

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **17 June 2021**

**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***

**Public**

**Decision on the requests for leave to submit *amicus curiae* observations**

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

**The Office of the Prosecutor**  
Mr Karim Asad Ahmad Khan QC  
Mr James Stewart

**Counsel for the Defence**  
Mr Krispus Ayena Odongo

**Legal Representatives of Victims**  
Mr Joseph Akwenyu Manoba  
Mr Francisco Cox

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victim**  
Ms Paolina Massidda

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

**States Representatives**

**Trust Fund for Victims**  
Mr Pieter de Baan

## REGISTRY

**Registrar**  
Mr Peter Lewis

**Victims and Witnesses Unit**  
Mr Nigel Verrill

**Victims Participation and Reparations  
Section**  
Mr Philipp Ambach

**Others – Amicus Curiae**  
Acholi Religious Leaders Peace Initiative (ARLIPI); Foundation for Justice and Development Initiatives (FJDI) and the War Victims and Children Networking (WVCN); International Center For Transitional Justice (ICTJ) and Uganda Victims Foundation (UVF); Uganda Association of Women Lawyers (FIDA-Uganda); African Youth Initiative Network (AYINET); Refugee Law Project (RLP); *Avocats sans Frontières* (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, and Women Advocacy Network (WAN); Amuria District Development Agency (ADDA); the United Nations (UN); and The Populace Foundation International (TPFI), Makmot Kibwanga & Co. Advocates, Lango War Claimants' Association (LAWCAS), and Lango Camp Host Association (LACHA).

**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 Article 75 of the Rome Statute (‘Statute’), Regulations 23 and 24 of the Regulations of the Court (‘Regulations’), and Rule 103 of the Rules of Procedure and Evidence (‘Rules’), issues this ‘Decision on the requests for leave to submit *Amicus Curiae* observations’.

## I. PROCEDURAL HISTORY

1. On 6 May 2021, the Chamber, in its prior composition, issued the ‘Order for Submissions on Reparations’ (the ‘Order’),<sup>1</sup> in which it, *inter alia*, invited persons or organisations, particularly with local expertise, interested in making submissions on any of the specific issues identified by the Chamber,<sup>2</sup> to request, by 7 June 2021, leave to make submissions pursuant to Article 75(3) of the Statute and Rule 103 of the Rules.<sup>3</sup>

2. On 4 and 7 June 2021, requests for leave to submit observations on the issues identified in the Order were submitted by: (i) the Acholi Religious Leaders Peace Initiative (ARLIPI);<sup>4</sup> (ii) the Foundation for Justice and Development Initiatives (FJDI) and the War Victims and Children Networking (WVCN);<sup>5</sup> (iii) the International Center For Transitional Justice (ICTJ) and The Uganda Victims Foundation (UVF);<sup>6</sup> (iv) the Uganda Association of Women Lawyers

<sup>1</sup> Order for Submissions on Reparations, 6 May 2021, [ICC-02/04-01/15-1820](#), (‘Order’).

<sup>2</sup> The specific issues identified by the Chamber were: a. the need for the Chamber to consider additional principles on reparations, apart from those already established by the consistent jurisprudence of the Court, as recently adapted and expanded in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’); b. estimated total number of the direct and indirect victims of the crimes for which Mr Ongwen was convicted, who may be potentially eligible for reparations; 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 victims of the crimes for which Mr Ongwen was convicted; f. whether recourse to factual presumptions should be considered; 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. 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; 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. See Order, [ICC-02/04-01/15-1820](#), para. 5 (i).

<sup>3</sup> Order, [ICC-02/04-01/15-1820](#), para. 5 (iii).

<sup>4</sup> Request for leave to submit *amicus curiae* observations on reparations for victims of LRA in the case of Dominic Ongwen (‘ARLIPI application’), 4 June 2021, [ICC-02/04-01/15-1840](#).

<sup>5</sup> Request for leave to file submission on reparations issues pursuant to Article 75 of the Statute and rule 103 of the Rules (‘FJDI and WVCN application’), 7 June 2021, [ICC-02/04-01/15-1842](#).

<sup>6</sup> Request for leave to file submissions on reparations issues (‘ICTJ and UVF application’), 7 June 2021, [ICC-02/04-01/15-1843](#).

(FIDA-Uganda);<sup>7</sup> (v) the African Youth Initiative Network (AYINET);<sup>8</sup> (vi) the Refugee Law Project (RLP);<sup>9</sup> (vii) *Avocats sans Frontières* (ASF), the Emerging Solutions Africa (ESA), the Essex Transitional Justice Network at the University of Essex, the Global Survivors Fund (GSF), the 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, Watye Ki Gen, and the Women Advocacy Network (WAN);<sup>10</sup> (viii) the Amuria District Development Agency (ADDA);<sup>11</sup> and (ix) the United Nations (UN), on behalf of the Office of the High Commissioner for Human Rights (OHCHR), the Office of the Special Representative of the Secretary General on Sexual Violence in Conflict (OSRSG on Sexual Violence in Conflict), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), and Other United Nations Offices, Funds, Programmes, and Representatives.<sup>12</sup>

3. On 11 June 2021, the Registry transmitted two further requests, submitted by (i) The Populace Foundation International (TPFI), Makmot Kibwanga & Co. Advocates, Lango War Claimants' Association (LAWCAS), and Lango Camp Host Association (LACHA);<sup>13</sup> and (ii) the War Victims and Children Networking (WVCN).<sup>14</sup> The Registry informed the Chamber that both requests were received on 7 June 2021 but, since they did not comply with the Court’s formal filing requirements, the persons that submitted each of the requests on behalf of the

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<sup>7</sup> Request for leave to submit Amicus Curiae observations on the legal questions presented in the Order for Submissions on Reparations (pursuant to Rule 103 of the Rules of Procedure and Evidence) of 6th May 2021 (ICC-02/04-01/15) (‘FIDA-Uganda application’), 7 June 2021, [ICC-02/04-01/15-1844](#).

<sup>8</sup> Request for leave to submit Amicus Curie Observations for reparations, pursuant to article 75 of the Statute and Rule 103 of Rules (‘AYINET application’), 7 June 2021, [ICC-02/04-01/15-1845](#).

<sup>9</sup> Request for Leave to Submit Observations on the issues set out under point 5 (iii) of the Order No. ICC-02/04-01/15 (‘RLP application’), 7 June 2021, [ICC-02/04-01/15-1846](#).

<sup>10</sup> 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 (‘ASF, ESA, Essex Transitional Justice Network, GSF, Gwed-G, Institute for Peace and Strategic Studies, FIDH, Redress, Watye Ki Gen, and WAN application’), 7 June 2021, [ICC-02/04-01/15-1847](#).

<sup>11</sup> Request for leave to submit amicus curiae observations on reparations for victims of the LRA for the case of Dominic Ongwen (‘ADDA application’), 7 June 2021, [ICC-02/04-01/15-1848](#).

<sup>12</sup> 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 (‘UN application’), 4 June 2021, [ICC-02/04-01/15-1849](#).

<sup>13</sup> Transmission of a “Request for leave to submit Amicus Curiae Observations on reparations”, [ICC-02/04-01/15-1853](#), with Annex 1 (TPFI, Makmot Kibwanga & Co. Advocates, LAWCAS, and LACHA application), [ICC-02/04-01/15-1853-Anx1](#).

<sup>14</sup> Transmission of a “Brief and Priority Needs”, [ICC-02/04-01/15-1854](#), with Annex 1 (‘WVCN application’), [ICC-02/04-01/15-1854-Anx1](#).

abovementioned organisations were contacted by the Court Management Section; the first was not able to fix the issues,<sup>15</sup> while the second did not respond.<sup>16</sup>

4. On 11 June 2021, the Office of Public Counsel for Victims (‘OPCV’) and Legal Representatives of Victims (‘LRVs’) submitted their filing on ‘Victims’ concerns on the applications to submit *amicus curiae* observations (‘Concerns’).<sup>17</sup>

## II. ANALYSIS

### a. ‘Concerns’ submitted by the LRVs and the OPCV

5. At the outset, the Chamber notes that Rule 103(2) of the Rules provides that the Prosecutor and the defence shall have the opportunity to respond to *amicus curiae* observations. In the context of reparations proceedings, this reference should be understood to apply to the parties, i.e., the defence and the victims and their legal representatives.<sup>18</sup> However, as stressed by previous jurisprudence, Rule 103(2) of the Rules refers to the opportunity to file responses to actual *amicus curiae* observations rather than to requests for leave to submit such observations.<sup>19</sup>

6. The Chamber further notes that according to Regulation 24(1) of the Regulations, the parties are entitled to respond to any document filed by any participant in the case.<sup>20</sup> However, as also stressed by previous jurisprudence, requests to submit observations as *amicus curiae* do not constitute ‘a document filed by any participant’, to which the parties would be entitled to respond in accordance with Regulation 24(1) of the Regulations.<sup>21</sup> As such, and noting that the ‘Concerns’ submitted by the LRVs and the OPCV constitute in fact a substantive response

<sup>15</sup> Transmission of a “Request for leave to submit Amicus Curiae Observations on reparations”, [ICC-02/04-01/15-1853](#), paras 3-5.

<sup>16</sup> Transmission of a “Brief and Priority Needs”, [ICC-02/04-01/15-1854](#), paras 3-5.

<sup>17</sup> Victims’ concerns on the applications to submit *amicus curiae* observations (‘Concerns on amicus curiae applications’), 11 June 2021, [ICC-02/04-01/15-1858](#).

<sup>18</sup> For a similar approach, see, Appeals Chamber, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Directions on the conduct of the appeal proceedings, 7 November 2017, ICC-01/12-01/15-246, para. 3. See also, Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the admissibility of the appeals against Trial Chamber I’s ‘Decision establishing the principles and procedures to be applied to reparations’ and directions on the further conduct of proceedings, 14 December 2012, [ICC-01/04-01/06-2953](#), para. 67; Appeals Chamber, *Prosecutor v. Germain Katanga*, Decision on the Trust Fund’s request for leave to file observations, 14 September 2017, [ICC-01/04-01/07-3765](#), para. 8.

<sup>19</sup> Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Decision on request for leave to submit *Amicus Curiae* observations (‘*Ntaganda*, Decision on *amicus curiae*’), 17 January 2020, [ICC-01/04-02/06-2460](#), para. 4;

<sup>20</sup> *Ntaganda*, Decision on *amicus curiae*, [ICC-01/04-02/06-2460](#), para. 4.

<sup>21</sup> *Ntaganda*, Decision on *amicus curiae*, [ICC-01/04-02/06-2460](#), para. 4; Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Decision on request for leave to submit *amicus curiae* observations, 17 December 2018, [ICC-01/04-02/06-2324](#), para. 4.

as it goes to the admissibility and conditions under which the Chamber should grant the requests, the Chamber may leave it aside when ruling on the requests.

**b. Requests for leave to submit *amicus curiae* observations that the Registry considers not to comply with the Court's formal filing requirements**

7. With regard to the two requests for leave to submit *amicus curiae* observations transmitted by the Registry as not complying with the Court's formal filing requirements, the Chamber notes as follows: (i) the request submitted by TPFI, Makmot Kibwanga & Co. Advocates, LAWCAS, and LACHA, is not signed. However, as noted in the Court's jurisprudence, although the signature to a document serves as a certification of its provenance, it is not an essential requirement and, as such, its lack thereof does not render a filing inadmissible.<sup>22</sup> In the view of the Chamber, the document contains all requirements prescribed by Regulation 23(1) of the Regulations and, accordingly, it is formally admissible and should therefore be assessed on the merits; (ii) the request by WVCN, however, does not comply with any of the requirements of Regulation 23(1)(b), (c), or (d) of the Regulations and, as such, it is formally inadmissible and should be dismissed. Nevertheless, the Chamber notes that the applicant is also included in a joint application submitted together with FJDI,<sup>23</sup> and accordingly, the potential relevance of its submissions in light of its local expertise will be analysed in the context of that application.

**c. Requests for leave to submit *amicus curiae* observations**

8. The Chamber notes that according to Rule 103(1) of the Rules, the Chamber may grant leave to an organisation or person to submit observations on any issue that the Chamber considers appropriate. In line with the Court's jurisprudence, the Chamber shall evaluate any request to make such observations by assessing whether the observations proposed are desirable for the proper determination of the case.<sup>24</sup>

9. As to the substance of the observations to be submitted, the Chamber notes that the persons and organisations seek leave to submit observations on matters covering, to a large

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<sup>22</sup> Pre-Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the "Motion to unseal certain documents and decisions" of 14 July 2008, 27 July 2008, [ICC-01/05-01/08-47](#), para. 11. *See also*, Appeals Chamber, *Situation in Darfur, Sudan*, Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 3 December 2007 and in the appeals of the Prosecutor and the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 6 December 2007, 18 June 2008, [ICC-02/05-138](#), paras 29-30.

<sup>23</sup> FJDI and WVCN application, [ICC-02/04-01/15-1842](#).

<sup>24</sup> *Ntaganda*, Decision on *amicus curiae*, [ICC-01/04-02/06-2460](#), para. 5; Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on "Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence", 22 April 2008, [ICC-01/04-01/06-1289](#), para. 8.

extent, all the issues identified by the Chamber in paragraph 5(i) of the Order. However, to a certain extent, some organisations intend to put forward observations that relate to broader issues pertaining to the potential impact of reparations in Northern Uganda,<sup>25</sup> and the importance of victim participation in the reparations process.<sup>26</sup> Considering the nature of the submissions for which persons or organisations were invited to request leave, the Chamber underlines that the observations ought to be limited to the specific issues identified and be within their scope as framed by the Chamber. Any submission going beyond that framework will be disregarded.

10. As to the expertise of the applicants, the Chamber notes that, in line with paragraph 5(iii) of the Order, all persons or organisations are either locally or internationally based,<sup>27</sup> and possess expertise and working experience in relation to victims and war affected communities in Northern Uganda, as well as knowledge on specific aspects pertaining to the *Ongwen* case, and/or reparations in Uganda. In addition, the majority of applicants have prior experience engaging with the Court on victims related matters, as they either have been previously granted leave to submit observations on issues related to reparations in other ICC cases,<sup>28</sup> have supported the Court by mobilising victims and witnesses to participate in the proceedings, engaged in pilot projects with the Trust Fund for Victims, or worked closely with the ICC Outreach Office in Uganda.<sup>29</sup> Consequently, the Chamber considers that, due to their expertise, the persons and organisations that submitted the applications are all in a position to provide *amicus curiae* observations which could assist the Chamber in its determinations of the issues relevant to the reparations proceedings in the present case.

11. However, regarding the methodology proposed by some applicants to obtain the information necessary to provide their submissions, the Chamber notes that some proposals put forward by certain applicants include the intention to conduct surveys and generate lists of

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<sup>25</sup> See, for instance, AYINET application, [ICC-02/04-01/15-1845](#).

<sup>26</sup> See, for instance, FIDA-Uganda application, [ICC-02/04-01/15-1844](#); TPFI, Makmot Kibwanga & Co. Advocates, LAWCAS, and LACHA application, [ICC-02/04-01/15-1853-Anx1](#).

<sup>27</sup> The Chamber notes that while the UN's application for a joint submission does not elaborate on its local expertise, it is publicly known that the organisation has offices and is involved in project activities in Uganda. See, for instance, <https://uganda.ohchr.org/> and <https://africa.unwomen.org/en/where-we-are/eastern-and-southern-africa/uganda>.

<sup>28</sup> See, *inter alia*, UN application, [ICC-02/04-01/15-1849](#); ICTJ and UVF application, [ICC-02/04-01/15-1843](#); ASF, ESA, Essex Transitional Justice Network, GSF, Gwed-G, Institute for Peace and Strategic Studies, FIDH, Redress, Watye Ki Gen, and WAN application, [ICC-02/04-01/15-1847](#).

<sup>29</sup> See, *inter alia*, ARLIPI application, [ICC-02/04-01/15-1840](#); AYINET application, [ICC-02/04-01/15-1845](#); RLP application, [ICC-02/04-01/15-1846](#).



victims<sup>30</sup> or to carry out consultations to collect information from victims.<sup>31</sup> The Chamber underlines that the observations ought to rely on the existing expertise that the persons or organisations already have, drawing on their own experience and knowledge of any of the issues identified by the Chamber in paragraph 5(i) of the Order. In addition, and consistent with the principles that should inform the reparation process,<sup>32</sup> the Chamber considers that contacting victims for the specific purposes of submitting *amicus curiae* observations is not appropriate in this context and the observations should be informed by the existing expertise and information available to these persons or organisations.

12. In light of the above, the Chamber grants leave to submit observations to all applicants. As set out above, the observations should be strictly limited to the issues set forth in paragraph 5(i) of the Order and observe the instructions set forth by the Chamber in the present Decision. In addition, in line with the Order,<sup>33</sup> these observations shall not exceed 20 pages and are to be filed by 6 September 2021, at the latest.

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<sup>30</sup> See, *inter alia*, ARLIPI application, [ICC-02/04-01/15-1840](#), p. 4; ADDA application, [ICC-02/04-01/15-1848](#), p. 4.

<sup>31</sup> ASF, ESA, Essex Transitional Justice Network, GSF, Gwed-G, Institute for Peace and Strategic Studies, FIDH, Redress, Watye Ki Gen, and WAN application, [ICC-02/04-01/15-1847](#), para. 14.

<sup>32</sup> See Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#), particularly paras 45-52 referring to the ‘do no harm’ and ‘victim-centred approach’ principles noting, *inter alia*, that interaction with victims for the purposes of surveys or consultations should be cautiously approached, to avoid victims’ re-traumatisation and raising their expectations.

<sup>33</sup> Order for Submissions on Reparations, [ICC-02/04-01/15-1820](#), para. 5(iii).



**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**GRANTS** (i) ARLIPI; (ii) FJDI and WVCN; (iii) ICTJ and UVF; (iv) FIDA-Uganda; (v) AYINET; (vi) RLP; (vii) ASF, ESA, the Essex Transitional Justice Network, GSF, GWED-G, the Institute for Peace and Strategic Studies, FIDH, Redress, Watye Ki Gen, and WAN; (viii) ADDA; (ix) UN; and (x) TPFI, Makmot Kibwanga & Co. Advocates, LAWCAS, and LACHA, leave to submit observations, of up to 20 pages, exclusively limited to any of the issues identified under paragraph 5(i) of the Order and observing the instructions set forth by the Chamber in the present Decision by **6 September 2021**.

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 Thursday, 17 June 2021

At The Hague, The Netherlands