

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **3 September 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***

Public

**Public Redacted Version of “Correct Version of ‘Defence Request to Meet Selected
Individuals’, filed on 27 August 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**

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I. INTRODUCTION

1. Pursuant to Trial Chamber IX's ('Chamber') instructions *via* email on 19 July 2019,¹ the Defence for Dominic Ongwen ('Defence') requests that the Victim and Witnesses Unit ('VWU'),² instead of the Office of the Prosecutor ('Prosecution'), be ordered to contact the below mentioned persons pursuant to ICC-02/04-01/15-339-Anx ('Protocol'), paragraph 30, and facilitate requests for meetings with:
 - a. [REDACTED] – D-0010/P-0214
 - b. [REDACTED] – D-0004/P-0235
 - c. [REDACTED] – D-0005/P-0236
 - d. [REDACTED] – P-0099
 - e. [REDACTED] – P-0101
 - f. [REDACTED] – P-0227
2. The purpose of this request is simple; the Defence wishes to speak with these women to discuss issues and problems related to the upbringing of their children and grandchildren, consistent with Mr Ongwen's parental rights to ensure that the children are raised in a manner consistent with internationally recognised rights of children, traditional norms and the appropriate station in life of these children. Furthermore, the Defence wants to enquire and verify consistent allegations that these women desire to talk to Mr Ongwen about these issues.
3. As expanded upon below, the Defence is troubled that issues have arisen, some of which relate to financial and health issues, and said problems are not informed to the Defence.
4. The Defence has no ill-feelings but is concerned about the issues addressed in paragraph 2 hereof.
5. Finally, the Defence requests the Chamber to reclassify ICC-02/04-01/15-606-Conf-Exp as confidential.

¹ Email from Trial Chamber IX to Parties and Participants, "*Request pursuant to Protocol 339-Anx, paras 30-37*", received by the Defence on 19 July 2019 at 18h20 CET. Attached as Confidential Annex A.

² As noted by His Honour Judge Tarfusser during the confirmation phase of the proceedings, Article 43(6) of the Rome Statute identifies this unit as the Victims and Witnesses Unit, not the Victims and Witnesses Section, which is why it is labelled as such in this pleading.

II. CONFIDENTIALITY

6. Pursuant to Regulations 23*bis* of the Regulations of the Court ('RoC'), this request and annexes are submitted as confidential as the documents refer to names and locations of persons who received protective measures from the Court. A public redacted version shall be filed as soon as practicable.

III. REGULATION 35(1) REQUEST

7. Pursuant to Regulation 35(1) of the Regulations of the Court, the Defence requests the Chamber to shorten the time limit in which the Prosecution and Common Legal Representative for Victims ('Legal Representative') have to respond to this request to 16h00 CET on 30 August 2019. Considering orders ICC-02/04-01/15-1570, ICC-02/04-01/15-1572 and that the Prosecution and Legal Representative failed to adhere to the Protocol when the Defence requested meetings, the Defence avers such a variance in the time limit is warranted.

IV. BACKGROUND

8. On 12 October 2015, Pre-Trial Chamber II issued a decision on the Prosecution's second request pursuant to Article 56, and instructed the Parties not to meet with the witnesses subject to the decision, which included D-0010/P-0214, D-0004/P-0235 and D-0005/P-0236.³
9. In November 2015, D-0010/P-0214, D-0004/P-0235, D-0005/P-0236 and P-0101 participated in Article 56 hearings conducted by Pre-Trial Chamber II.⁴ The Defence disputes the legality of said hearings.⁵
10. The Prosecutor submitted the transcripts of the Article 56 hearings for the Confirmation of Charges and Pre-Trial Chamber II relied on these transcripts for its decision on the Confirmation of Charges against Mr Ongwen.⁶

³ See ICC-02/04-01/15-316-Red, para. 13.

⁴ ICC-02/04-01/15-T-13-CONF-ENG, ICC-02/04-01/15-T-14-CONF-ENG, ICC-02/04-01/15-T-15-CONF-ENG, ICC-02/04-01/15-T-16-CONF-ENG and ICC-02/04-01/15-T-17-CONF-ENG.

⁵ See ICC-02/04-01/15-259-CONF (and associated annex); ICC-02/04-01/15-277-CONF; ICC-02/04-01/15-286-CONF, paras 8-9; ICC-02/04-01/15-314-CONF (and associated annexes); ICC-02/04-01/15-492 (and associated annexes); and ICC-02/04-01/15-522.

⁶ ICC-02/04-01/15-422-CONF, para. 52.

11. On 13 June 2016, the Prosecution sought the submission of the Article 56 hearings into evidence as testimony in the case.⁷ The Prosecution used these hearings specifically to gather information for the Confirmation of Charges hearing and, as learned later, for the trial.
12. On 6 July 2016, the Defence objected to the submission of the Article 56 hearings into evidence.⁸
13. On 10 August 2016, the Chamber allowed the submission into evidence the Article 56 hearings.⁹ The Defence requested leave to appeal the submission on 16 August 2016,¹⁰ but the Chamber rejected the request on 9 September 2016.¹¹
14. On 24 November 2016, the Defence and Prosecution agreed that “if a witness asks for help from Mr Ongwen’s family, and Mr Ongwen wishes to send a support payment, it would disclose any such request, including the amount sought, to the Prosecution. Both Parties agree that any disbursement to the families will be done in a fair and even handed manner, which may take into account special circumstances.”¹² As an aside, the Defence requests that this filing be reclassified as confidential.¹³
15. [REDACTED].
16. On 8 May 2019, the Chamber decided that the Defence could meet with [REDACTED] after the Parties sought guidance from the Chamber about a request to interview her.¹⁴
17. On 10 May 2019, the Chamber clarified its decision on 8 May 2019 after receiving further submissions from the Parties and Legal Representative, and the Chamber maintained that the Defence was free to request a meeting with [REDACTED].¹⁵
18. On 5 July 2019, the Defence requested meetings with D-0010/P-0214, D-0004/P-0235 and P-0099.¹⁶

⁷ ICC-02/04-01/15-464 (and associated annexes).

⁸ ICC-02/04-01/15-492 (and associated annexes).

⁹ ICC-02/04-01/15-520.

¹⁰ ICC-02/04-01/15-522.

¹¹ ICC-02/04-01/15-535.

¹² ICC-02/04-01/15-606-Conf-Exp, para. 9(b).

¹³ The Defence notes that the Legal Representative has been verbally told of this agreement and that the negotiations took place before her appointment as the legal representatives for some persons whom this agreement touch and concern.

¹⁴ Email from the Chamber to Parties and Participants, “*RE: Information and request for order to Registry*,” received by the Defence on 8 May 2019 at 15h38 CET.

¹⁵ Email from the Chamber to Parties and Participants, “*decision in light of further requests pertaining to the Defence’s request to interview [REDACTED]*,” received by the Defence on 10 May 2019 at 14h19 CET.

19. On 15 July 2019, the Defence requested to meet with P-0099, P-0101 and P-0227¹⁷ after the Prosecution refused to contact these women to inquire whether the children would like to talk to Mr Ongwen, something which the Prosecution facilitated in the past.¹⁸
20. On 15 July 2019, the Defence sent a reminder email about the request to meet with D-0010/P-0214, D-0004/P-0235 and P-0099.¹⁹
21. On 16 July 2019, the Prosecution requested further clarification as to the nature of the meetings with P-0099, P-0101, D-0010/P-0214, P-0227 and D-0004/P-0235.²⁰
22. On 18 July 2019, the Defence responded to the Prosecution stating that the Protocol does not require the nature of the meeting be disclosed. The Defence included the Chamber in this email.²¹
23. On 19 July 2019, the Chamber requested more information from the Defence before it would rule on any request.

V. SUBMISSIONS

24. The Defence requests to meet with the following women:
 - a. [REDACTED] – D-0010/P-0214
 - b. [REDACTED] – D-0004/P-0235
 - c. [REDACTED] – D-0005/P-0236
 - d. [REDACTED] – P-0099
 - e. [REDACTED] – P-0101
 - f. [REDACTED] – P-0227
25. The Defence's reason for the meetings stem from the lack of communication about the family life of the women, their children, and the needs of the children. Even though the Defence and

¹⁶ Email from Defence to Prosecution and Legal Representative, "*Request pursuant to Protocol 339-Anx, paras 30-37*," sent by the Defence on 5 July 2019 at 13h47 CET. See Confidential Annex A.

¹⁷ Email from Defence to Prosecution and Participants, "*Request for Contacts*," sent by the Defence on 15 July 2019 at 20h33 CET. Attached as Confidential Annex B.

¹⁸ See UGA-OTP-0271-3094-R01, UGA-OTP-0271-3101-R01 and UGA-OTP-0271-3098-R01.

¹⁹ Email from Defence to Prosecution and Legal Representative, "*Request pursuant to Protocol 339-Anx, paras 30-37*," sent by the Defence on 15 July 2019 at 20h59 CET. See Confidential Annex A.

²⁰ Email from Prosecution to Defence and Legal Representative, "*Request pursuant to Protocol 339-Anx, paras 30-37*," received by the Defence on 16 July 2019 at 12h59 CET. See Confidential Annex A.

²¹ Email from Defence to Prosecution and Legal Representative, "*Request pursuant to Protocol 339-Anx, paras 30-37*," sent by the Defence on 18 July 2019 at 18h34 CET. See Confidential Annex A.

Prosecution amicably discussed and decided to share information related to the welfare of the children,²² the Defence asserts that such information sharing is lacking, tending to be a one-way flow of information when the Defence hears information from family members in Coorom or through the children begging Mr Ongwen for money during one of the quarterly phone conversations.²³ It is noteworthy that as of late, more information has been shared by the Legal Representatives than the Prosecution.

26. In October 2017, the Prosecution notified the Defence and Legal Representative about [REDACTED].²⁴ While moving at a slower pace than desired, the Prosecution, Legal Representative and Defence worked together to ensure that the financial hardship encountered because of [REDACTED] was significantly lessened.²⁵ Since this incident, information regarding the children has been less forthcoming from the Prosecution.²⁶
27. A recent example of such problems happened in April 2019. The Defence learned that the children of [REDACTED]. An email requesting the transfer of monies from Mr Ongwen to the mothers was sent,²⁷ the Legal Representative did not object to the request,²⁸ a follow-up email was then sent to the Prosecution,²⁹ and no reply was received by the Defence.
28. The Defence also wishes to meet the aforementioned women to determine whether they would like to visit Mr Ongwen and to explain to them the applicable procedures they must follow to facilitate any request. This Defence initiative through this motion is necessitated to redress the situation [REDACTED].³⁰
29. [REDACTED].³¹

²² See ICC-02/04-01/15-606-Conf-Exp.

²³ The Defence notes that the Prosecution did inform the Defence and Legal Representative that [REDACTED].

²⁴ See Confidential Annex C pp. 2-10.

²⁵ [REDACTED].

²⁶ The Defence purposefully excludes the Legal Representative from this statement.

²⁷ Email from Defence to Prosecution and Legal Representatives, "*Request to send monies to [REDACTED]*," sent by the Defence on 2 April 2019 at 14h05 CET. Attached as Confidential Annex D.

²⁸ Email from Legal Representative to Defence and Prosecution, "*RE: Request to send monies to [REDACTED]*," received by the Defence on 2 April 2019 at 14h13 CET. See Confidential Annex D.

²⁹ Email from Defence to Prosecution and Legal Representative, "*RE: Request to send monies to [REDACTED]*," sent by the Defence on 4 April 2019 at 13h09 CET. See Confidential Annex D.

³⁰ See ICC-02/04-01/15-1411-Conf, ICC-02/04-01/15-1418-Conf-Red, ICC-02/04-01/15-1424-Conf, and ICC-02/04-01/15-1445.

³¹ Emails between Defence, Prosecution and Legal Representatives, "[REDACTED]," sent by Defence on [REDACTED], notified to the Chamber on [REDACTED], answered by the Prosecution on [REDACTED] and Legal Representative at [REDACTED].

30. [REDACTED].³² [REDACTED],³³ [REDACTED].³⁴ The Defence notes that this was not the first time [REDACTED],³⁵ [REDACTED].
31. Additionally, since the request to meet with these women was first emailed to the Prosecution, the Defence has come to learn that [REDACTED].³⁶ As required, the Defence has refrained from talking to [REDACTED].
32. The Defence previously requested for the Prosecution to contact P-0099, P-0101 and P-0227 for the purpose of asking their children if they would like to contact Mr Ongwen.³⁷ The Legal Representative responded that her clients, P-0099 and P-0227, “have not indicated to us the wish for their children to meet with Mr Ongwen.”³⁸ The Prosecution responded a few hours later that “so far as the Prosecution is aware, [these persons] expressed no such wish” and that Mr Ongwen “[d]espite the length of time which P-0099, P-0101 and P-0227 spent with the accused the alleged commission, on his part, of these crimes does not result in his gaining any ‘family’ rights in respect of these individuals, **or their children**.”³⁹ The Defence did not ask if the women have asked the Prosecution or Legal Representative about their children contacting Mr Ongwen. The Defence requested the Prosecution to inquire with them if the children would like to contact Mr Ongwen.
33. The Prosecution’s claims are unfounded in law and were noted to the Prosecution by the Defence.⁴⁰ There have been no judgments by a competent jurisdiction divesting Mr Ongwen of parental rights. Furthermore, the actions taken by [REDACTED] demonstrate that these women **want** Mr Ongwen in the lives of the children and possibly in their lives too.⁴¹ Finally, the Prosecution’s and Legal Representative’s claims of these women being vulnerable are completely unfounded, which is evidenced by [REDACTED].

³² See [REDACTED]. Attached as Confidential Annex F.

³³ Email from Defence to Legal Representative, “*Notification of [REDACTED]*,” sent by the Defence on [REDACTED]. Attached as Confidential Annex E.

³⁴ Email from Legal Representative to Defence, “*Notification of [REDACTED]*,” received by the Defence on [REDACTED]. See Confidential Annex E.

³⁵ See [REDACTED].

³⁶ [REDACTED].

³⁷ Email from Defence to Prosecution and Legal Representative, “*Request for Contacts*,” sent by the Defence on 11 June 2019 at 14h27 CET. See Confidential Annex B.

³⁸ Email from Legal Representative to Parties, “*Request for Contacts*,” received by the Defence on 14 June 2019 at 12h47 CET. See Confidential Annex B.

³⁹ Email from Prosecution to Defence and Participants, “*Request for Contacts*,” received by the Defence on 14 June 2019 at 15h24 CET [emphasis added]. See Confidential Annex B.

⁴⁰ Email from Defence to Prosecution and Participants, “*Request for Contacts*,” sent by the Defence on 15 July 2019 at 20h33 CET. See Confidential Annex B.

⁴¹ [REDACTED]. See UGA-OTP-0271-3094-R01, UGA-OTP-0271-3101-R01 and UGA-OTP-0271-3098-R01.

34. The Defence notes that the meetings requested within this request are not meant to be a phishing expedition to gather information related to alleged conduct towards these persons. While such information may materialise in the normal course of events, this is not the underlying purpose of the proposed meetings. Even so, as such information may be offered by persons mentioned in paragraph 1 above, the Defence has requested the meetings pursuant to the Protocol and recognises that the meetings must be recorded and disclosed.
35. Finally, the Defence invites the Legal Representative (or one of her staff) to be present during the meetings with D-0010/P-0214, D-0004/P-0235 and D-0005/P-0236, unless the women state that they do not want them present. In relation to the Prosecution, the Defence of course has no objection to a Prosecution representative being present should any of the women request a member of the Prosecution be present.

VI. RELIEF

36. For the reasons described above, the Defence respectfully requests Trial Chamber IX to order VWU to request meetings with the following persons:
- a. [REDACTED] – D-0010/P-0214
 - b. [REDACTED] – D-0004/P-0235
 - c. [REDACTED] – D-0005/P-0236
 - d. [REDACTED] – P-0099
 - e. [REDACTED] – P-0101
 - f. [REDACTED] – P-0227
37. Reclassify ICC-02/04-01/15-606-Conf-Exp as confidential.

Respectfully submitted,



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

Dated this 3rd day of September, 2019
At Kampala, Uganda