

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-02/04-01/15**
Date: **27 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 Further 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

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Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of Victims

Joseph Akwenyu Manoba
Francisco Cox
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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 Further 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 ‘Initial 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 two items rejected in the Initial Decision and provided the translation of these items (the ‘First Request’).⁴ The Chamber granted this request on 25 November 2019.⁵
4. On 26 November 2019, the Defence submitted a further request to submit two items rejected in the Initial Decision (the ‘Request’).⁶ The Defence requests the submissions of items 15⁷ and 190⁸ (together, the ‘Items’) of the Annex of the Original Request⁹ and provided the translation of these items.

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

⁴ 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.

⁵ Decision on Defence Request to Submit Two Previously Rejected Items of Evidence, ICC-02/04-01/15-1678.

⁶ Defence Second Request Pursuant to Paragraph 33 of Decision ICC-02/04-01/15-1670, ICC-02/04-01/15-1681.

⁷ UGA-D26-0015-0323.

⁸ UGA-OTP-0026-0090.

⁹ ICC-02/04-01/15-1637-Conf-AnxA, pages 6 and 27.

II. Analysis

5. As has been done in case of the First Request,¹⁰ the Chamber exceptionally rules on the Request without receiving any responses. The other parties and participants had already the possibility to make submissions on the Items when responding to the Original Request, accordingly the Chamber is able to rule on the Request without receiving further filing. The submissions made by the Defence, the Office of the Prosecutor and the Common Legal Representative of Victims regarding the Items are noted and their consideration is deferred until the Chamber's deliberation of the judgment pursuant to Article 74(2) of the Statute.
6. The Chamber recalls its general approach to the submission of evidence,¹¹ as well as its prior decisions on the submission of evidence other than through a witness.¹² 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'.¹³
7. 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.¹⁴ As already indicated in the Initial Decision, the Chamber allows 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'.¹⁵
8. The Defence has now provided an English translation for each of the Items.¹⁶ 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

¹⁰ ICC-02/04-01/15-1678, para. 4.

¹¹ 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.

¹² 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.

¹³ Initial Decision, ICC-02/04-01/15-1670, para. 6.

¹⁴ Initial Decision, ICC-02/04-01/15-1670, paras 28, 32, 33.

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

¹⁶ *See* UGA-D26-0015-0323 and UGA-D26-0026-0791 (translation); UGA-OTP-0026-0090 and UGA-D26-0026-0795 (translation).

affected. No further procedural bars to the recognition of the Items as formally submitted are apparent.

9. Accordingly, the Chamber grants the Request.

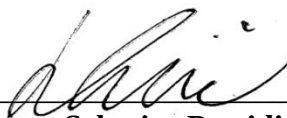
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

RECOGNISES UGA-D26-0015-0323 and UGA-OTP-0026-0090 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.

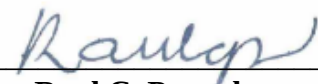
Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Raul C. Pangalangan

Dated 27 November 2019

At The Hague, The Netherlands