

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 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*

Confidential

**Victims' Response to the Defence Request for an Order to Disclose the Names of
the Victim Sample Pool of Participating Victims**

Source: Legal Representatives of 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 Legal Representatives for Victims (LRVs) submit that the Defence request lacks merit and should be rejected.
2. The LRVs submit that the Defence in its filing fails to demonstrate that its request for disclosure of the identities of the victims in the Victims Sample pool (hereafter the Victims Sample) is justified by reason of the test enunciated by the Trial Chamber (The Chamber) in its decision for the assessment of the eligibility of victims at the reparations stage.¹

II. PROCEDURAL HISTORY

3. On the 16 December 2022, the Chamber issued the Decision on the Registry Additional Information on Victims.²
4. On 15 February 2023, the LRVs sent an email notifying the Defence that 29 persons consented to disclosure of their names; 34 persons declined consent; and 22 persons could not be reached.³
5. On 16 February 2023, the Defence responded to the email from the LRVs 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.⁴
6. On 10 March 2023, the LRVs notified VPRS that two (2) additional persons from the Victims Sample consented to their identities being disclosed to the Defence.⁵
7. On 15 March 2023, the Registry filed 63 lesser-redacted victim applications from the Victims Sample.⁶

¹ Decision on the Registry Additional Information on Victims, ICC-02/04-01/15-2024 16-12-2022.

² ICC-02/04-01/15-2024.

³ 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.

⁴ 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.

⁵ 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.

⁶ 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.

8. On the 29 March 2023, the Defence filed its Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims.⁷

III. CONFIDENTIALITY.

9. The LRVs file their 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.

10. The LRVs submit that the Defence for Dominic Ongwen should not act surprised that only 31 individuals from the Victims Sample consented to have their identities disclosed to the Defence because these victims have every reason to fear Dominic Ongwen and have continuously maintained that they harbour fears for Dominic Ongwen owing to his ruthless conduct consistent with his conviction. Dominic Ongwen’s conviction is sufficient to support the fears of the victims as a perpetrator of the harms they suffered.
11. The LRVs accordingly recall that Dominic Ongwen was convicted, and the conviction confirmed by the Appeals Chamber of his role as a direct and indirect co-perpetrator for the attacks on the civilian populations in the IDP camps at Pajule, Odek, Lukodi and Abok.⁸
12. The LRVs similarly recall that the Victims Sample’ is drawn from the multitude of participating victims from the above named four IDP camps and therefore the Defence allegation that some of the victims do not mention Dominic Ongwen⁹ is not tenable. The victims are not necessarily obliged to positively identify Dominic Ongwen as the direct the perpetrator of the crimes or harms they suffered because Dominic Ongwen has in any event been found guilty of the attacks on the four IDP camps.
13. The LRVs additionally note that Dominic Ongwen was convicted, and the Appeals Chamber confirmed the conviction that Dominic Ongwen was individually criminally responsible as an indirect perpetrator and indirect co-

⁷ Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims, ICC-02/04-01/15-2036-Conf 29-03-2023.

⁸ 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 15-12-2022, Para. 711 – 769.

⁹ ICC-02/04-01/15-2036-Conf, para.20 (a).

perpetrator for the crimes committed during the attacks on the four IDP camps and for the conscription and use in hostilities children under the age of 15.¹⁰

14. The LRVs further note that Dominic Ongwen was convicted, and the Appeals Chamber confirmed the conviction that Dominic Ongwen as an indirect perpetrator and indirect co-perpetrator played a significant role in the LRA policy of abducting and abusing civilian women and girls.¹¹

15. The knowledge of the status of some victims does not take away real fears that victims harbour against Dominic Ongwen and his friends in the LRA who have not renounced rebellion or fighting and accordingly still pose threats. Moreover, the victims understand that Dominic Ongwen is currently in detention, however they remain concerned about their safety and that of their family members upon his return after serving out his sentence.

Request to Know the Names of Victims in the Victims Sample

16. The Defence claims its unable to review or comment on the Victims Sample without knowing the names of the individuals¹². Paradoxically, the Defence proceed to undertake assessments of 4 victims' applications and their respective accounts of harm, in spite the redactions contained in those accounts. It is evident from the Defence's own submissions that, in spite the redactions, there is enough information disclosed in those applications that would enable it to meaningfully assess the extent of the alleged harm and Dominic Ongwen's liability for the same as well as examine the eligibility of the applicants for reparations based on those accounts.¹³

17. The LRVs submit that the Defence fails to illustrate in its filing how the redacted identities of these victims, if lifted, would resolve any such difficulties in assessing the accounts of harm. The Defence additionally has not demonstrated in the same filing that Dominic Ongwen personally knows every victim who was resident in the IDP camps of the charged locations or who was abducted and came under his command to justify the disclosure of the identities of the victims in the sample.

¹⁰ ICC-02/04-01/15-2022-Conf, Para. 862 - 927.

¹¹ ICC-02/04-01/15-2022-Conf, Para. 928 – 977.

¹² ICC-02/04-01/15-2036-Conf, para 20.

¹³ Ibid., para 20

18. The LRVs in this regard recall that the Chamber in its decision has stated and established the test for ruling on victims' reparations claims as follows:

.....In effect, the Chamber does not consider it necessary or appropriate, in the context of the current proceedings, for the Registry to collect additional applications from participating victims. All information required to rule on their claims – i.e., the description of the harm suffered, the events that caused the harm, the extent of the harm, and the causal link between the alleged harm and the crimes of which Mr Ongwen has been convicted – is information the victims were already asked to provide when filing the application forms....¹⁴

19. Accordingly and going by the said finding of the Chamber, the LRVs submit that what is required for the Defence to comment on the Victims Sample is not the names of the individual victims but rather to review the description of the harm suffered; the events that caused the harm; the extent of the harm; and the causal link between the alleged harms and the crimes for which Mr. Ongwen was convicted.
20. In its filing, the Defence has not shown that it has been unable to access this information from the victims' participation forms submitted to it, which information is sufficient to assess whether a victim is eligible or not for reparations.
21. The LRVs submit further that there is nothing in the examples listed by the Defence which strongly supports the Defence argument that having applied the test highlighted in the decision of the Chamber it is non the less still unable to review the victims' applications owing as it were to not knowing the names of the victim in issue from the Victims Sample.

V. RELIEF REQUESTED

22. The LRVs accordingly invite the Chamber to reject the Defence request for failing to:
- i. illustrate how the redacted identities of these victims would resolve any such difficulties in assessing the accounts of harm; and
 - ii. demonstrate that the test pronounced by the Chamber herein above is incapable of enabling it to assess the eligibility for reparations by victims in the Victims Sample.

¹⁴ ICC-02/04-01/15-2024, para. 13.

Respectfully submitted.



Dated this 11th day of April 2023
At Kampala (Uganda), Santiago (Chile)