

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: English

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

Date: 24 March 2021

**THE APPEALS CHAMBER**

**Before:** Judge Luz del Carmen Ibáñez Carranza, Presiding Judge  
Judge Gocha Lordkipanidze  
Judge Marc Perrin de Brichambaut  
Judge Piotr Hofmański  
Judge Solomy Balungi Bossa

**SITUATION IN UGANDA**

**IN THE CASE OF  
*THE PROSECUTOR v. DOMINIC ONGWEN***

**Confidential**

**CLRV Response to “Defence Request for an Extension of Time to File its Notice of Intent to Appeal the Trial Judgment due to the Registrar’s Violation of Mr Ongwen’s Fair Trial Rights, or in the Alternative, Reconsideration of ICC-02/04-01/15-1781 based on new information”**

**Source:** Office of Public Counsel for Victims

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr Colin Black

**Counsel for the Defence**

Mr Krispus Ayena Odongo  
Mr Charles Achaleke Taku  
Ms Beth Lyons

**Legal Representatives of the Victims**

Mr Joseph Akwenyu Manoba  
Mr Francisco Cox

**Common Legal Representatives for Victims**

Ms Paolina Massidda

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda  
Mr Orchlon Narantsetseg  
Ms Caroline Walter

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

Mr Xavier-Jean Keita

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Esteban Peralta Losilla  
Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX issued the “Trial Judgment” (the “Judgement”), declaring Mr Ongwen guilty of 61 charges of war crimes and crimes against humanity.<sup>1</sup> The same day, the Trial Chamber also issued the “Decision scheduling a hearing on sentence and setting the related procedural calendar”.<sup>2</sup>

2. On 8 February 2021, the Defence filed a request for a suspension of the time limit to file its notice of appeal until 30 days after an Acholi translation of the Judgement is provided (the “Initial Request”).<sup>3</sup> On 16 February 2021, the Prosecution<sup>4</sup>, the Common Legal Representative of Victims<sup>5</sup> (the “CLRv”) and the Legal Representatives of Victims<sup>6</sup> filed their responses to the Initial Request.

3. On 24 February 2021, the Appeals Chamber issued the “Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation” (the “Extension Decision”), partially granting the Initial Request.<sup>7</sup>

4. On 12 March, the Defence filed its “Defence Request for an Extension of Time to File its Sentencing Brief due to the Registrar’s Violation of Mr Ongwen’s Fair Trial

---

<sup>1</sup> See the “Trial Judgment ” (Trial Chamber IX), [No. ICC-02/04-01/15-1762-Red](#), 4 February 2021 (the “Judgement”).

<sup>2</sup> See the “Decision scheduling a hearing on sentence and setting the related procedural calendar” (Trial Chamber IX), [No. ICC-02/04-01/15-1763](#), 4 February 2021.

<sup>3</sup> See the “Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment”, [No. ICC-02/04-01/15-1764-Conf](#), 08 February 2021. A Public redacted version of the document was filed on the same day. See [No. ICC-02/04-01/15-1764-Red](#) (the “Initial Request”).

<sup>4</sup> See the “Prosecution’s Response to Defence’s ‘Request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment’”, [No. ICC-02/04-01/15-1775](#), 16 February 2021.

<sup>5</sup> See the “CLRv Response to the ‘Defence Request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment’”, [No. ICC-02/04-01/15-1774-Conf](#), 16 February 2021. A Public redacted version of the document was filed on 25 February 2021. See [No. ICC-02/04-01/15-1774-Red](#).

<sup>6</sup> See the “Victims’ response to ‘Defence Request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment’”, [No. ICC-02/04-01/15-1776-Conf](#), 16 February 2021, reclassified as public on 1 March 2021.

<sup>7</sup> See the “Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation”(Appeals Chamber), [No. ICC-02/04-01/15-1781 A](#), 24 February 2021 (the “Extension Decision”).

Rights”,<sup>8</sup> to which the CLRV<sup>9</sup> and the Prosecution<sup>10</sup> filed their respective response on 16 March 2021, following a Trial Chamber’s decision shortening the time-limit,<sup>11</sup> opposing the request.

5. On 18 March 2021, the Defence submitted the “Request for an Extension of Time to File its Notice of Intent to Appeal the Trial Judgment due to the Registrar’s Violation of Mr Ongwen’s Fair Trial Rights, or in the Alternative, Reconsideration of ICC-02/04-01/15-1781 based on new information” (the “Renewed Request”).<sup>12</sup>

6. On 19 March, the Trial Chamber issued its “Decision on the Defence request for extension of time for its written submissions on sentence”,<sup>13</sup> rejecting said request in the absence of good cause.

## II. LEVEL OF CLASSIFICATION

7. In accordance with regulation 23*bis* (2) of the Regulations of the Court, the present submission is filed confidential following the classification chosen by the Defence. The CLRV however notes that her submission does not contain any confidential information and could therefore be reclassified as public.

---

<sup>8</sup> See the “Defence Request for an Extension of Time to File its Sentencing Brief due to the Registrar’s Violation of Mr Ongwen’s Fair Trial Rights”, [No. ICC-02/04-01/15-1791-Conf](#), 12 March 2021.

<sup>9</sup> See the “CLRV Response to the Defence Request for an Extension of Time to File its Sentencing Brief due to the Registrar’s Violation of Mr Ongwen’s Fair Trial Rights”, [No. ICC-02/04-01/15-1794](#), 16 March 2021, reclassified as public on 19 March 2021.

<sup>10</sup> See the “Prosecution’s response to the Defence request for an extension of time in which to file its sentencing brief”, [No. ICC-02/04-01/15-1796](#), 16 March 2021. See also, the “Defence Request to Reply to the “Prosecution’s response to the Defence request or an extension of time in which to file its sentencing brief”, [No. ICC-02/04-01/15-1798](#), 17 March 2021.

<sup>11</sup> See the Decision issued by the Chamber by email on 12 March 2021 at 12:17, entitled “Time limit for responses to filing ICC-02/04-01/15-1791-Conf”, setting the time-limit to the 16 of March 2021 for any responses.

<sup>12</sup> See the “Defence Request for an Extension of Time to File its Notice of Intent to Appeal the Trial Judgment due to the Registrar’s Violation of Mr Ongwen’s Fair Trial Rights, or in the Alternative, Reconsideration of ICC-02/04-01/15-1781 based on new Information”, [No. ICC-02/04-01/15-1799-Conf](#), 18 March 2021 (the “Renewed Request”).

<sup>13</sup> See the “Decision on the Defence request for extension of time for its written submissions on sentence” (Trial Chamber IX), [No. ICC-02/04-01/15-1800](#), 19 March 2021.

### III. SUBMISSIONS

8. The Common Legal Representative of the Victims participating at trial<sup>14</sup> opposes the Renewed Request for another extension of time for the filing of the Defence's notice of appeal on 21 May 2021 (instead of 21 April 2021) and of the document in support of the appeal on 21 July 2021 (instead of 21 June 2021).<sup>15</sup>

9. The CLRV argues that such an extensive delay is unreasonable and is contrary to the best interests of the Victims she represents. As already noted on several occasions throughout the proceedings, Victims have been longing for the end of these proceedings and for a prompt determination of Mr Ongwen's sentence. Therefore, every day of postponement in the proceedings should be carefully weighted with the victims' rights to expeditious proceedings.<sup>16</sup>

10. Concerning the merits of the Renewed Request, the CLRV notes that the Defence alleges a failure on the part of the Registry to provide additional funds.<sup>17</sup> While leaving the merits of the matter to the discretion of the Appeals Chamber, the CLRV underlines that the Defence's request for an extension of time to file its sentencing submissions based on the identical arguments currently put before this Chamber has been recently rejected by the Trial Chamber. In particular, the latter observed that:

---

<sup>14</sup> See the "Decision on contested victims' applications for participation, legal representation of victims and their procedural rights" (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/15-350](#), 27 November 2015, p. 19; the "Decision on issues concerning victims' participation" (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/15-369](#), 15 December 2015, pp. 10-11; the "Second decision on contested victims' applications for participation and legal representation of victims" (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/05-384](#), 24 December 2015, pp. 20-22; and the "Decision on the 'Request for a determination concerning legal aid' submitted by the legal representatives of victims" (Trial Chamber IX, Single Judge), [No. ICC-02/04-01/15-445](#), 26 May 2016, para. 13.

<sup>15</sup> See the Renewed Request, *supra* note 12, para. 1.

<sup>16</sup> See the "Decision on Mr Ntaganda's request for reconsideration of the decision on time and page extensions" (Appeals Chamber), [No. ICC-01/04-02/06-2426 EK A A2](#), 01 October 2019, para. 7.

<sup>17</sup> See the Renewed Request, *supra* note 12, paras. 1-5.

*“[It] is not persuaded by the Defence submission that there exists ‘good cause’ within the meaning of Regulation 35(2) of the Regulations of the Court to extend the time limit for the written submissions on the sentence. On the contrary, it observes that the Defence has been accorded ample time to prepare its written submissions, and is of the view that, even in the circumstances as described by the Defence in the request, such time remains more than sufficient for this purpose. In this regard, the Chamber also emphasises that the Defence may present its submissions relevant to the sentence orally at the hearing under Article 76 of the Statute. Indeed, the possibility to file written submissions in advance of such hearing [...] has been meant as an additional opportunity to bring relevant arguments to the attention of the Chamber. In these circumstances, the Chamber remains satisfied that no prejudice arises to Dominic Ongwen from the envisaged sentencing calendar, and that the facts referred to in the Defence request do not warrant any modification thereof”.<sup>18</sup>*

11. On the alternative request for reconsideration, the CLRV submits that, according to the jurisprudence of the Court, *“reconsideration is exceptional and should only be done if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice”*.<sup>19</sup> Additionally, *“new facts and arguments arising since the decision was rendered may be relevant to this assessment”*.<sup>20</sup> While the Appeals Chamber has not conclusively pronounced itself on the propriety and/or the legal basis of the reconsideration of its decisions, the Defence generally agrees with the above mentioned case law by submitting that *“[t]he extraordinary remedy of reconsideration is applicable where a ‘clear error of reasoning has been demonstrated or if it is necessary [...] to prevent an injustice.’”*<sup>21</sup>

---

<sup>18</sup> See the “Decision on the Defence request for extension of time for its written submissions on sentence” *supra* note 13, para. 3.

<sup>19</sup> See the “Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance” (Trial Chamber IX), [No. ICC-02/04-01/15-468](#), 15 June 2016, para. 4. See also, the “Decision on the Defence Request for Partial Reconsideration of the Decision under Rule 68(2)(b) of the Rules of Procedure and Evidence” (Trial Chamber IX), [No. ICC-02/04-01/15-711](#), 23 February 2017, para. 4; the “Decision on Defence Request for Reconsideration of Decision ICC-02/04-01/15-1147 and Objections to Victim Participation” (Trial Chamber IX), [No. ICC-02/04-01/15-1152](#), 26 January 2018, para. 6; and the “Decision on the Legal Representative Request for Reconsideration of the Decision on Witnesses to be Called by the Victims Representatives” (Trial Chamber IX), [No. ICC-02/04-01/15-1210-Conf](#), 26 March 2018, para. 6, reclassified as public on 28 March 2018.

<sup>20</sup> *Ibid.*

<sup>21</sup> See the Renewed Request, *supra* note 12, para. 24.

12. In the Renewed Request, the Defence asserts that the Registrar abused his discretion by not issuing a timely decision on the funding for the members of the team and thus violated Mr Ongwen's fair trial rights.<sup>22</sup> According to the Defence, this unnecessary delay in rendering said decision was not contemplated by the Appeals Chamber when it issued the Extension Decision, constituting a new fact/argument which was not previously available.<sup>23</sup>

13. The CLRV submits that, while the Registrar's decision in question was indeed rendered after the issuance of the Extension Decision, the Defence cannot argue that the Appeals Chamber committed a clear error of reasoning in issuing the Extension Decision because said issue was not addressed in the ruling.

14. The Defence also fails to show that the reconsideration of the Extension Decision is necessary to prevent an injustice. In fact, while the Defence complains vaguely that the Registrar abused his discretion by not issuing a timely decision on the requested additional funds<sup>24</sup>, it does not concretely identify any injustice that would allegedly result from the implementation of the Extension Decision in its current form. Thus, the CLRV submits that none of the Defence's arguments shows a clear error of reasoning nor that it is necessary to reconsider the Extension Decision in order to prevent an injustice. Accordingly, the Appeals Chamber should reject this alternative remedy since the Defence fails to fulfil the requirements for reconsideration.<sup>25</sup>

15. Finally, on the Defence's renewed allegations that Mr Ongwen is a person with mental disabilities, the CLRV recalls her previous submissions on the matter

---

<sup>22</sup> *Idem*, paras. 45-48.

<sup>23</sup> *Idem*, paras. 48-49.

<sup>24</sup> See the Renewed Request, *supra* note 12, para. 45.

<sup>25</sup> See the "Decision on Mr Ntaganda's request for reconsideration of the decision on time and page extensions", *supra* note 16, para. 6.

underlining once again that such contentions have never been established before the Trial Chamber.<sup>26</sup>

16. Should the Appeals Chamber be minded to grant the extensions sought by the Defence, the CLRV respectfully submits that the Prosecution and Counsel representing Victims should be granted the same as a matter of procedural fairness.

Respectfully submitted,



Paolina Massidda  
Principal Counsel

Dated this 24<sup>th</sup> day of March 2021

At The Hague, The Netherlands

---

<sup>26</sup> See, in particular, the "CLRV Response to the 'Defence Request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment'", *supra* note 5, paras. 21-23.