

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 2 June 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single Judge

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

Public Document

**Decision on the Defence Application for Leave to Appeal the 14 March 2008
Decision on Victims' Applications for Participation**

Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda

Counsel for the Defence

Ms Michelyne C. St-Laurent

Legal Representatives of the Victims

Ms Paolina Massidda
Ms Adesola Adeboyejo

Legal Representatives of the 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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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

NOTING the “Decision designating a Single Judge on victims’ issues”, dated 22 November 2006,¹ whereby Pre-Trial Chamber II (the “Chamber”) designated Judge Mauro Politi as Single Judge responsible for all issues arising in connection with victims’ participation in the proceedings in respect of the situation in Uganda (the “Situation”) and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (the “Case”);

NOTING the “Decision on victims’ 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”, filed on 13 August 2007 in the record of the Situation² and in the record of the Case (the “13 August 2007 Decision”);³

NOTING the “Report on the identity documents available in the Ugandan legal and administrative system and other supporting documentation for applications for participation in proceedings in Uganda” with annexes, dated 12 October 2007 and transmitted by the Victims Participation and Reparations Section in the form of an Internal Memorandum (the “VPRS Report”);

NOTING the “Addendum to ‘Report on the identity documents available in the Ugandan legal and administrative system and other supporting documentation for applications for participation in proceedings in Uganda’”, dated 15 February 2008 and transmitted by the VPRS in the form of an Internal Memorandum (the “Addendum”);

¹ ICC-02/04-01/05-130.

² ICC-02/04-100-Conf-Exp; ICC-02/04-101.

³ ICC-02/04-01/05-251-Conf-Exp; ICC-02/04-01/05-252.

NOTING the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06”, dated 14 March 2008, and filed on 17 March 2008 in the record of the Situation⁴ and in the record of the Case (the “17 March 2008 Decision”),⁵ whereby the Single Judge *inter alia* granted Applicants a/0065/06, a/0068/06, a/0093/06, a/0096/06, a/0117/06, a/0120/06 and a/0123/06 the status of victim in the context of the Situation, and Applicants a/0094/06, a/0095/06, a/0103/06, a/0117/06, a/0120/06, a/0121/06, a/0123/06 and a/0124/06 the status of victim in the Case, and requested the Registrar to assist them in the appointment of a common legal representative;

NOTING the “Requête de la Défense sollicitant l’autorisation d’interjeter appel de la ‘Decision on victims’ applications for participation’ rendue le 14 mars 2008”(the “Defence’s Request”), filed on 25 March 2008 in the record of the Situation⁶ and in the record of the Case;⁷

NOTING the “Prosecution’s Response to Defence’s Request for Leave to Appeal the Single Judge’s 14 March 2008 Decision on the Applications for Participation in the Proceedings” (the “Prosecution’s Response”), filed on 31 March 2008 in the record of the Situation⁸ and in the record of the Case;⁹

NOTING the “Request for leave to file a response to the ‘Requête de la Défense sollicitant l’autorisation d’interjeter appel de la ‘Decision on victims’ applications for participation’ rendue le 14 mars 2008”, filed on 31 March 2008 by the Office of Public

⁴ ICC-02/04-124-Conf-Exp ; ICC-02/04-125.

⁵ ICC-02/04-01/05-281-Conf-Exp ; ICC-02/04-01/05-282.

⁶ ICC-02/04-128.

⁷ ICC-02/04-01/05-285.

⁸ ICC-02/04-129.

⁹ ICC-02/04-01/05-287.

Counsel for Victims (the “OPCV”) in the record of the Situation¹⁰ and in the record of the Case¹¹, in which the OPCV requested to be appointed “as legal representative for the victims authorised to participate in the case *The Prosecutor v. Joseph Kony et al.* until a common legal representative is chosen by the victims and to grant her leave to file a response to the Defence’s Application in a time limit indicated by the Single Judge” (the “OPCV’s First Request”);

NOTING the “Request for leave to file observations to the ‘Prosecution’s Response to Defence’s Request for Leave to Appeal the Single Judge’s 14 March 2008 Decision on the Applications for Participation in the Proceedings’”, filed on 2 April 2008 by the OPCV in the record of the Situation¹² and in the record of the Case¹³, in which the OPCV requested to be appointed “as legal representative for the victims authorised to participate in the situation until a common legal representative is chosen by the victims and to grant her leave to file observations on the Prosecution’s Response in a time limit indicated by the Single Judge” (the “OPCV’s Second Request”);

NOTING the “Decision on the OPCV’s Requests for Leave to file a Response to the Defence’s Application dated 25 March 2008 and to file Observations on the Prosecution’s Response to such Application”, filed on 7 April 2008 in the record of the Situation¹⁴ and in the record of the Case;¹⁵

NOTING the “Réponse du représentant legal des victims à la requête de la Défense sollicitant l’autorisation d’interjeter appel de la décision du 14 mars 2008 et observations sur la réponse du Procureur à ladite requête”, filed on 11 April 2008 in the record of the Situation¹⁶ and in the record of the Case¹⁷;

¹⁰ ICC-02/04-130.

¹¹ ICC-02/04-01/05-288.

¹² ICC-02/04-131.

¹³ ICC-02/04-01/05-289.

¹⁴ ICC-02/04-132.

¹⁵ ICC-02/04-01/05-290.

¹⁶ ICC-02/04-133.

CONSIDERING that the Defence seeks leave to appeal the following issues:

- (i) Can victims be granted a general right to participate or should it be considered that such participation is only possible if it is established that specific personal interests of the applicant are affected by the proceedings and that this participation is appropriate at that stage of the proceedings? (the “First Issue”);
- (ii) In order to establish mental harm suffered as a result of physical harm suffered by another person, should the identity of the latter and the relationship the applicant has with the person be required? (the “Second Issue”);¹⁸

NOTING article 82(1) (d) of the Statute of the Court (the “Statute”) and rule 155(1) of the Rules of Procedure and Evidence (the “Rules”);

CONSIDERING that the First Issue on which the Defence requests leave to appeal, while formally raised in relation to the 17 March 2008 Decision, actually calls into question the principles on victims’ participation and conditions thereto that have been established in the 13 August 2007 Decision on the basis of the relevant provisions of the Statute, the Rules and the Regulations, including, *inter alia*, article 68(3) of the Statute;¹⁹

CONSIDERING that the 17 March 2008 Decision was merely meant to deal with those applications, on which ruling had been deferred in accordance with the 13

¹⁷ ICC-02/04-01/05-291.

¹⁸ ICC-02/04-128, para. 18; ICC-02/04-01/05-285, para.18.

¹⁹ ICC-02/04-100-Conf-Exp, ICC-02/04-101; ICC-02/04-01/05-251-Conf-Exp; ICC-02/04-01/05-252.

August 2007 Decision, until adequate proof of identity was provided and/or the relevant VPRS report was submitted;²⁰

CONSIDERING therefore that the Defence's Request in relation to the First Issue must be considered inadmissible, since it should have been submitted in relation to the 13 August 2007 Decision, within the time limit specified in rule 155(1) of the Rules;

CONSIDERING on the other hand, that the 17 March 2008 Decision revisited the identity requirements established in the 13 August 2007 Decision in light of the VPRS Report and the Addendum;²¹

CONSIDERING further that the 17 March 2008 Decision did not explicitly address the Second Issue on which the Defence requests leave to appeal;

CONSIDERING that article 82(1) (d) of the Statute restricts the possibility of leave to appeal to decisions "that involve an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings";

CONSIDERING that, according to its first decision on the issue of interlocutory appeals dated 19 August 2005, this Chamber held that when dealing with an application for leave to appeal, it must be governed by three principles: (a) the restrictive character of the remedy provided for in article 82(1)(d) of the Statute; (b) the need for the applicant to satisfy the Chamber as to the existence of the

²⁰ ICC-02/04-124-Conf-Exp ; ICC-02/04-125; ICC-02/04-01/05-281-Conf-Exp; ICC-02/04-01/05-282.

²¹ *Ibid*

requirements enshrined in this provision; and (c) the irrelevance or non-necessity for the Chamber to address arguments relating to the merits or substance of the appeal;²²

CONSIDERING further the judgment, dated 13 July 2006, in which the Appeals Chamber stated that the object of the remedy provided for in article 82(1)(d), is to “pre-empt the repercussions of erroneous decisions on the fairness of the proceedings or the outcome of the trial”(the “13 July 2006 Decision”);²³

CONSIDERING that according to the 13 July 2006 Decision, the Appeals Chamber defined an issue as:

[A]n identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion. There may be disagreement or conflict of views on the law applicable for the resolution of a matter arising for determination in the judicial process. This conflict of opinion does not define an appealable subject. An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.²⁴

CONSIDERING that the subject-matter raised in the Defence’s Request concerning the Second Issue satisfies the requirement of being an “identifiable subject or topic requiring a decision for its resolution”;

CONSIDERING, upon review of the Defence’s Request, the Prosecution’s Response and the OPCV’s First and Second Requests, that the Second Issue raised by the

²² ICC-02/04-01/05-20-US-Exp, unsealed pursuant to Decision ICC-02/04-01/05-52 dated 13 October 2005, para. 15.

²³ ICC-01/04-168, para. 19.

²⁴ *Ibid.*, para. 9.

Defence would affect in a “material way” *current* and *future* proceedings in terms of fairness as well as expeditiousness;²⁵

CONSIDERING, in particular, that the fair and expeditious conduct of the proceedings for victims’ participation would be affected, in light of the possible uncertainty on whether determining mental harm claimed by an applicant victim in relation to physical harm suffered by another person requires that the identity of the latter and his/her relationship with the applicant be established;

CONSIDERING also that, at this stage, an immediate resolution of the Second Issue by the Appeals Chamber may materially advance the proceedings;

FOR THESE REASONS, HEREBY

DISMISS *in limine* the Defence’s Request in relation to the First Issue as inadmissible;

DECIDE to grant the Defence leave to appeal the 17 March 2008 Decision on the Second Issue, namely, “[i]n order to establish mental harm suffered as a result of physical harm suffered by another person, should the identity of the latter and the relationship the applicant has with the person be required?”

²⁵ *Ibid*, para. 12.

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

Mauro Politi

Judge Mauro Politi
Single Judge

Dated this Monday 2 June 2008

At The Hague

The Netherlands