

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 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 for Disclosure and Transmission of Materials
Belonging to the Accused**

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

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 192 of the Rules of Procedure and Evidence and Regulation 23 *bis*(3) of the Regulations of the Court, issues the following 'Decision on Defence Request for Disclosure and Transmission of Materials Belonging to the Accused'.

1. On 10 July 2018, the Defence of Mr Ongwen ('Defence') filed a request that the Registry be ordered to disclose and transmit certain items ('Items') which were in Mr Ongwen's possession at the time of his transfer to the Court.¹
2. The Defence submits that the Items may reveal or corroborate certain points of interest to the Defence, such as, *inter alia*, the circumstances surrounding Mr Ongwen's escape from the LRA or the legality of the procedural steps taken at the time of the transfer of custody of Mr Ongwen to representatives of the Registry.²
3. On 16 July 2018, the Registry filed its observations ('Observations') to the Request, reiterating a previously submitted willingness to either transmit the Items to the Defence or facilitate their inspection.³
4. First, the Chamber notes that the Request is filed confidential *ex parte*, Defence only. However, the explanation provided by the Defence that this classification is necessary since the motion 'discusses confidential, *ex parte*, personal items'⁴ is not convincing. The Defence is hereby ordered to either request reclassification of its Request or file a public-redacted version thereof within five days of receipt of this decision. Thereafter, the Registry is instructed to also request

¹ Defence Request to Order the Registry to Disclose and Transmit Certain Materials, ICC-02/04-01/15-1302-Conf-Exp, available to the Defence only.

² Request, ICC-02/04-01/15-1302-Conf-Exp.

³ Registry's Report on Mr Ongwen's personal items kept in the Registry's vault, ICC-02/04-01/15-1307-Conf-Exp, available only to the Defence with a confidential *ex parte* annex available to the Defence only, ICC-02/04-01/15-1307-Conf-Exp-Anx.

⁴ Request, ICC-02/04-01/15-1302-Conf-Exp, para. 3.

reclassification of its Observations or provide a public-redacted version within five days of the reclassification of the Request or receipt of its public-redacted version.

5. In light of the Observations, the submissions by the Defence and the fact that the Items were in Mr Ongwen's possession before the Registry obtained custody over them, the Single Judge finds that there are no countervailing considerations against returning the Items to the accused. Accordingly, the Single Judge orders the Registry to transmit the Items, as specified in paragraph 5 of the Request,⁵ to the accused to the extent possible. Should, for any safety or security reason, the return to the accused of any of the Items not be possible, the item in question is to be securely stored in accordance with the applicable procedure.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS the Defence and the Registry to either request reclassification of their filings or file public-redacted versions thereof, in accordance with paragraph 4; and

ORDERS the Registry to transmit the Items to the accused, subject to the last sentence of paragraph 5 above.

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


 Judge Bertram Schmitt, Single Judge

Dated 18 July 2018

At The Hague, The Netherlands

⁵ Request, ICC-02/04-01/15-1303-Conf-Exp-Anx, para. 5.