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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 840 victims' applications for participation,
transmitted by the Registry on 8 December 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”) submits observations on the 840 victims’ applications for participation transmitted by the Registry to the Parties and the Chamber on 8 December 2015, 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 (“Decision”).

Procedural Background

2. On 3 September 2015, the Single Judge issued the Decision setting out the procedure for admission of victims to participate in the proceedings of the case. The Single Judge instructed the Registry to transmit to the Chamber and the Parties complete victims’ applications received by 7 December 2015 that fall within the scope of the case against Dominic Ongwen.
3. The Registry has to date transmitted 2048 victims’ applications in four separate reports. The Parties have already provided observations on 209 applications transmitted on 18 September 2015, 336 applications transmitted on 26 October 2015 and 663 applications transmitted on 18 November 2015.
4. On 27 November 2015 the Single Judge issued the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights”.² On 15 December 2015, the Chamber issued a further “Decision on issues concerning victims’ participation”.³

¹ ICC-02/04-01/15-299.

² ICC-02/04-01/15-350.

³ ICC-02/04-01/15-369.

5. On 8 December 2015, the Registry transmitted the final 840 victims' applications⁴ which are the subject of this filing.
6. On 21 December 2015, the Prosecution filed the document containing the charges against Dominic Ongwen ("DCC").⁵

Analysis of the applications for participation

7. The Prosecution in its analysis of the applications continues to follow the approach outlined in its filings of 2 October 2015,⁶ and 9 November 2015.⁷

Changed scope with regard to the crime of persecution

8. The victims' applications transmitted as complete and falling within the scope of the case have been assessed by the Registry against the factual parameters set out in the warrant of arrest against Dominic Ongwen and the "Notice of intended charges against Dominic Ongwen" ("Notice") filed on 18 September 2015.⁸
9. Pursuant to the DCC, Dominic Ongwen is charged with the crime of persecution being committed in the attacks on Pajule IDP camp on or about 10 October 2003, Odek IDP camp on or about 29 April 2004, Lukodi IDP camp on or about 19 May 2004 and Abok IDP camp on or about 8 June 2004. The scope of persecution is therefore narrower than described in the Notice. Consequently, only applicants providing information related to the four IDP

⁴ ICC-02/04-01/15-365.

⁵ ICC-02/04-01/15-375-Conf-AnxA. The public redacted version was filed on 22 December 2015, ICC-02/04-01/15-375-AnxA-Red.

⁶ ICC-02/04-01/15-309, paras. 7-20.

⁷ ICC-02/04-01/15-337, para. 6.

⁸ ICC-02/04-01/15-305-Conf.

camp attacks should be considered as victims of the crime of persecution in the context of this case.

10. The Prosecution observes that only applicants in the final transmission of 8 December 2015 are potentially affected by the change, since this is the only transmission that also includes applicants not belonging to groups of victims related to the four charged camp attacks. The previous transmissions by the Registry included only applications related to the Lukodi and Pajule camp attacks and the conscription and use of child soldiers.⁹

Challenged applications

11. The following applicants in the Prosecution's assessment do not describe events that constitute at least one crime within the jurisdiction of the Court that Dominic Ongwen is charged with in the DCC: a/07028/15, a/07024/15, a/07023/15, a/07022/15, a/06995/15, a/07097/15, a/07080/15, a/07068/15, a/07063/15, a/07059/15, a/07058/15, a/06735/15, a/07019/15, a/07020/15, a/07025/15, a/07051/15, a/07069/15, a/07088/15, a/07099/15.
12. Applicant a/07028/15 describes sexual and gender based crimes committed against her, however the application does not include any mention or link to Dominic Ongwen and/or Sinia brigade. Although the application lists "Unyama 2004"¹⁰ as the incident location and time period, the narrative in the application contradicts that. It is clear from the description that the applicant was abducted earlier, not in 2004 in Unyama.

⁹ Transmission on 18 September 2015 included 209 applications related to the Lukodi attack, transmission on 26 October 2015 included 336 applications related to the Lukodi attack, transmission on 18 November 2015 included 621 applications related to the Lukodi attack, 40 applications related to the Pajule attack and 2 applications related to conscription and use of child soldiers.

¹⁰ This being one of the locations listed in the Notice, para. 35.

13. Applicants a/07097/15 and a/07080/15 do not provide information that could establish a link to crimes falling within the temporal scope of the charges against Dominic Ongwen. The applicants, whilst both abducted by the LRA when younger than 15 years, were older than 15 as of 1 July 2002. The applicants also cannot be considered victims of the crime of persecution, because the events described do not pertain to one of the four camp attacks.

14. Applicants a/07024/15, a/07023/15, a/07022/15, a/06995/15, a/07068/15, a/07063/15, a/07059/15, a/07058/15, a/06735/15, a/07019/15, a/07020/15, a/07025/15, a/07051/15, a/07069/15, a/07088/15, a/07099/15 describe events related to attacks on Palaro IDP camp,¹¹ Acet IDP camp¹², Lira Palwo,¹³ Ojwii IDP camp,¹⁴ Bario,¹⁵ Onegkwok,¹⁶ Acholi Pii¹⁷ and Patongo¹⁸. The Notice listed some of these locations among the attacks giving rise to the crime of persecution, while other locations were listed in relation to the crimes of conscription and use of child soldiers and abductions of women and girls. As described above, however, Dominic Ongwen is only charged with the crime of persecution in relation to attacks on Pajule, Odek, Lukodi and Abok IDP camps. Applicants who allege crimes committed in incidents other than the four camp attacks, and whose description of events do not disclose any other charged crimes besides persecution, therefore fall outside the scope of the case. The above listed applications fall into this category.

¹¹ a/07024/15, a/07023/15, a/07022/15, a/07019/15, a/07020/15, a/07025/15.

¹² a/06995/15.

¹³ a/07068/15, a/07069/15.

¹⁴ a/07059/15, a/07051/15.

¹⁵ a/07058/15, a/06735/15.

¹⁶ a/07063/15.

¹⁷ a/07088/15.

¹⁸ a/07099/15.

Clarifications sought with regard to a/07100/15, a/07101/15 and a/07050/15

15. Applicants a/07100/15 and a/07101/15 both describe being abducted in Ngora Parish in October and November 2002, while younger than 15 years old. Apart from stating that Dominic Ongwen is responsible at the designated field in the form, the application of a/07101/15 does not include any information related to Dominic Ongwen and/or Sinia brigade. Similarly, the application of a/07100/15 does not even mention Dominic Ongwen or Sinia brigade. The Prosecution proposes that the Chamber directs the Registry to provide further information in relation to these two applicants to verify whether there is any link between the alleged events and Dominic Ongwen/Sinia brigade and hence fall within the scope of the case against Dominic Ongwen.

16. Applicant a/07050/15 describes rape that occurred in Unyama in 2004. However, it is unclear who the perpetrator was. The term “soldier” is used throughout the application with no additional qualifying information. It is therefore not clear whether the perpetrator of the crime is an individual or entity related to the charges brought against Dominic Ongwen, namely the LRA. The Prosecution proposes that this issue should be similarly clarified by the Registry. If the victim alleges the perpetrator to be a member of the LRA, the Prosecution is satisfied that the victim meets the criteria pursuant to rule 85.

Dual status of applicants a/06695/15, a/06812/15, a/06809/15, a/06905/15, a/06992/15 and a/06996/15

17. Applicant a/06695/15 is Witness P-0284. The statement of the Witness was disclosed to the Defence in December 2015 with no redactions applied to the identity of P-0284 or to the content of his statement.

18. Applicant a/06812/15 is Witness P-0250. The statement of the Witness was disclosed to the Defence in November 2015 with no redactions applied to the identity of P-0250 or to the content of his statement.
19. Applicant a/06809/15 is Witness P-0217. The transcripts of the interview with the Witness were disclosed to the Defence in September 2015 with no redactions applied to the identity of P-0217 or to the content of his statement.
20. Applicant a/06905/15 is Witness P-0218. The statement of the Witness was disclosed to the Defence in September 2015 with no redactions applied to the identity of P-0218 or to the content of his statement.
21. Applicant a/06992/15 is Witness P-0197. The statement of the Witness was disclosed to the Defence in October 2015 with no redactions applied to the identity of P-0197 or to the content of his statement.
22. Applicant a/06996/15 is Witness P-0252. The statement of the Witness was disclosed to the Defence in November 2015 with no redactions applied to the identity of P-0252 or to the content of his statement.
23. The Prosecution proposes that the redactions made to the applications of the above individuals are revisited and, that subject to the authorisation of the Single Judge, un-redacted or lesser redacted versions be transferred by the Registry to the Defence.

Conclusion

24. The Prosecution submits that the 818 applicants not specifically addressed herein, whose applications were transferred by the Registry on 8 December 2015, meet the requirements for admission as victim-participants in the pre-trial proceedings in this case. Applicants a/07028/15, a/07024/15, a/07023/15, a/07022/15, a/06995/15, a/07097/15, a/07080/15, a/07068/15, a/07063/15, a/07059/15, a/07058/15, a/06735/15, a/07019/15, a/07020/15, a/07025/15, a/07051/15, a/07069/15, a/07088/15, a/07099/15 in the Prosecution's assessment do not meet the criteria under rule 85, because they do not describe events that constitute at least one crime within the jurisdiction of the Court with which Dominic Ongwen is charged. The Prosecution proposes that further clarification be obtained in relation to a/07100/15, a/07101/15 and a/07050/15.



Fatou Bensouda,
Prosecutor

Dated this 23rd day of December 2015
At The Hague, The Netherlands