

ANNEX VII

PUBLIC

[REDACTED]

From: [REDACTED]
Sent: 07 June 2019 14:10
To: Trial Chamber IX Communications; [REDACTED]
Subject: OTP vs Ongwen - DEF Submission for D-0081

Dear Trial Chamber IX, Prosecution and Legal Representatives,

The Defence wishes to submit the following item used in the examination of D-0081:

Tab 1, UGA-D26-0022-0360
Tab 2, UGA-D26-0022-0107
Tab 3, UGA-D26-0022-0111
Tab 4, UGA-OTP-255-0115
Tab 6, UGA-D26-0022-0434

The Defence notes that it is not directly show the witness the photograph, but the witness described what happened, but the Defence did not show the photograph as the witness became emotional during this time.

Very best,

[REDACTED]

From: [REDACTED]
Sent: 07 June 2019 14:57
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
Subject: RE: OTP vs Ongwen - DEF Submission for D-0081

Dear Trial Chamber IX, Parties and Participants,

The Prosecution does not object to submission of the items referred to by the Defence below.

In addition, the Prosecution submits Prosecution Tab 1, UGA-OTP-0137-0275, used during the Prosecution's examination of D-0081.

Best regards,

[REDACTED]

Dévouement - Intégrité - Respect
 Dedication - Integrity - Respect

From: [REDACTED]
Sent: 07 June 2019 14:
To: Trial Chamber IX Communications; [REDACTED]
Subject: OTP vs Ongwen - DEF Submission for D-0081

Dear Trial Chamber IX, Prosecution and Legal Representatives,

The Defence wishes to submit the following item used in the examination of D-0081:

Tab 1, UGA-D26-0022-0360
 Tab 2, UGA-D26-0022-0107
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The Defence notes that it is not directly show the witness the photograph, but the witness described what happened, but the Defence did not show the photograph as the witness became emotional during this time.

Very best,

[REDACTED]

From: [REDACTED]
Sent: 10 June 2019 15:17
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
Subject: RE: OTP vs Ongwen - DEF Submission for D-0081
Attachments: 2004.10 - Pajule Police Reports - CONF.pdf

Dear Trial Chamber IX, Prosecution and Legal Representatives,

Pursuant to ICC-02/04-01/15-497, para. 28(ii), the Defence hereby submits arguments towards the relevance of UGA-OTP-0137-0275 (Prosecution Tab 1, henceforth "Item"). The Defence argues that this Item is only relevant regarding the parts of the Item in which UGA-D26-P-0081 ("D-0081") confirmed during his testimony. Any parts which he did not confirm or were not asked are irrelevant and should not be used in determining the Article 74 decision of Mr Ongwen or determining the credibility/veracity of D-0081.

The Defence notes that D-0081 stated during his testimony that this Item was taken with a group and that this Item contains representations of a group in which he was the leader (eldest). (See ICC-02/04-01/15-T-221-CONF ENG, p. 55, lns 15-25 and p. 62 ln 21 to p. 63 ln 1) The Defence also notes that D-0081 stated that the Item was not read back to him after written by the police officer. (See ICC-02/04-01/15-T-221-CONF ENG, p. 56, lns 7-9)

The Defence presents two arguments about the relevance of the Item.

- 1) The Defence asserts that circumstantial evidence within the Prosecution's disclosure supports D-0081's testimony that this Item was discussed and taken with a group.
- 2) The Defence asserts that circumstantial evidence within witness testimonies demonstrates that these "statements" about the 10 October 2003 attack were not read back to persons by officers from the Pajule Police Station, regardless of what is stated in the individual statements.

The Defence asserts that circumstantial evidence supports D-0081's assertion that the Item was discussed and taken with a group and has elements from other persons

Attached to this email is a chronological order of the alleged statements taken by the Pajule Police Station officers from 28 to 30 October 2004. In the "Date" column, the time in which the document states it was recorded follows the hyphen. There are notations in the final column which note issues like the wrong main date in the metadata, an estimated date, or the wrong date accidentally written on the report (which one can tell is false because the police file record number is [REDACTED] [REDACTED])

The time frame in which these alleged statements were taken were extremely close together. As seen in the attached chronology, four (4) alleged statements were taken by the Pajule Police Station officers within the same 20 minutes as D-0081 (12h55-13h15), including three (3) statements given to the same officer (UGA-OTP-0137-0286 [12h55], UGA-OTP-0137-0295 [13h00] and UGA-OTP-0137-0284 [13h15]). After that, on 28 October 2004:

- a) four (4) additional alleged statements were taken from 13h55-14h25;
- b) four (4) alleged statements were taken from 16h00-16h20; and
- c) four (4) more from 16h50-17h05.

It is understandable that some people can write faster than others, but it is categorically impossible to take three (3) statements, handwrite the statements out and orally translate the documents into Acholi from

English within the time frames listed in the statements. To say otherwise is a delusion. The circumstances surrounding these statements gives credence to what D-0081 stated during his testimony.

Similar, yet less prominent issues happen on 29 October 2004:

- a) six (6) alleged statements taken from 09h00-10h00;
- b) four (4) from 12h55-13h05;
- c) five (5) from 14h23-15h29; and
- d) five (5) from 16h23-17h00.

The picture is clear. The materials available significantly suggests that there were multiple persons around the officers discussing their stories in groups as D-0081 stated. While some of the reports were about alleged attacks at different times, the overwhelming story told was about 10/10/2003.

The circumstantial evidence presents a compelling reason in favour of D-0081's testimony. Furthermore, unlike what the Defence did with D-0081's de-briefing note, the Prosecution did not ask D-0081 to read the entirety of the document to determine what was from him and what was from other persons in the group. As such, the Court cannot know what is and what is not from the witness, and anything not confirmed by D-0081 has no relevance to the case or his credibility/veracity.

The Defence asserts that circumstantial evidence within witness testimonies demonstrates that these "statements" were not read back to persons named on the statement

During his testimony, D-0081 stated that the Item was not read back to him. (See ICC-02/04-01/15-T-221-CONF ENG, p. 56, lns 7-9) The Defence recalls, with great concern, the testimony of P-0006, found at ICC-02/04-01/15-T-140-CONF-ENG, p. 18:

- 20: Q. Madam Witness, when you were giving this statement to the police
- 21: station, were they writing things down? Do you remember?
- 22: A. Yes, they were writing.
- 23: Q. When they were finished writing, did they read back to you what
- 24: they have written?
- 25: A. ***They did not read to me.*** (emphasis added)

In addition to the admission made by P-0006 above (which the Defence does not dispute), the witness was questioned on two further substantive areas of her statement by the Defence. At page 52 of the same transcript, the Defence and P-0006 discussed a part of this alleged police statement:

- 3: Q. At tab 2 at page 0327, in the police report, you told them that the
- 4: LRA soldiers arrived at your house and requested you to show them the location of
- 5: the army barracks. Is that correct in the 2004 police report, Madam Witness?
- 6: A. Not correct. They asked one of the lady with whom I was
- 7: abducted, she's call [REDACTED] she was the one who was asked to show them the direction
- 8: of the camp. But for me, they just told me to run towards the barracks where
- 9: everyone was heading to.
- 10: Q. I will correct my question, it does say "us" and not "me".
- 11: Presiding Judge Schmitt: That's okay. The witness obviously is
- 12: not following any suggestive things that are put to her. She differentiates. If she
- 13: thinks it's not correct, she correctly says it's not correct, so to speak.

While the error in the statement goes to the plural “us” instead of a singular her (the other lady [REDACTED]), this is a mistake readily identified by P-0006 (as noted by the Presiding Judge). Again though, in the same transcript at page 55, the examination about this document continued:

18: Q. I’m going to read from tab 2, page 0237:

19: “The commander of those...who came and pick us from the centre/house was --”

20: person 1.

21: Now, Madam Witness, this is from your first police report. Is this incorrect?

22: A. That’s not correct.

Once again, P-0006 noted areas which were not correct in the alleged police statement.

As the Parties and Participants had the Item, the UPDF de-briefing note and a statement from D-0081, it was easy for the Prosecution to point out areas with which D-0081 would agree. The Defence did the same with P-0006. But, to paraphrase the Prosecution during its examination of D-0081, D-0081’s memory would be better closer to the event. The Defence notes that in the UPDF de-briefing note dated 18 February 2004, there is no mention of Dominic Ongwen or Lapwony Odomi in the short paragraph describing the Pajule attack. (See UGA-OTP-0255-0115, p. 0115).

The witness read the UPDF de-briefing note in the presence of the Defence and, as confirmed by the statement and questions, noted the errors in the UPDF de-briefing note. As stated in his testimony and noted above, D-0081 did not get this opportunity with the Item when he was asked to print his name on the Item in October 2004, and neither did P-0006 when she wrote her name on UGA-OTP-0137-0236 a mere two hours after D-0081 wrote his name.

Your Honours, there exists serious doubt in relation to all these reports taken by the Pajule Police Station and lack the reliability and credibility needed of evidence in a court of law. As such, the Defence requests that the Chamber deem UGA-OTP-0137-0275 as irrelevant except for the explicit areas in which the witness confirmed correct during his testimony on 7 June 2019.

Sincerest Regards,

[REDACTED]

From: [REDACTED]

Sent: Friday, June 07, 2019 2:56 PM

To: [REDACTED] Trial Chamber IX Communications; [REDACTED]

Subject: RE: OTP vs Ongwen - DEF Submission for D-0081

Dear Trial Chamber IX, Parties and Participants,

The Prosecution does not object to submission of the items referred to by the Defence below.

In addition, the Prosecution submits Prosecution Tab 1, UGA-OTP-0137-0275, used during the Prosecution’s examination of D-0081.

Best regards,

[REDACTED]

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Dedication - Integrity - Respect

From: [REDACTED]
Sent: 07 June 2019 14:10
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The Defence notes that it is not directly show the witness the photograph, but the witness described what happened, but the Defence did not show the photograph as the witness became emotional during this time.

Very best,

[REDACTED]

[REDACTED]

From: Trial Chamber IX Communications
Sent: 19 July 2019 14:58
To: [REDACTED]
 [REDACTED] Trial Chamber IX Communications;
Subject: Decision on Submitted Materials for D-81
Attachments: OTP vs Ongwen - DEF Submission for D-0081; RE: OTP vs Ongwen - DEF Submission for D-0081; RE: OTP vs Ongwen - DEF Submission for D-0081
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel and Registry:

For D-81, the Defence submits 5 items (Email from the Defence, 7 June 2019, at 14:10) for submission, which are recognised as formally submitted.

The Prosecution submits one item (Email from the Prosecution, 7 June 2019, at 14:57). Noting that the Defence only commented on the relevance on the item but did not object to its submission (Email from the Defence, 10 June 2019, at 15:17), the Chamber also recognises it as formally submitted.

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

Kind regards,
 Trial Chamber IX