

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **26 February 2021**

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
with PUBLIC Annex A**

Public Redacted Version of “Defence request to submit additional evidence for Trial Chamber IX’s determination of the sentence”, filed on 26 February 2021

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**

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Krispus Ayena Odongo

Chief Charles Achaleke Taku

Beth Lyons

Legal Representatives of the Victims

Joseph Akwenyu Manoba

Francisco Cox

Common Legal Representative for Victims

Paolina Massidda

Unrepresented Victims**Unrepresented Applicants
(Participation/Reparation)****The Office of Public Counsel for Victims**

Paolina Massidda

Caroline Walter

Orchlon Narantsetseg

States' Representatives**The Office of Public Counsel for the
Defence**

Xavier-Jean Keita

Amicus Curiae**REGISTRY****Registrar**

Peter Lewis

Counsel Support Section**Victims and Witnesses Unit**

Nigel Verrill

Detention Section**Victims Participation and Reparations
Section****Other**

I. INTRODUCTION

1. Pursuant to Article 76(2) of the Rome Statute ('Statute'), Rule 143 of the Rules of Procedure and Evidence ('Rules'), and Trial Chamber IX's ('Chamber') "Decision scheduling a hearing on sentence and setting the related procedural calendar",¹ the Defence for Dominic Ongwen ('Defence') hereby requests the submission of additional evidence to be considered by the Chamber in determining a sentence for Mr Ongwen.
2. This request is without prejudice against the Defence's assertion of Mr Ongwen's fundamental human right to have a translation of the Trial Judgment before the submission of additional evidence, the hearing on sentencing² and the denial of the Defence's request for leave to appeal.³

II. CONFIDENTIALITY

3. Pursuant to Regulations 23*bis* of the RoC, this submission is filed as confidential as it names persons whose names are not known to the public. A public redacted version shall be filed contemporaneously, and after the Chamber's decision on the submission of the evidence, a lesser redacted version shall be filed again.

III. APPLICABLE STANDARD

4. Article 76(1) of the Statute requires the Chamber to "take into account the evidence presented and submissions made during the trial that are relevant to the sentence."
5. Article 76(2) of the Statute requires the Chamber to "hold a further hearing to hear any additional evidence or submissions relevant to the sentence." For absolute clarity, even though the Chamber ordered the hearing and submission of additional evidence,⁴ the Defence also requests such hearings pursuant to Article 76(2) of the Statute.

¹ Trial Chamber IX, *Decision scheduling a hearing on sentence and setting the related procedural calendar*, [ICC-02/04-01/15-1763](#) ('Decision 1763').

² See Ongwen Defence, Defence Request for Leave to Appeal 'Decision scheduling a hearing on sentence and setting the related procedural calendar', [ICC-02/04-01/15-1766-Red](#).

³ ICC-02/04-01/15-1777.

⁴ See Decision 1763.

6. Article 78(1) of the Statute requires the Chamber to “take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.”
7. Rule 145 of the Rules outlines factors which the Chamber must take into account when determining the sentence against a convicted person, but it is a non-exhaustive list. In terms of mitigating factors, the Chamber must take into account:
 - a. Any mitigating...factors and consider the circumstances both of the convicted person and of the crime;⁵
 - b. The age, education, social and economic condition of the convicted person;⁶
 - c. The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;⁷ and
 - d. The convicted person’s conduct after the act, including any efforts by the person to...[cooperate] with the Court.⁸

IV. SUBMISSIONS

8. A list of items the Defence seeks to add is appended in Public Annex A.

A. Bar Table Evidence

9. Witness UGA-D26-P-0060 used two new items supplied by the Defence for the purpose of his report which are not currently in evidence. The items are UGA-D26-0015-1722 and UGA-D26-0015-1723.⁹ The items are being disclosed today to the Chamber, Parties and Participants. The Defence requests that these items be submitted into evidence through the Bar Table.
10. The items go towards Rule 145(2)(a)(i) of the Rules, namely towards Mr Ongwen’s mental state on the cosmological belief of the LRA, to Joseph Kony’s power over him and to Mr Ongwen’s constant state of duress while captive in the LRA.

⁵ Rule 145(1)(b) of the Rules.

⁶ Rule 145(1)(c) of the Rules.

⁷ Rule 145(2)(a)(i) of the Rules.

⁸ Rule 145(2)(a)(ii) of the Rules.

⁹ The Defence notes that there are redactions in these two items. These are redactions emplaced by the ICC-DC Medical Officer and not by the Defence. The English translations carry the suffix “_tENG”. The full list of items given to D-60 shall be emailed to the Chamber, Prosecution and Legal Representatives.

11. These items were created during the normal course of business at the ICC-DC by medical professionals and were translated by the Registry's Language Service Section. The items have a high indicium of reliability and authenticity. The Defence requests that both items be submitted into evidence for the purpose of sentencing.

B. Evidence Submitted by Witnesses

i. Expert Report from Professor Emilio Ovuga, M.D. (Ret), UGA-D26-P-0042

12. Professor Emilio Ovuga, M.D. (Ret.), is Defence Expert D-42 and testified during the Defence's case-in-chief¹⁰ and during its rejoinder case.¹¹ Professor Ovuga's testimony goes to Article 78(1) of the Statute and Rules 145(1)(b), 145(1)(c) and 145(2)(a)(i) of the Rules. The expert report details the personal circumstances of Mr Ongwen, his age (both age of abduction and mental age), education, socioeconomic conditions, diminished capacity and duress.
13. The new expert report discusses how Mr Ongwen's current problems, which have been caused by past traumas, should be seen in terms of mitigating circumstances. It also elaborates how Mr Ongwen's abduction, related to his personal circumstances as a child below 10 years old, created problems which still exists today. It briefly discusses long-term care issues for Mr Ongwen and the best manner to provide said services. The services are based on known and recognised traditional mechanisms and modern therapeutic processes. These recommendations come from extensive work in Uganda with persons returning from the LRA.
14. Professor Ovuga's evidence shall be submitted as an expert report.¹² The Defence proposes that said evidence be submitted through Rule 68(2)(b) of the Rules. Should the Chamber determine that Professor Ovuga's expert report does not qualify pursuant to Rule 68(2)(b) of the Rules, the Defence, in the alternative, seeks to call Professor Ovuga as an expert witness for sentencing and shall submit his expert report through Rule 68(3) of the Rules.

¹⁰ ICC-02/04-01/15-T-250-Conf and ICC-02/04-01/15-T-251-Conf.

¹¹ [ICC-02/04-01/15-T-254](#) and [ICC-02/04-01/15-T-255](#).

¹² UGA-D26-0015-1878.

ii. Expert Report from Professor Kristof Titeca, Ph.D., UGA-D26-P-0060

15. Professor Kristof Titeca, Ph.D., is Defence Expert D-60 and testified during the Defence's case-in-chief.¹³ Professor Titeca's testimony goes to Article 78(1) of the Statute and Rules 145(1)(b), 145(1)(c) and 145(2)(a)(i) of the Rules. The expert report details the personal circumstances of Mr Ongwen, his age, circumstances around his abduction, the cosmology of the LRA, education, socioeconomic conditions, and duress.
16. Professor Titeca's report differs from his testimony as it delves into Mr Ongwen himself. Professor Titeca expands upon his evidence adduced at trial by placing Mr Ongwen in the cosmological space of the LRA and placing Mr Ongwen's knowledge and belief of the cosmological space of LRA into perspective through seven (7) interviews with Mr Ongwen. His evidence goes into the long-lasting affect that the beliefs had upon Mr Ongwen, last up to today.
17. Professor Titeca's evidence shall be submitted as an expert report.¹⁴ The Defence proposes that said evidence be submitted through Rule 68(2)(b) of the Rules. Should the Chamber determine that Professor Titeca's expert report does not qualify pursuant to Rule 68(2)(b) of the Rules, the Defence, in the alternative, seeks to call Professor Titeca as an expert witness for sentencing and shall submit his expert report through Rule 68(3) of the Rules.

iii. Expert Report from Major Pollar Awich, Esq., UGA-D26-P-0133

18. Major Pollar Awich, Esq., is Defence Expert D-133 and testified during the Defence's case-in-chief.¹⁵ Major Awich's testimony goes to Article 78(1) of the Statute and Rules 145(1)(b), 145(1)(c) and 145(2)(a)(i) of the Rules. The expert report details the personal circumstances of Mr Ongwen, his age (both age of abduction and mental age), education, socioeconomic conditions, diminished capacity and duress.
19. Major Awich's testimony differs from his earlier testimony as it delves further into the problems associated with child soldiers and former child soldiers returning from war. He draws upon not only the experiences learned during his career as a lawyer, uniformed officer and advocate for child soldiers, but his own personal experiences as a child soldier and returning after fighting in a

¹³ [ICC-02/04-01/15-T-197](#).

¹⁴ UGA-D26-0015-1835.

¹⁵ [ICC-02/04-01/15-T-203](#) and [ICC-02/04-01/15-T-204](#).

war. He discusses issues which, in his professional opinion, should be taken into account in mitigation of Mr Ongwen's sentence, which includes issues found in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.¹⁶ Finally, Major Awich discusses local mechanisms for rehabilitative and restorative justice.

20. The Defence seeks to call Major Awich as a live witness and submit his expert report pursuant to Rule 68(3) of the Rules.¹⁷ The Defence proposes no protective measures for the witness, and he can testify *via* video-link from Kampala, Uganda. The Defence estimates that his entire testimony can be completed in three hours.

iv. Expert Report from Professor Eric Awich Ochen, Ph.D., UGA-D26-P-0114

21. Professor Eric Awich Ochen, Ph.D., Defence witness D-114, testified during the Defence's case-in-chief.¹⁸ While the Defence did not call Dr Ochen as an expert witness during its case-in-chief as it requested this too late, the Defence seeks his expert opinion during the sentencing phase. Dr Ochen's testimony goes to Article 78(1) of the Statute and Rules 145(1)(b), 145(1)(c) and 145(2)(a)(i) of the Rules.
22. Dr Ochen was contracted late, and his report is expected on or before 5 March 2021. Additionally, the short time period granted to collect additional evidence meant that his report could not be finished by today. Pursuant to Regulation 35 of the RoC, the Defence requests that his report be accepted past the 26 February 2021 deadline and given leeway for disclosure until 8 March 2021, which is the timeline given by Dr Ochen. The Defence does not intend to oppose observations made by the Parties or Participants after 10 March 2021 on this report, but asks that the observations be filed on or before 17 March 2021.
23. Dr Ochen's expert report and testimony shall be different than that at trial as he is testifying as an expert, allowing him to give an expert opinion as to his and other's research into the LRA and practices at early abduction, which includes his professional opinion related to Mr Ongwen's experiences during the early days after his abduction by the LRA. This shall deal with the personal circumstances of Mr Ongwen, along with issues related to his mental state and duress.

¹⁶ See [United Nations Standard Minimum Rules for the Administration of Juvenile Justice](#) ("The Beijing Rules").

¹⁷ UGA-D26-0015-1889.

¹⁸ [ICC-02/04-01/15-T-247](#).

24. The Defence seeks to call Dr Ochen as a live witness and submit his expert report pursuant to Rule 68(3) of the Rules. The Defence proposes no protective measures for the witness, and he can testify *via* video-link from Kampala, Uganda. The Defence estimates that his entire testimony can be completed in three hours.

v. Expert Report from Ambrose Olaa, Prime Minister of Ker Kwaro Acholi, UGA-D26-P-0160

25. Prime Minister Ambrose Olaa is the Prime Minister of Ker Kwaro Acholi.¹⁹ Prime Minister Olaa has held this position since January 2016 and is one of the central figures in Ker Kwaro Acholi. Ker Kwaro Acholi is an organisation comprising leaders of the different clans of Northern Uganda of the Acholi people and promotes traditional Acholi customs and values. Ker Kwaro Acholi played an important role in attempting to bring peace to Northern Uganda and restore balance through traditional means. Ker Kwaro Acholi was instrumental in getting the Government of Uganda to pass the Amnesty Act. The organisation is led by the Paramount Chief, Paramount Chief Rwot David Onen Acana II and its Prime Minister Ambrose Olaa.
26. Prime Minister Olaa's testimony goes to Article 78(1) of the Statute and Rules 145(1)(b), 145(1)(c) and 145(2)(a)(i) of the Rules. The expert report details the circumstances of abduction by the LRA, the circumstances surrounding abductions, Mr Ongwen's age, education, socioeconomic conditions, and duress. It discusses issues related to Acholi traditional justice and the available mechanisms of reconciliation and restorative justice in Northern Uganda for Mr Ongwen's sentence. As a leading member of Ker Kwaro Acholi, his evidence is authoritative on the subject of Mato Oput, and Acholi rituals of traditional justice.
27. The Defence seeks to call Prime Minister Olaa as a live witness and submit his expert report pursuant to Rule 68(3) of the Rules.²⁰ The Defence proposes no protective measures for the witness, and he can testify *via* video-link from Kampala, Uganda. The Defence estimates that his entire testimony can be completed in three hours.

¹⁹ See Prime Minister Olaa's CV at UGA-D26-0015-1825.

²⁰ UGA-D26-0015-1812.

vi. Statement by [REDACTED], UGA-D26-P-0163

28. [REDACTED]. He lived through the war in Northern Uganda and understands the problems caused by the war. He understands the culture of the Acholi people and personally went through the ritual of Mato Oput.
29. [REDACTED] testimony goes to Article 78(1) of the Statute and Rules 145(1)(b) and 145(1)(c) of the Rules. The statement details the circumstances of the abductions by the LRA, family circumstances surrounding abductions, Mr Ongwen's age, education, socioeconomic conditions, and his current personal situation.
30. Much like Prime Minister Olaa's testimony, [REDACTED] is knowledgeable in the Acholi ritual cleansing process of Mato Oput with [REDACTED]. [REDACTED] actions demonstrates that even after time, the ritual can take place with meaning. Even though [REDACTED] did not directly cause the harm against [REDACTED], the ritual still had meaning and offered solace and peace to hurt persons.
31. Defence proposes to submit this testimony through Rule 68(2)(b) of the Rules.²¹ The Defence does not propose any protective measures for this witness.

vii. Statement by Odong Johnson, Uncle to Dominic Ongwen, UGA-D26-P-0008

32. Odong Johnson is the uncle of Mr Ongwen. He lives in the family homestead [REDACTED]²² and family. He testified *via* Rule 68(2)(b) of the Rules during trial as Witness D-8.
33. Mr Odong's testimony goes to Article 78(1) of the Statute and Rules 145(1)(b) and 145(1)(c) of the Rules. The statement details the circumstances of Mr Ongwen's abduction by the LRA, the family circumstances surrounding his abduction, Mr Ongwen's age, education, socioeconomic conditions, and his current personal situation at home in relation to Mr Ongwen's family.
34. Mr Odong discusses briefly the problems associated with Mr Ongwen's abduction and the fact that the eldest family son was taken. He notes that with Mr Ongwen's escape from the LRA, [REDACTED]. [REDACTED].

²¹ UGA-D26-0015-1864.

²² [REDACTED].

35. Defence proposes to submit this testimony through Rule 68(2)(b) of the Rules.²³ The Defence does not propose any protective measures for this witness.

viii. Statement by [REDACTED], UGA-D26-P-0009

36. [REDACTED]²⁴ [REDACTED].
37. [REDACTED] testimony goes to Article 78(1) of the Statute and Rules 145(1)(b) and 145(1)(c) of the Rules. The statement details the circumstances of Mr Ongwen's abduction by the LRA, [REDACTED].
38. [REDACTED].
39. Defence proposes to submit this testimony through Rule 68(2)(b) of the Rules.²⁵ The Defence does not propose any protective measures for this witness.

ix. Statement by [REDACTED], UGA-D26-P-0161

40. [REDACTED].
41. [REDACTED] testimony goes to Article 78(1) of the Statute and Rules 145(1)(b) and 145(1)(c) of the Rules. [REDACTED].
42. Defence proposes to submit this testimony through Rule 68(2)(b) of the Rules.²⁶ The Defence does not propose any protective measures for this witness.

x. Statement by [REDACTED], UGA-D26-P-0162

43. [REDACTED].
44. [REDACTED] testimony goes to Article 78(1) of the Statute and Rules 145(1)(b) and 145(1)(c) of the Rules. [REDACTED].

²³ UGA-D26-0015-1855.

²⁴ [REDACTED].

²⁵ UGA-D26-0015-1851.

²⁶ UGA-D26-0015-1858.

45. Defence proposes to submit this testimony through Rule 68(2)(b) of the Rules.²⁷ The Defence does not propose any protective measures for this witness.

xi. Catherine Abbo Adito, M.D., UGA-OTP-P-0445

46. The Defence takes note of Dr Abbo's testimony in Court when referencing her expert report to the Chamber. Dr Abbo stated that the Judges should be aware of the mitigating factors that Mr Ongwen was abducted during a developmental age, continued to develop in the bush, do so in an unfavourable environment and being under the control of Joseph Kony.²⁸ "As an adolescent, he [Dominic Ongwen] was vulnerable and lacked control over his immediate environment. This means, he can't be blamed for failing to escape negative influences in his whole environment."²⁹

C. Evidence Submitted by Organisations

i. Statement by the Acholi Religious Leaders Peace Initiative

47. The Acholi Religious Leaders Peace Initiative ('ARLPI') is an organisation comprising leaders of the major religions and faiths of Northern Uganda. It was formed in 1999 and attempted to broker peace between the LRA and the Government of Uganda, promoting peace and reconciliation in traditional manners. The organisation played a key role in the promulgation and continuation of the Amnesty Act for returning persons from the LRA.
48. The letter submitted by ARLPI requests the Judges to take into account the specific circumstances of Mr Ongwen (Rule 145(b) of the Rules), namely that he spent over 25 years as a captive of the LRA and that the Acholi people have a mechanism of reconciliation and restorative justice, Mato Oput.
49. The Defence proposes to submit the letter through the Bar Table.³⁰ Should the Chamber deem this an inappropriate manner to submit the letter, the Defence proposes Rule 68(2)(b) of the Rules. The Defence does not propose any redactions to this submission.

²⁷ UGA-D26-0015-1861.

²⁸ [ICC-02/04-01/15-T-166](#), p. 58, lns 1-23 and UGA-OTP-0280-0732, p. 0755, para. 8.4.

²⁹ UGA-OTP-0280-0732, p. 0755, para. 8.4.

³⁰ UGA-D26-0015-1832.

ii. Statement by the Wang-oo Heritage of Acholi Elders

50. The Wang-oo Heritage Ltd is a non-profit private company limited by guarantee and falls under the Ugandan jurisdiction. The company is registered and incorporated before 2 December 2019.³¹ The Wang-Oo Heritage Limited is composed of elders from the Acholi Sub Region. Some its representatives are:
- a. Chairperson John Livingstone Okello-Okello – a former Member of Parliament for Chua County, Kitgum district;
 - b. Chairperson Board of Director retired Uganda Supreme Court Justice Galdino Moro Okello;
 - c. Vice-Chairperson Rosalba Atoo Oywa; and
 - d. Sister Rebecca Lanyero from the ARLPI.
51. Wang-oo received its name from a traditional gathering of Acholi people around a communal fireplace where elders would convey moral lessons and pass on vital elements of cultural knowledge to younger generations.³² It usually took place in the evenings and served as an “informal school for the Acholi”.³³ Younger generations would learn about taboos, rituals, and expected behaviour. Elders would often indirectly correct misbehaviours of community members by relating proverbs and folk tales or openly discuss and resolve conflicts.³⁴ Elders would also address commission of offences during *wang-oo* and choose an appropriate procedure for the cleansing ceremony.³⁵ Overall, *wang-oo* promoted peace and a strong sense of belonging among the people of Acholi community because everyone was always welcome to attend and there was no segregation.³⁶

³¹ WANG-OO HERITAGE LIMITED, found at [OpenCorporates](#), published 2 November 2020, last accessed 21 February 2021.

³² Thomas Harlacher, ‘[Traditional ways of coping with consequences of traumatic stress in Acholiland Northern Ugandan ethnography from a Western psychological perspective](#)’ (PhD thesis, University of Fribourg 2009), pp 30-31, last accessed 22 February 2021.

³³ Bonnies Fournier, ‘[How an ancient fireside gathering could tackle HIV stigma in Uganda](#)’ (The Conversation, 12 June 2019), last accessed 21 February 2021.

³⁴ Harlacher, p. 31.

³⁵ *Ibid*, p. 184.

³⁶ Tabu Simon, ‘[A New Window of Normalisation: Young People as Peace Builders in Northern Uganda](#)’ (Children and Youth Studies, Research Paper 2009), p. 30, last accessed 22 February 2021.

52. The letter submitted by Wang-oo requests the Judges to take into account the specific circumstances of Mr Ongwen.³⁷ It also promotes the Acholi tradition reconciliation and restorative justice through Mato Oput while acknowledging the conviction and time spent in ICC detention and captivity by the LRA.
53. The Defence proposes to submit the letter through the Bar Table.³⁸ Should the Chamber deem this an inappropriate manner to submit the letter, the Defence proposes Rule 68(2)(b) of the Rules. The Defence does not propose any redactions to this submission.

D. Article 67(1)(h) of the Statute

54. Pursuant to Article 67(1)(h) of the Statute, Mr Ongwen may make an unsworn statement to the Chamber. The Defence suggests that it be allotted an additional 20-30 minutes during its oral argument for Mr Ongwen to make his statement.

V. RELIEF

55. For the reasons stated above, the Defence respectfully requests that the Chamber:
- a. Accept the submission of the additional material for sentencing listed in this request and listed in the annex and
 - b. Grant the Defence until 8 March 2021, at the latest, to submit the expert report by D-0114.

³⁷ Article 78(1) of the Statute and Rules 145(1)(b) and 145(1)(c) of the Rules.

³⁸ UGA-D26-0015-1833.

Respectfully submitted,



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

Dated this 26th day of February, 2021

At Gulu, Uganda