

## Situation in Uganda

### ***The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen***

ICC-02/04-01/05

ICC-PIDS-Q&A-UGA-01-01/15\_Eng

Updated: 20 January 2015

## Transfer of Dominic Ongwen to the ICC custody

### WHO IS DOMINIC ONGWEN?

Dominic Ongwen is the alleged Brigade Commander of the Sinia Brigade of the Lord's Resistance Army (LRA).

On 8 July 2005, ICC Judges issued an arrest warrant against Mr. Ongwen for three counts of crimes against humanity (murder; enslavement; inhumane acts of inflicting serious bodily injury and suffering) and four counts of war crimes (murder; cruel treatment of civilians; intentionally directing an attack against a civilian population; pillaging) allegedly committed in 2004 within the context of the situation in Uganda.

The Judges considered that senior LRA commanders, including Dominic Ongwen, were alleged to be the key members of "Control Altar", the section representing the core LRA leadership responsible for devising and implementing LRA strategy, including standing orders to attack and brutalise civilian populations. They considered the allegations that Mr. Ongwen, in his capacity as Brigade Commander of the Sinia Brigade of the LRA, ordered the commission of several crimes within the jurisdiction of the Court.

On the same day, ICC warrants of arrest were also issued against other commanders of the LRA for the commission of crimes against humanity and war crimes, namely for Joseph Kony, Vincent Otti, Raska Lukwiya, and Okot Odhiambo. On 11 July 2007, the proceedings against Raska Lukwiya were terminated following his death.

### WHAT WILL HAPPEN AFTER DOMINIC ONGWEN ARRIVES AT THE ICC DETENTION CENTRE?

Once the person is arrested and the Court is so informed, the Court ensures that the person receives a copy of the warrant of arrest in a language which he or she fully understands and speaks.

Within a reasonable time after delivery of the suspect and his arrival at the Detention Unit of the ICC, the Pre-Trial Chamber will hold an initial appearance hearing to verify the identity of the suspect and ensure that he was clearly informed of the charges against him and his rights under the Rome Statute.

### WHAT IS AN INITIAL APPEARANCE HEARING?

The suspect's first appearance before the Court takes place shortly after his or her arrival in The Hague. During the first appearance, the Pre-Trial Chamber confirms the identity of the suspect, ensures that the suspect understands the charges, confirms that language in which the proceedings should be conducted, and sets a date to begin the confirmation of charges hearing.

From this moment, the suspect will enjoy rights as recognised in the Rome Statute, including the right to have adequate time and facilities for the preparation of his or her Defence and to have the assistance of a Counsel, without payment if the person lacks sufficient means to pay for it. After this first appearance, the Pre-Trial Chamber shall set the date of the confirmation of charges hearing.

Mr Ongwen will appear before Pre-Trial Chamber II, which is composed of Judge Ekaterina Trendafilova (Bulgaria), Presiding Judge, Judge Christine Van den Wyngaert (Belgium), and Judge Cuno Tarfusser (Italy).

### WHAT WILL HAPPEN AFTER THE INITIAL APPEARANCE HEARING TAKES PLACE?

After the initial appearance hearing, the Pre-Trial Chamber will start the process leading to the confirmation of charges hearing.

This process may take several months, depending on the complexity of the case, and also on the challenges which may arise during this period. After the initial appearance, the process of disclosure of evidence will start. During this process, the Prosecutor will have to provide to the Defence teams the evidence he has collected during his investigation and on which he wants to rely for the confirmation of charges hearings. As indicated by the Rome Statute, the Prosecutor also has a duty to disclose exonerating information or materials to a suspect which in any way tend to suggest his or her innocence or mitigate his or her guilt, or which may affect the credibility of the Prosecution's evidence.

In addition, the Rome Statute contains provisions which enable victims to participate in all stages of the proceedings before the ICC. Victims can present their views and observations before the Court. The judges will give directions as to the timing and manner of the participation of victims at the confirmation of charges stage.

At the confirmation of charges hearing – which is not a trial, but a pre-trial hearing – the Prosecution must present sufficient evidence for the case to go to trial. The suspect's defence may object to the charges, challenge the Prosecution's evidence and also present evidence.

### WHAT RIGHTS DO SUSPECTS HAVE?

Suspects before the ICC are presumed innocent. Unless exempted by the Judges, they are present in the courtroom during the trial, and they have a right to a public, fair and impartial hearing of their case. To this end, a series of guarantees are set out in the Court's legal documents, including, to mention a few:

- to be defended by the counsel (lawyer) of their choice, present evidence and witnesses of their own and to use a language which they fully understand and speak;
- to be informed in detail of the charges in a language which they fully understand and speak;
- to have adequate time and facilities for the preparation of the defence and to communicate freely and in confidence with counsel;
- to be tried without undue delay;
- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- to have the Prosecutor disclose to the defence evidence in his possession or control which he believes shows or tends to show the innocence of the suspects or accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

As provided for by article 57(2)(b) of the Rome Statute, a single judge of the Pre-Trial Chamber may exercise the functions provided for in the Statute, except for specific orders or rulings mentioned in the article (the confirmation of charges, for example).

### WHAT ARE THE CONDITIONS OF DETENTION AT THE DETENTION CENTRE IN THE HAGUE?

The ICC Detention Centre is located within a Dutch prison complex in Scheveningen - on the outskirts of The Hague, in the Netherlands. It functions to hold in safe, secure and humane custody those persons detained under the authority of the ICC. The Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules. An independent inspecting authority conducts regular and unannounced inspections of the Centre in order to examine how detainees are being held and treated.

Detained persons are presumed innocent until proven guilty. If convicted of crimes under the jurisdiction of the ICC, they do not serve their sentences at the ICC Detention Centre as it is not a facility made for the purposes of managing a regime of convicted prisoners; they are transferred to a prison outside of The Netherlands to serve their time, subject to an agreement between the ICC and the State of enforcement.

### WHAT IS VICTIMS' PARTICIPATION IN THE PROCEEDINGS, WHO CAN PARTICIPATE AND HOW CAN VICTIMS APPLY FOR PARTICIPATION?

At the ICC, victims can present their views and concerns to the Judges in order to ensure that their own interests are taken into account during the proceedings. This is called "victims' participation in proceedings", and it is different from victims appearing as witnesses for one of the parties. The participation of victims in proceedings offers victims a unique opportunity to be involved in the ICC process, and ensure that their voices are heard. The Judges are the ones who decide at which moments of the proceedings and how victims can participate, taking into account their personal interests and the rights of the accused.

Victims authorized to participate rarely come to The Hague. Participation is done through a legal representative (that is, a lawyer) who presents the victims' views and concerns to the Court. The victims' lawyer legal fees can be covered by the Court's legal aid scheme.

The participation of victims in proceedings is different from reparations. Victims will not receive any compensation or any form of reparations for their participation – reparations may only be awarded at the end of the trial process if there is a conviction.

At the ICC not all the victims can participate in the proceedings, but only the victims that have suffered from crimes brought against a suspect or an accused. The Victims Participation and Reparations Section (VPRS), a section of the Registry which is the neutral organ of the Court, will provide information on who can apply for participation and how they can apply. The ICC charges no fees for the victims' applications to participate.

Victims can find information on the ICC website: [www.icc-cpi.int](http://www.icc-cpi.int)

For any question related to the participation of victims in proceedings please contact the VPRS by email at: [VPRS.Applications@icc-cpi.int](mailto:VPRS.Applications@icc-cpi.int) or by phone: + 256 772 70 6062