

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/15A
Date: 15 November 2021

THE APPEALS CHAMBER

Before:

**Judge Luz del Carmen Ibáñez Carranza, President
Judge Piotr Hofmański
Judge Solomy Balungi Bossa
Judge Reine Alapini-Gansou**

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN*

Public Document

**Request for leave to submit observations as Amicus Curiae pursuant to Rule 103(1)
of the Rules of Procedure and Evidence**

Source: Mr. Arpit Batra

Document 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 the Victims

Mr. Joseph Akwenyu Manoba
Mr. Francisco Cox

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

M. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparation Sections**

Other

I. Introduction

1. Pursuant to Rule 103(1) of the Rules of Procedure and Evidence (RPE) of the International Criminal Court (ICC), the Appeals Chamber is hereby requested to grant leave of the Applicant who is admitted to the List of Assistants to Counsel at the International Criminal Court to file an amicus curiae brief in the case *The Prosecutor V. Dominic Ongwen*¹.
2. On 4 February 2021, Trial Chamber IX convicted Mr. Dominic Ongwen of crimes against humanity and war crimes *inter alia* involving Sexual and gender-based crimes of war crime of rape, sexual slavery, enslavement, forced pregnancy, outrages upon personal dignity under the Rome Statute. On 21 July 2021, the Defence filed its appeal brief against the Conviction Decision, *inter alia*, averring that the Trial Chamber “disregard[ed] evidence which raised reasonable doubt or was favorable to the Appellant” and that that the Trial Chamber erred “in rejecting the relevance of Article 20’s provisions” when addressing the issue of cumulative convictions. On 25 October 2021, the Appeals Chamber invited qualified scholars and practitioners to request leave to submit observations on the merits of the legal questions presented in the order concerning, *inter alia*, the standards applicable to assessing evidence of sexual violence and the permissibility or otherwise of entering cumulative convictions when the conduct in question violates two or more distinct provisions of the Statute.
3. If leave to submit written observations is granted, the Applicant will file the amicus curiae brief within the time-limit fixed by the Chamber. The Applicant remains prepared to submit any further written comments at the request or with the leave of the Chamber.

II. Issues on which the Applicant requests to submit observations as *amicus curiae*

4. If leave to submit written observations as amicus curiae is granted, the Applicant would seek to make submissions addressing the following matters:
 - a. the standards applicable to assessing evidence of sexual violence;
 - b. the permissibility or otherwise of entering cumulative convictions when the conduct in question violates two or more distinct provisions of the Statute.
5. The Applicant’s submission will assist the Appeals Chamber in the proper determination

¹ Case No. ICC-02/04-01/15 A [hereinafter referred to as “Ongwen case”].

6. of the necessary evidence and the methods of evaluating the evidentiary value of the victims' testimonies in the conviction of the accused with the help of the considerable experience of the Applicant and substantial research in the said point of law.
7. Firstly, sexual violence is one of the most gruesome crimes that can be inflicted on humanity. A clear understanding of the required standard of assessing evidence of sexual violence is much more crucial in determining the guilt of the accused and to provide justice in such cases. That ordinarily, the evidence of a victim should not be suspected and if the evidence is reliable, no corroboration is necessary. But at the same time, it cannot be universally and mechanically applied to the all cases of sexual violence which comes before the court. It cannot be lost sight that sexual violence causes greatest distress and humiliation to the victim but at the same time a false allegation can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. There cannot be any basis or presumption for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. The matter should be examined in the background of the case. The factors to assess evidence should be in the nature of relevance, admissibility, persuasiveness in objective terms, corroborative, impact of statement of accused during investigation, evidence of contamination and collusion, credibility, reliability, approach to inconsistency and impact of trauma.
8. Secondly, the legal permissibility of cumulative convictions is an issue that still remains unsettled despite the jurisprudential developments in the international criminal law. Time and again, many types of cumulative convictions have been addressed by multiple adjudicatory authorities, but with differing results. This has resulted in the development and application of varying tests with regard to the determination of cumulative convictions. A single rape can simultaneously be a crime against humanity, war crime, and genocide if it is committed with genocidal intent against a protected person in an armed conflict where there is a widespread or systematic attack directed against a civilian population. Permitting multiple convictions based on the same conduct is critical because the multiple charges will enable the Trial Chamber, where appropriate, to enter multiple convictions based on that conduct. The theory that it may not be possible to determine what charges will be proved beyond reasonable doubts is not sound and alien to established principles of criminal jurisprudence.

9. Through the Amicus brief, the Applicant aims to aid the Chambers in arriving at a sustainable framework which may remedy the existing flux about cumulative convictions. The Applicant through profound research seeks to assist the Chambers in establishing a decisive test that can be followed and thereby harmonizing the differences between the existing tests propounded by different authorities. A decisive precedent on this point of law shall have far-reaching footprint in the development of the International Criminal Law jurisprudence.

III. Legal and Procedural Framework in considering requests under Rule 103

10. The basis upon which an amicus curiae (amicus) brief can be admitted by the Court in respect of a given proceedings is Rule 103(1) of the Rules of Procedure and Evidence of the ICC, in which it is provided.

“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, organization¹ or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.”

11. In this regard, attention is drawn to the ‘Decision on “Motion for leave to File proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence” wherein the Appeals chamber has allowed the submissions of *Amicus Curiae* on the basis that “... it may assist the Appeals Chamber in the proper determination of the case”.²

IV. Expertise of the Applicant

12. Mr. Arpit Batra is an advocate enrolled in the Bar Council of Delhi, India having over 13 years of practice during which he has been appointed as Amicus Curiae in multiple cases by the Hon’ble High Court of Delhi, India and Special Courts holding trials in cases of heinous offences. He was admitted to the List of Assistants to Counsels vide requirements set forth in Regulation 124 of the Registry of The International Criminal Court. He is currently appointed as a Special Public Prosecutors of the Income Tax Department,

² ICC-01/04-01/06 OA 11, 22 April 2008

13. Government of India and represents the department under the penal taxation laws, Black Money Act 2015, Benami Transactions (Prohibition) Act 1988 along with penal issues in International Taxation. As a Defence Counsel, he is engaged in trials of cases involving International Drug trafficking and those of human trafficking. He is also representing clients in numerous cases of traditional as well as white-collar crimes involving appreciation of great deal of evidence. He had gained significant expertise in criminal laws through the substantial experience achieved working as both, Defence counsel and a Prosecutor. He has also given opinions in the China Hong Kong protest issue in 2020 and is working in close association with South Asian Association for Regional Cooperation (SAAARC)- Law.

V. Relief Requested

14. The Applicant respectfully requests the Chamber to grant him leave to file amicus curiae brief concerning the Ongwen Case, given the wide-ranging potential and significant impact, the adjudication of the case will have on the future potential cases of such nature.
15. The Applicant is not seeking leave to intervene orally. If leave to submit written observations as amicus curiae is granted, the Applicant would be able to submit the written comments promptly after a decision granting the request. Therefore, the Applicant's written submissions would not delay proceedings. The requested amicus brief will not prejudice any party to the proceedings as Rule 103(2) provides that the parties have the right to respond to any amicus brief if leave to file is granted. Given the importance of the interests at stake to the developing international law, the Applicant submits that he will significantly contribute to the fair and expeditious resolution of the issues. The Applicant also submits that it is appropriate to allow the filing of the proposed Amicus Curiae brief as it is "desirable for the proper determination of the case".



Mr. Arpit Batra

Dated this 15 November 2021

At New Delhi, India.