

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04 OA
Date: 10 November 2008

THE APPEALS CHAMBER

Before: Judge Georghios M. Pikis, Presiding Judge
Judge Philippe Kirsch
Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Daniel David Ntanda Nsereko

SITUATION IN UGANDA

Public Document

**Prosecution Response to Victim's Observations on the Defence Appeal against
Pre-Trial Chamber II's 14 March 2008 Decision on Victim Participation**

Source: Office of the Prosecutor

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

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**Victims Participation and Reparations
Section**

Other

Response to Victim's Observations

1. The Defence is appealing a Decision by the Pre-Trial Chamber to grant applications by victims who claim to have suffered mental harm as a result of direct injury to others, without requiring proof of the identity of the primary victim and his or her relationship to the applicant.¹ On 18 June, the Defence filed its documents in support of the appeal ("Defence Appeal").² On 30 June, the Prosecution filed its response.³
2. Victim a/0101/06 (the "Victim") filed Observations on the appeal,⁴ pursuant to an order of the Appeals Chamber.⁵
3. The Victims and the Prosecution concur that (a) certain arguments raised in the Defence Appeal go beyond the scope of the legal issue for which leave to appeal was granted,⁶ and (b) the Defence has not demonstrated any error of fact in the Decision.⁷
4. In relation to the alleged error of law, the Victim (like the Prosecution) does not oppose the appeal in principle. All agree that when a victim claims to have suffered mental harm as a result of direct harm to another, some proof may be required concerning the identity of the direct victim and his or her relationship with the applicant.⁸
5. The Prosecution also supports the Victim's submissions that this requirement must be applied flexibly,⁹ taking into account the difficulties in proving the

¹ "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", ICC-02/04-125. The same decision was filed in *Prosecutor v. Kony et al.*, ICC-02/04-01/05-282, 14 March 2008.

² ICC-02/04-142-tENG OA. The same Defence Appeal was also filed in *Prosecutor v. Kony et al.*, ICC-02/04-01/05-298-tENG OA2, 18 June 2008.

³ ICC-02/04-147 OA. The same response was filed in *Prosecutor v. Kony et al.*, ICC-02/04-01/05-304 OA2, 30 June 2008.

⁴ ICC-02/04-166 OA, 3 November 2008 ("Victim's Observations"). The same observations were filed in *Prosecutor v. Kony et al.*, ICC-02/04-01/05-331 OA2, 3 November 2008 (on behalf of victims a/0090/06, a/0098/06, a/0118/06 and a/0122/06).

⁵ ICC-02/04-164 OA, 27 October 2008. A similar decision was issued in *Prosecutor v. Kony et al.*, ICC-02/04-01/05-324 OA2, 27 October 2008 (in respect of victims a/0090/06, a/0098/06, a/0118/06 and a/0122/06).

⁶ Victim's Observations, para. 17.

⁷ Victim's Observations, para. 20.

⁸ Victim's Observations, paras. 22-23, 31.

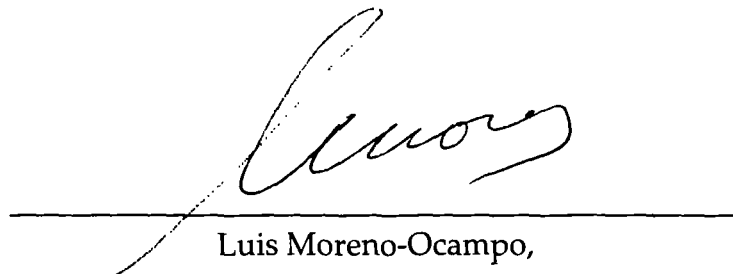
⁹ Victim's Observations, paras. 25, 27, 29, 31.

identity of a third person or the relevant relationship in a situation such as Northern Uganda.¹⁰ The Prosecution agrees that this requirement must not be applied in such a way as to *de facto* prevent all victims who have suffered mental harm of this kind from participating in proceedings.¹¹

6. Thus, there must be a case-by-case basis consideration of applications. If an applicant cannot provide proof that the Chamber appropriately considers reasonable in the circumstances, the Chamber may deny the applicant leave to participate.¹² However, this appeal does not concern the nature or degree of the requisite proof, but is limited solely to whether *some* proof is required.

Conclusion

7. For the reasons set out above, the Prosecution requests that the Appeals Chamber consider these Observations in the resolution of this appeal.



Luis Moreno-Ocampo,
Prosecutor

Dated this 10th day of November, 2008

At The Hague, The Netherlands

¹⁰ Victim's Observations, paras. 28, 30-31.

¹¹ Victim's Observations, para. 22; see also para. 31.

¹² Our view thus is somewhat different than the Victim's position that the requirement for proof may never be interpreted in a way that would be prejudicial to an applicant (para. 22).