

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05
Date: 17 September 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single Judge

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

Public Document

Decision on legal representation, appointment of counsel for the defence, criteria for redactions of applications for participation, and submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07

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

Ms Fatou Bensouda

Counsel for the Defence

Mr Michiel Pestman

Legal Representatives of the Victims

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**

Ms Fiona McKay

Other

I, Judge Mauro Politi, judge at the International Criminal Court (the “Court”);

NOTING the “Decision designating a Single Judge on victims’ issues”, dated 22 November 2006,¹ whereby Pre-Trial Chamber II (the “Chamber”) designated Judge Mauro Politi as Single Judge responsible for all issues arising in connection with victims’ participation in the proceedings in respect of the situation in Uganda (the “Situation”) and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (the “Case”);

NOTING the reports filed by the Registrar in accordance with rule 89(1) of the Rules of Procedure and Evidence (the “Rules”) and regulation 86(5) of the Regulations of the Court (the “Regulations”) in the record of the Situation on 12 April 2007² and 25 June 2007,³ and in the record of the Case on 13 April 2007⁴ (the “Registrar’s Reports”), and the applications for participation annexed thereto;

NOTING the “Corrigendum to Report to Pre-Trial Chamber II on applications a/0014/07 to a/0020/07 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court”, filed on 24 April 2007 in the record of the Situation⁵ and in the record of the Case;⁶

¹ ICC-02/04-01/05-130.

² Report to Pre-Trial Chamber II on applications a/0014/07 to a/0020/07 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court (ICC-02/04-92-Conf-Exp).

³ Report to Pre-Trial Chamber II on applications a/0076/07 to a/0125/07 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court (ICC-02/04-97-Conf-Exp).

⁴ Report to Pre-Trial Chamber II on applications a/0014/07 to a/0020/07 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court (ICC-02/04-01/05-241-Conf-Exp).

⁵ ICC-02/04-92-Conf-Exp-Corr.

⁶ ICC-02/04-01/05-241-Conf-Exp-Corr.

NOTING the Single Judge's "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", filed on 1 February 2007 in the record of the Case (the "1 February 2007 Decision");⁷

NOTING articles 57(3) (c) and 68(1), (3) of the Statute of the Court (the "Statute"), rule 89(1) of the Rules, and regulations 76(1) and 81(4) of the Regulations;

CONSIDERING that, in the 1 February 2007 Decision, the Single Judge determined that the "*only feasible and appropriate protective measures*" at the stage of assessment of the applications for participation are redactions of those applications, irrespective of receiving a specific request to take such measures;⁸

CONSIDERING that, in the same Decision, the Single Judge determined that the main principle governing redactions is the need to prevent the identification of the applicants,⁹ and accordingly listed several information to be redacted in the applications for participation;

CONSIDERING that the information listed in the 1 February 2007 Decision include *inter alia* the following elements: (i) the applicant's place of birth; (ii) languages spoken and understood by the applicant; (iii) the applicant's ethnic group/tribe and religion; (iv) the applicant's occupation; (v) the applicant's marital status; (vi) the existence and number, if any, of the applicants' dependants; and (vii) the specific features of the harm, damage, loss or injury suffered (the "Elements");¹⁰

⁷ ICC-02/04-01/05-134.

⁸ *Ibid*, paras. 20, 22.

⁹ *Ibid*, para. 21.

¹⁰ *Ibid*

CONSIDERING that, as stated by Pre-Trial Chamber I, the *“scope of redactions cannot exceed what is strictly necessary in light of the security situation and must allow for a meaningful exercise by the Prosecution and the Defence of their right to reply to the application for participation”*, pursuant to rule 89(1) of the Rules;¹¹

CONSIDERING further that one of the fundamental principles governing the exercise of the Chamber’s functions is to ensure the fairness and effectiveness of the proceedings, and that practice in the area of victims’ participation has demonstrated that the redaction of one or more of the Elements does not always appear necessary;

CONSIDERING therefore, without prejudice to the core principles governing redactions set out in the 1 February 2007 Decision, that the possibility of redacting one or more of the Elements in applications for participation received by the Chamber shall depend on a case-by-case assessment of relevant factual circumstances;

NOTING that 57 applications for participation in the Situation and in the Case have been filed with the Chamber as annexes to the Registrar’s Reports (the “Applications”);

NOTING that rule 89(1) of the Rules requires the transmission of applications for participation to the Prosecutor and the Defence for the purpose of receiving their observations, prior to the issuance of a decision on the merits granting or rejecting the status of victim to any of the applicants;

¹¹ ICC-01/04-147, p. 3; ICC-01/04-228, pp.4-5; ICC-01/04-01/06-107, p. 3.

CONSIDERING that, pursuant to the 1 February 2007 Decision, the applications for participation were transmitted in a redacted form, given the instability of the security situation in Uganda;¹²

CONSIDERING that to date all persons against whom warrants of arrest have been issued remain at large, allegedly continuing to carry out acts of violence, and thus to pose a threat to the applicants and their families;

CONSIDERING that articles 68(1) and 57(3)(c) of the Statute mandate the Court to take appropriate measures to protect *inter alia* the safety, privacy, physical and physiological well-being of the victims in a manner that is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial;

CONSIDERING that the last sentence of article 68(1) of the Statute embodies the principle of proportionality, and therefore measures taken pursuant to this provision may restrict the rights of the suspect or accused only to the extent necessary;¹³

CONSIDERING that, in light of the nature, purpose and circumstances of the current proceedings, redacting the Applications remains the appropriate measure to be taken, which on the other hand does not unnecessarily restrict the rights of the Defence;

CONSIDERING that the Single Judge continues to take the view that the Applications must be transmitted to both parties (the Prosecutor and the Defence) in

¹² ICC-02/04-01/05-134, para. 20.

¹³ ICC-01/04-01/06-773, para. 34; ICC-02/04-01/05-134, para. 24.

a redacted form, in light of the security concerns still arising from the situation in the field and the need to preserve the equality of arms among the parties;¹⁴

CONSIDERING therefore appropriate that the Registrar transmits a redacted copy of the Applications to both the Prosecutor and the Defence after having expunged any information that could lead to the identification of the applicant victims in light of the principles established in the 1 February 2007 Decision, as partially modified in the present decision;

CONSIDERING also that, at this stage, where none of the suspects is yet represented by a defence counsel, the Single Judge deems it in the interests of justice to appoint, following consultations with the Registrar and in accordance with regulation 76(1) of the Regulations, a counsel for the defence, entrusted with responsibility for all issues related to the Applications, including in particular the right to receive a copy of those Applications and to submit observations thereon;

CONSIDERING that, since thus far none of the applicants can rely on a legal representative, the need to ensure the fairness of the proceedings makes it appropriate and sufficient for the applicants, under the present circumstances, to benefit from the support and assistance provided by the Office of Public Counsel for Victims (OPCV) pursuant to regulation 81(4) of the Regulations;¹⁵

FOR THESE REASONS, HEREBY

APPOINT Mr Michiel Pestman as counsel for the Defence, entrusted with representing and protecting the interests of the Defence within the context and for

¹⁴ ICC-02/04-01/05-134, para. 25.

¹⁵ *Ibid*, para. 13.

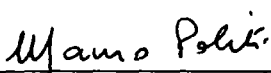
the purposes of the proceedings on the Applications for participation in the Situation and in the Case, pursuant to rule 89 of the Rules;

ORDER the Registrar to transmit the Applications to the OPCV by Friday 26 September 2008, for the purpose of providing the necessary support and assistance to the applicants;

ORDER the Registrar to provide the Prosecutor and the counsel for the Defence, by Friday 26 September 2008 with a redacted copy of the Applications, in accordance with this decision;

GRANT the Prosecutor and the Defence until Friday 10 October 2008 to submit their observations on the Applications.

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



Judge Mauro Politi
Single Judge

Dated this Wednesday 17 September 2008

At The Hague

The Netherlands