

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **10 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**

**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**

**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**

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**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

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Defence**

Xavier-Jean Keita

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman Von Hebel

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**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations Other  
Section**

## I. SUBMISSIONS

1. This Addendum to ‘Defence Request for Findings on Fair Trial Violations and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute’<sup>1</sup>, filed 8 January 2018, (‘Request 1127’) is filed, as ordered by Trial Chamber IX (‘Chamber’) in its e-mail correspondence of 8 January 2018.<sup>2</sup>
2. Specifically, the Defence was requested to clarify whether the existence of an Acholi translation affects the relief sought in Request 1127.
3. The short answer is no. The relief requested remains the same, notwithstanding information provided by the Chamber in its e-mail regarding the Acholi translation. The fair trial violations in respect to notice and translation continue: a) the Acholi translation (without the Separate Opinion) is still incomplete; and b) the trial is entering its 14<sup>th</sup> month.
4. Hence, the Defence is still requesting a complete Acholi translation of the Confirmation of Charges Decision (‘CoC’), which includes the Separate Opinion of Judge Marc Perrin de Brichambaut, 19 May 2016, and an immediate stay of the proceedings. The Defence notes that in English, the CoC decision, including the Separate Opinion, totals 156 pages. Mr Ongwen, once he receives the complete translation, must be provided with adequate time to fully review the CoC and discuss it with his Counsel, so that he can instruct his Counsel during the remainder of the current Trial phase of the case.

### A. The Defence was not notified by Court Management Services (‘CMS’)

5. Regulation 34(1) of the Regulations of the Registry provides the method of notification for documents, materials, orders or decisions in a case. The preferred notification method is electronic, to a secure ICC e-mail account.
6. Based on information available to us, the *Ongwen* team was never notified by CMS (electronically or by other methods) of the finalized CoC translation. It is clear that CMS had been provided with the secure ICC e-mail accounts since team members received e-mail notification from CMS of the filing of the French translation of the CoC on 2 October 2016.

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<sup>1</sup> ICC-02/04-01/15-1127.

<sup>2</sup> Email, subject: ‘Question by the Chamber in Relation to Request 1127’, sent 8 January 2018 at 16h57.

7. In fact, the *Ongwen* team has been following up the translation issue with CSS and CMS, and received an e-mail on 13 December 2017 from CSS stating that “[...] the translation of the CoC Decision which has been requested in 2016 by the Ongwen Defence team has been finalized and will be filed first by CMS. Once this is completed we will inform you as well.” (*underlining added*). But there was no further communication concerning a translated CoC.

## **B. The continuing fair trial violations**

8. But, even assuming, for the purposes of argument that CMS provided notification in mid-December 2017 of the Acholi translation, the Acholi translation of the CoC without the Separate Opinion of Judge de Brichambaut is still incomplete, and this incomplete translation is being provided in the 13<sup>th</sup> month of trial.
9. Hence, the lateness and incompleteness of the translation still result in prejudice and harm to Mr Ongwen, and violate his fair trial rights under Article 67, including the rights to notice, to translation and to present a defence.
10. Furthermore, a late and incomplete translation cannot cure the harm and prejudice of the fair trial violations of Article 67(a) and (f) – the lack of notice and lack of translation of the charging instrument including the Separate Opinion – which have existed since the inception of the case, in the pre-trial and trial phases and which continue to violate Mr Ongwen’s Article 67 rights.

## **II. Remedy**

11. For these reasons, the remedy requested remains the same: that the Trial Chamber
- a) Make findings on the fair trial violations in respect to notice and translation; and
  - b) Order a temporary stay of proceedings until the violations are remedied.

Respectfully submitted,



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Hon. Krispus Ayena Odongo  
On behalf of Dominic Ongwen

Dated this 10th day of January, 2018

At Gulu, Uganda