

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **27 May 2021**

APPEALS CHAMBER

Before:

**Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
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

**Defence Request for a Page Limit Extension for its Document in Support of its Appeal against
the Trial Judgment**

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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I. INTRODUCTION

1. Pursuant to Regulation 37(2) of the Regulations of the Court ('RoC'), the Defence for Dominic Ongwen ('Defence') hereby respectfully requests the Appeals Chamber to grant a page limit extension to from 100 pages¹ to 600 pages for its document in support of the appeal ('appeal brief') of the Trial Judgment due on 21 July 2021. The Defence avers that exceptional circumstances for the extension of the page limit exist because:
 - a. this is the longest Article 74 judgment in the history of the International Criminal Court;
 - b. Trial Chamber IX convicted Mr Ongwen of 61 counts, more than three times as many counts than any other person prosecuted before the ICC under Article 5;
 - c. Trial Chamber IX heard testimony from 186 witnesses, rendered 663 decisions² and accepted the submission into evidence 5,149 items; and
 - d. this is the most complex Article 74 judgment in history and the Appellant is a mentally disabled person.
2. The Defence asserts that due to the factors above, exceptional circumstances warranting an increase in the page limit exist. An increase in the page limit is necessary to cover the legal and factual reasons for each ground of appeal listed in the Defence's Notification of its Intent to Appeal the Trial Judgment.³

II. PROCEDURAL HISTORY

3. On 4 February 2021, Trial Chamber IX issued the Trial Judgment ('Judgment') against Dominic Ongwen, convicting him of 61 counts of crimes against humanity and war crimes.⁴
4. 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."⁵ The Defence requested a suspension of the

¹ See Regulation 58(4) of the RoC.

² There were 190 written decisions, 70 oral decisions and 403 decisions issued *via* email. See Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 25.

³ Trial Chamber IX, *Defence Notification of its Intent to Appeal the Trial Judgment*, [ICC-2/04-01/15-1826](#).

⁴ Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762](#).

⁵ 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.

due date for its notice of appeal until there was a full Acholi translation of the Judgment,⁶ because the Judgment was the longest in history and very complex⁷ and that Mr Ongwen needs additional time to read the Judgment as he has mental disabilities.⁸

5. 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”, granting the Defence a 45-day extension to file its notice of appeal and document in support of the appeal.⁹
6. On 18 March 2021, the Defence filed 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.”¹⁰ The Defence requested a suspension of the due date for its notice of appeal because the Defence was not given additional funds to pay its staff until 12 March 2021.¹¹
7. On 9 April 2021, the Appeals Chamber issued the “Decision on Mr Ongwen’s second request for time extension”, extending the due date of the Defence’s notice of appeal to 21 May 2021 and the due date of the Defence’s appeal brief to 21 July 2021.¹²
8. On 6 May 2021, Trial Chamber IX issued its Sentence, sentencing Mr Ongwen to a total period of imprisonment of 25 years as a joint sentence with the period between 4 January 2015 and 6 May 2021 deducted from the total period of imprisonment.¹³
9. On 10 May 2021, the Defence filed the “Defence request for a page limit extension for its notice of appeal”.¹⁴

⁶ *Ibid.*, paras 28-32.

⁷ *Ibid.*, pp 11-13, paras 33-40.

⁸ *Ibid.*, pp 13-14, paras 38-42.

⁹ Appeals Chamber, *Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation*, paras 12-13, [ICC-02/04-01/15-1781](#).

¹⁰ Appeals Chamber, *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-Conf (a [public redacted version](#) was filed on 26 March 2021).

¹¹ *Ibid.*, paras 2 and 24-26.

¹² Appeals Chamber, *Decision on Mr Ongwen’s second request for time extension*, [ICC-02/04-01/15-1811](#).

¹³ Trial Chamber IX, *Sentence*, [ICC-02/04-01/15-1819-Red](#).

¹⁴ Appeals Chamber, *Defence request for a page limit extension for its notice of appeal*, [ICC-02/04-01/15-1821](#).

10. On 18 May 2021, the Appeals Chamber issued the “Decision on ‘Defence request for a page limit extension for its notice of appeal,’” extending the page limit for the Defence’s notice of appeal by ten pages.¹⁵
11. On 21 May 2021, the Defence filed the “Defence Notification of its Intent to Appeal the Trial Judgment.”¹⁶ The Defence submitted 90 grounds of appeals.¹⁷

III. APLICABLE LAWS

12. According to Regulation 58(1) of the RoC, after filing a notice of appeal the appellant must file an appeal brief.¹⁸ The appeal brief shall not exceed 100 pages.¹⁹ However, Regulation 37(2) of the RoC allows the Appeals Chamber to extend page limits in exceptional circumstances.²⁰
13. Although ‘exceptional circumstances’ has not been defined by the Court, the Appeals Chamber found in *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* that “the novelty and complexity of the issues raised on appeal” warranted an increase in the page limit of Mr Gbagbo and Mr Blé Goudé’s respective appeal briefs.²¹ Similarly, in the present case, the Appeals Chamber extended the page limit for the Defence’s notice of appeal by ten pages because of “the length and complexity of the Conviction Decision coupled with the volume of the evidence and the number of convictions.”²²
14. Although the Appeals Chamber may extend the page limit due to exceptional circumstances, the extension must be “reasonable and supported by a discernible assessment of the impact of these factors on the formulation of the [appeal brief].”²³ The requestor must demonstrate the “impact that

¹⁵ Appeals Chamber, *Decision on ‘Defence request for a page limit extension for its notice of appeal’*, [ICC-01/04-01/15-1825](#).

¹⁶ Trial Chamber IX, *Defence Notification of its Intent to Appeal the Trial Judgment*, [ICC-2/04-01/15-1826](#).

¹⁷ *Ibid.*

¹⁸ Regulation 58(1) of the RoC.

¹⁹ Regulation 58(5) of the RoC.

²⁰ Regulation 37(2) of the RoC.

²¹ See e.g. Appeals Chamber, *Decision on Mr Laurent Gbagbo’s request for an extension of page limit for his response to the Prosecutor’s appeal brief*, [ICC-02/11-01/15-1313](#); Appeals Chamber, *Decision on the ‘Urgent Defence Application for Extension of Page Limit for its Document in Support of Appeal against Trial Chamber II’s Decision of 21 November 2012 on Regulation 55 (Decision 3319)’*, [ICC-01/04-01/07-3334](#), para. 7; Appeals Chamber, *Decision on the ‘Prosecutor’s Motion for Extensions of the Time and Page Limits’*, [ICC-01/04-01/06-177](#), para. 6.

²² *Ibid.*

²³ *Ibid.*

the factors it identifies would have on the [appeal brief] in order to justify such a significant increase in the page limit.”²⁴

IV. SUBMISSIONS

15. The Defence emphasises that by making this submission, it is not waiving the Appellant’s rights to amend the “Defence Notification of its Intent to Appeal the Trial Judgment” after a full Acholi translation of the Judgment has been provided.

16. The Appeals Chamber should find that exceptional circumstances warranting an extension of the page limit for the appeal brief exists and that these factors significantly impact the appeal brief, which justify a significant increase in the page limit to the appeal brief.

i. The Appeals Chamber should find that exceptional circumstances warranting an extension of the page limit of the Appellant’s appeal brief exists because of the length of the Trial Judgment

17. The Appeals Chamber should find that exceptional circumstances warranting an extension of the page limit for the Appellant’s appeal brief exists because the Judgment against the Appellant is the longest in the history of the ICC. The Judgment against the Appellant is 1,077 pages in length.²⁵ No other Article 74 judgment issued by a chamber of this Court compares in length. In fact, the closest comparison is the Article 74 judgment issued in *The Prosecutor v. Germain Katanga*. That judgment was only 660 pages in length.²⁶ In other words, the judgment against the Appellant is 417 pages longer than the second longest judgment issued by a chamber of this Court. Additionally, the judgment against the Appellant is twice as long as that issued in the *Bemba et al*²⁷ and *Ntaganda*²⁸ cases, and nearly triple that of the *Bemba*²⁹ main case.

18. The length of the Judgment against the Appellant impacts the appeal brief and justifies a significant increase in the page limit. The length of the Judgment impacts the appeal brief because the Defence

²⁴ Appeals Chamber, *Decision on ‘Defence request for a page limit extension for its notice of appeal’*, [ICC-02/04-01/15-1825](#).

²⁵ See Judgment.

²⁶ Trial Chamber II, *Judgment pursuant to article 74 of the Statute*, [ICC-01/04-01/07-3436-tENG](#) (noting that the French version is also 660 pages).

²⁷ Trial Chamber VII, *Judgment pursuant to Article 74 of the Statute*, [ICC-01/05-01/13-1989-Red](#).

²⁸ Trial Chamber VI, *Judgment*, [ICC-01/04-02/06-2359](#).

²⁹ Trial Chamber III, *Judgment pursuant to Article 74 of the Statute*, [ICC-01/05-01/08-3343](#).

must address each alleged factual or legal error found in the 1,077-page Judgment. In its notice of appeal, the Defence identified 90 grounds of appeal. These grounds were identified throughout the entirety of the Judgment.

19. The Defence further notes the length of other documents in support of appeal of an Article 74 judgment. In *Lubanga*, the appeal brief was 115 pages with six grounds,³⁰ *Bema* had six main ground of appeal and used 196 pages,³¹ *Ntaganda* used 152 pages for its two documents in support of its appeal with 15 grounds,³² the Office of the Prosecutor used 128 pages for two grounds of appeal in *Gbagbo and Blé Goudé*,³³ and 122 pages for three ground in *Ngudjolo*³⁴ (noting that the Prosecution document in support of appeal is still heavily redacted and is undoubtedly much longer). These were decisions significantly smaller than the Judgment, with significantly fewer grounds of appeal.

20. In keeping with Regulation 58 of the RoC, the Defence must identify each ground of appeal and fully explain the legal and/or factual reasons supporting the ground of appeal. With the current 100-page limit, the defence would have approximately 1.1 pages per ground of appeal. With a 600-page limit, the Defence would have approximately 6.6 pages per ground of appeal. This page limit would allow the Defence to identify and explain the legal and factual reasons supporting each ground of appeal. The Defence will be able to articulate the way in which each ground of appeal materially affected the Judgment. Thus, the length of Trial Chamber IX's Judgment against the Appellant and its impact on the appeal brief justifies a significant increase in the page limit.

21. For the abovementioned reasons, the Defence argues that exceptional circumstances have been shown for a 600-page limit for its document in support of its appeal against the Judgment and respectfully requests the Appeals Chamber to grant this request.

³⁰ Appeals Chamber, *Mémoire de la Défense de M. Thomas Lubanga relatif à l'appel à l'encontre du « Jugement rendu en application de l'Article 74 du Statut » rendu le 14 mars 2012*, [ICC-01/04-01/06-2948-Red](#).

³¹ Appeals Chamber, Public Redacted Version of Appellant's document in support of the appeal, [ICC-01/05-01/08-3434-Red](#).

³² Appeals Chamber, *Defence Appeal Brief – Part I*, [ICC-01/04-02/06-2443](#) and *Corrigendum* to the “Public Redacted Version of ‘Defence Appeal Brief – Part II’*, 31 January 2020, ICC-01/04-02/06-2465”, 27 March 2020, ICC-01/04-02/06-2465-Red, [ICC-01/04-02/06-2465-Red-Corr](#).

³³ Appeals Chamber, *Further public redacted version of “Prosecution Document in Support of Appeal”*, ICC-02/11-01/15-1277-Conf, 15 October 2019, [ICC-02/11-01-15-1277-Red2](#).

³⁴ Appeals Chamber, *Second Public Redacted Version of “Prosecution's Document in Support of Appeal against the ‘Judgement rendu en application de l'article 74 du Statut’”*, 19 March 2013, ICC-01/04-02/12-39-Conf, [ICC-01/04-02/12-39-Red3](#).

ii. The Appeals Chamber should find that exceptional circumstances warranting an extension of the page limit of the Appellant's appeal brief exist because Trial Chamber IX convicted Mr Ongwen of 61 counts under Article 5

22. The Appeals Chamber should find that exceptional circumstances warranting an extension of the page limit for the Appellant's appeal brief exist because the Appellant was convicted of the most charges of any person prosecuted before this Court, or any other international court/tribunal. The Appellant was found guilty on 61 counts charged under Article 5 of the Rome Statute. No other person in the history of the ICC has been prosecuted or found guilty of so many counts. In fact, the closest person in relation to the Appellant being charged and convicted of the crimes under Article 5 is Bosco Ntaganda, who was found guilty of 18 counts.³⁵
23. The number of convictions impacts the appeal brief and justifies a significant increase in the page limit. The number of convictions impacts the appeal brief because the Defence must address all alleged errors related to the 61 convicted crimes that arose over 42 months and occurred at four different crime bases. The Defence must also address the errors related to the Appellant's Article 31(1)(a) and (d) defences. The nature of the errors committed by Trial Chamber IX, especially related to the Article 31(1) affirmative defences, are highly interconnected and necessitate ample space. Explaining the material impact of these errors requires sufficient space to meet the obligations of Regulation 58 of the RoC. Thus, the number of convictions and their impact on the appeal brief justifies a significant increase in the page limit.
24. For the abovementioned reasons, the Defence argues that exceptional circumstances have been shown for a 600-page limit for its document in support of its appeal against the Judgment and respectfully requests the Appeals Chamber to grant this request.

iii. The Appeals Chamber should find that exceptional circumstances warranting an extension of the page limit of the Appellant's appeal brief exists because Trial Chamber IX heard testimony from 186 witnesses, rendered 663 decisions and accepted the submission into evidence 5,149 items

25. The Appeals Chamber should find that exceptional circumstances warranting an extension of the page limit for the Appellant's appeal brief exists because of the large volume of evidence and

³⁵ Trial Chamber VI, *Judgment*, [ICC-01/04-02/06-2359](#).

decisions. No other person prosecuted before the Court has seen so many witnesses, decisions or amount of evidence, thus warranting the page limit increase.

26. During the course of trial, Trial Chamber IX heard from 186 witnesses who testified on behalf of the Prosecution, Victims, and Defence.³⁶ No other chamber of this Court has heard testimony from this amount of witnesses, either through live testimony or through Rule 68(2) of the Rules of Procedure and Evidence. During the trial proceedings, these 186 witnesses who testified before Pre-Trial Chamber II and Trial Chamber IX produced 236 transcripts³⁷ and dozens of witness statements pursuant to Rule 68(2) of the Rules of Procedure and Evidence.
27. Furthermore, the Trial Chamber accepted the submission into evidence of 5,149 items during the trial proceedings. No other person prosecuted before the Court faced such a voluminous amount of potential evidence.³⁸ The amount of evidence in this case impacts the appeal brief and justifies a significant increase in the page limit. The amount of evidence in the case impacts the appeal brief because the Defence must address alleged errors related to conflicts between witness statements, testimonies, contemporaneous evidence, and inconsistencies in the Judgment.
28. The Defence must also address the significant number of inconsistencies as applied to different witnesses with similar inconsistencies between their witness interview and trial testimony. In other words, multiple witnesses gave inconsistent accounts between their witness interview(s) and trial testimony. Although many of these inconsistencies were similar, the witnesses were treated differently by Trial Chamber IX. Explaining the numerous inconsistencies identified in Judgment, and how each error materially affects the Judgment, requires sufficient space. Thus, the amount of evidence and its impact on the appeal brief justifies a significant increase in the page limit.
29. For the abovementioned reasons, the Defence argues that exceptional circumstances have been shown for a 600-page limit for its document in support of its appeal against the Judgment and respectfully requests the Appeals Chamber to grant this request.

³⁶ Judgment, paras 19-22.

³⁷ Transcripts T-8 to T-11, T-13 to T-18, T-28 to T-178, T-180 to T-231 and T-233 to T-255.

³⁸ The Defence writes potential evidence as it cannot determine what Trial Chamber IX deemed admitted versus submitted, which concerns grounds 9 and 23 of the *Defence Notification of its Intent to Appeal the Trial Judgment*.

iv. The Appeals Chamber should find that exceptional circumstances warranting an extension of the page limit of the Appellant's appeal brief exist because the Judgment is the most complex Article 74 judgment in history and the Appellant is mentally disabled

30. Finally, the Appeals Chamber should find that exceptional circumstances warranting an extension of the page limit for the Appellant's appeal brief exist because this is the most complex case in the history of the ICC. According to Trial Chamber IX, this case was "exceptionally extensive and complex."³⁹ The complexity of the case includes the factors outlined above, issues related to radio intercepts, handwritten notes, radio directional findings, and other technological issues. These factors and issues are in addition to the novelty of the Article 31(1) defences and the lack of clarity on what was excluded from evidence and why. This complexity, and the novelty of the Article 31(1) defences, greatly influenced the number of grounds of appeal alleged by the Defence. These novelties are further exacerbated by the fact that the Appellant is a mentally disabled person.

31. The complexity of this case impacts the appeal brief and justifies a significant increase in the page limit. The complexity of this case impacts the appeal brief because the Defence must address the complex issues that touch and concern all aspects of the case, which include being convicted through multiple modes of responsibility. Explaining how each complex issue relates to an error of fact, law or procedure, and how that error materially affects the judgment, requires sufficient space. Additionally, many of these errors are intertwined and must be fully explained for clarity. Thus, the complexity of this case and its impact on the appeal brief justify a significant increase in the page limit.

32. For the abovementioned reasons, the Defence argues that exceptional circumstances have been shown for a 600-page limit for its document in support of its appeal against the Judgment and respectfully requests the Appeals Chamber to grant this request.

V. RELIEF

33. For the abovementioned reasons, the Defence respectfully requests the Appeals Chamber to grant the Defence a page limit extension for its appeal brief from 100 pages to 600 pages.

³⁹ See [ICC-02/04-01/15-T-259](#), p. 4, lns 12-15. See also p. 31, lns 14-15.

Respectfully submitted,



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

Dated this 27th day of May, 2021
At Lira, Uganda