

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: **ICC-02/04-01/15**
Date: **14 January 2016**

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

Public

**Communication of the Common Legal Representative in compliance with the
Decisions dated 27 November and 24 December 2015**

Source: Office of Public Counsel for Victims

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 Benjamin Gumpert

Counsel for the Defence

Mr Krispus Ayena Odongo

Legal Representatives of the Victims

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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States' Representatives

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. On 27 November, 15 December and 24 December 2015, the Single Judge of Pre-Trial Chamber II issued the decisions on participation of victims in the pre-trial proceedings, appointing the Principal Counsel of the Office of Public Counsel for Victims as Common Legal Representative of 592 victims authorised to participate in the present case (the “Common Legal Representative”)¹; and ordering, *inter alia*, the Common Legal Representative to consult with her clients about the need for anonymity *vis-à-vis* the Defence and to report to the Single Judge as soon as practicable.²

2. Following consultation with the majority of the victims she represents, the Common Legal Representative informs the Chamber that, at this point in time, the victims have expressed their wish to not disclose their identity to the Defence for the reasons explained *infra*.

3. The present Communication concerns the following participating victims :
a/05000/15, a/05002/15, a/05017/15, a/05030/15, a/05046/15, a/05058/15, a/05064/15,
a/05075/15, a/05078/15, a/05085/15, a/05087/15, a/05108/15, a/05109/15, a/05120/15,
a/05121/15, a/05131/15, a/05137/15, a/05147/15, a/05152/15, a/05155/15, a/05156/15,
a/05162/15, a/05163/15, a/05170/15, a/05172/15, a/05176/15, a/05183/15, a/05185/15,
a/05186/15, a/05188/15, a/05196/15, a/05197/15, a/05199/15, a/05212/15, a/05213/15,
a/05215/15, a/05221/15, a/05225/15, a/05227/15, a/05228/15, a/05234/15, a/05244/15,
a/05245/15, a/05247/15, a/05248/15, a/05251/15, a/05252/15, a/05253/15, a/05254/15,
a/05255/15, a/05256/15, a/05258/15, a/05259/15, a/05260/15, a/05262/15, a/05263/15,
a/05265/15, a/05272/15, a/05276/15, a/05292/15, a/05298/15, a/05314/15, a/05319/15,

¹ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-350, 27 November 2015, p. 19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 15 December 2015, pp. 10-11; and the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 24 December 2015, pp. 20-22.

² Decision of 27 November 2015, page 21; and Decision of 24 December 2015, page 23.

a/05325/15, a/05329/15, a/05330/15, a/05333/15, a/05337/15, a/05340/15, a/05343/15,
a/05350/15, a/05354/15, a/05360/15, a/05364/15, a/05367/15, a/05368/15, a/05376/15,
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a/05431/15, a/05432/15, a/05434/15, a/05436/15, a/05453/15, a/05464/15, a/05476/15,
a/05479/15, a/05482/15, a/05495/15, a/05498/15, a/05514/15, a/05519/15, a/05524/15,
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a/05564/15, a/05565/15, a/05570/15, a/05596/15, a/05624/15, a/05627/15, a/05638/15,
a/05644/15, a/05645/15, a/05661/15, a/05677/15, a/05683/15, a/05763/15, a/05765/15,
a/05766/15, a/05784/15, a/05789/15, a/05791/15, a/05795/15, a/05803/15, a/05805/15,
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a/05583/15, a/05589/15, a/05593/15, a/05597/15, a/05598/15, a/05599/15, a/05607/15,
a/05608/15, a/05623/15, a/05626/15, a/05643/15, a/05650/15, a/05651/15, a/05652/15,
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a/05809/15, a/05812/15, a/05813/15, a/05815/15, a/05816/15, a/05818/15, a/05819/15,
a/05823/15, a/05829/15, a/05834/15, a/05837/15, a/05839/15, a/05840/15, a/05844/15,
a/05854/15, a/05856/15, a/05857/15, a/05858/15, a/05859/15, a/05861/15, a/05862/15,
a/05863/15, a/05866/15, a/05867/15, a/05869/15, a/05872/15, a/05876/15, a/05877/15,

a/05881/15, a/05883/15, a/05885/15, a/05886/15, a/05887/15, a/05889/15, a/05898/15, a/05899/15, a/05906/15, a/05910/15, a/05911/15, a/05914/15, a/05918/15, a/05924/15, a/05929/15, a/05930/15, a/05949/15, a/05953/15, a/05955/15, a/05956/15, a/05960/15, a/05961/15, a/05963/15, a/05964/15, a/05965/15, a/05967/15, a/05969/15, a/05970/15, a/05973/15, a/05974/15, a/05976/15, a/05977/15, a/05978/15, a/05980/15, a/05982/15, a/05987/15, a/05988/15, a/05989/15, a/05990/15, a/05991/15, a/05996/15, a/05997/15, a/05999/15, a/06008/15, a/06009/15, a/06010/15, a/06014/15, a/06015/15, a/06016/15, a/06018/15, a/06019/15, a/06020/15, a/06022/15, a/06023/15, a/06026/15, a/06027/15, a/06028/15, a/06030/15, a/06033/15, a/06034/15, a/06035/15, a/06036/15, a/06038/15, a/06042/15, a/06043/15, a/06044/15, a/06045/15, a/06046/15, a/06047/15, a/06049/15, a/06050/15, a/06051/15, a/06052/15, a/06053/15, a/06055/15, a/06057/15, a/06058/15, a/06059/15, a/06063/15, a/06064/15, a/06065/15, a/06066/15, a/06067/15, a/06068/15, a/06069/15, a/06087/15, a/06088/15, a/06093/15, a/06094/15, a/06095/15, a/06096/15, a/06103/15, a/06104/15, a/06105/15, a/06106/15, a/06107/15, a/06108/15, a/06109/15, a/06110/15, a/06111/15, a/06115/15, a/06117/15, a/06120/15, a/06121/15, a/06122/15, a/06123/15, a/06124/15, a/06130/15, a/06131/15, a/06132/15, a/06133/15, a/06135/15, a/06140/15, a/06141/15, a/06143/15, a/06153/15, a/06155/15, a/06156/15, a/06157/15, a/06158/15, a/06159/15, a/06160/15, a/06161/15, a/06162/15, a/06163/15, a/06164/15, a/06166/15, a/06170/15, a/06172/15, a/06173/15, a/06258/15, a/06303/15, a/06359/15, a/06361/15, a/06362/15, a/06364/15, a/06371/15, a/06674/15, a/06675/15, and a/06677/15.

II. Reasons for non-disclosure of the victims' identity to the Defence

4. As a preliminary remark, the Common Legal Representative notes that, in accordance with the jurisprudence of the Court, protective measures for victims are often the legal means by which the Court can secure their participation in the proceedings. Such measures do not constitute favours but are instead the rights of victims, enshrined in article 68(1) of the Rome Statute.³

³ See the "Decision on victims' participation", Trial Chamber I, No. ICC-01/04-01/06-1119, 18 January 2008, paras. 128-129.

5. Indeed, in accordance with the practice of the Court, the legal basis for the non-disclosure of identifying information of the victims is to be found in article 68(1) of the Rome Statute, which mandates the Court to take appropriate measures to protect, *inter alia*, the safety, privacy, physical and psychological well-being of the victims.⁴

6. The Common Legal Representative recently undertook a mission in the field to meet with the victims she represents in preparation for the confirmation of charges hearing and on that occasion she also consulted with them with regard to the issue pertaining to the disclosure of their identity to the Defence.

7. In this regard, all victims expressed the view that at this early stage of the proceedings, in which it is still uncertain whether Mr Ongwen will be committed for trial, they fear retaliation if the charges brought by the Prosecution are not confirmed. In particular, victims have indicated that the situation on the ground is still volatile and that because Mr Kony is still at large and in command of his army, he is still in a position of perpetrating further crimes.

8. The victims also explained that they were targeted because they are Acholi and perceived by the LRA as supporting or sympathising with the Government instead of supporting the cause of Kony who is also an Acholi. The victims indicated that while claiming to defend the rights of Acholis, the LRA used extreme brutality against fellow Acholi people in northern Uganda by murdering, torturing, mutilating, raping and abducting children as well as adults. The recollection of what happened to them is still vivid in their memory despite the elapse of more than 10 years and they do not wish to risk that further crimes be perpetrated if their identity is known. This choice is also dictated by their willingness to protect their children

⁴ See, *inter alia*, the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, Pre-Trial Chamber II (Single Judge), No. ICC-01/09-01/11-249, 5 August 2011, paras. 108-113; and the “Decision on victims’ participation at the confirmation of charges hearing and in the related proceedings”, Pre-Trial Chamber II, No. ICC-01/04-02/06-211, 15 January 2014, paras. 45-46.

and ensure that they will not go through the events they suffered, and are still suffering, from.

9. The victims also indicated that they are living in places where members of the family of the suspect still reside and this proximity could put them in danger if their identity is known to the Defence. Furthermore, they indicated that they live in relatively small communities where individuals can easily be identified.

10. The concerns expressed by the victims are echoed by the leaders of the communities where they reside who have been met by the Common Legal Representative in an effort to better understand the situation in the ground. Said leaders also stressed that the security situation can evolve very quickly and that civilians will never be safe until Mr Kony is at large because he still has the capacity of perpetrating attacks against civilians.

11. Due to the limited time available, the Common Legal Representative will not be able to consult with the remaining victims she represents before the confirmation of the charges hearing. However, she submits that the reasons adduced above in relation to the non-disclosure of the victims' identity to the Defence also apply to the remaining victims. Therefore, she posits that said victims shall also remain anonymous pending further consultation with the Common Legal Representative.

12. For the reasons explained above, the Common Legal Representative submits that the non-disclosure of the victims' identity to the Defence at this early stage of the proceedings is justified and does not jeopardise the rights of the Defence.

Respectfully submitted.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 14th day of January 2016

At The Hague, The Netherlands