

**Cour
Pénale
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**International
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Court**

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Date: 4 November 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 Two Items to its List of Evidence

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 seeks leave from the Chamber to add two exhibits, UGA-OTP-0129-0419 and UGA-OTP-0167-0118 (collectively, “Annotated Transcripts”), produced during the interviews of P-0016, to its list of evidence, pursuant to the Decision Setting the Commencement Date of the Trial.¹ The Annotated Transcripts are appended to this motion as Annexes A and Annex B respectively.

Background

2. The Prosecution recently discovered a discrepancy between the pre-registration forms used to record the collection of evidence from P-0016 and the evidence registered pursuant to the same. Following a review, the Prosecution discovered that certain exhibits produced during interviews of P-0016 had been collected and sealed in an evidence bag but had not been registered and uploaded to Ringtail at the time. The majority of these exhibits are not intended for use by the Prosecution.² However, the Prosecution intends to use two of the newly discovered exhibits—the Annotated Transcripts—during the examination of P-0016. The Prosecution disclosed PDF copies of the Annotated Transcripts on 28 October 2016, apologised for the error, and informed the Defence that it intended to seek leave to add the Annotated Transcripts to the list of evidence.³

¹ ICC-02/04-01/15-449, para. 7.

² The newly discovered exhibits that were assessed to be disclosable under rule 77 of the Rules of Procedure and Evidence have been disclosed, or will be disclosed shortly.

³ Email sent to the Defence on Friday, October 28, 2016 3:27 PM.

Confidentiality

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

Submissions

4. The addition of the Annotated Transcripts to the Prosecution’s list of evidence is justified since they are of significant probative value and since the addition causes no prejudice to the Accused. The Prosecution adopts the submissions on the law made in its previous request to add items to the list of evidence.⁴

The Annotated Transcripts are of significant probative value

5. **UGA-OTP-0129-0419** is a transcript of an intercepted communication⁵ relating to the attack on Lukodi IDP camp,⁶ annotated during an interview of P-0016 in April 2005. During the interview the witness listened to, and commented on, the sound recording of the relevant intercepted communication.⁷ As evident from Annex A to this submission, the annotations identify the speakers in the communication, and make corrections to the transcript. The annotated transcript corroborates and provides context for the information provided by P-0016 during the interview,⁸ and provides for easy comprehension of the intercepted communication. Hence, use of

⁴ ICC-02/04-01/15-577.

⁵ The intercepted radio communication transcribed in UGA-OTP-0129-0419 is found at UGA-OTP-0054-0046.

⁶ See especially pages -0428 to -0430 of the transcript.

⁷ The intercepted communication relevant to UGA-OTP-0129-0419 is discussed during the interview at UGA-OTP-0223-0034 at page -0052 onwards.

⁸ The relevant intercepted communication, UGA-OTP-0054-0046, (identified in the relevant interview as UGA.00054.50 which was the ERN of the associated audio file) is discussed during the interview at UGA-OTP-0223-0034 at page -0052 onwards.

the annotated transcript will make for more streamlined and speedy testimony on the part of P-0016.

6. **UGA-OTP-0167-0118** is a transcript of an intercepted communication⁹ annotated during an interview of P-0016 in February 2006, where Joseph Kony speaks approvingly of Dominic Ongwen's attacks on Koc Ongako and Alero, and then criticizes another commander for inactivity.¹⁰ During the interview the witness listened to, and commented on, the sound recording of the relevant intercepted communication¹¹. The annotated transcript corroborates and provides context for the information provided by P-0016 during the interview,¹² and provides for easy comprehension of the intercepted communication. As above, use of the annotated transcript will make for more streamlined and speedy testimony on the part of P-0016.

Lack of prejudice to the Accused

7. The addition of the Annotated Transcripts to the List of Evidence will not impact on the rights of the Accused since the Defence has had comprehensive notice of the substantive evidence to which they relate. The interviews during which the Annotated Transcripts were produced were already disclosed in May 2015¹³ and were on the list of evidence submitted on 6 September 2016.¹⁴ Moreover, the sound

⁹ The intercepted radio communication transcribed in UGA-OTP-0167-0118 is found at UGA-OTP-0025-0625 (identified in the relevant interview as UGA.00025.627 which was the ERN of the associated audio file).

¹⁰ See especially pages -0124 and -0125 of the annotated transcript.

¹¹ The intercepted communication relevant to UGA-OTP-0167-0118 is discussed during the interview at UGA-OTP-0228-3441 at page -3447 onwards.

¹² The relevant intercepted communication, UGA-OTP-0025-0625 (identified in the relevant interview as UGA.00025.627 which was the ERN of the associated audio file) is discussed during the interview at UGA-OTP-0228-3441 at page -3447 onwards. See also notes made by P-0016 at UGA-OTP-0167-0041 during the same interview, which relates to the same intercepted communication and makes reference to Koc Ongako and Alero.

¹³ In Pre-Confirmation INCR Package 03. The intercepted communication relevant to UGA-OTP-0129-0419 is discussed during the interview at UGA-OTP-0223-0034 at page -0052 onwards. The intercepted communication relevant to UGA-OTP-0167-0118 is discussed during the interview at UGA-OTP-0228-3441 at page -3447 onwards.

¹⁴ ICC-02/04-01/15-532-Conf-AnxA. UGA-OTP-0223-0034 features at item 2228. UGA-OTP-0228-3441 features at item 2307.

recordings of the intercepted communications¹⁵ to which the transcripts relate were disclosed on 15 June 2015.¹⁶

8. The substantive content to which the above intercepted communications and Annotated Transcripts relate was also summarised in the Summary of Anticipated Testimony for P-0016 disclosed on 2 August 2016.¹⁷ An updated version of the summary containing the same information relevant to the Annotated Transcripts was disclosed on 6 September 2016.¹⁸

Relief Requested

9. The Prosecution requests leave from the Chamber to add the Annotated Transcripts to the Prosecution's list of evidence.



Fatou Bensouda
Prosecutor

Dated this 4th day of November 2016
At The Hague, The Netherlands

¹⁵ The sound recording relevant to UGA-OTP-0129-0419 is UGA-OTP-0054-0046 (identified in the relevant interview as UGA.00054.50, which was the ERN of the associated audio file). The sound recording relevant to UGA-OTP-0167-0118 is UGA-OTP-0025-0625 (identified in the relevant interview as UGA.00025.627 which was the ERN of the associated audio file).

¹⁶ Pre-Confirmation INCR Package 05.

¹⁷ ICC-02/04-01/15-512-Conf-AnxB, pp. 4, 8.

¹⁸ ICC-02/04-01/15-532-Conf-AnxC, pp. 17, 21.