

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 23 November 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

**Confidential *EX PARTE*, available only to the Registry and the legal
representatives of victims**

**With three Annexes Confidential *EX PARTE*, available only to the Registry
and the legal representatives of victims**

Registry's Report on the Implementation of Decision ICC-02/04-01/15-331

Source: Registry

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Mr. Joseph Akwenyu

Mr. Francisco Cox

Legal Representatives of 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

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms. Fiona McKay

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the Registry’s Second and Third Transmissions to the Single Judge and the Parties of applications for participation in the proceedings *The Prosecutor v. Dominic Ongwen* (the “Case”), notified respectively on 26 October 2015¹ and 18 November 2015,² in which the Registry informed the Single Judge that it had received powers of attorney relating to applicants in the Case in favor of two lawyers currently registered on the Court List of Counsel (the “Powers of Attorney”);

NOTING the Single Judge’s Order in relation to the legal representation of victims participating in the proceedings, notified on 29 October 2015 (the “29 October 2015 Order”),³ whereby the Registry is instructed to (1) verify and, if appropriate, acknowledge, in compliance with regulation 123(1) of the Regulations of the Registry (the “Regulations”), the powers of attorney issued by victims currently admitted to participate in the proceedings in the Case and those of victims whose applications for participation are currently pending, and (2) inform the Chamber of any powers of attorney that can be acknowledged should the applicant be admitted to participate, by 11 November 2015;

NOTING the Single Judge’s decision granting the Registry an extension of time until 23 November 2015 to implement the 29 October 2015 Order, dated 10 November 2015;⁴

NOTING article 68(3) of the Rome Statute, rules 16(1), 85, and 90(1) of the Rules of Procedure and Evidence, regulations 23*bis*(1), 24*bis* and 86(5) of the Regulations of the Court, and Regulation 123(1) of the Regulations;

¹ ICC-02/04-01/15-327.

² ICC-02/04-01/15-344.

³ ICC-02/04-01/15-331.

⁴ Email sent to the Victims Participation and Reparations Section.

CONSIDERING that, by 22 November 2015, the Registry has registered powers of attorney submitted by 492 individuals in favour of two lawyers, Mr. Joseph Akwenyu Manoba and Mr. Francisco Cox (the "Powers of Attorney");⁵

CONSIDERING that the Registry has taken the following steps in implementing the 29 October 2015 Order: the Registry (1) verified that the Powers of Attorney were properly completed,⁶ (2) conducted a consultation in Northern Uganda with a representative sample of 38 victims applicants who had submitted Powers of Attorney, and (3) sought information from Mr. Akwenyu Manoba and Mr. Cox (the "Designated Lawyers") in relation to the Powers of Attorney received and their designation by victims and applicants to represent their interests in the proceedings related to the Case;

CONSIDERING that, pursuant to Regulations 23*bis*(1) and 24*bis* of the Regulations of the Court, the Registry is filing this Report and the annexes appended thereto as Confidential *EX PARTE*, available only to the Registry and the legal representatives of victims since they contain information relating to the steps taken by the Registry to implement the Order of 29 October 2015, as well as the work of the legal representatives of victims and their relationship with their clients;

TRANSMITS to the Single Judge the present report setting out the results of the verification process of the Powers of Attorney, along with one annex which contains the list of questions submitted to individuals consulted and two annexes listing the reference numbers of applications submitted by both participating victims and applicants who have designated the two abovementioned lawyers to represent their interests in the proceedings.

⁵ The Registry has received powers of attorney on 1, 19 and 20 October 2015. Other applicants have indicated their wish to be represented by the Designated Lawyers directly in their application for participation.

⁶ According to the regular practice of the Registry.

Introduction

1. The Registry notes that so far 492 individuals⁷ have appointed the two Designated Lawyers, including 249 victims participating in the Case,⁸ 171 applicants who have their application for participation currently pending,⁹ and 70 applicants whose application form has been received by the Registry but has not yet been processed and/or transmitted to the Single Judge and the Parties.¹⁰

A. Steps taken to verify Powers of Attorney

2. The Registry took the following steps to verify the Powers of Attorney.
3. First, the Registry verified that the Powers of Attorney fulfilled formal requirements. Following this verification, the Registry confirms that all the Powers of Attorney contain the following necessary requirements: (1) the identity and (2) the signature of the individual who designates the two lawyers, and (3) the identity of the lawyers designated. The Registry then proceeded to check the names of the individuals who have submitted the powers of attorney against the application forms received in relation to the Case.
4. Second, the Registry consulted with a sample of individual applicants¹¹ who had submitted Powers of Attorney in order to verify their choice of legal representation. The Registry aimed to meet 38 applicants, or around 10% of the applicant population whom the Registry considered with certainty had submitted

⁷ The process of identifying victims and applicants who submitted the Powers of Attorney is still ongoing as the Registry continues to register applications for participation in the Case.

⁸ This includes 107 out of the 198 applicants from the Registry's First Transmission of applications for participation (ICC-02/04-01/15-303), and 142 out of the 322 applicants from the Registry's Second Transmission of applications for participation (ICC-02/04-01/15-327) whose applications were not contested upon expiration of the time limit for parties' objections (See ICC-02/04-01/15-299, para.9).

⁹ Applicants whose applications were filed with the Registry's Third Transmission of applications for participation (ICC-02/04-01/15-344).

¹⁰ In addition, the Registry is seeking clarification from 143 individuals who submitted a Power of Attorney, in order to match these to a victims' application form received.

¹¹ As the process of assessment and transmission of applications to the Single Judge and the Parties is still ongoing, no distinction was made between victims already admitted to participate and applicants.

a Power of Attorney,¹² representing as far as possible the main characteristics of the victims as a whole, based on criteria such as current place of residence,¹³ gender,¹⁴ and age groups.¹⁵ In a separate meeting the Registry staff also met with the leaders of the Lukodi community.

5. During individual consultations, the Registry staff asked applicants a set of seven questions aiming at measuring their level of understanding of legal representation, confirming their choice of legal representation, and obtaining information on how they had come to choose their legal representative and whether they are happy with their choice.¹⁶
6. On the basis of the information gathered as a result of the consultation process with the 38 applicants, the Registry notes that:
 - i. The vast majority have a good level of understanding of legal representation.¹⁷ For instance, they said they understood the role of a legal representative before the Court, and what they can expect from a lawyer representing them in the Court proceedings (such as representing their views and concerns and being regularly informed about proceedings);¹⁸
 - ii. The majority of the persons consulted was able to name at least one of the Designated Lawyers, others could at the very least describe who they had chosen;

¹² At the moment the mission was organised, the Registry could match with certainty the application forms of 380 individuals who had submitted powers of attorney.

¹³ All applicants who have submitted a Power of Attorney come from Lukodi. Applicants consulted came from 5 of the Lukodi sub-villages.

¹⁴ 22 women and 16 men were consulted.

¹⁵ The consulted applicants' ages ranged from 25 to 62 years old.

¹⁶ The list of questions submitted to the applicants consulted is reproduced in Annex 1.

¹⁷ Two out of 38 applicants say they were not sure they understood fully the role of the lawyers because they did not attend, or came late to the meeting during which these issues were explained. One applicant explained that she decided to choose these lawyers because she followed the advice of her neighbours and the community who had chosen them. The second person said that the notion of having a lawyer is new to him.

¹⁸ The Registry staff conducting the consultation asked follow up questions to be able to probe whether the person had understood the role of the legal representative.

- iii. The vast majority had met with the Designated Lawyers,¹⁹ most of them twice and for some more than twice;
 - iv. Although most appeared to have been following advice from the community leaders and met with the Designated Lawyers through a meeting organized by them, many said that they had decided to designate them as their legal representative after they had met with the lawyers or attended a meeting with them. Some explained that their choice was based on their qualities such as experience, communication style and their knowledge of Court proceedings and the conflict in Northern Uganda. A few applicants mentioned having been presented with other choices of legal representative, but ultimately chose the Designated Lawyers.
7. All applicants consulted confirm that they are happy with their choice of legal representatives, highlighting, for instance, that the Designated Lawyers had shown commitment and competence by making several visits to Lukodi and the surrounding villages, informing them about the Court's proceedings and engaging them on issues such as the conditional release of Mr Ongwen, or *in situ* proceedings. One applicant mentioned as an asset that his Ugandan lawyer speaks Luo and that his team includes Acholi speakers, including a female lawyer.
8. Third, the Registry sought information from the Designated Lawyers about their current professional activities, the circumstances in which they have been designated by victims and applicants in Lukodi, and any potential source of funding to represent victims in the Case.²⁰
9. Mr. Akwenyu Manoba informed the Registry that he is a Legal Advisor with the African Youth Initiative Network (AYINET). Although he is not remunerated for this position, he is attached to AYINET's transitional justice programme, for which he is paid some benefits for the hours spent on work related to this

¹⁹ Two applicants were not able to attend a meeting with the Designated Lawyers.

²⁰ Registry's correspondence with the Designated Lawyers dated 17 and 19 November 2015.

programme, but he is not paid to represent victims before the Court. Mr. Francisco Cox is involved in the Inter American Commission on Human Rights as a member of a group of experts for the disappearance of 43 students in Iguala, Mexico.

10. Mr Akwenyu Manoba informed the Registry that he first came to Lukodi and met with members of the community's leadership and some victims to present his credentials with a view to representing victims in the ICC proceedings in early September, following an invitation from a member of the leadership whom he knew from prior interactions within a wider group of individuals working on victims' issues. Mr Akwenyu Manoba returned to Lukodi at a later date with his colleague Mr. Cox (with whom he had suggested to work in relation to the ICC proceedings) in order to meet with more applicants.

11. Pursuant to Regulation 113(2) of the Regulations, the Registry asked the Designated Lawyers to explain the statement included in a number of Powers of Attorney received,²¹ that the Designated Lawyers would represent the participating victims on a *pro bono* basis. Mr. Akwenyu Manoba and Mr. Cox both confirmed that they have not received any payment for their work with the victims in Lukodi from victims or any other local organisation. Mr. Akwenyu Manoba informed the Registry that the wording *pro bono* in some Powers of Attorney (later removed to avoid any confusion as regards its meaning)²² was intended to indicate that they would not charge victims to represent them in the Court proceedings and that they had explained to the applicants that they would be submitting a request for legal aid support from the Court once their appointment is confirmed.

12. The Registry notes that in light of the complexity of the issue of legal representation for victims in general, for whom this issue is often far removed from their daily lives, in the Lukodi community, community leaders play an

²¹ The Powers of Attorney received by the Registry on 1 October 2015.

²² The second batch of Powers of Attorney received by the Registry on 19 and 20 October 2015 do not include such reference to *pro bono* work of the lawyers.

important role in decisions about issues that affect the entire community.²³ In this instance, the leaders assisted individuals in the community to select a legal representative,²⁴ by first discussing with the community the qualities and skills desired in their lawyers,²⁵ and then introducing them to the Designated Lawyers. The Registry staff conducting the interviews noted that victims showed a high level of deference towards and trust in the community leaders and the choice of the community, and expressed confidence in the choice made as regards their legal representation for ICC proceedings. This appears to have been further reinforced by the positive impression the Designated Lawyers made on the applicants. The Registry has no information on whether or not the choice of some applicants to designate the Designated Lawyers was influenced by the term *pro bono* included in some Powers of Attorney. The Registry will consider any request that might be submitted to provide legal assistance for the legal representation of victims participating in the proceedings in accordance with the relevant rules and regulations concerning legal assistance paid by the Court.

B. Conclusion

13. The Registry respectfully informs the Single Judge that the Designated Lawyers currently represent the 249 victims admitted to participate whose reference numbers are listed in Annex 2, and that, in compliance with Regulation 123(1) of the Regulations the Registry will acknowledge the Designated Lawyers by

²³ The Registry understands that any decision on matters aiming to improve the situation of the community is discussed within the group of leaders first, then it is presented and discussed with the entire community; the solutions or approaches preferred by the majority will be adopted, and that in general, the community trusts their leaders.

²⁴ Through its interaction with the community, including for the purpose of the consultation, the Registry was informed that both the community leaders and some victims in Lukodi were particularly eager to have legal representation organised as soon as possible.

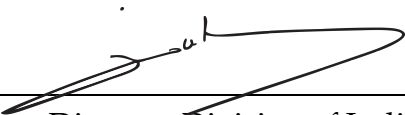
²⁵ According to the consultations held with the applicants, these skills include the following: a Ugandan lawyer who speaks Acholi or, in the alternative, someone who understands their situation and the context of the LRA conflict, someone with solid knowledge of the Court and criminal proceedings, someone strong and committed and who is able to meet with his or her clients frequently.

sending them a letter which includes lists of the individuals they represent as well as notifying the persons designating the Lawyers, the relevant Chamber and the competent national authority exercising regulatory and disciplinary powers over the Designated Lawyers.

14. The Registry respectfully informs the Single Judge that the Powers of Attorney of applicants for participation whose reference numbers are listed in Annex 3,²⁶ can be acknowledged should the applicants be admitted to participate.

15. The Registry stands ready to file a confidential or public version of the present report, should the Single Judge so order.

RESPECTFULLY SUBMITTED,



Marc Dubuisson, Director, Division of Judicial Services
per delegation of
Herman von Hebel, Registrar

Dated this 23 November 2015

At The Hague, the Netherlands

²⁶ Annex 3 contains two tables, one table listing the reference numbers of applicants whose applications forms were transmitted to the Single Judge and the Parties in the Registry's Third Transmission of applications, and a second table listing the reference numbers of applicants whose applications have been registered by the Registry and are currently being assessed against the requirements of Rule 85 of the Rules of Procedure and Evidence.