

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 October 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

CONFIDENTIAL

**Defence Request to Amend the Schedule of the Second Article 56 of the Rome
Statute Hearing Pursuant to ICC-02/04-01/15-316-Conf**

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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Counsel for the Defence

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

(Participation/Reparation)

The Office of Public Counsel for Victims

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REGISTRY

Registrar

Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Victims Participation and Reparations Section Other

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') respectfully requests that the Single Judge modify the commencement date of the second proceedings ordered pursuant to Article 56 of the Rome Statute ('Statute'). In particular, it is requested that the proceedings are postponed by at least one week and commence on or after 9 November 2015.
2. The Defence further requests that the hearings be held with enough breaks as to enable Mr. Ongwen to follow the proceedings to the fullest extent.

II. CLASSIFICATION

3. Pursuant to Regulation 23*bis* (2) of the Regulations of the Court read together with Regulation 24(2) of the Regulations of the Registry, the Defence submits that this application, any further written pleadings it may generate, and any order made by the Single Judge should be classified as confidential since they relate to matters already classified as confidential as well as the personal circumstances of members of the Ongwen Defence Team.

III. PROCEDURAL HISTORY

4. On 27 July 2015, the Single Judge, Judge Tarfusser granted the Prosecution's motion requesting unique investigative measures under Article 56 of the Statute for witnesses P-226 and P-227.¹ The two witnesses were heard by Judge Tarfusser on 15 to 19 September 2015.
5. On 2 October 2015, the Prosecution filed its second request to have six witnesses, P-099, P-101, P-198, P-214, P-235, and P-236 ('Witnesses'), testify pursuant to Article

¹ ICC-02/04-01/15-277-Conf. See ICC-02/04-01/15-256-Conf. See also ICC-02/04-01/15-259-Conf.

56 of the Statute.² The Defence responded on 8 October 2015, opposing the application on several grounds.³

6. On 12 October 2015, the Single Judge, Judge Tarfusser issued his decision, ordering that the testimony of the Witnesses be heard pursuant to Article 56 of the Statute, commencing on 2 November 2015 through 19 November 2015, as necessary.⁴

IV. SUBMISSIONS

A. Request that Commencement date be moved by one week

7. The Defence submits that it has resource constraints that may impact its ability to adequately prepare for the examination of the Witnesses within the time stipulated by the Single Judge. Apart from the resource inadequacy for which the Registry has already been notified and additional request for funding made, the Defence notes that: (i) Mr. Thomas Obhof, the Defence Assistant to Counsel, has had to take an unexpected leave to attend to his ailing mother in the United States;⁵ and (ii) Ms. Abigail Bridgman, Case Manager, had a prior arranged leave scheduled from 25 October to 7 November 2015.
8. The Defence notes that Mr. Obhof and Ms. Bidgman have been responsible for extensively reviewing matters pertaining to the Witnesses. They are therefore important Defence personnel needed to assist Lead Counsel during the impending Article 56 proceedings. Their absence would therefore pose a great challenge to the

² See ICC-02/04-01/15-310-Conf, with confidential annexes.

³ ICC-02/04-01/15-314-Conf, with confidential annexes. The Single Judge shortened the deadline for filing the Defence response from 12 October 2015 to 8 October 2015.

⁴ ICC-02/04-01/15-316-Conf, para. 14.

⁵ It is noted that Mr. Obhof received notice of the seriousness of his mother's condition when on special assignment on 10 October 2015. He left for the United States at the earliest date possible of 13 October 2015. Whilst returning to Uganda on the date of this filing, he shall be heading back to the United States one week after returning.

efficiency with which Lead Counsel shall conduct the hearing scheduled to commence on 2 November 2015.

9. In this regard, the Defence further notes that the Single Judge allotted the Defence and Prosecution more than six (6) weeks to prepare for the first Article 56 proceedings, which involved only two (2) witnesses. In this instance, it is noted that the Defence is given only three (3) weeks to prepare its examination of six (6) witnesses.
10. In the interest of ensuring that the Defence has adequate time and resources to prepare its defence, it is hereby respectfully requested that the commencement of the Article 56 proceedings be moved from 2 November 2015 to on or after 9 November 2015.
11. The Defence further notes that it advised Mr Benjamin Gumpert, QC of the circumstances and that, in principle, the Prosecution did not oppose the request for a one-week postponement, subject to the availability of the six (6) witnesses.⁶
12. The Defence respectfully submits that a one-week postponement of the commencement of the Article 56 proceedings is reasonable in light of the circumstances noted above.

B. Hearings scheduled with sufficient breaks

13. During the first Article 56 of the Statute proceedings, Mr. Ongwen was sometimes unable to follow the entirety of the proceedings. In particular, the length of the consecutive examination of the witnesses without significant breaks negatively affected Mr. Ongwen and his ability to concentrate and follow the proceedings.

⁶ Email response from Benjamin Gumpert, QC to Michelle Oliel on 17 October 2015 at 11h00.

14. In light of Mr. Ongwen's right to examine the Witnesses in accordance with Article 67(1)(e) of the Statute, the Defence respectfully requests the hearings to be scheduled with more breaks than during the first Article 56 hearings. As the pace of the hearings was high and the days were long, Mr. Ongwen had a hard time following witness' testimony which caused him distress.
15. The Defence accordingly requests that *at least* one (1) day break is allotted between Witnesses so to ensure that Mr. Ongwen can follow the proceedings against him. Should this request be granted, it is also requested that the Single Judge schedule the hearings in such a way as to enable Mr. Ongwen to attend his English classes, which he indicates are a source of calm during stressful times.⁷

IV. RELIEF

16. The Defence requests that the Single Judge grant this application and order that the impending proceedings ordered pursuant to Article 56 of the Statute commence on or after 9 November 2015.
17. The Defence further requests that the Single Judge grants the Defence's request to schedule breaks in between Witnesses.

⁷ Mr. Ongwen's classes are scheduled every week on Monday's from 13h00 – 14h00 and Thursday's from 13h30 to 16h00.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 19th day of October, 2015

At Kampala, Uganda