

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 8 October 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 for Leave to Appeal Decision on Non-Standard  
Redactions Related to D-100 BSQ**

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 Article 82(1)(d) of the Rome Statute ('Statute'), issues the following 'Decision on Defence Request for Leave to Appeal Decision on Non-Standard Redactions Related to D-100 BSQ'.

1. On 26 September 2018, the Single Judge granted the Office of the Prosecutor's ('Prosecution') request for non-standard redactions to the latest biographic data and security questionnaire for D-100 ('D-100 BSQ') ('Redactions Decision').<sup>1</sup>
2. On 2 October 2018, the defence for Mr Ongwen ('Defence') sought leave to appeal the Redactions Decision with respect to two issues ('Request'):
  - (i) whether the Single Judge erred in law by failing to adhere to Appeals Chamber's and this Chamber's jurisprudence on what constitutes objective risks in respect to disclosure to the Defence; and
  - (ii) whether the Single Judge's reasoning based on a 'systemic appraisal' (i.e. without a specific, case-by-case analysis) is flawed.<sup>2</sup>
3. On 5 October 2018, the Prosecution responded that the Request should be rejected in full.<sup>3</sup>
4. The Single Judge recalls the interpretation of Article 82(1)(d) of the Statute as set out in detail previously.<sup>4</sup>
5. The Single Judge does not consider that the Redactions Decision failed to consider the objective risk of disclosing the specific information at issue to the

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<sup>1</sup> Decision on Prosecution's Request for non-standard redactions to document UGA-OTP-0284-0102, ICC-02/04-01/15-1348.

<sup>2</sup> Defence Request for Leave to Appeal "Decision on Prosecution's Request for non-standard redactions to document UGA-OTP-0284-0102" (ICC-02/04-01/15-1348), ICC-02/04-01/15-1355, paras 3, 9-10, 16.

<sup>3</sup> Prosecution's Response to Defence Request for Leave to Appeal Decision ICC-02/04-01/15-1348, ICC-02/04-01/15-1359.

<sup>4</sup> Decision on Defence Request for Leave to Appeal the Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), ICC-02/04-01/15-1331, para. 8; Decision on Defence Request for Leave to Appeal Decision ICC-02/04-01/15-521, 2 September 2016, ICC-02/04-01/15-529, paras 4-8.

Defence.<sup>5</sup> But even if it were assumed that the Defence was correct, its proposed issues for appeal have no effect on the Single Judge's further determination that the contested information was of 'no relevance to Mr Ongwen's case'.<sup>6</sup> Withholding irrelevant information in the D-100 BSQ has no effect on the fair and expeditious conduct of the proceedings or the outcome of the trial.

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

**REJECTS** the Request.

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

  
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**Judge Bertram Schmitt, Single Judge**

Dated 8 October 2018

At The Hague, The Netherlands

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<sup>5</sup> Compare Request, ICC-02/04-01/15-1355, paras 9-10, with Redactions Decision, ICC-02/04-01/15-1348, para. 13 ('by demonstrating how the objectively justifiable risk arises from disclosure to all actors external to the Prosecution, the Prosecution has captured how the same risk must necessarily arise from "disclosing the particular information to the Defence" as discussed in the Appeals Chamber jurisprudence underlying the Rule 81(4) test.').

<sup>6</sup> Redactions Decision, ICC-02/04-01/15-1348, para. 14.