

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

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

**Date: 07 June 2021**

## **TRIAL CHAMBER IX**

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

## **SITUATION IN UGANDA**

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

**Level of Confidentiality  
Public**

**Request for leave to submit an Amicus Curiae brief pursuant to article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence**

**Source:** Avocats sans Frontiers (ASF)  
Emerging Solutions Africa (ESA)  
Essex Transitional Justice Network at the University of Essex  
Global Survivors Fund (GSF)  
Gulu Women's Economic Development and Globalization (GWED-G)  
Institute for Peace and Strategic Studies at Gulu University  
International Federation for Human Rights (FIDH)  
REDRESS  
Watye Ki Gen  
Women Advocacy Network

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart

**Counsel for the Defence**

Mr Krispus Ayena Odongo

**Legal Representatives of the Victims**

Mr Joseph Akwenyu Manoba  
Mr Francisco Cox

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

**States' Representatives**

Competent authorities of the Republic of  
Uganda

**Amicus Curiae**

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**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. We the applicants, the following human rights organisations; Avocats Sans Frontiers (ASF), Emerging Solutions Africa (ESA), Essex Transitional Justice Network (ETJN, University of Essex), the Global Survivors Fund (GSF), Gulu Women's Economic Development and Globalization (GWED-G), The Institute for Peace and Strategic Studies at Gulu University, the International Federation for Human Rights (FIDH), REDRESS, the Watye Ki Gen, and the Women Advocacy Network, (hereinafter "the Applicants") respectfully submit the following leave to submit *amici curiae* observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence ("the Rules")<sup>1</sup> regarding the issues set forth in paragraph 5(iii) of the Order for Submissions on Reparations<sup>2</sup>.

## II. Procedural History

2. On 4 February 2021, the Trial Chamber IX of the International Criminal Court (the Chamber) convicted Mr Dominic Ongwen (Mr Ongwen) for the commission of 61 counts of crimes against humanity and war crimes<sup>3</sup>.
3. On 6 May 2021 the Chamber sentenced Mr Ongwen to a joint sentence of 25 years of Imprisonment<sup>4</sup>.
4. On 6 May 2021, the Chamber issued the "Order for Submissions on Reparations"<sup>5</sup> providing for any persons or organizations with local expertise, to request leave to make submissions pursuant to article 75 of the Statute and rule 103 of the of the Rules.

## III. Background and Expertise

5. Avocats Sans Frontières (ASF) is an international NGO specialized in defending human rights and access to justice. For more than 20 years, ASF has been implementing programmes with the aim to facilitate access to justice for persons and communities in situation of vulnerability in fragile states or transitioning contexts. ASF has extensive experience in the field of international criminal justice and transitional justice, including in Uganda where it is present since 2007. In the Acholi region, ASF works on improving the functioning of justice mechanisms for

<sup>1</sup> Rules of Procedure and Evidence, available at: <https://www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>.

<sup>2</sup> Order for Submissions on Reparations, ICC-02/04-01/15-1820, May 2021.

<sup>3</sup> Trial Judgment, ICC-02/04-01/15-1762-Red, February 2021.

<sup>4</sup> Sentence, ICC-02/04-01/15-1819-Red, May 2021.

<sup>5</sup> Order for Submission on Reparations, ICC-02/04-01/15-1820, May 2021.

populations affected by conflicts, through close partnership with legal aid service providers. It has published among others the study «A beggar has no choice: Victims' perspectives on the reparation's framework in Uganda». ASF has already been granted leave to intervene before various international courts, including the ICC in the *Lubanga* case (together with REDRESS).

6. Emerging Solutions Africa (ESA) is a non-governmental organisation based in Uganda that focuses on enabling access to substantive justice, sustainable livelihood initiatives and public health. ESA has worked and partnered with different entities to create remedies to legal and social issues that include empowering marginalized persons against human rights abuse. For the last three years, ESA has worked with victims in Northern Uganda to strengthen their participation in reparations processes and in the fight against impunity for international crimes.
7. The Essex Transitional Justice Network at the University of Essex has been carrying out work on reparations under the leadership of Professor Clara Sandoval, its co-director. She has served as a consultant on reparations to VPRS (*Lubanga*), as an expert on reparations appointed by the ICC (*Jean Pierre Bemba*), and as an expert witness on reparations before the Inter-American Court of Human Rights. She also drafted the Secretary General Guidance Note on Reparations for Conflict Related Violence (2014), and has been a co-investigator in research projects on reparations such as *Reparations, Responsibility and Victimhood in Transitional Societies* and the ESRC. She is co-author of "Titling at Windmills: Reparations and the International Criminal Court" (with Moffett) in *Leiden Journal of International Law* (2021); and *Reparations for Victims of Armed Conflict* (with Correa and Furuya), CUP, 2020.
8. The Global Survivors Fund ("GSF") was launched in October 2019 by Dr Denis Mukwege and Nadia Murad, Nobel Peace Prize laureates 2018. Its mission is to enhance access to reparations for survivors of conflict-related sexual violence (CRSV) around the globe. GSF acts to provide interim reparative measures in situations where states or other parties are unable or unwilling to meet their responsibilities. GSF advocates for duty bearers as well as the international community to develop reparations programmes. It also guides states and civil society by providing expertise and technical support for designing reparations programmes. GSF's survivor-centric approach is the cornerstone of its work. The GSF is undertaking a comprehensive multi-country study on the status of and opportunities for reparations for CRSV survivors in over 20 countries, including in Uganda. This work includes and is based on a variety of workshops, focus group discussions and field-work with CRSV survivors. The GSF is working closely with CRSV survivors in Uganda to identify their needs, perceptions and expectations regarding reparations. This study is expected to be launched in September 2021.

9. Gulu Women's Economic Development and Globalization (GWED-G) is a women's right organization working in northern Uganda and founded in 2004 by women whose children were abducted and conscripted into the Lord's Resistance Army (LRA) war and women who are victims and survivors of the violent LRA conflict and rights violations. GWED-G envisions a post-conflict northern Uganda and society where all people, regardless of their sex, age, sexual orientation, ethnicity, class, or status, are fully integrated into their communities, respected, treated with dignity and are enjoying their full fundamental human rights. GWED-G implements short and long term development programs aligned to its strategic focus of promoting gender equality and women's empowerment, peacebuilding and transitional justice, livelihoods and food security, health and nutrition, and advocacy on women's bills and law. GWED-G has been implementing projects promoting physical rehabilitations programs for war victims through support from the ICC and the Trust Fund for Victims for over 9 years.
10. The Institute for Peace and Strategic Studies at Gulu University is located in Gulu District which was epicentre of the protracted northern Uganda insurgency, led by the Lord's Resistance Army (LRA) movement. Since its inception, it offers courses in conflict transformation studies. Through its outreach programme it has promoted the transformative role of peace education among the community and continues to nurture the culture of peace. Under the leadership of Dr. Tenywa Aloysius Malagalagala, Senior lecturer and Director, the Institute has taken a system wide approach to the reparation agenda. He was Lead Consultant for UNICEF 2014 Conflict Analysis update in the 28 districts of Uganda. He was also co-lead consultant for UNESCO Conflict Sensitive education for refugees and host communities in West Nile 2019. He was principle investigator for the Governance and Post-Conflict Reconstruction project in Northern Uganda.
11. The International Federation for Human Rights (FIDH) is an international NGO founded in 1922. The organisation is a federation of 192 national human rights organisations from 117 countries, and has a mandate to defend all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights. As part of its priorities, FIDH fights against impunity for the most serious crimes and supports the realisation of victims' rights to truth, justice and reparations. FIDH has maintained a permanent representation in The Hague since 2004, and along with its member organisations has submitted communications pursuant to article 15 of the Rome Statute ("Statute") to the Office of the Prosecutor ("OTP") on specific situations. FIDH has also advocated for a victim-centered approach in Court-wide policies, progressive provisions on victims' rights and their effective implementation, and the meaningful participation of victims before the ICC. FIDH and its member organisation in Mali, the Association malienne des

droits de l'Homme (AMDH), submitted amicus curiae observations in the Al Mahdi case on 2 December 2016.<sup>6</sup>

12. REDRESS is an international non-governmental organisation that has special consultative status with the United Nations Economic and Social Council. Its mandate is to seek justice and reparation for victims of torture and related international crimes. It has over 25 years' expertise in advocating for the rights of victims to gain both access to the courts and redress for their suffering, in over 50 countries worldwide. REDRESS has extensive experience in directly representing victims before national, regional, and international courts and tribunals, as well as UN treaty bodies and special procedures. REDRESS has regularly been granted leave to intervene in cases before the Court, the African Commission on Human and Peoples' Rights, the European Court of Human Rights, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia.
13. Watye Ki Gen ("We Have Hope") is a Community Based Organization founded by formerly abducted women and girls in Gulu district in 2013, with the mission to empower marginalized and vulnerable families to achieve social and economic life successes. It primarily responds to persistent conflicts and recovery challenges faced by their children born of sexual and gender-based violence (SGBV). WKG advocates for the rights and welfare of children born in the captivity (CBC) of the LRA and their families. It has documented 1,175 CBC in the 8 districts of Acholi Sub region. As a survivor-led entity, WKG ensures a unique understanding of life in captivity, reintegration, conflict prevention and resettlement of CBC and their mothers in post war settings.
14. The Women's Advocacy Network (WAN) is a Ugandan community-based entity with more than 900 survivors of conflict-related sexual violence, including abduction, forced marriage, forced pregnancy and rape. WAN is a survivor-run organization established in 2011 and currently has 22 women's groups located in 10 districts of Acholi, Lango, Teso and West Nile sub regions of northern Uganda. Income generation and storytelling projects brought us together to identify common challenges. Since then, we have engaged in various activities. For example, survivor to survivor exchange locally and internationally. WAN partners with different academics and NGOs to conduct participatory research that inform our advocacy efforts for reparation, reconciliation, and justice.

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<sup>6</sup> See 'Joint observations of FIDH and AMDH on the reparations proceedings', The Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15-189, 2 December 2016: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/12-01/15-189>

14. The Applicants are requesting leave to submit a joint *amicus curiae* brief, based on the belief that the complementarity of their international and national expertise could be of assistance to the Court in this case. The expertise of the Applicants has been widely recognised because of their deep knowledge of the right to reparations in theory and in practice, their knowledge of international systems such as the International Criminal Court and their expertise and first hand work in Uganda, with survivors of international crimes and victims of the case. Their joint efforts on this amicus would permit to integrate a wealth of knowledge and experience that are relevant to the Court when deciding on reparations. In particular, if granted, this amicus will bring a firm and clear understanding of the context and views of victims in Uganda. In this regard, the Applicants will conduct a number of consultations and discussions to collect relevant information that can assist the Chamber in its deliberations.

#### **IV. Applicable Law**

15. Article 75 of the Rome Statute and Rule 103(1) of the Rules provide a Chamber with the authority to accept requests to present *amicus curiae* observations on any issue the Chamber deems appropriate by organisations, or individuals interested in addressing issues of relevance to the proceedings.

#### **V. Specific Issues to be Addressed**

16. The Applicants respectfully seek to submit observations on the following issues from the list contained in paragraph 5 of the Chamber's Order for Submissions on Reparations:

- a) the need for the Chamber to consider additional principles on reparations, apart from those already established by the consistent jurisprudence of the Court<sup>7</sup>, as recently adapted and expanded in the case of *The Prosecutor v. Bosco Ntaganda* (the 'Ntaganda case')<sup>8</sup>;
- b) ...
- c) any legal and factual issues relevant to the identification of eligible victims;
- d) any victims or groups of victims who may require prioritisation in the reparations process;
- e) specification of the types and extent of the harm suffered by the

<sup>7</sup> Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, ICC-01/04-01/06-3129, Annex A, Order for Reparations (amended), ICC-01/04-01/06-3129-AnxA, paras 1-49; Trial Chamber II, *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute (with public Annex I and confidential ex parte Annex II), 24 March 2017, ICC-01/04-01/07-3728, paras 29-30; Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, ICC-01/12-01/15-236, paras 26-50.

<sup>8</sup> Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Reparations Order, 8 March 2021, ICC-01/04-02/06-2659 ('Ntaganda Reparations Order'), paras 30-103.

victims of the crimes for which Mr Ongwen was convicted;

- f) whether recourse to factual presumptions should be considered<sup>9</sup>;
- g) 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 individualised components, the appropriate modalities to be included therein, and whether certain modalities can be expeditiously implemented;
- h) ...
- i) information as to whether the victims of the crimes for which Mr Ongwen was convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes; and
- j) any additional information relevant to reparations. In particular, we would like to refer to the following issues: complementarity between domestic reparations and reparations ordered by the ICC; methodologies to be adopted, including participatory ones, for the design, identification, and implementation of reparations orders, including for victims of conflict related sexual violence.

## VI. Relief Requested

17. The Applicants request that the Chamber grants them leave to submit *amicus curiae* observations on the [8] issues listed in paragraph 15 of this request.




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Rupert Skilbeck, Director REDRESS

Submitted on behalf of the following persons and organisations:

Elisa Novic (ASF); Justice Elizabeth Ibanda Nahamya (ESA), Clara Sandoval (ETJN, Essex University); Esther Digenmans (GSF); Angwech Pamela Judith (GWED-G); Tenywa Aloysius Malagala (Institute for Peace and Strategic Studies, Gulu University); Raquel Vazquez Llorente (FIDH); Rupert Skilbeck (REDRESS); Angela Lakor (Waty Ki Gen) and Moses Oringa (WAN).

Dated this 07 June 2021

At Kampala (Uganda) and The Hague (The Netherlands)

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<sup>9</sup> See, inter alia, Ntaganda Reparations Order, ICC-01/04-02/06-2659, paras 140-147.