

VICTIMS INFORMATION PACKAGE ON THE ROME STATUTE

(Based on Dominic Ongwen's Proceedings before the ICC)

*Cour
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Criminal
Court*



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Trial before the ICC takes place in 3 stages:

Pre-Trial stage before a Pre-Trial Chamber; the Trial stage before a Trial Chamber and the Appeal stage before the Appeals Chamber.

Composition of Court at each sitting:

Pre-Trial Chamber is composed of either a single (1) or three (3) Judges. The single Judge represents the other 2 Judges at any sitting.

The Trial Chamber is composed of 3 Judges.

The Appeals Chamber is composed of 5 Judges.

Status of Dominic Ongwen's Case:

Pre-Trial stage before a Pre-Trial Chamber composed of 1 (one) Judge.

The ICC Registry sent a Duty Counsel to process the transfer of Dominic Ongwen to The Hague. The Duty Counsel appeared as his lawyer before the Pre-Trial Chamber [on 26 January 2015] when he made his initial appearance before the Single Judge of the Pre-Trial Chamber.

Initial appearance under the Rome Statute and its Rules of Procedure and Evidence:

Conducted before a Pre-Trial Chamber composed of either a single Judge or three Judges, the initial appearance by the suspect occurs once the suspect is surrendered to the court, appears before the court voluntarily, or in response to a summon issued by the court at the request of the Prosecutor.

What was the purpose of the Initial appearance of Dominic Ongwen?

Initial appearance hearing held on 26 January 2015:

To establish that the person appearing before the court is Dominic Ongwen.

Establish the language Dominic Ongwen prefers given that the working languages of the court is English and French.

For the Pre-Trial Chamber to set the date for the confirmation of charges hearing and satisfy itself that Dominic Ongwen has been informed of the crimes which he is alleged to have committed and of his rights under the Rome Statute and the Rules of Procedure and Evidence.

The Judge pointed out that the initial appearance is neither a trial nor a confirmation of charges hearing.

No evidence will be presented or collected during the initial appearance hearing nor will the issue of guilt or innocence be addressed during the hearing. [Article 60(1) of the Rome Statute and rule 121(1) of the Rules of Procedure and Evidence sets out the limited scope of the initial appearance hearing]

What was decided?

Provisionally, the confirmation of charges was to commence on 24 August 2015.

On the application of the Prosecutor, the date was fixed for 21 January 2016.

What are the next steps?

The Pre-Trial Chamber also decides as to whether or not to confirm the charges against a person suspected of a crime.

What is the purpose of the confirmation of charges hearings?

At the confirmation of charges hearing:

The Prosecutor-

Mandatory that the Prosecutor supports each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged.

Prosecutor, at this stage, may rely on documentary evidence or summary of evidence in his or her possession.

Prosecutor need not call witnesses expected to testify at the trial.

Pre-Trial Chamber-

Mandatory that the Pre-Trial Chamber, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes with which he or she is charged.

Based on the determination, the Pre-Trial Chamber has the mandatory duty to-

Confirm the charges on which it has determined that there is sufficient evidence. Commit the person to a Trial Chamber for trial on the charges as confirmed.

Decline to confirm the charges on which it has determined there is insufficient evidence.

Adjourn the hearing and request the Prosecutor to consider-

Providing further evidence or conducting further investigation with respect to a particular charge; or

Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the court.

Where the Pre-Trial Chamber **declines** to confirm a charge, Prosecution may, on the basis of additional information, make another request for confirmation of the charges.

After the charges are confirmed and before the trial has begun, Prosecution, with the permission of the Pre-Trial Chamber and after informing the accused, may, amend the charges.

If Prosecution is to add additional charges or to substitute more serious charges a confirmation of hearing charges hearing has to be held.

After commencement of trial, Prosecution, with the permission of the Trial Chamber may withdraw the charges.

A warrant of arrest that has been issued ceases to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

What are the rights of the suspect during the confirmation of charges hearings:

The right to be presumed innocent until proved guilty beyond reasonable doubt; burden of proof on the Prosecutor; there is no reversal nor rebuttal of this right.

The right to be informed promptly and in detail of the nature, cause and content of the charges in a language the suspect fully understands.

The right to adequate time and facilities for the preparation of the suspect's defence.

The right to be provided with materials that shows or tends to show suspect's innocence or to mitigate suspect's guilt or may affect the creditability of evidence that tends to incriminate the suspect.

Suspect entitled to waive the right to be present during the confirmation of charges hearing but the Chamber could decide to demand his or her presence during the hearing.

Suspect can waive the right to appear during status conference.

Suspect can waive the right to choose own counsel; e.t.c.

Specific rights of the accused during the confirmation of charges:

At the request of the Prosecutor or on its own decision, the Pre-Trial Chamber could decide to hold the confirmation of charges hearing in the absence of the person charged if:

The person charged waives his or her right to be present; or

The person charged has fled and cannot be found despite all reasonable attempts to trace him or her so as to inform him or her of the date for the confirmation of charges hearing.

The Pre-Trial Chamber may, in the interest of justice, decide that the person charged be represented by Counsel.

Rights of the person charged:

Within a reasonable time before the hearing:

To be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and

To be informed of the evidence on which the Prosecutor intends to rely at the hearing.

Prior to the confirmation of charges hearing:

The Prosecutor may amend or withdraw any charges based on new evidence.

Mandatory for the person charged to be given reasonable notice before the confirmation of charges hearing of any amendment to or withdrawal of charges. [see OTP notice of intended charges (24 Sept. 2015)]

Mandatory for the Prosecutor to notify the Pre-Trial Chamber of the reasons for any charges withdrawn.

Rights of person charged prior to the conformation of charges hearing:

Object to the charges.

Challenge the evidence presented by the Prosecutor.

Present evidence.

What are the rights of the victims:

Under the Rome Statute and its Rules of Procedure and Evidence, 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.

Under victims' participation in proceedings. the court may permit the views and concerns of the victims to be heard during the hearing on the confirmation of charges.

Victims participation before the ICC is subject to the decision of the Judge to admit victims to participate in the proceedings and a decision by the court deciding upon the modalities of participation of the parties at that stage of the proceedings.

Victims participation, once granted, could be through written submissions, attending the hearing and submitting evidence.

Victims' participation in proceedings offers victims a unique opportunity to be involved in the ICC court 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 the victims' personal interests and the rights of the accused.

Victims' participation through legal representation:

Victims authorized to participate in proceedings rarely travel 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.

Victims' participation and reparation:

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.

Who can participate:

At the ICC not all the victims can participate in the proceedings.

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' participation in the case of Dominic Ongwen:

Victims who wish to participate in the proceedings must make a written application to the Registrar. [rule 89 of the Rules of Procedure and Evidence]

On 3rd Sept. 2015, the Pre-Trial Judge of Pre-Trial Chamber II adopted a **decision** determining how the victims' applications in the Dominic Ongwen's case will be dealt with and how victims will be admitted to participate in the court proceedings.

The Judge's decisions are as follows:

Decision: All those victims whose applications for participation have not been objected to by either the Prosecution or the Defence, or otherwise rejected by the Single Judge are admitted to participated in the proceedings upon expiration of the time limit for the OTP and Defence objections.

Decision: The Registry will assess all victim applications for participation received or collected in relation to the case of Dominic Ongwen.

This exercise could involve the Registry checking 2 main aspects-

Whether the document is complete? Meaning:

Whether there is a sufficient proof of identity (national identity card or, in absence of such document, voters' cards or letters from Chairpersons of Local Council),

Whether there is sufficient proof of kinship or guardianship, where appropriate;

Whether personal details are consistent throughout the application;

Whether the applicant signed the application.

Decision: The Registry will separate all complete applications falling within the scope of the case against Dominic Ongwen.

This means that the Registry, in the assessment of the applications has to determine whether the applicant sufficiently showed that he/she has personally suffered (direct/indirect) harm as a result of the crimes charged against Ongwen?

The Registry has to assess each application against the crimes with which Ongwen is currently charged OR "will be". The documents the Registry considers in determining this are: 1) warrant of arrest; 2) OTP notice of intended charges (filed on 24 Sept. 2015)

The Registry has to check the type of crime, the geographical and temporal/legal scope of the facts. No need for a specific date as such; this means that an applicant should not be push to give a date when he or she does not know it)

If according to the Registry's assessment, the applicant qualifies as a "victim", the Registry reports to the Judge that the applicant qualifies as a victim (without transmitting the individual applications)

Decision: The Office of the Prosecutor (OTP) and Defence may file objections within 14 days of being notified of the victims application to enable them raise any specific objection to individual application.

If no objection from OTP and Defence: applicant is admitted without any further review of his/her application form by the Judge.

Decision: If there is objection from OTP and/or Defence within the relevant time limit: the Judge will review the application forms and decides whether to grant the request to participate.

If according to the Registry's assessment, the applicant DOES NOT qualify as a "victim" (including because the application form is incomplete): the application is purely and simply REJECTED. The Registry, through VPRS, informs the concerned applicants accordingly.

Decision: If the Registry is unable to determine whether an application/group of applicants qualify as victims: the Registry consults the Judge for "guidance".

(This means that there will be no public debate on this and it will be completely between the Judge and the Registry).

Summary: The Registry has to organize the applicants in three groups: Applicants that appear to qualify as victims in the case (Group A); Applicants for whom the Registry is unable to make a

determination (Group B); and Applicants who do not appear to qualify as victims (Group C).

Decision: The first batch of victim applications was transmitted to the Registry by 18 September 2015. The final batch of victim applications will be transmitted to the Registry by 7 December 2015.

Status of Victims' Applications as of 7 October 2015:

According to the information available, so far VPRS has received 905 applications for participation but has been able to transmit (on 18 Sept. 2015) to the judge and parties 209 applications only;

OTP has no objection re: the 209 applications (no Defence filing apparently so far);

From now until 7 Dec. 2015: the Registry/VPRS to transmit on a rolling basis to the Judge and parties the remaining applications received or yet to be received.

As of today victims have not yet been admitted to participate in the proceedings: they have no procedural right.

Victims' Protection:

If an applicant expressed security concerns then the application form is transmitted to the Defence in redacted form (i.e. removal of identifying information).

Why the confirmation of charges hearing will take place in Uganda:

According to Article 62 of the Rome Statute, unless otherwise decided, the place of the trial shall be the seat of the court in The Hague.

An *in situ* hearing is possible by virtue of Article 3(3) of the Rome Statute, which allows the court to sit elsewhere whenever it considers it desirable.

Rule 100(1) of the ICC Rules of Procedure and Evidence stipulates that this decision should be taken in the interests of justice.

Position of Pre-Trial Chamber II (PTC):

On 10th Sept. 2015, the PTC single Judge recommended to the ICC Presidency that the hearing on the confirmation of charges against Dominic Ongwen be held in Uganda (preferably in Gulu; if not, Kampala).

The views of the Prosecutor, defence, and the victims have to be taken into account. The decision is also taken in consultation with the Government of Uganda.

The matter is before the Presidency (i.e. ICC President + 2 vice-Presidents) who will decide whether it is in the interests of justice to hold the hearing in Uganda (and where).

Apparently, the Registry is now requested to carry out a reassessment to get “feedback from various stakeholders working with affected communities” whether in fact a) the affected communities continue to believe it is a good idea to have the hearing in Uganda, and b) if they are still convinced that Gulu is still the best option in terms of location, bearing in mind that the new charges in this case relate to other communities outside of Gulu District/Acholi sub-region.

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