

**Cour
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**International
Criminal
Court**

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

Date: **26 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 motion to strike and disregard the Confidential, *ex parte*, Annex 1 of the CLRV
submission of information related to the Sample Applications for reparations**

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**

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I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby files this complaint with Trial Chamber IX ('Chamber') about the Common Legal Representatives for Victims ('CLRV') substantive submissions on the sample application forms for reparations found in Annex 1 of its individualised submissions.¹ The CLRV violated three different issues in Regulation 36 of the Regulations of Court ('RoC'). Equally, the Defence relies on the fact that the CLRV did not request permission to submit two (2) separate pleadings in response to Chamber decisions 2024 and 2027 regarding the filing allowed about the Victim Sample Pool ('VSP').
2. Pursuant to Regulation 29(1) of the RoC, the Defence requests the Chamber to disregard and strike from the record Substantive Annex 1 for violating Regulation 36(3) of the RoC and the Chamber's order.

II. PROCEDURAL HISTORY

3. On 4 February 2021, the Chamber passed judgment on Dominic Ongwen, convicting him of 61 counts of crimes against humanity and war crimes.²
4. On 6 December 2021, the Defence,³ Registry,⁴ Trust Fund for Victims,⁵ Legal Representative for Victims ('LRV')⁶ and CLRV⁷ filed submissions on reparations.
5. On 15 December 2022, the Appeals Chamber pronounced the judgments on the appeals against the convictions⁸ and sentence,⁹ upholding all the convictions and the sentence.
6. 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

¹ Trial Chamber IX, *CLRV submission of information related to the Sample Applications for reparations*, ICC-02/04-01/15-2041-Conf-Exp-Anx1-Red ('Substantive Annex 1').

² Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Conf](#).

³ Trial Chamber IX, *Defence Submissions on Reparations*, [ICC-02/04-01/15-1917](#).

⁴ Trial Chamber IX, *Registry's Mapping Report and Submission on Reparations*, [ICC-02/04-01/15-1919](#) with annexes.

⁵ Trial Chamber IX, *Trust Fund for Victims' Observations relevant to Reparations*, [ICC-02/04-01/15-1920](#).

⁶ Trial Chamber IX, *Victims' Preliminary Submissions on Reparations*, [ICC-02/04-01/15-1921](#).

⁷ Trial Chamber IX, *Common Legal Representative of Victims' Submissions on Reparations*, [ICC-02/04-01/15-1923-Conf](#) with annexes.

⁸ Appeals Chamber, *Judgment on the appeal of Mr Ongwen against the Decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgment"*, [ICC-02/04-01/15-2022-Conf](#).

⁹ Appeal Chamber, *Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled "Sentence"*, [ICC-02/04-01/15-2023](#) (with partially dissenting opinion in [Annex I](#)).

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

7. On 15 March 2023, the Registry filed 63 lesser-redacted victim applications from the VSP.¹²
8. On 17 April 2022, the CLRV and LRV filed a joint submission on the sample application forms for Reparations as allowed per the Chamber's instructions given on 16 January 2023.¹³ The CLRV filed additional submissions that same day in respect of information related to the VSP for reparations, which included Substantive Annex 1.¹⁴

III. SUBMISSIONS

A. Initial Comments

9. The Defence does not seek to exclude the first filing, ICC-02/04-01/15-2040, which was the joint filing by the CLRV and LRV. Neither does the Defence seek to exclude Annexes 2-4 of CLRV filing ICC-02/04-01/15-2041 as those are notifications of resumptions of actions, which the CLRV must legally file before the Chamber. The Defence reserves the right to argue against the substance of Annexes 5-8 in its submission due before the Chamber on 19 May 2023.
10. The Defence also does not argue a violation of Regulation 37(1) of the RoC. Since the CLRV submitted Substantive Annex 1 pursuant to representations under Article 75 of the Rome Statute,¹⁵ she was allowed to use 50 pages for her submissions.¹⁶ Should the Chamber deem otherwise, the Defence also seeks to have Substantive Annex 1 stricken from the record for violating Regulation 37(1) of the RoC.¹⁷

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 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](#).

¹³ Trial Chamber IX, *Legal Representatives of Victims Joint Submissions on the Sample Application Forms for reparations*, [ICC-02/04-01/15-2040](#).

¹⁴ Trial Chamber IX, *CLRv submission of information related to the Sample Applications for reparations*, [ICC-02/04-01/15-2041](#).

¹⁵ See Trial Chamber IX, *Decision on the Registry Additional Information on Victims*, [ICC-02/04-01/15-2024](#), introductory paragraph 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](#), introductory paragraph.

¹⁶ Regulations 38(2)(f) of the RoC. The Defence notes that while the CLRV said that she could make representations on the factors outlined in [ICC-02/04-01/15-2011](#) in 20 pages (paragraphs 11-13), and the Chamber noted this in Decision 2024 at paragraph 29, no such limiting factor was made in regards to the representations ordered in paragraph 27 of [ICC-02/04-01/15-2024](#).

¹⁷ The Defence notes that the annex would be more than 18 pages, and when the joint filing is included, already exceeds the 20 page allowance found in Regulation 37(1) of the RoC.

B. The CLRV violated Regulation 36 of the RoC by filing Substantive Annex 1 to her notification.

11. Regulation 36(3) of RoC states, “[m]argins shall be at least 2.5 centimetres on all four sides. [...] The typeface of all documents shall be 12 point with 1.5 line spacing for the text [...]”. The CLRV Regulation 36(3) of the RoC as it is in an unreadable font size, not 1.5 line spacing and the margins are not 2.5 centimetres on all four sides.
12. It is obvious and clear that the typeface of Substantive Annex 1 is not 12 point and that the spacing is not 1.5 line spacing. The CLRV wilfully and intentionally violated these two (2) facets of Regulation 36(3) of the RoC.
13. The Defence measured the margins of Substantive Annex 1. Directly below are the measured margins of Substantive Annex 1.¹⁸ The Defence supplies the Chamber with two (2) charts. The first is “Fit to Page Printing” and the second is “Actual Size Printing”. “Fit to Page printing automatically fits images or text you want to print to the paper size you select in the printer software [...]”.¹⁹

CLVR Fit to Page Printing	CLRV Actual Size Printing
2.0 cm 2.1 cm2.2 cm 2.2 cm	1.8 cm 1.8 cm1.9 cm 2.0 cm

To compare a known document, the Defence printed a rough draft of this document after a PDF was created with Adobe Acrobat Standard from Microsoft Word. The page used was page five (5) of the rough draft. The margins are below.

¹⁸ The Defence used PDF page 6 of Substantive Annex 1 because it contained the largest chart.

¹⁹ See Online Epson Stylus CX6600 [Reference Guide](#).

DEF Fit to Page Printing	DEF Actual Size Printing
2.6 cm 2.6 cm2.9 cm 2.6 cm	2.4 cm 2.4 cm2.6 cm 2.3 cm

14. An inspection of the Defence's known document shows that the "Fit to Page" printing made the margins slightly larger than set in Microsoft Word. The "Actual Size" printing was slightly smaller than set in Microsoft Word. The Defence notes that the right margin above is the bottom of the page, which is why that margin is slightly larger than the other sides.
15. The Defence understands, as shown above, that margins may shift slightly when a PDF is created, but that process does not account for 0.8 cm in vertical space and 0.7 cm in horizontal space as shown above in the CLRV Fit to Page Printing. The CLRV's margins for Substantive Annex 1 were not in compliance with Regulation 36(3) of the RoC.
16. The Defence likens these to analogous violations of Regulation 37. In *Mbarushimana*, the Appeals Chamber rejected the victims' observations in its entirety for wilfully violating Regulation 37(1) of the RoC.²⁰ In *Gbagbo*, the Appeals Chamber order Côte d'Ivoire to re-file its submissions in compliance with Regulation 37(1) of the RoC.²¹
17. The CLRV wilfully and intentionally violated three (3) different parts of Regulation 36(3), namely font size, margins and spacing. As such, the Defence requests the Chamber to strike and disregard Substantive Annex 1.

²⁰ Appeals Chamber, *Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges"*, [ICC-01/04-01/10-514](#), paras 13-14.

²¹ Appeals Chamber, *Decision on requests related to page limits and reclassification of documents*, [ICC-02/11-01/11-266](#), para. 11.

C. The CLRV violated the Chamber's order on submission about the VSP.

18. In the Chamber's decision of 16 December 2022, the Chamber outlined the manner in which the VSP would be made and how the Parties would give submissions on the VSP.²² Additionally, the Chamber re-confirmed this on 16 January 2023.²³
19. No where in the Chamber's two (2) decision did it grant the CLRV the right to submit a joint argument with the LRV and an individual argumentative document (Substantive Annex 1). This is a clear violation of the Chamber's decisions, and the Defence respectfully requests the Chamber to strike out and disregards the CLRV's submissions in Substantive Annex 1.

IV. REQUEST RELIEF

20. For the abovementioned reasons, the Defence respectfully requests Trial Chamber IX to strike out and disregard Substantive Annex 1 for violating Regulation and 36 of the Regulations of Court and for not seeking permission from Trial Chamber IX to file two (2) submissions on the Victim Sample Pool.

Respectfully submitted,



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Chief Charles Achaleke Taku
On behalf of Dominic Ongwen

On this 26th day of April 2023
At The Hague, Netherlands

²² Trial Chamber IX, *Decision on the Registry Additional Information on Victims*, [ICC-02/04-01/15-2024](#), paras 27(a)-(f).

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](#), para. 13(a)-(f).