



Original: English

No.: ICC-02/04-01/15
Date: 2 September 2016

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

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

Public
With
300 confidential annexes *EX PARTE* only available to the Registry and the
Prosecutor
300 confidential redacted annexes
and one confidential annex

First Report on Applications to Participate in the Proceedings

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. The Registry hereby submits to Trial Chamber IX (“Chamber”) its first report on victims’ applications to participate in the proceedings in the case *The Prosecutor v. Dominic Ongwen* (“Ongwen case”), together with annexes containing 300 applications.

II. Procedural history

2. From 18 September to 7 December 2015, during the pre-trial stage of the proceedings in the *Ongwen* case, the Registry transmitted to Pre-Trial Chamber II and to the parties four separate reports on applications to participate in the proceedings,¹ following which 2,026 victims were admitted to participate at the confirmation of charges hearing.²
3. On 4 and 23 May 2016, the Single Judge of Trial Chamber IX (“Single Judge”) ordered that the victim application procedure for participation adopted at the pre-trial stage of the *Ongwen* case remain in place at the trial stage of the proceedings (“Single Judge’s Order”).³
4. On 30 May 2016, the Chamber set a deadline of 6 October 2016 for the transmission of all victims applications for participation in the proceedings.⁴

¹Registry, “[...] 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.

²Pre-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 Pre-Trial Chamber II, “Second decision on contested victims’ applications for participation and legal representation of victims”, dated 24 December 2015, ICC-02/04-01/15-384.

³Trial Chamber IX, “Order Scheduling First Status Conference and Other Matters”, dated 4 May 2016, ICC-02/04-01/15-432, para. 4, and Oral Order issued during the status conference of 23 May 2016, ICC-02/04-01/15-T-25-ENG (ET WT), p. 29, lines 23-24.

⁴Trial Chamber IX, “Decision Setting the Commencement Date of the Trial”, dated 30 May 2016, ICC-02/04-01/15-449, p.7.

5. To date, the Registry has collected approximately 2040 applications for participation over the course of three field missions.⁵ The Registry has prepared for transmission to the Trial Chamber and parties a first batch of 300 applications which the Registry assessed as complete and linked to the *Ongwen* case (“Applications”). 297 Applications filed in the present transmission fall within the group “Attack on the Abok IDP camp”, two applications fall within the group “Attack on the Lukodi IDP camp”, and one application falls within the group “Conscription and use of child soldiers”.⁶
6. The Registry hereby transmits its first report on 300 Applications, along with confidential Annexes 1 to 300 *EX PARTE* only available to the Registry and the Prosecutor, which contain unredacted versions of the Applications; confidential Annexes 1 to 300, which contain redacted versions of the Applications, and confidential Annex 301 which contains the Registry’s assessment of the Applications against the requirement of rule 85 of the Rules of Procedure and Evidence (“Rules”).

⁵ Missions took place on 5-12 July 2016, 18-26 July 2016 and 10-19 August 2016. Around 770 applications collected relate to the Attack on the Abok IDP camp, 600 applications relate to the Attack on the Odek IDP camp and 670 applications relate to the attack on the Pajule-Lapul IDP camp. These figures include duplicate applications received.

⁶ Pursuant to the practice followed at the pre-trial stage of the proceedings (see Pre-Trial Chamber II, “Decision Establishing Principles on the Victims’ Application Process”, dated 4 March 2015, ICC-02/04-01/15-205, para. 29), all applications are grouped according to the main incidents laid out in Pre-Trial Chamber II’s “Decision on the confirmation of charges against Dominic Ongwen”, dated 23 March 2016, ICC-02/04-01/15-422-Red (“Decision Confirming the Charges”). These include the attacks on, respectively, Pajule IDP camp, Odek IDP camp, Lukodi IDP camp, Abok IDP camp. There are also two groups corresponding to categories of alleged thematic crimes as separately outlined in the Decision: sexual and gender based crimes, and conscription and use of child soldiers. Applications that may fall within two groups because they include thematic crime(s) allegedly committed in an IDP camp falling within the scope of the case have been grouped in the group pertaining to the relevant IDP camp.

III. Classification

7. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), the annexes to this document, which include the Registry’s assessment of the Applications against the requirements of rule 85 of the Rules , as well as both redacted and unredacted versions of the Applications, are respectively classified as “Confidential” and “Confidential *EX PARTE*, only available to the Registry and the Prosecutor” since they contain sensitive information which may lead to the identification of the applicants.⁷

IV. Applicable Law

8. The Registry submits the present report in accordance with article 68(1) and (3) of the Rome Statute (“Statute”), rules 16, 85 and 89(1) of the Rules, regulation 86 of the RoC and regulations 105 to 109 and 123(1) of the Regulations of the Registry (“RoR”), and in accordance with the Single Judge’s Order.

V. Submissions

A. Activities carried out in the field to enable victims to apply for participation in the proceedings

9. As soon as the Decision Confirming the Charges was issued, the Registry carried out a number of outreach activities in order to provide updates to affected communities and potential victim-applicants and answer their

⁷ Trial Chamber IX, “Decision on Disclosure of Victims’ Identities”, dated 17 June 2016, ICC-02/04-01/15-471, para. 12; Pre-Trial Chamber II, “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. 6.

questions about the judicial process. Information about the Court, the proceedings against Domininc Ongwen, the legal representation, and the victims' rights to participate in the proceedings and obtain reparations was provided throughout these activities.

10. Immediately after the issuance of the Single Judge's Order,⁸ the Registry undertook activities to prepare the application process on the ground, which included:

- providing information to victims and key community leaders on the application process;
- developing the information available to the Registry on the number, location and general situation of potential victims of the attacks of Abok, Odek and Pajule IDP camps,⁹ as well as on victims of sexual and gender based crimes and on the crimes of conscription and use of child soldiers; and
- training selected individuals who would assist applicants to fill in their applications.

11. The Registry organised three 8-day application completion processes in the localities where most of the victims of the attacks on the Abok, Odek and Pajule-Lapul IDP camps reside. The 2040 application forms for participation collected to date were filled in either by Registry staff or by interviewers trained by the Registry. The process of filling in a form was individual, and took between 45 minutes and one hour. The Registry has been particularly mindful that the number of potential applicants interested in applying for

⁸ Trial Chamber IX, "Order Scheduling First Status Conference and Other Matters", dated 4 May 2016, ICC-02/04-01/15-432, para. 4, and Oral Order issued during the status conference of 23 May 2016, ICC-02/04-01/15-T-25-ENG (ET WT), p. 29, lines 23-24. The Registry did not begin to collect applications for participation before a decision was issued in order to ensure that the applications filled in complied with the instructions of the Trial Chamber.

⁹ The VPRS was only able to conduct a limited number of activities in these locations at the pre-trial stage.

participation¹⁰ could exceed the capacity of the Registry to collect, process and transmit before the 6 October 2016 deadline. The Registry was also aware that this limitation could create tensions within the community between those who were able to apply and those who were not.

12. To address these issues without having to lengthen the proceedings and request for an extension of deadline, the Registry held meetings with community leaders in order to explain the time limitations of the current process and to inform them that, given the timeframe, it could not meet with all potential applicants and assist them to fill in participation forms. Efforts were made so that the applications collected would, as much as possible, be representative of the victim population. In particular, the Registry discussed with local leaders the possibility of designating one person per family or per household to apply for participation.
13. However, despite all efforts in finding such a workable solution, the Registry notes that in practice this strategy met with limited success since it was difficult to restrict the process to one person per family due to the family structure and social dynamics in the context of Northern Uganda, in particular the strong bonds that exist between non-immediate family members living in very close proximity and often sharing property and resources.
14. In an attempt to address the limitations of the process, community leaders from one specific location presented the Registry with a list containing the names of 2074 potential applicants who wanted to fill in application forms,

¹⁰ According to estimates provided by the Prosecution, 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; and 7,000 to 12,000 civilians residing in the Abok IDP camp. See Pre-Trial Chamber II, “Decision on the confirmation of charges against Dominic Ongwen”, dated 23 March 2016, ICC-02/04-01/15-422-Red, paras. 67, 72 and 82.

but were not able to do so at this stage of the proceedings given the deadline imposed by the Chamber and the limited resources of the Registry.¹¹

15. In this context, the Registry would also like to draw the Chamber's attention to the general situation faced by victims. Many victims have reported to the Registry that they continue to be affected by the injuries resulting from the crimes they suffered and that they had limited, if any, access to the scarce medical and social services available. They claim that this has also curtailed their ability to engage in economic activities or provide for their families resulting in broken marriages, disrupted education of their children, alcoholism and domestic violence. Victims of sexual and gender based crimes and former child soldiers also reported being stigmatized by their families and the larger community which enhanced their suffering.

B. Explanation of the assessment criteria applied by the Registry

16. Following the practice established during the pre-trial proceedings,¹² the Registry transmits only applications which it assesses as complete and in which the applicant alleges to have personally suffered harm, whether direct or indirect, as a result of one or more crimes included in the charges confirmed against Dominic Ongwen.¹³ The approach followed in assessing the applications against the requirements of rule 85 of the Rules is described below.

¹¹ The community leaders indicated that more people showed interest in participating in the process but could not be registered on this list because the community leaders lacked resources to reach out to them. This list is available to the Trial Chamber, upon request.

¹² Pre-Trial Chamber II, "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. 4.

¹³ Pre-Trial Chamber II, "Decision on the confirmation of charges against Dominic Ongwen", dated 23 March 2016, ICC-02/04-01/15-422-Red.

1- Completeness

17. When assessing the completeness of applications, the Registry examines: whether sufficient proof of identity and kinship or guardianship is provided, as applicable; whether the personal details are consistent throughout the application; whether the application contains basic information related to the crime, including date, place and the harm suffered, and; whether the applicant has signed the application form.
18. In assessing whether the proof of identity provided by the applicants is sufficient, the Registry refers to Pre-Trial Chamber II's decision on the identification documents available in Uganda ¹⁴ that also applies to proof of kinship or guardianship. The Registry notes however that some applications are supported by additional forms of identity documentation, namely voter location slips, that were issued by the Electoral Commission ahead of the February 2016 national general elections. This type of document contains, *inter alia*, the name, date of birth and photo of the person. The Registry further notes that all applicants who have submitted this new type of document also provided identification letters issued by a Local Council, which were previously accepted by Pre-Trial Chamber II.¹⁵
19. The Registry also brings to the Chamber's attention the high number of applicants who allege to have suffered harm as a result of crimes committed against a relative. Consistent with the jurisprudence of the Court, the Registry verifies that the direct victim's identity is established , and that the proof of kinship between the direct victim and the applicant is also provided.¹⁶ When

¹⁴ Pre-Trial Chamber II, "Decision on victims' applications for participation [...]", dated 14 March 2008, ICC-02/04-125, para. 6.

¹⁵ Pre-Trial Chamber II, "Decision on victims' applications for participation [...]", dated 14 March 2008, ICC-02/04-125, para. 6.

¹⁶ Appeals Chamber, "Judgment on the appeals of the Defence against the decisions entitled "Decision on victims' applications for participation [...]" of Pre-Trial Chamber II", dated 23 February 2009, ICC-02/04-01/05-371, paras. 1 and 38; Appeals Chamber, "Judgment on the appeals of the Defence against the decisions entitled "Decision on victims' applications for participation [...]" of Pre-Trial Chamber

harm is alleged as a result of a crime committed against a relative who is not part of the applicant's nuclear family or a person who is not a family member, the Registry makes a determination on a case-by-case basis in light of any information provided by the applicant explaining his or her relationship with the direct victim, and whether the relationship can be said to resemble that between close family members.¹⁷ In making this assessment, the Registry has taken into account the information provided in the application form, as well as information regarding family structure and social dynamics in the context of Northern Uganda, in particular the strong bonds that exist between non-immediate family members living in very close proximity who often share property and resources. If the special bond of affection with or dependence on the direct victim was missing, the Registry considered that there was no sufficient information available to conclude that the applicant has suffered harm as a result of the crime allegedly committed against the direct victim.¹⁸

20. Where there appears to be inconsistencies in the information provided in the application forms or discrepancies between the application forms and the identity documents submitted, the Registry has followed the approach that various Chambers have previously adopted.¹⁹ Accordingly, applications

II", dated 23 February 2009, ICC-02/04-179 paras. 1 and 38; Trial Chamber II, "Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims", dated 23 September 2009, ICC-01/04-01/07-1491-Red-tENG, paras. 37 and 38; Trial Chamber III, "Decision on 722 applications by victims to participate in the proceedings", dated 18 November 2010, ICC-01/05-01/08-1017, para. 44.

¹⁷ See Trial Chamber IV, "Decision on 19 applications to participate in the proceedings", dated 12 December 2013, ICC-02/05-03/09-528, para. 32.

¹⁸ The Registry notes that in the majority of cases, the applicant would also have suffered harm as a result of another crime Dominic Ongwen has been charged with that would qualify them as a victim within the meaning of rule 85(a) of the Rules.

¹⁹ Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", dated 15 January 2014, ICC-01/04-02/06-211, para. 23. See also Trial Chamber II, "Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims", dated 23 September 2009, ICC-01/04-01/07-1491-Red-tENG, para.32-33; Pre-Trial Chamber I, "Decision on the 138 applications for victims' participation in the proceedings", dated 11 August 2011, ICC-01/04-01/10-351, paras. 27-28; and Trial Chamber I, "Decision on victim participation", dated 6 March 2015, ICC-02/11-01/11-800, para. 32.

containing minor inconsistencies which appear to be the result of human error and applications in which the discrepancies are clearly and satisfactorily explained by the applicant have been assessed as complete. In those instances, the Registry has taken into account the nature of the discrepancy, together with the overall story provided by the applicant, to conclude that the application appears to be complete.

2- Requirements relating to the alleged crime

21. In considering whether the acts described by the applicant appear to constitute crimes within the scope of the present case, three issues were taken into account: a) the type of crime(s), b) the geographical location and the date of the commission of the alleged crime(s), and c) the harm suffered.
22. In accordance with the jurisprudence of the Court, the Registry has considered that the identification of the perpetrator(s) is not required information for an application for participation to be considered complete.²⁰ As regards sexual and gender based crimes and the crimes of conscription and use of child soldiers committed outside the four IDP camps, the Registry has assessed as falling within the scope of the *Ongwen* case applications which mention , or are linked to, Dominic Ongwen and/or the Sinia Brigade.²¹

²⁰ Pre-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 para. 13. See also Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", dated 4 March 2015, ICC-02/04-01/15-205, para. 28. See also Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, dated 26 August 2011", ICC-01/09-02/11-267, paras. 32-34; Pre-Trial Chamber I, "Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings", dated 6 February 2013, ICC-02/11-01/11-384-Corr, para. 37.

²¹ Pre-Trial Chamber II, "Second decision on contested victims' applications for participation and legal representation of victims", dated 24 December 2015, ICC-02/04-01/15-384, para. 13.

a) Type of crime(s)

23. In conducting its assessment, the Registry has considered whether the acts described in the applications appear to constitute any of the crimes laid out in the Decision Confirming the Charges. The Registry specifies that in so doing, it considered only the alleged acts and did not make an assessment as to the presence of the contextual elements of the charged crimes.
24. Where applicants reported indiscriminate shootings, destruction of property or attacks against the person, the Registry considered these alleged acts as possibly falling within the charge of the crime of intentionally directing attacks against a civilian population under article 8(2)(e)(i) of the Statute. In addition, irrespective of whether an applicant was injured while fleeing the attack or whether their property inside the IDP camps was destroyed, the Registry considered the alleged acts as possibly falling within the charge of the crime of intentionally directing attacks against a civilian population and the crime of persecution.
25. Further, in line with the practice at the pre-trial stage, the Registry considered that acts which would qualify as Cruel Treatment under article 8(2)(c)(i) of the Statute also qualify as Other Inhumane Acts under 7(1)(k). The Registry notably listed these crimes when applicants allege to have been abducted (or to have suffered harm as a result of a close relative having been abducted) during the attack, irrespective of whether they also allege having (or a close relative having) suffered from the remaining acts included in paragraphs 22, 35, 49 and 61 of the charges confirmed against Dominic Ongwen.²²

²² Pre-Trial Chamber II, “Decision on the confirmation of charges against Dominic Ongwen”, dated 23 March 2016, ICC-02/04-01/15-422-Red, p. 71-104.

b) Geographical location and date which delimit the scope of the Case

In its assessment, the Registry has examined whether the reported alleged crimes have occurred within the specific locations and on the dates referred to in the Decision Confirming the Charges. In some instances the Registry considered that an applicant had sufficiently demonstrated that the events took place within the geographical and temporal scope of the *Ongwen* case even if he or she did not know or did not explicitly state the specific date or location when the applicant provided relevant descriptions of the context of the attack. In line with the approach of the Chamber at the pre-trial stage, the Registry has assessed as complete and linked to the case, applications where, in light of the overall description of the facts, there were enough indicators to enable the reasonable conclusion that the applicants' claim corresponded to the charges confirmed against Domininc Ongwen.²³ This approach was followed even when the date of the alleged events, as written, did not seem to fall within the temporal scope of the case or where the applicant did not remember the date of the event.

c) Requirements related to the harm suffered

26. Only personal harm, direct or indirect, which appeared to be the result of one or more of the crimes contained in the charges, has been considered.²⁴ In line with the jurisprudence of the Court, the Registry has categorised the type of harm as material, physical or psychological.²⁵ In a limited number of cases the Registry has categorised the alleged harm as a "substantial impairment of

²³ Pre-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, para. 13.

²⁴ Pre-Trial Chamber II, "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.4.

²⁵ Appeals Chamber, "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008", dated 11 July 2008, ICC-01/04-01/06-1432, para. 32.

fundamental rights”.²⁶ These were instances where alleged crimes appeared to have interfered with a child’s rights to education and family life, with the fundamental rights to liberty and security of the person, or with the associated right of persons deprived of their liberty to be treated humanely.²⁷

C. Legal Representation

27. Before assisting applicants to complete the forms the Registry provided information to the applicants on how legal representation of victims is currently organised for the victims participating in the *Ongwen* case.²⁸ As was done during the pre-trial stage, when the applicants fill in their application forms they are also asked to respond to the questions about their preferences regarding legal representation.

28. The Registry notes that 298 of the applicants whose Applications are transmitted with the current report have answered that they are or would like to be represented in the proceedings by Mr. Joseph Manoba and/or Mr. Francisco Cox (“External Counsel”). The remaining two applicants²⁹ have not chosen a counsel yet.

29. Pursuant to regulation 123(1) of the RoR, the Registry has sent letters to the External Counsel acknowledging receipt of the applications in which they have been designated legal representative by the victim applicants.³⁰

²⁶In line with the approach of Trial Chamber I in the case of *The Prosecutor v Thomas Lubanga Dyilo*, “Decision on victims’ participation”, dated 18 January 2008, ICC-01/04-01/06-1119, para. 92.

²⁷ See, *inter alia*, *Universal Declaration of Human Rights*, 10 December 1948, N81O, article 3; *UN Convention on the Rights of the Child*, 20 November 1989, 1577 United Nations Treaty Series 27531, articles 16 and 28; *International Covenant on Civil and Political Rights*, 16 December 1966, 999 United Nations Treaty Series 14668, articles 9 and 10, etc.

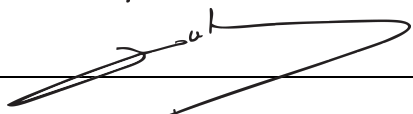
²⁸ Prior to the commencement of the application process, the Registry consulted with both teams of legal representatives when drafting key messages to be conveyed to victims in order to explain legal representation.

²⁹ a/06039/15 and a/06368/15.

³⁰ Letters of acknowledgment of receipt of powers of attorney were sent to the External Counsel on 12 and 22 August 2016.

D. Further transmissions of applications

30. Unless instructed otherwise by the Chamber, the Registry will continue to assess and transmit complete applications on a rolling basis, until the final deadline for transmission of 6 October 2016.



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

Dated this 2 September 2016

At The Hague, The Netherlands