

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **19 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

**Decision on the ‘Defence request to submit additional evidence for Trial
Chamber IX’s determination of the sentence’**

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

The Office of the Prosecutor

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Legal Representatives of Applicants

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**Unrepresented Applicants for
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**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

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Counsel Support Section

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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 69 and 76 of the Rome Statute and Rule 68 of the Rules of Procedure and Evidence, issues the following decision on the ‘Defence request to submit additional evidence for Trial Chamber’s determination of the sentence’.¹

1. On 4 February 2021, simultaneously with the issuance of its judgement pursuant to Article 74 of the Statute convicting Dominic Ongwen of a total of 61 crimes,² the Chamber rendered a decision whereby it regulated the further proceedings leading to the imposition of the sentence, including as concerns the submission of evidence by the parties and participants, and the holding of a further hearing in the week of 12-16 April 2021.³ The Chamber ordered the Prosecution, the Defence for Dominic Ongwen and the participating victims through their respective legal representatives, in case they intended to submit additional evidence relevant to the sentence to be imposed on Dominic Ongwen, to make a filing to this effect by 26 February 2021. It further set the limit for any response to any such filing at 10 March 2021.
2. The Prosecution and both teams of legal representatives of the participating victims notified the Chamber that they did not intend to present any additional evidence relevant to the sentence.⁴ The Defence instead requests to submit some such additional evidence. The present decision disposes of this request.
3. Responses to the Defence request were filed by the Prosecution and the legal representatives of the participating victims on 10 March 2021.⁵ On 16 March 2021, the

¹ ‘Defence request to submit additional evidence for Trial Chamber’s determination of the sentence’, 26 February 2021, ICC-02/04-01/15-1783-Conf (‘Request’; public redacted version available: ICC-02/04-01/15-1783-Red). On the same day of the Request, the Defence also filed the ‘Defence Addendum to “Defence request to submit additional evidence for Trial Chamber IX’s determination of the sentence”, filed on 26 February 2021 as ICC-02/04-01/15-1783-Conf’, ICC-02/04-01/15-1785 (‘Addendum’). On 12 March 2021, the Defence filed the ‘Defence Filing in the Record of the Case the Expert Report of UGA-D26-P-0114’, ICC-02/04-01/15-1792 (see in this regard Request, para. 22).

² ‘Trial Judgment’, ICC-02/04-01/15-1762-Conf (public redacted version available: [ICC-02/04-01/15-1762-Red](#)).

³ ‘Decision scheduling a hearing on sentence and setting the related procedural calendar’, [ICC-02/04-01/15-1763](#).

⁴ ‘Prosecution’s Notification regarding Presentation of Additional Evidence in the Sentencing Stage of the Proceedings’, ICC-02/04-01/15-1779; ‘CLRv’s Notification Regarding Presentation of Additional Evidence On Sentencing’, ICC-02/04-01/15-1780; ‘Victims’ Notification regarding Presentation of Additional Evidence at the Sentencing Stage of Proceedings’, ICC-02/04-01/15-1782.

⁵ ‘CLRv Response to the “Defence request to submit additional evidence for Trial Chamber IX’s determination of the sentence”’, ICC-02/04-01/15-1787-Conf (‘CLRv Response’); ‘Prosecution’s response to the Defence request to submit additional evidence at sentencing’, ICC-02/04-01/15-1788 (‘Prosecution’s Response’);

Prosecution provided a supplementary response in relation to an item of evidence, i.e. a report by Erich Awich Ochen (Witness D-0114),⁶ that the Defence filed in the record of the case only on 12 March 2021,⁷ after the expiration of the time limit set by the Chamber. In this regard, noting that the Defence was transparent about the delay⁸ and submitted the item immediately after it came into its submission, and that the Prosecution and the participating victims had been given an opportunity to respond to the late submission,⁹ the Chamber considers that good cause exists to consider the submission also of this item of evidence on its merits.

4. At the outset, the Chamber recalls that, in accordance with the relevant procedure set out in the trial,¹⁰ when material is submitted into evidence its consideration is generally limited to the determination of whether there exists any procedural bar to such submission as emanating from any exclusionary rule contained in the Court's legal texts. In principle, and barring particular circumstances, substantive considerations concerning the relevance and the probative value of evidence submitted in the course of the proceedings are not part of the Chamber's assessment for the purpose of the procedural decisions recognising or authorising the submission of evidence, but are instead made, as appropriate, in the corresponding final decision rendered by the Chamber.¹¹ At the same time, the Chamber recalls that it maintains its discretion to render separate rulings on the relevance and/or probative value of individual items of evidence as warranted by the specific circumstances at hand, and, on this basis, exclude material from the evidentiary record when justified.¹² The Chamber will address the Defence request in accordance with such procedure.
5. The Chamber, having considered the items presented by the Defence as well as their prospective use on the part of the Defence for its submissions on sentence, and while taking note of the arguments raised by the Prosecution and by the two teams of legal

'Victims' Response to the "Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence"', ICC-02/04-01/15-1789-Conf ('LRV Response').

⁶ 'Prosecution's response to the Defence request regarding the proposed report and testimony of D-0114', ICC-02/04-01/15-1795 ('Prosecution's Additional Response').

⁷ ICC-02/04-01/15-1792-AnxA.

⁸ See Request, para. 22.

⁹ Email decision of 12 March 2021 at 12.18.

¹⁰ 'Initial Directions on the Conduct of Proceedings', 13 July 2016, ICC-02/04-01/15-497, paras 24-33.

¹¹ See also (on rule 68), 'Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules', 18 November 2016, ICC-02/04-01/15-596-Conf, para. 7 ('First Rule 68(2)(b) Decision'; public redacted version available: [ICC-02/04-01/15-596-Red](#)).

¹² See Trial Judgment, para. 239.

representatives of victims in relation to the relevance and/or probative value of some of this material, decides, in the present circumstances, not to exercise its discretion to address these matters at this point in the proceedings. For the purpose of the present decision, the Chamber will rather limit itself to the determination of whether the submission of the evidence requested by the Defence is precluded by any particular procedural bar. A determination concerning the relevance and probative value of the submitted evidentiary material will be conducted as part of the Chamber's determination of the appropriate sentence to be imposed on Dominic Ongwen, following consideration of the arguments raised.

6. The Chamber notes, at first, that, within the material the submission of which is requested, the Defence refers to a statement given by Dr Catherine Abbo (Witness P-0445) during her testimony before the Chamber in the course of the trial.¹³ The Chamber clarifies that this evidence – as any other evidence elicited or submitted at trial – is already part of the record of the case, and, therefore, that no further procedural action is required for the Defence to rely on it. Thus, the Chamber will not consider this part of the request any further. That said, the Defence request to submit additional evidence may be divided in four limbs. The Chamber will address them in turn.
7. First, the Defence submits two items of non-testimonial documentary evidence: UGA-D26-0015-1722-R01 and UGA-D26-0015-1723, together with their translation into English. These items are medical records for Dominic Ongwen from the Court's detention centre, dated 26 June 2018 and 2 July 2018, respectively. They are submitted on the ground that they were used by Professor Kristof Titeca (D-0060) for the purpose of his report.¹⁴ The Prosecution stated that it did not object to the submission of these items.¹⁵ The common legal representative of the participating victims opposes to the submission of these items as part of its opposition to the submission of new evidence by Professor Titeca.¹⁶ The legal representatives of the participating victims appear to oppose on similar grounds.¹⁷ In the absence of any procedural preclusion barring their submission into evidence, and without prejudice to the Chamber's eventual assessment of their relevance

¹³ Request, para. 46.

¹⁴ Request, para. 9.

¹⁵ Prosecution's Response, para. 2.

¹⁶ CLRV Response, paras 14-17.

¹⁷ LRV Response, paras 10-14.

to the determination of the sentence and their probative value, the Chamber recognises the submission by the Defence of this material into evidence.

8. Second, the Defence requests the Chamber to allow the introduction of the prior recorded testimony of seven witnesses pursuant to Rule 68(2)(b) of the Rules:
 - i. new expert reports of two witnesses who testified previously at the trial, i.e. Professor Emilio Ovuga (Witness D-0042),¹⁸ whose expert report is proposed for introduction on the grounds that ‘it discusses how Mr Ongwen’s current problems [...] should be seen in terms of mitigating circumstances’ and ‘also elaborates how Mr Ongwen’s abduction [...] created problems which still exists today’;¹⁹ and Professor Kristof Titeca (Witness D-0060),²⁰ whose expert report is proposed for introduction on the grounds that the witness ‘expands upon his evidence adduced at trial by placing Mr Ongwen in the cosmological space of the LRA’;²¹
 - ii. the statement of Witness D-0163,²² whose prior recorded testimony is proposed for introduction on the grounds that the witness ‘understands the culture of Acholi people’ and is ‘knowledgeable in the Acholi ritual cleansing process of Mato Oput’;²³ and
 - iii. the statement of Odong Johnson (Witness D-0008),²⁴ who is Dominic Ongwen’s uncle and who had already provided another statement which was considered by the Chamber in the Trial Judgment,²⁵ and the statements of three other relatives of Dominic Ongwen (Witnesses D-0009, D-0161 and D-0162),²⁶ which are proposed for introduction on the grounds that they detail the circumstances of Dominic Ongwen’s abduction, his family circumstances, age, education, socioeconomic

¹⁸ UGA-D26-0015-1878.

¹⁹ Request, para. 13.

²⁰ UGA-D26-0015-1835.

²¹ Request, para. 16.

²² UGA-D26-0015-1864.

²³ Request, paras 28, 30.

²⁴ UGA-D26-0015-1855.

²⁵ See Trial Judgment, para. 591.

²⁶ UGA-D26-0015-1851, UGA-D26-0015-1858, UGA-D26-0015-1861.

conditions, and their current personal situation at home in relation to Dominic Ongwen's family.²⁷

9. The Prosecution argues in respect of the new reports produced by Professor Ovuga (Witness D-0042) and Professor Titeca (Witness D-0060) that they are largely repetitive of their previous evidence, and affected by the same shortcomings as their previous evidence.²⁸ It submits that their introduction should be rejected, or alternatively that, if introduced, they should be given little or no weight.²⁹ As for the remaining five witnesses, the Prosecution does not object to the introduction of their testimonies under Rule 68(2)(b) of the Rules.
10. The common legal representative of the victims participating in the proceedings submits, with respect to Professor Ovuga (Witness D-0042) and Professor Titeca (Witness D-0060), that they previously testified extensively before the Chamber, and that the possibility to submit additional evidence at sentencing should not be used to re-litigate the findings of the Chamber.³⁰ In respect of the proposed testimony of Witness D-0163, the common legal representative submits that it is repetitive of ample evidence the Chamber heard about Dominic Ongwen's abduction and personal circumstances, and otherwise irrelevant.³¹ As concerns the family members of Dominic Ongwen, the common legal representative submits that given the similarity of information contained in their statements, the Chamber should only accept the most representative statements.³²
11. The legal representatives of victims similarly submit that the proposed evidence of Professor Ovuga (Witness D-0042) and Professor Titeca (Witness D-0060) is repetitive and pertains to issues which have already been considered and decided.³³ They object to the evidence of Witness D-0163 on the ground that considerations of traditional methods of restorative justice are irrelevant under the legal regime of the Court.³⁴ Finally, they do

²⁷ Request, paras 33-34, 37-38, 41, 44.

²⁸ Prosecution's Response, paras 6-7.

²⁹ Prosecution's Response, paras 6-7.

³⁰ CLRV Response, paras 14-19.

³¹ CLRV Response, para. 29.

³² CLRV Response, para. 32.

³³ LRV Response, paras 11, 13-14.

³⁴ LRV Response, para. 15.

not oppose to the introduction of statements of Dominic Ongwen's family members as concerns his socioeconomic conditions and his current personal situation.³⁵

12. According to Rule 68(2)(b) of the Rules, the Chamber may allow the introduction of the previously recorded testimony of a witness who is not present before the Chamber when that prior recorded testimony: (i) goes to proof of 'a matter other than the acts and conduct of the accused'; and (ii) is accompanied by a declaration by the testifying person, witnessed by a person authorised by the Chamber or in accordance with the law and procedure of a State, as detailed in Rule 68(2)(b)(ii) and (iii) of the Rules. The Chamber further recalls that the decision of whether to introduce a prior recorded testimony pursuant to Rule 68(2)(b) of the Rules, when the relevant requirements are met, is discretionary in nature, and that Rule 68(2)(b)(i) provides a non-exhaustive list of factors that the Chamber shall bear in mind in the exercise of such discretion. As previously observed, such factors are not mandatory pre-conditions for the applicability of Rule 68(2)(b), but are merely meant to guide the Chamber's exercise of discretion under this provision.³⁶ In this regard, the Chamber refers to its considerations previously expressed in relation to the interpretation of such factors and their relevance to the eventual decision of whether to allow the introduction of a prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.³⁷
13. The Chamber considers that there exists no procedural bar to the introduction of the prior recorded testimony as requested by the Defence. While some of the concerned testimonies provide information concerning Dominic Ongwen, none of them goes to prove his 'acts and conduct' within the meaning of Rule 68(2)(b) of the Rules – namely, as previously clarified by the Chamber, 'those actions of the accused which are described in the charges brought against him or her or which are otherwise relied upon to establish his or her criminal responsibility for the crimes charged'.³⁸
14. In addition, the Chamber is of the view that the prior recorded testimony of the witnesses at issue may be appropriately introduced under Rule 68(2)(b) of the Rules. In this regard, the Chamber recalls that the crucial question for its discretionary determination under Rule

³⁵ LRV Response, para. 21.

³⁶ First Rule 68(2)(b) Decision, para. 6.

³⁷ First Rule 68(2)(b) Decision, paras 14-20.

³⁸ First Rule 68(2)(b) Decision, para. 12.

68(2)(b) of the Rules is ‘whether a testimony which was previously recorded may, in light of its content and significance to the case, be introduced without the need that the provided information be “tested” through oral examination of the witness at trial’.³⁹ Having considered, also in light of the evidence already on record, the content of the material and the issues which the Defence intends to prove by relying on it, the Chamber is satisfied that the prior recorded testimony of the witnesses under consideration may be introduced without the need for them to be examined orally in court. In this regard, the Chamber also observes that neither the Prosecution nor the legal representatives of victims argue that the request by the Defence should be rejected on the ground that they would need to examine orally the concerned witnesses. Accordingly, the Chamber grants this part of the Defence request.

15. The Chamber reiterates, also in relation to the prior recorded testimony of these witnesses, that issues concerning the relevance of this material to the determination of the sentence as well as its probative value will be considered in the Chamber’s decision on the sentence. The introduction of the material at issue is therefore without prejudice to any such consideration on the part of the Chamber in its final decision on the sentence.
16. Finally, the Chamber clarifies that the introduction of this material is, at this stage, only conditional, in that it is subject to the concerned witnesses providing a declaration that the contents of the prior recorded testimony are true and correct to the best of their knowledge and belief, as provided for in Rule 68(2)(b)(ii) and (iii) of the Rules. With a view to the proper management of the present proceedings the Chamber considers it appropriate to set at 1 April 2021 the time limit for the filing in the record of the case of such declarations.
17. Third, the Defence requests the Chamber to hear, at the hearing on sentence, the live testimony of three expert witnesses and introduce their prior recorded testimony – in the form of ‘expert reports’ – into evidence pursuant to Rule 68(3) of the Rules:
 - i. Pollar Awich (Witness D-0133), who already testified at trial and whose additional evidence is proposed ‘as it delves further into the problems associated with child soldiers and former child soldiers returning from war’;⁴⁰

³⁹ First Rule 68(2)(b) Decision, para. 7.

⁴⁰ Request, paras 18-20; Prior recorded testimony, UGA-D26-0015-1889.

- ii. Eric Awich Ochen (Witness D-0114), who already testified at trial, and whose additional evidence is proposed as ‘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’;⁴¹ and
 - iii. Ambrose Olaa (Witness D-0160), who is the Prime Minister of Ken Kwaro Acholi – ‘an organisation comprising leaders of the different clans of Northern Uganda of the Acholi people and promotes traditional customs and values’⁴² – and whose evidence is proposed as dealing with the subject of abductions into the LRA, Dominic Ongwen’s personal circumstances and ‘issues related to Acholi traditional justice and the available mechanisms of reconciliation and restorative justice in Northern Uganda for Mr Ongwen’s sentence’.⁴³
18. The Prosecution objects to the proposed recalling of Pollar Awich (Witness D-0133) and the introduction of his prior recorded testimony, on the ground that his evidence is cumulative and lacks significant probative value, and requests the Chamber to ‘reject [the witness’s] proposed report and testimony, or in the alternative to accept the report under rule 68(2)(b) but give it little or no weight’.⁴⁴ Similarly, the Prosecution objects to the recalling of Eric Awich Ochen (Witness D-0114) and the introduction of his expert report under Rule 68(3) of the Rules, on the grounds that he lacks the necessary expertise, that the issues touched upon by the report were all extensively covered at trial, including by numerous witnesses who provided first-hand accounts, and that the report lacks any probative value.⁴⁵ In the alternative, the Prosecution states that ‘[i]f the Chamber were inclined to receive the evidence, it should do so under rule 68(2)(b) and give it little or no weight’.⁴⁶ Finally, the Prosecution states that it ‘does not object to submission of the report

⁴¹ Request, paras 21-24; Prior recorded testimony, UGA-D26-0015-1907.

⁴² Request, para. 25.

⁴³ Request, paras 25-27; Prior recorded testimony, UGA-D26-0015-1812; Associated document – CV: UGA-D26-0015-1825.

⁴⁴ Prosecution’s Response, paras 9, 12.

⁴⁵ Prosecution’s Additional Response, paras 3-5.

⁴⁶ Prosecution’s Additional Response, para. 6.

of D-0160 under rule 68(3) or his proposed testimony *via* video link, subject to an opportunity for questioning by the Prosecutor at the sentencing hearing'.⁴⁷

19. The common legal representative of the victims participating in the proceedings opposes to the request as concerns Pollar Awich (Witness D-0133) and Ambrose Olaa (Witness D-0160), arguing that their proposed evidence is irrelevant,⁴⁸ as she does, on similar grounds, also in relation to the re-calling of Eric Awich Ochen (Witness D-0114).⁴⁹ The legal representatives of the participating victims submit that the proposed evidence of Pollar Awich and Ambrose Olaa pertains to issues which have already been considered and decided by the Chamber,⁵⁰ and, in relation to the latter, that evidence concerning Acholi traditional reconciliation rituals is in any case irrelevant under the Court's legal framework.⁵¹ They also oppose to the submission of the evidence of Eric Awich Ochen, arguing that its value has not been explained by the Defence.⁵²
20. As recalled, the Defence requests that the three witnesses under consideration be heard as live witnesses and that their prior recorded testimony be introduced under Rule 68(3) of the Rules. The Chamber observes that the primary purpose of Rule 68(3) of the Rules is to permit the calling party (in this case, the Defence) to rely on the prior recorded testimony of a certain witness while at the same time safeguarding the possibility for the non-calling party and the Chamber to orally examine the witness if they wish to. It is in this context that the appropriateness of a possible introduction of prior recorded testimony under Rule 68(3) of the Rules shall be determined. In the present instance, having considered the scope and subject-matter of the prior recorded testimony that the Defence requests to introduce pursuant to Rule 68(3) of the Rules, as well as the fact that two of the three witnesses concerned already testified live before the Chamber in the course of the trial, the Chamber does not consider that the proper conduct of the proceedings demands that the witnesses be subject to examination by the Prosecution, the legal representatives of victims or the Chamber itself. The prior recorded testimony obtained by the Defence from these witnesses may rather be introduced without the need for any such examination – therefore,

⁴⁷ Prosecution's Response, para. 8.

⁴⁸ CLRV Response, paras 23, 28.

⁴⁹ CLRV Response, paras 24-26.

⁵⁰ LRV Response, para. 13.

⁵¹ LRV Response, para. 15.

⁵² LRV Response, para. 12.

pursuant to Rule 68(2)(b) of the Rules. In this regard, the Chamber is satisfied that the Prosecution and the legal representatives of the participating victims are in a position to advance any relevant argument in relation to the evidence provided by these witnesses on the basis of their prior recorded testimony only. The Chamber recalls in this context that also the Prosecution itself submits, with respect to Witnesses D-0133 and D-0114, that, if accepted, their testimony should rather be introduced under Rule 68(2)(b) of the Rules without the need to call the witnesses to testify *viva voce*. The Defence would also be able to present fully its arguments on the basis of this evidence as already obtained and recorded, as it intended to. The fact that this material has been obtained very recently, and in the absence of any indication to the contrary on the part of the Defence, the Chamber is also satisfied that the Defence would equally not necessitate to conduct any further examination of the witnesses to elicit information besides that already recorded in the prior recorded testimony. In this regard, the Chamber also recalls that no distinction in terms of evidentiary weight ensues from the mere fact that the testimony concerned is introduced under Rule 68(2)(b) rather than being elicited orally in court.

21. In light of the above, given that the prior recorded testimony of the three witnesses under consideration may be introduced without the need for the witnesses to be examined orally in court, the Chamber decides to exercise its discretion to consider their introduction under Rule 68(2)(b) of the Rules. In this regard, the Chamber also observes that these statements do not go to proof of Dominic Ongwen's 'acts and conduct' within the meaning of Rule 68(2)(b) of the Rules and, therefore, there exists no procedural bar to the introduction of the material under consideration under this legal basis. Further, while taking note of the arguments raised by the Prosecution and by the two teams of legal representatives of victims in relation to the relevance and/or probative value of some of this material at issue, the Chamber decides not to exercise its discretion to address these matters at this point in the proceedings.
22. Accordingly, and without prejudice to the its eventual consideration of the relevance and probative value of this material, the Chamber decides to allow the introduction of the prior

recorded testimony of Pollar Awich (Witness D-0133),⁵³ Eric Awich Ochen (Witness D-0114)⁵⁴ and Ambrose Olaa (Witness D-0160)⁵⁵ pursuant to Rule 68(2)(b) of the Rules.

23. Also in these instances the introduction of the prior recorded testimony of the three witnesses is subject to the filing of their respective declarations under Rule 68(2)(b)(ii) and (iii) of the Rules. The same time limit as for all other witnesses is established for the filing of such declarations by these witnesses into the record of the case.
24. Fourth, the Defence requests the submission into evidence of two letters addressed to the Chamber by three organisations, the Acholi Religious Leaders Peace Initiative,⁵⁶ the Wang-oo Heritage of Acholi Leaders⁵⁷ and the Ker Kwaro Acholi.⁵⁸
25. These organisations request the Judges to take into account ‘the specific circumstances of Mr Ongwen’ and the Acholi traditional mechanism of ‘reconciliation and restorative justice’.⁵⁹ The Defence states its ‘propos[al] to submit the letter[s] through the Bar Table’ or, in the alternative, ‘[s]hould the Chamber deem this an inappropriate manner to submit the letter[s]’, pursuant to Rule 68(2)(b) of the Rules.⁶⁰ The Prosecution does not object to the submission of this material,⁶¹ while both teams of legal representatives of victims argue, *inter alia*, that this material, like any other proposed evidence concerning mechanisms of traditional justice and reconciliation, is irrelevant for the purpose of the sentence to be imposed on Dominic Ongwen under the legal framework of the Court.⁶²
26. The Chamber considers that three letters under consideration, rather than ‘evidence’ – whether testimonial or not, are in reality submissions made by the concerned organisations for the Chamber’s consideration. They do not contain any information directed at proving or disproving facts under consideration by the Chamber, nor are they, as emanating from organisations, otherwise attributable to a specific individual providing

⁵³ UGA-D26-0015-1889

⁵⁴ UGA-D26-0015-1907.

⁵⁵ UGA-D26-0015-1812; and its associated document, UGA-D26-0015-1825

⁵⁶ UGA-D26-0015-1832

⁵⁷ UGA-D26-0015-1833

⁵⁸ UGA-D26-0015-1901.

⁵⁹ Request, paras 48 and 52; Addendum, para. 6.

⁶⁰ Request, paras 49 and 53; Addendum, para. 7.

⁶¹ Prosecution’s Response, para. 3.

⁶² LRV Response, para. 15; CLRV Response, para. 30.

relevant testimony to the Chamber.⁶³ Rather, they are pleadings to the Chamber on what factors should be considered in the determination of the sentence in the present case. The Chamber recalls in this regard that a request by the Defence to allow submissions of, *inter alia*, organisations on issues concerning the determination of the sentence to be imposed on Dominic Ongwen was specifically considered and rejected,⁶⁴ in that the Chamber did not – and does not – find it appropriate to receive submissions, other than from the parties and participants, on the considerations to be taken into account for the determination of the sentence. The fact that these submissions from certain organisations have now been presented as ‘evidence’ rather than as submissions from prospective *amici curiae* does not change the (non-evidentiary) nature of the material under consideration.

27. Be it as it may, the Chamber acknowledges that the letters at issue have been submitted into evidence by the Defence. The Chamber, in the exercise of its discretion, does not consider it necessary to exclude these letters received from the three organisations comprising certain leaders of the Acholi community. This shall not be construed as attributing an evidentiary nature to this material, and is of course without prejudice to the eventual use that the Chamber will make of it in the final decision on the sentence.
28. The Chamber observes that, as a result of the present decision, and recalling that neither the Prosecutor nor the participating victims intend to present any additional evidence, no live evidence will be elicited orally at the hearing on sentence under Article 76 of the Statute, which will thus be limited to hear the participants’ additional submissions on the appropriate sentence to be imposed on Dominic Ongwen. As previously announced,⁶⁵ the Chamber will thus render a more precise schedule of the hearing, with further details as to the precise date and time of the individual sessions. A decision in this regard will be rendered shortly.
29. As a final matter, the Chamber notes that the Defence has redacted vis-à-vis the public the names of some proposed witnesses, and has indicated its intention to file a lesser redacted

⁶³ The Chamber notes in this regard that the letter from the Ker Kwaro Acholi is submitted ‘Under the seal of the Prime Minister of Ker Kwaro Acholi’, i.e. Ambrose Olaa, who is also Witness D-0160 and whose prior recorded testimony, following the present decision, is introduced under Rule 68(2)(b) of the Rules.

⁶⁴ ‘Decision on ‘Defence Request for Trial Chamber IX to accept Submissions on Sentencing Pursuant to Rule 103 of the Rules of Procedure and Evidence’’, 22 February 2021, [ICC-02/04-01/15-1778](#).

⁶⁵ ‘Decision scheduling a hearing on sentence and setting the related procedural calendar’, ICC-02/04-01/15-1763, paras 3 and 8.

version of its request following the Chamber's decision.⁶⁶ While the Chamber has refrained from referring in the present decision to the names of those witnesses whose identity has been withheld from the public, it observes that the Defence submitted that it did not propose for these witnesses any protective measures.⁶⁷ Thus, there appears to be no reason for keeping confidential the identity of these witnesses. In these circumstances, the Chamber finds it appropriate to set a time limit for the Defence to confirm to the Chamber that the Request can be reclassified as public or, alternatively, file a – lesser redacted – public version, as appropriate.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES to recognise the submission into evidence of items UGA-D26-0015-1722-R01 and UGA-D26-0015-1723 and corresponding translations (UGA-D26-0015-1722-R01_tENG and UGA-D26-0015-1723_tENG); and of items UGA-D26-0015-1832, UGA-D26-0015-1833 and UGA-D26-0015-1901;

DECIDES that, subject to the receipt of the respective declarations under Rule 68(2)(b)(ii) and (iii) of the Rules, the prior recorded testimonies of the following witnesses are introduced into evidence pursuant to Rule 68(2)(b) of the Rules:

- Professor Emilio Ovuga (Witness D-0042, UGA-D26-0015-1878);
- Professor Kristof Titeca (Witness D-0060, UGA-D26-0015-1835);
- Witness D-0163 (UGA-D26-0015-1864);
- Odong Johnson (Witness D-0008, UGA-D26-0015-1855);
- Witness D-0009 (UGA-D26-0015-1851);
- Witness D-0161 (UGA-D26-0015-1858);
- Witness D-0162 (UGA-D26-0015-1861);
- Pollar Awich (Witness D-0133, UGA-D26-0015-1889);
- Eric Awich Ochen (Witness D-0114, UGA-D26-0015-1907); and

⁶⁶ Request, para. 3.

⁶⁷ Request, paras 31, 39, 42, 45.


- Ambrose Olaa (Witness D-0160, UGA-D26-0015-1812), together with its associated document UGA-D26-0015-1825.

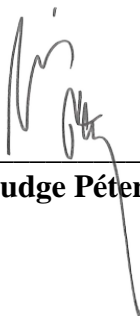
ORDERS that the declarations under Rule 68(2)(b)(ii) and (iii) of the Rules by the concerned witnesses be filed in the record of the case by Thursday, 1 April 2021;

REJECTS the remainder of the Defence request; and

ORDERS the Defence to file a lesser redacted version of the request (ICC-02/04-01/15-1783-Conf), or inform the Chamber that it can be reclassified as public, by Thursday, 25 March 2021.

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



Judge Bertram Schmitt, Presiding Judge

Judge Péter Kovács

Judge Raul C. Pangalangan

Dated 19 March 2021

At The Hague, The Netherlands