

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/04 OA  
Date: 26 January 2011**

**THE APPEALS CHAMBER**

**Before:**  
**Judge Anita Ušacka, Presiding Judge**  
**Judge Sang-Hyun Song**  
**Judge Akua Kuenyehia**  
**Judge Erkki Kourula**  
**Judge Daniel David Ntanda Nsereko**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**Public document**

**Order on the Reclassification of Documents**



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

**The Office of the Prosecutor**  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Fabricio Guariglia

**REGISTRY**

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**Registrar**  
Ms Silvana Arbia

The Appeals Chamber of the International Criminal Court,

Recalling the appeal of the Prosecutor of 14 February 2006, entitled “Prosecutor’s Appeal against Pre-Trial Chamber I’s 10 February 2006 ‘Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58’” (ICC-01/04-125-US-Exp),

Unanimously

*Issues* the following

## ORDER

1) The Registrar shall reclassify as public the following documents:

ICC-01/04-T-9-US-Exp,  
ICC-01/04-121-US-Exp,  
ICC-01/04-124-US-Exp,  
ICC-01/04-125-US-Exp,  
ICC-01/04-126-US-Exp,  
ICC-01/04-127-US-Exp,  
ICC-01/04-129-US-Exp,  
ICC-01/04-131-US-Exp,  
ICC-01/04-133-US-Exp,  
ICC-01/04-136-US-Exp,  
ICC-01/04-136-US-Exp-AnxI,  
ICC-01/04-136-US-Exp-AnxII,  
ICC-01/04-165-US-Exp, and  
ICC-01/04-537-US-Exp.

2) By 6 February 2011, the Prosecutor shall file a public-redacted version of ICC-01/04-120-US-Exp, in which the names and any identifying information of the protected witnesses mentioned in footnotes 119, 120 and 121 and the name and any identifying information of the person mentioned in footnote 162 are redacted.



## REASONS

### I. PROCEDURAL HISTORY

1. On 29 November 2010, the Appeals Chamber issued an order<sup>1</sup> (hereinafter: "Order Concerning the Reclassification of Documents") giving the Prosecutor a time limit of 17 December 2010 at 16h00 to provide his views as to whether any information contained in the under seal documents<sup>2</sup> listed in the order could not be reclassified as public. In addition, the Appeals Chamber ordered the Registrar to provide her views as to whether any information contained in document ICC-01/04-129-US-Exp could not be reclassified as public.
  
2. On 2 December 2010, the Registrar filed the "Submission of the Registry pursuant to the Appeals Chamber's 'Order relating to the reclassification of documents' (ICC-01/04-589) dated 29 November 2010" indicating that "the Registrar is of the opinion that document ICC-01/04-129-US-Exp does not contain any under seal or confidential information and thus can be reclassified as public".<sup>3</sup>

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<sup>1</sup> *Situation in the Democratic Republic of Congo*, "Order Relating to the Reclassification of Documents", ICC-01/04-589 (OA).

<sup>2</sup> "Prosecutor's Document in Support of the Appeal", 3 March 2006, ICC-01/04-120-US-Exp (OA); "Copies or Internet links to Authorities relied upon in Prosecutor's Document in Support of the Appeal", 3 March 2006, ICC-01/04-121-US-Exp (OA); "Order on the Registrar's Request to Transfer Certain Parts of the Case Record to the Situation Record", 16 March 2006, ICC-01/04-124-US-Exp (OA); "Prosecutor's Appeal against Pre-Trial Chamber I's 10 February 2006 'Decision on the Prosecutor's Application for Warrants of Arrest, Article 58'", ICC-01/04-125-US-Exp (OA); "Decision on the Presiding Judge of the Appeals Chamber", 17 February 2006, ICC-01/04-126-US-Exp (OA); "Prosecutor's Application for an Extension of the Page Limit for the Document in Support of Appeal", 23 February 2006, ICC-01/04-127-US-Exp (OA); "Registrar's Request for an Order of Transfer of Certain Parts of the Case Record to the Situation Record", 9 March 2006, ICC-01/04-129-US-Exp (OA); "Order on the Registrar's Request to Transfer Certain Parts of the Case Record to the Situation Record, Separate Opinion of Judge Song", 23 March 2006, ICC-01/04-131-US-Exp (OA); "Order Pursuant to Regulation 28 of the Regulations of the Court for the Prosecutor to Respond to Questions", 29 March 2006, ICC-01/04-133-US-Exp (OA); "Prosecutor's Supplementary Submissions in Compliance of the Appeals Chamber's 29 March 2006 'Order Pursuant to Regulation 28 of the Regulations of the Court for the Prosecutor to Respond to Questions'", 5 April 2006, ICC-01/04-136-US-Exp (OA); "Annex 1: List of Authorities", 5 April 2006, ICC-01/04-136-US-Exp-AnxI (OA); "Annex 2: Declaration of Bernard Lavigne", 5 April 2006, ICC-01/04-136-US-Exp-AnxII (OA); "Scheduling Order for Delivery of the Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision on the Prosecutor's Application for Warrants of Arrest, Article 58'", 11 July 2006, ICC-01/04-165-US-Exp (OA); "Decision on the Presiding Judge of the Appeals Chamber in relation to the appeal of the Prosecutor of 14 February 2006 entitled 'Prosecutor's Appeal against Pre-Trial Chamber I's 10 February 2006 'Decision on the Prosecutor's Application for Warrants of Arrest, Article 58'", 5 September 2008, ICC-01/04-537-US-Exp (OA).

<sup>3</sup> ICC-01/04-590 (OA), p. 3.

3. On 15 December 2010, the Prosecutor filed the “Prosecution’s submissions in compliance with the ‘Order relating to the reclassification of documents’”,<sup>4</sup> indicating that, with the exception of information included in footnotes 119, 120, 121 and 162 of the “Prosecutor’s Document in Support of the Appeal”<sup>5</sup> (hereinafter: “Document in Support of the Appeal”), all of the information contained in the documents listed in the Order Concerning the Reclassification of Documents could be made public.

## II. REASONS

4. The Appeals Chamber notes that of the twelve documents and two annexes identified in the Order Concerning the Reclassification of Documents, the Appeals Chamber did not receive any objections to the documents being made public, with the exception that the Prosecutor identified four footnotes in the Document in Support of the Appeal that the Prosecutor indicated should be redacted.

5. In the view of the Prosecutor, footnotes 119, 120 and 121 of the Document in Support of the Appeal should be redacted from the public in order to ensure the safety of the protected witnesses named therein.<sup>6</sup> The Prosecutor also requests the redaction of the name of the person mentioned in footnote 162, in order to preserve the confidentiality of the Prosecution’s investigations.<sup>7</sup>

6. The Appeals Chamber is of the view that documents ICC-01/04-T-9-US-Exp, ICC-01/04-121-US-Exp, ICC-01/04-124-US-Exp, ICC-01/04-125-US-Exp, ICC-01/04-126-US-Exp, ICC-01/04-127-US-Exp, ICC-01/04-129-US-Exp, ICC-01/04-131-US-Exp, ICC-01/04-133-US-Exp, ICC-01/04-136-US-Exp, ICC-01/04-136-US-Exp-AnxI, ICC-01/04-136-US-Exp-AnxII, ICC-01/04-165-US-Exp, and ICC-01/04-537-US-Exp may be reclassified as public because the basis for their classification as “under seal” no longer exists. In accordance with regulation 23 *bis* (3) of the Regulations of the Court, the Appeals Chamber therefore orders the Registrar to reclassify as public these above-mentioned documents.

7. In respect of the Document in Support of the Appeal, the Appeals Chamber is of the view that the names contained in footnotes 119, 120, 121 and 162 should be

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<sup>4</sup> ICC-01/04-591 (OA).

<sup>5</sup> 3 March 2006, ICC-01/04-120-US-Exp (OA).

<sup>6</sup> ICC-01/04-591 (OA), p. 3.

<sup>7</sup> ICC-01/04-591 (OA), p. 4.

redacted from the public for the reasons provided in the Prosecutor's submissions and in accordance with article 64 (6) (c) and (e) of the Statute and rule 149 of the Rules of Procedure and Evidence. The Appeals Chamber therefore orders the Prosecutor to file a public redacted version which redacts the names and any identifying information of the protected witnesses mentioned therein, as well as the name and any identifying information of the person mentioned in footnote 162.

Done in both English and French, the English version being authoritative.



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**Judge Anita Ušacka**  
**Presiding Judge**

Dated this 26<sup>th</sup> day of January 2011

At The Hague, The Netherlands