

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/04-01/05  
Date: **6 February 2015**

**PRE-TRIAL CHAMBER II**

**Before: Judge Ekaterina Trendafilova, Single Judge**

**SITUATION IN UGANDA**

**IN THE CASE OF  
THE PROSECUTOR *v.* JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO,  
DOMINIC ONGWEN**

**Public  
With annex**

**Decision Severing the Case Against 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**

Paolina Massidda

Sarah Pellet

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**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”),<sup>1</sup> herewith provides notice to the parties that the proceedings against Dominic Ongwen will be severed from the present case.

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”,<sup>2</sup> along with a warrant of arrest for Dominic Ongwen (“Mr. Ongwen”),<sup>3</sup> for his alleged responsibility for (i) crimes against humanity of murder, enslavement and other inhumane acts under articles 7(1)(a), 7(1)(c) and 7(1)(k) of the Statute and (ii) war crimes of murder, cruel treatment, attack against a civilian population and pillaging under articles 8(2)(c)(i), 8(2)(c)(ii), 8(2)(e)(i) and 8(2)(e)(v) of the Statute.
2. On 16 January 2015, Mr. Ongwen consented to appear voluntarily before the ICC and was transferred to the custody of the Court.<sup>4</sup>
3. On 21 January 2015, Mr. Ongwen arrived to the detention centre of the Court.<sup>5</sup> The same day, the Chamber designated Judge Ekaterina Trendafilova as Single Judge.<sup>6</sup>
4. On 26 January 2015, Mr. Ongwen made his initial appearance before the Single Judge of the Chamber during which, *inter alia*, Mr. Ongwen was informed of his rights provided under the Statute.<sup>7</sup>
5. On 28 January 2015, the Single Judge held a status conference in the presence of the Prosecutor only (the “Status Conference”), during which the Prosecutor provided some information on the preparations of her Office for the confirmation of charges hearing. The Single Judge also requested the Prosecutor to provide observations on whether or not confirmation of charges proceedings *in absentia*

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

<sup>2</sup> 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.

<sup>3</sup> Pre-Trial Chamber II, “Warrant of Arrest for Dominic Ongwen”, 8 July 2005, ICC-02/04-01/05-10.

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

<sup>5</sup> ICC-02/04-01/05-419-Conf-Exp, para. 18.

<sup>6</sup> Pre-Trial Chamber II, Decision Designating a Single Judge, 21 January 2015, ICC-02/04-01/05-415.

<sup>7</sup> Pre-Trial Chamber II, Transcript of Hearing, 26 January 2015, ICC-02/04-01/05-T-10-ENG.

against the other co-suspects in this case, namely *Joseph Kony, Vincent Otti and Okot Odhimabo*, could be pursued at the same time, as provided in article 61(2)(b) of the Rome Statute (the “Statute”).<sup>8</sup> The Prosecutor expressed reservations about this option.<sup>9</sup>

*Proceedings in Absentia and Severance of the Case*

6. The Single Judge notes articles 21(1)(a), 61, 64 and 67 of the Statute and rules 123(2) and 136 of the Rules of Procedure and Evidence (the “Rules”).

7. The present case involves four suspects, three of whom have not appeared or have not been apprehended yet, since the issuance of the warrants of arrest almost ten years ago. Given the fact that Mr. Ongwen appeared before the Court, the question arises whether or not to hold proceedings *in absentia* at the same time against the other co-suspects in this case, pursuant to article 61(2)(b) of the Statute. Having consulted the Prosecutor on whether or not “there is cause to hold a hearing on confirmation of charges under the conditions set forth in article 61, paragraph 2(b)”, as dictated by rule 123(2) of the Rules, the Single Judge noted the Prosecutor’s reservations expressed during the Status Conference. A further point to be considered is the fact that (i) currently, the Court lacks the necessary resources to proceed against the other co-suspects *in absentia*; and that (ii) this course of action would have significant but unjustified budgetary implications, considering the circumstances of the case. Finally, the Single Judge is mindful of the consequence that, should the charges be confirmed, and accordingly, the case proceed to trial, then only those victims linked to the charges against Mr. Ongwen would participate in trial. In contrast, victims linked to the charges concerning the other co-suspects, who remain at large, would not continue to participate in any trial proceedings. Such course of action would not meet the valid expectations of victims, who will have participated during the pre-trial proceedings and remain possibly highly disappointed. For these reasons, the Single Judge opines that under these

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<sup>8</sup> Pre-Trial Chamber II, Transcript of Hearing, 28 January 2015, ICC-02/04-01/05-T-11-Conf-Exp-ENG, p. 25, lines 16-17.

<sup>9</sup> *Ibid.*, p. 26, line 9.

circumstances, there is no cause to proceed with the confirmation of charges proceedings against the other three co-suspects in absentia, as provided in article 61(2)(b) of the Statute.

8. In deciding on the way ahead, the Single Judge is also mindful of the following factors: (i) the present case is the oldest case before the Court, which has been dormant for the last 10 years due to the unavailability of the suspects; (ii) whereas Mr. Ongwen appeared before the Court on a voluntary basis, there is no real prospect that the other suspects will appear nor certainty that they will be apprehended in the near future;<sup>10</sup> and (iii) the factual allegations brought by the Prosecutor against Mr. Ongwen are significantly less than those pertaining to the other co-suspects. In the view of the Single Judge, the latter point in particular has a bearing on the preparation of the proceedings leading to the confirmation of charges hearing insofar as the limited scope of the current case against Mr. Ongwen, compared to the broader scope of the case against *Joseph Kony, Vincent Otti* and *Okot Odhiambo*, necessarily impacts the disclosure of evidence and other related issues, such as restrictions to disclosure of information and protection of witnesses. In this regard, the Single Judge is particularly attentive to the fact that Mr. Ongwen has the right to be tried fairly and without undue delay, as stipulated in articles 64(2) and 67(1) of the Statute.

9. In light of the above, the Single Judge concludes that continuing the proceedings against all four suspects of the case may bring about serious prejudice to Mr. Ongwen as it has the potential of prolonging the pre-trial proceedings against him. Therefore, the Single Judge deems it necessary to sever the case against Mr. Ongwen from the present case, as foreseen in article 64(5) of the Statute and 136 of the Rules.<sup>11</sup>

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<sup>10</sup> The Chamber is mindful of the Prosecutor's submission that according to public reports Vincent Otti is believed to be deceased, see ICC-02/04-01/05-258; ICC-02/04-01/05-US-Exp, paras 15 et seq; ICC-02/04-01/05-315-US-Exp. So far, the Chamber has not taken any decision to terminate proceedings against Vincent Otti.

<sup>11</sup> For the applicability of article 64(5) of the Statute and rule 136 of the Rules at the pre-trial stage, see Appeals Chamber, Judgment on the Appeal Against the Decision on Joinder rendered on 10 March

*Registry*

10. The Registry is ordered to open a new case record and transfer all documents relevant to Mr. Ongwen to it, pursuant to regulation 22 of the Regulations of the Registry. The Single Judge, having reviewed the situation record (ICC-02/04) and present case record (ICC-02/04-01/05), specifies in the annex to this decision which documents should be transferred to the new case record. For the sake of convenience, the Single Judge is of the view that the transfer follow a chronological order and that the case record be opened with the Prosecutor's application for the warrant of arrest, as suggested in regulation 20(2) of the Regulations of the Registry. The level of classification remains the same and will be revisited by the Chamber in due time.

11. Further, the Single Judge notes that one and the same document may exist in several versions, depending on its level of classification or the need for redactions. At the time, those documents were registered under different serial numbers in the present case record. The numbering procedure currently in force foresees that those documents be registered under one and the same serial number to which an abbreviation is added, as appropriate.<sup>12</sup>

12. Moreover, for reasons of completeness, the newly established case record will contain all documents relevant for Mr. Ongwen in their available versions, including translations. However, in light of the principle of publicity, in case a document, originally filed under seal or confidentially, is made public in its entirety in the meantime, the Single Judge prefers to transfer only this public document to the newly established case record and to put aside any other public redacted version previously produced, as the case may be.<sup>13</sup>

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2008 by the Pre-Trial Chamber in the Germain Katanga and Mathieu Ngudjolo Chui Cases, 9 June 2008, ICC-01/04-01/07-573 (OA 6), para. 9; Pre-Trial Chamber I, Decision on the Joinder of the Cases against Germain Katanga and Mathieu Ngudjolo Chui, 10 March 2008, ICC-01/04-01/07-307, pp. 8-9.

<sup>12</sup> Regulation 27(2) of the Regulations of the Registry, as amended on 4 December 2013, and entered into force on 5 December 2013.

<sup>13</sup> For example, the warrant of arrest for Mr. Ongwen, originally registered under seal, has been reclassified as public on 28 January 2015 and is available in unredacted form. Hence, the public redacted version of the warrant of arrest, produced at the time by Pre-Trial Chamber II and registered

*Victims*

13. The Single Judge is mindful of rule 93 of the Rules and the discretionary power vested in her to seek the views of the forty-one victims participating in this case. However, considering that none of those victims is actually linked to the allegations levied against Mr. Ongwen, as contained in the warrant of arrest, and the time needed to receive such views from the victims in Uganda, the Single Judge refrains from seeking their views on the issue of severance. The Single Judge will, in due course, address the issue of victims' participation in the new case to be opened in a separate decision. Finally, it is clarified that the present decision does not in any way affect the participatory rights of the victims accepted in the case of the Prosecutor v. *Joseph Kony, Vincent Otti and Okot Odhiambo*.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

- a) **decides** to sever the case against Dominic Ongwen from the present case;
- b) **orders** the Registrar to open a new case record and assign it a new case number in accordance with regulation 27(1) of the Regulations of the Registry;
- c) **orders** the Registrar to copy and transfer all documents and decisions set out in the annex to this decision in chronological order to the new case record while maintaining the same level of classification, until ordered otherwise;
- d) **recalls** that following the decision designating her to be a Single Judge in the case of the *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*, she will remain in charge as a Single Judge for the two cases, as severed by the present decision.

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as ICC-02/04-01/05-57, is now superseded by the public warrant of arrest registered under ICC-02/04-01/05-10 and, accordingly, must not be transferred to the new case record.

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



Judge Ekaterina Trendafilova  
Single Judge

Dated this Friday, 6 February 2015

At The Hague, The Netherlands