

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 24 September 2018

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public redacted version

**Decision on Defence Request for Leave to Appeal the 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

Fatou Bensouda
James Stewart
Benjamin Gumpert

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

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 82(1)(d) of the Rome Statute ('Statute'), issues the following 'Decision on Defence Request for Leave to Appeal the Decision on Defence Request for Amendment of the Seating Schedule'.

1. On 20 August 2018, the Chamber informed the parties, participants and the Registry via e-mail of the sitting schedule for the remainder 2018 ('Sitting Schedule') and noted that 'further reductions to this schedule may be made in due course'.¹
2. On 29 August 2018, the defence of Mr Ongwen ('Defence') filed a request to amend the Sitting Schedule ('Defence Request').² It cited to a report³ containing a recommendation that there should be a break in the middle of the week for the well-being of the accused ('Recommendation').⁴ The Defence argued that the Recommendation necessitates an amendment to the Sitting Schedule and submitted a proposal.⁵
3. On 5 September 2018, the Single Judge issued a decision rejecting the Defence Request ('Impugned Decision').⁶ He considered it 'premature to declare that the Chamber will not sit every Wednesday in a five-day week', as the 'flow of the Defence's evidence may necessitate designating a non-sitting day other than Wednesday'.⁷ The Single Judge noted that he did not see any reason why

¹ E-mail from the Chamber to the parties and participants and the Registry, 20 August 2018, at 9:35.

² 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-Conf.

³ Defence Notification of [REDACTED] as Ordered by Trial Chamber IX, 15 August 2018, ICC-02/04-01/15-1321-Conf.

⁴ ICC-02/04-01/15-1321-Conf, para. 12(3).

⁵ Defence Request, ICC-02/04-01/15-1326-Conf, para. 11.

⁶ Decision on Defence Request for Amendment of the Seating Schedule, ICC-02/04-01/15-1330-Conf, page 5. A public redacted version was filed the same day, ICC-02/04-01/15-1330-Red.

⁷ Impugned Decision, ICC-02/04-01/15-1330-Red, para. 7.

designating a day other than Wednesday as a non-sitting day would be incompatible with the Recommendation.⁸

4. On 10 September 2018, the Defence filed a request for leave to appeal the Impugned Decision ('Request for Leave to Appeal').⁹ The Defence seeks leave to appeal on two issues:

- (1) Whether the Single Judge erred in law by failing to consider and adhere to relevant international legal standards concerning the treatment of detained persons [REDACTED] subject to proceedings before a criminal court; and

- (2) Whether the Single Judge erred in fact by failing to attribute due weight and give appropriate consideration to the [REDACTED].¹⁰

5. On 14 September 2018, the Office of the Prosecutor responded to the Request for Leave to Appeal, submitting that it be rejected.¹¹
6. The Single Judge recalls the interpretation of Article 82(1)(d) of the Statute as set out in detail in previous decisions.¹²
7. The Single Judge does not consider the issues presented by the Defence to be appealable issues under Article 82(1)(d) of the Statute. The Chamber has previously accommodated the accused's needs when deciding which days to sit within the hearing schedule. It has indicated its willingness to do so in the

⁸ Impugned Decision, ICC-02/04-01/15-1330-Red, para. 7.

⁹ Defence Request for Leave to Appeal 'Decision on Defence Request for Amendment of the Seating Schedule', ICC-02/04-01/15-1334-Conf.

¹⁰ Request for Leave to Appeal, ICC-02/04-01/15-1334-Conf, paras 14, 51.

¹¹ Prosecution's Response to Defence Request for Leave to Appeal Decision ICC-02/04-01/15-1326, ICC-02/04-01/15-1338-Conf.

¹² Decision on Defence Request for Leave to Appeal Decision ICC-02/04-01/15-521, 2 September 2016, ICC-02/04-01/15-529, paras 4-8. *See also* Decision on the Defence Request for Leave to Appeal the Decision on the Confirmation of Charges, 29 April 2016, ICC-02/04-01/15-428, paras 5-9.


future.¹³ At this point in time, both issues are purely hypothetical. The Impugned Decision declared a definite decision on the seating schedule premature '[a]t this point in time'.¹⁴ Accordingly, the alleged failure to consider the rights of the accused or attribute due weight to them cannot arise from the Impugned Decision.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request for Leave to Appeal; and

ORDERS the submitting party to file a public redacted version of the Request for Leave to Appeal (ICC-02/04-01/15-1334-Conf) and Response (ICC-02/04-01/15-1338-Conf) – or request reclassification thereof – within five days of notification of the present decision.

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



Judge Bertram Schmitt, Single Judge

Dated 24 September 2018

At The Hague, The Netherlands

¹³ Transcript of Hearing, 18 September 2018, ICC-02/04-01/15-T-179-CONF-ENG, page 81, lines 12-24.

¹⁴ Impugned Decision, ICC-02/04-01/15-1330-Red, para. 7.