

# Annex 67

Public

**From:** Trial Chamber X Communications  
**Sent:** 24 March 2021 12:20  
**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 Defence request concerning P-0641's preparation log

Dear counsel,

The Chamber has had regard to the below request and response.

On the timeliness of the provision of the preparation log for P-0641, the Chamber recalls that pursuant to the witness preparation protocol, the calling party shall 'promptly' provide the non-calling party with a copy of the log (*see* ICC-01/12-01/18-666-Anx, para. 15).

While the Chamber has not been privy to the details of the 'technical problems' faced by the Prosecution, the Chamber notes that the Prosecution has provided the preparation log nine days after the conclusion of the preparation session [REDACTED] (*see also* ICC-01/12-01/18-1142-Red, para. 4).

In light of this, the Chamber considers that the Prosecution failed to provide the preparation log promptly. However, the Chamber does not find that the late provision caused undue prejudice and notably observes that, as pointed out by the Prosecution, P-0641 did not provide new information [REDACTED] during its preparation session. Accordingly, considering that [REDACTED] there are no hearings scheduled until 29 March 2021, the Chamber considers that no further remedies are warranted as a result of the late provision of P-0641's preparation log.

As regards the redactions applied by the Prosecution, the Chamber notes that the Prosecution has clearly indicated in its email transmitting the preparation log that redactions are applied to 'the name of the interpreter, the investigator based in the field, and confidential security-related concerns raised by the witness'.

The Chamber remains unconvinced by the Defence's assertion that any information contained in the preparation log should be disclosable to the Defence, which has no basis in the witness preparation protocol.

In fact, the Chamber recalls that information relating to a witness's security has previously been redacted from preparation logs of witnesses testifying in the present case ([REDACTED]).

As regards the redactions applied to the preparation log of P-0641, the Chamber is satisfied that these are in fact applied to information relating to P-0641's security.

Considering that security related information are not 'allegations pertaining to the testimony' of a witness, and that such information is in fact withheld from the non-calling party where necessary in the context of in-court protective measures (*see for example* ICC-01/12-01/18-1019-Red2, para. 8), the Chamber also does not consider that receiving such information on an *ex parte* basis would be 'inimical to the principle of open justice'.

Accordingly, the Defence request is rejected.

Kind regards,

On behalf of Trial Chamber X

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**From:** Dutertre, Gilles <Gilles.Dutertre [REDACTED]>  
**Sent:** 23 March 2021 11:03  
**To:** Taylor, Melinda <mtaylor [REDACTED]>; Trial Chamber X Communications <TrialChamberXCommunications [REDACTED]> Al Hassan Prosecution Team <AlHassanProsecutionTeam [REDACTED]>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam [REDACTED]> V43 Victims Al Hassan Team <V43LRVTeam [REDACTED]>  
**Subject:** RE: Witness MLI-OTP-P-0641 Witness Preparation Note and Log

Dear Trial Chamber X,

The Prosecution confirms that it disclosed the witness preparation log as soon possible after conclusion of the witness preparation [REDACTED]. The Prosecution needed to check certain audio recordings against the draft notes of the log on certain points, and had to wait until technical problems with the records were fixed before they could be finalised. Ensuring the accuracy of the record was a time-consuming exercise.

As regards potential prejudice, the Prosecution observes that P-0641, during the preparation sessions, did not change or comment upon any of the information contained in his witness statement [REDACTED] so that no prejudice should be occasioned by the disclosure of the witness preparation note [REDACTED]. The Defence has had disclosure of P-0641's witness statement since [REDACTED]. [REDACTED].

As regards the redactions, the Prosecution has redacted confidential security-related information, which needed to be provided on an *ex parte* basis for the Chamber's information, as indicated in its initial email.

Kind regards,

Gilles Dutertre

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**From:** Taylor, Melinda <[mtaylor](#)[REDACTED]>  
**Sent:** 23 March 2021 09:58  
**To:** [REDACTED]; Trial Chamber X Communications  
 <[TrialChamberXCommunications](#)[REDACTED]>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)[REDACTED]>;  
 D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)[REDACTED]> V43 Victims Al Hassan Team  
 <[V43LRVTeam](#)[REDACTED]>  
**Subject:** RE: Witness MLI-OTP-P-0641 Witness Preparation Note and Log  
**Importance:** High

Dear Trial Chamber X,

The Defence would like to express its concern regarding:

- First, the lack of timeliness concerning the disclosure of this preparation log; and
- Second, the Prosecution's extensive reliance on redactions, without any justification for doing so, and transmission of *ex parte* information to the Chamber.

As concerns the first point, the preparation sessions occurred [REDACTED]. [REDACTED] The Defence should have received the preparation log by no later than [REDACTED]. Regrettably, notwithstanding repeated requests from the Defence, and initial promise to disclose as soon as possible last week, the Defence did not receive the log until last night. Of further concern, the Prosecution response to these requests [REDACTED] suggests that adjournments in witness testimony can have an impact on the timing of disclosure.

These delays embody the concrete prejudice caused by changes in the witness schedule. [REDACTED] having started its preparation for this witness, it would be in the interests of efficiency for the Defence to complete this preparation. The Defence cannot do so until it receives all relevant disclosure. [REDACTED], given the intersection between his evidence and other witnesses in the case [REDACTED] the Defence was entitled to receive this evidence as soon as practicable.

As concerns the second point, the use of redactions and *ex parte* submissions should be the exception and not the rule. It is also necessary for the Prosecution to justify its reliance on such measures. The Prosecution has nonetheless implemented significant redactions to the preparation log, without any explanation or justification as to why the material cannot be disclosed to the Defence. The log is not a transcript: it is supposed to set out all disclosable information arising from the preparation session. If the Prosecution has included this information in the

log, this suggests that it is disclosable, in which case the Prosecution should first have sought permission in order to withhold it from the Defence. If the information is not disclosable then it was not necessary to include it in the log and it should not have been transmitted to the Trial Chamber. It is, in this regard, inimical to the principle of open justice to provide the Chamber, as the ultimate finder of fact, with allegations pertaining to the testimony of [REDACTED] witness, of which the Defence has no cognisance. This information has not been submitted as part of a filing or request for reliance. The transmission of this information was therefore both prejudicial and unnecessary.

The Defence therefore requests the Trial Chamber to either order the Prosecution to lift the redactions, or to strike the unredacted version from the record.

Kind regards,

Melinda Taylor on behalf of the Al Hassan Defence

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From: Luping, Dianne [REDACTED]  
 Sent: 22 March 2021 17:49  
 To: Trial Chamber X Communications; Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team  
 Subject: Witness MLI-OTP-P-0641 Witness Preparation Note and Log

Dear Trial Chamber X, Dear Colleagues

The Prosecution attaches the redacted version of the witness preparation note and log of witness MLI-OTP-P-0641.

The Prosecution has applied redactions to the name of the interpreter, the investigator based in the field, and confidential security-related concerns raised by the witness. The Prosecution will provide to the Chamber, separately, a version unredacting those confidential security concerns.

Kind regards,

Dianne Luping  
 Trial Lawyer

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