

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **28 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* Defence and Registry only

**Defence Request for Leave to Reply to
'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'
(ICC-02/04-01/15-1418-Conf-Red), filed 23 January 2019**

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**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. On 23 January 2019, the Registry filed its response¹ to the 'Defence Request for Production of Correspondence Addressed to Mr Ongwen'.² The Defence requested that two letters whose delivery had been blocked by the Chief Custody Officer be provided to Mr Ongwen and his Defence. Annexed to the Registry Response was a notice of reasons provided to Mr Ongwen for the denial of delivery of the letters. As the Defence was not in possession of the reasons at the time of filing its request, the Defence seeks leave, pursuant to Regulation 24(5) of the Regulations of the Court ('RoC') to supplement its request with the brief reply contained in the following submissions.
2. Pursuant to Regulations 23*bis* of the RoC, this request is submitted as confidential *ex parte* to the Defence and Registry as it refers to a filing of the same classification.

II. SUBMISSIONS

3. In light of the Registry Response the Defence notes that paragraphs 24 and 25 of its Request require supplement and correction. The Detention Center notice³ to Mr Ongwen does base its denial of the delivery of letters out of a concern that interference with the administration of justice may occur. However, the DC Notice's explanation fails to provide a coherent basis for concluding that a Decision of the Single Judge is a legal basis for denying delivery of the letters or that interference could occur through delivery of the letters. As such, the prior Defence argument that the letters should be delivered due to the absence of reasons for withholding it remains applicable.⁴
4. The DC Notice to Mr Ongwen states: "I consider that, following the spirit and the underlying principles of [Decision 553], the Single Judge would also not intend that there be contact between you and this witness by mail correspondence."⁵ The DC Notice does not state what the Chief Custody Officer considers to be the spirit or underlying principles of the aforementioned decision are.

¹ ICC-02/04-01/15-1418-Conf-Red ('Registry Response').

² ICC-02/04-01/15-1411-Conf.

³ ICC-02/04-01/15-1418-Conf-AnxI ('DC Notice').

⁴ ICC-02/04-01/15-1411-Conf, para. 25.

⁵ Registry Notice.

5. The reasons given by the Single Judge for denying contact were the Trial Chamber's duty to keep the trial fair and "free from the taint of witness interference and undue coercion."⁶ That decision was taken to deny Mr Ongwen adding persons to his list of contacts. In other words to prevent Mr Ongwen being able to contact various individuals himself. Thus, the Single Judge rejected direct communication between Mr Ongwen and some individuals or communication that originated from Mr Ongwen to the individuals concerned.
6. It is not apparent to the Defence how a communication that originates from an individual outside of the Detention Center to an individual within the Detention Center can interfere with the administration of justice or cause undue coercion to witnesses outside of the Detention Center.⁷ That is particularly the case since Mr Ongwen would still not be able to direct messages out of the Detention Center to P-214.
7. Similarly, the notice does not explain how the letter coming from the child, even if substantively the same and in the same hand-writing as P-214, may be construed as attempting to interfere with a witness or interfere with the administration of justice. The Defence recalls its prior submissions that the Detention Center communicated no indication that the contents of the letter appeared in any way to interfere with the administration of justice. If the letters do contain something that could lead to this conclusion, then the Defence should be given an opportunity to make submissions in respect to the claims or be provided the letters. This is because if it is the case that the letter suggests that P-214 sought to interfere with the administration of justice then the Defence should be provided the letters since it may impact upon the credibility or reliability of P-214.

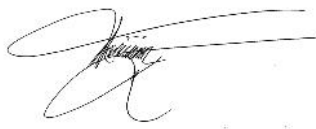
⁶ ICC-02/04-01/15-553, para. 9.

⁷ ICC-02/04-01/15-1411-Conf, para. 26 ("Neither justice nor a witness will be interfered with if Mr Ongwen and his Defence receive the letters.").

III. RELIEF

8. The Defence respectfully requests leave to reply to the Registry Response pursuant to Regulation 24(5) RoC with the submissions contained in paragraph 3 through 7 above.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 28th day of January, 2019

At London, United Kingdom