



Original: English

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

Date: 30 May 2016

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public redacted

**Decision on issues related to the restriction of communications of Dominic
Ongwen**

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

The Office of the Prosecutor

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Legal Representatives of the Victims

Joseph Akwenyu Manoba and Francisco
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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

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court'), having regard to Regulations 23 *bis* and 101 of the Regulations of the Court ('Regulations'), issues the following 'Decision on issues related to the restriction of communications of Dominic Ongwen'.

1. On 3 August 2015, the Single Judge exercising the functions of the Pre-Trial Chamber in the present case ('PTC Single Judge') issued the 'Decision concerning the restriction of communications of Dominic Ongwen'.¹ The PTC Single Judge, acting pursuant to Article 57(3)(a) and (c) of the Rome Statute ('Statute') and Regulation 101(2) of the Regulations, *inter alia*, ordered the Registrar to: (i) actively monitor all non-privileged telephone calls of Dominic Ongwen; (ii) remove two individuals from the list of persons whom Mr Ongwen is permitted to contact on the telephone; and (iii) 'inform the Chamber if any change occurs to the list of persons whom Dominic Ongwen is permitted to contact on the telephone, which will be subject to the authorisation of the Chamber'. These measures were taken by the PTC Single Judge, upon request of the Office of the Prosecutor ('Prosecution'), on the basis of 'information which led to the finding of a reasonable suspicion that there had been attempts to exercise some form of influence on persons who possess information relevant to the case'.²
2. On 20 May 2016, the Registry filed the 'Report on the Active Monitoring of Mr. Ongwen Telephone Communications' ('Registry's Report'), whereby it: (i) reports two telephone conversations which were terminated on 11 January 2016 and 30 March 2016; and (ii) informs the Chamber that Mr Ongwen submitted to

¹ ICC-02/04-01/15-283.

² ICC-02/04-01/15-283, para. 9 (with reference to Decision on a request by the Prosecutor under article 57 of the Rome Statute and regulation 101(2) of the Regulations of the Court, 24 June 2015, ICC-02/04-01/15-254, para. 6). See also para. 12.

it requests to add new persons to his non-privileged telephone contact list and that it has no objections to approve such requests.³

3. On 25 May 2016, the Defence provided its observations on the Registry's Report ('Defence Observations'), explaining the circumstances of the telephone conversations which had been terminated by the Registry and requesting the Chamber to approve certain additions to Mr Ongwen's privileged and non-privileged phone lists.⁴
4. The Single Judge considers that the restrictions of communication ordered by the PTC Single Judge remain warranted at the present stage, in particular those concerning the active monitoring of all non-privileged telephone communications of Mr Ongwen. Also, should Mr Ongwen intend to add names to the list of persons he is permitted to contact on the telephone, the proposed additional names shall be communicated to the Chamber and the Prosecution. The Prosecution will then have two days to raise any objections to the addition of these names. In the absence of any objection on the part of the Prosecution requiring resolution by the Single Judge, the proposed addition(s) shall be considered approved, subject to the ordinary procedure at the Court's detention centre.
5. At present, Mr Ongwen has requested the addition of seven persons to his list of authorised telephone contact. The Registry indicates that it has no objection to this request. Consistent with the present decision, the Prosecution shall be given the opportunity to raise any justified objection. However, both the Registry's Report and the Defence Observations are classified as confidential *ex parte*, only available to the Defence and the Registry. Considering that none of the two

³ ICC-02/04-01/15-443-Conf-Exp, only available to the Defence and Registry.

⁴ Defence Observations on ICC-02/04-01/15-443-Conf-Exp, 25 May 2016, ICC-02/04-01/15-444-Conf-Exp (a redacted confidential *ex parte*, Defence and Registry only, version was also filed, ICC-02/04-01/15-444-Conf-Exp-Red).

filings contains information which should be withheld from the Prosecution, upon whose request the restrictions on communication have been ordered by the PTC Single Judge, the Registry's Report and the redacted confidential *ex parte* version of the Defence Observations shall be reclassified and made available to the Prosecution. As decided in the present decision, the Prosecution shall have two days after notification of the Defence request (through the reclassification of these filings) to raise any objection. In the absence of any such objection, the additional names, already approved by the Registrar, shall be added to Mr Ongwen's non-privileged phone list.

6. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8. [REDACTED]
[REDACTED]
[REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS the Registrar to reclassify as confidential *ex parte*, only available to the Prosecution and the Defence, filings ICC-02/04-01/15-443-Conf-Exp (and annexes) and ICC-02/04-01/15-444-Conf-Exp-Red;

ORDERS the Defence to inform the Chamber and the Prosecution of any future request addressed to the Registry to add individuals to the lists of persons whom Dominic Ongwen is permitted to contact on the telephone;

¹⁰ [REDACTED]

ORDERS the Prosecution to raise any objection within two days of notification of any Defence request to add individuals to the lists of persons whom Dominic Ongwen is permitted to contact on the telephone; and

[REDACTED]

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



Judge Bertram Schmitt
Single Judge

Dated 30 May 2016

At The Hague, The Netherlands