

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/05
Date: 17 October 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 and DOMINIC
ONGWEN***

Public

**Prosecution's Observations on the Applications for Participation in the
Proceedings of Applicants a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Mr Michiel Pestman

Legal Representatives of Victims

Legal Representatives of 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

The Office of the Prosecutor ("Prosecution") respectfully submits its observations on the applications for participation in the situation in Uganda ("Situation") and case of *The Prosecutor v. Joseph KONY, Vincent OTTI, Okot ODHIAMBO and Dominic ONGWEN* ("Case") of Applicants a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07 ("Applicants"), pursuant to Rule 89(1) of the Rules of Procedure and Evidence ("Rules").

Background

1. On 17 September 2008, the Single Judge requested the Prosecution to file observations regarding 57 applications for participation in the proceedings.¹
2. To assess whether the Applicants should be granted the status of victim in the context of the Situation, the Prosecution has considered, in accordance with the approach of the Single Judge,² whether
 - a) the Applicant is a natural person;
 - b) who has suffered harm;
 - c) the crime from which the harm resulted falls within the jurisdiction of the Court; and
 - d) there is a reasonably direct causal link between the crime and the harm suffered by him or her.
3. Similarly, when assessing whether the Applicants should be granted the status of victim in the context of the Case, the Prosecution has followed the approach of the Single Judge. Therefore, firstly, the Prosecution has considered the requirements set out in paragraph 2 above. Secondly, it has considered whether the events described by each Applicant constitute a crime that is the

¹ ICC-02/04-154 ; ICC-02/04-01/05-312.

² ICC-02/04-125 ; ICC-02/04-01/05-282, pp. 27-68.

subject of a warrant of arrest and whether the harm suffered by the Applicant is a result of the crime.³

4. The Prosecution has examined the identification documentation provided by the Applicants in light of the list of documents which would be accepted as proof of identity by the Single Judge.⁴
5. As stipulated by the Single Judge,⁵ the Prosecution considered whether the person acting on behalf of an alleged victim (on the basis of kinship, guardianship or legal guardianship) has provided sufficient evidence of her/his identity and of the link existing between her/him and the child applying for participation. Similarly, the Prosecution has considered whether sufficient evidence is provided on the link between a disabled Applicant and the person acting on his or her behalf (legal guardianship).
6. Where Applicants seem to refer to incidents that form part of the situation, but do not feature in the warrants of arrest issued by the Court, the Prosecution has also considered, in accordance with the approach of the Single Judge,⁶ whether the applications referred to other sources such as the United Nations or Non-Governmental Organizations to corroborate the incidents.

Limited scope of this reply

7. Where the unredacted sections of the applications provide sufficient information, the Prosecution has drawn conclusions based on the same and set them out in this filing. However, the Prosecution respectfully submits that it is

³ ICC-02/04-125; ICC-02/04-01/05-282, pp. 11-26.

⁴ ICC-02/04-125; ICC-02/04-01/05-282, pp. 8-9.

⁵ *Ibid.*, p. 9. The following documents will be accepted as proof of such a link: (i) "short" birth certificate or "long" birth certificate, (ii) birth notification card, (iii) baptism card, (iv) letter issued by a Rehabilitation Centre, (v) letter from a local Council, (vi) affidavit sworn before a Magistrate or Commissioner of Oaths.

⁶ *Ibid.*, pp. 10-11.

not in a position to file a fully informed reply under Rule 89(1), due to the protective measure imposed by the 17 September 2008 Decision, namely the significant redaction of the applications provided to the Prosecution.⁷

FACTUAL ANALYSIS OF THE APPLICATIONS - SITUATION

Applicants who satisfy all the requirements in order to be granted the procedural status of victim in the context of the situation

8. Applicants a/0018/07, a/0076/07 to a/0078/07, a/0080/07 to a/0082/07, a/0084/07 to a/0087/07, a/0090/07 to a/0103/07, a/0105/07, a/0106/07, a/0108/07 to a/0113/07, a/0115/07 to a/0121/07 and a/0123/07 to a/0125/07 should be granted the procedural status of victims in the situation, since they fulfil all the criteria as set out in rule 85(a) of the Rules, as elaborated above.

Applicants who should be requested to provide the Court with additional information and/or rectify the information contained in their applications in order to be granted the procedural status of victim in the context of the situation

9. Applicants a/0017/07, a/0020/07, a/0079/07, a/0083/07, a/0088/07, a/0089/07, a/0104/07, a/0107/07, a/0114/07 and a/0122/07 satisfy the four criteria. However, they should be requested to provide the Court with additional information and/or to rectify the information contained in their applications, as detailed below:

- a/0017/07 – Evidence of the relationship between the alleged victim and the person making the application on behalf of the alleged victim has not been provided;

⁷ The Prosecution raised the same concerns regarding the previous set of applications for participation provided to it. *See* ICC-02/04-01/05-214 at paragraph 5.

- a/0020/07 – Evidence of the relationship between the alleged victim and the person making the application on behalf of the alleged victim has not been provided. Additionally, the application does not distinguish between the harm suffered by the alleged victim and the harm suffered by the person acting on behalf of the alleged victim;
- a/0079/07 - Evidence has not been provided regarding 1) the relationship between the alleged victim and the person making the application on behalf of the alleged victim 2) the identity of the person making the application on behalf of the alleged victim;
- a/0083/07 – The identification document provided relates to a male but the application states that the Applicant is a single female;
- a/0088/07 – Evidence confirming the identity of the alleged victim has not been provided;
- a/0089/07 – Evidence of the relationship between the alleged victim and the person making the application on behalf of the alleged victim has not been provided;
- a/0104/07 – Evidence confirming the identity of the alleged victim has not been provided;
- a/0107/07 – The identification document provided relates to a female Applicant but the application states that the Applicant is a single male;
- a/0114/07 - The application does not provide information about the harm suffered by the Applicant as a result of her abduction;
- a/0122/07 – Evidence has not been provided regarding 1) the relationship between the alleged victim and the person making the application on behalf of the alleged victim 2) the identity of the person making the application on behalf of the alleged victim 3) the identity of the alleged victim.

Applicants regarding whom insufficient information is available to the Prosecution due to redaction of applications

10. The Prosecution has insufficient information to determine whether Applicants a/0014/07, a/0015/07, a/0016/07 and a/0019/07 should be granted the procedural status of victim in the context of the Situation, since the extent of the redactions are such that it is not possible to determine whether the incidents described fall within the temporal jurisdiction of the Court.⁸

FACTUAL ANALYSIS OF THE APPLICATIONS – CASE

Applicants who satisfy all the requirements in order to be granted the procedural status of victim in the context of the Case

11. If the exact date of the attack described by the applicant matches the date of attack on the same location, as described in the arrest warrants issued by the Court, Applicant a/0098/07 should be granted the procedural status of victim in the context of the Case, since all the criteria set out above are fulfilled.

⁸ If the incidents described in these applications did occur on or after 1st July 2002, the Applicants meet the criteria for being granted the procedural status of victim in the Situation, subject to providing the Court with additional information and/or rectifying the information contained in their applications as follows:

a/0014/07: 1) Evidence of the relationship between the alleged victim and the person making the application on behalf of the alleged victim has not been provided 2) The application confuses harm suffered by the representative and the alleged victim;

a/0015/07: 1) Evidence of the relationship between the alleged victim and the person making the application on behalf of the alleged victim has not been provided 2) The application confuses harm suffered by the representative and the alleged victim;

a/0016/07: 1) Evidence of the relationship between the alleged victim and the person making the application on behalf of the alleged victim has not been provided 2) The application confuses harm suffered by the representative and the alleged victim;

a/0019/07: 1) Evidence of the relationship between the alleged victim and the person making the application on behalf of the alleged victim has not been provided 2) The representative refers to the Applicant as his niece, but on page 1 of the application, the alleged victim is stated to be male.

Applicants regarding whom insufficient information is available to the Prosecution due to redaction of applications

12. The Prosecution has insufficient information to determine whether Applicants a/0018/07, a/0076/07 to a/0078/07, a/0080/07 to a/0087/07, a/0090/07 to a/0097/07, a/0099/07 to a/0103/07, a/0105/07, a/0106/07, a/0108/07, a/0110/07 to a/0113/07, a/0119/07, a/0120/07, a/0123/07 and a/0125/07 should be granted the procedural status of victim in the context of the Case, due to the redaction of the applications.

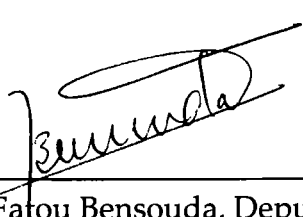
Conclusion

13. The Prosecution submits that:

- if the exact date of the attack described by the applicant matches the date of attack on the same location, as described in the arrest warrants issued by the Court, Applicant a/0098/07 should be granted the procedural status of victim in the context of the Case, since all the criteria set out above are fulfilled.
- Applicants a/0018/07, a/0076/07 to a/0078/07, a/0080/07 to a/0082/07, a/0084/07 to a/0087/07, a/0090/07 to a/0103/07, a/0105/07, a/0106/07, a/0108/07 to a/0113/07, a/0115/07 to a/0121/07 and a/0123/07 to a/0125/07 should be granted the procedural status of victim in the context of the Situation, subject to the caveat that if these applications refer to crimes unrelated to the Case, the claims made should be corroborated by other sources such as the United Nations or Non-Governmental Organizations;⁹

⁹ See para. 6 above.

- Applicants a/0017/07, a/0020/07, a/0079/07, a/0083/07, a/0088/07, a/0089/07, a/0104/07, a/0107/07, a/0114/07, and a/0122/07 and should be requested to provide the Court with additional information and/or rectification to the documents contained in their applications, before they are granted the status of victims in the context of the Situation;
- owing to the redaction of applications, it has insufficient information to determine whether Applicants a/0014/07, a/0015/07, a/0016/07 and a/0019/07 should be granted the procedural status of victim in the context of the Situation;
- owing to the redaction of applications, it has insufficient information to determine whether Applicants a/0018/07, a/0076/07 to a/0078/07, a/0080/07 to a/0087/07, a/0090/07 to a/0097/07, a/0099/07 to a/0103/07, a/0105/07, a/0106/07, a/0108/07, a/0110/07 to a/0113/07, a/0119/07, a/0120/07, a/0123/07 and a/0125/07 should be granted the procedural status of victim in the context of the Case.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 17th day of October 2008

At The Hague, The Netherlands