

Annex 26

Confidential

From: Trial Chamber X Communications
Sent: 03 May 2021 09:08
To: Al Hassan Prosecution Team; 'D28AlHassanDefenceTeam'; V43 Victims Al Hassan Team (V43LRVTeam)
Cc: Trial Chamber X Communications; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: Decision on Defence request to have its consultant cross-examine P-0643 via video-link

Dear counsel,

The Chamber has had regard to the below request in which the Defence requests the Chamber to authorise [REDACTED], a legal consultant on the Defence team, to question witness P-0643 (the 'Request'). The Request is based in particular on the role of [REDACTED] within the Defence team, the fact that he is in the process of being admitted to the Court's list of counsel, and the fact that witness P-0643 is an expert who will not be testifying on crimes.

The Chamber recalls its previous ruling that 'the accused's right to legal representation is ensured, *inter alia*, by the appearance in court, questioning of witnesses or the of making submissions only by counsel who meet the requirements for designation as such' and that this should be the rule (E-mail from the Chamber dated 24 September 2020 at 12:39).

The Chamber has previously rejected a similar request from the Defence, seeking authorisation to have [REDACTED] question a witness, holding that while 'Lead Counsel may distribute the work in a manner that members of the Defence team specialise in particular issues, this does not mean that these persons will cross-examine witnesses' (E-mail from the Chamber dated 24 February 2021 at 15:16).

The aforementioned reasoning applies equally to the case at hand.

Moreover, the Chamber considers that the present request is distinct from the previous occasion in which the Chamber authorised [REDACTED] to question P-0064, an expert whose evidence was limited to technical aspects. As regards P-0643, the Chamber observed that it is expected that the witness may provide evidence which goes beyond his area of expertise, notably [REDACTED] (see ICC-01/12-01/18-1409-Conf, para. 23). Further, the Chamber emphasises that the fact that a witness is not a crime base witness does not *per se* justify deviating from the general rule on court representation.

For the aforementioned reasons, the Chamber rejects the Request.

Kind regards,

[REDACTED]
 On behalf of Trial Chamber X

From: Taylor, Melinda <mtaylor[REDACTED]>
Sent: 28 April 2021 19:10
To: Trial Chamber X Communications <TrialChamberXCommunications[REDACTED]>
Cc: D28 Al Hassan Defence Team <D28AlHassanDefenceTeam[REDACTED]>; Al Hassan Prosecution Team <AlHassanProsecutionTeam[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam[REDACTED]>
Subject: Remote cross-examination

Dear Trial Chamber X,

The Defence for Mr Al Hassan respectfully seeks exceptional authorisation of the Trial Chamber to allow [REDACTED] – a legal consultant on the team – to conduct the cross-examination of Prosecution Witness P-0643, under the direct supervision of Counsel.

The Defence takes full note of the Single Judge's previous decision on a Defence request for authorisation to conduct cross-examination of Prosecution Witness P-0641 by [REDACTED]. The present request is materially different for several reasons and merits an exception to the general rule on court representation, as previously accorded in relation to [REDACTED].

[REDACTED] is a key member of the Defence, who plays an important role in drafting filings, conducting Defence investigations and assisting Counsel to prepare for witness testimony.

On 24 March 2021, the Registry of the ICC provisionally admitted [REDACTED] to the ICC List of Counsel (pending certain documents which have now been provided to the CSS and are awaiting processing). As such, [REDACTED] professional experience has been recognised by the Registry as sufficient to represent persons before the ICC in his own right.

Witness P-0643 is an overview witness and purported expert and is not expected to testify about alleged crimes. Moreover, P-0643 is expected to testify in the French language.

Due to COVID-related travel restrictions and family commitments, [REDACTED] is only able to cross examine witness P-0643 on a remote basis [REDACTED]. Whilst he would prefer to do so in English, he is also able to conduct the cross examination in French should this pose a technical issue for the Court. The Registry has confirmed that [REDACTED] remote participation [REDACTED] would not be problematic, provided he complies with basic technical requirements.

For all of the above-stated reasons, the Defence respectfully requests your Honours to authorise [REDACTED] to conduct a cross-examination of Witness P-0643 remotely, under the supervision of Lead Counsel.

Kind regards

Melinda Taylor, on behalf of the Al Hassan Defence

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