

ANNEX XX

PUBLIC

[REDACTED]

From:

Sent:

To:

15 May 2018 15:55

Trial Chamber IX Communications;

Subject:

DEF Documents for Submission which were used for PCV-0002

Dear Trial Chamber IX, Prosecution and Legal Representatives,

Pursuant to paragraph 28(i) of Decision 497, the Defence requests the submission into evidence the following document used during the examination of PCV-0002:

Tab 6, UGA-OTP-0283-1517

Very best,

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 17 May 2018 13:26
To: Trial Chamber IX Communications
Cc: [REDACTED]
Subject: RE: PCV-0002 - CLR formal Submission of Evidence

Dear Trial Chamber IX,

The Common Legal Representative respectfully submits that the Defence's objections are unfounded.

As far as document UGA-PCV-0005-0056 is concerned, the Common Legal Representative submits that the document contains extracts of trial material known to the Defence and timely provided to it and therefore it is not prejudicial to the Defence. Moreover, the expert referred to it during his questioning from the CLR (see ICC-02/04-01/15-T-176-ENG ET WT, p. 40 line 4 – p. 45 line 7) and it is therefore appropriate for the completeness of the record to have it submitted into evidence. A similar approach has been taken by the Prosecution in relation to the extracts used for the questioning of P-0445, P-0446 and P-0047. In this regard, the CLR refers to the Decision of the Chamber on submitted material for P-0446 sent by e-mail on 3 April 2018 at 10:13.

As far as document UGA-PCV-0005-0012 is concerned, the Common Legal Representative submits that it emanates directly from the witness who is the author of the book. The Common Legal Representative informed on 01 May 2018 the Chamber, the parties and participants of the fact that the witness had indicated that he may refer to this document during his testimony. A courtesy copy was also provided (see email sent by the Common Legal Representative on 01/05/2018 at 17:42) and it was included in the list of material.

The CLR made reference to it during her questioning (see ICC-02/04-01/15-T-176-ENG ET WT, p. 38 line 16 – p. 40 line 3). It is therefore appropriate for the completeness of the record to have it submitted into evidence. In this regard, the CLR recalls the Chamber's decision on the admission into evidence of 2 material by the Defence not even shown to the witness during his testimony and to which the Prosecution raised objections. On that occasion the Chamber ruled that Decision 497 sets no "[...] *limits on the email procedure. As has been determined in the Bemba et al. case, the general rule on admissibility of evidence set out in decision 497 of this case applies to such documents – they may be recognised as formally submitted, and consideration of their relevance and probative value will be deferred until the judgment (ICC-01/05-01/13-1786-Anx1-Red, page 4)*" (see Decision of the Chamber on submitted material for P-0422 sent by e-mail on 27 January 2017 at 09:52, also including in attachment the relevant parties' e-mails).

Finally, the Defence cannot argue that the submission of the 2 items into evidence violates para. 14 of Decision 1241, since both documents were not the subject of said ruling.

Kind regards,

Paolina Massidda

From: [REDACTED]
Sent: 17 May 2018 08:13
To: [REDACTED] Trial Chamber IX Communications
Cc: [REDACTED]
[REDACTED]

Subject: RE: PCV-0002 - CLR formal Submission of Evidence

Dear Trial Chamber IX, Prosecution and Legal Representatives,

The Defence objects to the submission into evidence the following items as the submission into evidence by the CLRV violates Decision 1241, paragraph 14:

UGA-PCV-0005-0012

and

UGA-PCV-0005-0056

The Defence respectfully requests that the abovementioned items not be recognised as submitted.

Very best,

[REDACTED]

Ext. [REDACTED]

From: [REDACTED]
Sent: Tuesday, May 15, 2018 3:33 PM
To: Trial Chamber IX Communications
Cc: [REDACTED]
[REDACTED]

Subject: PCV-0002 - CLR formal Submission of Evidence

Dear All,

In accordance with Decision ICC-02/04-01/15-497, the CLRV formally submits the following items of evidence used during the testimony of Expert Witness PCV-0002:

Tab	ERN (E-Court) or Other Official Identifier	Description	Confidentiality	Rule 68(3)
1	UGA-PCV-0002-0005	<i>Curriculum vitae</i> Prof. Wessells	CONF	YES
2	UGA-PCV-0002-0076	Report Prof. Wessells: “The Consequences of the Abduction of Children under 15: Implications for Individuals, Families, Communities and Acholi Society”	PUBLIC	YES
3	UGA-PCV-0002-0001	Letter of Instruction Prof. Wessells	CONF	YES
4	UGA-PCV-0005-0012	Chapter 6 : “The Invisible Wounds of War” in <i>Child Soldiers From Violence to Protection</i>	PUBLIC	N/A
5	UGA-PCV-0005-0056	Extracts from trial evidence provided to the expert by the CLR	PUBLIC	N/A

Kind regards,
Paolina Massidda



Paolina Massidda

Conseil principal / Principal Counsel
Bureau du conseil public pour les victimes (BCPV)
Office of Public Counsel for Victims (OPCV)
International Criminal Court
[Redacted]
www.icc-cpi.int

[REDACTED]

From: Trial Chamber IX Communications
Sent: 25 May 2018 09:33
To: [REDACTED]
Cc: Trial Chamber IX Communications; [REDACTED]
Subject: Decision on Submitted Materials for PCV-2
Attachments: PCV-0002 - CLR formal Submission of Evidence; DEF Documents for Submission which were used for PCV-0002; RE: PCV-0002 - CLR formal Submission of Evidence; RE: PCV-0002 - CLR formal Submission of Evidence

Dear Counsel and Registry:

The Chamber notes the submission of items by the CLRV (Email from the CLRV, 15 May 2018 at 15:34) and Defence (Email from the Defence, 15 May 2018 at 15:55). It is also noted that the Defence objects to the submission of two items by the CLRV on grounds that their submission violates paragraph 14 of Decision 1241 (Email from the Defence, 17 May 2018 at 08:13, *referencing* Decision on Defence Request to Deny the Use of Items from the CLRV List of Evidence, 25 April 2018, ICC-02/04-01/15-1241). The CLRV replies that the two documents in question were not the subject of this ruling (Email from the CLRV, 17 May 2018 at 13:26).

Decision 1241 was rendered in the context of a challenge to the timeliness of the CLRV including certain items on its list of evidence ('LoE') past the 2 February 2018 deadline. The Single Judge ruled that: (i) the challenged items were not timely placed on the LoE; (ii) these items needed to be removed from the LoE; and (iii) these challenged items could be used when questioning CLRV witnesses, but would not be recognised as formally submitted (Decision 1241, paras 11-14).

The purpose of a LoE is to have a document itemising all the materials which the filer of the document intends to submit as evidence during a trial (Decision 1241, para. 9). It provides certainty to the other participants as to the universe of materials which could be submitted to the Chamber as evidence.

The two contested items (UGA-PCV-0005-0056, UGA-PCV-0005-0012) do not appear on the updated CLRV LoE following Decision 1241 (Annex A to the CLR Updated List of Evidence, 26 April 2018, ICC-02/04-01/15-1249-AnxA). Identical considerations apply to these items as the ones at issue in Decision 1241 – they were not included on the LoE by the applicable deadline.

By virtue of these items not being on the CLRV LoE, the CLRV is procedurally barred from having their submission formally recognised by the Chamber. The request to recognise the formal submission of items UGA-PCV-0005-0056 and UGA-PCV-0005-0012 is rejected. All other items submitted by the CLRV and Defence are recognised as formally submitted by the Chamber, confirming that the witness's report is introduced by virtue of the procedural pre-requisites of

Rule 68(3) of the Rules being satisfied. The Chamber will defer consideration of the Defence arguments falling under the standard evidentiary criteria until deliberating its judgment (T-176, page 7 lines 18-24. *See also* Decision on Submitted Materials for PCV-1, Email of 24 May 2018, at 15:12, document number forthcoming).

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