

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-02/04-01/15**
Date: **7 February 2017**

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 Annex A and B

Prosecution request to add two witnesses to its list of witnesses and 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 Prosecution requests the Chamber's permission to add two witnesses, P-0441 and P-0442, to its list of witnesses, and two items to its list of evidence. The Prosecution requests that these two witnesses' evidence be given pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules").

2. The evidence of these two witnesses will assist the Chamber to understand witness P-0059's evidence on a discrete issue: the authorship of a sketch of the ISO radio intercept building in Gulu. The Chamber has previously stated that it would like to receive this evidence, and that the Defence would incur no prejudice from its submission.¹ The introduction of these witnesses' evidence pursuant to rule 68(2)(b) of the Rules will assist the Chamber to arrive at the truth without expending valuable court time.

Confidentiality

3. Annex A and B to this request are classified as "confidential" pursuant to regulation 23*bis* of the Regulations of the Court because they contain witnesses' names and evidentiary information that has been disclosed confidentially. Although this request contains references to confidential transcripts of court hearings, the portions cited herein do not undermine the protective measures implemented during P-0059's questioning.

¹ ICC-02/04-01/15-T-39-CONF-ENG ET 01-02-2017, p. 54, lns. 11-14.

Background

4. 6 September 2016 was the deadline to submit the Prosecution's list of witnesses and list of evidence and to disclose all incriminating evidence.² Any addition to the Prosecution's list of witnesses or evidence after this deadline requires the leave of the Chamber.³

5. On 31 January 2017, the Defence questioned P-0059 about the authorship of a sketch of the Internal Security Organisation (ISO) intercept building, UGA-OTP-0258-0721. P-0059 stated that he had authored the sketch, and was subsequently questioned on various details of the sketch. He stated that he had added the various annotations (P-3, P-32, P-59) to indicate the location of various features, and that 'P' stood for position, while the numbers were selected at random.⁴

6. On 1 February 2017, upon re-examination by the Prosecution and the Defence, the witness conceded that he was "confused", and in fact "[t]his sketch was brought to me already sketched and it was [...] the Prosecutor who brought to me this sketch".⁵

7. Confirming P-0059's latter testimony, Prosecution staff member P-0441 was in fact the author of this sketch. P-0441's statement is annexed to this filing at Annex A. The sketch was shown to P-0059 during his interview in February and March 2016 by Prosecution staff member P-0442. P-0442's statement is attached to this filing at Annex B.⁶

² See ICC-02/04-01/15-449.

³ ICC-02/04-01/15-449, para. 8.

⁴ ICC-02/04-01/15-T-38-CONF-ENG ET 31-01-2017, pp. 32-38.

⁵ ICC-02/04-01/15-T-39-CONF-ENG ET 01-02-2017, pp. 55-56.

⁶ These statements are also registered in Ringtail as UGA-OTP-0276-2414 (P-0441) and UGA-OTP-0276-2418 (P-0442). They were disclosed to the Defence on 2 February 2017.

Submissions

A. The Chamber should permit the Prosecution to add two witnesses to its list of witnesses and two items to its list of evidence

8. P-0441's and P-0442's witnesses' statements are relevant and probative. They are important to confirm and clarify P-0059's testimony related to the sketch, which will permit the Chamber to better weigh P-0059's testimony at the end of the trial.
9. The Prosecution could not have anticipated this issue because it only arose during P-0059's questioning. Because both parties became aware of this issue at the same time the Defence incurs no prejudice by the introduction of these statements.

B. The witnesses' evidence should be introduced via rule 68(2)(b) of the Rules

10. The Chamber has already indicated in Court proceedings on 1 February 2017 that it "would rather receive their [P-0441's and P-0442's] statements in writing, and I would assume that there are no objections against that. We allow this because there is no prejudice seen for the Defence".⁷
11. These witnesses' evidence goes to proof of matters other than the acts and conducts of Dominic Ongwen. The subject matter cannot reasonably be in dispute, given P-0059's answers to questioning by both parties on re-examination on 1 February 2017. It is clear that the interests of justice are best served by the introduction of this evidence, as it will assist the Chamber

⁷ ICC-02/04-01/15-T-39-CONF-ENG ET 01-02-2017, p. 54, lns. 11-14.

to arrive at the truth regarding the authorship of the sketch, and thus better understand P-0059's testimony.

12. The Acholi versions of P-0441's and P-0442's statements will be made available to the Defence in the coming days.

Conclusion

13. The Prosecution requests the Chamber's permission to add P-0441 and P-0442 to its list of witnesses and add Annex A and B of this request to its list of evidence. The Prosecution requests that the two witnesses' evidence be introduced pursuant to rule 68(2)(b) of the Rules.



Fatou Bensouda, Prosecutor

Dated this 7th day of February 2017
At The Hague, The Netherlands