

ANNEX XIII

PUBLIC

[REDACTED]

From: [REDACTED]
Sent: 27 September 2019 14:40
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
Subject: Prosecution Submission of Material for D-0013

In accordance with ICC-02/04-01/15-497, the Prosecution respectfully requests the submission into evidence of the following documents used in its examination of D-0013:

Prosecution Tab 25 UGA-OTP-0233-1427
 Prosecution Tab 28 Filing 268 Annex 1 – Audio recording
 Prosecution Tab 29 UGA-OTP-0286-2476
 Prosecution Tab 30 UGA-OTP-0286-2526
 Prosecution Tab 31 Filing 268 Annex 3 – Audio recording
 Prosecution Tab 32 UGA-OTP-0286-2393
 Prosecution Tab 33 UGA-OTP-0286-2421
 Prosecution Tab 34 Filing 268 Annex 4 - Audio recording
 Prosecution Tab 35 UGA-OTP-0286-2579
 Prosecution Tab 36 UGA-OTP-0286-2601
 Prosecution Tab 37 Filing 268 Annex 5 - Audio recording
 Prosecution Tab 38 UGA-OTP-0286-2623
 Prosecution Tab 39 UGA-OTP-0286-2647

[REDACTED]



[REDACTED]
 Senior Trial Lawyer
 Office of the Prosecutor
 International Criminal Court



[REDACTED]
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Mail address:

[REDACTED]
 The Hague,
 Netherlands

[REDACTED]

From: [REDACTED]
Sent: 02 October 2019 19:59
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
Subject: Re: Prosecution Submission of Material for D-0013
Attachments: 2019.10.02 - Distance for Alero to Awere - CONF.PNG

Dear Trial Chamber IX,

Pursuant to Order 497, para. 28(ii), the Defence responds to items requested for submission through D-0013.

Tab 25 - UGA-OTP-0233-1427

The Defence notes the witness's concern at page 12, lines 3-5 of T-245 RT transcript where she stated: "*I don't speak English so I suppose it is the person who interpreted my speech that probably got it wrong.*" The Defence agrees with the witness that it appears that there must have been interpretation problems in the interview.

1) Firstly, the witness's first son, Bak (named Lagony/Back to God in the news article) was attributed to Mr Ongwen in the news article. As the witness clearly told the Chamber, Bak was the child of D-0013 and Obong Kijura, not Mr Ongwen. (*See also* T-14-CONF, p. 36 line 21 to p. 37, line 2). It is completely incomprehensible that D-0013 would made this mistake.

2) Secondly, the news article reads that the witness stated "*I can't go to my husband's home, which I even don't know. I hear it's in Alero and other tell me it's in Awere [both in Gulu].*" The witness clearly stated that Mr Ongwen was from Amuru. (T-244, p. 65, lines 4-5) In the news article, the witness is alleged to have said Mr Ongwen's relatives visited her in 2005 at the rehabilitation centre. Pursuant to Article 69(6) of the Rome Statute, the attached picture shows the distance between Alero and Awere (84.5 km). This is a massive difference in locations. Also, if Mr Ongwen's family arrived in 2005 to meet her and the children, she would have known from where Mr Ongwen's family came.

These are merely 2 inconsistencies in this news article. Because IRIN placed quotation marks around it does not mean that it was a direct quote. Because IRIN is affiliated with the UN has nothing to do with its ability to interpret Acholi. The Defence states that like other news articles, this one should be treated with extremely low relevance. The only relevant parts of the alleged quotations which should be used by the Chamber are those which the witness specifically endorsed.

General Comments on the Audio

- 1) The audios in the Prosecution binder are in reverse chronological.
- 2) The witness did not get the opportunity to hear the audios in the entirety, and the phone conversations happened over four (4) years ago.
- 3) The Chamber will notice that a significant amount of the time is about family matters which the witness discussed.

Tabs 37, 38 and 39 - Audio of 268 Annex 5, UGA-OTP-0286-2623 and UGA-OTP-0286-2647 (the first audio in chronological order)

1) The Defence notes that in the first chronological call, there was a lengthy discussion about bringing the children up to The Hague for visits and trying to contact persons for the visits. (Tab 38, lines 164-270).

2) Mr Ongwen was worried about his family. (Tab 38, lines 280-305) It is shown by of D-0013 when speaking of Fatuma by saying "[t]he information I have is the information I gave you last time but the have not been killed." (Tab 38, lines 284-285)

3) The reason for the JRP meeting was "to inform the mothers of your children that you are fine." (Tab 38, lines 353-354)

4) Finally, if any message is to be gleaned from the alleged message, it is that Mr Ongwen asked for the women to tell the truth. The comments, "I am not the one who abducted them. Other people abducted them and gave them, what, gave them to me" (Tab 38, lines 522-523) [REDACTED] there were brought to me, they were given to me and I am not ht eone who went out and abducted them. I did not go and abduct NONO's mother of abduct KICCA's [sic] mother or even [REDACTED] is supported by the testimony of the women in attendance at the meeting. If any was asked, these women were told to speak the truth.

Tabs 31, 32 and 33, Filing 268 Annex 3 (audio), UGA-OTP-0286-2393 and UGA-OTP-0286-2422

Finally, when looking at the Witness's veracity, it is noted that when speaking about being possibly interviewed, the witness stated that "[b]ut for me, I am not going to say anything. I told these people not to say anything because *truth is what leads people and the truth lasts.*" (Tab 33, lines 155-156)

Very best,

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 27 September 2019 14:39
To: [REDACTED] Trial Chamber IX Communications [REDACTED]

Subject: Prosecution Submission of Material for D-0013

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 Prosecution Tab 38 UGA-OTP-0286-2623
 Prosecution Tab 39 UGA-OTP-0286-2647



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International Criminal Court

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[REDACTED]

From: [REDACTED]
Sent: 04 October 2019 10:39
To: [REDACTED]; Trial Chamber IX Communications; [REDACTED]
Subject: RE: Prosecution Submission of Material for D-0013

This response comes after yesterday's deadline. I overlooked it. I apologise and ask the Chamber to extend the deadline under the provisions of regulation 35.

The matters raised by the Defence would have been better explored in re-examination. Alternatively the Defence could mention them in their closing submissions. They have no bearing on the formal submission of the Prosecution's documents

From: [REDACTED]
Sent: 02 October 2019 19:59
To: [REDACTED]; Trial Chamber IX Communications; [REDACTED]
Subject: Re: Prosecution Submission of Material for D-0013

Dear Trial Chamber IX,

Pursuant to Order 497, para. 28(ii), the Defence responds to items requested for submission through D-0013.

Tab 25 - UGA-OTP-0233-1427

The Defence notes the witness's concern at page 12, lines 3-5 of T-245 RT transcript where she stated: "*I don't speak English so I suppose it is the person who interpreted my speech that probably got it wrong.*" The Defence agrees with the witness that it appears that there must have been interpretation problems in the interview.

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- 2) Mr Ongwen was worried about his family. (Tab 38, lines 280-305) It is shown by D-0013 when speaking of Fatuma by saying "[t]he information I have is the information I gave you last time but the have not been killed." (Tab 38, lines 284-285)
- 3) The reason for the JRP meeting was "to inform the mothers of your children that you are fine." (Tab 38, lines 353-354)
- 4) Finally, if any message is to be gleaned from the alleged message, it is that Mr Ongwen asked for the women to tell the truth. The comments, "I am not the one who abducted them. Other people abducted them and gave them, what, gave them to me" (Tab 38, lines 522-523) [REDACTED], there were brought to me, they were given to me and I am not ht eone who went out and abducted them. I did not go and abduct NONO's mother of abduct KICCA's [sic] mother or even [REDACTED] is supported by the testimony of the women in attendance at the meeting. If any was asked, these women were told to speak the truth.

Tabs 31, 32 and 33, Filing 268 Annex 3 (audio), UGA-OTP-0286-2393 and UGA-OTP-0286-2422

Finally, when looking at the Witness's veracity, it is noted that when speaking about being possibly interviewed, the witness stated that "[b]ut for me, I am not going to say anything. I told these people not to say anything because *truth is what leads people and the truth lasts.*" (Tab 33, lines 155-156)

Very best,

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: 27 September 2019 14:39

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

Subject: Prosecution Submission of Material for D-0013

In accordance with ICC-02/04-01/15-497, the Prosecution respectfully requests the submission into evidence of the following documents used in its examination of D-0013:

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 Prosecution Tab 37 Filing 268 Annex 5 - Audio recording
 Prosecution Tab 38 UGA-OTP-0286-2623
 Prosecution Tab 39 UGA-OTP-0286-2647

[REDACTED]



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[REDACTED]

From: Trial Chamber IX Communications
Sent: 06 December 2019 16:32
To: [REDACTED]
[REDACTED] Trial Chamber IX Communications; [REDACTED]
Subject: Decision on Submitted Materials for D-0013
Attachments: Prosecution Submission of Material for D-0013; Re: Prosecution Submission of Material for D-0013; RE: Prosecution Submission of Material for D-0013
Follow Up Flag: Follow up
Flag Status: Flagged
Categories: Hearings

Dear Counsel and Registry,

For D-0013, the Prosecution submits 13 items for formal recognition (Email from the Prosecution, 27 September 2019, at 14:40).

In its response, the Defence makes comments to seven of the items (Email from the Defence, 02 October 2019, at 19:59)

The Prosecution replied to the Defence response on 4 October 2019 (Email from the Prosecution, 04 October 2019, 10:39).

The Chamber notes that this reply comes after the deadline established by decision ICC-02/04-01/15-497, para. 28 iii. but exceptionally permits the late submission.

The Chamber notes that the comments made by the Defence on all seven items related to the relevance of the items or how to interpret them.

As explained in ICC-02/04-01/15-497, this will be considered by the Chamber during its judgment deliberations.

Accordingly, the Chamber recognises all items 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