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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

Prosecution's Response to the Defence Request for Leave to File a No Case to Answer Motion and Application for Judgment of Acquittal

Source: **The Office of the Prosecutor**

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

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Introduction

1. The Defence Request for Leave to File a No Case to Answer Motion and Application for Judgment of Acquittal ("Request")[1] should be denied. The Trial Chamber has discretion whether to entertain a no case to answer motion, and in the specific circumstances of this case such a procedure would not expedite the trial and is not necessary to protect the fairness of the proceedings.

Submissions

A. The Trial Chamber has discretion whether or not to entertain a no case to answer motion

2. As the Defence concedes,[2] there is no mandatory or presumptive "no case to answer" procedure under the Rome Statute ("Statute") or the Rules of Procedure and Evidence ("Rules"). Whether or not to entertain a no case to answer motion is within the "broad discretion" of the Trial Chamber.[3]

3. In the *Ntaganda* case, the Appeals Chamber upheld the Trial Chamber's decision not to entertain a no case to answer motion, finding that the Trial Chamber had "appropriately balanced both expediency and fairness"[4] and that the Trial Chamber's discretion to forego a no case to answer procedure "was not limited by internationally recognised human rights [including the right to silence[5]] or as a result of the adoption of an adversarial trial structure."[6] The Trial Chamber had noted that "'permitting such a motion may contribute to shorter and more focused trial', but, on the other hand, it 'may also entail a lengthy process requiring parties' and

[1] ICC-02/04-01/15-1300.
[2] Request, para. 19.
[3] ICC-01/04-02/06-2026 OA6, paras. 44-46.
[4] ICC-01/04-02/06-2026 OA6, para. 55.
[5] *See* ICC-01/04-02/06-2026 OA6, paras. 47-49.
[6] ICC-01/04-02/06-2026 OA6, para. 56.

participants' submissions and evaluation of the evidence by the Chamber, and may thus not necessarily positively affect the expeditiousness of the trial, even if successful in part.'"[7]

4. The *Ntaganda* Appeals Chamber concluded that a no case to answer procedure is not generally necessary to ensure the fairness of ICC proceedings, because the latter is protected through other mechanisms.[8] That conclusion holds true in this case. Mr Ongwen had an opportunity to challenge the sufficiency of evidence at the *inter partes* confirmation stage, after receiving detailed notice of the charges, with the benefit of disclosure, and with the assistance of Counsel. At the end of that confirmation process, all three judges of Pre-Trial Chamber II concluded that the Prosecution had established substantial grounds to believe that Mr Ongwen committed the crimes confirmed in the Confirmation Decision, and that the case could proceed to trial.[9] Absent a substantial change or fundamental failing in the Prosecution's expected case post-confirmation, the presumption should be that the trial proceeds to conclusion.

5. Since the Confirmation Decision, the contours of the Prosecution's case have not changed. The charges remain the same, and the evidence cited in the Prosecution's Pre-Trial Brief and later presented at trial has closely followed the case theory presented at confirmation. Although the Prosecution did not ultimately call every witness relied upon at confirmation or cited in its Pre-Trial Brief, the vast majority of the evidence previewed there has in fact been presented at trial. Differences in the evidence presented at various stages of proceedings do not require a Trial Chamber to entertain a no case to answer motion.[10] The Prosecution accepts

[7] ICC-01/04-02/06-2026 OA6, para. 14 (quoting ICC-01/04-02/06-1931, para. 26).
[8] ICC-01/04-02/06-2026 OA6, para. 52.
[9] ICC-01/04-02/15-422-Red, para. 157; ICC-01/04-02/15-422-Anx-tENG, para. 1 (separate opinion of Judge Brichambaut); *see also* ICC-01/04-02/06-2026 OA6, para. 52 (considering the confirmation procedure one of the safeguards ensuring that ICC trials are fair).
[10] ICC-01/04-02/06-2026 OA6, para. 53.

that a no case to answer motion may promote fairness and expeditiousness in the unusual case where the Prosecution's presentation of evidence has "broken down"[11] or changed substantially for some reason, such as the recantation of key prosecution witnesses or their refusal to testify at trial (*e.g.*, the *Ruto and Sang* case), but such circumstances are simply not present here.

B. The Trial Chamber should deny the Request

6. The Trial Chamber should deny the Request. The Request misconstrues the applicable legal standard, and a no case to answer procedure would not speed up the trial and is not necessary to protect the fairness of these proceedings.

1. The standard advocated by the Defence is incorrect

7. A no case to answer motion is not a dress rehearsal for final trial judgment. It is instead a procedural mechanism designed to ensure that trial proceedings are not unnecessarily and unfairly continued where there is no reasonable prospect of conviction.[12]

8. This purpose is reflected in the applicable test, articulated in the *Ruto and Sang* case and consistently applied at the *ad hoc* tribunals: "whether there is sufficient evidence on which a reasonable Trial Chamber *could* convict…. The Trial Chamber will not consider questions of reliability or credibility relating to the evidence, save where the evidence in question is incapable of belief by any reasonable Trial Chamber."[13] Under this standard, prosecution evidence is "taken at its highest,"

[11] *See Prosecutor v. Rwamakuba*, ICTR-98-44C-R98*bis*, Decision on Defence Motion for Judgment of Acquittal, 28 October 2005, para. 7.
[12] *See* ICC-01/09-01/11-1334, para. 12 (citing jurisprudence from the *ad hoc* tribunals); *id.* para. 23 (distinguishing a no case to answer procedure from the determination of guilt at the end of trial).
[13] Request, para. 15; ICC-01/09-01/11-1334, paras. 23-24, 32; ICC-01/09-01/11-2027-Red-Corr, Reasons for Judge Fremr, paras. 17-19; *cf. id.*, Reasons of Judge Eboe-Osuji, paras. 40-137. *See also Prosecutor v. Jelisic*, 11-95-10-A, Appeals Chamber, Judgement, 5 July 2001, para. 55; *Prosecutor v.* Nahimana, ICTR-99-52-T, Trial Chamber I, Reasons for Oral Decision of 17 September 2002 on the Motions for Acquittal, 25 September 2002, para. 18; *Prosecutor v. Bizimungu*, ICTR-00-56-T, Trial Chamber II, Decision on Defence Motions Pursuant to Rule 9*bis*, 20 March 2007, paras. 6-8; *Prosecutor v Ayyash et al.*, STL-11-01/T/TC, Decision on the

meaning that the Trial Chamber is to "assume that the prosecution's evidence [i]s entitled to credence unless incapable of belief on any reasonable view."[14] While this inquiry should not focus only on the strongest or best prosecution evidence, neither should it devolve into a dissection of pieces of evidence in isolation from one another. Instead the Trial Chamber should view the evidence as a whole when considering its capability of supporting a conviction.[15]

9. The Defence, however, argues for a different approach when it urges the Trial Chamber to examine the "quality" of the evidence and to make "credibility assessments" where alleged gaps in the prosecution evidence would make a conviction "unlikely."[16] It is clear from the few examples offered in the Request that the Defence intend to parse the evidence in detail, asking the Trial Chamber to accept some pieces and reject others[17] and to draw inferences from the absence of particular kinds of evidence.[18] The Prosecution submits that such an approach is fundamentally at odds with the established test for no case to answer motions, which requires only evidence upon which, taken at its highest and viewed as a whole, a reasonable Trial Chamber *could* convict. Matters which go to the strength or weight of prosecution evidence are properly assessed in final deliberations at the end of trial in light of the entirety of the evidence.[19]

Oneissi Defence application for a judgment of acquittal under rule 167(A), 7 March 2008, pp. 2-5 (adopting the same standard for the Special Tribunal for Lebanon and noting the uniform acceptance of the standard at the ICTY, ICTR, and Special Court for Sierra Leone).

[14] ICC-01/09-01/11-1334, para. 24.

[15] *See* ICC-01/09-01/11-2027, Reasons of Judge Oboe-Osuji, para. 51 (citing *Prosecutor v Karadzic*, IT-95-5/18-AR98*bis*.1, Appeals Chamber, Judgement, 11 July 2013, para. 21).

[16] Request, para. 16.

[17] *See* Request, para. 29 (apparently arguing the credibility of a prosecution witness based on suggested inconsistencies between his trial evidence and a prior statement), para. 30 (apparently asserting the credibility of two prosecution witnesses for one factual point regarding the Accused's role in preparations for the Pajule attack, while presumably denying the reliability of other portions of the same testimony implicating the Accused).

[18] *See* Request, para. 30 (arguing the importance of a suggested lack of intercept evidence regarding the Accused's role in the Pajule attack), para. 31 (proposing inferences to be drawn from the Prosecution's decision not to call certain witnesses).

[19] ICC-01/09-01/11-1334, para. 32.

10. An additional complication with the "qualitative" no case to answer standard advocated by the Defence would be the need to reconcile it with the evidence submission regime adopted in this case, whereby the relevance and admissibility of evidence is ordinarily assessed at the end of trial, in light of *all* the evidence.[20] Evaluating credibility at the half-way stage of trial would require the Trial Chamber to revisit all of the prosecution evidence and reach conclusions, both as to admissibility and weight, before the totality of the trial evidence is heard. This would almost certainly prolong the Trial Chamber's deliberations on any no case to answer motion, further delaying and disrupting the proceedings, and offsetting any potential efficiency gains.

2. A no case to answer motion will not advance the trial

11. A principal justification asserted by the Defence for allowing a no case to answer motion is to promote expeditious proceedings.[21] However, granting the Request would not speed up the trial. Instead, a no case to answer procedure would cause additional delay. None of the grounds identified by the Defence warrants acquittal on any count, and even if a no case to answer motion were successful in part, it would not streamline the Defence case.

a. A no case to answer procedure will cause additional delay

12. First, as recognised by the *Ntaganda* Trial Chamber, a no case to answer procedure takes time.[22] In this case, several weeks or even months would likely pass before a no case to answer motion could be filed by the Defence, responses filed by the Prosecution and Legal Representatives of the Victims, and a decision issued by the Trial Chamber. Such litigation would, moreover, fall over the Court's summer

[20] ICC-02/04-01/15-497, para. 24. In response to the Defence's stated "alignment" with the separate opinion of two judges in the recent *Bemba* appeal judgment, *see* Request, para. 18, the Prosecution simply observes that the submission approach has been expressly upheld by the Appeals Chamber. *See* ICC-01/05-01/08-1386 OA5 OA6, para. 37.
[21] Request, paras. 10, 18, 20, 33-34.
[22] ICC-01/04-02/06-1931, para. 26.

recess and at a time when the Parties and participants are busily preparing for the presentation of evidence by the Defence. It is difficult to imagine that this process would not result in considerable delay, in a trial which has already been underway since December 2016.

b. The identified grounds do not support acquittal

13. Second, none of the grounds identified in the Request would warrant acquittal on any count. The Defence's entire approach is premised on an incorrect legal standard, as discussed above, and the prospect of detailed credibility assessments which the Defence assumes would be resolved in its favour. However, for the following reasons, even if that "best case" scenario for the Defence were realised, their arguments would still fail.

i) The Accused has received adequate notice of the charges

14. The Defence alleges a "lack of notice" regarding the charges against Mr Ongwen. This is, in effect, an objection regarding the conduct of pre-trial proceedings which should have been raised prior to the start of trial, as required by rule 134(2) of the Rules, and should not be entertained now.[23]

15. The Request relies on the Appeals Chamber judgment in the article 70 proceedings against *Bemba et al*.[24] The Request does not, however, explain how that (or any other) judgment undermines the notice provided in this case. Without more, it is difficult for the Prosecution to respond meaningfully to this proposed ground. In any event, the Prosecution submits that the Confirmation Decision sufficiently describes the facts and circumstances of the charges in terms of article 74(2) of the Statute, and the Accused has received detailed notice of the nature, cause, and content of the charges as required by article 67(1)(a) of the Statute.

[23] *Compare* ICC-02/04-01/15-1147, paras. 18-19 (rejecting as untimely a Defence request to stay the proceedings due to the lack of a translation of the entire Confirmation Decision).
[24] Request, para. 23.

16. First of all, the scope of the charges as set out in the Confirmation Decision is sufficiently detailed to constitute a meaningful description of the charges in terms of article 74(2).[25] The attack-related charges are specific regarding time (to the day) and location (to the particular IDP camp) and lay out specific actions allegedly taken by the Accused and his co-perpetrators. The direct-perpetration Sexual and Gender Based Crimes charges in Counts 50 to 60 identify individual victims, individually tailored time frames, and specific acts perpetrated by Mr Ongwen individually. The temporal and geographic scopes of the systemic Sexual and Gender Based Crimes and child soldier charges in Counts 61 to 70 are broader. However, this does not reflect a lack of specificity or precision, but instead reflects the nature of the charged crimes. These charges describe patterns of *ongoing* crimes perpetrated on a continuing basis throughout the entire charged period. A very similar charging approach was upheld by the Appeals Chamber in *Lubanga*, a case concerning ongoing crimes perpetrated over time and space.[26]

17. Second, in the context of article 67(1)(a), the Appeals Chamber has held that "further details about the charges as confirmed by the Pre-Trial Chamber may […] be contained in other auxiliary documents."[27] In fact, all documents designed to inform an accused of the charges must be considered to determine whether he or she had sufficient information.[28] The *Bemba et al.* Appeals Judgment did not purport to change this rule, and in fact held that an accused received adequate notice of the

[25] ICC-01/05-01/08-3636-Red, para. 110. By way of comparison, the invalidated charges in *Bemba* were found too broad because they referred only generally to murder, rape and pillage in the CAR during a time frame of four and one half months, with no further demarcation of the temporal or geographic scope of those crimes or the approximate number of victims. *See id.* paras. 101-103, 110-111.
[26] ICC-01/04-01/06-3121-Red, paras. 123-136. In *Lubanga*, the Appeals Chamber held that in certain circumstances, framing the material facts broadly as a pattern of child soldier offences, rather than charging individual acts of child soldier crimes, is permissible and can form the basis of a conviction. *Id.* paras. 131-132, 135.
[27] ICC-01/04-01/06-3121-Red, para. 124.
[28] ICC-01/04-01/06-3121-Red, paras. 128, 132.

charges against him in part through the Prosecution's Pre-Trial Brief.[29] More recently, the *Bemba* main case Appeals Chamber also endorsed this approach.[30]

18. In this case, the Prosecution has provided the Accused with extensive detail regarding all the charges and even the evidence to be relied upon. This detailed notice was provided in the Prosecution's Pre-Confirmation Brief, and later also in the Prosecution's 285-page Pre-Trial Brief, its witness list, the summaries of anticipated testimony, and the Prosecution's opening statement. Consequently, there is no basis for an acquittal on the grounds of insufficiently detailed charges or lack of notice to the Accused.

ii) The charges are supported by the evidence

19. Although the Defence purports to have identified "a number of charges that are not supported by sufficient evidence or no evidence at all", the Request only identifies "[a]s an example" the four charges related to pillage.[31] The Defence suggests that those charges must fail because the Prosecution has not proven that the pillaged property belonged to an enemy or hostile party to the conflict.[32] This is wrong both as a matter of law and on the evidence.

20. The only authority presented by the Defence to suggest that victims of pillage must be affiliated with an adverse party to the perpetrator is the *Katanga* Confirmation Decision,[33] which inferred such a requirement simply as a matter of "doctrine" applicable to "any war crime."[34] Not only was that reasoning

[29] ICC-01/05-01/13-2275-Red, para. 183.
[30] *See* ICC-01/05-01/08-3636-Red, para. 115 (holding, in the article 74(2) context, that addition of specific criminal acts after confirmation does not necessarily require amendment of the charges), para. 186 (citing, in the article 67(1)(a) context, *Lubanga* for the proposition that sufficient notice must be given "prior to trial").
[31] Request, para. 27.
[32] Request, para. 27.
[33] Request, para. 27 (fn. 26, citing ICC-01/04-01/07-717, para. 329).
[34] ICC-01/04-01/07-717, para. 329 (fn. 430: "Unlike the war crime of destruction of property, under article 8(2)(b)(xiii), the war crime of pillage, described in article 8(2)(b)(xvi) does not require, explicitly, that the property pillaged belongs to an 'enemy' or 'hostile' party to the conflict. However, part of the doctrine endorses

unsupported by the authority cited,[35] but the Appeals Chamber has since expressly rejected it, ruling that:

> [I]nternational humanitarian law does not contain a general rule that categorically excludes members of an armed group from protection against crimes committed by members of the same armed group.[36]

21. Certainly nothing in the Statute or the Elements of Crimes requires victims of pillage to be affiliated with an adverse party to the perpetrator.[37] Neither the *Katanga* nor *Bemba* Trial Chambers imposed such a requirement.[38] Nor is there any such rule of international humanitarian law. To the contrary, in non-international armed conflict, pillage is "prohibited at any time and in any place whatsoever", as part of the fundamental guarantees protecting "[a]ll persons who do not take a direct part or who have ceased to take part in hostilities."[39] Meanwhile, where the drafters did intend an adverse party requirement to apply to property offences, they have said so expressly in the Statute.[40]

22. In addition to these legal shortcomings, the Defence's argument also ignores the Prosecution's evidence that the LRA did, in fact, consider civilians in IDP camps to be hostile, either for failing to actively support the LRA or for supporting the

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the view that, as any war crime, the crime of pillage is committed against the adverse party to the conflict", citing K. Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (Cambridge: CUP, 2004), pp. 279-280).

[35] *See* Dörmann, pp. 279-280, which makes no reference to an adverse party requirement, in relevant part, but instead merely refers to four post-World War Two cases and five military manuals. These materials support the view that appropriating civilian property, for private purposes, is a war crime.

[36] ICC-01/04-02/06-1962 OA5, para. 63. This reasoning applies *a fortiori* to the circumstances of this case, where the victims were not members of an armed group at all, but were civilians.

[37] *See* ICC-01/04-02/06-1962 OA5, para. 46 (fn. 109: identifying pillage under articles 8(2)(b)(xvi) and 8(2)(e)(v) as crimes which do not "expressly circumscribe the group of potential victims").

[38] *See* ICC-01/04-01/07-3436, paras. 902-914, 925-932, 949-957; ICC-01/05-01/08-3343, paras. 113-125, 639-648.

[39] *See* *Additional Protocol II*, arts. 4(1), 4(2)(g). *See further* ICC-01/05-01/08-3343, para. 113 (fn. 267: noting that APII "strictly protects those not directly participating in hostilities"); Sandoz et al (eds.), *Commentary on the Additional Protocols* (ICRC: Geneva, 1987), p. 1376 (mn. 4542: noting that the prohibition in article 4 "has a general tenor"). Other IHL treaties also proscribe pillage in a variety of circumstances, including: *Hague Regulations*, arts. 28, 47; *Geneva Convention I*, art. 15; *Geneva Convention II*, art. 18; *Geneva Convention III*, art. 18; *Geneva Convention IV*, arts. 16, 33.

[40] *See e.g.* Statute, arts. 8(2)(b)(xiii), 8(2)(e)(xii).

government forces with which the LRA was at war.[41] The Defence may dispute that evidence, but it is plainly sufficient to defeat a no case to answer motion.

iii) There is ample evidence of the Accused's individual criminal responsibility for the attack on Pajule IDP camp

23. The Defence also argues that the Prosecution has failed to prove co-perpetration in relation to the Pajule attack. To do so, the Defence largely ignores the evidence actually presented by the Prosecution and instead bases its claims on misrepresentations or misunderstandings of individual pieces of evidence or witnesses whom the Prosecution *did not* call.

24. For example, the Defence repeatedly emphasises the fact that the Prosecution did not call all the witnesses on its initial witness list. They suggest that such decision was "a disingenuous way to circumvent its good faith obligations not to pursue unsubstantiated charges"[42] and that "the only reasonably inference to be drawn from this, is that the Prosecution, in its assessment, determined that their proposed witnesses were not going to support the flawed theory of their case."[43] Another "reasonable inference" which the Defence overlooks, and which reflects reality, is that the Prosecution shortened its presentation of evidence because it was satisfied that it had *already* proven its case, without additional witnesses.

25. The Defence also decries the lack of intercept evidence related to the Pajule attack. Although the intercept evidence clearly strengthens the Prosecution's case on the other charged attacks, its absence in no way undermines the Pajule charges.

[41] *See*, *e.g.*, Testimony of P-0138, ICC-02/04-01/15-T-120-CONF ET, pp. 21-22, 25-26 (LRA targeting civilians for cooperating with government or merely living in camps guarded by government forces); Rule 68(2)(b) statement of P-0040, UGA-OTP-0209-0436, at 0452 (describing how from 2002 Kony started giving orders to kill civilians because they were his first enemy); UGA-OTP-0064-0093, at 0103, 0111, 0122 (ISO logbook recording LRA messages directing the killing of civilians who did not support the LRA). *Compare* ICC-01/04-01/07-3436, para. 943 (concluding that civilians were considered "adversaries" by attackers because of their allegiance to an opposing group).
[42] Request, para. 29.
[43] Request, para. 31.

International criminal cases (and all kinds of criminal cases) are routinely prosecuted on the basis of witness testimony. Moreover, the Defence here conveniently ignores the witness testimony, for example, that Mr Ongwen met with other LRA commanders at the RVs before and after the Pajule attack,[44] that he led a group to the attack itself,[45] and that he was seen inside the camp.[46] Again, the Defence is entitled to challenge this evidence, and it will have ample opportunity during its case to do so; but the fact remains that the evidence provides a sufficient basis for a reasonable Trial Chamber to convict, and thus is sufficient to justify proceeding to final judgment.

26. Furthermore, although the Defence attacks the evidence of co-perpetration in relation to the Pajule attack, Mr Ongwen is also charged under article 25(3)(c) and (d) and under article 28(a) for the same crimes. Evidence sufficient to establish any *one* of those other modes of liability would be enough to defeat a no case to answer motion.[47]

c. Even a successful no case to answer motion will not shorten the trial

27. The Prosecution also submits that, even assuming *arguendo* that one or more of the grounds identified by the Defence were to succeed, there is no concrete indication of how that would actually streamline the Defence case. For example, based on the summaries provided, not a single witness on the Defence witness list is expected to speak only about pillage. Consequently, eliminating those charges would not affect the number of witnesses called. Similarly, as noted above, even a successful attack on the co-perpetration mode of liability for the Pajule-related

[44] *See*, *e.g.*, Testimony of P-0309, ICC-02/04-01/15-T-60-CONF-ENG, pp. 45-51; Testimony of P-0372, ICC-02/04-01/15-T-148-CONF-ENG, p. 16; Testimony of P-0330, ICC-02/04-01/15-T-51-CONF-ENG, pp. 74-75; Testimony of P-0009, ICC-02/04-01/15-T-81-CONF-ENG, pp. 13-14.
[45] *See*, *e.g.*, Testimony of P-0309, ICC-02/04-01/15-T-60-CONF-ENG, pp. 51-52, 59; Testimony of P-0309, ICC-02/04-01/15-T-63-CONF-ENG, pp. 7-9; Testimony of P-0144, ICC-02/04-01/15-T-91-CONF-ENG, pp.22-23; Testimony of P-0372, ICC-02/04-01/15-T-148-CONF-ENG, p. 19.
[46] *See*, *e.g.*, Testimony of P-0309, ICC-02/04-01/15-T-60-CONF-ENG, pp. 61-62; Testimony of P-0009, ICC-02/04-01/15-T-81-CONF-ENG, pp. 15-16, 28-29.
[47] ICC-01/09-01/11-1334, para. 32.

counts would not invalidate the other modes of liability for those same counts, and the Defence give no indication of how eliminating one mode of liability would obviate the need to call any particular witness or present other identifiable evidence. In short, even if a no case to answer motion were allowed, the Defence has offered nothing more than speculation that it might materially advance, shorten, or meaningfully streamline the proceedings.

3. No unfairness will result from the ordinary continuation of the trial

28. Finally, the Prosecution submits that no unfairness will result to the Accused from the ordinary continuation of these proceedings. As the Appeals Chamber held in *Ntaganda*, a no case to answer procedure is not generally necessary to protect the fair trial rights of accused persons before the Court.[48] Nothing specific to this case warrants any other conclusion.

29. As set out above, the Prosecution has presented evidence on which a reasonable trier of fact could convict Mr Ongwen of all the charges against him. The Prosecution's case has not changed from that promised at the confirmation stage and in its Pre-Trial Brief. The Accused has now heard and seen all of the evidence against him, and is in a position to prepare his defence, having been granted more than four months after the close of prosecution evidence in which to do so (not to mention the years since confirmation of charges). The ordinary, and fair, sequence is for the case to now proceed to the presentation of defence evidence.

[48] ICC-01/04-02/06-2026 OA6, paras. 46-56. The Prosecution notes in particular the Defence's reference to Mr Ongwen's right to silence. *See* Request, para. 26. Mr Ongwen's name is not on the Defence's witness list. If the Defence contemplates calling him as a witness, the Prosecution requests to be informed of this fact immediately. Fair and efficient proceedings require that both Parties, Prosecution and Defence, receive advance notice of critically important evidence.

Conclusion

30. For the reasons set out above, the Request should be denied.

Fatou Bensouda, Prosecutor

Dated this 12th day of July 2018
At The Hague, The Netherlands