



Original: **French**

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

Date: **23 June 2008**

THE APPEALS CHAMBER

Before: Judge Navanethem Pillay, Presiding Judge
Judge Philippe Kirsch
Judge Georgios M. Pikis
Judge Sang-Hyun Song
Judge Erkki Kourula

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

Public Document

**Preliminary Response to the Victims' Applications for Participation and
Application for Extension of Time Following the Late Registration of the Defence
Appeal of Pre-Trial Chamber II's Decision of 14 March 2008**

Source: Ms Michelyne C. St-Laurent, Ad Hoc Counsel for the Defence

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Counsel for the Defence

Ms Michelyne C. St-Laurent

Legal Representatives of the Victims

Ms Paolina Massidda,

Legal Representative of Victim

a/0119/06

Ms Adesola Adeboyejo,

Legal Representative of Victims

a/0090/06, a/0098/06, a/0112/06,

a/0118/06 and a/0122/06

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**

Other

PROCEDURAL BACKGROUND

1. On 25 March 2008, Ad Hoc Counsel for the Defence filed a Defence application for leave to appeal 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*,¹ issued on 14 March 2008.²
2. On 2 June 2008, the Honourable Single Judge rendered his *Decision on the Defence Application for Leave to Appeal the 14 March 2008 Decision on Victims' Applications for Participation*.³
3. On 16 June 2008, Ad Hoc Counsel for the Defence filed a "Defence Appeal of Pre-Trial Chamber II's Decision of 14 March 2008 on Victim Participation" in relation to the Situation⁴ and the Case;⁵ however, this appeal was not registered by the Registry of the Court.
4. On 20 June 2008, the Office of Public Counsel for Victims (OPCV) filed an application entitled "Request of the victims a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06 for participation in the interlocutory appeal lodged by the Defence against the Decision of the Single Judge of Pre-Trial Chamber II dated 14 March 2008".⁶
5. For the purposes of her application, Ad Hoc Counsel for the Defence does not consider it necessary to list all the proceedings.

¹ ICC-02/04-125 and ICC-02/04-01/05-282.

² ICC-02/04-128-tENG and ICC-02/04-01/05-285-tENG.

³ ICC-02/04-139 and ICC-02/04-01/05-296.

⁴ ICC-02/04-142-tENG.

⁵ ICC-02/04-01/05-298-tENG.

⁶ ICC-02/04-01/05-302.

AS TO THE LAW

6. Considering that, pursuant to regulation 65(4) of the *Regulations of the Court*, the decision of Pre-Trial Chamber II of 2 June 2008 granting leave to appeal having been notified on 3 June 2008, the time limit for Ad Hoc Counsel to file her appeal would expire on 16 June 2008 at 16.00
7. Considering that pursuant to regulation 33(2) of the *Regulations of the Court*, “[d]ocuments shall be filed with the Registry between 9am and 4pm The Hague time or the time of such other place as designated by the Registrar”.
8. Considering that pursuant to regulation 24(5) of the *Regulations of the Registry*, under which “[i]f filed electronically, documents, material, orders and decisions shall be sent to the following email address: judoc@icc-cpi.int”, and in accordance with the requisite time limits, Ad Hoc Counsel for the Defence submitted her appeal to the Registry of the Court by e-mail on 16 June at 12.49, as confirmed by a copy of the e-mail attached to this document (Annex 1).
9. Considering that the appeals were not registered, despite the fact that the time limit prescribed in accordance with regulation 65(4) of the *Regulations of the Court* expired on 16 June.
10. Considering that, in an e-mail received by Ad Hoc Counsel for the Defence at 14.47 on 16 June 2008 (Annex 2), the Court Management Section informed her that it had not registered the appeal it had received, on the grounds that “only documents satisfying the requirements prescribed by Regulations 23, 26 and 36 of the *Regulations of the Court* will be registered in the relevant record. The Court Management Section shall not have any input into formatting, editing and any other alterations to documents received for registration”, and requested Ad Hoc Counsel for the Defence to send her appeal in the appropriate format, without specifying which format type was required.

11. Considering that Ad Hoc Counsel was convinced that everything had indeed been properly received, given that the documents were in the same format as those sent previously, and she read this e-mail around 17.00 hours.
12. Considering that, after reviewing her document, Ad Hoc Counsel re-sent her appeal at 19.52 that same day.
13. Considering that, on 17 June at 12.13, Ad Hoc Counsel was astonished to receive a message from the Registry informing her once again that registration of the document had been refused on the ground that it had to be sent in “pdf” format (Annex 3).
14. Considering that Ad Hoc Counsel worked on her computer for hours to convert the documents to “pdf” format.
15. Considering that Ad Hoc Counsel is in Arusha and that it was impossible for her, after several hours of trying on her computer, to convert the said documents. She first sought assistance from an assistant, who tried in vain for several hours to convert the documents on her own computer.
16. Considering that, towards the end of the evening of 17 June, Ad Hoc Counsel subsequently sought assistance from other assistants from other teams of the ICTR.
17. Considering that finally, around 2 o'clock in the morning of 18 June, with the help of another computer and an assistant, the documents were converted to “pdf” format.
18. Considering that on 18 June, starting at 6.59 in the morning (Annex 4), Ad Hoc Counsel made several attempts to send the said documents to the Section until 13.32 (Annex 5). It should be noted that the said documents were not reaching the sender.

19. Considering that the documents were finally registered by the Registry in “pdf” format on 18 June at 13.32.
20. Considering that Ad Hoc Counsel for the Defence acted in good faith in sending her applications in “Word” format.
21. Considering that none of the regulations to which the Court Management Section referred and, generally, no provisions of the *Rome Statute*, the *Rules of Procedure and Evidence*, the *Regulations of the Court* or the *Regulations of the Registry* make any mention of the electronic format in which participants must send their documents to the Registry.
22. Considering, moreover, that all of the applications and observations which Ad Hoc Counsel for the Defence has filed with the Registry to date have been sent in “Word” format and that they have been accepted systematically.
23. Considering that Ad Hoc Counsel for the Defence has never been told when sending previous documents, or subsequently, that the “Word” format was not appropriate.
24. Considering that Ad Hoc Counsel for the Defence therefore had no way of knowing that the required format was “pdf”.
25. Considering that under regulation 35(2) of the *Regulations of the Court* “[t]he Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside of his or her control”.

26. Considering that Ad Hoc Counsel for the Defence did everything in her power to file her appeal within the prescribed time limits and demonstrated good faith throughout the steps she took to send the documents to the Registry.

27. Considering that, since all of the above reasons were outside of her control,⁷ Ad Hoc Counsel for the Defence was unable to submit her appeal within the prescribed time limit, since she had no way of knowing that documents sent electronically to the Registry must be in “pdf” format.

28. Considering that Ad Hoc Counsel for the Defence is prejudiced due to this late registration, since her appeal might not be taken into consideration.

29. Considering that this situation could, in particular, be prejudicial to all of the parties to the proceedings, who would therefore be unable to submit their views on the substance of the appeal.

30. Considering that Ad Hoc Counsel for the Defence would like to subsequently submit her response to the victims’ applications for participation, within the time limits that will be prescribed by the Appeals Chamber in a scheduling order for the filing of all applications for victim participation and the responses thereto of Ad Hoc Counsel for the Defence and the Prosecutor.⁸ Ad Hoc Counsel for the Defence will

⁷ ICC-01/04-472, Situation in the DRC, *Decision on the “Demande de prorogation de délai suite à l’enregistrement tardif des ‘Observations des représentants légaux de VPRS1 à 6 et de a/0071/06 sur la ‘Notification by the board of Directors of the trust Fund for victims’ ”*, 26 February 2008.

⁸ See, for example, ICC-02/05-133, 29 February 2008, Situation in Darfur, *Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the response by the OPCD and the Prosecutor*; ICC-01/04-450, 11-06-2008, Situation in the DRC, *Decision of the Appeals Chamber on the OPCV’s request for clarification and the legal representatives’ request for extension of time and Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor*; ICC-01/04-450, 13 February 2008, Situation in the DRC, *Decision of the Appeals Chamber on the OPCV’s request for clarification and the legal representative’s request for extension of time and Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the response thereto by the OPCD and the Prosecutor*; ICC-01/04-481, 29 February 2008, Situation in the DRC, *Order of the Appeals Chamber on the date of filing of applications for participation and on the time of the filing of the responses thereto by the OPCD and the Prosecutor*.

then file her submissions on the right of victims to participate in the appeal and on the modalities of their participation.⁹

CONCLUSION

31. Accordingly, Ad Hoc Counsel for the Defence respectfully requests the Appeals Chamber to:

GRANT this application;

EXTEND the time limit for receiving the “Defence Appeal of Pre-Trial Chamber II’s Decision of 14 March 2008 on Victim Participation” to 18 June 2008, the day on which the appeal was notified, pursuant to regulation 35(2) of the *Regulations of the Court*.

Annex 1: e-mail of 16 June 2008 sent at 12.49 by Ad Hoc Counsel for the Defence

Annex 2: e-mail of 16 June 2008 sent at 14.47 by the Court Management Section of the Registry

Annex 3: e-mail of 17 June 2008 sent at 12.13 by Ad Hoc Counsel for the Defence

Annex 4: e-mail of 18 June 2008 sent at 06.59 by the Court Management Section of the Registry

Annex 5: e-mail exchange of 18 June 2008 between Ad Hoc Counsel and the Registry

NB: The times recorded on the e-mails are Québec time, that is, 6 hours behind The Hague time. The times to which Ad Hoc Counsel refers in this application are The Hague time.

⁹ See, for example, ICC-01/04-489, 20 March 2008, Situation in the DRC, “OPCD Response to the submissions of the Legal Representatives”; ICC-01/04-484, 4 March 2008, Situation in the DRC, “OPCD Response to the submissions of the Legal Representatives”; ICC-01/04-01/06-1264-tENG, 7 April 2008, *The Prosecutor v. Thomas Lubanga Dyilo*, “Defence Response to the “Order of the Appeals Chamber on the Date of Filing of Applications for Participation by Victims and on the Time of Filing of the Responses thereto by the Prosecutor and the Defence” dated 20 March 2008; ICC-01/04-488, 20 March 2008, Situation in the DRC, “Prosecution’s Consolidated Response to Applications by Victims to Participate in the Appeals by the Prosecution and OPCD against the 24 December 2007 Decision on the Victims’ Applications for Participation in the Proceedings”.

Respectfully submitted,

_____ **[signed]**
Ms Michelyne C. St-Laurent
Ad Hoc Counsel for the Defence

Dated this 23 June 2008

At Arusha, Tanzania