

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**
Date: **25 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

Decision on Defence Request to Submit Two Previously Rejected Items of Evidence

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda
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Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of Victims

Joseph Akwenyu Manoba
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber IX of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(2) and (9), 69 and 74(2) of the Rome Statute (the ‘Statute’), Rules 63 and 64 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 39 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on Defence Request to Submit Two Previously Rejected Items of Evidence’.

I. Procedural history and submissions

1. On 15 October 2019, the Defence filed a request (the ‘Original Request’) to submit 470 items into evidence.¹
2. On 14 November 2019, the Chamber rendered its decision on the Original Request (the ‘Decision’).² Therein, the Chamber, *inter alia*, did not recognise a number of submitted items for which no translations in English or French were provided, citing to Regulation 39 of the Regulations.³
3. On 15 November 2019, the Defence submitted a request to accept the submission into evidence of items 30⁴ and 112⁵ (together, the ‘Items’) of the annex of the Original Request (the ‘Request’).⁶ The Defence notes in its Request that it now provided for both Items English translations in e-court.⁷

II. Analysis

4. The Chamber exceptionally rules on the Request without any responses by the other parties and participants, as they had already the possibility to make submissions on the Items⁸. Accordingly, the Chamber is able to rule on the Request without receiving further submissions. The submissions made by the Office of the Prosecutor and the Common Legal Representative of Victims regarding the Items are noted and their consideration is

¹ Defence Bar Table Motion, ICC-02/04-01/15-1637, with confidential annex A, containing an overview of the items (the ‘Annex’), ICC-02/04-01/15-1637-Conf-AnxA.

² Decision on the Defence Request to Submit 470 Items of Evidence, ICC-02/04-01/15-1670.

³ Decision, ICC-02/04-01/15-1670, paras 27-33.

⁴ UGA-D26-0015-0622.

⁵ UGA-D26-0018-2767.

⁶ Defence First Request Pursuant to Paragraph 33 of Decision, ICC-02/04-01/15-1673, para. 1. *See*, annex to the Original Request, ICC-02/04-01/15-1637-Conf-AnxA.

⁷ ICC-02/04-01/15-1673, para. 12.

⁸ *See* Prosecution Response to the Defence Bar Table Motion, 14 November 2019, ICC-02/04-01/15-1646-Red, para. 15 b.

deferred until the Chamber's deliberation of the judgment pursuant to Article 74(2) of the Statute.

5. The Chamber recalls its general approach to the submission of evidence,⁹ as well as its prior decisions on the submission of evidence other than through a witness.¹⁰ Accordingly, 'all the Chamber will do at this point in the proceedings is to recognise items as formally submitted or rule on the existence of procedural bars or other issues which prevent such recognition'.¹¹
6. The Items had not been recognised as formally submitted because of the missing translation into English or French in accordance with Regulation 39(1) of the Regulations.¹² As already indicated in the Decision, the Chamber accepts the submission of items into evidence, if (i) the Defence provides a translation in English or French and (ii) 'under the condition that it does not cause a delay in the proceedings or affect the closure of the evidence'.¹³
7. The Defence has now provided an English translation to each of the Items.¹⁴ Furthermore, there are no indications that because of the recognition of the Items as formally submitted, the proceedings would be delayed or the closure of the evidence be affected. No further procedural bars to the recognition of the Items as formally submitted are apparent.
8. Accordingly, the Chamber grants the Request.

⁹ Initial Directions on the Conduct of the Proceedings, 13 July 2016, ICC-02/04-01/15-497, paras 24-26. *See also* Decision on Prosecution Request to Submit Interception Related Evidence, 1 December 2016, ICC-02/04-01/15-615, para. 4.

¹⁰ Decision on Prosecution Request to Submit Interception Related Evidence, 1 December 2016, ICC-02/04-01/15-615; Decision on Prosecution's Request to Submit 1006 Items of Evidence, 28 March 2017, ICC-02/04-01/15-795.

¹¹ Decision, ICC-02/04-01/15-1670, para. 6.

¹² Decision, ICC-02/04-01/15-1670, paras 29, 30, 33.

¹³ Decision, ICC-02/04-01/15-1670, para. 30.

¹⁴ *See* UGA-D26-0015-0622 and UGA-D26-0026-0451 (translation); UGA-D26-0018-2767 and UGA-D26-0018-3985 (translation).

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

RECOGNISES UGA-D26-0018-2767 and UGA-D26-0015-0622 as formally submitted; and

ORDERS the Registry to reflect in the e-court metadata that the Items and their translations have been recognised as such.

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



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Raul C. Pangalangan

Dated 25 November 2019

At The Hague, The Netherlands