

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **4 November 2019**

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 Request to Add Three Items to its List of Evidence

Source: Defence for Mr 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 Mr Dominic Ongwen ('Defence') seeks leave from Trial Chamber IX ('Chamber') to add three items to its list of evidence ('LoE').
2. The three items for which the Defence seeks leave are related to the Defence Expert Witnesses D-41 and D-42 ('Defence Experts') and will likely be used by the Defence during their testimony. The Defence submits that the addition of the items is warranted because:
 - a) 'the subject matter of the testimony of the Defence Expert Witnesses and the reports produced by them are of high importance in this case';¹
 - b) the timing of the request, and the nature and amount of material to be added cause no prejudice to the Prosecution and Victims;²
 - c) the Defence disclosed the items in a timely manner and notified the Prosecution about the nature of the items on 18 October 2019;³ *and*
 - d) permitting the Defence to add the items to its LoE at this point will avoid any additional litigation during or after the testimony of the Defence Experts, and thus supports the fair and expeditious conduct of the proceedings.

II. APPLICABLE LAW

3. The Defence incorporates by reference the applicable law with respect to seeking leave to add items to the parties' lists of evidence as set out in its prior requests.⁴
4. The Defence notes also the Chamber's recent holding that 'the deadline for the Defence list of witnesses, list of evidence and Rule 68 requests lapsed on 4 June 2018, meaning that such requests – even if filed by 30 September 2019 – must still justify why they were filed after the lapse of this earlier deadline'.⁵

¹ *Ongwen*, Decision on Requests related to Testimony of Defence Expert Witnesses D-0041 and D-0042, [ICC-02/04-01/15-1623](#), 1 October 2019, para. 16.

² In total, the three items amount to 29 pages.

³ *Ongwen*, Defence Notification of Disclosure of Rule 78 Material, [ICC-02/04-01/15-1643](#), 18 October 2019.

⁴ *Ongwen*, Defence Third Request to Add 12 Items to its List of Evidence, [ICC-02/04-01/15-1513](#), 15 May 2019, paras 6-9.

⁵ *Ongwen*, Decision on Defence Request for Variation of the 30 September Deadline, [ICC-02/04-01/15-1591](#), 10 September 2019, para. 6; see also Regulation 35(2) of the Regulations of the Court.

III. SUBMISSIONS

A. Items UGA-D26-0015-1395, UGA-D26-0015-1410 and UGA-D26-0015-1418

5. The Defence seeks the addition of items **UGA-D26-0015-1395**, **UGA-D26-0015-1410** and **UGA-D26-0015-1418**. The items are open-source articles related to the expertise of the Defence Experts, which can be useful during their testimony.
6. Article **UGA-D26-0015-1395**, with a title ‘Complex PTSD: A Syndrome in Survivors of prolonged and Repeated Trauma’, was published by the Journal of Traumatic Stress in 1992. In particular, the article discusses the concept of post-traumatic stress disorder (‘PTSD’) and reviews the evidence for the existence of a complex form of PTSD in survivors of prolonged, repeated trauma. It further finds that ‘[i]n contrast to a single traumatic event, prolonged, repeated trauma can occur only where the victim is in a state of captivity, under the control of the perpetrator’.⁶ There are many other related findings on, for example, a prolonged childhood abuse as severe PTSD⁷ or the dissociative symptoms of PTSD⁸ that recur in the Defence Experts’ reports. The Defence obtained the 15-page-long article from an open-source on 6 September 2019 and disclosed it to the Prosecution and Victims on 18 October 2019.
7. Article **UGA-D26-0015-1410**, with a title ‘What! Criteria For Criminal Responsibility’, was published by the East African Medical Journal in October 1991. The author of the article is one of the Defence Experts, D-41. Moreover, the article is referred to in the text of the Defence Experts’ First Report⁹ as well as in the bibliography section of the Defence Experts’ Second Report.¹⁰ Another reason why this article is relevant to the testimony of the Defence Experts is its discussion concerning the issue of appreciation of the nature and wrongfulness of one’s behavior.¹¹ The Defence obtained the 8-page-long article from the Ohio University in July 2019 and disclosed it to the Prosecution and Victims on 18 October 2019.
8. Article **UGA-D26-0015-1418**, with a title ‘Post traumatic stress disorder among former child soldiers attending a rehabilitative service and primary school education in northern Uganda’, was published by the African Health Sciences in September 2008. One of the co-authors is the Defence Expert, D-41. Furthermore, the article is pertinent to the *Ongwen* case because it, *inter*

⁶ UGA-D26-0015-1395, at 1395, 1396.

⁷ UGA-D26-0015-1395, at 1397.

⁸ UGA-D26-0015-1395, at 1400.

⁹ UGA-D26-0015-0004, at 0015 (page 12) and 0019 (page 16).

¹⁰ UGA-D26-0015-0948, at 0981 (page 34).

¹¹ UGA-D26-0015-1410, at 1412.

alia, reflects on a study of ‘12 former child soldiers of the Lord’s Resistance Army (LRA) at a rehabilitation school in Northern Uganda with a case of mass psychotic behavior’.¹² The Defence obtained the 6-page-long article from an open-source and disclosed it to the Prosecution and Victims on 18 October 2019.

9. The addition of the three articles in the Defence LoE at this time and its potential use during the examination of the Defence Experts will thus allow for an effective assessment of the reports produced by the Experts, which is a prerequisite for meaningful questioning.
10. In summary, the Defence recognizes that all three articles could have been sought to be added on the Defence LoE in the past. Accordingly, the Defence regrets this inadvertent omission. That said, all three articles are directly related to the subject matter of the testimony of the Defence Experts, which is of high importance to this case.¹³ Moreover, the articles are not voluminous and their 18 October disclosure provided sufficient notice and time to assess the information therein. Therefore, the addition of the items does not prejudice the Prosecution and Victims, shows good cause and goes hand-in-hand with the fair and expeditious conduct of the proceedings.

IV. RELIEF SOUGHT

11. For the reasons stated above, the Defence respectfully requests leave from the Chamber to add the following items to its LoE: **UGA-D26-0015-1395, UGA-D26-0015-1410 and UGA-D26-0015-1418.**

Respectfully submitted,



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Hon. Krispus Ayena Odongo

On behalf of Mr Dominic Ongwen

Dated this 4th day of November, 2019

¹² UGA-D26-0015-1418, at 1418.

¹³ *Ongwen*, Decision on Requests related to Testimony of Defence Expert Witnesses D-0041 and D-0042, [ICC-02/04-01/15-1623](#), 1 October 2019, para. 16.