

ANNEX I

PUBLIC

[REDACTED]

From: [REDACTED]
Sent: 19 January 2017 13:56
To: Trial Chamber IX Communications
Cc: [REDACTED]
Subject: RE: Defence items to be submitted to Trial Chamber IX pursuant to ICC-02/04-01/15-497, para. 28(i)

Dear Trial Chamber,

I am writing on behalf of Counsels Hon. Ayena-Odongo and Chief Taku to convey the following reply to the Prosecution objections to two of the P-422 items for which submission was requested by the Defence.

The Trial Chamber has previously stated that it will generally defer its assessment of the admissibility of the evidence until deliberating its judgment (ICC-02/04-01/15-497, para. 24). It made clear that this general approach would not even involve a *prima facie* consideration of the submitted material (ICC-02/04-01/15-615, para. 7).

Witness P-422 was asked questions about the documents and their subject matter. Whether the witness had seen them or not, or had knowledge of them or not, is irrelevant to their submission. It can be added that P-422 was able to continue with the line of questions to which the submitted material relates.

The Prosecution's objections are directed at the relevance and probative value of the items. Where the Prosecution has previously requested submission to the Trial Chamber of items where it considered that "not every page [of the entirety of the intercept evidence][...] is directly relevant or probative" (ICC-02/04-01/15-580, para. 17), this approach was accepted by the Trial Chamber (ICC-02/04-01/15-615, para. 24).

In contrast to the prior Prosecution's request for the submission of not directly relevant materials, these documents should be accepted as submitted for the completeness of the proceedings since reference was made to them and questions asked and answered on their subject and contents.

Kind regards,

From: [REDACTED]
Sent: 18 January 2017 17:24
To: Trial Chamber IX Communications
Cc: [REDACTED]
Subject: RE: Defence items to be submitted to Trial Chamber IX pursuant to ICC-02/04-01/15-497, para. 28(i)

The Prosecution objects to the formal submission of the highlighted items (at numbers 3 and 5) in the list below as a result of the testimony of Witness P-0422.

Witness P-0422 was not shown these documents in the witness box and did not comment on them in any way. In respect of the first he specifically stated (p.75 of the edited transcript) that he had not read the document and could not comment on it.

In respect of the second (p.81 of the edited transcript) he was not specifically asked whether he was familiar with the document, but his answers clearly suggest that he was not, and Defence counsel (at p.82 of the edited transcript) expressly 'excused' P-0422 from expressing an opinion on something he had not studied. The Prosecution wishes to make it clear that it is not objecting to the submission of these documents per se. It may be that through another witness, or by virtue of a bar table motion, they can be properly submitted. But it cannot be the case that merely mentioning a document to a witness, irrespective of his answers to questions about it, provide grounds for its formal submission through that witness.

Ben Gumpert

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Dedication - Integrity - Respect

From: [REDACTED]
Sent: 18 January 2017 16:10
To: Trial Chamber IX Communications
Cc: [REDACTED]
[REDACTED]

Subject: Defence items to be submitted to Trial Chamber IX pursuant to ICC-02/04-01/15-497, para. 28(i)

Dear Trial Chamber,

On behalf of the Ongwen Defence, I am here writing to you to request the formal submission of 8 items raised with witness P-422 during testimony. The table below outlines these items.

This email is sent in accordance with the (i) the Chamber's instructions in ICC-02/04-01/15-497, para. 28(i) and (ii) Articles 64(9) and 69(3) of the Rome Statute and Rule 64 of the Rules of Evidence and Procedure. The materials submitted into evidence were discussed with the witness during the course of his cross-examination.

Tab	Doc ID	Title	Confidentiality	Pages	Passages	Citation
1	UGA-D26-0018-0001	Uganda's LRA war criminals speak about horrors of war	Public	A/V	06:42-07:10;	p. 49 of the edited transcript;
2	UGA-D26-0018-0002	ICC - Ugandan LRA rebel chief headed to The Hague	Public	A/V	02:19-02:52	p. 106 of the edited transcript
3	UGA-D26-0018-0003	Recruiting Internally Displaced Persons into Civil Militias: The Case of Northern Uganda	Public	21	ALL	p. 86 of the edited transcript
5	UGA-D26-0018-0079	Inside 5000 lost guns & Shs24bn Arrow Boys pay	Public	12	0080-0089	p. 86 of the edited transcript
6	UGA-D26-0018-0091	Joseph Kony: Another side: Freedom Fighter against Ugandan Oppression	Public	A/V	01:00-01:11; 06:42-07:10	p. 9 of the edited transcript
8	UGA-D26-0018-0224	Civil Society and Conflict Resolution: The Role of the Acholi Religious Leaders Peace Initiative (ARLPI) in the Northern	Public	12	0224-0234	p. 94 of the edited transcript

		Uganda Conflict				
10	UGA-OTP-0270-0004	Independent Background Report on the Situation in Northern Uganda	Confidential	32	ALL	p. 21 of the edited transcript
11	UGA-OTP-0272-0002	THE LORD'S RESISTANCE ARMY / MYTH AND REALITY	Public	370	Chapters 3, 8, and 10	

Kind regards,

[REDACTED]

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From:**Sent:****To:**

19 January 2017 15:21

Trial Chamber IX Communications;

Subject:

Correction of submission of evidence by email - #497 para. 28 (i)

My sincere apologies.

Item 5 on the table of items for submission into evidence which I sent yesterday was a nonsense, and item 6 not much better.

May I seek the Chamber's leave to make appropriate corrections?

The table should have been as follows:

#	ERN	Description
1	UGA-OTP-0270-0004	Professor Allen's Report on the Situation in Northern Uganda
2	UGA-OTP-0272-0002 at 0127 to 0145 and at 0146 to 0169	Relevant chapters from the book: The Lord's Resistance Army / Myth And Reality
3	UGA-OTP-0023-0002	Sound recording of Kony and Otti on speaking on MEGA FM radio station in December 2002
4	UGA-OTP-0023-0011	Transcription/Translation of UGA-OTP-0023-0002
5	UGA-OTP-0012-0326	LRA Constitution
6	UGA-OTP-0269-0791	LRA Manifesto
7	UGA-OTP-0025-0388	LRA Manifesto
8	UGA-OTP-0268-0010	LRA Manifesto (English translation of UGA-OTP-0025-0388)
9	UGA-OTP-0026-0273	LRA Rules
10	UGA-OTP-0253-0165	LRA Rules (English translation of UGA-OTP-0026-0273)
11	UGA-OTP-0026-0094	LRA Rules
12	UGA-OTP-0253-0162	LRA Rules (English translation of UGA-OTP-0026-0094)
13	UGA-OTP-0012-0242	LRA document dated May 1997

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From:**Sent:** 18 January 2017 11:47**To:** Trial Chamber IX Communications;

Subject: Submission of evidence by email - #497 para. 28 (i)

The Prosecution formally submits the items of evidence associated with the evidence of P-0422, which concluded on 17 January 2017, in accordance with the Chamber's Decision #497.

#	ERN	Description
1	UGA-OTP-0270-0004	Professor Allen's Report on the Situation in Northern Uganda
2	UGA-OTP-0272-0002 at 0127 to 0145 and at 0146 to 0169	Relevant chapters from the book: The Lord's Resistance Army / Myth And Reality
3	UGA-OTP-0023-0002	Sound recording of Kony and Otti on speaking on MEGA FM radio station in December 2002
4	UGA-OTP-0023-0011	Transcription/Translation of UGA-OTP-0023-0002
5	UGA-OTP-0270-0004	LRA Manifesto
6	UGA-OTP-0269-0791	LRA Manifesto (typed version of UGA-OTP-0270-0004)
7	UGA-OTP-0025-0388	LRA Manifesto
8	UGA-OTP-0268-0010	LRA Manifesto (English translation of UGA-OTP-0025-0388)
9	UGA-OTP-0026-0273	LRA Rules
10	UGA-OTP-0253-0165	LRA Rules (English translation of UGA-OTP-0026-0273)
11	UGA-OTP-0026-0094	LRA Rules
12	UGA-OTP-0253-0162	LRA Rules (English translation of UGA-OTP-0026-0094)
13	UGA-OTP-0012-0242	LRA document dated May 1997

From: [REDACTED]
Sent: 18 January 2017 15:51
To: Trial Chamber IX Communications; [REDACTED]
Cc: [REDACTED]
Subject: Submission of evidence by email - #497 para. 28 (i)

Dear All,

In accordance with para. 28 of the Initial Directions on the Conduct of the proceedings (ICC-02/04-01/15-497), the Common Legal Representative formally submits the following item of evidence associated with P-0422, which testimony concluded on 17 January 2017:

#	ERN	Description
1	UGA-OTP-0272-0002 at 0170 to 0272-0190	Chapter 8 from the Book: The Lord's Resistance Army. Myth and Reality

Kind regards,
Paolina Massidda



Paolina Massidda

Conseil principal / Principal Counsel
Bureau du conseil public pour les victimes (BCPV)
Office of Public Counsel for Victims (OPCV)
International Criminal Court
[REDACTED]
www.icc-cpi.int

International Criminal Court (ICC Permanent Premises)

Visiting address: Oude Waalsdorperweg 10, 2597 AK, The Hague

Mail address: PO Box 19519, 2500 CM, The Hague, The Netherlands _

From: Trial Chamber IX Communications
Sent: 27 January 2017 09:52
To: [REDACTED]
Cc: [REDACTED]
Subject: Decision on Submitted Materials for P-422
Attachments: RE: Defence items to be submitted to Trial Chamber IX pursuant to ICC-02/04-01/15-497, para. 28(i); Correction of submission of evidence by email - # 497 para. 28 (i); Submission of evidence by email - #497 para. 28 (i)
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel and Registry:

For P-422, the Chamber recognises as formally submitted all items submitted by the Prosecution (Email from the Prosecution, 18 January 2017 at 11:47 *as corrected in* Email from the Prosecution, 19 January 2017 at 15:21) and Legal Representative for Victims (Email from OPCV, 18 January 2017 at 15:51). The Defence also submitted items (Email from the Defence, 18 January 2017 at 16:10), and the Prosecution objects to the submission of items UGA-D26-0018-0003 and UGA-D26-0018-0079 (Email from the Prosecution, 18 January 2017 at 17:24, responded to in Email from the Defence, 19 January 2017 at 13:56).

The Prosecution objects to the formal submission of these items on grounds that ‘Witness P-0422 was not shown these documents in the witness box and did not comment on them in any way’. That these items were not shown or meaningfully commented on by P-422 does not preclude their formal submission via email. Decision 497 sets no such limits on the email procedure. As has been determined in the *Bemba et al.* case, the general rule on admissibility of evidence set out in decision 497 of this case applies to such documents – they may be recognised as formally submitted, and consideration of their relevance and probative value will be deferred until the judgment (ICC-01/05-01/13-1786-Anx1-Red, page 4).

Accordingly, the Chamber also recognises as formally submitted all items submitted by the Defence.

The Registry is accordingly directed to proceed in accordance with paragraph 28(v) of the ‘Initial Directions on the Conduct of the Proceedings, 13 July 2016, ICC-02/04-01/15-497.

Best,

[REDACTED] Trial Chamber IX