

1 International Criminal Court
2 Pre-Trial Chamber II - Courtroom 1
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
5 Single Judge Cuno Tarfusser
6 Status Conference
7 Tuesday, 19 May 2015
8 (The status conference starts in open session at 9.32 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 SINGLE JUDGE TARFUSSER: So good morning to everybody in and outside; inside
13 the courtroom and in the public gallery and outside. Good morning also to
14 Mr Ongwen.
15 Please, court officer, could you call the case.
16 THE COURT OFFICER: Yes, your Honour. Good morning.
17 Situation in the Republic of Uganda, in the case of The Prosecutor versus Dominic
18 Ongwen, case reference ICC-02/04-01/15, and for the record we are in open session.
19 SINGLE JUDGE TARFUSSER: Thank you very much.
20 I would now for the record invite the parties to introduce themselves and their teams
21 in -- and I begin with the OTP, with the Prosecutor?
22 MR GUMPERT: Good morning, your Honour. My name is Ben Gumpert. With
23 me today for the Prosecution: Adesola Adeboyejo, Kamran Choudhry and
24 Ramu Bittaye.
25 SINGLE JUDGE TARFUSSER: Thank you very much.

1 Now the Defence team?

2 MR ODONGO: Thank you very much, your Honour.

3 My names are Krispus Ayena Odongo. I'm being assisted by Thomas Obhof.

4 Thank you very much.

5 SINGLE JUDGE TARFUSSER: Thank you very much.

6 Also Mr Ongwen is present, so just for the record.

7 MR ODONGO: Your Honour, my client, Mr Dominic Ongwen, is present in court.

8 SINGLE JUDGE TARFUSSER: Thank you very much.

9 Before starting I really would invite all of us, myself first, to speak slowly because we
10 have the translation in Acholi and I think it's not easy to translate in Acholi. So
11 I think we have to really speak slowly in order for the suspect to understand exactly
12 what is going on here.

13 Before we start with the agenda for this status conference, I note that I received on 7
14 May a request by the Prosecutor for an extension of time limit to file her review of the
15 level of classification in the record of the case. It is the filing 231.

16 The time limit in question was 8 May and it had been set on 14 April. In my opinion
17 to come on 7 May with this submission is not really a serious request for an extension
18 of time limit, I must say. I would rather think of it as a sort of a notification of
19 non-compliance. And it's not the first time, not of this senior legal -- senior trial
20 lawyer, but in other cases.

21 I must say that I'm equally not impressed by the Prosecutor relying on how many
22 pages needed to be reviewed as if it could provide justification, also because I think
23 that 3,000 pages are not much at all, but still I think the prevailing interest is to make
24 sure that what can be made public is made public and that what must kept -- be kept
25 confidential is kept confidential. And since the Prosecutor needs more time to

1 present submissions on the matter you can take the time, but please file your
2 submissions as soon as possible.

3 In any case, a number of filings I have received submissions from the -- on a number
4 of filings I have received submissions from the Prosecutor, as well as from the
5 Registrar, and I will issue in the coming days a written order for reclassification for all
6 the documents we can -- which can be reclassified.

7 So this said, we can start with the status conference. At first I would like to receive a
8 general update from the Prosecutor on the progress of disclosure of evidence and to
9 hear also from the Defence if things are running smoothly, as I hope.

10 I would also request from the Prosecutor an update on the Article 54(3)(e) documents.

11 In the last report on the status of documents obtained under 54(3)(e), dated 30
12 April 2015, filing number 229, the Prosecutor stated that there remained 320
13 documents for which the Prosecutor, and I quote, "... continues to consult with
14 information provided and seek their consent to lift restrictions." End of quote.

15 This was exactly the time -- the same situation as it was at the time of the Prosecutor's
16 previous report on 31 March 2015, and I refer to filing 260.

17 Can the Prosecutor now elaborate a bit more on the status of consultation on these
18 remaining 320 documents? Please, Prosecutor, you have the floor.

19 MR GUMPERT: Your Honour, I shall answer that question now, but I seek
20 your Honour's leave to respond to the criticism which your Honour makes and in a
21 rather conclusory fashion, I submit. There are one or two matters which, since the
22 matter has been aired publicly, I would wish to draw to your Honour's attention.

23 SINGLE JUDGE TARFUSSER: Of course you can, but I said it is not the first time
24 that I receive a request the last day. It's a sort of *fait accompli*. You know, it's not
25 very nice to be put in a situation where you can't -- where you have no choice.

1 MR GUMPERT: Shall I deal with that issue now, or shall I --

2 SINGLE JUDGE TARFUSSER: No, no, you can go ahead. Please do.

3 MR GUMPERT: Your Honour, Mr Choudhry who sits behind me is the

4 International Cooperation Adviser and he -- it is he who has direct conduct of the

5 matters which concern documents which are affected by restrictions under Article

6 54(3)(e) of the Rome Statute.

7 The position remains the same. There are 797 pages which constitute 320 documents.

8 We have scanned that material. Only six items and 64 pages actually contain

9 reference to Mr Ongwen.

10 We've spoken to the various information providers. One of them has verbally

11 confirmed its willingness to lift restrictions. That verbal confirmation was received

12 on 11 May. Another has informed the Office of the Prosecutor that it has no

13 objection in principle, but they have requested a further formal letter of request.

14 Those two providers together cover some 311 pages, so something under -- just under

15 half, a little under half, of the material.

16 We remain in difficulties, I am frank, with the other seven information providers.

17 We are seeking to locate them. We're not standing still, or sitting on our hands.

18 This is a principal part of Mr Choudhry's work and I know that he takes it seriously,

19 but your Honour will understand that this is a case where this material was gathered

20 something close to a decade ago. There has been a very long period of stasis when

21 the resources of the Office of the Prosecutor were fully occupied on other matters

22 because it was unknown when, or if ever, any of those against whom arrest warrants

23 had been issued would come into the hands of the Office of the Prosecutor.

24 I can only report what efforts we are making and assure the Court that we recognize

25 the importance of continuing those efforts and, as I have done already, indicate the

1 extent to which there is likely to be real significance in these documents. The
2 moment we have further developments we will include them in the monthly updates
3 which we are providing to the Court.

4 I don't believe that in all honesty I can respond very much more fully than I have, but
5 if Mr Choudhry feels there is anything which he would wish to add I will defer to
6 him. I see him shaking his head.

7 Can I just enquire whether my pace of delivery is sufficiently slow? I'm getting a
8 thumbs up, yes, from all three booths.

9 Thank you very much.

10 SINGLE JUDGE TARFUSSER: Thank you, Mr Gumpert.

11 Having heard this, I think it -- I don't think it would be necessary to keep receiving
12 monthly updates. I think it's quite cumbersome to have these deadlines, monthly
13 deadlines, so a monthly report from the Prosecutor, if there is no real update. Rather
14 I think the Prosecutor should continue with her consultations to lift the restrictions, at
15 least as soon as possible to -- regarding the two - at least the two providers - to lift
16 restrictions on the remaining documents and then to inform the Chamber on any
17 relevant development as soon as there are any developments.

18 Therefore the order of the then Single Judge, contained in decision number 203 of 9
19 March, is therefore amended in accordance with the instructions I just gave.

20 MR GUMPERT: For clarity's sake --

21 SINGLE JUDGE TARFUSSER: Yes.

22 MR GUMPERT: -- I apologise for interrupting, we will no longer provide updates at
23 the end of the month?

24 SINGLE JUDGE TARFUSSER: Right.

25 MR GUMPERT: But whenever there is a material development, either positive in

1 terms of being able to disclose material or negative in terms of being given a contrary
2 answer, we will inform the Court and do so in a filing which is made available at least
3 to the Defence?

4 SINGLE JUDGE TARFUSSER: That's correct.

5 MR GUMPERT: Thank you very much.

6 SINGLE JUDGE TARFUSSER: Have you any questions or comments to make on
7 this?

8 MR OBHOF: No, your Honour.

9 SINGLE JUDGE TARFUSSER: Okay, then I go ahead dealing with the additional
10 charges or -- because at the previous status conference on 28 January 2015, before the
11 then Single Judge, the senior trial lawyer stated that the Prosecutor was considering
12 presenting charges against Dominic Ongwen on a factual basis going beyond that for
13 which the warrant of arrest against him was issued. Reference at the time was made
14 to charges in relation to the attack on the camp in Pajule, sexual and gender-based
15 violence crimes and crimes in relation to child soldiers.

16 At the same status conference, the senior trial lawyer stated that within the following
17 three months the Prosecutor would have been able to inform the Chamber and the
18 Defence on these issues.

19 Now that more than three months have passed, I would like to receive an update on
20 this matter from the Prosecutor.

21 You have the floor. Thank you.

22 MR GUMPERT: Yes, your Honour.

23 We are engaged in investigations with a view to bringing charges beyond those
24 relating to the single attack, the attack on Lukodi, which is contained within the
25 warrant for Mr Ongwen's arrest. We are conducting investigative missions, the

1 details of which I don't propose to expand upon, and it is our intention that if the
2 evidence supports it we will include within the Document Containing the Charges
3 offences which relate to locations and individuals other than those named in that
4 warrant for arrest.

5 I'm not in a position now to say what those offences will be and, indeed, whether the
6 Prosecution is currently in the possession of evidence which would sufficiently
7 support them. That is the purpose of our current investigative efforts.

8 SINGLE JUDGE TARFUSSER: Thank you very much.

9 So at this point in time we are on the charges which are contained in the arrest
10 warrant; is that correct?

11 MR GUMPERT: Certainly there are no other charges in existence. I don't believe,
12 in fact, that the word "charges" is quite technically the right term. Offences have
13 been set out. He has been - Mr Ongwen has been - arrested on the basis that the
14 Prosecution has persuaded the Pre-Trial Chamber previously that there is evidence
15 sufficient to support those offences.

16 That is the current state of play in formal terms, but I make no secret of the fact, as I
17 did previously, that the Prosecution is conducting further investigations and that one
18 of the reasons why we sought further time beyond the confirmation date originally
19 envisaged by the Single Judge was to enable those investigations to be carried out.

20 SINGLE JUDGE TARFUSSER: Does the Defence have some observations to make to
21 this?

22 MR ODONGO: Yes, your Honour.

23 In relation to anticipated additional charges, we can only state that it has been more
24 than 10 years since the first charges were preferred.

25 Prosecution has had sufficient time, more than four months, since the arrest -- or,

1 rather, my client was brought in. We can only demand that for purposes of
2 preparation these anticipated new charges should be brought maybe not later than
3 September to allow us sufficient time to prepare before the date of the confirmation
4 hearing in January. I think that's all.

5 SINGLE JUDGE TARFUSSER: Thank you very much.

6 MR GUMPERT: Your Honour --

7 SINGLE JUDGE TARFUSSER: Okay. Sorry.

8 MR GUMPERT: I apologise for interrupting.

9 SINGLE JUDGE TARFUSSER: It's okay.

10 MR GUMPERT: Mr Odongo and I have spoken about this matter previously and I
11 accept as proper, necessary, entirely genuine his concern.

12 The formal position is that with the confirmation hearing fixed for 21 January, the
13 Document Containing the Charges and the List of Element are due no later than 21
14 December.

15 Your Honour set out in the decision which fixed a brief agenda for this hearing the
16 article, that is Article 63(1)(3); the rule, that is Rule 121(3); and the regulation, that is
17 Regulation 52, which set those time limits and delineate what the Document
18 Containing the Charges must contain.

19 Realistically, and I give no formal undertaking in this respect, but realistically, the
20 Prosecution's current intention is to have decided in outline what charges to include
21 within the Document Containing the Charges, the DCC if I can call it that, by the end
22 of September because it will be necessary to have done so in order to give adequate
23 time to the drafting of that document, which can be expected to occupy the following
24 months.

25 And it is our intention at the time when we make that selection as we begin the

1 drafting process to inform the Defence as to the nature of further -- actually, I
2 withdraw the word "further" -- the nature of the charges we intend to include.
3 I should make it plain that that will -- indeed, cannot necessarily be a precise
4 characterisation of the legal nature or of the mode of liability. And the Prosecution
5 reserves the right, plainly, until the time when the DCC is served to refine those. But
6 what we will be able to do is to tell the Defence the locations, if I can call it the attacks,
7 in respect of which we are proposing to bring charges in the DCC and the nature of
8 any other offences which may not be precisely tied to location; for example, ongoing
9 sexual offences, perhaps of rape or sexual slavery, or of enlistment of child soldiers.

10 SINGLE JUDGE TARFUSSER: Well, I must say that I expected something more
11 because the three months we -- you talked about three month -- more than three
12 month ago have passed, and I think it is a bit disappointing to have nothing more
13 than we had three month ago.

14 MR GUMPERT: Well, your Honour, with respect, that isn't fair.

15 SINGLE JUDGE TARFUSSER: But that's not -- no. This is a comment of why.

16 MR GUMPERT: Indeed. And I would with respect seek to reply to your comment.

17 SINGLE JUDGE TARFUSSER: Yes, okay.

18 MR GUMPERT: What we undertook to do was to inform the Court on the progress
19 of what we were doing within three months, and we do so. It is with respect
20 unrealistic to think that in a case which has been taken out of the deep freeze where it
21 has lain for many years until the surrender of Mr Ongwen, further investigations
22 would not only have been initiated but concluded within three months. That isn't, I
23 respectfully submit, a realistic proposition.

24 SINGLE JUDGE TARFUSSER: I just expected one or two steps ahead, and we are at
25 the same place where we were three months ago. But it doesn't matter. I don't

1 want to go further on this discussion. I just think that we have to distinguish two
2 different aspects. The first one is the Prosecutor intends to bring charges, it seems,
3 against Dominic Ongwen for a conduct committed before the surrender other than
4 the conduct or course of conduct for which he was surrendered, the Court must
5 request the competent authorities of Central African Republic to provide a waiver of
6 the rule of speciality under 101, Article 101 of the Statute.

7 Second, Dominic Ongwen must be put in a position to defend himself at the
8 confirmation hearing also from these additional charges. This is contingent on him
9 and his Defence being given notice of the intended expanded factual basis of the
10 allegations against him sufficiently in advance before the hearing on 21 January '16 so
11 that the Defence could have adequate time to prepare.

12 So if, as it seems, the Prosecutor intends to bring against Dominic Ongwen additional
13 crimes, she shall file in the record of the case a formal notice thereof with the
14 reference to time, location and underlying conduct of the crimes she would charge
15 Dominic Ongwen with with the same level of specificity as in the counts contained in
16 the warrant of arrest. I called them "counts" and not "charges" as you've seen. Of
17 course, the detailed description of the charges would then come as usual 30 days
18 before the confirmation hearing.

19 This notification will need to be translated into Acholi in order to be provided to
20 Dominic Ongwen and would also be the basis for the Chamber to request through the
21 Registrar that the Central African Republic provides a waiver under Article 101(2) of
22 the Statute.

23 In light of the information provided at this status conference, which are very poor, I
24 must say, I expect that this notice may be filed by the Prosecutor in the record of the
25 case I would say before the end of September 2015.

1 You asked for the floor?

2 MR GUMPERT: Please, your Honour.

3 SINGLE JUDGE TARFUSSER: You have the floor.

4 MR GUMPERT: Your Honour, the question of whether the law requires a waiver to
5 be sought from the Central African Republic is, I submit, a complex one. It is one to
6 which the Office of the Prosecutor has given considerable thought. I would
7 respectfully submit that it's appropriate that before any such order is made, the
8 parties should be given an opportunity to address the law on that subject in detail.
9 It is likely that both Prosecution and Defence will have submissions to make on that
10 subject, which can't readily be advanced at a status conference such as this where
11 there is no notice of the likelihood of such an argument arising. And I would
12 respectfully submit that time is given, a short period of time, for the submission of
13 filings on that subject so that your Honour can make a decision in the light of those
14 submissions rather than today without the benefit of any submissions from either
15 party.

16 SINGLE JUDGE TARFUSSER: I must say that also the Chamber have given some
17 thoughts on this, on this aspect on the -- so I -- but I -- you are always free to submit
18 any request or make any submissions you consider and then we will take a decision
19 on these submissions, but be sure that also the Chamber has given some thought on
20 this aspect. So I'm happy to receive a submission on this.

21 MR GUMPERT: Yes, your Honour. I don't doubt that we've all thought about it.
22 What I seek to do is to bring some formality to the proceedings and to enable a
23 decision to be taken, not in the course of a hearing, but in the light of submissions
24 which have had -- where the parties have had the opportunity to draft them carefully.
25 Your Honour, so far as the other matter is concerned, that is to say giving notification

1 of the charges which will be contained in the Document Containing the Charges, with
2 great respect, my understanding of the procedure is that the purpose of the DCC is to
3 do precisely what your Honour has just suggested; that is to say to give detailed
4 notice of what offences it is irrespective of what may be contained within the warrant
5 of arrest that the Prosecutor now seeks confirmation for.

6 Of course, in order for a warrant of arrest to be issued in the first place, the
7 Prosecution has to specify what offences at that time it believes that it can prove. But
8 it's hardly surprising that over a very long period of time, nearly a decade, there are
9 both factual and evidential developments. Things don't stand still in terms of the
10 sources of information which become available to the Prosecution.

11 The Prosecution, as I say, will by the end of September be able to say the locations
12 and the nature of the charges that it intends to include in the DCC. But I am unclear
13 as to what is the nature of the document that your Honour is considering ordering we
14 should serve I think by the beginning of that month. It's not, as I understand it, the
15 DCC itself. That, unless your Honour orders otherwise, remains due on 21
16 December.

17 I will be grateful if that is your Honour's order to be clear in my mind what the nature
18 of that document should be and whether in truth it is necessary for there to be such an
19 order given that there will by December be full specificity in the form of the
20 document required by the Rules and the Statute and that the Prosecutor will at the
21 date that I have already suggested be able to tell the Defence in slightly broader terms
22 the locations and the nature of offences which are not tied to a location.

23 MR ODONGO: Your Honour, with absolute respect to the expressions my learned
24 brother on the other side, I think there is a world of difference between amendment of
25 charges and bringing a completely new list of charges, and for that matter I would

1 invite my learned friend's assistance to address this Court. It might be useful to the
2 Prosecution for purposes of clarifying on this particular matter without engaging the
3 Judge.

4 SINGLE JUDGE TARFUSSER: Just to be clear, when I say that we -- you need to
5 notify what I call a formal notice, to give a formal notice of the new accusations, the
6 new counts, against Dominic Ongwen with the same level of specificity as in the
7 counts contained in the warrant of arrest, I just want to make sure that you don't
8 come with new charges in the 30 days before the hearing, say on 21 December, but
9 that you give notice to the Defence and to the accused of the new accusations you will
10 bring in the charges at least some -- sometime before 21 December in order to give
11 him the possibility to prepare his defence.

12 So I called it formal notice just because I think it is a formality to deliver a sort of
13 notice to the Defence what charges you will bring, together with those charges he
14 already knows, or with the -- so this is the sense of this -- well, of this term, to give to
15 the Defence and to the suspect the time to prepare himself.

16 Now, I -- also what as far as the DC -- sorry.

17 MR OBHOF: Your Honour, thank you very much.

18 What we'd like to point out is that the Prosecution keeps referring to Article 61(4) as
19 amending the charges, and as our learned colleague, Mr Gumpert, seems to interpret
20 is that amend the charges means add additional counts.

21 Now if you look further down in Article 61, in 61 paragraph 9, you will see where it
22 discusses amending the charges. Even though that is post-confirmation, but it uses
23 the phrase "amending the charges," but it also talks about adding additional charges,
24 or in this case right now additional counts, where you'd have to go back and go back
25 and seek leave from the Pre-Trial Chamber.

1 We are of the opinion that the term in Article 61(4) means -- when it talks about
2 "amending" it would mean going from say, "We are charging him with a sexual crime
3 of rape," to a sexual crime of forced -- forced marriage. That's how we interpret the
4 word "amend" and that's why we gave the time frame of September for the
5 Prosecution to file literally a new Article 58 application to the Pre-Trial Chamber for
6 extra counts to be added.

7 The DCC, yes, is supposed to be a detailed description of the crimes that are being
8 charges, but we should have at least at a minimum four to five -- sorry, four to five
9 months to go over, to prepare --

10 SINGLE JUDGE TARFUSSER: Forty-five months?

11 MR OBHOF: Four to five.

12 SINGLE JUDGE TARFUSSER: (Microphone not activated)

13 MR OBHOF: Yes, 45. Sorry, your Honour. It's my Midwestern accent. We
14 should have at least four to five months to sit there and to go over and to investigate
15 any charges that the Prosecution would like to add in addition.

16 Thank you, your Honour.

17 SINGLE JUDGE TARFUSSER: Mr Gumpert?

18 MR GUMPERT: Yes. If I may, I'd just like to explore the Articles to which my
19 learned friend has made reference. It will take a little time, and I apologise for that,
20 but I think it's necessary in the light of the submissions that have been made.

21 Article 58, which is to be found on page 37 of the loose-leaf binder which I think we
22 both have, is headed "Issuance by the Pre-Trial Chamber of a warrant of arrest or a
23 summons to appear."

24 The purpose of the document - the warrant - is to cause the suspect, or the person
25 concerned, to be arrested, or if that is not necessary to be summonsed so that he can

1 answer to that summons. And the -- my learned friend who sits next me points out
2 that the microphone on the Defence bench is open and we might hear the exchanges
3 between counsel and his assistant.

4 That is the purpose of the document which results from the application of Article 58,
5 to bring the person who is suspected of having committed crimes to the Court by one
6 means or another.

7 Of course it specifies offences, because it is only by so doing that the Pre-Trial
8 Chamber can judge whether it's fair to require someone to come to the court whether
9 of his own -- under his own steam, or under arrest.

10 Article 61, on the other hand, deals with the confirmation of the charges before trial.

11 There is, I respectfully submit, no link established between the two at all. The
12 purpose of the confirmation hearing, which is the subject of Article 61, is for the
13 Prosecution to specify what charges it proposes that the accused person, or the
14 suspect, should be tried upon. Those charges may or may not be the same as the
15 charges which have been - or the offences which have been - the cause of his arrest, or
16 of his answering to a summons.

17 When my learned friend refers to Article 61(4) and draws your Honour's attention to
18 the provision for the Prosecutor amending or withdrawing any charges, it is I
19 respectfully submit clear that that amendment or withdrawal may take place between
20 the provision of the copy of the DCC and the confirmation hearing itself.

21 That is the context in which the drafters of the Statute used the word "amend;" that is
22 to say that a DCC has been drafted, served on the Court and the Defence and the
23 Prosecution now seek to amend it by changing or withdrawing some of the charges.
24 The word "amend" in that provision of the Statute has no relevance at all to the
25 offences which were specified in the warrant of arrest. If the Prosecutor brings new

1 or different charges in the DCC to the warrant of arrest, that isn't any kind of
2 amendment or withdrawal, at least not in the terms of Article 61(4). The DCC, the
3 Document Containing the Charges, I submit is quite plainly under the Rules an
4 independent document.

5 I readily accept the proposition advanced by my learned friend, and which
6 your Honour obviously has accepted as well, that there needs to be adequate notice.
7 No reasonable Prosecutor could suggest otherwise.

8 I also accept that the notice which is provided by the Rules as the minimum, that is to
9 say the 30 days under Rule 121(3), may not in the particular circumstances of a case be
10 sufficient notice. It is, after all, expressed as a minimum and it's plainly open to the
11 Court to require a longer period of notice.

12 And I can understand that where charges relate to matters which were not in the
13 warrant of arrest as against this accused person that the Court will think that more
14 than 30 days is required, but I respectfully submit that there is no support in the
15 Statute or the Rules such as Mr Obhof has advanced. It is a matter of fairness based
16 upon the circumstances of this case, and of course your Honour is the ultimate arbiter
17 of what fairness will require.

18 What I can say - and I apologise I'm repeating myself now so I shall do so only very
19 briefly - is that by the end of September, and therefore three months and 21 days
20 before the confirmation hearing, the Prosecution will be able to provide with
21 sufficient specificity to enable the Defence to investigate, to take instructions from
22 their client and to consider how they wish to conduct the hearing on 21 January
23 material which will enable them to do that.

24 If we're required to do it before the end of September, as your Honour first indicated,
25 then of course we will comply with what order the Court makes, but I invite the

1 Court to accept that there is no lackadaisical approach on the part of the Prosecution
2 here. On the contrary, the maximum proportion of investigative resources is being
3 applied to this case.

4 We haven't been able to proceed any faster than I have indicated to your Honour and
5 we've tried to take a realistic view to say that by the end of September we will have to
6 be clear what the charges we intend to bring are.

7 That is the order I ask your Honour to make.

8 SINGLE JUDGE TARFUSSER: Mr Gumpert, I think we are here making some very
9 sophisticated legal discussion on what amendment and new charges and -- means,
10 but here the only problem is to give time to the Defence to prepare their defence and
11 to the suspect.

12 So I think that it is normally, in a normal -- in all situations the cases we had, from the
13 moment of the first appearance to the confirmation hearing, which is the time frame
14 approximately necessary to do all the disclosure and therefore also the preparation of
15 the Defence, this time frame was close to the -- or on average six months about. So
16 I think this would be a good period, a good time frame, to set for -- also for the new
17 charges.

18 I realise, of course, that it is quite a long -- a long time and this would bring you to
19 make this notice I requested you to make very, very soon. Therefore I think that
20 realistically if we set here and I set here the date of 21 September, meaning four
21 months before, I think this could be realistic.

22 So I will say latest 21 September. I don't know -- I don't know which date it is, if it's
23 a Saturday or a Sunday, but say 21 September. I think four months before the
24 confirmation hearing I -- the Prosecutor should give this notice of the new charges, of
25 the new accusation of the facts, with the same specificity as I said before you would

1 put in a request for an arrest warrant. This should be filed -- this notice should be
2 given by filing on 21 September 2015.

3 I think this should conclude this discussion, although I see the finger of Mr Gumpert
4 close to the -- no.

5 MR GUMPERT: Only to say that by delightful coincidence 21 September is a
6 Monday and therefore I shan't seek to persuade your Honour any further and we will
7 do as your Honour has ordered.

8 SINGLE JUDGE TARFUSSER: Thank you very much.

9 So now I have some communications from the Single Judge which go to both parties,
10 but of course in -- the bigger part is for the Prosecutor.

11 First about the time limit for the responses under Regulation 34(b) of the Regulations
12 of the Court. I think these -- following the communication that I give, they will have
13 added validity throughout the whole proceedings and the intent is to expedite it and
14 to avoid requests and comments and decisions which maybe can be avoided, can
15 be -- are not needed, because we can decide them here for the future.

16 So the first -- the first communication is about the time limits for the responses under
17 Regulation 34(b) of the Regulations of the Court.

18 According to Regulation 34(b), in conjunction with Regulation 24(1), the Prosecutor
19 and the Defence may file a response to any document filed by any participant in the
20 case within 21 days of notification of the document to which the party is responding.
21 This applies unless otherwise provided by the legal texts or otherwise provided and
22 ordered by the Chamber.

23 As I said, for the sake of efficiency and avoidance of delays in addressing any
24 procedural matter that requires intervention by the Single Judge in the present
25 proceedings leading to Confirmation of Charges hearing, I issue the following order:

1 The Prosecutor and the Defence may respond to each other's filings within 5 days,
2 and not 21, in accordance with Regulation 31 of the Regulations of the document to
3 which they are responding.

4 If and when victims are admitted to participate in the proceedings, this order will
5 apply to them as well.

6 After five days, irrespective of whether a response is presented, a decision can be
7 issued at any time.

8 Of course in case any issue raised by any party would need to be decided upon with
9 particular urgency, say in less than five days, which happens, the other party would
10 be requested by email communication to provide a response if it wishes to do so
11 within a time limit obviously even shorter than five days. The decision would be
12 issued upon expiration of this time limit. So this is the first communication.

13 The second regards the DCC, the charges and the submissions.

14 In the agenda for today's status conference I also included the item format of the
15 charges in accordance with Article 61(3)(a) of the Statute, Rule 121(3) of the Rules and
16 Regulation -- of the Rules and Regulation 52 of the Regulations of the Court.

17 In fact, in order to prevent problems at later stages of the proceedings, it's better to be
18 clear on what it is expected of the charges to be presented by the Prosecutor 30 days
19 before the confirmation hearing.

20 First, the charges serve the purpose of informing Dominic Ongwen in details of the
21 facts he's accused of and to which the Prosecutor proposes the legal characterisation;
22 Second, in the event charges are confirmed by the Chamber, such charges as
23 confirmed determine the factual parameters of the case at trial.

24 The charging document is therefore the single most important procedural document.

25 The Prosecutor shall state all the material facts of the charges brought against

1 Dominic Ongwen that are the fact and circumstances as per Article 74(2) of the Statute
2 that must be described in the charges; in other words, first, the temporal, geographic
3 and material parameters of the acts that are alleged to qualify as crimes under the
4 Statute; second, the conduct ascribed to Dominic Ongwen which is alleged to give rise
5 to his individual criminal responsibility; and, three, the facts alleged to establish the
6 contextual element of the alleged crimes.

7 Of course, the required specificity of the charges depends on the nature of the case,
8 including the degree of the immediate involvement of the suspect in the acts fulfilling
9 the material element of the crimes. In any case, what is required is that the charges
10 are clear and enable Dominic Ongwen to identify the historical events at issue and the
11 criminal conduct alleged in order to prepare his defence.

12 Also if charges are confirmed, there shall be no discussion at trial as to their
13 formulation, scope or intent. The charges presented by the Prosecutor on the basis of
14 which the Chamber will decide whether or not to commit Dominic Ongwen to trial on
15 those charges, or part of them, shall be formulated in a clear and exhaustive way and
16 not subject to diverging interpretation at trial.

17 To be very clear, if the charges fail to include all the necessary material facts or
18 include factual allegations which are not material, thereby making the charging
19 document meaningless, the DCC will be sent back to the Prosecutor to be amended in
20 accordance with the present instructions.

21 In any case, it is fundamental that for the proper conduct of the proceedings,
22 including Dominic Ongwen's fair trial rights, that at the commencement of the
23 confirmation hearing any question on the form, completeness and clarity of the
24 charges have been settled.

25 While the Document Containing the Charges shall indeed present the charges

1 formulated against the suspect, in other cases the Prosecutor included in the DCC not
2 only the charges but also submissions by which she proposes a narrative of the
3 relevant events and analysis of facts and evidence.

4 These submissions by which the Prosecutor presents her case in order to persuade the
5 Chamber to confirm the charges can also be of assistance to the Defence preparation
6 and to the proper conduct of the confirmation hearing. However, these submissions
7 of the narrative should not be confused with the charges. So if the Prosecutor
8 decides to include these submissions in the DCC also in the present case rather than
9 in a separate document, as she may choose to do, there shall be no confusion also
10 visually between the two sections, the charges and the submissions. And there shall
11 be no confusion between the material fact of the charges and the subsidiary facts that
12 are relied upon by the Prosecutor as part of her argumentation but that they are not
13 part of the charges.

14 The two things I repeat must be kept separate. In the charges the Prosecutor must
15 include only the material facts as the subsidiary facts, like more generally the
16 evidence, are brought to the attention of the Chamber only as part of the Prosecutor's
17 argumentation but do not belong to the charges.

18 Again, if the Prosecutor chooses to present a single document containing both charges
19 and submissions, in this document there exists -- and in this document there exists
20 confusion between the two sections or between the material and the subsidiary facts,
21 the DCC will be sent back in order to cure these deficiencies.

22 The current practice to include footnotes and hyperlinks to the evidence supporting a
23 factual allegation is helpful. Of course, no footnote, whether internal
24 cross-references or hyperlinks to the evidence, can be included in the charges as they
25 shall be fully self-contained and shall exhaustively set out all and no more than the

1 material facts. How the Prosecutor's evidence substantiates the charges belong to
2 the submissions part, not to the charges section. This applies regardless of whether
3 the Prosecutor decides to include her submissions in the DCC or in a separate filing.
4 I hope I have been clear enough, but this is what the Chamber expects from the DCC
5 and from the charges and from the submissions.

6 At this point I also consider it helpful in order to properly prepare for the
7 confirmation hearing to provide already at this stage some general information
8 related to the conduct of the hearing as envisaged -- as it is envisaged by the Chamber.

9 I give this information not only as Single Judge in the present case, but also as
10 Presiding Judge of the Chamber, who is entrusted by Rule 122(1) with the
11 responsibility to determine how the confirmation hearing is to be conducted.

12 As part of the confirmation hearing, the parties will be allocated a certain amount of
13 time in order to make their respective presentations. It is for them to choose how to
14 make the best use of their time, which I can tell you from now will be absolutely
15 sufficient. I will not put particular limits to the requested times. In any case, the
16 Chamber for the Decision on the Confirmation of Charges will consider all the
17 evidence that is included in the parties' lists -- list of evidence without the need that
18 each and every item be rehearsed at the hearing.

19 Of course, the parties may choose to avail themselves of the right under Rule 121(9) of
20 the Rules to make written submissions in advance, which was never done, of the
21 confirmation hearing in order to present the full set of their arguments and focus their
22 oral presentation to the most relevant issues. But again it is up to the parties to
23 decide how to present the case.

24 As soon as the parties finish with their respective oral presentations and depending
25 on how the hearing goes, the Chamber would consider a short adjournment, which

1 can go from a few hours to one or two days maximum, before the parties' final
2 observations under Rule 122(8) of the Rules. In these final observations each party
3 could respond to the other party's submissions and answer any questions that the
4 Chamber may have. No new argument can be presented during a party's final
5 observations of course.

6 After the final oral observations at the hearing, there will be no further written
7 submissions. Also this is new. So the written submissions can come before, but not
8 after the hearing is finished. The idea is to have a combination of written
9 submissions in advance of the hearing, preferably in advance, a focused oral
10 submission by the parties at the hearing as part of their respective presentations, and
11 a last opportunity for the parties to respond to each other's arguments in their final
12 observations, after which the hearing will be closed and according to Article -- within
13 60 days from that moment, the Chamber will issue the decision under Article 61(7).

14 A last point I would raise regards the page limit for written submission, so in order
15 also to avoid here the requests. As far as the written submissions in advance of the
16 hearings are concerned and in order for the parties to elaborate their respective
17 arguments in the way they find the most efficient, I issue an oral order to the fact that
18 the ordinary page limit of 20 pages under Regulation 37(1) of the Regulations is lifted
19 for the Prosecutor's submission presented 30 days before the hearing. This applies
20 regardless of whether these submissions are presented in the document containing
21 the charges or in a separate filing and any written submissions that the parties may
22 wish to file under Rule 121(9) in advance of the hearing.

23 I hope I have been clear enough because this would conclude my remarks and
24 communications and oral decisions, and if there are no other issues the parties want
25 to raise, I close this status conference.

1 I think that in order to - I've seen - in order to -- maybe the part on the DCC was a bit
2 complex, but I think that I spoke slow enough in order for you to be able to read the
3 transcript properly and then questions can also be put forward in a separate moment
4 in the next future because of course it's not something which is due in the next few
5 days.

6 Mr Obhof, you have the floor.

7 MR OBHOF: Yes, your Honour, it's just a brief submission. It has to deal with
8 Mr Ongwen and a computer for his use at the prison. The Prosecution just recently
9 started disclosing material, some of which is in Acholi. We would like to -- we have
10 requested that a computer be placed for his use and that he receive training, but it is
11 taking a little bit of time and we just do not know if your Honour has a way to talk to
12 the Registry and have them maybe proceed forward now that we have some
13 disclosure.

14 SINGLE JUDGE TARFUSSER: Mr Obhof, of course I will -- this is a matter of the
15 Registrar. I will talk to the Registrar in order for him to do the best he can to provide
16 Mr Ongwen with all the facilities he needs.

17 Mr Gumpert?

18 MR GUMPERT: Yes, I have two observations. The first is a matter of concern with
19 regard to progressing the investigation.

20 SINGLE JUDGE TARFUSSER: With regard?

21 MR GUMPERT: To progressing the investigation. It's an issue of interpretation.
22 The Prosecution in the course of its investigations is interviewing a number of
23 persons who have the right to be given a warning under Article 55(2)(c), that is to say
24 these are people who are suspected of themselves possibly committing offences and
25 who therefore have the right to be told that they don't have to answer any questions

1 and that they have the right to legal advice in the course of their questioning.
2 The requirement of the provision of legal advice is a matter dealt with by the Registry.
3 There are independent counsel, as I understand it, who stand ready on a list should
4 such advice be sought to give it, but there is a language issue because not every
5 counsel, indeed my understanding is none of the counsel on that list speak Acholi,
6 and Mr Ongwen doesn't have a sufficient command of Kiswahili or English to
7 facilitate communications; in other words, there needs to be an Acholi interpreter.
8 Thus far, the need has not arisen, but it could do so tomorrow, it could at any time,
9 and the Prosecution has been informed by those who are responsible for providing
10 interpreters in the Registry that there is no facility available for such interpretation
11 and none can be expected within the next three months. That could present a crucial
12 stumbling block. I hope that the question will never arise, but the Prosecution finds
13 it lamentable that there should be such a potential obstacle which might in turn cause
14 proper investigations to be substantially delayed.
15 If the Chamber can do anything to resolve that obstacle and to ensure that
16 arrangements can be made for the provision of interpretation if that situation arises,
17 we should be -- we would be extremely grateful. It seems to us that there are a
18 number of options which are possible beyond simply having a body on the ground.
19 I am aware, your Honour is probably aware from your domestic experience, of the
20 provision of interpretation remotely through telephone interpretation, for example.
21 It seems to me that those are the kind of options which need to be explored and if the
22 Chamber can help with that we would be very grateful.
23 The last remark I seek to make refers back to the first remarks that your Honour
24 made.

25 SINGLE JUDGE TARFUSSER: (Microphone not activated)

1 MR GUMPERT: Firstly, I have to say I apologise for causing the Chamber offence.
2 The decision to draft the filing as it was was entirely mine and I am sorry that the
3 Chamber has found the performance unsatisfactory. What I would wish to point out
4 as one matter in mitigation is that I did not on the day before the filing simply present
5 the Chamber with a fait accompli that nothing had been done to comply.
6 The Chamber has in its possession in that filing the Prosecution's observations on
7 what I calculate are about 80 per cent of the nearly 3,000 pages. I know your Honour
8 isn't impressed with numbers, but nonetheless it was a big task and I did most of it.
9 I'm very sorry that I am late with the rest of it and your Honour will have it as soon as
10 I can manage it and indeed I take it from your Honour's remarks that that needs to be
11 addressed with urgency and I shall do so.

12 SINGLE JUDGE TARFUSSER: Thank you very much. I will just respond to the
13 two issues raised by you. I take it -- with regard to the interpretation, I take it over
14 and I will try to do my best in order to -- will speak to the Registrar and find out
15 which are the possible ways to help the investigation of the Prosecutor not to be
16 delayed in any case. So I will do that in the next days.

17 As to the second point, I obviously accept your apology. They were not requested,
18 but I accept them and I can assure you that I was -- I'm not offended, I was not
19 offended, I am not. I just -- it's just not the first time that this happened and, you
20 know, one is a bit concerned when for the postponement of a deadline the request is
21 coming just a few hours before the deadline expires, and I think that you have done
22 everything you could, but as I'm -- as I told you once in a vis-à-vis colloquium that I
23 am a common lawyer, come from the common law, I have no problem also with a
24 short telephone call - this goes also to the Defence of course - saying, "Well, we have
25 this difficulty," you know, just two or three days before.

1 We should be -- we should do all our best in order to make these proceedings go
2 ahead without -- and avoid formalities where formalities -- avoid formalities where
3 formalities are not needed really. I mean I'm very much a formalist, but one should
4 not exaggerate with formalism, but trying to be also very proactive and easy in
5 handling our things because our goal is to reach 21 January in the best possible
6 position for all of us in order then to give me the possibility, to give the Chamber the
7 possibility to decide -- to make the right decisions.

8 MR GUMPERT: Yes, I with respect heartily endorse the suggestion that the parties
9 and indeed, at your Honour's invitation, the Chamber can communicate informally.
10 I can assure your Honour that the parties thus far correspond by telephone, by email
11 in the most informal and easy fashion and cooperation thus far, and I'm touching
12 wood as I speak, has been friendly and easy, and I'm sure that the Chamber's
13 contribution to that will be well appreciated.

14 SINGLE JUDGE TARFUSSER: I am part of this triangle.

15 MR GUMPERT: Okay.

16 SINGLE JUDGE TARFUSSER: Okay.

17 Thank you very much. This concludes this status conference. Thank you to the
18 parties, to the participants, to the court officers, to my staff, to all who -- to the Acholi
19 translator I think is the most -- oh, he's there, and also to the others of course, to the
20 students I suppose in the public gallery, thank you very much.

21 THE COURT USHER: All rise.

22 (The status conference ends in open session at 10.47 a.m.)