

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **1 June 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

**Prosecution's Response to Defence Request for a Status Conference
ICC-02/04-01/15-1264-Red**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. The Prosecution does not, in principle, oppose the Defence request¹ ('Request') for a status conference. The Prosecution submits that in advance of the hearing:
 - a) the Defence should explain in writing why a gathering of the Parties and participants before the Chamber (a status conference) is necessary in respect of matters which it is not prepared to disclose² to the other Parties and participants and from part of which (implicitly) it intends that they should be excluded;
 - b) the Defence should provide written details of the matters it intends to raise at the status conference to enable the Parties and participants to make informed responses.

Submissions

Status Conferences

2. The Prosecution understands the principal purpose of a status conference to be to enable the parties and participants to engage in candid exchanges concerning the future conduct of the litigation, under the guidance of the Chamber.
3. Regulation 54 of the Regulations of the Court provides that a status conference may involve the Chamber making orders on a variety of matters. The Prosecution recognises that the making of oral orders, immediately following inter-parties submissions, may be a more efficient resolution of issues which would otherwise require numerous time-consuming written communications between the parties and participants and subsequent written judicial decisions. Such efficiency can only be achieved if the parties and participants

¹ ICC-02/04-01/15-1264.

² The contents of paragraphs 10 and 15 of the Request have been withheld from the Prosecution and LRVs by means of redaction.

are sufficiently prepared, which requires that they be adequately informed of the topics to be addressed at the status conference.

4. A status conference (or part of one) from which all but one party are excluded is no conference. The Prosecution submits that any *ex parte* hearing sought by the Defence should be held separately from the requested status conference, and notes that without knowing the subject of such *ex parte* discussions, it is unable to offer any useful further comments.

The Defence should provide written detail of its proposals

New Defence Experts

5. The Request indicates that the Defence has, for the last two months, been “finalising contracts of new expert witnesses”,³ and that it wishes to discuss the “modalities of the[se] witnesses’ appearances.”⁴ It is unclear, in the absence of further detail, what contribution the Prosecution may be able to make on this matter at the status conference.
6. Certainly the Prosecution will need time, once reports from the Defence’s new experts are received, to consider the contents, and to consult its own experts thereon, before the new experts give evidence. In the absence of detail the Prosecution will not be able to make useful submissions on any proposed time-scale for the appearance of the new experts.
7. The Prosecution notes that the deadline for the communication by the Defence of the names of the witnesses (and any other evidence) upon which the Defence relies to establish that there are grounds for excluding criminal responsibility pursuant to article 31 of the Rome Statute expired on 9 August 2016.⁵ If any of the new experts bear upon the issues of mental disease or defect, or duress, then it is particularly important that this fact be communicated to the Parties (and the Chamber) prior to any status conference.

³ ICC-02/04-01/15-1264, para. 16.

⁴ *Idem.*

⁵ ICC-02/04-01/15-1073.

8. Before calling its own expert witnesses the Prosecution made detailed proposals concerning the “modalities” of their appearance.⁶ This enabled the Defence to respond in a considered way and the Chamber to rule on the matter. The Prosecution should have a similar opportunity to consider the nature of the Defence’s proposals, rather than being required to make ‘off the cuff’ responses at the status conference.

The proposal that experts be appointed by the Chamber under rule 135

9. The Prosecution submits that, if the Defence wish to request that the Chamber appoint additional expert psychiatrists and psychologists to examine the Accused and provide reports concerning any mental disease or defect affecting his responsibility for the crimes he may have committed, this should be done by the means of a formal and substantiated motion.
10. The Prosecution notes that it is likely to oppose any such motion, since it would result in unnecessary delay. There is no indication from the Defence as to why this matter was not raised earlier in proceedings.
11. The Court is currently in receipt of the oral testimony and/or written opinions of five experts in this field who have all given reasoned views on the matter. The Defence has indicated its intention to call two of these experts as part of their defence case. If the Defence is concerned that the totality of this evidence will be insufficient for the Chamber to come to proper conclusions on article 31(1)(a), it should explain why.
12. The Prosecution is not prepared (absent a direction from the Chamber that it should do so) to take part in inter-parties discussions as to the identity of any such experts in advance of a decision by the Chamber that they should be appointed.
13. The Prosecution submits that discussion at a status conference of such an appointment would be inefficient in the absence of detailed and considered

⁶ ICC-02/04-01/15-1024.

proposals from the Defence, provided in writing well in advance of the status conference.

Conclusion

14. For the reasons set out above, the Prosecution submits that the Chamber should delay its consideration of the Request until the Defence has provided the written details and explanation set out above.



Fatou Bensouda,
Prosecutor

Dated this 1st day of June 2018

At The Hague, The Netherlands