

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 July 2017

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

Public

Decision on Prosecution Request to Add Two Items to its List of Evidence

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’) of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(2) and 67 of the Rome Statute, issues the following ‘Decision on Prosecution Request to Add Two Items to its List of Evidence’.

I. Procedural History and Submissions

1. On 21 June 2017, the Office of the Prosecutor (‘Prosecution’) filed a request to add two items to its list of evidence (‘List of Evidence’ and ‘Request’).¹ The items are transcripts in English and Acholi of a radio interview given by one of its witnesses.² The Prosecution explains that the audio recording of the radio interview is already on its List of Evidence and that both transcripts were disclosed to the Defence as soon as they were available.³
2. On 3 July 2017, the Defence filed its response, submitting that the Request should be rejected (‘Response’).⁴ It argues that the Prosecution failed to explain the purpose of the addition.⁵ Further, it asserts that only the audio tape itself and the comments on the audio tape made by the witness during his testimony have probative value.⁶ Lastly, according to the Defence, it is prejudiced due to the late disclosure of the transcripts.⁷
3. Firstly, with regard to what the Defence refers to as a ‘standing objection’ that transcripts and translations of non-ICC interview audio files should not be

¹ Prosecution’s Request to Add Two Items to its List of Evidence, ICC-02/04-01/15-899-Conf, with two confidential annexes A and B. A public redacted version was filed on the same day, ICC-02/04-01/15-899-Red.

² Request, ICC-02/04-01/15-899-Red, paras 2-3.

³ Request, ICC-02/04-01/15-899-Red, paras 4 and 6.

⁴ Defence Response to the “Prosecution’s Request to Add Two Items to its List of Evidence” (ICC-02/04-01/15-899-Conf), ICC-02/04-01/15-904-Conf.

⁵ Response, ICC-02/04-01/15-904-Conf, para. 7.

⁶ Response, ICC-02/04-01/15-904-Conf, paras 9-10.

⁷ Response, ICC-02/04-01/15-904-Conf, paras 9-10.

submitted following the 6 September disclosure deadline,⁸ the Single Judge notes that the initial directions on the conduct of the proceedings ('Initial Directions') permit such a possibility when the original audio-visual material is on the List of Evidence:

In principle, recognising the formal submission of audio-visual material automatically includes recognising the formal submission of any associated transcripts or translations which were duly disclosed. *This would be the case irrespective of whether these transcripts/translations were on the list of evidence or formally submitted, though it is clearly preferable to do both so there is no confusion as to their status.*⁹

4. The Single Judge considers the transcripts at issue to be duly disclosed since the Prosecution disclosed them as soon as they became available. Accordingly, the listing of the two transcriptions on the List of Evidence is not a prerequisite for the formal submission of the radio interview into evidence, and the submission of the latter will extend automatically to the transcripts. However, for reasons of clarity the addition of the two transcripts to the List of Evidence is welcome.¹⁰

5. Consequently, this also means that the addition of the transcripts cannot cause any undue prejudice to the accused. The Single Judge further reminds the Defence that it has every opportunity to test the veracity of the transcripts during the testimony of the relevant witness. Accordingly, the Single Judge grants the Request.

⁸ Response, ICC-02/04-01/15-904-Conf, para. 2.

⁹ Initial Directions on the Conduct of the Proceedings, 13 July 2016, ICC-02/04-01/15-497, para. 30 (emphasis added).

¹⁰ *In the same spirit*, Initial Directions on the Conduct of the Proceedings, 13 July 2016, ICC-02/04-01/15-497, para. 30. *See also*, Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on 'Prosecution's Fifth Request for the Admission of Evidence from the Bar Table', 14 December 2015, ICC-01/05-01/13-1524, para. 7.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request; and

ORDERS the Prosecution to file an updated List of Evidence.



Judge Bertram Schmitt, Single Judge

Dated 5 July 2017

At The Hague, The Netherlands