

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **18 November 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 Victims' Request for an extension of the time limit to submit their observations on reparation proceedings

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

The Office of the Prosecutor

Mr Karim A. A. Khan
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**

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The Office of Public Counsel for the Defence

States Representatives

Competent authorities of the Republic of
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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 regulation 35 of the Regulations of the Court (‘Regulations’), issues the following Decision on the Victims’ Request for an extension of the time limit to submit their observations on reparation proceedings (‘Decision’).

I. PROCEDURAL HISTORY

1. On 6 May 2021, the Chamber, in its prior composition, issued the ‘Order for Submissions on Reparations’ (the ‘Order’),¹ in which it, *inter alia*, (i) instructed and invited the parties, the Registry, the Trust Fund for Victims (‘TFV’), the Office of the Prosecutor (‘Prosecutor’), the Republic of Uganda, and persons or organisations authorised to act as *amicus curiae*, to make submissions on a list of issues identified by the Chamber (‘submissions on reparations’), by 6 September 2021;² and (ii) authorised the parties and the TFV to respond to any submissions by 4 October 2021.³
2. On 19 July 2021, the Chamber issued the Decision on requests for extension of time,⁴ *inter alia*, extending the time limits for the submissions on reparations until 6 December 2021 and for responses to such submissions until 10 January 2022.
3. On 9 November 2021, the Legal Representatives of Victims (‘LRVs’) submitted the Victims’ Request for an extension of the time limit to submit their observations on reparation

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

² Order, [ICC-02/04-01/15-1820](#), para. 5 (i), (ii), (iii). The specific issues identified by the Chamber are: 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 for Submissions on Reparations, [ICC-02/04-01/15-1820](#), para. 5 (i).

³ Order, [ICC-02/04-01/15-1820](#), para. 6.

⁴ Decision on requests for extension of time, 19 July 2021, [ICC-02/04-01/15-1865](#) (‘19 July Extension’).

proceedings ('LRVs' Request'),⁵ requesting a three month extension of the time limit for their submissions on reparations.

4. As instructed by the Chamber,⁶ the Prosecutor,⁷ the Office of Public Counsel for Victims ('OPCV'),⁸ the TFV,⁹ and the Defence¹⁰ informed the Chamber that they do not oppose the LRVs' Request, for as long as the parties and participants receive the same extension.

II. ANALYSIS

5. The LRVs submits that the continuing COVID-19 measures in place in Uganda as well as those introduced by the Court's Occupational and Health Unit ('OHU'), 'render it impossible to consult a sufficient number of participating victims in order to obtain a representative picture of their views for the purposes of informing the LRV's observations on reparations'.¹¹ In the LRVs' argument, in order for the participation of victims at this stage of the proceedings to be 'meaningful', as opposed to 'purely symbolic', the LRVs should undertake sustained qualitative and quantitative discussions with the victims.¹² However, they argue that 'despite their field presence and established networks and structures of intermediaries situated in the affected communities', consultations with victims proved challenging against the backdrop of the pandemic restrictions.¹³

6. The LRVs submit that lockdown measures imposed in Uganda since June 2021, frustrated two missions intended to be undertaken in July and August 2021.¹⁴ Since such measures were partly lifted in Uganda at the end of September 2021, the LRVs obtained clearance from the Registry to undertake a consultative mission with the victims. However, although Uganda restricted gatherings to not more than 200 people, following the OHU's recommendation, the LRVs were further precluded from meeting with more than 20 people at a single time.¹⁵

⁵ Victims' Request for an extension of the time limit to submit their observations on reparation proceedings, 9 November 2021, [ICC-02/04-01/15-1890](#) ('LRVs' Request').

⁶ Email from Trial Chamber IX to the parties, the Registry, and the TFV, 11 November 2021 at 10:58 hrs.

⁷ Email from the Trial Lawyer OTP to Trial Chamber IX, 12 November 2021 at 14:21 hrs.

⁸ Email from the OPCV to Trial Chamber IX, 15 November 2021, at 14:20 hrs.

⁹ Email from the TFV to Trial Chamber IX, 15 November 2021, at 15:44 hrs.

¹⁰ Email from Defence counsel to Trial Chamber IX, 16 November 2021, at 11:20 hrs.

¹¹ LRVs' Request, [ICC-02/04-01/15-1890](#), para. 1.

¹² LRVs' Request, [ICC-02/04-01/15-1890](#), para. 2.

¹³ LRVs' Request, [ICC-02/04-01/15-1890](#), para. 11.

¹⁴ LRVs' Request, [ICC-02/04-01/15-1890](#), para. 17.

¹⁵ LRVs' Request, [ICC-02/04-01/15-1890](#), para. 18.

7. The LRVs note that they represent 2605 victims out of the 4106 victims participating in the case,¹⁶ and submit that they will only be able to undertake one set of consultations with a limited number of victims in a mission to be concluded by 4 December 2021.¹⁷ The LRVs further indicate that they can provide the Chamber with a snapshot of the views of at least 180 victims by 6 December 2021, but note that they will not be representative of the views of the majority of the victims.¹⁸

8. The Chamber notes that, pursuant to regulation 35(2) of the Regulations, it may extend or reduce a time limit if good cause is shown, and, where appropriate, after having given the participants an opportunity to be heard. In the case at hand, the Chamber previously considered that factors such as difficulties in organising field missions and COVID-19 related restrictions, constituted good cause to extend the time limit for the submissions on reparations.¹⁹ Notwithstanding the above, the Chamber recalls its clear instructions for the parties and participants to find all possible alternatives to finalise their submissions on reparations as efficiently and expeditiously as possible, within the final deadlines already established.²⁰

9. The Chamber has considered the difficulties referred to by the LRVs that prevented them from conducting two field missions in July and August 2021, aimed at sustaining discussions with the victims. However, as noted by the LRVs, they have at their disposal field presence and established networks and structures of intermediaries in the affected communities. In the view of the Chamber, in light of the clear instructions for efficiency and expeditiousness, the LRVs presence and networks in the field should have facilitated a fluid contact with the victims in spite of the difficulties. Considering the large number of victims they have represented for a number of years, as part of their expected continuous communication with their clients, the LRVs should have collected already an important part of the information necessary to make their submissions on reparations. The Chamber underlines that the submissions on reparations should be limited to the issues identified in paragraph 5(i) of the Order, most of which require information that does not need to be collected anew at this stage of the proceedings.

10. In these circumstances, the Chamber finds that good cause to extend the time limits has only partly been shown. Accordingly, the Chamber will only partly extend the time limits

¹⁶ LRVs' Request, [ICC-02/04-01/15-1890](#), para. 10.

¹⁷ LRVs' Request, [ICC-02/04-01/15-1890](#), paras 2, 19.

¹⁸ LRVs' Request, [ICC-02/04-01/15-1890](#), para. 24.

¹⁹ 19 July Extension, [ICC-02/04-01/15-1865](#), para. 10.

²⁰ 19 July Extension, [ICC-02/04-01/15-1865](#), para. 12.

provided for at paragraph 5(i) of the Order, allowing the parties, the Registry, and the TFV to make their final submissions on reparations by 7 February 2022, in order to exclusively cover the issues which require further consultations. Nevertheless, the Chamber expects the parties, the Registry, and the TFV to provide as much information as possible in their submissions on reparations on either some or all of the issues identified by the Chamber by the original deadline of 6 December 2021.

11. In addition, the Chamber considers it pertinent, in the interests of fairness, to also extend the deadline to the Prosecutor and the relevant authorities of the Republic of Uganda, to make their final submissions in accordance with paragraph 5(ii) of the Order, as well as to the persons and organizations who were granted leave to submit *amicus curiae* observations in accordance with rule 103 of the Rules of Procedure and Evidence, pursuant to paragraph 5(iii) of the Order,²¹ to 7 February 2022. The deadline for responses to these final submissions, as granted at paragraph 6 of the Order, shall be similarly extended to 7 March 2022.

12. The Chamber once again reiterates that reparations must be prompt, meaning that the proceedings should be conducted efficiently and expeditiously, avoiding unnecessary delays.²² Similarly, the Chamber once again underlines that time limits cannot be extended indefinitely on account of the COVID-19 pandemic without affecting the victims' rights to prompt reparations. As previously ordered, the Registry and the parties and participants should redouble their efforts to find all possible alternatives to finalise their submissions as efficiently and expeditiously as possible, within the final deadlines established in this Decision.²³

²¹ Decision on the requests for leave to submit *amicus curiae* observations, 17 June 2021, [ICC-02/04-01/15-1860](#).

²² Order, [ICC-02/04-01/15-1820](#), para. 4; 19 July Extension, [ICC-02/04-01/15-1865](#), para. 12.

²³ 19 July Extension, [ICC-02/04-01/15-1865](#), para. 12.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

PARTLY GRANTS the parties, the Registry, and the TFV an extension of the time limit to make their submissions on reparations exclusively on issues which require further consultations, as referred to in paragraph 5(i) of the Order, until 7 February 2022;

ORDERS the parties, the Registry, and the TFV to provide as much information as possible on either some or all of the issues identified by the Chamber in paragraph 5(i) of the Order, by the original deadline of 6 December 2021;

EXTENDS the time limit for the Prosecutor and the relevant authorities of the Republic of Uganda to make submissions on reparations in accordance with paragraph 5(ii) of the Order, until 7 February 2022;

EXTENDS the time limit for persons and organizations who were granted leave to submit *amicus curiae* observations in accordance with paragraph 5(iii) of the Order, until 7 February 2022; and

EXTENDS the time limit for the parties and the TFV to respond to the submissions on reparations referred above in accordance with paragraph 6 of the Order, until 7 March 2022.

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, 18 November 2021

At The Hague, The Netherlands