

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04-01/05

Date: 23 February 2007

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single judge

Registrar: Mr Bruno Cathala

**SITUATION IN UGANDA
IN THE CASE OF
THE PROSECUTOR
v. JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO, RASKA LUKWIYA,
DOMINIC ONGWEN**

Public Document

**Decision on "Requête de la Défense en extension de délai afin de répondre aux
'Observations de la Défense sur les demandes de participation à la procédure
a/0010/06, a/0064/06 à a/0070/06, a/0070/06, a/0081/06 à a/0104/06 et a/0111/06 à
a/0127/06"**

The Office of the Prosecutor

Mr. Luis Moreno Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Ms. Christine Chung, Senior Trial
Lawyer

Ad Hoc Counsel for the Defence

Ms. Michelyne C. St. Laurent

I, Mauro Politi, Single Judge at the International Criminal Court (the “Court”),

NOTING the “Decision designating a Single Judge for victims’ issues”, dated 22 November 2006;¹

NOTING the Single Judge's "*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/111/06 to a/0127/06*" dated 1 February 2007 ("the 1 February 2007 Decision"),² appointing Ms. Michelyne C. St-Laurent as 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 victims’ applications for participation filed in the situation in Uganda and in the case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen* (“the Applications”), pursuant to rule 89 of the Rules of Procedure and Evidence (“the Rules”);

NOTING that in the 1 February 2007 Decision, the Single Judge ordered the Registrar to provide the Prosecutor and counsel for the Defence with a redacted copy of the Applications filed by victims for participation in the situation and in the case by Monday 12 February 2007, and granted the Prosecutor and the Defence until Monday 26 February 2007 to submit their observations on the Applications;

NOTING the Prosecutor’s “Application to Lift Redactions From Applications for Victims’ Participation to be Provided to the OTP” dated 6 February 2007³ (the “Prosecutor’s Application”) and the “Prosecution’s further submissions supplementing its ‘Application to Lift Redactions from Applications for Victims’

¹ ICC-02/04-01/05-130

² ICC-02/04-01/05-134.

³ ICC-02/04-01/05-150.

Participation to be Provided to the OTP', dated 6 February 2007, and request for extension of time" dated 15 February 2007 ("the Prosecution's Further Submissions");⁴

NOTING the "Decision on Prosecutor's "Application to lift redactions from applications for Victims' Participation to be provided to the OTP" and on the Prosecution's further submissions supplementing such Application, and request for extension of time" dated 20 February 2007 ("the Decision on the Prosecutor's Application and the Prosecution's Further Submissions");⁵

NOTING the "Requête de la Défense en extension de délai afin de répondre aux 'Observation[s] de la Défense sur les demandes de participation à la procédure a/0010/06, a/0064/06 à a/0070/06, a/0070/06, a/0081/06 à a/104/06 et a/0111/06 à a/0127/06 » dated 21 February 2007 (the "Defence Application"),⁶ whereby counsel for the defence requests from the Single Judge the following: 1) an extension of the time-limit to submit observations on the Applications, namely until 6 March 2007 ; 2) the granting of the right to file a reply to the Prosecutor's Application upon receipt of the French version of the relevant documents ; 3) an order to the Registrar to translate into French all documents filed in English relating to the Applications a/0010/06, a/0064/06 to a/0070/06, a/0081/06 à a/0104/06 and a/0111/06 to a/0127/06; and 4) to consider the period for the submission of observations or replies to any documents relating to victims' applications as running only from the date of notification of the French version of the relevant documents;

NOTING regulation 35 of the Regulations of the Court ("the Regulations") on "Variation of time limits";

NOTING that in the Defence Application, counsel for the Defence indicates that while the Single Judge ordered the Registrar in the 1 February 2007 Decision to

⁴ ICC-02/04-01/05-208.

⁵ ICC-02/04-01/05-209.

⁶ ICC-02/04-01/05-210.

provide a redacted copy of the Applications to both the Prosecutor and the Defence by 12 February 2007, she received notification by email on 14 February 2007 that the documents would be sent to her by courier “dans les prochains jours” and that she subsequently received the redacted victims’ Applications on 19 February 2007;

CONSIDERING that in its decision dated 12 July 2005,⁷ Pre-Trial Chamber I decided that the system provided for by regulation 31 of the Regulations of the Court, according to which a participant is deemed notified of a document on the day it is effectively sent from the Court by the Registry, is difficult to apply in the absence of the planned electronic system which is not yet in place at the Court and consequently not available for confidential documents;

CONSIDERING further that Pre-Trial Chamber I noted that the strict application of regulations 31 and 33 of the Regulations of the Court in the absence of the electronic system on which they are based, “penalises the person concerned, the time of transmission by post being unavoidably and unfairly included in the calculation of the applicable deadline,” and that therefore, pending the effective implementation of a secure electronic system for the transmission of documents, it should be considered that with respect to confidential documents, a participant is deemed notified of a confidential document, decision or order on the day it is effectively received by post by the said participant;⁸

CONSIDERING that counsel for the Defence received the redacted victims’ applications on 19 February 2007, a full week after the date specified by the Single Judge in the 1 February 2007 decision, and that this constitutes “good cause” for variation of the time limit in accordance with regulation 35, sub-regulation 2 of the Regulations;

⁷ ICC-01/04-62-tEN.

⁸ ICC-01/04-62-tEN.

CONSIDERING that in the 1 February 2007 Decision the Single Judge noted that “the redacted copies of the Applications shall be transmitted to the Prosecutor and the Defence at the same time and both parties shall have the same time-limit for submitting their observations”;⁹

CONSIDERING that the Prosecutor received notification of the Applications on Tuesday 13 February 2007,¹⁰

CONSIDERING that in light of the late notification of the Applications to the Prosecutor it is necessary to grant the Prosecutor a variation of the time limit to ensure that both parties have equal opportunity to submit their observations;

CONSIDERING that in light of the Decision on the Prosecutor’s Application and the Prosecution’s Further Submissions rendered by the Single Judge on 20 February 2007,¹¹ the issue raised by the request in the Defence Application to file a reply to the Prosecutor’s Application upon receipt of the French translation of the documents has become moot;

NOTING that counsel for the Defence requests translations into French of all documents relating to victims’ participation on the ground that her mother tongue is French and that her knowledge of the English language is insufficient, and that in order to properly respond to decisions of the Chamber, requests, observations or any *other document filed by the Prosecutor or by the victims, it is necessary that counsel for the Defence be in a position to clearly understand what has been written;*¹²

⁹ ICC-02/04-01/05-134, para. 25.

¹⁰ ICC-02/04-01/05-208, page 2 : « The submissions are based on OTP’s preliminary reading of the victim’s applications for participation in the proceedings, as provided, in redacted form, by the Registry to the OTP on 13 February 2007 ».

¹¹ ICC-02/04-01/05-209.

¹² ICC-02/04-01/05-210, paragraph 17: “La langue maternelle et de travail de la requérante est le français et sa connaissance de l’anglais est insuffisante afin de bien maîtriser les documents déposés en langue anglaise.» ; paragraph 18 : « La requérante soumet que afin de répondre adéquatement aux « Décisions de la Chambre », requêtes, interventions, observations et tout autre document déposés par le Procureur ou les Victimes, il est nécessaire qu’elle soit en mesure de bien comprendre les écritures ».

NOTING that in the Candidate Application Form (“the Application Form”) dated 10 August 2005 completed and signed by Ms. St. Laurent for inclusion on the list of counsel pursuant to regulation 122 of the Regulations of the Registry, under the section entitled “Language proficiency”, counsel for the Defence stated that her mother tongue is French, and rated as “Excellent” her “written comprehension” and “oral comprehension” of the English language, declaring as well that her “writing” and “speaking” abilities in English are “very good”;

NOTING further that in the Application Form counsel for the Defence responded to the question “How would you describe your knowledge of the common law system?” by stating “Excellent”, and specified that she had “been working in English for many years”;

NOTING further that in the *curriculum vitae* attached to the Application Form counsel for the Defence included “French and English” under the heading “Languages”;

NOTING further that at the end of the Application Form, counsel for the Defence signed and dated a declaration which reads as follows:

“I certify on my honour that I have verified the information in this form and that it is true and correct. I hereby undertake to inform the Court in the event of a change in my circumstances.

I understand that any decision to appoint me at the Court will be based on the information provided herein. I also understand that, should any item of information herein prove to be incorrect or false, the Court would be at liberty to terminate my appointment without notice.”

NOTING article 24.3 of the Code of Professional Conduct for counsel, which reads as follows: “Counsel shall not deceive or knowingly mislead the Court. He or she shall take all steps necessary to correct an erroneous statement made by him or her or

by assistants or staff as soon as possible after becoming aware that the statement was erroneous;”¹³

NOTING article 31, sub-paragraph (a) of the Code of Professional Conduct for counsel, pursuant to which “[c]ounsel commits misconduct when he or she (a) [v]iolates or attempts to violate any provisions of this Code, the Statute, the Rules of Procedure and Evidence and the Regulations of the Court or of the Registry in force imposing a substantial ethical or professional duty on him or her;”¹⁴

CONSIDERING that the decision on appointment of counsel for the Defence taken by the Single Judge, upon consultation with the Registrar, was necessarily based on the information provided in the Application Form, and that one of the criteria for the selection of Ms. St. Laurent was her assertion that her written and oral comprehension of the English language was “excellent” and that she had “been working in English for many years”;

CONSIDERING that the Single Judge deems the claim made by counsel for the Defence in the Defence Application that her knowledge of the English language is “insuffisante afin de bien maîtriser les documents déposés en langue anglaise” to be in contradiction with the assertions made in the Application Form about her language abilities;

CONSIDERING the inherent power which the Chamber has to control the proceedings in such a way as to ensure that they be conducted fairly and expeditiously;

CONSIDERING that the request to order the translation of all documents filed in relation to victims’ participation and to treat the period for responding as running

¹³ Resolution ICC-ASP/4/Res.1, Adopted at the 3rd plenary meeting on 2 December 2005, page 310.

¹⁴ Resolution ICC-ASP/4/Res.1, Adopted at the 3rd plenary meeting on 2 December 2005, page 311.

only from the date that the translation is notified would unduly delay the proceedings;

FOR THESE REASONS

GRANT to counsel for the Defence an extension of the time limit to reply to the Applications until 6 March 2007;

GRANT to the Prosecutor an extension of the time limit to reply to the Applications until 28 February 2007;

DISMISS the request to file a response to the Prosecutor's Application upon receipt of the French version of the relevant documents;

REJECT the request to order the Registrar to take the necessary measures to ensure the translation into French of all documents related to victims' participation;

REJECT the request to consider the period for the submission of observations or replies to any documents as running only from the date that counsel for the Defence receives the French translation of all documents related to victims' participation.

Done in both English and French, the English version being authoritative.

Mauro Politi

Judge Mauro Politi
Single judge

Dated this 23rd day of February 2007,

At The Hague,

The Netherlands.