

ANNEX 14

Public redacted

From: Trial Chamber X Communications
Sent: 19 February 2020 17:55
To: Dutertre, Gilles
Cc: [REDACTED] Taylor, Melinda; [REDACTED]; Doumbia, Seydou; Kassongo, Mayombo; Nsita Luvengika, Fidel; [REDACTED]
Subject: Trial Chamber X Communications
 TC X - Single Judge decision on the procedure to be followed pursuant to Regulation 42 of the Regulations
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel,

As indicated during the status conference held yesterday, the Single Judge finds it appropriate to proceed as suggested for the variations of protective measures in the form of non-disclosure orders issued in the context of the *Al Mahdi* proceeding.

Accordingly, the Single Judge hereby authorises the Prosecutor to vary protective measure in the form of the rescinding of the non-disclosure orders issued in the context of the *Al Mahdi* proceeding, including the lifting of redactions applied to witnesses' identifying information. In light of the related obligations of the Chamber, and mindful of Regulation 42(4) of the Regulations of the Court, the present decision is limited: (i) to non-disclosure orders issued for the protection of witnesses or that of their relatives pursuant to Rule 81(4) of the Rules and/or Rule 81(2) of the Rules; and (ii) where the relevant witnesses have clearly provided their consent for disclosure to be effected.

Beyond this case scenario, and/or in case of doubt, the Prosecution is to file by 10 March 2020 discrete applications seeking the Chamber's authorisation to vary protective measures in place, should it be required to comply with its disclosure obligations.

Finally, the Prosecution should clearly indicate in its Disclosure Note where a disclosure or re-disclosure is effected as a result of the present decision pursuant to Regulation 42.

Kind regards,

On behalf of the Single Judge of Trial Chamber X

From: Dutertre, Gilles
 Sent: 18 février 2020 16:30
 To: Trial Chamber X Communications
 Cc: [REDACTED] Taylor, Melinda; [REDACTED]; Doumbia, Seydou; Kassongo, Mayombo; Nsita Luvengika, Fidel; [REDACTED]
 Subject: Regulation 42 guidance.

Chère Chambre de première instance X,

) As mentioned during the status conference, the Prosecution applies for guidance from the Chamber regarding its proposed approach to regulation 42 applications.

- J When the Prosecution filed requests for variation of protective measures pursuant to regulation 42 before the Single Judge of Trial VIII in the *Al Mahdi* case, the latter declared that Trial Chamber VIII was unable to rule on the requests, and found that the requests must instead be brought before Trial Chamber X in the *Al Hassan* case.
- J Since then, the Single Judge of Trial Chamber X has decided on the said requests.
- J The Prosecution submits that, as a result of these developments, those witnesses for whom the non-disclosure of their identity had been ordered earlier by the Pre-Trial or Trial Chamber in the *Al Mahdi* proceedings, find themselves in an analogous procedural posture to those witnesses for whom non-disclosure of their identity had been ordered earlier by the Pre-Trial Chamber in the *Al Hassan* proceedings, with one caveat and one exception. For both groups of witnesses, Trial Chamber X is the competent Chamber to decide on whether measures of non-disclosure of their identity should be amended.
- J As a result, the Prosecution proposes to deal with the regulation 42 witnesses from the *Al Mahdi* case as with the witnesses whose non-disclosure was ordered by Pre-Trial Chamber I in this case. Where they are no longer justified, the Prosecution will lift non-standard redactions and disclose to the Defence witnesses' identity without the need to seek further leave from the Chamber, and make any individual application for the retention of non-standard redactions, if required.
- J This is a practical approach requiring less time and fewer filing of applications (and responses) and rendering of decisions. The Prosecution invites the Chamber to approve this approach, and this approval would be tantamount to a "revision by a chamber" under regulation 42(1).
 - o The caveat is that regulation 42(4) contains an additional safeguard which is not envisaged for those witnesses for whom non-disclosure of their identity was ordered by the *Al Hassan* Pre-Trial Chamber. Regulation 42(4) provides that, before making a determination as to whether to vary protective measures, the Chamber "shall seek to obtain, whenever possible, the consent of the person in respect of whom the application" is made. Obtaining prior consent is not mandatory, but it has been found "that the relevant chamber should 'at a minimum, attempt to seek the witnesses' consent to the requested variation'". Thus, in order to respect the spirit of the regulation 42(4) provision, the Prosecution proposes filing individual applications before the Chamber where witnesses cannot be located to seek their consent or where they decline such consent, or where other circumstances requires such applications, so that the

Chamber may consider such circumstances. The Prosecution invites the Chamber to approve its proposed approach.

- o The exception is witness P-0151, for whom the measures ordered in the *Al Mahdi* proceedings did not relate to non-disclosure of his identity but were put in place as conditions in relation to his testimony required by UNESCO.

Respectueusement

Gilles Dutertre



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