

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 26 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

Decision on Defence Request for Reconsideration of Decision ICC-02/04-01/15-1147 and Objections to Victim Participation

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

The Office of the Prosecutor

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber IX ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(2) and 67(1) of the Rome Statute and Regulations 24 and 34 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Defence Request for Reconsideration of Decision ICC-02/04-01/15-1147 and Objections to Victim Participation'.

1. On 8 January 2018, the defence for Mr Ongwen ('Defence') filed a motion ('Request') 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.¹
2. Later this same day, the Chamber sought an addendum from the Defence by 10 January 2018 and required that '[a]ny responses to request 1127 or this addendum shall be filed within 10 days of notification of the addendum.'² The Defence duly filed its addendum on the date indicated.³
3. On 22 January 2018, the Legal Representatives for Victims ('LRVs') jointly responded to the Request ('Victims Response').⁴ The Office of the Prosecutor had already responded to the Request several days before.⁵
4. On 24 January 2018, the Chamber rejected the relief sought in the Request ('Decision').⁶

¹ Defence Request for Findings on Fair Trial Violations and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute, 8 January 2018, ICC-02/04-01/15-1127.

² Email from Trial Chamber IX to the Defence and other participants, 8 January 2018 at 16:57.

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 Victims' Joint Response to "Defence Request for Findings of Fair Trial Violations and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute" (ICC-02/04-01/15-1127), ICC-02/04-01/15-1144.

⁵ Prosecution Response to "Defence Request for Findings on Fair Trial Violations and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute.", 17 January 2018, ICC-02/04-01/15-1140.

⁶ 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.

5. On 25 January 2018, the Defence filed a reply to the Victims Response ('Reconsideration Request'), requesting the Chamber to: (i) reconsider the Decision on the basis that 'the Decision extinguished the Defence's right to reply under Rule 91(2), as well as the right to seek leave to reply under Regulations 24(5) and 34(c)'; (ii) dismiss the Victims Response in its entirety and (iii) rule on the Defence objections in respect to victim participation.⁷
6. As for items (i) and (ii) of the relief sought, the Chamber recalls its previous jurisprudence on reconsideration⁸ and considers the Defence's arguments to be meritless. It is important for victims to have their submissions considered in order for their participation in the proceedings to be meaningful. However, sometimes the Chamber reaches its conclusions independently of these submissions and, on this occasion, the Decision's reasoning did not end up relying upon the Victims Response. This document is referenced only once in the whole Decision, and this reference appears in the procedural history: '[o]n 22 January 2018, the Legal Representatives for Victims jointly filed a submission opposing the relief sought in the Request'.⁹ Any extent to which the Chamber's actual reasoning mirrors the Victims Response is merely coincidental. For the Defence to argue in these circumstances that a lack of reply led to any error or injustice justifying reconsideration is simply untenable. For the same reasons, formally dismissing the Victims Response would serve no purpose.
7. As for item (iii) of the relief sought, the Defence argues that the Victims Response goes beyond the personal interests of the victims and exceeds the

⁷ Defence Reply to Victims' Joint Response to "Defence Request for Findings on Fair Trial Violations and Remedy, Pursuant to Articles 67 and 64 of the Rome Statute," pursuant to Rule 91(2), ICC-02/04-01/15-1149.

⁸ Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, 15 June 2016, ICC-02/04-01/15-468, para. 4.

⁹ Decision, ICC-02/04-01/15-1147, para. 5.

permissible scope of victims' participation.¹⁰ As noted by the Defence, this Chamber has incorporated by reference the procedure for victim participation set out by the Pre-Trial Chamber.¹¹ This procedure includes the LRVs' 'right to make written submissions to the Chamber', the 'right of response', and an acknowledgement that victims could file 'submissions on points of fact and law' in certain circumstances.¹² The decision amending the response deadline leading up to the Decision contained no qualification as to the kinds of submissions which the LRVs could present in response to the Request.¹³ The Chamber considers that the Victims Response was filed in conformity with the applicable procedure and Regulation 24(2) of the Regulations. Noting that this particular submission did not affect the Chamber's reasoning, the Chamber considers any further discussion of the scope of the LRVs' participatory rights to be unwarranted.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Reconsideration Request.



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Raul C. Pangalangan

Dated 26 January 2018

At The Hague, The Netherlands

¹⁰ Reconsideration Request, ICC-02/04-01/15-1149, paras 11-38.

¹¹ Decision on Requests Concerning Organisation of Victim Representation, 17 June 2016, ICC-02/04-01/15-476, para. 11, *incorporating* Decision on contested victims' applications for participation, legal representation of victims and their procedural rights, 27 November 2015, ICC-02/04-01/15-350, paras 25-35.

¹² ICC-02/04-01/15-350, paras 33 and 35. The procedure at paragraph 35 was discussed in the context of confirmation submissions of the kind foreseen in Rule 121(9) of the Rules.

¹³ *See* para. 2 above.