

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 12 July 2016

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

**Prosecution's Request for Leave to Reply to the "Defence Response to the
Prosecution Filing ICC-02/04-01/15-482-Conf"**

Source: The Office of the Prosecutor

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

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I. Introduction

1. Pursuant to regulation 24(5) of the Regulations of the Court ("RoC"), the Office of the Prosecutor ("Prosecution") submits a request for leave to reply to the "Defence Response to the Prosecution Filing ICC-02/04-01/15-482-Conf" ("Response"), filed on 4 July 2016.¹
2. The Prosecution only seeks leave to reply to the Defence assertion that the Prosecution filed its request 22 days out of time. This assertion is a discrete new issue raised by the Defence in the Response.

II. Procedural History

3. On 20 May 2016, the Registry filed a report on the monitoring of Mr Ongwen's telephone communications ("Registry's Report").²
4. On 30 May 2016, the Trial Chamber evaluated Mr Ongwen's ongoing communication restrictions and found them justified.³ In addition, seven individuals were added to Mr Ongwen's communication list, after approval by the Registrar and with no objection from the Prosecution.⁴
5. On examination of the conversations contained in Annex II to the Registry's report, the Prosecution filed a request for an order that Mr Ongwen cease from and disclose payments to witnesses and that the Registry review and disclose certain calls made by Mr Ongwen ("Request").⁵

¹ ICC-02/04-01/15-490-Conf.

² ICC-02/04-01/15-443-Conf-Exp and Annexes I-III.

³ ICC-02/04-01/15-450-Red, para. 4.

⁴ ICC-02/04-01/15-450-Red, para.4.

⁵ ICC-02/04-01/15-482-Conf.

6. On 4 July 2016, the Defence filed the Response, submitting that the Request was filed 22 days out of time.⁶

III. Submissions

7. Pursuant to regulation 24(5) of the RoC, the Prosecution seeks leave to reply to the erroneous Defence submission that the Request was filed 22 days out of time.
8. If granted leave, the Prosecution will demonstrate how the Defence submission is based on a fundamental misunderstanding of the nature of the Request, which was not a “response” to the Chamber’s Decision of 30 May 2016, but a separate request seeking primary relief on the basis of information contained in the Registry’s Report. The two-day deadline set by the Chamber, and relied upon by the Defence, referred *only* to raising objections against adding individuals to Dominic Ongwen’s approved telephone contacts.⁷ The Prosecution’s Request represented a new and distinct line of litigation, in respect of which no deadlines were in operation.

⁶ ICC-02/04-01/15-490-Conf, paras.17-18.

⁷ See ICC-02/04-01/15-450-Red, para. 5: “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.”

IV. Request

9. For the foregoing reasons, the Prosecution requests the Chamber to grant it leave to reply to the Response's assertion that the Request was untimely, pursuant to regulation 24(5) of the RoC.



Fatou Bensouda
Prosecutor

Dated this 12th day of July 2016
At The Hague, Netherlands