

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **1 May 2024**

THE APPEALS CHAMBER

Before:

**Judge Luz del Carmen Ibáñez Carranza Presiding
Judge Tomoko Akane
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin**

SITUATION IN UGANDA

IN THE CASE OF

THE PROSECUTOR v. DOMINIC ONGWEN

Public document

**Observations on Defence Request for Suspensive Effect
and
Request under rule 103 of the Rules of Procedure and Evidence**

Source:

The Trust Fund for Victims

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

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Section**

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I. BACKGROUND

1. On 28 February 2024, Trial Chamber IX (the ‘Trial Chamber’) issued an order for reparations against Mr Ongwen (the ‘Reparations Order’) awarding collective community-based reparations focused on rehabilitation and symbolic and satisfactory measures to the direct and indirect eligible victims of the crimes for which Mr Ongwen was convicted through the Trust Fund for Victims (‘TFV’) pursuant to rule 98 (3) of the Rules of Procedure and Evidence (‘Rules’) and assessing his liability at EUR 52,429,000.¹
2. In the Reparations Order, the Trial Chamber directed the TFV to consult with victims and to prepare a draft implementation plan, for the Chamber’s approval, setting the deadline to 3 September 2024.²
3. On 22 April 2024, the defence team of Mr Ongwen filed a notice of appeal against the Reparations Order pursuant to article 82 (4) of the Rome Statute (the ‘Statute’),³ setting out 15 grounds of appeal and requesting suspensive effect of the appeal pursuant to article 82 (3) of the Statute (‘Defence Request’).
4. On 24 April 2024, the Appeals Chamber invited the TFV and the Victims Participation and Reparations Section (‘VPRS’) to respectively submit observations and a submission on the request for suspensive effect on Wednesday, 1 May 2024 and set the time limit for the Legal Representatives’ and Mr Ongwen’s responses to Monday, 6 May 2024 (‘Invitation’).⁴
5. The TFV hereby provides its observations and background information on its preparations for the implementation of the Reparations Order (II), as well as a request pursuant to Rule 103 of the Rules (III).

¹ Reparations Order, 28 February 2024, [ICC-02/04-01/15-2074](#).

² Reparations Order, p. 360.

³ Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for Suspensive Effect, 22 April 2024, [ICC-02/04-01/15-2084](#).

⁴ Order setting a time limit for submissions on the request for suspensive effect, 24 April 2024, [ICC-02/04-01/15-2085](#) (“Invitation”).

II. OBSERVATIONS

6. In accordance with the Invitation, the TFV hereby provides its observations on issues arising from the Defence Request.

7. The Request is based on article 82 (3) of the Statute providing that an appeal may have suspensive effect, if the Appeals Chamber so orders, upon request. The Appeals Chamber has repeatedly held that deciding on the suspensive effect is a matter within its discretion and that it will accordingly “consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under the circumstances”.⁵

8. In earlier appeal proceedings against reparations, the Appeals Chamber adopted the same criteria in relation to its discretion to grant suspensive effect as in other appeals under article 82 of the Statute, which are the following:

whether the implementation of the decision under appeal (i) ‘would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant’, (ii) would lead to consequences that ‘would be very difficult to correct and may be irreversible’, or (iii) ‘could potentially defeat the purpose of the [...] appeal’.⁶ [Footnotes omitted]

9. The Appeals Chamber considered in relation to appeal proceedings against reparations, “that [these criteria] are of a demanding nature and should be rigorously applied in view of the overriding importance of delivering reparations to victims following the Trial Chamber’s decision on conviction and in circumstances in which that decision is final”.⁷

⁵ Decision on the Request of the Prosecutor for Suspensive Effect, 3 September 2009, [ICC-01/05-01/08-499 \(OA 2\)](#), para. 11; and Decision on the Defence request for suspensive effect, 2 July 2021, [ICC-01/04-02/06-2691](#), para. 20.

⁶ *Prosecutor v. Ali Muhammad Ali Abd-El-Rahman*, Decision on Request for Suspensive Effect, 25 August 2020, [ICC-02/01-01/20-134](#), para. 6. *See also Prosecutor v. Joseph Kony et al.*, Decision on the Prosecutor’s “Application for Appeals Chamber to Give Suspensive Effect to Prosecutor’s Application for Extraordinary Review”, 13 July 2006, [ICC-02/04-01/05-92](#), para. 7.

⁷ Decision on Defence request for suspensive effect, 2 July 2021, [ICC-01/04-02/06-2691](#), para. 21.

1. Tasks of the TFV

10. The Reparations Order provides for a division of tasks between the Registry and TFV. Registry/VPRS has been tasked with the identification and verification of the eligible victims, including notification of positive and negative eligibility determinations to victims⁸ Registry/PIOS has been tasked with outreach.⁹ The TFV has been tasked with the development of the draft implementation plan ('DIP') by 3 September 2024 and taking all steps to ensure the implementation of collective community-based reparations. In the preparation of these Observations, the TFV consulted with the Registry, given any implementation of the Reparations Order depends on the administrative eligibility assessment by the Registry/VPRS.

a) *Fundraising*

11. It falls within the mandate of the TFV to raise funds through voluntary contributions of States and private donors. In respect of reparations ordered through the TFV pursuant to rule 98(3) of the Rules of Procedure and Evidence, such voluntary contributions enable the TFV to proceed pursuant to regulation 56 of the Regulations of the Trust Fund for Victims ('TFV Regulations') and to complement the payment of the Reparations Order, where the convicted person does not have sufficient funds. The Trial Chamber determined in the Reparations Order that Mr Ongwen is indigent for the purposes of reparations.¹⁰ The Trial Chamber accordingly encouraged the TFV to complement the reparations awards and to engage in additional fundraising efforts.¹¹ The TFV is committed to continue engaging in fundraising activities, including for the purposes of the *Ongwen* Reparations Order.

b) *DIP development*

12. The Reparations Order orders the TFV to develop a DIP by 3 September 2024 and to consult with the victims in developing the DIP.¹² These activities have already started; not only has engagement with relevant stakeholders in the four case locations taken place, but

⁸ Reparations Order, p. 361.

⁹ Reparations Order, p. 360.

¹⁰ Reparations, Order, p. 361.

¹¹ Reparations Order, p. 361.

¹² Reparations Order, para. 799, p. 360.

consultations with victims have started on 30 April 2024 in Abok and are planned over a period of five weeks until the end of June 2024. Follow-up consultations may be planned for July and August 2024. Direct engagement with various stakeholders, including civil society in Northern Uganda, is also planned for July and August 2024.

13. The TFV is planning to share with the parties the planned measures in July 2024 to be able to take into account, to the extent possible, their observations in the DIP that will be submitted by 3 September 2024.

14. The TFV has started to closely collaborate with Registry/PIOS and Registry/VPRS in developing key messages and Question-and-Answer documents to ensure that the same messages are distributed to the general public, the affected communities and the victims, be it through outreach (PIOS), identification (VPRS) or consultation (TFV) measures.

15. The TFV considers that the development of the DIP relates foremost to measures other than the symbolic payment of EUR 750, given the Trial Chamber's directions for the DIP development and the annex prepared by the Trial Chamber for that purpose.

c) TFV Implementation of the Reparations Order

16. To start implementing the Reparations Order, the TFV notes that the DIP will first need to be approved by the Trial Chamber. In line with the Reparations Order, the only exception thereto is that the symbolic payment of EUR 750 can be implemented by the TFV without the approval of the DIP, once a victim is found eligible by the Registry/VPRS.

17. While the DIP is still in the process of development and, accordingly, decisions on whether the TFV implements some activities directly or with implementing partners have not been taken yet, the TFV notes that it has implemented its activities with implementing partners on numerous occasions in the past. Once the DIP is approved, the TFV will therefore likely enter into the process of selecting and contracting the relevant partners. Thereafter, the implementing partners will set up the project and start implementation.

18. Throughout that process, the TFV will have to engage with key stakeholders and continue the communication with the eligible victims.

19. Accordingly, before the implementation of the Reparations Order can actually start concretely, the TFV has to conduct numerous preparatory activities, relevant to identifying its partners, establishing networks, and maintaining communication with eligible victims.

2. The Defence Request

20. The TFV notes that the 15 grounds of appeal relate, either directly or indirectly, to all aspects ordered by the Trial Chamber in the Reparations Order.

a) Adverse effects

21. The TFV underlines that once the implementation of the Reparations Order starts by providing victims with 750 EUR or with services as approved in the DIP, it becomes *de facto* difficult to reverse any measures taken; any reversal of the Reparations Order would likely lead to adverse effects for the victims and be problematic in light of the *do no harm* principle.

22. In addition, the TFV submits that after the start of provision of EUR 750 or of services to victims, if the appeal was successful in full or part, the TFV would have to take various measures to address the financial and contractual implications of such a reversal or amendment of the Reparations Order.

b) Preparatory measures

23. The TFV considers that many of the specific orders contained in the Reparations Order concern preparatory steps relevant to the implementation that can be continued without causing adverse effects for victims. Rather, continuation of such measures ensures preparedness and expeditiousness and that, ultimately, victims will be able to benefit from reparations without delay. In the view of the TFV this relates, in any case, to the consultation with victims, interaction with stakeholders, the development of the DIP and the pre-selection of partners.

c) Other measures

24. Finally, similar to the preparatory measures referred to above, a number of activities will continue independently from the Reparations Order and the appeal process, in particular fundraising activities to enable the TFV to complement the payment of the reparations award as expeditiously as possible. Outreach, as carried out by Registry/PIOS, will also have to continue, as well as Registry and TFV communication with victims and engagement with other stakeholders, as they need to be well-informed to ensure their ongoing support to and acceptance of the reparations, including about where the judicial process before the ICC stands.

d) Conclusion

25. The TFV observes that if the Appeals Chamber was to suspend the entire or part of the Reparations, clarity on the relevant part of the Reparations Order and a clear articulation of the consequences of any such suspension would assist the TFV in taking any steps that mitigate the effects of the suspension on the timeline for implementation. In addition, it will be essential to ensure that steps can be taken to mitigate the effect of any order for suspensive effect on the timeline for the implementation of reparations, such as the preparatory measures mentioned above.

26. Should the Appeals Chamber proceed in line with the recent jurisprudence in the case of Mr *Ntaganda*, where it held that “considered progress rather than immediate suspension of implementation is the more appropriate course”,¹³ the TFV welcomes any guidance the Appeals Chamber may be able to provide, on how to proceed, in particular to ensure that the steps taken conform with the reparations principles, including the *do no harm* principle.

III. REQUEST PURSUANT TO RULE 103 OF THE RULES

27. The TFV notes that the Defence Appeal addresses numerous issues, some of which have a number of practical implications in the implementation of the Reparations Order.

¹³ *The Prosecutor v. Bosco Ntaganda*, Appeals Chamber, Decision on the requests for suspensive effect and other procedural issues, 5 February 2024, [ICC-01/04-02/06-2882](#), para. 49.

28. Accordingly, the TFV seeks leave to make observations on these issues pursuant to Rule 103 of the Rules, in particular with respect to issues such as the symbolic payment of EUR 750 or the prioritization of victims, which concern directly implementation activities of the TFV.

RELIEF SOUGHT

The TFV hereby respectfully requests the Appeals Chamber

- 1) to consider these observations in adjudicating the Defence Request;
- 2) to grant the TFV the opportunity to submit observations pursuant to rule 103 of the Rules as set out above in paragraphs 28 *et seq.*



Deborah Ruiz Verduzco
Executive Director of the Secretariat of the Trust Fund for Victims,

Dated this 1st Day of May 2024

At The Hague, The Netherlands