



**Original: English**

**No. ICC-02/04-01/15 A  
Date: 9 April 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 Mr Ongwen's second request for time extension**

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

**The Office of the Prosecutor**

Fatou Bensouda, Prosecutor  
Helen Brady

**Counsel for the Defence**

Krispus Ayena Odongo  
Chief Charles Achaleke Taku

**Legal Representatives of Victims**

Joseph Akwenyu Manoba  
Francisco Cox

Paolina Massidda

**REGISTRY**

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**Registrar**

Peter Lewis

The Appeals Chamber of the International Criminal Court,

Having before it 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’ of 18 March 2021 (ICC-02/04-01/15-1799-Conf; public redacted version filed on 26 March 2021 (ICC-02/04-01/15-1799-Red)),

Pursuant to rule 150(2) of the Rules of Procedure and Evidence and regulations 23*bis*(3) and 35 of the Regulations of the Court,

*Renders* the following

## DECISION AND ORDER

1. The Defence may file the notice of appeal no later than 16h00 on 21 May 2021.
2. The Defence may file the appeal brief no later than 16h00 on 21 July 2021.
3. The Registrar shall reclassify as ‘public’ document ICC-02/04-01/15-1803-Conf.

## REASONS

### I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX (the ‘Trial Chamber’) convicted Dominic Ongwen (‘Mr Ongwen’) of crimes against humanity and war crimes (the ‘Conviction Decision’).<sup>1</sup>
2. On 8 February 2021, counsel for Mr Ongwen (the ‘Defence’) filed a request for a suspension of the time limit to file the notice of appeal against the Conviction

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<sup>1</sup> [Trial Judgment](#), ICC-02/04-01/15-1762-Red; confidential version notified on the same day (ICC-02/04-01/15-1762-Conf).

Decision until 30 days after an Acholi translation of the decision is provided.<sup>2</sup> The Prosecutor, the common legal representative of victims (the ‘CLR V’) and the legal representatives of victims filed responses.<sup>3</sup>

3. On 24 February 2021, the Appeals Chamber issued a decision partially granting the request. Pursuant to its decision, the Appeals Chamber extended the deadlines for the notice of appeal and appeal brief to 21 April and 21 June 2021, respectively (the ‘First Decision on Extension of Time’).<sup>4</sup>

4. On 18 March 2021, the Defence filed a second request for an extension of the deadline to file the notice of appeal and appeal brief, this time due to the Registry’s undue delay in deciding the Defence’s request for additional funding for the appellate phase of the case.<sup>5</sup> The Defence seeks an extension of the deadline to 21 May 2021 and 21 July 2021 for the two documents, respectively.<sup>6</sup>

5. On 24 March 2021, the CLR V filed a response opposing the Request (the ‘CLR V’s Response’).<sup>7</sup> The Prosecutor did not file a response to the Request.

## II. MERITS

6. The Defence submits that it applied for additional legal assistance pursuant to regulation 83(3) of the Regulations of the Court immediately after the Conviction Decision was issued, on 4 February 2021,<sup>8</sup> because it had insufficient resources to

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<sup>2</sup> [Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment](#), 8 February 2021, ICC-02/04-01/15-1764-Red; confidential version notified on the same day (ICC-02/04-01/15-1764-Conf).

<sup>3</sup> [Prosecution’s Response to Defence’s “Request request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment”](#), ICC-02/04-01/15-1775; Victims’ response to “Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment”, ICC-02/04-01/15-1776-Conf; CLR V Response to the “Defence Request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment”, ICC-02/04-01/15-1774-Conf.

<sup>4</sup> [Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation](#), ICC-02/04-01/15-1781.

<sup>5</sup> [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](#), ICC-02/04-01/15-1799-Red (‘Request’) (public redacted version filed on 26 March 2021).

<sup>6</sup> [Request](#), paras 1, 49-50,

<sup>7</sup> CLR V 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’, ICC-02/04-01/15-1803-Conf.

<sup>8</sup> [Request](#), para. 9.

handle the sentencing and appellate proceedings.<sup>9</sup> According to the Defence, a representative of the Counsel Support Section of the Registry made a decision granting, in part, the application on 12 March 2021.<sup>10</sup> The Defence submits that the delay in granting its application violated Mr Ongwen’s right to a fair trial, which constitutes ‘good cause’ for the extension of time for the Defence’s obligations in the appellate phase.<sup>11</sup> The Defence argues, in the alternative, that the funding issue constitutes ‘new information’ on the basis of which there are grounds for reconsideration of the First Decision on Extension of Time.<sup>12</sup>

7. In opposing the Request, the CLRV refers to the decision of the Trial Chamber rejecting the Defence’s request for an extension of time in the sentencing proceedings.<sup>13</sup> In that decision, the Trial Chamber found that the delay of the Registry in deciding the Defence’s request for additional funding did not constitute ‘good cause’ within the meaning of regulation 35(2) of the Regulations of the Court.<sup>14</sup> Should the Appeals Chamber grant the Request, the CLRV submits that the Prosecutor and victims’ counsel should be granted ‘the same as a matter of procedural fairness’.<sup>15</sup>

8. Rule 150(2) of the Rules of Procedure and Evidence provides that the Appeals Chamber may extend the deadline for the notice of appeal for ‘good cause’ upon the application of a party seeking to file the appeal. Regulation 35(2) of the Regulations of the Court, applicable where a party seeks more time for an appeal brief, also requires a showing of ‘good cause’ for the extension. Good cause may exist where a party is unable to meet a deadline for objective reasons beyond that party’s control.<sup>16</sup>

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<sup>9</sup> [Request](#), paras 29, 39, 42.

<sup>10</sup> [Request](#), para. 17.

<sup>11</sup> [Request](#), paras 37-44.

<sup>12</sup> [Request](#), paras 45-49.

<sup>13</sup> CLRV’s Response, para. 10, referring to [Decision on the Defence request for extension of time for its written submissions on sentence](#), 19 March 2021, ICC-02/04-01/15-1800 (‘Decision of the Trial Chamber on Extension of Time’).

<sup>14</sup> [Decision of the Trial Chamber on Extension of Time](#), para. 3.

<sup>15</sup> CLRV’s Response, para. 16.

<sup>16</sup> *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Reasons for the ‘Decision on the Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’](#), 27 June 2008, ICC-01/04-01/07-653 (OA7), para. 5.

9. The Appeals Chamber notes that decisions on the payment of legal assistance should be made by the Registrar.<sup>17</sup> Such assistance ‘shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence’.<sup>18</sup>

10. The Appeals Chamber notes that, according to the Defence, between 4 February 2021, when it submitted its request for additional resources, and 12 March 2021, when this request was partially granted, the defence team was operating with limited resources (three full time and one part time (30%) team members) to explain the Conviction Decision to Mr Ongwen and prepare for sentencing and appeals proceedings.<sup>19</sup> The Defence submits that the resources available to the prosecution team have not been affected by similar constraints and that the situation has impacted on Mr Ongwen’s right to equality of arms and adequate time and facilities for the preparation of his defence.<sup>20</sup> In view of these submissions, the Appeals Chamber considers that good cause exists to extend the deadlines for the Defence’s obligations in the appellate phase. Taking into account the fact that the Prosecutor has not declared her opposition, the Appeals Chamber finds it appropriate to grant the Request in full.

11. Thus, the Defence’s notice of appeal, pursuant to regulation 57 of the Regulations of the Court, must be filed no later than 21 May 2021, and its appeal brief, pursuant to regulation 58 of the Regulations of the Court, must be filed by 21 July 2021. The Appeals Chamber acknowledges that the Defence could have suffered prejudice from the delay of the Registry in deciding the application for additional funds, but the Appeals Chamber has not made a determination that any of Mr Ongwen’s rights have been concretely violated.

12. Under regulation 59 of the Regulations of the Court, a participant must file a response within 60 days of the appeal brief. The CLRV has not substantiated her argument that this period should be lengthened ‘as a matter of procedural fairness’, and therefore the Appeals Chamber holds that any responses filed must comply with the deadline set out in the regulations.

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<sup>17</sup> Regulations 83(4) and 85(1) of the Regulations of the Court.

<sup>18</sup> Regulation 83(1) of the Regulations of the Court.

<sup>19</sup> [Request](#), paras 2, 29, 41.

<sup>20</sup> [Request](#), paras 39-44.

13. Finally, the Appeals Chamber notes that the CLRV's Response is classified as 'confidential', but that 'her submission does not contain any confidential information and could therefore be reclassified as public'.<sup>21</sup> Therefore, the Appeals Chamber orders the Registrar to reclassify the CLRV's Response as 'public' pursuant to regulation 23*bis*(3) of the Regulations of the Court.

14. The Appeals Chamber emphasises that no further extensions of time for the Defence team concerning the notice of appeal or appeal brief will be granted.

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



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**Judge Luz del Carmen Ibáñez Carranza**  
**Presiding**

Dated this 9th day of April 2021

At The Hague, The Netherlands

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<sup>21</sup> CLRV's Response, para. 7.