

1 International Criminal Court

2 Trial Chamber IX

3 Situation: Republic of Uganda

4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15

5 Presiding Judge Bertram Schmitt, Judge Péter Kovács and Judge Raul Cano

6 Pangalangan

7 Trial Hearing - Courtroom 3

8 Monday, 15 July 2019

9 (The hearing starts in open session at 9.30 a.m.)

10 THE COURT USHER: [9:30:09] All rise. The International Criminal Court is now
11 in session. Please be seated.

12 PRESIDING JUDGE SCHMITT: [9:30:28] Good morning, everyone. Could the
13 court officer please call the case.

14 THE COURT OFFICER: [9:30:35] Good morning, Mr President, your Honours.

15 The situation in the Republic of Uganda, in the case of The Prosecutor versus Dominic
16 Ongwen, case reference ICC-02/04-01/15.

17 And for the record we are in open session.

18 PRESIDING JUDGE SCHMITT: [9:30:52] Thank you.

19 I ask for the appearances of the parties.

20 Prosecution first.

21 MR SACHITHANANDAN: [9:30:57] Good morning, your Honour.

22 Pubudu Sachithanandan appearing with Sanyu Ndagire, Ben Gumpert, Colin Black,
23 Milena Bruns, Grace Goh, Beti Hohler, Yulia Nuzban, Jasmina Suljanovic, and
24 Yang Suhong.

25 PRESIDING JUDGE SCHMITT: [9:31:13] Thank you.

1 And the representatives of the victims.

2 Ms Massidda first.

3 MS MASSIDDA: [9:31:19] Good morning, Mr President, your Honours.

4 The Common Legal Representatives is composed of myself Paolina Massidda and Ms
5 Caroline Walter.

6 PRESIDING JUDGE SCHMITT: [9:31:26] And Ms Hirst.

7 MS HIRST: [9:31:28] Good morning, your Honours, I'm Megan Hirst. Here with
8 me is James Mawira.

9 PRESIDING JUDGE SCHMITT: [9:31:32] Thank you.

10 And for the Defence.

11 Mr Kifudde.

12 MR KIFUDDE: [9:31:37] Good morning, Mr President, your Honours. For the
13 Defence today, we have myself Gordon Kifudde; Roy Titus Ayena; we have
14 co-counsel, Beth Lyons; we have Michael Rowse our case manager and our client
15 Dominic Ongwen is in Court.

16 PRESIDING JUDGE SCHMITT: [9:31:51] Thank you.

17 We are all aware that we have to discuss a matter in private session and we go to
18 private session.

19 (Private session at 9.32 a.m.) * (Reclassified entirely in public)

20 THE COURT OFFICER: [9:32:04] We are in private session, Mr President.

21 PRESIDING JUDGE SCHMITT: [9:32:21] Thank you very much.

22 Ms Lyons I think we have received your email and it has been forwarded to the
23 Prosecution. You don't have to repeat it at the moment what is the content of this
24 email.

25 Does the Prosecution have any thoughts on that?

1 MR SACHITHANANDAN: [9:32:39] Your Honour, we have two proposals in the
2 context of the Defence's email.

3 Firstly, perhaps pushing D-100 tomorrow and moving D-84 to the next session, which
4 would allow counsel some time to prepare for D-100's direct examination.

5 The second being, if we are going to lose both witnesses for this session, if we could
6 add two days to the next session, perhaps 21 and 22 August or if we need a break day,
7 22 and 23 August.

8 PRESIDING JUDGE SCHMITT: [9:33:13] Thank you very much.

9 Any thoughts by the representatives of the victims?

10 Ms Massidda.

11 MS MASSIDDA: [9:33:17] Your Honours, we are actually thinking along the same
12 lines of the Prosecution. If at least one witness could be heard tomorrow, this will be
13 of help; otherwise, we support the alternative position of having two additional days
14 after the Court recess.

15 Thank you.

16 PRESIDING JUDGE SCHMITT: [9:33:34] Thank you.

17 Ms Hirst.

18 MS HIRST: [9:33:35] Thank you, your Honours.

19 We would also be very happy with the options proposed by the Prosecution.

20 PRESIDING JUDGE SCHMITT: [9:33:42] Actually the Chamber has also discussed
21 the matter in the deliberation room of course beforehand, and it was according to
22 these lines.

23 We would at least want to put on the table, Ms Lyons, if we can move D-100, for
24 example, to tomorrow, we would not have to go back then.

25 With regard to the material, I think everything is available via e-Court, so it should

1 and could be possible in our opinion. We don't want to force you of course, but this
2 is a proposal and I would want to give you the floor.

3 MS LYONS: [9:34:21] Thank you, your Honour, and I appreciate the proposals.
4 It is not possible for me to do D-100 tomorrow. Some material may be available, but
5 I don't -- we have a division of labour in the team. I don't know -- I have no
6 instructions from counsel as to what he wanted to do.

7 If you've read the summary, this is a technical witness and --

8 PRESIDING JUDGE SCHMITT: [9:34:49] I interrupt you, we have foreseen that, so
9 to speak.

10 MS LYONS: [9:34:53] Yes, right, and I can't and I won't because it would not be
11 professionally responsible for me to take this witness tomorrow and I won't do it. I
12 can't.

13 PRESIDING JUDGE SCHMITT: [9:35:01] Yes. As I said, we have -- I won't say we
14 have foreseen it, but we have contemplated another possibility. What about D-84
15 tomorrow?

16 MS LYONS: [9:35:12] Your Honour, I -- the same situation with D-84. It is not -- it's
17 the same argument; although that witness is based on a summary, it's different.
18 There are other issues and I am not able to -- I don't have instructions and I'm not able
19 to do that, and I can't get the instructions and discuss with the client and adequately
20 prepare. And I'm sorry about that, but that's the situation.

21 PRESIDING JUDGE SCHMITT: [9:35:39] Okay, thank you.

22 (Trial Chamber confers)

23 PRESIDING JUDGE SCHMITT: [9:35:53] So we are going to cancel then these two
24 days, this is out of fairness of the proceedings for the Defence.

25 We understand your problem. It was simply an attempt to rescue what could be

1 rescued, but we understand your position.

2 With regard to the proposal to add two further days, we have to look in our schedules
3 if it is possible, but I can already tell you that we envision to have further extended
4 the hearing days until November and you will get notice of that. We have already
5 prepared that.

6 We also can count days and witnesses and try to look into the future, so it seems to be
7 clear that we will need at least until mid-November; that is our expectation at the
8 moment.

9 Now, we lose again two days, so it might reach until the end of November, but
10 frankly speaking, the Chamber expects that we finish then the Defence case, so to
11 speak.

12 But it's just now in private session, so it is, so to speak, for the parties and participants
13 on the record.

14 We go back to open session.

15 (Open session at 9.37 a.m.)

16 THE COURT OFFICER: We are in open session, Mr President

17 PRESIDING JUDGE SCHMITT: [9:37:27] Thank you.

18 That is, of course, not very satisfying what I have to say for the audience, but on
19 request by the Defence, the hearings of today and tomorrow are canceled.

20 The hearing is adjourned.

21 THE COURT USHER: [9:37:42] All rise.

22 (The hearing ends in open session at 9.37 a.m.)

23 RECLASSIFICATION REPORT

24 Pursuant to the Trial Chamber' IX's instructions, ICC-02/04-01/15-497, dated 13 July
25 2016, the transcript is reclassified public and is filed in the case