

ANNEX XIV

PUBLIC

From: Trial Chamber IX Communications
Sent: 04 May 2018 12:30
To: [REDACTED]
Cc: Trial Chamber IX Communications; [REDACTED]

Subject: Directions in Response to Defence Clarification Requests Regarding its List of Evidence

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel:

The Chamber's responses to the Defence requests for clarification are provided below pursuant to Rule 134(3) of the Rules. The Chamber considers that its answers sufficiently resolve the Defence requests - no request formally varying Decision 497 is required.

Defence Question 1: Whether the current conduct of proceedings regime (ICC-02/04-01/15-497) requires that items that have previously been submitted – be it through bar-table motion or testimony – must be indicated on the Defence list of evidence to be selected for use in direct examination of Defence witnesses?

Answer: No. The purpose of a list of evidence is to have a document itemising all the materials which the filer of the document intends to submit as evidence during a trial (Decision 1241, para. 9). But, once an item has been recognised as formally submitted, no purpose is served by formally submitting this item a second time (Decision 497, para. 28(v), n. 20). So the Defence is not required to indicate any items on its list of evidence which have previously been recognised as formally submitted.

Defence Question 2: Whether the current conduct of proceedings regime requires that items on the Prosecution list of evidence must be indicated on the Defence list of evidence to be used in direct examination of Defence witnesses?

Answer: It depends. If the Defence does not seek to formally submit a duly disclosed item into evidence, it need not include it on its list of evidence as a pre-requisite to using it during Defence witness examinations (*see* Decision 1241, para. 10). If the Defence seeks to both use and formally submit an item which has yet to be submitted at trial, then this item must be on the Defence list of evidence. This is irrespective of whether the same document appeared on the Prosecution's list of evidence.

Best,

Trial Chamber IX

From: [REDACTED]
Sent: 04 May 2018 11:22
To: Trial Chamber IX Communications
Cc: [REDACTED]

[REDACTED]
Subject: Clarification about the Defence's List of Evidence

Dear Trial Chamber,

I have been asked to write on behalf of the Ongwen Defence to seek clarification regarding the requirements for the contents of the Defence list of evidence for the conduct of trial during the Defence case.

The Defence seeks guidance on two issues:

1. Whether the current conduct of proceedings regime (ICC-02/04-01/15-497) requires that items that have previously been submitted – be it through bar-table motion or testimony – must be indicated on the Defence list of evidence to be selected for use in direct examination of Defence witnesses?

and

2. Whether the current conduct of proceedings regime requires that items on the Prosecution list of evidence must be indicated on the Defence list of evidence to be used in direct examination of Defence witnesses?

Should the Trial Chamber prefer it, the Defence can present the request for clarification through a formal filing. Additionally, if the answer to either of the questions is no, then the Defence will formally seek variation of the regime and make submissions.

Very best,

[REDACTED]