

ANNEX XXIV

PUBLIC

From: Trial Chamber IX Communications
Sent: 21 June 2018 18:19
To: [REDACTED]
Cc: Trial Chamber IX Communications; [REDACTED]
Subject: Decision on Additional Redactions to T-173

Dear Counsel and Registry,

In accordance with paragraph 37 of Decision 497 (and Email from Trial Chamber IX Communications, 14 February 2017 at 17:43) please see below for the ruling on further redactions proposed for transcript T-173. All references are to the English transcript, but all rulings must also be reflected in the corresponding parts of the French transcript.

T-173

(i) *Contested redaction:*

The LRVs request additional redactions from page 51 line 25 to page 53 line 7. The LRVs submit that the portion sought to be redacted discloses the witness's role as an intermediary (who assisted the VPRS in reaching victims and helped the victims apply to the Court) and "[i]f intermediaries' identities are made known, this places them in a position where they may become targets of persons wishing to identify the victims (whether by theft, pressure, inducements, fraud etc)".

The Defence objects to the implementation of the redactions as the witness was not questioned as an intermediary but instead regarding his role as LC 1 in Lukodi. It is alleged that an LC 1's function in identifying persons is well known and therefore this information should not be redacted.

Ruling:

The LRVs request for additional redactions is rejected for the reasons stipulated below. It follows that the requests to block access to the current public redacted version of T-173 and that the VPRS should be provided with an opportunity to be heard on this question prior to the witness's identity (as an intermediary) being revealed, are also rejected.

First, the portion sought to be redacted simply highlights the witness's role, as LC 1, in verifying the identity of victims (as well as their relationships and missing property) at the time the victim applications were being filled out. There is no indication of the role the witness played in assisting the VPRS beyond this.

Second, even if the portion sought to be redacted discloses the witness's role as an intermediary, given the nature of his role as LC 1, the prohibition on disclosure of intermediaries' identity does not apply in this instance. Section 5.4 of the ICC Guidelines Governing the Relations between the Court and

Intermediaries state that “the prohibition of disclosure of intermediaries’ identity does not apply when, because of the circumstances or because of the nature of the particular intermediary’s functions, such prohibition bears no relevance with respect to that intermediary”. The witness testified with no protective measures and therefore his role as LC 1 in Lukodi is public knowledge. It is also well known that the role of an LC 1 includes verifying the identity of individuals. Therefore, the disclosure of the relevant portion poses no additional risk to the witness or the participating victims. The risk, if any, already exists by virtue of the fact that it is public knowledge the witness operates as LC 1 in Lukodi and would have been the one most likely to be called upon to verify the identities of victims in his community.

For the reasons above, no further redactions are to be implemented to T-173.

Regards,
Trial Chamber IX

From: [REDACTED]
Sent: 19 June 2018 12:09
To: [REDACTED] Trial Chamber IX Communications; [REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: LRV Proposed Additional Redactions to Lesser Redacted Version of T-173-Red-ENG

Dear Trial Chamber IX, Legal Representatives and Prosecution,

The Defence objects to the redaction request submitted by the Legal Representative.

The Defence did not question the witness in his capacity as an intermediary. The Defence questioned the witness about his capacity as the LC1 Chairperson.

Anyone from Uganda knows that the process of identifying persons generally falls upon the Local Councillors, especially the LC1. Examples of this are attached.

- 1) The first example is from the NIRA website (National Identification and Registration Administration of Uganda), which is attached by way of PDF. Identification absent National ID Cards and a certified birth certificate requires an LC1 signature and acknowledgement. As is also known in Uganda, NIRA is relatively (started within the past 5-6 years).
- 2) The second example attached is Form B for passport applications. The Defence notes section 5 where the Local Council 1, 2 and 3 must verify the person requesting a first-time passport.

The Defence see no need to conceal what is already known (aka the LC1’s function in identifying persons).

Very best,

[REDACTED]

From: [REDACTED]
Sent: 15 June 2018 17:50
To: Trial Chamber IX Communications; [REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: LRV Proposed Additional Redactions to Lesser Redacted Version of T-173-Red-ENG

Dear Trial Chamber IX,
Dear Parties and Participants,

In line with the Chamber's instructions regarding proposed lesser redactions (ICC-02/04-01/15-497, para. 37) and proposed additional redactions (Email from Trial Chamber IX Communications, 14 February 2017 at 17:43), and consistent with the practice to date, the LRVs have reviewed the English and French edited versions of transcript T-173-Red-FRA of the hearing held on 3 May 2018.

The LRVs proposes that additional redactions be applied to the portions of the text highlighted in **RED** in the attachments. In line with the Chamber's instructions (Email from Trial Chamber IX Communications, 14 February 2017 at 17:43) the LRVs requests that access to the original ENG and FRA public-redacted version of T-173-CONF be blocked.

In light of the Chamber's ruling during the hearing that the material in question should be heard in open session, the LRVs provide the following justification for the proposed redactions.

The material dealt with in this portion of the hearing reveals that the witness was involved at the early stages of the present case as a person who assisted the Registry (specifically the VPRS) in reaching victims and assisting them to apply to the Court. Such persons (referred to by the VPRS as their 'intermediaries') have, by consistent practice of the Court, had their identities protected from the public. It is understood that the general rationale for this approach is that VPRS intermediaries, by virtue of their role, are familiar with the identities of the participating victims whose identities are anonymous.

If intermediaries' identities are made known, this places them in a position where they may become targets of persons wishing to identify the victims (whether by theft, pressure, inducements, fraud etc). Risk levels may naturally vary from situation to situation, however it should not be assumed that the risk of this kind of interference is correlated to easily visible security concerns in a situation country. They may be linked to other factors such as the nature of community dynamics. For this reason, it is submitted that the general rule of protecting intermediaries' identities from the public should be maintained unless (a) removing that protection is required, for example to ensure fair trial rights; and (b) a risk assessment specific to the intermediary and the affected group of participating victims has been carried out. In the present case neither of these conditions exists. There is no prejudice to the defence in having this material redacted; and no risk assessment has been undertaken by the VWU to provide insight into whether the Court's article 68(1) obligations can be upheld toward the victims and the intermediary himself if information is made known publicly.

These matters are also canvassed in the ICC's Guidelines Governing the Relations between the Court and Intermediaries. It recognises the Court's protection obligations in respect of intermediaries, and that these may best be achieved by limiting public information about the intermediary's engagement with the Court. The Guidelines also recognise the need for individualised risk assessments.

The LRVs consider that the witness' willingness to speak about the subject openly should not be considered a relevant consideration, let alone a decisive one. Not only is it not clear that he has considered the security implications of this disclosure or that he is best placed to make such an assessment himself; more significantly the question concerns not only his own privacy and security but also those of the participating victims themselves.

The LRVs note that the witness was a VPRS intermediary, and that the VPRS should be provided with an opportunity to be heard on this question prior to the individual's identity being publicly revealed. The VWU as the section of the Registry best placed to advise on the risks to privacy and security of victims and intermediaries should also be consulted before that occurs. For this reason the LRVs have copied those sections on the present email.

The LRVs do not have any proposals for the lifting of redactions to T-173-Red-ENG.

Best regards,

[REDACTED]

On behalf of,
Joseph Manoba and Francisco Cox

From: [REDACTED]

Sent: 12 June 2018 14:27

To: [REDACTED]

Cc: [REDACTED]

[REDACTED]

Subject: OTP Proposed Lesser Redacted Version of T-173-Red-ENG

Dear all,

In line with the Trial Chamber IX's instructions to propose lesser redactions (ICC-02/04-01/15-497, para. 37), the Prosecution has reviewed transcript T-173, dated 03/05/2018. The Prosecution proposes no changes in the status of redactions. All redactions, as applied to the public English and French versions distributed on 25 May 2018 should remain in place.

Kind regards,

[REDACTED]

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Dedication - Integrity - Respect