

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **13 July 2016**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

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

Public

Defence Response to Prosecution Request ICC-02/04-01/15-496

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

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James Stewart, Deputy Prosecutor
Benjamin Gumpert, QC

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I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') responds to the 'Prosecution's Request for Leave to Reply to the "Defence Response to the Prosecution Filing ICC-02/04-01/15-482-Conf"' (Application).¹
2. The Defence requests Trial Chamber IX ('Chamber') to dismiss the Application for the following reasons:
 - a. Section IV(a) of the Defence response (*i.e.* paragraphs 17 and 18)² is a clear and cogent issue which the Chamber can easily decide without further intervention from the Prosecution and
 - b. The issue is one which the Prosecution should have foreseen.

II. SUBMISSIONS

- a) Prosecution intervention as to the interpretation of Regulation 35(2) of the Regulations of the Court is not warranted
3. The Defence proffered a clear and simple disagreement with the Prosecution Response. Paragraphs 17 and 18 state:
 17. The Chamber gave the Prosecution two (2) days from the notification of filings 443 and 444 to respond to the issues therein. The Prosecution has not requested additional time to file its Response.
 18. The Prosecution filed the Response 22 days past the 2 June 2016 filing date. Pursuant to Regulation 35(2) of the Regulations of the

¹ ICC-02/04-01/15-496.

² ICC-02/04-01/15-490-Conf.

Court, the Chamber should reject the Response for being filed past the filing without proper justification.³

4. These paragraphs convey a simple and concise issue about the interpretation of Regulation 35(2) of the Regulations of the Court. This is not a complex issue which warrants a reply. The submissions currently before the Chamber offer ample information for the Chamber to make a reason decision without further intervention.

b) The issue is one which the Prosecution should have foreseen

5. The substance of the Response contained references to filing 443 and 444 only. Defence asserts that it was completely foreseeable that this issue stated in paragraphs 17 and 18 of Defence filing 490-Conf could be raised by the Defence.
6. Merely because the Prosecution either failed to address the issue or cloaked it within another issue in its Response does not equate to a new discrete issue.⁴ Considering the content of the Response, it was easily foreseeable that the Defence would raise the issue in section IV(a) of Defence filing ICC-02/04-01/15-490-Conf.

III. CONCLUSION

7. The Defence respectfully requests the Chamber to dismiss the Prosecution Application.

³ ICC-02/04-01/15-490-Conf, paras 17-18.

⁴ ICC-02/04-01/15-496, para. 2.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 13th day of July, 2016

At Kampala, Uganda