

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/04-01/15  
Date: 27 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**  
**Victims' request for postponement of the delivery of the judgment**

**Source:** Legal Representatives of Victims

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

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## I. INTRODUCTION

1. The Legal Representatives of Victims (“LRVs”) hereby request the Trial Chamber to postpone the delivery of the judgment date, currently scheduled for 12 January 2021<sup>1</sup> to 4 February 2021.
2. Cognizant of the fact that the current date of the delivery of the judgment set by the Trial Chamber is in line with the ten-month deadline provided for in the Chambers Practice Manual 2019,<sup>2</sup> the LRVs request an exceptional extension of this deadline due to the general elections in Uganda, which are scheduled to take place from 11 January to 3 February 2021, including the presidential election on 14 January 2021.<sup>3</sup>
3. Under these circumstances the requested postponement is necessary to safeguard the safety and security of participating victims during the electoral process, allow for community participation and outreach in relation to the delivery of the judgment, as well as to ensure its adequate and timely dissemination in Uganda.

## II. PROCEDURAL HISTORY

4. Investigations into the situation in Uganda were opened in July 2004.
5. On 8 July 2005, Pre-Trial Chamber II issued a warrant of arrest for five leaders of the LRA, including Dominic Ongwen.<sup>4</sup>
6. On 26 January 2015, Mr Ongwen made his initial appearance before the Court.<sup>5</sup>

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<sup>1</sup> Order Scheduling the Delivery of the Judgment, [ICC-02/04-01/15-1754](#), 12 November 2020 (“Order Scheduling the Delivery of the Judgment”).

<sup>2</sup> Chamber Practice Manual, 2019, para. 87, available at: <https://www.icc-cpi.int/iccdocs/other/191129-chamber-manual-eng.pdf>, accessed 20.11.2020.

<sup>3</sup> The Republic of Uganda, The Electoral Commission, Press Release, Polling dates for Parliamentary and Local Government Council Elections, 2021, 4 November 2020, Ref: Adm 72/01, available at: <https://www.ec.or.ug/sites/default/files/docs/Polling%20Dates%20for%202021%20General%20Election%202020.pdf>, accessed 20.11.2020 (“Press Release of the Electoral Commission”).

<sup>4</sup> Warrant of arrest for Dominic Ongwen, [ICC-02/04-01/15-6](#), 8 July 2005.

<sup>5</sup> ICC-02/04-01/15-T-4-ENG ET WT 26-01-2015 1-18 SZ PT.

7. On 23 March 2016, Pre-Trial Chamber II confirmed charges brought by the Prosecutor against Dominic Ongwen<sup>6</sup> and his trial commenced on 6 December 2016.<sup>7</sup>
8. On 12 December 2019, the Presiding Judge of Trial Chamber IX declared the closure of the submission of evidence in the case.<sup>8</sup> Parties and participants filed their closing briefs on 24 February 2020<sup>9</sup> and the closing statements took place from 10 to 12 March 2020.<sup>10</sup>
9. On 12 November 2020, the Single Judge of Trial Chamber IX set the date for the delivery of the judgment in the case against Mr Ongwen for 12 January 2021.<sup>11</sup>
10. On 25 November 2020, the Defence for Dominic Ongwen requested the Trial Chamber to reschedule the date of the delivery of the judgment to 29 January 2020 (“Defence Request”).<sup>12</sup>

### III. SUBMISSIONS

11. The 2019 Chambers Practice Manual states that a ‘written decision under Article 74 of the Statute shall be delivered within 10 months from the date the closing statements end.’<sup>13</sup> The LRVs are aware of this deadline and commend its general

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<sup>6</sup> Pre Trial Chamber II, Decision on the confirmation of charges against Dominic Ongwen, [ICC-02/04-01/15-422-Red](#), 23 March 2016.

<sup>7</sup> ICC-02/04-01/15-T-26-ENG ET WT 06-12-2016 1-89 SZ T.

<sup>8</sup> Declaration on the Closure of the Submission of Evidence, [ICC-02/04-01/15-1699](#), 12 December 2019.

<sup>9</sup> Public Redacted Version of “Prosecution Closing Brief”, [ICC-02/04-01/15-1719-Red](#), 24 February 2020; Public Redacted Version of ‘Corrected Version of “Defence Closing Brief” filed on 24 February 2020’, [ICC-02/04-01/15-1722-Corr-Red](#), 13 March 2020; Public redacted version of Common Legal Representative of Victims’ Closing Brief (ICC-02/04-01/15-1720-Conf), [ICC-02/04-01/15-1720-Red](#), 28 February 2020; Public Redacted Version of the ‘Corrected version of the “Victims’ Closing Brief”’ filed on 24 February 2020, ICC-02/04-01/15-1721-Conf, [ICC-02/04-01/15-1721-Corr-Red](#), 31 March 2020.

<sup>10</sup> ICC-02/04-01/15-T-256-Red-ENG WT 10-03-2020 1/84 SZ T; ICC-02/04-01/15-T-257-ENG ET WT 11-03-2020 1-54 NB T; ICC-02/04-01/15-T-258-Red-ENG WT 12-03-2020 1-93 NB T.

<sup>11</sup> Order Scheduling the Delivery of the Judgment.

<sup>12</sup> Defence Request to Reschedule the Delivery of the Article 74(5) Judgment, ICC-02/04-01/15-1755-Red, 25 November 2020; Public Redacted Version of “Defence Request to Reschedule the Delivery of the Article 74(5) Judgment” filed on 25 November 2020, [ICC-02/04-01/15-1755-Red 25-11-2020](#), 25 November 2020.

<sup>13</sup> Chambers Practice Manual, fourth edition, 2019, para. 87, available at: <https://www.icc-cpi.int/iccdocs/other/191129-chamber-manual-eng.pdf>, accessed 20.11.2020.

purpose to establish an expeditious timeframe for the issuance of a judicial decision at the conclusion of trial.<sup>14</sup>

12. However, the LRVs submit that due to the upcoming general elections in Uganda, this deadline should be applied with a degree of flexibility. As explained below, a strict application of the ten-month deadline may have negative consequences in relation to the reception of the Court's judgment amongst affected the communities.
13. Closing statements in the trial of Mr. Ongwen concluded on 12 March 2021. Therefore, the ten-month deadline prescribed for in para. 87 of the Chambers Practice Manual falls on 12 January 2021. This date coincides with the commencement of the general elections in Uganda.
14. According to the information available on the website of the Electoral Commission in Uganda, polling will take place between 11 January and 3 February 2021.<sup>15</sup> Apart from the presidential elections, which are scheduled for 14 January 2021, Ugandans will also vote to choose their representatives to Parliament and to local authorities.
15. The polling commences with the elections of Councillors for Older Persons, Councillors for Persons with Disabilities, and Youth Representatives to the Sub County/Town/Municipal Division, and to the Municipality/City Division, which are scheduled for 11 and 12 January 2021.<sup>16</sup>
16. Numerous victims represented by the LRVs will take part in these elections. For those preoccupied with the local and national elections, it will be extremely difficult to follow outreach activities in relation to the delivery of the judgment on 12 January 2021.

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<sup>14</sup> Chambers Practice Manual, fourth edition, 2019, Introduction to the fourth edition of the Manual, pp. i-ii, available at: <https://www.icc-cpi.int/iccdocs/other/191129-chamber-manual-eng.pdf>, accessed 20.11.2020.

<sup>15</sup> Press Release of the Electoral Commission.

<sup>16</sup> The Electoral Commission, <https://www.ec.or.ug/polling-dates-2021-general-elections>

17. In addition, the security situation during the election period in Uganda can be volatile.<sup>17</sup> Recent events demonstrate that insecurity and violence are highly probable during the upcoming elections.
18. Furthermore, the special limitations and procedures put in place in relation to the Covid-19 pandemic, including a ban on public rallies introduced by the Electoral Commission,<sup>18</sup> has resulted in large numbers of enforcement officers tasked with ensuring compliance with these measures.<sup>19</sup>
19. The events of the week of 15 November 2020 were characterised by the violent suppression of protests in Kampala and several parts of the country, sparked off by the arrest of one of the presidential candidates. This demonstrates the volatile nature of the current electoral process in Uganda.
20. Indeed, these events have marred the upcoming elections – at least 45 persons have been killed, while others have been injured, and hundreds of people have been arrested.<sup>20</sup> Last week in Gulu, another presidential candidate was arrested, leading to unrest that resulted in the police to using teargas and firing live bullets at the protesting crowds.<sup>21</sup>
21. Rule 144 of the Rules of Procedure and Evidence specifies that that the delivery of the judgment in a case should be done in the presence of victims or the legal representatives of victims participating in the proceedings. However, the delivery of the judgment on 12 January 2021 would be problematic and would fail to take into account contextual developments in the situation country.

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<sup>17</sup> <https://media.africaportal.org/documents/Massive-Voter-Education-as-a-Preventive-Tool-to-2021-Election-Violence-in-Uganda-1.pdf>, <https://www.independent.co.ug/on-ugandas-election-violence/>, accessed 20.11.2020;

<sup>18</sup> <https://www.newvision.co.ug/news/1520972/ec-bans-campaign-rallies-2021-polls>, accessed 20.11.2020.

<sup>19</sup> Human Rights Watch, Uganda: Authorities Weaponize Covid-19 for Repression, 20 November 2020, available at: <https://www.hrw.org/news/2020/11/20/uganda-authorities-weaponize-covid-19-repression>, accessed 23.11.2020.

<sup>20</sup> <https://edition.cnn.com/2020/11/23/africa/ugandan-protest-death-toll-intl/index.html>. Accessed 24.11.2020.

<sup>21</sup> <https://www.independent.co.ug/patrick-amuriat-arrested-in-gulu-city/>, accessed 23.11.2020.

22. Although victims have an interest in ensuring the expeditiousness of the proceedings, they are also concerned about their personal safety and security during the electoral period should the Chamber proceed to deliver its judgment as scheduled, in a period likely to be characterised by political instability, violence and insecurity.
23. Furthermore, the judgment could be potentially used by politicians on both sides of the political divide for their own advantage to the detriment of the victims and the Court.
24. Furthermore, complex court proceedings at the international level often mean that certain parts of the judgment will be unclear, disappointing or not favourable to some individuals or groups in Uganda. A number of the victims represented by the LRVs reside in close proximity to each other and often follow the key phases of the proceeding in groups. The LRVs are concerned that outcome of the judgment decision may evoke public expressions of jubilation or despair, which, in an intense political environment may be misinterpreted by the local security forces as being politically motivated and thereby inviting the use of forceful countermeasures. This opinion has been shared by number of our victims including a/06922/15; a/01001/16; a/000454/16, and a/05451/15.
25. For example, victims a/00742/16, a/06922/15, a/05451/15 informed the LRVs that postponing the election date by two weeks would ensure that participating victims would not be subjected to any hostilities that may result from the volatile situation in the region and country at large.
26. One of the LRVs, who is currently on mission and meeting with victims in the field, has been informed of concerns from a number of victims with regards to the delivery of the judgement so close to the polling date. One of them stated:
- “I feel scared just to imagine that judgment will be delivered just a day before the presidential polling date yet basing on the previous elections in the country soldiers are heavily deployed in the villages to suppress any sort of upcoming excitement which may be difficult to control.”

27. Subsequent to the delivery of the judgment, the LRVs and stakeholders in the Court will also need to inform victims about the key conclusions contained within judgement and answer any questions that may result through meetings and outreach programmes. These meetings will be taking place within the context of the Covid-19 pandemic and the relevant restrictions pertaining to public gatherings.
28. The difficulty of this process will be further compounded in the event of any unrest resulting from the electoral process. Moreover, any unrest at the time of elections might be met with opposition from the local authorities' due to the security situation in the country.
29. Dominic Ongwen remains the only one of the initial five LRA commanders sought by the Court who has been tried for his alleged participation in and perpetration of crimes in northern Uganda. Many in Uganda, regardless of their views on the guilt or innocence of Mr. Ongwen, have been eagerly awaiting the judgment in this case since he first appeared before the Court in January 2015. Communities affected by the conflict in northern Uganda, including participating victims, deserve to have the possibility to participate in this most significant phase of the case as fully and meaningfully as possible, without worrying about their security.
30. In light of the past six years of proceedings in the case of Mr. Ongwen, the requested – minor – postponement of the delivery of the judgment would not constitute a substantial delay detrimental to the expeditiousness of the proceedings or the rights of the Accused. On the contrary, such an exceptional postponement would benefit both the parties and participants to the proceedings as it would enable maximum community participation and outreach in relation to the judgment which are necessary to ensure the judgment's recognition and legitimacy.



31. Furthermore, the Defence are also in favour of a similar postponement on grounds set out in the Defence Request.<sup>22</sup> The LRVs support the relief sought by the Defence. However, the LRVs believe that the judgment should be delivered at the end of the electoral period, that is, on 4 February 2021.

#### IV. CONCLUSION AND RELIEF SOUGHT

32. The LRVs therefore request the Trial Chamber to postpone the delivery of the judgment date, currently scheduled for 12 January 2021, to 4 February 2021.

33. Additionally, the LRVs support the Defence Request concerning their application for a secure video-link connection for counsels who may not be able to attend the hearing for the delivery of the judgment in person in light of the current circumstances resulting out of the Covid-19 pandemic.<sup>23</sup>

Respectfully submitted,



Joseph A. Manoba



Francisco Cox

Dated this 27<sup>th</sup> day of November 2020  
At Gulu, Uganda and at Santiago, Chile

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<sup>22</sup> ICC-02/04-01/15-1755-Red 25-11-2020, para 27 and 31.

<sup>23</sup> Id, para 28 – 31.