

ANNEX VII

PUBLIC

From: Trial Chamber IX Communications
Sent: 18 January 2019 14:37
To: [REDACTED]
Cc: Trial Chamber IX Communications; [REDACTED]
Subject: Decision on Prosecution Request Related to the Scope of D-133's evidence

Dear Prosecution Counsel:

The Prosecution correctly references the Chamber's past pronouncements on this point. Nevertheless, the Chamber will not give advance rulings on questions which may be asked during D-133's examination. This will be dealt with on a question-by-question basis during the hearing.

As for the objections raised to the last two pages of D-133's report, the Chamber recalls its general approach that it does not rule upon the relevance, probative value, or potentially prejudicial effect of evidence at the point of its submission (Decision 497, para. 24). The Chamber does not consider that a deviation from its general approach is warranted in this instance. Should D-133's report be submitted by the Defence, the Prosecution may raise or repeat any objections it has in accordance with Rule 64(1) of the Rules and this Chamber's email submission procedure (Decision 497, para. 28). These arguments will then be considered by the Chamber when deliberating its judgment.

Best,

Trial Chamber IX

From: [REDACTED]
Sent: 18 January 2019 13:11
To: Trial Chamber IX Communications; [REDACTED]
Cc: [REDACTED]
Subject: Request related to the scope of D-0133's evidence

Dear Trial Chamber IX,

Witness D-0133 is identified as an expert witness in the Defence's List of Witnesses. His Expert Report is UGA-D26-0015-1022 (hereinafter "Report"), which is scheduled to be introduced into evidence pursuant to Rule 68(3) of the Rules of Procedure and Evidence.

The Prosecution objects to the introduction into evidence of the final two pages of the Report, i.e. the text under subtitle '[I]s the prosecution of a former child soldier consistent with human rights law' (UGA-D26-0015-1022 at 1029-1030), in which D-0133 opines on applicability and interpretation of international law and the propriety of the ICC conducting a case against Dominic Ongwen. We also object to one additional sentence on the preceding page (1028) that reads: *"Given his status as a child soldier, therefore a victim, the ICC may have been incorrect in identifying Dominic Ongwen among the few to be prosecuted"*.

The purpose of expert testimony is to provide specialized knowledge that will help the trier of fact to understand the evidence or to determine a fact in issue, and not to opine on matters of law which, if they arise at all, must be

determined by the Chamber. During the testimony of another Defence expert, D-0060, the Trial Chamber emphasized that “[e]xperts and witness can only bring to the attention of the Court a factual basis for the legal conclusions that the Chamber will have to take later on” (ICC-02/04-01/15-T-197-ENG ET, 19.11.2018 (D-0060), p. 14 lns. 3-5). The Trial Chamber has previously also prohibited questioning related to a witness’s opinion about the ICC and preferences for different justice systems (ICC-02/04-01/15-T-181-ENG, 2.10.2018 (D-0028), p. 57 ln. 12 - p. 58 ln. 3). The Trial Chamber has, throughout this trial, disallowed questions on knowledge/interpretation of the law (*for example*: ICC-02/04-01/15-T-168-ENG ET, 28.03.2018 (P-0445), p. 26 ln. 14 - p. 27 ln. 5; ICC-02/04-01/15-T-117-CONF-ENG ET, 3.10.2017 (P-0038), p. 8 ln. 3 – p.11. ln. 23).

The Prosecution therefore asks the Trial Chamber to *first*, reject the introduction of the relevant part of the Report into evidence and, *second*, not allow related questioning during D-0133’s examination in court.

The Prosecution submits that the relevant part of the Report is a distinct, stand-alone section drafted in response to a discrete question posed by the Defence in the Terms of Reference for D-0133 (UGA-D26-0015-1032 at 1033, third bullet point). It is not directly related to the rest of the Report and its exclusion does not affect the Chamber’s ability to review and assess the reliability and consistency of the Report/testimony.

The Prosecution raises this objection in advance of D-0133’s testimony in writing, so that it can be considered and decided by the Trial Chamber in advance of the hearing. The Prosecution submits this request via email, but will file a formal filing should the Trial Chamber direct it to do so.

Best regards,

[REDACTED]

[REDACTED]

Office of the Prosecutor
International Criminal Court

[REDACTED]

[REDACTED]

[REDACTED]