

Annex 39

Confidential

From: Trial Chamber X Communications
Sent: 17 May 2021 11:30
To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Cc: Trial Chamber X Communications; Associate Legal Officer-Court Officer; Chamber Decisions Communication
Subject: TC X - Decision on Prosecution Request to instruct the Defence to Provide references regarding a document the Defence intends to use with P-0643

Dear counsel,

The Single Judge considers that pursuant to paragraphs 57 and 61 of the directions on the conduct of proceedings (ICC-01/12-01-18-789-AnxA), and as a matter of courtesy, both the calling party and the non-calling party are required to set out any passage it intends to use within any lengthy document. This is without prejudice to the parties referring to other parts of such documents, where necessary in light of the testimony of the witness.

As regards item [REDACTED], considering the length and scope of the document as well as the Defence's response that it envisages using in particular pages 8148, 8163 and 8173, the Single Judges finds it unnecessary to issue any further orders.

Kind regards,

On behalf of the Single Judge of Trial Chamber X

From: [REDACTED]
Sent: 17 May 2021 10:23
To: [REDACTED]; Trial Chamber X Communications
 <TrialChamberXCommunications@icc-01/12-01-18-789-AnxA>; D28 Al Hassan Defence Team
 <D28AlHassanDefenceTeam@icc-01/12-01-18-789-AnxA>; V43 Victims Al Hassan Team <V43LRVTeam@icc-01/12-01-18-789-AnxA>; Al Hassan Prosecution Team <AlHassanProsecutionTeam@icc-01/12-01-18-789-AnxA>
Subject: RE: Defence List of Materials for Witness MLI-OTP-P-0643

Dear Trial Chamber X,
 Dear Colleagues,

In relation to the Prosecution's request below, the Defence respectfully submits that the request should be rejected and notes three matters.

First, as [REDACTED] herself acknowledges, the document contained at Tab 24, [REDACTED], comprises 40 pages in total. This includes two pages of a table of contents (pages 8151 and 8152), six pages of annexes including a bibliography and glossary (pages 8182 to 8187) and a number of large diagram tables (see e.g. pages 8155, 8159, 8165 and 8171). As such, the substantive content of the document is considerably less than 40 pages. The entirety of this document is relevant to this witness's evidence. While the Defence envisages using in particular pages 8148, 8163 and 8173, depending on the witness's responses, the entire document may be used.

Second, the Defence notes further that the Prosecution was provided this document in the late afternoon of Wednesday, 12 May 2021 (some four and a half days before the witness commenced testimony, well in advance of the required one day before the commencement of cross-examination under paragraph 61 of the Directions on the Conduct of Proceedings). As such, contrary to [REDACTED]'s submissions, there is no risk of surprise to the Prosecution or unnecessary delay to the process.

Third, the Prosecution does not provide any basis for its allegation that the ‘spirit and intention of paragraph 57(ii) of the Conduct of proceedings Decision, is that both parties provide intended pages in lengthy documents’ [sic] nor does that allegation appear to be consistent with the wording of paragraph 57 of the Directions on the Conduct of Proceedings.

Kind regards,

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

From: ██████████

Sent: 17 May 2021 09:31

To: Trial Chamber X Communications; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Al Hassan Prosecution Team

Subject: RE: Defence List of Materials for Witness MLI-OTP-P-0643

Dear Trial Chamber X,

The Prosecution has requested from the Defence an indication of potential pages it intends to use from the document at Tab 24, ██████████, pursuant to paragraph 57(ii) of the Conduct of Proceedings Decision. The document is 40 pages, inclusive of a bibliography/annex. The Prosecution observes that there are a number of lengthy documents on the Defence’s list, which comprise more than 2000 pages in total.

The Defence has indicated that it will not provide the intended pages for this document because it considers that the Chamber clarified that this paragraph applies to the calling party and the non-calling party has more leeway; and as it does not consider it to be a lengthy document, as 5 pages comprise an annex and bibliography.

The Prosecution submits that the spirit and intention of paragraph 57(ii) of the Conduct of proceedings Decision, is that both parties provide intended pages in lengthy documents, to avoid any surprise to the other party or unnecessarily delaying the process.

For these reasons, the Prosecution requests that the Chamber grant the Prosecution request for the Defence to provide the intended pages to be used in the document at Tab 24 and prior to commencement of cross-examination.

Kind regards

██████████
Trial Lawyer

From: ██████████

Date: Sunday, 16 May 2021, 8:51 PM

To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> ██████████

Cc: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> ██████████ V43 Victims Al Hassan Team

<[V43LRVTeam](#)> ██████████, Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)> ██████████

D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> ██████████

Subject: Re: Defence List of Materials for Witness MLI-OTP-P-0643

Honourable Trial Chamber,
Dear Counsel,

The Defence respectfully provides a second updated version of the list of materials. The list contains further pinpoint references, but the items therein remain the same.

Respectfully,
Al Hassan Defence Team

From: [REDACTED]
Sent: 16 May 2021 14:05
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED]
Cc: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED]; V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED]; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED]
 D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]
Subject: Re: Defence List of Materials for Witness MLI-OTP-P-0643

Honourable Trial Chamber,
 Dear Counsel,

The Defence respectfully provides an updated version of the List of Materials, and a courtesy copy of the item added to the list. The document will be disclosed tomorrow.

Respectfully,
Al Hassan Defence Team

From: [REDACTED]
Sent: 12 May 2021 18:05
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED]
Cc: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED]; V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED]; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED]
 D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]
Subject: Defence List of Materials for Witness MLI-OTP-P-0643

Dear Honourable Trial Chamber X,
 Dear Counsel,

Pursuant to paragraph 61 of ICC-01/12-01/18-789-AnxA, the Defence provides its List of Materials for Witness MLI-OTP-P-0643.

With kind regards,
Al Hassan Defence Team

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