

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**
Date: **4 December 2019**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge

SITUATION IN UGANDA

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

Public

Decision on Defence Request to Reconsider the Date of the Closing Statements

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 the Victims

Joseph Akwenyu Manoba
Francisco Cox
Paolina Massidda

Legal Representatives of the 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**

Other

Judge Bertram Schmitt, acting as Presiding Judge on behalf of Trial Chamber IX (‘Presiding Judge’ and ‘Chamber’, respectively) of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(2), (8)(b) and 67 of the Rome Statute (‘Statute’) and Rules 140 and 141 of the Rules of Procedure and Evidence (‘Rules’), issues the following ‘Decision on Defence Request to Reconsider the Date of the Closing Statements’.

I. Procedural history and submissions

1. On 13 July 2016, the Presiding Judge issued the Initial Directions on the Conduct of the Proceedings.¹ Therein, he, *inter alia*, provided directions with regard to the opening statements and stated that any issue ‘unaddressed in the present decision and which require intervention from the Chamber will be dealt with in the course of the trial’.²
2. On 13 April 2018, the Presiding Judge issued directions regarding the closing briefs and the closing statements (the ‘Directions on the Initial Timeline’).³ Therein, he ordered that the parties and participants should file their closing briefs six weeks after the declaration that the submission of evidence is closed.⁴ He further announced that the closing statements would be held two weeks after the filing of the closing briefs, with further details to be provided.⁵
3. On 23 October 2019, the Presiding Judge announced an amendment to these deadlines and set a date for the closing statements (the ‘Order Setting Dates for Closing Briefs and Statements’).⁶ Therein, he noted that the closure of evidence is expected by December 2019 and set the date for the filing of the closing submissions to 26 February 2020.⁷ In accordance with the Directions on the Initial Timeline, the date for the closing statements was set on 10 March 2020.⁸

¹ Initial Directions on the Conduct of the Proceedings, ICC-02/04-01/15-497.

² Initial Directions on the Conduct of the Proceedings, ICC-02/04-01/15-497, paras 4 and 7.

³ Directions on Closing Briefs and Closing Statements, ICC-02/04-01/15-1226.

⁴ Directions on Closing Briefs and Closing Statements, ICC-02/04-01/15-1226, para. 3.

⁵ Directions on Closing Briefs and Closing Statements, ICC-02/04-01/15-1226, para. 9.

⁶ Modification of Deadline Regarding Closing Briefs and Setting of Dates for Closing Statements, ICC-02/04-01/15-1645.

⁷ Order Setting Dates for Closing Briefs and Statements, ICC-02/04-01/15-1645, paras 3 and 4.

⁸ Order Setting Dates for Closing Briefs and Statements, ICC-02/04-01/15-1645, para. 4.

4. On 14 November 2019, the Defence filed a request to change the date of the closing statements (the ‘Request’).⁹ It submits that the two week period between the filing of the closing briefs and the closing statements is ‘simply insufficient time’, citing to the rights of the accused.¹⁰ Accordingly, the Defence seeks reconsideration of the date of the closing statements and requests that the date of the closing statements be deferred to 24 March 2019.¹¹
5. The Office of the Prosecutor (the ‘Prosecution’),¹² the Common Legal Representatives of Victims (the ‘CLRV’)¹³ and the Legal Representatives of Victims (the ‘LRV’)¹⁴ all indicated via email that they do not oppose the Request.

II. Analysis

6. The Presiding Judge recalls the prior decisions of this Chamber regarding reconsideration and notes that the measure of reconsideration is exceptional and should only be undertaken to prevent an injustice or if a clear error of reasoning has been demonstrated.¹⁵
7. The Presiding Judge notes the Defence already sought the requested remedy, albeit in another form, on a previous occasion. On 23 April 2018, the Defence filed a request for reconsideration or leave to appeal the Directions on the Initial Timeline (the ‘Prior Request’).¹⁶ Therein it, *inter alia*, requested that the Chamber allow for four weeks between the filing of the closing briefs and the closing statements.¹⁷ In substance, the Request is asking for the same remedy, since a postponement of the closing statements to 24 March 2020 would have the equivalent effect.

⁹ Defence Request to Change the Start Date of the Closing Statements, ICC-02/04-01/15-1668.

¹⁰ Request, ICC-02/04-01/15-1668, para. 2.

¹¹ Request, ICC-02/04-01/15-1668, paras 43-53.

¹² E-mail to Trial Chamber IX Communications, 20 November 2019, at 12:31.

¹³ E-mail to Trial Chamber IX Communications, 20 November 2019, at 14:22.

¹⁴ E-mail to Trial Chamber IX Communications, 21 November 2019, at 14:58.

¹⁵ Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, 15 June 2016, ICC-02/04-01/15-468, para. 4; Decision on Legal Representatives’ Request Regarding Opening Statements, 29 November 2016, ICC-02/04-01/15-610; Decision on Defence Request for Reconsideration of or Leave to Appeal the Directions on Closing Briefs and Closing Statements, 11 May 2018, ICC-02/04-01/15-1259.

¹⁶ Defence Request for Reconsideration or Leave to Appeal ICC-02/04-01/15-1226, ICC-02/04-01/15-1238-Conf-Exp. A public redacted version was filed on the same day, ICC-02/04-01/15-1238-Red.

¹⁷ Defence Request for Reconsideration or Leave to Appeal ICC-02/04-01/15-1226, ICC-02/04-01/15-1238-Red, paras 38-40, 78 b.

8. On 11 May 2018, the Prior Request was rejected (the ‘Prior Decision’).¹⁸ Regarding the period of two weeks between the submissions of the closing briefs and the closing statements, no clear error of reasoning or other exceptional circumstances warranting reconsideration was found.¹⁹ The requested leave to appeal on the issue related to this point was equally rejected.²⁰
9. Finally, the Presiding Judge also takes notice that the Request is unopposed. However, he recalls that both the Prosecution and the CLRV opposed the Prior Request which asked for the same remedy.²¹
10. Since the Prior Decision already stated that there is no clear error of reasoning in the Directions on the Initial Timeline,²² the Presiding Judge will only consider whether reconsideration is necessary in order to prevent an injustice. In this regard, only facts that have arisen after the Prior Decision can be considered.
11. Regarding this aspect, the Presiding Judge notes that the Request overwhelmingly refers to events predating the Prior Decision,²³ mentions facts not concerning the relief sought²⁴ or merely repeats arguments already made in the Prior Request.²⁵ The Defence simply ignores the prior decisions of the Chamber.²⁶ The only new fact submitted by the Defence is a request for translation of two documents from Acholi into English which were translated in a timeframe considered too slow by the Defence.²⁷
12. The Presiding Judge considers this new fact to be insufficient to warrant reconsideration. As previously explained, the closing briefs will ‘not contain anything substantially

¹⁸ Decision on Defence Request for Reconsideration of or Leave to Appeal the Directions on Closing Briefs and Closing Statements, ICC-02/04-01/15-1259.

¹⁹ Prior Decision, ICC-02/04-01/15-1259, paras 14, 17.

²⁰ Prior Decision, ICC-02/04-01/15-1259, para. 21.

²¹ See CLR Response to the ‘Public Redacted Version of ‘Defence Request for Reconsideration or Leave to Appeal ICC-02/04-01/15-1226’, filed on 23 April 2018’, 30 April 2018, ICC-02/04-01/15-1251, para. 9: ‘the parties do not necessarily need a substantial amount of time to review each other’s closing briefs prior to making their closing statements’ and Prosecution’s Response to Defence Request for Reconsideration or Leave to Appeal ICC-02/04-01/15-1226, 30 April 2018, ICC-02/04-01/15-1250, para. 3 : no necessity was shown ‘to have this [Prior] Decision reconsidered in order to prevent an injustice’.

²² Prior Decision, ICC-02/04-01/15-1259, para. 17

²³ Request, ICC-02/04-01/15-1668, paras 4-28.

²⁴ Request, ICC-02/04-01/15-1668, paras 32, 43-44.

²⁵ Request, ICC-02/04-01/15-1668, paras 2, 3, 45 and 50.

²⁶ The Presiding Judge notes that paragraphs 3, 13, 15, 16, 18, 20, 21, 23, 24, 45 of the Request all refer to previous requests of the Defence which have already been adjudicated by the Chamber.

²⁷ Request, ICC-02/04-01/15-1668, paras 47-48.

new'.²⁸ The dates of the closing briefs and the closing statements have been announced deliberately in advance so that the parties and participants have adequate time to prepare. The Presiding Judge expects the Defence to liaise with the Registry and the Language Service Section ahead of time in order to facilitate an efficient translation process of specific, identified sections of the closing briefs. Additional time after the filing of the closing submissions is not warranted to prevent an injustice. Accordingly, the Presiding Judge cannot grant the exceptional remedy of reconsideration and postpone the date of the closing statements.

13. However, as noted above, in the context of the present Request none of the other parties or participants objects to a longer period between the filing of the closing briefs and the closing statements. Accordingly, the Presiding Judge agrees to advance the deadline for the filing of the closing briefs one week.
14. This does not infringe on any rights of the parties and participants, since the Directions on the Initial Timeline – issued in April 2018 – prescribed a period of six weeks for the filing of the closing briefs after the declaration that the submission of evidence is closed. Currently, it is expected that this declaration will be done in before the Court's recess in December 2019, which still leaves the parties and participants with more than six weeks to file their closing briefs. Advancing the time limit for filing the closing briefs one week and thereby providing an additional week between that filing and the closing statements also strikes a balance between the concerns voiced by the Defence and the fact that the Request does not meet the requirements for reconsideration.

²⁸ Directions on the Initial Timeline, ICC-02/04-01/15-1226, para. 7.

FOR THE FOREGOING REASONS, THE PRESIDING JUDGE HEREBY

REJECTS the Request; and

DECIDES that the closing briefs have to be filed by 19 February 2020.

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



Judge Bertram Schmitt, Presiding Judge

Dated 4 December 2019

At The Hague, The Netherlands