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

Date: 10 July 2015

## PRE-TRIAL CHAMBER II

Before:  
Judge Cuno Tarfusser, Presiding Judge  
Judge Marc Perrin de Brichambaut  
Judge Chang-ho Chung

### SITUATION IN UGANDA

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

Public

Prosecution's submissions on conducting the confirmation of charges  
hearing *in situ*

Source: The Office of the Prosecutor

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

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**Unrepresented Applicants for Participation/Reparation**

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**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Section**

**Detention Section**

Mr Nigel Verrill

**Victims Participation and Reparations Section**

**Other**

## Introduction

1. On 29 June 2015, Pre-Trial Chamber II ("Chamber") issued an "Order for submissions on the possibility of holding the confirmation of charges hearing in the Republic of Uganda" ("Order")<sup>1</sup> notifying the parties that it was considering making such a recommendation to the Presidency under rule 100(2) of the Rules of Procedure and Evidence ("Rules").
2. The Chamber ordered the parties to provide their views by 13 July 2015 and ordered the Registry to provide an assessment by 27 July 2015.
3. The Prosecution supports holding proceedings close to affected victim communities where this is feasible, provided the Court can ensure the protection of victims, witnesses, Court staff, and Dominic Ongwen himself.
4. All other considerations aside, Gulu town in northern Uganda would be the best location to achieve the objective of holding proceedings closest to affected victim communities. The Registry should make a full assessment as to whether Gulu would be a feasible location to host the confirmation hearing. This should include an assessment on any protection issues that may arise for this location, together with an examination of pertinent logistical factors, such as the availability of a suitable trial venue, accommodation and various resources necessary to hold proceedings in Gulu. An alternative venue is the capital, Kampala. It has the requisite courtroom facilities, is logically more accessible, and is more secure.
5. Following the surrender of Dominic Ongwen to the Court, the Prosecution has conducted numerous missions to Uganda in order to meet with key stakeholder groups and affected communities. During these missions, victims

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<sup>1</sup> ICC-02/04-01/15-258.

and civil society have expressed their desire to see the confirmation hearing held locally. Appropriate measures could be put in place to ensure their attendance and meaningful participation should the confirmation hearing be held in Kampala.

### **Submissions**

6. Articles 3 and 62 of the Rome Statute ("Statute") provide that trials are ordinarily to be held at the seat of the Court, in The Hague, unless otherwise decided. The Chamber may recommend that the trial be held elsewhere, pursuant to articles 3(3), 4(2) and 62 of the Statute, rule 100 of the Rules and regulation 48 of the Regulations of the Registry.
7. The Prosecution submits that it is in the interests of justice to provide victims and the public with the most direct access possible to the court process by conducting proceedings where the alleged crimes occurred.
8. However, this interest does not outweigh the Court's article 68 obligation to protect victims and witnesses, or the need to ensure the safety of Judges, lawyers, court staff, and Dominic Ongwen himself.

#### *Location of a potential *in situ* hearing*

9. The current charges against Dominic Ongwen concern crimes committed at Lukodi IDP Camp, Gulu District, in May 2004. Attacks on other areas are currently being investigated with a view to adding to the existing charges against Dominic Ongwen. Lukodi is 17 kilometers from Gulu town, which is the principal conurbation and economic capital of northern Uganda. In terms of accessibility for victim communities, Gulu would be the preferred location, provided the necessary resources and facilities are available.

10. Alternatively, the Prosecution believes that the High Court, Supreme Court, or the International Crimes Division ("ICD") are each potential locations in Kampala that could hold the confirmation hearing. This would, of course, be subject to the agreement of the Government of Uganda and to the possibility that the existing court schedules for one of these locations could be changed in order to accommodate the confirmation hearing.

11. Kampala would also have the necessary practical requirements in terms of accommodation and reliable electricity supply. It would also offer a more capacious and secure environment for Judges, lawyers, and court staff to carry out their work, and appropriate secure facilities for Dominic Ongwen. Kampala is also easily accessible from the Uganda's main international airport in Entebbe. These are matters which the Registry may wish to address in its report to be filed later this month.

#### *Victims and Witnesses*

12. In February and June 2015, the Prosecution held consultative meetings in Gulu with cultural and religious leaders<sup>2</sup> and civil society organisations.<sup>3</sup> These key stakeholder groups expressed their strong desire that, if possible, part of the proceedings against Dominic Ongwen be held in Uganda. The prevailing sentiment was that justice should be brought as close to victims as is practically possible. Further, the Prosecution conducted outreach meetings in the victim communities of Lukodi, Odek and Pajule.<sup>4</sup> It is noteworthy that, at each meeting, victims enquired whether any part of the proceedings against Dominic Ongwen would be held in Uganda, and if so, how they might attend and participate.

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<sup>2</sup> Consultative meeting with cultural and religious leaders, Gulu, 28 February and 16 June 2015.

<sup>3</sup> Consultative meeting with civil society organisations, Kampala, 27 February 2015 and Gulu, 17 June 2015.

<sup>4</sup> Outreach meetings in Lukodi, Pajule and Odek, 16-18 June 2015.

13. Should the preferred option of Gulu be considered not to be a feasible location, an effective victim participation strategy for a confirmation hearing in Kampala could include, *inter alia*:

- Making appropriate transport and accommodation arrangements for representatives of victim communities and key stakeholder groups to attend the confirmation hearing, possibly on a rotational basis (morning/afternoon) to ensure maximum accessibility.
- Ensuring the wider visibility of the confirmation hearing by providing a 'live-feed' of the confirmation hearing, disseminating radio and television broadcasts and summaries in Acholi, and erecting a "media tent" in Gulu town containing big television screens.

14. The Prosecution has also communicated with a randomly selected cross-section of its witnesses to gauge their opinion on the possibility of an *in situ* confirmation hearing. When asked whether they would like to see the confirmation hearing held in Uganda, the majority were in favour, and expressed reservations only where their security might be at issue. The Prosecution does not intend to call any witnesses at the confirmation hearing and so, at this stage, it does not foresee any security concerns in this respect.

#### *Security considerations*

15. The Prosecution is mindful that protection and security concerns, on their own, might outweigh any of the potential benefits of holding part of the confirmation proceedings *in situ*. Indeed, there may be risks to victims and witnesses even if none are called to testify at the confirmation hearing.

16. There are a number of potential security challenges that will impact upon a potential confirmation hearing in Kampala.
17. First, Kampala itself faces ongoing security challenges, particularly with regard to threats from regional terrorist groups such as Al-Shabab<sup>5</sup> and the Allied Defence Forces.<sup>6</sup> Uganda's military presence in Somalia as part of the African Union peacekeeping mission makes it vulnerable to further attack. More recent attacks in neighbouring Kenya underline this concern.<sup>7</sup> In March 2015, a senior Principal State Attorney working in the ICD, was assassinated.<sup>8</sup>
18. Second, it has to be acknowledged that, on the date scheduled for the confirmation hearing, 21 January 2016, Uganda will be in the run-in to Parliamentary and Presidential elections, which are scheduled to take place in February and March of that year. The last election period in Uganda was marked by numerous episodes of civil unrest,<sup>9</sup> and there is the possibility such unrest might re-occur.

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<sup>5</sup> See, e.g., BBC News, 'US warns Westerners may be targeted in Uganda's capital', 26 March 2015, <http://www.bbc.com/news/world-africa-32061733> (last accessed on 10/07/2015); 'Uganda on alert over 'foiled al-Shabab plot', 13 September 2014, available at <http://www.bbc.com/news/world-africa-29193649> (last accessed on 10/07/2015), The Guardian, 'Uganda bomb blast kill at least 74', available at <http://www.theguardian.com/world/2010/jul/12/uganda-kampala-bombs-explosions-attacks> (last accessed on 10/07/2015).

<sup>6</sup> See, e.g., New Vision, 'Police warns against terror attacks by ADF', 5 April 2014, available at <http://www.newvision.co.ug/news/654233-police-warns-against-terror-attacks-by-adf.html> (last accessed on 10/07/2015).

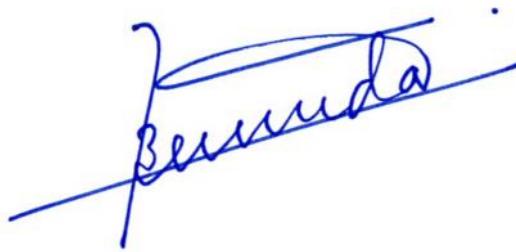
<sup>7</sup> See, e.g., BBC News, 'Nairobi attack: Kenya mourns Westgate siege victims', 25 September 2013, available at <http://www.bbc.com/news/world-africa-24237180> (last accessed on 10/07/2015); Aljazeera, 'Al-Shabab siege of Kenya university leaves 147 dead', 2 April 2015, available at <http://www.aljazeera.com/news/2015/04/kenya-garissa-university-attack-150402155656780.html> (last accessed on 10/07/2015).

<sup>8</sup> See, e.g., BBC News, 'Uganda prosecutor in al-Shabab bomb case shot dead', 31 March 2015, available at <http://www.bbc.com/news/world-africa-32125134> (last accessed on 10/07/2015).

<sup>9</sup> See, e.g., BBC News, 'Uganda election: Amnesty International violence concern', 11 February 2011, available at <http://www.bbc.com/news/world-africa-12428969> (last accessed on 10/07/2015).

## Conclusion

19. The Prosecution supports holding the confirmation hearing in Uganda, preferably Gulu, if the Registry determines it to be suitable location. Alternatively, Kampala is also a possible venue for *in situ* hearings, provided the logistical and security standards are comparable to those in the Hague.



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Fatou Bensouda,

Prosecutor

Dated this 10<sup>th</sup> day of July 2015

At The Hague, The Netherlands