

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 February 2021

APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Piotr Hofmański
Judge Solomy Balungi Bossa

SITUATION IN UGANDA

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

Confidential

Victims' response to "Defence Request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment"

Source: Legal Representatives of Victims

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

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**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Legal Representatives for Victims (“LRVs”), in line with the Order from the Appeals Chamber¹ submit their response to the ‘Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment’ (the “Request”).²
2. The Defence for Dominic Ongwen (the “Defence”) requests a suspension of the due date of the notification of the Defence’s intent to appeal the Trial Chamber’s judgment pursuant to article 74(5) of the Rome Statute (the “Judgment”), based on several factors which include, *inter alia*, the fact that Dominic Ongwen has not received an Acholi translation of the Judgment.
3. The LRVs recognize that Dominic Ongwen has the right to receive the Judgement translated into the language that he fully understands or speaks, if it is necessary to meet the requirements of fairness. However, the LRVs submit that the extent of the Request – to suspend due date of the Defence’s notification of appeal until an Acholi translation of the Trial Chamber judgment is provided³ – has not been justified by the Defence, be it by the requirements of fairness or otherwise. Should the Appeals Chamber grant the Request, the extension should be moderate and ensure expeditiousness of proceedings.
4. At the same time, the LRVs submit that the Defence’s assertions concerning Dominic Ongwen’s alleged mental disability have not been substantiated by the Defence and remain unfounded.

¹ Appeals Chamber, Order concerning the time limit for responses to the ‘Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment’, ICC-02/04-01/15-1769, 12 February 2021.

² Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgement, ICC-02/04-01/15-1764-Conf, 8 February 2021.

³ Ibid., para. 44.

II. CONFIDENTIALITY

5. Pursuant to Regulation 23*bis* (2), the LRVs submit this response as confidential as it is made in response to a confidential filing.

III. PROCEDURAL HISTORY

6. On 4 February 2021, Trial Chamber IX declared Dominic Ongwen guilty of 62 out of 70 charges.⁴ On the same day, Trial Chamber IX issued the Decision scheduling a hearing on sentence and setting the related procedural calendar.⁵
7. On 8 February 2021, the Defence submitted the Request and on 12 February 2021, the Appeals Chamber ordered prosecution and participants to respond to the Defence request.⁶

IV. SUBMISSIONS

8. The Defence argues in its submissions that good cause exists for the suspension of the due date to submit its notice of appeal against the Judgement until an Acholi translation of the Judgement is provided.⁷ According to the Defence this good cause exists owing to three reasons: "1) Mr Ongwen has not received a translation of the Judgment in a language that he understands and speaks; 2) the Judgment is exceptionally long, the appeal is complex and the Defence must prepare for concurrent sentencing proceedings and 3) Mr Ongwen can only be able to fully and meaningfully participate in his appeal with an Acholi translation of the Judgment because Mr Ongwen is a special needs person with mental disabilities, and requires adequate time and resources to communicate with and instruct his Counsel".⁸

⁴ Trial Judgment, Trial Chamber IX, ICC-02/04-01/15-1762-Conf, 04 February 2021.

⁵ Decision scheduling a hearing on sentence and setting the related procedural calendar, ICC-02/04-01/15-1763, 4 February 2021.

⁶ Order concerning the time limit for responses to the 'Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment', ICC-02/04-01/15-1769, 12 February 2021.

⁷ The Request, para. 27.

⁸ Ibid.

9. At the outset, the LRVs strongly oppose the Defence's claim that Mr Ongwen is "a special needs person with mental disabilities". This claim has not been substantiated by the Defence at trial and it disregards Trial Chamber IX's findings on the matter.⁹ Neither does the Defence present evidence to support its assertion that the mental challenges affecting Mr Ongwen at present,¹⁰ have rendered him mentally disabled and a person of special needs.
10. The LRVs recognise that under rule 144(2), the accused has the right to receive translation of the Judgment in the language that he fully understands and speaks. This right, however, is not absolute. The translation is necessary if requirements of fairness so require.
11. The LRVs submit that the Defence has not provided any reasons explaining why Dominic Ongwen needs to be provided with a full translation of the judgement in order to prepare for the appeal. Dominic Ongwen's counsel speaks both English and Acholi. Moreover, it is unclear why the Defence has not identified any specific portions of the judgement to the Court's Language Services Section in order to assist Mr Ongwen in understanding the most important parts of judgement on an ongoing basis. There is nothing that prevents the Defence from consulting Mr Ongwen and effectuating his participation in the preparation for appeal proceedings while awaiting for an Acholi translation of the Judgment or portions thereof.
12. The LRVs object also to the Defence unsubstantiated and broad assertion that the appeal is complex. Nothing in the Defence request suggests that the intended appeal is complex or characterised by complex findings of law or fact by the Chamber warranting the suspension of the due date for the Defence's notification of appeal. The exceptional length of the judgement reflects the number of the

⁹ Trial Judgment, paras. 108-109.

¹⁰ The Request, para. 41.

charges and facts of the case, which Dominic Ongwen is well aware of and familiar with.

13. In light of the foregoing, the LRVs do not oppose a moderate extension of the due date of the notification of the Defence's intent to appeal, provided that such an extension is reasonable and does not delay the proceedings excessively.

Respectfully submitted,



Joseph A. Manoba



Francisco Cox

Dated this 16th day of February 2021

At Kampala, Uganda and at Santiago, Chile