



Original: English

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

Date of original: 15 October 2015

Date of public redacted version: 23 March 2016

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

Public redacted

**Decision on the Prosecutor's "Request for permission to supplement the
'Notice of intended charges against Dominic Ongwen' filed on 18
September 2015"**

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 decision on the “Request for permission to supplement the ‘Notice of intended charges against Dominic Ongwen’ filed on 18 September 2015”, submitted by the Prosecutor on 5 October 2015 (ICC-02/04-01/15-311-Conf, “Request”).

1. At a status conference held on 19 May 2015 (ICC-02/04-01/15-T-6-ENG), the Prosecutor confirmed her intention to charge Dominic Ongwen with crimes based on facts beyond those stipulated in the warrant of arrest ([ICC-02/04-01/15-6](#)), whereupon the Single Judge ordered the Prosecutor to file in the record of the case, by 21 September 2015, a formal notice of the intended charges.
2. On 18 September 2015, in advance of the time limit established by the Single Judge, the Prosecutor filed the “Notice of intended charges against Dominic Ongwen” (ICC-02/04-01/15-305-Conf and [-Red](#), “Notice”).
3. On 5 October 2015, the Prosecutor filed the Request, by which she seeks authorisation to supplement the Notice by including a concise statement of additional factual allegations and corresponding legal characterisation which she intends to include in the charges against Dominic Ongwen.
4. The Defence did not respond within the applicable 5-day time limit (see ICC-02/04-01/15-T-6-ENG, page 19, lines 1-3).
5. At the outset, the Single Judge notes that the witness interview which prompted the Request took place from 25 to 27 September 2015, after the time limit originally set for the submission of the Notice, and considers that the conduct of the Prosecutor in the matter does not show an attempt to circumvent the original order of the Single Judge.

6. In order to decide on the Request, it is necessary to recall the context and reasons of the order for the submission of an advanced notice of intended charges. As is clear from the transcript of the status conference of 19 May 2015, this order was based, in law, on the right of the Defence to be put in a position to adequately prepare for the confirmation of charges hearing and, in fact, on the stated intention of the Prosecutor to present charges going extensively beyond the facts stipulated in the warrant of arrest.

7. The purpose of the notice was to avoid that the Defence is confronted at the last possible moment with largely unforeseen factual allegations in respect of which it could not reasonably prepare, by giving the Defence sufficient advance information about the intended charges even before the time limit established by rule 121(3) of the Rules of Procedure and Evidence for the submission of the document containing the charges (*i.e.* 30 days before the commencement of the confirmation of charges hearing). Indeed, it was said explicitly that the time limit for the submission of that document was not affected.

8. The present request to “supplement the notice” must therefore be examined from the viewpoint of whether or not the Defence would be in position to prepare for the confirmation of charges hearing also with respect to the additional allegations.

9. In this regard, the Single Judge notes that the Prosecutor seeks permission to present charges against Dominic Ongwen for the direct perpetration of sexual and gender based crimes against [REDACTED], and observes that the factual basis and legal characterisation of the additional intended charges are very similar to the crimes and facts included in the Notice with respect to seven other women (see Notice, paras 36-46). The Single Judge also recalls that the confirmation of charges hearing is scheduled

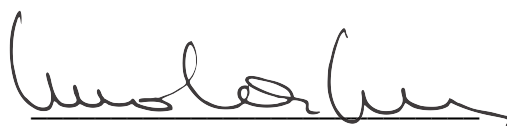
at 21 January 2016 and that, by virtue of rule 121(3) of the Rules, 30 days between the formulation of the charges by the Prosecutor and the commencement of the confirmation are, in ordinary circumstances, presumed sufficient for the proper preparation of the Defence.

10. In these circumstances, the Single Judge is of the view that the Defence will be fully in position to prepare adequately for the confirmation of charges hearing if the Prosecutor is permitted to include in the charges also the facts and crimes mentioned in the Request. No prejudice to the Defence could indeed be identified for the limited addition by the Prosecutor of further allegations and corresponding legal characterisation, of which the Defence was in any case informed, through the Request, well in advance of the time limit established for the submission of the document containing the charges due on 21 December 2015.

FOR THESE REASONS, THE SINGLE JUDGE

GRANTS the Request.

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



Judge Cuno Tarfusser
Single Judge

Dated this 15 October 2015

At The Hague, The Netherlands