

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 9 March 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 the "Prosecution's Request for Leave to Appeal the Decision Denying the 'Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP"

The Office of the Prosecutor

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

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 “*Decision on legal representation, appointment of counsel for the defense, 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 ordering *inter alia* the Registrar to provide both the Prosecutor and the counsel for the Defence with a redacted copy of the applications filed by victims for participation in the situation and in the case (“the Victims’ Applications”);

NOTING the Prosecutor’s “*Application to lift redactions from applications for Victims’ Participation to be provided to the OTP*” dated 6 February 2007 (“the Prosecutor’s Application to Lift Redactions”),³ whereby the Prosecutor requested that the Single Judge lift all of the redactions on the Victims’ Applications to be provided to his Office;

NOTING the “*Prosecution’s further submissions supplementing its ‘Application to Lift Redactions From Applications for Victims’ Participation to be Provided to the OTP’, dated 6 February 2007, and request for extension of time*” dated 15 February 2007 (“the Prosecutor’s Further Submissions”),⁴ whereby the Prosecutor *inter alia* reiterated his request for the lifting of all the redactions on the Victims’ Applications to be furnished to his Office;

¹ ICC-02/04-01/05-130.

² ICC-02/04-01/05-134.

³ ICC-02/04-01/05-150.

⁴ ICC-02/04-01/05-208.

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 to Lift Redactions”*),⁵ whereby the Single Judge reiterated the Court’s case-law, establishing that the only remedy of a general nature whereby participants can voice their concerns regarding a Chamber’s decision is a request for leave to appeal under article 82, paragraph 1 (d), of the Statute of the Court (*“the Statute”*)⁶, provided that the substantive and procedural requirements set forth for such remedy under the Statute and the Rules of Procedure and Evidence (*“the Rules”*) are duly complied with and, accordingly, dismissed the Prosecutor’s Application to Lift Redactions as deprived of proper procedural basis;

NOTING the *“Prosecution’s Request for Leave to Appeal the Decision Denying the ‘Application to Lift Redactions From Applications for Victims’ Participation to be Provided to the OTP”*, dated 26 February 2007 (*“the Prosecutor’s Request for Leave to Appeal”*),⁷ whereby the Prosecutor requests leave to appeal against the Decision on the Prosecutor’s Application to Lift Redactions pursuant to article 82, paragraph 1(d), of the Statute;

NOTING that the Prosecutor requests leave to appeal the Decision on the Prosecutor’s Application to Lift Redactions by arguing that it raises the issue *“of whether a party may file a motion or application to vary protective measures before the original Chamber”*,⁸ in particular pursuant to regulation 42, sub-regulation 3, of the

⁵ ICC-02/04-01/05-209.

⁶ ICC-02/04-01/05-60, paragraph 21; PTC I Decision on the Prosecutor’s Position on Pre-Trial Chamber I’s 17 February 2005 Decision to Convene a Status Conference, page 2 (ICC-01/04-11).

⁷ ICC-02/04-01/05-212.

⁸ ICC-02/04-01/05-212, paragraph 5.

Regulations of the Court⁹ (“the Regulations”) “or alternatively whether an application for leave to appeal under Article 82(1)(d) ‘is the only remedy of a general nature whereby participants can voice their concerns regarding a Chamber’s decision’”¹⁰;

NOTING regulation 23, sub-regulation 1(d), of the Regulations, providing that any document filed with the Court shall state *inter alia* “all relevant legal and factual issues, including details of the articles, rules, regulations or other applicable law relied upon”;

NOTING that nowhere, either in his Application to Lift Redactions or in his Further Submissions, did the Prosecutor argue that he was bringing a motion under regulation 42, sub-regulation 3, of the Regulations;

CONSIDERING that, accordingly, neither the issue of the scope and purpose of regulation 42, sub-regulation 3, of the Regulations, nor its relationship to article 82, paragraph 1(d), of the Statute, were addressed by the Decision on the Prosecutor’s Application to Lift Redactions;

CONSIDERING that, therefore, neither the issue of the scope and purpose of regulation 42, sub-regulation 3, of the Regulations, nor that of its relationship to article 82, paragraph 1(d), of the Statute, can be regarded as being “involved” by the Decision on the Prosecutor’s Application to Lift Redactions within the meaning of article 82, paragraph 1(d), of the Statute;

CONSIDERING that the Prosecutor’s request for leave to appeal falls therefore beyond the scope of article 82, paragraph 1(d), of the Statute and that, as a consequence, there is no need for the Single Judge to determine whether the

⁹ ICC-02/04-01/05-212, paragraph 7.

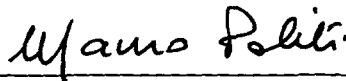
¹⁰ ICC-02/04-01/05-212, paragraph 5.

substantive requirements set forth by that provision (namely, the significant impact of the issue on the fairness and expeditiousness of the proceedings or the outcome of the trial, and the likelihood that an immediate resolution of such issue by the Appeals Chamber materially advance the proceedings) are met;

FOR THESE REASONS

REJECT the Prosecutor's request for leave to appeal.

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



Judge Mauro Politi
Single judge

Dated this 9 March 2007

At The Hague, The Netherlands