

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **2 December 2019**

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 Redactions to Rule 68(2)(b) Statements

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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**Victims Participation and Reparations
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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 Articles 64(6)(e) and 68(1) of the Rome Statute and Rule 81(4) of the Rules of Procedure and Evidence (the ‘Rules’), issues the following ‘Decision on Defence Request for Redactions to Rule 68(2)(b) Statements’.

I. Procedural history and submissions

1. On 2 July 2018, the Chamber decided that, *inter alia*, the prior recorded testimony of Defence witnesses D-0020 and D-0034 (the ‘Defence Witnesses’) are to be introduced pursuant to Rule 68(2)(b) of the Rules.¹ The Chamber premised the introduction of the statements on receiving the declarations required under Rule 68(2)(b)(iii) of the Rules and ordered the Defence to propose public redacted versions of the concerned prior testimonies or indicate that they can be made public.²
2. On 30 September 2019, the declarations required under Rule 68(2)(b)(iii) of the Rules were filed into the case record.³
3. On 13 November 2019, the Defence requested redactions to the prior recorded testimony of the Defence Witnesses (the ‘Request’).⁴
4. On 14 November 2019, the Office of the Prosecution (the ‘Prosecution’) responded, agreeing to some of the redactions, but opposing others (the ‘Prosecution Response’).⁵

II. Analysis

5. At the outset, the Single Judge notes the Prosecution’s submission that its Response should be reclassified as ‘public’.⁶ However, bearing in mind the discussion below, the Single Judge orders the Prosecution to file a public redacted version of the Response within five days of notification of this decision.

¹ Decision on Defence request to Introduce Previously Recorded Testimony Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-02/04-01/15-1294 (the ‘Decision on Rule 68(2)(b) Request’).

² Decision on Rule 68(2)(b) Request, ICC-02/04-01/15-1294, pp. 13 and 14.

³ Registry Transmission of the Declarations made by Witnesses P-28, D-20 and D-34, pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-02/04-01/15-1620 with confidential annexes I to III.

⁴ Defence Request for Redactions to Rule 68(2)(b) Statements, ICC-02/04-01/15-1664-Conf, with confidential annexes A and B. A public redacted version of the Request was filed the same day, ICC-02/04-01/15-1664-Red.

⁵ Prosecution’s Response to “Defence Request for Redactions to Rule 68(2)(b) Statements”, ICC-02/04-01/15-1669-Conf.

⁶ Prosecution Response, ICC-02/04-01/15-1669-Conf, para. 3.

6. Turning to the substance of the Request, the Single Judge notes that the Prosecution does not oppose the proposed redactions to the current place of residence of the Defence Witnesses, the name of interpreters and name of resource persons.⁷ As these redactions are unopposed, the Single Judge grants them without further discussion.⁸
7. In contrast, the Prosecution does object to the redactions of place and date of birth or the names of spouses or other relatives of the Defence Witnesses.⁹
8. The Single Judge notes in this regard that the Defence Witnesses agreed to their identities being made public. Accordingly, there is no need to redact their date of birth. The names of relatives need equally not be redacted since ordinarily non-disclosure of such information would be motivated by the need to protect the identity of witnesses. As this is not the case here, this information can be disclosed.¹⁰ The Single Judge also sees no other indications in the Request that the persons might be put at risk. This redaction request is therefore rejected.
9. In addition, the Defence requests the redaction of the place of interview, indicating such redactions are ‘routine’.¹¹ The Prosecution does not take any position in this regard.
10. The Single Judge recalls that in a prior decision on requested redactions, it was held that while the specific place of an interview could be redacted to prevent disclosure of any information which could potentially impede the work or ongoing investigations of the Defence, general references to a place or town could not.¹² The proposed redaction in this context relates to a town without additional specification. The Single Judge is of the view that its disclosure to the public would not potentially interfere with the work or ongoing investigations of the Defence, even more so bearing in mind the advanced stage of the proceedings. This redaction request is therefore rejected.

⁷ See Prosecution Response, ICC-02/04-01/15-1669-Conf, paras 1 and 4.

⁸ See also Decision on Defence Request for Redactions to Witness Statements, 12 April 2019, ICC-02/04-01/15-1498 (the ‘Prior Redaction Decision’), para. 6.

⁹ Prosecution Response, ICC-02/04-01/15-1669-Conf, para. 5.

¹⁰ See also Prior Redaction Decision, ICC-02/04-01/15-1498, para. 9.

¹¹ Request, ICC-02/04-01/15-1664-Red, para. 6. The Single Judge notes that the filing refers to ‘location of interviews’, but that a redaction is proposed in this regard only to one statement (ICC-02/04-01/15-1664-Conf-AnxA, at p. 2).

¹² Prior Redaction Decision, ICC-02/04-01/15-1498, para. 10.

11. Finally, the Defence requests redactions to certain acts in specific locations described in the witness statements.¹³ The Prosecution opposes these redactions on the basis that they are vague and do not provide details on any potential implications of the witnesses.¹⁴
12. The Single Judge considers that the proposed redactions in this regard encompass matters which do not, by themselves, reveal any potential involvement of the Defence Witnesses in activities in countries other than Uganda. At the same time, the Single Judge is of the view that the specific locations at issue should not be disclosed to the public.¹⁵ The Single Judge considers that this will mitigate the risk of implicating the Defence Witnesses in actions outside of Uganda which would, for example, not be covered by a Ugandan amnesty. While such a risk may be relatively small, the redaction of just the specific locations concerned is very limited and does not impact in any significant way the otherwise public presentation of the evidence in question. Overall, the Single Judge is of the view that the redactions of the actual locations will be sufficient to address any concerns of potential implications of the Defence Witnesses, while at the same time ensuring that the written evidentiary record is made public to the extent possible.

¹³ Request, ICC-02/04-01/15-1664-Red, paras 9 and 12.

¹⁴ Prosecution Response, ICC-02/04-01/15-1669-Conf, para. 6.

¹⁵ Concretely, this relates to ICC-02/04-01/15-1664-Conf-AnxA, para. 7 (p. 6), line 2, last two words and line 3, first word; ICC-02/04-01/15-1664-Conf-AnxB, para. 35 (p. 10), line 25, words 5 and 6; para. 39 (p. 11), line 16, words 3-5.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the redactions as outlined in paragraphs 6 and 12 above;

REJECTS the remainder of the Request; and

ORDERS the Prosecution to file a public redacted version of filing ICC-02/04-01/15-1669-Conf within five days of notification of this decision.

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


Judge Bertram Schmitt, Single Judge

Dated 2 December 2019

At The Hague, The Netherlands