

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 June 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Presiding Judge

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Public

Prosecution application under regulation 24(5) for leave to reply

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

1. The Office of the Prosecutor ("Prosecution") notes that the Defence Response¹ ("filing 248") to its application for the Pre-Trial Chamber to make orders under article 57 of the Rome Statute and regulation 101 of the Regulations of the Court² ("filing 241") does not contest the facts of the events during the relevant meeting as set out in filing 241.
2. On the contrary, in filing 248 the Defence submits that the telephone call that Dominic Ongwen made on that day, during which he spoke to individuals who may be of evidential significance in the proceedings against him, and who had been gathered together at the premises of an NGO to discuss his case, is a "coincidence".³
3. The Defence further submits that, in making the call, Dominic Ongwen was exercising a "basic human right".⁴ The Defence asserts that the orders which the Prosecution has proposed should be made in respect of Dominic Ongwen's future ability to make such telephone calls, and to investigate what he said to the participants of the referred to meeting, are in direct conflict with the procedures outlined in the Regulations of the Registry.⁵
4. In the circumstances the Prosecution seeks the leave of the Court to reply to the submissions made in filing 248, in particular on the correct construction of regulations 173 and 175 of the Regulations of the Registry and the appropriateness of the orders which the Single Judge should make regarding this incident. Good cause⁶ exists for leave to be granted: the issue cited in paragraph two above amounts to a "new and distinct issue of fact".⁷

¹ ICC-02/04-01/15-248-Red.

² ICC-02/04-01/15-241-Conf-Exp, reclassified as "Public" by virtue of order ICC-02/04-01/15-242.

³ Filing 248, para.22.

⁴ Filing 248, para.19.

⁵ Filing 248, para.23.

⁶ See ICC-01/05-01/08-294, para. 3 regarding the test of "good cause".

⁷ ICC-01/04-01/10-61.

Similarly, the issue cited in paragraph three above amounts to a “new and distinct issue of law”.⁸



Fatou Bensouda,
Prosecutor

Dated this 17th day of June 2015
At The Hague, The Netherlands

⁸ *Ibid.*