



Original: English

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

Date: 11 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

Order reclassifying documents in the record of the case

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

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Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the 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

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Cuno Tarfusser, Single Judge exercising the functions of the Chamber in the present case, issues this order reclassifying documents in the record of the case under regulation 23 *bis* (3) of the Regulations of the Court.

1. The Single Judge notes articles 54(3)(f) and 57(3)(c) and 68(1) of the Rome Statute. For the purpose of the present order, which complements a previous order (ICC-02/04-01/15-238), the Single Judge has taken into account the supplementary submissions of the Prosecutor of 4 June 2015 (ICC-02/04-01/15-240 and annexes) and the report of the Registrar dated 8 May 2015 (ICC-02/04-01/15-233 and annexes).

2. A number of documents in the record of the case are to be reclassified as “public”, “confidential” or “confidential, *ex parte*, only available to the Prosecutor and/or the Defence”, as specified below. In respect of documents which originate in the record of the case of *The Prosecutor v. Joseph Kony et al.*, the level of classification is adapted in both records.

3. For one document in the record of the case which was filed by the Registrar but originates from the Prosecutor (ICC-02/04-01/15-41-US-Exp), the Single Judge has obtained a proposed redacted version from the Prosecutor (ICC-02/04-01/15-240-Conf-Exp-AnxC) and now orders the Registrar to prepare and file a public redacted version as proposed by the Prosecutor.

4. The Prosecutor appears to have taken the view that if a public redacted version of a certain document exists, the level of classification of that document need not be further reviewed (see ICC-02/04-01/15-240-Conf-Exp-AnxA, rows 6, 7, 9, 12, 16 and 17). However, this view disregards the specific terms of the order of 14 April 2015 (ICC-02/04-01/15-219, p. 3) and, in any case, is also untenable because the redacted versions in question are old and may be outdated.

5. As concerns such documents of which public redacted versions have been filed in the record of the case – with respect to some of which the Prosecutor made no submission at all (ICC-02/04-01/15-9-Conf-Exp, ICC-02/04-01/15-16-Conf-Exp, ICC-02/04-01/15-49-Conf-Exp) – the Single Judge expects that the Prosecutor will, as ordered on 14 April 2015, review those documents and, if possible, file new public or confidential redacted versions with lesser redactions and/or inform the Single Judge that the documents can be made public or reclassified as “confidential”. Any public redacted versions of documents copied from the record of the *Kony* et al. case should also be filed in that record.

6. The Prosecutor also refers to the existence of certain old public redacted versions as part of another document in the *Kony* et al. case record. As currently no redacted versions even exist in the record of the present case, the filing of public and/or confidential redacted versions, with redactions as warranted at the present time, is hereby ordered. If the documents can (also) be reclassified to a less restrictive level of classification, the Prosecutor should so inform the Single Judge.

7. In this regard, the Single Judge notes that the Prosecutor has submitted on 10 June 2015 (ICC-02/04-01/15-244 and annex) a proposal for redactions vis-à-vis the public to one such document. Considering that the parties are best placed to make the assessment of redactions that may be necessary to their filings in the record of the case, the Single Judge will as a rule not adjudicate on the specific redactions deemed necessary, but will intervene when specific circumstances so require, including in case of dispute.

8. Furthermore, in response to the order previously issued to the Prosecutor to “file in the record of the case a new redacted version of document ICC-02/04-01/15-3-US-Exp redacting only information which is redacted in both

document ICC-02/04-01/15-3-Conf-Red and document ICC-02/04-01/15-3-Conf-Red2" (ICC-02/04-01/15-238, p. 7), the Prosecutor "notes that such third version has already been filed as [document ICC-02/04-01/15-198-Conf-Exp-AnxA]". Yet, it is manifest from its cover filing, context, first page and content that the document to which the Prosecutor refers is an *ex parte* unredacted version of the Prosecutor's application for warrants of arrest (with some text highlighted but legible). The order of the Single Judge has therefore not yet been complied with, and the Single Judge expects it will be without any further delay.

9. Both the Prosecutor (ICC-02/04-01/15-240-Conf-Exp-AnxB) and the Registrar (ICC-02/04-01/15-233-Conf-Exp-AnxD) have proposed redactions to transcripts ICC-02/04-01/15-T-1-CONF-EXP-ENG and ICC-02/04-01/15-T-2-CONF-EXP-ENG before they are made available to the Defence and the public. Taking into account those proposals, the Single Judge orders the Registrar to prepare and file a public redacted version of transcript ICC-02/04-01/15-T-1-CONF-EXP-ENG and a confidential and a public redacted version of transcript ICC-02/04-01/15-T-2-CONF-EXP-ENG, consolidating the proposals of the Prosecutor and the Registrar. The order of the Single Judge is directed to the English language transcript in the current case. Nevertheless, the Registrar should prepare identically redacted versions to the French language transcript, and file the public redacted versions also in the record of the *Kony et al.* case.

10. With the exception of limited further orders that may have to be made following the Prosecutor's completion of the review of the record of the case as specified at paragraphs 5 and 6 above, this completes the review of the level of classification of documents in the record of the case following the order of 14 April 2015 (ICC-02/04-01/15-219). Any changed circumstances with respect to the appropriate level of classification of documents in the

record of the case should be brought to the attention of the Single Judge as soon as possible.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Registrar to reclassify as “public” the following documents:

- ICC-02/04-01/15-11-US-Exp, ICC-02/04-01/15-11-US-Exp-tFRA, ICC-02/04-01/05-19-US-Exp and ICC-02/04-01/05-19-US-Exp-tFR;
- ICC-02/04-01/15-18-US-Exp-AnxA and ICC-02/04-01/05-26-US-Exp-AnxA;
- ICC-02/04-01/15-58-US-Exp and ICC-02/04-01/05-84-US-Exp;
- ICC-02/04-01/15-95-Conf-Exp and ICC-02/04-01/05-218-Conf-Exp;
- ICC-02/04-01/15-95-Conf-Exp-AnxA and ICC-02/04-01/05-218-Conf-Exp-AnxA;
- ICC-02/04-01/15-99-Conf-Exp and ICC-02/04-01/05-233-Conf-Exp;
- ICC-02/04-01/15-105-US-Exp and ICC-02/04-01/05-264-US-Exp;
- ICC-02/04-01/15-109-US-Exp and ICC-02/04-01/05-276-US-Exp;
- ICC-02/04-01/15-109-US-Exp-AnxA and ICC-02/04-01/05-276-US-Exp-AnxA;
- ICC-02/04-01/15-110-US-Exp, ICC-02/04-01/15-110-US-Exp-tFRA, ICC-02/04-01/05-278-US-Exp and ICC-02/04-01/05-278-US-Exp-tFRA; and
- ICC-02/04-01/15-111-US-Exp, ICC-02/04-01/15-111-US-Exp-tFRA, ICC-02/04-01/05-294-US-Exp and ICC-02/04-01/05-294-US-Exp-tFRA;

ORDERS the Registrar to reclassify as “confidential” the following documents:

- ICC-02/04-01/15-46-Conf-Exp;
- ICC-02/04-01/15-53-US-Exp and ICC-02/04-01/15-53-US-Exp-tFRA; and
- ICC-02/04-01/15-91-Conf-Exp;

ORDERS the Registrar to reclassify as “confidential, *ex parte*, only available to the Prosecutor and the Defence” the following documents:

- ICC-02/04-01/15-3-US-Exp-AnxW;
- ICC-02/04-01/15-3-US-Exp-AnxW1;
- ICC-02/04-01/15-3-US-Exp-AnxW2;
- ICC-02/04-01/15-3-US-Exp-AnxW3;
- ICC-02/04-01/15-3-US-Exp-AnxW4; and
- ICC-02/04-01/15-3-US-Exp-AnxW5;

ORDERS the Registrar to reclassify as “confidential, *ex parte*, only available to the Prosecutor” the following documents:

- ICC-02/04-01/15-13-US-Exp;
- ICC-02/04-01/15-14-US-Exp;
- ICC-02/04-01/15-14-US-Exp-AnxA;
- ICC-02/04-01/15-14-US-Exp-AnxB;
- ICC-02/04-01/15-18-US-Exp;
- ICC-02/04-01/15-23-US-Exp;
- ICC-02/04-01/15-24-US-Exp;
- ICC-02/04-01/15-27-US-Exp;
- ICC-02/04-01/15-28-US-Exp;
- ICC-02/04-01/15-41-US-Exp;
- ICC-02/04-01/15-55-US-Exp; and
- ICC-02/04-01/15-58-US-Exp-AnxA;

ORDERS the Prosecutor to file, as appropriate, public and/or confidential redacted versions of documents:

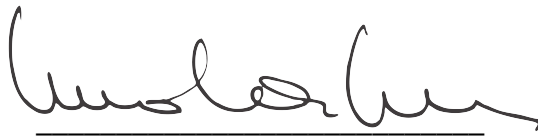
- ICC-02/04-01/15-14-US-Exp;
- ICC-02/04-01/15-14-US-Exp-AnxA;
- ICC-02/04-01/15-14-US-Exp-AnxB;
- ICC-02/04-01/15-18-US-Exp;

- ICC-02/04-01/15-27-US-Exp;
- ICC-02/04-01/15-55-US-Exp; and
- ICC-02/04-01/15-58-US-Exp-AnxA;

ORDERS the Registrar to file a public redacted version of transcript ICC-02/04-01/15-T-1-CONF-EXP-ENG and a confidential and a public redacted version of transcript ICC-02/04-01/15-T-2-CONF-EXP-ENG, as proposed in documents ICC-02/04-01/15-233-Conf-Exp-AnxD and ICC-02/04-01/15-240-Conf-Exp-AnxB; and

ORDERS the Registrar to file a public redacted version of document ICC-02/04-01/15-41-US-Exp, redacted as proposed by the Prosecutor in document ICC-02/04-01/15-240-Conf-Exp-AnxC.

Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser
Single Judge

Dated this 11 June 2015

At The Hague, The Netherlands