

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 26 November 2015

**PRE-TRIAL CHAMBER II**

**Before: Judge Cuno Tarfusser, Single Judge**

**SITUATION IN UGANDA**

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

**Confidential**

**Decision on the Defence "Request to Postpone Confirmation of Charges  
Hearing"**

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**

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**Registrar**

Herman von Hebel

**Counsel 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 to Postpone Confirmation of Charges Hearing" (ICC-02/04-01/15-336-Conf and [-Red](#), "Request"), filed by the Defence on 6 November 2015, and supplemented orally on 23 November 2015 (ICC-02/04-01/15-T-19-CONF-ENG).

1. Dominic Ongwen was surrendered to the Court by the Central African Republic on 16 January 2015. On 26 January 2015, he made his first appearance before Pre-Trial Chamber, where the date for the commencement of the confirmation of charges hearing was set at 24 August 2015 ([ICC-02/04-01/15-T-4-ENG](#)). This date was subsequently postponed to 21 January 2016 on request from the Prosecutor ([ICC-02/04-01/15-206](#)).

2. The Defence requests that the confirmation of charges hearing be postponed by "at least two months", on the basis of the "breadth of the intended charges in the indictment including the increased geographical scope", the volume of materials disclosed by the Prosecutor, the "inordinate amount of time spent preparing for the extraordinary proceedings ordered under article 56 of the Statute" and the number of victims applications.

3. The Prosecutor opposes the Request, submitting that "the rights and procedural safeguards of the Defence have been fully respected and the latter has been afforded adequate time to prepare for a confirmation hearing on 21 January 2016" (ICC-02/04-01/15-341-Conf and [-Red](#)).

4. Rule 121(7) of the Rules of Procedure and Evidence provides for postponement of the confirmation of charges hearing, either on request by either party or *proprio motu* by the Chamber. This allows for the calendar of the proceedings to be adapted to changed circumstances and the legitimate needs of the parties. The Request is therefore, in principle, admissible.

5. However, upon review of the Defence submissions, the Single Judge considers that the Defence is in position to properly prepare for the confirmation of charges hearing as currently scheduled and that none of the reasons put forward by the Defence, whether individually or cumulatively, warrant a postponement.

6. First, the Single Judge considers, as concerns the breadth of the upcoming charges against Dominic Ongwen, that the measures previously taken in the interest of the Defence are entirely sufficient for it to be able to prepare. Indeed, the Single Judge, on 19 May 2015, ordered the Prosecutor to provide formal notice to the Defence of the intended charges by 21 September 2015 (ICC-02/04-01/15-T-6-ENG, pp. 17-18). The Defence has received this notice as ordered (ICC-02/04-01/15-305-Conf and [-Red](#) and ICC-02/04-01/15-311-Conf). The Defence was therefore in possession, four months before the scheduled start of the confirmation of charges hearing, of an up to date comprehensive statement of the intended charges. Bearing in mind the object and purpose of the confirmation of charges hearing, any argument in relation to the quality of notice of the case provided to the Defence is unsustainable. Furthermore, while the Defence has been greatly facilitated by the provision of the notice of the intended charges on 18 September 2015, it cannot be said that it was not in a position to advance its preparation for the confirmation of charges hearing since months before. Indeed, the Defence had received disclosure of the evidence on which the Prosecutor intends to rely at the confirmation hearing since May 2015 and on a rolling basis, as well as an indication in the record of the case, available to the Defence as of 2 March 2015, of the Prosecutor's intention to charge Dominic Ongwen with crimes committed in the context of the attack in Pajule, sexual and gender-based crimes and recruitment and enlistment of child soldiers (*see* ICC-02/04-01/15-191-Anx-Red, p. 3), as recognised by the Defence itself in its Request (para. 8).

7. Second, as to the amount of disclosure received by the Defence, the Single Judge considers that the mere volume of evidence as such is a poor indicator of the complexity of the case and the work required. Rather than to review the material received robotically and uncritically, it is the responsibility of counsel to identify and select that evidence and information which needs to be focused on in order to advance the preparation of the case. In the present circumstances, considering that evidence has been (and is being) disclosed on a rolling basis and noting also that the amount of evidence disclosed in the present case is comparable to other cases before the Court, the time accorded to the Defence is sufficient to this purpose.

8. Third, while the Single Judge acknowledges that the taking of evidence from eight witnesses pursuant to article 56 of the Statute has required the Defence to adapt and reassign its resources, the Single Judge does not consider that this has amounted to a significant disruption of the Defence work. In particular, the Defence claim that it has "lost at least two (2) months" does not appear well-founded, considering the relatively little litigation on the subject, the length of the proceedings in court, and the absence, to the Single Judge's knowledge, of any Defence investigative activity which was taken for the exclusive purpose of the article 56 proceedings and would not prove relevant to the Defence preparation for the confirmation of charges hearing. The article 56 proceedings are not distinct, but form part of the work and proceedings in the present case. It must also be noted that these proceedings have been concluded two months before the scheduled start of the confirmation of charges hearing, which further supports the conclusion that the ability of the Defence to prepare for the confirmation of charges hearing has not been hampered.

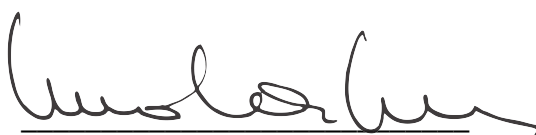
9. Finally, the Single Judge considers that the number of victims' applications for participation in the record of the case on which the Defence is

entitled to provide observations in accordance with rule 89(1) of the Rules is in no way extraordinary and does not warrant an adjustment of the calendar of the confirmation proceedings, but, if needed, would justify an extension of the time limit for submitting observations on the victims' applications as it was recently done (*see* ICC-02/04-01/15-347).

**FOR THESE REASONS, THE SINGLE JUDGE**

**REJECTS** the Request.

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 26 November 2015

At The Hague, The Netherlands