

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**
Date: **16 January 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
With Public Annex 1

**Decision on the Registry Transmission of List of Individuals and Relevant
Information for Reparations Sample**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Trial Chamber IX of the International Criminal Court (the ‘ICC’ or the ‘Court’), in the case of *The Prosecutor v. Dominic Ongwen* (the ‘Ongwen case’), having regard to articles 68 and 75 of the Rome Statute (‘Statute’), issues this Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample (‘Decision’).

I. PROCEDURAL HISTORY

1. On 12 September 2022, in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), the Appeals Chamber issued a Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (the ‘Ntaganda Appeals Judgment’).¹ The *Ntaganda Appeals Judgment* remanded the matter to Trial Chamber II, as it partially reversed the Reparations Order to the extent that Trial Chamber VI failed to, *inter alia*, ‘assess and rule upon victims’ applications for reparations’.²

2. On 25 October 2022, in the *Ntaganda* case, Trial Chamber II issued an Order³ informing that it had decided to implement the *Ntaganda Appeals Judgment* by, *inter alia*, assessing and ruling upon a limited but representative sample of victims’ dossiers.

3. On 16 November 2022, the Chamber informed the parties, participants, and the Registry that it was considering to proceed in the present case in a similar fashion as Trial Chamber II was proceeding in the *Ntaganda* case.⁴ To this end, it ordered the Registry, through the VPRS, to provide information regarding victims’ applications in the case file.

4. On 22 November 2022, the Registry submitted the requested information on victims’ applications in the case file.⁵

5. On 16 December 2022, the Chamber issued its Decision on the Registry Additional Information on Victims (‘Decision on the Sample’),⁶ detailing its approach for ruling on a limited but representative sample of victims’ dossiers currently in the case file, amounting to

¹ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Ntaganda Appeals Judgment’), 12 September 2022, [ICC-01/04-02/06-2782](#).

² *Ntaganda Appeals Judgment*, [ICC-01/04-02/06-2782](#), p. 11.

³ Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Ntaganda Order’), 25 October 2022, [ICC-01/04-02/06-2786](#).

⁴ E-mail from Trial Chamber IX Communications, 16 November 2022, at 15:01.

⁵ Registry Additional Information on Victims (‘Registry Additional Information’), 21 November 2022 (notified on 22 November 2022), [ICC-02/04-01/15-2019](#).

⁶ Decision on the Registry Additional Information on Victims (‘Decision on the Sample’), 16 December 2022, [ICC-02/04-01/15-2024](#).

5% of the universe of participating victims.⁷ In order to ensure a fair and proportional representation of the potential beneficiaries of reparations in the sample, the Chamber instructed the Registry, through the VPRS, to randomly extract from the universe of participating victims: 92 victims from the Pajule IDP camp; 24 victims from the Odek IDP camp; 18 victims from the Lukodi IDP camp; 40 victims from the Abok IDP camp; and 31 victims from the thematic crimes.⁸ The Chamber further instructed the VPRS to transmit, within twenty-one days to the Chamber only in the first place, the list of individuals included in the sample and all their details compiled in the Registry's databases.⁹

6. On 9 January 2023, the Registry filed its Transmission of List of Individuals and Relevant Information for Reparations Sample ('Registry Transmission'),¹⁰ accompanying the list of individuals included in the sample, compiled at random using an online computer program, and details of the relevant victims as compiled in the Registry's databases.

II. ANALYSIS

7. In what follows, the Chamber will consider the following issues relevant to the sample exercise: a) the representativeness of the assembled sample; b) issues of redactions; and c) scheduling and procedural issues.

a) Representativeness of the assembled sample

8. The Chamber recalls that in the Decision on the Sample it indicated that, with the purpose of ensuring that the sample was sufficiently objective and statistically representative, it should be constituted with victims randomly selected by the Registry within the five main categories of victims in the case.¹¹ As noted above, the VPRS was instructed to transmit to the Chamber only, in the first instance, the list of individuals included in the sample and all details compiled in relation to them by the Registry in their databases.¹² The Chamber gave the above instruction with the goal of independently assessing the representativeness of the sample, based on its in-depth knowledge of the terms of the conviction and the case file. Having assessed the

⁷ Decision on the Sample, [ICC-02/04-01/15-2024](#), paras 7, 10, 25, 27(a) and (b).

⁸ Decision on the Sample, [ICC-02/04-01/15-2024](#), paras 20-24, 26, 27(c).

⁹ Decision on the Sample, [ICC-02/04-01/15-2024](#), para. 27(d).

¹⁰ Registry Transmission of List of Individuals and Relevant Information for Reparations Sample ('Registry Transmission'), 9 January 2023, [ICC-02/04-01/15-2026](#), with two Confidential *ex parte* Annexes only available to the Registry, ICC-02/04-01/15-2026-Conf-Exp-AnxI and ICC-02/04-01/15-2026-Conf-Exp-AnxII.

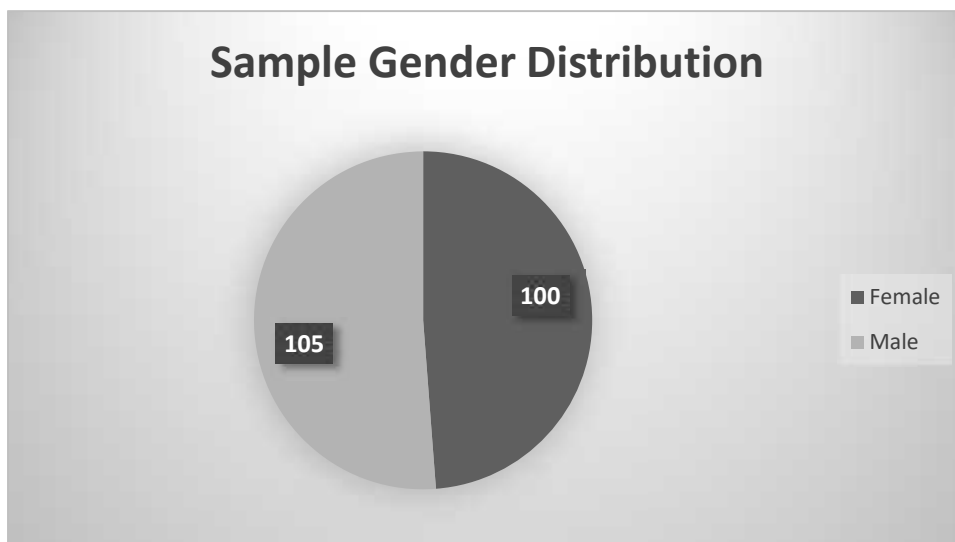
¹¹ Decision on the Sample, [ICC-02/04-01/15-2024](#), para. 24.

¹² Decision on the Sample, [ICC-02/04-01/15-2024](#), para. 27(d).

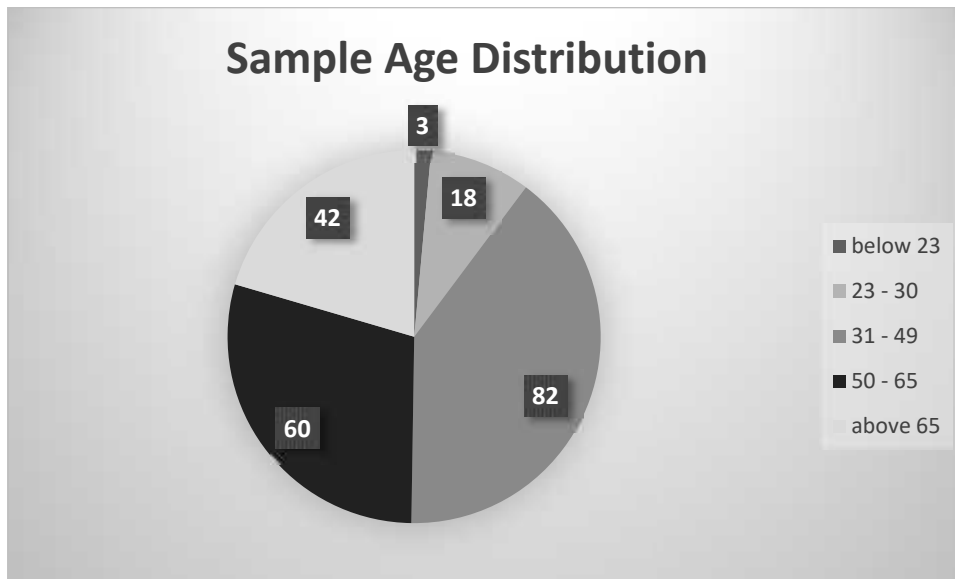
resulting composition of the assembled sample, the Chamber is satisfied that the results of the exercise it envisaged in the Decision on the Sample yield a sample that is indeed sufficiently representative of the ‘universe of potential victims’, meaning the individuals that are likely to come forward and request reparations in the present case, allowing the Chamber to reach statistically valid conclusions as to the victims actually entitled to benefit from reparations as a result of the crimes for which Mr Ongwen was convicted.

9. In effect, the Chamber is fully satisfied that the assembled sample of 205 victims, as listed in Annex 1 to the present Decision, is sufficiently representative of the universe of potential victims as regards gender, age, alleged harm, alleged crimes, and alleged locations where the crimes would have occurred. To be precise, having analysed the sample, the Chamber notes that:

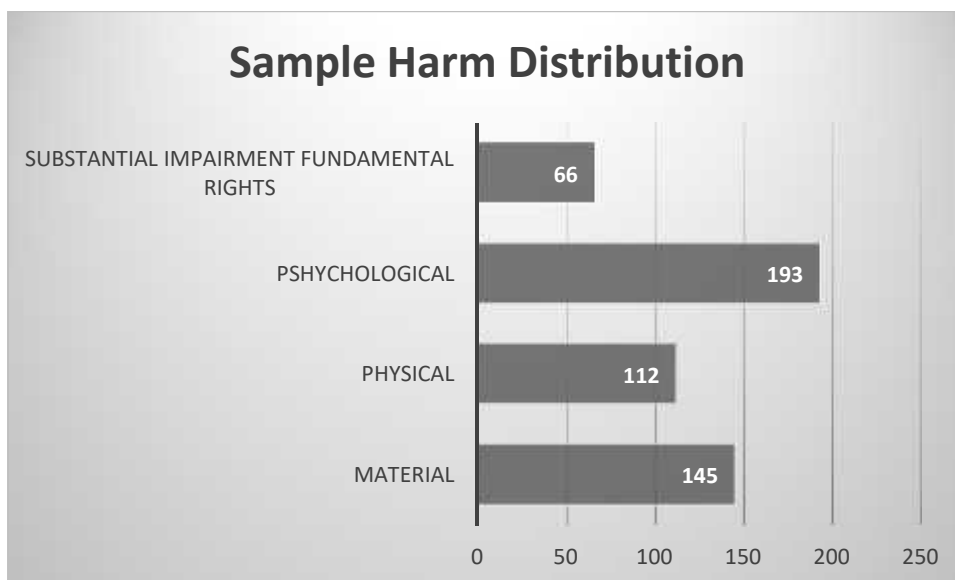
i) both genders are proportionally represented in the assembled sample, with 100 female, representing 48.78% of the sample; and 105 male, representing 51.22% of the sample.



ii) most age groups are proportionally represented in the assembled sample, with: a) 3 victims under 23 years of age, representing 1.46% of the sample; b) 18 victims currently between 23 and 30 years of age, representing 8.78% of the sample; c) 82 victims currently between 31 and 49 years of age, representing 40% of the sample; d) 60 victims currently between 50 and 65 years of age, representing 29.27% of the sample; and e) 42 victims currently above 65 years, representing 20.49% of the sample.



iii) all types of harms allegedly suffered by the victims, are proportionally represented in the assembled sample, noting that most victims allege to have suffered more than one type of harm, with: a) 145 victims alleging to have suffered material harm, representing 71.22% of the sample; b) 193 victims alleging to have suffered psychological harm, representing 94.15% of the sample; c) 112 victims alleging to have suffered physical harm, representing 54.63% of the sample; and d) 66 victims alleging to have suffered substantial impairment of fundamental rights, representing 32.19% of the sample.



iv) all types of crimes the victims allege to have suffered from, which represent most of the counts for which Mr Ongwen was convicted,¹³ are also proportionally represented in the assembled sample, noting that most victims allege to have suffered from more than one crime, including:

a) crimes committed in the context of the Pajule IDP camp attack: count 1 (attack against the civilian population) alleged by 96 victims, representing 46.82% of the sample; counts 2, 3 (murder) alleged by 25 victims, representing 12.19% of the sample; counts 4, 5 (torture) alleged by 23 victims, representing 11.21% of the sample; count 8 (enslavement) alleged by 34 victims, representing 16.58% of the sample; count 9 (pillaging) alleged by 54 victims, representing 26.34% of the sample; count 10 (persecution) alleged by 96 victims, representing 46.82% of the sample;

b) crimes committed in the context of the Odek IDP camp attack: count 11 (attack against the civilian population) alleged by 30 victims, representing 14.63% of the sample; counts 12, 13 (murder) alleged by 18 victims, representing 8.78% of the sample; counts 14, 15 (attempted murder) alleged by 2 victims, representing 0.97% of the sample; counts 16, 17 (torture) alleged by 8 victims, representing 3.9% of the sample; count 20 (enslavement) alleged by 10 victims, representing 4.87% of the sample; count 21 (pillaging) alleged by 8 victims, representing 3.9% of the sample; count 22 (outrages upon personal dignity) alleged by 2 victims, representing 0.97% of the sample; count 23 (persecution) alleged by 30 victims, representing 14.63% of the sample;

c) crimes committed in the context of the Lukodi IDP camp attack: count 24 (attack against the civilian population) alleged by 18 victims, representing 8.78% of the sample; counts 25, 26 (murder) alleged by 9 victims, representing 4.39% of the sample; counts 27, 28 (attempted murder) alleged by 1 victims, representing 0.48% of the sample; counts 29, 30 (torture) alleged by 1 victims, representing 0.48% of the sample; count 34 (pillaging) alleged by 8 victims, representing 3.9% of the sample; count 35 (destruction of property) alleged by 11 victims,

¹³ See Trial Judgment, 4 February 2021, [ICC-02/04-01/15-1762-Red](#), para. 3116. The Chamber notes that the sample did not yield results only in relation to Count 33 (enslavement in Lukodi), Counts 58, 59 (forced pregnancy), and Count 60 (outrages upon personal dignity). The Chamber notes that, according to the terms of the conviction, Count 33 refers to at least 29 civilians, men, women, and children, abducted from the Lukodi IDP camp by the LRA, including dual status witnesses (*see* paras 2948-2949, 187, 1796-1830), Counts 58 and 59, refer to two victims of forced pregnancy as a crime against humanity and as a war crime, specifically, P-0101 and P-0214 (*see* paras 3057-3062, 206-207, 2068-2070); and Count 60 refers to two victims of outrages upon personal dignity as a war crime, specifically, P-0226 and P-0235 (*see* paras 3064-3068, 209-210, 2083-2085). As such, the Chamber does not consider that this generally affects the representativeness of the sample and the information at the Chamber's disposal to make findings on these matters, as there is sufficient additional information about the victims of these counts in the case file.

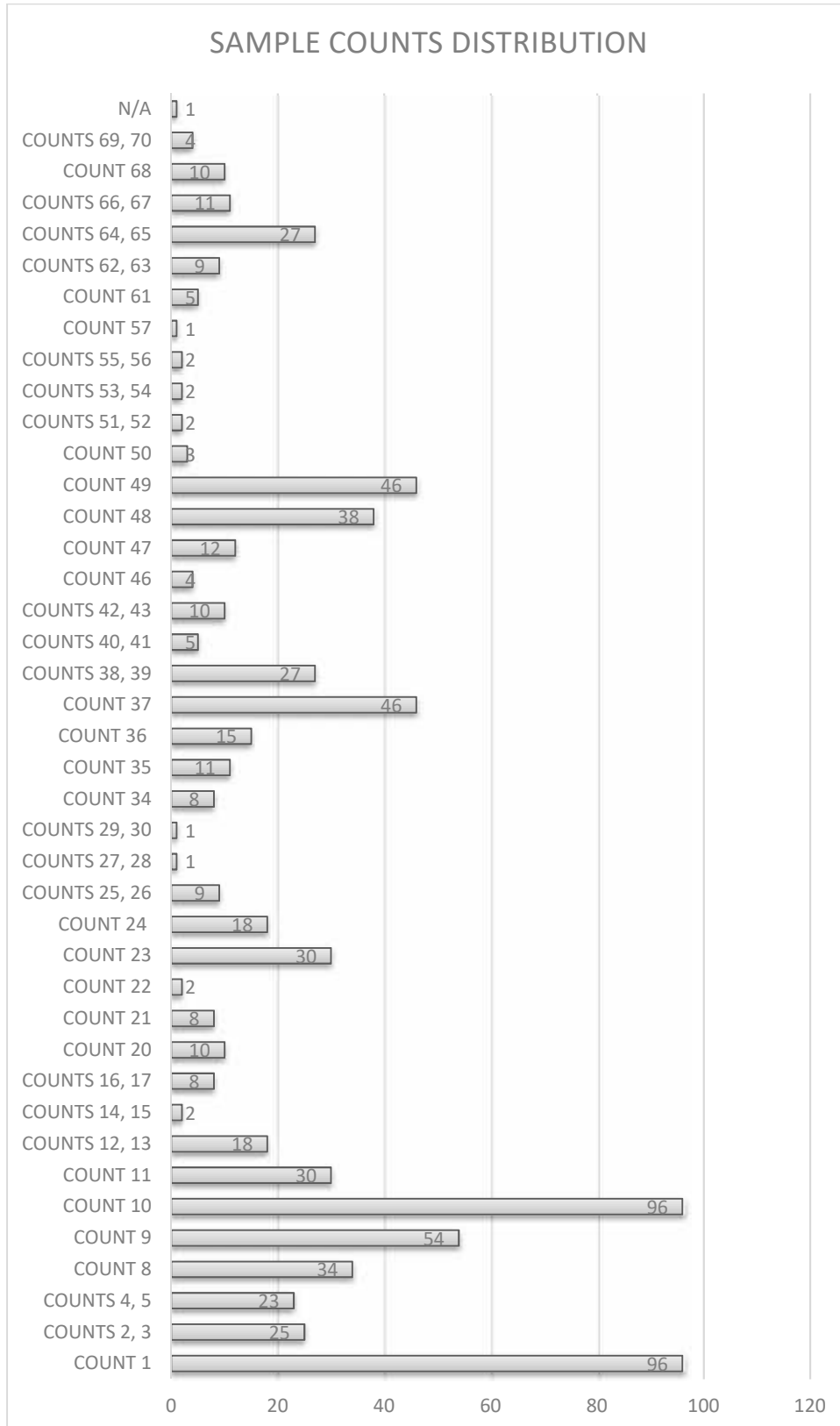
representing 5.36% of the sample; count 36 (persecution) alleged by 15 victims, representing 7.31% of the sample;

d) crimes committed in the context of the Odek IDP camp attack: count 37 (attack against the civilian population) alleged by 46 victims, representing 22.43% of the sample; counts 38, 39 (murder) alleged by 27 victims, representing 13.17% of the sample; counts 40, 41 (attempted murder) alleged by 5 victims, representing 2.43% of the sample; counts 42, 43 (torture) alleged by 10 victims, representing 4.87% of the sample; count 46 (enslavement) alleged by 4 victims, representing 1.95% of the sample; count 47 (pillaging) alleged by 12 victims, representing 5.85% of the sample; count 48 (destruction of property) alleged by 38 victims, representing 18.53% of the sample; count 49 (persecution) alleged by 46 victims, representing 22.43% of the sample;

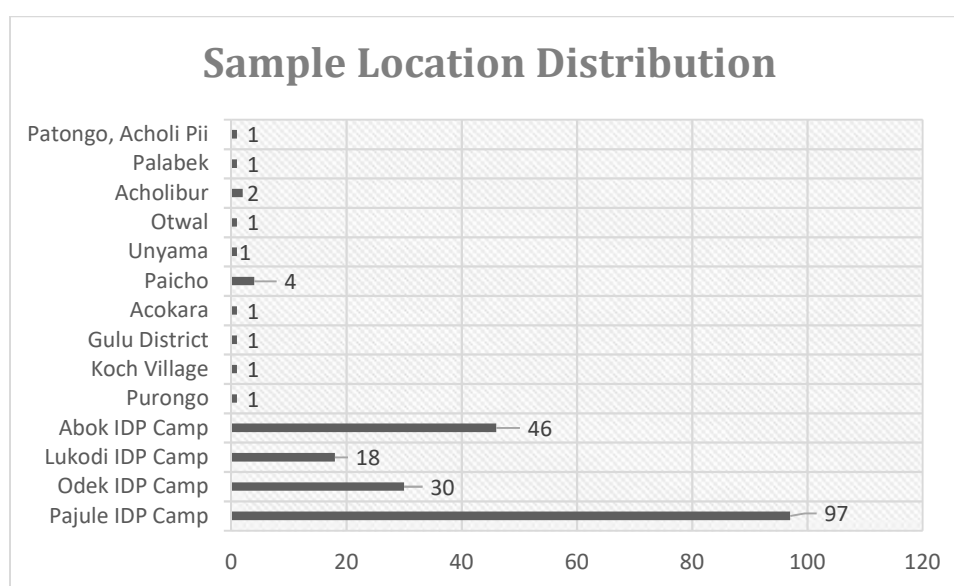
e) sexual and gender-based crimes: count 50 (forced marriage), alleged by 3 victims, representing 1.46% of the sample; counts 51, 52 (torture) alleged by 2 victims, representing 0.97% of the sample; counts 53, 54 (rape) alleged by 2 victims, representing 0.97% of the sample; counts 55, 56 (sexual slavery) alleged by 2 victims, representing 0.97% of the sample; count 57 (enslavement) alleged by 1 victim, representing 0.48% of the sample; count 61 (forced marriage) alleged by 8 victims, representing 3.9% of the sample; counts 62, 63 (torture) alleged by 11 victims, representing 5.36% of the sample; counts 64, 65 (rape) alleged by 29 victims, representing 14.14% of the sample; counts 66, 67 (sexual slavery) alleged by 13 victims, representing 6.34% of the sample; count 68 (enslavement) alleged by 11 victims, representing 5.36% of the sample;

f) crimes against child soldiers: counts 69, 70 (conscripted and use of child soldiers) alleged by 4 victims, representing 1.9% of the sample; and

g) other crime, alleged by 1 victim, representing 0.48% of the sample.



v) all locations where the victims allege to have suffered the crimes, which represent almost all locations included in the counts for which Mr Ongwen was convicted,¹⁴ are also proportionally represented in the assembled sample, noting that some victims allege to have suffered crimes in more than one location, including: a) Pajule IDP camp alleged by 97 victims, representing 47.31% of the sample; b) Odek IDP camp alleged by 30 victims, representing 14.63% of the sample; c) Lukodi IDP camp alleged by 18 victims, representing 8.78% of the sample; d) Abok IDP camp alleged by 46 victims, representing 22.43% of the sample; e) Purongo, Koch village, Gulu district, Acokara, Unyama, Palabek, and Patongo, Acholi Pii alleged by 1 victim each, representing 0.48% of the sample; f) Acholibur alleged by 2 victims, representing 0.97% of the sample; and g) Paicho alleged by 4 victims, representing 1.95% of the sample.



b) Redactions

10. As noted in the Decision on the Sample, in the present case the Defence has had the opportunity to review redacted versions of the applications and make submissions thereon for the purposes of victims' participation in the proceedings.¹⁵ In the same decision, the Chamber

¹⁴ In particular, the Chamber notes that all four IDP camps as specified in the Trial Judgment are represented in the sample, as well as several locations where the Chamber has found that sexual and gender based crimes have occurred. *See* Trial Judgment, [ICC-02/04-01/15-1762-Red](#), for Purongo, paras 205, 2011, 3022, 3052; for Koch Village, paras 211, 2091; for Gulu district, paras 159, 178, 1284, 1643; for Paicho, para. 2133; for Unyama, paras 1836, 1736, 1803; for Patongo, Acholi Pii, paras 209, 356, 1022, 1159, 2083, 2134, 3064, 3068. In addition, the Chamber notes that more victims allege to have suffered harm in the context of the IDP camps than the number of victims to be randomly selected for each IDP camp as per the Chamber's instructions. However, the Chamber notes that the Registry previously reported an overlap between the victims having suffered harm in the IDP camps and having suffered from thematic crimes, *see* Registry Additional Information on Victims, 21 November 2022, [ICC-02/04-01/15-2019](#), paras 18-19.

¹⁵ Decision on the Sample, [ICC-02/04-01/15-2024](#), para. 11.

ordered the OPCV and the LRVs to consult with the victims as to whether they would consent that their identities are disclosed to the Defence at this stage of the proceedings.¹⁶

11. Notwithstanding the above, the Chamber underlines that, even if the victims do not consent to their identities being disclosed to the Defence, the Registry should maintain redactions only related to identifying information. However, in line with the Court's prior jurisprudence, any information relating to the description of the harm suffered, the events that caused the harm, and the link between such harm and the crimes of which Mr Ongwen has been convicted, should not be redacted and redactions already applied should therefore be lifted, except for information that might reveal the identities of victims, current residence or other contact information that may be used to locate the victims.¹⁷ If the victims have provided their consent to their identities being disclosed to the Defence, the Registry should proceed to lift further redactions on the victims' dossiers keeping redacted *only* the information that might reveal the current residence or other contact information that may be used to locate the victims.

12. The Registry should uniformly apply to all victims' dossiers the limited redactions as detailed above. The Defence should raise any challenge it may have to the redactions applied/maintained directly with the VPRS, seizing the Chamber only exceptionally when no agreement can be reached.

c) Scheduling and procedural issues

13. Having approved the sample as assembled by the Registry, the Chamber decides that the subsequent calendar shall be as follows:

- a. The LRVs shall immediately proceed to contact the victims they represent and consult with them as to whether they consent to their identities being disclosed to the Defence;
- b. The LRVs shall subsequently inform about the victims' consent to the Defence and the VPRS, on a rolling basis and within thirty days from the notification of the present Decision at the latest, for the proper redactions to be lifted/maintained in the victims' dossiers;
- c. As soon as the VPRS has received the relevant information from the LRVs about the victims' consent for their identities to be transmitted to the Defence, the VPRS shall review the

¹⁶ Decision on the Sample, [ICC-02/04-01/15-2024](#), para. 11.

¹⁷ *Ntaganda* Order, [ICC-01/04-02/06-2786](#), paras 35-36. *See also* Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo, 22 February 2017, [ICC-01/04-01/06-3275-tENG](#), paras 14, 18.

redactions to the victims' dossiers, in accordance with the criteria outlined in the present Decision, and should transmit, if applicable, lesser redacted versions of the victims' dossiers to the Defence, on a rolling basis and within thirty days from the date it receives the information about the victims' consent, at the latest;

d. The LRVs will have thirty days from the last transmission of the victims' dossiers to the Defence 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;

e. The LRVs shall directly apply any redactions, in accordance with the criteria outlined above, that may be required for the transmission to the Defence of the documents and information referred to in sub-paragraph d. above; and

f. Afterwards, the Defence will have thirty days to make submissions on the victims' dossiers, before the Chamber rules on the sample of applications.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

APPROVES the sample as assembled by the VPRS, and listed in Annex 1 to the present Decision, as sufficiently representative of the universe of potential victims in the case;

INSTRUCTS the LRVs to immediately proceed to contact the victims they represent and consult with them as to whether they consent to their identities being disclosed to the Defence;

INSTRUCTS the LRVs to subsequently inform about the victims' consent to the Defence and the VPRS, on a rolling basis and within thirty days from the notification of the present Decision at the latest, for the proper redactions to be lifted/maintained in the victims' dossiers;

INSTRUCTS the VPRS as soon as receiving information about the victims' consent regarding their identities being transmitted to the Defence, to review the redactions to the victims' dossiers, in accordance with the criteria outlined in the Decision, and transmit, if applicable, lesser redacted victims' dossiers to the Defence, on a rolling basis and within thirty days from the date it receives the information about the victims' consent, at the latest;

DIRECTS the Defence to raise any challenge it may have to the redactions applied directly with the VPRS, seizing the Chamber only exceptionally when no agreement can be reached;

INSTRUCTS the LRVs to make any 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, within thirty days from the last transmission of the victims' dossiers to the Defence, at the latest;

INSTRUCTS the LRVs to directly apply any redactions, in accordance with the criteria outlined in the present Decision, that may be required for the transmission to the Defence of the documents and information referred above; and

INSTRUCTS the Defence to make submissions on the victims' dossiers, within thirty days from the notification of the LRVs submissions on the victims' dossiers, at the latest;

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated this Monday, 16 January 2023

At The Hague, The Netherlands