



Original: **French**

No.: **ICC-02/04**

Date: **19 March 2008**

PRE-TRIAL CHAMBER II

Before: Judge Fatoumata Dembele Diarra, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Public Document

ORDER REQUESTING 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 AND CHANGING THEIR LEVEL OF CONFIDENTIALITY with Annex I under seal available only to the Prosecutor and the Victims and Witnesses Unit and Annex II under seal available only to the Registry and the Prosecutor

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Mr Eric MacDonald, Trial Lawyer

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

NOTING the *Decision Appointing a Single Judge for Unsealing of Documents*, dated 31 May 2006,¹ 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, Okot ODHIAMBO and Dominic ONGWEN*;

NOTING the Chamber’s or the Single Judge’s previous decisions on the unsealing of documents in the record both of the situation and of the case, dated 13 October 2005,² 2 November 2005,³ 9 March 2006,⁴ 6 July 2006⁵, 2 February 2007⁶ and 15 February 2008;⁷

CONSIDERING articles 53(1)(c), 67(1), 68(1) and 43(6) of the *Rome Statute of the International Criminal Court* (“the Statute”), rules 17 to 19, 87 and 88 of the *Rules of Procedure and Evidence* (“the Rules”), and regulation 41 of the *Regulations of the Court*;

CONSIDERING that by previous decisions on the unsealing of documents, the Chamber or the Single Judge decided, on the one hand, to reclassify certain documents submitted in the record both of the situation and of the case and, on the other hand, 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;

¹ ICC-02/04-01/05-87-tENG

² ICC-02/04-01/05-52.

³ ICC-02/04-01/05-62.

⁴ ICC-02/04-01/05-78.

⁵ ICC-02/04-01/05-89-tENG.

⁶ ICC-02/04-05-135.

⁷ ICC-02/04-05-268.

CONSIDERING that pursuant to article 57(3)(c) of the Statute, the Chamber must provide for the protection and privacy of victims and witnesses;

CONSIDERING that article 67(1) of the Statute enshrines the principle that proceedings before the Court shall be public;

CONSIDERING also 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 (“VWU”) may advise the Prosecutor and the Court on protective measures, security arrangements, counselling and assistance as referred to in article 43(6) of the Statute;

CONSIDERING that article 43(6) of the Statute defines the mandate and functions of VWU as “provid[ing], in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling 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 regulation 41 of the *Regulations of the Court*, the VWU may “draw any matter to the attention of a Chamber where protective or special measures under rules 87 and 88 require consideration”;

CONSIDERING that pursuant to paragraph 42 of the Decision of 9 March 2006,⁸ “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

⁸ 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;

CONSIDERING that in her Order of 12 July 2007,⁹ the Single Judge had ordered the Prosecutor to submit under seal, *ex parte*, for the Office of the Prosecutor and the Victims and Witnesses Unit, a proposal detailing the treatment of any document in the situation and in 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;

CONSIDERING that the Prosecutor was also ordered 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 previous proposals;

CONSIDERING that, at present, in his observations, the Prosecutor only mentioned a limited number of documents contained in the record both of the situation and of the case and did not analyse the remaining documents that have not been the subject of a previous decision by the Chamber or the Single Judge;

CONSIDERING that it is also appropriate to request that the Prosecutor submit a proposal for the treatment of the transcripts of all court hearings, whether or not they have been the subject of a previous decision by the Chamber or the Single Judge in respect of the unsealing of documents, and that the treatment of the said transcripts should, depending on the observations of the Office of the Prosecutor, and as the case may be, of VWU, be reviewed to determine whether the initial level of confidentiality proposed is still justified;

CONSIDERING, therefore, that in Annex I of this Order, which is classified “under seal”, *ex parte*, available only to the Prosecutor, VWU and the Registry, the Chamber

⁹ ICC-02/04-98: “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”, 12 July 2007.

has listed the documents in the situation and in the case which, until now, have not been the subject of a previous decision by the Chamber or the Single Judge and about which the Chamber is requesting the observations of the Prosecutor and VWU in order to treat them appropriately;

CONSIDERING that Annex I of this Order also mentions documents which in previous decisions on the unsealing of documents were classified as either “under seal” or “under seal, but their existence and titles have been made public”, “confidential”, or “public redacted version” and that the treatment of the said documents should, depending on the observations of the Office of the Prosecutor, and as the case may be, of VWU, be reviewed in order to determine whether the adopted classification is still warranted;

CONSIDERING further that in Annex II of this Order, which is classified “under seal”, *ex parte*, available only to the Registry and the Office of the Prosecutor, the Chamber listed all the documents pertaining to the situation and to the case originating from the Registry which have, until now, not been the subject of a previous decision of the Chamber or the Single Judge;

CONSIDERING, finally, that it is appropriate that in their respective observations, they submit to the Single Judge reasons why the documents listed in Annexes I and II, whether or not they have been the subject of a previous decision on the unsealing of documents by the Chamber or the Single Judge, may not, at this time, be the subject of a decision to unseal or reclassify their level of confidentiality;

FOR THESE REASONS,

ORDER the Prosecutor to submit, no later than 6 May 2008, a proposal on the treatment of all the documents listed in Annex I of this Order and following the order and the document categories indicated in Annex I classified as “under seal”, *ex parte*, available only to the Office of the Prosecutor and VWU, which are documents

contained in the record both of the situation and of the case, as well as the reasons for the proposed treatment;

ORDER the Prosecutor to follow the official numbering of the record both 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 said Prosecutor's proposal be submitted under seal, *ex parte*, available only to the Office of the Prosecutor and VWU;

ORDER the Registry to transmit, no later than 6 June 2008, the said proposal and the corresponding documents in the record both of the situation and of the case to VWU, in order that it may, in light of the Prosecutor's proposals, file 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 the documents listed in Annex I, as well as on the possible need to maintain the redactions proposed by the Prosecutor before the documents are unsealed, and the scope of such redactions or the need for further redactions;

ORDER that the observations of VWU be submitted under seal, *ex parte*, available only to VWU and the Office of the Prosecutor;

ORDER the Prosecutor to submit, no later than 20 June 2008, his observations, if any, on the observations submitted by VWU, and that the said observations in response be submitted under seal, *ex parte*, available only to VWU and the Office of the Prosecutor;

ORDER the Registrar and VWU to submit, no later than 18 April 2008, a proposal on the treatment of all the documents listed in Annex II of this Order classified as "under seal", *ex parte*, available only to the Registry and the Office of the Prosecutor,

which are documents in the record both of the situation and of the case, as well as the reasons for the proposed treatment;

ORDER the Registrar and VWU to follow the official numbering of the records of the situation and of the case and to include all of their proposals in one single document;

ORDER that the said proposal by the Registrar and VWU be submitted under seal, *ex parte*, available only to the Registry and the Office of the Prosecutor;

ORDER the Registry to transmit the said proposals by the Registrar and VWU and the corresponding documents in the record both of the situation and of the case to the Office of the Prosecutor, in order to enable the latter, if appropriate, to submit its observations, no later than 5 May 2008, on the treatment of the corresponding documents in the record both of the situation and of the case, and the possibility of unsealing the documents listed in Annex II, as well as on the possible need to maintain the redactions proposed by the Registry and VWU before the documents are unsealed, and the scope of such redactions or the need for further redactions;

ORDER that the observations of the Office of the Prosecutor be submitted under seal, *ex parte*, available only to the Registry and the Office of the Prosecutor;

ORDER the Registrar and VWU to submit their observations, if any, no later than 19 May 2008, on the observations submitted by the Office of the Prosecutor, and that their observations in response be submitted under seal, *ex parte*, available only to the Registry and the Office of the Prosecutor;

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

[signed]

Judge Fatoumata Dembele Diarra
Single Judge

Dated this 19 March 2008

At The Hague