

Annex 57

Public

From: Trial Chamber X Communications
Sent: 12 March 2021 17:38
To: [REDACTED] Trial Chamber X Communications; Al Hassan Prosecution Team
Cc: D28 Al Hassan Defence Team; Chamber Decisions Communication
Subject: Decision - Exclusion P-0636 testimony [REDACTED]

Dear counsel,

Dear colleagues,

The Chamber notes the Defence e-mail below, seeking to limit the scope of P-0636's testimony to exclude any information related to [REDACTED] (the 'Defence Request'). The Chamber notes the Prosecution's response, opposing the Defence Request. [REDACTED]

As noted by the Prosecution in its response, P-0636's witness statement as regards [REDACTED] is limited and redactions solely expunge the identity of [REDACTED] but no other details of P-0636's testimony regarding [REDACTED] (the 'Defence Request'). The Chamber also notes that the Prosecution expects to examine P-0636 on the basis of the redacted statement, and will thus not go beyond the details included therein.

In light of the above, and having duly considered the impact that [REDACTED] may have on the Defence's preparation for the cross-examination of P-0636, particularly in view of the limited scope of P-0636's expected evidence in relation to [REDACTED], the Chamber rejects the Defence Request. Nonetheless, as noted by the Prosecution, should it become necessary once [REDACTED]'s identity is disclosed to the Defence, P-0636 may be recalled for additional cross-examination.

Kind regards,

[REDACTED]
(on behalf of Trial Chamber X)

From: [REDACTED]
Sent: 12 March 2021 09:24
To: [REDACTED]; Trial Chamber X Communications
<TrialChamberXCommunications@icc-01/12-01/18-1558-Anx57-Red>; Al Hassan Prosecution Team <AlHassanProsecutionTeam@icc-01/12-01/18-1558-Anx57-Red>
Cc: D28 Al Hassan Defence Team <D28AlHassanDefenceTeam@icc-01/12-01/18-1558-Anx57-Red>
Subject: RE: Exclusion P-0636 testimony [REDACTED]

Dear Trial Chamber,

The Prosecution opposes the Defence request for exclusion from P-0636's testimony of any information relating to [REDACTED]

[REDACTED] the Prosecution will disclose her name and other identifying information sufficiently in advance of her testimony.

With respect to P-0636, the Defence is in a position to cross-examine P-0636 on her knowledge of [REDACTED] on the basis of P-0636's redacted statement ([REDACTED]). Paragraphs 15 and 67 to 70 of P-0636's statement contain all the details relating to [REDACTED] that the Defence can expect the Prosecution to elicit from P-0636, save of course for [REDACTED]'s identity.

The Prosecution further recalls that the Defence preferred that [REDACTED]

Finally, the Defence is not precluded from seeking to recall P-0636 for additional cross-examination limited to matters relating to [REDACTED] after [REDACTED]'s identity has been disclosed.

The Prosecution therefore submits that the Defence request to exclude information relating to [REDACTED] from P-0636's upcoming testimony is without merit.

Best regards,

Lucio Garcia

Trial Lawyer

From: [REDACTED]
Sent: 11 March 2021 13:33
To: Trial Chamber X Communications <[TrialChamberXCommunications](#) [REDACTED]>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#) [REDACTED]>
Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#) [REDACTED]>
Subject: Exclusion P-0636 testimony [REDACTED]

Your Honours,

Dear Colleagues,

The Defence notes that according to the metadata of P-0636's witness statement [REDACTED], P-0636 refers in her statement to the facts surrounding [REDACTED] in 2012-2013. [REDACTED]

[REDACTED] Considering that redacted information contained within P-0636's statement is relevant to the Defence preparation for her P-0636 upcoming testimony, the Defence considers that it would be highly prejudicial for P-0636 to offer testimony regarding any facts [REDACTED]. The Defence notes, in particular, paragraphs 22 and 27 of ICC-01/12-01/18-741-Conf-Red, in which the Chamber held:

The Chamber notes that delayed disclosure of witness identities is established in the jurisprudence of the Court, which has consistently held that, in order to justify restrictions on disclosure, the Prosecution must show: (i) the existence of an 'objectively justifiable' risk to the safety of the person concerned (would disclosure of the particular information *to the Defence* endanger the person's security?); (ii) the necessity of the measure (would the delayed disclosure of the information eliminate or reduce that risk? Is the measure the least restrictive possible?); and that (iii) the measure is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

The Chamber shall also duly consider the impact that any delayed disclosure may have on the Defence's preparation for trial, particularly in view of the right of the accused to have adequate time and facilities for the preparation of his defence. In its assessment, the Chamber shall notably take into account the cumulative impact of the measure where delayed disclosure is requested for a number of witnesses, and consider the availability any appropriateness of any mitigating measures to diminish any prejudicial impact on the Defence.

It would be contrary to Article 68(1) and Rule 81(4) for the Prosecution to introduce material or information into evidence during the trial without adequate prior disclosure to the Defence. The prejudice arising from the delayed disclosure [REDACTED] must be assessed holistically including in relation to other witnesses, not merely isolated to [REDACTED]'s testimony.

Furthermore it is the Prosecution's obligation to organise the scheduling of its witnesses in a way that allows the parties to obtain the entirety of the evidence sufficiently in advance of the testimony of the witness. The Prosecution cannot remedy this situation under the current schedule.

The necessary mitigating measure to diminish the prejudicial impact on the Defence is, in this instance, exclusion. Therefore, the scope of Witness P-0636's testimony should be limited accordingly (in this regard, the Defence notes the Chamber's findings in ICC-01/12-01/18-1320-Conf).

The Defence therefore respectfully submits that the scope of P-0636's testimony must be limited to exclude any information related to [REDACTED].

Kind regards,

Al Hassan Defence

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