

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **29 August 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

Public

**Prosecution's Response to Defence Request for Leave to Appeal Decision ICC-
02/04-01/15-956-Corr**

Source: The Office of the Prosecutor

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

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Introduction

1. The Defence's Request for Leave to Appeal ("Request")¹ the "Decision on Prosecution's Request to Add Updated Forensic Report to its List of Evidence" ("Decision")² should be dismissed. The Request fails to establish an appealable issue within the meaning of article 82(1)(d) of the Rome Statute. The issue for which leave to appeal is sought, namely "[t]he Chamber did not properly factor prejudice to the Accused when it allowed the addition of the Updated Forensic Report to the Prosecution's List of Evidence",³ merely disagrees with the findings of the Chamber, stemming from its exercise of its discretionary powers to freely assess the evidence submitted to it.

Submissions

The Request fails to identify an appealable issue

2. The issue for which leave to appeal is sought merely disagrees with the Chamber's decision, made after considering and weighing various factors, to add an updated forensic report to the Prosecution's List of Evidence. As the Request itself acknowledges, the Chamber assessed the "length of the report",⁴ "its contents"⁵ and the fact that any "prejudice incurred by the Defence [through the late admission of the updated forensic report] could be remedied by a changing of the testimony date of P-0414".⁶ This shows that the Chamber considered any potential prejudice to Mr Ongwen caused by the late addition of the updated report to the Prosecution's List of Evidence, and exercised its discretion properly in doing so. The Defence is simply dissatisfied with the outcome of the Chamber's Decision—which falls short of establishing an appealable issue within the meaning of article 82(1)(d).

¹ ICC-02/04-01/15-960.

² ICC-02/04-01/15-956-Corr, para. 13.

³ Request, para. 2.

⁴ ICC-02/04-01/15-960, para. 11.

⁵ ICC-02/04-01/15-960, para. 11.

⁶ ICC-02/04-01/15-960, para. 11.

Conclusion

3. For the foregoing reasons the Chamber should reject the Defence's Request.



Fatou Bensouda, Prosecutor

Dated this 29th day of August 2017
At The Hague, The Netherlands