

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 31 January 2018

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public

**Decision on Common Legal Representative's Request for an Extension of Time
to File its Final List of Witnesses**

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 Victims

Joseph Akwenyu Manoba
Francisco Cox
Paolina Massidda

Legal Representatives of 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**

Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court') in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Regulation 35(2) of the Regulations of the Court ('Regulations'), issues the following 'Decision on the Common Legal Representative's Request for an Extension of Time to File its Final List of Witnesses'.

1. On 13 October 2017, the Single Judge issued the 'Preliminary Directions for any LRV or Defence Evidence Presentation' ('Preliminary Directions'), instructing the legal representatives for victims to present their final lists of proposed witnesses and evidence by 2 February 2018.¹
2. On 26 January 2018, the Common Legal Representative for Victims ('CLR') submitted a request seeking an extension of time, until 16 February 2018, to file its final list of witnesses ('Request').² The CLR asserts that, for reasons beyond its control, it is unable to file the final list by the stipulated deadline. It is submitted that the difficulty arises in relation to three fact-witnesses it intends to call for the following reasons: (i) the first individual needs to seek consent of her superior and consult a lawyer prior to engaging with the CLR; (ii) contact has been established with the second individual only on 26 January 2018; and (iii) the CLR is still trying to establish contact with the third.³
3. On 30 January 2018,⁴ the Defence for Mr Ongwen ('Defence') submitted its objection to the Request ('Response').⁵ According to the Defence the CLR does

¹ ICC-02/04-01/15-1021, para. 4.

² Common Legal Representative's Request for an extension of time to file her final list of witnesses, ICC-02/04-01/15-1154-Red, para. 1 (a confidential version was notified on the same day).

³ Request, ICC-02/04-01/15-1154-Conf, para. 2. To the extent that this Decision makes reference to confidential filings, the Single Judge is of the view that information as referenced in this Decision does not warrant confidential treatment.

⁴ The response deadline was shortened to this date. Email communication from Legal Officer of the Trial Chamber to the parties, 29 January 2018 at 11:37.

not qualify for relief under Regulation 35 of the Regulations as it fails to outline the precise reasons for the delay, given that three and a half months have elapsed since the issuance of the Preliminary Directions.⁶ It is highlighted that a member of the CLRV's team is based in Uganda, which is more cost efficient and should make it easier to find and contact individuals.⁷ Further, the Defence asserts that it would be disadvantaged by the extension, as the names of the witnesses would only be revealed after the two-week trial break 'depriving the Defence of another chance to investigate the potential witnesses'.⁸ Lastly, it is argued that an extension is unnecessary, as the list of witnesses required to be submitted on 2 February 2018 may be modified later if good cause is shown.⁹

4. On 30 January 2018, the other Legal Representatives of the Victims informed the Chamber, via email, that it did not have any objections to the Request.¹⁰ No response was filed by the Office of the Prosecutor.
5. Regulation 35(2) of the Regulations empowers the Single Judge to extend the time limit if good cause is shown to that effect. Previously, it has been held that the 'good cause' requirement is satisfied, *inter alia*, if the delay is caused by an unforeseeable occurrence,¹¹ or a heavy workload requiring simultaneous preparation of a complex filing.¹²

⁵ Defence Response to the Common Legal Representative's Request for a Time Extension to File Her List of Witnesses, 30 January 2018, ICC-02/04-01/15-1157-Red (a confidential version was notified on the same day).

⁶ Response, ICC-02/04-01/15-1157-Red, para. 10.

⁷ Response, ICC-02/04-01/15-1157-Red, para. 10.

⁸ Response, ICC-02/04-01/15-1157-Red, para. 12.

⁹ Response, ICC-02/04-01/15-1157-Red, para. 14.

¹⁰ Email Communication to Trial Chamber IX Communications and the other participants, 30 January 2018 at 13:14.

¹¹ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Reasons for the 'Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007' issued on 16 February 2007, 21 February 2007, ICC-01/04-01/06-834, OA8, para. 7. In this particular case it was held that counsel's illness was an unforeseeable occurrence, which was equated to a supervening event.

¹² See Appeals Chamber, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the requests for time and page extension, 18 September 2015, ICC-01/09-01/11-1971, OA10; Appeals Chamber, *The Prosecutor v. Laurent Koudou Gbagbo*, Decision on the "Requête aux fins de suspension des délais

6. The Single Judge is of the view that the good cause requirement has not been satisfied in the present case. The Preliminary Directions, as highlighted by the Defence in its Response,¹³ were deliberately issued ‘far in advance in order to facilitate the effective preparation of the LRVs and Defence’.¹⁴ The CLRV has been allowed adequate time to identify, contact and finalise its witnesses. No unforeseen circumstances or competing deadlines relating to complex filings have been alleged.

7. To the contrary, the Request identifies foreseeable complexities inherent in identifying, meeting and assessing potential witnesses (such as access to limited resources and difficulties in tracing individuals who had interactions with former abductees).¹⁵ The Single Judge is not persuaded that the CLRV could not have surmounted these difficulties through means short of an extension of time, such as by identifying alternative dual status witnesses with similar testimony. It must be emphasised that the Defence is entitled to adequate time and facilities to prepare, and extensions of deadlines which risk infringing upon this right cannot be taken lightly. A continuation of foreseeable challenges and failure to deal with the challenges in a timely manner – absent any special circumstances – does not constitute good cause as required under Regulation 35(2) of the Regulations.

prévus par la Règle 154(1) du Règlement de procédure et de preuve et par la Norme 64(5) du Règlement de la Cour jusqu'à la fin des vacances judiciaires, fixée au lundi 6 août 2012”, 19 July 2012, ICC-02/11-01/11-189, OA.

¹³ Response, ICC-02/04-01/15-1157-Red, para. 9.

¹⁴ Preliminary Directions, ICC-02/04-01/15-1021, para. 1.

¹⁵ Request, ICC-02/04-01/15-1154-Red, paras 10-12.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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



Judge Bertram Schmitt, Single Judge

Dated 31 January 2018

At The Hague, The Netherlands