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

Date: 17 June 2016

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public

Decision on Requests Concerning Organisation of Victim Representation

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
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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**

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

States Representatives

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, issues the following Decision on Requests Concerning Organisation of Victim Representation, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(2), 67, and 68(3) of the Rome Statute ('Statute'), Rules 89 to 93 of the Rules of Procedure and Evidence ('Rules'), and Regulation 80 of the Regulations of the Court ('Regulations').

1. On 27 November 2015, 15 December 2015, and 24 December 2015, the Single Judge of Pre-Trial Chamber II ('Pre-Trial Chamber') (i) acknowledged Mr Joseph Akwenyu Manoba and Mr Francisco Cox ('LRVs') as representatives of the 1,434 participating victims who designated them as their counsel; and (ii) appointed Ms Paolina Massidda of the Office of Public Counsel for Victims ('OPCV') as the common legal representative for 592 victims previously unrepresented or represented by the OPCV in the situation in Uganda.¹
2. On 13 and 18 May 2016, the LRVs and OPCV both submitted that the victim representation scheme had to be reviewed.² On 6 June 2016, pursuant to an order of the Chamber,³ the LRVs⁴ and OPCV⁵ filed observations on the organisation of victim representation.
3. The LRVs submit that the current representation scheme results in confusion in the relevant communities and raises practical issues, such as difficulties

¹ Decision on contested victims' applications for participation, legal representation of victims and their procedural rights, 27 November 2015, ICC-02/04-01/15-350, paras 16-24; Decision on issues concerning victims' participation, 15 December 2015, ICC-02/04-01/15-369, paras 8-10; and Second decision on contested victims' applications for participation and legal representation of victims, 24 December 2015, ICC-02/04-01/15-384, paras 19-22. *See also* ICC-02/04-01/15-366; ICC-02/04-01/15-377; and ICC-02/04-01/15-382.

² Submission on Items Defined for the Status Conference on 23 May 2016, 13 May 2016, ICC-02/04-01/15-433, paras 24-27. A corrected version was filed on 23 May 2016 (ICC-02/04-01/15-433-Corr); and Common Legal Representative's submissions pursuant to the "Order Scheduling First Status Conference and Other Matters", 18 May 2016, ICC-02/04-01/15-437, paras 39-40.

³ Transcript of hearing on 23 May 2016, ICC-02/04-01/15-T-25-ENG-ET, page 29, lines 12-16.

⁴ Observations on the organisation of victims' legal representation, 6 June 2016, ICC-02/04-01/15-455.

⁵ Common Legal Representative's observations on legal representation issues, 6 June 2016, ICC-02/04-01/15-454, paras 3-12.

organising meetings and maintaining confidentiality.⁶ They submit that the best solution is to initiate the process set out in Rule 90(2)-(3) of the Rules in order to create a single group of victims, thereby promoting a coherent case strategy and saving substantial time and resources.⁷

4. The OPCV submits that the current system is efficient and effective.⁸ It notes that some members of the same family have different representatives, but submits that, as agreed with the LRVs, this issue could be solved if the Registry consults those victims as to their preference.⁹
5. On 13 June 2016,¹⁰ the Defence for Mr Ongwen ('Defence') responded ('Defence Response').¹¹ It requests, *inter alia*, that the Chamber adopt the current system in place.¹² It submits that the observations of the LRVs attempt to relitigate the issue of compensation.¹³ Further, the Defence claims that a competitive recruitment process at this stage would cause undue delay and financial strain.¹⁴
6. On 14 June 2016, the LRVs requested leave to reply to the Defence Response.¹⁵ The Single Judge rejects this request, as he does not require any further submissions in order to render his ruling.
7. Pursuant to Rule 90(1) of the Rules, '[a] victim shall be free to choose a legal representative'. However, under Rule 90(2)-(3) of the Rules and Regulation 80 of the Regulations, 'where there are a number of victims', 'for the purposes of

⁶ ICC-02/04-01/15-455, paras 11-17.

⁷ ICC-02/04-01/15-455, paras 40-50. *See also* ICC-02/04-01/15-433-Corr, paras 24-27.

⁸ ICC-02/04-01/15-454, paras 13-14.

⁹ ICC-02/04-01/15-454, paras 13-14. *See also* ICC-02/04-01/15-437, para. 40.

¹⁰ The Chamber set 13 June 2016 as the response deadline. *See* ICC-02/04-01/15-T-25-ENG-ET, page 29, lines 16-16.

¹¹ Defence Response to the Observations on the Organisation of the Legal Representation for the Victims, 13 June 2016, ICC-02/04-01/15-463.

¹² ICC-02/04-01/15-463, paras 2-3, 7.

¹³ ICC-02/04-01/15-463, paras 4, 7.

¹⁴ ICC-02/04-01/15-463, para. 5.

¹⁵ Request for leave to reply to the "Defence Response to the Observations on the Organisation of the Legal Representation of the Victims", 14 June 2016, ICC-02/04-01/15-466.

ensuring the effectiveness of the proceedings’, and ‘[i]f the victims are unable to choose a common legal representative or representatives’, a Chamber may appoint a legal representative, taking into consideration the distinct interests of the victims and avoiding any conflict of interest.

8. The LRVs and OPCV both submit that the victims are generally satisfied with their current representation.¹⁶ The current system is supported by the Defence and, according to the OPCV, efficient and effective. The Single Judge notes that many of the difficulties alleged by the LRVs are phrased as hypotheticals or future possibilities.¹⁷ The LRVs do not specify the measures they took to address these alleged difficulties. They do not indicate that they first sought to address most of these matters *inter partes*, for example, with the OPCV or Registry.¹⁸
9. Concerning different representation among family members, the LRVs and OPCV have apparently agreed on a course of action.¹⁹ The Single Judge commends this initiative, but notes that no relief is requested. Generally, the parties and participants must exhaust other available and reasonable measures before seizing the Chamber,²⁰ particularly in matters of representation, which are best addressed, whenever possible, by counsel, their clients, and the Registry.
10. Accordingly, the Single Judge considers that there is no indication that the current system of representation is ineffective. Any judicial intervention in the organisation of victim representation is therefore not warranted at this stage.

¹⁶ ICC-02/04-01/15-455, paras 17, 38; and ICC-02/04-01/15-454, para. 12. *See also* ICC-02/04-01/15-346, para. 7.

¹⁷ *See, for example*, ICC-02/04-01/15-455, paras 14(c) (‘victims [...] will likely fail to understand [...] and may seek [...]’), 14(d) (‘Victims may share [...]’), 39 (‘there may remain’) (emphasis added).

¹⁸ The parties and participants are expected to cooperate with each other in this case whenever possible. *See* ICC-02/04-01/15-T-25-ENG-ET, page 3, lines 22-23.

¹⁹ ICC-02/04-01/15-454, paras 13-14; and ICC-02/04-01/15-455, paras 37-38. *See also* ICC-02/04-01/15-437, para. 40.

²⁰ ICC-02/04-01/15-T-25-ENG-ET, page 3, line 22 to page 4, line 4. *See, similarly*, Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Arido Defence Requests for Disclosure and to Delay the Testimony of Witnesses P-245 and P-260, 28 September 2015, ICC-01/05-01/13-1309, para. 11 and footnote 25.

11. Finally, the Single Judge considers that the procedural rights accorded to participating victims by the Pre-Trial Chamber continue to apply *mutatis mutandis*.²¹ The Single Judge notes that the interests of the two groups of victims represented by the LRVs and OPCV are not distinct, nor are there any irreconcilable conflicts apparent within each group. Further, according to the Registry, the victims themselves do not object to the possibility of a single counsel or team representing all participating victims in the case.²² In these circumstances, the Single Judge considers that the LRVs and OPCV must consult, cooperate and, whenever possible, act jointly. This promotes the fair and expeditious conduct of the proceedings and the rights of the accused.²³

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

DECIDES that the participating victims shall have the procedural rights set out in para. 11 above; and

REJECTS all other requests.

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



Judge Bertram Schmitt
Single Judge

Dated 17 June 2016

At The Hague, The Netherlands

²¹ ICC-02/04-01/15-350, paras 25-35.

²² ICC-02/04-01/15-344, para. 6; ICC-02/04-01/15-327, para. 6; and ICC-02/04-01/15-303, para. 22.

²³ Articles 64(2), 67, and 68(3) of the Statute.