

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 March 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

Prosecution's response to the Defence request regarding the proposed report and testimony of D-0114

Source: The Office of the Prosecutor

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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Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Office of the Prosecutor (“Prosecution”) supplements its initial response¹ to the Defence’s request regarding the proposed report and testimony of D-0114 as additional evidence for the purpose of determining Mr Ongwen’s sentence (“Defence Request”).² The Defence sent a copy of D-0114’s report to the Parties and Participants two weeks after the deadline.³

Submissions

2. The Trial Chamber concluded that D-0114’s testimony at trial⁴ was not directly relevant for the disposal of the charges.⁵ His proposed report for sentencing is cumulative in nature and has no significant probative value. For that reason, the Defence has failed to establish the good cause required to recall D-0114.⁶

3. D-0114 did not testify as an “expert” at trial, because the Defence request was untimely.⁷ D-0114 is not a psychiatrist, psychologist, or mental health expert. His hands-on experience as a social worker, based on his own testimony, appears very limited, given that since 2003 his occupation is that of a lecturer at Makerere University.⁸ He therefore lacks the expertise needed to offer an expert opinion about how Mr Ongwen’s experiences in the LRA may have impacted his mental or moral functioning.

4. The issues which the proposed report touches upon, such as the abduction, escape, and experiences of children in the LRA generally, or the spiritualism, rules,

¹ [ICC-02/04-01/15-1788](#), para. 13. On 12 March 2021, the Chamber instructed Parties and Participants who wished to supplement their respective responses to do so by Tuesday, 16 March 2021. See Email from Trial Chamber IX Communications, 12 March 2021, 12hrs18.

² [ICC-02/04-01/15-1783-Red](#) (“Defence Request”); see also [ICC-02/04-01/15-1785](#); [ICC-02/04-01/15-1792](#).

³ [ICC-02/04-01/15-1792+AnxA](#). A copy of D-0114’s report, [UGA-D26-0015-1907](#), was sent to the parties and participants on 10 March 2021 at 21hrs.40 and officially disclosed on 11 March 2021. It was due on 26 February 2021 - see [ICC-02/04-01/15-1763](#).

⁴ [T-247](#).

⁵ [Trial Judgment](#), para. 607.

⁶ *Prosecutor v. Bemba*, Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing, [ICC-01/05-01/08-3384](#), para. 18.

⁷ [T-247](#), p. 3.

⁸ [T-247](#), p. 7.

structure, and Kony's role in the LRA, were all extensively covered at trial through the testimony of numerous witnesses, including former LRA fighters and former child soldiers who provided first-hand accounts, as well as various experts. D-0114 refers extensively to two such trial witnesses, Evelyn Amony and Tim Allen.⁹ The Chamber heard their testimony directly at trial, including discussions of their publications and reports,¹⁰ and can make its own assessment regarding their relevance, if any, for determining Mr Ongwen's sentence. Furthermore, these issues were also sufficiently covered by D-0114 during his trial testimony and the formally submitted documentary evidence, including his 341-page PhD thesis.¹¹

5. The proposed report refers repeatedly to what Mr Ongwen has allegedly said or experienced.¹² The Prosecution submits that these portions of the report are of no probative value as they contain, *inter alia*, no consideration or probing of the veracity of Mr Ongwen's statements, which are not a proper subject of expert evidence by D-0114. D-0114's comments on the legal interpretation of mitigating circumstances should also be disregarded as legal opinions which are squarely the Chamber's prerogative.¹³ The Chamber should also give no weight to his sweeping (and unsourced) remarks, such as, "[i]n mitigation, my consultation also suggests that the dominant opinion among the victims' population in northern Uganda (most of Acholi land have suffered and lost people in the war) is that Dominic Ongwen should be released from prison."¹⁴ They stand in stark contrast with what the participating victims in this case have testified, pleaded, and asked for in these proceedings.¹⁵

⁹ See, for example, the extensive references to Evelyn Amony at pages 1909-1912 and Tim Allen at pages 1909 and 1912 of D-0114's proposed report, [UGA-D26-0015-1907](#).

¹⁰ See, for example, [T-243](#) and [UGA-OTP-0286-2030](#) for D-0049 and her book, or [T-28](#) and [UGA-OTP-0270-0004](#) for P-0422 and his report.

¹¹ See [T-247](#), [UGA-OTP-0286-2015](#), [UGA-OTP-0286-1371](#).

¹² See, for example, [UGA-D26-0015-1907](#) at 1908-1909, 1912, 1915.

¹³ See, for example, "Abduction as a mitigating factor for Mr Ongwen", [UGA-D26-0015-1907](#) at 1908.

¹⁴ [UGA-D26-0015-1907](#) at 1914.

¹⁵ ICC-02/04-01/15-1789-Conf, ICC-02/04-01/15-1787-Conf.

Relief sought

6. For the reasons set out above, the Prosecution reiterates its prior submission that the proposed report and testimony of D-0114 should be rejected *in limine* as untimely. If the Chamber were to consider its content, it should reject the proposed evidence because it does not meet the standard for recalling a witness. If the Chamber were inclined to receive the evidence, it should do so under rule 68(2)(b) and give it little or no weight.

A handwritten signature in black ink that reads "James K. Stewart." The signature is written in a cursive, flowing style.

James Stewart, Deputy Prosecutor

Dated this 16th day of March 2021

At The Hague, the Netherlands