

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **4 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

Confidential

Defence Request for Leave to Reply to
Prosecution filing ICC-02/04-01/15-1577-Conf and
CLRV filing ICC-02/04-01/15-1581-Conf

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

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Benjamin Gumpert, QC

Counsel for the Defence

Krispus Ayena Odongo
Chief Charles Achaleke Taku
Beth Lyons

Legal Representatives of the Victims

Joseph Akwenyu Manoba
Francisco Cox

Common Legal Representative for Victims

Paolina Massidda
Jane Adong

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

Paolina Massidda
Caroline Walter
Orchlón Narantsetseg
States' Representatives

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

Xavier-Jean Keita

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. SUBMISSIONS

1. The Defence seeks leave to reply, pursuant to Regulation 24(5) of the Regulations of the Court ('RoC'), to a Prosecution 30 August 2019 proposal of an alternative solution¹ to the 'Defence Request to Meet Selected Individuals'.² As explained below, the Defence seeks leave to include requests within the proposed reply. For reasons that also follow, the Defence also requests that if a reply is granted, then the deadline be no less than 10 days from the date of notification of a decision on the present filing and the page limit for the reply to the proposal not be below the standard filing limit (e.g. 20 pages).
2. Pursuant to Regulations 23bis of the RoC, this request is submitted as confidential as it refers to filings of the same classification. Should those filings be re-classified or later filed in public redacted form, the Defence does not object to the present filing being reclassified as public.
3. The resolution of the Defence Request proposed by the Prosecution could not have been anticipated and this by itself merits a reply; however, importantly, the Prosecution proposal is similar in form to a Defence request for an order for the Victim's and Witness's Unit ('VWU') which the Defence is currently finalising ('Draft Defence Filing'). That request, which concerns communications restrictions, is anticipated to be filed in the coming two weeks. The Draft Defence Filing is motivated by different reasons which need to be placed on the record but considered at the same time as the Prosecution response, but it could be considered as qualified support for the Prosecution proposal.
4. Though the Defence will not abandon its request to interview the women, the Defence submits that it would be in the interests of justice, and more expeditious, for Trial Chamber IX ('Trial Chamber') to receive all arguments, facts, and the full scope of matters to be asked of the Article 56 individuals when deliberating on the Prosecution's alternative solution of ordering the VWU to contact the concerned individuals.

¹ ICC-02/04-01/15-1577-Conf, para. 9.

² ICC-02/04-01/15-1574-Conf ('Defence Request'). The Common Legal Representative for Victims ('CLRV') has responded urging the rejecting of the Defence request but alternatively supported the Prosecution proposal in the event that the Defence motion is not rejected. 2 September 2019, ICC-02/04-01/15-1581-Conf.

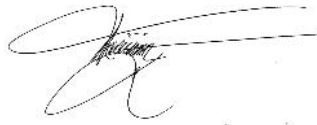
5. It is in the interests of justice to grant leave to reply for two reasons. Firstly, if the VWU is to contact these individuals, it is in the interests of justice that the Trial Chamber also considers Defence requests related to information that should be conveyed. It seems preferable for only one contact to occur if the individual in question does not wish to have any further contact with the Defence. Therefore, a future Defence request seeking the provision of information by the VWU to these individuals could be foreclosed by a decision on the Prosecution response or at least become procedurally disorganised and less expeditious if leave to file a Defence reply now is not granted and the Defence files its separate request later.
6. Secondly, as noted above, the Draft Defence Filing has reasons in it which are motivated by the legal mechanisms restricting Mr Ongwen's contact with these individuals. These are not the same reasons as underlie the Prosecution proposal and they cannot be separated from the arguments in respect to communication restrictions.
7. Therefore, the Defence requests leave to reply to the Prosecution and CLRV responses on the matter of the proposal to contact the witnesses. As part of this reply, the Defence would also simultaneously file its request in respect to communication restrictions in the same document. The Draft Defence Request currently comprises 14 pages of submissions.³
8. Motivating the Defence request for a 10 day deadline and 20 page limit to reply to the Prosecution and CLRV are the reasons that finalizing the Defence Draft Request and incorporating changes resulting from the Prosecution and CLRV's responses will not take longer but may take close to a standard response deadline due to the complexity of the issues. Given the substantial procedural history underlying the communication restrictions, the intricacy of the legal issues, and number of individuals involved, it will not be possible to present the arguments in a shorter form.

³ With the title and cover pages 16 pages.

II. RELIEF

9. For the reasons described above, the Defence respectfully requests Trial Chamber IX to:
- a. **GRANT** the Defence leave to file a reply to Prosecution filing ICC-02/04-01/15-1577-Conf and CLR V filing ICC-02/04-01/15-1581-Conf and simultaneous request with a maximum limit of 20 pages in total; and
 - b. **SET** the deadline for no less than 10 days from the granting of the present Defence request.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 4th day of September, 2019

At Lira, Uganda