

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **26 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

Defence Response to the Prosecution's Second Request to Maintain Redactions

Source: Defence for Dominic Ongwen

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

James Stewart, Deputy Prosecutor

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I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby responds to the "Prosecution's Communication of the Disclosure of Evidence and Report on Actions Taken in Response to Decision ICC-02/04-01/15-1750" ('Motion').¹ The Prosecution's request to maintain B.2 redactions² fails to meet the standard outlined by Pre-Trial Chamber II, adopted by Trial Chamber IX ('Chamber'), and further expounded with Defence witnesses. This is the second time the Defence must request that these specific redactions be lifted, and the need to do so is unnerving in light of the recently published report by the Independent Expert Review.
2. The Defence requests the Chamber to reject the Prosecution's request to maintain the B.2 redactions to item UGA-OTP-0204-0268-R03.
3. Furthermore, considering that the Prosecution disregard for this Chamber's prior decisions, and the Prosecution's own arguments in support of the decisions, the Defence requests the Chamber to remind the Prosecution of its disclosure obligations and that requests to maintain redactions must have some semblance of adherence to the Chamber's prior decisions.

II. SUBMISSIONS

4. The arguments advanced by the Prosecution in support of retaining the B.2 redactions for witness D-0134 fail to meet the standard outlined by the Chamber. The Defence is somewhat dumbfounded by the Prosecution and its sudden change in heart.
5. When the Defence requested B.2 redactions in its Rule 68(2)(b) request³ from being released in the public domain, the Prosecution responded that:

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. [...] No such redactions were requested and granted in public

¹ [ICC-02/04-01/15-1751](#).

² *Motion*, para. 9.

³ [ICC-02/04-01/15-1472-Red](#) and Confidential Annexes A-E.15.

redacted versions of statements already introduced into evidence under rule 68(2)(b) of the Rules.⁴

The Prosecution further identified the information it thought should be made public in a chart in this same response.⁵

6. The reasons espoused for keeping this information from the Defence are general in nature and lack specificity as to any real threat should the Prosecution disclose this material to the Defence on a confidential nature. It was the duty of the Prosecution to explain to D-0134 that these reasons were not valid, especially considering the Prosecution's own arguments in support of making B.2 material public for Defence witnesses. Contrary to the Prosecution's assertions, the witness's concerns about stigmatisation are not valid reasons to have his information disclosed to the Defence on a confidential basis.⁶
7. The only reason for not disclosing this information to the Defence is that the Prosecution has a real belief that the information, which the Defence most likely has all of, is not safe in the hands of the Defence because the Defence shall not abide by its duty of confidentiality. The Prosecution has not advanced this claim, and it has noted the opposite in the past. As such, there is no valid reason why the Prosecution is withholding this information.
8. The Defence is vexed that it must make this argument once again. The Prosecution has failed to advance a valid reason for withholding this information on a confidential basis. The Defence does not seek a formal reprimand or sanction at this time, but it requests the Chamber to remind once again the Prosecution of its **ongoing duty** to review disclosure to ensure the necessity of prior redactions.

III. RELIEF

9. For the reasons described above, the Defence respectfully requests Trial Chamber IX to:
 - a. Reject the B.2 redaction requests related to UGA-OTP-0204-0268-R03 in the Motion and
 - b. Remind the Prosecution again of its ongoing duty to review and lift redactions.

⁴ [ICC-02/04-01/15-1487](#), para. 10. [internal citations omitted]

⁵ *Ibid*, para. 12.

⁶ The Defence notes that part of the information the Prosecution seeks to redact is part of the Witness Information Form filled out and submitted to VWU.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 26th day of October, 2020

At Lira, Uganda