

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **29 August 2019**

TRIAL CHAMBER IX

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

SITUATION IN UGANDA

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

PUBLIC

Defence Request for Variation of the 30 September Deadline

Source: Defence for Mr 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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Mr Charles Achaleke Taku
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Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
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Ms Paolina Massidda
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REGISTRY

Registrar

Peter Lewis

I. SUBMISSIONS

1. Pursuant to Regulation 35 of the Regulations of the Court ('RoC'), the Defence for Mr Dominic Ongwen ('Defence') requests that the Trial Chamber IX ('TC IX') vary the deadline of 30 September 2019 ('30 September Deadline') concerning 'new requests related to the introduction of evidence or any other matter concerning evidence at this stage of the proceedings'.¹
2. The present request demonstrates good cause and is necessary in order to uphold the 'fair and expeditious conduct of the proceedings' pursuant to Article 64(2) of the Rome Statute ('Statute') and to preserve Mr Ongwen's fair trial rights under Article 67(1)(b) and (e) of the Statute.²

A. Pending and Potential Requests Related to Rebuttal and Rejoinder Evidence

3. If the pending and potential requests for rebuttal evidence from the Prosecution are granted, and then, if the Defence potential requests for rejoinder evidence are granted, the case is not complete until these stages of the proceedings are finished. These stages are likely to require additional evidence and investigations, which could reasonably result in Defence requests to add material to its list of evidence and requests to add witnesses to its list of witnesses.
4. Furthermore, these advanced stages could potentially require the Defence to file requests related to the 'submission of items into evidence' as well. In particular, it is possible that the rejoinder evidence stage may result in the Defence filing a request under Rule 68(2)(b) of the Rules of Procedure and Evidence ('Rules') and/or a request to submit related items into evidence via 'bar table'. In other words, the Defence cannot reasonably make such requests until the evidence it may seek to rejoin has been presented.
5. Therefore, the Defence requests that TC IX vary the 30 September Deadline and allow the Defence to file additional requests concerning 'the introduction of new evidence',³ if the pending and potential requests for rebuttal and rejoinder evidence from the Prosecution and the Defence are granted. Resolution of this matter at this point is supported by good cause,

¹ *Ongwen*, Order Setting a Deadline for Evidence Related Requests, [ICC-02/04-01/15-1570](#) ('**Order**'); see also *Ongwen*, Clarification on Order Setting a Deadline for Evidence Related Requests, [ICC-02/04-01/15-1572](#) ('**Clarification**').

² *Katanga*, Judgment pursuant to article 74 of the Statute, [ICC-01/04-01/07-3436-tENG](#), para. 1572: "[t]he right to adequate time and facilities for the proper preparation of the defence presupposes that the Defence team will have sufficient time to conceive, prepare and raise meaningful and effective grounds of defence which are tailored to its case."

³ [Clarification](#), para. 5.

because it will avoid the parties from potentially litigating the matter again as the rebuttal and rejoinder evidence stages unfold.

B. ‘Bar Table Motion(s)’ and ‘Rule 68(2)(b) Application(s)’

6. Irrespective of the requests concerning rebuttal and rejoinder evidence stages, the Defence requests that TC IX postpone the 30 September Deadline until 1 November 2019 (Friday), as concerns the Defence request(s) to submit material into evidence via ‘bar table’ and application(s) for introduction of prior recorded testimony under Rule 68(2)(b) of the Rules.
7. The Defence is not in a position to meet the 30 September Deadline as concerns the ‘bar table motion(s)’ and Rule 68(2)(b) application(s). The Defence endeavours to continue to act in the spirit of ‘fairness and expeditiousness’. However, without the postponement until 1 November (32 calendar days), the Defence will simply not have adequate time and resources to scrutinise all the remaining items on its list of evidence and responsibly decide which items it should seek to submit into evidence via ‘bar table motion(s)’.
8. When tendering material through the ‘bar table motion(s)’, the moving party is expected to litigate the admissibility and/or relevance of each item of evidence, with sufficient clarity and specificity. The sufficiently detailed and precise submissions are, naturally, necessary for the success of the Defence’s request, but also enable the parties and participants to make informed responses and the Chamber to resolve the matter in a fair and expeditious manner. In the Defence’s view, this ground also constitutes good cause.
9. Moreover, the ongoing trial-litigation and preparations for the remaining factual and expert witnesses require a significant amount of the Defence resources. As it stands, the Defence will not have enough time and personnel to produce a complete and detailed ‘bar table motion’ by the 31 September Deadline. Therefore, an extra 32 calendar days would allow the Defence team members to divide the additional time effectively among the remaining tasks, resulting in delivery of the final products in a complete and professional manner.⁴

⁴ The Human Rights Committee has held that “[w]hat counts as “adequate time” depends on the circumstances of each case” noting, further, that “[i]f counsel reasonably feel that the time for the preparation of the defence is insufficient, it is incumbent on them to request the adjournment of the trial”, see Human Rights Committee, General Comment No. 32: Article 14, Right to equality before courts and tribunals and to a fair trial, 23 August 2007, [CCPR/C/GC/32](#), para. 32, citing: No. 1128/2002, [Morais v. Angola](#), para. 5.6; Similarly, No.

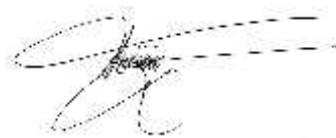
10. In relation to Rule 68(2) application(s), the Defence notes that it has three outstanding certifications for Rule 68(2)(b). The Defence contacted the Registry about a joint mission for these final certifications in July 2019. Until recently, the Defence aimed to conduct this mission immediately following the evidence block ending 1 October 2019. The Defence also notes that it shall be applying to add one more Rule 68(2)(b) witness. The Defence anticipates that this witness's statement could be certified during the same mission after this witness block.

II. RELIEF SOUGHT

11. For the reasons stated above, the Defence requests that TC IX:

- A) **GRANT** the Defence Request;
- B) **VARY** the 30 September Deadline and **ALLOW** the Defence to file additional requests concerning 'the introduction of new evidence', if the pending and potential requests for rebuttal and rejoinder evidence from the Prosecution and the Defence are granted; and
- C) **POSTPONE** the 30 September Deadline until 1 November 2019, as concerns the request(s) to submit material into evidence via 'bar table' and the application(s) for introduction of prior recorded testimony under Rule 68(2)(b) of the Rules.

Respectfully submitted,



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Hon. Krispus Ayena Odongo

On behalf of Dominic Ongwen

Dated this 29th day of August, 2019

At Kampala, Uganda

349/1989, [Wright v. Jamaica](#), para. 8.4; No. 272/1988, *Thomas v. Jamaica*, para. 11.4; No. 230/87, [Henry v. Jamaica](#), para. 8.2; Nos. 226/1987 and 256/1987, [Sawyers, Mclean and Mclean v. Jamaica](#), para. 13.6.