

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **25 November 2020**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

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

PUBLIC

**Public Redacted Version of “Defence Request to Reschedule the Delivery of the Article
74(5) Judgment”, filed on 25 November 2020**

Source: Defence for Dominic Ongwen

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

James Stewart, Deputy Prosecutor

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Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Other**

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') respectfully requests Trial Chamber IX ('Chamber') to reschedule the date of its delivery of the judgment pursuant to Article 74(5) of the Rome Statute ('Judgment').¹ The Defence avers that the Chamber's Judgment should be moved to the end of the month on 29 January 2021.
2. The Defence suggests that a later Judgment would be in the best interests of all parties and participants for the following reasons:
 - a. It would allow for the Registry to disseminate timely information in an appropriate manner to the people of Northern Uganda about the Judgment;
 - b. It would negate any effect the Judgment may have on the Ugandan Elections scheduled for 14 January 2021; and
 - c. It would not disenfranchise persons on the Defence, Prosecution, Victims or Registry who must vote in person in Uganda in the 14 January 2021 Ugandan Elections.
3. Furthermore, several members of the Defence are in the high-risk category for COVID-19. While they wish to attend the Judgment in person, travelling from one high-risk region to another high-risk region is unadvisable. The Defence respectfully requests that a secure video-link link be made so Co-Counsels Taku and Lyons may attend the hearing virtually.

II. CONFIDENTIALITY LEVEL

4. Pursuant to Regulation 23 *bis*(1) of the Regulations of the Court ('RoC'), the Defence files this request as confidential. The Defence discusses issues about [REDACTED]. A public redacted version is filed contemporaneously, and a lesser public redacted version shall be filed [REDACTED].

¹ See *Ongwen*, Order Scheduling the Delivery of the Judgment, [ICC-02/04-01/15-1754](#).

III. SUBMISSIONS ON RESCHEDULING THE JUDGMENT

A. **The timing of the Judgment significantly inhibits the Registry from disseminating timely information in a prompt fashion to the people of Northern Uganda.**

5. The Defence reasons that the current Judgment day will significantly restrain the ICC Registry from being able to disseminate accurate information to the affected communities. The Registry shall face several problems disseminating information to the affected communities because the Ugandan Elections take place two days after the Judgment. Just before the Ugandan Elections, radio stations – which are the largest and most reliable manner of disseminating information quickly in Northern Uganda – shall be covering the final campaign push of the vying electoral candidates. These same campaigning candidates are also the persons who Registry officials should be speaking to in order to apprise the communities of the Judgment. Furthermore, [REDACTED]. These issues significantly hinder, if not halt, any possible outreach programme immediately following the Judgment.

i. The ICC Registry will not be able to disseminate timely information about the Judgment on and immediately after 12 January 2021.

6. As the Ugandan Elections draw near, candidates vying for political positions are increasingly using the local radio stations to broadcast their platforms. This is even more present now with travel restrictions, limitations on public gatherings and curfews.² The ability of the Registry to get reasonable broadcast times to inform the affected persons about the Judgment shall be limited.
7. Very few homes in these areas have a television, but nearly all have personal AM/FM radios and/or radio receivers *via* their mobile phones. As stated above, local radio stations are the main conduit for information to the affected areas of Northern Uganda. Radio stations like Mega FM, Radio Rupiny, Radio Unity, and others are the lifeblood of up-to-date information for persons outside Gulu, Lira and Kitgum. This has become even more self-evident with the imposition of safety curfews, limitations on public gatherings and travel restrictions related to the current SARS-CoV-2 pandemic.
8. Restrictions on public gatherings have further complicated this issue. The previous outreach meetings, where the Registry convenes large groups of people for question and answer sessions, are not a current viable option. While people may want to congregate to hear this

² Currently, Uganda has a 21h00 to 06h00 curfew in effect and public gatherings are restricted to less than 200 persons.

information, it would be against public safety and the ICC public image to have such meetings. While these outreach meetings are not viable, at the minimum, Registry personnel could still convene meetings with local officials to give them proper information for their communities. Again, as they shall be campaigning, this is not a viable option until after the Ugandan Elections.

9. The only practicable and safe manner for the Registry, not to mention the parties and participants, is to broadcast the information over FM and AM radio. This would involve Registry, and possibly parties and participants later, attending talk shows to explain what is going on and answering the questions of callers. It is practicable, safer and offers the only manageable way to inform the affected persons in a timely fashion of their questions and concerns.
10. Radio stations of Northern Uganda are also the lifeblood of current elections information. Besides the contested position in the Presidential Election, Uganda has 440 constituencies, all of which have races for local government and Members of Parliament. While television stations shall be covering the key locations for the elections, radio stations are the workhorse of information dissemination. Radio stations shall be broadcasting up-to-date election information about hotly contested Parliamentary, Mayoral and Councillor platforms and positions.
11. On Election Day, even with current restrictions, radio stations shall send correspondents to polling areas to question those who voted and to broadcast up-to-date information on the elections. Few, if any, persons shall be available on Election Day and those days surrounding it. There shall be little to no way for the Registry to conduct outreach meetings to answer the questions and concerns of the affected persons. There exists an unfortunate and real chance that the Judgment shall be missed by many, especially those in the affected areas who will undoubtedly be listening to the radio about the Ugandan Elections.
12. For the abovementioned reasons, the Defence respectfully requests the Chamber to reschedule the Judgment day to 29 January 2021 so timely and correct information can reach the affected areas and that questions and concerns can be answered quickly by the Registry in the most effective manner.

ii. The ICC Registry will not be able to travel to Northern Uganda to conduct outreach programmes on the local radio stations and community leaders on and immediately after 12 January 2021.

13. [REDACTED].³ With the current problems already taking place,⁴ [REDACTED]. Assuming this happens, the Registry shall not be able to inform the affected areas of the Judgment in an effective and timely manner if the Judgment is delivered on 12 January 2021.
14. Since the announcements of the NUP⁵ presidential candidate, Robert Kyagulanyi Ssentamu, commonly known as Bobi Wine, has been arrested twice, the latter being in mid-November 2020.⁶ Crowds violating the 200-person limit have been tear-gassed by the Ugandan security forces. The same happened in Gulu to Presidential candidate Patrick Amuriat, something which [REDACTED].⁷ These actions by the uniformed services are eerily like those during the 2016 elections.⁸
15. With the Ugandan Elections two days after the Judgment day, tensions will be high. Persons will be glued to their radios and newspapers, but not because of the Judgment. As history has shown, these issues developing now about elections shall, more than likely, only increase in frequency. After the 2016 presidential election, one candidate was arrested and charged with treason.⁹ The NUP candidate, Mr Ssentamu, was erroneously charged with treason in 2018 as a form of intimidation by the ruling NRM party.¹⁰ While many of these problems are related to SARS-CoV-2/COVID-19 restrictions, President Museveni is embracing any tactic possible to intimidate candidates and their voters.
16. ICC JTAG does not have a dog in this fight; its responsibility is to keep people safe. [REDACTED]. This shall significantly restrict Registry personnel from travelling to Northern Uganda to disseminate information to the affected communities in the north about the Judgment in a timely fashion. By using a date later in the month, such as 29 January 2021,

³ [REDACTED].

⁴ [REDACTED].

⁵ NUP is an opposition party to the current incumbent party, NRM.

⁶ For example, Al Jazeera reported on the second arrest during the middle of November 2020. <https://www.youtube.com/watch?v=iqON2dJwqHE>.

⁷ See New York Times, [Deadly Protests Erupt in Uganda After Arrest of 2 Opposition Figures](#), 19 November 2020 (last accessed on 24 November 2020) and The Independent, [Patrick Amuriat Arrested in Gulu city](#), 18 November 2020 (accessed on 24 November 2020).

⁸ For example see New York Times, [Kizza Besigye, Main Opposition Candidate in Uganda, Is Arrested Again](#), 19 February 2016 (accessed on 24 November 2020).

⁹ See Al Jazeera, [Uganda: Opposition's Kizza Besigye charged with treason](#), 14 May 2016 (accessed on 25 November 2020)

¹⁰ See BBC, [Uganda's Bobi Wine: Pop star MP charged with treason](#), 23 August 2018 (accessed on 25 November 2020).

there exists a high probability that [REDACTED], and the problems noted directly above shall have ended.

17. For the reason written above, the Defence respectfully requests the Chamber to reschedule Judgment day to 29 January 2021.

B. The timing of the Judgment may unduly influence the Ugandan Elections.

18. People in Northern Uganda want the Judgment, but they also want a free and fair election without outside influences. This is what any population under a proper democracy wants. In the case of Uganda, while many will say that something went wrong during the election,¹¹ the ICC should have no possible influence upon the electorate.
19. The alleged crime locations cover four different constituencies in Uganda. People in these areas have an interest in knowing the outcome, along with the incumbents and challengers. At the local level, persons interact with their Local Councillors and, on small occasions, their Member of Parliament.
20. [REDACTED].
21. [REDACTED].¹² [REDACTED]. As such, the Defence respectfully requests the Judgment day to be moved to 29 January 2021.

C. The timing of the Judgment will disenfranchise Defence members and may disenfranchise other parties and participants.

22. As it sits, the Ugandan Election is two days after the scheduled Judgment day. If it proceeds as planned, Ugandans present in The Hague for the Judgment may not be able to get to Uganda in time to vote on 14 January 2021. Other than Counsel Ayena Odongo, several other Defence Team members are Ugandan citizens. One Counsel for the Legal Representatives for Victims is Ugandan, and the Prosecution has several. The interpreters are Ugandan. Counsel and Defence Team members must remain in The Hague several days after the Judgment. Having the Judgment on 12 January 2021 would disenfranchise (accidentally) Ugandans in The Hague who are present for the Judgment.

¹¹ See generally European Union, [European Union Election Observation Mission Final Report: Uganda Presidential, Parliamentary and Local Council Elections – 18 February 2016](#), April 2016, (accessed on 25 November 2020).

¹² [REDACTED].

23. Uganda requires in-person voting. There are no absentee ballots for citizens for situations explained here. The persons listed above, if they wish to vote, will have to be in their constituencies on 14 January 2021. Holding the Judgment on 12 January 2021 will incidentally disenfranchise some, if not all, Ugandans who need to be present in The Hague for the Judgment.
24. Uganda requires a negative PCR for SARS-CoV-2 within 72 hours of entry into the country. Uganda also requires a negative PCR test within 120 hours of leaving the country *via* Entebbe Airport. While there is no mandatory quarantine period now, there was a required quarantine in March 2020 before Entebbe Airport closed. Who is to say that the government will not reinstate a quarantine period if Uganda see an uptick in SARS-CoV-2 cases? Any quarantine period by the Government of Uganda would bar all persons from voting.
25. The Netherlands recommends a 10-day quarantine period upon arrival. The International Criminal Court *requires* a 10-day quarantine period before entering the ICC Permanent Premise.
26. To allow for the Ugandan citizens working on this case to vote, the Defence respectfully requests the Chamber to reconsider the Judgment day and move it to 29 January 2021. With the later date, it allows for persons to vote, get a PCR test to leave Uganda, and then remain in quarantine in The Hague for 10 days before entering the ICC Permanent Premises without having to rush.¹³ The later date also ensures that the Judgment is not on NRM National Liberation Day (26 January 2021), [REDACTED].
27. For the abovementioned reasons in Sections III(A)-(C), the Defence respectfully requests the Judgment day be rescheduled to 29 January 2021.

IV. SUBMISSIONS ON REQUESTING A SECURE WEBEX VIDEO-LINK FOR CO-COUNSELS

28. Defence Counsel and Co-Counselors are among the high-risk categories for COVID-19. Counselors are senior citizens and have different increased risk factors based on medical conditions.

¹³ While the PCR test confirms that on that day, there were no detectable level of SARS-CoV-2 in said person, it could be during the latency period before the viral loads are detectable. Therefore, a 10-day period after entering the Netherlands is the best policy/practice.

29. Co-Counsels are recommended not to fly to other high-risk areas. While they understand that this will not change the Judgment day, the Defence respectfully asks the Chamber to order a secure video-link from inside the courtroom to their personal computers. The Defence would normally make such a request to the Registry, but as it deals with an in-court connection, such connection would require the Chamber's consent.
30. As Co-Counsels are unable to fly, the Defence respectfully asks that a secure video-link connection be made for the hearing for Co-Counsel Taku and Lyons.

V. RELIEF

31. For the reasons described above, the Defence respectfully requests Trial Chamber IX to:
- a. Rescheduled the date for the delivery of the Article 74(5) judgment from 12 January 2021 to 29 January 2021 and
 - b. Order a secure video-link connection from inside the courtroom for Co-Counsels Taku and Lyons to participate remotely.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 25th day of November, 2020

At Lira, Uganda