

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15 October 2020**

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

**Prosecution's Communication of the Disclosure of Evidence and Report on Actions
Taken in Response to Decision ICC-02/04-01/15-1750**

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

Mr James Stewart

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba

Mr Francisco Cox

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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**

Amicus Curiae

States Representatives

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Office of the Prosecutor (“Prosecution”) provides notice of the disclosure of evidence and others actions taken pursuant to the Trial Chamber’s decision of 2 October 2020 (“the Decision”).¹
2. On 14 October 2020, the Prosecution disclosed to the Defence “Trial Rule 77 package 136” containing 9 items/78 pages.
3. The Prosecution has removed the proposed redactions identified at paragraph 14, footnote 51, of the Decision and re-disclosed the affected items.
4. The Prosecution has reviewed and completed the metadata for disclosure package 134, including several items for which the “Related to Witness” field had not been completed previously, as ordered in paragraph 15 of the Decision.
5. The Prosecution has requested, on an urgent basis, the transcription and translation of UGA-OTP-0227-0100, an Acholi-language audio recording, and will provide the transcript and translation to the Chamber as soon as they are ready, as ordered in paragraph 18 of the Decision.
6. In paragraph 19 of the Decision, the Chamber ordered the Prosecution to review the B.1 and B.2 standard redactions in item UGA-OTP-0204-0268 and provide to the Chamber specific reasons why the redactions continue to be justified. The B.1 redaction covers basic personal information about Witness P-0048/D-0134, including a contact telephone number from 2005. The B.2 redaction covers information identifying the names and contact information (as of 2005) for the witness’s parents, wives, child, and ten other relatives.
7. After obtaining permission from the Defence, the Prosecution contacted P-0048/D-0134 on 13 October 2020 to inquire whether he would consent to disclosure of the information covered by the B.1 and B.2 redactions to UGA-OTP-0204-0268.

¹ ICC-02/04-01/15-1570.

The witness stated that he had already met with the Defence, that the Defence knew where he lived, and had already taken the details of his family. However, when asked to consent to the disclosure of the redacted information, the witness refused. He stated that he continues to face stigmatisation as a former LRA member, and fears that exposing the names of his family members would extend the stigmatisation to them. The Prosecution reminded P-0048/D-0134 that the Defence has confidentiality obligations, and appears to already possess some of the information at issue, but the witness still refused to consent to disclosure.

8. The Prosecution has reviewed the B.1 and B.2 redactions in UGA-OTP-0204-0268 in light of current circumstances, including its 13 October 2020 contact with P-0048/D-0134 described above. Because P-0048/D-0134 is a Defence witness, and based on the witness's own statements about information he has provided to the Defence, the Prosecution considers it overwhelmingly likely that the Defence already possesses all of the information redacted pursuant to standard redaction category B.1, and thus the provision of that information to the Defence would not cause or increase any appreciable risk to the witness or third parties. The B.1 redaction to UGA-OTP-0204-0268 has therefore been lifted in disclosure package 136.

9. However, the information relating to P-0048/D-0134's family members presents a different, and more difficult, circumstance. Although the witness has informed the Prosecution that the Defence is already in possession of "the details of his family", the Prosecution is not in a position to know specifically whether the Defence already has some or all of the information covered by the B.2 redaction to UGA-OTP-0204-0268. This information relates primarily to third parties who are not witnesses in this case and have had, to the Prosecution's knowledge, no interaction with the Court. The Prosecution also notes P-0048/D-0134's concerns about continuing stigmatisation, which appear genuine and credible and are consistent with stigmatisation reported by other victims and witnesses in this case. In light of

those objectively reasonable concerns, the potential impact on third parties, and the witness's current refusal to consent to disclosure, the Prosecution submits that the B.2 standard redactions in UGA-OTP-0204-0268 continue to be justified.

10. The Prosecution has also reviewed the B.1 standard redaction in item UGA-OTP-0198-0249, as ordered in paragraph 22 of the Decision. This redaction covers basic personal information of P-0039/D-0064, as well as his contact information (as of 2007), including three telephone numbers. Because P-0039/D-0064 is deceased, the Prosecution is not able to obtain his consent to disclosure of this information. As a matter of due diligence, the Prosecution called all three of the redacted phone numbers, one of which was no longer in use and the other two of which were answered by persons unknown to the Prosecution and apparently unrelated to P-0039/D-0064. Under these unique circumstances, the Prosecution has re-assessed the redacted information and in particular the likelihood that any appreciable risk to the security, safety, or dignity of the witness or any third party might be created by its disclosure to the Defence at this time. In particular given the nature, age, and amount of the information, the stage of these proceedings, and the current security situation in Uganda, the Prosecution has concluded that disclosure will not create or increase any appreciable risk. Consequently, the B.1 redaction has been lifted in disclosure package 136.



James Stewart, Deputy Prosecutor

Dated this 15th day of October 2020
At The Hague, The Netherlands