

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 10 June 2019

**THE APPEALS CHAMBER**

**Before:** Judge Luz del Carmen Ibáñez Carranza, Presiding Judge  
Judge Chile Eboe-Osuji  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Solomy Balungi Bossa

**SITUATION IN UGANDA**

**IN THE CASE OF  
*THE PROSECUTOR v. DOMINIC ONGWEN***

**Public**

**CLRV's Request to respond to the Defence's Further Submissions  
Pursuant to the Appeals Chamber's Order No. 1524**

Source: Office of Public Counsel for Victims

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

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Ms Helen Brady

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Ms Jane Adong

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**Unrepresented Victims**

**Unrepresented Applicants  
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**The Office of Public Counsel for the  
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**States' Representatives**

**Amicus Curiae**

**REGISTRY**

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. PROCEDURAL HISTORY

1. On 7 March 2019, the Trial Chamber issued the “Decision on Defence Motions Alleging Defects in the Confirmation Decision” (the “Impugned Decision”).<sup>1</sup> On 14 March 2019, the Defence filed a Request seeking leave to appeal the Impugned Decision on two issues (the “Leave to Appeal Request”).<sup>2</sup> On 18 March 2019, the Prosecution<sup>3</sup> and the CLRV<sup>4</sup> responded to the Leave to Appeal Request. On 1 April 2019, the Trial Chamber granted the Leave to Appeal Request in respect of one issue.<sup>5</sup> On 11 April 2019, the Defence filed its Appeal Brief.<sup>6</sup> On 23 April 2019, the Prosecution<sup>7</sup> and the CLRV<sup>8</sup> filed their responses to the Appeal Brief.

2. On 24 May 2019, the Appeals Chamber rendered the Order for Further Submissions (the “Order”), inviting the parties and participants to file additional observations on four issues by 31 May 2019.<sup>9</sup> On 31 May 2019, pursuant to regulation 35(2) of the Regulations of the Court, the CLRV requested the Appeals Chamber to extend the deadline to file her further submissions until 3 June 2019.<sup>10</sup> On the same

<sup>1</sup> See the “Decision on Defence Motions Alleging Defects in the Confirmation Decision” (Trial Chamber IX), No. [ICC-02/04-01/15-1476](#), 7 March 2019 (the “Impugned Decision”).

<sup>2</sup> See the “Defence Request for Leave to Appeal ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision (ICC-02/04-01/15-1476), notified 7 March 2019’”, No. [ICC-02/04-01/15-1480](#), 14 March 2019 (the “Leave to Appeal Request”).

<sup>3</sup> See the “Prosecution’s Response to ‘Defence Request for Leave to Appeal ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision (ICC-02/04-01/15-1476), notified 7 March 2019’”, No. [ICC-02/04-01/15-1486](#), 18 March 2019.

<sup>4</sup> See the “CLRV’s Response to ‘Defence Request for Leave to Appeal ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision (ICC-02/04-01/15-1476), notified 7 March 2019’”, No. [ICC-02/04-01/15-1484](#), 18 March 2019.

<sup>5</sup> See the “Decision on Defence Request for Leave to Appeal a Decision on Motions Alleging Defects in the Confirmation Decision” (Trial Chamber IX), No. [ICC-02/04-01/15-1493](#), 1 April 2019.

<sup>6</sup> See the “Corrected Version of ‘Defence’s appeal against the ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision’ (ICC-02/04-01/15-1496)”, No. [ICC-02/04-01/15-1496-Corr OA4](#), 4 June 2019 (submission initially submitted on 11 April 2019).

<sup>7</sup> See the “Prosecution’s Response to ‘Defence’s appeal against the ‘Decision on Defence Motion Alleging Defects in the Confirmation Decision’”, No. [ICC-02/04-01/15-1502 OA4](#), 23 April 2019.

<sup>8</sup> See the “CLRV’s Response to ‘Defence’s Appeal Against the Decision on Defence Motions Alleging Defects in the Confirmation Decision’”, No. [ICC-02/04-01/15-1523 OA4](#), 23 April 2019.

<sup>9</sup> See “Order for Further Submissions” (The Appeals Chamber), No. [ICC-02/04-01/15-1524 OA4](#), 24 May 2019, p. 3.

<sup>10</sup> See the “CLRV’s Request for an Extension of Time Limit”, No. [ICC-02/04-01/15-1529-Conf OA4](#), 31 May 2019.

day, the Appeals Chamber granted the CLRV's request and equally extended the time limit for the parties and participants to file their further submissions to 3 June 2019.<sup>11</sup> Nonetheless, the Prosecution<sup>12</sup> and the Legal Representative of Victims<sup>13</sup> filed their further submissions in the course of the day.

3. On 3 June, the CLRV<sup>14</sup> and the Defence<sup>15</sup> filed their respective further submissions.

4. On 6 June 2019, the Prosecution<sup>16</sup> requested the Appeals Chamber leave to respond to the Defence's Further Submissions.

## II. SUBMISSIONS

5. The CLRV supports the Prosecution's Request for leave to respond to the Defence's Further Submissions.

6. In her observations dated 3 June 2019, the CLRV only addressed the issue raised in question 3 of the Appeals Chamber's Order, noting that the Defence was better placed to first answer questions 1, 2 and 4 in as much as said questions specifically related to the arguments raised by the latter.

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<sup>11</sup> See the "Decision on the Victims' request for time extension" (Appeals Chamber), [No. ICC-02/04-01/15-1530 OA4](#), 31 May 2019.

<sup>12</sup> See the "Prosecution's Submission in response to 'Order for Further Submissions' (ICC-02/04-01/15-1524)", No. [ICC-02/04-01/15-1532 OA4](#), 31 May 2019.

<sup>13</sup> See the "Victims' submissions in response to the Order for Further Submissions", No. [ICC-02/04-01/15-1531 OA4](#), 31 May 2019.

<sup>14</sup> See the "CLRV's Further Submissions Pursuant to the Appeals Chamber's Order", No. [ICC-02/04-01/15-1537 OA4](#), 3 June 2019.

<sup>15</sup> See the "Corrected Version of 'Defence's Further Submissions' (ICC-02/04-01/15-1536)", No. [ICC-02/04-01/15-1536-Corr](#) and [Corr-Anx OA4](#), 4 June 2019. The Defence's initial Submissions were filed at 16:51 on the 31 of May 2019, and thus notified in the proceedings on the 3 of June. On the 4 of June, the Defence filed said corrected version of its Further Submissions.

<sup>16</sup> See the "Prosecution's request for leave under regulation 28 to file a response to Defence's Further Submissions (ICC-02/04-01/15-1536-Corr)", No. [ICC-02/04-01/15-1539 OA4](#), 6 June 2019.

7. In light of the Defence's Further Submissions<sup>17</sup>, the CLRV notes, like the Prosecution,<sup>18</sup> that, in addressing the questions raised by the Chamber, the Defence placed new arguments which not only fall outside of the scope of the present appeal but were also already the subject of separate litigations before the Trial Chamber.

8. Therefore, in order to assist the Chamber in its determination of the present appeal, the CLRV requests leave to respond to three of these new arguments raised by the Defence, namely: 1) the alleged prejudice stemming from the alleged failure to fully translate the Confirmation Decision in the Acholi language;<sup>19</sup> 2) the alleged inability to object timeously to the Confirmation Decision due to the Accused's mental health conditions and disability;<sup>20</sup> and 3) the alleged prejudicial Trial Chamber evidentiary regime.<sup>21</sup>

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<sup>17</sup> See the "Corrected Version of 'Defence's Further Submissions' (ICC-02/04-01/15-1536)", *supra* note 15.

<sup>18</sup> See the "Prosecution's request for leave under regulation 28 to file a response to Defence's Further Submissions (ICC-02/04-01/15-1536-Corr)", *supra* note 16, paras. 3, 4, 6 and 7.

<sup>19</sup> See the "Corrected Version of 'Defence's Further Submissions' (ICC-02/04-01/15-1536)", *supra* note 15, paras. 15 to 18. See also the "Decision on Defence Request for Leave to Appeal Decision 1147" (Trial Chamber IX), [No. ICC-02/04-01/15-1176](#), 12 February 2018. In this Decision, the Trial Chamber rejected the request for leave to Appeal introduced by the Defence on this very issue, underlining, among other elements, that the Defence's Request corresponded to an attempt to re-litigate matters already decided well before the issuance of Impugned Decision.

<sup>20</sup> See the "Corrected Version of 'Defence's Further Submissions' (ICC-02/04-01/15-1536)", *supra* note 15, paras. 23 and 26. See also the "Decision on Defence Request to Order an Adjournment and a Medical Examination" (Trial Chamber IX), No. [ICC-02/04-01/15-1412-Red](#), 16 January 2019, and in particular para. 14: "*As previously stated, the Chamber underlines that the accused's general state of health or specific aspects of his well-being which might impact him negatively and the fact that he is fit to stand trial are not synonymous. The Chamber repeats that an accused is fit to stand trial when he is able to effectively exercise his fair trial rights and can meaningfully participate in the proceedings before the Court*"; and para. 16: "*At the beginning of the trial, the Chamber satisfied itself that the accused understood the nature of the charges and stated that he was fit to stand trial. The Chamber considers that no facts mentioned in the Request indicate that the accused is unable to participate effectively in the proceedings. Nothing indicates that the accused does not understand the testimonies of the witnesses, the overall meaning and importance of the proceedings or that he cannot communicate with his counsel. During the proceedings, the Chamber has repeatedly observed that the accused called his counsel during the testimony of witnesses in order to instruct them, frequently in reaction to answers provided by the testifying witness. The Chamber was able to see that the accused reacted to the testimony of witnesses, giving all indications that he followed its content and could process what was being said in court*". The Defence submitted a Request for leave to Appeal this Decision which was rejected by the Trial Chamber. See the "Decision on Request for Leave to Appeal the 'Decision on Defence Request to Order an Adjournment and a Medical Examination'" (Trial Chamber IX), No. [ICC-02/04-01/15-1426](#), 31 January 2019.

<sup>21</sup> *Idem*, paras. 24 and 25. See also the "Public Redacted Version of 'Defence Request and Observations on Trial Chamber IX's Evidentiary Regime'", No. [ICC-02/04-01/15-1519-Red](#), 21 May 2019 and the

Respectfully submitted,

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda  
Principal Counsel

Dated this 10<sup>th</sup> day of June 2019

At The Hague, The Netherlands

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CLRV's Response to "Defence Request and Observations on Trial Chamber IX's Evidentiary Regime",  
No. [ICC-02/04-01/15-1538-Conf](#), 3 June 2019.