

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 January 2016

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

CONFIDENTIAL EX PARTE (Defence Only)

**Defence Request to vary deadline pursuant to Regulation 35 of the Regulations of
the Court**

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

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

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

Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Defence for Mr Ongwen ('Defence') files this request to vary the time limit for submission of evidence it intends to use at the Confirmation Hearing pursuant to Regulation 35 of the Regulations of the Court ("RoC"). In particular, the Defence files this request in order to give it adequate time to secure the participation of one witness who can speak directly to the issues in question.

II. CLASSIFICATION

2. Pursuant to Regulation 23*bis* of the RoC read together with Regulation 24 of the Regulations of the Registry, the Defence submits this filing confidential *ex parte* as it relates to witnesses not yet disclosed for the Confirmation of Charges Hearing.

III. PROCEDURAL HISTORY

3. The date for the Confirmation Hearing had originally been set for 24 August 2015¹ but was later postponed to 21 January 2016.² Accordingly, the deadline for the Defence's transmission of a list of the evidence it intends to rely on at the Confirmation Hearing was set for 6 January 2016.
4. On 6 November 2015, the Defence filed its request to postpone the Confirmation Hearing by at least two months ("First Request").³ On 26 November 2015 and the Single Judge rejected the First Request⁴ as well as the Defence's subsequent request for leave to appeal ("Leave to Appeal").⁵

¹ ICC-02/04-01/05-T-10-ENG ET, p. 14, lns. 7-8.

² ICC-02/04-01/15-197.

³ ICC-02/04-01/15-336-Conf. The Prosecutor opposed the First Request (ICC-02/04-01/15-341-Conf).

⁴ ICC-02/04-01/15-348-Conf.

⁵ ICC-02/04-01/15-373-Conf.

5. On 30 December 2015, the Defence filed a second request to postpone the Confirmation Hearing ("Second Request").⁶ The Second Request was supported by the Victims' in their filing of 4 January 2016.⁷ The parties respectfully await a decision of the Single Judge.

IV. SUBMISSIONS

6. The Defence requests an extension of time pursuant to Regulation 35 of the RoC in order to vary the deadline for submission of its evidence it intends to use at the Confirmation Hearing. The variation is for a witness statement for potential witness D26-0002 only. All other evidence will be disclosed to the Prosecution at 18h00 on 6 January 2016.
7. The Defence recalls that it has previously expressed challenges in preparing for the Confirmation Hearing as set out in the First Request, Leave for Appeal, and Second Request. These challenges have impacted the ability of the Defence to finalise the list of evidence it intends to utilize and obtain consent for its usage. This problem was compounded by the holiday season which has resulted in, *inter alia*, the absence of third parties assisting the potential witness.
8. In particular, the Defence seeks a variation of time limit for one (1) week as it has been unable to finalise and obtain consent for the evidence given to the Defence by Witness D26-0002. D26-0002 has requested independent legal advice in relation to his participation in these proceedings prior to his participation.
9. It is noted that D26-0002 is a high profile individual with extensive experience in matters, including but not limited to, the LRA and child soldiers. The Defence notes that these issues are at the very heart of this case. The Defence further

⁶ ICC-02/04-01/15-385-Conf.

⁷ ICC-02/04-01/15-387. The Defence notes that The Prosecutor has yet to reply.

submits that Witness D26-0002's request is reasonable in light of his profile and knowledge and therefore warrants a variation of the deadline.

10. The Defence further considers its request to be reasonable given that the request for independent legal advice was not made when the Defence originally interviewed the Witness on 9 December 2015. Although the Defence has explained the procedure before the Court, the Defence also considers it reasonable to allow an individual to seek independent advice. Since D26-0002's potential participation is *integral* to the Defence case and its submissions at the Confirmation Hearing, the Defence hereby requests that the Single Judge grant this request.

11. The Defence finally notes that this request is without prejudice to its Second Request.

IV. RELIEF

12. The Defence hereby requests that the Single Judge vary the time limit by one (1) week in relation to disclosing D26-0002's witness statement to allow the Defence to obtain the necessary consent of this Witness.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 6th day of January 2016
At Kampala, Uganda