

Annex 25

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From: Trial Chamber III Communications
Sent: 28 February 2022 11:08
To: OTP KEN art70 [REDACTED]; D32 Gicheru Defence team
Cc: Associate Legal Officer-Court Officer; Trial Chamber III Communications
Subject: email in light of this morning's discussion in court

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Dear parties,

The Chamber sends this email in light of the discussion this morning concerning an undisclosed affidavit related to the testimony of P-0613.

First, as already said in Court and put on the record, the Chamber does not consider that the questioning of the Defence – in light of the items disclosed to it – was inappropriate or in any way unfair.

Further, the Chamber notes the remarks by the Senior Trial Attorney on p. 10, line 13 and p.11 line 13 to 14 of the real time version of transcript T-058, where he first states that he would have disclosed the item and that he did not know that the item was not disclosed.

The Chamber stresses that it is the duty of the Senior Trial Attorney as head of his prosecution team and also, in this particular case, as questioning counsel of the witness, to know which items relate to the witness, which items have been disclosed and any further relevant information related to the witness. He cannot abrogate this responsibility to his team and then state that – had he known the facts at hand – he would have acted differently.

Accordingly, the Chamber instructs the Senior Trial Attorney for the upcoming Prosecution witnesses: to be fully prepared, to double-check before the start of testimony which items have been disclosed with regard to the witness in question and react appropriately on any issue raised during the questioning of the Defence.

Lastly, the Chamber notes that the Defence did not request any specific redress. In any event, the Chamber assures both parties that it will continue to ensure the fairness of the proceedings.

Kind regards,
Trial Chamber III