

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **02 October 2024**

Original Date: **17 May 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 Redacted Version of

Omnibus Decision on the Defence's Filings ICC-02/04-01/15-2044 and ICC-02/04-01/15-2045-Conf

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

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Trial Chamber IX of the International Criminal Court (the ‘ICC’ or the ‘Court’), in the case of *The Prosecutor v. Dominic Ongwen* (the ‘Ongwen case’), having regard to articles 68 and 75 of the Rome Statute (‘Statute’), rule 171 of the Rules of Procedure and Evidence, and regulations 23bis(3), 29(1), and 36 of the Regulations of the Court (‘Regulations’), issues the following Omnibus Decision on the Defence’s Filings ICC-02/04-01/15-2044 and ICC-02/04-01/15-2045-Conf (‘Decision’).

I. PROCEDURAL HISTORY

1. On 16 November 2022, following developments in another case at the reparations stage of the proceedings before the Court,¹ the Chamber ordered the Registry, through the Victims Participation and Reparations Section (‘VPRS’), to provide information on the victims applications in the case file.²

2. On 16 December 2022, having received the requested information from the Registry,³ the Chamber issued a decision (‘Decision on the Sample’) detailing its approach for ruling on a limited but representative sample of victims’ dossiers in the case file, amounting to 5% of the universe of participating victims.⁴

3. On 16 January 2023, in light of the Registry’s transmission of the list of victims included in the sample and their relevant details,⁵ the Chamber issued a decision (‘Decision on the Registry Transmission’), *inter alia*, (i) approving the sample of 205 victims, assembled by the VPRS, as sufficiently representative of the universe of potential victims in the case (‘Sample’); (ii) setting out deadlines for the legal representatives to make submissions and complement the victims’ dossiers, and for the Defence to make final submissions; (iii) establishing a procedure for the transmission of victims’ dossiers by the VPRS to the Defence

¹ See, *inter alia*, *The Prosecutor v. Bosco Ntaganda*, Appeals Chamber, Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 12 September 2022, [ICC-01/04-02/06-2782](#); Trial Chamber II, Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 25 October 2022, [ICC-01/04-02/06-2786](#).

² E-mail from Trial Chamber IX Communications, 16 November 2022, at 15:01.

³ Registry Additional Information on Victims (‘Registry Additional Information’), 21 November 2022 (notified on 22 November 2022), [ICC-02/04-01/15-2019](#).

⁴ Decision on the Registry Additional Information on Victims (‘Decision on the Sample’), 16 December 2022, [ICC-02/04-01/15-2024](#).

⁵ Registry Transmission of List of Individuals and Relevant Information for Reparations Sample (‘Registry Transmission’), 9 January 2023, [ICC-02/04-01/15-2026](#), with two Confidential *ex parte* Annexes only available to the Registry, ICC-02/04-01/15-2026-Conf-Exp-AnxI and ICC-02/04-01/15-2026-Conf-Exp-AnxII.

with the necessary redactions, depending on the victims' consent; and (iv) establishing the relevant procedure for the Defence to challenge the applied redactions.⁶

4. On 17 April 2023, the legal representatives filed submissions on the sample of applications, by way of a joint submission⁷ and a separate submission by the Office of the Public Counsel for Victims ('OPCV').⁸

5. On 20 April 2023, the Chamber issued a decision rejecting a request by the Defence⁹ to order the disclosure of the identifying information of all victims included in the Sample who have not consented to having their identity disclosed to the Defence ('Disclosure Decision').¹⁰

6. On 26 April 2023, the Defence submitted a motion to strike and disregard the Confidential, *ex parte*, Annex 1 to the OPCV submission on the Sample ('Motion').¹¹

7. On 5 May 2023, the Defence filed its Request for an Order to Disclose Specific Material of Persons in the Victim Sample Pool of Participating Victims ('Request').¹²

8. On 8 May 2023, the OPCV filed its response to the Motion ('Motion Response'),¹³ requesting the Chamber to reject it.

9. On 10 May 2023, the legal representatives filed its response to the Request ('LRVs' Request Response'),¹⁴ requesting the Chamber to reject it *in limine*.

⁶ Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample ('Decision on the Registry Transmission'), 16 January 2023, [ICC-02/04-01/15-2027](#), with public annex 1, [ICC-02/04-01/15-2027-Anx1](#), paras 10-13, disposition.

⁷ Legal Representatives of Victims Joint Submissions on the Sample Application Forms for reparations, 17 April 2023, [ICC-02/04-01/15-2040](#).

⁸ CLRV submission of information related to the Sample Applications for reparations, 17 April 2023, [ICC-02/04-01/15-2041](#) (with confidential *ex parte* only available to the OPCV and confidential redacted annexes 1 to 8).

⁹ Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims ('Request'), 29 March 2023, ICC-02/04-01/15-2036-Conf (public redacted version on filed the same day, [ICC-02/04-01/15-2036-Red](#)).

¹⁰ Decision on the Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims ('Disclosure Decision'), 20 April 2023, ICC-02/04-01/15-2043-Conf.

¹¹ Defence motion to strike and disregard the Confidential, *ex parte*, Annex 1 of the CLRV submission of information related to the Sample Applications for reparations ('Motion'), 26 April 2023, [ICC-02/04-01/15-2044](#).

¹² Defence Request for an Order to Disclose Specific Material of Persons in the Victim Sample Pool of Participating Victim ('Request'), 5 May 2023, ICC-02/04-01/15-2045-Conf.

¹³ Response to the "Defence motion to strike and disregard the Confidential, *ex parte*, Annex 1 of the CLRV submission of information related to the Sample Applications for reparations" (No. ICC-02/04-01/15-2044) ('Motion Response'), 8 May 2023, [ICC-02/04-01/15-2046](#).

¹⁴ Victims' Response to the Defence Request for an Order to Disclose Specific Material of Persons in the Victim Sample Pool of Participating Victims ('LRVs Request Response'), 10 May 2023, ICC-02/04-01/15-2047-Conf-Corr.

10. On 15 May 2023, the OPCV filed a response to the Request ('OPCV's Request Response'),¹⁵ requesting the Chamber to dismiss it.

II. ANALYSIS

A. Motion

11. In its Motion, the Defence requests the Chamber to disregard and strike from the record Annex 1 of the OPCV submissions on the Sample ('Annex 1'), arguing that the OPCV violated three different issues in regulation 36 of the Regulations and did not request permission to submit two separate pleadings on the Sample.¹⁶ The Defence complains that Annex 1 – a table summarising the information contained in the applications of the victims included in the Sample – is in an 'unreadable font size, not 1.5 line spacing and the margins are not 2.5 centimetres on all four sides'.¹⁷ To prove its point, the Defence details – in four paragraphs, including visual aids – the different possibilities to print a document,¹⁸ cites some purportedly applicable jurisprudence,¹⁹ and concludes by arguing that, considering that the OPCV 'wilfully and intentionally violated three different parts of Regulation 36(3)', the Chamber should strike and disregard Annex 1.²⁰ Further, the Defence argues that nowhere in the Decision on the Sample or in the Decision on the Registry Transmission the Chamber authorised the OPCV to file a joint submission and an individual argumentative document, i.e., Annex 1.²¹

12. In its Motion Response, the OPCV first submits that the wording of regulation 36(2)(b) of the Regulations clearly indicates that appendixes are not to be counted in calculating page limits of submissions filed with the Court.²² As to the arguments that the content of Annex 1 is not keeping with the technical specifics of filing format and is not readable, the OPCV posits that the arguments have no merit.²³ The OPCV argues that Annex 1 is simply a user-friendly excel table, which can be zoomed in and out and is aimed at streamlining the information contained in the applications of the victims included in the Sample.²⁴ Further, the OPCV submits that the relief sought is moot as the information contained in Annex 1 is already

¹⁵ Response to the "Defence Request for an Order to Disclose Specific Material of Persons in the Victim Sample Pool of Participating Victims" ('OPCV Request Response'), 15 May 2023, ICC-02/04-01/15-2048-Conf.

¹⁶ Motion, [ICC-02/04-01/15-2044](#), paras 1-2.

¹⁷ Motion, [ICC-02/04-01/15-2044](#), para. 11.

¹⁸ Motion, [ICC-02/04-01/15-2044](#), paras 12-15.

¹⁹ Motion, [ICC-02/04-01/15-2044](#), para. 16.

²⁰ Motion, [ICC-02/04-01/15-2044](#), para. 17.

²¹ Motion, [ICC-02/04-01/15-2044](#), paras 18-19.

²² Motion Response, [ICC-02/04-01/15-2046](#), para. 9.

²³ Motion Response, [ICC-02/04-01/15-2046](#), para. 15.

²⁴ Motion Response, [ICC-02/04-01/15-2046](#), para. 15.

available to the Chamber, as it can be extracted from the individual documents included in the Sample.

13. As to whether the OPCV was allowed to submit an ‘individual argumentative document’, the OPCV posits that the Decision on the Registry Transmission was clear in that both teams of LRVs were instructed to make submissions.²⁵ It further argues that, for the efficiency and expeditiousness of the proceedings and following the instructions received throughout the proceedings to consult, cooperate and whenever possible act jointly, the legal representatives deemed appropriate to file a joint submissions on matters and positions that were common.²⁶ The separate submission, the OPCV submits, only contained information pertaining to the victims represented by her office.²⁷ As to whether Annex 1 is ‘argumentative’ as described by the Defence, the OPCV argues that the document does not contain any reference to evidence reflecting her own interpretation of the facts nor does it convey any personal comments or observations.²⁸ Rather, the OPCV indicates that the document reflects a purely objective representation of the facts included in the applications, in line with the practice of the Court and within the meaning of regulation 36(2)(b) of the Regulations.²⁹

14. At the outset, the Chamber notes its strong disapproval for the submission of superfluous requests that only create litigation of marginal issues that shall not deserve the Chamber’s attention nor waste the parties’ resources engaging in arguing matters that have no actual impact on the rights of the convicted person. In the case at hand, the alleged ‘wilful and intentional’ violation focuses on a regulation related to font size, margins and spacing in a document that is not to be counted in calculating page limits.³⁰ The Chamber does not consider these alleged ‘violations’ to deserve a ruling in the interests of justice pursuant to regulation 29(1) of the Regulations, the only procedural avenue to deal with the non-compliance of a regulation. In the case at hand, the interests of justice actually demand that the parties and the Chamber focus their attention on repairing, as expeditiously as possible, the harm caused to tens of thousands of victims by the crimes for which Mr Ongwen has received a final conviction already upheld on appeal. As such, the Chamber considers that it is not in the interests of justice,

²⁵ Motion Response, [ICC-02/04-01/15-2046](#), para. 11.

²⁶ Motion Response, [ICC-02/04-01/15-2046](#), para. 12.

²⁷ Motion Response, [ICC-02/04-01/15-2046](#), para. 12.

²⁸ Motion Response, [ICC-02/04-01/15-2046](#), para. 13.

²⁹ Motion Response, [ICC-02/04-01/15-2046](#), para. 14.

³⁰ Motion, [ICC-02/04-01/15-2044](#), para. 17.

in the present scenario, to engage any further in the alleged violations of regulation 36(3) of the Regulations.

15. As to the alleged violation of the Chamber's orders regarding the legal representatives' right to file separate submissions, the Chamber deems it sufficient to underline that indeed both teams of legal representatives have the right to make separate submissions on behalf of the clients they separately represent. Joint submissions that will contribute to the efficient and expeditious conduct of the reparation proceedings continue to be always encouraged, without limiting the parties' rights.

16. The Chamber underlines once again that it will not engage any further in superfluous motions and warns the parties that, in the future, such submissions will not only be dismissed *in limine* but be considered a deliberate refusal to comply with the Chamber's directions.

B. Request

17. In its Request, the Defence asks the Chamber, *inter alia*, to order the VPRS to disclose to the Defence 12 – although actually listing 13 – unredacted victim applications from the victims included in the Sample.³¹ While reiterating submissions already addressed in the Disclosure Decision,³² and arguing that the requested information is necessary to ensure fair and impartial reparation proceedings – since the information requested would have an impact on the estimated number of victims, possible individual and collective reparations and the amount of the award³³ – the Defence request the lifting of redactions in the applications of 12, or 13 in practice, victims included in the Sample.³⁴ The Defence then details the specific redactions requested to be lifted – names, dates of birth, and other identifying information³⁵ –

³¹ Request, ICC-02/04-01/15-2045-Conf, para. 1.

³² Request, ICC-02/04-01/15-2045-Conf, paras 14, 22.

³³ Request, ICC-02/04-01/15-2045-Conf, paras 19-21.

³⁴ Request, ICC-02/04-01/15-2045-Conf, para. 18.

³⁵ Request, ICC-02/04-01/15-2045-Conf, para. 24, for **a/01996/19**, name and date of birth; para. 26, for **a/02006/16**, name; para. 27, for **a/06890/15**, name; para. 28, for **a/0326/07**, all redactions on pages 1, 3, 7 and 16-22, including name and other identifying material, such as parents names and place of residence; para. 29, for **a/01421/16**, name, date of birth and name of her forced husband, and name of the reception centre she went to in [REDACTED] para. 30, for **a/06710/15**, name, date of birth and name of her parents; para. 31, for **a/07031/15**, name, date of birth, where she lived, and where she was allegedly raped; para. 33, for **a/07032/15**, name and date of birth; paras 34-35, for **a/07041/15**, name, date of birth, specific location of abduction, and [REDACTED]; para. 36, for **a/07042/15**, name and date of birth; para. 38, for **a/07053/15**, name, date of birth and ethnicity, her village, parish and sub-county; para. 40, for **a/07090/15**, entire question 1 including person's name, movements, name of the person she alleges to have been given as a wife, name of the group; and para. 41, for **a/07093/15**, entire question 1 including person's name, and who is the most responsible.

and explains how it intends to use the information,³⁶ i.e., to search for the victims in different databases.³⁷

18. In the LRVs Request Response they argue that the Request lacks merit and should be dismissed *in limine* for being *res judicata* and an attempt to relitigate matters that have been conclusively determined by the Chamber.³⁸ In the alternative, as to the specific request related to the victims they represent, the LRVs submit that all redactions should be maintained as it is all potentially identifying information and all applicants are victims of one or more forms of sexual and gender based crimes for which Mr Ongwen was convicted.³⁹

19. In the OPCV Request Response, counsel opposes the Request arguing that it should be rejected as (i) the lifting of redactions applied to names has already been conclusively resolved by the Chamber;⁴⁰ (ii) dates of birth is not only highly identifying but also irrelevant and immaterial for the purposes of assessing the applications;⁴¹ (iii) the date of birth of a victim is moot;⁴² (iv) claims concerning the disclosure of the name of the forced husband of another victim directly contradicts the factual findings of the Chamber and is moot;⁴³ and (v) the requested disclosure concerning the specifics of the abductions of three victims is highly identifying, thus defeating the purpose of the Disclosure Decision.⁴⁴

20. The Chamber notes at the outset that, while recalling that in the Disclosure Decision the Chamber ‘denied the Defence’s request to lift redactions in the [Sample]’, the Defence interprets it as if it would have ‘left open the possibility to request lifting of specific redactions at a later date’.⁴⁵ However, the Chamber underlines that the Disclosure Decision is clear in

³⁶ Request, ICC-02/04-01/15-2045-Conf, paras 24-43.

³⁷ Request, ICC-02/04-01/15-2045-Conf, para. 24, for **a/01996/19**, ‘to search the evidentiary database for any medical records related to this person’; para. 26, for **a/02006/16**, ‘to search the evidentiary database for any records related to this person’; para. 27, for **a/06890/15**, ‘to use the databases from the reception centres and the Amnesty Commission to determine if she lied on the victim application’; para. 28, for **a/0326/07**, ‘to identify him further in the databases from the reception centres and Amnesty Commission’; para. 29, for **a/01421/16**, to check against the information of the reception centres and brigades; para. 30, for **a/06710/15**, ‘to search the databases at its disposal’; para. 31, for **a/07031/15**, to check against the information ‘in one of the databases’; para. 33, for **a/07032/15**, to check ‘the evidence about her’; para. 35, for **a/07041/15**, search the reception centre databases and the Amnesty Commission; para. 37, for **a/07042/15**, to make an informed decision on the victim’s eligibility; para. 39, for **a/07053/15**, to find her in the databases; para. 40, for **a/07090/15**, because it appears that the information is redacted because she is not a victim of a crime for which Mr Ongwen was convicted; and para. 43, for **a/07093/15**, ‘to find her in one of the databases’.

³⁸ LRVs Request Response, ICC-02/04-01/15-2047-Conf-Corr, paras 1-2, 11-17.

³⁹ LRVs Request Response, ICC-02/04-01/15-2047-Conf-Corr, paras 3, 18-21.

⁴⁰ OPCV Request Response, ICC-02/04-01/15-2048-Conf, paras 2, 13-14.

⁴¹ OPCV Request Response, ICC-02/04-01/15-2048-Conf, paras 2, 15-16.

⁴² OPCV Request Response, ICC-02/04-01/15-2048-Conf, paras 2, 17-18.

⁴³ OPCV Request Response, ICC-02/04-01/15-2048-Conf, paras 2, 19-20.

⁴⁴ OPCV Request Response, ICC-02/04-01/15-2048-Conf, paras 2, 21.

⁴⁵ Request, ICC-02/04-01/15-2045-Conf, para. 12.

indicating that ‘it will not rule on further requests attempting to relitigate matters already decided’.⁴⁶ When the Chamber ‘left open the possibility to request lifting of specific redactions’, it was obviously referring to other types of redactions not included in the Disclosure Decision, i.e., redactions *not* related to identifying information. To read it otherwise would imply that the Chamber would have contradicted itself in the same paragraph of its decision.

21. The Chamber has nevertheless carefully reviewed the Defence’s submission and arguments and notes that, indeed as noted by both teams of legal representatives, the Defence is once again requesting the lifting of the applicants identifying information,⁴⁷ trying to relitigate an issue that was conclusively ruled upon in the Disclosure Decision. As such, the Request shall be dismissed, *in limine*.

22. In addition, the Chamber notes that the Defence once again refers to several databases ‘at its disposal’ and against which it intended to cross-reference the applicants identifying information.⁴⁸ The Chamber underlines that the eligibility determination of the applicants included in the Sample is an exercise that will be conducted directly and independently by the Chamber. The Chamber reiterates that if the parties consider that certain items of evidence – among the thousands of items that are part of the evidentiary record of the case – would be relevant for the purposes of reparations, they are expected to make express reference to them. In case such items have not been formally submitted as part of the evidence of the case during the trial proceedings, they should be submitted at this stage.⁴⁹

C. Publicity

23. In order to give full effect to the principle of publicity of the reparations proceedings, the Chamber hereby directs the parties to review their submissions underlying this decision and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential within five days from the notification of the present Decision. The Chamber reiterates that public redacted versions of confidential documents are to be filed as expeditiously as possible, preferably simultaneously to every filing submitted.

⁴⁶ Disclosure Decision, ICC-02/04-01/15-2043-Conf, para. 21.

⁴⁷ See footnote 35 above.

⁴⁸ See footnote 37 above.

⁴⁹ Disclosure Decision, ICC-02/04-01/15-2043-Conf, para. 13.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DISMISSES the Motion and the Request.

DIRECTS the parties to review their submissions underlying this decision and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential within five days from the notification of the present Decision.

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



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 2 October 2024

Original Date: Wednesday, 17 April 2023

At The Hague, The Netherlands