

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**

Date: **4 July 2018**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

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

PUBLIC

Defence Request to Order the Prosecution to Comply with the Disclosure Order

Source: Defence for Dominic Ongwen

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

The Office of the Prosecutor

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Benjamin Gumpert, QC

Counsel for the Defence

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I. SUBMISSIONS

1. The Defence for Dominic Ongwen ('Defence') requests the Trial Chamber to order the Prosecution to comply with the Single Judge's "Decision on Prosecution Request under Paragraph 9 of Decision 1207" ('Decision 1234'),¹ ordering the Prosecution to disclose RFA 24, the UPDF Report, the sound recording, and transcripts of the sound recording *via* E-Court.²
2. The Defence respectfully disagrees with the Single Judge's "Decision in Response to an Article 72(4) Intervention"³ modifying Decision 1234 with regard to the obligation of the Prosecution to disclose the UPDF informant's identity and the lifting of all corresponding redactions in the UPDF Report.⁴
3. That said, the Defence notes that Decision 1234 has two separate orders. The first order stipulates:

ORDERS the Prosecution to disclose the identity of the UPDF informant and to lift all corresponding redactions in the UPDF report and the sound recording, subject to paragraph 9 above.⁵

4. The second order stipulates:

ORDERS the Prosecution to disclose RFA 24, the UPDF report, the sound recording, and any transcripts of the sound recording *via* E-Court.⁶

5. Following the Single Judge's Decision 1234, the Ugandan authorities objected to the disclosure of the UPDF informant's identity and intervened under Article 72 of the Rome Statute.⁷ Despite the objections of the Defence,⁸ the Single Judge ruled:

MODIFIES the 16 March Decision and the Decision on Non-disclosure with regard to the obligation of the Prosecution to disclose the Informant's identity and the lifting of all corresponding redactions in the UPDF Report, nullifying these obligations.⁹

¹ ICC-02/04-01/15-1234.

² ICC-02/04-01/15-1234, p. 6.

³ ICC-02/04-01/15-1267-Corr.

⁴ ICC-02/04-01/15-1267-Corr2, p. 12; See also, ICC-02/04-01/15-1290.

⁵ ICC-02/04-01/15-1234, p. 6.

⁶ ICC-02/04-01/15-1234, p. 6.

⁷ ICC-02/04-01/15-1240, with annex A, containing the communication, ICC-02/04-01/15-1240-AnxA.

⁸ ICC-02/04-01/15-1255-Red.

⁹ ICC-02/04-01/15-1267-Corr2, p. 12.

6. The Defence notes that the Single Judge explicitly nullified the Prosecution's obligation to disclose the UPDF informant's identity. However, the Single Judge did not nullify the Prosecution's obligation to disclose RFA 24, the UPDF Report, the sound recording, and transcripts of the sound recording *via* E-Court. Therefore, the order obliging the Prosecution to disclose the impugned items still stands.
7. It is implicit that the disclosure of items, along with attached metadata, *via* E-Court contains additional information, such as 'main date', 'chain of custody', 'source identity', etc., which is essential to the Defence.¹⁰ If necessary, the Prosecution can redact portions of metadata that mention the identity of the UPDF informant.
8. In sum, the Defence submits that the Prosecution failed to comply with the Single Judge's order to disclose RFA 24, the UPDF report, the sound recording, and transcripts of the sound recording *via* E-Court. The Trial Chamber should, accordingly, order the Prosecution to comply with the Single Judge's pre-existing order and disclose the items sought.

II. RELIEF SOUGHT

9. For the reasons stated above, the Defence requests the Trial Chamber to:
 - a) **ORDER** the Prosecution to comply with the Single Judge's order in Decision 1234¹¹ and disclose RFA 24, the UPDF report, the sound recording, and any transcripts of the sound recording *via* E-Court.

¹⁰ The Defence notes that it uploaded these items with Defence ERNs, yet it does not have the necessary metadata which is essential to each item disclosed.

¹¹ ICC-02/04-01/15-1234, p. 6: ("ORDERS the Prosecution to disclose RFA 24, the UPDF report, the sound recording, and any transcripts of the sound recording *via* E-Court").

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 4th day of July, 2018

At Lira, Uganda