

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **18 June 2018**

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

Defence Request for Leave to Reply to ‘Public Redacted Version of ‘Prosecution’s Response to the “Defence notification of List of Witnesses and Evidence in compliance with ICC-02/04-01/15-1021 and Request for Leave to Add Witnesses [to] its List of Witnesses and Materials to its List of Evidence”” (ICC-02/04-01/15-1284-Red)

Source: Defence for Dominic Ongwen

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**The Office of the Prosecutor**

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Benjamin Gumpert, QC

Counsel for the Defence

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Detention Section**Victims Participation and Reparations Other
Section**

I. SUBMISSIONS

1. The Defence seeks leave to reply ('Request'), pursuant to Regulation 24(5) of the Regulations of the Court ('RoC'), to the Prosecution's response¹ ('Response') to its notification of list of witnesses and evidence ('Notification')² on the discrete issue of the Prosecution's invitation to "the Trial Chamber to instruct the Defence to file its first overall witness order no later than 27 June 2018" ('Invitation').³
2. The Defence submits that it should be granted leave because the Defence could not reasonably have anticipated the Prosecution's Invitation. The instructions with respect to the certifications, list of evidence, and lists of witnesses did not include a deadline for the order of calling witnesses. The Prosecution Invitation is a request made within a response. If the Invitation was within a standard request the Defence would ordinarily have a right to respond. However, pursuant to Regulation 24(5), the Defence does not have an automatic right of reply to a response of another party and must seek leave. Being an issue that could not have been anticipated from the original order, the Defence did not make submissions on the subject of the Invitation and therefore the response raises a new issue warranting leave to reply.
3. The Notification contains submissions that arguably impact upon the deadline proposed in the Invitation. The Prosecution Response also contains submission, which if upheld, by the Trial Chamber would also impact upon the order of witnesses. If the Prosecution submissions are accepted without a reply the Trial Chamber will not be appraised of all the factors that impact upon the deadline proposed by the Prosecution.
4. The interests of justice also merit a Defence reply to the Prosecution Invitation. Without Defence input, any deadline set will not be fully informed and this could impact upon the expediency of proceedings by provoking further litigation.

¹ ICC-02/04-01/15-1284-Red.

² ICC-02/04-01/15-1272.

³ Response, para. 24.

II. RELIEF

5. The Defence respectfully requests leave to reply to the Prosecution Invitation for the reasons described in paragraphs 1 to 4 above.

Respectfully submitted,



.....
Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 18th day of June, 2018
At Gulu, Uganda