

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 25 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 Redacted Version of ICC-02/04-01/15-1774-Conf

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

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. The Common Legal Representative of the Victims participating in the proceedings¹ (the “CLR V”) preliminarily notes that Victims have been waiting for justice for more than fifteen years and that proceedings should be conducted in an expeditious manner.

2. In accordance with the practice of the Court, an accused does not have an absolute right to have translated the full judgment in a language he or she fully understands and speaks and the right of the accused to receive translations is qualified to the extent to meet the requirements of fairness. In order to avoid delays in the proceedings, the CLR V submits that the Defence for Mr Ongwen should be provided with the translations of the essential parts of the Trial Judgment² (the “Judgment”) on a rolling basis in order to ensure that the appellate proceedings advance both fairly and expeditiously. The Appeals Chamber may also consider providing Mr Ongwen with the assistance of an interpreter (as it was the case during the trial proceedings) in order for him to be able to review the Judgment and provide instructions to his counsel.

3. The CLR V further opposes the open-ended nature of the relief sought in the “Defence Request for a suspension of its notice of its intent to appeal Trial Chamber’s

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 the “Trial Judgment” (Trial Chamber IX), [No. ICC-02/04-01/15-1762-Conf](#), 4 February 2021 (the “Judgment”) (Public redacted version of the document was filed on the same day. [No. ICC-02/04-01/15-1762-Red](#)).

IX's Trial Judgment" (the "Request")³ and posits that, should the Appeals Chamber grant the Request, the extension of time limit must be modest.

4. Finally, the CLRV objects to the reference to Mr Ongwen as a mentally disabled person alleged in the Request since such qualification has no factual or legal basis.

II. PROCEDURAL HISTORY

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

6. On 8 February 2021, the Defence submitted its Request.⁵

7. On 11 February 2021, the Appeals Chamber issued the Decision on the Presiding Judge of the Appeals Chamber in any appeal against the Judgment.⁶

8. On 12 February 2021, the Appeals Chamber issued the Order concerning the time limit for responses to the Request, instructing the parties and participants to file their submissions by 16 February 2021.⁷

³ 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](#), 8 February 2021 (the "Request").

⁴ See the Judgment, *supra* note 2.

⁵ See the Request, *supra* note 3.

⁶ See the "Decision on the Presiding Judge of the Appeals Chamber in any appeal against the decision of Trial Chamber IX entitled 'Trial Judgment'" (Appeals Chamber), [No. ICC-02/04-01/15-1767 A](#), 11 February 2021.

⁷ See the "Order concerning the time limit for responses to the 'Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment'" (Appeals Chamber), [No. ICC-02/04-01/15-1769 EC A](#), 12 February 2021.

III. LEVEL OF CLASSIFICATION

9. In accordance with regulation 23bis (2) of the Regulations of the Court, the present submission is filed confidential following the classification chosen by the Defence. A public redacted version will be filed in due course.

IV. SUBMISSIONS

10. At the outset, the CLRV underlines that Victims have been waiting for justice to be delivered for more than fifteen years. Thus, the Request seeking the extension of time limit for filing the notice of appeal raises a serious concern for them in terms of the expeditiousness of the proceedings. Indeed, Victims wish that the remaining trial and appeal proceedings be conducted and concluded as soon as possible.

11. In the Request, the Defence, while indicating that the Language Services Section of the Registry (“LSS”) had asked it to identify the parts of the Judgment it wishes to receive in Acholi, insists on the need of a full translation of the Judgement, claiming that it is necessary since all sections of the document are equally important and any untranslated portion could cause a potential prejudice to Mr Ongwen.⁸

12. The CLRV submits that the accused does not have an absolute right to receive the full translation of the Judgment in a language he fully understands and speaks. Indeed, pursuant to rule 144(2) of the Rules of Procedure and Evidence (the “Rules”), a decision of the Trial Chamber concerning the criminal responsibility of the accused is to be provided, as soon as possible, in a working language of the Court, and to the accused in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness under article 67(1)(f) of the Statute.⁹ Therefore, the right of the

⁸ See the Request, *supra* note 3, para. 31.

⁹ See the “Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcripts (Appeals Chamber), [No. ICC-02/11-01/15-1289 A](#), 26 November 2019, para. 21.

accused to receive translations is qualified to the extent to “*meet the requirements of fairness*”.¹⁰

13. In this regard, the practice of the Court (upon which the Defence relies in its Request) militates in the opposite direction of what the Defence is asking. For example, in the *Ntaganda case*, the defence identified only the essential parts of the trial judgment (not the totality of the judgment) which it requested the LSS to translate in order to allow Mr Ntaganda to participate in the drafting of his appeal and to give instructions to his counsel.¹¹ Accordingly, the Appeals Chamber granted the request for extension of time limit on the basis that the translation of the essential parts of the judgment into Kinyarwanda was provided to the defence *on a rolling basis*.¹² As to the length of the extension sought, the Appeals Chamber considered that a modest extension of 30 days was initially appropriate in the circumstances.¹³

14. Similarly, in the *Gbagbo case*, the Appeals Chamber decided to grant a modest extension of the time limit (totalling 14 days) under regulation 59(1) of the Regulations of the Court provided that the defence would receive draft translations of the necessary documents for its appeal *on a rolling basis*.¹⁴ Thus, the Appeals Chamber rejected Mr Gbagbo’s request that the time limit applicable to his appeal should begin

¹⁰ See the “Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision” (Trial Chamber IX), [No. ICC-02/04-01/15-1147](#), 24 January 2018, para. 12. See also, the “Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests” (Trial Chamber IX), [No. ICC-02/04-01/15-1199-Conf](#), 6 March 2018, para. 21 (Public redacted version of the document was filed on 4 April 2018. [No. ICC-02/04-01/15-1199-Red](#)).

¹¹ See the “Request for translation of parts of the Judgment”, [No. ICC-01/04-02/06-2405](#), 16 September 2019, paras. 7-9.

¹² See the “Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of appeal and the appeal brief” (Appeals Chamber), [No. ICC-01/04-02/06-2364 A](#), 19 July 2019, paras. 3-6. See also, the “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 (Appeals Chamber)”, [No. ICC-01/04-02/06-2415 A](#), 20 September 2019, paras. 13-14 and the “Decision on the request for extension of time” (Appeals Chamber), [No. ICC-01/04-02/06-2461 A A2](#), 17 January 2020, paras. 9-14

¹³ See the “Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of appeal and the appeal brief”, *supra* note 12, para. 6.

¹⁴ See the “Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcripts (Appeals Chamber)”, [No. ICC-02/11-01/15-1289 A](#), 26 November 2019, paras. 23-25.

to run as of notification of the official translations of the documents he requested since such arrangement was not justified and would have unnecessarily prolonged the proceedings.¹⁵ In the *Ngudjolo case*, the Appeals Chamber also considered that the defence could commence its preparation for the appeal based on the English version of the necessary documents, while directing the LSS to make available to Mr Ngudjolo a *draft* translation.¹⁶ Consequently, the Appeals Chamber decided to extend the time limit applicable to Mr Ngudjolo's appeal by thirty days.¹⁷

15. The CLRV submits that similar procedural steps are appropriate in the circumstances of this case. Indeed, granting the Request in its current form is not justified and would unnecessarily prolong the proceedings. Therefore, the CLRV posits that the Appeals Chamber should request the Defence to identify in a set time-limit the essential parts of the Judgment it wishes to be translated into Acholi and direct the Registry (LSS) to provide the translation of said essential parts on a rolling basis in order to ensure that the appellate proceedings advance both fairly and expeditiously.¹⁸

16. The CLRV further submits that the Appeals Chamber may also adopt other measures to expedite proceedings, such as providing Mr Ongwen with the assistance of an interpreter (as it was the case during the trial proceedings) in order to review the Judgment and provide instructions to his counsel.

17. In this regard, the CLRV recalls, at this juncture, that the *requirements of fairness* had been met in the proceedings so far by providing Mr Ongwen with the assistance of a competent interpreter and relevant translations of documents for the following reasons: (i) Mr Ongwen is not conducting his own defence in person but is assisted by

¹⁵ *Idem*, para. 25.

¹⁶ See the "Decision on Mr Ngudjolo's request for translation and suspension of the time limit (Appeals Chamber), [No. ICC-01/04-02/12-60 A](#), 11 April 2013, para. 13.

¹⁷ *Ibid.*

¹⁸ See the "Decision on Mr Gbagbo's requests for extension of time, translations and correction of transcripts, *supra* note 14, para. 23.

counsel who well satisfies the criteria set forth in rule 22 of the Rules, in particular to have an excellent knowledge of and be fluent in one of the working languages of the Court¹⁹; (ii) Mr Ongwen's Defence team is composed of members (in particular, the Lead Counsel) who are fluent in Acholi²⁰; and (iii) interpretation services have been provided to Mr Ongwen throughout the proceeding.²¹

18. This combination of having the assistance of a defence counsel, fluent in English and Acholi, together with the translation into Acholi of core documents (and pieces of evidence) has been found as satisfying the requirement of fairness of the proceedings.²² In fact, Mr Ongwen has heard the entire trial through Acholi interpretation and has instructed his defence team throughout the trial without any discernible impediments.²³ If need be, he may also consult the Acholi recordings of court hearings²⁴ for the preparation of his appeal.

19. The CLRV also opposes the open-ended nature of the relief sought by the Defence. Indeed, the request for the suspension of the due date for the notification of the intention to appeal until 30 days after the Acholi translation of the full Judgment is provided to Mr Ongwen essentially means that the time limit applicable for the parties and participants provided in the relevant statutory provisions would be suspended indefinitely since there is no indication on exactly when the Acholi translation of the entire Judgment will be ready.

¹⁹ See the "Decision Setting the Regime for Evidence Disclosure and Other Related Matters" (Pre-Trial Chamber II), [No. ICC-02/04-01/15-203](#), 27 February 2015, para. 33.

²⁰ See the "Decision on the confirmation of charges against Dominic Ongwen (Pre-Trial Chamber), [No. ICC-02/04-01/15-422-Conf](#), 23 March 2016, para. 22 (Public redacted version of the document was filed on the same day. [No. ICC-02/04-01/15-422-Red](#)) See also, the "Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules" (Trial Chamber IX), [No. ICC-02/04-01/15-596-Conf](#), 18 November 2016, para. 28.

²¹ See the "Decision on the confirmation of charges against Dominic Ongwen", *supra* note 20, para. 22.

²² See the "Decision Setting the Regime for Evidence Disclosure and Other Related Matters", *supra* note 19, para. 33.

²³ See the "Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision", *supra* note 10, para. 20.

²⁴ See the "Decision on Defence Request for Reconsideration of or Leave to Appeal the Directions on Closing Briefs and Closing Statements" (Trial Chamber IX), [No. ICC-02/04-01/15-1259](#), 11 May 2018, para. 15.

20. The CLRV notes that she is unable to provide punctual submissions on the extension request because of the uncertainty about the time frame for the provision by the LSS to the Defence of the essential parts of the Judgment, as well as on any measure eventually adopted by the Appeals Chamber to minimise delays in the proceedings. However, she indicates that, in light of the Victims' right to expedite proceedings, should the Appeals Chamber grant the Request, the extension of time limit should be modest.

21. Finally, the CLRV notes the Defence's allegation that "*Mr Ongwen can only be able to fully and meaningfully participate in his appeal with an Acholi translation of the Judgment because [he] is a special needs person with mental disabilities*".²⁵ The Defence adds that "[REDACTED]".²⁶

22. The CLRV strongly objects to the reference to Mr Ongwen as a person with mental disabilities since such qualification has no factual or legal basis. In the Judgment, the Trial Chamber explicitly rejected the Defence's allegation that Mr Ongwen is a mentally disabled person.²⁷ In particular, the Trial Chamber considered as entirely untenable the Defence's submission to the effect that it had discriminated against the accused by treating him as if he were not a defendant with mental disabilities.²⁸ Throughout the trial proceedings, the Chamber assessed Mr Ongwen's mental health and made relevant rulings on information provided by independent medical experts.²⁹ Most importantly, the Trial Chamber found, based on expert evidence, that Mr Ongwen is not suffering from any mental illness.³⁰

²⁵ See the Request, *supra* note 3, para. 27.

²⁶ *Idem*, para. 41.

²⁷ See the Judgment, *supra* note 2, paras. 108-109.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Idem*, paras. 2475-2477, 2484, 2492-2493, 2518, 2538 and 2580.

23. Therefore, the CLRV submits that the Defence's attempt purporting to show that Mr Ongwen is a mentally disabled person is not a valid argument and thus should be rejected.

Respectfully submitted,

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 25th day of February 2021

At The Hague, The Netherlands