

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **16 March 2021**

**TRIAL CHAMBER IX**

**Before:** Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Raul C. Pangalangan

**SITUATION IN UGANDA**

**IN THE CASE OF**

***THE PROSECUTOR v. DOMINIC ONGWEN***

**Public**

**Prosecution's response to the Defence request for an extension of time  
in which to file its sentencing brief**

**Source:** The Office of the Prosecutor

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

**The Office of the Prosecutor**

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**Legal Representatives of Applicants**

**Unrepresented Victims**

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Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

**States Representatives**

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**REGISTRY**

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**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. The Office of the Prosecutor (“Prosecution”) opposes the Defence’s request for an extension of time in which to file its sentencing brief (“Defence Request”),<sup>1</sup> because the requested extension would complicate and delay the sentencing proceedings and the Defence has not shown good cause.

2. The Defence asks the Chamber to delay the filing of its sentencing brief until 26 April 2021,<sup>2</sup> which is approximately 10-14 days after the sentencing hearing scheduled for the week of 12 April 2021. The Defence states that it has no objection to similarly postponing the sentencing briefs of the Prosecution and Legal Representatives of Victims (LRVs).<sup>3</sup>

3. The requested extension would complicate and delay the sentencing proceedings. Decision 1763 provides for the Parties and Participants to file written submissions simultaneously, in advance of the sentencing hearing, and provides for no written responses.<sup>4</sup> If the Defence sentencing brief were to be filed *after* the hearing, the Prosecution and LRVs would require an opportunity to respond, either orally or in writing. If all Parties and Participants were to file their briefs after the hearing, it would require a full round of responsive briefing (or an additional hearing for oral submissions). Either way, the proceedings would be extended into May 2021.

4. The requested extension would also impact negatively on the sentencing hearing itself. If the Defence were to file no written submissions before the hearing, the Prosecution and LRVs would be required to question witnesses without knowing the Defence’s position on key issues, or even which issues are in dispute, rendering the testimony less valuable and likely extending the questioning. Without prior written submissions, the Defence’s oral submissions would also almost certainly be

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<sup>1</sup> [ICC-02/04-01/15-1791-Red](#) (“Defence Request”).

<sup>2</sup> [Defence Request](#), para. 1.

<sup>3</sup> [Defence Request](#), para. 3.

<sup>4</sup> [ICC-02/04-01/15-1763](#), para. 7 (“any response to the written submissions relevant to the sentence will be heard at the hearing under Article 76(2) of the Statute”), 8 (“after the hearing no subsequent written submissions will be allowed”).

longer, and there likely would be greater need for oral responses by the Prosecution and LRVs, further lengthening and complicating the hearing.

5. In short, the extension sought by the Defence goes beyond a mere extension of time and would make the sentencing proceedings longer, more complex, and potentially less useful to the Chamber. The Defence Request fails to justify such a significant disruption. Although the Prosecution does not seek to dismiss or diminish the important work of the Defence team at this stage of the case, the Defence Request does not sufficiently explain why current resources are inadequate. The Defence Request suggests that the Prosecution has vast resources, but since the end of trial in March 2020, only five Prosecution lawyers work actively on this case, all of whom also work on other cases or situations. Meanwhile, no appellate lawyer is currently assigned full-time to this case. Consequently, the Defence resources noted in the Defence Request are not patently inadequate or out of proportion to the Prosecution resources assigned to the case.

6. The Defence Request also does not describe what steps, if any, the Defence took prior to the Trial Judgment to prepare its own contingency plans for the possibility of a conviction, although the Defence Request itself states that at least a partial conviction was foreseeable.<sup>5</sup> If the Defence simply made a decision to postpone work on possible sentencing issues until after the Trial Judgment, such a decision would not, in the Prosecution's view, justify the requested extension.

7. The Prosecution also notes that the Defence has already received extensions of time in which to file its notice of appeal and appeal brief, the latter now being due on 21 June 2021,<sup>6</sup> more than two months after the sentencing hearing. If the Defence needs more time to prepare for appellate proceedings, which have not yet begun, it should

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<sup>5</sup> [Defence Request](#), para. 19.

<sup>6</sup> [ICC-02/04-01/15-1781](#), p. 3.

seek a further extension from the Appeals Chamber, not a prolongation of these ongoing sentencing proceedings.

8. The Prosecution therefore submits that the requested extension should be denied because it would unnecessarily complicate and delay the sentencing proceedings. In the alternative, if the Chamber were to grant the requested extension, the Prosecution requests an opportunity to respond to the Defence's sentencing brief. If the Chamber were inclined to also extend the deadlines for the sentencing briefs of the Prosecution and the LRVs, the Prosecution submits that it may be less disruptive to simply postpone the entire sentencing calendar – all remaining deadlines and the hearing itself – so that the proceeding could continue as originally conceived by the Chamber, albeit later.



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**James Stewart, Deputy Prosecutor**

Dated this 16<sup>th</sup> day of March 2021

At The Hague, the Netherlands