

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/15
Date: 8 September 2023

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

Response to the “Confidential Redacted Version of ‘Victims’ Request for Urgent Support to Victims presenting with Mental Health Challenges and Other Victims Requiring Urgent Medical Intervention, with Public Annex A and Confidential ex parte annex B available to the Chamber and Trust Fund for Victims Only’, filed on 23 August 2023, ICC-02/04-01/15-2054-Conf-Exp”

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

Mr Karim A.A. Khan KC
Mr Colin Black

Counsel for the Defence

Mr Charles Achaleke Taku
Ms Beth Lyons
Mr Thomas Obhof

Legal Representatives of the Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Common Legal Representatives of Victims

Ms Paolina Massidda

Registrar

Mr Osvaldo Zavala Giler

Victims Participation and Reparations Section

Mr Philipp Ambach

Victims and Witnesses Unit

Trust Fund for Victims

Ms Deborah Ruiz Verduzco

I. INTRODUCTION

1. The Common Legal Representative of Victims (the “CLR” or “Counsel”) firstly conveys the concern of the victims she represents regarding the significant delay in issuing a reparation order following the Judgment. The victims have been waiting for this order for nearly two years and they are growing increasingly frustrated and despondent.

2. The CLR shares the concerns expressed in the “Victim’s Request for Urgent Support to Victims presenting with Mental Health Challenges and Other Victims Requiring Urgent Medical Intervention”¹ (the “Request”) filed by the other team of Legal Representatives of Victims (the “LR”).

3. She agrees with the LR that a number of victims require urgent psychological and medical assistance. The CLR recalls that, pursuant to article 68(1) of the Rome Statute (the “Statute”), the Court has a duty to protect the safety, physical and psychological well-being of victims. During reparations proceedings, the Court shall adhere to the principle that priority may be necessary for certain victims who are particularly vulnerable or require urgent assistance. The Court may take affirmative action to guarantee victims’ equal, effective and safe access to reparations.

4. The CLR posits that if no interim measure is taken by the Chamber in the present case, many victims will not be able to benefit from any of the reparation measures they are entitled to. Therefore, the CLR suggests that the Chamber instruct the TFV to take immediate steps to address the most urgent needs of victims requiring priority treatment and to include the victims identified by both teams of legal representatives in the assistance programmes currently ongoing in Uganda.

¹ See the “Confidential Redacted Version of ‘Victims’ Request for Urgent Support to Victims presenting with Mental Health Challenges and Other Victims Requiring Urgent Medical Intervention, with Public Annex A and Confidential ex parte annex B available to the Chamber and Trust Fund for Victims Only”, filed on 23 August 2023, ICC-02/04-01/15-2054-Conf-Exp”, [No. ICC-02/04-01/15-2054-Conf-Red.](#), 28 August 2023. A public redacted version was filed the same day, [No. ICC-02/04-01/15-2054-Red2](#), (the “Request”).

5. In fact, certain assistance programmes already in place could adequately cover the victims' most pressing needs, without the necessity to develop a separate initial draft implementation plan. Incorporating these individuals into the existing assistance programmes would respond to their immediate needs while preserving their right to fully enjoy reparation measures to be ruled upon at a later stage.

6. Moreover, this course of action would expedite these proceedings. Indeed, the general nature of the assistance programmes only requires a link to a situation before the Court, rather than to a conviction or judicial proceedings. As such, the inclusion of these victims into the ongoing assistance programmes would not be prejudicial to or inconsistent with the rights of Mr Ongwen. There would be no need to develop a separate eligibility mechanism, as the intake conducted by the implementing partners would suffice. Thereby avoiding extensive litigation and thus additional delays which may further harm the victims in urgent need.

7. Finally, the CLRV reiterates her request to consider the following categories of victims as priority groups in addressing urgent needs through interim measures, and in developing and implementing reparations programmes at a later stage: (i) former child soldiers and children born in captivity, as well as families led by children; (ii) victims of SGBV and children born out of rape; (iii) victims with a medical or other condition which can be qualified as life-threatening; and (iv) elderly individuals.

II. PROCEDURAL HISTORY

8. On 4 February 2021, Trial Chamber IX (the "Chamber") issued its Judgment, finding Mr Ongwen guilty of 61 charges of war crimes and crimes against humanity.²

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 (the "Judgment").

9. On 6 May 2021, the Chamber sentenced Mr Ongwen to 25 years of imprisonment.³ The same day, the Chamber issued an Order setting the calendar of submissions in relation to the reparations proceedings.⁴

10. On 6 December 2021, the CLRV filed her submissions on reparations.⁵ The same day, the LRV, the Defence, the Trust Fund for Victims (the “TFV”) and the Registry filed their submissions on reparations.⁶

11. On 7 February 2022, the LRV, the Registry and the Prosecution filed additional submissions on reparations.⁷

12. On 16 November 2022, the Chamber informed the parties, participants, and the Registry that it was considering to proceed in the present case in a similar fashion as in the *Ntaganda* case.⁸

13. On 28 August 2023, the LRV filed the Request.⁹

III. LEVEL OF CLASSIFICATION

14. The present submission is filed publicly despite the original level of confidentiality chosen by the LRV because it does not contain confidential information.

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, as well as 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 (the “Order”).

⁵ See the “Common Legal Representative of Victims’ Submissions on Reparations” [No. ICC-02/04-01/15-1923-Red](#), 7 December 2021 (the “CLRV Submissions”).

⁶ See the “Victims’ Preliminary Submissions on Reparations”, [No. ICC-02/04-01/15-1921](#); 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](#) (the “TFV Observations”); 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.

⁷ 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 filed on 7 February 2022.

⁸ See the email from the Chamber dated 16 November 2022 at 15:01.

⁹ See *supra* note 1.

IV. SUBMISSIONS

15. Preliminarily, the CLRV highlights that it has been over two years since the start of the reparations proceedings, and the issuance of the reparation order is still pending. Victims have conveyed their deep concern to Counsel regarding the passing of time and the significant delay in issuing a reparation order since the Judgment was delivered. Notably, considering the expedited nature of the trial, victims had a legitimate expectation that reparations proceedings would also move swiftly. Given their extremely challenging current life conditions, they are growing increasingly frustrated and hopeless. They are aware that any reparations programmes will take a substantial amount of time to be implemented and to actually have an impact on their lives. Yet, the absence of a reparation order at this juncture further diminishes their hope of receiving any assistance from the Court in the foreseeable future. Therefore, it is crucial to emphasise the urgent need for the prompt issuance of a Chamber's order.

16. In the Request, the LRV seeks the intervention of the Chamber to instruct the TFV to promptly allocate resources on a rolling basis or, as an alternative, to prepare an intermediate draft implementation plan. This plan would cater to victims in urgent need of assistance, such as those facing mental health challenges necessitating access to mental health clinics to mitigate threats to their lives, and other victims who require immediate medical intervention. This support is sought pending the issuance of the reparation order and the development of a comprehensive implementation plan.

17. Before addressing the substance of the Request, the CLRV recalls the approach put forward in her previous submissions filed in December 2021 and in March 2022.¹⁰ In particular, she requested the Chamber “*to indicate in the reparations order that certain categories of victims should be considered as priority groups and that the Chamber instructs the TFV to present, as expeditiously as possible, a specific initial draft implementation plan for*

¹⁰ See the “Common Legal Representative of Victims’ Additional Submissions on Reparations”, [No. ICC-02/04-01/15-1990](#), 7 March 2022 (the “Additional Submissions”). See also, the CLRV Submissions, *supra* note 5.

the individuals facing urgent needs, prior to and pending the implementation of the general plan encompassing all the services and modalities of reparations proposed, following the practice in the Ntaganda case”.¹¹

18. As previously argued in her earlier submissions, the CLRV maintains that this task should not pose a significant challenge for the TFV, especially considering its experience in designing and implementing assistance programmes.¹² Moreover, she recalls her suggestion that *“in light of the information provided by the TFV on the extent of its current assistance programs in Uganda, it is worth to evaluate if and how some assistance could be already provided to the priority victims through those programs”*.¹³ In this regard, the CLRV, in December 2021, had already indicated that she was *“in a position to provide a specific list of clients to the TFV in order to advance the prompt implementation of a transitional emergency plan for the victims facing life-threatening issues, pending the implementation of the full reparations plan and programs”*.¹⁴

19. Concerning more specifically the Request, the CLRV notes that mental illness amongst the population in Acholi sub region – particularly amongst the LRA victims – is one of the biggest problems affecting the area since the end of the conflict after the twenty-year LRA insurgency. The pervasive social stigma and taboos associated with accessing mental health services, and cultural beliefs and misconceptions are the major hindrances in fighting the illness in the whole of northern Uganda. According to one Senior Psychiatric Clinical Officer at Gulu Regional Referral Hospital – with whom Counsel is in contact – the facility receives at least 400 people seeking mental health support weekly.

¹¹ See the Additional Submissions, *supra* note 10, para. 41, and the CLRV Submissions, *supra* note 5, paras. 12, 13 and 36 to 41. See also, the “Decision on the TFV’s initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2696](#), 23 July 2021; and the “Public redacted version of ‘Report on Trust Fund’s Preparation for Draft Implementation Plan’, submitted on 8 June 2021”, [No. ICC-01/04-02/06-2676-Red](#) + [No. ICC-01/04-02/06-2676-AnxA-Corr-Red2](#) (“Public lesser redacted version of ‘Initial Draft Implementation Plan with Focus on Priority Victims’ (‘Initial Implementation Plan’ or ‘IIP’), 14 June 2021.

¹² See the Additional Submissions, *supra* note 10, para. 41.

¹³ *Ibid.*

¹⁴ See the CLRV Submissions, *supra* note 5, para. 37. Said original list contained 144 victims.

20. Presumably, participating victims with various mental disorders amount to a small percentage of that statistic. Unfortunately, due to the stigma and the stereotypes they face, along with their financial constraints, many of them are reluctant to seek mental health support, which worsens their conditions over time. This neglect has led to a point where, on occasions, relatives of participating victims have approached the CLRV inquiring whether they could step in for the original victim who has become mentally incapacitated.

21. Additionally, there is an increasing number of victims in urgent need of medical assistance, particularly those with long-standing physical injuries, as their conditions have deteriorated due to a lack of support. The CLRV also notes that some victims have lost their lives as a direct consequence of the prolonged lack of treatment.

22. Specifically, the CLRV recalls that a significant portion of the 1,532 victims she represents currently endure extremely poor living conditions, whether it be due to mental or physical health issues, or a lack of resources and income. This group includes individuals struggling with severe physical conditions or illnesses necessitating immediate medical assistance to prevent potential loss of life. Additionally, it comprises elderly individuals¹⁵ and those without a source of income or who are physically incapacitated, but responsible for supporting large families. The group further encompasses children and young adults who were formerly abducted by the LRA, former child soldiers and children born in captivity, and families led by children. Their successful reintegration and survival in society hinge upon their urgent access to specific forms of support, including education and vocational trainings. Lastly, all victims of SGBV, including those who suffered from this type of crimes by Mr Ongwen directly, are in a particularly vulnerable situation.

¹⁵ The CLRV notes that many of her clients have reached an advanced age and are suffering from a very weakened health, living in very difficult economic situations.

23. In these circumstances, the CLRV agrees with the LRV that a number of victims require urgent psychological and medical assistance. In this regard, she stresses that the Court has a duty to ensure the safety, physical and psychological well-being of victims under article 68(1) of the Statute and to take appropriate protective measures.¹⁶ Concerning reparations specifically, she recalls the principle that “[p]riority may need to be given to certain victims, who are in a particularly vulnerable situation or who require urgent assistance”; and that therefore “[t]he Court may adopt [...] measures that constitute affirmative action in order to guarantee equal, effective and safe access to reparations for particularly vulnerable victims”.¹⁷

24. If no concrete action is taken by the Chamber in the present case, many victims will not be able to benefit from any reparation measures to which they are entitled. Therefore, the CLRV posits that the Chamber should instruct the TFV to take immediate measures to address the most urgent needs of victims requiring priority treatment.

25. Considering the significant time elapsed since the Judgment was delivered and of the growing urgency to address the victims’ dire situation, the CLRV submits that, as previously argued,¹⁸ victims in this case may benefit from certain existing assistance programmes in Uganda that could adequately address their most immediate needs. This would avoid having to develop a separate initial draft implementation plan, while preserving their right to fully enjoy reparation measures to be ruled upon at a later stage. Both teams of legal representatives are able to provide the TFV with a list of individuals requiring urgent psychological and/or medical assistance.

¹⁶ See article 68(1) of the Rome Statute.

¹⁷ See Annex A to the “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with Amended order for reparations (Annex A) and public annexes 1 and 2” (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA](#), 3 March 2015, para. 19. See also, the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021, para. 92.

¹⁸ See the CLRV Submissions, *supra* note 5, para. 38.

26. As to the suitability of the TFV's current assistance activities in Uganda as a conservative measure for reparations purposes in the present case, the CLRV recalls the TFV's thorough submissions on the matter in its initial observations on reparations.¹⁹ More specifically, Counsel observes that the TFV has been providing, through its partners, the following types of assistance: (i) physical rehabilitation, including reconstructive surgery and gynaecological treatments for SGBV victims, and referral mechanisms for specialised medical care; (ii) psychological rehabilitation, including for victims of SGBV and for former child soldiers and children suffering from physical and psychological issues, and including community sensitisations on, *inter alia*, SGBV, stigma and discrimination; and (iii) material support activities, including village savings and loan associations, scholarships and vocational trainings for abducted or injured children or whose parents were killed during the war, and agricultural assistance for durable sources of livelihood.²⁰ Furthermore, the CLRV notes that, in the *Ntaganda* case, the TFV also used its pre-existent assistance projects in the Democratic Republic of the Congo as these were considered to be "*the most efficient and expeditious response to the urgent needs of victims that require priority treatment*".²¹

27. The CLRV is mindful of the discussions between the TFV and the LRV on the possibility of incorporating victims into the ongoing assistance programmes, and of the fact that the TFV's assistance activities in Uganda are presently winding up.²² However, she submits that it may offer a solution to renew some activities for a limited period of time with the specific aim of addressing the urgent needs of priority victims, pending the implementation of reparations at a much later stage.

28. The CLRV further notes that assistance programmes, contrary to reparations, are not linked to a conviction or judicial proceedings, but rather to a situation before

¹⁹ See the TFV Observations, *supra* note 6, paras. 61, 103, and 127-167.

²⁰ *Ibid.*

²¹ See, for instance, the "Decision on the TFV's initial draft implementation plan with focus on priority victims", *supra* note 11, para. 24.

²² See the Request, *supra* note 1, paras. 27-29.

the Court. They have thus a larger scope, encompassing all crimes under the jurisdiction of the Court within the temporal and geographical confines of a situation.²³ Implementing partners conduct a straightforward intake conversation with victims to ensure that they fall within these confines. Because of their general nature, the inclusion of these victims into the current assistance activities in Uganda “[would not be] *prejudicial to or inconsistent with the rights of [Mr Ongwen]*”.²⁴ Accordingly, there would be no need to develop a separate eligibility mechanism, as it was done in the *Ntaganda* proceedings²⁵ - thereby avoiding extensive litigation and delays that would prejudice the victims in urgent need, in violation of the ‘*do no harm*’ principle.²⁶

29. In conclusion, the CLRV respectfully requests the Chamber to instruct the TFV to take conservative interim measures to address the most urgent needs of the identified victims requiring priority treatment, and to include them into the assistance programmes. Regarding the prioritisation of victims, the CLRV requests to consider the following categories of victims as priority groups in addressing urgent needs through interim measures, and in developing and implementing reparations programmes at a later stage : (i) former child soldiers and children born in captivity, as well as families led by children; (ii) victims of SGBV and children born out of rape; (iii) victims with a medical or other condition which can be qualified as life-threatening; and (iv) elderly individuals.²⁷

²³ See the “Decision on the TFV’s initial draft implementation plan with focus on priority victims”, *supra* note 21, para. 23.

²⁴ See the “Decision on the ‘Notification by the Board of Directors in accordance with Regulation 50(a) of the Regulations of the Trust Fund for Victims of its conclusions to undertake further activities in Uganda’” (Pre-Trial Chamber II), [No. ICC-02/04-235](#), 4 February 2019, para. 8. See also, Regulation 50(a)(ii) of the Regulations of the TFV.

²⁵ See, for instance, the “Decision on the TFV’s initial draft implementation plan with focus on priority victims”, *supra* note 11, para. 38.

²⁶ See the “Reparations Order”, *supra* note 17, paras. 50-52.

²⁷ *Idem*, para. 214. All these categories of victims have been recognised as priority in the *Ntaganda* case.

Respectfully submitted.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda

Dated this 8th day of September 2023

At The Hague (The Netherlands)