

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **27 September 2024**

APPEALS CHAMBER

Before:

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

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

PUBLIC

**Defence Response to the Trust Fund for Victims' Submissions on Pursuant to Rule 103 of
the Rules and Procedure and Evidence**

Source: Defence for Dominic Ongwen

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

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I. INTRODUCTION

1. Pursuant to the Appeals Chamber *Decision on the Trust Fund for Victims request for leave to make observations*,¹ the Defence for Dominic Ongwen ('Defence') hereby submits its response to the submissions Trust Fund for Victims ('TFV').² The Defence submits this response to ensure that issues are not being misconstrued or misinterpreted as is done by the TFV.

II. PROCEDURAL HISTORY

2. On 28 February 2024, Trial Chamber IX issued the *Reparations Order* against Mr Ongwen.³
3. On 14 March 2024, the Appeals Chamber granted the Defence an extension until 22 April 2024 to file its notice of appeal and 24 June 2024 to file its appeals brief.⁴
4. On 22 April 2024, the Defence filed its notice of appeal against the Impugned Decision.⁵
5. On 1 May 2024, the TFV requested the Appeals Chamber's permission to submit observations pursuant to Rule 103 of the Rules of Procedure and Evidence ('RPE').⁶
6. On 6 May 2024, the Defence requested the Appeals Chamber to reject observations from the TFV pursuant to Rule 103 of the RPE as the request was premature.⁷
7. On 16 May 2024, the Appeals Chamber deferred its decision on the Rule 103 of the RPE request until after the Defence filed its brief in support of its appeal.⁸

¹ Appeals Chamber, *Order setting a time limit for submissions on the request for suspensive effect*, [ICC-02/04-01/15-2085](#), para. 7.

² Appeals Chamber, *Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-2087](#).

³ Trial Chamber IX, *Reparations Order*, [ICC-02/04-01/15-2074](#) ('Impugned Decision')

⁴ Appeals Chamber, *Decision on the Defence's request for time extension for the notice of appeal and appeal brief against Trial Chamber IX's "Reparations Order"*, [ICC-02/04-01/15-2080](#).

⁵ Appeals Chamber, *Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for Suspensive Effect*, [ICC-02/04-01/15-2084](#).

⁶ Appeals Chamber, *Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-2087](#).

⁷ Appeals Chamber, *Defence Response to the Registry's and TFV's Submissions on Suspensive Effect and Rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-2091](#).

⁸ Appeals Chamber, *Decision on the Defence request for suspensive effect*, [ICC-02/04-01/15-2092](#), para. 38.

8. On 24 June 2024, the Defence filed its brief in support of its appeal against the Impugned Decision.⁹
9. On 23 August 2024, the Legal Representatives for Victims ('LRV') filed its response to the Defence's Appeal Brief.¹⁰
10. On 26 August 2024, the Common Legal Representative of Victims ('CLRV') filed her response to the Defence's Appeal Brief.¹¹
11. On 3 September 2024, the Appeals Chamber granted leave to the TFV to submit observations on the Defence's fifth and sixth ground of appeal.¹² The Chamber granted the Defence, LRV and CLRV until 27 September 2024 at 16:00 to file responses to the Rule 103 submissions from the TFV.¹³
12. On 17 September 2024, the TFV filed its observations pursuant to Rule 103 of the RPE.¹⁴

III. RESPONSE TO THE OBSERVATIONS OF THE TRUST FUND FOR VICTIMS

A. The Trust Fund for Victims misconstrues Ground 5.

13. Notwithstanding the Defence's other ground of appeal, the Defence admits that there is a high number of victims resulting from the convictions in the *Trial Judgment* and the mathematical determinations made by Trial Chamber IX in the Impugned Decision. Furthermore, the Defence does not contend the legality of generalised monetary amounts given to victims for the purpose of restitution, compensation or rehabilitation because of having such a high number of victims. The Defence put forth Ground 5 because Trial Chamber IX specifically noted that the symbolic amount of €750 per victim was not given as restitution or compensation for the harm suffered

⁹ Appeals Chamber, *Defence Brief in support of its Appeal of the Reparations Order dated 28 February 2024*, ICC-02/04-01/15-2093-Conf (PRV found [here](#)) ('Appeals Brief').

¹⁰ Appeals Chamber, *Victims' Response to the "Defence Brief in Support of its Appeals of the Reparations Order dated 28 February 2024"*, ICC-02/04-01/15-2095-Conf (PRV found [here](#)).

¹¹ Appeals Chamber, *Response of the Common Legal Representative of Victims to the "Defence Brief in Support of its Appeals of the Reparations Order dated 28 February 2024"*, [ICC-02/04-01/15-2096](#).

¹² Appeals Chamber, *Decision on the Trust Fund for Victims' request for leave to make observations*, [ICC-02/04-01/15-2098](#), paras 11-12.

¹³ *Ibid*, para. 12.

¹⁴ Appeals Chamber, *Trust Fund for Victims' Observations on the "Defence Brief in Support of its Appeals of the Reparations Order dated 28 February 2024" submitted on 24 June 2024*, ICC-02/04-01/15-2093-Conf, [ICC-02/04-01/15-2100](#).

by the victims.¹⁵ The €750 symbolic award is not a meaningful one, being a symbolic charitable gift instead of a transformative amount.¹⁶

14. The Defence further notes that the Appeals Chamber was not called upon to decide whether a symbolic cash payment was permissible pursuant to the Rome Statute in *Katanga*.¹⁷ As the Defence wrote in its Appeals Brief, this was not in contention on appeal in *Katanga*.¹⁸ The symbolic reparations given were that of monuments and buildings, ones which have communal healing and *rehabilitative* purposes. The symbolic award of €750 carries none of those characteristic.
15. Likewise, the Defence asserts that Trial Chamber IX's determination that the symbolic award of €750 is not intended to address the harm suffered by the victims,¹⁹ specifically noting that Trial Chamber IX stated that it was not meant to be compensation or restitution for the harm suffered.²⁰ The Defence specifically requests a decision from the Appeals Chamber on this issue because of the lacuna created by Trial Chamber IX in awarding this gift of €750 per victim without it being specifically given as, at least in part, compensation or restitution.
16. Finally, the Defence highlights that the TVF acknowledges that in *Lubanga*, the Appeals Chamber decision "did not indicated that any such payment must be considered as [...] compensation [restitution]."²¹ The Defence asserts that the nature of the payment must be specifically made as the drafters of the Rome Statute intended, as compensation or restitution. As the Defence wrote in its Appeals Brief, the Appeals Chamber has dealt with similar situations before, giving due deference to the fact that a chamber cannot go beyond the letter of the law and act *ultra vires*.²²
17. The Defence respectfully request the Appeals Chamber to dismiss the arguments of the TFV related to Ground 5 of the Appeals Brief.

¹⁵ [Impugned Decision](#), para. 626.

¹⁶ Trial Chamber VI, *Reparations Order*, [ICC-01/04-02/06-2659](#), para. 91.

¹⁷ The Defence notes footnote 18 of the TFV submission, ICC-02/04-01/15-2100.

¹⁸ [Appeals Brief](#), paras 67-75.

¹⁹ See Appeals Chamber, *Trust Fund for Victims' Observations on the "Defence Brief is Support of its Appeals of the Reparations Order dated 28 February 2024"* submitted on 24 June 2024, ICC-02/04-01/15-2093-Conf, [ICC-02/04-01/15-2100](#), para. 19.

²⁰ [Appeals Brief](#), para. 74 (citing [Impugned Decision](#), para. 626).

²¹ Appeals Chamber, *Trust Fund for Victims' Observations on the "Defence Brief is Support of its Appeals of the Reparations Order dated 28 February 2024"* submitted on 24 June 2024, ICC-02/04-01/15-2093-Conf, [ICC-02/04-01/15-2100](#), para. 20 (citing 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'*, [ICC-01/04-01/06-3466-Red](#), para. 40).

²² [Appeals Brief](#), paras 70-75.

B. The Trust Fund for Victims gives no substantial argument against Ground 6.

18. The TFV gave no substantial argument as to why Ground 6 of the Defence's Appeals Brief is not an appropriate measure.²³ The TFV merely states that it is implementing Trial Chamber IX's instructions and asks the Appeals Chamber to confirm Trial Chamber IX's instructions.
19. Whether an error of procedure or fact, the Defence asserts that there should be no distinction between those who were able to file, in the short time prescribed by Trial Chamber IX, a victim participation application and those who could not. This is not debating whether those in dire need should receive their reparations first, but that when there is no dire need of urgent assistance, victims should be treated equally. It was physically impossible for VPRS, the CLRV and the LRV to collect victim applications from every person in the amount of time allotted by Trial Chamber IX.
20. The Defence defends its position of the disestablishment of the difference between participating victims and non-participating victims in terms of which category receives reparations first. The Defence considers that such a divide between victims who are not in dire need has the real possibility of creating negative sentiments against the Court. What happens when a person who was seriously affected by one of the crimes does not receive any reparations because the limit on the crime or crime site location has been reached? How well would that go over with the victims?
21. The manner which Trial Chamber IX decided to give preference to participating victims over non-participating victims is arbitrary and pointless. It sets a class of victim above others without reason. As such, and because the TFV did not make true substantive submissions, the Defence requests the Appeals Chamber to dismiss the TFV submissions on Ground 6.

IV. RELIEF

22. The Defence for Dominic Ongwen respectfully request the Appeals Chamber to dismiss the Trust Fund for Victims' submission on Ground 5 and Ground 6 of the Appeals Brief.

²³ See Appeals Chamber, *Trust Fund for Victims' Observations on the "Defence Brief is Support of its Appeals of the Reparations Order dated 28 February 2024" submitted on 24 June 2024*, ICC-02/04-01/15-2093-Conf, [ICC-02/04-01/15-2100](#), paras 22-25.

Respectfully submitted,



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Chief Charles Achaleke Taku
On behalf of Dominic Ongwen

Dated this 27th day of September, 2024
At Maryland, United States of America