

Annex A

From: Samson, Nicole [REDACTED]

Sent: 16 September 2019 19:48

To: Trial Chamber VI Communications

Cc: Yirgou, Selamawit; Solano, Julieta; Rabanit, Marion; van der Werf, Hendrik Rens; Bourgon, Stephane; Gosnell, Christopher; Portier, Margaux; Daria Mascetti; Pellet, Sarah; Suprun, Dmytro; Grabowski, Anne; Kiss, Alejandro; Tchidimbo, Patrick

Subject: Prosecution Request for Disclosure of Witness D-0305's Statement

Dear Trial Chamber VI,

The Prosecution requests disclosure of D-0305's witness statement.

First, the substance of witness D-0305's earlier statement was reviewed at some length during the witness preparation session. In these circumstances, the Prosecution is entitled to review the contents of the first meeting for the purpose of assessing the credibility and reliability of Witness D-0305, and effectively assist the Chamber in the determination of the truth.

For example, reference to this earlier meeting (which culminated in a statement) is made throughout the witness preparation session in parts entitled: "questions de clarification et/ou de confirmation". These references include, but are not limited to, p. 2 (fifth paragraph), p. 3 (second and fifth paragraphs), p. 4 (fourth, fifth and sixth paragraphs), p. 7 (second and fourth paragraphs). The fact that the statement was not physically shown to the witness during the witness preparation session does not diminish the requirement to disclose it, since it is the basis of a number of discussions with the witness who claims that the information she gives is the same information she gave in the earlier meeting, or on one occasion – regarding her membership to the UPC – is contradictory to information she gave during the first meeting but without any details as to the first indication that she was never part of the UPC. The Prosecution and Participants – as well as the Chamber – are unable to fully assess the contradictions or consistencies without the witness statement.

Second, the Trial Chamber's past decisions on disclosure evidence an expectation that Defence witness statements will be disclosed when they are available. Only when statements are not available, did the Chamber order that the Defence prepare a sufficiently detailed summary of the anticipated evidence. *See*, paragraphs 10-11 of Decision 1757, where the Trial Chamber stated:

"By 31 March 2017, the Defence must provide a further provisional list of witnesses. This should include estimates for the number of hours it intends to examine each witness, as well as a summary of the anticipated testimony of the witness. **Noting that witness statements may not be available in all cases**, the Defence is requested to prepare the summaries in a sufficiently detailed manner to enable the parties, participants and Chamber to prepare meaningfully [...]"

In this case, the witness statement is available and should be disclosed.

Third, this issue has not arisen before during trial. The Defence disclosed witness statements for witnesses D-0210, D-0172, D-0057, D-0201, D-0017, D-0243, D-0251, D-0207 at trial. The

Defence did not disclose witness statements for D-0054, D-0038, D-0211

[REDACTED], and D-0300 (for whom the witness preparation protocol did not apply). Yet, a review of the witness preparation note and log for witnesses D-0054 and D-0038 reveals that the substance of the earlier meetings with the Defence were never addressed during the witness preparation sessions. The witness preparation sessions in those cases were limited to showing additional documents to the witnesses. In the case of D-0211,

[REDACTED] which allowed the Prosecution and Participants to assess the new information against the prior recorded testimony.

Based on the foregoing, the Prosecution requests disclosure of D-0305's statement from May 2019.

Kind regards,
Nicole Samson