

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04-01/05

Date: 31 March 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single Judge

Registrar: Mr Bruno Cathala

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

Public

**Prosecution's Response to Defence's Request for Leave to Appeal the Single Judge's
14 March 2008 Decision on the Applications for Participation in the Proceedings**

The Office of the Prosecutor

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Introduction

1. On 14 March 2008, the Single Judge of Pre-Trial Chamber II issued the “Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06” (“Decision”).¹
2. On 25 March, *ad hoc* counsel for the Defence (“Defence”) filed the “*Requête de la Défense sollicitant l'autorisation d'interjeter appel de la «Decision on Victims' applications for participation» rendue le 14 mars 2008*” (“Defence Application”),² in which the Defence seeks leave to appeal the Decision on the following two issues:
 - *Peut-on accorder aux victimes un droit général de participer ou bien doit-on considérer que cette participation n'est possible que s'il est établi que les intérêts personnels spécifiques du demandeur sont affectés par la procédure et que cette participation est appropriée à la phase de la procédure?* (“First Issue”);³ and
 - *Pour établir un préjudice moral résultant du préjudice physique subi par une autre personne, doit-on exiger l'identité de cette dernière personne et la relation du demandeur avec cette personne?* (“Second Issue”).⁴
3. Pursuant to Regulation 65(3), the Prosecution hereby responds to the Defence Application.⁵

Submissions

4. The Prosecution does not oppose the Application.
5. The Prosecution takes this position on the basis of its independent examination of the issues raised in the Defence Application in light of the requirements of Article 82(1)(d). These requirements do not involve consideration of, or in any way reflect the

¹ *Prosecutor v Kony et al.*, ICC-02/04-01/05-282, 14 March 2008. The same decision was filed in the *Situation in Uganda* (ICC-02/04-125, 14 March 2008).

² *Prosecutor v Kony et al.*, ICC-02/04-01/05-285, 25 March 2008. The same application was filed in the *Situation in Uganda* (ICC-02/04-128, 25 March 2008).

³ Defence Application, paras. 19-34.

⁴ Defence Application, paras. 35-43.

⁵ The Prosecution files an equivalent response in the *Situation in Uganda*.

Prosecution's position on, the merits of the Decision. If leave to appeal is granted, the Prosecution will advance its position on the merits of the Decision before the Appeals Chamber.

a) First Issue: Peut-on accorder aux victimes un droit général de participer ou bien doit-on considérer que cette participation n'est possible que s'il est établi que les intérêts personnels spécifiques du demandeur sont affectés par la procédure et que cette participation est appropriée à la phase de la procédure?

6. The Prosecution notes that in the DRC,⁶ as well as in the Darfur situations,⁷ both the Prosecution and the OPCD sought, and were granted, leave to appeal in relation to an identical issue.

7. Consequently, the Prosecution does not oppose that leave to appeal be granted for the First Issue.

b) Second Issue: Pour établir un préjudice moral résultant du préjudice physique subi par une autre personne, doit-on exiger l'identité de cette dernière personne et la relation du demandeur avec cette personne?

8. The issue at bar is identical to one in relation to which the OPCD sought, and was granted, leave to appeal in the DRC situation on the basis that all requirements of Article 82 (1) (d) were met.⁸

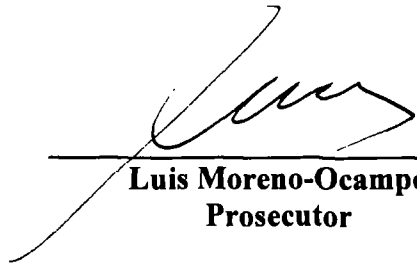
⁶ See *Situation in the DRC*, ICC-01/04-428, Prosecution's Application for Leave to Appeal the Single Judge's 24 December 2007 'Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo', 7 January 2008 ; *Situation in the DRC*, ICC-01/04-429, Request for leave to appeal the 'Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 à a/0241/06 à a/0250/06', 7 January 2008; *Situation in the DRC*, ICC-01/04-444, Decision on the Prosecution, OPCD and OPCV Requests for Leave to Appeal the Decision on the Applications for Participation of Victims in the Proceedings in the Situation, 6 February 2008.

⁷ See *Situation in Darfur*, ICC-02/05-113, Request for leave to appeal the 'Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07, filed by the Office of Public Counsel for the Defence on 12 December 2007; *Situation in Darfur*, ICC-02/05-114, Prosecution's Application for Leave to Appeal the Single Judge's 6 December 2007 Decision on Applications for Participation in the Proceedings, 12 December 2007; *Situation in Darfur*, ICC-02/05-121, Decision on the Requests for Leave to Appeal the Decision on the Application for Participation of Victims in the Proceedings in the Situation, 6 February 2008.

9. Consequently, the Prosecution does not oppose leave to appeal being granted for the Second Issue.

Conclusion

10. For the reasons referred to above, the Prosecution does not oppose leave to appeal being granted in relation to both issues.



Luis Moreno-Ocampo
Prosecutor

Dated this 31st day of March 2008
At The Hague, The Netherlands

⁸ See *Situation in the DRC*, ICC-01/04-429, Request for leave to appeal the 'Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 à a/0241/06 à a/0250/06', 7 January 2008; *Situation in the DRC*, ICC-01/04-444, Decision on the Prosecution, OPCD and OPCV Requests for Leave to Appeal the Decision on the Applications for Participation of Victims in the Proceedings in the Situation, 6 February 2008. The Prosecution did not oppose the OPCD's request for leave to appeal on that issue (*Situation in the DRC*, ICC-01/04-428, Prosecution's Application for Leave to Appeal the Single Judge's 24 December 2007 'Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo', 7 January 2008).