

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 August 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 with Confidential Annex A

**Defence Notification Pursuant to Rules 79(2) and 80(1) of the Rules of Procedure
and Evidence**

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
Benjamin Gumpert, QC

Counsel for the Defence

Krispus Ayena Odongo
Chief Charles Achaleke Taku

Legal Representatives of the Victims

Joseph Akwenyu Manoba
Francisco Cox

Common Legal Representatives of the Victims

Paolina Massidda
Jane Adong

Unrepresented Victims

The Office of Public Counsel for the Victims

Paolina Massidda
Caroline Walter
Orchlon Narantsetseg

The Office of Public Counsel for the Defence

Xavier-Jean Keïta

Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Victims Participation and Reparations Section Other Section

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby notifies Trial Chamber IX ('Chamber'), the Prosecution and the Legal Representatives for Victims¹ that the Defence intends to raise the affirmative defence of duress during trial.

II. CONFIDENTIALITY LEVEL

2. Pursuant to Article 68(1) of the Rome Statute and Regulation 23bis(1) of the Regulations of the Court, the Defence files Annex A as confidential as it deals with witnesses designated as such.

III. SUBMISSIONS

3. The Defence hereby notifies the Chamber, Prosecution and Legal Representatives for Victims that the Defence intends to present an affirmative defence of duress at trial.
4. As required, attached as Confidential Annex A is a list of witnesses which the Defence intends to call or question about this affirmative defence. The Defence notes that this is a tentative list, and subsequent updated lists shall be filed every two months henceforth.
5. The Defence presents this affirmative defence of duress based on:
 - a. Any alleged acts committed during the temporal jurisdiction outlined by Pre-Trial Chamber II would have been committed under duress;
 - b. The duress would have been caused by Joseph Kony and his close advisors;

¹ The Defence uses this phrase to encompass both the Common Legal Representative for Victims and the Legal Representative for the Victims.

- c. The duress would have come from a continuing threat of imminent death and imminent threat of serious bodily harm against Mr Ongwen and against other persons which was beyond Mr Ongwen's control; and
 - d. Mr Ongwen's alleged intended conduct is not alleged to have caused a greater harm than the one which was avoided.
6. Even though it is not completely apparent, it appears that the duress described in Article 31(1)(d) is a justification form of duress.
 7. The Defence is presently examining whether the legal sources under Article 21 can support the existence of a total excusal form of duress defence under Article 31(3), and whether such a defence would be relevant to accusations brought by the Prosecution and the materials disclosed.
 8. Given the complexity of justification defences of duress and an excusal defence of duress, the Defence submits this notice pursuant to Rule 79(2) and Rule 80(1).

IV. CONCLUSION

9. The Defence hereby notifies the Chamber, Prosecution and Legal Representatives for Victims that the Defence intends to present an affirmative defence of duress pursuant to Articles 31(1)(d) and 31(3) at trial.

Respectfully submitted,



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

Dated this 9th day of August, 2016

At Lira, Uganda