

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **8 February 2021**

**APPEALS CHAMBER**

**Before:**

**Judge Chile Eboe-Osuji  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa**

**SITUATION IN UGANDA**

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

**PUBLIC**

**Public Redacted Version of “Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment”, filed on 8 February 2021**

**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. The Defence for Dominic Ongwen (‘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 (‘Judgment’). The character of Mr Ongwen’s case is exceptional due to the number of convictions and the length of the Judgment.<sup>1</sup> The Defence submits this request pursuant to Rule 150(2) of the Rules of Procedure and Evidence (‘Rules’).<sup>2</sup>
2. Good cause exists for the suspension of the due date of the notification of the Defence’s intent to appeal because:
  - a. Mr Ongwen has not received an Acholi translation of the Judgment;
  - b. The Judgment is exceptionally long, the appeal is complex, and the Defence must prepare for concurrent sentencing proceedings; and
  - c. 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.
3. The Defence argues that good cause exists for the suspension of the due date for the notification of the Defence’s intent to appeal until 30 days after a full Acholi translation of the Judgment is provided to the Defence. This is necessary to protect Mr Ongwen’s fair trial rights pursuant to Articles 67(1)(a), (b), (e), and (f) of the Rome Statute.

## II. CONFIDENTIALITY AND TIME LIMIT REQUEST

4. Pursuant to Regulations 23*bis* of the Regulations of the Court (‘RoC’), this request is submitted as confidential as it refers to issues classified as such. The Defence files a public redacted version contemporaneous to this request.
5. 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 Thursday, 11 February 2021. The Defence avers that this is necessary as the time limit for filing its notice of its intent to appeal is on 8 March 2021.

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<sup>1</sup> Noting that the Trial Chamber found Mr Ongwen guilty of 61 counts and the Trial Chamber Judgment is comprised of 1,077 pages. See [ICC-02/04-01/15-1762-Red](#).

<sup>2</sup> Rule 150(2) of the Rules of Procedure and Evidence.

### III. PROCEDURAL HISTORY

6. On 6 January 2015, Mr Ongwen surrendered to United States soldiers from the hands of the Séléka in Central African Republic ('CAR'), where he remained for the following eight days.
7. On 16 January 2015, Mr Ongwen was transferred to the custody of the International Criminal Court in Bangui, CAR.<sup>3</sup>
8. On 21 January 2015, Mr Ongwen arrived at the ICC-DC in The Hague, Netherlands.<sup>4</sup>
9. On 26 January 2015, Mr Ongwen had his first appearance.<sup>5</sup>
10. From 21-27 January 2016, Pre-Trial Chamber II held the Confirmation of Charges Hearing.
11. On 23 March 2016, Pre-Trial Chamber II issued the "Decision on the confirmation of charges against Dominic Ongwen"<sup>6</sup> and the "Separate opinion of Judge Marc Perrin de Brichambaut."<sup>7</sup>
12. On 29 March 2016, the Defence requested leave to appeal the Decision on the confirmation of charges against Dominic Ongwen.<sup>8</sup>
13. On 29 April 2016, Pre-Trial Chamber II, by majority, denied the Defence's request for leave to appeal the confirmation decision.<sup>9</sup> Judge de Brichambaut dissented in respect to the Defence's third issue of appeal.<sup>10</sup>
14. On 6 December 2016, the presentation of evidence at trial began.<sup>11</sup>
15. On 18 September 2018, the Defence began its presentation of evidence.<sup>12</sup>
16. On 12 March 2020, the Defence closed the trial with its closing statement.<sup>13</sup>

<sup>3</sup> Report of the Registry on the voluntary surrender of Dominic Ongwen and his transfer to the Court, [ICC-02/04-01/15-189](#), paras 1-4.

<sup>4</sup> *Ibid*, para. 17.

<sup>5</sup> See [ICC-02/04-01/15-T-4-ENG](#).

<sup>6</sup> See Decision on the confirmation of charges against Dominic Ongwen, [ICC-02/04-01/15-422-Red](#).

<sup>7</sup> See Separate opinion of Judge Marc Perrin de Brichambaut, [ICC-02/04-01/15-422-Anx-tENG](#).

<sup>8</sup> Defence Request for Leave to Appeal Issues in Confirmation of Charges Decision, [ICC-02/04-01/15-423](#).

<sup>9</sup> See Decision on the Defence request for leave to appeal the decision on the confirmation of charges, [ICC-02/04-01/15-428](#) and Partially dissenting opinion of Judge Marc Perrin de Brichambaut, [ICC-02/04-01/15-428-Anx-tENG](#).

<sup>10</sup> Partially dissenting opinion of Judge Marc Perrin de Brichambaut, [ICC-02/04-01/15-428-Anx-tENG](#).

<sup>11</sup> [ICC-02/04-01/15-T-26-ENG](#).

<sup>12</sup> [ICC-02/04-01/15-T-179-Red-ENG](#).

<sup>13</sup> [ICC-02/04-01/15-T-258-Red-ENG](#).

17. On 4 February 2021, Trial Chamber IX rendered its Judgment. The Trial Chamber found Mr Ongwen guilty of 61 counts, which include the crime sites of Pajule, Odek, Lukodi and Abok, charges related to sexual and gender-based crimes and use of child soldiers.<sup>14</sup>
18. On 5 February 2021, the Defence contacted Language Services Section ('LSS') about the status of the Acholi translation of the Judgment.<sup>15</sup>

#### IV. APPLICABLE LAWS

18. According to article 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 which the accused fully understands and speaks."<sup>16</sup> 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 which the accused fully understands and speaks."<sup>17</sup> According to Rule 144(1) and (2), the accused is entitled to translations of decisions of the Trial Chamber concerning the criminal responsibility of the accused. The Judgment concerns the criminal responsibility of the accused because Article 74(5) states that the Judgment must be in writing and "contain a full and reasoned statement of the Trial Chamber's findings of the evidence and conclusions."<sup>18</sup> Mr Ongwen must also be granted adequate time and facilities to prepare and instruct his Counsel pursuant to Article 67(1)(b) of the Rome Statute, and includes the ability to raise defences on appeal through Article 67(1)(e) of the Rome Statute.
19. In response to a trial chamber's decision regarding the criminal responsibility of the accused, parties may appeal against decisions of convictions or acquittal pursuant to Rule 150.<sup>19</sup> For the purposes of Rule 150, Regulation 57 of the Regulations of the Court ("Regulations") lists the requirements for an appellant's notice of appeal.<sup>20</sup> This list states that the appellant must include "[t]he grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision."<sup>21</sup>

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<sup>14</sup> [ICC-02/04-01/15-1762-Red](#).

<sup>15</sup> Phone call from [REDACTED] to [REDACTED], 5 February 2021.

<sup>16</sup> Article 67(1)(a) of the Rome Statute.

<sup>17</sup> *Id.* at 20.

<sup>18</sup> See Article 74(5).

<sup>19</sup> See Rule 150 of the Rules.

<sup>20</sup> Regulation 57 of the RoC.

<sup>21</sup> Regulation 57(e) of the RoC.

20. Rule 150 also dictates the procedure of filing a notice of appeal.<sup>22</sup> According to Rule 150(1), “an appeal against a decision of conviction or acquittal under article 74 [...] may be filed no later than thirty days from the date on which the party filing the appeal is notified of the decision.”<sup>23</sup> 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.”<sup>24</sup> In addition, Regulation 35(2) states that “the Chamber may extend or reduce a time limit if good cause is shown.”<sup>25</sup>
21. Although ‘good cause’ has not been defined, it has been addressed in relation to Regulation 35(2) of the RoC.<sup>26</sup> For example, in *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, the Pre-Trial Chamber found that, “[a]ccording to the well-established jurisprudence of the Court, the ‘good cause’ criterion is satisfied when there are ‘sound reasons’ which ‘would objectively provide justification for the inability of a party to comply with his/her obligation’; as regards the reasons outside one party’s control, they must amount to ‘exceptional circumstances.’”<sup>27</sup>
22. In *The Prosecutor v. Bosco Ntaganda* and *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*,<sup>28</sup> the Appeals Chambers identified four reasons that provide justification for the inability of the party to comply with its obligations, including: 1) lack of translation of the Trial Chamber decision into the language that the accused fully understands and speaks,<sup>29</sup> 2) the

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<sup>22</sup> See Rule 150 of the Rules.

<sup>23</sup> Rule 150(1) of the Rules.

<sup>24</sup> Rule 150(2) of the Rules.

<sup>25</sup> Regulation 35(2) of the RoC.

<sup>26</sup> Regulation 35(2) RoC.

<sup>27</sup> *Yekatom* case, Decision on the Confirmation of Charges against Alfred Yekatom and Patrice Edouard Ngaissona, [ICC-01/14-01/18-403-Red-Corr](#), para. 23. See also, *Ongwen* case, Decision on Defence Request for Variation of the 30 September Deadline, 10 September 2019, [ICC-02/04-01/15-1591](#). See also, *Lubanga* case, Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on 16 February 2007, 21 February 2007, [ICC-01/04-01/06-834](#), paras 7 and 9.

<sup>28</sup> (1) *Ntaganda* case, Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of appeal and the appeal brief, 19 July 2019, [ICC-01/04-02/06-2364](#). (2) *Ntaganda* case, Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters, 20 September 2019, [ICC-01/04-02/06-2415](#), para. 12. (3) *Ntaganda* case, Decision on the request for extension of time, 17 January 2020, [ICC-01/04-02/06-2461](#), para. 11. (4) *Gbagbo and Blé Goudé* case, Decision on the Prosecutor’s request for time extension for the notice of appeal and the appeal brief, 19 July 2019, [ICC-02/11-01/15-1268](#), para. 9. (5) *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcripts, 26 November 2019, [ICC-02/11-01/15-1289](#), page 3 and para. 23. Note that this time limit was further extended because the Registry failed to provide Mr Gbagbo with translations on a rolling basis. (Decision on Mr Gbagbo’s request for extension of time to file a response to the Prosecutor’s appeal brief, 5 February 2020, [ICC-02/11-01/15-1304](#), para. 9).

<sup>29</sup> *Ntaganda* case, Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of appeal and the appeal brief, 19 July 2019, [ICC-01/04-02/06-2364](#), paras 3-5; *Ntaganda* case, Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters, 20 September

complexity of the appeal and the concurrent sentencing proceedings,<sup>30</sup> 3) the inability of the accused to meaningfully participate in his appeal because of the absence of a translation of the Trial Chamber decision,<sup>31</sup> and 4) the Registry failed to provide translations in accordance with the timeline set by the Appeals Chamber.<sup>32</sup>

23. Firstly, the Appeals Chamber found that the absence of a translation of the Trial Chamber decision into the language that the accused fully understands and speaks is good cause for the extension of a time limit.<sup>33</sup> For example, in *Ntaganda* the Appeals Chamber extended “the time limit for the filing of Mr Ntaganda’s and the Prosecutor’s notice of appeal against” the Trial Chamber’s decision because portions of the Trial Chamber decision had not been translated into the language that Mr Ntaganda understands and speaks.<sup>34</sup> Here, the Appeals Chamber extended the time limit to file the notice of appeal by 31 days, from 9 August 2019 to 9 September 2019.<sup>35</sup>
24. Secondly, the Appeals Chamber found that the complexity of the appeal and the concurrent sentencing proceedings amounts to good cause for the extension of the time limit.<sup>36</sup> The *Ntaganda* Appeals Chamber found that Mr Ntaganda showed ‘good cause’ for the extension of a time limit because of the complexity of the appeal, the concurrent sentencing and reparation proceedings, and portions of the Trial Chamber decision had not been translated into the

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2019, [ICC-01/04-02/06-2415](#), para. 12; *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcripts, 26 November 2019, [ICC-02/11-01/15-1289](#), paras 21-23.

<sup>30</sup> *Ntaganda* case, Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of appeal and the appeal brief, 19 July 2019, [ICC-01/04-02/06-2364](#), paras 3 – 5; *Ntaganda* case, Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters, 20 September 2019, [ICC-01/04-02/06-2415](#), para. 12; *Gbagbo and Blé Goudé* case, Decision on the Prosecutor’s request for time extension for the notice of appeal and the appeal brief, 19 July 2019, [ICC-02/11-01/15-1268](#), para. 4.

<sup>31</sup> *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcripts, 26 November 2019, [ICC-02/11-01/15-1289](#), paras 23.

<sup>32</sup> *Ntaganda* case, Decision on the request for extension of time, 17 January 2020, [ICC-01/04-02/06-2461](#), paras 8-11; *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo’s request for extension of time to file a response to the Prosecutor’s appeal brief, 5 February 2020, [ICC-02/11-01/15-1304](#), paras 5-9.

<sup>33</sup> *Ntaganda* case, Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters, 20 September 2019, [ICC-01/04-02/06-2415](#), paras 13-15. *See also*, *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcripts, 26 November 2019, [ICC-02/11-01/15-1289](#), para. 23.

<sup>34</sup> *Ntaganda* case, Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of appeal and the appeal brief, [ICC-01/04-02/06-2364](#), p. 3, para. 3.

<sup>35</sup> *Ntaganda* case, Mr. Ntaganda’s Notice of Appeal against the Judgment pursuant to Article 74 of the Statute, ICC-01/04-02/06-2359, [ICC-01/04-02/06-2396](#), para. 5.

<sup>36</sup> *Ntaganda* case, Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of appeal and the appeal brief, 19 July 2019, [ICC-01/04-02/06-2364](#), paras 3-5. *See also*, *Gbagbo and Blé Goudé* case, Decision on the Prosecutor’s request for time extension for the notice of appeal and the appeal brief, 19 July 2019, [ICC-02/11-01/15-1268](#), paras 4-8.

language that Mr Ntaganda understands and speaks.<sup>37</sup> Here, in addition to his request for a time extension to file his appeal brief, Mr Ntaganda also requested that sections of the Trial Chamber decision be translated in accordance with Rule 144.<sup>38</sup> He argued that translations were necessary to allow him to “meaningfully participate in the drafting of his appeal and to give instructions to the Defence.”<sup>39</sup> The Appeals Chamber, considering both the request for translations and a time extension, ruled that the Registry must provide translations of the Trial Chamber Judgment and extended the time limit for Mr Ntaganda to file the section of his appeal brief related to the non-translated sections of the Trial Chamber decision.<sup>40</sup>

25. Similarly, the Appeals Chamber in *Gbagbo and Blé Goudé* found that the inability of the accused to meaningfully participate in his appeal because of the absence of a translation of the Trial Chamber decision is good cause for the extension of a time limit.<sup>41</sup> Here, Mr Gbagbo requested an extension of the time limit to file his response to the Prosecutor’s appeal brief until full translations of Judge Henderson’s reasons, Judge Herrera Carbuccion’s dissenting opinion, the prosecutor’s notice of appeal, and the prosecutor’s appeal brief.<sup>42</sup> The Appeals Chamber found that it must “ensure that these Appellate proceedings advance both fairly and expeditiously.”<sup>43</sup> So, it concluded that “Mr Gbagbo needs to have the opportunity to provide meaningful input in relation to his appeal.”<sup>44</sup> Thus, the Appeals Chamber granted an extension by ordering that Mr Gbagbo file his response to the Prosecutor’s appeal brief “within 14 days of the provision of the full draft French translation of Judge Henderson’s reasons.”<sup>45</sup>
26. Finally, the Appeals Chamber demonstrated the importance of translations of the Trial Chamber decision by extending the time limit for a party to file because the registry failed to provide translations in accordance with the timeline set by the Appeals Chamber. For example, the *Ntaganda* Appeals Chamber concluded that: 1) the Registry must provide translations of the Trial Chamber decision by 17 February 2020, 2) the time limit for Mr Ntaganda to submit his

<sup>37</sup> *Ntaganda* case, Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of appeal and the appeal brief, 19 July 2019, [ICC-01/04-02/06-2364](#), para. 3.

<sup>38</sup> *Ntaganda* case, Request for translation of parts of the Judgment, [ICC-02/04-01/15-2405](#), paras 7-11.

<sup>39</sup> *Ibid*, para. 7.

<sup>40</sup> *Ntaganda* case, Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters, 20 September 2019, [ICC-01/04-02/06-2415](#), para.14.

<sup>41</sup> *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcript, [ICC-02/11-01/15-1289](#). Note that the extension was granted to Mr Blé Goudé in order to keep both defendants on the same timeline.

<sup>42</sup> *Ibid*, para. 11.

<sup>43</sup> *Ibid*, para. 23.

<sup>44</sup> *Ibid*.

<sup>45</sup> *Ibid*, para. 25 (*noting* that the Appeals Chamber denied Mr Gbagbo’s request that the time limit begin to run from the notification of the French translation).

appeal brief is 31 January 2020, and 3) Mr Ntaganda may file a corrected version of the appeal brief within 14 days of receipt of the last translation of the Trial Chamber decision because the Registry failed to comply with the Appeals Chamber's order to provide translations of the Trial Chamber Judgment into a language that Mr Ntaganda fully understands and speaks.<sup>46</sup> Similarly, the *Gbagbo and Blé Goudé* Appeals Chamber further extended the limit for Mr Gbagbo to submit his response to the Prosecutor's Appeal Brief because the Registry did not provide translations on a rolling basis.<sup>47</sup> Rather, Mr Gbagbo received the whole translation on 29 January 2020.<sup>48</sup> In his request for a time limit extension, Mr Gbagbo stated that the Registry did not provide translations on rolling basis and, as a result, the defence received all 950 pages of translation at one time.<sup>49</sup> So, Mr Gbagbo must read and analyse the entirety of Judge Henderson's reasons and discuss it with his defence team in only ten working days.<sup>50</sup> Thus, the Appeals Chamber found that 'good cause' for an extension of time was shown and extended the deadline for Mr Gbagbo to submit his response to the Prosecutor's appeal brief from 12 February 2020<sup>51</sup> to 6 March 2020.<sup>52</sup>

## V. SUBMISSIONS

27. The Defence submits that good cause exists for suspension of the due date of the notification of the Defence's intent to appeal until a full translation of the Judgment is provided in Acholi. Good cause for the suspension of the due date until an Acholi translation of the Judgment is provided exists because: 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.

<sup>46</sup> *Ntaganda* case, Decision on the request for extension of time, [ICC-01/04-02/06-2461](#).

<sup>47</sup> *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo's requests for extension of time to file a response to the Prosecutor's appeal brief, [ICC-02/11-01/15-1304](#), para. 9.

<sup>48</sup> *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo's requests for extension of time to file a response to the Prosecutor's appeal brief, [ICC-02/11-01/15-1304](#), para. 6.

<sup>49</sup> *Ibid*, at para. 6.

<sup>50</sup> *Ibid*, at para. 6.

<sup>51</sup> Note that 12 February 2020 is 14 days after the 29 January 2020, which is the date Mr Gbagbo received the full translation.

<sup>52</sup> *Ibid*.

*i. The Appeals Chamber should suspend the date for the Defence's notification of appeal until 30 days after the provision of an Acholi translation because Mr Ongwen has not received a full Acholi translation of the Judgment.*

28. The due date to file the Defence's notice of appeal should be suspended until 30 days after receiving a full translation<sup>53</sup> because Mr Ongwen has not received a full translation of the Judgment in Acholi. Like Mr Ntaganda and Mr Gbagbo,<sup>54</sup> Mr Ongwen does not fully understand or speak the language in which his trial is held and the language in which the Judgment is written. Mr Ongwen only fully understands and speaks Acholi.
29. Furthermore, COVID-19 restrictions at the ICC Detention Centre ('ICC-DC') complicate matters for the Defence as it cannot meet regularly in person with Mr Ongwen. Rather, the Defence must meet with Mr Ongwen *via* video-conferencing. Although this communication is valuable, it is more challenging and time consuming than meeting in person, and sometimes not possible because of slow connection-speeds in Uganda.<sup>55</sup> Without an Acholi translation of the Judgment, Mr Ongwen will not be able to read the content of the Judgment. Therefore, the Defence will be required to spend countless hours in video-conference meetings merely explaining the factual and legal findings of the Trial Chamber to Mr Ongwen, not to mention the hours it shall need to spend explaining possible strategies. The Defence will also need to discuss grounds for appeal and sentencing issues with Mr Ongwen.
30. The amount of time required to explain the Judgment to Mr Ongwen is exacerbated by the fact that this case includes more charges than any previous case before the Appeals Chamber and the longest Trial Chamber judgment issued in the history of the Court. In its 1,077-page decision, the Trial Chamber convicted Mr Ongwen of 61 counts. Prior to this Judgment, the longest Trial Chamber judgment was 624 pages<sup>56</sup> and the largest case included convictions on only 18 charges.<sup>57</sup> So, the *Ongwen* Trial Chamber Judgment is 453 pages longer than the

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<sup>53</sup> See generally *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo's requests for extension of time, translations and correction of transcripts, 26 November 2019, [ICC-02/11-01/15-1289](#), paras 14 and 22-27.

<sup>54</sup> *Ongwen* case, Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision, 24 January 2018, [ICC-02/04-01/15-1147](#), para. 1.

<sup>55</sup> The Defence also notes that Mr Obhof had problems connecting from WiFi connections twice in Uganda in Gulu and Entebbe with WebEx. To join the meetings (one was a Defence meeting and the other with Director Marc Dubuisson), he had to call the USA phone number and connect *via* telephone, not video-conferencing.

<sup>56</sup> *Lubanga* case, Judgment pursuant to Article 74 of the Statute, 14 March 2012, [ICC-01/04-01/06-2842](#) (noting that the decision and separate and dissenting opinions in *Gbagbo and Blé Goudé* amounted to over 1,300 pages, but that this was a decision on a no-case-to-answer motion, and not a decision pursuant to Article 74(5), and the tolling of time ended when Judge Henderson's decision was issued alone).

<sup>57</sup> *Ntaganda* case, Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#), pages 535-539.

previous longest Trial Chamber judgment and more than triple the previous highest number of charges.

31. Since the rendering of the Trial Chamber Judgment, the Defence has contacted LSS of the Court. The Defence learned that an Acholi translation of the Judgment has not begun. LSS requested the Defence identify by section the order in which it would like to receive Acholi translations. However, the Defence maintains that a full translation of the Judgment is necessary for Mr Ongwen to be fully apprised of the factual and legal findings of the Chamber. The structure of the Judgment is such that all sections are equally important, and any untranslated portion could cause a potential prejudice to the Defence. Like in *Blé Goudé and Gbagbo*, this Chamber should find that a full translation is necessary for the Defendant to have the “opportunity to provide meaningful input” in relation to his appeal.<sup>58</sup>
32. Suspending the due date of the Defence’s notice of appeal until 30 days after LSS provides a full Acholi translation of the Judgment will allow Mr Ongwen time to read and understand the Trial Chamber’s findings, allow the Defence to address questions Mr Ongwen will have regarding the factual and legal findings of the Trial Chamber, and allow the Defence and Mr Ongwen to discuss grounds for appeal and sentencing matters.<sup>59</sup> This Appeals Chamber should suspend the due date to file the Defence’s notice of appeal until 30 days after a translation of the Judgment into Acholi is provided to the Defence.

*ii. The Appeals Chamber should suspend the date for the Defence’s notification of appeal because the appeal is complex and the Defence must prepare for concurrent sentencing proceedings.*

33. The due date to file the Defence’s notice of appeal should be suspended until 30 days after an Acholi translation is provided because the appeal is complex and the Defence must prepare for concurrent sentencing proceedings. As previously discussed, Mr Ongwen has not received an Acholi translation of the Judgment and the Defence must ensure that Mr Ongwen fully understands the findings of the Trial Chamber.
34. In addition to this duty, an appeal against the Judgment will be complex and the Defence must simultaneously prepare for sentencing proceedings. The number of convictions and amount of evidence presented in this case are of unprecedented scope. As previously stated, in its 1,077-

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<sup>58</sup> *Gbagbo and Blé Goudé* case, Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcripts, 26 November 2019, [ICC-02/11-01/15-1289](#), para. 23.

<sup>59</sup> *Ibid.*, paras 14 and 22-27.

page Judgment, the Chamber convicted Mr Ongwen of 61 charges. Challenges to the Trial Chamber findings will require extensive analysis of the Trial Chamber's reasoning, including an analysis of disregarded evidence and evidence not mentioned in the Judgment.<sup>60</sup>

35. The Defence must also prepare for the sentencing proceedings. A deadline for additional evidence for sentencing has been set,<sup>61</sup> and runs concurrently with the 90-day period of the appeal.<sup>62</sup>
36. The Defence intends to request leave to call additional evidence. Calling additional evidence is important given the scope of the convictions against Mr Ongwen. Calling additional evidence requires conducting additional investigations and analysing evidence to determine what should be included in the sentencing proceedings.
37. The challenge of analysing the complex Judgment, preparing for an appeal, and preparing for sentencing proceedings is amplified by COVID-19 restrictions at the ICC and ICC-DC. As previously stated, the Defence cannot meet with Mr Ongwen to discuss his appeal, sentencing, and possible reparations proceedings. In addition, Defence team members are extremely limited in its ability to meet in-person and travel for investigative purposes. Any such travel is highly regulated and has the added expense of SARS-CoV-2 PCR testing and rapid antigen tests, not to mention required quarantines.
38. For the safety of team members, the Defence has not held an in-person Team meeting since March 2020. Because of the pandemic, almost all Defence team members have returned to their country of origin to protect their health. This situation has led to additional challenges in accommodating time zones spanning from Uganda to California, as well as internet connectivity. Connecting Defence team members across 11 time zones has proven to be a major unforeseen challenge of the pandemic.<sup>63</sup>
39. Travel related to investigations for sentencing and reparation proceedings is limited and challenging. For example, limited flights and space are available for travel to Uganda and all

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<sup>60</sup> The Defence notes that the evidence regime and manner by which the Chamber deems evidence submitted vs admitted represents an additional, time-consuming challenge for the Defence to determine what is and is not admitted.

<sup>61</sup> [ICC-02/04-01/15-1763](#).

<sup>62</sup> See *Chambers Practice Manual*, updated on 29 November 2019, para. 89.

<sup>63</sup> Most recently, the Defence notes problems associated with the Initial Appearance of Mahamat Said Abdel Kani.

travellers must present a negative COVID-19 test upon arrival.<sup>64</sup> Additionally, precautions must be taken to protect all persons interviewed for purposes of this case.

40. Thus, this Appeals Chamber should suspend the due date for the Defence's notification of appeal until 30 days after an Acholi translation of the Trial Chamber decision is provided because of the complexity of the appeal and the concurrent sentencing proceedings.

*iii. The Appeals Chamber should suspend the date for the Defence's notification of appeal because 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.*

38. Mr Ongwen will only be able to fully and meaningfully participate in his appeal or give direction to the Defence if he has time to review an Acholi translation of the Trial Chamber decision. Mr Ongwen is a special needs person. Suspending the due date of the notice of appeal until 30 days after Mr Ongwen receives an Acholi translation of the Judgment shall afford Mr Ongwen his rights pursuant to Articles 67(1)(a), (b), (e), and (f) of the Rome Statute.
39. As previously stated, the Judgment is complex and the Defence must explain each conviction and the Trial Chamber's reasoning to Mr Ongwen *via* WebEx, prepare for appeals, and prepare for sentencing proceedings. Without time to analyse an Acholi translation of the Judgment, Mr Ongwen will not fully understand the reasoning of the Judgment, cannot meaningfully discuss the evidence relied upon by the Trial Chamber, or understand any appeal that the Prosecution may present.
40. Mr Ongwen's formal education in Uganda ended with second grade. He was stolen away from his family and a normal life at the tender age of nine and did not receive a proper education. Mr Ongwen reads at a very slow pace, and his ability to process legal issues is lower than the average person. Mr Ongwen spent the end of his formative years and the rest of life – until 27 December 2014 – trying to survive in the LRA. Mr Ongwen has the right to participate in his appeal, and he requires additional time to do this.
41. Mr Ongwen also suffers from [REDACTED]. Hearing and reading about his time in the LRA causes pain and suffering during extended periods, and Mr Ongwen must have time to read

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<sup>64</sup> [Foreign Travel Advice – Uganda](#), “If you are travelling to Uganda, you will need to provide a negative COVID-19 test certificate, issued no more than 120 hours before boarding the aircraft or crossing land borders. Foreign nationals without a valid negative test certificate will be denied entry.”

through the Judgment while taking extended breaks during traumatic sections. Mr Ongwen even began crying during a hearing when one of his childhood friends recounted his experiences with Mr Ongwen when they were abducted by the LRA.<sup>65</sup>

42. Suspending the due date of the Defence's notification of appeal until 30 days after an Acholi translation of the Trial Chamber judgment is provided will allow Mr Ongwen to fully and meaningfully participate in his appeal because 1) Mr Ongwen will have the opportunity to read and analyse the Judgment against him, 2) the Defence will have the opportunity to discuss the Trial Chamber's findings with Mr Ongwen and address his questions or concerns, and 3) it will allow Mr Ongwen time to consider and address sentencing proceedings. It will also facilitate the advancement of fair and expeditious proceedings. Thus, suspending the due date for the Defence's notification of appeal until an Acholi translation of the Judgment is provided will allow Mr Ongwen to fully and meaningfully participate in his appeal and give direction to the defence.

## **VI. RELIEF**

43. The Defence submits that good cause for the suspension the due date of the Defence's notification of appeal until an Acholi translation of the Trial Chamber judgment is provided exists because Mr Ongwen has not received translations of the Trial Chamber's decision in a language that he understands and speaks, the appeal is complex and the Defence must prepare for concurrent sentencing proceedings, and Acholi translations will allow Mr Ongwen to meaningfully participate in his appeal.
44. For the reasons outlined above, the Defence requests that the Appeals Chamber suspend the due date of the Defence's notification of appeal until an Acholi translation of the Trial Chamber judgment is provided.

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<sup>65</sup> See ICC-02/04-01/15-T-193-ENG, p. 17, lns 15-25.

Respectfully submitted,



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Hon. Krispus Ayena Odongo

On behalf of Dominic Ongwen

Dated this 8<sup>th</sup> day of February, 2021

At Kampala, Uganda