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

Date: 2 February 2018

**TRIAL CHAMBER IX**

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

**SITUATION IN UGANDA**

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

**Public with Confidential Annex**

**Decision on Prosecution's Submission of Public Redacted Versions of 23  
Testimonies Introduced Under Rule 68(2)(b) and (c) of the Rules**

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

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
Benjamin Gumpert

**Counsel for the Defence**

Krispus Ayena Odongo

**Legal Representatives of the Victims**

Joseph Akwenyu Manoba  
Francisco Cox  
Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Judge Bertram Schmitt**, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court') in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(2), 64(7), 68 and 72 of the Rome Statute ('Statute') and Regulation 23 *bis* of the Regulations of the Court, issues the following 'Decision on Prosecution's Submission of Public Redacted Versions of 23 Testimonies Introduced Under Rule 68(2)(b) and (c) of the Rules'.

## I. Background and Submissions

1. On 18 November 2016, the Chamber issued its Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules ('Decision 596'),<sup>1</sup> in which it granted the Office of the Prosecutor's ('Prosecution') request to introduce the prior recorded testimonies of a number of witnesses into evidence pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence ('Rules').<sup>2</sup> The Chamber also ordered the Prosecution to, *inter alia*, file a proposed public redaction version of each prior recorded testimony introduced under Rule 68(2)(b) of the Rules.<sup>3</sup> The other participants were instructed to raise any objection to the redactions proposed by the Prosecution or propose additional redactions.<sup>4</sup>
2. On 22 November 2016, the Chamber issued its Decision on Prosecution Request to Add Items to its List of Evidence, to include a Witness on its List of Witnesses and to Submit Two Prior Recorded Testimonies under Rule 68(2)(b) and (c) ('Decision 600'),<sup>5</sup> in which it, *inter alia*, granted the Prosecution's request to

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<sup>1</sup> ICC-02/04-01/15-596-Conf, a public redacted version was issued on the same day.

<sup>2</sup> Decision 596, ICC-02/04-01/15-596-Red, page 111.

<sup>3</sup> Decision 596, ICC-02/04-01/15-596-Red, page 111.

<sup>4</sup> Decision 596, ICC-02/04-01/15-596-Red, page 111.

<sup>5</sup> Decision 600, ICC-02/04-01/15-600.

introduce the prior recorded testimonies of two additional witnesses into evidence pursuant to Rule 68(2)(b) and (c) of the Rules.<sup>6</sup>

3. On 25 September 2017, the Single Judge issued a decision reviewing the Prosecution's proposed redactions and relevant Defence objections and instructing the Prosecution to file the public redacted versions of 17 of the prior recorded testimonies introduced into evidence in eCourt.<sup>7</sup>
4. On 21 December 2017, the Registry filed its confidential transmission related to the Rule 68(2)(b) declarations of 22 witnesses and the accompanying attestation by the witnessing officer.<sup>8</sup> The declarations and attestations were filed as confidential *ex parte* annexes to the Registry's transmission.<sup>9</sup> In relation to the dual status witnesses,<sup>10</sup> the Registry submits that the two teams of Legal Representatives ('LRVs') seek to redact from the Defence the identity card or passport number of the witnesses in addition to the location of the certification when the certification took place at the the witness's current place of residence.<sup>11</sup>
5. On 28 December 2017, the Prosecution submitted proposed public redacted versions of 23 testimonies ('Testimonies')<sup>12</sup> introduced under Rule 68(2)(b) or (c) of the Rules ('Request').<sup>13</sup> The testimonies were submitted as Annexes 1 to 23 to

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<sup>6</sup> Decision 600, ICC-02/04-01/15-600, page 15.

<sup>7</sup> Decision on Prosecution's Submission of Public Redacted Versions of 17 Testimonies Introduced Under Rule 68(2)(b) of the Rules and on Publicity of the Record, ICC-02/04-01/15-1005, with confidential Annex.

<sup>8</sup> Registry Transmission of the Declarations made by Twenty-two Witnesses pursuant to rule 68(2) (b) of the Rules of Procedure and Evidence, ICC-02/04-01/15-1116-Conf, with confidential *ex parte* Annexes I-XXII.

<sup>9</sup> ICC-02/04-01/15-1116-Conf, Annexes 1-XXII.

<sup>10</sup> Witnesses P-26, P-60, P-185, P-195, P-196, P-274, P-279, P-281, P-282, P-284 and P-287 are represented by the Legal Representatives of Victims and Witnesses P-1, P-7, P-8, P-61, P-268 and P-325 are represented by the Common Legal Representative of Victims.

<sup>11</sup> ICC-02/04-01/15-1116-Conf, paras 4-5.

<sup>12</sup> These are the written statements of Witnesses P-1, P-7, P-8, P-15, P-26, P-35, P-40, P-60, P-61, P-96, P-130, P-185, P-195, P-196, P-268, P-270, P-274, P-279, P-281, P-282, P-284, P-287, and P-325. These Testimonies are the remaining Rule 68(2) statements still requiring the filing of a public redacted version pursuant to Decision 596 and 600.

<sup>13</sup> Prosecution's second submission of proposed public redacted versions of testimonies introduced under rules 68(2)(b) and (c) of the Rules of Procedure and Evidence, 28 December 2017, ICC-02/04-01/15-1123 with confidential Annexes 1-23.

the Request.<sup>14</sup> The Prosecution submits that the proposed redactions are necessary ‘to protect national security information of the Republic of Uganda under article 72 of the Statute, safety of witnesses and victims under article 68 of the Statute, and current and future investigative activities of the Prosecution under article 54 of the Statute’.<sup>15</sup> The Prosecution requests the Chamber’s approval of its proposed public redacted versions of the Testimonies.<sup>16</sup>

6. In its response to the Request (‘Defence Response’),<sup>17</sup> the defence for Dominic Ongwen (‘Defence’) does not object to the Prosecution’s proposed redactions to the statements of several witnesses.<sup>18</sup> The Defence has specific objections to the proposed redactions relating to the testimonies of P-40,<sup>19</sup> P-96,<sup>20</sup> P-274,<sup>21</sup> P-282<sup>22</sup> and P-287.<sup>23</sup>
7. The Defence also has general objections to redactions of the identity and identifying materials of Witnesses P-35,<sup>24</sup> P-130,<sup>25</sup> and P-195<sup>26</sup> in their statements.<sup>27</sup> The Defence argues that the Chamber has not been provided with objectively justified factual circumstances that would impermissibly risk the well-being of these witnesses.<sup>28</sup>

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<sup>14</sup> See Annexes 1-23 to the Request.

<sup>15</sup> Request, ICC-02/04-01/15-1123, paras 8-13.

<sup>16</sup> Request, ICC-02/04-01/15-1123, para. 14.

<sup>17</sup> Defence Observations on the Prosecution’s Second Submission of Rule 68(2) Witnesses, 15 January 2018, ICC-02/04-01/15-1134-Conf, with confidential Annex A. The Chamber granted the Defence and the Legal Representatives an extension of time until 15 January 2018 to file their responses. See Emails from the Chamber to the participants on 29 December at 10.41 and at 11.10.

<sup>18</sup> Specifically Witnesses P-1, P-7, P-8, P-15, P-26, P-60, P-61, P-185, P-196, P-268, P-270, P-279, P-281, P-284, and P-325. Defence Response, ICC-02/04-01/15-1123-Conf, para. 3.

<sup>19</sup> See Annex 7 to the Request.

<sup>20</sup> See Annex 10 to the Request.

<sup>21</sup> See Annex 17 to the Request.

<sup>22</sup> See Annex 20 to the Request.

<sup>23</sup> See Annex 22 to the Request.

<sup>24</sup> See Annex 6 to the Request.

<sup>25</sup> See Annex 11 to the Request.

<sup>26</sup> See Annex 13 to the Request.

<sup>27</sup> Defence Response, ICC-02/04-01/15-1134-Conf, paras 5-13.

<sup>28</sup> Defence Response, ICC-02/04-01/15-1134-Conf, paras 5-13.

8. The Defence also notes that it will file a public redaction version of its Response after a decision on the Request has been rendered.<sup>29</sup>
9. On 15 January 2018, the Legal Representatives of Victims notified the Chamber, and participants that it agrees with the Prosecution's proposed redactions represented in ICC-02/04-01/15-1123 and confidential annexes 1-23.<sup>30</sup>
10. On 15 January 2018,<sup>31</sup> the Common Legal Representative of Victims submitted its response stating that it shares the Prosecution's approach to minimize the redactions necessary to protect the security and well-being of the individuals concerned or national security information.<sup>32</sup>

## II. Analysis

11. The Defence makes no objection to the Prosecution's proposed redactions to the testimonies of P-1, P-7, P-8, P-15, P-26, P-60, P-61, P-185, P-196, P-268, P-270, P-279, P-281, P-284, and P-325.<sup>33</sup> Accordingly, the Prosecution's request in relation to these testimonies is granted.
12. The Single Judge addresses the disputed redactions to the testimonies of P-35, P-40, P-96, P-130, P-195, P-274, P-282 and P-287 in the confidential Annex to this decision. The Prosecution is instructed to prepare public redacted versions of the Testimonies in line with the Annex and paragraph 11 above and make them available in eCourt.
13. Regarding the confidential *ex parte* declarations of 22 witnesses and accompanying attestations, the Single Judge notes that the Registry's

<sup>29</sup> Defence Response, ICC-02/04-01/15-1134-Conf, para. 4 and Confidential Annex A.

<sup>30</sup> Email from Mr Manoba to the Chamber and the participants on 15 January 2018 at 16.01.

<sup>31</sup> The Chamber notes that this filing was not notified the Chamber and the participants until 16 January 2018.

<sup>32</sup> Common Legal Representative Response to 'Prosecution's second submission of proposed public redacted versions of testimonies introduced under rule 68(2)(b) and (c) of the Rules of Procedure and Evidence', ICC-02/04-01/15-1135, paras 4-5.

<sup>33</sup> Annexes 1, 2, 3, 4, 5, 8, 9, 12, 14, 15, 16, 18, 19, 21, and 23 to the Request respectively.

transmission does not provide the Legal Representatives' justifications for the requested redactions. Thus, the Single Judge instructs the Prosecution, in consultation with the LRVs as appropriate, to prepare confidential redacted versions of the declarations and attestations or request their reclassification. The Prosecution shall then transmit any confidential redacted declarations and attestations for the Registry to file into the case record.

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

**ORDERS** the Prosecution to prepare public redacted versions of the Testimonies in line with the Annex and paragraph 11 above and make them available in eCourt;

**INSTRUCTS** the Registry to ensure that the public redacted versions made available by the Prosecution in eCourt are made publicly available via the Court website as soon as practicable;

**ORDERS** the Prosecution to transmit any confidential redacted declarations or attestations to the Registry – or otherwise request their reclassification – in accordance with paragraph 13 above within 15 days of notification of the present decision; and

**ORDERS** the Defence to request reclassification of the Defence Response or file a public redacted version within 10 days of notification of the present decision.

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



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**Judge Bertram Schmitt**  
**Single Judge**

Dated 2 February 2018

At The Hague, The Netherlands