

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **20 October 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 Reconsideration of a Decision

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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Section****Other**

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') respectfully requests the Appeals Chamber to reconsider the "*Decision related to the translation of the Conviction Decision into Acholi*"¹ and to grant Mr Ongwen until Monday, 8 November 2021, to file any possible variations of the grounds of appeal pursuant to Regulation 61 of the Regulations of the Court ('RoC'). The Defence asserts this is necessary to accommodate Mr Ongwen's rights as a person with disabilities.

II. PROCEDURAL HISTORY

2. On 4 February 2021, Trial Chamber IX convicted Mr Ongwen of 61 war crimes and crimes against humanity.² The Trial Judgment ('Judgment') was issued in English only.
3. On 5 February 2021, the Defence contacted Language Services Section ('LSS') about the status of the Acholi translation of the Judgment.³
4. On 8 February 2021, the Defence requested a suspension of the time limit to file its notice of appeal and appeal brief because Mr Ongwen had not been supplied with an Acholi translation of the Judgment.⁴
5. On 24 February 2021, the Appeals Chamber granted an extension to the Defence to file its notice of intent to appeal and its appeal brief.⁵ In this decision, the Appeals Chamber set the modalities of the translation of the Judgment.⁶ The Appeals Chamber, by request of the Defence, later extended the deadlines for the documents one final time.⁷

¹ Appeals Chamber, *Decision related to the translation of the Conviction Decision into Acholi*, [ICC-02/04-01/15-1876](#).

² Trial Chamber IX, *Trial Judgment*, ICC-02/04-01/15-1762-Conf (public redacted version available [here](#)).

³ Phone call from Thomas Obhof to Aida Camara, 5 February 2021.

⁴ Appeals Chamber, *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 (public redacted version available [here](#)).

⁵ 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](#).

⁶ *Ibid*, paras 12-14.

⁷ Appeals Chamber, *Decision on Mr Ongwen's second request for time extension*, [ICC-02/04-01/15-1811](#).

6. During the ensuing months, LSS provided translations based on the Defence's priority list to the Defence through a ShareFile®.⁸
7. On 8 October 2021, LSS finished the Acholi translation of the Judgment.⁹
8. On 11 October 2021, the Appeals Chamber issued an order requiring the Defence to submit any variations on the grounds of appeal by 22 October 2021.¹⁰
9. On 11 October 2021, the Defence sent the final Acholi translated version of the Judgment to Mr Ongwen at the International Criminal Court Detention Centre.¹¹ Prior to this, Mr Ongwen received approximately 600 pages of the Judgment in Acholi *via* email thanks to the updates from LSS and transmission of the files by the Detention Centre.

III. SUBMISSIONS

10. Mr Ongwen has the right to have the Judgment in a language which he understands and speaks and adequate time to prepare such defences.¹² As noted above, the Defence received a full Acholi translation of the Judgment from LSS in the afternoon of 8 October 2021, and the full translation of the Judgment was given to Mr Ongwen in the afternoon of 11 October 2021.¹³ Mr Ongwen requires adequate time to read the Judgment in its entirety.¹⁴ This is even more prominent in the case-at-bar as Mr Ongwen is a person with mental disabilities.¹⁵

⁸ Appeals Chamber, *Corrected Version of "Defence Notification of Priority Sections of the Trial Judgment to be Translated and other Related Requests"*, ICC-02/04-01/15-1793-Conf (public redacted version available [here](#)) and public annexes.

⁹ Email from Diederick Zanen of LSS to Thomas Obhof, *Completed Draft Translation of ICC-02/04-01/15-1762*, received on 8 October 2021 at 14h26 CET.

¹⁰ Appeals Chamber, *Decision related to the translation of the Conviction Decision into Acholi*, [ICC-02/04-01/15-1876](#).

¹¹ Emails from Thomas Obhof to Harry Tjonk, *Translation of Trial Judgment – Part 1 of 4*, sent at 16h23 CET; *Translation of Trial Judgment – Part 2 of 4*, sent at 16h23 CET; *Translation of Trial Judgment – Part 3 of 4*, sent at 16h24 CET; and *Translation of Trial Judgment – Part 4 of 4*, sent at 16h25 CET.

¹² See Articles 67(1)(a), (b) and (f) of the Rome Statute. See also Rules 144(1) and (2) of the Rules of Procedure and Evidence and Regulation 40(6) of the Regulations of the Court. See generally Appeals Chamber, *Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgement*, [ICC-02/04-01/15-1764-Red](#), paras 18-26.

¹³ Acting CCO Harry Tjonk confirmed that the PDF was printed and handed over to Mr Ongwen on 11 October 2021, email from Harry Tjonk to Thomas Obhof, *Re: Translation of Trial Judgment – Part 4 of 4*, received on 11 October 2021 at 17h18 CET. The Defence notes that it took over 24 hours to create the PDF of the Judgment, which is why it was delivered on Monday, 11 October 2021 instead of Friday, 8 October 2021.

¹⁴ See Articles 67(1)(a) and (b) of the Rome Statute.

¹⁵ See UGA-D26-0015-0046-R01, pp 0050-0053. See also UGA-D26-0015-0004, pp 0013-0014; UGA-D26-0015-0326, p. 0327 at para. 5; UGA-D26-0015-0948, pp 0961-0969; and UGA-D26-0015-1219-R01, p. 1222.

11. The Convention on the Rights of Persons with Disabilities ('Convention') mandates that Mr Ongwen be given "appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity".¹⁶ The Convention also requires that Court have "appropriate and effective safeguards to prevent abuse in accordance with international human rights law [] [...] [which] ensure that measures relating to the exercise of legal capacity respect the rights [and] are proportional and tailored to the person's circumstances [...]".¹⁷
12. The Appeals Chamber has taken some of the appropriate and effective safeguards to ensure Mr Ongwen's rights before the Court, namely allowing for possible variations of the grounds of appeal after the translation was completed, but the Defence asserts that more additional time is required for Mr Ongwen to review the Acholi translation of the Judgment in its entirety.
13. Mr Ongwen has a rudimentary education as he was abducted from his family at the tender age of nine years old. He is not a fast reader, which is further compounded by his current mental illnesses.¹⁸ Because of his education and mental disabilities, Mr Ongwen can read, on average, 20-25 pages per day.
14. The Defence also notes that the provision of the earlier sections has aided in the review of the Judgment, but caused some confusion during the previous months as the sections skipped parts of the Judgment.¹⁹ The review of sections, with references to "yet-to-be-translated" sections, lessened the utility of the early provisions.
15. With the current review by Mr Ongwen, helped in part by the early provision of the Acholi translations and Defence explanations, the Defence opines that Mr Ongwen can complete a review of the necessary parts of the Judgment during the first week of November 2021. As such, the Defence respectfully requests the Appeals Chamber to reconsider its decision for any variations to the appeal brief against the Judgment be moved from 22 October 2021 to 8 November 2021.

¹⁶ Article 12(3) of the [Convention on the Rights of Persons with Disabilities](#), entered into force on [3 May 2008](#).

¹⁷ Article 12(4) of the [Convention](#).

¹⁸ See generally footnote 15.

¹⁹ The Defence places no blame on LSS for this. It translated sections as asked, and this was just an unfortunate outcome of the process, which the Defence believes was caused by Mr Ongwen's education level and mental disabilities.

16. The Defence avers that this will not cause any prejudice to the Prosecution or Victim Representatives as the requested change is minimal, before the winter recess, and pleadings and/or submissions on reparations are not due until 6 December 2021. The Defence also avers that this may be advantageous to the Prosecution and Victim Representatives as it would allow the Parties and Participants to focus on finalising responses to the Defence's appeal brief against the sentence without interruption by another possible response.
17. The Defence avers that the changed circumstance warranting the extension of the deadline to file any possible variation on the grounds of appeal pursuant to Regulation 61 of the RoC stems from Mr Ongwen reading level and comprehension of the translated Judgment related to his education level and mental disabilities. After having the fully translated Judgment for just over a week, it is apparent to the Defence that Mr Ongwen requires a little more time to complete a review of the longest decision in history in a language which he fully understands and speaks.

IV. RELIEF

18. The Defence respectfully requests the Appeals Chamber to reconsider its decision to require any variations to the grounds of appeal against the Judgment to be filed on 22 October 2021 and allow the Defence, on Mr Ongwen's behalf, to file any possible variations on the grounds of appeal against the Judgment on or before 8 November 2021. The Defence avers that good cause and changed circumstances exist to warrant the short extension for the benefit of Mr Ongwen.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 20th day of October, 2021

At The Hague, Netherlands