

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04
Date: 12 February 2008

PRE - TRIAL CHAMBER II

Before: Judge Mauro Politi, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Ekaterina Trendafilova

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Public

Request for Leave to file Observations in relation to the « Notification of the Board of Directors of the Trust Fund for Victims in accordance with Regulation 50 of the Regulations of the Trust Fund for Victims with Confidential annex »

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

Office of Public Counsel for Victims
Ms Paolina Massidda

**Office of Public Counsel for the
Defence**
Mr Xavier Jean Keita

I. PROCEDURAL BACKGROUND

1. On 1st February 2007, the Single Judge issued 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 Office of Public Counsel for Victims (the “OPCV” or the “Office”) *“to provide the applicants with any support and assistance which may be necessary or appropriate”* at the stage which precedes a decision on their status in the situation of Uganda and in the Kony and others case.¹

2. On 16 April 2007, the Single Judge, issued the “Decision on the OPCV’s observations on victims’ applications and on the Prosecution’s objection thereto” in which he indicated that in respect of any activity or initiative not specifically authorised by the Chamber the Office should seek authorisation from the Chamber.²

3. On 10 August 2007, the Single Judge issued the “Decision on victims’ application 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” granting the status of victims in the context of the situation to applicants a/0101/06 and a/0119/06.³ The decision requested the Office, *inter alia*, to continue to provide support and assistance to victims and applicant victims.⁴ The decision also requested the Registry to assist the victims authorised to participate in the situation and in the case to appoint a common legal representative. A common legal representative has not been appointed yet.

¹ 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.

² See the “Decision on the OPCV’s observations on victim’s applications and on the Prosecution’s objections thereto”, No. ICC-02/04-01/05-243, 16 April 2007.

³ See the “Decision on victims’ application 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- 02/04-01/05-252, 10 August 2007.

⁴ *Ibid.*, par. 164.

4. On 28 August 2007, the Single Judge issued the “Decision on legal representation of victims a/0101/06 and a/0119/06”⁵, appointing the Principal Counsel of the Office as legal representative for the purpose of filing, on behalf of the said victims, a response to the Prosecution’s application for leave to appeal the decision on participation rendered on 10 August 2007.

5. On 25 January 2008, the Board of Directors of the Trust Fund for Victims filed a notification (the “Trust Fund notification”) to the Pre-Trial Chamber II pursuant to regulation 50 of the Regulations of the Trust Fund for Victims.

II. REQUEST OF THE OPCV FOR LEAVE TO SUBMIT OBSERVATIONS ON THE TRUST FUND NOTIFICATION

6. The Office considers that both victims authorised to participate in the context of the situation in Uganda, as well as applicants, have an interest in providing the Pre-Trial Chamber with their views on the Trust Fund notification, particularly in light of regulation 49 of the Regulation of the Trust Fund which provides that “[t]he Board of Directors may consult victims as defined in rule 85 of the Rules of procedure and Evidence and, where natural persons are concerned, their families as well as their legal representatives [...] in conducting its activities and projects”.

7. The Office submits that since the victims authorised to participate and/or the applicants may benefit from the activities the Trust Fund wants to undertake, it is appropriate for them to provide the Chamber with their view and concerns, if any, on the specified activities as identified in the Trust Fund notification.

⁵ See the “Decision on Legal Representation of Victims a/101/06 and a/0119/06”, No. ICC-02/04/105, 28 August 2007.

8. The Office submits that pending the designation of a common legal representative, the Principal Counsel of the OPCV may be appointed by the Chamber for the purpose of submitting observations on the Trust Fund notification, as it was already the case when the Single Judge appointed the Principal Counsel to respond to the Prosecution's application for leave to appeal the decision on participation issued on 10 August 2007.

9. The Office further recalls the Pre-Trial Chamber I's decision issued on 5 February 2008, giving legal representatives of victims the opportunity to file observations on the Trust Fund notification of specified activities to be undertaken on the territory of the Democratic Republic of the Congo⁶.

10. Furthermore, pursuant to regulation 81(4) of the Regulations of the Court, "[t]he Office of Public Counsel for victims shall provide support and assistance to victims, including, where appropriate (a) legal research and advice ; and (b) appearing before a Chamber in respect of specific issues."

11. The Office submits that regulation 81(4) of the Regulations of the Court has been drafted in general terms in order to provide some flexibility in relation to the extent of the assistance the Office may provide to victims. In particular, the use of the word "including" clearly indicates that the list contained in letters (a) and (b) of the regulation shall not be viewed as an exhaustive list. Indeed, other hypothesis not covered in the said list could be necessary in order for victims' rights as provided in the Rome Statute and the Rules to be effective.

⁶ See the "Decision on the time limit for the filing of observations on the Notification by the Board of Directors of the Trust Fund for Victims", ICC-01/04-441, 5 February 2008.

12. In interpreting regulation 81 of the Regulations of the Court, the Single Judge of Pre-Trial Chamber II, in its Decision dated 1st February 2007, entrusted the Office with the task to provide support and assistance to 49 applicant victims having requested 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* when “*necessary and appropriate at this stage of the proceedings.*”⁷ The Single Judge reiterated his reasoning in his decision dated 10 August 2007 with regard to applicant victims, and to victims already admitted to participate in the proceedings, pending the appointment of a common legal representatives.⁸

13. 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*” and, therefore, he deemed it appropriate for victims to benefit from any form of support and assistance which may be offered by the OPCV.⁹

14. However, the *chapeau* of regulation 81(4) of the Regulations of the Court clearly provides for an obligation binding upon the Office to provide, where appropriate, support and assistance to victims, *inter alia*, in appearing before the Chamber in respect of specific issues.

15. In relation to the possibility for the Office to appear before the Chamber in respect of specific issues, the Office argues that the provision does not specify if such possibility is triggered by a request of a Chamber in this sense or by the Office itself in requesting leave to appear before the Chamber in respect of specific issues. In light

⁷ See *supra* note 1, par. 13, as well as the operative part of the said Decision.

⁸ See *supra* note 3, p. 62.

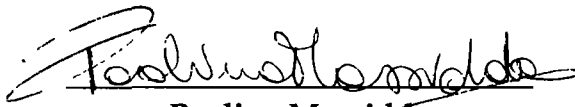
⁹ See *supra* note 1, par. 13.

of the formulation of the provision, the Office submits that both possibilities should be opened.

16. The Office, therefore, considers it is entitled to request the Chamber leave to appear before the honourable bench in respect of specific issues which have an impact on the personal interests of the victims it assists or represents, particularly when the issues may have practical implications.

17. Consequently, the Office argues that whether the Chamber will not access the request of the Office to submit observations as legal representative of the victims authorised to participate in the context of the situation and in the Kony and others case, the Chamber may grant leave in application of regulation 81(4) of the Regulations of the Court.

FOR THE FOREGOING REASONS, the Principal Counsel respectfully requests the Pre-Trial Chamber II to grant her leave to submit observations on the “Notification of specified activities filed by the Board of Directors of the Trust Fund for Victims” in accordance with regulation 50 of the Regulations of the Trust Fund, in a time limit specified by the Chamber, either as legal representative or as counsel appearing on a specific issue in accordance with regulation 81(4) of the Regulations of the Court, on behalf of victims authorised to participate in the context of the situation and of applicants.



Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Done in English

Dated this 12th day of February 2008

At The Hague (The Netherlands)