

**Cour
Pénale
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**International
Criminal
Court**

Original: English

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

Date: **29 March 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 ‘Defence Request for an Order to Disclose the Names of the
Victim Sample Pool of Participating Victims’, filed on 29 March 2023**

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 requests Trial Chamber IX ('Chamber') to order the Victims Participation and Reparations Section ('VPRS') to disclose to the Defence 164 unredacted victim applications from the victim sample pool ('VSP') of participating victims. As the Defence already has in its possession 41 unredacted victim participation applications, it seeks the unredacted versions of the remaining 164 applications.

II. CONFIDENTIALITY

2. Pursuant to Regulation 23 *bis*(1) of the Regulations of the Court, the Defence files this request as confidential as it mentions something which is not known to the public. A public redacted version is filed concurrently.

III. 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.¹
4. On 21 July 2021, the Defence filed its appeal against the convictions.²
5. On 26 August 2021, the Defence filed its appeal against the sentence.³
6. On 21 October 2021, the Prosecution,⁴ Common Legal Representative for Victims ('CLR'),⁵ and Legal Representatives for Victims ('LRV')⁶ filed responses against the Defence's appeal against the convictions.

¹ Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Conf](#).

² Appeals Chamber, *Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021*, [ICC-02/04-01/15-1866-Conf](#).

³ Appeals Chamber, *Correct Version of "Defence Document in Support of its Appeal against the Sentencing Decision"*, filed on 26 August 2021, [ICC-02/04-01/15-1871-Conf-Corr](#).

⁴ Appeals Chamber, *Prosecution Response to "Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021"* ICC-02/04-01/15-1866-Conf, [ICC-02/04-01/15-1882-Conf](#).

⁵ Appeals Chamber, *CLR's Observations on the "Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021"*, [ICC-02/04-01/15-1880-Conf](#).

⁶ Appeals Chamber, *Victims' Observations on the "Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021"*, [ICC-02/04-01/15-1883-Conf](#).

7. On 26 October 2021, the Prosecution,⁷ CLRV⁸ and LRV⁹ filed responses against the Defence's appeal against the sentence.
8. On 6 December 2021, the Defence,¹⁰ Registry,¹¹ Trust Fund for Victims ('TFV'),¹² LRV¹³ and CLRV¹⁴ filed submissions on reparations.
9. On 7 February 2022, the Registry,¹⁵ Prosecution¹⁶ and LRV¹⁷ filed submissions on reparations.
10. On 15 December 2022, the Appeals Chamber pronounced the judgments on the appeals against the convictions¹⁸ and sentence,¹⁹ upholding all the convictions and the sentence.
11. On 16 December 2022, the Chamber ordered 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.²⁰ The CLRV and LRV were then ordered to contact their respective clients chosen for the VSP to seek permission to disclose their identities.²¹
12. On 16 January 2023, the Chamber ordered the CLRV and LRV to disclose to the Defence those consenting to disclosure on a rolling basis, and at the latest, 30 days from the 16 January 2023 order.²²

⁷ Appeals Chamber, *Prosecution response to Sentencing Appeal Brief*, [ICC-02/04-01/15-1886-Conf](#).

⁸ Appeals Chamber, *CLRV Observations on the "Defence Appeal of the Sentence"*, [ICC-02/04-01/15-1885](#).

⁹ Appeals Chamber, *Victims' Observations on the "Defence Document in Support of its Appeals against the Sentencing Decision"*, [ICC-02/04-01/15-1887](#).

¹⁰ Trial Chamber IX, *Defence Submissions on Reparations*, [ICC-02/04-01/15-1917](#).

¹¹ Trial Chamber IX, *Registry's Mapping Report and Submission on Reparations*, [ICC-02/04-01/15-1919](#) with annexes.

¹² Trial Chamber IX, *Trust Fund for Victims' Observations relevant to Reparations*, [ICC-02/04-01/15-1920](#).

¹³ Trial Chamber IX, *Victims' Preliminary Submissions on Reparations*, [ICC-02/04-01/15-1921](#).

¹⁴ Trial Chamber IX, *Common Legal Representative of Victims' Submissions on Reparations*, [ICC-02/04-01/15-1923-Conf](#) with annexes.

¹⁵ Trial Chamber IX, *Registry's Additional Submissions on the Mapping Exercise and Reparations*, [ICC-02/04-01/15-1975](#).

¹⁶ Trial Chamber IX, *Prosecution's Observations on Reparations*, [ICC-02/04-01/15-1976](#).

¹⁷ Trial Chamber IX, *Victims' Further Submissions on Reparations*, [ICC-02/04-01/15-1977](#).

¹⁸ 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](#).

¹⁹ Appeals 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](#)).

²⁰ Trial Chamber IX, *Decision on the Registry Additional Information on Victims*, [ICC-02/04-01/15-2024](#), paras 27(a)-(b).

²¹ *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).

²² *Ibid* (noting that the CLRV and LRV were to disclose updates and possibly application numbers, not the actual names).

13. On 15 February 2023, the LRV sent an email notifying the Defence that 29 persons consented to disclose their names, 34 persons declined consent, and 22 persons could not be reached.²³ The LRV noted that it would continue its attempt to contact those who could not be reached.²⁴
14. On 16 February 2023, the Defence responded to the email from the LRV requesting the reasons from the victims for declining to disclose their names and the manner in which the LRVs asked their clients to disclose their names.²⁵ At the time of this filing, the Defence has not received an answer.
15. On 17 February 2023, the Defence sent an email to the CLRV requesting to receive the information ordered by the Chamber.²⁶
16. On 17 February 2023, the CLRV responded and wrote that none of its clients consented to disclosing their names to the Defence, except for the dual-status victims.²⁷ The CLRV noted that it must have been an oversight that the Defence was not notified on 13 February 2023 when it notified VPRS.²⁸
17. On 10 March 2023, the LRV informed VPRS that two (2) additional persons from the VSP consent to have their identities disclosed to the Defence.²⁹
18. On 15 March 2023, the Registry filed 63 lesser-redacted victim applications from the VSP.³⁰

IV. SUBMISSIONS

19. The Defence highlights with concern that only 31 of the 205 persons from the VSP allowed for their identities to be disclosed to the Defence.³¹ Not one person represented by the CLRV

²³ Email from LRVs to Defence, *Notification of Consultations with LRV Sample Victims on the Disclosure of their Identities Pursuant to*, received on 15 February 2023 at 18h12 CET.

²⁴ *Ibid.*

²⁵ Email from Defence to LRVs, *Re: Notification of Consultations with LRV Sample Victims on the Disclosure of their Identities Pursuant to*, sent on 16 February 2023 at 12h33 CET.

²⁶ Email from Defence to CLRV, *Order 2027, para. 13(b) notification*, sent on 17 February 2023 at 14h09 CET.

²⁷ Email from CLRV to Defence, *RE: Order 2027, para. 13(b) notification*, received on 17 February 2023 at 17h10 CET.

²⁸ *Ibid.*

²⁹ 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](#), para. 11.

³⁰ 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](#).

³¹ Email from LRVs to Defence, *Notification of Consultations with LRV Sample Victims on the Disclosure of their Identities Pursuant to*, received on 15 February 2023 at 18h12 CET. *See also* 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](#), paras 10-11.

whose identity was unknown to the Defence on 16 December 2022 consented to disclose their identity.³² Including those who were dual-status victims, the Defence knows the identity of 41 of the 205 persons in the VSP.³³ Also rather disturbing is that one persons, a/01170/16, told the LRV that he did not want his identity disclosed, yet the Defence has known this persons status as a dual-status victim since 17 August 2017.³⁴ His identity has been known for five and one-half years (5.5) and nothing has happened to him.

20. The Defence has serious concerns about its ability to review and comment on the VSP without knowing the names of the persons in the VSP, especially those persons of the thematic crimes. To list off a quick few, without getting into heavy details:
 - a. Victim a/0326/07 (2034-Anx2) – The victim gives a detailed account of his time in the LRA and Mr Ongwen is not discussed,³⁵ he does not mention Mr Ongwen once and does not list him as one of the most responsible.³⁶ The movements discussed by the victim while a child soldier appears incompatible with Mr Ongwen's movements and commands,³⁷ but one cannot ascertain this without more being unredacted, including his name.
 - b. Victim a/06710/15 (2034-Anx26)³⁸ and Victim a/07049/15 (2034-Anx 32)³⁹ – The Defence has concerns that the victims are not victims of one of the crimes for which Mr Ongwen was convicted. Without the lifting of redactions, it poses a serious problem with completely meaningful representations of the two applicants.
 - c. Victim a/1521/16 (556-Anx563)⁴⁰ – From a reading of the redacted file, the person does not appear to be a victim of one of the crimes for which Mr Ongwen was convicted.

³² Email from CLRV to Defence, *RE: Order 2027, para. 13(b) notification*, received on 17 February 2023 at 17h10 CET. See also 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](#), para. 8.

³³ The Defence notes the following persons were dual-status victims who are also part of the VSP: Pajule: a/02109/16; a/06812/15 and a/06827/15. Odek: a/01170/16 and a/06929/15. Lukodi: **NONE**. Abok: **NONE**. Thematic: a/02101/16; a/02112/16; a/02119/26; a/02099/16 and a/02100/16.

³⁴ See Trial Chamber IX, *Third Report on Applications to Participate in the Proceedings*, [ICC-02/04-01/15-556](#), Conf-Anx239-Red2.

³⁵ 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](#), Conf-Exp-Anx2, pp 7 and 16-21.

³⁶ *Ibid*, Conf-Exp-Anx2, p. 8, no. 2.

³⁷ *Ibid*, Conf-Exp-Anx2, pp 7 and 16-21.

³⁸ *Ibid*, Conf-Exp-Anx26.

³⁹ *Ibid*, Conf-Exp-Anx32.

⁴⁰ Trial Chamber IX, *Third Report on Applications to Participate in the Proceedings*, [ICC-02/04-01/15-556](#), Conf-Anx563.

21. The victim applications listed above exhibit only few of the many problems and issues found in the 205-VSP. To conduct a more meaning review of the VSP, the Defence asserts that it must know more information about the persons found in the VSP.
22. Considering the advanced stages of the proceedings, it should be instructive to the Chamber that there has not been a single incident of interference with persons because of their testimony or filing an application to participate in the proceedings. In fact, the Defence met with some of the persons who were dual-status victims, and none were harassed for their participation.⁴¹ None of the persons in the VSP have a reasonable expectation of fear for their safety or security from the Defence if their names were to be disclosed to the Defence. The Defence poses no threat to these people, and it has the right to know their names.
23. There is no objectively justifiable risk as to why the persons in the VSP should have their identifying information redacted. The Defence requests the Chamber to order VPRS to disclose the additional 164 applications without identifying information redacted.

V. REQUEST RELIEF

24. For the abovementioned reasons, the Defence respectfully requests Trial Chamber IX to order VPRS to disclose unredacted versions of the remaining 164 victim applications in the VSP to the Defence which currently have identifying information redacted.

Respectfully submitted,



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 Chief Charles Achaleke Taku
 On behalf of Dominic Ongwen

Dated this 29th day of March, 2023

At Maryland, United States of America

⁴¹ The Defence met with P-0306 over seven months before interviewing with the Prosecution, and over 11 months before filling out his application to participate in the proceedings. The Defence also met with P-0214, P-0235 and P-0236 under the same circumstances as P-0306. [REDACTED].