

ANNEX XXI

PUBLIC

From: [REDACTED] >
Sent: 25 June 2017 17:42
To: [REDACTED] Trial Chamber IX Communications
Cc: [REDACTED]
Subject: RE: Defence Submission of Items used during the Examination of P-0252
Attachments: 2017.05.18 - Disclosure Request of UGA-OTP-0258-0013 - CONF.pdf

Dear Trial Chamber IX, Prosecution and Legal Representatives,

Respectfully, the Defence submits this response in relation to the Prosecution's observations in of to Tabs 12, 15, 16 and 17.

- 1) Tabs 12 (UGA-OTP-0247-1216-R01) and 15 (UGA-OTP-0268-0005-R01) have the author of each respective report redacted, thus the Prosecution's argument as to the Defence's ability to examine the creator is materially flawed. Such a request to interview the creator is best served if the interview is conducted before the witness (in this case, P-0252) testifies.
- 2) Tab 15 is a summary of required disclosable material from a pre-interview assessment (*see* Tab 13, UGA-OTP-0263-2763-R01) which is found at UGA-OTP-0258-0013. The Defence requested the parent document, UGA-OTP-0258-0013, from the Prosecution on 18 May 2017 (*see* attached PDF) because it appeared from reading Tabs 13 and 15 that information within UGA-OTP-0258-0013 might contain relevant information to P-0252's memory (*i.e.* credibility) . The Prosecution responded that day and informed the Defence that all material was disclosed via reports at Tab 13 and Tab 15. The Defence responded that it was satisfied since the Senior Trial Attorney conducted the review himself. To make a request for the parent report, have the request denied by the Senior Trial Attorney, and then argue against the use of the full report would be materially unfair to the Defence.
- 3) Tab 16 (UGA-OTP-0269-0678) is a report prepared by the Prosecution on 16 August 2016 which contains information from what appears to be an amalgam of sources dating back to July 2015 (*see* page 0678). These sources are not cited, but it is respectfully submitted that neither the Defence nor the Chamber should have any reason to doubt that the report was created with any malice, deceit or fraudulence. It is a report which details information from apparently several sources which the creator deemed necessary and important to write with full regards to the standards outlined in the Code of Conduct of the Office of the Prosecutor and the Rome Statute.
- 4) Tab 17 (UGA-OTP-0269-0818-R01) is a contemporaneous report prepared by the Prosecution during the normal course of business, and as outlined above in paragraph 3, there is no reason to doubt that that the information contained within this report does not live up to the standards beholden of an officer of the Court.
- 5) All Tabs are reports prepared during the normal course of business by the Office of the Prosecutor, and each person preparing these reports are bound by the Code of Conduct of the Office of the Prosecutor, which entered into force on 5 September 2013. The content therein are the truthful and honest impressions and information relayed from witness P-0252 to Prosecution and VWU staff members (*see* Tab 16, pg. 0679).

Very best regards,

From: [REDACTED]
 Sent: Thursday, June 22, 2017 3:56 PM
 To: [REDACTED]; Trial Chamber IX Communications
 Cc: [REDACTED]

Subject: RE: Defence Submission of Items used during the Examination of P-0252

The Prosecution does not object to the formal submission of items UGA-OTP-0247-1216-R01 (Def Tab 12), UGA-OTP-0268-0005-R01 (Defence Tab 15), UGA-OTP-0269-0678 (Defence Tab 16) and UGA-OTP-0269-0818-R01 (Defence Tab 17) as long as their submission is sought only to challenge the credibility of P-0252's evidence and is limited to the portions addressed during his testimony. The Defence cannot rely on these items for the truth of their content. If they intend to do so they should call the original creators as witnesses.

Kind regards,
 [REDACTED]

Dévouement - Intégrité - Respect
 Dedication - Integrity - Respect

From: [REDACTED]
 Sent: 21 June 2017 11:54
 To: Trial Chamber IX Communications
 Cc: [REDACTED]

Subject: Defence Submission of Items used during the Examination of P-0252

Dear Trial Chamber, Prosecution and Legal Representatives,

Please find below the list of documents used by the Defence which it requests submission into evidence from the Examination of witness P-0252:

DEFENCE BINDER

Tab	Doc ID	Title/Description	Conf Level	Page in ET	Pages
2	UGA-OTP-0243-0455	Annex 1	Confidential	T-89, pg. 5	2
9	UGA-D26-0012-0142	Application for Individual Victims' Participation	Confidential	T-88, pg. 45	5
12	UGA-OTP-0247-1216-R01	Investigation Report	Confidential	T-88, pg. 55	1
15	UGA-OTP-0268-0005-R01	Explanation Note	Confidential	T-88, pg. 61	1
16	UGA-OTP-0269-0678	Investigation Report	Confidential	T-88, pg. 56	3
17	UGA-OTP-0269-0818-R01	Report on Witness [REDACTED] (UGA-OTP-P-0252)	Confidential	T-88, pg. 59	2

The Defence notes that items 19 from the Defence Binder and 14 from the Prosecution Binder were submitted pursuant to Decision 795, and thus not included in the above list.

Very best,



From:**Sent:****To:**

21 June 2017 13:06

Trial Chamber IX Communications;

Cc:**Subject:**

Evidence used in the examination of P-0252

In accordance with the Trial Chamber's Decision #497, the Prosecution formally submits the following items of evidence used during the hearing of the evidence of Witness P-0252 whose testimony concluded on 20 June 2017:

TAB	DocID	Confidentiality	Transcript reference	Pages
2	UGA-OTP-0243-0455	Confidential	T-87, page 27	2
3	UGA-OTP-0243-0457	Confidential	T-87, page 61	1
4	UGA-OTP-0243-0458	Confidential	T-88, page 17	1
5	UGA-OTP-0243-0459	Confidential	T-88, page 18	2
6	UGA-OTP-0243-0461	Confidential	T-88, page 18	1
7	UGA-OTP-0243-0462	Confidential	T-88, page 19	1
8	UGA-OTP-0243-0463	Confidential	T-87, page 54	1
9	UGA-OTP-0269-0732	Confidential	T-88, page 20	1
10	UGA-OTP-0269-	Confidential	T-88, page 15	2

	0722			
11	UGA-OTP-0269-0726	Confidential	T-88, page 20	2
12	UGA-OTP-0269-0728	Confidential	T-88, page 21	2
13	UGA-OTP-0269-0730	Confidential	T-88, page 15	2
14	UGA-OTP-0272-1018	Confidential	T-88, page 21	1

With regards to items UGA-OTP-0269-0722 (Tab 10), UGA-OTP-0269-0728 (Tab 12), UGA-OTP-0269-0732 (Tab 9), and UGA-OTP-0272-1018 (Tab 14), the Prosecutions notes that they are already recognized as formally submitted through Decision # 795 of the Chamber. Their inclusion in the above table is to provide the information on their respective transcript references.

Kind regards,



Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

RE: Request for Disclosure

Sent: Thursday, May 18, 2017 12:15 PM

To: [REDACTED]

Cc: [REDACTED]

Dear Ben,

My concerns arose because UGA-OTP-0268-0005 was written one week after UGA-OTP-0263-2763.

Now that you have confirmed that all disclosable information from UGA-OTP-0258-0013 is contained within UGA-OTP-0263-2763, that alleviates my concerns.

Best,

■

From: [REDACTED]

Sent: 18 May 2017 12:04

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Request for Disclosure

Dear [REDACTED]

I have looked at UGA-OTP-0258-0013 again.

Our position is that we should not disclose these documents themselves. They form part of a record relating to the witness's well-being which is sensitive and personal.

What we do is to subject each such document to careful scrutiny, placing ourselves in the position of defence counsel, to see what use could be made of it in the proceedings. In other words whether the information contained in any parts of such documents is disclosable under r.77.

In this case we concluded that there was such information. We therefore caused *all* of this information to be set out in an investigation note and disclosed to you. That note is (I am sure you are aware of it) UGA-OTP-0263-2763. I have myself checked its contents against UGA-OTP-0258-0013 and am satisfied that we have complied with our obligations.

We do not propose to make any further disclosure, unless the Chamber directs us to.

Regards,

Ben

Dévouement - Intégrité - Respect

Dedication - Integrity - Respect

From: [REDACTED]

Sent: 18 May 2017 10:45

To: [REDACTED]

Cc: [REDACTED]

Subject: Request for Disclosure

[REDACTED] 25-Jun-17

Dear Ben,

On behalf of the Defence, I request the disclosure of UGA-OTP-0258-0013.

The Prosecution notes several problems with Witness P-0252 which may affect his memory of events, and the Defence considers that the report regarding the psycho-social expert's assessment of P-0252 to be necessary for its preparation its examination.

Very best,

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From: Trial Chamber IX Communications
Sent: 05 July 2017 17:12
To: [REDACTED]
Cc: Trial Chamber IX Communications; [REDACTED]
Subject: Decision on Submitted Materials for P-252
Attachments: Defence Submission of Items used during the Examination of P-0252; Evidence used in the examination of P-0252; RE: Defence Submission of Items used during the Examination of P-0252; RE: Defence Submission of Items used during the Examination of P-0252

Dear Counsel and Registry:

For P-252, the Chamber recognises as formally submitted all items submitted by the Prosecution (Email from the Prosecution, 21 June 2017 at 13:06) and Defence (Email from the Defence, 21 June 2017 at 11:54, *responded to by the* Prosecution, 22 June 2017 at 15:56 *with further response from the* Defence, 25 June 2017 at 17:42).

It is noted that the Prosecution submits certain items that have already been recognised as formally submitted. As stated previously, from the way the conduct of proceedings in this case is set out, formally submitting materials again after they have been recognised as formally submitted serves no purpose. *See* Decision 497, para. 28(v) at footnote 20.

Further, the Prosecution indicates that it does not object to the formal submission of four of the Defence items 'as long as their submission is sought only to challenge the credibility of P-0252's evidence and is limited to the portions addressed during his testimony' (*in reference to* UGA-OTP-0247-1216-R01, UGA-OTP-0268-0005-R01, UGA-OTP-0269-0678, UGA-OTP-0269-0818-R01). The Defence responds by stressing the reliability of these four items, but does not challenge the assertion that the items are submitted for the purpose of challenging P-252's credibility.

The Chamber sees no procedural bar to the submission of the four Defence items to challenge P-252's credibility. More generally, although the fact that evidence is submitted for a particular purpose may be relevant in determining whether procedural bars may apply, unless otherwise indicated it is emphasised that '[c]onsistent with its approach of deferring admissibility considerations, the Chamber will not set limitations on how it will consider any submitted evidence' (ICC-02/04-01/15-497, para. 29).

The Registry is directed to proceed in accordance with paragraph 28(v) of the Initial Directions on the Conduct of the Proceedings, 13 July 2016, ICC-02/04-01/15-497.

Best,

Trial Chamber IX