

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**
Date: **20 September 2018**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

IN THE CASE OF

THE PROSECUTOR v. DOMINIC ONGWEN

Public

Public Redacted Version of “Prosecution’s Response to ‘Defence Request in Light of the Prosecution’s Meeting and Interview with the Defence Witness D-0100’, ICC-02/04-01/15-1327-Conf”, ICC-02/04-01/15-1332-Conf

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo
Mr Charles Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Ms Caroline Walter
Mr Orchlon Narantsetseg

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

Amicus Curiae

States Representatives

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Defence request,¹ that the Trial Chamber
 - a) orders the Prosecution to disclose the updated questionnaire compiled following the Prosecution's meeting and interview with D-0100,
 - b) orders the Prosecution to disclose the audio/video recording of that meeting, and
 - c) reprimands the Prosecution both for violating paragraph 26 of the Witness Protocol and for the delay in disclosing the breach to the Defence,
 should be denied for the reasons set out below.

Confidentiality

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this document is classified as confidential because it responds to a filing so designated. Should the Defence file a public version of their filing, the Prosecution will do the same.

History

3. The Prosecution inadvertently contacted a Defence witness, D-0100, on 22 July 2018.² This individual, with the Prosecution designation P-0220, [REDACTED]. Prosecution investigators in the field were unaware that P-0220 and D-0100 were the same person. An explanation and apology was made to the Defence by the OTP for having breached the Witness Protocol.³
4. On 10 August 2018, the Defence made the following requests to the Prosecution: 1) that the Prosecution provide a written undertaking that

¹ ICC-02/04-01/15-1327-Conf.

² ICC-02/04-01/15-1327-Conf-AnxA, p. 3.

³ ICC-02/04-01/15-1327-Conf-AnxA, p. 2.

nothing obtained from the witness will be used against Mr Ongwen; 2) the disclosure of the audio or video recording of the Prosecution's interview with D-0100; and 3) the disclosure of UGA-OTP-0284-0102, the updated Basic Security Questionnaire resulting from the meeting.⁴

5. The OTP has provided the requested undertaking.⁵ The meeting was not recorded in any electronic form. The OTP has declined to disclose UGA-OTP-0284-0102.

Submissions

6. UGA-OTP-0284-0102 is the biographic data and security questionnaire ("BSQ") of D-0100. Security questionnaires are designed to record only the welfare and security concerns of individuals whom the OTP had contacted. The Prosecution, following its standard practice, has already disclosed to the Defence those parts of the BSQ which are disclosable. The rest of the document is purely personal information with no relevance to the matters at issue in the trial. Hence the BSQ is not "material to the preparation of the Defence" under rule 77 of the Rules of Procedure and Evidence.
7. As noted above (and previously stated to the defence) there is no audio/video recording of the meeting.

⁴ ICC-02/04-01/15-1327-Conf-AnxC, p. 3.

⁵ ICC-02/04-01/15-1327-Conf-AnxA, p. 2.

8. The Prosecution repeats to the Chamber the apology it has already made to the Defence for its inadvertent error in this matter. It submits that the matter does not merit a formal reprimand.



Fatou Bensouda, Prosecutor

Dated this 20th day of September 2018
At The Hague, The Netherlands