

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **31 January 2020**

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 with
CONFIDENTIAL ANNEXES A-C**

Defence Request for an extension of time to file the Closing Briefs

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 Regulation 35 of the Regulations of the Court ('RoC'), the Defence for Dominic Ongwen ('Defence') requests Trial Chamber IX ('Chamber') to extend the deadline for filing of the closing briefs from 19 February 2020 to 24 February 2020.
2. The Defence avers this short extension is warranted owing to the facts that:
 - a. The ICC Remote Access, commonly referred to as Citrix, was shut down for approximately 72 hours from 17-20 January 2020 due to security concerns¹ and
 - b. The ICCEPN Remote Webmail Access was inoperable from at least 14-21 January 2020.²

II. CONFIDENTIALITY

3. Pursuant to Regulation 23bis(1) of the RoC, the Defence files Annexes A-C as confidential as these items are internal communications between the Defence, between the Defence and the Registry, and from IMSS to all External Parties. With the utmost respect, unless ordered, the Defence shall not file public redacted versions of Annexes A-C.

III. BACKGROUND

4. On 23 October 2019, the Chamber ordered the closing briefs be due on 26 February 2020.³
5. On 4 December 2019, the Chamber ordered a change to the due date of the closing briefs, moving it up the calendar to 19 February 2020.⁴
6. On or around 14 January 2020, the Defence was unable to access its ICCEPN Remote Webmail.⁵

¹ Confidential Annex C.

² See *jointly* Confidential Annexes A, B and C.

³ ICC-02/04-01/15-1645, para. 4.

⁴ ICC-02/04-01/15-1691, p. 7.

⁵ See Confidential Annex B. The Defence notes that there are two sections of this annex which are redacted that state "PERSONAL". These were redacted as the redacted contents are material completely of a personal nature of the owner of the mobile phone and not related in any way related to the case-at-bar.

7. On 15 January 2020, the Defence notified Counsel Support Section ('CSS') of the problem Defence members encountered while attempting to log into its ICCEPN Remote Webmail.⁶
8. On 15 January 2020, CCS confirmed to the Defence that it opened ticket number 46447.⁷ By this time, the Defence had talked to other "external teams" and noticed that it was not merely a problem with the Defence, but a problem possibly affecting all "external teams".
9. On 16 January 2020, after IMSS had been working on the problem, the Defence was still unable to access its ICCEPN Remote Webmail.⁸
10. On 17 January 2020, IMSS, through CSS, notified the "external parties" that there were possible security concerns with Citrix and that it would be shutting down Citrix until the concerns were addressed, which was estimated to be dealt with by 20 January 2020.⁹
11. On 20 January 2020, IMSS, through CSS, notified the "external parties" that the issues with Citrix had been resolved without incident and that Citrix was operable again.¹⁰
12. On 22 January 2020, the Defence confirms that it was able to use the ICCEPN Remote Webmail again.
13. On 30 January 2020, the Defence requested an extension to file the closing briefs to the Chamber through email.¹¹ On the same date, the Chamber wrote the Defence and ordered the Defence to file its request in the public record of the case.¹²

IV. SUBMISSIONS

14. The Defence appreciates the current schedule the Chamber has issued and does not seek in this request to alter the date of the closing arguments. The Defence respectfully requests to regain these few lost days and asks for all briefs (Defence, Prosecution and LRVs) to be due on 24 February 2020.

⁶ See Confidential Annex A, pp 2-4.

⁷ *Id.*, p. 5.

⁸ See Confidential Annex B.

⁹ See Confidential Annex C, p. 2.

¹⁰ *Id.*, pp. 3-5.

¹¹ Email from Defence to Trial Chamber IX, Prosecution, Legal Representatives and Registry, '*OTP vs Ongwen – Request for Short Extension for Final Brief*', emailed on 30 January 2020 at 17h23 CET.

¹² Email from Trial Chamber IX to Defence, Prosecution, Legal Representatives and Registry, '*Order to submit a formal filing for an extension of time and shortening of response deadline*', received by the Defence on 30 January 2020 at 18h34 CET.

15. The ICC suspended activity and access to the internal system through Citrix from just after midday on 17 January 2020 until around midday on 20 January 2020 due to security concerns. As such, the Defence was unable to access remotely the internal database *via* Citrix.¹³
16. For approximately one week (14-21 January 2020), including the aforementioned weekend, the Defence was unable to access its ICCEPN Remote Webmail from outside the ICC Permanent Premises, hindering a team where five of its members are working remotely. The Defence contacted CSS on the morning of 15 January 2020 and ticket 46447 was created.¹⁴ The Defence was able to use it until 22 January 2020.
17. The use of the ICCEPN Remote Webmail is vital to the Defence as it allows persons to share documents from an individual's personal computer and to print material at home, processes which cannot be done while accessing webmail through Citrix.¹⁵
18. The Defence avers that an extension to 24 February 2020 is warranted as the shutdown to Citrix came suddenly. This was not something for which anyone in the Court could have foreseen and prepared. This extension would also alleviate the problems associated with the unexplained outage of the ICCEPN Remote Webmail platform from 14-21 January 2020.
19. The Defence depends on the internal ICC webmail to carry out the tasks required for producing its closing brief. This applies to those who work in the building and to those who work remotely. While those who work at the ICC Permanent Premises could still access webmail, those persons were unable to receive work-product from persons working remotely and vice-versa. As much of the work is confidential, the Defence cannot merely revert to using public email.
20. Respectfully, the Defence requests that the abovementioned extension be granted to all parties and participants as the problems written about above were beyond anyone's control.

¹³ See Confidential Annex C.

¹⁴ See Confidential Annex A.

¹⁵ Email from ICT through CSS to Defence, 'RE: [Request ID :##46829] : Category/item oprobably [sic] not correct – Ms Beth Lyons has an ISSUE WITH PRINTING FROM ICCEPN', received on 24 January 2020 at 15h45 CET. The Defence notes that ICT stated that only ICC Field Offices have the ability to print through Citrix. ICT did not mention that documents could be attached from personal computers through Citrix, but the Defence has tried this many times and this access was restricted to all but the ICC Field Offices sometime in the past.

V. RELIEF

21. For the reasons described above, the Defence respectfully requests Trial Chamber IX to extend the filing date of the closing briefs for all parties and participants to 24 February 2020.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 31st day of January, 2020
At The Hague, Netherlands