

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 28 November 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 Document

With Annex Confidential *ex parte* only available to the OPCV

OPCV Report on legal representation of victims

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

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Ms Fatou Bensouda, Deputy Prosecutor

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Legal Representative of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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Ms Paolina Massidda

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL HISTORY

1. On 22 November 2006, Pre-Trial Chamber II designated “*judge Mauro Politi as single judge, responsible for all issues arising in connection with victims’ application for participation in the proceedings in the situation in Uganda and in the case against Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen*”¹.

2. On 1st February 2007, the Single Judge rendered 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”, by which he ordered the Office of Public Counsel for Victims (the “OPCV” or the “Office”) to provide the Applicants with any support and assistance which may be necessary or appropriate at the stage of the proceedings prior to the decision on their status in the context of the situation in Uganda and the case of *The Prosecutor v. Joseph Kony et al.*².

3. 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/0101/06 and a/0119/06 the status of victim in the context of the situation in Uganda and 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 *The Prosecutor v.*

¹ See the “Decision designating a Single Judge on Victim’s issues”, 22 November 2006, No. ICC-02/04-01/05-130, p. 3. See also the “Decision Designating a Single Judge on Victim’s Issues for the Period of 6 September to 15 October 2007”, 3 September 2007, No. ICC-02/04-01/05-255.

² 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 2006, No. ICC-02/04-01/05-134, par. 13.

*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.

4. 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, after consultation with the Office, the Principal Counsel of the OPCV as legal representative of victims a/0101/06 in the situation in Uganda and a/0119/06 both in the situation in Uganda and in the case of *The Prosecutor v. Kony et al.*, as well as a Counsel from the OPCV, as legal representative of victims a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0122/06 in the case *The Prosecutor v. Kony et al.*⁴.

5. 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.*⁵ In the said decision the Single Judge requested the Office to continue to provide support and assistance to victims and to applicants.

6. On 17 November 2008 the Single Judge issued the “Decision on victims’ applications for participation a/0066/06, a/0067/06, a/0069/06, a/0070/06, a/0083/06, a/0088/06, a/0091/06, a/0092/06, a/0102/06, a/0114/06, a/0115/06, a/0125/06 and

³ 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 and No. ICC-02/04-01/05-252.

⁴ 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-02/04-117 and No. ICC-02/04-01/05-267, p. 6.

⁵ 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”, 14 March 2008, No. ICC-02/04-125 and No. ICC-02/04-01/05-282.

a/0126/06” granting applicants a/0066/06, a/0088/06, a/0091/06, a/0092/06, a/0102/06, a/0115/06, a/0125/06, a/0126/06 the status of victims in the context of the situation in Uganda and appointing a counsel from the Office as their legal representative⁶.

7. On 21 November 2008, the Single Judge issued the “Decision on victims’ application for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07” (the “Decision”), granting applicants a/0076/07, a/0077/07, a/0078/07, a/0081/07, a/0082/07, a/0084/07, a/0085/07, a/0090/07, a/0091/07, a/0092/07, a/0093/07, a/0094/07, a/0095/07, a/0096/07, a/0097/07, a/0098/07, a/0099/07, a/0100/07, a/0101/07, a/0102/07, a/0103/07, a/0105/07, a/0106/07, a/0107/07, a/0108/07, a/0112/07 and a/0123/07 the status of victims in the case of *The Prosecutor v. Joseph Kony et al.*⁷; and granting to applicants a/0108/07, a/0115/07, a/0117/07 a/0118/07 the status of victims in the situation⁸. In the said decision the Single Judge requested the Office to continue to provide support and assistance to victims and to applicants⁹.

8. In the Decision, the Single Judge requested the OPCV to submit, no later than 28 November 2008, a Report on the feasibility of the arrangement for legal representation¹⁰.

9. Accordingly, the Principal Counsel therefore respectfully submits the following Report.

⁶ Decision on victims’ applications for participation a/0066/06, a/0067/06, a/0069/06, a/0070/06, a/0083/06, a/0088/06, a/0091/06, a/0092/06, a/0102/06, a/0114/06, a/0115/06, a/0125/06 and a/0126/06, 17 November 2008, No. ICC-02/04-170, p. 19.

⁷ See the “Decision on victims’ applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07”, 21 November 2008, No. ICC-02/04-172 and ICC-02/04-01/05-356, pp. 66-67.

⁸ *Idem*, p. 67.

⁹ *Ibid.*, p. 66.

¹⁰ *Ibid.*, paras. 281 and 282 and p. 67.

II. OBSERVATIONS RELATED TO THE MANDATE OF THE OFFICE IN THE FRAMEWORK OF THE LEGAL REPRESENTATION OF VICTIMS

10. Before addressing the feasibility of the arrangement for legal representation itself, the Principal Counsel avails herself to first explain the working procedure of the Office.

11. In accordance with regulation 80(2) of the Regulations of the Court "*The Chamber may appoint counsel from the Office of Public Counsel for victims*".

12. The resources of the Office are not unlimited and neither the Chamber nor the Registrar is in the position to know *a priori* the workload of the Office at a particular moment in time. Moreover, they are not in a position to know about the specific constraints related to the support and assistance the Office is capable of granting to victims or to legal representatives in specific situations and/or cases. Therefore, the Office respectfully submits that a consultation with the Principal Counsel is appropriate before the Chamber takes any decision or order involving the assistance or representation the OPCV may provide to victims and thanks the Single judge for this opportunity.

13. The Principal Counsel allocates staff members of the Office to each situation and case taking into account, *inter alia*, the resources available, the language(s) spoken by the staff members and by the victims who might request the assistance of the Office, the workload of the Office and the need to avoid conflicts of interests. Such determination is the responsibility of the Principal Counsel and falls under the independence of the Office as established by regulation 81(2) of the Regulations of the Court. The access of the staff members of the Office to documents and material of a situation and/or case record is also set according to the determination made by the Principal Counsel and in accordance with the tasks they are asked to perform.

14. Together with the Single Judge, the OPCV further considers that, for reasons of efficiency, its members should be appointed for group(s) of victims. As a general rule, the creation of groups can only be determined on a case by case basis. However, it is clear that, apart from the criteria already listed in article 68 of the Rome Statute, other general criteria can be applied. In particular the interest of victims (creation of group by interests), the location (creation of group by location), the crime(s) which lead to the alleged prejudice (creation of group by crimes), and the intermediaries with particular reference to NGOs dealing with victims (creation of group by intermediaries or organisation) could be criteria to be applied.

15. In relation to the specific issue underlined in the Decision, namely the feasibility of the arrangement for legal representation, the Principal Counsel shares the approach of the Single Judge that victims who have similar experiences and who provide similar statements should be jointly represented by a common legal representative¹¹.

16. In this respect, the Principal Counsel respectfully suggest that one counsel should represent victims of different attacks, while another one should represent former child soldiers¹². Indeed, the appointment of these two counsel prevents any conflict of interests from arising amongst the victims. It also enables a legal representation taking into account the specificities of the two different categories of victims. In this respect, the OPCV notes that the only victims whose status has been granted both in the context of the situation and in the case are indeed victims of attacks as well as people who were abducted by the LRA. In this respect, the Office contends that their interests would be best protected if they were to be included in the second category. Indeed the specificities of their experiences as well as the fact that they are sometimes stigmatised within their community

¹¹ See the "Decision on victims' applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07", *supra* note 7, paras. 281 and 282.

¹² This approach seems to be shared by the Single Judge in 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 4, pp. 5 and 6.

seems to call for specific interests to be taken into account in the course of their legal representation. These specific interests seem to indicate that they would be more comfortable being represented in the second category. The Principal Counsel notes that this willingness was often put forward by the victims concerned when she met with them in the course of the fulfilment of the mandate of the Office to provide support and assistance as required by the Single Judge.

17. The Principal Counsel informs the Single Judge that the resources of the Office at this point in time allow the OPCV to represent both categories of victims. However, due to organisational changes within the Office which take into account its workload, the assignments of each staff member and the turn over of staff, the Principal Counsel respectfully suggests the appointment of two counsel from the Office as specified in the annex appended to the present report and filed confidential *ex parte* only available to the OPCV due to the fact that it contains detailed information on the internal functioning of the Office.

18. Finally, the Principal Counsel would like to inform the Single Judge that the Office will also be able to carry on its task to provide support and assistance to applicants and victims as requested in the Decision.

FOR THE FOREGOING REASONS,

The Principal Counsel respectfully requests the Single Judge to take into consideration this Report and its Annex in any deliberation dealing with the fulfilment of the mandate of the OPCV in relation to the legal representation of victims in the context of the situation in Uganda and of the case of *The Prosecutor v. Kony et al.*

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 28th day of November 2008

At The Hague (The Netherlands)