

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/05**

Date: **3rd November 2015**

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

IN THE CASE OF

THE PROSECUTOR v. DOMINIC ONGWEN

Public

**Application by the Legal Representatives for Leave to Submit *Amicus Curie*
Observations pursuant to Rule 103 of the Rules of Procedure and Evidence**

Source: Legal Representatives 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, Prosecutor

Counsel for the Defence

Mr Crispus Ayena Odong

Legal Representatives of Victims

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representative

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Fiona McKay

Introduction

1. Pursuant to Rule 103 of the Rules of Procedure and Evidence (RPE), the Legal Representatives of Victim Applicant's already having contact with the Court ("the Applicants) hereby apply for leave to submit observations as Amicus Curiae in the case of the *Prosecutor v Dominic Ongwen* in the situation in Uganda.
2. The Applicants are legal practitioners in Uganda and Chile respectively and have satisfied the requirements in Rule 90 (6) of the Rules of Procedure and Evidence Regulation 67 of the Regulations of the Court and have been added to the list of Counsel of the ICC.
3. The Applicants organised three missions to visit and interact with victims in Lukodi prior to their appointment as legal representatives by 858 victims through means of powers of attorney and by 450 others through means of direct nomination in the course of completion of the participation form.
4. During these missions the Applicants met and interacted with victims of the LRA attack in Lukodi. The interactions covered amongst others; the role of a legal representative; the right of a victim to choose counsel of their choice; the nature of victim participation in proceedings at the Court etc.
5. The Applicants additionally had the opportunity to explain to victim applicants how individually each applicant could authorise the legal representatives including the use and purpose of a power of attorney to represent them in proceedings of the Court.

Grant of Powers of Attorney to Represent Victims

6. 858 victim applicants for participation in proceedings of the case against Dominic Ongwen including men, women and children, all hailing from Lukodi in Gulu District and who have contact with the court presently have granted powers of Attorney to the two legal representatives. They wish to be represented by them before the Court.

These Powers of Attorney have been transmitted to the Victims Participation and Reparations Section (VPRS) for onward presentation to the Chamber.¹

7. 450 other victim applicants from Lukodi in Gulu District have completed their application forms following their respective face to face engagement with both legal representatives and similarly expressed interest to be represented in the proceedings of the Court by the Applicants.

Right to Legal Representation

8. The legal representatives recall that in this case the Prosecutor published a public redacted version of “Notice of Intended charges against Dominic Ongwen” dated 18th September 2015, ICC-02/04-01/15-305-conf. The notice has attracted a lot of interest amongst victims in the said case.
9. The legal representatives note that pursuant to Article 68 (3) of the Statute, victims are allowed to participate in proceedings of the Court when their ‘personal interests are affected’ and under Rule 90 of the Rules of Procedure and Evidence have the right to freely choose a legal representative to represent him or her in proceedings before the Court.

Submissions by the Legal Representatives 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* basis, when it is of the view that such observations providing specific

¹ ICC-02/04-01/15-327, para 5. The second Report of the Registry in the case of Dominic Ongwen notes that the registry has received powers of attorney from applicants in favour of two lawyers. These lawyers although not named are the Applicants.

expertise are needed on particular topics, and subject to the Chamber's consideration that this is desirable for the proper determination of the case.²

12. The Applicants submit that the proposed *amicus* submissions by the legal representatives are of an 'exceptional' nature.

a. Legal Representation

13. The Applicant's clients, the victims from the Lukodi attack travelled many kilometres to meet with the Applicants to express their views and concerns regarding the participation in proceedings and legal representation before the Court. Some of those concerns related to the qualities expected of any person providing victim legal representation should have. The second report of the Registry on applications to participate in proceedings dated 26th October 2015 highlights these concerns of victims.³ These are some of the issues raised by the victims presented to the Applicants in the different meetings held and that the applicants would like to present to the Single Judge in an *amicus* brief.

14. The Applicants believe that the information gathered in these meetings and the questions raised could illustrate and be useful for the single judge on matters under his mandate and jurisdiction. Thus, the Applicants respectfully request to present them to the Chamber in the form of an *amicus* brief for which we request leave.

15. The exceptional nature of the requested *amicus* is also premised on the fact that if leave is granted, the Applicants will convey to the Single Judge the manner in which

² 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

³ ICC-02/04-01/15-327, para.7

the Applicants will fulfil the requisite qualities that victims have stated they want in a legal representative.⁴

b. Application for Interim Release by the Defence

16. Pursuant to the Application of the Defence for Interim Release of Dominic Ongwen,⁵ the Applicants have consulted with their clients about the said application by the Defence Counsel and the clients are opposed to the said application for interim release. The Applicants note that if given leave, they would communicate the concerns and fears of their clients to the Chamber, Prosecution and Defence for consideration in any decision on the Application by the Defence.

17. Therefore, the applicants submit that the request for leave to submit an *amicus curiae* application satisfies the requisite of been of an exceptional nature.

Conclusion

18. The applicants respectfully request that the Chamber be pleased to grant leave to the Applicants to submit *amicus curiae* observations on the matter pursuant to Rule 103 of the RPE within a time limit determined by the Chamber.

Respectfully Submitted,



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JOSEPH AKWENYU MANOBA
LEGAL REPRESENTATIVE

Dated this 03 day of November 2015, At Kampala, Uganda

⁴ ICC-02/04-01/15-327, para. 7

⁵ ICC-02/04-01/15-332-Red2,

Public Redacted Version of "Defence Request for the Interim Release of Dominic Ongwen" dated 29th October 2015.