

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/04-01/15  
Date: 21 November 2016

**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**

**Legal Representatives of Victims' notification regarding opening statements**

**Source:** Legal Representatives of Victims

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

Ms Fatou Bensouda  
Mr Benjamin Gumpert

**Counsel for the Defence**

Mr Krispus Ayena Odongo  
Mr Charles Achaleke Taku

**Legal Representatives of the Victims**

Mr Joseph Akwenyu Manoba and  
Mr Francisco Cox

**Legal Representatives of the Applicants****Unrepresented Victims****Unrepresented Applicants  
(Participation/Reparation)****The Office of Public Counsel for  
Victims**

Ms Paolina Massidda  
Mr Orchlon Narantsetseg  
Ms Caroline Walter

**The Office of Public Counsel for the  
Defence****States' Representatives****Amicus Curiae****REGISTRY****Registrar**

Mr Herman von Hebel

**Counsel Support Section****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations  
Section****Other**

## I. INTRODUCTION

1. The document is filed in accordance with the Chamber's Initial Directions on the Conduct of the Proceedings.<sup>1</sup> There the Chamber directed that:

*The parties will be given five hours to present their opening statements, and the LRVs will be given 2.5 hours to be divided between them as they see fit. The LRVs and Defence may make their opening statements either at the commencement of the trial or just prior to the presentation of their evidence, if any. In the interest of streamlining the presentation of these statements, an opening statement must be presented all at one time – the LRVs and Defence are not allowed to reserve unused time from their opening statements and continue them later during the trial. The LRVs and Defence are to inform the Chamber within 15 days of the commencement of trial if they do not intend to present their opening statements at the commencement of the trial.<sup>2</sup>*

## II. TIMING OF OPENING STATEMENTS

2. In accordance with the direction set out above, the Legal Representatives of Victims hereby notify the Chamber that they intend to present their opening statements prior to the presentation of their case, rather than at the commencement of trial.
3. In the interests of transparency the Legal Representatives consider it appropriate to provide a brief explanation of the reasons for this decision. It is hoped that this will ensure that interested persons, including participating victims and their communities, not only understand these reasons but know that the Chamber is also aware of them.

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<sup>1</sup> *Prosecutor v. Dominic Ongwen*, Initial Directions on the Conduct of the Proceedings, ICC-02/04-01/15-497, 13 July 2016.

<sup>2</sup> *Ibid*, para.7.

(i) *Effective use of opening to introduce the victims' case*

4. The Legal Representatives believe that there are significant advantages in delaying their opening statements until after the Prosecution case. Making an opening immediately before the presentation of the Legal Representatives' own evidence or the *viva voce* presentation of views and concerns by victims (to the extent permitted by the Chamber) will allow that opening to be used so as to introduce and contextualise the evidence to be led or views and concerns to be represented. It is hoped that this will make the information clearer to the parties and the Chamber and cause it to have greater value in establishing the truth about the alleged crimes.

(ii) *The need for instructions*

5. During pre-trial the Legal Representatives were recognised as representing 1434 participating victims. However, in the two months preceding this filing the Legal Representatives have been recognised as representing an additional 1167 participating victims. These victims applied for participation after the confirmation of charges hearing and were granted the status of participants on 26 September and 4 November 2016.<sup>3</sup> For the most part they are persons whom the Legal Representatives have not met. They were assisted by the Registry to complete application forms and in the process nominated the Legal Representatives as their lawyers. Their details, including contact information, were provided to the Legal Representatives by the Registry on a rolling basis in the form of their unredacted applications, between 21 September 2016 and 1 November 2016. During this extremely short period of time, it would have been difficult under the best of circumstances to meet with these clients and adequately take instructions as to their views and concerns.

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<sup>3</sup> *Prosecutor v. Dominic Ongwen*, Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications, ICC-02/04-01/15-543, 26 September 2016; *Prosecutor v. Dominic Ongwen*, Decision Concerning 610 Victim Applications (Registry Report ICC-02/04-01/15-544) and 1183 Victim Applications (Registry Report ICC-02/04-01/15-556), ICC-02/04-01/15-586, 4 November 2016.

6. The Legal Representatives note that although victims are represented collectively, they remain individuals with various views and concerns (indeed they are recognised individually by the Court in the process by which they are granted status). It cannot be assumed that victims' views will be homogenous. It is therefore important to consult as thoroughly as possible to ensure that the position adopted on behalf of participating victims genuinely represents the full range of their views. It is hoped that during the course of the Prosecution case, careful consultation can be undertaken with all of the new participating victims in order to ensure that their views and concerns are also incorporated into the opening statements made by the Legal Representatives on their behalf.

*(iii) Contribution to the expedition of the proceedings*

7. Finally, the Legal Representatives consider that this approach will contribute most significantly to the efficiency of the proceedings. Observing and participating in the trial during the presentation of the Prosecution's evidence will enable the Legal Representatives to better formulate the victims' views on the case. This will allow the participating victims to play their appropriate and unique role in the proceedings and to avoid merely duplicating the function of the Prosecution.

8. In addition, the Legal Representatives note that they have been in communication with counsel from the OPCV, who has indicated that she will take the opportunity to make opening statements at the commencement of trial. Given that there is likely to be overlap in the perspectives presented as between those victims represented by the OPCV and those represented by the Legal Representatives, the expedition of the proceedings would appear to be separating these statements in time and function.

9. The Legal Representatives are cognizant that the commencement of trial constitutes an important symbolic and public moment in the proceedings. This may be even more so than usual for the participating victims in the present

case, who have been waiting for up to 14 years for this moment. The decision to forego participation in this event is therefore not to be taken lightly. Despite this, the Legal Representatives also recognize that making an opening statement at the commencement of trial would deprive their clients of that possibility following the closure of the Prosecution case. Given the matters set out above, the Legal Representatives believe that making statements at that later point in the proceedings would best facilitate the meaningful and effective participation of their clients. For these reasons, the Legal Representatives notify the Chamber of their intention to present their opening statements following the conclusion of the Prosecution's evidence.

### **III. DIVISION OF ALLOCATED TIME**

10. Finally, the Legal Representatives note the Chamber's direction that counsel representing victims share a total of 2.5 hours between them for their respective opening statements. Since the Chamber has indicated that the allotted time can be used either at the commencement of trial or later, but not both, the Legal Representatives have understood this stipulation to agree on a division of time as pertaining even if the victims' legal teams present their openings at different times. However the Legal Representatives seek the Chamber's guidance on this point. To the extent that it remains necessary to agree on the division of time at this stage, the Legal Representatives inform the Chamber that they have communicated with the OPCV on this subject and agreed that the 2.5 hours be divided equally.

Respectfully submitted,



**Joseph A. Manoba**



**Francisco Cox**

Dated this 21<sup>st</sup> day of November 2016

At Kampala, Uganda and at Santiago, Chile