

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/05
Date: 7 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

**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**

Source: Amnesty International

Document 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 Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massida

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

States Representatives

The Government of the Republic of
Uganda

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Pursuant to rule 103 of the Rules of Procedure and Evidence, Amnesty International hereby applies for leave to submit written observations as *amicus curiae* on the admissibility of the case of the *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* ("the Case"). Pre-Trial Chamber II (the "Chamber") of the International Criminal Court (the "Court") decided to initiate proceedings under Article 19(1) of the Statute of the Court (the "Statute") in the Case on 21 October 2008.¹
2. If leave to submit written observations is granted, Amnesty International will file its *amicus curiae* brief within any time-limit fixed by the Chamber. Amnesty International remains prepared to submit any further written comments at the request or with the leave of the Chamber.

Details of Amnesty International and its interest in these proceedings

3. Amnesty International Ltd, 1 Easton Street, London, WC1X 0DW, United Kingdom, is a company limited by guarantee.
4. Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights to be respected and protected. Its vision is for every person to enjoy all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Amnesty International's mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, cultural, political, social and economic.
5. Amnesty International is funded mainly by its membership and public donations. No funds are sought or accepted from governments for investigating

¹ The Prosecutor v. Joseph Kony and others, Pre-Trial Chamber II, Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence, No. ICC-02/04-01/05-320 dated 21 October 2008.

and campaigning against human rights abuses. Amnesty International is independent of any government, political ideology, economic interest or religion.

6. Amnesty International enjoys Special Consultative Status to the Economic and Social Council of the United Nations, Participatory Status with the Council of Europe and Observer Status with the African Commission on Human and Peoples' Rights. It is registered as a civil society organization for participation in activities of the Organization of American States.
7. Amnesty International has extensive experience in submitting *amicus curiae* briefs and other third-party submissions in international and national courts to assist them in resolving fundamental questions of international law. At the international level, Amnesty International has intervened before the Special Court for Sierra Leone,² the European Court of Human Rights³ and the Inter-American Court of Human Rights.⁴ In addition, Amnesty International has made numerous submissions to national courts, including the United Kingdom House of Lords⁵ and the United States Supreme Court.⁶

² Special Court for Sierra Leone, Prosecutor v. Alex Tamba Brima and others, Case No. SCSL-04-16-AR73(B), *Amicus curiae* brief of Amnesty International concerning the public interest information privilege, 16 December 2005.

³ For example, Amnesty International has submitted written comments in the following cases before the European Court of Human Rights: *Acar v. Turkey* (Application No. 26307/95), 6 May 2003 (preliminary issue) 8 April 2004; *T.A. v. Turkey* (Application No 26307/95); *Aydin v. Turkey* (Application No 28293/95; 29494/95; 30219/96), 10 July 2001; *Assenov and Others v. Bulgaria* (Application No 24760/94), 18 October 1998; *Kurt v. Turkey* (Application No 24276/94), 25 May 1998; *Chahal v. United Kingdom* (Application No. 22414/93), 15 November 1996; *Akdivar and Others v. Turkey* (Application No. 21893/93), 19 June 1996; *McCann and others v. United Kingdom* (Application No.18984/91), 27 September 1995; *Murray v. United Kingdom* (Application No 18731/91), 28 October 1994; *Brannigan and McBride v. United Kingdom* (Application No 14553/89 and 14554/89), 26 May 1993; *Soering v. United Kingdom* (Application No 14038/88), 7 July 1989.

⁴ For example, Amnesty International has intervened as *amicus curiae* in the following cases before the Inter-American Court of Human Rights: *Case of Velasquez-Rodriguez*, Judgement of 29 July 1988; *Case of Godinez-Cruz*, Judgement of 20 January 1989; *Case of Fairen-Garbi and Solis-Corrales*, Judgement of 15 March 1989. Amnesty International has also intervened in the following advisory opinions of the Inter-American Court of Human Rights: "Habeas Corpus in Emergency Situations (Arts. 27(2) and 7(6) American Convention on Human Rights)" (OC-8/87 of January 30, 1987); "Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)" (OC-9/87 of October 6, 1987); and "The Right to Information on Consular Assistance, in the framework of the guarantees of the Due Process of Law" (OC-16/99 of October 1, 1999).

⁵ Amnesty International has filed third-party interventions in: the appeal in *A v. Secretary of State for the Home Department* (2005); the appeal to the House of Lords of the judgment by the English High

8. Amnesty International has lobbied governments to elaborate and adopt a statute for a just, fair and effective International Criminal Court. Amnesty International co-founded the Coalition for the International Criminal Court, which is made up of over 2000 NGOs, and is a member of its Steering Committee. Following the adoption of the Statute, Amnesty International launched a worldwide campaign for its universal ratification and implementation.
9. Amnesty International believes that any person who is responsible for genocide, crimes against humanity, war crimes and other crimes under international law should be brought to justice in the course of proceedings that meet international standards for a fair trial. Amnesty International strongly supports the aims of the Court and seeks to assist its work as an essential tool in combating global impunity. Amnesty International believes that the Court can serve as a deterrent to people planning to commit crimes under international law and allow victims and their families the chance to obtain justice, truth and full reparations.
10. Amnesty International is seeking leave to submit written observations in this Case because the issues raised are central to the effective implementation of the principle of complementarity, the bedrock principle on which the Court is founded and operates. The decision of the Chamber on admissibility in this Case will have a significant impact upon all future cases, including cases relating to the situation in Darfur, Sudan, and cases relating to the situation in the Central African Republic. The decision of the Chamber will also be a crucial factor in future decisions by the Prosecutor whether to open investigations in other situations and to select cases within those situations for prosecution.

Court of Justice, Queen's Bench Division on 28 October 1998 in the cases, *In the Matter of an Application for a Writ of Habeas Corpus ad Subjicendum (Re: Augusto Pinochet Ugarte)* and *In the Matter of an Application for Leave to Move for Judicial Review between: The Queen v. Nicholas Evans et al. (Ex Parte Augusto Pinochet Ugarte)*.

⁶ Among the recent cases in which Amnesty International has filed *amicus curiae* briefs in the United States Supreme Court are: *Rasul v. Bush*, Nos. 03-334, 03-343, decided 28 June 2004; *Sosa v. Alvarez-Machain*, No. 03-339, filed 27 February 2004; *Roper v. Simmons*, No. 03-633 (2004).

Issues on which Amnesty International requests to submit observations as *amicus curiae*

11. If leave to submit written observations as *amicus curiae* is granted, Amnesty International would seek to make submissions limited to the legal criteria for determining whether this Case is admissible under article 17 of the Statute. In particular, Amnesty International proposes to submit written observations on the following matters:

- a. What the legal criteria are under article 17(2) and (3) of the Statute that the Chamber should use when determining pursuant to article 19(1) whether Uganda is genuinely willing and able to investigate crimes.
- b. What the legal criteria are under Article 17(2) and (3) of the Statute that the Chamber should use when determining pursuant to article 19(1) whether Uganda is genuinely willing and able to prosecute crimes.

Relevance of the observations which Amnesty International requests to submit in the present proceedings

12. Amnesty International submits that the legal issues that it requests to raise in its observations are relevant to the present proceedings, as they (i) fall within the scope of the present Case; and (ii) will be under consideration during the proceedings under Article 19(1) of the Statute, which the Chamber decided to initiate on 21 October 2008.⁷
13. Amnesty International submits that it is an appropriate organization to act as an *amicus curiae* in the present Case, given that it has played an important role at all stages of the drafting of the Statute, including on the principle of complementarity, having made several detailed submissions on legal issues since 1994 to the International Law Commission, the Ad Hoc Committee on the

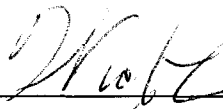
⁷ Pre-Trial Chamber I, Decision Inviting Observations from the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict, ICC-01/04-01/06-1175, 18 February 2008, paragraph 9.

International Criminal Court, the Preparatory Committee on the International Criminal Court and the Diplomatic Conference on the International Criminal Court in Rome.⁸ Since the Rome Conference, Amnesty International has been working on a global basis to ensure the implementation of the principle of complementarity.

14. Furthermore, it is submitted that the proposed *amicus curiae* brief will supply information of direct relevance on issues that otherwise may not be available to the Court, and, therefore, will assist the Chamber in the proper determination of the present Case.⁹
15. Amnesty International is not seeking leave to intervene orally. If leave to submit written observations as *amicus curiae* is granted, the organization would be able to submit the written comments promptly after a decision granting the request. Therefore, Amnesty International's written submissions would not delay proceedings.
16. For these reasons, Amnesty International respectfully requests the Chamber to grant the organization leave to submit written observations as *amicus curiae* limited to the legal criteria which the Chamber should use in determining whether the present Case is admissible.

⁸ The following are examples of Amnesty International's submissions: Memorandum to the International Law Commission: Establishing a just, fair and effective permanent international criminal tribunal (AI Index: IOR 40/007/1994) June 1994; Establishing a just, fair and effective international criminal court (AI Index: 40/005/1994) October 1994; The quest for international justice: Time for a permanent international criminal court (AI Index: IOR 40/004/1995) July 1995; The International Criminal Court: Making the Right Choices - Part I - Defining the crimes and permissible defences and initiating prosecution (AI Index: 40/001/1997) January 1997; The quest for international justice: Defining the crimes and defences of the International Criminal Court (AI Index: IOR 40/006/1997) February 1997; The International Criminal Court: Making the Right Choices - Part II - Organizing the court and guaranteeing a fair trial (AI Index: IOR 40/011/1997) July 1997; The International Criminal Court: Making the Right Choices - Part III - Ensuring effective cooperation (AI Index: IOR 40/013/1997) November 1997; The International Criminal Court: Making the Right Choices - Part IV - Establishing and financing the court and final clauses (AI Index: IOR 40/004/1998) March 1998; The International Criminal Court: Making the Right Choices - Part V - Recommendations to the Diplomatic Conference (AI Index: IOR 40/010/1998) May 1998; International Criminal Court: 16 fundamental principles for a just, fair and effective international criminal court (AI Index: IOR 40/012/1998) May 1998; Justice now: Time for an effective International Court (AI index: IOR 40/018/1998) June 1998.

⁹ Pre-Trial Chamber I, Decision Inviting Observations from the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict, ICC-01/04-01/06-1175, 18 February 2008, paragraph 7.



Ms Widney Brown, Senior Director, International Law and Policy
on behalf of
Amnesty International

Dated this 7 November 2008

At ~~[place, country]~~ LONDON
UNITED KINGDOM