



International Criminal Court
Bar Association | Association du Barreau près
la Cour Pénale Internationale

ICCBA NEWSLETTER

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MESSAGE FROM THE PRESIDENT

Dear Members,

I am delighted to present this edition of the ICCBA Newsletter which includes updates on the cases currently on-going at the ICC.

Firstly, I hope that you and your families are keeping safe and well in these unprecedented times, let's hope that we will be able to return to some sense of normality in the very near future.

In light of the current situation, and the uncertainty we are all faced with, the Executive Council has had to take the difficult decision to postpone the Annual General Assembly Meeting which was scheduled for 12 June 2020. As soon as a future date is set, we will be in contact with all members. Despite the current situation, the Executive Council continues to hold virtual meetings and maintain regular communications to continue the work of the Association for the benefit of its members.

In January, I met with the ICC Registrar and President to discuss several issues affecting counsel and support staff at the Court. One such issue is that of taxation of legal team members, this is something which the ICCBA has been actively working on to find a solution but at the present time the discussions are still on-going with the ICC Registry and the Dutch authorities. I would like to emphasize that the issues of taxation and legal aid are of high priority for the ICCBA and we will continue to keep members updated on developments.

The ICCBA has also been engaging with the Independent Expert Review which is currently being undertaken at the request of the Assembly of States Parties. I have met with the experts, along with representatives of both defence and victims counsel and support staff and raised several issues which are of concern to our members. The Independent Expert Review panel members also requested written submissions from the ICCBA which were submitted in April 2020. The mandate of the Independent Expert Review is to identify ways to strengthen the International Criminal Court and the Rome Statute system in order to promote universal recognition of their central role in the global fight against impunity and enhance their overall functioning.

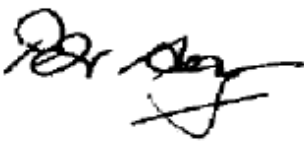
In December 2019, at the Assembly of States Parties, I had the privilege of delivering a statement at the General Debate. I took this opportunity to call upon States to officially recognise the ICCBA as an independent representative body of counsel in accordance with Rule 20(3) of the ICC Rules of Procedure and Evidence. During the final session of the ASP the States adopted a resolution which included this recognition which is an achievement for all members of the Association. This recognition gives the ICCBA a more formal standing with other sections of the ICC. Also, at the ASP, the ICCBA held a side event at the Assembly of States Parties highlighting the rights of detainees before the ICC which was well attended and received positive feedback from both States and civil society.

I wish to take this opportunity to thank all members for their continued support and dedication and if you would like to get in contact with us, please feel free to contact the ICCBA Executive Director at: executivedirector@iccba-abcpi.org

To keep updated with news from the ICCBA, please keep check of our website: www.iccba-abcpi.org

I hope you keep safe during these turbulent times.

Best wishes,



Peter Haynes Q.C.
President
ICCBA



CASE UPDATES



PROSECUTOR V. GBAGBO & BLÉ GOUDÉ (ICC-02/11-01/15)

Decision on the acquittal of Laurent Gbagbo and Charles Blé Goudé

On 15 January 2019, Trial Chamber I, by majority, Judge Herrera Carbuccion dissenting, orally acquitted Laurent Gbagbo and Charles Blé Goudé of all charges, namely, crimes against humanity allegedly committed in Abidjan, Côte d'Ivoire, during the post-electoral crisis between December 2010 and April 2011, by granting the Defence no case to answer motions (ICC-02/11-01/15-T-232-Eng). The Trial Chamber held that the Prosecution had "failed to satisfy the burden of proof to the requisite standard as foreseen in Article 66 of the Rome Statute". Laurent Gbagbo and Charles Blé Goudé were released with conditions pending appellate proceedings.

Prosecution's appeal of the Decision on the no case to answer motions

On 16 September 2019, the Prosecution filed its notice of appeal against the decision on the no case to answer motions (ICC-02/11-01/15-1270, a corrected version was filed on 17 September 2019), notifying its intention to challenge the decision based on alleged legal and procedural errors. It identified two grounds of appeal: 1) the Majority erred by acquitting Mr. Gbagbo and Mr. Blé Goudé in violation of the mandatory requirements of article 74(5) of the Statute, or alternatively erred in the exercise of its discretion in doing so; 2) the Majority erred by acquitting Mr. Gbagbo and Mr. Blé Goudé

without properly articulating and consistently applying a clearly defined standard of proof and/or approach to assessing the sufficiency of the evidence.

The Prosecution's grounds for appeal were further articulated in its Document in support of the appeal filed on 15 October 2019 (ICC-02/11-01/15-1277-Red). As a remedy, the Prosecution requested that the Appeals Chamber declare a mistrial.

Decision on victim participation in the appeal

In its decision dated 26 November 2019 (ICC-02/11-01/15-1290), the Appeals Chamber held that 1) victims who participated in the trial proceedings may, through their legal representative, participate for the purpose of presenting their views and concerns in respect of their personal interests in the issues on appeal; that 2) they may file consolidated observations to the responses of the defence teams of Mr. Laurent Gbagbo and Mr. Blé Goudé within 30 days; and that 3) the defence may file responses to the victims' observations, within 30 days of notification of the decision.

Hearing before the Appeals Chamber on the issue of conditional release

On 7 October 2019, the defence team of Mr Gbagbo filed its « Requête de la Défense afin d'obtenir que la Chambre d'appel restitue à Laurent Gbagbo, acquitté de toutes les charges portées contre lui, l'intégralité de ses droits humains fondamentaux » (ICC-02/11-01/15-1272-Conf).



On 20 December 2019, the Appeals Chamber scheduled a hearing for 6 February 2020 and posed four questions to the parties and participations. The first two questions concerned the circumstances and applicable standard according to which an Appeals Chamber could reconsider its own decisions pursuant to rule 158. The third question related to the particular circumstances which could warrant the revocation of the conditions imposed by the Appeals Chamber in its 1 February 2019 decision. The final question related to the potential bearing that the relief sought by the Prosecution in its appeal brief – namely, the declaration of a mistrial – could have on the necessity of continued release conditions as set out in the 1 February Judgment.

The hearing was held on 6 February 2020 during which the parties, the Legal Representative of Victims and the Government of Côte d'Ivoire presented oral submissions.

Extension of time to file responses to the Prosecution's appeal brief

On 5 February 2020, the Appeals Chamber (ICC-02/11-01/15-1304) granted a request filed by the defence team of Mr. Laurent Gbagbo for an extension of time to file the defence responses to the Prosecution's appeal brief, as good cause had been shown. The new deadline is 6 March 2020.

The Defence for Mr. Laurent Gbagbo (ICC-02/11-01/15-1314-Red) and for Mr. Charles Blé Goudé (ICC-02/11-01/15-1315-Red) filed their respective responses to the Prosecution's appeal brief on 6 March 2020.

Scheduling of hearings before the Appeals Chamber

On 20 March 2020, the Appeals Chamber ordered that a hearing be held in open court from Monday 11 May to Wednesday 13 May 2020 (ICC-02/11-01/15-1318).



Mr Al Hassan in Courtroom I of the International Criminal Court on 19 February 2020

PROSECUTOR V. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG MAHMOUD (ICC-01/12-01/18)

The Al Hassan case is currently in its pre-trial stage and is set to begin on the 14th of July 2020, as per the 6 January 2020 [Decision](#). The charges were confirmed against Mr. Al Hassan on the 20th of September 2019. Below are the most recent developments in the case.

On the 21st of November 2019, the [Decision](#) constituting Trial Chamber X assigned to the Al Hassan case was issued. It was determined that Judges Antoine Kesia-Mbe Mindua, Tomoko Akane and Kimberly Prost were to be appointed to the Trial Chamber X. On the same day, the newly appointed judges decided that Judge Antoine Kesia-Mbe Mindua would be the presiding Judge, and that Judge Kimberly Prost was to be appointed as the Single Judge for the preparation of the trial. You can read the full decision [here](#).

The Al Hassan Defence appealed the Pre-Trial Chamber decision from 27 September 2019 rejecting Al Hassan admissibility challenges of the case before the ICC. Following its decision of 27 September 2019, the Pre-Trial Chamber confirmed on 30 September 2019, the charges of war crimes and crimes against humanity brought by the Prosecutor against Al Hassan.

In its grounds of appeal, Al Hassan raised the lack of gravity of the case and the abuse of discretion of the



Pre-trial chamber in its assessment of the gravity of the case.

In its judgement, the Appeals Chamber determined whether in the circumstances of this case, the Pre-Trial Chamber properly determined that the case brought against Mr. Al Hassan meets the gravity requirement set out in article 17(1)(d) of the Statute. The Appeals Chamber stated that this article aims at excluding cases which technically could be qualify as crimes under the jurisdiction of the Court but are nonetheless not of sufficient gravity to justify further action.

The gravity assessment under article 17(1)(d) of the Statute must be made on a case-by-case basis. It involves a holistic evaluation of all relevant quantitative and qualitative criteria, including some of the factors relevant to the determination of the sentence of a convicted person. The quantitative criteria are not determinative of the gravity of a given case.

The Appeals Chamber decided that Pre-Trial Chamber did not err in considering the ‘significant role’ attributed to Mr Al Hassan by the Prosecutor to the alleged crimes. The Pre-Trial Chamber did not err in considering the nature and scale of the charged crimes, being also part of the relevant criteria for the assessment of the gravity requirement under article 17(1)(d) of the Statute.

At last, the fact that the same underlying acts violated several provisions of the Rome Statute is also a relevant consideration for the purposes of assessing gravity under article 17(1)(d) of the Statute.

You can find the full judgement [here](#).

On the 19th of March, Mr. Thomas Hannis was [appointed](#) as associate counsel for the defence of Mr. Al Hassan.

In light of the current COVID-19 situation, the prosecution requested the extension of certain deadlines relating to the disclosure of evidence and the postponement of the starting date of the trial. The Defence opposed the Prosecution’s request. Trial Chamber X issued its decision on the matter on the 20th of March 2020, providing that it considers that the prosecution has shown good cause and force majeure pursuant to Regulation 35 (2) of the Regulations and

hence the deadlines must be reassessed. The Chamber furthermore recognises that it must give full consideration to Al Hassan’s fundamental rights, including his right to be tried without undue delays, and therefore agrees with the Defence that the Prosecution must take measures to mitigate the effects of the circumstances on the case. The Chamber also does not believe there is cause for a blanket extension of all deadlines at this stage. Considering that there isn’t a large quantity of documents to disclose on the part of the prosecution, the chamber asks the prosecution to take all available measures to disclose as much material as possible by the original April 14th 2020 deadline, but also provides an extension up until the 12th of May to disclose all remaining materials. Additionally, the prosecution’s request to delay the deadline of the Trial Brief has been denied as this date had already been extended. The Chamber does not believe there is cause to delay the disclosure of the Prosecution’s witness list to the defence, nor is there at the moment cause to delay the beginning of the trial, or the date of the start of the Prosecution’s presentation of evidence, set on the 25th of August 2020, at this time. This is subject to change, depending on the evolution of the situation. The full decision is available [here](#).

On 23 March 2020, the Defence made an “urgent defence request for interim release” of Mr. Al Hassan, also in light of the COVID-19 situation, available in full [here](#). The Defence argued that the situation has led to severe restrictions to Mr. Al Hassan’s ability to maintain meaningful social contacts and to interact with his defence team, and that his right to be with his family is important at a time when they are at risk. He is isolated, and cannot speak to a religious adviser, or Imam. The Defence further argues that his continued detention places him at greater risk of catching the Coronavirus. He has furthermore not been receiving appropriate medical and psychological treatments, which heightens his vulnerability as a victim of torture. The Defence therefore requests his provisional release for the duration of the COVID-19 pandemic.



PROSECUTOR v. BOSCO NTAGANDA (ICC-01/04-02/06)



Mr. Ntaganda during delivery of sentence, ICC, 7 November 2019

On the 7 November 2019, Trial Chamber VI, composed of Presiding Judge Robert Fremr, Judge Kuniko Ozaki, and Judge Chang-Ho Chung, issued the sentencing judgement in the case of the Prosecutor v. Bosco Ntaganda.

Mr. Ntaganda had been convicted on 8 July 2019 of 18 counts of crimes against humanity and war crimes in the context of the events that took place in the Ituri District of the Democratic Republic of Congo in 2002 and 2003. The crimes of which he was found guilty are the following: murder and attempted murder, rape, sexual slavery, persecution, forcible transfer and deportation as crimes against humanity; and murder and attempted murder, intentionally directing attacks against civilians, rape, sexual slavery, ordering the displacement of the civilian population, conscripting and enlisting children under the age of 15 years into an armed group and using them to participate actively in hostilities, intentionally directing attacks against protected objects, and destroying the adversary's property as war crimes.

In deciding on sentencing, the Trial Chamber heard from the participants and from witnesses during hearings held between 17-20 September 2019. The Chamber took into consideration the gravity of the crimes, the degree of the harm caused by the crimes, and Mr Ntaganda's culpability including his level of intent and degree of participation. Mitigating

circumstances were taken into consideration, but it was found that there were no established mitigating circumstances.

The chamber considered the aggravating circumstances brought forward by the prosecution, namely the allegations of witness interference, but found that these interferences were not proven beyond reasonable doubt.

The Chamber imposed specific sentences for each crime, ranging from 8 to 30 years of imprisonment, and furthermore imposed an overall sentence. The Chamber found that the threshold for life imprisonment had not been met, and therefore sentenced Mr. Ntaganda to 30 years of imprisonment, the maximum time allowed by the Rome statute. No additional fine was imposed, due to Mr. Ntaganda's solvency and the nature of the crimes. The time already spent imprisoned while awaiting trial has been deducted from Bosco Ntaganda's sentence, hence the period between 22 March 2013 and 7 November 2019.

You can find the sentencing judgment in full [here](#).

PROSECUTOR V. ALFRED YEKATOM & PATRICE-EDOUARD NGAÏSSONA (ICC-01/14-01/18)

Overview

Alfred Yekatom and Patrice-Edouard Ngaïssona were accused of war crimes and crimes against humanity, allegedly committed in the Central African Republic since at least September 2013 until at least December 2014 in various locations in CAR.

Confirmation of charges hearings

The confirmation of charges hearing commenced on 19 September 2019. The parties and the legal representative of victims presented their arguments with respect to the charges brought against Mr. Yekatom and Mr. Ngaïssona. On the last day, on 25 September 2019, after consideration of the submissions heard during the first four days of the confirmation hearing, the Chamber, by oral ruling, amended its schedule. It ordered the Prosecution to



respond in writing to the issues raised by the Defence for Mr. Yekatom and the Defence for Mr. Ngaïssona, while allowing the defence teams and the LRV the opportunity to respond in writing. The Pre-Trial Chamber postponed the closing arguments for the confirmation hearing to 11 October 2019. On 3 October, the Prosecution filed its written submissions, while the defence for Mr. Yekatom, the defence for Mr. Ngaïssona, and the LRVs responded on 10 October 2019. The parties and participants presented their closing statements on 11 October 2019.

Decision on the confirmation of charges

On 11 December 2019, the Pre-Trial Chamber rendered its decision on the confirmation of charges against Mr. Yekatom and Mr. Ngaïssona (ICC-01/14-01/18-403, a public redacted version was issued on 20 December 2019). The Pre-Trial Chamber held there was sufficient evidence to establish substantial grounds to believe that Mr. Yekatom and Mr. Ngaïssona were responsible for a portion of the crimes charged by the Prosecution.

The Chamber found, *inter alia*, that the contextual elements for crimes against humanity were satisfied (para. 70). It also held that the contextual elements for war crimes were met and that “conduct underlying the charges of war crimes confirmed by the Chamber took place in the context of and was associated with the aforementioned armed conflict not of an international character” (para. 74).

The Pre-Trial Chamber explained its methodology whereby it would not enter factual findings with respect of the events for which the evidence submitted allegedly supporting the link to either of the suspects was “either missing or otherwise unsuitable to meet the relevant evidentiary threshold” (para. 59), to avoid potentially prejudicing other ongoing investigations in CAR. The Chamber detailed its factual and legal findings with respect to both Mr. Yekatom and Mr. Ngaïssona’s alleged responsibility for the crimes, by location.

In anticipation of potential appeals of the confirmation decision, the Chamber noted the importance of the confirmation of charges decision and that it was one of the few translations in the language of the accused which is mandated by the statutory texts. It therefore held, *proprio motu*, that the time limit for filing an

application for leave to appeal would be suspended until the translation of the decision into French was submitted by the Registry in the record of the case.

The translation of the confirmation decision was filed on 21 February 2020, triggering the 5-day time limit pursuant to article 82(1)(d) and rule 155 of the Rules of Procedure and Evidence. On 26 February 2020, the Defence for Mr. Ngaïssona submitted a request for a swift transmission of the case record to the Presidency, to avoid any further delay, while informing the Chamber that it would not seek leave to appeal the Confirmation of charges decision. The Defence specified that this position should in not be interpreted as an admission as to the Chamber’s decision confirming 32 out of the 111 charges brought against Mr. Ngaïssona, to the contrary (ICC-01/14-01/18-434).

On 2 March 2020, the Prosecution filed a request for reconsideration, or in the alternative, for leave to appeal the Confirmation of charges decision, in particular, regarding the modes of liability charges against Mr. Yekatom (ICC-01/14-01/18-437). On 11 March, the Pre-Trial Chamber rejected the Prosecution’s requests, thereby officially concluding pre-trial proceedings (ICC-01/14-01/18-447).

Defence for Mr. Yekatom admissibility challenge and request for interim release

On 17 March 2020, the Defence team for Mr. Yekatom filed an admissibility challenge to the Trial Chamber (ICC-01/14-01/18-456). The Defence argued, *inter alia*, that the CAR authorities should be given an opportunity to investigate and prosecute Mr. Yekatom before the Special Criminal Court. It requested the Chamber to declare the case against Mr. Yekatom at the ICC inadmissible on the basis of complementarity. Practically, the Defence requested the Chamber to adopt a step-by-step approach whereby it would: 1) invite written submissions from the CAR authorities addressing whether, notwithstanding the OTP’s invocation of Article 37, it would be willing and able to investigate and prosecute Mr. Yekatom’s case if given the opportunity to do so; 2) if the answer is in the affirmative, give the CAR authorities a fixed period of time to open an investigation and/or commence a prosecution of Mr. Yekatom and encourage the OTP to share the results of its investigation with the SCC to enable it to act expeditiously; 3) if an active



investigation and/or prosecution has been commenced during this period, declare Mr. Yekatom's case inadmissible and order his transfer to the custody of the CAR authorities.

On 3 March 2020, the Defence for Mr. Yekatom submitted a request for interim release (ICC-01/14-01/18-438). The Defence argued that Mr. Yekatom's release is required at this stage to avoid lengthy pretrial detention for loss of liberty and time with his family that can never be returned to him. It argued, moreover, that "detention is not necessary to ensure his appearance at trial, or to ensure that he does not obstruct or endanger the investigation or the court proceedings, or to prevent him from committing crimes" (para. 1). On 20 March 2020, the Single Judge ordered observations on Mr. Yekatom's request for interim release from both The Netherlands and CAR by 9 April 2020 (ICC-01/14-01/18-461).

Constitution of the Trial Chamber and scheduling of the first status conference

Trial Chamber V was constituted on 16 March 2020, consisting of Judge Schmitt (presiding), Judge Kovács, and Judge Chang-ho Chung, and the case record was transmitted to it the following day. On 19 March 2020, the Trial Chamber convened a first status conference for 21 April 2020 (ICC-01/14-01/18-459); however, in light of the evolution of the public health situation and measures taken in response by the Host State in response to the covid-19 pandemic, on 26 March 2020, the Trial Chamber ordered a deferral of the date of the status conference, which is to be held "as soon as feasible" (ICC-01/14-01/18-464).

PROSECUTOR V. DOMINIC ONGWEN (ICC-02/04-01/15)

Dominic Ongwen's trial began on 6 December 2016 and concluded on 6 December 2019 following the Defence notification to the Court that it had rested its case. On 12 December 2019, the Presiding Judge Bertram Schmitt formally declared the submission of evidence closed. It is important to recall that the Prosecution had closed its case in April 2018, and the

two legal teams representing victims closed their cases in May 2018.

As the Defence phase of the trial had concluded, Presiding Judge Bertram Schmitt scheduled hearings, starting 10th March 2020, during which Trial Chamber

IX will listen to closing statements of the parties. The Presiding judge also set 24th February 2020 as the deadline for all legal teams to file their closing briefs. After the presentation of evidence by the Prosecution, the Defence, and the legal representatives for victims, the Court held closing statements of the parties on 10th-12th March 2020.

In its closing brief dated 24th February 2020, the Prosecution argued that the Defence were mistaken in their case or failed to provide evidence to disprove the specific charges Ongwen faces. The ICC Chief Prosecutor Fatou Bensouda said:

"Mr. Ongwen was in a position of authority and had effective command and control over his subordinates during the charged period. He mobilised his authority and power in the LRA to secure compliance with his orders and cause his subordinates to carry out the conduct underlying the charges in this case. This allowed him to exert control over the crimes charged, and to prevent or repress any misconduct by his subordinates if he wished to do so".

In her 200 paged closing brief, Prosecutor Bensouda said two Defence psychiatrists diagnosed Ongwen with dissociative identity disorder, post-traumatic stress disorder, and major depressive disorder in their first report submitted in 2016. She said in their second report submitted in 2018, they added dissociative amnesia and obsessive-compulsive disorder to their diagnosis of Ongwen's mental health. *"They suggest these disorders amount to grounds for excluding his criminal responsibility for some of the charged crimes because they "interfered with his ability to distinguish right from wrong" and rendered him unable to control his behaviour or to refrain from taking part in those crimes,"* said Bensouda. She added that the Defence psychiatrists testified in court that their brief did not include the sexual and gender-based crimes Ongwen has been charged with, so the mental disease defense does not extend to those crimes.



In conclusion, Prosecutor Bensouda described Ongwen as “a pivotal figure in the LRA’s campaign of terror across northern Uganda in the early 2000s.” she stated that *“He planned, directed, and reported with enthusiasm upon persecutory attacks which left dozens dead and destroyed the livelihoods and hopes of thousands of others. He presided over a regime of human misery whereby children were forced to become murderers and sex slaves. His treatment of the women and girls under his control set the tone for the behaviour of his subordinate officers and fighters. During the course of trial, he has sought to hide behind excuses involving mental illness and duress, which have been exposed as false,”*

Based on all the evidence, the Prosecution requested that the Chamber find Mr Ongwen guilty on all counts,”

In its closing statement, Senior Trial lawyer Benjamin Gumpert said “We are not here to deny that Dominic Ongwen was a victim of abduction... But the defence line that this should somehow make him immune is untenable.” Gumpert said *that in international criminal practice the “phenomenon” of a victim-perpetrator may be new, but “for those who practice criminal law at the national level it is mundanely familiar. The Prosecution has proved what Mr. Ongwen did and why the law must hold him accountable. If he is then convicted, the question of his victimhood is one that may have to be considered again on the day of sentencing,”*

The closing statements of the legal representatives for victims focused on highlighting crimes allegedly committed by Ongwen, including the practice of abducting girls and women, gender-based crimes, and the conscription of girls and boys under the age of 15.

In its closing arguments on 12 March 2020, the Defence lawyers for Mr. Ongwen triggered a discussion on what has been for a long time been an intense debate on the victim-perpetrator status of formerly abducted children in northern Uganda including their client Mr Ongwen. Furthermore, the Defence lawyers on this occasion also recapped their arguments throughout the trial regarding Ongwen’s innocence and his abduction background. Lead Counsel for Defence, Krispus Ayena Odongo argued that the prosecution chose to ignore the effect of spiritualism on Ongwen’s mental health. He said that when the prosecution challenged the mental health defence that was presented, they should have looked beyond the

charged period of 2002 to 2005. Odongo said Ongwen was abducted at a young age and “brutalized” to become a “fighting machine. He is a victim just like other former soldiers who managed to escape and are now participants in this courtroom as victims”.

Furthermore, lead counsel Odongo argued that the prosecution conducted “shoddy” investigations and prosecution investigators depended on a Ugandan military officer, Colonel Ocira, to act as an intermediary and find witnesses for them. “Instead of combing the affected areas of northern Uganda for credible witnesses, it is obvious from the nature of witnesses you saw in this courtroom that they basically went and sat in the comfort of their hotel rooms in Gulu and collected only evidence from government security agents,”.

In the closing arguments, the Defence team for Mr Ongwen asked Trial Chamber IX judges to make one of three determinations in rendering a judgement for atrocities he is alleged to have committed in northern Uganda more 15 years ago. In particular, the Defence asked the judges to find Ongwen not guilty of the crimes he has been charged with at the ICC because the prosecution failed to prove their case beyond reasonable doubt. Alternatively, the Defence asked the judges to immediately suspend, or stay the proceedings against Ongwen. The Defence argued that such an extreme measure so late in the proceedings against Ongwen was necessary because his trial could not be considered fair. In explaining the issue of fair trial rights, the Defence described the violation of Ongwen’s human rights as “egregious.” According to Beth Lyons a lawyer on the team *“Ongwen’s fair trial rights had been violated repeatedly over the past four years, from the time he surrendered in the Central Africa Republic in January 2015 through to the trial hearings that concluded in December 2019”.*

Thirdly, the Defense requested the Trial Chamber judges that if they convicted Ongwen, they should consider sentencing Ongwen to only a few years in prison because he had already been “in prison” for the 27 years he was in the Lord’s Resistance Army (LRA). The Defense also asked the judges to order that Ongwen serve any sentence they determine under the charge of Acholi elders in line with the complementarity principle provided for in the Rome Statute, the ICC’s founding treaty.



Finally, Lead counsel Odongo proposed in his closing arguments that the Trial Chamber judges should, *“Please release him [Ongwen from detention] and send him to serve part of his sentence under the supervision of Acholi traditional leaders [in Uganda]. And this does not in any way contradict the Rome Statute.”* He argued that whilst the Defence proposal was not explicitly provided for in the Rome Statute, *“the principle of complementarity empowers you to think outside the box.”*

This is the first time at the ICC that a Defence team who have argued consistently that their client is not guilty have also made a closing statement in anticipation of a possible guilty verdict.

With the Defence team concluding their closing statement, the trial of Ongwen has nearly concluded because the prosecution and legal teams representing victims had already presented their closing statements. According to guidelines set out in the fourth edition of the Chambers Practice Manual issued in November 2019, the judges of Trial Chamber IX have up to 10 months to deliberate and deliver their judgement.

Other issues surrounding Dominic Ongwen trial

The trial proceedings in the case of Thomas Kwoyelo have been suspended following the Presidential decree on Covid-19. On 19th March 2020, the judges adjourned proceedings until 24th April 2020. This was in response to a presidential decree the previous day ordering the immediate closure of all schools, public places of worship, and other mass gatherings for the next 32 days to curb the spread of COVID-19 in Uganda.

The public in northern Uganda welcomed closing statements by the legal representatives in the case of Dominic Ongwen, at the ICC in The Hague. Many community members praised the legal representatives’ for highlighting the suffering that victims went through. An example is a resident of Gulu town Ongom said “I am in support what the legal representatives for victims said. They mentioned exactly what the victims in northern Uganda went through: the suffering in the IDP camps; killing; raping women; looting; beating; and torture. This gave me hope that truth will prevail, and we shall receive justice. The statements made by the prosecution in their closing statements did not conflict with that of

the legal representatives for victims. I am therefore hoping for a free and fair judgment,”.

The seventh and eighth prosecution witnesses appeared from 30th September to 3rd October 2019. From 7th -10th October 2019, two more prosecution witnesses testified, and afterwards the trial was postponed indefinitely due to a disagreement between the defense and the prosecution over the use of closed sessions.

In December 2019, the trial resumed before the International Criminal Division (ICD) sitting at the High Court in Kampala, however, proceedings could not take place due to the absence of Thomas Kwoyelo, the court assessors, interpreters, and witnesses and for this reason, judges adjourned the trial to January 2020. From 13-15 January 2020, the trial resumed in Gulu and four prosecution witnesses testified and concluded their testimonies. From 9th-13th March 2020 at proceedings held in Gulu, the judges heard testimony from four witnesses.

THE PROSECUTOR V. SAIF AL-ISLAM GADDAFI (ICC-01/11-01/11)

Judgment on the appeal of Dr. Saif Al-Islam Gaddafi against the decision of the Pre-trial Chamber I ‘Decision on the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute”’ of 5 April 2019.

In its judgment, the Appeals Chamber confirmed the admissibility of the case against Saif Al-Islam Gaddafi before the Court and rejected the appeal filed by the Defense against the impugned pre-trial Chamber decision, dated on 5 April 2019. The Appeals Chamber decided that in considering article 17(1)(c) of the Statute, read together with article 20(3) of the Statute, the decision issued by a national jurisdiction must be final before a case can be declared inadmissible on the basis of these provisions before the Court.

Therefore, a case will be inadmissible before the Court when a person has already been tried for the crimes under the ICC jurisdiction and for the same conduct. The Appeals Chamber stated the Pre-trial Chamber didn’t erred in its findings, stating that the judgment



rendered *in absentia* against Gaddafi in Libya was not under Libyan law considered as final. In addition, the Appeals Chamber confirmed the Pre-trial Chamber decision that “amnesty” under Libyan law was not applicable to the crimes for which Gaddafi was convicted by the Tripoli Court.

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN NO. ICC-02/17



The judges of the Appeals Chamber (left to right) Judge Solomy Balungi Bossa, Judge Howard Morrison, Presiding Judge Piotr Hofmański, Judge Luz del Carmen Ibáñez Carranza, and Judge Kimberly Prost on 5 March 2020 at the seat of the International Criminal Court

Judgment on the appeal against the decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan, dated 05 March 2020

The Appeals Chamber issued its Judgment of 5 March 2020 on the appeal filed by the Prosecutor of the ICC filed against the decision of the Pre-Trial Chamber II from 12 April 2019 rejecting her request to open an investigation.

In 2017, the Office of the Prosecutor requested the authorization of the Pre-Trial Chamber to open an investigation into war crimes and crimes against humanity allegedly committed since 1 May 2003 on the territory of Afghanistan, and since 1 July 2002 on the territory of other States, in relation to the armed conflict in Afghanistan.

On 12 April 2019, the Pre-Trial Chamber rejected the prosecutor's request, finding that an ICC investigation would not serve the interests of justice. It was stressed by the Pre-trial Chamber that the Court should prioritize the allocation of its resources to those investigations with a better chance of success.

In its Judgment, the Appeals Chamber overturned the Pre-Trial Chamber's decision and decided that the Pre-Trial Chamber erred in law by considering the interest of justice factor and not only the legally required standard under article 15 (4) of the Statute to limit

itself to considering whether there was a reasonable factual basis for the Prosecutor to initiate an investigation, i.e., (a) whether crimes had been committed and (b) whether from that investigation there was one or more potential case(s) that could fall within the jurisdiction of the ICC. Furthermore, in light of the factual findings made by the Pre-trial Chamber, the Appeals Chamber decided to authorize the commencement of an investigation, rather than referring the case back to the Pre-Trial Chamber for a new decision.





EVENTS

International Conference on Foreign and International Penal Law

Date: 22-23 May 2020

Location: Barcelona, Spain

For more information, click [here](#)

The EU Area of Criminal Justice

Date: 29 May- 3 June 2020

Location: Brussels, Belgium

For more information, click [here](#)

Challenges to Prosecuting Paramilitaries: Insights from the former Yugoslavia and Syria

Date: 3 June 2020

Location: Asser Institute, The Hague, Netherlands

For more information, click [here](#)

Artificial Intelligence (AI) and the Criminal Justice System

Date: 4-5 June 2020

Location: London, United Kingdom

For more information, click [here](#)

Libya and the lessons of the 2011 intervention for the EU

Date: 5 June 2020

Location: Amsterdam, Netherlands

For more information, click [here](#)

International Conference on International Criminal Law and Criminal Justice

Date: 29-30 June 2020

Location: London, United Kingdom

For more information, click [here](#)

Protecting Education in Conflict

Date: 20 July 2020

Location: London, United Kingdom

For more information, click [here](#)

Advanced summer programme on terrorism, countering terrorism and the rule of law

Date: 24-28 August 2020

Location: Asser Institute, The Hague, Netherlands

For more information click [here](#)

Prosecuting Environmental and Serious Economic Crimes as International Crimes

Date: 02-07 November 2020

Location: Dubrovnik, Croatia

For more information, click [here](#)





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