

Annex 23

**PUBLIC
REDACTED**

From: Trial Chamber X Communications
Sent: 26 October 2020 11:15
To: Dutertre, Gilles; Trial Chamber X Communications; [REDACTED] Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer; VWS Legal; Chamber Decisions Communication; Bossette, Caroline; Pineau, Carine
Subject: RE: New Forthcoming Witnesses List - November/December 2020

Dear Mr Dutertre,
 I confirm receipt of your e-mail, which has been transmitted to the Chamber.
 Kind regards,
 [REDACTED]

From: Dutertre, Gilles
Sent: 24 October 2020 18:41
To: Trial Chamber X Communications ; [REDACTED] Al Hassan Prosecution Team ; D28 Al Hassan Defence Team ; V43 Victims Al Hassan Team ; Associate Legal Officer-Court Officer ; VWS Legal ; Chamber Decisions Communication ; [REDACTED]
Subject: RE: New Forthcoming Witnesses List - November/December 2020

Chère Chambre de Première Instance X,

Il s'avère que, vu des raisons personnelles, P-0635 ne peut venir et, [REDACTED], un AVL n'est pas envisageable.

L'Accusation doit se résoudre à reporter encore une fois son témoignage et s'en excuse.

L'Accusation est en train d'établir si P-0431 pourrait témoigner en novembre 2020, ce avec quoi la Défense semble être d'accord (dans un courriel concernant le remplacement de P-0582).

Respectueusement,

Gilles Dutertre

From: Trial Chamber X Communications
Sent: 16 October 2020 11:20
To: [REDACTED]; Trial Chamber X Communications; Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer; VWS Legal; Chamber Decisions Communication
Subject: RE: New Forthcoming Witnesses List - November/December 2020

Dear counsel,
 Dear colleagues,

The Chamber takes note of the Prosecution's updated witness list and the Defence's e-mail in response to this list.

The Chamber acknowledges the Prosecution's efforts to reschedule witnesses, as a result of the current situation with P-0582. The Chamber notes that such reorganisation is in accordance with to the Chamber's previous instructions that the Prosecution should avoid unnecessary 'gaps' between witnesses. Notwithstanding, and in light

of the Defence's objections, the Chamber considers it more appropriate to hear the testimonies of P-0610 and P-0622 in 2021.

The Chamber, while appreciating the difficulties, encourages the Prosecution, in consultation with the Defence, to determine if there are any other witnesses which could be moved into these dates.

The Chamber also notes the Prosecution's leave to examine P-0065 for an additional three hours (total of 18 hours). The Chamber grants this request.

Kind regards,

[REDACTED]
(on behalf of Trial Chamber X)

From: [REDACTED]
Sent: 15 October 2020 16:41
To: Trial Chamber X Communications; Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer; VWS Legal
Subject: RE: New Forthcoming Witnesses List - November/December 2020

Dear Trial Chamber X,
Dear Colleagues,

The Defence notes the updated Forthcoming Witnesses List for November/December 2020 ('List') provided on 15 October 2020, which varies the list previously provided on 1 October 2020.

In substitution of Witness P-0582, the List proposes to add three witnesses:

-) Witness P-0635, who the Prosecution proposes to schedule on 26-27 November [REDACTED]
[REDACTED];
-) Witness P-0610, who the Prosecution proposes to schedule on 30 November, 3-4 December [REDACTED]
[REDACTED]; and
-) Witness P-0622, who the Prosecution proposes to schedule on 9-10 December [REDACTED]
[REDACTED].

The Defence does not oppose the addition of Witness P-0635 given that the witness has been scheduled for [REDACTED] and the expert is expected to testify on technical matters.

However, despite Defence best endeavours as concerns *in situ* investigations, the Defence will not be in a position to cross-examine Witnesses P-0610 and P-0622 on these proposed dates. Both P-0610 and P-0622 are crime base witnesses. These witnesses are expected to testify on a variety of issues relating to Counts V (Outrages upon personal dignity), VIII (Forced marriage as other inhumane acts), IX and X (Sexual slavery), XI and XII (Rape) and XIII (Persecution).

Specifically, P-0610 is a female civilian who the Prosecution claims was forcibly married to, and raped by, a member of Ansar Dine/AQIM (the armed groups) in August or September 2012. P-0610 will also provide evidence on persecutory acts suffered by her family members and the impact of the control of the city by the armed groups on the population in Timbuktu (including floggings, detention of women, the imposition of dress codes, the forced marriage of [REDACTED], and members of the armed groups with whom she is familiar ([REDACTED])).

P-0622 is expected to testify 'about the situation in Timbuktu before and after the arrival of the armed groups and the practice of forced marriage between local women and members of the armed groups', rape committed by the armed groups, and members of the armed groups with whom he is familiar (including [REDACTED]) [REDACTED].

As such, their testimony raises important fact issues which the Defence must be afforded proper opportunity to investigate before they testify, consistent with Mr. Al Hassan's Statutory right to adequate time and facilities for the preparation of the Defence.

As a result of the COVID-19 pandemic, delayed disclosure of witness and victim identities, the fact that the schedule for November 2020 already includes four complex fact witnesses (P-0065 from 26 October 2020 to 5 November 2020 and three complex fact witnesses back-to-back (P-0565, P-0557 and P-0638 from 16 November 2020 to 25 November 2020) and the number of the changes which have already been made to the schedule of witness testimony, the Defence regrets that it will not be in a position to complete necessary investigations for these important fact witnesses before the proposed dates of testimony. The Defence has relied on the Prosecution's initial indications in its investigation planning and the COVID-19 pandemic limits the Defence's ability to flexibly adapt to each proposed change to the schedule of witness testimony. The Defence notes that it had previously prepared for witnesses who no longer are scheduled to testify in 2020 (including P-0657 and P-0582), and has had to adapt to the changes in schedule for, notably, P-0055, P-0662 and P-0151. Furthermore, for P-0657 and P-0582, the changes to the schedule have not been due to the COVID-19 pandemic (and in the case of P-0657, has been related to visa issues which should have been foreseen by the Prosecution). The Defence has lost time and resources dedicated to those witnesses over the past few months and being required to again adapt to a significant change to the schedule will occasion substantial prejudice to the Defence.

The Defence further notes that:

) *First*, in the Single Judge's email decision of 14 August 2020, that 'The Single Judge however acknowledges the difficulties faced by all, and particularly by the Defence, in finalising and adjusting the trial preparation to these ongoing changes.'

) *Second*, the Chamber noted in paragraph 20 of its [decision](#) of 22 July 2020 that 'The Prosecution should bear in mind any *inter partes* discussions, as well as the views of the Registry, and particularly the Victims and Witnesses Unit (the 'VWU'), as to the logistics and any other issues that may have an impact on the availability of witnesses to testify at the seat of the Court or via video-link.'

) *Third*, the Chamber noted in paragraphs 11 and 12 of its [decision](#) of 19 August 2020 when it provided the process for providing Forthcoming Witnesses Lists, the following:

11. When formulating the Forthcoming Witnesses List, the Prosecution should first schedule the appearance of witnesses listed under Block 1 and only subsequently move on to the scheduling of Block 2, and then Block 3 witnesses. Moreover, where possible, the schedule should be determined in consultation with the Defence and taking into account the views of the Registry, particularly the Victims and Witnesses Unit, as to the logistics and any other issues that may have an impact on the availability of witnesses to testify at the seat of the Court or via video-link.

12. In the interests of fairness and expeditiousness, the Chamber expects any changes to the schedule contained in the Forthcoming Witnesses List to be minimal. The Prosecution must inform the Defence, LRVs and Chamber of any changes immediately. Where possible the change should be made on the basis of an agreement between the parties.

In the premises of the above, and in the absence of any consultation by the Prosecution with the Defence concerning the proposed changes to the Forthcoming Witnesses List, the Defence submits that the Prosecution's request to add Witnesses P-0610 and P-0622 to the List should be rejected.

Best regards,

██████████ (on behalf of the Al Hassan Defence)

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

From: Dutertre, Gilles ██████████

Sent: 15 October 2020 08:37

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

Cc: V43 Victims Al Hassan Team; D28 Al Hassan Defence Team; Bokulic, Sanja; Luping, Dianne; Garcia, Lucio; Mourad, Hesham; VWS Legal; Pineau, Carine_icc-cpi; Bossette, Caroline

Subject: RE: New Forthcoming Witnesses List - November/December 2020

Copying Registry and VWS.

Cordialement,

Gilles Dutertre

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

From: Dutertre, Gilles

Sent: 15 October 2020 08:35

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

Cc: V43 Victims Al Hassan Team [REDACTED]; D28 Al Hassan Defence Team

Subject: New Forthcoming Witnesses List - November/December 2020

Chère Chambre de Première Instance X et Chers Collègues,

[REDACTED]
[REDACTED]

Le calendrier en pièce jointe contient les témoins amenés à déposer à sa place dans le calendrier diffusé début octobre 2020.

Dans ce contexte infortuné, exclusivement dû à des facteurs étrangers au Bureau du Procureur, l'Accusation sollicite de pouvoir utiliser 18 heures pour le témoin P-0065 et non 15 heures. Vu le nombre de jours initialement prévus pour sa déposition, cela ne modifie pas le calendrier et ne crée aucun préjudice pour la Défense.

L'Accusation continue à suivre les développements sur cette question et souligne que, en tant que nécessaire dans ses circonstances, elle fera notamment des requêtes en application de la norme 35 pour amender dans les délais les plus favorables la liste des témoins et la liste des éléments de preuve.

Respectueusement,

Gilles Dutertre

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

From: [REDACTED]

Sent: 01 October 2020 17:50

To: Trial Chamber X Communications

Cc: Dutertre, Gilles; [REDACTED]

[REDACTED] Taylor, Melinda; Nsita Luvengika, Fidel; Kassongo, Mayombo; Doumbia, Seydou; [REDACTED]

[REDACTED] D28 Al Hassan Defence Team [REDACTED]

'V43 Victims Al Hassan Team [REDACTED]

Subject: Forthcoming Witnesses List - November/December 2020

Dear Trial Chamber X

Dear Colleagues

Kindly find attached the Prosecution's forthcoming witnesses list for the months of November/December 2020.

Respectfully,

[REDACTED]

Trial Lawyer

Dévouement - Intégrité -
Respect

Dedication - Integrity - Respect

Dévouement - Intégrité -
Respect

Dedication - Integrity - Respect

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