

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 11 June 2021

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-Ho Chung

SITUATION IN UGANDA

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

Public

Victims' concerns on the applications to submit *amicus curiae* observations

Source: Office of Public Counsel for Victims
Legal Representatives of Victims

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

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**Victims Participation and Reparations
Section**

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I. INTRODUCTION

1. Counsel representing the Victims authorised to participate in the present case (the “Counsel”) express their concerns on behalf of the Victims they represent in relation to some of the applications to submit *amicus curiae* observations in the reparations proceedings filed before the Trial Chamber.

2. While welcoming the interest of organisations to contribute to the important discussions about reparations for victims, Counsel note that some requests seem to fall outside the scope of rule 103 of the Rules of Procedure and Evidence (the “Rules”) because aiming at providing information that appear to fall either under the mandate of the Registry for the purpose of the mapping exercise ordered by the Trial Chamber and/or of the Legal Representatives with regards to the views and concerns of victims about the reparations process, the extent of the harm they have suffered from and their wishes in terms of reparations to be awarded.

II. PROCEDURAL HISTORY

3. On 4 February 2021, Trial Chamber IX (the “Chamber”) issued its Judgment, finding Mr Ongwen guilty of 62 charges of war crimes and crimes against humanity, including the attack against the civilian population and crimes committed in Pajule, Odek, Lukodi and Abok IDP camps; 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.¹

¹ See the “Trial Judgment” (Trial Chamber IX), [No. ICC-02/04-01/15-1762-Conf](#) and [No. ICC-02/04-01/15-1762-Red](#), 4 February 2021 (the “Judgment”).

4. On 6 May 2021, the Chamber issued its Decision sentencing Mr Ongwen to 25 years of imprisonment.²

5. The same day, the Chamber issued an Order for Submissions on Reparations,³ directing, *inter alia*, the parties (the Defence and the Legal Representatives of Victims (the “LRV”)), the Registry, the Trust Fund for Victims (the “TFV”), the Prosecution and the relevant authorities of the Republic of Uganda to file their submissions on a number of issues identified by the Chamber by 6 September 2021. The Chamber also invited applications to appear as *amicus curiae* to be submitted by 7 June 2021. The Registry was further instructed to undertake a mapping of victims potentially eligible for reparations with the assistance of the LRV and to review Mr Ongwen’s current financial situation, and to report to the Chamber on both matters by 6 September 2021.

² See the “Sentence” (Trial Chamber IX), No. ICC-02/04-01/15-1819-Conf and [No. ICC-02/04-01/15-1819-Red](#), 6 May 2021, and the “Partly Dissenting Opinion of Judge Raul C. Pangalangan”, [No. ICC-02/04-01/15-1819-Anx](#).

³ See the “Order for Submissions on Reparations” (Trial Chamber IX), [No. ICC-02/04-01/15-1820](#), 6 May 2021 (the “Order”).

6. On 4,⁴ 7⁵, 8⁶ and 11⁷ June 2021, applications to submit *amicus curiae* observations were notified to the parties.

III. VICTIMS' CONCERNS

7. Counsel welcome the expression of interest of several organisations working in Uganda and of organisations supporting generally victims in presenting observations on reparations matters for the benefit of the Chamber and ultimately of the victims. The expertise of organisations working in the field and with victims of the crimes for which Mr Ongwen has been convicted, as well as the expertise of organisations having knowledge of reparations procedures, will enhance the knowledge of the Chamber on

⁴ See the "Request for leave to submit amicus curiae observations on reparations for victims of LRA in the case of Dominic Ongwen" (the Acholi Religious Leaders Peace Initiative (ARLPI)), [No. ICC-02/04-01/15-1840](#), 4 June 2021.

⁵ See the "Request for leave to file submission on reparations issues pursuant to Article 75 of the Statute and rule 103 of the Rules" (the Foundation for Justice and Development Initiatives (FJDI) and the War Victims and Children Networking (WVCN)), [No. ICC-02/04-01/15-1842](#), 7 June 2021; the "Request for leave to file submissions on reparations issues" (the ICTJ and the Uganda Victims Foundation), [No. ICC-02/04-01/15-1843](#), 7 June 2021; the "Request for leave to submit Amicus Curiae observations on the legal questions presented in the Order for Submissions on Reparations (pursuant to Rule 103 of the Rules of Procedure and Evidence) of 6th May 2021 (ICC-02/04-01/15)" (the Uganda Association of Women Lawyers (FIDA- Uganda)), [No. ICC-02/04-01/15-1844](#), 7 June 2021; the "Request for leave to submit Amicus Curie Observations for reparations, pursuant to article 75 of the Statute and Rule 103 of Rules." (the African Youth Initiative Network (AYINET)), [No. ICC-02/04-01/15-1845](#), 7 June 2021; the "Request for Leave to Submit Observations on the issues set out under point 5 (iii) of the Order No. ICC-02/04-01/15" (the Refugee Law Project (RLP)), [No. ICC-02/04-01/15-1846](#), 7 June 2021; the "Request for leave to submit an Amicus Curiae brief pursuant to article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence" (Avocats sans Frontiers (ASF), Emerging Solutions Africa (ESA), Essex Transitional Justice Network at the University of Essex, Global Survivors Fund (GSF), Gulu Women's Economic Development and Globalization (GWED-G), Institute for Peace and Strategic Studies at Gulu University, International Federation for Human Rights (FIDH), REDRESS, Watye Ki Gen, Women Advocacy Network), [No. ICC-02/04-01/15-1847](#), 7 June 2021.

⁶ See the "Request for leave to submit amicus curiae observations on reparations for victims of the LRA for the case of Dominic Ongwen" (Amuria District Development Agency (ADDA)), [No. ICC-02/04-01/15-1848](#), 8 June 2021; the "Application by the United Nations for leave to make submissions pursuant to Paragraph 5(iii) of the "Order for Submissions on Reparations" of 6 May 2021, Article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence", [No. ICC-02/04-01/15-1849](#), 8 June 2021.

⁷ See the "Transmission of a "Request for leave to submit Amicus Curiae Observations on reparations"" (The Populace Foundation International (TPFI), Makmot Kibwanga & Co. Advocates, Lango War Claimants' Association (LAWCAS) and Lango Camp Host Association (LACHA)), [No. ICC-02/04-01/15-1853](#) and [No. ICC-02/04-01/15-1853-Anx1](#), 11 June 2021; the "Transmission of a "Brief and Priority Needs"" (War Victims and Children Networking), [No. ICC-02/04-01/15-1854](#) and [No. ICC-02/04-01/15-1854-Anx1](#).

the general needs of victims, on the available services in the country and on the type and modalities of reparations.

8. Counsel underline that, according to the constant jurisprudence of the Court, *amicus curiae* submissions may be admitted by a Chamber in accordance with rule 103 of the Rules, if it is desirable for the proper determination of the case and if the observations relate to an issue that the Chamber deems appropriate. This determination is made by the Chamber on a case by case basis and aims at having the opportunity to get experts' information on relevant issues of legal interest for the proceedings.⁸

9. In this regard, Counsel note that some of the requests to submit *amicus curiae* observations seem to fall outside the scope of the rule 103 of the Rules because aiming at providing information that fall under the mandates of the Registry and of the Legal Representative of Victims for the purpose of the mapping exercise order by the Chamber; as well as under the mandate of the Legal Representative with regards to information corresponding to the views and concerns of the victims represented, the extent of the harm they have suffered from and their wishes in terms of reparations to be awarded. Consequently, Counsel posit that the ambit of the observations proposed by most of the applicants goes beyond the expected contribution and will be redundant with the submissions which will be filed by the parties and the Registry in the proceedings.

10. Moreover, applicants should clearly indicate on which matters they wish to provide their expertise. In this regard, at least two applicants do not indicate the purpose of their request for submissions.⁹ Finally, two requests appear to be confusing

⁸ See, *inter alia*, the "Decision on the Request 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.

⁹ See the "Request for leave to submit Amicus Curie Observations for reparations, pursuant to article 75 of the Statute and Rule 103 of Rules" (the African Youth Initiative Network (AYINET)), *supra* note 5 and the "Transmission of a "Request for leave to submit Amicus Curiae Observations on reparations"", *supra* note 7.

their possible contribution as *amicus curiae* and their eventual intention to respond to a call for interests that the TFV might launch in order to identify implementing partners once the Draft Implementation Plan will be finalised and approved by the Chamber.¹⁰

11. More importantly, Counsel are concerned by some applicants' submissions mentioning an intention to run surveys and meet with victims of the crimes for which Mr Ongwen was convicted in the different locations where the Legal Representatives undertake their operations.¹¹ This approach carries the risks of running against the main principle of 'do not harm' emphasised by the Chamber,¹² jeopardising the security and well-being of the victims concerned, of creating confusion and of raising expectations on the part of the victims. In any case, activities in the field are currently not possible. Indeed, since 7 June 2021, more stringent restrictions are in place in Uganda due to the raising of COVID-19 cases. The new measures include, *inter alia*, the closure of all educational institutions for 42 days; suspension of communal

¹⁰ See the "Request for leave to submit amicus curiae observations on reparations for victims of LRA in the case of Dominic Ongwen" (the Acholi Religious Leaders Peace Initiative (ARLPI)), *supra* note 4, p. 5, para. 4: "Among other organisations, ARLPI stands a better chance of implemented these reparation modalities and we pray that we are able to submit our observations"; and the "Request for leave to submit amicus curiae observations on reparations for victims of the LRA for the case of Dominic Ongwen." (Amuria District Development Agency (ADDA)), *supra* note 6, p. 5: "ADDA stands a better chance to implement these modalities and we par that we are given leave to submit our observation".

¹¹ See the "Request for leave to submit amicus curiae observations on reparations for victims of LRA in the case of Dominic Ongwen" (the Acholi Religious Leaders Peace Initiative (ARLPI)), *supra* note 4, p. 4, para. 4: "ARLPI's submission will assist [TC IX] in determining the most affected victims and the specific types and extent of harms suffered. [...] We will conduct a survey and generate a list of victims or groups of victims with specific types and extent of harm suffered of the crimes for which Dominic Ongwen was convicted and prioritise these so that they get reparations in the order of priorities"; the "Request for leave to file submissions on reparations issues" (the ICTJ and the Uganda Victims Foundation), *supra* note 5, para. 22: "The Applicants intended submissions will also be based on focus group discussions conducted in the four case locations of Lukodi, Abok, Pajule and Odek and with victims of sexual violence from across the Northern Uganda region to establish the extent of harm suffered by victims of the crimes for which Mr. Ongwen was convicted". and the "Request for leave to submit amicus curiae observations on reparations for victims of the LRA for the case of Dominic Ongwen." (Amuria District Development Agency (ADDA)), *supra* note 6, pp. 4-5: "The submissions of [ADDA] will assist the [TC IX] in determining the most affected victims and the specific types and the extent of the harms suffered [...]. [ADDA] will review her records, survey reports and or conduct a survey to generate a list of victims or groups of victims with specific types and extent of harms suffered of the crimes for which Mr Dominic Ongwen was convicted [...]".

¹² See the Order, *supra* note 3, para. 5 (iv).

gathering in places of worship for 42 days; suspension of public gathering and inter-district travel ban for 42 days.

12. Finally, Counsel note that some of the requests have been filed outside of the deadline set by the Chamber and/or do not respect the required format, including by already submitting the very substance of the observations they are asking leave for¹³ or to the contrary, simply not indicating what their submissions could be about and simply quoting the list of issues contained in the Order.¹⁴

13. In conclusion, Counsel are of the opinion that *amicus curiae* submissions, if authorised, should focus on providing the Chamber with information - on the issues identified by the latter - already in possession of the respective organisation by virtue of its expertise and that the applicants' contribution should not inadvertently cause harm to victims already participating in the proceedings, as well as those not yet admitted to participate on the one hand and/or avoid potential duplication with submissions by the parties on the other.

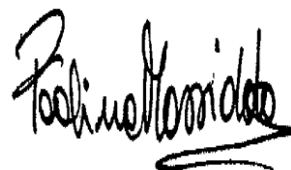
Respectfully submitted.



Joseph Manoba



Francisco Cox



Paolina Massidda

Dated this 11th day of June 2021

At The Hague (The Netherlands), Santiago (Chile) and Kampala (Uganda)

¹³ See the "Transmission of a "Brief and Priority Needs"", *supra* note 7.

¹⁴ See *supra* note 9.