



Original: **English**

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

Date: **15 July 2015**

**PRE-TRIAL CHAMBER II**

**Before: Judge Cuno Tarfusser, Presiding Judge**

**SITUATION IN UGANDA**

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

**Public**

**Prosecution submission pursuant to filing ICC-02/04-01/15-267**

**Source: The Office of the Prosecutor**

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

**The Office of the Prosecutor**

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**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Section**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## Introduction

1. The Office of the Prosecutor ("Prosecution") respectfully requests that the restrictions on Dominic Ongwen's communications be maintained until the Prosecution can fully analyse the six sound recordings transmitted by the Registrar on 13 July 2015.
2. In the short period of time available,<sup>1</sup> the Prosecution has conducted a preliminary analysis of the six sound recordings and is of the view that the restrictions on Dominic Ongwen's communications should be maintained. The Prosecution will however only be able to provide a definitive position after it completes a full and in-depth analysis of the recordings.
3. Furthermore, the Prosecution requests the Single Judge to order the Registry to provide the Parties with the call data information, linking the disclosed sound recordings with the telephone numbers called, and the time and date when the respective calls were made. This information will enable the Prosecution to make accurate and fully informed submissions.
4. The Prosecution respectfully requests an extension of time to file substantive submissions on whether the restrictions on Dominic Ongwen's communications, or any other appropriate measures, remain necessary to ensure the integrity of the evidence. The Prosecution undertakes to make such submissions by 16:00 on Monday, 20 July 2015 after it has received and analysed the required information.

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<sup>1</sup> The six sound recordings were made available to the Prosecution on Monday 13 July 2015 at 17.55.

## Procedural history

5. On 5 June 2015, the Prosecution applied to the Single Judge for orders under article 57 of the Rome Statute (“Statute”) and regulation 101 of the Regulations of the Court (“RoC”) to restrict Dominic Ongwen’s access to the telephone (“Request”).<sup>2</sup> On the same day, the Single Judge orally instructed the Registrar to put in place the requested restrictions *ad interim*, as provided for under regulation 101(3) of the RoC.
6. On 8 June 2015, the Single Judge ordered that the Defence be notified of the Prosecutor’s Request and decided that the restrictions on Dominic Ongwen’s communications be maintained until a response is obtained from the Defence and a comprehensive decision on the Request is taken.<sup>3</sup> The Defence responded on 15 June 2015.<sup>4</sup>
7. The Prosecution, with leave of the Single Judge,<sup>5</sup> replied on 22 June 2015.<sup>6</sup>
8. On 24 June 2015, the Single Judge issued the first decision on the Request,<sup>7</sup> ordering, *inter alia*, the Registrar to file in the record of the case, as a matter of urgency, a “confidential, *ex parte*, Chamber only” report listing and summarising the content of Dominic Ongwen’s telephone conversations between 25 May and 5 June 2015 (“Registry’s Report”). The latter was filed on 9 July 2015.<sup>8</sup>

<sup>2</sup> ICC-02/04-01/15-241-Conf-Exp and -Conf-Exp-AnxA.

<sup>3</sup> ICC-02/04-01/15-242.

<sup>4</sup> ICC-02/04-01/15-248-Conf-Exp and –Red.

<sup>5</sup> ICC-02/04-01/15-252.

<sup>6</sup> ICC-02/04-01/15-253-Conf and –Red.

<sup>7</sup> ICC-02/04-01/15-254.

<sup>8</sup> ICC-02/04-01/15-261-Conf-Exp and –AnxA.

9. On 13 July 2015, the Single Judge issued the second decision on the Request, ordering that the sound recordings of six telephone communications be made available to the Prosecutor and the Defence.<sup>9</sup> This was implemented by the Registrar on the same day.<sup>10</sup>
10. The Single Judge further ordered the Prosecution to make submissions by 12.00 on 15 July 2015, as to “whether the restrictions on Dominic Ongwen’s communications, or any other appropriate measures, remain necessary to ensure the integrity of the evidence”.<sup>11</sup>

## Submissions

11. The Prosecution submits that the restrictions on Dominic Ongwen’s communications be maintained until the Prosecution completes its analysis of the sound recordings and is therefore able to make fully informed submissions on whether their continuance is warranted at this stage.
12. More time is needed to listen to and analyse the content of the six sound recordings, which amount to over four hours of telephone conversation in Luo. Until this analysis is carried out, the Prosecution cannot make informed submissions on whether the restrictions imposed on Dominic Ongwen should be amended, extended or lifted.
13. In the short time available, it has been impossible for the Prosecution to fully analyse the six sound recordings. However, a preliminary analysis of the six sound recordings has been conducted, and the Prosecution is seriously

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<sup>9</sup> ICC-02/04-01/15-267, para.5.

<sup>10</sup> ICC-02/04-01/15-268.

<sup>11</sup> ICC-02/04-01/15-267, p.5, disposition.

concerned by the content of the conversations. The Prosecution submits that the justification for the initial Request, namely the prevention of witness interference, remains valid. Therefore, the restrictions on Dominic Ongwen should be maintained at the present time. This is to avoid prematurely defeating the purpose of the Single Judge's imposition of restrictions.

14. The Prosecution requests the Single Judge to order the Registry to provide the Parties with the relevant call data information pertaining to the six sound recordings. This data should link each of the recordings to the name of persons and telephone numbers called, as well as the time and date of the calls. This information will provide a more complete overview of the information necessary for the Prosecution's analysis, including sequence of and context to the content of the phone calls.
15. Finally, the Prosecution respectfully requests an extension of time until 16:00 on Monday, 20 July 2015, to file fully informed and substantive submissions, as requested by the Single Judge. It is submitted that this short extension will cause no prejudice to the Defence, or Dominic Ongwen.

**Relief sought**

16. The Single Judge should maintain the restrictions imposed on Dominic Ongwen's communications until the Prosecution can make fully informed submissions.
17. Furthermore, the Prosecution requests the Single Judge to order the Registry to provide a separate report to the Parties with the information described at paragraph 14 above, and to grant an extension of time to 16:00 on Monday, 20 July 2015 to file substantive submissions after it has received and analysed all the required information.



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Fatou Bensouda,  
Prosecutor

Dated this 15<sup>th</sup> day of July 2015  
At The Hague, The Netherlands