

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **13 January 2022**

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 *PROSECUTOR v. DOMINIC ONGWEN*

Public

Prosecution's Urgent Request for Extension of Pages

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim Khan Q.C.
Mr James Stewart
Ms Helen Brady

Counsel for the Defence

Mr Krispus Ayena Odongo
Mr Charles Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox
Ms Paolina Massidda

Amicus Curiae

Dr. Mohammad Hadi Zakerhossein;

Felicity Gerry QC, Wayne Jordash QC, Ben Douglas-Jones QC, Anna McNeil, Philippa Southwell, Dr. Beatrice Krebs and Jennifer Keene-McCann;

Erin Baines, Anne-Marie de Brouwer, Annie Bunting, Eefje de Volder, Kathleen M. Maloney, Melanie O'Brien, Osai Ojigho, Valerie Oosterveld, Indira Rosenthal;

Louise Arimatsu, Adejoké Babington-Ashaye, Kirsten Campbell, Danya Chaikel, Christine Chinkin; Carolyn Edgerton, Priya Gopalan; Gorana Mlinarević, Angela Mudukuti, Cynthia T. Tai;

Sareta Ashraph, Stephanie Barbour, Kirsten Campbell, Alexandra Lily Kather, Jocelyn Getgen Kestenbaum, Maxine Marcus, Gorana Mlinarević, Valerie Oosterveld, Kathleen Roberts, Susana SáCouto, Jelja Sané, Hyunah Yang;

Professor Jean Allain, Monash University, Castan Centre for Human Rights Law;

Prof. Dr. Mario H. Braakman;

Mr. Arpit Batra;

Professor Bonita Meyersfeld and the
Southern African Litigation Centre Trust;

Ms Ardila, Mariana; Ms Fernández-Paredes,
Teresa; Ms Ibáñez, María
Cecilia; Ms Kravetz, Daniela; Ms SáCouto,
Susana; Ms Seoane, Dalila;

Dr. Rosemary Grey, Global Justice Center
(GJC); Amnesty International (AI),
Women's Initiatives for Gender Justice
(WIGJ);

NIMJ - National Institute of Military Justice;

Tina Minkowitz, Robert D. Fleischner;

Public International Law & Policy Group;

Justice Francis M. Ssekandi;

Professor Erin Baines, Professor Kamari M.
Clarke, Professor Mark A. Drumbl;

Dr. Paul Behrens, University of Edinburg;

Association of Defence Counsel Practicing
before the International Courts and
Tribunals (ADC-ICT)

Registrar

Mr Peter Lewis

1. The Prosecution respectfully requests an extension of five pages to respond to the observations of the *amici curiae*. This modest extension is needed to better assist the Appeals Chamber in assessing the numerous and wide-ranging issues raised by the *amici*'s observations. It is sought on an urgent basis given the imminent deadline for filing its response.

2. On 25 October 2021, the Appeals Chamber invited highly qualified scholars and practitioners to seek leave to submit observations on the following topics by 15 November 2021:

- a. Grounds for excluding criminal responsibility under article 31(1)(a) and (d) of the Statute: (i) the legal interpretation of article 31(1)(a) and (d) of the Statute concerning grounds for excluding criminal responsibility; (ii) evidentiary issues relating to mental disease or defect; (iii) the burden of proof when asserting a ground for excluding criminal responsibility; and the standard of proof applicable to the assessment of mental disease or defect or duress;
- b. Sexual and gender-based crimes: (i) the legal interpretation of the crimes of forced marriage, sexual slavery and forced pregnancy, and (ii) the standards applicable to assessing evidence of sexual violence;
- c. Cumulative convictions: the permissibility or otherwise of entering cumulative convictions when the conduct in question violates two or more distinct provisions of the Statute.¹

3. After receiving 20 requests (two of them filed after the time limit), the Appeals Chamber authorised 18 *amici curiae* to provide written observations of no more than 15 pages by 23 December 2021. It permitted the Prosecution, the Defence and the participating victims to submit consolidated responses of no more than 25 pages by 17 January 2022.²

4. By 24 December 2021, 18 *amici curiae* had filed their observations amounting a total of 323 pages (with 200 additional pages annexed). Two of them substantially exceeded the page limit set out by the Appeals Chamber.³ The Prosecution has done its outmost, including during the Court recess, to address the multiple and complex arguments raised by the *amici* within the allotted 25 pages. However, it has become apparent that despite these persistent efforts a

¹ ICC-02/04-01/15-1884.

² ICC-02/04-01/15-1914.

³ See [NIMJ Brief B](#) (21 pages) and [Gerry et al. Brief](#) (22 pages).

modest extension of five pages is needed to be able to adequately respond to all the issues raised. In particular, the *amici* refer to numerous domestic and international legal texts and jurisprudence, (selectively) opine on the facts and evidence of this case and raise controversial policy considerations by reference to a vast number of academia. The Prosecution respectfully submits that the additional five pages requested will be of assistance to the Appeals Chamber in assessing these observations, focusing the upcoming appeals hearing and resolving the appeal.

5. The Prosecution is aware that it brings this request very late, and is now obliged to act on an urgent basis, but it has exercised its best efforts to confine its submissions to the existing page limit. However, at this juncture, it has concluded that further edits would likely prejudice its ability to assist the Appeals Chamber by providing submissions which are both clear and germane to the wide-ranging issues raised by the *amici*.

6. The Prosecution does not object to the same extension being granted to the Defence and participating victims. Mindful of the imminent deadline, it requests the Appeals Chamber to rule on this request expeditiously.

Relief Sought

7. For the reasons set out above, the Prosecution respectfully requests an extension of five pages, amounting to a total of 30 pages, to respond to the observations of the *amici curiae*.



Karim A. A. Khan QC, Prosecutor

Dated this 13th day of January 2022
At The Hague, The Netherlands