

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**
Date: **15 November 2021**

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*

Confidential

***Ex Parte* only available to the Registry and the Office of the Prosecutor**

Order for a Request for cooperation to the Republic of Uganda for the identification, tracing, freezing, or seizing of assets and properties of Mr Dominic Ongwen

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Mr Karim A. A. Khan

Mr James Stewart

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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**

Others

Trial Chamber IX of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen* (the ‘*Ongwen case*’), having regard to articles 75(4), 86, 87, 93(1)(k), 97, and 99 of the Rome Statute (‘Statute’) and rules 13, 99(1), and 176(2) of the Rules of Procedure and Evidence (‘Rules’), issues the following Order for a Request for cooperation to the Republic of Uganda for the identification, tracing, freezing, or seizing of assets and properties of Mr Dominic Ongwen (‘Order’).

I. PROCEDURAL HISTORY

1. On 6 May 2021, the Chamber issued its Order for Submissions on Reparations, by which it, *inter alia*, instructed the Registrar, assisted by the information that may be provided by the Prosecutor, to review the current financial situation of Mr Dominic Ongwen (‘Mr Ongwen’) and report back to the Chamber.¹

2. On 15 October 2021, the Registry filed its submissions on the financial situation of Mr Ongwen (‘Registry Submissions’), whereby it informs the Chamber that no information is currently available to the Registry on the financial situation of Mr Ongwen.²

II. ANALYSIS

3. The Registry submits that, in the absence of a decision for the identification, tracing, freezing, and seizing of assets and property of Mr Ongwen, either in the *Ongwen case* or previously in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen* (ICC-02/04-01/05), no State has been requested to investigate into the assets and property of Mr Ongwen and to provide the Registry with information in this regard.³ The Registry also informs the Chamber that the Office of the Prosecutor has indicated that it does not have any information in relation to Mr Ongwen’s current financial situation.⁴

4. The Registry Submission further informs the Chamber that in Mr Ongwen’s application for legal assistance paid by the Court, based on which he was assessed as indigent, he declared no assets or income belonging to either himself or his dependents.⁵ However, the Registry observes that it is apparent from the transcripts of Mr Ongwen’s conversations that he owns

¹ Order for Submissions on Reparations, [ICC-02/04-01/15-1820](#), 6 May 2021, para 5(v)

² Registry submissions on the financial situation of Mr Dominic Ongwen, ICC-02/04-01/15-1877-Conf-Exp, 15 October 2021 (‘Registry Submissions’), para. 1.

³ Registry Submissions, ICC-02/04-01/15-1877-Conf-Exp, para. 4.

⁴ Registry Submissions, ICC-02/04-01/15-1877-Conf-Exp, para. 4.

⁵ Registry Submissions, ICC-02/04-01/15-1877-Conf-Exp, para. 5.

some assets, but that it has no information as to their value or reasons to believe that they are of great value.⁶

5. As noted by the Appeals Chamber in the *Lubanga* case,⁷ the Resolution on Reparations adopted by the Assembly of States Parties in 2011 clearly underlined that:

[...] as the freezing and identification of any assets of the convicted person, which are indispensable for reparations, is of paramount importance the Court should seek to take all measures to that end, including effective communication with relevant States so that they are in a position to provide timely and effective assistance pursuant to article 93, paragraph 1 (k), where possible, in all cases and at as early a stage of the proceedings as possible, irrespective of the declaration of indigence for the purpose of legal aid which bears no relevance to the ability of the accused to provide reparations;⁸

Within that context, '[t]he identification and freezing of any assets of the convicted person are a fundamental element in securing effective reparations'.⁹

6. Pursuant to article 75(4) of the Statute 'the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93 paragraph 1'. In accordance with article 93(1)(k) of the Statute, States Parties should provide assistance to the Court in the 'identification, tracing and freezing or seizure of proceeds, property and assets [...], without prejudice to the rights of bona fide third parties'. As noted by the Appeals Chamber, this provision should be interpreted broadly, allowing the Court to rely on it for the purposes of reparations after the person has been convicted, consolidating the effectiveness of the reparation system consistent with the object and purpose of the Statute.¹⁰

7. According to rule 99(1) of the Rules, the Chamber may, on its own motion, determine whether cooperation should be requested pursuant to article 75(4) of the Statute. In the case at hand, the Chamber considers that the identification, tracing, freezing, and seizing of any

⁶ Registry Submissions, ICC-02/04-01/15-1877-Conf-Exp, para. 5, referring to Annex II to Report on the Active Monitoring of Mr Ongwen's Telephone Communications, ICC-02/04-01/15-443-Conf-Exp-AnxII..

⁷ Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, [ICC-01/04-01/06-3129](#) ('*Lubanga* Judgment on Principles'), para. 87.

⁸ Resolution ICC-ASP/10/Res.3, Adopted at the 7th plenary ICC meeting, on 20 December 2011, by consensus, [ICC-ASP/10/Res.3](#), Reparations, para. 3.

⁹ Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, [ICC-01/04-01/06-2904](#) ('*Lubanga* Reparations Decision'), para. 277, endorsed by the Appeals Chamber in *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), para. 96.

¹⁰ Appeals Chamber, Judgment of the appeal of the Prosecutor against the decision of [REDACTED], 15 February 2016, ICC-ACRed-01/16, paras 52, 54.

property and assets belonging to or under the direct or indirect control of Mr Dominic Ongwen is necessary in light of the interests of the victims.

8. The Chamber notes that all requests for cooperation must be executed pursuant to the provisions contained in Part IX of the Statute and in accordance with the procedures provided for in the national law of the requested State, without prejudice to the rights of *bona fide* third parties. In this respect, while the Court is responsible for the legality of the requests for cooperation sent to the State, it is the latter's responsibility to verify that any measure necessary to implement the Court's request is in line with the Statute and national law.

9. The Chamber further recalls article 87(3) of the Statute and underlines the importance for the requested State to respect the confidentiality of the request for cooperation and any relevant supporting documents, except to the extent that their disclosure is necessary for executing the request. In addition, pursuant to article 87(4) of the Statute, the requested State should ensure that any information that is made available pursuant to the present request be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, witnesses, and their families.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Registrar to prepare and transmit, a request for cooperation to the competent authorities of the Republic of Uganda to:

- take all necessary measures, in accordance with the procedures provided in their national law, for the purposes of identifying, tracing, freezing or seizing any property and assets belonging to or under the direct or indirect control of Mr Dominic Ongwen on its territory, including his movable and immovable property, bank accounts or shares, without prejudice to the rights of *bona fide* third parties;
- keep confidential the present request for cooperation and any documents supporting it, except to the extent that the disclosure is necessary for the execution of the request;
- ensure that any information that is made available pursuant to the present request be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, witnesses, and their families; and

- consult with the Court without delay should it identify any problems which may impede or prevent the execution of the request, if appropriate in accordance with article 97 of the Statute.

ORDERS the Registrar to transmit the necessary translation to accompany the request for cooperation in accordance with article 87(2) of the Statute; and

ORDERS the Registrar to include in the request for cooperation a provision requesting that the competent authorities of the Republic of Uganda inform the Registry within three months, of any seizure of property and freezing of assets carried out in execution of this order and any financial information concerning Mr Ongwen, regardless of whether measures to freeze have yet been implemented.

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



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated this Monday, 15 November 2021

At The Hague, The Netherlands