

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/15
Date: 12 February 2021

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul Cano Pangalangan

SITUATION IN UGANDA

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

Public

**CLRV Response to the Defence Request for Trial Chamber IX to accept
Submissions on Sentencing Pursuant to
Rule 103 of the Rules of Procedure and Evidence**

Source: Office of Public Counsel for Victims

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Colin Black

Counsel for the Defence

Mr Krispus Ayena Odongo
Mr Charles Achaleke Taku
Ms Beth Lyons

Legal Representatives of the Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Common Legal Representatives for Victims

Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

Ms Paolina Massidda
Mr Orchlon Narantsetseg
Ms Caroline Walter

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Common Legal Representative of the Victims¹ (the “CLR”) participating at trial opposes the Defence Request asking Trial Chamber IX (the “Chamber”) to accept Submissions on Sentencing Pursuant to Rule 103 of the Rules of Procedure and Evidence (the “Defence Request”).²

2. The CLR argues that the parties and the participants are best placed to address considerations regarding the sentencing for the convicted person because the factors to be taken into account at this stage relate to facts and evidence adjudicated by the Chamber and the extent of the victimisation. Moreover, absent any case-law and possible expert on this issue, any *amici* would be likely to amount to mere speculations and opinions.

II. PROCEDURAL HISTORY

3. On 4 February 2021, the Chamber issued its Trial Judgment, finding Mr Ongwen guilty of 61 charges of war crimes and crimes against humanity, which include crimes committed in the IDP Camps of Pajule, Odek, Lukodi and Abok; sexual and gender-based crimes directly and indirectly committed by Mr Ongwen; and the conscription and use of children under the age of 15 in hostilities.³

¹ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/15-350](#), 27 November 2015, p. 19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/15-369](#), 15 December 2015, pp. 10-11; the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/05-384](#), 24 December 2015, pp. 20-22; and the “Decision on the ‘Request for a determination concerning legal aid’ submitted by the legal representatives of victims” (Trial Chamber IX, Single Judge), [No. ICC-02/04-01/15-445](#), 26 May 2016, para. 13.

² See the “Defence Request for Trial Chamber IX to accept Submissions on Sentencing Pursuant to Rule 103 of the Rules of Procedure and Evidence”, [No. ICC-02/04-01/15-1765](#), 9 February 2021 (the “Defence Request” or the “Request”).

³ See the “Trial Judgment ” (Trial Chamber IX), [No. ICC-02/04-01/15-1762-Red](#), 4 February 2021.

4. On 9 February 2021, the Defence submitted its Request.⁴

III. SUBMISSIONS

5. The CLRV submits that the criteria led down in rule 145 of the Rules of Procedure and Evidence (the “RPE”) on the determination of sentence constitute clear and sufficient guidance for the Chamber’s determination and that the submissions of *Amicus Curiae* at this stage is not desirable for the proper determination of the matter.

6. The CLRV purports that the parties and the participants are best placed to address considerations regarding the possible existence of mitigating and/or aggravating circumstances, the convicted person and the crimes’ circumstances (rule 145(1)(b) and 145(2)), and the factors mentioned in article 78(1) of the Rome Statute (rule 145(1)(c)).

7. Indeed, in as much as these factors relate to the facts and evidence presented during the trial and adjudicated in the Trial Judgment, and in large part to the gravity of the crimes and to the harm suffered by the victims and their families, it is submitted that both the parties and participants primarily possess the necessary information to assist the Chamber in its determination and that further interventions from actors outside of these proceedings might create more confusion than bring helpful contributions at this stage.

8. Moreover, in as much as it appears that the single issue identified by the Defence for *Amicus Curiae* submissions has not been addressed by any international jurisprudence to this day (the fact that the convicted person is a former abductee and child-soldier himself), absent any case-law and possible expert on this issue, any *amici* would be likely to amount to mere speculations and opinions. In this light and

⁴ See the Defence Request, *supra* note 2.

bearing in mind that “*the rationale for admitting amicus curiae in the proceedings is to have the opportunity to get experts’ information on relevant issues of legal interest for the proceedings in order to provide the Chamber with a contribution to the proper determination of the case*”,⁵ the CLRV submits that such opinions would be unlikely to assist the Chamber in its deliberation *as per* the terms of rule 103(1) of the RPE.

9. Lastly, the CLRV notes that the Defence indicates that the Chamber “*must [not now] determine an appropriate sentence for a victim of child soldiering*”. In this regard, she underlines that what the Chamber must rather determine at this stage is the appropriate sentence for a *convicted person found guilty of 61 charges of war crimes and crimes against humanity*.

10. Finally, should the Chamber be otherwise minded to receive submissions under Rule 103 of the RPE, the CLRV submits that the legal representatives of the victims should be granted an opportunity to respond to such submissions in the same manner and at the same time as the Prosecution and the Defence, *as per* the continuous jurisprudence of the chambers of the Court.⁶ The impacts of such submissions at this stage of the proceeding indeed directly touch upon the interests of the victims they represent, consequently they ought to participate in any related debate.

⁵ See the “Decision on the Requests submitted pursuant to rule 103(1) of the Rules of Procedure and Evidence” (Pre-Trial Chamber I), [No. ICC-01/04-373](#), 17 August 2007, paras. 3-4.

⁶ See *inter alia*, the “Decision on the Request related to the filing of observations by the Amicus Curiae” (Pre-Trial Chamber I), [No. ICC-01/11-01/11-168](#), 5 June 2012, paras. 3-6.

Respectfully submitted,

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a prominent initial 'P' and a long horizontal stroke at the end.

Paolina Massidda

Dated this 12th day of February 2021

At The Hague, The Netherlands