

**Cour
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**International
Criminal
Court**



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TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul Cano Pangalangan

SITUATION IN UGANDA

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

Confidential

**CLRV's Response to "Defence Request for Leave to Reply to CLRV, Prosecution
and LRV Responses to 'Defence Urgent Request to Order a Medical Examination
of Mr. Ongwen'"**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. The Common Legal Representative of Victims¹ (the “CLR/V”) opposes the “Defence Request for Leave to Reply to CLR/V, Prosecution and LRV Responses to ‘Defence Urgent Request to Order a Medical Examination of Mr. Ongwen’” (the “Request to Reply”).²

2. The CLR/V submits that the Request to Reply should be dismissed since the Defence fails to raise any new issue that it could not have reasonably anticipated in the submissions made by the Prosecution and the Legal Representatives of the Victims (the “LRV”). Moreover, the Chamber is already in possession of sufficient information to determine the matters at hand and it would not be assisted by receiving further submissions from the Defence.

3. Finally, the CLR/V contends that the Defence is in violation of the explicit instruction of the Chamber according to which a party or participant asking leave to reply cannot include in said request the substantive arguments to be developed eventually if the request is granted.³

¹ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-350, 27 November 2015, p. 19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 15 December 2015, pp. 10-11; the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-384, 24 December 2015, pp. 20-22; and the “Decision on the ‘Request for a determination concerning legal aid’ submitted by the legal representatives of victims” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-445, 26 May 2016, para. 13.

² See the “Defence Request for Leave to Reply to CLR/V, Prosecution and LRV Responses to ‘Defence Urgent Request to Order a Medical Examination of Mr. Ongwen’”, No. ICC-02/04-01/15-1612-Conf, 26 September 2019 (the “Request to Reply”).

³ See the “Decision on the Defence Request for Leave to Reply” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-1608, 23 September 2019, para. 7.

II. PROCEDURAL BACKGROUND

4. On 16 September 2019, the Defence filed a further Request for medical examination of Mr Ongwen (the "Third Request for medical examination").⁴ On 17 September 2019, the Chamber, by e-mail, shortened the deadline for responses to 23 September 2019.⁵

5. On 23 September 2019, the Prosecution,⁶ the CLRV⁷ and the LRV⁸ filed their respective responses to the Third Request for medical examination.

6. On 26 September 2019, the Defence filed the Request to Reply.⁹

III. CONFIDENTIALITY

7. The present submission is filed confidential in accordance with regulation 23*bis* (2) of the Regulations of the Court (the "Regulations"), following the level of classification chosen by the Defence. However, the CLRV indicates that the present submission does not contain confidential information and can be reclassified as public.

⁴ See the "Defence Urgent Request to Order a Medical Examination of Mr. Ongwen", No. ICC-02/04-01/15-1595-Conf, 16 September 2019.

⁵ See the email of the Chamber sent on 17 September 2019 at 09:12.

⁶ See the "Prosecution's Response to the "Defence Urgent Request to Order a Medical Examination of Mr. Ongwen", No. ICC-02/04-01/15-1603-Conf, 23 September 2019.

⁷ See the "CLRV Response to "Defence Urgent Request to Order a Medical Examination of Mr. Ongwen", No. ICC-02/04-01/15-1604-Conf, 23 September 2019.

⁸ See the "Victims' response to the "Defence Urgent Request to Order a Medical Examination of Mr. Ongwen", No. ICC-02/04-01/15-1607-Conf, 23 September 2019.

⁹ See the Request to Reply, *supra* note 2.

IV. SUBMISSIONS

8. Regulation 24(5) of the Regulations states that “[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.” The Appeals Chamber ruled in this regard that this provision “precludes the possibility of an automatic response by the parties to the victims’ response, except with the leave of the [Chamber]”.¹⁰ The Chamber also held that “[...] it is at the Chamber’s discretion as to whether such leave to reply will be granted. It is equally within the Chamber’s discretion to conclude that a reply would not be of assistance in reaching a decision and instead issue its decision forthwith particularly when time is of the essence [...]”.¹¹ Moreover, requests to reply should be rejected if the Chamber is in possession of sufficient information to determine the matter at hand.¹²

9. In the Request, the Defence seeks leave to reply to several issues raised by the Prosecution, the CLRV and the LRV which the Defence allegedly could not reasonably anticipate. However, the matters to which the Defence refer in its Request were clearly foreseeable at the time it made the Third Request, particularly the arguments related to the inclusion of Mr Ongwen on the Defence list of witnesses and the applicable standard of rule 135 of the Rules of Procedure and Evidence.

10. In addition, the CLRV submits that the Chamber is already in possession of sufficient information to determine the matter at hand and it would not be assisted

¹⁰ See the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute’” (Appeals Chamber), No. ICC-02/11-01/15-208 OA6, 08 September 2015, para. 22.

¹¹ See the “Decision on Defence Request for Leave to Appeal Decision 1248” (Trial Chamber IX), No. ICC-02/04-01/15-1263, 22 May 2018, para. 20. See also the “Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision” (Trial Chamber IX), No. ICC-02/04-01/15-1147, 24 January 2018, para. 15.

¹² See the “Decision on the ‘Prosecution’s submissions on the conduct of proceedings pursuant to decision ICC-02/04-01/15-277’” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-293-Red, 23 March 2016, para. 8.

by receiving further submissions from the Defence. The parties and participants have fully explored the contested issues and made their respective submissions, thus enabling the Chamber to dispose of the matter expeditiously.

11. Finally, the CLRV notes that in its last decision on a Defence's requests to reply, the Single Judge of the Chamber reminded "*parties and participants that a request for leave to reply should not contain the reply itself*".¹³ Therefore, she posits that the Defence is in violation of an unequivocal instruction of the Chamber in as much as it includes its substantive arguments extensively in the Request to Reply.

V. CONCLUSION

12. For the foregoing reasons, the Common Legal Representative of the Victims respectfully requests the Chamber to reject the Request to Reply.



Paolina Massidda
Principal Counsel

Dated this 27th day of September 2019

At The Hague, The Netherlands

¹³ See the Decision on the Defence Request for Leave to Reply, *supra* note 3.