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No.: ICC-02/04-01/15
Date: 22 November 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 Legal Representatives' Notification Regarding Opening Statements

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

The Office of the Prosecutor

Fatou Bensouda
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**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

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, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 64 of the Rome Statute and Rule 140 of the Rules of Procedure and Evidence, issues the following 'Decision on Legal Representatives' Notification Regarding Opening Statements'.

1. On 27 November 2016, the Single Judge exercising the functions of the Pre-Trial Chamber in the present case, appointed Paolina Massidda from the Office of Public Counsel for Victims as the common legal representative of victims admitted to participate ('CLR') and noted at the same time that certain victims chose to be represented by Joseph Akwenyu Manoba and Francisco Cox ('LRs', together with the CLR, 'LRVs').¹ This system of representation was maintained at the trial stage.²
2. On 30 May 2016, the Chamber set 6 December 2016 as the trial commencement date.³
3. On 13 July 2016, the Single Judge issued the 'Initial Directions on the Conduct of Proceedings' ('Directions'), whereby he ruled that, with regard to opening statements, 'the LRVs will be given 2.5 hours to be divided between them as they see fit. [...] In the interest of streamlining the presentation of these statements, an opening statement must be presented all at one time – the LRVs and Defence are not allowed to reserve unused time from their opening statements and continue them later during the trial'.⁴

¹ Pre-Trial Chamber II, Decision on contested victims' applications for participation, legal representation of victims and their procedural rights, ICC-02/04-01/15-350.

² 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; Decision on Registry's Request for Clarification on the Issue of Legal Assistance Paid by the Court for the Legal Representatives of Victims, 14 November 2016, ICC-02/04-01/15-591.

³ Decision Setting the Commencement Date of the Trial, ICC-02/04-01/15-449.

⁴ ICC-02/04-01/15-497, para. 7.

4. On 21 November 2016, in accordance with the deadline set in the Directions,⁵ the LRs filed a notice regarding the opening statements indicating that, although the CLR wishes to open at the trial commencement,⁶ the LRs intend to present their opening statements following the conclusion of the Prosecution's evidence, rather than at the commencement of trial.⁷ The LRs seeks clarification from the Chamber as to whether the 2.5 hours estimate applies in the case of the two victim teams opening at different times.⁸
5. The Directions aim at organising the trial efficiently by, *inter alia*, receiving the opening statements of the two victims teams in a consolidated manner.⁹ In this regard, the Single Judge recalls that the victims in this case are represented by two different teams by their own choice and do not have competing interests which would require separate representation. Further, it is apparent from the plain text of the Directions that its reference to the 'LRVs' in the relevant paragraph indicates both the LRs and the CLR.¹⁰ Thus, the Directions do not give the LRVs the discretion to decide to open at two different times. On the contrary, the Presiding Judge specifically prohibited this by explicitly indicating that a participant may not reserve unused time from their opening statements and continue them later during the trial.¹¹
6. Accordingly, the LRs shall liaise with the CLR with a view of reaching a common position as to whether their opening statements shall be held at the start of trial or following the conclusion of the Prosecution's evidence.

⁵ Directions, ICC-02/04-01/15-497, para. 7.

⁶ See in this regard, Email from CLR to Chambers, parties and participants on 21 November 2016 at 12:04.

⁷ Legal Representatives of Victims' notification regarding opening statements, ICC-02/04-01/15-597, paras 2-9 ('LRs Notice').

⁸ LRs Notice, ICC-02/04-01/15-497, para. 10.

⁹ See Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Decision on Requests Related to Timing of Defence Opening Statements, 10 September 2015, ICC-01/05-01/13-1231, para. 4.

¹⁰ See Directions, ICC-02/04-01/15-497, para. 7.

¹¹ Directions, ICC-02/04-01/15-497, para. 7.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY:

CLARIFIES that the LRVs must hold their opening statements in a consolidated manner, in accordance with paragraph 6 above; and

DIRECTS the LRVs to inform the Chamber and the parties of their decision by 25 November 2016.

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



Judge Bertram Schmitt, Single Judge

Dated 22 November 2016

At The Hague, The Netherlands