

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **9 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

**Defence Request for Trial Chamber IX to accept Submissions on Sentencing Pursuant to
Rule 103 of the Rules of Procedure and Evidence**

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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I. INTRODUCTION

1. The Defence Team of Dominic Ongwen (‘Defence’) requests Trial Chamber IX (‘Chamber’) to seek *amicus curiae* observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence (‘Rules’) in preparation for the Chamber’s upcoming decision on sentencing for Mr Ongwen. The Defence avers that the novel issue of determining an appropriate sentence for a former child soldier warrant such submissions.
2. The Defence respectfully suggests that all *amicus curiae* briefs be limited to 20 pages and submitted on or before 16h00 CET on 1 April 2021. Any submissions by the Prosecution and Defence pursuant to Rule 103(2) of the Rules can be made during the hearing on sentencing during the week of 12 April 2021.

II. BACKGROUND

3. Mr Ongwen was abducted by the LRA in November 1987 at the age of nine (9) years old.
4. On 6 January 2015, Mr Ongwen surrendered to United States soldiers from the hands of the Séléka in Central African Republic (‘CAR’), where he remained for the next eight days.
5. On 16 January 2015, Mr Ongwen was transferred to the custody of the International Criminal Court (‘ICC’) in Bangui, CAR.¹
6. On 21 January 2015, Mr Ongwen arrived at the ICC-DC in The Hague, Netherlands.²
7. On 26 January 2015, Mr Ongwen had his first appearance.³
8. From 21-27 January 2016, Pre-Trial Chamber II held the Confirmation of Charges Hearing.
9. On 23 March 2016, Pre-Trial Chamber II issued the “Decision on the confirmation of charges against Dominic Ongwen”⁴ and the “Separate opinion of Judge Marc Perrin de Brichambaut.”⁵

¹ Report of the Registry on the voluntary surrender of Dominic Ongwen and his transfer to the Court, [ICC-02/04-01/15-189](#), paras 1-4.

² *Ibid*, para. 17.

³ See [ICC-02/04-01/15-T-4-ENG](#).

⁴ See Decision on the confirmation of charges against Dominic Ongwen, [ICC-02/04-01/15-422-Red](#).

⁵ See Separate opinion of Judge Marc Perrin de Brichambaut, [ICC-02/04-01/15-422-Anx-tENG](#).

10. On 29 March 2016, the Defence requested leave to appeal the Decision on the confirmation of charges against Dominic Ongwen.⁶
11. On 29 April 2016, Pre-Trial Chamber II, by majority, denied the Defence's request for leave to appeal the confirmation decision.⁷ Judge de Brichambaut dissented in respect to the Defence's third issue of appeal.⁸
12. On 6 December 2016, the presentation of evidence at trial began.⁹
13. On 18 September 2018, the Defence began its presentation of evidence.¹⁰
14. On 12 March 2020, the Defence closed the trial with its closing statement.¹¹
15. On 4 February 2021, Trial Chamber IX rendered its Trial Judgment. The Trial Chamber found Mr Ongwen guilty of 61 counts, which include the crime sites of Pajule, Odek, Lukodi and Abok, charges related to sexual and gender-based crimes and use of child soldiers.¹²

III. SUBMISSIONS

16. The Defence makes these submissions without prejudice to its current request for an extension of time pending the Acholi translation of the Trial Judgment filed before the Appeals Chamber,¹³ and its request for leave to appeal the "Decision scheduling a hearing on sentence and setting the related procedural calendar".¹⁴
17. The Defence submits that the Chamber should request *amicus curiae* observations before deciding the novel issue of sentencing a former child soldier. According to Rule 103(1) of the Rules, "at any stage of the proceedings, a Chamber may, if it considers desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate."¹⁵ The Chamber's decision regarding applications for leave to submit observations is discretionary in

⁶ Defence Request for Leave to Appeal Issues in Confirmation of Charges Decision, [ICC-02/04-01/15-423](#).

⁷ See Decision on the Defence request for leave to appeal the decision on the confirmation of charges, [ICC-02/04-01/15-428](#) and Partially dissenting opinion of Judge Marc Perrin de Brichambaut, [ICC-02/04-01/15-428-Anx-tENG](#).

⁸ Partially dissenting opinion of Judge Marc Perrin de Brichambaut, [ICC-02/04-01/15-428-Anx-tENG](#).

⁹ [ICC-02/04-01/15-T-26-ENG](#).

¹⁰ [ICC-02/04-01/15-T-179-Red-ENG](#).

¹¹ [ICC-02/04-01/15-T-258-Red-ENG](#).

¹² [ICC-02/04-01/15-1762-Red](#).

¹³ [ICC-02/04-01/15-1764-Conf](#).

¹⁴ The Defence intends to submit another pleading request leave to appeal ICC-02/04-01/15-1763 on 10 February 2021.

¹⁵ Rule 103(1) of the Rules of Procedure and Evidence.

nature.¹⁶ After receiving observations, the Prosecution and Defence have the opportunity to respond to the observations.¹⁷

18. When other chambers of this Court addressed a novel issue, those chambers accepted *amicus curiae* observations from States, organizations, professionals, and intellectuals. For example, *amicus curiae* observations were accepted by Pre-Trial Chamber I in *The Situation in the State of Palestine*¹⁸ and by the Appeals Chambers in *The Prosecutor v. Bosco Ntaganda*.¹⁹ In *The Situation in the State of Palestine*, the Pre-Trial Chamber requested *amicus curiae* observations regarding the scope of the Court’s territorial jurisdiction in the Situation of Palestine.²⁰ In *Ntaganda*, the Appeals Chamber requested *amicus curiae* observations regarding the term ‘attack’.²¹ First, the Chamber asked how ‘attack’ is defined under international humanitarian law in the context of cultural property and hospitals.²² Second, the Chamber asked “what does the term ‘attack’ mean in Article 8(2)(e)(iv) of the Statute” and “does it covers acts such as pillaging and destruction.”²³
19. Similarly, the *Ongwen* Trial Chamber must address a novel issue – what is an appropriate sentence for a former child soldier convicted in an international court or tribunal? During the course of trial, the Chamber established that Mr Ongwen was abducted by the Lord’s Resistance Army (‘LRA’) as a child and was forced to serve as a child soldier.²⁴ He remained captive in the LRA until December 2014 when he escaped and surrendered to American soldiers in CAR in January 2015. After his surrender, Mr Ongwen was brought to the ICC to stand trial for war crimes and crimes against humanity. On 4 February 2021, the Chamber convicted Mr Ongwen of 61 war crimes and crimes against humanity.
20. The Trial Chamber’s Trial Judgment marks the first instance in which a former child soldier has been convicted in an international court or tribunal. The Appeals Chamber has recognized

¹⁶ *Situation in the State of Palestine*, Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, 20 February 2020, [ICC-01/18-63](#) at para 49.

¹⁷ Rule 103(2) of the Rules.

¹⁸ *Situation in the State of Palestine*, Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, 20 February 2020, [ICC-01/18-63](#).

¹⁹ *Ntaganda* case, Order inviting expressions of interest as *amicus curiae* in judicial proceedings (pursuant to Rule 103 of the Rules of Procedure and Evidence), 24 July 2020, [ICC-01/04-02/06-2554](#).

²⁰ *Situation in the State of Palestine*, Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, 20 February 2020, [ICC-01/18-63](#) at para. 58.

²¹ ²¹ *Ntaganda* case, Order inviting expressions of interest as *amicus curiae* in judicial proceedings (pursuant to Rule 103 of the Rules of Procedure and Evidence), 24 July 2020, [ICC-01/04-02/06-2554](#) at para. 15.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ongwen* case, Trial Judgment, 4 February 2021, [ICC-02/04-01/15-1762-Red](#) at paras 30.

the “long-term consequences” that former child soldiers endure.²⁵ Now, the Chamber must determine an appropriate sentence for a victim of child soldiering. Thus, the Defence submits that the Trial Chamber should request *amicus curiae* observations from States, organizations, professionals, and intellectuals before sentencing Mr Ongwen.

21. As noted above, Rule 103(2) of the Rules grants the Prosecution and Defence a right of response to any *amicus curiae* pleading. Considering the expeditiousness in which the Chamber is conducting the sentencing proceedings, the Defence suggests that any response to any *amicus curiae* be given during its oral presentation starting on 12 April 2021.

IV. RELIEF

22. For the reasons described above, the Defence respectfully requests Trial Chamber IX to:
- a. Allow for the submission of *amicus curiae* briefs on the novel issue of sentencing a former child soldier and factors to be taken into account in determining an appropriate sentence;
 - b. Limit the submissions to 20 pages;
 - c. Order that any *amicus curiae* submission be submitted on or before 1 April 2021; and
 - d. Limit the Party’s responses to the respective oral submissions during the hearing starting on 12 April 2021.

Respectfully submitted,



.....
 Hon. Krispus Ayena Odongo
 On behalf of Dominic Ongwen

Dated this 9th day of February, 2021
 At Kampala, Uganda

²⁵ *Lubanga* case, Decision on Sentence Pursuant to Article 76 of the Statute, 10 July 2012, [ICC-01/04-01/06-2901](#) at para. 29. This decision was upheld on appeal (*Lubanga* case, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the “Decision on Sentence pursuant to Article 76 of the Statute” 1 December 2014, [ICC-01/04-01/06-3122](#)).