

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **7 October 2024**

TRIAL CHAMBER II

Before:

**Judge Maria 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

**Defence Response to the Trust Fund for Victims' Submissions of the Draft Implementation
Plan**

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 Trial Chamber IX's *Reparations Order*¹, the Defence for Dominic Ongwen ('Defence') hereby submits its response to the *Trust Fund for Victims' submissions of Draft Implementation Plan* ('DIP').²

II. PROCEDURAL HISTORY

2. On 28 February 2024, Trial Chamber IX issued the *Reparations Order* against Mr Ongwen.³ Trial Chamber IX gave the Trust Fund for Victims ('TFV') until 3 September 2024 to submit a Draft Implementation Plan, and granted the Parties 30 days to respond to the TFV submission.
3. On 22 April 2024, the Defence filed its notice of appeal against the Impugned Decision and request for suspensive effect of the implementation of the *Reparations Order*.⁴
4. On 24 April 2024, the Appeals Chamber issued the *Order setting a time limit for submission on the request for suspensive effect*.⁵ The Appeals Chamber gave the TFV and Victims Participation and Reparations Section until 1 May 2024 to file a response, and the Defence and Legal Representatives for Victims until 6 May 2024 to file a reply to the respective submissions.⁶
5. On 1 May 2024, the TFV and Registry submitted observations on the Defence's request for suspensive effect.⁷
6. On 6 May 2024, the Legal Representatives for Victims, Common Legal Representative for Victims and Defence filed replies to the Registry's and TVF's submissions.⁸

¹ Trial Chamber IX, *Reparations Order*, [ICC-02/04-01/15-2074](#).

² Trial Chamber II, *Trust Fund for Victims' submission of Draft Implementation Plan*, [ICC-02/04-01/15-2099](#), with [Annex](#).

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

⁴ 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](#).

⁵ Appeals Chamber, *Order setting a time limit for submission on the request for suspensive effect*, [ICC-02/04-01/15-2085](#).

⁶ Appeals Chamber, *Order setting a time limit for submission on the request for suspensive effect*, [ICC-02/04-01/15-2085](#), paras 1-4.

⁷ Appeals Chamber, *Registry Submission on the Request for Suspensive Effect*, [ICC-02/04-01/15-2086](#) and *Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules and Procedure and Evidence*, [ICC-02/04-01/15-2087](#).

⁸ Appeals Chamber, *Victims' Response to the Defence Request for Suspensive Effect in its appeal against the Reparations Order*, [ICC-02/04-01/15-2089](#); *Victims' Response to the Defence Request for Suspensive Effect and to the Observations by the Trust Fund for Victims and Registry on the Request for Suspensive Effect*, [ICC-02/04-01/15-2090](#); *Defence*

7. On 16 May 2024, the Appeals Chamber denied the Defence's request for suspensive effect of the *Reparations Order*.⁹
8. On 4 September 2024, the TFV submitted the *Trust Fund for Victims' submissions of Draft Implementation Plan*.¹⁰ Because of the later submissions, and pursuant to Regulation 33(1) of the Regulations of the Court, the filing date of responses were due on 7 October 2024 by 16:00 CET.

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

A. The victims' opinion about the prioritisation of participating victims receiving reparations before non-participating victims in not apparent.

9. The TFV discusses its consultations with potentially eligible victims in paragraphs 18-28 of the DIP.¹¹ The TFV specifically noted that victims were both participating and non-participating victims,¹² yet no estimates of the percentages of the two groups were given.
10. The TFV noted that:

*[V]ictims showed an understanding of the intention of the Reparations Order and of the prioritisation set out therein, which were both explained to them at the start of each consultation meeting. A number of victims expressed support and understanding about the Chamber's prioritisation decision and seemed in general agreeable to beneficiaries in dire need receiving reparations first.*¹³

11. The Defence is happy that victims appear content that those in dire need shall receive reparations first. The Defence notes that the TFV is silent as to whether non-participating victims are content or agreeable to the prioritisation of participating victims receiving reparations before them. Considering that this was a ground of appeal for the Defence against the *Reparations Order*,¹⁴ the Defence expected some kind of quantifiable data within the DIP.

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

⁹ Appeals Chamber, *Decision on the Defence request for suspensive effect*, [ICC-02/04-01/15-2092](#).

¹⁰ Trial Chamber II, *Trust Fund for Victims' submission of Draft Implementation Plan*, [ICC-02/04-01/15-2099](#), with [Annex](#).

¹¹ Within section III(A) of this filing, the term "victim" refers to potentially eligible victims unless further specified.

¹² [DIP](#), para. 20.

¹³ [DIP](#), para. 26.

¹⁴ Appeals Chamber, *Public Redacted Version of "Defence Brief in Support of its Appeal of the Reparations Order dated 28 February 2024"*, filed on 24 June 2024 as ICC-02/04-01/15-2093-Conf, [ICC-02/04-01/15-2093-Red](#), paras 76-87.

B. The Trust Fund for Victims failed to outline concerns of the Defence related to Trial Chamber IX's suggestion of an apology from Mr Ongwen.

12. The Defence notes that the Annex to the DIP lists a possibly apology from Mr Ongwen to the concerned communities.¹⁵ The Defence shares, at least in part, the concerns of the Legal Representatives of Victims about the lack of detail for the rehabilitation and symbolic reparations.¹⁶
13. During the Defence's meeting with the TFV on 8 March 2024, the Defence spoke at length with the TFV about possible issues surrounding an apology from Mr Ongwen. The Defence affirmed to the TFV that Mr Ongwen is willing and happy to address the people of not only the concerned communities, but others which may want an address from his as well. Mr Ongwen is concerned about the plight of all victims, and wishes to do what he can to help them heal and rehabilitate. This was relayed to the TFV.
14. The Defence noted some complications with an address to the people of northern Uganda by Mr Ongwen, most notably that he is currently incarcerated at Bergen Prison in Norway. During the 8 March 2024 meeting, the Defence implored the TFV to speak with the religious and cultural elders of the Acholi and Lango regions to discuss possible alternative measures as it is doubtful that Mr Ongwen will be allowed to perform these cultural and religious rituals and ceremonies *in situ*. While the Defence stressed that it would be more than happy for Mr Ongwen to conduct these rituals and ceremonies *in situ*, it noted that the coordination and implementation of Mr Ongwen traveling to Uganda for this would be astronomically high, near prohibitively expensive.
15. The Defence is rather dismayed that while the TFV noted that is conducted meetings with religious and cultural leaders,¹⁷ nothing related to Mr Ongwen's apology is discussed in the main filing. In fact, the only reference to it is in the Annex to the DIP.¹⁸ At the least, the Defence expected the TFV to report to Trial Chamber II that during its discussions with the cultural and religious leaders, it had concrete discussions related to Mr Ongwen's apologies to the people of northern Uganda and that the religious and cultural leaders were determining the best modalities for these actions. Unfortunately, this was absent from the DIP.

¹⁵ [DIP](#), Annex, Symbolic Measure 1, p. 7.

¹⁶ Trial Chamber II, *Victims' Observations to the Trust Fund for Victims Draft Implementation Plan (DIP)*, [ICC-02/04-01/15-2093](#), paras 2 and 10 (but generally applicable to the entire filing).

¹⁷ [DIP](#), para. 15.

¹⁸ [DIP](#), Annex, Symbolic Measure 1, p. 7.

16. The Defence stresses that Mr Ongwen is more than willing to participate in religious and cultural rituals for the healing of all victims in northern Uganda. His wish is to help his people heal and rehabilitate to a better and stronger society.
17. The Defence respectfully requests Trial Chamber II to order the TFV to file an update to the DIP with further information related to its discussions with the religious and cultural leaders of northern Uganda. Should the TFV determine that such information requires a confidential submission, the Defence has no issue with that.

Respectfully submitted,



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Chief Charles Achaleke Taku
On behalf of Dominic Ongwen

Dated this 7th day of October, 2024
At Maryland, United States of America