

ANNEX III

PUBLIC

From: Trial Chamber IX Communications
Sent: 14 February 2020 14:19
To: [REDACTED]
 [REDACTED] Trial Chamber IX Communications;
 [REDACTED]
Subject: decision on Prosecution Request for Extension of Deadline to File Responses to ICC-02/04-01/15-1718-Conf
Follow Up Flag: Follow up
Flag Status: Flagged

Dear parties and participants,

The Chamber takes note of the Prosecution request to extend the deadline to file responses to Defence Request ICC-02/04-01/15-1718-Conf ('Request') to 28 February 2020.

It also notes that the responses to Request -1718 are currently due on 24 February 2020, the same day the closing briefs of the parties and participants are to be filed.

The Defence opposes the request, submitting several reasons for why the extension should not be granted. First, it argues that the Prosecution did not disclose the material in a way the Defence claimed it should and that the Prosecution can also file its response before 24 February.

Second, the Defence submits that if a deadline is to be extended it should be the one for submitting the closing briefs, since the Defence then would have time to incorporate the Decision on its request in its closing brief.

Third and lastly, it requests that, if the extension of the response deadline is granted, the Chamber considers remedies for any prejudice to the Defence which has been caused because they did not have a resolution of its Request before drafting the Closing Briefs.

The Chamber recalls Regulation 35 of the Regulations of the Court and will determine whether good cause is shown to extend the deadline.

The date for the filing of the closing briefs has been known for quite some time and was moved to 24 February 2020 upon request by the Defence (decision -1715). When filing the Request, the Defence was also aware that any responses thereto would have to be submitted by the same date. Further, the Request addresses complex factual allegations and it is to be expected that the other parties and participants must devote some time and resources for the preparations of the responses. Lastly, the requested extension is four days and therefore minimal.

With regard to the first argument raised by the Defence, the Chamber notes that the Defence mixes allegations made in its Request – as to how the Prosecution should have disclosed certain material – with the issue whether the response deadline should be extended. Further, the fact that the Prosecution (as any party) can submit a filing before a specific deadline does not address the problem that for the period in which the response can be filed, the closing briefs need also to be finalised.

Concerning the second argument raised by the Defence – that the deadline for the filing of the closing briefs should be changed – the Chamber notes that this is entirely unpractical. First, in this case the deadline for the filing of all closings briefs would have to be extended. But more importantly, this would affect the time the parties and participants have for the preparation of the closing statements. They are scheduled to start on 10 March 2020 and will not be postponed. Any extension to file the closing briefs later would automatically

shorten the preparation time for the closing statements. Accordingly, the proposal by the Defence is unfeasible.

In respect of the third point raised by the Defence, the Chamber will address this issue in its decision on the Defence Request.

For the reasons above the Chamber finds that good cause is shown and extends the deadline to file responses to motion -1718 until Friday, 28 February 2020, 16:00 hours.

Kind regards,

Trial Chamber IX

Sent: 14 February 2020 11:22

To: [REDACTED] Trial Chamber IX Communications

Cc: [REDACTED]

[REDACTED] Prosecutor v. Dominic Ongwen: ICC-02/04-01/15-1718-Conf + Conf-Anxs A~D - Defence Request for Remedies in Light of Prosecution Disclosure Violations

Dear Trial Chamber,

I am writing to convey a response from Co-Counsel for Mr Ongwen. The Prosecution's request should be dismissed. The delay described in the Prosecution's email only underscores the prejudice caused by the Prosecution late disclosure described in the filing.

Though the Trial Chamber saw the Defence email on 6 December, the Prosecution did as well and chose not to disclose the material in a way which could have expedited resolution of the issues. It is also open to the Prosecution to file a response before the statutory deadline for response.

Given the context, Co-Counsel suggests that it would be more reasonable for the Prosecution to request an extension of the deadline for the filing of the final briefs unless it is certain that absolutely no prejudice can result from the ultimate disposition of the Defence request following the final brief submission.

Therefore, should the Trial Chamber grant the Prosecution request for an extension of the deadline, then the Defence requests that the Trial Chamber also additionally consider in the remedies to the request whether any prejudice has been caused to the Defence in drafting its final brief without the benefit of the remedies described in the request and to provide appropriate remedies for this.

Finally, Co-Counsel notes that, in any case, a stay of proceedings is also possible during deliberations (Appeals Chamber: Judgment on the Appeal of Thomas Lubanga Dyilo against his Conviction (1 December 2014) at para. 148).

Kind regards,

From: Massidda, Paolina [REDACTED]

Sent: Friday, February 14, 2020 8:58 AM

To: Trial Chamber IX Communications [REDACTED]

Cc: [REDACTED]

Subject: RE: The Prosecutor v. Dominic Ongwen: ICC-02/04-01/15-1718-Conf + Conf-Anxs A~D - Defence Request for Remedies in Light of Prosecution Disclosure Violations

Dear All,

The CLRV supports the Prosecution's request for an extension of the deadline to file responses to the Defence's filing until 28 February 2020.

In this regard, she notes that her limited resources are currently allocated to the finalisation of the Closing Brief.

Best regards,

Paolina Massidda

From: Gumpert, Benjamin

Sent: 13 February 2020 17:23

To: Trial Chamber IX Communications; [REDACTED]

Cc: [REDACTED]

Su [REDACTED] nic Ongwen: ICC-02/04-01/15-1718-Conf + Conf-Anxs A~D - Defence Request for Remedies in Light of Prosecution Disclosure Violations

The Prosecution requests the Trial Chamber to extend the deadline for a response to this filing until after the extended deadline for the filing of closing briefs, on 24 February. If the Chamber were to permit an extension until the end of that week, 28 February, that would be an extension of just four days.

Even if the extension were not granted, and the Prosecution filed a response on 24 February (as required under Regs 33 and 34(b)), the Defence could hardly expect a decision before the filing of the briefs that same day.

The Defence have been silent on this matter for two months. They could have filed at any time during that period.

The Defence arguments were already developed in the email correspondence of which the Trial Chamber received copies on 6 December (see attached). They have chosen to wait until five working days before the original deadline for submission of closing briefs and eight working days before the new deadline, extended at their request.

To require the Prosecution to divert its attention from the crucial work of the Closing Brief so close to the deadline would be unjust. Furthermore the Defence will not be prejudiced by such an extension being granted.

Ben Gumpert

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