

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 30 March 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Public

Prosecution's Observations on a Disclosure Calendar

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. On 27 February 2015, the then Single Judge of Pre-Trial Chamber II (“Chamber”), Judge Ekaterina Trendafilova (“Single Judge”) issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters” (“Decision”).¹ In the Decision, she ordered the Office of the Prosecutor (“Prosecution”) to submit its observations for the establishment of a calendar for disclosure with staggered deadlines for in particular the incriminating evidence on which it intends to rely at the confirmation hearing.²
2. On 6 March 2015, the Single Judge issued the “Decision Postponing the Date of the Confirmation of Charges Hearing” in which she granted the Prosecution’s request for a postponement of the date for the commencement of confirmation of charges hearing, from 24 August 2015 to 21 January 2016.³

Prosecution’s Observations

3. Pursuant to the Single Judge’s direction,⁴ the Prosecution submits its observations on the following issues:

Disclosure of incriminating evidence under rule 76(1) of the Rules of Procedure and Evidence

4. The Prosecution divides its evidence into two batches. The first batch is evidence collected before 26 January 2015, the date of Dominic Ongwen’s (“Suspect”) initial appearance. The second batch is evidence collected after that date.

¹ ICC-02/04-01/15-203.

² ICC-02/04-01/15-203, p.20 at point c.

³ ICC-02/04-01/15-206.

⁴ ICC-02/04-01/15-203, para.19.

First batch

(a) Material related to current charges

5. The Prosecution has identified 29 witnesses upon whose evidence it proposes to rely to support the charges against Dominic Ongwen.⁵ For the witnesses who do not have any security concerns and do not object to the disclosure of their evidence, the Prosecution intends to disclose to the Defence this material with limited redactions by mid-May 2015, two weeks after the completion of the security assessment of the Prosecution's witnesses.⁶
6. For the witnesses whose material requires more significant redactions or whom the Prosecution has not yet been able to contact, the Prosecution intends to disclose to the Defence by mid-June 2015.

(b) Material related to additional charges

7. Additionally, the Prosecution has identified 30 witnesses whose evidence is relevant to possible charges additional to those set out in the Warrant of Arrest, as indicated in the Prosecution's application for a postponement.⁷ Should the Prosecution decide to include such charges in the eventual Document Containing the Charges, it intends to disclose that material to the Defence by mid-August 2015. This date would allow the Prosecution to complete the security assessments for these witnesses.
8. In order for the Defence to receive the materials as soon as possible and to expedite the disclosure process, the Prosecution intends to disclose the redacted versions of these witnesses' material to the Defence and file a

⁵ ICC-02/04-01/05-10 issued on 8 July 2005.

⁶ The Prosecution refers to the "Prosecution's submission of a security assessment of the situation in Uganda", ICC-02/04-01/15-193, para.5.

⁷ ICC-02/04-01/15-196, paras.41-42.

redaction application to the Chamber at the same time. Should the Chamber disagree with the implemented redactions, the Prosecution will lift these redactions and re-disclose to the Defence the affected material.

Second batch

9. The Prosecution is collecting additional evidence in relation to all matters and therefore is not, at this stage, in a position to make proposals on the disclosure deadlines of this evidence. It will review the evidence as it is collected and disclose on a rolling basis to the Defence but no later than 21 December 2015, and will inform the Chamber of the protective measures that it suggests are appropriate.

Disclosure of incriminating evidence other than under rule 76(1)

10. In addition to disclosing evidence under rule 76(1), the Prosecution will disclose other material “intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial”⁸ under article 61(3)(b) of the Rome Statute and rule 77. This category constitutes non-testimonial material that the Prosecution intends to rely on - for example, the intercepted LRA communications. This material will be disclosed on a rolling basis, but no later than 21 December 2015.⁹

Confidential level of the disclosed material

11. The Prosecution intends to classify all material which it discloses to the Defence as “confidential”, except for material that is already publicly available. The Prosecution is of the view that the publication, prior to the commencement of the trial, of material which may either identify

⁸ Rule 77 of the Rules of Procedure and Evidence.

⁹ 30 days prior to the date of the confirmation hearing.

witnesses, their family members or innocent third parties to the public, or lead to speculation as to their identities, and which may never be admitted into evidence, would put its witnesses under unnecessary pressure. Further, the publication of incriminating material may trigger public discussions regarding Dominic Ongwen's alleged wrongdoing which may not be substantiated at trial and lead to public speculation about the case in the news media for months or years before it is litigated in court.

Redactions

12. The Prosecution invites the Chamber to decide on a redaction regime and to approve a set of standard redaction categories, as has been widely accepted at the Court.¹⁰ Adopting a standard set of redactions, along with appropriate safeguards, will make disclosure more expeditious.
13. In order to assist the Chamber in establishing such regime, and in accordance with recent jurisprudence, the Prosecution lists below a number of proposed standard redaction categories:
 - a) Locations of witness interviews or accommodation;
 - b) Identifying/contact information of parties' staff, VWU and other Court staff member, who travel frequently to, or are based in, the field;
 - c) Identifying and contact information of translators, interpreters, stenographers and psycho-social experts assisting during interviews who are not Prosecution staff members but who travel frequently to, or are based in, the field;

¹⁰ At pre-confirmation stage: ICC-01/09-02/11-165-Conf-Exp, paras.40-70; ICC-01/04-01/07-84-Conf-Exp, paras.23-64. At pre-trial stage: ICC-01/09-02/11-495-AnxA; ICC-01/04-02/06-411-AnxA; ICC-02/11-01/11-737-AnxA.

- d) Identifying and contact information of investigators;
- e) Identifying and contact information of intermediaries;
- f) Identifying and contact information of leads and sources;
- g) Means used to communicate with witnesses;
- h) Recent contact information of witnesses;
- i) Identifying and contact information of family members of witnesses;
- j) Identifying and contact information of “other persons at risk as a result of the activities of the Court” (also known as “innocent third parties”);
- k) Location of witnesses who are admitted in the ICCPP and information revealing the places used for present and future relocation of these witnesses; and
- l) Internal work-product.

14. If a specific redaction falls under one of these above categories, the disclosing party can include the respective letter code in the redaction box. Any dispute arising shall be dealt with on an *inter partes* basis and the Chamber can be informed of the outcome of the negotiations or be seized with a request for relief.

15. For the redactions that do not fall under standard categories, the disclosing party can apply to the Chamber on a case-by-case basis. When the disclosing party seeks to apply redactions which are not based on the standard categories discussed above, disclosure of the relevant material can be accompanied by an application justifying the requested redactions.

Translation Issues

16. At this stage, the Prosecution refers to its submission in the “Prosecution’s Application for Postponement of the Confirmation Hearing”.¹¹ The Prosecution will liaise with the Defence to identify the precise extent of material to be translated into the language of Dominic Ongwen.



Fatou Bensouda,
Prosecutor

Dated this 30th day of March 2015
At The Hague, The Netherlands

¹¹ ICC-02/04-01/15-196, paras.36-39.