

ANNEX 22

Public redacted

From: Trial Chamber X Communications
Sent: 25 September 2020 18:00
To: Dutertre, Gilles; [REDACTED] Trial Chamber X Communications; Taylor, Melinda; Nsita Luvengika, Fidel; Kassongo, Mayombo; Doumbia, Seydou
Cc: [REDACTED]
Subject: RE: Testimony of Witness MLI-OTP-P-0064
Follow Up Flag: Follow up
Flag Status: Flagged

Dear colleagues,
 Dear counsel,

The Chamber renders this present ruling on the Prosecution's request to authorise that Witness P-0064 make a short visual presentation using his laptop during his testimony, schedule on 29 September 2020.

The Chamber considers that such a presentation, insofar as it is based on information already disclosed to the defence and therefore in the Prosecution's list of evidence, is appropriate and may assist the Chamber, as well as the parties and participants, in understanding the technical aspects of the witness's reports and testimony.

However, following the presentation and the examination in chief, and if strictly necessary, the Defence may make a concrete oral request for remedy, including to postpone the start of its cross examination. Moreover, the Chamber reminds the Prosecution that its allotted time to conduct the examination-in-chief of P-0064 (one hour) remains unaffected.

Kind regards,

[REDACTED]
 (on behalf of the Single Judge of TCX)

-----Original Message-----

From: Dutertre, Gilles
Sent: 25 September 2020 16:36
To: [REDACTED] Trial Chamber X Communications; Taylor, Melinda; Nsita Luvengika, Fidel; Kassongo, Mayombo; Doumbia, Seydou
 [REDACTED]

Subject: RE: Testimony of Witness MLI-OTP-P-0064

Dear Trial Chamber X,

The Prosecution understands that in his short visual presentation, Witness P-0064 would illustrate how he used the software to carry out the image analysis of Figure 6 of his first Report (MLI-OTP-0017-0029 at 0040 (Cheick Sidi El Mokhtar ben Sidi Mouhammad Ben Cheickh Al Kabir)), as indicated in the witness preparation log. The presentation would be based on the images that have been disclosed and is meant to aid the explanation being provided by the witness as to his methodology.

The Prosecution notes that Witness P-0064 was allowed to make an analogous presentation in the Ntaganda case.

The Prosecution does not object to the Defence being present when Witness P-0064 tests his laptop in the courtroom prior to his testimony and to be shown his presentation at that time and requests to be present as well.

Respectueusement,

Gilles Dutertre

-----Original Message-----

From: [REDACTED]

Sent: 25 September 2020 14:00

To: Dutertre, Gilles; Trial Chamber X Communications; Taylor, Melinda; Nsita Luvengika, Fidel; Kassongo, Mayombo; Doumbia, Seydou

Subject: RE: Testimony of Witness MLI-OTP-P-0064

Dear Trial Chamber X,

I am conveying the following response on behalf of Counsel for Mr Al Hassan.

At the outset, the Defence notes that a demonstration of the software is not described in the anticipated summary of testimony (ICC-01/12-01/18-740-Conf-AnxB, p. 238).

The Prosecution request refers to "analysis" which goes beyond the mere use of software and ordinarily would include matters/questions of methodology and approach. If such is the case, the request could be better characterised as a request to add to the disclosed reports and therefore P-64's testimony should either be delayed until such information is made available to the Defence or alternatively P-64 should not be permitted to make the presentation.

Although it is not clear from the Prosecution's request, if P-64 only intends to demonstrate the software (ArcMap 10.1 and 10.2) described in his reports at MLI-OTP-0021-0006 at 0011 and MLI-OTP-0017-0029 at 0033, then before doing so the Defence should be provided with at the minimum: a summary or presentation notes and preferably be permitted to sit through a comparable demonstration in advance of the in-court presentation.

This is because the Defence does not have access to the software described in P-64's reports and since receiving the request a short time ago has not been able to identify the cost of obtaining it (<https://www.esriuk.com/en-gb/arcgis/products/arcgis-pro/overview>).

The question of cost overlooks the fact that no member of the Al Hassan Defence has used this software before and thus the introduction of material into the record under such circumstances will put the Defence at a disadvantage. For example, if P-64 is to provide new information in court, without some advance notice of the contents, the Defence will not be position to make objections with adequate preparation and may not have adequate time to re-formulate its cross-examination in light new information that could impact upon it.

In sum, the consequence of unknown material being presented for the first time on 29 September may lead to a request for a delay in the presentation of the cross-examination to consider new information provided during the presentation and unless the above concerns can be resolved, the Defence requests the Trial Chamber to reject the request.

Kind regards,

[REDACTED] on behalf of Counsel for Mr Al Hassan

-----Original Message-----

From: Dutertre, Gilles [REDACTED]

Sent: 25 September 2020 12:58

To: Trial Chamber X Communications; Taylor, Melinda; Nsita Luvengika, Fidel; Kassongo, Mayombo; Doumbia, Seydou

Subject: Testimony of Witness MLI-OTP-P-0064

Dear Trial Chamber X,

Witness P-0064, whose testimony is scheduled for 29 and 30 September 2020, would make a short visual presentation in the Courtroom to demonstrate the process of the satellite image analysis that he undertook. This presentation would be based on his material which has already been disclosed.

For the presentation, Witness P-0064 would use his own laptop as it has the appropriate software and the necessary material.

To this end, the Prosecution requests that the Trial Chamber authorise that Witness P-0064 be allowed to bring his laptop into the VWS' premises prior to his testimony and to bring it into the Courtroom for the purpose of his testimony.

Best regards,

Gilles Dutertre

-----Original Message-----

From: Dutertre, Gilles

Sent: 23 September 2020 16:09

To: Trial Chamber X Communications; 'Taylor, Melinda [REDACTED]'; 'Nsita Luvengika, Fidel [REDACTED]'; Kassongo, Mayombo; Doumbia, Seydou

Subject: List of material for Witness MLI-OTP-P-0064

Chère Chambre de Première Instance X et Chers Collègues,

Conformément au paragraphe 57 de l'annexe ICC-01/12-01/18-789-AnnA, l'Accusation vous prie de bien vouloir trouver en pièce jointe la "List of Material" concernant le témoin P-0064.

Respectueusement,

Giles Dutertre

Dévouement - Intégrité -
Respect

Dedication - Integrity - Respect

Dévouement - Intégrité -
Respect

Dedication - Integrity - Respect

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