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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 Redacted version of Filing ICC-02/04-01/15-1165
with 6 Confidential Annexes**

**Common Legal Representative's submission of Final List of Witnesses and
Request for Leave to Present Evidence**

Source: Office of Public Counsel for 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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I. INTRODUCTION

1. The Common Legal Representative¹ submits her Final List of Witnesses she intends to call, should the Chamber grant her leave to present evidence. The Common Legal Representative requests leave to call five expert witnesses.

2. The Common Legal Representative submits that the personal interests of the victims she represents are affected by the anticipated testimonies of the experts since the evidence to be presented will assist the Chamber in understanding the nature and the extent of the victimisation suffered by the victims, as well as the specific types of harms concerned. The presentation of this body of evidence is substantially relevant to the issues of the case and will bring to light important new information before the Chamber. Said evidence was not adduced by the Prosecution and therefore will not be repetitive of the evidence already available in the record of the case. Most importantly, it will contribute significantly to the determination of the truth; and will not be prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial.

3. The Common Legal Representative notes the decision of the Chamber ruling that no good cause was shown to grant a very limited extension of time (of two weeks) requested to finalise the list of witnesses because of the objective difficulties in reaching out the potential witnesses. Said ruling seems based on a misunderstanding of the category of witnesses the Common Legal Representative

¹ See the "Decision on contested victims' applications for participation, legal representation of victims and their procedural rights" (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-350, 27 November 2015, p. 19; the "Decision on issues concerning victims' participation" (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 15 December 2015, pp. 10-11; the "Second decision on contested victims' applications for participation and legal representation of victims" (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-384, 24 December 2015, pp. 20-22; and the "Decision on the 'Request for a determination concerning legal aid' submitted by the legal representatives of victims" (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-445, 26 May 2016, para. 13.

intended to call since it refers to “*dual status individuals*”.² However, in her request for extension of time, the Common Legal Representative clearly stated that the witnesses concerned were not victims or her clients but rather staff or former staff of organisations through which many of the victims and witnesses of the case passed following their return from the bush. Identifying and tracking these persons proved to be a very difficult task which the Common Legal Representative decided nonetheless to tackle for the best interests of the victims she represents. In this regard for the completeness of the record, the Common Legal Representative wishes to underline that, apart from the three individuals mentioned in her previous submissions, she contacted 11 potential witnesses in this category currently residing in 5 different countries who unfortunately were not the best placed to be called. This task was undertaken while following the on-going trial where several dual status individuals represented by her were called to testify in the last two evidentiary blocks; and while also simultaneously engaging in a second ongoing trial and in three reparations proceedings. It is also worth stressing that, in contrast of the Defence and the Prosecution, legal representatives do not have the resources to engage investigators. Faced with the decision of the Chamber rejecting her request for extension of time, the Common Legal Representative is not in a position to pursue the search for few additional witnesses who she posits would have contributed to the establishment of the truth.

II. PROCEDURAL BACKGROUND

4. On 13 July 2016, the Single Judge of Trial Chamber IX (respectively, the “Single Judge” and the “Chamber”) issued the “Initial Directions on the Conduct of the Proceedings”, ruling, *inter alia*, that victims may present evidence after the close of the Prosecution case.³

² See the “Decision on Common Legal Representative’s Request for an Extension of Time to File its Final List of Witnesses” (Single Judge, Trial Chamber IX), No. ICC-02/04-01/15-1160, 31 January 2018, para. 7.

³ See the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-497, 13 July 2016, para. 9.

5. On 13 October 2017, the Single Judge issued the “Preliminary Directions for any LRV or Defence Evidence Presentation” (the “Preliminary Directions”) and instructed, *inter alia*, the Legal Representatives to: (i) provide their preliminary list of witnesses and time estimates of their witness examination by 14 December 2017; and (ii) provide their final lists of witnesses by 2 February 2018, along with justifications for why leave should be granted to present evidence.⁴

6. On 13 December 2017, the Common Legal Representative filed her preliminary list of witnesses.⁵ On 14 December 2017, the Legal Representatives of Victims filed their preliminary list of witnesses.⁶ On 15 December 2017, the Defence filed a request (the “Defence’s Request”) seeking, *inter alia*, the full disclosure of the names of the witnesses that the Legal Representatives wish to call.⁷ On 18 December 2017, the Legal Representatives of Victims⁸ and the Common Legal Representative⁹ responded to the Defence’s Request. On 22 December 2017, the Chamber partially granted the Defence’s Request and instructed the Common Legal Representative to disclose the names of its four expert witnesses.¹⁰ Accordingly, the Common Legal

⁴ See the “Preliminary Directions for any LRV or Defence Evidence Presentation” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-1021, 13 October 2017, paras. 3-4 (the “Preliminary Directions”).

⁵ See the “Common Legal Representative Preliminary List of Witnesses Provided Pursuant to the ‘Preliminary Directions for any LRV or Defence Evidence Presentation’”, No. ICC-02/04-01/15-1105-Conf. (A public redacted version of the document was notified on 19 December 2017. See No. ICC-02/04-01/15-1105-Red.)

⁶ See the “Victims’ preliminary list of witnesses”, No. ICC-02/04-01/15-1106, 14 December 2017.

⁷ See the “Defence Request for Orders Regarding ICC-02/04-01/15-1105-Conf, ICC-02/04-01/15-1106 and ICC-02/04-01/15-1106-Conf-Anx”, No. ICC-02/04-01/15-1109-Conf, 15 December 2017 (Pursuant to Trial Chamber IX’s Decision, dated 22 December 2017, this document is reclassified as “Public”).

⁸ See the “Victims’ response to “Defence Request for Order Regarding ICC-02/04-01/15-1105-Conf, ICC-02/04-01/15-1106 and ICC-02/04-01/15-1106-Conf-Anx”, No. ICC-02/04-01/15-1112-Conf, 18 December 2017.

⁹ See the “Common Legal Representative Response to ‘Defence Request for Orders Regarding ICC-02/04-01/15-1105-Conf, ICC-02/04-01/15-1106 and ICC-02/04-01/15-1106-Conf-Anx’”, No. ICC-02/04-01/15-1113-Conf, 19 December 2017 (Pursuant to Trial Chamber IX’s Decision, dated 22 December 2017, this document is reclassified as “Public”).

¹⁰ See the “Decision on Defence Request for the Identities of Potential Witnesses on the Legal Representatives of Victims’ Preliminary Lists of Witnesses” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-1117, 22 December 2017.

Representative proceeded with the disclosure of the names of four experts on 22 and 29 December 2017.¹¹

7. On 29 January 2018, the Common Legal Representative requested an extension of time limit of 2 weeks to file her final list of witnesses.¹² On 30 January 2018, the Defence filed its response.¹³ On 31 January 2018, the Chamber rejected the request.¹⁴

8. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this document is filed confidential since it refers to information not to be known by the public at the present stage considering its preliminary nature. The Annexes are filed confidential since they contain personal information related to the experts not to be disclosed to the public at this point in time.

III. SUBMISSIONS

A. Request for leave to present evidence

9. The Common Legal Representative submits her Final List of Witnesses she intends to call, should the Chamber grant her leave to present evidence. Accordingly, the Common Legal Representative requests leave to call five experts.

¹¹ See email to the Chamber, parties and participants sent by the Common Legal Representative on 22 December 2017 at 11:41 and the “List of Experts Provided Pursuant to the ‘Decision on Defence Request for the Identities of Potential Witnesses on the Legal Representatives of Victims’ Preliminary Lists of Witnesses”, with Confidential Annex A, No. ICC-02/04-01/15-1125, 29 December 2017.

¹² See the “Common Legal Representative’s Request for an extension of time to file her final list of witnesses”, No. ICC-02/04-01/15-1154-Conf, 29 January 2018. (A public redacted version of the document was notified on the same day.)

¹³ See the “Defence Response to the Common Legal Representative’s Request for a Time Extension to File Her List of Witnesses”, No. ICC-02/04-01/15-1157-Conf, 30 January 2018. (A public redacted version of the document was notified on the same day.)

¹⁴ See the “Decision on Common Legal Representative’s Request for an Extension of Time to File its Final List of Witnesses” *supra* note 2.

10. The Common Legal Representative recalls her previous submissions on the possibility for victims to call witnesses at trial according to which the jurisprudence of the Court recognises the right of legal representatives to call witnesses – other than victims.¹⁵ In particular, the Appeals Chamber held that, while the right to lead evidence lies primarily with the parties, the statutory provisions empower victims to lead evidence in order to assist the Chamber in its determination of the truth.¹⁶ In this regard, the Trial Chamber must assess whether the evidence proposed by the victims (i) affects their personal interests; (ii) is relevant to the issues of the case; (iii) is necessary for the determination of the truth; and (iv) whether the testimony would be consistent with the rights of the accused and a fair and impartial trial.¹⁷

11. Furthermore, the Legal Representative recalls that the participation of victims in the proceedings before the Court shall be “*effective and significant as opposed to purely symbolic*”.¹⁸ The participation of victims in the proceedings before the Court can only be deemed meaningful, rather than purely symbolic, if victims are entitled to positively contribute to the search for the truth. In this respect, any form of

¹⁵ See the “Common Legal Representative’s submissions pursuant to the “Order Scheduling First Status Conference and Other Matters”, No. ICC-02/04-01/15-437, 18 May 2016, paras. 12 and 13.

¹⁶ See the “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008” (Appeals Chamber), No. ICC-01/04-01/06-1432 OA9 OA10, 11 July 2008, paras. 3-4, 93-104.

¹⁷ See the “Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled ‘Decision on the Modalities of Victim Participation at Trial’” (Appeals Chamber), No. ICC-01/04-01/07-2288 OA11, 16 July 2010, paras. 3-114. See also the “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, No. ICC-01/04-01/06-1432 OA9 OA10, 11 July 2008, para. 4 and the “Order regarding applications by victims to present their views and concerns or to present evidence” (Trial Chamber III), No. ICC-01/05-01/08-1935, 22 November 2011, para. 3.

¹⁸ See the “Judgment on the Appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008” (Appeals Chamber), No. ICC-01/04-01/06-1432, para 97; the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-01/11-460, 3 October 2012, para. 10; the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-02/11-498, 3 October 2012, para. 9; the “Decision on common legal representation of victims for the purpose of trial” (Trial Chamber III), No. ICC-01/05-01/08-1005, 1st December 2010 (dated 10 November 2010), para. 9(a).

positive contribution from victims is crucial for the accomplishment of the Court's functions.¹⁹

12. In light of the Court's jurisprudence, as also adopted by this Chamber,²⁰ as for the personal interest of the victims represented, the following should, *inter alia*, be considered: whether the proposed evidence demonstrates the nature of the harm suffered by the victims and whether the specific types of harm shown by the evidence were suffered by large groups of victims or representative of the victim population.²¹ As for the relevance, the presentation of evidence proposed by the victims should be sufficiently and closely related to issues which the Chamber must consider in its assessment of the charges brought against the Accused.²²

13. Moreover, the definition of what constitutes evidence necessary for the determination of the truth is decided by the Chamber on a case-by-case basis.²³ The evidence led by the victims may contribute to the determination of the truth by "[bringing] to light substantial new information",²⁴ or helping the Chamber to have a better understanding of the facts "*with their knowledge of the background to the case or by drawing its attention to relevant information of which it was not aware [that, for example;] may be of use in the future if it should need to assess the entirety of the harm suffered by the*

¹⁹ See DONAT-CATTIN (D.), "Article 68", in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article*, Second Edition, 2008, pp. 1280.

²⁰ See the "Initial Directions on the Conduct of the Proceedings", *supra* note 3 and the "Preliminary Directions", *supra* note 4.

²¹ See the "Public redacted version of 'Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns'" (Trial Chamber VI), No. ICC-01/04-02/06-1780-Conf, 10 February 2017, par. 11 and the "Directions for the conduct of the proceedings and testimony in accordance with rule 140" (Trial Chamber II), No. ICC-01/04-01/07-1665, 20 November 2009, para. 3(c).

²² See the "Directions for the conduct of the proceedings and testimony in accordance with rule 140" (Trial Chamber II), No. ICC-01/04-01/07-1665, 20 November 2009, para. 3(b).

²³ See the "Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled 'Decision on the Modalities of Victim Participation at Trial'" (Appeals Chamber), No. ICC-01/04-01/07-2288 OA11, 16 July 2010, para. 112.

²⁴ See the "Directions for the conduct of the proceedings and testimony in accordance with rule 140" (Trial Chamber II), No. ICC-01/04-01/07-1665, 20 November 2009, para. 3(d).

victims."²⁵ The evidence led by the victims should not already have been presented by the Prosecution²⁶ nor be unnecessarily repetitive of evidence already tendered by the parties while "*it being noted that it is not a matter of rejecting any possible repetitions, only those which do not contribute significantly to the determination of the truth*".²⁷ Lastly, in order to guarantee that the presentation of evidence led by the victims is not prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial, the Chamber must ensure that the trial proceedings are expeditious and prevent undue delays that would "*substantially increase the length of the trial*" resulting "*from the presentation of cumulative evidence*";²⁸ and allow the Accused to exercise his or her right to have adequate time and facilities to prepare his or her defence.²⁹

14. In light of the practice discussed *supra*, the Common Legal Representative contends that the personal interests of the victims she represents are affected by the anticipated testimonies of the experts since the evidence to be presented will assist the Chamber in understanding the nature and the extent of the victimisation, as well as the specific types of harms, suffered by the victims. Moreover, the presentation of this body of evidence is substantially relevant to the issues of the case and will bring to light important new information before the Chamber. Said evidence was not adduced by the Prosecution and therefore it will not be repetitive of the evidence already available in the record of the case. It will also significantly contribute to the

²⁵ See the "Decision authorising the appearance of Victims a/0381/09, a/0018/09, a/0191/08, and pan/0363/09 acting on behalf of a/0363/09" (Trial Chamber II), No. ICC-01/04-01/07-2517-tENG, 4 January 2012, paras. 4-5, 20.

²⁶ See the "Directions for the conduct of the proceedings and testimony in accordance with rule 140" (Trial Chamber II), No. ICC-01/04-01/07-1665, 20 November 2009, para. 3(a).

²⁷ See the "Decision authorising the appearance of Victims a/0381/09, a/0018/09, a/0191/08, and pan/0363/09 acting on behalf of a/0363/09", *supra* note 25, para. 14.

²⁸ See the "Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims" (Trial Chamber III), No. ICC-01/05-01/08-2027, 21 December 2011, paras. 9 and 11. See also the "Public redacted version of 'Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns'" (Trial Chamber VI), No. ICC-01/04-02/06-1780-Conf, 10 February 2017, para. 11.

²⁹ See the "Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims" (Trial Chamber III), No. ICC-01/05-01/08-2138, 23 February 2012, par. 23 and the "Public redacted version of 'Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns'" (Trial Chamber VI), No. ICC-01/04-02/06-1780-Conf, 10 February 2017, para. 11.

determination of the truth; and it will not be prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial.

15. The Common Legal representative develops further *infra* her justifications for the proposed presentation of evidence.

B. Expert Witnesses to be called

16. The Common Legal Representative reiterates her intention to call experts witnesses on the following areas: (i) trauma; (ii) issues related to children and youth (and in particular former child soldiers); (iii) issues related to rape and sexual and gender-based crimes; and (iv) Acholi culture. In particular, the Common Legal Representative intends to call the following five experts.

1.1. Experts on issues related to children and youth (and in particular former child soldiers)

17. The Common Legal Representative requests to call [REDACTED]. Both experts have extensive experience in former child soldiers' issues having been involved in programmes and studies dealing with long-term effects of adversity on child development and their mental health and children and youth affected by war. Both have experience in the field and are familiar with the Ugandan context having personally undertaken research and studies in said country. The *curriculum vita* of each of them is attached to the present submission as Annexes 1 and 2.

18. Concerning this area of expertise, the Common Legal Representative stresses the fact that many of the victims she represents are former child soldiers recruited in the LRA. In the course of the trial, the Prosecution presented evidence aiming at demonstrating that children under the age of 15 were abducted for the purpose of being enlisted, conscripted and used in hostilities. Several witnesses – including dual status individuals represented by the Common Legal Representative – testified about their abduction and the consequences of said abductions upon their lives and the

lives of their families. Consequently, the Common Legal Representative posits that the experts will contribute to a better understanding of the victimisation suffered by the former child soldiers and children and youth in general, and their respective testimonies will assist in the Chamber's fact-finding function on the gravity and the extent of the crimes committed and the consequences of said crimes. The interests of victims are affected by said testimonies in so far they will contribute to have their sufferings and concerns explained and understood from scientific perspective.

19. The two experts are expected to testify about the consequences of being enlisted, conscripted or used to participate actively in hostilities for children under the age of 15 and the effect, *inter alia*, on their psychological, social, developmental, and behavioural well-being; as well as on their families and their communities. The expertise will also cover an assessment of the difficulties of the demobilisation and reintegration of former child soldiers, consequences suffered by former child soldiers once they have returned to their families and/or communities, and the extent of the mental health damage on the relevant individuals, their families and affected populations in the immediate future, as well as the longitudinal impact. Finally, the experts will also be able to provide information – for children who were not abducted but suffered from the attacks on camps – on the impact of living and growing up in a fearful/dangerous environment, of undergoing attacks, and of witnessing violence at various degrees. In the Common Legal Representative's view, fully understanding these issues is essential for determining the exact nature and extent of the harms children and youth have been suffering from.

20. Considering that the expertise of these two experts is complementary, the Common Legal Representative suggests hearing both of them together during the same session. She indeed argues that in this way the experts will be able to interact and provide a more comprehensive and complete testimony; while allowing the Chamber, the parties and the other participants to explore with both experts simultaneously the issues they will consider important for understanding of the

matters in question. Should this be the option approved by the Chamber, the anticipated length of the questioning by the Common Legal Representative is 4 hours.

1.2 Experts on issues related to rape and sexual and gender-based crimes ("SGBC")

21. The Common Legal Representative requests to call [REDACTED]. He is an expert in the area of cross-cultural trauma psychiatry, having spent more than a decade dedicated to providing a combination of administrative and clinical services in trauma mental health locally and internationally. [REDACTED]. For the expertise, he will be supported by [REDACTED]. However, since they will produce a joint report, only [REDACTED] will be called to testify. The *curricula vitae* of both [REDACTED] are attached to the present submission as Annexes 3 and 4.

22. Concerning this area of expertise, the Common Legal Representative recalls that many of the victims she represents suffered from the commission of rape and SGBC, including those allegedly committed by the Accused. In the course of the trial, the Prosecution presented evidence aiming at demonstrating that rapes and other SGBC were systematically committed. Several witnesses – including dual status individuals represented by the Common Legal Representative – testified about being raped or otherwise having suffered from SGBC and the consequences of said events upon their lives and the lives of their families. Consequently, the Common Legal Representative posits that the expert will contribute to a better understanding of the victimisation suffered by this category of victims and his testimony will assist the Chamber's fact-finding function in relation to the gravity and the extent of the crimes committed and the consequences of said crimes. The interests of victims are affected by said testimony in so far as it will contribute to have the suffering and concerns of the victims explained and once again, understood from scientific perspective.

23. The expert is expected to testify about the different types of mental health outcomes on individuals having suffered from rape(s) and other SGBC; the effects and consequences of SGBC on the development of a person and on couples, families and society; the psychological and social consequences of pregnancies following acts of rape and SGBC; the psychological and social consequences of diseases contracted through acts of rapes and SGBC; the importance of assessing the impact of the crimes of SGBC from the perspective of mental health; the extent of the mental health damage on the individual, his and her family and affected populations in the immediate future, as well as its longitudinal impact; the difficulties faced by children born or conceived in the bush from a mother who had been abducted and held captive by the LRA; the difficulties encountered by victims of rape(s) and SGBC in reintegrating into their families/communities. The anticipated length of the questioning by the Common Legal Representative is 3 hours.

1.3 Expert on trauma

24. The Common Legal Representative intends to call [REDACTED]. He has extensive experience in trauma and Post Traumatic Stress Disorder (“PTSD”) and specific experience in war-affected victims particularly in Northern Uganda. The *curriculum vitae* of [REDACTED] is attached to the present submission as Annex 5.

25. Concerning this area of expertise, the Common Legal Representative recalls that throughout the presentation of evidence by the Prosecution, the witnesses testified about the traumas they suffered from because of the events they underwent and the effects and consequences of said events on their lives and their families. In this regard, the Common Legal Representative argues that it is important for the Chamber to hear expertise on the matter in order to fully appraise the type of traumas victims have been suffering from and the effects and consequences of said traumas on their lives from scientific perspective. In this regard, the Common Legal

Representative also notes that expertise on traumas has been typically presented in other cases before the Court.³⁰

26. The expert is expected to testify about the definition and assessment of traumas and PTSD in relation to the categories of victims in this case and the influencing factors; the consequences of PTSD on the ability of individuals to function normally and possible other health-related issues; the consequences of PTSD on the ability of individuals to remember and narrate the events they have been suffering from; the consequences of PTSD on the ability of individuals to reintegrate into their family and community and to form new relationships; the impact of the length of the time exposed to traumatic events on PTSD. The first-hand experience and knowledge of [REDACTED] who practises and lives in Northern Uganda make him the most suitable person to address these issues. The anticipated length of the questioning by the Common Legal Representative is 3 hours.

27. The Common Legal Representative stresses that this evidence will not be duplicative of that envisaged for the other experts who will also touch upon the psychological impact of both child soldiering and SGBV since [REDACTED] will concentrate his report generally on PTSD and trauma.

1.4. Expert on Acholi culture

28. The Common Legal Representative intends to call [REDACTED]. He has extensive experience in treating war-affected victims (including LRA victims) and by virtue of this experience he has insight knowledge of the Acholi culture. The *curriculum vitae* of [REDACTED] is attached to the present submission as Annex 6.

³⁰ See the "Instructions to the Court's expert on child soldiers and trauma" (Trial Chamber I), No. ICC-01/04-01/06-1671, 06 February 2009 and see the "Decision on Prosecution's request to hear P-0933/s testimony via video-link" (Trial Chamber VI), No. ICC-01/04-02/06-1213-Red, 16 March 2016.

29. Concerning this area of expertise, the Common Legal Representative notes that the vast majority of the victims she represents are of Acholi ethnicity. During the course of the trial, the witnesses have testified about distinctive features of Acholi culture (including traditional roles of men and women, marriage and rules of family lineage, relationship between family members and relationship with community members, as well as social norms, beliefs, values and taboos). Therefore, the Common Legal Representative submits that it is important for the Chamber to hear expertise on the matter in order to fully understand the characteristic of Acholi culture and acquire in-depth comprehension of the unique nature and the level of intensity of personal harms that the victims have suffered in the past and continue to suffer at present in the context of their culture as a result of the commission of the charged crimes.

30. The expert is expected to testify about the expression and acceptance of emotions and guilt in Acholi culture; the traditional forms of justice and penance; the approaches to punishment and reconciliation; the importance and weight of customs and traditions on ability of former abductees to re-integrate into their families and communities; the impact of the customs and traditions on how victims describe their past painful experiences or painful memories and the expression of PTSD symptoms specific to the Acholi culture. The anticipated length of the questioning by the Common Legal Representative is 3 hours.

31. The Common Legal Representative notes that this evidence will not be duplicative of that envisaged for the other experts in as much as this expert will address the various harms and victimisations observed in this case through the specific lens of Acholi culture, only touching upon topics such as traumas and specific types of crimes in this regard.

32. The Common Legal Representative concludes that the proposed evidence is not duplicative of the one already presented by the Prosecution and will contribute to the establishment of the truth by the Chamber.

33. The Common Legal Representative indicates that the five individuals identified *supra* are prominent practitioners in their respective fields of expertise (as shown by their *curricula* attached to the present submission) and thus are fully qualified to appear as experts who can assist the Chamber to acquire in-depth understanding of the specific scientific and technical issues³¹ in which they are instructed.

34. The Common Legal Representative contends that the criteria for authorising the presentation of experts' testimony are fulfilled in so far the Chamber can be satisfied that the proposed witnesses are indeed experts;³² and that the anticipated testimonies fall within the expertise of the experts.³³

35. Moreover, none of the reports being prepared by these experts and their anticipated testimonies in Court shall usurp the functions of the Chamber³⁴ since said testimonies will not touch upon the Accused's guilt or innocence or the elements of

³¹ See the "Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu" (Trial Chamber V), No. ICC-01/09-01/11-844, 07 August 2013, para. 11. See also the "Decision on Defence preliminary challenges to Prosecution's expert witnesses" (Trial Chamber VI), No. ICC-01/04-02/06-1159, 9 February 2016, par. 7 and the "Decision on "Prosecution's Motion to Exclude Defence Political-Military Strategy Expert'" (Trial Chamber III), No. ICC-01/05-01/08-2273, 21 August 2012, para. 8.

³² See the "Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu" (Trial Chamber V), No. ICC-01/09-01/11-844, 07 August 2013, para. 11 and the "Decision on Defence preliminary challenges to Prosecution's expert witnesses" (Trial Chamber VI), No. ICC-01/04-02/06-1159, 9 February 2016, para. 8.

³³ See the "Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu" (Trial Chamber V), No. ICC-01/09-01/11-844, 07 August 2013, para. 12. See also the "Decision on Defence preliminary challenges to Prosecution's expert witnesses" (Trial Chamber VI), No. ICC-01/04-02/06-1159, 9 February 2016, para. 8.

³⁴ See the "Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu" (Trial Chamber V), No. ICC-01/09-01/11-844, 07 August 2013, para. 11 and the "Decision on Defence preliminary challenges to Prosecution's expert witnesses" (Trial Chamber VI), No. ICC-01/04-02/06-1159, 9 February 2016, para. 8.

the crimes charged by the Prosecution. Lastly, these experts have no personal or professional interest in the ultimate outcome of the case. Consequently, their expert reports are produced and their anticipated testimonies will be given in open court with the utmost neutrality and objectivity.³⁵

36. As far as the rights of the Accused are concerned, the Defence will have ample opportunity to be acquainted with the experts reports which will be disclosed to it in due course, if the presentation of evidence is authorised. Moreover, the Defence will be able to question the experts at the hearing.

37. For planning purposes, the Common Legal Representative informs the Chamber that all experts have been instructed and that their respective reports are expected to be completed in the course of the month of March 2018. Subsequently, the Common Legal Representative will need one month at the very minimum to prepare for the testimonies.

IV. CONCLUSION

38. For the foregoing reasons, the Common Legal Representative respectfully requests the Chamber to grant her leave to present evidence and be authorised to call the five expert witnesses identified in the present submission.



Paolina Massidda

Principal Counsel

Dated this 5th day of February 2018

At The Hague (The Netherlands)

³⁵ See the "Decision on Defence preliminary challenges to Prosecution's expert witnesses" (Trial Chamber VI), No. ICC-01/04-02/06-1159, 9 February 2016, para. 9.