

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-02/04-01/15**

Date: **10 July 2015**

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Public

**Prosecution's Request to be Provided with Unredacted Copies of Victims'
Applications Submitted in the Situation in Uganda and the Case of *The Prosecutor
v. Joseph Kony et al.***

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Office of the Prosecutor (“the Prosecution”) requests, in view of its duties under articles 54(1)(a) and (b), 67(2) and 68(1) of the Rome Statute (“the Statute”), that the Registry provide it with unredacted copies of the applications for participation of victims in the Situation in Uganda and in the case of *The Prosecutor v. Joseph Kony et al.* submitted pursuant to rule 89 of the Rules of Procedure and Evidence (“the Rules”). This will enable the Prosecution to comply with its obligation to establish the truth, while posing no risk of unwanted disclosure of the victim-applicants’ identities.

Procedural Background

2. On 8 July 2005, Pre-Trial Chamber II (“the Chamber”), in a different composition, issued the “Decision on the Prosecutor’s application for the warrants of arrest under Article 58”¹ in the *Kony et al.* case. On the same day, it issued a warrant of arrest for Dominic Ongwen for his alleged responsibility for crimes against humanity and war crimes.²
3. On 1 February 2007, the Chamber issued a decision on, *inter alia*, the legal representation, protective measures and time-limit for submission of observations on victims’ applications submitted in the situation in Uganda and in the *Kony et al.* case.³ The Chamber ordered that all victims’ applications for

¹ Pre-Trial Chamber II, “Decision on the Prosecutor’s application for the warrants of arrest under Article 58”, ICC-02/04-01/05-1, 8 July 2005.

² Pre-Trial Chamber II, “Warrant of Arrest for Dominic Ongwen”, ICC-02/04-01/05-10, 8 July 2005.

³ Pre-Trial Chamber II, Single Judge Mauro Politi, “Decision on legal representation, appointment of counsel for the defence, 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/0111/06 to a/0127/06”, ICC-02/04-01/05-134, 1 February 2007.

participation in the proceedings be transmitted in redacted form to both the Prosecution and the Defence.⁴

4. On 6 February 2015, following Mr Ongwen's transfer⁵ and initial appearance before the Court,⁶ the Chamber, in a different composition again, severed the case against Mr Ongwen from the *Kony et al.* case.⁷
5. On 4 March 2015, the Chamber issued the "Decision Establishing Principles on the Victims' Application Process"⁸ ("4 March 2015 Decision") and decided, *inter alia*, that the Parties should be provided with copies of the applications for victims' participation, with redactions for the Defence where appropriate.⁹

Submissions

6. In order to comply with its obligations under article 54(1)(a) of the Statute to establish the truth by investigating both incriminating and exonerating

⁴ *Ibid.*, para.25. The then Single Judge upheld this approach in the Chamber's subsequent jurisprudence. See, *inter alia*, Pre-Trial Chamber II, Single Judge Mauro Politi, "Decision on legal representation, appointment of counsel for the defence, criteria for redactions of applications for participation, and submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07", 17 September 2008, pp. 6-7; Pre-Trial Chamber II, Single Judge Mauro Politi, "Decision on victims' applications for participation a/0192/07 to a/0194/07, a/0196/07, a/0200/07, a/0204/07, a/0206/07, a/0209/07, a/0212/07, a/0216/07, a/0217/07, a/0219/07 to a/0221/07, a/02228/07 to a/0230/07, a/0234/07, a/0235/07, a/0237/07, a/0324/07 and a/0326/07 under rule 89", ICC-02/04-180, 10 March 2009, p.8.

⁵ ICC-02/04-01/05-419-Conf-Exp, paras.4 and 18; ICC-02/04-01/05-419-Conf-Exp-Anx2.

⁶ Mr Ongwen made his initial appearance before the Single Judge on 26 January 2015 – see Pre-Trial Chamber II, Transcript of Hearing, ICC-02/04-01/05-T-10-ENG, 26 January 2015.

⁷ Pre-Trial Chamber II, Single Judge Ekaterina Trendafilova, "Decision Severing the Case against Dominic Ongwen", ICC-02/04-01/05-424, 6 February 2015.

⁸ Pre-Trial Chamber II, Single Judge Ekaterina Trendafilova, "Decision Establishing Principles on the Victims' Application Process", ICC-02/04-01/15-205, 4 March 2015.

⁹ *Ibid.*, para.35. As a matter of necessary inference, the copies of the applications provided to the Prosecution are to be in unredacted form. As clarified by the Chamber, "this difference in treatment between the parties is instrumental in allowing the Prosecutor to properly discharge her statutory obligations and, as such, does not constitute a violation of the principle of equality of arms". See in the same vein also *The Prosecutor v. William Samoei Ruto et al.*, Pre-Trial Chamber II, Single Judge Ekaterina Trendafilova, "Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case", ICC-01/09-01/11-169, 8 July 2011, para.14, as well as *The Prosecutor v. Bosco Ntaganda*, Pre-Trial Chamber II, Single Judge Ekaterina Trendafilova, "Decision Establishing Principles on the Victims' Application Process", ICC-01/04-02/06-67, 28 May 2013, para.44.

circumstances equally, the Prosecution needs to consider not only applications submitted after the 4 March 2015 Decision, but also all those applications submitted by victim-applicants prior to the severance of the proceedings. These may contain either incriminating or exculpatory information in relation to Mr Ongwen.

7. The Prosecution recalls that such applications “can under no circumstances be considered as evidence subject to disclosure within the legal framework of the Court”.¹⁰ Thus, the victim-applicants’ identities would remain unknown to the Defence, ensuring compliance with the duty to protect the safety, physical and psychological well-being, dignity and privacy of victims pursuant to article 68(1) of the Statute.
8. Where consideration of the applications leads the Prosecution to determine that the victim-applicants may possess information relevant to the Prosecution’s obligation to investigate, the Prosecution will carry out such investigations. In the event that those investigations give rise to material which is exculpatory in nature, or in any way material to the preparation of the Defence,¹¹ the Prosecution will make disclosure of that material in accordance with article 67(2) of the Statute and rule 77 of the Rules.¹²

¹⁰ *The Prosecutor v. William Samoei Ruto et al.*, Pre-Trial Chamber II, Single Judge Ekaterina Trendafilova, “Decision on the Defence Requests in Relation to the Victims’ Applications for Participation in the Present Case”, ICC-01/09-01/11-169, 8 July 2011, para.9.

¹¹ Notably, in the case of *The Prosecutor v. William Samoei Ruto et al.* it was the Defence of Mr Ruto and Mr Sang who requested the Single Judge to order that the unredacted versions of the victims’ applications be disclosed to the Prosecution, so that it is in a position to make an informed decision as to whether to proceed with the charges, as well as to fulfil its disclosure obligations to the Defence – see “Response on behalf of Mr. William Samoei Ruto and Mr. Joshua Arap Sang to the First transmission to the parties and legal representatives of redacted applications to participate in the proceedings, with Confidential Annex”, ICC-01/09-01/11-102, 3 June 2011, paras.15-21.

¹² See Decision cited in fn.10, para.11.

Relief Sought

9. The Prosecution requests an order that the Registry provide the Prosecution with unredacted copies of the applications for participation submitted by victim-applicants in the Situation in Uganda and in the case of *The Prosecutor v. Joseph Kony et al.* prior to the 4 March 2015 Decision.¹³



Fatou Bensouda,
Prosecutor

Dated this 10th day of July 2015

At The Hague, The Netherlands

¹³ See *supra*, para.5.