

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/15
Date: 27 October 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

**Confidential,
with Confidential Annexes A and C and Confidential, *EX PARTE* - only
available to the Prosecution and Defence Annex B**

Prosecution's Transmission of Investigators' Reports

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

Ms Fatou Bensouda

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 Unit

Detention Section

Victims Participation and Reparations Section

Other

Introduction

1. The Prosecution submits this filing in compliance with the directive of the Chamber to transmit the Investigators' reports of its telephone conversations with Prosecution witnesses P-0099, P-0101, P-0198, P-0214 and P-0235 to the Defence.

Confidentiality

2. This filing and the Annexes appended contain sensitive information that has been disclosed to the Defence in preparation for the Status Conference on the Article 56 hearings. For this reason, the Prosecution requests that the entire filing, and Annexes A and C be received as confidential and Annex B, which contains information about the witnesses, be received as "Confidential *ex parte*".

Submissions

3. In the "Decision on the Second Prosecution application to the Pre-Trial Chamber to preserve evidence and take measures under article 56 of the Rome Statute" ("Decision"), the Prosecution and the Defence were ordered not to meet with the witnesses prior to the taking of testimony.¹
4. On 13 October 2015, to check the availability of the witnesses and inform them of the Victims and Witnesses Unit ("VWU") contact in the near future to arrange for their testimony, the Prosecution sought and obtained a waiver of the order from the Single Judge.²
5. The Prosecution conducted telephone conversations with witnesses P-0099, P-0101, P-0198, P-0214 and P-0235 and the reports of these

¹ ICC-02/04-01/15-316-Conf, para. 13.

² See attached Annex A – email from the Prosecution to the Chamber and the response of the Chamber.

telephone conversations are attached as Annex B to this filing.³

Following the outcome of these conversations, the Prosecution by email dated 23 October 2015, raised certain concerns with the Chamber.

6. On the same date, the Chamber issued an order scheduling a Status Conference for Wednesday 28 October 2015 with the Prosecution, the Defence and the VWU in order "to obtain an update from the Prosecutor and the VWU as to the continued availability to testify of the concerned witnesses and [...] to provide the Single Judge with any relevant information concerning the upcoming hearing that would require his consideration".⁴
7. The Chamber by an oral directive issued on Monday 26 October 2015 at 4.30 pm, directed the Prosecution to transmit the Investigators' reports of its conversations with the witnesses to the Defence. In compliance with the directive, the Prosecution transmitted to the Defence the reports relating to witnesses P-0235,⁵ P-0099,⁶ P-0101,⁷ P-0198⁸ and P-0214⁹ on Tuesday 27 October 2014. The Defence acknowledged receipt of the transmitted document.¹⁰

³ See Attached Annex B – Investigators' Reports on the Prosecution telephone conversation with Witnesses P-0099, P-0101, P-0214 and P-0235.

⁴ ICC-02/04-01/15-326-Conf sent by email to the Parties on Friday 23 October 2015, but notified formally on Monday 26 October 2015.

⁵ UGA-OTP-0247-0010.

⁶ UGA-OTP-0247-0745.

⁷ UGA-OTP-0247-0748.

⁸ UGA-OTP-0247-0753.

⁹ UGA-OTP-0247-0750.

¹⁰ See Annex C – email exchange between Prosecution and Defence transmitting the report.

8. At the time of this filing, the Prosecution has been unable to reach Witness P-0236. Once it succeeds, it will communicate this to the Chamber and the Defence as well.



Fatou Bensouda,
Prosecutor

Dated this 27th October of June 2015
At The Hague, The Netherlands