



Original: English

**No. ICC-02/04-01/15 A
Date: 8 June 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 appeal brief and order setting time limit for responses to the Prosecutor request for extension of time to file her response to the appeal brief

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

Chief Charles Achaleke Taku

Ms Beth Lyons

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 Document in Support of its Appeal against the Trial Judgment’ of 27 May 2021 (ICC-02/04-01/15-1832),

Pursuant to regulations 34, 37(2), 58 and 59 of the Regulations of the Court,

Renders the following

DECISION

1. The page limit for Mr Ongwen’s appeal brief is extended by 150 pages to a total of 250 pages.
2. The page limit for the Prosecutor’s response to the appeal brief is extended by 150 pages to a total of 250 pages.
3. Any responses to the Prosecutor’s request for an extension of the time limit to file her response to the appeal brief should be filed by 16h00 on Friday, 11 June 2021.
4. The Defence’s request for leave to reply to the Prosecutor’s request for an extension of the time limit to file her response to the appeal brief is dismissed as moot.

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

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. 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 18 May 2021, further to a request by the Defence, the Appeals Chamber extended the page limit for the notice of appeal by 10 pages (the ‘Notice of Appeal Page Extension Decision’).³
4. On 21 May 2021, the Defence filed its notice of appeal raising 90 grounds of appeal (the ‘Notice of Appeal’).⁴
5. On 27 May 2021, the Defence filed a request seeking an extension of the page limit for its appeal brief (the ‘Request’).⁵
6. On 2 June 2021, following an Appeals Chamber’s order to do so,⁶ the Prosecutor and the participating victims responded to the Request (the ‘Prosecutor’s Response’ and the ‘Victims’ Response’ respectively).⁷ In her response, the Prosecutor also submitted a request seeking an extension of the time limit for the filing of her response to the appeal brief.⁸

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 [Decision on ‘Defence request for a page limit extension for its notice of appeal’](#), ICC-02/04-01/15-1825 (A).

⁴ [Defence Notification of its Intent to Appeal the Trial Judgment](#), ICC-02/04-01/15-1826 (A).

⁵ [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 (A).

⁶ Order concerning the time limit for responses to the Defence request for a page limit extension for its appeal brief, 28 May 2021, ICC-02/04-01/15-1833 (A).

⁷ [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](#), filed on 1 June 2021 and notified on 2 June 2021, ICC-02/04-01/15-1836 (A) (the ‘Prosecutor’s Response’); [CLRv Response to the ‘Defence Request for a Page Limit Extension for its Document in Support of its Appeal against the Trial Judgment’](#), ICC-02/04-01/15-1838 (A) (the ‘CLRv Response’); [Victims’ Response to ‘Defence Request for a Page Limit Extension for its Document in Support of its Appeal against the Trial Judgment’](#), ICC-02/04-01/15-1839 (A) (the ‘LRV Response’).

⁸ [Prosecutor’s Response](#), paras 2, 8-12.

7. On 4 June 2021, the Defence filed a request for leave to reply to the Prosecutor's Response (the 'Defence Request for Leave to Reply').⁹

II. MERITS

A. Submissions

8. The Defence requests that the Appeals Chamber extend the page limit for its appeal brief from 100 to 600 pages on the basis that exceptional circumstances exist.¹⁰ 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 this has an impact on the appeal brief 'because the Defence must address each alleged factual or legal error found';¹¹ (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;¹² (iii) that the Trial Chamber heard 186 witnesses and accepted the submission of 5,149 items of evidence, and 'the Defence must address alleged errors related to conflicts between witness statements, testimonies, contemporaneous evidence, and inconsistencies';¹³ and (iv) the complexity of the case and the novelty of the issue of defences under article 31 of the Statute, which 'are further exacerbated by the fact that the Appellant is a mentally disabled person'.¹⁴

9. The Prosecutor opposes the Request on the basis that '[t]here are no exceptional circumstances justifying Ongwen's unreasonable request to file a document six times longer than the ordinary 100 pages allowed'.¹⁵ She submits that the request to file an appeal brief of 600 pages is 'extraordinary and unreasonable and should be dismissed'.¹⁶ She recalls that the Appeals Chamber only granted a limited extension of the page limit for the notice of appeal, namely 10 pages, which represents half of the

⁹ [Defence request for leave to reply to the Prosecution's request pursuant to Regulation 35\(2\) of the Regulations of the Court](#), ICC-02/04-01/15-1841.

¹⁰ [Request](#), paras 1, 21, 24, 29, 32-33.

¹¹ [Request](#), paras 1, 17-21.

¹² [Request](#), paras 1, 22-24.

¹³ [Request](#), paras 1, 25-29.

¹⁴ [Request](#), paras 1, 30-32.

¹⁵ [Prosecutor's Response](#), para. 1.

¹⁶ [Prosecutor's Response](#), para. 6.

page limit under the Regulations of the Court (the ‘Regulations’).¹⁷ The Prosecutor further submits that the Defence ‘places undue weight on the number of grounds of appeal raised’, and that if a large number of grounds of appeal would *per se* require a greater page extension of the appeal brief, ‘any appellant could unilaterally determine the length of their appeal brief by dissecting connected arguments into unnecessary numerous grounds or even by raising frivolous grounds in their notice of appeal’.¹⁸ Notwithstanding these arguments, the Prosecutor submits that a page extension of 50 pages would better reflect the circumstances of this case and would be consistent with the page extension granted in the Notice of Appeal Page Extension Decision.¹⁹ If the Appeals Chamber were to grant the Request, the Prosecutor requests the same increase of pages for her response to the appeal brief.²⁰

10. The Common Legal Representative of the Victims (the ‘CLRV’) also oppose the Request and submit that the page limit extension sought is ‘unreasonable’.²¹ The CLRV submits that, despite the Defence’s insistence, ‘the complexity of the present case is not so unusual given the nature of the crimes falling under the jurisdiction of the Court’.²² In her view, the Defence fails to raise argument that would constitute exceptional circumstances and, in any event, if the Appeals Chamber were to grant the Request, any page extension should not exceed 30 pages.²³

11. The Legal Representatives of Victims (the ‘LRV’) submit that the Request is ‘wholly unjustified and grossly excessive’.²⁴ They contend that while it is correct that the Conviction Decision is lengthy, it ‘is not substantively overly complex in its nature’ to warrant the sought extension of page limit.²⁵ The LRV further aver that several grounds of appeal relate ‘to one another and concern the same subject matter’ and therefore, as pointed out in the jurisprudence of the *ad hoc* tribunals, ‘the mere number of grounds of appeal could not be considered an “exceptional circumstance”’.²⁶ They

¹⁷ [Prosecutor’s Response](#), para. 3.

¹⁸ [Prosecutor’s Response](#), para. 5.

¹⁹ [Prosecutor’s Response](#), para. 6.

²⁰ [Prosecutor’s Response](#), para. 7.

²¹ [CLRV Response](#), para. 5.

²² [CLRV Response](#), para. 7.

²³ [CLRV Response](#), para. 7.

²⁴ [LRV Response](#), paras 1, 33.

²⁵ [LRV Response](#), paras 2, 20-27.

²⁶ [LRV Response](#), paras 23-24.

question the novelty and complexity of the issues in this case, in particular of the defences raised by the Defence under article 31(1) of the Statute and submit that Mr Ongwen's 'mental status has no bearing on the length' of the appeal brief.²⁷ The LRV also maintain that given that many of the crimes for which Mr Ongwen was convicted comprise the same underlying facts, the fact that he was convicted of 62 counts 'does not constitute an exceptional circumstance'.²⁸ They submit that taking into account the length of the Trial judgment, the Defence should be granted a page extension of no more than 50 pages, arguing that an appeal brief of 600 pages 'will make it difficult for parties and participants to respond to and arguably will result in unnecessary repetition'.²⁹

B. Determination by the Appeals Chamber

12. Regulation 58(3) of the Regulations provides that the appeal brief shall not exceed 100 pages.

13. Regulation 37(2) of the Regulations provides:

The Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.

14. 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.³⁰ In this case, the Appeals Chamber has 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' within the meaning of regulation 37(2) of the

²⁷ [LRV Response](#), paras 26-27.

²⁸ [LRV Response](#), paras 28-29.

²⁹ [LRV Response](#), paras 4, 32-33.

³⁰ See *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.

Regulations.³¹ The Appeals Chamber further notes the scope and range of the arguments anticipated in the present appeal, as presented in the Notice of Appeal.

15. However, the Appeals Chamber is not persuaded by the Defence's arguments that an extension of 500 pages is warranted in the present case. In particular, the Appeals Chamber notes that, as argued by the Prosecutor and the LRV,³² many of the grounds raised by the Defence appear to be connected and is of the view that the additional pages requested by the Defence would not contribute to the clarity or focus of its arguments. The Appeals Chamber considers that a page extension of 500 pages is excessive and finds that an extension of 150 pages, to a total of 250 pages, is appropriate in the circumstances. Furthermore, the Defence is reminded that 'substantial submissions must be contained within the text of the document itself and that it is impermissible to attempt to incorporate by reference submissions contained in other documents'.³³

16. Pursuant to regulations 37(2) and 59(2) of the Regulations, the Appeals Chamber finds it appropriate to grant the same page extension to the Prosecutor for her response to the appeal brief.

17. Finally, the Appeals Chamber notes that it will address the Prosecutor's request for an extension of time limit for the filing of her appeal brief³⁴ in a separate decision. Pursuant to regulation 34 of the Regulations, any responses to the Prosecutor's request are to be filed by 16h00 on Friday, 11 June 2021.³⁵ Accordingly, the Defence Request for Leave to Reply is dismissed as moot.

³¹ [Decision on 'Defence request for a page limit extension for its notice of appeal'](#), 18 May 2021, ICC-02/04-01/15-1825 (A), para. 10.

³² [Prosecutor's Response](#), para. 5; [LRV Response](#), paras 23-24.

³³ See Decision on Defence request for review of the Registrar's decision on additional funds, 20 April 2021, ICC-02/04-01/15-1815-Conf-Exp, para. 16. See also *Prosecutor v. Thomas Lubanga Dyilo*, "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](#) (OA6), para. 29; *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', 30 March 2021, ICC-01/04-02/06-2666-Red (A A2), para. 354, n. 619.

³⁴ [Prosecutor's Response](#), paras 2, 8-12.

³⁵ It notes that the CLRV has already responded to this request ([CLRV Response](#), para. 8).

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



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 8th day of June 2021

At The Hague, The Netherlands