

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**
Date: **4 February 2021**

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

Decision scheduling a hearing on sentence and setting the related procedural calendar

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

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

Trial Chamber IX of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 76 of the Rome Statute and Rule 143 of the Rules of Procedure and Evidence, issues the following decision scheduling a hearing on sentence and setting the related procedural calendar.

1. Today, 4 February 2021, the Chamber delivered its judgement pursuant to Article 74 of the Statute, convicting Dominic Ongwen of a total of 61 crimes comprising crimes against humanity and war crimes.¹
2. In accordance with Article 76(1) of the Statute, the Chamber shall at this point proceed to considering the appropriate sentence to be imposed on Dominic Ongwen. For this purpose, the Chamber, as provided for in the same provision, will take into account the evidence presented and the submissions made during the trial that are relevant to the sentence.
3. In addition, the Chamber considers it appropriate to afford the Office of the Prosecutor, the Defence for Dominic Ongwen and the participating victims through their respective legal representatives an opportunity to make further submissions and propose additional evidence relevant to the sentence to be imposed on Dominic Ongwen. Accordingly, acting pursuant to Article 76(2) of the Statute, the Chamber decides to hold a further hearing under this provision to hear further submissions and any additional evidence relevant to the sentence. The Chamber schedules such a hearing for the week of 12-16 April 2021; further details as to the precise date and time of the individual sessions of the hearing will be given in due course.
4. In the present decision, the Chamber also identifies the relevant steps, and sets out the related procedural calendar, leading to the hearing under Article 76(2) of the Statute and to the imposition of the sentence on Dominic Ongwen.
5. First, the parties and participants, in case they intend to present additional evidence relevant to the sentence, shall make a filing to this effect. Such a filing shall include:
 - (i) the indication whether the party/participant intends to call any witness to testify *viva voce* before the Chamber at the hearing on sentence. If so, and with respect to any such witness, the party/participant shall further indicate: a) the identity of the

¹ Trial Judgment, ICC-02/04-01/15-1762-Conf and its public redacted version, ICC-02/04-01/15-1762-Red.

witness; b) the topic(s) on which he or she is expected to testify and their anticipated relevance to the sentence; c) the estimated length of examination; d) whether any protective measure is warranted and on what grounds; and e) whether the witness can testify via video-link; as well as include any request for introduction of any prior recorded testimony under Rule 68(3) of the Rules subject to the witness concerned not objecting thereto when appearing to testify before the Chamber;

(ii) any request to introduce, under Rule 68(2) of the Rules, prior recorded testimony relevant to the sentence given by witness(es) not proposed for oral examination before the Chamber;

(iii) the submission of any non-testimonial documentary evidence in accordance with the procedure established in the present trial.

6. In addition, for any such proposed additional evidence, the parties/participants shall indicate how, in their submission, the evidence concerned relates to the factors under Article 78 of the Statute and Rule 145 of the Rules that the Chamber is mandated to consider in the determination of the appropriate sentence to be imposed on Dominic Ongwen. In this regard, the Chamber emphasises that given the abundance of evidence of potential relevance to the sentence that has been presented at trial (and is thus already part of the record of the case), it expects that any additional evidence, especially oral evidence to be heard at the hearing on sentence, will be very limited. The time-limit for this filing concerning additional evidence relevant to the sentence is set at Friday, 26 February 2021. Any response shall be filed by Wednesday, 10 March 2021. Thereafter, the Chamber will render its decision, as appropriate, on the received requests and plan for any related subsequent steps. The Chamber emphasises in this regard that it may intervene in the selection and presentation of evidence in order to ensure the fair and expeditious conduct of the present proceedings.²

7. Second, the parties and participants may file written submissions relevant to the sentence in advance of the hearing under Article 76(2) of the Statute. While this is not required as such by the legal instruments of the Court, the Chamber invites the parties and participants to avail themselves of this opportunity. The parties and participants are directed to include

² See also Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al*, Sentencing Calendar, ICC-01/05-01/13-1990, 20 October 2016, para. 2 (i).

in their written submissions any argument they wish to bring to the attention of the Chamber – also in light of the evidence presented at trial and any (proposed) additional evidence – in relation to the factors to be taken into account, pursuant to Article 78 of the Statute and Rule 145 of the Rules, for the imposition of an appropriate sentence on Dominic Ongwen. The relevant time limit for these submissions is set at Thursday, 1 April 2021. Any response to the written submissions relevant to the sentence will be heard at the hearing under Article 76(2) of the Statute, as well as any reply to the extent authorised by the Chamber.

8. The final step is indeed the hearing under Article 76(2) of the Statute, in which the Chamber will hear any additional evidence and oral submissions relevant to the sentence. As indicated, the Chamber sets the hearing for the week of 12-16 April 2021. The Chamber clarifies that the hearing under Article 76(2) of the Statute will be the last procedural step before the delivery of the sentence. In this regard, and while a more precise schedule of the hearing will be rendered in due course, the Chamber also anticipates that in case live evidence is eventually heard at the hearing, it is minded to foresee a break of one calendar day before hearing the oral submissions relevant to the sentence; this is in order for such submissions to be prepared taking full account of any oral evidence obtained at the hearing itself. Indeed, after the hearing no subsequent written submissions will be allowed. Any motivated request for oral response/reply to another party's oral submissions shall be made orally at the hearing and will be disposed of by the Chamber, in light of the individual circumstances, at the hearing itself. At the conclusion of the hearing, the Chamber will retire to deliberate and will deliver the sentence on Dominic Ongwen in due course thereafter.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES to hold a hearing under Article 76(2) of the Statute, in the presence of Dominic Ongwen, his defence counsel, representatives of the Office of the Prosecutor and the legal representatives of the victims participating in the proceedings, to hear further submissions and any additional evidence relevant to the appropriate sentence to be imposed on Dominic Ongwen;

SCHEDULES the hearing on sentence under Article 76(2) of the Statute for the **week of 12-16 April 2021**;

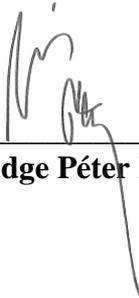
DECIDES that the Office of the Prosecutor, the Defence for Dominic Ongwen and the participating victims through their respective legal representatives shall make any filing concerning additional evidence relevant to the sentence to be imposed on Dominic Ongwen by **Friday, 26 February 2021**; and that any response thereto shall be filed by **Wednesday, 10 March 2021**;

DECIDES that the Office of the Prosecutor, the Defence for Dominic Ongwen and the participating victims through their respective legal representatives may file written submissions on the sentence to be imposed on Dominic Ongwen by **Thursday, 1 April 2021**.

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



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Raul C. Pangalangan

Dated 4 February 2021

At The Hague, The Netherlands