

# **ANNEX II**

## **PUBLIC**



[REDACTED]

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**From:** [REDACTED]  
**Sent:** 01 March 2019 11:49  
**To:** [REDACTED] Trial Chamber IX Communications; [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

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**From:** [REDACTED]  
**Sent:** 28 February 2019 16:28  
**To:** [REDACTED] Trial Chamber IX Communications; [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



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

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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  
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[REDACTED]

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**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