



Original: English

No.: ICC-02/04-01/15
Date: 27 September 2022

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

**Joint Request on behalf of Victims for Leave to Submit Supplementary
Observations on Reparations**

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:

The Office of the Prosecutor

Mr Karim A.A. Kahn KC
Mr Colin Black

Counsel for the Defence

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
Mr Orchlon Narantsetseg
Ms Adeline Bedoucha
Mr Walter Komakech

Trust Fund for Victims

Ms Franziska Eckelmans

States' Representatives

Registrar

Mr Peter Lewis

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Victims and Witnesses Unit

I. INTRODUCTION

1. Following the issuance of the Appeals Judgment on reparations in the *Ntaganda* case (hereafter the “Judgment”),¹ the Common Legal Representative of Victims (the “CLR”) and the Legal Representatives of Victims (the “LRV”; jointly “Counsel”) seek leave to submit supplementary observations on several issues arising from the Judgment which may have an impact on the present reparations proceedings.

2. In light of the findings of the Appeals Chamber in the Judgment, Counsel posit that focussed submissions on several issues relevant for the upcoming reparations order in the *Ongwen* case will assist Trial Chamber IX (the “Chamber”) in making proper rulings on the matter.

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.² On 6 May 2021, the Chamber sentenced Mr Ongwen to 25 years of imprisonment.³

4. On 6 May 2021, the Chamber also issued an Order setting the calendar of submissions in relation to the reparations proceedings.⁴

¹ See the “Judgment on the appeals against the decision of Trial Chamber VI of 9 March 2021 entitled “Reparations Order””, [No. ICC-01/04-02/06-2782](#) (Appeals Chamber), 12 September 2022 (the “Judgment”).

² 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.

³ 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.](#)

⁴ See the “Order for Submissions on Reparations” (Trial Chamber IX), [No. ICC-02/04-01/15-1820](#), 6 May 2021.

5. On 9 June 2021, the Presidency issued a Decision replacing Judge Pangalangan, whose mandate had come to an end, with Judge Chang-Ho-Chung.⁵
6. On 6 December 2021, Counsel filed their respective submissions on reparations.⁶ The same day, the Defence, the Trust Fund for Victims and the Registry filed their submissions on reparations.⁷
7. On 7 February 2022, the LRV, the Registry and the Prosecution filed additional submissions on reparations.⁸
8. On 7 March 2022, Counsel, the Defence and the Trust Fund for Victims filed further submissions on reparations.⁹
9. On 12 September 2022, the Appeals Chamber issued the Judgment.¹⁰

⁵ See the “Decision replacing a judge in Trial Chamber IX” (Presidency), [No. ICC-02/04-01/15-1851](#), 9 June 2021.

⁶ See the Common Legal Representative of Victims’ Submissions on Reparations [No. ICC-02/04-01/15-1923-Conf](#), 7 December 2021. See also the “Decision on requests for extension of time” (Trial Chamber IX), [No. ICC-02/04-01/15-1865](#), 19 July 2021; the “Victims’ Preliminary Submissions on Reparations”, [No. ICC-02/04-01/15-1921](#), 6 December 2021.

⁷ See the “Defence Submissions on Reparations”, [No. ICC-02/04-01/15-1917](#) the “Trust Fund for Victims’ Observations relevant to Reparations”, [No. ICC-02/04-01/15-1920](#) and the “Registry’s Mapping Report and Submission on Reparations”, [No. ICC-02/04-01/15-1919](#) + [AnxI](#) and [AnxII](#) – all filed on 6 December 2021.

⁸ See the “Victims’ Further Submissions on Reparations”, [No. ICC-02/04-01/15-1977](#); the “Prosecution’s Observations on Reparations”, [No. ICC-02/04-01/15-1976](#) and the “Registry’s Additional Submissions on the Mapping Exercise and Reparations”, [No. ICC-02/04-01/15-1975](#) – all submitted on 7 February 2022.

⁹ See the “Common Legal Representative of Victims Additional Submissions on Reparations”, [No. ICC-02/04-01/15-1990](#); see the “Corrected version of the “Defence Omnibus Response to the Submissions on Reparations”, [No. ICC-02/04-01/15-1991-Conf-Exp-Corr](#) (public redacted version: [No. ICC-02/04-01/15-1991-Red-Corr](#)); the “Trust Fund for Victims’ Final Observations on Reparations”, [No. ICC-02/04-01/15-1992](#); and the “Victims’ response to the *amici curia* submissions on reparations”, [No. ICC-02/04-01/15-1993](#) – all submitted on 7 March 2022.

¹⁰ See the Judgment, *supra* note 1.

III. SUBMISSIONS

10. In its Judgment, the Appeals Chamber clarifies, elaborates and expands on several aspects of the Court's practice in relation to reparations. The Appeals Chamber's findings are of critical relevance for the reparations proceedings currently ongoing in the present case before the Chamber.

11. In particular, Counsel stress the Appeals Chamber's determination in relation to: (i) the definition of direct and indirect victims; (ii) the requirement to rule on (*at least a sample of*) applications for reparations in certain circumstances; (iii) the potential impact of said ruling on the determination of the potential number of beneficiaries; (iv) the substantive and procedural parameters of the eligibility assessment mechanism to be put in place, if any; (v) the establishment of presumptions; (vi) the evidentiary issue related to the establishment of transgenerational harm; and (vii) the appropriate calculation of the amount of the liability of the convicted person.¹¹

12. Counsel posit that the above matters trigger the need to further address some concrete legal and factual issues that have a bearing on the submissions previously filed by the parties. Such issues include - but are not limited to - the categories of direct and indirect victims, in particular children born out of rape; as well as the need for the Chamber to rule on a sample of applications in the present case and the procedure for the eligibility assessment of potential beneficiaries.

13. Since the above mentioned matters have a clear and substantial impact on the interest of victims participating in the reparations proceedings, Counsel submit that additional observations – including more concrete statistics of the number of victims eligible for reparations in the present case and the type of harms they suffered from -

¹¹ *Idem*, paras. 1-18.

would surely assist the Chamber in its determination of the nature, form and scope of the reparations to be awarded in the present case. Counsel also submit that some of the matters ruled upon by the Appeals Chamber will have to be determined in light of the specificities of the country in question. In this regard, by virtue of their continuous engagement with the participating victims, Counsel are best positioned to present to the Chamber various elements of high importance for the adjudication of the issues identified by the Appeals Chamber in the Judgment. Finally, Counsel observe that this course of event will not impact on the expeditious conduct of the proceedings since said submissions can be filed promptly and can be limited to the standard 20 page-limit per team.

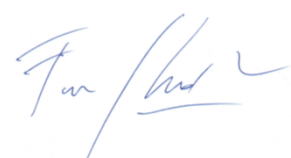
FOR THE FOREGOING REASONS, Counsel respectfully request leave to file additional submissions on reparations in a time limit determined by the Chamber.



Paolina Massidda



Joseph Manoba



Francisco Cox

Dated this 27th day of September 2022

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