisation to the different modalities,

²⁵ Impugned Decision, para. 658 (footnotes omitted).

²⁶ Impugned Decision, para. 665.

²⁷ Appeal Brief, para. 76.

²⁸ Trust Fund for Victims’ submission of Draft Implementation Plan, 3 September 2024, [ICC-02/04-01/15-2099](#), paras 18 *et seq.*

changes be required due to new facts and circumstances arising, the TFV intends to address the Trial Chamber pursuant to regulation 57 of the Regulations of the Trust Fund for Victims.

RELIEF SOUGHT

The TFV hereby respectfully requests the Appeals Chamber to take note of its observations in this appeal.



Deborah Ruiz Verduzco
Executive Director of the Secretariat of the Trust Fund for Victims,

Dated this 17th of September 2024
At The Hague, The Netherlands