

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **10 May 2021**

APPEALS CHAMBER

Before:

**Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
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

Defence request for a page limit extension for its notice of appeal

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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Section****Other**

I. INTRODUCTION

1. Pursuant to Regulation 37(2) of the Regulations of the Court ('RoC'), the Defence for Dominic Ongwen ('Defence') hereby respectfully requests the Appeals Chamber to grant a page-limit extension from 20 pages¹ to 75 pages for its notice of appeal due on 21 May 2021. The Defence avers that good cause exists as:
 - a. This is the longest Article 74 Judgment in the history of the ICC;
 - b. Trial Chamber IX convicted Mr Ongwen for more than three times as many counts than another other person prosecuted before the ICC under Article 5;
 - c. Trial Chamber IX heard testimony from 186 witnesses; and
 - d. This Trial Judgment is the most complex in history.
2. The Defence asserts that due to the factors listed above, an increase in the page limit is warranted to cover the detail needed in the grounds of appeal listed in the Defence's notice of appeal. With respect and considering the Defence's current draft document, anything under this limit would infringe upon the Client's rights in the notice of appeal and the Appeals Chamber's duty to ensure proper notice to the opposing party.

II. VARIATION OF TIME LIMITS

3. Pursuant to Regulation 35 of the RoC, the Defence requests that any response to this request be filed on or before 13 May 2021 at 16h00 CET. While the Defence appreciates that this notice is sent rather close to the 21 May 2021 date to submit its notice of appeal, the Defence avers that this late time relates to the packed schedule which the Defence must conform to with its brief on sentencing, the hearing on sentencings, the sentencing pronouncement and the various ancillary duties with the case. The Defence is now compiling all grounds in one master document and requires additional pages for its notice of appeal. Because of the close proximity, the Defence avers that a speedy decision by the Appeals Chamber is necessary to ensure the Defence complies with the Appeals Chamber order and the RoC.

¹ See Regulation 37(1) of the RoC.

III. PROCEDURAL HISTORY

4. On 4 February 2021, Trial Chamber IX issued its Trial Judgment, convicting Mr Ongwen on 61 counts of war crimes and crimes against humanity.²
5. On 8 February 2021, the Defence requested an extension of time to file its notice of appeal.³
6. On 18 February 2021, the Appeals Chamber granted the Defence an additional 45 days to file its notice of appeal and the document in support of the appeal.⁴
7. On 18 March 2021, the Defence requested an additional extension of time to file its notice of appeal and document in support of the appeal because the Registrar had prejudiced Mr Ongwen's appellate work by issuing a unreasonably late decision on the Defence's Regulation 83(3) request for additional funds.⁵
8. On 9 April 2021, the Appeals Chamber granted the Defence's second request for an additional 30 days to file its notice of appeal and document in support of the appeal.⁶

IV. SUBMISSIONS

9. Regulation 37(2) of the RoC allows the Appeals Chamber to extend the page limit in exceptional circumstances. The Defence asserts that such exceptional circumstances exist which warrant a page limit extension. The Defence notes that this is the longest Article 74 Judgment in the history of the ICC, Trial Chamber IX convicted Mr Ongwen for more than three times as many counts than another other person before the ICC, 186 witnesses testified either live or through Rule 68(2) and this Trial Judgment is the most complex in history.

A. This is the longest Trial Judgment in the history of the ICC

10. The Defence notes that the next longest Article 74 Judgment issued by any Chamber of this Court is 660 pages in *The Prosecutor v Germain Katanga*.⁷ The *Lubanga* trial judgment was

² Trial Chamber IX, *Trial Judgment*, ICC-02/04-01/15-1762-Conf (public redacted version available [here](#)).

³ Appeals Chamber, *Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment*, ICC-02/04-01/15-1764-Conf (public redacted version available [here](#)).

⁴ Appeals Chamber, *Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation*, [ICC-02/04-01/15-1781](#).

⁵ Appeals Chamber, *Defence Request for an Extension of Time to File its Notice of Intent to Appeal the Trial Judgment due to the Registrar's Violation of Mr Ongwen's Fair Trial Rights, or in the Alternative, Reconsideration of ICC-02/04-01/15-1781 based on new Information*, ICC-02/04-01/15-1799-Conf (public redacted version available [here](#)).

⁶ Appeals Chamber, *Decision on Mr Ongwen's second request for time extension*, ICC-02/04-01/15-1811 (noting that while the decision is public, it has not been published on the ICC website or Legal Tools Database).

593 pages,⁸ the *Katanga* trial judgment was 660 pages,⁹ the *Bemba* trial judgment was 364 pages,¹⁰ the *Ntaganda* trial judgment was 539 pages,¹¹ and the *Bemba et al* trial judgment was 458 pages.¹² The closest trial judgment, found in *Katanga*, is only 61.28% the size of the Trial Judgment issued against Mr Ongwen. Mr Ongwen's Trial Judgment is twice as long that issued in the *Bemba et al* and *Ntaganda* cases, and nearly triple that of the *Bemba* main case.

11. It bears to reason that a trial judgment this long warrants a notice of appeal page limit commensurate with its length. While the Defence avers that while length is not everything, it is a major factor for the Appeals Chamber to use when assessing the Defence's request. As discussed below, further issues must be accounted for when determining whether an extension is warranted.

B. Mr Ongwen was convicted for more than three times the amount of counts than the next closest person charged under Article 5 at the ICC

12. Trial Chamber IX found Mr Ongwen guilty on 61 counts charged under Article 5 of the Rome Statute. No other person in the history of the ICC has been found guilty of so many counts. In fact, the closest person in relation to Mr Ongwen being charged and convicted of crimes under Article 5 is Bosco Ntaganda, who was found guilty of 18 counts.¹³
13. The Trial Judgment is complex,¹⁴ covering several different modes of responsibility. These counts span a time frame from 1 July 2002 to 31 December 2005, a time at which the Trial Chamber found Mr Ongwen attained several so-called promotions. There are four location-specific crime sites, one SGBC section with crimes convicted for direct action, another general SGBC section and one general section of crimes with no specific dates and/or locations that covers the entire charge period.
14. Dealing with the interconnectivity of the convicted crimes which span such a long timeframe is no easy task. This is compounded by the fact that the Defence shall be appealing issues

⁷ Trial Chamber II, *Judgment pursuant to article 74 of the Statute*, [ICC-01/04-01/07-3436-tENG](#) (noting that the French version is also 660 pages).

⁸ Trial Chamber I, *Judgment pursuant to Article 74 of the Statute*, [ICC-01/04-01/06-2842](#) (noting that 31 additional pages are appended to the trial judgment as separate opinions).

⁹ Trial Chamber II, *Judgment pursuant to article 74 of the Statute*, [ICC-01/04-01/07-3436-tENG](#) (noting that the French version is also 660 pages).

¹⁰ Trial Chamber III, *Judgment pursuant to Article 74 of the Statute*, [ICC-01/05-01/08-3343](#).

¹¹ Trial Chamber VI, *Judgment*, [ICC-01/04-02/06-2359](#).

¹² Trial Chamber VII, *Judgment pursuant to Article 74 of the Statute*, [ICC-01/05-01/13-1989-Red](#).

¹³ Trial Chamber VI, *Judgment*, [ICC-01/04-02/06-2359](#).

¹⁴ Trial Chamber IX, [ICC-02/04-01/15-T-259](#), p. 4, lns 12-15 and p. 31, lns 14-15.

relating to Mr Ongwen's Article 31(1)(a) and (d) defences. The Defence further notes that the psychological trauma of these defences, and the fear instilled into all members of the LRA, precedes the charge period named above.

15. When all these factors are considered, and as noted above with the extremely long length of the Trial Judgment, the Defence's request for an extension of the page limit to 75 pages is warranted.

C. The amount of witnesses heard during trial further lengthens the Defence's notice of appeal

16. Trial Chamber IX heard 186 witnesses from the Prosecution, Victims and Defence during trial.¹⁵ No other chamber of this Court has heard testimony from this amount of witnesses, either through live testimony or through Rule 68(2) of the Rules of Procedure and Evidence.
17. The evidence is rife with witnesses contradicting other witnesses. Inconsistencies in the Trial Judgment and all available testimony happened, and the Defence intends to appeal these issues on behalf of Mr Ongwen. But scrutinising so many witnesses has led to a significantly longer notice of appeal than originally thought.
18. Furthermore, the Trial Judgment contains a significant number of inconsistencies as applied to different witnesses with near similar internal inconsistencies.¹⁶ The Defence shall argue that Trial Chamber IX abused its discretion by applying different standards to these internal inconsistencies, which materially affected the Trial Judgment.
19. With the sheer volume of witnesses, this is no easy task and will require a significant increase in the number of pages for the Defence's notice of appeal to apprise the Appeals Chamber, Prosecution and participants of the alleged errors. Because of this, and the factors outlined above, the Defence requests the Appeals Chamber to increase the number of pages for the Defence's notice of appeal to 75 pages.

¹⁵ Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Red](#), paras 19-22.

¹⁶ By internal inconsistencies, the Defence means that inconsistencies between the witness's interview with the Party when compared to the witness's trial testimony.

D. The Trial Judgment is the most complex Article 74 judgment issued by any chamber of the Court

20. During the pronouncement of the judgment, Trial Chamber IX noted that the case was “exceptionally extensive and complex”.¹⁷ The complexity of the case has been outlined above, and touches and concerns all aspects of the Trial Judgment.
21. The Trial Judgment details issues related to radio intercepts, handwritten notes, radio directional finding, and a host of other technological issues used and made during the conflict. These technologies are still novel at the ICC, and many are in a language which few persons speak, including the Judges. With respect to the Trial Chamber, these appealable issues are lengthy.
22. The sheer magnitude of the evidence, the amount of evidence submitted from the bar table, the number of witnesses called to testify, the novel issues of the Article 31(1) defences and the lack of clarity on what was excluded and why necessitates a longer notice of appeal. The Defence avers that the complexity of this case and the Trial Judgment warrants a longer notice of appeal, and requests the Appeals Chamber grant the Defence 75 pages for its notice of appeal.

V. RELIEF

23. For the abovementioned reasons, the Defence respectfully requests the Appeals Chamber to grant the Defence a page-limit extension for its notice of appeal to 75 pages.

Respectfully submitted,



.....
 Hon. Krispus Ayena Odongo
 On behalf of Dominic Ongwen

Dated this 10th day of May, 2021

At Kampala, Uganda

¹⁷ See Trial Chamber IX, [ICC-02/04-01/15-T-259](#), p. 4, lns 12-15. See also [T-259](#), p. 31, lns 14-15.