

**Cour
Pénale
Internationale**



**International
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Court**

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Date: 8 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

**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)**

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 motion to strike and disregard the Confidential, *ex parte*, Annex 1 of the CLR submission of information related to the Sample Applications for reparations” (the Defence Motion”).¹

2. The CLR submits that the arguments raised in the Defence Motion are inapposite. In particular: (i) pursuant to regulation 36(2)(b) of the Regulations of the Court (the “Regulations”), annexes are not to be counted in calculating the page limits for submissions; (ii) the CLR correctly submitted a separate filing including information concerning exclusively the victims she represents (the “Separate Submission”), in line with the instructions of Trial Chamber IX (the “Chamber”) and in addition to the joint observations filed with the Legal Representatives of Victims (the “LRs”). Moreover, the CLR did not include any argumentative information in Annex 1 of the Separate Submission. Rather, the information contained therein reflects an objective representation of facts; and (iii) the claim that the content of Annex I is unreadable is without merit, as the Excel table actually streamlines and facilitates the reference to the relevant information.

II. PROCEDURAL HISTORY

3. On 16 November 2022, the Chamber ordered the VPRS to provide information regarding: (i) the total number of applications for participation and/or reparations received in the case; and (ii) the total representation of the victims of the case.² On 22 November 2022, the Registry submitted said information (the “Registry Additional Information”).³

¹ See the “Defence motion to strike and disregard the Confidential, *ex parte*, Annex 1 of the CLR submission of information related to the Sample Applications for reparations”, [No. ICC-02/04-01/15-2044](#), 26 April 2023 (the “Defence Motion”).

² See e-mail from the Chamber sent on 16 November 2022 at 15:01 hours.

³ See the “Registry Additional Information on Victims”, [No. ICC-02/04-01/15-2019](#), 21 November 2022 (the “Registry Additional Information”).

4. On 16 December 2022, the Chamber issued its Decision on the Registry Additional Information, *inter alia*, instructing the Registry to randomly extract from the totality of the application forms a sample (the “Sample Application Forms”) and transmit to the Chamber only the list of the individuals selected, with all their details.⁴
5. On 9 January 2023, the VPRS transmitted to the Chamber the list of individuals included in the Sample Application Forms.⁵
6. On 16 January 2023, the Chamber approved the Sample Application Forms and, *inter alia*, instructed the CLRV and LRVs to make submissions and complement the victims’ dossiers, appending additional supporting documents – attesting, in particular, the extent of the harm suffered and the causal link between the alleged harm and the crime committed (the “Order”).⁶
7. On 17 April 2023, the CLRV and the LRVs filed a joint submission on the Sample Application Forms (the “Joint Submission”).⁷ On the same day, the CLRV filed additional information related to her clients included in the Sample Application Forms (the “Separate Submission”).⁸
8. On 26 April 2023, the Defence filed its Motion.⁹

⁴ 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.

⁵ See the “Registry Transmission of List of Individuals and Relevant Information for Reparations Sample”, [No. ICC-02/04-01/15-2026](#), 9 January 2023.

⁶ See “Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample” (Trial Chamber IX), [No. ICC-02/04-01/15-2027](#), 16 January 2023, p. 13 (the “Order”).

⁷ See the “Legal Representatives of Victims Joint Submissions on the Sample Application Forms for reparations”, [No. ICC-02/04-01/15-2040](#), 17 April 2023 (the “Joint Submission”).

⁸ See the “CLRV submission of information related to the Sample Applications for reparations”, [No. ICC-02/04-01/15-2041](#), 17 April 2023 (the “Separate Submission”).

⁹ See the Defence Motion, *supra* note 1.

III. SUBMISSIONS

9. In the Motion, the Defence advances three set of arguments. Firstly, it alleges that by filing the Separate Submission along with Annex 1, the CLRV exceeded the 20 page limit established by regulation 37(1) of the Regulations.¹⁰ However, the wording of regulation 36(2)(b) of the Regulations clearly indicates that appendixes are not to be counted in calculating the page limits of submissions filed with the Court.

10. Secondly, the Defence argues that the CLRV is in breach of the Order since (i) the Chamber did not grant her the right to submit a joint submission with the LRVs and “*an individual argumentative document (Substantive Annex 1)*”; and (ii) the CLRV did not request permission to do so.¹¹

11. The CLRV posits that the Order is clear on the matter. The Chamber explicitly instructed both teams of legal representatives to “*make submissions and 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*”.¹²

12. In accordance with the Order and for the efficiency of the proceedings, the Legal Representatives deemed it more appropriate to file a joint submission. Indeed, the matters and positions raised therein were common to and best expressed jointly in the interest of the victims represented by both teams. In addition, since the commencement of the trial, the Legal Representatives were instructed to consult, cooperate and, whenever possible, act jointly - especially in the matters pertaining to the representation of victims.¹³ This, as also noted by the Single Judge, promotes the fair and expeditious conduct of the proceedings and the rights of the accused.¹⁴

¹⁰ *Idem*, paras 9-10 and footnote 17.

¹¹ *Idem*, paras. 1 and 19.

¹² See the Order, *supra* note 6, para. 13(d).

¹³ See the “Decision on Requests Concerning Organisation of Victim Representation” (Single Judge, Trial Chamber IX), [No. ICC-02/04-01/15-476](#), 17 June 2016, para. 11.

¹⁴ *Ibid.*

The CLRV filed the Separate Submission individually because the information contained therein pertains only to the victims she represents.

13. The Defence further argues that Annex 1 to the Separate Submission is an “*argumentative document*”.¹⁵ The CLRV notes that said document does not contain any reference to *evidence submitted at trial or reparations proceedings reflecting her own interpretation of facts*.¹⁶ Nor does it convey *any personal comments or observations*¹⁷ on the reparations proceedings from the victims she represents. Most importantly, Annex 1 does not contain any arguments that are designed to persuade the Chamber¹⁸ to grant reparations to the victims concerned.

14. Rather, the information in Annex 1 reflects a purely objective representation of facts¹⁹ included in the Sample Application Forms. In line with the practice of the Court,²⁰ the information contained in the document merely seeks to ease the understanding of said Forms. The detailed non-argumentative information conveyed in the table falls within the meaning of regulation 36(2)(b) of the Regulations.²¹

15. Thirdly, the Defence argues that the content of Annex 1 is not keeping with the technical specifics of filing format and thus it is not readable.²² The CLRV posits that these arguments have no merit. Annex 1 contains a simple user-friendly Excel table,

¹⁵ See the Defence Motion, *supra* note 1, para. 19.

¹⁶ See the “Public redacted version of ‘Corrigendum of ‘Decision on Prosecution requests concerning the Defence motion to terminate the proceedings’” (Trial Chamber X), [No. ICC-01/12-01/18-932-Corr-Red](#), 18 August 2020, 18 August 2020, para. 12. See also the “Decision on Mr Al Hassan’s ongoing fitness to stand trial” (Trial Chamber X), [No. ICC-01/12-01/18-1467](#), 10 May 2021, para. 36.

¹⁷ See the “Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled ‘Judgment pursuant to Article 74 of the Statute’” (Appeals Chamber), [No. ICC-01/05-01/13-2275-Red A A2 A3 A4 A5](#), 8 March 2018, paras. 777-778.

¹⁸ See the “Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu” (Trial Chamber V(A)), [No. ICC-01/09-01/11-844](#), 7 August 2013, para. 9.

¹⁹ See the “Public redacted version of ‘Corrigendum of “Decision on Prosecution requests concerning the Defence motion to terminate the proceedings”’, *supra* note 16, para. 14.

²⁰ See e.g., the “Decision on Admissibility of Evidence and Other Procedural Matters” (Pre-Trial Chamber II), [No. ICC-01/04-02/06-308](#), 9 June 2014, para. 35.

²¹ See the “Judgment on the appeal of Mr Bosco Ntaganda against the decision of Pre-Trial Chamber II of 18 November 2013 entitled ‘Decision on the Defence’s Application for Interim Release’” (Appeals Chamber), [No. ICC-01/04-02/06-271-Red OA](#), 05 March 2014, para. 16.

²² See the Defence Motion, *supra* note 1, para. 19.

which can be zoomed in or out without any difficulty, and which is aimed at streamlining the information contained in the Sample Applications Forms in order to ease their understanding.

16. Lastly, the relief sought by the Defence of striking and disregarding Annex 1 from the record is moot. The information contained in said Annex is already available to the Chamber, as it can be extracted from the individual documents of the victims included in the Sample Application Forms.

FOR THE FOREGOING REASONS, the CLRV respectfully requests the Chamber to reject the Defence Motion.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda

Dated this 8th day of May 2023

At The Hague (The Netherlands)