



Original: English

**No. ICC-02/04-01/15 A
Date: 18 May 2021**

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
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 document

Decision on ‘Defence request for a page limit extension for its notice of appeal’

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

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Helen Brady

Counsel for the Defence

Mr Krispus Ayena Odongo

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba

Mr Francisco Cox

Ms Paolina Massidda

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

Having before it the ‘Defence request for a page limit extension for its notice of appeal’ of 10 May 2021 (ICC-02/04-01/15-1821),

Pursuant to regulations 37(2) and 57 of the Regulations of the Court,

Renders the following

DECISION

The page limit for Mr Ongwen’s notice of appeal is extended by 10 pages.

REASONS

I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX (the ‘Trial Chamber’) convicted Mr Dominic Ongwen (‘Mr Ongwen’) of crimes against humanity and war crimes (the ‘Conviction Decision’).¹
2. On 9 April 2021, following a second request by the Defence, the Appeals Chamber extended the time for the filing of the notice of appeal and the appeal brief to 21 May 2021 and 21 July 2021 respectively.²
3. On 10 May 2021, the Defence filed a request for an extension of the page limit for its notice of appeal (the ‘Request’).³

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 [Decision on Mr Ongwen’s second request for time extension](#), ICC-02/04-01/15-1811 (A). *See also* [Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation](#), 24 February 2021, ICC-02/04-01/15-1781 (A).

³ [Defence request for a page limit extension for its notice of appeal](#), ICC-02/04-01/15-1821 (A).

4. On 12 May 2021, following an order of the Appeals Chamber,⁴ the Prosecutor and the participating victims filed their responses to the Request (the ‘Prosecutor’s Response’ and the ‘Victims’ Response’ respectively).⁵

II. MERITS

A. Submissions

5. The Defence requests that the Appeals Chamber extend the page limit for its notice of appeal from 20 to 75 pages on the basis that exceptional circumstances exist.⁶ The Defence argues that an extension of the page limit is warranted given: (i) that the Conviction Decision issued against Mr Ongwen is the ‘longest Trial Judgment in the history of the [Court]’ and is consequently deserving of ‘a notice of appeal page limit commensurate with its length’;⁷ (ii) that Mr Ongwen was found guilty of 61 counts of war crimes and crimes against humanity which is the most that any person has been convicted of at the Court;⁸ (iii) that the Trial Chamber heard 186 witnesses and the Defence intends to challenge alleged inconsistencies in the testimony of these witnesses and the Trial Chamber’s assessment thereof;⁹ and (iv) the complexity of the case coupled with the complexity of the Conviction Decision.¹⁰

6. The Prosecutor opposes the Request on the basis that the number of pages sought is excessive and the Defence has failed to demonstrate exceptional circumstances warranting such an extension.¹¹ She submits, *inter alia*, that the length of a trial judgment ‘is not a reason for setting a page limit of a notice of appeal that is commensurate in length’.¹² Recalling that far lengthier judgments involving complex factual issues have been issued in the *ad hoc* tribunals, where convicted persons were able to file their notices of appeal within reasonable page limits, the Prosecutor argues

⁴ [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 (A).

⁵ [Prosecution Response to the Defence request for a page limit extension for its notice of appeal](#), ICC-02/04-01/15-1823 (A); [Victims’ Response to ‘Defence request for a page limit extension for its notice of appeal’](#), ICC-02/04-01/15-1824 (A).

⁶ [Request](#), paras 1, 9, 23.

⁷ [Request](#), paras 1, 10-11.

⁸ [Request](#), paras 1, 12-15.

⁹ [Request](#), paras 1, 16-19.

¹⁰ [Request](#), para. 22.

¹¹ [Prosecutor’s Response](#), para. 1.

¹² [Prosecutor’s Response](#), para. 4.

that, in the case at hand, the Defence fails to justify a page extension ‘far greater than those seen in the large and complex cases’ before those tribunals.¹³ Moreover, the Prosecutor argues that the notice of appeal is ‘intended to be a confined document’ in which the ‘parties are not required to set out their arguments on appeal’.¹⁴ Notwithstanding these arguments, the Prosecutor submits that in light of the factors raised by the Defence, an ‘extension of the page limit to no more than 28 pages’ would be reasonable.¹⁵

7. The Legal Representatives of the victims also oppose the Request and submit that the page limit extension is ‘excessive in the circumstances’.¹⁶ In their view, the Defence fails to substantiate why the case at hand is the ‘most complex in history’ warranting such an excessive extension.¹⁷ With regard to the purported inconsistencies in the evidence that the Defence wishes to challenge, they submit that such arguments are best articulated in the appeal brief rather than the notice of appeal.¹⁸ The Legal Representatives of victims, nevertheless, acknowledge that given the length of the Conviction Decision the Defence may require more than 20 pages to state their grounds of appeal and submit that a page-extension to a maximum of 30 pages should be granted.¹⁹

B. Determination by the Appeals Chamber

8. Regulation 37 of the Regulations provides:

1. A document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber.
2. The Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.

9. In relation to the content of a notice of appeal filed pursuant to rule 150 of the Rules, regulation 57 of the Regulations, as amended in July 2017, requires an appellant

¹³ [Prosecutor’s Response](#), para. 4.

¹⁴ [Prosecutor’s Response](#), para. 5.

¹⁵ [Prosecutor’s Response](#), paras 1, 3, 6.

¹⁶ [Victims’ Response](#), para. 1.

¹⁷ [Victims’ Response](#), paras 13-16.

¹⁸ [Victims’ Response](#), para. 17.

¹⁹ [Victims’ Response](#), paras 3, 18-19.

to state, *inter alia*, '[t]he grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision'. The notice of appeal is thus limited in nature and is not intended to contain the arguments of the appellant on appeal. Indeed, regulation 58(2) of the Regulations stipulates that the appellant's appeal brief shall contain 'the legal and/or factual reasons in support of each ground of appeal'.²⁰

10. Turning to the Request, the Appeals Chamber notes that it has previously found the complexity and novelty of issues raised on appeal to constitute 'exceptional circumstances' within the meaning of regulation 37(2) of the Regulations.²¹ In the present case, the Appeals Chamber considers that the length and complexity of the Conviction Decision coupled with the volume of the evidence and the number of convictions constitute exceptional circumstances that warrant a page extension for Mr Ongwen's notice of appeal.

11. However, as argued by the Prosecutor, the Appeals Chamber considers that a page extension based on these factors must be reasonable and supported by a discernible assessment of the impact of these factors on the formulation of the notice of appeal.²² In the case at hand, the Appeals Chamber considers that the Defence has not sufficiently demonstrated the impact that the factors it identifies would have on the notice of appeal in order to justify such a significant increase in the page limit. In particular, the Defence

²⁰ See Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled 'Decision on Mr Gbagbo's Detention'](#), 19 July 2017, ICC-02/11-01/15-992-Red (OA 10), para. 19 ('[t]he arguments of a participant to an appeal must be fully contained within that participant's filing in relation to that particular appeal [the document in support of the appeal]' and this document "must, in itself, enable the Appeals Chamber to understand the position of the participant on the appeal, without requiring reference to arguments made by that participant elsewhere'). See also [Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81'](#), 14 December 2006, ICC-01/04-01/06-774 (OA 6), para. 29.

²¹ See e.g. *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Decision on Mr Laurent Gbagbo's request for an extension of page limit for his response to the Prosecutor's appeal brief](#), 2 March 2020, ICC-02/11-01/15-1313 (A); *The Prosecutor v. Germain Katanga*, [Decision on the 'Urgent Defence Application for Extension of Page Limit for its Document in Support of Appeal against Trial Chamber II's Decision of 21 November 2012 on Regulation 55\(Decision 3319\)'](#), 8 January 2013, ICC-01/04-01/07-3334, para. 7 (OA 13); *The Prosecutor v. Thomas Lubanga Dyilo*, [Decision on the 'Prosecutor's Motion for Extensions of the Time and Page Limits'](#), 3 July 2006, ICC-01/04-01/06-177, para. 6.

²² [Prosecutor's Response](#), para. 3

does not provide any specific information as to the scope of its appeal or the number of grounds of appeal it intends to raise.

12. In these circumstances and given the limited nature of a notice of appeal the Appeals Chamber considers that an increase of 10 pages would be an appropriate extension to the stipulated 20 pages in regulation 37 of the Regulations for Mr Ongwen's notice of appeal.

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



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 18th day of May 2021

At The Hague, The Netherlands