

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04-01/05
Date: 5 November 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Presiding Judge
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

Decision on application for leave to submit observations under Rule 103

Decision 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

The Government of the Republic of
Uganda

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Judges of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”);

1. **NOTING** the “Decision assigning the situation in Uganda” to Pre-Trial Chamber II issued by the Presidency on 5 July 2004¹;

2. **NOTING** the “Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence” dated 21 October 2008, whereby the Chamber decided to initiate proceedings under article 19(1) of the Statute (the “Proceedings”) and invited the Republic of Uganda, the Prosecutor, the counsel for the Defence (the “Defence”) and victims having communicated with the Court with respect to the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (“the Case”), or their legal representatives, to submit their observations on the admissibility of the Case by 10 November 2008;²

3. **NOTING** the “Decision on Defence Counsel’s ‘Request for conditional stay of proceedings’” dated 31 October 2008, whereby the Chamber *inter alia* rejected the “Request for conditional stay of proceedings”³ filed by the Defence on 28 October 2008 and extended until 18 November 2008 the time limit for the Republic of Uganda, the Prosecutor, the Defence and the victims having communicated with the Court with respect to the Case to submit observations in the Proceedings;

4. **NOTING** the “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”, dated 31 October 2008 and filed on 3 November 2008, whereby the Uganda Victims’ Foundation (the “UVF”) and the Redress Trust (“Redress”; UVF

¹ ICC-02/04-1.

² ICC-02/04-01/05-320.

³ ICC-02/04-01/05-325.

and Redress, collectively, the "Applicants") requested leave to submit written observations in the Proceedings;⁴

5. **NOTING** that the Applicants seek leave to submit observations on a number of issues related to the "Annexure to the Agreement on Accountability and Reconciliation signed between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement" on 19 February 2008 (the "Annexure"), in particular (i) "the relationship between the investigations and prosecutions foreseen under the Annexure and issues of admissibility under Article 17 of the Statute" and (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";

6. **NOTING** rule 58(3) of the Rules of Procedure and Evidence (the "Rules"), pursuant to which the Chamber acting on its own motion under article 19(1) of the Statute shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings;

7. **NOTING** rule 103(1) of the Rules, pursuant to which at 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 any observation on any issue that the Chamber deems appropriate;

8. **NOTING** that, in its "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'" dated 22 April 2008, the Appeals Chamber highlighted that, in exercising its discretion as to whether to grant leave to file submissions

⁴ ICC-02/04-01/05-330.

under rule 103(1) of the Rules, a Chamber should consider whether such submissions may assist it “in the proper determination of the case”;⁵

9. **CONSIDERING** that the issues indicated by the Applicants might have a bearing on the determinations to be taken by the Chamber in the context of the Proceedings;

10. **CONSIDERING** that, accordingly, the Chamber is of the view that granting the Applicants leave to file submissions on the proposed issues appears desirable and appropriate;

11. **CONSIDERING**, however, that the desirability and appropriateness of allowing submissions under rule 103(1) of the Rules has to be assessed against the duty of the Chamber to ensure the expeditiousness of the proceedings as a fundamental tenet of their fairness;

12. **CONSIDERING**, therefore, that the Chamber deems it necessary to precisely determine the subject matter of the proposed submissions by the Applicants;

13. **CONSIDERING** that, in the view of the Chamber, the most desirable aspect of the proposed submissions by the Applicants consists of the factual information they may be in possession of and therefore able to provide to the Chamber as regards the following issues:

- i. the state of implementation of the Annexure, with particular reference to the establishment of the Special Division of the High Court;
- ii. the existence of any relevant legal texts relating to such establishment or to the Annexure;

⁵ ICC-01/04-01/06-1289, paragraph 8.

- iii. the experiences of victims of crimes within the jurisdiction of the Court in seeking justice from Ugandan courts;

14. **CONSIDERING** that, accordingly, the Applicants should confine their submissions to points of specific relevance to the issues outlined above, refraining from providing information of a general nature as regards victims' issues and/or analysis of a legal nature;

15. **NOTING** that rule 103(2) of the Rules stipulates that the Prosecutor and the Defence shall have the opportunity to respond to observations submitted under rule 103(1) of the Rules;

16. **CONSIDERING** that, in the light of the proposed subject matter of the submissions by the Applicants, it might be appropriate to grant an opportunity to respond also to the other participants in the Proceedings;

17. **CONSIDERING**, therefore, that once the submissions have been filed the Chamber will be in a better position to assess such appropriateness, as well as to establish a deadline for the response by the Prosecutor and the Defence;

18. **NOTING** regulations 36 and 37 of the Regulations of the Court (the "Regulations"), setting forth the rules governing the format and page limits of documents filed with the Registry, in particular the 20-page limit provided under regulation 37(1) of the Regulations;

19. **NOTING** the "Application of the OPCV to extend the time limit for the submission of observations with regards to the admissibility proceedings" dated 4 November 2008 (the "OPCV's request")⁶, whereby the Office of Public Counsel for Victims (the "OPCV") alleges that its intermediaries in the field will not be able to

⁶ ICC-02/04-01/05-332.

contact the relevant victims before the end of the first week in December, due to logistical obstacles as well as to the fact that student victims will be away from their place of residence until the beginning of school holidays, and, accordingly, requests an extension of the time limit to file observations until 15 December 2008;

20. **CONSIDERING** that the Chamber will decide upon the OPCV's request in due course;

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Applicants, subject to paragraphs 14 and 18 of the present decision, leave to submit, by Tuesday 18 November 2008, observations under rule 103(1) of the Rules on the following issues:

- (i) the state of implementation of the Annexure, with particular reference to the establishment of the Special Division of the High Court;
- (ii) the existence of any relevant legal texts relating to such establishment or to the Annexure;
- (iii) the experiences of victims of crimes within the jurisdiction of the Court in seeking justice from Ugandan courts;

RESERVES the right to determine the time limit for the Prosecutor and the Defence, as well as to allow other participants in the Proceedings, to respond to the observations made by the Applicants.

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

Mauro Politi

Judge Mauro Politi
Presiding Judge

Hans-Peter Kaul

Judge Hans-Peter Kaul

Ekaterina Trendafilova

Judge Ekaterina Trendafilova

Dated this Wednesday, 5 November 2008

At The Hague, The Netherlands.