

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 5 September 2018

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public-redacted version of

Decision on Defence Request for Amendment of the Seating Schedule

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Benjamin Gumpert

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of Victims

Joseph Akwenyu Manoba
Francisco Cox
Paolina Massidda

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

Registrar
Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(2) and 67 of the Rome Statute, Rule 132 *bis* (5)(e) of the Rules of Procedure and Evidence, and Regulation 23 *bis* of the Regulations of the Court, issues the following 'Decision on Defence Request for Amendment of Seating Schedule'.

1. On 20 August 2018, the Chamber informed the parties, participants and the Registry via e-mail of the remaining seating schedule for 2018 ('Seating Schedule').¹ It indicated the day of the opening statements for the defence of Mr Ongwen ('Defence'), four full weeks of court hearings and 3 weeks during which there would be hearings on some days and not others.²
2. On 29 August 2018, the Defence filed a request to amend the Seating Schedule ('Request').³ Therein, it cites to a report [REDACTED],⁴ containing a recommendation that there should be no hearings Wednesdays during a five-day court week, [REDACTED] ('Recommendation').⁵ The Defence argues that the Recommendation necessitates an amendment to the Seating Schedule and submits a proposal.⁶
3. On 3 September 2018, the Office of the Prosecutor ('Prosecution') filed its response,⁷ opposing the Request.⁸

¹ E-mail from the Chamber to the parties and participants and the Registry, 20 August 2018, at 9:35.

² The complete hearing schedule can be found on the official website of the Court.

³ Defence Request in Light of the Trial Chamber IX's Trial Hearings Dates Schedule for the Remainder of 2018, ICC-02/04-01/15-1326-Conf.

⁴ Defence Notification of Medical Report as Ordered by Trial Chamber IX, 15 August 2018, Defence Notification of [REDACTED] as Ordered by Trial Chamber IX, 15 August 2018, ICC-02/04-01/15-1321-Conf.

⁵ ICC-02/04-01/15-1321-Conf, para. 12(3).

⁶ Request, ICC-02/04-01/15-1326-Conf, para. 11.

⁷ Prosecution's Response to "Defence Request in Light of the Trial Chamber IX's Trial Hearings Dates Schedule for the Remainder of 2018", ICC-02/04-01/15-1326-Conf, ICC-02/04-01/15-1328-Conf. The Legal Representatives for Victims and the Common Legal Representatives for Victims both indicated via e-mail that they do not oppose the Request. E-mails to Trial Chamber IX Communications inbox on 29 September 2018, at 15:40 and on 30 September 2018, at 18:11.

⁸ On 4 September 2018, the Defence of Mr Ongwen sent an e-mail to the Trial Chamber IX Communications inbox replying to 'correct factual inaccuracies in the Prosecution Response'. The Single Judge will not let the

4. The Single Judge notes that no public redacted version of the Request has been filed and instructs the Defence to do so with three days of the notification of this decision. Upon receiving that version, the Prosecution is instructed to promptly do the same and file a public redacted version of its response.
5. The Single Judge is of the view that it is not necessary to amend the Seating Schedule at this point in time. He assures the Defence that the Chamber is fully aware of the Recommendation. This is why the initial scheduling email indicated that 'further reductions to the current schedule may be made' in accordance with it.
6. Additionally, the Single Judge notes that the Defence requests that two hearings days be moved and another cancelled (12 to 14 November 2018) for reasons entirely apart from considerations of the health of the accused and without any further justification. For this reason alone this part of the Request is to be rejected.
7. At this point in time, the Single Judge considers it premature to declare that the Chamber will not sit every Wednesday in a five-day week. The flow of the Defence's evidence may necessitate designating a non-sitting day other than Wednesday. This necessary retention of flexibility in the scheduling of the court hearings of the Chamber is not in opposition to motivation behind the Recommendation. The Single Judge does not find any reason why taking a day, other than Wednesday, off in a five-day week would be incompatible with the Recommendation.
8. The Single Judge further considers that an overly rigid approach to the sitting schedule forecloses the possibility that, as the hearings unfold, the circumstances underlying the Recommendation may change and the Chamber could resume a

Defence circumvent Regulation 24(5) of the Regulations of the Court by allowing replies to a response via e-mail. Consequently, the e-mail and its content are not taken into consideration while ruling on the Request.

five-day a week sitting schedule. The Single Judge stresses again that this decision is taken in full consideration of the rights of the accused.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS the Defence and Prosecution to submit public redacted versions of their filings, as specific in paragraph 4 above; and

REJECTS the Request.

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



Judge Bertram Schmitt, Single Judge

Dated 5 September 2018

At The Hague, The Netherlands