

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**
Date: **22 December 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 the Single Judge's Decision for Report on the Resources of the Parties to the Case and Order for Additional Resources to the Defence", ICC-02/04-01/15-1098

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo
Mr Charles Taku
Ms Beth S Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Ms Caroline Walter
Mr Orchlon Narantsetseg

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keita

Amicus Curiae

States Representatives

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The request for leave to appeal the Single Judge's decision,¹ rejecting the "Defence Request for Reports on the Resources of the Parties to the Case and Order for Additional Resources to the Defence"² ("Defence Request"), should be dismissed. Interlocutory appeals are "exceptional"³ and should not be a device "to express mere disagreement with any of the Chamber's Decisions".⁴
2. Since disagreements or such conflicts of opinion are not appealable issues, the application must fail on that basis alone. Even if, *arguendo*, appealable issues do arise from the Decision, the application equally fails because none of the three issues meet the other criteria for leave to appeal under article 82(1)(d) of the Statute.
3. Where the first issue fails to meet the criteria, the second and third issues must also fail because they are conditional on the first issue.

Submissions

A. The First Issue does not genuinely arise from the Decision

4. The Defence formulates this issue thus:

"whether the Trial Chamber, or the Registry, is the appropriate entity under the Rome Statute to decide whether the fair trial rights of the accused are violated, and if yes, the remedy to be implemented for the violations."
5. The premise underlying this formulation, that the Chamber ought to reach a legal finding of fair trial violation of the rights of the Accused for the non-allocation

¹ ICC-02/04-01/15-1114 ("Decision").

² ICC-02/04-01/15-1115.

³ ICC-02/05-03/09-109, para. 2; ICC-02/04-01/15-428, para. 8.

⁴ ICC-01/12-01/15-T-1-ENG, p. 12 (lns. 11-12).

of resources by the Registry, is not an issue that genuinely arises from the Decision. The Defence cannot seek appellate guidance on its legality.

6. The impugned Decision merely seeks to provide procedural clarity on the need for the Defence to exhaust administrative remedies pursuant to regulation 84(3) of the Regulations of the Court before seeking the intervention of the Chamber pursuant to article 64(4). In arguing to the contrary, the Defence seeks a declarative ruling for which they have not previously sought relief.

B. The First Issue does not meet the remaining article 82(1)(d) criteria

7. The first issue fails to meet the requirements of article 82(1)(d) of the Statute necessary to justify appellate intervention in an ongoing trial.

8. In its original application, the Defence failed to concretely demonstrate that it had presented a “specific and reasoned” application to the Registry for the allocation of additional resources and for which a review of the decision of the Registry is sought of the Chamber. If such a “specific and reasoned” application is brought to the Registry and the Defence thereafter applies for the Chamber to review the Registrar’s decision, the Chamber has indicated that it would rule on such an application with “fullest regard for the Defence’s rights pursuant to article 67 of the Statute”.⁵

9. The Chamber indicated the need to protect the rights of the Defence once the proper procedural steps are respected. The issues proposed for certification therefore, do not amount to a significant issue requiring the immediate resolution by the Appeals Chamber to materially advance the proceedings.

⁵ ICC-02/04-01/15-1114 para. 7

C. The second and third issues fail because they depend on certification of the first issue

10. Since the procedural requirements of the first issue are not met, and the second and third issues are tied to the resolution of the first issue, the second and third issues should similarly be dismissed.

Conclusion

11. The Defence's request should be rejected.



Fatou Bensouda, Prosecutor

Dated this 22nd day of December 2017
At The Hague, The Netherlands