

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **2 June 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
Victims' Response to "Defence Request for a Page Limit Extension for its Document in Support of its Appeal against the Trial Judgment"

Source: Legal Representatives of Victims

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. The Legal Representatives for Victims (“LRVs”) submit that while the Regulations of the Court (“RoC”) permit the extension of page limits in exceptional circumstances, the ‘Defence request for a Page Limit Extension for its Document in Support of its Appeal against the Trial Judgment,’ (“Defence Request”)¹ is wholly unjustified and grossly excessive in the circumstances.
2. Whilst taking into account that the Article 74 Judgment is lengthy and that Mr Ongwen has been convicted for more counts than any other convicted person before this Court, the LRVs aver that the Trial Judgment is not substantively overly complex in its nature to warrant a page limit increase from 100 to 600 pages for the Defence’s document in support of its appeal.
3. Furthermore, having received the ‘Defence Notification of its Intent to Appeal the Trial Judgment’² (“Defence Notice of Appeal”), it is arguable that many, if not all, of the grounds of appeal laid out by the Defence appear to be mere disagreements with the Trial Chamber decisions, rather than errors of law, fact or procedure that would materially affect and invalidate Mr Ongwen’s conviction.
4. The LRVs submit that taking into a consideration the length of the Trial Judgment and the Defence Notice of Appeal, the Defence should be granted a reasonable extension of page limit of 50 additional pages at a maximum.

II. PROCEDURAL HISTORY

5. On 4 February 2021, Trial Chamber IX issued its Trial Judgment, convicting Mr Ongwen on 62 counts of war crimes and crimes against humanity.³

¹ ICC-02/04-01/15-1832.

² ICC-02/04-01/15-1826.

³ Trial Chamber IX, *Trial Judgment*, ICC-02/04-01/15-1762-Conf.

6. On 8 February 2021, the Defence requested an extension of time to file its notice of appeal.⁴
7. On 18 February 2021, the Appeals Chamber granted the Defence an additional 45 days to file its notice of appeal and the document in support of the appeal.⁵
8. On 18 March 2021, the Defence requested an additional extension of time to file its notice of appeal and document in support of the appeal.⁶ On 9 April 2021, the Appeals Chamber granted the Defence's second request for an additional 30 days to file its notice of appeal and document in support of the appeal.⁷
9. On 10 May 2021, the Defence filed the 'Defence request for a page limit extension for its notice of appeal,' where it requested the Appeals Chamber to grant a page-limit extension from 20 pages to 75 pages for its notice of appeal due on 21 May 2021.⁸
10. On 11 May the Appeals Chamber stated that the Prosecutor and the participating victims could respond to the Defence Request by 16h00 on Wednesday, 12 May, 2021.⁹
11. On 12 May 2021, the Prosecution¹⁰ and the LRVs¹¹ both opposed the 'Defence request for a page limit extension for its notice of appeal,' arguing that it was excessive in the circumstances, and that a page limit extension of 8 pages or 10 pages, respectively, should be granted to the Defence.

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.

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 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.

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

⁸ Defence Request.

⁹ ICC-02/04-01/15-1822.

¹⁰ ICC-02/04-01/15-1823.

¹¹ ICC-02/04-01/15-1824.

12. On 18 May 2021, the Appeals Chamber issued the ‘Decision on “Defence request for a page limit extension for its notice of appeal,”’¹² extending the page limit for the Defence’s notice of appeal by ten pages.
13. On 27 May 2021, the Defence requested the Appeals Chamber to grant a page limit extension from 100 pages to 600 pages for its document in support of the appeal.¹³
14. On 28 May 2021, the Appeals Chamber issued its ‘Order concerning the time limit for responses to the Defence request for a page limit extension for its appeal brief,’ stating that the Prosecutor and participating victims could respond to the Defence Request by 16h00 on Wednesday, 2 June 2021.¹⁴

III. SUBMISSIONS

15. The Defence requests the Appeals Chamber to grant a page limit extension from 100 pages to 600 pages for its document in support of the appeal, arguing that this is warranted for exceptional reasons.
16. In particular, the Defence states that these exceptional circumstances are as follows: the *Ongwen* judgment is the longest article 74 judgment in the history of the ICC; Trial Chamber IX convicted Mr Ongwen for more than three times as many counts than any other person at the ICC; Trial Chamber IX heard testimony from 186 witnesses, rendered 663 decisions and accepted the submission into evidence 5,149 items; and ‘this is the most complex Article 74 judgment in history and the Appellant is a mentally disabled person.’¹⁵
17. Regulation 58(1) of the RoC provides that after filing a notice of appeal, the

¹² ICC-02/04-01/15-1825.

¹³ Defence Request.

¹⁴ ICC-02/04-01/15-1833.

¹⁵ Defence Request, para. 1.

appellant must file an appeal brief which shall not exceed 100 pages.¹⁶ Regulation 37(2) of the RoC allows the Appeals Chamber to extend page limits in exceptional circumstances.

18. The Defence points out that in *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, the Appeals Chamber found 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.¹⁷ In this case, some of the exceptional circumstances included novel issues relating to the ‘no case to answer’ legal framework and the fact that the Prosecution had requested a declaration of a mistrial. Consequently, the page limit for the defence response was extended by 30 pages by the Appeals Chamber.
19. Similar *reasonable* extension of page limit requests were granted in the *Katanga*¹⁸ and *Lubanga*¹⁹ cases based on the complexity of the legal issues at hand.

The issue of legal complexity cannot be equated to the length of the judgment

20. The LRVs submit that contrary to the arguments made by the Defence, the complexity of the judgment in this case cannot be merely equated to its length.²⁰ The assertion by the Defence that the Judgment in this case is the longest in the history of the Court without failing to substantiate how this relates to the complexity of their appeal brief does not pass the test laid out in *Gbagbo* which required that an extension must be ‘reasonable and supported by a discernible assessment of the impact of these factors on the formulation of the [appeal brief].’²¹

¹⁶ Regulation 58(5) of the RoC.

¹⁷ ICC-02/11-01/15-1313.

¹⁸ ICC-01/04-01/07-3334.

¹⁹ ICC-01/04-01/06-177.

²⁰ ICC-02/04-01/15-1824.

²¹ ICC-02/11-01/15-1313, ICC-01/04-01/07-3334, para. 7, ICC-01/04-01/06-177, para. 6.

21. The length of the Judgment may warrant a reasonable increase in the page limit for the Defence's appeal brief, however, an increase of 500 pages is wholly unjustified in the circumstances.
22. The Defence has identified 90 grounds of appeal and submit that '[w]ith 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.'²²
23. The LRVs submit that many of the grounds of appeal listed in the Defence Notice of Appeal are related to one another and concern the same subject matter. Moreover, numerous grounds of appeal identified by the Defence amount to mere disagreements with the decisions taken by the Trial Chamber, as opposed to errors of law, fact or procedure that would materially affect and invalidate Mr Ongwen's conviction.
24. The LRVs note in this regard the jurisprudence of the *ad hoc* tribunals, according to which the division of the number of pages by the number of listed grounds of appeal was not found to be helpful in determining whether "exceptional circumstances" existed and the mere number of grounds of appeal could not be considered an 'exceptional circumstance.'²³
25. Furthermore, many of the issues raised by the Defence in their notice of appeal have already been litigated and adjudicated upon by the Appeals Chamber

²² Defence Request, para. 20.

²³ ICTY, *The Prosecutor v. Radoslav Brdjanin*, IT-99-36-A, Decision on Appellant's motion for extension of time to file a consolidated brief and for enlargement of page limit, 22 June 2005, para. 11; *The Prosecutor v. Stanišić & Župljanin*, IT-08-91-A, Decision on Mićo Stanišić's and Stojan Župljanin's Motions Seeking Variation of Time and Word Limits to File Appeal Briefs, 4 June 2013, p. 3; ICTR, *Siméon Nchamihigo v. the Prosecutor*, ICTR-2001-63-A, Decision on Defence motion for leave to exceed the word limit, 12 May 2009, p. 2.

during the course of the trial.²⁴

26. Indeed, the Defence fails to substantiate why the complexity or novelty of issues in this case are such that it warrants a page extension far greater than that in any case before this Court, save for citing the volume of the evidence in the case and the ‘complexity and the novelty of the Article 31(1) defence,’ as well as ‘the fact that the Appellant is a mentally disabled person.’²⁵

27. Additionally, the LRVs fail to see why the Article 31(1) defences raised by the Defence are novel or complex issues. They are standard defences that have been utilised at the *ad hoc* tribunals as well as in domestic jurisdictions. The volume of evidence presented in the case has no bearing on the complexity or novelty of Defence’s grounds of appeal as is clear from their Defence notice of appeal. Lastly, the Trial Chamber has found that Mr Ongwen is not a mentally disabled person, and therefore his mental status has no bearing on the length of the Defence appeal brief.

*Mr Ongwen’s conviction of 62 counts of war crimes and crimes against
does not constitute an exceptional circumstance*

28. The LRVs submit that the fact that Mr Ongwen was convicted of 62 counts of war crimes and crimes against humanity does not constitute an exceptional circumstance that would warrant an extension of the page limit for the Defence appeal brief.

29. Many of the crimes for which Mr Ongwen has been charged and convicted of comprise of the same underlying conduct and therefore it would be simplistic to state that the number of counts for which he has been convicted can be equated with the complexity of the case.

²⁴ ICC-02/04-01/15-1562.

²⁵ Defence Request, para.30.

30. Furthermore, in relation to the geographical scope for the case, the same arguments apply in that Mr Ongwen has been charged with more or less the same counts in each of these four locations and therefore the fact that there are a number of charges in each location does not mean that the Judgment is substantively complex.
31. With regards to Sexual and Gender Based Crimes (“SGBC”), the fact that Mr Ongwen was charged (and was eventually convicted) as a direct and indirect perpetrator is something of which the Defence has been well aware of, and from the perspective of the LRVs, the Defence fails to show what, if anything, would justify an excessive page-limit extension in relation to Mr Ongwen’s conviction for SGBC.
32. Therefore, while the LRVs acknowledge that Defence may require a reasonable page limit extension in order to articulate their grounds of appeal given the length of the Judgment, an extension of 500 pages is wholly excessive. An appeal brief of such length and unwieldiness will make it difficult for parties and participants to respond to and arguably will result in unnecessary repetition.

IV. RELIEF SOUGHT

33. The LRVs respectfully submit that a page-extension of 500 pages would be excessive and is wholly unjustified in the circumstances. Taking into account the length of the Judgment, the LRVs submit that the Defence should be granted a page-extension of 50 pages at most.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Manoba', written in a cursive style.

Joseph A. Manoba

A handwritten signature in blue ink, appearing to read 'Francisco Cox', written in a cursive style.

Francisco Cox

Dated this 2nd day of June 2021

At Kampala, Uganda and at Santiago, Chile