



Original: English

No.: ICC-02/04-01/15
Date: 24 December 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

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

Public

**Second decision on contested victims' applications for participation and
legal representation of victims**

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

The Office of the Prosecutor

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James Stewart
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Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Joseph Akwenyu Manoba and Francisco
Cox
Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Cuno Tarfusser, Single Judge exercising the functions of the Chamber in the present case, issues this second decision on contested victims' applications for participation and legal representation of victims and their procedural rights. For the present decision, the Single Judge has considered articles 57(3)(c), 67(1), 68(1) and (3) of the Rome Statute ("Statute"), rules 85, 86, 89, 90 and 91 of the Rules of Procedure and Evidence ("Rules"), regulations 80 and 81 of the Regulations of the Court and regulations 113 and 123 of the Regulations of the Registry.

1. On 18 November 2015, the Registry transmitted to the Chamber, the Prosecutor and, on 19 November 2015 in redacted form, to the Defence 663 applications to participate in the proceedings, together with a report on the matter (ICC-02/04-01/15-344 and annexes). On request of the parties, the time limit for their observations was set at 18 December 2015 (ICC-02/04-01/15-347). On 15 December 2015, the Prosecutor informed the Chamber that in her view all the 663 applicants meet the criteria for admission as participants in the case (ICC-02/04-01/15-370). On 18 December 2015, the Defence raised objections in respect of three applicants (ICC-02/04-01/15-372).

2. On 27 November 2015, the Single Judge issued a decision, *inter alia*, appointing Paolina Massidda from the Office of Public Counsel for victims (OPCV) as common legal representative of the participating victims who did not choose a legal representative and specifying the procedural rights of victims admitted in the present proceedings (ICC-02/04-01/15-350).

3. On 8 December 2015, the Registry transmitted to the Chamber, the Prosecutor and, in redacted form, to the Defence 840 applications to participate in the proceedings, together with a report on the matter (ICC-02/04/01-15-365 and annexes). On 23 December 2015, the Prosecutor

challenged 22 applications (ICC-02/04-01/15-379) and the Defence challenged three others (ICC-05/04-01/15-380).

4. On 21 December 2015 and 23 December 2015, the Registry notified to the Chamber the acknowledgement of powers of attorney of victims from the transmissions of 18 and 19 November 2015, and 8 December 2015, respectively (ICC-02/04-01/15-377 and annexes, ICC-02/04-01/15-382 and annexes).

5. In line with the applicable procedure (see ICC-02/04-01/15-299), the following 660 applicants whose applications were transmitted by the Registry on 18 and 19 November 2015 and were not contested by the parties are automatically admitted as of 18 December: a/0115/07, a/3019/10, a/3074/10, a/3077/10, a/3079/10, a/3080/10, a/3082/10, a/3083/10, a/3093/10, a/30007/12, a/30008/12, a/30009/12, a/30010/12, a/30020/12, a/30021/12, a/30000/13, a/30001/13, a/30002/13, a/30003/13, a/30004/13, a/30005/13, a/30006/13, a/30007/13, a/40001/14, a/40002/14, a/40003/14, a/40005/14, a/40007/14, a/40008/14, a/40009/14, a/40012/14, a/40013/14, a/40014/14, a/40016/14, a/40018/14, a/40021/14, a/40023/14, a/40024/14, a/40026/14, a/40027/14, a/40028/14, a/40029/14, a/05134/15, a/05164/15, a/05165/15, a/05167/15, a/05203/15, a/05211/15, a/05217/15, a/05219/15, a/05229/15, a/05230/15, a/05231/15, a/05235/15, a/05271/15, a/05295/15, a/05305/15, a/05310/15, a/05316/15, a/05323/15, a/05324/15, a/05332/15, a/05334/15, a/05336/15, a/05339/15, a/05346/15, a/05347/15, a/05353/15, a/05361/15, a/05362/15, a/05370/15, a/05372/15, a/05373/15, a/05375/15, a/05390/15, a/05395/15, a/05396/15, a/05398/15, a/05399/15, a/05403/15, a/05407/15, a/05411/15, a/05415/15, a/05416/15, a/05418/15, a/05420/15, a/05421/15, a/05425/15, a/05426/15, a/05427/15, a/05433/15, a/05437/15, a/05438/15, a/05439/15, a/05443/15, a/05445/15, a/05446/15, a/05448/15, a/05449/15, a/05452/15, a/05456/15, a/05463/15, a/05468/15, a/05469/15, a/05470/15, a/05472/15,

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a/06262/15, a/06303/15.

6. The following 815 applicants whose applications were transmitted on 8 November 2015 and were not contested by the parties are automatically admitted as of 23 December 2015: a/0326/07, a/0375/08, a/2923/10, a/2926/10,
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a/07092/15, a/07093/15, a/07098/15, a/07102/15, a/07103/15, a/07104/15, a/07105/15.

7. The Single Judge will consider in the present decision the 28 applications which have been contested by the parties (section 1) and the legal representation of victims admitted since the decision of 27 November 2015 (section 2) as well as one other related matter (section 3). The Single Judge clarifies that all participatory rights granted to victims in the decision of 27 November 2015 automatically extend to the victims subsequently admitted.

1) Applications contested by the parties

8. Rule 85(a) of the Rules defines “victims” as “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”. For the purpose of participation in the present proceedings, victims are persons who allege to have personally suffered harm, whether direct or indirect, as a result of one or more crimes with which Dominic Ongwen is charged by the Prosecutor.

9. The Defence challenges the application of applicant a/05935/15 on the basis that “the applicant identifies harm caused by the ‘government soldiers’ who allegedly hit the applicant ‘on the back with a gun’”, arguing that “the victim cannot therefore be considered a ‘victim’ of any of the crimes for which Mr. Ongwen is suspected of” (ICC-02/04-01/15-372, para. 4). However, it is apparent from the application that this was a separate event and other allegations are also made which indeed bring the applicant within the scope of the case. In particular, it transpires from the application that the victim’s family was resident at Lukodi IDP camp at the moment of the alleged attack on which the charges against Dominic Ongwen are also based, that he was unable to be reunited with his family during the attack because “the fighting was so tense” and that his livelihood was destroyed as a result of the attack.

The applicant's allegations correspond to the Prosecutor's charges of the war crimes of attacks against the civilian population as such and pillaging or destruction of property. It is therefore appropriate to admit him to participate in the proceedings.

10. The Defence also challenges the applications of applicants a/05787/15 and a/05788/15 on the basis that "they are untruthful" as the applicants state both that they were born in 2003 and 2001, respectfully, and that they were no longer able to attend school because their uncle who was paying school fees was killed (para. 5). Indeed, the Single Judge finds that there is an inconsistency in the allegations of both applicants who appear to simultaneously claim: (i) that they were, respectively, one and three years old at the time of the alleged victimisation during the attack on Lukodi IDP camp; (ii) that their uncle was killed in the attack; and (iii) that the uncle who had been killed was paying their school fees. Nevertheless, it is unnecessary to attempt to resolve this inconsistency for the purpose of admission of the applicants to participate in the proceedings, considering that the applicants otherwise allege direct harm during the attack on Lukodi IDP camp which falls within the charges. Indeed, both applicants were present at the camp during the attack. One applicant was abducted before being thrown into the bush and both applicants had their home destroyed. Accordingly, they can be admitted as participants in the proceedings.

11. The Prosecutor challenges applicant a/07028/15 on the basis that while she describes sexual and gender based crimes committed against her, her "application does not include any mention or link to Dominic Ongwen and/or Sinia brigade" (ICC-02/04-01/15-379, para. 12). The Single Judge notes that Dominic Ongwen is charged with abducting women and girls in northern Uganda pursuant to a common plan involving himself, Joseph Kony and the Sinia brigade leadership, and depriving them of their liberty and distributing

them to LRA fighters in Sinia brigade to become forced wives (ICC-02/04-01/15-375-Anx-Red, paras 129-130). While the applicant does allege victimisation by members of the LRA, her claim does not fall within the factual parameters described just above. For this reason, the application must be rejected.

12. The Prosecutor also challenges applicants a/06735/15, a/06995/15, a/07019/15, a/07020/15, a/07022/15, a/07023/15, a/07024/15, a/07025/15, a/07051/15, a/07058/15, a/07059/15, a/07063/15, a/07068/15, a/07069/15, a/07080/15, a/07088/15, a/07097/15, a/07099/15, which were transmitted by the Registry as victims of the crime of persecution. The Prosecutor explains that while the notice of intended charges of 18 September 2015 was wider in the factual scope of the intended charge of persecution (see ICC-02/04-01/15-305-Conf and –Red), the charge of persecution in the document containing the charges is limited to persecution in relation to attacks on Pajule, Odek, Lukodi and Abok IDP camps (ICC-02/04-01/15-379, paras 13-14). Noting indeed the charges as presented by the prosecutor on 21 December 2015, the Single Judge considers that the abovementioned applicants' allegations do not, or no longer, fall within the scope of the case. The applicants can therefore not be admitted.

13. Further, the Prosecutor challenges applicants a/07100/15 and a/07101/15, submitting that they do not provide information that could link their abduction to Dominic Ongwen and/or Sinia brigade (ICC-02/04-01/15-379, paras 15). Similarly, applicant a/07050/15 is challenged because she claims to have been raped by a "soldier" without providing further information that could assist in linking the allegations of the victim to the charges. Upon review, the Single Judge shares the assessment of the Prosecutor. The applications cannot be accepted.

14. The Defence contests applicant a/06408/15 on the grounds that it “refers to death of a family member and corresponding harm without attaching the necessary supporting documentation to demonstrate the relevant relationship” (ICC-02/04-01/15-380, para. 5). In light of the other allegations by the applicant, which bring her within the scope of the charges related to the attack on Lukodi IDP camp (the applicant alleges to have been present in the camp at the time of the attack), the Single Judge, however, does not find the Defence objection dispositive.

15. Similarly, the Defence challenges applicant a/06762/15, which also refers to the death of a family member, on the basis that “[i]n this instance, the supporting documentation does not indicate that the applicant’s brother is deceased” (ICC-02/04-01/15-380, para. 6). The Single Judge observes, first, that the applicant also alleges direct victimisation as a result of the attack on the Abok IDP camp, and, second, that in circumstances such as the present, the applicant is not required to prove by way of documentary evidence the allegation of victimisation of the close relative (which must, however, fall within the charges) resulting in indirect harm to the applicant, but it suffices that the relationship between the applicant and the relative be established by the supporting material, as is the case in the present instance. The application must therefore be accepted.

16. Finally, the Defence contests applicant a/06624/15 because she refers to being injured by UPDF soldiers (ICC-02/04-01/15-380, para. 7). However, again, the applicant otherwise describes victimisation within the scope of the charges (in particular being abducted and forced to carry a heavy load in the immediate context of the attack on Lukodi IDP camp) and qualifies for admission on that basis.

17. The Single Judge notes with respect to the applicants whose applications were rejected that, under rule 89(2) of the Rules, “[a] victim whose application has been rejected may file a new application later in the proceedings”. It is therefore important that when informing the rejected applicants of the present decision, the Registry makes sure that the applicants understand the reasons why their applications were rejected.

18. In sum, the Single Judge notes that all 663 applicants whose applications were transmitted on 18 and 19 November 2015 and 818 applicants whose applications were transmitted on 8 December 2015 are admitted at the time of the issuance of the present decision, bringing the total number of victims participating in the case to 2,026.

2) *Legal representation of victims*

19. This section concerns the legal representation of the victims admitted since the decision of 27 November 2015. The Registry has reported on the status of legal representation as follows:

- with respect to the participating victims whose applications were transmitted on 18 and 19 November 2015:
 - that it has acknowledged 368 powers of attorney made in favour of Joseph Akwenyu Manoba and Francisco Cox, or in some cases Joseph Akwenyu Manoba alone, by the victims automatically admitted on 18 December 2015 (see ICC-02/04-01/15-377-AnxA);
 - that it has validated and verified the power of attorney in favour of said counsel made by victim a/05935/15;
 - that 42 victims are represented by the OPCV in the context of the Situation in Uganda (see ICC-02/04-01/15-377-AnxC);

- that 252 victims remain unrepresented (see ICC-02/04-01/15-377-AnxB);
- with respect to the participating victims whose applications were transmitted on 8 December 2015:
 - that it has verified and validated 651 powers of attorney made by the victims admitted either automatically on 23 December 2015 or by virtue of the present decision in favour of Joseph Akwenyu Manoba and Francisco Cox, or in some cases Joseph Akwenyu Manoba alone, (see ICC-02/04-01/15-382-AnxA, -AnxB and ICC-02/04-01/15-382, p. 4, footnote 8);
 - that five victims are represented by the OPCV in the context of the Situation in Uganda (see ICC-02/04-01/15-377-AnxD);
 - that 162 victims remain unrepresented.

20. In light of the considerations laid out in detail in the decision of 27 November 2015, the Single Judge considers it appropriate to appoint Paolina Massidda from the OPCV to represent the victims already represented by the OPCV in the context of the Situation in Uganda as well as the unrepresented victims admitted to participate in the case.

21. The Single Judge has not appointed the common legal representative to represent those victims for whom the Registry states that it has verified and validated powers of attorney, on the understanding that the Registry is in the process of acknowledging these powers of attorney. The Single Judge recalls, however, that prior to acknowledgment of appointment, counsel may not exercise any procedural rights on behalf of the victims concerned.

22. With respect to the victims who have chosen a legal representative pursuant to rule 90(1) of the Rules, the Single Judge also considers it important that the appointed counsel inform their clients that they presently

do not qualify for financial assistance by the Court but may, if they so wish, benefit from legal representation free of charge by the common legal representative appointed by the Single Judge, as already stated in the decision of 27 November 2015.

3) *Related matter*

23. The Single Judge notes that the applications for participation have been transmitted to the Defence by the Registry with the applicants' identity expunged. Following the admission of the applicants as participating victims and following the organisation of legal representation it is now appropriate to order the legal representatives to consult with their clients and report back to the Single Judge, as soon as practicable, as to whether the identities of the participating victims can be disclosed to the Defence or whether there exist valid reasons to maintain their anonymity vis-à-vis the Defence. In this context, the Single Judge notes that the Prosecutor has already effectively disclosed to the Defence the identity of applicants a/3074/10, a/06695/15, a/06812/15, a/06809/15, a/06905/15, a/06992/15 and a/06996/15, who are witnesses whose statements were previously disclosed by the Prosecutor to the Defence (ICC-02/04-01/15-370, para. 9; ICC-02/04-01/15-379, paras 17-22).

24. Paolina Massidda from the OPCV, legal representative of victim a/3074/10 in the context of the Situation in Uganda, informed the Single Judge by way of email on 18 December 2015 that she did not object to the disclosure of the victim's identity to the Defence, but that she requested the continued redaction of the name of the person who assisted the victim in filling out her application form. The Single Judge, noting that the requested further redaction relates to minimal information with no apparent relevance to the case, accepts the proposed redaction. Accordingly, the Registry is ordered to file a new confidential redacted version of the application of victim a/3074/10.

The applications of the remaining victims whose identities have been disclosed to the Defence by the Prosecutor shall be reclassified.

FOR THESE REASONS, THE SINGLE JUDGE

ADMITS applicants a/05787/15, a/05788/15, a/05935/15, a/06408/15, a/06624/15 and a/06762/15 to participate in the proceedings in the present case;

REJECTS the applications to participate in the proceedings submitted by applicants a/06735/15, a/06995/15, a/07019/15, a/07020/15, a/07022/15, a/07023/15, a/07024/15, a/07025/15, a/07028/15, a/07050/15, a/07051/15, a/07058/15, a/07059/15, a/07063/15, a/07068/15, a/07069/15, a/07080/15, a/07088/15, a/07097/15, a/07099/15, a/07100/15 and a/07101/15;

APPOINTS Paolina Massidda from the OPCV as common legal representative of victims a/0115/07, a/0326/07, a/0375/08, a/2923/10, a/2926/10, a/3019/10, a/3074/10, a/3077/10, a/3079/10, a/3080/10, a/3082/10, a/3083/10, a/3093/10, a/30007/12, a/30008/12, a/30009/12, a/30010/12, a/30020/12, a/30021/12, a/30000/13, a/30001/13, a/30002/13, a/30003/13, a/30004/13, a/30005/13, a/30006/13, a/30007/13, a/40001/14, a/40002/14, a/40003/14, a/40005/14, a/40007/14, a/40008/14, a/40009/14, a/40012/14, a/40013/14, a/40014/14, a/40015/14, a/40016/14, a/40018/14, a/40021/14, a/40023/14, a/40024/14, a/40026/14, a/40027/14, a/40028/14, a/40029/14, a/05049/15, a/05160/15, a/05164/15, a/05217/15, a/05229/15, a/05230/15, a/05231/15, a/05241/15, a/05293/15, a/05305/15, a/05315/15, a/05316/15, a/05323/15, a/05332/15, a/05334/15, a/05336/15, a/05346/15, a/05347/15, a/05357/15, a/05372/15, a/05386/15, a/05403/15, a/05438/15, a/05456/15, a/05474/15, a/05481/15, a/05484/15, a/05485/15, a/05486/15, a/05489/15, a/05501/15, a/05525/15, a/05532/15, a/05544/15, a/05569/15, a/05574/15, a/05582/15, a/05583/15, a/05589/15, a/05593/15, a/05597/15, a/05598/15, a/05599/15,

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ORDERS the Registrar to notify to the legal representatives the unredacted applications for participation of the victims they represent;

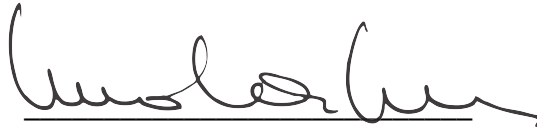
ORDERS the legal representatives to consult with their clients about the need for anonymity vis-à-vis the Defence and report to the Single Judge as soon as practicable;

ORDERS the Registrar to file a new confidential redacted version of document ICC-02/04-01/15-344-Conf-Exp-Anx3, wherein only the identifying information of the person who assisted the victim in filing out her application is redacted; and

ORDERS the Registrar to reclassify the following documents as “confidential”:

- ICC-02/04-01/15-365-Conf-Exp-Anx429;
- ICC-02/04-01/15-365-Conf-Exp-Anx522;
- ICC-02/04-01/15-365-Conf-Exp-Anx525;
- ICC-02/04-01/15-365-Conf-Exp-Anx634;
- ICC-02/04-01/15-365-Conf-Exp-Anx746; and
- ICC-02/04-01/15-365-Conf-Exp-Anx749.

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 24 December 2015

At The Hague, The Netherlands