

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **4 June 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 leave to reply to the Prosecution's request pursuant to Regulation 35(2)  
of the Regulations of the Court**

**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**

Fatou Bensouda, Prosecutor  
James Stewart, Deputy Prosecutor  
Helen Brady

**Counsel for the Defence**

Krispus Ayena Odongo  
Chief Charles Achaleke Taku  
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**Legal Representatives of the Victims**

Joseph Akwenyu Manoda  
Francisco Cox

**Common Legal Representative for Victims**

Paolina Massidda  
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Caroline Walter

**Unrepresented Victims****Unrepresented Applicants  
(Participation/Reparation)****The Office of Public Counsel for Victims**

Paolina Massidda

**The Office of Public Counsel for the  
Defence**

Xavier-Jean Keïta

**States' Representatives****Amicus Curiae****REGISTRY****Registrar**

Peter Lewis, Registrar

**Counsel Support Section****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations  
Section****Other**

## I. INTRODUCTION

1. Pursuant to Regulation 24(5) of the Regulations of the Court ('RoC'), the Defence for Dominic Ongwen ('Defence') requests from the Appeals Chamber leave to reply to the "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" ('Prosecution Response').<sup>1</sup> Specifically, the Defence wishes to reply to the Prosecution's request for a 30-day extension of time to file its response to the Defence document in support of the appeal against the Trial Judgment ('Defence Appeal Brief').<sup>2</sup> The Defence asserts that leave to reply is warranted because the Prosecution Response raised an entirely new issue that the Defence could not reasonably have anticipated<sup>3</sup> and was not directly or indirectly related to the Defence's original request in the "Defence Request for a Page Limit Extension for its Document in Support of its Appeal against the Trial Judgment" ('Defence Request')
2. Should the Appeals Chamber allow a reply by the Defence, the Defence requests to file its reply on 8 June 2021 by 16h00 CET, and a courtesy copy shall be emailed to the Chamber, Parties, and Participants.

## II. SUBMISSIONS

3. The Defence submits that leave to reply should be granted because the Prosecution Response raised a new issue that the Defence could not reasonably have anticipated. According to Regulation 24(5) of the RoC, "participants may only reply to a response with the leave of the Chamber[.] [...] Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated."<sup>4</sup>

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<sup>1</sup> Appeals Chamber, *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*, [ICC-02/04-01/15-1836](#).

<sup>2</sup> *Ibid*, para. 8.

<sup>3</sup> See Regulation 24(5) of the RoC.

<sup>4</sup> See Regulation 24(5) of the RoC.

4. First, the Prosecution's use of its Response raises a flag as to its motive behind including the Regulation 35(2) request in the Prosecution's Response. The Regulation 35(2) request should not have been included in the Prosecution's Response as it is in no way related to the Defence Request. This misuse now requires the Defence to request leave to reply when a response should be automatic. The Defence, through this request, politely asks the Appeals Chamber to instruct the Prosecution and the entire Office of the Prosecutor not to do this again.
5. Second, the Prosecution raised a new issue in its Response by requesting a 30-day extension of time to file its response to the Defence Appeal Brief. This is a new issue as the Defence did not raise an issue related to time limit extensions in the Defence Request. In the Defence Request, the Defence submitted that exceptional circumstances for the extension of the page limit existed because: 1) this is the longest Article 74 judgment in the history of the International Criminal Court ('ICC'), 2) Trial Chamber IX convicted Mr Ongwen of more counts than any other person prosecuted before the ICC under Article 5, 3) the large number of witnesses, decisions, and items of evidence, and 4) the complexity of the Article 74 Judgment. The Defence did not raise the issue of a time limit extension. Thus, the Prosecution's Response raised a new issue.
6. Third, the Defence could not reasonably have anticipated that the Prosecution would request a 30-day extension for the filing of the Prosecution's response to the Defence Appeal Brief.<sup>5</sup> In the Prosecution Response, the Prosecution submitted that good cause for the extension of the time limit to file its response to the Defence Appeal Brief exists because 1) the Conviction Decision is long, complex, and includes a high volume of evidence and a large number of convictions and 2) the judicial recess is 23 July to 16 August, the Dutch school holiday is 17 July to 29 August, and the prosecution's staff "planned to reunite with their extended families during the upcoming recess."<sup>6</sup>
7. While the Defence agrees with the Prosecution's assertion that the Conviction Decision is complex, and is sympathetic to the desire to visit one's extended family, the Defence could not reasonably have anticipated that the Prosecution would submit this request in its Response. The Defence could not have anticipated this request because the Prosecution has

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<sup>5</sup> Appeals Chamber, *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*, [ICC-02/04-01/15-1836](#), para. 2.

<sup>6</sup> *Ibid*, para. 10.

insisted on “modest extensions of time”<sup>7</sup> that do not “unnecessarily [...] delay proceedings.”<sup>8</sup> Requesting an extension of time beyond that of the judicial recess so that staff can travel for a holiday is, generally, an unnecessary delay in proceedings. Additionally, requesting an extension of time beyond the judicial recess does not render the Prosecution “unable to meet a deadline for objective reasons beyond [its] control.”<sup>9</sup> The Defence could not reasonably have anticipated that the Prosecution would request an extension of time that unnecessarily delays proceedings so that members of the Prosecution staff could go on holiday.

8. Should leave to reply be granted, the Defence shall discuss the reasons proffered by the Prosecution as good cause for an extension of time. The Defence acknowledges that it has requested extensions of time during these appellate proceedings. However, there is a stark difference between requesting an extension of time in order to accommodate the needs of the Appellant who is mentally disabled and understands and speak Acholi only, and the desire to go on a summer holiday.

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<sup>7</sup> Appeals Chamber, *Prosecution’s Response to Defence’s “Request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment,”* [ICC-02/04-01/15-1775](#), para. 7.

<sup>8</sup> Trial Chamber IX, *Prosecution’s response to the Defence request for an extension of time in which to file its sentencing brief,* [ICC-02/04-01/15-1796](#), para. 8.

<sup>9</sup> Appeals Chamber, *Decision on Mr Ongwen’s second request for time extension,* [ICC-02/04-01/15-1811](#), para. 8. *See also,* Appeals Chamber, *Reasons for the ‘Decision on the “Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation”’,* [ICC-01/04-01/07-653](#), para. 5.

### III. RELIEF

9. The Defence respectfully requests the Appeals Chamber to grant it the right to reply to the request for an extension of time to file its response to the Defence Appeal Brief in the Prosecution Response.

Respectfully submitted,



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Hon. Krispus Ayena Odongo  
On behalf of Dominic Ongwen

Dated this 4<sup>th</sup> day of June, 2021  
At Lira, Uganda