

Pursuant to Trial Chamber IX's instruction dated 19-02-2024, this document is reclassified as " Public

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**
Date: **29 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***

Confidential

**Decision on the 'Victims' Request for Urgent Support to Victims presenting with
Mental Health Challenges and Other Victims Requiring Urgent Medical
Intervention'**

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To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Counsel for the Defence

Mr Charles Achaleke Taku
Ms Beth Lyons
Mr Thomas Obhof

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Mr Orchlón Narantsetseg
Mr Walter Komakech

Unrepresented Applicants for Reparations

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Colin Black

Trust Fund for Victims

Ms Deborah Ruiz Verduzco

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Counsel Support Section

Detention Section

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Trial Chamber IX of the International Criminal Court (the 'ICC' or the 'Court'), in the case of *The Prosecutor v. Dominic Ongwen* (the 'Ongwen case'), having regard to articles 68(1) and 75 of the Rome Statute ('Statute'), rule 98(5) of the Rules of Procedure and Evidence ('Rules'), and regulations 47, 48 and 50(a) of the Regulations of the Trust Fund for Victims, issues the following Decision on the 'Victims' Request for Urgent Support to Victims presenting with Mental Health Challenges and Other Victims Requiring Urgent Medical Intervention' ('Decision').

I. PROCEDURAL HISTORY

1. On 4 February 2021, the Chamber issued its Judgment ('Conviction Judgment'), convicting Dominic Ongwen ('Mr Ongwen') of sixty one counts of crimes against humanity and war crimes, committed in Northern Uganda between 1 July 2002 and 31 December 2005.¹
2. On 6 May 2021, the Chamber issued the Sentence ('Sentencing Judgment'), imposing on Mr Ongwen a joint sentence of twenty-five years of imprisonment.²
3. On the same date, the Chamber issued an Order for Submissions on Reparations, in which it, *inter alia*, (i) instructed the parties, i.e. the Defence and the victims' representatives (hereafter the 'LRVs' and the 'CLRV'),³ the Registry and the Trust Fund for Victims ('TFV') and invited the Office of the Prosecutor, the relevant authorities of the Republic of Uganda, and any persons or organisations with local expertise, to make submissions on a series of issues relevant to reparations; and (ii) instructed the Registry, with the assistance and cooperation of the victims' representatives, as appropriate, to undertake a comprehensive mapping of direct and indirect victims potentially eligible for reparations in the case.⁴
4. On 15 December 2022, the Appeals Chamber delivered two Judgments confirming both, the Conviction Judgment and the Sentencing Judgment.⁵

¹ Trial Judgment ('Conviction Judgment'), ICC-02/04-01/15-1762-Conf, public redacted version filed on the same day [ICC-02/04-01/15-1762-Red](#).

² Sentence, ICC-02/04-01/15-1819-Conf, public redacted version filed on the same day, [ICC-02/04-01/15-1819-Red](#) (with Annex of Partly Dissenting Opinion of Judge Raul C. Pangalangan, [ICC-02/04-01/15-1819-Anx](#)).

³ For the purposes of reparations proceedings, the concept of 'parties' refer to the Defence and the victims' representatives. In the present case, out of the 4,095 participating victims, Mr Joseph Akwenyu Manoba and Mr Francisco Cox (the 'LRVs') represent 2,594 victims who appointed them as their legal representatives, and Ms Paolina Massidda (the 'CLRV'), as Counsel from the Office of the Public Counsel for Victims ('OPCV'), represents 1,501 victims admitted to participate in the proceedings who did not appoint counsel, *see*, Updated Consolidated List of Participating Victims, 29 June 2020, [ICC-02/04-01/15-1746](#).

⁴ Order for Submissions on Reparations, 6 May 2021, [ICC-02/04-01/15-1820](#).

⁵ 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-Red](#); and Judgment on the appeal of Mr Dominic

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5. On 16 December 2022, following developments at the reparations stage in the case of *The Prosecutor v. Bosco Ntaganda* (the 'Ntaganda case'),⁶ and having received information requested from the Registry,⁷ the Chamber issued a decision detailing its approach for ruling on a limited but representative sample of victims' dossiers in the case file.⁸

6. On 16 January 2023, the Chamber issued a decision, *inter alia*, (i) approving the sample of 205 victims' dossiers, assembled by the VPRS, as sufficiently representative of the universe of potential victims in the case; and (ii) setting out deadlines for the victims' representatives to make submissions and complement the victims' dossiers, and for the Defence to make final submissions on the sample.⁹

7. On 28 August 2023, the LRVs filed a request asking the Chamber to direct the TFV to provide resources or submit an intermediate draft implementation plan to respond to the needs of victims requiring urgent psychological, medical, or other relevant intervention pending the issuance of the reparations order and consequent implementation plan ('Request').¹⁰

8. On 8 September 2023, as instructed by the Chamber,¹¹ the CLRV and the Defence filed their responses (respectively 'CLRV Response'¹² and 'Defence Response'¹³) and the TFV filed its observations ('TFV Observations')¹⁴ to the Request.

Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled "Sentence", 15 December 2022, [ICC-02/04-01/15-2023](#).

⁶ See, *inter alia*, Appeals Chamber, Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", 12 September 2022, [ICC-01/04-02/06-2782](#); Trial Chamber II, Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", 25 October 2022, [ICC-01/04-02/06-2786](#).

⁷ See E-mail from Trial Chamber IX Communications, 16 November 2022, at 15:01 and Registry Additional Information on Victims, 21 November 2022 (notified on 22 November 2022), [ICC-02/04-01/15-2019](#).

⁸ Decision on the Registry Additional Information on Victims, 16 December 2022, [ICC-02/04-01/15-2024](#).

⁹ Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample, 16 January 2023, [ICC-02/04-01/15-2027](#), with public annex 1, [ICC-02/04-01/15-2027-Anx1](#).

¹⁰ Victims' Request for Urgent Support to Victims presenting with Mental Health Challenges and Other Victims Requiring Urgent Medical Intervention ('Request'), originally filed on 23 August 2023 as confidential *ex parte* Trust Fund for Victims only, ICC-02/04-01/15-2054-Conf-Exp. Confidential redacted and public redacted versions filed on 28 August 2023, ICC-02/04-01/15-2054-Conf-Red and [ICC-02/04-01/15-2054-Red2](#), with Confidential Annex A and Confidential *ex parte* annex B, ICC-02/04-01/15-2054-Conf-AnxA and ICC-02/04-01/15-2054-Conf-Exp-AnxB.

¹¹ See emails from the Chamber's Legal Officer, 23 October 2023 at 18:35hrs. and 25 October 2023 at 10:41hrs.

¹² Response to the "Confidential Redacted Version of 'Victims' Request for Urgent Support to Victims presenting with 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 Trust Fund for Victims Only' ('CLR V Response'), filed on 23 August 2023, ICC-02/04-01/15-2054-Conf-Exp", 8 September 2023, [ICC-02/04-01/15-2056](#).

¹³ Defence Response to ICC-02/04-01/15-2054-Conf-Red ('Defence Response'), 8 September 2023, ICC-02/04-01/15-2057-Conf.

¹⁴ Trust Fund for Victims' Observations pursuant to Trial Chamber II's order of 25 August 2023 ('TFV Observations'), 8 September 2023, [ICC-02/04-01/15-2058](#).

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II. SUBMISSIONS

9. In their Request, the LRVs ask for the Chamber's intervention to issue an order 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 the victims requiring priority attention, namely (i) victims identified by the LRVs as presenting dire mental health challenges to attend mental clinics in Gulu or Kampala; and (ii) other victims requiring urgent medical intervention, pending the issuance of the reparations order and any implementation plans.¹⁵ The LRVs indicate that they have identified victims whose lives are at risk owing to the deterioration of their mental and physical health, detailing the situation and concerns of dozens of victims.¹⁶ The LRVs explain that, although some of the victims have been introduced to the TFV's partners implementing projects under the TFV's assistance mandate in Uganda, others may not be able to be completely handled by them.¹⁷ The LRVs recall the principle of prioritisation in the reparations process and note the jurisprudence of the reparations order in the *Ntaganda* case, where an Initial Draft Implementation Plan ('IDIP') was implemented to deal with the most urgent needs of priority victims.¹⁸

10. In her Response, the CLRV commences by conveying the victims' concern regarding the delay in issuing a reparations order in the case and emphasises its urgent need.¹⁹ As to the Request, the CLRV shares the concerns expressed by the LRVs, agreeing that a number of victims require urgent psychological and medical assistance, and stresses that the Court has a duty to ensure the safety, physical and psychological well-being of victims and to take appropriate protective measures.²⁰ In the argument of the CLRV, if no interim measure is taken by the Chamber in the present case, many victims will not be able to benefit from any of the reparation measures to which they are entitled.²¹ As such, the CLRV submits that the Chamber should instruct the TFV to take immediate conservative interim measures to address the most urgent needs of victims requiring priority treatment and include the victims identified by both teams of representatives in the assistance programmes currently ongoing in Uganda.²²

¹⁵ Request, [ICC-02/04-01/15-2054-Red2](#), para. 1.

¹⁶ Request, [ICC-02/04-01/15-2054-Red2](#), paras 2, 18-26.

¹⁷ Request, [ICC-02/04-01/15-2054-Red2](#), paras 3, 27-29.

¹⁸ Request, [ICC-02/04-01/15-2054-Red2](#), paras 13-17, referring to Trial Chamber II, *The Prosecutor v Bosco Ntaganda*, Decision on the TFV's initial draft implementation plan with focus on priority victims ('Decision on the IDIP'), 23 July 2021, [ICC-01/04-02/06-2696](#), paras 5-6.

¹⁹ CLRV Response, [ICC-02/04-01/15-2056](#), paras 1, 15.

²⁰ CLRV Response, [ICC-02/04-01/15-2056](#), paras 2-3, 19-23.

²¹ CLRV Response, [ICC-02/04-01/15-2056](#), paras 4, 24.

²² CLRV Response, [ICC-02/04-01/15-2056](#), paras 4, 24-29.

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11. The CLRV further recalls that it has already suggested the Chamber to instruct the TFV to submit an IDIP, following the practice in the *Ntaganda* case.²³ Nevertheless, the CLRV submits that certain assistance programmes already in place could adequately cover the victims' most pressing needs, preserving their right to fully enjoy reparation measures to be ruled upon at a later stage, and avoiding the need to develop a separate IDIP with the possible extensive litigation and delays that a separate eligibility mechanism may create.²⁴ In the argument of the CLRV, the TFV may offer a solution renewing some activities of its assistance programmes for a limited period of time with the specific aim of addressing the urgent needs of priority victims, pending the implementation of reparations.²⁵

12. In its Response, the Defence asks the Chamber to dismiss the Request as premature, considering that there has been no reparations order in the case, unlike when the IDIP was ordered in the *Ntaganda* case.²⁶ In the argument of the Defence, granting the Request would imply granting individualised reparations to specific victims.²⁷ The Defence submits that there are programmes available for these type of problems and the only reasonable conclusion is that the Chamber should order the continuation of these programmes until the reparations order is made.²⁸ The Defence further submits that 'the ICC cannot be seen as a saviour entity that will fix the problems of everyone', as many of the issues outlined by the LRVs are not issues which should be handled by the Chamber in the reparations order.²⁹ In addition to discussing in detail the situation of each of the victims,³⁰ the Defence argues that many of the issues listed are personal problems unrelated to the crimes for which Mr Ongwen was convicted and should thus be dealt with by local government officials and not by the Court.³¹

13. In its Observations, the TFV submits to be cognisant of the situation of the victims whose suffering and needs are documented in the Request.³² The TFV argues that such ongoing needs have indeed generally informed the assistance programme that the TFV has had in place in Uganda for nearly 15 years.³³ The TFV details that the Uganda programme provide medical, mental, and livelihood support to victims affected by the crimes under the Court's jurisdiction,

²³ CLRV Response, [ICC-02/04-01/15-2056](#), paras 17-18.

²⁴ CLRV Response, [ICC-02/04-01/15-2056](#), paras 5-6, 25-28.

²⁵ CLRV Response, [ICC-02/04-01/15-2056](#), para. 27.

²⁶ Defence Response, ICC-02/04-01/15-2057-Conf, paras 1, 12.

²⁷ Defence Response, ICC-02/04-01/15-2057-Conf, para. 13.

²⁸ Defence Response, ICC-02/04-01/15-2057-Conf, paras 13, 15.

²⁹ Defence Response, ICC-02/04-01/15-2057-Conf, para. 14.

³⁰ Defence Response, ICC-02/04-01/15-2057-Conf, paras 16-18.

³¹ Defence Response, ICC-02/04-01/15-2057-Conf, para. 14.

³² TFV Observations, [ICC-02/04-01/15-2058](#), para. 10.

³³ TFV Observations, [ICC-02/04-01/15-2058](#), para. 10.

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through four projects implemented by different partners within a five-years cycle running until 3 April 2024 (the 'Uganda Programme').³⁴ The TFV underlines that the Uganda Programme is based on regulation 50(a) of the Regulations of the Trust Fund for Victims, which falls within the full discretion and authority of the TFV's Board of Directors.³⁵ In the context of this programme, the TFV indicates, it has engaged with the victims' representatives in the Ongwen case in different opportunities since the commencement of the pre-trial proceedings in 2015, informing them about their partners and activities.³⁶ Given that the Uganda Programme has been open to all victims who suffered harm between July 2002 and 2006, the TFV argues that the LRVs' clients have been and are able to access the programme, as some have indeed done.³⁷ Considering that the Uganda Programme is still underway until 3 April 2024, the TFV submits that it is prepared to receive additional lists of names in order to refer them to its partners, insofar as the required treatment fits the activities and are within the geographical scope of the projects currently financed by the TFV.³⁸

III. ANALYSIS

14. At the outset, the Chamber underlines that, having received the submissions and information required for its determinations, as detailed in the procedural history, the Chamber is currently in the process of assessing the sample of victims' dossiers and deliberating on the reparations order to be issued in the present case. As such, the Request is premature as no provisions for reparations to individual victims can be made before a reparations order against the convicted person is issued. Whether an IDIP will be ordered in the present case and the way in which priorities should be implemented are all matters to be decided upon in the upcoming reparations order.

15. Considering that the Request asks for the Chamber's intervention directing the TFV to 'provide resources from its "other resources"', the Chamber underlines that it has no power to do so, as a decision to use of these 'other resources' is at the entire discretion of the TFV's Board of Directors, not the Court.³⁹ Considering the seriousness of the information detailed in

³⁴ TFV Observations, [ICC-02/04-01/15-2058](#), para. 11.

³⁵ TFV Observations, [ICC-02/04-01/15-2058](#), para. 12.

³⁶ TFV Observations, [ICC-02/04-01/15-2058](#), para. 13.

³⁷ TFV Observations, [ICC-02/04-01/15-2058](#), paras 14, 17.

³⁸ TFV Observations, [ICC-02/04-01/15-2058](#), para. 18.

³⁹ Appeals Chamber, *The Prosecutor v Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations", 3 March 2015, [ICC-01/04-01/06-3129](#), paras 111-114.

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the Request, the Chamber welcomes the TFV indication that it is prepared to receive additional lists of names in order to integrate them into the Uganda Programme.

16. Finally, the Chamber directs the Defence to review its Response and either file a public redacted version or justify the need to maintain the current classification as confidential within five days from the notification of the present Decision. The Chamber reiterates that it expects public redacted versions of confidential documents to be filed as expeditiously as possible, preferably simultaneously.

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FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DISMISSES the Request; and

DIRECTS the Defence to review its Response and either file public redacted version or justify the need to maintain the current classification as confidential within five days from the notification of the present Decision.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated this Friday, 29 September 2023

At The Hague, The Netherlands