

[REDACTED]

From: [REDACTED]
Sent: 17 December 2020 10:15
To: [REDACTED]
Subject: FW: Reclassification of filings
Attachments: RE: Request to Reclassify ICC-02/04-01/15-259-Conf; RE: Request for reclassification of ICC-02/04-01/15-T-29-Conf; Reclassification Requests; RE: Reclassification Requests; Re: Reclassification Requests; Request for Lesser Redacted Version of Filing 1695

[REDACTED]

From: Trial Chamber IX Communications [REDACTED]
Sent: 04 August 2020 10:54
To: [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] Trial Chamber IX Communications [REDACTED]
 [REDACTED]
Subject: Reclassification of filings

Dear colleagues,
 Dear parties and participants,

Noting the submissions in the attached emails, and pursuant to Regulation 23 *bis* of the Regulations of the Court, the Registry is hereby ordered to reclassify the following filings as 'public':

ICC-02/04-01/15-259-Conf
 ICC-02/04-01/15-312-Conf
 ICC-02/04-01/15-361-Conf-AnxA
 ICC-02/04-01/15-390-Conf-Exp
 ICC-02/04-01/15-392-Conf-AnxA
 ICC-02/04-01/15-398-Conf-AnxA
 ICC-02/04-01/15-T-29-CONF (the English and the French version)

With regard to filing ICC-02/04-01/15-345-Conf, the Chamber takes note of the disagreement whether the following part of the first sentence of paragraph 20: '[...] , the standard hotel used by the Court, [...]' should be redacted or not.

First, the Chamber notes that the hotel in question was in the immediate vicinity of the Court's premises, which was most likely one of the reasons for the description as 'the standard hotel used by the Court'. However, in the meantime the location of the premises changed, which presumably also had an impact on its usage of the Court. The Chamber has also conferred with specific units within the Registry on this aspect.

Second, while the building is currently still used as a hotel it is not run under the same company name as described in the filing. This attenuates the need to redact the fact that this – former – hotel was used by the Court even more. For these reasons the Chamber does not consider that the information needs to be redacted and accordingly instructs the Registry to reclassify filing ICC-02/04-01/15-345-Conf as 'public' as well.

With regard to filing -1695 (see email from the Defence on 28 July 2020, at 11:53) the Chamber confirms that no public-redacted or confidential-redacted versions are available and informs that, at this point in time, such versions are not going to be provided.

Kind regards,

Trial Chamber IX

From: [REDACTED]
Sent: 23 July 2020 15:44
To: [REDACTED] Trial Chamber IX Communications
Cc: [REDACTED]
Subject: RE: Request to Reclassify ICC-02/04-01/15-259-Conf

Dear Trial Chamber IX, Parties, and Participants,

Following receipt of the Defence's request for reclassification, below, the Prosecution contacted Dr Holly Porter to seek her views. Dr Porter has kindly indicated that she does not object to her name being un-redacted from filing 259-Conf. However, she confirmed and re-emphasised her ongoing request that her report itself (UGA-OTP-0254-0206) remain confidential, for the reasons noted on the first page of that report.

In light of Dr Porter's consent, the Prosecution does not oppose reclassification of ICC-02/04-01/15-259-Conf as public.

Best regards,

[REDACTED]

From: [REDACTED]
Sent: 22 July 2020 14:20
To: Trial Chamber IX Communications
Cc: [REDACTED]
Subject: Request to Reclassify ICC-02/04-01/15-259-Conf

Dear Trial Chamber IX, Prosecution and Victims Representatives,

The Defence requests that ICC-02/04-01/15-259-Conf be reclassified as **PUBLIC**.

The current public redacted version of this pleading has the name of Holly Porter, PhD ('Dr Porter') redacted, along with the relative time frame of her visit to the Office of the Prosecutor in 2015 (para. 17). The Defence sees no dispute with lifting the redaction in paragraph 17 of filing 259-Red, but if the Prosecution has an issue with it, the Defence requests that its arguments be known in its response.

On 21 July 2020, the Defence wrote to the Office of the Prosecutor to ask if it minded if the redaction over her name be lifted. The Prosecution stated that it wished the redaction to remain as the Office told her that it would keep her involvement in the case confidential. The Defence originally consent out of respect, but remembered the written words of the Prosecution about its opinion of experts (*see* below). The Defence notified the Prosecution that it intended to challenge this issue and the Defence requests the entirety of Filing 259-Conf be public for the below mentioned reasons.

Dr Porter, along with Dr Tim Allen Dr Anna Macdonald, assisted the Prosecution in May 2015 with determining a possible strategy to try to conduct the Article 56 hearings (*see* UGA-OTP-0254-0206). With the utmost respect for the Pre-Trial Chamber and Chamber, Dr Porter acted as an integral part for the initiation of the Article 56 process, a process which the Defence still contends violated Mr Ongwen's rights under the Rome Statute. As an expert consultant for this "unique investigatory opportunity", it is necessary for the publicity of the proceedings for the public to know this information.

Furthermore, as the Prosecution noted in relation to Defence experts (altered slightly to fit Dr Porter), the suggestion that Dr Porter may have fears of reprisals and isolation from the communities in which she has been practicing is speculative and not an objectively justifiable basis for redactions. Concerns about reputational damage alone cannot justify protective measures for an expert. The experts' authority is bound up in who she is, including her educational background and professional experience. The identity of Dr Porter is a matter of genuine public interest and should not be shielded merely because it might be embarrassing for her to have her methodology or reasoning criticized in a public forum on the Article 56 hearings. This is particularly so here, given the importance of the Article 56 hearings in this case (*see generally*, OTP filing 1283, para. 7). If persons who live and work in Uganda, and interact on a much more frequent basis with former LRA, should not fear personal or professional reprisal because of their involvement with the Court (*i.e.* D-41, D-42 and P-422), neither should a scholar who works primarily in the United Kingdom.

Additionally, Dr Porter can be distinguished from fact witnesses. She is a published person on issues related to Northern Uganda. Her expertise was sought and used by the Prosecution. Merely because she did not testify for the Prosecution cannot be a reason to exclude her involvement in an important role in the foundation of the Article 56 proceedings. Unlike fact witnesses, her livelihood should not be able to be affected public knowledge of her giving an expert opinion in her field of expertise, unlike someone who lives day-to-day in the diaspora. She works to defend her opinions while a vast majority of the fact witnesses work to get by. The Defence finds it vexing that the Prosecution consented to Major Ocira's name, an integral Prosecution intermediary with a less than perfect history with the Prosecution, being public, but yet fights to keep Dr Porter's name confidential. Did the Prosecution not make the same promise to Major Ocira?

Finally, an expert's authority is bound up in who they are, including their educational background and professional experience. The identity of Dr Porter is a matter of genuine public interest and should not be shielded merely because it might be embarrassing for her to have her methodology or reasoning criticised in public. This is particularly so here, given the importance of the Article 56 hearings in this case. Dr Porter voluntarily undertook the task of reporting and advising the Prosecution. (*see generally*, Decision 1337, para. 14). Merely because she asked to remain confidential because of her work **does not override** the principle of publicity of the proceedings, especially relating to the contentious issue of the Article 56 proceedings.

For the abovementioned reasons, the Defence respectfully requests the Chamber to order that Defence filing ICC-02/04-01/15-259-Conf be reclassified as **PUBLIC** in its entirety.

Very best,



On behalf of Co-Counsel Taku

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From: [REDACTED]
Sent: 24 July 2020 10:25
To: [REDACTED] Trial Chamber IX Communications
Cc: [REDACTED]
Subject: RE: Request for reclassification of ICC-02/04-01/15-T-29-Conf

Dear all,

My apologies for the typo below – the Prosecution does not object to the requested reclassification of T-29.
 Sorry!

From: [REDACTED]
Sent: 24 July 2020 10:14
To: [REDACTED] Trial Chamber IX Communications
Cc: [REDACTED]
Subject: RE: Request for reclassification of ICC-02/04-01/15-T-29-Conf

Dear Trial Chamber IX, Parties and Participants,
 The Prosecution does object to the requested reclassification of transcript ICC-02/04-01/15-T-29 as public.
 Best regards,

From: [REDACTED]
Sent: 24 July 2020 10:01
To: Trial Chamber IX Communications
Cc: [REDACTED]
Subject: Request for reclassification of ICC-02/04-01/15-T-29-Conf

Dear Trial Chamber IX and Prosecution,

In light of the Prosecution's email received yesterday, 23 July 2020 at 15h44 CET, the Defence respectfully requests that **ICC-02/04-01/15-T-29-Conf** be reclassified as **PUBLIC**.

The only two redactions which remain in the second public redacted version are Dr Porter's name, hence the request.

The Defence also takes this time to reassure the Chamber, Prosecution and Participants that it is slowly reviewing the filings and transcripts of the proceedings for the purpose of attempting to lift as many redactions as possible. I know personally that there are some which need to be lifted which are later in the case, but I'm trying to go in chronological order. With the Reduced Activity Period emplaced by the Legal Aid Policy, the Defence is under-staffed and it will take some time. Please accept my apologies on behalf of the Defence.

Highest regards,

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[REDACTED]

From: [REDACTED]
Sent: 26 July 2020 16:22
To: Trial Chamber IX Communications; [REDACTED]
Subject: Reclassification Requests

Dear Trial Chamber IX, Prosecution and Legal Representatives for Victims,

The Defence for Dominic Ongwen respectfully requests the following pleadings be reclassified to **PUBLIC**.

ICC-02/04-01/15-312-Conf

ICC-02/04-01/15-345-Conf (main filing only)

ICC-02/04-01/15-361-Conf-AnxA

ICC-02/04-01/15-390-Conf-Exp

ICC-02/04-01/15-392-Conf-AnxA

ICC-02/04-01/15-398-Conf-AnxA

Very best,

[REDACTED]

[REDACTED]

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From: [REDACTED]
Sent: 27 July 2020 16:05
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
Subject: RE: Reclassification Requests

Dear Trial Chamber IX, Defence, and Legal Representatives of Victims:

The Prosecution has no objection to making public the following filings: ICC-02/04-01/15-312-Conf, ICC-02/04-01/15-361-Conf-AnxA, ICC-02/04-01/15-392-Conf-AnxA, and ICC-02/04-01/15-398-Conf-AnxA.

With respect to filing ICC-02/04-01/15-345-Conf, the Prosecution submits that the following text in paragraph 20 should remain redacted: "the standard hotel used by the Court".

The Prosecution notes that it has no access to filing ICC-02/04-01/15-390-Conf-Exp, which is available in a confidential redacted form at ICC-02/04-01/15-390-Conf-Red, and cannot review the redacted text.

Sincerely,

From: [REDACTED]
Sent: 26 July 2020 16:22
To: Trial Chamber IX Communications; [REDACTED]
Subject: Reclassification Requests

Dear Trial Chamber IX, Prosecution and Legal Representatives for Victims,

The Defence for Dominic Ongwen respectfully requests the following pleadings be reclassified to **PUBLIC**.

ICC-02/04-01/15-312-Conf

ICC-02/04-01/15-345-Conf (main filing only)

ICC-02/04-01/15-361-Conf-AnxA

ICC-02/04-01/15-390-Conf-Exp

ICC-02/04-01/15-392-Conf-AnxA

ICC-02/04-01/15-398-Conf-AnxA

Very best,

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From: [REDACTED]
Sent: 27 July 2020 16:20
To: [REDACTED]; Trial Chamber IX Communications; [REDACTED]
Subject: Re: Reclassification Requests

Dear Trial Chamber IX, Prosecution and Legal Representatives,

In relation to ICC-02/04-01/15-345-Conf, and with respect to the Prosecution, it is common knowledge that the Court recommended to persons visiting and working as a Defence Counsel the Movenpick Hotel as it was only a couple hundred metres from the Arc Building of the ICC before the move to the ICC-PP.

The Defence is unaware of the hotels used the organs of the Court, merely that the Registry used to recommend that hotel. I don't know if the Prosecution is looking too much into it, but the Defence feels that considering the nature of the pleading, it is obvious what the Defence was referring to in paragraph 20.

Very best,

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 27 July 2020 16:04
To: [REDACTED]; Trial Chamber IX Communications; [REDACTED]
Subject: RE: Reclassification Requests

Dear Trial Chamber IX, Defence, and Legal Representatives of Victims:

The Prosecution has no objection to making public the following filings: ICC-02/04-01/15-312-Conf, ICC-02/04-01/15-361-Conf-AnxA, ICC-02/04-01/15-392-Conf-AnxA, and ICC-02/04-01/15-398-Conf-AnxA. With respect to filing ICC-02/04-01/15-345-Conf, the Prosecution submits that the following text in paragraph 20 should remain redacted: "the standard hotel used by the Court".

The Prosecution notes that it has no access to filing ICC-02/04-01/15-390-Conf-Exp, which is available in a confidential redacted form at ICC-02/04-01/15-390-Conf-Red, and cannot review the redacted text.

Sincerely,

[REDACTED]

From: [REDACTED]
Sent: 26 July 2020 16:22
To: Trial Chamber IX Communications; [REDACTED]
[REDACTED]

Subject: Reclassification Requests

Dear Trial Chamber IX, Prosecution and Legal Representatives for Victims,

The Defence for Dominic Ongwen respectfully requests the following pleadings be reclassified to **PUBLIC**.

ICC-02/04-01/15-312-Conf

ICC-02/04-01/15-345-Conf (main filing only)

ICC-02/04-01/15-361-Conf-AnxA

ICC-02/04-01/15-390-Conf-Exp

ICC-02/04-01/15-392-Conf-AnxA

ICC-02/04-01/15-398-Conf-AnxA

Very best,

[REDACTED]
[REDACTED]

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[REDACTED]

From: [REDACTED]
Sent: 28 July 2020 11:53
To: Trial Chamber IX Communications
Cc: [REDACTED]
Subject: Request for Lesser Redacted Version of Filing 1695

Dear Trial Chamber IX, Prosecution, and Legal Representatives,

Pursuant to the spirit of T-25, p. 4, lines 5-10, the Defence requests a confidential redacted and public redacted version of ICC-02/04-01/15-1695-Conf-Exp be submitted as soon as possible. The Defence does not have access, on any level, to this document, and does not know which party or participant submitted the item.

Very best,

[REDACTED]

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