

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/04-01/15
Date: 23 January 2019

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**

**Confidential *EX PARTE* Redacted version of “Registry’s Observations on
‘Defence Request for Production of Correspondence Addressed to Mr Ongwen”,
only available to the Registry and the Defence**

**With Confidential Annexes I and III *EX PARTE* only available to the Defence and
Registry and
Confidential Annex II *EX PARTE* only available to the Registry**

Source: Registry

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

The Office of the Prosecutor

Counsel for Mr Dominic Ongwen
Mr Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Patrick Craig

Victims Participation and Reparations Section

Other

I – Introduction

1. Following the “Defence Request for Production of Correspondence Addressed to Mr Ongwen” (“Defence Request”),¹ the Registry hereby submits its observations pursuant to Trial Chamber IX (“Chamber”)’s invitation to do so.²

II – Classification

1. Pursuant to regulation 23 *bis*(2) of the Regulations of the Court (“RoC”), the present submission is classified as confidential *ex parte* Registry only as it refers to sensitive information related to the subject of the Defence Request, and Annexes I and III are classified as confidential *ex parte* Defence and Registry only as they contain information personal to Mr Ongwen.
2. The Registry notes that the Chamber re-classified the Defence Request as confidential, and stands ready to re-classify the present submission and its first and third annexes, redacted where necessary, as confidential, upon order from the Chamber.
3. Pursuant to regulation 23 *bis*(1) of the RoC, Annex II is classified confidential *ex parte* Registry only as it is the subject of the Defence Request.

III – Submissions

Notification

4. As a preliminary matter, the Registry points out that the Chief Custody Officer (“CCO”) of the ICC detention centre (“DC”) sent a notification to Mr

¹ Trial Chamber IX, “Defence Request for Production of Correspondence Addressed to Mr Ongwen”, 14 January 2019, ICC-02/04-01/15-1411-Conf.

² Email from Trial Chamber IX Communications, 16 January 2019 14:29.

Ongwen on 28 May 2018 (“CCO’s Notification”),³ in which he informed Mr Ongwen of his retention of the letters, and notified the latter of his right to file a complaint under Chapter 5, Section 5 of the Regulations of the Registry should he oppose that retention. Mr Ongwen chose not to avail himself of this recourse.

Regulation 169 of the Regulations of the Registry (“RoR”)

5. For recollection, the letters at issue originate from P-214 and her daughter, both presenting the same handwriting.⁴ In the “Decision on Mr Ongwen’s Request to Add New Persons to his Non-Privileged Telephone Contact List” (“Decision”),⁵ the Chamber denied Mr Ongwen’s request to add P-214 to his telephone contact list. The Chamber stated that adding P-214 to the contact list “would create an impermissible threat to the integrity of the present proceedings.”⁶ The Chamber reasoned that this was because P-214 is both a Prosecution witness and a person “previously removed from [Mr Ongwen’s] contact list as a result of the PTC Single Judge’s ‘reasonable suspicion that there had been attempts to exercise some form of influence on persons who possess information relevant to the case’.”⁷ It is therefore clear from the spirit of the Decision and its underlying principles that any contact between Mr Ongwen and P-214 is prohibited. The CCO confiscated the letters from P-214 and her daughter on this basis, and in accordance with regulations 169(3)(a)(iv)⁸ and (b)(iii)⁹ of the RoR.

³ Interception of incoming mail and confiscation by the CCO, 28 May 2018, Annex I.

⁴ Annex II.

⁵ Trial Chamber IX, “Decision on Mr Ongwen’s Request to Add New Persons to his Non-Privileged Telephone Contact List”, 4 October 2016, ICC-02/04-01/15-553.

⁶ *Ibid.*, para. 9.

⁷ *Ibid.*, para. 9.

⁸ Per regulation 169(a)(iv), in relevant part, “After being reviewed in accordance with sub-regulation 1, items of opened mail shall be delivered to a detained person [...] unless the item [...] is in breach of [...] an order of a Chamber.”

⁹ Regulation 169(3)(b)(iii) states, in relevant part, that “items of opened mail shall be delivered to a detained person or posted to the addressee immediately, unless the item gives the Chief Custody Officer reasonable grounds to believe that the detained person or the correspondent may be attempting to interfere with the administration of justice.”

6. The Defence claims that “[n]o restrictions referred to in Regulation 169(3) RoR were referred to [...] The Chief Custody Officer did not refer to the administration of justice as a basis for denying the delivery of the letters.”¹⁰ The CCO’s Notification stated that under regulation 169 RoR, the CCO must retain any incoming mail that, *inter alia*, may constitute a breach of an order of the Chamber or may interfere with the administration of justice.¹¹

Disclosure

7. The Defence asserts that the Registry is withholding the letters and denying their delivery to Mr Ongwen.¹²
8. The Registry wishes to clarify that it does not *per se* oppose the transmission of the letters in question to Mr Ongwen. In light of the Decision, however, it appears that it is for the Chamber to decide whether the Registry can transmit these letters accordingly
9. Further, the Registry recalls that it is a neutral organ dealing with the “non-judicial aspects of the administration and servicing of the Court,” as set out in article 43 of the Rome Statute, and as such does not have disclosure obligations. The Defence’s assertion that “the disclosure obligations contained in Article 67(2) and Rule 77 should be applied analogously to the Registry”¹³, appears misplaced. It is precisely for this reason that the Registry recommended that the Defence seize the Chamber of the present issue.¹⁴ The Registry maintains its previous position.

¹⁰ Defence Request, paras. 24-25.

¹¹ Annex I.

¹² Defence Request, para. 26.

¹³ Defence Request, para. 33.

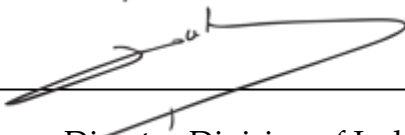
¹⁴ Email from Office of the Director of Judicial Services to the Defence team, 8 June 2018 at 15:27, Annex III.

10. On the related transmission issue of the emails from the journalist who inquired with the ICC press office about delivering letters to Mr Ongwen, the Defence Request, insofar as it relates to the said journalist's emails, appears without legal basis.¹⁵ The Registry reiterates that it is under no obligation to transmit these emails to Mr Ongwen.¹⁶ The said emails, addressed to the Registry, do not fall under regulation 169 of the RoR.

IV – Conclusion

11. The Registry does not oppose the transmission of the letters in question to Mr Ongwen and, for the foregoing reasons, respectfully defers to the Chamber's determination on the matters in question.

12. [REDACTED].



Marc Dubuisson, Director Division of Judicial Services
on behalf of
Peter Lewis, Registrar

Dated this 23 January 2019

At The Hague, the Netherlands

¹⁵ Defence Request, para. 3.

¹⁶ Annex III.