

ANNEX VIII

PUBLIC

From: Trial Chamber IX Communications
Sent: 21 March 2018 14:28
To: [REDACTED]

Subject: redacted versions of the Defence's request to adjourn the proceedings and the Chamber's response thereto

Dear parties and participants,

Please find below the redacted versions of the Defence's request to adjourn the proceedings (of Monday, 19 March 2018) and the Chamber's ruling on the request (dated the same day).

For the Defence: the request to redact the second set of information is rejected, as it contains no confidential information and the disclosure to the parties and participants does not constitute any violation of the accused's right.

Kind regards,
 Trial Chamber IX

From: Trial Chamber IX Communications
Sent: 19 March 2018 21:08
To: [REDACTED]

Cc: Trial Chamber IX Communications; [REDACTED]
Subject: Decision on Urgent Defence Request for Adjournment for a Medical Examination

Dear Counsel:

The Chamber notes the urgent and *ex parte* relief sought by the Defence in their email of 19 March 2018, at 19:12.

Professor de Jong was originally appointed to conduct a psychiatric examination of Mr Ongwen with a view to: (i) making a diagnosis as to any mental condition or disorder that Mr Ongwen may suffer at the present time; and (ii) providing specific recommendations on any necessary measure/treatment that may be required to address any such condition or disorder at the detention centre (ICC-02/04-01/15-637-Conf). This report was duly received over a year ago, and nothing in it prompted the Chamber to stop the trial. The trial has proceeded to date without any disruption from the accused, but for a single incident during the examination of P-3 on 2 March 2017 (ICC-02/04-01/15-T-45-CONF-ENG).

Over the balance of the trial, nothing has arisen which would justify a second medical examination. When deciding on whether Professor de Jong's assessments now require revisiting,

the only relevant recent developments are: (i) [REDACTED]; (ii) the recent change in Mr Ongwen's mental health doctors; and (iii) Mr Ongwen's disruptive behaviour in the last hearing.

On point (i), [REDACTED].

On point (ii), the Chamber is not persuaded that the recent change in Mr Ongwen's mental health doctors justifies a second medical examination. As the Defence itself notes, Professor de Jong already noted that the turnover of psychiatrists at the Detention Centre 'seems quite high'. Mr Ongwen has managed to date despite the changes in his health care professionals, and the Chamber sees no reason why this latest change would prompt a meaningfully different assessment from Professor de Jong.

On point (iii), Mr Ongwen's disruptive behaviour prompted the Presiding Judge to adjourn the hearing for the day and make a warning that continued disruption would lead to Mr Ongwen's removal pursuant to Article 63(2) of the Statute. It is quite clear from the Presiding Judge's warning that the incident in the last court hearing was insufficient to justify adjourning the trial beyond the hearing day. It is also noted that, following the incident during P-3's testimony, Mr Ongwen has attended well over 100 consecutive court hearings without any apparent difficulties.

When considering these developments – either in isolation or together - there is insufficient cause to adjourn the trial for purposes of ordering a second examination by the Chamber appointed expert. The adjournment request is rejected. The Chamber will not permit the accused to let his behaviour disrupt the conduct of this trial. Mr Ongwen is expected to attend court tomorrow, or provision will be made for him to follow the hearing via video-link.

As to the Defence's final concern related to the Presiding Judge's remark to make a short declaration, such a statement from the accused would be appreciated. However, noting Article 67(1)(g) of the Statute, Mr Ongwen is of course not obligated to make any such declaration. Should he elect not to do so, this will not be considered against him in any way.

Best,

Trial Chamber IX

 From: [REDACTED]
 Sent: 19 March 2018 19:12
 To: Trial Chamber IX Communications
 Cc: [REDACTED]
 Subject: Urgent Ex Parte Request for Adjournment for a Medical Examination
 Importance: High

Dear Trial Chamber IX,

Following the events in the court-room today I have been asked to convey this request from Lead Counsel for Mr Ongwen.

Firstly, the Defence requests an adjournment of proceedings until Mr Ongwen is examined to ensure that he is able to continue with the trial. In relation to this request, the Defence suggests that Mr Ongwen be examined by Prof de Jong who was previously appointed to advise the Chamber on intervention measures to ensure Mr Ongwen's ability to follow the proceedings under Rule 135 of the Rules of Procedure and Evidence.

The Defence emphasises the fact that Prof de Jong last examined Mr Ongwen in January 2017 before the beginning of the Prosecution witnesses. Apart from the events in March 2017, Mr Ongwen has not shown any behaviour to warrant his removal from the courtroom or the extreme measures of having him follow the proceedings via video link at the Detention Centre. Prof de Jong noted in his report that Mr Ongwen has not had a consistent mental health professional during his stay at the Detention Centre "*since the turnover of psychiatrists seems quite high*" (page 8). Information available to the Defence suggests that indeed Mr Ongwen's mental health doctors have changed yet again since Prof de Jong's report.

The Defence also recalls [REDACTED].

In the Defence's view, Prof de Jong evaluating Mr Ongwen is consistent with the Chamber's previous ruling that "the Chamber may order a psychological and psychiatric examination with a view to assessing Mr Ongwen's continued fitness to stand trial." (ICC-02/04-01/15-T-26-ENG ET WT 06-12-2016 7/89 SZ T, page 7 lines 9-11). The Defence further submits that detailed information is required "in order to properly manage Mr Ongwen's mental health and safety at the detention centre." (ICC-02/04-01/15-637-Conf, para. 30). The Defence believes that Prof de Jong created a rapport with Mr Ongwen while conducting the first examination of Mr Ongwen. He is already aware of the challenges that Mr Ongwen faces and Mr Ongwen will not have to repeat himself yet again. Additionally, the parties have previously agreed on Prof de Jong as a neutral and competent expert on the issues at hand.

Secondly, while mindful of the Trial Chamber's recommendation at the close of the hearing today that Mr Ongwen give a short declaration to the effect that he would not be disruptive throughout the proceedings, the Defence notes that Mr Ongwen has a right to remain silent under Article 67(1) (g) of the Statute. This right has to be safeguarded, especially in light of Mr Ongwen's mental state.

Kind regards,

[REDACTED]