



Original: English

No.: ICC-02/04-01/15  
Date: 03 January 2017

**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 on  
Mr Ongwen's Understanding of the Nature of the Charges**

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

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
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**Counsel for the Defence**

Krispus Ayena Odongo

**Legal Representatives of the Victims**

Joseph Akwenyu Manoba  
Francisco Cox  
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**Legal Representatives of the 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**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Trial Chamber IX** ('Chamber') of the International Criminal Court ('Court') in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 82(1)(d) of the Rome Statute ('Statute'), issues the following 'Decision on Defence Request for Leave to Appeal the Decision on Mr Ongwen's Understanding of the Nature of the Charges'.

## **I. Background and Submissions**

1. On 6 December 2016, at the opening of the trial, Mr Ongwen indicated, while being questioned by the presiding judge of the Chamber, that he does not understand the charges.<sup>1</sup> After having retired for deliberation,<sup>2</sup> the Chamber issued an Oral Decision finding that it is satisfied that Mr Ongwen understood the nature of the charges ('Impugned Decision').<sup>3</sup>

2. On 12 December 2016, the Defence filed a request for leave to appeal the Impugned Decision ('Request').<sup>4</sup> It seeks leave to appeal the following issue ('Issue'):

*'whether the standard for Article 64(8)(a) allows for the Chamber to use historical statements of the Accused for the major basis of determining the Accused understanding of the charges'.<sup>5</sup>*

3. The Defence submits that the issue arises from the Impugned Decision since the Chamber 'relied heavily' upon Mr Ongwen's statement during the confirmation of charges hearing,<sup>6</sup> that the Impugned Decision affects the fair and

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<sup>1</sup> Transcript of the hearing of 6 December 2016, ICC-02/04-01/15-T-26-ENG, page 16, line 11 to page 17, line 19.

<sup>2</sup> ICC-02/04-01/15-T-26-ENG, page 17, lines 15-21.

<sup>3</sup> ICC-02/04-01/15-T-26-ENG, page 17, line 23 to page 20, line 4.

<sup>4</sup> Defence Request for Leave to Appeal the Oral Decision of 6 December 2016 on Mr Ongwen's Understanding of the Nature of the Charges, ICC-02/04-01/15-632.

<sup>5</sup> Request, ICC-02/04-01/15-632, para. 8.

<sup>6</sup> Request, ICC-02/04-01/15-632, para. 10.

expeditious conduct of the proceedings<sup>7</sup> as well as the outcome of the trial<sup>8</sup> and that ‘a determination of the [I]ssue will remove any doubt as to the correctness of the [Impugned] Decision’.<sup>9</sup>

4. On 16 December 2016, the Office of the Prosecutor provided its response (‘Response’), submitting that the Request should be rejected.<sup>10</sup>

## II. Analysis

5. The Chamber recalls the applicable law relating to Article 82(1)(d) of the Statute as set out in previous decisions.<sup>11</sup>

6. The Defence misrepresents the Chamber’s reasoning in the Impugned Decision. The Impugned Decision notes Mr Ongwen’s statement before the Pre-Trial Chamber as a starting point for its assessment of whether Mr Ongwen understands the nature of the charges brought against him.<sup>12</sup> It then proceeds to explain the various other factors the Chamber has taken into consideration to arrive at its finding, including: the information provided to the accused after the issuance of the decision on the confirmation of the charges, the submissions and arguments made by the Defence in the course of the proceedings, the lack of sufficient substantiation for Defence’s allegations and, importantly, the accused’s statement made before the Chamber just prior to the issuance of the Impugned Decision.<sup>13</sup> The Impugned Decision never indicated that these other factors were

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<sup>7</sup> Request, ICC-02/04-01/15-632, paras 11-13.

<sup>8</sup> Request, ICC-02/04-01/15-632, paras 14-15.

<sup>9</sup> Request, ICC-02/04-01/15-632, para. 17.

<sup>10</sup> Prosecution’s Response to “Defence Request for Leave to Appeal the Oral Decision of 6 December 2016 on Mr Ongwen’s Understanding of the Nature of the Charges”, ICC-02/04-01/15-632, ICC-02/04-01/15-638.

<sup>11</sup> *See*, 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 Article 56 Evidence, 9 September 2016, ICC-02/04-01/15-535, para. 7.

<sup>12</sup> ICC-02/04-01/15-T-26-ENG, page 17, lines 4-11.

<sup>13</sup> ICC-02/04-01/15-T-26-ENG, page 18, line 12 to page 20, line 4.


somehow less significant to the Chamber than the accused's historical statements.

7. Thus, contrary to the Defence's allegations, the Chamber did not use the accused's prior statement as the 'major basis' for its findings. Accordingly, the Issue does not arise from the Impugned Decision and is not an appealable issue. Consequently, the Request does not fulfil the requirements of Article 82(1)(d) of the Statute.

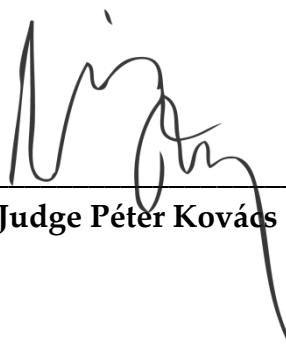
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:**

**REJECTS** the Request.

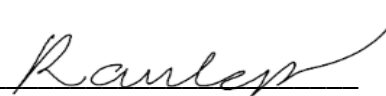
Done in both English and French, the English version being authoritative.



**Judge Bertram Schmitt**  
**Presiding Judge**



**Judge Péter Kovács**



**Judge Raul C. Pangalangan**

Dated 03 January 2017

At The Hague, The Netherlands