

ANNEX IV

PUBLIC

From: Trial Chamber IX Communications
Sent: 06 June 2017 10:02
To: [REDACTED]
Cc: Trial Chamber IX Communications;
Subject: Decision on Request to Disclose Lesser Redacted Version of Victim Application Related to P-9
Attachments: FW: Order to file confidential lesser redacted versions of applications
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel:

Noting the correspondence below, in addition to the non-objection of counsel representing the victim and in view of the imminent commencement of P-9's testimony, the Prosecution is authorised to disclose a lesser redacted version of the relevant application to the Defence.

Following this disclosure, the Prosecution is to provide this lesser redacted confidential application to the Registry. The Registry is then ordered to file it in the case record accordingly, as has already been ordered for a/05330/15 and a/05154/15 (see attached Email from Trial Chamber IX Communications on 5 June 2017 at 17:39, with attachments removed).

Best,

Trial Chamber IX

From: [REDACTED]
Sent: 06 June 2017 09:36
To: Trial Chamber IX Communications
Cc: [REDACTED]
Subject: RE: P-0009 victim's application disclosure

Dear All,
 I wish to inform the Chamber that I have no objection to the Defence be provided with a lesser redacted version of the application of the victim concerned because said victim was informed and consented to the disclosure.

Kind regards,
 Paolina Massidda

From: [REDACTED]
Sent: 06 June 2017 09:16
To: [REDACTED]

Cc: [REDACTED]
 Subject: RE: P-0009 victim's application disclosure

Dear Trial Chamber IX,

The Defence does not object to the proposal. As before, the Defence shall review and, if necessary, upload the material into eCourt.

Very best,

From: [REDACTED]
 Sent: Tuesday, June 06, 2017 9:13 AM
 To: Trial Chamber IX Communications; [REDACTED]
 [REDACTED]

Cc: [REDACTED]
 Subject: P-0009 victim's application disclosure

P-0009 will be giving evidence tomorrow.

There is one victim's application in the possession of the Prosecution which is relevant to the testimony he may give and which should be disclosed to the Defence on the same basis as that set out in the email of 31 May (below).

The Prosecution have communicated with Ms Massida, who represents the person who made the application, and I understand that without prejudice to any future position she may take on the general issue of the disclosure of lesser redacted applications such as this, she is content that a lesser redacted version of this particular application (which she has seen and approved) can be communicated to the Defence.

In these circumstances I ask for leave to do so.

I can provide the Chamber with a copy of the proposed disclosure, by separate email, if that is the appropriate course, or alternatively, if the Chamber approves, simply copy it to all those to whom this mail is addressed.

More generally, the Prosecution acknowledges that this 'piecemeal' approach is unsatisfactory. The volume of material is considerable. The Prosecution is working hard to make a comprehensive application in respect of all future witnesses, and hopes to file that this week.

Ben Gumpert

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 Dedication - Integrity - Respect

From: Trial Chamber IX Communications
 Sent: 01 June 2017 09:22
 To: [REDACTED]
 [REDACTED]

Cc: [REDACTED]
 Subject: RE: Notice of Disclosure Application to be made tomorrow morning
 Importance: High

Dear parties,

With regard to Mr Gumpert's request below, and in the interest of facilitating an expeditious examination of P-24, the Chamber has decided that no further submissions are necessary in relation to applications a/05330/15 and a/05154/15. The Prosecution may disclose lesser redacted versions of these applications to the Defence.

An application of a more general nature can be made subsequently.

Kind regards,

On behalf of Trial Chamber IX

From: [REDACTED]
 Sent: 31 May 2017 21:28
 To: Trial Chamber IX Communications; [REDACTED]
 [REDACTED]
 Cc: [REDACTED]
 Subject: Notice of Disclosure Application to be made tomorrow morning
 Importance: High

I apologise for the lateness of this mail and for the somewhat unusual course of asking for a decision to be made immediately following submissions in the courtroom.

The Prosecution has been considering the issue of the disclosure of certain victims' applications in the light of the Appeal Chamber's decision ICC-02/11-01/15-915-Conf OA9, and the practices adopted in other ongoing trials.

Up until now the position in the *Ongwen* case has been that the Defence receive redacted versions of all victims' applications. The redaction regime in place was instituted through decision #205 which authorized 'very limited redactions' (para. 32-33) which include all identifying information of the applicants. Of course, for victims' applications made by dual status witnesses, on whom the Prosecution relies to prove its case ('trial witnesses'), the Defence receive lesser redacted versions which do include identifying information.

The Prosecution has noted that a number of the applications which the Defence has received with identifying information redacted relate to individuals who are close relatives of trial witnesses who give evidence about events at the four charged locations. These individuals were often at that same location at the time of the events about which evidence will be given, and make assertions about events at this time in their applications. The Defence are already in possession of this material. However, the Prosecution considers that the identities of these individuals and their relationship to the trial witnesses (hitherto redacted in accordance with decision #205) is material which ought, additionally, to be disclosed under rule 77, in the form of lesser redacted versions of these applications.

The Prosecution is currently conducting a review to establish how many such applications are in its possession and intends, in the course of next week, to make an application to the Chamber to vary the redaction regime established by decision #205 so as to permit disclosure of them as soon as possible.

The Prosecution has established that in respect of the next witness to be called, P-0024, there are two applications made by the witness's family members. The Prosecution believes that the Defence should be in possession of the lesser redacted versions before questioning of this witness begins. In order to avoid, or at least minimise, the inevitable delay which would be caused by the making of a formal written application in respect of these two documents, the Prosecution seeks the Court's permission to make a short oral application at the start of proceedings tomorrow.

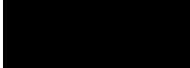
The Prosecution is happy to report that with one exception, there are no victims' applications relevant to the witnesses who have already testified which would be made available to the Defence if the Chamber approves the proposals for disclosure of lesser redacted versions. This exceptional application relates to a close relative of witness P-0330. If the Chamber approves, this application will be disclosed to the Defence at the same time as those relating to P-0024. If the Defence considers that it would have conducted its questioning of P-0330 in a materially different

way, and if the Chamber considers that it is necessary, the prosecution will make arrangements for the recall of this witness to enable further questions to be put.

Following this mail the Prosecution will send further mails, to the LRVs and the Chamber alone, attaching copies of the two applications relating to P-0024 and the one relating to P-0330 in their proposed lesser redacted form. These redaction are in accordance with the approach directed in the Chamber's email of 23 January 2017.

Regards
Ben Gumpert

Ben Gumpert
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