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TRIAL CHAMBER II

Before: Judge María del Socorro Flores Liera, Presiding Judge
Judge Kimberly Prost
Judge Nicolas Guillou

SITUATION IN UGANDA

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

Public

Registry Submissions pursuant to Reparations Order ICC-02/04-01/15-2074

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I. Introduction

1. Pursuant to Trial Chamber IX's "Reparations Order" ("Chamber" and "Order", respectively) issued on 28 February 2024 in the case of *The Prosecutor v. Dominic Ongwen* ("Case"),¹ the Registry hereby presents its submissions on the estimated time needed by the Victims Participation and Reparations Section ("VPRS") to conduct the eligibility and urgent needs assessment of the participating victims in the Case.

II. Procedural History

2. On 16 January 2023, the Chamber issued the "Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample" by which it approved a sample of 205 participating victims assembled by the VPRS ("Sample").²
3. On 28 February 2024, the Chamber issued the Order in which it, *inter alia*, instructed the Registry, through the VPRS, to provide "an estimate as to the time it requires to assess eligibility and urgent needs of all participating victims" within one month from the issuance of the Order.³
4. On 1 March 2024, the Defence for Mr Ongwen filed a request for suspension of its notice of appeal against the Order ("Defence request").⁴

¹ Trial Chamber IX, "Reparations Order", 28 February 2024, ICC-02/04-01/15-2074.

² Trial Chamber IX, "Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample", 16 January 2023, ICC-02/04-01/15-2027.

³ *Id.*, para. 810 c).

⁴ Defence, "Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Reparations Order pursuant to Rule 150(2) of the Rules of Procedure and Evidence", 1 March 2024, ICC-02/04-01/15-2075-Conf. A public redacted version was filed on 4 March 2024, ICC-02/04-01/15-2075-Red.

5. On 11 March 2024, the Legal Representatives of Victims filed a joint response to the Defence Request.⁵
6. On 12 March 2024, the Presidency of the International Criminal Court (“ICC” or “Court”) referred the Case to Trial Chamber II and recomposed the latter.⁶
7. On 14 March 2024, the Appeals Chamber issued its decision on the Defence Request and extended the time limit for the filing of the notice of appeal and of the appeal brief by the Defence and by the Legal Representatives of Victims, if applicable.⁷
8. On 15 March 2024, Judge María del Socorro Flores Liera was designated as Presiding Judge and Single Judge in the Case.⁸

III. Applicable Law

9. The Registry submits the present filing in light of article 75 of the Rome Statute and pursuant to the Order.

IV. Submissions

10. The VPRS will address in the present submissions: a. the eligibility assessment of participating victims; b. the urgent needs assessment of participating victims; and c. the timeframe for completion of the administrative eligibility process for all beneficiaries of reparations in the Case.

⁵ Legal Representatives of Victims, “Legal Representatives of Victims Joint Response to the ‘Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Reparations Order pursuant to Rule 150(2) of the Rules of Procedure and Evidence’”, 11 March 2024, reclassified as public on 14 March 2024, ICC-02/04-01/15-2078.

⁶ Presidency, “Decision assigning judges to divisions and recomposing Chambers”, dated 12 March 2024 and notified on 13 March 2024, ICC-02/04-01/15-2079.

⁷ 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’”, 14 March 2024, ICC-02/04-01/15-2080.

⁸ Trial Chamber II, “Decision notifying the election of a Presiding Judge and Single Judge”, 15 March 2024, ICC-02/04-01/15-2081.

11. At the outset, the VPRS notes that a potential appeal⁹ of the Order might directly affect VPRS activities, including the manner in which the VPRS conducts its eligibility and vulnerability assessments of victims' dossiers. However, in line with the Order, the VPRS will commence its activities, including the eligibility and urgent needs assessment as soon as practicable, and it will conduct all its activities based on the provisions of the Order, unless the Appeals Chamber issues a decision for suspensive effect of the (potential) appeal(s).¹⁰

A. Eligibility assessment of participating victims

12. For the purpose of its eligibility assessment for reparations of the participating victims in the Case, the VPRS distinguishes between the following three categories of victims: i) participating victims in the Sample ("Category 1"); ii) other participating victims who suffered harm as a result of the attacks on the four internally displaced people ("IDP") camps for which Mr Ongwen was convicted ("Category 2");¹¹ and iii) other participating victims who suffered harm *exclusively* as a result of thematic crimes ("Category 3").
13. With respect to Category 1 victims, the VPRS notes that the Chamber was satisfied that 198 applications included in the Sample established, on a balance of probabilities, the relevant individuals' eligibility as victims of the crimes for which Mr Ongwen was convicted and are thus entitled to benefit from reparations in the Case.¹² Moreover, as authorised by the Chamber, the VPRS will also conduct eligibility assessments for reparations for the remaining seven victims in the

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", 14 March 2024, ICC-02/04-01/15-2080.

¹⁰ The VPRS notes that some VPRS assessments may have to be reviewed once the appeals proceedings have concluded if provisions of the Order relevant to its work are appealed and reversed.

¹¹ This also entails victims who suffered harm as a result of thematic crimes if their harm is *also* constituted by the attacks on the four IDP camps.

¹² Reparations Order, para. 509.

Sample which were found ineligible for reparations by the Chamber, subject to supplementary information or clarifications regarding said victims.¹³

14. For participating victims in Category 2, the VPRS will not conduct a *de novo* assessment for eligibility for reparations for the following reasons: i) the Chamber adopted a presumption of victimhood according to which all residents of the four IDP camps attacked and all other individuals who were present in the camps at the time of the attacks are victims, at a minimum, of the crimes of attack against civilian population and persecution;¹⁴ ii) all but one of the victims of the IDP camps attacks from the Sample (or 96,59%)¹⁵ were assessed by the Chamber as entitled to benefit from reparations based solely on the information and supporting documents submitted at the participation stage; iii) when the VPRS conducted the Rule 85 assessment of all victims' applications for participation at the pre-trial and trial stages, it assessed the intrinsic coherence and consistency of the victims' applications;¹⁶ iv) at the pre-trial and trial stages of the Case, the Registry transmitted all applications to the Chamber and to the parties and the latter had the opportunity to challenge before the Chamber any of the applications transmitted before a decision on the victims' participatory status was issued;¹⁷ and v) the scope of the *Ongwen* case has not changed following the trial judgement.¹⁸ Finally, and particularly in light of the extensive amount of potential beneficiaries yet to be identified in a very tight timeframe, the VPRS suggests that there is good cause to not duplicate its previous work performed during the pre-trial and trial stages by conducting a *de novo* eligibility assessment for reparations for Category 2 participating victims.

¹³ Reparations Order, para. 510.

¹⁴ Reparations Order, paras. 163-164.

¹⁵ Reparations Order, Annex II, ICC-02/04-01/15-2074-AnxII.

¹⁶ Reparations Order, para. 457.

¹⁷ See, for example, Pre-Trial Chamber II, "Decision on contested victims' applications for participation, legal representation of victims and their procedural rights", 27 November 2015, ICC-02/04-01/15-350.

¹⁸ Trial Chamber IX, "Trial Judgment", 4 February 2021, ICC-02/04-01/15-1762-Red.

15. The VPRS will re-assess the participating victims falling in Category 3, in line with the eligibility criteria set by the Chamber in its analysis of the victims from the Sample of thematic crimes.¹⁹ The VPRS recalls that only 72 of the 4,096 participating victims in the Case are victims of solely thematic crimes with no link to the IDP camps attacks.²⁰ Out of the 72 victims, 15 were part of the Sample and 9 among those were found eligible for reparations by the Chamber. Therefore, the VPRS will conduct eligibility assessments for reparations for a total of 63 Category 3 victims. In light of its current resources, the VPRS would take approximately one week to process their files. However, for the six applications found by the Chamber as ineligible and, potentially, for other applications out of the total of 63, the VPRS will need supplementary information. Therefore, the total time needed by the VPRS to complete the eligibility assessment for reparations of all 63 applications will depend on the time it takes to obtain said supplementary information.
16. With respect to the eligibility criteria to be applied, the VPRS takes this opportunity to inform the Chamber how it intends to assess letters issued for individual victims by a local council (“LC.I letters”), a type of document that was submitted by a large number of participating victims to establish their identity. The Chamber held, in relation to two application forms from the Sample supported by LC.I letters,²¹ that the potential beneficiaries have not provided any form of documentation to establish their identity. The VPRS respectfully recalls that LC.I letters were consistently recognized previously as valid identity documents in the Uganda situation and the *Ongwen* case.²² In a VPRS report of October 2007 on identity documents available in the Ugandan legal and administrative system (“2007 report”), the VPRS informed the Judges that “the contents of the letters issued by the LC.I or camp leader are very basic, typically stating the name of the person,

¹⁹ Reparations Order, paras. 463- 479.

²⁰ Email from VPRS to the Chamber and Parties of 6 February 2024 at 12h19.

²¹ a/30006/13 and a/40007/14.

²² Pre-Trial Chamber II, “Decision on victims’ applications for participation [...]”, dated 14 March 2008 and notified on 17 March 2008, ICC-02/04-125, para. 6.

possibly their age and place of work, and attesting to the fact that they are residents of a certain area. They would not normally include a photograph. The letter might also be tailored to the specific purpose for which it had been requested, such as to confirm particular information or request the recipient to assist the person in a particular way. [...] Letters issued by the local councils remain one of the most widely used forms of identification by rural people, and many informants told the VPRS that this was the most common form of documentation used to prove identity.”²³ In an annex to this 2007 report, the VPRS also submitted to Pre-Trial Chamber II samples of identity documents, including two LC.I letters with a very similar format to the ones seemingly dismissed by the Chamber in the two applications from the Sample mentioned above. The VPRS also notes that, in its analysis of the Sample, the Chamber accepted LC.I letters submitted in support of applications collected by the VPRS in 2015 and 2016, in which some of the information was typed in as opposed to handwritten. However, still based on the premise of how LC.I letters were generally crafted and obtained²⁴, the VPRS suggests that all LC.I letters, irrespective of their format, are valid identity documents, recognized previously in the Case. Therefore, the VPRS suggests that in all its future eligibility assessments, it will consider this type of document as sufficient to establish the identity of potential beneficiaries for reparations, unless ordered otherwise by the Chamber.

B. Urgent needs assessment of participating victims

17. In the Order, the Chamber *i)* found that “the categories of victims prioritised in the *Ntaganda* case are indeed in a particularly vulnerable situation and should

²³ *Id.*, Annex, ICC-02/04-125-Anx, paras. 41-42, 46 and 49.

²⁴ As outlined in the 2007 report, *id.*

therefore also receive prioritisation in the present case”²⁵, *ii*) noted that “applying [the *Ntaganda*] priorities, without any further refinement, would result in all thematic potential beneficiaries in this case falling within the categories of prioritised victims, which may amount to several thousand individuals”²⁶, *iii*) found merit in the victims’ legal representatives submission that “the most vulnerable victims who require urgent assistance should be prioritised first and benefit from reparations as expeditiously as possible.”²⁷ In light of the above, the Chamber established “additional prioritisation requirements specifically tailored to this case”²⁸ and instructed the VPRS to proceed, in the process of conducting the administrative eligibility assessment, in line with the prioritisation principles it articulated.²⁹ These are notably: *i*) first priority: vulnerable victims who are in dire need of urgent assistance;³⁰ *ii*) second priority: vulnerable direct participating victims;³¹ *iii*) third priority: all remaining vulnerable victims, including direct and indirect victims and regardless of their (previous) participation in ICC proceedings.³² Lastly, all remaining non-vulnerable victims should receive reparations.³³

18. The Chamber defined the first priority category - *vulnerable victims who are in dire need of urgent assistance* - as those “victims experiencing life-threatening needs deriving from the harms caused by the crimes for which Mr Ongwen was convicted.”³⁴ Urgent needs for prioritisation purposes are defined by the Chamber

²⁵ Reparations Order, para. 656. Trial Chamber VI, in the *Ntaganda* case decided that “priority should be given to individuals who require immediate physical and/or psychological medical care, victims with disabilities and the elderly, victims of sexual or gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers” – see *Ntaganda* Reparations Order, 8 March 2021, ICC-01/04-02/06-2659, para. 214.

²⁶ Reparations Order, para. 656.

²⁷ Reparations Order, para. 657.

²⁸ *Id.*

²⁹ Reparations Order, para. 810 b.

³⁰ Reparations Order, para. 659.

³¹ Reparations Order, para. 660.

³² Reparations Order, para. 661.

³³ Reparations Order, para. 662.

³⁴ Reparations Order, para. 659.

as those needs “for which the victims need to receive immediate physical and/or psychological medical care, and/or support due to financial hardship that endangers the person’s life.”³⁵ The Chamber concluded that first priority individuals are “those whose very survival is at stake and who, as a result, need immediate attention to appropriately address and mitigate the potentially life threatening effects of the harm they suffered.”³⁶

19. With respect to the participating victims, the Chamber instructed the victims’ representatives to provide the VPRS with “the list of the victims they represent who are considered to be in dire need of urgent assistance, in order for the VPRS to assess eligibility and the dire need of urgent assistance threshold of all participating victims as soon as practicable.”³⁷ In light of this, the VPRS met with the legal representatives of victims (“LRVs”³⁸ and “CLR”,³⁹ together “Legal Representatives”) and had a number of written exchanges.

20. The CLR informed the VPRS that she considers all her clients to fall within the first priority category and that “this assessment is in line with the information already provided to the Trial Chamber throughout the years. It is even more justified at this juncture, considering that the lapse of time between the events and the issuance of the reparation order has further worsened their living conditions.”⁴⁰ The CLR indicated that she will submit to the VPRS “the list of all the victims she represents by 15 April 2024 at the latest” and that “the list will include the most recent and accurate information obtained from the victims and it will be provided in an Excel table.”⁴¹

³⁵ *Id.*

³⁶ *Id.*

³⁷ Reparations Order, para. 810 b. *i.*

³⁸ The LRVs team is composed of Joseph Akwenyu Manoba and Francisco Cox.

³⁹ The Common Legal Representative of Victims is Paolina Massidda, Principal Counsel of the Office of Public Counsel for Victims.

⁴⁰ Email from CLR to VPRS of 14 March 2024 at 17h35.

⁴¹ *Id.*

21. The LRVs indicated to the VPRS that they would need approximately two months to provide the list of their clients falling within the first priority category and the information supporting this assessment, and up to six months to provide lists and information pertinent to their clients falling inside the other priority categories.⁴² The LRVs indicated that they intend to send said lists to the VPRS on a rolling basis, in Excel tables.⁴³
22. The Chamber instructed the VPRS to make an independent and neutral assessment as to whether participating victims fall within the first priority category or one of the other categories. In order to make this assessment, the VPRS will rely on the information it will receive from the Legal Representatives. If from the information received it clearly transpires that “the very survival” of an individual is at stake,⁴⁴ the VPRS will assess said individual as priority category 1. Yet, if the information only consists of elements related to vulnerability without providing *indicia* as described in paragraph 659 of the Reparations Order, the VPRS will assess relevant applications for the following priority categories as applicable. The VPRS will work in close cooperation with the Legal Representatives with a view to obtaining the necessary information of relevant victims’ situations for them to receive the most inclusive treatment possible within the Chamber’s guiding parameters.
23. The VPRS will proceed with the vulnerability and urgent needs assessment of participating victims as soon as it starts receiving relevant information from the Legal Representatives, and it will transmit the dossiers to the Trust Fund for Victims (“TFV”) on a rolling basis. The pace of any dossier’s assessment depends on: *i*) the pace, format and completeness of the information received from the Legal Representatives, *ii*) VPRS’ available resources to digest relevant information. Considering these variables, and especially the factors outside the VPRS’ control, it is not in a position to provide an exact estimate as to the total time it will need to

⁴² Email from LRVs to VPRS of 20 March 2024 at 16h24.

⁴³ *Id.*

⁴⁴ See *supra*, para. 18.

transmit to the TFV all the dossiers of participating victims. If the information to be received from the Legal Representatives is sufficient for the VPRS to make its assessment, with the present approved resources in the VPRS legal team, it is expected that in 2024 an average of 400 victims' dossiers can be transmitted to the TFV monthly.⁴⁵

24. As to the vulnerability categories applicable in the Case, the VPRS submits, in line with the Chamber's findings, that the following categories retained in the *Ntaganda* case are equally applicable in the present case: *i*) individuals who require immediate physical and/or psychological medical care; *ii*) victims with disabilities; *iii*) the elderly;⁴⁶ *iv*) victims of sexual or gender-based violence; *v*) victims who are homeless; *vi*) victims experiencing financial hardship;⁴⁷ *vii*) children born out of rape and sexual slavery; and *viii*) former child soldiers.⁴⁸ The VPRS also suggests one additional category listed by the Registry in its observations on reparations in the present Case, namely: victims whose family members were killed or who were abducted and never returned, especially elderly parents, widows, widowers and orphans.⁴⁹ The CLR also submitted to the VPRS information in relation to vulnerability categories.⁵⁰

⁴⁵ Thus, if the VPRS were to be in possession of relevant information for 400 forms at the beginning of every month starting April 2024, the Section could cover approx. 3.600 forms until year's end.

⁴⁶ According to a 2017 report by the Uganda Bureau of Statistics, based on the 2014 national population and housing census, female life expectancy, on average in the northern region is 66.26 years, whilst male life expectancy is 63.64 years; <https://uganda.unfpa.org/sites/default/files/pub-pdf/Health%20Monograph%2010-01-2018%20With%20Covers.pdf>.

⁴⁷ The VPRS notes that according to the Uganda National Survey Report 2019/2020, [UGANDA NATIONAL HOUSEHOLD SURVEY 2019/2020 REPORT \(ubos.org\)](https://ubos.org), the poverty rate in Uganda is estimated at 20,3% with Acholi being the most impoverished sub-region (68% poverty rate in 2020 from 33% in 2017) followed by Karamoja (68%). The Lango sub-region is 6th on the list (23%), Teso on the 7th place (22%) and West Nile – number 8 (17%). For more information on multidimensional poverty, see also UNDP, "Global Multidimensional Poverty Index 2022" <https://hdr.undp.org/system/files/documents/hdp-document/2022mpireporten.pdf>.

⁴⁸ *Ntaganda* Reparations Order, para. 214.

⁴⁹ Registry, Annex I to "Registry's Mapping Report and Submission on Reparations", 6 December 2021, ICC-02/04-01/15-1919-AnxI, para. 24.

⁵⁰ Email from CLR to VPRS of 13 March 2024 at 15.16. The "additional categories relevant in the Ugandan context and which reflect some of the vulnerabilities of the CLR clients" were: "1. Orphans; 2. Child headed families: there are several families in all the case locations who have children as their heads (aged between 14 and 18); 3. Widows/single mothers; 4. Condition requiring urgent medical care

C. Timeframe for completion of the administrative eligibility process including urgency for all participating victims in the Case

25. The Registry recalls the Chamber's finding that "it is paramount that the administrative eligibility process – including outreach, identification, and eligibility assessment – is executed within a reasonable timeframe."⁵¹ With this in mind, it undertakes to finalise its eligibility and urgency assessment regarding all victims that participated in the *Ongwen* trial proceedings by the end of 2024, or the first months of 2025 at the latest.⁵² It will do so in close cooperation with the Legal Representatives, as outlined *supra*. In parallel, application forms and information collected of other potential beneficiaries of reparations will be processed by the Section on a rolling basis.
26. The Registry notes, however, that the Chamber set a two-year deadline for the completion of the administrative eligibility process of all potential reparation beneficiaries "consistent with the approach of Trial Chamber II in the *Ntaganda* case."⁵³ The estimated total number of direct and indirect victims in the *Ntaganda* case is 10,500⁵⁴ and Trial Chamber II set a two-year time frame for the eligibility process of these victims.⁵⁵ Yet, in the present Case, the estimated total number of potentially eligible direct and indirect victims is 49,772 individuals.⁵⁶ Based on its current and expected future resources, even considering the more permissive

(including chronic diseases, physical or psychological health problems that prevent the victim from working or enjoying daily life): victims with bullets and bomb fragments still stuck in their bodies, victims with amputated limbs, victims with burned bodies requiring corrective surgeries, victims with hypertension, victims who still experience some kind of trauma; victims abusing alcohol or drugs."

⁵¹ Reparations Order, para. 813.

⁵² See also *supra*, para. 23. Again, the timely receipt of relevant information from victims will heavily influence the processing pace.

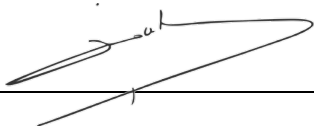
⁵³ *Id.*

⁵⁴ Trial Chamber II, "Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659", 14 July 2023, ICC-01/04-02/06-2858-Red, para. 320.

⁵⁵ Trial Chamber II, "Public Redacted Version of First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations, ICC-01/04-02/06-2860-Conf", 30 August 2023, ICC-01/04-02/06-2860-Red, para. 187.

⁵⁶ Reparations Order, para. 748.

environment in Northern Uganda compared to Eastern Congo, the Registry considers the two-year timeframe set by the Chamber to identify the above number of individuals as very optimistic. This said, the Registry is fully committed to secure the human and financial resources it needs both in the field⁵⁷ and at HQ to provide optimal performance within applicable margins. The VPRS is currently developing alternative tools (*e.g.* a victim household form)⁵⁸ and exploring various electronic data collection tools, in order to be able to execute the mandate it was entrusted with in a victim-centred, efficient and timely manner. The Registry stands ready to provide status updates to this Chamber in intervals as it may see fit.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of Osvaldo Zavala Giler, Registrar

Dated this 2 April 2024

At The Hague, the Netherlands

⁵⁷ Activities related to the identification of potential beneficiaries and collection of information require, *inter alia*, a minimum of Registry (VPRS) permanent field presence, and a reliable network of local partners (individuals and organizations) with skills, knowledge of the context and access to relevant victims' communities. The VPRS will need to adequately enhance its infrastructure in the field to ensure that victims can easily reach and access the Registry. Its cooperation with PIOS but also the TFV in the field will be fundamental to this.

⁵⁸ The VPRS plans to use, in addition to the individual victim form, a 'household' form, which would be a tool catering for a more efficient collection of information of families and other homogeneous groups sharing a common harm, who may wish to be met as a unit and submit together their application/information to benefit from reparations. The VPRS will ensure that individual experience or harm is not disregarded when using this approach. The household form and methodology will be tested in the field in the coming weeks and months prior to being put to use.