

ANNEX XVIII

PUBLIC

[REDACTED]

From: [REDACTED]
Sent: 12 June 2017 17:33
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
Subject: RE: Evidence used in the cross examination of P-0009

Dear TC IX,

The Defence reiterates its submissions found in the email of 8 June, 2017 at 20:58. The Defence respectfully submits that the reaction of the witness to the victim application is of no consequence to the admissibility of this document. The document is not submitted in lieu of the applicant's testimony but it affects the credibility of the witness's testimony. Contrary to the CLR submissions, P-0009's statement, and testimony which is at issue was taken with the guarantees of a witness statement.

In addition, the Defence recalls the peculiar position of Witness P-0009 as Rwot in the community of Pajule in particular and Acholi in general as well as his involvement in the peace process.

As such, this evidence is highly probative and should be admitted.

Best,

From: [REDACTED]
Sent: 12 June 2017 10:05
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
Subject: RE: Evidence used in the cross examination of P-0009

Dear All,

The CLR supports the Prosecution's position.

In this regard, she also recalls that application forms are provided by the applicants to the Chamber only for the purposes of substantiating an application for participation but not to give evidence and that said documents are not taken with the same guarantees as a witness statement.

Kind regards,
 Paolina Massidda

From: [REDACTED]
Sent: 12 June 2017 09:46
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
Subject: RE: Evidence used in the cross examination of P-0009

The Prosecution objects to formal submission and potential admission of the victim application, UGA-D26-0012-0160 (Defence tab 27) pursuant to articles 64 and 69 of the Statute, rule 68 of the Rules, and paras. 24-29 of Decision ICC-02/04-01/15-497 dated 13 July 2016.

The reasons for doing so are set out in the Prosecution's email to the Chamber of 7/6/17 at 19.14 and not repeated in full here.

In short the document is testimonial in nature, and should not be admitted through another live witness. P-0009 knew nothing of its existence before his testimony and cannot authenticate it in any way. His reaction to the existence of the document is a matter of evidential record. If the defence wish to rely upon the accuracy of its contents they will have to call the maker as a witness or make an application under rule 68(2).

Ben Gumpert

From: [REDACTED]
 Sent: 09 June 2017 21:34
 To: Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
 Subject: Evidence used in the cross examination of P-0009

Dear Trial Chamber IX,

In accordance with Decisions 497 and 621, the Defence formally submits the following items of evidence used during the cross examination of witness P-0009 (Rwot Joseph Oywat Ywakamoi) which concluded today on 9 June, 2017:

Tab	ERN	Description	Pages
1	UGA-OTP-0151-0167	Witness Statement	15
2	UGA-OTP-0241-0546	Witness Statement	9
5	UGA-OTP-0022-0343	Notebook	18
7	UGA-OTP-0011-0507	Report	1
8	UGA-OTP-0011-0497	Possible LRA Contacts and their Telephone Numbers	2
21	UGA-OTP-0138-0279	Correspondence – Letter	1
22	UGA-OTP-0256-0335	Report	1
24	UGA-OTP-0263-1496	ICC Investigation Note/Report	2
25	UGA-OTP-0263-1498	ICC Investigation Note/Report	6
27	UGA-D26-0012-0160	ICC Statement – Victim Application	3
28	UGA-OTP-0241-0607; UGA-OTP-0241-0609; UGA-OTP-0241-0618; UGA-OTP-0241-0740; UGA-OTP-0241-0745; UGA-OTP-0241-0750; UGA-OTP-0241-0758; UGA-OTP-0241-0764; UGA-OTP-0241-0768; UGA-OTP-0241-0769.	Photographs	
N/A	UGA-D26-0018-0001	Video/Audio Material	
N/A	UGA-D26-0018-0428	Video/Audio Material	

Very best,

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 09 June 2017 16:34
To: Trial Chamber IX Communications; [REDACTED]
Cc: OTP UGA Prosecution Team
Subject: Evidence used in the examination of P-0009

In accordance with the Trial Chamber's Decisions #497 and #621, the Prosecution formally submits the following items of evidence used during the hearing of the evidence of Witness P-0009 whose testimony concluded on 9 June 2017:

#	DocID	Date Shown to Witness	Transcript Reference	Level of Confidentiality	Comments
1	UGA-OTP- 0241-0555	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
2	UGA-OTP-0241-0556	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
3	UGA-OTP-0245-0037	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
4	UGA-OTP-0245-0038	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
5	UGA-OTP-0245-0031	7 June 2017	ICC-02/04-01/15-T-81	Confidential	
6	UGA-OTP-0245-0039	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
7	UGA-OTP-0245-0040	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
8	UGA-OTP-0245-0041	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
10	UGA-OTP-0151-0167-R01	7 June 2017	ICC-02/04-01/15-T-81	Confidential	
11	UGA-OTP-0241-0562	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
12	UGA-OTP-0241-0569	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
13	UGA-OTP-0241-0581	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
14	UGA-OTP-0241-0591	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
15	UGA-OTP-0241-0546-R01	7 June 2017	ICC-02/04-01/15-T-81	Confidential	
16	UGA-OTP-0241-0558	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
17	UGA-OTP-0241-0559	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public
18	UGA-OTP-0241-0560	7 June 2017	ICC-02/04-01/15-T-81	Confidential	Shown to the public

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Dedication - Integrity - Respect

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

From: Trial Chamber IX Communications
Sent: 20 June 2017 09:42
To: [REDACTED]
Cc: Trial Chamber IX Communications; [REDACTED]
Subject: Decision on Submitted Materials for P-9
Attachments: Evidence used in the examination of P-0009; Evidence used in the cross examination of P-0009; RE: Evidence used in the cross examination of P-0009; RE: Evidence used in the cross examination of P-0009; RE: Evidence used in the cross examination of P-0009

Dear Counsel and Registry:

For P-9, the Chamber notes the relevant correspondence on submitted items related to this witness: the Prosecution (Email from the Prosecution, 9 June 2017 at 16:34) and Defence (Email from the Defence, 9 June 2017 at 21:34, *see also objections by* the Prosecution, 12 June 2017 at 09:46 and the OPCV, 12 June 2017 at 10:05 *and corresponding response by* the Defence, 12 June 2017 at 17:33).

The Defence does not contest the submission of any Prosecution items. The Chamber recognises as formally submitted all items submitted by the Prosecution.

The Prosecution contests the formal submission of victim application UGA-D26-0012-0160 for the same reasons given when objecting to two victim applications submitted after P-24's testimony. The Defence likewise responds with reference to its previous arguments in relation to P-24.

As the Chamber stated in its recent 'Decision on Submitted Materials for P-24' (Email from Trial Chamber IX Communications, 14 June 2017 at 09:13), there is no procedural bar to the Defence submitting victim applications on the basis it provides. For the same reasons given when rejecting the Prosecution objections in relation to P-24, the Chamber recognises as formally submitted all items submitted by the Defence in relation to P-9.

Consistent with the Chamber's general approach of deferring its assessments of the standard evidentiary criteria until deliberating its judgment (ICC-02/04-01/15-497, para. 24), the parties and participants' remaining arguments related to probative value and potential prejudice are not considered at this time.

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,

Trial Chamber IX