

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **31 January 2019**

**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***

**Confidential**

**Defence Request for Leave to Reply to the Prosecution Response to the  
“Defence Request for Production of Correspondence Addressed to Mr Ongwen”  
(ICC-02/04-01/15-1424-Conf), filed 28 January 2019**

**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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## I. INTRODUCTION

1. On 28 January 2019, the Prosecution filed its response<sup>1</sup> to the 'Defence Request for Production of Correspondence Addressed to Mr Ongwen'.<sup>2</sup> The Defence requested the delivery of two letters that had been blocked by the Chief Custody Officer be provided to Mr Ongwen and his Defence.
2. The Defence sought leave to reply to the Registry response on 28 January 2019.<sup>3</sup> Now, the Defence seeks leave, pursuant to Regulation 24(5) of the Regulations of the Court ('RoC') to reply to the Prosecution. The Prosecution response<sup>4</sup> raises new issues in its response which the Defence could not reasonably have anticipated and for which a reply is merited. The issues upon which the Defence requests leave to reply are:
  - a. The prejudicial comment made by the Prosecution that "[t]he Accused has previously demonstrated a tendency to seek to influence and manipulate the behaviour of his victims, including by using the offspring of his sexual violence to legitimise his contact and relationship with the victims";<sup>5</sup> and
  - b. The portrayal of the Defence Request as a request for unchecked written communication between Mr Ongwen and P-214.<sup>6</sup>

## II. CONFIDENTIALITY

3. Pursuant to Regulations 23*bis* of the Regulations of the Court ('RoC'), this request is submitted as confidential as it refers to a filing of the same classification.

## III. SUBMISSIONS

4. The Prosecution response raises two new issues that the Defence could not have reasonably anticipated and therefore a reply is merited.

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<sup>1</sup> ICC-02/04-01/15-1424-Conf ('Prosecution Response').

<sup>2</sup> ICC-02/04-01/15-1411-Conf ('Defence Request').

<sup>3</sup> ICC-02/04-01/15-1422-Conf.

<sup>4</sup> The Defence notes that the Prosecution Response, at paragraph 8, incorrectly states that P-214 spoke to the court on 11 November 2017 when in fact this was 11 November 2015 (ICC-02/04-01/15-T-15-CONF-ENG). The Defence has subsequently filed a corrected version of its Defence Request upon which the error seems to have been based.

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

<sup>6</sup> *Ibid.*, para. 14.

### A. Prejudicial comments made by the Prosecution without citation or explanation

5. Paragraph 2 of the Prosecution Response states that Mr Ongwen “*demonstrated* a tendency to seek to *influence* and *manipulate* the behaviour of his victims”.<sup>7</sup> Despite the purported demonstrated tendency, the Prosecution cites to nothing. Though brief, these prejudicial comments raised in response – especially unsupported assertions such as these – merit a reply in the interests of justice. The Defence requests leave to have the reply that follows in the next paragraph considered by the Trial Chamber.
6. The Defence notes that the Prosecution comment<sup>8</sup> concerning Mr Ongwen’s alleged tendency is announced in the introduction, not cited, and not discussed in the submissions that follow. The basis for such prejudicial comments should be cited and explained. The Defence urges Trial Chamber IX (‘Trial Chamber’) to disregard the argument by the Prosecution in its deliberations on the Defence Request as to take it into account without any citation or explanation from the Prosecution would be unfair to Mr Ongwen.

### B. The portrayal of the Defence Request as a request for unchecked written communication between Mr Ongwen and P-214

7. In paragraph 14 of its response, the Prosecution notes that:

allowing the establishment of unchecked written communication between them would impinge on the protections enacted in the previous decisions of the Chamber to safeguard witness interference with victim witnesses against whom the Accused is alleged to have committed sexual and gender based crimes.<sup>9</sup>
8. A request for unchecked written communications was not presented to the Trial Chamber in the Defence Request. The request was whether Mr Ongwen can receive two letters. Moreover, the Detention Centre regime referred to in the Defence Request<sup>10</sup> involves monitoring of all incoming and outgoing correspondences – it is not “unchecked [...] communication”.<sup>11</sup>
9. As touched upon in the Defence request for leave to reply to the Registry response to the Defence Request,<sup>12</sup> it is not apparent to the Defence how a communication that originates from an individual outside of the Detention Centre to an individual within the Detention

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<sup>7</sup> Prosecution Request, para. 2 (emphasis added).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, para. 14.

<sup>10</sup> Defence Request, paras 6 and 7.

<sup>11</sup> Prosecution Request, para. 14.

<sup>12</sup> ICC-02/04-01/15-1422-Conf, para. 6.

Centre can interfere with the administration of justice or cause undue coercion to witnesses outside of the Detention Centre.

10. The Defence stresses that there is a tangible difference between restricting Mr Ongwen's ability to contact P-214 directly, or initiate contacts, and being able to receive letters. It is also worth stressing again that from the information available to the Defence the Chief Custody Officer has not noted anything concerning the content of the letters which suggests an attempt to interfere with the administration of justice or any particular witness. Moreover, Mr Ongwen's calls are monitored and the amount of time he can spend on the phone is limited.<sup>13</sup>
11. The Prosecution response argues for a decision on an issue that goes beyond that presented in the Defence Request. If the Trial Chamber will consider the Defence request as one for lifting all communication restrictions between Mr Ongwen and P-214, then fairness demands that the Defence be provided the opportunity to make submissions on that request. The background to the restrictions and procedure is lengthy and there are more legal issues than those raised in the more restricted Defence Request for provision of the letters. Unless the Trial Chamber can see absolutely no reason to maintain the restrictions on communications and would otherwise remove the restrictions *sua sponte*, it would be prejudicial and a violation of the principle that both sides should be heard in a legal dispute<sup>14</sup> to take a decision on the question of removing all communication restrictions between Mr Ongwen and P-214 absent further Defence arguments.

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<sup>13</sup> ICC-02/04-01/15-283, para. 15 affirmed in ICC-02/04-01/15-450-Red, para. 4.

<sup>14</sup> See, for example, ICC-02/05-03/09-632-Red 0A5, footnote 55.

**IV. RELIEF**

12. For the reasons described above, the Defence respectfully requests Trial Chamber IX to grant the Defence leave to reply pursuant to Regulation 24(4) RoC on the issues identified in paragraph 2 above and elaborated upon in the present submissions.

Respectfully submitted,



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

Dated this 31<sup>st</sup> day of January, 2019  
At London, United Kingdom