

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/05
Date: 20 February 2007

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single judge

Registrar: Mr Bruno Cathala

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

Public document

Decision on Prosecutor's "Application to lift redactions from applications for Victims' Participation to be provided to the OTP" and on the Prosecution's further submissions supplementing such Application, and request for extension of time

The Office of the Prosecutor
Mr. Luis Moreno Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Ms. Christine Chung, Senior Trial
Lawyer

Ad hoc Counsel for the Defence
Ms. Michelyne C. St-Laurent

I, Mauro Politi, Single Judge at the International Criminal Court (the “Court”);

NOTING the “Decision designating a Single Judge for victims’ issues”, dated 22 November 2006¹,

NOTING the Single Judge’s “*Decision on legal representation, appointment of counsel for the defense, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/111/06 to a/0127/06*” dated 1 February 2007 (“the 1 February 2007 Decision”)², ordering *inter alia* the Registrar to provide both the Prosecutor and the counsel for the Defence with a redacted copy of the applications filed by victims for participation in the situation and in the case (“the Victims’ Applications”) by Monday 12 February 2007;

NOTING the Prosecutor’s “Application to lift redactions from applications for Victims’ Participation to be provided to the OTP” dated 6 February 2007 (“the Prosecutor’s Application”)³, whereby the Prosecutor requested that the Single Judge lift all of the redactions on the Victims’ Applications;

NOTING the “Prosecution’s further submissions supplementing its ‘Application to Lift Redactions From Applications for Victims’ Participation to be Provided to the OTP’, dated 6 February 2007, and request for extension of time” dated 15 February 2007 (“the Prosecution’s Further Submissions”)⁴, whereby the Prosecutor reiterated his request to the Single Judge for the lifting of all the redactions on the victims’ applications for participation to be furnished to the Prosecutor, and requested an

¹ ICC-02/04-01/05-130.

² ICC-02/04-01/05-134.

³ ICC-02/04-01/05-150.

⁴ ICC-02/04-01/05-208.

extension of the time-limit to reply to the applications pursuant to rule 89, sub-rule 1, of the Rules of Procedure and Evidence (“the Rules”);

NOTING regulation 35 of the Regulations of the Court (“the Regulations”) on “Variation of time limits”;

NOTING that the Prosecutor indicated that his Application was made “*pursuant to a procedure suggested by Pre-Trial Chamber I in its ‘Decision on Defence Motion for Leave to Appeal’ dated 18 August 2006, wherein that Chamber opined that a proper means for a party to seek redress, in the event that it contests the propriety of being furnished with redacted applications for victim participation, would be to file ‘a motion requesting the lifting of all or part of the redactions’, either before or after ‘the receipt of the redacted versions of the Applications’*”⁵;

NOTING further that the Office of the Prosecutor (“the OTP”) indicates in a footnote to his Application that it “*does not seek leave to appeal the portion of the 1 February Decision at issue*”, because it “*considers it more appropriate that the matter be considered in this forum in the first instance*”, whilst at the same time “*not foregoing its right to seek intervention of the Appeals Chamber in the future*”⁶;

NOTING that Pre-Trial Chamber I, in the decision referred to by the Prosecutor, determined that the Defence “*could have filed a motion requesting the lifting of all or part of the redactions and, in the alternative, leave to appeal*” against the decision ordering the transmission of redacted versions of the victims’ applications for participation in the proceedings⁷;

⁵ Prosecutor’s Application, paragraph 3.

⁶ Prosecutor’s Application, page 4, footnote 10.

⁷ ICC-01/04-01/06-338, page 8.

CONSIDERING that reference by Pre-Trial Chamber I to the submission of a motion requesting the lifting of all or part of the redactions was made on a hypothetical basis and that there is no case law of the Court actually admitting this kind of motion as a remedy in lieu of a request for leave to appeal against the decision ordering the transmission of redacted versions of the applications;

CONSIDERING that in the Prosecution's Further Submissions, the OTP, while elaborating on the content of its Application, and submitting arguments based on a "preliminary reading of the victims' applications for participation in the proceedings, as provided, in redacted form, by the Registry", is equally seeking review of the Single Judge's decision ordering the transmission to the Prosecutor of redacted versions of the victims' applications for participation in the proceedings;

CONSIDERING that the established practice of both Pre-Trial Chamber I⁸ and Pre-Trial Chamber II⁹ is consistent in reminding that participants in proceedings before the Court must comply with the procedures provided for in the Statute of the Court ("the Statute") and in the Rules when making submissions to the Chamber and that compliance with procedural requirements is necessary, in order to preserve the integrity and transparency of Court proceedings;

CONSIDERING that, as stated by Pre-Trial Chamber II¹⁰, review of decisions by the Court is only allowed either under specific circumstances explicitly provided in the Statute and in the Rules, or by way of interlocutory appeal against decisions other than final decisions, under article 82, paragraph 1 (d), of the Statute;

⁸ PTC I Decision on the Prosecutor's Position on Pre-Trial Chamber I's 17 February 2005 Decision to Convene a Status Conference, page 2 (ICC-01/04-11).

⁹ ICC-02/04-01/05-60, paragraph 13.

¹⁰ ICC-02/04-01/05-60, paragraph 18, 20.

CONSIDERING that, accordingly, a request to the Chamber for leave to appeal under article 82 paragraph 1 (d) of the Statute is the only remedy of a general nature whereby participants can voice their concerns regarding a Chamber's decision¹¹;

CONSIDERING that, in the procedural framework applicable before the Court, interlocutory appeals were meant as a restrictive remedy, as such admissible only under the limited and very specific circumstances stipulated in article 82, paragraph 1 (d), of the Statute (namely, within a five-day time-limit pursuant to rule 155 of the Rules, and subject to the need for the appeal to be authorised by the Chamber having issued the decision)¹²;

CONSIDERING that the established practice of both Pre-Trial Chamber I¹³ and Pre-Trial Chamber II¹⁴ is to hold that a participant's failure to avail itself of the proper procedural mechanism in compliance with all relevant rules is tantamount to that participant waiving its right to have its concerns regarding a given decision considered by the Chamber;

CONSIDERING further, as already stated by Pre-Trial Chamber II¹⁵, that such a result cannot be prevented by a mere statement by the participants claiming that no waiver of their rights to appeal was intended;

CONSIDERING that allowing a participant to "reserve" its rights of appeal would result in undermining the five-day time-limit set for leave to appeal under rule 155 of

¹¹ ICC-02/04-01/05-60, paragraph 21; PTC I Decision on the Prosecutor's Position on Pre-Trial Chamber I's 17 February 2005 Decision to Convene a Status Conference, page 2 (ICC-01/04-11).

¹² ICC-02/04-01/05-60, paragraph 20.

¹³ PTC I Decision on the Prosecutor's Position on Pre-Trial Chamber I's 17 February 2005 Decision to Convene a Status Conference, page 3 (ICC-01/04-11).

¹⁴ ICC-02/04-01/05-60, paragraph 21.

¹⁵ ICC-02/04-01/05-60, paragraph 21.

the Rules, which is not variable, thereby creating “procedural uncertainty ... contrary to the objective of ensuring fair and expeditious proceedings”¹⁶;

CONSIDERING that, in view of the above, the Prosecutor’s Application is deprived of procedural basis and that, accordingly, the Single Judge will not consider the merits of the submissions made in the context of the Prosecutor’s Application and of the Prosecution’s Further Submissions;

CONSIDERING further that, under the terms of the Prosecution’s Further Submissions, the OTP’s request for an extension of the time-limit to reply to the applications pursuant to rule 89, sub-rule 1, of the Rules, appears dependent upon and consequential to the granting of the Prosecutor’s request for lifting the redactions;

CONSIDERING therefore that no good cause, pursuant to regulation 35 of the Regulations, has been shown by the OTP for such an extension in the case of dismissal of the request for lifting of the redactions contained in the Prosecutor’s Application and in the Prosecution’s Further Submission;

FOR THESE REASONS

DISMISS the requests contained in the Prosecutor’s Application and the Prosecution’s Further Submissions, including the request for an extension of the time-limit to reply to the applications pursuant to rule 89, sub-rule 1, of the Rules.

¹⁶ PTC II “Decision on the Prosecutor’s Motion for Clarification and Urgent Request for Variation of the Time-Limit Enshrined in Rule 155” 18 July 2005.

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

Mauro Politi

Judge Mauro Politi
Single judge

Dated this 20 February 2007

At The Hague, The Netherlands