



Original : English

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

Date: 4 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 Prosecution's Applications dated 22 March 2007 and on the
OPCV's Requests dated 29 March 2007**

The Office of the Prosecutor

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

Ad hoc Counsel for the Defence

Ms. Michelyne C. St-Laurent

The Office of Public Counsel for Victims

Ms. Paolina Massidda, Principal Counsel

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 ordering *inter alia* the Registrar to provide both the Prosecutor and the counsel for the Defence with a redacted copy of the applications filed by victims for participation in the situation and in the case ("the Victims' Applications");

NOTING the Prosecutor's "*Application to Lift Redactions from Applications for Victims' Participation to be Provided to the OTP*" dated 6 February 2007 ("the Prosecutor's Application to Lift Redactions"),³ whereby the Prosecutor requested that the Single Judge lift all the redactions on the Victims' Applications to be provided to his Office;

NOTING the "*Prosecution's further submissions supplementing its 'Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP', dated 6 February 2007, and request for extension of time*" dated 15 February 2007 ("the Prosecutor's Further Submissions"),⁴ whereby the Prosecutor *inter alia* reiterated his request for the lifting of all the redactions on the Victims' Applications to be furnished to his Office;

¹ ICC-02/04-01/05-130.

² ICC-02/04-01/05-134.

³ ICC-02/04-01/05-150.

⁴ ICC-02/04-01/05-208.

NOTING the *“Decision on Prosecutor’s ‘Application to lift redactions from applications for Victims’ Participation to be provided to the OTP’ and on the Prosecution’s further submissions supplementing such Application, and request for extension of time”* dated 20 February 2007 (*“the Decision on Prosecutor’s Application to Lift Redactions”*),⁵ whereby the Single Judge reiterated the Court’s case-law, establishing that the only remedy of a general nature whereby participants can voice their concerns regarding a Chamber’s decision is a request for leave to appeal under article 82, paragraph 1 (d), of the Statute of the Court (*“the Statute”*),⁶ provided that the substantive and procedural requirements set forth for such remedy under the Statute and the Rules of Procedure and Evidence (*“the Rules”*) are duly complied with and, accordingly, dismissed the Prosecutor’s Application to Lift Redactions as deprived of proper procedural basis;

NOTING the *“Prosecution’s Request for Leave to Appeal the Decision Denying the ‘Application to Lift Redactions From Applications for Victims’ Participation to be Provided to the OTP”*, dated 26 February 2007 (*“the Request for Leave to Appeal”*),⁷ whereby the Prosecutor requested leave to appeal against the Decision on the Prosecutor’s Application to Lift Redactions pursuant to article 82, paragraph 1(d), of the Statute, by arguing that it raised the issue *“of whether a party may file a motion or application to vary protective measures before the original Chamber”*,⁸ in particular pursuant to regulation 42, sub-regulation 3, of the Regulations of the Court⁹ (*“the Regulations”*), *“or alternatively whether an application for leave to appeal under Article 82(1)(d) ‘is the only*

⁵ ICC-02/04-01/05-209.

⁶ ICC-02/04-01/05-60, paragraph 21; PTC I Decision on the Prosecutor’s Position on Pre-Trial Chamber I’s 17 February 2005 Decision to Convene a Status Conference, page 2 (ICC-01/04-11).

⁷ ICC-02/04-01/05-212.

⁸ ICC-02/04-01/05-212, paragraph 5.

⁹ ICC-02/04-01/05-212, paragraph 7.

remedy of a general nature whereby participants can voice their concerns regarding a Chamber's decision";¹⁰

NOTING the *"Decision on the "Prosecution's Request for Leave to Appeal the Decision Denying the 'Application to Lift Redactions From Applications for Victims' Participation to be Provided to the OTP"*, dated 9 March 2007 (*"the Decision on the Prosecution's Request for Leave to Appeal"*),¹¹ whereby the Single Judge denied leave to appeal by considering that the issues identified by the Prosecutor in his Request for Leave to Appeal were not *"involved"* by the Decision on the Prosecutor's Application to Lift Redactions and that, therefore, the Request for Leave to Appeal fell beyond the scope of article 82, paragraph 1(d), of the Statute;

NOTING the *Prosecution's applications "under Regulation 42(3) to Vary Protective Measures by Lifting Redactions from Applications for Victims' Participation Provided to the OTP, and to Submit a Further Reply under Rule 89(1) in the Case and Situation"*, dated 22 March 2007 (*"the Prosecution's Applications"*),¹² whereby the Prosecutor applies under regulation 42, sub-regulation 3, of the Regulations, for lifting of the redactions in the Victims' Applications provided to the Prosecutor in accordance with the 1 February 2007 Decision;

NOTING the Office of Public Counsel for Victims' (*"the OPCV" or "the Office"*) requests *"to appear before the Single Judge or to otherwise be heard on the protective measures for Applicants 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 in the Uganda situation and in the case The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen and to file a*

¹⁰ ICC-02/04-01/05-212, paragraph 5.

¹¹ ICC-02/04-01/05-219.

¹² ICC-02/04-88 ; ICC-02/04-01/05-231.

response to the Prosecution's Application to vary protective measures", dated 29 March 2007 (the "OPCV's Requests");¹³

NOTING that the Office requests the Single Judge: (a) to allow its Principal Counsel to appear before him or to be otherwise heard on the protective measures for applicants 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 in the situation in Uganda and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen*; (b) to authorise the Office to file a response to the Prosecution's applications to vary protective measures in a time limit to be determined by the Single Judge; (c) to allow the Office "*to respond and/or to reply to any submission by the OTP and/or the ad hoc Defence counsel on issues related to the protection of the applicants*";

NOTING that regulation 42, sub-regulation 3, of the Regulations provides for the submission of applications seeking variation of a protective measure previously ordered in the proceedings to the Chamber which issued the order;

CONSIDERING that an application to vary protective measures under regulation 42, sub-regulation 3, of the Regulations necessarily implies a claim from the applicant that a change occurred in the factual circumstances under which those measures were taken, and, correspondently, in the level of risk for the security of the person (or persons) concerned;

CONSIDERING that nowhere in the Prosecution's Applications did the Prosecutor provide evidence of any change in either the factual circumstances or the relevant level of risk which may have occurred since the 1 February 2007 Decision; and that, on the contrary, the Prosecution's Applications reiterate the same arguments already

¹³ ICC-02/04-90; ICC-02/04-01/05-234.

brought before the Single Judge in the Prosecutor's Application to Lift Redactions, the Prosecutor's Further Submissions, and in the Request for Leave to Appeal;

CONSIDERING further that the extent of the redactions in the Victims' Applications to be provided to the Prosecutor and to the Defence was specified in detail in the 1 February 2007 Decision, together with the reasoning warranting such redactions;

CONSIDERING, accordingly, that the statement purporting that "*the circumstance that the redacted applications themselves furnish no rationale for redaction of information from the OTP*" would amount to an "*additional fact which came to light after the redacted versions of the applications were furnished to the OTP*"¹⁴ is not a valid argument in support of the Prosecution's Applications, since it cannot be regarded as a change in the factual circumstances under which protective measures were taken, or in the relevant level of risk, within the meaning of regulation 42, sub-regulation 3, of the Regulations;

CONSIDERING therefore that, as recalled in the Decision on Prosecutor's Application to Lift Redactions¹⁵, any concerns that the Prosecutor might have had regarding the reasons supporting the decision to provide the Office of the Prosecutor with redacted versions of the Victims' Applications should have been raised by submitting a request for leave to appeal against the 1 February 2007 Decision, pursuant to article 82, paragraph 1(d), of the Statute ;

CONSIDERING, in light of the above, that, on the one hand, the OPCV's requests for the Office to be heard on and/or to file a response to the Prosecution's Applications have become irrelevant in the context of the present decision; on the other hand, that the request submitted by the OPCV to allow the Office to respond

¹⁴ ICC-02/04-01/05-231, paragraph 10.

¹⁵ ICC-02/04-01/05-60, paragraph 21.

and/or to reply "*to any submission by the Prosecutor and/or the ad hoc Defence counsel on issues related to the protection of the applicants*" is not supported by adequate reasoning and appears hypothetical in nature and broad and vague in scope;

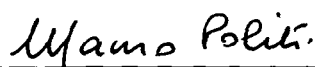
CONSIDERING that the admissibility of any specific submission that the OPCV may decide to file with the Chamber in the current proceedings for victims' participation will be assessed on a case-by-case basis, in light of its conformity with the statutory tasks vested in the Office;

FOR THESE REASONS

DISMISS the Prosecution's Applications;

DISMISS the OPCV's Requests.

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



Judge Mauro Politi
Single judge

Dated this 4 April 2007

At The Hague, The Netherlands