

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 22 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

**Public redacted version of “Corrected version of Victims’ Response to the Defence
Request for an Order to Disclose Specific Material of Persons in the Victim
Sample Pool of Participating Victims”, 15 May 2023, ICC-02/04-01/15-2047-Conf-
Corr**

Source: Legal Representatives of Victims

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

The Office of the Prosecutor

Mr Karim A. A. Khan QC
Mr Collin Black

Counsel for the Defence

Mr Charles Achaleke Taku
Ms Beth Lyons
Mr Tom Obhof

Legal Representatives of the Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Mr Orchlon Narantsetseg
Ms Caroline Walter

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. The Legal Regal Representatives for Victims (LRVs) submit that the Defence's present filing¹ lacks merit and should be dismissed for being *res judicata*.
2. The LRVs submit that the issues raised by the defence in its filing are all issues that have been conclusively determined by Trial Chamber IX (The Chamber) and accordingly should be rejected in *limine*.
3. The LRVs submit in the alternative but without prejudice to the foregoing that all information maintained under redactions for victims **a/07053/15; a/07090/15; a/07093/15**; all represented by the LRVs in the victims' sample, is all potentially identifying information.

II. PROCEDURAL HISTORY

4. 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.² The Common Legal Representative ('CLR') and Legal Representatives for Victims ('LRV') were then ordered to contact their respective clients chosen for the VSP to seek permission to disclose their identities.³
5. On 29 March 2023, the Defence requested the lifting of redactions in 164 victim applications.⁴

¹ Defence Request for an Order to Disclose Specific Material of Persons in the Victim Sample Pool of Participating Victims, ICC-02/04-01/15-2045-Conf 05-05-2023.

² Trial Chamber IX, Decision on the Registry Additional Information on Victims, ICC-02/04-01/15-2024, paras 27(a)-(b)

³ ICC-02/04-01/15-2024, para. 13(a).

⁴ Public Redacted Version of 'Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims', filed on 29 March 2023, ICC-02/04-01/15-2036-Red 29-03-2023.

6. On 11 April 2023, the CLRV⁵ and LRVs⁶ responded to the Defence's request to lift redactions.
7. On 17 April 2023, the LRV and CLRV filed a joint submission.¹² On that same day, the CLRV submitted an additional submission.⁷
8. On 20 April 2023, the Chamber issued its decision rejecting the Defence's request.⁸
9. On 5 May 2023, the Defence filed its request for an order to disclose specific material of persons in the victim sample pool of participating victims.⁹

III. CONFIDENTIALITY

10. The LRVs file this response as "Confidential" pursuant to Regulation 23 *bis* (2) of the Regulations of the Court as it is in response to a submission marked "Confidential."

IV. SUBMISSIONS

11. The LRVs submit that the Defence motion is an attempt to re-litigate issues that have already been decided by this Honourable Chamber and which the Chamber has unequivocally stated it will not rule on such further requests re-litigating matters already resolved.¹⁰

⁵ CLRV 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 24-04-2023.

⁶ 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.

⁷ Legal Representatives of Victims Joint Submissions on the Sample Application Forms for reparations, ICC-02/04-01/15-2040.

⁸ Decision on the Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims, ICC-02/04-01/15-2043-Conf.

⁹ Defence Request for an Order to Disclose Specific Material of Persons in the Victim Sample Pool of Participating Victims, ICC-02/04-01/15-2045-Conf 05-05-2023.

¹⁰ ICC-02/04-01/15-2043-Conf, para. 21.

12. Further, the Defence incorrectly misinterprets and misapplies the Chamber's decision by arguing that the Chamber left open the possibility of requesting the lifting of redactions at a later stage.¹¹

13. The Defence grounds for the motion are rooted not in the failure by the Victims Participation and Reparations Section (VPRS) to fulfil the orders of the Chamber relating to disclosure of redacted information in victims' participation forms but rather in the defence wild and speculative imaginations outside its remit.

14. The Chamber in its decision¹² appraised the Defence complaint in its motion as follows:

*.... According to the Defence, in light of the advanced stage of the proceedings, and considering that there has been no incident of interference with persons because of their testimony or filing of a victims' application for participation, there is no objectively justifiable risk as to why the persons in the Sample should have their identifying information redacted. As such, the Defence requests the Chamber to order the VPRS to disclose the additional 164 applications without the identifying information being redacted.*¹³

15. The Chamber resolved the above issue and related matters noting that it has provided the procedure for redactions to the victims applications and additional information submitted by the LRVs and the CLRV.¹⁴ The chamber further found that the Defence had failed to demonstrate that its ability to review and comment on the victims' sample forms is affected by not knowing all the victims' names.¹⁵

¹¹ ICC-02/04-01/15-2045-Conf, para. 12.

¹² Decision on the Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims, ICC-02/04-01/15-2043-Conf 20-04-2023

¹³ ICC-02/04-01/15-2043, para. 14.

¹⁴ ICC-02/04-01/15-2043, para. 17.

¹⁵ ICC-02/04-01/15-2043, para. 19.

16. It is submitted that in rejecting the Defence motion and thereby conclusively disposing of the matter related to the retained redactions of the victims' identities falling in the victims' sample, the Chamber held:

the Chamber maintains that the redactions regime as previously established strikes the required balance demanded by article 68(1) of the Statute, enabling the Defence to make meaningful submissions on the victims' eligibility.

17. There is therefore nothing remote in the Defence fresh filing that offers any justification after the Chamber's conclusive determination of the matters previously resolved before it, for the Chamber to reconsider there being no alleged procedural or substantive error of law to have been occasioned.

LRVs Specifically Represented Victims a/07053/15; a/07090/15; a/07093/15

18. For argument's sake, the LRVs recall that the Chamber has found that Dominic Ongwen, Joseph Kony and the Sinia Brigade leadership were at the heart of the abduction and abuse of civilian women and girls. It made specific findings as follows:

Dominic Ongwen, Joseph Kony and the Sinia brigade leadership engaged in a coordinated and methodical effort, relying on the LRA soldiers under their control, to abduct women and girls in Northern Uganda and force them to serve in Sinia brigade as so-called 'wives' of members of Sinia brigade, and as domestic servants.¹⁶

Dominic Ongwen, Joseph Kony and the Sinia brigade leadership ordered Sinia brigade soldiers to abduct civilian women and girls. Sinia brigade soldiers, in execution of orders of Joseph Kony, Dominic Ongwen and the Sinia brigade leadership, abducted civilian women and girls in Northern Uganda between 1 July

¹⁶ Trial Judgment, ICC-02/04-01/15-1762-Conf 04-02-2021, Para.212.

2002 and 31 December 2005. At any time during this period, there were over one hundred abducted women and girls in Sinia brigade.¹⁷

19. The LRVs note further that that the Chamber in addressing evidence related to the abduction of women and girls found that the practice was not limited to *Sinia* brigade owing to its “coordinated characteristic” within the LRA. The Chamber noted as follows:

The Chamber notes that P-0351 testified that she was abducted by ‘Raska’s group’ and was later transferred to Sinia. This transfer demonstrates, as already stated, that the abduction and abuse of women and girls was not limited to Sinia, but was a coordinated characteristic of the LRA in general. In detail, P-0351 testified that she was abducted on 12 December 2002 from home in [REDACTED] [REDACTED]. At the time, she was approximately 12 years old. More than ten civilians were abducted on that occasion, including one boy and another girl whom the witness both knew by name. They were taken away and, the next morning, were addressed by ‘Raska’, who stated that everybody, except the witness, would be released. A woman smeared P-0351 with shea butter on her forehead, back and chest, and told her that if she tried to escape she would not be able to see where she was going and would get lost because of the shea butter; she was told that they would catch her and kill her. The group then moved and during the move P-0351 slept next to four girls who had also been abducted. P-0351 stated that there were ‘many’ girls in the group. Next, she explained that the group she was travelling with met with other groups, where an escort of one of the leaders told her to sleep with a group of girls that were new to her. The next day she realised that she was in a new group, and later learned that this was ‘Odomi’s group’. In court, the witness stated that the group was called Sinia and that she spent about three years in it.¹⁸

¹⁷ICC-02/04-01/15-1762-Conf 04-02-2021, Para. 213.

¹⁸ ICC-02/04-01/15-1762-Conf 04-02-2021, Para. 2128.

20. The Chamber thus conclusively found Dominic Ongwen with others guilty for committing SGBC against women and girls. It found as follows:

On the basis of the above, the Chamber therefore finds that, between 1 July 2002 and 31 December 2005, Dominic Ongwen committed, jointly with Joseph Kony and the Sinia brigade leadership and through LRA soldiers, within the meaning of Article 25(3)(a) of the Statute, the following crimes: (i) forced marriage as an other inhumane act, pursuant to Article 7(1)(k) of the Statute (Count 61); (ii) torture as a crime against humanity, pursuant to Article 7(1)(f) of the Statute (Count 62); (iii) torture as a war crime, pursuant to Article 8(2)(c)(i) of the Statute (Count 63); (iv) rape as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 64); (v) rape as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 65); (vi) sexual slavery as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 66); (vii) sexual slavery as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 67); and (viii) enslavement as a crime against humanity, pursuant to Article 7(1)(c) of the Statute (Count 68).¹⁹

21. Victims a/07053/15; a/07090/15; and a/07093/15 are all victims of one or more forms of SGBC for which Dominic Ongwen was convicted by the Chamber. Their respective participation forms clearly show their abduction and subsequent abuse was occasioned between 1st July 2002 and 31st December 2005. Accordingly, the Defence allegations in its request with prejudice deliberately ignore and omit the said findings and conclusions of the Chamber in respect of SGBC and should be rejected by the Chamber.

¹⁹ ICC-02/04-01/15-1762-Conf 04-02-2021, Para. 3100

V. ADDITIONAL SUBMISSIONS

22. The LRVs submit that the Defence request is misconceived and without merit.

There is nothing in the defence request that would inform the need for additional submissions.

VI. RELIEF SOUGHT

23. The LRVs invite the Chamber to reject the Defence request in *limine*.

Respectfully submitted.



Dated this 22nd day of May 2023

At Kampala (Uganda), Santiago (Chile)