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**International
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Date: **10 October 2016**

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 the Prosecution's second request for introduction of
prior recorded testimony pursuant to rule 68(2)(b) of the Rules, 20 September 2016,
ICC-02/04-01/15-538-Conf**

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

Ms Fatou Bensouda
Mr James Stewart
Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo
Mr Charles Taku

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda
Ms. Caroline Walter

The Office of Public Counsel for the Defence

Amicus Curiae

States Representatives

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests, pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”), conditional admission into evidence of the prior recorded testimony, including related documents (collectively, “rule 68(2)(b) documents”),¹ of witnesses P-0274,² P-0281, P-0029, P-0337, P-0404, and P-0256 (“rule 68(2)(b) witnesses”).
2. P-0274 and P-0281 are victims of the attacks on Odek and Abok IDP camps, respectively. P-0029, P-0337, and P-0404 are UPDF personnel who were involved in intercepting LRA communications. P-0256 is a Forensic Officer in the Forensic Science Section of the Prosecution. The witnesses in question provide corroborative crime base evidence about the attacks on Odek and Abok IDP camps or general, background information regarding the interception of LRA communications. The Prosecution does not seek to rely on the rule 68(2)(b) documents to prove any fact relating to the acts and conduct of the accused.
3. The rule 68(2)(b) documents feature on the list of evidence submitted on 6 September 2016, and have been disclosed to the Defence. Acholi translations of these documents, where relevant, have also been disclosed, or will be disclosed by 24 September 2016. Annex A appended to this motion contains a list of the evidence registration numbers of the rule 68(2)(b) documents.

¹ The related documents are those referred to by the witnesses in their statements or otherwise annexed thereto. Case law has established that, in the case of introduction of written statements under Rule 68, “any documentary evidence annexed is also to be considered submitted”, [ICC-02/11-01/15-573-Red](#), para 9. While the defence teams of Laurent Gbagbo and Charles Blé Goudé sought leave to appeal this position, these requests were rejected. See [ICC-02/11-01/15-612](#), paras 21-22.

² This is the second statement of P-0274 that the Prosecution seeks to admit under rule 68(2)(b). See [ICC-02/04-01/15-465-Conf-Corr](#), para. 54-58. P-0274’s second statement was signed on 16 July 2016, and thus could not form part of the first rule 68 application made on 16 June 2016.

CONFIDENTIALITY

4. This submission is classified as “Confidential” as it refers to the identity of Prosecution witnesses. The Prosecution will file a public redacted version of this motion.

SUBMISSIONS

A. Legal framework

5. Rule 68(2)(b)³ allows the introduction of prior recorded testimony where it goes to proof of a matter other than the acts and conduct of the accused. Prior recorded testimony, in the context of Rule 68, includes written statements and transcripts of interviews taken pursuant to rules 111 and 112 of the Rules, and associated exhibits.⁴ It includes the admission of prior recorded testimony *in whole* or *in part*.⁵ Rule 68(2)(b) requires that the evidence relates to “a matter other than the acts and conduct of the accused”. The expression “acts and conduct of the accused” has been construed in the jurisprudence of the *ad hoc* international criminal tribunals to refer to the “deeds and behaviour of the accused”, such that they seek to establish the accused’s responsibility under any

³ The rule as amended by resolution ICC-ASP/12/Res.7 applies in this case, because the amendment was adopted prior to commencement of trial. [ICC-01/09-01/11-2024](#), para. 81.

⁴ [ICC-02/11-01/15-573-Red](#), para. 9, [ICC-01/09-01/11-1938-Corr-Red2](#), paras. 31-33; [ICC-01/04-01/06-1603](#), para. 18; [ICC-01/04-01/07-2289-Corr-Red](#), para.11; [ICC-01/04-01/07-2362](#), para. 13; [ICC-01/05-01/08-2012-Red](#), paras. 134-136 and [ICC-01/05-01/08-1386](#), paras. 79-81.

⁵ ICTY, *Prosecutor v. Karadžić*, Case No.IT-95-5/18-T, T.Ch., Decision on Prosecution’s Second Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to rule 92bis (Witnesses ARK Municipalities), 18 March 2010, paras. 32, 38, 40, 63(c) (admitting in part the evidence of two witnesses pursuant to a similar procedural rule — ICTY rule 92bis — upon the condition that the Prosecution redact the portion of their testimony that pertained to the acts and conduct of the accused). Similarly, Chambers at the ICC have countenanced applications where admission of testimony was requested “in whole or in part”. ([ICC-01/04-02/06-729](#). See especially. para. 1).

applicable mode of liability.⁶ The acts and conduct of the accused must be distinguished from the acts and conduct of others who commit crimes for which the accused is alleged to be responsible.⁷ Proof of the latter is admissible under rule 68(2)(b).

6. Rule 68(2)(b)(i) provides a list of factors to guide a Chamber's exercise of its discretion. This includes whether the prior recorded testimony in question: (i) relates to issues that are not materially in dispute; (ii) is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts; (iii) relates to background information; (iv) is such that the interests of justice are best served by its introduction; and (v) has sufficient indicia of reliability.⁸ These factors are not mandatory pre-requisites for the admission of evidence under the rule. As noted by the Trial Chamber in *Gbagbo et al.*, Rule 68(2)(b)(i) merely "[...] provides *examples* of factors that the Chamber *may* take into account for its determination."⁹ (emphasis added).

7. The Rules do not require the applicant to show that the witness is unavailable. As emphasised by the Trial Chamber in *Gbagbo et al.*, the "essence of rule 68(2)(b) [...] is to allow for streamlining of the evidentiary proceedings by not

⁶ See *Prosecutor v. Milošević*, IT-02-54-T, Decision on Prosecution's Request to have Written Statements Admitted under rule 92bis, 21 March 2002, para. 22 ("Milošević Decision"): "The phrase 'acts and conduct of the accused' in rule 92bis is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and conduct by alleged co-perpetrators, subordinates or, indeed, of anybody else. Had the rule been intended to extend to acts and conduct of alleged co-perpetrators or subordinates it would have said so"; *Prosecutor v. Karadžić*, IT-955/18-PT, Decision on the Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to rule 92bis (Witnesses for Sarajevo Municipality), 15 October 2009, para. 5 ("Karadžić Decision"); *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to rule 92bis and Prosecution Motion to Admit GH-139's Evidence Pursuant to rule 92bis, 24 January 2013, para. 15 ("Hadžić Decision").

⁷ Karadžić Decision, para. 5; *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning rule 92bis(C), 7 June 2002, para. 10 ("Galić Decision"); Hadžić Decision, para. 15; *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to rule 92bis, 22 August 2008, para. 17 ("Lukić Decision").

⁸ Rule 68(2)(b)(i).

⁹ [ICC-02/11-01/15-573-Red](#), para. 10.

calling some witnesses in person, *even if they are available*.”¹⁰ (emphasis added).

B. Request for admission of Rule 68(2)(b) Documents

8. The Prosecution requests the conditional admission of the rule 68(2)(b) documents pending the filing of accompanying declarations pursuant to rules 68(2)(b)(ii) and (iii).¹¹ The rule 68(2)(b) documents go to the proof of matters other than the acts and conduct of the accused. The accounts of the witnesses in question provide crime base evidence regarding the attacks on Odek and Abok IDP camps or general background information regarding the UPDF's interception of LRA radio communications.
9. The Prosecution does not seek to rely on the rule 68(2)(b) documents to prove any fact relating to the acts and conduct of the accused. Nor does the Prosecution seek to rely on the rule 68(2)(b) documents to prove a “core, and disputed”¹² or “critical and live” issue,¹³ or a matter that is “proximate to the accused”¹⁴ in the case. The evidence sought to be admitted through this motion is cumulative or corroborative, in that other witnesses will provide live testimony regarding the same, often in greater detail.

¹⁰ [ICC-02/11-01/15-573-Red](#), para.11.

¹¹ If the Chamber determines that the rule 68(2)(b) documents should, in principle, be admitted, the Prosecution will obtain the requisite rule 68(2)(b) declarations. Regarding the proposed format of the declarations, the Prosecution intends to use the same template as that proposed in the Prosecution's initial submission pursuant to rule 68(2)(b). See [ICC-02/04-01/15-465-AnxB](#). The practice of conditional admission under rule 68(2)(b) has been accepted in the jurisprudence of other Trial Chambers. The Prosecution notes in this context that Trial Chamber IX has recognised that it “always retains the discretion to rule on admissibility related issues upfront when appropriate” ([ICC-02/04-01/15-497](#), para.26).

¹² See reference to such issues at [ICC-02/11-01/15-573-Red](#), para. 15.

¹³ *Prosecutor v. Popović et al.*, no. IT-05-88-T, Decision on Prosecution's Confidential Motion for Admission of Written Evidence in Lieu of Viva Voce Testimony Pursuant to rule 92bis, 12 September 2006, para. 15

¹⁴ *Prosecutor v. Tolimir*, Decision on Prosecution's Motion for Admission of Written Evidence Pursuant to rules 92bis and 94bis, 7 July 2010, para. 67.

10. The Prosecution will first address, below, the interests of justice and indicia of reliability as they apply to all of the proposed rule 68(2)(b) witnesses. The Prosecution will then address the remaining factors – the fact that the evidence relates to issues that are not materially in dispute, the cumulative or corroborative nature of the evidence and the fact that the evidence relates to background information – by witness or category of witness, as applicable.

(i) Rule 68(2)(b) factors applicable to all witnesses

a) Interests of justice

11. The admission of the rule 68(2)(b) documents is in the interests of justice for several reasons. *First*, admitting the rule 68(2)(b) documents into evidence ensures the accused is tried without undue delay. As noted by the Appeals Chamber, expeditiousness is “an independent and important value in the Statute to ensure the proper administration of justice [and] [f]or this reason, article 64(2) enjoins the Trial Chamber to ensure that the trial is both fair and expeditious.”¹⁵ *Second*, some of the rule 68(2)(b) witnesses underwent traumatic experiences. Recalling violent events forces them to bring back painful memories and may cause them significant distress. Introducing the statements of these witnesses by means of rule 68(2)(b) would spare them this experience. For others, introducing their prior recorded testimony into evidence pursuant to rule 68(2)(b) minimises the impact on their professional and personal life in Uganda. *Third*, rule 68(2)(b) has the effect of reducing the financial cost to the Court.

¹⁵ [ICC-01/04-01/07-2259 OA10](#), para. 47.

12. On 7 July 2016, Trial Chamber I granted leave to appeal, *inter alia*, the issue of whether “the Chamber erred in law in posing ‘good trial management’ as a guiding principle for the admission of prior statements”.¹⁶ The issue, currently considered by the Appeals Chamber, does not affect this application. In the pending appeal, Mr Gbagbo argues that the Majority’s sole or main consideration in applying rule 68 was “trial management”.¹⁷ Similarly, Mr Blé Goudé argues that the Majority considered “good trial management” as the “one” or “sole criterion”.¹⁸ The Prosecution in this case does not rely on “good trial management” as the sole guiding principle but merely as one of several factors to be considered in the context of the “interests of justice”. The Prosecution also makes submissions relating to other factors beyond the interests of justice, including those set out in rule 68(2)(b).

13. The admission of the rule 68(2)(b) documents does not prejudice the rights of the accused: Since the rule 68(2)(b) witnesses are corroborative or cumulative witnesses, any challenges that the Defence may wish to raise regarding the issues addressed in their statements – including the attacks on Odek or Abok IDP camps, or the intercepted LRA radio communications – can be raised during the cross examination of other witnesses who will give detailed live testimony pertaining to the same matters. In the context of the intercept evidence, as discussed in greater detail below, the Defence can also raise issues relating to admissibility or weight when the Prosecution submits its bar table motion.

¹⁶ [ICC-02/11-01/15-612](#), page 11.

¹⁷ [ICC-02/11-01/15-633-tENG](#), paras. 23-24, 30, 47, 49. These allegations are contested by the Prosecution.

¹⁸ [ICC-02/11-01/15-632-Red](#), paras. 14, 20. These allegations are contested by the Prosecution.

b) Sufficient indicia of reliability

14. The prior recorded testimony of the rule 68(2)(b) witnesses has sufficient indicia of reliability: The statements include information as to how the witness came to know of particular facts, distinguishing between circumstances where a witness has direct knowledge of events from where the witness obtained the information from another source.¹⁹ The statements also contain information about the vantage point of the witness and his or her ability to perceive events,²⁰ the capacity of the witness to understand a particular utterance,²¹ and how, where relevant, the witness developed expertise in a particular area.²² The Prosecution also sets out below how the testimony of the rule 68(2)(b) witnesses is corroborated by the evidence of witnesses who will provide live testimony. Moreover, the interviews that produced the prior recorded testimony were conducted in accordance with the procedures under the Rome Statute and Rules.
15. On 7 July 2016, Trial Chamber I also granted leave to appeal the issue of whether “the Chamber erred by limiting its analysis of sufficient indicia of reliability to the formal requirement that the statement be taken by the Prosecution ‘pursuant to Rule 111 of the Rules and under all applicable guarantees, including article 54(1).²³ This too does not affect the merits of the current application. The Prosecution is not relying solely on these formal requirements. As evident from the paragraph above, and the individualised

¹⁹ For example, see the statement of P-0281, [UGA-OTP-0261-0257](#) at -0260 (“They said that they had seen some rebel soldiers crossing the road and were surrounding the camp.”).

²⁰ For example, see the statement of P-0281, [UGA-OTP-0261-0257](#) at -0261 (“It was difficult to look at them because we were lying on the floor but I saw that they had long hair and were wearing combats like the government soldiers wore.”)

²¹ For example, see the statement of P-0281, [UGA-OTP-0261-0257](#) at -0261. (“I can understand Acholi because it is very similar to Lango and I can tell the difference between them.”)

²² For example, see the statement of P-0400, [UGA-OTP-0267-0470](#) at -0472 (the witness describes in detail the training he received in radio communications).

²³ ICC-02/11-01/15-612, page 11.

analyses below, in addition to the formal, procedural indicators of reliability, the rule 68(2)(b) documents feature substantive, content-related indicators of reliability.

(ii) Individual analysis of the witnesses

a) Witnesses principally related to the charged attacks on IDP camps

UGA-OTP-P-0274 [REDACTED]

16. P-0274 is a victim of the attack on Odek on 29 April 2004. He was the former camp leader of Odek IDP camp from [REDACTED]. This is the second statement of P-0274 that the Prosecution seeks to admit under rule 68(2)(b).²⁴ P-0274's prior recorded testimony goes to proof of matters other than the acts and conduct of Dominic Ongwen: This very limited statement exclusively concerns population details in Odek IDP camp in early 2004. In Annex A to the statement, P-0274 describes excerpts from his notebook which contains a table of sub-villages within the camp, the number of households and the number of family members in each household.²⁵

17. In Annex B to his statement, P-0274 describes excerpts from his notebook, which lists the location of the camp in Palaro Parish, Odek sub-county, the size of the camp which was 800 square metres, the names of the leaders of each block, the names of the camp officials and committee members. It also contains information on the number households and population within each block of

²⁴ See [ICC-02/04-01/15-465-Conf-Corr](#), para. 54-58. P-0274's second statement was signed on 16 July 2016, and thus could not form part of the first rule 68 application made on 16 June 2016.

²⁵ P-0274, [UGA-OTP-0267-0174](#) at 0177, referring to Annex A ([UGA-OTP-0267-0180](#)).

Odek IDP camp in early 2004.²⁶ The Prosecution notes that one of the issues raised by Defence in relation to P-0274's first statement was the lack of population figures from Odek IDP camp. This issue is addressed by the second statement and its annexes.²⁷

Issues that are not materially in dispute

18. The Defence has not disputed that large numbers of civilians lived in Odek IDP camp in 2004.

Cumulative or corroborative nature

19. P-0274's testimony is of a cumulative or corroborative nature. Other crime-base witnesses also speak to the fact that large numbers of civilians were living in Odek IDP camp in 2004. For example, P-0218, P-0269, P-0252 and P-0275 (all former residents in Odek IDP camp) will each testify *viva voce* as to the presence of large numbers of civilians living in Odek IDP camp in 2004.

UGA-OTP-P-0281 [REDACTED]

20. P-0281 was a resident of Abok IDP camp who fled after LRA rebels broke into her home and pillaged personal property on the night of 8 June 2004. Her prior recorded testimony goes to proof of matters other than the acts and conduct of Dominic Ongwen: She describes how, at 9pm on 8 June 2004 rebels attacked Abok IDP camp.²⁸ As P-0281 and her family attempted to flee the camp three rebels with long hair, carrying guns and speaking Acholi broke into their

²⁶ P-0274, [UGA-OTP-0267-0174](#) at 0177, referring to Annex B ([UGA-OTP-0267-0182](#)).

²⁷ See [ICC-02/04-01/15-509-Conf-Corr](#), para. 179.

²⁸ P-0281, [UGA-OTP-0261-0257-R01](#) at 0261.

house.²⁹ One of the rebels demanded money from P-0281's father and beat him continuously with the butt of a gun.³⁰ The other two rebels searched the house and took money and clothes.³¹ P-0281 also saw the rebels set houses in the camp on fire.³² In the aftermath of the attack P-0281 saw dead bodies of children and adults strewn all over the camp.³³ She confirms that some of the bodies had been burned to death, had gunshot wounds and some had the back of their heads smashed.³⁴ P-0281 further confirms that animals tied to verandas of houses in the camp were burned in the fire or had been shot during the attack.³⁵

Cumulative or corroborative nature

21. P-0281's evidence is cumulative or corroborative in nature: Witnesses P-0280, P-0286, P-0293, P-0304 and P-0306, in their oral testimony, will describe the killings, pillaging and destruction of property that took place at Abok IDP camp on 8 June 2004.

b) Witnesses related to intercepted communications

22. The seven paragraphs immediately following apply to witnesses P-0029, P-0337 and P-0404. The submissions are grouped together in light of the similar backgrounds of these witnesses.

²⁹ P-0281, [UGA-OTP-0261-0257-R01](#) at 0261.

³⁰ P-0281, [UGA-OTP-0261-0257-R01](#) at 0261.

³¹ P-0281, [UGA-OTP-0261-0257-R01](#) at 0261.

³² P-0281, [UGA-OTP-0261-0257-R01](#) at 0262.

³³ P-0281, [UGA-OTP-0261-0257-R01](#) at 0262-0263.

³⁴ P-0281, [UGA-OTP-0261-0257-R01](#) at 0263.

³⁵ P-0281, [UGA-OTP-0261-0257-R01](#) at 0263.

Cumulative or corroborative nature

23. Six of the eighteen intercept witnesses that the Prosecution relies on worked with the UPDF.³⁶ P-0029³⁷ was in charge of the UPDF interception operation. P-0003³⁸ and P-0339³⁹ were two of the UPDF's principal intercept operatives, operating respectively in Gulu and in various locations in northern Uganda. P-0400⁴⁰ and P-0404⁴¹ were other UPDF intercept operatives. P-0337⁴² was the Officer Commanding in Gulu and administrative head of the UPDF interception and direction-finding operations in northern Uganda. All provide similar testimony of the interception process and the procedures. For this reason, the Prosecution intends to call only P-0003 and P-0339 to give oral testimony; as two of the UPDF's principal intercept operatives, these witnesses are best placed to describe the interception process.
24. The existence of the UPDF interception operation is also independently corroborated by other Prosecution witnesses. Five ISO interception operatives corroborate the existence of the UPDF operation,⁴³ as does P-0126 from the Ugandan Police Force.⁴⁴ Further, independent corroboration of the Ugandan government's intercept operation is provided by former LRA fighter P-0019, who was a signaller while he was in the LRA and later served in the UPDF.⁴⁵ P-0019 will testify in court.

³⁶ The others worked with the Internal Security Organisation ('ISO') – P-0027, P-0032, P-0059, P-0291, P-0301, P-0303, P-0384, P-0385 and P-0386 – and the Ugandan Police Force – P-0125, P-0126 and P-0370.

³⁷ P-0029, [UGA-OTP-0027-0231-R01](#).

³⁸ P-0003, [UGA-OTP-0027-0214-R01](#), [UGA-OTP-0069-0803-R01](#), [UGA-OTP-0246-0077-R01](#).

³⁹ P-0339, [UGA-OTP-0258-0732-R01](#).

⁴⁰ P-0400, [UGA-OTP-0264-0015-R01](#).

⁴¹ P-0404, [UGA-OTP-0267-0470](#).

⁴² P-0337, [UGA-OTP-0256-0201-R01](#).

⁴³ P-0027, [UGA-OTP-0207-0256-R01](#) at 0257; P-0032, [UGA-OTP-0246-0003-R01](#) at 0013; P-0059, [UGA-OTP-0258-0699-R01](#) at 0707-0708; P-0291, [UGA-OTP-0246-0061-R01](#) at 0070-0071; P-0301, [UGA-OTP-0249-0423-R01](#) at 0427-0428.

⁴⁴ P-0126, [UGA-OTP-0253-0764-R01](#) at 0773.

⁴⁵ P-0019, [UGA-OTP-0262-0176-R01](#) at 0180-0181; see also [UGA-OTP-0218-0571-R01](#) at 0591-0592.

Issues that are not materially in dispute

25. The evidence of P-0029, P-0337 and P-0404 is focused on the LRA radio interception operation carried out from at least July 2002 to December 2005 by the UPDF. The existence of this operation is not materially in dispute. In its pre-confirmation submissions and at the confirmation hearing, the Defence made repeated reference to the LRA's radio communications and acknowledged that they had been intercepted and recorded by the UPDF.⁴⁶ During the confirmation hearing, the Defence referred to UPDF intelligence reports to support its submissions.⁴⁷

Relates to background information

26. Unlike the logbooks and sound recordings of intercepted communications, the intercept evidence in the rule 68(2)(b) documents is not directly related to the charges. The latter merely provides the background of how the intercept evidence was intercepted, recorded, reported to superiors, stored and collected by the Prosecution.

27. The Prosecution intends to obtain admission of the substantive intercept evidence, including logbooks and audio recordings of intercepted communications, principally via a bar table motion, and the remainder through witnesses who will testify *viva voce*. It does not intend to seek admission of such evidence through witnesses P-0029, P-0337 or P-0404. Hence, a challenge to the admission of substantive intercept evidence, such as the intercept logbooks or audio tapes containing intercepted communications, is most appropriately done in response to the Prosecution's bar table motion seeking admission of the body of intercept evidence or through cross-examination of live witnesses.

⁴⁶ [ICC-02/04-01/15-404-Conf](#), at paras 24, 89; see also [ICC-02/04-01/15-T-22-ENG](#), at pp. 68-69.

⁴⁷ [ICC-02/04-01/15-T-23-CONF-ENG](#), pp. 30, 35-36.

28. Even if the Defence intends to highlight errors in the process of collecting and recording the intercepted communications,⁴⁸ or explore purported tension between radio operators,⁴⁹ it will have the opportunity to examine the key witnesses involved in the UPDF interception process, P-0003 and P-0339, as well as key ISO operative P-0059 and police operative P-0125. Repeating the same process with all eighteen intercept witnesses would result in needlessly repetitive questioning of witnesses who provide cumulative evidence. In any event, the dispute that arose between P-0003 and other intercept witnesses occurred in 2006,⁵⁰ which is outside the charged period.

Direction finding information

29. The prior recorded testimony of P-0029, P-0337 and P-0404 includes information on radio-related direction finding. However, as set out in the pre-trial brief,⁵¹ the Prosecution does not intend to rely on information regarding direction finding to prove its case.

UGA-OTP-P-0029 [REDACTED]

30. Witness P-0029 oversaw the interception of LRA radio communications by the UPDF in Gulu and other locations in northern Uganda. His prior recorded testimony goes to proof of matters other than the acts and conduct of Dominic Ongwen: P-0029 states that the UPDF began to intercept LRA radio communications from Gulu in 1997, to inform the UPDF's tactical and strategic decisions in the conflict against the LRA.⁵² He states that as the LRA moved

⁴⁸ See for example, [ICC-02/04-01/15-509-Conf-Corr](#), para 84.

⁴⁹ The Defence raised this issue in its response to the Prosecution's first request under rule 68(2)(b). See [ICC-02/04-01/15-509-Conf-Corr](#), paras 97-103, citing a letter written by P-0059: [UGA-OTP-0242-0219](#). It has also been addressed in the Prosecution's pre-trial brief. See [ICC-02/04-01/15-533](#), paras 84, 87.

⁵⁰ After P-0003 was promoted to the rank of Warrant Officer (P-0003, [UGA-OTP-0246-0077](#) at 0079) and given control of the UPDF interception operation (P-0059, [UGA-OTP-0258-0699](#) at 0708).

⁵¹ [ICC-02/04-01/15-533](#), para.78.

⁵² [UGA-OTP-0027-0231-R01](#) at 0234; [UGA-OTP-0267-0455](#) at 0457-0458.

around northern Uganda, he deployed UPDF interception teams accordingly, which then intercepted from other UPDF division barracks.⁵³ P-0029 describes the history of the UPDF interception operation.⁵⁴ He names UPDF staff who worked under him.⁵⁵ He outlines the process by which his staff intercepted, decoded and recorded the LRA's radio communications, and the equipment that they used to do so.⁵⁶

31. P-0029 also details how his interception team reported to UPDF divisional commanders and to the UPDF hierarchy in Kampala.⁵⁷ He explains how the records that his team made, including rough notes, logbooks and tapes, were stored.⁵⁸ He briefly sets out how the LRA used the radio: timings, communication methods and patterns, and reporting chains.⁵⁹ He explains the form and content of UPDF intelligence reports produced in Kampala.⁶⁰ P-0029 also describes briefly the UPDF's direction-finding operation.⁶¹ Finally, P-0029 sets out his interaction with the ICC, including material that he provided to the ICC.⁶²

UGA-OTP-P-0337 [REDACTED]

32. Witness P-0337 was the commanding officer of the UPDF direction-finding and LRA radio communication interception team in Gulu, and the administrative head of the UPDF radio interception and direction-finding operations in

⁵³ [UGA-OTP-0267-0455](#) at 0459-0460.

⁵⁴ [UGA-OTP-0027-0231-R01](#) at 0234-0235.

⁵⁵ [UGA-OTP-0267-0455](#) at 0460-0461.

⁵⁶ [UGA-OTP-0027-0231-R01](#) at 0235-0236.

⁵⁷ [UGA-OTP-0027-0231-R01](#) at 0236-0238; [UGA-OTP-0267-0455](#) at 0458-0459.

⁵⁸ [UGA-OTP-0027-0231-R01](#) at 0236; [UGA-OTP-0267-0455](#) at 0461-0462.

⁵⁹ [UGA-OTP-0027-0231-R01](#) at 0238-0240.

⁶⁰ [UGA-OTP-0267-0455](#) at 0464-0467.

⁶¹ [UGA-OTP-0267-0455](#) at 0463-0464.

⁶² [UGA-OTP-0027-0231-R01](#) at 0240-0241; [UGA-OTP-0267-0455](#) at 0467.

northern Uganda and Sudan.⁶³ His prior recorded testimony goes to proof of matters other than the acts and conduct of Dominic Ongwen. With respect to the interception operation, P-0337 details his staff's reporting requirements up the UPDF chain of command.⁶⁴ He explains how records were stored.⁶⁵

33. P-0337 also lists the other interception operations around northern Uganda and Sudan where he was aware of signallers intercepting.⁶⁶ He states that signallers there intercepted following the same procedure as in Gulu.⁶⁷ He names the UPDF staff he knew or worked with, and describes their role and training.⁶⁸ P-0337 also describes the UPDF's direction finding operation.⁶⁹

UGA-OTP-P-0404

[REDACTED]

34. Witness P-0400 was a Corporal in the UPDF.⁷⁰ He intercepted LRA radio communications in Gulu from April to November 2004.⁷¹ His prior recorded testimony goes to proof of matters other than the acts and conduct of Dominic Ongwen: P-0404 outlines how he and his colleague P-0003 intercepted, decoded and recorded the LRA's radio communications.⁷² He details how they reported up the hierarchy.⁷³ He describes other UPDF staff whom he knows or worked with.⁷⁴ He briefly sets out how the LRA used the radio.⁷⁵ P-0404 also comments on two UPDF logbooks, including whether

⁶³ [UGA-OTP-0267-0445](#) at 0447.

⁶⁴ [UGA-OTP-0267-0445](#) at 0448, 0451; [UGA-OTP-0256-0201](#) at 0205.

⁶⁵ [UGA-OTP-0267-0445](#) at 0451-0452.

⁶⁶ [UGA-OTP-0267-0445](#) at 0448-0450.

⁶⁷ [UGA-OTP-0267-0445](#) at 0448.

⁶⁸ [UGA-OTP-0267-0445](#) at 0449-0451.

⁶⁹ [UGA-OTP-0256-0201](#) at 0206-0211.

⁷⁰ [UGA-OTP-0267-0470](#) at 0473.

⁷¹ [UGA-OTP-0267-0470](#) at 0472-0473.

⁷² [UGA-OTP-0267-0470](#) at 0474-0476.

⁷³ [UGA-OTP-0267-0470](#) at 0475.

⁷⁴ [UGA-OTP-0267-0470](#) at 0476-0477.

⁷⁵ [UGA-OTP-0267-0470](#) at 0474-0476.

they contain his handwriting.⁷⁶ P-0404 discusses his work with the UPDF direction finding operation at various locations around northern Uganda.

UGA-OTP-P-0256 [REDACTED]

35. Witness P-0256 is a Forensic Officer in the Forensic Science Section in the OTP of the ICC.⁷⁷ P-0256 performed the audio enhancement of 106 sound recordings of LRA radio communications.⁷⁸ His prior recorded testimony goes to proof of matters other than the acts and conduct of Dominic Ongwen. The evidence of P-0256 relates to his audio enhancement of sound recordings of LRA radio communications produced by the UPDF and the ISO. P-0256 describes the OTP's purchase of the CEDAR audio enhancement system.⁷⁹ He details his receipt of the sound recordings.⁸⁰ He explains his methodology of first digitalising and second enhancing the sound recordings.⁸¹ He comments on specific exhibits.⁸² Finally, he explains his interaction with other OTP staff.⁸³

Issues that are not materially in dispute

36. The enhancement of the sound recordings is not a matter materially in dispute. The sound recordings in the case record are of varying quality. Hence, the Prosecution requested the enhancement of the most relevant original sound recordings. P-0256 did not modify the original sound

⁷⁶ [UGA-OTP-0267-0470](#) at 0477-0478.

⁷⁷ P-0256, [UGA-OTP-0269-0015](#) at 0016, 0017, paras. 1, 9.

⁷⁸ P-0256, [UGA-OTP-0269-0015](#) at 0020, 0028, para. 22, 37.

⁷⁹ [UGA-OTP-0269-0015](#) at 0019-0020.

⁸⁰ [UGA-OTP-0269-0015](#) at 0020.

⁸¹ [UGA-OTP-0269-0015](#) at 0021-0028.

⁸² [UGA-OTP-0269-0015](#) at 0029.

⁸³ [UGA-OTP-0269-0015](#) at 0030.

recordings, which are still available to the Defence in unenhanced form. P-0256's statement describes the enhancement procedure and details the filters he used on the sound recordings, providing maximum transparency in the process.

Relates to background information

37. P-0256's evidence is background information: it does not speak to any crimes that Dominic Ongwen is alleged to have committed, nor about the substance of the intercept evidence. It does not address the content of the audio recordings and thus does not pertain to the specific crimes that Ongwen is alleged to have committed. The Prosecution does not seek to obtain the admission of the 106 enhanced audio recordings through this motion. Nor does it seek to obtain the admission of the photographs contained within the fifth attachment to P-0256's statement.⁸⁴ Instead, the Prosecution will seek the admission of this material through a bar table motion or *viva voce* witnesses during trial.

⁸⁴ [UGA-OTP-0269-0071](#).

Relief Sought

38. For the above reasons, the Prosecution requests that the Chamber conditionally admits the rule 68(2)(b) documents, subject to the fulfilment of rules 68(2)(b)(ii) and (iii).



Fatou Bensouda
Prosecutor

Dated this 10th day of October 2016
At The Hague, The Netherlands