



Original: English

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

Date: 13 July 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

Public

Second decision on a request by the Prosecutor under article 57 of the Rome Statute and regulation 101(2) of the Regulations of the Court

To be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Benjamin Gumpert

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Cuno Tarfusser, Single Judge exercising the functions of the Chamber in the present case, issues this second decision on the “Prosecutor’s application for the Pre-Trial Chamber to make orders under article 57 of the Rome Statute and regulation 101 of the Regulations of the Court to restrict Dominic Ongwen’s access to the telephone and to direct that there be a public hearing” (ICC-02/04-01/15-241-Conf-Exp and -Conf-Exp-AnxA), filed on 5 June 2015.

1. On 24 June 2015, the Single Judge issued the first decision on the request (ICC-02/04-01/15-254). The issue which has remained open is the request of the Prosecutor that the records, and in particular the sound recordings, of “telephone connections made and received by Dominic Ongwen between 25 May and 5 June 2015” be provided to her and to the Defence.

2. In this regard, the Single Judge held in the decision of 24 June 2015 that there was reasonable suspicion that a meeting was held in Uganda under the auspices of a Ugandan non-governmental organisation with a view to exercising some form of influence on persons who possess information relevant to the case. The Single Judge further noted that the information that the organisers of the meeting attempted to impress upon the attendees the importance of Dominic Ongwen’s return to Uganda, and Dominic Ongwen’s personal intervention, by telephone, in the meeting, were factors of particular concern. Accordingly, the Single Judge ruled that the Prosecutor was, in principle, entitled to have access to information about Dominic Ongwen’s telephone communications in the period identified in the request, in order to exercise her powers under article 54(1)(a) of the Statute. The Single Judge noted that his power to grant to the parties access to telephone data and voice recordings stems from article 57(3)(a) and (c) of the Statute, and has been explicitly confirmed by the Appeals Chamber as falling within the discretion of the Chamber.

3. Nevertheless, the Single Judge, in order to allow him to strike the necessary balance between the different interests at stake with a view to guaranteeing the fairness of the present proceedings, and bearing in mind the ensuing need to limit the transmission of this information to what is necessary in the specific circumstances, instructed the Registrar to review the voice recordings of the telephone communications and submit to the Single Judge a report listing and briefly summarising the content of each communication.

4. On 9 July 2015, the Registrar filed in the record of the case, as “confidential, *ex parte*, Chamber only” as instructed, his report (ICC-02/04-01/15-261-Conf-Exp and –AnxA).

5. The Single Judge has reviewed the summaries of the telephone communications with a view to guaranteeing, as stated, the balance between the competing interests. As a result, the Single Judge concludes that the sound recordings of six telephone communications can be made available to the Prosecutor and the Defence. The remaining communications are not related to the reasons for which the Prosecutor seeks access.

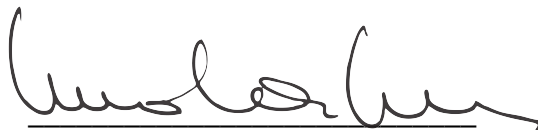
6. The Single Judge notes that restrictions on Dominic Ongwen’s communications remain in place. In the present circumstances, the Single Judge considers it appropriate to order the Prosecutor to make submissions, within a short time limit, on whether these or any other appropriate measures remain necessary to ensure the integrity of the evidence. This will enable the Single Judge to consider ending or modifying, as appropriate, the restrictions on Dominic Ongwen’s communications.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Registrar to immediately file in the record of the case as “confidential, *ex parte*, Prosecutor and Defence only”, the sound recordings of conversations 2, 5, 10, 11, 12 and 16 listed in his report of 9 July 2015;

ORDERS the Prosecutor to file in the record of the case, by Wednesday, 15 July 2015, at 12.00 hours, submissions as to whether the restrictions on Dominic Ongwen’s communications, or any other appropriate measures, remain necessary to ensure the integrity of the evidence.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this 13 July 2015

At The Hague, The Netherlands