

ANNEX II

PUBLIC

26 February 2019 08:39

Trial Chamber IX Communications;

D-0032 - Defence's submission of evidence

For posterity, the Defence does not intend to request the submission of any items into evidence for this witness.

██████████

[REDACTED]

From: [REDACTED]
Sent: 01 March 2019 11:49
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
Cc: [REDACTED]
Subject: RE: D-0032: Prosecution's formal submission of evidence

The Prosecution responds to the Defence's email of 28 February 2019, 16:28, as follows:

- (1) The three referenced transcripts have been properly submitted. Questions of relevance are immaterial to the submission of documents. (*See Decision #497, para. 24*).
- (2) In any event, D-0032's own prior statements on the matters raised in Court, including two of the charged attacks, are obviously highly relevant.
- (3) The Defence's arguments, with which the Prosecution disagrees entirely, go primarily to the weight that the Defence argues the Chamber should afford to this evidence during its deliberations after the close of the evidence. The Prosecution is satisfied that at the end of this case, in light of these items and the totality of the evidence, the Chamber will be in a position to properly assess the reliability of D-0032's evidence.

Best regards,

[REDACTED]

Dévouement - Intégrité - Respect
 Dedication - Integrity - Respect

From: [REDACTED]
Sent: 28 February 2019 16:28
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
 [REDACTED]
Cc: [REDACTED]
Subject: RE: D-0032: Prosecution's formal submission of evidence

Dear Trial Chamber IX,

Pursuant to Decision 497, para. 28(ii), the Defence raises issues of relevance to the following items which the Prosecution requests submission:

Defence Tab 20, Defence Tab 21 and Defence Tab 22

The Defence reiterates that the relevance of the transcripts related to Odek, Lukodi and Lukole are low. As the Defence noted during testimony about Odek and Lukodi, the representatives of the Office of the Prosecutor were to supply the witness with transcripts of his testimony (see UGA-OTP-0275-3130-R01, p. 3140, lines 324-332). The witness was never given the opportunity to review his statement to ensure that what he stated was accurate. The argument that the first answer is usually the correct one is fallacious and without merit, especially when trying to remember something which happened 11-12 years ago.

Furthermore, the Defence notes that the Prosecution had possession of the audio tracks of these interviews since May 2016. It gives a dubious appearance that the Prosecution knew or had constructive knowledge of these alleged

inconsistencies in May 2016, placed the witness on its List of Witnesses on 6 September 2016, yet the Prosecution never revisited the witness to discuss these issues.

The abovementioned transcripts are of low relevance to the witness. The documents demonstrate more that the Prosecution interviews persons over a long day (two in this case...which are much longer than Court settings) and without knowledge of why the witness was called until he/she arrives on site. After having time to review the topics and think, the witness remembered that he was wrong and that what he told the defence in the first quarter of 2016 and in December 2018 was correct.

Very best,

[REDACTED]

Ext. [REDACTED]

From: [REDACTED]
 Sent: Monday, February 25, 2019 5:36 PM
 To: Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
 Cc: [REDACTED]
 Subject: D-0032: Prosecution's formal submission of evidence

Dear Trial Chamber IX,

The Prosecution requests the submission into evidence of the following items used during its examination of D-0032, conducted on 22 February 2019 (T-201).

TAB FROM LIST OF MATERIALS	ERN	DESCRIPTION
OTP TAB 1	UGA-OTP-0182-0026	Audio recording of Dwog Paco radio show [REDACTED]
OTP TAB 2	UGA-OTP-0284-0987	English translation of Track 1 of UGA-OTP-0182-0026 (2nd part of the [REDACTED] Dwog Paco radio show)
OTP TAB 3	UGA-OTP-0284-0995	English translation of Track 2 of UGA-OTP-0182-0026 (1st part of the [REDACTED] Dwog Paco radio show)
OTP TAB 4	UGA-OTP-0182-0022	Audio recording of Dwog Paco radio show [REDACTED]
OTP TAB 5	UGA-OTP-0284-1559	English translation of Track 2 of UGA-OTP-0182-0022 (1st part of the [REDACTED] Dwog Paco radio show)
OTP TAB 6	UGA-OTP-0284-1552	English translation of Track 1 of UGA-OTP-0182-0022 (2nd part of the [REDACTED] Dwog Paco radio show)
OTP TAB 11	UGA-OTP-0286-0165	English transcript and translation of audio recording UGA-OTP-0241-0303
DEFENCE TAB 3	UGA-D26-0011-0191	Transcript of D-0032 Interview with the Defence
DEFENCE TAB 7	UGA-D26-0011-0443	Transcript of D-0032 Interview with the Defence

DEFENCE TAB 20	UGA-OTP-0275-3343-R01	Transcript of D-0032 Interview with the Prosecution
N/a	UGA-OTP-0240-0111, Track entitled "Audio file-Track02_Ex01" (NB: The Prosecution is in the process of registering and disclosing this short audio clip. It will be available in ECourt by Wednesday, 27-2-19.)	Audio clip of a portion of D-0032's Interview with the Prosecution, corresponding to DEFENCE TAB 20, UGA-OTP-0275-3343-R01, pp. 3369-3370, lines 864-891 (NB: This audio clip was played at 11:19 on 22-02-2019 – see T-201, p. 25.)
DEFENCE TAB 21	UGA-OTP-0275-3380-R01	Transcript of D-0032 Interview with the Prosecution
DEFENCE TAB 22	UGA-OTP-0275-3411-R01	Transcript of D-0032 Interview with the Prosecution
DEFENCE TAB 25	UGA-OTP-0283-2045	Extract from LRA [REDACTED] (UDPF Debriefing Report for D-0032)

The other materials referred to during the Prosecution examination have already been recognised as formally submitted (OTP TABS 7-8, 10, 12, 14, 17, 18-19) or are otherwise part of the record (OTP TABS 20-21).

Kind regards,

[REDACTED]

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

From: [REDACTED]
Sent: 15 February 2019 14:44
To: Trial Chamber IX Communications; [REDACTED]
[REDACTED]
Cc: [REDACTED]
Subject: Prosecution (Additional) List of Materials for D-0032

Dear Trial Chamber, Parties, Participants, et al.,

For its examination of D-0032, the Prosecution will use the same list of materials as the Defence (see email from the Defence, 14.02.2019 at 10:03 hrs).

In addition, the Prosecution will use the materials listed in the attached document (Prosecution's List of Materials for the Examination of D-0032).

Kind regards,

[REDACTED]



Cour
Pénale
Internationale
International
Criminal
Court

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

[REDACTED]

[REDACTED]

From: Trial Chamber IX Communications
Sent: 06 March 2019 15:19
To: [REDACTED]
Cc: Trial Chamber IX Communications; [REDACTED]
Subject: Decision on Submitted Materials for D-32
Attachments: RE: D-0032: Prosecution's formal submission of evidence; RE: D-0032: Prosecution's formal submission of evidence; D-0032 - Defence's submission of evidence; D-0032: Prosecution's formal submission of evidence

Dear Counsel and Registry:

For D-32, the Chamber recognises as formally submitted the items submitted by the Prosecution (Email from the Prosecution, 25 February 2019 at 17:37).

The Defence challenges the relevance of three items (UGA-OTP-0275-3343-R01, UGA-OTP-0275-3380-R01 and UGA-OTP-0275-3411-R01) submitted by the Prosecution on grounds that these transcripts are unreliable due to the witness not having had a proper opportunity to review them and ensure their accuracy (Email from the Defence, 28 February 2019, at 16:28, *responded to in* Email from the Prosecution, 1 March 2019, at 11:49). Pursuant to its general approach, the Chamber defers consideration of these arguments until deliberating its judgment.

It is also noted that the Defence does not formally submit any items of evidence following this witness's testimony (Email from the Defence, 26 February 2019 at 08:39).

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