

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 1 June 2016

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Peter Kovacs
Judge Raul C. Pangalangan

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

Public

Request for variation of time limit

Source: The Office of the Prosecutor

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

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution requests, pursuant to regulation 35 of the Regulations of the Court ("Regulations"), a variation of the time limit set in paragraph 4 of the Chamber's "Decision Setting the Commencement Date of the Trial"¹ ("Decision") for the disclosure of summaries of anticipated testimony and the submission of a provisional list of witnesses. The Prosecution asks that the Chamber permit:
 - a. The disclosure of testimony summaries on a rolling weekly basis, starting on Tuesday 7 June 2016, with the totality of the summaries (as known to the Prosecution at that time) being provided no later than Tuesday 9 August 2016.
 - b. The submission of a provisional list of the witnesses the Prosecution intends to rely on at trial on Tuesday 7 June 2016, with further updated lists to accompany each weekly disclosure of testimony summaries.

The Current Order

2. The Decision requires the Prosecution to provide a provisional list of witnesses, with anticipated testimony summaries, by 1 July 2016. The effect of the Decision would be to compress the Prosecution's workload in a way which will put strain on its resources.
3. The Prosecution is presently drafting an application concerning the introduction of prior recorded testimony under rule 68(2)(b) of the Rules of Procedure and Evidence which will be filed on or before 13 June 2016. This will be a substantial filing, containing summaries of at least 45 witnesses, together with legal submissions as to why their statements can be introduced into evidence without the need for them to attend court.

¹ ICC-02/04-01/15-449.

4. The Prosecution is also drafting an application concerning the admission into evidence at the trial of the testimony of a further seven witnesses collected and preserved for trial under the provisions of article 56 of the Rome Statute.
5. There are currently 63 further witnesses (apart from those referred to in the two preceding paragraphs) whom the Prosecution intends to call to give live evidence in court at the trial. As prefigured in the Prosecution's submissions at the Status Conference, more may be added. To prepare brief but considered summaries for all of these witnesses is a task on which the Prosecution has not yet embarked and to which it will not easily be able to turn until 14 June 2016, leaving under three weeks for compliance.
6. The Defence would then be left with the prospect of having to digest the provisional list of witnesses and 63 or more testimony summaries served simultaneously on 1 July 2016, together with the continuing rolling disclosure which will continue between now and early September, in accordance with paragraphs 6 and 7 of the Decision. This would be in addition to reviewing the approximately 45 rule 68 witnesses and seven article 56 witnesses.

Submissions

7. The Prosecution submits that a more efficient path could be charted for both Parties, and possibly for the Chamber itself, if the Prosecution were required to start the process of providing testimony summaries earlier than required by the Decision and permitted to finish it later.
8. A provisional list of witnesses (including those to be called live, those proposed under rule 68(2)(b) and those under article 56) already exists. It includes time estimates. The Prosecution would be happy to serve it on 7 June

2016, long before the proposed deadline of 1 July 2016, provided that it is clearly understood that it is an aspirational document, rather than an immutable one.

9. The Prosecution would also undertake to provide to the Chamber, the Defence and the Legal Representatives of the Victims (“LRVs”), weekly disclosure of no fewer than six testimony summaries commencing on Tuesday 7 June 2016 and continuing on that and every succeeding Tuesday, together with an updated (but still provisional) list. On Tuesday 9 August 2016, the Prosecution would serve all remaining summaries, together with a further updated provisional list.

10. This would give the Defence, the LRVs and the Chamber earlier access, starting three weeks prior to the current deadline, to a considerable number of testimony summaries. It would prevent the Defence and LRVs from being deluged with material disclosed *en masse*. It would enable the Chamber, the Defence and the LRVs to see the identities and projected testimony lengths of all the witnesses the Prosecution *currently* intends to call immediately, rather than in a month’s time.

11. The Prosecution submits that the challenges described in paragraphs 2-6 and the advantages, to both Parties, set out in paragraphs 7-10 constitute “good cause”, as envisioned in regulation 35(2) for the requested variation of time limit.

12. The Prosecution has spoken to the Defence concerning these submissions. The Defence is understood to be content with the Prosecution proposals as set out herein.

Relief Requested

13. The Prosecution asks the Chamber to order that:

- a. The deadline of 1 July 2016, set in the Decision, for the service of a provisional list of prosecution witnesses (with summaries of anticipated witness testimony) is vacated;
- b. The Prosecution shall serve on the Chamber, the defence and the LRVs, on a rolling weekly basis, starting on Tuesday 7 June 2016, summaries of the testimony that it anticipates its witnesses will give, no fewer than six such summaries being served each week;
- c. The Prosecution shall serve the totality of the summaries (as known to the Prosecution at that time) no later than Tuesday 9 August 2016;
- d. The Prosecution shall serve a provisional list of the witnesses the Prosecution intends to rely on at trial on Tuesday 7 June 2016, with further updated lists to accompany each weekly disclosure of testimony summaries.



Fatou Bensouda
Prosecutor

Dated this 1st day of June 2016
At The Hague, The Netherlands