

Annex 41

Confidential

From: Trial Chamber X Communications
Sent: 19 May 2021 16:30
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; Chamber Decisions Communication
Subject: Decision on Defence request for leave to reply to Prosecution's filing 1483

Dear counsel,
 Dear colleagues,

The Single Judge notes the Defence's urgent request for disclosure related to the witness preparation sessions [REDACTED]

The Single Judge also notes the Prosecution's response (filing ICC-01/12-01/18-1483-Conf), opposing the Request (the 'Response').

The Single Judge notes the Defence request for leave to reply. However, she does not consider it necessary at this point in order to decide on the Request. The Defence leave to reply is therefore rejected.

The Single Judge considers that in its Request the Defence misconstrues the Witness Preparation Protocol (ICC-01/12-01/18-666-Anx) and the relevant applicable law. The Single Judge recalls that in its decision adopting the Witness Preparation Protocol, and although the Chamber found that general principles of disclosure apply to the information gathered in witness preparation sessions, the Chamber explicitly rejected the Defence's argument that the disclosure of recordings of the witness preparation sessions is always warranted by Rule 76 of the Rules. The Chamber therefore found that, contrary to the disclosure obligations under Rule 76 of the Rules, automatic disclosure of the video recordings is not warranted (ICC-01/12-01/18-666, para. 46). Accordingly, in the aforesaid decision the Chamber determined that 'it is expected that the relevant disclosure note and log will already contain all information that falls within the Prosecution's disclosure obligations' (ICC-01/12-01/18-666, para. 45).

The Single Judge notes that the information contained in the witness preparation log related to [REDACTED] preparation sessions does not contain, as suggested by the Defence 'entirely new information', but instead contains mainly clarifications or specifications that may naturally and spontaneously occur when a witness, [REDACTED] goes through the transcripts of his previous interviews. The Defence also misinterprets the nature of witness preparation sessions, as comments made by a witness during a preparation session is not evidence. Particularly in the case of [REDACTED], who will testify viva voce, neither the comments he made during his witness preparation session nor the transcripts of his interviews will replace his oral testimony before the Chamber. Thus, the Defence's allegations that [REDACTED] 'gave evidence' during his preparation session are incorrect.

Moreover, the Defence has failed to substantiate its submission that it requires Arabic translation of the information related to the witness preparation session of [REDACTED]. As noted by the Prosecution, such a remedy is unjustified and disproportionate and would inevitably cause delays in the proceedings. Instead, during its cross-examination the Defence will have ample opportunity to raise issues directly with [REDACTED], including any clarification of his use of Arabic terms.

The Single Judge therefore considers that the Defence has failed to justify its request as it did not identify substantive information provided by [REDACTED] during his preparation session which is genuinely new or would otherwise warrant further disclosure beyond the witness preparation log already provided (i.e. disclosure of transcripts or audio recordings of the sessions) (see ICC-01/12-01/18-666-Anx, para. 13).

The above determination is without prejudice to the Defence's ability to request, if and when the viva voce evidence of [REDACTED] touches upon subject areas which are completely different to [REDACTED] expected testimony, and if strictly

necessary, a short adjournment before the start of its cross-examination [REDACTED]
[REDACTED]).

As regards the Defence's Request for disclosure of information related to [REDACTED]
[REDACTED] the Single Judge considers that the Defence submissions are general and speculative. The Defence has failed to demonstrate how this information is relevant to its preparation or subject to disclosure. Moreover, the Single Judge notes that the Prosecution has already disclosed or will disclose shortly material falling within the above part of the Request which is subject to disclosure (Response, para. 31).

Accordingly, the Single Judge rejects the Defence Request in its entirety.

In light of the Prosecution's voluntary proposal to disclose further information regarding discrete sections it is a matter which should be discussed inter partes. The Single Judge will not entertain requests flowing from disagreements arising from further discussions of this same issue.

Best regards,

[REDACTED]
(on behalf of the Single Judge to Trial Chamber X)

From: Trial Chamber X Communications <TrialChamberXCommunications[REDACTED]>
Sent: 19 May 2021 16:03
To: [REDACTED]; Trial Chamber X Communications <TrialChamberXCommunications[REDACTED]>; Al Hassan Prosecution Team <AlHassanProsecutionTeam[REDACTED]>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam[REDACTED]>; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer[REDACTED]>
Subject: RE: Defence request for leave to reply to Prosecution's filing 1483

Dear counsel,
Dear colleagues,

The Single Judge notes the Defence request for leave to reply. However, she does not consider it necessary at this point in order to decide on the Request. The Defence leave to reply is therefore rejected.

Kind regards,

[REDACTED]
(on behalf of the Single Judge to Trial Chamber X)

From: [REDACTED]
Sent: 19 May 2021 12:11
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)[REDACTED]>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)[REDACTED]>; D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)[REDACTED]>; V43 Victims Al Hassan Team <[V43LRVTeam](#)[REDACTED]>; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)[REDACTED]>
Subject: Defence request for leave to reply to Prosecution's filing 1483

Dear Trial Chamber X,
Dear Colleagues,

The Defence refers to the 'Prosecution response to Urgent Defence Request for Disclosure related to Witness Preparation Sessions with Witness [REDACTED]' (ICC-01/12-01/18-1483-Conf) notified yesterday ('Response').

In particular, the Defence notes that at paragraph 7 of the Response, the Prosecution states:

[REDACTED]
[REDACTED]
[REDACTED].

With a view to achieving expedition and efficiency, the Defence intends to submit, by the end of today, a short request for leave to reply to the Response, including a table with concise references to the relevant portions of the Witness Preparation Log which the Defence considers contain new and substantial information.

Kind regards,

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

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