

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **11 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
with Confidential Annex A**

**Defence response to the Prosecution's request for an extension to file its response to the
Defence's Appeal Brief on the Trial Judgment**

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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I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby responds to the Prosecution's request for a time limit extension to file its response to the Defence's Appeal Brief due on 21 July 2021 ('Appeal Brief').¹ The Defence does not object to an extension for the Prosecution to 13 October 2021 at 16h00 CET for the specific reason delineated below in Section IV(D).

II. PROCEDURAL HISTORY

2. On 2 June 2021, the Prosecution made the Prosecution Request within a response to an unrelated Defence request.²
3. On 4 June 2021, the Defence requested leave to reply to the Prosecution Request by 8 June 2021.³
4. On 8 June 2021, the Appeals Chamber ordered that any responses to the Prosecution Request should be filed no later than 11 June 2021 at 16h00 CET.⁴

III. CONFIDENTIALITY

5. Pursuant to Regulation 23 *bis*(2) of the Regulations of the Court, the Defence files Annex A as confidential as it is classified as such by Trial Chamber IX. A public redacted version, based on the upcoming filing by the Registry of decisions in the case, is filed concurrently.

IV. SUBMISSIONS

6. The Defence's response shall be divided into four (4) areas:

¹ Appeals Chamber, *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*, [ICC-02/04-01/15-1836](#) ('Prosecution Request').

² *Ibid.*

³ See Appeals Chamber, *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](#).

⁴ Appeals Chamber, *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, para. 17.

- a. The complexity of the Trial Judgment and expected Appeals Brief by the Defence against the Trial Judgment;
- b. The Dutch school holidays and judicial recess;
- c. The “limited nature” of the Prosecution Request; and
- d. The issues caused by the SARS-CoV-2 / COVID-19 pandemic (‘Pandemic’).

A. The complexity of the Trial Judgment and the expected Defence Appeal Brief against the Judgment do not warrant an extension of time for the Prosecution

7. The Defence notes that the Appeals Chamber granted the Defence two (2) extensions of its due date to file its notice of appeal and Appeal Brief.⁵ The Appeals Chamber granted the extension requests because of the Registrar’s failure to issue a prompt decision on funding which caused an unnecessary delay in re-hiring employees for the Defence⁶ and because of issues related to Mr Ongwen’s language capabilities *vis-à-vis* the language of the Trial Judgment.⁷ While the Defence arguments for the first extension request included the complexity and length of the Trial Judgment,⁸ and the Prosecution supported this argument,⁹ the Appeals Chamber did not rely upon this argument when it rendered the first decision.
8. The Defence admits, as it argued before, that the Trial Judgment is long and complex. This fact did not impede the Prosecution from reading the Trial Judgment since Trial Chamber IX rendered the Trial Judgment on 4 February 2021. By the time the Defence submits its Appeal Brief, 167 days will have passed since the issuance of the Trial Judgment. The length, and for the most part, the complexity of the Trial Judgment is moot.
9. These two issues are further mitigated by the Defence’s notice of appeal¹⁰ that outlines specific issues within the Trial Judgment which the Defence intends to appeal. This notification requirement was amended in July 2017 to facilitate a Respondent’s response in order to mitigate the needs for time extensions.

⁵ See 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](#) and *Decision on Mr Ongwen’s second request for time extension*, [ICC-02/04-01/15-1811](#).

⁶ Appeals Chamber, *Decision on Mr Ongwen’s second request for time extension*, [ICC-02/04-01/15-1811](#), para. 10.

⁷ 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](#), paras 8-12.

⁸ Appeals Chamber, *Public Redacted Version of “Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment”*, filed on 8 February 2021, [ICC-02/04-01/15-1764-Red](#), paras 33-40.

⁹ Appeals Chamber, *Prosecution’s Response to Defence’s “Request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Trial Judgment”*, [ICC-02/04-01/15-1775](#), paras 1 and 9.

¹⁰ Appeals Chamber, *Defence Notification of its Intent to Appeal the Trial Judgment*, [ICC-02/04-01/15-1826](#).

10. Finally, the Defence distinguishes the Prosecution's Request with its previous request in *The Prosecutor vs Gbagbo and Blé Goudé*.¹¹ In that case, the Prosecution was the Appellant and was reviewing Trial Chamber I's decision and the separate decisions issued by Judge Henderson, Judge Tarfusser and Judge Herrera Carbuccia.¹² The decision was 961 pages, and the separate opinions of the three Judges added an additional 405 pages.¹³ Considering the time frame to write a notice of appeal for the Prosecution, good cause was presented by the Prosecution for the extension granted by the Appeals Chamber for the notice of the appeal only.¹⁴ Unlike that case, the Prosecution here is the respondent. One hundred and sixty-seven (167) days will have passed by the time the Prosecution receives the Defence's Appeal Brief. The length of the Trial Judgment, while significantly long, is much less a factor in this case as the Prosecution is responding to Defence arguments and the Trial Judgment itself.
11. For the abovementioned reasons, the Defence asserts that good cause has not been demonstrated by the complexity of the Trial Judgment or the length of the Defence's notice of appeal and it should be rejected on this ground.

B. Good cause for an extension of the time limit has not been demonstrated by the Prosecution in relation to the judicial recess or the Dutch school system summer holiday

12. The judicial recess and Dutch school system summer holiday does not amount to good cause for the extension asked for by the Prosecution. The Appeals Chamber should reject this ground for cause by the Prosecution.
13. On 9 April 2021, the Appeals Chamber granted the Defence's second time limit extension until 21 July 2021.¹⁵ The Prosecution has known since then that the Appeal Brief would be submitted on that date, and that it would have 60 days from that date to submit its response. The Prosecution will have had 103 days to organise its vacation schedule to ensure that its

¹¹ See Appeals Chamber, *Prosecution's urgent request for extension of time limits under rule 150(1) and regulation 58(1)*, [ICC-02/11-01/15-1264](#). See also Appeals Chamber, *Decision on the Prosecutor's request for time extension for the notice of appeal and the appeal brief*, [ICC-02/11-01/15-1268](#).

¹² See Appeals Chamber, *Prosecution's urgent request for extension of time limits under rule 150(1) and regulation 58(1)*, [ICC-02/11-01/15-1264](#), para. 9.

¹³ *Ibid.*

¹⁴ Appeals Chamber, *Decision on the Prosecutor's request for time extension for the notice of appeal and the appeal brief*, [ICC-02/11-01/15-1268](#), para. 8 (noting that the Appeals Chamber denied an extension for the Prosecution's appeal brief).

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

response would be filed within the 60-day time limit. With the utmost respect, the ICC's operations do not and cannot stop during a three-week recess.

14. The Defence recently requested a similar alteration of Trial Chamber IX's scheduling during the spring recess.¹⁶ While the Prosecution did not object to the Defence's request for a one-week postponement of the sentencing hearing,¹⁷ Trial Chamber IX rejected the request, causing all members of the Defence who were travelling to miss the spring recess, Easter with its family, and stay in quarantine until the hearing began on 14 April 2021.¹⁸
15. Additionally, the timing of the Dutch school system summer holiday has been known since the beginning of the school year, *i.e.* last calendar year. Just like the judicial recess, the Prosecution has known since 9 April 2021 of the impending appeal and could have adjusted its vacation accordingly.
16. For the abovementioned reasons, the Defence asserts that good cause has not been demonstrated by the Prosecution's assertion of the summer judicial recess and the Dutch school system summer holiday schedule, and thus, the Appeals Chamber should reject the Prosecution Request on the ground.

C. The Prosecution Request is not of a limited nature

17. The Prosecution asserted that the time limit extension is of a limited nature.¹⁹ Any time extension not properly justified is by nature a violation of Mr Ongwen's right to an expeditious trial.²⁰
18. The Defence requested time limit extensions to preserve Mr Ongwen's rights as he is a person with mental disabilities, he understands and speaks only Acholi, and that his Defence was not properly funded as required by Article 67(1)(d) of the Rome Statute.²¹ These delays were requested by the Defence to protect Mr Ongwen's fair trial rights.

¹⁶ Email to Trial Chamber IX from the Defence, *Defence Request about Sentencing Schedule*, sent on 4 February 2021 at 16h29 CET (attached as Confidential Annex A).

¹⁷ *Ibid.*

¹⁸ Email to Defence from Trial Chamber IX, *RE: Defence Request about Sentencing Schedule*, received on 5 February 2021 at 12h15 CET (attached as Confidential Annex A).

¹⁹ Prosecution Request, para. 11.

²⁰ Article 67(1)(c) of the Rome Statute.

²¹ See Appeals Chamber, *Public Redacted Version of "Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment"*, filed on 8 February 2021, [ICC-02/04-01/15-1764-Red](#) and Appeals

19. Conversely, the Prosecution Request does not protect Mr Ongwen's fair trial rights and delays the trial. For the abovementioned reasons, the Defence asserts that good cause has not been demonstrated by the Prosecution and the extension should be rejected on this ground.

D. The issues caused by the Pandemic warrant a limited extension to the Prosecution's due date for its response to the Appeals Brief

20. Many of the people can understand the problems associated with the Pandemic which started in March 2020. People were cut-off from their loved ones, had daily or weekly routines interrupted, stopped being able to work. This was something unusual which the planet had not seen globally in nearly 100 years.
21. The Defence sympathises with the Prosecution and the issues caused by the Pandemic. Persons working at the Court have been cut-off from physical contact from their loved ones, much like being incarcerated in a country thousands of kilometres away from them. Vaccines in the Netherlands are finally becoming available, and persons will want to return home to see their family soon.
22. The Defence distinguishes this from normal summer holidays and judicial recesses as restrictions have applied when entering numerous countries for more than a year. The Pandemic has strained many relationships and caused problems that shall resonate for the next few years, all with little to no fault of the persons it affected. It has not been possible for many to return home to see their families, and this warrants an extension.
23. The summer judicial recess encompasses 23 calendar days. As the Prosecution Request seeks summer holidays, and this is the time allotted for such holidays, the Defence avers that the Appeals Chamber should limit the extension to this time and grant the Prosecution an extension until 13 October 2021 at 16h00 CET. Again, the Defence stresses that it only agrees to the extension because of the extraordinary issues caused by the Pandemic.

Chamber, *Prosecution's Response to Defence's "Request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment"*, [ICC-02/04-01/15-1775](https://www.iccnij.org/icc-02/04-01/15-1775).

V. RELIEF

24. For the abovementioned reasons, the Defence does not object to the Appeals Chamber granting the Prosecution an extension to its deadline to respond to the Defence's Appeal Brief against the Trial Judgment to 13 October 2021 at 16h00 CET.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 11th day of June, 2021

At Lira, Uganda