

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 July 2015

PRE-TRIAL CHAMBER II

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

SITUATION IN UGANDA

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

Confidential with Confidential Annexes A - D

**Defence Submissions Pursuant to Pre-Trial Chamber II's Order for Observations
on the Location of the Confirmation of Charges Hearing**

Source: Defence for Dominic Ongwen

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Benjamin Gumpert, QC

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

The Office of Public Counsel for the Victims

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States' Representatives

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REGISTRY

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Victims and Witnesses Unit

Nigel Verrill

Detention Section

Patrick Craig

Victims Participation and Reparations Section Other

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby submits observations on its views of the location for the Confirmation of Charges Hearing ('Hearing') as requested by Pre-Trial Chamber II.¹ The Defence believes that the Hearing should be held in Gulu. In the alternative, if it is deemed impossible to have the five-day Hearing in Gulu, the Supreme Court of Uganda would serve the Court's needs.

II. CONFIDENTIALITY LEVEL

2. The Defence files this submission as confidential. The Defence does so in order to keep its thoughts on its proposed location unknown to the public until such time that the Court determines a suitable location. After the Court decides upon a location, the Defence sees no reason to keep the confidentiality level as such.

III. SUBMISSIONS

A. *Holding the Hearing in Gulu*

3. On the street corners in Gulu, and indeed much of Northern and Eastern Uganda, discussion continues as to what the International Criminal Court ('ICC') is and what is its purpose. The debate between the schools of thought persists among those who wanted peace, even at the cost of justice, and those who wanted ICC intervention. What they have in common though is whether the ICC really cares about the people of Uganda.
4. The same type of questions resurfaced when Dominic Ongwen was surrendered to the ICC by the Government of Central African Republic. In radio talk shows, printed media, social media, street discussions and such other fora, people

¹ ICC-02/04-01/15-258.

discussed whether Ongwen should be tried, and if tried, who should do it and where. Some people submitted that he should be tried in The Hague, others that he should be tried in Gulu, others that he should be tried by the ICD of Uganda and others submitted that he should be re-integrated in line with the traditional Acholi reconciliation and reintegration system – *Mato oput*.

5. Article 3(3) of the Statute allows the Court to sit in other places other than The Hague whenever it is considered desirable.
6. The ICC needs to reconnect with the people of Africa, and Acholi in particular. The ICC needs to show them that they care, and is not just a distant Court created to police Africans as it is alleged by some African Head of States. The Defence is of the opinion that if the Hearing is held in Uganda, in Gulu specifically, it will help reconnect with the people of Africa, but most specifically those of Northern and Eastern Uganda. If the ICC cannot find a suitable place in Uganda, the Assembly of State Parties seriously needs to consider repealing Article 3(3) of the Statute.
7. The community also needs to own the process and contribute to its success, no matter the outcome of the Hearing. The community can do this by attending the preceding. This will enhance the spirit of reconciliation and reintegration of former LRA combatants as the truth is separated from propaganda. This will allow the people to process and digest the ICC procedure and decision to come in late March 2016.
8. Having the Hearing in Gulu will bring a positive image of the Court to the people who are still trapped in the rebellion. The Defence hopes that this can be tool to help LRA remnants realise that there can be life after the rebellion. This can be done by bringing the trial closer home, where everyone, no matter what their feelings on the situation, will take part in the process by attending the hearing.

B. Location in Gulu

9. The Defence understands that the ultimate location of the Hearing depends upon multiple factors, but proposes a possible location in Gulu for the Hearing.
10. Recently, DFCU Bank on Princess Road, in the Northern part of the town centre, relocated within the town.² The Defence points to Confidential Annexes A and B to show the Court the location. The Defence considers this to be a desirable location. With minimal construction, the building could be ready to house the Hearing. The Defence attaches Confidential Annexes C and D to show the structure, and that the road is a tarmac road.
11. Significantly, the Defence notes that DFCU Bank is almost entirely surrounded by Government owned buildings. The only building that the Defence believes is privately owned and operated is the building directly opposite the bank, identified by the blue arrow in Confidential Annex B.
12. The Defence feels that DFCU Bank can be properly secured. During the Hearing, and with the permission of the Local Government, Princess Road can be cordoned off to vehicle traffic and tents for viewing the hearing can be erected. This will also allow for people rotate in and out of the building in what could be a public gallery.
13. Finally, the Uganda Prison Services maintains a medium security male prison in Gulu which could house Mr Ongwen during the Hearing.

² The Defence has attempted to contact the owner to determine if it has been rented yet, but has been unable to do so at this time.

C. Supreme Court of Uganda, Kampala

14. In the unlikely event that it is impossible to find a suitable location within Gulu Town, the Defence considers the Supreme Court of Uganda an alternative location.³ It is stressed that this should be used as a last resort.
15. The Defence asserts that any venue in Kampala should be used as a last resort because:
- a. The cost of bringing people to Kampala from the north would be rather expensive. Persons would need to spend at least two nights in Kampala, causing an extreme burden on the Court. These funds would be better used to renovate the DFCU Bank, renovate another structure or build a venue.
 - b. Many people that might be able to miss one day from work to travel to Gulu might not be able to miss three days to go to Kampala. Whilst the roads between Kampala and Gulu are being modernised, construction exists along the first 80-100 kms leaving Gulu going to Kampala. A minimum of six hours needs to be set aside for travel between Kampala and Gulu, meaning that people would be bussed one day, watch the proceedings the next day go back home on the third day.
16. Holding the Hearing in Kampala would only avail a select few to witness the Hearing. The Defence hopes though that Kampala would be used only as a last resort.

IV. RELIEF

17. The Defence requests that the Hearing take place in Gulu, Uganda. If it is deemed impossible to hold it there, the Supreme Court of Uganda could serve as an alternative location.

³ The Defence considered the courtroom of the International Crime Division, but the Defence deemed it not feasible due to its size.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 13th day of July 2015

At Kampala, Uganda