



Original: English

No.: ICC-02/04-01/15
Date: 23 December 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

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

Public redacted

**Decision on the Prosecutor's request for authorisation of non-standard
redactions**

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 the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the 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

Defence Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Cuno Tarfusser, Single Judge exercising the functions of the Chamber in the present case, issues this decision on the “Prosecution’s urgent request for authorisation of non-standard redactions to a psycho-social assessment report (██████████)”, filed on 21 December 2015 (ICC-02/04-01/15-374-Conf-Exp and annex, “Request”).

1. The item of evidence in question is a psycho-social assessment report for Witness ██████, dated 12 June 2015, which the Prosecutor intends to disclose under rule 77 of the Rules of Procedure and Evidence (“Rules”). The Prosecutor requests permission to redact excerpts of the report in which ██████

██████████. According to the Prosecutor, such redactions which are intended to protect the psychological well-being, dignity and privacy of the witness, are justified in articles 57(3)(c) and 68(1) of the Rome Statute (“Statute”).

2. The title of the Request suggests that it is “urgent” but this sudden urgency is nowhere explained. Nevertheless, considering that the Request is without legal basis, the Single Judge finds it appropriate to dispose of it immediately, even before it is notified to the Defence, in the interest of the Defence receiving disclosure as soon as possible of the material that in the Prosecutor’s assessment falls within rule 77 of the Rules.

3. The Statute and the Rules provide a strict regime for exceptions to disclosure by the Prosecutor, which are permissible only in circumstances and under the conditions prescribed by rule 81 of the Rules (and article 68(5) of the Statute, which is, however, not relevant for the present decision). Under rule 81(4) of the Rules, redaction is only permissible in order to protect the safety of witnesses and victims, and not to protect their privacy or their well-being more generally. The Single Judge is aware that the provisions of article

57(3)(c) and 68(1) of the Statute are wider, and provide the legal basis for the Chamber and the Court to accord protection to a broader category of interests of victims and witnesses, including, in addition to their safety, their physical and psychological well-being, dignity and privacy. However, these provisions of the Statute provide a basis for a wide spectrum of protective measures which are not necessarily as intrusive as non-disclosure of information to the Defence. Confidentiality of information may be one such measure, and the Single Judge notes on the side, as explained below, that, indeed, all information related to Witness [REDACTED] shall be kept strictly confidential by the parties.

4. In the view of the Single Judge the Prosecutor unreasonably argues that redactions are permissible to protect all interests listed in articles 57(3)(c) and/or 68(1) of the Statute. In fact, in light of the tension between redactions and the right of the Defence to disclosure, the circumstances in which redactions are permissible are understandably narrower. For this reason, the Single Judge, bound by the text of 81(4) of the Rules, which is *lex specialis*, does not see a justification to attempt to extend the scope of application of the rule by reference to the more general provisions of articles 57(3)(c) and 68(1) of the Statute. Accordingly, the Request is without legal basis.

5. Following this decision, the Defence will receive disclosure of sensitive personal information related to Witness [REDACTED]. It must be noted that even before this disclosure, most notably [REDACTED], the Defence became privy to information about the witness which is private and personal, and of which disclosure to third parties may indeed cause the witness great distress. For this reason, all related documents are classified as “confidential”, indeed under articles 57(3)(c) and 68(1) of the Statute. The Single Judge is confident that the Defence

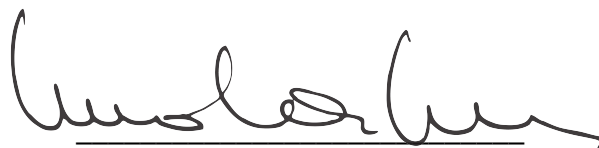
understands that the protection of the legitimate interests of the witness also depends on the Defence's professionalism and discretion.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Request; and

ORDERS the Registrar to reclassify document ICC-02/04-01/15-374-Conf-Exp as "confidential, *ex parte*, only available to the Prosecutor and the Defence".

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this 23 December 2015

At The Hague, The Netherlands