

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 16 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 OPCV's 'Request to access documents and material'

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 “*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 entrusting to the Office the task to provide victims having applied for participation in the situation and in the case with any support and assistance which may be necessary or appropriate at this stage of the proceedings;

NOTING the “*Request to access documents and material*”, dated 5 February 2007,³ whereby the Office of Public Counsel for Victims (“the OPCV” or “the Office”) requested the Single Judge (i) to provide the Office with the unredacted versions of the warrants of arrest issued in the situation in Uganda (“the Warrants”); (ii) to provide the Office with the index of the situation and case records; (iii) to identify and provide the Office with any confidential or under seal document or material relating either to the Warrants or to the security and protection of victims included in the record of the situation or of the case which may be necessary for the purposes of the tasks entrusted to the OPCV by the 1 February 2007 Decision, or to authorise the OPCV Principal Counsel to consult the situation and case records in order to identify any such documents;

¹ ICC-02/04-01/05-130.

² ICC-02/04-01/05-134.

³ ICC-02/04-01/05-149-Conf-Exp.

NOTING the “*Decision on ‘Request to access documents and material’, and to hold a hearing in camera and ex parte*”, dated 7 February 2007,⁴ whereby the Single Judge (i) ordered the Registrar to provide the OPCV with the unredacted version of the Warrants; (ii) rejected the OPCV’s requests to have access to the index or to consult the record of the situation and of the case; and (iii) decided to hold a hearing *in camera* and *ex parte*;

NOTING the hearing held *in camera* and *ex parte* on 12 February 2007, attended by the OPCV and by the Victims Participation and Reparations Section (“the Hearing”);

NOTING the arguments brought by the OPCV during the Hearing, with a view to substantiating its request to access any documents and material relating to the assessment of the security situation in Uganda which may be included in the record of the situation or of the case;

NOTING, in particular, the references made by the OPCV to article 68 of the Statute of the Court (“the Statute”); regulations 107, 100, sub-regulation 1, and 99, sub-regulation 2 of the Regulations of the Registry;

CONSIDERING that all of these provisions make reference to the Registry as a whole, rather than to the OPCV as such;

CONSIDERING, in particular, that regulations 99, 100 and 107 appear in Section 2 of Chapter 3 of the Regulations of the Registry (“Victims Participation and Reparations”), in sub-section 1, setting forth “General provisions”, and sub-section 2, under the heading “Participation of victims in the proceedings and reparations”, rather than in sub-section 5, specifically devoted to the Office;

⁴ ICC-02/04-01/05-151-Conf-Exp; ICC-02/04-01/05-152 (public redacted version).

NOTING regulation 81 of the Regulation of the Court (“the Regulations”) establishing the OPCV;

NOTING, in particular, regulation 81, sub-regulation 4, of the Regulations, vesting the OPCV with the task to *“provide support and assistance to the legal representative of victims and to victims, including, where appropriate: a) legal research and advice; and b) appearing before a Chamber in respect of specific issues”*;

CONSIDERING that no mention is made by this regulation of tasks relating to security and protection of victims which would be entrusted to the OPCV, nor any mention of the OPCV is made within the context of provisions specifically devoted to victims’ protection and security either in the Regulations or in the Regulations of the Registry;

NOTING that, during the Hearing, the Principal Counsel of the Office identified the tasks vested in the OPCV as a result of the 1 February Decision as consisting in (i) *“provid[ing] the applicants with any legal advice related to their applications”*, as well as with *“any advice to supplement, if need be, their request”*; (ii) *“explain[ing] to the applicants the procedure before a decision on the application is taken by the relevant Chamber; and, more in general... explain[ing] their general rights as potential victims in a proceeding before the Court”*;⁵

CONSIDERING that all of these tasks appear in full compliance with the statutory tasks of the Office as set forth under regulation 81, sub-regulation 4, of the Regulations and that none of them appears directly related to or dependent upon

⁵ ICC-02/04-01/05-T-6-CONF-EXP-EN, page 8, lines 4-12.

issues of victims' protection within the meaning of article 68, paragraph 1, of the Statute;

CONSIDERING, more specifically, that none of these provisions entrusts the Office with the responsibility "*to assess any potential risks for the applicants*",⁶ nor with any specific functions relating to any concerns such applicants may have for their security and safety "*in relation to the fact that they are communicating with the court and they are requesting to participate in a case before the court*";⁷

NOTING further regulation 81, sub-regulation 2, providing that the OPCV "*shall fall within the remit of the Registry solely for administrative purposes and otherwise shall function as a wholly independent office*";

CONSIDERING that, accordingly, it would be inappropriate to construe the provisions referring to the Registry as a whole as *per se* encompassing the Office;

NOTING, finally, that documents included at this stage in the record of either the situation or the case relating to issues of safety and security of victims and witnesses do not contain any information which would allow the Office "*to assess if some of the applicants already were contacted by the Office of the Prosecutor to be potential witnesses*";⁸

CONSIDERING that the foregoing remarks are without prejudice to the right and duty of the OPCV to seek and obtain any information relating to victims' safety and security, as well as to the overall assessment of the general security situation in Uganda, from those sections of the Registry vested with specific responsibilities in the area of victims' safety and security (in particular, the Victims and Witnesses Unit), whenever such information may be necessary and/or appropriate for the purposes of the proper discharge of the Office's statutory tasks, including those

⁶ ICC-02/04-01/05-T-6-CONF-EXP-EN, page 21, lines 7-8.

⁷ ICC-02/04-01/05-T-6-CONF-EXP-EN, page 21, lines 11-14.

⁸ ICC-02/04-01/05-T-6-CONF-EXP-EN, page 21, lines 22-24.

entrusted to it by the 1 February 2007 Decision, and that this information will allow *inter alia* the Office to “conform [...] itself to measures already taken”,⁹ if any;

NOTING that the Office has consulted the Victims and Witnesses Unit with a view to obtaining advice about certain aspects of the performance of its tasks which may have a bearing on the victims’ safety and security;¹⁰

CONSIDERING that this consultation process appears the proper way in which the Office should approach the implications that the performance of its tasks may have on victims’ safety and security;

FOR THESE REASONS

DECIDE to make public the transcripts of the Hearing, to the extent that such transcripts are referred to in this decision;

REJECT the OPCV’s request to access documents or material included in the record either of the situation or of the case bearing upon issues of security and safety of victims and witnesses;

REQUEST the OPCV to refrain from taking initiatives relating to the carrying out of its tasks without prior seeking and obtaining advice from those sections of the Registry vested with specific responsibilities in the area of victims’ safety and security (in particular, the Victims and Witnesses Unit) on the possible security implications of such initiatives.

⁹ ICC-02/04-01/05-T-6-CONF-EXP-EN, page 21, lines 16-18.

¹⁰ ICC-02/04-01/05-T-6-CONF-EXP-EN, page 31, lines 13-23 ; page 32, lines 3-4.

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

Mauro Politi

Judge Mauro Politi
Single judge

Dated this 16 March 2007

At The Hague, The Netherlands.