

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**

Date: **16 June 2017**

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

Defence Observations on a Judicial Site Visit

Source: Defence for Dominic Ongwen

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

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I. INTRODUCTION

1. Pursuant to Order 834,¹ the Defence for Dominic Ongwen ('Defence') submits its observation on a possible judicial site visit to Northern Uganda.

II. CONFIDENTIALITY

2. Pursuant to Order 834,² the Defence files these observations as confidential only.

III. BACKGROUND

3. On 19 May 2017, Trial Chamber IX ('Chamber') requested observations concerning a possible judicial site visit to Northern Uganda after the close of the Prosecution's case-in-chief.³ The Chamber requested the observations by 16 June 2017.⁴

IV. SUBMISSIONS

a) Alleged Locations of Violence in the Confirmation Decision

4. The Defence agrees that the Chamber should visit all the sites outlined in the Decision on the Confirmation of Charges from which Mr Ongwen faces direct charges.⁵

Lukodi

5. In addition to the physical location of the former IDP camp and its environs,⁶ the Defence requests that the Chamber visit the following areas whilst at Lukodi:

- (1) The hill immediately south of Awach Road, which is approximately 500 metres east of Gulu-Patiko Road. The Defence considers it important that the Chamber visits the area in which the UPDF artillery detach was located before the attack on Lukodi.⁷

¹ ICC-02/04-01/15-834-CONF.

² *Id.*, para. 3.

³ *Id.*

⁴ *Id.*, p. 4.

⁵ ICC-02/04-01/15-422-Conf.

⁶ The term environs encapsulates any church missions, former military barracks, schools and trading centres.

⁷ The Defence notes that this location was discussed by P-0024 during her testimony, but takes the position that she was mistaken as to the timing. The witness stated that the detach moved there after the attack, yet she conclusively stated that she did not return to that area for eight years after the attack. See ICC-02/04-01/15-T-78-CONF-ENG, p. 58, l. 25 to p. 49, l. 6.

- (2) The area east of Lukodi along Awach Road all the way to the Unyama River Bridge. Several witnesses have testified about this area,⁸ and further witnesses are likely to testify about this location. The stretch of road is less than a five (5) minute drive from the location of the former IDP Camp to the Unyama River Bridge.
- (3) The stretch of road leading to the bridge crossing the Unyama River approximately 5.0 km north of Lukodi along the Gulu-Patiko Road. The Defence position is that this is not the Unyama River Bridge described by witnesses, but requests that the Chamber travel and observe this area because Defence witnesses will discuss this area as routes travelled by UPDF and LDU detachments at Lukodi where the detachments encountered and engaged patrols from Gilva Brigade proximate to the alleged attack on Lukodi.
- (4) Gwendiya (Gwendia) – P-0018 alleges that this location was the original target for the LRA from Sinia Brigade before LRA members from Tulu's group connected with them and ordered the change of attack. This location is approximately seven (7) km from the former IDP Camp along the Awach Road.

Odek

6. In addition to the physical location of the former IDP camp and its environs, the Defence requests that the Chamber visit the following areas in and around Odek:

- (1) Awere Rock – this location plays an important role in the Spiritual aspect of the LRA and shall be discussed in detail by some Defence witnesses and quite possibly future Prosecution witnesses. It is the alleged location of the first Juma Oris Day (7 April) and is the location where some stories state that the LRA started.
- (2) Achwa (Aswa) River approximately 6.5 km east of Odek – as there has been no conclusive evidence as to which direction the LRA allegedly came from for the attack on Odek IDP camp, the Defence avers that the Chamber should visit

⁸ For example see ICC-02/04-01/15-T-78-CONF-ENG , p. 20, ll. 9-10, p. 33, ll. 5-8, p. 38, ll. 19-22, p. 36, ll. 6-10, p. 47, ll. 2-11, p. 48, ll. 4-20.

this section of the river to see the width of the river and the level of the flood plains.

- (3) The area around map coordinates 2°50'52.0"N, 32°39'38.0"E – the UPDF directional finding material places Mr Ongwen at this location, approximately 20 km north of Odek, and east of both the Odek River and the Achwa (Aswa) River on the evening of 27 April 2004.

Pajule

7. In addition to the physical location of the former IDP camp and its environs, the Defence requests that the Chamber visit the following areas in and around Pajule:

- (1) The area in and around Wangduku (Wanduku) – it has been alleged by Prosecution witnesses that this was the RV point for the attack on Pajule.
- (2) The area in and around Latanya Hill – this position has also been alleged to be the RV point for the attack on Pajule and the secondary RV point after the attack on Pajule.
- (3) The town of Lanyatido – the Chamber has already heard conflicting information about an alleged attack on the Lanyatido Barracks, and the Defence avers that it should take a short trip to the area of Lanyatido Barracks as it is approximately four to five (4-5) km from Pajule.

Abok

8. In addition to the physical location of the former IDP camp and its environs, the Defence requests that the Chamber look at the following areas in and around Abok:

- (1) Map coordinates 2°45'07.0"N, 32°36'27.0"E – the UPDF directional finding material places Mr Ongwen at this location, approximately 22.5 km north of Abok, on the evening of 9 June 2004. In addition to visiting this area, the Defence requests the Chamber to observe the areas in and around the direct route from Abok to this location.
- (2) Akello Alyek Forest – The Defence realises that besides witness P-0269, this area has not been discussed. It is the Defence's opinion that this area will be discussed further by Prosecution witnesses.

- (3) Abok Primary School – The Defence realises that besides witness P-0269, this area has not been discussed. It is the Defence's opinion that this area will be discussed further by Prosecution witnesses.
- (4) Papyrus Swamp – The Defence realises that besides witness P-0269, this area has not been discussed. It is the Defence's opinion that this area will be discussed further by Prosecution witnesses.
- (5) Aweki – The Defence realises that besides witness P-0269, this area has not been discussed. It is the Defence's opinion that this area will be discussed further by Prosecution witnesses.

b) Ancillary Locations

9. Because of the peculiarities of this case, the Defence requests the Chamber to visit several ancillary locations associated with the case. The Defence requests the Chamber to visit the following locations:

- (1) The area around Atoo Hills – this area is discussed by several witnesses. For example, P-280 recently discussed it as the location to which he was taken following the attack on Odek.⁹ From the developing Prosecution case, is a location of interest which the Chamber should seriously consider visiting.
- (2) A view of the Imatong Mountains – the Defence does not request that the Chamber physically travel into South Sudan, but that it travel far north in Uganda and view the mountains from a distance. These mountains play a key role in this case, especially with respects to the question of “why did you not try to escape from the LRA?” Additionally, the Defence will argue that Prosecution witnesses yet to testify have stories which are not practicable or plausible given anticipated testimony based upon statements concerning crossing into Sudan (present day South Sudan) with Mr Ongwen.¹⁰
- (3) Patonga-Kalongo Road – this area can be visited on the same day as Lira Palwo, and is the location which Mr Ongwen was severely injured in late 2002.

⁹ ICC-02/04-01/15-T-83-CONF-ENG, p. 60, l. 6 to p. 66, l. 25.

¹⁰ As an example see transcripts of P-0200.

- (4) Lira Palwo/Omot – this area is discussed by several witnesses, and the Defence avers that the Chamber should visit the site, noting specifically the inscription on the monument present in the area which shows the date of the alleged attack. The Defence shall be using information about this alleged attack to dispute future testimonies of Prosecution witnesses.
- (5) Lalogi – this location has been mentioned by several witnesses in relation to several crimes bases. It lies between Odek and Abok, and can be visited when visiting either location.
- (6) Opit – several witnesses discuss this area, and Defence requests that the Chamber make a quick stop at this location, which can be done on the same day as the visit to either Abok or Odek.
- (7) Acet – Mr Ongwen was severely injured in 1996 at this location, and several witnesses have or shall discuss this town.
- (8) UPDF 4th Division Headquarters, Gulu – the Defence requests that the Chamber conduct a site visit at the location from which P-0003 and P-0059 conducted the alleged radio intercepts.
- (9) Locations of crimes alleged in ICC-02/04-01/05 – the Defence thinks that it would be respectful to the people of northern Uganda if the Chamber made short stops at the locations alleged in the Kony *et al* case.
- (10) Northern area of Teso Region – as several Prosecution witnesses discuss the region of Teso, the Defence suggests that it might behove the Chamber to take a one-day trip to the northern region of Teso around the borders with Lango and Karamoja.

c) *Time in Uganda and Request for further Observations*

10. The Defence respectfully submits that the site visit should last at least two (2) weeks to see each location in its entirety.
11. Finally, the Defence requests that the Chamber request further observations at the beginning of the New Year. At this time, the Prosecution's case shall be in

the final third and the Parties and Participants will have a more complete appreciation of the evidence elicited from the witnesses. This also allows the Parties and Participants to conduct *inter partes* meetings for the purpose of proposing a protocol for the site visit.¹¹

V. RELIEF

12. The Defence respectfully submits these observations pursuant to Order 834.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 16th day of June, 2017
At The Hague, Netherlands

¹¹ See ICC-02/04-01/15-877-Conf, para. 3.