

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/04-01/15
Date: 30 August 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

Prosecution's Response to "Defence Request to Meet Selected Individuals" (ICC-02/04-01/15-1574-Conf)

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo
Mr Charles Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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 Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 27 August 2019, the Defence filed a “Defence Request to Meet Selected Individuals”.¹ The Defence asks for the Chamber’s permission for Dominic Ongwen’s legal representatives to speak to six witnesses, who have given testimony in this case, “to discuss issues and problems related to the upbringing of their children and grandchildren [...] and [to] verify consistent allegations that these women desire to talk to Mr Ongwen about these issues.”² The Prosecution opposes the Defence Request and makes alternative submissions as to how the Chamber should deal with this matter.

Confidentiality

2. This document is filed confidentially because it responds to a filing which was itself filed confidentially. The Prosecution submits that none of the material contained in this Response is of a confidential nature and it can be reclassified as Public.

The six witnesses

3. The six individuals who are the subject of the Defence Request are all vulnerable witnesses who gave their evidence four years ago under the provisions of article 56, following a finding by the Single Judge of Pre-Trial Chamber II that this was necessary, in part, to minimise the duration of their involvement in the case.³ They testified that Dominic Ongwen forcibly married them, raped them, sexually enslaved them, and caused them to endure forced pregnancies and give birth. Their

¹ ICC-02/04-01/15-1574-Conf. (“Defence Request”).

² Defence Request, para. 2.

³ ICC-02/04-01/15-316, para 12.

testimony was, essentially, undisputed in questioning on behalf of Dominic Ongwen.

4. The Prosecution notes that the Defence disputes the applicability of the term “vulnerable witness” to the six individuals who are the subject of the Defence application. Regulation 94*bis* of the Regulations of the Registry establishes that, *inter alia*, “Factors relating to the nature of the crime, in particular sexual or gender based violence” may be important in the determination of which persons can be defined as “vulnerable witnesses”. To quote the President of Pre-Trial Chamber II in respect of five of these witnesses, they “may require specific protective measures as a result of the nature of their victimisation”.⁴ Their status as vulnerable witnesses, entitled to protection under article 68, has not changed since then, and there is no objective reason for questioning that status now.

Prosecution observations on the proposed meetings

5. The Prosecution does not accept that Dominic Ongwen has endowed himself with a parental right to see the children who were conceived as a result of alleged rape, as described by these six witnesses in their article 56 testimony.

6. Nor does the Prosecution accept, as is apparently proposed by the Defence, that Dominic Ongwen’s legal representatives should, at any meeting with these witnesses, discuss the proposition that “the children [should be] raised in a manner consistent with [...] traditional norms and the appropriate station in life of these children.”⁵ The manner in which these witnesses’ children are brought up is of no concern to those legal representatives.

⁴ ICC-02/04-01/15-316-Conf.

⁵ Defence Request, para. 2.

7. The Prosecution accepts that, if any of the six witnesses has clearly expressed a wish to meet or communicate with Dominic Ongwen, or to introduce him to their children, the Prosecution should not stand in the way of their doing so; but the Prosecution does not consider that it has an obligation, in the absence of any order by the Chamber, to facilitate any such meetings or communications, which have no bearing upon the instant case.

8. Moreover, in light of the vulnerable status of the six individuals and the potential that further contact between them and their families and Dominic Ongwen or his representatives may harm their psychological well-being, the Prosecution considers that any such meetings or communications should be permitted and facilitated by the Court on an exceptional basis, only after the risk of further traumatising has been excluded or adequately mitigated, as suggested below.

Prosecution submissions

9. The Prosecution submits that, if the Chamber considers it appropriate for the six witnesses to be asked whether they wish to meet or speak to Dominic Ongwen, and whether they wish to introduce him to the children he has fathered, then these are questions which would best be asked by the Victims and Witnesses Section ("VWS"). This is the independent body with which these witnesses have already had interactions and, if the VWS were to ask the questions proposed, there would be no perception of obligation on the part of these witnesses as to how they should answer, according to who was asking the question.

10. Additionally, should one or more of the six witnesses answer in the affirmative, the Prosecution submits that the VWS should be instructed (i) to conduct an assessment of any potential harm that may be occasioned to the relevant witnesses through renewed contact between them and their families and Dominic

Ongwen; and (ii) to make recommendations to the Chamber regarding whether and under what conditions such contact should be permitted.

11. This proposed role for VWS would be in accordance with its mandate as defined in article 43(6) of the Rome Statute: "This Unit shall provide, in consultation with the Office of the Prosecutor, [...] counselling and other appropriate assistance for witnesses, victims who appear before the Court [...]. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence."

12. It might also be appropriate, if this is the course taken by the Chamber, to direct the VWS to make a similar inquiry of the children themselves, particular any who are eighteen years old or older.

13. The Prosecution also submits that:

- i) any meetings or communications between these witnesses and Dominic Ongwen's representatives should only take place after considered decisions, in each case, by the Chamber, in the light of any answers these witnesses may have given to the VWS and VWS's assessment as to the appropriateness of such contact;
- ii) any such meetings should also be organised by the VWU who could alert the Chamber as to the need for any special measures;
- iii) the Prosecution and the appropriate Legal Representative of Victims should be permitted to have a representative present;
- iv) at the beginning of any such meeting, those present should be clearly informed that the purpose of the meeting is solely connected with their expressed wish to meet Dominic Ongwen, and (if they have so indicated) to introduce him to their children, and that there should be no discussion of the testimony which the witnesses gave in 2015.

Conclusion

14. The Prosecution submits that, in its current form, the Defence Request should be denied for the reasons set out above. If the Chamber is minded to grant some relief, the Prosecution requests that it be subject to the conditions and procedures recommended above.



Fatou Bensouda, Prosecutor

Dated this 30th day of August 2019
At The Hague, the Netherlands