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

Date: **7 May 2015**

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

**Public
with Confidential Annex A and Confidential *Ex Parte*
Prosecution only Annexes B and C**

**Prosecution's Partial Compliance with Order ICC-02/04-01/15-219 and Request for
an Extension of the Deadline to Comply with the Remainder of the Order**

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

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Mr James Stewart
Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo

Legal Representatives of Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Detention Section

Victims Participation and Reparations Section

Other

Introduction

1. The Single Judge has ordered that the Office of the Prosecutor (“Prosecution”) makes as much of the court record in the *Ongwen* case as public as possible. This requires the Prosecution to review a total of 2,869 pages of material stretching back a decade. In the time available the Prosecution has considered well over three-quarters of that material in detail and, in Annexes to this filing, makes proposals which, if implemented, would result in the court record becoming significantly more transparent.
2. The Prosecution has not yet been able to consider the possible reclassification of the remaining parts of the material. The Prosecution requests the Single Judge to grant further time for this task to be undertaken.

The Scope of the Order

3. On 14 April 2015 the Single Judge issued an “Order concerning the level of classification of documents in the record of the case” (“Order”).¹ The Order was designed to:
 - a) ensure that as much as possible of the record of the case, which stretches back to 2005, is made public, and
 - b) cause the Prosecutor to put on the record of the case reasons justifying the level of classification of any filing that cannot be made public.
4. The deadline fixed for the completion of this task was 8 May 2015.
5. In compliance with the Order, the Prosecution has reviewed all of its filings, and the Annexes to those filings which are not currently classified as “public”, together with the four transcripts of proceedings enumerated in the Order.

¹ ICC-02/04-01/15-219.

6. So far as the filings and Annexes are concerned there are 76 documents to be considered. 48 of those documents (amounting to 2,015 pages) are currently classified as Confidential, some of these marked *Ex Parte* and thus with an even more restricted circulation. A further 28 documents (amounting to 594 pages) are currently under seal. In compliance with the Order, four transcripts² (amounting to 260 pages) are to be considered.

Annex A: Confidential filings and Annexes, compliance with the Order

7. Annex A to this filing is a chart listing 47 of the 48 Confidential documents and setting out the Prosecution's reasons either for maintaining or varying the current classification of each filing. This Annex is classified Confidential as it includes a brief description of the documents so marked and because it lists the said reasons, which often expand upon the contents of the documents.

Annex B: other documents, further time requested

8. Annex B to this filing is a chart listing the 28 documents which are currently under seal and 1 further document³ which is classified as Confidential *Ex Parte* available only to the Prosecution and the Defence. The Prosecution has not yet been able to embark upon a similar analysis of these documents in the light of its other commitments, in particular the need to meet the deadline for the disclosure of the first portion of the evidence on which it will rely to prove the case against Dominic Ongwen. This Annex is classified Confidential *Ex Parte* Prosecution only, because it includes a brief description of documents which are under seal.
9. A number of the documents in Annex B are themselves previous proposals concerning the reclassification of documents under seal given the circumstances

² ICC-02/04-01/15-T-1-CONF-EXP-ENG, ICC-02/04-01/15-T-2-CONF-EXP-ENG, ICC-02/04-01/15-T-3-CONF-EXP-ENG and ICC-02/04-01/15-T-5-CONF-EXP-ENG.

³ ICC-02/04-01/15-136-Conf-Exp-AnxC.

at a particular time. The task of making realistic proposals which meet the Chamber's objective of maximum transparency while still maintaining an appropriate level of confidentiality is a delicate and time-consuming one.

10. In the circumstances the Prosecution requests that the deadline for full compliance with respect to the documents listed in Annex B be extended for a further month, to 8 June 2015.

Transcripts: partial compliance with the Order, further time requested

11. With respect to transcripts ICC-02/04-01/15-T-3-CONF-EXP-ENG and ICC-02/04-01/15-T-5-CONF-EXP-ENG, the Prosecution proposes that these be made public without any redaction.
12. In respect of transcripts ICC-02/04-01/15-T-1-CONF-EXP-ENG, ICC-02/04-01/15-T-2-CONF-EXP-ENG, the Prosecution has not yet been able to embark upon a similar analysis of these documents for the reasons advanced at paragraph 8 above.

Annex C: additional matter: notification to the Defence of Annexes to the Application for Warrants of Arrest

13. The Prosecution notes that, as matters currently stand in accordance with the Pre-Trial Chamber's "Order to the Prosecutor to file redacted versions of documents in the record"⁴ and with the Annex to the Single Judge's "Decision Severing the Case Against Dominic Ongwen"⁵ a number of the documents which were listed as Exhibits (Annexes) to the Prosecutor's Application for Warrants of Arrest⁶ are currently not part of the case record and have not been seen by Counsel representing Dominic Ongwen.

⁴ ICC-02/04-01/05-345 .

⁵ ICC-02/04-01/05-424.

⁶ ICC-02/04-01/15-3-US-Exp.

14. These documents are listed, together with a brief description of their nature and the Prosecution's observations concerning the course that should be taken in respect of these documents, in Annex C to this filing. This Annex is classified Confidential *Ex Parte* Prosecution only, because it includes a brief description of documents which are under seal.



Fatou Bensouda,
Prosecutor

Dated this 7th day of May 2015
At The Hague, The Netherlands