

ANNEX XXXVII

PUBLIC

From: Trial Chamber IX Communications
Sent: 10 May 2019 14:20
To: [REDACTED] Trial Chamber IX Communications;
Subject: decision in light of further requests pertaining to the Defence's request to interview P-214

Dear parties and participants,

First, with regard to the question whether the protocol on individuals enjoying a dual status (ICC-02/04-01/15-504-Anx2) applies in this specific case, the Chamber finds the arguments presented by the Defence not to be persuasive. The Common Legal Representative for Victims ('CLRV') stated in the e-mail of 14 January 2019 merely that she did not have any further information on the matter of the Article 56 testimony of the witness.

This does not mean that the mandate of CLRV to represent [REDACTED] is in any way limited. The suggestion by the Defence that these are 'matters not arising from her mandate' is unconvincing. The Defence wants to contact [REDACTED] to question her on issues related to the proceedings of this case. Naturally, it falls in the mandate of the CLRV to be present during such an interview, should the witness wish so.

Second, regarding the request for clarification submitted by the Prosecution on whether the protocol on contacting witnesses of the opposing party (ICC-02/04-01/15-339-Anx) still applies after the testimony of this witness the Chamber provides the following information:

The formulation 'restrictions barring the Defence from contacting the witness' is to be understood in context of the decisions cited by the Prosecution in its email of 9 May 2019.

These limitations pertain to restrictions of the contact the accused has with these persons, not the accused's lawyers who are in any case bound by the Statute and Code of Professional Conduct. Accordingly, the Defence is free to request an interview in accordance with the procedure prescribed in the protocol.

The Chamber further considers that the specific circumstances of this case do not warrant a different resolution of the matter.

It notes the prior contacts [REDACTED] had with the accused and the Defence. [REDACTED]. Further, a member of the Defence team was involved in the [REDACTED]. This happened with the consent of the CLRV and no other party, participant or entity of the Court seems to have been present at that occasion.

Accordingly, it seems that the witness already had extensive contact with the accused and the Defence team. A decision which puts further precautionary measures of contact restrictions in place or disallows any contact at all with the Defence seems therefore misplaced at this point in time.

Lastly, the Chamber notes that the CLRV will be present during a possible interview, should [REDACTED] wish so.

The Chamber considers any request for injunctive relief to be moot with this e-mail.

The Chamber is confident that the further arrangements and follow-up of this matter will be amicably arranged *inter partes* between the parties and participants without the need of further involvement of the Chamber.

Kind regards,
 Trial Chamber IX

From: [REDACTED]
Sent: 10 May 2019 08:48
To: Trial Chamber IX Communications
Cc: [REDACTED]

Subject: RE: Information and request for order to Registry

Dear All,

For the record, the Defence's observation is irrelevant for the matter at stake.

Since her appointment as counsel for the concerned person, the CLRV has an obligation to fully represent the interests of her client, independently of the fact that at the time the matter arose she was not appointed. In any case, [REDACTED] has indicated that should she decide to speak/meet with the Defence, she wishes one of her lawyer to be present. Therefore, the Defence shall liaise with the CLRV in the matter before contacting the dual status individual.

Kind regards,

From: [REDACTED]
 Sent: 09 May 2019 19:50
 To: [REDACTED]

Subject: RE: Information and request for order to Registry

Dear Trial Chamber,

I have been asked by Co-Counsel to convey the following message on his behalf:

When the Defence submitted the request to the Chamber, the CLRV [REDACTED] submitted as follows:

"Dear All,

In relation to the Defence's e-mail, I wish to clarify that at the time of the article 56 procedure, [REDACTED]

Therefore, the CLR has no information to provide in the matter".

When she made this submission, she knew that the witness is a participating victim but that the issue relating to her status arose when she was not a participating victim so she could not provide any information as she was not assisted by the CLRV. That being her submission to the Chamber, the submission purporting to represent the witness on a matter that she has previously submitted did not arise from her mandate must be rejected.

On the submission by the Prosecution, the Defence submits that the Prosecution has not demonstrated that there are changed circumstances to warrant the Chamber revisiting its decision. The Prosecution could have in an *inter partes* discussion approached the Defence on the modality of contacting the witness before approaching the Chamber to modify its decision.

The Defence urges the Chamber to reject the intervention of the CLRV and reject the Prosecution's request.

From: [REDACTED]
 Sent: 09 May 2019 17:40
 To: [REDACTED]

Subject: RE: Information and request for order to Registry

Dear All,

The [REDACTED] the CLRV.

In the circumstances the CLRV shall contact the person concerned in accordance with the Protocol on [REDACTED] to verify whether she intends to meet with the Defence. By virtue of her [REDACTED] the witness has also the right to have her lawyer present if she wishes. The CLRV supports the Prosecution request for suspension of any action from the Defence pending clarification by the Chamber.

Kind regards
[REDACTED]

Sent with BlackBerry Work
[REDACTED]

From: [REDACTED]
Date: Thursday, 09 May 2019, 5:19 PM
To: Trial Chamber IX Communications [REDACTED]
[REDACTED]

Subject: RE: Information and request for order to Registry

Dear Trial Chamber,

In light of the response of the defence, the Prosecution respectfully requests the Chamber for clarification of its email decision of 08.05.2019 @ 15:38.

The Prosecution's understanding of the ruling of the Chamber, considering the Chamber's previous decisions aimed at preventing the circumvention of the non-contact orders with vulnerable witnesses, was that the Defence can contact [REDACTED] in this case but subject to the procedure set out in the Annex to Order #339 which has not yet been vacated by the Chamber.

This will be in keeping with the spirit of the witness contact protocol which has been followed in subsequent decisions by the Chamber {#450, #503, #1444, #1445}.

Prosecution further seeks an injunctive relief to prevent the defence calling [REDACTED] pending the decision of the Trial Chamber on this clarification request. The Prosecution reiterates its undertaking to convey the Chamber's decision to the witness as expeditiously as possible in order to facilitate the contact by the defence.

Regards,

[REDACTED]

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

From: [REDACTED]
Sent: 09 May 2019 12:00
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
Subject: RE: Information and request for order to Registry

Dear Trial Chamber,

I am writing on behalf of Co-Counsel for Mr Ongwen to convey the following:

The Trial Chamber has already decided that the Defence can contact the witness for these purposes and the Defence is taking steps to prepare to do so. The Prosecution is merely disagreeing with the decision of the Trial Chamber which was taken after considering the comprehensive submission the Prosecution made in opposition to the Defence request on a legal issue which has been determined.

Kind regards,

[REDACTED]

From: [REDACTED]
 Sent: 08 May 2019 16:16
 To: Trial Chamber IX Communications; [REDACTED]
 Subject: RE: Information and request for order to Registry

Apologies. I have mistyped the highlighted quotation from the defence mail.
 It should read 'restrictions barring the Defence from contacting the witness'

[REDACTED]

From: [REDACTED]
 Sent: 08 May 2019 16:12
 To: Trial Chamber IX Communications; [REDACTED]
 Subject: RE: Information and request for order to Registry

The Prosecution believes that the 'restrictions formal exchanges of information and missions took place' to which the Defence was referring are those set out in the Protocol on witness contact which is an Annex to the Pre-Trial Chamber's decision #339.

Like the Defence, the Prosecution believes that that Protocol continues to govern contact between the Defence and [REDACTED] who is 'a person...on whose statement [the Prosecution] intends to rely'.

The Protocol makes no provision for its becoming inapplicable after a witness has testified, but before the end of the trial.

The Prosecution respectfully submits that, if the Defence wish to contact [REDACTED] then it must tell the Prosecution and ask for the witness to be contacted to see whether she consents or not.

In the light of the Chamber's decision concerning the state of the witness, the Prosecution undertakes to convey this message faithfully and speedily.

[REDACTED]

From: Trial Chamber IX Communications
 Sent: 08 May 2019 15:38
 To: [REDACTED]
 Subject: RE: Information and request for order to Registry

Dear parties and participants,

The Chamber apologises for the delay in its answer.

The Chamber does not consider it appropriate that the Registry be ordered to make enquiries on behalf of the Defence.

Further, it is noted that the allegation pertains to the fact that the witness did not know on behalf of which party the testimony would formally be provided for. There is no contention or suggestion that the content of the witness's testimony was affected by this alleged circumstance.

However, should the Defence wish to verify the allegations it must execute the necessary enquiries itself. The Chamber does not see any 'restrictions barring the Defence from contacting the witness', as submitted by the Defence. While the Chamber notes the submissions of the Prosecution with regard to the state of the witness, nothing in the facts available to the Chamber suggests that a contact of the witness by the Defence should be disallowed at this point in time.

The Chamber will not give further 'instructions or guidance' – as requested by the Defence – going beyond the information above. It considers that, without any specific request formulated by the parties or participants, the Chamber's role is not to give general instructions or comments.

Kind regards,
Trial Chamber IX"

From: [REDACTED]
Sent: 14 January 2019 17:03
To: Trial Chamber IX Communications
Cc: [REDACTED]
[REDACTED]

Subject: RE: Information and request for order to Registry

Dear All,

In relation to the Defence's e-mail, I wish to clarify that at the time of the article 56 procedure, [REDACTED]
[REDACTED]

Therefore, the CLR has no information to provide in the matter.

Kind regards,
[REDACTED]

From: [REDACTED]
Sent: 14 January 2019 11:38
To: [REDACTED] Trial Chamber IX Communications
Cc: [REDACTED]
[REDACTED]

Subject: RE: Information and request for order to Registry

The Prosecution suggests that an inquiry by the Registry is unnecessary.

In [REDACTED] statement, UGA-D26-0010-0001, taken by defence investigators and resulting from interviews [REDACTED] [REDACTED] she recounts (paras 1 to 8) her dealings with Prosecution investigators. She makes it quite clear that she knew who they were, and that, [REDACTED] it was they who were asking her to testify [REDACTED] At paragraph 51 of that statement [REDACTED] states: "I have told the Defence that I want to testify for it and not the Prosecution. I did not convey a reason for it. Similarly, the Defence informed me that every witness is a witness of the Court, and no matter who I testify for, the Registry is responsible for my well-being during my testimony and not the parties. The Defence also conveyed that testifying is my decision, and that all anyone from the Court wants is the truth, no matter whether I testify on behalf of the Prosecution or the Defence."

On 28 October 2015 P-0214 was the subject of a hearing before the single Judge of the Pre Trial Chamber, HHJ Tarfusser.

The exchanges concerning her can be found at the following locations in transcript ICC-02/04-01/15-T-12-CONF-ENG ET

p. 8 l.15 to p.10 l.22, and
p.16 l.17 to p.17 l.12.

In the light of the statement and the transcript the suggestion implicit in [REDACTED] alleged account to Dominic Ongwen, namely that [REDACTED] was in some way tricked into becoming a witness called by the Prosecution is untenable.

[REDACTED] is a vulnerable individual. She has given clear testimony that is capable of amounting to evidence that [REDACTED]
[REDACTED] The Defence has had ample opportunity to question her on these allegations and have indeed done so during the Article 56 hearings. She

has [REDACTED]
[REDACTED]

Whatever [REDACTED] may currently express, any further involvement [REDACTED] in this litigation is more likely to harm rather than to benefit [REDACTED]. The defence should only be permitted to interview her further concerning the case with the leave of the Chamber, and upon demonstrating in some concrete way that it is necessary to do so in order to assist the Chamber in its function of establishing the truth.

[REDACTED]

From: [REDACTED]
Sent: 11 January 2019 15:03
To: Trial Chamber IX Communications
Cc: [REDACTED]
Subject: Information and request for order to Registry

Dear Trial Chamber,

I am writing to you at the request of Counsel to convey the following communication:

We are informed by our client that [REDACTED] –
volunteered the information to him that she was not told when approached to testify in the Article 56
hearings that she would be a Prosecution witness and that her intent was to be a Defence witness.

If the allegation is true then the Defence will surely pursue further information from the Prosecution and OPCV and make a filing before the Chamber to seek appropriate remedies. However, at this point in time, because of the restrictions barring the Defence from contacting the witness put in place by the Trial Chamber, the time and resources it may take to negotiate and plan an interview *inter partes*, and considering the interests of justice, the Defence respectfully requests the Trial Chamber to order the Registrar to verify the accuracy of the statement or representation with P-214 and make a report to the Chamber.

Counsel also seeks any further instructions or guidance from the Trial Chamber at this point.

Kind regards,
[REDACTED]