



Original: English

No.: ICC-02/04-01/15
Date: 29 November 2016

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

**SITUATION IN UGANDA
IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN***

Public

Decision on Legal Representatives' Request Regarding Opening Statements

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Benjamin Gumpert

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Joseph Akwenyu Manoba
and Francisco Cox
Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 64 of the Rome Statute and Rule 140 of the Rules of Procedure and Evidence, issues the following 'Decision on Legal Representatives' Request Regarding Opening Statements'.

1. On 27 November 2016, the Single Judge exercising the functions of the Pre-Trial Chamber in the present case, appointed Paolina Massidda from the Office of Public Counsel for Victims as the common legal representative of victims admitted to participate ('CLR') and noted at the same time that certain victims chose to be represented by Joseph Akwenyu Manoba and Francisco Cox ('LRs', together with the CLR, 'LRVs').¹ This system of representation was maintained at the trial stage.²
2. On 30 May 2016, the Chamber set 6 December 2016 as the trial commencement date.³
3. On 13 July 2016, the Single Judge issued the 'Initial Directions on the Conduct of Proceedings' ('Directions'), whereby he ruled that, with regard to opening statements, 'the LRVs will be given 2.5 hours to be divided between them as they see fit. [...] 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'.⁴

¹ Pre-Trial Chamber II, Decision on contested victims' applications for participation, legal representation of victims and their procedural rights, ICC-02/04-01/15-350.

² Decision on the 'Request for a determination concerning legal aid' submitted by the legal representatives of victims, 26 May 2016, ICC-02/04-01/15-445; Decision on Registry's Request for Clarification on the Issue of Legal Assistance Paid by the Court for the Legal Representatives of Victims, 14 November 2016, ICC-02/04-01/15-591.

³ Decision Setting the Commencement Date of the Trial, ICC-02/04-01/15-449.

⁴ ICC-02/04-01/15-497, para. 7.

4. On 21 November 2016, in accordance with the deadline set in the Directions,⁵ the LRs filed a notice regarding the opening statements indicating that, although the CLR wishes to open at the trial commencement,⁶ the LRs intend to present their opening statements following the conclusion of the Prosecution's evidence, rather than at the commencement of trial.⁷
5. On 22 November 2016, the Single Judge issued a decision indicating that the Directions require the CLR and LRs to open at the same time and directing them to liaise with a view to deciding whether they will do so at the beginning of the trial or after the presentation of the Prosecution's case ('22 November Decision').⁸
6. On 25 November 2016, the CLR and the LRVs filed a joint motion reiterating their request to hold their opening statements at two different points in time, thus enabling them to comply with their clients' instructions ('Request').⁹
7. The Single Judge considers that the Request amounts to a request for a reconsideration of the 22 November Decision. Reconsideration is exceptional and should only be done if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.¹⁰
8. The LRVs fail to satisfy this standard as they neither demonstrate that a clear error of reasoning has been made by the Single Judge in the 22 November

⁵ Directions, ICC-02/04-01/15-497, para. 7. In accordance with this same deadline, the Defence has indicated that it will open after the presentation of evidence of the Prosecution (Email from Defence to Prosecution and LRVs on 21 November 2016, 15:34 and 22 November 2016, 9:29 respectively).

⁶ See in this regard, Email from CLR to Chambers, parties and participants on 21 November 2016 at 12:04.

⁷ Legal Representatives of Victims' notification regarding opening statements, ICC-02/04-01/15-597, paras 2-9 ('LRs Notice').

⁸ Decision on Legal Representatives' Notification Regarding Opening Statements, ICC-02/04-01/15-602.

⁹ Victims' Joint Submission following the Decision regarding Opening Statements (ICC-02/04-01/15-602), ICC-02/04-01/15-607.

¹⁰ Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, 15 June 2016, ICC-02/04-01/15-468, para. 4 and footnote contained therein.

Decision nor do they present any new argument. Accordingly, the Single Judge maintains that the LRVs shall open at the same juncture.

9. The Single Judge notes that the beginning of the trial constitutes a unique symbolic moment in the trial and that, in the present circumstances where the CLR and the LRs fail to reach an agreement, it appears to be the best opportunity for the victims to present their views, which – in both the LRs’ and CLR’s submission – they have been waiting to do for years.¹¹
10. Further, the Single Judge recalls that the victims in this case are represented by two different teams by their own choice and do not have competing interests which would require separate representation.¹² Thus, having the LRs and the CLR hold their opening statements at two different points in time would inevitably lead to somewhat repetitive submissions, which would not be compatible with the principles of expeditiousness and efficiency of the proceedings.
11. The Single Judge finally notes the LRs’ submissions that they were not yet in a position to consult with all the victims they represent.¹³ Given the large number of victims represented by the LRs, the Single Judge understands that consultation with all the victims is a challenge. However, this does not supersede the above mentioned considerations.

¹¹ Request, ICC-02/04-01/15-607, paras 10 and 25; LR Notice, ICC-02/04-01/15-597, para. 9.

¹² 22 November Decision, ICC-02/04-01/15-602, para. 5.

¹³ Request, ICC-02/04-01/15-607, para. 26.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY:

REJECTS the Request; and

DIRECTS the CLR and the LRs to make their opening statements at the beginning of the trial.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Single Judge

Dated 29 November 2016

At The Hague, The Netherlands