

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/04-01/15
Date: 13 November 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***

Confidential

Ex parte only available to LRV, CLRV, OTP, VPRS and Defence

**Response of the Common Legal Representative of Victims
to the “Defence Notification of Potential Issues with Representation of Victims”**

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 Manoba
Mr Francisco Cox

Common Legal Representatives for Victims

Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

Ms Paolina Massidda
Ms Ludovica Vetrucchio
Ms Diletta Marchesi

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

I. INTRODUCTION

1. The Common Legal Representative of Victims (the “CLR” or “Counsel”) opposes the request of the Defence of Mr Ongwen (the “Defence”) raised in its “Notification of Potential Issues with Representation of Victims” (the “Defence Notification”).¹

2. The Defence seeks an order from the Chamber for “*an in-depth determination*” to verify whether any of the individuals listed in the Annexes to the Notification are claiming reparations both at national level and before the Court. The CLR submits that the Request should be rejected. She recalls that nothing in the legal texts of the Court prevents victims from seeking reparations through other venues than the Court, as recognised by the Court’s jurisprudence. In any case, the CLR argues that the documents submitted by the Defence are not sufficient to substantiate the claim that there may be an overlap between the victims participating in this proceeding, and the individuals involved in civil suit cases before the Ugandan courts.

II. PROCEDURAL HISTORY

3. 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

4. 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

¹ See the “Defence Notification of Potential Issues with Representation of Victims”, No. ICC-02/04-01/15-2063-Conf-Exp, 24 October 2023 and the “Defence Addendum to Filing 2063-Conf-Exp”, No. ICC-02/04-01/15-2064-Conf-Exp, 31 October 2023.

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”).

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. On 24 October 2023, the Defence submitted the its Notification⁵ with Confidential, *ex parte*, Annexes A-D.⁶

6. On 31 October 2023, the Defence filed its Addendum to the Notification.⁷

7. On 1 November 2023, the Chamber, by e-mail, indicated that the deadline for the responses to the Notification would run from the date of notification of its Addendum.⁸

8. On 10 November 2023, the other team of Legal Representatives of Victims filed its response to the Defence Notification.⁹

III. LEVEL OF CLASSIFICATION

9. In accordance with regulation 23*bis* (2) of the Regulations of the Court, the present submission is filed confidential *ex parte* only available to LRV, CLRV, OTP, VPRS and Defence following the classification chosen by the latter. However, the CLRV indicates that the document can be re-classified as public.

IV. SUBMISSIONS

10. The CLRV submits that the Notification should be rejected because nothing in the legal text of the Court prevents victims from seeking reparations for the harms they suffered also through venues other than the Court, as the relevant jurisprudence confirms.

11. Article 75(6) of the Rome Statute (the “Statute”), regulating reparations to victims, clarifies that “[n]othing in this article shall be interpreted as prejudicing the rights

⁵ See the “Defence Notification of Potential Issues with Representation of Victims”, No. ICC-02/04-01/15-2063-Conf-Exp with Confidential, *ex parte*, Annexes A-D, 24 October 2023.

⁶ *Idem*, paras. 14-16.

⁷ See the “Defence Addendum to Filing 2063-Conf-Exp”, No. ICC-02/04-01/15-2064-Conf-Exp with Confidential, *ex parte*, Annex A, 31 October 2023.

⁸ See the Chamber’s email on 1 November 2023, at 18:40 hours.

⁹ See the “Victims’ Response to Defence Notification of Potential Issues with Representation of Victims”, No. ICC-02/04-01/15-2066-Conf-Exp, 10 November 2023.

of victims under national or international law". In this regard, as established by the consolidated jurisprudence of the Court, States have "separate obligations, under domestic law or international treaties, to provide reparations to their citizens".¹⁰ Reparations pursuant to orders from the Court do not exonerate States from their obligation to award reparations to victims under other treaties or national law, and do not interfere with this responsibility.¹¹ Relevant States have indeed the primary obligation of addressing the harms suffered and award compensation to their citizens because of crimes committed on their territory.¹²

12. In turn, "decisions by other bodies, whether national or international, do not affect the rights of victims to receive reparations pursuant to article 75 of the Statute".¹³ Even "assistance programs run by separate actors" have not been considered in the past as "a replacement" for the Court's reparations programme.¹⁴ Awards or benefits received by victims from other bodies cannot exclude them from benefitting from the Court's reparation. Instead, said awards or benefits may be considered by the Court to guarantee that reparations are "not applied unfairly or in a discriminatory manner", especially when

¹⁰ See the "Reparations Order" (Trial Chamber VIII), [No. ICC-01/12-01/15-236](#), 17 August 2017, para. 36.

¹¹ See the "Reparations Order" (Trial Chamber VIII), [No. ICC-01/12-01/15-236](#), 17 August 2017, para. 36; the "Annex A to Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 order for reparations (amended)" (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA](#), 3 March 2015, para. 50; the "Ordonnance de réparation en vertu de l'article 75 du Statut Accompagnée d'une annexe publique (annexe I) et d'une annexe confidentielle ex parte réservée au Représentant légal commun des victimes, au Bureau du conseil public pour les victimes" (Trial Chamber), No. [ICC-01/04-01/07-3728](#), 24 March 2017, para. 323.

¹² See the "Reparations Order" (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021, para. 225.

¹³ See the "Decision Establishing the Principles and Procedures to be Applied to Reparations" (Trial Chamber I), [No. ICC-01/04-01/06-2904](#), 7 August 2012, para. 201; the "Annex A to Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 order for reparations (amended)" (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA](#), 3 March 2015, para. 9.

¹⁴ See the "Public Redacted Version of First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations" (Trial Chamber II), No. [ICC-01/04-02/06-2860-Red](#), 30 August 2023, para. 191, dated 11 August 2023.

prioritizing victims in terms of vulnerability¹⁵ and assessing the type of remedies to be awarded.¹⁶

13. The CLRV posits that this argument alone is sufficient to reject the Defence's request. However, she also argues that, in any case, the documents submitted by the Defence are not sufficient to substantiate the claim that there may be an overlap between the victims participating in the proceedings before the Court and individuals involved in national civil suit cases.

14. Most notably, the documents submitted do not include the relevant decisions and any other document issued by a national court, the Defence seems to rely on in its Notification.¹⁷ It is therefore impossible to verify not only the scope of the 21 February 2023 ruling mentioned in said documents, but also its actual existence. Moreover, the Defence does not provide any explanation on how it became in possession of said documents and the Notification does not contain any information on their authenticity and source.

15. Furthermore, said documents do not provide sufficient information on the plaintiffs' identity. In this regard, it should be noted that, in Uganda, phenomena of "namesake" are extremely frequent: many individuals have identical or similar names. Therefore, the limited information provided does not allow to determine whether any of the plaintiffs are in fact also victims participating in this proceeding. In light of the above, the CLRV posits that the documents are irrelevant, unreliable and unsubstantiated.

¹⁵ See the "Decision Establishing the Principles and Procedures to be Applied to Reparations" (Trial Chamber I), [No. ICC-01/04-01/06-2904](#), 7 August 2012, paras. 200-201; the "Annex A to Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 order for reparations (amended)" (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA](#), 3 March 2015, para. 9.

¹⁶ See the "Public Redacted Version of First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations" (Trial Chamber II), No. [ICC-01/04-02/06-2860-Red](#), 30 August 2023, para. 191, dated 11 August 2023.

¹⁷ See the Defence Notification, *supra* note 1, para. 12.

16. Lastly, the CLRV notes the Defence submissions on the potential involvement of former counsel for the Defence Mr Ayena Odongo in representing individuals claiming reparations through a civil lawsuit before the Ugandan courts. However, in the absence of a more detailed understanding of the specific circumstances and of the plaintiffs' identity, the CLRV is unable to provide an informed comment on the matter.

FOR THE FOREGOING REASONS, the CLRV respectfully requests the Chamber to dismiss the Defence request.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 13th day of November 2023

At The Hague, The Netherlands