

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 January 2016

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

Confidential

**Prosecution's application for an extension of time to present evidence under rule
121(8) of the Rules of Procedure and Evidence**

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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**Unrepresented Applicants for
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REGISTRY

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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 ("the Prosecution") requests that the Pre-Trial Chamber grants an extension of the time limit for the presentation of evidence under rule 121 of the of Rules of Procedure and Evidence ("Rules") in respect of the document with the ERN number UGA-OTP-0248-0524 ("document") to be found in the List of Evidence ("LoE") under the heading "other materials", at item 128, on page 44/44. This document should have been disclosed to the Defence on 21 December 2015, but was omitted from the disclosure package served on that day in error. The Prosecution submits that the Defence is on notice as to the nature and content of the document and that the extension of the time limit will cause no prejudice and will be in the interests of justice.

Procedural Background

2. On 21 December 2015, the Prosecution submitted the document containing the charges against Dominic Ongwen ("DCC"), the pre-confirmation brief ("PCB") and the LoE.¹ On 22 December 2015 the Prosecution filed a revised LoE.²

Submissions

The Document

3. The document is an annotated version of the transcript of a radio intercept, recording conversations between senior LRA commanders, on which witness P-0059 (who states that he recognises the voices of persons taking part in the conversations) has made markings to indicate the identity of the speakers. It is referred to in the PCB at footnotes 969, 970, 982 and 987 and relied upon as one

¹ ICC-02/04-01/15-375.

² ICC-02/04-01/15-378-Conf-AnxA.

of the documents substantiating assertions made in the text concerning Dominic Ongwen's alleged involvement in the attack on Abok IDP camp.

4. As noted above, the document was included in the LoE.
5. The sound recording from which the document is derived³ was disclosed to the Defence on 16 July 2015 and the statement of witness P-0059,⁴ in which he describes the process by which the annotations were made on the transcript, was disclosed to the Defence on 21 December 2015. In addition, a transcript with content identical to document,⁵ annotated by P-0003 (who also states that he recognises the voices to be heard) rather than P-0059, was disclosed on 21 December 2015. In the most important respects, the witness annotations are identical. P-0003 and P-0059 are in agreement on the specific instances in the sound recording when Ongwen is the speaker.

The Law

6. Rule 121(5) of the Rules permits the Prosecution to present new evidence at the confirmation hearing on the condition that the Pre-Trial Chamber and the Defence are provided with a list of that evidence no later than 15 days before the date of the confirmation hearing. Neither the Rules, nor any provision in the Rome Statute, specify that the evidence included in such a list must have been disclosed to the Defence, but the Prosecutor accepts that in order to give effect to the notice requirements of rule 121(5), such disclosure must have taken place within the same time limit.
7. Rule 121(8) of the Rules prohibits the Pre-Trial Chamber from taking into consideration evidence presented after the time limit, or any extension thereof.

³ UGA-OTP-0235-0049 Track 1.

⁴ UGA-OTP-0248-0328 at 0334-0336.

⁵ UGA-OTP-0248-0106-R01.

It is a necessary implication of the inclusion of the words "or any extension thereof", in respect of the time-limit, that the Pre-Trial Chamber has the power to grant such an authorize extensions to the time-limit established in rule 121 (3) and/or (5). These words would be meaningless if it did not.

The request

8. The 15 day time limit expired on 6 January 2016. The Prosecution identified the error only on 7 January 2016. The document was then immediately informally disclosed to the Defence on 7 January and formally disclosed on 8 January. It is, therefore, two days outside the time limit.
9. In these circumstances, there is no prejudice to the Defence. The recording of this radio exchange between Dominic Ongwen and other senior LRA commanders and the intention of the Prosecution to use it as incriminating evidence was disclosed to the Defence six months ago. The transcript of the recording, the attribution of the speakers by P-0003 and the statement of P-0059 indicating that he had performed a similar attribution exercise were all disclosed to the Defence within the time limit. The quantity of new information within the document is minimal and the fact of its existence and the Prosecution's reliance upon it has already been made clear. The document is important evidence, but it cannot be said to be the sole or even decisive evidence on the issue in question. Granting the Prosecution's request will permit this evidence to be considered by the Pre-Trial Chamber as part of the Prosecution's case as a whole.
10. The Pre-Trial Chamber has the power under rule 121(8) to extend the time limit for the presentation of evidence. The Prosecution submits that it would be in the interests of justice for the Chamber to use that power in this case.

Conclusion

11. The Prosecution requests that the Pre-Trial Chamber order that the time limit for the presentation of the document be extended by two days.



Fatou Bensouda,
Prosecutor

Dated this 8th day of January 2016
At The Hague, The Netherlands