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Pénale
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**International
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TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public

Decision on Defence Request for Redactions to Witness Statements

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

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Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(6)(e) and 68(1) of the Rome Statute ('Statute') and Rule 81(4) of the Rules of Procedure and Evidence ('Rules') issues the following 'Decision on Defence Request for Redactions to Witness Statements'.

I. Procedural history

1. On 2 July 2018, the Chamber decided that, *inter alia*, the prior recorded testimony of Defence witnesses D-0008, D-0012, D-0050 and D-0077 are to be introduced pursuant to Rule 68(2)(b) of the Rules.¹ The Chamber premised the introduction of the statements on the reception of the declarations required under Rule 68(2)(b)(iii) of the Rules and ordered the Defence to propose public redacted version of the concerned prior recorded testimonies or indicate that they can be made public.²
2. On 16 August 2018, the Chamber decided that the prior recorded testimony of a further Defence witness, D-0132 (together with D-0008, D-0012, D-0050 and D-0077, the 'Defence Witnesses') is to be introduced via Rule 68(2)(b) of the Rules.³
3. On 14 February 2019, the declarations required under Rule 68(2)(b)(iii) of the Rules were filed into the case record.⁴
4. On 5 March 2019, the Defence requested redactions to the prior recorded testimony of the Defence Witnesses (the 'Request').⁵
5. On 19 March 2019, the Office of the Prosecutor (the 'Prosecution'), provided its response to the Request, submitting observations for the redactions for each of the Defence Witnesses (the 'Response').⁶

¹ Decision on Defence Request to Introduce Previously Recorded Testimony Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-02/04-01/15-1294.

² ICC-02/04-01/15-1294, page 13 and 14.

³ Public Redacted Version of Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), ICC-02/04-01/15-1322-Red.

⁴ Registry Transmission of the Declarations made by Witnesses D-0008, D-0012, D-0050, D-0077, and D-0132 pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-02/04-01/15-1448-Conf and confidential annexes I to V.

⁵ Defence Notification of Rule 68(2)(b) Statements and Redaction Requests, ICC-02/04-01/15-1472-Conf with 19 confidential annexes A to E.15. A public redacted version was filed on the same day, ICC-02/04-01/15-1472-Red.

II. Submissions and analysis

6. The Single Judge will discuss the proposed redactions for each of the Defence Witnesses individually or in groups of witnesses, where appropriate. In instances where a proposed redaction is unopposed, the Single Judge grants the Request without further discussion. Contested redactions are discussed and analysed below.

1. *Defence Witnesses D-0008, D-0012 and D-0132.*

7. The Defence informs the Chamber that D-0008, D-0012 and D-0132 consented to disclosing their identity and making their statements public with specific redactions.⁷ The Defence requests the redaction of ‘identifying material like phone numbers, current addresses, names of family members, identification card numbers, date of birth, place of birth and other like material’.⁸ It further requests that the name of persons working for the Defence and the location and dates of the interviews be redacted.⁹
8. The Prosecution agrees to redactions of the current place of the witnesses’ residence, the name of the interpreter, the name of resource persons working for the Defence and the specific location of the interview. However, it objects to the redaction of further details with regard to the witness (such as their date of birth and their ethnic origin, the name of their parents and spouse, the number of children they have, as well as the name of the case manager and the general location of the interview).¹⁰
9. The Single Judge notes, that the three witnesses agreed to their identity being made public. Accordingly, the Single Judge does not find any need to redact their place or date of birth or other information which is connected to the witness him- or herself. Equally, the names of relatives can be disclosed. The motivation behind these redactions is to prevent the witnesses from being identified. Since the name of the three witnesses will be known, such information can be equally disclosed. However, personal information like telephone numbers or the current place of residence shall remain redacted.

⁶ Prosecution’s Response to “Defence Notification of Rule 68(2)(b) Statements and Redaction Requests”, ICC-02/04-01/15-1487-Conf.

⁷ Request, ICC-02/04-01/15-1472-Conf, para. 6.

⁸ Request, ICC-02/04-01/15-1472-Conf, para. 7.

⁹ Request, ICC-02/04-01/15-1472-Conf, para. 8.

¹⁰ Response, ICC-02/04-01/15-1487-Conf, paras 9-10.

10. Any information which could potentially impede the work or ongoing investigations of the Defence may remain redacted. This includes the specific place of the interview, but not general references to a place or town.¹¹ The Single Judge, however, finds the redaction of the dates of the interviews to be unnecessary. With regard to the redaction of the name of the case manager,¹² which the Prosecution opposes, the Single Judge finds that under normal circumstances a case manager's identity should not be redacted.¹³ However, in this specific case, it appears that the person in question seems to be only working in Uganda in order to facilitate the Defence's work on the ground. Further, the name of the person is not known to the general public, unlike other case managers on Mr Ongwen's defence team. Accordingly, the Single Judge finds that in the specific circumstances this person shall be treated like a resource person and the name can remain redacted.

2. *Defence Witnesses D-0077*

11. In respect of witness D-0077, the Defence submits that the witness requested that his identity be withheld from the public out of fear of reprisals and additionally seeks to redact the same information in relation to D-0008, D-0012, and D-0132.¹⁴
12. The Prosecution submits that withholding the witness's identity is not justified. It agrees to the same information as in the cases of D-0008, D-0012 and D-0132 (current place of residence, information related to the interpreter, the name of the Defence's resource person) may remain redacted in relation to D-0077, but requests that any additional redacted information be disclosed.¹⁵
13. The Single Judge finds that the reasons for withholding D-0077's identity are purely subjective. Additionally, the witness requests that his identity be withheld for events which occurred over 15 years ago and seem to be based on general grounds and not specific events related to the witness. Accordingly, the Single Judge finds that it is not necessary to protect the identity of D-0077. The same redactions as for D-0008, D-0012

¹¹ General references are made in Annex A, page 3, UGA-D26-0010-0307; Annex B, page 3, UGA-D26-0010-0337.

¹² See, Annex A, page 3, UGA-D26-0010-0308 and Annex B, page 3, UGA-D26-0010-0337e.

¹³ See *in this sense*, Annex E.1, page 4, UGA-D26-0025-0098, which contains the name of a case manager by the Defence for which no redaction is requested.

¹⁴ Request, ICC-02/04-01/15-1472-Conf, paras 10-13.

¹⁵ Response, ICC-02/04-01/15-1487-Conf, paras 8 and 12.

and D-0132, are granted for D-0077, namely the current place of residence of the witness, the name of the Defence's resource person and the name and signature of the interpreter.¹⁶

3. *Defence Witness D-0050*

14. The Prosecution does not oppose the redactions regarding D-0050, except for the dates of the interview, the location of the interview, and the name of a Prosecution trial lawyer.¹⁷
15. There are 15 annexes with interviews D-0050 gave. The Prosecution did not precisely pinpoint the contested redactions. However, the only reference to the dates and place of interview for which a redaction request is made is in annex E.1 of the Request, which is the interview the witness gave to the Defence. The Single Judge finds that revealing the dates and the general location of the interview does not risk revealing the identity of D-0050. Accordingly, this proposed redaction is rejected.
16. Equally, the contested redaction of a Prosecution trial lawyer's name is not indicated. Annex E.2 of the Request contains a redaction request of what appears to be the signature of an OTP trial lawyer.¹⁸ This annex further contains redaction requests on pages 2 to 9 for initials which seem to belong to the same person. The Single Judge does not consider these redactions to be necessary to protect the identity of D-0050 and notes that the Prosecution itself requests that the name of one of its trial lawyers be disclosed. Accordingly, these proposed redactions are also rejected.
17. For consistency, the name of the interpreter in annex E.15 on page two (UGA-OTP-0228-1528) should also be redacted, as indicated by the Prosecution.¹⁹

¹⁶ The place of the first interview, mentioned in Annex D, page 3, UGA-D26-0022-0316, can also be disclosed as it is a general reference.

¹⁷ Response, ICC-02/04-01/15-1487-Conf, para. 12.

¹⁸ Annex E.2, page 4, UGA.00131.003.

¹⁹ Response, ICC-02/04-01/15-1487-Conf, para. 7.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the redactions as outlined in paragraphs 6, 9, 10, 13 and 1517 above; and

REJECTS the remainder of the Request.

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



Judge Bertram Schmitt, Single Judge

Dated 12 April 2019

At The Hague, The Netherlands