

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04-01/05
Date: 9 February 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**

**URGENT
Public document**

Decision on "Prosecutor's Application to attend 12 February hearing"

The Office of the Prosecutor

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

Office of Public Counsel for Victims

Ms. Paolina Massidda

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 “Request to access documents and material” submitted by the Office of Public Counsel for Victims (“the OPCV” or “the Office”) on 5 February 2007 (“the OPCV’s Request”)²;

NOTING the “Decision on ‘Request to access documents and material’, and to hold a hearing *in camera* and *ex parte*” issued on 7 February 2007 (“the Decision”),³ whereby the Single Judge (i) granted the OPCV’s request to have access to the unredacted version of the warrants of arrest issued in the situation in Uganda (“the Warrants”);⁴ (ii) rejected the OPCV’s request to have access to the index of the record of the situation and of the case; (iii) rejected the OPCV’s request to authorise the Office to consult the record of the situation and of the case; and (iv) convened a hearing *in camera* and *ex parte* on Monday 12 February 2007 to be attended by the OPCV and the Victims’ Participation and Reparations Section only (“the Hearing”);

NOTING the “Prosecutor’s Application to attend 12 February 2007 Hearing” dated 8 February 2007 (“the Prosecutor’s Application”),⁵ requesting the Single Judge to attend the Hearing;

¹ ICC-02/04-01/05-130.

² ICC-02/04-01/05-149-Conf-Exp.

³ ICC-02/04-01/05-152 (public redacted version).

⁴ Warrants of arrest for Joseph KONY (ICC-02/04-01/05-28-US-Exp); Vincent OTTI (ICC-02/04-01/05-4-US-Exp); Raska LUKWIYA (ICC-02/04-01/05-6-US-Exp); Okot ODHIAMBO (ICC-02/04-1/05-8-US-Exp); and Dominic ONGWEN (ICC-02/04-01/05-10-US-Exp).

⁵ ICC-02/04-01/05-153.

NOTING the “OPCV observations on the ‘Prosecution’s Application to attend 12 February 2007 Hearing’” submitted by the OPCV on 9 February 2007 (“the OPCV’s Observations”),⁶ requesting the Single Judge to reject the Prosecutor’s Application;

NOTING the Single Judge’s “*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”)⁷, entrusting the OPCV with the task to provide forms and methods of assistance to victims having applied for participation in the situation and/or in the case which fall short of legal representation, including, in particular, the task of “*appearing before a Chamber in respect of specific issues*” where appropriate, pursuant to regulation 81, sub-regulation 4, of the Regulations;

NOTING that the Decision convened the Hearing on the basis of the Single Judge’s determination that it was appropriate for the OPCV to appear before him with a view to addressing issues raised by its Request pertaining to the tasks entrusted to the Office pursuant to the 1 February 2007 Decision;

CONSIDERING that, accordingly, the OPCV’s Observations are admissible to the extent that they are referred to the holding and the attendance of the Hearing;

CONSIDERING that the filing of a public redacted version of the Decision was specifically aimed at disclosing to the parties all the information which, in the view of the Single Judge, was not strictly and exclusively pertaining to the independent tasks of the OPCV, namely (i) the fact of the filing of the OPCV’s “Request to access

⁶ ICC-02/04-01/05-154.

⁷ ICC-02/04-01/05-134.

documents and material”; (ii) the scope of the requests by the OPCV and (ii) the fact that a hearing *in camera* and *ex parte* would be held;

CONSIDERING that, accordingly, both the Prosecutor and the Defence Counsel were made aware both of the existence of the OPCV’s Request and of the procedural steps which the Single Judge would be taking to address it;

NOTING that the purpose of the Hearing is twofold: first, to receive additional information and clarification on the reasons substantiating the OPCV’s requests for access to documents and/or materials other than public included in the record of the situation and/or of the case; second, to receive additional information on issues strictly and exclusively pertaining to the tasks entrusted to the OPCV pursuant to the Regulations of the Court and the 1 February 2007 Decision, within the context of victims’ participation in the proceedings;

CONSIDERING, as already stated by Pre-Trial Chamber I, that “*the Statute grants victims an independent voice and role in proceedings before the Court*” and that accordingly, such independence should be preserved, including *vis-à-vis* the Prosecutor, “*so that victims can present their interests*”;⁸

CONSIDERING that the Pre-Trial Chamber is entrusted with responsibilities *vis-à-vis* victims which are independent from those vested in the Prosecutor, without prejudice to his duties and powers under the Statute;

⁸ Pre-Trial Chamber I “Decision on the Applications for Participation in the proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6” (ICC-01/04-100t-EN) 17 January 2006, paragraph 51.

NOTING regulation 81, sub-regulation 2, of the Regulations, 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, the Prosecutor is not, at this stage, a "party in interest"⁹ to any of the issues to be discussed at the Hearing, since none of his statutory duties or powers have been or are going to be affected by the holding of the Hearing;

CONSIDERING that the Hearing will provide the Single Judge with information relevant for him to determine the requests by the OPCV as regards further access to documents and/or material in the record and constitutes therefore an essential part of a proper decision-making process on those requests by the OPCV which remain outstanding and which were summarised in the Decision;

CONSIDERING that, in the event that such requests might entail disclosure of documents and/or materials bearing upon the Prosecutor's statutory duties and powers, the Single Judge will ensure that the Prosecutor's rights, including the right to be heard, are duly preserved prior to the rendering of any decision;

CONSIDERING that the rejection of two of the requests made by the OPCV was motivated on the basis of the serious and irreversible effects which their granting would entail and that, accordingly, was precisely aimed at avoiding that the OPCV would gain uncontrolled and unlimited access *inter alia* to any "*information which the OTP has sought to protect, in large part as a means of exercising its statutory obligation to*

⁹ Prosecutor's Application, paragraph 13.

*protect the security and well-being of victims and witnesses” or “to ensure that the ongoing investigation is not impaired”;*¹⁰

CONSIDERING that the case-law of the Appeals Chamber of the Court relied upon by the Prosecutor deals with decisions whereby determinations as to the core rights of the defence (in particular, the issue of disclosure of the identity of the Prosecution’s witnesses) had been taken by a Chamber, and therefore addresses issues other than those addressed in the Decision;

CONSIDERING that, as stated in the Decision, the legal basis for the Hearing is to be found in regulation 28, sub-regulations 1 and 2, of the Regulations of the Court (“the Regulations”), allowing the Chamber to order the participants to clarify or to provide additional details on any document or to address specific issues in their oral submissions; and regulation 20, sub-regulation 2, of the Regulations, vesting a Chamber with the power to hold a hearing in closed session, subject to the need to make public the reasons for such an order;

CONSIDERING that neither of these two regulations makes it compulsory for the Chamber, when exercising either of these powers, to seek and/or allow the intervention of all the participants in the proceedings, including those whose interests are not affected at that stage;

FOR THESE REASONS

REJECT the Prosecutor’s request to attend the 12 February 2007 Hearing *in camera* and *ex parte*.

¹⁰ Application, paragraph 10.

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

Mauro Politi

Judge Mauro Politi
Single judge

Dated this 9 February 2007

At The Hague, The Netherlands