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PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

Public redacted

**Order to the Registrar to transmit a request for cooperation under article 101
of the Rome Statute to the Central African Republic**

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, issues this order addressed to the Registrar for the transmission of a request for cooperation to the Central African Republic.

1. The arrest and surrender of Dominic Ongwen were sought and obtained, pursuant to the warrant issued on 8 July 2005 ([ICC-02/04-01/15-6](#)), for the crimes against humanity of murder, enslavement and inhumane acts, and the war crimes of murder, cruel treatment, attack against the civilian population and pillaging, all committed on or about 20 May 2004 at Lukodi IDP camp, near Gulu town, Uganda.

2. On 18 September 2015, the Prosecutor, in compliance with an order by the Single Judge (ICC-02/04-01/15-T-6-ENG), filed in the record of the case a notice of the charges she intends to bring against Dominic Ongwen in her document containing the charges due on 21 December 2015 (ICC-02/04-01/15-305-Conf and [-Red](#)). In her notice, supplemented on 5 October 2015 (ICC-02/04-01/15-311-Conf), the Prosecutor indicates that she intends to charge Dominic Ongwen with: (i) crimes committed within the context of attacks on internally displaced persons' camps in northern Uganda in addition to that on Lukodi IDP camp for which the warrant of arrest was issued, namely the Pajule IDP camp (on or about 10 October 2003), the Odek IDP camp (on or about 29 April 2004) and the Abok IDP camp (on or about 8 June 2004); (ii) the crime of persecution of civilians in northern Uganda perceived by the Lord Resistance Army as being affiliated with, or supporting the Ugandan government through a variety of criminal conducts put in place from July 2002 until December 2005; (iii) sexual and gender based crimes, including forms of direct perpetration by Dominic Ongwen extending, in some cases, until January 2015; and (iv) the conscription and use of child soldiers between July 2002 and December 2005.

3. Dominic Ongwen was surrendered to the Court by the Central African Republic on 16 January 2015 (see [ICC-02/04-01/15-260](#)). Therefore, in accordance with article 101 of the Statute, Dominic Ongwen can be proceeded against by the Court for a conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which he was surrendered, only if the Central African Republic provides a waiver of the requirements of the rule of speciality.

4. The Single Judge is of the view that the alleged criminal conduct for which the Prosecutor intends to prosecute Dominic Ongwen extends beyond the conduct or course of conduct forming the basis of the crimes for which his surrender to the Court was requested and obtained. Accordingly, it is necessary to direct the Registrar to liaise with the Central African Republic authorities, informing them of the alleged criminal conduct for which the Prosecutor intends to prosecute Dominic Ongwen, in order to obtain the necessary waiver of the requirements of the rule of speciality.

5. The Single Judge observes that article 101(2) of the Statute states that “States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so”. Indeed, the Single Judge does not envisage in the circumstances of the present case any difficulty for the Central African Republic to provide the requested waiver expeditiously in order to allow for the proper conduct of the proceedings in the case. In this regard, the Single Judge recalls that the process of surrender of Dominic Ongwen to the Court was conducted with the required expeditiousness and in the absence of complex procedural steps other than the identification of Dominic Ongwen as being the person sought by the Court (ICC-02/04-01/15-189-Anx1), the notification to him of the warrant of arrest issued by the Court (ICC-02/04-01/15-189-Anx2) and the transfer of custody to the Court. In addition, while in itself irrelevant to the Central African Republic’s statutory right under article

101, the Single Judge recalls that the *“Procès-verbal de remise”*, signed by the *Procureur général près de la Cour d’appel de Bangui* and a representative of the Court, records that *“il n’y a pas lieu de procéder à la procédure visée par l’article 59 du statut de Rome. Du fait que les autorités centrafricaines n’exercent pas leur compétence”* (ICC-02/04-01/15-189-Anx3).

6. Nonetheless, should the Central African Republic still encounter difficulties with the provision of the waiver of the requirements of the rule of speciality as requested, the Central African Republic shall, as provided for by article 97 of the Statute, consult with the Court promptly in order to resolve the matter without delay. Indeed, the avoidance of any delay in obtaining from the Central African Republic the requested waiver is of great importance for the present proceedings, as the formulation of the charges against Dominic Ongwen must be finalised by the Prosecutor by 21 December 2015 and the commencement of the hearing on the confirmation of charges is scheduled for 21 January 2016.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Registrar to inform the Central African Republic that the Prosecutor intends to proceed against Dominic Ongwen for:

- the commission, contribution to the commission or failure to prevent or repress the commission (articles 25(3) or 28 the Statute), on or about 10 October 2003, at or near Pajule IDP camp in Uganda, of the crimes against humanity of murder, torture, enslavement and other inhumane acts (article 7(1)(a), (c), (f) and (k) of the Statute) and the war crimes of murder, torture, cruel treatment, attacks against the civilian population as such and pillaging (article 8(2)(c)(i), (e)(i) and (e)(v) of the Statute);

- the commission, contribution to the commission or failure to prevent or repress the commission (articles 25(3) or 28 the Statute), on or about 29 April 2004, at or near Odek IDP camp in Uganda, of the crimes against humanity of murder, attempted murder, torture, enslavement and other inhumane acts (article 7(1)(a), (c), (f) and (k) of the Statute) and the war crimes of murder, attempted murder, torture, cruel treatment, outrages upon personal dignity, attacks against the civilian population as such and pillaging (article 8(2)(c)(i), (c)(ii), (e)(i) and (e)(v) of the Statute);
- the commission, contribution to the commission or failure to prevent or repress the commission (articles 25(3) or 28 the Statute), on or about 20 May 2004, at or near Lukodi IDP camp in Uganda, of the crimes against humanity of murder, attempted murder, torture, enslavement and other inhumane acts (article 7(1)(a), (c), (f) and (k) of the Statute) and the war crimes of murder, attempted murder, torture, cruel treatment, attacks against the civilian population as such, pillaging and destruction of property (article 8(2)(c)(i), (e)(i), (e)(v) and (e)(xii) of the Statute);
- the commission, contribution to the commission or failure to prevent or repress the commission (articles 25(3) or 28 the Statute), on or about 8 June 2004, at or near Abok IDP camp in Uganda, of the crimes against humanity of murder, attempted murder, torture, enslavement and other inhumane acts (article 7(1)(a), (c), (f) and (k) of the Statute) and the war crimes of murder, attempted murder, torture, cruel treatment, attacks against the civilian population as such, pillaging and destruction of property (article 8(2)(c)(i), (e)(i), (e)(v) and (e)(xii) of the Statute);
- the commission, contribution to the commission or failure to prevent or repress the commission (articles 25(3) or 28 the Statute), from July 2002 until December 2005, of the crime against humanity of persecution of

civilians in northern Uganda perceived by the LRA as being affiliated with, or supporting the Ugandan government, by attacks against the civilian population as such, murder, attempted murder, torture, cruel treatment, enslavement, sexual slavery, rape, other inhumane acts (including forced marriage), pillaging, conscription of children under 15 into armed forces and use of children under fifteen to participate actively in hostilities, outrages upon personal dignity and destruction of property (article 7(1)(h) of the Statute);

- the commission, contribution to the commission or failure to prevent or repress the commission (articles 25(3) or 28 the Statute), from July 2002 until December 2005, of the crimes against humanity of enslavement, torture, rape, sexual slavery and forced marriage (article 7(1)(c), (f), (g) and (k) of the Statute) and the war crimes of torture, rape and sexual slavery (article 8(2)(c)(i) and (e)(vi) of the Statute), perpetrated in pursuance of a common plan between Dominic Ongwen and other senior LRA leaders that involved the abduction of women and girls by the Sinia brigade of the LRA commanded by Dominic Ongwen and other LRA fighters in northern Uganda;
- the direct commission (article 25(3)(a) of the Statute) of the crimes against humanity of enslavement, torture, rape, sexual slavery, forced pregnancy and forced marriage, an inhumane act of a character similar to the acts set out in article 7(1)(a)-(j) of the Statute (article 7(1)(c), (f), (g) and (k) of the Statute) and the war crimes of torture, outrages upon personal dignity, rape, sexual slavery and forced pregnancy (article 8(c)(i) (c)(ii) and (e)(vi) of the Statute) of some or all of the following:
 [REDACTED] between July 2002 and September 2002, [REDACTED]
 between July 2002 and July 2004, [REDACTED]
 [REDACTED], [REDACTED] between July 2002 and December 2010,

██████████ between July 2002 and December 2003, ██████████ between 2003 and December 2010, ██████████ between September 2002 and January 2015, and ██████████ between September 2002 and January 2015; and

- the commission, contribution to the commission or failure to prevent or repress the commission (articles 25(3) or 28 the Statute), between July 2002 and December 2005, of the war crimes of conscription of children under the age of 15 into an armed group and use of children under the age of 15 to participate actively in hostilities (article 8(2)(e)(vii) of the Statute) perpetrated in pursuance of a common plan between Dominic Ongwen and other senior LRA leaders to ensure a constant supply of soldiers for the LRA through the abduction of civilians including children under the age of 15 years at various locations in northern Uganda;

ORDERS the Registrar to request the Central African Republic to provide a waiver of the requirements of the rule of speciality, under article 101(2) of the Statute, as soon as possible and, in any case, within 30 days from the transmission of the request, given the need to deal with the matter expeditiously in light of the upcoming formulation by the Prosecutor of the charges against Dominic Ongwen; and to request the Central African Republic to raise with the Court any difficulty in this regard without delay in order for it to be solved in consultation with the Court expeditiously; and

ORDERS the Registrar to transmit the present decision to the Central African Republic as part of the request for cooperation.

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 15 October 2015

At The Hague, The Netherlands