

**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

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').¹
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.²
3. On 5 October 2018, the Prosecution responded that the Request should be rejected in full.³
4. The Single Judge recalls the interpretation of Article 82(1)(d) of the Statute as set out in detail previously.⁴
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

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

² 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.

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

⁴ 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.⁵ 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'.⁶ 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.



Judge Bertram Schmitt, Single Judge

Dated 8 October 2018

At The Hague, The Netherlands

⁵ 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.').

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