



Original English

No.: ICC-02/04-01/15
Date: 28 October 2015

THE PRESIDENCY

Before: Judge Silvia Fernández de Gurmendi, President
Judge Joyce Aluoch, First Vice-President
Judge Kuniko Ozaki, Second Vice-President

**SITUATION IN THE REPUBLIC OF UGANDA
IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Public

**Decision on the recommendation to the Presidency to hold the confirmation of charges
hearing in the Republic of Uganda**

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court***to:****The Office of the Prosecutor**

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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 Unit****Detention Section****Victims Participation and Reparations
Section****Others**

Pre-Trial Chamber II

The Presidency of the International Criminal Court (“Court”) has before it the “Recommendation to the Presidency to hold the confirmation of charges hearing in the Republic of Uganda” (“recommendation”) of Pre-Trial Chamber II (“Chamber”) in the case of *The Prosecutor v. Dominic Ongwen* (“Ongwen case”).¹

The confirmation of charges hearing in the *Ongwen* case shall be held at the seat of the Court at The Hague for the reasons set forth below.

I. RECOMMENDATION BY THE CHAMBER AND REGISTRY ASSESSMENTS

1. On 29 June 2015, the Chamber issued an order requesting that the parties provide their views and the Registrar provide an assessment in relation to the possibility of holding the confirmation of charges hearing in Uganda, pursuant to rule 100(2) of the Rules of Procedure and Evidence (“Rules”),² in response to which both the Prosecution and the Defence expressed their support for this possibility.³

a. Registry’s Preliminary Assessment

2. On 27 July 2015, the Registry submitted a preliminary assessment following its mission to Uganda (“preliminary assessment”).⁴ The Registry identified Gulu and Kampala as suitable locations, while considering Entebbe to be unsuitable.⁵
3. The Registry reported concerns that holding the proceedings in Uganda before the upcoming parliamentary and presidential elections, particularly in Kampala, may increase political tensions.⁶ The Registry emphasised the timing of the hearing as key and noted recommendations that it be held after the electoral process.⁷ The Registry

¹ 10 September 2015, ICC-02/04-01/15-300 (“Recommendation”).

² Order for submissions on the possibility of holding the confirmation of charges hearing in the Republic of Uganda, ICC-02/04-01/15-258.

³ Prosecution’s submissions on conducting the confirmation of charges hearing *in situ*, 10 July 2015, ICC-02/04-01/15-264; Defence Submissions Pursuant to Pre-Trial Chamber II’s Order for Observations on the Location of the Confirmation of Charges Hearing, 13 July 2015, ICC-02/04-01/15-265-Red.

⁴ Assessment of the Registry on the possibility of holding the confirmation of charges hearing in the Republic of Uganda, ICC-02/04-01/15-279-Conf (“preliminary assessment”).

⁵ *Id.* at para. 4.

⁶ *Id.* at paras. 4, 7-9, 11 and 15-16.

⁷ *Id.* at paras. 4 and 7-9.

also submitted that, unlike in Gulu, there is a credible security threat in Kampala.⁸ The Registry further submitted that a detailed analysis must be conducted in respect of both regional security threats and possible civil and political unrest linked to the elections.⁹

4. With respect to witness and victim protection, the Registry submitted that Gulu would be preferable to Kampala and that the inevitable increase in the risk to victims and witnesses during the proceedings could be considered manageable.¹⁰
5. The Registry stressed the importance of a tailored outreach strategy, given the potentially large audience in Gulu and the local, regional and international interest in the *Ongwen* case.¹¹ The Registry also highlighted Gulu's suitability due to its proximity to the victims and affected communities but noted the challenges of ensuring the Court's independence and protecting its image.¹²
6. No challenges to cooperation were reported by the Registry, although the necessary legal arrangements would need to be discussed with Uganda.¹³
7. Finally, the Registry estimated that the costs of holding the hearing away from The Hague would be between €154 014 and €164 064, excluding the costs of transporting the accused.¹⁴

b. Recommendation

8. On 10 September 2015, after receiving the above submissions, the Chamber recommended to the Presidency, pursuant to rule 100(2) of the Rules, that holding the confirmation of charges hearing in Uganda would be desirable and in the interests of justice and improve the Court's perception in Africa.¹⁵ The Chamber viewed Gulu as the best location because of its proximity to the location of the alleged crimes and the

⁸ *Id.* at paras. 23 and 27-29.

⁹ *Id.* at paras. 17-19.

¹⁰ *Id.* at paras. 36-39.

¹¹ *Id.* at paras. 40-48.

¹² *Id.* at paras. 44 and 48.

¹³ *Id.* at paras. 4 and 32-35.

¹⁴ *Id.* at para. 53.

¹⁵ Recommendation, *supra* note 1, at paras. 4-5 and p. 5.

opportunity for outreach with affected communities.¹⁶

9. The Chamber submitted that the confirmation of charges hearing is ideal for the above purposes as it is short, self-contained and discrete, lasting three to no more than five working days.¹⁷
10. The Chamber noted that Uganda had expressed its full support and had offered logistical and security support.¹⁸ Furthermore, the Chamber considered the estimated costs of organising the hearing in Uganda not to be disproportionate, noting in particular that more than 85% of the estimated costs would constitute the fixed minimum costs of holding proceedings away from the seat of the Court at any time.¹⁹
11. However, the Chamber also noted some issues raised by the Registry which may affect the feasibility of holding the proceedings in Uganda, including those related to the timing of the parliamentary and presidential elections.²⁰

e. Registry's Updated Assessment

12. On 21 October 2015, in response to an order of the Presidency requesting specific further information,²¹ the Registry filed an updated assessment on holding the confirmation of charges hearing in Uganda ("updated assessment") addressing: the position of Uganda, the political and security situation, co-operation in respect of legal arrangements, the impact on the Court's resources and costs.²²
13. The Registry noted that Uganda had submitted a *note verbale* dated 8 October 2015 in which it referred to the upcoming electoral process and advised "that the risks of conducting the hearing in Uganda outweigh the possible benefits" and proposed that the hearing be deferred.²³ Accordingly, the Registry submitted that it would not be

¹⁶ *Id.* at para. 5.

¹⁷ *Id.* at paras. 4 and 8.

¹⁸ *Id.* at para. 4.

¹⁹ *Id.*

²⁰ *Id.* at paras. 6-7.

²¹ Order seeking further information with respect to the recommendation to the Presidency to hold the confirmation of charges hearing in the Republic of Uganda, 1 October 2015, ICC-02/04-01/15-308-Conf.

²² Registry's Updated Assessment on the Possibility of Holding the Confirmation of Charges Hearing in the Republic of Uganda, in compliance with the Order ICC-02/04-01/15-308-Conf, ICC-02/04-01/15-324-Conf ("updated assessment").

²³ *Id.* at para. 5; ICC-02/04-01/15-324-Conf-AnxI, p. 2.

advisable to hold the hearing in Uganda in January 2016.²⁴

14. The Registry reiterated concerns in its preliminary assessment that political tensions would intensify closer to the elections, particularly around the scheduled hearing date.²⁵
15. The Registry reported that, in light of Uganda's proposal to defer the hearing, no negotiations on any necessary legal arrangements had taken place.²⁶
16. The Registry further submitted that holding the hearing in Uganda as scheduled would significantly impact the Court's resources, particularly as it would take place during the Court's move to its permanent premises.²⁷
17. Finally, the Registry provided a revised estimate of the costs of holding the hearing in Uganda of between €12 800 and €415 800, which would include the costs of transportation of the accused and various equipment.²⁸

II. APPLICABLE LAW AND DETERMINATION BY THE PRESIDENCY

18. The Presidency notes paragraphs 1 and 3 of Article 3 and article 62 of the Rome Statute ("Statute") as well as rule 100 of the Rules.
19. In deciding whether to move the place of the proceedings, the Presidency shall carefully consider whether such move is desirable and in the interests of justice. In making such determination, it will take into account:
 - a. the recommendation of the Chamber;
 - b. the views of the parties, participants and Registry; and
 - c. any relevant views of a State or international organisation.²⁹

²⁴ Updated assessment, *supra* note 22, at para. 6.

²⁵ *Id.* at paras. 7-10.

²⁶ *Id.* at para. 23.

²⁷ *Id.* at para. 27.

²⁸ *Id.* at paras. 25-26.

²⁹ See also Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, 26 August 2013, ICC-01/09-01/11-875-Anx, para. 11; Decision on the recommendation to the Presidency on holding part of the trial in the State concerned, 15 June 2015, ICC-01/04-02/06-645-Red, para. 17.

20. The Presidency shall also consider the following factors:

- a. security issues;
- b. the potential impact upon victims and witnesses;
- c. the length and purpose of the proceedings to be held away from the seat of the Court;
- d. the potential impact on the perception of the Court;
- e. the potential impact on other proceedings before the Court; and
- f. the costs of holding proceedings outside The Hague.³⁰

21. The Presidency first notes the excellent co-operation of Uganda in assisting the Registry with the preparation of its preliminary and final assessments.

22. The Presidency notes that there would be a number of benefits to holding the confirmation of charges hearing in Uganda. In principle, it would contribute to a better perception of the Court and bring the proceedings closer to the affected communities, particularly if such proceedings were held in Gulu, rather than Kampala.³¹ The Presidency also notes the Registry's belief that the inevitable increase in the risk to victims and witnesses during the proceedings is manageable.³² The Presidency further agrees with the Chamber's view that the limited nature of the confirmation of charges hearing is ideal for the purpose of *in situ* proceedings.³³

23. Turning to costs, the Presidency notes that the revised estimated costs in the Registry's updated assessment, although reflecting some cost savings, include significant additional costs for the transportation of the accused and various equipment. These costs were not included in the preliminary assessment on the basis of which the Chamber found the cost of a hearing in Uganda not to be disproportionate. The Presidency considers that it is unnecessary to assess whether the revised cost assessment is disproportionate to the potential benefits of holding the confirmation hearing *in situ* in view of the overriding concerns set out below.

24. The Presidency notes particularly the possibility, expressed by Uganda itself in its *note verbale* dated 8 October 2015, that political tensions may increase during the

³⁰ ICC-01/09-01/11-875-Anx, *supra* note 29, para. 12; ICC-01/04-02/06-645-Red, *supra* note 29, para. 18.

³¹ Recommendation, *supra* note 1, at paras. 4 and 8.

³² Preliminary assessment, *supra* note 4, at paras. 36-39.

³³ Recommendation, *supra* note 1, at paras. 4 and 8.

electoral period, especially during January 2016,³⁴ which may have an adverse impact on the Court, as expressed by the Registry in its assessments.³⁵

25. Further, the Presidency's above finding has also been informed by operational limitations in The Hague, particularly concerns expressed by the Registry that holding proceedings would significantly impact the Court's resources during the Court's move to its permanent premises.³⁶

26. The Presidency thus finds that the potential benefits of holding the confirmation hearing in Uganda in January 2016 are outweighed by the significant risks.

III. CONCLUSION

27. In light of the foregoing, the confirmation of charges hearing in the *Ongwen* case shall be held at the seat of the Court at The Hague.

Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
President

Dated this 28 October 2015

At The Hague, The Netherlands

³⁴ Updated assessment, *supra* note 22, at para. 5; ICC-02/04-01/15-324-Conf-AnxI, p. 2.

³⁵ Preliminary assessment, *supra* note 4, at paras. 4, 7-9, 11 and 15-16; Updated assessment, *supra* note 22, at paras. 7-10.

³⁶ Updated assessment, *supra* note 22, at para. 27.