

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **31 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

**Defence Response to the Prosecution's Request to Maintain Redactions in the
Article 58 Application**

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
Fatou Bensouda, Prosecutor
Benjamin Gumpert, QC

Counsel for the Defence
Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the Victims

The Office of Public Counsel for the Defence

Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby files its response to the "Prosecution's Further Application to Maintain the Redactions in the "Prosecutor's Amended Application for Warrants of Arrest Under Article 58""¹
2. The Defence files this response pursuant to Regulation 24(1) of the Regulations of the Court and in consideration of its filing on 10 March 2015.²

II. PROCEDURAL HISTORY

3. On 14 November 2008, the Prosecution filed the "Prosecutor's Amended Application for Warrants of Arrest Under Article 58" ('Article 58 Application').³
4. On 21 January 2015, Mr Dominic Ongwen arrived in The Hague, Netherlands.
5. On 26 January 2015, Pre-Trial Chamber II ('Chamber') held Mr Ongwen's initial appearance.
6. On 17 February 2015, the Prosecution requested a review of the redactions implemented on 12 November 2008 by the Chamber.⁴
7. On 10 March 2015, the Defence requested 21 working days from 11 March 2015 to respond to the Prosecution's 17 February 2015 filing.⁵

¹ ICC-02/04-01/15-198.

² ICC-02/04-01/15-208.

³ ICC-02/04-01/05-347-Conf-Exp-AnxA.

⁴ ICC-02/04-01/15-198.

⁵ ICC-02/04-01/15-208, para. 10. The Defence realises that under Regulation 34(b), it has 21 days to respond

III. SUBMISSIONS

8. The Defence agrees with the Chamber's request to the Prosecution to re-evaluate the redactions in its Article 58 Application.⁶ Being almost ten years since the Article 58 Application was filed, and over six years since the last redaction review, many of the redactions made in November 2008 are undoubtedly no longer needed. At this time, none of the persons named in the warrant for arrest were detained. At that time, the need to investigate the charges by the Defence, or any defence, did not exist.

9. As previously stated by this Chamber, a lesser redacted Article 58 Application "may enable the [d]efence to understand better the charges, and thereby give flesh to article 67(1)(a) of the Statute" whilst it awaits the Document Containing the Charges ('DCC').⁷ Considering that the Chamber granted the Prosecution's request to delay the Confirmation of Charges Hearing until 21 January 2016,⁸ and since the DCC is not technically required to be disclosed until 22 December 2015,⁹ the Defence deems it necessary to receive an unredacted version of the Article 58 Application as soon as possible.

10. The Prosecution stated that it is currently reviewing approximately 95,000 pages of evidence.¹⁰ Disclosure is expected to start in mid-May, and over the course of the following seven months, the Prosecution intends to disclose the entire lot to the Defence.¹¹ The Defence respectfully requests the Chamber to give special consideration to the redactions which the Prosecution wishes to keep in the Article 58 Application.

⁶ ICC-02/04-01/15-198, fn. 1.

⁷ ICC-01/09-02/11-151, para. 14.

⁸ ICC-02/04-01/15-206, para. 35.

⁹ See Rule 121(3).

¹⁰ ICC-02/04-01/15-196-Conf-Red, para. 4.

¹¹ Meeting between Benjamin Gumpert and Krispus Ayena Odongo on 23 March 2015.

11. It is the opinion of the Defence that no redactions are needed in the Article 58 Application and it should be delivered to the Defence in such form as soon as possible. Having mind though of the Chamber's duty, if it deems that some redactions are still necessary, it should do so sparingly. Having a better idea as to what the Prosecution intends to try to prove at the Confirmation of Charges Hearing will greatly increase the Defence's capability to review evidence more efficiently as it is being disclosed.

VI. RELIEF

12. The Defence requests that the Chamber lift all redactions in the Article 58 Application and order the Prosecution to file it immediately thereafter. The Defence prays that the Chamber gives special consideration to the amount of evidence which will be disclosed leading up to the Confirmation of Charges Hearing and the need of the Defence to have the potential charges defined clearly whilst it reviews the material and conducts its pre-Confirmation investigations.

Respectfully submitted,



.....
Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 31st day of March, 2015

At Kampala, Uganda