

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR* v. *DOMINIC ONGWEN*

Public

Decision on Defence Request for Leave to Reply

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda
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Counsel for the Defence

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Legal Representatives of Victims

Joseph Akwenyu Manoba
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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

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX (‘Single Judge’ and ‘Chamber’, respectively) of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Regulations 24(5) of the Regulations of the Court, issues the following ‘Decision on Defence Request for Leave to Reply’.

1. On 16 September 2019, the Office of the Prosecutor (‘Prosecution’) sent an email to the Chamber and parties and participants concerning the testimony of Defence witnesses D-41 and D-42 (the ‘Defence Expert Witnesses’). The Chamber instructed the Prosecution to submit its request via a formal filing.
2. On 17 September 2019, the Prosecution submitted a formal request (the ‘Prosecution Request’).¹ The Prosecution first requests that the Defence be ordered to specify the dates on which the Defence Expert Witnesses will testify.² Further, it explains that from the content of the second report produced by the Defence Expert Witnesses it ‘is almost inevitable that the Prosecution [...] will ask for permission to call evidence in rebuttal.’³
3. Also on 17 September 2019, the Defence filed a motion requesting that the Defence Expert Witnesses be allowed to testify jointly from 19 to 22 November 2019 (the ‘Defence Request’).⁴
4. On 19 September 2019, the Prosecution filed its response to the Defence Request (the ‘Prosecution Response’) requesting, *inter alia*, that the Chamber order a fixed date for the envisaged testimony and that the Prosecution be allowed to question the Defence Expert Witnesses consecutively, irrespective of whether the Defence questions them concurrently or not.⁵
5. On 23 September 2019, the Defence filed a request for leave to reply to the Prosecution Response (the ‘Request for Leave to Reply’).⁶ It submits that there are new issues in the

¹ Prosecution’s request for the Trial Chamber to order the Defence to specify a date for the testimony, ICC-02/04-01/15-1596.

² Prosecution Request, ICC-02/04-01/15-1596, paras 9-11.

³ Prosecution Request, ICC-02/04-01/15-1596, para. 5.

⁴ Defence Motion Regarding the Mode of D-41 and D-42’s Testimony, ICC-02/04-01/15-1598.

⁵ Prosecution Response to “Defence Motion Regarding the Mode of D-41 and D-42’s Testimony”, ICC-02/04-01/15-1601.

⁶ Defence Request for Leave to Reply to Prosecution Response Regarding the Mode of D-41 and D-42’s Testimony, ICC-02/04-01/15-1605 with confidential annex A, ICC-02/04-01/15-1605-Conf-AnxA.

Prosecution Response which it could not have reasonably anticipated⁷ and states that it will also include the response to the Prosecution Request in this filing.⁸

6. At the outset the Single Judge notes that no responses to the Request for Leave to Reply have been filed by the other parties and participants yet. However, in order to streamline and expedite the procedure and in light of the limited subject matter of the Request for Leave to Reply the Single Judge will, on an exceptional basis, issue a decision on the request without having received any response.
7. The Single Judge also notes that the Defence includes part of the content of its reply in its request to file such an answer. It reminds the parties and participants that a request for leave to reply should not contain the reply itself.
8. The Single Judge considers that that a reply by the Defence to the Prosecution Response would be beneficial to the resolution of the Defence Request. Considering that the Defence also wishes to include its response to the Prosecution Request, for which responses are due on Tuesday, 24 September 2019,⁹ and the fact that the issues that the Defence wishes to address are limited, the Single Judge considers that a relatively short deadline for the reply is appropriate. Therefore, the Single Judge orders the Defence to file its reply by Friday, 27 September 2019.

⁷ Request for Leave to Reply ICC-02/04-01/15-1605, para. 3.

⁸ Request for Leave to Reply ICC-02/04-01/15-1605, para. 4.

⁹ E-mail for the Chamber to the parties and participants, 17 September 2019, at 19:12.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Defence Request to Reply; and

ORDERS the Defence to file the reply by Friday, 27 September 2019.

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Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Single Judge

Dated 23 September 2019

At The Hague, The Netherlands