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No.: ICC-02/04-01/15
Date: 17 October 2016

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

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

Public

**Decision on Defence Request for a Hearing Pursuant to Rule 118(3) of the Rules of
Procedure and Evidence**

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

The Office of the Prosecutor

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Participation/Reparation**

**The Office of Public Counsel for
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Defence**

States Representatives

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 60(3) of the Rome Statute ('Statute') and Rule 118 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Defence Request for a Hearing Pursuant to Rule 118(3) of the Rules of Procedure and Evidence'.

A. Background and submissions

1. At the 23 May 2016 status conference, the Chamber requested filings from the parties in relation to its periodic review of the ruling on Mr Ongwen's detention.¹ Additionally, the Chamber, pursuant to Rule 118(3) of the Rules, also enquired whether the parties had any preliminary comments on the matter of Mr Ongwen's detention.² Both the defence for Mr Ongwen ('Defence') and the Office of the Prosecutor ('Prosecution') made brief submissions.³
2. On 13 June 2016, the Defence filed its request, seeking conditional release, or in the alternative, the restoration of Mr Ongwen's communication privileges.⁴ On 4 July 2016, the Defence filed its reply to the other participants' responses to its request.⁵ In that reply, the Defence asked for 'its required annual hearing on Mr Ongwen's pre-trial detention'.⁶

¹ Transcript of hearing on 23 May 2016, ICC-02/04-01/15-T-25-ENG, page 6, lines 5-18.

² ICC-02/04-01/15-T-25-ENG, page 6, lines 19-21.

³ ICC-02/04-01/15-T-25-ENG, page 6, line 19 to page 7, line 10.

⁴ Defence Request for Conditional Release, or in the Alternative, the Restoration of Mr Ongwen's Communication Privileges, 13 June 2016, ICC-02/04-01/15-461. The Chamber, upon the Defence's request, granted the Defence a ten page extension of the page limits. Email from the Chamber on 23 May 2016 at 13.18.

⁵ Defence Consolidated Reply to Prosecution and Joint LRV Response to the Defence's Request for Conditional Release or Restoration of Phone Rights, 4 July 2016, ICC-02/04-01/15-489-Conf-Exp (a confidential redacted version was notified the same day and a public redacted version was notified on 6 July 2016).

⁶ ICC-02/04-01/15-489-Red2, para. 24.

3. On 21 July 2016, in its decision on the review of Mr Ongwen's detention ('Review Decision'),⁷ the Chamber noted that during the 23 May 2016 status conference it had afforded the parties an opportunity to make preliminary comments on the matter of Mr Ongwen's detention for the purpose of the required hearing under Rule 118(3) of the Rules.⁸
4. On 26 September 2016, the Single Judge issued the Order Requesting Observations on Dominic Ongwen's Detention ('Order'),⁹ ordering the Defence to submit observations, if any, on Mr Ongwen's continued detention or release with or without conditions, including the existence of any changed circumstances pursuant to Article 60(3) of the Statute by 7 October 2016.¹⁰ The Prosecution and the Legal Representatives of Victims were ordered to submit their observations by 21 October 2016.¹¹ The Single Judge also afforded the Defence the opportunity to submit a response to the other participants' observations by 28 October 2016.¹²
5. On 7 October 2016, the Defence filed a request for a hearing pursuant to Rule 118(3) of the Rules ('Request').¹³ The Defence cites Rule 118(3) and states that Mr Ongwen has not received the required hearing since his initial appearance.¹⁴ It submits that in the hearing, it will discuss, amongst possible other topics: (i) issues relating to the Registrar renewing his search for a nation which would guarantee Mr Ongwen's appearance at trial; (ii) Mr Ongwen's current restrictions

⁷ Decision on the Review of Dominic Ongwen's Detention and on the Restriction on Communication, 21 July 2016, ICC-02/04-01/15-503.

⁸ ICC-02/04-01/15-503, para. 5.

⁹ ICC-02/04-01/15-541.

¹⁰ Order, ICC-02/04-01/15-541, para. 5.

¹¹ Order, ICC-02/04-01/15-541, para. 5.

¹² Order, ICC-02/04-01/15-541, para. 5.

¹³ Defence Request for a Hearing Pursuant to Rule 118(3) of the Rules of Procedure and Evidence, ICC-02/04-01/15-560.

¹⁴ Request, ICC-02/04-01/15-560, para. 7.

whilst detained; (iii) Mr Ongwen's medical needs; and (iv) issues relating to the translation of key decisions and documents for Mr Ongwen.¹⁵

6. On 11 October 2016, the Prosecution filed its response to the Defence's Request,¹⁶ in which it states that it does not oppose the Request.¹⁷

B. Analysis

7. The Single Judge notes that, as previously stated,¹⁸ Mr Ongwen had the hearing required by Rule 118(3) of the Rules at the 23 May 2016 status conference. The Single Judge notes that the Defence did not object to having the hearing pursuant to Rule 118(3) of the Rules during the status conference.
8. Pursuant to Rule 118(3) of the Rules, a Chamber may decide to hold a hearing at the request of the detained person. However, the Single Judge does not deem such a hearing necessary at the present time.
9. The Defence was given an opportunity to make its submissions on Mr Ongwen's detention in writing and failed to do so. The Defence offers no reason why the issues it raises as potential discussion topics at a hearing could not have been addressed in written submissions.
10. Further, several of the issues the Defence raises in its Request are unrelated to the matter of Mr Ongwen's continued detention or interim release. For example, the Defence raises issues relating to the translation of key decisions and documents for Mr Ongwen; the translation of documents is entirely unrelated to the review

¹⁵ Request, ICC-02/04-01/15-560, para. 8.

¹⁶ Prosecution's Response to Defence Request for a Hearing Pursuant to Rule 118(3) of the Rules of Procedure and Evidence, ICC-02/04-01/15-563.

¹⁷ ICC-02/04-01/15-563, para. 2.

¹⁸ See ICC-02/04-01/15-T-25-ENG, page 6, line 19 to page 7, line 10; and Review Decision, ICC-02/04-01/15-503, para. 5.

of the ruling on Mr Ongwen's detention.¹⁹ The Defence may in any case raise any such issues in writing at any time. However, any submissions filed pursuant to the Single Judge's Order must be tailored to matters directly related to Mr Ongwen's continued detention or release with or without conditions, including the existence of any changed circumstances pursuant to Article 60(3) of the Statute.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Defence's Request.

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



Judge Bertram Schmitt
Single Judge

Dated 17 October 2016

At The Hague, The Netherlands

¹⁹ See also Review Decision, ICC-02/04-01/15-503, para. 16. Although the Chamber addressed the issue of Mr Ongwen's communication restrictions in the Review Decision, it noted that this issue was wholly distinct from the review of the ruling on Mr Ongwen's detention.