

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **30 January 2018**

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

Public Redacted Version of “Defence Response to the Common Legal Representative’s Request for a Time Extension to File Her List of Witnesses”, filed on 30 January 2018

Source: Defence for Dominic Ongwen

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Benjamin Gumpert, QC

Counsel for the Defence

Krispus Ayena Odongo
Chief Charles Achaleke Taku
Beth S. Lyons

Legal Representatives of the Victims

Joseph Akwenyu Manoba
Francisco Cox

Common Legal Representative for Victims

Paolina Massidda
Jane Adong

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

Paolina Massidda
Orchlon Narantsetseg
Caroline Walter

States' Representatives

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

Xavier-Jean Keita

Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby responds to the "Common Legal Representative's Request for an extension of time to file her final list of witnesses" ('Request').¹ For the reasons enumerated below, the Common Legal Representative's ('CLR') Request fails to demonstrate how a time extension pursuant to Regulation 35 of the Regulations of the Court is necessary, and thus should be denied. The Defence also notes that the Request is unnecessary in light of the directions given by Trial Chamber IX ('Chamber') on 13 October 2017.

II. CONFIDENTIALITY

2. Pursuant to Regulation 23 *bis*(2), the Defence submits this response as confidential. The Defence files a public redacted version contemporaneously.

III. PROCEDURAL HISTORY

3. On 13 July 2016, Chamber issued the "Initial Directions on the Conduct of the Proceedings" and stated that "any presentation by the LRVs, should leave to do so be granted," will take place between the presentations of evidence by the parties.²
4. On 13 October 2017, the Chamber issue the "Preliminary Directions for any LRV or Defence Evidence Presentation" ('Preliminary Directions') which ordered the Legal Representatives for Victims ('LRV') to submit provisional lists of witnesses by 14 December 2017³ and final lists of witnesses by 2 February 2018.⁴ The Chamber also instructed the LRVs to "provide its justifications for why leave should be granted to present evidence."⁵

¹ ICC-02/04-01/15-1154-CONF.

² ICC-02/04-01/15-497, para. 9.

³ ICC-02/04-01/15-1021, para. 3.

⁴ *Ibid.*, para. 4.

⁵ *Ibid.*

5. The LRVs submitted provisional lists of witnesses on 13 and 14 December 2017.⁶ The CLRV provided the names of her potential expert witnesses to the Chamber, Parties and Participants *via* email on 22 December 2017.⁷
6. On 29 January 2018, the Chamber, Parties and Participants were notified pursuant to Regulation 31 of the Regulations of the Court of the Request.⁸ On the same day, and pursuant to Regulation 34 of the Regulations of the Court, the Chamber shortened the response time to the Request to 30 January 2018 at 16h00 CET.⁹

IV. SUBMISSIONS

7. The CLRV outlined much of the judicial case law on applications pursuant to Regulation 35 of the Regulations of the Court, and the Defence weens it unnecessary to reiterate the case law in its response.
8. The Defence also makes no substantive submissions on the four proposed expert witnesses the CLRV intends to bring other than their names should be confirmed to the Parties and Participants on 2 February 2018.
9. The Chamber issued the Preliminary Directions “far in advance in order to facilitate the effective preparation of the LRVs and Defence.”¹⁰
10. The CLRV fails to elucidate why she and her team have not been able to identify three fact witnesses since the Chamber issued the “Initial Directions on the Conduct of the Proceedings”, or better put, in the past 18.5 months. Three and one-half months have elapsed, including eight weeks of recess from the trial proceedings, since the Chamber issued its Preliminary Directions. Furthermore, the Defence notes that a member of the CLRV’s Team lives in Uganda. Whilst the Defence understands the fact that very little money is given to the LRVs (and also to the Defence) for investigations, costs are much lower when persons live and operate from the situation country. This should

⁶ ICC-02/04-01/15-1105-Conf and ICC-02/04-01/15-1106.

⁷ Email communication from CLRV entitled “RE: Decision on Defence Request for the Identities of Potential Witnesses”, received on 22 December 2017 at 11h41 CET.

⁸ The Defence notes that a courtesy copy was emailed to the Chamber, Parties and Participants on 26 January 2018 at 18h24 CET. Additionally, the CLRV phoned the Defence on 26 January 2018 at 13h34 CET and notified the Defence of the upcoming submission, including the content.

⁹ Email communication on behalf of the Chamber entitled “Shortening of response deadline of ICC-02/04-01/15-1154-Conf”, received on 29 January 2018 at 11h37 CET.

¹⁰ *Preliminary Directions*, para. 1.

allow the CLRV's Team more flexibility and the ability to find and contact persons within Uganda.

11. The CLRV has stated a very general nature of the role played by the three unnamed potential fact witnesses, [REDACTED]. She knows the names, jobs and material about the three potential witnesses. Releasing the names of these potential witnesses poses no harm to her presentation of evidence or to the potential witnesses, but not disclosing the names of the three fact witnesses would continue to delay the Defence and its investigations.
12. Furthermore, as proposed by the CLRV, the names of the potential witnesses would not be known to the Defence until after the two-week trial break, thus depriving the Defence of another chance to investigate the potential witnesses. The response to the request to present evidence and whether the LRVs should be allowed to present the witnesses would then have to be written whilst Court is in session, unlike as it is currently scheduled. This would further hamper the Defence as it would be required to write a pleading during the presentation of evidence and pull resources from the Defence's examinations.
13. Whilst the Defence maintains that the CLRV does not qualify for relief pursuant to Regulation 35 of the Regulations of the Court, the Defence is sympathetic to her plight. The Defence takes note of the Preliminary Directions, which reads, "[w]ithin one week from notification of this notice [...] the LRVs must: (i) confirm its final lists of evidence and witnesses..."¹¹
14. Because of this sentence, the Defence presumes that the list of witnesses required of the LRVs on 2 February 2018, whilst being its final list of witnesses, may be modified if good cause is shown. The Defence expects that the CLRV submits a list of witnesses in good faith and not to deviate from the descriptions proffered in paragraph 12 of the Request and paragraph 10 of ICC-02/04-01/15-1105-Conf after 2 February 2018. But if one person must be replaced by another who falls within the same description, *i.e.* same type of organisation and work performed, the Defence understands. As such, the Defence also weens that the Request is unnecessary.

¹¹ *Preliminary Directions*, para. 6.

15. Finally, the Defence notes that the CLRV asks that the other Legal Representatives for Victims be allotted the same time frame. The other Legal Representatives for Victims have not requested an extension of time, and notably, that team is in a different situation. The other Legal Representatives for Victims have identified all of their potential witnesses, and should have been able to confirm which of the 13 fact witnesses they will call during the six-week Christmas recess.

V. CONCLUSION

16. The Defence for Dominic Ongwen asks the Chamber to reject the Request as:
- a. It does not meet the requirements of Regulation 35 of the Regulations of the Court and
 - b. Is unnecessary in light of the Preliminary Directions.

Respectfully submitted,



.....

Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 30th day of January, 2018
At The Hague, Netherlands