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**International
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TRIAL CHAMBER II

Before: Judge María del Socorro Flores Liera, Presiding Judge
Judge Kimberly Prost
Judge Nicolas Guillou

SITUATION IN UGANDA

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

**Public Document
With Public Annex**

**Observations on the Draft Implementation Plan for reparations
submitted by the Trust Fund for Victims**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. The Common Legal Representative of Victims (the “CLR”) hereby files her observations on the “Trust Fund for Victims’ submission of Draft Implementation Plan”(the “DIP” or the “Plan”).¹

2. Having assessed the Plan on the basis of the three elements that Trial Chamber IX (the “Chamber”) instructed the Trust Fund for Victims (“TFV”) to include in the DIP, the CLR considers that additional information are necessary to, on the one hand, ensure the full appraisal of the Chamber prior to its decision on the DIP’s approval; and, on the other hand, enable the CLR to discharge her duties and provide her clients with sufficient information about the process.

3. In particular, concerning the first element required in the DIP, namely the reparations projects or measures that the TFV intends to develop under each modality, the Plan is overly general and lacks a specific focus on child victims and SGBC victims, as well as details on the expected locations of services and coverage of certain fees, if necessary.

4. Concerning the second element, namely the harm each project intends to remedy, the Plan fails to address certain types of prejudice explicitly recognised by the Chamber; namely, material harm in the form of loss of shelter and loss of property for the victims of the attacks, as well as material harm in the form of loss of education for former child soldiers, children born of SGBC and direct victims of SGBC.

5. Concerning the third element, namely, a brief overview of the steps, including timeline, the Plan lacks details on the intended sequencing of the implementation of the reparations measures and of the timing for the concrete implementation of said measures.

¹ See the “Trust Fund for Victims’ submission of Draft Implementation Plan”, [No. ICC-02/04-01/15-2099](#), 3 September 2024, notified on 4 September 2024 (the “DIP Submission”), and Annex [No. ICC-02/04-01/15-2099-Anx](#) (the “DIP” or the “Plan”).

6. Furthermore, the CLRV shares some concerns expressed by the victims on the involvement of certain authorities in the design and implementation of reparations programmes and the selection of suitable and honest implementing partner(s).

7. Lastly, the CLRV considers that additional information on the funding for the reparations are necessary prior to the newly constituted Chamber making a decision on whether the Plan is appropriate and effective in repairing the harms suffered by the victims.

II. PROCEDURAL HISTORY

8. On 28 February 2024, the Chamber issued the Reparations Order, awarding collective community-based reparations focused on rehabilitation, and symbolic and satisfaction measures, and setting Mr Ongwen's liability at EUR 52,429,000.²

9. The Chamber also directed the TFV to submit a DIP by 3 September 2024 and the parties and the Registry to respond within thirty days of its submission.³

10. On 12 March 2024, the Presidency recomposed the trial chambers and assigned the *Ongwen* case to a newly composed Trial Chamber II (the "newly constituted Chamber").⁴

11. On 3 September 2024, the TFV submitted its Plan.⁵

² See the "Reparations Order" (Trial Chamber IX), [No. ICC-02/04-01/15-2074](#), with Annexes I, II and III, 28 February 2024 (the "Reparations Order").

³ *Idem*, page 360.

⁴ See the "Decision assigning judges to divisions and recomposing Chambers" (Presidency), [No. ICC-02/04-01/15-2079](#), 12 March 2024. See also, the "Decision notifying the election of a Presiding Judge and Single Judge" (Trial Chamber II), [No. ICC-02/04-01/15-2081](#), 15 March 2024.

⁵ See the DIP, *supra* note 1.

III. OBSERVATIONS

12. At the outset, the CLRV notes that the Chamber invited the parties and the Registry to provide observations on the DIP within 30 days from its submission.⁶ In this regard, while the DIP Chart - contained in Annex III to the Reparations Order - provides a column for “Reasoned Objections/Observations” by the parties and the Registry, the CLRV understands from the ruling that the legal representatives are also entitled to present observations complementing their position expressed concisely in said Chart (annexed to the present submission). This is in line with the Chamber’s instruction according to which the TFV could file a cover filing together with its submission of the DIP Chart.⁷

1) On the elements identified by the Chamber to be included in the DIP

13. The CLRV recalls that the Chamber instructed the TFV to include in the DIP the following elements: (i) the reparation projects and measures that it intends to develop under each modality; (ii) the corresponding harm that each project intends to remedy (physical, moral, material, community and or transgenerational harm); and (iii) a brief overview of the steps required for implementation of each project, including an estimated timeline for the implementation of each project and measure.⁸

14. Preliminarily, the CLRV indicates that the TFV’s proposals appear consonant with the views expressed by her clients during the consultations, held both before the issuance of the Reparations Order and, more recently, during the TFV’s preparation for the DIP. However, the CLRV posits that some level of details is still needed for the newly constituted Chamber to make its informed determination in order to ensure that the Plan adequately and concretely repairs the harms suffered by the victims and duly responds to the types and modalities of reparations ordered.

⁶ See the Reparations Order, *supra* note 2, para. 797.

⁷ *Idem*, para. 800.

⁸ *Idem*, para. 798.

15. This is particularly true considering that the Chamber held that its judicial role will conclude once the Reparations Order becomes final, and, subsequent to that, “[d]uring the administrative stage of implementation and execution, the Chamber will retain limited oversight to rule on the [Plan]”.⁹ In this context, ensuring that the parameters of implementation of the measures ordered are clear and unequivocally understood by all actors is essential.

16. The CLRV provides *infra* her observations in relation to each of the three elements identified by the Chamber as necessary to be included in the Plan.

(i) *The reparation projects and measures that the TFV intends to develop under each modality of reparations*

17. The CLRV notes that the measures proposed in the DIP are of a general nature and applicable to any reparations proceedings in the abstract. The DIP in its current state does not provide specific and tangible information as to the expected implementation of the reparations measures in the Ugandan context. In this regard, the Chamber acknowledged the need to take into account the specificities of the case in relation to cultural, familial and societal aspects.¹⁰

18. Additionally, the DIP does not sufficiently focus on child victims and SGBC victims. In relation to the proposed projects (and type of harms), the DIP does not specifically address the needs of children/young victims. While the *Ongwen* case constitutes a landmark towards the recognition of crimes against children, the Plan does not unfortunately include any specific information on particular methodology or approach which would take into account the specific nature of the victimisation of children harmed as result of the commission of the crimes for which Mr Ongwen was convicted.

⁹ *Idem*, para. 41.

¹⁰ *Idem*, para. 66.

19. This is particularly regrettable in light of the fact that the Chamber underlined in the Reparations Order “*the extensive manner in which children were affected by the crimes for which Mr Ongwen was convicted*”,¹¹ and updated the existing reparations principles concerning children. The newly adopted principles aim at ensuring that all victims who were children at the time of the crimes are included in the reparations process and that the implementation of the measures addressing their needs is done in adherence with the four principles of the Convention on the Rights of the Child and the child-right approach.¹² In particular, the Chamber underlined that reparations programmes in favour of child victims should fully guarantee the development of their personalities, talents and abilities.¹³

20. Therefore, the CLRV posits that the DIP should have contained specific elements indicating how the TFV intends to tailor the programmes targeting child victims both in terms of the methodology to engage with them and of the reparations services they are entitled to. In particular, since the Reparations Order acknowledges that former child soldiers and children born of SGBC suffered material harm in the form of, *inter alia*, loss of education,¹⁴ the Plan should have proposed special measures aiming at addressing said harm.

21. The same considerations are true for SGBC victims since the DIP also does not specifically focus on said category of victims. Similar to child victims, the Chamber recognised the specific needs of SGBC victims, as well as the fact that direct victims of SGBC likewise suffered from material harm in the form of, *inter alia*, loss of education.¹⁵

22. *Locations of the services* – Moreover, the DIP does not contain details about the locations where each measure will ultimately be implemented. In most instances, the Plan merely indicates that a specific measure will be implemented “*at appropriate*

¹¹ *Idem*, para. 79.

¹² *Idem*, paras. 79-83.

¹³ *Idem* para. 83.

¹⁴ *Idem*, paras. 332 and 376.

¹⁵ *Idem*, para. 314.

*locations in and around the four case locations, or in Gulu, and at other locations where beneficiaries, [...] reside, insofar as appropriate” or “at locally available medical/health facilities” or “at appropriate facilities” or “in and around the case locations and beyond, insofar as possible”.*¹⁶

23. The CLRV recalls the importance of providing services to beneficiaries in the areas where they habitually reside, or in close proximity to the areas in which they are currently located. In light of the current situation of services available in Northern Uganda, the Plan does not include sufficient information about solutions as how to provide medical and/or psychological services where facilities are absent (particularly in Pajule). In respect to this issue, the CLRV observes that transportation fees for the beneficiaries are not mentioned at all in the DIP (and she assumes said expenses will be covered by the TFV as per practice in past and ongoing reparations programmes).

24. The provision of more details on the above mentioned issues will allow the newly constituted Chamber to evaluate whether the DIP sufficiently take into account the specificity of each category of victims in the specific Ugandan context; and whether the DIP will adequately respond to the different harms identified by the Chamber.

(ii) The corresponding harm that each project intends to remedy (physical, moral, material, community and or transgenerational harm).

25. The Chamber ordered community-based rehabilitation programme directed at addressing all types of harms identified in the Reparations Order.¹⁷ In this regard, concerning material harms, none of the measures proposed in the DIP seems to address the lack of shelter/homes and loss of property, which are nonetheless explicitly recognised by the Chamber for all direct victims of the attacks.¹⁸

¹⁶ See the DIP – Annex, for instance under Measure Medical 1, Measure Psychological 2, Measure Socio-Economic 1, Measure Symbolic 1, Measure programme-wide.

¹⁷ See the Reparations Order, *supra* note 2, para. 617.

¹⁸ *Idem*, para. 414 (a) (iii). See also, paras. 251, 256, 307, 370 and 536 on presumption of material harm for direct victims of pillaging and destruction of property.

26. Additionally, as set out *supra*,¹⁹ material harm in the form of loss of education - incurred by former child soldiers, children born of SGBC and direct victims of SGBC -²⁰ is not specifically addressed in the DIP.

27. The provision of more details on the above mentioned issues will allow the newly constituted Chamber to evaluate whether the DIP will adequately respond to the different harm identified by the Chamber.

(iii) A brief overview of the steps required for implementation of each project, including an estimated timeline for the implementation of each project and measure

28. *Timeline of implementation* – The DIP does not contain enough information about the timing of the its implementation. In particular, the estimated timeline is unclear since the TFV indicates for each measure a duration of several months without clarifying against which benchmark(s) said estimation is calculated (for instance, under Measure Medical 1, Preparatory Phase point 1, the estimated duration is “4 to 8 months” while there is no explanation of what landmark is being used as a starting point to calculate said period).

29. This approach has understandably generated a number of queries by the victims who cannot simply understand the time needed before they will be able to benefit from the proposed reparations measures. In this regard, the CLRV recalls the need to ensure the prompt implementation of the reparations programme considering that each passing day has a significant impact on the lives of the victims who are in dire needs.

30. The provision of more details about the timeline will allow the newly constituted Chamber to objectively evaluate whether the imperatives of promptness, efficiency and effectiveness - which were considered by the Chamber itself as

¹⁹ See paras. 20 and 21.

²⁰ See the Reparations Order, *supra* note 2, paras. 314, 332 and 376.

important factors in ruling for a collective community-based award -²¹ will be met in the reparation process.

31. *Sequencing of implementation* – Moreover, in ordering collective community-based reparations,²² the Chamber identified, on the one hand, rehabilitation measures (“Component 1”) and, on the other hand, symbolic satisfaction measures (“Component 2”).²³ The Chamber did not specify in which order said components must be implemented, nor whether they should take place before during or after the symbolic payments.

32. The DIP does not provide any further elements of clarification concerning the sequencing of the reparations measures. It remains unclear whether Component 1 related to rehabilitation²⁴ will be implemented prior to Component 2 concerning symbolic and satisfaction measures.²⁵ This aspect is important for the victims because, during the consultations, they clearly expressed how the crimes severely impacted their lives and how the lack of reparative measures caused further deterioration of their living conditions. Consequently, the victims advocated for the implementation of rehabilitative measures as soon as possible. The implementation of said measures aiming at restoring, as far as possible, their “*independence, physical, mental, social, and vocational ability; and full inclusion and participation in society*”²⁶ will, in turn, make them more responsive to symbolic and satisfaction measures. Therefore, the latter should take place after the rehabilitation measures have benefitted the victims.

33. Thus, further provision of specific details about the sequencing of reparations measures will allow the Chamber to concretely assess whether the Plan will promptly and adequately respond to the needs of the victims.

²¹ *Idem*, paras. 578–579.

²² *Idem*, para. 574 and *seq.*

²³ *Idem*, paras. 613, 620 and 635–638.

²⁴ See the DIP, *supra* note 1, pages 2–6.

²⁵ *Idem*, pages 7–8.

²⁶ See the Reparations Order, *supra* note 2, para. 616.

2) Concerns expressed by victims in relation to the implementation of reparations

34. The CLRV notes that, for the purpose of drafting the Plan, the TFV consulted with a large number of stakeholders, including national, district and local authorities, community, cultural and religious leaders, as well as civil society organisations, in order to inform them, hear their views and determine ways in which they may contribute to the implementation of reparations.²⁷

35. In this regard, the CLRV wishes to inform the newly constituted Chamber that the victims have expressed some concerns about certain authorities who, if associated too closely, could jeopardise the reparations process. This fear is fuelled by prior experiences of official initiatives failing due to, *inter alia*, the rampant corruption, existing in Uganda.

36. In fact, the CLRV stresses that the design and implementation of the reparations programmes must be informed by the views expressed by the victims, which should continuously be sought, at all stages of the process.

37. The victims have also expressed a similar concern regarding the selection of appropriate implementing partner(s) and shared with the CLRV their fear that the organisation(s) selected might mismanage the funds and ultimately render the whole process ineffective.

38. Accordingly, the CLRV underlines the importance for the TFV of ensuring a rigorous review process of the proposals received by potential partner organisations, including by making sure that they are not known to the national authorities for matters of corruption.

²⁷ See the DIP, *supra* note 1, para. 15.

3) Issues related to funding

39. The CLRV welcomes the Board of Directors' commitment to mobilise resources to complement in full or to the maximum extent possible the Reparations Order.²⁸ She notes with concern, however, that at the date of the submission of these observations, she is unaware of whether funding or funding pledge had been secured yet for the purposes of implementing the reparations measures ordered. This raises questions as to whether the measures proposed in the DIP will in fact be implemented fully and concretely, and if so, when, and to which extent.

40. Therefore, the CLRV submits that - prior to approving the DIP – the Chamber should request additional information on (i) the current status of the efforts put in place by the TFV to collect the necessary financial resources to start the implementation process of reparations in a timely manner; (ii) whether the previously stated scarce funding situation has an impact on the procurement process to secure implementing partner(s); (iii) the current status of the TFV Request for Expression of Interest (EOI) to select implementing partner organisations in Uganda (expired on 1 October 2024) and the subsequent TFV procurement plan for identifying suitable partner(s) and relevant timelines; (iv) whether the TFV intends to publish further EOI and, in the affirmative, the respective timeline; (v) the amount of funds that will be allocated to the collective community-based rehabilitation measures; and (iv) funds already earmarked for reparations in the *Ongwen* case, if any.

41. Lastly, the CLRV notes that the DIP does not explicitly indicate whether the amount of liability of EUR 52,429,000 will be used to cover direct costs only and whether programme support costs will be covered through additional funds from the TFV. Indeed, in reaching the total amount of liability, the Chamber aggregated the estimates made for each of the components of the reparations programme, *i.e.* Component 1 concerning collective community-based rehabilitation programmes

²⁸ *Idem*, para. 31.

(estimated at EUR 15,000,000), Component 2 concerning collective community-based symbolic measures (estimated at EUR 100,000), and the last component, namely the payment of the symbolic awards of EUR 750 to an approximate number of victims (estimated to EUR 37,329,000).²⁹

42. In reaching this latter estimate, the Chamber multiplied the approximate number of victims by the amount they are entitled to receive,³⁰ therefore implying that any support costs for ensuring the delivering of the award (such as transfer fees and others) would be borne by the TFV.

43. Any other reading of the Reparations Order would result in considerably reducing the amount of reparations awarded to the victims, and making Mr Ongwen liable for programme support costs. Accordingly, the CLRV understands that all costs associated with running the reparations programme mentioned in the DIP, such as hiring personnel, transfer fees, etc. will be incurred by the TFV directly, and not deducted from the total amount awarded by the Chamber to the victims.

44. Finally, the CLRV recalls that, pursuant to Regulation 56 of its Regulations, the TFV should promptly inform the newly constituted Chamber of its decision to complement the amount of liability with its “*other resources*”.

²⁹ See the Reparations Order, *supra* note 2, para. 795.

³⁰ *Idem*, para. 790.

IV. CONCLUSION

43. In light of the above, the CLRV respectfully requests the newly constituted Chamber to instruct the TFV to provide additional information on the issues identified in the present submissions before ruling on the approval of the DIP within a short deadline in order not to delay the process.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda

Dated this 3rd day of October 2024

At The Hague, The Netherlands