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No.: ICC-02/04-01/15
Date: 18 September 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR* v. *DOMINIC ONGWEN*

PUBLIC

With 209 confidential annexes *EX PARTE* only available to the Registry and the Prosecutor

First Report on Applications to Participate in the Proceedings

Source: Registry

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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Mr. James Stewart

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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REGISTRY

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Counsel Support Section

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Detention Section

**Victims Participation and Reparations
Section**

Ms. Fiona McKay

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the decision of the Single Judge of Pre-Trial Chamber II notified on 4 March 2015 (the “Decision of 4 March 2015”), establishing principles on the victims’ application process in the pre-trial proceedings in the case *The Prosecutor v. Dominic Ongwen* (the “Case”);¹

NOTING the decision of the Single Judge of Pre-Trial Chamber II (the “Single Judge”) notified on 3 September 2015 (the “Decision of 3 September 2015”),² concerning the procedure for admission of victims to participate in the proceedings in the Case, ordering the Registry to, *inter alia*, assess and transmit to the Chamber, the Prosecutor and to the Defence,³ by 18 September 2015, all complete victim applications received and collected as of 3 September 2015 which have been assessed by the Registry against the factual parameters of the Case as set out in the warrant of arrest for Dominic Ongwen (the “Warrant of Arrest”),⁴ and, thereafter, on a rolling basis and by 7 December 2015, all complete applications received and falling within the scope of the present Case, including in light of the Prosecutor’s concise statement of the facts underlying the crimes with which the Prosecutor intends to charge Dominic Ongwen which will be filed by 21 September 2015;⁵

NOTING articles 68(1) and (3) of the Rome Statute (the “Statute”), rules 16, 85 and 89 of the Rules of Procedure and Evidence (the “Rules”), and regulation 86(5) of the Regulations of the Court (the “Regulations”);

CONSIDERING that to date, the Registry has received in the field 905 applications for participation in the proceedings, that it has not been able to go through all the

¹ICC-02/04-01/15-205.

²ICC-02/04-01/15-299.

³Redacted, as appropriate.

⁴ICC-02/04-01/05-10.

⁵ICC-02/04-01/15-299, para. 10.

steps necessary to process all of these applications by the time of the present filing,⁶ and that it has so far been able to assess and prepare for transmission 209 applications which it has assessed as complete and linked to the Case;

CONSIDERING that, pursuant to regulation 23*bis* (1) of the Regulations, the annexes to the present document, which contain unredacted versions of the 209 applications for participation, are notified with the status “Confidential *EX PARTE*, only available to the Registry and the Prosecutor” since they contain information which may lead to the identification of the applicants;

TRANSMITS the present report on 209 applications for participation in the proceedings (the “Report”) along with Confidential *EX PARTE* Annexes 1 to 209, which contain the applications, in compliance with the Decision of 3 September 2015.⁷

A. Background and Content of the Report

1. The Registry transmits to the Single Judge and the parties the first batch of 209 applications for participation in the proceedings (the “Applications”) together with the present Report, pursuant to Regulation 86(5) of the Regulations, which includes:
 - Activities carried out in the field to enable victims to apply for participation in the pre-trial proceedings (Part B);
 - Explanation of the assessment criteria applied by the Registry (Part C)
 - Redactions (Part D)
 - Preliminary information on the applicants’ views on legal representation (Part E)
 - Further transmissions of applications (part F)

⁶ Once applications are received in the field, the staff based in the Field Office do an initial screening, and then scan and transmit them to The Hague; in The Hague staff register the applications, enter data in the database and assess them, and prepare and review redacted versions.

⁷ ICC-02/04-01/15-299, para. 4.

2. The Registry will include statistics on applications received which are incomplete or outside the scope of the Case⁸ in the Report accompanying its last transmission of applications which will be filed by 7 December 2015.
3. Pursuant to the Decision of 4 March 2015,⁹ the Registry will group the applicants according to relevant criteria which will be defined following the Prosecution's notification on 21 September 2015 of the facts underlying the crimes with which it intends to charge Dominic Ongwen.¹⁰ This issue will therefore be addressed in the next transmission of applications to the Single Judge and the parties.

B. Activities carried out in the field to enable victims to apply for participation in the pre-trial proceedings

4. In the weeks following the Decision of 4 March 2015, the Victims Participation and Reparations Section of the Registry (the "VPRS") undertook preparatory activities in Northern Uganda, in accordance with the instructions in the Decision.¹¹ These activities aimed at gathering information on potential victims linked to the Case, conveying messages to key community leaders and representatives, identifying convenient, safe and secure locations for meetings with applicants, and identifying and selecting intermediaries who had the capacity and willingness to assist victims in the area affected by the Case.
5. In July 2015, the VPRS conducted a three-day training of selected individuals who would assist applicants to complete their applications.¹² Immediately afterwards, the intermediaries began assisting victims to complete the application forms, while VPRS staff remained on location to organize the interviews, provide support and assistance when needed, answer questions, and collect and review the applications before sending them to the VPRS in The Hague.

⁸ Pursuant to the Decision of 3 September 2015, ICC-02/04-01/15-299, para. 5.

⁹ ICC-02/04-01/15-205, para. 29.

¹⁰ For example, categories could be created in order to group victims according to the incidents charged.

¹¹ ICC-02/04-01/15-205, paras 23 and 24.

¹² This involved explaining the scope of the Case and providing training on the completeness of applications, ethical rules, confidentiality, and basic interviewing skills.

C. Explanation of the assessment criteria applied by the Registry

6. As instructed by the Single Judge in the Decision of 3 September 2015, the Registry transmits only applications which it assesses as complete and in which the applicant alleges to have personally suffered harm, whether direct or indirect, as a result of one or more crimes with which Dominic Ongwen is or will be charged by the Prosecutor.¹³ The approach followed in assessing the applications against the requirements of Rule 85 of the Rules is described below.

1- Completeness

7. When assessing the completeness of applications, the Registry examines whether sufficient proof of identity and kinship or guardianship is provided, as applicable,¹⁴ whether the personal details are consistent throughout the application, and whether the applicant has signed the application.
8. In assessing the sufficiency of proof of identity documents provided by the applicants, the Registry refers to the identification documents available in Uganda and accepted by Pre-Trial Chamber II in its previous composition.¹⁵ This also applies to proof of kinship or guardianship.
9. The Registry notes the high number of applicants who allege to have suffered harm as a result of crimes committed against a relative. Consistent with the jurisprudence of the Court, the Registry verifies that proof of identity of the direct victim is provided, as well as proof of kinship between the latter and the

¹³ ICC-02/04-01/15-299, para. 4.

¹⁴ The Registry notes that application a/05169/15 is submitted by a 17-year old applicant, applying on his own behalf. In light of the jurisprudence of this Court admitting such applications (see ICC-01/04-01/06-1556-Corr-Anx1, paras. 91-98) and the fact that the applicant is relatively close to adulthood at the moment of completing the application and will have reached the age of legal maturity at the start of the confirmation hearing, the Registry assessed this application as complete.

¹⁵ ICC-02/04-125, para. 6. The Registry was informed that a general country-wide National Identity Registration process took place in 2014 but that it has not yet been completed, and the distribution of national identity documents has not yet reached every region in Northern Uganda. In the absence of a national identity card, some applicants have provided documents such as voters' cards, which are not available to everyone, or letters provided by Chairpersons of Local Councils. The Registry notes that the latter form of identification remains the most available means of identification for Ugandans.

applicant.¹⁶ When harm is alleged as a result of a crime committed against a relative who is not part of the applicant's nuclear family or a person who is not a family member, the Registry makes a determination on a case-by-case basis in light of any information provided by the applicant explaining his or her relationship with the direct victim, and whether the relationship can be said to resemble that between close family members.¹⁷ In making this assessment, the Registry has taken into account the information provided in the application form, as well as information regarding family structure and social dynamics in the context of the Lukodi IDP camp prior to the attack, in particular the strong bonds that existed between non-immediate family members living in very close proximity and often sharing property and resources. If the Registry determines that such a relationship has not been sufficiently established, the applicant is assessed as not having suffered harm as a result of the crime allegedly committed against the direct victim.¹⁸

10. Where there appear to be inconsistencies within applications, the Registry has followed the approach that Chambers have adopted in other situations.¹⁹ On this basis, applications containing minor inconsistencies which appear to be the result of human error, or where the reasons for the inconsistency are clearly and satisfactorily explained by the applicant, have been assessed as complete. In those instances, the Registry has taken into account the nature of the discrepancy, together with the overall picture provided by the applicant, to conclude that the application appears to be complete.

2- Requirements relating to the alleged crime

¹⁶ Appeals Chamber, ICC-02/04-01/05-371, paras. 1 and 38, ICC-02/04-179 paras. 1 and 38; Trial Chamber II, ICC-01/04-01/07-1491-Red-tENG, paras. 37 and 38; Trial Chamber III, ICC-01/05-01/08-1017, para.44.

¹⁷ See Trial Chamber IV, ICC-02/05-03/09-528, para. 32.

¹⁸ The Registry notes that in most cases, the applicant would also have suffered harm as a result of another crime included in the Warrant of Arrest that would qualify them as a victim within the meaning of Rule 85(a) of the Rules.

¹⁹ Pre-Trial Chamber II, ICC-01/04-02/06-211, para. 23. See also Trial Chamber II, ICC-01/04-01/07-1491-Red-tENG, para.32-33, Pre-Trial Chamber I, ICC-01/04-01/10-351, paras.27-28, and Trial Chamber I ICC-02/11-01/11-800, para. 32.

11. In accordance with the Decision of 3 September 2015, at this stage of the proceedings, the scope of the Case is delineated by the alleged crimes as defined in the Warrant of Arrest.²⁰ In considering whether the acts described by the applicant appear to constitute crimes within the scope of the present Case, three issues were taken into account: a) the type of crime(s), b) the geographical location and the date of the commission of the alleged crime(s), and c) the harm suffered. In accordance with the jurisprudence of the Court, the Registry has considered that the identification of the perpetrator(s) is not amongst the information necessary for an application for participation to be considered complete.²¹

a) Type of crime(s)

12. In conducting its assessment, the Registry has considered whether the acts described in the application appear to constitute any of the crimes laid out in the Warrant of Arrest. The Registry emphasizes that in so doing, it looks solely at the alleged acts, and does not make an assessment as to the presence of the contextual elements of the crime such as would be necessary to determine whether the acts constitute a crime against humanity under the article 7 chapeau or a war crime under the article 8 chapeau of the Statute.
13. Regarding the crime of intentionally directing attacks against a civilian population, in light of article 8(2)(e)(i) of the Statute, the Registry has considered that this crime is demonstrated where the events described by the applicant fall within the context of an attack against a civilian population, such as destruction of property or attacks against the person.²²
14. Regarding the crime of cruel treatment under article 8(2)(c)(i) of the Statute, and in compliance with the Single Judge's instructions,²³ the Registry has considered

²⁰ ICC-02/04-01/15-299, para. 10.

²¹ ICC-02/04-01/15-205, para. 28. See also Pre-Trial Chamber II, ICC-01/09-02/11-267, paras 32-34; Pre-Trial Chamber I, ICC-02/11-01/11-384-Corr, para. 37.

²² Warrant of Arrest, ICC-02/04-01/05-10, para. 15.

²³ Email from Legal Officer of Pre-Trial Chamber II to VPRS Associate legal officer, dated 30 June 2015.

that acts described in an application constitute this crime when applicants allege to have been abducted (or to have suffered harm as a result of a close relative having been abducted) during the attack, irrespective of whether they also allege having (or a close relative having) suffered from the remaining acts included in Count Thirty-One of the Warrant of Arrest.

15. Lastly, in reference to counts Twenty-Seven to Thirty-One of the Warrant of Arrest, and in compliance with the Single Judge's instructions,²⁴ the Registry has considered that being a civilian present in the camp was sufficient and there was no need to establish residence in the Lukodi IDP camp at the moment of the attack.

b) Geographical location and date which delimit the scope of the Case

16. In its assessment the Registry has considered whether it appears from the application that the alleged crime has occurred within the specific location referred to in the Warrant of Arrest, the Lukodi IDP camp, on or around 20 May 2004.²⁵ In some instances the Registry has considered that an applicant had sufficiently demonstrated that the events took place within the geographical and temporal scope of the Case even if he or she does not know or does not explicitly state the specific date of the attack, when the applicant provided relevant indications of the context of the attack or described elements that indicate that the events occurred within the temporal scope of the Case. Similarly, in some instances, the Registry has assessed as complete and linked to the Case applications where the date of the alleged events, on the face of it, does not seem to be within the temporal scope of the Case²⁶ but where, in light of the overall description of the facts, it could reasonably be concluded that the applicant or

²⁴ *Ibid.*

²⁵ The Registry notes that it was very often raised by the victims applicants that the date of the attack on Lukodi as indicated in the Warrant of Arrest (20 May 2004) is wrong, and that according to them, the attack occurred on the evening of 19 May 2004.

²⁶ Applications: a/05003/15; a/05011/15; a/05017/15; a/05025/15; a/05029/15; a/05043/15; a/05068/15; a/05078/15.

the person assisting the applicant in filling in the form has either made a mistake as to the date of the event or simply could not recall the precise date.²⁷

c) Requirements related to the harm suffered

17. Only personal harm, direct or indirect, which appears to be the result of one or more of the crimes contained in the charges, has been considered.²⁸ In line with the jurisprudence of the Court, the Registry has categorized the type of harm as material, physical or psychological.²⁹ In limited cases the Registry has categorised the alleged harm as a “substantial impairment of a fundamental right”,³⁰ where alleged crimes appear to have interfered with a child’s rights to education and family life, with the fundamental rights to liberty and security of the person, or with the associated right of persons deprived of their liberty to be treated humanely.

D. Redactions

18. Paragraph 6 of the Decision of 3 September 2015 provides that should an applicant express security concerns in case his identity and his involvement with the Court were to be known to the Defence, his or her application should be transmitted to the Defence in a redacted form, expunging the person’s identifying information. All applicants were asked when completing an application to indicate whether they had reason to be concerned about their security or the security of their family as a result of their interaction with the Court, and whether they had reason to be concerned about the disclosure of their identity to the parties. Some, but not all, applicants whose applications are included in this transmission have indicated that they do have such concerns. The Registry notes that at the time of submitting an application, victims do not

²⁷ Based on information currently available to the Registry, there has been no other attack against the Lukodi IDP camp of the scale of the attack described in the Warrant of Arrest.

²⁸ ICC-02/04-01/15-299, para.4.

²⁹ ICC-01/04-01/06-1432, para. 32.

³⁰ In line with the approach of Trial Chamber I in the case of *The Prosecutor v Thomas Lubanga Dyilo* ICC-01/04-01/06-1119, para. 92.

yet have experience with judicial proceedings, and have not yet been advised by a lawyer. In the Registry's experience, victims may not be aware of the implications of their identities being disclosed to the parties to the proceedings, and may not be in a position to accurately assess threats to their own security. The non-disclosure of the identity of the applicants appears to the Registry to be, at the application stage, the only available protection measure.

19. For the above-mentioned reasons, and after consultation with the relevant sections of the Registry, the Registry recommends that at this early stage a cautious approach be taken, namely that the identities of the victims not be disclosed to the Defence at the application stage, and that the matter be considered at a later stage in relation to those accepted as victim participants, after a legal representative has been appointed and has had the opportunity to advise the victims and take instructions on this matter. Unless the Single Judge decides otherwise, therefore, redacted versions of all applications will be transmitted to the Defence.
20. All applications are only redacted to the extent considered strictly necessary to avoid disclosing the applicant's identity.

E. Preliminary information on the Applicants' views on legal representation

21. To date, the Registry has not received information that any of the victims have already chosen a legal representative. In view of Rule 90 of the Rules, and the role the Registry may play in assisting victims to choose a legal representative or choosing a common legal representative if the Chamber so orders, all applicants were asked to indicate their preferences as regards legal representation.³¹ The answers provided have been compiled in order to provide preliminary information to the Single Judge regarding whether there appears to be any

³¹ Applicants are asked whether they agree that one lawyer represents all victims participating in the Case, and what qualities they want in a legal representative representing them in the proceedings before the Court.

conflict of interest between groups of victims, composition of a legal team, and any preferences expressed by victims as regards their representation.

22. Overall, applicants generally agree that one legal representative could represent all the victims participating in the Case.³² The Registry has so far not identified any potential conflict of interest between applicants that would call for more than one group of victims for the purpose of common legal representation.
23. Concerning the criteria for the selection of a common legal representative, a high number of applicants (93) mentioned that they would like to be represented by someone from the Acholi region or who speaks Acholi, or someone familiar with Lukodi, and 18 applicants specifically mentioned that they would like to be represented by someone who knows or understands what happened to them and/or who understands their current situation. In a similar vein, 32 applicants specifically mentioned that the legal representative should have the willingness and/or capacity to communicate with victims, highlighting that proximity (whether physical and or cultural) between the legal representative and his or her clients is seen as important. Many applicants emphasised the importance of work ethic,³³ competence/experience/qualifications,³⁴ and others mentioned human qualities such as kindness, loyalty, humility and a sense of caring for the victims.
24. The Registry notes that the applications received to date all relate to the same incident. Should the notification of the intended charges to be filed by the Prosecutor on 21 September 2015 extend the scope of the current Case, this could lead to participation by victims from other communities, who may have different interests and views on their legal representation. In the interests of ensuring an efficient and meaningful participation of victims during the Confirmation of Charges Hearing, the Registry would nevertheless recommend the appointment

³² Of the few who answered negatively (9), some mentioned that having one legal representative may not be sufficient to represent all the participating victims and ensure good communication with them.

³³ 123 out of 209 applicants describe the qualities sought in a legal representative using words such as “honest”, “hard working”, “not corrupted”, “reliable”, “trustworthy”, or who “tells the truth”.


³⁴ 57 applicants.

of a common legal representative as early as possible, and to this end, would like to indicate its availability to implement any order the Single Judge may wish to make under rule 90(2) or 90(3) of the Rules.³⁵

F. Further transmissions of applications

25. The Registry will continue to assess all applications received or to be received and, unless instructed otherwise by the Single Judge, will transmit all complete applications on a rolling basis, and at least every 4 weeks from the notification of the current transmission, until the final deadline for transmission of 7 December 2015.

RESPECTFULLY SUBMITTED,



 Marc Dubuisson, Director, Division of Judicial Services
per delegation of
 Herman von Hebel, Registrar

Dated this 18 September 2015

At The Hague, The Netherlands

³⁵ If so ordered, the Registry would be able to conduct a transparent selection process aimed at identifying common legal representative(s) for the victims, or assistants to common legal representative(s), based on the criteria mentioned by the victims and any instructions of the Single Judge. The Registry also notes that individual(s) from the Office of Public Counsel for Victims could be designated to represent victims in the proceedings, whether as principal counsel or as a member of the team of legal representatives.