

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **19 January 2018**

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

Defence Request for Leave to Reply to Prosecution's Response to "Defence Request for Findings on Fair Trial Violations and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute"

Source: Defence for Dominic Ongwen

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Benjamin Gumpert, QC

Counsel for the Defence

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Legal Representatives of the Victims

Joseph Akwenyu Manoba
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Jane Adong

Unrepresented Victims

**Unrepresented
(Participation/Reparation)**

Applicants

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

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Victims and Witnesses Unit

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**Victims Participation and Reparations Other
Section**

I. INTRODUCTION

1. Pursuant to Regulations 24(5) and 34(c) of the Regulations of the Court ('RoC'), the Defence for Dominic Ongwen ('Defence') respectfully requests leave to reply to the 'Prosecution Response to "Defence Request for Findings on Fair Trial Violations and Remedy, Pursuant to Article 67 and 64 of the Rome Statute,"' ('Prosecution Response').¹
2. Based on Regulation 24(5) of the RoC, the Trial Chamber has the discretion to determine the scope of a reply, if leave is granted. It includes the criterion of 'new issues' raised in the response which the replying participant could not reasonably have anticipated.
3. The Defence is mindful of the Single Judge's reminder to the parties that a request for leave to reply and the substantive content must be filed in two separate submissions.² If granted leave, the Defence will present full arguments in a separate submission.
4. However, in compliance with Rule 24(5) of the RoC, the Defence here identifies two 'new issues' which it could not have reasonably anticipated. These are factual errors, which severely undermine the Prosecution's arguments and render them unsound.
5. Factual Error #1: Contrary to the Prosecution's assertions,³ Counsel does not speak Acholi. Lead Counsel Ayena speaks Lango, which is a different dialect of the Luo language. Therefore, it is incorrect to state that Lead Counsel speaks Acholi.
6. But, even if Counsel spoke Acholi, it is not the position of the law that Counsel is a gazetted translator. Article 67 of the Statute requires that the notice of the charges be given in a language that the Accused fully understands and speaks, so that Counsel can advise the Accused and the Accused may instruct him on how to prepare his defence.
7. Factual Error #2: Contrary to the Prosecution's assertions,⁴ Judge Marc Perrin de Brichambaut's opinion is a Separate Opinion, not a Dissenting Opinion. In fact, he writes that "I consider it necessary to make, in my own name, a number of additions which ought to have been made in order for the decision to be well-rounded both in law and fact. It is in the light of

¹ ICC-02/04-01/15-1140.

² ICC-02/04-01/15-1114 ("Decision on Request for Reports on the Resources of the Parties to the Case and Order for Additional Resources to the Defence"), fn. 9.

³ ICC-02/04-01/15-1114, para. 8.

⁴ ICC-02/04-01/15-1114, para. 9.

these additions that I have felt able to put my name to the decision on the confirmation of charges.”⁵ The application of the Appeal Chamber’s holdings on a dissenting opinion in the *Gbagbo* case is therefore misplaced.

8. If granted leave, the Defence will file a separate submission, arguing how these errors resulted in the Prosecution’s misunderstanding and misinterpretations of Article 67 of the Statute, particularly the fundamental concepts of notice and translation.

II. REMEDY SOUGHT

9. For the reasons stated above, the Defence requests the Trial Chamber to grant its leave to reply to the Prosecution’s Response.

Respectfully submitted,



.....
Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 19th day of January, 2018

At The Hague, Netherlands

⁵ ICC-02/04-01/15-422-Anx-tENG, para. 2