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No.: ICC-02/04-01/05
Date: 3 February 2015

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. JOSEPH KONY,
VINCENT OTTI, OKOT ODHIAMBO, DOMINIC ONGWEN***

Public

Public redacted version of “Prosecution’s Application for Redactions to the Document submitted at the 28 January 2015 Status Conference and to its Transcript”, 2 February 2015, ICC-02/04-01/05-422-Conf-Exp

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

Fatou Bensouda
James Stewart
Benjamin Gumpert

Counsel for Dominic Ongwen

Helen Cissé

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

Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Detention Section

Victims Participation and Reparations Section

Other

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) submits its application (“Application”) for the Single Judge’s authorisation, pursuant to articles 54(3)(e) and 68(1) of the Rome Statute (“Statute”) and rules 81(1), (2) and (4) of the Rules of Procedure and Evidence (“Rules”), to redact information contained in the document¹ submitted at the 28 January 2015 status conference and its transcript.²
2. Pursuant to article 54(3)(e) and rule 81(2), the Prosecution seeks authorisation to redact information relevant to its information providers.
3. Pursuant to rules 81(1) and (2), it seeks authorisation to redact: (a) information concerning the other suspects including [REDACTED]; and (b) information regarding the Prosecution’s internal security processes including [REDACTED].
4. Pursuant to rules 81(2) and (4), it seeks authorisation to redact information concerning witness protection issues.

II. Request for confidentiality

5. Pursuant to regulation 23*bis* of the Regulations of the Court, the Prosecution requests that this Application and its annexes be received by the Single Judge as “confidential, *ex parte*, only available to the Prosecution” because they (i) relate to information that is currently under seal, *ex parte*, only available to the Registry and the Prosecution, or (ii) contain information for which redactions are sought, the disclosure of which would defeat the purpose for which the redactions are requested. No alternative procedures

¹ Confidential, *Ex Parte*, Prosecution Annex A (“Annex A”).

² Confidential, *Ex Parte*, Prosecution Only Annex B (“Annex B”).

exist to deal with this request. The Defence will be informed of the Application and its legal basis through a public redacted version which will be filed as soon as practicable.

III. Submissions

Legal basis for redactions

6. According to the Appeals Chamber in the cases of *The Prosecutor v. Germain Katanga*, and of *The Prosecutor v. Thomas Lubanga Dyilo*, rules 81(2) and (4) require that:

- (i) There is an objectively justifiable risk that the disclosure to the Defence of the information sought to be redacted could: (i) prejudice ongoing or further investigations (rule 81(2)); (ii) affect the confidential character of the information under articles 54, 72 and 93 of the Statute (rule 81(4)); or (iii) affect the safety of witnesses, victims, or members of their families, or persons at risk on account of the activities of the Court (rule 81(4));³
- (ii) Less restrictive protective measures are not feasible or insufficient;⁴
- (iii) The redactions sought are not prejudicial to or inconsistent with the rights of the Defence and the requirements of a fair and impartial trial.⁵

7. The Appeals Chamber has also explained that a Pre-Trial Chamber seized with the request for redactions “should carefully assess the relevance of the information in question to the Defence” and has clarified that the

³ ICC-01/04-01/07-475, paras.1,43,71 and 97; ICC-01/04-01/07-476, para.60.

⁴ ICC-01/04-01/07-475, para.72.

⁵ ICC-01/04-01/06-773, para.34.

determination requires a “careful assessment by the Pre-Trial Chamber on a case-by-case basis, balancing the various interests at stake.”⁶

Information the Prosecution seeks to redact

Information regarding the Prosecution’s information providers

8. The Prosecution seeks the Single Judge’s authorisation to redact the information relevant to its information providers.⁷ The Prosecution submits that it relies on these providers to collect evidence. The Prosecution has been and is in contact with these providers to discharge its disclosure obligation and as part of its investigation into crimes allegedly committed by Mr Ongwen and other suspects. The Prosecution does not wish to expose these providers to any pressure should information regarding their cooperation with the Prosecution become public. The redactions requested are not prejudicial to or inconsistent with the rights of Mr Ongwen and the requirements of a fair and impartial trial.

Information concerning the other suspects including [REDACTED]

9. The Prosecution seeks the Single Judge’s authorisation to redact the information relevant to [REDACTED].⁸ The information regarding [REDACTED] is currently under seal, *ex parte*, only available to the Registry and the Prosecution.⁹ The investigation into crimes committed by [REDACTED] is ongoing. The redactions requested are not prejudicial to or inconsistent with the rights and the interests of Mr Ongwen.

⁶ ICC-01/04-01/07-475, paras 66 and 72.

⁷ See Annex A, p. 13 and Annex B, p. 20, ln.13-p. 21, ln.22; p. 35, lns.2-22.

⁸ Annex A, p. 4 and Annex B, p. 26, lns.13-15; p. 27, lns.1-2; p. 27, ln.7-p. 28, ln.8.

⁹ ICC-02/04-01/05-315-US-Exp.

Information regarding the Prosecution's internal security processes

10. The Prosecution seeks the Single Judge's authorisation to redact the information regarding the Prosecution's internal security processes.¹⁰ Internal security processes including [REDACTED] constitute Prosecution internal work products and should not be revealed to the Defence, pursuant to rule 81(1).

Information concerning witness protection

11. The Prosecution seeks the Single Judge's authorisation to redact the information regarding witness protection issues.¹¹ The information regarding its witnesses who [REDACTED] or received support from the Victims and Witnesses Unit is sensitive and should not be shared with the Defence. The Prosecution will re-visit the redactions sought, should they affect the rights of Mr Ongwen, or the requirements of a fair and impartial trial, at a later stage.

¹⁰ Annex A, pp.8 and 9.

¹¹ Annex A, p. 11 and Annex B, p. 32, lns.15-18; p. 33, ln. 7-p. 34, ln.6.

IV. Conclusion

12. In light of the foregoing, the Prosecution requests the Single Judge to authorise the proposed redactions as submitted in this Application and accompanying Annexes.



Fatou Bensouda,
Prosecutor

Dated this 3rd day of February 2015
At The Hague, The Netherlands