

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15
Date: 22 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

**Decision on Prosecution Request to Add Items to its List of Evidence, to
include a Witness on its List of Witnesses and to Submit Two Prior Recorded
Testimonies under Rule 68(2)(b) and (c)**

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Benjamin Gumpert

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of Victims

Joseph Akwenyu Manoba
Francisco Cox
Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber IX ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(2) and 67(1) of the Rome Statute ('Statute') and Rule 68(2)(b) and (c) of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Prosecution Request to Add Items to its List of Evidence, to include a Witness on its List of Witnesses and to Submit Two Prior Recorded Testimonies under Rule 68(2)(b) and (c)'.

A. Procedural History

1. On 30 May 2016, the Chamber issued a decision setting 6 September 2016 as the deadline ('6 September Deadline') for the Office of the Prosecution ('Prosecutor') to submit, *inter alia*, its final list of witnesses and list of evidence and disclose all incriminating evidence ('30 May Decision').¹ The Prosecution duly submitted both lists on the indicated day.²
2. On 25 October 2016, the Prosecution submitted a request to add 405 items to its list of evidence ('List of Evidence'), as well as to include to its list of witnesses ('List of Witnesses') one additional witness, P-1 ('Initial Request').³
3. On 28 October 2016, the Prosecution submitted a request to introduce the prior recorded testimony of P-1 under Rule 68(2)(b) and prior recorded the testimony of witness P-96 under Rule 68(2)(c) of the Rules ('Additional Request').⁴
4. On 4 November 2016, the Prosecution filed a further request to add another two items to the List of Evidence ('Second Additional Request').⁵

¹ Decision Setting the Commencement Date of the Trial, ICC-02/04-01/15-449.

² Prosecution's submission of the list of evidence, the list of witnesses and summaries of anticipated testimony, 6 September 2016, ICC-02/04-01/15-532, with three confidential annexes, A to C.

³ Prosecution's Request to Add items to its List of Evidence and to include P-0001 to its List of Witnesses, ICC-02/04-01/15-577, with two confidential annexes, A and B.

⁴ Prosecution's request that the Chamber receive as formally submitted P-0001's prior recorded testimony under rule 68(2)(b) and P-0096's prior recorded testimony under rule 68(2)(c), ICC-02/04-01/15-579-Conf, with four confidential annexes, A to D.

5. On 7 November 2016, the defence for Mr Ongwen ('Defence') submitted its response to the Prosecution's Initial and Additional Request, seeking that both be dismissed ('Response').⁶
6. On 9 November 2016, the Defence submitted its response to the Second Additional Request, seeking that it be rejected.⁷
7. On 18 November 2016, the Chamber issued a decision on the Prosecution's applications for introduction of prior recorded testimony under Rule 68(2)(b) of the Rules ('Rule 68(2)(b) Decision').⁸

B. Submissions and Analysis

8. The Chamber will first address the requests to add further items to the List of Evidence (without the items related to P-1 and P-96), before discussing the various requests related to P-1 and P-96.

i) Requests to add items to the List of Evidence

9. In its Initial Request, the Prosecution explains that 300 items,⁹ which were disclosed to the Defence prior to the 6 September Deadline, were 'inadvertently omitted' from its List of Evidence.¹⁰ In respect of 19 further items, the Prosecution explains that it received them after the 6 September Deadline.¹¹ With

⁵ ICC-02/04-01/15-585, Prosecution's Request to Add Two Items to its List of Evidence, with two confidential annexes A and B.

⁶ Defence Consolidated Response to Prosecution Filings ICC-02/04-02/15-577 and ICC-02/04-01/15-579-Conf; ICC-02/04-01/15-587-Conf. A public-redacted version was filed on 8 November 2016, ICC-02/04-01/15-587-Red.

⁷ Defence Response to the Prosecution's Request to Add Two Items to its List of Evidence (ICC-02/04-01/15-585), ICC-02/04-01/15-588.

⁸ Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, ICC-02/04-01/15-596-Conf, a public redacted version was filed on the same day.

⁹ Annex A to ICC-02/04-01/15-577, ICC-02/04-01/15-577-Conf-AnxA. The Prosecution identifies 386 items in this group, however 86 items are related to witness P-1 and will be discussed below.

¹⁰ Initial Request, ICC-02/04-01/15-577, para. 6; Annex B to ICC-02/04-01/15-577, ICC-02/04-01/15-577-Conf-AnxB.

¹¹ Initial Request, ICC-02/04-01/15-577, para. 6.

regard to all items, the Prosecution avers that they are of ‘significant probative value’¹² and that their addition will not significantly prejudice the Defence.¹³

10. In its Response, the Defence submitted that the Prosecution has not justified the late addition,¹⁴ arguing that the Prosecution fails to demonstrate why it was out of its control to include the items to its List of Evidence before the 6 September Deadline. The Defence argues that the Prosecution thus fails to fulfil the criteria of Regulation 35 of the Regulations of the Court (‘Regulations’).¹⁵
11. In its Second Additional Request, the Prosecution explains that it wishes to add two items related to P-16 which had been collected but not uploaded into the evidence management system.¹⁶ The items are transcripts and translations of intercepted communications related to the attack on Lukodi IDP camp and, in one case,¹⁷ Joseph Kony speaking about the accused.¹⁸ During an interview with the Prosecution in 2005, P-16 listened to both communications and made comments on their contents.¹⁹ The Prosecution submits that the items’ addition to its list of evidence does not prejudice the Defence, since the interview of P-16, in which he commented on the two items, as well as the intercepted communications themselves, have already been disclosed to the Defence in May and June 2015.²⁰
12. In its Further Response, the Defence submits that the Prosecution did not show that the criteria of Regulation 35 of the Regulations are fulfilled²¹ and that the

¹² Initial Request, ICC-02/04-01/15-577, para. 10.

¹³ Initial Request, ICC-02/04-01/15-577, paras 12-20.

¹⁴ Response, ICC-02/04-01/15-587-Red, para. 3.

¹⁵ Response, ICC-02/04-01/15-587-Red, paras 23-24.

¹⁶ Second Additional Request, ICC-02/04-01/15-585, para. 2.

¹⁷ UGA-OTP-01167-0118.

¹⁸ Second Additional Request, ICC-02/04-01/15-585, paras 5-6.

¹⁹ Second Additional Request, ICC-02/04-01/15-585, paras 5-6.

²⁰ Second Additional Request, ICC-02/04-01/15-585, para. 7.

²¹ Further Response, ICC-02/04-01/15-588, paras 7-13.

Prosecution is not prejudiced by the exclusion of the two items in question.²² It proposes that the documents could be recreated during P-16's live-testimony by having him listening to the audio-files in question and making a new set of transcripts.²³

13. First, the Chamber notes that the request for belated addition does not merely concern a few items that have been unintentionally left out but almost 400. It finds the number of the omitted items surprising and expresses its hopes that this will be an isolated request.
14. However, the Chamber recalls that in its 30 May Decision it stated that any addition to its witnesses or the List of Evidence after the 6 September Deadline requires the leave of the Chamber.²⁴ Accordingly, any request to add further items to the List of Evidence is not a request pursuant to Regulation 35 of the Regulations but a request for leave from the Chamber to add items, in accordance with the 30 May Decision. Furthermore, even if Regulation 35 of the Regulations were to be applied, the Chamber notes the jurisprudence of other Chambers, holding that the non-fulfilment of the requirements of Regulation 35 of the Regulations does not mean that a request must be dismissed when a different outcome can be reached while preserving the fair and expeditious conduct of the proceedings.²⁵
15. In its 30 May Decision, in the course of deciding on the 6 September Deadline, the Chamber explained that it considered a period of three months for the disclosure of all incriminating evidence before the commencement of the trial to

²² Further Response, ICC-02/04-01/15-588, paras 14-18.

²³ Further Response, ICC-02/04-01/15-588, para. 16.

²⁴ 30 May Decision, ICC-02/04-01/15-449, para. 8.

²⁵ See Article 64(2) of the Statute; Regulation 29 of the Regulations of the Court; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Prosecution Request to add 12 Items to its List of Evidence, 27 August 2015, ICC-01/05-01/13-1191, paras 9-11.

be adequate for the Defence to prepare for the trial.²⁶ The Chamber notes that out of the 300 items of the Initial Request which were available before the 6 September Deadline,²⁷ only seven were disclosed to the Defence after 6 September 2016.²⁸ The rest was either disclosed in 2015 or in 2016, before the deadline.²⁹ Accordingly, the Defence had access to the overwhelming majority of these items before the 6 September Deadline. The Chamber further notes that the seven items that were not disclosed prior to the 6 September Deadline are all short and of very limited scope.³⁰

16. Further, with regard to the 300 items at stake in the Initial Request and the two items that form the subject of the Second Additional Request, the Chamber notes that their vast majority are not connected to the very first witnesses expected to testify in the case,³¹ which will enable the Defence to conduct any further necessary limited investigations prior to the appearance of the witnesses of relevance to these items.³² The Chamber does note that the Prosecution seeks to add UGA-OTP-0129-0419 and UGA-OTP-0167-0118 to its List of Evidence which are connected to the third witness to testify, namely P-16. That said, these documents are of limited volume and are mentioned both in the statements of P-16 disclosed well ahead of the 6 September Deadline and in the Summary of P-16's anticipated testimony filed on 2 August 2016.³³ Accordingly, the Chamber does not find that their addition to the List of Evidence prejudices the Defence.

²⁶ 30 May Decision, ICC-02/04-01/15-449, paras 5-7.

²⁷ 386 items overall were available before 6 September 2016, the 86 items related to witness P-1 will be discussed in the following section.

²⁸ UGA-OTP-0045-0001; UGA-OTP-0054-0001; UGA-OTP-0150-0148; UGA-OTP-0150-0184; UGA-OTP-0191-0565; UGA-OTP-0246-0093; UGA-OTP-0249-0460, *see* ICC-02/04-01/15-577-Conf-AnxA.

²⁹ 165 items disclosed in 2015, *see* ICC-02/04-01/15-577-Conf-AnxA.

³⁰ Four of them demonstrate the chain of custody of intercepted communication and three of them are one-page documents extracted from P-0007's notebook and referred to in his statement.

³¹ *See* ICC-02/04-01/15-548-Conf-AnxA.

³² The Chamber recalls that the presentation of evidence is scheduled to start on 16 January 2017 for a three week block, followed by a break of three weeks. *See* Email from Chamber to parties and participants on 10 October 2016 at 16:53.

³³ *See* ICC-02/04-01/15-512-Conf-AnxB, pages 4-8.

17. Additionally, some of the items in question are already on the current List of Evidence, albeit in different form. For instance, 54 of the items are sound recordings which were enhanced by one of the Prosecution witnesses, the versions with a lesser quality are already on the current List of Evidence. Another 54 of the items are reports on the enhancement which correspond to the 54 audio files and are of a technical nature only. The addition of these items does not pose any additional burden to the Defence but, to the contrary, make their assessment of existing items on the list easier. Many other items are related to the expected testimony of individuals the Prosecution intends to call as witnesses. They are thus commented upon in these statements, which are already in the List of Evidence.
18. In respect of the 19 items which the Prosecution has come into possession after the 6 September Deadline, the Chamber notes that two of the items are related to P-96 and will be discussed below. Concerning the remainder, the Chamber observes that some items³⁴ are related to witnesses whose testimony has already been accepted via Rule 68(2)(b) of the Rules or was taken via Article 56 and subsequently recognised as formally submitted. One item is a corrected version of a report already on the List of Evidence³⁵ and a further item, a book authored by an expert witness the Prosecution intends to call, was disclosed under Rule 77 of the Rules.³⁶ Additionally, the majority of the items disclosed as incriminating evidence are related to witnesses that are not scheduled among the first ten witnesses to testify for the Prosecution. Accordingly, the Defence had more than three months after the reception of this evidence³⁷ before the testimony of these witnesses.

³⁴ UGA-OTP-0270-1307, UGA-OTP-0270-1341 and UGA-OTP-0272-0576.

³⁵ UGA-OTP-0272-446.

³⁶ UGA-OTP-0272-0002.

³⁷ See paragraph 16 above, especially footnote 32.

19. Considering the above, the Chamber is of the view that, the fair and expeditious conduct of the proceedings is preserved by permitting the Prosecution to add these items. The Defence still has sufficient time to prepare and is not unduly prejudiced by their addition. Accordingly, it grants the Initial Request with regard to 317 items³⁸ and the Second Additional Request with regard to the two items.

ii) Requests related to P-1

20. In respect to the requests linked to P-1, the Prosecution explains that P-1 was ‘inadvertently’ excluded from the List of Witnesses³⁹ and that his expected testimony is ‘relevant, probative and important’.⁴⁰ With regard to the introduction of P-1’s prior testimony pursuant to Rule 68(2)(b) of the Rules, the Prosecution submits that it goes to proof of a matter other than the acts and conduct of the accused despite P-1 mentioning Mr Ongwen in the statement. The Prosecution argues that the references made to the accused’s conduct concern incidents outside of the charges and further informs the Chamber that it will not rely on it as evidence.⁴¹ Further, it avers that the prior recorded testimony has sufficient indicia of reliability, is of a cumulative and corroborative nature and that its introduction would be in the interest of justice.⁴²

21. In respect of the requests related to P-1, the Defence avers the Prosecution does not fulfil the Regulation 35 criteria to add P-1 to its List of Witnesses and the 86 items related to P-1 to its List of Evidence.⁴³ It further submits that, in case P-1 is admitted to the List of Witnesses, the admission of his testimony under Rule

³⁸ The 300 items listed in ICC-02/04-01/15-577-Conf-AnxA not relating to P-1 and the 17 items listed in ICC-02/04-01/15-577-Conf-AnxB not related to P-96.

³⁹ Initial Request, ICC-02/04-01/15-577, para. 21.

⁴⁰ Initial Request, ICC-02/04-01/15-577, para. 21.

⁴¹ Additional Request, ICC-02/04-01/15-579-Conf, paras 7-9.

⁴² Additional Request, ICC-02/04-01/15-579-Conf, paras 10-13.

⁴³ Response, ICC-02/04-01/15-587-Red, paras 23-25.

68(2)(b) of the Rules should be rejected.⁴⁴ It repeats the arguments made in its submissions to the Rule 68(2)(b) Decision with respect of the usage of Rule 68(2)(b) of the Rules and incorporates them by reference.⁴⁵ It further argues that the prior recorded testimony has, in violation of Rule 76(3) of the Rules, not been translated into Acholi.⁴⁶ Lastly, the Defence states that it already complained in July 2016 that P-1 was not included in the witness list and that his testimony, as the testimony of P-7 and P-8, should be provided via live-testimony.⁴⁷

22. In respect to the Defence argument that the belated addition of P-1 to the witness list does not satisfy the criteria of Regulation 35 of the Regulations, the terms of the 30 May Decision and the Chamber's legal application of it above apply equally to the context of adding witnesses.⁴⁸
23. P-1 has been included in the submissions of Prosecution since the pre-trial stage of this case, including the pre-confirmation brief.⁴⁹ The Pre-Trial Chamber, in its decision on the confirmation of the charges, also noted that the Prosecution relies on the testimony of P-1⁵⁰ and, in fact, the Defence noted his absence from the List of Witnesses in one of its filings.⁵¹ Accordingly, the Defence has been aware of the content of P-1's testimony for almost a year by now. Noting that the trial has not even commenced yet, the Chamber fails to see what undue prejudice is caused by P-1's addition and considers that this addition can be permitted while preserving the fair and expeditious conduct of the proceedings.

⁴⁴ Response, ICC-02/04-01/15-587-Conf, paras 26-31.

⁴⁵ Response, ICC-02/04-01/15-587-Red, para. 26.

⁴⁶ Response, ICC-02/04-01/15-587-Red, para. 29.

⁴⁷ Response, ICC-02/04-01/15-587-Conf, para. 30.

⁴⁸ See paragraph 14 above.

⁴⁹ Annex C to Prosecution's submission of the document containing the charges, the pre-confirmation brief, and the list of evidence, 25 December 2015, ICC-02/04-01/15-375-Conf-AnxC.

⁵⁰ Public redacted version of: Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, ICC-02/04-01/15-422-Red, para. 47.

⁵¹ Corrected Version of "Defence Response to the Prosecution Application to Admit Testimony Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence", filed on 26 July 2016, 27 July 2016, ICC-02/04-01/15-509-Conf-Corr.

24. Accordingly, the Chamber allows the addition of P-1 to the Prosecution's List of Witnesses and the addition of the 68 items related to P-1 in annex A of the Initial Request to the Prosecution's List of Evidence.
25. Turning to the request to introduce P-1's prior recorded testimony, the Chamber recalls its general findings as to the meaning of 'prior recorded testimony, the criteria of Rule 68(2)(b) of Rules and the factors guiding the Chamber discretion under Rule 68(2)(b)(i) of the Rules.⁵²
26. The Chamber does not agree with the Defence that the attack on the Pajule IDP camp is a fact materially in dispute. It is true that only the existence of the attack – not that the attack was conducted by the LRA – is agreed upon between the parties. However, in the Rule 68(2)(b) Decision the Chamber has allowed the introduction of the prior recorded testimony of several witnesses related to the Pajule IDP camp attack.⁵³ Furthermore, the Chamber notes that in other submissions the Defence seems to implicitly argue that the attack was conducted by the LRA.⁵⁴ The Chamber recalls its interpretation of 'materially disputed' as set out in the Rule 68(2)(b) Decision,⁵⁵ and – taking into consideration the above – finds that P-1's testimony is not materially in dispute in respect of the attack on the Pajule IDP camp.
27. The Chamber notes that P-7 and P-8's testimony have been introduced via Rule 68(2)(b) of the Rules⁵⁶ and similar considerations apply in the current case. P-1 is mainly called for the documents associated with his prior recorded testimony. The Chamber is convinced that – with the information provided by P-1 in the

⁵² Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, paras 9-20.

⁵³ Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, paras 31-67.

⁵⁴ Corrected Version of "Defence Response to the Prosecution Application to Admit Testimony Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence", filed on 26 July 2016, 27 July 2016, ICC-02/04-01/15-509-Conf-Corr., paras 28 and 38-39.

⁵⁵ Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 15.

⁵⁶ Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, paras 34-42.

prior recorded testimony about these documents – the Defence is fully capable of presenting its arguments at trial.

28. The fact that the Prosecution does not provide a translation of P-1's statement in Acholi, does not make the prior recorded testimony inadmissible *per se*. In its Decision on Disclosure Issues Arising out of the First Status Conference, the Chamber held that the Acholi translations of witness statements must be provided 'by no later than three months prior to the testimony of the witness concerned'.⁵⁷ In case of an introduction of the prior recorded testimony via Rule 68(2)(b) this deadline can logically not apply. While the Chamber agrees with the Defence that the Prosecution is obliged to provide a translation in Acholi pursuant to Rule 76(3) of the Rules, the current lack thereof does not prevent its introduction pursuant to Rule 68.⁵⁸ Rather, the Chamber hereby instructs the Prosecution to provide the Defence with a translation of P-1's prior recorded testimony in Acholi.
29. Considering the above and subject to both the prompt provision of an Acholi translation and the necessary Rule 68(2)(b)(ii) and (iii) declarations, the Chamber introduces the prior recorded testimony of P-1 under Rule 68(2)(b) of the Rules, together with its associated documents, as specified in annex A to the Additional Request.

iii) Request related to P-96

30. With regard to the introduction of P-96's prior recorded testimony under Rule 68(2)(c) of the Rules, the Prosecution informs the Chamber that the witness gave an interview to the Prosecution in 2005 and subsequently died in 2007.⁵⁹ The Prosecution submits that the prior recorded testimony is relevant, probative and

⁵⁷ 7 June 2016, ICC-02/04-01/15-457, para. 10.

⁵⁸ See also Rule 68(2)(b) Decision, ICC-02/04-01/15-596-Red, para. 26.

⁵⁹ Additional Request, ICC-02/04-01/15-579-Conf, paras 17-18 and Annexes C and D to the Additional Request.

reliable, that it goes not to the acts and conducts of the accused, that measures under Article 56 of the Statute could not be anticipated and that its introduction would be consistent with the rights of the accused.⁶⁰

31. In its Response, the Defence objects to the introduction of the evidence on two grounds: it submits first that the testimony in question is immaterial and irrelevant⁶¹ and second that it received the translations of the transcripts too late.⁶²
32. In respect to the second argument, the Chamber repeats its finding above⁶³ that the deadline for the disclosure of translations of witness statements of three months applies in respect to the date of testimony and can therefore logically not be applied in cases of introductions via Rule 68. The Chamber does not find any prejudice for the Defence due to the fact that it has only been in possession of the translations of the witness statements for two months instead of three.
33. The Chamber notes that the further criteria of Rule 68(2)(c)(i) and (ii) of the Rules, namely that the person is unavailable, that measures under Article 56 could not be anticipated, that the prior record testimony has sufficient criteria of reliability are not contested by the Defence and finds them fulfilled.
34. In respect of the argument that the testimony provided by P-96 is irrelevant, the Chamber notes that the Prosecution submits that P-96 testified about the Lord's Resistance Army's policy of targeting civilians and thus provides contextual information relevant to the charges.⁶⁴ The Chamber defers its final assessment of

⁶⁰ Additional Request, ICC-02/04-01/15-579-Conf, paras 15-16 and 19-28.

⁶¹ Response, ICC-02/04-01/15-587-Red, paras 32 and 34.

⁶² Response, ICC-02/04-01/15-587-Red, paras 33 and 35.

⁶³ See paragraph 28 above.

⁶⁴ Additional Request, ICC-02/04-01/15-579-Conf, paras 19-21.

the relevance of P-96's testimony for the deliberation of the judgment under Article 74 of the Statute.⁶⁵

35. Accordingly, the Chamber introduces the prior recorded testimony of P-96, together with its associated documents, as specified in Annex B to the Additional Request. The Chamber also grants leave to add the two items of annex B of the Initial Request, which are related to P-96,⁶⁶ to the Prosecution's List of Evidence.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Initial Request, the Additional Request and the Second Additional Request;

DECIDES, subject to the prompt provision of an Acholi translation of the prior recorded testimony and the respective declarations under Rule 68(2)(b)(ii) and (iii) of the Rules, that the prior recorded testimony of P-1 and its associated documents are introduced into evidence pursuant to Rule 68(2)(b), respectively:

UGA-OTP-0138-0002, together with related documents UGA-OTP-0138-0023, UGA-OTP-0138-0024, UGA-OTP-0138-0091, UGA-OTP-0138-0168, UGA-OTP-0138-0197, UGA-OTP-0138-0198, UGA-OTP-0138-0200, UGA-OTP-0138-0202, UGA-OTP-0138-0203, UGA-OTP-0138-0207, UGA-OTP-0138-0209, UGA-OTP-0138-0211, UGA-OTP-0138-0213, UGA-OTP-0138-0214, UGA-OTP-0138-0215, UGA-OTP-0138-0216, UGA-OTP-0138-0217, UGA-OTP-0138-0219, UGA-OTP-0138-0222, UGA-OTP-0138-0229, UGA-OTP-0138-0230, UGA-OTP-0138-0232, UGA-OTP-0138-0234; UGA-OTP-0138-0235; UGA-OTP-0138-0236, UGA-OTP-0138-0238, UGA-OTP-0138-0239, UGA-OTP-0138-0240, UGA-OTP-0138-0241,

⁶⁵ See Initial Directions on the Conduct of the Proceedings, ICC-02/04-01/15-497, paras 24-26.

⁶⁶ UGA-OTP-0272-0658 and UGA-OTP-0272-0666, they are submitted to prove the death of P-96.

UGA-OTP-0138-0242, UGA-OTP-0138-0243, UGA-OTP-0138-0244, UGA-OTP-0138-0246, UGA-OTP-0138-0248, UGA-OTP-0138-0251, UGA-OTP-0138-0252, UGA-OTP-0138-0253, UGA-OTP-0138-0254, UGA-OTP-0138-0256, UGA-OTP-0138-0258, UGA-OTP-0138-0259, UGA-OTP-0138-0260, UGA-OTP-0138-0262, UGA-OTP-0138-0263, UGA-OTP-0138-0264, UGA-OTP-0138-0265, UGA-OTP-0138-0266, UGA-OTP-0138-0267, UGA-OTP-0138-0269, UGA-OTP-0138-0270, UGA-OTP-0138-0271, UGA-OTP-0138-0274, UGA-OTP-0138-0277, UGA-OTP-0138-0279, UGA-OTP-0138-0280, UGA-OTP-0138-0281, UGA-OTP-0138-0283, UGA-OTP-0138-0284, UGA-OTP-0138-0286, UGA-OTP-0137-0325, UGA-OTP-0138-0287, UGA-OTP-0138-0288, UGA-OTP-0138-0289, UGA-OTP-0138-0291, UGA-OTP-0138-0295, UGA-OTP-0138-0297, UGA-OTP-0138-0309, UGA-OTP-0138-0310, UGA-OTP-0138-0311, UGA-OTP-0138-0315, UGA-OTP-0138-0317, UGA-OTP-0138-0318, UGA-OTP-0138-0319, UGA-OTP-0138-0320, UGA-OTP-0138-0321, UGA-OTP-0138-0322, UGA-OTP-0138-0323, UGA-OTP-0138-0325, UGA-OTP-0138-0326, UGA-OTP-0138-0327, UGA-OTP-0138-0328, UGA-OTP-0138-0329, UGA-OTP-0138-0330 and UGA-OTP-0138-0331;

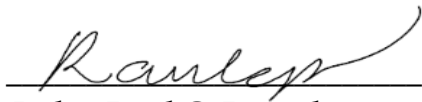
DECIDES that the prior recorded testimony of P-96 and its associated documents are introduced into evidence pursuant to Rule 68(2) (c), respectively:

UGA-OTP-0228-1698, UGA-OTP-0228-1739, UGA-OTP-0228-1778, UGA-OTP-0228-1814, UGA-OTP-0228-1851, UGA-OTP-0228-1862, UGA-OTP-0228-1901, UGA-OTP-0228-1938, UGA-OTP-0228-1974, UGA-OTP-0228-2014, UGA-OTP-0228-2056, together with related documents UGA-OTP-0164-0071, UGA-OTP-0164-0072, UGA-OTP-0164-0073, UGA-OTP-0164-0074, UGA-OTP-0164-0075 and UGA-OTP-0164-0076;

DIRECTS the Prosecution to file a updated List of Evidence; and

DIRECTS the Prosecution to file an updated List of Witnesses.

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


Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

Dated 22 November 2016

At The Hague, The Netherlands