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No.: ICC-02/04-01/15
Date: 19 February 2019

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public

**Decision on Defence Request for Leave to Reply to Prosecution and CLRV
Responses on the Burden and Standard of Proof Applicable to Articles 31(1)(a)
and (d) of the Rome Statute**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda
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Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of Victims

Joseph Akwenyu Manoba
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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

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court') in the case of *The Prosecutor v. Dominic Ongwen*, having regards to Regulations 24(5) and 34(c) of the Regulations of the Court, issues the following 'Decision on Defence Request for Leave to Reply to Prosecution and CLRV Responses on the Burden and Standard of Proof Applicable to Articles 31(1)(a) and (d) of the Rome Statute'.

1. On 28 January 2019, the Defence for Mr Ongwen ('Defence') filed a request for a ruling on the burden and standard of proof applicable to defences raised under Articles 31(1)(a) and (d) of the Rome Statute ('Defence Request').¹
2. On 7 February 2019, the Prosecution and the Common Legal Representative of Victims ('CLR') each filed responses to the Defence Request ('Prosecution's Response' and 'CLR's Response', respectively).²
3. On 11 February 2019, the Defence filed an application for leave to reply to the Prosecution's Response and the CLR's Response to the Defence Request ('Request for Leave to Reply').³ The Defence identifies two issues in relation to Prosecution's Response⁴ and one issue in relation to the CLR's Response⁵ which it contends it should be authorised to reply.

¹ Defence Request for the Chamber to Issue an Immediate Ruling Confirming the Burden and Standard of Proof Applicable to Articles 31(1)(a) and (d) of the Rome Statute, ICC-02/04-01/15-1423, with public annexes A and B.

² Prosecution Response to the "Defence Request for the Chamber to Issue an Immediate Ruling Confirming the Burden and Standard of Proof Applicable to Articles 31(1)(a) and (d) of the Rome Statute (ICC-02/04-01/15-1423)", ICC-02/04-01/15-1439; CLR's Response to "Defence Request for the Chamber to Issue an Immediate Ruling Confirming the Burden and Standard of Proof Applicable to Articles 31(1)(a) and (d) of the Rome Statute", ICC-02/04-01/15-1441.

³ Defence Request for Leave to Reply to Prosecution and CLR Responses on Burden and Standard of Proof Applicable to Articles 31(1)(a) and (d) of the Rome Statute, ICC-02/04-01/15-1442.

⁴ Request for Leave to Reply, ICC-02/04-01/15-1442, paras 4-5.

⁵ Request for Leave to Reply, ICC-02/04-01/15-1442, para. 6.

4. On 13 February 2019, the CLRV responded to the Request for Leave to Reply ('CLRV's Response to Request for Leave to Reply').⁶ The CLRV submits that Request for Leave to Reply should be rejected.⁷
5. The Single Judge considers that the Chamber will be assisted by the Defence being able to fully present their views on the three issues identified in the Request for Leave to Reply. This is particularly so as the burden and standard of proof for Article 31(1)(a) and (d) defences is an issue of first impression for the Court. The Single Judge therefore orders the Defence to file a single reply addressing the three issues it identified in its Request for Leave to Reply.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request for Leave to Reply; and

ORDERS the Defence to file their reply by 16:00 on 26 February 2019.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Single Judge

Dated 19 February 2019

At The Hague, The Netherlands

⁶ CLRV's Response to "Defence Request for Leave to Reply to Prosecution and CLRV Responses on Burden and Standard of Proof Applicable to Articles 31(1)(a) and (d) of the Rome Statute", ICC-02/04-01/15-1447.

⁷ CLRV's Response to Request for Leave to Reply, para. 13.