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No.: ICC-02/04-01/15  
Date: 13 December 2016

**TRIAL CHAMBER IX**

**Before:** Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Raul C. Pangalangan

**SITUATION IN UGANDA**

**IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN***

**URGENT**

**Public**

**With one public annex A**

**Registry recommendations on psychological and psychiatric experts  
Pursuant to the Trial Chamber's Oral Order of 6 December 2016**

**Source: Registry**

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

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**REGISTRY**

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Mr. Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
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Mr. Philipp Ambach

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## **I. Introduction**

1. Pursuant to Trial Chamber IX's ("Chamber") oral ruling on 6 December 2016 that the Registry, in consultation with the Prosecution and the defence for Mr Ongwen ("Defence", collectively the "Parties"), must provide recommendations on experts who may be engaged to provide a psychological and psychiatric examination of Mr Ongwen ("Oral Ruling"),<sup>1</sup> the Registry hereby submits in annex A the names of 17 experts in the fields of psychiatry and/or psychology.

## **II. Procedural history**

2. On 5 December 2016, the "Defence Request for a Stay of the Proceedings and Examinations Pursuant to Rule 135 of the Rules of Procedure and Evidence" ("Defence Request") was filed.<sup>2</sup> The Defence Request sought a Chamber order: i) halting the opening statements of the trial, in favour of scheduling a status conference; ii) requiring a psychiatric and/or psychological examination to ensure that Mr Ongwen understands the charges against him; iii) requiring a psychiatric and/or psychological examination to determine whether Mr Ongwen suffers from a mental disease or defect undermining his ability to appreciate the unlawfulness of his conduct; and, iv) requiring a psychiatric and/or psychological examination to ensure that Mr Ongwen is fit to stand trial.

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<sup>1</sup> Transcript of 6 December 2016, ICC-02/04-01/15-T-26-ENG ET WT 06-12-2016 T, pg 3, line 5 – pg. 7, line 18.

<sup>2</sup> ICC-02/04-01/15-620-Conf. A public redacted version of the Defence Request was filed the same day; See, ICC-02/04-01/15-620-Red.

3. On 6 December 2016, the “Prosecution’s Response to the Defence Request for a Stay of Proceedings, ICC-02/04-01/15-620-Conf” (“Prosecution Response”) was filed, arguing that the Defence Request should be denied.<sup>3</sup>
4. At the opening of the trial proceedings, on 6 December 2016, the Chamber issued the Oral Ruling, rejecting items one to three of the Defence Request. However, and as to part four of the Defence Request, the Chamber ordered the Registry, in consultation with the Parties, to provide recommendations on experts who may be utilised to provide a psychological and psychiatric examination of Mr Ongwen.
5. Accordingly, the Registry immediately identified persons on the Court’s List of Experts with a specialty in psychiatry and/or psychology and expertise relevant to this proceeding. Subsequently, the Registry liaised with said experts in order to determine whether they were interested and available to assist the Court in this case.
6. Additionally, on 8 December 2016, the Registry consulted with the Parties in order to obtain their respective input on the Registry’s anticipated recommendations to the Chamber.

### **III. Applicable Law**

7. For the purpose of the present recommendations, and in accordance with the Oral Ruling, the Registry has considered Rule 135 of the Rules of Procedure and Evidence and Regulations 24*bis* and 44 of the Regulations of the Court (“RoC”).

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<sup>3</sup> ICC-02/04-01/15-624-Conf.

#### **IV. Submissions**

##### **a. The Court's List of Experts**

8. The Court's List of Experts, established pursuant to Regulation 44 of the RoC, is a publically available document identifying experts – by name, nationality, field(s) of expertise, and working language(s) – who may be called upon to provide services to the Court.<sup>4</sup>

##### **b. Experts that Satisfy the Oral Ruling**

9. The Registry highlights that the fields of psychiatry and psychology have traditionally been viewed as two distinct disciplines. Accordingly, most of the persons on the List of Experts satisfy only one of the disciplines sought by the Chamber. Further, and despite being specialised in either psychiatry or psychology, the expertise of a number of experts is not relevant to the issues in this proceeding. Additionally, and as a result of the consultation with the Parties, the Registry has been made aware of three (3) additional experts with relevant expertise who have expressed their interest and availability to be assigned by the Chamber.
10. Consequently, the Registry provides the list attached as annex A, which is composed of 17 experts in the fields of psychiatry and/or psychology, with expertise relevant to this proceeding. All experts listed in annex A have indicated that they are interested and available for a potential assignment by the Chamber, except Mr John Yuille and Ms Christine Richardson (numbers 16 and 17, respectively), who have yet to respond to the Registry's inquiry. As and when the Registry has a response from these two experts, it will update the Chamber as appropriate.

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<sup>4</sup> The List of Experts, as of 18 August 2015, is available here: <https://www.icc-cpi.int/iccdocs/PIDS/other/180815-List-of-Experts-Eng.pdf>.

### **c. The Parties' Positions Expressed During Consultation**

11. Of the experts listed in annex A, the Prosecution has suggested Mr Joop T.V.M. de Jong as an ideal candidate for appointment.<sup>5</sup> The Defence does not oppose this suggestion. Mr de Jong was not previously on the List of Experts.
12. The Defence has recommended the appointment of Mr Daryn Reicherter, which the Prosecution supports; unfortunately, Mr Reicherter is unable to accept an appointment in this case.
13. The Prosecution also suggested the appointment of Ms Heidi Kastner, Ms Gillian Clare Mezey, Mr Gerard Niveau, and Mr Lutz Gretenkord. The Defence opposes the appointment of Ms Kastner and Ms Mezey, neither of which were previously on the List of Experts, but takes no position in regard to Mr Niveau and Mr Gretenkord.
14. Finally, the Defence suggested the appointment of Mr John Yuille and Ms Christine Richardson. The Prosecution has not had an opportunity to take a position on these proposed experts.

### **d. The Registry's Recommendations**

15. *Ab initio*, the Registry notes that a Mission Statement has yet to be articulated, which would serve to specifically guide any expert(s) appointed by the Chamber to assess Mr Ongwen. Accordingly, and as a result of the consultation with the Parties, the Registry recommends that the Chamber request the submission of a joint Mission Statement (or, Terms of Reference) by the Prosecution and the Defence.
16. On the basis of the foregoing, the Registry respectfully recommends that the Chamber appoint a panel, or college, of experts in the event that it orders a psychiatric and psychological assessment of Mr Ongwen's fitness to stand

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<sup>5</sup> Mr de Jong was contacted by the Prosecution prior to the Chamber's Oral Ruling, in August 2016. For purposes of transparency, the exchange of communication between Mr de Jong and the Prosecution was provided to both the Registry and the Defence.

trial. Such a college of experts could, for example, be constituted of two or more experts, as follows: i) one expert that maintains expertise in both of the disciplines identified by the Chamber; ii) one expert in psychiatry; and/or, iii) one expert in psychology. In utilising such an approach, the Registry submits that the assessment to be undertaken would benefit from the breadth of expertise held by the college of experts.

17. Further, should the Chamber agree with this approach, and in consideration of the Parties' expressed positions during the consultative process, the Registry recommends that Mr Joop T.V.M. de Jong be appointed as the lead expert of the panel due to his dual expertise. Due to Mr de Jong's status as a Dutch medical professional (i.e., he is already a practicing member of the domestic system) and geographic proximity to the Court, it is submitted that his appointment also makes practical and logistical sense. Indeed, it may be appropriate to appoint two Dutch medical professionals (e.g., the second being Ms Brigitte Beelen) to constitute the college, as this will eliminate any difficulties which could be encountered by medical professionals from outside the Dutch national system. Finally, it is noted that Mr de Jong has previous experience with, and knowledge of, the Republic of Uganda.
18. With regard to having relevant field experience, the Registry submits that it is difficult to pay particular attention to the notion of geographical and gender distribution in this appointment process due to the limited sample of experts in annex A. There is one expert listed in annex A – Mr Gregoire Gansou of Benin – from an African country.
19. In terms of logistics, and also to safeguard the well-being of Mr Ongwen, the Registry respectfully submits that it would be most effective and minimally intrusive to have all of the appointed experts visit the Detention Centre together. Finally, the Registry notes that the issue of translation and interpretation is a matter to be considered in the context of the anticipated assessment of Mr Ongwen. Indeed, depending on the working language(s) of

any appointed experts, the need for translation and interpretation could be more or less expansive; this resource constraint would be more expansive, if, for instance, the working languages of respective experts are divergent. Furthermore, if the working language of a particular expert requires interpretation of Mr Ongwen's mother tongue into French, it is possible that the essence of the original statement will be diluted.<sup>6</sup>

## V. Conclusion

20. In conclusion, and beyond the undisputed appointment of Mr de Jong, the Registry suggests that the Chamber appoint at least one additional expert in psychiatry or psychology, from the list in annex A. When weighing relevant considerations, it may be advisable for the second member of the college to be another Dutch medical practitioner.



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 Marc Dubuisson, Director, Division of Judicial Services  
*per delegation of Herman von Hebel, Registrar*

Dated this 13 December 2016

At The Hague, The Netherlands

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<sup>6</sup> Such a scenario is plausible as available language resources allow for interpretation of Acholi directly into English, but not directly into French. Accordingly, to provide a Francophone expert with interpretation of Mr Ongwen's statements, it will require relay interpreting from Acholi to English and then English to French.