

ANNEX XI

PUBLIC

[REDACTED]

From: [REDACTED]
Sent: 21 March 2018 13:42
To: Trial Chamber IX Communications; [REDACTED]
[REDACTED]
[REDACTED]
Cc: [REDACTED]
Subject: DEF Formal Submission of Evidence for P-0446

Dear Trial Chamber IX, Prosecution and Legal Representatives,

The Defence wishes to submit the following materials into evidence which were used with P-0446 during her examination.

UGA-D26-0015-0004

UGA-D26-0015-0140

UGA-D26-0015-0167

UGA-D26-0015-0197

UGA-D26-0016-0281

Tab 5 of the Prosecution Binder, which is the edited version of Dr de Jong's Report. The Defence shall stamp this redacted document and release it via Ecourt on Friday.

Very best,

[REDACTED]

From: [REDACTED]
Sent: 22 March 2018 14:18
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
Cc: [REDACTED]
Subject: RE: P-0446: Prosecution's formal submission of evidence

Dear Trial Chamber IX, Defence, and Legal Representatives,

All of the materials to which the Defence objects below were provided to P-0446 by the Prosecution and listed by her as "sources of information" in her report (UGA-OTP-0280-0786, at 0790-0791, 0823-0829). That report has been submitted by the Prosecution under rule 68(3) and, if admitted by the Trial Chamber under that rule, is effectively the equivalent of court testimony. During her court testimony on 19-20 March 2018, P-0446 also specifically confirmed her use of the clinical records in Tabs 10 and 44, some of which she excerpted in her report (ICC-02/04-01/15-T-162-CONF-ENG ET p.13 ll.6-19), and she made clear that she had read *all* of the materials provided to her. (E.g., ICC-02/04-01/15-T-163-CONF-ENG RT p.107 l.10).

The Prosecution submits that the Trial Chamber will be in the best position to evaluate the evidence of P-0446 and the other expert witnesses if it has access to all of the materials upon which the experts relied in forming their opinions. *Cf.* ICC-02/04-01/15-709, para. 12 (stating, in the disclosure context, that access to sources used in support of an expert witness statement is necessary for the proper evaluation of the expert evidence).

Best regards,

[REDACTED]

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Dedication - Integrity - Respect

From: [REDACTED]
Sent: 21 March 2018 15:26
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
Cc: [REDACTED]
Subject: RE: P-0446: Prosecution's formal submission of evidence

Dear Trial Chamber IX, Prosecution and Legal Representatives,

Pursuant to paragraph 28(ii) of Decision 497, the Defence objects to the following items which the Prosecution requests to submit into evidence:

Tab 10
Tab 11
Tab 40
Tab 41
Tab 42
Tab 44 (excluding UGA-D26-0015-0140, which was used by the Defence on 20 March 2018)

I shall write the reasons for the exclusion for each tab number listed.

Tab 10

None of these clinical notes were specifically discussed during P-0446's testimony on 19-20 March 2018 ('Testimony'). Furthermore, with the exception of the beginning of her report at 0792-0795, it is impossible to determine which clinical notes she relied upon in her report as the report is poorly cited. Even with the citations at 0792-0795, she only specifically referred to a June 2016 clinical note (p. 0779) after paragraph 35 of her report. The Defence does not consider the reference in paragraph 60 of her report as a reference to any clinical note, and the reference is incorrect as she did not understand that PTSS (post-traumatische stress stoornis) is the Dutch acronym for PTSD.

Tab 11

The key to the identities of the four individuals was not mentioned at all during the Testimony. Even though this will undoubtedly be submitted when the Defence Experts testify, the current submission does not meet the requirements for submission into evidence with this witness.

Tab 40

The witness did not speak about this specific document during her Testimony. She only referred to the selected excerpts from Tab 4. This document, Tab 40, does not meet the requirements for submission of evidence with this witness.

Tab 41

The witness did not speak about this video during her Testimony. This video, Tab 41, does not meet the requirements for submission with this witness. Furthermore, it is impossible to determine whether she relied upon this video in her report as the report is poorly cited.

Tab 42

The witness did not speak about these specific documents or video during her Testimony. She referred to the selected excerpts from Tab 4. The items in Tab 42 do not meet the requirements for submission of evidence with this witness.

Tab 44 (with the exception of UGA-D26-0015-0140)

None of these clinical notes were specifically discussed during P-0446's Testimony. Furthermore, with the exception of the beginning of her report at 0792-0795, it is impossible to determine which clinical notes she relied upon in her report as the report is poorly cited. Even with the citations at 0792-0795, she only specifically referred to a June 2016 clinical note (p. 0779) after paragraph 35 of her report. The Defence does not consider the reference in paragraph 60 of her report as a reference to any clinical note, and the reference is incorrect as she did not understand that PTSS (post-traumatische stress stoornis) is the Dutch acronym for PTSD.

Very best,

[REDACTED]

From: [REDACTED]
 Sent: 21 March 2018 09:53
 To: Trial Chamber IX Communications; [REDACTED]

Cc: [REDACTED]
 Subject: P-0446: Prosecution's formal submission of evidence

Dear Trial Chamber IX, parties, and participants,

In accordance with Decision ICC-02/04-01/15-497, the Prosecution formally submits the following items of evidence referred to during the testimony of Expert Witness P-0446, which concluded yesterday (20 March 2018):

Tab	ERN (E-Court) or Other Official Identifier	Description	Confidentiality	Rule 68(3)
2	UGA-OTP-0280-0786	Expert report of P-0446	Confidential	Yes
4	UGA-OTP-0283-1386	Extracts from trial evidence provided to the experts by the Prosecution pursuant to decision ICC-02/04-01/15-1073, para. 14	Confidential	n/a
10	UGA-D26-0015-0035, UGA-D26-0015-0037, UGA-D26-0015-0038, UGA-D26-0015-0098, UGA-D26-0015-0100, UGA-D26-0015-0102, UGA-D26-0015-0104, UGA-D26-0015-0106, UGA-D26-0015-0109, UGAD26-0015-0110, UGA-D26-0015-0112, UGA-D26-0015-0113, UGA-D26-0015-0115	Clinical Notes of the ICC Detention Centre Psychiatrist and Clinical Psychologist (translations from Dutch to English where applicable) [See Tab 44 for additional clinical notes provided to the prosecution experts after 13 April 2017]	Confidential	n/a
11	UGA-D26-0015-0081	Key to Identities of the Collateral Interviewees	Confidential	n/a
40	UGA-OTP-0274-6941	Transcript and translation of a sound	Confidential	n/a

	only	recording of a person alleged to be Mr Ongwen relating to the role of LRA fighter [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]		
41	UGA-OTP-0283-1449	Video Recording of Mr Ongwen speaking as shown in an excerpt from Jonathan Littell's documentary film entitled "Wrong Elements"	Confidential	n/a
42	Only: UGA-OTP-0277-1169 (video) UGA-OTP-0278-0003 UGA-OTP-0278-0006	Video and transcripts/translations of portions of the proceedings on 2 and 3 March 2017, during testimony of P-0003	Confidential	n/a
44	UGA-D26-0015-0135; UGA-D26-0015-0136; UGA-D26-0015-0138; UGA-D26-0015-0139; UGA-D26-0015-0140; UGA-D26-0015-0141; UGA-D26-0015-0142; UGA-D26-0015-0143; UGA-D26-0015-0144; UGA-D26-0015-0145;	Clinical Notes of the ICC Detention Centre Psychiatrist and Clinical Psychologist (translations from Dutch to English where applicable)	Confidential	n/a

UGA-D26-0015-0146; UGA-D26-0015-0147; UGA-D26-0015-0148; UGA-D26-0015-0149; UGA-D26-0015-0150; UGA-D26-0015-0151; UGA-D26-0015-0152); UGA-D26-0015-0154; UGA-D26-0015-0163			
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Best regards,

[Redacted]



Cour
Pénale
Internationale

International
Criminal
Court

[Redacted]
[Redacted]
Office of the Prosecutor
International Criminal Court
PO Box 19519, 2500 CM, The Hague, The Netherlands
[Redacted]

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From: [REDACTED]
Sent: 27 March 2018 16:39
To: Trial Chamber IX Communications; [REDACTED]
Cc: [REDACTED]
Subject: RE: Decision on Submitted Materials for P-446

Dear Trial Chamber IX, Prosecution, and Legal Representatives,

The CLRV Team noticed that I mistyped one of the ERNs, writing UGA-D26-0016-0281 instead of UGA-D26-0015-0281. I thank the CLRV Team for noticing it.

The Defence humbly requests the Chamber to admit the proper document, UGA-D26-0015-0281.

Very best,

From: Trial Chamber IX Communications [REDACTED]
 Sent: 27 March 2018 09:54
 To: [REDACTED]
 Cc: Trial Chamber IX Communications [REDACTED]
 Subject: Decision on Submitted Materials for P-446

Dear Counsel and Registry:

For P-446, the Chamber recognises as formally submitted all items submitted by the Defence (Email from the Defence, 21 March 2018 at 13:42, noting the ERN for the last item was forthcoming at the time of submission). The Chamber also notes the exchange whereby the Defence objects to certain items submitted by the Prosecution (Email from the Prosecution, 21 March 2018, at 09:53; *responded to by* Email from the Defence, 21 March 2018 at 15:26; *replied to in* Email from the Prosecution, 22 March 2018, at 14:18).

The Defence objects to the submission of the ERNs across Tabs 10, 11, 40, 41, 42 and 44 (excluding UGA-D26-0015-0140) on grounds that P-446 did not specifically address them in the course of her testimony. Certain issues are also raised as to the probative value of the expert's report. The Prosecution replies that it provided all the materials in question to P-446, she listed them as sources of information in her report, and P-446 testified that she had read all the materials provided to her. (*referencing* Transcript of Hearing, 20 March 2018, ICC-02/04-01/15-T-163-CONF-ENG, page 87 lines 18-22).

The Chamber recalls its prior finding that the fact that items 'were not shown or meaningfully commented on' by the witness does not preclude their formal submission via email. Decision 497

sets no such limits on the email procedure (Decision on Submitted Materials for P-422, 27 January 2017, ICC-02/04-01/15-985-AnxI, page 8).

The Chamber also notes that, although the Prosecution's deadline for submitting documentary evidence has passed, this deadline does not apply to: (i) the testimony of the remaining Prosecution witnesses and any related materials submitted through the email submission procedure; and (ii) any future Prosecution evidence submitted through the email procedure for witnesses called by others, so long as the submitted evidence has a genuine - and not pretextual - connection to the Prosecution's examination of that witness (Order Setting Deadline for the Prosecution to Submit Documentary Evidence, 2 February 2018, ICC-02/04-01/15-1162).

The Chamber considers that the items submitted by the Prosecution are within the scope of the email submission procedure and have a genuine connection to the Prosecution's examination of P-446. It is also noted that P-446 is a Rule 68(3) witness and that, even if she did not mention the contested items in her testimony, the contested items all form part of the sources of information listed in her prior recorded testimony (UGA-OTP-0280-0786, 0790-0791).

For these reasons, the Chamber also recognises as formally submitted all items submitted by the Prosecution, confirming that the witness's report is introduced by virtue of the procedural prerequisites of Rule 68(3) of the Rules being satisfied. In accordance with the Chamber's general approach, the Defence's arguments on the probative value of the expert's report will be deferred until the Chamber is deliberating its judgment.

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

[REDACTED]

From: Trial Chamber IX Communications
Sent: 03 April 2018 10:13
To: [REDACTED]
Cc: Trial Chamber IX Communications; [REDACTED]
Subject: Addendum to Decision on Submitted Materials for P-446
Attachments: RE: Decision on Submitted Materials for P-446

Dear Counsel and Registry:

For P-446, and following the Chamber's decision on submitted materials (Email from the Chamber, 27 March 2018, at 09:54), the Defence informed the Chamber that it mistyped one of the ERNs it intended to submit. The Defence did not intend to submit UGA-D26-0016-0281, but rather UGA-D26-0015-0281 (Email from the Defence, 27 March 2018 at 16:39).

Noting that the Defence's corrected ERN was used through P-446, the Chamber is satisfied that the Defence in fact intended to submit UGA-D26-0015-0281. Despite the correction being sent after the expiry of the applicable deadlines set in Decision 497, it is accepted on this occasion.

The Defence is again reminded to exercise diligence in preparing accurate evidence submission emails going forward (Addendum to Decision on Materials to be Submitted through P-245, 20 September 2017, ICC-02/04-01/15-1178-AnxIII, page 12).

As an addendum to its prior decision, and pursuant to Regulation 29(1) of the Regulations of the Court, the Chamber also recognises as formally submitted item UGA-D26-0015-0281. 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