

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 7 October 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*

Confidential

Victims' Response to "Defence Request to add UGA-D26-P-0157 to its List of Witnesses, Accompanying Documents to its List of Evidence and Submissions of the Accompanying Documents Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence"

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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Mr Benjamin Gumpert

Counsel for the Defence

Mr Krispus Ayena Odongo
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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**

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Amicus Curiae

REGISTRY

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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 (the "LRVs") respectfully request Trial Chamber IX (the "Chamber") to dismiss the 'Defence Request to add UGA-D26-P-0157 to its List of Witnesses, Accompanying Documents to its List of Evidence and Submissions of the Accompanying Documents Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence' ("Defence Request").¹
2. The Defence fails to justify: (a) why it proposes to add UGA-D26-P-0157 at this late juncture of the proceedings; and (b) the significance of this evidence. The LRVs support the Prosecution's request to reject the addition of D-0157 to the Defence's List of Witnesses ("LoW") and his evidence to the List of Evidence ("LOE").²

II. PROCEDURAL HISTORY

3. On 13 October 2017, the Chamber issued preliminary directions on the presentation of evidence by the Defence and the Legal Representative and Common Legal Representative of Victims (together 'Victims Representatives'). Therein, it, *inter alia*, ordered the Defence to confirm its final list of evidence and list of witnesses three weeks after the Office of the Prosecutor ('Prosecution') provided formal notice of the closure of its case.³
4. On 6 March 2018, the Chamber extended this deadline to 31 May 2018, which was again extended until, de facto, 4 June 2018.⁴
5. On 4 June 2018, the Defence duly filed its list of evidence and list of witnesses.⁵

¹ ICC-02/04-01/15-1619-Conf.

² ICC-02/04-01/15-1625-Conf.

³ Preliminary Directions for any LRV or Defence Evidence Presentation, ICC-02/04-01/15-1021, para. 7.

⁴ E-mail from the Trial Chamber to the parties on 24 May 2018, ICC-02/04-01/15-1483-AnxXVI. The Defence requested an extension until 2 June 2018, which was a Saturday and the Chamber granted the request.

6. On 10 July 2019, the Defence filed a request to add two witnesses to its list of witnesses and documents related to these two witnesses to its list of evidence.⁶
7. On 20 September 2019 the Defence Request was filed, where it seeks to add UGA-D26-P-0157 to its LoW and the accompanying documents to its LoE pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence ("RPE").
8. On 4 October 2019, the Prosecution filed the 'Prosecution's Response to Defence Request to add UGA-D26-P-0157 to its List of Witnesses (ICC-02/04-01/15-1619-Conf)⁷, where it opposed the Defence Request.

III. CONFIDENTIALITY

9. The LRVs' response is filed as confidential pursuant to regulation 23bis (2) of the Regulations of the Court as the Defence Motion was submitted by the Defence as confidential. There is nothing, however, in this document that would require such a classification, and it may be reclassified as public should the Chamber deem it necessary.

IV. SUBMISSIONS

The Defence Request should be dismissed

10. As stated previously by the Trial Chamber, the following criteria should be taken into account when determining whether late additions to the LOW and the LOE should be permitted: (i) the extent to which the requested addition is opposed, (ii) the time when the addition is sought, (iii) the nature and amount of the material concerned, (iv) the intended purpose for the party's requested reliance

⁵ Defence notification of List of Witnesses and Evidence in compliance with ICC-02/04-01/15-1021 and Request for Leave to Add Witnesses its List of Witnesses and Materials to its List of Evidence, ICC-02/04-01/15-1272-Red2, with three annexes. Further public redacted version filed on 5 June 2018.

⁶ Defence's request to add Expert Witness UGA-D26-P-0158 and Fact Witness UGA-D26-P-0013 to its List of Witnesses and Accompanying Documents to its List of Evidence, with three annexes, ICC-02/04-01/15-1559-Conf.

⁷ ICC-02/04-01/15-1625.

on the material and (v) the material's prospective significance in light of the charges brought against the accused and the rest of the available evidence.⁸

11. Firstly, the Defence Request fails to articulate why the evidence of UGA-D26-P-0157 should be incorporated into the LoW and the LoE at this stage of the proceedings. As highlighted by the Prosecutor, 'the attack on Mucwini was included in some of the earliest material the Prosecution collected in the Uganda investigation.'⁹ Thus, the Defence have been fully apprised of the related material disclosed by the Prosecution and it is unclear why the Defence seeks its inclusion 16 months after the initial deadline for submitting the LoW and LoE expired.
12. Secondly, in light of the criteria laid out above by the Chamber, the Defence fails to explain why the material related to UGA-D26-P-0157 is significant in light of the charges brought against the accused and the rest of the available evidence.
13. The LRVs concur with the Prosecution that UGA-D26-P-0157's evidence is speculative as it relates to the retaliatory nature of the Mucwini attack and it fails to add any weight to the defence's argument of duress.¹⁰ UGA-D26-P-0157's abduction was of a very short duration in comparison to Dominic Ongwen's. Indeed, there are few parallels between the two individuals, save for the fact that they were both abducted by the LRA, albeit at different times.

IV. RELIEF SOUGHT

14. For the reasons outlined above, the LRVs respectfully request the Chamber dismiss the Defence Request.

Respectfully submitted,

⁸ ICC-02/04-01/15-619, para.10, cited in Defence Request, para.13.

⁹ ICC-02/04-01/15-1625-Conf, para. 4.

¹⁰ ICC-02/04-01/15-1625-Conf, paras. 6 and 7.



Joseph A. Manoba

Dated this 7th day of October 2019

At Kampala, Uganda and at Santiago, Chile



Francisco Cox