

Annex 68

Public

From: Trial Chamber X Communications
Sent: 26 March 2021 09:26
To: Al Hassan Prosecution Team; 'D28AlHassanDefenceTeam'; 'V43LRVTeam'
Cc: Trial Chamber X Communications; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: Decision on the use of private sessions and redactions to the public broadcast and transcript
Attachments: P-0636 Highlighted Summary.pdf; T-071.pdf

Dear counsel,
 Dear colleagues,

The Chamber hereby provides further directions on the use of private sessions and redactions to the public broadcast and transcripts of trial proceedings.

The Chamber reiterates the parties and participants obligation to fully comply with the Chamber's recent directions on the use of private and/or closed sessions (Decision 1265).

The Chamber also recalls that in its Directions on the conduct of proceedings (Decision 789-AnxA, paras 86-87), it originally adopted a system in which redactions are applied pursuant to a Chamber order. However, in light of the COVID-19 pandemic, and in order to avoid handling of paper copies, the Chamber modified the original approach, directing the Registry to implement (without a need for judicial approval) redaction requests that were not objected (Decision 1040, paras 10-11).

Nonetheless, the Chamber considers that in practice, the parties and participants continue to conduct a significant part of their questioning in private session. Moreover, the Chamber observes that the parties systematically and sometimes unnecessarily request redactions to the public broadcast and transcripts. This has led in the past weeks to situations in which the Registry can no longer implement redactions due to their frequency within a 30-minute timeframe (*see for example*, T-71-Conf-Eng-ET, p. 55, lines 19-21).

In light of the above, the Chamber provides the further directions below:

1. Provision of highlighted summary: The calling party shall submit (together with its list of material to be used with a witness) a highlighted summary of the witness's expected evidence, indicating the areas of the testimony it proposes should be elicited in private session (these are the areas of the testimony it considers should remain confidential). The Chamber will indicate prior to the start of the testimony if any of the highlighted areas should be elicited in open sessions. The Chamber hereby provides attached a highlighted summary for the previous witness, P-0636, so that the parties have an example for future witnesses. The provision of the highlighted summaries is without prejudice to the parties requesting private sessions for discrete/indispensable aspects of a non-highlighted area. However, the parties 'should be prepared to provide a clear and well-founded explanation, beyond a mere indication that the answer may be identifying' (Decision 1265, para. 15).
2. Request for redactions to the public broadcast and transcript: As foreseen in its initial Directions on the conduct of proceedings (Decision 789-AnxA, paras 86-87), all requests for redactions will be authorised by the Chamber during the course of a hearing. In order to allow for a timely decision (within the 30-minute timeframe), any such request shall be made within 10 minutes after the information at issue was revealed. It must be formulated via email, clearly identifying the word(s) to be redacted and the corresponding timestamps of the real time transcript, copying all parties and participants, the Court Officer and TCX Communications. The Chamber will decide thereafter.

3. Lesser redacted versions of transcripts: The Chamber reiterates its instructions in the Directions on the conduct of proceedings (Decision 789-AnxA, paras 88-89), and reminds the parties that they must review the transcripts and proposed lesser redacted versions within 21 days following the conclusion of a testimony. In order to facilitate the parties' understanding of what the Chamber considers as identifying information that warrants confidentiality, the Chamber attaches to this e-mail decision the highlighted transcript of the examination-in-chief of the previous witness (P-0636). Additionally, in relation to this testimony, and pursuant to Regulation 23bis of the Regulations of the Court, the Chamber instructs the Registry to reclassify the attached transcript (T-071), with the exception of the highlighted parts, as public.
4. Use of private sessions and redactions must be strictly tied to the objective risk or threat justifying the use of in-court protective measures: In general, risks vis-à-vis the community in Timbuktu do not justify the use of redactions or private sessions (the exception being the risk for some vulnerable crime base witnesses, for example, of ostracism). Private sessions cannot be generally used to avoid recounting of difficult evidence in a public setting. Accordingly, only very specific personal information should remain confidential (name, current location, date of birth, or family relationships) but not general information about the crimes (*i.e.* witness was allegedly flogged or witness was allegedly raped). Unless the circumstances of the description involve very specific interactions with identified members of the armed groups it is not testimony which should be adduced in private session. Likewise, general information about the witness (*i.e.* ethnicity, languages spoken, movements to and from Timbuktu, occupation) is not to be systematically redacted, as this could reasonably apply to many other individuals.

Kind regards,



(on behalf of Trial Chamber X)