

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **23 April 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

**Public Redacted Version of “Defence Request for Reconsideration or Leave to Appeal
ICC-02/04-01/15-1226”, filed on 23 April 2018**

Source: Defence for Dominic Ongwen

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

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I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby requests reconsideration of the scheduling order in the "Directions on Closing Briefs and Closing Statements"¹ ('Order'). The timing in which Trial Chamber IX ('Chamber') set is highly prejudicial to the Accused and violates Mr Ongwen's fair trial rights pursuant to Articles 64(2), 64(8)(b), 67(1)(b) and 67(1)(f) and Rules 42 and 91(2) of the Rules of Procedure and Evidence ('RPE'). The Defence respectfully requests:
 - a. Four months between the closing of the presentation of evidence to the submission of the closing briefs;
 - b. The right to have Acholi translations of the closing briefs filed concurrently with the English versions;
 - c. Four weeks between the submission of the closing briefs and the closing statements; and
 - d. Its right to reply to the closing briefs of the Common Legal Representative for Victims and Legal Representatives for Victims (jointly 'LRVs').
2. In the alternative, the Defence requests leave to appeal the abovementioned issues pursuant to Article 82(1)(d) of the Rome Statute.
3. This request is made notwithstanding the Defence's assertion that Mr Ongwen does not understand the charges pursuant to Article 64(8)(a) of the Rome Statute and that he suffers, and did suffer, from a mental disease or defect during the alleged crimes.

II. CONFIDENTIALITY

4. Pursuant to Regulation 23 *bis*(2) of the Regulations of the Court, the Defence submits this request as confidential *ex parte*, Trial Chamber IX and Defence only as it briefly notes information classified as such. A public redacted version is filed concurrently.

¹ ICC-02/04-01/15-1226.

III. PROCEDURAL HISTORY

5. On 6 December 2016, the trial in *The Prosecutor vs Dominic Ongwen* began.
6. On 16 January 2017, the Prosecution called its first witness.
7. On 27 October 2017, the Defence submitted the “Defence Observations on the Preliminary Directions for any LRV or Defence Evidence Presentation and Request for Guidance on Procedure for No-case-to-answer Motion.”² In this submission, the Defence outlined some of the special needs of Mr Ongwen.³
8. [REDACTED].⁴
9. On 13 April 2018, the Prosecution notified the Chamber that it completed its presentation of evidence in the *Ongwen* case.⁵
10. On 13 April 2018, the Chamber issued the Order.⁶

IV. APPLICABLE LAW

11. Article 64(2) of the Rome Statute requires the Chamber to “ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused...”.
12. Article 64(8)(b) of the Rome Statute grants the presiding judge the power to “give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner.”
13. Article 67(1)(b) of the Rome Statute guarantees that the accused receives adequate time to prepare his or her defence.
14. Article 67(1)(f) of the Rome Statute guarantees “the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings

² ICC-02/04-01/15-1029-Conf.

³ *Ibid.*, paras 12-17.

⁴ [REDACTED].

⁵ ICC-02/04-01/15-1225, para. 1.

⁶ *See* Order.

of or documents presented to the Court are not in a language which the accused fully understands and speaks.”

15. Rule 42 of the RPE requires the Court to “arrange for the translation and interpretation services necessary to ensure the implementation of its obligations under the Statute and the Rules.”
16. Rule 91(2) of the RPE grants the Defence and Prosecution the right “to reply to any oral or written observation by the legal representative for victims.”

V. SUBMISSIONS

A. Exceptional circumstances exist which warrant reconsideration in this case

17. The case of *The Prosecutor vs Dominic Ongwen* presents exceptional circumstances. Mr Ongwen is charged with 70 criminal allegations and seven modes of liability, and the Prosecution has been investigating this situation since 2004, *i.e.* 14 years. No other single accused at the ICC has been charged with this number of allegations, and, in fact, the maximum post-confirmation charges to date has been 13 charges for a single defendant. For this reason alone, the scheduling of submissions must reflect this magnitude and attendant complexity that the Confirmation of Charges reflects.
18. Trial chambers of the ICC have found that they have the power⁷ to reconsider interlocutory decisions⁸ when prompted by the parties or *proprio motu*.⁹ Prior trial chambers have also been willing to consider material that was not formally admitted as relevant to whether reconsideration is merited.¹⁰
19. “Reconsideration should only be done in exceptional circumstances.”¹¹ That is where a decision is “manifestly unsound and their consequences are manifestly unsatisfactory.”¹² This covers “circumstances [that] can include ‘new facts or new arguments’.”¹³ Trial Chamber VII has

⁷ ICC-01/04-01/06-2705, para. 13 (“The starting point for considering an application of this kind is the duty on the part of a Trial Chamber to ensure the trial is fair and expeditious, pursuant to Article 64(2) of the Statute”).

⁸ ICC-01/04-01/06-2705, para. 18, ICC-01/09-01/11-511, and ICC-01/09-02/11-863.

⁹ ICC-01/09-02/11-863, para. 11.

¹⁰ ICC-01/05-01/13-1948, para. 21.

¹¹ ICC-01/09-02/11-863, para. 11.

¹² ICC-01/04-01/06-2705, para. 18.

¹³ ICC-01/09-02/11-863, para. 11.

considered this law and added that reconsideration “should only be done if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.”¹⁴

20. The Defence respectfully objects to the proximity of the closing briefs to the closure of the presentation of evidence, the timing between the closing briefs and closing statements, the fact that the closing briefs are not required to be submitted in Acholi and that the Defence is not allowed to reply to the LRVs’ closing briefs, and requests reconsideration of the Order based on the following issues:

- a. Mr Ongwen does not understand English, as defined in the governing documents of the Court, and none of the trial transcripts produced by the Registry are in Acholi;
- b. As the closing briefs are meant to “be a summary and reiteration of the parties and participants’ views and positions,”¹⁵ the Defence is at a severe disadvantage as its case will be recently closed, unlike the Prosecution which has over a year to summarise its case;
- c. Mr Ongwen has the right to have the Prosecution’s and LRVs’ closing briefs in a language he understands and speaks;
- d. The Defence requests four weeks between the submissions of the closing briefs and the closing statements; and
- e. The Defence has the right, pursuant to Rule 91(2) of the RPE, to reply to any submission by the LRVs.

1. Not granting the Defence at least four months between the close of evidence and the submission of the closing brief violates Mr Ongwen’s fair trial rights pursuant to Articles 64(2), 67(1)(b) and 67(1)(f) of the Rome Statute and Rule 42 of the RPE

21. Pursuant to Article 67(1)(b), Mr Ongwen has the right to adequate time to prepare his defence, which includes all submissions directed to the Chamber. As the closing brief is a summation of the Defence’s position, Mr Ongwen must be allowed to participate effectively in its preparation. The current amount of time allotted by the Chamber to the Parties and Participants to submit closing briefs nullifies Mr Ongwen’s right to participate. As none of the trial transcripts are

¹⁴ ICC-01/05-01/13-1085-Conf, para. 4.

¹⁵ Order, para. 7.

produced in Acholi, Mr Ongwen's ability to participate in the preparation of the closing brief in such a short period of time is significantly diminished, and more time is required from the closing of the presentation of evidence to the submission of the closing brief to allow his participation.

22. The Chamber is aware that Mr Ongwen is a special needs person.¹⁶ Even when documents are written in Acholi, Mr Ongwen still requires more time than an average person to read and understand the material.
23. As noted above, **none** of the official court transcripts, and a very limited amount of the filings, are written in Acholi. Mr Ongwen must rely on the Acholi versions of witness statements and interview transcripts to aid in the preparation of his closing brief. This places Mr Ongwen and the Defence at a significant disadvantage as the content of some of the witness statements and/or interview transcripts differ significant from in-court testimony.¹⁷
24. Whilst Mr Ongwen was present during the Prosecution's case-in-chief, and shall be present during the LRVs' and Defence's cases-in-chief, hearing the testimony in Acholi during court does not replace the fact that Mr Ongwen's right to help prepare his defence is violated by having only six weeks to submit a closing brief. Transcripts are created and saved into the case record so an accurate record of what was said by each witness is kept. These transcripts **are not** written in Acholi. By failing to allot enough time between the end of the presentation of evidence and the submission of the closing briefs, the Chamber is requiring something of Mr Ongwen which it does not require of anyone else, *i.e.* a perfect memory of a trial which will have lasted for over three years.
25. No one can honestly claim to have a perfect memory. As such, and since there is a rather short period to write the closing briefs, Mr Ongwen's fair trial right pursuant to Article 67(1)(f) of the Rome Statute and Rule 42 of the RPE, of having the assistance of Acholi translations of the trial transcripts (which are necessary documents), shall also be violated. There will be little to no time for Counsel and his staff to revert to the English trial transcripts to determine which issues may have been stated in the witness statements or interview transcripts, and were not stated in the trial transcripts. The short period of time to write the closing briefs makes this impossible.

¹⁶ See ICC-02/04-01/15-1029-Conf, paras 12-17 [REDACTED].

¹⁷ *E.g.*, the testimony of P-0205 and P-0264.

26. For the abovementioned reasons, the Defence respectfully requests the Chamber to reconsider the timing in which the Defence must submit its closing brief as it violates Mr Ongwen's fair trial rights pursuant to Articles 64(2), 67(1)(b) and 67(1)(f) and Rule 42 of the RPE. The Defence requests the Chamber to grant four months between the close of the presentation of evidence and the submission of the closing briefs.

2. The due date of the closing briefs violates Mr Ongwen's fair trial right of having adequate time to prepare his defence in full equality of the Prosecution

27. By requiring the Defence's closing brief to be submitted six weeks after the closure of the presentation of evidence, Mr Ongwen's fair trial right of having adequate time to prepare his defence **in full equality** with the Prosecution is violated.

28. The Prosecution closed its case-in-chief on 13 April 2018.¹⁸ As it is obvious that the Prosecution has a significantly larger staff than the Defence,¹⁹ it is fair to assume that the Prosecution is able to begin writing its closing brief effective 13 April 2018 – the close of its evidence. In practical terms, this means that the Prosecution has over a year to write its closing brief. The Defence, as it shall be conducting its own case-in-chief during that time, does not have that luxury. The current schedule, when cast against equality of arms, violates Mr Ongwen's fair trial right of adequate time to prepare his defence.

29. The Defence, of course, does not request a year to write its closing brief. The Defence requests adequate time, in full equality, to review and prepare its closing brief with the participation of Mr Ongwen. The Prosecution's case-in-chief encompassed 116 witnesses. The LRVs shall present seven. The Defence expects around 60 witnesses. Considering the vast amounts of material, including the log books, alleged intercept material, and other materials submitted through the Prosecution's bar table motions,²⁰ the Defence avers at this time that four months is an adequate time to prepare its closing brief with respect to equality of arms.

30. For the abovementioned reasons, the Defence requests the Chamber to reconsider the deadline for closing briefs and change it to four months after the close of the presentation of evidence as

¹⁸ ICC-02/04-01/15-1225.

¹⁹ See ICC-02/04-01/15-1029-Red, para. 23.

²⁰ See ICC-02/04-01/15-615 and ICC-02/04-01/15-795.

the current deadline violates the Mr Ongwen's fair trial right, in full equality, to have adequate time to prepare his defence.

3. Mr Ongwen has the right to have the Prosecution's and LRVs' closing briefs in a language he understands and speaks pursuant to Article 67(1)(f) of the Statute

31. Mr Ongwen has been present and provided with oral interpretations of the evidence presented in court by witnesses during the trial. This is required by the Rome Statute at Article 67(1)(f). The Defence is at a loss to understand why the summation of the Prosecution's case, its final submission to the Chamber on the evidence presented, does not have to be translated for Mr Ongwen.
32. The Chamber reasoned that the closing briefs are not documents which meet the threshold of documents that need to be translated to meet the requirements of fairness.²¹ The Defence respectfully disagrees and requests that the closing briefs be submitted concurrently both in English and Acholi.
33. The closing briefs are summations of the case as it appears to the Parties and Participants.²² As the Chamber wrote, the closing briefs in this case are not reactionary to each other.²³ Even so, the closing statements are after the closing briefs, and during the closing statements, the Parties and Participants will have a chance to adapt the closing statements to arguments proffered in the closing briefs. This cannot be done effectively if the Defence is required to visit Mr Ongwen with an interpreter for several days, if not the entire two weeks, to read all three closing briefs to him.²⁴
34. In conjunction with the failure to provide the closing briefs in Acholi, Mr Ongwen shall be effectively cut-off from participating in the closing statements *vis-à-vis* responding to factual claims the Prosecution and LRVs make in the closing briefs. It is true that Mr Ongwen shall be able to work with the Defence for its closing brief and closing statement, but Mr Ongwen will not be able to aid effectively in the preparation of his closing statement which relates the Prosecution's and LRVs' closing briefs, thus violating Mr Ongwen's fair trial rights pursuant to Article 67(1)(b) of the Rome Statute.

²¹ Order, paras 5-8.

²² Order, para. 7.

²³ Order, para. 6.

²⁴ The Defence notes that it intends to prepare on its own an unofficial translation of its closing brief for Mr Ongwen.

35. The Defence notes that the Court shall be providing interpretation services for the closing statements as is required per the Rome Statute and RPE. The Defence argues that there is no difference between essence of the closing statements and the closing briefs. Both are summations of the case from the point-of-view of the submitting team. Since interpretations are required to meet the requirements of fairness for the closing statements, it is only logical that the closing briefs require translation into Acholi to meet the requirements of fairness.
36. Finally, as discussed in Section V(A)(5) below, the Defence has the fundamental right to reply to any oral or written observation from the LRVs.²⁵ As such, the Defence avers that for Mr Ongwen's fair trial rights to be respected, he must be able to participate effectively in the reply, which can only be done if both LRV closing briefs are translated into Acholi.
37. For the abovementioned reasons, the Defence respectfully requests the Chamber to reconsider the Order in relation to Acholi translations of the closing briefs and require that Acholi translations are filed concurrently with the English versions of the closing briefs.

4. The Defence has the fair trial right to have adequate time to prepare its closing statement and requests four weeks after the closing briefs to prepare its closing statement

38. The closing statements are meant to be the final instance in which the Parties and Participants may address the Chamber on the interpretation of the evidence. The Defence requests adequate time to prepare its closing statement as it avers that two weeks is insufficient time between the closing briefs and the closing statements. The Defence respectfully requests four weeks between the closing briefs and closings statements.
39. Currently, the Parties and Participants are not required submit the closing briefs in Acholi.²⁶ The Chamber has allotted 200 pages for the Parties and 120 pages for the LRVs. Not counting the Defence's closing brief, that means the Defence shall be required to read and analyse up to 440 pages of materials during the two weeks between the submission of the briefs and the closing statements. Noting the arguments in paragraphs 22 and 28 and footnote 16, and that the closing briefs are not currently required to be submitted in Acholi, the Defence's fair trial right pursuant to Article 67(1)(b) to have adequate time to prepare its Defence, in full equality with the Prosecution, is violated. The short interval between the closing briefs and closing statements

²⁵ Rule 91(2) of the Rules of Procedure and Evidence.

²⁶ Order, para. 6.

denies Mr Ongwen his right to help his Defence prepare his closing statement, especially noting the arguments proffered in Section V(A)(3) above, paragraphs 31-37.

40. For the abovementioned reasons, the Defence respectfully requests the Chamber to reconsider its decision to allot two weeks between the closing briefs and closing statements and alter the Order to allow for four weeks between the closing briefs and closing statements in respect of Mr Ongwen's fair trial right to adequate time to prepare his defence.

5. The Defence has a fundamental right under Rule 91(2) RPE to reply to any oral or written observations submitted by the LRVs

41. Pursuant to Rule 91(2) of the RPE, "[t]he Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative for victims." In the Order, the Defence notes that the Chamber authorised the LRVs to submit closing briefs.²⁷
42. Rule 91(2) of the RPE uses the future verb "shall" and not "may". The drafters of the RPE made it clear that there is a right to reply to any observation made by the LRVs. With the utmost respect to the Chamber, this right is not waived by the Defence and it requests the enforcement of this right.
43. For the abovementioned reason, the Defence respectfully requests the Chamber to reconsider its decision not to allow the Defence its right to reply to the LRVs' closing briefs.

B. In the alternative, the Defence requests leave to appeal the Order

44. Pursuant to Article 82(1)(d) of Statute, either party may appeal a decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The purpose of such procedure is to "pre-empt the repercussions of erroneous decisions on the fairness of the proceedings or the outcome of the trial."²⁸ The Pre-Trial Chamber is vested with the power to certify the existence of an appealable issue,²⁹ however when determining whether leave to appeal should be granted, the Pre-Trial Chamber must not justify or defend the correctness of its

²⁷ Order, para. 4.

²⁸ ICC-01/04-168, para. 19.

²⁹ *Ibid.*, para. 20.

decision, but instead determine whether the issues presented significantly affect the fairness of the proceedings.³⁰

45. According to Rule 155(1) of the Rules of Procedure and Evidence ('RPE'), a party shall make a written application for leave to appeal to the Chamber that gave the decision, setting out the reasons for the request for leave to appeal. The application for leave to appeal shall state the name and number of the case or situation and shall specify the legal and/or factual reasons in support thereof, in accordance with Regulation 65(1) of the Regulations of the Court. It shall also specify the reasons warranting immediate resolution by the Appeals Chamber of the matter at issue.³¹
46. The Appeals Chamber has ruled that only an "issue" may form the subject-matter of an appealable decision, which it defined as "an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion."³² Further, an issue is "a subject the resolution of which is essential for the determination of the matters arising in the judicial cause under examination" and may be "legal or factual or a mixed one".³³ The issue must be one apt to "significantly affect", that is, in a material way, either the fair and expeditious conduct of the proceedings, or the outcome of the trial.³⁴ In other words, the issue "must be one likely to have repercussions on either of these two elements of justice."³⁵
47. The Appeals Chamber has defined the term "fair" as being associated with the norms of a fair trial and corresponding human rights, as per Article 64(2) and 67(1) of the Statute.³⁶ In particular, it noted that the "expeditious conduct of the proceedings in one form or another constitutes an attribute to a fair trial."³⁷ The term "proceedings" extends to proceedings prior and subsequent to the current proceedings.³⁸
48. The Appeals Chamber also held that an issue will be appealable "where the possibility of error in an interlocutory or intermediate decision may have a bearing" on the outcome of the trial.³⁹ The Pre-Trial Chamber, when deciding on a request for leave to appeal, "must ponder the

³⁰ See e.g. ICC-01/09-02/11-253, para. 28.

³¹ Regulation 155(2) of the RoC.

³² ICC-01/04-168, para. 9.

³³ *Ibid.*

³⁴ *Ibid.*, para. 10.

³⁵ *Ibid.*

³⁶ *Ibid.*, para. 11.

³⁷ *Ibid.*

³⁸ *Ibid.*, para. 12.

³⁹ *Ibid.*, para. 13.

possible implications of a given issue being wrongly decided on the outcome of the case”, thereby forecasting the consequences of such an occurrence.⁴⁰

49. Regarding the second aspect of a request for leave to appeal (the immediate resolution by the Appeals Chamber), the Appeals Chamber has held that this criterion will be satisfied if the relevant Chamber rules that an authoritative determination on the appeal would “move forward” the proceedings and “remove doubts about the correctness of the decision or map a course of action along the right lines.”⁴¹ The issue at stake must also be “such that its immediate resolution by the Appeals Chamber will settle the matter posing for decision through its authoritative determination, ridding thereby the judicial process of possible mistakes that might taint either the fairness of the proceedings or mar the outcome of the trial.”⁴² The solving of the issue by the Appeals Chamber is aimed to “ensure that the proceedings follow the right course.”⁴³
50. Pursuant to Article 82(1)(d), the Defence respectfully requests leave to appeal the following issues:
 - a. Mr Ongwen’s fair trial rights pursuant to Articles 64(2), 67(1)(b), 67(1)(f) of the Rome Statute and Rule 42 of the RPE shall be violated if its closing brief is required to be submitted six weeks after the closing of the presentation of evidence (‘Issue 1’);
 - b. Mr Ongwen’s fair trial rights pursuant to Articles 64(2), 67(1)(b), 67(1)(f) of the Rome Statute and Rule 42 of the RPE shall be violated if Mr Ongwen is not supplied with concurrent Acholi translations of the closing briefs (‘Issue 2’);
 - c. Mr Ongwen’s fair trial rights pursuant to Articles 64(2), 67(1)(b), 67(1)(f) of the Rome Statute and Rule 42 of the RPE shall be violated if the Defence is required to give its closing statement two weeks after the submission of all the closing briefs (‘Issue 3’); and
 - d. Mr Ongwen’s fundamental right pursuant to Rule 91(2) of the RPE shall be violated if Mr Ongwen is not allowed to reply to the LRVs’ closing briefs (‘Issue 4’).

⁴⁰ *Ibid.*, para. 13.

⁴¹ *Ibid.*, paras 14-15.

⁴² *Ibid.*, para. 14.

⁴³ *Ibid.*, para. 15.

ISSUE 1

51. Mr Ongwen's fair trial rights pursuant to Articles 64(2), 67(1)(b), 67(1)(f) of the Rome Statute and Rule 42 of the RPE shall be violated if its closing brief is required to be submitted six weeks after the closing of the presentation of evidence, and requests four months to prepare its closing brief.
52. The Defence asserts that Issue 1 is an appealable issue as defined by the Appeals Chamber; it is not a mere disagreement about the interpretation of Mr Ongwen's fair trial rights. Mr Ongwen's rights shall be violated by not granting sufficient time to prepare its final brief with Mr Ongwen's assistance. Whilst the Chamber noted that Mr Ongwen has been present for the presentation of evidence, and received Acholi interpretation of the evidence, Mr Ongwen does not fully understand or speak either working language of the Court. This means that unlike any other accused who pleaded not guilty at the start of the trial, Mr Ongwen does not have trial transcripts of the evidence presented during the trial in a language which he fully understands and speaks. The Defence avers that the Chamber made a material error in fact and law when it relied solely upon the circumstance that Mr Ongwen has been present in trial and provided live Acholi interpretations of the presentation of evidence.
53. Issue 1 significantly affects the fairness of the proceedings. The Defence incorporates by reference Sections V(A)(1) to V(A)(3), specifically paragraphs 21-37 above.
54. Issue 1 affects the expeditiousness of the proceedings. Mr Ongwen has the fair trial right to participate meaningfully in his trial. Failure to allow him and his Defence sufficient time to prepare and write the closing brief, regardless of the intended purpose, shall result in further complaints when further details are issued⁴⁴ and during any possible appeal phase. Furthermore, the Defence shall be required to petition the Chamber for additional time as none of the closing briefs are currently required to be submitted in Acholi, *i.e.* the only language Mr Ongwen understands and speaks.
55. Issue 1 affects the outcome of the trial. The closing briefs are meant to be a guide to the Chamber to assist it in its Article 74 deliberations.⁴⁵ Mr Ongwen and his Defence have the right to discuss and decide which materials are important to emphasise and underscore to the Chamber. Failure to give Mr Ongwen and the Defence adequate time to prepare the closing brief, especially

⁴⁴ Order, para. 9.

⁴⁵ See Order, paras 3 and 6.

considering that Mr Ongwen does not have Acholi trial transcripts, could result in important and key facts being overlooked or disregarded. Unlike the more than one-year the Prosecution has to write its closing brief after the close of its presentation of evidence, the Defence has been given six weeks after the close of its presentation of evidence to write its brief.

56. Finally, an immediate resolution by the Appeals Chamber shall materially advance the proceedings and ensure the correctness of the Order. Issue 1 directly concerns novel issues never resolved by the Chamber. Every accused who pleaded not guilty before the beginning of the presentation of evidence understood and spoke a working language of the Court, which is not the case with Mr Ongwen. Mr Ongwen, as he does not have access to Acholi trial transcripts, must be given adequate time to aid his Defence team. Failure to do so would taint the entirety of the proceedings.
57. For the abovementioned reasons, including the incorporated paragraphs, the Defence respectfully request leave to appeal Issue 1.

ISSUE 2

58. Mr Ongwen's fair trial rights pursuant to Articles 64(2), 67(1)(b), 67(1)(f) of the Rome Statute and Rule 42 of the RPE shall be violated if Mr Ongwen is not supplied with concurrent Acholi translations of the closing briefs.
59. The Defence asserts that Issue 2 is an appealable issue as defined by the Appeals Chamber; it is not a mere disagreement about the interpretation of Mr Ongwen's fair trial rights. Mr Ongwen's rights shall be violated by not requiring concurrent Acholi translations of the closing briefs. This issue is a contestation of the fundamental documents required for translation for an accused who does not understand or speak the working language of the case or working languages of the Court. Without concurrent translations of the closing briefs, Mr Ongwen will be denied his right to aid his Defence in the preparation of the closing statements. Regardless of whether the Defence understands and speaks the working language of the case, the sheer volume of pages anticipated makes it impracticable for the Defence to identify and have translated "discrete parts" of the closing briefs before the closing statements.
60. Issue 2 significantly affects the fairness of the proceedings. The Defence incorporates by reference Sections V(A)(1) to V(A)(3), paragraphs 21-37 above, especially noting paragraphs 31-37.

61. Issue 2 significantly affects the expeditiousness of the proceedings. Without concurrent Acholi translations of the closing brief, the Defence shall be seriously hampered in its preparation of the closing statements. The Defence shall be required to read up to 440 pages of material, decide which material needs to be translated for Mr Ongwen,⁴⁶ and wait for the translations. The Defence notes with caution that translations are time consuming, and gives the example that the “Opinion individuelle du Juge Marc Perrin de Brichambaut”,⁴⁷ which was 53 pages in the original version and 52 pages in the English translation, was not translated into Acholi until 19 February 2018.⁴⁸ Because translations are so time consuming, significant delays shall be required to translated even 10% of the maximum pages allotted by the Chamber for the Prosecution’s and LRVs’ closing briefs.
62. Issue 2 affects the outcome of the trial. The closing briefs are meant to be a guide to the Chamber to assist it in its Article 74 deliberations.⁴⁹ Mr Ongwen and his Defence have the right to discuss and decide which materials are important to emphasise and underscore to the Chamber during its closing statement, which is the final submission guiding the Chamber on how to interpret the evidence. Failure to give Mr Ongwen concurrent Acholi translations of the closing briefs, especially considering that Mr Ongwen does not have Acholi trial transcripts, could result in important and key facts being overlooked or disregarded during the closing statements.
63. Finally, an immediate resolution by the Appeals Chamber shall materially advance the proceedings and ensure the correctness of the Order. Issue 2 directly concerns Mr Ongwen’s fundamental fair trial rights to adequate time for the preparation of his defence and translations of fundamental documents submitted before the Chamber. Again, as Mr Ongwen is the only accused to have pleaded not guilty at trial who does not understand and speak one of the working languages of the Court, a definitive answer from the Appeals Chamber will remove all doubt as to whether the closing briefs are fundamental documents which require translation into a language which an accused fully understands and speaks.
64. For the abovementioned reasons, including the incorporated paragraphs, the Defence respectfully request leave to appeal Issue 2.

⁴⁶ Order, para. 8.

⁴⁷ ICC-02/04-01/15-422-Anx.

⁴⁸ ICC-02/04-01/15-422-Anx-tACH.

⁴⁹ See Order, paras 3 and 6.

ISSUE 3

65. Mr Ongwen's fair trial rights pursuant to Articles 64(2), 67(1)(b), 67(1)(f) of the Rome Statute and Rule 42 of the RPE shall be violated if the Defence is required to give its closing statement two weeks after the submission of the closing briefs. The Defence respectfully requests four weeks between the submission of the closing briefs and the closing statements.

66. The Defence asserts that Issue 3 is an appealable issue as defined by the Appeals Chamber; it is not a mere disagreement about the interpretation of Mr Ongwen's fair trial rights. Mr Ongwen's rights shall be violated if it is required to present its closing statement two weeks after the closing briefs. As Mr Ongwen does not fully understand or speak the working language of the case (or either working languages of the Court), and considering the Order does not require the closing briefs to be in Acholi, Mr Ongwen shall be denied his fair trial right, in full equality with the Prosecution, to participate in the construction and modifications of the Defence's closing statement, thus violating his fair trial rights.

67. Issue 3 significantly affects the fairness of the proceedings. The Defence incorporates by reference Sections V(A)(1) to V(A)(4), paragraphs 21-40 above, especially noting paragraphs 37-40.

68. Issue 3 significantly affects the expeditiousness of the proceedings, and is inextricably linked to Issue 2. As described above in paragraph 61, Judge de Brichambaut's separate opinion on the confirmation of charges decision, which was 53 pages, took around 22 months to translate in Acholi. Whilst the Defence does not allege that this will be the case for the closing briefs, Acholi translations of witness statements and transcripts take a considerable amount of time, much more than two weeks. The Chamber even granted the Prosecution's request for leeway on the disclosure of Acholi translations of witness statements and interview transcripts,⁵⁰ highlighting that this is not an easy and quick task. Noting this, and that the closing briefs are not required to be filed concurrent in Acholi and English, the Defence shall be required to seek an extension of the time frame between the closing briefs and the closing statements as it shall undoubtedly require parts of the closing briefs to be translated into Acholi.

69. Issue 3 affects the outcome of the trial. Failure to allow adequate time for the Defence to communicate to Mr Ongwen about the closing briefs and the evidence presented by all witnesses

⁵⁰ ICC-02/04-01/15-457, paras 8-10.

before the Chamber could irreparably mar the end of the proceedings,⁵¹ which is the time for the Parties and Participants to make final submissions to the Chamber about the evidence. As it cannot be stated enough, Acholi trial transcripts do not exist and the closing briefs are not required to be translated into a language which Mr Ongwen fully understands and speaks. Time additional to what has already been ordered is necessary under the fair trial rights delineated in the Rome Statute.

70. Finally, an immediate resolution by the Appeals Chamber shall materially advance the proceedings and ensure the correctness of the Order. Issue 3 directly concerns Mr Ongwen's fair trial rights to have adequate time to prepare his defence and his right to have fundamental documents translated into a language which he fully understands and speaks, *i.e.* Acholi. As none of the trial transcripts are in Acholi, and none of the closing briefs are currently required to be translated into Acholi, the Mr Ongwen and his Defence shall require additional time to prepare its closing statement, *i.e.* its final submission on the evidence to the Chamber.
71. For the abovementioned reasons, including the incorporated paragraphs, the Defence respectfully request leave to appeal Issue 3.

ISSUE 4

72. Mr Ongwen's fundamental right pursuant to Rule 91(2) of the RPE shall be violated if Mr Ongwen is not allowed to reply to the LRVs' closing briefs.
73. The Defence asserts that Issue 4 is an appealable issue as defined by the Appeals Chamber; it is not a mere disagreement about the interpretation of Mr Ongwen's fundamental right. Mr Ongwen's rights shall be violated by not granting him the right to reply to written submissions by the LRVs as allowed by the RPE. Whilst the Chamber noted that the closing briefs are summations of the Parties and Participants case,⁵² the RPE does not distinguish between legal, factual or summary observations or submissions. With respect, there is a clear error of legal reasoning in the Order.
74. Issue 4 significantly affects the fairness of the proceedings. The Defence incorporates by reference Section V(A)(4), specifically paragraphs 41-43 above.

⁵¹ See paragraphs 55 and 62 above.

⁵² Order, paras 3 and 6.

75. Issue 4 affects the expeditiousness of the proceedings. The Defence has the fundamental right to reply to the LRVs' closing briefs pursuant to Rule 91(2) of the RPE. Failure to allow him and his Defence to reply to the LRVs' closing briefs, regardless of the intended purpose of the briefs, shall result in further complaints when further details are issued⁵³ and during any possible appeal phase, ultimately causing delays in the proceedings.
76. Finally, an immediate resolution by the Appeals Chamber shall materially advance the proceedings and ensure the correctness of the Order. Issue 4 directly concerns a fundamental right of Mr Ongwen, and shall taint the end of the proceedings by denying him his right to reply to the LRVs' closing briefs.
77. For the abovementioned reasons, including the incorporated paragraphs, the Defence respectfully request leave to appeal Issue 4.

VI. RELIEF SOUGHT

78. The Defence respectfully requests the Chamber to reconsider the orders in ICC-02/04-01/15-1226 and:
- a. Grant four months between the close of the presentation of evidence and the submission date of the closing briefs;
 - b. Grant four weeks between the submission of the closing briefs and the closing statements;
 - c. Require the closing briefs to be filed concurrently in English and Acholi; and
 - d. Allow the Defence to reply to the LRVs' closing briefs.
79. In the alternative, the Defence respectfully requests leave to appeal the following four issues:
- a. Mr Ongwen's fair trial rights pursuant to Articles 64(2), 67(1)(b), 67(1)(f) of the Rome Statute and Rule 42 of the RPE shall be violated if its closing brief is required to be submitted six weeks after the closure of the presentation of evidence;

⁵³ Order, para. 9.

- b. Mr Ongwen's fair trial rights pursuant to Articles 64(2), 67(1)(b), 67(1)(f) of the Rome Statute and Rule 42 of the RPE shall be violated if Mr Ongwen is not supplied with concurrent Acholi translations of the closing briefs;
- c. Mr Ongwen's fair trial rights pursuant to Articles 64(2), 67(1)(b), 67(1)(f) of the Rome Statute and Rule 42 of the RPE shall be violated if the Defence is required to give its closing statement two weeks after the submission of all of the closing briefs; and
- d. Mr Ongwen's fundamental right pursuant to Rule 91(2) of the RPE shall be violated if Mr Ongwen is not allowed to reply to the LRVs' closing briefs.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 23rd day of April, 2018

At Lira, Uganda