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**International
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Court**

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Date: **6 March 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 redacted version

**Decision on the Legal Representatives for Victims Requests to Present Evidence
and Views and Concerns and related requests**

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

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Trial Chamber IX ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(2), 66(2), 67, 68 and 69 of the Rome Statute ('Statute'), Rules 68(3) and 91 of the Rules of Procedure and Evidence ('Rules') and Regulation 24 of the Regulations of the Court, issues the following 'Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests'.

I. Procedural history and submissions

1. On 13 October 2017, the Chamber issued its preliminary directions regarding the presentation of evidence for the defence case and for a potential victims case ('Preliminary Directions').¹ Therein, it ordered, *inter alia*, that the Common Legal Representative for Victims ('CLR') and the Legal Representative for Victims ('LRV', together 'Legal Representatives') file their final lists of proposed witnesses and justification for why leave to present evidence should be granted by 2 February 2018.²
2. On 2 February 2018, the CLR³ and LRV⁴ filed their final lists of witnesses and requests for leave to present evidence ('CLR Request' and 'LRV Request' respectively, and 'Requests' together).
3. The CLR requests leave to call five expert witnesses on four different areas, namely: (i) trauma; (ii) issues related to children, youth and - in particular - former child soldiers (the CLR requests to call two experts testifying together

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

² Preliminary Directions, ICC-02/04-01/15-1021, para. 4.

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, with six confidential annexes 1 to 6. A public redacted version was filed on 5 February 2018, ICC-02/04-01/15-1165-Red.

⁴ Victims' requests for leave to present evidence and to present victims' views and concerns in person, ICC-02/04-01/15-1166, with one confidential annex, ICC-02/04-01/15-1166-Conf-Anx.

on this issue); (iii) issues related to rape and sexual and gender-based crimes; and (iv) Acholi culture.⁵

4. The LRV requests to call six participating victims and two experts.⁶ They further seek permission that two victims present their views and concerns in person before the judgment.⁷
5. On 15 February 2018, the defence for Mr Ongwen ('Defence') filed its response, requesting that the Requests be rejected ('Defence Response').⁸
6. On 19 February 2018, the CLRV requested leave to reply to the Defence Response ('Request for Leave to Reply').⁹

II. Submissions

7. The CLRV submits with regards to the four different areas of expertise that the personal interests of the victims are affected by the anticipated expert testimony, since this evidence will assist the Chamber in explaining the specific types of harms suffered by the victims.¹⁰ Further, the CLRV argues that the information is relevant,¹¹ will significantly contribute to the determination of the truth¹² and is, in part, new.¹³

⁵ CLRV Request, ICC-02/04-01/15-1165-Red, paras 16 and 38.

⁶ LRV Request, ICC-02/04-01/15-1166, para. 8.

⁷ LRV Request, ICC-02/04-01/15-1166, para. 9.

⁸ 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. A public redacted version was filed on 22 and notified on 23 February 2018, ICC-02/04-01/15-1182-Red.

⁹ Common Legal Representative's Request for leave to reply to the Defence Response No. ICC-02/04-01/15-1182-Conf, ICC-02/04-01/15-1184-Conf. (The filing was filed on the 16th and notified on the 19th February).

¹⁰ CLRV Request, ICC-02/04-01/15-1165-Red, paras 18, 22 and 25.

¹¹ CLRV Request, ICC-02/04-01/15-1165-Red, paras 18, 20, 22 and 26.

¹² CLRV Request, ICC-02/04-01/15-1165-Red, paras 19, 22 and 26.

¹³ CLRV Request, ICC-02/04-01/15-1165-Red, para. 27.

8. The CLRV informs the Chamber that the experts have been instructed to complete their reports by March 2018 and requests at least a month afterwards for the preparation of the testimonies.¹⁴
9. The LRV requests to present factual witnesses on the following five issues: (i) the infliction of sexual violence on men and boys (three witnesses); (ii) the forced desecration of dead bodies (one witness, who would also testify on the first issue); (iii) the stigma experienced by the returned abductees (one witness); (iv) the impact of the crimes on education (one witness) and (v) the interrelated and cumulative nature of harms.¹⁵
10. The LRV asserts that the presentation of the identified evidence is consistent with the rights of the accused, appropriate and will assist the Chamber in its understanding of the case or the evidence heard so far. Further, they submit that the anticipated testimony will not be duplicative of the material presented by the Prosecution.¹⁶
11. The Defence submits that the requests for leave to call witnesses should be dismissed because the LRV and CLRV failed to submit a list of evidence and Acholi translations of the necessary statements and reports. These alleged failures, according to the Defence, violate the accused's rights to have adequate time and facilities for the preparation of his defence, to be tried without undue delay, to examine the witnesses against him and to be provided with free translations of documents which are presented in a language which the accused does not fully understand, pursuant to Article 67(1) (b), (c), (e) and (f).¹⁷

¹⁴ CLRV Request, ICC-02/04-01/15-1165-Red, para. 37.

¹⁵ LRV Request, ICC-02/04-01/15-1166, paras 16-36 and ICC-02/04-01/15-1166-Conf-Anx ('LRV Request Annex').

¹⁶ LRV Request, ICC-02/04-01/15-1166, paras 11 and 14.

¹⁷ Defence Response, ICC-02/04-01/15-1182-Ref, paras 8-14.

12. Further, the Defence argues that the anticipated testimony of the expert and factual witnesses are repetitive,¹⁸ not outlined in the charges¹⁹ or ‘highly incredulous’.²⁰

III. Analysis

13. Regarding the Request for Leave to Reply, the Chamber notes that the CLRV seeks leave to reply to two issues: (i) the Defence’s ostensible ‘confusion’ between factual and expert witness evidence; and (ii) allegations made about the prior involvement of one of the CLRV’s experts with the Defence.²¹ The Chamber does not deem it necessary to receive further submissions on these issues in order to rule on the CLRV Request and, accordingly, rejects the Request for Leave to Reply.
14. The Chamber takes note of the prior jurisprudence of the Court in respect of the presentation of evidence by participating victims and the presentation of their views and concerns.²² It will first discuss the requests to present evidence, then the request for leave to present views and concerns by the LRV, and finally provide further guidelines in respect of the testimony of those witnesses for whom leave to testify has been granted.

¹⁸ Defence Response, ICC-02/04-01/15-1182-Red, paras 26-34.

¹⁹ Defence Response, ICC-02/04-01/15-1182- Red, paras 35-39.

²⁰ Defence Response, ICC-02/04-01/15-1182- Red, para. 39.

²¹ Request for Leave to Reply, ICC-02/04-01/15-1184-Conf, para. 3.

²² Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432 (‘Lubanga Appeals Judgment’); Appeals Chamber, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, 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”, 16 July 2010, ICC-01/04-01/07-2288 (‘Katanga Appeals Judgment’); Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012, ICC-01/05-01/08-2138 (‘Bemba Victims Evidence Decision’); Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain*, Decision on the participation of victims in the trial proceedings, 20 March 2014, ICC-02/05-03/09-545 (‘Banda Victims Evidence Decision’); Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, 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’ (10 February 2017, ICC-01/04-02/06-1780-Conf), 15 February 2017, ICC-01/04-02/06-1780-Red (‘Ntaganda Victims Evidence Decision’).

i) Requests for leave to present evidence

15. The Chamber considers it to be the established jurisprudence of this Court that Article 68(3) of the Statute, in conjunction with Article 69(3), provides an avenue for participating victims to lead previously undisclosed evidence, pertaining to the innocence or guilt of the accused, when the personal interests of the victims are affected. This must be undertaken in proceedings deemed appropriate by the Chamber and in a manner which is not prejudicial to the rights of the accused.²³
16. Recalling that, according to Article 66(2) of the Statute, the burden of proof regarding the guilt of the accused lies with the Prosecution and that therefore it is the role of the Prosecution to present, in principle, incriminating evidence,²⁴ the Chamber is required to be vigilant that any presentation of evidence by the victims is in conformity with the rights of the accused.
17. The Chamber adopts the requirements identified by other chambers in order to determine whether leave to present evidence should be given.²⁵ Namely, in addition to whether the personal interests of the victims are affected, it will assess whether: (i) the presentation is consistent with the rights of the accused; (ii) the hearing of evidence is appropriate and affects the issues in the case; and (iii) the hearing of evidence is necessary for the determination of the truth.²⁶

²³ See, Lubanga Appeals Judgment, ICC-01/04-01/06-1432, paras 92-98; Katanga Appeals Judgment, ICC-01/04-01/07-2288, paras 1, 3; Bemba Victims Evidence Decision, ICC-01/05-01/08-2138, para. 18; Banda Victims Evidence Decision', ICC-02/05-03/09-545, para. 24; Ntaganda Victims Evidence Decision, ICC-01/04-02/06-1780-Red, paras 8-9.

²⁴ Lubanga Appeals Judgment, ICC-01/04-01/06-1432, para. 93.

²⁵ Katanga Appeals Judgment, ICC-01/04-01/07-2288, para. 114; Ntaganda Victims Evidence Decision, ICC-01/04-02/06-1780-Red, para. 11.

²⁶ The Chamber further recalls the requirement that no victim may testify anonymously and notes that according to the CLRV and LRV Requests, the identity of all proposed witnesses would be known to the Defence.

18. Further, the Chamber recalls its oral decision of 4 April 2017 on the scope of questioning by the LRV.²⁷ The same limitations and considerations apply to the questioning of witnesses which are called upon request by the Legal Representatives.
19. The Chamber will first address the general arguments presented and subsequently assess the proposed witnesses on a case-by-case basis.
20. In respect of the Defence's argument that the Requests should be dismissed because of a failure by the Legal Representatives to submit a list of evidence,²⁸ the Chamber recalls the timeline set out in its Preliminary Directions. Should the Legal Representatives be allowed to present evidence, they 'will be required to disclose the evidence [they] intend [...] to use and the identities of [their] witnesses sufficiently in advance.'²⁹ The Chamber understands the fact that the Legal Representatives did not submit lists of evidence on 2 February 2018 to simply mean that they do not wish to use further items beyond the witnesses' testimonies. The Chamber repeats that it will be vigilant in respect of the observance of the rights of the accused.
21. Concerning the Defence's observation that it has not been provided with the Acholi translations of the reports of the proposed experts and the alleged violation of the accused's right under Article 67(1)(f) of the Statute, the

²⁷ Transcript of hearing on 4 April 2017, ICC-02/04-01/15-T-65-Red-ENG, page 55, line 14 to page 56, line 16. *See especially*, page 56, lines 3-13:

'...the LRV may not ask questions as the Prosecution bis, irrespective of whether the Prosecution elicited information on the same point or not. The Chamber will sustain objections if it determines that, for example, the LRVs are attempting to elicit evidence which aims to prove the elements of the crimes charged or Mr Ongwen's role in their commission. However, the LRV may appropriately ask certain questions to witnesses about other matters which are relevant to the personal interests of the victims. This may include questions about harms which the witness personally suffered or harms of other victims which the witness observed. As always, the Chamber emphasises that objections will be received and resolved on a case-by-case basis.'

²⁸ Defence Response, ICC-02/04-01/15-1182-Conf, paras 2a) and 8.

²⁹ Preliminary Directions, ICC-02/04-01/15-1021, para. 2(iv).

Chamber recalls³⁰ that this right (to be provided with translations of documents in a language the accused fully understands) is not without limitation. It is limited to translations of documents which 'are necessary to meet the requirements of fairness'.³¹ Further, the Chamber recalls that the Prosecution is obliged to prepare such translations for the statements of their witnesses.³² The statutory scheme does not put any specific obligation on victims' representatives to translate – or even take – statements of witnesses they intend to call. As such, it falls to the Chamber to decide on the appropriate disclosure obligations that shall be imposed when victims are permitted to call witnesses.³³

22. The Chamber finds that not every expert report for a witness proposed by the Legal Representatives is automatically a document falling under the translation requirement of Article 67(1)(f) of the Statute. It notes that not all reports from experts who already have testified were translated into Acholi, but nevertheless recognised as formally submitted in accordance with the evidentiary system set up by the Chamber.³⁴
23. Further, considering the limitations on questioning by the Legal Representatives, as set out in paragraph 18 above, the Legal Representatives' experts will not appear to elicit evidence which aims to prove the elements of the crimes charged or Mr Ongwen's role in their commission. Rather, these experts are proposed for other matters which are relevant to the personal interests of the victims, including on the nature of the harms personally

³⁰ See, Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision, ICC-02/04-01/15-1147, para. 12.

³¹ Article 67(1)(f) of the Statute: To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks.

³² Rule 76(3) of the Rules.

³³ Article 64(2) of the Statute. It is noted that other international tribunals permitting victims evidence provide a similar discretion. Rule 112 *bis* of the STL Rules; Rule 114(5) of the KSC Rules.

³⁴ Expert reports from P-414, UGA-OTP-0278-0529, UGA-OTP-0267-0160 and UGA-OTP-0170-0027.

suffered.³⁵ Moreover, and unlike the factual witnesses proposed by the Legal Representatives, the proposed expert witnesses will all speak to general matters beyond the four charged attack sites in this case (Pajule, Odek, Lukodi and Abok). These distinctions affect the role and function of the proposed evidence to the case, and the Chamber considers that an Acholi translation of these reports is not a necessary prerequisite to these experts appearing.

24. For these reasons, the Chamber does not consider that the requirements of fairness mandate the translation of all documents relating to testimony of these witnesses. Nevertheless, the Chamber will order Acholi translations of certain materials in order to facilitate Defence preparations.³⁶
25. As in previous cases, the Defence may nevertheless liaise with the Registry in order to facilitate any request regarding further translations. Should the Defence – after having received the translations and consulted with the accused – be able to substantiate that a significant new line of questioning have arisen for a witness who has already testified, it may request to have this witness recalled.
26. The Chamber will now turn to a case-by-case assessment of each proposed witness.
 - (i) *Expert witnesses on issues related to children and youth – in particular former child soldiers, proposed by the CLRV*
27. The CLRV proposes to call two experts to testify about the consequences of being a child soldier, being forced to participate in hostilities and the long term effects on their psychological and social well-being.³⁷ The CLRV seeks leave for

³⁵ In this regard, see Initial Directions on the Conduct of the Proceedings, 13 July 2016, ICC-02/04-01/15-497, para. 29.

³⁶ See para. 80 below.

³⁷ CLRV Request, ICC-02/04-01/15-1165-Red, para. 19.

the two experts to testify together.³⁸ The Defence argues that the proposed testimony is repetitive and that several witnesses, including dual status witnesses which were questioned by the CLRV, have already testified about the consequences that their abductions had on their lives.³⁹

28. The Chamber finds that the proposed evidence is not repetitive, as it aims to focus on the psychological, social developmental and behavioural well-being of children under the age of 15 who were participating in hostilities from an expert's point of view. It is true that several witnesses have given first-hand accounts of their own experiences related to this topic. However, the proposed testimony is different in the sense that, since it is evidence provided by experts, a more general conclusion on the entirety of the victims falling under this category can be drawn from this testimony which surpasses the account of an individual experience.
29. The proposed evidence also affects the issues in the case and is necessary for the determination of the truth, since two of the confirmed charges concern the conscription of children under the age of 15 and their use to participate actively in hostilities.⁴⁰ The personal interests of the victims are affected, since many of them were enlisted, conscripted or used to participate actively in hostilities while being under the age of 15.
30. The CLRV requests to call two experts on this matter, arguing that 'the expertise of these two experts is complementary'.⁴¹ Since the CLRV explains that both experts have 'extensive experience in former child soldiers' issues'⁴²

³⁸ CLRV Request, ICC-02/04-01/15-1165-Red, para. 20.

³⁹ Defence Response, ICC-02/04-01/15-1182-Red, para. 31.

⁴⁰ Pre-Trial Chamber II, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, para. 131.

⁴¹ CLRV Request, ICC-02/04-01/15-1165-Red, para. 20.

⁴² CLRV Request, ICC-02/04-01/15-1165-Red, para. 17

and 'have experience in the field and are familiar with the Ugandan context'⁴³ the Chamber finds it suitable to allow the testimony of one of the proposed expert witnesses. This approach, in the eyes of the Chamber, appropriately balances the rights of the victims where their interests are affected along with the rights of the accused.

31. The Chamber leaves it up to the CLRV to decide which expert to call. Should the CLRV judge it to be beneficial that the expert report is produced jointly by both proposed experts, the Chamber does not oppose this approach.
32. The Chamber considers that the report which will be produced by the chosen expert, or jointly, is suitable to be introduced via Rule 68(3) of the Rules, subject to the procedural requisites of Rule 68(3) being satisfied. Considering that the report can be admitted under Rule 68(3) of the Rules, the Chamber considers 2 hours to be an appropriate length of time for the questioning by the CLRV.

(ii) *Expert witness on issues related to rape and sexual and gender based crimes ('SGBC'), proposed by the CLRV*

33. The CLRV submits that the proposed expert, Professor Daryn Reicherter, will testify about the various consequences and effects on victims of rape and SGBC.⁴⁴ In the production of the expert report, he will be supported by another expert – who the CLRV does not intend to call.⁴⁵
34. The Defence submits, that the proposed testimony is repetitive, since these topics were already discussed by witnesses called by the Prosecution and that

⁴³ CLRV Request, ICC-02/04-01/15-1165-Red, para. 17.

⁴⁴ CLRV Request, ICC-02/04-01/15-1165-Red, para. 23.

⁴⁵ CLRV Request, ICC-02/04-01/15-1165-Red, para. 21.

the proposed expert witness 'mainly encompass views and concerns of the witnesses' which should not be elicited at this point of the proceedings.⁴⁶

35. The Chamber finds that the proposed testimony is not repetitive, since the anticipated expert evidence differs from a first-hand account by a direct victim. The anticipated expert testimony will allow the Chamber to assess the impact of rape and SGBC on the lives of the victims in a more universal manner, which includes victims who did not provide testimony before this Chamber.
36. The proposed testimony affects the interests of the victims, is relevant to the issues of the case and is necessary for the determination of the truth. Several charges in this case confirmed by the Pre-Trial Chamber relate to rape and SGBC.⁴⁷
37. The Chamber considers that the report which will be produced is suitable to be introduced via Rule 68(3) of the Rules, subject to the procedural requisites of Rule 68(3) being satisfied. Considering that the report will be introduced pursuant to Rule 68(3) of the Rules and taking the rights of the accused into account, the Chamber finds that 1,5 hours are appropriate for the questioning of this expert by the CLRV.

(iii) *Expert witness on Acholi culture, proposed by the CLRV*

38. The CLRV proposes to call Professor Seggane Musisi as an expert on Acholi culture, who will testify, *inter alia*, about 'the expressions and acceptance of emotions and guilt in Acholi culture', 'the approaches to punishment and reconciliation' and the impact of Acholi culture on 'how victims describe their past painful experiences or painful memories'.⁴⁸

⁴⁶ Defence Response, ICC-02/04-01/15-1182-Red, para. 32.

⁴⁷ Confirmation of charges, ICC-02/04-01/15-422-Conf, paras 118-124.

⁴⁸ CLRV Request, ICC-02/04-01/15-1165-Red, para. 30.

39. The Defence submits, again, that the proposed testimony is repetitive since factual witnesses and expert witness P-422 have already provided evidence on this matter.⁴⁹
40. The Chamber finds that, while certain factual witnesses provided evidence on aspects of the topics the expert witness is supposed to testify on, the proposed testimony will allow the Chamber to receive more general evidence on these points, which go beyond the individual accounts of the factual witnesses. In respect of expert witness P-422, the Chamber notes that his testimony centred on aspects regarding the LRA, not the Acholi culture in general.⁵⁰ The Chamber is of the view that, due to the high number of victims having an Acholi background, the personal interests of the victims are affected and that the hearing of evidence is appropriate and necessary for the determination of the truth.
41. Accordingly, the Chamber grants leave to hear Professor Musisi as an expert witness. It considers that the report which will be produced by the witness is suitable to be introduced via Rule 68(3) of the Rules subject to the procedural requisites of Rule 68(3) being satisfied. The Chamber finds that 3 hours are appropriate for the testimony of this expert by the CLRV.
- (iv) Expert witness on trauma, proposed by the CLRV*
42. The CLRV requests to call an expert who will testify about ‘the definition and assessment of traumas and PTSD in relation to the categories of victims in this case’.⁵¹ The CLRV assures that the evidence will not be duplicative of the other

⁴⁹ Defence Response, ICC-02/04-01/15-1182-Red, para. 34.

⁵⁰ See, Transcript of hearing on 16 January 2017, ICC-02/04-01/15-T-28-ENG; Transcript of hearing on 17 January 2017, ICC-02/04-01/15-T-29-Red2-ENG.

⁵¹ CLRV Request, ICC-02/04-01/15-1165-Red, para. 26.

proposed experts, since this expert 'will concentrate his report generally on PTSD and trauma.'⁵²

43. The Defence opposes the testimony of this specific expert, on the basis that it contacted the same expert previously as a potential witness. While it decided not to call this expert, it submits that he is privy to privileged information about Mr Ongwen.⁵³
44. The Chamber does not consider that the calling of a general expert on trauma is necessary, considering the anticipated testimony of the other expert witnesses. It reaches this conclusion irrespective of the arguments raised by the Defence on the specific circumstances of this expert. The CLRV notes 'that expertise on traumas has been typically presented in other case before the Court'.⁵⁴ While this is true, it does not necessarily mean that it has been done through an expert testifying solely on the issue of trauma. For instance, one of the decisions relied upon by the CLRV concerns an expert who was called to testify specifically on the subject of trauma and child soldiers.⁵⁵
45. The Chamber notes that the proposed expert on child soldiers is expected to testify about 'the difficulties of demobilisation and reintegration', 'consequences suffered by former child soldiers once they have returned' and 'the extent of mental health damage'.⁵⁶ The proposed expert on rape and SGBC is expected to, *inter alia*, provide evidence on 'the different types of mental health outcomes', 'the psychological and social consequences' and 'the extent of the mental health damage on the individual'.⁵⁷ The proposed expert on Acholi culture is expected to testify, *inter alia*, about 'the expression of PTSD symptoms specific to Acholi

⁵² CLRV Request, ICC-02/04-01/15-1165-Red, para. 27.

⁵³ Defence Response, ICC-02/04-01/15-1182-Conf, para. 40-43.

⁵⁴ CLRV Request, ICC-02/04-01/15-1165-Red, para. 25.

⁵⁵ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Instructions to the Court's expert on child soldiers and trauma, 6 February 2009, ICC-01/04-01/06-1671.

⁵⁶ CLRV Request, ICC-02/04-01/15-1165-Red, para. 19.

⁵⁷ CLRV Request, ICC-02/04-01/15-1165-Red, para. 23.

culture'.⁵⁸ Accordingly, the trauma expert, as indicated by the CLRV, would testify only 'generally on PTSD and trauma'.⁵⁹ Considering the right of the accused to a fair and expeditious trial, the Chamber finds that the hearing of this witness is not appropriate and necessary for the determination of the truth. Accordingly, the Chamber rejects the request to hear the expert on trauma.

(v) Victim a/05658/15, proposed by the LRV

46. The LRV submits that victim a/05658/15 would present evidence concerning Lukodi [REDACTED].⁶⁰ The witness is called to provide evidence with regard to the impact of the crimes on education.⁶¹ Further, the victim would provide evidence on [REDACTED].⁶²
47. The Defence submits that the proposed evidence is repetitive and mainly relates to the victims' views and concerns.⁶³
48. The Chamber finds that, due to the specific position of the victim, his evidence would not be repetitive, since he can provide a broader view on the impact of the disruption of the education on the victims of abductions. This goes beyond the first-hand accounts which have been provided by Prosecution witnesses thus far.
49. The Chamber further finds that the personal interests of the victims are affected, since Lukodi is one of the charged locations and victims whose education was interrupted due to abductions by the LRA form part of the participating victims.
50. As a general matter, the Chamber is of the view that – in order to make the participation of the victims who testify as witnesses before the Chamber

⁵⁸ CLRV Request, ICC-02/04-01/15-1165-Red, para. 30.

⁵⁹ CLRV Request, ICC-02/04-01/15-1165-Red, para. 27.

⁶⁰ LRV Request Annex, ICC-02/04-01/15-1166-Conf-Anx, para. 1.

⁶¹ LRV Request Annex, ICC-02/04-01/15-1166-Conf-Anx, para. 2.

⁶² LRV Request Annex, ICC-02/04-01/15-1166-Conf-Anx, paras 3-4.

⁶³ Defence Response, ICC-02/04-01/15-1182-Red, para. 27.

meaningful and for the most effective exercise of their rights prescribed by Article 68(3) of the Statute – that this testimony must be as public as possible. This does not mean that the identity of this victim has to be automatically revealed to the public. However, if the fact that a witness's identity is not revealed has the consequence that the substantial parts of the testimony must be given in private session in order to protect the witness's identity, the Chamber considers that the presentation of this evidence would be inappropriate.

51. With regard the victim a/05658/15, the LRV submits that '[f]urther discussion would be necessary to determine what, if any, protective measures would be appropriate for this proposed witness.'⁶⁴ While this is consistent with the timeline set out in the Preliminary Directions,⁶⁵ the Chamber sees the possibility that the core of the testimony would need to be conducted in private session, due to the very specific position of the victim and his anticipated testimony. Since protective measures have not been requested yet, the Chamber cannot say with certainty whether this will be the case. Bearing in mind the considerations set out in the previous paragraph, the Chamber allows the presentation of evidence by this victim only under the condition that any proposed protective measure will not result in the core of the testimony being provided in private session. The Chamber finds that 1,5 hours are appropriate for the questioning of this witness by the LRV.

(vi) Victim a/06342/15, proposed by the LRV

⁶⁴ LRV Request Annex, ICC-02/04-01/15-1166-Conf-Anx, para. 6.

⁶⁵ Preliminary Directions, ICC-02/04-01/15-1021, para. 6.

52. The victim was present during the attack on Lukodi IDP camp, [REDACTED] and is expected to provide evidence on the ‘various and interrelated forms of harm experienced in the Lukodi community’.⁶⁶
53. The Defence, again, submits that the proposed evidence is repetitive and mainly relates to the victims’ views and concerns.⁶⁷
54. The Chamber notes that the victim has been [REDACTED]. As such, it considers him to be well-placed to provide testimony which touches upon the issues of the case and affects the witnesses’ personal interests. The anticipated evidence is not repetitive in the sense that, [REDACTED], the victim can testify more broadly about the effects on the local community. Accordingly, the Chamber allows the victim to testify as a witness. The Chamber finds that 1,5 hours are appropriate for the questioning of this witness by the LRV.

(vii) victims a/05023/15, a/00688/16 and a/06686/15, proposed by the LRV

55. The LRV request that these three witnesses provide evidence on the issues of sexual violence against men and boys and the desecration of dead bodies.⁶⁸
56. The Defence argues that the LRV should not be allowed to call these three witnesses since their anticipated testimonies touches on matters which are not outlined in the confirmed charges.⁶⁹
57. The Chamber notes that both proposed topics (sexual violence against men and boys and the desecration of bodies) are not part of the facts and circumstances described in the charges confirmed by the Pre-Trial Chamber. As noted by the LRV, the charges for SGBC as confirmed concern crimes against women and

⁶⁶ LRV Request Annex, ICC-02/04-01/15-1166-Conf-Anx, para. 8.

⁶⁷ Defence Response, ICC-02/04-01/15-1182-Red, para. 28.

⁶⁸ LRV Request Annex, ICC-02/04-01/15-1166-Conf-Anx, paras 11-23.

⁶⁹ Defence Response, ICC-02/04-01/15-1182-Red, paras 35-37.

girls.⁷⁰ Since the acts described by the anticipated testimony would fall under the category of sexual crimes and such acts are not mentioned in the facts confirmed by the decision on the confirmation of charges, the Chamber considers them to be beyond the scope of the charges.

58. The Chamber states that it is not assessing the veracity of the anticipated testimony and disagrees with the Defence's characterisation of the expected testimonies as 'highly incredulous'.⁷¹ However, in view of the above and taking into account the rights of the accused, the Chamber does not consider the hearing of this evidence to be appropriate and necessary for the determination of the truth.
59. Accordingly, the Chamber rejects the request by the LRV to call these three witnesses.

(viii) victim a/00613/16, proposed by the LRV

60. The LRV submits that this victim is expected to provide evidence on the attack on Abok and the stigma experienced by returned abductees.⁷²
61. The Defence submits that the proposed testimony is either repetitive or represents views and concerns.⁷³
62. The Chamber finds that, while evidence on the Abok attack has indeed been provided by previous witnesses, the fact that the witness did not receive any rehabilitation after his return is sufficiently different to allow him to be called as a witness. This is also done based on the consideration that this testimony will focus on life in his community after his return.

⁷⁰ LRV Request, ICC-02/04-01/15-1166-Conf, para. 21.

⁷¹ Defence Response, ICC-02/04-01/15-1182-Red, para. 39.

⁷² LRV Request Annex, ICC-02/04-01/15-1166-Conf-Anx, paras 24-25.

⁷³ Defence Response, ICC-02/04-01/15-1182-Red, para. 29.

63. In order to take the rights of the accused appropriately into consideration, the Chamber finds that 1,5 hours an appropriate length of questioning by the LRV.

(ix) Experts on the victimisation of the affected communities, proposed by the LRV

64. The LRV requests to call two expert witnesses on the victimisation in the affected communities, including the 'harm suffered in the communities affected by the crimes charged'.⁷⁴

65. The LRV submits that their respective evidence would 'complement each other'⁷⁵ and argue that the anticipated evidence would not address subjects already sufficiently addressed by Prosecution witnesses.⁷⁶

66. The Defence submits, that the anticipated testimony by the two proposed experts is repetitive, since these topics were already discussed by witnesses who already testified and that it contains views and concerns which should not be elicited at this point of proceedings.⁷⁷

67. The Chamber notes that the anticipated testimony would address the psychosocial impact of the conflict on the affected victim communities.⁷⁸ As stated previously with the other experts, the Chamber is of the view that the general nature of the testimony is distinct from personal experiences provided by previous factual witnesses and is therefore not repetitive. The proposed testimony affects the interests and concerns of the victims and the issues in the case.

68. However, keeping in mind the rights of the accused, the Chamber is not convinced that the testimony of both experts is appropriate. From the LRV's

⁷⁴ LRV Request Annex, ICC-02/04-01/15-1166-Conf-Anx, paras 28-29.

⁷⁵ LRV Request, ICC-02/04-01/15-1166, para. 34.

⁷⁶ LRV Request, ICC-02/04-01/15-1166, para. 34.

⁷⁷ Defence Response, ICC-02/04-01/15-1182-Red, para. 30.

⁷⁸ LRV Request Annex, ICC-02/04-01/15-1166-Conf-Anx, para. 31.

submissions, the Chamber understands that both experts would produce a joint expert report. The Chamber is not opposed to receiving a joint report, but finds that it is sufficient that Ms Teddy Atim – who is also based in Uganda – provides evidence.

69. The Chamber considers that the report which will be produced by the expert(s) is suitable to be introduced via Rule 68(3) of the Rules, subject to the procedural requisites of Rule 68(3) being satisfied. Considering that the report can be admitted under Rule 68(3) of the Rules, the Chamber considers 1,5 hours to be an appropriate length of time for the questioning by the LRV.

ii) Request for leave to present views and concerns

70. The LRV requests leave for two victims to present their views and concerns.⁷⁹ The LRV submits that the persons are two community leaders who adequately represent the diversity of their clients – one being from the Langi community and the other being from the Acholi community; and one being a man and the other being a woman.⁸⁰
71. In respect of the timing of the presentation of views and concern, the LRV argues that hearing the victims' views and concerns at this stage of the proceedings enables the judges to take them into consideration when writing the judgment,⁸¹ that a potential representation of views and concerns during the sentencing or reparations phase will be understood as them being of secondary importance⁸² and that – should the accused be acquitted – there would not be any possibility for such presentation.⁸³

⁷⁹ LRV Request, ICC-02/04-01/15-1166, para. 56.

⁸⁰ LRV Request, ICC-02/04-01/15-1166, para. 56.

⁸¹ LRV Request, ICC-02/04-01/15-1166, para. 49.

⁸² LRV Request, ICC-02/04-01/15-1166, para. 50.

⁸³ LRV Request, ICC-02/04-01/15-1166, para. 51.

72. The Defence submits that the decision on whether victims should be allowed to present their views and concerns should be taken after the decision pursuant to Article 74 of the Statute.⁸⁴
73. The Chamber recalls that it indicated that it was 'not provisionally inclined' to allow the presentation of victims' views and concerns at this stage of the proceedings.⁸⁵ It does not agree with the LRV that there are compelling reasons to hear views and concerns at this point in time.
74. As pointed out by the LRV,⁸⁶ such presentation would not be part of the evidentiary record and can therefore not be taken into account in the judgment. The Chamber does not follow the argument that this presentation may explain better which parts of the judgment might require particular attention so as to be understood by the victims' communities. The Chamber considers that, through the questioning of the Prosecution witnesses by the Legal Representatives and the upcoming testimony of the witnesses to be called by the Legal Representatives, it has sufficient information to adequately address all points of the judgment, along with the views of the victims' communities.
75. The Chamber disagrees that the possible acquittal of the accused⁸⁷ is an appropriate factor to take into consideration for deciding whether to allow the victims to present their views and concerns before the judgment.
76. In respect of the argument that a presentation of views and concerns at a later stage in the proceedings might be perceived as 'of secondary o[r] subsidiary importance',⁸⁸ the Chamber finds that while this might be true to a certain degree, there are countervailing considerations. As prescribed by Article 68(3)

⁸⁴ Defence Response, ICC-02/04-01/15-1182-Red, para. 21.

⁸⁵ Preliminary Directions, ICC-02/04-01/15-1021, para. 2 i).

⁸⁶ LRV Request, ICC-02/04-01/15-1166, para. 49.

⁸⁷ LRV Request, ICC-02/04-01/15-1166, para. 51.

⁸⁸ LRV Request, ICC-02/04-01/15-1166, para. 50.

of the Statute, the right to present views and concerns must be 'determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the right of the accused and a fair and impartial trial.'

77. The Chamber notes that the Legal Representatives both chose to present their opening statements at the beginning of the trial⁸⁹ and that there will be a possibility for them to make closing statements after the conclusion of the defence case and the closure of the evidence. The Chamber does not deem it appropriate to hear additional submissions, which are not related to the presentation of the evidence or subject to scrutiny through Defence questioning, at this stage of the proceedings.
78. Accordingly, the Chamber rejects the part of the LRV Request to present views and concerns of the victims at this stage of the proceedings. This ruling is irrespective of any decision on a request to present views and concerns at a later stage of the proceedings.

IV. Implementation of the Decision

79. As previously indicated,⁹⁰ and in order to protect of the rights of the accused, the Legal Representatives are required to provide within one week after the Prosecution has filed its formal notice that it 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 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.

⁸⁹ Transcript of hearing on 7 December 2016, ICC-02/04-01/15-T-27-ENG.

⁹⁰ Preliminary Directions, ICC-02/04-01/15-1021, para. 6.

80. The Chamber notes that the above-mentioned deadline is the last point in time when these actions need to take place and encourages the Legal Representatives to undertake them as early as possible. In respect to (iii), and in order to facilitate the preparation of the Defence, the Chamber directs that Acholi translations be produced of the anticipated testimony summaries. The Chamber further specifies that the applications for victim participation need to be disclosed and – as they are the closest thing these witnesses have to a prior statement – these applications must be translated into Acholi. The Legal Representatives are instructed to liaise with the Registry as soon as possible in order to receive the translations in a timely manner.
81. The Legal Representatives are further directed to provide any victim applications of close relatives of the witnesses.⁹¹ Should the Legal Representatives consider that any redactions are necessary, these are to be implemented in accordance of the redaction protocol applicable in this case.⁹²
82. The Chamber informs the parties and participants that it envisages to hear the testimony of the Legal Representatives' witnesses from 30 April 2018 to 16 May 2018. It will confirm the exact dates once it has received the final list of witnesses from the Legal Representatives. The Chamber intends to hear the testimony of one witness per day, meaning that the other participants combined have roughly – in the majority of the cases – an equal amount of time to question as the calling Legal Representative. This division of time is done keeping in mind the purpose and modalities of the questioning of the witnesses by the Legal Representatives, as outlined in paragraphs 18 and 23 above. However, some degree of flexibility will be provided should the need to have

⁹¹ *In line with* Decision on Prosecution's Request to Disclose Lesser Redacted Versions of 43 Victims' Applications, 6 July 2017, ICC-02/04-01/15-907.

⁹² Order Scheduling First Status Conference and Other Matters, 4 May 2016, ICC-02/04-01/15-432, para. 4; Pre-Trial Chamber II, Decision on issues related to disclosure and exceptions thereto, 23 April 2015, ICC-02/04-01/15-224.

more time for questioning arise. The Legal Representatives are to jointly agree on an order of appearances of the witnesses and to communicate this order to the parties and the Chamber on the same day as the deadline referred to in paragraph 79.⁹³

83. By the same date, the Chamber further expects the Legal Representatives to indicate the mode of testimony (at the seat of the Court, via video-link, etc.) for each witness. The Legal Representatives are to liaise with the Registry and make all necessary logistical arrangements sufficiently in advance in order to enable the testimony for each witness. In the interest of ensuring that the trial proceeds expeditiously and without undue delay, if these essential arrangements are not made on schedule, then the Chamber may – amongst other possible measures – require a different mode of testimony.
84. The Chamber is conscious of the time and resources that the Defence requires to adequately prepare for the testimony of all of the witnesses mentioned above. It further notes the submission by the Defence that the Preliminary Directions require it to finalise its own list of witnesses and evidence three weeks after the Prosecution provided its formal notice of conclusion of its evidence presentation⁹⁴ and the additional workload that this might cause.⁹⁵ In order to protect the rights of the accused to a fair trial and adequate time and facilities to prepare its defence, the Chamber hereby modifies the deadline provided for in paragraph 7 of the Preliminary Directions and orders the Defence to provide the required information by 31 May 2018.

⁹³ This direction supersedes the general direction for the Legal Representatives to file witness lists on a monthly basis. ICC-02/04-01/15-497, para. 16. Should this order of witnesses expected to testify change, the calling Legal Representative must immediately inform the other participants and Chamber accordingly.

⁹⁴ Preliminary Directions, ICC-02/04-01/15-1021, para. 7.

⁹⁵ Defence Response, ICC-02/04-01/15-1182-Red, para. 13.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Reply;

AUTHORISES one expert witnesses on issues related to children and youth, in particular former child soldiers, proposed by the CLRV, to present evidence under the conditions specified in paragraphs 31 and 32;

AUTHORISES the expert witness on issues related to SGBC, proposed by the CLRV, to present evidence under the conditions specified in paragraph 37;

AUTHORISES the expert witness on Acholi culture, proposed by the CLRV, to present evidence under the conditions specified in paragraph 41;

AUTHORISES victim a/05658/15, proposed by the LRV, to present evidence under the conditions specified in paragraph 51;

AUTHORISES victim a/06342/15, proposed by the LRV, to present evidence under the conditions specified in paragraph 54;

AUTHORISES victim a/00613/16, proposed by the LRV, to present evidence under the conditions specified in paragraph 63;

AUTHORISES one expert on the victimisation of the affected communities, proposed by the LRV, to present evidence under the conditions specified in paragraphs 68 and 69;

REJECTS the remainders of the CLRV and LRV Requests;

ORDERS the Defence to provide the information required by paragraph 7 of the Preliminary Directions by 31 May 2018; and

ADOPTS the guidelines laid out in paragraphs 79 to 83 of this Decision for the presentation of evidence by the witnesses of the Victim Representatives.

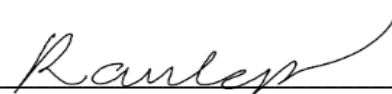
Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Raul C. Pangalangan

Dated 6 March 2018

At The Hague, The Netherlands