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

Date: 16 April 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 observations on victims' applications and on the
Prosecution's objections thereto**

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

Office of Public Counsel for Victims
Ms. Paolina Massidda

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/0111/06 to a/0127/06*” dated 1 February 2007 (“the 1 February 2007 Decision”),² entrusting the Office of Public Counsel for Victims (the “OPCV” or the “Office”) with the task to provide victims having applied for participation in the situation in Uganda and in the case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen* with any support and assistance which, albeit falling short of legal representation, may be necessary or appropriate at this stage of the proceedings;

NOTING the “*Decision on the OPCV’s ‘Request to access documents and material’*” dated 16 March 2007;³

NOTING the “*Decision on the Prosecution’s Applications dated 22 March 2007 and on the OPCV’s Requests dated 29 March 2007*”,⁴ whereby the Single Judge considered *inter alia* that the admissibility of any specific submission that the OPCV may decide to file with the Chamber in the current proceedings for victims’ participation would be assessed on a case-by-case basis, in light of its conformity with the statutory tasks vested in the Office;

¹ ICC-02/04-01/05-130.

² ICC-02/04-01/05-134.

³ ICC-02/04-01/05-222.

⁴ ICC-02/04-01/05-239, page 7.

NOTING the “*Observations on the Victims’ Applications a/0010/06, /0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06 to participate in the Uganda situation and in the case The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen*”, filed by the OPCV on 26 March 2007 both in the record of the situation⁵ and in the record of the case⁶, as well as the confidential *ex parte* annexes thereto⁷ (hereinafter, collectively, the “OPCV’s Observations”) whereby the Office argued that, by virtue of the 1 February Decision, it was “*under the obligation to provide support and assistance to the 49 applicants in any form it considers necessary and/or appropriate at this stage of the proceedings*” and that, accordingly, provision to the Chamber of “*legal arguments on the admissibility of the applications*”, as well as of “*any assessment and/or information that could be useful in the process of the examination of the applications*” would be encompassed in such obligation⁸;

NOTING the “*Prosecution’s Objection*” to the OPCV’s Observations filed both in the record of the situation⁹ and in the record of the case¹⁰ on 3 April 2007, whereby the Prosecutor argues that the OPCV’s Observations were filed “*without a legal basis and outside the mandate conferred*” to the Office by the 1 February 2007 Decision and, accordingly, requests that they be rejected;¹¹

NOTING the «*Réponse de la Défense sur les Observations des Conseils Public des Victimes “OPCV” sur les demandes des demandeurs a/0010/06, a/0064/06 à a/0070/06, a/0081/06 à a/0104/06 et a/0111/06 à a/0127/06 dans la Situation en Ouganda et dans l’Affaire: le Procureur c/JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO, RASKA LUKWIYA, DOMINIC ONGWEN*» dated 10 April 2007, filed by the ad hoc Counsel for the Defense both in the record of the situation¹² and in the record of the case¹³,

⁵ ICC-02/04-89.

⁶ ICC-02/04-01/05-232

⁷ ICC-02/04-89-Conf-Exp-Anx; ICC -02/04-01/05-232-Conf-Exp-Anx.

⁸ ICC-02/04-89, paras. 18-19 ; ICC-02/04-01/05-232, paras. 18-19.

⁹ ICC-02/04-01/05-91.

¹⁰ ICC-02/04-01/05-236.

¹¹ ICC-02/04-01/05-91, page 2 ; ICC-02/04-01/05-236, page 2.

¹² ICC-02/04-93, paragraph 6.

whereby Counsel for the Defense joins the request by the Prosecutor by arguing that the OPCV's observations "*sont faites sans mandat légal et sont 'ultra vires'*" and, accordingly, requests that they be rejected;

NOTING regulation 81 of the Regulations of the Court ("the Regulations") establishing the OPCV and, in particular, regulation 81, sub-regulation 4, vesting the Office 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*";

NOTING that, in his "*Decision on the OPCV's 'Request to access documents and material'*", the Single Judge acknowledged that the tasks vested in the OPCV as a result of the 1 February Decision would include "*(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'*";¹⁴

CONSIDERING that all of the above-mentioned tasks appear in full compliance with the statutory tasks of the Office as set forth under regulation 81, sub-regulation 4, of the Regulations since they consist in activities to be performed *vis-à-vis* the applicant victims themselves, as such mirroring the letter and spirit of such regulation;

CONSIDERING, instead, that submitting observations addressing legal issues relating to the admissibility and the merits of victims' applications appears to be an activity performed *vis-à-vis* the Chamber on behalf of the applicant victims;

¹³ ICC-02/04-01/05-242, paragraph 6.

¹⁴ ICC-02/04-01/05-222, page 4.

CONSIDERING that the 1 February Decision, whilst entrusting to the OPCV the task of providing support and assistance, explicitly excluded that the Office would be entrusted with the role and responsibility of legal representative of the applicant victims;

CONSIDERING that no mention is made in the 1 February 2007 Decision of the OPCV being requested or authorised to submit observations to the Single Judge on the admissibility and the merits of the victims' applications;

NOTING that regulation 81, sub-regulation 4, makes all of the tasks which may be performed by the OPCV conditional upon their being "appropriate";

CONSIDERING that such evaluation of appropriateness pertains exclusively to the Chamber within the context of its judicial functions and powers and has to be exercised on a case-by-case basis;

CONSIDERING that, accordingly, as far as any activity or initiative not specifically authorised by the Chamber is concerned, the proper way for the OPCV to fulfil its mandate is to refrain from taking any initiatives *vis-à-vis* the Chamber without prior seeking authorisation to do so;

CONSIDERING, on the basis of the reasoning of the 1 February Decision as to the absence of a need for a legal representative, that the OPCV's spontaneous submission of legal observations as to the admissibility and the merits of the victims' applications to the Single Judge is deprived of legal basis;

CONSIDERING that the foregoing remarks are without prejudice to the power of the Chamber to request the assistance of the OPCV whenever such assistance may be appropriate for the purposes of the performance of the Chamber's own tasks, on the basis of a discretionary evaluation of the appropriateness of such assistance, on a case-by-case basis, as when the Single Judge requested the OPCV to attend the hearing held on 12 March 2007;¹⁵

FOR THESE REASONS

DISMISS the OPCV's Observations as inadmissible.

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

Mauro Politi

Judge Mauro Politi
Single judge

Dated this 16 April 2007

At The Hague, The Netherlands.

¹⁵ ICC-02/04-01/05-152 (Decision on 'Request to access documents and material', and to hold a hearing *in camera* and *ex parte*).