

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No. ICC-RoC46(3)-01/18

Date: 11 July 2018

**PRE-TRIAL CHAMBER I**

Before: **Judge Péter Kovács, Presiding Judge  
Judge Marc Perrin de Brichambaut  
Judge Reine Adélaïde Sophie Alapini-Gansou**

**REQUEST UNDER REGULATION 46(3) OF THE REGULATIONS OF THE COURT**

**Public**

**Decision on the Reclassification of Certain Documents and Orders**

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

**The Office of the Prosecutor**  
 Fatou Bensouda, Prosecutor  
 James Stewart, Deputy Prosecutor

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
 Participation/Reparations**

**The Office of Public Counsel for  
 Victims**

**The Office of Public Counsel for the  
 Defence**

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**  
 Peter Lewis

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
 Section**

**Other**

**PRE-TRIAL CHAMBER I** (the “Chamber”) of the International Criminal Court (the “Court”) hereby renders this decision on the reclassification of certain documents and orders in the RoC46(3)-01/18 record.

1. On 9 April 2018, the Prosecutor filed the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute” (the “Request”) pursuant to regulation 46(3) of the Regulations of the Court (the “Regulations”) and article 19(3) of the Rome Statute.<sup>1</sup>

2. On 11 April 2018, the President of the Pre-Trial Division assigned the Request to the Chamber.<sup>2</sup>

3. On 11 May 2018, the Chamber issued an order convening a status conference to be held on 20 June 2018 in closed session, only in the presence of the Prosecutor.<sup>3</sup> The Prosecutor was ordered to address at the status conference a number of issues set out in the annex to the order – filed confidential, *ex parte* Prosecutor – as well as any other issue in connection with the Request that she deemed appropriate.<sup>4</sup>

4. On 19 June 2018, the Prosecutor submitted confidentially the “Prosecution Notice of Documents for Use in Status Conference”, together with six confidential annexes, *ex parte* Prosecutor (the “19 June 2018 filing”).<sup>5</sup>

5. On 20 June 2018, the status conference took place, in closed session, only in the presence of the Prosecutor.<sup>6</sup> At the closing of the status conference, the Chamber

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<sup>1</sup> ICC-RoC46(3)-01/18-1.

<sup>2</sup> President of the Pre-Trial Division, “Decision assigning the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’ to Pre-Trial Chamber I”, 11 April 2018, ICC-RoC46(3)-01/18-2.

<sup>3</sup> Pre-Trial Chamber I, “Order Convening a Status Conference”, 11 May 2018, ICC-RoC46(3)-01/18-4, together with one confidential annex, *ex parte* Prosecutor.

<sup>4</sup> Pre-Trial Chamber I, “Order Convening a Status Conference”, 11 May 2018, ICC-RoC46(3)-01/18-4, p. 4.

<sup>5</sup> ICC-RoC46(3)-01/18-27-Conf-Exp and Annexes A-F.

<sup>6</sup> ICC-RoC46(3)-01/18-T-1-CONF-EXP-ENG.

ordered the Prosecutor to submit proposals for redactions to the transcript of the status conference, if any.<sup>7</sup>

6. On 28 June 2018, the Prosecutor submitted her proposed redactions to the transcript of the status conference (the “28 June 2018 filing”).<sup>8</sup>

7. The Chamber notes regulations 8(c), 20, 21(1) and 23 *bis*(3) of the Regulations and regulation 14 of the Regulations of the Registry. In particular, according to regulation 20(3) of the Regulations, “[a] Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist”. Further, regulation 23 *bis*(3) of the Regulations provides that the Chamber may reclassify a document upon request by any participant or on its own motion, where the basis for the classification no longer exists.

8. The Chamber notes that in her 19 June 2018 filing, the Prosecutor clarified that said filing and its annexes were based on public documents obtained by the Prosecutor from open sources and could be reclassified, as necessary, to conform to the classification of the transcript of the status conference.<sup>9</sup> In her 28 June 2018 filing, the Prosecutor reiterated that she had no objection to the reclassification as “public” of her 19 June 2018 filing.<sup>10</sup> Accordingly, the Chamber considers that the Prosecutor’s 19 June 2018 filing, numbered ICC-RoC46(3)-01/18-27-Conf-Exp, together with its annexes, may be reclassified as “public”.

9. Further, the Chamber has reviewed the Prosecutor’s proposals for redactions to the transcript of the status conference. The Chamber has assessed the redactions sought on a case-by-case basis, having regard to (i) the justification provided by the

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<sup>7</sup> ICC-RoC46(3)-01/18-T-1-CONF-EXP-ENG, p. 37, lines 5-8.

<sup>8</sup> ICC-RoC46(3)-01/18-29-Conf-Exp, with one confidential annex, *ex parte* Prosecutor.

<sup>9</sup> ICC-RoC46(3)-01/18-27-Conf-Exp, para. 3.

<sup>10</sup> ICC-RoC46(3)-01/18-29-Conf-Exp, para. 3.

Prosecutor<sup>11</sup> and (ii) the nature of the information, in particular whether the information is already publicly available. The Chamber agrees with the Prosecutor that certain information cannot be disclosed to the public, but considers that information which otherwise emanates from public documents or has become known need not be redacted. Accordingly, the Chamber is of the view that only the following passages in the transcript numbered ICC-RoC46(3)-01/18-T-1-CONF-EXP-ENG should be redacted *vis-à-vis* the public:

- page 17, lines 22 to 25;
- page 18, lines 1 to 9;
- page 21, line 14 (starting after “the Prosecutor.”) to line 16 (ending before “what I have just reported”);
- page 22, line 4 (starting after “the Statute.”) to line 8; and line 13 (starting after “crimes.”) to line 25;
- page 23, line 1 to line 9; line 12 (starting after “annex D.”) to line 14; and line 20 (starting after “Article 12(3).”) to line 23;
- page 24, line 1 (starting after “the Court.”) to line 3; and line 7 to line 10;
- page 28, lines 13 to 14 (ending before “Based”); and lines 18 to 25;
- page 29, lines 1 to 9;
- page 30, line 24 (starting after “the Court”) to line 25;
- page 31, line 1 to line 2; line 7 (starting after “the deportation”) to line 10; line 13 to line 17; and line 20 (starting after “about 670,000”) to line 21 (ending before “However”);
- page 33, line 20 (starting after “Myanmar.”) to line 23;
- page 34, line 23 (starting after “to speculate,”) to line 25;
- page 35, line 1 to line 3; and line 14 to line 20; and
- page 36, line 6 to line 16.

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<sup>11</sup> ICC-RoC46(3)-01/18-29-Conf-Exp, para. 1.

The Chamber clarifies that all remaining proposals for redactions submitted by the Prosecutor are hereby rejected.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**a) Decides** to reclassify as “public” the following documents and orders:

- ICC-RoC46(3)-01/18-4-Conf-Exp-Anx;
- ICC-RoC46(3)-01/18-27-Conf-Exp;
- ICC-RoC46(3)-01/18-27-Conf-Exp-AnxA;
- ICC-RoC46(3)-01/18-27-Conf-Exp-AnxB;
- ICC-RoC46(3)-01/18-27-Conf-Exp-AnxC;
- ICC-RoC46(3)-01/18-27-Conf-Exp-AnxD;
- ICC-RoC46(3)-01/18-27-Conf-Exp-AnxE;
- ICC-RoC46(3)-01/18-27-Conf-Exp-AnxF; and

**b) Orders** the Registrar to apply redactions to the transcript ICC-RoC46(3)-01/18-T-1-Conf-Exp, both in English and French, in accordance with paragraph 9 of this decision and to reclassify the redacted transcript as “public”.

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



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**Judge Péter Kovács**  
**Presiding Judge**



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**Judge Marc Perrin de Brichambaut**



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**Judge Reine Adélaïde Sophie**  
**Alapini-Gansou**

Dated this Wednesday, 11 July 2018

At The Hague, The Netherlands