



Original: English

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

Date: 29 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

Decision on the “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.*”

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Benjamin Gumpert

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the 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

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Cuno Tarfusser, Single Judge exercising the functions of the Chamber, issues this decision on the “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.*” filed on 10 July 2015 (ICC-02/04-01/15-263).

1. The Prosecutor submits that to comply with her obligations under article 54(1)(a) of the Statute to investigate both incriminating and exonerating circumstances equally, she needs to also consider applications for victims’ participation submitted in the situation in Uganda and the case concerning Joseph Kony *et al.* prior to the severance of the current proceedings and prior to the former Single Judge’s decision establishing principles on the victims’ application process of 4 March 2015 (ICC-02/04-01/15-205). The Prosecutor submits that while the victim-applicants’ identities would remain unknown to the Defence, thereby ensuring compliance with article 68(1) of the Statute, material arising out of any investigations initiated upon consideration of the applications which is exculpatory in nature, or in any way material to the preparation of the Defence, will be disclosed in accordance with article 67(2) of the Statute and rule 77 of the Rules of Procedure and Evidence.

2. In its response filed on 20 July 2015 (ICC-02/04-01/15-275), the Defence submits that the Prosecutor’s request, which it considers to be a “fishing expedition”, should be denied. The Defence argues that the Prosecutor’s request fails to show how receiving the unredacted victims’ applications is warranted, and submits that the Prosecutor should have to demonstrate why each victim application sought is necessary. In case the Prosecutor’s request is granted, the Defence submits that it should be provided with the victims’ applications in a redacted form.

3. The Single Judge considers that providing the Prosecutor with unredacted victims' applications submitted in the situation in Uganda and in the case concerning Joseph Kony *et al.* will enable the Prosecutor to comply with her obligation under article 54(1)(a) of the Statute, while at the same time respecting the interests and personal circumstances of victims and protecting their safety, physical and psychological well-being, dignity and privacy, in accordance with articles 54(1)(b) and 68(1) of the Statute.

4. Bearing in mind these statutory obligations of the Prosecutor, and considering the different roles of the Prosecutor and the Defence in the proceedings, the Single Judge is of the view that the provision of the unredacted victims' applications to the Prosecutor is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial. Providing the Prosecutor with the unredacted victims' applications is necessary to enable the Prosecutor to discharge her statutory duties.

5. In this regard, the Single Judge also notes, as indicated in the request, that in case any investigations initiated by the Prosecutor upon consideration of the victims' applications lead to information which is exculpatory in nature or material to the preparation of the Defence, it is for the Prosecutor to disclose such information to the Defence pursuant to article 67(2) of the Statute and rule 77 of the Rules of Procedure and Evidence.

6. As the Appeals Chamber has found, albeit in a slightly different context:

[T]he Appeals Chamber recalls that under article 54 (1) (a) of the Statute, the Prosecutor has a duty to investigate exonerating and incriminating circumstances equally. Under article 54 (3) (b) of the Statute, the Prosecutor may, with respect to his investigations, "[r]equest the presence of and question persons being investigated, victims and witnesses". The Appeals Chamber therefore considers that it is reasonable that, in particular where the submissions in the victims' applications for participation indicate that victims may possess potentially exculpatory information, the Prosecutor's investigation should extend to discovering any such information in the victims' possession. Such information would then be disclosed to the accused pursuant to

article 67 (2) of the Statute and rule 77 of the Rules of Procedure and Evidence.¹
[footnote omitted]

7. In light of above considerations, and bearing once again in mind in particular the different statutory obligations and role of the Prosecutor as compared to the Defence, the Single Judge is also of the view that it is not necessary for the Defence to receive the victims' applications submitted in the situation in Uganda and the case concerning Joseph Kony *et al.* in a redacted form.

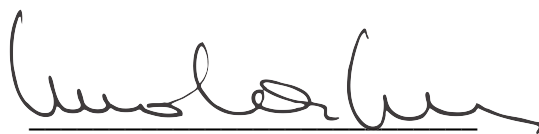
FOR THESE REASONS, THE SINGLE JUDGE

GRANTS the Prosecutor's request;

REJECTS the request of the Defence; and

ORDERS the Registrar to provide the Prosecutor 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 4 March 2015.

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



Judge Cuno Tarfusser
Single Judge

Dated this 29 July 2015

At The Hague, The Netherlands

¹ *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 entitled 'Decision on the Modalities of Victim Participation at Trial'", 16 July 2010, ICC-01/04-01/07-2288 (OA 11), para. 81.