

**Cour
Pénale
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**International
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Court**

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Date: 4 June 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, *EX PARTE*, only available to the Prosecution Annexes A, B and C

Prosecution's Supplementary Submission Concerning Levels of Classification and Redactions Further to its Filing of 7 May 2015

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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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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**The Office of Public Counsel for the
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REGISTRY

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Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Office of the Prosecutor (“the Prosecution”) files herewith its supplementary submission on the levels of classification pursuant to regulation 23*bis* of the Regulations of the Court and redactions to documents in the case record pursuant to article 54(3)(e) and (f) of the Rome Statute (“the Statute”) and rule 81 of the Rules of Procedure and Evidence (“the Rules”).

Procedural Background

2. On 7 May 2015, following the Single Judge’s “Order concerning the level of classification of documents in the record of the case”,¹ the Prosecution filed a submission² on the level of classification of 48 documents (classified as “confidential”) out of 76 documents in the case record requiring consideration of their level of classification.
3. With respect to the remaining 28 documents classified as “under seal” and two transcripts classified as “confidential, *ex parte*”,³ the Prosecution requested additional time in order to carefully review the materials and make proposals which meet the Chamber’s objective of maximum transparency while still maintaining an appropriate level of confidentiality.
4. On 22 May 2015, the Single Judge issued the “Order reclassifying documents in the record of the case” (“the 22 May 2015 Order”),⁴ in which he requested the Prosecution to file a third consolidated redacted version of the two previously filed confidential redacted versions⁵ of the Prosecution’s application for a warrant of arrest under article 58 of the Statute (“the Article 58 Application”).⁶

¹ ICC-02/04-01/15-219.

² ICC-02/04-01/15-231, “Prosecution’s Partial Compliance of Order ICC-02/04-01/15-219 and Request for an Extension of the Deadline to Comply with the remainder of the Order”.

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

⁴ ICC-02/04-01/15-238.

⁵ ICC-02/04-01/15-3-Conf-Red and ICC-02/04-01/15-3-Conf-Red2.

⁶ ICC-02/04-01/15-238, para. 6.

5. In addition, the Prosecution was requested to file, as appropriate, public and/or confidential redacted versions of three documents classified as “confidential, *ex parte*”,⁷ as well as to submit considerations on the appropriate level of classification of two other documents in the case record.⁸

Submissions

6. In relation to the third consolidated redacted version of the Article 58 Application, as ordered by the Single Judge in the 22 May 2015 Order, the Prosecution notes that such third version has already been filed as Annex A⁹ to the “Prosecution’s Further Application to Maintain the Redactions in the “Prosecutor’s Amended Application for Warrants of Arrest Under Article 58” of 17 February 2015.¹⁰ Therefore, the Prosecution respectfully submits that confidential, *ex parte*, Prosecution only Annex A to the Prosecutor’s submission of 17 February 2015 constitutes compliance with the Single Judge’s 22 May 2015 Order.
7. With respect to the three documents classified as “confidential, *ex parte*”, the Prosecution, being mindful of the principle of publicity of the proceedings, suggests reclassification of two of these as public.¹¹ Given the nature of the information contained in the third document,¹² as specified in Annex C to the present filing, the Prosecution submits that while it should be made available to the Defence, its confidential classification should remain in place.

⁷ ICC-02/04-01/15-238, p. 7, namely documents ICC-02/04-01/15-91-Conf-Exp, ICC-02/04-01/15-95-Conf-Exp and ICC-02/04-01/15-99-Conf-Exp.

⁸ Following an email exchange with the Chamber, dated 20 and 25 May 2015, the Prosecution was requested to also address in the supplementary submissions documents ICC-02/04-01/15-41-US-Exp and ICC-02/04-01/15-46-Conf-Exp.

⁹ ICC-02/04-01/15-198-Conf-Exp-AnxA.

¹⁰ ICC-02/04-01/15-198 submitted to the then Single Judge Ekaterina Trendafilova.

¹¹ ICC-02/04-01/15-95-Conf-Exp and ICC-02/04-01/15-99-Conf-Exp. See in more detail the chart in confidential Annex C, *ex parte*, only available to the Prosecution.

¹² ICC-02/04-01/15-91-Conf-Exp.

8. As regards the other two documents in the case record which the Prosecution is requested to consider,¹³ it does not object to the reclassification of document ICC-02/04-01/15-46-Conf-Exp as confidential, available to the Defence. However, with respect to document ICC-02/04-01/15-41-US-Exp, for reasons set out in Annex C to the present submission, the Prosecution objects to the lifting of all redactions and suggests instead a lesser redacted public version of this filing.¹⁴
9. In relation to the two transcripts, the Prosecution requests authorisation to redact, pursuant to article 54(3)(f) of the Statute, as well as rules 81(2) and 81(4) of the Rules information concerning: (i) internal security processes of the Office of the Prosecutor; (ii) confidential information and safety of persons involved; (iii) the protection of victims and witnesses.¹⁵ Given the nature of the proposed redactions, the Prosecution suggests two redacted versions of each transcript: a confidential version with lesser redactions *vis-à-vis* the Defence and a public redacted version.
10. As regards its internal security processes specified in Annex B to the present submission the Prosecution seeks the Single Judge's authorisation to withhold respective information both from the Defence and from the public.¹⁶ The Prosecution submits that revealing the internal security processes may pose a risk to its ongoing investigation.
11. For the purpose of ensuring the confidentiality of information specified in Annex B to the present submission and the safety of persons involved, the Prosecution seeks the Single Judge's authorisation to withhold respective information from the public.

¹³ See *supra*, fn. 8.

¹⁴ See confidential Annex C, *ex parte*, only available to the Prosecution.

¹⁵ See the annotation in confidential Annex B, *ex parte*, only available to the Prosecution.

¹⁶ *Ibid.*

12. In relation to information related to witness protection issues, the Prosecution seeks the Single Judge's authorisation to withhold such information both from the Defence and from the public. For reasons set out in Annex B to the present submission, the Prosecution is of the view that this information is sensitive and should not be revealed at this point in time.
13. The requested redactions are minimal. They are limited to what is strictly necessary to avoid prejudice to the Prosecution's ongoing investigation and to minimise any risk to the security of victims and witnesses. Therefore, the Prosecution respectfully submits that the requested redactions are not prejudicial to or inconsistent with the rights of Mr Ongwen and the requirements of a fair and impartial trial. The Prosecution will re-visit the redactions sought, should they affect the rights of the accused or the requirements of a fair and impartial trial, at a later stage.¹⁷

Annex A: Filings and Annexes under Seal

14. Annex A¹⁸ to this filing is a chart listing 28 under seal documents setting out the Prosecution's reasons either for maintaining or varying the classification of each filing.

Annex B: Transcripts

15. Annex B to this filing contains two transcripts: ICC-02/04-01/15-T-1-CONF-EXP-ENG and ICC-02/04-01/15-T-2-CONF-EXP-ENG together with a chart. The chart sets out the category of information proposed for redaction and the reasons for the suggested redactions. Attached below the chart are the two transcripts with

¹⁷ See in the same vein "Prosecution's Application for Redactions to the Document submitted at the 28 January 2015 Status Conference and to its Transcript", ICC-02/04-01/15-192-Conf-Exp, 2 February 2015, para. 11.

¹⁸ Previously submitted as Annex B to "Prosecution's Partial Compliance of Order ICC-02/04-01/15-219 and Request for an Extension of the Deadline to Comply with the remainder of the Order", ICC-02/04-01/15-231.

the Prosecution's proposed redactions *vis-à-vis* the Defence and the public or only *vis-à-vis* the public, marked accordingly.

Annex C: Other Filings

16. Annex C to this filing is a chart listing the following documents: ICC-02/04-01/15-46-Conf-Exp, ICC-02/04-01/15-41-US-Exp, ICC-02/04-01/15-91-Conf-Exp, ICC-02/04-01/15-95-Conf-Exp and ICC-02/04-01/15-99-Conf-Exp. The chart sets out the Prosecution's observations concerning the course that should be taken in respect of these documents. Below the chart the Annex also contains ICC-02/04-01/15-41-US-Exp with those redactions that the Prosecution proposes to remain in place.

Confidentiality level

17. Pursuant to regulation 23*bis* of the Regulations of the Court, the Prosecution requests that the Annexes to the present submission be received by the Single Judge as "confidential, *ex parte*, only available to the Prosecution" due to the considerations advanced by the Prosecution therein and the level of confidentiality of the respective filings.



Fatou Bensouda,
Prosecutor

Dated this 4th day of June 2015
At The Hague, The Netherlands