

**PUBLIC REDACTED
VERSION OF

ANNEX C**

**Detained Person's Complaint to the Registrar****FORM 2**

PART A – To be completed by the Detained Person (if he or she refuses or is unable to fill in this form, the Chief Custody Officer should do so for her/him.)

1. Personal details

Full name (First and last names)	Dominic Ongwen
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2. I declare that I am not satisfied with the decision of the Acting Chief Custody Officer to my complaint dated after CoB on 10 February 2021 on the matter of the violation of my fundamental human right to a family life and the racial discrimination caused by this violation and wish to apply for a review from the Registrar on this matter for the following reason(s): [Use Additional Sheets if required]

INTRODUCTION

1. Pursuant to Regulation 219(1) of the Regulations of the Registry ('RoR'), the Defence Team for Mr Ongwen ('Defence') requests review by the Registrar of the 10 February 2021 decision ('Impugned Decision') by the Acting Chief Correctional Officer ('Acting CCO') regarding Mr Ongwen's 26 January 2021 complaint ('Complaint'). A copy of the Complaint, along with the Impugned Decision, is attached to the email containing this request for review ('Request').
2. The Defence requests, on Mr Ongwen's behalf, that Mr Ongwen receive one video-conference call per month to family members for 90 minutes because of the prolonged nature of the Pandemic. With respect, the Defence demands that the calls start by 26 February 2021.
3. Pursuant to Regulation 217(3)(a) of the RoR, the Defence has prepared this document for Mr Ongwen after consultations with Mr Ongwen.

CONFIDENTIALITY

4. Pursuant to Regulation 219(1) of the RoR in conjunction with Regulation 218(2) of the RoR, the Defence files this complaint **CONFIDENTIAL**. While this request for review is directed to Registrar Lewis, the Defence extends the confidentiality to the Registrar's immediate staff, the Director of DJS Marc Dubuisson and Mr Dubuisson's immediate staff. The Defence notifies the Registrar that if this Request is rejected and review is requested to the Presidency, it shall be proposing public redacted versions of all documents.

PROCEDURAL HISTORY

5. On or around 12 March 2020, former ICC-DC Chief Correctional Officer Paddy Craig ('Former CCO') spoke with Mr Thomas Obhof about: 1) the upcoming visits by Acholi personalities present for the closing statements in Mr Ongwen's case; 2) the scheduled family visit by [REDACTED] with Mr Ongwen; and 3) the impending closure of the ICC-DC to all visitors stemming from the SARS-CoV-2 pandemic ('Pandemic'). This conversation happened outside the employee entrance to the ICC-PP.
6. On 13 March 2020, Mr Ongwen had his last non-privileged visit at the ICC-DC. Since this date, Mr Ongwen has only met with his Counsel and Assistant to Counsel on 4 February 2021. He has not had a family visit in over two years.
7. Also on 13 March 2020, Mr Obhof was informed by ICC-DC personnel at the end of the non-privileged meeting between Mr Ongwen and two Acholi personalities that the ICC-DC would be closed to all visitors, including Counsels, because of the Pandemic.
8. On 19 March 2020, the ICC-DC sent a communication to Counsels about the urgent enactment of emergency procedures because of the Pandemic.¹ Emergency procedures are still in place today.²
9. On 26 January 2021, the Defence filed the Complaint.
10. On 3 February 2021, the Defence sent to the Acting CCO a copy of Trial Chamber V's "Decision on Non-Privileged Video-Conferencing at the Detention Centre."³ The Defence wrote, *"I attach the public redact version of a decision issued by Trial Chamber V for your perusal in relation to this current complaint lodged by Mr Ongwen about video-conferencing. I look forward to the response as soon as possible, but of course, by the latest, next Tuesday."*⁴

¹ Email from Etienne Mbumoko of the ICC-DC to Mylène Dimitri, Melinda Taylor, Jan-Geert Knoops, Stephane Bourgon, Krispus Ayena Odongo, Thomas Obhof, Marie-Hélène Proulx, Sarah Bafadhel, [REDACTED] and Paddy Craig, *Urgent – New DC temporary measures regarding COVID-19*, received on 19 March 2020 at 15h15 CET.

² Email from [REDACTED] of the ICC-DC to Stephane Bourgon, Cyril Laucci, Ongwen Defence, Yekatom Defence, Ngaïssona Defence and Al Hassan Defence, *Notice of extension of DC COVID-19 Temporary Measures*, received on 16 February 2021 at 13h03 CET.

³ Email from Thomas Obhof to Harry Tjonk, *RE: Regulation 217(1) Complaint – Dominic Ongwen*, sent 3 February 2021 at 16h06 CET.

⁴ *Ibid.*

11. On 10 February 2021 after 16h00 CET, the Acting CCO gave his response to the Complaint.⁵

SUBMISSIONS

Inclusion of the Arguments in the Complaint

12. The Defence incorporates by reference the arguments advanced in the Complaint.

The Registry has a Positive Obligation to Facilitate Family Visits

13. “[W]ith regard to family visits, the [...] [Court has a] positive obligation to provide for an effective right to family visits and the Registry’s duty to give specific attention to visits by family of the detained persons with a view to maintaining such links, under Regulation 100(1) of the Regulations and Regulation 179(1) of the Registry Regulations.”⁶ Unfortunately, the Acting CCO either failed to read the courtesy copy of Trial Chamber V’s decision in *Yekatom & Ngaïssona*, or he failed to understand the plain language of Judge Schmitt’s decision in relation to the Registry’s duty toward the ICC-DC detainees’ fundamental rights.
14. Judge Schmitt decided that the current plan of Registrar Lewis and Director Dubuisson in allowing a one-hour video-call every four months fails to fulfil the Registrar’s obligations to a prisoner’s right to family life.⁷ Although the Acting CCO alleges that the Registry is “working hard” on this issue, Trial Chamber V nonetheless found that the present situation constitutes ineffective protection of a detainee’s rights.⁸
15. Firstly, Mr Ongwen no longer has restrictions imposed other than contacting P-99, P-101, P-214/D-10, P-226, P-227 and P-235/D-4.⁹ Mr Ongwen is free to call anyone on his call list, and the aforementioned persons are not on that list.¹⁰ The human costs and person-power described by the Acting CCO are no longer valid issues to be considered.¹¹
16. Secondly, the Defence notes paragraph 12 of Judge Schmitt’s decision in *Yekatom & Ngaïssona* where “the Detention Centre Policy on Family Visits, detainees are ordinarily

⁵ The Defence notes that pursuant to Regulation 217(6) of the RoR, the time limits follow Regulation 33 of the RoC. As the Impugned Decision was signed by the Acting CCO at 17h06 CET, the Impugned Decision is considered received on 11 February 2021.

⁶ Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 10 (citing Presidency, *Decision on “Mr Mathieu Ngudjolo’s Complaint Under Regulation 221(1) of the Regulations of the Registry Against the Registrar’s Decision of 18 November 2008”*, [ICC-RoR217-02/08-8](#).)

⁷ Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 11.

⁸ Compare *ibid* with Impugned Decision, para. 12.

⁹ See Trial Chamber IX, *Corrected version of Decision on the Defence Request for Immediate Release and the Communication Restrictions Applying to the Accused*, [ICC-02/04-01/15-1733-Corr](#), p. 14 (noting paras 37 and 39).

¹⁰ *Ibid*.

¹¹ See Impugned Decision, para. 12.

entitled to receive ‘a minimum of one visit in each two-week period’ of ‘no less than one [...] hour’ (*i.e.* at least two hours of visits every month). The Single Judge, while mindful that Video-Conferencing cannot be fully equated to in-person visits, considers this policy instructive in assessing the appropriate frequency and duration of Video-Conferencing.”¹²

17. Thirdly, as argued in the Complaint,¹³ Judge Schmitt noted that other tribunals in the same building/facility have been able to implement video-conferencing between detainees and their families during the Pandemic with a higher frequency than that proposed by the Registry.¹⁴ The fact that the Acting CCO knew or should have known of Judge Schmitt’s decision in *Yekatom & Ngaïssona*, and that he stated that a policy was forthcoming – one which the Defence is aware of and noted in the Complaint¹⁵ – further demonstrates a lack of equality of treatment between detainees.¹⁶ The timeline and frequency noted in the Complaint and Impugned Decision are not compatible with fundamental human rights.¹⁷
18. Fourthly, additional resources for these contacts shall be minimal, if existent at all.¹⁸ Mr Ongwen no longer has restrictions on his calls made to his non-privileged phone list.¹⁹ For the purpose of the visits, the persons need only to download [REDACTED] smart phone or a computer. For this, it is noted that Counsel [REDACTED]
[REDACTED]
[REDACTED]. If problems arise because of the lack of a smart phone, the family member who wish to speak with Mr Ongwen can use the computer of a team member to speak with him [REDACTED].
19. The Defence knows that there are connection problems in Northern Uganda, but there are places where the family can go to speak on a fast internet connection. Considering the frequency of the calls, arrangements can be made so these connections can be made available to the families.²⁰
20. Finally, the issue of recording non-privileged phone calls can easily be done [REDACTED]
[REDACTED]. This platform allows for the host to record the meeting and save the file. While this would create a small amount of work for the correctional officers, it is minimal considering the fundamental rights being denied to Mr Ongwen.

¹² Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 13.

¹³ See Complaint, paras 8-11 and 23-29.

¹⁴ Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 14.

¹⁵ Complaint, para. 11.

¹⁶ Impugned Decision, para. 19.

¹⁷ See Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#).

¹⁸ See Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 15.

¹⁹ See *supra*, fn. 9 and para. 15.

²⁰ [REDACTED]
[REDACTED]

21. For the abovementioned reasons, and for those stated in the Complaint, the Defence requests the Registrar to overturn the Impugned Decision and grant Mr Ongwen one video-conference call to a family member(s) on his non-privileged phone call list per month lasting 90 minutes.²¹ This is equal to what Mr Yekatom and Mr Ngaïssona received from Trial Chamber V. The Defence respectfully demands that the video-conferencing begins immediately, just as for Mr Yekatom and Mr Ngaïssona (26 February 2021).

Discrimination against Mr Ongwen

22. The Defence stands behind its submission about the policy at the ICC-DC causing discrimination. Again, the Acting CCO radically misinterpreted what the Defence wrote when he wrote that, “[t]he Defence appears to alleges [sic] discrimination against Mr Ongwen on the basis that the ICC is the same institution as the other international detention facilities with “white Europeans” detained persons who may provide video-conferencing.”²² This is factually incorrect. The Defence acknowledged that they are different facilities, but that all the facilities, ICC-DC, KSC-DF and UNDU, are supposed to operate with the highest standards and care for human rights and there are marked differences between the facilities in relation to family visits.²³

23. With respect, the Acting CCO misses the point. Mr Ongwen sees white Europeans use the elevator when he – a person with a physical disability – cannot. Mr Ongwen sees so-called African food being delivered to his cell – which was not African – while the white Europeans get their normal food. Mr Ongwen learns from his Defence Team that there is *prima facie* evidence that the persons of colour at the ICC-DC are being charged significantly increased prices for food grown in the European Union and marketed as “African”. Mr Ongwen is called a “fucking African” during a cell extraction.²⁴ Now, Mr Ongwen hears that white Europeans can make video-calls to their families, but the persons of colour in the ICC-DC have to continuously fight for their fundamental rights. What is Mr Ongwen supposed to think?

24. The Defence alleges that the discrimination was caused by the rules put in place and not because of discriminatory intent, and as explained in the Complaint, is irrelevant whether there is intent or discrimination caused by a rule. The Defence used the September 2016 incident to help the Acting CCO understand why Mr Ongwen – and the other detainees – feels discrimination against their person.

25. Mr Ongwen is being discriminated against by the failure of the Registry to implement

²¹ The Defence uses family members because he could talk to [REDACTED] all on the same call.

²² Impugned Decision, para. 13.

²³ Complaint, paras 27-28.

²⁴ Presidency, *Defence Request for Review of a Decision on a Complaint Pursuant to Regulation 220(1) of the Regulations of the Registry*, ICC-RoR220-01/16-1-Conf-Exp, paras 8 and 12.

measures to protect fundamental rights of Mr Ongwen while trying to combat against the problems caused by the Pandemic. The Defence requests that Mr Ongwen receive the same treatment as Mr Yekatom and Mr Ngaïssona immediately *vis-à-vis* video-conferencing with his family.

Factual Inaccuracy made by the Acting CCO

26. Paragraph 11 of the Impugned Decision states that Mr Ongwen's family visit, rescheduled from January 2020 to March 2020, was cancelled because of missing documents. This is not true. [REDACTED] scheduled for an interview to finish having her passport made when Mr Ongwen instructed his Defence Team to cancel the visit because of the Pandemic. Mr Obhof conveyed this to the Former CCO on or about 12 March 2020 during the discussion noted in paragraph 5 above. The Former CCO was made aware that Mr Ongwen was likening the virus causing the Pandemic to Ebola virus, a virus which Mr Ongwen has personally witnessed, and did not want his family to come to the Netherlands because of the rapid increase in the number of cases happening which were reported to him by his Defence Team and the media.
27. Paragraph 17 of the Impugned Decision stated that the Defence did not raise the issue of Mr Ongwen being called a "fucking African" in September 2016 with the Registrar. In fact, the Defence did. On 14 October 2016, the Defence attempted to file with CMS a complaint to the Registrar. CMS told the Defence to file it with the Presidency, even though the body of the request is written to the Registrar.²⁵ The Defence complained to the Registrar about the language used against Mr Ongwen.²⁶ The Defence is attempting to find records to show that the Former CCO informed the Defence that an investigation was performed about this incident, but because of the closure of the ICC-PP, the Defence does not have access to all these records. When found, the Defence shall convey these to the Registrar if requested.

Requested Relief

28. For the abovementioned reasons, the Defence requests that Mr Ongwen receive one video-conference call per month to family members for 90 minutes. With the highest respect, the Defence demands that the calls start by 26 February 2021 as ordered by Trial Chamber V in *Yekatom & Ngaïssona*.

²⁵ Presidency, *Defence Request for Review of a Decision on a Complaint Pursuant to Regulation 220(1) of the Regulations of the Registry*, ICC-RoR220-01/16-1-Conf-Exp, paras 8 and 12.

²⁶ The Defence admits though that the citation must have been deleted accidentally from the Complaint.

Signature of
Detained Person

Date

18 February 2021

Signature of CCO
or Delegated
Official

Date

**** This document has been digitally signed by Mr Ongwen's Defence Team.**

PART B – To be completed by the Detained Person (Or signed by the Officer who witnesses the informing process if he/she refuses. In this case the Officer should also write his/her name in CAPITAL LETTERS below the signature).

I am aware of the decision taken by the Registrar with regard to my complaint dated _____ and the reasons for it.

I understand that if I am not satisfied with the decision taken by the Registrar, I am entitled to address the Presidency on this matter.

I understand that I have the right to raise any concerns with regard to any matters related to my detention, at any time during an inspection of the Detention Centre by the independent inspecting authority.

Signature of
Detained Person

Date

Signature of
Detention Official

Date

