

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/04  
Date: 30 March 2009

**PRE-TRIAL CHAMBER II**

Before: Judge Hans-Peter Kaul, Single Judge

**SITUATION IN UGANDA**

**Public document**

**Prosecution's Observations on the Victims' Applications a/0192/07, a/0194/07, a/0206/07, a/0209/07, a/0216/07, a/0217/07, a/0219/07, a/0220/07, a/0221/07, a/0229/07, a/0235/07, a/0237/07, and a/0324/07 for Victim Participation in the Situation in Uganda**

Source: 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**

**Counsel for the Defence**

Ms Michelyne C. Saint-Laurent

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

## Background

1. In a Decision of 10 March 2009,<sup>1</sup> the then Single Judge granted the Prosecution until 30 March to submit its observations on the applications for participation as victims in the situation in Uganda of applicants a/0192/07, a/0194/07, a/0206/07, a/0209/07, a/0216/07, a/0217/07, a/0219/07, a/0220/07, a/0221/07, a/0229/07, a/0235/07, a/0237/07, and a/0324/07.
2. On 23 March 2009, Pre-Trial Chamber II designated Judge Hans-Peter Kaul as Single Judge of Pre-Trial Chamber II responsible for all victims' issues in relation to the situation of Uganda.<sup>2</sup>

## Submission

3. The Prosecution submits that all applicants satisfy the criteria for "victims" under rule 85. However, recent jurisprudence of the Appeals Chamber<sup>3</sup> states that none of the applicants have a right *at this point* to participate: *"What emerges from the case law of the Appeals Chamber is that participation can take place only within the context of judicial proceedings. Article 68(3) of the Statute correlates victim participation to "proceedings", a term denoting a judicial cause pending before a Chamber. In contrast, an investigation is not a judicial proceeding but an inquiry conducted by the Prosecutor into the commission of a crime with a view to bringing justice to those deemed responsible."*
4. A victim's right to participate arises only in a judicial proceeding that affects the victims' personal interests; an investigation or a situation does not qualify, thus there is no right to participate in the present situation.

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<sup>1</sup> ICC-02/04-180, page 9.

<sup>2</sup> ICC-02/04-184, page 4.

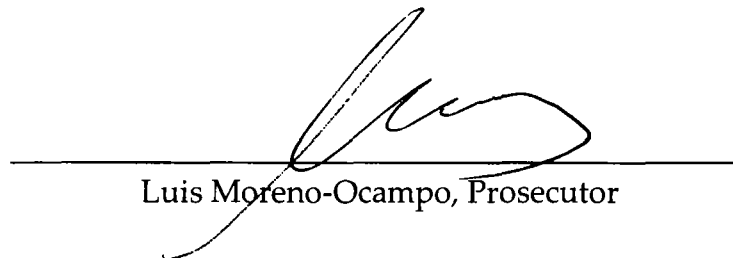
<sup>3</sup> ICC-01/04-556, OA4 OA5 OA6, para. 45

5. The Appeals Chamber did not prescribe the procedure by which the Single Judge should treat victim applications in a situation.<sup>4</sup> There are two options:

- (i) the Single Judge could make a preliminary assessment of whether the applicants are victims, subject to further consideration of whether the additional criteria in Article 68(3) and Rule 89 are met, once there is a proceeding. While they would not have a right to participate or to procedural status under Article 68(3), such persons would still be considered as victims who have communicated with the Court;
- (ii) alternatively, the Single Judge may defer consideration of applications at this stage, since there is no judicial proceeding.

## Conclusion

6. The Prosecution does not oppose to qualify all applicants as victims but any determination with regard to their participation should be deferred until there is a case or proceeding.



Luis Moreno-Ocampo, Prosecutor

Dated this 30<sup>th</sup> day of March 2009  
At The Hague, The Netherlands

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<sup>4</sup> *Ibid*, para. 57.