

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 19 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

**CLRv Response to the “Defence Request to Reply to
ICC-02/04-01/15-2037-Conf and ICC-02/04-01/15-2038-Conf”**

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 to Reply to ICC-02/04-01/15-2037-Conf and ICC-02/04-01/15-2038-Conf” (the “Request to Reply”).¹

2. The CLR submits that the Defence fails to demonstrate that the matters it wishes to address in its reply could not have been reasonably anticipated within the meaning of regulation 24(5) of the Regulation of the Court (the “Regulations”).

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 instructing, *inter alia*, the Registry to constitute a Sample Application Forms and to transmit it to the Chamber.⁵

5. On 9 January 2023, the Registry transmitted to the Chamber the list of individuals included in the Sample Application Forms.⁶ On 16 January 2023, the Chamber approved the Sample Application Forms and instructed, *inter alia*, (i) the

¹ See the “Defence Request to Reply to ICC-02/04-01/15-2037-Conf and ICC-02/04-01/15-2038-Conf”, [No. ICC-02/04-01/15-2039](#), 14 April 2023 (the “Request to Reply”).

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”).

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.

Legal Representatives of Victims 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 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 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; and (ii) the lesser redacted versions of 63 victims' dossiers.⁸

7. On 29 March 2023, the Defence requested an order to disclose the names of the victims included in the Sample Application Forms (the "Initial Request").⁹ On 11 April 2023, the CLRV¹⁰ (the "CLRV Response") and LRVs¹¹ responded to the Initial Request.

8. On 14 April 2023, the Defence filed the Request to Reply.¹²

III. SUBMISSIONS

9. Regulation 24(5) of the Regulations provides that, unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

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 "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.

⁹ 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 "Initial Request").

¹⁰ See the CLRV Response to the "Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims", [No. ICC-02/04-01/15-2037-Conf](#), 11 April 2023 (the "CLRV Response").

¹¹ See the Victims' Response to the Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims, No. [ICC-02/04-01/15-2038-Conf](#), 11 April 2023.

¹² See the Request to Reply, *supra* note 1.

10. In the Request, the Defence seeks leave to reply to the CLRV Response adducing that she: (i) is wrong in stating that the Defence did not request the names from the VPRS ("Issue 1"); (ii) is misplaced in her suspicion that the Defence mysteriously found out the names of 31 persons in the Sample Application Forms ("Issue 2"); and (iii) is erroneous in believing that the Defence can effectively review and report on the victims' dossiers with redacted names ("Issue 3").¹³

11. As for Issue 1, the Defence argues that, if granted to reply, it will explain why consulting with the VPRS would prove to be fruitless and why the Chamber was seized with its Initial Request without consulting VPRS first.¹⁴ By arguing as such, the Defence actually acknowledges that, in the Decision on Redactions, the Chamber *did instruct it to firstly consult with the VPRS* and, failing that, *seize the Chamber only afterwards*.¹⁵

12. As held by the Appeals Chamber, "[o]rders of the Chambers are binding and should be treated as such by all parties and participants unless and until they are suspended, reversed or amended by the Appeals Chamber or their legal effects are otherwise modified by an appropriate decision of a relevant Chamber."¹⁶ Indeed, the Decision on Redactions is binding and authoritative over all parties and participants. Regardless of what a party believes (in particular, about whether or not following the Decision on Redactions would have been a fruitless exercise), the authority of the judges over the parties and participants always prevails.¹⁷ In this regard, the Appeals Chamber held that it is not for the parties or participants to elect whether or not to implement a binding judicial order, depending on the interpretation of its duties.¹⁸

¹³ *Idem*, para. 1.

¹⁴ *Idem*, paras. 17-18.

¹⁵ See the Decision on Redactions, *supra* note 7, paras. 10-12.

¹⁶ See the "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled 'Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU'" (Appeals Chamber), [No. ICC-01/04-01/06-2582 OA18](#), 08 October 2010, para. 48.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

13. In fact, the arguments of the Defence show that it was aware of the Decision on Redactions and, therefore, it should have explained already in its Initial Request the reasons for not following said Decision. This issue could have been clearly anticipated by the Defence.

14. As for Issue 2, the Defence argues that, if granted to reply, it will explain further *to the CLRV* how it knows the identities of 41 persons included in the Sample Application Forms.¹⁹ As noted by the CLRV in her response, the Defence had listed the registration numbers of only ten victims in its Initial Request while claiming to know the identities of 41 others.²⁰ This is not in any shape or form a *new issue* which the Defence could not reasonably have anticipated. There was indeed nothing that prevented the Defence to explain how it came into possession of the identifying information of concerned victims in its Initial Request. It was actually in its interest to explain said circumstance. Moreover, the claim that the Defence knows the identity of 41 victims has no bearing on the specific issue of the redaction of identifying information in the Sample Application Forms.

15. As for Issue 3, the Defence argues that, if granted to reply, it will explain how the identifying material of four victim applications mentioned in its Initial Request is vital and necessary to make an informed and fair determination on whether they are victims of the crimes for which Mr Ongwen has been convicted.²¹ This is exactly what the Defence purported to achieve in its Initial Request.²² There is nothing *new* about it. In addition, the Defence argues that the CLRV allegedly *twisted* the Defence's arguments in relation to its ability to review properly the Sample Application Forms, in particular about victim a/0326/07.²³ In the relevant parts of her response, the CLRV simply: (i) recalled the fact that all applications had been ruled as admissible by the Chamber and the Defence was supposed to make submissions on the victims' dossiers

¹⁹ See the Request to Reply, *supra* note 1, para. 21.

²⁰ See the CLRV Response to the "Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims", *supra* note 10, para. 12.

²¹ See the Request to Reply, *supra* note 1, para. 21.

²² See the Initial Request, *supra* note 9, para. 20-21.

²³ See the Request to Reply, *supra* note 1, para. 22, referring to paras 18-21 of the CLRV Response.

only after the Legal Representatives of Victims had an opportunity to complement the victims' dossiers with supporting documentation, in accordance to the Decision on Redactions; and (ii) quoted the Defence's own words about how victim a/0326/07 had in fact given "*a detailed account of his time in the LRA*" in his redacted application.²⁴

16. Consequently, the CLRV posits that the Defence's allegations appear to be an attempt to re-litigate matters it failed to properly articulate or argue in its Initial Request. Therefore, none of the matter constitutes a *new issue* in the meaning of regulation 24(5) of the Regulations that the Defence could not reasonably have anticipated at the time of its Initial Request.

FOR THE FOREGOING REASONS, the CLRV respectfully requests the Chamber to reject the Request to Reply.



Paolina Massidda

Dated this 19th day of April 2023

At The Hague (The Netherlands)

²⁴ See the CLRV Response, *supra* note 10, paras. 18-21.