

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 30 May 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**

**Decision Setting the Commencement Date of the Trial**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
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**Counsel for the Defence**

Krispus Ayena Odongo

**Legal Representatives of Victims**

Joseph Akwenyu Manoba and Francisco  
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**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Isabelle Guibal

**Others**

**Trial Chamber IX** ('Chamber') of the International Criminal Court issues the following 'Decision Setting the Commencement Date of the Trial', in the case of *The Prosecutor v. Dominic Ongwen*, pursuant to Article 64(3) of the Rome Statute and Rules 101 and 132 of the Rules of Procedure and Evidence ('Rules').

1. On 23 May 2016, the Chamber held a status conference in order to set the date of the trial ('Status Conference').<sup>1</sup> This status conference was preceded by written submissions<sup>2</sup> from the Office of the Prosecutor ('Prosecution'),<sup>3</sup> the defence for Mr Ongwen ('Defence'),<sup>4</sup> the Legal Representatives for Victims ('LRVs')<sup>5</sup> and the Registry.<sup>6</sup>
2. In the present decision, the Chamber will set the commencement date of the trial and fix the attendant calendar leading up to this date. The Chamber will address each part of the calendar in turn.

**A. Provisional list of Prosecution witnesses (with summaries of anticipated witness testimony)**

3. The Chamber wishes to receive a provisional indication of the Prosecution's witness list, along with brief summaries of their anticipated testimonies. The Chamber appreciates the Prosecution's argument that early projections of its prospective witnesses may be subject to considerable changes.<sup>7</sup> Nevertheless, the Chamber considers that having some preliminary indications of the Prosecution's witness list – together with brief summaries which also include the estimated length of testimony - prior to the disclosure deadline and pre-trial

<sup>1</sup> Transcript of Hearing, ICC-02/04-01/15-T-25-ENG.

<sup>2</sup> See Order Scheduling First Status Conference and Other Matters, 4 May 2016, ICC-02/04-01/15-432.

<sup>3</sup> Prosecution Submissions in Accordance with the Scheduling Order of 4 May 2016, 18 May 2016, ICC-02/04-01/15-438.

<sup>4</sup> Public Redacted Version of "Defence Submissions in Advance of the 23 May 2016 Status Conference", 18 May 2016, ICC-02/04-01/15-439-Red2 (with four annexes; confidential ex parte and confidential redacted versions of main filing notified same day).

<sup>5</sup> Common Legal Representative's submissions pursuant to the "Order Scheduling First Status Conference and Other Matters", 18 May 2016, ICC-02/04-01/15-437; Corrected Version of Submissions on Items Defined for the Status Conference on 23 May 2016, ICC-02/04-01/15-433-Corr (originally notified on 13 May 2016).

<sup>6</sup> Registry Submissions on the Order Scheduling the First Status Conference and Other Matters, 18 May 2016, ICC-02/04-01/15-440.

<sup>7</sup> Status Conference, ICC-02/04-01/15-T-25-ENG, page 25 line 3 to page 26 line 24.

brief, even if later revised in several aspects, would facilitate the Chamber's understanding of the Prosecution's upcoming evidence presentation and the Defence's preparations.

4. The Prosecution must provide a provisional list of witnesses, with anticipated testimony summaries, by 1 July 2016. These documents must be made available to the Defence and LRVs, with redactions as applicable. This provisional list may be changed by the Prosecution between this date and the final list of witnesses deadline without leave of the Chamber.

**B. Disclosure of material in the Prosecution's possession, final list of Prosecution witnesses (with summaries of anticipated witness testimony), Prosecution list of evidence and pre-trial briefs**

5. The Chamber considers it appropriate to set a deadline for the Prosecution to disclose any incriminating material it intends to rely on at trial. The Prosecution submits that this should come three months prior to the trial commencement, while the Defence argues for a six month deadline.<sup>8</sup> The Prosecution also indicates that it could reasonably finish its disclosure review of the materials in its possession by 5 September 2016.<sup>9</sup>
6. Noting that disclosure has been conducted on a monthly rolling basis in this case and that most of the material falling under the Prosecution's disclosure obligations appear to have been disclosed,<sup>10</sup> the Chamber agrees with the Prosecution that a disclosure deadline three months prior to the commencement of trial is sufficient notice for the Defence. The Chamber does not consider it relevant that previous Chambers gave more than three months in actual practice – this case's deadline must be decided on its own facts, and many of these past

<sup>8</sup> Status Conference, ICC-02/04-01/15-T-25-ENG, page 20 line 12 to page 24 line 17.

<sup>9</sup> ICC-02/04-01/15-438, para. 7.

<sup>10</sup> ICC-02/04-01/15-438, paras 5-6 (79,611 pages of materials have already been disclosed by the Prosecution, while only 49,000 pages – plus an additional 4500 pages generated from transcriptions of interviews - remain to be reviewed for disclosure to the Defence).

Chambers actually did set three month disclosure deadlines (with additional time being given only incidentally due to trial postponements).<sup>11</sup>

7. This disclosure deadline is therefore set three months prior to the commencement of trial. By this date, the Prosecution must have reviewed all the materials in its possession and disclosed all materials falling under its disclosure obligations. The Prosecution may – and in some cases, must<sup>12</sup> – continue disclosing materials after this date, but leave of the Chamber is required for the Prosecution to rely on materials disclosed after the deadline as incriminating evidence at trial.<sup>13</sup> The Prosecution is expected to disclose material on a rolling basis up until the deadline.
8. By this same deadline, the Prosecution is also expected to provide: (i) its final list of witnesses (with summaries of anticipated witness testimony and estimated length of testimony); (ii) a list of evidence, containing the materials which the Prosecution intends to submit as evidence during trial and (iii) its pre-trial brief. Witnesses and evidence may be added to these lists after the deadline only with leave of the Chamber. Should the other participants wish to file their own pre-trial briefs by the same deadline as the Prosecution, they may also do so.

### **C. Applications by victims to participate in the proceedings**

9. In order to facilitate the fair and expeditious conduct of the proceedings, the Chamber considers it appropriate to set a cut-off date for transmission of victim applications to participate at trial. Such a deadline ensures that victims' counsel fulfil their mandates consistently during trial – because their client base is settled

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<sup>11</sup> See ICC-02/04-01/15-439-AnxA (chart indicating a three month gap between the disclosure date and the original trial date in the *Ruto and Sang, Kenyatta and Ntaganda* trials). See also Trial Chamber VII, *The Prosecutor v. Bemba et al.*, Order setting the commencement date for trial, 22 May 2015, ICC-01/05-01/13-960, paras 11-12.

<sup>12</sup> E.g. Article 67(2) of the Statute (potentially exculpatory evidence must be disclosed 'as soon as practicable').

<sup>13</sup> The Prosecution has already indicated that it requires additional time to provide certain items, such as Acholi translations of certain witness statements and electronic visual representation evidence. These issues will be addressed by way of a separate decision on disclosure matters arising out of the Status Conference.

by the trial commencement – and also avoids diverting time and resources away from the conduct of the trial after it begins. Accordingly, the Chamber rejects the arguments of the LRVs that victim applications should be assessed on a rolling basis throughout the trial.<sup>14</sup>

10. The Chamber considers that the deadline for the Registry to transmit all applications to participate in the trial should be set 60 days before it commences. This deadline is without prejudice to receipt and review of subsequent applications to participate in any reparations proceedings which could occur in this case.

#### **D. Motions requiring resolution prior to the commencement of trial**

11. As has been done in previous cases, and in order to ensure that no issues affecting the commencement of the trial are unresolved by the commencement date, the Chamber sets a deadline for all motions which require resolution prior to the commencement of trial. This deadline will be set just over a month prior to the commencement of the trial.

#### **E. Commencement date of the trial**

12. The Chamber notes the Prosecution's submission that the trial can start in early December 2016 and the Defence submission that it cannot give an estimate until the disclosure calendar is resolved.<sup>15</sup> Noting the three month disclosure deadline set out above, the Chamber decides that the trial will commence on 6 December 2016. The Chamber will only hear opening statements as of this date – the evidence presentation in the case will commence in January 2017. The exact date for the presentation of evidence will be conveyed to the parties in due course.

<sup>14</sup> Status Conference, ICC-02/04-01/15-T-25-ENG, page 33 line 5 to page 34 line 5.

<sup>15</sup> ICC-02/04-01/15-438, para. 2; ICC-02/04-01/15-439-Red2, paras 5-6, 13.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**DECIDES** that the trial will commence on **Tuesday, 6 December 2016**; and

**SETS** the following deadlines leading up to the trial commencement:

**1 July 2016:** Provisional list of Prosecution witnesses (with summaries of anticipated witness testimony).

**6 September 2016:** Disclosure of material in the Prosecution's possession, final list of Prosecution witnesses (with summaries of anticipated witness testimony), Prosecution list of evidence, pre-trial briefs.

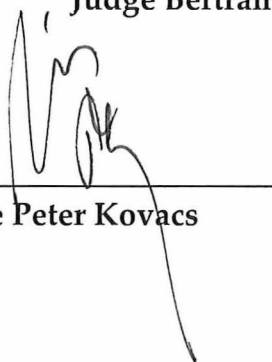
**6 October 2016:** Transmission by the Registry of applications by victims to participate in the proceedings.

**28 October 2016:** Motions requiring resolution prior to the commencement of trial.

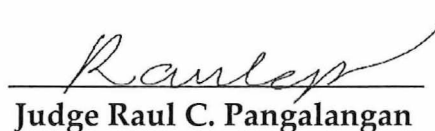
Done in both English and French, the English version being authoritative.



**Judge Bertram Schmitt, Presiding Judge**



**Judge Peter Kovacs**



**Judge Raul C. Pangalangan**

Dated 30 May 2016

At The Hague, The Netherlands