

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-RoR220**
Date: **4 August 2021**

PRESIDENCY

Before:

Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

SITUATION IN UGANDA

IN THE CASE OF
THE PROSECUTOR v. DOMINIC ONGWEN

PUBLIC
with Public Annexes A-E

Public Redacted Version of “Defence Request for Review Pursuant to Regulation 220 of the Regulations of the Registry”, filed 13 April 2021

Source: Defence for Dominic Ongwen

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

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I. INTRODUCTION

1. Pursuant to Regulation 220(1) of the Regulations of the Registry ('RoR'), the Defence for Dominic Ongwen ('Defence') requests review of the Registrar's "Final Decision on Mr Ongwen's Request for Review addressed to the Registrar received 18 February 2021"¹ ('Impugned Decision 1').
2. The Defence argues, on Mr Ongwen's behalf, that Mr Ongwen should receive one video-conference call to a family member or group ('Video Family Visit') for 90 minutes each month because of the prolonged nature of the Pandemic and to be treated equally among other detainees.
3. The Defence attaches as further annexes the "Decision on Mr Ongwen's Request for Review addressed to the Registrar received 18 February 2021" ('Impugned Decision 2'),² "Form 2"³ and "Form 1.1".⁴
4. Pursuant to Regulation 217(3)(a) of the RoR, the Defence has prepared this document for Mr Ongwen after consultations with Mr Ongwen.

II. CONFIDENTIALITY

5. Pursuant to Regulation 220(2) of the RoR and 23*bis* of the Regulations of the Court ('RoC'), the Defence files this request for review as confidential *ex parte* Defence for Dominic Ongwen and Registrar only. The Defence notes that the Acting Chief Custody Officer ('Acting CCO') of the International Criminal Court Detention Centre ('ICC-DC') noted the confidential nature of his decision "as it contains confidential information and operational matters".⁵ A public redacted version of this request for review and the accompanying annexes shall be proposed to the Presidency in due course with the Registrar in copy, with the exception of Confidential *ex parte* Annexes F and G. The Defence shall not submit a request for a public redacted versions of these two annexes.

¹ See Confidential *ex parte* Annex A. The Defence notes that it was signed on 7 April 2021, but received by the Defence on 8 April 2021 at 11h00 CET *via* email.

² Confidential *ex parte* Annex B.

³ Confidential *ex parte* Annex C.

⁴ Confidential *ex parte* Annex D. This annex contains both the original complaint and the decision of the Acting CCO.

⁵ Confidential *ex parte* Annex D, p. 13, para. 21.

III. PROCEDURAL HISTORY

6. In December 2018, Mr Ongwen had his last in-person family visit at the ICC-DC when he was visited by P-0214/D-0010 and [REDACTED].
7. On or around 12 March 2020, former ICC-DC Chief Correctional Officer Paddy Craig ('Former CCO') spoke with Mr Thomas Obhof about: 1) the upcoming visits by Acholi personalities present for the closing statements in Mr Ongwen's case; 2) the scheduled family visit by [REDACTED] with Mr Ongwen; and 3) the impending closure of the ICC-DC to all visitors stemming from the SARS-CoV-2 pandemic ('Pandemic'). This conversation happened outside the employee entrance to the ICC-PP. Mr Obhof informed the Former CCO that Mr Ongwen wished to cancel the pending family visit because of the dangers associated with the Pandemic.⁶
8. On 13 March 2020, Mr Ongwen had his last non-privileged visit at the ICC-DC when two representatives of the Acholi/Langi delegation present for the closing arguments visited him. Since this date, Mr Ongwen has only met with his Counsel and Assistant to Counsel on 4 February 2021.
9. On 13 March 2020, Mr Obhof was informed by ICC-DC personnel at the end of the non-privileged meeting between Mr Ongwen and two Acholi personalities that the ICC-DC would be closed to all visitors, including Counsels, because of the Pandemic.
10. On 19 March 2020, the ICC-DC sent a communication to Counsels about the urgent enactment of emergency procedures because of the Pandemic.⁷ Emergency procedures are still in place today.⁸
11. On 16 April 2020, Trial Chamber IX lifted the communication restrictions emplaced on Mr Ongwen, with the exception of P-0099, P-0101, P-0214/D-0010, P-0226, P-0227 and P-0235/D-0004.⁹

⁶ [REDACTED].

⁷ Email from Etienne Mbumoko of the ICC-DC to Mylène Dimitri, Melinda Taylor, Jan-Geert Knoops, Stephane Bourgon, Krispus Ayena Odongo, Thomas Obhof, Marie-Hélène Proulx, Sarah Bafadhel, Sarah Marinier Doucet, Sara Pedroso and Paddy Craig, *Urgent – New DC temporary measures regarding COVID-19*, received on 19 March 2020 at 15h15 CET.

⁸ Email from Etienne Mbumoko of the ICC-DC to Ongwen Defence, *Mesures provisoires relatives au COVID-19*, received on 17 March 2021 at 15h40 CET.

⁹ Trial Chamber IX, *Corrected version of Decision on the Defence Request for Immediate Release and the Communication Restrictions Applying to the Accused*, [ICC-02/04-01/15-1733-Corr](#) (noting that the original decision was

12. On 26 January 2021, the Defence filed the Form 1.1 Complaint.¹⁰
13. On 3 February 2021, the Defence sent to the Acting CCO a copy of Trial Chamber V's "Decision on Non-Privileged Video-Conferencing at the Detention Centre."¹¹ The Defence wrote, "*I attach the public redact [sic] version of a decision issued by Trial Chamber V for your perusal in relation to this current complaint lodged by Mr Ongwen about video-conferencing. I look forward to the response as soon as possible, but of course, by the latest, next Tuesday.*"¹²
14. On 10 February 2021 after 16h00 CET, the Acting CCO gave his decision to the Form 1.1 Complaint.¹³
15. On 18 February 2021, the Defence filed its Form 2 Complaint for a request for review of the Acting CCO's decision.¹⁴
16. On 5 March 2021, the Registrar issued Impugned Decision 2 in which he requested 15 days to inquire further as to the feasibility and costs of Video Family Visits to Uganda.¹⁵
17. On 31 March 2021, the Defence wrote to the Registrar requesting to know the answer to the Registrar's inquiry into the possibility of Video Family Visits.¹⁶ The Defence requested an answer on the decision by close of business on 2 April 2021.¹⁷
18. On 1 April 2021, Registrar Lewis wrote to the Defence informing it that Ms [REDACTED], would "contact [...] [the Defence] to discuss the practical arrangements for a video conference for Mr Ongwen and his family."¹⁸ The Registrar also informed the Defence that he would issue his final decision after Easter.¹⁹

issued on 16 April 2021). The Chamber kept the restrictions for the above-named persons, but P-0236 may speak to Mr Ongwen as she stated she wanted to speak to him, but with the CLRV with her. Because of the Pandemic, Mr Ongwen has not yet spoken to her.

¹⁰ See Confidential *ex parte* Annex D.

¹¹ Email from Thomas Obhof to Harry Tjonk, *RE: Regulation 217(1) Complaint – Dominic Ongwen*, sent 3 February 2021 at 16h06 CET.

¹² *Ibid.*

¹³ See Confidential *ex parte* Annex D.

¹⁴ See Confidential *ex parte* Annex C.

¹⁵ See Confidential *ex parte* Annex B, para. 13.

¹⁶ Email from Thomas Obhof to Registrar Peter Lewis, *Re: Request for Review of another Decision Issued by the Acting CCO of the ICC-DC*, sent on 31 March 2021 at 13h24 CET.

¹⁷ Email from Thomas Obhof to Registrar Peter Lewis, *Re: Request for Review of another Decision Issued by the Acting CCO of the ICC-DC*, sent on 31 March 2021 at 13h24 CET.

¹⁸ See Confidential *ex parte* Annex E., p. 4.

¹⁹ See Confidential *ex parte* Annex E., p. 4.

19. On 2 April 2021, Ms [REDACTED] called Mr Obhof to discuss a Video Family Visit between Mr Ongwen and a family group of his choosing.²⁰ The Defence was advised that the Video Family Visit would take place on 8 April 2021 with the assistance of the Ugandan Office.²¹ The representative did not mention the breadth of the upcoming decision.
20. On 2 April 2021, Ms [REDACTED] wrote a follow-up email to Mr Obhof to describe the parameters of the Video Family Visits between Mr Ongwen and the family group of his choosing.²² The Defence was informed that [REDACTED] was going to be used for the Video Family Visit.²³
21. On 3 April 2021, the Mr Obhof wrote Ms [REDACTED] and informed her the family which Mr Ongwen wanted to have the video-conference call.²⁴ Mr Obhof also confirmed that the selected family members are allowed to speak to Mr Ongwen and that they are on his non-privileged phone number list.²⁵
22. On 8 April 2021, Mr Ongwen spoke with one of his family groups through a video-link service with the assistance of the Registry.
23. On 8 April 2021, the Registrar transmitted Impugned Decision 1 to the Defence.²⁶ The Defence informed Mr Ongwen of the Impugned Decision 1 that evening.²⁷

IV. SUBMISSIONS

24. The Defence incorporates by reference the arguments made in Form 1.1²⁸ and Form 2²⁹ in its submissions to the Acting CCO and Registrar.
25. The standard for review by the Presidency involves:

A consideration of whether the Registrar has acted without jurisdiction, has committed an error of law, has failed to act with procedural fairness, has acted in a disproportionate manner, has taken into account irrelevant factors or failed to take into

²⁰ WhatsApp call from [REDACTED] to Thomas Obhof, 2 April 2021 at 10h00 CET.

²¹ WhatsApp call from [REDACTED] to Thomas Obhof, 2 April 2021 at 10h00 CET.

²² Confidential *ex parte* Annex E., pp 2-3.

²³ Confidential *ex parte* Annex E., pp 2-3.

²⁴ Confidential *ex parte* Annex E, p. 2.

²⁵ Confidential *ex parte* Annex E, p. 2.

²⁶ Email from [REDACTED] to Defence, *RE: Request for Review of another Decision Issued by the Acting CCO of the ICC-DC*, received 8 April 2021 at 11h00 CET.

²⁷ Privileged telephone call from Mr Ongwen to Thomas Obhof, 8 April 2021 at 19h26 CET.

²⁸ See Confidential *ex parte* Annex D.

²⁹ See Confidential *ex parte* Annex C.

account relevant factors, or has reached a conclusion which no sensible person who has properly applied his or her mind to the issue could have reached.³⁰

A. Impugned Decision 1 and Impugned Decision 2 create inequality between Mr Ongwen and other detained persons

26. The Registrar's decision in Impugned Decision 1 and Impugned Decision 2 **committed an error of law, has failed to act with procedural fairness and has acted in a disproportionate manner between the detainees at the ICC-DC.**
27. The Registrar's claim that "all detained persons will have the right to receive an equal number of Video Family Visits..."³¹ in Impugned Decision 1 is false. The Registrar knows that Trial Chamber V ordered that detainees Yekatom and Ngaïssona receive 90-minute Video Family Visits every month.³² The Registrar acknowledged this in Impugned Decision 2,³³ yet failed to give any concrete evidence how the alleged situations between Mr Yekatom and Mr Ngaïssona were different from Mr Ongwen.
28. The Defence notes that in regard to indigent detainees, the Assembly of State Parties ('ASP') decided that indigent detainees must receive equal treatment for family visits.³⁴ Because of the current Pandemic, the Video Family Visits are temporarily replacing the family visits.³⁵
29. The Registrar informed Trial Chamber V that he felt one call of one hour every four months was what he thought was reasonable.³⁶ Trial Chamber V decided that "more frequent and extensive Video-Conferencing is warranted to render the accused's right to family visits effective."³⁷ Like the Defence did on Mr Ongwen's behalf,³⁸ Trial Chamber V noted that "the practice adopted by other international tribunals, where Video-Conferencing has been implemented while restrictions due to the Coronavirus Pandemic are still in place, with a

³⁰ Presidency, *Public redacted version of "Decision on the 'Application to review the 'Decision on Complaint to the Registrar by [REDACTED] concerning Supported Family Visits'" dated [REDACTED] 2016"*, [ICC-RoR221-02/16-3-Red](#), para. 21 (citing Presidency, *Reasons for the "Decision on the 'Application for Review of Decision of the Registrar's Division of Victims and Counsel dated 2nd January not to Admit Prof. Dr. Sluiter to the List o Counsel"*, [ICC-RoC72-01/08-10](#), para. 20).

³¹ Confidential *ex parte* Annex A, para. 8.

³² Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), p. 2.

³³ Confidential *ex parte* Annex B, para. 18.

³⁴ Assembly of State Parties, *Family visits for indigent detainees*, [Resolution ICC-ASP/8/Res.4](#), para. 5.

³⁵ See Confidential *ex parte* Annex A, paras 7-10.

³⁶ See Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), paras 3 and 11.

³⁷ Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 11.

³⁸ Confidential *ex parte* Annex D, paras 6-9.

higher frequency than the one proposed by the Registry.”³⁹ The Video Family Visit plan outlined in Impugned Decision 1⁴⁰ acts contrary to Trial Chamber V’s order in the *Yekatom & Ngaïssona case*.

30. The Registrar’s Video Family Visit plan creates an unequal treatment between the detainees, and specifically Mr Ongwen, at the ICC-DC. It also creates unequal treatment between persons detained at the ICC-DC, KSC Detention Facility, and the United Nations Detention Unit.⁴¹ By failing to apply the same standards between indigent detainees at the ICC-DC (Mr Yekatom, Mr Ngaïssona and Mr Ongwen), the Registrar has committed an error of law under the ASP resolution on family visits for indigent detainees, committed a procedural violation in the application of video family visits and acted in a disproportionate manner between the detainees.
31. Considering the Defence’s arguments herein and contained in Confidential *ex parte* Annexes C and D, the Defence respectfully requests the Presidency to order the Registrar to fulfil Mr Ongwen’s equal treatment right by ordering him to grant Mr Ongwen one Video Family Visit to a family group of his choosing each month for 90 minutes.

B. Impugned Decision 1 is an unreasonable restriction on Mr Ongwen’s fundamental right to a family life

32. Impugned Decision 1 is an unreasonable restriction on Mr Ongwen’s fundamental right to a family life. Considering the actions taken by the other tribunals/courts in The Hague, and the decision of Trial Chamber V, **the Registrar reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached in Impugned Decision 1.**
33. “[W]ith regard to family visits, the [...] [Court has a] positive obligation to provide for an effective right to family visits and the Registry’s duty to give specific attention to visits by family of the detained persons with a view to maintaining such links, under Regulation 100(1)

³⁹ Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para.14 (citing *Prosecutor v. Radovan Karadžić*, Registrar’s Submission in Compliance with “Decision on Request for Review of Registrar’s Decision on Video Communications” of 16 April 2020, 15 June 2020, MICT-13-55-ES, para. 2 and KSC, [Registry Instruction on Video Visits](#), 23 September 2020, KSC-BD-34, (‘KSC Instruction on Video Visits’), Section 7).

⁴⁰ Confidential *ex parte* Annex A, para. 10.

⁴¹ See Confidential *ex parte* Annex D, paras 6-11 and 25-29 and Confidential *ex parte* Annex C, paras 13-25.

of the Regulations and Regulation 179(1) of the Registry Regulations.”⁴² Mr Ongwen has a fundamental right to have contact with family members.⁴³ Specifically, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) protects the family unit, family contact and family visits.⁴⁴ Rule 58(1) of the Nelson Mandela Rules states:

Prisons shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:

- (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; **and**
- (b) By receiving visits.⁴⁵

34. Because of the problems caused directly by the Pandemic, detainees at the ICC-DC have not been allowed to have in-person family/friend visits since 13 March 2020.⁴⁶ The Defence does not deny that the restrictions emplaced by the Registrar at the ICC-DC, namely the cancelation of all in-person visitors,⁴⁷ are reasonable. [REDACTED].⁴⁸ It is unreasonable though that it has taken the Registrar over one year to enact a policy on Video Family Visits, and that said visits are expected to occur every three to four months.
35. The “Detention Centre Policy on Family Visits pursuant to Regulation 179(1) of the Regulations of the Registry” recognises, “the importance of the family as the fundamental and natural group unit of society, as stipulated under article 16(3) of The Universal Declaration on Human Rights...”.⁴⁹ Under the current policy, “[e]very detained person is entitled to receive a

⁴² Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 10 (citing Presidency, *Decision on Mr Mathieu Ngudjolo’s Complaint Under Regulation 221(1) of the Regulations of the Registry Against the Registrar’s Decision of 18 November 2008*”, [ICC-RoR217-02/08-8](#)). See also Presidency, *Public redacted version of “Decision on the ‘Application to review the ‘Decision on Complaint to the Registrar by [REDACTED] concerning Supported Family Visits’” dated [REDACTED] 2016*”, [ICC-RoR221-02/16-3-Red](#), para. 42.

⁴³ Regulation 100(1) of the RoC and Regulation 179(1) of the RoR. See also [Universal Declaration of Human Rights](#), Article 16(3); [International Covenant on Civil and Political Rights](#), Articles 10(1), 17 and 23(1); [European Convention on Human Rights](#), Article 8; [African Charter on Human and Peoples’ Rights](#), Article 18; [African Charter on the Rights and Welfare of the Child](#), Articles 18 and 19 (noting that this is a right of Mr Ongwen’s children); [American Convention on Human Rights](#), Article 17(1); [International Covenant on Economic, Social and Cultural Rights](#), Article 10(1); and [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#), Rules 43(3), 58(1) and 88(2).

⁴⁴ [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#), Rule 58(1).

⁴⁵ [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#), Rule 58(1).

⁴⁶ See para. 10 above.

⁴⁷ By this, the Defence means personal visitors. The ICC-DC is allowing, on a limited basis, visits from persons on the Defence team.

⁴⁸ [REDACTED].

⁴⁹ Confidential *ex parte* Annex F, para. 4.

minimum of one visit in each two-week period. A visit's duration shall be no less than one-hour long.”⁵⁰ Trial Chamber V thought the policy of bi-weekly in-person visits to be instructive on the length and frequency of Video Family Visits.⁵¹ Trial Chamber V also deemed it instructive that other international tribunals in The Hague have taken action by providing Video Family Visits.⁵² The Defence notes that those frequencies are significantly greater than the plan issued by the Registrar in Impugned Decision 1.⁵³

36. As noted in the Form 2 request for review, Trial Chamber V decided that the Registrar's plan on Video Family Visits outlined in Impugned Decision 1 failed to fulfil the Registrar's obligations to a prisoner's right to family life.⁵⁴ Mr Ongwen has the right to have **regular** in-person visits from family and friends,⁵⁵ not occasional ones. Other tribunals/courts, and Trial Chamber V, disagree with the Registrar's proposal for Video Family Visits, and the Defence asserts that no sensible person who has properly applied his mind to the issue could have reached the Registrar's proposed Video Family Visit plan when applying the law properly.
37. Considering the Defence's arguments herein and outlined in Confidential *ex parte* Annexes C and D, the Defence respectfully requests the Presidency to order the Registrar to fulfil Mr Ongwen's right to family visits by ordering him to grant Mr Ongwen one Video Family Visit to a family group of his choosing each month for 90 minutes.

C. Impugned Decision 1 has taken into account irrelevant factors and failed to take into account relevant factors about the cost of Mr Ongwen having Video Family Visits with his family

38. The Registrar claimed that the “Video Family Visits require significant staff, logistical and financial resources [] [i]n light of the fact that all detained persons will have the right to receive an equal number of Video Family Visits...”.⁵⁶ In terms of Mr Ongwen, this is false. The Defence asserts that Mr Ongwen's Video Family Visits will not cost any additional funds than already required by the Registrar. Furthermore, should there be a need for additional

⁵⁰ Confidential *ex parte* Annex F, para. 17.

⁵¹ Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 13.

⁵² Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 14.

⁵³ Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), fn 31 (noting that the KSC has one family video-conference per week for 45 minutes).

⁵⁴ Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 11.

⁵⁵ [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#), Rule 58(1).

⁵⁶ Confidential *ex parte* Annex A, para. 8.

funds, the Registrar has at his disposal the Trust Fund for Family Visits ('TFFV') to provide the additional funds.

39. Firstly, the Defence already has in place a mechanism for Mr Ongwen to speak to his children on the phone about once a month.⁵⁷ Nearly every very month since December 2016 Mr Ongwen spoke to a group of his children with the assistance of the Registry until the Pandemic caused worldwide travel to come to a halt in March 2020.⁵⁸ Because of this, there would be no additional costs associated with a Registry representative bringing a computer instead of a telephone. In fact, since [REDACTED] is being used, the Registry is actually saving costs with Mr Ongwen's calls by not using a mobile phone.⁵⁹
40. The protocol for these phone calls is the same as those used on 8 April 2021 when Mr Ongwen has a Video Family Visit with [REDACTED] and their children. In fact, as reported to the Defence by its Resource Person in Uganda, once Ms [REDACTED] and the children connected to Mr Ongwen through [REDACTED], the Registry representative left the hotel room in which the Video Family Visit took place.⁶⁰ This further proves the Defence's argument that the cost of having Video Family Visit is minimal when one accounts for what is already approved.
41. The Defence also notes that quarantine restrictions are not as stringent in Uganda as they are in the Netherlands. The Defence points to the fact that a Registry representative just travelled to [REDACTED], Uganda – which is [REDACTED] Kampala (depending on traffic) – to perform a Video Family Visit.⁶¹ The Registrar has also noted other potential Video Family Visits in Gulu, Uganda.⁶²
42. Secondly, funds were available for [REDACTED] to visit Mr Ongwen in The Hague, Netherlands, in March 2020.⁶³ The Acting CCO, while being wrong about the reason the March 2020 visit was cancelled,⁶⁴ admits that the family visit was scheduled, *i.e.* there were

⁵⁷ Trial Chamber IX, *Decision on Mr Ongwen's Request to Add New Persons to his Non-Privileged Telephone Contact List*, [ICC-02/04-01/15-553](#), paras 10-11.

⁵⁸ See Confidential *ex parte* Annex G.

⁵⁹ The Defence notes that in the conversations between Mr Obhof and Ms [REDACTED], [REDACTED] is the platform being used by the Registry for the Video Family Visits.

⁶⁰ WhatsApp message from [REDACTED] to Thomas Obhof, received on 10 April 2021 at 17h13 CET.

⁶¹ Confidential *ex parte* Annex A, para. 10.

⁶² Confidential *ex parte* Annex A, para. 10. The Defence notes that the distance from Kampala to [REDACTED].

⁶³ See Confidential *ex parte* Annex D, pp 11-12, para. 11.

⁶⁴ Confidential *ex parte* Annex C, para. 26 and para. 7 above.

available funds.⁶⁵ Considering the cost for flying [REDACTED],⁶⁶ there should be money available in the TFFV. Without any additional costs, which there always are, the minimum the March 2020 travel for Mr Ongwen's family group would be [REDACTED].⁶⁷ This means that, again at the minimum, the Registry would have to have [REDACTED] left in the TFFV. This is money which is supposed to be used for the purpose of Video Family Visits. **Why is this money not being utilised for Mr Ongwen and all the detainees for Video Family Visits?**

43. While this request for review deals directly with Mr Ongwen, the Defence expresses deep concern about available funds in the TFFV. The Registry has been warned about ensuring that proper funds are available to meet the legal requirements about family visits for indigent persons,⁶⁸ most recently by the Presidency in 2019.⁶⁹ Since there were available funds for Mr Ongwen in March 2020, those funds, **plus the additional funds the Registrar should have secured**, there should be ample funds in the TFFV to offset the costs of having monthly phone calls for Mr Ongwen and the other indigent detainees. The Registrar does not need to think outside the box; the box is within his purview and he fails to see it.
44. Finally, the Defence notes that Mr Ongwen's additional calling restrictions were lifted on 16 April 2020.⁷⁰ Mr Ongwen's restrictions are only those emplaced by the Regulations of the Registry and duly authorised by the Registrar.⁷¹ Mr Ongwen's family visits, and by extension Video Family Visits, are subject to the supervision outlined in Regulations 183 and 184 of the RoR. Because the Video Family Visits takes place on an electronic media device, the ICC-DC can easily record the conversation from the computer at the ICC-DC, and a supervisory person can be included in the call. These measures require nothing additional than what is already performed during in-person visits.

⁶⁵ Confidential *ex parte* Annex D, pp 11-12, para. 11.

⁶⁶ [REDACTED].

⁶⁷ The Defence notes that because of the climate difference, the families are usually required to buy warm-climate clothing when travelling to the Netherlands.

⁶⁸ Presidency, *Public redacted version of "Decision on the 'Application to review the 'Decision on Complaint to the Registrar by [REDACTED] concerning Supported Family Visits' dated [REDACTED] 2016"*, [ICC-RoR221-02/16-3-Red](#), para. 42.

⁶⁹ Presidency, *Public redacted version of "Decision on Defence 'Request for review of the Registrar's decision of 21 June 2019' dated 5 July 2019 (ICC-RoR220-01/19-1-Conf-Exp)"*, 17 September 2019, [ICC-RoR220-01/19-2-Conf-Exp, ICC-RoR220-01/19-2-Red](#), paras 22-29.

⁷⁰ Trial Chamber IX, *Corrected version of Decision on the Defence Request for Immediate Release and the Communication Restrictions Applying to the Accused*, [ICC-02/04-01/15-1733-Corr](#) (noting that the original decision was issued on 16 April 2021). The Chamber kept the restrictions P-0099, P-0101, P-0214/D-0010, P-0226, P-0227 and P-0235/D-0004, but P-0236 may speak to Mr Ongwen as she stated she wanted to speak to him, but with the CLRV with her. Because of the Pandemic, Mr Ongwen has not yet spoken to her.

⁷¹ See Regulations 183 and 184 of the RoR.

45. The Defence realises that there may be security concerns with the receiving end of the Video Family Visit, namely that someone else may be able to join the call. This function can easily be controlled by the third person who is supervising the call who can end the Video Family Visit, which is no different than the monitoring performed with telephone calls under the RoR and should add no additional cost.⁷² Furthermore, the Defence offered to send a representative to the location to monitor the calls to ensure that no other person or persons are at the site of the Video Family Visit.⁷³ By virtue of Articles 7(3) and (4) of the Professional Code of Conduct for counsel, the Defence representative would be required to ensure the application of the rules governing the Video Family Visit.⁷⁴
46. These are the facts in which the Registrar failed to apply and the irrelevant factors which he considered. Mr Ongwen already has Court approved phone calls, save for the quarantine, and there would be no additional costs to the Court. If additional costs do arise, the Registrar has at his disposal the TFFV to cover said additional costs.
47. The Defence respectfully requests the Presidency to order the Registrar to fulfil Mr Ongwen's right to family visits by ordering him to grant Mr Ongwen one Video Family Visit to a family group of his choosing each month for 90 minutes.

D. The Defence's argument related to racial discrimination

48. The Defence asserts that the policy outlined in Impugned Decision 1, while not appearing to be the intent, causes racial discrimination. For clarity, the Defence restates in this request for review that it understands that the three operating international prisons where the ICC-DC is located are governed by different institutions.⁷⁵ All three international prisons are beholden to the same customary international law though.
49. The ICC-DC hosts all but one of the non-European and non-white persons at the international facility in Scheveningen Prison. As noted by Trial Chamber V, the other two international prisons, the UNDU and KSC Detention Facility, have already instituted policies on Video Family Visits and at a much higher frequency than that proposed by the Registrar in

⁷² See Regulations 173-175 of the RoR.

⁷³ Confidential *ex parte* Annex C, para. 18.

⁷⁴ Code of Professional Conduct for counsel, [ICC-ASP/4/Res.1](#), Articles 7(3) and (4).

⁷⁵ Confidential *ex parte* Annex C, para. 22 and Confidential *ex parte* Annex D, p. 7, paras 27-28.

Impugned Decision 1.⁷⁶ While not appearing to be the intent, the Registrar's plan for Video Family Visits causes discrimination against the persons of colour at the ICC-DC.

50. For the remainder of this section, the Defence relies on its previous submission in Form 1.1 and Form 2.⁷⁷

V. RELIEF

51. The Defence respectfully requests the Presidency to order the Registrar to provide a 90-minute Video Family Visit each month to Mr Ongwen.

Respectfully submitted,



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

Dated this 30th day of August, 2021

At Kampala, Uganda

⁷⁶ Trial Chamber V, *Decision on Non-Privileged Video-Conferencing at the Detention Centre*, [ICC-01/14-01/18-869-Red](#), para. 14.

⁷⁷ Confidential *ex parte* Annex C, paras 22-25 and Confidential *ex parte* Annex D, p. 7, paras 25-29.