

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 February 2021**

APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Piotr Hofmański
Judge Solomy Balungi Bossa

SITUATION IN UGANDA

IN THE CASE OF THE PROSECUTOR v. DOMINC ONGWEN

Public

**Prosecution's Response to Defence's "Request for a suspension
of its notice of its intent to appeal Trial Chamber IX's Trial Judgment"**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Prosecution opposes Mr Ongwen's request¹ to suspend the filing of his notice of appeal until 30 days after the provision of a *full* translation in Acholi of the Judgment.² It does however agree to a reasonable extension of time to allow the most relevant parts of the Judgment to be translated before Mr Ongwen files his notice of appeal. The Prosecution further recognises that the length and complexity of the Judgment and the concomitant sentencing proceedings may constitute good cause for the purpose of rule 150(2) of the Rules of Procedure and Evidence ("Rules").

II. SUBMISSIONS

2. Under rule 150(2) of the Rules the Appeals Chamber may extend the 30 days' time limit under rule 150(1) for the filing of the notice of appeal. It may do so if 'good cause' has been shown.

3. Mr Ongwen requests the Appeals Chamber to extend the time limit for the filing of his notice of appeal under rule 150(1) until 30 days after the provision of a full translation in Acholi of the Judgment.³ He argues that 'good cause' under rule 150(2) exists in this case for two main reasons: First, Mr Ongwen submits he will be able to fully and meaningfully participate in his appeal only when he will receive a full translation in Acholi of the Judgment because he is a special needs person with mental disabilities;⁴ Second, Mr Ongwen argues that an extension of time is also justified because the Judgment is exceptionally long and complex and the Defence must at the same time prepare for the sentencing proceeding.⁵

(a) A full translation of the Trial Judgment in Acholi is not required to ensure the fairness of the proceedings under rule 144(2)(b).

4. Contrary to Mr Ongwen's submission, an accused person is not necessarily entitled under rule 144(2)(b) to a *full* translation of the Judgment in a language he or she fully understands or

¹ [ICC-02/04-01/15-1764-Red](#) ("Request").

² [ICC-02/04-01/15-1762-Red](#) ("Judgment").

³ [Request](#), paras. 3, 43.

⁴ [Request](#), paras. 2, 27-32, 38 p.13-42 p.14 (the Prosecution notes that after paragraph 40 of page 13 of the Request, the numbering of Section iii restarts from paragraph number 38. The Prosecution will refer to the relevant paragraphs of Section iii and following indicating also the page number).

⁵ [Request](#), paras. 2, 27, 33-40.

speaks.⁶ Rather, under rule 144(2)(b) an accused person is entitled to such translation “*if necessary* to meet the requirements of fairness under article 67, paragraph 1 (f)” of the Statute. A *full* translation of the Judgment thus is not an automatic right of the accused. Such right arises only if—and to the extent that—the translation is necessary to meet the requirement of fairness under article 67(1)(f). This it is a case-by-case determination.⁷ Indeed, rule 144(2) may be satisfied by providing an accused person with a translation of parts of the Judgment.⁸

5. In this case, Mr Ongwen does not explain why a *full* translation in Acholi of the Judgment is required to ensure his meaningful participation and the fairness of the appeal proceedings. He does not substantiate his submission that he is a “special needs person with mental disabilities” or that his particular situation requires an exceptional extension of time.⁹ Consistently with the approach taken in *Ntaganda*—where the Appeals Chamber granted a “modest extension of time” to file the notice of appeal for several reasons, including to allow the translation of *parts* of the Judgment¹⁰—the translation of the *most relevant parts* of the Judgment, such as the factual basis for his conviction, are sufficient to allow Mr Ongwen to meaningfully participate in his appeal, without unnecessarily undermining the fair and expeditious conduct of the appeal.¹¹ In addition, counsel for Mr Ongwen is fluent in English and, like other members of the Defence team, speaks Acholi.

6. Further, if certain parts of the Judgment cannot be translated within a reasonable period of time, the Appeals Chamber, in consultation with the Registry Language Service Section

⁶ *Contra Request*, para. 18.

⁷ The different approaches taken by the Appeals Chamber in different cases supports this proposition. While in the *Gbagbo & Blé Goudé* case the Appeals Chamber extended the deadline for the Defence to respond to the Prosecution appeal until 14 after the draft translation of Judge Henderson’s opinion was provided ([ICC-02/11-01/15-1289](#)), in the *Ntaganda* case, the Appeals Chamber extended 30 days the deadline to file the notice of appeal (due to translation but also to other factors such as the complexity of the appeal and concurrent sentencing proceedings) ([ICC-01/04-02/06-2364](#)). The Appeals Chamber then staggered (and further extended) the filing of the appeal brief in two deadlines due to different factors, such as translation issues but also due to concurrent sentencing and reparation proceedings, among others ([ICC-01/04-02/06-2415](#), paras. 13-16 and [ICC-01/04-02/06-2426](#), paras. 6-8).

⁸ See e.g. [ICC-01/05-01/13-2001](#), paras. 11, 13; the *Bemba et al.* Trial Chamber dismissed Mr Babala’s and Mr Arido’s argument that the full translation in French of the Judgment was required in order to proceed to sentencing and instead it identified parts of the Judgment to be translated into French. The *Ntaganda* Trial Chamber likewise identified parts of the Judgment to be translated into Kinyarwanda for the purpose of sentencing: [ICC-01/04-02/06-2405](#), para. 3 and fn. 2. The Prosecution notes that Mr Ongwen has sought leave to appeal the Trial Chamber’s decision setting out the sentencing calendar on the grounds that the full Judgment had not been translated into Acholi: [ICC-02/04-01/1766-Red](#). While Mr Ongwen argues that the full Judgment has not been translated but he does not clarify if parts of it have been translated.

⁹ *Contra Request*, paras. 2, 27, 38 p.13-42 p. 14.

¹⁰ [ICC-01/04-02/06-2364](#), paras. 3, 5.

¹¹ [ICC-01/04-02/06-2401](#).

(“LSS”), may explore alternative or additional ways to further assist Mr Ongwen to ensure that the rule 144(2) requirements are met.¹²

(b) *The length and complexity of the Judgment may justify a modest extension of time.*

7. The Prosecution agrees that the length and complexity of the Judgment may justify a modest extension of time, particularly considering that the Parties must prepare at the same time for the sentencing proceedings.¹³ In *Ntaganda*, where the Parties were also engaged in the sentencing proceedings, the Appeals Chamber found that the length and complexity of the judgment constituted good cause justifying a *modest* extension of time to file the notice of appeal.¹⁴

8. However, this extension largely depends on the time required for the translation of the most relevant parts of the Judgment and / or other mechanisms put in place to assist Mr Ongwen.¹⁵

III.CONCLUSION

9. The Prosecution opposes Mr Ongwen’s request to suspend the date for the Defence’s filing of its notice of appeal until 30 days after the provision of a *full* translation of the Judgment. It does, however, agree to a reasonable extension of time considering the length and complexity of the Judgment and the concomitant sentencing proceedings and to allow the most relevant parts of the Judgment to be translated before Mr Ongwen files his notice of appeal.



Fatou Bensouda, Prosecutor

Dated this 16th day of February 2021

At The Hague, The Netherlands

¹² For example, the Appeal Chamber might instruct the Registry to make additional interpreters available to assist Defence counsel in advising Mr Ongwen regarding the content of the Judgment, or to interpret portions of the Judgment to the Mr Ongwen orally.

¹³ [Request](#), paras. 24, 33-40.

¹⁴ [ICC-01/04-02/06-2364](#), paras. 3, 5.

¹⁵ *See* above para. 6.