

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 10 September 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

**Recommendation to the Presidency to hold the confirmation of charges
hearing in the Republic of Uganda**

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

**Other
Presidency**

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pre-Trial Chamber II, under rule 100(2) of the Rules of Procedure and Evidence (the “Rules”), makes this recommendation to the Presidency to hold the confirmation of charges hearing in the Republic of Uganda (“Uganda”).

1. On 29 June 2015, the Chamber stated that it was seriously considering exploring the desirability and feasibility of holding the confirmation of charges hearing in Uganda and of making a recommendation to the Presidency to this effect, and ordered the parties to provide their views on the matter, and the Registrar to provide an assessment as to the possibility of holding the confirmation of charges hearing in Uganda.

2. On 13 July 2015, the Prosecutor (ICC-02/04-01/15-264) and the Defence (ICC-02/04-01/15-265-Conf and -Red, and annexes) filed their submissions. On 27 July 2015, the Registrar submitted his assessment (ICC-02/04-01/15-279-Conf and annexes).

3. Both parties have expressed themselves in favour of attempting to bring the Court’s process closer to the communities affected by the alleged crimes. The information gathered by the Registrar equally indicates that stakeholders welcome the Court’s initiative to sit in Uganda.

4. The Chamber appreciates the importance of bringing the proceedings closer to the affected communities and that sitting in Uganda for the hearing on the confirmation of charges may also contribute to a better perception of the Court in Africa. Also, the Chamber is of the view that the hearing on the confirmation of charges is well suited to achieve the ultimate purpose of holding proceedings away from the seat of the Court, as it is a short, self-contained, discrete procedural step. The Chamber also notes that the Registrar submits that representatives of the Ugandan Government expressed full support in terms of identifying the most suitable locations and providing the logistical and security support for the confirmation hearing, including by

expressing willingness to provide the courtrooms and the detention facilities free of charge. In this regard, the Chamber considers that the estimated costs of organising the confirmation of charges hearing in Uganda, as reflected in the breakdown of the costs provided by the Registrar, do not appear disproportionate. In particular, the Chamber notes that the Registrar estimates the costs between 154,014 and 164,064, with a sum of 131,374/141,374 euros (which is more than the 85% of the total estimated costs) for fixed minimum costs (*i.e.* costs that would be present at any time the Court would hold proceedings away from the seat the Court), namely flight tickets and daily subsistence allowance payments for the Court's staff.

5. The Chamber is of the view that, in principle, it would be desirable and in the interest of justice to hold the confirmation of charges hearing in Uganda. More specifically, it is apparent that a confirmation of charges hearing held in Gulu would bring the most benefits, as this location is the closest to the location of the alleged crimes, and would therefore allow for best outreach. Should this option prove itself unfeasible, Kampala presents another option.

6. At the same time, the Chamber notes that, in his assessment, the Registrar, while emphasising the absence of major challenges in terms of cooperation and of technical or practical obstacle to holding the confirmation of charges hearing in Uganda, informs the Chamber of some factors which may impact on the feasibility of an *in situ* confirmation of charges hearing in the present case. More specifically, the Registrar submits that a key factor to take into account is that parliamentary and presidential elections in Uganda are scheduled from 12 February and 12 March 2016, and that this may lead to an increase of security challenges and/or to the refusal of the Government of Uganda to allow the holding of the confirmation hearing in Uganda during the electoral campaign.

7. However, under the regime of rule 100 of the Rules, which places on the Presidency the responsibility to consult Uganda, the Chamber cannot conclusively explore these factors. Rather, it is appropriate to note the available information and proceed with a positive recommendation to the Presidency. It is the latter which, under rule 100(3) of the Rules, shall consult Uganda to resolve the open questions. The process of consultation with Uganda will also be able to determine whether an adequate regime of privileges and immunities for the Court can be agreed, a point emphasised by the Registrar.

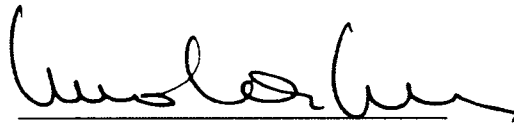
8. Thus, the Chamber recommends holding the confirmation of charges hearing in the present case in Uganda. The Chamber recalls that the hearing is scheduled to commence on 21 January 2015 and is expected to last three to no more than five working days.

FOR THESE REASONS, THE CHAMBER

RECOMMENDS to the Presidency that the hearing on the confirmation of charges against Dominic Ongwen be held in the Republic of Uganda; and

ORDERS the Registrar to notify documents ICC-02/04-01/15-264, ICC-02/04-01/15-265-Conf and annexes, and ICC-02/04-01/15-279-Conf and annexes to the Presidency.

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



Judge Cuno Tarfusser
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Chang-ho Chung

Dated this 10 September 2015
At The Hague, The Netherlands