

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15

Date: 5 October 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

CONFIDENTIAL

**Defence Observations on the 209 Applications for Victim Participation
Transmitted on 18 September 2015**

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 Other
Section**

I. INTRODUCTION

1. The Defence Team for Dominic Ongwen ('Defence') hereby submits the following observations on the 209 applications for victim participation transmitted by the Registry on 18 September 2015.

II. CONFIDENTIALITY LEVEL

2. Pursuant to Regulation 23*bis* of the Regulations of the Court, the Defence files these observations as confidential as some of the material might enable non-parties or non-participants to determine the identity of the applicants. A public redacted version shall be filed in due course.

III. PROCEDURAL HISTORY

3. On 3 September 2015, Judge Cuno Tarfusser issued the "Decision concerning the procedure for admission of victims to participate in the proceedings in the present case".¹
4. On 18 September 2015, the Registry filed 209 redacted applications for victims' participation in the record of the case.²

IV. OBSERVATIONS

5. Firstly, if an application is not specifically mentioned by number below, the Defence does not challenge it because the victim participant has met the *prima facie* requirements to be included as a victim participant. The Defence reserves the

¹ ICC-02/04-01/15-299.

² ICC-02/04-01/15-303 and ICC-02/04-01/15-304.

right to challenge any applicant should new information arise which contradicts any applicant's current application.

Applicant not Able to Provide First Hand Accounts of the Attack or its Aftermath

6. The Defence challenges applications a/05168/15, a/05215/15, a/05226/15, a/05252/15, a/05253/15, a/05263/15, a/05265/15 and a/05272/15.³ These applicants acknowledge that they only know of the attack because an immediate family member told them of the attack. In fact, these applications act as duplicate applications from the immediate family member. These applicants cannot show how they were harmed. They are merely reiterations of the immediate family members' account. All of these applicants were five years old or less on 19 May 2004.
7. Similarly, the Defence notes that application a/05255/15 was around the age of three when the attack on Lukodi happened.⁴ The Defence asks that this application also be dismissed on the same grounds directly above. Whilst the applicant does not state that a family member told her what happened, it is highly unlikely that someone of that age will remember what happened. It is much more likely that the applicant was told what happened by a parent.

Failure to Meet more than One Criteria

8. The applicant in application a/05189/15 does not remember the date of the incident or who caused the incident.⁵ The application does not state enough information to properly ascertain if the incident discussed is the one described in the arrest warrant.

³ See annexes ICC-02/04-01/15-303-Conf-Anx144-Red, ICC-02/04-01/15-303-Conf-Anx166-Red, ICC-02/04-01/15-303-Conf-Anx171-Red, ICC-02/04-01/15-303-Conf-Anx178-Red, ICC-02/04-01/15-303-Conf-Anx179-Red, ICC-02/04-01/15-303-Conf-Anx184-Red and ICC-02/04-01/15-303-Conf-Anx190-Red.

⁴ See ICC-02/04-01/15-303-Conf-Anx181-Red

⁵ See ICC-02/04-01/15-303-Conf-Anx152-Red

The Applicant Clearly States the Wrong Day

9. The applicant in application a/05029/15 states that the incident occurred on a Friday.⁶ The 19th and 20th of May 2004 were Wednesday and Thursday of that week. The applicant does not state a year or month. The application should be dismissed because it is unclear if it discusses the incident in the arrest warrant. Because the applicant was clear as to the day of the week, this should not be considered an innocent error as described directly below.

Minor Discrepancies in Applications

10. As stated in the Prosecution's observations,⁷ the Defence noticed similar minor inconsistencies in some applications. The Defence agrees that such minor inconsistencies, which can be accepted as innocent errors, do not disqualify the applicant. Such errors would include writing the date in which the applicant filled out the application instead of putting the date of the incident, or writing 9 May 2004 instead of 19 May 2004.

IV. RELIEF

11. The Defence respectfully requests His Honour, Judge Cuno Tarfusser, to deny applicants a/05029/15, a/05168/15, a/05189/15, a/05215/15, a/05226/15, a/05252/15, a/05253/15, a/05255/15, a/05263/15, a/05265/15 and a/05272/15 from being registered as victim participants in the case.

⁶ See ICC-02/04-01/15-303-Conf-Anx18-Red.

⁷ ICC-02/04-01/15-309, para. 13.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 5th day of October, 2015

At Oyam, Uganda