

ANNEX XXXVI

PUBLIC

From: Trial Chamber IX Communications
Sent: 08 May 2019 15:38
To: [REDACTED]
Subject: Trial Chamber IX Communications; 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]

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]

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]

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 in [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, in [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."

[REDACTED] 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.

P-0214 is a vulnerable individual. She has given clear testimony that is capable of amounting to evidence that she was [REDACTED] The Defence has had ample opportunity to question her on these allegations and have indeed done so during the Article 56 hearings. [REDACTED] [REDACTED] and is now gaining financial advantage, [REDACTED] [REDACTED]

Whatever wishes [REDACTED] may currently express, any further involvement of [REDACTED] in this litigation is more likely to harm rather than to benefit her. 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.

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]