

Annex 5

**PUBLIC
REDACTED**

From: Trial Chamber X Communications
Sent: 16 November 2020 10:14
To: Chamber Decisions Communication
Cc: Trial Chamber X Communications
Subject: FW: Directions regarding use of witness's statement during examination

For the record.

From: Trial Chamber X Communications
 Sent: 16 November 2020 09:49
 To: D28 Al Hassan Defence Team; Al Hassan Prosecution Team; V43 Victims Al Hassan Team
 Cc: Trial Chamber X Communications
 Subject: Directions regarding use of witness's statement during examination

Dear counsel,

This email relates to the issue that arose during last Wednesday's session regarding the way the statement of P-0065 was used by the Defence during cross examination.

The Chamber recalls that the Prosecution intervened twice towards the end of the session and complained of the Defence 'cherry picking' from parts of the witness's statement during cross-examination. The intervention was made in the presence of the witness and then again after the witness had left the courtroom. The Defence opposed both interventions (see T-045).

Further to the comments of the Presiding Judge on this matter during Wednesday's hearing, the Chamber issues the following additional directions:

1. First, the Chamber recalls paragraph 52 of its Directions on the conduct of proceedings (ICC-01/12-01/18-789-AnxA) which states that *'Counsel questioning a witness shall refrain from paraphrasing the witness' statement or testimony in the courtroom or from unnecessarily requesting the witness to reiterate such testimony. Where necessary for the understanding of a question, counsel shall quote the directly relevant passage from the statement or transcript and indicate the exact page numbers, paragraph numbers, and/or relevant lines'*. The Chamber reminds the Defence of its obligation under this paragraph. The witness should be given the opportunity to respond to the question in a general sense based on memory.

The Chamber would also like to emphasise that in order to have a complete record, when referring to a passage of the witness's prior written statement with the witness, counsel must quote the relevant paragraph in full. In addition, the party calling the witness has the opportunity to draw out other parts of the prior recorded testimony in re-examination, as necessary.

2. Second, the Chamber reminds the Prosecution of its obligation under paragraph 53 of the Directions on the conduct of proceedings, namely that the *'party making the objection has the responsibility to indicate, before making any substantive submission on its objection, whether it is appropriate to discuss the reasons for objecting in the presence of the witness, and provide the Chamber with an opportunity to decide if the matter is best dealt with in the absence of the witness'*. This did not occur on Wednesday and it is not the first time that the Prosecution has made this kind of substantive intervention in the presence of the witness. This direction must be respected. Further, the Prosecution is reminded that it must not 'testify' during its objections, including by reading into the transcript parts of the witness's statement which are not in evidence.

Kind regards,

[REDACTED], on behalf of Trial Chamber X