

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **4 November 2019**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public

**Decision on Legal Representatives of Victims Request to Present Views and Concerns
in Person**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

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Legal Representatives of Applicants

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**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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Amicus Curiae

REGISTRY

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Counsel Support Section

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Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX (the ‘Single Judge’ and ‘Chamber’, respectively) of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 68(3) of the Rome Statute, issues the following ‘Decision on Legal Representatives of Victims Request to Present Views and Concerns in Person’.

I. Procedural history and submissions

1. On 13 October 2017, the Single Judge issued preliminary directions for any evidence presentation by the legal representatives of victims or the Defence, in which it was also indicated that the Chamber was ‘not provisionally inclined to hear victims present unsworn non-evidentiary “views and concerns” before its Judgment’.¹
2. On 6 March 2018, while granting the request of the Legal Representatives of Victims (the ‘LRV’) to call a number of witnesses to give evidence, the Chamber rejected the request to have two participating victims present their views and concerns at that point in time, irrespective of any decision on a request to present views and concerns at a later stage of the proceedings.²
3. On 15 October 2019, the LRV filed a request to allow two participating victims to present their views and concerns in person during the closing statements (the ‘Request’).³
4. The LRV propose to present the views and concerns of one Acholi and one Lango community leader, one male and one female, and indicate that the views presented will not be repetitive of issues already heard by the Chamber.⁴ The topics suggested to be addressed include: (i) the significance of the trial process to the participating victims and their communities; (ii) the meaning and significance given by victims to their participation in the trial process; (iii) the extent to which the proceedings are capable of impacting on stability, reconciliation and other social change; and (iv) any other issue that the Court would deem appropriate for the victims to address.⁵ According to the

¹ Preliminary Directions for any LRV or Defence Evidence Presentation, ICC-02/04-01/15-1021, para. 2(i).

² 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, paras 77-78 (the ‘Decision on Victims Requests’).

³ Victims’ Request to Present Views and Concerns in Person, ICC-02/04-01/15-1638, paras 1 and 29.

⁴ Request, ICC-02/04-01/15-1638, para. 4.

⁵ Request, ICC-02/04-01/15-1638, para. 21.

LRV, granting the Request would be practicable, appropriate, and render victim participation meaningful.⁶

5. On 16 October 2019, the Office of the Prosecutor indicated that it would not file a formal response, but that it supports the Request ‘on the understanding that the victims who address the court will not say anything about Mr Ongwen’s criminal responsibility’.⁷
6. On 28 October 2019, the Defence responded, opposing the Request.⁸ The Defence argues that the LRV had ample opportunity to present and question witnesses about the victims’ views and concerns.⁹ The Defence submits that the LRV failed to demonstrate why the Request should be granted.¹⁰

II. Analysis

7. The Single Judge notes that the Request is similar to an earlier request of the LRV for two participating victims to present their views and concerns in person.¹¹
8. Since that earlier request, the LRV had the opportunity to present four witnesses before the Chamber.¹² Two of these witnesses at least briefly touched on some of the topics which the LRV now suggests to be addressed by two participating victims presenting their views and concerns in person.¹³ The LRV had the opportunity to ask more questions with regard to the suggested topics to the witnesses it called to give evidence.
9. The Single Judge notes that calling witnesses to provide sworn testimony before a Chamber can be distinguished from hearing participating victims exclusively presenting their views and concerns in person. However, the Single Judge considers that at this stage of the proceedings the views and concerns of the victims can also be adequately and meaningfully conveyed by the LRV. This is in particular the case since the LRV

⁶ Request, ICC-02/04-01/15-1638, paras 20-22, 24, 27-28.

⁷ Email to Trial Chamber IX Communications, at 10:48.

⁸ Defence response to ‘Victims’ Request to Present Views and Concerns in Persons’, ICC-02/04-01/15-1648 (the ‘Defence Response’).

⁹ Defence Response, ICC-02/04-01/15-1648, paras 9-14.

¹⁰ Defence Response, ICC-02/04-01/15-1648, paras 15-17.

¹¹ See Victims’ requests for leave to present evidence and to present victims’ views and concerns in person, 2 February 2018, ICC-02/04-01/15-1166, paras 37-58.

¹² These witnesses were heard between 1 and 4 May 2018.

¹³ See V-0002: ICC-02/04-01/15-T-171-Red-ENG, p. 30, lines 17-23; V-0004: ICC-02/04-01/15-T-173-Red-ENG, p. 34, lines 6-17.

already had the opportunity to make opening statements at the beginning of the trial¹⁴ and will further have the opportunity to present closing statements.¹⁵ In the context of the closing statements, the LRV will be in a position to convey the views and concerns of the victims they represent, and in doing so also specifically address the topics suggested in their Request.

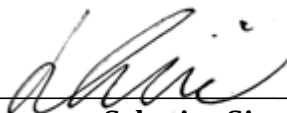
10. In this regard, the Single Judge furthermore considers that giving two participating victims the opportunity to present their views and concerns in person in addition to the closing statements to be given by their legal representatives – even if this were to be done without requiring additional time – could create the impression of an imbalance to the detriment of the accused in the presentation of closing arguments. This would be of particular concern insofar as at that point in time, the Chamber will not yet have pronounced itself on the guilt or innocence of the accused.

11. Accordingly, the Request is rejected.

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 4 November 2019

At The Hague, The Netherlands

¹⁴ Transcript of hearing, 7 December 2016, ICC-02/04-01/15-T-27-ENG, p. 51, line 18 – p. 67, line 14.

¹⁵ See Decision on Victims Requests, ICC-02/04-01/15-1199-Red, para. 77.