

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 12 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 the Decision on Disclosure
and Remedy for Late Disclosure**

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

The Office of the Prosecutor

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**The Office of Public Counsel for
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REGISTRY

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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 the Decision on Disclosure and Remedy for Late Disclosure'.

A. Procedural History and Submissions

1. On 4 September 2018, the Defence for Mr Ongwen ('Defence') filed a request for disclosure and for remedy for untimely disclosure ('Original Request').¹
2. On 28 September 2018, the Single Judge issued a decision on the Original Request in which it almost entirely rejected the disclosure request by the Defence ('Impugned Decision').²
3. On 5 October 2018, the Defence submitted a motion for leave to appeal the Impugned Decision ('Request').³ It requests leave for the issue 'whether the Single Judge applied the Court's jurisprudence in respect to disclosure too restrictively' ('Issue').⁴ The Defence submits that the Single Judge should have adopted a 'wider interpretation' of the original disclosure request⁵ and that the Single Judge could have used the Defence's opening statements to interpret its original disclosure request.⁶ Further, it submits that the Single Judge should have limited the scope of the Original Request instead of rejecting it.⁷

¹ Defence Request for Disclosure Pursuant to Rule 77 and Article 67(2) and Request for a Remedy in Light of Late and Untimely Disclosure, 5 September 2018, ICC-02/04-01/15-1329-Conf, with confidential annex A. The Request was filed on 4 and registered on 5 September 2018. A corrected version was filed on 17 September 2018, ICC-02/04-01/15-1329-Conf-Corr.

² Decision on Defence Request for Disclosure and Remedy for Late Disclosure, 28 September 2018, ICC-02/04-01/15-1351.

³ Defence Request for Leave to Appeal 'Decision on Defence Request for Disclosure and Remedy for Late Disclosure' (ICC-02/04-01/15-1351), ICC-02/04-01/15-1360.

⁴ Request, ICC-02/04-01/15-1360, para. 1.

⁵ Request, ICC-02/04-01/15-1360, paras 7 and 13.

⁶ Request, ICC-02/04-01/15-1360, paras 9-10.

⁷ Request, ICC-02/04-01/15-1360, para. 11.

4. On 10 October 2018, the Office of the Prosecutor filed its response to the Request ('Response').⁸ It submits that the Issue does not arise from the Impugned Decision and that the further requirements are equally not met.⁹

B. Analysis

5. The Single Judge recalls the interpretation of Article 82(1)(d) as set out in the prior jurisprudence of this Chamber.¹⁰
6. The Issue, as formulated by the Defence, is too wide and general to constitute an identified subject arising from the Impugned Decision requiring a decision for its resolution. No indication is provided as to what was too restrictive in the application of the Court's jurisprudence that constitutes a subject admissible for appeal. The Single Judge will therefore rely on the Request in order to identify what the Defence considers to be the error it wishes to submit for appellate review.
7. The Single Judge notes that the arguments in support of the Request are all on the subject on how the Single Judge erred in interpreting the Original Request. The Defence variously submits that the Original Request was understood both too narrowly (not considering how the requested information was relevant to Mr Ongwen's different types of alleged contributions) and too broadly (rejecting the request as overbroad without attempting to grant a more circumscribed relief).¹¹ The Defence further suggests that the Single Judge should have relied on other

⁸ Prosecution's Response to Defence Request for Leave to Appeal Decision ICC-02/04-01/15-1351, ICC-02/04-01/15-1362.

⁹ Response, ICC-02/04-01/15-1360, paras 2-4, 7-8.

¹⁰ Decision on Defence Request for Leave to Appeal the Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 5 September 2018, 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.

¹¹ Request, ICC-02/04-01/15-1360, paras 7, 11, 13.

statements made by the Defence, such as its opening statements, to interpret the Original Request.¹²

8. The Issue raised by the Defence is the Single Judge's application of the Court's jurisprudence on disclosure and does not seem to be related to these arguments. The Defence submits that the Single Judge erred in identifying the scope of the Original Request and claims that '*thus*' the question whether the application of the *prima facie* relevance standard was applied too restrictively arises out of the Impugned Decision.¹³ However, the Defence's arguments are not about the application of the disclosure jurisprudence as such – they are rather about how the Original Request was understood prior to applying this jurisprudence.
9. Accordingly, the analysis of the Request does not provide any further indication on the interpretation of the Issue. Accordingly, the Single Judge considers that the Issue raised by the Defence, when read in light of its argumentation justifying it, does not constitute an appealable issue. Accordingly, the Single Judge rejects the Request.

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 12 October 2018

At The Hague, The Netherlands

¹² Request, ICC-02/04-01/15-1360, paras 9-10.

¹³ Request, ICC-02/04-01/15-1360, para. 5.