

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **11 November 2015**

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

Public

Defence's Observations on 336 Victims' Applications for Participation

Source: Defence for Dominic Ongwen

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Fatou Bensouda, Prosecutor
Benjamin Gumpert, QC

Counsel for the Defence
Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence
Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section **Other**

I. INTRODUCTION

1. The Defence for Mr. Ongwen ('Defence') hereby submits its objections to 14 victims' applications for participation in accordance with Rule 89(1) of the Rules of Procedure and Evidence ("Rules").

II. PROCEDURAL HISTORY

2. On 3 September 2015, the Single Judge instructed the Registry to transmit applications of alleged victims. The Registry transmitted 209 applications on 18 September 2015,¹ to which both the Defence and the Prosecution replied on 6 and 2 October, respectively.
3. On 26 October 2015, the Registry transmitted its "Second Report on Applications to Participate in the Proceedings" to the Chamber and the Parties ("Second Report").² The confidential redacted annexes containing the applications were transmitted to the Defence on 27 October 2015.

III. SUBMISSIONS

4. The Defence challenges 14 applications on the basis that the applicants fail to demonstrate that they have suffered personal harm as a result of at least one crime *allegedly* committed by Mr. Ongwen.
5. In particular, the Defence objects to the following applications on the basis that the applications are made by individuals who were under the age of five years old at the time of the alleged harm: a/05188/15; a/05199/15; a/05221/15; a/05223/15;

¹ ICC-02/04-01/15-303.

² ICC-02/04-01-15-327.

a/05228/15; a/05256/15; a/05258/15; a/05259/15; a/05262/15; a/05355/1³; a/05360/15⁴; a/05413/15; and a/05428/15⁵. It is noted that the basis of the application is hearsay of alleged harm which was told to the applicant by a family member, which in most cases meant the young applicant's mother.

6. The Defence further objects to the inclusion of applicant a/05156/15, noting that the application was filed by a person acting on behalf of an alleged victim and that there is no indication of the relationship between the victim and applicant. The application should therefore be *prima facie* rejected on this basis.
7. Finally, the Defence has not challenged whether the *prima facie* requirements to be included as a victim-participant have been met in relation to the remaining witnesses. However, the Defence reserves the right to challenge these applications should new information arise. The Defence has also not assessed the particulars set forth in the table transmitted in the Second Report.

IV. CONCLUSION

8. The Defence submits that 14 applicants do not meet the requirements for admission as victim-participants. The Defence therefore objects to their inclusion.

³ It is noted that this applicant refers to the harm of sadness of watching her mother take medicine. This is however not demonstrative of a *personal harm* suffered as a result of one of the alleged crimes.

⁴ This applicant alleges recurrent malaria as a result. The Defence notes that this cannot reasonably be attributable to the alleged crimes.

⁵ This applicant alleges recurrent malaria as a result. The Defence notes that this cannot reasonably be attributable to the alleged crimes.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 11th day of November, 2015

At Den Haag, Netherlands