

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/04-01/15
Date: 1 September 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

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

Confidential

**Decision on the "Prosecution's Request to Obtain DNA Samples from
Dominic Ongwen"**

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Benjamin Gumpert

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the 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

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Paddy Craig

**Victims Participation and Reparations
Section**

Other

Judge Cuno Tarfusser, Single Judge exercising the functions of the Chamber in the present case, issues this decision on the "Prosecution's Request to Obtain DNA Samples from Dominic Ongwen" (ICC-02/04-01/15-288-Conf-Exp and annexes 1-3), filed on 13 August 2015.

1. The Prosecutor requests authorisation to collect DNA samples from Dominic Ongwen for the purpose of determining the paternity of some of the children allegedly fathered by him following the abduction and captivity of some of the prospective witnesses of the Prosecutor.

2. Article 57(3)(a) of the Rome Statute permits the Pre-Trial Chamber to issue, at the request of the Prosecutor, such orders and warrants as may be required for the purposes of an investigation. The present request demonstrates that this requirement is met, and the Single Judge cannot envisage any argument why the requested authorisation for this nonintrusive investigative measure should not be given. The request must therefore be granted.

3. The Prosecutor has filed her request as "confidential, *ex parte*", submitting that in order to prevent that Dominic Ongwen "take steps to frustrate [the] procedure", the DNA sample should be obtained by seizing objects in his private use at the detention centre and that he should not be informed until after the fact. In the view of the Single Judge, this course of action is disproportionate. Even if the objects that the Prosecutor is aiming to obtain are tampered with, hidden or destroyed – a course of action that the Single Judge has no reason to believe Dominic Ongwen would choose to engage in – this would not prevent the Prosecutor from obtaining a DNA sample by other relatively simple and nonintrusive procedures.

4. Accordingly, this decision is notified to both parties and the request shall be reclassified as "confidential". The Prosecutor is authorised to obtain a

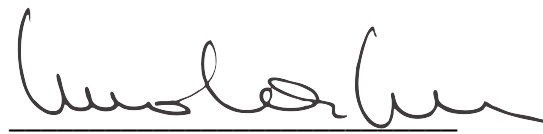
sample of Dominic Ongwen's DNA by appropriate means, with the assistance of the Registrar if necessary. Dominic Ongwen shall be informed of the procedure and shall be given an opportunity to voluntarily cooperate.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Registrar to permit the Prosecutor to obtain a sample of Dominic Ongwen's DNA and to provide the necessary assistance for this purpose;

ORDERS the Registrar to reclassify document ICC-02/04-01/15-288-Conf-Exp and its annexes as "confidential".

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this 1 September 2015

At The Hague, The Netherlands