

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 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
Victims' Response to "Defence request for a page limit extension for its notice of appeal"

Source: Legal Representatives of Victims

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 Legal Representatives for Victims (“LRVs”) submit that while the Regulations of the Court (“RoC”) permit the extension of page limits in exceptional circumstances, the “Defence request for a page limit extension for its notice of appeal” (“Defence Request”)¹ is excessive in the circumstances.
2. Whilst taking into account that the Article 74 Judgment is lengthy and that Mr Ongwen has been convicted for more counts than any other convicted person before this Court, the LRVs aver that the Trial Judgment is not substantively overly complex in its nature to warrant a page limit increase from 20 to 75 pages for the Defence’s notice of appeal.
3. As a middle ground, the LRVs submit that the Defence should be granted an extension of page limit to a maximum of 30 pages. This will enable the Defence to summarise its grounds of appeal without going into detail which would be more fitting of an appeal brief.
4. Furthermore, the timeliness of the Defence Request must also be taken into a consideration. The Defence cites the length and complexity of the judgment and the volume of the evidence submitted in the case as factors to be taken into consideration when assessing the Defence Request. However, none of these purported factors should come as a surprise to the Defence and therefore it is unclear why they have waited so close to 21 May 2021 in order to file the Defence Request.
5. Lastly, the LRVs disagree with the Defence assertion that ‘[T]he evidence is rife with witnesses contradicting other witnesses’² as a justification for increasing the page limit for their notice of appeal.

¹ ICC-02/04-01/15-1821.

² Defence Request, para. 17.

II. PROCEDURAL HISTORY

6. On 4 February 2021, Trial Chamber IX issued its Trial Judgment, convicting Mr Ongwen on 62 counts of war crimes and crimes against humanity.³
7. On 8 February 2021, the Defence requested an extension of time to file its notice of appeal.⁴
8. 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.⁵
9. 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.⁶ 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.⁷
10. On 10 May 2021, the Defence filed its Defence Request where it requested the Appeals Chamber to grant a page-limit extension from 20 pages to 75 pages for its notice of appeal due on 21 May 2021.⁸
11. On 11 May the Appeals Chamber stated that the Prosecutor and the participating victims could respond to the Defence Request by 16h00 on Wednesday, 12 May, 2021.⁹

³ Trial Chamber IX, *Trial Judgment*, ICC-02/04-01/15-1762-Conf.

⁴ 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.

⁵ 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

⁶ 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.

⁷ Appeals Chamber, 'Decision on Mr Ongwen's second request for time extension', ICC-02/04-01/15-1811.

⁸ Defence Request, para 23

⁹ Order concerning the time limit for responses to the 'Defence request for a page limit extension for its notice of appeal' ICC-02/04-01/15-1822.

III. SUBMISSIONS

12. In their Request, the Defence argues that a page-limit extension from 20 pages to 75 pages is exceptionally warranted for its notice of appeal due on 21 May 2021 for the following reasons: the *Ongwen* judgment 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 any other person convicted by the ICC; Trial Chamber IX heard testimony from 186 witnesses; and the ‘Trial Judgment is the most complex in history.’¹⁰
13. However, the LRVs submit that the complexity of the judgment in this case cannot be merely equated to its length. In substantive terms the LRVs disagree with the unsubstantiated assertion that the judgment in this case is the ‘most complex in history.’
14. Indeed, many of the crimes for which Mr Ongwen has been charged and convicted of comprise of the same underlying conduct and therefore it would be simplistic to state that the number of counts for which he has been convicted can be equated with the complexity of the case.
15. Furthermore, in relation to the geographical scope of the case, the same arguments apply in that Mr Ongwen has been charged with more or less the same counts in each of these four locations and therefore the fact that there are a number of charges in each location does not mean that the Judgment is substantively complex.
16. With regards to Sexual and Gender Based Crimes (“SGBC”), the fact that Mr Ongwen was charged (and was eventually convicted) as a direct and indirect perpetrator is something of which the Defence has been well aware of, and from the perspective of the LRVs, the Defence fails to show what, if

¹⁰ Defence Request, para.1.

anything, would justify an excessive page-limit extension in relation to Mr Ongwen's conviction for SGBC.

17. Lastly, the Defence state that they intend to appeal purported inconsistencies in the evidence and thus in the Trial Judgment. However, the Defence fail to demonstrate the exceptional nature of their notice of appeal with regards to purported inconsistencies in the evidence. Such arguments would be better suited to be articulated in the Defence document in support of its appeal.
18. Therefore, while the LRVs acknowledge that Defence may require more than 20 pages in order to state their grounds of appeal, a page limit of 75 pages appears to be excessive. The notice of appeal should lay out the Defence's grounds of appeal in a concise manner which would enable the parties and participants to instantly comprehend the arguments made by the Defence.

IV. RELIEF SOUGHT

19. The LRVs respectfully submit that a page-extension of 75 pages would be excessive. As a middle ground, and taking into account the length of the judgment, the LRVs submit that the Defence should be granted a page-extension of 30 pages at most.

Respectfully submitted,



Joseph A. Manoba



Francisco Cox

Dated this 12th day of May 2021

At Kampala, Uganda and at Santiago, Chile