

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04
Date: 29 March 2007

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single judge

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Public Document

OPCV's Request to appear before the Single Judge or to otherwise be heard on the protective measures for Applicants 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 in the Uganda situation and in the case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen* and to file a response to the Prosecution's Application to vary protective measures

The Office of the Prosecutor

Mr. Luis Moreno Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Ms. Christine Chung, Senior Trial Lawyer

Ad hoc Counsel for the Defence

Ms. Michelyne C. St-Laurent

Office of Public Counsel for Victims

Mrs. Paolina Massidda

I. Background of Proceedings

1. On 22 November 2006, Judge Mauro Politi has been designated as Single Judge on Victim's Issues by the Pre-Trial Chamber II¹ seized of the situation in Uganda² and of the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen*.

2. On 1st February 2007, the Single Judge rendered 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", in which he requested the OPCV "to provide the Applicants with any support and assistance which may be necessary or appropriate at this stage of the proceedings."³

3. In the same decision, the Single Judge ordered the transmission of the applications for participation, in a redacted format, to the Office of the Prosecutor (the "OTP") and to the Defence for the purposes of rule 89(1) of the Rules of Procedure and Evidence (the "Rules"). He also requested both participants to submit their observations by 26 February 2007.⁴

4. On 6 February 2007, the OTP filed a request to lift the redactions from the applications⁵ and on 15 February 2007, the OTP filed additional submissions to its

¹ See the "Decision designating a Single Judge on Victim's issues", No. ICC-02/04-01/05-130, 22 November 2006.

² See the "Decision assigning the situation in Uganda to Pre-Trial Chamber II" issued by the Presidency, No. ICC-02/04-1, 5 July 2004.

³ See 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", No. ICC-02-04-01-05-134, 1st February 2007, par. 13.

⁴ *Ibid.*, p. 19.

⁵ See the "Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP", No. ICC-02/04-01/05-150, 6 February 2007.

request to lift redactions and requested an extension of time to provide its observations on the applications.⁶

5. On 20 February 2007, the Single Judge rejected the OTP's request to lift the redactions.⁷

6. On 21 February 2007, the *ad hoc* counsel for the Defence requested an extension of time to submit her observations on the applications.⁸ On 23 February 2007, the Single Judge granted the request extending the deadline for the submission of the observations until 28 February 2007 for the OTP, and until 6 March 2007 for the Defence.⁹

7. On 26 February 2007, the OTP filed a "Request for Leave to Appeal the Decision Denying the 'Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP'".¹⁰

8. On 28 February 2007, the OTP submitted its observations under rule 89(1) of the Rules¹¹ and on 5 March 2007, the Defence submitted its observations.¹²

⁶ See the "Prosecution's further submissions supplementing its 'Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP', dated 6 February 2007, and request for extension of time", No. ICC-02/04-01/05-208, 15 February 2007.

⁷ See the "Decision on Prosecutor's 'Application to lift redactions from applications for Victims' Participation to be provided to the OTP' and on the Prosecution's further submissions supplementing such Application, and request for extension of time", No. ICC-02/04-01/05-209, 20 February 2007.

⁸ See the "Defence Application for an extension to the time limit to respond to the 'Defence Observations on the Applications for Participation in the Proceedings 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'", No. ICC-02/04-01/05-210, 21 February 2007.

⁹ See the "Decision on 'Requête de la Défense en extension de délai afin de répondre aux 'Observations de la Défense sur les demandes de participation à la procédure a/0010/06, a/0064/06 à a/0070/06, a/0070/06, a/0081/06 à a/0104/06 et a/0111/06 à a/0127/06'", No. ICC-02/04-01/05-211, 23 February 2007.

¹⁰ See the "Prosecution's Request for Leave to Appeal the Decision Denying the 'Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP'", No. ICC-02/04-01/05-212 and ICC-02/04-01/05-212-Anx, 26 February 2007.

¹¹ See the "Prosecution's Reply under Rule 89(1) to Applications for participation of Applicants a/0010/06 and a/0064/06 to a/0070/06 and a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06 in the Case of The Prosecutor vs. Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen", No. ICC-02/04-01/05-214 and No. ICC-02/04-01/05-214-Anx1, 28 February 2007.

¹² See the "Observations de la Défense sur les demandes de participation à la procédure a/0010/06, a/0064/06 à a/0070/06, a/0081/06 à a/0104/06 et a/0111/06 à a/0127/06", No. ICC-02/04-01/05-216, 5 March 2007.

9. On 9 March 2007, the Single Judge issued the "Decision on the 'Prosecution's Request for Leave to Appeal the Decision Denying the 'Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP'",¹³ in which he denied leave to appeal.

10. On 22 March 2007, the OTP filed the "Prosecution's Application under Regulation 42(3) to Vary Protective Measures by Lifting Redactions from Applications for Victims' Participation Provided to the OTP, and To Submit a Further Reply under Rule 89(1) in the Case and in the Situation".¹⁴

II. Legal Basis for the Office to be heard on issues pertaining to the protection of the applicants

11. In its Decision of 1st February 2007, the Single Judge entrusted the Office with the task of providing support and assistance to the 49 applicants requesting to participate in the situation in Uganda and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen*.¹⁵

12. In the same decision the Single Judge recognised that "*the mandate vested in the OPCV by the Regulations [of the Court] also encompasses forms and methods of assistance to victims which fall short of legal representation*".¹⁶

13. The decision of the Single Judge entails a margin of appreciation for the Office in evaluating when its intervention may be necessary and/or appropriate at the stage of the procedure which precedes the decision on the status of the applicants in order to provide them with support and assistance.

¹³ See the "Decision on the 'Prosecution's Request for Leave to Appeal the Decision Denying the 'Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP'", No. ICC-02/04-01/05-219, 9 March 2007.

¹⁴ See the "Prosecution's Application under Regulation 42(3) to Vary Protective Measures by Lifting Redactions from Applications for Victims' Participation Provided to the OTP, and To Submit a Further Reply under Rule 89(1) in the Case and Situation", No. ICC-02/04-88 and ICC-02/04-01/05-231, 22 March 2007.

¹⁵ See *supra* note 3, par. 13, as well as the operative part of the Decision.

¹⁶ *Ibid.*

14. In relation to the protective measures, the Office notes that this matter is of vital importance for the applicants since most of them requested that the Court ensure that their identity, and any other information which may lead to their identification, not be revealed either to the Prosecutor, the Defence, a State, or any other participant.¹⁷

15. Regulation 42(4) of the Regulations of the Court states that “[b]efore making a determination under sub-regulation 3 [related to a motion for variation of protective measures], the Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the application to rescind, vary or augment protective measures has been made”.

16. The Office notes that regulation 42(4) of the Regulations of the Court reflects the wording of rule 87(1) of the Rules¹⁸ which request “the Chamber to seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure”. In this respect the Office argues that, by analogy, the mechanism provided for in rule 87(1)(c) of the Rules should also apply in case of request to vary protective measures, such request affecting the 49 applicants.

17. Therefore, the Office argues that the applicants shall be informed of the request to vary protective measures and shall have the possibility to be heard on the matter.

18. The Office argues that the decision of the Single Judge, read in conjunction with this provision, supports its application to appear before the Chamber in respect of the variation of the protective measures since regulation 81(1) of the Regulations of the Court expressly provides for the possibility for the Office to appear before the Chamber in respect of specific issues.

¹⁷ See the 49 Applications for participation filed by the VPRS as Confidential *Ex parte*.

¹⁸ For an explanation of the drafting of regulation 42 of the Regulations of the Court, see *Draft Regulations of the Court/Rev.2/November 2003*, Explanatory Note by the Drafting Board under regulation 42(2), p. 60, Confidential, available to the Judges and the Office of the Prosecutor.

19. Indeed, the Office is of the opinion that the variation of the protective measures for the 49 applicants referred to the OPCV for support and assistance constitutes a specific issue on which it is necessary and appropriate to assist them.

20. The Office also considers that, in order to provide assistance to the applicants, it should be allowed to file a response to the OTP's application to vary the protective measures.

21. In the alternative, the Office submits that the applicants themselves shall be heard before any variation of the protective measures, decided by the Single Judge in his decision of 1st February 2007 - namely the redaction of the applications in conformity with paragraphs 21 and 22 of the said decision - be authorised.

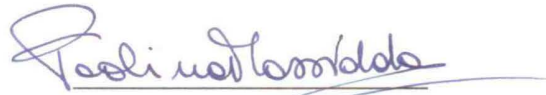
22. Finally, the Office notes that, recently, the Principal Counsel undertook a mission in Uganda in order, *inter alia*, to provide legal assistance and legal advices to the applicants as well as to gather information useful for the examination of their respective applications. As a result of this mission, the Office is in a position to provide the Chamber with information on security concerns of the applicants.

For the foregoing reason, the Office respectfully requests the Single Judge

(a) To allow the Principal Counsel to appear before him or to be otherwise heard on the protective measures for applicants 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 in the Situation in Uganda and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen*;

(b) To authorise the Office to file a response to the OTP's application to vary protective measures in a time limit to be determined by the Single Judge;

(c) To allow the Office to respond and/or to reply to any submission by the OTP and/or the *ad hoc* Defence counsel on issues related to the protection of the applicants.



Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Done in English.

Dated this 29th day of March 2007

At The Hague

The Netherlands