

Annex 14

Public Redacted

From: Trial Chamber X Communications
Sent: 10 July 2020 15:18
To: Dutertre, Gilles
Cc: Mourad, Hesham; [REDACTED] Doumbia, Seydou; Kassongo, Mayombo; [REDACTED] Nsita Luvengika, [REDACTED]
Subject: Taylor, Melinda; Trial Chamber X Communications
 RE: Decision on Defence request for variation of time limit for filing objections to materials to be used in the course of the opening statements
Importance: High
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel,

With reference to the Defence objections to materials to be used in the course of the opening statements, the Chamber hereby directs the Prosecution to please submit any response via email by the end of the day today, 10 July 2020.

Kind regards,

[REDACTED]

On behalf of Trial Chamber X

From: Taylor, Melinda
 Sent: 10 July 2020 11:55
 To: Trial Chamber X Communications; Dutertre, Gilles
 Cc: [REDACTED] Doumbia, Seydou; Kassongo, Mayombo; [REDACTED] Nsita Luvengika, Fidel; [REDACTED]
 Subject: RE: Decision on Defence request for variation of time limit for filing objections to materials to be used in the course of the opening statements

Dear Trial Chamber X, Dear Colleagues,

In addition to the authority set out in footnote 1 to our observations, we further note the concern, expressed in the *Lubanga* case, concerning the use of visual aids or information, in the absence of a clear intention to tender and authenticate such materials through a witness at trial.

<https://www.legal-tools.org/doc/032a0f/pdf>

16 Jan 2009, pp. 44 et seq

The next issue is (C), is a request for leave to use an 10 additional visual aid during opening statements. 11 Now, Mr. Sachdeva, this, I think, should be dealt with in 12 conjunction with your filing of yesterday where you've raised a further 13 two or three visual aids for use. Now, we want to know more, please, 14 about what these visual aids are, who made them, and whether the person 15 who made the visual aid is going to be called as a witness during the 16 trial. So shall we take the one first in your consolidated motion. 17 MR. SACHDEVA: The four visual aids that we now seek leave to add 18 or use during the opening are video excerpts. They're not technically 19 visual aids. We are going to tender

them during the trial, accordingly, 20 if the criteria are satisfied, and I think -- I believe that one or two 21 of them are going to be authenticated by a witness who is coming to 22 testify in this trial. 23

PRESIDING JUDGE FULFORD: I'm very worried at the suggestion that 24 some of the visual aids you wish to use during your opening may not be authenticated by witnesses who are coming give evidence, Mr. Sachdeva.

MR. SACHDEVA: I'll ask Ms. Struyven to -- 2

PRESIDING JUDGE FULFORD: Now, Ms. Struyven, it may be 3 that I'm -- because I've taken this without warning, you need more time 4 to prepare this or are you ready to advance submissions on this? 5

MS. STRUYVEN: Your Honour, I can provide you with a short answer 6 on your first question. There's three visual aids -- well, there's three 7 groups of visual aids. The first one is -- the first and the second one 8 are infographics. They were made by a member of the Office of the 9 Prosecutor. They combine evidence that was disclosed, and basically in 10 short, they are maps that indicate on the one hand side the attacks that 11 were -- that occurred in Ituri between 2002 and 2003; on the other hand, 12 they provide for an overview of the places of recruitment and -- and use 13 of the children that we are calling as trial witnesses. These are the 14 first two visual aids. 15

PRESIDING JUDGE FULFORD: No, no, don't go on. I want to have a 16 look at those. First of all, have those visual aids, these maps I'm going to describe them as being, have they been given to the Defence and 18 the participants in the form in which you wish to use them during the 19 opening? 20

MS. STRUYVEN: No, your Honours, but we believe that according to 21 the decisions of the Trial Chamber of the 2nd of December we had seven 22 days prior to the use of those visual aids at trial to disclose them to 23 the parties and the participants, so we intend to disclose them on 24 Monday. 25

PRESIDING JUDGE FULFORD: Fine. Well, we're not going to renege on the order that we've made. Disclose them on Monday. Make sure copies 2 are provided to the Judges via the usual channels, and we will make a 3 decision on Thursday as to whether or not you are to be allowed to rely 4 on them. 5 It is absolutely right that we have authorised the use of visual 6 aids, that is correct. We want to make sure that the visual aids that 7 you are intending to rely on are appropriate. So there's no objection in 8 principle to the use of visual aids, but given that the Defence have 9 raised a question about this, we want to ensure that there is nothing 10 either impermissible, inadmissible or unfair about the aids which are 11 proposed. So for safety's sake, service, please, no later than Monday, 12 provision to us and, if necessary, we will address this on Thursday 13 morning. And if anybody wishes to raise any objections on Thursday, this 14 must -- objections must be set out in writing prior to midday on 15 Wednesday.

Kind regards
Al Hassan Defence

From: Taylor, Melinda
 Sent: 10 July 2020 11:50
 To: Trial Chamber X Communications; Dutertre, Gilles
 Cc: [REDACTED] Doumbia, Seydou; Kassongo, Mayombo; [REDACTED] Nsita
 Luvengika, [REDACTED]
 Subject: RE: Decision on Defence request for variation of time limit for filing objections to materials to be used in the course of the opening statements

Dear Trial Chamber X, Dear Colleagues,

The Defence respectfully attaches its observations concerning the materials, which the Prosecution proposes to use in its opening statements.

Kind regards
 Al Hassan Defence

From: Trial Chamber X Communications [mailto:TrialChamberXCommunications@icc-cpi.int]
 Sent: 09 July 2020 11:01
 To: Dutertre, Gilles; Taylor, Melinda
 Cc: [REDACTED] Doumbia, Seydou; Kassongo, Mayombo; [REDACTED] Nsita
 Luvengika, Fidel; [REDACTED] Trial
 Chamber X Communications; [REDACTED]
 Subject: Decision on Defence request for variation of time limit for filing objections to materials to be used in the course of the opening statements

Dear Counsels,

Having had regard to the Prosecution's list of materials it intends to use in the course of their opening statements, and pursuant to Regulation 35 of the Regulations of the Court, the Chamber partially grants the below request and authorises the **Defence** to file any objections by 10 July 2020 at 12:00.

In accordance with paragraph 16 of ICC-01/12-01/18-789-AnxA, such objections shall be sent via email.

To facilitate the Defence's review of the materials, the Chamber encourages the **Prosecution** to provide necessary assistance, including by providing an updated list, should it become aware that some of the materials indicated in its list will no longer be relied upon during its opening statement.

The Chamber also notes that the **Defence** and the **LRVs** were required, in accordance with paragraphs 15-16 of ICC-01/12-01/18-789-AnxA, to either: (i) inform the Chamber their intention to give their opening statements prior to their presentation of their evidence, rather than during trial commencement, by 30 June 2020; or (ii) should they choose to give their opening statements during trial commencement, submit a list of materials they intend to use during their opening statements by 6 July 2020.

Since no notice under (i) above was provided, the Chamber requests that the **Defence** and the **LRVs** to confirm as soon as possible, and in any event no later than the above deadline on objections, whether they will give their opening statements during trial commencement.

Kind regards,

[REDACTED]
 On behalf of Trial Chamber X

From: Dutertre, Gilles
 Sent: 09 July 2020 09:56
 To: [REDACTED]; Trial Chamber X Communications
 Cc: [REDACTED] Doumbia, Seydou; Kassongo, Mayombo; [REDACTED] Nsita
 Luvengika, Fidel; [REDACTED] Taylor, Melinda; [REDACTED]
 Subject: RE: Request - Objections to the use of materials

Dear Trial Chamber X,

The Prosecution opposes the Defence request.

In accordance with the Conduct of Proceedings decision, the Prosecution “indicate[d] by email any materials [it intends] to use in the course of [its] opening [statement] to the Chamber and the other party and participants by no later than eight days prior to the commencement of trial” (ICC-01/12-01/18-789AnxA, para. 16).

Any metadata associated with these materials are readily available to the Defence in eCourt.

No additional details are required to be provided to the Defence and therefore its request should be denied.

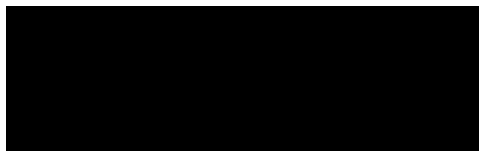
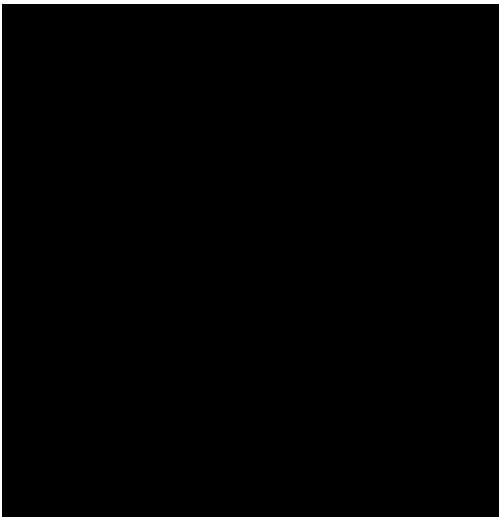
Further, as indicated to the Defence, the Prosecution will soon provide the lists with hyperlinks to eCourt to facilitate access to these items.

Kind regards,

Gilles Dutertre

PS:

The lists are further updated by deleting the following 12 items, as the Prosecution no longer intends to rely on them.



From: [REDACTED]
Sent: 08 July 2020 21:19
To: Trial Chamber X Communications
Cc: Dutertre, Gilles; [REDACTED] Doumbia, Seydou; Kassongo, Mayombo;
[REDACTED] Nsita Luvengika, Fidel; [REDACTED] Taylor, Melinda; [REDACTED]
Subject: Request - Objections to the use of materials

Dear Honourable Trial Chamber X,

On 06 July, the Prosecution communicated by email two tables citing the materials they intend to use in the course of the opening statement: 1) material for the opening of the trial and 2) rapports de la PI et Jugements du TI. One of these two tables (material for the opening of the trial) lists 714 items and it simply provides the ERN numbers for each, without any indication of the details of those materials. Given that the opening statement is only supposed to last 4 hours, it is not clear whether all evidential items will be referred to, and the particular section or component of the item that will be cited to.

On 07 July, the Defence asked the Prosecution via email whether, given the number of documents and the short response deadline, they would provide a more detailed table with hyperlinks, especially as in some other cases the OTP has provided more details, namely the Doc ID, Main Date, Type, Title and Package. On 08 July, the Defence sent a follow up email to which the OTP responded that they would send a hyperlinked version that day. However, the Defence haven't yet received the new version of the abovementioned tables yet.

In accordance with paragraph 16 of Annex A to Trial Chamber X's "Decision on the conduct of proceedings" (ICC-01/12-01/18-789-AnxA), any objections to the use of materials should be provided via email no later than five days prior to the commencement of trial, which means that the Defence must provide any objections to these materials tomorrow, Thursday 09 July.

Given the significant number of materials that the Defence need to examine, the fact that no details regarding these materials have been provided and there has been no indication on which extracts and pages the Prosecution will rely in the course of the opening statements, the Defence hereby respectfully request the Honourable Trial Chamber X to authorise the filing of their objections on Friday, 10 July.

Kind regards,
Defence Al Hassan

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