

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 April 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***

Confidential

**CLRv Response to the “Defence Request for an Order to Disclose
the Names of the Victim Sample Pool of Participating Victims”**

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. INTRODUCTION

1. The Common Legal Representative of Victims (the “CLR”) opposes the Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims (the “Defence Request”).¹

2. The CLR recalls the Court’s duty, pursuant to article 68 of the Rome Statute, to protect the safety, physical and psychological well-being, dignity and privacy of victims. The CLR submits that (i) the Defence did not comply with the procedure on redactions set out by Trial Chamber IX (the Chamber); (ii) the arguments raised by the Defence as to its ability to review and comment on the Sample Applications are premature; and (iii) the Defence fails to demonstrate any practical need to receive the disclosure of the victims’ identity since, by its own admission, it is, in fact, able to conduct a meaningful review of the Sample Applications.

II. PROCEDURAL HISTORY

3. On 16 November 2022, the Chamber informed the parties and participants that it had decided to proceed in the present case in a similar fashion as in the *Ntaganda* case² and ordered the Registry to provide some information related to the victims’ applications.³ On 22 November 2022, the Registry submitted said information (the “Registry Additional Information”).⁴

4. On 16 December 2022, the Chamber issued its Decision on the Registry Additional Information (i) deciding to rule on a limited but representative sample of victims’ dossiers, amounting to 5% of the universe of participating victims; and (ii) instructing the Registry to randomly extract from the universe of participating victims

¹ See the “Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims”, [No. ICC-02/04-01/15-2036-Conf](#), 29 March 2023 (the “Defence Request”).

² See the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (Trial Chamber II), [No. ICC-01/04-02/06-2786](#), 25 October 2022.

³ See the e-mail from the Chamber sent on 16 November 2022 at 15:01.

⁴ See the “Registry Additional Information on Victims”, [No. ICC-02/04-01/15-2019](#), 21 November 2022 (the “Registry Additional Information”).

205 victims from four IDP camps and 31 victims from the thematic crimes (the “Sample Applications”) and transmit to the Chamber the list of individuals included in the Sample Applications and all their details compiled in the Registry’s database.⁵

5. On 9 January 2023, the Registry transmitted to the Chamber the list of individuals included in the Sample Applications.⁶ On 16 January 2023, the Chamber approved the Sample Applications and instructed, *inter alia*, (i) the Legal Representatives to contact their clients and consult them as to whether they consent to their identities being disclosed to the Defence and inform the latter and the Victims Participation and Reparations Section (the “VPRS”) about the victims’ consent; and (ii) the VPRS to review the redactions to the victims’ dossiers and transmit lesser redacted versions to the Defence (the “Decision on Redactions”).⁷

6. On 27 January 2023, the VPRS transmitted to the CLRV and to the other team of Legal Representatives of Victims (the “LRVs”) the dossiers of their respective clients included in the Sample Applications, with proposed redactions.⁸ On 13 and 14 February 2023, the CLRV informed the VPRS that the concerned victims (apart from dual status victims whose identities had already been disclosed) do not consent to the disclosure of their identities to the Defence.⁹ The CLRV also provided the VPRS with: (i) lesser redacted versions for 30 victims’ dossiers; (ii) the ERNs of the victims’ dossiers already in the possession of the Defence; and (iii) approved the proposed redactions as for the remainder of victims’ dossiers.¹⁰

⁵ See the “Decision on the Registry Additional Information on Victims” (Trial Chamber IX), [No. ICC-02/04-01/15-2024](#), 16 December 2022, p. 16.

⁶ See the “Registry Transmission of List of Individuals and Relevant Information for Reparations Sample”, [No. ICC-02/04-01/15-2026](#), 9 January 2023.

⁷ See “Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample”, [No. ICC-02/04-01/15-2027](#), 16 January 2023, p. 12 (the “Decision on Redactions”).

⁸ See the emails from the VPRS to the CLRV and the LRVs sent on 27 January 2023 at, respectively, 15:47 and 16:59.

⁹ See the emails from the CLRV to the VPRS sent on 13 February 2023 at 13:45 and 14 February 2023 at 11:57.

¹⁰ *Ibid.*

7. On 15 February 2023, the LRVs provided the VPRS with lesser redacted versions of the dossiers of 29 victims who had consented to the disclosure of their identities and further indicated that 34 victims had not consented to the disclosure of their identities while 22 victims could not be reached to give their views on the matter.¹¹ On 10 March 2023, the LRVs provided redacted versions of three dossiers which had been supplemented by documents relating to their resumption of action and further informed the VPRS that: (i) two additional victims, who had previously not been reached, did not object to the disclosure of their identities; (ii) four victims, who had previously not been reached, have declined to have their identities disclosed; and (iii) all current redactions shall be retained for all applications for participation for which the LRVs did not receive explicit consent from the victims in question, including those not yet reached to give their consent.¹²

8. On 15 March 2023, the Registry transmitted to the Chamber: (i) a list containing the victims' reference numbers for which no additional redaction is lifted with their corresponding filing number and ERNs, where applicable; and (ii) the lesser redacted versions of 63 victims' dossiers.¹³

9. On 29 March 2023, the Defence filed the Request.¹⁴

III. CLASSIFICATION

10. In accordance with regulation 23*bis* (2) of the Regulations of the Court, the present submission is filed confidential following the classification chosen by the Defence. A public redacted version will be filed in due course.

¹¹ See the emails from the LRVs to the VPRS sent on 15 February 2023 at 16:36, 17:20 and 17:51.

¹² See the email from the LRVs to the VPRS sent on 10 March 2023 at 17:42.

¹³ See the "Transmission to the Defence of 63 Redacted Victim Dossiers pursuant to Trial Chamber IX Decision ICC-02/04-01/15-2027", [No. ICC-02/04-01/15-2034](#), 15 March 2023.

¹⁴ See the Defence Request, *supra* note 1.

IV. SUBMISSIONS

11. At the outset, the CLRV recalls that, pursuant to article 68 of the Rome Statute, the Court shall protect the safety, physical and psychological well-being, dignity and privacy of victims. In the absence of the concerned victims' express consent and in light of said Court's duty, the disclosure of the concerned victims' identities to the Defence is unwarranted.

12. In the Request, the Defence asks the Chamber to order the VPRS to disclose to it the un-redacted versions of 164 victim applications included in the Sample Applications.¹⁵ The Defence indicates that it knows the identities of 41 victims but lists the registration numbers of only ten of them in the Request (namely, a/01170/16, a/02109/16, a/06812/15, a/06827/15, a/06929/15, a/02101/16, a/02112/16, a/02119/26, a/02099/16 and a/02100/16).¹⁶ Except for a/01170/16, said victims are represented by the CLRV and are dual status individuals for whom the CLRV has indicated to the VPRS that the Defence is in possession of their identities and of the lesser redacted versions of their applications disclosed at trial.¹⁷ The Defence was also informed accordingly.¹⁸

13. The Defence does not indicate the reference numbers of all 41 applications for which it apparently knows the identities of the victims concerned and fails to elaborate on how it came into possession of the names of said individuals. In the circumstances, the CLRV is not in the position to verify the Defence's assertion.

14. Furthermore, the Defence alleges that it has serious concerns about its ability to review and comment on the Sample Applications without knowing the names of the victims concerned, especially those who suffered from the thematic crimes.¹⁹ The

¹⁵ *Idem*, para. 1.

¹⁶ *Idem*, para. 19, footnote 33.

¹⁷ See the e-mail from the CLRV to the VPRS sent on 14 February 2023 at 11:57.

¹⁸ See the e-mail from the CLRV to the Defence sent on 17 February 2023 at 17:10.

¹⁹ See the Defence Request, *supra* note 1, para. 23.

Defence also argues that, in order to conduct a meaningful review of said applications, it must know more information about the persons in question.²⁰

15. The CLRV notes that, in the Decision on Redactions, the Chamber had set a very specific procedure in relation to lifting redactions. In particular, the Chamber held that:

*“[...] [it had previously] ordered the OPCV and the LRVs to consult with the victims as to whether they would consent that their identities are disclosed to the Defence at this stage of the proceedings. [...] Notwithstanding the above [...] even if the victims do not consent to their identities being disclosed to the Defence, the Registry should maintain redactions only related to identifying information. However, in line with the Court’s prior jurisprudence, any information relating to the description of the harm suffered, the events that caused the harm, and the link between such harm and the crimes of which Mr Ongwen has been convicted, should not be redacted and redactions already applied should therefore be lifted, except for information that might reveal the identities of victims, current residence or other contact information that may be used to locate the victims. If the victims have provided their consent to their identities being disclosed to the Defence, the Registry should proceed to lift further redactions on the victims’ dossiers keeping redacted only the information that might reveal the current residence or other contact information that may be used to locate the victims. [...] The Registry should uniformly apply to all victims’ dossiers the limited redactions as detailed above. The Defence should raise any challenge it may have to the redactions applied/maintained directly with the VPRS, seizing the Chamber only exceptionally when no agreement can be reached”.*²¹

16. Therefore, the Defence should have firstly raised its concerns with the VPRS and, only then, addressed the Chamber in the event of unresolvable disagreement with the former. Consequently, the Chamber should reject the Defence Request *in limine* for failing to follow the specific instructions it had issued on the matter of redactions.

17. As to the Defence’s allegations that it has found many problems and issues in some of the Sample Applications, the CLRV underlines that the Chamber - in its Decision on the Registry Additional Information - recalled that the Defence had already have the opportunity to review redacted versions of all victim applications

²⁰ *Idem*, para. 24.

²¹ See the Decision on Redactions, *supra* note 7, paras. 10-12 (emphasis added).

and make submissions thereon.²² Consequently, the Defence cannot possibly argue now that it had identified numerous problems and issues which it had apparently failed to raise since the pre-trial stage of the proceedings.

18. Furthermore, the Defence makes several allegations to the effect that some of the individuals included in the Sample Applications do not qualify as victims.²³ For example, the Defence alleges that victims a/0326/07, a/06710/15, a/07049/15 and a/1521/16 are apparently not victims of one of the crimes for which Mr Ongwen was convicted.²⁴

19. The CLRV recalls that all applications have been ruled as admissible for the purpose of the trial²⁵ and that Mr Ongwen has been convicted for all the charges.²⁶ Therefore, it is unlikely that some of the victims do not qualify for reparations purposes.

20. In any case, according to the Decision on Redactions, the Defence was supposed to make submissions on the victims' dossiers only after the Legal Representatives had an opportunity to "*complement the victims' dossiers, appending any additional supporting documentation within the meaning of rule 94(1)(g) of the Rules, attesting in particular the extent of the harm suffered and the causal link between the alleged harm and the crime committed, to the extent possible and necessary*".²⁷ Pursuant to the same decision, only after

²² See the "Decision on the Registry Additional Information on Victims", *supra* note 5, para. 11, citing the "Decision on contested victims' applications for participation, legal representation of victims and their procedural rights" (Pre-Trial Chamber II), [No. ICC-02/04-01/15-350](#), 27 November 2015, paras. 10-15; and the "Second decision on contested victims' applications for participation and legal representation of victims" (Pre-Trial Chamber II), [No. ICC-02/04-01/15-384](#), 24 December 2015, paras. 9-18. See also the Decision on Redactions, *supra* note 7, para. 10.

²³ See the Defence Request, *supra* note 1, para. 20.

²⁴ *Ibid.*

²⁵ See the "Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications" (Trial Chamber IX), [No. ICC-02/04-01/15-543](#), 26 September 2016 and the "Decision Concerning 610 Victim Applications (Registry Report ICC-02/04-01/15-544) and 1183 Victim Applications (Registry Report ICC-02/04-01/15-556)" (Trial Chamber IX), [No. ICC-02/04-01/15-586](#), 4 November 2016.

²⁶ See the Trial Judgment (Trial Chamber IX), [No. ICC-02/04-01/15-1762-Conf](#), 4 February 2021, para. 3116.

²⁷ See the Decision on Redactions, *supra* note 7, para. 13 (emphasis added).

having assessed all the information pertaining to the victims, the Chamber will be able to rule on the merits of the Sample Applications.²⁸ As a consequence, the Defence's allegations are premature and procedurally inadmissible.

21. In this regard, the CLRV also notes that the Defence's arguments in support of its Request appear contradictory. Indeed, the Defence states that victim a/0326/07 "*gives a detailed account of his time in the LRA [in his redacted application] [...] The movements discussed by the victim while a child soldier appears incompatible with Mr Ongwen's movements and commands.*"²⁹ This, along with its *apparent* assessment of eligibility of victims /06710/15, a/07049/15 and a/1521/16, demonstrates amply that the Defence is actually able to conduct a meaningful review of the Sample Applications with the redactions applied at present. Therefore, the Defence fails to demonstrate any practical need to receive the disclosure of the names of the victims included in the Sample Applications for the purposes of addressing their eligibility for reparations.

FOR THE FOREGOING REASONS, the CLRV respectfully requests the Chamber to dismiss the Defence Request.



Paolina Massidda

Dated this 11th day of April 2023

At The Hague (The Netherlands)

²⁸ *Ibid.*

²⁹ See the Defence Request, *supra* note 1, para. 20 (emphasis added).