

**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

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Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of Victims

Joseph Akwenyu Manoba
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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

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').¹
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').² The Prosecution's obligation to disclose the informant's identity and lift all corresponding redactions was nullified.³
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').⁴ The Defence therefore seeks an order asking the Prosecution to comply with the disclosure obligation in the manner stated in the Initial Decision.⁵
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.⁶ The

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

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

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

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

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

⁶ 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.⁷ 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.⁸
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

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'.

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

⁸ 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).