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TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public

**Registry Submissions on the Order Scheduling the First Status Conference and
Other Matters**

Source: Registry

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

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I. Introduction

1. In accordance with the Single Judge's Order Scheduling the First Status Conference and Other Matters, notified on 4 May 2016, (the "4 May 2016 Order")¹ the Registry hereby presents its submissions on paragraphs 3(b), 3(c), 3(f), and 3(h) respectively.

II. Submissions

A) *Protection issues and possible referrals to the Court's witness protection programme*²

2. The Registry encourages the parties to follow the procedure established in regulations 80(1) and 96(2) of the Regulations of the Registry for any issues concerning the protection of witnesses and referrals to the Court's witness protection program. Upon receipt of a referral for protection, the Registry will perform a threat and risk assessment of the security situation of the individual in question. For the purpose of assessment and recommendation of the appropriate protective measures, it is essential that the parties provide the Registry with specific information on the nature of the threat or risk the individual could be exposed to. The Victims and Witnesses Unit (the "VWU") remains available to assist the parties in that regard and to provide them with a protection referral form to facilitate any request.

B) *Languages to be Used in the Proceedings*³

3. Given that there are currently only two Acholi interpreters (one in-house and one freelance), the Registry has to train para-professional interpreters to

¹ Trial Chamber IX, "Order Scheduling First Status Conference and Other Matters", dated 4 May 2016, ICC-02/04-01/15-432.

² 4 May 2016 Order, para. 3(b)(i).

³ 4 May 2016 Order, para. 3(c).

interpret from Acholi into English and vice versa for the accused and the witnesses.

4. The Registry is currently taking the necessary steps to ensure that the Acholi interpreters are on-board by the beginning of July 2016. The usual timeline for training is between six and eight months. The trainees would then undergo an accreditation test which would confirm that they are able to interpret simultaneously in the courtroom. In practical terms, the Registry expects that the trainees recruited in July 2016 and the one available in-house Acholi interpreter to be able to interpret by the end of the year, possibly by November 2016, for the opening of the case, i.e. opening statements. For the substantial and more demanding part of the trial, namely witness testimonies, the trainee interpreters would be ready in January 2017.
5. For potential other languages at the trial such as Ateso, the Registry would need to recruit operational interpreters that would work in consecutive fashion which would add 30% to the length of the hearing. In the event that Ateso or any other languages are required, the Registry would need four-weeks notice, at a minimum, in order to arrange the availability and travel of the interpreters.
6. In terms of translation into situation languages, the Registry's Language Service Section can provide translation from and into Acholi and Ateso. Other languages will be dealt with on a case-by-case basis and will need to be outsourced sufficiently in advance.

C) New Victim Applications for Participation Received since the Confirmation Hearing Deadline and Number of Applications Expected in the Future⁴

7. From 18 September to 7 December 2015, during the pre-trial stage of the proceedings, the Registry transmitted to the Pre-Trial Chamber II (the "Pre-

⁴ 4 May 2016 Order, para. 3(f).

Trial Chamber”) and the parties 2,048 applications linked to the case,⁵ of which 2,026 victims were admitted to participate at the confirmation of charges hearing.⁶

8. Since the last transmission of applications in the record of the case, dated 7 December 2015, no new application for participation has been received by the Registry.⁷ Through its outreach activities since January 2016,⁸ the Registry notes the continuing interest of victims’ communities in taking part in the process.
9. In light of the information provided by the Prosecutor and the Pre-Trial Chamber,⁹ and considering the new scope of the case, which has been

⁵Registry, “ [...] Report on Applications to Participate in the Proceedings” dated 18 September 2015, 26 October 2015, 18 November 2015 and 7 December 2015, respectively ICC-02/04-01/15-303 and ICC-02/04-01/15-304 and annexes; ICC-02/04-01/15-327 and annexes; ICC-02/04-01/15-344 and annexes; and ICC-02/04-01/15-365 and annexes. The Registry notes that the remaining applications for participation in the proceedings received in relation to the case were not transmitted during the pre-trial stage of the proceedings because they were assessed by the Victims Participation and Reparations Section (“VPRS”) as incomplete or falling outside the scope of the case.

⁶Pre-Trial Chamber II, “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights”, dated 27 November 2015, ICC-02/04-01/15-350 and “Second decision on contested victims’ applications for participation and legal representation of victims”, dated 24 December 2015, ICC-02/04-01/15-384.

⁷Throughout its field activities at the pre-trial stage of the proceedings, the Registry has been particularly mindful not to raise the expectations of victims and has carefully planned the collection of the applications taking into account the number that could be completed and processed in time for the deadline of 7 December 2015 set by the Pre-Trial Chamber (see “Decision concerning the procedure for admission of victims to participate in the proceedings in the present case”, dated 3 September 2015, ICC-02/04-01/15-299, para. 10). Following standard practice, the VPRS advised potential applicants who could not apply in time for participation at the confirmation of charges hearing to wait for the Chamber’s decision on whether there would be further opportunities for victims to participate in the case before applying for participation.

⁸These activities, some of which were conducted jointly with staff from the Office of the Prosecutor, were attended by over 13,000 victims, representatives of community-based organizations and civil society organizations. The activities have been dedicated to answering questions about the judicial process and providing information on victims’ rights to participate in the proceedings and obtain reparations. The Registry also participated in radio programmes aimed at reaching out to a larger number of victims and communities within Northern Uganda. The Registry continued to build up its knowledge about the number, locations and general situation of the potential victims of the attacks of Abok, Odek and Pajule IDP camps, as well as victims of sexual and gender based crimes and the conscription and use of child soldiers. Reports of the Registry’s activities conducted in the field and questions raised by victims during outreach sessions can be provided upon request.

⁹See Pre-Trial Chamber II, “Decision on the confirmation of charges against Dominic Ongwen”, dated 23 March 2016, ICC-02/04-01/15-422-Red, which mentions evidence provided by the Prosecutor that

broadened and includes now attacks on four internally displaced persons (IDP) camps as well as sexual and gender based crimes and the conscription and use of child soldiers, the Registry believes that there are potentially several thousands of new victims that may apply in the future for participation in the proceedings.¹⁰

10. The Registry is mindful of the Court-wide imperative to conduct proceedings in an expeditious, transparent and fair manner, as well as committed to the imperative set by the various Chambers that the participation process needs to be “meaningful” as opposed to “purely symbolic”.¹¹ In light of this, and taking into account the Single Judge’s decision that, unless otherwise indicated, the procedures adopted by the Pre-Trial Chamber remain in place as regards to evaluating victim applications,¹² the Registry’s Victims

estimates that, at the time of the attacks, there were approximately between 15,000 and 30,000 people residing in the Pajule IDP camp; 2,000 to 2,600 people residing in the Odek IDP camp; 7,000 civilians residing in the Lukodi IDP camp; and 7,000 to 12,000 civilians residing in the Abok IDP camp. The VPRS notes that these estimates do not include potential victims of the counts of sexual and gender based crimes and conscription and use of child soldiers.

¹⁰The Registry notes that at the pre-trial stage, the VPRS was only able to conduct a limited number of activities in the localities which were the subject of the additional charges as set out in the Prosecutor’s Notice (attacks on the IDP camps of Abok, Pajule and Odek, as well as sexual and gender based crimes and conscription and use of child soldiers). See Office of the Prosecutor, “Notice of intended charges against Dominic Ongwen”, dated 18 September, public redacted version registered on 25 September 2015, ICC-02/04-01/15-305-Red2 (the “Prosecutor’s Notice”). The Registry therefore believes that the number of applications related to crimes committed in these localities may significantly increase with the development of the Registry’s activities in the field.

¹¹Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision on victims’ participation”, dated 18 January 2008, ICC-01/04-01/06-1119, para 85; Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo* “Judgment on the appeals of the Prosecutor and the Defence against Trial Chamber I’s Decision on Victims Participation”, dated 11 July 2008, ICC-01/04-01/06-1432, para 97; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Order on the Organisation of Common Legal Representation of Victims”, dated 22 July 2009, ICC-01/04-01/07-1328, para 10(a) and “Decision on the modalities of victim participation at trial”, dated 22 January 2010 and registered on 3 March 2010, ICC-01/04-01/07-1788-tENG, para 57; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on common legal representation of victims for the purpose of trial”, dated 10 November 2010, ICC-01/05-01/08-1005, para 9(a); Trial Chamber V, *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, “Decision on victims’ representation and participation”, dated 3 October 2012, ICC-01/09-02/11-498, para 9.

¹² 4 May 2016 Order, para. 4. The main parameters of the Ongwen’s pre-trial victim’s admission system have been set out in Pre-Trial Chamber II “Decision Establishing Principles on the Victims’ Application Process”, dated 4 March 2015, ICC-02/04-01/15-205, and “Decision concerning the procedure for admission of victims to participate in the proceedings in the present case”, dated 3

Participation and Reparations Section stands ready to provide the Single Judge with recommendations regarding some aspects of the system for allowing victims to participate in the trial proceedings, with a view to streamlining the procedure and adapting it to the specificities of the present case, including the high number of expected applications for participation in the proceedings related to trial.¹³

D) *Any Other Matters*¹⁴

11. The Registry respectfully takes the opportunity of this submission to inform the Single Judge that prior to any witness giving testimony, the VWU is generally required to carry out a witness familiarisation procedure. In this respect, the Registry recommends the adoption of a Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial (the “Familiarisation Protocol”) which outlines the procedures that serve the best interests of witnesses and provides for sustainable working solutions for all entities involved. The Familiarisation Protocol covers issues pertinent to the

September 2015, ICC-02/04-01/15-299, and consisted in, *inter alia*, (1) A short simplified one-page application form to be completed by victims seeking to participate in the proceedings; (2) Transmission in original version to the Chamber and Prosecutor, and in a redacted version to the Defence, on a rolling basis and no later than 45 days before the start of the confirmation hearing, of only those applications (along with documents attached) assessed by the Registry as falling within the scope of the case; in case of doubt, the Registry shall consult with the Single Judge and request guidance; (3) Transmission of confidential reports with the Registry’s assessment of the transmitted applications against the requirements of rule 85 of the Rules; (4) Administrative grouping of victims based on the incidents in which the victim applicants were involved or on categories of alleged crimes when separately outlined in the Prosecutor’s Notice; (5) All those victims whose applications for participation have not been objected by either party, or otherwise rejected by the Single Judge, are admitted to participate in the proceedings upon expiration of the time limit for the parties’ objection, while any contested application shall be decided upon individually by the Single Judge.

¹³The Registry notes the resource-intensive application process in place at the pre-trial stage, which required the full-time and almost exclusive work of the 3 Units of the VPRS from July to December 2015. Taking into account the VPRS’ current resources and competing priorities, it estimates that under the same application system it would be able to transmit around 300 applications per month to the Chamber and parties. In view of the high number of potential applicants for participation at trial stage, using the same application system would thus either require a substantial amount of time or a significant increase in the VPRS’ resources devoted to this process.

¹⁴ 4 May 2016 Order, para. 3(h).

familiarisation process taking into account the practices and experiences concerning witnesses appearing before the Court and matters relating to, *inter alia*, travel preparations of witnesses in the field, arrangements for witnesses falling under the scope of Rule 74 of the Rules of Procedure and Evidence (the “Rules”) and courtroom familiarisation.

12. Subject to the approach of the Chamber in the present case, the Registry informs the Single Judge that two different recent amended versions of Familiarisation Protocols were adopted in the cases of *The Prosecutor v. Bosco Ntaganda* (the “Ntaganda case”)¹⁵ and *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* (the “Gbagbo and Blé Goudé case”)¹⁶. The version adopted in the Ntaganda case takes into consideration the fact that a Witness Preparation Protocol was adopted by the Chamber of the case. This version is an amended version of the Protocols previously filed in the cases of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (the “Ruto and Sang case”) and *The Prosecutor v. Uhuru Muigai Kenyatta*¹⁷. In the version adopted in the Gbagbo and Blé Goudé case, due to the absence of a Witness Preparation Protocol, the Registry’s Victims and Witnesses Unit conducts the exercise of reading the statement with the witness. This Protocol is an amended version of the Protocol previously filed in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (the “Bemba case”)¹⁸. The Registry would recommend the adoption of the amended versions of one of the two Familiarisation Protocols

¹⁵ Trial Chamber VI, “Decision on the protocol on witness familiarisation”, dated 17 June 2015, ICC-01/04-02/06-656.

¹⁶ Trial Chamber I, “Decision on witness preparation and familiarisation”, dated 2 December 2015 and registered on 3 December 2015, ICC-02/11-01/15-355.

¹⁷ Registry, “Victims and Witnesses Unit’s Amended Protocol on the practices used to familiarise witnesses for giving testimony”, dated 24 April 2013 and registered on 25 April 2013, ICC-01/09-01/11-704-Anx and Registry, “Victims and Witnesses Unit’s Amended Protocol on the practices used to familiarise witnesses for giving testimony”, dated 24 April 2013 and registered on 25 April 2013, ICC-01/09-02/11-727-Anx.

¹⁸ Registry, “Victims and Witnesses Unit’s amended version of the “Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial” submitted on 22 October 2010”, dated 7 December 2010 and registered on 8 December 2010, ICC-01/05-01/08-1081-Anx.

in order to promote a uniform practice for the management of witnesses appearing before the Court.

13. The Registry also informs the Single Judge that in accordance with Rule 88 of the Rules, the VWU, upon a request from the Chamber, will provide its assessment on the need for special measures to be implemented for the benefit of potentially vulnerable witnesses. In this regard, the Registry refers to the “Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses” (the “Vulnerability Protocol”) which was adopted in the Bemba case¹⁹, the Ruto and Sang²⁰, the Ntaganda²¹ and the Gbagbo and Blé Goudé²² cases. There is currently one version of the Vulnerability Protocol adopted before the Court. Therefore, in order to maintain this uniform practice, the Registry would recommend adopting the same Vulnerability Protocol in the present case subject to minor amendments to the terminology in order to reflect the recent restructuring of the VWU.
14. Furthermore, subject to the approach of the present Chamber and in the event that the parties and participants call dual status’ witnesses, the Registry informs the Single Judge, on the “Proposed mechanism for exchange of information on individuals enjoying dual status” (the “Proposed Mechanism”) introduced in the case of *The Prosecutor v. Thomas Lubanga Dyilo*. An amended version was subsequently adopted in the Ntaganda case²³ and

¹⁹ Registry, “Victims and Witnesses Unit’s additional observations on protective measures for vulnerable witnesses”, dated 25 October 2010, ICC-01/05-01/08-974-Anx 2.

²⁰ Registry. “Victims and Witnesses Unit’s information report on the preparation and familiarisation of *viva voce* witnesses in the field”, dated 29 August 2011 and registered on 30 August 2011, ICC-01/09-01/11-303- Conf-Exp-Anx.

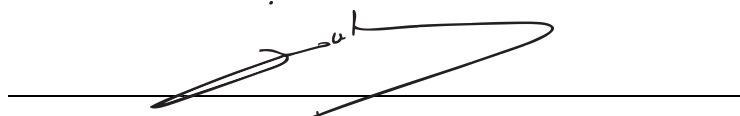
²¹ Trial Chamber VI, “Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses”, dated 18 February 2015, ICC-01/04-02/06-464.

²² Trial Chamber I, “Decision on Protocol on vulnerable witnesses”, dated 4 December 2015, ICC-02/11-01/15-357.

²³ Trial Chamber VI, “Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses”, dated 18 February 2015, ICC-01/04-02/06-464

an updated one in the Gbagbo case²⁴ following further consultations between the Registry and the parties and participants.

15. Upon request of the Chamber, the Registry stands ready to coordinate any necessary consultation with the parties and participants in order to submit the above mentioned documents for the Chamber's consideration and adoption.

A handwritten signature in black ink, appearing to read 'M. Dubuisson', is written over a horizontal line.

Marc Dubuisson, Director, Division of Judicial Services

per delegation of Herman von Hebel, Registrar

Dated this 18 May 2016

At The Hague, The Netherlands

²⁴ Trial Chamber I, "Decision adopting the 'Protocol on disclosure of the identity of witnesses of other parties and of the LRV in the course of investigations, use of confidential information by the parties and the LRV in the course of investigations, inadvertent disclosure and contacts between a party and witnesses not being called by that party'", dated 31 August 2015 and registered 1 September 2015, ICC-02/11-01/15-200.