

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-02/04-01/15**  
Date: **22 February 2021**

**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 the 'Decision scheduling a hearing on sentence and setting the related procedural calendar'**

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

**The Office of the Prosecutor**

Fatou Bensouda

James Stewart

**Counsel for the Defence**

Krispus Ayena Odongo

**Legal Representatives of Victims**

Joseph Akwenyu Manoba

Francisco Cox

Paolina Massidda

**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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**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Trial Chamber IX** of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 82(1)(d) of the Rome Statute (the ‘Statute’), issues the following decision on ‘Defence Request for Leave to Appeal “Decision scheduling a hearing on sentence and setting the related procedural calendar”’ (‘Request’), filed on 10 February 2021.<sup>1</sup>

1. On 4 February 2021, the Chamber issued the Trial Judgment.<sup>2</sup> On the same day, the Chamber issued ‘Decision scheduling a hearing on sentence and setting the related procedural calendar’ (‘Impugned Decision’).<sup>3</sup> Following the procedural decision, under Article 76 of the Statute, not to impose the sentence together with the decision under Article 74 of the Statute, the Impugned Decision regulated the further proceedings leading to the imposition of the sentence, including as concerns the submission of evidence by the parties and participants, and the holding of a further hearing.
2. The Defence requests leave to appeal against the Impugned Decision on the following issue:

Did the Impugned Decision violate Mr Ongwen’s rights in respect to sentencing under Article 76(2) and fair trial rights under Articles 67(1)(a), (b), (e) and (f) of the Rome Statute and Rule 144(2)(b) of the Rules of Procedure and Evidence (...), namely an Acholi translation of the Trial Judgment (...) and the ability to have adequate time and facilities to prepare his defence of his sentence, before the sentencing proceedings can commence, especially considering that Mr Ongwen is a special needs person (...)?<sup>4</sup>

3. Submitting that ‘the Judgment must be translated into Acholi for Mr Ongwen to be afforded his rights’, the Defence argues that the Impugned Decision ‘implicitly recognises that the sentencing proceeding shall commence, continue and be finalised before Mr Ongwen is ever afforded his right to have the Judgment in a language he understands and speaks’.<sup>5</sup> Separately, the Defence also appears to argue that the Impugned Decision did not properly take into account Mr Ongwen’s status as, in the words of the Defence, ‘a mentally disabled defendant’.<sup>6</sup>

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<sup>1</sup> ICC-02/04-01/15-1766-Conf (public redacted version available: [ICC-02/04-01/15-1766-Red](#)).

<sup>2</sup> ICC-02/04-01/15-1762-Conf (public redacted version available: [ICC-02/04-01/15-1762-Red](#)).

<sup>3</sup> [ICC-02/04-01/15-1763](#).

<sup>4</sup> Request, para. 1 (footnote omitted).

<sup>5</sup> Request, paras 21-22.

<sup>6</sup> Request, para. 24.

4. The Prosecution responded to the Request on 15 February 2021.<sup>7</sup> It argues that the issue proposed for appeal by the Defence does not arise out of the Impugned Decision, which ‘does not deal with, and thus did not make any determination concerning, the translation of the Judgment’.<sup>8</sup> The Prosecution also challenges the Defence interpretation of the right to receive translations of court documents, stating that ‘rule 144(2) does not establish an automatic right to full translation’.<sup>9</sup>
5. The common legal representative of the victims participating in the proceedings also responded to the Request on 15 February 2021.<sup>10</sup> She argues that the proposed issue does not arise out of the Impugned Decision, as that decision contained only rulings ‘of purely procedural nature’ and did not deal ‘with any substantive issue related to Mr Ongwen’s rights to receive an Acholi translation of the Judgment and/or his ability to have adequate time and facilities to prepare his submissions on sentencing’.<sup>11</sup>
6. The Chamber notes Article 82(1)(d) of the Statute as well as its previous decisions laying out in detail the interpretation of this provision.<sup>12</sup>
7. At the outset, the Chamber observes that the Impugned Decision does not concern the question of any accommodations necessary on account of Dominic Ongwen’s health. In this regard, the Defence appears to have stated, albeit not very clearly, that Dominic Ongwen as a ‘mentally disabled defendant’ would require certain ‘accommodations, including but not limited to scheduling’.<sup>13</sup> However, the Defence does not provide any particulars and does not bring any matter to the attention of the Chamber prior to seeking leave to seize the Appeals Chamber with an appeal. In these circumstances, this limb of the request is unrelated to the Impugned Decision, and the Chamber will not consider it further.

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<sup>7</sup> [Prosecution’s Response to the “Defence Request for Leave to Appeal ‘Decision scheduling a hearing on sentence and setting the related procedural calendar’”](#), 15 February 2021, ICC-02/04-01/15-1773 (hereinafter: ‘Prosecution’s Response’).

<sup>8</sup> Prosecution’s Response, ICC-02/04-01/15-1773, para. 4.

<sup>9</sup> Prosecution’s Response, ICC-02/04-01/15-1773, para. 7.

<sup>10</sup> CLRV Response to the “Defence Request for Leave to Appeal ‘Decision scheduling a hearing on sentence and setting the related procedural calendar’”, 15 February 2021, ICC-02/04-01/15-1772-Conf (hereinafter: ‘CLR V Response’).

<sup>11</sup> CLRV Response, ICC-02/04-01/15-1772-Conf, para. 9.

<sup>12</sup> [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; [Decision on Defence Request for Leave to Appeal the Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68\(2\)\(b\)](#), 5 September 2018, ICC-02/04-01/15-1331, para. 8.

<sup>13</sup> Request, para. 24.

8. Moreover, also the issue of translation of the Trial Judgment into Acholi, on which the Request is focused, is not a matter addressed as such in the Impugned Decision. The Chamber has considered whether, in spite of this matter not having been dealt with explicitly in the Impugned Decision, it could nevertheless be stated to arise out of the Impugned Decision by way of being implicit in it, as asserted by the Defence.<sup>14</sup>
9. It is noted that under Rule 144 of the Rules, the right to receive translations of Court documents is not absolute but subject to a concrete assessment of the necessity of such translations to meet the requirements of fairness. However, the principal legal basis for the Impugned Decision is Article 76 of the Statute.<sup>15</sup> Importantly, that provision envisages that the appropriate sentence can be pronounced together with the decision on the conviction under Article 74 of the Statute, rather than separately and consecutively, and therefore, logically, without the convicted person being informed of the conviction – and even less of the reasons thereof – prior to the determination of the sentence. The decision to separate the conviction and sentence is placed within the discretion of the Chamber, and depends, under Article 76(2) of the Statute, on the consideration of whether receipt of evidence or submissions relevant to the sentence additional to those already on record is warranted. The decision to separate the conviction and sentence does not have as its *ratio* to give the convicted person, or the parties in general, the possibility to make submissions on sentencing in response to the conviction under Article 74 of the Statute. Accordingly, the issue of accessibility of the reasoning for the decision under Article 74 to the convicted person does not form part of the considerations that underlie the decision to envisage separate sentencing proceedings and setting out the related calendar like the Impugned Decision. Thus, in the concrete circumstances of the case, any issue relating to the translation of the Trial Judgment into Acholi does not arise out of the Impugned Decision.
10. In any case, the Chamber recalls that Dominic Ongwen, as part of the delivery of the Trial Judgment in open court on 4 February 2021, received the interpretation into Acholi of the verdict and of an extensive summary of the main findings and underlying reasons of the

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<sup>14</sup> Request, para. 22.

<sup>15</sup> See [Decision scheduling a hearing on sentence and setting the related procedural calendar](#), 4 February 2021, ICC-02/04-01/15-1763, paras 2-4.

Trial Judgment, and that he benefits from the assistance of counsel and, more broadly, of his defence team.

11. As a final related matter, the Chamber notes that the response of the common legal representative of the participating victims is currently classified ‘confidential’ due to the level of classification of the Request.<sup>16</sup> However, its contents do not justify this level of classification, and an order for its reclassification as ‘public’ under Regulation 23 *bis* (3) of the Regulations of the Court is appropriate.

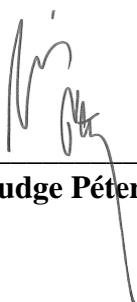
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**


**REJECTS** the Request; and

**ORDERS** the Registry to reclassify document ICC-02/04-01/15-1772-Conf as ‘public’.

Done in both English and French, the English version being authoritative.

  
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**Judge Bertram Schmitt, Presiding Judge**

  
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**Judge Péter Kovács**

  
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**Judge Raul C. Pangalangan**

Dated 22 February 2021

At The Hague, The Netherlands

<sup>16</sup> CLRV Response, ICC-02/04-01/15-1772-Conf, para. 5.