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**International
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Court**

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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 Request for Leave to Appeal the Decision on Defence Request for Medical
Examination of Mr. Ongwen**

Source: Defence for Mr. Dominic Ongwen

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. Pursuant to article 82(1)(d) of the Rome Statute ('Statute'), the Defence for Mr. Dominic Ongwen ('Defence') seeks leave to appeal Trial Chamber IX's ('Chamber') 'Decision on Further Defence Request for a Medical Examination' ('Defence Request for Leave to Appeal').¹
2. The Defence incorporates by reference the jurisprudence of this Court with respect to seeking leave to appeal as set out in prior requests.²
3. The Defence notes also articles 21(3), 64(2), 67(1) of the Statute. According to article 21(3) of the Statute the 'application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights [...]'.³ In this regard, the Defence points out relevant international human rights instruments concerning the treatment of detained persons with disabilities subject to proceedings before a criminal court.⁴

II. SUBMISSIONS

4. The Defence seeks leave to appeal the following three issues arising from the Decision:

A. Issue 1

Whether the Chamber's consideration of lateness with respect to the accused's testimony is consistent with its obligations under articles 21(3) and 64(2) of the Statute and with the accused's fundamental fair trial right to testify.

¹ *Ongwen*, Decision on Further Defence Request for a Medical Examination, [ICC-02/04-01/15-1622](#), 1 October 2019 ('Decision'); see also *Ongwen*, Defence Urgent Request to Order a Medical Examination of Mr. Ongwen, [ICC-02/04-01/15-1595-Red](#), 16 September 2019 ('Defence Request'); and *Ongwen*, Defence Request for Leave to Reply to CLRV, Prosecution and LRV Responses to 'Defence Urgent Request to Order a Medical Examination of Mr. Ongwen', ICC-02/04-01/15-1612, 26 September 2019 ('Defence Request for Leave to Reply').

² *Ongwen*, Defence Request for Leave to Appeal "Decision on Defence Request for Amendment of the Seating Schedule", [ICC-02/04-01/15-1334-Red](#), 10 September 2018, at paras 4 to 10.

³ *Palestine Situation*, Decision on Information and Outreach for the Victims of the Situation, [ICC-01/18-2](#), 13 July 2018, para. 9; in this context, the Appeals Chamber in the *Lubanga* case held: "[a]rticle 21 (3) of the Statute stipulates that the law applicable under the Statute must be interpreted as well as applied in accordance with internationally recognized human rights. Human rights underpin the Statute; every aspect of it, including the exercise of the jurisdiction of the Court. Its provision must be interpreted and more importantly applied in accordance with internationally recognized human rights [...]", see *Lubanga*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006, [ICC-01/04-01/06-772](#), 14 December 2006, at para. 37.

⁴ Articles 2, 4(2), 5(3) and 13(1) of the [Covenant on the Rights of Persons with Disabilities](#); articles 12(1) and 12(2)(d) of the [International Covenant on Economic, Social and Cultural Rights](#), and rules 27(2) and 30 of the [Nelson Mandela Rules](#); and article 13 of the [Convention on the Rights of Persons with Disabilities](#).

5. The right of Mr. Ongwen to testify and defend himself in a criminal trial cannot be under any circumstances restricted by the Chamber's imposed deadlines on submission of the Defence's list of witnesses. It is both axiomatic and consistent with international legal practice and international human rights instruments that an accused can decide to remain silent or decide to testify, regardless of any administrative timeliness.⁵
6. The ruling in **paragraph 12** that the Prosecution was correct in arguing that the Defence Request should be rejected *in limine* because the deadline for adding witnesses for the Defence has already passed and that Mr. Ongwen may be '*exceptionally*, allowed to testify in his defence' is inconsistent with the Chamber's obligations under articles 21(3) and 64(2) of the Statute and with the accused's article 67(1)(e) fair trial right. Lateness may be considered with respect to other witnesses presented by the parties, but it cannot apply to the accused who decides to testify against the charges.⁶
7. The Chamber's consideration of lateness with respect to the accused's final decision on whether to testify at the end of his case disregards the fundamental legal principles on fair trials and the minimum rights guaranteed to everyone charged with a criminal offence.⁷ There is no justification for a rule that denies an accused the opportunity to testify in his defence.
8. In conclusion, whether the Chamber's consideration of lateness is consistent with its obligations under article 21(3) and 64(2) of the Statute and with the accused's fundamental fair trial right to testify is an appellate issue that arises from the Decision.

B. Issue 2

Whether the Chamber is required, when determining if an accused is fit to stand trial under its article 64(2) obligations, to assess the meaningful exercise of all fair trial rights in a holistic manner, or the assessment can be based on an individual fair trial right, which forms the subject of separate orders of a medical examination.

9. The Defence position is that a fair trial right of an accused person to make an informed decision as to whether or not to testify on his/her behalf is a fundamental right which stands alone among

⁵ See, for example, [Rock v. Arkansas](#) (US Supreme Court) 483 U.S. 44, 51-53 (1987), which ruled that a defendant has a constitutional right to testify for his own behalf, see paras 49-52; see also [United States v. Teague](#) 908 F.2d 752 (1st Cir. 1990), at 1530-1532.

⁶ Decision, at para. 12.

⁷ Article 14(e) of the International Covenant on Civil and Political Rights; article 6(3)(c) and 14 of the European Convention on Human Rights; article 67(1)(e) of the Statute.

the fair trial rights. This means that while it could be argued that this right is related to the other fair trial rights, this individual right must be analysed alone. Here, the Chamber takes the erroneous position that all fair trial rights are fungible, and it fails to properly analyse and reach conclusions about the accused's capacity to make an informed decision as to whether or not to testify.

10. Therefore, it was erroneous as a matter of law for the Chamber to assess the Defence Request and the facts presented therein for the purpose of determining their impact on *all* of Mr. Ongwen's capacities necessary for the meaningful exercise of the article 67(1) fair trial rights, but not solely on his capacity to make an informed decision whether to testify or not. In the Defence's view, this amounted to an error of law that materially affected the Decision.
11. In **paragraph 15** of the Decision, the Chamber ruled that when determining if an accused is fit to stand trial, the assessment of the meaningful exercise of an accused's fair trial rights 'cannot be split up separately in individual, compartmentalised rights, which form subject of completely separated orders of a medical examination'. In support of its ruling the Chamber quotes a limited section from the *Gbagbo* Decision, which holds that 'a chamber must take into account all the relevant circumstances of each individual case'.⁸
12. First, the Defence explicitly requested the Chamber, on the basis of the information and all relevant circumstances available to it at that point in time, to determine whether there are sufficient indicia warranting the appointment of an impartial mental health expert to 'make a diagnosis as to any mental condition or disorder that Mr. Ongwen may suffer at the present time that makes him unable to make an informed decision whether or not to testify in his defence'.⁹ Instead, the Chamber examined the Defence Request in light of its support for any mental condition or disorder that would impact *all* Mr. Ongwen's rights.¹⁰
13. Second, the Chamber misinterpreted and misapplied **paragraph 51** from the *Gbagbo* Decision to support its legal conclusions. The limited part of **paragraph 51** quoted by the Chamber reads that it 'must take into account all the relevant circumstances of each individual case' when reaching its overall determination of fitness to stand trial. For the purpose of completeness, the other part of **paragraph 51** reads that 'the focus on article 67(1) of the

⁸ Decision, at paras 15-16; see also *Gbagbo & Blé Goudé*, Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, [ICC-02/11-01/11-286-Red](#), 2 November 2012 ('**Gbagbo Decision**'), at para. 51.

⁹ Defence Request, at paras 2, 3, 20, 21, 25, 26 and 27.

¹⁰ Decision, at paras 14 and 15.

Statute makes it clear that the question before the Chamber is not merely the existence of particular medical conditions, or what their sources are, but primarily whether these medical conditions affect the capacities of the person concerned to meaningfully exercise his or her fair trial rights'.¹¹

14. While **paragraph 51** refers to the article 67(1) fair trial rights as a whole, nothing in it suggests or requires the Chamber to assess all the capacities necessary for the meaningful exercise of the accused's fair trial rights as a whole, and not separately. In other words, while making an overall determination of fitness to stand trial, the Chamber is not prohibited from concluding that the accused is unfit to stand trial because of his or her inability to meaningfully exercise an individual, separate fair trial right. Therefore, the standard of assessment that the Chamber applied to the Defence Request, following its misinterpretation of the *Gbagbo* Decision, is incorrect.
15. Third, the Defence submits that indeed Mr. Ongwen's capacity to make an informed decision as to whether or not to testify may possibly interrelate or overlap with other capacities necessary for his meaningful exercise of the article 67(1) fair trial rights. Nevertheless, it would be unreasonable for the Chamber to suggest that this capacity is inseparable from other capacities, or that the capacity to make an informed decision can not be impaired and/or compromised by a mental condition or disorder as a stand-alone capacity.
16. For Mr. Ongwen to make an informed decision whether to testify in his defence, he will have to, for example, understand conditions, such as 'legal implications of his decision to testify', 'that the answers he uses can also be used against him', 'that the other party and participants are also allowed to pose him questions and that he must answer them',¹² 'that he is able to understand that he may choose to give testimony himself' or not to testify,¹³ but also 'to have the freedom to choose what to say'¹⁴, to have a 'basic capacity to understand the questions put to him and give rational and truthful answers to those questions',¹⁵ or to be able to withstand

¹¹ Gbagbo Decision, at para. 51.

¹² Decision, at paras 17-18.

¹³ *Kova evi*, Public Version of the Decision on Accused's Fitness to Enter a Plea and Stand Trial, [IT-01-42/2-I](#), 12 April 2006, at para. 5, subpara. 4.

¹⁴ Rothschild, Erdmann and Parzeller (2007), [Fitness for Interrogation and Fitness to Stand Trial](#), 104 Deutsches Ärzteblatt International 3029, at p. 2: 'The freedom to choose what to say is held to be substantially impaired when the relevant party "said more" under the influence of drugs "than he would have said without them," or if he was "in state of at least reduced free will and freedom of decision"'.¹⁵

¹⁵ *Joki*, Judgment on the Allegations of Contempt, [IT-05-88-R77.1-A](#), 27 March 2009, at para. 35.

the cross-examination.¹⁶ The Defence submits that some of these conditions are so specific to the accused's ability to make an informed decision whether to testify in his defence that it would be illogical and practically impossible to consider such conditions with respect to the meaningful exercise of other fair trial rights.

17. This view is supported by a ruling in the case of *R. v. Orr*, in which the Court of Appeal found that 'the appellant had been fit to participate in his trial up to the point of cross examination and thereby implicitly determined that the appellant was no longer able to fully participate in his trial within the 'Pritchard' refined criteria'. Put differently, the defendant's capacity to withstand a cross-examination was considered a separate issue from other capacities, including from his capacity to undergo the examination-in-chief. This resulted in the Court of Appeal ruling that the defendant was unfit to stand trial.¹⁷
18. In conclusion, whether the Chamber's assessment of all the capacities necessary for the meaningful exercise of Mr. Ongwen's fair trial rights, and not only his capacity to make an informed decision whether to testify amounted to an error of law is an appellate issue that arises from the Decision.

C. Issue 3

Whether the Decision discriminates against Mr. Ongwen, based on his documented mental health conditions and disabilities, by rejecting the appointment of an impartial mental health expert to assess his ability to make an informed decision whether or not to testify on his own behalf.

19. The central appellate issue that arises from the Decision is whether the Chamber's analysis and conclusions, which are based on the premise that Mr. Ongwen is a defendant, who does not suffer from any mental health condition and disability, are discriminatory. The Chamber's discriminatory approach against Mr. Ongwen, as a mentally disabled defendant, became most apparent in its analysis of the Defence Request and indicia therein to support the need for Mr. Ongwen's rule 135 examination as well as its *proprio motu* analysis of the Defence Experts' second report.

¹⁶ *R. v. Orr*, [2016] EWCA Crim 889.

¹⁷ *R. v. Orr*, [2016] EWCA Crim 889, at para. 29; see also Defence Request, at para. 12, referring to *T. v. UK* [1999] ECtHR, at para. 87: Where the Grand Chamber considered two separate abilities and held that due to T.'s PTSD combined with lack of any therapeutic work since the offence, had limited T.'s ability to instruct his lawyers and testify adequately in his own defence.

20. In its analysis and holdings, the Chamber discussed Mr. Ongwen and his participation as if he were not a mentally disabled defendant. For example, in **paragraph 17** of the Decision, the Chamber held that for Mr. Ongwen ‘to take a procedural decision it is not necessary that the accused has the same capacity as if he was a trained lawyer’. In **paragraph 18**, it held also that Mr. Ongwen needs to take an informed decision whether to testify in his defence, with the help and advice of his lawyers.
21. First, the Defence reiterates that whether Mr. Ongwen elects to testify in his defence is ultimately a matter for Mr. Ongwen, and he alone.¹⁸ An accused can be assisted by his/her counsel in the explanations as to what legal consequences might arise from certain choices; however, under no circumstances, can a Chamber invite the counsel to help or perhaps influence the accused’s decision whether to testify or not. It is the Chamber, as the ultimate guarantor of the fairness of proceedings, who has the duty to ascertain that the exercise of Mr. Ongwen’s fair trial rights is unfettered and not influenced by anyone.
22. If counsel perceives that a client’s ability to make an informed decision whether to testify or remain silent is impeded or even nullified by a client’s health status, it must promptly notify the Chamber to address this matter, as required under its articles 21(3) and 64(2) obligations. The counsel, in the present case, identified such difficulty and urgently approached the Chamber to resolve the matter in a fair and expeditious manner.¹⁹
23. Second, when considering whether Mr. Ongwen understands the conditions required to make an informed decision whether to testify in his defence, the Chamber failed to deal with him in a manner which takes full account of his thoroughly documented mental disabilities and disorders and mental vulnerability.²⁰
24. The mere fact that Mr. Ongwen is represented by lawyers²¹ is not enough, because his current mental state prevents his understanding of conditions necessary to make an informed decision whether to testify - the decision that only he alone can make. The key difference here lies

¹⁸ Defence Request, at para. 5.

¹⁹ Defence Request, at para. 5.

²⁰ Confidential report prepared by this Court’s appointed expert, UGA-D26-0015-0046-R01, at 0050; see also confidential annex A attached to the Defence Request; *Ongwen*, Defence Request for Leave to Appeal ‘Decision on Defence Request for Amendment of the Seating Schedule, [ICC-02/04-01/15-1334-Red](#), 1 October 2018; and *Ongwen*, Defence Request for Leave to Appeal ‘Decision on Defence Request for Amendment of the Seating Schedule, [ICC-02/04-01/15-1515-Red](#), 20 May 2019, at para. 15, footnote 14.

²¹ Decision, at para. 17, referring also to *Ongwen*, Decision on the Defence Request to Order a Medical Examination of Dominic Ongwen, [ICC-02/04-01/15-637-Red](#), 16 December 2016, at para. 10.

particularly in the fact that the standard applied by the Chamber concerns, generally, defendants without any mental disabilities or disorders, which is not the case of Mr. Ongwen.

25. For the reasons stated above, instead of rejecting the Defence Request on the premise that Mr. Ongwen understands the conditions necessary to make an informed decision whether to testify, the Chamber was required to apply the available standards on equal and meaningful participation by defendants with mental disabilities²² and take necessary precautions, such as the medical examination under articles 21(3) ad 64(2) of the Statute and rule 135 of the Rules.
26. In **paragraphs 24** and **27-28** of the Decision, the Chamber failed to fully assess the conclusions of the mental health experts regarding Mr. Ongwen's mental health.
27. First, in **paragraph 24**, the Chamber concluded that the ICC-DC Medical Officer's report does not contain any indicia indicating that a rule 135 examination is warranted. To support its conclusion, the Chamber referred to the following information from the report: 'the accused is medically fit to resume the trial process while remaining cautious about his individual circumstances', and 'while the medical officers of the detention centre continues to point out the implications of the accused's state he explains that the health of the accused will be continuously monitored and the Registry will be informed of any changes during the Court proceedings'.
28. In order to fully discharge its role in assisting the Chamber to establish the truth, the Defence submits that the same report from the ICC-DC Medical Officer also found that Mr. Ongwen 'is still mentally vulnerable to relapsing under stress', that he had an experience in the proceedings which made him unable 'to communicate properly with the Defence', and that 'apparent small incidents can suddenly bring him mentally out of balance'.²³
29. Second, in **paragraphs 27** to **28**, the Chamber assessed the second report prepared by the Defence Experts. To support its conclusion that the report does not contain any information warranting a medical examination under rule 135 of the Rules, the Chamber found that the

²² *Supra*, at para. 3, footnote 4, in particular article 13 of the [Convention on the Rights of Persons with Disabilities](#); see also Report of the Office of the United Nations High Commissioner for Human Rights, Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities, [A/HRC/37/25](#), 27 December 2017.

²³ While the Chamber quoted, in its public Decision, a specific section from a confidential Annex A attached to the Defence Request (ICC-02/04-01/15-1595-Conf-AnxA), the Defence quotes a different section from the same Annex A, for the purposes of fairness and completeness.

Defence Experts ‘made a recommendation with regard to a potential testimony by the accused’ and that in their report, ‘they state the ‘caution should be exercised in granting him this right’’.²⁴

30. The Chamber found further that the Defence Experts ‘do not give any indication that the accused would not be able to testify (or take a decision whether to do so) but seem to be motivated by a concern for his state of health in the framework of his rehabilitation’.²⁵
31. However, the full and relevant part of the report - within context - informs that ‘*[s]hould Mr. Ongwen wish to testify, caution should be exercised in granting him this right*’.²⁶
32. Thus, the Defence Medical Experts did not make (and were not asked to make) an assessment as to whether or not Mr. Ongwen had the capacity to make an informed decision as to whether he should testify. They simply identified the mental health issues which could occur, *if* he chose to testify. Based on these, they concluded that caution should be exercised.
33. It is apparent from **paragraphs 25** and **26** of the Decision that the Chamber failed to attribute due weight to the status of Mr. Ongwen, as a mentally disabled defendant, and abused its discretion by substituting its own untrained medical opinion for those of mental health experts.
34. The Chamber rejected the Defence argument that the medications (and their side effects) that Mr. Ongwen is taking may impair cognitive abilities, and therefore impact on his capacity to make an informed decision whether to testify in his defence.²⁷ To this end, the Chamber found that ‘the Defence does not claim that there are actually any side effects which impair the accused. It merely points out their possible existence’.
35. First, given that Mr. Ongwen’s mental health disabilities were an essential issue when considering the request for a rule 135 examination, the Chamber’s rejection thereof without attributing appropriate weight that Mr. Ongwen is taking medications prescribed to patients with impaired mental health was unreasonable in all the circumstances.²⁸

²⁴ Decision, at para. 27.

²⁵ Decision, at para. 28.

²⁶ UGA-D26-0015-0948, at 0980. (Italics added).

²⁷ Defence Request, at para. 24.

²⁸ See, for example, *Mladi*, Decision on Mladi’s Interlocutory Appeal Regarding Modification of Trial Sitting Schedule Due to Health Concerns, [IT-09-92-AR.73.3](#), 20 October 2013, at para. 16.

36. Second, the Defence recognizes that each person can react to medications in a different and individual way, including Mr. Ongwen. The Defence reiterates also its agreement with the LRV position on this point that ‘the Defence relies on open source material regarding possible drug side effects, *without any expert material*, let alone material specifically directed to the actual observed effects of those medicines on Mr Ongwen’.²⁹ This is particularly why an impartial mental expert opinion is necessary, and the Defence requested the same.
37. The Chamber’s point that the Defence should have supported its Request with any side effects that impair the accused is unreasonable. Not being Mr. Ongwen’s physician(s), who prescribed the medication, it would be both legally and ethically inappropriate for the Defence to venture to provide an untrained opinion beyond the visible effects and complaints by Mr. Ongwen on the side effects of the medications. Once this was brought to the attention of the Chamber, it was its duty as the guarantor of the rights of Mr. Ongwen to order an enquiry. This is especially true where expert opinion could be available to confirm or deny the medications’ side effects and their impact on Mr. Ongwen’s capacities.
38. However, the Chamber has decided to reject the possibility of eliciting expert opinion by concluding that the ‘potential side effects and their effects on the accused’s capacity are hypothetical and amount to speculation’.³⁰ Put differently, the Chamber is not a mental health professional and yet its decision has had the effect of concluding that Mr. Ongwen does not suffer any mental impairment from his medicine regimen.³¹
39. In summary, the Chamber’s discriminatory approach against Mr. Ongwen’s disability materially affected the Decision and resulted in finding that there are no indications which give rise to an order for a medical examination under rule 135 of the Rules. In these circumstances, Issue 3 is an appellate issue that arises from the Decision.

D. Issues 1-3 satisfy the legal criteria under article 82(1)(d) of the Statute

40. The key premise of Issues 1-3 is whether the Decision rejecting the appointment of an impartial mental health expert is consistent with Mr. Ongwen’s fair trial right to testify, as a defendant with documented mental conditions and disabilities.

²⁹ *Ongwen*, Victims’ response to the “Defence Urgent Request to Order a Medical Examination of Mr. Ongwen”, ICC-02/04-01/15-1607-Conf, 23 September 2019. (Italics added).

³⁰ Decision, at para. 26.

³¹ See, for example, *Mladi*, Decision on Mladi’s Interlocutory Appeal Regarding Modification of Trial Sitting Schedule Due to Health Concerns, [IT-09-92-AR.73.3](#), 20 October 2013, at para. 13.

41. It is essential that the accused charged with criminal offences is dealt with in a manner which takes full account of his several symptoms of post-traumatic stress disorder, depression and dissociative disorders³² as well as daily medicine regimen, and that steps are taken to safeguard his abilities to meaningfully participate in the proceedings.
42. International human rights law guarantees Mr. Ongwen's right to health, first and foremost, as a human being with inherent dignity, but also as a defendant with mental disabilities.³³ The effects of the Decision violate these guarantees.
43. Due process and a fair adversarial process requires that Mr. Ongwen is able to enjoy his fair trial right to decide whether or not to testify equally to defendants without any disabilities. The Chamber's Decision rejecting the Defence Request to order the rule 135 examination of Mr. Ongwen, on this very limited matter, fails to implement such equality and therefore is discriminatory, unfair and in violation of articles 21(3), 64(2) and 67(1)(e) of the Statute.
44. The Defence Request neither imposed any disproportionate or undue delay on the proceedings, nor prejudiced the interests of the parties and participants. The testimony of the accused is in the interests of both justice and expeditious conclusion of the proceedings. While the proposed examination of Mr. Ongwen by an impartial mental health expert could have a minimal impact on the expeditious conduct of the proceedings, the Chamber's Decision denying Mr. Ongwen's right to make an informed decision as to whether or not to testify will have a major effect on the interests of both justice and *fair and expeditious conduct of the proceedings*.
45. Moreover, issues that touch on the accused's fundamental fair trial right to testify and Mr. Ongwen's mental health '[are] of high importance in this case'³⁴ and therefore *impact upon the outcome of the Ongwen case*.
46. The Defence reiterates the urgent need to appoint an impartial mental health expert to resolve the matter whether Mr. Ongwen's capacity to make an informed decision whether to testify is impacted by any mental condition or disorder. It thus requests the Chamber to allow the Defence to seize the Appeals Chamber with this matter in order to protect Mr. Ongwen's health

³² Confidential report prepared by this Court's appointed expert, UGA-D26-0015-0046-R01, at 0050.

³³ *Supra*, at para. 3, footnote 4.

³⁴ *Ongwen*, Decision on Requests related to the Testimony of Defence Expert Witnesses D-0041 and D-0042, [ICC-02/04-01/15-1623](#), 1 October 2019, at para. 16; see also *Ongwen*, Decision on Prosecution Requests Related to Mental Health Expert Evidence, [ICC-02/04-01/15-1073](#), 16 November 2017, at para. 13.

and ensure a fair trial. Given that the Defence's presentation of evidence will be concluded in the upcoming months, the Defence submits that this matter must be dealt with urgently.

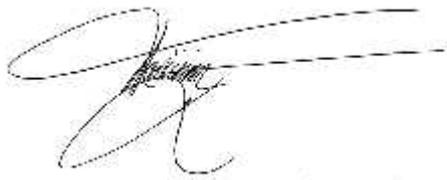
47. Therefore, in the interests of protecting Mr. Ongwen's status as a mentally disabled defendant and implementing both the Chamber's article 64(2) obligations and Mr. Ongwen's fundamental fair trial right to testify under article 67(1)(e) of the Statute *an immediate resolution of the Issues by the Appeals Chamber would materially advance the proceedings.*

III. RELIEF SOUGHT

48. For the reasons stated above, the Defence respectfully requests that the Chamber

GRANT the Defence request for leave to appeal the Issues arising from the Decision.

Respectfully submitted,



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

Dated this 7th day of October, 2019