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

Date: **15 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

**Public Redacted Version of “Defence Response to the Prosecution’s Request to Add Two Witnesses to its List of Witnesses and Submission of Statements Pursuant to Rule 68(2)(b)”,
filed on 9 February 2017**

Source: Defence for Dominic Ongwen

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**The Office of the Prosecutor**

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I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') responds to the "Prosecution request to add two witnesses to its list of witnesses and two items to its list of evidence" ('Application').¹ Trial Chamber IX ('Chamber') should reject the Application as the proposed items are irrelevant.

II. CONFIDENTIALITY

2. Pursuant to Regulation 23 *bis*(1), the Defence files this response as confidential. As the Application requests the introduction of the two items into evidence pursuant to Rule 68(2)(b), the Defence makes arguments as to the relevance of these confidential items and persons which touch and concern these items. A public redacted version is filed contemporaneously.

III. BACKGROUND

3. On 6 September 2016, the Prosecution submitted its list of witnesses.²
4. On 28 October 2016, the Prosecution requested to add P-0001 to its list of witnesses.³
5. On 22 November 2016, the Chamber granted the Prosecution request to add P-0001 to its list of witnesses.⁴
6. On 30 November 2016, the Prosecution filed its updated list of witnesses.⁵
7. From 27 January 2017 to 1 February 2017, P-0059 testified before the Chamber.
8. On 7 February 2017, the Prosecution filed the Application.⁶

¹ ICC-02/04-01/15-699 (with Confidential Annexes A and B).

² ICC-02/04-01/15-532-Conf-AnxB.

³ ICC-02/04-01/15-579-Conf.

⁴ ICC-02/04-01/15-600.

⁵ ICC-02/04-01/15-613-Conf-AnxB.

⁶ See Application.

IV. SUBMISSIONS

9. On 27 January 2017, Witness P-0059 took credit for drawing UGA-OTP-0258-0721. He stated, “*On this page I can see a map which is hand-drawn. I can see below it is my signature. This means that I was the one who drew this map.*”⁷
10. On 31 January 2017, the Defence and the Presiding Judge further questioned P-0059 about UGA-OTP-0258-0721 during which he elaborated on details in the maps which he claimed to have drawn and provided unintelligible answers regarding the rationale for labels on the map.⁸ The Witness went into details about how he had even indicated the [REDACTED], although he later suggested that [REDACTED] stood for “a tree”;⁹ and he explained in graphic details the positions of the [REDACTED] leading to the [REDACTED] tree.¹⁰
11. On 1 February 2017, the Prosecution questioned P-0059 about the authorship of UGA-OTP-0258-0721.¹¹ Witness P-0059, when confronted with his statement that he had in fact been shown the sketch and was then asked about the authorship of the sketch, stated, “*I have my signature there and that means that even if I didn’t sketch it, it is as if I sketched it because my signature is down there.*”¹² The Defence then questioned witness P-0059 further on this issue.¹³
12. It is noteworthy that P-0059, a [REDACTED], could have been the one to be asked by the office from the Prosecution to append his signature to the sketch map!
13. Witness P-0059 contradicted himself by adopting the information presented to him in the Prosecution’s re-direct after his memory was refreshed from his past statement.¹⁴ Enough information has been placed on the record of the case for the Chamber to come to its own conclusion about the credibility and reliability of the witness.

⁷ ICC-02/04-01/15-T-36-CONF-ENG ET, pg. 10, lns 2-3.

⁸ ICC-02/04-01/15-T-38-CONF-ENG ET, pg. 32, ln. 14 to pg. 38, ln. 13 and pg. 43, ln. 15 to pg. 45, ln. 4

⁹ *Ibid.*, pg. 33, lns 19-21. *See also* pg. 35, lns 23-24 and pg. 36, lns 9-15.

¹⁰ *Ibid.*, pg. 35, ln. 20 to pg. 36, ln. 15.

¹¹ ICC-02/04-01/15-T-39-CONF-ENG ET, pg. 54, ln. 18 to pg. 55, ln. 19.

¹² *Ibid.*, pg. 55, lns 17-18.

¹³ *Ibid.*, pg. 55, ln 22 to pg. 58, ln 13.

¹⁴ *Compare* ICC-02/04-01/15-T-39-CONF-ENG ET, pg. 55, lns 10-18 with ICC-02/04-01/15-T-39-CONF-ENG ET, pg. 56, ln 10 to pg. 58, ln 13.

14. Something of true concern is the issue that when confronted with something that witness P-0059 was unsure of, a question which he did not have an answer for, he concocted a story. Instead of answering truthfully, *i.e.* saying “I do not know”, he filled in unknown information with his imagination. He created a story so as not to appear unintelligent before the Court and **continued to repeat this information for around half an hour of cross-examination.**¹⁵ This raises the question of how many other times during his career he invented stories to fill in missing gaps so as to impress someone of an apparent higher status than him. The Defence requests the Chamber to take P-0059’s statements regarding this sketch into account in its deliberations when evaluating his credibility and the reliability of his evidence.
15. Under the protocol enacted on 11 November 2015,¹⁶ P-0059 is a Prosecution witness, and the Prosecution is at liberty to share information with its witnesses relating to its own witnesses as it deems fit. [REDACTED]. There is thus the potential for the contamination of testimony, even if not ill-intended. The Chamber is requested to take this into account in its deliberations when considering the integrity of the Prosecution’s case.
16. Though the two statements annexed to the Prosecution application may appear to provide greater clarity on the origins of the sketch presented to P-0059, the full implications have not yet been revealed. The Defence thus reserves its rights to make further submissions on this issue and raise the issue with subsequent witnesses.

V. RELIEF

17. For the abovementioned stipulation, the Defence respectfully requests the Chamber to reject the Prosecution Application as irrelevant and inadmissible pursuant to Rule 64(3) of the Rules of Procedure and Evidence because they would have no evidential value on a matter fully expatiated upon by both the Prosecution and Defence, as well as the Chamber.

¹⁵ ICC-02/04-01/15-T-38-CONF-ENG ET, pg. 32, ln. 14 to pg. 38, ln. 13 and pg. 43, ln. 15 to pg. 45, ln. 4.

¹⁶ ICC-02/04-01/15-339-Anx.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 15th day of February, 2017

At Gulu, Uganda