

Annex 14

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From: Trial Chamber X Communications
Sent: 22 December 2020 12:26
To: D28 Al Hassan Defence Team; Al Hassan Prosecution Team
Cc: V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber X Communications
Subject: Ex parte information in Prosecution Response ICC-01/12-01/18-1224-Conf-Exp

Dear counsel,

The Single Judge has taken note of the Defence submissions below.

The redactions to paragraph 8 and footnote 5 of ICC-01/12-01/18-1224-Conf-Exp are unnecessary as this information is available to the Defence in paragraph 38 of ICC-01/12-01/18-871-Conf-Exp-Red. These redactions should be lifted.

As to the remainder of the redactions, the Single Judge notes that these concern protected information relating to witnesses and do not relate to Mr Al Hassan, or the Defence, or in any way contain allegations that Mr Al Hassan or the Defence might constitute a risk to witnesses or the integrity of the proceedings. These redactions may therefore remain.

The Prosecution is instructed to file a corrigendum to ICC-01/12-01/18-1224-Conf-Red by COB tomorrow to reflect the instructions above.

Kind regards,

██████████ on behalf of the Single Judge of Trial Chamber X

From: Taylor, Melinda
Sent: 22 December 2020 10:06
To: Trial Chamber X Communications
Cc: D28 Al Hassan Defence Team ; Al Hassan Prosecution Team ; V43 Victims Al Hassan Team ; Associate Legal Officer-Court Officer
Subject:

Dear Trial Chamber X,

In order to ensure the expeditious adjudication of the Urgent Defence Request for a Custodial Visit (the Defence Request), the Defence is not seeking leave to reply to the Prosecution response. Irrespective of the outcome of the Defence Request, the Defence requests the Trial Chamber to order the Prosecution to lift the redactions to paragraph 8 and footnote 5, if the information therein refers to either Mr. Al Hassan or the Defence, or in any way contains allegations that Mr. Al Hassan or the Defence might constitute a risk to witnesses or the integrity of the proceedings. For the reasons set out in (ICC-01/12-01/18-737-Conf, paras. 2-15), it is highly prejudicial to resort to *ex parte* submissions in relation to litigation where liberty rights are at stake. For this reason, in its earlier Decision on Interim Release, the Trial Chamber noted that the *ex parte* information before it was minimal, related to protective measures, and had no bearing on the outcome of the decision (ICC-01/12-01/18-786-Red, paras. 21-22). The degree of prejudice is also heightened after the commencement of the trial, as it risks tainting the Trial Chamber's appreciation of testimony and evidence pertaining to the charges. From an adversarial perspective, it is also unfair for the Prosecution to place allegations and evidence that could suggest that the defendant might have motive and/or means to interfere with witnesses or the proceedings, without affording the Defence an effective opportunity to respond and be heard on such matters during the trial process.

Kind regards

Melinda Taylor, on behalf of the Defence for Mr. Al Hassan

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