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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 Response to “Defence Request for Findings on Fair Trial Violations
and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute.”**

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 Office of the Prosecutor (“Prosecution”) opposes the “Defence Request for Findings on Fair Trial Violations and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute” (“Request”).¹
2. The Request is based on misplaced legal submissions, and incomplete information. Since December 2015, the Accused has been in receipt of an Acholi translation of the Document Containing the Charges (“DCC”), which was repeated almost *verbatim* in the Confirmation of Charges Decision (“CoC Decision”). These charges were read to the Accused on the first day of trial, and the Trial Chamber was satisfied that he understood them. Moreover, the Accused is represented by Counsel who speaks English and Acholi, and who can explain any pertinent issue arising from the CoC Decision.
3. In the circumstances, the requested relief for findings of fair trial violations and a stay of proceedings is wholly unwarranted.

Submissions

4. Article 67(1) states that an Accused has a right to “be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks.” Dominic Ongwen has been fully on notice of the charges in this case in a language he fully understands and speaks, as evinced by the following facts.
5. First, on 21 December 2015, the Accused was provided with an Acholi translation of the DCC.² In confirming the charges against the Accused, the CoC Decision repeated almost³ *verbatim* the content of the DCC.⁴

¹ ICC-02/04-01/15-1127 + Addendum ICC-02/04-01/15-1129.

² ICC-02/04-01/15-375-AnxB-Red.

³ With the exception of the charges relating to P-0198.

⁴ See ICC-02/04-01/15-422-Red, p. 72-103.

6. Second, at the commencement of the trial, the charges were read to the Accused.⁵ In determining that the Accused did indeed understand the charges, the Trial Chamber quoted the Accused's own words from the confirmation hearing, wherein he stated: "I've been handed out the document translated in Acholi, so I've read and understood it. Thank you."⁶
7. Third, the Acholi translation of the CoC Decision was completed on 13 December 2017,⁷ rendering the primary relief sought by the Defence as moot. The Prosecution submits that the time required to transmit this translation, as required by regulation 40(6) of the Regulations of the Court, does not warrant findings that the Accused's fair trial rights have been violated, because the Accused has been fully on notice of the content of the charges since December 2015, in a language he fully understands.
8. Fourth, the Accused is represented by Counsel who speaks Acholi, and who can discuss any issue arising from the CoC Decision. The unavailability of an Acholi translation of a decision does not affect the ability of Counsel to properly represent the interests of the Accused.⁸ Moreover, as the Defence concedes,⁹ the *Katanga* decision relied upon by the Defence does not touch upon the issue of translating the CoC Decision, but rather what language the Accused actually understood.¹⁰ This is not the case here.
9. Finally, the Defence requests that the Separate Opinion of Judge de Brichambaut also be translated into Acholi.¹¹ The Appeals Chamber has held documents such as dissenting opinions do not concern the "nature, cause and content of the charge" within the meaning of article 67(1)(a) of the Statute, and translation is

⁵ ICC-02/04-01/15-T-26-ENG ET, p. 9-16.

⁶ ICC-02/04-01/15-T-26-ENG ET, p. 18, lines 4-11.

⁷ ICC-02/04-01/15-422-Conf-tACH.

⁸ See ICC-02/11-01/11-489, para. 13.

⁹ Request, para. 27.

¹⁰ See ICC-01-04-01/07-522, para. 9.

¹¹ Request, para. 28.

not necessary “to meet the requirements of fairness within the meaning of article 67(1)(f) of the Statute.”¹² As such, the Accused’s fair trial rights cannot said to have been violated in the present case, as the requirements of notice have been fully complied with.

10. In the circumstances, the Defence request for a stay of proceedings - an exceptional measure of last resort and only where a fair trial has been rendered impossible¹³ - is wholly unwarranted and must be rejected.

Conclusion

11. The Request should be dismissed.



Fatou Bensouda , Prosecutor

Dated this 17th day of January 2018
At The Hague, The Netherlands

¹² See ICC-02/11-01/11-489 OA5, paras. 8-12.

¹³ ICC-01/04-01/06-2582, para. 55; ICC- 01/09-02/11-868-Red, para. 14.