

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 January 2022

THE APPEALS CHAMBER

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

SITUATION IN UGANDA

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

Public Document

**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

Source: UN Special Rapporteur on trafficking in persons, especially women
 and children, Siobhán Mullally

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
Ms Paolina Massidda

Legal Representatives of the Applicants

[1 name per team maximum]

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

[2 names maximum]

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

[2 names maximum]

States' Representatives

Amicus Curiae

REGISTRY

Registrar

M. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Special Rapporteur on trafficking in persons, especially women and children (“the Special Rapporteur”) seeks permission to intervene in this Appeal in the case of the *Prosecutor v Dominic Ongwen*, Situation in Uganda, No. ICC-02/04-01/15 A A2. The Special Rapporteur is seeking permission to intervene, in order to provide the Court with her international law expertise on sexual and gender-based crimes and on the defence of duress.
2. Any submission (oral or written) by the Special Rapporteur is provided on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. Authorization for the positions and views expressed by the Special Rapporteur, in full accordance with her independence, was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.
3. The Special Rapporteur is one of the thematic special procedures of the United Nations Human Rights Council. The Special Procedures are independent human rights experts, and in accordance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, all Special Procedures mandate holders carry out their functions independently and impartially.¹ At its sixtieth session, the UN Commission on Human Rights adopted decision 2004/110², by which it decided to appoint, for a three-year period, a Special Rapporteur on trafficking in persons, especially women and children, to focus on the human rights aspects of the victims of trafficking in persons. This mandate has been regularly extended by state consensus since then.³ In July 2020, the mandate of the Special Rapporteur was extended again for three years by Human Rights Council resolution 44/4⁴. Professor Siobhan Mullally assumed her mandate as the UN Special Rapporteur on 1 August 2020. According to Human Rights Council (HRC) Resolution 44/4, the mandate of the Special Rapporteur involves (a) taking action on violations committed against trafficked persons and on situations in which there has been a failure to protect their human rights; (b) undertaking country visits in order to study the situation in situ and formulate recommendations to prevent and/or combat trafficking, and protect the human rights of victims of trafficking in specific countries and/or regions; and (c) submitting annual reports to the UN Human Rights Council and the General Assembly.

¹ Human Rights Council Res. 5/2

² See: https://ap.ohchr.org/documents/alldocs.aspx?doc_id=9780

³ The Human Rights Council extended the mandate in 2008 with Resolution 8/12 and again in 2011 with Resolution 17/1.

⁴ See: <https://undocs.org/en/A/HRC/RES/44/4>

4. HRC Resolution 44/4 specifically recognises the importance of the work of the Special Rapporteur on trafficking in persons, especially women and children, “in the prevention of trafficking in persons and the promotion of the global fight against trafficking in persons and in promoting awareness of and upholding the human rights of victims of trafficking.” Recognising the gender dimension of trafficking in persons, the mandate of the Special Rapporteur includes a specific focus on trafficking of women and children.
5. Prior to her appointment as UN Special Rapporteur on Trafficking in Persons, especially women and children, Professor Siobhán Mullally was a member of the Council of Europe monitoring body, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) from 2012-2018, and was elected as 1st Vice-President from 2014-2016, and subsequently as President of GRETA from 2016-18. It is respectfully submitted that the Special Rapporteur is well positioned and has the experience and legal expertise to contribute to the analysis of the important points of law arising in this Appeal.

Legal Issues

6. Noting the Order inviting expressions of interest as amici curiae in judicial proceedings (pursuant to rule 103 of the Rules of Procedure and Evidence), the Special Rapporteur’s submission would specifically address the following legal issues: (i) the legal interpretation of article 31(1)(a) and (d) of the Statute concerning grounds for excluding criminal responsibility; (ii) evidentiary issues relating to mental disease or defect; (iii) the burden of proof when asserting a ground for excluding criminal responsibility; and the standard of proof applicable to the assessment of mental disease or defect or duress.
7. In addressing these issues, the Special Rapporteur will draw upon her Report to the Human Rights Council, on the implementation of the non-punishment principle in international law: *Report of the Special Rapporteur on trafficking in persons, especially women and children: Implementation of the non-punishment principle* (2021) UN Doc. (17 May 2021) A/HRC/47/34.
8. In relation to the legal issues arising concerning sexual and gender-based crimes, the Special Rapporteur’s submission will focus specifically on the: (i) the legal interpretation of the crime of sexual slavery, and (ii) the standards applicable to assessing evidence of sexual violence.
9. In addressing these legal issues, the Special Rapporteur will draw upon her Reports to the Human Rights Council, and the General Assembly: *Report of the Special Rapporteur on trafficking in persons, especially women and children, on the gender dimension of trafficking in persons in conflict and post-conflict settings and the importance of integrating a human rights-based approach to trafficking in persons into the women and peace and security agenda of the Security Council* (17 July 2018) A/73/171; *Report of the Special Rapporteur on trafficking in persons, especially women and children, on trafficking in persons in conflict*

and post-conflict situations: protecting victims of trafficking and people at risk of trafficking, especially women and children (5 August 2016) A/71/303).

Procedure to Intervene in the Appeal

10. Noting [Regulation 35\(2\)](#), the Special Rapporteur seeks permission to file after the deadline specified in the Order inviting expressions of interest as amici curiae, due to factors that were "outside of my control". Specifically, the Special Rapporteur was engaged 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 make a submission to the International Criminal Court was only recently made possible through enhanced capacity within the mandate of the Special Rapporteur, on the legal issues arising in this appeal.

Conclusion

11. The Special Rapporteur respectfully considers that she is well positioned to make a submission on the specific international law issues arising in this Appeal, in the public interest. Recognising the important public interest in ensuring the timely progression of the legal proceedings before the Court, and avoiding delays, the submission of the Special Rapporteur would be provided within 24 hours of being granted permission to intervene. The submission of the Special Rapporteur would not exceed ten pages. Given the importance of the legal issues arising in this case, the Court is respectfully requested to grant permission for this proposed intervention.



Siobhán Mullally
UN Special Rapporteur on trafficking in persons, especially women and children
on behalf of
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Dated this 18 January 2022

At [place, country]

