

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 21 July 2006

PRE-TRIAL CHAMBER II

Before: Judge Fatoumata Dembele Diarra, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Under Seal, *Ex Parte*, Prosecutor Only

**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**

The Office of the Prosecutor

Mr. Luis Moreno Ocampo, Prosecutor

Mrs. Fatou Bensouda, Deputy Prosecutor

Ms. Christine Chung, Senior Trial Lawyer

Mr. Eric MacDonald, Trial Lawyer

The OTP respectfully requests that the “Decision on Prosecutor’s Application For Leave to Appeal Dated the 15th Day of March And to Suspend or Stay Consideration of Leave to Appeal Dated the 11th Day of May 2006,” dated 10th July 2006¹, be unsealed. The OTP also renews its prior request, made by submission dated 2 May 2006, that all previous filings, decisions and transcripts of hearings related to the subject matter of the above mentioned decision also be unsealed, according to the treatment proposed by the OTP in its 2 May 2006 submission.² Should this request be denied, the OTP respectfully requests this Chamber to enter into the record of the case the reasons why the filings, decisions and transcripts of court proceedings related to the Decision, and the Decision itself, should remain under seal.

Request for Sealing of This Submission

1. The OTP submits this request under seal and *ex parte* because the Decision is currently classified as “under seal, Prosecutor only”.

Procedural Background

2. On 30 November 2005, the OTP filed a submission entitled “Application for Clarification in Relation to 7 December 2005 Status Conference”.³
3. On 5 December 2005, the OTP submitted an application entitled “Application for Pre-Trial Chamber II to Supplement the Record With A Description of

¹ ICC-02/04-01/05-90-US-Exp, hereinafter “Decision”.

² See “Prosecutor’s Submission of Information on Further Unsealing of Documents Of the Record”, ICC-02/04-01/05-83 filed on 2 May 2006; see also footnote 1 to “Application to Suspend or Stay Consideration of Prosecutor’s Application for Leave to Appeal, ICC-02/04-01/05-85-US-Exp, filed on 11 May 2006.

³ ICC-02/04-01/05-66.

Informal Communications Between Registry and the Chamber”⁴ and a sealed annex⁵ to the same application.

4. On 5 December 2005, the Registrar filed a sealed submission.⁶ This submission was later renamed by the PTC and thus should be referred to as cited in the “Decision on the Prosecutor's Application that the Pre-Trial Chamber Disregard as Irrelevant the Submission filed by the Registry on 5 December 2005”.⁷
5. On 7 December 2005, a closed status conference was held on the matter of the communications between the Registry and this Chamber which prompted the OTP's 5 December 2005 filing.⁸
6. On 12 December 2005, the OTP filed under seal an application entitled “Prosecutor's Application That the Pre-Trial Chamber Disregard as Irrelevant The Submission Filed by the Registry on 5 December 2005”.⁹
7. On 15 December 2005, material presented during the closed status conference of 7 December 2005 was registered, under seal, in the record of the case.¹⁰
8. On 15 March 2006, the OTP filed, under seal, an application entitled “Prosecutor's Application for Leave to Appeal Pre-Trial Chamber II's Decision

⁴ ICC-02/04-01/05-69.

⁵ ICC-02/04-01/05-69-Anx-US-Exp.

⁶ ICC-02/04-01/05-70-Conf.

⁷ See ICC-02/04-01/05-77-US-Exp for the decision. The submission filed by the Registry, on 5 December 2005, as been renamed and the confidentiality level as been changed to “confidential, *ex parte*”.

⁸ ICC-02-04-01-05-T-4-CONF-EN [7dec2005 Edited].

⁹ ICC-02/04-01/05-74-US-Exp.

¹⁰ See Registration in the record of material presented during the status conference held in closed session on 7 December 2005, ICC-02/04-01/05-74-US-Exp.

on Prosecutor's Application That The Pre-Trial Chamber Disregard As Irrelevant The Submission Filed By the Registry on 5 December 2005".¹¹

9. On 2 May 2006, in response to an order of the PTC¹², the OTP filed the "Prosecutor's Submission of Information on Further Unsealing of Documents Of the Record."¹³ The OTP also filed sealed annexes to the same submission in which it proposed the unsealing, in some cases with limited redactions, of the filings and decisions listed in paras. 2 to 7 above, as well as the transcript of the 7 December 2005 status conference.¹⁴
10. On 11 May 2006, the OTP filed an "Application to Suspend or Stay Consideration of Prosecutor's Application for Leave to Appeal".¹⁵
11. Finally as mentioned above, on 10 July 2006, the PTC delivered its Decision, which related to issues first raised in the 5 December 2005 OTP Application and addressed in the filings and proceedings listed above.¹⁶

Request to Unseal the Decision And Renewal of the Request to Unseal, In Some Cases in Redacted Form, the Previous Submissions, Decisions and Court Proceedings Leading to the Decision

12. With the issuance of the Decision, the matter relating to the 5 December 2005 OTP Application has come to a close. The OTP had informed the Court, by its 2 May 2006 Application, that in its view, the factors that initially militated

¹¹ ICC-02/04-01/05-79-US-Exp.

¹² See "Order to the Prosecutor to Provide Information on Further Unsealing of Documents of the Record", ICC-02/04-01/05-82.

¹³ ICC-02/04-01/05-83.

¹⁴ ICC-02/04-01/05-83-AnxA-B-US-Exp.

¹⁵ ICC-02/04-01/05-85-US-Exp.

¹⁶ ICC-02/04-01/05-90-US-Exp.

in favour of the sealing of the proceedings related to the 5 December 2005 Application no longer existed. The Decision which was recently issued contains no information, in the OTP's view, which requires sealing.

13. The OTP therefore requests that the Decision be unsealed. In addition it renews its request, that the filings, decisions and transcripts related to the Decision be unsealed, in the manner proposed by the OTP on 2 May 2006. The OTP reiterates its view that as to the vast majority of the information in these filings, decisions and in the 7 December transcript the interest in sealing does not outweigh the presumption of public proceedings.¹⁷

Alternative Request of Entry of Reasons for Sealing

14. If the Chamber determines not to lift the seal as to the identified documents, then the OTP requests in the alternative that the Chamber enter reasons in the record in support of the continued sealing, in accordance with Regulation 20 of the Regulations of the Court. No reason for sealing of the Decision was identified in the Decision, and sealing in its entirety is not currently supported, in the OTP's view, with respect to the other documents at issue.

¹⁷ ICC-02/04-01/05-83-AnxA-B-US-Exp, *see* Annex A, column: OTP Reasons for Proposed Treatment and/or Redactions to Content. The OTP also requests that the present application be unsealed. It is only submitted under seal because it refers to material which is currently sealed.

CONCLUSION

15. The OTP respectfully requests the Pre-Trial Chamber to unseal its Decision and that it unseal the submissions, decisions and transcript related to the subject matter of the Decision, with only the limited redactions identified in the OTP's "Submission of Information on Further Unsealing of Documents Of the Record".¹⁸



Luis Moreno Ocampo
Prosecutor

Dated this 21st day of July 2006
At The Hague, The Netherlands

¹⁸ As for "Application to Suspend or Stay Consideration of Prosecutor's Application for Leave to Appeal", ICC-02/04-01/05-85-US-Exp, in footnote 2, the OTP indicated that it had no objection to its unsealing.