



Original: **English**

No.: ICC-02/04-01/15
Date: 26 October 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
336 confidential annexes *EX PARTE* only available to the Registry and the
Prosecutor
336 confidential redacted annexes
And one confidential annex
Second 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

Ms. Fatou Bensouda, Prosecutor
Mr. James Stewart
Mr. Benjamin Gumpert

Counsel for the Defence

Mr. Krispus Ayena Odongo

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

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 ordering the Registry to assess and transmit to the Chamber, the Prosecutor and the Defence,³ by 18 September 2015, all complete victim applications received and collected as of 3 September 2015 which have been assessed 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 which the Prosecutor intends to charge Dominic Ongwen;⁵

NOTING the Registry’s First Report on Applications for Victims’ Participation in the Proceedings (the “Registry’s First Report”)⁶ and the Registry’s First Transmission to the Single Judge and the Office of the Prosecutor,⁷ and to the Defence,⁸ of 209 Applications for Participation in the Proceedings, notified on 18 September 2015;

¹ ICC-02/04-01/15-205.

² ICC-02/04-01/15-299.

³ Redacted, as appropriate.

⁴ ICC-02/04-01/05-10.

⁵ ICC-02/04-01/15-299, para. 10.

⁶ ICC-02/04-01/15-303.

⁷ ICC-02/04-01/15-303.

⁸ ICC-02/04-01/15-304.

NOTING the Prosecutor's Notice of intended charges against Dominic Ongwen, notified on 18 September 2015 (the "Notice");⁹

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 regulations 23*bis* and 86(5) of the Regulations of the Court (the "Regulations");

CONSIDERING that to date the Registry has received in the field approximately 1,640 applications for participation in the proceedings, of which 209 have been transmitted to the Single Judge and the parties with the First Transmission, and 336, which have been assessed as complete and linked to the Case, are being transmitted with the present transmission (the "Applications");

CONSIDERING that, pursuant to regulation 23*bis*(1) of the Regulations, the annexes to the present document which include the Registry's assessment of the Applications against the requirements of rule 85 of the Rules,¹⁰ as well as both redacted and unredacted versions of these Applications, are respectively notified with the status "Confidential" and "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 in accordance with the Decision of 3 September 2015 the present report on 336 applications for participation in the proceedings (the "Report") along with:

- Confidential *EX PARTE* Annexes 1 to 336 which contain unredacted versions of the Applications,
- Confidential Annexes 1 to 336 which contain redacted versions of the

⁹ A Public redacted version was notified on 25 September 2015, ICC-02/04-01/15-305-Red2.

¹⁰ In compliance with the Single Judge's instructions provided to the Victims Participation and Reparations Section on 19 October 2015.

Applications,¹¹

- Confidential Annex 337 which contains the Registry's assessment of the Applications against the requirements of rule 85 of the Rules.

Introduction

1. The Registry transmits to the Single Judge and the parties 336 Applications together with the present Report, pursuant to regulation 86(5) of the Regulations. Following the issuance of the Prosecutor's Notice on 18 September 2015, the Registry organized the applications into various groups, according to appropriate criteria, in accordance with the Decision of 4 March 2015.¹² The Applications filed with the present transmission fall within the group "Attack on the Lukodi IDP camp".
2. In compliance with the Decision of 3 September 2015, the Registry transmits only those 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 charged,¹³ as laid out in the Warrant of Arrest and the Prosecutor's Notice. In assessing the Applications against the requirements of rule 85 of the Rules, the Registry has continued to follow the approach described in the Registry's First Report.¹⁴ In addition, as regards the crime of persecution, in considering whether this alleged crime has been demonstrated by the applicant, the Registry has taken into account all the information provided by the applicant, including whether the applicant is identified as being affiliated with or supporting the Ugandan government, even

¹¹ ICC-02/04-01/15-299, para. 4. As explained in the Registry's First Report, applications are transmitted to the Defence in redacted form. ICC-02/04-01/15-303, para. 18-20.

¹² ICC-02/04-01/15-205, para. 29. Based on the Prosecutor's Notice, the Registry has created 4 groups according to the main incidents laid out in the Notice: Pajule IDP camp, Odek IDP camp, Lukodi IDP camp, Abok IDP camp; and 3 additional groups corresponding to categories of alleged crimes as separately outlined in the Notice: Persecution, Sexual and gender based crimes, and Conscripted and use of child soldier.

¹³ ICC-02/04-01/15-299, para. 4.

¹⁴ ICC-02/04-01/15-303, paras. 6 to 17.

where there is no explicit allegation of political motivation for the crime(s) alleged.¹⁵

Update on the Registry's Activities

3. A high number of individuals have indicated their wish to apply for participation in the present proceedings. Registry staff in the field continue to identify potential victims and arrange for them to be assisted to make their applications. Following the Prosecutor's Notice, the Registry began reaching out to potential victims of the alleged crimes committed in the new localities which are the subject of the charges as set out in the Notice.¹⁶ Registry staff explained that, due to time constraints and the potentially high volume of applications, it may not be possible for applications by all potential victims in those areas to be submitted by applicants and dealt with by the Court in time to enable them to participate at this stage of the proceedings.¹⁷
4. The Registry is also in the process of reviewing the applications it has received since the opening of the Situation in Uganda with a view to identifying and transmitting to the Single Judge and the parties any applications which would fall within the scope of the Case as delineated by the Notice.

Information on the Applicants' Views on Legal Representation

5. Since the First Report, the Registry has received powers of attorney relating to applicants in the Case¹⁸ in favour of two lawyers currently registered on the ICC List of Counsel. The Registry notes that many of these applicants met by the

¹⁵ ICC-02/04-01/15-305-Red2, para. 27.

¹⁶ In accordance with the Decision of 4 March 2015, this includes, firstly, outreach activities to relevant affected communities, followed by the identification of reliable individuals to assist victims to complete the form as well as safe places to organise meetings with potential victims; ICC-02/04-01/15-205, paras. 10-13 and 24.

¹⁷ In accordance with the Decision of 4 March 2015, the last batch of applications should be transmitted to the Single Judge and the parties no later than 45 days before the start of the confirmation hearing, which is scheduled for 21 January 2016; ICC-02/04-01/15-205, para. 25.

¹⁸ At least 39 applications have already been transmitted to the Chamber in the previous transmission of applications, and 50 in the current transmission. The Registry is currently reviewing a second batch of powers of attorney.

Registry's staff in the field have expressed concerns about their legal representation and their wish to have the counsel they have chosen to represent them before the Court appointed as soon as possible in order to have their views and concerns conveyed in the proceedings.

6. The Registry has continued to compile answers provided by applicants regarding their preferences with regard to legal representation.¹⁹ Overall, the answers provided in the applications transmitted with this Report confirm the trends described in the Registry's First Report. Most applicants agree that one legal representative (or a team of lawyers) could represent all the victims participating in the Case. Although the Prosecutor intends to include charges against Dominic Ongwen related to the recruitment and use of child soldiers, so far the Registry has not identified a need for more than one group of victims for the purpose of common legal representation.²⁰ The Registry will keep this assessment under review as it continues to receive applications, in particular from applicants from other communities who may have different interests and views on their legal representation.
7. Almost half of the applicants indicated that they would like to be represented by someone from the Acholi region or who speaks Acholi, or someone familiar with Lukodi;²¹ and some have mentioned they would like someone who knows or understands what has happened to them and/or who understands their current situation.²² Applicants have expressed a wish for proximity and/or accessibility

¹⁹ The Registry's consultation of applicants on their preference regarding legal representation is further detailed in the Registry's First Report, ICC-02/04-01/15-303, paras. 21-24.

²⁰ The Registry notes that separate legal representation was organised for former child soldiers participating in the proceedings related to the cases *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (ICC-01/04-01/07-1328) and *The Prosecutor v. Bosco Ntaganda* (ICC-01/04-02/06-160).

²¹ 155 applicants.

²² 34 applicants.

to their lawyer²³ as well as qualities such as ethical integrity,²⁴ competence²⁵ and other human qualities (such as kindness and a sense of caring).²⁶

Further transmissions of applications

8. The Registry will continue to assess all applications received or to be received and transmit them on a rolling basis 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 26 October 2015

At The Hague, the Netherlands

²³ 54 applicants.

²⁴ This has been mentioned by 162 applicants.

²⁵ 85 applicants.

²⁶ 61 applicants.