



Original: English

**No. ICC-02/04-01/15 A A2
Date: 24 November 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

**Decision on the requests for leave to file observations pursuant to rule 103
of the Rules of Procedure and Evidence**

Decision 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

Others

Dr. Mohammad Hadi Zakerhossein

Professor Bonita Meyersfeld and the Southern African Litigation Centre Trust

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

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

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

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

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

NIMJ - National Institute of Military Justice

Tina Minkowitz, Robert D. Fleischner

Public International Law & Policy Group

Justice Francis M. Ssekandi

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

Dr. Ayodele Akenroye, Professor Erin Baines, Professor Kamari M. Clarke, Professor Mark A. Drumbl

Dr. Paul Behrens, University of Edinburgh

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

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

Prof. Dr. Mario H. Braakman

Warner ten Kate

Mr. Arpit Batra

Ronald Rijners

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of the Defence 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 19 requests for leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence on selected issues arising from the appeals of the Defence,

Having before it the “Request for extension of time limit to submit observations as *amicus curiae*, in accordance with regulation 35 of the Regulations of the Court” (ICC-02/04-01/15-1911),

Pursuant to rule 103 of the Rules of Procedure and Evidence and regulations 23*bis* and 35 of the Regulations of the Court,

Renders the following

DECISION

1. The applicants identified in paragraph 18 of this decision are granted leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence, as *amici curiae*.
2. The *amici curiae* are invited to file written submissions, not exceeding 15 pages, by 16h00 on Thursday, 23 December 2021, on the issues identified in paragraph 19 of the “Order inviting expressions of interest as *amici curiae* in judicial proceedings (pursuant to rule 103 of the Rules of Procedure and Evidence)”.
3. The Defence, the Prosecutor and the participating victims may submit consolidated responses, of no more than 25 pages, to the written observations of the above-mentioned *amici curiae*, by 16h00 on Monday, 17 January 2022.

4. The above-mentioned request for extension of time limit (ICC-02/04-01/15-1911) is rejected.
5. Application ICC-02/04-01/15-1913 is dismissed.
6. The Registry is directed to reclassify document ICC-02/04-01/15-1907-Conf as “public”.

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 6 May 2021, the Trial Chamber, by majority, sentenced Mr Ongwen for the aforementioned crimes for which he was convicted (hereinafter: “Sentencing Decision”) to a total period of imprisonment of 25 years as a joint sentence.²
3. On 21 July and 26 August 2021, the Defence filed its appeal briefs against the Conviction Decision and the Sentencing Decision, respectively.³
4. On 21 and 26 October 2021, the Prosecutor filed his responses to the appeal brief against the Conviction Decision and to the appeal brief against the Sentencing Decision,

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

² [Sentence](#), ICC-02/04-01/15-1819-Red (original confidential version filed on the same day, ICC-02/04-01/15-1819-Conf).

³ [Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021](#), 19 October 2021, ICC-02/04-01/15-1866-Red (with public annexes A, B and confidential annex C; original confidential version filed on 21 July 2021, ICC-02/04-01/15-1866-Conf); [Defence Document in Support of its Appeal against the Sentencing Decision](#), 31 August 2021, ICC-02/04-01/15-1871-Corr-Red (with public redacted annex A; original confidential version filed on 26 October 2021, ICC-02/04-01/15-1871-Conf; corrected confidential version filed on 30 August 2021, ICC-02/04-01/15-1871-Conf-Corr).

respectively.⁴ On the same dates, the participating victims filed their observations on the two appeals.⁵

5. On 25 October 2021, the Appeals Chamber issued an order inviting expressions of interest as *amici curiae* in judicial proceedings on the merits of the legal questions presented in the same order (hereinafter: “Order inviting expressions of interest”).⁶

6. On 28 October 2021,⁷ and on 15 November 2021,⁸ a total of 18 requests for leave to submit observations under rule 103 of the Rules of Procedure and Evidence (hereinafter: “Rules”) were filed.

⁴ [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 (with public annexes A, B and public redacted annex C; original confidential version filed on 21 October 2021, ICC-02/04-01/15-1882-Conf); [Prosecution response to Sentencing Appeal Brief](#), 27 October 2021, ICC-02/04-01/15-1886-Red (with public annex A; original confidential version filed on 26 October 2021, ICC-02/04-01/15-1886-Conf).

⁵ [CLR V Observations on the “Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021”](#), 28 October 2021, ICC-02/04-01/15-1880-Red (original confidential version filed on 21 October 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”, 21 October 2021, ICC-02/04-01/15-1883-Conf; [CLR V Observations on the “Defence Appeal of the Sentence”](#), 28 October 2021, ICC-02/04-01/15-1885-Red (original confidential version filed on 26 October 2021, ICC-02/04-01/15-1885-Conf); Victims’ Observations on the “Defence Document in Support of its Appeal against the Sentencing Decision”, 26 October 2021, ICC-02/04-01/15-1887-Conf.

⁶ [Order inviting expressions of interest as amici curiae in judicial proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\)](#), ICC-02/04-01/15-1884.

⁷ Dr Mohammad Hadi Zakerhossein, [Request for leave to submit an Amicus Curiae pursuant to Rule 103 of the Rules of Procedure and Evidence](#), ICC-02/04-01/15-1888.

⁸ Felicity Gerry QC, Wayne Jordash QC, Ben Douglas-Jones QC, Anna McNeil, Philippa Southwell, Dr Beatrice Krebs and Jennifer Keene-McCann, [Request for leave to submit Amicus Curiae pursuant to Rule 103\(1\) of the Rules of Procedure and Evidence](#), notified on 15 November 2021, ICC-02/04-01/15-1891; Erin Baines, Anne-Marie de Brouwer, Annie Bunting, Eefje de Volder, Kathleen M. Maloney, Melanie O’Brien, Osai Ojigho, Valerie Oosterveld, Indira Rosenthal, [Request for Leave to File an Amici Curiae Brief on Forced Marriage Pursuant to Rule 103 of the Rules of Procedure and Evidence](#), notified on 15 November 2021, ICC-02/04-01/15-1892 (with annex 1); Louise Arimatsu, Adejoké Babington-Ashaye, Kirsten Campbell, Danya Chaikel, Christine Chinkin, Carolyn Edgerton, Priya Gopalan, Gorana Mlinarević, Angela Mudukuti, Cynthia T. Tai, [Request for Leave to File Amici Curiae Submissions on Duress and the Standards Applicable to Assessing Evidence of Sexual Violence Pursuant to Rule 103 of the Rules of Procedure and Evidence](#), notified on 15 November 2021, ICC-02/04-01/15-1893 (with annex 1); Sareta Ashraph, Stephanie Barbour, Kirsten Campbell, Alexandra Lily Kather, Jocelyn Getgen Kestenbaum, Maxine Marcus, Gorana Mlinarević, Valerie Oosterveld, Kathleen Roberts, Susana SáCouto, Jelia Sané, Hyunah Yang, [Request for Leave to File Amici Curiae Submission on Sexual- and Gender-Based Crimes, Particularly Sexual Slavery, and on Cumulative Convictions, Pursuant to Rule 103 of the Rules of Procedure and Evidence](#), ICC-02/04-01/15-1894 (with annex 1); Professor Jean Allain, Monash University, Castan Centre for Human Rights Law, [Request by Professor Jean Allain for Leave to Submit Observations on the issue of Sexual and Gender-based Crimes](#), ICC-02/04-01/15-1895; Prof. Dr Mario H. Braakman, [Request for leave to submit an amicus curiae pursuant to Rule 103\(1\) on transcultural forensic psychiatric issues](#), ICC-02/04-01/15-1896; Mr Arpit Batra, [Request for leave to submit observations as Amicus Curiae pursuant to Rule 103\(1\) of the Rules of Procedure and Evidence](#), ICC-02/04-01/15-1897; Professor Bonita Meyersfeld and the Southern African Litigation Centre Trust,

7. On 17 November 2021, the Appeals Chamber scheduled a hearing from Monday, 14 February 2022, to Friday, 18 February 2022, to hear submissions and observations by the parties and participants on the merits of the appeals.⁹

8. On 19 November 2021, the Appeals Chamber received a request for extension of time to submit observations as *amicus curiae* from Warner ten Kate (hereinafter: “Request for extension of time limit”), pursuant to regulation 35 of the Regulations of the Court (hereinafter: “Regulations”).¹⁰

9. On 23 November 2021, Ronald Rijnders filed a request for leave to submit observations as *amicus curiae*.¹¹

[Request for leave to submit observations pursuant to Rule 103\(1\) of the Rules of Procedure and Evidence](#), ICC-02/04-01/15-1899; Ms Ardila, Mariana; Ms Fernández-Paredes, Teresa; Ms Ibáñez, María Cecilia; Ms Kravetz, Daniela; Ms SáCouto, Susana; Ms Seoane, Dalila, [Request for leave to submit amici curiae pursuant to Rule 103 of the Rules of Procedure and Evidence on the “Appeal of Mr Dominic Ongwen against the “Trial Judgment” of Trial Chamber IX of 4 February 2021](#), ICC-02/04-01/15-1900; Dr. Rosemary Grey, Global Justice Center (GJC), Amnesty International (AI), Women's Initiatives for Gender Justice (WIGJ), [Request for Leave to File Amici Curiae Submissions on forced pregnancy by Dr. Rosemary Grey, Global Justice Center \(GJC\); Amnesty International \(AI\); and Women's Initiatives for Gender Justice \(WIGJ\) pursuant to Rule 103 of the Rules of Procedure and Evidence](#), ICC-02/04-01/15-1901; NIMJ - National Institute of Military Justice, [Request for leave to file amicus curiae submission pursuant to Rule 103 of the Rules of Procedure and Evidence](#), ICC-02/04-01/15-1902; Tina Minkowitz, Robert D. Fleischer, [Application for Leave to Submit Observations Amici Curiae](#), ICC-02/04-01/15-1903; Public International Law & Policy Group, [Request to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence on behalf of the Public International Law & Policy Group](#), ICC-02/04-01/15-1904; Justice Francis M. Ssekandi, [Request to Submit an Amicus Curiae pursuant to Rule 103\(1\) of the Rules of Procedure and Evidence](#), ICC-02/04-01/15-1905; Dr. Ayodele Akenroye, Professor Erin Baines, Professor Kamari M. Clarke, Professor Mark A. Drumbl, [Request for leave to submit Amicus Curiae observations on the merits of the legal questions presented in the "Order inviting expressions of interest as amici curiae in judicial proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\) of 25 October 2021 \(ICC-02/04-01/15A\)](#), ICC-02/04-01/15-1906; Dr Paul Behrens, University of Edinburg, Expression of Interest as amicus curiae in judicial proceedings, received on 15 and notified on 16 November 2021, ICC-02/04-01/15-1907-Conf; Association of Defence Counsel Practising before the International Courts and Tribunals (ADC-ICT), [ASSOCIATION OF DEFENCE COUNSEL PRACTISING BEFORE THE INTERNATIONAL COURTS AND TRIBUNALS \(ADC-ICT\) MOTION FOR LEAVE TO SUBMIT OBSERVATIONS AS AMICUS CURIAE](#), received on 15 and notified on 16 November 2021, ICC-02/04-01/15-1908.

⁹ [Order scheduling a hearing before the Appeals Chamber](#), ICC-02/04-01/15-1909.

¹⁰ Warner ten Kate, [Request for extension of time limit to submit observations as amicus curiae, in accordance with regulation 35 of the Regulations of the Court](#), ICC-02/04-01/15-1911, p. 3.

¹¹ Ronald Rijnders, Request for leave to submit an amicus curiae pursuant to rule 103 (1) on issues related to duress and mental defect, notified on 24 November 2021, ICC-02/04-01/15-1913.

II. MERITS

A. Preliminary issue: request for extension of time limit

10. In his application for an extension of the time limit to submit his request to participate as an *amicus curiae* in these proceedings, Warner ten Kate indicates that while he submitted his application on 13 November 2021, the Registry informed him on 15 November 2021 that the application had not been presented in the correct format and therefore could not be filed.¹² The applicant submits that due to work-related travelling, he only could submit his complete application on 17 November 2021.¹³ For these reasons, the applicant requests an extension of the time limit, pursuant to regulation 35 of the Regulations.¹⁴

11. Pursuant to regulation 35(2) of the Regulations,

[A] Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

12. Noting the arguments advanced in support of the request for an extension of the time limit, the Appeals Chamber is not persuaded that the reasons put forward, in particular the fact that the applicant was travelling abroad for reasons related to his work, constitute reasons “outside [the applicant’s] control”. In the absence of arguments that demonstrate that the applicant was unable to file his request in the proper format within the time limit for reasons outside his control, the request for an extension of the time limit is rejected.

B. Requests for leave to submit *amici curiae*’s observations

13. At the outset, the Appeals Chamber notes that Ronald Rijnders submitted a request for leave to make observations as *amicus curiae*, on 23 November 2021, more than a week after the expiry of the time limit.¹⁵ As recalled above, pursuant to regulation 35(2) of the Regulations, “after the lapse of a time limit, an extension of time

¹² [Request for extension of time limit](#), p. 3.

¹³ [Request for extension of time limit](#), p. 3.

¹⁴ [Request for extension of time limit](#), p. 3.

¹⁵ Ronald Rijnders, Request for leave to submit an *amicus curiae* pursuant to rule 103 (1) on issues related to duress and mental defect, notified on 24 November 2021, ICC-02/04-01/15-1913.

may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control”. The applicant in this case filed his request without seeking in advance an extension of time limit. The applicant also fails to provide any reason for his late filing. In the circumstances, the request of Ronald Rijnders (application ICC-02/04-01/15-1913) is dismissed.

14. Rule 103 of the Rules provides, in relevant part, as follows:

1. At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.
2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

15. The Appeals Chamber’s decision pursuant to rule 103(1) of the Rules is discretionary and premised on whether it considers it “desirable for the proper determination of the case” to grant leave to the applicants to submit observations on the merits of the legal questions presented in the appeal. As noted above, the Appeals Chamber is seized with 18 requests for leave to submit observations pursuant to rule 103 of the Rules as *amici curiae*.¹⁶

16. The Appeals Chamber has considered the background and expertise of the individuals and organisations who applied to participate as *amici curiae* in these proceedings, as well as their summary initial observations. Noting also the novelty of most of the issues on which they intend to submit observations and with the aim of ensuring consideration of different viewpoints, the Appeals Chamber considers that the submissions proposed in all applications could potentially contribute to the proper determination of the matters under appeal. Therefore, it grants all of the 18 requests to participate as *amici curiae* under rule 103 of the Rules.

¹⁶ See *supra* para. 6. With regard to application ICC-02/04-01/15-1905, the Appeals Chamber requested the Registry to contact the applicant and request him to provide information about his expertise in the legal issues presented to the Chamber. This information was filed on 23 November 2021. See [Request to Submit an Amicus Curiae pursuant to Rule 103\(1\) of the Rules of Procedure and Evidence](#), ICC-02/04-01/15-1912.

17. However, with regard to application ICC-02/04-01/15-1906, submitted by four applicants, the Appeals Chamber notes that one of them, Dr. Ayodele Akenroye, was a “Visiting Professional at the Office of the Prosecutor of the International Criminal Court where he provided subject matter expertise to the prosecution team prosecuting Dominic Ongwen”.¹⁷ Considering Dr. Ayodele Akenroye’s previous involvement in the *Ongwen* case with the Office of the Prosecutor, the Appeals Chamber considers his participation not desirable in the circumstances. Consequently, while Dr. Ayodele Akenroye’s request to participate as *amicus curiae* in the present proceedings is rejected, the Appeals Chamber considers that Professor Erin Baines, Professor Kamari M. Clarke, and Professor Mark A. Drumbl may file submissions as *amici curiae* as proposed in their application.

18. The following applicants are therefore invited to submit written observations pursuant to Rule 103 of the Rules in the present appeals:

- 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;

¹⁷ [Request for leave to submit Amicus Curiae observations on the merits of the legal questions presented in the "Order inviting expressions of interest as amici curiae in judicial proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\) of 25 October 2021 \(ICC-02/04-01/15A\)](#), para. 3.

- 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. Fleischer;
- 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).

19. The above-mentioned *amici curiae* are invited to submit, by 16h00 on Thursday, 23 December 2021, written observations of no more than 15 pages, on the issues identified in paragraph 19 of the Order inviting expressions of interest.¹⁸ The *amici curiae* are also requested to familiarise themselves with the appeal briefs and responses

¹⁸ [Order inviting expressions of interest.](#)

in the present appeals and to refrain from repeating submissions that are already before the Appeals Chamber.

20. The Appeals Chamber emphasises that the written observations must adhere, in particular, to the requirements stipulated in regulations 23, 33, and 36 of the Regulations and regulation 24 of the Regulations of the Registry.

21. Upon receipt of the observations, the Appeals Chamber may invite some of the *amici curiae* to attend, remotely if necessary, the hearing scheduled for 14 to 18 February 2022, to address some of the matters in more detail and/or answer additional questions.

22. In accordance with rule 103(2) of the Rules, the Appeals Chamber will permit the Defence, the Prosecutor and the participating victims to submit consolidated responses, of no more than 25 pages, to the written observations of the above-mentioned *amici curiae*, by 16h00 on Monday, 17 January 2022.

23. Finally, the Appeals Chamber notes that application ICC-02/04-01/15-1907-Conf was filed confidentially. Noting that, contrary to regulation 23*bis*(1) of the Regulations, the application does not “state the factual and legal basis for the chosen classification”, and considering that it does not contain any confidential information, the Appeals Chamber directs the Registry to reclassify this document as “public”.

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



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 24th day of November 2021

At The Hague, The Netherlands