

Annex 9

Confidential

From: Trial Chamber X Communications
Sent: 14 April 2021 13:56
To: Trial Chamber X Communications; [REDACTED]
Cc: Al Hassan Prosecution Team; V43 Victims Al Hassan Team; D28 Al Hassan Defence Team; Taylor, Melinda; Chamber Decisions Communication
Subject: RE: Decision on Defence request for access to victim applications concerning P-1134

Dear colleagues,
 Dear counsel,
 Please find below the decision with a small **correction** below.
 Kind regards,
 [REDACTED]

From: Trial Chamber X Communications <TrialChamberXCommunications[REDACTED]>
Sent: 14 April 2021 13:42
To: [REDACTED]; Trial Chamber X Communications <TrialChamberXCommunications[REDACTED]>
Cc: Al Hassan Prosecution Team <AlHassanProsecutionTeam[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam[REDACTED]>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam[REDACTED]>; Taylor, Melinda <mtaylor[REDACTED]>; Chamber Decisions Communication <ChamberDecisionsCommunication[REDACTED]>
Subject: Decision on Defence request for access to victim applications concerning P-1134

Dear colleagues,
 Dear counsel,

The Chamber notes the Defence request for access to victim applications concerning P-1134 (the 'Request'). The Chamber observes that [REDACTED] [REDACTED] The Chamber also notes the Defence's submission that her victim application is relevant to the case, [REDACTED] [REDACTED] The Chamber notes that no responses were received from either the Legal Representatives for Victims (the 'LRVs') or the Office of the Prosecutor (the 'Prosecution'). However, from the e-mail exchanges attached to the Request, it appears they both object.

The Chamber recalls it previously rejected a similar Defence request for being very broad (Decision 1248). However, the Chamber notes that it determined then that this was without prejudice to the Defence's ability to make specific substantiated applications in relation to specific testifying witnesses (para. 16). The Chamber therefore considers that the present Request is such a specific request as foreseen in Decision 1248. The Chamber notes, nonetheless, that in the e-mail exchanges between the Defence and the Prosecution and the LRVs the Defence's request was much broader, [REDACTED]

In the Request the Defence clearly identifies one individual (P-1134) who is mentioned in one witness statement (that of P-0639). The Chamber considers that [REDACTED] [REDACTED] The Chamber therefore considers that the application form of P-1134 (if one has been filled-in and submitted) may have information necessary for the determination of the truth and that could therefore be material for the preparation of the Defence.

The Chamber however notes that the Defence also requests the transmission of victim application forms submitted by family members of P-1134. The Chamber considers that these individuals do not fall within the same category as P-1134. The Chamber considers this part of the Request is speculative. Consequently, and in line with paragraphs 12-13 of Decision 1248 mentioned above, the Chamber rejects this part of the Defence request.

Accordingly, the Chamber instructs the LRVs to transmit to the Defence the victim application form of P-1134 or indicate if no application form has been submitted to the Registry on her behalf.

Best regards,

[REDACTED]
(on behalf of Trial Chamber X)

From: [REDACTED]
Sent: 13 April 2021 13:20
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED]
Cc: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED]; V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED] D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]; Taylor, Melinda <[mtaylor](#)> [REDACTED]
Subject: FW: Defence request for access to victim applications concerning P-1134.

Dear Trial Chamber X,
 Dear Colleagues,

The Defence respectfully notes that it has not received a ruling in relation to Counsel's **below** email of 25 March 2021 at 13:21. The Defence would be grateful for the guidance of the Chamber in relation to its request, given the Defence's inability to obtain these items through *inter partes* procedures.

Kind regards,
 [REDACTED] (on behalf of the Al Hassan Defence)

From: Taylor, Melinda
Sent: 25 March 2021 13:21
To: 'TrialChamberXCommunications' [REDACTED]
Cc: Al Hassan Prosecution Team; V43 Victims Al Hassan Team; D28 Al Hassan Defence Team
Subject: Defence request for access to victim applications concerning P-1134.

Dear Trial Chamber X,

The Defence for Mr. Al Hassan is writing to the Chamber to respectfully request the Trial Chamber to order the Registry to transmit any victim applications (and related materials and attachments) that have been submitted to the Registry by, on behalf of, or in connection with the charged incidents concerning P-1134.

The basis for this request is as follows:

In its Decision amending the charges, [REDACTED]
 [REDACTED]. The Pre-Trial Chamber did not confirm the incidents concerning P-1705 and P-1706, [REDACTED]
 [REDACTED]

[REDACTED] any accounts concerning P-1134 are material to Defence preparation. The Prosecution has recognised as such through its reliance on a range of hearsay evidence concerning P-1134 [REDACTED]. It follows that accounts concerning this incident, set out in victim applications, are also material to the preparation of the Defence. It is therefore necessary for the Defence to seek the assistance of the Trial Chamber in order to obtain confirmation as to whether P-1134, or a member of her family, has submitted a request to participate in relation to the charged incident concerning her detention and rape.

The Defence has attempted to gain access to this information through correspondence with the Prosecution and the LRV (see attached email from the Prosecution dated 23 March 2021, and email below from the LRV). The LRV have nonetheless adopted the position that unless a victim is participating directly as a witness, the LRV have no

obligation to inform the Defence as to whether a victim application exists for the person in question. As a result, the Defence is not in a position to know whether victims of charged incidents, [REDACTED], have applied to participate in these proceedings.

The Appeals Chamber has confirmed that information in victim applications forms can be material to the preparation of the Defence (ICC-02/11-01/15-915-Red, para. 56), in which case, there is a presumption that the information should be communicated to the Defence (para.60).

In the present case, the Trial Chamber accepted the Registry's proposal to adopt a procedure that deviates from the Chamber's practice manual, due to the high volume of applications, and the heavy workload associated with implementing redactions (ICC-01/12-01/18-661, para. 19). The Trial Chamber further relied on Article 68(1) as the legal basis for overriding Rule 89(1), which otherwise specifies that the Registry is obliged to transmit a copy of victim applications to the Defence and the Prosecution (ICC-01/12-01/18-661, para. 20).

As concerns the situation of P-1134, since the Defence are aware of her identity, and have received information concerning her family members, the rationale for withholding victim applications concerning this incident is no longer applicable. The transmission of victim applications concerning this incident (submitted either by P-1134, or by members of her family applying on the basis of moral harm) would be consistent with the Appeals Chamber's directive that the Trial Chamber has an ongoing duty to review the necessity and proportionality of protective measures, and to lift such measures in the event that the original rationale no longer applies (ICC-02/11-01/15-915-Red, para. 61-62). The lifting of such measures does not constitute reconsideration, and no burden can be placed on the Defence to justify the lifting or reversal of such protective measures (ICC-02/11-01/15-915-Red, paras. 62-63). Given the targeted nature of the request, the Registry concerns regarding the volume of applications are also inapplicable.

Kind regards

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

From: Nsita Luvengika, Fidel
Sent: 24 March 2021 11:41
To: Taylor, Melinda; V43 Victims Al Hassan Team
Cc: Al Hassan Prosecution Team; D28 Al Hassan Defence Team
Subject: RE: Inquiry concerning P-639

Chère Consœur,

Nous nous permettons de rappeler notre position qui est qu'en dehors des cas spécifiques posés par la Chambre, les RLV n'ont aucune obligation automatique de communication.

Dès lors que votre demande consiste finalement à obtenir les formulaires de TOUTE victime quel que soit son statut, demandeur, admis à participer ou pas, dans Al- Hassan mais aussi dans AL Mahdi ou dans la situation, et ce uniquement sur base de déclarations de témoins, nous estimons qu'il vous appartient de saisir la Chambre.

Nous estimons en outre que votre demande telle qu'elle est formulée aujourd'hui vise en réalité à contourner la procédure mise en place par la Chambre dans sa décision 661.

Bien cordialement,

Me Fidel Luvengika Nsita
 Pour la représentation légale des victimes

De : Taylor, Melinda <[mtaylor](#)>
Envoyé : mardi 23 mars 2021 15:46
À : V43 Victims Al Hassan Team <[V43LRVTeam](#)>
Cc : Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)>; D28 Al Hassan Defence Team

<[D28AlHassanDefenceTeam](#) [REDACTED]

Objet : Inquiry concerning P-639

Dear LRV,

I hope you are well. On 19 March, the Defence asked the Prosecution to take the necessary steps to verify whether any of the individuals, [REDACTED] have submitted a victim application to the ICC.

Today, the Defence received the response: "Ayant pris contact avec les Représentants légaux, il apparaît à leur lecture [REDACTED] n'y avoir aucune information relative à des formulaires à communiquer dans le cadre de la décision 1248. » The Prosecution subsequently confirmed that this was the response received from the LRV.

Given that first, the Defence request was not initiated on the basis of decision 1248, and second, decision 1248 envisages that other categories of applications might be disclosable, the Defence respectfully requests the LRV to indicate, in the clearest terms possible :

- a) Whether any who are mentioned [REDACTED] have applied for participation in either this case, the Al Mahdi case, or the Mali situation?
- b) The names or pseudonyms of such persons, so that the Defence can then make a reasoned application as concerns the relevance of the victim applications to Defence preparation.

Thank you for your assistance.

Kind regards
Melinda

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