

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 20 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 “Victims’ Response to Defence Notification of Potential Issues with Representation of Victims”, filed on 10 November 2023

Source: Legal Representatives of Victims

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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I. INTRODUCTION

1. The Legal Representatives for Victims (LRVs) submit this response to the Defence notification and invite Trial Chamber IX (The Chamber) to reject the notification and its annexes for prejudice, lack of relevance, authenticity, substantiality and clarity.
2. The LRVs submit that nothing in the Defence notification nor the annexes remotely speaks to the crimes for which Dominic Ongwen was convicted on 61 counts of war crimes and crimes against humanity on the one hand and nothing in the annexes suggests that a cause of action was instituted against the convicted Dominic Ongwen in relation to his conviction by this Chamber to bring the impugned Defence notification within the ambit of the trial judgment delivered by this Honourable Chamber. It is similarly noteworthy that nothing in the impugned notification remotely relates to the items listed by the Chamber in its Order to parties and participants to file Submissions on Reparations.¹
3. The LRVs wish to register their utter shock in light of the statement in the Defence notification pointing to conflict of interest specifically that a [REDACTED] has actively participated in the [REDACTED] proceedings as amici curiae armed with [REDACTED].

II. CONFIDENTIALITY

4. The LRVs respond to this filing as confidential pursuant to Regulation 23 bis (1) of the Regulations of the Court only because the Defence has preferred this classification.
5. The LRVs submit that the photocopies in Annex A, B, C and D to the Defence notification are not authentic, substantiated and reliable and even if they were, the same appear to be documents before the High Court in Uganda and therefore do

¹ Order for Submissions on Reparations, ICC-02/04-01/15-1820 06-05-2021.

not warrant the classification preferred by the Defence. The individuals identified by the Defence in its notification could have been addressed otherwise.

III. PROCEDURAL HISTORY

6. On 4 February 2021, the Chamber convicted Mr Ongwen of 61 counts of war crimes and crimes against humanity.²
7. On 6 May 2021, the Chamber issued its sentence to Mr Ongwen, sentencing him to a cumulative 25 years in prison.³ On that same day, the Chamber issued an order on reparations.⁴
8. On 7 March 2022, the Defence submitted its omnibus observations on submission related to reparations.⁵
9. On 15 December 2022, the Appeals Chamber upheld the convictions⁶ and sentence⁷ against Mr Ongwen.
10. 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.⁸
11. On 16 January 2023, the Chamber issued its decision on the Registry's proposed VSP.⁹

² Trial Chamber IX, Trial Judgment, ICC-02/04-01/15-1762-Red.

³ Trial Chamber IX, Sentence, ICC-02/04-01/15-1819-Red.

⁴ Trial Chamber IX, Order for Submission on Reparations, ICC-02/04-01/15-1820.

⁵ 7 March 2022, the Defence submitted its omnibus observations on submission related to reparations.

⁶ 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.

⁷ 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.

⁸ Trial Chamber IX, Decision on the Registry Additional Information on Victims, ICC-02/04-01/15-2024.

⁹ Trial Chamber IX, Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample, ICC-02/04-01/15-2027.

12. On 17 February 2023, the Defence,¹⁰ CLRV,¹¹ Trust Fund¹² for Victims and LRV¹³ submitted additional observations on potential beneficiaries and transgenerational harm.
13. On 22 March 2023, the Defence submitted its response to the observations made by the CLRV, LRV and Trust Fund for Victims.¹⁴
14. On 24 October 2023, the Defence filed a notification of potential issues with reparations of victims and attached confidential annexes.¹⁵

IV. SUBMISSIONS

15. The LRVs submit that the Defence in its notification asserts that Annex A to its notification is a list of individuals that presumably will benefit from an alleged [REDACTED]. The Defence offers no substantiation of its assertions in the notification and annexes attached to its notification. Specifically, the Defence does not state which of the annexes to its notification is the subject of the Ugandan court's [REDACTED].
16. The Defence proceeds further in paragraphs 13 -18 of the impugned notification to list names of individuals that it purports will benefit from a [REDACTED] without any further substantiation or clarification as to how it arrives at its conclusions.

¹⁰ Defence Additional Submissions on Beneficiaries and Transgenerational Harm, ICC-02/04-01/15-2030.

¹¹ CLRV Submission on transgenerational harm and estimated number of potential beneficiaries for reparations, ICC-02/04-01/15-2031.

¹² 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.

¹³ 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.

¹⁴ Defence Response to the Additional Submission on Beneficiaries and Transgenerational Harm, ICC-02/04-01/15-2035.

¹⁵ Defence Notification of Potential Issues with Representation of Victims, ICC-02/04-01/15-2063-Conf-Exp 25-10-2023.

17. The LRVs accordingly submit that the Defence notification and its attached annexes should be rejected for the following reasons:

i. Prejudice and Authenticity

18. The Defence of Dominic Ongwen other than stating that it undertook a mission to Uganda to secure a list, does not demonstrate to this Chamber how it came into possession of the annexes to its notification. The Defence proceeds as though the annexes A, B, C & D are public documents known by this Chamber. The LRVs contend that all official documents of a public nature emanating from a public office in Uganda, are required under Ugandan law to be certified and sealed by the officer in custody of the documents to attest to their authenticity.¹⁶

19. The impugned annexes to the Defence notification cannot be presumed to be authentic public documents upon which this Honourable Chamber exercising its mandate may act upon. The said annexes are but mere photocopies which could have been picked from anywhere and presented to this Chamber as though they were authentic public documents. The lack of certification from the officer in custody of the documents in Uganda renders them inadmissible in a Ugandan Court and therefore by implication would be inadmissible before the Chamber because the Chamber has no way of verifying their authenticity.

20. The LRVs further submit that Annex A, B, C, and D to the Defence notification are prejudicial as nothing in them suggests that the individuals listed by the Defence have in the alleged proceedings been given the opportunity to respond to the Defence allegations of having status in the proceedings before the Chamber.

ii. Lack of Relevance, Substantiation and Clarity

¹⁶ Section 75 of the Uganda Evidence Act provides as follows:

“Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees for the copy, together with a certificate written at the foot of the copy that it is a true copy of that document or part of the document, as the case may be, and the certificate shall be dated and subscribed by the officer with his or her name and official title, and shall be sealed whenever the officer is authorised by law to make use of a seal, and the copies so certified shall be called certified copies.

21. The LRVs submit that the impugned Defence Annexes are wholly irrelevant, unreliable, unsubstantiated as submitted to further below.
22. Annex A is titled [REDACTED]. It is purportedly a suit brought by [REDACTED]. In paragraph 4 thereof (page 44 of Annex A), the purported claim is for trespass to land where camps were allegedly forcefully hosted in several locations including Abok for six years.
23. The LRVs submit that the allegation by the Defence that the names of some participating victims appear in the list does not of itself make the identified individuals as the ones with status in the proceedings before the Chamber. The fact of Abok being mentioned as one of the locations where camps were hosted and attachment of [REDACTED] pictures purporting to be of Abok does not appear from the pleading in Annex A to show which of the [REDACTED] claimants are specifically from Abok or that the location is Abok.
24. The foregoing notwithstanding, the possibility of similarity of names whether in Abok or elsewhere in the locations mentioned is not clarified by the Defence notification. The identification of the individuals with similar names to victims with status in the proceedings similarly does not establish that indeed the said individuals are the victims from Abok and with status before this Chamber.
25. At page 55 of Annex A, in the brief facts, it is clearly stated that the claimants formed themselves into an organization [REDACTED]. By this identification and the proceeding written submission the issue of relevance to the Dominic Ongwen conviction arises and is not substantiated. Moreover, at page 51 of the same annex, the [REDACTED] contests the impugned claims set out at pages 2 to 50.
26. The perusal and examination of Annex C and Annex D to the Defence notification reveals that these two annexes are related to Annex A by reason of either being a written statement of defence to or a motion arising from Annex A, respectively.
27. Significantly, the Defence has not furnished the Chamber with any authentic judicial pronouncement on the said claims issued by the alleged [REDACTED]

upon which the Chamber may rely upon as a final outcome of alleged court proceedings.

28. The LRVs recall that the trial Judgement issued by the Chamber convicting Dominic Ongwen does not address nor consider the issue of trespass to land by Dominic Ongwen in respect of the properties of the purported claimants or [REDACTED] in Annex A.
29. The Defence of Dominic Ongwen also fails to demonstrate in its notification how the said Annex A relates to the trial Judgement convicting Dominic Ongwen for war crimes and crimes against humanity.
30. With regard to Annex B, it is titled [REDACTED]. The perusal of the impugned documents suggests that it is a suit brought by [REDACTED]. The purported suit in paragraph 6 thereof allegedly seeks declaratory orders in respect of another suit titled [REDACTED].
31. The Defence of Dominic Ongwen does not substantiate to this Chamber how these two suits,¹⁷ the subject of Annex B, are related in themselves or how they both are related to [REDACTED] and more importantly how they relate to the trial Judgment issued by this Chamber.
32. The LRVs submit that it is not enough to go on a wild chase for unauthenticated documents as the Defence has done in its notification. It is similarly not enough to attach the said unauthenticated documents without clear substantiation and clarity and expect the Chamber to adopt the same in the exercise of its mandate, moreover without an official pronouncement by a competent Court in Uganda on the purported suits.
33. The LRV submit that none of the alleged civil suits in Annex A, B, C, and D to the Defence notification if they were to be authentic and successful could in any way satisfy the criteria for [REDACTED] of harm suffered by victims represented by

¹⁷ Para 30.

the LRVs and for which Dominic Ongwen has been convicted. The alleged suits are against other defendants and not Dominic Ongwen, and for alleged violations of Ugandan law, not the Rome Statute.

34. The LRVs submit that the notification and its annexes are thus prejudicial, inauthentic, unsubstantiated and devoid of merit worth consideration by the Chamber.

V. RELIEF SOUGHT

35. The LRVs accordingly invite the Chamber to reject the Defence notification and the attached annexes for being prejudicial, lack of authenticity, relevance, substantiation and clarity.

Respectfully submitted.



Joseph Manoba



Francisco Cox

Dated this 20th day of November 2023

At Kampala (Uganda), Santiago (Chile)