

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/04-01/15
Date: 8 November 2018

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 the “Prosecution’s Urgent Request for Call Data on Communications between the Accused and Defence Witness D-0006”, ICC-02/04-01/15-1383-Conf, filed on 26 October 2018

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo
Mr Charles Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution requests the Trial Chamber to order, pursuant to article 64(6)(f) of the Rome Statute and regulation 92(3) of the Regulations of the Court, the Detention Unit to provide the Chamber and the Parties and participants with the call data of any telephone communication between the Accused and Defence Witness [REDACTED](D-0006).

Confidentiality

2. This Request is classified as confidential pursuant to regulation 23*bis* of the Regulations of the Court, because it, *inter alia*, contains the name and other personal information of a witness who has been granted protective measures.¹ The Prosecution will also file a public redacted version.

Urgency

3. Witness D-0006 is currently scheduled to commence her testimony in less than two weeks, around 8 November 2018. The Prosecution therefore respectfully requests the Trial Chamber to treat this request as urgent.

Submissions

4. [REDACTED] Since at least June 2015, D-0006 has been included in the list of persons whom Dominic Ongwen is permitted to contact from the ICC Detention Unit *via* telephone.² Communications between the Accused and D-0006 fall within so called non-privileged communications which are subject to several restrictions.³

¹ ICC-02/04-01/15-1301.

² See ICC-02/04-01/15-257-Conf-Exp-Anx.

³ See ICC-02/04-01/15-283 and ICC-02/04-01/15-450.

5. The Accused and Defence witness D-0006 have been able to talk directly for over three years. The Prosecution requests that the ICC Detention Unit be directed to provide the Prosecution with the relevant call data from the Detention Unit, which sets out the frequency and duration of communication between the Accused and D-0006.

6. This information is relevant for the Prosecution's preparation for examination of D-0006, specifically to investigate and explore issues such as the nature of D-0006's relationship with the Accused, the extent of communication between D-0006 and the Accused since his arrival to the ICC Detention Unit and D-0006's motivations to testify.

7. The Prosecution notes that the Accused appears to have recently discussed events involving D-0006 with Defence expert witnesses D-0041 and D-0042 who included this information in their [REDACTED] Report dated 28 June 2018.⁴ No similar information is contained in D-0006's statement, disclosed by the Defence,⁵ or in the two expert witnesses' initial report.⁶ The Prosecution is exploring whether the information provided by the Accused could have resulted from his telephone communications with D-0006.

8. The Prosecution accepts that a request for information concerning these communications would engage the Accused's right to privacy and would require a careful balancing of different interests at stake. The Prosecution clarifies that it does not, at this stage, make any request for disclosure of the content of conversations between the Accused and D-0006.

⁴ [REDACTED] Report, 28 June 2018, UGA-D26-0015-0948, at 0960. This information is not included in the experts' earlier report, leading the Prosecution to believe that it was conveyed by Dominic Ongwen only during the April 2018 meeting with the experts (see at 0950).

⁵ Witness Statement, UGA-D26-0010-0115.

⁶ [REDACTED] Report, 7 December 2016, UGA-D26-0015-0004.

9. The Prosecution submits, however, that it must be clear that communications between the Accused and witnesses to be called in his defence should not include discussion of any matters which may be the subject of future testimony. Where, as here, there is reasonable suspicion that such discussion may have taken place, a proportionate intrusion into the right to privacy is in the interests of justice.

10. The Prosecution notes that Dominic Ongwen's communications are restricted because of his previous attempts to exercise some form of influence on persons who possess information relevant to the case.⁷ [REDACTED]

11. The current request is limited to information about (i) the dates and times the Accused communicated with D-0006 from his arrival to the ICC Detention Unit until now, (ii) the duration of each communication and (iii) information about who (D-0006 or the Accused) initiated the contact. At this stage the Prosecution's aim is merely to review the extent of the communications to assess whether any further action is necessary.

12. The Prosecution also requests the Trial Chamber to order that the Accused should not be allowed to communicate with D-0006 from the time of the making of any order following this request until conclusion of D-0006's testimony.

Conclusion

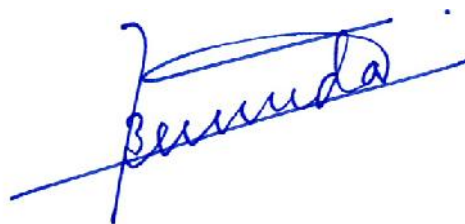
13. For the reasons set out above, the Prosecution requests the Trial Chamber to

⁷ Decisions of the Pre-Trial Chamber ICC-02/04-01/15-254 and ICC-02/04-01/15-283; Decision of the Trial Chamber ICC-02/04-01/15-450. See also Prosecution's filing ICC-02/04-01/15-276.

(a) Order the ICC Detention Unit to file into the record of the case a report relating to communications between [REDACTED] (D-0006) and Dominic Ongwen, containing the following data:

- (i) the date and time of each communication between [REDACTED] (D-0006) and Dominic Ongwen from Dominic Ongwen's arrival to the ICC Detention Unit until now,
- (ii) the duration of each such communication and
- (iii) whether the contact was initiated by Dominic Ongwen or D-0006.

(b) Order that the Accused should not be allowed to communicate with D-0006 until the conclusion of her testimony.



Fatou Bensouda, Prosecutor

Dated this 8th day of November 2018
At The Hague, the Netherlands