

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 31 May 2021

THE 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

**CLRv Response to the “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: Office of Public Counsel for Victims

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

The Office of the Prosecutor

Ms Fatou Bensouda
Ms Helen Brady

Counsel for the Defence

Mr Krispus Ayena Odongo
Mr Charles Achaleke Taku
Ms Beth Lyons

Legal Representatives of the Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Common Legal Representatives for Victims

Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

Ms Paolina Massidda
Mr Orchlon Narantsetseg
Ms Caroline Walter

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

I. INTRODUCTION

1. The Common Legal Representative of the Victims participating in the proceedings¹ (the “CLRv”) preliminarily notes yet again that Victims have been waiting for justice in this case for more than 15 years and that the appellate proceedings should be conducted as expeditiously as possible.

2. While leaving the matter to the discretion of the Appeals Chamber, the CLRv recalls that a convicted person does not have an absolute right to have translated the Trial Chamber’s Sentence (the “Sentencing Decision”)² in a language he or she fully understands and speaks in order to prepare for the appellate proceedings. Rather, in order to avoid delays, Mr Ongwen should be provided with the translations of the priority parts of the Sentencing Decision on a rolling basis in order to ensure that the proceedings advance both fairly and expeditiously.

3. The CLRv submits further that these appellate proceedings were well expected since the issuance of the Trial Judgment (the “Judgment”).³ Indeed, it is inherent in a conviction that a sentence would follow shortly and that appeal proceedings against a conviction would run in parallel with appeal proceedings against a sentence. Therefore, should the Appeals Chamber grant the Defence’s Request for an Alteration of the due date for its Notice of Appeal and Document in

¹ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/15-350](#), 27 November 2015, p. 19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/15-369](#), 15 December 2015, pp. 10-11; the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/05-384](#), 24 December 2015, pp. 20-22; and the “Decision on the ‘Request for a determination concerning legal aid’ submitted by the legal representatives of victims” (Trial Chamber IX, Single Judge), [No. ICC-02/04-01/15-445](#), 26 May 2016, para. 13.

² See “Sentence” (Trial Chamber IX), [No. ICC-02/04-01/15-1819-Red](#), 6 May 2021 (the “Sentencing Decision”).

³ See the “Trial Judgment” (Trial Chamber IX), [No. ICC-02/04-01/15-1762-Red](#), 4 February 2021 (the “Judgement”).

Support of its Appeal of the Sentence (the Alteration Request”),⁴ said extension should be modest.

II. PROCEDURAL HISTORY

4. On 4 February 2021, Trial Chamber IX issued the Judgement, declaring Mr Ongwen guilty of 61 charges of war crimes and crimes against humanity.⁵

5. On 24 February 2021, following a request by the Defence,⁶ the Appeals Chamber granted the latter a 45-day extension to file its notice of appeal and document in support of the appeal against the Judgment (the “Decision on the First Extension Request”).⁷ On 9 April 2021, the Appeals Chamber issued another decision granting a further Defence’s request for extension of time,⁸ extending for another 30 days the time limit for the Defence to file its notice of appeal and appeal brief.⁹

6. On 6 May 2021, the Trial Chamber issued the Sentencing Decision, imposing upon Mr Ongwen a total period of imprisonment of 25 years.¹⁰

7. On 24 May 2021, the Defence filed the Alteration Request.¹¹

⁴ See the “Defence Request for an Alteration of the due date for its Notice of Appeal and Document in Support of its Appeal of the Sentence, [No. ICC-02/04-01/15-1828 A](#), 24 May 2021 (the “Alteration Request”).

⁵ See the Judgement, *supra* note 3.

⁶ See the “Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment”, No. ICC-02/04-01/15-1764-Conf EC A, 8 February 2021 (a public redacted version was filed the same day [No. ICC-02/04-01/15-1764-Red A](#)).

⁷ See the “Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation” (Appeals Chamber), [No. ICC-02/04-01/15-1781 A](#), 24 February 2021 (the “Decision on the First Extension Request”).

⁸ See 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”, No. ICC-02/04-01/15-1799-Conf, 18 March 2021 (a public redacted version was filed on 26 March 2021, [No. ICC-02/04-01/15-1799-Red A](#)).

⁹ See the “Decision on Mr Ongwen’s second request for time extension” (Appeals Chamber), [No. ICC-02/04-01/15-1811 A](#), 9 April 2021.

¹⁰ See the Sentencing Decision, *supra* note 2.

8. On 25 May 2021, the Appeals Chamber elected the Presiding Judge in any appeal against the Sentencing Decision.¹² On 26 May 2021, the Appeals Chamber instructed the Prosecution and the Victims to respond to the Alteration Request by 31 May 2021.¹³ On the same day, the Prosecution filed its response to the Alteration Request.¹⁴ On 28 May 2021, the other team of Legal Representatives in the case filed its response to the Alteration Request.¹⁵

III. SUBMISSIONS

9. As already noted on several occasions throughout the proceedings, Victims have been longing for the end of this case and for a prompt determination of Mr Ongwen's final sentence. Therefore, every day of postponement in the proceedings should be carefully weighted with the Victims' rights to expeditious proceedings.¹⁶

10. While leaving the matter to the discretion of the Appeals Chambers, the CLRV notes that, in the Alteration Request, the Defence argues that good cause exists to warrant a change in the due date of its notice of appeal of the Sentencing Decision and its document in support of the appeal because: (i) Mr Ongwen has not received a translation of the Sentencing Decision in a language that he understands and speaks

¹¹ See the Alteration Request, *supra* note 4.

¹² See the "Decision on the Presiding Judge of the Appeals Chamber in any appeal against the decision of Trial Chamber IX entitled 'Sentence'" (Appeals Chamber), [No. ICC-02/04-01/15-1829 A2](#), 25 May 2021.

¹³ See the "Order concerning the time limit for responses to the 'Defence Request for an Alteration of the due date for its Notice of Appeal and Document in Support of its Appeal of the Sentence'" (Appeals Chamber), [No. ICC-02/04-01/15-1831 A2](#), 26 May 2021.

¹⁴ See the "Prosecution Response to the Defence request for an alteration of the due date for its notice of appeal and document in support of its appeal of the Sentence", [No. ICC-02/04-01/15-1830 A](#), 26 May 2021.

¹⁵ See the "Victims' Response to 'Defence request for an Alteration of the due date for its Notice of Appeal and the Document in Support of its Appeal of the Sentence'", [No. ICC-02/04-01/15-1834 A](#), 28 May 2021.

¹⁶ See the "Decision on Mr Ntaganda's request for reconsideration of the decision on time and page extensions" (Appeals Chamber), [No. ICC-01/04-02/06-2426 A A2](#), 1 October 2019, para. 7.

and is unable to meaningfully participate in his appeal, and (ii) the Defence must prepare for concurrent appellate proceedings against the Judgment.¹⁷

11. Concerning the translation of the Sentencing Decision, the Appeals Chamber already ruled in the Decision on the First Extension Request that a defendant's right under article 67(1)(f) of the Rome Statute *"requires a chamber to determine what is 'necessary to meet the requirements of fairness'. It does not, per se, require that a full translation of the decision under article 74 of the Statute be provided to a convicted person before filing a notice of appeal."*¹⁸ The Appeals Chamber added that *"it must also take into account the circumstances as a whole and the convicted person's ability to understand the details of his conviction by other means."*¹⁹

12. In line with the reasoning of the Appeals Chamber,²⁰ the following are also true with respect to the sentencing proceedings: (i) Mr Ongwen has been provided with full Acholi translations of the core documents of the case; (ii) he has followed the sentencing hearings in real-time through Acholi interpretation, including the oral summary of the reasons for the Decision; (iii) he has had, throughout the proceedings, the assistance of a Defence team whose members (including the lead counsel) are fluent in both English and Acholi.

13. Therefore, the CLRV submits that, as already exemplified in the Decision on the First Extension Request, Mr Ongwen should be provided with the translations of the priority parts of the Sentencing Decision on a rolling basis in order to ensure that the appellate proceedings advance both fairly and expeditiously. This would also enable the Defence to eventually later seek a variation of the grounds of appeal, pursuant to regulation 61 of the Regulations of the Court (the "Regulations"), once it

¹⁷ See the Alteration Request, *supra* note 4, paras. 17-26.

¹⁸ See the Decision on the First Extension Request, *supra* note 7, para. 10.

¹⁹ *Ibid.*

²⁰ *Idem*, para. 11.

would have received a translation of the priority sections of the Sentencing Decision relevant to those grounds.²¹

14. As for the Defence's need to prepare for concurrent appellate proceedings on conviction and sentence, the CLRV submits that these proceedings were well expected since the issuance of the Judgment. Indeed, as held previously by the Appeals Chamber, it is inherent in a conviction that a sentence, if not issued simultaneously, would follow shortly and that it is therefore not exceptional that appeal proceedings against a conviction would run in parallel with appeal proceedings against a sentence.²² It is thus reasonable to expect that the Defence will have to organise its work leading to the upcoming filing of its intent to appeal and of its document in support of the appeal against the Judgment factoring in that the sentence would be rendered in the meantime and that such decision would likely have implications for the convicted person.²³

15. Likewise, the Appeals Chamber also held that the concurrent finalisation of the document in support of the appeal against the conviction decision does not preclude a determination, within the regular 30 days, on whether to appeal the sentencing decision.²⁴ In particular, the required notice of appeal under rule 150 of the Rules of Procedure and Evidence, as clarified by regulation 57 of the Regulations, is limited to the identification of the decision appealed against, a statement of whether such decision is appealed in its entirety or only in part and an indication of the relief sought.²⁵ Therefore, the current finalisation of the document in support of the appeal against the Judgment should not interfere the preparation by the Defence

²¹ *Idem*, para. 10.

²² See the "Decision on Mr Arido's request for extension of time limits for his potential notice of appeal and document in support of the appeal against sentence" (Appeals Chamber), [No. ICC-01/05-01/13-2138 A6](#), 12 April 2017, para. 11.

²³ See the "Decision on Mr Bemba's request for extension of the time and page limits for his document in support of the appeal" (Appeals Chamber), [No. ICC-01/05-01/13-2129 A A2 A3 A4 A5](#), 29 March 2017, para. 10.

²⁴ See the "Decision on Mr Arido's request for extension of time limits for his potential notice of appeal and document in support of the appeal against sentence", *supra* note 22, para. 9.

²⁵ *Ibid.*

of any document in support of the appeal against the Sentencing Decision.²⁶ These different time limits do not give rise to unmanageable competing priorities to the detriment of the convicted person.²⁷

16. This is particularly true given that the Defence for Mr Ongwen had twice requested and was granted a total of 75 days (which is a substantial amount of additional time) for its preparation of the appellate proceedings against the Judgment.

17. Therefore, should the Appeals Chamber grant the Alteration Request, the extensions of the relevant time limits must be modest, meaning that an extra time of one or two weeks (instead of three) should be adequate.

Respectfully submitted,



Paolina Massidda
Principal Counsel

Dated this 31st day of May 2021

At The Hague, The Netherlands

²⁶ *Ibid.*

²⁷ *Ibid.*