

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 10 July 2018

**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 to Order the Prosecution to Comply with the  
Disclosure Order**

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 Victims**

Joseph Akwenyu Manoba  
Francisco Cox  
Paolina Massidda

**Legal Representatives of 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**  
Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**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 Rule 134(3) of the Rules of Procedure and Evidence, issues the following 'Decision on Defence Request to Order the Prosecution to Comply with the Disclosure Order'.

1. On 20 April 2018, the Single Judge issued a decision whereby the Office of the Prosecutor ('Prosecution') was ordered to: (i) disclose the identity of a UPDF informant and to lift all corresponding redactions in the relevant materials; and (ii) disclose 'RFA 24, the UPDF report, the sound recording, and any transcripts of the sound recording *via* E-Court' ('Initial Decision').<sup>1</sup>
2. On 1 June 2018, the Single Judge, subsequent to an objection to the disclosure of the informant's identity registered by the Republic of Uganda, modified his Initial Decision ('Second Decision').<sup>2</sup> The Prosecution's obligation to disclose the informant's identity and lift all corresponding redactions was nullified.<sup>3</sup>
3. On 4 July 2018, the defence for Mr Ongwen ('Defence') submitted a request highlighting that the Prosecution had yet to disclose the relevant materials *via* E-Court ('Request').<sup>4</sup> The Defence therefore seeks an order asking the Prosecution to comply with the disclosure obligation in the manner stated in the Initial Decision.<sup>5</sup>
4. On the same day, the Prosecution responded *via* email stating that it understood the matter to have been adequately resolved by the Second Decision.<sup>6</sup> The

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<sup>1</sup> Decision on Prosecution Request under Paragraph 9 of Decision 1207, ICC-02/04-01/15-1234.

<sup>2</sup> Decision in Response to an Article 72(4) Intervention, ICC-02/04-01/15-1267-Corr2 (the corrigendum was notified on 26 June 2018).

<sup>3</sup> Second Decision, ICC-02/04-01/15-1267-Corr2, para. 28.

<sup>4</sup> Defence Request to Order the Prosecution to Comply with the Disclosure Order, ICC-02/04-01/15-1298, para. 8.

<sup>5</sup> Request, ICC-02/04-01/15-1298, paras 8 and 9(a).

<sup>6</sup> Email from Prosecution to Trial Chamber IX Communications on 4 July 2018 at 14:07. The Prosecution refers to paragraph 29 of the Second Decision, which states '[a]s to the question of whether the Defence has now

Prosecution highlighted that the materials in question have already been provided to the Defence in electronic format but, following a direction from the Chamber, would ensure that the materials are also disclosed *via* E-Court.

5. On 5 July 2018, the Chamber clarified by email that the Prosecution was still under an obligation to disclose the materials *via* E-Court.<sup>7</sup> While the Single Judge, in the Second Decision, modified his prior ruling with regard to the obligation of the Prosecution to disclose the informant's identity, this did not impact the remainder of the disclosure order contained in the Initial Decision.
6. On 9 July 2018, the Prosecution informed the Chamber that the relevant materials have been disclosed to the Defence *via* E-Court.<sup>8</sup>
7. The Single Judge is of the view that since the relevant materials have now been disclosed to the Defence *via* E-Court (along with the requisite metadata) the Defence Request is moot.

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

**DISMISSES** the Request as moot.

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



**Judge Bertram Schmitt, Single Judge**

Dated 10 July 2018

At The Hague, The Netherlands

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been amply and sufficiently remedied by the Prosecution's original failure to fulfil its information and evidence management obligations, the Single Judge considers that the Proposed Stipulation — along with the other items already disclosed — fully and adequately addresses this failure and ensures the fair and expeditious conduct of the proceedings'.

<sup>7</sup> Email from Trial Chamber IX Communications to the parties and participants on 5 July 2018 at 12:42.

<sup>8</sup> Email from Prosecution to Trial Chamber IX Communications on 9 July 2018 at 11:05. A disclosure report was attached to the email listing five items that have been formally provided to the Defence (UGA-OTP-0208-0016, UGA-OTP-0209-0042, UGA-OTP-0283-1502, UGA-OTP-0283-1508 and UGA-OTP-0283-1510).