

ANNEX I

PUBLIC

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

23 January 2018 14:11

Trial Chamber IX Communications; [REDACTED]

Cc:**Subject:**

P-0200: Prosecution's Formal Submission of Evidence

Dear Trial Chamber IX,

in accordance with the Trial Chamber's Decision ICC-02/04-01/15-497, the Prosecution formally submits the following items of evidence used during the testimony of **Witness P-0200**, which concluded earlier today (23 January 2018):

Tab number (OTP Binder)	ERN	Description	Confidentiality
19	UGA-OTP-0236-0551	Re-union Letter dated 14.04.2004, Office of the resident District Commissioner Gulu	Confidential
20	UGA-OTP-0263-2295	Amnesty Certificate, issued 22.06.2004	Confidential

Best regards,

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

[REDACTED]

From: [REDACTED]
Sent: 26 January 2018 09:06
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
 [REDACTED]
Cc: [REDACTED]
Subject: RE: P-0200: Prosecution's Objection to Defence's Submission of [REDACTED]
 [REDACTED]

Dear Trial Chamber IX,

After just now re-reading through ICC-02/04-01/15-497, para. 28, and even though it was originally thought that the Prosecution could reply, the Prosecution did not seek leave to reply to the Defence's para. 28(iii) response, and the Defence respectfully requests that the Trial Chamber disregard the comments from 25 January 2018 at 17h41 from the Prosecution.

Should the Chamber decide to allow these comments, the Defence requests that it be allowed to reply to the Prosecution's reply.

Very best,

[REDACTED]

From: [REDACTED]
Sent: 25 January 2018 17:41
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
 [REDACTED]
Cc: [REDACTED]
Subject: P-0200: Prosecution's Objection to Defence's Submission of [REDACTED]

Your Honours et al,

The Prosecution maintains its objection to the formal submission of [REDACTED] statement [REDACTED].

The Defence's response introduces a theory of conspiracy to pervert the course of justice between [REDACTED] and P-0200 of which, they say, [REDACTED] statement is circumstantial evidence.

But P-0200 was never questioned on this basis. The suggestion that he had conspired together with [REDACTED], or had regular meetings with her to collude was never put to P-0200 as a proposition of fact during his testimony. The statement of [REDACTED] was not used for this purpose at all, but instead as the basis for certain propositions which it was suggested to P-0200 were true (see citations referenced in Prosecution's objection).

Insofar the Defence refers to introduction of [REDACTED] statement pursuant to Rule 68(2)(c), the Defence is welcome to make the appropriate application if it considers this Rule to be engaged. The response below does not amount to any such application.

Best regards,

[REDACTED]

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

From: [REDACTED]
Sent: 25 January 2018 15:17
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
[REDACTED]
Cc: [REDACTED]
Subject: RE: P-0200: Prosecution's Objection to Defence's Submission of [REDACTED]

Dear Trial Chamber IX,

The Defence hereby responds to the Prosecution's objection to the inclusion of [REDACTED] into evidence (objection received at 16h32 CET on 24 January 2018). The Defence advances the following reasons for the inclusion of this document into evidence, and attaches non-transcript documents referenced below:

- 1) The Chamber has allowed the submission into evidence "non-Registry certified statements" ('Statements') when the Statement was written by a close relative of the testifying witness. The Defence does not imply that the witness and [REDACTED] are closely related, but the Defence quotes two sections of the witness's testimony:

[REDACTED]

and

[REDACTED]

[REDACTED]

The Defence maintains that there is enough evidence to infer that P-0200 and [REDACTED] have discussed their time in the bush, and colluded in their stories to conspire against Mr Ongwen in an attempt to be treated like a victim and receive monies from the ICC. This can be evidenced by:

- a) Witness P-0200's confirmation that (see quote above),
- b) UGA-OTP-0269-0006 at 0007 where the Prosecution notes that P-0200 stated he would refuse to answer questions unless he received psychosocial support; and in the Prosecution's next encounter with P-0200, P-0200 requested repayment of medical expense that he incurred after the meeting described in UGA-OTP-0269-0006 at 0007, which the Prosecution repaid (see UGA-OTP-0259-0002, UGA-OTP-0256-0586 and UGA-OTP-0256-0587);
- c) [REDACTED] received funds to purchase dresses, baby carrier, lotion and nappies (UGA-OTP-0253-0127-R01) and herself (UGA-OTP-0236-0518-R01, chemically treated mosquito net); and
- d) UGA-OTP-0237-0021 where [REDACTED] reported interactions and conversations between herself and P-0200.

As written above, the Defence maintains that this distinguishes the submission of this Statement with the requested submission of Statements after the testimony of P-0047. In P-0047's testimony, there was nothing to suggest that he interacted about his experiences with Prosecution Interviewee P-0054. To the contrary, there is enough material in eCourt to demonstrate that P-0200 and [REDACTED] have a personal, plutonic relationship where they share stories about their past.

- 2) [REDACTED]
[REDACTED] The official record of the case, *i.e.* the case transcripts, have 32 pages of testimony and procedures from [REDACTED]. Whilst these areas are not completely covered in the transcript, the Statement from [REDACTED] should be submitted into evidence as an extension of her testimony, even though said testimony is not evidence in the case.
- 3) The Defence does not submit this Statement for the truth of its content. The Defence submits this Statement as circumstantial evidence of a conspiracy against Mr Ongwen by these two persons and for completeness of the record. As the Prosecution did not question and lay the foundation for these issue when it interviewed and met with P-0200 and [REDACTED] the Defence made inquiries during its examination, and thus the Statement of [REDACTED] should be allowed into evidence as circumstantial evidence of a conspiracy against Mr Ongwen.
- 4) Finally, the Defence notes that Rule 68(2)(c) could allow for the introduction of the Statement of [REDACTED]. In UGA-OTP-0237-0021, the Prosecution noted that [REDACTED] went into hiding when scared. The Prosecution noted in submission [REDACTED].

As Witness P-0200 and [REDACTED] corroborate their stories by name, the Prosecution is obliged to disclose all materials related to [REDACTED] under Rule 77. None has been disclosed, and thus it should be inferred by the Chamber that the Prosecution has not interacted with [REDACTED] since [REDACTED].

The Defence understands that this is not up to the normal standards of Rule 68(2)(c), but under the circumstance, one in which the Defence does not rely on the Statement for the truth of its content but for the evidence of a possible conspiracy, it is reasonable to allow the submission of [REDACTED] [REDACTED] into evidence.

Very best,

From: [REDACTED]
 Sent: 24 January 2018 16:32
 To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
 Cc: [REDACTED]
 Subject: P-0200: Prosecution's Objection to Defence's Submission of

Your Honours et al,

The Prosecution objects to the Defence's formal submission of the following item of evidence: Witness statement of Submission of P-0198's statement into evidence would circumvent Rule 68 of the Rules of Procedures and Evidence (RPE).

Reasoning:

During the Defence's examination of witness P-0200 the latter was effectively asked to comment on whether factual propositions in [REDACTED] statement were true.

The Defence in its submission email does not advance reasons for seeking to submit [REDACTED] statement into evidence.

The apparent conclusion is that the Defence aims to submit [REDACTED] statement for the truth of its contents. This, however, would contravene Rule 68 of the RPE. As the Trial Chamber ruled previously in identical circumstances (Email Decision on Submitted Materials for P-0047, 12 October 2017 at 14:25 hrs), asking a testifying witness to comment about another witness's statement does not relieve the tendering party from fulfilling the Rule 68 criteria for submitting such statement into evidence. Allowing the statement of [REDACTED] to be formally submitted into evidence by virtue of P-0200's testimony, as the Defence requests, would circumvent Rule 68. It should be rejected in conformity with the Email Decision of 12 October 2017 cited above (that decision is attached for ease of reference).

Insofar as the Defence intends to submit [REDACTED]'s statement "for the completeness of the record", as argued on a similar previous occasion (Email from the Defence in reply to Prosecution's objection to submission of item UGA-OTP-0207-0196-R01, 2 October 2017 at 19:03 hrs), this too should be rejected. Witness P-0200 responded to factual allegations drawn from [REDACTED] statement. His answers are perfectly intelligible from the transcript without [REDACTED] statement being submitted and they in itself represent a complete record of the propositions put and responses given.

In conclusion, the Prosecution requests the Trial Chamber not to recognize item [REDACTED] as formally submitted.

The Prosecution also observes that at the time of writing this email, item UGA-D26-0024-0008, listed in Defence's submission email, is not yet disclosed to the Prosecution and/or uploaded into eCourt.

Best regards,

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

From: [REDACTED]
Sent: 23 January 2018 19:08
To: Trial Chamber IX Communications; [REDACTED]
Cc: [REDACTED]
Subject: P-0200: Defence's Formal Submission of Evidence

Dear Trial Chamber IX, parties and participants,

In accordance with Decision Nos. 497 and 621, the Ongwen Defence formally submits the following items of evidence used during the cross examination of Witness P-0200 which concluded today on 23 January 2018:

Tab	ERN #	Description	Transcript Reference
1	UGA-OTP-0243-0028	Transcript of Witness Interview	T-145
2	UGA-OTP-0243-0043	Transcript of Witness Interview	T-146
4	UGA-OTP-0243-0066	Transcript of Witness Interview	T-145, T-146
5	UGA-OTP-0243-0089	Transcript of Witness Interview	T-146
7	UGA-OTP-0243-0123	Transcript of Witness Interview	T-146
8	UGA-OTP-0243-0133	Transcript of Witness Interview	T-146
14	UGA-OTP-0248-0792	Transcript of Witness Interview	T-146
17	UGA-OTP-0248-0837	Transcript of Witness Interview	T-146
22	UGA-D26-0018-2129	[REDACTED] [REDACTED]	T-145, T-146
23	UGA-D26-0018-2163	Newspaper article	T-145
24	[REDACTED]	Witness Statement for [REDACTED]	T-146
28	UGA-OTP-0236-0549	Leadership Training Certificate	T-146
29	UGA-OTP-0236-0553	Participation Certificate	T-145
30	UGA-OTP-0236-0554	Participation Certificate	T-145
31	UGA-OTP-0236-0555	Participation Certificate	T-145
32	UGA-OTP-0263-2297	Identification Document	T-145
N/A	UGA-OTP-0281-0377	Investigation Note	T-146
N/A	UGA-D26-0024-0008	Email Correspondence from VWU	T-146

The Defence notes that the item in Tab # 33 (UGA-OTP-0032-0038) discussed in Transcript 146 has already been submitted into evidence in Decision #795.

Kind regards,



From: Trial Chamber IX Communications
Sent: 08 February 2018 10:18
To: [REDACTED]
Cc: Trial Chamber IX Communications; [REDACTED]
Subject: Decision on Submitted Materials for P-200
Attachments: P-0200: Prosecution's Objection to Defence's Submission of
P-0200: Defence's Formal Submission of Evidence; P-0200: Prosecution's Formal
Submission of Evidence; RE: P-0200: Prosecution's Objection to Defence's
Submission of [REDACTED] ; P-0200: Prosecution's Objection to Defence's
Submission of [REDACTED] ; RE: P-0200: Prosecution's Objection to
Defence's Submission of [REDACTED]

Dear Counsel and Registry:

1. For P-200, the Chamber recognises as formally submitted all items submitted by the Prosecution (Email from the Prosecution, 23 January 2018 at 14:11) and all items submitted by the Defence to which no objection was raised (Email from the Defence, 23 January 2018 at 19:08).
2. For this witness, the Defence submits a witness statement of [REDACTED]. The Prosecution objects to the submission of this statement (Email from the Prosecution, 24 January 2018 at 16:32), and the Defence responded to this objection (Email from the Defence, 25 January 2018 at 15:17). The Prosecution then sent a further email, but, as noted by the Defence, this last message goes beyond the scope of the email submission procedure and, pursuant to Regulation 29 of the Regulations, is disregarded (Email from the Prosecution, 25 January 2018 at 17:41, *responded to in* Email from the Defence, 26 January 2018 at 09:06). Initial Directions on the Conduct of the Proceedings, 13 July 2016, ICC-02/04-01/15-497 ('Rule 140 Decision'), para. 28(ii)-(iv).

A. [REDACTED] Statement – Procedural Context

3. As regards [REDACTED] statement [REDACTED], the Prosecution objects to its submission. The Prosecution argues that: (i) recognising the submission of this document would contravene Rule 68 of the Rules and that P-200's answers to factual allegations drawn from [REDACTED] statement are perfectly intelligible from the transcript without submitting the statement.
4. The Defence replies that [REDACTED] statement is not introduced for the truth of its contents, but 'as circumstantial evidence of a conspiracy against Mr Ongwen by [REDACTED] and P-200] and for completeness of the record'.

5.

[REDACTED] transitioned to the Defence then confronting P-200 with the proposition that 'you are in Mr Ongwen's group because he is the one at trial today and you are aligning your story to fit in his case' (ICC-02/04-01/15-T-146-ENG, page 55 lines 14-15).

B. Determination on the Submission of [REDACTED] Statement

6. Rule 68 of the Rules is only applicable in cases where the tendering party wishes to adduce the prior recorded testimony for the truth of its contents. The determining factor is the intention of the tendering party. Decision on Submitted Materials for P-24, ICC-02/04-01/15-985-AnxXVI, pages 6-7 (further citations referenced therein).
7. Determining the intention of the tendering party is not based solely on its stated intentions at the point of submission, but rather on a case-by-case assessment as to how the information at issue was actually used. *See* Decision on Submitted Materials for P-47, Email from Trial Chamber IX, 12 October 2017 at 14:25 (publication in case record to follow). *See similarly* Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, ICC-02/04-01/15-596-Red, para. 15 (not limiting the assessment of 'materially in dispute' in Rule 68(2)(b) of the Rules to the parties' stated positions alone).
8. Turning to the Defence's stated justifications for [REDACTED] statement, the Chamber considers that it is unnecessary to submit [REDACTED] statement for completeness of the record. P-200's responses to the factual propositions drawn from [REDACTED] statement are intelligible without [REDACTED] statement being recognised as formally submitted.
9. To the extent the statement is submitted to show circumstantial evidence of a conspiracy against Mr Ongwen, the Chamber is satisfied, from the way [REDACTED] was discussed in the course of the Defence questioning, that the Defence submits the statement for this reason and not for the truth of its contents. From the Defence's justifications given in response to the Prosecution's objection, it is clear that it does not consider the overall contents of the submitted statement to be true. Accordingly, Rule 68 of the Rules is not engaged.
10. It must be acknowledged that there is prejudice caused to the fair evaluation of P-200's testimony to submit [REDACTED] statement in this manner. The Defence did not squarely confront P-200 about being involved in any sort of conspiracy with [REDACTED], and thereby afforded him no opportunity to give a complete response to these allegations.

11.

[REDACTED]

Balancing the relevant considerations, the Chamber decides to also recognise the formal submission of [REDACTED]. Any further consideration of this statement is deferred to the judgment, in accordance with its general approach to evidence in this case. Rule 140 Decision, ICC-02/04-01/15-497, para. 24.

13. The Registry is accordingly directed to proceed in accordance with paragraph 28(v) of Rule 140 Decision, ICC-02/04-01/15-497. For purposes of applying redactions, the portion highlighted above in the Chamber's decision is to be redacted in the public version.

Trial Chamber IX