

Annex 44

Public

From: Trial Chamber X Communications
Sent: 02 March 2021 14:26
To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team (D28AlHassanDefenceTeam [REDACTED]); V43 Victims Al Hassan Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber X Communications
Subject: Decision on the submission of the list of material by the non-calling party

Dear counsel,

The Chamber takes note of the email of the Prosecution below and the response of the Defence.

The Chamber recalls paragraph 61 of the directions on the conduct of proceedings (ICC-01/12-01/18-789-AnxA) and reminds the Defence to submit its list of material at least 24 hours before the scheduled commencement of its cross-examination. The Chamber however acknowledges that this may result in the calling party having less than 24 hours to review the items on the list, notably when the examination-in-chief of a witness was shorter than expected.

This is without prejudice to the non-calling party or participant submitting an updated list of material prior to the commencement of its questioning of the witness, should it become necessary to use additional items as a result of information elicited during the examination in chief.

Kind regards,

On behalf of Trial Chamber X

From: Taylor, Melinda [REDACTED] >
Sent: 02 March 2021 09:29
To: Dutertre, Gilles [REDACTED]; [REDACTED]; Trial Chamber X Communications <TrialChamberXCommunications [REDACTED]>; Al Hassan Prosecution Team <AlHassanProsecutionTeam [REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam [REDACTED]>
Cc: Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer [REDACTED]>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam [REDACTED]>
Subject: RE: Defence List of Material for Witness MLI-OTP-P-0160

Dear Trial Chamber X, Dear Colleagues,

The Trial Chamber has previously accepted the reactive nature of cross-examination, which in turn means that the Defence will necessarily base its cross-examination on the information elicited during examination in chief (which is not scheduled to conclude until today mid-morning).

The Defence further notes that the hearing finished yesterday at 4pm and it was necessary to speak to the client after the hearing, it was not possible for the Defence to send the list before this time period as it was necessary for Counsel – as the person conducting cross-examination – to approve the list. The batch print in fact means that the Prosecution has been able avail itself of a virtual binder earlier than was the case with physical binders.

The list itself is also composed of, inter alia, several items that emanate from the Prosecution (8 items), French translations of Prosecution items (to facilitate the ability of the witness to read the document (i.e. item 7), French translations of Defence items (items 4 and 20) or slightly later versions of Prosecution reports (including information that is solely relevant to chain of custody). Other items have been referred to in Prosecution evidence (i.e the law set out in item 11). The number of new items is thus quite small, and consistent with practices concerning past witnesses.

Kind regards

Melinda Taylor on behalf of the Al Hassan Defence

From: Dutertre, Gilles | [REDACTED]
 Sent: 02 March 2021 09:11
 To: [REDACTED] Trial Chamber X Communications; Al Hassan Prosecution Team; V43 Victims Al Hassan Team
 Cc: Associate Legal Officer-Court Officer; D28 Al Hassan Defence Team
 Subject: RE: Defence List of Material for Witness MLI-OTP-P-0160

Chère Chambre de Première Instance X,

Les *Directions on the conduct of the proceedings* (ICC-01/12-01/18-789-AnxA) disposent en leur paragraphe 61 que *“the non-calling party or participant will provide, by way of email to the Chamber and the other party and participants, at least one day before they commence their questioning of the witness, a list of any material they intend to use during questioning”*.

L'Accusation comprend l'expression *“at least one day before”* comme signifiant au moins 24 heures avant le commencement du *questionning*.

En l'espèce, l'Accusation note que la Défense a communiqué sa liste pour P-0160 hier à 16h41. Cela n'est pas sans précédent.

Qui plus est, sur les 25 éléments sur la liste de la Défense, 16 ont été divulgués à seulement 15h48.

Et le *defence court binder*, qui permet une impression rapide des documents par *batch print*, a été communiqué à 18h22.

L'Accusation souhaite que la Défense respecte les dispositions du paragraphe 61 susvisé, pour le bénéfice de la Chambre et de toutes les parties impliquées.

Respectueusement,

Gilles Dutertre

Dévouement - Intégrité - Respect
 Dedication - Integrity - Respect

From: [REDACTED]
 Sent: 01 March 2021 16:41
 To: Trial Chamber X Communications; Al Hassan Prosecution Team; V43 Victims Al Hassan Team
 Cc: Associate Legal Officer-Court Officer; D28 Al Hassan Defence Team
 Subject: Defence List of Material for Witness MLI-OTP-P-0160

Dear Honourable Trial Chamber X,
 Dear Counsel,

Pursuant to paragraph 61 of ICC-01/12-01/18-789-AnxA, the Defence provides its List of Material for Witness MLI-OTP-P-0160.

With kind regards,
Al Hassan Defence Team

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