

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 7 December 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

Corrected Version of “Defence Observations on Granting Access to Confidential Documents in the Case Record to the OPCV and the Legal Representatives for the Victims”, filed on 3 December 2015 as ICC-02/04-01/15-361

Source: Defence for Dominic Ongwen

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Fatou Bensouda, Prosecutor
Benjamin Gumpert, QC

Counsel for the Defence
Krispus Ayena Odongo

Legal Representatives of the Victims
Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the Victims
Paolina Massidda

The Office of Public Counsel for the Defence
Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit
Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

I. INTRODUCTION

1. The Defence Team for Dominic Ongwen ('Defence') hereby submits its observations on granting access to confidential documents to the OPCV and the Legal Representatives for the Victims.

II. CONFIDENTIALITY LEVEL

2. Pursuant to Regulation 23*bis* of the Regulations of the Court, the Defence files Annex A as confidential because it refers to matters currently designated as confidential. A public redacted version is filed concurrently.

III. PROCEDURAL HISTORY

3. On 3 September 2015, Judge Cuno Tarfusser issued the "Decision concerning the procedure for admission of victims to participate in the proceedings in the present case".¹
4. On 18 September 2015, the Registry filed 209 redacted applications for victims' participation in the record of the case.²
5. On 27 October 2015, the Registry filed 336 redacted applications for victims' participation in the record of the case.³ In the same filing, the Registry noted that there were a rather significant proportion of the applicants that signed a power of attorney with Mr Joseph Akwenyu Manoba and Mr Francisco Cox ('Legal Representatives').

¹ ICC-02/04-01/15-299.

² ICC-02/04-01/15-303 and ICC-02/04-01/15-304.

³ ICC-02/04-01/15-327.

6. On 27 November 2015, Judge Tarfusser admitted all the applicants from the 18 September and 27 October 2015 Registry submissions.⁴ Furthermore, Judge Tarfusser appointed Paolina Massidda from the OPCV to represent the unrepresented victim-participants in the case.⁵ Judge Tarfusser also admitted the Legal Representatives.⁶ Finally, Judge Tarfusser order all parties and participants to review filings and evidence submitted by the individual party or participant to determine if cause existed to withhold any filings or evidence from the OPCV or the Legal Representatives.⁷

IV. OBSERVATIONS

7. Firstly, the Defence has no objection to granting access to the confidential evidence it has submitted through eCourt to the Prosecution. For the reasons outlined in an email of 11 November 2015 from Thomas Obhof to Judge Tarfusser, the Defence does not consider it appropriate to grant the OPCV or the Legal Representatives access to the unredacted version of UGA-D26-0010-0019 at this time, especially considering that the Prosecution does not have access to it. As stated on 17 November 2015 during the Article 56 Hearing, the Defence expects that the reasons for which the redactions have been made will cease to exist by the time of the Confirmation of Charges Hearing, and will release it to the Prosecution, OPCV and the Legal Representatives accordingly. The Defence will liaise with the Registry to determine how to release evidence separately to the Legal Representatives as soon as practicable.
8. Secondly, the Defence notes that every document filed in the case record by the former Counsel before Mr Ongwen surrendered is public.

⁴ ICC-02/04-01/15-350.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

9. Finally, the Defence files Confidential Annex A with its observations on confidential and confidential *ex parte* filings submitted by the Defence since Mr Ongwen surrendered. The Defence further notes that it has made observations on the confidential *ex parte* Annexes 1-3 of filing ICC-02/04-01/15-317-Conf, even though these documents were not submitted by the Defence.

V. CONCLUSIONS

10. The Defence notifies Pre-Trial Chamber II that:

- a. all of the evidence disclosed via eCourt to the Prosecution shall be disclosed to the OPCV and Legal Representatives via eCourt as soon as practicable and
- b. all of the filings made by the Defence before Mr Ongwen surrendered that were transferred to case ICC-02/04-01/15 are public.

11. The Defence has no objection to the OPCV and Legal Representatives receiving the following case filings: ICC-02/04-01/15-199-Conf, ICC-02/04-01/15-199-Conf-Anx1, ICC-02/04-01/15-201-Conf-AnxIV, ICC-02/04-01/15-248-Conf-Exp, ICC-02/04-01/15-259-Conf, ICC-02/04-01/15-259-Conf-Anx, ICC-02/04-01/15-265-Conf, ICC-02/04-01/15-265-Conf-AnxA, ICC-02/04-01/15-265-Conf-AnxB, ICC-02/04-01/15-265-Conf-AnxC, ICC-02/04-01/15-265-Conf-AnxD, ICC-02/04-01/15-278-Conf, ICC-02/04-01/15-278-Conf-AnxG, ICC-02/04-01/15-284-Conf, ICC-02/04-01/15-286-Conf, ICC-02/04-01/15-291-Conf, ICC-02/04-01/15-312-Conf, ICC-02/04-01/15-321-Conf, ICC-02/04-01/15-322-Conf-Red, ICC-02/04-01/15-332-Conf and ICC-02/04-01/15-336-Conf.

12. For the reasons outlined in Confidential Annex A, the Defence requests that the OPCV and Legal Representatives do not receive access to the following case filings: ICC-02/04-01/15-281-Conf-Exp, ICC-02/04-01/15-281-Conf-Exp-AnxA, ICC-

02/04-01/15-281-Conf-Exp-AnxC, ICC-02/04-01/15-317-Conf-Exp-Anx1, ICC-02/04-01/15-317-Conf-Exp-Anx2, ICC-02/04-01/15-317-Conf-Exp-Anx3 and ICC-02/04-01/15-322-Conf-Exp.

13. Finally, for the reasons outlined in Confidential Annex A, the Defence requests the following documents to be reclassified from confidential to public: ICC-02/04-01/15-265-Conf, ICC-02/04-01/15-265-Conf-AnxA, ICC-02/04-01/15-265-Conf-AnxB, ICC-02/04-01/15-265-Conf-AnxC, ICC-02/04-01/15-265-Conf-AnxD and ICC-02/04-01/15-312-Conf.

Respectfully submitted,



.....
Hon. Krispus Ayena Odongo

On behalf of Dominic Ongwen

Dated this 7th day of December, 2015

At Kampala, Uganda