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No.: ICC-02/04-01/15
Date: 1 November 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

**Registry's request for clarification on the issue of legal assistance paid by the
Court for the Legal Representatives of Victims**

Source: Registry

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart
Mr Benjamin Gumpert

Counsel for the Defence

Mr Krispus Ayena Odongo

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba and
Mr Francisco Cox
Ms Paolina Massidda

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

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Other

I. Introduction

1. The Registry is currently seized of the “Application for Legal Assistance Paid by the Court” (“Application”), submitted by the legal representatives of victims (“LRVs”) in accordance with regulation 85 of the Regulations of the Court (“RoC”) and regulation 131 of the Regulations of the Registry (“RoR”).¹
2. In accordance with regulation 24*bis* of the RoC, the Registry hereby notifies Trial Chamber IX (“Chamber”) of the Registry’s intention to decide on the Application subject to any guidance received from the Chamber.

II. Procedural history

3. On 23 May 2016, the LRVs filed (a corrected version of) their request for a determination concerning legal aid (“Request”), requesting the Chamber to direct the Registry:
 - (i) that legal aid is available for lawyers appointed under rule 90(1) or rule 90(2) and;
 - (ii) that accordingly any application for legal aid submitted by the LRVs must be decided on its merits by the Registry under the RoC, the RoR and any applicable policy documents.²
4. On 26 May 2016, the Chamber denied the Request (“26 May 2016 Decision”).³
5. On 30 May 2016, the Chamber set the deadline of 6 October 2016 for the transmission of all victims applications for participation in the proceedings.⁴

¹ Legal Representatives of Victims, “Application for Legal Assistance Paid by the Court”, Letter addressed to the Chief of the Counsel Support Section, 10 October 2016.

² Legal Representatives of Victims, “Corrected Version of Request for a determination concerning legal aid”, 23 May 2016, ICC-02/04-01/15-434-Corr.

³ Trial Chamber IX, “Decision on the ‘Request for a determination concerning legal aid’ submitted by the legal representatives of victims”, 26 May 2016, ICC-02/04-01/15-445.

6. By the set deadline, the Registry transmitted to the Chamber in three different batches, 2,093 applications for participation in the proceedings. Of these victim applicants, 1173 nominated the LRVs as their lawyers.⁵ With the participation process now closed, the Registry noted that no new victims' lawyers were nominated through the victim application process.
7. On 10 October 2016, the LRVs submitted their Application to the Registry. The LRVs stated that their circumstances had significantly changed since the Chamber rendered the 26 May 2016 Decision, specifying:
- The LRVs currently represent 1,434 victims admitted to participate at the pre-trial phase of this Case and were nominated by an additional 1,173 victim applicants at Trial phase;⁶
 - The LRVs had no "influence or control" over the process that led to their nomination by an additional 1,173 victim applicants;⁷
 - The recent increase in the number of victim applicants nominating the LRVs "represents a near doubling" and "will substantially increase the enormous burden placed on our team in providing [...] effective representation for both our existing and newly received clients";⁸
 - The LRVs received and submitted to the Registry 95 financial information forms from participating victims establishing their indigence. The LRVs noted that they "have not yet been able to obtain

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

⁵ Registry, "First Report on Applications to Participate in the Proceedings", dated 2 September 2016, notified on 5 September 2016, ICC-02/04-01/15-530; Registry, "Second Report on Applications to Participate in the Proceedings", dated 26 September 2016, notified on 27 September 2016, ICC-02/04-01/15-544 and Registry, "Third Report on Applications to Participate in the Proceedings", dated 6 October 2016, notified on 7 October 2016, ICC-02/04-01/15-556.

⁶ Legal Representatives of Victims, "Application for Legal Assistance Paid by the Court", Letter addressed to the Chief of the Counsel Support Section, 10 October 2016, page 2.

⁷ *Id.* at page 3.

⁸ *Id.*

completed forms from our other clients” but that “it is almost inconceivable that any person living in these communities would have sufficient means to fund his or her own legal representation before the Court.”⁹

III. Applicable Law

8. The Registry has considered the following provisions in relation to the present submissions: article 68(3) of the Rome Statute, rules 16(1)(b) and 90 of the Rules of Procedure and Evidence (“Rules”), regulations 83 and 85 of the RoC, regulations 113 and 130 to 133 of the RoR and the Registry’s single policy document on the Court’s legal aid system (“Legal Aid Policy”).¹⁰

IV. Submissions

9. The Registry notes the 26 May 2016 Decision, which stated at paragraph 12 that:

“Indeed, different policy considerations underlie the scheme established by Rule 90 of the Rules which is intended to provide a balance between the victims’ right to choose their own legal representative(s), on the one hand, and the effectiveness of the proceedings and cost containment, while preserving victims’ participatory rights before the Court, on the other hand.”¹¹

10. The Chamber further specified that the right of victims to appoint counsel of their own choosing cannot automatically imply an obligation for the Court

⁹ *Id.* at page 2.

¹⁰ Registry’s single policy document on the Court’s legal aid system, ICC-ASP/12/3, 4 June 2013.

¹¹ Trial Chamber IX, 26 May 2016 Decision, para. 12.

because it could lead to a system that “results in dozens of such representatives being part of the legal aid scheme for a single case.”¹²

11. In this context, as noted above, the Registry considers it relevant that no new legal representatives for victims have been nominated by victim applicants and that, as a result, only two teams of legal representatives have been authorised to represent victims at trial. Also, the LRVs were nominated by an additional 1,173 victim applicants in a process overseen neutrally by the Court.

12. In light of the responsibilities bestowed on the Registry pursuant to rules 16(1)(b) and 90(2) and (3) of the Rules, and having been seized of the Application pursuant to regulation 85 of the RoC, the Registry respectfully requests the guidance of the Chamber on the issue of eligibility before it renders its decision on payment of legal assistance.



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

Dated this 1 November 2016

At The Hague, The Netherlands

¹² *Ibid.*