

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04-01/05
Date: 10 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 OTTL, OKOT ODHIAMBO,
DOMINIC ONGWEN**

Public Document

**Decision on application for leave to submit observations under Rule 103 dated 7
November 2008**

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

Amici Curiae

The Uganda Victims' Foundation
Redress Trust

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 2008²;

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 by the Defence and extended 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 until 18 November 2008⁴;

4. **NOTING** the “Decision on application for leave to submit observations under Rule 103” dated 5 November 2008⁵, whereby the Chamber granted the Uganda Victims’ Foundation (the “UVF”) and the Redress Trust (“Redress”) leave to submit,

¹ ICC-02/04-1.

² ICC-02/04-01/05-320.

³ ICC-02/04-01/05-325.

⁴ ICC-02/04-01/05-328.

⁵ ICC-02/04-01/05-333.

by 18 November 2008, observations under rule 103(1) of the Rules limited to points of relevance to a number of specific issues⁶;

5. **NOTING** the “Request pursuant to rule 103(1) of the Rules of Procedure and Evidence for leave to submit observations as *amicus curiae* in the proceedings under Article 19(1) of the Rome Statute of the International Criminal Court in the case of the Prosecutor v. Kony and others” submitted by Amnesty International (the “Applicant”) on 7 November 2008, requesting “leave to submit written observations as *amicus curiae* limited to the legal criteria which the Chamber should use in determining whether the [...] Case is admissible”⁷;

6. **NOTING** rule 58(2) 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

⁶ In particular, the Chamber authorized submissions bearing upon (i) the state of implementation of 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”), 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; and (iii) the experiences of victims of crimes within the jurisdiction of the Court in seeking justice from Ugandan courts.

⁷ ICC-02/04-01/05-335.

under rule 103(1) of the Rules, a Chamber should consider whether such submissions may assist it “in the proper determination of the case”⁸;

9. **CONSIDERING** 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;

10. **CONSIDERING** that, in accordance with the above, the Chamber precisely determined the subject matter of the authorized submissions by UVF and Redress and explicitly requested them to refrain *inter alia* from providing analysis of a legal nature;

11. **CONSIDERING** that the Applicant is seeking leave to submit observations as to the “legal criteria” under articles 17(2) and 17(3) of the Statute that the Chamber should use in the context of proceedings under article 19(1) of the Statute;

12. **CONSIDERING** furthermore that the statement by the Applicant to the effect that “the proposed *amicus curiae* brief will supply information of direct relevance on issues that otherwise may not be available to the Court” is too vague for the Chamber to establish whether such information would assist it in the determination of the issues relevant to the Proceedings;

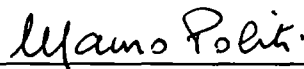
13. **CONSIDERING** that granting the Applicant leave to file submissions on the proposed issues appears therefore neither desirable nor appropriate;

⁸ ICC-01/04-01/06-1289, paragraph 8.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Applicant's request for leave to submit observations under rule 103(1) of the Rules.

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



Judge Mauro Politi
Presiding Judge



Judge Hans-Peter Kaul



Judge Ekaterina Trendafilova

Dated this Monday, 10 November 2008

At The Hague, The Netherlands.