



Original: English

**No. ICC-02/04-01/15 A
Date: 24 February 2021**

THE 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. DOMINIC ONGWEN

Public document

**Decision on Mr Ongwen's request for time extension for the notice of appeal and
on translation**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
Helen Brady

Counsel for the Defence

Krispus Ayena Odongo
Chief Charles Achaleke Taku

Legal Representatives of Victims

Joseph Akwenyu Manoba
Francisco Cox

Paolina Massidda

REGISTRY

Registrar

Peter Lewis

The Appeals Chamber of the International Criminal Court,

Having before it the ‘Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment’ of 8 February 2021 (ICC-02/04-01/15-1764-Conf; public redacted version: ICC-02/04-01/15-1764-Red),

Renders pursuant to rule 150(2) of the Rules of Procedure and Evidence the following

DECISION AND ORDER

- 1) The time limit for the filing of the notice of appeal by Mr Ongwen is extended to 16h00 on Wednesday, 21 April 2021.
- 2) The time limit for the filing of the appeal brief by Mr Ongwen is extended to 16h00 on Monday, 21 June 2021.
- 3) Mr Ongwen’s defence team shall, by 16h00 on Friday, 12 March 2021, inform the Appeals Chamber and the Language Services Section of the Registry of the sections of the decision on conviction (ICC-02/04-01/15-1762-Conf) that should be prioritised for translation into Acholi. Each section should not exceed 25 pages in length and should be identified by paragraph number. The sections should be listed in priority order.
- 4) The Registry shall provide draft Acholi translations of the sections of the decision on conviction (ICC-02/04-01/15-1762-Conf) identified on a rolling basis to the defence team and in the order set out by them. It shall further inform the defence team and the Appeals Chamber by Wednesday, 31 March 2021, of the estimated time to deliver the translated sections as well as the full translation of the decision on conviction, in draft and revised versions. Mr Ongwen can, under regulation 61 of the Regulations of the Court, seek a variation of the grounds of appeal once he has received a translation of the sections of the decision on conviction relevant to those grounds.
- 5) Should the Registry subsequently anticipate not being able to meet the estimated timeframe, it shall inform the Appeals Chamber immediately.
- 6) The Common Legal Representative of Victims and the Legal Representatives of Victims are ordered to file, as soon as possible,

public redacted versions of ICC-02/04-01/15-1774-Conf and ICC-02/04-01/15-1776-Conf, respectively.

REASONS

I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX ('Trial Chamber') convicted Mr Ongwen of crimes against humanity and war crimes (the 'Conviction Decision').¹
2. On 8 February 2021, Mr Ongwen filed a request for a suspension of the time limit to file his notice of appeal against the Conviction Decision until 30 days after an Acholi translation of the decision is provided (the 'Request').²
3. On 16 February 2021, the Prosecutor, the Common Legal Representative of Victims (CLRV) and the Legal Representatives of Victims (LRV) filed their responses to the Request (the 'Prosecutor's Response', 'CLRV's Response' and 'LRV's Response', respectively).³

II. MERITS

A. Submissions of the parties and participants

4. Mr Ongwen submits that the due date to file his notice of appeal against the Conviction Decision should be suspended until a full Acholi translation of the decision is provided.⁴ In his view, his request meets the criterion of 'good cause' in terms of rule 150(2) of the Rules of Procedure and Evidence (the 'Rules') for extension of the time limit because (i) an Acholi translation of the Conviction Decision has not been provided yet; (ii) the complexity and length of the decision must be taken into account, as well

¹ [Trial Judgment](#), ICC-02/04-01/15-1762-Red; confidential version notified on the same day (ICC-02/04-01/15-1762-Conf).

² [Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment](#), 8 February 2021, ICC-02/04-01/15-1764-Red; confidential version notified on the same day (ICC-02/04-01/15-1764-Conf).

³ [Prosecution's Response to Defence's "Request request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment"](#), ICC-02/04-01/15-1775; Victims' response to "Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment", ICC-02/04-01/15-1776-Conf; CLRV Response to the "Defence Request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment", ICC-02/04-01/15-1774-Conf.

⁴ [Request](#), paras 3, 27-28.

as the fact that the defence team is also engaged with the sentencing proceedings; and (iii) given his personal special needs, he would ‘only be able to fully and meaningfully participate in his appeal’ when provided with the translation.⁵

5. The Prosecutor opposes the Request. However, she agrees to ‘a reasonable extension of time to allow the most relevant parts of the Judgment to be translated’ before the filing of Mr Ongwen’s notice of appeal. In this regard, she avers that the length and complexity of the decision as well as the fact that there is a concurrent sentencing proceedings constitute good cause warranting some extension.⁶

6. The LRV acknowledge that Mr Ongwen has the right to receive a translation of the Conviction Decision into a language he fully understands and speaks. However, they submit that he has not advanced compelling reasons which would justify the period of extension sought. In their view, the extension should be moderate in light of the expeditiousness of the proceedings.⁷

7. The CLRV submits that a full translation of a decision is not an absolute right of the accused, as it needs to meet the requirement of fairness. She avers that Mr Ongwen should be provided with relevant excerpts of the Conviction Decision on a rolling basis or with the assistance of an interpreter. Finally, she favours a modest extension should the Appeals Chamber grant the Request.⁸

B. Determination by the Appeals Chamber

8. Pursuant to rule 150(2) of the Rules, an extension of time limit for the filing of a notice of appeal may be granted if ‘good cause’ is shown. In this regard, the Appeals Chamber notes that, the Conviction Decision is currently only available in English and that under article 67(1)(b) and (f) of the Statute, ‘the accused shall be entitled to [...] have adequate time and facilities for the preparation of the defence’, and ‘[t]o have [...] such translations as are 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’. According to rule 144(2)(b) of the Rules, a copy of the decision of a trial chamber concerning the ‘criminal responsibility of the accused’

⁵ [Request](#), para. 2.

⁶ [Prosecutor’s Response](#), para. 1.

⁷ LRV’s Response, para. 3.

⁸ CLRV’s Response, paras 2-3.

shall be provided as soon as possible to ‘[t]he accused, in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness under article 67, paragraph 1 (f)’.

9. The Appeals Chamber recalls that, in the past, it has granted an accommodation of the briefing schedule where a convicted person was facing language difficulties.⁹ However, in the present case, the Registry has indicated to the Appeals Chamber that, in the Registry’s preliminary assessment, a full, unrevised translation of the Conviction Decision may not be available until the end of 2021. The corollary is that Mr Ongwen’s Request, if granted, would significantly postpone the commencement of appellate briefing and, thus, the determination of the appeal. Mr Ongwen has not referred the Appeals Chamber to any case where a chamber of this Court has granted an extension of the magnitude he seeks here.

10. Moreover, the Appeals Chamber finds Mr Ongwen’s argument that granting the Request in full is necessary to comply with his right under article 67(1)(f) of the Statute to be unreasonable. The Appeals Chamber finds that the language of this provision 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. In this regard, the Appeals Chamber considers 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.¹⁰

11. Bearing in mind the above, the Appeals Chamber considers that granting Mr Ongwen’s Request in full would be disproportionate as it could lead to a delay of the

⁹ See e.g. [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. 5; [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 12-15; *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [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 18, 20-21, 23-26.

¹⁰ See European Court of Human Rights (ECtHR), *Kamasinski v. Austria*, [Judgment](#), 19 December 1989, application no 9783/82, paras 74, 84-85: holding that the right to an interpreter (article 6(3)(e) of the ECHR) does not relate to translation of all documents, but only those necessary for the defendant to be acquainted with the case in order to allow his or her defence, and that translation of the final judgment itself is not necessary when a convicted person understands, through oral explanations and the assistance of legal counsel, the judgment sufficiently to lodge an appeal. See also ECtHR, Deuxième Section, *H.K. c. Belgique*, [Décision sur la Recevabilité de la Requête n° 22738/08](#), 12 January 2010.

appeal proceedings of one year or maybe more. Mr Ongwen has been provided with full Acholi translations of the decision on the confirmation of the charges and other core documents, he has followed all hearings in real-time through Acholi interpretation – including the oral summary of the reasons for the Conviction Decision¹¹ – and he has had, throughout the proceedings, the assistance of a Defence team ‘whose members, including [the lead] counsel, [are] fluent in English and Acholi’.¹² The Appeals Chamber also takes into account that Mr Ongwen would be detained throughout the period requested awaiting the translation in order to file his notice of appeal. Finally, the Appeals Chamber further notes that, pursuant to regulation 61 of the Regulations, 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.

12. Nevertheless, the Appeals Chamber finds that counsel for Mr Ongwen has set out reasons in the Request that demonstrate ‘good cause’ for a modest extension of time. Accordingly, the Appeals Chamber finds that an extension of 45 days is sufficient for Mr Ongwen to, with the assistance of counsel, have a meaningful opportunity to identify which parts of the Conviction Decision he intends to challenge on appeal. Furthermore, Mr Ongwen’s defence team must inform the Language Services Section and the Appeals Chamber, by Friday, 12 March 2021, of the sections of the Conviction Decision to be prioritised for translation into Acholi. Each section should not exceed 25 pages and should be listed in priority order.

13. The Appeals Chamber also finds it appropriate to extend, on its own motion, the time limit for Mr Ongwen to file his appeal brief, filed pursuant to regulation 58 of the Regulations, by 45 days. This is because otherwise, Mr Ongwen would be required to

¹¹ [Verdict in the Ongwen case, full hearing, 4 February 2021](#).

¹² Trial Chamber IX, [Decision on the Prosecution’s Applications for the Introduction of Prior Recorded Testimony under Rule 68\(2\)\(b\) of the Rules](#), 18 November 2016, ICC-02/04-01/15-596-Red, para. 28; Pre-Trial Chamber II, [Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#), 27 February 2015, ICC-02/04-01/15-203, paras 33-35; Trial Chamber IX, Decision on Defence request for leave to appeal the ‘Decision scheduling a hearing on sentence and setting the related procedural calendar’, 22 February 2021, ICC-02/04-01/15-1777, para. 10; Trial Chamber IX, [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, paras 9, 17, 20; Pre-Trial Chamber II, [Decision on the confirmation of charges against Dominic Ongwen](#), 23 March 2016, ICC-02/04-01/15-422-Red, para. 22; [Prosecutor’s Response](#), para. 5; CLRV’s Response, para. 17. *See also* [Report of the Registry on the voluntary surrender of Dominic Ongwen and his transfer to the Court](#), 22 January 2015, ICC-02/04-01/15-189, paras 2, 6-7 (on Mr Ongwen having some, but limited, understanding of English).

file his appeal brief only 30 days after the notice of appeal is due to be filed.¹³ The present decision does not affect the schedule set in the Regulations for the Prosecutor and participating victims to file responses.

14. The Registrar shall provide an Acholi translation of sections of the Conviction Decision on a rolling basis to the defence team in the order indicated by the team. It shall further inform the defence team and the Appeals Chamber of the estimated time to deliver the sections of the translation as well as the full translation of the Conviction Decision, in draft and revised versions.

15. The CLRV and the LRV are requested to file, as soon as possible, public redacted versions of their responses to the Request.

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



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 24th day of February 2021

At The Hague, The Netherlands

¹³ See rule 150(1) of the Rules of Procedure and Evidence (notice of appeal to be filed within 30 days of notification of the appealed decision) and regulation 58(1) of the Regulations of the Court (appeal brief to be filed within 90 days of notification of the appealed decision).