

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/04-01/05
Date: 7 November 2008

PRE-TRIAL CHAMBER II

Before: Judge Hans-Peter Kaul, Single Judge

**SITUATION IN UGANDA
IN THE CASE OF
THE PROSECUTOR**

v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominik Ongwen

**Confidential
Ex parte Registry and OPCV**

**Report on implementation of Decision initiating proceedings under article 19,
requesting observations and appointing counsel for the Defence**

Source: **Victim Participation and Reparations Section**

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

The Office of the Prosecutor

Counsel for the Defence

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

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

1. The present report is submitted in accordance with Regulation 86 sub-regulation 5 of the Regulations of the Court, for the purpose of conveying information of the type normally included in such reports in accordance with the internal memoranda from Pre-Trial Chamber II to the Registrar dated 28 July 2006 entitled *Report to Pre-Trial Chamber II for Proceedings in Uganda* and dated 5 November 2006 entitled *Report to Pre-Trial Chamber II for proceedings in Uganda – reply to issues raised by the Registrar in his Memorandum as of October 13, 2006* and follow-up meeting held on November 2, 2006, in which the Chamber requested the VPRS to provide the Chamber with general information on activities conducted by VPRS in Northern Uganda.
2. In its Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence dated 21 October 2008 (hereafter, the Decision of 21 October),¹ the Chamber ordered the Registrar to inform the victims who have already communicated with the Court with respect to the Case or their legal representatives of the initiation of the proceedings. The purpose of the present report is to explain what steps have been taken by the Registry to implement this order, and to draw the Chamber's attention to certain constraints and difficulties it is facing in informing victims and applicants in a timely manner, in view of the deadline for submitting observations of 18 November 2008.
3. The Registry informs the Chamber that approximately 300 victims have communicated with the Court in respect of the Case, according to the definition contained in the Decision of 21 October. Of these, 157 have already been filed with the Chamber, while the remainder have not yet been filed.²

¹ ICC-02/04-01/05-320

² This represents the number of applications to participate in proceedings that have been received by the VPRS. Not all of the applications have yet been registered by the VPRS at the seat of the Court. Some applications are presently being transported from the field office in Kampala. As soon as they have been received and registered,

4. The Decision of 21 October orders the Registrar to inform victims or their legal representatives of the initiation of the present proceedings, in accordance with Rule 59 of the Rules of Procedure and Evidence. Where a victim has a legal representative, the Registry considers that its duty to inform victims is discharged if it informs the legal representatives. However, of the approximately 400 victims who have communicated with the Court in respect of the Case, only six have a legal representative, who in each case is a member of the Office of Public Counsel for Victims (OPCV).³ Of the others, 100 have already been transmitted to the OPCV in accordance with decisions of the Chamber, to enable them to provide support and assistance.⁴ Of the approximately 300 further victims who have submitted applications to be admitted to participate with respect to the Case, the VPRS is not aware that the OPCV has had contact with any of these.
5. In light of this situation as regards legal representation, the Registry has considered that in order to implement the Decision, it has a duty to take steps to ensure that victims who have already communicated with the Court with respect to the Case are informed directly of the initiation of the proceedings. Since among the purposes of informing the victims of the initiation of the proceedings is to enable them to make observations or representations in accordance with Article 19 paragraph 3 of the Statute and Rule 59 paragraph 3 of the Rules of Procedure and Evidence, the Registry further considers that

a notification of receipt will be filed with the Chamber. Others have not yet been transferred from the field office to the seat of the Court because they do not contain the required information, which has been requested by the Registry in accordance with Regulation 86 paragraph 4 of the Regulations of the Court. Many of those applications are still lacking supporting documentation such as proof of identity. The 157 applications that have already been filed with the Chamber comprise: a/0010/06 filed in the record of the Case on 4 September 2006, a/0064/06 to a/0070/06 filed in the record of the Case on 16 October 2006, a/0081/06 to a/0104/06 filed in the record of the Case on 26 October 2006, a/0111/06 to a/0127/06 filed in the record of the Case on 16 November 2006, a/0014/07 to a/0020/07 filed in the record of the Case on 11 April 2007, a/0076/07 to a/0125/07 filed in the record of the Situation on 22 June 2007, and a/0192/07 to a/0239/07 and a/0324/07 to a/0326/07 filed in the record of the Situation on 30 May 2008.

³ ICC-02/04-01/05-267 of 15 February 2008

⁴ ICC-02/04-01/05-134 of 1 February 2007 and ICC-02/04-01/05-312 of 19 September 2008

this duty includes the duty to inform the relevant category of victims in a timely manner that would enable them to effectively exercise this possibility to submit observations within the time limit set by the Chamber.

6. Further, given that the majority of the victims do not yet have legal representatives, and nor do they have the realistic possibility, given their circumstances, to submit their observations directly to the Court, and in light of the fact that the OPCV has been appointed to represent some of the victims and to provide support and assistance to others, and of the reference in the Decision of 21 October to Regulations 80(1) and 80(2) of the Regulations of the Court, the Registry assumes that the OPCV will be submitting the observations of the victims. In light of the VPRS's function to inform victims in accordance with the Decision of 21 October, and to assist victims and groups of victims in relation to participation in the proceedings under Regulation 86 paragraph 9 of the Regulations of the Court, as well as the Registry's duty to assist legal representatives of victims in accordance with Rule 16 paragraph 1(b) of the Rules of Procedure and Evidence, the VPRS is cooperating with the OPCV with a view to ensuring that victims who have communicated with the Court are effectively informed of the present proceedings and able to present their observations, if any, to the Chamber.

7. The Registry has adopted two main methods for informing victims in accordance with the Decision of 21 October.

a. Radio broadcasts and other media

8. Radio broadcasts explaining the Chamber's Decision of 21 October have been made in community radio stations in the sub-regions of Acholi, Lango, Madi and Teso. All the programmes were broadcast in the relevant local languages

9. The Decision was also forwarded to both print and electronic media houses in Uganda and the two leading local newspapers, the New Vision and the Monitor, both of which reported the Decision in their issues dated 29 and 31 October respectively.

10. The VPRS has ascertained as a result of consultation with various interlocutors in Northern Uganda that radio broadcasts, whilst they may reach some victims, are not a sufficient method of conveying targeted messages to most victims and applicants, particularly not within a short time frame. Most applicants and victims reside either in camps for the internally displaced or in villages, and whilst radios are more common in remoter areas than newspapers, television or other media, not every household possesses a radio. Further, even where a household does possess a radio, it will not necessarily tune in to a particular broadcast unless informed in advance, particularly if it is only broadcast once or once a week.

11. The Registry therefore found it necessary to take additional steps to inform victims and applicants directly, in order to comply with the request of the Chamber. Such steps have been designed taking into account a) cost, b) what can practically be done within the time available and c) security.
12. Whilst inviting victims to attend public meetings in different areas might be an effective means of informing them, the Registry did not consider that this was a secure way to proceed in the current circumstances. Any meetings between Court staff and victims need to be carefully organized and managed in order to avoid drawing attention and therefore safeguard security.
13. Another option considered was sending information in writing by post or email. However given that the majority of victims and applicants are illiterate and do not speak English, and that many villages and IDP camps do not have email facilities or even electricity, this did not appear to be a practical option. Informing people by telephone is also difficult since the majority does not have telephones or easy access to them, or live outside the areas of reception of the telephone companies. Further, even if telephone communication could be arranged, the VPRS does not have staff who speak all the local languages in the relevant areas, and it may not be easy to ensure that the person has understood the information being provided, given the complexity of the message, the poor understanding many have of the legal context, and the fact that they are not accustomed to receiving information by this means.
14. The Registry therefore considered what were the most effective ways to deliver the information in person in a discrete manner. The Registry recognizes that it is preferable for information to be conveyed in person by

staff of the Court, as this is the best way to ensure that the information is conveyed and in an accurate manner (taking due consideration of the language barriers). The VPRS made arrangements for its field staff to travel to meet in person in a discrete context with the 14 victims who have been accepted to participate in the proceedings relating to the case, with the assistance of the relevant intermediary organization.

15. However, since it was not feasible for Registry staff to meet directly with all the victims who have communicated with the Court with respect to the case in secure circumstances on this occasion, given the constraints of time and cost, it was decided that the most effective option was to ask the intermediaries who assisted the applicants to complete their applications and present their applications to themselves convey the information to the victims. In order ensure as far as possible that the information provided to the victims was accurate, the Registry on Sunday 2 November held a day-long meeting with 8 intermediaries, of which most are organizations and some are individuals, a total of 16 individuals, who had assisted the applicants to complete and present their applications. The 2 November was the earliest that it was possible to organize such a meeting, given the fact that not all the intermediaries are regularly contactable by telephone or email and that some of them had commitments that made it impossible for them to meet earlier. The objective of the meeting was to explain the Decision of 21 October and discuss how to inform the victims of the initiation of the proceedings under Article 19, as well as to facilitate the communication of any observations.

16. During the meeting, after having attained an understanding of what was required, the intermediaries each indicated how they proposed to contact and inform the victims, and how long they estimated this would take. Globally, the conclusion was that even though they intended to start immediately and

would work intensively to convey the information to the victim as quickly as possible, approximately a month is needed for the majority of victims and applicants to be informed, and six weeks in order to reach all of them. They indicated that the precise time required will depend on factors such as the number of victims or applicants assisted, logistical and geographical factors such as whether the victims and applicants are scattered around a large area or concentrated in the same areas, and security considerations which have a bearing on what precautions need to be taken and whether some victims or applicants could be met in groups. The following are some of the specific points raised by the intermediaries:

- a) For some who assisted only a small number of victims or applicants (such as 10), they estimate that they would be able to inform all of them in less than a week.
- b) Two of the intermediaries have assisted over 100 people to complete their applications. These intermediaries say that they will need more than three weeks to reach all of them.
- c) Additionally, some applicants are school students and cannot be reached before the end of the school term on 7 December, after which they will take some time to travel to their homes. Intermediaries estimate they would be able to obtain the views of these students by 15 December but not before.
- d) A number of intermediaries noted that poor road conditions, worsened by the current rainy season, sometimes impede access to certain areas.
- e) Some will have to travel to a number of different districts, counties, and sub counties.
- f) Some applicants have moved, including outside of their districts.
- g) The organizations that act as Intermediaries have few members and the individuals concerned sometimes cannot involve others, even within the same organization, due to security concerns.

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- h) While some intermediaries indicated that they may be able to meet with some victims in small groups, particularly where they are located in the same place and where there are few security concerns, others indicated that they will need to talk to people individually instead of in groups due to security concerns. Additional time may be required in order to arrange the meetings in such a way as to avoid attracting attention, particularly in areas where people are already aware of the Decision of 21 October because it has been publicized.
- i) It will take some time to explain this complex legal question, particularly where the victims are illiterate and not familiar with criminal proceedings in general, and where they have not previously met with the VPRS or OPCV in order to receive basic information regarding participation in proceedings.

17. The Registry conveys the above information, in the hope that it will be helpful in the context of the Chamber's decision to grant until 18 November for observations. The Registry remains at the Chamber's disposal for any further information or assistance.



Didier Preira, Deputy Registrar
On behalf of
Silvana Arbia, Registrar

Dated this 7 November 2008

At The Hague, The Netherlands