

Pursuant to Pre-Trial Chamber III Single Judge's order dated 01 November 2024, this document has been reclassified as "Public"

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 6 October 2006

PRE TRIAL CHAMBER II

Before: Judge Fatoumata Dembele Diarra, Single judge

Registrar: Mr Bruno Cathala

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

**Under seal
Ex parte only available to the Office of the Prosecutor**

**Submission by the Registrar of new observations and recommended redactions
pursuant to the order from the Single Judge in Pre Trial Chamber II on 25
September 2006**

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

The Registrar of the International Criminal Court (the Court);

NOTING the decision on 29 August 2006, "Ordonnance sollicitant de la division d'aide aux victimes et aux témoins des observations relatives à la levée des scellés concernant certains documents dans les dossiers de la situation et de l'affaire", of the Single Judge in Pre Trial Chamber II¹,

NOTING the "Observations of the Registrar on the Prosecutor's request for the Disclosure of certain sealed documents on record in the Situation in Uganda" dated 13 September 2006². In addition it's accompanying filing "Clarifications and Corrigendum related to the filing of 13 September 2003 on the Prosecutor's request for the disclosure of certain sealed documents on record in the situation in Uganda" on 18 September 2006³,

NOTING, the filing of the Office of the Prosecutor (OTP), "Application for Guidance from the Single Judge Regarding the OTP and VWU Proposals to Unseal", on 19 September 2006⁴,

NOTING the filing of the Registrar on 22 September 2006, "Demande d'une autorisation d'enregistrer de nouvelles observations relatives à la levée des scellés

¹ *Prosecutor v Joseph Kony, Vincent Otti, Raskwa Lukwiya, Okot Odhiambo and Dominic Ongwen*, Ordonnance sollicitant de la division d'aide aux victimes et aux témoins des observations relatives à la levée des scellés concernant certains documents dans les dossiers de la situation et de l'affaire, ICC-02/04-01/05-107-US-Exp, 29 August 2006, (ICC-02/04-01/05-107-US-Exp) page (pg) 5-7.

² *Prosecutor v Joseph Kony, Vincent Otti, Raskwa Lukwiya, Okot Odhiambo and Dominic Ongwen*, Observations of the Registrar on the Prosecutor's request for the Disclosure of certain sealed documents on record in the Situation in Uganda, ICC-02/04-01/05-110-US-Exp, 13 September 2006, (ICC-02/04-01/05-110-US-Exp).

³ *Prosecutor v Joseph Kony, Vincent Otti, Raskwa Lukwiya, Okot Odhiambo and Dominic Ongwen*, Clarifications and Corrigendum related to the filing of 13 September 2003 on the Prosecutor's request for the disclosure of certain sealed documents on record in the situation in Uganda, ICC-02/04-01/05-112-US-Exp, 18 September 2006, (ICC-02/04-01/05-112-US-Exp).

⁴ *Prosecutor v Joseph Kony, Vincent Otti, Raskwa Lukwiya, Okot Odhiambo and Dominic Ongwen*, Prosecutor's Application for Guidance from the Single Judge Regarding the OTP and VWU Proposals to Unseal, ICC-02/04-01/05-113-US-Exp, 19 September 2006, (ICC-02/04-01/05-113-US-Exp).

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concernant certains documents dans les dossiers de la situation et de l'affaire au regard des propositions faites par le Bureau du Procureur"⁵,

NOTING the decision, "Ordonnance Accordant à la division d'aide aux victimes et aux témoins l'autorisation de présenter de nouvelles observations et un délai supplémentaire à cet effet", of the Single Judge in Pre Trial Chamber II (PTC II) on 25 September 2006, that the VWU submit new observations on the request by the Office of the Prosecutor to unseal certain sealed documents in the matter by 6 October 2006⁶,

NOTING, Article 68 (4) and Article 43 (6) of the Rome Statute of the International Criminal Court (Rome Statute),

NOTING, Rule 17 and Rule 19 of the Rules of Procedure and Evidence of the International Criminal Court,

NOTING Regulation 41 of the Regulations of the Court,

NOTING Regulation 14 of the Regulations of the Registry that documents *inter alia* may be classified as public, confidential or under seal,

INFORMS the single judge, that for clarity, the observations made by the VWU and submitted herein, are accompanied by recommended redactions,

⁵ *Prosecutor v Joseph Kony, Vincent Otti, Raskwa Lukwiya, Okot Odhiambo and Dominic Ongwen*, Demande d'une autorisation d'enregistrer de nouvelles observations relatives à la levée des scellés concernant certains documents dans les dossiers de la situation et de l'affaire au regard des propositions faites par le Bureau du Procureur ICC-02/04-01/05-114-US-Exp, 22 September 2006, (ICC-02/04-01/05-114-US-Exp).

⁶ *Prosecutor v Joseph Kony, Vincent Otti, Raskwa Lukwiya, Okot Odhiambo and Dominic Ongwen*, Ordonnance Accordant à la division d'aide aux victimes et aux témoins l'autorisation de présenter de nouvelles observations et un délai supplémentaire à cet effet, ICC-02/04-01/05-115-US-Exp, 25 September 2006, (ICC-02/04-01/05-115-US-Exp) pg 5.

INFORMS the Single Judge that the VWU, within the confines of its mandate and pursuant to PTC II order on 29 August 2006, has made observations on OTP's proposed redactions that refer to or are proposed in the interests of victim and witness protection,

SUBMITS, an Explanatory Note on the Process Leading to the VWU observations,

SUBMITS new observations and recommended redactions pursuant to the order from the Single Judge in Pre Trial Chamber II on 25 September 2006 in Annex 1.

Explanatory Note on the Process Leading to the VWU Observations

1. Receipt of Documents by VWU

1.1 PTC II 's order on 29 August 2006 listed twenty-four documents that the Registry was required to provide to the VWU⁷. On 30 August 2006 the VWU received these documents. On 25 September 2006, PTC II ordered the Registrar to provide the listed documents to VWU again⁸. In response to this order and on that same date the Registrar provided the listed twenty-four documents⁹.

2. Repository Annex B

2.1 On 27 September 2006 in the meeting with VWU staff, the OTP provided clarification regarding the purpose and proposed treatment of document

⁷ ICC-02/04-01/05-107-US-Exp.

⁸ ICC-02/04-01/05-115-US-Exp.

⁹ ICC-02/04-01/05-107-US-Exp.

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ICC-02/04-01/05-83-AnxB-US. This document serves as a repository for prior documents already on record and under seal. All of the documents in the OTP repository have 'strike throughs' representing redactions the OTP is seeking. Further, the OTP has expressed that the Annex remains under seal.

- 2.2 Each of the documents contained in the repository is, on its own, a stand-alone document which is already on record under seal as a separate independent document (here in after 'stand alone documents'). The OTP has requested that some or all of these stand-alone documents be unsealed in redacted form¹⁰.
- 2.3 This treatment raises concern, as it unseals a given document in redacted 'stand-alone' form, while at the same time preserving it under seal as a component of the repository annex without redactions.
- 2.4 The Registry is concerned that in the interest of witness protection, the redaction process should be straight-forward and clear to ensure that the documents unsealed do not contain information that could jeopardize the safety or security of any witness or victim.
2. 5 PTC II order on 29 August 2006 included ICC-02/04-01/05-83-US-Exp-AnxA-B amongst the list of documents VWU was required to make observations.¹¹ Document ICC-02/04-01/05-83-US-Exp-AnxB is comprised of the strike-through versions of eleven other documents and strike-through transcripts dating from 21 June 2005. Many of these documents are the same as those individually listed in PTC II order. Nonetheless, and in an abundance of caution, the Registrar interpreted PTC II 29 August 2006 order¹² to include all documents, even duplicate documents. Therefore the VWU has made separate observations and

¹⁰ ICC-02/04-01/05-107-US-Exp.

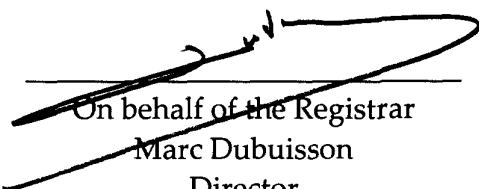
¹¹ ICC-02/04-01/05-107-US-Exp, pg 7.

¹² ICC-02/04-01/05-107-US-Exp.

recommended redactions for these documents. The Registrar submits its observations and redactions for all of these documents herein.

- 2.6 On 29 September 2006, a staff member of the immediate office of the Division of Court Services and VWU staff held a second meeting with the OTP to compare VWU and OTP redactions. The Registry found it very useful to consult with the OTP during the process leading to the observations and the recommended redactions. Fully acknowledging the different mandates of the OTP and the VWU, this meeting allowed for clarification and helped foster understanding between the OTP and the VWU regarding the proposed OTP redactions. As this aspect of the redaction process was most productive, the Registry envisions similar consultations with other Participants. Additionally, the Registrar believes that it would be generally beneficial to train all relevant court staff on the logic and methodology of redaction so as to ensure a coherent approach to this complicated process.

INFORMS the Single Judge that in consideration of the approach adopted by the Registry, acting in an abundance of caution, by making observations and recommending redactions on all documents provided to the VWU, the VWU remains at the disposal of the Single Judge to make further comments or observations as the Single Judge may deem necessary.



On behalf of the Registrar
Marc Dubuisson
Director
Division of Court Services

Dated this Friday 6th day of October 2006

At The Hague, The Netherlands