



**Original: English**

**No. ICC-02/04-01/15 A  
Date: 17 June 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 the Prosecutor's request for an extension of the time limit to file a  
response to the appeal brief**

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

**The Office of the Prosecutor**

Mr Karim Asad Ahmad Khan  
Ms Helen Brady

**Counsel for the Defence**

Mr Krispus Ayena Odongo  
Chief Charles Achaleke Taku  
Ms Beth Lyons

**Legal Representatives of Victims**

Mr Joseph Akwenyu Manoba  
Mr Francisco Cox

Ms Paolina Massidda

**REGISTRY**

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**Registrar**

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX entitled ‘Trial Judgment’ of 4 February 2021 (ICC-02/04-01/15-1762-Red),

Having before it the Prosecutor’s ‘Request under regulation 35(2) to extend the time limit for the filing of the Prosecution response to the Defence appeal against the Trial Judgment’, of 1 June 2021 (ICC-02/04-01/15-1836),

Pursuant to regulations 35(2) and 59(1) of the Regulations of the Court,

*Renders* the following

## DECISION

1. The Prosecutor’s request is granted.
2. The time limit for the Prosecutor to file a response to the appeal brief and for the participating victims to file their observations on the appeal brief is extended to 16h00 on Thursday, 21 October 2021.

## REASONS

### I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX (the ‘Trial Chamber’) convicted Mr Dominic Ongwen (‘Mr Ongwen’) of crimes against humanity and war crimes (the ‘Conviction Decision’).<sup>1</sup>
2. On 9 April 2021, following a second request by the Defence, the Appeals Chamber extended the time limit for the filing of the notice of appeal and the appeal brief to 21 May 2021 and 21 July 2021, respectively.<sup>2</sup>

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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).

<sup>2</sup> [Decision on Mr Ongwen’s second request for time extension](#), ICC-02/04-01/15-1811 (A). *See also* [Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation](#), 24 February 2021, ICC-02/04-01/15-1781 (A).

3. On 21 May 2021, the Defence filed its notice of appeal raising 90 grounds of appeal.<sup>3</sup>
4. On 2 June 2021, in response to a Defence's request seeking an extension of the page limit for its appeal brief,<sup>4</sup> the Prosecutor requested an extension of the time limit to file her response to the appeal brief (the 'Request').<sup>5</sup>
5. On the same day, the Common Legal Representative of Victims (the 'CLR') responded to the Request.<sup>6</sup>
6. On 4 June 2021, the Defence filed a request for leave to reply to the Prosecutor's response.<sup>7</sup>
7. On 8 June 2021, the Appeals Chamber directed that any responses to the Request be filed by 11 June 2021, dismissing as moot the Defence's request for leave to reply.<sup>8</sup>
8. On 11 June 2021, the Defence and the Legal Representatives of Victims (the 'LRV') filed their respective responses to the Request.<sup>9</sup>
9. On the same day, the Appeals Chamber issued a decision on the modalities of victim participation, stating, *inter alia*, that the participating victims should file their observations within 60 days of notification of the appeal brief, that is within the same

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<sup>3</sup> [Defence Notification of its Intent to Appeal the Trial Judgment](#), ICC-02/04-01/15-1826 (A).

<sup>4</sup> [Defence Request for a Page Limit Extension for its Document in Support of its Appeal against the Trial Judgment](#), ICC-02/04-01/15-1832 (A).

<sup>5</sup> [Prosecution Response to 'Defence Request for a Page Limit Extension for its Document in Support of its Appeal against the Trial Judgment' \(ICC-02/04-01/15-1832\) and Request under regulation 35\(2\) to extend the time limit for the filing of the Prosecution response to the Defence appeal against the Trial Judgment](#), filed on 1 June 2021 and notified on 2 June 2021, ICC-02/04-01/15-1836 (A).

<sup>6</sup> [CLR Response to the 'Defence Request for a Page Limit Extension for its Document in Support of its Appeal against the Trial Judgment'](#), ICC-02/04-01/15-1838 (A) (the 'CLR Response').

<sup>7</sup> [Defence request for leave to reply to the Prosecution's request pursuant to Regulation 35\(2\) of the Regulations of the Court](#), ICC-02/04-01/15-1841 (A).

<sup>8</sup> [Decision on Defence request for a page limit extension for its appeal brief and order setting time limit for responses to the Prosecutor request for extension of time to file her response to the appeal brief](#), ICC-02/04-01/15-1850 (A) (the 'Decision of 8 June 2021'), p. 3 and para. 17.

<sup>9</sup> [Defence response to the Prosecution's request for an extension to file its response to the Defence's Appeal Brief on the Trial Judgment](#), ICC-02/04-01/15-1855 (A) (the 'Defence Response'); [Victims' Response to the Prosecutor's request for extension of time limit for filing her response to the Defence appeal brief](#), ICC-02/04-01/15-1856 (A) (the 'LRV Response').

time limit that the respondent is required to file his or her response under regulation 59 of the Regulations of the Court (the ‘Regulations’).<sup>10</sup>

## II. MERITS

### A. Submissions

10. The Prosecutor requests that the Appeals Chamber extend the time limit for her response to the appeal brief. She recalls that under the current timetable, the Prosecutor’s response is due on 21 September 2021, and submits that, in light of (i) the ‘wide-ranging scope of Ongwen’s appeal against the complex Conviction Decision’, and (ii) the ‘intervening judicial recess from 23 July to 16 August 2021 and school holidays from 17 July to 29 August 2021’, there is ‘good cause’ under Regulation 35(2) of the Regulations to grant a limited extension of time of 30 days for the filing of her response to the appeal brief.<sup>11</sup>

11. In particular, in support of her first set of arguments, the Prosecutor argues that the complexity of the Conviction Decision ‘is mirrored in the complexity and wide-ranging scope of Ongwen’s appeal which raises the unprecedented number of 90 grounds’, and that ‘irrespective of whether the 90 grounds have merit or not, or whether they could have been grouped in a different and more succinct way, the Prosecutor will have to devote a considerable amount of time to respond to Ongwen’s numerous and multi-faceted arguments which seek to challenge most if not all of the Trial Chamber’s findings’.<sup>12</sup>

12. In support of her second set of arguments, the Prosecutor argues that ‘the Court’s judicial recess is scheduled to begin just two days after the filing of the appeal brief’ and that ‘[a] large part of the time limit for drafting the response will thus fall within the judicial recess’.<sup>13</sup> The Prosecutor further recalls the dates for the school holidays and submits that ‘[d]ue to the exceptional circumstances of the COVID-19 pandemic and the related travel restrictions imposed for the last year and a half, most of the section’s staff [...] had planned to reunite with their extended families during the

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<sup>10</sup> [Decision on the modalities of victim participation](#), ICC-02/04-01/15-1859 (A), p. 3, paras 6 and 8.

<sup>11</sup> [Request](#), paras 8 and 12.

<sup>12</sup> [Request](#), para. 9.

<sup>13</sup> [Request](#), para. 10.

upcoming judicial recess – after difficult months of a heavy workload, home-schooling and lockdown’.<sup>14</sup> The Prosecutor further notes the limited extension of time sought and the fact that the Defence was granted an extension of 45 days to file its notice of appeal and appeal brief.<sup>15</sup>

13. The Defence submits that the complexity of the Conviction Decision and the expected Defence appeal brief do not warrant an extension of time for the Prosecutor;<sup>16</sup> that good cause for an extension of the time limit has not been demonstrated in relation to the judicial recess or the Dutch school system summer holiday;<sup>17</sup> and that the Request is not of a ‘limited nature’ as suggested by the Prosecutor.<sup>18</sup> The Defence however does not object to a limited extension being granted until 13 October 2021, to take into account the time corresponding to the judicial recess, stressing that this is only warranted because of the ‘extraordinary issues caused by the Pandemic’.<sup>19</sup>

14. The CLRV submits that she does not oppose the Request and that, should the Appeals Chamber grant it, the CLRV requests that the same extension should be granted to the legal representatives.<sup>20</sup>

15. The LRV support the Request and request that the same extension of time be granted for their response.<sup>21</sup>

## **B. Determination by the Appeals Chamber**

16. Under regulation 59(1) of the Regulations, a participant must file a response within 60 days of the appeal brief. Regulation 35(2) of the Regulations provides that a Chamber may extend or reduce a time limit if ‘good cause’ is shown.

17. The Appeals Chamber notes the Prosecutor’s arguments in support of her request for an extension of time to file her response to the forthcoming appeal brief. The Appeals Chamber is persuaded that good cause has been demonstrated that warrants an extension of time. In particular, the Appeals Chamber notes the extraordinary impact

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<sup>14</sup> [Request](#), para. 10.

<sup>15</sup> [Request](#), para. 11.

<sup>16</sup> [Defence Response](#), paras 7-11.

<sup>17</sup> [Defence Response](#), paras 12-16.

<sup>18</sup> [Defence Response](#), paras 17-19.

<sup>19</sup> [Defence Response](#), paras 1, 20-24.

<sup>20</sup> [CLRV Response](#), para. 8.

<sup>21</sup> [LRV Response](#), paras 8-11.

that the Covid-19 pandemic and its related restrictions has had on the staff of the Court and their families over the last year. Consequently, the Appeals Chamber considers it reasonable to expect staff to use the upcoming judicial recess and Dutch school holiday schedule to reunite with their extended families. Given that a large part of the time limit for drafting the Prosecutor's response to the appeal brief will fall within the judicial recess and the 'numerous and multi-faceted' arguments of the Defence that the Prosecutor will have to address, the Appeals Chamber considers that an extension of 30 days would be appropriate and therefore grants the Request in full.

18. Thus, the Prosecutor's response to the appeal brief must be filed no later than 21 October 2021. In line with its recent decision on the modalities of victim participation,<sup>22</sup> the Appeals Chamber grants the same extension of time to the participating victims to file their observations on the appeal brief.

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



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

Dated this 17<sup>th</sup> day of June 2021

At The Hague, The Netherlands

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<sup>22</sup> [Decision on the modalities of victim participation](#), p. 3, paras 6 and 8.