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**International
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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 Redacted Version of ICC-02/04-01/15-2048-Conf

**Response to the “Defence Request for an Order to Disclose Specific Material of
Persons in the Victim Sample Pool of Participating Victims”**

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 Request for an Order to Disclose Specific Material of Persons in the Victim Sample Pool of Participating Victims” (the “Second Disclosure Request”).¹

2. The CLR posits that the Second Disclosure Request should be rejected because: (i) the lifting of redactions applied to the names of concerned victims has already been conclusively resolved by Trial Chamber IX (the “Chamber”); (ii) the requested disclosure of the dates of birth of the concerned victims is not only highly identifying but also irrelevant and immaterial for the purposes of assessing their applications; (iii) the requested disclosure of the date of birth of victim a/01996/16 is moot since Mr Ongwen was found guilty of the war crime of conscripting children under the age of 15 into an armed group and using them to participate actively in hostilities starting from 1 July 2002, not 2004 as alleged by the Defence; (iv) the claims concerning the disclosure of the name of the forced husband of victim a/01421/16 directly contradict the factual findings of the Chamber in its Judgment on Mr Ongwen’s role during the Pajule attack and are moot since said individual may still qualify as victim as the result of numerous other crimes committed by the convicted person during and after the attack; and (v) the requested disclosure concerning the specifics of the abduction of victims a/06890/15, a/07031/15 and a/07041/15 is highly identifying, thus defeating the purpose of the Chamber’s previous decision on the redaction of their names.

II. PROCEDURAL HISTORY

3. On 16 November 2022, the Chamber informed the parties and participants that it had decided to proceed in the present case in a similar fashion as in the *Ntaganda*

¹ See the “Defence Request for an Order to Disclose Specific Material of Persons in the Victim Sample Pool of Participating Victims”, [No. ICC-02/04-01/15-2045-Conf](#), 05 May 2023 (the “Second Disclosure Request”).

case.² On 16 December 2022, the Chamber further decided to rule on a limited but representative sample of victims' dossiers, amounting to 5% of the universe of participating victims and instructed the Registry to randomly extract 236 victims from the universe of participating victims (the "Sample Applications").³

4. On 9 January 2023, the Registry transmitted to the Chamber the list of individuals included in the Sample Applications.⁴ On 16 January 2023, the Chamber approved the Sample Applications and instructed, *inter alia*, (i) the legal representatives to contact their clients and consult them as to whether they consent to their identities being disclosed to the Defence and inform the latter and the VPRS about the victims' consent; and (ii) the VPRS to review the redactions to the victims' dossiers and transmit lesser redacted versions to the Defence (the "Decision on Redactions").⁵

5. On 27 January 2023, the VPRS transmitted to the CLRV and the Legal Representatives of Victims (the "LRVs") the dossiers of their respective clients included in the Sample Applications.⁶ On 13 and 14 February 2023, the CLRV informed the VPRS that the concerned victims (apart from dual status victims whose identities had already been disclosed) do not consent to the disclosure of their identities.⁷ On 15 February and 10 March 2023, the LRVs informed that 31 victims consented to the disclosure of their identities while 38 victims declined their consent.⁸

² See the "Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'" (Trial Chamber II), [No. ICC-01/04-02/06-2786](#), 25 October 2022.

³ 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.

⁴ See the "Registry Transmission of List of Individuals and Relevant Information for Reparations Sample", [No. ICC-02/04-01/15-2026](#), 9 January 2023.

⁵ See "Decision on the Registry Transmission of List of Individuals and Relevant Information for Reparations Sample", [No. ICC-02/04-01/15-2027](#), 16 January 2023, p. 12. (the "Decision on Redactions")

⁶ See the emails from the VPRS to the CLRV and the LRVs sent on 27 January 2023 at, respectively, 15:47 and 16:59.

⁷ See the emails from the CLRV to the VPRS sent on 13 February 2023 at 13:45 and 14 February 2023 at 11:57.

⁸ See the emails from the LRVs to the VPRS sent on 15 February 2023 at 16:36, 17:20 and 17:51 and the email from the LRVs to the VPRS sent on 10 March 2023 at 17:42.

6. On 29 March 2023, the Defence filed a request seeking the disclosure of the identities of the victims included in the Sample Applications (the “First Disclosure Request”).⁹ On 11 April 2023, the CLRV¹⁰ and the LRVs¹¹ responded to the First Disclosure Request.
7. On 14 April 2023, the Defence sought leave to reply the responses filed by the CLRV and the LRVs to the First Disclosure Request (the Defence’s Leave to Reply).¹² On 19 April 2023, the CLRV responded the Defence’s Leave to Reply.¹³
8. On 20 April 2023, the Chamber decided to reject both the Defence’s Leave to Reply and the First Disclosure Request (the “Disclosure Decision”).¹⁴
9. On 5 May 2023, the Defence filed the Second Disclosure Request.¹⁵
10. On 10 May 2023, the LRVs responded to the Second Disclosure Request.¹⁶

⁹ See the “Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims”, [No. ICC-02/04-01/15-2036-Conf](#), 29 March 2023 (the “Defence Request”).

¹⁰ See the “CLR V Response to the ‘Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims’”, [No. ICC-02/04-01/15-2037-Conf](#), 11 April 2023 (pursuant to Trial Chamber IX’s instruction dated 24 April 2023, this document is reclassified as Public).

¹¹ See the “Victims’ Response to the Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims”, [No. ICC-02/04-01/15-2038-Conf](#), 11 April 2023 (pursuant to Trial Chamber IX’s instruction, dated 28 April 2023, this document is reclassified as Public).

¹² See the “Defence Request to Reply to ICC-02/04-01/15-2037-Conf and ICC-02/04-01/15-2038-Conf”, [No. ICC-02/04-01/15-2039](#), 14 April 2023.

¹³ See the “CLR V Response to the ‘Defence Request to Reply to ICC-02/04-01/15-2037-Conf and ICC-02/04-01/15-2038-Conf’”, [No. ICC-02/04-01/15-2042](#), 19 April 2023.

¹⁴ See the “Decision on the Defence Request for an Order to Disclose the Names of the Victim Sample Pool of Participating Victims”, [No. ICC-02/04-01/15-2043-Conf](#), 20 April 2023 (the “Disclosure Decision”).

¹⁵ See the Second Disclosure Request, *supra* note 1.

¹⁶ See the “Victims’ Response to the Defence Request for an Order to Disclose Specific Material of Persons in the Victim Sample Pool of Participating Victims”, [No. ICC-02/04-01/15-2047-Conf](#), 10 May 2023.

III. CLASSIFICATION

11. In accordance with regulation 23bis (2) of the Regulations of the Court, the present submission is filed confidential following the classification chosen by the Defence. A public redacted version will be filed in due course.

IV. SUBMISSIONS

12. In the Second Disclosure Request, the Defence asks the Chamber to order the VPRS to disclose 13 un-redacted victim applications included in the Sample Applications.¹⁷ Among these, victims 01996/16, a/02006/16, a/06890/15, a/0326/07, a/01421/16, a/06710/15, a/07031/15, a/07032/15, a/07041/15 and a/07042/15 are represented by the CLRV.

13. Firstly, the Defence seeks the disclosure of the names of victims a/01996/16, a/02006/16, a/06890/15, a/0326/07, a/01421/16, a/06710/15, a/07031/15, a/07032/15, a/07041/15 and a/07042/15. Yet, this matter has been conclusively resolved by the Chamber in the Disclosure Decision. In particular, the Chamber stated that “[...] *the Defence has not demonstrated how its ability to review and comment on the victims’ sample is affected by not knowing all the victims’ names, especially since the Chamber observes, as also pointed out by the OPCV and the LRVs, the Defence has been in fact able to review and comment on some of the victims’ eligibility at this stage, as exemplified by its analysis of four victims’ applications*”.¹⁸

14. In fact, the content of the Second Disclosure Request also shows that the Defence was able to conduct a detailed assessment of the applications concerned. In this regard, the Chamber had warned in the Disclosure Decision that it will not rule on further requests attempting to re-litigate matters already decided.¹⁹ Indeed, as held

¹⁷ See the Second Disclosure Request, *supra* note 1, para. 1. While the Defence states that it seeks the lifting of redactions of 12 victims applications in paragraphs 1 and 45 of the Second Disclosure Request, it actually makes submissions on 13 victim applications (including a/07090/15 who was not mentioned in said paragraphs).

¹⁸ See the Disclosure Decision, *supra* note 14, para. 19.

¹⁹ *Idem*, para. 21.

by the Appeals Chamber, a matter that has been adjudicated by a court may not be pursued further by the same party in line with the well-established principle of *res judicata*.²⁰

15. Secondly, the Defence seeks the disclosure of the dates of birth of victims a/01996/16, a/0326/07, a/01421/16, a/06710/15, a/07031/15, a/07032/15, a/07041/15 and a/07042/15. The CLRV posits that (except for victim a/0326/07 – [REDACTED]), the dates of birth of said victims are irrelevant and immaterial for the purposes of assessing their applications in the reparations proceedings. Needless to say, apart from the conduct proscribed in article 8(2)(e)(vii) of the Statute, there is no age limit for qualifying as victims in relation to the crimes for which Mr. Ongwen was convicted. More importantly, the disclosure of such information is highly identifying. For example, in relation to victim a/01996/16, the Defence states that, armed with the name and date of birth of said person, it intends to “*search the evidentiary database for any medical records related to this person to see if he visited any nearby medical facilities for his alleged injury*”.²¹ Moreover, with regard to victim a/06710/15, the Defence states that, while having the name and other identifying material, it “*shall search the databases at its disposal in an attempt to determine if she was ever with Mr Ongwen’s group*”.²² Since dates of birth are unique and distinctive and often associated with the names of the relevant persons in question, the true identities of the concerned victims may easily be discovered, thus defeating the purpose of the Decision on Redactions.

16. Moreover, in line with the Chamber’s reasoning in the Disclosure Decision²³, the Defence has not demonstrated how its ability to review and comment on the Sample Applications is affected by not knowing the dates of birth of the victims concerned, especially in light of the fact that the Defence was indeed able to do so, as exemplified by its analysis of the thirteen applications concerned by the Request.

²⁰ See the “Judgment on the Prosecutor’s appeal against the decision of Trial Chamber II entitled ‘Judgment pursuant to article 74 of the Statute’” (Appeals Chamber), [No. ICC-01/04-02/12-271 A](#), 27 February 2015, para. 246.

²¹ See the Second Disclosure Request, *supra* note 1, para. 24.

²² *Idem*, para. 30.

²³ See the Disclosure Decision, *supra* note 14, para. 19.

17. As for a/0326/07 ([REDACTED]), the Defence argues that the lifting of the redaction applied to the date of birth is necessary because he was born [REDACTED] which means that [REDACTED] in 2004.²⁴ Yet, the Defence manifestly ignores the fact that Mr Ongwen was found guilty of the war crime of conscripting children under the age of 15 into an armed group and using them to participate actively in hostilities between 1 July 2002 and 31 December 2005 in Northern Uganda.²⁵ Consequently, regardless of what month and day the victim was born, the fact that [REDACTED] of the charged period is sufficient to make the Defence arguments moot. Furthermore, the Defence requests to receive the victim's parent's names and place of residence in order to identify him further in the databases from the reception centres and Amnesty Commission. Both information will not only be highly identifying but also will have no bearing on the determination of his age (which already meets the elements of the crime listed in article 8(2)(e)(vii) of the Statute in accordance with the findings of the Chamber in the Judgment).²⁶

18. Additionally, the Defence requests to lift redactions applied to the description of the events narrated by the victim, arguing, *inter alia*, that he did not refer to Mr Ongwen's name while mentioning the Sinia Brigade once in his application.²⁷ The CLRV posits that whether the victim in question was able to explicitly mention Mr Ongwen's name is irrelevant to the determination of his age. The fact that he served as a child soldier in the Sinia Brigade during the charged period is more than enough to establish his eligibility. Indeed, in the Judgment, the Chamber accepted the fact that even an adult soldier of the LRA was not able to precisely identify commanders. In particular, witness P-0144 could not remember the name of the commander who led an ambush in Pajule even though he stayed in the LRA for many years.²⁸ Therefore,

²⁴ See the Second Disclosure Request, *supra* note 1, para. 28.

²⁵ See the "Trial Judgment" (Trial Chamber IX), [No. ICC-02/04-01/15-1762-Red](#), 4 February 2021, p. 1076 (the "Judgment").

²⁶ *Idem*, paras. 2312-2447.

²⁷ See the Second Disclosure Request, *supra* note 1, para. 28.

²⁸ See the Judgment, *supra* note 25, paras. 1243 (footnote 2600) and 1263 (footnote 2669).

the redactions applied to the accounts narrated by the victim should remain in place intact.

19. As for victim a/01421/16, the Defence requests to know the name of her forced husband. The Defence argues that “[c]onsidering that Mr Ongwen did not lead the attack on Pajule, and that there were several different brigades in attendance, the victim may have been given as a forced wife by a commander in a brigade other than the one of which Mr Ongwen was part”.²⁹ The Defence’s assertion directly contradicts the factual findings of the Chamber about the role Mr Ongwen played during the Pajule attack. In the Judgment, the Chamber found that Mr Ongwen not only participated in the planning of the attack but also personally led a group of LRA attackers.³⁰ The Chamber also found that, after the attack, abducted civilians, including women and girls, were distributed to Mr Ongwen’s household and given as wives to the LRA men.³¹ As mentioned *supra*, the Defence attempts to re-litigate the factual findings made by the Chamber in its Judgment.

20. For arguments sake, even if the Defence insists that said victim was “*given as a forced wife by a commander in a brigade other than the one of which Mr Ongwen was part*”, she may still qualify as a victim of one or more crimes committed by Mr Ongwen during and after the attack on Pajule (namely; war crime of attack against the civilian population under article 8(2)(e)(i), crime against humanity of torture under article 7(1)(f), war crime of torture under article 8(2)(c)(i), war crime of cruel treatment under article 8(2)(c)(i), crime against humanity of other inhumane acts under article 7(1)(k), crime against humanity of enslavement under article 7(1)(c), war crime of pillaging under article 8(2)(e)(v) and crime against humanity of persecution under article 7(1)(h) of the Statute). Therefore, the Defence’s arguments in this regard are moot.

²⁹ See the Second Disclosure Request, *supra* note 1, para. 29.

³⁰ See the Judgment, *supra* note 25, paras. 1264. Confirmed on appeal - see the “Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled ‘Trial Judgment’” (Appeals Chamber), [No. ICC-02/04-01/15-2022-Red A](#), 15 December 2022, paras. 737-738.

³¹ See the Judgment, *supra* note 25, paras. 1367-1368.

21. As for victims a/06890/15, a/07031/15 and a/07041/15, the Defence requests to lift the redactions applied to the specifics of their abduction.³² The Defence also states that it intends to use the databases from the reception centres and the Amnesty Commission to determine if they lied on their applications.³³ The CLRV posits that lifting relevant redactions will be highly identifying since said information will certainly be associated with their names in such databases, thus again defeating the purpose of the Decision on Redactions.

FOR THE FOREGOING REASONS, the CLRV respectfully requests the Chamber to dismiss the Defence Second Disclosure Request.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style and is underlined with a single horizontal line.

Paolina Massidda

Dated this 22nd day of May 2023

At The Hague (The Netherlands)

³² See the Second Disclosure Request, *supra* note 1, paras. 27, 31 and 34.

³³ *Ibid.*