

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04-01/05
Date: 23 October 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 request by the Office of Public Counsel for Victims
dated 21 October 2008**

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
Mr Jens Dieckmann

Legal Representatives of the Victims

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 of the International Criminal Court (the “Court”);

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

NOTING the decisions in the situation in Uganda (the “Situation”)² and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (“the Case”)³ “on legal representation, appointment of counsel for the defence, criteria for redactions of applications for participation, and submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07” dated 17 September 2008 (the “Decisions”; the applications addressed by the Decisions, collectively, “the Applications”), whereby *inter alia* the Single Judge held that the need to ensure the fairness of the proceedings made it appropriate and sufficient for the applicants to benefit from the support and assistance provided by the Office of Public Counsel for Victims (the “Office” or the “OPCV”) pursuant to regulation 81(4) of the Regulations;

NOTING the “*Submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07*” filed by the Defence on 20 October 2008 in the record of the Situation⁴ and in the Case⁵ (the “Defence Submissions”);

NOTING the “*Request of the OPCV for leave to file observations on the ‘Submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07’ filed by the ad hoc Counsel for the Defence*”, filed on 21 October 2008 in the record of the Situation⁶ and of the Case⁷ (the “OPCV’s Request”), whereby the Office

¹ ICC 02/04-01/05-130.

² ICC 02/04-154.

³ ICC-02/04-01/05-312.

⁴ ICC-02/04-160.

⁵ ICC-02/04-01/05-318.

⁶ ICC-02/04-161.

⁷ ICC-02/04-01/05-319.

argued that the Defence Submissions address *“issues related to the general interpretation of the provisions concerning the participation of victims in the proceedings before the Court and therefore clearly impact on the interests of the victims the Office is assisting by virtue of the Single Judge’s decision dated of 17 September 2008”*, therefore requesting to be authorised to file observations on the Defence Submissions;

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”*)⁸, first entrusting the Office with the task to provide victim applicants with any necessary or appropriate form of support and assistance falling short of legal representation;

NOTING the *“Decision on the OPCV’s observations on victims’ applications and on the Prosecution’s objections thereto”* dated 16 April 2007 (*“the 16 April 2007 Decision”*)⁹, whereby the Single Judge decided that, in the light of the 1 February 2007 Decision, the submission of legal observations by the OPCV as to the admissibility and the merits of the victims’ applications to the Single Judge in the absence of a specific authorisation is deprived of legal basis;

NOTING that, in the 16 April 2007 Decision, the Single Judge highlighted that regulation 81 (4) of the regulations of the Court makes the tasks which may be performed by the OPCV conditional upon their being *“appropriate”* and 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”*;

NOTING that also Trial Chamber I, in its *“Decision on the role of the Office of Public Counsel for Victims and its request for access to documents”* dated 6 March 2008 (the Trial

⁸ ICC-02/04-01/05-134.

⁹ ICC-02/04-01/05-243.

Chamber Decision")¹⁰ stressed that *"in critical respects it is for the Chamber – and not the Office – to determine the precise nature of the role of the Office in a particular case"*;

NOTING that the Trial Chamber Decision held that the power to determine the role of the OPCV must be vested in the Chamber in particular *"because of the latter's responsibility to manage the proceedings and to ensure the fair and expeditious conduct of the trial"*;

CONSIDERING that the Single Judge has taken his decisions on the admissibility and the merits of the applications without requesting submissions from the OPCV, in particular in his decisions dated 10 August 2007 (the "First Decisions on Victims' Applications")¹¹ and 14 March 2008 (the "Second Decision on Victims' Applications")¹²;

CONSIDERING that the Single Judge deems that, as it has been the case for the First and the Second Decision on Victims' Applications, he has all the necessary elements to decide on the admissibility and the merits of the Applications and that, accordingly, authorising additional submissions by the OPCV at this stage would not be consistent with the need to ensure a fair and expeditious conduct of the trial;

CONSIDERING that the foregoing reasoning is without prejudice to the power of the Chamber to request the assistance of the OPCV, on the one hand, and of the Office to request to be authorised to address the Chamber on specific issues, on the other hand, always subject to the discretionary evaluation by the Chamber of the appropriateness of such assistance or address;

¹⁰ ICC-01/04-01/06-1211.


¹¹ ICC-02/04-100-Conf-Exp; ICC-02/04-101 ; ICC-02/04-01/05-251-Conf-Exp; ICC-02/04-01/05-252.

¹² ICC-02/04-124-Conf-Exp ; ICC-02/04-125 ; ICC-02/04-01/05-281-Conf-Exp ; ICC-02/04-01/05-282.

HAVING REGARD THERETO AND FOR THESE REASONS,

REJECT the OPCV's Request.

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



Judge Mauro Politi
Single Judge

Dated this Thursday, 23 October 2008

At The Hague, The Netherlands.