

**ANNEX XVI**  
**PUBLIC**

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 27 November 2019 14:53  
**To:** [REDACTED] Trial Chamber IX Communications; [REDACTED]  
**Subject:** Prosecution Submission of Material through Rebuttal Witness P-0447

The Prosecution has no observations concerning the Defence's request for submission of items.

The Prosecution itself, pursuant to para. 28 of decision# 497, requests the following item from its examination list be submitted into evidence:

UGA-OTP-0287-0072 (Professor Weierstall-Pust's second report dated November 2019).

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 27 November 2019 14:03  
**To:** Trial Chamber IX Communications; [REDACTED]  
**Subject:** Defence Submission of Material through Rebuttal Witness P-0447

Dear Trial Chamber IX,

Pursuant to para. 28 of the Order 497, the Defence requests the following items from its examination list be submitted into evidence:

Tab No	ERN	First announced/used in T-253
6	UGA-D26-0015-1481	Page 18, lines 7-8
7	UGA-D26-0015-1501	Page 17, lines 5-8
8	UGA-D26-0015-1514	Page 11, lines 18-21

These are documents which are not on the Defence's list of evidence. The Defence requests the submission of these items as it was not reasonably foreseeable until the expert report of P-0447 was disclosed *via* email on 23 November 2019. Also, considering that this is a cross examination of the witness, the Defence avers that the items used need not be on its list of evidence to be submitted.

In addition to the items on the Defence's list for its examination of P-0447, the Defence also requests the submission of the following newly disclosed item:

Tab No	ERN	First announced/used in T-253
N/A	UGA-D26-0015-1582	Pages 96-97

The Defence notes this item, while not being on its list of materials for P-0447, was used during the Defence's examination of P-0447. It is also noted that the Prosecution had a physical copy of the DSM-5 in its possession. It is the Defence's position that the Prosecution was disadvantaged by the use of the material in this item, and that for the completeness of the record, the Defence requests its submission into evidence.

Best regards,

██████████

██████████

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** 02 December 2019 09:37  
**To:** Trial Chamber IX Communications; [REDACTED]  
**Subject:** Re: Defence Submission of Material through Rebuttal Witness P-0447

Dear All,

Please note that after reviewing this weekend, I made a typographical error last Wednesday. It is highlight in green below. It was meant to read "not disadvantaged".

[REDACTED]

[REDACTED]

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 27 November 2019 14:02  
**To:** Trial Chamber IX Communications [REDACTED]  
**Subject:** Defence Submission of Material through Rebuttal Witness P-0447

Dear Trial Chamber IX,

Pursuant to para. 28 of the Order 497, the Defence requests the following items from its examination list be submitted into evidence:

Tab No	ERN	First announced/used in T-253
6	UGA-D26-0015-1481	Page 18, lines 7-8
7	UGA-D26-0015-1501	Page 17, lines 5-8
8	UGA-D26-0015-1514	Page 11, lines 18-21

These are documents which are not on the Defence's list of evidence. The Defence requests the submission of these items as it was not reasonably foreseeable until the expert report of P-0447 was disclosed *via* email on 23 November 2019. Also, considering that this is a cross examination of the witness, the Defence avers that the items used need not be on its list of evidence to be submitted.

In addition to the items on the Defence's list for its examination of P-0447, the Defence also requests the submission of the following newly disclosed item:

Tab No	ERN	First announced/used in T-253
N/A	UGA-D26-0015-1582	Pages 96-97

The Defence notes this item, while not being on its list of materials for P-0447, was used during the Defence's examination of P-0447. It is also noted that the Prosecution had a physical copy of the DSM-5 in its possession. It is the Defence's position that the Prosecution was not disadvantaged by the use of the material in this item, and that for the completeness of the record, the Defence requests its submission into evidence.

Best regards,

██████████

██████████

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** 02 December 2019 13:54  
**To:** [REDACTED] Trial Chamber IX Communications; [REDACTED]  
**Subject:** RE: Prosecution Submission of Material through Rebuttal Witness P-0447

Dear Trial Chamber IX,

In accordance with rule 64(1) of the Rules of Procedure and Evidence and paragraph 28(ii) of 'Initial Directions on the Conduct of the Proceedings' (ICC-02/04-01/15-497), the Defence objects to the admissibility of P-0447's rebuttal evidence, contained in his rebuttal Expert Report (UGA-OTP-0287-0072) and/or his live testimony on 25-26 November 2019 (T-252-CONF-ENG ET and T-253-CONF-ENG ET). In particular, the Defence respectfully requests that the Chamber does not consider P-0447's rebuttal evidence, insofar it discusses issues other than Dissociative Amnesia (**DA**) and symptoms of Obsessive-Compulsive Disorder (**OCD**). In addition, the Defence incorporates by reference Counsel Beth Lyons' arguments concerning P-0447's rebuttal evidence (T-252-CONF-ENG ET, pages 4-8).

First, the Defence reiterates that the Prosecution did not file any formal application to introduce P-0447 as a rebuttal witness, nor did the Chamber rule on the factual parameters of the rebuttal evidence consistent with the legal criteria for rebuttal evidence. Hence, Mr Ongwen's right to notice under article 67(1) of the Rome Statute has been violated. The Defence was put in a position where it had to present a rejoinder case, without knowing the Chamber's legal ruling as to the limits for the rebuttal evidence. In the absence of such a ruling, there were no limits: both the Second Expert Report (UGA-D26-0015-0948) as a whole and the testimonies provided by the Defence Experts were made available for P-0447's expert opinion (T-248-CONF-ENG ET, T-249-CONF-ENG ET, T-250-CONF-ENG ET and T-251-CONF-ENG ET). Hence, P-0447's rebuttal Expert Report was entitled '[E]xpert opinion on the Second Psychiatric Report and its related testimonies by Emilio Ovuga and Dickens Akena'.

Second, the Defence submits that the admission of the full report violates Mr Ongwen's fair trial rights and prejudices him because the Prosecution is getting a second chance to present its case: almost all of the report (with the exception of anything about DA or symptoms of OCD) – the only two conclusions from the Defence Experts which were not included in the First Report (UGA-D26-0015-0004) – is repetitive of both prior Prosecution Expert Reports and their testimonies. The criteria for a rebuttal case include, as one of its legal criterion, matters which could not have been anticipated (see Defence Request for Leave to Appeal Trial Chamber IX's Oral Decision on the Objections of the Defence to the report presented by the rebuttal expert, P-0447, ICC-02/04-01/15-1682, para. 3, footnote 3). The Second Expert Report builds on the material of the First Expert Report and maintains the same conclusions in respect to Experts' diagnoses of Mr Ongwen's mental health. Thus, admitting the full rebuttal Expert Report, and corresponding testimony, is in fact admitting repetitive evidence. As found by the Chamber in paragraph 16 of 'Decision on Requests related to the Testimony of Defence Expert Witnesses D-0041 and D-0042' (ICC-02/04-01/15-1623) and cited by the Defence (T-252-CONF-ENG ET, p. 4, lines 14-18) '[t]he Chamber anticipates that this evidence will concern only points and facts previously not addressed by the Prosecution Expert Witness. The Chamber will not allow any repetition of evidence previously provided'.

As the examples given by the Defence in the oral objection show (T-252-CONF-ENG ET, pp 4-8) Malingering, Major Depressive Disorder and Post-Traumatic Stress Disorder have already been addressed and any material on same is repetitive. Therefore, the Defence does not object to sections dealing with symptoms of OCD and DA. However, any other materials/sections do not satisfy the legal standard for rebuttal evidence and it is prejudicial to Mr Ongwen to admit these materials/sections.

Regards,

[REDACTED]  
[REDACTED]

From: [REDACTED]  
 Sent: 27 November 2019 14:53  
 To: [REDACTED] Trial Chamber IX Communications; [REDACTED]  
 Subject: Prosecution Submission of Material through Rebuttal Witness P-0447

The Prosecution has no observations concerning the Defence's request for submission of items.

The Prosecution itself, pursuant to para. 28 of decision# 497, requests the following item from its examination list be submitted into evidence:  
 UGA-OTP-0287-0072 (Professor Weierstall-Pust's second report dated November 2019).

From: [REDACTED]  
 Sent: 27 November 2019 14:03  
 To: Trial Chamber IX Communications; [REDACTED]  
 Subject: Defence Submission of Material through Rebuttal Witness P-0447

Dear Trial Chamber IX,

Pursuant to para. 28 of the Order 497, the Defence requests the following items from its examination list be submitted into evidence:

<b>Tab No</b>	<b>ERN</b>	<b>First announced/used in T-253</b>
6	UGA-D26-0015-1481	Page 18, lines 7-8
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8	UGA-D26-0015-1514	Page 11, lines 18-21

These are documents which are not on the Defence's list of evidence. The Defence requests the submission of these items as it was not reasonably foreseeable until the expert report of P-0447 was disclosed *via* email on 23 November 2019. Also, considering that this is a cross examination of the witness, the Defence avers that the items used need not be on its list of evidence to be submitted.

In addition to the items on the Defence's list for its examination of P-0447, the Defence also requests the submission of the following newly disclosed item:

<b>Tab No</b>	<b>ERN</b>	<b>First announced/used in T-253</b>
N/A	UGA-D26-0015-1582	Pages 96-97

The Defence notes this item, while not being on its list of materials for P-0447, was used during the Defence's examination of P-0447. It is also noted that the Prosecution had a physical copy of the DSM-5 in its possession. It is the Defence's position that the Prosecution was disadvantaged by the use of the material in this item, and that for the completeness of the record, the Defence requests its submission into evidence.

Best regards,

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** 02 December 2019 16:55  
**To:** [REDACTED] Trial Chamber IX  
 Communications; [REDACTED]  
**Subject:** RE: Prosecution Submission of Material through Rebuttal Witness P-0447

In accordance with Decision 497, para. 28(iii), the Prosecution responds as follows:

The objections of the Defence should be rejected in their entirety.

The Defence repeats arguments it has raised before, particularly during the trial hearings and in its Request for Leave to Appeal of 27 November 2019 (Filing 1682). The Prosecution stands by its earlier submissions and emphasizes:

- With regard to the first point raised by the Defence, the Prosecution notes that the Defence *did* receive notice of the limits of rebuttal evidence in Decision 1623 on 1 October 2019, specifically para. 16.
- With regard to the second point raised by the Defence, the Prosecution refers to its submissions in the “Response to the ‘Defence Request for Leave to Appeal Trial Chamber IX’s Oral Decision on the Objections of the Defence to the report presented by the rebuttal expert, P-0447’” (Filing 1687 dated 28 November 2019), in particular paras. 8-11.

Regards,

Dévouement - Intégrité - Respect  
 Dedication - Integrity - Respect

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**From:** [REDACTED]  
**Sent:** 02 December 2019 13:54  
**To:** [REDACTED] Trial Chamber IX Communications [REDACTED]  
**Subject:** RE: Prosecution Submission of Material through Rebuttal Witness P-0447

Dear Trial Chamber IX,

In accordance with rule 64(1) of the Rules of Procedure and Evidence and paragraph 28(ii) of ‘Initial Directions on the Conduct of the Proceedings’ (ICC-02/04-01/15-497), the Defence objects to the admissibility of P-0447’s rebuttal evidence, contained in his rebuttal Expert Report (UGA-OTP-0287-0072) and/or his live testimony on 25-26 November 2019 (T-252-CONF-ENG ET and T-253-CONF-ENG ET). In particular, the Defence respectfully requests that the Chamber does not consider P-0447’s rebuttal evidence, insofar it discusses issues other than Dissociative Amnesia (**DA**) and symptoms of Obsessive-Compulsive Disorder (**OCD**). In addition, the Defence incorporates by reference Counsel Beth Lyons’ arguments concerning P-0447’s rebuttal evidence (T-252-CONF-ENG ET, pages 4-8).

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Chamber's legal ruling as to the limits for the rebuttal evidence. In the absence of such a ruling, there were no limits: both the Second Expert Report (UGA-D26-0015-0948) as a whole and the testimonies provided by the Defence Experts were made available for P-0447's expert opinion (T-248-CONF-ENG ET, T-249-CONF-ENG ET, T-250-CONF-ENG ET and T-251-CONF-ENG ET). Hence, P-0447's rebuttal Expert Report was entitled '[E]xpert opinion on the Second Psychiatric Report and its related testimonies by Emilio Ovuga and Dickens Akena'.

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Regards,

[REDACTED]  
[REDACTED]

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From: [REDACTED]  
Sent: 27 November 2019 14:53  
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]  
Subject: Prosecution Submission of Material through Rebuttal Witness P-0447

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UGA-OTP-0287-0072 (Professor Weierstall-Pust's second report dated November 2019).

[REDACTED]

---

From: [REDACTED]  
Sent: 27 November 2019 14:03  
To: Trial Chamber IX Communications; [REDACTED]  
Subject: Defence Submission of Material through Rebuttal Witness P-0447

Dear Trial Chamber IX,

Pursuant to para. 28 of the Order 497, the Defence requests the following items from its examination list be submitted into evidence:

<b>Tab No</b>	<b>ERN</b>	<b>First announced/used in T-253</b>
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7	UGA-D26-0015-1501	Page 17, lines 5-8
8	UGA-D26-0015-1514	Page 11, lines 18-21

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Best regards,

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**From:** Trial Chamber IX Communications  
**Sent:** 06 December 2019 16:41  
**To:** [REDACTED]  
**Subject:** Trial Chamber IX Communications; [REDACTED]  
**Attachments:** Decision on Submitted Materials for the rebuttal evidence provided by P-0447 Prosecution Submission of Material through Rebuttal Witness P-0447; Re: Defence Submission of Material through Rebuttal Witness P-0447; RE: Prosecution Submission of Material through Rebuttal Witness P-0447; RE: Prosecution Submission of Material through Rebuttal Witness P-0447

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Hearings

Dear Counsel and Registry:

In relation to the rebuttal evidence provided by P-0447, the Prosecution submits 1 item for formal recognition (Email from the Prosecution, 27 November 2019, at 14:53).

The Defence requests that 4 items be recognised as formally submitted (Email from the Defence, 2 December 2019, at 09:37).

It further objects to the submission of the item submitted by the Prosecution (Email from the Defence, 2 December 2019, at 13:54)

The Prosecution responded to the Defence's objection on 2 December (Email from the Prosecution, 2 December 2019, at 16:55).

First, the Chamber notes that the Defence objects to the admissibility of the expert report in question 'and/or his live testimony on 25-26 November 2019'. Unlike argued by the Defence, this is not in line with decision ICC-02/04-01/15497, para. 28(ii). This procedure only allows the other participants to make submissions on the item submitted, not generally on the entire live testimony provided by a witness.

Accordingly, the Chamber will only respond to the objections raised against the submission of the P-0447 rebuttal report.

The Chamber notes that the objections raised by the Defence were already addressed and rejected in decision ICC-02/04-01/15-1623, para. 13. and the oral decision on 25 November 2019 (ICC-02/04-01/15-T-252, pg 7, l.16 – pg 8, l.10). Additionally, the Defence requested leave to appeal of the oral decision, ICC-02/04-01/15-1682.

Accordingly, the Chamber finds that item UGA-OTP-0287-0072 may also be recognised as formally submitted. It further confirms that the witness's report is introduced by virtue of the procedural prerequisites of Rule 68(3) of the Rules being satisfied.

Consequently, the Chamber recognises all items are 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