

**Cour
Pénale
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**International
Criminal
Court**

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Date: **07 May 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 of
“CLR Response to the ‘Confidential Redacted Version of ‘Defence
Request for a Deadline Extension’, filed on 18 April 2018”**

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 Representative of victims¹ submits that the Defence fails to show good cause for granting the requested extension of three months for submitting its final lists of evidence and applications for its case and therefore its Request² should be rejected. In the alternative, if the Chamber is minded to grant the Request, the Common Legal Representative submits that the Chamber should grant a very limited extension of time since the requested extension of three full months appears excessive.

2. In this regard, the Common Legal Representative underlines that ensuring the expeditiousness of the proceedings has a vital importance for the participating victims since they have waited for these proceedings to start for more than a decade and are anxious to see the end of the trial.

II. PROCEDURAL BACKGROUND

3. 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 Defence to submit its final List of Witnesses, List of Evidence, Rule 68(2)(b) requests, bar table motion and request for protective

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.

² See the “Confidential Redacted Version of ‘Defence Request for a Deadline Extension’, filed on 18 April 2018”, No. ICC-02/04-01/15-1232-Conf-Red, 18 April 2018 (the “Request”).

measures (the “Defence’s Final Lists”) three weeks after the closing of the Prosecution case.³

4. On 27 October 2017, the Defence filed its Observations on the Preliminary Directions requesting, *inter alia*, a revision of the timeline for submitting the Defence’s Final Lists (the “First Extension Request”).⁴ On 1 November 2017, the Prosecution filed its response to the First Extension Request.⁵ On 3 November 2017, the Legal Representatives of victims filed a joint response to the First Extension Request.⁶ On 6 November 2017, in form of a reply to the Prosecution’s response, the Defence modified its First Extension Request and further requested the Chamber to change the deadline set for submitting the Defence’s Final Lists to 1 June 2018 or three weeks after the close of the Prosecution case, whichever is later (the “Modified First Extension Request”).⁷ On 16 November 2017, the Chamber rejected the First/Modified Extension Request (the “First Decision on Extension Request”).⁸

5. On 6 March 2018, the Chamber issued the Decision on the Legal Representatives’ requests to present evidence and decided, *inter alia*, to modify the

³ 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”).

⁴ See the “Defence Observations on the Preliminary Directions for any LRV or Defence Evidence Presentation and Request for Guidance on Procedure for No-case-to-answer Motion”, with Confidential Annexes A-C, No. ICC-02/04-01/15-1029-Conf, 27 October 2017, paras. 41-46 (the “First Extension Request”).

⁵ See the “Prosecution’s Response to Defence Observations on the Chamber’s Preliminary Directions and Request for Guidance (ICC-02/04-01/15-1029-Conf)”, No. ICC-02/04-01/15-1048-Conf, 1 November 2017.

⁶ See the “Joint Response to the “Defence Observations on the Preliminary Directions for any LRV or Defence Evidence Presentation and Request for Guidance on Procedure for No-case-to-answer Motion”, No. ICC-02/04-01/15-1056-Conf, 3 November 2017.

⁷ See the “Defence Reply to Prosecution Response ICC-02/04-01/15-1048-Conf”, No. ICC-02/04-01/15-1064-Conf, paras. 23-26 (the “Modified First Extension Request”).

⁸ See the “Decision on Defence Observations on the Preliminary Directions for any LRV or Defence Evidence Presentation and Request for Guidance on Procedure for No-Case-to-Answer Motion” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-1074, 16 November 2017, paras. 20-27 (the “First Decision on Extension Request”).

deadline provided in the Preliminary Directions for submitting the Defence's Final Lists to 31 May 2018 (the "*Proprio Motu* Decision Extending Defence Deadline").⁹

6. On 18 April 2018, the Defence filed its Request.¹⁰ On the same day, by e-mail, the Chamber shortened the deadline for filing responses to the Request to 25 April 2018, pursuant to regulation 34 of the Regulations of the Court.¹¹ On 23 April 2018, the Defence filed an *Addendum* to its Request.¹²

7. Pursuant to regulation 23*bis* (1) of the Regulations of the Court, this document is filed confidential since it refers to confidential filings. A public redacted version will be filed in due course.

III. SUBMISSIONS

8. The Common Legal Representative preliminarily reiterates¹³ that ensuring the expeditiousness of the proceedings has a vital importance for the participating victims since they have waited for these proceedings to start for more than a decade and are anxious to see the end of the trial. In the same vein, the victims appreciate the Chamber's past and current efforts to streamline the proceedings and conduct hearings in an expeditious manner, while respecting the rights of all parties and participants.

⁹ See the "Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests", No. ICC-02/04-01/15-1199-Conf, 06 March 2018, para. 84. A public redacted version of the decision was filed on the same day. See No. ICC-02/04-01/15-1199-Red (the "*Proprio Motu* Decision Extending Defence Deadline").

¹⁰ See the Request, *supra* note 2.

¹¹ See the email sent by Trial Chamber IX on 18 April 2018 at 15:03.

¹² See the "Defence Addendum to Submission 1232", with Confidential Ex Parte Annexes A-G Trial Chamber IX and Defence Only and Confidential Annex H and Confidential Redacted Annexes A-F, No. ICC-02/04-01/15-1236, 23 April 2018.

¹³ See the "Joint Response to the "Defence Observations on the Preliminary Directions for any LRV or Defence Evidence Presentation and Request for Guidance on Procedure for No-case-to-answer Motion", *supra* note 6, para. 17.

9. In its Request, the Defence contends that “[t]he current date of 31 May 2018 [for submitting its Final Lists] is untenable” and thus asks for additional three months.¹⁴ In particular, the Defence argues that the alleged non-cooperation by the Government of Uganda prevents it from complying with the deadline for submitting said Lists.¹⁵

10. The Common Legal Representative stresses that, in its First Extension Request¹⁶ and Modified First Extension Request¹⁷, the Defence noted the non-cooperation by the Government of Uganda only as a minor reason for asking for an extension of the deadline. Therefore, the Defence’s contention that the alleged non-cooperation by the Ugandan Government has significantly hindered its case preparation and prevented it from complying with the 31 May 2018 deadline for submitting its Final Lists appears self-contradictory and unpersuasive.

11. Moreover, in the Modified First Extension Request, when asking for a new deadline (until 1 June 2018 or three (3) weeks after the Prosecution finishes its case, whichever is later), the Defence explicitly gave an assurance to the Chamber by stating that, if granted, “the Defence’s list of witnesses will be slightly later than ordered by the Chamber” and [REDACTED].¹⁸ Surprisingly, the Defence now claims that it requires an extension of time limit for three full months.

12. In the First Decision on Extension Request, the Single Judge noted :

“[...] As to the deadlines for the final list of witnesses and other information related to the Defence’s presentation of its case, the Single Judge is unconvinced by the Defence’s arguments that the timelines given in the Preliminary Directions are prejudicial to Mr Ongwen’s fair trial rights. The Pre-Trial Chamber confirmed the charges against Mr Ongwen on 23 March 2016. The Confirmation Decision and the Prosecution’s

¹⁴ See the Request, *supra* note 2, para. 2.

¹⁵ *Idem*, para. 3.

¹⁶ See the First Extension Request, *supra* note 4, para. 18. The notice involving alleged non-cooperation by the Ugandan Government appears only once in footnote 24.

¹⁷ See the Modified First Extension Request, *supra* note 7, para. 25. The Defence only noted that “the Government of Uganda has not been as proactive with the Defence as it has been with the Prosecution.”

¹⁸ *Idem*, para. 24.

*Pre-Trial Brief provide the Defence with a detailed understanding of the Prosecution's case against Mr Ongwen. Further, the Prosecution provided detailed summaries of the anticipated testimony of its witnesses as well as other attendant material related to the witnesses, including their written statements or transcribed interviews. [...] The Single Judge is of the view that with its advance knowledge of the Prosecution case, the Defence will have had sufficient time to devise its case in defence of Mr Ongwen by the conclusion of the Prosecution's case-in-chief. The deadline set in the Preliminary Directions allows the Defence sufficient time to finalise its list of witnesses and provide the relevant information. [...]."*¹⁹

13. In this regard, the Common Legal Representative underlines that the Chamber has always ensured the respect of the fair trial rights of the Accused and made sure that the Defence is given sufficient time to prepare for the commencement of its case. In particular, in the *Proprio Motu* Decision Extending Defence Deadline, the Chamber held that it was conscious of the time and resources that the Defence requires to adequately prepare for the testimony of the witnesses to be called by the legal representatives and of the additional workload.²⁰ Thus, "*in order to protect the rights of the accused to a fair trial and adequate time and facilities to prepare its defence*", the Chamber decided on its own motion to grant to the Defence an extension of time for submitting its Final Lists until 31 May 2018.²¹

14. In the circumstances, the Common Legal Representative argues that the Defence has not shown "good cause" for its Request under the conditions set out in regulation 35(2) of the Regulations of the Court.

15. *Arguendo*, should the Chamber deem that the Defence did establish that the alleged non-cooperation by the Ugandan Government has prevented it from complying with the deadline for submitting its Final Lists, the Common Legal Representative contends that the proposed extension of time is excessive. While rendering the First Decision on the Extension Request and the *Proprio Motu* Decision

¹⁹ See the First Decision on Extension Request, *supra* note 8, para. 25-26.

²⁰ See the *Proprio Motu* Decision Extending Defence Deadlines, *supra* note 9, para. 84.

²¹ *Idem*.

Extending Defence Deadline, the Chamber must have already taken into account the alleged non-cooperation by the Ugandan Government in response to the Defence's requests for assistance. Thus, even if the Chamber is minded to grant the Request, the extension of time should be as minimal as possible in order not to disrupt the expeditious conduct of the proceedings.

16. Additionally, should the Chamber grant the Request, the Common Legal Representative equally submits that the Defence should be reminded of the exceptional nature of the variation of time limits and that granting of its Request must not lead to further delays and successive similar requests in the future.

IV. CONCLUSION

17. For the foregoing reasons, the Common Legal Representative respectfully requests the Chamber to reject the Defence's Request. In the alternative, if the Chamber is minded to grant the Request, the Common Legal Representative respectfully requests the Chamber to grant a very limited extension of time.



Paolina Massidda
Principal Counsel

Dated this 7th day of May 2018

At The Hague (The Netherlands)