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No.: ICC-02/04-01/15  
Date: 4 November 2016

**TRIAL CHAMBER IX**

**Before: Judge Bertram Schmitt, Single Judge**

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

**Public Redacted**

**Order to the Registry to File Public Redacted Versions of the Transcripts of  
Testimonies Obtained under Article 56 of the Statute**

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 and 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**

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**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, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(7) and 67(1) of the Rome Statute ('Statute') and Regulation 23 *bis* of the Regulations of the Court, issues the following 'Order to the Registry to File Public Redacted Versions of the Transcripts of Testimonies Obtained under Article 56 of the Statute'.

1. Pursuant to an order of the Chamber,<sup>1</sup> the Office of the Prosecutor ('Prosecution') filed proposed redactions to the transcripts of the testimonies taken under Article 56 of the Statute by the Single Judge of the Pre-Trial Chamber, prior to such transcripts being made public.<sup>2</sup> The Defence responded to the Prosecution's filing, proposing: (i) to implement redactions to four additional pieces of information in two transcripts; (ii) to remove the proposed redactions to two passages in two other transcripts; and (iii) to file an alternative public redacted version of the record of the testimony of Witness P-198 (transcript ICC-02/04-01/15-T-18-CONF-ENG).<sup>3</sup>
2. At the present stage of the proceedings, as the Single Judge is not yet fully apprised of the security situation on the field, it is appropriate to leave a margin of deference to the participants in the identification of the passages of the witnesses' testimonies which should be withheld from the public at this point in time. However, the Single Judge notes that the Prosecution proposes, and the other participants do not object to, redactions to certain information which has already been revealed to the public. While not contested by the other participants, these redactions, as specified below, are unwarranted and would

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<sup>1</sup> Decision on Request to Admit Evidence Preserved under Article 56 of the Statute, 10 August 2016, ICC-02/04-01/15-520, para. 16.

<sup>2</sup> Prosecution's proposed redactions of the transcripts of Article 56 witnesses' testimonies, 30 September 2016, ICC-02/04-01/15-547 and 12 confidential annexes. The Prosecution subsequently filed a corrigendum to five of its original filings (annexes 1, 6, 7, 8 and 9), proposing additional redactions. A consolidated version of all proposed redactions was finally filed on 14 October 2016 (ICC-02/04-01/15-567 and 12 confidential annexes).

<sup>3</sup> Defence Submissions on Proposed Redactions to the Article 56 Transcripts, 20 October 2016, ICC-02/04-01/15-570 and its two confidential annexes.

create confusion in the record as to the applicable level of confidentiality of the information concerned.

3. As to the additional redactions proposed by the Defence, the Single Judge notes that: (i) two of the proposed additional redactions are to information which is already public;<sup>4</sup> (ii) the redaction of the name of the Courtroom Officer<sup>5</sup> is not warranted; and (iii) the last additional proposed redaction,<sup>6</sup> consistent with the general deference left to the parties at this stage, may be implemented.
4. Turning to the two redactions to which the Defence objects,<sup>7</sup> the Single Judge considers that the redactions are unwarranted as there exists no reason why the concerned information should be withheld from the public. In particular, with respect to the redaction in transcript ICC-02/04-01/15-T-19-CONF-ENG, the Defence informs the Single Judge that it had contacted the Senior Trial Lawyer in this case and confirmed with him that the redaction concerned was not demanded by personal reasons.<sup>8</sup> The Defence request for the removal of the two redactions originally proposed by the Prosecution is therefore granted.
5. The Prosecution proposes redactions to, effectively, the entire record of the testimony of Witness P-198.<sup>9</sup> The Defence argues that these redactions are ‘highly overbroad’ and proposes redactions which ‘follow the same patterns as the Prosecution’s proposed redactions in the other Article 56 transcripts’.<sup>10</sup> The Single Judge notes that the charges brought against Dominic Ongwen for alleged

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<sup>4</sup> This is the case for ‘Pageya in Gulu’ at page 2, lines 20-21 of transcript ICC-02/04-01/15-T-10-CONF-ENG (compare, for example, with Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, confirmed charges, pages 71-101, para. 101 ); and ‘Purongo’ at page 11, line 14, of transcript ICC-02/04-01/15-T-14-CONF-ENG (compare, for example, with Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, confirmed charges, pages 71-101, para. 68).

<sup>5</sup> Proposed by the Defence for page 66, lines 14, 15, 17 and 22, of transcript ICC-02/04-01/15-T-14-CONF-ENG.

<sup>6</sup> Namely the redaction to [REDACTED] at page 2, line 21, of transcript ICC-02/04-01/15-T-10-CONF-ENG.

<sup>7</sup> Namely the redactions of lines 22-24 of page 12 of transcript ICC-02/04-01/15-T-13-CONF-ENG, and the redaction of lines 5-14 of page 2 of transcript ICC-02/04-01/15-T-19-CONF-ENG.

<sup>8</sup> See ICC-02/04-01/15-570-Conf-AnxB, footnote 1.

<sup>9</sup> See ICC-02/04-01/15-567-Conf-Anx11.

<sup>10</sup> ICC-02/04-01/15-570, para. 4, and ICC-02/04-01/15-570-Conf-AnxA.

crimes committed against Witness P-198 were not confirmed by the Pre-Trial Chamber.<sup>11</sup> Also, the testimony under Article 56 of the Statute of Witness P-198 has not been submitted in the present trial, and the witness is not on the Prosecution's witness list. Differently from all other witnesses who testified under Article 56 of the Statute, any relevant information about Witness P-198 is also expunged from the public version of the decision of the confirmation of charges.<sup>12</sup> The Single Judge also notes that his order to the participants to review the transcripts of the testimonies, only applied to the records of the testimonies of Witnesses P-99, P-101, P-214, P-226, P-227, P-235 and P-236, *i.e.* those testimonies which have been formally submitted in the present trial.<sup>13</sup> Furthermore, [REDACTED]

[REDACTED]

[REDACTED] make it inapposite to render any information in her respect public. As the concerned testimony is not relied upon in this trial and Mr Ongwen is not charged with any crime against Witness P-198, there exists no prejudice to the Defence's rights ensuing from maintaining the confidentiality of her testimony. Likewise, and in light of the considerations above, the Single Judge considers that the principle of the publicity of proceedings does not justify making any aspect of Witness P-198's testimony public. The public redacted version of transcript ICC-02/04-01/15-T-18-CONF-ENG proposed by the Prosecution is therefore justified.

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<sup>11</sup> Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, ICC-02/04-01/15-422-Conf, paras 130-135 and para. 158.

<sup>12</sup> Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, ICC-02/04-01/15-422-Red, paras 125-135.

<sup>13</sup> See Decision on Request to Admit Evidence Preserved under Article 56 of the Statute, 10 August 2016, ICC-02/04-01/15-520

**FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY**

**ORDERS** the Registry<sup>14</sup> to:

- (i) file a public redacted version of transcript ICC-02/04-01/15-T-8-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx1, with the exception of the redactions to 'Patiko in Lukome' (at page 8, line 11), 'Patiko Cetkana' (at page 9, lines 5 and 6), 'Lukome' (at page 9, lines 5 and 9)<sup>15</sup> and 'tore a polythene bag' (at page 42, line 11 and lines 15-16);<sup>16</sup>
- (ii) file a public redacted version of transcript ICC-02/04-01/15-T-9-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx2, with the exception of the redaction to 'Lukome' at page 11, line 4;<sup>17</sup>
- (iii) file a public redacted version of transcript ICC-02/04-01/15-T-10-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx3, with the additional redaction to [REDACTED] at page 2, line 21, and with the exception of the redactions to 'Olak' (at page 46, lines 16, 17, 18 and 20; page 49, lines 15 and 16; page 52, line 25; page 53, line 1)<sup>18</sup> and 'Nyeko' (at page 52, lines 8, 9, 14, 17, 19, 23 and 25; page 53, lines 1, 19 and 24);<sup>19</sup>
- (iv) file a public redacted version of transcript ICC-02/04-01/15-T-11-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx4,

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<sup>14</sup> The page numbers given below are those of the respective transcripts as originally filed in the record of the case, not those of the annexes filed by the Prosecution.

<sup>15</sup> See, for example, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, confirmed charges, pages 71-101, para. 92.

<sup>16</sup> See, for example, Pre-confirmation brief, ICC-02/04-01/15-375-AnxC-Red2, para. 559.

<sup>17</sup> See, for example, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, confirmed charges, pages 71-101, para. 92.

<sup>18</sup> See, for example, Prosecution's Pre-Trial Brief, ICC-02/04-01/15-533, para. 650.

<sup>19</sup> See, for example, Prosecution's Pre-Trial Brief, ICC-02/04-01/15-533, para. 586.

with the exception of the redactions to '2010' at page 20, lines 17, 23 and 24, page 21, lines 5, 6 and 25, page 22, lines 3, 8 and 16, and page 24, line 3;<sup>20</sup>

- (v) reclassify as 'public' transcript ICC-02/04-01/15-T-12-CONF-ENG;
- (vi) file a public redacted version of transcript ICC-02/04-01/15-T-13-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx6 with the exception of the redactions to:
- 'The suffering that you guys are suffering in the bush is unnecessary. You go to collect food, you're shot at, you come empty-handed. When I came back, nothing, there was nothing. We stayed hungry for one month -- for one week' (at page 11, lines 22-24);
  - 'July of 2004' (at page 29, line 18) and 'July' (at page 29, line 58);<sup>21</sup>
  - 'Cetkana' (page 42, line 18);<sup>22</sup> and
  - 'Pajule' (at page 42, line 25);<sup>23</sup>
- (vii) file a public redacted version of transcript ICC-02/04-01/15-T-14-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx7, with the exception of the redactions to 'Margaret' at page 36, lines 15, 17 and 23; page 37, line 12; and page 40, line 20;<sup>24</sup>
- (viii) file a public redacted version of transcript ICC-02/04-01/15-T-15-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx8, with the additional redaction to ██████ at page 11, line 3, and with the exception of the redactions to:

<sup>20</sup> See, for example, Prosecution's Pre-Trial Brief, ICC-02/04-01/15-533, para. 561.

<sup>21</sup> See, for example, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, para. 111.

<sup>22</sup> See, for example, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, confirmed charges, pages 71-101, para. 92.

<sup>23</sup> See, for example, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, confirmed charges, pages 71-101, para. 115.

<sup>24</sup> See, for example, Prosecution's Pre-Trial Brief, ICC-02/04-01/15-533, para. 522.

- ‘Pope’ (at page 6, lines 16, 21 and 23, page 10, lines 7 and 16, and page 11, line 15), ‘Kidega’ (page 6, line 23), and ‘Pope and Kidega’ (at page 11, line 15);<sup>25</sup>
  - ‘It was during the peace talks. That's when the people who came for the peace talks came and took me and I went with them.’ (at page 31, lines 21-22);<sup>26</sup>
  - ‘I was taken to the hospital and when medical tests were done, they found that I had a problem in my nose, some growth in in my nose, sinuses. Q. Madam Witness, was this condition treated? A. Yes, the doctor actually did some minor operation and cut the growth and gave me also some medication’ (page 32, line 25, to page 33, line 4);<sup>27</sup>
  - ‘After three weeks’ (page 34, line 5);<sup>28</sup>
  - ‘After getting treatment when I came back, I continued taking the medication. There was some improvement in my condition. For one year I was okay, but after that I started feeling pains again and that's when I came back home. I came back home, I was staying at GUSCO, that was 2011 and GUSCO took me to the town of Lira where I had another operation and the growth was cut.’ (page 34, lines 7-11);<sup>29</sup>
- (ix) file a public redacted version of transcript ICC-02/04-01/15-T-16-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx9 with the exception of the redactions to ‘Ogule’ (at page 6, lines 14 and 15) and ‘Wang’yaa’ (at page 6, lines 16, 17 and 19);<sup>30</sup>

<sup>25</sup> See, for example, Prosecution’s Pre-Trial Brief, ICC-02/04-01/15-533, para. 534.

<sup>26</sup> The exact same information appears at page 32, line 17, of the same transcript. The Prosecution does not propose to redact it in this instance, nor does the Single Judge see reason to order the redaction *proprio motu*.

<sup>27</sup> The information that Witness P-214 was treated at the hospital for a ‘sinus problem’ appears at a page 34, line 6, of the same transcript. But, as far as this instance is concerned, the Prosecution does not propose redaction, and the Single Judge does not find it necessary to order it, to this information.

<sup>28</sup> The exact same information appears at page 33, line 6, of the same transcript, and the Prosecution does not propose to redact it in this instance, nor does the Single Judge see reason to order the redaction *proprio motu*.

<sup>29</sup> It is unredacted in the proposed public version of the transcripts that Witness P-214 after the treatment at the hospital went back with the LRA (see for example, page 34, lines 1-5, of the same transcript). The information that the witness came back home from the bush in 2011 is also already public (see, for example, Prosecution’s Pre-Trial Brief, ICC-02/04-01/15-533, para. 541), as it is in public domain (and not redacted in the proposed public versions of the transcripts of the testimonies under Article 56 of the Statute of the other concerned witnesses) that people who left the LRA regularly passed through GUSCO.

<sup>30</sup> See, for example, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, confirmed charges, pages 71-101, para. 115.

- (x) file a public redacted version of transcript ICC-02/04-01/15-T-17-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx10, with the exception of the redactions to '1987', two times at page 2, line 10;<sup>31</sup>
- (xi) file a public redacted version of transcript ICC-02/04-01/15-T-18-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx11; and
- (xii) file a public redacted version of transcript ICC-02/04-01/15-T-19-CONF-ENG applying all redactions marked in filing ICC-02/04-01/15-567-Conf-Anx12, with the exception of the following passage at page 2, lines 5-14:

'Therefore, I take the opportunity for this morning to ask parties if they have some issues to raise in connection with this Article 56 proceedings. Otherwise, I will have to -- we close it. Prosecutor? MS ADEBOYEJO: Thank you, Mr President, your Honour. First of all, let me apologise for the absence of Mr Gumpert. His mother has taken ill and that's why he's not here. For the Prosecution, we don't have any further observations per se. We wanted to leave it in the hands of the Judge that if there are any matters that you wanted us to address specifically, then we could address them'.

- (xiii) apply the same redactions to the public versions of the French translations of the corresponding transcripts, as soon as they are finalised.

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<sup>31</sup> The same information appears at page 49, line 24 of the same transcript. The Prosecutor does not propose to redact this information *vis-à-vis* the public in this instance, and the Single Judge sees no reason to order the redaction *proprio motu*.

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

A handwritten signature in black ink, appearing to read 'B. Schmitt', is written over a solid horizontal line.

**Judge Bertram Schmitt**  
**Single Judge**

Dated 4 November 2016

At The Hague, The Netherlands