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**International
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Court**



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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***

Confidential

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

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. The Common Legal Representative of Victims¹ (the “CLRv”) opposes the Defence’s “Request for Amendment of the Seating Schedule” (the “Request”).² The Trial Chamber’s (the “Chamber”) decision³ to amend the sitting schedule in the month of June 2019 merely replaced some previously cancelled dates with new but shorter ones (the “Amendment Decision”). Said amendment represents only a minimal alteration to the trial hearings which cannot possibly have any adverse impact upon Mr Ongwen’s health conditions or the preparation of his defence.

II. PROCEDURAL BACKGROUND

2. On 1 May 2019, the Chamber cancelled the trial hearings previously scheduled on 2, 3, 6, 7, 9 and 10 May 2019 due to unforeseen and urgent circumstances within the Chamber.⁴ On the same day, the Prosecution expressed concerns about the cancellation of trial hearings and asked the Chamber to consider further amending the sitting schedule to foresee additional hearing days (the “Prosecution’s Proposal”).⁵

3. On 2 May 2019, the CLRv shared the concerns expressed in the Prosecution’s Proposal.⁶ On the other hand, the Defence indicated that it has constantly urged the Chamber to take into consideration the special circumstances and special needs of

¹ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-350, 27 November 2015, p. 19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 15 December 2015, pp. 10-11; the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-384, 24 December 2015, pp. 20-22; and the “Decision on the ‘Request for a determination concerning legal aid’ submitted by the legal representatives” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-445, 26 May 2016, para. 13.

² See the “Defence Request for Amendment of the Seating Schedule”, No. ICC-02/04-01/15-1507-Conf, 7 May 2019 (the “Request”).

³ See the email from the Chamber sent on 02 May 2019 at 10:03 (the “Amendment Decision”).

⁴ See the email from the Chamber sent on 01 May 2019 at 14:36.

⁵ See the email from the Prosecution sent on 01 May 2019 at 16:31.

⁶ See the email from the CLRv sent on 02 May 2019 at 07:26.

the Accused when making the schedule of the hearings.⁷ On the same day, the Chamber decided that it will additionally sit five more days in June 2019.⁸ In response, the Defence indicated that it will make representations to the Chamber on some practical difficulties that may affect the adjusted schedule.⁹

4. On 7 May 2019, the Defence filed the Request.¹⁰ On the same day, the Chamber shortened the deadline to submit responses to the Request until 14 May 2019.¹¹

III. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this response is filed confidential following the classification chosen by the Defence. However, the CLRV indicates that these submissions do not contain information which should remain confidential and therefore can be reclassified as public.

IV. SUBMISSIONS

6. In the Request, the Defence objects to the addition of new dates to the hearing schedule in the month of June 2019 and requests the cancellation of the hearings on said dates.¹² In particular, the Defence argues that the addition of new dates does not allow for sufficient time for Mr Ongwen to maintain his mental health treatment and recovery and has a considerable effect on the planning and preparation of his defence in violation of his fair trial rights under article 67(1)(e) of the Statute.¹³

⁷ See the email from the Defence sent on 02 May 2019 at 00:41.

⁸ See the Amendment Decision, *supra* note 3.

⁹ See the email from the Defence sent on 02 May 2019 at 10:32.

¹⁰ See the Request, *supra* note 2.

¹¹ See the email from the Chamber sent on 07 May 2019 at 15:03.

¹² See the Request, *supra* note 2, para. 1.

¹³ *Idem*, paras. 2-4.

7. The CLRV submits, firstly, that these arguments appear disingenuous. Indeed, the Defence did not specifically raise any of these matters previously when it responded to the Prosecution's Proposal and the Amendment Decision. In relation to the former, the Defence acknowledged the fact that the Chamber has a discretionary power to take into consideration a variety of reasons for making the hearing schedule, including personal matters concerning the Judges of the Chamber that warrant a change in the schedule of the hearings.¹⁴ In relation to the latter, the Defence stated that it will make representations to the Chamber only about some *practical difficulties* affecting the amended schedule, including the participation of the members of the Defence team to the training session of list counsel/auxiliary staff before the ICC and the general assembly of the ICCBA.¹⁵ Only five days after the Amendment Decision, the Defence presented completely new set of reasons and arguments objecting to the new schedule. Thus, said arguments should be dismissed as untimely and frivolous.

8. *Arguendo*, even if the Chamber is minded to address the merits of said arguments, the Request cannot but be rejected. The CLRV submits that, in the Amendment Decision, the Chamber, in cancelling certain hearings scheduled in May 2019, removed in total 6 days from the trial calendar. Yet, in re-scheduling the hearings of the month of June 2019, the Chamber set only 5 additional days on said calendar. Consequently, by virtue of the Amendment Decision, the cancelled days in May were essentially replaced with new - but even shorter days - in June 2019. Thus, the Defence's arguments to the effect that the Chamber unexpectedly added totally new days to the trial calendar are misleading and improper.

9. Moreover, the amendment in question represents only a minimal alteration to the continuing trial hearings and thus cannot possibly affect negatively Mr Ongwen's mental health treatment and recovery. In setting the trial schedule, the

¹⁴ See *supra* note 7.

¹⁵ See *supra* note 9.

Chamber does routinely take into account the health conditions of the Accused and reduce the number of days to sit in a week, if necessary.¹⁶ This approach cannot possibly have any adverse impact on the planning and preparation of Mr Ongwen's defence or further violate his fair trial rights. This is simply because the matter of shifting five days of hearings from one month to the next is inconsequential within the context of the trial for which the Defence has had time to prepare since the issuance of the decision on the confirmation of charges in March 2016. Indeed, the Defence's arguments in this regard appear to be illogical, unreasonable and unpersuasive.

10. Most importantly, in rendering the Amendment Decision, the Chamber took a correct step in ensuring the expeditious conduct of the proceedings under article 64(2) of the Rome Statute. In this regard, the Appeals Chamber held that:

"[t]he Statute and the Rules of Procedure and Evidence place an onus on all those involved in the trial to act in a diligent and expeditious manner in the performance of their obligations. The duty applies to the Chambers of the Court, the parties and participants. As regards the accused person, where he or she is represented by counsel, the Code of Professional Conduct for counsel enjoins counsel to represent him or her 'expeditiously with the purpose of avoiding unnecessary delay in the conduct of the proceedings'. [...] The need to act expeditiously must also be viewed in the context in which the Court operates. The crimes under the Court's jurisdiction are by their nature complex and their adjudication takes time. It is vital for cases to be properly managed from the start to forestall unnecessary delays. Undoubtedly, delays in proceedings are inimical to the proper administration of justice. [...] An expeditious trial is beneficial to victims. It assures them of receiving justice and of going through the healing process quickly. For witnesses, it relieves them as soon as possible of the anxiety of having to appear in court to give evidence. Unreasonable delay in commencing or finalising a trial may also diminish public interest and public support for, and cooperation with, the Court. Without such support and cooperation the Court would find it difficult to have its decisions and orders respected or enforced. [...] Expeditiousness is thus an independent and important value in the Statute to ensure the proper administration of justice, and is therefore more than just a component of the

¹⁶ See the "Decision on Defence Request for Amendment of the Seating Schedule", (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-1330-Red, 05 September 2018, paras. 5 – 7. See the emails from the Chamber sent on 31 October 2018 at 11:26 and 19 February 2019 at 14:07 (deciding not to sit on Wednesdays).

fair trial rights of the accused. For this reason, article 64 (2) enjoins the Trial Chamber to ensure that the trial is both fair and expeditious".¹⁷

11. By the same token, the CLRV conveys to the Chamber the fact that the victims participating in these proceedings wish indeed that the trial hearings proceed as expeditiously as possible and have expressed their concerns about recent adjournments.

V. CONCLUSION

12. For the foregoing reasons, the Common Legal Representative of the Victims respectfully requests the Chamber to reject the Request.



Paolina Massidda
Principal Counsel

Dated this 10th day of May 2019

At The Hague, The Netherlands

¹⁷ See the "Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 20 November 2009 Entitled 'Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings'" (Appeals Chamber), No. ICC-01/04-01/07-2259 OA10, 12 July 2010, paras. 40-47.