

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05
Date: 21 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

Request of the OPCV for leave to file observations on the "Submissions of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07" filed by the *ad hoc* Counsel for the Defence

Source: Office of Public Counsel for Victims

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

Ms Fatou Bensouda

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**

Other

I. Procedural background

1. On 17 September 2008, the Single Judge of Pre-Trial Chamber II issued the “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”¹ (the “Decision”), requesting the Office of Public Counsel for Victims (the “OPCV” or the “Office”) to provide the necessary support and assistance to the applicants, pursuant to regulation 81(4) of the Regulations of the Court.

2. On 24 September 2008, the *ad hoc* Counsel for the Defence filed a “Request for leave to appeal the Decisions 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 and Request that the appeal have suspensive effect in accordance with Article 83(3) of the Statute”².

3. On 7 October 2008, the Single Judge issued the “Decision on the Defence Request for leave to appeal dated 24 September 2008 and extension of time-limit for submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07”³, rejecting the *ad hoc* Counsel’s request for leave to appeal the Decision and establishing a new deadline for the Prosecutor and the Defence to

¹ See the “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”, 17 September 2008, No. ICC-02/04-154 and ICC-02/04-01/05-312, p. 7.

² See the “Request for leave to appeal the Decisions 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 and Request that the appeal have suspensive effect in accordance with Article 83(3) of the Statute”, 24 September 2008, No. ICC-02/04-155 and No. ICC-02/04-01/05-313.

³ See the “Decision on the Defence Request for leave to appeal dated 24 September 2008 and extension of time-limit for submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07”, 7 October 2008, No. ICC-02/04-158 and ICC-02/04-01/05-316.

submit their observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07.

4. On 17 October 2008, the Office of the Prosecutor filed the "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"⁴.

5. On 20 October 2008, the *ad hoc* Counsel for the Defence filed the "Submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07" (the "*ad hoc* Counsel Submissions")⁵.

II. Legal basis for the Office to request leave to file observations

6. Pursuant to regulation 81(4) of the Regulations of the Court, "[t]he Office of Public Counsel for victims shall provide support and assistance to [...] victims, including, where appropriate [...] (b) appearing before a Chamber in respect of specific issues."

7. In interpreting regulation 81 of the Regulations of the Court, the Single Judge of Pre-Trial Chamber II, in his Decision dated 1st February 2007, entrusted the Office with the task of providing support and assistance to the victims requesting to participate in the situation in Uganda and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen* when "necessary and

⁴ See the "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", 17 October 2008, No. ICC-02/04-159 and ICC-02/04-01/05-317.

⁵ See the "Submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07", No. ICC-02/04-160 and No. ICC-02/04-01/05-318.

appropriate at this stage of the proceedings”⁶. The Single Judge reiterated his reasoning in his decisions dated of 10 August 2007⁷ and of 17 September 2008⁸.

8. In the decision dated 1st February 2007, the Single Judge recognised that *“the mandate vested in the OPCV by the Regulations [of the Court] also encompasses forms and methods of assistance to victims which fall short of legal representation”* and, therefore, it deemed it appropriate for victims to benefit from any form of support and assistance that may be offered by the OPCV⁹.

9. The decisions of the Single Judge entails a margin of appreciation for the Office in evaluating when its intervention may be necessary and/or appropriate at the stage of the procedure which precedes the decision on the status of the victims in order to provide them with support and assistance.

10. Incidentally, the Office notes that Trial Chamber I, in its decision dated 6 March 2008, interpreted regulation 81(4) of the Regulations of the Court as implying that *“the opportunity for the Office to appear before the Chamber in respect of specific issues can be initiated by: [...] the Office, following an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability)”*¹⁰.

⁶ See the “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”, 1st February 2007, No. ICC-02/04-01/05-134, par. 13, as well as the operative part of the said Decision.

⁷ See the “Decision on victims’ 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”, No. ICC-02/04-101, 10 August 2007, p. 62.

⁸ See ICC-02/04-154 and ICC-02/04-01/05-312, *supra* note 1.

⁹ See ICC-02/04-01/05-134, *supra* note 6, par. 13.

¹⁰ *Ibid.*, par. 35.

11. In his Submissions, the *ad hoc* Counsel addresses issues related to the general interpretation of the provisions concerning the participation of victims in the proceedings before the Court and therefore clearly impact on the interests of the victims the Office is assisting by virtue of the Single Judge's decision dated of 17 September 2008¹¹.

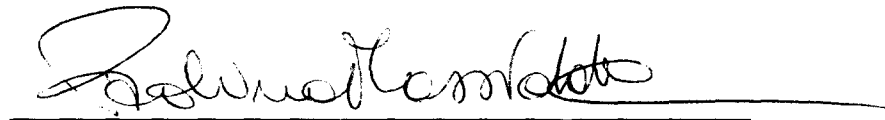
12. In the said decision, the Single Judge requested the Office, to provide support and assistance to applicants pursuant to regulation 81(4) of the Regulations of the Court. The *chapeau* of this provision clearly provides for an obligation binding upon the Office to provide, where appropriate, support and assistance to victims, *inter alia*, in appearing before the Chamber in respect of specific issues.

13. Therefore, the Office, considers it is entitled to request the Chamber leave to file observations on the *ad hoc* Counsel Submissions which have an impact on the personal interests of the victims it assists.

¹¹ See ICC-02/04-154 and ICC-02/04-01/05-312, *supra* note 1.

FOR THE FOREGOING REASONS,

The Principal Counsel of the Office respectfully requests the Single Judge to grant her leave to file observations on the *ad hoc* Counsel Submissions within a time limit to be determined by the Single Judge.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', is written over a horizontal line.

**Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims**

Dated this 21st day of October 2008

At The Hague, The Netherlands