

ANNEX VII

PUBLIC

From: Trial Chamber IX Communications
Sent: 03 March 2020 14:29
To: [REDACTED]
Subject: [REDACTED] Trial Chamber IX Communications; [REDACTED]
 RE: disclosure regarding information used by the Defence in its Closing Brief

Dear Defence,
 Dear parties and participants,

In view of the urgency of this matter and pursuant to Regulation 34 of the Regulations of the Court, the Chamber hereby orders that responses to the Prosecution request below, if any, must be provided via email until Wednesday, 4 March 2020, 9:00 am.

Kind regards,
 Trial Chamber IX

From: [REDACTED]
Sent: 03 March 2020 13:28
To: Trial Chamber IX Communications
Cc: [REDACTED]

Subject: RE: disclosure regarding information used by the Defence in its Closing Brief

Dear Trial Chamber IX:

For the same reasons articulated by the Chamber in the email below, the Prosecution urgently requests that the Trial Chamber reclassify as Confidential the following five items cited in the Defence Closing Brief:

ICC-02/04-01/15-1200-Conf-Exp (cited at Annex E)
ICC-02/04-01/15-1200-Conf-Exp-Anx (cited at footnotes 151 and 187 and Annex E)
ICC-02/04-01/15-1315-Conf-Exp (cited at Annex E)
ICC-02/04-01/15-1315-Conf-Exp-Anx (cited at footnotes 152-154 and Annex E)
ICC-02/04-01/15-1403-Conf-Exp (cited at footnote 155)

The above-cited items were referenced by the Defence as support for its assertion that the Chamber failed to implement the recommendations of the medical officer of the Detention Centre, as well as its overarching claim that Mr Ongwen is a “mentally disabled defendant” whose rights under international human rights law have not been respected by the Trial Chamber. *See* Defence Closing Brief, paras. 118-146. As the Trial Chamber stated below, “the references mentioned in Closing Briefs must be available to the other parties and participants in order to allow them to respond to the arguments made.” The Prosecution cannot fully assess the Defence’s arguments or meaningfully respond without access to these items.

It is particularly important that the Prosecution see the exact language used by the medical officer and any examining mental health professionals in these items. In this regard, the Prosecution notes that ICC-02/04-01/15-1321-Conf is not an adequate substitute for ICC-02/04-01/15-1315-Conf-Exp-Anx. At para. 12 of Filing 1321-Conf, the Defence provided a brief seven-line summary of what it “deem[ed] to be disclosable issues within the Report.” The Defence’s summary of the medical officer’s purported recommendation about the Chamber’s sitting schedule was largely paraphrased. *See* ICC-02/04-01/15-1321-Conf, para. 12(3). However, since there appears to be a dispute

about what exactly was recommended, and in what terms, it is essential that all parties and participants have access to the verbatim text of the observations by the Medical Officer.

The Chamber has a clear legal basis for making all these items available to the parties and participants, most prominently pursuant to its Article 64(2) obligation to ensure the fair and expeditious conduct of the proceedings. See Decision 691, paras. 9-23 (citing also Article 64(3)(d) and (6)(d) and rule 84 of the Rules as bases for ordering disclosure of medical information).

The Prosecution makes this request on an urgent basis given the limited time before the Prosecution's Closing Statement.

Kind regards,

[Redacted]



Cour
Pénale
Internationale
International
Criminal
Court

[Redacted]
Trial Lawyer

[Redacted]

From: Trial Chamber IX Communications

Sent: 25 February 2020 12:33

To: [Redacted]

[Redacted] Trial Chamber IX Communications;
re regarding information used by the Defence in its Closing Brief

Dear parties and participants,

The Defence discusses in its Closing Brief (paras 136-145) the purported failure of the Chamber to implement the recommendations of the medical officer of the Detention Centre.

In this discussion it makes reference to an email communication in which the Chamber ruled on a request by the Defence ('Email Communication', Fn 181).

The Closing Statements are an opportunity for each party and participant, should they wish to do so, to address issues in the Closing Briefs of the other parties and participants. In this regard the Closing Statements are, in part, reactionary to the Closing Briefs of the other parties and participants.

The Defence has displayed its identical view of the purpose of the Closing Statements in several requests (filing -1238, para. 33; filing -1668, paras 1-2, 49-51). The Chamber confirmed this view (decision -1259, para. 16).

This means that the references mentioned in Closing Briefs must be available to the other parties and participants in order to allow them to respond to the arguments made.

The Chamber notes that the Email Communication is only available in redacted form to the other parties and participants at this point in time (filing -1483, Annex 43). These redactions were done in order to protect details about the medical treatment Mr Ongwen was undergoing at the time.

However, the Defence makes the state of health of Mr Ongwen, and its appropriate treatment, a live issue in its Closing Brief. It argues that the Chamber 'did not implement the ICC-DC Medical Officer's recommendations' and 'rejected all the Defence request on this matter', referencing the Email Communication in support (para. 137, Defence Closing Brief). In order for the other parties and participants to meaningfully respond to the issue, it is necessary that they have the entire content of the Email Communication in its unredacted form.

The Chamber also takes into account the content of the information that form the redactions. It finds that the initial considerations redacting the details about Mr Ongwen's medical treatment must stand back, due the Defence's use of the information in the Closing Brief. Accordingly, the Chamber hereby transmits the Email Communication in its unredacted form to the parties and participants.

Kind regards,
Trial Chamber IX