

Annex 27

Public

[REDACTED]

From: Trial Chamber X Communications
Sent: 05 February 2021 11:42
To: D28 Al Hassan Defence Team; Al Hassan Prosecution Team; VWS Legal
Cc: Associate Legal Officer-Court Officer; Trial Chamber X Communications; Chamber Decisions Communication
Subject: RE: Witness preparation log for Witness MLI-OTP-P-0554

Dear counsel and colleagues

The Single Judge takes note of the Defence's request below and the Prosecution's response.

In the Single Judge's view, the Prosecution's interpretation of the statement in question seems correct: the witness asked this question in the context of being explained how the in court questioning would proceed, [REDACTED], and being explained the role of the Defence in the courtroom (see log paras 4-19 and in particular 16-18).

However, for the avoidance of doubt, the Single Judge requests VWU to clarify with the witness as soon as possible today whether she meant that she in fact wished to speak to Defence lawyers before her testimony starts on Monday, and report back by email.

Kind regards,
 [REDACTED] on behalf of the Single Judge of Trial Chamber X

From: Garcia, Lucio
Sent: 05 February 2021 09:24
To: Taylor, Melinda ; Trial Chamber X Communications
Cc: D28 Al Hassan Defence Team ; Al Hassan Prosecution Team ; Associate Legal Officer-Court Officer ; VWS Legal
Subject: RE: Witness preparation log for Witness MLI-OTP-P-0554

Dear Trial Chamber X, Dear colleagues,

This urgent request is unfounded.

The Witness did not make an explicit request to speak to Defence Counsel.

As can be seen from the Witness Preparation Log, the Witness asked the said question (para. 19) during the opening part of the preparation session while the Prosecution was explaining how the questioning would proceed in Court (See paras. 16, 17 and 18).

Given the context, the Prosecution understood the question as relating to how things would proceed in Court and re-iterated to the Witness that the Defence would be asking her questions and she would be responding to these.

[REDACTED]

Finally, Defence Counsel has never made any request to interview this Witness in accordance with the Witness Contact Protocol.

Best regards,

Lucio Garcia

From: Taylor, Melinda <[mtaylor](#)>
Sent: 05 February 2021 07:49
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)>
Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)>; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)>; VWS Legal <[VWS Legal](#)>
Subject: Fw: Witness preparation log for Witness MLI-OTP-P-0554

Dear Trial Chamber X, Dear Colleagues,

Further to the provisions of the witness contact protocol (ICC-01/12-01/18-674-Anx2), and light of the imminent timing of her testimony, the Defence for Mr. Al Hassan seeks the urgent intervention of the Trial Chamber, to instruct the VWS to ascertain whether P-0554 wishes to speak to the Defence in advance of her testimony.

The relevant facts are as follows.

Yesterday at 9.08pm, the Prosecution disclosed the preparation logs concerning sessions conducted with P-0554. According to the log concerning, “[l]a témoin demande si elle peut parler aux avocats de la Défense.” Rather than explaining the possibility of doing so in accordance with the witness contact protocol, the Prosecution gave: “[e]xplications qu’elle parlera aux avocats de la Défense en répondant à leurs questions”

There is a distinct difference between cross-examining a witness in court and speaking to a witness in advance of their testimony. If a witness expresses their consent to the latter, then it should be facilitated irrespective of the fact that they will eventually meet and be questioned by the Defence in court. The fact that witness preparation has concluded also cannot be a bar to such a possibility. The Decision on Witness Preparation envisages that new issues and information can raise through preparation sessions: if this is the case, then a mechanism must exist to allow the Defence to exercise the same rights as would be the case if the Prosecution obtained the information at an earlier juncture. Similarly, since there is no property in a witness, if, during such sessions, a witness expresses their wish to speak to the Defence, then this request should be duly conveyed to the Defence. This is consistent with the ruling of Trial Chamber VII, which underscored the Prosecution’s positive obligation to convey such information from witnesses in a timely manner, even if the witness in question had declined or failed to express such a wish previously ([ICC-01/05-01/13-T-35-Red-ENG](#), pp. 5-6).

It is therefore concerning that P-0554 was not provided full and accurate information as concerns her potential ability to speak to the Defence (outside the context of cross-examination), and the Defence, in turn, was not alerted as to her inquiry, until late last night.

It is entirely possible that P-0554’s question was hypothetical but it is also possible that she wishes to speak to the Defence. This is a matter that can easily be clarified by the VWS, who can advise P-0554 that first, witnesses can request to speak to the Defence before their testimony on substantive

issues, second, they can request to have the calling party present during such interviews, and third, such interviews are recorded and disclosed to the calling party. It would also be appropriate for the Prosecution to convey this information to witnesses, in case it is faced with a similar situation in the future.

For these reasons, the Defence requests the Trial Chamber to:

- Request VWS to ascertain whether P-0554 in fact wishes to speak to the Defence, in a manner that is consistent with the requirement of the witness contact protocol;
- Direct the Prosecution to ensure that in case similar situations arise in the future, the witnesses will be advised of their rights and entitlements under the witness contact protocol.

Kind regards,

Melinda Taylor, on behalf of the Al Hassan Defence

From: [REDACTED]
Sent: 04 February 2021 21:08
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED]; Doumbia, Seydou [REDACTED]; Kassongo, Mayombo <[REDACTED]> [REDACTED]; Nsita Luvengika, Fidel <[REDACTED]> [REDACTED]; Taylor, Melinda [REDACTED]
Cc: [REDACTED]
 [REDACTED]
 [REDACTED] D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]; V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED]
Subject: Witness preparation log for Witness MLI-OTP-P-0554

Dear Trial Chamber X and Colleagues,

Please find the witness preparation log for Witness MLI-OTP-P-0554

Best regards,

Lucio Garcia

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