

ANNEX III

PUBLIC

From: Trial Chamber IX Communications
Sent: 27 July 2017 14:43
To: [REDACTED]

Cc: [REDACTED]

Subject: Decision on Contested Redactions Across Transcripts T-67, T-80, T-83, T-84, T-85 and T-87

Attachments: RE: OTP Proposed Lesser Redacted Version of T-67-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-67-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-67-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-80-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-80-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-83-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-84-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-84-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-85-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-85-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-87-Red-ENG; RE: OTP Proposed Lesser Redacted Version of T-87-Red-ENG

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel and Registry:

In accordance with paragraph 37 of Decision 497, please see below for the rulings on contested redactions across transcripts T-67, T-80, T-83, T-84, T-85 and T-87. All references are to the English transcripts, but all rulings must also be reflected in the corresponding parts of the French transcripts. Once the appropriate redactions have been implemented, the lesser redacted versions of these transcripts can be released.

T-67:

Contested redaction(s):

The Defence requests lifting redactions from page 35 line 21 to page 38 line 5 (with the exception of the witness's name at page 36, line 6) (Emails from the Defence, 24 July 2017 at 10:23 and 11:14). The OPCV supports the request (Email from the OPCV, 25 July 2017 at 17:35).

Ruling:

The passage as highlighted by the Defence does not risk identifying the witness. These redactions are to be lifted.

T-80:

Contested redaction(s):

The Defence requests lifting redactions from: (i) page 3 line 20 to page 4 line 2; (ii) page 5 line 3 and (iii) page 5 line 10 (Email from the Defence, 24 July 2017 at 16:03). The Defence notes that the latter two redactions are covered by a redaction order signed by the Presiding Judge (ICC-02/04-01/15-858-Conf). The OPCV supports the Defence requests (Email from the OPCV, 25 July 2017 at 17:37).

Ruling:

The passages as highlighted by the Defence do not risk identifying the witness. These redactions are to be lifted.

More generally, redaction orders are preventative measures issued in a singular context. In order to redact information from the live broadcast, redaction orders must be approved in the middle of an ongoing hearing and within the 30 minute broadcast delay. Due to the impracticability of making a detailed assessment under these conditions, the Chamber takes a risk averse approach and is broadly agreeable to redaction order requests made during hearings. It is emphasised that redaction orders are always issued without prejudice to a revised assessment.

T-83:*Contested redaction(s):*

The Defence requests lifting redactions from: (i) page 38 line 18 to page 39 line 17 and (ii) page 73 line 4 to page 78 line 18 (except for the location referenced at lines 13 and 25 on page 73) (Email from the Defence, 24 July 2017 at 16:12).

Ruling:

The passage identified by the Defence across pages 38-39 does not risk identifying the witness or compromising the Rule 74 assurances provided. These redactions are to be lifted.

As for the passage identified by the Defence across pages 73-78, the Chamber determined that Rule 74 assurances were necessary for P-280 irrespective of any national amnesty certificate he may have received (*see* T-83, page 39 lines 20-24). In this regard, it is noted that Rule 74 protections do not solely concern the risk of a national prosecution, but also protect witnesses in any subsequent prosecution by *this* Court (Rule 74(3)(c)(ii)). Further, Rule 74(3)(c)(i) and (7)(a)-(b) of the Rules require the Chamber providing the Rule 74 assurance to order that testimony implicating self-incrimination not be disclosed to the public. The passage identified by the Defence concerns acts and conduct directly relevant to the Rule 74 assurances provided. The redactions to this passage must be maintained.

T-84:*Contested redaction(s):*

The Defence requests lifting redactions on page 11 line 23 to page 12 line 18 (Email from the Defence, 24 July 2017 at 16:30). The OPCV contests lifting this redaction (Email from the OPCV, 26 July 2017 at 08:57).

Ruling:

This passage identified concerns acts and conduct directly related to the Rule 74 assurances given to P-280. For the same reasons provided above on T-83, the redactions to this passage must be maintained.

T-85:*Contested redaction(s):*

The Defence requests lifting redactions to page 3 lines 7-17 (Email from the Defence, 24 July 2017 at 17:48). The OPCV supports the request (Email from the OPCV, 26 July 2017 at 09:04).

Ruling:

The passage identified by the Defence does not risk identifying the witness or compromising the Rule 74 assurances provided. These redactions are to be lifted.

T-87:

Contested redaction(s):

The Defence requests maintaining redactions from page 68 line 16 to page 69 line 2 on grounds that the testimony provided risks identifying the witness (Email from the Defence, 25 July 2017 at 08:56). The OPCV supports the request (Email from the OPCV, 26 July 2017 at 09:07).

Ruling:

For the reasons provided by the Defence, redactions are to be maintained in the passage indicated.

Best,

Trial Chamber IX