

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/04-01/15  
Date: 28 October 2016

**TRIAL CHAMBER IX**

**Before:** Judge Bertram Schmitt, Presiding Judge  
Judge Peter Kovacs  
Judge Raul C. Pangalangan

**SITUATION IN UGANDA**

**IN THE CASE OF**

***THE PROSECUTOR v. DOMINIC ONGWEN***

**Public**

**With Confidential Annexes A to G**

**Prosecution's formal submission of intercept evidence *via* the 'bar table'**

**Source:** The Office of the Prosecutor

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## Introduction

1. The Office of the Prosecutor (“Prosecution”) requests the Chamber to recognise as formally submitted 2,507 items of evidence related to the interception of LRA radio communications by the Ugandan government (“intercept evidence”). This request is made pursuant to the Chamber’s invitation to submit evidence in writing through a ‘bar table’ application,<sup>1</sup> and in accordance with articles 64(9)(a), 69(3) and 69(4) of the Rome Statute (“Statute”).<sup>2</sup>
  
2. The intercept evidence falls into the following distinct categories:
  - Category I: short-hand rough notes of LRA radio communications (annex A);
  - Category II: logbooks containing summaries of LRA radio communications (annex B);
  - Category III: faxed copies of logbook entries (annex C);
  - Category IV: intelligence reports (annex D);
  - Category V: sound recordings of LRA radio communications (annex E); and
  - Category VI: miscellaneous intercept evidence (annex F).
  
3. The intercept evidence is relevant to material issues at trial, is mutually corroborative and corroborative of other Prosecution evidence, and bears sufficient indicia of reliability. As demonstrated in this application and its annexes, each item of evidence that the Prosecution formally submits demonstrates characteristics that *prima facie* satisfy the criteria for submission.
  
4. Recognising the formal submission of this evidence in advance of the commencement of the trial causes no prejudice to a fair trial. It will enable the Chamber to make use of it during the trial, understand other evidence in the

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<sup>1</sup> ICC-02/04-01/15-497, para.27.

<sup>2</sup> The Chamber authorised a page limit extension for this request pursuant to regulation 37(2) of the Regulations of the Court. *See* Trial Chamber IX email to Parties and participants, sent on Monday 24 October 2016 at 10:12.

case and ultimately assist in determining the truth. Recognising the formal submission of the intercept evidence will also ensure an expeditious trial. The presentation of evidence will be streamlined, and the need to call several witnesses to attest to the authenticity of the underlying evidence greatly reduced, saving valuable Court resources and time.

### **Annexes**

5. The six lists in annexes A to F to this filing detail, for each of the 2,507 items of evidence: (i) the evidence registration number (“ERN”); (ii) type;<sup>3</sup> (iii) title;<sup>4</sup> (iv) the main date of the document;<sup>5</sup> (v) the identity of the evidence provider; (vi) its relevance and probative value; and (vii) the date of disclosure.<sup>6</sup>
  
6. 161 of the items listed in annexes A to F were not included in the Prosecution’s 6 September 2016 list of evidence. These 161 items are listed in Annex G. The Prosecution has applied in its filing “Prosecution’s Request to Add items to its List of Evidence and to include P-0001 to its List of Witnesses”, on 24 October 2016, to add these items to its list of evidence.<sup>7</sup>

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<sup>3</sup> The ‘type’ is a metadata field populated by Prosecution staff when evidence is registered in Ringtail. This field is reproduced in annexes A to G as it appears in eCourt.

<sup>4</sup> The ‘title’ is a metadata field populated by Prosecution staff when evidence is registered in Ringtail. It contains the information available at the time on the face of the item. On occasion, when the title is not readily apparent, there is no information inserted into the ‘title’ field, resulting in a blank entry. This field is reproduced in annexes A to G as it appears in eCourt.

<sup>5</sup> The ‘main date’ is a metadata field populated by Prosecution staff when evidence is registered in Ringtail. It is the date of creation or production of the item, the date on the item, or the date for which the item bears relevance. On occasion, when the main date is not readily apparent, there is no information inserted into the ‘main date’ field, resulting in a blank entry. This field is reproduced in annexes A to G as it appears in eCourt.

<sup>6</sup> This column gives the date of disclosure in the form: year/month/date. It also includes the disclosure ‘package’ in which the item was disclosed to the Defence.

<sup>7</sup> ICC-02/04-01/15-577.

## Confidentiality

7. Annexes A to G are classified as “confidential” because the “source identity” column contains the names of Prosecution witnesses, and because the items of evidence listed were disclosed to the Defence as “confidential”.

## Legal Framework

8. The Chamber ruled in its Initial Directions on the Conduct of the Proceedings that participants may submit evidence “in writing through a ‘bar table’ application”.<sup>8</sup>
9. In accordance with this practice, the reception of evidence other than testimony requires consideration of three key factors: (i) its *prima facie* relevance to the issues at trial;<sup>9</sup> (ii) its *prima facie* probative value, including its reliability and authenticity;<sup>10</sup> and (iii) any prejudicial effect to a fair trial as weighed against its probative value.<sup>11</sup>

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<sup>8</sup> ICC-02/04-01/15-497, para.27. The Trial Chamber in *Gbagbo and Blé Goudé* has also held that Parties may submit evidence from the bar table, without producing it by or through a witness (ICC-02/11-01/15-498-AnxA, para.43). It held that “in general, [...] a rule that documents can only be submitted ‘through a witness’ has no basis in the Statute or the Rules and does not form part of the Court’s applicable law” (ICC-02/11-01/15-573-Red, para.9). *See also* ICC-01/04-01/06-1399-Corr, paras.22, 42; ICC-01/04-01/06-1981; ICC-01/04-01/07-2635; ICC-01/04-01/07-1665, para.100; ICC-01/09-01/11-135, para.13; ICC-01/05-01/08-2012-Conf; ICC-01/05-01/08-2299-Red.

<sup>9</sup> ICC-01/04-01/06-1399-Corr, para.27; ICC-01/04-01/07-2635, section B; ICC-01/05-01/08-2012-Red, paras.13-14; ICC-01/05-01/08-2299-Red, para.8; ICC-01/09-01/11-1353, para.15.

<sup>10</sup> ICC-01/04-01/06-1399-Corr, paras.28-30; ICC-01/04-01/07-2635, section C; ICC-01/05-01/08-2012-Red, paras.13, 15; ICC-01/09-01/11-1353, para.15. The *Ruto and Sang* Trial Chamber held that definitive proof of reliability is not required at this stage, but rather *prima facie* proof based on sufficient indicia; *see* ICC-01/09-01/11-1353, para.15.

<sup>11</sup> ICC-01/04-01/06-1399-Corr, paras.31-32; ICC-01/04-01/07-2635, section D; ICC-01/05-01/08-2012-Red, paras.13, 16-17; ICC-01/05-01/08-2299-Red, para.8; ICC-01/09-01/11-1353, para.16. The Appeals Chamber has ruled that “a Chamber’s determination of the relevance or admissibility of evidence be made on an item-by-item basis” (ICC-01/05-01/08-1386, para.53).

## Submissions

### A. Background to the intercept evidence

10. From at least the early 1990s, the LRA used high-frequency radios to communicate internally.<sup>12</sup> They looted these radios from Catholic missions or NGO vehicles, or they received them from collaborators.<sup>13</sup> After the UPDF's Operation Iron Fist in 2002 destroyed the LRA's base of operations in Sudan, communication through these radios became critical to the LRA's survival.
11. After Operation Iron Fist Joseph Kony remained in Sudan, while his forces streamed into northern Uganda. Kony was often hundreds of kilometres away from his troops, who operated as far south as Soroti, Uganda. Because of this geographical isolation, Kony used high-frequency radio to issue orders to and communicate with his senior commanders, who were themselves spread over large distances.<sup>14</sup>
12. In the mid-1990s, the Ugandan government recognised the strategic significance of the radio communications to its military campaign against the LRA.<sup>15</sup> Three independent radio interception operations were established: by the Internal Security Organisation of the Ugandan government ("ISO"), by the Ugandan People's Defence Forces ("UPDF"), and by the Ugandan Police force. The Ugandan government set up the ISO<sup>16</sup> and the UPDF<sup>17</sup> operations in the mid- and

<sup>12</sup> P-0301, [UGA-OTP-0249-0423-R01](#) at 0426; P-0029, [UGA-OTP-0027-0231-R01](#) at 0235; ISO logbook, [UGA-OTP-0063-0194](#) at 0208.

<sup>13</sup> P-0003, [UGA-OTP-0027-0214-R01](#) at 0224; P-0059, [UGA-OTP-0027-0244](#) at 0251; ISO logbook, [UGA-OTP-0068-0146](#) at 0318; ISO Logbook, [UGA-OTP-0068-0146](#) at 0195.

<sup>14</sup> P-0003, [UGA-OTP-0027-0214-R01](#) at 0226; P-0059, [UGA-OTP-0027-0244](#) at 0249.

<sup>15</sup> P-0059, [UGA-OTP-0027-0244](#) at 0246; P-0301, [UGA-OTP-0249-0423-R01](#) at 0426, 0428.

<sup>16</sup> P-0027, [UGA-OTP-0249-0444-R01](#) at 0446, 0449.

late-1990s, respectively. The Police intercepted communications from August 2003. Its operation was more modest.<sup>18</sup>

13. By 2001, the ISO and the UPDF had permanent offices at the UPDF barracks in Gulu, and were intercepting LRA radio communications with trained staff, on a daily, full-time basis.<sup>19</sup> The ISO's and the UPDF's mandate was to intercept and record radio communications to inform UPDF military decisions.<sup>20</sup> Gulu was selected as the permanent operating base for both, because that region was the main theatre of LRA operations and closest to the UPDF decision-makers.<sup>21</sup> The UPDF also intercepted LRA radio communications from various locations in Sudan and northern Uganda, mirroring the LRA's movements as its centre of operations shifted.<sup>22</sup>

14. The Prosecution relies on the evidence of eighteen individuals involved at all levels of the ISO's, UPDF's, and Police's interception operation.<sup>23</sup> Four of these witnesses will testify live: P-0059, P-0003, P-0339 and P-0125.<sup>24</sup> The others are included in the Prosecution's two applications to admit their previously recorded testimony into evidence pursuant to rule 68(2)(b) of the Rules.<sup>25</sup> Together, the intercept witnesses describe an interception processes that was conducted contemporaneously to the charged crimes, and in similar circumstances across the three organisations. These witnesses confirm that they are the producers, supervisors and handlers of the intercept evidence.

<sup>17</sup> P-0003, [UGA-OTP-0027-0214-R01](#) at 0216; P-0029, [UGA-OTP-0027-0231-R01](#) at 0234, [UGA-OTP-0267-0455](#) at 0458.

<sup>18</sup> P-0125, [UGA-OTP-0170-0047-R01](#) at 0050-0055; P-0125, [UGA-OTP-0253-0780-R01](#) at 0788; P-0370, [UGA-OTP-0258-0687-R01](#) at 0690-0694.

<sup>19</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0081; P-0027, [UGA-OTP-0207-0256-R01](#) at 0257.

<sup>20</sup> P-0291, [UGA-OTP-0246-0061-R01](#) at 0064; P-0027, [UGA-OTP-0249-0444-R01](#) at 0446, 0448-0449, [UGA-OTP-0207-0256-R01](#) at 0257-0258; P-0029, [UGA-OTP-0267-0455](#) at 0457-0458.

<sup>21</sup> P-0027, [UGA-OTP-0249-0444-R01](#) at 0449.

<sup>22</sup> P-0029, [UGA-OTP-0267-0455](#) at 0459-0460; P-0337, [UGA-OTP-0267-0445-R01](#) at 0447-0451; P-0339, [UGA-OTP-0258-0732-R01](#) at 0734, 0739-0743; P-0400, [UGA-OTP-0264-0015-R01](#) at 0019-0020.

<sup>23</sup> P-0003, P-0029, P-0337, P-0339, P-0400, P-0404 (UPDF); P-0027, P-0032, P-0059, P-0291, P-0301, P-0303, P-0384, P-0385, P-0386 (ISO); P-0125, P-0126, P-0370 (Police).

<sup>24</sup> See ICC-02/04-01/15-548-Conf-AnxA.

<sup>25</sup> ICC-02/04-01/15-465-Corr-Red; ICC-02/04-01/15-538-Red.

B. The intercept evidence is relevant to the issues at trial

15. The intercept evidence goes directly to the heart of the issues at this case—for example Dominic Ongwen reporting attacks he led on Odek, Lukodi and Abok IDP camps, or evidence of the contextual elements of the war crimes and crimes against humanity charges. But it also provides valuable context to, and corroborates, other evidence in the case.
16. Each of the six categories of intercept evidence contains highly relevant information to the charges against Dominic Ongwen. In addition to information relevant to Dominic Ongwen's acts and conduct, the intercept evidence documents the LRA's goals, policies, tactics and movements over the charged period, its interaction with persons and institutions outside the LRA, its system of discipline, its command and leadership structure, and the system of communication between commanders.
17. The Prosecution formally submits the intercept evidence in its entirety. This will allow the Chamber to assess: (i) the original form in which the records were provided; (ii) their integrity and reliability; and (iii) the context in which the highly probative material is framed, to determine the weight to attach to it. Although—understandably for such a large body of material—not every page comprising these records or each minute of the sound-recorded radio communications is directly relevant or probative, editing the records so as to select only specific portions would mean altering their original format and affecting their context. The Chamber should not deprive itself of the opportunity to have all possible insights at its disposal. The four intercept witnesses whom the Prosecution intends to call to give live testimony will

provide further explanation of the intercept material. And the Prosecution will, during the course of the trial and in its final arguments, identify the portions of the material that it regards as being of particular importance.

18. The intercept evidence is central to each thematic area of this case. First, it helps to establish the contextual elements of the alleged war crimes and crimes against humanity. The ISO and UPDF logbooks, which span the entire charged period, are particularly useful. Almost every page of these voluminous records details LRA attacks on civilian and military targets. For example:

- On 9, 10 and 12 November 2002, Dominic Ongwen reported an attack upon his forces by the UPDF and received orders to ambush the UPDF group following his fighters.<sup>26</sup> He said that his forces had been attacked by two UPDF battalions,<sup>27</sup> and that there had been 54 casualties during fighting with the UPDF at Olung Primary School.<sup>28</sup>
- On 7 May 2003, Joseph Kony ordered that the LRA should “wage serious atrocities” in northern Uganda so that the community “blame[s] the government”.<sup>29</sup> On 23 January 2004, he instructed that the killing of civilians from infant to old age was to start “seriously”, because civilians are the ones who put pressure on the Government to fight the LRA.<sup>30</sup>
- On 13 February 2004, Ongwen reported that in the course of an attack on the UPDF at Koc Ongako he had burned “all houses”.<sup>31</sup>
- On 2 March 2005, Ongwen reported successful ambushes and attacks against the UPDF on 21 January, 30 January, and 26 February 2005, resulting

<sup>26</sup> ISO logbook, [UGA-OTP-0065-0002](#) at 0015, 0018.

<sup>27</sup> ISO logbook, [UGA-OTP-0065-0002](#) at 0019-0020.

<sup>28</sup> ISO logbook, [UGA-OTP-0065-0002](#) at 0025.

<sup>29</sup> ISO logbook, [UGA-OTP-0063-0002](#) at 0191.

<sup>30</sup> ISO logbook, [UGA-OTP-0061-0002](#) at 0016.

<sup>31</sup> UPDF logbook, [UGA-OTP-0197-0697](#) at 0780.

in UPDF soldiers killed and equipment captured. Ongwen reported that his soldiers had very high morale. He vowed to continue attacking the UPDF.<sup>32</sup>

19. Second, the intercept evidence helps to establish the elements of the modes of liability charged in this case. The logbooks, for example, record Dominic Ongwen's position of authority and movements in the LRA hierarchy. On 1 July 2002, Joseph Kony promoted Ongwen to the rank of Major.<sup>33</sup> He was promoted to Lieutenant Colonel in November 2003,<sup>34</sup> to Colonel on 30 May 2004,<sup>35</sup> and to Brigadier in December 2004.<sup>36</sup>

20. Third, the intercept evidence helps to establish the LRA's persecutory campaign against the civilian population in northern Uganda. Again, the logbooks demonstrate that the LRA perceived IDP camp residents as Government supporters and targeted them on that basis. For example:

- On 31 August 2002, Kony instructed LRA commanders in Uganda to distribute letters to civilians telling them that the "LRA wants all able bodied p[eo]ple [to] all move and join LRA and no body [*sic*] should move to camps". He stated that "this time LRA shouldn't spare any civilian who doesn't want to side with LRA", and approved of another commander's suggestion that the LRA should bring resistant civilians into line by "killing mercilessly".<sup>37</sup>

<sup>32</sup> ISO logbook, [UGA-OTP-0159-0002-R01](#) at 0169-0170.

<sup>33</sup> ISO logbook, [UGA-OTP-0063-0194](#) at 0246, 0248; *see* a list of LRA command structure authored by the ISO at [UGA-OTP-0242-1008](#), dated 22 October 2003, listing Ongwen as a Major in Sinia brigade. *See* P-0059's comments on this list at [UGA-OTP-0258-0699-R01](#) at 0706.

<sup>34</sup> ISO logbook, [UGA-OTP-0066-0002-R01](#) at 0051; UPDF logbook, [UGA-OTP-0242-6018](#) at 6199 (right page).

<sup>35</sup> ISO logbook, [UGA-OTP-0062-0002](#) at 0004; Audio transcript annotation by P-0003, [UGA-OTP-0248-0143-R01](#) at 0179-0182 (*see* explanation by P-0003, [UGA-OTP-0248-0094-R01](#) at 0099-0100); Audio transcript annotation by P-0059, [UGA-OTP-0248-0381-R01](#) at 0417-0420 (*see* explanation by P-0059, [UGA-OTP-0248-0328-R01](#) at 0336-0337); Police intelligence report, [UGA-OTP-0256-0309](#).

<sup>36</sup> ISO logbook, [UGA-OTP-0163-0007](#) at 0165.

<sup>37</sup> ISO logbook, [UGA-OTP-0064-0002](#) at 0086.

- On 3 May 2003, Kony authorised Vincent Otti to attack IDP camps, burning them and killing the people there because “all Acholi are stupid and agents of Museveni”.<sup>38</sup>
- On 7 July 2004, Kony ordered his commanders to kill civilians in IDP camps because they support the Government to fight against the LRA.<sup>39</sup>

21. Fourth, the intercept evidence is directly relevant to the four charged attacks. The Chamber can hear Dominic Ongwen claiming responsibility for the Odek, Lukodi, and Abok IDP camp attacks on the sound recordings, and see these communications recorded in the logbooks.<sup>40</sup>

22. Fifth, the intercept evidence demonstrates the systematic nature of the sexual and gender-based violence perpetrated by the LRA. The logbooks in particular show that senior LRA commanders regarded abducted women and girls as their possessions: sometimes valued, but ultimately disposable and replaceable.<sup>41</sup> For example, on 4 April 2003, Joseph Kony told his commanders on the radio that “with women, those once got should be captured and raped seriously without mercy”.<sup>42</sup> On 11 July 2004, Dominic Ongwen reported on the radio to Buk Abudema that the wives of a subordinate officer had escaped. Ongwen said that he had informed the subordinate officer to abduct other young girls because “there is no way he [Dominic Ongwen] can survive in the bush without women”.<sup>43</sup> There are numerous entries that support each of the systematic

<sup>38</sup> ISO logbook, [UGA-OTP-0063-0002](#) at 0179.

<sup>39</sup> UDPF logbook, [UGA-OTP-0255-0228](#) at 0355-0356.

<sup>40</sup> See ICC-02/04-01/15-533 (“Prosecution pre-trial brief”), paras.342-353 (Odek), 407-416 (Lukodi), 480-486 (Abok).

<sup>41</sup> ISO Logbook, UGA-OTP-00133-0289 at 0371: Kony recorded on the logbook consoling Bogi Bosco, whose wife had escaped and was heard of Mega FM, that “LRA changes women like cloth[e]s [and] Bogi should not mind and should get move and get another lady from Teso to replace Aloyo”.

<sup>42</sup> [UGA-OTP-0063-0002](#) at 0080 (left side).

<sup>43</sup> UDPF logbook, [UGA-OTP-0197-1670](#) at 1821.

SGBC charges: forced marriage,<sup>44</sup> enslavement,<sup>45</sup> sexual slavery, rape and torture.<sup>46</sup>

23. Sixth, the intercept evidence supports the charges of conscription and use of child soldiers. For decades, including throughout the charged period, Joseph Kony ordered his commanders to abduct boys to serve as LRA fighters.<sup>47</sup> The logbooks contain reference to numerous such instances. For example, on 16 November 2002, Kony instructed all of his commanders to abduct boys of 10 years of age and below.<sup>48</sup> On 9 May 2003, Kony spoke of abducting people of the “right size”,<sup>49</sup> meaning those the LRA thought were most useful: children under 15. Kony further told his commanders to keep new abductees well because “they are now their fresh fighters”,<sup>50</sup> their “future” fighters,<sup>51</sup> and the “pillars of LRA”.<sup>52</sup> He also emphasised the importance of abducting and training recruits: “without recruits [the LRA] will not operate effectively”;<sup>53</sup> recruits will “keep [the] LRA [surviving]”;<sup>54</sup> and without children the “LRA would be nowhere”.<sup>55</sup>

24. In its confirmation decision, the Pre-Trial Chamber used the intercept evidence to make findings with respect to all six thematic areas.<sup>56</sup> It found the intercept

<sup>44</sup> See, e.g., ISO logbook, [UGA-OTP-0063-0002](#) at 0068, 0071-0072, 0073.

<sup>45</sup> See, e.g., UPDF logbook, [UGA-OTP-0197-1670](#) at 1821.

<sup>46</sup> See, e.g., ISO Logbook, [UGA-OTP-0063-0002](#) at 0080 (left side).

<sup>47</sup> E.g., ISO logbook, [UGA-OTP-0063-0002](#) at 0148; ISO logbook, [UGA-OTP-0065-0002](#) at 0034-0035.

<sup>48</sup> ISO logbook, [UGA-OTP-0065-0002](#) at 0035.

<sup>49</sup> ISO logbook, [UGA-OTP-0068-0146](#) at 0150-0151.

<sup>50</sup> ISO logbook, [UGA-OTP-0064-0002](#) at 0049.

<sup>51</sup> ISO logbook, [UGA-OTP-0068-0146](#) at 0161; UPDF logbook, [UGA-OTP-0197-2162](#) at 2209.

<sup>52</sup> ISO logbook, [UGA-OTP-0064-0002](#) at 0052.

<sup>53</sup> ISO logbook, [UGA-OTP-0064-0002](#) at 0056.

<sup>54</sup> ISO logbook, [UGA-OTP-0068-0002](#) at 0042.

<sup>55</sup> ISO logbook, [UGA-OTP-0065-0002](#) at 0049.

<sup>56</sup> ICC-02/04-01/15-422-Red, para.60 (to establish the contextual elements of the war crimes and crimes against humanity), 65 (to support its findings about the Pajule attack), 71 (to support its findings about the Odek attack), 76 and 78 (to support its findings about the Lukodi attack), 81 and 83 (to support its findings about the Abok attack), 136 (to confirm the systematic sexual and gender-based charges), and 141 (to confirm the child soldier charges).

evidence to be “particularly instructive” to its findings regarding the nature and structure of the LRA and Dominic Ongwen’s status in the organisation.<sup>57</sup>

### C. The intercept evidence is probative

25. The probative nature of the intercept evidence, including its reliability and authenticity, is demonstrated by the sheer number and consistency of the Prosecution witnesses’ statements, and by the intercept evidence itself.

26. First, each of the 18 intercept witnesses on which the Prosecution relies provides similar, detailed evidence of their organisation’s interception operation. They give corroborative accounts of how their operation started;<sup>58</sup> they name the same colleagues;<sup>59</sup> they describe the same interception process;<sup>60</sup> and they confirm what records were produced, and how.<sup>61</sup>

27. Importantly, many intercept witnesses know about the existence of other organisations’ interception operations. For example, four UPDF interception operatives corroborate the existence of the ISO operation.<sup>62</sup> Five ISO

<sup>57</sup> ICC-02/04-01/15-422-Red, paras.54-55.

<sup>58</sup> For example, P-0003, [UGA-OTP-0246-0077-R01](#) at 0081; P-0027, [UGA-OTP-0249-0444-R01](#) at 0446, 0448-0449, [UGA-OTP-0207-0256-R01](#) at 0257-0258; P-0291, [UGA-OTP-0246-0061-R01](#) at 0064; P-0029, [UGA-OTP-0267-0455](#) at 0457-0458.

<sup>59</sup> For example, P-0003, [UGA-OTP-0246-0077-R01](#) at 0081-0082; P-0027, [UGA-OTP-0249-0444-R01](#) at 0446-0447; P-0032, [UGA-OTP-0246-0003-R01](#) at 0009; P-0059, [UGA-OTP-0258-0699-R01](#) at 0713-0714; P-0339, [UGA-OTP-0258-0732-R01](#) at 0745.

<sup>60</sup> For example, P-0003, [UGA-OTP-0246-0077-R01](#) at 0083; P-0291, [UGA-OTP-0246-0061-R01](#) at 0067-0068; P-0059, [UGA-OTP-0027-0244](#) at 0246; P-0125, [UGA-OTP-0170-0047-R01](#) at 0051.

<sup>61</sup> For example, P-0059, [UGA-OTP-0258-0699-R01](#) at 0710, 0711, 0714-0716, *see also* [UGA-OTP-0198-0346-R01](#) at 0347-0348; P-0386, [UGA-OTP-0260-0508-R01](#) at 0514-0515; P-0384, [UGA-OTP-0260-0491-R01](#) at 0495; P-0385, [UGA-OTP-0260-0498-R01](#) at 0502-0503; P-0339, [UGA-OTP-0258-0732-R01](#) at 0746; P-0400, [UGA-OTP-0264-0015-R01](#) at 0022-0024; P-0404, [UGA-OTP-0267-0470-R01](#) at 0477; P-0125, [UGA-OTP-0253-0780-R01](#) at 0790; P-0126, [UGA-OTP-0253-0764-R01](#) at 0776-0777, [UGA-OTP-0264-0002-R01](#) at 0010 (with respect to logbooks [UGA-OTP-0256-0321](#) and [UGA-OTP-0256-0324](#)); P-0370, [UGA-OTP-0258-0687-R01](#) at 0695-0696.

<sup>62</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0087; P-0337, [UGA-OTP-0256-0201-R01](#) at 0204-0205; P-0339, [UGA-OTP-0258-0732-R01](#) at 0738-0739; P-0400, [UGA-OTP-0264-0015-R01](#) at 0020.

interception operatives corroborate the existence of the UPDF operation.<sup>63</sup> P-0027, the head of the ISO interception operation, corroborates the existence of the Police interception operation,<sup>64</sup> and P-0126, the head of the Police interception operation in Kamdini, corroborates that of the ISO and the UPDF.<sup>65</sup> Corroboration of the Ugandan government's intercept operation is also provided by former LRA fighter P-0019, who was a signaller while he was in the LRA and who later assisted the UPDF's interception operation.<sup>66</sup>

28. Second, the intercept evidence comprises records compiled and maintained by the ISO, UPDF and Police in the regular course of their duty to protect the Ugandan State, and to maintain law and order. Because the purpose of these organisations required such records to be regular and accurate, the intercept evidence is implicitly imbued with indicia of reliability. The UPDF used the intercept evidence to prevent LRA attacks when it was possible to do so, which demonstrates the accuracy of the radio operators' interception and the authenticity of the recorded material.<sup>67</sup> For example, P-0059 recalled that in 2002 or 2003 he intercepted and de-coded an LRA radio communication about an upcoming attack on Abim. P-0059 gave that information to the UPDF prior to the attack. When the LRA arrived, UPDF forces ambushed them and killed an LRA commander.<sup>68</sup>

<sup>63</sup> P-0027, [UGA-OTP-0207-0256-R01](#) at 0257; P-0032, [UGA-OTP-0246-0003-R01](#) at 0013; P-0059, [UGA-OTP-0258-0699-R01](#) at 0707-0708; P-0291, [UGA-OTP-0246-0061-R01](#) at 0070-0071; P-0301, [UGA-OTP-0249-0423-R01](#) at 0427-0428.

<sup>64</sup> P-0027, [UGA-OTP-0249-0444-R01](#) at 0449.

<sup>65</sup> P-0126, [UGA-OTP-0253-0764-R01](#) at 0773.

<sup>66</sup> P-0019, [UGA-OTP-0262-0176-R01](#) at 0180-0181; *see also* [UGA-OTP-0218-0571-R01](#) at 0591-0592.

<sup>67</sup> P-0029, [UGA-OTP-0267-0455](#) at 0458; P-0126, [UGA-OTP-0253-0764-R01](#) at 0776; P-0059, [UGA-OTP-0258-0699-R01](#) at 0717; UPDF Logbook, [UGA-OTP-0242-7309](#) at 7455-7456, [UGA-OTP-0242-6018](#) at 6123.

<sup>68</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0717.

29. Third, the chain of custody of the intercept evidence is secure:

- P-0027, P-0029, the head of the UPDF interception operation, and Police radio operator P-0125 explained that their interception operations commenced at the behest of the Ugandan government.<sup>69</sup>
- After radio operators produced and used the intercept evidence, they stored it in locked wardrobes in their room,<sup>70</sup> or they sent it to their superiors in Kampala<sup>71</sup> and Gulu.<sup>72</sup>
- Having discovered the existence of this material, the Prosecution made requests for assistance to the Ugandan government pursuant to Part 9 of the Statute.<sup>73</sup>
- Finally, intercept witnesses confirm that they handed the intercept evidence personally to the Prosecution.<sup>74</sup>

30. Fourth, the consistency across the breadth of the intercept evidence demonstrates its accuracy and reliability. Intercept evidence overview witness P-0403's evaluation of the intercept evidence in his summary report is instructive in this regard. P-0403 provided an overview of the intercept evidence available at the time of the four charged attacks, as well as four dates he selected at random, in order to explore the level of consistency in reporting between the different strands of evidence.<sup>75</sup> He found, for example, that:

<sup>69</sup> P-0027, [UGA-OTP-0207-0256-R01](#) at 0257; P-0029, [UGA-OTP-0027-0231-R01](#) at 0234; P-0125, [UGA-OTP-0253-0780-R01](#) at 0784.

<sup>70</sup> P-0032, [UGA-OTP-0246-0003-R01](#) at 0007-0008, 0013-0015.

<sup>71</sup> P-0032, [UGA-OTP-0246-0003-R01](#) at 0013-0015.

<sup>72</sup> P-0125, [UGA-OTP-0253-0780-R01](#) at 0785-0787; P-0126, [UGA-OTP-0253-0764-R01](#) at 0774-0775.

<sup>73</sup> [UGA-OTP-0206-0183](#); [UGA-OTP-0206-0151](#); [UGA-OTP-0270-1398](#); [UGA-OTP-0270-1407](#); [UGA-OTP-0206-0018](#).

<sup>74</sup> P-0038, [UGA-OTP-0069-0784-R01](#) at 0787-0789, [UGA-OTP-0244-0912-R01](#); P-0032, [UGA-OTP-0246-0003-R01](#) at 0013-0015; P-0003, [UGA-OTP-0246-0077-R01](#) at 0088; P-0126, [UGA-OTP-0253-0764-R01](#) at 0776-0777; P-0003, [UGA-OTP-0069-0803-R01](#) at 0804-0805 (describing how the logbooks were photographed by Prosecution staff, and adopting the content).

<sup>75</sup> P-0403, [UGA-OTP-0272-0446](#) at 0481-0494.

- “The ISO logbooks produced in Gulu and Kampala, as well as the faxed ISO notes, contain practically the same details and the same account regarding Otti’s reporting of the attack on Pajule on 10 October”.<sup>76</sup>
- “[T]he details of the report [on Odek] itself are largely consistent between the relevant logbooks”.<sup>77</sup>
- “P-0003, P-0016, P-0019, and P-0059 were played ISO intercept tape 824, which contains this conversation [about Lukodi]. They all identified Ongwen saying he is responsible for the attack on Lukodi and confirming what Otti had ‘heard that they burnt more than one hundred houses’ and ‘they killed more than fifty—twenty five people’”.<sup>78</sup>
- “ISO intercept tape 837 was played to P-0003, P-0016, P-0019, and P-0059. [...] All the witnesses also identify Ongwen as stating that ‘we burnt everything that was there including all the huts even the camp and the barracks’”.<sup>79</sup>

31. On the four dates that P-0403 selected at random—2 December 2002, 1 April 2003, 20 October 2004 and 15 March 2005—he also found the intercept evidence to be largely consistent.<sup>80</sup>

32. Fifth, former LRA fighters confirm independently the accuracy of the content of sound recordings of LRA radio communications. Prosecution investigators played ISO and UPDF sound recordings to former LRA signaller P-0016 and former LRA director of signals P-0019 for their comment. Because of their roles in the LRA, both were intimately familiar with the LRA’s system of radio

<sup>76</sup> P-0403, [UGA-OTP-0272-0446](#) at 0481.

<sup>77</sup> P-0403, [UGA-OTP-0272-0446](#) at 0485.

<sup>78</sup> P-0403, [UGA-OTP-0272-0446](#) at 0489 (footnotes omitted).

<sup>79</sup> P-0403, [UGA-OTP-0272-0446](#) at 0490-0491 (footnotes omitted). The Prosecution submits that this tape refers to the attack on Abok IDP camp. See Prosecution pre-trial brief, paras.480-486.

<sup>80</sup> P-0403, [UGA-OTP-0272-0446](#) at 0492-0494.

communication,<sup>81</sup> and knew Dominic Ongwen.<sup>82</sup> These LRA fighters confirmed that those conversations took place and that they could hear Dominic Ongwen's voice reporting on attacks he led.<sup>83</sup>

33. Sixth, the Pre-Trial Chamber found this material to be reliable for the purposes of its decision on the confirmation of charges.<sup>84</sup>

34. In sum, a plausible challenge to the authenticity and reliability of the intercept evidence cannot be sustained. Many of the radio operators, particularly P-0059, P-0003, P-0339 and P-0125 who will testify live, were trained professionals, who listened to the LRA for years without break. These witnesses said that the material they produced was distinct and independently compiled, and, indeed, occasional inconsistencies in the records are proof of this. Former LRA fighters confirm the accuracy of this work. The intercept evidence is too voluminous and its sources too diverse to be anything other than genuine, contemporaneous and highly probative evidence.

D. Each category of intercept evidence is relevant and probative

35. The following submissions relate to the relevance and probative nature of the six categories of intercept evidence. They are complemented by item-specific comments made in the "relevance & probative value" column in the lists in annexes A to F, where required.

<sup>81</sup> See e.g., P-0016, [UGA-OTP-0221-1100-R01](#) at 1115, 1118, 1121-1124; P-0019, [UGA-OTP-0218-0485-R01](#) at 0499, [UGA-OTP-0218-0522-R01](#) at 0532-0542.

<sup>82</sup> P-0016, [UGA-OTP-0259-0011-R01](#) at 0016; P-0019, [UGA-OTP-0262-0176-R01](#) at 0182.

<sup>83</sup> See P-0016, [UGA-OTP-0259-0011-R01](#), [UGA-OTP-0265-0318-R01](#); P-0019, [UGA-OTP-0262-0176-R01](#).

<sup>84</sup> ICC-02/04-01/15-422-Red, paras.50-51.

(i) *Category I: short-hand rough notes of LRA radio communications*

36. Immediately prior to the LRA's set communication times each day, radio operators from the ISO, UPDF and Police sat down at their desks and switched on the radio.<sup>85</sup> As the LRA talked in Acholi, the operators took, in short-hand, rough notes of the conversations.<sup>86</sup> If commanders talked in codes, operators wrote down the codes and broke them after the communication had finished. Radio operators monitored the radio seven days a week, 24 hours a day.<sup>87</sup>

37. The Prosecution collected 160 sheaves and books of short-hand rough notes, totalling 4,937 pages. It has shown many of these pages to radio operators, who verified that they wrote them. For example:

- P-0386 confirmed that his handwriting appeared in the short-hand rough notes. For one (UGA-OTP-0242-5078), P-0386 said, "[t]his is an example of the rough notes that I made as I listened to the LRA radio transmissions and of which I would subsequently make a full account on a separate paper to fax to the Kampala headquarters. The full account would thereafter be recorded in the counter-books and the rough notes stored in a box".<sup>88</sup>
- P-0059 also confirmed that he wrote short-hand rough notes.<sup>89</sup> When shown several examples, he explained his routine: he wrote the date and time of the communication at the top, a list of the commanders who signed on to the radio on the left, and what they said next to those names on the right.<sup>90</sup> He

<sup>85</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0083; P-0291, [UGA-OTP-0246-0061-R01](#) at 0067-0068; P-0059, [UGA-OTP-0027-0244](#) at 0246; P-0125, [UGA-OTP-0170-0047-R01](#) at 0051.

<sup>86</sup> P-0003, [UGA-OTP-0027-0214-R01](#) at 0222-0223; P-0339, [UGA-OTP-0258-0732-R01](#) at 0736, 0739, 0740, 0741, 0742; P-0291, [UGA-OTP-0246-0061-R01](#) at 0068; P-0059, [UGA-OTP-0027-0244](#) at 0247, [UGA-OTP-0258-0699-R01](#) at 0716-0717; P-0125, [UGA-OTP-0253-0780-R01](#) at 0785.

<sup>87</sup> P-0125, [UGA-OTP-0253-0780-R01](#) at 0785; P-0126, [UGA-OTP-0253-0764-R01](#) at 0774; P-0029, [UGA-OTP-0267-0455](#) at 0458; P-0059, [UGA-OTP-0258-0699-R01](#) at 0706.

<sup>88</sup> P-0386, [UGA-OTP-0260-0508-R01](#) at 0513-0514.

<sup>89</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0713, 0716-0717.

<sup>90</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0716.

also described how he broke the LRA codes with reference to his short-hand rough notes.<sup>91</sup>

- P-0003 identified examples of his de-coding LRA coded communications in his short-hand rough notes, citing as an example a page marked UGA-OTP-0197-2319 at 2512.<sup>92</sup> P-0003 explained how he wrote his rough notes: a date, a list of LRA commanders who spoke on the radio on the left, and their message following.<sup>93</sup>

38. The short-hand rough notes were a critical step in the process of the production of the intercept evidence. They are the most raw, but most contemporaneous record of the LRA commanders' radio communications. The sheaves and books of short-hand rough notes collected by the Prosecution provide corroboration of the content of the logbook entries recorded on that date and time.

*(ii) Category II: logbooks containing summaries of LRA radio communications*

39. After the LRA communication ended, radio operators de-coded their short-hand rough notes and wrote the intelligible content into logbooks, in English.<sup>94</sup> These logbook entries were the most important record that the organisations produced.<sup>95</sup> They are the most detailed, comprehensive, and most accessible category of intercept evidence. They contain evidence on every aspect of the case against Dominic Ongwen.

<sup>91</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0710, 0713, 0716-0717.

<sup>92</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0081.

<sup>93</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0084-0085.

<sup>94</sup> P-0003, [UGA-OTP-0027-0214-R01](#) at 0219, 0223, [UGA-OTP-0246-0077-R01](#) at 0084-0085; P-0339, UGA-0258-0732 at 0736, 0739, 0740, 0741, 0742; P-0291, [UGA-OTP-0246-0061-R01](#) at 0068-0069; P-0059, [UGA-OTP-0027-0244](#) at 0247; P-0125, [UGA-OTP-0170-0047-R01](#) at 0051-0052.

<sup>95</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0084.

40. The Prosecution collected 69 logbooks: 23 from the ISO, 20 from the UPDF and 26 from the Police. It took statements from several radio operators for their comment on these logbooks, and to verify their authenticity. For example:

- P-0059 was shown logbooks and confirmed that his handwriting appeared in them.<sup>96</sup> He said, “UGA-00068-146 [UGA-OTP-0068-0146] is a logbook written in Gulu. I recognise my handwriting in the first few pages. [...] The tick on p. 005 is the UPDF Division Commander”.<sup>97</sup> The witness was even able to confirm that an anecdote about the LRA he had recounted in his 24 June 2005 statement matched up with a logbook entry from that same date.<sup>98</sup>
- ISO radio operator P-0386 was shown ten ISO logbooks, in which he recognised his and others’ handwriting. He was able to distinguish between books produced in Gulu and those produced in Kampala.<sup>99</sup> ISO radio operators P-0384<sup>100</sup> and P-0385<sup>101</sup> made statements to the same effect.
- P-0339 was shown nine UPDF logbooks. He said, with respect to UGA-OTP-0197-1078 at 1079, “This page is my handwriting. When I wrote this entry on 12 September 2003 I was in Soroti. I remember that at the time Tabuley was the commander in Soroti. What is written down here is what I heard on the radio”.<sup>102</sup>
- P-0400 was shown twelve UPDF logbooks. He recognised other operators’ handwriting in logbooks (e.g., UGA-OTP-0197-0697), indicated where logbooks were produced (e.g., UGA-OTP-0197-1866), and confirmed that his handwriting appeared in logbooks (e.g., UGA-OTP-0255-0451).<sup>103</sup> P-0400 recognised one of the logbooks as being his personal logbook, in

<sup>96</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0710, 0711, 0714-0716, *see also* [UGA-OTP-0198-0346-R01](#) at 0347-0348.

<sup>97</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0715.

<sup>98</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0702-0703.

<sup>99</sup> P-0386, [UGA-OTP-0260-0508-R01](#) at 0514-0515.

<sup>100</sup> P-0384, [UGA-OTP-0260-0491-R01](#) at 0495.

<sup>101</sup> P-0385, [UGA-OTP-0260-0498-R01](#) at 0502-0503.

<sup>102</sup> P-0339, [UGA-OTP-0258-0732-R01](#) at 0746.

<sup>103</sup> P-0400, [UGA-OTP-0264-0015-R01](#) at 0022-0024.

which he recorded intercepted communications from 1 April 2004 while stationed in Sudan (UGA-OTP-0242-7194).<sup>104</sup>

- P-0404 was shown UPDF logbook UGA-OTP-0197-1670. He said, “I have reviewed each page of this book and I can confirm that at UGA-OTP-0197-1824 the entry ‘14<sup>th</sup> Jul 2004, LRA Sitrep 09:00 hrs’ is my handwriting. This was my first entry in this logbook. I can confirm that at page 1855 the entry dated ‘2<sup>nd</sup> Aug 2004 at 09:00 hrs’ is my handwriting. I closed this book on 2 August 2004. It was produced in Gulu”.<sup>105</sup>
- P-0125 was shown all 201 pages of the Police logbooks. He recognised the handwriting in these pages to be his. He said that, apart from the page marked UGA-OTP-0151-0032, all the documents were produced by him and submitted to P-0126.<sup>106</sup> P-0126<sup>107</sup> and P-0125’s colleague P-0370<sup>108</sup> confirmed this account.

*(iii) Category III: faxed copies of logbook entries*

41. After they finished writing in the logbooks, both the ISO and the UPDF radio operators physically took the logbooks to show the UPDF Division Commander of the barracks after each LRA communication time.<sup>109</sup> The ISO, for each communication time, also faxed a copy of the logbook entry to their superiors in

<sup>104</sup> P-0400, [UGA-OTP-0264-0015-R01](#) at 0023.

<sup>105</sup> P-0404, [UGA-OTP-0267-0470-R01](#) at 0477.

<sup>106</sup> P-0125, [UGA-OTP-0253-0780-R01](#) at 0790.

<sup>107</sup> P-0126, [UGA-OTP-0253-0764-R01](#) at 0776-0777, [UGA-OTP-0264-0002-R01](#) at 0010 (with respect to logbooks [UGA-OTP-0256-0321](#) and [UGA-OTP-0256-0324](#)).

<sup>108</sup> P-0370, [UGA-OTP-0258-0687-R01](#) at 0695-0696. P-0370 states that [UGA-OTP-0151-0031](#) is also his handwriting; *see* [UGA-OTP-0258-0687-R01](#) at 0696.

<sup>109</sup> P-0003, [UGA-OTP-0027-0214-R01](#) at 0223, [UGA-OTP-0069-0803-R01](#) at 0804, [UGA-OTP-0246-0077-R01](#) at 0083; P-0339, [UGA-OTP-0258-0732-R01](#) at 0737, 0739, 0740, 0741, 0742; P-0291, [UGA-OTP-0246-0061-R01](#) at 0069; P-0029, [UGA-OTP-0027-0231-R01](#) at 0237; P-0032, [UGA-OTP-0069-0796-R01](#) at 0799, [UGA-OTP-0246-0003-R01](#) at 0010; P-0059, [UGA-OTP-0027-0244](#) at 0248, [UGA-OTP-0258-0699-R01](#) at 0714; P-0125, [UGA-OTP-0170-0047-R01](#) at 0053; P-0303, [UGA-OTP-0258-0723-R01](#) at 0726, 0727; P-0384, [UGA-OTP-0260-0491-R01](#) at 0495.

Kampala. These faxed copies were used to brief politicians and senior military figures.<sup>110</sup>

42. The Prosecution collected 394 sheaves and books of ISO faxed copies, totalling 5,092 pages. They are copies of logbook entries, and thus add little probative value. However, on occasion they are more legible than the original entry.<sup>111</sup> And they constitute persuasive evidence of the truthfulness of the ISO witnesses' accounts of the interception process, all of whom mention the faxed copies as being part of the interception procedure.<sup>112</sup> For example, P-0386 was shown two books containing ISO faxed copies. He looked at an entry marked UGA-OTP-0163-0007 at 0133-0135, dated 24 June 2005, and confirmed that it was his handwriting. He said that he believed "this is a faxed copy which I sent from Gulu station to Kampala headquarters".<sup>113</sup>

*(iv) Category IV: intelligence reports*

43. The UPDF<sup>114</sup> and the Police<sup>115</sup> compiled typed intelligence reports. UPDF intelligence reports were used to brief senior military officials in Kampala. They contained summaries of the logbooks, human intelligence reports from UPDF units stationed in the field and geographic coordinates pinpointed by UPDF

<sup>110</sup> P-0291, [UGA-OTP-0246-0061-R01](#) at 0069; P-0032, [UGA-OTP-0069-0796-R01](#) at 0799, [UGA-OTP-0246-0003-R01](#) at 0010; P-0059, [UGA-OTP-0027-0244](#) at 0248; P-0303, [UGA-OTP-0258-0723-R01](#) at 0727-0728; P-0385, [UGA-OTP-0260-0498-R01](#) at 0500-0502.

<sup>111</sup> See, e.g. ISO Logbook, [UGA-OTP-0068-0146](#) at 0268-0282, [UGA-OTP-0060-0002](#) at 0143, [UGA-OTP-0060-0149](#) at 0150-01 and ISO faxed copy, [UGA-OTP-0241-2490](#) at 2672-2673, 2674-2676, 2677, 2678-2679, 2680, 2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692 (no ref recorded); ISO Logbook, [UGA-OTP-0232-0234](#) at 0559-0567, [UGA-OTP-0133-0289](#) at 0402-0407 and ISO faxed copy, [UGA-OTP-0242-0748](#); [UGA-OTP-0242-0755](#); ISO Logbook, [UGA-OTP-0061-0002](#) at 0093-0097 and ISO faxed copy, [UGA-OTP-0242-2274](#); ISO Logbook, [UGA-OTP-0062-0002](#) at 0022-0025 and ISO faxed copy, [UGA-OTP-0241-1212](#) at 1371-1382..

<sup>112</sup> P-0291, [UGA-OTP-0246-0061-R01](#) at 0069; P-0032, [UGA-OTP-0069-0796-R01](#) at 0799, [UGA-OTP-0246-0003-R01](#) at 0010; P-0059, [UGA-OTP-0027-0244](#) at 0248; P-0303, [UGA-OTP-0258-0723-R01](#) at 0727-0728; P-0385, [UGA-OTP-0260-0498-R01](#) at 0500-0502.

<sup>113</sup> P-0386, [UGA-OTP-0260-0508-R01](#) at 0514.

<sup>114</sup> P-0029, [UGA-OTP-0267-0455](#) at 0464-0467.

<sup>115</sup> P-0126, [UGA-OTP-0253-0764-R01](#) at 0775, [UGA-OTP-0264-0002-R01](#).

direction-finding equipment.<sup>116</sup> Although the Prosecution does not rely on the direction-finding evidence,<sup>117</sup> the intelligence reports represent another iteration of the LRA commanders' communications, and evidence of the truthfulness of the Prosecution's witnesses' accounts of the interception process. They also demonstrate how the interception process was geared to collecting and disseminating intelligence, rather than amassing evidence for potential future criminal proceedings.

44. The Police intelligence reports were based on the summaries of LRA radio communications that P-0125 sent from his interception post at Kamdini Police station.<sup>118</sup> Like the UPDF, Police intelligence reports were used to brief senior Police officials. They constitute another iteration of the LRA commanders' communications, are evidence of the truthfulness of the Police witnesses' accounts of the interception process, and demonstrate how the Police interception process was geared to collecting and disseminating intelligence to senior officials.

45. The Prosecution relies on 285 UPDF intelligence reports and 16 Police reports. The UPDF and Police witnesses who handled these documents verified the authenticity of both:

- P-0029 confirms that UGA-OTP-0016-0538 "is an example of a daily report created in CMI [Chieftaincy of Military Intelligence] Headquarters Kampala".<sup>119</sup> P-0029 explained that the daily report was created at the end of each day, and that he took strategic decisions based on the information in the daily report. He said that the communications intelligence in the

<sup>116</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0082-0083, 0086; P-0029, [UGA-OTP-0027-0231-R01](#) at 0240, P-0029, [UGA-OTP-0267-0455](#) at 0458-0459.

<sup>117</sup> See P-0337, [UGA-OTP-0256-0201-R01](#) at 0204-0211; P-0029, [UGA-OTP-0267-0455](#) at 0463-0464; P-0404, [UGA-OTP-0267-0470-R01](#) at 0474; P-0339, [UGA-OTP-0258-0732-R01](#) at 0737-0738.

<sup>118</sup> P-0126, [UGA-OTP-0264-0002-R01](#) at 0004.

<sup>119</sup> P-0029, [UGA-OTP-0267-0455](#) at 0465.

report came from the interception team in Gulu.<sup>120</sup> He was shown four other UPDF intelligence reports, confirming that they were “the same type of daily report explained above [referring to UGA-OTP-0016-0538]”.<sup>121</sup>

- P-0126 was shown the 16 Police intelligence reports for his comment.<sup>122</sup> He explained that the information in a report marked UGA-OTP-0256-0232 was taken from P-0125’s interception operation at the Kamdini police post. He explained that it was created on his computer by his clerk and sent electronically to Special Branch Headquarters. He says that “all documents that bear my signature were reviewed and authorised by myself before their being faxed to Kampala. I ensured that the information within the report appeared to be accurate and credible and conformed to Special Branch standards for intelligence handling”.<sup>123</sup>

*(v) Category V: sound recordings of LRA radio communications*

46. From at least 2003, the UPDF and the ISO sound-recorded LRA radio communications.<sup>124</sup> Sound recordings were not intended to cover the entirety of each communication.<sup>125</sup> They were used as a back-up tool. If radio operators missed the meaning or content of communications during the live transmission,<sup>126</sup> they could go to the sound recording to check what had been said, to complete their logbook entry. The Police did not sound-record.<sup>127</sup>

<sup>120</sup> P-0029, [UGA-OTP-0267-0455](#) at 0464-0466.

<sup>121</sup> P-0029, [UGA-OTP-0267-0455](#) at 0466-0467.

<sup>122</sup> P-0126, [UGA-OTP-0264-0002-R01](#) at 0004, 0006, 0007, 0008, 0009, 0010, 0011.

<sup>123</sup> P-0126, [UGA-OTP-0264-0002-R01](#) at 0004.

<sup>124</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0083; P-0291, [UGA-OTP-0246-0061-R01](#) at 0068-0069; P-0032, [UGA-OTP-0069-0796-R01](#) at 0800.

<sup>125</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0083-0084; P-0059, [UGA-OTP-0258-0699-R01](#) at 0703-0704.

<sup>126</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0083; P-0291, [UGA-OTP-0246-0061-R01](#) at 0068; P-0059, [UGA-OTP-0027-0244](#) at 0247.

<sup>127</sup> P-0125, [UGA-OTP-0170-0047-R01](#) at 0055.

47. The ISO and UPDF sound recordings contain the voices of LRA commanders, including Dominic Ongwen, as they report on attacks and receive orders. The sound recordings contain crucial information in relation to Dominic Ongwen's reports of his attack on Odek, Lukodi and Abok IDP camps.

48. The Prosecution collected 610 sound recordings. When examples of key communications were played to ISO and UPDF radio operators P-0059 and P-0003, and former LRA fighters P-0016 and P-0019, they confirmed that they were sound recordings of LRA radio communications, and they recognised the voices and the content of the communications.<sup>128</sup> Radio operators also confirmed that their handwriting appeared on the cassettes of the sound recordings. For example:

- P-0059 said, "I wrote on the tapes of the tape-recorded radio communications myself. For example, I recognise my handwriting on tapes UGA.00051.074 [UGA-OTP-0051-0074], UGA.00053.006 [UGA-OTP-0053-0006], UGA.00049.068 [UGA-OTP-0049-0068] and UGA.00048.012 [UGA-OTP-0048-0012]".<sup>129</sup> He confirmed that after sound recording, the cassettes were stored in the locked wardrobe in his room, or in boxes in P-0032's room.<sup>130</sup>
- P-0003 described the process by which he sound-recorded LRA radio communications.<sup>131</sup> He was then shown a cassette marked UGA-OTP-0039-0026. He explained that it was his handwriting on the cassette. He said that he used this tape to record LRA communications on 19 and 20 May 2004.<sup>132</sup> He said that he personally handed these tapes to ICC staff.<sup>133</sup>

<sup>128</sup> P-0059, [UGA-OTP-0248-0328-R01](#), [UGA-OTP-0258-0755-R01](#), [UGA-OTP-0266-0074-R01](#); P-0003, [UGA-OTP-0132-0002-R01](#), [UGA-OTP-0248-0094-R01](#); P-0019, [UGA-OTP-0262-0176-R01](#); P-0016, [UGA-OTP-0265-0318-R01](#), [UGA-OTP-0259-0011-R01](#).

<sup>129</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0704.

<sup>130</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0718.

<sup>131</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0083-0084.

<sup>132</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0084.

<sup>133</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0088.

- P-0386 was shown cassettes of sound recordings and confirmed that his handwriting appeared on the outside of one of them (UGA-OTP-0050-0008).<sup>134</sup>

49. After collecting the sound recordings, the Prosecution enhanced the quality of key recordings using audio enhancement software.<sup>135</sup> Digital enhancement gives translators and witnesses the best possible opportunity to understand the content of the sound recordings, without altering the content.

50. P-0242 and P-0256 performed these digital enhancements. P-0242 described receiving 43 compact cassette audio tapes from the Prosecution.<sup>136</sup> He explained how he removed the protection tabs and put the cassette in the tape player. He used the CEDAR Cambridge processing system to make a digital copy of the sound recording, and then devised a filter strategy to produce the best enhanced version.<sup>137</sup> He used his treatment of a sound recording marked UGA-OTP-0053-0046 as an example.<sup>138</sup> P-0256 followed the same procedure for the 106 sound recordings he received.<sup>139</sup> Both confirmed that they did not modify the content of the sound recording in any way during the enhancement process.<sup>140</sup>

51. P-0242 and P-0256 also produced reports about the sound recordings they enhanced. These reports describe the enhancement procedure and the filters

<sup>134</sup> P-0386, [UGA-OTP-0260-0508-R01](#) at 0515.

<sup>135</sup> P-0242, [UGA-OTP-0261-0333-R01](#); P-0256, [UGA-OTP-0269-0015](#).

<sup>136</sup> P-0242, [UGA-OTP-0261-0333-R01](#) at 0336. He listed the sound recordings he received at [UGA-OTP-0261-0347](#) and [UGA-OTP-0261-0348](#). He only enhanced 42 of the 43 sound recordings, because [UGA-OTP-0047-0086](#) was blank on both sides; *see* P-0242, [UGA-OTP-0261-0333-R01](#) at 0338; [UGA-OTP-0261-0347](#).

<sup>137</sup> P-0242, [UGA-OTP-0261-0333-R01](#) at 0338-0339.

<sup>138</sup> P-0242, [UGA-OTP-0261-0333-R01](#) at 0339-0341.

<sup>139</sup> P-0256, [UGA-OTP-0269-0015](#). He listed these at [UGA-OTP-0269-0044](#). P-0256 only enhanced 103 of the 106 sound recordings, because [UGA-OTP-0038-0036](#), [UGA-OTP-0039-0023](#) and [UGA-OTP-0054-0051](#) at 0054 were blank on both sides; *see* [UGA-OTP-0269-0015](#) at 0029.

<sup>140</sup> P-0242, [UGA-OTP-0261-0333-R01](#) at 0338 (*see* the discussion of protection tabs at para.42); P-0256, [UGA-OTP-0269-0015](#) at 0022 (*see* the discussion of protection tabs at para.25.c).

used.<sup>141</sup> They allow anyone with access to the CEDAR software to re-create the filter chain used on a sound recording, to produce an identical enhanced version to the Prosecution's.<sup>142</sup> An example of the processing chain and modules used for the sound recording UGA-OTP-0053-0046 side A is annexed to P-0242's statement.<sup>143</sup> He describes each of the steps in his statement.<sup>144</sup>

*(vi) Category VI: miscellaneous intercept evidence*

52. This category contains important additions to the core categories of intercept evidence described above, including:

- photographs of the ISO and UPDF interception operations at the UPDF barracks in Gulu and of the Police interception operation at the Police station in Kamdini;
- better quality re-scans of UPDF logbooks and short-hand rough notes;
- photographic annexes to P-0256's statement;
- lists of the LRA command structure made by ISO personnel;
- documents related to the LRA command structure, codes and call-signs made by Police personnel;
- documents related to the ISO sound recordings;
- documents related to the LRA Tonfas code; and
- documents related to the chain of custody of the intercept evidence.

53. In 2015 and 2016, Prosecution investigators took photographs of the locations where the intercept operations were conducted at the UPDF barracks in Gulu and

<sup>141</sup> P-0242, [UGA-OTP-0261-0333-R01](#) at 0339-0340, [UGA-OTP-0261-0349-R01](#) at 0349-0352; P-0256, [UGA-OTP-0269-0015](#) at 0027, [UGA-OTP-0269-0073](#), [UGA-OTP-0269-0080](#).

<sup>142</sup> P-0242, [UGA-OTP-0261-0333-R01](#) at 0339; P-0256, [UGA-OTP-0269-0015](#) at 0027.

<sup>143</sup> P-0242, [UGA-OTP-0261-0349-R01](#).

<sup>144</sup> P-0242, [UGA-OTP-0261-0333-R01](#) at 0339-0340.

at the Police station in Kamdini.<sup>145</sup> These photographs provide visual context to the witnesses' statements and permit the Chamber to view the conditions under which the UPDF, ISO and Police intercept operations took place. They were shown to intercept operators for their comment. For example:

- P-0059 was asked about UGA-OTP-0244-3324.<sup>146</sup> He said that it was a photograph of his operational desk. On the desk was the same type of Icom radio that he used to intercept LRA radio communications from 2002 to 2005. He also pointed out a Sony tape recorder, the same model that he had used since 2002.
- P-0003 was asked about UGA-OTP-0244-3307.<sup>147</sup> He said that it was a photograph of the windows of his office, and of the antennae of the radio he used to intercept coming out of them.<sup>148</sup>
- P-0370 was asked about four photographs taken at the Kamdini Police station: UGA-OTP-0254-1647, UGA-OTP-0254-1652, UGA-OTP-0254-1655 and UGA-OTP-0254-1656.<sup>149</sup> He confirmed that these photographs showed the radio room in which he and P-0125 listened to LRA radio communications. He identified the radio inside the room that they used to intercept. He said that the door was lockable by key, which P-0125 and he shared.<sup>150</sup>

54. During its investigation in 2015-2016, the Prosecution collected some UPDF logbooks and short-hand rough notes that it had already collected and registered in Ringtail in the period 2004-2006. The Prosecution re-scanned these books to achieve a better quality image. They are now available to the Chamber, the Parties

<sup>145</sup> P 0032 confirmed that this occurred with respect to the intercept house at the UPDF barracks in Gulu; *see* P-0032, [UGA-OTP-0246-0003-R01](#) at 0013.

<sup>146</sup> P-0059, [UGA-OTP-0258-0699-R01](#) at 0705-0706; *see also* P-0032, [UGA-OTP-0246-0003-R01](#) at 0007, 0008; P-0291, [UGA-OTP-0246-0061-R01](#) at 0065.

<sup>147</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0088.

<sup>148</sup> P-0003, [UGA-OTP-0246-0077-R01](#) at 0088.

<sup>149</sup> P-0370, [UGA-OTP-0258-0687-R01](#) at 0691-0692.

<sup>150</sup> P-0370, [UGA-OTP-0258-0687-R01](#) at 0692.

and participants in the event they find parts of the original logbooks difficult to read. The re-scanned logbooks are linked to the originals in the Intercept Books Timeline. The latter is a tool that the Prosecution created to navigate the intercept evidence, available to the Chamber, Parties and participants in TRIM.<sup>151</sup>

55. The remaining documents are lists, photographs and documents referenced in the intercept witnesses' statements. The Prosecution formally submits them because they have been commented on by the witnesses, and because they provide valuable context to the case. Individual and specific comments, with references to witness statements, are provided where necessary in annex F.

E. The probative value of the intercept evidence outweighs any prejudicial effect

56. The following factors demonstrate that the probative value of the intercept evidence outweighs any prejudicial effect:

- First, each item is relevant to the charges and will assist the Chamber in the determination of the truth.
- Second, the Defence has been put on notice of the content of the intercept evidence and that the Prosecution would be relying on these items. The Prosecution referred extensively to intercept evidence in the pre-confirmation brief, at the confirmation hearing, in the pre-trial brief, and included it in the list of evidence.<sup>152</sup> The majority of the intercept evidence has long been disclosed (over two-thirds of the 2,507 items of intercept evidence were disclosed before 1 July 2016 and over one-third before 1

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<sup>151</sup> See TRIM link W16/03294.

<sup>152</sup> Except for the 161 items listed in Annex G to this filing. As explained in the Prosecution's 24 October 2016 request to add items to its list of evidence, these items requested to be added to the list of evidence are minimal in number, and duplicative or correlative (*see* ICC-02/04-01/15-577, para.15; ICC-02/04-01/15-577-Conf-AnxA; ICC-02/04-01/15-577-Conf-AnxB).

November 2015).<sup>153</sup> Further, the Prosecution has made available to the Defence tools to help navigate through and search the intercept materials.<sup>154</sup>

- Third, the Defence has thus far not challenged fundamentally the reliability of the intercept evidence, and relied on parts of it in its submissions at confirmation.<sup>155</sup>
- Fourth, the reliability, veracity, and weight of these records are independently corroborated both internally and by other evidence in the case.
- Fifth, the Defence will have the opportunity to examine intercept witnesses P-0003, P-0059, P-0125 and P-0339, and former LRA fighters P-0016 and P-0019, who will testify in court, about the authenticity and reliability of the intercept evidence.

57. Recognising the formal submission of the intercept evidence at this stage will cause no prejudice to a fair trial. The Chamber will be able to make use of it during the trial, understand other evidence in the case and determine the truth. It will also ensure an expeditious trial by greatly reducing the need to call witnesses to attest to the authenticity of the underlying evidence. The Chamber recognising the formal submission of the intercept evidence causes no prejudice to the Defence because the Defence will still have the opportunity, during its closing submissions, when all the evidence in the case has been submitted, to seek to persuade the Chamber that some, or all, of the intercept evidence submitted by the Prosecution should be excluded from consideration in the Chamber's deliberations because of prejudice, or given lesser probative value than contended for by the Prosecution.

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<sup>153</sup> See the column in annexes A to F titled "date of disclosure".

<sup>154</sup> See TRIM folder W16/03294.

<sup>155</sup> In its pre-confirmation submission and at the confirmation hearing, the Defence made repeated reference to the ISO and the UPDF interception operations. See ICC-02/04-01/15-404-Conf, para.24; see also ICC-02/04-01/15-T-22-ENG, pp. 68-69. ICC-02/04-01/15-404-Conf, para.89. Further, it relied on some communications recorded by these organisations. During the confirmation hearing, the Defence referred to multiple ISO logbook entries to support its submissions. See ICC-02/04-01/15-T-23-CONF-ENG, at pp. 30, 32-36.

## Conclusion

58. The Prosecution requests the Trial Chamber to recognise the formal submission of the intercept evidence listed in annexes A to F to this filing.



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Fatou Bensouda  
Prosecutor

Dated this 28<sup>th</sup> day of October 2016

At The Hague, The Netherlands