

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/04-01/05  
Date: 19 March 2015

**PRE-TRIAL CHAMBER II**

**Before: Judge Cuno Tarfusser  
Judge Marc Perrin de Brichambaut  
Judge Chang-ho Chung**

**SITUATION IN UGANDA  
IN THE CASE OF  
*THE PROSECUTOR v. DOMINIC ONGWEN***

**Public**

**Application by the Uganda Victims Foundation to Submit *Amicus Curie*  
Observations pursuant to Rule 103 of the Rules of Procedure and Evidence**

**Source: Uganda Victims Foundation**

Document to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**  
Ms Fatou Bensouda, Prosecutor  
Mr Benjamin Gumpert, Senior  
Trial Lawyer

**Duty Counsel for the Defence**  
Krispus Ayena Odongo

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**  
Ms Paolina Massidda  
Sarah Pellet

**The Office of Public Counsel for the  
Defence**

**States Representative**

**Amicus Curiae**

## REGISTRY

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**Registrar**  
Mr Herman von Hebel

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## **Introduction**

1. The Uganda Victims Foundation (“the Applicant”) hereby seeks to submit *amicus curie* observations pursuant to Rule 103 of the Rules of Procedure and Evidence (“Rules”) in relation to the legal representation of victims who may be admitted to participate in the confirmation of charges hearing and potential trial of Mr Ongwen and the narrow scope of charges in the current case.
2. The Uganda Victims Foundation is a national coalition of Non-Governmental Organisations and Community Based Organisations situated in Uganda working to promote the rights of victims of gross violations of international human rights law and serious violations international humanitarian law. The Applicant’s objectives include: advocating on behalf of victims of crimes including victims of international crimes perpetrated in Uganda; enhancing access to information on victims' rights and victims' organisations; providing capacity development for members in respect of the victims' thematic areas of protection, including medical treatment, access to justice, participation, reparations; and holding state and non-state actors accountable for crimes perpetrated in Uganda.
3. The present application is being brought before the Chamber pursuant to Rule 103 of the Rules of Procedure and Evidence (“Rules”).

### **I. Procedural History**

4. On 8 July 2005, Pre-Trial Chamber II (the “Chamber”) issued the “Decision on the Prosecutor’s application for the warrants of arrest under Article 58”, along with a warrant of arrest against Mr. Dominic Ongwen for his alleged responsibility for (i) crimes against humanity of murder, enslavement and other inhumane acts under articles 7(1)(a), 7(1)(c) and 7(1)(k) of the Rome Statute and (ii) war crimes of murder, cruel treatment, attack against a civilian population and pillaging under articles 8(2)(c)(i), 8(2)(e)(i) and 8(2)(e)(v) of the Rome Statute.<sup>1</sup>

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<sup>1</sup> ICC-02/04-01/05-152.

5. On 21 January 2015, Mr. Ongwen was transferred to the detention centre of the Court.<sup>2</sup>
6. On 21 January 2015, the Chamber issued a decision appointing Judge Trendafilova as Single Judge responsible for carrying out the functions of the Chamber with respect to the case.<sup>3</sup>
7. On 26 January 2015, the Office of Public Counsel for Victims (“OPCV”) submitted ‘Views and concerns of victims in relation to the proceedings against Mr. Dominic Ongwen’ stating that the scope of crimes Mr Ongwen has been charged with are too narrow.<sup>4</sup>
8. On 6 February 2015, the Single Judge severed the case against Mr. Ongwen from the case of the Prosecutor v. Joseph Kony *et al.*<sup>5</sup>
9. On 6 March, the Single Judge issued a decision postponing the provisional date set for the commencement of the confirmation hearing and decided that the new date for the commencement of the confirmation of charges hearing would be Thursday, 21 January 2016.

## II. Submissions by the Victims’ Foundation are of an “exceptional” nature

10. Rule 103 of the Rules stipulates that “[a]t any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, (...) grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate”.
11. It is well established jurisprudence of this Chamber that under rule 103(1) of the Rules the Chamber will resort, at its discretion, to *amicus curiae* observations only on an *exceptional*<sup>6</sup> basis, when it is of the view that such observations providing specific

<sup>2</sup> “Decision on Setting the Date for the Initial Appearance of Dominic Ongwen and the Date for a Status Conference”, ICC-02/04-01/05-418,

<sup>3</sup> ICC-02/04-01/05-415.

<sup>4</sup> ICC-02/04-01/05-420-Red2.

<sup>5</sup> ICC-02/04-01/05-419-Conf-Exp, para. 18.

<sup>6</sup> Emphasis added.

expertise are needed on particular topics, and subject to the Chamber's consideration that this is desirable for the proper determination of the case.<sup>7</sup>

12. The Applicant submits that the proposed *amicus* submissions by the Victims' Foundation are of an 'exceptional' nature. Article 68(3) allows for the participation of victims when their 'personal interests are affected.' It is foreseeable that once the case against Mr Ongwen proceeds to the confirmation of charges hearings and possibly trial, the victims of this case will be allowed to participate and present their views and concerns.<sup>8</sup> However, as a preliminary matter the Chamber has not yet appointed a legal representative for the victims of the *Ongwen* case, and as such the OPCV has been representing victims of the *entire Uganda 'situation'*.
13. The Applicant has been approached by numerous victims who would like to communicate with the Chamber on the issue of their legal representation and the narrow scope of the charges in this case. Thus, it is in the opinion of the Applicant that the Chamber could benefit from the exceptional nature of these observations, especially as the victims currently have no alternative avenues to seize the Chamber on the issue of their views and concerns relating to their participation under Article 68(3).

### III. Victims would like to exercise their rights under Rule 90

11. A key issue that the Victims' Foundation would like to raise in the proposed *amicus curiae* submissions is the lack of proper and effective legal representation that they have received from the OPCV thus far. In a ten year period the victims have received

<sup>7</sup>PRE-TRIAL CHAMBER II, "Decision on the Application by the Redress Trust to Submit Amicus Curiae Observations", 18 February, ICC-01/04-02/06-259, Pre-Trial Chamber II, "Decision on the 'Request by Ms. Moraa Gesicho to Appear as Amicus Curiae'", 12 April 2011, ICC-01/09-01/11-49, para. 14; Pre-Trial Chamber II, "Decision on the 'Request by Ms. Moraa Gesicho to Appear as Amicus Curiae'", 12 April 2011, ICC-01/09-02/11-54, para. 15; Pre-Trial Chamber II, "Decision on the 'Request for leave to submit Amicus Curiae Observations on behalf of the Kenya Section of the International Commission of Jurists Pursuant to Rule 103 of the Rules of Procedure and Evidence'", 11 May 2011, ICC-01/09-01/11-84, para. 8; Pre-Trial Chamber II, "Decision on the 'Request for leave to submit Amicus Curiae Observations on behalf of the Kenya Section of the International Commission of Jurists Pursuant to Rule 103 of the Rules of Procedure and Evidence'", 11 May 2011, ICC-01/09-02/11-87, para. 8

<sup>8</sup>See for example, 'Decision Establishing Principles on the Victims' Application Process', ICC-02/04-01/15-205.

very little communication from the OPCV regarding the progress or lack thereof of the proceedings against *Kony et al.* It is the opinion of the victims that legal representation does not take effect only when a suspect is apprehended and when judicial proceedings commence. Despite the lack of judicial activity at the Court in relation to this case, the OPCV was still duty bound to explain to the victims of the case why the proceedings had not commenced, any obstacles in the apprehension and prosecution of the suspects in the case; as well as answer any questions that the victims had regarding their status as well as the possibility of reparations.

12. The victims believe that they should have benefited from more than a mere shadow of communication from the OPCV during this 10 year period, even if on an annual basis. Instead their questions have remained unanswered to date.
13. Rule 90 of the Rules states that "*a victim shall be free to choose a legal representative*", and in order to ensure that this right does not remain illusory; the Applicant believes that the Chamber will benefit greatly from the views and concerns of victims on this matter. Essentially, the Ugandan victims want to be given agency in a process that affects them and play a role in the choice of *their*<sup>9</sup> legal representative, instead of having one appointed for them with no consultation. If given leave, the Foundation proposes to submit observations on the qualities that the victims want to see in any potential legal representative that is appointed for them.

#### **IV. Narrowness of the scope of the charges**

14. It is the opinion of the victims that the Applicant has been in contact with that the temporal/territorial scope and subject matter jurisdiction of the charges against Mr Ongwen are far too narrow and do not represent the totality of the crimes suffered by the victims during those particular series of attacks. The Applicant has already been in touch with victims who fear that only the victims from the Acholi (Lukodi)

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<sup>9</sup> Emphasis added. The victims in Uganda have suffered from the most heinous crimes which have left many of them disenfranchised and disempowered. The potential of the ICC to assist the victims in their recovery is tenfold, but this can only happen if victims are not treated as passive actors by the Court, and instead given an active role on decisions that affect them.

region will be able to participate in proceedings and benefit from potential reparations awards to the detriment of the hundreds of other victims who will remain without any form of redress or justice. If granted leave, the Applicant would like to submit the views and concerns of the victims on this matter.

15. Furthermore, the Applicant avers that Mr Ongwen allegedly committed several crimes in many parts of Northern Uganda which have not been included in the case and victims are eager to speak with the Office of the Prosecutor in order to furnish them with further information on attacks including those that occurred in regions such as Lango and Teso.

### V. Conclusion

16. For the foregoing reasons, the Applicant respectfully requests it be granted leave to submit *amicus curiae* observations on these matters pursuant to Rule 103 of the Rules, within a time limit determined by the Chamber.

Respectfully submitted,



Chris Ongom

National Coordinator

Uganda Victims Foundation

Dated this 19<sup>th</sup> day of March 2015

At Gulu, Uganda