

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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

Decision on Defence Request for Leave to Appeal Decision 1147

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Trial Chamber IX ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 82(1)(d) of the Rome Statute ('Statute'), issues the following 'Decision on Defence Request for Leave to Appeal Decision 1147'.

I. Procedural history

1. On 8 January 2018, the defence for Mr Ongwen ('Defence') filed a motion requesting that the Chamber: (a) make findings on fair trial violations in respect to notice and translation; and (b) order a temporary stay of proceedings until the violations are remedied ('Initial Request').¹ The Defence alleged that failure to provide an Acholi translation of the decision on the confirmation of charges ('Confirmation Decision') amounted to a violation of Article 67 of the Statute.
2. Later this same day, the Chamber brought to the Defence's attention an Acholi translation of the Confirmation Decision and inquired whether this affected the relief sought.² On 10 January 2018, the Defence filed an addendum stating that the relief sought remained the same ('Addendum').³
3. On 24 January 2018, the Chamber rejected the Initial Request on the basis that the relief sought was both untimely and unjustified ('Impugned Decision').⁴ The Chamber noted that no objection on this issue was raised by the Defence when given the opportunity to do so, as per Rule 134(2) of the Rules of

¹ Defence Request for Findings on Fair Trial Violations and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute, ICC-02/04-01/15-1127.

² Email from Trial Chamber IX to the Defence and other participants, 8 January 2018 at 16:57, *referring to* Acholi Translation of Decision on the confirmation of charges against Dominic Ongwen, 13 December 2017, ICC-02/04-01/15-422-Conf-tACH (first issued on 23 March 2016, with the notification date on the translated version of 13 December 2017).

³ Addendum to 'Defence Request for Findings on Fair Trial Violations and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute' (ICC-02/04-01/15-1127), filed 8 January 2018, ICC-02/04-01/15-1129.

⁴ Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision, ICC-02/04-01/15-1147, para.16.

Procedure and Evidence, at the commencement of trial.⁵ Additionally, the Chamber highlighted that the accused had been provided with an Acholi translation of the document containing the charges ('DCC'), which were recited almost verbatim in the operative part of the Confirmation Decision.⁶ The accused had also subsequently been provided with an Acholi translation of the Confirmation Decision. The continuing lack of translation of the separate opinion did not affect the accused's right under Article 67(1)(a) and neither was it 'necessary for the requirements of fairness' under Article 67(1)(f) of the Statute.⁷

4. On 30 January 2018, the Defence filed a request for leave to appeal the Impugned Decision on four issues ('Request for Leave to Appeal'):⁸

- (i) 'First Issue': whether the reading of enumerated counts in a very abbreviated and incomplete form constitutes notice of the charges, for the purposes of Article 67(1)(a) of the Statute;
- (ii) 'Second Issue': on what legal basis, if any, can the Chamber decide that seeking a waiver for a limited reading of the charges from the Accused is not necessary? And specifically, is reliance on a previous decision by the Single Judge a sufficient legal basis;
- (iii) 'Third Issue': whether the Impugned Decision denying Mr Ongwen's 'Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision' violates Article 67(1)(a) of the Statute;⁹ and

⁵ Impugned Decision, ICC-02/04-01/15-1147, para. 17.

⁶ Impugned Decision, ICC-02/04-01/15-1147, paras 17 and 20.

⁷ Impugned Decision, ICC-02/04-01/15-1147, para. 21.

⁸ Defence Request for Leave to Appeal 'Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision,' ICC-02/04-01/15-1147, 24 January 2018, ICC-02/04-01/15-1156.

⁹ While the Defence refers to Article 67(1)(a) in the heading of 'Issue 3', Article 67(1)(e) is referred to in the text. Request for Leave to Appeal, ICC-02/04-01/15-1156, paras 2(c) and 33.

(iv) 'Fourth Issue': whether the plea taken in December 2016 is valid given: (a) the accused's explicit statement that he did not understand the charges against him; and (b) that the Trial Chamber asked the accused to enter a plea based on the Confirmation Decision, which was not fully translated into Acholi and differed from the original DCC.

5. On 5 February 2018, the Office of the Prosecutor ('Prosecution') responded to the Request for Leave to Appeal ('Response').¹⁰ The Prosecution submits that the Request for Leave to Appeal should be dismissed as it does not meet the requirements of Article 82(1)(d) of the Statute, i.e. the issues raised do not arise from the Impugned Decision.¹¹ It is alleged that all four issues are inter-related and 'essentially concern the inadequacy of the reading of the charges at the commencement of trial'.¹²

II. Applicable law and analysis

6. The Chamber recalls the interpretation of Article 82(1)(d) of the Statute as set out in detail in previous decisions.¹³
7. The Chamber is of the view that none of the four issues highlighted by the Defence arise from the Impugned Decision and, on that basis, fail to meet the requirements of Article 82(1)(d) of the Statute. The Chamber considers this to be a belated attempt by the Defence to address issues that arose prior to or during the commencement of trial.

¹⁰ Prosecution's Response to Defence Request for Leave to Appeal Decision ICC-02/04-01/15-1147, ICC-02/04-01/15-1172.

¹¹ Response, ICC-02/04-01/15-1172, paras 1-2.

¹² Response, ICC-02/04-01/15-1172, para. 3.

¹³ Decision on Defence Request for Leave to Appeal Decision ICC-02/04-01/15-521, 2 September 2016, ICC-02/04-01/15-529, paras 4-8. *See also* Decision on the Defence Request for Leave to Appeal the Decision on the Confirmation of Charges, 29 April 2016, ICC-02/04-01/15-428, paras 5-9.

8. In respect of the First and Second Issue, the issues at stake relate to the directions given by the Chamber regarding the reading of the charges in July 2016 ('Initial Directions')¹⁴ and the alleged inadequacy of the reading of the charges at the commencement of trial. In its Initial Request and the Addendum, the Defence did not specifically raise either issue. Therefore, neither constitutes an appealable issue under Article 82(1)(d) of the Statute. Importantly, as highlighted by the Prosecution, the 'Defence did not seek leave to appeal [the Initial Directions], and cannot do so now, over 1.5 years later.'¹⁵ Also, no objections were raised regarding the 'abbreviated and incomplete' reading of the charges during or after the commencement of trial.¹⁶
9. The Third Issue relies on the 'lack of notice and waiver' elaborated upon in the First and Second Issue to claim a violation of Article 67(1)(e) of the Statute. As this is intrinsically linked to the first two issues, and for the reasons stipulated above, the Request for Leave to Appeal on this issue is also rejected.
10. The Fourth Issue, i.e. whether the plea entered by the accused in December 2016 is valid, also does not arise from the Impugned Decision. The Initial Decision requested the Chamber to rule upon whether the accused's rights under Article 67 of the Statute had been violated on the basis of a delayed and incomplete translation of the Confirmation Decision. This question is distinct and separate from whether the plea of 6 December 2016 was valid. The Impugned Decision refers, *inter alia*, to a prior ruling by the Chamber which took into account the accused's statements made at the commencement of

¹⁴ Initial Directions on Conduct of Proceedings, 13 July 2016, ICC-02/04-01/15-497, para. 6 ('No waiver or written certification that this is sufficient is required; the accused can confirm at the commencement of trial if he understands the charges or if any further reading is necessary').

¹⁵ Response, ICC-02/04-01/15-1172, para. 5.

¹⁶ *In this regard, see* Initial Directions, ICC-02/04-01/15-497, para. 6 (The accused was explicitly informed that he could confirm 'if any further reading [of the charges] is necessary' at commencement).

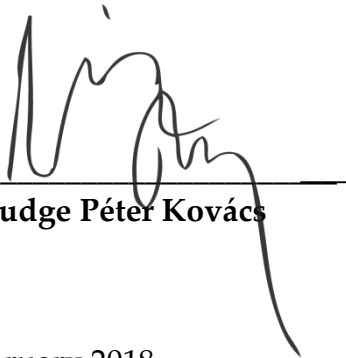
trial,¹⁷ to reinforce that the delay in being provided with an Acholi translation of the Confirmation Decision did not impact the accused's understanding of the charges. The question of the accused's understanding of the charges has already been ruled upon by the Chamber and this amounts to an attempt, by the Defence's own admission,¹⁸ to re-litigate matters already decided well before the Impugned Decision was rendered.¹⁹ Accordingly, the Chamber also rejects the Request for Leave to Appeal on the Fourth Issue.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Appeal.



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Raul C. Pangalangan

Dated 12 February 2018

At The Hague, The Netherlands

¹⁷ Oral decision stating that the Chamber was satisfied that the accused understands the nature of the charges. Commencement of Trial, 6 December 2016, ICC-02/04-01/15-T-26-ENG, page 17 line 11 to page 19 line 15.

¹⁸ Request for Leave to Appeal, ICC-02/04-01/15-1156, para. 43.

¹⁹ The oral decision rendered on 6 December 2016 during the commencement of trial was appealed by the Defence. Defence Request for Leave to Appeal the Oral Decision of 6 December 2016 on Mr Ongwen's Understanding of the Nature of the Charges, 12 December 2016, ICC-02/04-01/15-632; This was subsequently rejected by the Chamber. Decision on Defence Request for Leave to Appeal the Decision on Mr Ongwen's Understanding on the Nature of the Charges, 3 January 2017, ICC-02/04-01/15-645.