

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **16 June 2016**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

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

Public

**Corrected Version of “Defence Request for Variation of the Time Limit for its
Response to the Prosecution’s Request Pursuant to Rule 68(2)(b) of the Rules”,
filed on 16 June 2016**

Source: Defence for Dominic Ongwen

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

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James Stewart, Deputy Prosecutor
Benjamin Gumpert, QC

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Common Legal Representative for Victims

Paolina Massidda
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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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**Victims Participation and Reparations Other
Section**

I. INTRODUCTION

1. Pursuant to Regulation 35 of the Regulations of the Court ('RoC'), the Defence for Dominic Ongwen ('Defence') hereby requests a variation of the time limit to file its response to the "Prosecution's request for introduction of previously recorded testimony pursuant to rule 68 of the Rules ('Rule 68 Application')."¹ The Defence respectfully requests an additional three (3) weeks to respond to the Rule 68 Application, which would give a response date of 26 July 2016.

II. BACKGROUND

2. On 18 May 2016, the Prosecution notified Trial Chamber IX ('Chamber') that it intended to submit approximately 45 witness statements to the Chamber pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence ('Rules').² This was reaffirmed during the 23 May 2016 Status Conference.³
3. On 23 May 2016, the Chamber granted the Prosecution's request for a 60 page limit for its Rule 68 Application.⁴
4. On 13 June 2016, the Prosecution requested to submit testimony of seven (7) persons taken pursuant to Article 56 ('Article 56 Application').⁵
5. On 13 and 14 June 2016, the Defence contacted the Prosecution, Common Legal Representative for the Victims and Legal Representatives for the Victims (collectively 'Legal Representatives'), and asked if any of them would oppose a request for a three (3) week extension to file its response to the Rule 68(2)(b)

¹ ICC-02/04-01/15-467-Conf.

² ICC-02/04-01/15-438, para. 11.

³ ICC-02/04-01/15-T-ENG, pg. 36:4-10.

⁴ ICC-02/04-01/15-T-ENG, pg. 36:11-13.

⁵ ICC-02/04-01/15-464.

Application from the Prosecution. All three (3) stated that they had no objections.⁶

6. On 14 June 2016, the Parties and Participants received the official notification of the Prosecution's Rule 68 Application, which requests the introduction into evidence 38 witnesses' statements and supporting documents.⁷

III. SUBMISSIONS

7. Pursuant to Regulation 35(1) of the RoC, "[a]pplications to extend or reduce any time limit [...] shall be made orally or in writing to the Chamber [...] setting out the grounds on which the variation is sought." Regulation 35(2) of the RoC requires the submitting party or participant to show good cause for the requested extension, and if desired, the Chamber may seek observations from the parties and participants on said request.
8. The Defence makes the request owing to the volume of witnesses, 38 in total for this request, which it must review or review anew in light of the Prosecution's submissions. The Defence also notes that it must submit observations on the Prosecution's request to admit prior recorded testimony of seven (7) persons taken pursuant to Article 56 of the Rome Statute.⁸ The Defence is not seeking an extension for this response, but will require the full time allowed under Regulation 34(b) of the RoC.

⁶ Telephone conversation between Mr Benjamin Gumpert, QC, of the Prosecution and Mr Thomas Obhof of the Defence, at 15h05 CET on 13 June 2016 (Mr Gumpert reaffirmed the Prosecution's position on 14 June 2016 via email at 16h10 CET); email received from Ms Paolina Massidda by Thomas Obhof at 15h13 CET on 14 June 2016; email received from Megan Hirst (on behalf of LRV Counsels) by Thomas Obhof (on behalf of Counsel) at 14h25 CET on 15 June 2016. The Legal Representatives for the Victims indicated that "our team has no objection to the defence request on this issue so long as it does not result in any delay to the start of trial."

⁷ See ICC-02/04-01/15-467-Conf, para. 1.

⁸ ICC-02/04-01/15-464.

9. If the Defence were to abide by the current response date of 6 July 2016, the Defence would be under serious time constraints to review all the material which the Prosecution proposes to submit pursuant to Rule 68(2)(b). If the Defence reviewed every day, it would need to review 1.81 witnesses per day, which does not include the seven (7) witnesses in the Article 56 Application. The Defence still has limited full time personnel, and will have all available persons reviewing said material during this period, but it has two (2) separate field missions planned during this time period, which has four (4) members deployed on mission through 27 June 2016 and three (3) members through 11 July 2016.⁹
10. Furthermore, the Prosecution informed the Defence that it took about six (6) weeks to prepare the Rule 68 Application. The Defence merely asks for equal time. The Defence maintains that the proposed response date of 26 July 2016 complies with Article 67(1)(b) of the Rome Statute, which gives the Accused the right, in full equality, “[t]o have adequate time [...] for the preparation of the defence...”.
11. Finally, the Prosecution disclosed four (4) disclosure packages on 15 June 2016. This disclosure contained 19,418 pages of material. The disclosure on 16 May 2016 was 7,459 pages. The disclosure of 15 June 2016 increased the Defence’s workload by 24.4%.
12. For the abovementioned reasons, the Defence respectfully requests the Chamber to grant the Defence, and the Legal Representatives by proxy, until 26 July 2016 to file its response to the Rule 68 Application. It is the reasoned opinion of the Defence that the amount of witnesses which it must

⁹ These field missions were submitted to CSS via email on 1 June 2016 at 08h27 CET and 8 June 2016 at 11h16 CET.

comprehensively review in the short period allotted by Regulation 34(b) of the RoC, compounded by the amount of material received on 15 June 2016, shortages in personnel and two (2) separate field missions during this period, demonstrates good cause required for a variation of a time limit pursuant to Regulation 35(2) of the RoC.

IV. RELIEF

13. The Defence respectfully requests the Chamber to allow the Defence, and by proxy, the Legal Representatives, until 26 July 2016 at 16h00 CET to file responses to the Prosecution's Rule 68 Application.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 16th day of June, 2016

At Kampala, Uganda