



Original: English

**No. ICC-02/04-01/15 A A2
Date: 6 December 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

**Order on the request for reclassification and on the filing of public redacted
versions**

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

The Office of the Prosecutor

Mr Karim A.A. Khan, Prosecutor
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

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),

In the appeal of the Defence against the decision of Trial Chamber IX entitled “Sentence” of 6 May 2021 (ICC-02/04-01/15-1819-Red),

Having before it the “Prosecution Request for reclassification of annexes ICC-02/04-01/15-1882-Conf-AnxA and ICC-02/04-01/15-1882-Conf-AnxB, 21 October 2021”, of 9 November 2021 (ICC-02/04-01/15-1889-Conf),

Noting the “Victims’ Observations on the ‘Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021’”, of 21 October 2021, ICC-02/04-01/15-1883-Conf and the “Victims’ Observations on the ‘Defence Document in Support of its Appeal against the Sentencing Decision’”, of 26 October 2021, (ICC-02/04-01/15-1887-Conf),

Issues the following

ORDER

1. The Registrar is directed to reclassify the following documents as public:
 - a. ICC-02/04-01/15-1882-Conf-AnxA;
 - b. ICC-02/04-01/15-1882-Conf-AnxB; and
 - c. ICC-02/04-01/15-1889-Conf.
2. The LRVs shall file public redacted versions of documents ICC-02/04-01/15-1883-Conf and ICC-02/04-01/15-1887-Conf by Wednesday, 8 December 2021.

REASONS

I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX (hereinafter: “Trial Chamber”) convicted Mr Ongwen of crimes against humanity and war crimes (hereinafter: “Conviction Decision”).¹
2. On 22 July 2021, the Defence filed its appeal brief against the Conviction Decision (hereinafter: “Appeal Brief”).² On 19 October 2021, a public redacted version was filed.³
3. On 21 October 2021, the Prosecutor filed his response to the Appeal Brief (hereinafter: “Response to the Appeal Brief”).⁴ On the same day, the CLRV and the LRVs filed their respective observations on the Appeal Brief confidentially.⁵
4. On 28 October 2021, the CLRV filed a public redacted version of her observations on the Appeal Brief.⁶
5. On 9 November 2021, the Prosecutor filed public redacted versions of his Response to the Appeal Brief and Annex C to the response.⁷ On the same day, the Prosecutor filed the “Prosecution Request for reclassification of annexes ICC-02/04-

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

² Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021, dated 21 July 2021, ICC-02/04-01/15-1866-Conf (with public annexes A, B and D and confidential annex C).

³ [Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021, filed on 21 July 2021 as ICC-02/04-01/15-1866-Conf](#), ICC-02/04-01/15-1866-Red (with public annexes A, B and D and confidential annex C).

⁴ Prosecution Response to “Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021” (ICC-02/04-01/15-1866-Conf), ICC-02/04-01/15-1882-Conf (with confidential annexes ICC-02/04-01/15-1882-Conf-AnxA, ICC-02/04-01/15-1882-Conf-AnxB and ICC-02/04-01/15-1882-Conf-AnxC).

⁵ CLRV Observations on the “Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021”, ICC-02/04-01/15-1880-Conf; Victims’ Observations on the “Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021”, ICC-02/04-01/15-1883-Conf.

⁶ [CLR V Observations on the “Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021”](#), No. ICC-02/04-01/15-1880-Conf, 21 October 2021, ICC-02/04-01/15-1880-Red.

⁷ [Prosecution Response to “Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021” \(ICC-02/04-01/15-1866-Conf\)](#), 9 November 2021, ICC-02/04-01/15-1882-Red; [Annex C to the Prosecution Response to “Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021” \(ICC-02/04-01/15-1866-Conf\)](#), ICC-02/04-01/15-1882-AnxC-Red.

01/15-1882-Conf-AnxA and ICC-02/04-01/15-1882-Conf-AnxB, 21 October 2021” (hereinafter: “Prosecutor’s Request”).⁸

6. On 6 May 2021, the Trial Chamber sentenced Mr Ongwen to a total period of 25 years of imprisonment with a deduction for time spent in detention between 4 January 2015 and 6 May 2021 (hereinafter: “Sentence Decision”).⁹

7. On 30 August 2021, the Defence filed its appeal brief against the Sentence Decision confidentially (hereinafter: “Sentence Appeal Brief”).¹⁰ On 31 August 2021, public redacted versions of the Sentence Appeal Brief and Annex A to the appeal brief were filed.¹¹

8. On 26 October 2021, the CLRV and the LRVs filed their respective observations on the Sentence Appeal Brief confidentially.¹²

9. On 28 October 2021, the CLRV filed a public redacted version of her observations on the Sentence Appeal Brief.¹³

II. MERITS

10. The Prosecutor seeks reclassification as public of annexes A and B to his Response to the Appeal Brief.¹⁴ He submits that since a public redacted version of his Response to the Appeal Brief has been filed the basis for the confidential classification

⁸ Prosecution Request for reclassification of annexes ICC-02/04-01/15-1882-Conf-AnxA and ICC-02/04-01/15-1882-Conf-AnxB, ICC-02/04-01/15-1889-Conf.

⁹ [Sentence](#), ICC-02/04-01/15-1819-Red; confidential version notified on the same day (ICC-02/04-01/15-1819-Conf). *See also* [Partly Dissenting Opinion of Judge Raul C. Pangalangan](#), 6 May 2021, ICC-02/04-01/15-1819-Anx.

¹⁰ Corrected version of “Defence Document in Support of its Appeal against the Sentencing Decision”, filed on 26 August 2021, ICC-02/04-01/15-1871-Conf-Corr (with confidential annex ICC-02/04-01/15-1871-Conf-AnxA).

¹¹ [Corrected version of “Defence Document in Support of its Appeal against the Sentencing Decision”, filed on 26 August 2021](#), ICC-02/04-01/15-1871-Corr-Red; [Annex A to the Corrected version of “Defence Document in Support of its Appeal against the Sentencing Decision”, filed on 26 August 2021](#), ICC-02/04-01/15-AnxA-Red.

¹² CLRV Observations on the “Defence Appeal of the Sentence”, ICC-02/04-01/15-1885-Conf; Victims’ Observations on the “Defence Document in Support of its Appeal against the Sentencing Decision”, ICC-02/04-01/15-1887-Conf.

¹³ [CLR V Observations on the “Defence Appeal of the Sentence”](#), ICC-02/04-01/15-1885-Red.

¹⁴ Prosecutor’s Request, paras 1, 2 *referring to* ICC-02/04-01/15-1882-Conf-AnxA and ICC-02/04-01/15-1882-Conf-AnxB (hereinafter: “Annexes A and B”).

of Annexes A and B no longer exists.¹⁵ He also seeks reclassification as public of the Prosecutor's Request, should the Appeals Chamber grant the relief requested therein.¹⁶

11. The Appeals Chamber notes that Annex A consists of a "Table of Contents" of the Response to the Appeal Brief whilst Annex B is a "Glossary and List of Authorities" relied upon by the Prosecutor in his Response to the Appeal Brief. Having examined these documents, in light of existing protective measures in place and the public redacted version of the Response to the Appeal Brief, the Appeals Chamber concurs with the Prosecutor's assessment that the basis for the classification as confidential of Annexes A and B no longer exists. Accordingly, the Appeals Chamber finds it appropriate to re-classify Annexes A and B as public. In the same vein, the Appeals Chamber considers that the Prosecutor's Request may also be re-classified as public. The Registrar is therefore directed to reclassify documents: ICC-02/04-01/15-1882-Conf-AnxA, ICC-02/04-01/15-1882-Conf-AnxB and ICC-02/04-01/15-1889-Conf as public.

12. The Appeals Chamber notes the Prosecutor's indication of his willingness to file a lesser redacted version of his Response to the Appeal Brief. He submits that out of an abundance of caution he redacted certain passages from his response which pertain to direct quotations from expert reports which were received into evidence and treated as confidential at trial.¹⁷ He further submits that since the subject matter of these quotations is now available to the public "given the pronouncements of the Trial Chamber in the [Conviction Decision] and that of the Parties in open session", he is ready to file a lesser redacted version should the Appeals Chamber so direct.¹⁸

13. While the Prosecutor's initiative in seeking leave to file a lesser redacted version at this stage is welcomed, the Appeals Chamber considers that such action is best delayed until the records of the appeals against the Conviction Decision and the Sentence Decision are complete.

14. Finally, the Appeals Chamber notes that the LRVs have filed their observations on the Appeal Brief and the Sentence Appeal Brief confidentially and to date no public

¹⁵ Prosecutor's Request, para. 2.

¹⁶ Prosecutor's Request, para. 3.

¹⁷ Prosecutor's Request, para. 4.

¹⁸ Prosecutor's Request, para. 4.

redacted version has been filed. Accordingly, the LRVs are ordered to file public redacted versions of documents: ICC-02/04-01/15-1883-Conf and ICC-02/04-01/15-1887-Conf by Wednesday, 8 December 2021.

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

A handwritten signature in black ink, consisting of a large, stylized 'L' and 'C' intertwined, with a horizontal line crossing through the middle.

Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 6th day of December 2021

At The Hague, The Netherlands