

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **26 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 Second 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 15 and 190 ('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.

II. BACKGROUND

3. 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.
4. 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.³ 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."⁴
5. On 25 November 2019, the Defence disclosed UGA-D26-0026-0791⁵ and UGA-D26-0026-0795⁶ to the Prosecution and through eCourt.⁷

III. SUBMISSIONS

6. 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

¹ ICC-02/04-01/15-1670.

² ICC-02/04-01/15-1637.

³ Decision, paras 28-32.

⁴ Decision, para. 33. [Internal citations omitted]

⁵ Translation of Item 15 from ICC-02/04-01/15-1637-Conf-AnxA.

⁶ Translation of Item 190 from ICC-02/04-01/15-1637-Conf-AnxA.

⁷ ICC-02/04-01/15-1679, para. 3.

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.

7. The translations of the Items were disclosed on 25 November 2019.⁸
8. The Items are very short, consisting of seven (7) pages and the Prosecution has been aware of the Items for 20 months⁹ and 15 years¹⁰ respectively. It will not take long for one to review the translations of this material. The Defence notes that the Prosecution used an English version of Item 15 during its examinations of D-0041 and D-0042.
9. 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.

10. The translations of the Items were disclosed on 25 November 2019.¹¹
11. The Defence still has one more witnesses to call in rejoinder. Accepting the submission of the Items and the corresponding translations will not affect the closure of the evidence.
12. As such, the Defence requests the submission into evidence the Items and the corresponding translations.

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

13. In respect to Item 15, UGA-D26-0015-0323 and translation UGA-D26-0026-0791, the defence incorporates here its submission in the annex of the BTM, noting:

The document goes to the veracity of P-0446. It is the DSM-V categorisation of post-traumatic stress disorder. The document is in Dutch, and demonstrates how P-0446 invented a classification of a mental disorder when faced with something she did not understand. See ICC-02/04-01/15-T-162-CONF-ENG, p. 26, ln. 6 to p. 27, ln. 3 and p. 54, lns 7-14 where she tried to "explain" her mistake.¹²

⁸ ICC-02/04-01/15-1679-Conf-AnxA, pp 3-4.

⁹ In respect to Item 15.

¹⁰ In respect to Item 190, which was initially in the Prosecution's possession on 22 November 2004.

¹¹ ICC-02/04-01/15-1679-Conf-AnxA, pp 3-4.

¹² ICC-02/04-01/15-1637-Conf-AnxA, p. 6, Item 15.

14. In respect to Item 190, UGA-OTP-0026-0090 and its translation UGA-D26-0026-0795, the Defence incorporates by reference the comments made in Confidential Annex A of the BTM, page 27.¹³ Specifically, it stated that, “[t]his item is relevant as it shows that the LRA received support from the Government of Sudan after the jurisdiction of the case. The item, which was sent to the Prosecution by P-0038, purports to be a communication between Joseph Kony and General Mustafa (from GoS) on or about 29/10/2002.”
15. The Defence respectfully request the submission into evidence the Items and corresponding translations.

IV. RELIEF

16. For the reasons described above, the Defence respectfully requests Trial Chamber IX to:
- a. Accept as submitted Item 15, **UGA-D26-0015-0323**, and its translation, **UGA-D26-0026-0791**; and
 - b. Accept as submitted Item 190, **UGA-OTP-0026-0090**, and its translation, **UGA-D26-0026-0795**.

Respectfully submitted,



.....
Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 26th day of November, 2019
The Hague, Netherlands

¹³ ICC-02/04-01/15-1637-Conf-AnxA, p. 27, item 190.