

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05 OA2

Date: 22 July 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

**Decision on the application by the ad hoc Counsel for the Defence for an extension of
time**



Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

The Ad hoc Counsel for the Defence

Ms Michelyne C. St-Laurent

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda, Principal Counsel
Ms Adesola Adeboyejo

REGISTRY

Registrar

Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of the Defence against the decision of the Single Judge of Pre-Trial Chamber II entitled “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” dated 14 March 2008 (ICC-02/04-01/05-282),

Having before it the “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” of 23 June 2008 (ICC-02/04-01/05-303-tENG) (hereinafter: “Defence Application for an Extension of Time”),

Issues the following

DECISION

The time limit for the filing of the Defence document in support of the appeal is extended to 18 June 2008 and the “Defence Appeal of Pre-Trial Chamber II’s Decision of 14 March 2008 on Victim Participation” registered on 18 June 2008 (ICC-02/04-01/05-298-tENG) is accepted.

REASONS

1. On 2 June 2008, the Single Judge of Pre-Trial Chamber II rendered his “Decision on the Defence Application for Leave to Appeal the 14 March 2008 Decision on Victims’ Applications for Participation”¹. This decision was received by the Registry on 2 June 2008 at 16h45 and notified to the participants on 3 June 2008 at 9h23.

¹ ICC-02/04-01/05-296.

2. On 18 June 2008, the ad hoc Counsel for the Defence (hereinafter: “ad hoc Counsel”) filed the “Defence Appeal of Pre-Trial Chamber II’s Decision of 14 March 2008 on Victim Participation”² (hereinafter: “Defence Document in Support of the Appeal”). In accordance with regulations 65 (4) and 33 of the Regulations of the Court this document was due on 16 June 2008 at 16h00.
3. On 20 June 2008, the Office of Public Counsel for Victims (hereinafter: “OPCV”) filed the “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”³ in which they make the point that the Defence Document in Support of the Appeal was filed “two days after the expiration of the time limit prescribed under regulation 65 (4) of the Regulations of the Court”.⁴
4. On 23 June 2008, the ad hoc Counsel filed the Defence Application for an Extension of Time in which she submits that the Defence Document in Support of the Appeal was sent via email to the Registry on 16 June 2008 at 12h49.⁵ However, the document was not registered by Court Management Services (hereinafter: “CMS”) due to the electronic format of the document.⁶ Further, in support of her application for an extension of time, she submits that upon realising that the document had not been registered she “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.”⁷ According to ad hoc counsel, the central problem revolved around the fact that she had not sent her documents in “pdf” format.⁸ Ad hoc counsel states that she was not aware that documents had to be sent in this format and that she had acted in good faith in sending her applications in “Word” format.⁹ As soon as she discovered that there was a problem with the format, ad hoc counsel sets

² ICC-02/04-01/05-298-tENG.

³ ICC-02/04-01/05-302.

⁴ Ibid, at paragraph 11.

⁵ ICC-02/04-01/05-303-tENG, at paragraph 8.

⁶ Ibid, at paragraph 10.

⁷ Ibid, at paragraphs 14 to 26.

⁸ Ibid at paragraphs 10 to 13.

⁹ Ibid at paragraphs 20 to 24.

out various steps that she took between the evening of 16 June 2008 and the filing of the document on 18 June 2008, including considerable technical difficulties that she had in converting the document to “pdf” format and the amount of time that this took her.¹⁰

5. On 30 June 2008, the Prosecutor filed the “Prosecution Response to Defence Appeal of Pre-Trial Chamber II’s Decision of 14 March 2008 on Victim Participation”¹¹ in which it is stated that he “takes no position on whether or not the Defence Appeal should be rejected due to its delayed filing [...]”¹²
6. Regulation 35 (2), second sentence, of the Regulations of the Court provides:

“[a]fter 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 his or her control.”
7. In the present circumstances, the Appeals Chamber notes that neither the Regulations of the Court nor the Regulations of the Registry stipulate that documents filed by participants must be in “pdf” format. The Appeals Chamber further notes that the ad hoc Counsel submitted the Defence Document in Support of the Appeal, within the prescribed time limit, in a “Word” format thereby believing that she had complied with the relevant time limit. Upon being informed by CMS¹³ that a “pdf” version of her document was required, ad hoc Counsel undertook, as noted in paragraph 4 above, to file the document in the said format which was later accepted.
8. The Appeals Chamber accepts that in all of the above circumstances the fact that the document was not originally accepted and was late was beyond her control. That being the case the time limit is extended retrospectively and the Defence Document in Support of the Appeal is accepted.

¹⁰ Ibid at paragraphs 11 to 19.

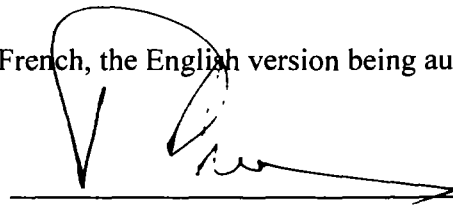
¹¹ ICC-02/04-01/05-304.

¹² Ibid, at paragraph 11.

¹³ See ICC-02/04-01/05-303-tENG-Anx3.



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



Judge Philippe Kirsch
On behalf of the Presiding Judge

Dated this 22nd day of July 2008

At The Hague, The Netherlands