

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **8 November 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

**Defence Request for Guidance Regarding the Limitation of Contact with and between
D-0041 and D-0042**

Source: Defence for Mr 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. SUBMISSIONS

1. The Defence for Mr Dominic Ongwen ('Defence') respectfully seeks guidance from Trial Chamber IX ('Chamber') as to the limitation of contact with and between its Defence Expert Witnesses D-0041 and D-0042. The Defence files the present motion in advance of the hearing in order to avoid any misunderstanding and ensure that the logistics concerning D-0041 and D-0042's testimony are done in a smooth manner.
2. The Chamber's 'Decision on Protocols to be Adopted at Trial' found that '[t]he limitation of contact does not apply to expert witnesses and that discussion between the parties and their experts may take place at any stage prior to calling the witness'. In this regard, the protocol stated also that 'all meetings with witnesses, excluding expert witnesses, and the entity calling the witness or legal representatives will be conducted within the premises of the VWU'.¹
3. In respect to the separation of witnesses at the accommodation, the Chamber held that '[e]xpert witnesses may also be jointly accommodated and will be reminded not to discuss the evidence they have given or will give'.²
4. In its more recent 'Decision on Requests related to the Testimony of Defence Expert Witness D-0041 and D-0042', the Chamber held that 'D-0041 and D-0042 will testify consecutively, on 18 and 19 November 2019 and 21 and 22 November 2019' and that 'the rebuttal witness, if called by the Prosecution, will testify on 25 or 26 November 2019'.³
5. Furthermore, the Decision allowed the Prosecution Expert Witness P-0447 to be present in the Courtroom but 'not to communicate during the ongoing testimonies about the content of the testimonies of D-0041 and D-0042'. In the same vein, the Chamber held 'should the Defence wish to call an expert to present rejoinder evidence, this person may attend the testimony of the Prosecution Expert Witness under the same conditions'.⁴
6. For the purposes of this motion, the Defence reiterates also that while D-0041 and D-0042 will be testifying as individual experts, they authored the Defence Expert Reports together and each

¹ *Ongwen*, Decision on Protocols to be Adopted at Trial, [ICC-02/04-01/15-504-Anx1](#), 22 July 2016 ('**Protocol**'), paras 31 and 34.

² [Protocol](#), para. 37.

³ *Ongwen*, Decision on Requests related to the Testimony of Defence Expert Witness D-0041 and D-0042 ('**Decision**'), [ICC-02/04-01/15-1623](#), 1 October 2019, paras 22 and 23.

⁴ [Decision](#), paras 18 and 20.

of their report is to be considered as one piece of evidence.⁵ Moreover, both Expert Witnesses will be present in The Hague during the course of their testimonies (18-22 November) and only one of them will be present in The Hague during P-0447's rebuttal evidence.

7. In light of the information above and in relation to D-0041 and D-0042's testimony, the Defence seeks guidance from the Chamber on the following points:
 - a) Is D-0042 permitted to be present in the Courtroom during the testimony of D-0041, and *vice versa*?
 - b) Is the Defence permitted to communicate with D-0042 before, during and after the testimony of D-0041? If so, to what extent?
 - c) Is the Defence permitted to communicate with D-0041 before, during and after the testimony of D-0042? If so, to what extent?
 - d) Are D-0041 and D-0042 permitted to communicate with each other before and after their testimonies?
8. While it is clear from the Decision that the Defence's potential rejoinder evidence witness may attend P-0447's presentation of rebuttal evidence but not to communicate with the Defence during the ongoing testimony about the content of P-0447's testimony, the Defence seeks guidance from the Chamber on the following points:
 - a) Is D-0041/D-0042, as a potential rejoinder witness, permitted to communicate with the Defence after the conclusion of his testimony and before the start of the presentation of P-0447's rejoinder evidence? If so, to what extent?
 - b) Is D-0041/D-0042, as a potential rejoinder witness, permitted to communicate with D-0042/D-0041 after the conclusion of D-0041/D-0042's testimony and before the start of the presentation of P-0447's rejoinder evidence? If so, to what extent?

II. RELIEF SOUGHT

9. For the reasons stated above, the Defence respectfully seeks guidance from the Chamber on the points laid out in **paragraph 7 (a-d)** and **paragraph 8 (a-b)**.

⁵ [Decision](#), para. 10.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Mr Dominic Ongwen

Dated this 8th day of November, 2019