

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **23 May 2016**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

IN THE CASE OF

THE PROSECUTOR v. DOMINIC ONGWEN

Public

**Corrected Version of Submissions on Items Defined for the Status Conference on
23 May 2016**

Source: Victims' Legal Representatives

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

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I. Introduction

1. This filing is made pursuant to the Order of the Single Judge made on the 5th of May 2016 (the “Order”) convening a status conference on the 23rd May 2016 and directing the participants to file their submissions on the items particularised in that Order.¹

II. Procedural History

2. On the 23rd March 2016, Pre-Trial Chamber II issued a decision confirming the charges brought by the Prosecutor against Dominic Ongwen.²
3. On the 29th March 2016, Mr Ongwen’s Defence filed before Pre-Trial Chamber II an application for leave to appeal against the decision confirming charges against Mr Ongwen.³
4. On the 29th April 2016, Pre-Trial Chamber II issued a decision rejecting the Defence request for leave to appeal the decision confirming charges against Mr Ongwen and directing the Registrar to transmit to the Presidency the decision confirming charges and the record of proceedings.⁴
5. On the 2nd May 2016, the Presidency issued a decision constituting Trial Chamber IX and referring to it the case of the *Prosecutor v Dominic Ongwen*.⁵

¹ *Prosecutor v Dominic Ongwen*, Order Scheduling First Status Conference and Other Matters, ICC-02/04-01/15-432, 4th May 2016.

² *Prosecutor v Dominic Ongwen*, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, 23rd March 2016.

³ *Prosecutor v Dominic Ongwen*, Defence Request for Leave to Appeal Issues in Confirmation of Charges Decision, ICC-02/04-01/15-423, 29th March 2016.

⁴ *Prosecutor v Dominic Ongwen*, Decision on the Defence request for leave to appeal the decision on the confirmation of charges, ICC-02/04-01/15-428, 29th April 2016.

⁵ *Prosecutor v Dominic Ongwen*, Decision constituting Trial Chambers VIII and IX and referring to them the cases of *The Prosecutor v. Ahmad Al Faqi Al Mahdi* and *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15-430, 2nd May 2016.

6. On the 3rd May 2016, Trial Chamber issued a decision in which it notified the election of the Presiding Judge and Single Judge in the case of the *Prosecutor v Dominic Ongwen*.⁶
7. On the 5th of May 2016 the Single Judge issued his Order convening a status conference on the 23rd May 2016 and directing the participants to file their submissions on the agenda items for that status conference.⁷

III. Submissions on Items identified by the Chamber

a) Outstanding Prosecution disclosure

8. The Legal Representatives of Victims (the “Legal Representatives”) make no submissions on this item at this stage. In the event that gaps in disclosure to the Legal Representatives are identified in the future, this will be raised with the Prosecution at that time and if the matter is not able to be resolved with the Prosecution, the same will be brought to the Chamber's attention.

b) Details of witnesses and other evidence

9. The Legal Representatives note that from the Order of the Single Judge that there is no specific address to them to make submissions on this item.⁸ The Legal Representatives however notify the Chamber that, subject to the Chamber's rulings on modalities of victim participation, they may request leave to call witnesses in the course of the proceedings and/or to have victims appear in person to present their views and concerns. Further time will be required in order to determine the number and identity of proposed witnesses or victims

⁶ *Prosecutor v Dominic Ongwen*, Decision Notifying the Election of a Presiding Judge and Single Judge, ICC-02/04-01/15-431, 3 May 2016.

⁷ *Prosecutor v Dominic Ongwen*, Order Scheduling First Status Conference and Other Matters, ICC-02/04-01/15-432, 4th May 2016.

⁸ *Prosecutor v Dominic Ongwen*, Order Scheduling First Status Conference and Other Matters, ICC-02/04-01/15-432, 4th May 2016.

appearing in person, and the court time required. This would in any event be communicated to the Chamber in due course, as will the question of whether any reliance will be made on non-testimonial evidence.

10. The Legal Representatives wish to reassure the Chamber that they are mindful of the need to only present a reasonable number of witnesses or victims in person so as not to impede the expeditiousness of the proceedings, and in doing so will also take into account protection issues in order to minimise risk. At this stage therefore it is not anticipated that there would be a need for use of the Court's protection program, although other support services from the VWU may be required.

c) Languages to be used in the Proceedings

11. In light of the submission above on the possibility of seeking to present witnesses or victims in person, language services may be required for victims who speak Acholi, Lango, Teso, or Madi/Lugbara languages. Notification of the languages spoken by victims or witnesses will be made to the Chamber as early as possible to ensure that the necessary arrangements can be made by the Registry.

d) Estimated time for Opening Statements

12. At this stage the Legal Representatives estimate using approximately one hour during the opening statements, to address the Trial Chamber in respect of victims' expectations of the trial and proceedings.

e) Time Required for Pre Trial Brief Preparation

13. The Legal Representatives make no submissions on this issue.

f) Victim Applications

14. The Legal Representatives believe that the Victims Participation and Reparations Section (VPRS) is best suited to provide information on this item, however they respectfully invite the Chamber to additionally consider the following comments.
15. During past consultations and engagements to provide informational updates and developments at the Court to their clients in Lukodi, Abok and Odek, the Legal Representatives have been asked by victims about the possibility for new victim participation applications to be submitted by fresh applicants. To date the Legal Representatives have not proceeded to assist those victims to complete application forms. Following discussions with the VPRS it has been considered preferable to wait for the decision on confirmation, as well as clarification of whether the Trial Chamber will take a different approach from the individual applications system previously applied.
16. However given the interest amongst currently non-participating victims desirous to apply to participate in proceedings against Mr Ongwen, the Legal Representatives expect that significant further numbers of victim applications may be received by the Registry.
17. In order to enable these expected new applications to be processed efficiently and fairly, the Legal Representatives respectfully request the Chamber to address as a matter of urgency the question of how victims' applications will be received and processed in this case. While the Legal Representatives will submit in due course that applications should continue to be accepted during the course of the trial, clarifying the applicable procedures early will maximise the number of victims who will be able to benefit from participation during opening statements and the early stages of the Prosecution case.

g) Commencement Date of the Trial.

18. When meeting with their clients the Legal Representatives have often been asked about the likely commencement date for the trial. Victims have expressed a concern for the trial to start immediately. With this in mind the Legal Representatives are grateful for the Chamber's readiness to commence trial during the course of 2016.

IV. Other Matters

19. The Legal Representatives do not have other matters to rise which they believe need to be addressed at the status conference scheduled for the 23rd of May.

20. Despite this, the Legal Representatives take the opportunity to draw to the Chamber's attention several issues which they believe should be addressed as soon as possible in order to enable timely preparation for trial. The Legal Representatives intend to prepare detailed submissions on these matters in due course.

a) The Possibility of In Situ Proceedings

21. *In situ* proceedings are provided for under the frame work of Articles 1, 3, and 62 of the Rome Statute and Rule 100 of the Rule of Procedure and Evidence (RPE). The Legal Representatives submit that notwithstanding the logistical and demanding nature of holding *in situ* proceedings, they have the potential to bring the Court closer to the victims, and to help victims appreciate that the Court views them as relevant to its work and appreciates their suffering.

22. The Legal Representatives recall Pre-Trial Chamber II's recommendation to the Presidency to hold the confirmation proceedings *in situ*.⁹ Despite that recommendation the Presidency ultimately issued a decision directing the

⁹ *Prosecutor v Dominic Ongwen*, Decision on the recommendation to the Presidency to hold the confirmation of charges hearing in the Republic of Uganda, ICC-02/04-01/15-330, 28th October 2015, para 8.

confirmation hearing to be held at the seat of the Court.¹⁰ However the reasons for that decision were principally related to events occurring at that time which are now concluded. In particular the Presidency was concerned by security issues in the light of a communication from the Government of Uganda indicating that “the risks of conducting the hearing in Uganda outweigh the benefits”¹¹ because of the processes leading to national elections which were underway at that time; a position which was supported by the Registry’s report.¹² The Presidency also referred to the possible impact of an *in situ* hearing on the Court’s move to the permanent premises.¹³ This leaves open the question of whether a different conclusion could now be reached, given that the Ugandan elections and the Court’s move to its permanent premises are now concluded.

23. The Legal Representatives note that during engagements and consultations with their clients, victims have expressed support for *in situ* proceedings. The Legal Representatives intend to consult further on this issue in the coming weeks and, subject to the results of that consultation, expect to file detailed submissions in due course. However the matter is raised at this point before the Chamber since the possibility of a request for *in situ* proceedings may, if it concerns opening statements, have a bearing on the start date for the trial.

b) Victims’ Legal Representation

24. Currently the Legal Representatives represent 1434 participating victims, all of whom specifically nominated them as legal representatives when applying for participation. The Office of Public Counsel for Victims (“OPCV”) was appointed by the Single Judge of Pre-Trial Chamber II under regulation 80(1) of the

¹⁰ *Ibid*, para. 27.

¹¹ *Ibid*, para. 13.

¹² *Ibid.*, para.24.

¹³ *Ibid.*, para. 25.

Regulations of the Court to represent the other 592 participating victims, none of whom not nominated a legal representative when applying for participation.¹⁴

25. Because of the way that this legal representation was arranged, the division between the two separately represented groups of victims does not bear any relation to geography, harm suffered, crimes experienced, or other objective factors. Indeed, within the communities of Abok, Odek and Lukodi, some participating victims have expressed confusion as to why they are met and advised separately by different lawyers than other members of their communities. The Legal Representatives have endeavoured to explain the reasons for this situation and to minimise the difficulties arising from this situation, and they believe that the OPCV has done the same. However it remains clear that the current arrangement of legal representation is neither the most efficient nor the most effective.
26. The Legal Representatives acknowledge that reorganizing legal representation has drawbacks and will involve challenges. Clients inevitably form bonds with their existing lawyers. However this is also a reason why any efforts to reorganize legal representation, whether under rule 90 or otherwise, should be undertaken as early as possible.
27. The Legal Representatives therefore request the Chamber to address this question as soon as possible. In doing so it would be beneficial to consult with the Registry, the Legal Representatives and the OPCV. However the Legal Representatives respectfully request that the views and wishes of the victims be considered foremost by the Chamber, subject only to the imperative for a fair and expeditious trial.

¹⁴ *Prosecutor v Dominic Ongwen*, Decision on contested victims' applications for participation, legal representation of victims and their procedural rights, ICC-02/04-01/15-350, 27th November 2015; *Prosecutor v Dominic Ongwen*, Decision on issues concerning victims' participation, ICC-02/04-01/15-369, 15th December 2015.

c) Modalities of Victim Participation at Trial

28. The Legal Representatives note that their trial preparation would be greatly facilitated by an early decision from the Chamber concerning the modalities of victim participation.

d) Dual Status Protocol

29. The Legal Representatives note that at least four of their clients (a/05103/15, a/05335/15, a/05366/15 and a/05603/15) have dual status as witnesses of the Prosecution.¹⁵ To allow for effective representations of these victims, especially on issues of protection, the Legal Representatives respectfully request the Chamber to consider adopting a protocol regulating interactions with dual status victims, such as been done in other cases before the Court.¹⁶

e) Protection of Victims' Identities

30. The Legal Representatives recall that in numerous discussions with their clients, victims have expressed concern to them that disclosure of their identities to the Defence risks exposing them again to retaliatory attacks by the Mr Ongwen's supporters and fellow LRA fighters who have not left the bush. In this respect the Legal Representatives refer to their earlier filing which addressed this question before Pre-Trial Chamber II.¹⁷

31. The Legal Representatives therefore request that the Chamber maintain the current anonymity of victims' identities *vis-a-vis* the Defence unless disclosure is

¹⁵ *Prosecutor v Dominic Ongwen*, Decision on contested victims' applications for participation, legal representation of victims and their procedural rights, ICC-02/04-01/15-350, 27th November 2015, para 36.

¹⁶ *The Prosecutor v. Bosco Ntaganda*, Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses, ICC-01/04-02/06-464, 18th February 2015; *The Prosecutor v. Laurent Gbagbo and Charles Ble Goude*, Decision adopting mechanisms for exchange of information on individuals enjoying dual status, ICC-02/11-01/15-199, 31st August 2015.

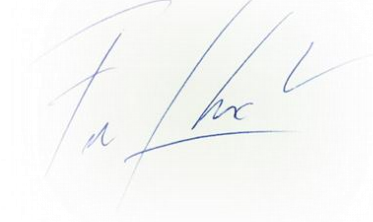
¹⁷ *Prosecutor v Dominic Ongwen*, Communication to the Chamber pursuant to the Chamber Decision of 27th November and 15th December 2015, ICC-02/04-01/15-395, 24th December 2015 (notified 8th January 2016).

warranted in the interests of justice in specific instances. The Legal Representatives respectfully request an opportunity to present detailed submissions on this matter should the Chamber consider modifying the current position.

Respectfully submitted,



JOSEPH A MANOBA



FRANCISCO COX

Dated this 23 day of May 2016
At Kampala, Uganda and Santiago, Chile