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PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

Public

**Prosecution's observations on 209 victims' applications for participation,
transmitted by the Registry on 18 September 2015**

Source: The Office of the Prosecutor

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

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Introduction

1. The Office of the Prosecutor (“the Prosecution”) in accordance with rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and the “Decision of the Single Judge concerning the procedure for admission of victims to participate in the proceedings in the present case”¹ submits its observations on 209 victims’ applications for participation, transmitted by the Registry on 18 September 2015.
2. The Prosecution supports victims’ participation when all statutory requirements are met. All 209 applicants meet the criteria to be admitted to participate as victims in the pre-trial proceedings of the case.

Procedural Background

3. On 15 January 2015, the then Single Judge issued the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in Related Proceedings”.²
4. On 3 September 2015, the Single Judge issued his “Decision concerning the procedure for admission of victims to participate in the proceedings in the present case”.³
5. On 18 September 2015, the Registry filed its “First Report on Applications to Participate in the Proceedings with 209 confidential annexes ex parte only available to the Registry and the Prosecutor”.⁴ The same annexes containing the victims’ applications were transmitted to the Defence in a redacted form.⁵

¹ ICC-02/04-01/15-299.

² ICC-02/04-01/15-205.

³ ICC-02/04-01/15-299.

⁴ ICC-02/04-01/15-303.

⁵ ICC-02/04-01/15-304.

6. On 18 September 2015, the Prosecution filed the “Notice of intended charges against Dominic Ongwen” (“Notice document”),⁶ setting out the scope of charges it intends to bring against Dominic Ongwen.

Legal criteria for victim admission and procedure in the present case

7. A person has the right to participate in the proceedings as a victim under article 68(3) of the Statute if:
- (i) he/she qualifies as a victim pursuant to rule 85; and
 - (ii) his/her personal interests are affected by the proceedings at hand, i.e. by the issues, legal or factual, raised therein.⁷
8. The jurisprudence of this Court has established that an applicant will qualify as a victim when the following criteria are met:
- (i) the identity of the applicant (natural person or organisation/institution) is duly established;
 - (ii) the event(s) described in the application for participation constitute one or more crimes within the jurisdiction of the Court, which the accused person is charged with or – at the earlier stages of the proceedings - are alleged in the warrant of arrest, in the document containing the charges, or, as in this case, in the Notice document⁸; and
 - (iii) the applicant has suffered personal harm as a result of such crime(s).⁹

⁶ ICC-02/04-01/15-305-Conf.

⁷ See ICC-01/04-556, para. 45; ICC-01/04-01/06-1335, para. 36.

⁸ The Single Judge in his decision of 3 September 2015 specifically directed the Registry to assess the applications collected or otherwise received against the factual parameters of the case as set out in the Warrant of Arrest against Dominic Ongwen and in the Notice document. ICC-02/04-01/15-299, para. 4.

⁹ ICC-02/04-01/15-205, para. 18.

9. The applicants are only required to make a *prima facie* showing that the requirements set out above are met.¹⁰ Their statements should be assessed “first and foremost on the merits of their intrinsic coherence, as well as on the basis of the information otherwise available”.¹¹
10. The Single Judge established the procedure for admission of victims to participate in the proceedings of the case in the decision of 3 September 2015. Parties are required to raise specific objections with regard to any of the applicants within 14 days after the applications are transmitted by the Registry. In case any objections are raised, the Single Judge will assess the contested applications individually. Conversely, the victims whose participation will not be objected to by either of the Parties within the relevant timeframe, will be admitted to participate in the proceedings. The Chamber however retains the authority to reject applications also on its own motion.¹²

The factual analysis of the 209 applications for participation

11. In the Prosecution’s assessment, all the applicants meet the criteria for participation in the pre-trial proceedings of the case.

The applicants prima facie meet the necessary requirements for victim participation

12. All 209 applicants are natural persons as set out in rule 85(a) of the Rules. Their identity, as well as the identity of persons acting on the victim’s behalf, where applicable, is established. With regard to the requisite proof of identification and kinship, the Prosecution supports the approach of the

¹⁰ ICC-02/05-01/07-58, para. 7; ICC-01/04-01/07-579, para. 67.

¹¹ ICC-01/04-01/07-579, paras. 67, 132.

¹² ICC-02/04-01/15-299, paras. 7-8.

Registry outlined in paragraph 8 of its Report.¹³ These modes of identification were accepted by Pre-Trial Chamber II in the context of the *Uganda Situation*¹⁴ and the Prosecution sees no reason to take a different approach in this case.¹⁵

The applications with minor inconsistencies

13. Some of the applications contain minor inconsistencies or omissions in the information provided. These include, for example, discrepancies in the date of birth or spelling of the name in the identification document provided and in the victim application form. These irregularities do not affect the completeness of the applications and/or the establishment of the identity of the applicants.
14. In line with the jurisprudence of the Court, identification of the perpetrator(s) is not required for a victim application to be considered complete.¹⁶ The Prosecution has however remained attentive to whether any of the applicants state that the perpetrators of the crimes from which they suffered personal harm were not related to the charges. No such application was identified.
15. The Prosecution observes that Applicant a/05169/15 is a 17-year old individual, applying on his own behalf. The Prosecution does not object to this application. The respective applicant will turn 18 before the start of the confirmation hearing and therefore possessed, at the time of making the application in July this year, the necessary maturity to understand the application process. The Prosecution notes the existing jurisprudence supports the acceptance of the application.¹⁷

¹³ ICC-02/04-01/15-303, para. 8 and ft. 15.

¹⁴ ICC-02/04-125, para. 6.

¹⁵ As the Registry points out, a general country-wide National Identity registration process that took place in 2014 has not yet been completed and the distribution of the ID cards has not yet reached every region in Northern Uganda. ICC-02/04-01/15-303 at p. 6, ft. 15.

¹⁶ ICC-02/04-01/15-205, para. 64; ICC-01/05-01/08-807-Corr, para. 94; ICC-01/09-02/11-267, para. 33.

¹⁷ See ICC-01/04-01/06-1556-Corr-Anx1, paras. 91-98. The Registry in its Report also addressed the issue and considered the application complete. ICC-02/04-01/15-303, ft. 14.

Link between the alleged crimes and the harm suffered

16. With regard to the alleged crimes and harm suffered, the Prosecution observes that the events described by each of the 209 applicants constitute *at least one* of the crimes alleged in the Notice document.
17. The applications transmitted by the Registry on 18 September 2015 all relate to the attack on the Lukodi IDP camp on or about 20 May 2004.
18. The warrant of arrest against Dominic Ongwen included seven counts attributed to him in the context of the Lukodi attack.¹⁸ The Prosecution notes that the Registry has assessed the applications against those seven counts only, since, at the time of its assessment, the Notice document had not yet been filed. The Prosecution emphasises that all seven counts alleged in the warrant of arrest are also encompassed in the Notice document. The list of charges against Dominic Ongwen with regard to the Lukodi attack now amounts to twelve counts.¹⁹ Since the Notice document was filed on the same day that the applications were transmitted, on 18 September 2015, Parties were able to review the applications in light of the crimes alleged in the Notice document.

¹⁸ ICC-02/04-01/15-6.

¹⁹ ICC-02/04-01/15-305-Conf, pp. 15-16. The crimes alleged to be committed by Dominic Ongwen in Lukodi, pursuant to the Notice document, are as follows: **Attacks against the civilian population as such** as a war crime pursuant to articles 8(2)(e)(i) and 25(3)(a), or (b), or (d), or 28; **Murder** as a crime against humanity, pursuant to articles 7(1)(a) and 25(3)(a), or (b), or (d), or 28; **Murder** as a war crime, pursuant to articles 8(2)(c)(i) and 25(3)(a), or (b), or (d), or 28; **Attempted murder** as a crime against humanity, pursuant to articles 7(1)(a) and 25(3)(f) and 25(3)(a), or (b), or (d), or 28; **Attempted murder** as a war crime, pursuant to articles 8(2)(c)(i) and 25(3)(f) and 25(3)(a), or (b), or (d), or 28; **Torture** as a crime against humanity, pursuant to articles 7(1)(f) and 25(3)(a), or (b), or (d), or 28; **Torture** as a war crime, pursuant to articles 8(2)(c)(i) and 25(3)(a), or (b), or (d), or 28; **Other inhumane acts** as a crime against humanity, pursuant to articles 7(1)(k) and 25(3)(a), or (b), or (d), or 28; **Cruel treatment** as a war crime, pursuant to articles 8(2)(c)(i) and 25(3)(a), or (b), or (d), or 28; **Enslavement** as a crime against humanity, pursuant to articles 7(1)(c) and 25(3)(a), or (b), or (d), or 28; **Pillaging** as a war crime, pursuant to articles 8(2)(e)(v) and 25(3)(a), or (b), or (d), or 28; **Destruction of property** as a war crime, pursuant to articles 8(2)(e)(xii) and 25(3)(a), or (b), or (d), or 28.

19. Each of the 209 applicants has demonstrated that he or she suffered personal harm as a result of at least one crime with which Dominic Ongwen will be charged. Some of the applicants describe having suffered harm as a result of a crime allegedly committed against their relatives, but do not include their requisite proof of identity and/or kinship. All such applicants however also suffered personal harm as a result of at least one other crime included in the Notice document, thus still qualifying as victims within the meaning of rule 85(a) of the Rules. As held in the jurisprudence of the Court, the status of victims of one of the crimes allegedly committed by the suspect does not differ from the status of victims who have been recognised as victims of more than one crime. Once admitted, victims are all equally considered as victims participating in the case.²⁰

20. Some applicants were unable to recall the date of the events described in the application. Based upon the descriptions of the facts in these applications such as the time of day the attack occurred, description of events and aftermath, the Prosecution concurs with the Registry's assessment that it can be reasonably concluded that they pertain to the Lukodi attack on or about 20 May 2004.

Dual status of Applicant a/05103/15

21. The Prosecution observes that Applicant a/05103/15²¹ is the same person as Witness P-0187, whom the Prosecution interviewed earlier this year. The name and date of birth recorded in the application and the Witness' statement are identical; the accounts of events described also correspond.

22. The application of a/05103/15 has been transmitted to the Defence with redactions applied to the identifying data of the applicant (name and date of

²⁰ ICC-01/04-02/06-211, para. 27.

²¹ Annex ICC-02/04-01/15-303-Conf-Exp-Anx94.

birth) and its content. The Prosecution notes that the identity of Witness P-0187 has already been disclosed to the Defence along with the Witness' statement with no redactions applied to the content of the statement.²² The Prosecution proposes that in light of the above, the redactions to the application be revisited and, subject to the authorisation of the Single Judge, an un-redacted or a lesser redacted version of the relevant application be transferred to the Defence.

Conclusion

23. The Prosecution submits that all 209 applicants, whose applications have been transferred by the Registry on 18 September 2015, meet the requirements for admission as victim-participants in the pre-trial proceedings in this case.



Fatou Bensouda,
Prosecutor

Dated this 2nd day of October 2015
At The Hague, The Netherlands

²² The only redactions applied in the statement were to the identifying data of Court staff, involved in the interview process (ERN: UGA-OTP-0233-1031).