

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **14 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**

**Prosecution's Response to "Defence Request for Amendment of the Seating  
Schedule"**

**Source:** The Office of the Prosecutor

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Benjamin Gumpert

**Counsel for Dominic Ongwen**

Mr Krispus Ayena Odongo  
Mr Charles Taku  
Ms Beth Lyons

**Legal Representatives of Victims**

Mr Joseph Akwenyu Manoba  
Mr Francisco Cox  
Ms 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**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Section**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. The Defence Request for Amendment of the Seating Schedule (“Request”)<sup>1</sup> in which the Defence requested the Chamber to remove five dates from the Hearing Schedule should be rejected because the arguments advanced by the Defence are speculative and unsupported by concrete evidence. Prolonging trial proceedings beyond that which is necessary also risks negatively impacting Mr Ongwen’s health rather than promoting it.

## Relevant procedural background

2. On 25 April 2019, the Chamber cancelled six hearing dates, namely 24 May, 3 June, 8, 9, 11 and 12 July 2019.<sup>2</sup>

3. On 1 May 2019, the Chamber cancelled six further hearing dates, namely 2, 3, 6, 7, 9 and 10 May 2019.<sup>3</sup> On the same day, the Prosecution invited the Chamber to consider compensating for the time lost due to the cancelations.<sup>4</sup> This was communicated via email.

4. On 2 May 2019, the Defence responded to the Prosecution’s email.<sup>5</sup> In this response, the Defence recognized the Chamber’s discretion to plan and amend the Hearing Schedule. It went on to say that the Defence has no control over that discretion.

5. On 2 May 2019, the Chamber informed the parties and participants that it will sit on five extra dates, namely 13, 14, 17, 18 and 20 June 2019.<sup>6</sup> On the same day, the Defence emailed the Chamber, the Prosecution and participants stating that the new Hearing Schedule may affect the Defence team’s training session which is organised

---

<sup>1</sup> ICC-02/04-01/15-1507-Conf.

<sup>2</sup> Trial Chamber IX Communications sent on 25 April 2019 at 12:26 hrs via email.

<sup>3</sup> Trial Chamber IX Communications sent on 1 May 2019 at 14:36 hrs via email.

<sup>4</sup> The Prosecution’s communication sent on 1 May 2019 at 16:31 hrs via email.

<sup>5</sup> The Defence’s communication sent on 2 May 2019 at 00:41 hrs via email.

<sup>6</sup> Trial Chamber IX Communications sent on 2 May 2019 at 10:03 hrs via email.

by the Registry on 13 and 14 June 2019.<sup>7</sup> Nowhere in its responses of 2 May 2019 did the Defence argue that these five hearing days will negatively affect Mr Ongwen's health.

### **Submissions**

6. In support of its Request, the Defence advanced three arguments. In the first argument<sup>8</sup>, the Defence asserts that sitting on five additional days in June will be detrimental to Mr Ongwen's health, which could trigger the incidents like the one occurred on 7 January 2019 ("the Incident"). This argument is merely speculative and is unsupported by any evidence. There was no link between the hearings and the Incident. There was not a single hearing scheduled between 30 November 2018 and 7 January 2019.

7. As the Defence Co-counsel has rightly pointed out, the Chamber has discretion to give directions for the conduct of proceedings including planning the Hearing Schedule.<sup>9</sup> While exercising its discretion outlined in articles 64(2) and (8)(b) of the Rome Statute, the Chamber has taken into consideration the ICC-DC Medical Officer's recommendation that there should be no hearings on Wednesdays due to Mr Ongwen's health status. Further, the Chamber consistently ensures that Mr Ongwen has sufficient breaks between witness hearings. The addition of five dates to the Hearing Schedule does not impact this. The Chamber will only sit 12 days in June. This means that Mr Ongwen will have 18 days within the month of June 2019 to rest and receive any treatment that is needed.

8. As its second argument, the Defence asserts that by adding five hearing dates to the Hearing Schedule, the Chamber did not consider Mr Ongwen's health concerns and thus acted in contravention of regulations 103(1) and (2) of the

---

<sup>7</sup> The Defence's communication sent on 2 May 2019 at 10:32 hrs via email.

<sup>8</sup> The Request, paras. 7-8.

<sup>9</sup> The Defence's communication sent on 2 May 2019 at 00:41 hrs via email.

Regulations of the Court.<sup>10</sup> The Chamber has not contravened these regulations. The new Hearing Schedule containing 18 days of breaks is consistent with the Chamber's previous statements<sup>11</sup> regarding Mr Ongwen's health status while ensuring that he is tried without undue delay.

9. For the same reason, the third argument<sup>12</sup> advanced by the Defence, namely that the new Hearing Schedule will limit Mr Ongwen's preparation time is baseless. Had the eight cancelled hearing days between 2 May and 3 June 2019 remained unchanged, Mr Ongwen and his Defence team should have been ready to examine their witnesses at that point, which is significantly in advance of the new Hearing Schedule. Thus, contrary to the Defence's assertion, the new Hearing Schedule allows Mr Ongwen and his Defence team more, not less, time to prepare for their witness examinations.

### Conclusion

12. For the reasons set out above, the Defence Request for Amendment of the Hearing Schedule should be rejected.




---

**Fatou Bensouda, Prosecutor**

Dated this 14<sup>th</sup> day of May 2019  
At The Hague, the Netherlands

---

<sup>10</sup> The Request, para. 12.

<sup>11</sup> Transcripts of hearings: ICC-02/04-01/15-T-199-CONF-ENG, p. 5, lines 9-13 and ICC-02/04-01/15-T-210 CONF-ENG, p. 3, lines 9-11.

<sup>12</sup> The Request, para. 13.