

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **26 April 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

Victims' response to "Defence Urgent Request for Delay in Opening of LRV and CLRV Cases, Pursuant to Articles 67(1)(b) and 67(1)(e) of the Rome Statute"

Source: Legal Representatives of Victims

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

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I. INTRODUCTION

1. The Legal Representatives for Victims (“LRVs”), respectfully request the Trial Chamber IX (“Chamber”) dismiss the “Defence Urgent Request for Delay in Opening of LRV and CLRV Cases, Pursuant to Articles 67(1)(b) and 67(1)(e) of the Rome Statute (“Defence Request” or “Request”).¹
2. Given the small amount of material relating to the LRVs’ witnesses which was disclosed to the Defence by 5 April 2018, the LRVs consider that the Defence have had entirely sufficient time and resources to prepare for the commencement of the victims’ presentation of evidence.
3. Furthermore, Article 68(1) of the Rome Statute requires the Court to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.” A delay in the opening in the victims’ cases could negatively affect the psychological well-being of those witnesses who will be presenting evidence, contrary to the requirements of the Statute.

II. PROCEDURAL HISTORY

4. On 2 February 2018, the LRVs filed their final lists of witnesses and request for leave to present evidence and to present victims’ views and concerns in person.² On the same day the OPCV filed its request for leave to present evidence.³ On 15 February 2018, the Defence requested the Chamber to reject both LRVs’ and OPCV’s requests to present evidence.⁴

¹ Defence Urgent Request for Delay in Opening of LRV and CLRV Cases, Pursuant to Articles 67(1)(b) and 67(1)(e) of the Rome Statute, ICC-02/04-01/15-1239, 24 April 2018 (“Defence Request”).

² Victims’ requests for leave to present evidence and to present victims’ views and concerns in person, ICC-02/04-01/15-1166 + Conf-Anx, 2 February 2018.

³ Common Legal Representative’s submission of Final List of Witnesses and Request for Leave to Present Evidence, ICC-02/04-01/15-1165-Conf + Conf-Anxs, 2 February 2018. A public redacted version of this Request was filed on 5 February 2018, ICC_02/04-01/15-1165-Red.

⁴ Defence Response to the LRV and CLRV Requests to Present Evidence and the Views and Concerns of Registered Victims, ICC-02/04-01/15-1182-Conf, 15 February 2018. A public redacted version of this documents was notified on 23 February 2018, ICC-02/04-01/15-1182-Red.

5. On 6 March 2018, the Chamber ruled that it envisages hearing the testimony of the victims' witnesses from 30 April 2018 to 16 May 2018.⁵ The Chamber also ordered the OPCV and the LRVs to provide the following, within one week after the Prosecution's formal notice that it had concluded its evidence presentation: (i) confirmation of its final lists of evidence and witnesses; (ii) certification that all necessary witness information forms have been completed and provided to the Victims and Witnesses Unit ("VWU"); (iii) summaries of the anticipated testimonies; (iv) disclosure of all items which are intended to be used during the evidence presentation; and (v) any request for protective measures or relief under Rule 68 of the Rules.⁶
6. On 13 March 2018 the Chamber modified that deadline so that it was fixed for 5 April 2018.⁷
7. On 4 April 2018 the OPCV disclosed to the Defence 23 items.⁸
8. On 5 April 2018, the OPCV disclosed to the Defence three Acholi translations of evidence summaries. On the same day the LRVs disclosed to the Defence 16 items, amounting to 212 pages of material.
9. On 24 April 2018, the Defence submitted its Request,⁹ asking the Chamber to grant an extension of at least one month to prepare for the LRV and CLRV cases.
10. On 24 April 2018, the Chamber shortened the deadline for responses to the Defence Request to 26 April 2018.¹⁰

⁵ Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests, ICC-02/04-01/15-1199-Red, 6 March 2018, para. 82.

⁶ Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests (Trial Chamber IX), no. ICC-02/04-01/15-1199-Conf, 6 March 2018, para. 79. A public redacted version of the decision was filed on the same day, ICC-02/04-01/15-1199-Red.

⁷ Email from Trial Chamber IX sent on 13 March 2018 at 16:55.

⁸ Common Legal Representative's Communication of the Disclosure of Evidence, 4 April 2018, ICC-02/04-01/15-1216.

⁹ Defence Urgent Request for Delay in Opening of LRV and CLRV cases, Pursuant to Articles 76(1)(b) and 67(1)(e) of the Rome Statute, 24 April 2018, ICC-02/04-01/15-1239, para. 26.

III. SUBMISSIONS

11. The Defence has entirely failed to justify its Request for the postponement of the victims' evidence which is scheduled to begin on 1 May 2018. The Defence claims that it has had inadequate time to review disclosed material. In light of the small volume of material disclosed, the Defence resources available, and the unexplained delay in making the Request, this argument cannot be sustained.
12. The material disclosed by the LRVs ahead of their presentation of evidence was disclosed to the Defence on 5 April 2018 and consists of only 212 pages.
13. The bulk of this material – 156 pages – relates to expert witness V-0001. This witness is scheduled to testify last of the LRVs four witnesses and is unlikely to begin her testimony before 7 May 2018. Contrary to an assertion made in the Defence filing,¹¹ this material does not consist of two separate reports. Rather it is only one expert report,¹² along with excerpts from that report.¹³ Along with this disclosed material, a summary of this evidence was provided to the Defence as ordered by the Chamber. Neither this summary nor the excerpts from the report contain any new or different information to that which is included in the main report. Indeed, the LRVs note that the evidence summaries have been ordered by the Chamber for the very purpose of *assisting* the Defence preparation.
14. The material relating to witness V-0002, witness V-0003 and witness V-0004, who are scheduled to begin testifying on 1 May 2018, amounts to not more than 56 pages. All of this material was disclosed to the Defence on 5 April 2018. Of these, 26 pages are constituted by the evidence summaries which have been produced to assist the Defence in its preparation.

¹⁰ Email from Trial Chamber IX sent on 24 April 2018 at 17:34.

¹¹ Defence Request, para.6.

¹² UGA-V40-0001-0010.

¹³ UGA-V40-0001-0137.

15. According to the Defence Request, the material disclosed by the OPCV to the Defence amounts to 1076 pages.¹⁴ Altogether the Defence were provided with 1288 pages of material to prepare for the opening of LRVs' and OPCV's cases. The LRVs notes that the Defence has a further two weeks to review the material disclosed by the OPCV before its first witness is scheduled to testify on 14 May.
16. Acholi translations of victims' application and of summaries of evidence were provided by the LRVs and OPCV. These amounted altogether to 36 pages, 12 of which were disclosed to the Defence on 5 April 2018, 16 pages on 6 April 2018 and 8 pages on 9 April 2018.
17. The LRVs firmly refute the Defence assertion that it has been unable to sufficiently review this volume of materials in the three weeks since 5 April 2018. The LRVs understand that the Defence team includes at least seven legally qualified team members. They have had more than three weeks to assess the material disclosed. In comparison with the volume of material presented by the Prosecution the LRVs' disclosed evidence is miniscule. In many instances the Defence itself has provided more material than this for the examination of a single Prosecution witness and such materials have been provided within a much shorter time frame before the appearance of the witness.
18. Moreover, the Defence has aware of the schedule for the presentation of victims' evidence and the character of this evidence well before the 5 April disclosures. Despite this, the Defence made no prior objections to the timeframe set by the Chamber. Nor has the Defence given any indication since the 5 April disclosures that it was facing difficulties reviewing the disclosed material. The first indication of this was the Defence Request itself, made three weeks after the material was disclosed, and three business days clear of the commencement of the victims' evidence. No explanation has been given by the Defence as to why its Request was not made earlier.

¹⁴ Defence Request, para. 5.

19. The LRVs' first witness is scheduled to testify already on 1 May 2018. As of 26 of April 2018, travel to The Hague is imminent for the LRVs' first two witnesses. They have already left their communities to prepare for their travel. It is possible that these victims will arrive in The Hague even before the Chamber issues its decision on the Defence Request. One of these victims is a person who has suffered significant trauma and has ongoing vulnerabilities. Last minute changes to his appearance schedule seem very likely to cause him distress and anxiety. They may well also make it more difficult for him to maintain secrecy about the reasons for his absence from his community. If the Defence request is granted, this victim will be exposed to unnecessary and unjustified interference with his psychological well-being. Article 68(1) directs that the Court must protect victims and witnesses from harm of this nature.
20. In addition, the unjustified and unnecessary extension of time requested by the Defence would also expose the Court's budget to unnecessary costs. This includes not only travel and accommodation costs for witnesses but also for the members of the LRVs' legal team.
21. Moreover, the Defence Request, if granted, will inevitably lead to an unjustified delay in the proceedings just before the beginning of their central stage for victims participating in this trial. These victims have waited many years to present their case before this Court and they have a legitimate expectation that proceedings in the case are conducted with unnecessary delays and according to the schedule they were informed of. As previously noted by the LRVs, in their view potential delays arising after the commencement of proceedings are far more troubling to the victims than those which preceded the arrest of the Accused. Once the trial has begun victims' anxieties increase and they have a legitimate expectation that proceedings will occur in a timely fashion. During LRV meetings with their clients victims have repeatedly expressed concerns that the trial process is taking too long. Some have pointed out that many of the victims are not in good health and may not see the conclusion of the trial if

there are delays. The LRVs therefore appeal to the Chamber that the proceedings, especially at their current stage, which is of key importance to participating victims, take place in line with previously ordered and undisputed schedule.

IV. RELIEF SOUGHT

22. The LRVs respectfully request the Chamber to dismiss the Defence Request for a postponement of the victims' presentation of evidence.

Respectfully submitted,



Joseph A. Manoba



Francisco Cox

Dated this 26th day of April 2018

At Kampala, Uganda and at Santiago, Chile