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No. ICC-02/04-01/15 A A2

Date: 19 January 2022

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Piotr Hofmański
Judge Solomy Balungi Bossa
Judge Reine Alapini-Gansou
Judge Gocha Lordkipanidze

SITUATION IN UGANDA

IN THE CASE OF THE PROSECUTOR v. DOMINIC ONGWEN

Public document

**Decision on the request for leave to file observations pursuant to rule 103
of the Rules of Procedure and Evidence**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor
Ms Helen Brady

Counsel for the Defence

Mr Krispus Ayena Odongo
Chief Charles Achaleke Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Ms Paolina Massidda

Others

Dr. Mohammad Hadi Zakerhossein

Professor Bonita Meyersfeld and the Southern African Litigation Centre Trust

Felicity Gerry QC, Wayne Jordash QC, Ben Douglas-Jones QC, Anna McNeil, Philippa Southwell, Dr. Beatrice Krebs and Jennifer Keene-McCann

Ms Ardila, Mariana; Ms Fernández-Paredes, Teresa; Ms Ibáñez, María Cecilia; Ms Kravetz, Daniela; Ms SáCouto, Susana; Ms Seoane, Dalila

Erin Baines, Anne-Marie de Brouwer, Annie Bunting, Eefje de Volder, Kathleen M. Maloney, Melanie O'Brien, Osai Ojigho, Valerie Oosterveld, Indira Rosenthal

Dr. Rosemary Grey, Global Justice Center (GJC); Amnesty International (AI), Women's Initiatives for Gender Justice (WIGJ)

NIMJ - National Institute of Military Justice

Louise Arimatsu, Adejoké Babington-Ashaye, Kirsten Campbell, Danya Chaikel, Christine Chinkin; Carolyn Edgerton, Priya Gopalan; Gorana Mlinarević, Angela Mudukuti, Cynthia T. Tai

Tina Minkowitz, Robert D. Fleischner

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Justice Francis M. Ssekandi

Sareta Ashraph, Stephanie Barbour, Kirsten Campbell, Alexandra Lily Kather, Jocelyn Getgen Kestenbaum, Maxine Marcus, Gorana Mlinarević, Valerie Oosterveld, Kathleen Roberts, Susana SáCouto, Jelja Sané, Hyunah Yang

Dr. Ayodele Akenroye, Professor Erin Baines, Professor Kamari M. Clarke, Professor Mark A. Drumbl

Dr. Paul Behrens, University of Edinburgh

Professor Jean Allain, Monash University, Castan Centre for Human Rights Law

Association of Defence Counsel Practicing before the International Courts and Tribunals (ADC-ICT)

Prof. Dr. Mario H. Braakman

Siobhán Mullally

Mr. Arpit Batra

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of the Defence against the decision of Trial Chamber IX entitled “Trial Judgment” of 4 February 2021 (ICC-02/04-01/15-1762-Red),

In the appeal of the Defence against the decision of Trial Chamber IX entitled “Sentence” of 6 May 2021 (ICC-02/04-01/15-1819-Red),

Having before it the “Request for Leave to File an Amici Curiae Brief on sexual slavery and defence of duress Pursuant to Rule 103 of the Rules of Procedure and Evidence” of 18 January 2022 (ICC-02/04-01/15-1954),

Pursuant to rule 103 of the Rules of Procedure and Evidence and regulations 35(2) of the Regulations of the Court,

Renders the following

DECISION

1. The above-mentioned request is granted.
2. Siobhán Mullally is invited to file written observations, not exceeding ten pages, by 16h00 on Friday, 21 January 2022, on the issues identified in paragraph 19 of the “Order inviting expressions of interest as *amici curiae* in judicial proceedings (pursuant to rule 103 of the Rules of Procedure and Evidence)”.
3. The Defence, the Prosecutor and the participating victims may submit responses, of no more than three pages, to the written observations of the above-mentioned *amicus curiae*, by 16h00 on Friday, 28 January 2022.

REASONS

I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX (hereinafter: “Trial Chamber”) convicted Mr Ongwen of crimes against humanity and war crimes (hereinafter: “Conviction Decision”).¹
2. On 6 May 2021, the Trial Chamber, by majority, sentenced Mr Ongwen for the aforementioned crimes for which he was convicted (hereinafter: “Sentencing Decision”) to a total period of imprisonment of 25 years as a joint sentence.²
3. On 25 October 2021, the Appeals Chamber issued an order inviting expressions of interest as *amici curiae* in judicial proceedings on the merits of the legal questions presented in the same order (hereinafter: “Order inviting expressions of interest”).³
4. On 17 November 2021, the Appeals Chamber scheduled a hearing from Monday, 14 February 2022, to Friday, 18 February 2022, to hear submissions and observations by the parties and participants on the merits of the appeals.⁴
5. On 24 November 2021, the Appeals Chamber granted leave to 18 applicants to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence, as *amici curiae*, by 23 December 2021, on the issues identified in the “Order inviting expressions of interest.”⁵ The Appeals Chamber further invited the Defence, the Prosecutor and the participating victims to submit consolidated responses to the written observations of the above-mentioned *amici curiae*, by 17 January 2022.⁶

¹ [Trial Judgment](#), ICC-02/04-01/15-1762-Red (original confidential version filed on the same day, ICC-02/04-01/15-1762-Conf).

² [Sentence](#), ICC-02/04-01/15-1819-Red (original confidential version filed on the same day, ICC-02/04-01/15-1819-Conf).

³ [Order inviting expressions of interest as amici curiae in judicial proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\)](#), ICC-02/04-01/15-1884.

⁴ [Order scheduling a hearing before the Appeals Chamber](#), ICC-02/04-01/15-1909.

⁵ [Decision on the requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence](#), ICC-02/04-01/15-1914 (hereinafter: “Decision of 24 November 2021”), p. 3, paras 18-19.

⁶ [Decision of 24 November 2021](#), p. 3, para. 22.

6. On 18 January 2022, Siobhán Mullally (hereinafter: “Applicant”) filed a request for leave to submit observations as *amicus curiae* (hereinafter: “Request”).⁷

II. DETERMINATION

7. At the outset, the Appeals Chamber notes that the Applicant submitted the Request on 18 January 2022, more than two months after the expiry of the time limit.

8. Pursuant to regulation 35(2) of the Regulations of the Court (hereinafter: “Regulations”), “[a]fter the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control”.

9. The Applicant submits that due to her participation as an *amicus curiae* in legal proceedings in the United Kingdom and preparation for the High Level meeting on the UN Global Plan of Action to combat trafficking in Persons, the possibility to submit her observations on the legal issues arising in the present appeal “was only recently made possible through enhanced capacity within the mandate of the Special Rapporteur”.⁸ For this reason, the Applicant submits that she seeks leave to file observations after the set time limit.⁹

10. In these specific circumstances, the Appeals Chamber finds that the Applicant demonstrates that she was unable to file the application within the time limit “for reasons outside [...] her control” as required in regulation 35(2) of the Regulations.

11. Regarding the question of whether to admit the Applicant as *amicus curiae*, the Appeals Chamber notes that rule 103 of the Rules of the Procedure and Evidence (hereinafter: “Rules”) provides, in relevant part, as follows:

1. 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.

⁷ Request for Leave to File an Amici Curiae Brief on sexual slavery and defence of duress Pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-02/04-01/15-1954.

⁸ Request, para. 10.

⁹ Request, para. 10.

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

12. Accordingly, the Appeals Chamber's decision pursuant to rule 103(1) of the Rules is discretionary and premised on whether it considers it "desirable for the proper determination of the case" to grant leave to the applicants to submit observations on the merits of the legal questions presented in the appeal.

13. The Appeals Chamber notes that the Applicant wishes to specifically address the following legal issues: (i) the legal interpretation of article 31(1)(a) and (d) of the Statute; (ii) evidentiary issues relating to mental disease or defect; (iii) the burden of proof when asserting a ground for excluding criminal responsibility, (iv) the standard of proof applicable to the assessment of mental disease or defect or duress; (v) the legal interpretation of the crime of sexual slavery; and (vi) the standards applicable to assessing evidence of sexual violence.¹⁰

14. Having considered the background of the Applicant and in particular, her highly specialised expertise given her function as the UN Special Rapporteur on trafficking in persons, especially in women and children,¹¹ as well as the novelty of most of the issues on which she intends to submit observations, the Appeals Chamber considers it indeed desirable for the proper determination of the matters under appeal to receive her observations. It also notes that the Applicant's observations "would be provided within 24 hours of being granted permission to intervene", which would thus not hinder the expeditiousness of the proceedings.¹²

15. Accordingly, the Appeals Chamber grants the Request to submit written observations pursuant to rule 103 of the Rules in the present appeals. The Applicant is invited to submit, by 16h00 on Friday, 21 January 2022, written observations of no more than ten pages, on the issues identified in paragraph 19 of the Order inviting expressions of interest.¹³ The Applicant is also requested to familiarise herself with the appeal briefs and responses in the present appeals and to refrain from repeating submissions that are already before the Appeals Chamber.

¹⁰ Request, paras 6, 8.

¹¹ Request, paras 1-5 (In paragraph 1, the Applicant submits that she has "international law expertise on sexual and gender based crimes and on the defence of duress.").

¹² Request, para. 11.

¹³ [Order inviting expressions of interest](#), para. 19.

16. The Appeals Chamber emphasises that the written observations must adhere, in particular, to the requirements stipulated in regulations 23, 33, and 36 of the Regulations and regulation 24 of the Regulations of the Registry.

17. In accordance with rule 103(2) of the Rules, the Appeals Chamber permits the Defence, the Prosecutor and the participating victims to submit their responses, of no more than three pages, to the written observations of the Applicant, by 16h00 on Friday, 28 January 2022.

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



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 19th day of January 2022

At The Hague, The Netherlands