



Uganda Situation and cases Update August 2014 – June 2015

Kony, Otti, Odhiambo and Ongwen case: Ongwen transferred, cases severed

[Background] On 13 October 2005, the International Criminal Court (ICC) issued arrest warrants for Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen in relation to crimes allegedly committed in northern Uganda in 2004. Proceedings against Mr Lukwiya were terminated following his death in 2006. It is alleged that Mr Otti and Mr Odhiambo have also been killed.

- Mr Kony is facing twelve counts of crimes against humanity (murder, enslavement, sexual enslavement, inhuman acts of inflicting serious bodily injury and suffering) and twenty-one counts of war crimes (murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, inducing rape and forced enlistment of children).
- Mr Otti is allegedly criminally responsible for eleven counts of crimes against humanity (murder, sexual enslavement, inhuman acts of inflicting serious bodily injury and suffering) and twenty-one counts of war crimes (inducing rape, intentionally directing an attack against a civilian population, forced enlistment of children, cruel treatment of civilians, pillaging and murder).
- Mr Odhiambo is allegedly criminally responsible for two counts of crimes against humanity (murder and enslavement) and eight counts of war crimes (murder, intentionally directing an attack against a civilian population, pillaging and forced enlistment of children).
- Mr Ongwen is allegedly criminally responsible for three counts of crimes against humanity (murder, enslavement, inhuman acts of inflicting serious bodily injury and suffering) and four counts of war crimes (murder, cruel treatment of civilians, intentionally directing an attack against a civilian population and pillaging).

Ongwen transferred to ICC, pre-trial proceedings underway

On 17 January 2015, D. Ongwen surrendered to ICC custody. He had been arrested early January by US forces in the Central African Republic. On 20 January 2015, he was transferred to the ICC in The Hague. Following a request for the postponement of the hearing, the Chamber has now set 21

January 2016 as the start date for the confirmation of charges hearing.¹ The Chamber has also sought observations on whether the confirmation of charges could take place in Uganda and currently receiving submissions from the Defence and the Prosecutor on this issue.

Ongwen case severed from other Uganda cases

On 6 February 2015, Pre-Trial Chamber II severed the proceedings against Mr. Ongwen from the case of *The Prosecutor v. Joseph Kony et al.*² The Chamber considered that since the three other suspects remained at large, it would not proceed against them in absentia. Judge Trendafilova was also mindful of the fact that the scope of the case against Kony, Otti and Odhiambo was much broader than that against Mr Ongwen.

Exact scope of charges revealed, new charges to be added?

Following the transfer of Mr Ongwen, the Chamber lifted the redactions applied to his warrant of arrest revealing that the charges he faces relate to an attack on civilian residents of Lukodi IDP Camp on or about 20 May 2004, near Gulu town (Bungatira Sub-County, Aswa County, Gulu District) in Uganda.

On 26 January 2015, the Office of Public Counsel for Victims (OPCV) raised the concerns of victims participating in the *Kony et al.* case regarding the fact that Mr Ongwen was only being charged in relation to a single attack.³ OPCV called on the Prosecution:

- to carry out further investigations into incidents which occurred prior to and following the issuance of the arrest warrant.
- to consider Mr. Ongwen's possible responsibility for additional acts under alternate modes of liability (in particular gender crimes, forcible recruitment, conscription and enlistment of children under the age of 15 and their active participation in the hostilities).
- to consider further investigations in relation to crimes the LRA allegedly committed outside the Ugandan territory – i.e. in Democratic Republic of Congo, Central African Republic, South Sudan.

On 12 February 2015, the Prosecutor informed the Chamber that she was considering the addition of new charges against Mr Ongwen. She will have until 21 September 2015 to do so.⁴

Uganda Victims' Foundation (UVF) seeks to be heard on victims' legal representation and scope of charges

On 19 March 2015, UVF sought leave to file *Amicus Curiae* observations⁵ on the views and concerns of victims in relation to:

¹Decision postponing the date of the confirmation of charges hearing, <http://www.icc-cpi.int/iccdocs/doc/doc1919135.pdf>

² Pre-Trial Chamber II, "Decision Severing the Case against Dominic Ongwen", 6 February 2015, ICC-02/04-01/05-424.

³ Views and concerns of victims in relation to the proceedings against Mr. Dominic Ongwen, <http://www.icc-cpi.int/iccdocs/doc/doc1923495.pdf>

⁴ Public redacted version of "Prosecution's Application for Postponement of the Confirmation Hearing", 10 February 2015, ICC-02/04-01/15-196-Conf-Exp, 12 February 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1918352.pdf> Decision Postponing the Date of the Confirmation of Charges Hearing, 6 March 2015, ICC-02/04-01/15-206, <http://www.icc-cpi.int/iccdocs/doc/doc1919135.pdf> ; Status Conference Transcript, 19 May 2015, ICC-02/04-01/15-T-6-ENG ET WT, www.icc-cpi.int/iccdocs/doc/doc1978697.pdf.

- Their right to choose a legal representative under Rule 90: UVF raised concerns as to the quality of the legal representation victims had received so far and advanced that OPCV had failed to provide victims with sufficient information on the proceedings.
- Their concerns about the narrowness of the charges against Mr. Ongwen.

The request was rejected on 15 April 2015.⁶

Single Judge sets out process for victims who wish to participate in confirmation of charges

On 4 March 2015, Single Judge Trendafilova set out the application process for victims who wish to participate in the confirmation of charges proceedings.⁷

Importance of outreach

The Judge recalled the court's responsibility to notify potential victims of the proceedings in which they may be entitled to participate. She ordered the Public Information and Documentation Section of the Court's ("PIDS") to conduct a 2 weeks outreach mission in the Lukodi community and the surrounding communities with a view to provide 'accurate, concise, accessible and complete information' on:

- the Court's overall mandate;
- the personal, material, temporal and geographical parameters of the *Ongwen case*;
- the various roles which victims can be called to play in the proceedings;
- the ability of victims to seek reparation (including the fact that one does not need to participate in the proceedings to seek reparation);
- the role and activities of the Trust Fund for Victims.

Application process

The Single Judge noted the benefits brought by using a simplified form in the *Ntaganda* case and ordered that a similar form be used in the *Ongwen* case. The Judge directed that the Victims Participation and Reparation Section (VPRS) of the Court directly assist applicants. To do so, VPRS will be able to work together with trained intermediaries operating under its control and supervision.

Applications will be divided by VPRS into:

- Applicants that appear to qualify as victims in the case (Group A);
- Applicants for whom VPRS is unable to make a determination (Group B);
- Applicants who do not appear to qualify as victims (Group C).

Only applications from group A and B will be transmitted to the parties for observations together with the VPRS report on these applications. However all applications will be reviewed by the Chamber.

⁵ Application by the Uganda Victims Foundation to submit *amicus curiae* observations, Accessible at: <http://www.icc-cpi.int/iccdocs/doc/doc1946656.pdf>

⁶ Decision on an application by the Uganda Victims Foundation to submit *amicus curiae* observations, 15 April 2015, ICC-02/04-01/15-221, <http://www.icc-cpi.int/iccdocs/doc/doc1956545.pdf>

⁷ Decision Establishing Principles on the Victims' Application Process, Accessible at: <http://www.icc-cpi.int/iccdocs/doc/doc1919073.pdf>