



Original: English

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

Date: 2 March 2016

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

Public

Decision on the “Prosecution’s application under article 53(3)(f) to apply redactions to documents obtained under article 54(3)(e)”

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

Joseph Akwenyu Manoba and Francisco

Cox

Paolina Massidda and Jane Adong

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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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 application under article 54(3)(f) to apply redactions to documents obtained under article 54(3)(e)” (ICC-02/04-01/15-409-Conf and two confidential, *ex parte*, annexes), received on 24 February 2016. Subsequently, the Prosecutor stated, by way of email, that the confidentiality of the application was not warranted.

1. The application concerns 43 documents obtained by the Prosecutor from the United Nations subject to conditions under article 54(3)(e) of the Rome Statute (“Statute”) “[d]uring the early stages of the Prosecution’s investigative activities into the Situation in Uganda”, which the Prosecutor deems “disclosable to the Defence under rule 77” of the Rules of Procedure and Evidence (“Rules”).
2. The Prosecutor informs the Chamber that the United Nations has agreed to the disclosure of said documents subject to “minimal redactions” of information of which the disclosure would, according to the United Nations, endanger the safety or security of any person, or prejudice the security or proper conduct of its operations. The 43 documents, amounting to 55 pages, are annexed to the Prosecutor’s application.
3. The Defence did not respond to the application within the applicable time limit.
4. The issue before the Single Judge is not whether the documents subject to the application should be disclosed with or without the redactions. It is clear, on the basis of article 54(3)(e) of the Statute and rule 81(3) of the Rules, that the disclosure of the documents is subject to the consent of the United

Nations. Rather, the issue is whether disclosure of the documents with redactions is compatible with the fair trial rights of Dominic Ongwen.¹

5. Considering the nature and content of the documents, from which it is apparent, without prejudice to the Prosecutor's decision to disclose them to the Defence under rule 77 of the Rules, that they are not of importance for the case, and considering that the redactions demanded by the United Nations pertain to portions of documents and information entirely without link to the present proceedings, the Single Judge takes the view that there is no tension between the Prosecutor's respect of her agreement with the United Nations under article 54(3)(e) of the Statute and the rights of the Defence. Accordingly, disclosure of redacted documents may proceed as per agreement with the United Nations and no other measure is necessary.

6. Concerning more generally the issue of disclosure of documents which were obtained on the condition of confidentiality under article 54(3)(e) of the Statute, the Single Judge notes that the last report received from the Prosecutor on this matter is dated 26 June 2015 ([ICC-02/04-01/15-255](#)), and considers that the provision of updated information is warranted at the present time.

¹ Appeals Chamber, "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled 'Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008'", 21 October 2008, [ICC-01/04-01/06-1486](#), para. 2.

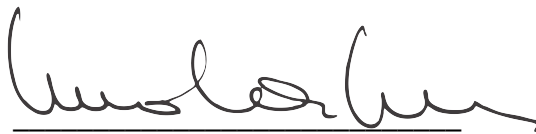
FOR THESE REASONS, THE SINGLE JUDGE

AUTHORISES the disclosure of the 43 documents with redactions as agreed to by the United Nations;

ORDERS the Prosecutor to file in the record of the case, by 9 March 2016, a report on the status of disclosure of documents obtained on the condition of confidentiality under article 54(3)(e) of the Statute; and

ORDERS the Registrar to reclassify document ICC-02/04-01/15-409-Conf as public.

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 2 March 2016

At The Hague, The Netherlands