

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 12 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

**Prosecution's opposition to the Defence request for postponement of the
confirmation of charges hearing**

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo

Legal Representatives of Victims

Legal Representatives of 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

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution opposes the Defence's "Request to Postpone Confirmation of Charges Hearing" ("Request"),¹ scheduled to start on 21 January 2016. The purpose of the confirmation hearing is to assess the adequacy of the Prosecution's evidence and not to hold a mini-trial. The Defence was given notice of the charges to be filed against Dominic Ongwen more than four months before the scheduled hearing and will have adequate time to prepare. The Request's arguments do not constitute valid grounds for adjournment and should be rejected.

Confidentiality

2. Pursuant to regulation 23bis(2) of the Regulations of the Court, this document is filed confidentially in response to a filing with the same classification.

Submissions

3. The purpose of the confirmation of charges hearing is to ensure that only cases and charges for which the Prosecution has presented sufficient evidence are committed to trial.² The confirmation hearing is first and foremost intended to test the adequacy of the Prosecution's evidence. At this stage the Defence is not required, or indeed called upon, to dispute every implication of the charges or evidence, and therefore cannot expect to be granted the same time to prepare for confirmation as it would be for trial.
4. The current date for the confirmation of charges hearing was set on 6 March 2015,³ giving the Defence over ten months to conduct its investigations. The Defence was aware of the majority of the crimes and locations being investigated by the Prosecution well in advance of the filing of the "Notice of intended charges

¹ ICC-02/04-01/15-336-Conf.

² ICC-02/05-02/09-243-Red, para. 39; ICC-01/04-01/07-717, para. 63; ICC-01/04-01/06-803-tEN, para. 37.

³ ICC-02/04-01/15-206.

against Dominic Ongwen" ("Notice") on 18 September 2015.⁴ The Prosecution made clear early on in the case that it was investigating crimes in Lukodi, Pajule, sexual and gender based crimes, and crimes relating to child soldiers.⁵ Moreover, the Prosecution's investigation into the attack on Odek IDP Camp was made public during outreach visits to Uganda in June 2015.⁶

5. The Notice, informing the Defence of the expanded factual basis and charges, was filed four months ahead of the confirmation hearing precisely to ensure that the Defence had adequate time to prepare, so that the hearing could proceed as scheduled.⁷
6. The volume of disclosed material and the number of victims' applications are also not valid grounds for a postponement of the confirmation hearing. As the Request acknowledges,⁸ the Defence has been aware of the scope of material earmarked for disclosure since March 2015. It was therefore able to anticipate the resources it would require to review it.
7. The Prosecution notes the Defence's assertion about having difficulties accessing disclosed material on several occasions and expending significant resources in the process.⁹ All matters notified to the Prosecution concerning the Defence's access to electronically disclosed material have been addressed expeditiously by the Prosecution, ensuring the material was available to the Defence on the same day. General complaints about difficulties resulting from "incorrect or missing metadata" are not something on which the Prosecution can act without

⁴ ICC-02/04-01/15-305-Conf.

⁵ ICC-02/04-01/15-191-Anx-Red, p. 3; see also ICC-02/04-01/15-T-6-ENG, p. 6.

⁶ See e.g. Daily Monitor, "ICC team collects evidence on Ongwen". 23 June 2015, available at <http://www.monitor.co.ug/News/National/ICC-team-collects-evidence-on-Ongwen/-/688334/2761536/-/v9swxa/-/index.html> (last accessed 11.11.2015); Uganda Radio Network, "ICC Appeals to Witnesses for Information on Ongwen's Case", 22 June 2015, available at <http://ugandaradionetwork.com/story/icc-appeals-for-information-on-ongwens-case-> (last accessed 11.11.2015); All Africa, "ICC calls for witnesses against Ongwen", 24 June 2015, available at <http://allafrica.com/stories/201506240735.html> (last accessed 11.11.2015).

⁷ ICC-02/04-01/15-T-6-ENG, pp. 10, 13, 17-18.

⁸ Request, ft. 11.

⁹ Request, para. 10.

notification. To date, the Prosecution has only been notified about specific missing/incorrect metadata issues on two occasions and has acted speedily to cure those defects.

8. Insofar as victims' applications are concerned, the number of applicants in this case is comparable to that in other cases before the Court. The simplified one-page application form has reduced the number of pages to be reviewed with each individual application. If the Defence is unable to meet deadlines to submit observations on the applications, the proper remedy is to seek an extension of deadline from the Chamber, not to adjourn the confirmation of charges hearing.
9. The Prosecution acknowledges the Defence's concerns over the assertions on diversion of resources to facilitate and prepare for the article 56 proceedings. However, these proceedings must be seen in proportion. The on-going examination of witnesses will take a maximum of 12 days, most probably less. These proceedings, while perhaps unexpected, do not merit the two-month postponement proposed by the Defence. Moreover, the proceedings do not require the presence of the entire Defence team. The Defence's investigators and other staff can continue to perform their tasks unaffected.
10. In conclusion, the Prosecution submits 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.

Relief requested

11. The Prosecution proposes to the Chamber to reject the Request.



Fatou Bensouda,
Prosecutor

Dated this 12th of November 2015
At The Hague, The Netherlands