

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **19 March 2019**

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

Confidential

**Prosecution's Response to "Defence Notification of Rule 68(2)(b) Statements and
Redaction Requests"**

Source: The Office of the Prosecutor

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

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Introduction

1. Pursuant to the Trial Chamber's orders, the Defence proposes redactions to statements of Witnesses D-0008, D-0012, D-0050, D-0077, and D-0132 that have been introduced into evidence under rule 68(2)(b) of the Rules of Procedure and Evidence.¹ The Defence requests limited redactions to statements of Witnesses D-0008, D-0012, and D-0132, and more extensive redactions for Witnesses D-0050 and D-0077. The Prosecution supports the redactions that are justified and proportionate, but opposes the remaining ones as unnecessary.

Confidentiality

2. The Prosecution files this response confidentially pursuant to regulation 23 *bis* of the Regulations of the Court because it responds to a confidential filing of the Defence. The Prosecution requests that the Chamber reclassify this filing as public.

Background

3. On 2 July 2018, the Trial Chamber gave directions for the filing of public redacted versions of statements introduced into evidence under rule 68(2)(b).² Following the filing of the witness's declarations by the Registry, the defence have 21 days to propose redactions. Thereafter the Prosecution have 21 days to respond.

4. On 14 February 2019, the Registry filed in the case record the declarations of Witnesses D-0008, D-0012, D-0050, D-0077, and D-0132.³ Their statements have been introduced into evidence under rule 68(2)(b) of the Rules.⁴

¹ ICC-02/04-01/15-1472-Conf +Conf-Anxs.

² ICC-02/04-01/15-1294.

³ ICC-02/04-01/15-1448-Conf +Conf-Anxs.

⁴ ICC-02/04-01/15-1294; ICC-02/04-01/15-1322-Conf.

5. On 5 March 2019, the Defence filed proposed public redacted versions of statements for Witnesses D-0008,⁵ D-0012,⁶ D-0050,⁷ D-0077,⁸ and D-0132.⁹

Submissions

Redactions to name and other identifying details of Witness D-0050

6. Witness D-0050 is a former forced wife to Joseph Kony abducted as a school girl. The Prosecution does not oppose proposed redactions to Witness D-0050's name and other identifying details as applied to her statements. Disclosing this information to the general public may increase the risk of stigmatisation to a woman, who was forced to become Joseph Kony's "wife" while she was a school girl.

7. In addition, interpreter's name in Annex E.15 should be redacted.¹⁰

No redactions to name and other identifying details of Witness D-0077

8. Witness D-0077 is a former Pajule IDP Camp resident, who was abducted during the charged attack. Witness D-0077 expressed a subjective fear of reprisals from the Government of Uganda for speaking about the living conditions of civilians. This information alone does not demonstrate any real risk to Witness D-0077, and therefore does not justify redactions to identifying information in the public version of his statement. In fact, several witnesses in this trial have already testified publicly about the atrocious living conditions of civilians in the IDP camps, for example Witnesses P-0422, P-0269, D-0028, D-0133, and D-0140.

⁵ ICC-02/04-01/15-1472-Conf-AnxA (UGA-D26-0010-0307).

⁶ ICC-02/04-01/15-1472-Conf-AnxB (UGA-D26-0010-0336).

⁷ ICC-02/04-01/15-1472-Conf-AnxE.1-15 (UGA-D26-0025-0097; UGA-OTP-0131-0002; UGA-OTP-0229-0230 to UGA-OTP-0229-0263; UGA-OTP-0228-2452 to UGA-OTP-0228-2783; UGA-OTP-0228-1469 to UGA-OTP-0228-1528).

⁸ ICC-02/04-01/15-1472-Conf-AnxD (UGA-D26-0022-0316).

⁹ ICC-02/04-01/15-1472-Conf-AnxC (UGA-D26-0025-0021).

¹⁰ ICC-02/04-01/15-1472-Conf-AnxE.1-15, page 2 (UGA-OTP-0228-1528 at 1528).

No redactions to background information like names of parents and spouse(s), date and place of birth, ethnic affiliation and similar information

9. Witness D-0008 is Dominic Ongwen's uncle, Witness D-0012 is Mr Ongwen's former school teacher, and Witness D-0132 is a former CARITAS employee.

10. Redactions to background information, such as names of parents and spouse(s), number of children, date and place of birth, ethnic affiliation and similar information identified in the below table are not necessary for witnesses whose identity is public. In addition, redactions to general references to interview locations and interview dates without additional justifications are not warranted. No such redactions were requested and granted in public redacted versions of statements already introduced into evidence under rule 68(2)(b) of the Rules.¹¹

11. The Prosecution notes that Decision 224, which is cited in support of such redactions, does not concern public versions of material in the case record and redactions thereto at the trial stage, but *inter partes* disclosure and exceptions thereto at the pre-trial stage of proceedings.¹²

12. For ease of reference, the Prosecution has summarised its observations in relation to each witness in the below table.

Defence witness code	Annex with rule 68(2)(b) statement(s)	Comments regarding proposed redactions
D-0008	ICC-02/04-01/15-1472-Conf-AnxA	No objection:) Current place of residence) Signature of interpreter) Location of interview (specific) Objection:) Names of spouse and parents) Ethnic origin

¹¹ ICC-02/04-01/15-930+Conf-Anxs; ICC-02/04-01/15-1005+Conf-Anx; ICC-02/04-01/15-1123+Conf-Anxs 1-23; ICC-02/04-01/15-1164+Conf-Anx.

¹² ICC-02/04-01/15-224.

Defence witness code	Annex with rule 68(2)(b) statement(s)	Comments regarding proposed redactions
		) Date and place of birth) Name of case manager) Location of interview (general)
D-0012	ICC-02/04-01/15-1472-Conf-AnxB	No objection:) Current place of residence) Name and signature of interpreter Objection:) Location of interview (general)) Names of spouses and parents) Number of children) Date and place of birth) Name of case manager
D-0050	ICC-02/04-01/15-1472-Conf-AnxE.1-15	No objection:) Name and identifying details of the witness Objection:) Dates of interview) Location of interview (general)) Name of OTP trial lawyer
D-0077	ICC-02/04-01/15-1472-Conf-AnxD	No objection:) Current place of residence) Name and signature of interpreter) Name of resource persons Objection:) Name and signature of the witness) Clan) Names of spouse and parents) Date and place of birth) Other identifying details) Location of interview (general)) Interview dates and times
D-0132	ICC-02/04-01/15-1472-Conf-AnxC	No objection:) Current place of residence) Name of resource person Objection:) Names of spouse and parents) Number of children) Date of birth

Conclusion

13. For the reasons set out above, the Prosecution supports proposed redactions to rule 68(2)(b) statements of Witnesses D-0008, D-0012, D-0050, D-0077, and D-0132 where justified and proportionate, but opposes the remaining ones as unnecessary.



Fatou Bensouda, Prosecutor

Dated this 19th day of March 2019
At The Hague, the Netherlands