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Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 24 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 Confidential Annexes A and B**

**Prosecution's Request to Add items to its List of Evidence and to include P-0001 to
its List of Witnesses**

Source:

The Office of the Prosecutor

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

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Introduction

1. The Office of the Prosecutor (“Prosecution”) seeks leave from the Trial Chamber to add 405 items, listed in Annexes A and B of this request, to its list of evidence for trial, pursuant to the Decision Setting the Commencement Date of the Trial¹. Annex A sets out 386 items omitted from the list of evidence submitted on 6 September 2016 (“Original list of evidence”). Annex B sets out 19 items collected and disclosed after the submission of the Original list of evidence.

2. The addition of the items in Annex A and Annex B to the Prosecution’s list of evidence is warranted by the relevance and probative value of the items and causes no prejudice to the Defence.

3. The Prosecution also seeks leave to include Witness P-0001 to its List of Witnesses. Witness P-0001 featured on the list of evidence at the confirmation stage and in the pre-confirmation brief, but was unintentionally excluded from the Prosecution’s list of witnesses and list of evidence filed on 6 September 2016. The evidence of Witness P-0001 will assist the Chamber, Parties and Participants in understanding the nature and extent of the attack on Pajule IDP camp. The addition is not prejudicial to the Defence since the Prosecution’s intention to rely on P-0001’s evidence as well as the context in which his evidence is to be used was conveyed to the Defence as early as 21 December 2015.

Confidentiality

4. Annexes A and B to this request are classified as “Confidential” pursuant to regulation 23*bis* of the Regulations of the Court because they contain evidentiary information which has been disclosed as “Confidential”.

¹ ICC-02/04-01/15-449, para 7,8.

Procedural history

5. The Chamber set 6 September 2016 as the deadline for the Prosecution to submit its list of witnesses, list of evidence and its pre-trial brief.² The Chamber also noted that, after the deadline, new evidence may be added to the lists of witnesses and evidence with leave of the Chamber.³ On 6 September 2016 the Prosecution submitted the Original list of evidence,⁴ containing 5,479 items.
6. The Prosecution subsequently discovered that 386 items,⁵ disclosed prior to the disclosure deadline of 6 September 2016, were inadvertently omitted from its Original list of evidence. The Prosecution has also, since 6 September 2016, collected 19 new items of evidence that it intends to rely upon at trial.⁶ These were disclosed to the Defence on 30 September 2016,⁷ 11 October 2016⁸ and 21 October 2016.⁹
7. On 6 October 2016, the Defence wrote to the Prosecution noting, *inter alia*, that references to Witness P-0001 in the Prosecution's Pre-Confirmation Brief were not reflected in the Prosecution's Pre-Trial Brief. On 7 October 2016, the Prosecution informed the Defence that the exclusion of Witness P-0001 was an error and that it intended to apply to the Chamber for leave to remedy that error.

² ICC-02/04-01/15-449, para 8.

³ Ibid.

⁴ ICC-02/04-01/15-532-Conf-AnxA

⁵ Confidential Annex A to this Request.

⁶ Confidential Annex B to this Request.

⁷ ICC-02/04-01/15-551-Conf-AnxA

⁸ ICC-02/04-01/15-565-Conf-AnxA.

⁹ ICC-02/04-01/15-573-Conf-AnxA

Submissions

Addition of items in Annex A and B to the list of evidence

8. No statutory provisions explicitly regulate the use of a list of evidence at trial.¹⁰ Decisions on how to deal with amendments to the list of evidence fall within the discretionary powers of each chamber.¹¹ Amendments to lists of evidence, after the deadline for the submission of the list, have been accepted in a number of cases, pursuant to, inter alia, articles 64(2),¹² 64(6)(d),¹³ 64(6)(f)¹⁴ and/or 69(3)¹⁵ of the Statute.
9. Below, the Prosecution sets out in detail why the Chamber should allow the addition of the items in Annex A and Annex B to the Prosecution's list of evidence.

Relevance and probative value

10. The items in Annex A and B have significant probative value, and merit addition to the list of evidence in order to further the truth-seeking function of the Court. In Annex A, the column titled "Relevance of the item" addresses this aspect in detail. In broad terms, the items in Annex A are:

- Documents authored¹⁶ or annotated¹⁷ by witnesses on the Prosecution's List of Witnesses that are annexed¹⁸ to their statements.

¹⁰ ICC-01/04-02/06-611, para.13.

¹¹ ICC-01/04-02/06-611, para.13.

¹² See, for example, ICC-02/11-01/15-183-Red,

¹³ See, for example, ICC-01/04-01/07-2325-Red, para 15.

¹⁴ ICC-01/05-01/13-1191, para 10.

¹⁵ See, For example, ICC-01/04-01/07-2325-Red, para 15.

¹⁶ [UGA-OTP-0020-0002](#).

¹⁷ [UGA-OTP-0240-0113-R01](#), [UGA-OTP-0151-0131](#); [UGA-OTP-0151-0146](#); [UGA-OTP-0151-0164](#); [UGA-OTP-0164-0071](#); [UGA-OTP-0164-0076](#).

¹⁸ Items 47, 51, 54-109, 111, 113-133, 253-258, 358, 376,386.

- Documents from the RACHELE Rehabilitation centre,¹⁹ GUSCO,²⁰ and the Amnesty Commission²¹ as well as other identification documents²² that relate to Prosecution witnesses.
- Non-ICC statements given by Witnesses P-0006 and P-0028²³ that correspond with their evidence.
- The statement of, and other items related to, Witness P-0001.²⁴ The Prosecution addresses the evidence of P-0001 in detail at paragraphs 21-27 below.
- Forensic records related to Witnesses P-0101 and P-0099;²⁵ an investigation report related to P-0280,²⁶ the content of which corroborates and complements his previously provided evidence; and other documents related to the evidence of Prosecution witnesses.²⁷
- Photographs,²⁸ satellite images²⁹ and forensic reports³⁰ relating to the Pajule, Lukodi, Odek and Abok IDP camps; documentary³¹ evidence, mostly

¹⁹ [UGA-OTP-0126-0248](#); [UGA-OTP-0126-0251](#); [UGA-OTP-0117-0129](#); [UGA-OTP-0219-0081](#).

²⁰ [UGA-OTP-0087-0360](#)

²¹ [UGA-OTP-0231-0145](#); [UGA-OTP-0247-1266](#).

²² [UGA-OTP-0256-0183](#); [UGA-OTP-0263-2244](#); [UGA-OTP-0263-2246](#); [UGA-OTP-0263-2247](#); [UGA-OTP-0267-0264-R01](#).

²³ [UGA-OTP-0012-0501](#); [UGA-OTP-0137-0236](#); [UGA-OTP-0163-0443](#);

²⁴ [UGA-OTP-0138-0002-R01](#).

²⁵ [UGA-OTP-0170-0027](#); [UGA-OTP-0170-0032](#)

²⁶ [UGA-OTP-0258-0005-R01](#).

²⁷ [UGA-OTP-0016-0591](#) related to P-0258; [UGA-OTP-0016-0593](#) related to P-0258; [UGA-OTP-0164-0072](#) related to P-0096; [UGA-OTP-0164-0073](#) related to P-0096; [UGA-OTP-0164-0074](#) related to P-0096; [UGA-OTP-0164-0075](#) related to P-0096; [UGA-OTP-0164-0081](#) related to P-0096; [UGA-OTP-0233-1399-R01](#) related to P-0209; [UGA-OTP-0238-0818](#) related to P-0249; [UGA-OTP-0255-0960](#) related to P-0067; [UGA-OTP-0255-1028](#) related to P-0067.

²⁸ [UGA-OTP-0250-0554](#); [UGA-OTP-0250-0600](#); [UGA-OTP-0250-0618](#); [UGA-OTP-0250-2150](#); [UGA-OTP-0250-2164](#); [UGA-OTP-0250-2180](#); [UGA-OTP-0250-2194](#); [UGA-OTP-0250-2221](#); [UGA-OTP-0250-2237](#); [UGA-OTP-0250-2238](#); [UGA-OTP-0250-2249](#); [UGA-OTP-0250-2284](#); [UGA-OTP-0250-2288](#).

²⁹ [UGA-OTP-0253-0195](#); [UGA-OTP-0253-0196](#); [UGA-OTP-0253-0197](#); [UGA-OTP-0253-0198](#); [UGA-OTP-0253-0202](#); [UGA-OTP-0253-0203](#); [UGA-OTP-0253-0204](#); [UGA-OTP-0253-0208](#); [UGA-OTP-0253-0212](#); [UGA-OTP-0253-0213](#).

³⁰ [UGA-OTP-0255-0960](#); [UGA-OTP-0253-0797](#).

³¹ [UGA-OTP-0137-0325](#); [UGA-OTP-0138-0287-R01](#); [UGA-OTP-0138-0289-R01](#); [UGA-OTP-0147-0239](#); [UGA-OTP-0150-0124](#); [UGA-OTP-0150-0129](#); [UGA-OTP-0150-0131](#); [UGA-OTP-0150-0133](#); [UGA-OTP-0150-0134](#); [UGA-OTP-0150-0137](#); [UGA-OTP-0150-0139](#); [UGA-OTP-0150-0150](#); [UGA-OTP-0150-0165](#); [UGA-OTP-0150-0179](#); [UGA-OTP-0150-0181](#); [UGA-OTP-0191-0309](#); [UGA-OTP-0191-0378](#); [UGA-OTP-0191-0430](#); [UGA-OTP-0191-0544](#); [UGA-OTP-0191-0545](#); [UGA-OTP-0191-0546](#); [UGA-OTP-0191-0548](#); [UGA-OTP-0191-0549](#); [UGA-OTP-0191-0550](#); [UGA-OTP-0191-0551](#); [UGA-OTP-0191-0552](#); [UGA-OTP-0191-0554](#); [UGA-OTP-0191-0555](#); [UGA-OTP-0191-0556](#); [UGA-OTP-0191-0558](#); [UGA-OTP-0191-0560](#); [UGA-OTP-0191-0562](#); [UGA-OTP-0191-0563](#); [UGA-OTP-0191-0564](#); [UGA-OTP-0191-0607](#); [UGA-OTP-0191-0608](#); [UGA-OTP-0191-0609](#); [UGA-OTP-0191-0610](#); [UGA-OTP-0191-0611](#); [UGA-OTP-0191-0612](#); [UGA-OTP-0191-0613](#); [UGA-OTP-0191-0614](#); [UGA-OTP-0191-0615](#); [UGA-OTP-0191-0616](#); [UGA-OTP-0191-0617](#); [UGA-OTP-0191-0618](#); [UGA-OTP-0191-0619](#); [UGA-OTP-0191-0620](#); [UGA-OTP-0209-0917](#).

contemporaneous, relating to the composition and layout of the Pajule IDP camp as well as the aftermath of LRA attacks.

- Documentary evidence on the command structure of the LRA.³²
- Intelligence Reports compiled by the UPDF and Uganda police.³³ The intelligence reports represent another iteration of LRA communications, and evidence of the reliability of the UPDF / Uganda Police witnesses' accounts of the interception process.
- Documents that demonstrate the chain of custody of intercept evidence provided through Witnesses P-0038³⁴ and P-0303,³⁵ and which document the LRA Tonfas codes referred to in P-0003's and P-0059's statements.³⁶
- LRA radio communications sourced by P-0038 and P-0027 that were sound-recorded by the UPDF and ISO;³⁷ digitally enhanced sound recordings of LRA radio communications prepared by the Prosecution, and the forensic reports thereon.³⁸

11. In Annex B, the column titled "Relevance of the item" provides additional detail. In broad terms, the items in Annex B include:

- Eight documents that corroborate the evidence of Prosecution witnesses.³⁹

³² [UGA-OTP-0195-0144](#); [UGA-OTP-0255-1036](#)

³³ [UGA-OTP-0012-0069](#); [UGA-OTP-0015-0143](#); [UGA-OTP-0256-0236](#); [UGA-OTP-0256-0296](#); [UGA-OTP-0256-0304](#); [UGA-OTP-0256-0319](#); [UGA-OTP-0256-0333](#); [UGA-OTP-0256-0338](#); [UGA-OTP-0256-0339](#); [UGA-OTP-0255-0007](#); [UGA-OTP-0255-0053](#); [UGA-OTP-0255-0086](#); [UGA-OTP-0255-0119](#).

³⁴ [UGA-OTP-0037-0288](#).

³⁵ [UGA-OTP-0246-0096](#); [UGA-OTP-0246-0093](#), [UGA-OTP-0249-0460](#).

³⁶ [UGA-OTP-0053-0127](#); [UGA-OTP-0053-0132](#); [UGA-OTP-0053-0134](#); [UGA-OTP-0053-0137](#); [UGA-OTP-0053-0138](#); [UGA-OTP-0053-0144](#); [UGA-OTP-0053-0149](#); [UGA-OTP-0053-0151](#); [UGA-OTP-0053-0153](#); [UGA-OTP-0053-0155](#); [UGA-OTP-0053-0157](#).

³⁷ [UGA-OTP-0038-0039](#); [UGA-OTP-0041-0047](#); [UGA-OTP-0042-0074](#); [UGA-OTP-0045-0001](#); [UGA-OTP-0045-0044](#); [UGA-OTP-0049-0086](#); [UGA-OTP-0050-0062](#); [UGA-OTP-0052-0020](#); [UGA-OTP-0052-0032](#); [UGA-OTP-0052-0062](#); [UGA-OTP-0052-0068](#); [UGA-OTP-0052-0074](#); [UGA-OTP-0052-0082](#); [UGA-OTP-0053-0002](#); [UGA-OTP-0053-0022](#); [UGA-OTP-0053-0026](#); [UGA-OTP-0053-0062](#); [UGA-OTP-0054-0001](#); [UGA-OTP-0054-0006](#); [UGA-OTP-0054-0026](#); [UGA-OTP-0054-0035](#); [UGA-OTP-0054-0051](#); [UGA-OTP-0142-0008](#); [UGA-OTP-0142-0023](#); [UGA-OTP-0143-0002](#); [UGA-OTP-0143-0008](#); [UGA-OTP-0144-0018](#); [UGA-OTP-0156-0004](#); [UGA-OTP-0241-0257](#); [UGA-OTP-0241-0304](#); [UGA-OTP-0241-0327](#); [UGA-OTP-0241-0329](#); [UGA-OTP-0241-0339](#); [UGA-OTP-0241-0382](#); [UGA-OTP-0241-0387](#).

³⁸ Items 266-357 and 360-375 in Annex A.

³⁹ [UGA-OTP-0270-1295](#); [UGA-OTP-0270-1307](#); [UGA-OTP-0270-1341](#); [UGA-OTP-0270-1376](#); [UGA-OTP-0270-1382](#); [UGA-OTP-0270-1387](#), [UGA-OTP-0270-1269](#); [UGA-OTP-0270-1331](#).

- A publicly available book that relates to the report provided by expert witness P-0422.⁴⁰
- The corrected report of expert witness P-0403; a courtesy copy of which was provided to the Defence, the Trial Chamber and the Legal Representatives of Victims on 14 October 2016.⁴¹ The initial version⁴² of this report was included on the Original list of evidence.

Lack of prejudice to the defence

12. The addition of the items in Annex A and B to the List of Evidence will not cause significant prejudice to the Defence for the reasons set out below.
13. Firstly, all the items in Annex A and B have been disclosed. Most of the items in Annex A were disclosed as early as June and August 2015.⁴³ All other items on Annex A were disclosed, at the very latest, on 6 September 2016.⁴⁴ The 19 items in Annex B have been disclosed already, or were disclosed at the latest on 21 October 2016, almost three months before the testimony of the first Prosecution witness.⁴⁵ Moreover this request is submitted only six weeks after the deadline and almost three months prior to the start of the presentation of evidence in the trial. Thus the Defence still has adequate time to investigate the limited material listed therein.
14. Potential prejudice to the Defence has been identified as relevant when exercising discretion to allow addition of items to the list of evidence. In the *Ntaganda* case, the trial chamber indicated that it would consider, among other factors, "...how long after the Chamber's deadline the Prosecution took to add a particular item to its List

⁴⁰ [UGA-OTP-0272-0002](#).

⁴¹ [UGA-OTP-0272-0446](#).

⁴² [UGA-OTP-0269-0897](#).

⁴³ Items 1-5, 9-12, 14-37, 39-42, 48-133, 135-139, 140-146, 149-151, 156-160, 170-172, 190-195, 198, 201, 205.

⁴⁴ The disclosure date of each item is indicated in Annex A.

⁴⁵ The disclosure date of each item is indicated in Annex B.

of Evidence”.⁴⁶ In *Gbagbo and Blé Goudé* the trial chamber similarly allowed additions to the list of evidence “...noting the relatively short period of time that has elapsed since the Disclosure Deadline”.⁴⁷ The same chamber in another decision allowing the addition of items to the list of evidence, took into consideration the fact that “the trial is still in its early stages”.⁴⁸ In the *Ruto and Sang* case, Trial Chamber V(A) considered that the timing of disclosure, was a relevant factor.⁴⁹

15. Secondly, many of the items on Annex A and B are enhanced versions of, or are corroborative of other items on the Original list of evidence. For example, 92 of the items requested for inclusion in this motion are enhanced sound recordings produced by P-0256, and reports detailing the process by which he did so. The Prosecution enhanced original sound recordings to give translators and witnesses the best possible opportunity to understand the content of the sound recordings. The substantive content itself was not modified in any way.

16. There is no impact on the fairness of the trial by granting the inclusion of this material to the Prosecution’s list of evidence because the Defence is already aware that the Prosecution is relying on the substance of this material through its inclusion in the Original list of evidence.⁵⁰ The Chamber, Parties and Participants can only benefit from the opportunity to hear the best possible iteration of these sound recordings during the trial. In an analogous situation relating to certain logbooks in *Gbagbo and Ble Goude*, the trial chamber held that “it is in the ultimate interest of all parties, and ultimately of the Chamber, in order to evaluate the evidence”,⁵¹ to

⁴⁶ ICC-01/04-02/06-T-19-ENG ET, 22 April 2015, p. 11, lns.22-25.

⁴⁷ ICC-02/11-01/15-183-Red, para 30.

⁴⁸ ICC-02/11-01/15-467, para 14.

⁴⁹ ICC-01/09-01/11-1549-Red, para.21.

⁵⁰ Original list of evidence, items 792, 805, 809, 819, 821, 825, 840, 841, 842, 844, 847, 853, 854, 859, 883, 885, 886, 887, 888, 893, 917, 920 and 1040.

⁵¹ ICC-02/11-01/15-306, para 25.

grant the Prosecution's request to disclose and rely on "...a more complete and better quality version of the Original Logbooks".⁵²

17. Similarly, items 2, 4, 43, 44, 51, 54, 55, 117-133, 143-153, 155, 170-202, 206, 245, 252-257 and 358 of Annex A and items 1-3, 11, 14-17 of Annex B relate to witness evidence, the principal components of which have already been disclosed and feature on the Original list of evidence. The relevant witnesses are already on the list of witnesses submitted on 6 September 2016.⁵³ Hence these items do not "...constitute a novel element but merely corroborat[e] other previously disclosed material".⁵⁴ In similar circumstances, the trial chamber in *Bemba et al* authorised the addition of certain belatedly disclosed phone logs to the list of evidence where, inter alia, "large parts of the information contained in the call logs are presented in items already contained in the List of Evidence".⁵⁵

18. Thirdly, as evident from the contents of Annex B – limited to 19 items - the volume of incriminatory material disclosed after the September 6, 2016 deadline, compared to the volume of evidence disclosed previously, is minimal. This has also been considered a factor supporting the addition of items to a list of evidence in *Gbagbo and Blé Goudé*.⁵⁶

19. Fourthly, the vast majority of the witnesses to whom the items in Annexes A and B relate will not testify within the next three months. This includes P-0003, P-0379, P-0205, P-0059, P-0249, P-0245, P-0264, P-0280, P-0396, P-0009, P-0172, P-0233, P-0006, P-0081, P-0189, P-0209, P-0410, P-0018, P-0067, P-0048, P-0258 and P-0224. This too

⁵² ICC-02/11-01/15-306, para 25. Emphasis added.

⁵³ The only exception to this in the context of witness evidence is the statement and material of Witness P-0001, addressed at paragraphs 21-27 below.

⁵⁴ ICC-02/11-01/15-467, para 12.

⁵⁵ ICC-01/05-01/13-1191 Para 10.

⁵⁶ ICC-02/11-01/15-467, para 14.

has been considered by prior chambers as a factor supporting the granting of leave for adding to the list of evidence.⁵⁷

20. Fifthly, some items⁵⁸ cited in Annex A were referenced in key prior documents, including the list of evidence submitted at the confirmation stage⁵⁹ and the pre-confirmation brief.⁶⁰ Hence, the Defence has already had the opportunity to acquaint themselves with these items over the course of these proceedings. As noted by the trial chamber in *Ntaganda*, the list of evidence “represents the Prosecution's intentions of what it may seek to admit into evidence, and serves to provide notice to the Defence.”⁶¹ Where such notice is provided in a prior document, accidental omission from the list of evidence, later rectified, does not cause prejudice to the Defence.

Addition of Witness P-0001 to the List of Witnesses

21. The Prosecution also seeks leave to include Witness P-0001 to the List of Witnesses.⁶² Witness P-0001 was inadvertently excluded from the Prosecution's list of witnesses and list of evidence filed on 6 September 2016. P-0001 provides corroborative, crime base evidence about the attack at Pajule IDP camp. P-0001's addition to the list of witnesses is justified because his evidence is relevant, probative and important for the Chamber in its determination of the truth, and because it causes no prejudice to the Defence.

⁵⁷ ICC-02/11-01/15-183-Red, para 30.

⁵⁸ [UGA-OTP-0012-0069](#) (an intelligence report), [UGA-OTP-0053-0137](#) (Notes relating to the LRA's use of codes called "tonifas" during communications) and [UGA-OTP-0138-0002-R01](#) (statement of Witness P-001).

⁵⁹ ICC-02/04-01/15-375-Conf-AnxD. [UGA-OTP-0053-0137](#) features at at p.43 row 43, [UGA-OTP-0138-0002-R01](#) at p.3 row 1), and [UGA-OTP-0012-0069](#) at p.22 row 12.

⁶⁰ ICC-02/04-01/15-375-Conf-AnxC. See footnote 150 for [UGA-OTP-0053-0137](#), footnote 494 for [UGA-OTP-0138-0002-R01](#)

⁶¹ ICC-01/04-02/06-T-19-ENG ET WT, page 11, line 15-16.

⁶² The Prosecution will apply in a separate motion for the admission of his statement and related material pursuant to rule 68(2)(b).

Relevance and probative value

22. P-0001 is important for the Prosecution's case and will ultimately aid the Chamber in its determination of the truth. P-0001's evidence concerns the attack at Pajule IDP camp on 10 October 2003. At the time of the attack, P-0001 served as the camp's LC3 Local Council Chairman.⁶³ He was also chairman of the camp's security committee.⁶⁴ Although P-0001 was not present when the attack at Pajule took place, he visited the scene on the same day, after the attack.⁶⁵
23. P-0001's evidence is relevant and probative for two reasons. Firstly, P-0001 is an eye-witness to the aftermath of the attack at Pajule IDP camp.
24. Secondly, P-0001 and secretaries that worked under him compiled contemporaneous records of the result of the attack.⁶⁶ These records include details of:
- a. camp residents that were abducted and/or missing;
 - b. camp residents that returned after being abducted; and
 - c. items that were pillaged during the course of the attack.
25. The addition of P-0001 to the list will assist the Chamber to understand the extent of the attack at Pajule. The evidence will also assist the Chamber in understanding elements of evidence that have already been disclosed and that will be provided by other witnesses who will testify live before the Chamber.

⁶³ [UGA-OTP-0138-0002-R01](#) at 0004.

⁶⁴ [UGA-OTP-0138-0002-R01](#) at 0004.

⁶⁵ [UGA-OTP-0138-0002-R01](#) at 0006.

⁶⁶ [UGA-OTP-0138-0002-R01](#) at 0007.

Lack of prejudice to the Defence

26. P-0001's addition to the list at this stage will not prejudice the Defence. This is because: i) the occurrence of the attack at Pajule IDP camp is an undisputed agreed fact;⁶⁷ ii) P-0001's statements have been in the possession of the Defence for over a year, having been disclosed on 17 August 2015;⁶⁸ iii) the Prosecution's intention to rely on P-0001's evidence as well as the context in which his evidence is to be used was conveyed to the Defence on 21 December 2015 in the Prosecution's Pre-Confirmation Brief⁶⁹ and list of evidence⁷⁰ for the confirmation hearing; and iv) the Prosecution confirmed its intention to rely on P-0001 at trial by email on 7 October 2016.

27. Support for the above can be found in current case law: In an analogous situation, in the *Gbagbo and Blé Goudé* case, where the Prosecution omitted, due to an error, to include a witness in the list of witnesses, the trial chamber allowed the addition of that witness. The chamber took into consideration the fact that the witness was cited in other case-related documents, including the pre-trial brief.⁷¹

⁶⁷ ICC-02/04-01/15-487-Conf-AnxA, p. 5.

⁶⁸ Pre-Confirmation INCR package 8 on 17 August 2015.

⁶⁹ ICC-02/04-01/15-375-Conf-AnxC. See footnote 494 for [UGA-OTP-0138-0002-R01](#).

⁷⁰ ICC-02/04-01/15-375-Conf-AnxD. [UGA-OTP-0138-0002-R01](#) at p.3 row 1.

⁷¹ ICC-02/11-01/15-306, paras 28, 32.

Relief Requested

28. In light of the above, the Prosecution requests leave from the Chamber to

- a. add the documents listed in Annex A and B to the Prosecution's list of evidence.
- b. add Witness P-0001 to the Prosecution's list of witnesses



Fatou Bensouda
Prosecutor

Dated this 24th of October 2016
At The Hague, The Netherlands