

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

**with confidential *ex parte* Annex, Registry and the Legal Representatives only
Victims' Request for an extension of the time limit to submit their observations on
reparation proceedings**

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**

Mr Kharim Asad Ahmad Khan QC
Mr James Stewart

Counsel for the Defence

Mr Krispus Ayena Odongo
Mr Charles Achaleke Taku
Ms Beth Lyons

Legal Representatives of the Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Legal Representatives of the Applicants**Unrepresented Victims****Unrepresented Applicants
(Participation/Reparation)****The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence****States' Representatives****Amicus Curiae****REGISTRY****Registrar**

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. Pursuant to regulation 35 (1) of the Regulations of the Court (the ‘Regulations’), the Legal Representatives of Victims (the ‘LRVs’) request an extension of the time limit to submit observations on reparations by three months. Such an extension is justified due to the continuing Covid-19 measures in place in Uganda as well as those introduced by the Court’s Occupational and Health Unit (the ‘OHU’), both aimed at curbing the spread of Covid-19 virus. These measures 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 within the deadline set by the Chamber.
2. ICC jurisprudence has emphasized that that the participation of victims must be ‘meaningful’ as opposed to ‘purely symbolic.’¹ Meaningful victim participation in the context of consultations for the purposes of reparations proceedings require the LRVs to undertake sustained qualitative and quantitative discussions with the victims participating in this case. Unfortunately, due to the Covid-19 restrictions in Uganda, the LRVs will only be able to undertake one set of consultations with a limited number of victims by 4 December 2021, which the LRVs submit, will in no way be sufficient to present adequate qualitative information for the purposes outlined in the Order for Submissions on Reparations’ (the ‘Order’).²

¹ Decision on Victims’ Participation, *Lubanga* (ICC-01/04-01/06-1119) Appeals Chamber, 22 January 2008, para. 85; Judgment on the appeals of the Prosecutor and the Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, *Lubanga* (ICC-01/04- 01/06-1432), Appeals Chamber, 11 July 2008, para. 97; Order on the Organisation of Common Legal Representation of Victims, *Katanga and Ngudjolo* (ICC-01/04- 01/07-1328), Trial Chamber II, 22 July 2009, para, 10(a); Decision on the Modalities of Victim Participation at Trial, *Katanga and Ngudjolo* (ICC-01/04-01/07-1788-tENG), 22 January 2010, para. 57; Decision on Common Legal Representation of Victims for the Purpose of Trial, *Bemba* (ICC-01/05-01/08-1005), Trial Chamber III, 10 November 2010, para. 9(a).

² Order for Submissions on Reparations, 6 May 2021, ICC-02/04-01/15-1820.

II. PROCEDURAL HISTORY

3. On 6 May 2021, the Chamber issued the Order,³ in which it, *inter alia*, instructed the parties to make submission on specific issues pertaining to reparations proceedings by 6 September 2021.⁴
4. From 4 through 11 June 2021 eleven requests for leave to submit such observations were filed⁵ and on 17 June 2021 the Chamber granted leave to all of the applicants.⁶
5. On 9 June 2021, the Chamber was reconstituted by the replacement of Judge Raul C. Pangalangan with Judge Chang-ho Chung.⁷
6. On 5 July 2021, the Registry filed its Progress Report on Mapping and Request for Extension of Time.⁸

³ *Ibid.*

⁴ *Ibid.*, para. 5 (i).

⁵ Request for leave to submit *amicus curiae* observations on reparations for victims of LRA in the case of Dominic Ongwen, 4 June 2021, ICC-02/04-01/15-1840; Request for leave to file submission on reparations issues pursuant to Article 75 of the Statute and rule 103 of the Rules, 7 June 2021, ICC-02/04-01/15-1842; Request for leave to file submissions on reparations issues, 7 June 2021, ICC-02/04-01/15-1843; Request for leave to submit *Amicus Curiae* observations on the legal questions presented in the Order for Submissions on Reparations (pursuant to Rule 103 of the Rules of Procedure and Evidence) of 6th May 2021 (ICC-02/04-01/15), 7 June 2021, ICC-02/04-01/15-1844; Request for leave to submit *Amicus Curie* Observations for reparations, pursuant to article 75 of the Statute and Rule 103 of Rules, 7 June 2021, ICC-02/04-01/15-1845; Request for Leave to Submit Observations on the issues set out under point 5 (iii) of the Order No. ICC-02/04-01/15, 7 June 2021, ICC-02/04-01/15-1846; Request for leave to submit an *Amicus Curiae* brief pursuant to article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence, 7 June 2021, ICC-02/04-01/15-1847; Request for leave to submit *amicus curiae* observations on reparations for victims of the LRA for the case of Dominic Ongwen, 7 June 2021, ICC-02/04-01/15-1848; Application by the United Nations for leave to make submissions pursuant to Paragraph 5(iii) of the "Order for Submissions on Reparations" of 6 May 2021, Article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence, 4 June 2021, ICC-02/04-01/15-1849; Transmission of a "Request for leave to submit *Amicus Curiae* Observations on reparations", ICC-02/04-01/15-1853, with Annex 1, ICC-02/04-01/15-1853-Anx1; Transmission of a "Brief and Priority Needs", ICC-02/04-01/15-1854, with Annex 1, ICC-02/04-01/15-1854-Anx1.

⁶ Decision on the requests for leave to submit *amicus curiae* observations, 17 June 2021, ICC-02/04-01/15-1860.

⁷ The Presidency, Decision replacing a judge in Trial Chamber IX, 9 June 2021, ICC-02/04-01/15-1851.

⁸ Registry Progress Report on Mapping and Request for Extension of Time, 5 July 2021, ICC-02/04-01/15-1863.

7. On the 12 July 2021, the LRVs and Office of Public Counsel for Victims filed a Joint Request for extension of time limit to submit their observations on reparation proceedings.⁹
8. On the 19 July 2021, the Chamber issued a decision extending the deadline to file observations to the 6 December 2021.¹⁰

III. SUBMISSIONS

9. The LRVs recall the Chamber's Decision granting parties, the Registry, and the TFV an extension of the time limit to make their submissions on reparations, as referred to in paragraph 5(i) of the Order, until 6 December 2021.¹¹
10. The LRVs who represent 2605 of the 4106 victims participating in this case, submit that they have collaboratively engaged with the Registry (VPRS) for the purposes of providing information and support in relation to the mapping of victims, aimed at estimating the number of victims eligible for reparations. Whilst this process is ongoing,¹² the possibility of providing reliable and accurate information regarding the numbers of victims of the thematic crimes within the current deadline of 6 December 2021 is not feasible.
11. The LRVs submit that despite their field presence and established networks and structures of intermediaries situated within the affected communities, mapping of victims of thematic crimes, who are spread out in different districts in Uganda, has proven to be challenging against the backdrop of the Covid-19 pandemic restrictions that are currently in place in Uganda, as well as those required by the OHU.

⁹ Victims' Joint Request for extension of time limit to submit their observations on reparation proceedings, 12 July 2021, ICC-02/04-01/15-1864

¹⁰ Decision on requests for extension of time, 19 July 2021, ICC-02/04-01/15-1865.

¹¹ Decision on requests for extension of time, 19th July 2021, ICC-02/04-01/15-1865.

¹² The LRVs are presently engaged in disaggregating data collected on camp residents of the former IDP camps of Odek, Lukodi and Abok to establish among others participating and non-participating victims for purposes informing the Registry (VPRS). The process is tedious and time consuming because of its manual nature.

12. The mapping of victims for the purposes of reparations proceedings necessitates the engagement with particularly vulnerable victim groups, as well as other actors that have worked with these victims, including victims/survivor groups. Due to the Covid-19 restrictions, the LRVs are presently unable to engage with such actors and therefore it is impossible for them to generate reliable data for the Registry and ultimately the Chamber.
13. Engagement with these victims requires a carefully thought out plan and methodology which includes outreach activities to potential victims, whilst still ensuring the provision of accurate information in order to prevent misinformation and raising the expectations of victims who may not be eligible to apply for reparations due to the limited parameters of the case. At present the LRVs are limited in their abilities to carry out any outreach with potential victim communities and would prefer not to outsource this responsibility to intermediaries and other interlocutors in order to prevent the spread of misinformation within a potentially large victim community.
14. The *Ongwen* case, as the Chamber is well aware, is the first case before this Court where the Accused person has been charged with 70 counts of war crimes and crimes against humanity, and has been convicted of 61, including thematic crimes and includes a broad temporal scope. The thematic crimes and scope of the charges within the four charged locations renders the estimation of potential victims of Dominic Ongwen's crimes challenging unless there is reasonable time for quality engagement with victims and survivor groups.
15. The LRVs also submit that meaningful victim participation necessitates the active participation of victims as an exercise of their agency in providing their input to the LRVs and the Registry regarding their expectations of the reparative processes at the ICC. In this way victims are able to have ownership of the processes, that arguably, most greatly impact their interests. This mitigates the potential for conflict related to perceptions of privilege amongst the various groups of victims including; (1) participating victims and non-

participating victims (2) victims who have and have not been consulted regarding the reparations process.

16. The LRVs further recall the Chamber's decision in which it noted the importance for the reparations process to proceed efficiently and expeditiously.¹³ Accordingly, the LRVs submit that their intention to abide by the said decision is constrained by the Government of Uganda's restrictions including limitation on gatherings and the imposition of a nightly curfew.
17. The LRVs submit that since June 2021, when the President of Uganda re-imposed lockdown measures in the country for 42 days, a partial lifting of lockdown measures has been made at the end of September. However, gatherings of not more than two hundred people are allowed.¹⁴ The LRVs intended to undertake missions in July and subsequently in August, but their efforts were frustrated by the lockdown measures imposed by the Ugandan authorities.
18. The LRVs submit that after the partial lifting of restrictions on gatherings, they requested and obtained clearance to undertake a consultative mission with their clients from the Registry. However, the OHU of the Court in recommending approval of the mission, guided and restricted the LRVs from meeting with more than 20 people at a single time owing to the continuing threat posed by the Covid-19 pandemic in Uganda.¹⁵
19. The LRVs submit that the 20 person cap on the number of victims that the LRVs can meet with during a single meeting on the one hand and confidential nature of the engagements with the divergent victims' groups means that the LRVs can at utmost hold two meetings a day in order to abide with the curfew imposed as part of lockdown measures put in place by the government of Uganda. The

¹³ ICC-02/04-01/15-1865, para. 12.

¹⁴ <https://www.mediacentre.go.ug/media/presidential-statement-nation-progress-covid-19-response>

¹⁵ The recommendation to minimize the number of persons to be met at any one time to 20 was first issued in the addendum to the mission requests of November 2020. This was later reaffirmed when the LRVs submitted requests for reconsideration of the recommended meeting numbers in February 2021. The OHU maintained that the LRVs ought to keep the numbers met at any one time to 20 participants but agreed that the LRVs could have more than one meeting session in a day.

two meetings would only allow meeting with about 180 individuals out of the total 2605 participating victims represented by the LRVs during their mission this November.

20. Furthermore, as mentioned in the Annex to this filing, the Field Security team in Uganda have noted that whilst the LRV's mission has been approved, they emphasize the high rates of infection in northern Uganda especially in Oyam District and recommend vigilance and caution for the LRVs with respect to Covid-19 measures when undertaking their consultations with their clients.
21. The victims represented by the LRVs are numerous and spread over several villages in the three charged locations Odek (Omoroto District), Lukodi (Gulu District) and Abok (Apac District). To reach them entails driving considerable distances. Moreover, because victims are often engaged in their farm activities, they do not often turn up at the meeting place in time for scheduled meetings with the LRVs and therefore a constructive engagement with victims on the issues identified by the Chamber requires reasonable time to reach the majority of the said participating victims.
22. The LRVs submit that their current approved mission of 14 days inclusive of travel days barely allows the LRVs sufficient time to engage and generate representative views of 2605 victims on reparations within the deadline of 6 December 2021 set by the Chamber.
23. Therefore, the LRVs submit that the described circumstances constitute a good cause in accordance with regulation 35(2) of the Regulations to justify a three month extension of time limit to make quality submissions on the issues pertaining to reparations as ordered by the Chamber on 6 May 2021.
24. The LRVs can provide the Chamber with a snapshot of views of at least 180 victims that they represent by 6 December 2021, however, these consultations will in no way be representative of the majority of the victims participating in this case and those not participating but are victims of the crimes Dominic Ongwen was convicted for. This, in some ways will unfairly advantage the

victims who the LRVs will be able to meet in this limited timeframe, over the victims who will not have the opportunity to meet with the LRVs.

IV. CONCLUSION

25. For the foregoing reasons, the LRVs respectfully request the Chamber to grant a three-month extension of time limit to make their submissions on issues pertaining to reparations and listed by the Chamber in para. 5(i) of the Order. The LRVs believe that the extension of such a short period of time will not be unfairly prejudicial within the larger framework of reparations proceedings at the Court.



Joseph A. Manoba



Francisco Cox

Dated this 9th day of November 2021
At Kampala (Uganda), Santiago (Chile) and The Hague (The Netherlands).