

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **24 July 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

Public Redacted Version of “Defence Request to Order the Registry to Disclose and Transmit Certain Materials,” ICC-02/04-01/15-1302-Conf-Exp, dated 10 July 2018

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

Counsel for the Defence

Krispus Ayena Odongo

Chief Charles Achaleke Taku

Beth Lyons

Legal Representatives of the Victims

Common Legal Representative for Victims

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

I. INTRODUCTION

1. Pursuant to Articles 64(3)(c), 64(6)(d), 67(1)(e), 67(2), 69(3) of the Rome Statute ('Statute') and Rule 84 of the Rules of the Procedure and Evidence ('RPE'), the Defence for Dominic Ongwen ('Defence') requests the Trial Chamber IX ('Trial Chamber') to order the Registry to disclose and transmit to Mr Ongwen and his Defence certain items, as specified in [REDACTED]
[REDACTED]
[REDACTED]¹
2. In particular, the Defence seeks the disclosure and transmission of items that were taken from Mr Ongwen by the Registry representatives prior to his departure to the Court, [REDACTED]
[REDACTED] The disclosure and transmission of the items is necessary to enable Mr Ongwen and his Defence to inspect the information therein, especially in the context of adequate preparation for trial and the determination of truth.

II. CONFIDENTIALITY

3. Pursuant to Regulation 23bis(2) of the Regulations of the Court ('RoC'), the Defence files this request confidential, *ex parte*, only available to the Trial Chamber, because it refers to a confidential, *ex parte*, filing and discusses confidential, *ex parte*, personal items.

III. SUBMISSIONS

4. Under Rule 84 of the RPE, the Trial Chamber shall in accordance with Articles 64(3)(c) 64(6)(d), and 67(2) of the Statute "make any necessary orders for the disclosure of documents or information not previously disclosed" in order "to enable the parties to prepare for trial and to facilitate the fair and expeditious conduct of the proceedings".²
5. The Defence has recently discovered that the Registry is in possession of items that were taken from Mr Ongwen between his voluntary surrender, following his escape from the LRA, and final departure to the Court. These items are Mr Ongwen's personal belongings and may

¹ [REDACTED]
[REDACTED]

Rule 84 of the RPE.

contain information that is vital for the determination of truth in this case.³ In particular, the Defence seeks disclosure and transmission of the following items:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. On 6 February 2015, the Registry provided to the Pre-Trial Chamber II ('Pre-Trial Chamber') additional information in relation to the voluntary surrender of Mr Ongwen and his transfer to the Court. It informed the Pre-Trial Chamber that:

[REDACTED]

7. [REDACTED]
- [REDACTED] The Defence is not aware of any follow up by the Pre-Trial Chamber or return of the items to Mr Ongwen.

8. It is essential for the Defence to be able to review, assess, and comment on relevance of the items in light of the Prosecution's evidence and the Defence's evidence that it intends to

³ Article 69(3) of the Statute.

⁴ [REDACTED]

⁵ [REDACTED]

⁶ [REDACTED]

⁷ [REDACTED]

present during its case.⁸ The items, such as [REDACTED] and [REDACTED] may include [REDACTED] that is highly relevant to the preparation of defence and is of potentially exculpatory nature.⁹

9. The Defence submits that the disclosure and transmission of the items sought is necessary because the items may reveal and corroborate information regarding: a) Mr Ongwen's voluntary surrender and interactions with the African Union, US special forces, UPDF, and Central African Republic authorities;¹⁰ b) medical examinations of Mr Ongwen by US special forces; c) legality of the procedural steps taken at the time of the transfer of custody of Mr Ongwen to the representatives of the Registry;¹¹ and d) the circumstances surrounding Mr Ongwen's escape from LRA .¹²
10. In sum, the Defence avers that the inspections of items sought will enable Mr Ongwen and his Defence to adequately prepare for its presentation of evidence and facilitate the fair and expeditious conduct of the proceedings against Mr Ongwen, consistent with his Article 67 rights.

IV. RELIEF SOUGHT

11. For the reasons stated above, the Defence requests the Trial Chamber to order the Registry to disclose and transmit to Mr Ongwen and his Defence the following items:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ Email Communication from Trial Chamber IX to the Registry and Counsel, Modification of Order 1275, 9 July 2018, at 10:11: (The Trial Chamber informed the parties and participants that the first block for the Defence presentation will run from 1 to 10 October 2018. The Defence opening statements will be given on 18 September 2018).

⁹ Article 67(2) of the Statute.

¹⁰ ICC-02/04-01/15-189, para. 1; [REDACTED]

¹¹ ICC-02/04-01/15-189, paras 2 and 3.

¹² [REDACTED]

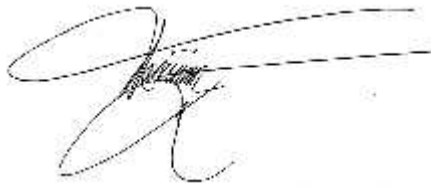
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 24th day of July, 2018
At The Hague, Netherlands