



Original: English

No.: ICC-02/04-01/15
Date: 25 September 2017

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

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

Public with Confidential Annex

**Decision on Prosecution's Submission of Public Redacted Versions of 17
Testimonies Introduced Under Rule 68(2)(b) of the Rules and on Publicity of the
Record**

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Benjamin Gumpert

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Joseph Akwenyu Manoba
Francisco Cox
Paolina Massidda

Legal Representatives of the 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

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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* ('Ongwen case'), having regard to Articles 54, 64(2), 64(7), 64(10), 67(1), 68 and 72 of the Rome Statute ('Statute') and Rules 15 and 137 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Prosecution's Submission of Public Redacted Versions of 17 Testimonies Introduced Under Rule 68(2)(b) of the Rules and on Publicity of the Record'.

I. Background and Submissions

1. On 18 November 2016, the Chamber issued its Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules ('Decision 596'),¹ in which it granted the Office of the Prosecutor's ('Prosecution') request to introduce the prior recorded testimonies of a number of witnesses into evidence pursuant to Rule 68(2)(b) of the Rules.² The Chamber also ordered the Prosecution to, *inter alia*, file a proposed public redaction version of each prior recorded testimony introduced under Rule 68(2)(b).³ The other participants were instructed to raise any objections to the redactions proposed by the Prosecution or propose additional redactions.⁴

2. On 22 November 2016, the Chamber issued its Decision on Prosecution Request to Add Items to its List of Evidence, to include a Witness on its List of Witnesses and to Submit Two Prior Recorded Testimonies under Rule 68(2)(b) and (c) ('Decision 600'),⁵ in which it, *inter alia*, granted the Prosecution's request to introduce the prior

¹ ICC-02/04-01/15-596-Conf, a public redacted version was issued on the same day.

² Decision 596, ICC-02/04-01/15-596-Red, page 111.

³ Decision 596, ICC-02/04-01/15-596-Red, page 111.

⁴ Decision 596, ICC-02/04-01/15-596-Red, page 111.

⁵ Decision 600, ICC-02/04-01/15-600.

recorded testimonies of two additional witnesses into evidence pursuant to Rule 68(2)(b) of the Rules.⁶

3. On 28 July 2017, the Prosecution submitted proposed public redacted versions of 17 testimonies⁷ ('Testimonies') introduced under Rule 68(2)(b) of the Rules ('Request').⁸ The testimonies were submitted as Annexes 1 to 17 to the Request.⁹ The Prosecution submits that the testimonies relate to witnesses who are government officials and that the proposed redactions are necessary 'to protect national security information of the Republic of Uganda under article 72 of the Statute, safety of witnesses and victims under article 68 of the Statute, and current and future investigative activities of the Prosecution under article 54 of the Statute'.¹⁰ The Prosecution submits that the requested redactions also mirror the in-court protective measures granted to Witnesses P-3, P-59 and P-339.¹¹ The Prosecution requests the Chamber's approval of its proposed public redacted versions of the Testimonies.¹²

4. In its response to the Request,¹³ the defence for Dominic Ongwen ('Defence') proposed changes to some of the Prosecution's proposed redactions.¹⁴ The proposed changes relate to the testimonies of Witnesses P-17,¹⁵ P-27,¹⁶ P-29,¹⁷ P-32,¹⁸ P-301,¹⁹ P-370,²⁰ P-385²¹ and P-400.²²

⁶ Decision 600, ICC-02/04-01/15-600, page 15.

⁷ These are the written statements of Witnesses P-0017, P-0027, P-0029, P-0032, P-0036, P-0084, P-0126, P-0291, P-0301, P-0303, P-0337, P-0370, P-0384, P-0385, P-0386, P-0400, and P-0404.

⁸ Prosecution's first submission of proposed public redacted versions of testimonies introduced under rule 68(2)(b) of the Rules of Procedure and Evidence, 28 July 2017, ICC-02/04-01/15-930 with confidential Annexes 1-17.

⁹ See Annexes 1-17 to the Request.

¹⁰ Request, ICC-02/04-01/15-930, paras 6-12.

¹¹ Request, ICC-02/04-01/15-930, para. 9. These three witnesses intercepted LRA radio communications for the Ugandan government. See Decision on Prosecution Request for Protective Measures for P-3, P-59 and P-339, ICC-02/04-01-15-651 ('Decision 651').

¹² Request, ICC-02/04-01/15-930, para. 13.

¹³ Defence Response to the Prosecution's Proposed Redactions to its Rule 68(2)(b) Statements, 10 August 2017, ICC-02/04-01/15-938.

¹⁴ Response, ICC-02/04-01/15-938-Annex A.

¹⁵ See Annex 1 to the Request.

¹⁶ See Annex 2 to the Request.

¹⁷ See Annex 3 to the Request.

¹⁸ See Annex 4 to the Request.

II. Analysis

5. The Defence makes no objection to the Prosecution's proposed redactions to the testimonies of P-36, P-84, P-126, P-291, P-303, P-337, P-384, P-386 and P-404.²³ Accordingly, the Prosecution's request in relation to these testimonies is granted.
6. The Single Judge addresses the disputed redactions in the confidential Annex to this decision. The Prosecution is instructed to prepare public redacted versions of the Testimonies in line with the Annex and paragraph 5 above and make them available in eCourt.
7. The Single Judge notes that Rule 15 of the Rules requires the Registrar to keep a publicly available database containing all the particulars of the case.²⁴ However, the public has no access to eCourt, which contains, *inter alia*, the evidence recognised as submitted in this case. In order to safeguard the publicity of the proceedings, the Registry is instructed to ensure that evidence recognised as submitted in the *Ongwen* case, classified as public and contained in eCourt shall be made available to the public via the Court website as soon as practicable.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS the Prosecution to prepare publicly redacted versions of the Testimonies in line with the Annex and paragraph 5 above and make them available in eCourt.

INSTRUCTS the Registry to ensure that evidence recognised as submitted in the *Ongwen* case, classified as public and currently contained in eCourt be made publicly available via the Court website as soon as practicable.

¹⁹ See Annex 9 to the Request.

²⁰ See Annex 12 to the Request.

²¹ See Annex 14 to the Request.

²² See Annex 16 to the Request.

²³ Annexes 5, 6, 7, 8, 10, 11, 13, 15, and 17 to the Request respectively.

²⁴ See Rule 15 of the Rules. See also Rule 137 of the Rules.

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



Judge Bertram Schmitt
Single Judge

Dated 25 September 2017

At The Hague, The Netherlands