

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **7 October 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

Defence Response to the Joint Request of the Legal Representatives

Source: Defence for Dominic Ongwen

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

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I. INTRODUCTION

1. The Defence for Dominic Ongwen (‘Defence’) hereby responds the *Joint Request on behalf of Victims for Leave to Submit Supplementary Observations on Reparations*¹ (‘Request’) from the Common Legal Representative for Victims (‘CLRV’) and Legal Representatives for Victims (‘LRV’) (jointly ‘Legal Representatives’). The Defence asks Trial Chamber IX (‘Chamber’) to reject the request.

II. PROCEDURAL HISTORY

2. On 4 February 2021, Chamber convicted Mr Ongwen of 61 war crimes and crimes against humanity.²
3. On 6 May 2021, the Chamber sentenced Mr Ongwen to combined joint sentence of 25 years.³
4. On 6 May 2021, the Chamber issued the *Order for Submissions on Reparations*⁴ in which it, *inter alia*:
 - a. instructed and invited the parties, the Registry, the Trust Fund for Victims (‘TFV’), the Office of the Prosecutor (‘Prosecutor’), the Republic of Uganda, and persons or organisations authorised to act as *amicus curiae*, to make submissions on a list of issues identified by the Chamber (‘submissions on reparations’), by 6 September 2021;⁵ and

¹ Trial Chamber IX, *Joint Request on behalf of Victims for Leave to Submit Supplementary Observations on Reparations*, [ICC-02/04-01/15-2011](#).

² Trial Chamber IX, *Trial Judgment*, ICC-02/04-01/15-1762-Conf (public redacted version [here](#)).

³ Trial Chamber IX, *Sentence*, [ICC-02/04-01/15-1819](#).

⁴ Trial Chamber IX, *Order for Submissions on Reparations*, [ICC-02/04-01/15-1820](#).

⁵ Trial Chamber IX, *Order for Submissions on Reparations*, [ICC-02/04-01/15-1820](#), para. 5 (i), (ii) and (iii). The specific issues identified by the Chamber are: (a) the need for the Chamber to consider additional principles on reparations, apart from those already established by the consistent jurisprudence of the Court, as recently adapted and expanded in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’); (b) estimated total number of the direct and indirect victims of the crimes for which Mr Ongwen was convicted, who may be potentially eligible for reparations; (c) any legal and factual issues relevant to the identification of eligible victims; (d) any victims or groups of victims who may require prioritisation in the reparations process; (e) specification of the types and extent of the harm suffered by the victims of the crimes for which Mr Ongwen was convicted; (f) whether recourse to factual presumptions should be considered; (g) types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes for which Mr Ongwen was convicted. In particular, the suitability of collective reparations with individualised components, the appropriate modalities to be included therein, and whether certain modalities can be expeditiously implemented; (h) concrete estimates as to the costs to repair the harms suffered by the victims in light of the appropriate modalities for repairing them, including costs of running rehabilitation programmes in the region with the potential to address multi-dimensional harm of individual beneficiaries for the purposes of reparations; (i) information as to whether the victims of the crimes for which Mr

- b. authorised the parties and the TFV to respond to any submissions by 4 October 2021.
5. On 19 July 2021, the Chamber issued the *Decision on requests for extension of time*,⁶ *inter alia*, extending the time limits for the submissions on reparations until 6 December 2021 and for responses to such submissions until 10 January 2022.
 6. On 9 November 2021, the LRV submitted the *Victims' Request for an extension of the time limit to submit their observations on reparation proceedings* ('LRVs' Request'),⁷ requesting an additional three-month extension of the time limit for their submissions on reparations.
 7. On 18 November 2021, the Chamber issued its decision on LRVs' Request for extension of time, partly granting the Parties and Participants an extension of the time limit to make their submissions on reparations exclusively on issues which require further consultations, as referred to in paragraph 5(i) of the order, until 7 February 2022.⁸ The Chamber however ordered the parties, the Registry, and the TFV to provide as much information as possible on either some or all of the issues identified by the Chamber in paragraph 5(i) of the order, by the original deadline of 6 December 2021.⁹
 8. On 1 December 2021, the Chamber granted the CLRV a page-limit extension for the CLRV's submissions on reparations from 50 pages to 65 pages.¹⁰ The Chamber also granted the Defence an additional 10 pages to respond to the CLRV's submission on reparations.¹¹
 9. On 6 December 2021, the Defence,¹² CLRV,¹³ LRV,¹⁴ Trust Fund for Victims¹⁵ and the Registry¹⁶ filed submissions on reparations.

Ongwen was convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes; and (j) any additional information relevant to reparations.

⁶ Trial Chamber IX, *Decision on requests for extension of time*, [ICC-02/04-01/15-1865](#).

⁷ Trial Chamber IX, *Victims' Request for an extension of the time limit to submit their observations on reparation proceedings*, [ICC-02/04-01/15-1890](#) ('LRVs' Request').

⁸ Trial Chamber IX, *Decision on the Victims' Request for an extension of the time limit to submit their observations on reparation proceedings*, [ICC-02/04-01/15-1910](#), para. 10.

⁹ *Ibid.*

¹⁰ Email from Trial Chamber IX to Parties and Participants, *RE: CLRV Request for extension of pages for submissions on reparations*, received on 1 December 2021 at 16h57 CET.

¹¹ *Ibid.*

¹² Trial Chamber IX, *Defence Submissions on Reparations*, [ICC-02/04-01/15-1917](#).

¹³ Trial Chamber IX, *Common Legal Representative of Victims' Submissions on Reparations*, [ICC-02/04-01/15-1923-Red](#).

¹⁴ Trial Chamber IX, *Victims' Preliminary Submissions on Reparations*, [ICC-02/04-01/15-1921](#).

¹⁵ Trial Chamber IX, *Trust Fund for Victims' Observations relevant to Reparations*, [ICC-02/04-01/15-1920](#).

¹⁶ Trial Chamber IX, *Registry's Mapping Report and Submission on Reparations*, [ICC-02/04-01/15-1919](#), [AnxI](#) and [AnxII](#).

10. On 7 February 2022, the LRV,¹⁷ Registry¹⁸ and Prosecution¹⁹ filed submissions on reparations.
11. On 7 March 2022, the Defence,²⁰ Trust fund for Victims²¹ and Legal Representatives²² filed further submissions on reparations.
12. On 12 September 2022, the Appeals Chamber issued a judgment on reparations in *Ntaganda*.²³
13. On 27 September 2022, the Legal Representatives filed the Request.²⁴

III. SUBMISSIONS

14. The Legal Representatives' Request posits that the Chamber cannot determine an appropriate reparation judgment and disbursements without further information from the Legal Representatives.²⁵ The Defence asserts that such submissions are premature and unnecessary following the Appeals Chamber judgment in *Ntaganda*.
15. The Chamber is aptly able to read, process and apply any standard outlined in *Ntaganda*. The Legal Representatives argues that the *Ntaganda* judgment "trigger[s] the need to further address [sic] some concrete legal and factual issues that have a bearing on the submissions previously filed by the parties."²⁶ The Legal Representatives argues, as an example, the need to discuss further issues about indirect and direct victims.
16. The Legal Representatives wrote that, "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

¹⁷ Trial Chamber IX, *Victims' Further Submissions on Reparations*, [ICC-02/04-01/15-1977](#).

¹⁸ Trial Chamber IX, *Registry's Additional Submissions on the Mapping Exercise and Reparations*, [ICC-02/04-01/15-1975](#).

¹⁹ Trial Chamber IX, *Prosecution's Observations relevant to Reparations*, [ICC-02/04-01/15-1976](#).

²⁰ Trial Chamber IX, *Public Redacted Version of 'Corrected Version of "Defence Omnibus Response to the Submissions on Reparations", filed on 7 March 2022'*, [ICC-02/04-01/15-1991-Red-Corr](#), with [AnxA](#), [AnxB-Conf](#) and [AnxC](#).

²¹ Trial Chamber IX, *Trust Fund for Victims' Final Observations on Reparations*, [ICC-02/04-01/15-1992](#).

²² Trial Chamber IX, *Common Legal Representative of Victims' Additional Submissions on Reparations*, [ICC-02/04-01/15-1990](#) and Trial Chamber IX, *Victims' response to the amici curiae submissions on reparations*, [ICC-02/04-01/15-1993](#).

²³ Appeals Chamber, *Judgment on the appeals against the decision of Trial Chamber VI of 9 March 2021 entitled "Reparations Order"*, [ICC-01/04-02/06-2782](#).

²⁴ Request, [ICC-02/04-01/15-2011](#).

²⁵ See Request, paras 12-13.

²⁶ *Ibid*, para. 12.

importance for the adjudication of the issues identified by the Appeals Chamber in the Judgment.”²⁷

17. The Defence submits that is not a reasonable basis for further submissions. The Legal Representative fail to identify the alleged “elements of high importance for adjudication” which they intend to address and how it will assist the Chamber in the determination of the issues before the Chamber. Additionally, the “continuous engagement with participating victims”, at this point in the case, is irrelevant to the comprehensive record which was established before the Court. The Legal Representatives were accorded every opportunity to present evidence and submit information, which the Chamber will carefully consider in making a decision which is consistent with the jurisprudence of the Court and the Statute.
18. The Legal Representatives had ample opportunity to argue the legal and factual issues ruled upon by the Appeals Chamber in *Ntaganda*. The Legal Representatives fall dismally short of explaining why none of these issues have not been canvassed in the hundreds of pages submitted by the Defence, Legal Representatives, Registry, Prosecution and the *amici curiae* submissions. The Legal Representatives want to use the Appeals Chamber judgment in the *Ntaganda* as a pretext to circumvent the Chamber’s *Decision on the Victims’ Request for an extension of the time limit to submit their observations on reparation proceedings*.²⁸ The Chamber gave a strict deadline, and with the utmost respect, it should not alter the deadline by allowing the Legal Representatives to file additional submissions.
19. Finally, the Legal Representatives fall short of explaining why none of the issues which were outlined in the Request were not reasonably foreseeable outcomes of the Appeals Chamber judgment in *Ntaganda*. The Chamber is aptly capable of determining each issue without further input.

IV. REQUESTED RELIEF

20. The Defence for Dominic Ongwen respectfully requests Trial Chamber IX to reject the Legal Representatives Request. Should Trial Chamber IX decide to entertain further submissions, the Defence respectfully asks the right to respond to any such submissions

²⁷ *Ibid*, para. 13.

²⁸ Trial Chamber IX, *Decision on the Victims’ Request for an extension of the time limit to submit their observations on reparation proceedings*, [ICC-02/04-01/15-1910](#), paras 10-11.

Respectfully submitted,



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Chief Charles Achaleke Taku
On behalf of Dominic Ongwen

Dated this 7th day of October, 2022
At Maryland, United States of America