

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05
Date: 10 March 2009

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single Judge

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

Public Document

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

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

The Office of the Prosecutor
Mr Luis Moreno Ocampo
Ms Fatou Bensouda

Counsel for the Defence
Ms Michelyne C. Saint-Laurent

Legal Representatives of the Victims

Legal Representatives of the 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

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**
Ms Fiona McKay

Other

I, Judge Mauro Politi, judge at the International Criminal Court (the “Court”);

NOTING the “Decision designating a Single Judge on victims’ issues”, dated 22 November 2006,¹ whereby Pre-Trial Chamber II (the “Chamber”) designated Judge Mauro Politi as Single Judge responsible for all issues arising in connection with victims’ participation in the proceedings in respect of the situation in Uganda (the “Situation”) and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (the “Case”);

NOTING the “Notification to Pre-Trial Chamber II of receipt of applications a/0192/07 to a/0239/07”, filed by the Registrar through the Victims Participation and Reparation Section (the “VPRS”) on 14 August 2007 in the record of the Situation² and of the Case;³

NOTING the “Notification to Pre-Trial Chamber II of receipt of applications a/0324/07 to a/0326/07”, filed by the VPRS on 22 November 2007 in the record of the Situation⁴ and of the Case;⁵

NOTING the Internal Memorandum sent to the VPRS on 7 April 2008, whereby the Chamber (i) noted the receipt of applications a/0192/07 to a/0239/07 and a/0324/07 to a/0326/07, and (ii) requested the VPRS to present these applications together with a report thereon to the Chamber not later than 20 April 2008;

NOTING the Internal Memorandum sent to the Chamber on 18 April 2008, whereby the VPRS requested a time extension until end of May 2008 to file a report concerning applications a/0192/07 to a/0239/07 and a/0324/07 to a/0326/01;

¹ ICC-02/04-01/05-130.

² ICC-02/04-102-Conf-Exp.

³ ICC-02/04-01/05-253-Conf-Exp.

⁴ ICC-02/04-109-Conf-Exp.

⁵ ICC-02/04-01/05-261-Conf-Exp.

NOTING that the Chamber granted such request through an Internal Memorandum dated 23 April 2008;

NOTING the “Report to Pre Trial Chamber II on applications a/0192/07 to a/0239/07 and a/0324/07 to a/0326/07 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court”, filed by the Registrar on 30 May 2008⁶ (the “First Report”);

NOTING that the VPRS considered only applications a/0324/07 and a/0326/07 to be complete and, accordingly, (i) annexed these two applications to the First Report,⁷ and (ii) requested a further period of four months for the remaining applicants to provide the necessary information to be included in a further report;

NOTING the “Decision on VPRS requests contained in the Report to Pre-Trial Chamber II applications a/0192/07 to a/0239/07 and a/0324/07 to a/0326/07 dated 30 May 2008”, dated 16 June 2008,⁸ whereby the Single Judge (i) deferred a decision on all applications annexed to the First Report until the missing information on applications a/0192/07 to a/0239/07 and a/0325/07 was submitted, and (ii) granted the VPRS until 30 September 2008 to submit a further report containing the missing information as outlined in the First Report;

NOTING the “Second Report to Pre Trial Chamber II on applications a/0192/07 to a/0239/07 and a/0324/07 to a/0326/07 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations

⁶ ICC-02/04-138-Conf-Exp.

⁷ Application a/0324/07 ((ICC-02/04-138-Conf-Exp-Anx1) and Application a/0326/07 ((ICC-02/04-138-Conf-Exp-Anx2).

⁸ ICC-02/04-141-Conf-Exp.

of the Court", filed on 1 October 2008⁹ and the Corrigendum thereto dated 22 October 2008¹⁰ (the "Second Report");

NOTING that the VPRS considered an additional twenty-seven out of the remaining forty-nine victims' applications for participation to be incomplete and, accordingly, annexed only twenty applications¹¹ to the Second Report;

NOTING that nine applications¹² out of the twenty-two applications annexed to the First and the Second Report are submitted by a minor and that, pursuant to rule 89(3) of the Rules of Procedure and Evidence (the "Rules"), these applications should have been presented by somebody acting on their behalf;

CONSIDERING that, under rule 89(2) of the Rules, the Chamber may reject the applications on its own initiative "if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled";

CONSIDERING that, accordingly, the principle of ensuring the expediency of the proceedings makes it appropriate to reject *in limine* the nine applications submitted by a minor;

⁹ ICC-02/04-157-Conf-Exp.

¹⁰ ICC-02/04-157-Conf-Exp-Corr.

¹¹ Application a/0192/07 (ICC-02/04-157-Conf-Exp-Anx4), Application a/0193/07 (ICC-02/04-157-Conf-Exp-Anx5), Application a/0194/07 (ICC-02/04-157-Conf-Exp-Anx6), Application a/0196/07 (ICC-02/04-157-Conf-Exp-Anx7), Application a/0200/07 (ICC-02/04-157-Conf-Exp-Anx8), Application a/0204/07 (ICC-02/04-157-Conf-Exp-Anx9), Application /0206/07 (ICC-02/04-157-Conf-Exp-Anx10), Application a/0209/07 (ICC-02/04-157-Conf-Exp-Anx11), Application a/0212/07 (ICC-02/04-157-Conf-Exp-Anx12), Application a/0216/07 (ICC-02/04-157-Conf-Exp-Anx13), Application a/0217/07 (ICC-02/04-157-Conf-Exp-Anx14), Application a/0219/07 (ICC-02/04-157-Conf-Exp-Anx15), Application a/0220/07 (ICC-02/04-157-Conf-Exp-Anx16), Application a/0221/07 (ICC-02/04-157-Conf-Exp-Anx17), Application a/0228/07 (ICC-02/04-157-Conf-Exp-Anx18), Application a/0229/07 (ICC-02/04-157-Conf-Exp-Anx19), Application a/0230/07 (ICC-02/04-157-Conf-Exp-Anx20), Application a/0234/07 (ICC-02/04-157-Conf-Exp-Anx21), Application a/0235/07 (ICC-02/04-157-Conf-Exp-Anx22) and Application a/0237/07 (ICC-02/04-157-Conf-Exp-Anx23).

¹² Applications a/0193/07, a/0196/07, a/0200/07, a/0204/07, a/0212/07, a/0228/07, a/0230/07, a/0234/07 and a/0326/07

NOTING that rule 89(1) of the Rules requires the transmission of applications for participation to the Prosecutor and the Defence for the purpose of receiving their observations, prior to the issuance of a decision on the merits granting or rejecting the status of victim to the applicants;

CONSIDERING that, in light of the rejection *in limine* of the applications submitted by a minor, observations from the Prosecutor and the Defence should only address the remaining 13 applications (the "Applications")¹³;

NOTING articles 57(3) (c) and 68(1), (3) of the Statute of the Court (the "Statute"), rule 89(1) of the Rules of Procedure and Evidence (the "Rules") and regulations 76(1) and 81(4) of the Regulations of the Court (the "Regulations");

NOTING the "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", dated 1 February 2007¹⁴ (the "1 February 2007 Decision"), whereby the Single Judge *inter alia* (i) determined that the "*only feasible and appropriate protective measures*" at the stage of assessment of victims' applications for participation were redactions of those applications, irrespective of receiving a specific request to take such measures; (ii) stated that the main principle governing redactions was the need to prevent the identification of the applicants, and, accordingly, (iii) listed several information to be redacted in the applications for participation;

NOTING that the information listed in the 1 February 2007 Decision included *inter alia* the following elements: (i) the applicant's place of birth; (ii) the languages spoken and understood by the applicant; (iii) the applicant's ethnic group and/or tribe and

¹³ Applications a/0192/07, a/0194/07, a/0206/07, a/0209/07, a/0216/07, a/0217/06, a/0219/06, a/0220/07, a/0221/07, a/0229/07, a/0235/07, a/0237/07 and a/0324/07.

¹⁴ ICC-02/04-01/05-134.

religion; (iv) the applicant's occupation; (v) the applicant's marital status; (vi) the existence and number, if any, of the applicants' dependants; and (vii) the specific features of the harm, damage, loss or injury suffered (collectively, the "Identifying elements");

NOTING the "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", filed on 18 September in the record of the Situation¹⁵ and of the Case¹⁶ (the "18 September 2008 Decision"), whereby the Single Judge determined, without prejudice to the core principles governing redactions set out in the 1 February Decision, that the possibility of redacting one or more Identifying elements in victims' applications for participation received by the Chamber would depend on a case-by-case assessment of the relevant factual circumstances;¹⁷

CONSIDERING the persisting instability of the security situation in Uganda, as well as the fact that all persons against whom warrants of arrest have been issued in the Situation still remain at large and may therefore pose a threat to the applicants and their families;

CONSIDERING that articles 68(1) and 57(3)(c) of the Statute mandate the Court to take appropriate measures to protect *inter alia* the safety, privacy, physical and physiological well-being of the victims in a manner that is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial;

¹⁵ ICC-02/04-154.

¹⁶ ICC-02/04-01/05-312.

¹⁷ *Ibid.*, p. 5.

CONSIDERING that, in accordance with the principle of proportionality enshrined in article 68(1) of the Statute, measures taken pursuant to this provision may restrict the rights of the suspect or accused only to the extent necessary;

CONSIDERING that, in light of the nature, purpose and circumstances of the current proceedings, the redaction of the applications remains the appropriate measure to be taken and does not amount to an unnecessary restriction of the rights of the Defence;

CONSIDERING that the Single Judge continues to take the view that the applications must be transmitted to both parties (the Prosecutor and the Defence) in redacted form, in light of the security concerns still arising from the situation in the field and of the need to preserve the equality of arms among the parties;

CONSIDERING therefore appropriate that the Registrar transmits a redacted copy of the Applications to both the Prosecutor and the Defence after having expunged any information that could lead to the identification of the applicant victims in light of the principles established in the 1 February 2007 Decision, as amended by the 18 September 2008 Decision;

CONSIDERING that, at this stage, where none of the persons sought by the Court in the Situation is yet represented by a defence counsel, the Single Judge deems it in the interests of justice to appoint, following consultations with the Registrar and in accordance with regulation 76(1) of the Regulations, a counsel for the defence, entrusted with responsibility for all issues related to the Applications, including in particular the right to receive a copy of those Applications and to submit observations thereon;

CONSIDERING that, with a view to ensuring the expediency of the proceedings, it appears appropriate to appoint Ms Michelyne C. Saint-Laurent as counsel for the

Defence within the context and for the purposes of the proceedings on the Applications;

CONSIDERING also that, since thus far none of the applicants can rely on a legal representative, the need to ensure the fairness of the proceedings makes it appropriate and sufficient for the applicants, under the present circumstances, to benefit from the support and assistance provided by the Office of Public Counsel for Victims (the "OPCV") pursuant to regulation 81(4) of the Regulations;

FOR THESE REASONS, HEREBY

DECIDE that applicants a/0193/07, a/0196/07, a/0200/07, a/0204/07, a/0212/07, a/0228/07, a/0230/07, a/0234/07 and a/0326/07 cannot be granted the status of victim;

APPOINT Ms Michelyne C. Saint-Laurent as counsel for the Defence, entrusted with representing and protecting the interests of the Defence within the context and for the purposes of the proceedings on the Applications for participation in the Situation and in the Case, pursuant to rule 89 of the Rules;

ORDER the Registrar to transmit the Applications to the OPCV, by Friday 20 March 2009, for the purpose of providing the necessary support and assistance to the applicants;

ORDER the Registrar to provide the Prosecutor and the counsel for the Defence, by Friday 20 March 2009, with a redacted copy of the Applications, in accordance with this decision;

GRANT the Prosecutor and the Defence until Monday 30 March 2009 to submit their observations on the Applications.

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

Mauro Politi

Judge Mauro Politi
Single Judge

Dated this Tuesday, 10 March 2009

At The Hague, The Netherlands.