

ANNEX III

PUBLIC

[REDACTED]

From:

Sent:

[REDACTED]
28 September 2017 13:58

To:

[REDACTED] Trial Chamber IX Communications; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Cc:

Subject:

RE: P-0038

Dear Trial Chamber IX,

On behalf of Counsels, I write the following message.

First, the Defence understands that this issue is in no way the fault of the Prosecution. The Defence thanks the Prosecution for telling us at the first possible moment of the issue.

- 1) The Defence questions why the Witness "sent his passport away for visa applications unrelated to his appearance as a witness in this case...and miscalculated the time within which he would receive his passport back." Considering this witness has been rescheduled for this block, the Defence has serious reservations as to whether he was properly notified and prepared by agents of the Court, and it appears on the face that P-0038 was either not told that it takes a minimum of two weeks to get a visa or it was sent late by P-0038 intentionally.
- 2) The Defence avers that this witness is an important witness who has physically dealt with a significant amount of the material collected by the Prosecution. A Ringtail search lists 1,279 items related to P-0038, not to mention more for which he appears in the chain-of-custody and not in the "related to witness category". According to his own witness statement, P-0038 acted as the GoU liaison to the OTP and as an intermediary. His physical presence in the Court, not via video-link, is highly preferential to the Defence. His immediate reactions to questions, i.e. his body language and voice inflections, are important parts of determining someone's credibility and veracity, and considering the aforementioned point about the plethora of evidence that has gone through his hands, the Defence requests he physically be at the seat of the Court in Courtroom 3.
- 3) The Defence is also willing to wait further for this witness so he can appear in-person in The Hague. The Defence notes that it demanded to question P-0038 before P-0242 and P-0256, but P-0256 works at the ICC. Should the Defence determine further questioning of P-0256 is necessary after questioning P-0038, there are no restraints to call P-0256 back to testify further as his office is within the ICC Complex.
- 4) The Defence informs the Chamber, Prosecution, Legal Representatives and Registry that the Defence Binder is estimated to be between 50-60 documents, but maybe slightly lower around 40. The documents should be around 300-400 pages. The Defence requests assurances that the entire binder shall be printed and ready for the witness when he arrives to stave off any delay in the questioning similar to that which happened yesterday with P-0047.
- 5) As video-link has had some problems, the Defence notes that this change in the locality of P-0038's testimony be considered if the Defence runs afoul of its estimate of 2.5 days for its examination. Having his testimony via video link will add significant time to the Defence's cross-examination.

Sincerely,

[REDACTED]
On behalf of Counsels for Dominic Ongwen
[REDACTED]