

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-02/04-01/15**

Date: **27 March 2017**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Public

**With confidential *EX PARTE* Annex A,
only available to the Prosecution**

**Prosecution Response to Defence Request for a
Disclosure Order (ICC-02/04-01/15-759)**

Source: 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**

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Confidentiality

1. The Prosecution files Annex A confidential *ex parte* because to do otherwise would defeat the purpose of the requested redactions.

Submissions

2. In response to the Defence Request,¹ the three most senior lawyers on the Prosecution trial team conducted a supplementary review of all undisclosed items in the Prosecution's possession. As a result of that review, the Prosecution has identified 15 previously undisclosed items which appear to be at least partially or arguably responsive to the Defence Request.² These items will be disclosed to the Defence in the coming days. The Prosecution does not consider any remaining undisclosed items in its possession to be responsive to the Defence Request.
3. In conducting its supplementary review, the Prosecution has purposefully taken a broad approach, in order to minimise any distraction or unnecessary consumption of resources in litigating the limits of appropriate disclosure in this case. Such broad approach, however, should not be construed as agreement that disclosure of these items is necessarily required by the Rome Statute or the Rules of Procedure and Evidence.
4. The Prosecution notes that it has reviewed information for disclosure on the basis of its contents and not its title or its origin. To the extent, for example, that Request J might be read to request "any reports by counter-intelligence services,"³ the Prosecution has undertaken no separate search or review based on that

¹ Defence Request for a Disclosure Order Regarding Material Related to the Circumstances of Hostilities between the LRA and Ugandan Government Pursuant to Article 67(2) and Rule 77, ICC-02/04-01/15-759 ("Defence Request").

² With regard to UGA-OTP-0159-0141, a UN security analysis from April 2005, the Prosecution notes that one page is dated April 2004. This appears to be a typographical error. To ensure that this was not the result of a scanning error, the Prosecution retrieved the original item from the evidence vault and hereby confirms that the registered copy is identical to the original item as it was received.

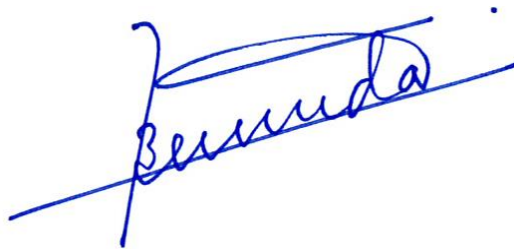
³ Defence Request, para. 4.b.

criterion. Rather, it has reviewed all information in its possession, from any source, for responsiveness to the substantive component of Request J (*i.e.*, “post-attack reports concerning any of the sites related to the charges against Mr Ongwen”).

5. Finally, the Prosecution requests leave to make a very limited number of non-standard redactions to one item, UGA-OTP-0159-0119, received from the United Nations (“UN”). The UN has agreed to its disclosure to the Defence in this case, but has requested the redaction of names of third party organisations on pages 0121 and 0123, as reflected in confidential *ex parte* Annex A to this filing.

Conclusion

6. For the reasons set forth above, the Prosecution requests leave to make the redactions specified in paragraph 5 above and Annex A, and submits that the Defence Request should be denied as moot in light of the supplementary review and disclosure described herein.



Fatou Bensouda, Prosecutor

Dated this 27th day of March 2017
At The Hague, The Netherlands