

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/05
Date: 2 December 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

**Request for leave to file a response to the "Request for leave to appeal the
Decision on victim's applications for participation a/0014/07 to a/0020/07 and
a/0076/07 to a/0125/07"**

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 Michiel Pestman

Legal Representative 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 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 17 September 2008, the Single Judge 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”², appointing Mr Michiel Pestman as *ad hoc* Counsel for the Defence “entrusted with representing and protecting the interests of the Defence within the context and for the purposes of the proceedings on the Applications for participation in the Situation and in the Case, pursuant to rule 89 of the Rules”³.

3. 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.*”⁴; and granting to applicants

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, 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.

³ *Idem*, pp. 7 and 8.

⁴ 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.

a/0108/07, a/0115/07, a/0117/07 a/0118/07 the status of victims in the situation⁵. In the said decision the Single Judge requested the Office to continue to provide support and assistance to victims and to applicants⁶.

4. On 1st December 2008, the *ad hoc* Counsel for the Defence filed the "Request for leave to appeal the Decision on victim's applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07"⁷ (The "Defence's Request") requesting leave to appeal the Decision.

II. REQUEST OF THE OPCV FOR LEAVE TO FILE A RESPONSE TO THE DEFENCE'S REQUEST

5. In accordance with regulation 24(2) of the Regulations of the Court, victims or their legal representatives may file a response to any document when they are permitted to participate in the proceedings in accordance with article 68(3) of the Rome Statute and rule 89(1) of the Rules of Procedure and Evidence.

6. The Office submits that pending the designation of a common legal representative, the Principal Counsel of the OPCV may be appointed by the Single Judge for the purpose of filing a response to the Defence's Application, as it was already the case when the Single Judge appointed the Principal Counsel of the Office to respond to the Prosecution's application for leave to appeal the decision on participation issued on 10 August 2007⁸ and to the "Requête de la Défense sollicitant l'autorisation d'interjeter appel de la 'Decision on victims' applications for participation' rendue le 14 mars 2008 and to the "Prosecution's Response to Defence's

⁵ *Idem*, p. 67.

⁶ *Ibid.*, p. 66.

⁷ See the "Request for leave to appeal the Decision on victim's applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07", 1st December 2008, No. ICC-02/04-174 and ICC-02/04-01/05-359

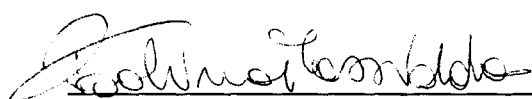
⁸ See the "Decision on Legal Representation of Victims a/101/06 and a/0119/06", No. ICC-02/04/105, 28 August 2007, p. 5.

request for Leave to Appeal the Single Judge's 14 March 2008 Decision on the Applications for Participation in the Proceedings"⁹.

7. This designation would conform, in the Office's opinion, with the wording of the Single Judge's Decision requesting the Office to continue to provide support and assistance to the victims concerned by the Decision.

8. Indeed, in the absence of an appointed common legal representative, the victims will not be able to provide their views and concerns on the Defence's Application and they will be *de facto* deprived of their rights to file a response in accordance with regulation 24 (2) of the Regulations of the Court.

FOR THE FOREGOING REASONS, the Principal Counsel respectfully requests the Single Judge to appoint her as legal representative for the victims authorised to participate in the case of *The Prosecutor v. Joseph Kony et al.* until a common legal representative is appointed by the Chamber and to grant her leave to file a response to the Defence's Request in a time limit indicated by the Single Judge.



Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Dated this 2nd day of December 2008

At The Hague (The Netherlands)

⁹ See the Decision on the OPCV's Requests for leave to file a response to the Defence's Application dated 25 March 2008 and to file observations on the Prosecution's Response to such Application", 4 April 2008, No. ICC-02/04-132 and ICC-02/04-01/05-290, p. 5.