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

Date: 12 July 2016

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***

Public

Public redacted version of “Request for an order that Mr Ongwen cease and disclose payments to witnesses and that the Registry disclose certain calls made by Mr Ongwen”, 24 June 2016, ICC-02/04-01/15-482-Conf

Source: The Office of the Prosecutor

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

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Other

Introduction

1. The Office of the Prosecutor (“Prosecution”) requests the Chamber to order:
 - a. the Defence to immediately disclose all financial or in-kind payments or promises of money made by Dominic Ongwen to witnesses in this case;
 - b. Mr Ongwen to cease payments to such individuals¹ pursuant to article 70² of the Rome Statute (“Statute”); and
 - c. the Registry to review Mr Ongwen’s communications that reference [REDACTED] and disclose these conversations to the Prosecution for review regarding possible article 70 violations.

Submissions

2. As outlined in the Prosecution response to the “Defence Request for Conditional Release, or in the Alternative, the Restoration of Mr Ongwen’s Communication Privileges,” filed concurrently with this request, during a 30 March 2016 phone call that was ultimately terminated by the Registrar, Mr Ongwen directed that certain payments be made to Prosecution witnesses and potential witnesses in this case³ and that the conversation be recorded and played to third parties.⁴
3. Payments were directed to [REDACTED]⁵, [REDACTED]⁶ [REDACTED]⁷, [REDACTED]⁸ [REDACTED]⁹, and [REDACTED]¹⁰ [REDACTED]¹¹—all

¹ ICC-02/04-01/15-443-Conf-Exp-AnxII, lines 65-68.

² Article 70(1)(c) prohibits “[c]orruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence.”

³ See ICC-02/04-01/15-443-Conf-Exp-AnxII, lines 65-69.

⁴ ICC-02/04-01/15-443-Conf-Exp-AnxII, lines 39-41.[REDACTED] .

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

Prosecution witnesses or potential Defence witnesses in this case—and [REDACTED], and who is also a potential Defence witness in this case.¹²

4. Mr Ongwen stated that the payments to the “homes” of [REDACTED] and [REDACTED] were “to cultivate a relationship,”¹³ which indicates that Mr Ongwen may intend the receipt of such money to favorably affect the dispositions of these witnesses toward Mr Ongwen.
5. In reference to these payments, the Defence admitted that “Mr Ongwen gave Counsel 1,000 Euros from his savings, which he earned at the Detention Centre, to give to his family.”¹⁴ Using the term “his family” is a euphemism that attempts to downplay the seriousness of the conduct—this money was directed by Mr Ongwen toward Prosecution witnesses in this case [REDACTED].
6. The Prosecution submits that such payments, particularly when made *sua sponte* and without the knowledge of the Chamber or Prosecution, constitute witness interference of the nature prohibited by the Pre-Trial Judge¹⁵ and potentially an offence under article 70 of the Statute.¹⁶
7. The Prosecution requests the Chamber to direct Mr Ongwen to immediately cease such witness interference and to disclose for all witnesses and potential witnesses in this case: 1) all monies paid and 2) any promises of money made either directly or indirectly. This information is necessary to evaluate possible article 70 misconduct.

¹¹ [REDACTED].

¹² See ICC-02/04-01/15-257-Conf-Exp-Anx, line 2. [REDACTED].

¹³ ICC-02/04-01/15-443-Conf-Exp-AnxII, lines 65-66. 400,000 UGX is approximately 105 euro.

¹⁴ ICC-02/04-01/15-444-Conf-Exp-Red, para. 12.

¹⁵ ICC-02/04-01/15-283, pg. 8 (noting that Mr Ongwen’s calls should be limited to “private matters” that do not “involve issues concerning witnesses in the case” and that he should not interfere with or intimidate individuals who possess information relevant to the case).

¹⁶ See, e.g., ICC-01/05-01/13.

Relief requested

8. Based on the foregoing, the Prosecution respectfully requests that the Chamber order:

- a. the Defence to immediately disclose all financial or in-kind payments or promises of money made to witnesses in this case;
- b. Mr Ongwen to cease payments to such individuals¹⁷ pursuant to article 70 of the Rome Statute ("Statute"); and
- c. the Registry to review Mr Ongwen's communications that reference [REDACTED] and disclose these conversations to the Prosecution for review regarding possible article 70 violations.



Fatou Bensouda
Prosecutor

Dated this 12th day of July 2016
At The Hague, The Netherlands

¹⁷ ICC-02/04-01/15-443-Conf-Exp-AnxII, lines 65-68.