

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 December 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

PUBLIC

Defence's Observations on 663 Victims' Applications for Participation

Source: Defence for Dominic Ongwen

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

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Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

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I. INTRODUCTION

1. The Defence for Mr. Ongwen ('Defence') hereby objects to three (3) applications for participation in the proceedings in accordance with Rule 89(1) of the Rules of Procedure and Evidence ("Rules").

II. PROCEDURAL HISTORY

2. On 3 September 2015, the Single Judge instructed the Registry to transmit applications of alleged victims. On 18 September 2015, the Registry transmitted 209 applications ("First Report").¹ An additional 336 applications were transmitted on 26 October 2015 ("Second Report").² The Defence and the Prosecutor provided its observations on the First Report and Second Report.³
3. On 18 and 19 November 2015, the Registry transmitted its "Third Report on the Applications to Participate in the Proceedings" ("Third Report") to the Chamber and the Parties.⁴ On 25 November 2015, the Single Judge granted the Defence request, extending the time-limit for observations on the applications transmitted in the Third Report to 18 December 2015.⁵

III. SUBMISSIONS

4. The Defence challenges application a/05935/15 on the basis that the applicant identifies harm caused by the "government soldiers" who allegedly hit the

¹ ICC-02/04-01/15-303.

² ICC-02/04-01-15-327. The annexes containing the applications were transmitted on 27 October 2015.

³ See ICC-02/04-01/15-312-Conf; ICC-02/04-01/15-309; ICC-02/04-01/15-340 and ICC-02/04-01/15-337. On 27 November 2015, the Single Judge issued a decision, in which he, *inter alia*, admitted the applicants contested by the Defence and Prosecution (ICC-02/04-01/15-350).

⁴ ICC-02/04-01/15-344.

⁵ ICC-02/04-01/15-347.

applicant “on the back with a gun”.⁶ The Defence notes that the victim cannot therefore be considered a “victim” of any of the crimes for which Mr. Ongwen is suspected of.

5. Furthermore, the Defence challenges applications a/05787/15 and a/05788/15 on the basis that they are untruthful.⁷ In particular, the applicants indicate that they were born in 2003 and 2001, respectively. However in section two, both applicants state that they were *no longer* able to attend school because their uncle who was paying their school fees was killed. The Defence submits that both applicants were too young to attend school at the time of the alleged incident.
6. Because of this incongruity, the Defence requests that applications a/05787/15 and a/058788/15 be verified by the applicants’ intended representative before being admitted as victim-participants. The Defence also requests an explanation as to why these two applicants stated this, even though it could not be the case. It is as if the applicants were not recanting the stories that they were told, but they were telling stories which they were instructed to say.
7. Although the Defence has not challenged whether the *prima facie* requirements to be included as a victim-participant have been met in relation to the remaining witnesses, the Defence reserves the right to challenge these applicant’s should new information arise. The Defence further notes in this regard that it has also not engaged in an assessment of the particulars set forth in the table transmitted in the Third Report.

⁶ ICC-02/04-01/15-344-Conf-Anx351-Red. Although the applicant refers to Dominic Ongwen’s rebel group as responsible for this incident, the incident and corresponding harm refers to that of government soldiers (see *ibid.*, p. 1).

⁷ See ICC-02/04-01/15-344-Conf-Anx238-Red, section 2 and ICC-02/04-01/15-344-Conf-Anx239-Red, section 2.

IV. CONCLUSIONS

8. The Defence submits that a/05935/15 does not meet the requirements for admission as a victim-participant. The Defence therefore objects to the inclusion of this applicant.
9. The Defence further requests that applications a/05787/15 and a/05788/15 be verified by the applicants' intended representative before being admitted as victim-participants, and an explanation be given to the parties as to the inconsistency in the respective applications.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 18th day of December 2015

At Nairobi, Kenya