

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **17 November 2023**

**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**

**Public Redacted Version of “Defence Notification of Potential Issues with Representation of Victims”, filed on 25 October 2023**

**Source: Defence for Dominic Ongwen**

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

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**Counsel for the Defence**

Chief Charles Achaleke Taku  
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**Legal Representatives of the Victims**

Joseph Manoba  
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**Common Legal Representative for Victims**

Paolina Massidda  
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**Unrepresented Victims****Unrepresented Applicants  
(Participation/Reparation)****The Office of Public Counsel for Victims**

Paolina Massidda

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Section**

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**Trust Fund for Victims**

## I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby notifies Trial Chamber IX ('Chamber'), Legal Representatives for Victims ('LRV'), Common Legal Representative for Victims ('CLR'), Victims Participation and Reparations Section ('VPRS') and the Office of the Prosecutor ('OTP')

## II. CONFIDENTIALITY

2. Pursuant to Regulation 23 *bis*(1) of the Regulations of the Court, the Defence files this notification and annexes as CONFIDENTIAL, *ex parte*, LRV, CLR, VPRS, OTP and Defence only. In consideration of the need to keep the names of the victims confidential, the Defence shall not file a public redacted version of this notification unless so ordered by the Chamber.

## III. PROCEDURAL HISTORY

3. On 4 February 2021, the Chamber convicted Mr Ongwen of 61 counts of war crimes and crimes against humanity.<sup>1</sup>
4. On 6 May 2021, the Chamber issued its sentence to Mr Ongwen, sentencing him to a cumulative 25 years in prison.<sup>2</sup> On that same day, the Chamber issued an order on reparations.<sup>3</sup>
5. On 7 March 2022, the Defence submitted its omnibus observations on submission related to reparations.<sup>4</sup>
6. On 15 December 2022, the Appeals Chamber upheld the convictions<sup>5</sup> and sentence<sup>6</sup> against Mr Ongwen.

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<sup>1</sup> Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Red](#).

<sup>2</sup> Trial Chamber IX, *Sentence*, [ICC-02/04-01/15-1819-Red](#).

<sup>3</sup> Trial Chamber IX, *Order for Submission on Reparations*, [ICC-02/04-01/15-1820](#).

<sup>4</sup> Trial Chamber IX, *Correct Version of 'Defence Omnibus Response to the Submission on Reparations'*, filed on 7 March 2022, ICC-02/04-01/15-1991-Conf-Exp-Corr.

<sup>5</sup> Appeals Chamber, *Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgment"*, [ICC-02/04-01/15-2022-Red](#).

<sup>6</sup> Appeals Chamber, *Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled "Sentence"*, [ICC-02/04-01/15-2023](#).

7. On 16 December 2022, the Chamber requested further submissions on reparations, including submissions on a victim sample pool ('VSP') representing five percent of the participating victims in the case.<sup>7</sup>
8. On 16 January 2023, the Chamber issued its decision on the Registry's proposed VSP.<sup>8</sup>
9. On 17 February 2023, the Defence,<sup>9</sup> CLRV,<sup>10</sup> Trust Fund for Victims<sup>11</sup> and LRV<sup>12</sup> submitted additional observations on potential beneficiaries and transgenerational harm.
10. On 22 March 2023, the Defence submitted its response to the observations made by the CLRV, LRV and Trust Fund for Victims.<sup>13</sup>

#### IV. NOTIFICATION

11. In its submissions of 7 March 2022, the Defence notified the Chamber, Parties and Participants of problems associated with the *amicus curiae* observations [REDACTED].<sup>14</sup> Namely, the Defence notified the Chamber, Parties and Participants that [REDACTED]. Furthermore, on 22 March 2023, the Defence notified the Chamber, Parties and Participants of a decision of the High Court of Uganda in Lira related to legal proceedings which potentially touched and concerned victims from Abok (civil suit case 27 of 2016).<sup>15</sup> In that response, the Defence recommended that the Chamber order the CLRV, LRV and Registry "to determine if any victims are beneficiaries of this award."<sup>16</sup>

<sup>7</sup> Trial Chamber IX, *Decision on the Registry Additional Information on Victims*, [ICC-02/04-01/15-2024](#).

<sup>8</sup> Trial Chamber IX, *Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample*, [ICC-02/04-01/15-2027](#).

<sup>9</sup> Trial Chamber IX, *Defence Additional Submissions on Beneficiaries and Transgenerational Harm*, [ICC-02/04-01/15-2030](#).

<sup>10</sup> Trial Chamber IX, *CLR V Submission on transgenerational harm and estimated number of potential beneficiaries for reparations*, [ICC-02/04-01/15-2031](#).

<sup>11</sup> Trial Chamber IX, *Trust Fund for Victims' Submission pursuant to the "Decision on the Registry Additional Information on Victims" of 16 December 2022*, ICC-02/04-01/15-2024, [ICC-02/04-01/15-2032](#).

<sup>12</sup> Trial Chamber IX, *Victims' Additional Submission on the Issues Identified by the Trial Chamber Pursuant to the Forthcoming Order on Reparations, with Confidential ex parte annexes A, B, C and D available to the Registry and Chamber Only*, [ICC-02/04-01/15-2033](#).

<sup>13</sup> Trial Chamber IX, *Defence Response to the Additional Submission on Beneficiaries and Transgenerational Harm*, [ICC-02/04-01/15-2035](#).

<sup>14</sup> Trial Chamber IX, *Correct Version of 'Defence Omnibus Response to the Submission on Reparations'*, filed on 7 March 2022, ICC-02/04-01/15-1991-Conf-Exp-Corr, paras 10-17.

<sup>15</sup> Trial Chamber IX, *Defence Response to the Additional Submission on Beneficiaries and Transgenerational Harm*, [ICC-02/04-01/15-2035](#), para. 17 and [Public Annex A](#).

<sup>16</sup> Trial Chamber IX, *Defence Response to the Additional Submission on Beneficiaries and Transgenerational Harm*, [ICC-02/04-01/15-2035](#), para. 17.

12. Recently, the Defence undertook a mission to Lira, Uganda with the purpose of securing the list of persons who shall benefit from the 21 February 2023 decision. Attached as Confidential Annex A, *ex parte*, LRV, CLRV, VPRS, OTP and Defence only is the list of names of the persons who will benefit from the reparation's decision from the High Court in Lira on 21 February 2023. The Defence urges the Chamber to consider this when determining reparations for persons from Abok IDP Camp.
13. The Defence has found several names that are either identical or very similar to persons from victim applications for participation from Abok. Unfortunately, because the Defence cannot identify the locations where the persons live in the Ugandan lawsuit, the Defence cannot say for certain whether these persons are the same as the ones in the victim applications for participation. The Defence also notes that it only has a small number of names of the persons who submitted applications for participation and reparations (around two dozen names). The names that were identical or very similar are:
  - a. [REDACTED].
  - b. [REDACTED].
  - c. [REDACTED].
  - d. [REDACTED].
  - e. [REDACTED].
  - f. [REDACTED].
  - g. [REDACTED].
  - h. [REDACTED].
  - i. [REDACTED].
  - j. [REDACTED].
14. These are the names which the Defence noticed. The Defence requests the Chamber to order an in-depth determination of both the possible persons listed here above and the possibility that other victims whose names are not known to the Defence are dual claimants in the national case and the case here at the ICC.

15. Furthermore, while looking into this issue, the Defence learned from local Ugandan judicial officials that former counsel Krispus Ayena Odongo is involved in a similar legal action to that of [REDACTED]. Former counsel Ayena Odongo represents [REDACTED] in a legal action against the [REDACTED]. This legal action started in [REDACTED], and from what the Defence was told, is still ongoing.
16. The documents the Defence has been able to retrieve relating to the Ugandan national legal proceedings initiated by former counsel Ayena Odongo are attached as Confidential, *ex parte*, Annexes B-D, LRV, CLRV, VPRS, OTP and Defence only. Confidential, *ex parte*, Annex B, LRV, CLRV, VPRS, OTP and Defence only contains the list of persons who are represented in the lawsuit filed by former Counsel Ayena Odongo. The Defence has searched the list of names in this lawsuit and has not found names any which are identical or like known names of persons who filed applications for participation and reparations in the proceedings. Again, the Defence only knows a small fraction of names of persons who filed applications for participation and reparations from Abok at the ICC. The Defence suggests that the Chamber order the CLRV, LRV and VPRS to check their records to determine whether there is overlap with between their represented persons and that of Mr Ayena Odongo in the national case.
17. The Defence makes this notification not only because of the list of names of persons who potentially may benefit twice from the same or similar actions, but because of two additional reasons:
  - a. The Defence finds it extremely concerning and disturbing that [REDACTED], considering he came with such a high potential for conflicts of interests. [REDACTED], and the Defence knows of no screenings or attempts to determine conflicts of interests of [REDACTED] between the ICC case and his national case conducted by Mr Ayena Odongo.
  - b. Former counsel Ayena Odongo may have represented persons from Abok in a similar type of lawsuit to the ICC case in national proceedings. Again, the Defence knows of no screenings or attempts to determine conflicts of interests between Mr Ayena Odongo's national clients and Mr Ongwen.
18. Finally, the Defence apologises to the Chamber, Parties and Participants that it did not get this list in sooner. Because of the security breach at the ICC, the Defence did not have access to the names of victims who submitted applications for participation and reparations as they were

stored in its secure database at the ICC. It was not until Wednesday, 18 October 2023, that the Defence regained full access. Had access not been interrupted, this notification would have come about four (4) weeks ago.

Respectfully submitted,



.....  
Chief Charles Achaleke Taku  
On behalf of Dominic Ongwen

Dated this 17<sup>th</sup> day of November, 2023

At Maryland, United States