



Original: English

No.: ICC-02/04-01/15  
Date: 4 November 2016

**TRIAL CHAMBER IX**

**Before: Judge Bertram Schmitt, Single Judge**

**SITUATION IN UGANDA**

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

**Public**

**Decision Concerning 610 Victim Applications (Registry Report ICC-02/04-01/15-544) and 1183 Victim Applications (Registry Report ICC-02/04-01/15-556)**

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**

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**

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Isabelle Guibal

**Other**

**Judge Bertram Schmitt**, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively), in the case of *The Prosecutor v. Dominic Ongwen* having regard to Article 68(3) of the Rome Statute, Rules 85, 89 and 90 of the Rules of Procedure and Evidence ('Rules') and Regulations 80-81 of the Regulations of the Court and incorporating by reference the applicable law relating to the procedure for admission of victims to participate in this case,<sup>1</sup> issues the following 'Decision Concerning 610 Victim Applications (Registry Report ICC-02/04-01/15-544) and 1183 Victim Applications (Registry Report ICC-02/04-01/15-556)'.

### **I. Background and Submissions**

1. On 26 September 2016, the Registry submitted its second report on victims' applications ('Second Report'), along with 610 applications and a chart containing the Registry's assessment of the applications against the requirement of Rule 85 of the Rules.<sup>2</sup>
2. On 6 October 2016, the Registry transmitted its third report on victims' applications ('Third Report'), along with 1183 victim applications for participation, and a chart containing the Registry's assessment of the applications against the requirement of Rule 85 of the Rules.<sup>3</sup> Out of the 1183 victim applications, 1176 were assessed as complete and linked to the case.<sup>4</sup> Seven applications were assessed as unclear pending additional information.<sup>5</sup>

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<sup>1</sup> Pre-Trial Chamber II, Decision concerning the procedure for admission of victims to participate in the proceedings in the present case, 3 September 2015, ICC-02/04-01/15-299, paras 3-9; Order Scheduling First Status Conference and Other Matters, 4 May 2016, ICC-02/04-01/15-432, para. 4(iv); ICC-02/04-01/15-T-25-ENG ET WT, page 29, lines 23-24. *See also* Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications, 26 September 2016, ICC-02/04-01/15-543, para. 6.

<sup>2</sup> Second Report on Applications to Participate in the Proceedings, ICC-02/04-01/15-544 with 610 confidential *ex parte* annexes, available to the Registry and the Prosecution, 610 confidential redacted version of said annexes and one confidential annex.

<sup>3</sup> Third Report on Applications to Participate in the Proceedings, 6 October 2016, ICC-02/04-01/15-556, with 1183 confidential *ex parte* annexes available to the Registry and the Prosecution, 1183 confidential redacted version of said annexes, and one confidential annex (the filing was notified to the Chamber and the participants on 7 October 2016).

<sup>4</sup> Third Report, ICC-02/04-01/15-556, para. 7.

<sup>5</sup> Third Report, ICC-02/04-01/15-556, para. 7.

3. On 11 October 2016, the Office of the Prosecutor ('Prosecution') filed its observations on the applications transmitted along with the Second Report ('Prosecution Observations on Second Report'), submitting that they all meet the requirements for admission as victim participants in this case.<sup>6</sup> None of the applicants were identified as dual-status witnesses.<sup>7</sup>
4. The defence for Mr Ongwen ('Defence') did not file any observations on the victims' applications transmitted together with the Second Report.
5. On 24 October 2016, the Prosecution filed its observations on the applications transmitted along with the Third Report ('Prosecution Observations on Third Report'), submitting that the 1176 applications assessed as qualifying as victims by the Registry all meet the requirements for admission in the case.<sup>8</sup> The Prosecution further submits that the applicants whose applications were assessed as unclear by the Registry should submit further information to determine whether they qualify as participating victims in the case.<sup>9</sup> Finally, the Prosecution indicates that 24 applicants are dual status individuals and that an additional applicant is a Prosecution witness who was inadvertently omitted from the Prosecution's list of witnesses, filed on 6 September 2016.<sup>10</sup>
6. The Defence did not file any observations on the victims' applications transmitted together with the Third Report.

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<sup>6</sup> Prosecution's observations on 610 victim applications for participation, notified on 27 September 2016, ICC-02/04-01/15-564.

<sup>7</sup> Prosecution Observations on Second Report, ICC-02/04-01/15-564, para. 9.

<sup>8</sup> Prosecution's observations on 1183 victim applications for participation, notified on 7 October 2016, 24 October 2016, ICC-02/04-01/15-576, para. 8.

<sup>9</sup> Prosecution Observations on Third Report, ICC-02/04-01/15-576, para. 9.

<sup>10</sup> Prosecution observations on Third Report, ICC-02/04-01/15-576, paras 10-11. *See also* Prosecution's Request to Add items to its List of Evidence and to include P-0001 to its List of Witnesses, 25 October 2016, ICC-02/04-01/15-577.

## II. Analysis

### *Second Report*

7. The 610 applications that were transmitted on 26 September 2016 by the Registry are not contested by either of the parties. Accordingly, in line with the victim application procedure,<sup>11</sup> these 610 applicants are automatically admitted to participate in the case as of 11 October 2016.
8. The Single Judge notes that, according to the Registry, 558 of the applicants stated that they are or would like to be represented in the proceedings by Mr Joseph Manoba and/or Mr Francisco Cox ('LRVs').<sup>12</sup> The Registry indicates that it sent letters of acknowledgment of receipt of powers of attorney for these 558 victims to the LRVs.<sup>13</sup>
9. The remaining 52 applicants did not appoint a counsel.<sup>14</sup> Following the approach taken in previous decisions,<sup>15</sup> the Single Judge appoints Paolina Massidda from the Office of Public Counsel for Victims ('OPCV') as the common legal representative of these unrepresented victims admitted to participate in the case.

### *Third Report*

10. The 1176 applications transmitted on 6 October 2016 and that were assessed as complete and linked to the case are not contested by either of the parties. Accordingly, in line with the victim application procedure,<sup>16</sup> these 1176

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<sup>11</sup> Decision concerning the procedure for admission of victims to participate in the proceedings in the present case, ICC-02/04-01/15-299, para. 7.

<sup>12</sup> Second Report, ICC-02/04-01/15-544, para. 14.

<sup>13</sup> Second Report, ICC-02/04-01/15-544, para. 15.

<sup>14</sup> Second Report, ICC-02/04-01/15-544, para. 14.

<sup>15</sup> See Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications, 26 September 2016, ICC-02/04-01/15-543, para. 8; and Decision on contested victims' applications for participation, legal representation of victims and their procedural rights, 27 November 2015, ICC-02/04-01/15-350, para. 19.

<sup>16</sup> Decision concerning the procedure for admission of victims to participate in the proceedings in the present case, ICC-02/04-01/15-299, para. 7.

applicants are automatically admitted to participate in the case as of 24 October 2016.

11. Turning to the unclear applications, the Single Judge considers that, on the basis of the information before him, the applications of a/00118/16,<sup>17</sup> a/00681/16,<sup>18</sup> a/06233/15<sup>19</sup> and a/06770/15,<sup>20</sup> are affected by irreconcilable contradictions and therefore rejects them.
12. In respect of a/00799/16,<sup>21</sup> the Single Judge notes that the applicant indicates that she deals with her brother's frustration at his wife's refusal to return to live with him after she suffered injuries in the course of the attack on the Abok IDP camp. The Single Judge considers that the harm suffered by the applicant is too remote to be said to have arisen as a result of the crimes charged.<sup>22</sup>
13. With regard to a/01265/16,<sup>23</sup> the Single Judge notes that the applicant was not residing in the Odek IDP camp at the date of the attack, during which he lost his nephew who was residing in the camp. The applicant alleges that if he had been alive, his nephew would have helped him doing domestic work. The Single Judge notes that the applicant and his nephew did not live together prior to the

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<sup>17</sup> ICC-02/04-01/15-556-Conf-Anx2-Red. The Single Judge notes that the age indicated by the victim on the first page of the form and supported by the identity document provided is in contradiction with the age of her child. *See also* Prosecution Observations on Third Report, ICC-02/04-01/15-576, para. 9.

<sup>18</sup> ICC-02/04-01/15-556-Conf-Anx9-Red. The Single Judge notes that the accounts provided by the applicant in July and September 2016 cannot be reconciled as to whether or not his brother passed away during the attack on Abok IDP Camp. *See also* Prosecution Observations on Third Report, ICC-02/04-01/15-576, para. 9.

<sup>19</sup> ICC-02/04-01/15-556-Conf-Anx1180-Red. The Single Judge notes that the accounts provided by the applicant in September 2015 and September 2016 cannot be reconciled as to whether or not she was residing in the Lukodi IDP Camp at the time of the attack. *See also* Prosecution Observations on Third Report, ICC-02/04-01/15-576, para. 9.

<sup>20</sup> ICC-02/04-01/15-556-Conf-Anx1182-Red. The Single Judge notes that the accounts provided by the applicant in November 2015 and July 2016 cannot be reconciled, in particular, regarding her whereabouts at the time of the attack on the Abok IDP Camp. *See also* Prosecution Observations on Third Report, ICC-02/04-01/15-576, para. 9.

<sup>21</sup> ICC-02/04-01/15-556-Conf-Anx11-Red.

<sup>22</sup> *See also* Prosecution Observations on Third Report, ICC-02/04-01/15-576, para. 9.

<sup>23</sup> ICC-02/04-01/15-556-Conf-Anx330-Red.

attack and therefore considers that the victim did not show a sufficient link with the direct victim.<sup>24</sup>

14. Finally, with regard to a/00666/16,<sup>25</sup> the Single Judge notes that the applicant alleges that he suffered harm as a result of the loss of relatives – including his nephew, whose family he is now supporting economically – during the attack on the Abok IDP Camp. The Single Judge notes the Prosecution’s submission that further information should be provided to establish whether the relationship between the applicant and the direct victims can be said to have resembled that of close family members.<sup>26</sup> However, the Single Judge considers that it is sufficient that the applicant states that he is economically supporting one of the direct victim’s family to qualify as a victim in this case and therefore admits him to participate. Thus, 4113 victims have been admitted to participate in the proceedings for the present case.<sup>27</sup>

15. The Single Judge notes that, according to the Registry, 317 of the applicants whose applications were transmitted by way of the Third Report, stated that they are to be represented in the proceedings by Joseph Manoba and/or Francisco Cox and four applicants nominated the OPCV.<sup>28</sup> The Registry indicates that it will send letters of acknowledgment of receipt of powers of attorney for these victims to the LRVs and the OPCV.<sup>29</sup>

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<sup>24</sup> See also Prosecution Observations on Third Report, ICC-02/04-01/15-576, para. 9.

<sup>25</sup> ICC-02/04-01/15-556-Conf-Anx7-Red.

<sup>26</sup> Prosecution Observations on Third Report, ICC-02/04-01/15-576, para. 9.

<sup>27</sup> 2026 had been admitted at the pre-trial stage (*See* Decision on contested victims’ application for participation, legal representation of victims and their procedural rights, 27 November 2015, ICC-02/04-01/15-350; Second Decision on contested victims’ applications for participation and legal representation of victims, 24 December 2015, ICC-02/04-01/15-384); a further 300 victims were admitted after the charges were confirmed (*See* Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications, 26 September 2016, ICC-02/04-01/15-543), the 610 applications transmitted by way of the Second Report and 1177 applications transmitted by way of the Third Report are admitted as of 11 October 2016 and 24 October 2016, respectively (and as of notification of this decision for a/00666/16).

<sup>28</sup> Third Report, ICC-02/04-01/15-556, para. 16.

<sup>29</sup> Third Report, ICC-02/04-01/15-556, footnote 15.

16. The remaining 862 applicants did not appoint a counsel.<sup>30</sup> Following the approach taken in previous decisions,<sup>31</sup> the Single Judge appoints Paolina Massidda from the OPCV as the common legal representative of these applicants who are admitted to participate in the case and did not appoint a counsel.
17. Finally, the Registry shall file a consolidated list of all victims admitted to participate in the case, indicating both a total number and, for each victim: (i) the alleged crimes of which they claim to be victims;<sup>32</sup> (ii) the name of the legal representative(s); and (iii) when applicable, their code as Prosecution's witness.

**FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY:**

**ADMITS** a/00666/16 to participate in the proceeding;

**REJECTS** the applications for participation submitted by applicants a/00118/16, a/00681/16, a/00799/16, a/01265/16, a/06233/15 and a/06770/15;

**APPOINTS** Paolina Massidda from the OPCV as the common legal representative of the admitted victims who did not appoint a counsel in line with paragraphs 9 and 16 above;

**ORDERS** the Registry to notify the LRVs and the OPCV of the unredacted applications for participation of the victims they represent; and

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<sup>30</sup> Third Report, ICC-02/04-01/15-556, para. 16.

<sup>31</sup> See Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications, 26 September 2016, ICC-02/04-01/15-543, para. 8; and Decision on contested victims' applications for participation, legal representation of victims and their procedural rights, 27 November 2015, ICC-02/04-01/15-350, para. 19.

<sup>32</sup> For this purpose, it is sufficient to indicate the group (or groups, if more than one apply) among those identified by the Registry in the transmissions of the applications, namely: attack on Pajule-Lapul IDP camp; attack on Odek IDP camp; attack on Lukodi IDP camp; attack on Abok IDP camp; sexual and gender based crimes; and conscription and use of child soldiers.



**ORDERS** the Registry to file a consolidated list of victims admitted to participate in the present case, in line with paragraph 17 above, as soon as practicable.

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



**Judge Bertram Schmitt, Single Judge**

Dated 4 November 2016

At The Hague, The Netherlands