



Original: English

No.: ICC-02/04-01/15

Date: 27 March 2015

PRE-TRIAL CHAMBER II

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

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

Public Redacted

Request for leave to file a Response to the “Application by the Uganda Victims Foundation to Submit *Amicus Curie* Observations pursuant to Rule 103 of the Rules of Procedure and Evidence”

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the****Court to:*****The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Mr Benjamin Gumpert

Counsel for the Defence

Mr Krispus Ayena Odongo

Legal Representatives of Victims

Ms Paolina Massidda

Ms Sarah Pellet

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 Representative****Amicus Curiae****REGISTRY**

Registrar

Ms Herman von Hebel

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Other**

Uganda Victims Foundation

I. INTRODUCTION

1. In accordance with the decisions on legal representation of victims issued by the then Single Judge of Pre-Trial Chamber II¹, two counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) were appointed as common legal representatives of participating victims and to provide legal assistance and representation to applicants in the proceedings related to the Uganda situation and the *Kony et al.* case (the “Legal Representatives”).

2. On 19 March 2015, the Uganda Victims Foundation (the “Applicant”) filed the “Application by the Uganda Victims Foundation to Submit *Amicus Curie* Observations pursuant to Rule 103 of the Rules of Procedure and Evidence” (the “Application”)² seeking, *inter alia*, leave to file observations on “*the lack of proper and effective legal representation that [victims] have received from the OPCV thus far*”.³

3. Considering that said issue on which the Applicant is seeking to provide observations under rule 103 of the Rules of Procedure and Evidence clearly touches upon the implementation of the mandate endowed to the Office by the then Pre-Trial Chamber II, the Principal Counsel, acting as one of the Legal Representatives,

¹ See the “Decision on legal representation, appointment of counsel for the defence, 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/0111/06 to a/0127/06” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/05-134, 1 February 2007; “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/05-267, 15 February 2008; “Decision on legal representation, appointment of counsel for the defence, criteria for redactions of applications for participation, and submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/05-312, 18 September 2008; “Decision on legal representation of Victims a/0065/06, a/0066/06, a/0068/06, a/0088/06, a/0090/06 to a/0096/06, a/0098/06, a/0102/06, a/0103/06, a/0112/06, a/0115/06, a/0117/06, a/0118/06, a/0120/06 to a/0126/06, a/0076/07 to a/0078/07, a/0081/07, a/0082/07, a/0084/07, a/0085/07, a/0090/07 to a/0103/07, a/105/07 to a/0108/07, a/0112/07, a/0115/07, a/0117/07, a/0118/07 and a/0123/07” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/05-366, 9 February 2009.

² See the “Application by the Uganda Victims Foundation to Submit *Amicus Curie* Observations pursuant to Rule 103 of the Rules of Procedure and Evidence”, No. ICC-02/04-01/15-211, 19 March 2015.

³ *Idem*, para. 11

respectfully requests leave of the Pre-Trial Chamber (the “Chamber”) to respond to said Application.

4. The Principal Counsel files the present submissions in the *Ongwen* case although they relate in part to the *Kony* et al. case since the Application was registered in the case record of the former.

5. The present submissions are filed Confidential *Ex parte* only available to the OPCV and the Registrar because they refer to exchanges between the Principal Counsel and the Registrar. A public redacted version is filed simultaneously.

II. REQUEST FOR LEAVE TO RESPOND

6. The Principal Counsel contends that the issue on which the Applicant is seeking leave to file observations relates to the fulfilment by the two appointed counsel from the Office of their mandate as Legal Representatives of victims and applicants in the Uganda situation and in the *Kony* et al. case. Therefore, in accordance with the principle *audita altera parte*, said counsel must be afforded an opportunity to be heard before any decision is taken by the Chamber in this regard.

7. As a preliminary remark, the Principal Counsel notes that the Application should be dismissed *in limine* because it is unfounded and, in any case, premature since the Chamber has not yet taken any step for the purpose of the organisation of the legal representation of victims in the *Ongwen* case. As a matter of fact, the Chamber has not ruled upon any request for participation in said case.

8. Incidentally, the Applicant seeks leave to submit views and concerns of the victims on the narrowness of the scope of the charges.⁴ The Legal Representatives already filed submissions in the *Kony* et al. case, duly exercising their mandate to preserve the rights of the participating victims in said case and to generally represent

⁴ *Ibid.*, paras. 14 and 15.

the interests of victims, on the scope of the charges currently included in the warrant of arrest against Mr Ongwen,⁵ as well as on the need to further investigate the events that occurred on the Ugandan territory.⁶

9. The Principal Counsel also notes that the Applicant has not shown its legitimacy to speak on behalf of the victims represented by the Legal Representatives. Indeed, the Applicant simply refers to the fact that it *“has been approached by victims who would like to communicate with the Court on the issue of their legal representation”*.⁷ Nothing in the Application allows concluding that said victims are in fact the ones represented by counsel of the Office. Accordingly, the Applicant has no standing to submit the views and concerns of the represented victims on these issues.

10. The Principal Counsel further notes that over the past 8 years, the Legal Representatives have provided victims with legal assistance and representation when necessary. However, in the absence of judicial activities, their presence in Uganda was not warranted and resources requested to undertake missions to meet with victims were systematically cut from the Office’s budget. Victims have been made aware of this situation several times via intermediaries and via the VPRS which benefits from a continuous field presence in the country.

11. Mr Ongwen’s surrender to the Court triggered a necessity for the Legal Representatives to travel to Uganda to explain the new procedural developments to the victims admitted to participate in the Uganda situation and in the *Kony* et al. case and the impact of the narrowness of the charges against the suspect on their request to participate in the proceedings pending before the Court. Indeed, said surrender prompted numerous reactions amongst the victims. Accordingly, and in order to fulfil their deontological and professional obligations, the Legal Representatives

⁵ See the public redacted version of the “Views and concerns of victims in relation to the proceedings against Mr. Dominic Ongwen”, No. ICC-02/04-01/05-420-Red2, 26 January 2015, paras. 13-20.

⁶ *Idem*, paras. 21-25

⁷ *Ibid.*, para.13.

contacted intermediaries in Uganda, immediately after Mr Ongwen's surrender, in order to discuss how best organise missions in the field to meet with their clients. Amongst others, the individual who signed the Application was also contacted and, no later than the 24 March 2015, confirmed, through the VPRS, his willingness to help counsel to organise meetings in Uganda with their clients.

12. Finally, the Principal Counsel wishes to inform the Chamber about a fact which might have had an impact on the filing of the Application at this stage of the proceedings, namely the cancellation in February 2015 of her first mission to Uganda organised within the framework of the legal assistance to be provided to applicants and represented victims in the Uganda situation and in the *Kony et al.* case. The Principal Counsel cancelled said mission at the last minute [REDACTED]. The Principal Counsel is now organising a new mission to Uganda in the near future.

FOR THE FOREGOING REASONS the Principal Counsel respectfully requests the Chamber to dismiss *in limine* the Application or, in the alternative, to grant the Legal Representatives leave to respond to the specific issue in a timeframe indicated by the Chamber.



Paolina Massidda
Principal Counsel

Dated this 27th day of March 2015

At The Hague, The Netherlands