

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **26 March 2021**

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***

PUBLIC

Public Redacted Version of

**"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",
filed on 18 March 2021**

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**

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Trial Chamber IX

I. INTRODUCTION

1. Pursuant to Rule 150 of the Rules of Procedure and Evidence (Rules), the Defence for Dominic Ongwen ('Defence') requests that the Appeals Chamber move the due date for the notice of appeal from 21 April 2021 to 21 May 2021, and move the document in support of the appeal from 21 June 2021 to 21 July 2021.
2. The Defence avers that good cause exists to warrant a change in the due date of the Defence's notice of appeal. Good cause exists because the Registrar needlessly and recklessly failed to give the Defence additional funds to pay most of its original staff from trial until 12 March 2021.¹ Until 12 March 2021, the Defence had funds for three (3) full time staff members and one staff member at 30% remuneration.
3. The Registrar's failure to answer the Defence in a timely manner violates Mr Ongwen's fair trial rights pursuant to Articles 67(1)(b) and (d) of the Rome Statute. As such, the Defence requests that the Appeals Chamber allow the Defence to submit its notice of appeal on 21 May 2021 and its document in support of the appeal on 21 July 2021 to lessen the prejudice resulting to Mr Ongwen and the Defence.
4. In the alternative, the Defence requests reconsideration of the Appeals Chamber's "Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation" ('Appeals Decision').² The Defence asserts that new events warrant reconsideration and rescheduling the due date of the notice of appeal to 21 May 2021 and the document in support of the appeal to 21 July 2021.
5. The filing of this request does not waive the Defence's pending request before Trial Chamber IX related directly to the same issue.³

¹ Email from CSS to Counsel Krispus Ayena Odongo, *RE: D26 – Regulation 83(3) Request for Appeals Phase*, received on 12 March 2021 at 12h42 CET.

² Appeals Chamber, *Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation*, [ICC-02/04-01/15-1781](#).

³ Trial Chamber IX, *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*, ICC-02/04-01/15-1791-Conf.

II. CONFIDENTIALITY

6. Pursuant to Regulations 23*bis* of the RoC, this request is filed as confidential as it contains materials about the Defence's budget. [REDACTED]
[REDACTED]
[REDACTED]. A public redacted version is filed contemporaneously.

III. URGENCY

7. Pursuant to Regulation 35 of the RoC, the Defence requests that any response to this request be filed on or before 23 March 2021. The Defence avers that good cause exists as the deadline for the Defence's notice of appeal is 21 April 2021. Considering that the Defence was working with a "skeleton crew" on the largest case ever presented before the ICC until 14 March 2021, a quick decision by the Appeals Chamber would allow the Defence to allocate its new resources as efficiently as possible while still meeting deadlines put forth by Trial Chamber IX and Appeals Chamber.

IV. PROCEDURAL HISTORY

8. On 4 February 2021, the Trial Chamber IX passed judgment on Dominic Ongwen, convicting him of 61 counts of crimes against humanity and war crimes.⁴
9. On 4 February 2021, after the issuance of the Trial Judgment and as instructed by the Counsel Support Section ('CSS'), the Defence filed the RoC 83 Request with the Registrar through CSS.⁵ The email stated:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

⁴ Trial Chamber IX, *Trial Judgment*, ICC-02/04-01/15-1762.

⁵ Email from [REDACTED] to CSS and [REDACTED], D26 – Regulation 83(3) Request or Appeals Phase, sent 4 February 2021 at 16h11 CET.

10. On 8 February 2021, the Defence filed the “Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment” (‘Extension Request’).⁶ The Defence requested a suspension of the due date for its notice of appeal until there was a full Acholi translation of the Trial Judgment,⁷ because the Trial Judgment was the longest in history and very complex⁸ and that Mr Ongwen needs additional time to read the Trial Judgment as he has mental disabilities.⁹
11. On 16 February 2021, the Defence wrote to CSS requesting to know the status of the RoC 83 Request.¹⁰ The Defence asked, [REDACTED]
[REDACTED]
[REDACTED].” A registry representative wrote back to the Defence on 17 February 2021 stating, “[REDACTED]
[REDACTED].”¹¹
12. On 24 February 2021, the Appeals Chamber issued the Appeals Decision, granting the Defence a 45-day extension to file its notice of appeal and document in support of appeal.¹² The Appeals Chamber instructed Counsel to work with the Language Services Section on the translation of the Trial Judgment and for the Defence to explain the longest judgment ever to Mr Ongwen.¹³
13. On 1 March 2021, the Defence again wrote to CSS requesting to know the status of the RoC 83 Request.¹⁴ The Defence informed the CSS that the delay in its answer would be brought to the attention of the Appeals Chamber.¹⁵

⁶ Trial Chamber IX, *Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment*, ICC-02/04-01/15-1764-Conf. A [public redacted version](#) was filed the same day.

⁷ *Ibid.*, paras 28-32.

⁸ *Ibid.*, pp 11-13, paras 33-40.

⁹ *Ibid.*, pp 13-14, paras 38-42.

¹⁰ Email from [REDACTED] to CSS and [REDACTED], *Re: D26 – Regulation 83(3) Request or Appeals Phase*, sent 16 February 2021 at 19h59 CET.

¹¹ Email from [REDACTED] to [REDACTED], *Re: D26 – Regulation 83(3) Request or Appeals Phase*, received 17 February 2021 at 10h33 CET.

¹² Appeals Decision, paras 12-13.

¹³ *Ibid.*

¹⁴ Email from [REDACTED] to CSS and [REDACTED], *Re: D26 – Regulation 83(3) Request or Appeals Phase*, sent 1 March 2021 at 19h03 CET.

¹⁵ Email from [REDACTED] to CSS and [REDACTED], *Re: D26 – Regulation 83(3) Request or Appeals Phase*, sent 1 March 2021 at 19h03 CET.

14. On 2 March 2021, a Registry representative replied to the Defence and told the Defence, [REDACTED]
[REDACTED]
[REDACTED].”¹⁶
15. On 5 March 2021, the Defence received an email from a Registry representative stating, “ [REDACTED].”¹⁷
16. On 12 March 2021 before the Registrar’s decision, the Defence filed its ‘Request for an Extension of Time to File its Sentencing Brief due to the Registrar’s Violation of Mr Ongwen’s Fair Trial Rights.’¹⁸
17. On 12 March 2021, the Defence received a decision to its RoC 83 Request. The Registrar granted the Defence [REDACTED] of the resources it asked.¹⁹
18. On 14 March 2021, the Defence instructed the Registry as to its team based on the funds allocated in its decision.²⁰

V. APPLICABLE LAWS

A. Mr Ongwen’s fair trial rights and an extension of time

19. According to Article 67(1)(b) and (d), the accused is entitled to have “adequate time and facilities for the preparation of the defence”²¹ and the right to have “legal assistance assigned by the Court in any case where the interest of justice so requires, and without payment if the accused lacks sufficient means to pay for it.”²² Article 67 has also been interpreted as encompassing “the principle of ‘equality of arms.’”²³ Trial Chamber I found that the phrase ‘in full equity’ “suggests that the minimum guarantees must be generously interpreted, so as to

¹⁶ Email from [REDACTED] to [REDACTED], *Re: D26 – Regulation 83(3) Request or Appeals Phase*, received 2 March 2021 at 07h37 CET.

¹⁷ Email from [REDACTED] to [REDACTED], *Re: D26 – Regulation 83(3) Request or Appeals Phase*, received 5 March 2021 at 16h48 CET.

¹⁸ ICC-02/04-01/15-1791-Conf, filed on 12 March 2021 at 04h09 CET and distributed by CMS at 09h34 CET.

¹⁹ Email from CSS to Counsel Krispus Ayena Odongo, *RE: D26 – Regulation 83(3) Request for Appeals Phase*, received on 12 March 2021 at 12h42 CET.

²⁰ Email from [REDACTED] to CSS, *RE: D26 – Regulation 83(3) Request for Appeals Phase*, sent on 14 March 2021 at 21h01 CET.

²¹ Article 67(1)(b) of the Rome Statute.

²² Article 67(1)(d) of the Rome Statute.

²³ *Lubanga case*, Trial Chamber, *Decision on Defence’s Request to Obtain Simultaneous French Transcripts*, para. 18.

ensure that the defence is placed in so far as possible on an equal footing with the prosecution, in order to protect fully the right of the accused to a fair trial.”²⁴

20. In addition to these protected rights, the accused is entitled to a Registrar who performs his function in accordance with the Rules of Procedure and Evidence (‘Rules’). According to Rule 20 of the Rules, the Registrar “shall organize the staff of the Registry in a manner that promotes the rights of the defence, consistent with the principle of fair trial as defined by the Statute.”²⁵ The Registrar must also “provide the defence with such facilities as may be necessary for the direct performance of the duty of the defence”²⁶ and “carry out functions [...], including the financial administration of the Registry, in such a manner as to ensure the professional independence of the defence counsel.”²⁷
21. Decisions on financial aid given by the Registrar may be “reviewed by the relevant Chamber on application by the person receiving legal assistance.”²⁸ When determining whether to overturn or adjust a decision by the Registrar, “the Chamber must assess (a) whether the Registrar has abused [his] [...] discretion; (b) whether the Registrar's decision is affected by a material error of law or fact; and (c) whether the Registrar's decision is manifestly unreasonable. The Chamber will only intervene if counsel can show that the Registrar's decision falls foul of one or more of these criteria.”²⁹
22. One point in which the Registrar is required to make decisions on financial aid is after a trial chamber renders an Article 74 judgment and a defence team submits a Regulation 83(3) request for funding.³⁰ After a trial chamber renders an Article 74 judgment, parties may appeal against decisions of convictions or acquittal pursuant to Article 81(1) of the Rome Statute and Rule 150 of the Rules.³¹ Rule 150 dictates the procedure of filing a notice of appeal.³² According to Rule 150(1), “an appeal against a decision of conviction or acquittal under article 74 [...] may be filed no later than thirty days from the date on which the party filing the appeal is notified of the decision.”³³ However, Rule 150(2) provides that “the Appeals Chamber may extend the

²⁴ *Id.*

²⁵ Rule 20 of the Rules.

²⁶ Rule 20(e) of the Rules.

²⁷ Rule 20(2) of the Rules.

²⁸ Regulation 83(4) of the Rules and RoC.

²⁹ Trial Chamber II, *Decision on the Urgent Requests by the Legal Representatives of Victims for Review of Registrar's Decision of 3 April 2012 regarding Legal Aid*, ICC-01/04-01/07-3277, para. 9.

³⁰ Regulation 83(3) of the RoC.

³¹ See Rule 150 of the Rules.

³² See Rule 150 of the Rules.

³³ Rule 150(1) of the Rules.

time limit [...] for good cause, upon the application of the party seeking to file the appeal.”³⁴
 In addition, Regulation 35(2) of the RoC states that “the Chamber may extend or reduce a time limit if good cause is shown.”³⁵

23. Although ‘good cause’ has not been defined, it has been addressed in relation to Regulation 35(2) of the RoC.³⁶ For example, in *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, the Pre-Trial Chamber found that, “[a]ccording to the well-established jurisprudence of the Court, the ‘good cause’ criterion is satisfied when there are ‘sound reasons’ which ‘would objectively provide justification for the inability of a party to comply with his/her obligation’; as regards the reasons outside one party’s control, they must amount to ‘exceptional circumstances.’”³⁷

B. The standard for reconsideration

24. The extraordinary remedy of reconsideration is applicable where a “clear error of reasoning has been demonstrated or if it is necessary [...] to prevent an injustice.”³⁸ In *Bemba et al.*, Trial Chamber VII asserted that “[n]ew facts and arguments arising since the decision was rendered may be relevant to this assessment.”³⁹ On the contrary, reconsideration may be denied if the new argument was “within the Chamber’s contemplation at the time of issuing the Decision.”⁴⁰
25. The current request is supported by new arguments that could not have been contemplated by the Appeals Chamber in delivering its decision on 24 February 2021. In other cases, the Prosecution has also sought reconsideration on the grounds that the Trial Chamber “wrongly construed”⁴¹ or “misunderstood”⁴² a submission which led to “manifestly unsound and unsatisfactory consequences”.⁴³

³⁴ Rule 150(2) of the Rules.

³⁵ Regulation 35(2) of the RoC.

³⁶ Regulation 35(2) of the RoC.

³⁷ Pre-Trial Chamber II, *Decision on the Confirmation of Charges against Alfred Yekatom and Patrice Edouard Ngaïssona*, [ICC-01/14-01/18-403-Red-Corr](#), para. 23. See also Trial Chamber IX, *Decision on Defence Request for Variation of the 30 September Deadline, 10 September 2019*, [ICC-02/04-01/15-1591](#) and Appeals Chamber, *Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’*, [ICC-01/04-01/06-834](#), paras 7 and 9.

³⁸ ICC-01/04-02/06-611, para. 12; ICC-01/04-02/06-605, para. 7.

³⁹ ICC-01/05-01/13-1282 para. 8; ICC-01/09-01/11-1813 para. 19; ICC-01/09-02/11-863, para.11.

⁴⁰ ICC-01/09-01/11-1813, para. 21; ICC-01/05-01/13-1282 para. 9.

⁴¹ ICC-01/04-02/06-460, para. 2.

⁴² ICC-01/04-02/06-519, paras. 8- 9.

⁴³ ICC-01/04-02/06-460, para. 2.

26. Notably, the very first ICC decision that established the possibility of reconsideration occurred in a situation where the Defence had “made a straightforward mistake about something that at the relevant time was ‘known’ by everyone concerned.”⁴⁴ Fittingly, reconsideration is an established remedial mechanism that can be employed to prevent an injustice, whether arising from the error of a party for having failed to present an argument or fact; from an issue that only becomes evident after a decision is delivered; or from any misunderstanding or uncertainty that may have stemmed from the party’s submissions. All three of these aspects may apply simultaneously.

VI. SUBMISSIONS

27. The Defence submits that the Registrar’s failure to render a timely decision on the Defence’s RoC 83 Request is manifestly unreasonable and an abuse of discretion. This failure to render a timely decision resulted in lack of funding for Mr Ongwen’s Defence team. Thus, the Defence further submits that good cause for an extension of time to file its notice of appeal exists because the lack of timely funding of the Defence violated Mr Ongwen’s fair trial rights.

A. The Registrar’s failure to render a timely decision is manifestly unreasonable

28. The Registrar’s failure to render a timely decision on the Defence’s RoC 83 Request is manifestly unreasonable and resulted in a lack of funds for Mr Ongwen’s defence for 36 days. The failure to render a timely decision is manifestly unreasonable because 1) the Defence has limited funding and cannot engage a full legal team and 2) the Registrar knew on 12 November 2020 that the Article 74 Judgment was forthcoming and that a stringent timeline would follow.
29. First, the Defence had limited funding from 4 February 2021 to 12 March 2021 while awaiting a response to have more than three (3) full time persons working on Mr Ongwen’s appeal and sentencing proceedings. Mr Ongwen received funds for his legal team to retain Counsel, two Assistants to Counsel and a Case Manager at 30%.⁴⁵ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]. No other funds were available to the Defence to use for the sentencing or the appellate proceedings. So, the Defence was in a position in which its limited staff must explain

⁴⁴ ICC-01/04-01/06-2705, para. 10.

⁴⁵ The funds for the Case Manager during the reduced activity period were from the Defence’s savings and not additional funds granted pursuant to a Regulation 83(3) request for additional funds. The Defence requested for said funds, but was denied by the Registrar.

a 1,077-page Judgment to Mr Ongwen, prepare for the sentencing proceedings and prepare for the appellate proceedings against the Trial Judgment.

30. Second, the Registrar has known since 12 November 2020 that the Article 74 Judgment was forthcoming.⁴⁶ While the Registrar could not have known the outcome of the decision beforehand, he should have been at least minimally prepared to handle the RoC 83 Request. Preparedness is important, especially considering the expeditious nature of the proceedings following a conviction or acquittal.
31. Additionally, the Registrar knew that the Defence must adhere to the strict schedule set by the Trial Chamber after the Article 74 Judgment. Rule 150(1) of the Rules requires the notice of appeal of a conviction or acquittal to be filed 30 days from the Article 74 judgment. A conviction on a single ground would trigger the Defence's right to file such notice. Considering the number of charges alleged against Mr Ongwen, it would have been reasonable for the Registry to be prepared for guilty convictions on some of the charges, and to draw up different contingency plans.
32. In this case, the Trial Chamber required the Parties and Participants to request submission of evidence by 26 February 2021 for sentencing and responses to any such requests by 10 March 2021.⁴⁷ The Registrar was notified pursuant to Regulation 31 of the RoC about these deadlines, and reminded by the Defence of these deadlines on 4 February 2021.⁴⁸ Two of the deadlines set by Trial Chamber IX passed without a decision by the Registrar on the Defence's RoC 83 Request. Had the Defence not received a 45-day extension to file its notice of appeal, the deadline also would have passed without the Defence even receiving a decision on funding. This is not a reasonable action by the Registrar.
33. Thus, the Defence submits that the Registrar was manifestly unreasonable in failing to render a timely decision on the Defence's RoC 83 Request despite the Defence's limited funding to employ more than three full time team members and its knowledge that the Article 74 Judgment was forthcoming. Because of this failure, the Defence asserts that an additional 30-day

⁴⁶ Trial Chamber IX, *Order Scheduling the Delivery of the Judgment*, [ICC-02/04-01/15-1754](#). See also Trial Chamber IX, *Decision on the Postponement of the Delivery Date of the Judgment*, [ICC-02/04-01/15-1759](#).

⁴⁷ *Ibid*, para. 6.

⁴⁸ Email from [REDACTED] to CSS and [REDACTED], D26 – Regulation 83(3) Request or Appeals Phase, sent 4 February 2021 at 16h11 CET (see para. 9 above).

extension to file its notice of appeal and an additional 30-day extension to file its brief in support of the appeal is warranted.

B. The Registrar's failure to render a timely decision is an abuse of discretion

34. The Registrar's failure to issue a decision on the Defence's RoC 83 Request is an abuse of discretion that resulted in a lack of funding for Mr Ongwen's defence. As noted above, the Registrar is aware of the time constraints faced by the Defence. The Registrar also knows that:
 - a. Mr Ongwen is a defendant with mental disabilities;
 - b. Mr Ongwen understands and speaks only one language according to the legal texts of the Court; and
 - c. Mr Ongwen will not have a translated copy of the Trial Judgment before his sentencing or appellate proceedings finish, causing further strain on his Defence Team's resources.
35. No reason has been stated to the Defence as to why it took 36 days to answer the RoC 83 Request. While the Registrar has discretion to determine what funds are necessary for an effective defence, failure to supply a timely answer to the Defence's RoC 83 Request is an abuse of such discretion.
36. In conclusion, the Defence submits that the Registrar's failure to render a timely decision on the Defence's RoC 83 Request is unreasonable and an abuse of discretion. As a result, the Registrar failed to uphold his duties to provide the defence with facilities "necessary for the direct performance of the duty of the defence"⁴⁹ and failed to "ensure the professional independence of the defence counsel."⁵⁰ These failures culminate in a lack of funds for Mr Ongwen's defence and, therefore, a violation of Mr Ongwen's fair trial rights.

C. Good cause for an extension of time to file the notice of appeal exists because the lack of funding violates Mr Ongwen's fair trial rights

37. Good cause pursuant to Rule 150 of the Rules for an extension of time to file the notice of appeal exists because the lack of funds for Mr Ongwen's defence violates Mr Ongwen's fair trial rights. Specifically, Mr Ongwen's fair trial rights to 1) equality of arms, 2) "adequate time and facilities for the preparation of the defence,"⁵¹ and 3) legal assistance funded by the Court⁵² are violated. Thus, good cause for the exceptional rescheduling of the due date for the notice of

⁴⁹ Rule 20(e) of the Rules.

⁵⁰ Rule 20(2) of the Rules.

⁵¹ Article 67(1)(b) of the Rome Statute.

⁵² Article 67(1)(d) of the Rome Statute.

appeal exists because of the Registrar's failure to fund Mr Ongwen's case promptly and properly.⁵³

38. First, the lack of a timely decision on funding for the Defence violates Mr Ongwen's fair trial right to equality of arms. As previously stated, Article 67 has been interpreted as encompassing "the principle of 'equality of arms'".⁵⁴

39. In this case, the Defence was working with a "skeleton crew" until the date of the decision. Three (3) members of the Defence are properly funded, and one person at 30% remuneration.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. In contrast, the Office of the Prosecutor has two teams working on this case. Contrary to its assertions,⁵⁵ it has an appellate division and a separate trial team, even though the two (2) are linked.⁵⁶ Both teams have a complement of competent legal personnel for the sentencing and appellate proceedings.⁵⁷ The Prosecution had the ability on 4 February 2021 to decide how to allocate funds given to it by the Assembly of State Parties for the sentencing and appeals proceedings. On the other hand, the Defence had to request funds and did not have the power to use Registry monies until the untimely decision on the Defence's RoC 83 Request was issued on 12 March 2021. The problems faced by the Defence were not caused by the Defence, while the Prosecutor's choice of funds and personnel allocation is its own decision and caused by the Prosecutor. It is unconscionable to think that the Defence and Prosecution are on the same or even near the same footing prior to the Registrar's decision.⁵⁸

41. Until 12 March 2021, the Defence had three (3) full time persons and one part time persons for both. With the bifurcated system at the ICC, the "skeleton crew" of persons on the Defence and

⁵³ See Rule 150(2) of the Rules and Chambers Practice Manual, para. 86

⁵⁴ *Lubanga* case, Trial Chamber, *Decision on Defence's Request to Obtain Simultaneous French Transcripts*, para. 18.

⁵⁵ See 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. 5.

⁵⁶ See Proposed Programme Budget for 2021 of the International Criminal Court, [ICC-ASP/19/10](#), para. 331.

⁵⁷ For the 2021 operational year, the Prosecutor requested funding for seven (7) persons to work on appeals. See Proposed Programme Budget for 2021 of the International Criminal Court, [ICC-ASP/19/10](#), p. 84 (chart at the bottom of the page).

⁵⁸ The Defence does not concede either that since the decision, the Defence and Prosecution are on the same footing.

the lack of a translation of the 1,077-page Trial Judgment places serious strains on the allocation of resources of defence teams. The Defence is clearly not on equal footing with the Prosecution as a result of the Registrar's failure to issue a timely decision on the Defence's RoC 83 Request. Thus, the failure to issue a decision on said request violated Mr Ongwen's fundamental right of equality of arms.

42. Second, the lack of funding for the Defence violates Mr Ongwen's fair trial right to "adequate time and facilities for the preparation of the defence."⁵⁹ As previously stated, the Defence had only three properly funded members and one member funded at 30% until the decision on 12 March 2021. These members must read, interpret, and explain the 1,077-page Trial Judgment to Mr Ongwen. Additionally, these members must simultaneously prepare for sentencing procedures and appellate procedures. The lack of funding to hire additional team members results in four team members bearing the burden of completing all tasks while adhering to the stringent schedule established by the Trial Chamber. Despite best efforts, there is not enough time for four (4) members to complete these tasks in a manner that adheres to professional ethics and obligations. Thus, the lack of a timely decision on the Defence's RoC 83 Request places Defence team members at risk of professional misconduct and, ultimately, deprives Mr Ongwen of his fair trial right to adequate time and facilities to prepare his defence.
43. Finally, the vacuum caused by the Registrar's failure to issue a timely decision on the Defence's RoC 83 Request violates Mr Ongwen's right to have adequate legal funds for his defence.⁶⁰ This failure to issue a timely decision prejudices Mr Ongwen as it does not allow him and his Defence adequate time or personnel to prepare the sentencing brief and notice of appeal.⁶¹ Thus, failure to fund Mr Ongwen's defence violates his right to adequate legal funds.
44. In conclusion, good cause has been shown for an extension of time to file the notice of appeal because the lack of funds for Mr Ongwen's defence violated Mr Ongwen's fair trial rights. The violations of Mr Ongwen's fundamental fair trial rights and the right to equality of arms warrant the rescheduling of the due date of the notice of appeal. Thus, the Defence requests that the Appeals Chamber reschedule the due date of the notice of appeal until 21 May 2021 and the date of the document in support of the appeal until 21 July 2021 for the Defence to lessen the

⁵⁹ Article 67(1)(b) of the Rome Statute.

⁶⁰ Article 67(1)(d) of the Rome Statute.

⁶¹ Article 67(1)(b) of the Rome Statute.

prejudice and fair trial right violations caused by the Registrar's manifestly unreasonable delay in deciding upon the Defence's RoC 83 Request.

D. The Registrar's failure to issue a timely decision warrants reconsideration of the Appeals Decision

45. The Defence avers that, in the alternative, exceptional circumstances transpired since the Appeals Decision that warrants reconsideration of the Appeals Chamber's previous decision to extend the notice of appeal until 21 April 2021 and the document in support of the appeal to 21 June 2021.⁶² The Defence asserts that its abovementioned complaint, that the Registrar abused his discretion by not issuing a timely decision on the Defence's RoC 83 Request, warrants reconsideration of the Appeals Decision and a further 30-day extension for both the notice of appeal and document in support of the appeal.
46. When the Defence filed the Extension Request, it could not have envisaged that the Registrar would take 36 days to issue a decision on the RoC 83 Request. While the Defence had a similar-type issue before in 2016,⁶³ the Defence thought it was the exception and not the rule. With the pressures to work in the bifurcated system now, a timely decision, especially considering the updated Chambers Practice Manual, should have been issued within a week of the Trial Judgment, 10 days at the latest, in order to ensure a smooth transition from the trial to the appeals phase.
47. In addition to the funding granted automatically by the Legal Aid Policy,⁶⁴ the Registrar determined that the Defence qualified [REDACTED].⁶⁵ [REDACTED] [REDACTED]. Had said additional funding been minuscule, one may be able to argue that the prejudice felt by Mr Ongwen was minor or negligible. Such is not the case here.
48. The new argument above, that the Registrar failed to issue a timely decision on the Defence's RoC 83 Request and violated Mr Ongwen's fair trial rights, was not contemplated by the Appeals Chamber in its decision. This unnecessary delay in rendering a timely decision on the

⁶² Appeals Chamber, *Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation*, [ICC-02/04-01/15-1781](#).

⁶³ See Trial Chamber IX, *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*, ICC-02/04-01/15-1791, para. 14 (citing Trial Chamber IX, *Defence Submissions in Advance of the 23 May 2016 Status Conference*, ICC-02/04-01/15-439-Conf, para. 21) (public redacted version, [ICC-02/04-01/15-1791-Red](#)).

⁶⁴ Funds for one Counsel, Assistant to Counsel and Case Manager.

⁶⁵ [REDACTED].

RoC 83 Request constitutes a new fact/argument which was not available to the Appeals Chamber at the time it issued the Appeals Decision.

49. Because of the failure to render a timely decision on the Defence's RoC 83 Request, new and exceptional circumstances exist for the Appeals Chamber to reconsider its Appeals Decision and grant the Defence until 21 May 2021 to file its notice of appeal and 21 July 2021 to file the document in support of the appeal.

VII. RELIEF

50. For the abovementioned reasons, the Defence respectfully requests that the Appeals Chamber reschedule the due date for:
- a. The notice of appeal to 21 May 2021 and
 - b. The document in support of the appeal to 21 July 2021.

Respectfully submitted,



.....
 Hon. Krispus Ayena Odongo
 On behalf of Dominic Ongwen

Dated this 26th day of March, 2021
 At Kampala, Uganda