

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **15 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 First Request Pursuant to Paragraph 33 of Decision ICC-02/04-01/15-1670

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’) requests Trial Chamber IX (‘Chamber’) to accept the submission into evidence Items 30 and 112 (‘Items’) of ICC-02/04-01/15-1637-Conf-AnxA.
2. Pursuant to instructions at paragraph 33 of the Chamber’s “Decision on the Defence Request to Submit 470 Items of Evidence” (‘Decision’).¹ Both Items have English versions in eCourt today.
3. The Defence notes that this is the first request. The Defence expects to have the other translations on or before 13 December 2019.

II. BACKGROUND

4. On 15 October 2019, the Defence filed “Defence Bar Table Motion,” (‘BTM’)² which included as list of 470 materials contained in Confidential Annex A. Each item has an individual item number.
5. On 18 October 2019, the Defence disclosed UGA-D26-0026-0451 to the Prosecution and through eCourt.³ In the disclosure notification⁴ and disclosure letter to the Prosecution,⁵ the Defence identified UGA-D26-0026-0451 as the English translation of UGA-D26-0015-0622 (Item 30 of the BTM).
6. On 14 November 2019, the Chamber issued the Decision. In it, the Chamber noted five instances where English or French translations of documents were not provided.⁶ The Chamber wrote that, “[s]hould the Defence wish, it can provide a translation in one of the working languages and re-submit a request for any of these items, under the condition that it does not cause a delay in the proceedings or affect the closure of the evidence.”⁷

¹ ICC-02/04-01/15-1670.

² ICC-02/04-01/15-1637.

³ ICC-02/04-01/15-1643 and ICC-02/04-01/15-1643-Conf-AnxA.

⁴ ICC-02/04-01/15-1643, para. 1.

⁵ ICC-02/04-01/15-1643-Conf-AnxA, p. 2.

⁶ Decision, paras 28-32.

⁷ Decision, para. 33. [Internal citations omitted]

7. On 15 November 2019, the Defence disclosed UGA-D26-0018-3985 to the Prosecution and through eCourt, which is the original English version⁸ of Item 112 of the BTM.⁹

III. SUBMISSIONS

8. Pursuant to paragraph 33 of the Decision, the Chamber granted the Defence an allowance to provide translations of documents listed in paragraphs 28-32 of the Decision. The Chamber stipulated that if the Defence chose to provide translations and request the submission of the documents, it must not 1) cause a delay in the proceedings or 2) affect the closure of the evidence.

A. The translations of the Items have not caused a delay in the proceedings.

9. The translations of the Items have been disclosed on 18 October 2019 and 15 November 2019.
10. The translation of Item 30, UGA-D26-0026-0451, is on the Defence's list of materials which it may use in its examinations of UGA-D26-P-0041 and UGA-D26-P-0042.¹⁰ It was disclosed on 18 October 2019 and is linked to the parent document in eCourt.
11. The Defence avers that there has been no delay in the proceedings and respectfully requests the Items and the corresponding translations be recognised as submitted into evidence.

B. The translations of the Items have not affected the closure of the evidence.

12. The translations of the Items have been disclosed on 18 October 2019 and 15 November 2019.
13. The Defence still has two more witnesses to call, the Prosecution may have a rebuttal witness, and the Defence may have a rejoinder witness. Accepting the submission of the Items and the corresponding translations will not affect the closure of the evidence.
14. As such, the Defence requests the submission into evidence the Items and the corresponding translations.

⁸ The Defence defines UGA-D26-0018-3985 as an "Original Version" as the chapter in the book was written in English and translated into Portuguese for publication. As seen in the metadata, this document was received by CSS from H.H. Judge Cuno Tarfusser.

⁹ ICC-02/04-01/15-1672 and Confidential Annex A.

¹⁰ Email from Defence to Chamber, Prosecution and Legal Representatives, "*Defence list of materials for the examination of D-0041 and D-0042*," sent at 14h10 CET on 13 November 2019. See attachment 20191113 – DEF Examination list for D-0041 and D-0042 (Binder 2), number 5.

C. The Defence's reasoning for the submission into evidence the Items remains the same as the BTM.

15. In respect to Item 30, UGA-D26-0015-0622 and translation UGA-D26-0026-0451, the defence incorporates by reference paragraphs 13-14 of the BTM.¹¹ Specifically, the Defence wrote:

The Defence requests the submission of research documents related to the Defence's Article 31(1)(a) and (d) defence's. These items are listed in Confidential Annex A and found in Defence Level 0015 and PCV Level 0001 of eCourt. The items contain the phrase "See Section IV(B)(i) of the main filing" in the column related to relevance and probative value.

Almost all of these items were used in the writing of the expert reports by UGA-D26-P-0041 and UGA-D26-P-0042. These items are relevant and probative to the Article 31(1)(a) and (d) defences. Some of these items shall be discussed during their testimony, but to expedite their testimony because of the limitations the Chamber has given, many of these documents are requested for submission through this bar table motion. [Internal citations omitted.]

16. In respect to Item 112, UGA-D26-0018-2767 and original version UGA-D26-0018-3985, the Defence incorporates by reference the comments made in Confidential Annex A of the BTM, page 16.¹² Specifically, it stated that, "[t]his report was published by the Single Judge of Pre-Trial Chamber II shortly after the Article 56 hearings, demonstrating the Single Judge's state of mind and possible motive to hold the Article 56 hearings."
17. The Defence respectfully request the submission into evidence the Items and corresponding translation and original version.

IV. RELIEF

18. For the reasons described above, the Defence respectfully requests Trial Chamber IX to:
- a. Accept as submitted Item 30, **UGA-D26-0015-0622**, and its translation, **UGA-D26-0026-0451**; and
 - b. Accept as submitted Item 112, **UGA-D26-0018-2767**, and its original version document, **UGA-D26-0018-3985**.

¹¹ BTM, paras 13-14.

¹² ICC-02/04-01/15-1637-Conf-AnxA, p. 16, item 112.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 15th day of November, 2019