

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 06 May 2024

## APPEALS CHAMBER

**Before:** Judge Luz del Carmen Ibáñez Carranza, Presiding Judge  
Judge Tomoko Akane  
Judge Solomy Balungi Bossa  
Judge Gocha Lordkipanidze  
Judge Erdenebalsuren Damdin

## SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN*

**Public**

**Victims' Response to the Defence Request for Suspensive Effect and to the Observations by the Trust Fund for Victims and Registry on the Request for Suspensive Effect**

**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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**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

## I. INTRODUCTION

1. The Legal Representatives for Victims (“LRVs”) hereby respond to the Defence request for a suspensive effect of the Reparations Order issued by Trial Chamber IX against Dominic Ongwen contained in its notification of the grounds of appeal; and observations made by the Trust Fund for Victims and the Registry of the Court on the said Defence Request.
2. The LRVs submit that the Defence request fails to satisfy with justification why the general rule established by the Appeals Chamber, that judicial orders should be allowed to take effect save where the Court determines otherwise, should not be maintained.

## II. PROCEDURAL HISTORY

3. On 4 February 2021, Trial Chamber IX issued its Trial Judgment in the case against Dominic Ongwen, convicting him of 61 counts of war crimes and crimes against humanity.<sup>1</sup>
4. On 6 May 2021, Trial Chamber IX gave Mr. Ongwen a 25-year sentence.<sup>2</sup>
5. On 15 December 2022, the Appeals Chamber unanimously confirmed the Judgment<sup>3</sup> and confirmed, by majority, the Sentence.<sup>4</sup>
6. On 28 February 2024, Trial Chamber IX issued the Impugned Decision against Mr. Ongwen.<sup>5</sup>
7. On the 14 March 2024, the Appeals Chamber granted the Defence an extension until 22 April 2024 to file its notice of appeal and 24 June 2024 to file its appeal brief.<sup>6</sup>

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<sup>1</sup> Trial Chamber IX, Trial Judgment, 4 February 2021, ICC-02/04-01/15-1762-Red.

<sup>2</sup> Trial Chamber IX, Sentence, 6 May 2021, ICC-02/04-01/15-1819-Red

<sup>3</sup> Appeals Chamber, Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”, 15 December 2022, ICC-02/04-01/15-2022-Red.

<sup>4</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, with the Partly Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza, 15 December 2022, ICC-02/04-01/15-2023-Anx1.

<sup>5</sup> Trial Chamber IX, Reparations Order, 24 February 2024, ICC-02/04-01/15-2074.

<sup>6</sup> Appeals Chamber, Decision on the Defence’s request for time extension for the notice of appeal and appeal brief against Trial Chamber IX’s “Reparations Order”, 14 March 2024, ICC-02/04-01/15-2080.

8. On the 22 April 2024, the Defence filed its Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for a Suspensive Effect (Defence Request).<sup>7</sup>
9. On the 24 April 2024, the Appeals Chamber issued an order setting the time limits for submissions on the Defence request for a suspensive effect.<sup>8</sup>
10. On 1 May 2024, the Registry submitted the Registry Submission on the Request for Suspensive Effect,<sup>9</sup> and the Trust Fund for Victims (TFV) filed Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence.<sup>10</sup>

### III. SUBMISSIONS

#### *Response to the Defence Request*

11. The LRVs submit that Article 82 (3) of the Rome Statute clearly spells out the general rule relating to suspensive effect where an appeal against a reparations order is notified. The rule requires that an appeal shall not have suspensive effect unless the Appeals Chamber so orders. Therefore, the intention of the Statute is that judicial orders should produce their effect immediately unless there are strong reasons to suspend them.
12. The above view has also been upheld in prior decisions of the Appeals Chamber, notwithstanding that the Appeals Chamber has determined that granting suspensive effect is within its discretion and has to take into consideration the specific facts of the case.<sup>11</sup> When considering exercising its discretion it will analyze if the implementation of the decision under appeal: “

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<sup>7</sup> Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for a Suspensive Effect, 22 April 2024, ICC-02/04-01/15-2084.

<sup>8</sup> Appeals Chamber, Order setting a time limit for submissions on the request for suspensive effect, ICC-02/04-01/15-2085.

<sup>9</sup> Registry Submission on the Request for Suspensive Effect, 1 May 2024, ICC-02/04-01/15-2086

<sup>10</sup> Observations on Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence, 1 May 2024, ICC-02/04-01/15-2087

<sup>11</sup> The Prosecutor v. Jean-Pierre Bemba Gombo, Decision on the Request of the Prosecutor for Suspensive Effect, 3 September 2009, ICC-01/05-01/08-499 (OA 2), para. 11.

(i) 'would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant', (ii) would lead to consequences that 'would be very difficult to correct and may be irreversible', or (iii) 'could potentially defeat the purpose of the appeal'."<sup>12</sup>

13. The Appeals Chamber in the Ntaganda case correctly determined that these criteria "...are of a demanding nature and should be rigorously applied in view of the overriding importance of delivering reparations to victims following the Trial Chamber's decision on conviction and in circumstances in which that decision is final."<sup>13</sup>

14. The LRVs submit that none of the said criteria has been met in the present case, nor has the Defence made any substantial effort to show factual or legal grounds that satisfy the strict standard set by the Appeals Chamber in the Ntaganda Case.

15. The Defence argues that it's likely that the number of victims will be reduced<sup>14</sup> however the LRVs note that the Defence seems to forget that the conviction against Mr. Ongwen has been confirmed by the Appeals Chamber on all relevant counts and it is therefore unlikely that there will be a reduction on numbers of eligible victims. This is so because many of the crimes suffered by the victims of Mr. Ongwen were committed in the context of the four attacks on the Pajule, Abok, Odek and Lukodi IDP Camps as well as the thematic crimes perpetrated between 1 July 2002 and 31 December 2005.

16. The LRVs further recall that the Chamber, in arriving at the estimated number of the totality of eligible victims, considered the relevant estimates of direct and indirect victims of the attack on the aforementioned IDP camps as well as those

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<sup>12</sup> The Prosecutor v. Jean-Pierre Bemba Gombo, Decision on the Request of the Prosecutor for Suspensive Effect, 3 September 2009, ICC-01/05-01/08-499 (OA 2), para. 11. Quoted in The Prosecutor vs Bosco Ntaganda, Decision on the Defense request for suspensive effect No. ICC-01/04-02/06 A4 A5 Date: 2 July 2021, para. 21.

<sup>13</sup> The Prosecutor vs Bosco Ntaganda, Decision on the Defense request for suspensive effect No. ICC-01/04-02/06 A4 A5, 2 July 2021, para. 21.

<sup>14</sup> ICC-02/04-01/15-2084, para. 12.

of the direct and indirect victims of the thematic crimes.<sup>15</sup> Notwithstanding the Defence notice of appeal, nothing in its request for suspensive effect suggests that the approach by the Trial Chamber regarding these estimates points to a prima facie error of law being occasioned.

17. The Defence of Dominic Ongwen also claims that; “.... Therefore, implementation of the Impugned Decision at this stage could result in considerable time being spent and resources being allocated by the Trust Fund for Victims, as well as unnecessarily raising expectations of victims, for something that has a real chance of not being implemented.”<sup>16</sup>
18. The LRVs submit that, it is a general principle of law that one must have legal standing to petition before a court. That is, the party making the request must have cause to make the request it is requiring from the tribunal...meaning that the party must have a direct interest in the outcome of his or her petition. The LRVs submit that Mr. Ongwen has no standing to request the suspensive effect of the appeal because the implementation of the reparations order pending the appeal does not affect any of his interests. This is evident from the reasons advanced by Mr. Ongwen to request for the suspensive effect of the appeal. None deal with his specific interest.
19. The LRVs submit that one of the reasons advanced by the Defence in its request is that TFV would waste time and money. It is for the TFV to determine its allocation of time and resources and in no way does this issue affect the personal interests of Mr. Ongwen. Hence, Mr. Ongwen has no *locus standi* to purport to represent the interest of the TFV.
20. The LRVs further recall that Mr. Ongwen has been granted indigence status and therefore he will not be the one supporting the implementation of the reparations order.

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<sup>15</sup> ICC-02/04-01/15-2074, para. 776 – 777.

<sup>16</sup> ICC-02/04-01/15-2084, para. 11.

21. The Defence additionally contends that starting the implementation of the reparations order would raise expectations among victims.<sup>17</sup> The LRVs submit that, besides the outrageous paternalistic nature of such a claim thinking that victims who have been waiting for justice for more than 20 years can't understand that the reparations order has not yet been confirmed and therefore its full implementation is pending, it is not for Mr. Ongwen to present the views and concerns of the victims of his crimes.
22. The LRVs note that it is the remit of the legal counsel for victims to explain to their clients the status of the reparations order and directives made by the Trial Chamber. This last-minute purported concern of Mr. Ongwen for the wellbeing of victims, who until this date has not shown remorse nor asked forgiveness of his victims, is but a gimmick not worth this Chamber's consideration.
23. Even if, for the sake of argument, Mr. Ongwen's concern was to be presumed genuine, the LRVs submit that this in no way satisfies the minimum standard of establishing that his interests are affected. This simply reinforces the submission herein that Mr. Ongwen lacks standing to present the request for suspensive effect of the reparations order.

*Response to Registry Observations*

24. The LRVs take note of the observations filed by the Registry. The LRVs agree with the Registry that the request by the Defence for suspensive effect lacks merit given the confirmation of the conviction decision by the Appeals Chamber on all counts for which Mr. Ongwen was convicted.
25. The LRVs further agree with the Registry that given the task of identifying eligible victims within two years as directed by the Trial Chamber any suspensive effect would impact the timely conclusion of the said process but would also be contrary to the reparations principles<sup>18</sup> laid out in the reparations

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<sup>17</sup> ICC-02/04-01/15-2084, para. 11.

<sup>18</sup> ICC-02/04-01/15-2074, para. 56 - 87.

order especially considering that the Defence does not demonstrate justifiably any interests of Dominic Ongwen that are affected by implementation of the reparations order.

26. The LRVs also recall in this regard the order by the Chamber to prioritize victims who are vulnerable and present with dire needs and require urgent attention.<sup>19</sup> The LRVs have informed some of their clients and will be meeting with others in the near future to inform them that vulnerable victims manifesting dire need or needing urgent attention will be given first priority, especially in the implementation of the symbolic award,<sup>20</sup> subject to the resources available within the TFV. Granting suspensive effect of the reparations order would be counterproductive for this category of victims especially, and as already submitted herein, in whose favor the Appeals Chamber has already confirmed the conviction decision against Mr. Ongwen.

*Response to the TFV Observations*

27. The LRVs have taken note of the observations by the TFV and would like to emphasize that the LRVs have been consistently in touch with their clients more than any other participant in the proceedings and therefore know that many victims have in recent times been presenting with various forms of mental ill health and other health complications which require urgent attention, as also addressed by their filing to the Trial Chamber.<sup>21</sup>
28. The LRVs accordingly note that, given the vulnerable situation and dire need that most victims are experiencing, it is more instructive to continue the administrative processes tasked to the Registry and the TFV respectively to ensure preparedness, as also submitted by the TFV, and ultimately a timely

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<sup>19</sup> ICC-02/04-01/15-2074, para. 659.

<sup>20</sup> ICC-02/04-01/15-2074, para. 789 -790.

<sup>21</sup> Public Redacted Version of 'Victims' Request for Urgent Support to Victims presenting with Mental Health Challenges and Other Victims Requiring Urgent Medical Intervention, with Public Annex A and Confidential ex parte annex B available to the Chamber and Trust Fund for Victims Only', filed on 23 August 2023, ICC-02/04-01/15-2054-Conf-Exp, 28 August 2023, ICC-02/04-01/15-2054-Red2.



deliverance of at least the symbolic award to the first priority category of victims.

#### IV. RELIEF SOUGHT

29. The LRVs ask the Appeals Chamber to reject the Defence request for suspensive effect as they have failed to justify why the general principle established by the Appeals Chamber, that judicial orders should be allowed to take effect, should not be upheld in their appeal against the Reparations order.

Respectfully submitted,



Joseph A. Manoba



Francisco Cox

Dated this 6th day of May 2024

At Kampala, Uganda and at Santiago, Chile