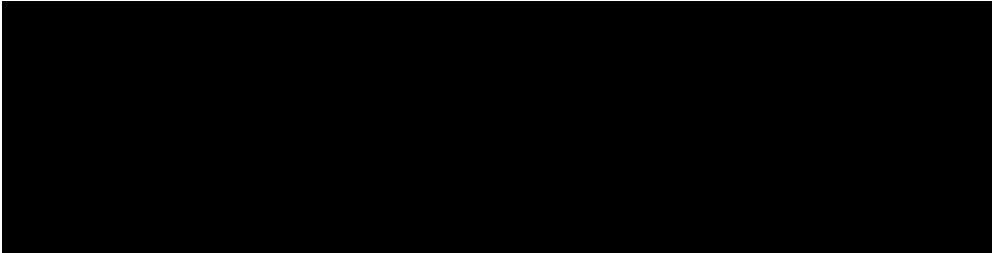


ANNEX XXI

PUBLIC

From: Trial Chamber IX Communications
Sent: 22 March 2018 11:18
To: 

Cc:

Subject:
Attachments: RE: Decision 1207

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel:

Paragraph 9 of Decision 1207 (ICC-02/04-01/15-1207) provides as follows [citations removed]:

On this basis, and irrespective of whether these three items sought by the Defence fall under the Prosecution's disclosure obligations, the Single Judge considers it appropriate for the Prosecution to provide the Sound Recording and RFA 24. As regards the identity of the informant in the UPDF Report, this must also be provided to the Defence forthwith unless, within 5 days of notification of the present decision, the Prosecution files a substantiated request for non-disclosure.

From the issuance date of this decision, and noting Regulation 33 of the Regulations of the Court, the deadline for any non-disclosure request would ordinarily be 26 March 2018.

In an email exchange, the Prosecution requests an extension of time to 6 April 2018 to provide any substantiated request for non-disclosure of the sound recording and informant's identity. The basis for the extension is that the Prosecution will not receive the views of the Ugandan government on the disclosure of their informant until 30 March 2018 (Email from Prosecution, 21 March 2018, at 18:58).

The Defence opposes the request on grounds that the Prosecution has not acted with sufficient diligence in seeking permission from the Ugandan authorities for this disclosure (Email from the Defence, 22 March 2018 at 06:48).

Preliminarily, and as correctly noted by the Defence, the Prosecution is obligated by Decision 1207 to disclose RFA 24 and the sound recording forthwith. The opportunity to file a substantiated request for non-disclosure does not extend to the sound recording. In response to the Prosecution's concerns that parts of this recording reveal the informant's identity, it is recalled that the Prosecution may apply redactions to this recording before providing it (Decision 1207, para. 9 n. 13).

As regards the identity of the UPDF informant, and contrary to the Defence's arguments, neither the Prosecution Notification (ICC-02/04-01/15-1189-Red) nor Decision 1207 explicitly concluded that the Prosecution had any disclosure obligation in respect of the UPDF informant's identity. The Chamber has never determined that the Prosecution had a pre-existing duty to provide this information before Decision 1207. It therefore cannot be concluded that the Prosecution failed to act with sufficient diligence, at least up until this point.

The Chamber considers it reasonable to give the Ugandan authorities an opportunity to comment on the risks of revealing the informant's identity before it is provided to the Defence. The additional week that the Ugandan authorities indicate they require to provide their views – plus a short additional extension for the Prosecution to process the information provided - is narrowly tailored and constitutes good cause to extend the deadline set in Decision 1207.

For these reasons, and pursuant to Regulation 35 of the Regulations, the Chamber grants the Prosecution an extension to **16:00 on 6 April 2018** to file any substantiated request for non-disclosure of the UPDF informant's identity. It is emphasised that this is the latest date for the Prosecution to file such a request. Should the Prosecution conclude that no such request is necessary, it is expected to provide the UPDF informant's identity promptly along with any corresponding lesser redacted versions of other materials.