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

Date: 18 July 2016

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Peter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

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

Public

**Decision Concerning the Requests to Recommend Holding Proceedings *In Situ*
and to Conduct a Judicial Site Visit in Northern Uganda**

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 the Victims

Joseph Akwenyu Manoba and Francisco
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Legal Representatives of the 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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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber IX ('Chamber') of the International Criminal Court ('Court'), having regard to Articles 3 and 62 of the Rome Statute ('Statute') and Rule 100 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision Concerning the Requests to Recommend Holding Proceedings *In Situ* and to Conduct a Judicial Site Visit in Northern Uganda' in the case of *The Prosecutor v. Dominic Ongwen*.

1. The trial in the present case is scheduled to commence on 6 December 2016 with the participants' opening statements.¹ In accordance with Articles 3 and 62 of the Statute, the trial shall be held at the seat of the Court at The Hague, the Netherlands, unless the Court considers it desirable to sit elsewhere. Rule 100 of the Rules provides that the Chamber, *proprio motu* or at the request of either party, may decide to make a recommendation to the Presidency to change the place where the Chamber sits.
2. In their submissions in advance of the first status conference in the present case, the Office of the Prosecutor ('Prosecution'), the Defence and both teams of legal representatives of the participating victims invited the Chamber to consider the possibility of making a recommendation to hold the opening of the trial in the Republic of Uganda, preferably in Gulu.²
3. The Chamber takes note of these submissions and recognises the importance of bringing justice closer to the affected community, but it is of the view that holding the opening statements of the trial in Uganda is not 'desirable' within the meaning of Article 3 of the Statute. Indeed, the Chamber considers that the combination of security concerns (including, as stated by the common legal representative of victims, with respect to Mr Ongwen's prospective presence in

¹ Decision Setting the Commencement Date of the Trial, 30 May 2016, ICC-02/04-01/15-449.

² Prosecution Submissions in Accordance with the Scheduling Order of 4 May 2016, 18 May 2016, ICC-02/04-01/15-438, paras 26-28; Defence Submissions in Advance of the 23 May 2016 Status Conference, 18 May 2016, ICC-02/04-01/15-439-Red2, para. 19; 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, paras 31-33; Submissions on Items Defined for the Status Conference on 23 May 2016, 13 May 2016, ICC-02/04-01/15-433-Corr (corrigendum filed on 23 May 2016), paras 21-23.

Uganda and the victims' ensuing fear of possible episodes of violence³) and logistical difficulties (noting also the judicial workload of the Chamber's individual Judges in other situations and cases before the Court) militates against making a recommendation to the Presidency to hold the opening of the trial *in situ*. The Chamber therefore decides not to make a recommendation to change the place of the proceedings under Rule 100 of the Rules. The trial will therefore take place at the seat of the Court.

4. The Chamber notes that the Prosecution in its submissions in advance of the first status conference also suggested to conduct a judicial site visit of the four locations in which the crimes with which Mr Ongwen is charged under counts 1 to 49 were allegedly committed (*i.e.* Pajule, Odek, Lukodi and Abok, in northern Uganda), and to combine this visit with the opening of the trial in Uganda.⁴ The Chamber considers that a determination of whether a judicial site visit in northern Uganda would be of material assistance to its evaluation of the evidence should be made at a later stage of the proceedings, after having heard, at least in part, the evidence to be presented at trial. In addition, the Prosecution's argument that conducting a site visit before the opening of the evidentiary hearing would also save costs if combined with holding the opening of the trial in Uganda⁵ is not applicable in light of the Chamber's decision not to make a recommendation to change the place of the proceedings under Rule 100 of the Rules. The Chamber therefore rejects the request to conduct a judicial site visit in northern Uganda, without prejudice to re-considering the matter at a later time.

³ ICC-02/04-01/15-437, para. 33.

⁴ ICC-02/04-01/15-438, para. 27. The Chamber notes that also the common legal representative of victims invited the Chamber to consider holding a judicial site visit to the places where the alleged crimes were committed (ICC-02/04-01/15-437, para. 32).


⁵ ICC-02/04-01/15-438, para. 27.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

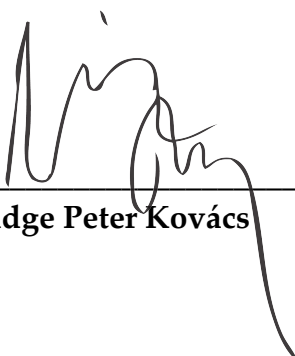
DECIDES that the trial will take place at the seat of the Court; and

REJECTS the request to conduct a judicial site visit in northern Uganda, without prejudice to re-considering the matter at a later time.

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



Judge Bertram Schmitt
Presiding Judge



Judge Peter Kovács



Judge Raul C. Pangalangan

Dated 18 July 2016

At The Hague, The Netherlands