

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **14 June 2022**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN UGANDA

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

PUBLIC

**Public Redacted Version of “Defence Request for an Alteration of the Contact
Restrictions on Dominic Ongwen”, filed on 9 June 2022**

Source: Defence for Dominic Ongwen

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

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I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby requests Trial Chamber IX ('Chamber') to remove the communication restrictions between [REDACTED] and Dominic Ongwen. Specifically, the Defence wishes the removal of the communication restrictions so [REDACTED] can visit Mr Ongwen at the International Criminal Court Detention Centre ('ICC-DC').
2. The Defence makes this request on behalf of Mr Ongwen after receiving confirmation from the Common Legal Representative for Victims ('CLRV') that [REDACTED] wishes to visit Mr Ongwen, [REDACTED], at the ICC-DC.
3. The Defence apologises for not making this request earlier, but the situation from 12 May 2022 through 7 June 2022 required the Defence to wait until after the withdrawal of former Counsel Ayena Odongo to make this request.

II. CONFIDENTIALITY LEVEL

4. Pursuant to Regulation 23 *bis*(1) of the Regulations of the Court ('RoC'), the Defence files this request confidentially as it discusses issues related to a person who was granted protective measures by Pre-Trial Chamber II and the Chamber. The Defence shall submit a heavily redacted version of this request contemporaneously and a lesser redacted version after the visit to ensure publicity of the record of the case while limiting the chance that the persons identified herein remain confidential.

III. PROCEDURAL HISTORY

5. On 5 June 2015, the Office of the Prosecutor ('Prosecution') communicated to Single Judge Cuno Tarfusser about a request to restrict Dominic Ongwen's telephone communications at the ICC-DC.¹ Approximately 26 minutes later, the Single Judge orally ordered the Registrar to emplace interim restrictions on Mr Ongwen's telephone calls and in-person visits at the ICC-DC.²

¹ Pre-Trial Chamber II, *Order concerning a request by the Prosecutor under regulation 101(2) of the Regulations of the Court*, [ICC-02/04-01/15-242](#), para. 1.

² *Ibid.*

6. On 8 June 2015, the Single Judge ordered the Prosecution's written request to be reclassified as public, a redacted version of the annex to be published to the Defence as a confidential redacted version and order the Defence to make submissions on the interim measures and the request within five (5) days of the notification of the confidential redacted annex.³
7. On 15 June 2015, the Defence responded to the Prosecution's request for measures pursuant to Regulation 101 of the RoC.⁴
8. On 24 June 2015, the Single Judge issued a decision on the Prosecution's request for measures pursuant to Article 57 of the Statute and Regulation 101(2) of the RoC.⁵ The Single Judge order the Registrar to file a confidential *ex parte*, Pre-Trial Chamber II only, summary of the phone conversations in question.⁶ The Single Judge continued the interim communication restrictions until a later time that the summary of the phone conversations was submitted.
9. On 13 July 2015, the Single Judge ordered that six (6) sound recordings be made available to the Defence and Prosecution on a confidential basis and that the Prosecution submit observations on the necessity of the continuation of the interim communication restrictions by 15 July 2015 at 12h00.⁷
10. On 3 August 2015, the Single Judge continued restrictions on Mr Ongwen's communication capabilities, but relaxed the regime to require that all non-privileged persons be approved by the Single Judge.⁸
11. On 30 May 2016, Presiding Judge Bertram Schmitt ('Presiding Judge') maintained the communication restrictions emplaced on Mr Ongwen, but added the additional requirement that any request to add someone to Mr Ongwen's non-privileged telephone call list or non-privileged visitor list must be made to the Chamber with the Prosecution in copy.⁹ The Chamber

³ *Ibid*, paras 4-5.

⁴ Pre-Trial Chamber II, *Public Redacted Defence Response to the Prosecutor's Request under Article 57 and Regulation 101 of the Regulations of the Court*, [ICC-02/04-01/15-248-Red](#).

⁵ Pre-Trial Chamber II, *Decision on a request by the Prosecutor under article 57 of the Rome Statute and regulation 101(2) of the Regulations of the Court*, [ICC-02/04-01/15-254](#).

⁶ *Ibid*, para. 8.

⁷ Pre-Trial Chamber II, *Second decision on a request by the Prosecutor under article 57 of the Rome Statute and regulation 101(2) of the Regulations of the Court*, [ICC-02/04-01/15-267](#), p. 5.

⁸ Pre-Trial Chamber II, *Decision concerning the restriction of communications of Dominic Ongwen*, [ICC-02/04-01/15-283](#), p. 8.

⁹ Trial Chamber IX, *Decision on issues related to the restrictions of communication of Dominic Ongwen*, [ICC-02/04-01/15-450-Red](#), para. 4.

would decide on whether someone was added only if the Prosecution objected to the addition of the person to either list.¹⁰

12. On 21 July 2016, the Presiding Judge maintained the communication restrictions emplaced on Mr Ongwen in its decision of 30 May 2016.¹¹
13. On 26 February 2020, in response to the Defence's closing brief,¹² the Chamber ordered the Parties and Participants to file observations on the release and continued necessity of the communication restrictions.¹³
14. On 16 April 2020, after hearing observations from the Parties and Participants¹⁴, the Chamber rendered its decision on the communication restrictions of Mr Ongwen. The Chamber determined that there were changed circumstances under Article 58(1)(b)(ii) of the Statute.¹⁵ The Chamber noted that the contact restrictions with persons called as witnesses by the opposing party or participant would remain in effect, and that any contact with said persons must adhere to that protocol.¹⁶ The Chamber also noted the wishes of the persons who testified pursuant to Article 56 of the Statute.¹⁷ The Chamber lifted the communication restrictions emplaced on Mr Ongwen,¹⁸ noting though that restrictions still applied for the witnesses who testified pursuant to Article 56 of the Statute¹⁹ and who testified for the opposing party and participant.²⁰ Finally, the Chamber stated that, "[s]hould any of the Article 56 Witnesses who

¹⁰ *Ibid.*

¹¹ Trial Chamber IX, *Decision on the Review of Dominic Ongwen's Detention and on the Restriction on Communication*, [ICC-02/04-01/15-503](#), para. 17.

¹² Trial Chamber IX, *Public Redacted Version of 'Corrected Version of "Defence Closing Brief", filed on 24 February 2020'*, [ICC-02/04-01/15-1722-Corr-Red](#), paras 731 and 733.

¹³ Email from Trial Chamber IX to Parties and Participants, *responses for relief requested in paragraph 731 of the Defence Closing Brief*, received on 26 February 2020 at 19h09 CET.

¹⁴ Trial Chamber IX, *CLRV Observations on the Defence Request seeking the release of the Accused and on current restrictions on communication and/or contacts*, [ICC-02/04-01/15-1728](#); *Prosecution's response to Defence's request for immediate release of the Accused pending judgment*, [ICC-02/04-01/15-1729](#); *Victims' response the [sic] Defence's request for immediate release of the Accused pending judgement [sic]*, [ICC-02/04-01/15-1730](#); *Defence Omnibus Response to Prosecution [sic] and Participants on Ending Communication Restrictions on Mr Ongwen Following the Closing Arguments*, [ICC-02/04-01/15-1731](#).

¹⁵ Trial Chamber IX, *Decision on the Defence Request for Immediate Release and the Communication Restrictions Applying to the Accused*, [ICC-02/04-01/15-1733-Corr](#), para. 25 (noting that the decision was issued on 16 April 2020, but a corrigendum was filed the following day) ('Decision 1733').

¹⁶ *Ibid.*, paras 37-38.

¹⁷ *Ibid.*, paras 39-40.

¹⁸ *Ibid.*, paras 41-42.

¹⁹ *Ibid.*, paras 39-40 and 43.

²⁰ *Ibid.*, paras 37-38.

previously declined communication contact the accused out of her own volition the Defence shall bring this to the attention of the parties and participants and the Chamber.”²¹

15. On 20 April 2022, the Defence and CLRV convened a meeting. During the meeting, the Defence informed the CLRV that the Defence had been told that [REDACTED] wished to visit Mr Ongwen at the ICC-DC. The Defence also informed the CLRV that [REDACTED] wished to visit Mr Ongwen. The Defence requested the CLRV and her team to inquire whether the information about [REDACTED] wanting to visit Mr Ongwen at the ICC-DC was true. The Defence informed the CLRV that if it was true, it would be willing to write to the Chamber to request the lifting of the communication restrictions related to [REDACTED].
16. On 16 May 2022, the CLRV confirmed *via* email that [REDACTED] wish to visit Mr Ongwen at the ICC-DC.²² The CLRV offered help with meeting [REDACTED] and beginning the arrangements for travel, which the Defence happily accepted.
17. On 17 May 2022, the Defence informed a representative of the Prosecution of its intent to request the lifting of the communication restrictions for [REDACTED].²³

IV. SUBMISSIONS

18. As ordered by the Chamber,²⁴ when the Defence heard of this news, it convened a meeting with the CLRV about [REDACTED] with the *Professional Code of Conduct for counsel*,²⁵ the *Mechanism for exchange of information on individuals enjoying dual status* (‘Protocol’)²⁶ and the *Protocol on the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant* (‘Protocol’).²⁷ After said meeting, the CLRV undertook steps to confirm the news. After confirming the news, the CLRV took appropriate and necessary steps to inquire with [REDACTED] about additional measures to aid [REDACTED] to visit Mr Ongwen.

²¹ *Ibid*, para. 39.

²² Email from CLRV to Defence, *Visit by* [REDACTED], received on 16 May 2022 at 14h43 CET.

²³ Phone call from Defence to Prosecution on 17 May 2022 at 15h56 CET.

²⁴ Decision 1733, para. 37.

²⁵ See Article 28 of the Code of Professional Counsel for counsel.

²⁶ Trial Chamber IX, *Mechanism for exchange of information on individuals enjoying dual status* (‘Protocol’), [ICC-02/04-01/15-504-Anx2](#), para. 5(a).

²⁷ Pre-Trial Chamber II, *Protocol on the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant*, [ICC-02/04/01/15-339-Anx](#), paras 26-30.

19. The CLRV offered her assistance with meeting [REDACTED].²⁸ The Defence agrees that this would be advantageous as securing the necessary documentation shall require some movement within [REDACTED], and persons are usually more comfortable to do this with known persons. Furthermore, [REDACTED].²⁹ [REDACTED].³⁰
20. As the Chamber ordered, the Defence undertook proper steps in conjunction with the CLRV to ensure that the Protocol was followed. Furthermore, after receiving news and confirming the modalities with the CLRV, the Defence contacted the Prosecution and informed it of news and that this request would be forthcoming.³¹
21. The Defence requests the Chamber to remove the communication restrictions in respect to [REDACTED] so that she may be allowed to travel to The Hague and visit Mr Ongwen [REDACTED]. The visits would of course comply with the Regulations of the Registry, which the Chamber reminded Mr Ongwen about in Decision 1733,³² and comply with all the requirements at the ICC-DC.
22. The Defence affirms that it shall keep the CLRV and Prosecution abreast of the processes involved in the travel arrangements, including, but not limited to, securing identification documents, arrangements for travel, the location where [REDACTED] shall stay while in The Hague, and the arrangements for them departing The Hague and returning home.

V. REQUESTED RELIEF

23. The Defence Team for Dominic Ongwen respectfully requests Trial Chamber IX to lift the communication restrictions currently emplaced on Mr Ongwen in relation to [REDACTED] so that his Defence, along with help from the CLRV and her team, can collect the necessary documents for [REDACTED] to travel to the ICC-DC to have a family visit with Mr Ongwen.

Respectfully submitted,

²⁸ Email from CLRV to Defence, *Visit by* [REDACTED], received on 16 May 2022 at 14h43 CET.

²⁹ *Ibid.*

³⁰ Email from Defence to CLRV, *Re: Visit by* [REDACTED], sent on 16 May 2022 at 14h50 CET.

³¹ Phone call from Defence to Prosecution on 17 May 2022 at 15h56 CET.

³² Decision 1733, para. 41 (*noting* the normal restrictions emplaced by Regulations 173-174 of the Regulations of the Registry).



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Chief Charles Achaleke Taku
On behalf of Dominic Ongwen

Dated this 14th day of June, 2022
At The Hague, Netherlands