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**International
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Court**



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Date: **16 June 2017**

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*

Confidential

Victims' Joint Submissions on Judicial Site Visit

Source: Office of Public Counsel for Victims
Legal Representatives of Victims

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Benjamin Gumpert

Counsel for the Defence

Mr Krispus Ayena Odongo
Mr Chief Charles Taku

Legal Representatives of the Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox
Ms Paolina Massidda
Ms Jane Adong

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Mr Orchlon Narantsetseg
Ms Caroline Walter

**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

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Counsel representing the victims participating in the proceedings¹ (separately referred to, for the purpose of these submissions, as the “Legal Representatives” and the “Common Legal Representative”) appreciate the Trial Chamber’s willingness to conduct a judicial site visit which will facilitate a better understanding of the facts of the case, including the personal harm suffered by the victims and the extent of their victimisation, and will ultimately assist the Chamber in the ascertainment of the truth.

2. Counsel stress the importance of a judicial site visit because this course of events is very likely to provide maximum access to the proceedings to the victims, the affected communities and public at large. It will also contribute to the transparency of the proceedings, as well as to a large dissemination of information and to making justice more visible for the victims.

3. Counsel indicate that the Chamber, accompanied by representatives of the parties and participants, should visit Pajule, Odek, Lukodi and Abok, as well as their surrounding areas, including memorial sites, preferably following the closing of the presentation of the evidence by the Prosecution.

4. Counsel further propose that the Chamber adopts a protocol on the conduct of the judicial site visit following the approach taken by Trial Chamber II in the *Katanga and Mathieu Ngudjolo* case. Lastly, Counsel indicate that Mr Ongwen should not take

¹ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-350, 27 November 2015, p.19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 15 December 2015, pp. 10-11; the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-384, 24 December 2015, pp. 20-22, “Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications”, (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-543, 26 September 2016, para. 8 and p. 5, and the “Decision Concerning 610 Victim Applications (Registry Report ICC-02/04-01/15-544) and 1183 Victim Applications (Registry Report ICC-02/04-01/15-556)”, No. ICC-02/04-01/15-586, 04 November 2016, p. 8, paras. 9, 15 and 16.

part in the judicial site visit as his physical presence in Northern Uganda will create fear and instability among the participating victims and the affected communities.

II. PROCEDURAL HISTORY

5. On 4 May 2016, the Single Judge of the Chamber (respectively the “Single Judge” and the “Chamber”) issued the “Order Scheduling First Status Conference and Other Matters” instructing the parties and participants to make submissions on various issue with the view of ensuring the proper preparation of the trial.²

6. On 13 May 2016, the Legal Representatives filed their submissions, indicating, *inter alia*, that *in situ* proceedings have the potential of bringing the Court closer to the victims and that participating victims represented by them had expressed support for proceedings to be held in Uganda.³ On 18 May 2016, the Common Legal Representative filed her submissions, stressing also the importance of holding *in situ* proceedings in the country where the crimes were committed and the support of her clients to this course of events.⁴

7. On 18 July 2016, the Chamber rendered its “Decision Concerning the Requests to Recommend Holding Proceedings in Situ and to Conduct a Judicial Site Visit in Northern Uganda”, recognising the importance of bringing justice closer to the affected community, while indicating that holding the opening statements in Uganda was not desirable since the combination of security and logistical concerns militated against such option.⁵ However, the Chamber considered that a determination of

² See “Order Scheduling First Status Conference and Other Matters” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-432, 4 May 2016.

³ See the “Corrected Version of Submissions on Items Defined for the Status Conference on 23 May 2016”, No. ICC-02/04-01/15-433-Corr, 23 May 2016, paras. 21-23.

⁴ See the “Common Legal Representative’s submissions pursuant to the ‘Order Scheduling First Status Conference and Other Matters’”, No. ICC-02/04-01/15-437, 18 May 2016, paras. 31-33

⁵ See the “Decision Concerning the Requests to Recommend Holding Proceedings In Situ and to Conduct a Judicial Site Visit in Northern Uganda (Trial Chamber IX)”, No. ICC-02/04-01/15-499, 18 July 2016, paras. 2 - 3.

whether a judicial site visit in Northern Uganda would be of material assistance to its evaluation of the evidence should be made at a later stage of the proceedings, after having heard, at least in part, the evidence to be presented at trial.⁶

8. On 19 May 2017, the Single Judge issued the “Order Inviting Observations on a Judicial Site Visit” indicating that, in light of the evidence received to date, the Chamber is inclined to visit Pajule, Odek, Lukodi and Abok soon after the end of the presentation of evidence by the Prosecution and invited observations on a prospective judicial site visit.⁷ In addition, the Single Judge stressed that the intention of conducting a site visit must be kept strictly confidential and instructed Counsel to eventually request permission to the Chamber should they wish to discuss information arising from the order with their clients.⁸

9. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this response is filed confidentially.

III. SUBMISSIONS

10. Preliminarily, Counsel indicate that they are in the position of providing the Chamber with the views of the victims on the opportunity of a judicial site visit because the possibility of holding some form of judicial visit or proceedings in Uganda has been already discussed with the participating victims in the framework of Counsel’s regular interaction with their clients. Counsel caution, however, that the general nature of these consultations, which have not engaged in revealing the Chamber’s specific request pertaining to a possible judicial site visit, have meant that some of the views presented are somewhat general in nature, rather than specifically focusing on the proposed site visit.

⁶ *Idem.*, para. 4.

⁷ See the “Order Inviting Observations on a Judicial Site Visit (Trial Chamber IX, Single Judge)”, No. ICC-02/04-01/15-834-Conf, 19 May 2017, p. 4.

⁸ *Idem.*, para. 3

11. Counsel submit that conducting visits to the localities where the crimes were allegedly committed will facilitate a better understanding of the facts of the case, including the personal harm suffered by the victims and the extent of their victimisation, and will ultimately assist the Chamber in the ascertainment of the truth. Moreover, this course of action will bring justice closer to the victims and the affected communities by enhancing the transparency of and accessibility to the judicial proceedings, as well as, enforcing wide dissemination of information about the trial in Uganda. In addition, the Chamber's intention to conduct the site visit at the end of the presentation of evidence by the Prosecution appears to be both timely and appropriate in the context of the current progression of the trial.

12. The Common Legal Representative informs the Chamber that her clients had already expressed on previous occasions their wish of holding *in situ* proceedings and judicial visits in Uganda and thus had accordingly provided their instructions. Victims indicated that they would like the Judges to see the places where the crimes were committed in order to better understand the events and be acquainted with the reality in the field. Victims also consider that a judicial site visit will contribute to make justice more visible and to reduce the distance between them and the Court.

13. Equally, the Legal Representatives of Victims also wish to inform the Chamber that they had also previously consulted their clients on the matter and the significant majority of the victims interviewed by them indicated their wish that the Chamber undertakes certain part of the proceedings in Uganda. The victims who supported this view indicated their belief that it would assist the Chamber to understand their personal circumstances in Uganda. They expressed the hope that the Judges would visit the locations of the respective IDP camps as well as memorial sites and graves. Some victims have also expressed the view that the Judges should see and hear from the victims themselves in the communities in order to understand their current situation and need for reparations.

14. Conversely, however, the Legal Representatives of Victims also wish to acknowledge that a minority of their clients stated that they do not consider it necessary for the Chamber to visit Uganda. These individuals most commonly explained their view by saying that they trust their legal representatives to act as a conduit to the Court and that it is therefore not necessary for the Judges to visit Uganda. Some expressed the concern that proceedings in Uganda could cause delay. Nonetheless, the Legal Representatives of Victims understand that aside from concerns about the need to avoid delay, these clients are not opposed to judicial proceedings taking place in Uganda, but merely question the necessity of such a step.

15. Consequently, Counsel appreciate the Chamber's predisposition to conduct a judicial site visit in Pajule, Odek, Lukodi and Abok following the end of the presentation of evidence by the Prosecution. In addition, Counsel propose that the Chamber also visit surrounding areas, as well as the memorial sites, in order not only to have a better understanding of the events, but also of the extent of the victimisation suffered by victims. This course of events will have a significant impact on the effective participation of victims in the proceedings insofar as they will feel that their concerns are duly taken into account and that justice is being done.

16. Furthermore, Counsel propose that the Chamber adopts a protocol on the conduct of the judicial site visit, following the practice of Trial Chamber II in the *Katanga and Ngudjolo case*.⁹ Accordingly, Counsel submit that the Chamber may consider to conduct the visit in the following manner:

⁹ See "Décision relative au déplacement de la Chambre en République démocratique du Congo (Trial Chamber II), No. ICC-01/04-01/07-3203, 18 November 2011 and No. ICC-01/04-01/07-3203-Conf-Anx-tENG, 13 December 2011 (Pursuant to Trial Chamber II's instruction, dated 27 January 2012, this document is reclassified as "Public"), "Décision relative au transport de la Chambre en République démocratique du Congo, 1 Décembre 2011" (Pursuant to Trial Chamber II's instruction, dated 27 January 2012, this document is reclassified as "Public"), No. ICC-01/04-01/07-3213 and ICC-01/04-01/07-3213-AnxB, 27 January 2012, "Ordonnance relative au procès-verbal du transport judiciaire en République démocratique du Congo (Trial Chamber II)", No. ICC-01/04-01/07-3233, 03 February 2012, and "Décision relative à la nature du «Procès-verbal de l'opération de transport judiciaire en

- a. *The Chamber shall retain control of the conduct of the visit;*
- b. *The parties and participants shall refrain from any contact with the media;*
- c. *The Chamber shall be assisted by its legal officers during the visit. The delegation of each party and each team of Legal Representatives shall be composed of two representatives of each of the parties and two members of each Legal Representatives' team;*
- d. *The parties and participants may propose an itinerary of the visit which specifically affords priority to a certain number of specific locations and sites to be viewed and visited. This itinerary may be subject to the budgetary and time constraints and be amended in situ according to, inter alia, meteorological conditions, the transport available to the Registrar, and, ultimately, any changes in the security situation which will be continuously reviewed in situ;*
- e. *A representative of the Registry shall act as guide, and, in situ, shall indicate the locations and sites referred to in the list determined by the Chamber;*
- f. *The parties and participants may not tender evidence during the visit. Nor shall they be authorised to file oral or written submissions;*
- g. *At the request of the Chamber, the parties and participants may be requested to identify locations, sites or buildings and, if necessary, to provide any further pertinent information on the events which took place there. In the event of disagreement over identification, any challenge shall be entered in the minutes of the visit;*

- h. During the site visit, a Registry representative shall prepare written minutes of the visit;*
- i. Upon the completion of the visit, the parties and participants may make suggestions to correct or amend the draft minutes prepared by the Registry and propose redactions of confidential and sensitive information for filing a public version of the minutes;*
- j. After having received the Chamber's approval, the minutes referred above shall be entered into the case file. These minutes shall be considered as a part of "the entire proceedings" within the meaning of Article 74 of the Rome Statute.¹⁰*

17. Lastly, Counsel submit that Mr Ongwen should not take part in the judicial site visit. Rather, as exemplified in the *Katanga and Ngudjolo case*, the accused's participation should be limited to providing instructions to his lawyer in relation to the conduct of said visit. Counsel wish to caution the Chamber that Mr Ongwen's physical presence in Northern Uganda will create fear and instability among the victims and the affected communities. In this regard, the victims participating in the case have explicitly expressed their concerns for their safety and well-being in the event that Mr Ongwen is allowed to return, albeit for a short period of time, to their home areas. Moreover, Counsel submit that Mr Ongwen's physical presence during the visit shall serve no purpose since the parties and participants should be prohibited from presenting evidence or making oral or written submissions during the visit.

¹⁰ *Idem.*

18. Finally, Counsel would like to take this opportunity to reiterate the fact that the participating victims had also expressed their wish that part of the proceedings be held in Northern Uganda. In this regard, Counsel wish to request the Chamber to evaluate the possibility of holding closing statements *in situ*. Should the Chamber be willing to consider this option, Counsel are ready to jointly file additional submissions on the matter.

Respectfully submitted



Paolina Massidda



Francisco Cox



Joseph Manoba Akwenyu

Dated this 16th day of June 2017

At The Hague, The Netherlands