

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04-01/05
Date: 21 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 responses to observations submitted 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

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 2004;¹

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 already 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 2008³, whereby the Chamber *inter alia* rejected the Defence’s “Request for conditional stay of proceedings”⁴ dated 28 October 2008 and granted the Republic of Uganda, the Prosecutor, the Defence and the victims having communicated with the Court with respect to the Case until 18 November 2008 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, whereby the Uganda Victims’ Foundation (the “UVF”) and the Redress Trust (“Redress”; UVF and Redress, collectively, the

¹ ICC-02/04-1.

² ICC-02/04-01/05-320.

³ ICC-02/04-01/05-328.

⁴ ICC-02/04-01/05-325.

“Applicants”) requested leave to submit written observations in the Proceedings under rule 103(1) of the Rules of Procedure and Evidence (the “Rules”);⁵

5. NOTING the “Decision on application for leave to submit observations under Rule 103” dated 5 November 2008 (the “Decision on application under Rule 103”)⁶, whereby the Chamber granted the Applicants leave to submit observations under rule 103(1) of the Rules on a number of specific issues, namely (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;

6. NOTING that, in its Decision on application under Rule 103, the Chamber reserved its 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 to be submitted by the Applicants;

7. NOTING the “Report of the Registrar on the execution of the request to the Republic of Uganda for observations on the initiation of proceedings pursuant to Article 19 of the Rome Statute”⁷, to which the response of the AG Solicitor General of the Republic of Uganda, Mr Kainamura, was annexed as Annex 2⁸;

⁵ ICC-02/04-01/05-330.

⁶ ICC-02/04-01/05-333.

⁷ ICC-02/04-01/05-354.

⁸ ICC-02/04-01/05-354-Anx2.

8. **NOTING** the “Prosecution’s Observations regarding the Admissibility of the Case against Joseph KONY, Vincent OTTI, Okot ODHIAMBO and Dominic ONGWEN”;⁹

9. **NOTING** the “Submission of observations on the admissibility of the Case under article 19(1) of the Statute” by the Defence;¹⁰

10. **NOTING** the “Observations on behalf of victims pursuant to article 19(1) of the Rome Statute with 55 Public Annexes and 45 Redacted Annexes” by the Office of Public Counsel for Victims;¹¹

11. **NOTING** the “Amicus Curiae submitted pursuant to Pre-Trial Chamber II ‘Decision on application for leave to submit observations under Rule 103’ dated 5 November 2008” by UVF and Redress (the “Observations by UVF and Redress”);¹²

12. **NOTING** rule 103(2) of the Rules, pursuant to which the Prosecutor and the Defence shall have the opportunity to respond to the observations submitted under rule 103(1);

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

14. **CONSIDERING** that, in accordance with the scope of the authorized submissions as defined by the Chamber, the Observations by UVF and Redress focus

⁹ ICC-02/04-01/05-352.

¹⁰ ICC-02/04-01/05-350.

¹¹ ICC-02/04-01/05-349.

¹² ICC-02/04-01/05-353.

inter alia on “an examination of the state of implementation of the Annexure that relates to the Special Division of the High Court”;

15. **NOTING** that UVF and Redress, whilst pointing out that “no official public documents are available which confirm or contradict the information provided”, submit detailed information as to the administrative steps allegedly taken as regards the establishment of the Special Division of the High Court, as well as in respect of the enactment of relevant legislation;

16. **NOTING** that, in particular, in Section B of their Observations (“The State of Implementation of the Annexure, with particular reference to the Establishment of the Special Division of the High Court”: “Section B”) UVF and Redress refer to a “Transitional Justice Working Group” composed *inter alia* of representatives from the judiciary, the Ministry of Justice and the Ministry of Internal Affairs of Uganda (the “Working Group”);

17. **CONSIDERING** that, in light of the content of Section B of the Observations by UVF and Redress, the Government of the Republic of Uganda appears to be in the best position to comment upon or to supplement the submissions by the Applicants;

18. **CONSIDERING** that, accordingly, it appears appropriate to grant the Republic of Uganda the opportunity to respond to the observations contained in Section B of the Observations by UVF and Redress;

19. **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;

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Prosecutor, the Defence and the Republic of Uganda until Monday, 15 December 2008 to respond to the Observations by UVF and Redress.

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



Judge Mauro Politi
Presiding Judge



Judge Hans-Peter Kaul



Judge Ekaterina Trendafilova

Dated this Friday, 21 November 2008

At The Hague, The Netherlands.