

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05
Date: 4 November 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Presiding Judge
Judge Hans Peter Kaul
Judge Ekaterina Trendafilova

SITUATION UGANDA

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

**Public Document
URGENT**

**Application of the OPCV to extend the time limit for the submission of
observations with regards to the admissibility proceedings**

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, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

***Ad Hoc* Counsel for the Defence**

Mr Jens Dieckmann

Legal Representative of Victims

a/0119/06

Ms Paolina Massidda

Legal Representatives of Applicants

Legal Representative of Victims

a/0090/06, a/0098/06, a/0112/06, a/0118/06
and a/0122/06

Ms Adesola Adeboyejo

Unrepresented Victims

a/0094/06, a/0095/06, a/0103/06, a/0117/06,
a/120/06, a/0121/06, a/0123/06 and
a/0124/06

**Unrepresented Applicants for
Participation/Reparation**

a/0010/06, a/0064/06, a/0081/06, a/0082/06,
a/0084/06 to a/0087/06, a/0097/06,
a/0099/06, a/0100/06, a/0104/06, a/0111/06,
a/0113/06, a/0116/06, a/0127/06, a/0014/07
to a/0020/07, and a/0076/07 to a/0125/07

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

The Government of the Republic of
Uganda

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL HISTORY

1. On 10 August 2007, the Single Judge rendered 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”, granting applicants a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06 the status of victims in the case of *Prosecutor v. Kony et al.*¹ In the said decision the Single Judge requested the Office of Public Counsel for Victims (the “OPCV” or the “Office”) to continue to provide support and assistance to victims and to applicants.

2. On 15 February 2008, the Single Judge rendered the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06” appointing the Principal Counsel of the Office as legal representative of victim a/0119/06, and a Counsel from the Office, as legal representative of victims a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0122/06 in the case of *The Prosecutor v. Kony et al.*²

3. On 14 March 2008, the Single Judge issued the “Decision on victims’ application 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”, granting applicants a/0094/06, a/0095/06, a/0103/06, a/0117/06, a/0120/06, a/0121/06, a/0123/06 and a/0124/06 the status of victims in the case of *The Prosecutor v. Joseph Kony et al.*³ In the said decision the Single Judge requested the Office to continue to provide support and assistance to victims and to applicants.

¹ 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”, 10 August 2007, No. ICC-02/04-101.

² See the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06”, 15 February 2008, No. ICC-02/04-01/05-267, p. 6.

³ See the “Decision on victim's application 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/0101/06, a/0102/06 to

4. On 21 October 2008, the Chamber issued the “Decision initiating proceedings under article 19, requesting observations and appointing Counsel for the Defence”⁴ (the “Decision”), inviting “*victims who have been admitted to participate in the case or their legal representatives*”, as well as “*those applicants who have submitted applications to be admitted to participate with respect to the case or their legal representatives*”, to submit observations on the admissibility of the case by 10 November 2008.⁵

5. On 28 October 2008, the *Ad Hoc* Counsel for the Defence filed a “Request for conditional stay of proceedings”⁶ before Pre-Trial Chamber II, as well as a “Request for review of Counsel’s appointment by the Registrar in accordance with Pre-Trial Chamber’s decision of 21 October 2008 and request for conditional stay/suspension of the proceedings” before the Presidency.⁷

6. On 31 October 2008, the Pre-Trial Chamber issued the “Decision of Defence Counsel’s ‘Request for conditional stay of proceedings’”,⁸ rejecting the Defence’s request for stay or suspension of the proceedings and granting “*the Republic of Uganda, the Prosecutor, the Defence and the victims having communicated with the Court with respect to the Case until Tuesday, 18 November 2008 to submit observations in the proceedings*”.⁹

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”, 14 March 2008, No. ICC-02/04-125.

⁴ See the “Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence”, No ICC-02/04-01/05-320, 21 October 2008.

⁵ *Idem*, p. 7.

⁶ See the “Request for conditional stay of proceedings”, 28 October 2008, No. ICC-02/04-01/05-325.

⁷ See the “Request for review of Counsel’s appointment by the Registrar in accordance with Pre Trial Chamber’s Decision of 21 October 2008 and request for conditional stay/suspension of the proceedings”, 28 October 2008, No. ICC-02/04-01/05-326.

⁸ See the Decision of Defence Counsel’s ‘Request for conditional stay of proceedings’, 31 October 2008, No. ICC-02/04-01/05-328.

⁹ *Idem*, p. 9.

7. The reference in the Decision to regulations 80(1) and 80(2) of the Regulations of the Court¹⁰ seems to imply that the OPCV is mandated by the Chamber to submit observations on behalf of victims authorised to participate in the case and for whom counsel of the OPCV have been appointed by the Single Judge in its decision date 15 February 2008,¹¹ as well as on behalf of victims authorised to participate in the case whom have not yet chosen a legal representative, and on behalf of applicants who have submitted applications for participation in the case since the Office has a duty to provide them with legal assistance pursuant to the decisions of the Single Judge dated 10 August 2007¹² and 14 March 2008.¹³

8. Pursuant to regulation 35(1) of the Regulation of the Court, “[a]pplications to extend [...] any time limit [...] ordered by the Chamber shall be made in writing [...] to the Chamber seized of the matter setting out the grounds on which variation is sought”.

9. Accordingly, the Office representing victims a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06, and providing legal assistance to applicants a/0010/06, a/0064/06, a/0081/06, a/0082/06, a/0084/06 to a/0087/06, a/0094/06, a/0095/06, a/0097/06, a/0099/06, a/0100/06, a/0103/06, a/0104/06, a/0111/06, a/0113/06, a/0116/06, a/0117/06, a/120/06, a/0121/06, a/0123/06, a/0124/06, a/0127/06, a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, respectfully submits the following observations, which the Office contends meet the criteria of regulation 35(1) of the Regulations of the Court.

¹⁰ See the “Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence”, *supra* note 4, p. 5.

¹¹ See the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06”, *supra* note 2.

¹² 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”, *supra* note 1.

¹³ See the “Decision on victim’s application 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/0101/06, 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”, *supra* note 3.

10. Following the notification of the Decision, the OPCV and the Victims' Participation and Reparations Section (the "VPRS") have undertaken to cooperate in order to inform victims in accordance with rule 59 of the Rules of Procedure and Evidence and make it possible for them to effectively be able to submit their observations on the admissibility of the case.

11. In order to be able to inform victims of the admissibility issue and to explain to them the consequences of the decision by Pre-Trial Chamber II to trigger proceedings under article 19 of the Rome Statute, the Office and the VPRS have to rely on intermediaries involved in the Ugandan situation and who helped most of the victims represented or assisted by the OPCV during the process of filing their applications. Indeed, the majority of the victims participating in the case of the *Prosecutor v. Kony et al*, or requesting to participate, are not represented; they live in remote areas of the country which are difficult to reach due to the insecurity in the field; they speak different local languages and they cannot be reached by phone. As a consequence, the assistance of intermediaries who know the country and speak the languages of the victims is essential for the Office to be able to convey to the Chamber the views and concerns of victims in accordance with article 19(3) of the Rome Statute.

12. Due to the logistical difficulties related to the fact that intermediaries are located in different areas of the country, the Principal Counsel of the Office was only able to speak with them during a meeting held on Sunday 2 November 2008.

13. The intermediaries concerned are actively trying to convey the views of the victims to the OPCV, through the VPRS. However, on 2 November 2008, they all shared the same concern with the Principal Counsel. Despite their best efforts, and considering the security situation in the country as well as the logistical difficulties to reach the majority of the places where victims reside, they will not be able to enter in contact with a meaningful part of the victims before a month.

14. Furthermore, most of the victims having communicated with the Court in respect of the case *The Prosecutor v. Joseph Kony et al.* are students who are currently living far away from their usual place of residence. Given the fact that the school holidays start at the end of the first week of December, the intermediaries will only be able to reach them upon their return home following this date.

15. Accordingly, the Principal Counsel respectfully argues that the deadline established by the Pre-Trial Chamber in the context described above does not suffice for enabling victims to submit their observations on the important issue of the admissibility of the case pursuant to article 19(3) of the Rome Statute.

FOR THE FOREGOING REASONS,

The Principal Counsel of the Office respectfully requests the Pre-Trial Chamber to extend the time limit for submitting observations on the admissibility of the case until 15 December 2008 since good cause is shown.


Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Done in English

Dated this 4th day of November 2008

At The Hague (The Netherlands)