

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15 May 2019**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public

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

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Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of Victims

Joseph Akwenyu Manoba
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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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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 and Regulations 23*bis* and 103 of the Regulations of the Court (‘Regulations’) issues the following ‘Decision on Defence Request for Amendment of the Seating Schedule’.

I. Procedural history and submissions

1. On 19 February 2019, the Chamber, via e-mail, informed the parties and participants of the hearing schedule through 1 October 2019.¹ On 1 May 2019, the Chamber informed the parties and participants that the hearing dates of 2, 3, 6, 7, 9, and 10 May 2019 would be cancelled.² The following day, the Chamber notified the parties and participants that it would sit, in addition to the days previously scheduled, on 13, 14, 17, 18, and 20 June 2019.³
2. On 7 May 2019, the Defence filed its ‘Defence Request for Amendment of the Seating Schedule’ (‘Request’), in which it requests that the additional hearing days scheduled for June be removed from the calendar and that it be consulted to choose dates which provide for the regular break that Mr Ongwen requires between blocks of witness hearings.⁴ In the Request, the Defence submits that the addition of the new dates to the hearing schedule does not allow for sufficient time for Mr Ongwen to maintain his mental health and recovery.⁵ The Defence argues that the amendment of the schedule has a considerable effect on the planning and preparation of the defence,⁶ as the accused will be unable to consistently and effectively provide instructions to counsel.⁷
3. The Common Legal Representative of Victims responded that the Request should be rejected⁸ since, *inter alia*, the amendment of the schedule represents only a small alteration to the trial hearings and therefore could not possibly negatively affect the

¹ E-mail from Trial Chamber IX Communications, 19 February 2019 at 14:07.

² E-mail from Trial Chamber IX Communications, 1 May 2019 at 14:36.

³ E-mail from Trial Chamber IX Communications, 2 May 2019 at 10:03.

⁴ Request, ICC-02/04-01/15-1507-Conf, para. 15. A public redacted version was filed the same day, ICC-02/04-01/15-1507-Red.

⁵ Request, ICC-02/04-01/15-1507-Red, para. 2.

⁶ Request, ICC-02/04-01/15-1507-Red, para. 4.

⁷ Request, ICC-02/04-01/15-1507-Red, para. 13.

⁸ CLRV’s Response to “Defence Request for Amendment of the Seating Schedule”, 10 May 2019, ICC-02/04-01/15-1508-Conf (‘CLRV Response’), paras 1, 12.

accused's mental health treatment and recovery.⁹ The Legal Representatives for Victims equally submitted that the Request should be dismissed,¹⁰ as, *inter alia*, the assertions concerning any detrimental effect on the accused's mental health were not supported by concrete information and appeared to be speculative¹¹ and the Defence failed to demonstrate how the additional hearings days would affect the accused's ability to defend himself.¹²

4. In its response filed on 14 May 2019, the Office of the Prosecutor argued that the Request should be rejected because (i) the argument concerning any detrimental impact on the accused's health is speculative and unsupported by any evidence; (ii) the Chamber did not contravene Regulation 103 of the Regulations; and (iii) the argument that the amended hearing schedule would limit the preparation time of the Defence is 'baseless' as under the initial schedule the Defence would have needed to examine the witnesses scheduled for the next block earlier than under the currently envisaged schedule.¹³

II. Analysis

5. The Single Judge considers that the Request does not provide any concrete indication as to how the changes in hearing dates scheduled for June concretely impact on the health and well-being of the accused. Rather, the Request seems to be speculating as to the potential effect the changes in hearing dates could have on the physical and mental health of the accused. In the same vein, the Request does not specify in which manner the amended hearing schedule would impact on the ability of the accused to instruct his counsel and thereby the planning and preparation of his defence.
6. In particular, the Request merely states that the absence of any break in between the hearing blocks in June will cause the accused to suffer undue stress and adverse mental health effects, without however pointing to any concrete information as to how this might be the case. More importantly, the Request disregards in this respect that while hearings are indeed scheduled for every week in June, only one of these weeks will

⁹ CLRV Response, ICC-02/04-01/15-1508-Conf, para. 9.

¹⁰ Victims' Response to "Defence Request for Amendment of the Seating Schedule", 10 May 2019, ICC-02/04-01/15-1510 ('LRV Response').

¹¹ LRV Response, ICC-02/04-01/15-1510, para. 9.

¹² LRV Response, ICC-02/04-01/15-1510, para. 18.

¹³ Prosecution's Response to "Defence Request for Amendment of the Seating Schedule", ICC-02/04-01/15-1511.

encompass four hearing days and that the Chamber will never sit more than two days in a row.¹⁴ The Single Judge also notes that the cancellation of six hearing days initially scheduled at the beginning of May resulted in a break of three weeks in between hearing days, and overall in a period of six weeks in which there was only one hearing day. The period within which the five hearing days were then scheduled in June would have been a mere two week break in between hearing blocks.

7. Similarly, the Request fails to specify in which way the Chamber has ‘acted in contravention’ of Regulation 103 of the Regulations.¹⁵ The decision of the Chamber to schedule five additional hearing days in June was based on the necessity to compensate for six hearing days which had to be cancelled in May due to unforeseen and urgent personal circumstances within the Chamber,¹⁶ this also with a view to ensuring that the trial proceedings advance expeditiously. Far from adding more days to the hearing schedule, the Chamber will in fact overall sit one day less in the period of May and June 2019. In addition, the Chamber ensured, in scheduling the additional hearing days in June, that no hearings would be scheduled on Wednesdays, as it has been done in the past.¹⁷
8. The argument of the Defence that the amendment to the hearing schedule has not considered the accused’s right and ability to consult and instruct counsel is equally speculative as it departs from the – hypothetical – assumption that the amended hearing schedule would in fact negatively affect the accused’s health. As indicated above, the Defence fails to point to any concrete information to demonstrate that this is indeed the case. In a similar vein, the Single Judge considers that the distribution of hearing days as currently scheduled in May and June will allow the accused sufficient time in between hearing days to consult with and instruct counsel. The Single Judge reiterates that the current hearing schedule provides sufficient time for the Defence to fully prepare the presentation of its evidence.

¹⁴ The Chamber is scheduled to sit on three days in week 23 (4, 6, 7 June), two days in week 24 (13, 14 June), three days in week 25 (17, 18, 20 June) and four days in week 26 (24, 25, 27, 28 June). Overall until the summer recess, the Chamber is scheduled to sit for 26 days over a span of 9 weeks (between 20 May and 19 July 2019).

¹⁵ See Request, ICC-02/04-01/15-1507-Red, para. 12.

¹⁶ E-mail from Trial Chamber IX Communications, 1 May 2019 at 14:36.

¹⁷ E-mail from Trial Chamber IX Communications, 31 October 2018 at 11:26; e-mail from Trial Chamber IX Communications, 19 February 2019 at 14:07. See also e-mail from Trial Chamber IX Communications, 29 October 2018 at 12:10, cancelling all hearings scheduled for Wednesdays in that hearing block.

9. The Single Judge further points out that the Chamber has ensured in the past,¹⁸ and will continue to ensure in the future, that the health and well-being of the accused are duly taken into account whenever any scheduling decisions are taken. Bearing this in mind, the Single Judge also sees no need to further consult the Defence in order for it to pick hearing dates which might be convenient, also considering that scheduling hearing days falls within the competence of the Chamber to manage the trial proceedings.
10. In light of the above considerations, the Request is rejected.
11. At the same time, the Single Judge reiterates that the Chamber will continue to take due consideration of the accused's health and safety during the hearings and the presentation of evidence by the Defence, as it has done in the past.
12. Finally, the Single Judge notes that the CLRV Response, which was filed confidentially, indicates that it does not contain any information which needs to remain confidential and can be reclassified as public.¹⁹ Having reviewed the CLRV Response, the Single Judge orders the Registry to reclassify the filing accordingly.

¹⁸ Transcript of hearing, 19 February 2019, ICC-02/04-01/15-T-199-CONF-ENG, p. 5, lines 9 to 16 [private session]; Transcript of hearing, 29 March 2019, ICC-02/04-01/15-T-210-CONF-ENG, p. 3, lines 9 to 13 [private session]. See also Decision on the Defence Request to Order a Medical Examination of Dominic Ongwen, 16 December 2016, ICC-02/04-01/15-637-Red, paras 29-32; Decision on Defence Request to Order an Adjournment and a Medical Examination, 16 January 2019, ICC-02/04-01/15-1412-Red, para. 12.

¹⁹ CLRV Response, ICC-02/04-01/15-1508-Conf, para. 5.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request; and

ORDERS the Registry to reclassify as ‘public’ filing ICC-02/04-01/15-1508-Conf.

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



Judge Bertram Schmitt, Single Judge

Dated 15 May 2019

At The Hague, The Netherlands