

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 August 2020

TRIAL CHAMBER IX

Before:

**Judge Bertram Schmitt, Single Judge
Judge Péter Kovács
Judge Raul C. Pangalangan**

SITUATION IN UGANDA

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

Public

Second Public Redacted Version of “Defence Response to ICC-02/04-01/15-539-Conf-Exp, ICC-02/04-01/15-542-Conf-Exp and ICC-02/04-01/15-545-Conf-Exp”, filed on 29 September 2016

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
Colin Black

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Krispus Ayena Odongo
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Joseph Manoba
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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

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States' Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Paddy Craig
Harry Tjonk

Victims Participation and Reparations Section Other

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby responds to the submissions of the Registry about the addition of names to Mr Ongwen's non-privileged call list ('Request')¹ and the Prosecution's response to the Request ('Response').²
2. The Defence respectfully asks Trial Chamber IX ('Chamber') to grant Mr Ongwen's application to add his children to his non-privileged phone list, under supervision as the Chamber deems appropriate.

II. CONFIDENTIALITY

3. The Defence files this confidential *ex parte*, Defence, Prosecution, VWU and Detention Centre only pursuant to Regulation 23bis(2). [REDACTED].

III. BACKGROUND

4. On 3 August 2015, the Single Judge of Pre-Trial Chamber II placed restrictions on Mr Ongwen's non-privileged contact list at the International Criminal Court Detention Centre ('ICC-DC').³
5. On 30 May 2016, the Chamber decided that the restrictions imposed by the Single Judge of Pre-Trial Chamber II were still warranted.⁴
6. On 21 July 2016, understanding the plight of Mr Ongwen to talk to his children, the Chamber denied Mr Ongwen's request to speak to two of his

¹ ICC-02/04-01/15-539-Conf-Exp and ICC-02/04-01/15-545-Conf-Exp.

² ICC-02/04-01/15-542-Conf-Exp.

³ See ICC-02/04-01/15-283.

⁴ ICC-02/04-01/15-450-Red, para. 4.

children, and urged Mr Ongwen to follow the internal procedure of the ICC-DC to add any names to his non-privileged phone list.⁵

7. Between 5-28 August 2016, Mr Ongwen attempted to request to add his children to his non-privileged phone list.
8. On 29 August 2016 at approximately 11h23, Mr Ongwen called his Defence to confirm one of the numbers which his children could be contacted. Mr Ongwen stated that he was told by ICC-DC staff that there were too few numbers in the telephone number.
9. On 8 September 2016, the Defence emailed the ICC-DC requesting the status of Mr Ongwen's request to add phone numbers to his non-privileged phone list.⁶
10. On 14 September 2016, the Defence emailed the ICC-DC again to requesting the status of Mr Ongwen's request to add phone numbers to his non-privileged phone list.⁷
11. On 15 September 2016 at approximately 15h07, the Director of Judicial Services contacted the Defence. During this call, the Director explained the problems with the request to add phone numbers to Mr Ongwen's non-privileged phone list. The Defence corrected the Director, stating that Mr Ongwen's request was not to talk to any person identified as a Prosecution or Defence witness, but to talk to his children.
12. Later that day, now knowing the reason for the request, the Registry informed the Defence the issues with Mr Ongwen's request to add his children to his non-privileged phone list.⁸

⁵ See ICC-02/04-01/15-503, para. 19.

⁶ Email "Question about Mr Ongwen's Phone Request", 8 September 2016 at 16h59 from Defence to ICC-DC.

⁷ Email "RE: Question about Mr Ongwen's Phone Request", 14 September 2016 at 10h03 from Defence to ICC-DC.

13. On 20 September 2016, the Defence emailed the Registry with the ERNs of Prosecution material from NFI.⁹ There were six (6) children on the list emailed to the Registry. The Registry responded later that day stating it would come back to us as soon as possible.¹⁰
14. On 21 September 2016, the Director of Judicial Services convened a meeting between himself, a staff member, three (3) members of the Defence and an Expert. During this meeting, the Director and Defence noted the problems with Mr Ongwen filling out the Number Request Form to request to add numbers to his non-privileged phone list. Whilst the Defence was told it could not receive a copy of the Number Request Form, the Director stated that he would send an email with the requested information for the Number Request Form.
15. On 22 September 2016, the Registry emailed to the Defence the type of information needed to fulfil the requirements of the Number Request Form.¹¹
16. On 23 September 2016, the Registry notified the Chamber, which was subsequently notified to the Prosecution, of part of the Request.¹²
17. On 26 September 2016, the Defence emailed to the Registry the information needed for the Number Request Form.¹³
18. On 26 September 2016, the Prosecution filed its Response.¹⁴

⁸ Email "FW: Question about Mr Ongwen's Phone Request", 15 September 2016 at 14h41 from the Registry to the Defence.

⁹ Email "RE: Question about Mr Ongwen's Phone Request", 20 September 2016 at 14h41 from the Defence to the Registry.

¹⁰ Email "RE: Question about Mr Ongwen's Phone Request", 20 September 2016 at 14h58 from the Registry to the Defence.

¹¹ Email "Request to speed up the approval process to add new persons to Mr Ongwen's telephone contact list", 22 September 2016 at 14h44 from the Registry to the Defence.

¹² ICC-02/04-01/15-539-Conf-Exp.

¹³ Email "Letter from Ongwen Defence concerning Proposed Additions to Mr Ongwen's Non-Privileged Calling List", 26 September 2016 at 12h20 from the Defence to the Registry.

¹⁴ ICC-02/04-01/15-542-Conf-Exp.

19. On 27 September 2016, the Registrar, as alluded to in the 23 September 2016 submission, filed the remainder of the Request, which states that Mr Ongwen seeks to speak with his children.¹⁵

IV. APPLICABLE LAW

20. The Defence incorporates by reference filing ICC-02/04-01/15-461, paragraphs 42-66. The internationally recognised human rights applicable to persons are explained in detail in the incorporated paragraphs.
21. It is worth repeating that under Article 21(3) of the Rome Statute, the Court is required to follow internationally recognised human rights law, and that the right of a child to speak to his/her parent(s), and the right of a parent to speak to his child are both internationally recognised human rights, as described in the incorporated reference in paragraph 20 above.

V. SUBMISSIONS

22. The Defence notes that the Prosecution filed the Response before the addendum to the Request. The Prosecution was without complete information for the Response. Regardless, the Defence must make one factual correction to paragraph 16 of the Response. The Prosecution incorrectly infers, after being informed by the Defence in filing ICC-02/04-01/15-490-Conf nonetheless,¹⁶ that Mr Ongwen transferred €1,000 to witnesses. This is absolutely false. Furthermore, the transfer followed ICC-DC protocols.
23. Mr Ongwen's request notified by the Registrar seeks for him to talk to his children, not any witness or potential witness. As written in Section III above, the Defence and Mr Ongwen have attempted for over a month to file these

¹⁵ ICC-02/04-01/15-545-Conf-Exp, paras 7-11.

¹⁶ ICC-02/04-01/15-490-Conf, para. 38.

names, which includes contacting the Registry and ICC-DC about the delays in submitting the Request.

24. The Defence would have approached the Prosecution first about the Request, but the procedures emplaced by the Single Judge of Pre-Trial Chamber II, and adopted by the Chamber, required Mr Ongwen to file the Request with the ICC-DC first. As stated by the Prosecution, it does not object, in principle, to Mr Ongwen talking to his children.¹⁷
25. Should the Chamber allow the Request, the Defence invites the Prosecution to *inter partes* discussions with the Registry to determine the best course of action to facilitate these communications. As written by the Prosecution, the Defence has no objections to a third party facilitator for such communications.¹⁸
26. The Defence understands that any such communications would be non-privileged, and such communications would be actively monitored.

VI. RELIEF

27. The Defence respectfully requests the Chamber to allow Mr Ongwen to speak with his children.

¹⁷ ICC-02/04-01/15-542-Conf-Exp, paras 23-24.

¹⁸ ICC-02/04-01/15-542-Conf-Exp, para. 24.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 10th day of August, 2020

At Kampala, Uganda