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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

Registry Progress Report on Mapping and Request for Extension of Time

Source: Registry

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

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I. Introduction

1. Pursuant to Trial Chamber IX's "Order for Submissions on Reparations" (respectively "Chamber" and "Order") issued on 6 May 2021,¹ the Registry hereby submits its progress report on the mapping of direct and indirect victims potentially eligible for reparations in the case of *The Prosecutor v. Dominic Ongwen* ("Ongwen case" and "Case").
2. Additionally, pursuant to regulation 35(1) of the Regulations of the Court ("RoC"), and due to the latest COVID-related in-country restrictions in Uganda, the Registry requests an extension of threemonths (until 6 December 2021) for the submission of: *i*) its final report on the mapping exercise; and *ii*) its submissions on reparations.

II. Procedural History

3. On 6 May 2021, the Chamber issued its Order by which it, *inter alia*, instructed the Registry, with the assistance and cooperation of the Legal Representatives of Victims ("LRVs") as appropriate, to undertake a comprehensive mapping of direct and indirect victims potentially eligible for reparations in the Case (respectively "Mapping" and "Potential Beneficiaries"), identifying: *i*) the main categories of victims; *ii*) their current location; and *iii*) all data that it may be able to obtain regarding the victims' gender, age group, and particular vulnerabilities which may need to be taken into account by the Chamber when deciding on the reparations to be awarded.² The Chamber highlighted that the Registry is not expected or encouraged to register applicants or to collect individual applications for reparations, and that full compliance with the 'do no harm' principle should be

¹ Trial Chamber IX, "Order for Submissions on Reparations", 6 May 2021, ICC-02/04-01/15-1820.

² Order, para. 5(iv).

ensured at all times.³ The Chamber further stressed the need for full cooperation and combination of the limited resources available between the parties, the Registry and the TFV, particularly for the purposes of estimating the total number of victims and mapping and identifying: *i*) the extent of the harm suffered by the victims; *ii*) the most appropriate types and modalities of reparations; and *iii*) the costs to repair the harm.⁴ The Registry was instructed to submit a progress report on the Mapping by Monday 5 July 2021 and a final report by Monday, 6 September 2021. In its Order, the Chamber further instructed the Registry, among other items, to make submissions not exceeding 50 pages each, on either or all of the reparations-related issues listed by the Chamber in paragraph 5(i) of the Order by Monday, 6 September 2021 (“Submissions on Reparations”).

II. Applicable Law

4. The present filing is submitted in accordance with the Order and pursuant to regulations 23*bis*(1) and 35(1) of the RoC.

III. Submissions

A. Preliminary report on Mapping

5. In May 2021, following the issuance of the Order, the Registry developed an action plan for the Mapping and started consultations with the LRVs and TFV, as well as with a number of interlocutors on the ground. However, as detailed further below, the recent developments related to the Covid-19 pandemic in Uganda negatively impacted the Registry’s plan and timeline. The Registry is currently exploring

³ *Ibid.*

⁴ Order, para. 7.

alternative ways to comply with the Order before deployment to the field becomes a possibility.

i) Guiding principles and Approach

6. The Registry designed an approach for the Mapping focused on the following guiding principles and premises:
7. The best interest of victims is at the centre of all activities related to the Mapping, as, in general, victims' genuine participation in the reparation process must be ensured.
8. A representative group of victim representatives, intermediaries and other interlocutors that can provide relevant information on Potential Beneficiaries' estimated numbers, whereabouts and other information listed in paragraph 5(iv) of the Order will be identified. Noting that victims are not a homogenous group and therefore not all victims have the same views, concerns, experiences, needs and desires, the Registry aims at ensuring that all different voices (e.g. victims of all crimes for which Mr Ongwen was convicted, including women, children, youth, elderly, and people with disabilities and other conditions that make them particularly vulnerable) are represented as best as possible by the Mapping.
9. The two LRV teams play a key role in this exercise as they are able to consult directly with their clients and their network of intermediaries to contribute to the mapping exercise. Similarly, the Trust Fund for Victims ("TFV") can play a crucial role by taking part in relevant discussions and activities that may inform the best way forward for the implementation of reparations.
10. The activities aimed at obtaining the information needed for the mapping will be conducted in a secure and low profile manner, respecting confidentiality and relevant good practices, and avoiding at all costs that unrealistic victim expectations are created. At the same time, the need not to raise expectations will

be balanced with the general need to consult victim constituencies in all aspects of the reparations process.

11. In order to avoid secondary victimization and additional tensions within victims' communities,⁵ activities will be conducted by Registry staff from Headquarters (Victims' Participation and Reparations Section, "VPRS"), the Uganda Country Office ("CO"), and relevant experienced colleagues from the LRV teams in coordination and consultation with the TFV.⁶ Activities are carried out concomitant and in coordination with the broader public information campaign conducted by the Registry Outreach team in the CO and their networks in Northern Uganda in relevant areas. Outreach-related key messages are disseminated by the Outreach team and their networks regarding: (1) the key findings in the Chamber's judgment and Order; (2) information related to who may be considered a Potential Beneficiary for reparations; and (3) the limitations of the reparations process. Relevant messages have been prepared in consultation between the VPRS and the VPR and Outreach teams of the CO. The LRVs and TFV were also consulted on the substance of the messages. Relevant messages are geared at informing and managing expectations; they provide clarifications and the opportunity for dialogue, and also complement and facilitate the Registry mapping exercise. Tight coordination of activities and consultation of all actors is imperative.

ii) Objectives

12. The key objective of the Mapping is to produce a comprehensive mapping of Potential Beneficiaries of reparations in light of all aspects highlighted in the Order. The Registry therefore, in consultation and cooperation with the LRVs and

⁵ Tensions between victims who suffered harm as a result of the crimes for which Mr Ongwen has been convicted and victims of the situation.

⁶ As the TFV may see fit, members of the TFV could join relevant missions.

TFV, aims to: *i*) collect key information on the main categories of victims (victims of the attacks on the internally displaced persons' ("IDP") camps, victims of sexual and gender-based crimes, and former child soldiers); their current location; all data that it may be able to obtain regarding the victims' gender, age group, and particular vulnerabilities which may need to be taken into account by the Chamber when deciding on the reparations to be awarded; and *ii*) collect other information such as types of harm suffered and most appropriate types and modalities of reparations,⁷ and any indication whether victims may have received any form of compensation or reparations for the harm suffered as a result of the crimes underlying Mr Ongwen's conviction. To this end, the VPRS developed a questionnaire listing all relevant questions; the questionnaire serves as a tool to obtain information in a standardized fashion from all interlocutors.⁸

13. Considering the limited time and resources, relevant activities will cover a small but representative number of victims, victim representatives and intermediaries who will be consulted. The Registry will also rely on analysis of all information on the case file,⁹ as well as social research methods to gather in-depth information about Potential Beneficiaries.
14. Semi-structured interviews¹⁰ with selected individuals and organizations with local expertise, including Governmental institutions, local authorities, international and national organizations, will constitute a key source of data collection. Other data collection methods to be used are: application forms for participation from the *Ongwen* proceedings; summaries and disclosed material on

⁷ Order, para. 7.

⁸ This is all the more so as the Registry envisages that the LRVs, in their interviews with their clients, interlocutors and intermediaries, may collect relevant information for the mapping, alongside the Registry's own efforts; *see infra*, para. 15*i*).

⁹ It is noted that VPRS has no access to the disclosure in the Case; it relies on the LRVs' assistance to identify pertinent information for the mapping that has been subject to prior disclosure by the parties in the Case.

¹⁰ Semi-structured interviews are discussions in which the interviewer does not strictly follow a formalized list of questions, but ask more open-ended questions, allowing for a discussion with the interviewee rather than a straightforward question and answer format. Semi-structured interviews are widely used in qualitative research.

the record of the *Ongwen* case¹¹; reports of field activities; knowledge and experience of the various teams (VPRS, TFV, LRVs); literature available on the topic; relevant expert reports on the general topic.¹²

iii) Activities

15. Preparatory activities for the Mapping conducted in May and June 2021 include the following:

i) drafting a plan of activities (May 2021) and subsequent rounds of consultations between the VPRS, CO, LRVs and TFV regarding key aspects of said plan, *inter alia*:

- the scope of the consultation and cooperation between the aforementioned stakeholders, including relevant communication (channels);
- division of tasks, and in particular the LRVs' invaluable help in potentially producing mapping-related information through their own intermediary networks and sharing it with the Registry;
- coordination of relevant activities in the field, with a view to a representative coverage of all affected victim communities both thematically and geographically; this way, field activities of VPR(S) staff, the LRVs and potentially the TFV respectively regarding different victim communities can cover more ground in less time;
- working methods, including the potential use of standardized material (questionnaire; relevant protocol regarding vulnerable victims; etc.); and
- monitoring of progress;

ii) information exchanges between VPRS and LRVs on lists of Potential Beneficiaries that both entities may hold, as well as other mapping-related information; the Registry has in its possession a number of lists containing the

¹¹ See footnote 9.

¹² The Registry notes that this list is not exhaustive.

names and other information of approximately 7,000 victims who wanted to fill in application forms for participation in 2016, ahead of the start of the trial, but who were not able to do so given the deadline set up by the Chamber;¹³ the Registry will compare said list with relevant lists collected by the LRVs with a view to establishing a consolidated list (thus eliminating potential duplications) and subsequent contacting of key representatives of relevant communities; the comparison of said lists is in preparation between the VPRS and the LRVs;

iii) review and comparison of intermediaries conducted between the VPRS and LRVs in order to avoid that the same intermediaries/interlocutors are being solicited for the purpose of the Mapping multiple times by different entities (*ie* Registry and LRVs); the Registry has established a list of its intermediaries and consultation with the LRVs is ongoing;

iv) exchanges with the Office of the Prosecutor (“OTP”) regarding information relevant to the reparations proceedings that could be shared with the Registry (in particular data/information on the number of potential additional beneficiaries of reparations that OTP may hold);¹⁴

v) compilation of list of interlocutors to be contacted and consulted during mapping exercise (e.g. central and local authorities, international organisations and agencies, NGOs and CSOs, representatives of all victim groups, local and religious leaders, etc.) in cooperation with the LRVs; in particular, the VPRS, the LRVs and the TFV are presently finalizing a list of international and regional organisations that may benefit from a formal Registry request for mapping-related information as outlined in paragraph 3 *supra*;

vi) developing a standard questionnaire to gather information to be used in semi-structured interviews; the questionnaire has been developed by the VPRS and is presently subject to the LRV and the TFV review and consultation;

¹³ See Registry, “Second Report on Applications to Participate in the Proceedings”, dated 26 September 2016 and notified on 27 September 2016, ICC-02/04-01/15-544, para. 12.

¹⁴ Relevant material may be part of the disclosure material on the case file. *See* already footnote 9, *supra*.

vii) establishing contact and setting up initial meetings with identified interlocutors; presently, the focus will be on meetings with interlocutors that have sufficient internet / telephone connectivity in light of the physical restrictions of movement in Uganda (*see in the following*).

16. The Registry missions planned for June 2021 aimed at explaining the recent procedural developments to its networks of intermediaries in the case locations and at re-establishing contact with relevant individuals and organizations in touch with thematic crimes victims, as well as collecting information relevant for the Mapping and its Submissions on Reparations during said missions, had to be suspended since early June for the reasons detailed below.

B. Covid-19 pandemic in Uganda and Request for Extension of time

17. Following an increase in the number of Covid-19 infections and of severe cases, on 7 June 2021 the President of Uganda announced that a number of measures, including the suspension of inter-district travel and a ban on public gatherings, would enter into force on 10 June 2021 for a period of at least 42 days.¹⁵
18. On 18 June 2021, the Ugandan President announced further anti-corona measures that entered into force on 18 June 2021 at 22.00h for a further period of 42 days, including a ban on all vehicular movement except for essential workers, and a stricter curfew, from 5.30 a.m. to 7 p.m.¹⁶ All offices, including governmental ones, are directed to implement a 10% physical presence at the workplace. Starting from 19 June 2021, heavy police and military deployment in Kampala and districts' borders were reportedly in place.

¹⁵ Reuters, "Uganda re-imposes lockdown to beat back COVID-19 case surge", 7 June 2021, <https://www.reuters.com/world/africa/uganda-re-imposes-lockdown-beat-back-covid-19-case-surge-2021-06-06/>.

¹⁶ Reuters, "Uganda imposes new anti-coronavirus measures to stem raging pandemic", 18 June 2021, <https://www.reuters.com/world/africa/uganda-imposes-new-anti-coronavirus-measures-stem-raging-pandemic-2021-06-18/>.

19. In the current circumstances, all ICC missions are suspended until further notice. The Registry cannot, at this point, anticipate when it could deploy to Northern Uganda in order to conduct its activities related to the Mapping and to collect information for its Submissions on Reparations. There are currently strong indications that the current restrictions would be further extended, at least throughout August 2021,¹⁷ which would prevent the Registry from conducting any field activities for a total of three months (June, July and August 2021).
20. The Registry believes that without genuine consultations with victim representatives and other interlocutors within their relevant localities, relevant information for the mapping may not be collected in a representative fashion. Taking into account the current exceptional situation on the ground, the Registry submits that allowing more time for field activities in completion of the Mapping will render more reliable results and benefit an effective potential implementation of reparations at the later stages of the process.
21. Consequently, the Registry submits that good cause is shown for extending the time limit for the submission of the Registry's final mapping report and of its Submission on Reparations by three months (until 6 December 2021), on the premise that the current Covid-19 restrictions in Uganda would be lifted by 31 August 2021, as presently foreseen. Should in-country restrictions be however lifted before the end of August 2021 or extended after this date, the Registry would immediately assess the situation and report to the Chamber proposing a new deadline accordingly.¹⁸

¹⁷ See also World Food Organization, <https://www.afro.who.int/news/rife-covid-19-variants-fuel-africas-surg-ing-wave>, 1 July 2021.

¹⁸ In terms of the time *period* considered most conducive to produce representative mapping results as per the Order, the Registry suggests that at least three months of a permissive field environment would be required to gather all relevant information, analyse it and report on it in a final consolidated report.

C. Subsequent activities

22. In light of the COVID-19 related restrictions in Uganda detailed above, the Registry will focus its activities throughout July and August 2021 on information review and remote meetings as far as feasible.¹⁹
23. The Registry will conduct field activities, jointly with LRVs and TFV field colleagues whenever relevant, as soon as it becomes possible. The LRVs' activities are focused on consulting with their clients, the majority of which are from the four case locations, whilst the Registry will center its efforts also on victims from the attacks locations who did not participate in proceedings and on the victims of thematic crimes. The Registry is currently developing further common tools to be used when collecting Mapping related information in order to harmonize data collection and reporting. The subsequent exchange of mapping-related information will enable the Registry to honour its reporting requirement vis-à-vis the Chamber. As mentioned above, the Registry and the LRVs are in the process of sharing and comparing their lists of intermediaries²⁰ in order to ensure that there is no duplication of efforts.
24. The Registry notes that only an extremely small number of former child soldiers and victims of sexual and gender based crimes for which Mr Ongwen was convicted has been able to participate in trial proceedings in the Case, despite the Registry's best efforts to identify more such victims during the application for participation process. Therefore, during the Mapping, special efforts will be made in order to identify and map further victims of these thematic crimes (*ie* victims of sexual and gender-based crimes and of conscription and use of children under the

¹⁹ The Registry however notes that the unstable mobile signal and internet connection in Northern Uganda, as well as the regular power outages, make it extremely difficult to organize remote meetings with interlocutors based there.

²⁰ *Supra*, para. 18.

age of 15 years committed in by the Sinia brigade in Northern Uganda from 1 July 2002 until 31 December 2005).

25. In coordination with the LRVs, the Registry will also conduct relevant activities in the locations of the four attacks against the civilian population for which Mr Ongwen was convicted. A special focus will be placed again on sexual and gender-based crimes committed inside the IDP camps in light of indications by civil society of under-reporting of these crimes (against women and men) because of the stigma attached to them.
26. Finally, the Registry and the LRVs will finalise the comparison of respective lists of Potential Beneficiaries as outlined above; as soon as the conditions allow, this will be followed by necessary checks on the ground related to the victims mentioned on these lists.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 5 July 2021

At The Hague, The Netherlands