

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **17 March 2021**

**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**

**Defence Request to Reply to the “Prosecution’s response to the Defence request or an extension of time in which to file its sentencing brief”**

**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

**Counsel for the Defence**

Krispus Ayena Odongo

Chief Charles Achaleke Taku

Beth Lyons

**Legal Representatives of the Victims**

Joseph Akwenyu Manoba

Francisco Cox

**Common Legal Representative for Victims**

Paolina Massidda

**Unrepresented Victims****Unrepresented Applicants  
(Participation/Reparation)****The Office of Public Counsel for Victims**

Paolina Massidda

Caroline Walter

Orchlon Narantsetseg

**States' Representatives****The Office of Public Counsel for the  
Defence**

Xavier-Jean Keita

**Amicus Curiae****REGISTRY****Registrar**

Peter Lewis

**Counsel Support Section**

Esteban Peralta Losilla

**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations  
Section****Other**

Appeals Chamber

## I. INTRODUCTION

1. Pursuant to Regulation 24(5) of the Regulations of the Court ('RoC'), the Defence for Dominic Ongwen ('Defence') requests from Trial Chamber IX ('Chamber') to reply to the "Prosecution's response to the Defence request for an extension of time in which to file its sentencing brief" ('Prosecution Response').<sup>1</sup> Specifically, the Defence wishes to reply to the Prosecution's statement that:

The Defence Request suggests that the Prosecution has vast resources, but since the end of trial in March 2020, only five Prosecution lawyers work actively on this case, all of whom also work on other cases or situations. Meanwhile, no appellate lawyer is currently assigned full-time to this case. Consequently, the Defence resources noted in the Defence Request are not patently inadequate or out of proportion to the Prosecution resources assigned to the case.<sup>2</sup>

2. The Defence asserts that good cause exists to allow a reply as said statement is misleading and distorts the truth to the Chamber.
3. Should the Chamber allow a reply by the Defence, it shall be filed by 16h00 CET on 18 March 2021, and a courtesy copy shall be emailed to the Chamber, Parties and Participants.

## II. URGENCY

4. The Defence files this request to reply as URGENT. The Defence's reasonings are the same as noted in its original request.<sup>3</sup>

## III. SUBMISSIONS

5. The Defence asserts that it could not have reasonably foreseen such an argument by the Prosecution considering the manner in which funds are granted by the Assembly of State Parties ('ASP'), who has control of the disbursements of funds once granted by the ASP and that the Prosecution somehow thinks that the budgets of the Office of the Prosecutor and that of publicly funded defendants are in anyway comparable in this situation.

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<sup>1</sup> Prosecution Response, [ICC-02/04-01/15-1796](#).

<sup>2</sup> Prosecution Response, para. 5.

<sup>3</sup> Trial Chamber IX, *Defence Request for an Extension of Time to File its Sentencing Brief due to the Registrar's Violation of Mr Ongwen's Fair Trial Rights*, ICC-02/04-01/15-1791-Conf, para. 6.

6. Should leave to reply be granted, the Defence shall briefly discuss the difference between having resources and funds available to allocate – or misallocate – towards the case and not having resources or funds to allocate towards the case. There is a stark difference between what the Defence complained about, *i.e.* not having the available resources and funds for an adequate team, and about what is stated in the Prosecution Response, *i.e.* the Prosecutor's failure or refusal to allocate resources towards this case.
7. The Defence must operate as both trial team and appellate division. While the Prosecution acknowledges its appellate division, and apparently that someone is assigned part time on this case, the Prosecutor has complete control over the allocation of resources which are granted by the ASP, something which a publicly funded defendant does not have. The Prosecution neglects to acknowledge that the Defence is the Party which must act to file a notice of appeal and a document in support of appeal.<sup>4</sup>
8. Finally, the Defence shall outline for the Prosecutions edification why the Prosecutor's resource allocation is not in proportion to the resources formerly allocated to the Defence.<sup>5</sup> This comes at a time when the deadline for a notice of appeal by the Prosecution against the Trial Judgment has passed.<sup>6</sup>

#### IV. RELIEF

9. The Defence respectfully requests Trial Chamber IX to grant it the right to reply to the discreet issue, as noted above, in the Prosecution Response.

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<sup>4</sup> Appeals Chamber, Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation, [ICC-02/04-01/15-1781](#), para. 13 (*noting* that the Prosecution's due date for a notice of appeal on the Trial Judgment was not extended and has passed).

<sup>5</sup> The Defence notes here that it received a decision to its Regulation 83(3) request on 12 March 2021 after filing ICC-02/04-01/15-1791-Conf with Registry.

<sup>6</sup> Appeals Chamber, Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation, [ICC-02/04-01/15-1781](#), para. 13.

Respectfully submitted,



.....  
Hon. Krispus Ayena Odongo  
On behalf of Dominic Ongwen

Dated this 17<sup>th</sup> day of March, 2021

At Oyam, Uganda