Cour
Pénale
Internationale

International
Criminal
Court

Original: English

No. ICC-02/04-01/15 A
Date: 21 October 2021

THE 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 THE PROSECUTOR v. DOMINIC ONGWEN

Public document

Decision on the "Defence Request for Reconsideration of a Decision"

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

The Office of the Prosecutor
Mr Karim A. A. Khan, Prosecutor
Ms Helen Brady

Counsel for the Defence
Mr Krispus Ayena Odongo
Chief Charles Achaleke Taku
Ms Beth Lyons

Legal Representatives of Victims
Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Ms Paolina Massidda

REGISTRY

Registrar
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX entitled "Trial Judgment" of 4 February 2021 (ICC-02/04-01/15-1762-Red),

Having before it the "Defence Request for Reconsideration of a Decision" of 20 October 2021 (ICC-02/04-01/15-1878),

Pursuant to regulation 35(2) of the Regulations of the Court,

Renders the following

DECISION

1. The Defence's request is granted in part.
2. Any application by the Defence for variation of the grounds of appeal pursuant to regulation 61 of the Regulations of the Court following receipt of the translation of the Conviction Decision shall be filed by Friday, 29 October 2021.
3. Responses to any such application shall be filed by Monday, 8 November 2021.

REASONS

I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX convicted Mr Ongwen of crimes against humanity and war crimes (hereinafter: "Conviction Decision").[1]

2. On 24 February 2021, the Appeals Chamber issued its "Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation",[2] in which it noted, *inter alia*, that "pursuant to regulation 61 of the Regulations,

[1] Trial Judgment, ICC-02/04-01/15-1762-Conf (public redacted version notified on the same day, ICC-02/04-01/15-1762-Red).
[2] Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation, 24 February 2021, ICC-02/04-01/15-1781 (A) (hereinafter: "Decision on extension of time and translation").

Mr Ongwen can seek a variation of the grounds of appeal once he has received a translation of the sections of the Conviction Decision relevant to those grounds".[3]

3. The Appeals Chamber further directed the Defence to inform the Language Services Section (hereinafter: "LSS") and the Appeals Chamber of the sections of the Conviction Decision to be prioritised for translation into Acholi,[4] and the Registry to provide the Defence a translation of those sections on a rolling basis.[5]

4. On 21 July 2021, the Defence filed its appeal brief.[6]

5. On 9 September 2021, LSS indicated that the transmission of the draft translation of the priority sections identified by the Defence had been completed on 3 September 2021.[7] On 8 October 2021, LSS confirmed that a draft translation of the entire Conviction Decision was provided to the Defence on the same day.[8]

6. On 11 October 2021, the Appeals Chamber issued the "Decision related to the translation of the Conviction Decision into Acholi" (hereinafter: "Decision related to translation").[9]

7. On 20 October 2021, the Defence filed a request for reconsideration of the Decision related to translation (hereinafter: "Defence request").[10]

II. MERITS

8. As a preliminary matter, the Appeals Chamber notes that, as a result of the late filing of the Defence request, the parties and participants are not able to file responses thereto, and the Appeals Chamber is left with little time to duly consider the merits of

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[3] Decision on extension of time and translation, para. 11.
[4] Decision on extension of time and translation, para. 12.
[5] Decision on extension of time and translation, para. 14.
[6] Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021, ICC-02/04-01/15-1866-Conf, with public Annexes A-B, D, and confidential Annex C.
[7] Email from the LSS to the Legal Officers of the Appeals Chamber, sent on 9 September 2021, at 14:33.
[8] Email from the LSS to the Legal Officers of the Appeals Chamber, sent on 8 October 2021, at 14:30. The completed draft translation was provided on 8 October 2021, although an extension of 10 days, until 18 October 2021, was granted on 10 September 2021 (email from Legal Officers of the Appeals Chamber to LSS, sent on 10 September 2021, at 9:06), following a request for extension of time by the LSS (email from the LSS to the Legal Officers of the Appeals Chamber, sent on 9 September 2021, at 14:33).
[9] ICC-02/04-01/15-1876.
[10] ICC-02/04-01/15-1878.

the request. In this regard, the Defence is reminded of its duty to apply due diligence and file any future requests in a timely manner.

9. At the outset, the Appeals Chamber notes that the Defence frames its application as a request for reconsideration.[11] The Appeals Chamber recalls that it has not previously addressed the circumstances under which it may reconsider its prior decisions[12] and the Defence does not identify the legal basis for such request. However, in light of its content, the Appeals Chamber understands the Defence's application as a request for extension of the time limit set by the Appeals Chamber for the filing of any application for variation of grounds of appeal pursuant to regulation 35 of the Regulations of the Court (hereinafter: "Regulations"). This is notwithstanding the fact that the Defence incorrectly refers to "changed circumstance warranting" an extension of the time limit.[13] Pursuant to regulation 35(2) of the Regulations, a chamber "may extend or reduce a time limit if good cause is shown".

10. In support of its request to extend the time limit set by the Appeals Chamber, the Defence submits that Mr Ongwen received the full draft Acholi translation of the Conviction Decision on 11 October 2021 and "Mr Ongwen requires adequate time to read the Judgment in its entirety", considering in particular that he "is a person with mental disabilities".[14] It further contends that "Mr Ongwen has a rudimentary education" and that "[h]e is not a fast reader", being able to read "on average, 20-25 pages per day".[15] The Defence argues that although the receipt of priority sections on a rolling basis was helpful, "[t]he review of sections, with references to 'yet-to-be-translated' sections, lessened the utility of the early provisions".[16] As a result, the Defence requests an extension of the time limit to file any application for variation of grounds of appeal from 22 October 2021 to 8 November 2021.[17]

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[11] Defence request, p. 1.
[12] *Prosecutor v. Bosco Ntaganda*, Decision on Mr Ntaganda's request for reconsideration of the decision on time and page extensions, 1 October 2019, ICC-01/04-02/06-2426, para. 6.
[13] Defence request, paras 17-18.
[14] Defence request, para. 10. *See also* paras 11-12.
[15] Defence request, para. 13.
[16] Defence request, para. 14.
[17] Defence request, paras 1, 15, 18.

11. The Appeals Chamber notes that the translation of the priority sections of the Conviction Decision into Acholi was completed on 3 September 2021, and that the translation of the entire Conviction Decision was provided to the Defence on 8 October 2021, which was given to Mr Ongwen in the afternoon of 11 October 2021.

12. The Appeals Chamber notes that the Defence relies primarily on Mr Ongwen's "education level and mental disabilities" to support its request for an extension of time to file any potential request for variation of grounds of appeal.[18] The Appeals Chamber notes that Mr Ongwen's mental capacity is a live issue on appeal and will therefore not delve into that argument for the purpose of this decision. Considering that Mr Ongwen received the full Acholi translation of the Conviction Decision in the afternoon of 11 October 2021 and also noting that he has not finished reviewing it at this point, the Appeals Chamber considers that good cause has been shown within the meaning of regulation 35(2) of the Regulations. However, considering that Mr Ongwen, together with his Defence team, has had ample time to review the priority sections of the Acholi translation which constitute a vast majority of the Conviction Decision and also noting the requirement to conduct proceedings in an expeditious manner, the Appeals Chamber finds that a limited extension by one week is appropriate in order to better guarantee the rights of the defendant.

13. Accordingly, any application by the Defence for variation of the grounds of appeal pursuant to regulation 61 of the Regulations following receipt of the translation of the Conviction Decision shall be filed by Friday, 29 October 2021. Responses to any such request shall be filed by Monday, 8 November 2021.

Done in both English and French, the English version being authoritative.

Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 21st day of October 2021
At The Hague, The Netherlands

[18] Defence request, paras 10-13, 17.