

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Decision on issues concerning victims' participation

To be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

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James Stewart
Benjamin Gumpert

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Joseph Akwenyu Manoba and Francisco
Cox
Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Cuno Tarfusser, Single Judge exercising the functions of the Chamber in the present case, issues this decision on issues related to victims' participation in the proceedings.

1. This decision is taken following the "Decision on contested victims' applications for participation, legal representation of victims and their procedural rights" of 27 November 2015 (ICC-02/04-01/15-350), in particular concerning two aspects: (i) the access of the legal representatives of the victims to the confidential documents in the record of the case; and (ii) the acknowledgment by the Registrar of powers of attorney issued by certain victims for whom the Single Judge, not informed of such powers of attorney, appointed a legal representative.

Access of the legal representatives to the confidential documents

2. On 27 November 2015, the Single Judge ordered the Prosecutor, the Defence and the Registrar "to review their confidential filings in the record of the case as well as, in the case of the Prosecutor and the Defence, the evidence that they have so far communicated to the Chamber, and to inform the Single Judge, by 11 December 2015, whether any such documents or evidence cannot be notified to the legal representatives, and why".

3. On 1 December 2015, the Prosecutor informed the Single Judge by way of email: (i) that the evidence that she has communicated to the Chamber and her filings in the record of the case which are classified as "confidential" or "confidential, *ex parte*, Prosecutor and Defence" could all be notified to the legal representatives of the victims; (ii) that her filings in the record of the case which are classified as "confidential, *ex parte*, Prosecutor only" should be withheld from the legal representatives of victims for reasons that originally led to this restrictive classification.

4. On 3 December 2015, the Defence filed its observations on the legal representatives of victims' access to the case record (ICC-02/04-01/15-361-Corr – *corrigendum* of 7 December 2015), submitting: (i) that, with the exception of the unredacted version of UGA-D26-0010-0019, access to the confidential evidence of the Defence can be granted to the legal representatives; (ii) a list detailing for each of its confidential filings whether they should be notified to the legal representatives of the victims and/or reclassified.

5. On 11 December 2015, the Registrar, by email, provided a list of confidential documents in the record of the case emanating from the Registry, stating for each document whether it can be notified to the legal representatives of the participating victims and providing further observations on the proper classification of some documents.

6. Having reviewed the submissions received, the Single Judge considers that documents shall be notified to the legal representatives of the victims, or reclassified as specified below. This includes decisions and orders of the Chamber, of which the status has been determined in line with the submissions of the parties and the Registrar concerning related filings.

7. As concerns document UGA-D26-0010-0019, the Single Judge has previously stated that any redactions to the document were not justified, has demanded and obtained from the Defence, by way of email, the unredacted version of the document, and has tolerated the fact that the Prosecutor is only in possession of the redacted version of the document for the simple reason that the Prosecutor has expressly consented. However, the Single Judge does not accept the argument of the Defence to the effect that because the Prosecutor does not have access to the document, neither should the legal representatives of the victims. The Single Judge also instructed the Defence to properly communicate the document to the Chamber through the Ecourt

system (ICC-02/04-01/15-T-14-CONF-ENG, pp. 67-68; ICC-02/04-01/15-T-16-CONF-ENG, p. 2), but to date only redacted versions of the document are available, and not the unredacted. The Defence is reminded to immediately comply with the instruction of the Single Judge.

Overlapping appointment of legal representatives

8. As of the decision of 27 November 2015, 545 victims are admitted to participate in the present case. Following an order of the Single Judge (ICC-02/04-01/15-331), the Registry informed the Chamber on 23 November 2015 that it would acknowledge powers of attorney issued by 249 of those victims. Subsequently, on 27 November 2015, the Registry informed the Single Judge by email that two other powers of attorney were verified. On the basis of this information, the Single Judge then appointed a common legal representative for the 294 unrepresented victims.

9. On 11 December 2015, the Registry notified to the Chamber the appointment of Joseph Akwenyu Manoba and Francisco Cox as legal representatives not only of the 251 victims as previously stated, but also of 163 participating victims (ICC-02/04-01/15-366 and annexes). The Registry states that it did so because it “has verified and validated additional powers of attorney received prior to the 27 November 2015 Decision”.

10. As a result of the failure of the Registry to provide timely and accurate information, the Single Judge is now faced with the unfortunate situation of an overlap of legal representation. Considering that the powers of attorney of which the Registry has informed the Single Judge on 11 November 2015 were all received by the Registry prior to the issuance of the decision of 27 November 2015, the Single Judge considers it most appropriate to respect the choice of the victims and revoke, in their respect, the appointment of the common legal representative. The appointment of the common legal

representative for the remaining 131 participating victims (a/05000/15, a/05002/15, a/05017/15, a/05030/15, a/05046/15, a/05058/15, a/05064/15, a/05075/15, a/05078/15, a/05085/15, a/05087/15, a/05108/15, a/05109/15, a/05120/15, a/05121/15, a/05131/15, a/05137/15, a/05147/15, a/05152/15, a/05155/15, a/05156/15, a/05162/15, a/05163/15, a/05170/15, a/05172/15, a/05176/15, a/05183/15, a/05185/15, a/05186/15, a/05188/15, a/05196/15, a/05197/15, a/05199/15, a/05212/15, a/05213/15, a/05215/15, a/05221/15, a/05225/15, a/05227/15, a/05228/15, a/05234/15, a/05244/15, a/05245/15, a/05247/15, a/05248/15, a/05251/15, a/05252/15, a/05253/15, a/05254/15, a/05255/15, a/05256/15, a/05258/15, a/05259/15, a/05260/15, a/05262/15, a/05263/15, a/05265/15, a/05272/15, a/05276/15, a/05292/15, a/05298/15, a/05314/15, a/05319/15, a/05325/15, a/05329/15, a/05330/15, a/05333/15, a/05337/15, a/05340/15, a/05343/15, a/05350/15, a/05354/15, a/05360/15, a/05364/15, a/05367/15, a/05368/15, a/05376/15, a/05389/15, a/05391/15, a/05392/15, a/05401/15, a/05404/15, a/05409/15, a/05419/15, a/05431/15, a/05432/15, a/05434/15, a/05436/15, a/05453/15, a/05464/15, a/05476/15, a/05479/15, a/05482/15, a/05495/15, a/05498/15, a/05514/15, a/05519/15, a/05524/15, a/05529/15, a/05531/15, a/05542/15, a/05543/15, a/05547/15, a/05552/15, a/05559/15, a/05564/15, a/05565/15, a/05570/15, a/05596/15, a/05624/15, a/05627/15, a/05638/15, a/05644/15, a/05645/15, a/05661/15, a/05677/15, a/05683/15, a/05763/15, a/05765/15, a/05766/15, a/05784/15, a/05789/15, a/05791/15, a/05795/15, a/05803/15, a/05805/15, a/05806/15, a/05848/15, a/05891/15, a/05894/15, a/05895/15) remains unaffected.

Considering the particular circumstances, the Single Judge also reiterates that, considering that it appears from the information provided by the Registry that counsel appointed by the victims have informed their clients that their representation would be free of charge as the associated costs could be borne by the Court and that a substantial number of victims even signed powers of attorney indicating that the lawyers would represent them on a *pro bono* basis,

it is imperative that the appointed counsel inform their clients they presently do not qualify for financial assistance by the Court but may, if they so wish, benefit from legal representation free of charge by the common legal representative appointed by the Single Judge (see ICC-02/04-01/15-350, para. 18). The Single Judge also clarifies that the previous order to the legal representatives to consult with their clients about the need for anonymity vis-à-vis the Defence and report to the Single Judge as soon as practicable also extends to these further 131 victims.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Registrar to notify to the legal representatives of the victims all confidential documents in the record of the case, except for those marked “*ex parte*”;

ORDERS the Registrar to provide access to the legal representatives to all evidence already communicated to the Chamber,

ORDERS the Registrar to reclassify the following documents as “public”:

- ICC-02/04-01/15-233-Conf-Exp-AnxA;
- ICC-02/04-01/15-233-Conf-Exp-AnxC; and
- ICC-02/04-01/15-265-Conf and its annexes;

ORDERS the Registrar to reclassify the following documents as “confidential”:

- ICC-02/04-01/15-3-Conf-Exp-AnxA;
- ICC-02/04-01/15-3-Conf-Exp-AnxB;
- ICC-02/04-01/15-3-Conf-Exp-AnxC;
- ICC-02/04-01/15-3-Conf-Exp-AnxD;
- ICC-02/04-01/15-3-Conf-Exp-AnxE;

- ICC-02/04-01/15-3-Conf-Exp-AnxF;
- ICC-02/04-01/15-3-Conf-Exp-AnxG;
- ICC-02/04-01/15-3-Conf-Exp-AnxH;
- ICC-02/04-01/15-3-Conf-Exp-AnxI;
- ICC-02/04-01/15-3-Conf-Exp-AnxI1;
- ICC-02/04-01/15-3-Conf-Exp-AnxI2;
- ICC-02/04-01/15-3-Conf-Exp-AnxI3;
- ICC-02/04-01/15-3-Conf-Exp-AnxI4;
- ICC-02/04-01/15-3-Conf-Exp-AnxI5;
- ICC-02/04-01/15-3-Conf-Exp-AnxJ;
- ICC-02/04-01/15-3-Conf-Exp-AnxK;
- ICC-02/04-01/15-3-Conf-Exp-AnxL;
- ICC-02/04-01/15-3-Conf-Exp-AnxM;
- ICC-02/04-01/15-3-Conf-Exp-AnxN;
- ICC-02/04-01/15-3-Conf-Exp-AnxO;
- ICC-02/04-01/15-3-Conf-Exp-AnxP;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ1;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ10;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ11;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ12;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ13;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ14;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ15;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ2;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ3;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ4;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ5;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ6;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ7;

- ICC-02/04-01/15-3-Conf-Exp-AnxQ8;
- ICC-02/04-01/15-3-Conf-Exp-AnxQ9;
- ICC-02/04-01/15-3-Conf-Exp-AnxR;
- ICC-02/04-01/15-3-Conf-Exp-AnxR1;
- ICC-02/04-01/15-3-Conf-Exp-AnxR2;
- ICC-02/04-01/15-3-Conf-Exp-AnxR3;
- ICC-02/04-01/15-3-Conf-Exp-AnxR4;
- ICC-02/04-01/15-3-Conf-Exp-AnxS;
- ICC-02/04-01/15-3-Conf-Exp-AnxU;
- ICC-02/04-01/15-3-Conf-Exp-AnxV;
- ICC-02/04-01/15-3-Conf-Exp-AnxW;
- ICC-02/04-01/15-3-Conf-Exp-AnxW1;
- ICC-02/04-01/15-3-Conf-Exp-AnxW2;
- ICC-02/04-01/15-3-Conf-Exp-AnxW3;
- ICC-02/04-01/15-3-Conf-Exp-AnxW4;
- ICC-02/04-01/15-3-Conf-Exp-AnxW5;
- ICC-02/04-01/15-3-Conf-Exp-AnxX;
- ICC-02/04-01/15-136-Conf-Exp-AnxA;
- ICC-02/04-01/15-136-Conf-Exp-AnxD;
- ICC-02/04-01/15-136-Conf-Exp-AnxE;
- ICC-02/04-01/15-141-Conf-Exp-AnxC;
- ICC-02/04-01/15-189-Conf-Exp-Anx10;
- ICC-02/04-01/15-329-Conf-Exp-AnxB;
- ICC-02/04-01/15-351-Conf-Exp and annexes;
- ICC-02/04-01/15-352-Conf-Exp and annex;
- ICC-02/04-01/15-353-Conf-Exp and annex;
- ICC-02/04-01/15-354-Conf-Exp and annexes;
- ICC-02/04-01/15-355-Conf-Exp and annex;
- ICC-02/04-01/15-356-Conf-Exp and annex;

- ICC-02/04-01/15-357-Conf-Exp and annex; and
- ICC-02/04-01/15-358-Conf-Exp and annexes;

ORDERS the Registrar to reclassify the following documents as “confidential, *ex parte*, only available to the Prosecutor and the Defence”:

- ICC-02/04-01/15-317-Conf; and
- ICC-02/04-01/15-322-Conf-Exp; and

REVOKES the appointment of Paolina Massidda from the OPCV as common legal representative of victims a/05005/15, a/05007/15, a/05008/15, a/05009/15, a/05010/15, a/05014/15, a/05027/15, a/05034/15, a/05038/15, a/05040/15, a/05042/15, a/05043/15, a/05048/15, a/05054/15, a/05055/15, a/05057/15, a/05061/15, a/05068/15, a/05070/15, a/05071/15, a/05072/15, a/05074/15, a/05077/15, a/05079/15, a/05082/15, a/05086/15, a/05097/15, a/05098/15, a/05099/15, a/05103/15, a/05107/15, a/05111/15, a/05112/15, a/05117/15, a/05123/15, a/05125/15, a/05126/15, a/05127/15, a/05132/15, a/05141/15, a/05142/15, a/05145/15, a/05148/15, a/05149/15, a/05150/15, a/05157/15, a/05158/15, a/05159/15, a/05161/15, a/05168/15, a/05171/15, a/05173/15, a/05175/15, a/05178/15, a/05181/15, a/05184/15, a/05189/15, a/05190/15, a/05192/15, a/05193/15, a/05195/15, a/05198/15, a/05200/15, a/05202/15, a/05205/15, a/05206/15, a/05207/15, a/05208/15, a/05218/15, a/05220/15, a/05223/15, a/05224/15, a/05232/15, a/05233/15, a/05236/15, a/05239/15, a/05240/15, a/05249/15, a/05250/15, a/05257/15, a/05273/15, a/05274/15, a/05275/15, a/05283/15, a/05287/15, a/05288/15, a/05290/15, a/05294/15, a/05296/15, a/05309/15, a/05311/15, a/05313/15, a/05318/15, a/05326/15, a/05327/15, a/05338/15, a/05342/15, a/05344/15, a/05345/15, a/05349/15, a/05351/15, a/05355/15, a/05356/15, a/05359/15, a/05365/15, a/05377/15, a/05380/15, a/05381/15, a/05384/15, a/05388/15, a/05405/15, a/05406/15, a/05413/15, a/05414/15, a/05422/15, a/05428/15, a/05429/15, a/05435/15, a/05441/15, a/05444/15, a/05450/15, a/05455/15, a/05457/15, a/05458/15,

a/05460/15, a/05461/15, a/05462/15, a/05465/15, a/05467/15, a/05477/15,
a/05478/15, a/05483/15, a/05493/15, a/05496/15, a/05509/15, a/05510/15,
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a/05646/15, a/05647/15, a/05657/15, a/05679/15, a/05682/15, a/05686/15,
a/05687/15, a/05690/15, a/05694/15, a/05764/15, a/05777/15, a/05778/15,
a/05779/15, a/05783/15 and a/05893/15.

Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser
Single Judge

Dated this 15 December 2015

At The Hague, The Netherlands