

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/04-01/15
Date: 12 February 2015

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN UGANDA

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

Public

**Decision Requesting Observations from the Defence on the Prosecutor's
Application to Postpone the Confirmation Hearing and on the Choice of Counsel
for Dominic Ongwen**

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor
Fatou Bensouda, Prosecutor
Benjamin Gumpert, Senior Trial Lawyer

Duty Counsel for Dominic Ongwen
Hélène Cisse

Legal Representatives of the Victims

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
Herman von Hebel

Counsel Support Section
Esteban Peralta Losilla
Abdoul Aziz Mbaye

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),¹ herewith issues this decision requesting observations from the Defence on the “Prosecution’s Application for Postponement of the Confirmation Hearing” (the “Application”)² and on the choice of counsel for Dominic Ongwen (“Mr. Ongwen”).

1. On 8 July 2005, the Chamber, in its previous composition, issued the “Decision on the Prosecutor’s application for the warrants of arrest under Article 58”,³ along with a warrant of arrest for Mr. Ongwen⁴ for his alleged responsibility for crimes against humanity and war crimes. At the time, Mr. Ongwen was prosecuted together with others forming the case of the *Prosecutor v. Joseph Kony et al.* (ICC-02/04-01/05)
2. On 16 January 2015, Mr. Ongwen consented to appear voluntarily before the ICC and, on the same day, was transferred to the custody of the Court.⁵
3. On 21 January 2015, Mr. Ongwen arrived to the detention centre of the Court.⁶ The same day, the Chamber designated Judge Ekaterina Trendafilova as Single Judge;⁷ and the Registrar informed the Chamber that “Ms. Hélène Cisse was appointed as Duty counsel to represent Mr. Dominic Ongwen by letter dated 12 January 2015 (...). Her mandate was extended until the end of the initial appearance of Mr. Ongwen before the Chamber”.⁸

¹ Pre-Trial Chamber II, Decision Designating a Single Judge, 21 January 2015, ICC-02/04-01/05-415.

² ICC-02/04-01/15-196-Conf-Exp. A confidential (ICC-02/04-01/15-196-Conf-Red) and public redacted (ICC-02/04-01/15-196-Red2) version of the Application were notified on 12 February 2015.

³ Pre-Trial Chamber II, “Decision on the Prosecutor’s application for the warrants of arrest under Article 58”, 8 July 2005, ICC-02/04-01/05-1.

⁴ Pre-Trial Chamber II, “Warrant of Arrest for Dominic Ongwen”, 8 July 2005, ICC-02/04-01/05-10.

⁵ ICC-02/04-01/05-419-Conf-Exp, para. 4; ICC-02/04-01/05-419-Conf-Exp-Anx2.

⁶ ICC-02/04-01/05-419-Conf-Exp, para. 18.

⁷ Pre-Trial Chamber II, Decision Designating a Single Judge, 21 January 2015, ICC-02/04-01/05-415.

⁸ ICC-02/04-01/05-416, p. 3 with confidential annex.

4. On 26 January 2015, Mr. Ongwen made his initial appearance before the Single Judge of the Chamber during which, *inter alia*, the date of the confirmation of charges hearing was set for 24 August 2015.⁹

5. On 28 January 2015, the Single Judge held an *ex parte* status conference only with the Prosecutor, during which the Prosecutor provided some information on the preparations of her Office for the confirmation of charges hearing.

6. On 6 February 2015, the Single Judge severed the case against Dominic Ongwen from the case of the *Prosecutor v. Joseph Kony et al.*¹⁰

7. On 10 February 2015, the Prosecutor submitted the Application requesting the Chamber to postpone the commencement of the confirmation of charges hearing to 31 January 2016 for various reasons.

8. The Single Judge notes article 67(1)(d) of the Rome Statute (the “Statute”), rules 20, 21 and 121(7) of the Rules of Procedure and Evidence (the “Rules”) and regulations 24, 34 and 76 of the Regulations of the Court (the “Regulations”).

Prosecutor’s Application

9. In order to guarantee the fairness of the judicial process and for the sake of being in a position to properly decide on the Application, the Single Judge deems it necessary to provide the Defence with the opportunity to be heard on the matter *sub judice*.

10. According to regulation 24(1) in conjunction with regulation 34 of the Regulations, the Defence “may file a response” to the Prosecutor’s Application “within 21 days of notification in accordance with regulation 31 of the document to which the participant is responding”, unless otherwise ordered by the Single Judge. Since the Single Judge is keen to expedite the proceedings, to the extent possible and

⁹ Pre-Trial Chamber II, Transcript of Hearing, 26 January 2015, ICC-02/04-01/05-T-10-ENG, p. 14, lines 7-9.

¹⁰ Pre-Trial Chamber II, Decision Severing the Case against Dominic Ongwen, 6 February 2015, ICC-02/04-01/05-424.

whenever it is feasible, she considers that a variation of the 21-day deadline is warranted in this case.

Appointment of Defence counsel

11. The Single Judge recalls the notification report of the Registrar submitted to the Chamber prior to the initial appearance of Mr. Ongwen which indicates that the mandate of duty counsel Hélène Cisse was limited to said initial appearance.¹¹ The Single Judge notes with concern that to date the Chamber has not been informed whether Hélène Cisse has been appointed to assist Mr. Ongwen for the duration of the entire pre-trial proceedings or whether she continues to assist him still as duty counsel until further notice.

12. The Single Judge also recalls article 67(1)(d) of the Statute which enshrines the right of Mr. Ongwen to conduct his defence in person or through counsel of his choosing. In the former case, Mr. Ongwen shall notify the Registrar in writing at the first opportunity, as foreseen in rule 21(4) of the Rules. The Single Judge further refers to regulation 76 of the Regulations according to which counsel may be appointed by the Chamber in the circumstances specified in the Statute or the Rules or where the interests of justice so require. This may also include the appointment of a standby counsel, if appropriate.

13. In this regard, the Single Judge recalls the Registrar's obligation to assist Mr. Ongwen in obtaining the assistance of legal counsel pursuant to rule 20(1)(c) of the Rules. Thus, as soon as Mr. Ongwen has chosen his counsel for the purpose of the proceedings, or has declared his intention to conduct his defence in person, the Registrar is ordered to notify the Chamber thereof.

¹¹ See also the remarks of the Single Judge during the initial appearance of Mr. Ongwen, Pre-Trial Chamber II, Transcript of Hearing, 26 January 2015, ICC-02/04-01/05-T-10-ENG ET, p. 9, lines 13-17.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **decides** to vary the 21-day deadline provided for filing a response by the Defence in accordance with regulation 34 of the Regulations;
- b) **requests** the Defence, should it decide to file a response to the Prosecutor's Application, to submit its observations no later than **Wednesday, 18 February 2015 at 16h00**; and
- c) **orders** the Registrar to assist Mr. Ongwen in obtaining the assistance of legal counsel, if he so chooses, and to inform the Chamber about the final decision of Mr. Ongwen on this matter as soon as possible.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 12 February 2015

At The Hague, The Netherlands