

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 January 2019

Date of submission: 11 June 2019

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 Victims' Response to "Confidential Redacted Version of 'Defence Request for a Stay of the Proceedings and for Trial Chamber IX, pursuant to Rule 135 of the Rules of Procedure and Evidence, to Order a Medical Examination of Mr Ongwen', filed on 10 January 2019", 11 January 2019, ICC-02/04-01/15-1409-Conf

Source: 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

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Mr Benjamin Gumpert

Counsel for the Defence

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Legal Representatives of the Victims

Mr Joseph Akwenyu Manoba and
Mr Francisco Cox

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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Amicus Curiae

REGISTRY

Registrar

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Legal Representatives for Victims (“LRVs”) respectfully request that Trial Chamber IX (“Chamber”) deny the Confidential Redacted Version of the “Defence Request for a Stay of the Proceedings and for Trial Chamber IX, pursuant to Rule 135 of the Rules of Procedure and Evidence, to Order a Medical Examination of Mr Ongwen”, filed on 10 January 2019 (“Defence Request”).¹
2. The LRVs submit that the Defence have not sufficiently established that Mr Ongwen is not fit to stand trial and oppose a temporary stay of proceedings or ordering a medical examination of Mr Ongwen pursuant to Rule 135 of the Rules of Procedure and Evidence (“RPE”).
3. The LRVs contend [REDACTED] the victims in this case want this trial to proceed as expeditiously as possible and oppose any delays to the continuation of this trial. Should the Trial Chamber deem a delay as necessary, the LRVs request that any delay in the commencement of proceedings be as brief as possible, to ensure that the rights of victims’ are not unfairly prejudiced.
4. Lastly, the Defence also request that Mr Ongwen is examined by their Experts [REDACTED], however, the LRVs submit that should the Trial Chamber order an examination of Mr Ongwen, any such examination should be conducted by neutral Registry appointed experts.²

II. CONFIDENTIALITY

5. This submission has been filed confidentially pursuant to directions from the Trial Chamber.

¹ ICC-02/04-01/15- 1405-Conf-Red.

² *Ibid*, para 2.

III. SUBMISSIONS

Mr Ongwen is fit to stand trial

6. [REDACTED]
[REDACTED]
[REDACTED] Concurrently, the Defence also state that “it appears to the Experts that Mr Ongwen is not fit to participate in the trial proceedings” commencing on 14 January 2019,³ and request a lengthier adjournment so that this question can be resolved.
7. [REDACTED]
[REDACTED] In the event that the redacted version of that report provides further relevant material the LRVs are willing to supplement these submissions.
8. In the *Gbagbo* case, the Pre-Trial Chamber highlighted that “[n]either the Rome Statute nor the Rules of Procedure and Evidence contain any provision specifically addressing fitness to stand trial.”⁴ The Pre-Trial Chamber asserted that the Rome Statute contained a number of capacities which are necessary to ensure that a person is fit to stand trial. These include:
 - a. To understand in detail the nature, cause and content of the charges;
 - b. To understand the conduct of the proceedings;
 - c. To instruct counsel;
 - d. To understand the consequences of the proceedings; and
 - e. To make a statement.⁵
9. The LRVs submit that although the Defence outline the relevant case law at the ICC and other tribunals relating to an accused’s fitness to stand trial,⁶ they fail

³ Paras 1-5, Defence Request.

⁴ *The Prosecutor v. Laurent Gbagbo*, ICC-02/11-01/11-286-Red, para. 43.

⁵ ICC-02/11-01/11-286-Red, para. 50 (*citing* ICC-02/11-01/11-164-Conf-tENG, para. 39)

⁶ Paras 28-34, Defence Request.

to demonstrate how Mr Ongwen is unfit to continue his trial, nor even that there is sufficient concern about this question to warrant further investigations which may substantially delay trial proceedings.

10. [REDACTED] the LRVs contend that Mr Ongwen is able to effectively participate in this trial and does have an understanding of the proceedings. No material to the contrary has been produced by the defence.
11. On 6 December 2016, the Trial Chamber held that Mr Ongwen did understand the nature of the charges against him and permitted the trial to proceed.⁷ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
12. The LRVs respectfully submit that there has been no material change in the factual position since that time. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
13. With regards to the conduct of the proceedings, it is clear that Mr Ongwen is following and is fully engaged in the proceedings when in the courtroom and is able to consult with his counsels and instruct them accordingly. Indeed, the Defence has prepared and submitted a list of witnesses and documents to be relied upon during the Defence case which suggests that Mr Ongwen has been consulted and has understood the manner in which this case is progressing.
14. The LRVs have no objection to the application of Regulation 162 *bis*(3) of the Regulations of the Registry ("RoR") and entirely agree that the Court should

⁷ Lines 2-4, ICC-02/04-01/15-T-26-ENG, 6 December 2016.

take appropriate measures to support, care and ensure treatment for Mr Ongwen [REDACTED]

15. However, the LRVs submit that it would be unwarranted in the circumstances to allow an open-ended adjournment of the proceedings for an additional medical examination pursuant to Rule 135 addressing the question of fitness to stand trial.

An adjournment would be prejudicial to the rights of participating victims

16. Victims participating in this case have suffered from some of the most horrendous crimes, narratives that have been heard by this Trial Chamber throughout the course of these proceedings. These victims deserve to know the truth about the crimes that took place, and have a right in the event of a conviction to apply for reparations. Any delay or adjournment would negatively impact on their interests and rights and must therefore only be permitted when properly warranted for the protection of the rights of the accused.
17. The LRVs have heard the views and concerns of very many victims who have expressed concern at the duration of proceedings. Many also fear that Mr Ongwen would seek adjournments as a tactic to avoid trial. Their faith in the proceedings will best be maintained by demonstrating that the Chamber will not adjourn proceedings any more than has been properly demonstrated by the defence to be strictly necessary.
18. Any material delay to the proceedings will negatively impact our clients and could even lead to a sense of disillusionment given that the crimes which are the subject of this case took place more than 15 years ago. It is not to be forgotten in this context that the participating victims represented by the LRVs suffer from a range of significant and ongoing forms of harm. Many continue to

experience mental health difficulties [REDACTED] Some have already not lived to see this phase of the proceedings.

19. [REDACTED], however it is important that the Court not lose sight of the fact that the victims continue to endure the deep emotional and psychological distress as a result of the violations they endured. For instance, victims were forced to kill family members or friends; forced to become wives to LRA commanders and bear them children; forced to face stigma and backlash from their communities once they returned from the bush; and that they almost all continue to live with what happened to them with little to no assistance.
20. When deciding upon granting a temporary adjournment, the Trial Chamber ought to take these factors into account as any lengthy delay in these proceedings may, in the eyes of the victims, render the ICC as just another institution which has been unable to deliver justice to them and suspend any hope for justice for which they have endured a long wait.

IV. CONCLUSION AND RELIEF SOUGHT

21. The LRVs do not object to the Chamber ensuring that Mr Ongwen is able to receive appropriate medical support as per Regulation 162 *bis* (3) of the RoR. If the Chamber is amenable to granting a delay in the proceedings for the purposes of allowing Mr Ongwen to receive the help he requires under Regulation 162 *bis* (3), the LRVs submit that any such delay must be as brief as possible.
22. However, the LRVs request that a longer adjournment be refused as unwarranted given that no material has been produced by the defence to call into question Mr Ongwen's fitness to stand trial.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Manoba', with a stylized flourish extending from the end.

Joseph A. Manoba

A handwritten signature in blue ink, appearing to read 'Francisco Cox', with a stylized flourish extending from the end.

Francisco Cox

Dated this 11th day of January 2019

At Kampala, Uganda and at Santiago, Chile