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

Date: **1 June 2021**

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 *PROSECUTOR v. DOMINIC ONGWEN*

Public

Prosecution Response to “Defence Request for a Page Limit Extension for its Document in Support of its Appeal against the Trial Judgment” (ICC-02/04-01/15-1832) and Request under regulation 35(2) to extend the time limit for the filing of the Prosecution response to the Defence appeal against the Trial Judgment

Source: Office of the Prosecutor

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

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Introduction

1. The Prosecution opposes Mr Ongwen's request to extend the page limit of his document supporting the appeal against the Conviction Decision from 100 to 600 pages ("Request").¹ There are no exceptional circumstances justifying Ongwen's unreasonable request to file a document six times longer than the ordinary 100 pages allowed under the Regulations of the Court ("RoC").² The Prosecution does however agree to a reasonable extension of no more than 50 pages.

2. In light of the wide-ranging scope of Ongwen's appeal which appears to challenge most of the Trial Chamber's findings, the complexity of the Conviction Decision as well as the intervening judicial recess from 23 July to 16 August 2021, the Prosecution respectfully requests the Appeals Chamber to grant under regulation 35(2) a 30 days extension for the filing of the Prosecution's response to Ongwen's document in support of the appeal against the Conviction Decision currently due on 21 September 2021.

Prosecution's Response to Ongwen's Request for an Extension of Page Limit

3. Regulation 37(2) of the RoC provides that the Chamber may extend the page limit in exceptional circumstances. The Appeals Chamber has already found 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".³ However, it also found that Ongwen's request of a 75 pages extension for the notice of appeal (being 3.75 times the page limit under the RoC)⁴ was not justified and granted a more limited extension of 10 pages (half of the page limit under the RoC).⁵

4. Similarly, while the length and complexity of the Conviction Decision,⁶ the volume of the evidence and decisions⁷ as well as the number of convictions⁸ constitute relevant circumstances justifying a limited page extension of the document in support of the appeal,

¹ ICC-02/04-01/15-1832 ("Request").

² Regulation 58(5) of the [RoC](#) provides that the document in support of the appeal shall not exceed 100 pages.

³ ICC-02/04-01/15-1825 ("[NoA Page Extension Decision](#)"), para. 10.

⁴ Regulation 37(1) of the [RoC](#) provides that a notice of appeal shall not exceed 20 pages.

⁵ [NoA Page Extension Decision](#), paras. 11-12.

⁶ [Request](#), paras. 17-21, 30-32.

⁷ [Request](#), paras. 25-29.

⁸ [Request](#), paras. 22-24.

they do not justify Ongwen's request to file such a document which is 600 pages long⁹—being 6 times longer than the 100 pages allowed under the Regulation of the Court.

5. In particular, Ongwen places undue weight on the number of grounds of appeal raised.¹⁰ As the examples cited by the Defence show¹¹ a large number of grounds of appeal does not *per se* require a greater page extension of the document in support of the appeal. If this was the case, any appellant could unilaterally determine the length of their document in support of the appeal by dissecting connected arguments into unnecessary numerous grounds or even by raising frivolous grounds in their notice of appeal. In the Prosecution's submission, not each of the 90 grounds raised by Ongwen require six and a half pages of submissions in support.¹²

6. Ongwen's request to file a 600 pages' long document in support of his appeal is extraordinary and unreasonable and should be dismissed. Instead, the Prosecution submits that a page extension of 50 pages (being half of the page limit under the RoC) would better reflect the circumstances in this case and would be consistent with the Appeals Chamber's extension in relation to Ongwen's notice of appeal.¹³

7. In any event, if the Appeals Chamber were to grant Ongwen's Request or a more reasonable extension of pages, the Prosecution respectfully seeks to be granted the same increase of pages for its response to Ongwen's document in support the appeal against the Conviction Decision. This extension is justified because the Prosecution would have to respond to longer Defence submissions.

Prosecution's Request for a Time Extension to file its Response to Ongwen's Document in support of the Appeal against the Conviction Decision

8. Irrespective of whether the Appeals Chamber grants or denies Ongwen's Request, the Prosecution seeks an extension of time to file its response. Under the current timetable, Ongwen's document in support of the appeal against the Conviction Decision is due on 21 July 2021¹⁴ and the Prosecution's response is due on 21 September 2021.¹⁵ In light of the

⁹ [Request](#), para. 33.

¹⁰ [Request](#), paras. 18-20.

¹¹ [Request](#), para. 19.

¹² If Ongwen was allowed to file a 600 pages document in support of the appeal, he would have more than 6,6 pages for each of his 90 grounds of appeal.

¹³ [NoA Page Extension Decision](#), paras. 11-12.

¹⁴ [ICC-02/04-01/15-1811](#), para. 11.

wide-ranging scope of Ongwen's appeal against the complex Conviction Decision¹⁶ as well as considering the intervening judicial recess from 23 July to 16 August 2021 and school holidays from 17 July to 29 August 2021, the Prosecution respectfully submits that there is good cause under regulation 35(2) to grant a limited extension of time of 30 calendar days for the filing a response brief under regulation 59(1).

9. *First*, as the Appeals Chamber noted, the Conviction Decision is exceptionally long, complex and coupled with a high volume of evidence and number of convictions.¹⁷ The complexity of the Conviction Decision is mirrored in the complexity and wide-ranging scope of Ongwen's appeal which raises the unprecedented number of 90 grounds.¹⁸ In addition, and irrespective of whether the 90 grounds have merit or not, or whether they could have been grouped in a different and more succinct way, the Prosecution will have to devote a considerable amount of time to respond to Ongwen's numerous and multi-faceted arguments which seek to challenge most if not all of the Trial Chamber's findings. Notwithstanding the standard of appellate review, the Prosecution will have to address in full Ongwen's apparent mischaracterisation of the Chamber's findings and his selective interpretation of the evidence.

10. *Second*, the Court's judicial recess is scheduled to begin just two days after the filing of the document in support of the appeal, from 23 July to 16 August 2021.¹⁹ A large part of the time limit for drafting the response will thus fall within the judicial recess. Chambers have recognised that judicial recess is to ensure that the Chamber, Parties and Participants are able to take proper rest²⁰ and the Appeals Chamber has held that the judicial recess may make it appropriate to extend time limits.²¹ In addition the Dutch school summer holidays—a time for children to spend time with their parents and extended families—run from 17 July to 29 August 2021,²² with the children returning to mandatory school on 1 September 2021. Due to the exceptional circumstances of the COVID-19 pandemic and the related travel restrictions imposed for the last year and a half, most of the section's staff (with and without young children) had planned to reunite with their extended families during the upcoming judicial

¹⁵ Regulation 59(1) of the [RoC](#) provides that participants may file a response within 60 days of notification of the document in support of the appeal.

¹⁶ See [Request](#) and [ICC-02/04-01/15-1826](#) (“[Ongwen's NoA](#)”).

¹⁷ [NoA Page Extension Decision](#), para. 10.

¹⁸ [Ongwen's NoA](#).

¹⁹ See <https://www.icc-cpi.int/visit>.

²⁰ See for instance, [ICC-01/05-01/08-T-43-Red2-ENG-WT](#), pp.31-32.

²¹ [ICC-01/04-01/07-121 OA2](#), para. 5.

²² See <https://www.government.nl/topics/school-holidays/question-and-answer/school-holidays-2020-2021> indicating that in Central Holland, including The Hague, schools will close from 17 July to 29 August.

recess—after difficult months of a heavy workload, home-schooling and lockdown and consequential impact on childrens’ mental health.²³ The complexity and wide-ranging scope of Ongwen’s appeal coupled with the Prosecution’s briefing schedule would make virtually impossible for the staff to take this limited rest.

11. Finally, the Prosecution observes that it is requesting only a limited extension of the deadline to file its response brief, by 30 days. This period corresponds to the 23 days of summer judicial recess and one additional week. The Appeals Chamber has previously found that the brevity of the extension requested militates in favour of granting that party’s request.²⁴ Given the brevity of the extension of time which the Prosecution seeks, it is unlikely to have an impact on the overall expeditious conduct of the appeals proceedings. Further, Ongwen has benefited from an extension of 45 days to file his notice of appeal and document in support of appeal.²⁵

12. In conclusion, the Prosecution submits that the complexity and wide-ranging scope of Ongwen’s appeal and the Conviction Decision as well as the upcoming judicial recess, cumulatively or alone constitute good cause to grant a limited extension of 30 days for the filing of the Prosecution’s response to Ongwen’s document in support of the appeal against the Conviction Decision.

Relief Sought

13. For the reasons set out above, the Prosecution:

- opposes Ongwen’s Request to extend the page limit of his document supporting the appeal to 600 pages but does not oppose an extension of no more than 50 pages;
- requests the Appeals Chamber to grant the Prosecution an equal and proportionate extension of page limit for its response to Ongwen’s document supporting the appeal against the Conviction Decision;

²³ On the impact of COVID-19 and COVID-19 restrictions on children *see* for instance [University of Amsterdam Covid-19 family study report](#) and [UNICEF statement on children mental health and well-being under COVID-restrictions](#).

²⁴ [ICC-01/04-01/06-562 OA3](#), para. 5; [ICC-01/04-01/06-190 OA3](#), paras. 2, 4-5; [ICC-01/04-01/07-653 OA7](#), para. 5; [ICC-01/04-01/10-497 OA4](#), para. 6.

²⁵ [ICC-02/04-01/15-1781](#), paras 12-13.

- requests the Appeals Chamber to grant under regulation 35(2) a time extension of 30 days for the filing of the Prosecution's response to Ongwen's document in support of the appeal against the Conviction Decision.



Fatou Bensouda, Prosecutor

Dated this 1st day of June 2021
At The Hague, The Netherlands