



Original: English

**No. ICC-02/04-01/15 A
Date: 11 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 the modalities of victim participation

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
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,

In the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX entitled ‘Trial Judgment’ of 4 February 2021 (ICC-02/04-01/15-1762-Conf),

Pursuant to article 68(3) of the Statute and regulation 86(8) of the Regulations of the Court,

Renders the following

DECISION

1. Each of the legal representatives of victims may file observations on Mr Dominic Ongwen’s appeal brief within 60 days of notification of same.
2. The observations referred to in the preceding paragraph shall not exceed 80 pages.
3. The Defence and the Prosecutor may respond to the above-mentioned observations in the manner and within the time limit to be set by the Appeals Chamber in due course.

REASONS

1. The purpose of the present decision is to regulate the participation of victims in the appeal proceedings brought by Mr Ongwen¹ against Trial Chamber IX’s decision of 4 February 2021 by which he was convicted of several counts of war crimes and crimes against humanity (the ‘Conviction Decision’).²
2. Under article 68(3) of the Statute, ‘[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and

¹ [Defence Notification of its Intent to Appeal the Trial Judgment](#), 21 May 2021, ICC-02/04-01/15-1826 (A) (the ‘Notice of Appeal’).

² [Trial Judgment](#), ICC-02/04-01/15-1762-Conf; public redacted version notified on the same day ([ICC-02/04-01/15-1762-Red](#)).

in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’.

3. The Appeals Chamber notes that since 31 July 2015, for the purpose of victim participation in interlocutory appeals, its practice has been to permit victims to participate in the appeal proceedings without the need to seek prior authorisation to do so.³ However, in appeals against a decision on conviction and/or sentence or acquittal its practice has differed in the sense that the Appeals Chamber has issued decisions permitting victims who had participated in the trial proceedings and whose right to participate was not withdrawn, to participate in the appeals.⁴ Thus, in final appeals the Appeals Chamber’s decision was a prerequisite for the participation of victims in the appeals proceedings.

4. The Appeals Chamber considers that with regard to the issue of prior authorisation of victim participation, no impediments exist to aligning the Appeals Chamber’s current practice in final appeals with that of the practice in interlocutory appeals.⁵ Consequently, victims who were authorised to participate during trial proceedings may participate in final appeals without authorisation (as they do in interlocutory appeals). Indeed, as noted in the context of interlocutory appeals,

the Appeals Chamber notes that regulation 86 (8) of the Regulations of the Court provides in relevant part, that ‘[a] decision taken by a Chamber under rule 89 shall apply throughout the proceedings in the same case’. [...] As such, the Appeals Chamber will not, in the absence of compelling reasons, overturn prior

³ *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Reasons for the ‘Decision on the “Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo’s detention \(ICC-02/11-01/15-134-Red3\)”](#)’, 31 July 2015, ICC-02/11-01/15-172 (OA6) (the ‘*Gbagbo* OA6 Decision’), para. 19.

⁴ *Prosecutor v. Thomas Lubanga Dyilo*, [Decision on the participation of victims in the appeals against Trial Chamber I’s conviction and sentencing decisions](#), 13 December 2012, ICC-01/04-01/06-2951 (A4 A5 A6); *Prosecutor v. Mathieu Ngujolo Chui*, [Decision on the participation of victims in the appeal against Trial Chamber IPs “Jugement rendu en application de l’article 74 du Statut”](#), 6 March 2013, ICC-01/04-02/12-30 (A); *Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the participation of victims in the appeal against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”](#), 15 April 2016, ICC-01/05-01/08-3369 (A); *Prosecutor v. Bosco Ntaganda*, [Decision on victim participation](#), 8 October 2019, ICC-01/04-02/06-2439 (A A2); *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Decision on victim participation](#), ICC-02/11-01/15-1290 (A).

⁵ See e.g. [Gbagbo OA6 Decision](#), para. 15.

decisions of a relevant Chamber on the status, personal interest and/or participatory rights accorded to victims in that case. Instead, these criteria underlying victim participation will be assumed for the purposes of the interlocutory appeal, given the victims' prior participation in the proceedings which gave rise to the appeal.

However, in the event that the Appeals Chamber considers that the personal interests of victims are not affected by the issues arising in a particular appeal or that the participation of victims would be inappropriate, it could issue an order to that effect. This is expressly acknowledged by regulation 86 (8) of the Regulations of the Court, whereby a prior decision of a Chamber concerning victim participation is 'subject to the powers of the relevant Chamber in accordance with rule 91 (1)'.⁶

5. The Appeals Chamber considers that the above reasoning is equally applicable to final appeals.

6. In order to streamline the appeal proceedings, the Appeals Chamber considers that, in principle, victims who participated in the trial proceedings should file their observations within 60 days of notification of the appeal brief, that is within the same time limit that the respondent is required to file his or her response under regulation 59 of the Regulations. This would allow the Appeals Chamber to receive all substantive submissions on the issues on appeal at an early stage thereby enabling it to consider the appeal in a more expeditious manner. Furthermore, the Appeals Chamber considers it appropriate in the context of final appeals to always afford the appellant and the respondent an opportunity to respond to victims' observations, either orally or in writing.

7. Turning to the circumstances of this case, the Appeals Chamber notes that Trial Chamber IX authorised 4,095 victims to participate in the trial proceedings in the case of *The Prosecutor v. Dominic Ongwen*.⁷ Out of the 4,095 participating victims, 2,594 victims are represented by the Legal Representatives of Victims (Mr Joseph Akwenyu Manoba and Mr Francisco Cox) and 1,501 victims are represented by the Common Legal Representative (Ms Paolina Massidda).⁸

⁶ [Gbagbo OA6 Decision](#), paras 17-18.

⁷ [Conviction Decision](#), para. 25.

⁸ [Conviction Decision](#), para. 25. See also [Updated Consolidated List of Participating Victims](#), 29 June 2020, ICC-02/04-01/15-1746, para. 4. fn. 6.

8. In light of the Appeals Chamber's above approach to victims' participation in final appeals, these victims may, through their representatives, file observations within 60 days of the notification of Mr Dominic Ongwen's appeal brief, together with the Prosecutor's response.

9. Moreover, considering the issues on appeal as well as the fact that page extensions for both the appeal brief and the response thereto have been granted to the Defence and the Prosecutor respectively,⁹ the Appeals Chamber deems it appropriate to allow each group of victims to file observations that shall not exceed 80 pages. The different groups of victims are also encouraged to avoid repetition in the substance of their observations.

10. Finally, the Appeals Chamber will allow the Defence and the Prosecutor to respond to the victims' observations, in the manner and within the time limit to be set by the Appeals Chamber in due course.

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



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 11th day of June 2021

At The Hague, The Netherlands

⁹ See [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, 8 June 2021](#), 8 June 2021, ICC-02/04-01/15-1850 (A).