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

Date: **14 March 2016**

**PRE-TRIAL CHAMBER II**

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

**SITUATION IN UGANDA**

**IN THE CASE OF**

***THE PROSECUTOR v. DOMINIC ONGWEN***

**Public**

**Victims' submissions on review of pre-trial detention**

**Source: Victims' Legal Representatives**

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

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## I. INTRODUCTION

1. These submissions are filed by the external Legal Representatives of Victims (“the Legal Representatives”) pursuant to article 68(3) of the Statute, the decision of the Single Judge prescribing participatory rights of victims,<sup>1</sup> and the Chamber’s email of 29 February 2016.

## II. PROCEDURAL HISTORY

2. On 8 July 2005 a warrant of arrest for the defendant was issued under seal. A redacted version of the warrant was unsealed on 13 October 2005.
3. On 16 January 2015 Mr Ongwen was surrendered to the custody of the Court, and a first appearance was held in the case on 26 January 2015.
4. On 29 October 2015 Mr Ongwen requested interim release to Belgium “at least through the Confirmation of Charges Hearing.”<sup>2</sup> On 3 November 2015 the Prosecution opposed the defence request for Mr Ongwen’s provisional release.<sup>3</sup> On 27 November 2015 the Single Judge rejected the request for interim release (“Decision on interim release”).<sup>4</sup>
5. Also on 27 November 2015 the Single Judge accepted the first group of victims as participants in this case, recognized the appointment of the Legal Representatives, and granted specific modalities of participation to them.<sup>5</sup>

## III. SUBMISSIONS

6. As explained by the Single Judge in his Decision on interim release, Mr Ongwen’s detention must continue if any of the conditions set out in article 58(1)(b) of the

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<sup>1</sup> *Prosecutor v Dominic Ongwen*, Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights, ICC-02/04-01/15-350, 27 November 2015.

<sup>2</sup> *Prosecutor v Dominic Ongwen*, Defence Request for the Interim Release of Dominic Ongwen, ICC-02/04-01/15-332-Conf, 29 October 2015.

<sup>3</sup> *Prosecutor v Dominic Ongwen*, Prosecution opposition to the Defence request for interim release, ICC-02/04-01/15-333-Conf, 3 November 2015.

<sup>4</sup> *Prosecutor v Dominic Ongwen*, Decision on the “Defence Request for the Interim Release of Dominic Ongwen”, ICC-02/04-01/15-349-Conf, 27 November 2015.

<sup>5</sup> *Prosecutor v. Dominic Ongwen*, Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights, ICC-02-04-01/15-350, 27 November 2015.

Statute still exists. In its Decision on interim release the Single Judge found that the conditions in both article 58(1)(b)(i) and (ii) were met.

7. The Legal Representatives submit that since 27 November 2015, when the Decision on interim release was issued, there has been no material change such as would permit Mr Ongwen's release. As article 60 of the Rome Statute prescribes, the Pre-Trial Chamber "...may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require." This wording conveys that in order for the Chamber to modify its ruling, a change in circumstances must have occurred which is so significant that it not merely advises, but rather *requires*, the defendant's release. A very high threshold is therefore established as regards the facts which must be demonstrated by the defence if it seeks Mr Ongwen's release.
8. In his Decision on interim release the Single Judge set out a number of compelling reasons why Mr. Ongwen's detention is necessary.<sup>6</sup> Each one of these reasons remains valid today. Specifically, nothing has occurred which would make Mr Ongwen's detention unnecessary for the purposes set out in article 58(1)(b)(i) and (ii).
9. On the contrary, the need for Mr Ongwen's pre-trial detention has only been heightened since 27 November 2015 by the continued disclosure of prosecution evidence, the provision to the defence of victims' applications for participation (albeit partially redacted), and the holding of the confirmation of charges hearing. These developments have:
  - (a) demonstrated to Mr Ongwen the strength of the case against him, thereby increasing his incentives to flee and/or to interfere with prosecution witnesses; and

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<sup>6</sup> *Prosecutor v Dominic Ongwen*, Decision on the "Defence Request for the Interim Release of Dominic Ongwen", ICC-02/04-01/15-349-Conf, 27 November 2015, paragraphs 15 to 23.

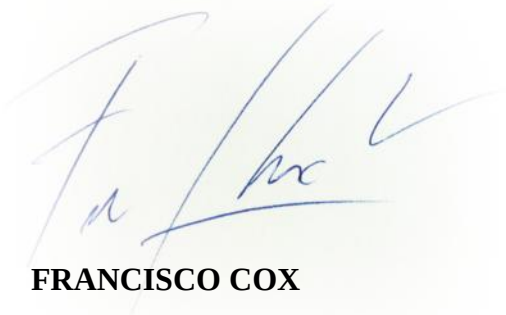
(b) provided Mr Ongwen with further means by which to interfere with prosecution witnesses, participating victims and their communities.

The Legal Representatives note that they only acquired standing on the day of the Decision on interim release, and that therefore their clients' views on this subject have not yet been put before the Chamber. The Legal Representatives have consulted the participating victims they represent on this subject. This was done both during previous face-to-face consultations, and over the past week through telephone communications with focal points within victim communities. The views received during these consultations confirm that the represented victims are unanimous in wanting Mr Ongwen to remain in detention. They explain that in their view:

- (a) Mr Ongwen still poses a threat to their lives since he still has "his people" in the communities. Moreover the LRA is still at large and able to return and attack the victims' homes and villages. The victims are particularly concerned about these risks knowing that Mr Ongwen and the LRA are aware, from the case documents, of the fact that witnesses and victims hail from the former Internally Displaced Peoples Camps at Abok, Odek and Lukodi.
- (b) Mr Ongwen is a flight risk considering that he has supporters in the diaspora, among them the people who supported the LRA during the 2006 Juba peace talks in the Republic of South Sudan.
- (c) If released, Mr Ongwen would not return to attend his trial to conclusion, knowing as he does now the evidence against him. It is believed that he would likely find ways to return to the bush and the LRA.
- (d) Mr Ongwen is likely to interfere with witnesses since he now knows their identities and the evidence that the prosecution has against him.

**IV.RELIEF SOUGHT**

11. For the reasons explained above, the victims represented by the Legal Representatives request that the Single Judge maintains Mr Ongwen's detention.

**JOSEPH AKWENYU MANOBA****FRANCISCO COX**

Dated this 14th day of March 2016

*At Kampala, Uganda and Santiago, Chile*