

**Cour
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**International
Criminal
Court**



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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

**Trust Fund for Victims' Observations pursuant to Trial Chamber II's order of 25
August 2023**

Source:

Trust Fund for 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. OVERVIEW OF PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX ('Trial Chamber') convicted Mr Ongwen on 61 counts of war crimes and crimes against humanity.¹ On 6 May 2021, the Trial Chamber sentenced Mr Ongwen to 25 years of imprisonment.²

2. On 6 May 2021, Trial Chamber IX issued an 'Order for Submissions on Reparations' ('Order')³ directing the parties, the Registry, the Trust Fund for Victims ('TFV' or 'Trust Fund'), the Office of the Prosecutor ('Prosecutor'), the Republic of Uganda, and persons or organisations authorised to act as *amicus curiae*, to (i) make submissions on a list of issues identified by the Chamber ('submissions on reparations');⁴ and (ii) authorised the parties and the TFV to respond to any submissions.⁵

3. On 6 and 7 December 2021, the Defence,⁶ the legal representatives for victims ('LRVs') of one group of victims,⁷ the Registry,⁸ the Trust Fund for Victims ('TFV'),⁹ and Office of Public Counsel for Victims, which is acting as common legal representative ('CLRv') of another group of victims,¹⁰ filed submissions and observations on a number of issues relevant to reparations proceedings in the *Ongwen* case.

¹ Trial Judgment, 4 February 2021, ICC-02/04-01/15-1762-Conf. A public redacted version was filed the same day: [ICC-02/04-01/15-1762-Red](#).

² Sentence, 6 May 2021, ICC-02/04-01/15-1819-Conf. A public redacted version was filed the same day: [ICC-02/04-01/15-1819-Red](#).

³ Order for Submissions on Reparations, 6 May 2021, [ICC-02/04-01/15-1820](#) ('Order for Submission on Reparations'), para. 5.

⁴ Order for Submissions on Reparations, para. 5. (i), (ii), (iii).

⁵ Order for Submissions on Reparations, para. 6.

⁶ Defence Submissions on Reparations, 6 December 2021, [ICC-02/04-01/15-1917](#).

⁷ Victims' Preliminary Submissions on Reparations, 6 December 2021, [ICC-02/04-01/15-1921](#) ('Victims' Preliminary Submissions on Reparations').

⁸ Registry's Mapping Report and Submission on Reparations, 6 December 2021, [ICC-02/04-01/15-1919](#); Annex I to the Registry's Mapping Report and Submission on Reparations, 6 December 2021, [ICC-02/04-01/15-1919-AnxI](#); Annex II to the Registry's Mapping Report and Submission on Reparations, 6 December 2021, [ICC-02/04-01/15-1919-AnxII](#).

⁹ Trust Fund for Victims' Observations relevant to Reparations, 6 December 2021, [ICC-02/04-01/15-1920](#) ('TFV Observations').

¹⁰ Common Legal Representatives of Victims' Submissions on Reparations, 7 December 2021, ICC-02/04-01/15-1923-Conf. A public redacted version was filed the same day: [ICC-02/04-01/15-1923-Red](#) ('CLRv Submissions on Reparations').

4. On 7 February 2022, the Prosecution¹¹ and the Government of the Republic of Uganda¹² filed observations on Reparations, the Registry¹³ filed additional observations on the mapping exercise and reparations, and the LRVs submitted further submissions on Reparations.¹⁴

5. Upon receiving submissions by *Amici curiae* pursuant to article 75 of the Statute and Rule 103¹⁵ of the Rules of Procedure and Evidence,¹⁶ final submissions by parties and participants, including the CLRV, LRVs and TFV were filed on 7 March 2022.¹⁷

¹¹ Prosecution's Observations on Reparations, 7 February 2022, [ICC-02/04-01/15-1976](#).

¹² The Government of the Republic of Uganda's Submissions on Reparations, 7 February 2022, [ICC-02/04-01/15-1978](#).

¹³ Registry's Additional Submissions on the Mapping Exercise and Reparations, 7 February 2022, [ICC-02/04-01/15-1975](#).

¹⁴ Victims' Further Submissions on Reparations, 7 February 2022, [ICC-02/04-01/15-1977](#).

¹⁵ Rome Statute of the International Criminal Court, Article 75; Rules of Procedure and Evidence, Article 103.

¹⁶ Amicus Curiae brief pursuant to article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence by Avocats sans Frontières (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, 4 February 2022, [ICC-02/04-01/15-1971](#); Submission on Amicus Curiae Observations on Reparations by The Populace Foundation International (TPFI) – Civil Society Organization (CSO), Makmot Kibwanga & Co. Advocates – Legal Consultants, Lango War Claimants' Association (LAWCAS) – Victims' Association, Lango Camp Host Association (LACHA) – Victims' Association, 5 February 2022, [ICC-02/04-01/15-1973](#); Joint Submission by the United Nations on Reparations pursuant to Rule 103 of the Rules of Procedure and Evidence by the United Nations, 4 February 2022, [ICC-02/04-01/15-1972](#); Request for leave to file submission on reparations issues pursuant to Article 75 of the Statute and rule 103 of the Rules by The Foundation for Justice and Development Initiatives (FJDI) and the War Victims and Children Networking (WVCN), 30 November 2021, [ICC-02/04-01/15-1922](#); Public Order for Submission of Reparation by Amuria District Development Agency (ADDA), 6 February 2022, [ICC-02/04-01/15-1980](#); Amicus Curiae Observations by the International Center for Transitional Justice and the Uganda Victims Foundation, pursuant to article 75 of the Statute and Rule 103 of the Procedure and Evidence by the International Center for Transitional Justice (ICTJ) and the Uganda Victims Foundation (UVF), 7 February 2022, [ICC-02/04-01/15-1974](#); Submissions on Amicus Curiae Observations on Legal Questions Presented in Order No ICC-02/04-01/15-1820 on Reparations by the Uganda Association of Women Lawyers (FIDA Uganda), 21 December 2021, [ICC-02/04-01/15-1947](#); Submissions of Amicus Curiae Observations by Acholi Religious Leaders Peace Initiative (ARLPI), 30 November 2021, [ICC-02/04-01/15-1925](#).

¹⁷ Common Legal Representative of Victims' Additional Submissions on Reparations, 7 March 2022, [ICC-02/04-01/15-1990](#) ('CLRV Additional Submissions on Reparations'); Trust Fund for Victims' Final Observations on Reparations, 7 March 2022, [ICC-02/04-01/15-1992](#) ('TFV Final Observations on Reparations'); Victims' response to the amici curiae submissions on reparations, 7 March 2022, [ICC-02/04-01/15-1993](#); Defence Omnibus Response to the Submissions on Reparations, 7 March 2022, ICC-02/04-01/15-1991-Conf. A public redacted version was filed the same day: [ICC-02/04-01/15-1991-Red](#).

6. On 15 December 2022, the Appeals Chamber issued the judgments on the appeals against the convictions¹⁸ and sentence,¹⁹ upholding all the convictions and the sentence.

7. Upon invitation of the Trial Chamber to address a number of distinct issues,²⁰ the LRVs,²¹ the CLRVR,²² the TFV²³ and the Defence²⁴ filed their respective submissions.

8. On 23 August 2023, the LRVs filed a request for urgent support to victims presenting with mental health challenges and other victims requiring urgent medical intervention (LRV Request).²⁵ The LRVs request the Trial Chamber to directing the TFV to urgently make provision for resources on a rolling basis or in the alternative an ‘intermediate Draft Implementation Plan’ to provide for victims requiring priority attention.

9. On 25 August 2023, Trial Chamber IX (“Chamber”) ordered, *inter alia*, that the TFV file observations on the LRV’s Request within the same timeline as that for the parties to submit their responses.²⁶

II. OBSERVATIONS

1. TFV’s activities in Uganda

¹⁸ Judgment on the appeal of Mr Ongwen against the Decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”, 15 December 2022, ICC-02/04-01/15-2022-Conf. A public redacted version was filed the same day: [ICC-02/04-01/15-2022-Red](#).

¹⁹ Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled “Sentence”, 15 December 2022, [ICC-02/04-01/15-2023](#).

²⁰ Decision on the Registry Additional Information on Victims, 16 December 2022, [ICC-02/04-01/15-2024](#).

²¹ Victims’ Additional Submissions on the Issues Identified by the Trial Chamber Pursuant to the Forthcoming Order on Reparations, with Confidential *ex parte* annexes A, B, C and D available to the Registry and Chamber Only, 17 February 2023, [ICC-02/04-01/15-2033](#).

²² CLRVR Submissions on transgenerational harm and estimated number of potential beneficiaries for reparations, 20 February 2023, ICC-02/04-01/15-2031-Conf. A public redacted version was filed the same day: [ICC-02/04-01/15-2031-Red](#).

²³ Trust Fund for Victims’ Submission pursuant to the “Decision on the Registry Additional Information on Victims” of 16 December 2022, ICC-02/04-01/15-2024, 17 February 2023, [ICC-02/04-01/15-2032](#).

²⁴ Defence Additional Submissions on Beneficiaries and Transgenerational Harm, 17 February 2023, [ICC-02/04-01/15-2030](#); Defence Response to the Additional Submissions on Beneficiaries and Transgenerational Harm, 22 March 2023, [ICC-02/04-01/15-2035](#).

²⁵ Victims’ Request for Urgent Support to Victims presenting with Urgent 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 TFV only, 23 August 2023, ICC-02/04-01/15-2054-Conf-Exp. A public redacted version was submitted on 28 August 2023: [ICC-02/04-01/15-2054-Red2](#) (“LRV’s Request”).

²⁶ Email from TC IX to TFV on 25 August 2023 at 10:41.

10. The TFV is cognizant of the situation of the victims whose suffering and needs are documented in detail in the LRV Request supported by the assessment of the psychologist. The request underscores that even 17 years after the end of the conflict, there is an ongoing and urgent need for psychological and physical rehabilitation of victims in the case of Ongwen. These ongoing needs have informed the assistance programme that the TFV has in place for nearly 15 years since 2008 in Uganda.

11. The TFV Uganda programme has provided medical treatment, mental health support and livelihood services to victims affected by the crimes under the jurisdiction of the Court. The programme is open indiscriminately to any victims of crimes falling within the jurisdiction of the Court insofar as they have injuries stemming from crimes falling under the jurisdiction of the Court that can be addressed by the TFV partners. The current cycle of programming runs from 4 April 2019 to 3 April 2024 (yearly renewable within this five-year cycle), and comprises four projects implemented by partners AVSI Foundation, Centre for Children in Vulnerable Situations (CCVS), Health Right International (HRI), and Transcultural Psychosocial Organization (TPO) who serviced in 2021 and 2022 an average of 7,500-7,900 beneficiaries per year.²⁷

12. The TFV Uganda programme is based on regulation 50(a) of the Regulations of the Trust Fund for Victims. Regulation 50(a) provides that it falls within the full discretion and authority of the TFV Board of Directors to decide whether to use its ‘other resources’ for the benefit of victims of Rome Statue crimes. If the Board of Directors so decides, the TFV needs to notify the relevant Pre-Trial Chamber of the programme/projects. The Pre-Trial Chamber has a period of 45 days to react to the notification.

13. In the context of the Uganda programme, the TFV engaged with the legal representatives of victims, i.e. with the LRVs and the CLRV, in the *Ongwen* case after the pre-trial proceedings started in 2015, and informed them about the TFV partners and their activities. The TFV engaged with the legal representatives before and at the time the new programme cycle started in 2019, after the sentencing of Mr Ongwen in 2021 and during the September

²⁷ Of the original six partners in 2019, the TFV is, since 2022, conducting the programme with four partners.

2022 joint monitoring mission organized by the Irish Embassies in The Hague and Kampala and the TFV.²⁸

14. Given the programme has been open to all victims who suffered harm between July 2002 and the end of the conflict in Northern Uganda in 2006, clients of legal representatives for victims have been and are able to access the programme. By way of example, one patient of the TFV partner, whose activities were subject to the above-mentioned joint monitoring mission, was a CLRV client. Several additional clients of legal representatives were included in the Uganda programme.²⁹

15. The TFV notes that the Board of Directors has not yet taken a decision to prolong the current programme or start a new programme in Northern Uganda. The TFV Board of Directors has been informed of the LRV Request. Accordingly, the LRV Request will be added to the documentation informing the Board of Directors decision in regard to the Uganda programme.

2. Initial reparations

16. The TFV makes reference of the LRVs suggested ‘intermediate’ draft implementation plan. The TFV recalls that reparation proceedings began in May of 2021 with submissions and observations ordered by the Trial Chamber within strict timelines throughout these proceedings. The TFV, CLRV and LRVs addressed explicitly or impliedly the matter of an ‘initial draft implementation plan’, by reference to the plan developed in the *Ntaganda* case for priority victims in urgent need.³⁰ The TFV considers that the matter has been addressed in these submissions and observations as set out in the relevant procedural history above.

3. Clients of the LRVs

²⁸ See TFV Press Release of 19 September 2022, available at: <https://www.icc-cpi.int/news/embassy-ireland-and-trust-fund-victims-conclude-joint-monitoring-visit-northern-uganda-between>; and <https://www.trustfundforvictims.org/index.php/en/news/embassy-ireland-and-trust-fund-victims-conclude-joint-monitoring-visit-northern-uganda-between>.

²⁹ See *infra*, para. 17.

³⁰ CLRV Submissions on Reparations, paras 36-41; Victims’ Preliminary Submissions on Reparations, paras 65-66; TFV Observations, paras 123-126; CLRV Additional Submissions on Reparations, paras 38-41; TFV Final Observations on Reparations, para. 57.

17. As to the clients of the LRVs, whose needs the LRVs recently assessed as urgent, including with the assistance of the psychologist, the TFV recalls that in July 2023, the LRVs communicated by email to the TFV that some of their clients are suffering from serious mental illness and trauma and sought their inclusion in the assistance programme. Thereafter, the LRVs submitted a list of 25 clients to the TFV. The TFV linked these clients to two of its TFV partners operating in geographically fitting areas. Two of the 25 clients were deceased. The needs of the remaining 23 clients were assessed and, insofar as reachable and possible, they started to receive treatment or support to address their most urgent needs. 20 of those 23 clients are currently under treatment. The TFV notes that the LRV Request refers to a total of 56 clients, 22 of which were part of the list referred to the TFV.

18. The TFV underlines that, given its programme is still underway until 3 April 2024, it is prepared to receive additional lists of names of additional LRV clients in order to refer them to its partners, insofar as their required treatment fits the activities, which are financed by the TFV,³¹ and the geographic scope, within which they are active.

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests the Trial Chamber to consider these observations when ruling on the LRV Request.



Deborah Ruiz Verduzco
Executive Director of the Trust Fund for Victims,
Dated this 8th Day of September 2023
At The Hague, The Netherlands

³¹ It needs to be kept in mind that the TFV projects have a set scope of activities and may therefore not be in a position to address all urgent needs of each client of the LRVs.