

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **1 December 2020**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public

Further Decision on the Prosecution Request for Non-Standard Redactions

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

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Counsel Support Section

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Detention Section

**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 Articles 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 ‘Further Decision on the Prosecution 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’).¹
2. On 8 June 2020, the Prosecution filed a request for non-standard redactions to the 27 Items pursuant to Rules 81(1) and 81(4) of the Rules.²
3. On 2 October 2020, the Single Judge issued a decision on this request, ordering the Prosecution, *inter alia*, to provide the Chamber with a full-length transcript with accompanying translation of item UGA-OTP-0227-0100 and with specific reasons why the redactions applied under code B.1 to item UGA-OTP-0198-0249-R02 and under codes B.1 and B.2 to item UGA-OTP-0204-0268-R01 continue to be justified.³
4. On 15 October 2020, the Prosecution informed the Chamber that it had requested, on an urgent basis, the transcription and translation of item UGA-OTP-0227-0100 and that it lifted the redactions under code B.1 to item UGA-OTP-0198-0249-R02.⁴ With regard to item UGA-OTP-0204-0268-R01, the Prosecution reports that witness D-0134, concerned by this item, was contacted and refused disclosure of the information at question despite having been in contact with the Defence.⁵ According to the Prosecution, it did proceed to lifting the redactions under code B.1, considering it ‘overwhelmingly likely’ that this information is already in possession of the Defence and that therefore its provision to the

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

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

³ Decision on the Prosecution Amended Request for Non-Standard Redactions, ICC-02/04-01/15-1750 (the ‘Decision on Non-Standard Redactions’), p. 16.

⁴ Prosecution’s Communication of the Disclosure of Evidence and Report on Actions Taken in Response to Decision ICC-02/04-01/15-1750, ICC-02/04-01/15-1751 (the ‘Prosecution Report’), paras 5, 10.

⁵ Prosecution Report, ICC-02/04-01/15-1751, para. 7.

Defence ‘would not cause or increase any appreciable risk to the witness or third parties’.⁶ However, in relation to the information redacted under code B.2, the Prosecution argues that it is not in a position to know whether the Defence already has some or all of the information concerned, that it concerns third parties who are not witnesses and have had no interaction with the Court, and that in light of D-0134’s expressed concerns about continuing stigmatisation, which appear genuine and credible, these standard redactions under code B.2 continue to be justified.⁷

5. The Defence filed a response to this report on 26 October 2020.⁸ It requests that the Chamber reject the Prosecution request to maintain the redactions under code B.2 and ‘[r]emind the Prosecution again of its ongoing duty to review and lift redactions’.⁹ The Defence argues that the reasons given for not providing the information to the Defence are ‘general in nature and lack specificity as to any real threat’, that ‘concerns about stigmatisation are not valid reasons to have his information disclosed to the Defence on a confidential basis’,¹⁰ and that the Prosecution ‘has failed to advance a valid reason for withholding this information on a confidential basis’.¹¹
6. On 5 November 2020, the Prosecution provided the Chamber with the transcript and its translation of item UGA-OTP-0227-0100.¹²

II. Analysis

7. Turning first to the requested non-standard redactions to item UGA-OTP-0227-0100, the Single Judge recalls the applicable law as outlined in the previous decision on non-standard redactions.¹³ The Single Judge also recalls the reasoning in regard to redactions pursuant to Rule 81(4) of the Rules, namely that restricting disclosure of the information at issue is not related to the professionalism of Defence counsel, but rather relates to the fact that this

⁶ Prosecution Report, ICC-02/04-01/15-1751, para. 8.

⁷ Prosecution Report, ICC-02/04-01/15-1751, para. 9.

⁸ Defence Response to the Prosecution’s Second Request to Maintain Redactions, ICC-02/04-01/15-1752 (the ‘Response’).

⁹ Response, ICC-02/04-01/15-1752, para. 9.

¹⁰ Response, ICC-02/04-01/15-1752, para. 6.

¹¹ Response, ICC-02/04-01/15-1752, para. 8.

¹² Prosecution’s Notice of the Filing of a Transcript and Translation of UGA-OTP-0227-0100, ICC-02/04-01/15-1753, with confidential *ex parte*, Prosecution only, annexes A and B.

¹³ Decision on Non-Standard Redactions, ICC-02/04-01/15-1750, paras 10-12.

information should be disseminated to as few individuals as possible.¹⁴ Having reviewed the translated transcript of UGA-OTP-0227-0100,¹⁵ the Single Judge is satisfied that the non-standard redactions applied to item UGA-OTP-0227-0100 are justified. In light of the fact that the Prosecution has now produced a transcript and translation of this audio, the relevant transcript and translation are also to be disclosed to the Defence, with the appropriate redactions applied.

8. Examining the redactions under code B.2 to item UGA-OTP-0204-0268-R01, the Single Judge recalls that in accordance with the redaction protocol, redactions under code B are made pursuant to Rule 81(4) of the Rules, and under code B.2 specifically to '[i]dentifying and contact information of family members of witnesses, insofar necessary to protect their safety'.¹⁶ In the case at hand, the information subject to redaction under code B.2 relates to details of family members and dependants of D-0134. One of the names is known to the Defence as it was discussed during the witness's testimony. Therefore, this specific part of the redactions should be lifted.¹⁷ However, for the remainder of the information, the Single Judge is of the view that the persons which the redactions aim to safeguard continue to require this protection, in particular bearing in mind that they appear to be third parties with no further connection to the proceedings. Accordingly, the Single Judge is convinced that such redaction continues to be justified and proportionate.

¹⁴ Decision on Non-Standard Redactions, ICC-02/04-01/15-1750, para. 13.

¹⁵ See ICC-02/04-01/15-1753-Conf-Exp-AnxB.

¹⁶ See 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.

¹⁷ This concerns in item UGA-OTP-0204-0268, at 0269, first line, the first name (with information in parenthesis) and second line, the first name (without information in parenthesis).

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the request for non-standard redactions to item UGA-OTP-0227-0100;

ORDERS the Prosecution to disclose to the Defence the transcript and accompanying translation of item UGA-OTP-0227-0100 with the appropriate redactions applied;

GRANTS, in part, the request to maintain the redactions under code B.2 to item UGA-OTP-0204-0268; and

ORDERS the Prosecution to re-disclose the lesser redacted version of item UGA-OTP-0204-0268, lifting the redaction as specified above in paragraph 8, footnote 17.

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



Judge Bertram Schmitt, Single Judge

Dated 1 December 2020

At The Hague, The Netherlands