

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/04-01/15  
Date: 3 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**

**Decision concerning the procedure for admission of victims to participate  
in the proceedings in the present case**

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

**The Office of the Prosecutor**

Fatou Bensouda

James Stewart

Benjamin Gumpert

**Counsel for the Defence**

Krispus Ayena Odongo

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Fiona McKay

**Other**

**Judge Cuno Tarfusser**, Single Judge exercising the functions of the Chamber, issues this decision concerning the procedure for admission of victims to participate in the proceedings in the present case. This decision is prompted by the procedural developments in the present case, certain requests for clarification and/or adjustments addressed to the Single Judge by the Victims Participation and Reparation Section, and by the need for harmonization of diverging practices in relation to admission of victims for participation in the proceedings across different cases and different stages of the proceedings.

1. Rule 89 of the Rules of Procedure and Evidence (“Rules”) sets out the basis requirements for the admission of victims to participate in the proceedings. In particular, according to this provision:

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

2. The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.

3. An application referred to in this rule may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled.

4. Where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision.

2. The Single Judge considers that the core elements of the system designed by rule 89 are, in essence, the following: (i) victims who wish to participate in the proceedings must make written application to the Registrar; (ii) the application is transmitted to the Chamber; (iii) a copy of the application is provided to the Prosecutor and the Defence, who are entitled to reply within a

time limit to be set by the Chamber; and (iv) the Chamber, *proprio motu* or upon request of the Prosecutor or the Defence, may reject the application *inter alia* if the person does not qualify as a victim.

3. In the present proceedings against Dominic Ongwen victims will be admitted to participate in accordance with the following procedure.

4. The Registry shall assess all victim applications for participation collected or otherwise received. The Registry must transmit to the Chamber all applications which are complete (including with respect to the necessary identity documents, as applicable) 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. In the present case, prior to the charges being presented by the Prosecutor 30 days before the commencement of the confirmation of charges hearing, the Registry shall assess the applicants' claims against the factual parameters of the case as set out in the warrant of arrest against Dominic Ongwen as well as against the factual parameters, identified in the concise statement of the facts underlying the crimes with which the Prosecutor intends to charge Dominic Ongwen, which the Prosecutor will file in the record of the case by 21 September 2015. Such applications by applicants who, in the Registry's assessment, qualify as victims shall be provided to the Chamber as annexes to the transmission report provided for by regulation 86(5) of the Regulations of the Court. It is not required that this transmission report includes an applicant-by-applicant assessment.

5. The applications that, in the view of the Registry, are incomplete and/or fall outside the scope of the present case against Dominic Ongwen are not to be transmitted to the Chamber. The Registry shall inform those applicants accordingly. Statistics as to the numbers of these applications which are not

transmitted to the Chamber shall be included in the Registry's report under regulation 86(5) of the Regulations.

6. In accordance with rule 89(2) of the Rules, all complete applications falling within the scope of the present case against Dominic Ongwen which are transmitted to the Chamber shall also be provided, at the same time, to the Prosecutor and the Defence. Consistent with article 68(1) of the Statute, which is also explicitly referred to in rule 89(2) of the Rules, if an applicant has expressed security concerns in case his identity and involvement with the Court were to be known to the Defence, the Registry shall transmit the application to the Defence in redacted form, expunging the person's identifying information. Considering that, in the present case, a simplified application form of one page only has been already adopted (ICC-02/04-01/15-205-Anx) and that, in line with decision ICC-02/04-01/15-205, the Registry has been reviewing those applications already in its possession with a view to preparing the necessary redactions *vis-à-vis* the Defence, the Single Judge considers that any process of redactions to the applications can be carried out expeditiously.

7. The Prosecutor and the Defence, in accordance with rule 89(2) of the Rules, are entitled to provide observations on the applications transmitted to them and to the Chamber, and may, as provided for by rule 89(4), request that one or more individual applications be rejected. The Single Judge sets the time limit for any specific objection from the parties to the admission as victims of any individual applicant at 14 days from notification of the relevant application(s). In case any objection is raised by either party, the Single Judge will assess the contested application(s) individually. Conversely, those victims whose participation in the proceedings is not objected by either party within the relevant timeframe are admitted to participate in the proceedings.

8. Indeed, the Rules do not require that an explicit, positive determination on each application be made by the Chamber – which may, rather, “reject” applications – and, in the Single Judge’s view, the positive assessment conducted by the Registry and the absence of objections from either party provide sufficient guarantees. Also, the Chamber retains the authority to reject applications on its own motion. Furthermore, the Single Judge considers that this system is also consistent with the fact that applications to participate in the proceedings are only assessed on their face, *i.e.* only on the basis of the claims of the individual applicant, and are intended as mere procedural mechanisms to participate in the proceedings.

9. In case the Registry, for any reason, is unable to determine whether a particular applicant or group(s) of applicants qualify as victims in the present case, the Registry shall consult the Single Judge in order to obtain guidance as to whether the concerned application(s) should be transmitted or not to the Chamber and the parties. In case any such application is eventually transmitted, the parties, as for any other applications transmitted by the Registry, will be entitled to raise any objection, in the absence of which the concerned applicant is admitted to participate in the proceedings.

10. In terms of the relevant timeframe, the Single Judge instructs the Registry to transmit, by 18 September 2015, the complete applications falling within the scope of the present case that have been received or collected as of the date of notification of the present decision and that, therefore, have been assessed against the factual parameters of the case as set out in the warrant of arrest against Dominic Ongwen. Thereafter, the Registry shall transmit, on a rolling basis and by 7 December 2015, all complete applications falling within the scope of the present case, including in light of the factual parameters of the charges intended to be brought against Dominic Ongwen that the Prosecutor will communicate by way of notification by 21 September 2015.

The Single Judge considers that this time frame provides sufficient time for the Registry to assess the applications and also permit that victims be admitted to participate in the proceedings sufficiently in advance of the commencement of the hearing on the confirmation of charges scheduled at 21 January 2016.

**FOR THESE REASONS, THE SINGLE JUDGE DECIDES THAT**

(i) the Registry shall assess all victim applications for participation received or collected in the present case, and transmit to the Chamber and the Prosecutor, and (redacted as appropriate) to the Defence, all complete applications falling within the scope of the case against Dominic Ongwen; in case of doubt, the Registry shall consult with the Single Judge and request guidance;

(ii) the Prosecutor and the Defence shall have 14 days upon notification of victim applications to raise any specific objection to individual applications;

(iii) all those victims whose applications for participation have not been objected by either party, or otherwise rejected by the Single Judge, are admitted to participate in the proceedings upon expiration of the time limit for the parties' objections;

(iv) any contested application to which objections are presented by either party within the relevant time limit shall be decided upon individually by the Single Judge;

(v) the first batch of victim applications, comprising, at least, those applications collected or received by the date of notification of the present decision, shall be transmitted by the Registry by 18 September 2015; and

(vi) the final batch of victim applications shall be transmitted by the Registry by 7 December 2015.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

**Judge Cuno Tarfusser**  
**Single Judge**

Dated this 3 September 2015

At The Hague, The Netherlands