

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 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 Redacted Version of

**Decision on the Defence Request for an Alteration of the Contact Restrictions on
Dominic Ongwen**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:**The Office of the Prosecutor**

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Trial Chamber IX of the International Criminal Court (the ‘ICC’ or the ‘Court’), in the case of *The Prosecutor v. Dominic Ongwen* (the ‘Ongwen case’), having regard to articles 64(2) and 64(6)(f) of the Rome Statute (‘Statute’), regulation 100 of the Regulations of the Court (‘Regulations’), and regulations 179 to 185 of the Regulations of the Registry, issues the following Decision on the Defence Request for an Alteration of the Contact Restrictions on Dominic Ongwen (‘Decision’).

I. PROCEDURAL HISTORY

1. On 24 June 2015, the Single Judge of Pre-Trial Chamber II (‘Pre-Trial Single Judge’) issued a decision allowing temporary restrictions to Mr Dominic Ongwen (‘Mr Ongwen’) telephone communications.¹ On 3 August 2015, the Pre-Trial Single Judge issued a further decision,² indicating that there was a reasonable suspicion that Mr Ongwen attempted to influence potential witnesses via telephone³ and ordered the implementation of a system of restricted communications and monitoring of all non-privileged telephone calls.⁴

2. On 30 May 2016, the Single Judge of Trial Chamber IX issued a decision, determining that the contact restrictions remained warranted and instructing a procedure for adding names to the lists of persons that Mr Ongwen was permitted to contact over the phone.⁵ On 21 July 2016, the Chamber issued a decision confirming the need to maintain the communications restrictions.⁶

3. On 17 April 2020, the Chamber issued a decision on, *inter alia*, Mr Ongwen contact restrictions regime (‘Decision on communication restrictions’),⁷ whereby it assessed the need and proportionality of maintaining it at a stage of the proceedings where the principal concern against the lifting of restrictions was already addressed in other ways.⁸ In particular, regarding witnesses who testified under Article 56 of the Statute (‘Article 56 Witnesses’), the Chamber noted that there exists a protocol regulating contacts between a party and witnesses called by

¹ 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, 24 June 2015, [ICC-02/04-01/15-254](#).

² Pre-Trial Chamber II, Decision concerning the restriction of communications of Dominic Ongwen (‘Pre-Trial Decision on communications restrictions’), 3 August 2015, [ICC-02/04-01/15-283](#).

³ Pre-Trial Decision on communications restrictions, [ICC-02/04-01/15-283](#), para. 12.

⁴ Pre-Trial Decision on communications restrictions, [ICC-02/04-01/15-283](#), para. 15 and p. 8.

⁵ Decision on issues related to the restriction of communications of Dominic Ongwen, 30 May 2016, ICC-02/04-01/15-450-Conf (public redacted version filed on the same day, [ICC-02/04-01/15-450-Red](#)).

⁶ Decision on the Review of Dominic Ongwen’s Detention and on the Restriction on Communication, 21 July 2016, [ICC-02/04-01/15-503](#), para. 17.

⁷ Decision on the Defence Request for Immediate Release and the Communication Restrictions Applying to the Accused (‘Decision on communication restrictions’), 17 April 2020, [ICC-02/04-01/15-1733-Corr](#).

⁸ Decision on communication restrictions, [ICC-02/04-01/15-1733-Corr](#), paras 34-35.

the opposing party or a participant ('Protocol'),⁹ which applied and had been followed by Mr Ongwen and the Defence.¹⁰ The Chamber further stressed that '[s]hould any of the Article 56 Witnesses who 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'.¹¹ Considering the above, the Chamber determined that the continuation of the contact restriction regime was not necessary and ordered it to be lifted, although noting that it could be re-instated should there be indications that either the Protocol or the regime prescribed by the statutory framework was not followed.¹²

4. On 9 June 2022, the Defence submitted a Request for an Alteration of the Contact Restrictions on Dominic Ongwen ('Request'), asking the Chamber to remove the communication restrictions between [REDACTED] and Mr Ongwen, allowing [REDACTED] to visit him at the ICC Detention Centre [REDACTED].¹³ The Defence notes that, in compliance with the Chamber's orders, it had communicated with the Common Legal Representative of Victims ('CLR') and, in a coordinated manner, they have taken steps to ensure that the Protocol and the statutory framework was indeed followed.¹⁴

5. On 10 June 2022, the Prosecution informed the Chamber that it does not plan to file a response, and does not oppose the modification of Mr Ongwen's communication restrictions to the extent necessary to allow the proposed visit by [REDACTED].¹⁵

6. On 13 June 2022, the CLR submitted its Response to 'Defence Request for an Alteration of the Contact Restrictions on Dominic Ongwen' ('Response'), indicating that, taking into account the wish of the individual concerned, varying the restrictions on communication between [REDACTED] and Mr Ongwen is justified in the present circumstances.¹⁶

⁹ Annex to the Order concerning the modalities for the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant, 11 November 2019, [ICC-02/04-01/15-339-Anx](#).

¹⁰ Decision on communication restrictions, [ICC-02/04-01/15-1733-Corr](#), paras 37-39.

¹¹ Decision on communication restrictions, [ICC-02/04-01/15-1733-Corr](#), para. 39.

¹² Decision on communication restrictions, [ICC-02/04-01/15-1733-Corr](#), para. 41.

¹³ Defence Request for an Alteration of the Contact Restrictions on Dominic Ongwen ('Request'), 9 June 2022, ICC-02/04-01/15-2002-Conf (public redacted version filed on 14 June 2022, [ICC-02/04-01/15-2002-Red2](#)).

¹⁴ Request, [ICC-02/04-01/15-2002-Red2](#), paras 18-22.

¹⁵ Email to Trial Chamber IX Communication inbox, Friday 10 June 2022, at 13:33.

¹⁶ CLR's Response to "Defence Request for an Alteration of the Contact Restrictions on Dominic Ongwen" ('Response'), 13 June 2022, ICC-02/04-01/15-2004-Conf (public redacted version filed on the same date, [ICC-02/04-01/15-2004-Red](#)).

II. ANALYSIS

7. At the outset, the Chamber notes that in its Decision on communication restrictions it lifted the contact restrictions imposed on Mr Ongwen. Nevertheless, as noted therein, the lifting of restrictions does not entail that Mr Ongwen can freely contact any person, the Protocol and the regime prescribed by the Court's statutory framework should be always followed.¹⁷ The case at hand, therefore, does not refer to whether communication restrictions should be lifted, but as to whether contact between the convicted person and witnesses of the other parties and participants complies with the Protocol and the statutory framework.

8. As noted in the Decision on communication restrictions, the convicted person and the Defence needs the consent of the witnesses in order to contact them and any contact must take place in accordance with paragraphs 26 to 30 of the Protocol, including the consent of the Prosecution and the victim's representative, if applicable.¹⁸ Since all Article 56 Witnesses had been contacted on this matter and submitted their – largely negative – response, the Chamber clearly indicated that any further attempts to contact these persons, would be contrary to the Protocol, the Chamber's decisions, and the Defence's own assurances.¹⁹ Accordingly, it ruled that '[s]hould any of the Article 56 Witnesses who 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.'²⁰

9. In the case at hand, the Defence and the CLRV indicate that it is indeed out of [REDACTED]'s own volition that they request authorisation for [REDACTED] to visit Mr Ongwen at the detention centre.²¹ The Prosecution does not oppose the Request.²² Accordingly, the Chamber is satisfied that contact between the convicted person and [REDACTED] can be arranged as the relevant Protocol has been complied with.

10. Regarding the proper authorisation and logistics for the visit, the Chamber reminds the Defence that the Regulations of the Registry provide the framework whereby applications to visit a detained person must be made by the prospective visitor to the Registrar, and shall take place in accordance with the procedures outlined in regulations 179 to 185 of the Regulations of the Registry and, where applicable, with the relevant rules for [REDACTED].

¹⁷ Decision on communication restrictions, [ICC-02/04-01/15-1733-Corr](#), paras 39-43.

¹⁸ Decision on communication restrictions, [ICC-02/04-01/15-1733-Corr](#), para. 37.

¹⁹ Decision on communication restrictions, [ICC-02/04-01/15-1733-Corr](#), para. 39.

²⁰ Decision on communication restrictions, [ICC-02/04-01/15-1733-Corr](#), para. 39.

²¹ Request, ICC-02/04-01/15-2002-Conf, paras 18-19; Response, ICC-02/04-01/15-2004-Conf, paras 6-7.

²² Email to Trial Chamber IX Communication inbox, Friday 10 June 2022, at 13:33.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request, to the extent that contact between the convicted person and [REDACTED] can be arranged as the relevant Protocol has been complied with; and

REMINDS the Defence that, for the visit to take place, it should comply with the framework provided for in the Regulations of the Registry and, where applicable, with the relevant rules for [REDACTED].

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated this Thursday, 16 June 2022

At The Hague, The Netherlands