

Annex 33

Public

From: Trial Chamber III Communications
Sent: 13 April 2022 13:16
To: Steynberg, Anton; Trial Chamber III Communications
Cc: Trial Chamber III Legal Officers; [REDACTED]; Associate Legal Officer-Court Officer; OTP KEN art70 [REDACTED]; D32 Gicheru Defence team
Subject: RE: Procedure for reviewing PRVs of transcripts

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr Steynberg,

Thank you for your email.

Should the Defence wish to respond to the Prosecution's request it is ordered to do so by midday tomorrow. Should the Defence not intend to respond, it should notify the Chamber as soon as possible.

Kind regards,
 Trial Chamber III

From: Steynberg, Anton [REDACTED]
Sent: 12 April 2022 17:02
To: Trial Chamber III Communications <TrialChamberIIICommunications[REDACTED]>
Cc: Trial Chamber III Legal Officers <TrialChamberIIILegalOfficers[REDACTED]>; [REDACTED]; [REDACTED] Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer[REDACTED]>; OTP KEN art70 [REDACTED]; [REDACTED] D32 Gicheru Defence team <D32GicheruDefenceteam[REDACTED]>
Subject: Procedure for reviewing PRVs of transcripts
Importance: High

Dear Trial Chamber III,
 Your Honour,

I write to raise an issue that has arisen during the implementation of the Chamber's instructions in the Directions on the Conduct of Proceedings (decision # 189), in particular paragraphs 47 and 48 concerning the production of lesser redacted versions. In consultation with Court Management Services (CMS), the Prosecution wishes to propose a slight adjustment to the prescribed procedure that both the OTP and CMS consider would best enable the Court to fulfil its obligations under article 68(1).

Para. 47 of the Directions requires the Registry to "make public the redacted version [PRV] of the transcripts within two days of the notification of the edited confidential version". CMS interprets this to mean publication of the PRV on the ICC website and through Legal Tools, which is then available for any member of the public to review or download.

Para. 48 then requires the calling party to review the PRV and within 21 days propose a lesser redacted version. It also permits the calling party to propose discreet additional redactions "in the context of this review". However, the purpose of proposing additional redactions is largely defeated if the PRV, including the confidential information which the calling party seeks to protect, has already been publicly available for up to three weeks. Removing the PRV and applying additional redactions at this point may rather serve to draw attention to the confidential

information, since any member of the public who has downloaded the material will be able to identify the new redaction(s) by comparing the two versions.

Consequently, the OTP and CMS propose that a provisional PRV first be circulated *inter partes*, but that it not be published until the 21 day review period has elapsed, or the calling party has provided its input, whichever is the sooner. This will allow any necessary *post facto* redactions to be requested by the calling party and the Chamber to rule thereon, with any input from the non-calling party that the Chamber may deem necessary, before the document becomes public.

Additionally, to facilitate the review, the OTP has requested CMS to provide the provisional PRV in draft format--i.e. with redactions indicated on the Edited Transcripts with highlights, or in "redactions proof" format. This will facilitate both the identification of any missing redactions in the public sessions, and the lifting of superfluous redactions in private sessions. If any corrections to the transcripts are identified, these will also be addressed simultaneously, through the procedure identified by CMS. Should the Chamber approve this proposal, the OTP and CMS will consult further on the specific modalities.

I should add that this is not merely a hypothetical concern, as the Prosecution has already identified discrete examples of, for instance, names and places in public session contained in Edited Transcripts that require redaction before the PRV is published. In some instances, the information was not transcribed in the Real Time Transcripts, but has been inserted into the edited version when the transcribers reviewed the audio record. In other instances, redactions authorised by the Chamber in one instance have not been consistently applied in others.

In summary, the Prosecution, in consultation with CMS, respectfully requests that para. 47 of the Directions be amended to instruct the Registry "to ~~[make public]~~ **circulate *inter partes*** the **provisional** redacted version of the transcripts within two working days of the notification of the edited confidential version", and to make provision for the publication of the PRV after the provisional redacted version has been reviewed or the 21 day period has elapsed.

Sincerely,
Anton Steynberg