

**ANNEX XV**  
**PUBLIC**

**From:** Trial Chamber IX Communications  
**Sent:** 23 June 2020 17:38  
**To:** [REDACTED] Trial Chamber IX Communications  
**Cc:** [REDACTED]  
**Subject:** RE: request for leave to file a combined response and reply to Defence filing 1743  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear parties and participants,  
 Having considered the submissions below, as well as the arguments and requests raised by the Defence in its response, filing -1743, the Chamber is of the view that it would be assisted by receiving the additional submissions proposed by the Prosecution.  
 The Prosecution is directed to file any such submissions no later than Wednesday, 1 July 2020.  
 Kind regards,  
 Trial Chamber IX

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**From:** [REDACTED]  
**Sent:** 23 June 2020 13:53  
**To:** [REDACTED] Trial Chamber IX Communications  
**Cc:** [REDACTED]  
**Subject:** Re: request for leave to file a combined response and reply to Defence filing 1743

Dear Trial Chamber IX,  
 Please note that in paragraph 10, I accidentally typed Response 1740, and it should be Response 1743.  
 Please accept my apologies for the mistake.  
 Highest regards,  
 [REDACTED]

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**From:** [REDACTED]  
**Sent:** 23 June 2020 13:49  
**To:** [REDACTED] Trial Chamber IX Communications  
**Cc:** [REDACTED]  
**Subject:** Re: request for leave to file a combined response and reply to Defence filing 1743

Dear Trial Chamber IX,  
 1) The Defence respectfully requests that the Prosecution's request to reply to ICC-02/04-01/15-1743-Conf be denied because:  
 a) The Prosecution fails to specify which specific issues it wishes to address in its response/reply;  
 b) The Prosecution fails to justify why it should be granted leave to reply as it was put on notice on 25 May 2020 that the Defence took issue with "C" and "D" redaction codes; and  
 c) The Prosecution fails to justify why the Defence's request relief was not foreseeable.

**The Prosecution fails to specify which specific issues it wishes to address in its response/reply and should be denied.**

2) The Prosecution's request below does not specify which issues it wishes to address in its reply. The Prosecution wrote that it desired "*to file a combined response and reply to the Defence's Filing 1743*". The Prosecution noted that the Defence's response addressed both the "*non-standard redactions and also goes further to request additional relief*".

3) The Defence outlined very specific issues related to very specific items. A significant amount of the response relates directly to redaction codes "C" and "D". The issues related to "A" and "B" redactions are highly specific for items UGA-OTP-0204-0268-R02, UGA-OTP0238-0699-R02 and UGA-OTP-0198-0249-R02, and specific as to redaction code "B.1" for UGA-OTP-0043-0124-R02, UGA-OTP-0204-0259-R02, UGA-OTP-0204-0284-R02 and UGA-OTP-0283-2165-R02. The Defence also requested the Prosecution to be ordered to merely check redaction codes "B.2" and "B.3" for material which the Defence believes is relevant. Finally, the Defence sees no reason for the Prosecution to reply to the Defence's requests for the **Chamber** to review the Prosecution's "A" redactions.

3) The Prosecution's failure to address the specific topics denies the Defence to respond poignantly to specific topics. It also leave a quandary as to which topic, if granted, the Defence could apply for leave to reply. As it appears from the Prosecution's email, it requests to respond to alleged unforeseeable requests from the Defence. The Defence would, pursuant to Regulation 34 of the RoC, have a right to request leave to reply to these alleged unforeseeable issues. The Prosecution has until 25 June 2020 at 16h00 to request specific topics to which it seeks to respond and/or reply. It should be required to specify, with reasonable detail, the topics to which it requests leave to reply.

4) Finally, the Defence sees no reason why the Prosecution should be able to reply about the Audio Files. The Defence requests that the Chamber order the Prosecution to follow the Protocol. It is completely incomprehensible that such a manner of redaction complies with the Protocol and Order 1734. The Prosecution should deny the Prosecution leave to reply to the arguments set forth about the Audio Files (*noting* that UGA-OTP-0227-0100-R02 is in Acholi).

**The Prosecution fails to justify why it should be granted leave to reply as it was put on notice on 25 May 2020 that the Defence took issue with "C" and "D" redaction codes.**

5) The Prosecution has not justified why it should be granted leave to reply to the complaints about redaction codes "C" and "D". This especially applies to paras. 15-25 of Response 1743.

6) The arguments advanced by the Defence in Response 1743-Conf are foreseeable and the request should be denied, especially in light of Defence filing 1342-Conf.

7) Finally, the Defence gave constructive notice that it took issue with the manner in which the Prosecution applied redaction codes "C" and "D". (*See* attached email.) The Defence wrote, "[p]lease know that this shall not the [sic] be the only *inter partes* request related to the disclosure of Friday, 22 May 2020. After skimming of some of the items Friday, I noticed that redaction codes C and D are prevalent in much, if not all, of the disclosure package. It is the opinion of the Defence though that this specific item deserves immediate attention". The Prosecution should have reasonably foreseen that the Defence would make arguments about all "C" and "D" codes and approached Request 1740 accordingly.

**The Prosecution fails to justify why the Defence's request relief was not foreseeable.**

8) The Prosecution fails to justify why the requested relief was not foreseeable. The Defence asked the Chamber to order the Prosecution to fulfil its obligations pursuant to Protocol 224. (*See* Defence Response, paras 17-18.)

9) At this advanced stage of the proceedings, the Prosecution's scrutiny of its material, and its *continual obligation* to remove redactions as they are no longer warranted, are foreseeable. It cannot be allowed to remain stagnant in its review at this time.

10) These continual obligations apply directly to redaction codes "A" and "B". The Defence pointed specifically to the areas where it questioned the necessity of these redactions. The Defence even conceded that certain "B.2" and "B.3" are more than likely irrelevant to the Defence's preparation, but merely asked that those redactions be reviewed for very specific reasons. (*See* Response 1743, para. 46.) This is completely foreseeable, especially in light of the [REDACTED] incident of the summer of 2015 at UGA-OTP-0258-0036 (*noting* that the OTP discovered this issue contemporaneously with its occurrence). This material is highly relevant if there as sought in Response 1740, and if not, the Defence sees no reason why they would need to be lifted.

11) For the abovementioned reasons, the Defence requests the Chamber to deny the Prosecution's request in its email received today, 23 June 2020, at 11h45 CET.

Highest regards,

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**From:** [REDACTED]

**Sent:** 23 June 2020 11:52

**To:** [REDACTED] Trial Chamber IX Communications

**Cc:** [REDACTED]

**Subject:** Re: request for leave to file a combined response and reply to Defence filing 1743

Dear Trial Chamber IX,

I will respond on behalf of the Defence in the next 30 minutes. I have food on the stove, so I have to watch it for about the next ten minutes before I can type the Defence's response.

Thank you very much for your indulgence and I am sorry about this.

Very best,

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**From:** [REDACTED]

**Sent:** 23 June 2020 11:45

**To:** Trial Chamber IX Communications

**Cc:** [REDACTED]

**Subject:** request for leave to file a combined response and reply to Defence filing 1743

Dear Trial Chamber IX,

The Prosecution requests leave to file a combined response and reply to the Defence's filing 1743. That filing both responds to the Prosecution's request for non-standard redactions and also goes further to request additional relief. The proposed response/reply could be filed by early next week.

Best regards,

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