

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 16 July 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 Annex A

**Prosecution's Submission in Compliance with Order ICC-02/04-01/15-245
Reclassifying Documents in the Record of the Case**

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
Victims**

**The Office of Public Counsel for the
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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
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Other

Introduction

1. The Office of the Prosecutor (“Prosecution”) herewith submits its further filing on the level of classification pursuant to regulation 23*bis* of the Regulations of the Court and redactions to documents in the case record pursuant to rule 81 of the Rules of Procedure and Evidence (“Rules”).

Procedural Background

2. On 4 June 2015, following the Single Judge’s “Order concerning the level of classification of documents in the record of the case”¹ and “Order reclassifying documents in the record of the case” (“22 May 2015 Order”),² the Prosecution filed its supplementary submission on the level 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 Statute and rule 81 of the Rules (“Supplementary Submission”).³
3. On 10 June 2015, the Prosecution filed its submission concerning redactions to document ICC-02/04-01/15-14-US-Exp-AnxA.⁴
4. On 11 June 2015, the Single Judge issued the “Order reclassifying documents in the record of the case” (“11 June 2015 Order”), noting that the Prosecution is expected to review the documents of which public redacted versions have been filed. The Prosecution is also expected to file, if possible, lesser public or confidential redacted versions of these documents and/or inform the Single Judge that the documents can be made public or reclassified as “confidential”.

¹ ICC-02/04-01/15-219.

² ICC-02/04-01/15-238.

³ “Prosecution’s Supplementary Submission Concerning Levels of Classification and Redactions Further to its Filing of 7 May 2015”, ICC-02/04-01/15-240.

⁴ ICC-02/04-01/15-244.

The Single Judge observed that with respect to some of these documents the Prosecution had made no submission at all.⁵

5. In addition, according to the 11 June 2015 Order, the Prosecution has not complied yet with the Single Judge's 22 May 2015 Order to "file in the record of the case a new redacted version of document ICC-02/04-01/15-3-US-Exp".⁶
6. Further, the Prosecution was ordered to file, as appropriate, public and/or confidential redacted versions of the following 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.⁷

Submissions

7. First, the Prosecution would like to address the seven documents, identified in the operative part of the 11 June 2015 Order and listed in the preceding paragraph.
8. Document ICC-02/04-01/15-14-US-Exp is available to the public in unredacted form as part of ICC-02/04-01/05-221-AnxA.⁸ Thus, the Prosecution submits that document ICC-02/04-01/15-14-US-Exp should be reclassified as public.
9. In relation to document ICC-02/04-01/15-14-US-Exp-AnxA, the Prosecution has provided a public redacted version for consideration to the Single Judge on 10 June 2015.⁹

⁵ *Ibid.* The documents referred to are: ICC-02/04-01/15-9-Conf-Exp, ICC-02/04-01/15-16-Conf-Exp, ICC-02/04-01/15-49-Conf-Exp.

⁶ *Ibid.*, para.8.

⁷ 11 June 2015 Order, p.7.

⁸ See, for more detail Confidential, *Ex Parte*, Prosecution only, Annex A to the present submission.

10. The Prosecution submits that document ICC-02/04-01/15-14-US-Exp-AnxB, consisting of two transcripts and three filings in the record of the case,¹⁰ should be made available to the public with lesser redactions than those initially suggested.¹¹ The Prosecution considers that the following information in certain parts of document ICC-02/04-01/15-14-US-Exp-AnxB should remain withheld from the public pursuant to rules 81(2) and 81(4) of the Rules: (i) internal security processes of the Prosecution; (ii) information related to the protection of victims and witnesses. The Prosecution respectfully submits that it will provide a lesser redacted version of this filing for consideration to the Single Judge in due course.
11. Documents ICC-02/04-01/15-18-US-Exp and ICC-02/04-01/15-27-US-Exp, in view of the nature of the information contained therein, as specified in Annex A to the present submission, can now be made available to the public in unredacted form.
12. Documents ICC-02/04-01/15-55-US-Exp and ICC-02/04-01/15-58-US-Exp-AnxA, as noted by the Prosecution in its previous submission,¹² both contain the same filing, namely “Prosecutor's Application for Leave to Appeal Pre-Trial Chamber II's Decision on Prosecutor's Application that the Pre-Trial Chamber Disregard as Irrelevant the Submission Filed by the Registry on 5 December 2005”. Given the nature of the information contained in this document, as specified in Annex

⁹ “Prosecution’s Submission Concerning Redactions to ICC-02/04-01/15-14-US-Exp-AnxA”, ICC-02/04-01/15-244, as well as Confidential, *Ex Parte*, Prosecution only, Annex A to that submission, ICC-02/04-01/15-244-Conf-Exp-AnxA.

¹⁰ ICC-02/04-01/05-17-US-Exp, ICC-02/04-01/05-19-US-Exp, ICC-02/04-11-US-Exp with Annexes A and B, ICC-02/04-T-2-CONF-EXP-EN and ICC-02/04-T-3-CONF-EXP-EN.

¹¹ Nevertheless, the Prosecution notes that some of the individual documents contained in ICC-02/04-01/15-14-US-Exp-AnxB no longer require redactions, namely ICC-02/04-01/05-19-US-Exp and ICC-02/04-11-US-Exp. See for further detail Confidential, *Ex Parte*, Prosecution only, Annex A to the present submission.

¹² “Prosecution’s Supplementary Submission Concerning Levels of Classification and Redactions Further to its Filing of 7 May 2015”, ICC-02/04-01/15-240 and Confidential, *Ex Parte*, Prosecution only, Annex A, ICC-02/04-01/15-240-Conf-Exp-AnxA, pp.3-4, rows 6-7.

A to the present submission, the Prosecution submits that these filings be reclassified as confidential, available to the Defence, but should remain redacted *vis-à-vis* the public.

13. Besides the orders in the operative part of the Single Judge's 11 June 2015 Order, the Prosecution also notes paragraphs 5 and 8. In view of paragraph 5 and the principle of publicity of the proceedings, the Prosecution has reviewed the documents of which public and/or confidential redacted versions have been filed in the case record.¹³ Depending on the nature of the information contained therein, as specified in Annex A to the present submission, the Prosecution is of the view that while some redactions should be lifted, others should remain in place.¹⁴ The Prosecution respectfully submits that it will provide a lesser public and/or confidential redacted versions of these filings for consideration to the Single Judge in due course.
14. In relation to the "Prosecutor's Amended Application for Warrants of Arrest under Article 58", ICC-02/04-01/15-3-US-Exp ("Article 58 Application"), discussed in paragraph 8 of the 11 June 2015 Order, the Prosecution submits the following.
15. On 9 February 2015, with the view of transmitting to the Defence a lesser redacted version of the Article 58 Application than the one contained in ICC-02/04-01/15-3-Conf-Red, the Prosecution made an application to the then Single Judge for authorisation to lift a number of redactions, while keeping certain sensitive information redacted.¹⁵ The proposed redactions to the Article 58 Application, ICC-02/04-01/15-3-US-Exp, were submitted by the Prosecution on 17 February 2015 as document ICC-02/04-01/15-198-Conf-Exp-AnxA. In the latter

¹³ See *supra*, fn. 7.

¹⁴ See in more detail the chart in Confidential Annex A, *Ex Parte*, Prosecution only, to the present submission.

¹⁵ ICC-02/04-01/15-198 and its Confidential, *Ex Parte*, Annex A.

document the parts of the text highlighted in yellow marked the redactions suggested to be lifted, while the parts of the text highlighted in red marked the redactions suggested to remain in place.

16. On 26 February 2015, the then Single Judge issued the “Decision Concerning the Redaction and Transmission of Documents to the Defence” (“26 February 2015 Decision”)¹⁶ authorising lifting of those redactions (highlighted in yellow) from the Article 58 Application as proposed in document ICC-02/04-01/15-198-Conf-Exp-AnxA.¹⁷ Accordingly, the Prosecution was ordered to file as soon as practicable a confidential redacted version of the Article 58 Application in the record of the case.¹⁸
17. On 27 February 2015, in compliance with the 26 February 2015 Decision, the Prosecution filed a new, lesser redacted version of the Article 58 Application under record number ICC-02/04-01/15-3-Conf-Red2.¹⁹
18. In view of the foregoing, the Prosecution respectfully submits that document ICC-02/04-01/15-3-Conf-Red2 represents “a new redacted version of document ICC-02/04-01/15-3-US-Exp” with lesser redactions than ICC-02/04-01/15-3-Conf-Red, in compliance with the Single Judge’s 22 May 2015 Order.²⁰

Annex A

19. Annex A to this filing is a chart listing the documents under consideration setting out the Prosecution’s reasons either for maintaining or varying the level

¹⁶ ICC-02/04-01/15-191.

¹⁷ *Ibid.*, p.12.

¹⁸ *Ibid.*, p.13.

¹⁹ Confidential redacted Annex B to the “Prosecution’s Implementation of the Single Judge’s Order of 26 February 2015”, ICC-02/04-01/15-204. Furthermore, for the benefit of the Defence and the public the redactions to the witnesses’ identities were not retained – the redacted names were replaced with the respective witness’s code.

²⁰ ICC-02/04-01/15-238, p.7.

of classification, as well as the reasons for maintaining or lifting the redactions applied.

Confidentiality level

20. Pursuant to regulation 23*bis* of the Regulations of the Court, the Prosecution requests that the Annex to this filing be received by the Single Judge as “confidential, *ex parte*, only available to the Prosecution” due to the considerations advanced therein.



Fatou Bensouda,
Prosecutor

Dated this 16th day of July 2015
At The Hague, The Netherlands