

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



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

Date: **2 October 2020**

**TRIAL CHAMBER IX**

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

**SITUATION IN UGANDA**

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

**Public**

**Decision on the Prosecution Amended Request for Non-Standard Redactions**

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

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**Victims Participation and Reparations  
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**Others**

**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 Article 67 and 68(1) of the Rome Statute (the ‘Statute’) and Rules 77 and 81(1), (2) and (4) of the Rules of Procedure and Evidence (the ‘Rules’), issues the following ‘Decision on the Prosecution Amended Request for Non-Standard Redactions’.

## **I. Procedural history and submissions**

1. On 22 April 2020, the Chamber issued a decision, *inter alia*, ordering that the Office of the Prosecutor (the ‘Prosecution’) disclose 27 items of which it had previously disclosed excerpts to the Defence (the ‘27 Items’).<sup>1</sup>
2. On 8 June 2020, the Prosecution filed a request for non-standard redactions for the 27 Items pursuant to Rules 81(1) and 81(4) of the Rules (the ‘Request’).<sup>2</sup> The Prosecution requests these redactions to protect internal work product and to ensure the ‘proper functioning and confidentiality’ of its monitoring and protection system for (potential) witnesses and third parties.<sup>3</sup>
3. According to the Prosecution, the redactions requested under Rule 81(4) of the Rules concern information on the witnesses’ security circumstances and welfare, as well as on the Prosecution’s system of witness protection and management.<sup>4</sup> The Prosecution submits that the redactions are ‘of systemic importance’ since in order to ensure its effectiveness, ‘it is vital that the details of the system are not shared beyond the dictates of operational necessity’.<sup>5</sup> It argues that the same reasoning also applies to a psycho-social assessment at issue (item UGA-OTP-0238-0699), regarding which it alleges that, in any event, all case-relevant information has been disclosed and redaction will not result in prejudice to the Defence.<sup>6</sup>
4. As regards the redactions requested under Rule 81(1) of the Rules, the Prosecution states that they contain internal work product<sup>7</sup> relating to its “techniques” for witness

<sup>1</sup> Decision on Defence Request for Remedies in Light of Disclosure Violations, ICC-02/04-01/15-1734.

<sup>2</sup> Prosecution’s Amended Request for Non-Standard Redactions, ICC-02/04-01/15-1740, with confidential *ex parte*, Prosecution only, annexes 1-21.

<sup>3</sup> Request, ICC-02/04-01/15-1740, para. 2.

<sup>4</sup> Request, ICC-02/04-01/15-1740, para. 15.

<sup>5</sup> Request, ICC-02/04-01/15-1740, para. 17; *see also* para. 19.

<sup>6</sup> Request, ICC-02/04-01/15-1740, para. 18.

<sup>7</sup> Request, ICC-02/04-01/15-1740, para. 20.

management and protection’, while information provided by the witnesses concerned non-evidentiary purposes and was intended ‘solely for internal administrative use’.<sup>8</sup> Specifically for item UGA-OTP-0263-1765, the Prosecution also reiterates that the potentially case-relevant information has already been disclosed and redaction will not result in prejudice to the Defence.<sup>9</sup>

5. Finally, the Prosecution submits that many of the proposed redactions would be justified on the basis of either Rule 81(1) or 81(4), or both, but that for practical reasons, the requested redactions have been labelled with only one redaction category.<sup>10</sup>
6. The Defence filed its response on 19 June 2020 (the ‘Response’).<sup>11</sup> The Defence opposes both the requested non-standard as well as standard redactions and makes a number of specific requests (the ‘Defence Requests’),<sup>12</sup> namely to:
  - (i) Order the Prosecution to upload the metadata for the last two disclosures according to the e-court protocol;<sup>13</sup>
  - (ii) Order the Prosecution to review and lift all redactions related to its investigative techniques in relation to a number of items;<sup>14</sup> according to the Defence, the format is about 15 years old and the Chamber should consider whether protection of the form’s structure is still necessary;<sup>15</sup>
  - (iii) Order the Prosecution to produce full-length transcripts of a number of audio files at issue,<sup>16</sup> apply redaction codes to these transcripts, and disclose them;<sup>17</sup>
  - (iv) Review all redactions to items UGA-OTP-0204-0268-R01 and UGA-OTP-0238-0699-R02 to ensure they are (still) warranted;<sup>18</sup>

<sup>8</sup> Request, ICC-02/04-01/15-1740, para. 24.

<sup>9</sup> Request, ICC-02/04-01/15-1740, para. 25.

<sup>10</sup> Request, ICC-02/04-01/15-1740, para. 26.

<sup>11</sup> Defence’s Response to the Prosecution’s Request for Non-Standard Redactions, ICC-02/04-01/15-1743-Conf. A public redacted version was filed on 22 June 2020, *see* ICC-02/04-01/15-1743-Red.

<sup>12</sup> Response, ICC-02/04-01/15-1743-Red, para. 49.

<sup>13</sup> *See also* Response, ICC-02/04-01/15-1743-Red, para. 14.

<sup>14</sup> UGA-OTP-0198-0249-R02, UGA-OTP-0204-0186-R02, UGA-OTP-0204-0209-R02, UGA-OTP-0204-0226-R02, UGA-OTP-0204-0243-R02, UGA-OTP-0204-0259-R02, UGA-OTP-0204-0268-R02, UGA-OTP-0204-0284-R02, UGA-OTP-0204-0300-R03, UGA-OTP-0204-0309-R02, UGA-OTP-0204-0327-R02, UGA-OTP-0204-0336-R02, UGA-OTP-0207-0026-R02.

<sup>15</sup> *See also* Response, ICC-02/04-01/15-1743-Red, paras 15-16.

<sup>16</sup> UGA-OTP-0158-0002-R01, UGA-OTP-0158-0034-R01, UGA-OTP-0158-0040-R01, UGA-OTP-0160-0095-Track01-R01, UGA-OTP-0160-0095-Track02-R01, UGA-OTP-0160-0095-Track03-R01, UGA-OTP-0189-0020-R01, UGA-OTP-0227-0100-R01.

<sup>17</sup> *See also* Response, ICC-02/04-01/15-1743-Red, paras 17-25.

<sup>18</sup> *See also* Response, ICC-02/04-01/15-1743-Red, paras 26-32 and 33-36.

- (v) Order the Prosecution to immediately disclose the material contained under redaction codes B.1 and B.2 in item UGA-OTP-0198-0249-R02, arguing a violation of the accused's rights under Article 67(1)(e) of the Statute and Rules 68(2)(c) and 77 of the Rules;<sup>19</sup>
  - (vi) Review all further redactions to items UGA-OTP-0198-0249-R02 and UGA-OTP-0283-1727-R02 to ensure those redactions are still warranted;<sup>20</sup>
  - (vii) Review all redactions under code A to determine if they are still warranted;<sup>21</sup>
  - (viii) Order the lifting of all B.1 redaction codes in items UGA-OTP-0043-0124-R02, UGA-OTP-0204-0259-R02, UGA-OTP-0204-0284-R02, UGA-OTP-0283-2156-R02;<sup>22</sup>
  - (ix) Order the Prosecution to review redactions under codes B.2 and B.3 in the remaining documents to ensure that the persons protected by these redactions were not interviewed by or acted as intermediary for the Prosecution;<sup>23</sup>
  - (x) Order the Prosecution to review redactions under codes C and D to ensure compliance with paragraph 5 of the Redaction Protocol; and
  - (xi) Order the Prosecution to review the entirety of its material in the 'Ugandan Situation' to ensure accuracy of its previous redactions and that the redactions are still warranted.
7. Having been granted leave,<sup>24</sup> the Prosecution filed a combined response and reply (the 'Reply').<sup>25</sup> The Prosecution reiterates that none of the information subject to the Request falls under any of its disclosure obligations, and that redaction is only at issue because of information contained in documents which also include disclosable information.<sup>26</sup> Further, it is argued that the Defence's arguments are based on a misunderstanding or 'underappreciation' of the Prosecution's protection and management obligation and abilities, 'not only in this case but across cases and situations'.<sup>27</sup> The Prosecution submits

<sup>19</sup> See also Response, ICC-02/04-01/15-1743-Red, paras 40-42

<sup>20</sup> See also Response, ICC-02/04-01/15-1743-Red, paras 37-39, 42.

<sup>21</sup> See also Response, ICC-02/04-01/15-1743-Red, paras 43-44.

<sup>22</sup> See also Response, ICC-02/04-01/15-1743-Red, para. 45.

<sup>23</sup> See also Response, ICC-02/04-01/15-1743-Red, paras 46-47.

<sup>24</sup> Email from Trial Chamber IX Communications, 23 June 2020, 17:38.

<sup>25</sup> Prosecution's Response and Reply to Defence Filing 1743, 29 June 2020, ICC-02/04-01/15-1747.

<sup>26</sup> Reply, ICC-02/04-01/15-1747, para. 6. It is specifically reiterated in regard to items UGA-OTP-0238-0699-R02 and UGA-OTP-0283-1727-R02 that information falling within the Prosecution's disclosure obligations has already been disclosed; see paras 9-10.

<sup>27</sup> Reply, ICC-02/04-01/15-1747, para. 5. See also paras 13-14.

that the Defence has made no showing of prejudice,<sup>28</sup> that many aspects of the Prosecution's witness management and protection practices remain the same over time, and that the institutional need to protect them is undiminished.<sup>29</sup> According to the Prosecution, the Defence's belief that it knows or might ask individuals about some of the redacted information does not warrant its disclosure by the Prosecution.<sup>30</sup>

8. Concerning the additional broader requests, the Prosecution also submits that:

- it will resolve the question of the metadata without an order from the Chamber;<sup>31</sup>
- the Defence 'has offered no basis to conclude that the Prosecution should have been or should now be obliged to lift the standard redactions applicable for information provided by th[e] individual' concerned in item UGA-OTP-0198-0249-R02;<sup>32</sup>
- the Defence has offered no argument as to why it needs to know the name of the psychosocial expert redacted from item UGA-OTP-0238-0699-R02;<sup>33</sup>
- the Defence does not offer any particular additional justification for its request to the Chamber to review all standard redactions applied to the items in question to determine whether they are still warranted;<sup>34</sup> and
- the Defence's request for an order to the Prosecution to review the entirety of its material in the 'Ugandan Situation' 'is wholly unsubstantiated and should be dismissed *in limine* for that reason alone'; in any event, 'there is no objective basis to order the Prosecution to review, yet again, its entire evidence collection to assure the appropriateness of all previously applied redactions therein'.<sup>35</sup>

9. With regard to the Defence request for the creation of transcripts and application of redaction codes to these transcripts, the Prosecution argues that while such transcripts might facilitate the review, 'the creation of such items requires substantial time and resources which are not warranted by the content of the items', and that review of the audio

<sup>28</sup> Reply, ICC-02/04-01/15-1747, para. 6.

<sup>29</sup> Reply, ICC-02/04-01/15-1747, para. 7.

<sup>30</sup> Reply, ICC-02/04-01/15-1747, para. 8.

<sup>31</sup> Reply, ICC-02/04-01/15-1747, para. 12.

<sup>32</sup> Reply, ICC-02/04-01/15-1747, para. 15.

<sup>33</sup> Reply, ICC-02/04-01/15-1747, para. 16.

<sup>34</sup> Reply, ICC-02/04-01/15-1747, para. 17.

<sup>35</sup> Reply, ICC-02/04-01/15-1747, para. 18.

files ‘is feasible and sufficient to determine the appropriateness of the proposed non-standard redactions’.<sup>36</sup>

## II. Analysis

10. The Single Judge will first discuss the issues raised in the Request and then rule on the Defence Requests. At the outset, the Single Judge recalls that non-standard redactions, i.e. redactions which are not explicitly included in the regime governing redactions in this case,<sup>37</sup> must be assessed on a case-by-case basis.<sup>38</sup>
11. In the case at hand, redactions are requested under Rule 81(1) and 81(4) of the Rules. According to Rule 81(1), ‘internal documents’ prepared ‘in connection with the investigation or preparation of the case’ are not subject to disclosure.
12. Rule 81(4) of the Rules provides for restrictions to disclosure ‘to protect the safety of witnesses and victims and members of their families’. As recalled in a prior decision on non-standard redactions,<sup>39</sup> jurisprudence has further specified that redactions may be granted if the following is satisfied: (i) there is an objectively justifiable risk to the safety of the person or interest concerned, or which may prejudice further or ongoing investigations;<sup>40</sup> (ii) the risk arises from disclosing the particular information ‘to the Defence, as opposed to [...] the public at large’;<sup>41</sup> (iii) less restrictive protective measures are infeasible or insufficient and (iv) the redactions sought are not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.<sup>42</sup> The Appeals

<sup>36</sup> Reply, ICC-02/04-01/15-1747, paras 19-20.

<sup>37</sup> Decision on issues related to disclosure and exceptions thereto, ICC-02/04-01/15-224. *See also* Order scheduling First Status Conference and Other Matters, ICC-02/04-01/15-432, para. 4.

<sup>38</sup> *See also* Decision on Prosecution’s Request for non-standard redactions to document UGA-OTP-0284-0102, 26 September 2018, ICC-02/04-01/15-1348 (the ‘26 September 2018 Decision’), para. 9.

<sup>39</sup> 26 September 2018 Decision, ICC-02/04-01/15-1348, para. 10.

<sup>40</sup> Trial Chamber VII, *Prosecutor v. Jean-Pierre Bemba et al.*, Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13-959 (the ‘*Bemba et al.* Decision on Modalities of Disclosure’), para. 11; Decision on Prosecution Request under Paragraph 9 of Decision 1207, 20 April 2018, ICC-02/04-01/15-1234 (the ‘20 April 2018 Decision’), para. 7. *See also* Appeals Chamber, *Prosecutor v. Germain Katanga*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”, 2 May 2008, ICC-01/04-01/07-475 OA (the ‘*Katanga* OA Judgment’), para. 71(a).

<sup>41</sup> *Katanga* OA Judgment, ICC-01/04-01/07-475 OA, para. 71(b) (emphasis removed). *See also* 20 April 2018 Decision, ICC-02/04-01/15-1234, para. 7 (stating that the available information must indicate the existence of circumstances that give rise to such a risk).

<sup>42</sup> *Bemba et al.* Decision on Modalities of Disclosure, ICC-01/05-01/13-959, para. 11; *Katanga* OA Judgment, ICC-01/04-01/07-475 OA, para. 67.

Chamber has clarified that Rule 81(4) of the Rules should be read to include ‘persons at risk on account of the activities of the Court’.<sup>43</sup>

13. Turning first to the non-standard redactions requested under Rule 81(4) of the Rules,<sup>44</sup> and having reviewed the information concerned by these redactions, the Single Judge recalls the prior assessment that, indeed, it is possible that disclosure of the Prosecution’s system of witness protection may create a risk with regard to the safety of Prosecution witnesses, were the system to be ‘shared beyond the dictates of operational necessity’.<sup>45</sup> The Single Judge equally considers that restricting disclosure of such information is not related to the professionalism of Defence counsel being at issue,<sup>46</sup> but rather concerns the fact that this information should be disseminated to as few individuals as possible, whether to Defence counsel or otherwise. Indeed, as stated in the past, the Single Judge is persuaded that, by demonstrating how the objectively justifiable risk arises from disclosure to all actors external to the Prosecution, the Prosecution has captured how the same risk must necessarily arise from disclosing that information to the Defence, as discussed in the Appeals Chamber jurisprudence underlying the Rule 81(4) test.<sup>47</sup> On this basis, the Single Judge is satisfied that the non-standard redactions requested pursuant to Rule 81(4) of the Rules are justified and are therefore granted.<sup>48</sup>
14. At the same time, the Single Judge notes the arguments provided for applying non-standard redactions in accordance with Rule 81(1) of the Rules and, after review of these redactions, finds that they should be granted only in part. This is mainly because it appears that some details, in particular of the form structure – and without including any actual information from or about the individuals interviewed – are requested to be redacted in some items,

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<sup>43</sup> *Katanga* OA Judgment, ICC-01/04-01/07-475 OA, paras 1, 56.

<sup>44</sup> This does not concern the non-standard redactions requested to the audio files, which are discussed below at paras 16-18.

<sup>45</sup> See Request, ICC-02/04-01/15-1740, para. 17.

<sup>46</sup> See Response, ICC-02/04-01/15-1743-Red, paras 15, 34, 44.

<sup>47</sup> 26 September 2018 Decision, ICC-02/04-01/15-1348, para. 13, quoting *Katanga* OA Judgment, ICC-01/04-01/07-475 OA, para. 71(b).

<sup>48</sup> This concerns the following: UGA-OTP-0043-0124, at 0128; UGA-OTP-0161-0164, at 0165, 0167, 0168, 0169, 0170; UGA-OTP-0198-0249, at 0250, 0251, 0253-54, 0256-58; UGA-OTP-0204-0186, at 0187, 0188, 0190, 0191; UGA-OTP-0204-0209, at 0210, 0211, 0213, 0214; UGA-OTP-0204-0226, at 0227, 0230, 0231; UGA-OTP-0204-0243, at 0245, 0247, 0248; UGA-OTP-0204-0259, at 0261, 0264; UGA-OTP-0204-0268, at 0269, 0270, 0272, 0273; UGA-OTP-0204-0284, at 0288, 0289; UGA-OTP-0204-0300, at 0305; UGA-OTP-0204-0309, at 0311, 0314, 0315; UGA-OTP-0204-0327, at 0331, 0332; UGA-OTP-0204-0336, at 0337, 0338, 0340, 0341; UGA-OTP-0207-0026, at 0029, 0030, 0033, 0034, 0035; UGA-OTP-0207-0184, at 0189, 0190, 0191-93; UGA-OTP-0238-0699, at 0699, 0700, 0701; UGA-OTP-0283-1727, at 1728-49; UGA-OTP-0283-2165, at 2165, 2166.



but not in others. The reasons for such discrepancies remain unclear. The Defence also submits that the format is about 15 years old and the Chamber should consider whether protection of its structure is still necessary.<sup>49</sup> In the view of the Single Judge, with some of the information having already been provided to the Defence, withholding the same information contained in other documents is not justified. The Single Judge also does not consider redaction of this information to be justified pursuant to Rule 81(4) of the Rules.<sup>50</sup> Therefore, part of the non-standard redactions requested under Rule 81(1) of the Rules is rejected, and the Prosecution is ordered to re-disclose the items in question with those redactions lifted.<sup>51</sup> The remainder of the requested redactions under Rule 81(1) of the Rules is granted.

15. Examining further the Defence Requests, the Single Judge notes the Prosecution's indication that it would upload the metadata for the two disclosures concerned in accordance with the e-court protocol,<sup>52</sup> and that, when looking at the relevant items in e-court, the metadata fields mentioned by the Defence are indeed completed for the second disclosure package of June 2020.<sup>53</sup> However, it appears that for the items disclosed in May 2020 (package 134),<sup>54</sup> not all items are linked to the summaries provided by the Prosecution earlier, or include the information in the 'related to witness'-field. Therefore,

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<sup>49</sup> Response, ICC-02/04-01/15-1743-Red, paras 15-16.

<sup>50</sup> See Request, ICC-02/04-01/15-1740, para. 26.

<sup>51</sup> This concerns specifically the following: UGA-OTP-0198-0249-R02, at 0252-53 (Part 2), 0254 (second sub-heading, header Part 4, last sub-heading on page); UGA-OTP-0204-0186-R02, at 0188-90 (Part 2), 0190 (header Part 3 and immediately following sub-heading), 0191 (sub-heading, header Part 4), 0192 (second sub-heading); UGA-OTP-0204-0268-R02, at 0270-72 (Part 2), 0272 (header Part 3 and immediately following sub-heading), 0273 (first sub-heading, header Part 4, last sub-heading on page); UGA-OTP-0204-0284-R02, at 0286-87 (Part 2), 0288 (header Part 3 and immediately following sub-heading), 0289 (first sub-heading, header Part 4, last sub-heading on page); UGA-OTP-0204-0300-R03, at 0306 (first sub-heading, header Part 4, second to last sub-heading on page); UGA-OTP-0204-0309-R02, at 0312-13 (Part 2), 0313 (header Part 3 and immediately following sub-heading), 0316 (first sub-heading, second to last sub-heading on page); UGA-OTP-0204-0327-R02, at 0329-30 (Part 2), 0331 (header Part 3 and immediately following sub-heading), 0332 (first sub-heading, header Part 4), 0333 (second sub-heading); UGA-OTP-0204-0336-R02, at 0338-39 (Part 2), 0340 (header Part 3 and immediately following sub-heading). The Single Judge notes that this specific part is marked with redaction code 'D', but considers this, in light of the redaction codes applied otherwise in this and other documents, to be a mere clerical error.), 0341 (first sub-heading). The Single Judge notes that this specific part is marked with redaction code 'D', but considers this, in light of the redaction codes applied otherwise in this and other documents, to be a mere clerical error.), 0341 (last sub-heading on page); UGA-OTP-0207-0026-R02, at 0030 (header Part 2 and two sub-headings following on same page), 0032 (header Part 3 and immediately following sub-heading), 0036 (first sub-heading, header Part 4, second to last sub-heading on page).

<sup>52</sup> Response, ICC-02/04-01/15-1743-Red, para. 12.

<sup>53</sup> See Prosecution's Communication of the Disclosure of Evidence, 8 June 2020, ICC-02/04-01/15-1739, with confidential annexes.

<sup>54</sup> See Prosecution's Communication of the Disclosure of Evidence, 22 May 2020, ICC-02/04-01/15-1737, with confidential annexes.

the Prosecution is ordered to ensure that all relevant metadata fields for disclosure package 134 are completed without further delay.

16. In addition, the Defence requests that for a number of audios which were disclosed with redactions, the Prosecution be ordered to produce full-length transcripts and disclose them with the appropriate redaction codes applied.<sup>55</sup> It appears from the Defence's submissions that, with exception of one audio file which is entirely in Acholi, it has already produced transcripts for those parts of the audios which were not redacted.<sup>56</sup> The Prosecution argues that the effort and time involved in producing full-length transcripts for these audios is not justified by the content which it requests to be redacted, and that it could arrange for language assistance in order for the Chamber to review the audio file in Acholi, if needed.<sup>57</sup>
17. Having reviewed the audio files which are not exclusively in Acholi, including the parts which the Prosecution requests to be redacted, and bearing in mind that the Defence has already produced transcripts for those parts of the audios which it did receive, the Single Judge considers it not justified to order the Prosecution to produce full-length transcripts of these audios.<sup>58</sup> Further, the Single Judge finds the requested non-standard redactions to these audio files to be justified, and it would serve therefore no purpose for the Defence to receive full-length transcripts of the audio files merely to see the redactions applied with the redaction codes. This part of the Defence Requests is therefore rejected.
18. However, with regard to the audio file which is entirely in Acholi,<sup>59</sup> the Single Judge is not in a position to review the contents of this audio file. Also bearing in mind that this concerns only one audio file of approximately 1 hour 15 minutes in length, the Single Judge considers that the Prosecution should produce a full-length transcript including accompanying translation. The transcript and its translation are to be provided to the Chamber for it to review the requested non-standard redactions to this audio file.

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<sup>55</sup> Response, ICC-02/04-01/15-1743-Red, paras 17-25.

<sup>56</sup> Response, ICC-02/04-01/15-1743-Red, paras 12, 19.

<sup>57</sup> Reply, ICC-02/04-01/15-1747, paras 19-20.

<sup>58</sup> This concerns items UGA-OTP-0158-0002-R01, UGA-OTP-0158-0034-R01, UGA-OTP-0158-0040-R01, UGA-OTP-0160-0095 track 1 and track 3 (two parts), UGA-OTP-0189-0020-R01.

<sup>59</sup> Item UGA-OTP-0227-0100, as provided to the Chamber in Annex 27 to Prosecution's Response to the "Defence Request for Remedies in Light of Prosecution Disclosure Violations", 28 February 2020, ICC-02/04-01/15-1723 (see ICC-02/04-01/15-1723-Conf-Exp-Anx27).

19. Turning to the Defence request to review all redactions applied to items UGA-OTP-0204-0268-R01 and UGA-OTP-0238-0699-R02,<sup>60</sup> the Single Judge examines them in turn. With regard to item UGA-OTP-0204-0268-R01, it is noted that the witness concerned was called to testify by the Defence, which is therefore likely already in possession of at least some of the information currently redacted under codes B.1 and B.2. The Single Judge takes note of the Prosecution's submission that 'the mere fact that a witness has testified, that the trial hearings have concluded, or that the Defence has contacted a person, does not eliminate the basis for, or applicability of, standard redactions aimed at protecting such information'.<sup>61</sup> However, regarding this particular item, the Single Judge considers that the Prosecution should, within ten days of notification of this decision, provide specific reasons why, in its submission, the redactions applied under codes B.1 and B.2 to item UGA-OTP-0204-0268-R01 continue to be justified. In contrast, the Single Judge finds that the redactions applied under A.7 continue to be justified. The non-standard redactions applied under codes C and D are addressed above.<sup>62</sup>
20. Having reviewed the redactions applied to item UGA-OTP-0238-0699-R02, the Single Judge considers that the redactions under A.2.4 continue to be justified under Rule 81(2) of the Rules in accordance with the redaction protocol. The Single Judge notes the argument of the Defence that the name of another person performing similar functions has been disclosed in the past and that the presentation of evidence has ended.<sup>63</sup> However, having reviewed the redactions at hand, the Single Judge considers that the protective interests at stake in this specific case continue to exist, and that the redaction there remains justified, and further that the information thus redacted does not appear to be relevant for the Defence. This part of the Defence Requests is thus rejected. The non-standard redactions applied under codes C and D are addressed above.<sup>64</sup>
21. The Defence also challenges the non-standard and standard redactions applied to items UGA-OTP-0198-0249-R02 and UGA-OTP-0283-1727-R02.<sup>65</sup> In relation to item UGA-OTP-0198-0249-R02, the Defence requests that the Prosecution be ordered to immediately

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<sup>60</sup> Response, ICC-02/04-01/15-1743-Red, paras 26-32 and 33-36.

<sup>61</sup> Reply, ICC-02/04-01/15-1747, para. 14.

<sup>62</sup> See paras 13-14.

<sup>63</sup> See Response, ICC-02/04-01/15-1743-Red, para. 34.

<sup>64</sup> See paras 13-14.

<sup>65</sup> Response, ICC-02/04-01/15-1743-Red, paras 37-39, 42.

disclose the information redacted pursuant to codes B.1 and B.2 because of an alleged violation of the accused's rights under Article 67(1)(e) of the Statute and Rules 68(2)(c) and 77 of the Rules.<sup>66</sup> The Prosecution points out that the Defence does not suggest that it requested such information from the Prosecution and it was refused.<sup>67</sup>

22. In this regard, the Single Judge takes note of the fact that in its decision on the Defence request under Rule 68(2)(c) of the Rules which concerned the individual subject to this item, the Chamber made clear that the Defence would have to submit information substantiating its allegation regarding the person's death.<sup>68</sup> Material currently redacted under code B.1 could potentially assist the Defence in obtaining such additional information, while at the same time the protective interests of the individual at stake, if indeed deceased, are reduced with regard to the information at hand. Consequently, the Single Judge considers that with regard to this particular item, the Prosecution should, within ten days of notification of this decision, provide specific reasons why, in its submission, the redactions applied under code B.1 to item UGA-OTP-0198-0249-R02 continue to be justified.
23. At the same time, having reviewed the information redacted under code B.2, the Single Judge notes that even if the individual in question is deceased, the persons which the redactions under code B.2 aim to safeguard continue to require this protection. Accordingly, the Single Judge is convinced that such redaction continues to be justified and proportionate. Having further reviewed the remainder of the redactions applied to this item, the Single Judge also considers that the redactions under code A.7 continue to be justified. The non-standard redactions under codes C and D are addressed above.<sup>69</sup>
24. Turning to item UGA-OTP-0283-1727-R02, the Defence challenges the 'block redactions' under codes C and D, in particular the latter, arguing that it is 'unfathomable' that the majority of the transcript content would be covered by such non-standard redactions.<sup>70</sup> Having reviewed the redacted information at stage, and as addressed above,<sup>71</sup> the Single

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<sup>66</sup> See also Response, ICC-02/04-01/15-1743-Red, paras 40-42.

<sup>67</sup> Reply, ICC-02/04-01/15-1747, para. 15.

<sup>68</sup> Decision on Defence Request Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence, 19 June 2018, ICC-02/04-01/15-1288, para. 9.

<sup>69</sup> See paras 13-14.

<sup>70</sup> Response, ICC-02/04-01/15-1743-Red, paras 37-38.

<sup>71</sup> See paras 13-14.

Judge is convinced that these redactions are justified. Therefore, this part of the Defence requests is rejected.

25. The Defence further requests the Chamber to review all standard redactions under code A to determine if they are still warranted, especially considering that the Prosecution's investigations are completed.<sup>72</sup> The Prosecution submits that the circumstances listed by the Defence do not warrant lifting standard redactions, 'particularly at this stage of proceedings, in which the trial hearings have concluded but judgment is pending'.<sup>73</sup>
26. In this context, the Single Judge notes that redactions under code A are made pursuant to Rule 81(2) of the Rules, which provides for non-disclosure of material or information if disclosure 'may prejudice further or ongoing investigations'. A number of these redactions have been addressed further above in this decision;<sup>74</sup> as stated, the Single Judge considers those redactions continue to be justified. For those and all remaining documents, the nature of the information redacted includes specifics on particular locations (under code A.1), certain staff involved with witness matters (under codes A.2.2, A.2.4 and A.2.6), and, for the majority of the items, on witness management and contact procedures (under code A.7). In this regard, it is to be noted that the phrase 'further or ongoing investigations' must be understood to refer to both current and future investigations and is not limited to the investigation against the accused in the present case.<sup>75</sup> On this basis, the Single Judge finds that disclosure of the redacted information bears the potential of prejudicing further or ongoing investigations. The Single Judge also recalls in this regard the considerations above in the context of the non-standard redactions pursuant to Rule 81(4) of the Rules and considers that also in this context, this is mainly related to ensuring that such information is disseminated to as few individuals as possible.<sup>76</sup> Having reviewed all relevant redactions, and for the reasons stated, the Single Judge is convinced that the redactions continue to be justified.

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<sup>72</sup> Response, ICC-02/04-01/15-1743-Red, paras 43-44.

<sup>73</sup> Reply, ICC-02/04-01/15-1747, para. 17.

<sup>74</sup> See paras 19, 20, 23.

<sup>75</sup> See also Pre-Trial Chamber II, *Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona*, First Decision on the Prosecutor's Request for Authorisation to Withhold the Identities of Witnesses and Apply Non-Standard Redactions, 3 February 2020 (date of public redacted version), ICC-01/14-01/18-232-Red2, para. 28.

<sup>76</sup> See also para. 13.

27. In this context, the Single Judge also notes that two items include information redacted under code A.7 which, in the view of the Single Judge, should rather be redacted under code B.1.<sup>77</sup> However, the Single Judge considers that as such, the redaction of this information remains justified, and this has therefore no further impact on the extent of disclosure regarding these two items. Finally, while finding that in the specific cases at hand, the redactions under code A continue to be justified, the Single Judge recalls that the Prosecution is under a continuing obligation to monitor the need for redactions and to lift redactions as soon as they are no longer warranted.<sup>78</sup>
28. In addition, the Defence requests the Chamber to order the lifting of all B.1 redaction codes in items UGA-OTP-0043-0124-R02, UGA-OTP-0204-0259-R02, UGA-OTP-0204-0284-R02 and UGA-OTP-0283-2165-R02 as they concern ‘witnesses who have testified’.<sup>79</sup> The Prosecution argues in this regard that its obligations towards witnesses and other persons do not diminish over time or cease once a witness has testified or specific case has ended.<sup>80</sup> It also points out that in the past, the Prosecution has provided contact information or assistance in contacting witnesses upon request of the Defence and subject to the consent of the witness.<sup>81</sup>
29. At the outset, the Single Judge notes that item UGA-OTP-0283-2165-R02 does not concern an individual who provided evidence before the Chamber. Having reviewed the redacted information at issue, and in any event, the Single Judge also considers that the redaction continues to be justified. In relation to the other three items, the Single Judge takes note of the fact that the individuals concerned in these documents have indeed provided evidence to the Chamber and that therefore some of their personal information is likely already available to the Defence. However, having reviewed the specific information at stake and the details which it concerns, the Single Judge considers that protection of this information remains justified also at this stage of the proceedings. Therefore, this part of the Defence Requests is rejected.

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<sup>77</sup> This concerns items UGA-OTP-0204-0209-R02, at 0209 and UGA-OTP-0204-0226-R02, at 0226.

<sup>78</sup> Decision on issues related to disclosure and exceptions thereto, ICC-02/04-01/15-224, para. 5.

<sup>79</sup> Response, ICC-02/04-01/15-1743-Red, para. 45.

<sup>80</sup> Reply, ICC-02/04-01/15-1747, para. 14.

<sup>81</sup> Reply, ICC-02/04-01/15-1747, para. 15.

30. The Defence also requests that the Prosecution be ordered to review all redactions applied under codes B.2 and B.3 in the remaining documents, to ensure that the person protected by these redactions were not interviewed by the Prosecution or acted as intermediary for the Prosecution.<sup>82</sup> The Prosecution has reiterated that information subject to its general disclosure obligations has been disclosed.<sup>83</sup> The Single Judge considers that the Defence has not demonstrated why an additional review of standard redactions under codes B.2 and B.3 is justified. Without anything further, the Single Judge does not consider this specific request substantiated. It is therefore rejected.
31. Moreover, the Defence requests that the Prosecution be ordered to review all redactions under codes C and D to ensure compliance with paragraph 5 of the Redaction Protocol.<sup>84</sup> However, the redactions under codes C and D are precisely the non-standard redactions which are requested by the Prosecution in the Request and which are, as such and in any event, subject to the review of the Single Judge in the present decision.<sup>85</sup> Therefore, the Single Judges sees no reason to order their review, yet again, and this part of the Defence Requests is rejected. At the same time, the Single Judge reiterates the Prosecution's obligation to continue monitoring the need for redactions over time, and to lift redactions as soon as they are no longer warranted.<sup>86</sup>
32. Finally, the Defence asks that the Prosecution be ordered to review the entirety of its material in the 'Ugandan Situation' to ensure accuracy of its previous redactions and that the redactions are still warranted.<sup>87</sup> The Single Judge notes in this regard, as pointed out just above, that the Prosecution is under a general obligation to keep redactions under review.<sup>88</sup> On the basis of the submissions, no further specific order is demonstrated to be necessary. For this reason, this part of the Defence Requests is rejected.

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<sup>82</sup> Response, ICC-02/04-01/15-1743-Red, paras 46-47.

<sup>83</sup> See Reply, ICC-02/04-01/15-1747, paras 6, 9.

<sup>84</sup> Response, ICC-02/04-01/15-1743-Red, para. 49.

<sup>85</sup> See specifically paras 13-14.

<sup>86</sup> Decision on issues related to disclosure and exceptions thereto, ICC-02/04-01/15-224, para. 5.

<sup>87</sup> Response, ICC-02/04-01/15-1743-Red, para. 49.

<sup>88</sup> Decision on issues related to disclosure and exceptions thereto, ICC-02/04-01/15-224, para. 5.

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

**GRANTS** the Request in part and as outlined in paragraphs 13-14 above;

**ORDERS** the Prosecution to re-disclose items UGA-OTP-0198-0249-R02, UGA-OTP-0204-0186-R02, UGA-OTP-0204-0268-R02, UGA-OTP-0204-0284-R02, UGA-OTP-0204-0300-R03, UGA-OTP-0204-0309-R02, UGA-OTP-0204-0327-R02, UGA-OTP-0204-0336-R02 and UGA-OTP-0207-0026-R02, lifting part of the requested non-standard redactions as specified in paragraph 14 and footnote 51 above;

**ORDERS** the Prosecution to complete all relevant e-court metadata fields for the items in disclosure package 134 without further delay;

**ORDERS** the Prosecution to produce a full-length transcript with accompanying translation of item UGA-OTP-0227-0100, to be provided to the Chamber for review of the non-standard redactions sought in the Request;

**ORDERS** the Prosecution in relation to item UGA-OTP-0198-0249-R02 to provide, within ten days of notification of this decision, specific reasons why the redactions applied under code B.1 continue to be justified;

**ORDERS** the Prosecution in relation to item UGA-OTP-0204-0268-R01 to provide, within ten days of notification of this decision, specific reasons why the redactions applied under codes B.1 and B.2 continue to be justified; and

**REJECTS** the remainder of the Defence Requests.

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

  
**Judge Bertram Schmitt, Single Judge**

Dated 2 October 2020

At The Hague, The Netherlands