

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

No.: ICC-02/04-01/05

Date: 12 July 2007

PRE-TRIAL CHAMBER II

Before: Fatoumata Dembele Diarra, 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

**ORDER TO THE PROSECUTOR AND THE VICTIMS AND WITNESSES UNIT
TO SUBMIT OBSERVATIONS ON THE UNSEALING OF CERTAIN
DOCUMENTS IN THE RECORD BOTH OF THE SITUATION AND OF THE
CASE**

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Ms Christine Chung, Senior Trial Lawyer
Mr Eric MacDonald, Trial Lawyer

I, Fatoumata Dembele Diarra, Judge at the International Criminal Court (“the Court”);

NOTING the previous decisions of Pre-Trial Chamber II (“the Chamber”) on the unsealing of documents in the record both of the situation and of the case, dated 13 October 2005,¹ 2 November 2005² and 9 March 2006;³

NOTING the “*Order to the Prosecutor to Provide Information on Further Unsealing of Documents of the Record*”, dated 18 April 2006,⁴ by which the Chamber ordered the Prosecutor to submit an updated proposal detailing the suggested treatment of any relevant document filed in the record both of the situation and of the case;

NOTING the “*Prosecutor's Submission of Information on Further Unsealing of Documents of the Record*” (“the Prosecutor’s submission”), dated 2 May 2006,⁵ by which the Prosecutor submitted an update of his proposed treatment of all documents in the record both of the situation and of the case;

NOTING the decision entitled “*Décision portant désignation d’un juge unique pour la levée des scellés*”, dated 31 May 2006,⁶ by which Pre-Trial Chamber II appointed Judge Fatoumata Dembele Diarra as Single Judge, for the unsealing of documents in the situation in Uganda and in the case of *The Prosecutor v. Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO and Dominic ONGWEN*;

NOTING the decision entitled “*Décision relative à la requête du Procureur datée du 3 juillet 2006 aux fins de levée de scellés*”, dated 6 July 2007,⁷ by which the Single Judge decided to unseal the documents referred to in the Prosecutor’s request;

¹ ICC-02/04-01/05-52

² ICC-02/04-01/05-62

³ ICC-02/04-05-78

⁴ ICC-02/04-01/05-82

⁵ ICC-02/04-01/05-83

⁶ ICC-02/04-01/05-87.

⁷ ICC-02/04-01/05-89.

NOTING the Prosecutor's "Request to Unseal Pre-Trial Chamber's Decision Dated the 10th Day of July 2006 and Renewal of Request to Unseal All Previous Filings, Decisions and Court Proceedings Related to the Subject Matter of that Decision", dated 21 July 2006;⁸

NOTING the decision entitled "*Décision relative à la levée des scellés et à la reclassification de certains documents dans les dossiers de la situation et de l'affaire et annexes*", dated 2 February 2007,⁹ by which the Single Judge decided to reclassify certain documents filed in the record both of the situation and of the case and to reserve, until further order, any other decision on the unsealing of documents contained in the record both of the situation and of the case;

NOTING the Chamber's functions and powers under article 57(3)(c) of the *Rome Statute of the International Criminal Court* ("the Statute") relating to the protection and privacy of victims and witnesses and under article 68 of the Statute;

NOTING article 43(6) of the Statute, rules 17 to 19 of the *Rules of Procedure and Evidence* ("the Rules") and regulation 41 of the *Regulations of the Court*;

NOTING the Court's mission to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses pursuant to article 68(1) of the Statute;

CONSIDERING that article 43(6) of the Statute sets forth the mandate and functions of the Victims and Witnesses Unit, which is to "provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling

⁸ ICC-02/04-01/05-93-US-Exp.

⁹ ICC-02/04-01/05-135.

and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses”;

CONSIDERING that, under article 68(1) of the Statute, “[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”;

CONSIDERING further that, under article 68(4) of the Statute, the Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43(6) of the Statute;

CONSIDERING that, under regulation 41 of the *Regulations of the Court*, the Victims and Witnesses Unit “may draw any matter to the attention of a Chamber where protective or special measures under rules 87 and 88 require consideration”;

CONSIDERING that in its decision of 9 March 2006,¹⁰ the Chamber requested the Prosecutor and the Registry to “keep the Chamber informed as to security issues which may be relevant for the Chamber in order to exercise its functions and powers pursuant to article 57, paragraph 3(c), of the Statute”;

CONSIDERING further that under paragraph 42 of the Decision of 9 March 2006,¹¹ “the VWU has a duty first and foremost to the interests of victims and witnesses and to act impartially in the exercise of this duty”;

CONSIDERING that the protection of victims and witnesses may render redactions necessary prior to the publication of certain documents, and that the Chamber has

¹⁰ ICC-02/04-01/05-77-US-Exp.

¹¹ ICC-02/04-01/05-77-US-Exp.

the power to make redactions in order to protect victims and witnesses pursuant to articles 57(3)(c) and 68(1) of the Statute and rule 87 of the Rules;

FOR THESE REASONS,

ORDER the Prosecutor to submit, at the latest by 3 August 2007, a proposal detailing the treatment of any document filed in the record of the situation and of the case until the present day which have not been the subject of a previous decision by the Chamber or the Single Judge, including the supporting reasons for the proposed treatment;

ORDER the Prosecutor to follow the official numbering of the record of the situation and of the case and to include all of his proposals in one single document replacing his previous proposals;

ORDER that the Prosecutor's proposal be submitted under seal, *ex parte*, for the Office of the Prosecutor and the Victims and Witnesses Unit only;

ORDER the Registry to transmit the proposal made by the Prosecutor and the corresponding documents in the record both of the situation and of the case to the Victims and Witnesses Unit;

ORDER the Victims and Witnesses Unit, in respect of the proposals made by Prosecutor, to submit its observations on the treatment of the corresponding documents in the record both of the situation and of the case, and on the possibility of unsealing said documents, at the latest by 24 August 2007, including the need, if any, to maintain the redactions proposed by the Prosecutor prior to unsealing, and the scope of those redactions or the need for other redactions;

ORDER that the observations of the Victims and Witnesses Unit be submitted under seal, *ex parte*, for the Victims and Witnesses Unit and the Office of the Prosecutor only;

ORDER the Prosecutor to submit his observations, if any, at the latest by 7 September 2007, on the observations submitted by the Victims and Witnesses Unit, and that his observations in response be submitted under seal, *ex parte*, for the Victims and Witnesses Unit and the Office of the Prosecutor only;

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

[signed]

Fatoumata Dembele Diarra
Single Judge

Dated this 12 July 2007

At The Hague, The Netherlands