

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **14 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***

PUBLIC

Defence Request to Reply to ICC-02/04-01/15-2037-Conf and ICC-02/04-01/15-2038-Conf

Source: Defence for Dominic Ongwen

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**The Office of the Prosecutor**

Karim A.A. Khan, KC, Prosecutor
Colin Black

Counsel for the Defence

Chief Charles Achaleke Taku
Beth Lyons

Legal Representatives of the Victims

Joseph Manoba
Francisco Cox

Common Legal Representative for Victims

Paolina Massidda
Orchlon Narantsetseg

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

Paolina Massidda

**The Office of Public Counsel for the
Defence**

Xavier-Jean Keïta

States' Representatives**Amicus Curiae****REGISTRY****Registrar**

Peter Lewis

Counsel Support Section**Victims and Witnesses Unit**

Nigel Verrill

Detention Section**Victims Participation and Reparations
Section**

Philipp Ambach

Trust Fund for Victims

Franziska Eckelmans

I. INTRODUCTION

1. Pursuant to Regulation 34(c) of the Regulations of the Court ('RoC'), the Defence for Dominic Ongwen ('Defence') hereby requests leave to reply to the *CLR V Response to the "Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims"* ('CLR V Response')¹ and the *Victims' Response to the Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims* ('LRV Response').² Specifically, the Defence requests to reply to the following issues:
 - a. The CLR V is wrong when she states that the request should be dismissed *in limine* because the Defence did not request the names from the Victim Participation and Reparations Section ('VPRS') first ('Issue 1');³
 - b. The Common Legal Representative for Victims ('CLR V') is misplaced in her suspicion that the Defence mysteriously found out the names of 31 persons in the Victim Sample Pool ('VSP') ('Issue 2');⁴
 - c. The CLR V's erroneous misconception that the Defence can effectively review and report on the victims with redacted names by twisting the arguments made about victim a/0326/07 ('Issue 3');⁵ and
 - d. The Legal Representative for Victims ('LRV') is misplaced that is not necessary to disclose the names of the persons in the VSP for the Defence to determine whether there is a causal link between the alleged harm suffered by the victim and the crimes for which Mr Ongwen was convicted ('Issue 4').⁶

¹ Trial Chamber IX, *CLR V Response to the "Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims"*, ICC-02/04-01/15-2037-Conf.

² Trial Chamber IX, *Victims' Response to the Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims*, ICC-02/04-01/15-2038-Conf.

³ CLR V Response, paras 15-16.

⁴ CLR V Response, paras 12-13.

⁵ CLR V Response, para. 21.

⁶ LRV Response, para. 19.

2. The Defence asserts that these issues could not have been foreseen when filing the *Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims* ('Defence Request').⁷
3. In the interest of expeditiousness, the Defence is willing and able to submit its reply the next business day after being granted the right to reply.

II. CONFIDENTIALITY

4. The Defence files this request to reply as a public document. While the need to keep the Defence Request confidential due to footnote 41⁸ still exists, the Defence shall not make reference to that confidential part in this request to reply. Furthermore, the Defence notes that neither the CLRV nor LRV offers any additional reasons in their responses to warrant the confidential classification so long as footnote 41 of the original request is not discussed.⁹

III. PROCEDURAL HISTORY

5. On 16 December 2022, the Chamber order the VPRS to create the VSP, consisting of 205 participating victims from the four (4) crime sites and thematic crimes based on percentages of estimated potential beneficiaries.¹⁰ The CLRV and LRV were then ordered to contact their respective clients chosen for the VSP to seek permission to disclose their identities.¹¹
6. On 16 January 2023, the Chamber ordered the CLRV and LRV to disclose to the Defence those consenting to disclosure on a rolling basis, and at the latest, 30 days from the 16 January 2023 order.¹²
7. On 15 February 2023, the LRV sent an email notifying the Defence that 29 persons consented to the disclosure their names, 34 persons declined consent, and 22 persons could not be

⁷ Trial Chamber IX, *Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims*, ICC-02/04-01/15-2036-Conf. A [public redacted version](#) was filed the same day.

⁸ Trial Chamber IX, *Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims*, ICC-02/04-01/15-2036, fn. 41.

⁹ See CLRV Response, para. 10 and LRV Response, para. 9.

¹⁰ Trial Chamber IX, *Decision on the Registry Additional Information on Victims*, [ICC-02/04-01/15-2024](#), paras 27(a)-(b).

¹¹ *Ibid* and Trial Chamber IX, *Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample*, [ICC-02/04-01/15-2027](#), para. 13(a).

¹² *Ibid* (noting that the CLRV and LRV were to disclose updates and possibly application numbers, not the actual names).

reached.¹³ The LRV noted that it would continue its attempts to contact those who could not be reached.¹⁴

8. On 16 February 2023, the Defence responded to the email from the LRV requesting the reasons from the victims for declining to disclose their names and the manner in which the LRVs asked their clients to disclose their names.¹⁵ At the time of this filing, the Defence still has not received an answer.
9. On 17 February 2023, the Defence sent an email to the CLRV requesting to receive the information ordered by the Chamber.¹⁶
10. On 17 February 2023, the CLRV responded and wrote that none of its clients consented to disclosing their names to the Defence, except for the dual-status victims.¹⁷ The CLRV noted that it must have been an oversight that the Defence was not notified on 13 February 2023 when it notified VPRS.¹⁸
11. On 10 March 2023, the LRV informed VPRS that two (2) additional persons from the VSP consent to have their identities disclosed to the Defence.¹⁹
12. On 15 March 2023, the Registry filed 63 lesser-redacted victim applications from the VSP.²⁰
13. On 29 March 2023, the Defence filed the Defence Request.
14. On 11 April 2023, the CLRV filed the CLRV Response and the LRV filed the LRV Response.

¹³ Email from LRVs to Defence, *Notification of Consultations with LRV Sample Victims on the Disclosure of their Identities Pursuant to*, received on 15 February 2023 at 18h12 CET.

¹⁴ *Ibid.*

¹⁵ Email from Defence to LRVs, *Re: Notification of Consultations with LRV Sample Victims on the Disclosure of their Identities Pursuant to*, sent on 16 February 2023 at 12h33 CET.

¹⁶ Email from Defence to CLRV, *Order 2027, para. 13(b) notification*, sent on 17 February 2023 at 14h09 CET.

¹⁷ Email from CLRV to Defence, *RE: Order 2027, para. 13(b) notification*, received on 17 February 2023 at 17h10 CET.

¹⁸ *Ibid.*

¹⁹ Trial Chamber IX, *Transmission to the Defence of 63 Redacted Victim Dossiers pursuant to Trial Chamber IX Decision ICC-02/04-01/15-2027, ICC-02/04-01/15-2034*, para. 11.

²⁰ Trial Chamber IX, *Transmission to the Defence of 63 Redacted Victim Dossiers pursuant to Trial Chamber IX Decision ICC-02/04-01/15-2027, ICC-02/04-01/15-2034*.

IV. SUBMISSIONS

A. Initial remarks.

15. The Defence takes this moment to ask the Chamber to kindly remind the LRV of Regulation 36(3) of the RoC. This is the second document in a row which the LRV submitted that does not conform to the 1.5 spacing required by Regulation 36(3) of the RoC.²¹ The Defence does not make this a formal request for a reprimand as both documents, with the proper spacing, would have fallen within the required page limits.

B. Issue 1 - The CLRV is wrong when she states that the Defence Request should be dismissed *in limine* because the Defence did not request the names from VPRS first.

16. The CLRV wrote that, “the Chamber should reject the Defence Request *in limine* for failing to follow the specific instructions it had issued on the matter of redactions”.²² The CLRV also quoted the Chamber in its *Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample* (‘Decision on Redactions’)²³, noting that the Defence should consult with VPRS first about lifting certain redactions.²⁴
17. In its reply, the Defence shall explain why such consultations would prove fruitless. The Defence is not asking for a few redactions to be lifted; the Defence requests identifying material of all the victims. The Chamber specifically allowed VPRS to maintain said redactions (*i.e.* to identifying material).²⁵ Any such request for the names of persons must have the authority from the Chamber. Furthermore, as ordered by the Chamber, these redacted victim applications were to come on a rolling basis,²⁶ which they did not. This would have given the Defence more time to review critically the applications and apply within a reasonable amount of time to VPRS and, if necessary, the Chamber.
18. The Defence respectfully requests the Chamber to grant it leave to reply to Issue 1 so it can explain why the Chamber was seized of this request without consulting VPRS first.

²¹ See LRV Response and Trial Chamber IX, *Victims’ Additional Submission on the Issues Identified by the Trial Chamber Pursuant to the Forthcoming Order on Reparations, with Confidential ex parte annexes A, B, C and D available to the Registry and Chamber Only*, [ICC-02/04-01/15-2033](#).

²² CLRV Response, para. 16.

²³ Trial Chamber IX, *Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample*, [ICC-02/04-01/15-2027](#).

²⁴ CLRV Response, paras 15-16.

²⁵ See Decision on Redactions, para. 11.

²⁶ Decision on Redactions, para. 13(c).

C. Issue 2 - The CLRV is misplaced in her suspicion that the Defence mysteriously found out the names of 31 persons in the VSP.

19. The CLRV wrote,

*The Defence does not indicate the reference number 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.*²⁷

20. The Defence clearly indicated how it came upon this information. The Defence stated that 10 persons in the VSP were dual-status victims²⁸ and that the LRV, through VPRS, disclosed 31 names to the Defence.²⁹

21. The Defence respectfully requests the Chamber to grant it leave to reply to Issue 2 so it can explain further to the CLRV how the Defence knows the identities of 41 persons in the VSP.

D. Issue 3 - The CLRV's erroneous misconception that the Defence can effectively review and report on the victims with redacted names by twisting the arguments made about victim a/0326/07.

22. The CLRV twists the Defence's argument in relation to its ability to review properly the VSP without identifying information.³⁰ The Defence used a/0326/07, which is an older and longer form, as one of four (4) examples to demonstrate how the identifying material, *i.e.* the victim's identity and identifying locations/names, is necessary to determine the victim's eligibility as a victim of a crime for which Mr Ongwen was convicted.³¹

23. If granted leave to reply, the Defence shall further expound on how the identifying material in victim application a/0326/07, and the other three (3) listed victim applications in the Defence Request, is vital and necessary to allow the Defence to make an informed and fair decision on whether he, and the other applicants, are true victims of Mr Ongwen.

24. The Defence has at its disposal several large databases containing records of tens-of-thousands of persons returning from the LRA.³² With these names, the Defence can attempt to cross-

²⁷ CLRV Response, para.13.

²⁸ Defence Request, fn. 33.

²⁹ Defence Request, paras 13, 17 and 19. *See also* Trial Chamber IX, *Transmission to the Defence of 63 Redacted Victim Dossiers pursuant to Trial Chamber IX Decision ICC-02/04-01/15-2027*, [ICC-02/04-01/15-2034](#), paras 10-11 (noting that confidential, *ex parte* LRV and Defence only, annexes 35-65).

³⁰ CLRV Response, paras 18-21.

³¹ Defence Request, para. 20(a). *See also* paras 20(b)-(c).

³² *See* UGA-OTP-0059-0063, UGA-OTP-0059-0064, UGA-OTP-0059-0065, UGA-OTP-0059-0066, UGA-OTP-0059-0067, UGA-OTP-0165-0124 and UGA-OTP-0224-0909.

reference the person with his/her date of return, the names of their parents, their villages, location of abduction, and other material to help determine whether the person, and others like a/0326/07, are truly victims of crimes for which Mr Ongwen was convicted. In reference to a/0326/07, most of the places in which he alleges to have fought, and some of the commanders who he met, have been redacted.³³ This victim gave a five-page handwritten statement, but yet most major locations and many major persons are redacted. With this information lifted, the Defence would be able to determine whether this person, a/0326/07, is a true victim of Mr Ongwen. The Defence must question what the CLRV has to hide?

25. The Defence respectfully requests the Chamber to grant it leave to reply to Issue 3 so it can further explain to the Chamber and CLRV how lifting the identifying redactions to a/0327/07, the other victims listed in paragraph 20 of the Defence Response, and more victims if desired by the Chamber, will allow the Defence to make an informed and fair assessment of the VSP.

E. Issue 4 - The LRV is misplaced that it is not necessary to disclose the names of the persons in the VSP for the Defence to determine whether there is a causal link between the alleged harm suffered by the victim and the crimes for which Mr Ongwen was convicted.

26. The LRV alleges that it is not necessary to disclose the names of persons in the VSP for the Defence to determine whether there is a causal link between the alleged harm suffered by the victim and the crimes for which Mr Ongwen was convicted.³⁴ The Defence outlined four (4) examples in paragraph 20 of the Defence Request. Should the Chamber grant the Defence leave to reply, it shall outline other problems with the redactions of names hindering the Defence's attempts to determine whether persons in the VSP meet the requirements as victims of crimes for which Mr Ongwen was convicted.
27. This is not a fishing expedition by the Defence. A significant amount of the victim applications pose serious questions as to their validity, especially in the thematic crimes. It is only fair and proper that the Defence be allowed to review and decide whether, in its opinion, the persons claiming to be victims of crimes for which Mr Ongwen was convicted actually are victims of these crimes. To withhold this full opportunity would taint the reparations proceedings and tarnish the reputation of the ICC, especially considering the four (4) problems outlined in paragraph 20 of the Defence Request.

³³ See ICC-02/04-01/15-2034-Conf-Exp-Anx2, pp 17-21.

³⁴ LRV Response, para. 19.

28. The Defence respectfully requests the Chamber to grant it leave to reply to Issue 4 so it can further explain to the Chamber and LRV how lifting the redactions of the identifying material shall significantly and materially aid the Defence in its determination as to whether there is a causal link to the harm describe with one of the crimes for which Mr Ongwen was convicted.

V. REQUEST RELIEF

29. For the abovementioned reasons, the Defence respectfully requests Trial Chamber IX to grant it leave to reply to the four (4) issues outlined above.

Respectfully submitted,



.....
Chief Charles Achaleke Taku
On behalf of Dominic Ongwen

Dated this 14th day of April, 2023
At The Hague, Netherlands