

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **21 June 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 Annexes A and B**

**Public redacted version of “Prosecution’s Request to Add Two Items to its List of
Evidence”, 21 June 2017**

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 Chamber to add two transcripts, UGA-OTP-0277-0834 (English) and UGA-OTP-0277-0824 (Acholi) (“Radio Transcripts”), to its List of Evidence (“LoE”). The Radio Transcripts are appended to this motion as Annexes A and B respectively. The audio recording itself (UGA-OTP-0182-0032) has been included in the LoE since 6 September 2016.
2. The Radio Transcripts contain an appearance by Witness P-0054 on local radio in northern Uganda in [REDACTED]. P-0054 is scheduled to testify in the next evidence block beginning on 10 July 2017.

Background

3. The Radio Transcripts reflect the audio of UGA-OTP-0182-0032, track 1. This is a recording of the radio programme [REDACTED]. In [REDACTED], Witness P-0054 appeared on this programme and spoke about [REDACTED].
4. The audio recording was first disclosed to the Defence on 13 November 2015. It was later re-disclosed on 6 September 2016.¹
5. In July 2016, P-0054 was interviewed by the Prosecution and the content of his radio appearance was discussed.² The transcripts of this interview were disclosed to the Defence on 6 September 2016.

¹ This re-disclosure was necessitated by a labelling error with respect to only track 2 of this audio. *See* the reports on this issue: UGA-OTP-0269-0841 & UGA-OTP-0269-0845.

² *See* UGA-OTP-0271-2298.

6. Due to the extensive transcription burden, and the prioritisation of translating witness statements and transcripts into Acholi, the Prosecution has only recently been able to secure the transcription of the audio recording. As soon as the Radio Transcripts became available, they were disclosed to the Defence on 7 June 2017 *via* e-mail.³

Confidentiality

7. This request and its Annexes A and B are classified as “Confidential” pursuant to regulation 23*bis* of the Regulations of the Court. [REDACTED]. Any further reference to this audio recording in court will be made in private session.

Submissions

8. The addition of the Radio Transcripts to the Prosecution’s LoE is justified since they are of significant probative value and the addition causes no prejudice to the Accused.

9. As previously clarified by the Trial Chamber, a determination of whether leave to add items to the LoE should be granted is not a decision under regulation 35 of the Regulations of the Court. Rather, the Chamber is to determine whether:

“reliance on the part of the Prosecution on items of evidence additional to those included in the original list of evidence causes an undue prejudice to the procedural rights of the Defence. Relevant factors for the Chamber’s determination in this regard include, *inter alia*, the extent to which the requested addition is opposed by the Defence, the time when the addition is sought, the nature and amount of the material concerned, the intended purpose for the Prosecution’s requested reliance on such

³ E-mail from Prosecution to Defence, 7 June 2017, 17:29.

material as well as its prospective significance in light of the charges brought against the accused and the rest of the available evidence.⁴

The Radio Transcripts are of probative value

10. The Radio Transcripts are of significant probative value. During his radio appearance, P-0054 speaks about, *inter alia*, [REDACTED].⁵ The audio recording may be played to P-0054 in the course of his direct examination, and he may be able to comment on its content, which will assist the Chamber in its truth-finding function.

Lack of prejudice to the Accused

11. The addition of the Radio Transcripts to the LoE will not impact on the rights of the Accused as the Defence has been in possession of the audio recording since November 2015. It was included in the LoE submitted on 6 September 2016,⁶ and updated on 30 November 2016.⁷

12. Moreover, P-0054 was interviewed on the content of his radio appearance, and these transcripts were also disclosed to the Defence on 6 September 2016. The Defence has thus been on sufficient notice of the content of the audio, and its relevance to P-0054 in particular.

13. Finally, the English translation of the audio recording is 10 pages in length, with the exchange concerning P-0054 being 5 pages long.

⁴ ICC-02/04-01/15-619, para. 10.

⁵ Annex A, UGA-OTP-0277-0834 at 0838-0842.

⁶ ICC-02/04-01/15-532-Conf-AnxA. UGA-OTP-0182-0032 features at item 1885.

⁷ ICC-02/04-01/15-613-Conf-AnxB. UGA-OTP-0182-0032 features at item 1885.

14. The Prosecution is mindful that per Trial Chamber's direction, for any subsequent formal submission into evidence, the inclusion of transcripts and translations into the LoE is not strictly necessary, but is preferable to avoid any confusion as to their status.⁸

Relief Requested

15. The Prosecution requests leave from the Chamber to add the Radio Transcripts to the Prosecution's LoE.



Fatou Bensouda , Prosecutor

Dated this 21st day of June 2017
At The Hague, The Netherlands

⁸ ICC-02/04-01/15-497, para. 30.