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

Date: 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

**Decision on the review of Dominic Ongwen's detention pursuant to article
60(3) of the Statute**

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

The Office of the Prosecutor

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States Representatives

Amicus Curiae

REGISTRY

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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 review of Dominic Ongwen's decision pursuant to article 60(3) of the Rome Statute ("Statute").

1. On 27 November 2015, the Single Judge issued the "Decision on the 'Defence Request for Interim Release of Dominic Ongwen'" (ICC-02/04-01/15-349). The Single Judge rejected the Defence request that Dominic Ongwen be released *ad interim*, and specified the reasons warranting the detention of Dominic Ongwen pending proceedings in the case, under article 58(1)(b)(i) and (ii) of the Statute as alleged by the Prosecutor. The Single Judge also found that the possibility of release with conditions was not suitable.

2. Under article 60(3) of the Statute, the decision of 27 November 2015 is subject to periodic review, which may lead, if changed circumstances so require, to its modification. Rule 118(2) of the Rules of Procedure and Evidence mandates that this review occur at least every 120 days.

3. For the purpose of the present decision, the Single Judge has received on 14 March 2016 submissions from the Defence ([ICC-02/04-01/15-416-Corr](#)), the common legal representative of the otherwise unrepresented victims appointed by the Court ([ICC-02/04-01/15-417](#)), the legal representatives of a group of victims ([ICC-02/04-01/15-418](#)), and the Prosecutor ([ICC-02/04-01/15-419](#)). The Prosecutor and the legal representatives of victims allege that there has been no change in the relevant circumstances, while the Defence submits otherwise.

4. On the basis of the submissions and the available information, the Single Judge finds that there has not been any change in the circumstances requiring Dominic Ongwen's detention since the issuance of the decision of 27 November 2015.

5. The only argument to the contrary raised by the Defence is that as Dominic Ongwen has not seen his immediately family since late 1987, he should be released in order to restore “his rights to see his family”, which in the Defence claim has been *de facto* denied at the Detention Centre.

6. This argument is not persuasive. The Single Judge observes that the management of Dominic Ongwen’s detention, including the administration of visits, is the responsibility of the Registrar. It appears from the submissions of the Defence that the core of the matter is the inability of the members of Dominic Ongwen’s family to pay the cost of travel to The Hague for the purpose of the visit. While this situation is unfortunate, it has no bearing on the continued existence of the risks under article 58(1)(b) of the Statute which, as found in the decision of 27 November 2015, warrant Dominic Ongwen’s detention.

7. The Single Judge notes the fleeting reference by the Defence in the introduction to its submission to the “passage of time” as an aspect requiring that Dominic Ongwen be released (para. 2). While the Defence does not elaborate on this particular point, the Single Judge considers it appropriate to address this issue too. The lapse of time in detention cannot be considered on its own to be a changed circumstance within the meaning of article 60(3) of the Statute, although it may be a relevant factor in the assessment of the risks that are being reviewed under article 60(3) of the Statute.¹ The Defence does not explain how the passage of time has affected the risks that were previously identified as warranting Dominic Ongwen’s detention, and indeed the Single Judge is of the view that the passage of four months since the

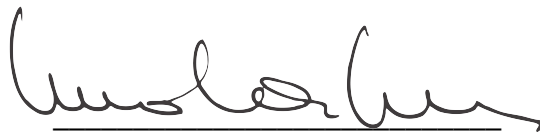
¹ See also Appeals Chamber, “Judgment on the appeals against Pre-Trial Chamber II’s decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification”, 29 May 2015, [ICC-01/05-01/13-969](#), paras 44-45.

decision of 27 November 2015 has not affected in any way the validity of its conclusion that the detention of Dominic Ongwen is necessary to ensure his appearance at trial and to prevent interference with the investigation or court proceedings.

FOR THESE REASONS, THE SINGLE JUDGE

DECIDES that Dominic Ongwen shall remain in detention.

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 23 March 2016

At The Hague, The Netherlands