

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **10 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

Victims' Response to "Defence Request for Amendment of the Seating Schedule"

Source: Legal Representatives of Victims

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

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Detention Section

**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. The Legal Representatives for Victims (“LRVs”) respectfully request that Trial Chamber IX (“Chamber”) dismiss the “Defence Request for Amendment of the Seating Schedule (‘Defence Request’).”¹ As has been reiterated by the LRVs on numerous occasions throughout the presentation of the Defence’s evidence, victims participating in this case are eager for the expeditious conclusion of this case. In the submission of the LRVs, granting the Defence Request would lead to an unwarranted delay in these proceedings.

II. PROCEDURAL HISTORY

2. On 1 May 2019 the Chamber informed the parties and participants via email that the hearing dates of 2 and 3 May; and 6-10 May 2019 would be cancelled.²
3. On the same day, the Prosecution responded via email and invited the Chamber to consider whether it would be possible to “catch up some of the time lost to recent cancellations of hearing days” given that “in the first four months of 2019 the trial has been in session on just 17 days.”³
4. The Defence, via email responded to the Prosecution’s request to readjust the trial schedule urging the Chamber to take into consideration the “special circumstances and special needs of Dominic Ongwen.”⁴
5. The Counsel for the Office of Public Counsel for Victims (“OPCV”), via email stated that she shared the Prosecution’s view and that victims have “expressed some concerns about recent adjournments.”⁵

¹ ICC-02/04-01/15-1507-Red.

² Email sent by Trial Chamber IX on 1 May 2019, 02:35 PM.

³ Email sent by the Prosecution on 1 May 2019, 04:31 PM.

⁴ Email sent by the Defence on 2 May 2019, 12:41 AM.

⁵ Email sent by the CLR on 2 May 2019, 07:25 AM.

6. On 2 May 2019, the Chamber informed the parties and participants, via email that the Chamber will sit on the additional dates of 13 and 14 June 2019, and 17, 18 and 20 June 2019.⁶
7. On 7 May 2019, the Defence filed its Defence Request, objecting to the addition of new dates to the hearing schedule. The Defence requested that the additional dates be removed and that the Chamber consult with the Defence on dates which will allow the Accused to have regular breaks between blocks of witness hearings.⁷

III. SUBMISSIONS

The Defence Request fails to substantiate the alleged prejudice to the Accused

8. The Defence submits that the inclusion of 5 additional hearing dates in June “does not allow for sufficient time for Mr Ongwen to maintain his mental treatment and recovery”,⁸ arguing that this could have an impact on the Accused’s “vulnerable mental health.”⁹ Further, the Defence submits that the Trial Chamber erred in “not considering Mr Ongwen’s well documented and sufficiently established health needs.”¹⁰
9. The LRVs submit that Defence assertions regarding the detrimental effect of the addition of 5 hearing days in June on Mr Ongwen’s mental health are not supported by any concrete information and appear to be speculative.
10. The LRVs are aware that they are not privy to all information relating to Mr Ongwen’s health. However, it is evident that the Chamber has taken care regarding Mr Ongwen’s health while making scheduling decisions: for example by ensuring that Mr Ongwen is able to have a break in the middle of each hearing week, as recommended by the ICC-DC Medical Officer. In the week of

⁶ Email sent by Trial Chamber IX on 2 May 2019, 10:02 AM.

⁷ ICC-02/04-01/15-1507-Red, para.15.

⁸ ICC-02/04-01/15-1507-Red, para 2.

⁹ ICC-02/04-01/15-1507-Red, para.3.

¹⁰ ICC-02/04-01/15-1507-Red, para. 8.

the 10 June, Mr Ongwen will only be expected to sit for two days during the entire week, having had a 5 day break from the last hearing of 7 June 2019.

11. Indeed the Accused will have only sat for one hearing day in a period of six weeks from 8 April to 20 May 2019. The LRVs contend that this period of rest must also be relevant in considering the extent of the burden imposed by an additional 5 sitting days in June.
12. Lastly, Defence arguments or speculation relating to why the original hearing dates in May were cancelled are inapposite and have no bearing on the matter at hand.

The Accused's fair trial rights are not impacted by the inclusion of 5 additional hearing days

13. The Defence further submits that the Chamber's lack of consultation with Defence regarding the removal and addition of new dates to the hearing schedule "violates the fair and expeditious conduct of proceedings and Mr Ongwen's fair trial rights under Article 67(1) (e)"¹¹ of the Statute. It is contended by the Defence that Mr Ongwen has a right to be consulted regarding sitting days, and additionally that the change to the schedule interferes with his ability to instruct counsel.
14. The LRVs disagree with this contention.
15. First, this is because the Defence Request provides no authority for its contention that there is a defence right to be consulted prior to individual decisions regarding sitting days. Not only is this assertion without authority, it is contradicted by consistent practice at the Court.
16. Secondly, the LRVs note that in any event, despite the absence of an express obligation of consultation, the Chamber has gone out of its way to accommodate

¹¹ ICC-02/04-01/15-1507-Red, para.4.

Defence Requests relating to the health of the Accused and has always sought the advice and recommendations of the Medical Officer in line with Regulation 103(1) and 103(2) of Regulations of the Court (“RoC”).

17. The Chamber’s previous granting of Defence Requests relating to the health of the Accused and its strict adherence to Regulation 103(1) and 103(2) of the RoC is amply demonstrated by the fact that there have been only 17 hearing days in the first four months of this year, as stated by the Prosecution.¹²
18. The Defence has not only failed to demonstrate how the additional hearing days would affect Mr Ongwen’s health, but how the ability of the Accused to defend himself is impacted negatively. Indeed, no explanation has been given for the assertion that Mr Ongwen’s ability to consult and instruct Counsel is affected by the addition of 5 hearing days in June.¹³ And such a conclusion appears counter-intuitive. Surely the gap in sitting days provided by the cancellation of the early May hearing days will provide Mr Ongwen with sufficient time “to consistently and effectively provide instructions to counsel.”¹⁴

Victims are concerned regarding the slow pace of proceedings

19. The LRVs wish to reiterate that the victims they represent are greatly concerned with the slow pace of the proceedings, especially during the Defence’s presentation of its case. Although the LRVs understand that there are circumstances justifying a slower pace of the proceedings, the victims remain perturbed and worry that the proceedings may grind to a halt entirely. The LRVs therefore emphasize that any further delays must be carefully considered and avoided wherever possible.
20. As the Chamber is aware, the victims participating in this case have waited a long time to know the truth regarding the attacks and events that took place in

¹² Email sent by the Prosecution, 1 May 2019, 10:52 AM.

¹³ ICC-02/04-01/15-1507-Red, para13.

¹⁴ ICC-02/04-01/15-1507-Red, para13.

2004. There is a real risk that continued setbacks and slackening in the speed of the proceedings may result in frustration within the victim community.

IV. RELIEF SOUGHT

21. The LRVs respectfully request the Chamber dismiss the Defence Request in its entirety.

Respectfully submitted,



Joseph A. Manoba



Francisco Cox

Dated this 10th day of May 2019

At Kampala, Uganda and at Santiago, Chile