

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **5 January 2016**

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

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

Confidential

**Common Legal Representative's response to the "*Defence Request for
Postponement of the Confirmation of Charges Hearing*"**

Source: Office of Public Counsel for Victims

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

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I. Introduction

1. The Principal Counsel of the Office of Public Counsel for Victims, acting as Common Legal Representative of 592 victims authorised to participate in the present case,¹ submits that the “*Defence Request for Postponement of the Confirmation of Charges Hearing*” (the “Defence Request”) should be dismissed because the Defence does not raise any valid arguments which could justify a postponement of the confirmation hearing.

II. Procedural Background

2. On 26 November 2015, the Single Judge of Pre-Trial Chamber II dismissed the Defence’s Request to Postpone Confirmation of Charges Hearing which sought an order postponing the confirmation of charges hearing.²

3. On 18 December 2015, the Single Judge rejected the Defence’s Request for leave to appeal the abovementioned decision.³

4. On 30 December 2015, the Defence filed an urgent Request for postponement of the Confirmation of Charges Hearing (the “Defence Request”).⁴

¹ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-350, 27 November 2015, p. 19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 15 December 2015, pp. 10-11; and the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 24 December 2015, pp. 20-22.

² See the “Decision on the Defence ‘Request to Postpone Confirmation of Charges Hearing’” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-348-Conf, 26 November 2015.

³ See the “Decision on the Defence request for leave to appeal the “Decision on the Defence ‘Request to Postpone Confirmation of Charges Hearing’” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-373-Conf, 18 December 2015.

⁴ See the “Defence Request for Postponement of the Confirmation of Charges Hearing”, No. ICC-02/04-01/15-385-Conf, 30 December 2015 (the “Defence Request”).

5. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this response is filed confidential following the classification of the Defence Request. However, the Common Legal Representative indicates that the present submissions do not contain confidential information and therefore could be reclassified as 'public'.

III. Submissions

6. The Common Legal Representative notes that the Defence contends once more that it is facing challenges which impact on its ability to adequately prepare its case and be ready for the confirmation of charges hearing.⁵ In this regard, the Common Legal Representative underlines that the vast majority of the arguments advanced by the Defence in its Request have already been adjudicated by the Single Judge in his decisions issued on previous applications for postponement of the confirmation of charges hearing and demonstrate a mere disagreement with the relevant rulings.

7. In his decision issued on 18 December 2015, the Single Judge clearly indicated that the Defence had have ample time to prepare and that, considering that the confirmation of charges hearing has a limited object and purpose, the Defence is "*in good position to arrive at the opening of the confirmation of charges on 21 January 2016 fully prepared for this limited procedural step*"⁶.

8. Against this background the Defence does not raise any valid arguments or show any valid reasons which could justify a postponement of the confirmation hearing.

9. The Common Legal Representative takes note of the Defence's observations in relation to the disclosure of evidence and difficulties with metadata⁷. While she is

⁵ See the Defence Request, *supra* note 4, paras. 7 and 8.

⁶ See the "Decision on the Defence request for leave to appeal the "Decision on the Defence 'Request to Postpone Confirmation of Charges Hearing'", *supra* note 3, par. 9.

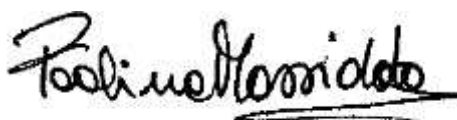
⁷ See the Defence Request, *supra* note 4, paras. 9 and 11.

unable to verify the extent of said difficulties because she has not yet gained access to part of the relevant information mentioned in the Request, the Common Legal Representative understands from the Request that the majority of the evidence disclosed is – in the Defence’s words – “*re-issuance of what appear to be over 700 items of metadata*”⁸. It seems, therefore, that the evidence concerned was already in possession of the Defence. Should this be the case, the Common Legal Representative fails to see any relevance to the Defence’s argument.

10. On the issue of the review of victims’ applications, the Common Legal Representative observes that the new one-page application form used in the case facilitates, *inter alia*, the parties’ assessment and that the Defence could have requested the assistance of the Office of Public Counsel for the Defence – as it has been the practice for other Defence teams – for its review of said applications to minimize the number of its resources dedicated to this task.

11. Finally, the Common Legal Representative wishes to reiterate that victims expect expeditious proceedings. Since her appointment, the Common Legal Representative was able to enter in contact with some of her clients who indicated that they hope that the confirmation of charges hearing will proceed as scheduled since they have expected justice to be done for more than ten years.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Single Judge to dismiss the Defence Request.



Paolina Massidda
Principal Counsel

Dated this 5th day of January 2016

At The Hague, The Netherlands

⁸ *Idem*, para. 11.