

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **28 October 2019**

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

Defence Response to ‘Victims’ Request to Present Views and Concerns in Persons’

Source: Defence for Dominic Ongwen

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 Defence for Dominic Ongwen ('Defence') hereby responds to the "Victims' Request to Present Views and Concerns in Person" ('Application').¹ The Defence requests Trial Chamber IX ('Chamber') to reject the Application.
2. The Defence avers the Legal Representatives of Victims Team ('LRV') fails to demonstrate a cogent and persuasive reason as to why the LRA did not request these persons to present their views and concerns during its presentation in May 2018. Furthermore, at this juncture of the trial proceedings, it would be inappropriate to have individual persons to present views and concerns during the LRV closing statement.

II. BACKGROUND

3. On 13 October 2017, the Chamber instructed the LRV to file its proposed list of witnesses ('LoW') on 2 February 2018.²
4. On 2 February 2018, the LRV submitted its proposed LoW.³
5. On 6 March 2018, the Chamber granted the LRV leave to call four witnesses.⁴
6. On 13 April 2018, the Chamber issued directions stating that the closing statements would happen eight weeks after the closing of the presentation of evidence.⁵
7. On 15 October 2019, the LRV filed its Application.⁶
8. On 23 October 2019, the Chamber issued an order modifying the date for the beginning of the closing statements to 10 March 2020.⁷

¹ ICC-02/04-01/15-1638.

² ICC-02/04-01/15-1021.

³ ICC-02/04-01/15-1166 and Confidential Annex.

⁴ ICC-02/04-01/15-1199.

⁵ See ICC-02/04-01/15-1226, paras 3 and 9.

⁶ ICC-02/04-01/15-1638.

⁷ ICC-02/04-01/15-1645.

III. SUBMISSIONS

A. The LRV had ample opportunity to present and question witnesses about the views and concerns of victims

9. The Defence notes that the LRV had an opportunity to present witnesses in March 2018. Included in the witnesses whom it presented were two community leaders from Lukodi. The LRV called V40-0003 on 2 May 2018⁸ and V40-0004 on 3 May 2018.⁹ Witness V40-0004, at the time of his testimony, was a Local Councillor in Lukodi.¹⁰
10. The Defence can only speculate, as the LRV did not give more finite details, that the community leaders it intends to present are from Abok and Odek as the LRV does not represent anyone from Pajule.¹¹ As noted above, the LRV already called two community leaders from Lukodi during its presentation of evidence.
11. The LRV could have requested to present the views and concerns of further community leaders when it requested to present witnesses on 2 February 2018.¹² Instead of requesting to present community leaders from Abok or Odek, the LRV requested to present witnesses who were expected to discuss issues outside the scope of the charges.¹³ The LRV cannot attempt to cure this defect now by bringing additional persons to the Court during its closing statements.
12. The LRV had ample opportunity to elicit the views on concerns of community leaders from persons whom the LRV represents. Several community leaders from the affected areas, outside of the two which the LRV brought, have testified before the Court. Witness D26-0083 is a former Member of Parliament from the neighbouring constituency of Abok.¹⁴ The LRV examined this witness for less than three minutes.¹⁵ Witness D26-0113 is a community leader from the region where Abok lies, who the LRV did not question.¹⁶ Witness D26-0028 is an Acholi Chief who the LRV did not question.¹⁷ Witness P-0306 was a camp leader at Abok,¹⁸

⁸ ICC-02/04-01/15-T-172-CONF-ENG.

⁹ ICC-02/04-01/15-T-173-CONF-ENG.

¹⁰ ICC-02/04-01/15-T-173-CONF-ENG, p. 3, lns 19-22.

¹¹ ICC-02/04-01/15-1638, para. 4 (“If permitted to do so, the LRVs propose to present the views and concerns of the leaders of two communities: one Acholi, one Lango, to ensure that the different perspectives and views of these communities are heard.”).

¹² See ICC-02/04-01/15-1166-Conf-Anx.

¹³ ICC-02/04-01/15-1166-Conf-Anx, paras 12, 16 and 21. See also ICC-02/04-01/15-1199-Conf, paras 55-59.

¹⁴ ICC-02/04-01/15-T-217-ENG, p. 7, ln. 17.

¹⁵ ICC-02/04-01/15-T-217-ENG, p. 48, ln. 18 to p. 49, ln. 19.

¹⁶ ICC-02/04-01/15-T-221-CONF-ENG, p. 33, lns 13-18.

¹⁷ ICC-02/04-01/15-T-182-ENG, p. 24, lns 7-9.

¹⁸ UGA-OTP-0261-0277-R01, p. 0279, para. 15.

and the LRV questioned the witness.¹⁹ Witness P-0218 was a leader at Odek,²⁰ and the LRV questioned that witness.²¹ Regardless of the LRV's intentions, the Defence notes that the LRV could have raised the issues that it seeks to raise now through these and other witnesses.

13. Additionally, the Defence argued against P-0274 from testifying *via* Rule 68(2)(b) of the Rules of Procedure and Evidence ('RPE').²² The LRV responded to the Prosecution's request to submit evidence pursuant to Rule 68(2)(b) of the RPE and the LRV agreed with the Prosecution's request, which included P-0274 not testifying *viva voce*.²³
14. The LRV has received ample chances to discuss the views and concerns of the affected communities with community leaders called as witnesses by the Prosecution, Defence and itself. As such, the Defence requests the Chamber to reject the Application.

B. The LRV has not provided enough information to the Chamber and Parties to make a conclusive decision

15. As noted above, the Defence can only speculate about whom the LRV requests to bring to present views and concerns. The LRV only identified the ethnicities of the persons.²⁴
16. The Defence agrees that any presentation during the closing statement of the LRV would not be evidence.²⁵ But, as the LRV requests persons to present views and concerns of victims as community leaders, the Defence would have expected more information than that provided in paragraphs 4 and 21 of the Application. The LRV merely identifies the persons as "leaders of two communities: one Acholi, one Lango..."²⁶ and outlines three general topics as the proposed presentation of the two community leaders.²⁷
17. The LRV has failed to demonstrate why it should be allowed to call two community leaders to present their views and concerns about the trial process. As the LRV has failed to do so, the Defence requests the Chamber to reject the Application.

¹⁹ ICC-02/04-01/15-T-130-ENG, pp 10-26.

²⁰ UGA-OTP-0238-0720-R01, para. 12 (Witness P-0218 was a "Teacher on Trial" at Odek and Agweng Primary School.). *See also* ICC-02/04-01/15-T-90-ENG, p. 49, lns 17-25.

²¹ ICC-02/04-01/15-T-90-ENG, pp 16-22.

²² ICC-02/04-01/15-509-Conf-Corr, paras 178-180.

²³ ICC-02/04-01/15-508, para. 14.

²⁴ ICC-02/04-01/15-1638, para. 4.

²⁵ ICC-02/04-01/15-1638, para. 22.

²⁶ ICC-02/04-01/15-1638, para. 4.

²⁷ ICC-02/04-01/15-1638, para. 22.

IV. RELIEF

18. For the reasons described above, the Defence respectfully requests Trial Chamber IX to reject the Application of the LRV.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 28th day of October, 2019

At The Hague, Netherlands