



Original: **English**

No.: ICC-02/04-01/05
Date: 31 October 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, President
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

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

Public Document

Application by the Uganda Victims' Foundation and the Redress Trust for leave to submit observations to the Pre-Trial Chamber II of the International Criminal Court, pursuant to Rule 103 of the Rules of Procedure and Evidence

Source: The Uganda Victims' Foundation and the Redress Trust

Document 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 Diekmann

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

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

States Representatives

The Government of the Republic of
Uganda

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Uganda Victims' Foundation ("UVF") and the Redress Trust ("REDRESS") seek leave of Pre-Trial Chamber II of the International Criminal Court to submit observations, concerning the issue of the admissibility of the Case of *the Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*, raised in the "Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence" of 21 October 2008.¹
2. This application for leave is made pursuant to Rule 103 of the Rules of Procedure and Evidence.

I. The Applicants

The UVF

3. The UVF is a registered nongovernmental organization based in Uganda which serves as a coalition of human rights and civil society nongovernmental organisations working with victims and on victims' rights issues in Uganda. The objectives of the UVF are to advocate for victims' rights especially with respect to the conflict in northern Uganda. The group was formed in 2006 initially as the Ugandan Victims' Rights Working Group, by participants and representatives of Ugandan nongovernmental organisations working with victims who acknowledged the absence of an independent victims' rights advocacy group in the country.
4. The mandate and objectives of the UVF include raising a voice for victims of crimes including victims of international crimes perpetrated in Uganda. Activities of the UVF include advocacy actions in the form of statements, press releases and press articles, notably on the Juba Peace Process. UVF also trains trainers and grass roots activists working with victims on victims rights, and conducts coordinated consultations with victims and sensitisation about their rights.

¹ ICC-02/04-01/05-320.

5. UVF has knowledge of issues concerning victims of international crimes in Northern Uganda. Many of UVF's members are themselves victims of crimes committed during the conflict and therefore have direct experience of victims' issues. UVF member organisations work with victims on initiatives such as child reintegration and self-help programmes. They are based in the targeted districts and their staff are all local. UVF has held workshops for members and consulted with victims in their own constituencies to inform 3 papers responding to the Juba Peace process. Its most recent paper, considers the Annexure to the Juba Agreement on Accountability and Reconciliation, and in particular the extent to which it satisfies victims' needs for justice, accountability and reconciliation.²
6. As such, UVF has an expertise directly related to the issue at stake in the "Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence" of 21 October 2008.³

REDRESS

7. REDRESS is an international nongovernmental organisation with a mandate to seek justice and reparation for victims of torture and related international crimes, and to make accountable all those who perpetrate, aid or abet these acts. It has considerable expertise in advocating for the rights of victims to gain both access to the courts and redress for their suffering.
8. REDRESS regularly takes up cases on behalf of individual survivors at the national and international level and provides assistance to representatives of survivors. It has extensive experience in interventions before national and international courts and tribunals, including at the international level, the United Nations Committee against Torture and Human Rights Committee, the European Court of Human Rights, the Inter-American Commission on Human Rights, the

² This paper is available online at:

www.vrwg.org/Publications/05/UVRWG%20position%20paper%2010%20Apr%2008.pdf.

³ ICC-02/04-01/05-320.

Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia.

9. REDRESS has been working actively in Uganda for several years on a range of issues regarding accountability for victims of torture and crimes relating to the conflict in the north of the country. It has published a number of reports and assessments on the situation of victims and access to justice in Uganda,⁴ and has been working actively with NGOs and lawyers in Uganda on a number of torture-related cases. As a result of this work covering the whole of Uganda, REDRESS has a strong understanding of the legal system and its practical application in serious international crime cases. REDRESS also assisted in the creation of the UVF and has been working closely with the UVF since its inception in 2006, and has been involved in the preparation of UVF consultations and position papers in response to the Juba Peace agreement.

II. The Application for Locus

10. Rule 103(1) of the Rules of Procedure and Evidence ("the Rules") of the International Criminal Court ("ICC" or "the Court") provides that:

"At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or 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. Pursuant to rule 103 of the Rules, spontaneous applications can be submitted either by States, organizations or individuals interested to participate in the proceedings before the Court.

⁴ See, for instance: *Torture in Uganda: A Baseline Study on the Situation of Torture Survivors in Uganda* (2007); *Action Against Torture: A Practical Guide to the Istanbul Protocol for Lawyers in Uganda* (2004). These reports are available at: http://www.redress.org/country_uganda.html.

12. In deciding whether to grant the leave to an applicant to submit observations as *amicus curiae*, according to rule 103 of the Rules the Chamber shall evaluate whether this is "desirable for the proper determination of the case".⁵
13. Other international courts and tribunals permit third party interventions, such as the International Court of Justice⁶, the International Criminal Tribunal for the former Yugoslavia ("ICTY"),⁷ the International Criminal Tribunal for Rwanda ("ICTR")⁸ and the Special Court for Sierra Leone ("SCSL"),⁹ on similar bases as Rule 103(1). The ICTR and the SCSL in particular have received submissions from third parties where it was considered that there was a real reason to believe that those submissions would assist the court to reach the right decision.¹⁰ As indicated by the Appeals Chamber of the Special Court of Sierra Leone in its decision granting REDRESS and others the opportunity to file an *amicus curiae* brief and to present oral submissions:

*"The issue is whether it is desirable to receive such assistance, and 'desirable' does not mean 'essential' (which would be over-restrictive) nor does it have an over-permissive meaning such as 'convenient' or 'interesting'. The discretion will be exercised in favour of an application where there is a real reason to believe that written submissions, or such submissions supplemented by oral argument, will help the Court to reach the right decision on the issue before it."*¹¹

⁵ See, Decision on "Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence" ICC-01/04-01/06 OA 11 of 22 April 2008.

⁶ Article 81 of the Rules of the International Court of Justice.

⁷ Rule 74 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia.

⁸ Rule 74 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

⁹ Rule 74 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

¹⁰ See for example *Prosecutor v Jean-Paul Akayesu* Case No. ICTR-96-4-T "Order Granting Leave for Amicus Curiae to Appear" 12 February 1998; *Prosecutor v Laurent Semanza* Case No. ICTR-97-20-T "Decision on the Kingdom of Belgium's Application to File and Amicus Curiae Brief and on the Defence Application to Strike Out the Observations of the Kingdom of Belgium Concerning the Preliminary Response of the Defence" 9 February 2000; *Prosecutor v Kallon* Case No. SCSL-2003-07 "Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae brief and to Present Oral Submissions" 1 November 2003.

¹¹ SCSL-2003-07 of 1 November 2003, *ibid.*, at para 5.

14. It is submitted that UVF and REDRESS are well placed to assist the Court in the proper determination of the issue of the admissibility of the Case at stake. Both organisations have experience in working on the issues of international crimes committed during the conflict in Northern Uganda, have followed closely the Juba Peace Agreement process from a victims' rights perspective, and are following and closely monitoring the institutional developments that have been taking place pursuant to the Annexure to the Juba Peace Agreement. Both organisations are also in regular contact with victims.

III. Specific Issues the Applicants Seek to Address, and the Nature of the Observations the Applicants Propose to Submit

15. The Applicants seek to make observations on the following specific issues:

- i) The relationship between the investigations and prosecutions foreseen under the Annexure and issues of admissibility under Article 17 of the Statute. Drawing on the response of the UVF to the Annexure to the Juba Agreement on Accountability and Reconciliation, further consultations with victims' communities, lawyers and other practitioners in Uganda, the Applicants will make observations on
 - a) the extent to which the investigations and prosecutions proposed under the Annexure satisfy Ugandan victims' needs for justice, accountability and reconciliation;
 - b) the state of advancement in the implementation of the Annexure, particularly in relation to the establishment of the Special Division of the High Court; and
 - c) the extent to which the legal framework for the establishment of the Special Division complies with principles of accountability as espoused by the ICC Statute and other international treaties binding on Uganda and principles of general international law;


- ii) The experiences of victims of crimes within the jurisdiction of the ICC in obtaining justice in Ugandan domestic criminal jurisdictions and other fora, and the relationship with issues of admissibility under Article 17 of the Statute. Here, the Applicants propose to make observations on the tested capacity of the Ugandan judiciary to afford justice to victims of serious international crimes.
16. The Applicants wish to underscore that in their proposed observations, they do not purport to speak on behalf of specific victims, victim-applicants or potential applicants to participate in proceedings.

Conclusion

For the reasons set forth above, the Applicants respectfully request that they be granted leave to submit written observations on these matters pursuant to Rule 103 of the Rules of Procedure and Evidence, within a time period determined by the Court. Should the Chamber desire that additional briefing or oral arguments be submitted on these issues, the Applicants will be happy to play whatever role is requested.

All of which is respectfully submitted.

For The Applicants



 LABEJA SANTOS JOHN
 CHAIRPERSON – UGANDA VICTIMS FOUNDATION

Carla Ferstman
Director, REDRESS

John Santos Labeja
Chairman, UVF

Dated this 31 October 2008

At London/United Kingdom and Kampala/Uganda