

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **7 May 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**

**Public Redacted Version of “Defence Request for Amendment of the Seating Schedule”**

**Source: Defence for Dominic Ongwen**

**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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James Stewart, Deputy Prosecutor  
Benjamin Gumpert, QC

**Counsel for the Defence**

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**Legal Representatives of the Victims**

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**Common Legal Representative for Victims**

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**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for Victims**

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**REGISTRY**

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**Registrar**

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**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verril

**Detention Section**

**Victims Participation and Reparations Section Other**

## I. INTRODUCTION

1. The Defence hereby objects to the addition of new dates to the Intended Seating Schedule ('Schedule') in June 2019 by Trial Chamber IX ('Trial Chamber'), and requests the removal of these dates from the Schedule.
2. This request is submitted in light of the Trial Chamber's late cancellation of the following trial dates: 2-3 May, and the week beginning 6 May (excluding 8 May), and the subsequent addition of these new dates in June. These new dates are as follows: the 13-14, 17-18 and 20 June. The addition of these new dates between this block of trial hearings and the following block, as the trial is due to resume on 24 June, does not allow for sufficient time for Mr Ongwen to maintain his mental health treatment and recovery.
3. Furthermore, with regards to Mr Ongwen's vulnerable mental health and its impact on his ability to follow the proceedings, the Trial Chamber confirmed that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
4. The Trial Chamber's removal and addition of new dates to the Schedule, without consulting the Defence, has a considerable effect on the planning and preparation of its defence. This violates the fair and expeditious conduct of proceedings and Mr Ongwen's fair trial rights under Article 67(1)(e) of the Rome Statute ('Statute').

## II. CONFIDENTIALITY

5. Pursuant to Regulation 23*bis* of the Regulations of the Court, the Defence files this request as confidential because it refers to information discussed in a private session of the trial hearing. A public redacted version of this request will be filed concurrently with the confidential version.

[REDACTED]

### III. SUBMISSIONS

6. On 2 May, the Trial Chamber informed the Prosecution, and the Legal Representatives of the Victims and Common Legal Representative for the Victims ('LRVs') about the amendments made to the Schedule due to the cancellation of the aforementioned trial hearings in May. The Defence disagrees with the addition of these new dates and requests that these be removed from the Schedule for the reasons stated below.
7. Firstly, the Defence submits that the reasons for the change in the Schedule are unclear. The Defence understands that the regular breaks in between the witness blocks were in place to allow Mr Ongwen to convalesce and to assist in the improvement of his mental health. The addition of more dates in June will be detrimental to Mr Ongwen's health and well-being,  

8. It appears that the Trial Chamber has erred in adding these trial dates to the Schedule by not considering Mr Ongwen's well documented and sufficiently established health needs. Although, the Defence does recognise that the Trial Chamber has accommodated the ICC-DC Medical Officer's recommendation that Mr Ongwen does not sit in Court on Wednesdays, given that he is still mentally unstable, no break in between the witness blocks in June will cause him to suffer undue stress and adverse mental health effects.
9. In the absence of any reasoned statement as to why the original hearing dates in May were cancelled, the Trial Chamber has rejected prior Defence requests based on recommendations from the ICC-DC Medical Officer to reschedule proceedings in deference to Mr Ongwen's health needs.<sup>3</sup> This has in the Defence view, significantly impacted Mr Ongwen's right to fair and expeditious conduct of proceedings.<sup>4</sup>
10. Taking into account all of Mr Ongwen's health concerns, counsels for Mr Ongwen are mindful of their obligation under Article 9(2) of the Code of Professional Conduct for counsel which requires them to "take into account the client's personal circumstances and specific needs, in

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<sup>3</sup> *Ongwen*, Decision on Defence Request for Amendment of the Seating Schedule, ICC-02/04-01/15-1330-Red, 5 September 2018; *Ongwen*, Decision on Defence Request for Leave to Appeal the Decision on Defence Request for Amendment of the Seating Schedule, ICC-02/04-01/15-1344-Red, 24 September 2018.

<sup>4</sup> Article 64(2) of the Statute.

particular [...] the disabled”.<sup>5</sup> Accordingly, counsels submit this request in line with their duty to the Accused.

11. Secondly, in accordance with Article 21(3) of the Statute, “the application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights”.<sup>6</sup> Consequently, the Defence submits that the Scheduling violates a number of Mr Ongwen’s fundamental rights, particularly Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’) which stipulates that:

The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>7</sup>

12. Pursuant to this provision, the Trial Chamber should always consider and follow the Medical Officer’s recommendations when creating the Schedule to accommodate Mr Ongwen’s health concerns, as far as practically possible. Thus, the Trial Chamber has acted in contravention of Regulations 103(1) and (2) of the Regulations of the Court (‘RoC’), which require that “[a]rrangements shall be made by the Registrar to protect the health and the safety of detained persons”,<sup>8</sup> and that “[a]rrangements shall be made by the Registrar in order to meet the needs of detained persons with disabilities”.<sup>9</sup>
13. Thirdly, Mr Ongwen’s right and ability to consult and instruct counsel in his own defence has not been considered when creating the latest Schedule. Once again, this violates his right to a fair trial under Article 67(1)(e) of the Statute.<sup>10</sup> As the Schedule negatively affects Mr Ongwen’s health and limits preparation time, he will be unable to consistently and effectively provide instructions to counsel. Therefore, this prevents Mr Ongwen from examining “the witnesses against [him] and to obtain the attendance and examination of witnesses on [his] behalf under the same conditions as witnesses against [him]”.<sup>11</sup>

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<sup>5</sup> Article 9(2) of the Code of Professional Conduct for counsel.

<sup>6</sup> Article 21(3) of the Statute.

<sup>7</sup> Article 12(1) of the ICESCR.

<sup>8</sup> Regulation 103(1) of the RoC.

<sup>9</sup> Regulation 103(2) of the RoC.

<sup>10</sup> See, for example, *Ongwen*, Defence request for Leave to Appeal “Decision on Defence Request for Amendment of the Seating Schedule, ICC-02/04-01/15-1334-Red; *Ongwen*, 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-Red, 7 September 2018; *Ongwen*, Defence Urgent Request for Delay in Opening of LRV and CLRV Cases, Pursuant to Article 67(1)(b) and 67(1)(e) of the Statute, ICC-02/04-01/15-1239, 24 April 2018.

<sup>11</sup> Article 67(1)(e) of the Statute.

14. In short, the Defence requests that the Trial Chamber remove these new dates in the Schedule and provide a break in between the witness blocks consistent with Articles 21(3), 64(2) and 67(1)(e) of the Statute and Regulation 103 of the RoC, in light of their exceptional relevance to these proceedings and potential impact on the outcome of the whole trial.

#### IV. RELIEF SOUGHT

15. For the reasons stated above, the Defence requests that the Trial Chamber:

**REMOVE** the additional dates added to the Schedule of June 13-14, 17-18 and 20, 2019; and

**CONSULT** with the Defence, as the party presenting its evidence, to choose dates which provide for the regular break that Mr Ongwen requires between blocks of witness hearings.

Respectfully submitted,



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Hon. Krispus Ayena Odongo  
On behalf of Dominic Ongwen

Dated this 7<sup>th</sup> day of May, 2019

At The Hague, Netherlands