

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **4 March 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***

CONFIDENTIAL

**Defence Request for Leave to Reply to
Prosecution filing ICC-02/04-01/15-1723-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

The Office of Public Counsel for Victims

Paolina Massidda
Caroline Walter
Orchlon Narantsetseg

The Office of Public Counsel for the Defence

Xavier-Jean Keita

REGISTRY

Registrar

Peter Lewis

Victims and Witnesses Unit

Nigel Verrill

1. The Defence requests leave to the Prosecution's Response to the "Defence Request for Remedies in Light of Prosecution Disclosure Violations"¹ on the issue of the number of duplicate records and the difficulty of this determination. The Defence files this request confidential² as it pertains to issues currently under the same confidentiality level but does not object to it being reclassified as soon as practicable.
2. The Prosecution Response claims that there are 6,727 non-duplicate records in the newly disclosed material of which only 197 are LRA members, and only 11 new records of those reported having served in Sinia Brigade. In paragraph 10, the Prosecution argues that the Defence "has not sought to contradict the figures set out [...]".
3. The Defence has not advanced arguments on as yet uncertain figures. The difficulty in determining non-duplicate records flows from the fact there are four different sources of information³ and electronically identifying duplicate records requires care followed by human inspection.⁴ There are many common names in use in Northern Uganda. If a record is considered duplicate simply on the basis of name match, many new records will be missed. The Prosecution figures may also not be clear for other reasons. For example, some individuals indicated their unit was "Coy" rather than "Sinia". Therefore, following the Prosecution's theory of the structure of the LRA, it not necessarily possible to draw the conclusions that there are only 11 new records in relation to Sinia.
4. The difficulty of arriving at these figures while preparing for the final brief and closing arguments underscores the prejudice of the late disclosure. The Defence respectfully requests Trial Chamber IX to grant the Defence leave to reply to the issue described above.

Respectfully submitted,



Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 4th day of March, 2020
At Kampala, Uganda

¹ ICC-02/04-01/15-1723-Conf ('Response').

² Pursuant to Regulation 220(2) of the RoR and 23bis(2) of the Regulations of the Court.

³ The newly disclosed databases are: UGA-OTP-0012-0523 and UGA-OTP-0024-0110 and the previously disclosed two spreadsheets are: UGA-OTP-0165-0124 and UGA-OTP-0244-0909.

⁴ ICC-02/04-01/15-1718-Conf ('Defence Request'), para. 46 suggests that the P-379 records are not-duplicative. Upon further analysis of the four sources of information the Defence clarifies that the records are duplicates of prior disclosed material. New information is however available, see para. 43 to the Defence Request.