

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **6 May 2024**

APPEALS CHAMBER

Before:

**Judge Luz del Carmen Ibáñez, Presiding Judge
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

**Defence Response to the Registry's and TFV's Submissions on Suspensive Effect and Rule
103 of the Rules and Procedure and Evidence**

Source: Defence for Dominic Ongwen

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

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I. INTRODUCTION

1. Pursuant to the Appeals Chamber *Order setting a time limit for submissions on the request for suspensive effect*,¹ the Defence for Dominic Ongwen (‘Defence’) hereby submits its response to the submissions Trust Fund for Victims (‘TFV’)² and Registry.³
2. Furthermore, the Defence requests the Appeals Chamber to reject the TFV request pursuant to Rule 103 of the Rules of Procedure and Evidence (‘RPE’) as it is premature.

II. PROCEDURAL HISTORY

3. On 4 February 2021, Trial Chamber IX issued its Trial Judgment in the case against Dominic Ongwen, convicting him of 61 counts of war crimes and crimes against humanity.⁴
4. On 6 May 2021, Trial Chamber IX gave Mr Ongwen a 25-year sentence.⁵
5. On 15 December 2022, the Appeals Chamber unanimously confirmed the Judgment⁶ and confirmed, by majority, the Sentence.⁷
6. On 28 February 2024, Trial Chamber IX issued the Reparations Order against Mr Ongwen.⁸
7. On 14 March 2024, the Appeals Chamber granted the Defence an extension until 22 April 2024 to file its notice of appeal and 24 June 2024 to file its appeals brief.⁹
8. On 22 April 2024, the Defence filed its notice of appeal, which included a request for suspensive effect of the Reparations Order.¹⁰

¹ Appeals Chamber, *Order setting a time limit for submissions on the request for suspensive effect*, [ICC-02/04-01/15-2085](#), para. 7.

² Appeals Chamber, *Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-2087](#).

³ Appeals Chamber, *Registry Submission on the Request for Suspensive Effect*, [ICC-02/04-01/15-2086](#).

⁴ Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Red](#).

⁵ Trial Chamber IX, *Sentence*, [ICC-02/04-01/15-1819-Red](#).

⁶ Appeals Chamber, *Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”*, [ICC-02/04-01/15-2022-Red](#).

⁷ Appeals Chamber, *Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled “Sentence”*, [ICC-02/04-01/15-2023](#), with the *Partly Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza*, [ICC-02/04-01/15-2023-Anx1](#).

⁸ Trial Chamber IX, *Reparations Order*, [ICC-02/04-01/15-2074](#).

⁹ Appeals Chamber, *Decision on the Defence’s request for time extension for the notice of appeal and appeal brief against Trial Chamber IX’s “Reparations Order”*, [ICC-02/04-01/15-2080](#).

¹⁰ Appeals Chamber, *Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for Suspensive Effect*, [ICC-02/04-01/15-2084](#).

9. On 24 April 2024, the Appeals Chamber issued its *Order setting a time limit for submissions on the request for suspensive effect*, inviting the TFV and the Victim Participation and Reparations Section ('VPRS') to submit any observations on the Defence's request for suspensive effect no later than 1 May 2024 at 16:00 CET.¹¹
10. On 1 May 2024, the TFV¹² and Registry¹³ (on behalf of VPRS) filed their respective observations.

III. RESPONSE TO THE REGISTRY'S AND TFV SUBMISSIONS

A. Response to the Registry

11. The Defence highlights that the Registry states that many of its preparatory activities can continue even if suspensive effect is granted.¹⁴ During the coming months, the Registry intends "to create a solid support network on the ground with will carry out victim identification tasks in multiple key locations [...], [t]rainings are being designed [...] key documents are being drafted to inform interlocutors about the details of the process, [the] scope of the case and steps ahead [and] finalising the consolidation of the files of victims that already participated in the *Ongwen* proceedings."¹⁵ The Registry, along with the TFV, can also still solicit contributions for the trust fund to help in eventual payments to victims.
12. The Defence stresses that these activities can continue even if suspensive effect is granted. The Registry, when identifying potential beneficiaries, must keep a record of each potential beneficiary and how each person qualifies as a victim and beneficiary. After the Defence files its brief in support of the appeal at the end of June 2024, the Registry shall know in detail which points and issues the Defence argues against and will be in a stable and comfortable position to determine which potential beneficiaries qualify pursuant to the Reparations Order and which potential beneficiaries are being disputed by the Defence.
13. The Registry has failed to explain how its operations would be hindered more than a mere inconvenience. If suspensive effect is granted, the Registry would be forbidden from making

¹¹ Appeals Chamber, *Order setting a time limit for submissions on the request for suspensive effect*, [ICC-02/04-01/15-2085](#), para. 6.

¹² Appeals Chamber, *Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-2087](#).

¹³ Appeals Chamber, *Registry Submission on the Request for Suspensive Effect*, [ICC-02/04-01/15-2086](#).

¹⁴ Appeals Chamber, *Registry Submission on the Request for Suspensive Effect*, [ICC-02/04-01/15-2086](#), paras 12 and 16.

¹⁵ Appeals Chamber, *Registry Submission on the Request for Suspensive Effect*, [ICC-02/04-01/15-2086](#), para. 16.

payments to victims. If the Registry acts in an efficient and logical manner, it should be ready to implement said payments almost immediately after the appeal and any subsequent legal arguments are concluded. Essentially, if the Registry creates a comprehensive database of the potential beneficiaries, it should be able to determine with relative ease and speed who qualifies as a beneficiary after the Appeals Chamber's judgment on the appeal. Suspensive effect should have only a minimal inconvenience on the Registry's ability to perform its functions if the job is done efficiently and logically.

B. Response to the TFV

14. Just as the Registry notes, the TFV states that many of its activities can continue even if suspensive effect is granted by the Appeals Chamber.¹⁶ Essentially, the TFV appears to admit that the only real adverse effect of granting suspensive effect is that potential beneficiaries will not be able to receive their €750 symbolic payment,¹⁷ something which the Defence has given notice of in its intent to appeal.¹⁸
15. From the Defence's point of view, the TFV can continue almost all its functions even during a time of suspensive effect. The only adverse effect the TFV notes is one which the Defence has specifically given notice of its intent to appeal. Consequently, the Appeals Chamber should grant suspensive effect.

C. Response to the TFV Rule 103 Request

16. In its submission, the TFV requests, pursuant to Rule 103 of the RPE, "leave to make observations on [...] issues such as the symbolic payment of EUR 750 or the prioritization of victims [...]".¹⁹ Pursuant to the Appeals Chamber order, the Defence is allowed to "respond to the observations submitted by the TFV [...]".²⁰
17. As it is not generally allowed for parties and participants to comment on requests made pursuant to Rule 103 of RPE, the Defence merely takes the opportunity to state that the TFV makes its

¹⁶ Appeals Chamber, *Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-2087](#), paras 10-19 and 23-24.

¹⁷ Appeals Chamber, *Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-2087](#), paras 21-22.

¹⁸ Appeals Chamber, *Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for Suspensive Effect*, [ICC-02/04-01/15-2084](#), para. 17.

¹⁹ Appeals Chamber, *Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-2087](#), para. 28.

²⁰ Appeals Chamber, *Order setting a time limit for submissions on the request for suspensive effect*, [ICC-02/04-01/15-2085](#), para. 7.

request prematurely. The Defence has not made its legal, factual and procedural submissions on the proposed topics of the TFV, and said submissions are not due until 24 June 2024. If the TFV wishes to submit observations on the grounds of appeal, it should make the request at the appropriate time, which would be after 24 June 2024. As such, the Defence requests the Appeals Chamber to reject the TVF's request.

IV. RELIEF

18. The Defence for Dominic Ongwen respectfully request the Appeals Chamber to:
 - a. Give suspensive effect to the implementation of the *Reparations Order* and
 - b. Reject the Trust Fund for Victims Rule 103 request for being premature.

Respectfully submitted,



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Chief Charles Achaleke Taku
On behalf of Dominic Ongwen

Dated this 6th day of May, 2024
At Maryland, United States of America