

Annex 1

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date:

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács, Judge
Judge Raul C. Pangalangan, Judge

SITUATION IN UGANDA

**IN THE CASE OF
THE PROSECUTOR *v.* DOMINIC ONGWEN**

Public Document

Request for leave to submit Amicus Curiae Observations on reparations

Source:

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]

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

The Office of the Prosecutor

[Ms. Fatou Bensouda
James Stewart]

Counsel for the Defence

[Mr. Krispus Ayena Odonga]

Legal Representatives of the Victims

[Joseph Akwenyu Manoba]

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)
Participation/ Reparation**

**The Office of Public Counsel for
Victims**

[Ms. Paolina Massidda]

**The Office of Public Counsel for the
Defence**

[2 names maximum]

States' Representatives

Competent Authorities of Republic of
Uganda

Amicus Curiae

TPFI; MAKMOT KIBWANGA & CO.
ADV.; LAWCAS & LACHA

REGISTRY

Registrar

M. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr. Philipp Ambach

Other

I. INTRODUCTION

1. The Populace Foundation International (TPFI), Makmot-Kibwanga & Co. Advocates, Lango War Claimants' Association (LAWCAS) and Lango Camp Hosts' Association (LACHA) hereinafter referred to as 'the Organisations' respectfully request Trial Chamber IX for leave to submit *Amicus Curiae* Observations on reparations in the case of the *Prosecutor vs. Dominic Ongwen* in the situation in Uganda pursuant to Article 75 of the Rome Statute and rule 103 of the Rules of Evidence and Procedure.

2. Established since August 2005 in Northern Uganda, TPFI is a Ugandan policy research and advocacy civil society organization (CSO) with an international reach. TPFI envisions a society where humanity, social justice and human rights are respected in the development processes. It has specific objectives of saving lives, alleviating suffering and maintaining human dignity during and in the aftermath of man-made crises and natural disasters, and preventing and strengthening preparedness for the occurrence of such situations. The humanitarian catastrophes from the devastating insurgency whose extreme brutalities disrupted the functions of every institution (*e.g. healthcare, education, justice systems etc.*) that left Northern and North-Eastern Uganda, to-date, in ruins - and this played a big and critical role in the formation of TPFI and it has a vast experience of working in the war-torn northern Uganda and beyond.
Please visit www.tpfi.org for more about the Organisation and its programming.

3. M/S Makmot Kibwanga & Co. Advocates is a home-grown law firm that does local and international legal consultancy in human rights, access to justice, peace building, class actions, public interest and strategic litigation.¹ It was established in 2006. This period marked the emergence of new areas of legal practice in Uganda and it coincided with the deteriorating human rights and humanitarian law situation at the time in Uganda. This deterioration was more pronounced in Northern Uganda where the firm draws most of its membership and consequently its clientele. The firm specialized in human rights, class actions, structuring humanitarian responses, public and strategic interest litigation, among others. It is composed of; 3 Managing Partners, 16 Advocates, 8 Consultants, 12 Legal Associates, 7 Professional Assistants, 8 Legal Assistants.

4. LAWCAS is a victims-led organisation with 79,750 members and whose successful landmark court case pioneered the claim for reparation against the GoU in the zone of UGX. 1.7 Trillion which is equivalent to USD 479, 693, 760.

¹ www.makmot.com

These orders, however, remain unfulfilled by GoU.² This landmark case was tried by Makmot-Kibwanga & Co. Advocates with technical and logistical support from TPFi.

5. LACHA is another victims-led community-based organization (CBO) with 5,506 members. It has its headquarters in Oyam District – northern Uganda and was incorporated in May, 2011. Its members comprise of ; victims of the Lord’s Resistance Army (LRA) war and persons deprived of livelihoods due to the establishment of internally displaced persons (IDP) camps on their farm lands resulting from the 25 year war between the Government of Uganda (GoU) and the LRA. It has undertaken mass action litigation against the GoU to seek for reparations. Here, Makmot-Kibwanga & Co. Advocates is defending the Association in the Courts while TPFi creates community awareness ; developing and disseminating Information, Education & Communication (IEC) materials that speak about rights, land governance, environment etc. to the community ; translating and disseminating simplified versions of relevant material of awareness creation; mapping and verifying the nature of new emerging land-related conflicts affecting host communities; and training the Association members. The Organisation also structures and facilitates court processes including its latest intervention for the indigent, management of *locus in quo*.

6. These four members have been carefully selected for the purpose of optimally responding to this call for submission on reparations. They have the necessary local expertise.

II. Procedural History

7. On the 6th May, 2021 the Trial Chamber IX of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen* (the ‘Ongwen case’), having regard to articles 64 and 75 of the Rome Statute (the ‘Statute’), rule 103 of the Rules of Procedure and Evidence (the ‘Rules’), and regulations 24*bis*, 34 and 38(2) of the Regulations of the Court (the ‘Regulations’), issued the Order for Submissions on Reparations (the ‘Order’).

8. The Chamber gave directions among which was number 5 (iii) which invited any persons or organizations, particularly with local expertise, interested in making submissions on the specific issues mentioned in the Order, to request for

² Delyon Johnson Wilson & 69,745 Others v. Attorney General of Uganda, High Court Civil Suit No. 27 of 2010. <https://www.monitor.co.ug/uganda/news/national/60-000-lango-war-claimants-yet-to-be-paid-four-years-later-1795172> <https://www.monitor.co.ug/uganda/news/national/government-releases-shs10b-to-compensate-teso-lango-war-claimants-3250908>

leave from the Chamber, pursuant to Article 75 of the Statute and rule 103 of the Rules, by Monday 7 June 2021.

III. Applicable Law

9. Article 75 of the Rome Statute empowers court to establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. It further provides for the scope and nature of determination of such reparations.
10. Meanwhile, rule 103 of the Rules of Procedure and Evidence provides for Amicus curiae and other forms of submission. It clothes the Chamber with the discretion to grant leave at any stage of the proceedings to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

IV. Submission

11. The Organisations seeks to make submissions that will call for a *Victims-led Reparation*. This is because the situation in Uganda is unique as already seen during the Ongwen trial and therefore this peculiarity requires a tailor-made reparation process that is victims-led. TPFII has expertise in this particular area.
12. The victims-led reparation process is categorized into three facets; individualistic, communal and institutional. The Organisations believe that a true victim-led process is a conversation amongst these three categories as none is independent of the other. An individual victim is a member of the community which may require institutional interventions. However, there are clear cut scenarios that separate the individual from the community and the institution and therefore warranting an individualistic approach, for instance, an amputee due to the war. LAWCAS and LACHA has leverage in this area.
13. The uniqueness in this situation is due to the fact that there is a fine line between victims and perpetrators and the line is drawn in family relations, age diversity, gender relations, communal aspects, tribal similarities, and affinity between victims and apparent perpetrators.
14. It is therefore important that a reparation process should be seen to be victims-led and that informs the Organisations' efforts to seek leave to make this submission. LAWCAS and LACHA who are both victims-led associations directly and indirectly reach an approximate population of 2.2 million within the war affected Lango Sub-region, Northern Uganda.

In addition, both LAWCAS and LACHA were designed to have influence beyond Lango Sub-region due to the nature of the conflict which was characterised by human movements across sub regions.

15. *Unpacking the accountability principle.* Since the trial of Dominic Ongwen was done far away from where the victims are, and more so where the majority do not have access to the media and made more severe with restrictions imposed by COVID-19 standard operating procedures (SOPs), it is important that stakeholders and victim-led organisations get actively involved/ fully participate in the reparation process as a feedback mechanism. This will plug the gaps.
16. It is against the above backdrop that the Organisations seek to make submission on reparations. It is hoped that the submissions will make the convict directly accountable through the active participation and full involvement of victims in the reparation process not only as beneficiaries but as their own representatives. It is further hoped that the victims-led reparations will propagate the deterrent aspects of Dominic Ongwen's case as an extension to the accountability process.
17. The submission also seeks to give the reparation call an *egalitarian approach* which is akin to African societies. Egalitarianism requires communal participation and through this, the community owns and sustains the interventions.
18. This submission shall also be informed by the need to mainstream *traditional and customary practices* commonly employed among the victims and generally in northern Uganda. The need to unpack the useful and long tested social justice mechanisms such as *mato oput, culo kwor* and *kao cuk* and juxtapose them alongside formal reparation mechanisms with the intention to provoke dialogues informs the Organisations' efforts to make submission for reparation.

V. Relief Sought

19. The Organisations respectfully requests the Trial Chamber IX for leave to submit *amicus curie* observations on reparations and in particular on the involvement of any persons or organizations, particularly with local expertise, interested in making submissions on the specific issues mentioned in the order.
20. The Organisation specifically proposes the need for the Chamber to consider additional principles on reparations; to delve into estimated total number of the direct and indirect victims of the crimes for which Mr. Ongwen was convicted and who may be potentially eligible for reparations; to look at any legal and factual issues relevant to the identification of eligible victims; to consider

specification of the types and extent of the harm suffered by the victims of the crimes for which Mr Ongwen was convicted; and types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes for which Mr Ongwen was convicted. In particular, the suitability of collective reparations with individualized components, the appropriate modalities to be included therein, and whether certain modalities can be expeditiously implemented.

21. It further requests the Chamber to consider concrete estimates as to the costs to repair the harms suffered by the victims in light of the appropriate modalities for repairing them, including costs of running rehabilitation programmes in the region with the potential to address multi-dimensional harm of individual beneficiaries for the purposes of reparations.

Respectfully Submitted

on behalf of

[_____ RICHARDOBEDI _____

Richard Obedi

Executive Director; The Populace Foundation International (TPFI)

_____ RAJAB ADAMS MAKMOT _____

Rajab Adams Makmot Kibwanga;

Managing Partner, Makmot Kibwanga & Co. Advocates

_____ ABAK RAJAB BAKARI _____

Mr. Abak Rajab Bakari

Coordinator, Lango War Claimants' Association (LAWCAS)

_____ JACKSON OMONA _____

Mr. Jackson Omona

Chairman, Lango Camp Host Association (LACHA)]]

Dated this 4th June 2021

At [place, country]