

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **24 May 2021**

APPEALS CHAMBER

Before:

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

SITUATION IN UGANDA

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

PUBLIC

Defence Request for an Alteration of the due date for its Notice of Appeal and Document in Support of its Appeal of the Sentence

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**

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I. INTRODUCTION

1. Pursuant to Rule 150 of the Rules of Procedure and Evidence ('Rules'), the Defence for Dominic Ongwen ('Defence') requests a suspension of the due date of the Defence's intent to appeal Trial Chamber IX's *Sentence* ('Sentence') and the document in support of the appeal. The Defence requests that the Appeals Chamber move the due date of the notice of appeal of the Sentence from 7 June 2021 to 28 June 2021 and the due date of the document in support of the appeal from 5 August 2021 to 26 August 2021.
2. The Defence avers that good cause exists to warrant a change in the due date of the Defence's notice of appeal of the Sentence and document in support of the appeal. Good cause exists because 1) Mr Ongwen has not received a translation of the Sentence in a language that he understands and speaks and is unable to meaningfully participate in his appeal and 2) the Defence must prepare for concurrent appellate proceedings.

II. REGULATION 35 TIME LIMIT REQUEST

3. Pursuant to Regulation 35 of the RoC, the Defence requests that the time limit for responses to this request be filed no later than 16h00 CET on 28 May 2021. The Defence avers that this is necessary as the time limit for filing its notice of its intent to appeal is on 7 June 2021.

III. PROCEDURAL HISTORY

4. On 4 February 2021, Trial Chamber IX passed judgment on Dominic Ongwen, convicting him of 61 counts of crimes against humanity and war crimes.¹
5. On 8 February 2021, the Defence filed the "Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment".² The Defence requested a suspension of the due date for its notice of appeal until there was a full Acholi translation of the Trial Judgment,³

¹ Trial Chamber IX, Trial Judgment, ICC-02/04-01/15-1762.

² Trial Chamber IX, *Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment*, ICC-02/04-01/15-1764-Conf. A public redacted version was filed the same day.

³ *Ibid*, paras 28-32.

because the Trial Judgment was the longest in history and very complex⁴ and that Mr Ongwen needs additional time to read the Trial Judgment as he has mental disabilities.⁵

6. On 24 February 2021, the Appeals Chamber issued the Appeals Decision, granting the Defence a 45-day extension to file its notice of appeal and document in support of the appeal.⁶
7. On 18 March 2021, the Defence filed the “Defence Request for an Extension of Time to File its Notice of Intent to Appeal the Trial Judgment due to the Registrar’s Violation of Mr Ongwen’s Fair Trial Rights, or in the Alternative, Reconsideration of ICC-02/04-01/15-1781 based on new Information.”⁷ The Defence requested a suspension of the due date for its notice of appeal because the Defence was not given additional funds to pay its staff until 12 March 2021.⁸
8. On 1 April 2021, the Defence filed the “Defence Brief on Sentencing”.⁹
9. On 9 April 2021, the Appeals Chamber issued the Appeal Decision, extending the due date of the Defence’s notice of appeal to 21 May 2021 and the due date of the Defence’s appeal brief to 21 July 2021.¹⁰
10. On 14 and 15 April 2021, Trial Chamber IX held a hearing on sentencing pursuant to Article 76(2) of the Rome Statute.
11. On 6 May 2021, Trial Chamber IX issued its Sentence, sentencing Mr Ongwen to a total period of imprisonment of 25 years as a joint sentence, with the period between 4 January 2015 and 6 May 2021 deducted from the total period of imprisonment.¹¹

⁴ *Ibid*, pp 11-13, paras 33-40.

⁵ *Ibid*, pp 13-14, paras 38-42.

⁶ Appeals Chamber, *Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation*, para. 12-13, ICC-02/04-01/15-1781.

⁷ Appeals Chamber, *Defence Request for an Extension of Time to File its Notice of Intent to Appeal the Trial Judgment due to the Registrar’s Violation of Mr Ongwen’s Fair Trial Rights, or in the Alternative, Reconsideration of ICC-02/04-01/15-1781 based on new Information*, ICC-02/04-01/15-1799-Conf.

⁸ *Ibid*, paras 2, 24-26.

⁹ Trial Chamber IX, *Public Redacted Version of “Corrected Version of ‘Defence Brief on Sentencing’, filed on 1 April 2021”*, ICC-02/04-01/15-1809-Corr-Red.

¹⁰ Appeals Chamber, *Decision on Mr Ongwen’s second request for time extension*, ICC-02/04-01/15-1811.

¹¹ Trial Chamber IX, *Sentence*, ICC-02/04-01/15-1819-Red.

12. On 21 May 2021, the Defence filed the “Defence Notification of its Intent to Appeal the Trial Judgment.”¹² The Defence submitted 90 grounds of appeals.¹³

IV. APLICABLE LAWS

13. According to Rule 150 of the Rules, parties may appeal against a sentence issued by a trial chamber under Article 76.¹⁴ For the purposes of Rule 150, Regulation 57 of the RoC lists the requirements for an appellant’s notice of appeal.¹⁵ This list states that the appellant must include “[t]he grounds of appeal, cumulative or in the alternative, specifying the alleged errors and how they affect the appealed decision.”¹⁶

14. Rule 150 also dictates the procedure of filing a notice of appeal.¹⁷ According to Rule 150(1), an appeal against a sentence “may be filed no later than thirty days from the date on which the party filing the appeal is notified of the [...] sentence.”¹⁸ However, Rule 150(2) provides that “the Appeals Chamber may extend the time limit [...] for good cause, upon the application of the party seeking to file the appeal.”¹⁹ “Good cause may exist where a party is unable to meet a deadline for objective reasons beyond that party’s control.”²⁰

15. Additionally, according to articles 67(1)(a) of the Statute, the accused is entitled to “be informed promptly and in detail of the nature, cause and content of the charge, in a language in which the accused fully understands and speaks.”²¹ Article 67(1)(f) further provides that the accused is entitled to translations “necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language in which the accused fully understands and speaks.”²² Although Article 67(1)(f) “does not require a full translation of the decision under

¹² Trial Chamber IX, *Defence Notification of its Intent to Appeal the Trial Judgment*, ICC-02/04-01/15-1862.

¹³ *Ibid.*

¹⁴ See Rule 150 of the Rules.

¹⁵ Regulation 57 of the RoC.

¹⁶ Regulation 57(e) of the RoC.

¹⁷ See Rule 150 of the Rules.

¹⁸ Rule 150(1) of the Rules.

¹⁹ Rule 150(2) of the Rules.

²⁰ Appeals Chamber, *Decision on Mr Ongwen’s second request for time extension*, para. 8, ICC-02/04-01/15-1811. See also, Appeals Chamber, *Reasons for the ‘Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’*”, ICC-01/04-01/07-653, para. 5.

²¹ Article 67(1)(a) of the Rome Statute.

²² *Id.* at 20. See also, **Rule 144 of the Rules**.

article 74 of the Statute be provided to a convicted person before filing notice of appeal,” the Appeals Chamber must consider “the circumstances as a whole and the convicted person’s ability to understand the details [of the decision] by other means.”²³ The convicted person must also be granted adequate time and facilities to prepare and instruct his Counsel pursuant to Article 67(1)(b) of the Rome Statute, including the ability to raise defences on appeal through Article 67(1)(e).

16. Finally, Regulation 61 of the Regulations of the Court allows for the variation of the grounds of appeal to be amended after the notice of the appeal once the reason for the ground becomes known.

V. SUBMISSIONS

17. Considering the circumstances, the Appeals Chamber should find that good cause exists for the suspension of the due date of the notification of the Defence’s intent to appeal and the document supporting the appeal. Good cause exists because 1) Mr Ongwen has not received a translation of the Sentence in a language that he understands and speaks and is unable to meaningfully participate in his appeal and 2) the Defence must prepare for concurrent appellate proceedings.

i. The Appeals Chamber should suspend the due date for the Defence’s notice of appeal because Mr Ongwen has not received an Acholi translation of the Sentence and requires additional time to understand the Sentence in order to meaningfully participate in his appeal.

18. The due date to file the Defence’s notice of appeal should be suspended until 28 June 2021 because Mr Ongwen has not received a full translation of the Sentence in Acholi and he cannot meaningfully participate in his appeal until such time that one has been provided. Although the Defence is reading and explaining the Sentence to Mr Onwen, this does not replace or negate the translation requirement of Article 67(1)(f), Rule 144(2)(b) of the Rules of Procedure and Evidence or Regulation 40(6) of the Regulations of the Court. The Defence is attempting to alleviate some of this problem by slowly explaining the Sentence to Mr Ongwen.

19. Mr Ongwen does not fully understand or speak the language in which his trial is held and the language in which the Sentence is written. Rather, Mr Ongwen fully understands and speaks

²³ The Prosecutor v. Dominic Ongwen, *Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation*, para. 10, ICC-02/04-01/15-1781.

Acholi. Thus, he cannot read and understand the Sentence on his own. Instead, the Defence must devote time to reading and explaining the Sentence to Mr Ongwen. This process is time consuming and does not replace the requirements enlaced by the Rome Statute, Rules of Procedure and Evidence or the Regulations of the Court.

20. However, Mr Ongwen currently cannot meaningfully participate in his appeal against the Sentence because he does not have sufficient time to fully review and understand the Sentence, especially as an Acholi translation does not exist. In accordance with article 67(1)(b), Mr Ongwen must have adequate time and facilities to prepare and instruct his Counsel. Although the Defence has begun reading and explaining the Sentence to Mr Ongwen, reading and explaining decisions to Mr Ongwen continues to be challenging due to ongoing COVID-19 restrictions at the ICC Detention Centre ('ICC-DC'). The restrictions prevent the Defence from regularly meeting in person with Mr Ongwen. Instead, the Defence explains the decision through phone calls and meetings with Mr Ongwen *via* WebEx. Although this is valuable and the Defence is striving to ensure that Mr Ongwen can participate in the appeal, meeting *via* video conferences and phone communications are more challenging and time consuming than meeting in person, and cannot replace the requirements of the official requirements of the Court. This is especially relevant considering the slow connection speeds in Uganda, which hinder the Defence's ability to explain the Sentence in Acholi.

21. As a result, the Defence has spent, and will continue to spend, numerous hours on phone calls and in video-conference meetings explaining the factual and legal findings of the Trial Chamber's Sentence to Mr Ongwen. This is in addition to the hours it shall need to address Mr Ongwen's questions and concerns and explain possible strategies and grounds of appeal. Allowing additional time for the Defence to read and explain the Sentence to Mr Ongwen helps Mr Ongwen understand what is going on, allows him to participate in the proceedings and alleviates **some** problems associated with a potential reversion to Regulation 61 of the Regulations of the Court (but does not completely alleviate this issue). Thus, the Chamber should find that good cause for the suspension of the due date of the Defence's notice of appeal exists because Mr Ongwen has not received an Acholi translation of the Sentence and requires additional time to review the Sentence in order to participate in some level with this appeal.

22. For the abovementioned reasons, the Defence requests the Appeals Chamber to suspend the due date of any possible notice of appeal of the sentence from 7 June 2021 to 28 June 2021 and the date for the document in support of the appeal from 5 August 2021 to 2 August 2021 as good cause has been shown.

ii. The Appeals Chamber should suspend the due date for the Defence's notice of appeal because the appeal is complex and the Defence must prepare for concurrent appellate proceedings.

23. The due date to file the Defence's notice of appeal should be suspended until 28 June 2021 and the date for its document in support of the appeal until 26 August 2021 because the appeal is complex, and the Defence must prepare for concurrent appellate proceedings. The amount of time required to read and explain the Sentence to Mr Ongwen is exacerbated 1) by the fact that Mr Ongwen was convicted of more charges than any previous case before prosecuted at the ICC, 2) this is the longest Sentence in the history of the Court, and 3) the Defence must also read and explain the *Partly Dissenting Opinion of Judge Raul C. Pangalangan* to Mr Ongwen.

24. In its 139 page sentence, Trial Chamber IX sentenced Mr Ongwen to 25 years imprisonment for 61 convictions.²⁴ This is more convictions than any previous defendant before the Court and the longest Sentence issued by the Court.²⁵ Prior to this Sentence, the longest Trial Chamber Sentence was 117 pages²⁶ and included 18 convictions²⁷. The Sentence is 21 pages longer than the previous longest Trial Chamber sentence and 43 many more convictions than the previous highest number of convictions. The Defence must also read and explain Judge Pangalangan's partially dissenting opinion to Mr Ongwen.

25. Additionally, the Defence must prepare for concurrent appellate proceedings. As previously noted, the Defence filed the "Defence Notification of its Intent to Appeal the Trial Judgment" on 21 May 2021. This notice of appeal included 90 grounds of appeal. The Defence document in support of the appeal is due on 21 July 2021. This document will be complex and requires a thorough analysis of alleged legal and factual errors that material affect the conviction of Mr Ongwen.

²⁴ Trial Chamber IX, *Sentence*, ICC-02/04-01/15-1819-Red.

²⁵ By longest sentence, the Defence means in terms of pages, not in terms of years.

²⁶ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda, Sentencing Judgment*, ICC-01/04-02/06-2442.

²⁷ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda, Judgment*, ICC-01/04-02/06-2359.

26. Thus, the Chamber should find that good cause for the suspension of the due date of the Defence's notice of appeal exists because the appeal is complex, and the Defence must prepare for concurrent appellate proceedings.

VI. RELIEF

27. The Defence submits that good cause for the suspension of the due date of the Defence's notification of appeal and the document supporting the appeal exists because

- a. Mr Ongwen has not received a translation of the Sentence in a language that he understands and speaks and is unable to meaningfully participate in his appeal and
- b. the Defence must prepare for concurrent appellate proceedings.

28. The Defence requests that the Appeals Chamber suspend the due date of the notice of appeal of the Sentence to 28 June 2021 and the due date of the document in support of the appeal to 26 August 2021.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 21st day of May, 2021
At Lira, Uganda