

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **17 September 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

**Prosecution's request for the Trial Chamber to order the Defence to specify a date
for the testimony**

Source: The Office of the Prosecutor

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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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

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Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution recognises that the scheduling of the trial is a matter for the Trial Chamber.
2. The submissions below are made in an effort to bring the presentation of evidence to an orderly conclusion as rapidly as is consistent with the interests of justice. The Prosecution recognises that there may be other considerations, of which it is unaware, which will affect the schedule.
3. It appears from correspondence between the Prosecution and the Defence that the Defence psychiatric experts, Drs Akena and Ovuga (D-0041 and D-0042) may testify in the week beginning 25 November (or possibly a week earlier). The Prosecution estimates that the totality of questioning may be a day and a half for each expert. That would (on the later date) take proceedings to the end of Thursday 31 November.
4. In June 2018, immediately after the testimony of the Prosecution experts was complete, the Defence psychiatric experts wrote a new report.¹ Two new diagnoses of mental disease or defect² were made in that report and it contains a significant quantity of new material by way of remarks attributed to Mr Ongwen and advanced as evidence in support of the report's conclusions.
5. It is almost inevitable that the Prosecution will ask the Trial Chamber for permission to call evidence in rebuttal because expert witnesses who gave evidence during the prosecution case did not have the opportunity to address this new material. Such rebuttal evidence is likely to be in the shape of a further report and brief testimony from Professor Weierstall. However, it will not be possible to make a final decision about the application until after the testimony of the Defence Experts, which will certainly be after the deadline of 30 September.

¹ UGA-D26-0015-0948.

² Dissociative Amnesia and 'symptoms' of OCD.

6. The Prosecution's submission, subject to the Court's ruling on its probable application, would be that Professor Weierstall should be physically present in the courtroom during the testimony of the Defence experts.

7. The Prosecution would then ask him, over the three days following the conclusion of that testimony, to write his further report and serve it on the Chamber, parties and participants, as part of the application to adduce evidence in rebuttal, hopefully as early as Monday 2 December.

8. The Prosecution would then call Professor Weierstall to give his evidence as soon as the Chamber thought it appropriate. If the Defence want to call evidence in rejoinder they would be able to do so immediately thereafter. Subject to any other evidence in rebuttal (at present the Prosecution only foresees the already announced evidence of Prof. Blattman) it should be possible to conclude the oral evidence in the week beginning 2 December 2019.

9. All of this is dependent upon there being a fixed date on which the Defence experts will testify. Professor Weierstall has significant clinical and academic commitments. He needs a reasonable amount of certainty and notice, as would be expected of any busy expert witness.

10. The Prosecution has communicated with the Defence on this subject, and requested that it specify a date on which its expert witnesses will begin their testimony. A draft of the submissions contained in this filing was also sent to the Defence by email, seeking their agreement, or at least their indication of whether any parts of it could be agreed between the parties. To date, the Prosecution has received no substantive response.

11. The Prosecution asks the Trial Chamber, first, to require the Defence to specify a date on which its expert witnesses will begin their testimony, and second, to consider whether the approach suggested in this mail as to the timing of any

consequent rebuttal and rejoinder evidence which the Trial Chamber may permit, is appropriate.

12. In the alternative, the Prosecution requests the Trial Chamber to consider whether it can, at this stage, give directions as to any other approach which will enable the parties, and their witnesses, to make plans for a smooth and efficient conclusion to the evidence in this case.



Fatou Bensouda, Prosecutor

Dated this 17th day of September 2019
At The Hague, the Netherlands