

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04
Date: 4 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***

Public Document

Application by the United Nations for leave to make submissions pursuant to Paragraph 5(iii) of the "Order for Submissions on Reparations" of 6 May 2021, Article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence

Source: The United Nations

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

United Nations

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 United Nations respectfully seeks leave to file a joint submission, pursuant to Article 75(3) of the Rome Statute (“the Statute”) and Rule 103 of the Rules of Procedure and Evidence (“the Rules”), and in accordance with paragraph 5(iii) of the Order for Submissions on Reparations of 6 May 2021 (“the Order”) of Trial Chamber IX (“the Chamber”), on behalf of:
 - a) the Office of the High Commissioner for Human Rights (“OHCHR”);
 - b) the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (“OSRSG on Sexual Violence in Conflict”); and
 - c) the United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”).
2. Other United Nations Offices, Funds, Programmes and Representatives that have not yet expressed their intention to do so may also contribute to the joint submission, should the Chamber grant the requested leave.
3. The above United Nations entities intend to share their experiences and expertise on reparations for victims, in their joint submission, in order to assist the Chamber to address the issues set out in the Order.

II. PROCEDURAL HISTORY

4. On 4 February 2021, the Chamber convicted Mr. Dominic Ongwen for the commission of 61 counts of crimes against humanity and war crimes, including sexual and gender-based crimes, which took place in Northern Uganda between July 2002 and December 2005.¹ On 6 May 2021, the Chamber sentenced Mr. Ongwen to a joint sentence of 25 years imprisonment.²

¹ *Prosecutor v Dominic Ongwen*, Case No. ICC-02/04-01/15, Trial Judgment, 4 February 2021.

² *Prosecutor v Dominic Ongwen*, Case No. ICC-02/04-01/15, Sentence, 6 May 2021.

5. On the same day, the Chamber issued the Order, *inter alia*, inviting “any persons or organizations, particularly with local expertise, interested in making submissions on the specific issues mentioned [at paragraph 5(i) of the Order]” to “request leave from the Chamber, pursuant to article 75 of the Statute and rule 103 of the Rules, by Monday 7 June 2021.”³

III. RELEVANT EXPERTISE OF THE UNITED NATIONS

6. In view of their respective mandates and areas of expertise, it is submitted that a joint filing by OHCHR, the OSRSG on Sexual Violence in Conflict and UN Women, together with any other relevant United Nations Office, Fund, Programme or Representative, would shed light on the issues identified in paragraph 5(i) of the Order.

A. OHCHR

7. United Nations General Assembly resolution 48/141 vests the United Nations High Commissioner for Human Rights with the mandate to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights, globally.
8. Since its creation in 1993, and through its work in field presences around the world, the Office has developed extensive normative expertise and operational experience in diverse areas. These include the fields of transitional justice processes and associated accountability issues, the rights of victims and survivors, including in context of sexual and gender-based violence, and applicable gendered analysis of root causes, processes and individual and community impacts in these areas.
9. Further to the mandate of the High Commissioner for Human Rights, OHCHR has intervened regularly before this Court, as well as in regional courts and

³ *Prosecutor v Dominic Ongwen*, Case No. ICC-02/04-01/15, Order for Submissions on Reparations, 6 May 2021.

national courts of final jurisdiction to advance views on cases addressing important questions from the perspective of international human rights law.

B. OSRSG on Sexual Violence in Conflict

10. The OSRSG on Sexual Violence in conflict was created pursuant to United Nations Security Council resolution 1888 (2009) in part to “engage in advocacy efforts with [...] judicial representatives” regarding sexual violence in conflict. In its most recent resolution on sexual violence in conflict, resolution 2467 (2019), the Security Council stressed the importance of granting reparations for victims of sexual and gender-based violence as an element of the restoration of peace and security in the wake of these crimes (see operative paragraphs 15; 18; and 28).
11. Since its establishment in 2009, the OSRSG on Sexual Violence in conflict has consistently advocated with international, regional, and national bodies on the issue of reparations for victims of sexual violence in conflict and has advised on the implementation of reparations programmes at field level. These advocacy efforts have included briefing to the Court as *amicus curiae* in the *Katanga* and *Bemba* cases on reparations. The issue is and remains a top priority for all victims of sexual violence in conflict and thus a critical part of the OSRSG on Sexual Violence in Conflict’s mandated work.

C. UN Women

12. UN Women was established in 2010 by the United Nations General Assembly in resolution 64/289. Its mandate is to lead, coordinate and promote accountability of the United Nations system to deliver on gender equality and the empowerment of women, with the primary objective to enhance country-level coherence, ensure coordinated interventions and secure positive impacts in the lives of women and girls. UN Women's work is grounded on a rights-

based approach and a long-standing relationship with the women's movement, gender-equality advocates, women's groups and organizations as well as national women's machineries.

13. UN Women leads and coordinates the work of the United Nations on women, peace and security. The Organization's support for gender-sensitive transitional justice and rule of law in conflict-affected countries is an integral part of its activities to advance the women, peace and security agenda. Globally, UN Women supports administrative and judicial reparations processes to ensure a survivor-centered approach, including the safe and meaningful participation of survivors of conflict related sexual violence at all levels and stages of reparations processes. In 2014, UN Women and OHCHR prepared the *Secretary-General's Guidance Note on Reparations for Conflict-Related Sexual Violence*.

IV. ISSUES TO BE ADDRESSED IN JOINT SUBMISSIONS

14. The Chamber has convicted Mr. Ongwen for a number of sexual and gender-based crimes, including rape, sexual slavery, various forms of enslavement, forced marriage and forced pregnancy. Any decision of the Court on reparations for these crimes will be essential to the victims of the crimes that Mr. Ongwen has been convicted of.
15. Additionally, the successful, gender-sensitive, and victim-centered implementation of a reparations order for the crimes that Mr. Ongwen has been convicted of, particularly in relation to sexual violence in conflict, will continue to not only develop the reparations jurisprudence of this Court, but to also influence the design and implementation of reparations programmes for

victims of sexual violence committed by members of the Lord's Resistance Army in particular,⁴ and of sexual violence in conflict globally.

16. Should the Chamber grant the requested leave, the joint submissions would seek to address the following matters, which arise from the issues highlighted at paragraph 5(i) of the Order:

- a) The need for the Chamber to consider additional principles on reparations;
- b) Any victims or groups of victims who may require prioritization in the reparations process;
- c) Types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes; and
- d) Any other relevant matters arising from the issues highlighted in the Order.

17. These joint submissions would build upon previous submissions by the United Nations before this Court on issues of appropriate and comprehensive reparation and remedy, from the perspective of international human rights standards and associated policy and best practice, with an emphasis on victim-centric perspectives, taking full account of the specific sexual and gender-based elements in the current case.

⁴ It is recalled that the Lords Resistance Army remains listed by the United Nations Secretary-General in his annual report to the United Nations Security Council on conflict-related sexual violence as a “part[y] credibly suspected of committing or being responsible for patterns of rape or other forms of sexual violence in situations of armed conflict on the agenda of the Security Council” in multiple country contexts (see S/2021/312 at Annex)

V. REQUEST FOR LEAVE

18. Accordingly, the United Nations respectfully seeks leave to file a joint submission pursuant to Article 75(3) of the Statute and Rule 103 of the Rules, and in accordance with paragraph 5(iii) of the Order, on behalf of: (i) OHCHR; (ii) OSRSG on Sexual Violence in Conflict; (iii) UN Women; and (iv) other relevant United Nations Offices, Funds, Programmes and Representatives.



Miguel de Serpa Soares
Under-Secretary General for Legal Affairs
and United Nations Legal Counsel
on behalf of
The High Commissioner for Human Rights;
The Special Representative of the Secretary-General on Sexual Violence in Conflict;
and
The Executive Director of UN Women

Dated this 4 June 2021

At New York, United States of America