

**Cour
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**International
Criminal
Court**

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

Date: **14 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***

PUBLIC

Defence Response to ICC-02/04-01/15-633

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

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Benjamin Gumpert, QC

Counsel for the Defence

Krispus Ayena Odongo
Chief Charles Achaleke Taku

Legal Representatives of the Victims

Joseph Akwenyu Manoba
Francisco Cox

Common Legal Representative for Victims

Paolina Massidda
Jane Adong

The Office of Public Counsel for Victims

Paolina Massidda
Caroline Walter
Orchlon Narantsetseg

The Office of Public Counsel for the Defence

Xavier-Jean Keita

Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Paddy Craig
Harry Tjonk

Victims Participation and Reparations Section Other

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') responds to the "Registry recommendations on psychological and psychiatric experts Pursuant to the Trial Chamber's Oral Order of 6 December 2016."¹

II. BACKGROUND

2. On 5 December 2016, the Defence filed "Defence Request for a Stay of the Proceedings and Examinations Pursuant to Rule 135 of the Rules of Procedure and Evidence."² Amongst the four (4) requests of the Defence, the Defence requested Trial Chamber IX ('Chamber') to order an examination of Mr Ongwen to determine if Mr Ongwen is fit to stand trial.³
3. On 6 December 2016, the Prosecution filed "Prosecution's Response to the Defence Request for a Stay of the Proceedings, ICC-02/04-01/15-620-Conf."⁴ The Prosecution requested the Chamber to reject the Defence request in its entirety.
4. On 6 December 2016, the Chamber gave an oral decision on the Defence's request, in part ordering the Registry to identify and provide recommendations on experts to determine Mr Ongwen's continued fitness to stand trial.⁵ In providing this recommendation, the Registry was ordered to work in consultation with the Parties.⁶
5. On 8 December 2016, the Parties met with representatives of the Registry to consult about possible experts to recommend to the Chamber.
6. On 12 December 2016, the Prosecution requested a 24-hour time limit extension for filing observations on the Registry's submissions.⁷ The Defence responded to the email, concurring with the time limit extension request so long as it received the same extension.⁸
7. On 13 December 2016, the Chamber granted the 24-hour time limit extension.⁹

¹ ICC-02/04-01/15-633 and Public Annex A.

² ICC-02/04-01/15-620-Conf.

³ ICC-02/04-01/15-620-Conf, paras 1(3) and 80(3).

⁴ ICC-02/04-01/15-624-Conf.

⁵ ICC-02/04-01/15-T-26-ENG, pg. 7, lines 9-15.

⁶ *Ibid.*

⁷ Email sent from Prosecution to the Chamber on 12 December 2016 at 17h50 CET.

⁸ Email sent from Defence to the Chamber on 12 December 2016 at 19h13 CET.

⁹ Email sent from the Chamber to the Parties on 13 December 2016 at 10h11 CET.

8. On 13 December 2016, the Registry submitted the “Registry recommendations on psychological and psychiatric experts Pursuant to the Trial Chamber’s Oral Order of 6 December 2016.”¹⁰

III. SUBMISSIONS

a) Initial remarks

9. The Defence and Prosecution are meeting on Thursday, 15 December 2016, to discuss a proposed joint terms of reference for the experts appointed by the Chamber. Should an agreement be reached, the Parties shall submit the recommendations to the Chamber via a joint filing.

b) Language concerns

10. In searching for its own experts, the Defence considered language to be a very important issue.¹¹ Whilst the Defence does not discount the expertise of the persons listed in ICC-02/04-01/15-633-AnxA, the Defence has serious concerns with non-English speaking experts being appointed to the panel. The disciplines of psychiatry and psychology depend heavily upon language and the interpretation of what an individual says. Interpreting from Acholi to English will cause some residual loss of meaning of Mr Ongwen’s statements, and then to interpret an interpretation, that will cause even more loss of meaning in Mr Ongwen’s statements. The Defence emphasises that this is a concern too of the Registry.¹²
11. Respectfully, the Defence requests that the Chamber not choose candidates 2, 3, 4, 5, 6, 8 9, 10, 11 and 12 within ICC-02/04-01/15-633-AnxA because of their inability to work in the English language.

c) “Lead expert” for the panel and number of experts

12. The Defence sees no reason to designate a lead expert for the panel as recommended by the Registry.¹³ All persons on the Registry’s list are qualified to give expert opinions, and each expert chosen by the Chamber should give his or her independent expert opinion on Mr Ongwen’s fitness to stand trial. This does not mean non-interaction between the experts, but merely independent reporting. If a single report is desired by

¹⁰ ICC-02/04-01/15-633 and Public Annex A.

¹¹ ICC-02/04-01/15-620-Conf, para. 69.

¹² ICC-02/04-01/15-633, para. 19 and fn. 6. The Defence notes that costs is also a factor.

¹³ ICC-02/04-01/15-633, para. 17.

the Chamber, the Defence requests that differences in opinions between the experts be noted within the report.

13. As to the number of experts to comprise the panel, the Defence is content with two (2) experts, even though three (3) would be ideal.

d) Nationality of the experts

14. The Defence suggests the Chamber to select experts with different nationalities. The Defence understands the Registry's reasoning behind the notion that it might be easier to appoint two persons licensed within the Netherlands, but the Defence avers that experts with varying education backgrounds, working environment, etc. would be ideal for a well-rounded panel.

e) International or different cultural exposure

15. The Defence maintains that international exposure, or exposure to different cultural backgrounds, should be an important criterion for the Chamber to consider in its selection of experts. The Defence notes that two (2) of the Prosecution's requested experts have little international or diverse cultural experience.¹⁴ On the opposite side, candidate number 17 in the Registry's list has worked on transcultural issues between non-western patients and western medical professionals.¹⁵

f) Defence comments on specific persons

Professor Joop T.V.M. de Jong, MD, Ph.D.

16. The Defence does not object to the Prosecution's request to have Professor Joop T.V.M. de Jong included in the panel of experts to examine Mr Ongwen. He has a lot of international and cross-culture experience, has worked in East Africa (including Uganda), is versed in both disciplines desired for the panel and resides, relatively speaking, close to the Court.

Dr Christine Richardson, Ph.D.

17. Dr Richardson is from Australia, and as mentioned above, she is learned in cross-cultural issues between western doctors and indigenous Australian patients. Dr

¹⁴ Candidate number 15 on the Registry's list in ICC-02/04-01/15-633-AnxA states only one duty outside her home country, which was in 1992-93 in the former Yugoslavia. Candidate number 14, from her CV, appears to have only worked in Austria, Germany and aiding in creating a foundation in Slovenia.

¹⁵ Dr Richardson is also experienced in forensic and legal psychology.

Richardson is also learned in forensic psychology and issues involving victims of crimes, which would complement Professor de Jong's primary focus of psychiatry.

Dr John C. Yuille, Ph.D.

18. The Defence also recommends Dr Yuille, Ph.D, Professor Emeritus at the University of British Columbia. He is a forensic psychologist, and has worked or been educated in North America and Europe. Whilst Dr Yuille focuses in SGBC, he is knowledgeable and versed in specific mental disorders/diseases which ail Mr Ongwen. It is noted that Dr Yuille, during his professional career, has work for both prosecutors and defendants.

Dr Lutz Gretenkord, Ph.D.

19. The Defence has no specific objection to Dr Gretenkord, Ph.D (psychologist). As no member of the Defence speaks or reads German, and the majority of his work and information about his profile is in this language, the ability to examine fully his expertise, or indications of a lack of impartiality, has been limited to a one-page curriculum vitae on record with the Registry. The curriculum vitae is from 2007.

Dr Heidi Kastner, MD

20. From Dr Kastner's curriculum vitae, she has no experience outside of Europe. Her experience is limited to Austria and Germany, with an advisory role in the establishment of a forensic psychiatric unit in Slovenia. She also does not appear to have experience with former child soldiers or persons in conflict. And from the limited time the Defence could conduct research on her, considering none of the team members speak fluent German, she appears to have worked heavily on the side of prosecutors and not for defendants. Finally, from her emailed response to the Prosecution this year, she appears to have formed preconceptions about Mr Ongwen's mental capabilities. The Defence objects to this expert on the panel.

Professor Gillian Clare Mezey, FRCPsych

21. Professor Mezey (psychiatrist), from her curriculum vitae, has only two (2) experiences outside of the United Kingdom on EC Missions in 1992-93: 1) to investigate abuses of Muslim women in conflict in the former Yugoslavia and 2) to advise on the establishment of a psychosocial programmes for refugees and displaced persons. Her experience dealing with persons in conflict is limited, and does not appear to be with

former child soldiers. Her focus, from her curriculum vitae, appears to be SGBC (both male and female). Her current research though is on “social exclusion and stigma experience by individuals with mental health problems”, which would be relevant. The Defence does not object to Professor Mezey *per se*, but opines that there are candidates with more relevant experience than her, especially if the Chamber chooses Professor de Jong (who is also a psychiatrist).

Brigitte M.J. Beelen

22. The Defence notes that Ms Beelen practice focuses on couples and family therapy.¹⁶ Her experience is limited to Europe, and appears to be France and the Netherlands only. From her website, it appears she has no experience with child soldiers, persons in conflict zones, non-western patients or the East African Community. Respectfully, the Defence requests Mr Beelen not be appointed to the panel of experts.

g) Preservation of rights

23. The Defence notes that this search was conducted for a limited purpose, *i.e.* for determining Mr Ongwen’s fitness to continue trial. The Defence specifically notes that this exercise was not performed with the intention to recommend these experts to interview Mr Ongwen for the purpose of aiding the Chamber in any possible determination pursuant to Article 31(1)(a) of the Rome Statute. Respectfully, the Defence reserves the right to request a similar exercise for the purpose of an Article 31(1)(a) defence.

IV. CONCLUSION

24. The Defence submits these observations pursuant to the Oral Decision and time extension granted by the Chamber.
25. The Defence approves of candidates 13, 16 and 17 for the reasons stated in paragraphs 16-18.
26. The Defence does not object to candidates 7 and 15, preference being in this order, for the reasons stated in paragraphs 19 and 21.
27. The Defence objects to candidates 2, 3, 4, 5, 6, 8 9, 10, 11 and 12 within ICC-02/04-01/15-633-AnxA because of their inability to work in the English language.

¹⁶ See www.syntagma.info/index.php?p=home&lang=en.

28. The Defence objects to candidates 1 and 14 for the reasons stated in paragraphs 22 and 20.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 14th day of December, 2016
At Lira, Uganda