

1 International Criminal Court

2 Pre-Trial Chamber II - Courtroom 2

3 Situation: Uganda

4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15

5 Single Judge Cuno Tarfusser

6 Article 56 Proceedings

7 Monday, 23 November 2015

8 *(The proceedings start in closed session at 9.33 a.m.) Reclassified as open session

9 SINGLE JUDGE TARFUSSER: Good morning. This will be quite a

10 short -- probably quite a short hearing because it's just to close the proceedings, the

11 Article 56 proceedings.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted) Therefore, I take the opportunity for

6 this morning to ask parties if they have some issues to raise in connection with this

7 Article 56 proceedings. Otherwise, I will have to -- we close it.

8 Prosecutor?

9 MS ADEBOYEJO: Thank you, Mr President, your Honour. First of all, let me

10 apologise for the absence of Mr Gumpert. His mother has taken ill and that's why

11 he's not here.

12 For the Prosecution, we don't have any further observations per se. We wanted to

13 leave it in the hands of the Judge that if there are any matters that you wanted us to

14 address specifically, then we could address them.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 SINGLE JUDGE TARFUSSER: Well, and this could be done only before the

24 confirmation of charges because otherwise after the confirmation, I think there is no

25 possibility for the Single Judge to proceed with this and then you have to go to the

1 trial and do it at trial.

2 The Defence?

3 MR ODONGO: Yes, good morning, your Honour. Your Honour, we don't have
4 much but -- specifically on the Article 56, but permit us, your Honour, to just make
5 brief observation by way of oral addendum to our filing.

6 Your Honour, this is all about our request for postponement of confirmation of

7 hearing. We want to bring to your attention, your Honour, that since the filing the

8 Prosecution has disclosed an addition of 5,817 pages of disclosures, which includes 28
9 new witnesses and 45 hours of enhanced audio intercepts.

10 Your Honour, we don't have to overemphasize the disproportionate availability of
11 resources to the Defence vis-à-vis what perhaps is available to Prosecution.

12 And given that we've got to prepare ourselves against all these disclosures, it is our
13 very fervent appeal by way of this oral addendum, your Honour, that this

14 Honourable Court may be pleased to look sympathetically at our request for

15 postponement of the confirmation of charges hearing because given the timeline now,
16 it would appear it would be very oppressive on the Defence to hurry through what
17 has been disclosed now.

18 I thank you, your Honour.

19 SINGLE JUDGE TARFUSSER: Yes, on this we will issue a decision soon on the
20 postponement and I take note of what you additionally said.

21 I ask the Prosecutor if there is something to add to this?

22 MS ADEBOYEJO: Your Honours, well, the only thing I can add, I'm grateful to your
23 Honour for indicating that the filings are already before you, submissions by the
24 parties -- written submissions are already before you, and so I am not sure that the
25 additional addendum from my learned friend really would add to that.

1 I think that the important thing we can only point out to your Honour is that the
2 Prosecution had, whilst carrying out its disclosure, invited the Defence to
3 communicate the themes or key words that they consider helpful for their preparation.
4 So we had actually offered to assist in terms of going through some of these materials
5 because we know the volume that is involved, and we are still awaiting from the
6 Defence what the themes are that they would require in order to help them carry our
7 searches that they need for their preparation. That's what we're prepared to add.

8 SINGLE JUDGE TARFUSSER: Mr Obhof.

9 MR OBHOF: We do admit that the Prosecution did ask us about the themes, but
10 requesting us to hand over themes is asking us to show our hand before we're legally
11 required. It requires us to at least put forth some type of -- I wouldn't say evidence,
12 especially in areas where the Rome Statute doesn't require you in the Rules of
13 Procedure and Evidence anywhere between 15 to 3 days before the hearing. It
14 would essentially be saying: Dear Prosecution, this is what we're going to present
15 nine months in advance before the confirmation of hearing happens.
16 It's just not something they can require from the Defence.

17 Thank you, your Honour.

18 SINGLE JUDGE TARFUSSER: Well, I --

19 MS ADEBOYEJO: Your Honours -- I'm sorry, your Honour. I just -- I think that the
20 important thing to point out is that this was done in good faith because the
21 Prosecution took cognizance of the fact that there was a large volume. And I'm glad
22 that my learned friend has based his addendum arguments this morning on the
23 volume. And we weren't expecting that it was for them to show their hand. What
24 we had indicated was that there were themes or key words that we could use to assist
25 them.

1 It was -- it was a gesture of good faith, not for them to reveal their hand with regards
2 to what their defence theory is.

3 SINGLE JUDGE TARFUSSER: Okay. I believe both that the Chamber has very
4 clear idea on all these things.

5 So the only thing I have to say then by concluding, by concluding these proceedings is
6 that in my decision 316 confidential of 12 October 2015 I order that the testimonies
7 under Article 56 be video recorded and the video recordings shall be filed in TRIM, in
8 TRIM the record of the case. The simplest way is to file these video recordings as
9 annex to the report by the Registrar on an Article 56 proceedings for each witness,
10 including Witness P-198, of course, although it's not completed, but for what -- for the
11 time she was answering.

12 For the benefit of any future proceedings, this report should also include the
13 references to the relevant transcripts. This applies also to the testimonies of Witness
14 226 and 227 which were given in September this year and which were video recorded
15 in compliance with my decision number 277 confidential of 27 July 2015 but not
16 yet -- they are not yet uploaded in TRIM.

17 So I would ask the Registrar -- well, I would order more than ask the Registrar to do
18 this to the benefit of the parties and to put it in the record of the case, video and
19 transcript.

20 And I think that is all and therefore I declare this Article 56 proceedings as concluded.

21 Thank you very much for your collaboration. Thank you to all, especially to the
22 Acholi translators I would say. The (Redacted) translators were not very much -- they
23 haven't had to do many efforts, but at least we know now that we have trained two
24 (Redacted) translators, which is also good.

25 Thank you to the parties also for their way of questioning the witnesses, which

1 was delicate enough given the arguments we had to deal with.

2 And well, this hearing is adjourned. Thank you.

3 *(The hearing ends in closed session at 9.47 a.m.) Reclassified as open session

4 RECLASSIFICATION REPORT

5 Pursuant to Trial Chamber IX 's Order, ICC-02/04-01/15-584-Conf, dated 4 November

6 2016, the version of the transcript with its redactions becomes Public.