

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **3 May 2024**

**TRIAL CHAMBER II**

**Before:**

**Judge María del Socorro Flores Liera, Presiding Judge  
Judge Kimberly Prost  
Judge Nicolas Guillou**

**SITUATION IN UGANDA**

**IN THE CASE OF**

***THE PROSECUTOR v. DOMINIC ONGWEN***

**Public**

**Decision on Registry Submissions pursuant to Reparations Order ICC-02/04-01/15-  
2074**

**To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:****Office of the Prosecutor****Counsel for the Defence**

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**Trial Chamber II** of the International Criminal Court (‘Court’), in the case of *The Prosecutor v. Dominic Ongwen* (the ‘Ongwen case’), having regard to article 75 of the Rome Statute, issues the following Decision on Registry Submissions pursuant to Reparations Order ICC-02/04-01/15-2074.

## I. PROCEDURAL HISTORY

1. On 28 February 2024, Trial Chamber IX issued the ‘Reparations Order’, in which it *inter alia*, instructed the Registry, through the Victims Participation and Reparations Section (‘VPRS’), to provide ‘an estimate as to the time it requires to assess eligibility and urgent needs of all participating victims’ within one month of the issuance of the Order.<sup>1</sup>
2. On 12 March 2024, the Presidency of the Court referred the *Ongwen* case to Trial Chamber II (the ‘Chamber’).<sup>2</sup>
3. On 2 April 2024, the Registry filed the ‘Registry Submissions pursuant to Reparations Order ICC-02/04-01/15-2074’ (‘Registry Submissions’), in which it, *inter alia*, informed the Chamber that it ‘undertakes to finalise its eligibility and urgency assessment regarding all victims that participated in the Ongwen trial proceedings by the end of 2024, or the first months of 2025 at the latest’.<sup>3</sup>
4. On 15 April 2024, the Common Legal Representative of Victims (‘CLRv’) filed the ‘Common Legal Representative of Victims’ Observations on the “Registry Submissions pursuant to the Reparations Order ICC-02/04-01/15-2074”, No. ICC-02/04-01/15-2082’ (‘CLRv Submissions’).<sup>4</sup> The Chamber notes that the Reparations Order held that ‘no legal representation of the potential beneficiaries is required outside the context of judicial proceedings’.<sup>5</sup> The Registry Submissions are related to the administrative implementation phase and are no longer judicial.<sup>6</sup> As such, the Chamber has not considered the CLRv Submissions.

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<sup>1</sup> Trial Chamber IX, Reparations Order, 28 February 2024, [ICC-02/04-01/15-2074](#).

<sup>2</sup> Decision assigning judges to divisions and recomposing Chambers, 12 March 2024, [ICC-02/04-01/15-2079](#).

<sup>3</sup> Registry Submissions pursuant to Reparations Order ICC-02/04-01/15-2074, 2 April 2024, [ICC-02/04-01/15-2082](#), para. 25.

<sup>4</sup> Common Legal Representative of Victims’ Observations on the “Registry Submissions pursuant to the Reparations Order ICC-02/04-01/15-2074”, No. ICC-02/04-01/15-2082, 15 April 2024, [ICC-02/04-01/15-2083](#).

<sup>5</sup> Reparations Order, [ICC-02/04-01/15-2074](#), para. 812 (b).

<sup>6</sup> Reparations Order, [ICC-02/04-01/15-2074](#), para. 39.

## II. ANALYSIS

5. Below, the Chamber addresses three issues raised in the Registry Submissions: (i) the eligibility assessment of victims who suffered harm as a result of the attacks on the four internally displaced people ('IDP') camps for which Mr Ongwen was convicted ('Category 2 victims'); (ii) the use of local council letters to establish victims' identities; and (iii) the additional vulnerability category identified by the VPRS.

### a) Eligibility assessment of Category 2 victims

6. The VPRS submits that it does not intend to conduct a *de novo* eligibility assessment of Category 2 victims because, *inter alia*, the Chamber adopted a presumption of victimhood whereby all residents of the four IDP camps and individuals who were present in the camps at the time of the attack are victims, at a minimum, of the crimes of attack against a civilian population and persecution.<sup>7</sup>
7. The Chamber recalls that, pursuant to the Reparations Order, '[it is not necessary for the VPRS] to scrutinise whether individuals who were present in or were residents of the four IDP camps at the time of the attacks on said camps are indeed victims of the crimes of attack against the civil[ian] population as such and persecution through the underlying act of attack against the civilian population as such'.<sup>8</sup> The Chamber notes that while this presumption of victimhood may allow the VPRS to avoid conducting an entirely *de novo* eligibility assessment, the Reparations Order also states that in order for a potential beneficiary to benefit from this presumption, the VPRS must still be satisfied, on a balance of probabilities, that he or she was either a resident of or physically present in one of the camps at the time of the attacks.<sup>9</sup> Thus, the VPRS must still ascertain the identity of the victim, pursuant to the eligibility criteria, as well as

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<sup>7</sup> Registry Submissions, [ICC-02/04-01/15-2082](#), para. 14. The VPRS further states that it is not necessary to undertake a *de novo* review because: (i) all but one of the victims of the IDP camps attacks from the Sample (or 96.59%) were assessed by the Chamber as entitled to benefit from reparations based solely on the information and supporting documents submitted at the participation stage; ii) when the VPRS conducted the Rule 85 assessment of all victims' applications for participation at the pre-trial and trial stages, it assessed the intrinsic coherence and consistency of the victims' applications; iii) at the pre-trial and trial stages, the Registry transmitted all applications to the Chamber and to the parties and the latter had the opportunity to challenge before the Chamber any of the applications transmitted before a decision on the victims' participatory status was issued; (iv) and the scope of the *Ongwen* case has not changed following the Trial Judgment.

<sup>8</sup> Reparations Order, [ICC-02/04-01/15-2074](#), paras 163-164.

<sup>9</sup> Reparations Order, [ICC-02/04-01/15-2074](#), para. 164.

proof of their residency or physical presence in one of the camps at the time of the attacks.

**b) The use of local council letters to establish victims' identities**

8. The VPRS states that local council letters were 'submitted by a large number of participating victims to establish their identity',<sup>10</sup> including a/30006/13 and a/40007/14, two potential beneficiaries. The VPRS submits that local council letters were 'consistently recognized previously as valid identity documents in the Uganda situation and the *Ongwen* case'.<sup>11</sup> In support of this proposition, the VPRS cites to a 2008 Pre-Trial Chamber II decision from the Situation in Uganda.<sup>12</sup> In this decision, the Single Judge of Pre-Trial Chamber II accepted identification letters issued by a Local Council as a valid form of identity to participate in the proceedings in respect of the situation in Uganda.<sup>13</sup> The VPRS therefore submits that local council letters are valid identify documents which, in line with previous directions, it intends to use to establish the identity of potential beneficiaries for reparations, unless ordered otherwise by the Chamber.<sup>14</sup>
9. The Chamber considers that the VPRS may rely on local council letters as forms of identification, noting that the Chamber accepted such letters as sufficient proof of identification elsewhere in the Sample of Victims' Dossiers.<sup>15</sup> With respect to the dossiers of a/30006/13<sup>16</sup> and a/40007/14,<sup>17</sup> the Chamber finds that the local council letters provided are sufficient to prove identification. As such, the Chamber rules that a/30006/13 and a/40007/14 have sufficiently established their identities for the purposes of the eligibility assessment.

<sup>10</sup> Registry Submissions, [ICC-02/04-01/15-2082](#), para. 16.

<sup>11</sup> Registry Submissions, [ICC-02/04-01/15-2082](#), para. 16.

<sup>12</sup> Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06, 13 March 2008, ICC-02/04-125 ('Decision on victims' applications').

<sup>13</sup> Decision on victims' applications, ICC-02/04-125, para. 6.

<sup>14</sup> Registry Submissions, [ICC-02/04-01/15-2082](#), para. 16.

<sup>15</sup> See for example: a/01120/16.

<sup>16</sup> A/30006/13 participation form, ICC-02/04-01/15-334-Conf-Exp-Anx637, p. 8.

<sup>17</sup> A/40007/14 participation form, ICC-02/04-01/15-344-Conf-Exp-Anx649, p. 8.

**c) Vulnerability categories identified by the VPRS**

10. The Chamber recalls that the Reparations Order identified the categories of vulnerable victims who should be prioritised in the distribution of reparations. Specifically, the Reparations Order states that, ‘priority should be given to individuals who require immediate physical and/or psychological medical care, victims with disabilities and the elderly, victims of sexual or gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers’.<sup>18</sup>
11. The Chamber notes that the VPRS has proposed an additional category of vulnerability in the present case, namely, ‘victims whose family members were killed or who were abducted and never returned, especially elderly parents, widows, widowers and orphans.’<sup>19</sup>
12. While the Chamber deeply sympathises with those whose family members were killed or who were abducted and never returned, it recalls that Trial Chamber IX considered the parties’ submissions with respect to prioritisation in its Reparations Order and previously ruled on the categories of vulnerability to be applied in the *Ongwen* case.<sup>20</sup> The Chamber further notes that many of the victims in this category proposed by the VPRS, such as elderly parents, may fall within the vulnerability categories set out in the Reparations Order.<sup>21</sup> The Chamber therefore directs the VPRS to follow the vulnerability categories as defined in the Reparations Order.<sup>22</sup>

**FOR THESE REASONS, THE CHAMBER HEREBY**

**TAKES NOTE** of the VPRS’ undertaking to finalise its eligibility and urgency assessment of all participating victims by the end of 2024 or the first months of 2025 at the latest;

**REMINDS** the VPRS that it must be satisfied, on a balance of probabilities, that the Category 2 victims were either a resident of or physically present in one of the camps at the time of the

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<sup>18</sup> Reparations Order, [ICC-02/04-01/15-2074](#), para. 655. The Chamber notes that the Reparations Order goes on to determine further prioritisations amongst victims. See: Reparations Order, [ICC-02/04-01/15-2074](#), paras 657-662.

<sup>19</sup> Registry Submissions, [ICC-02/04-01/15-2082](#), para. 24.

<sup>20</sup> Reparations Order, [ICC-02/04-01/15-2074](#), para. 655.

<sup>21</sup> Indeed, victims whose family members were killed or who were abducted and never returned, may also otherwise qualify as victims experiencing financial hardship, a category of victims already recognised in the prioritisation set out in the Reparations Order.

<sup>22</sup> Reparations Order, [ICC-02/04-01/15-2074](#), para. 655.

attacks, and that their identities have been established for the purposes of the eligibility assessment;

**FINDS** that a/30006/13 and a/40007/14 have provided sufficient proof of identification for the purposes of the eligibility assessment; and

**DIRECTS** the VPRS to follow the order of prioritisation set out in the Reparations Order.

Done in both English and French, the English version being authoritative.



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**Judge María del Socorro Flores Liera, Presiding Judge**



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**Judge Kimberly Prost**



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**Judge Nicolas Guillou**

Dated 3 May 2024

At The Hague, The Netherlands