



Original: **English**

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

Date: **12 May 2021**

APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Piotr Hofmański
Judge Solomy Balungi Bossa
Judge Reine Alapini-Gansou
Judge Gocha Lordkipanidze

SITUATION IN UGANDA

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

Public

Prosecution Response to the Defence request for a page limit extension for its notice of appeal

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Helen Brady

Counsel for the Defence

Mr Krispus Ayena Odongo
Mr Charles Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution opposes Mr Ongwen's request to extend the page limit of his notice of appeal from 20 to 75 pages ("Request").¹ The number of extra pages sought is excessive (being 3.75 times the page limit allotted under the Regulations of the Court²) and the Defence has not demonstrated that there are exceptional circumstances warranting such an extension. The Prosecution does however agree to a reasonable extension to, say, no more than 28 pages.

2. Regulation 37(2) of the Regulations of the Court ("RoC") provides that the Chamber may extend the page limit in exceptional circumstances. The Defence claims that the extension is justified by the length and complexity of the trial judgment, the number of counts for which Mr Ongwen was convicted and the number of witnesses who testified in the proceedings.³ None of these factors constitute exceptional circumstances in this case warranting an increase of the notice of appeal to 75 pages.

3. *First*, while Chambers have recognised that the complexity of the case and the novelty of issues involved may constitute exceptional circumstances,⁴ these are characteristics that would be common to most appeals filed in this Court and are not *per se* reasons justifying a page extension. Moreover, any page limit extension accounting for these factors must be reasonable.⁵ In this regard, while the Request broadly alleges that the complexity of the trial judgment and the sheer volume of evidence and the number of convictions warrants a page extension, the Request is vague as to the impact of these factors on the formulation of its appeal. The Defence only expressly identifies in broad terms a handful of issues that it will appeal,⁶ but otherwise does not indicate in any concrete terms the scope of the appeal or the number of grounds it intends to raise. Given the magnitude of the extension requested, such concrete information is relevant to ascertaining the existence of exceptional circumstances. In the absence of such information, the 75-page notice of appeal is unjustified. The Prosecution

¹ ICC-02/04-01/15-1821 ("[Request](#)").

² Regulation 37(1) of the Regulations of the Court ("[RoC](#)") provides that the document shall not exceed 20 pages.

³ [Request](#), paras. 1, 10-22.

⁴ ICC-01/04-01/06-177 ("[Lubanga Time and Page Extension Decision](#)"), para. 6; ICC-01/04-01/07-3334 ("[Katanga Page Extension Decision](#)"), para. 7.

⁵ ICC-02/11-01/11-481 ("[Gbagbo Detention Appeal Page Extension Decision](#)"), para. 6; ICC-02/11-01/11-471 ("[Gbagbo Confirmation Adjournment Page Extension Decision](#)"), para. 7.

⁶ [Request](#), paras. 14 (stating that it will appeal issues regarding Mr Ongwen's article 31(1)(a) and (d) defences), 17-18 (stating that it will appeal issues concerning the inconsistencies in the trial judgment regarding witness testimony), 21 (stating that there are appealable issues concerning the novel technological issues raised in the trial judgment), 22 (stating that there was a lack of clarity as to what evidence the Trial Chamber excluded and why).

considers however that a notice of appeal of 28 pages would be reasonable in light of the factors raised by the Defence.

4. *Second*, the mere length of the trial judgment is not a reason for setting a page limit of a notice of appeal that is commensurate in length.⁷ While the judgment of 1077 pages in this case is lengthy compared to prior cases in this Court, far lengthier judgments have been issued in the *ad hoc* tribunals (indeed more than double the length) concerning highly factually complex cases where convicted persons were nonetheless able to file their notices of appeal within reasonable page limits.⁸ These jurisdictions have similar requirements to the ICC as to the content of the notice of appeal, including that it set out the grounds of appeal and alleged errors.⁹ The Defence has not identified any reason why the complexity or novelty of issues in this case is such that it warrants a page extension far greater than those seen in the large and complex cases before the *ad hoc* tribunals.

5. *Third*, the notice of appeal is intended to be a confined document. Parties are only required to set out their grounds of appeal, the errors that allegedly arise from the impugned decision, and how those errors affect the decision;¹⁰ parties are not required to set out their arguments on appeal. The Defence provides no explanation as to why it would need 75 pages to comply with such limited requirements, and this raises a further concern as to the coherence and clarity of the notice of appeal if it is permitted to extend to such length. Moreover, since regulation 57 of the RoC was amended in July 2017 to require parties to stipulate the grounds of appeal and errors alleged, parties in this Court have been able to meet this requirement within the 20-page limit notwithstanding the length of the judgments that

⁷ *Contra* [Request](#), para. 11.

⁸ See e.g. [ICTY](#): In *Karadžić* (IT-95-5/18-T) the trial judgment was 2590 pages long and Karadžić's notice of appeal 16 pages. In *Mladić* (IT-09-92) the trial judgment was 2527 pages long and Mladić's notice of appeal 32 pages. In *Prlić et al.* (IT-04-74) the trial judgment was 2475 pages long and the convicted persons filed their notices of appeal within 23 pages (Čorić), 42 pages (Prlić) and 43 pages (Petković and Stojić). [ECCC](#): The *Case 002/02* trial judgment was 2259 pages long, and convicted persons filed notices of appeal of 66 pages (Khieu Samphan) and 62 pages (Nuon Chea) in length.

⁹ See [ICTY Rules of Procedure and Evidence](#), rule 108 ("The Appellant should also identify the order, decision or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought. The Appeals Chamber may, on good cause being shown by motion, authorise a variation of the grounds of appeal"); [ECCC Internal Rules](#), rule 105(3) ("The notice [of appeal] shall, in respect of each ground of appeal, specify the alleged errors of law invalidating the decision and alleged errors of fact which occasioned a miscarriage of justice").

¹⁰ Regulation 57(e) of the [RoC](#).

they sought to appeal.¹¹ The Request is unpersuasive as to why the Defence would not also be able to comply with the requirements in this case.

CONCLUSION

6. The Prosecution opposes Mr Ongwen's request to extend the page limit of his notice of appeal to 75 pages, but agrees to a reasonable extension of the page limit to no more than 28 pages.



Fatou Bensouda, Prosecutor

Dated this 12th day of May 2021
At The Hague, The Netherlands

¹¹ In *Ntaganda*, the trial judgment was 539 pages long (ICC-01/04-02/06-2359) and the Defence notice of appeal was 15 pages (ICC-01/04-02/06-2396). In *Gbagbo*, the reasons of the Trial Chamber majority in acquitting Mr Laurent Gbagbo and Mr Charles Blé Goudé was 968 pages long (ICC-02/11-01/15-Conf-AnxB) and the Prosecution's notice of appeal was 6 pages (ICC-02/11-01/15-1270-Corr).