

Annex 64

Confidential *ex parte*

Defence and Registry only

From: Trial Chamber X Communications
Sent: 10 June 2021 21:38
To: [REDACTED]; Trial Chamber X Communications
Cc: D28 Al Hassan Defence Team; Office of the Director DJSS; Chamber Decisions Communication
Subject: RE: Defence ex parte request for information relating to [REDACTED]
[REDACTED]

Dear counsel,

The Single Judge notes the Defence request below, seeking that the Chamber orders the Registry to provide the Defence with information relating to [REDACTED] [REDACTED]

[REDACTED] (the 'Request').

At the outset, the Single Judge notes the Defence's submission that the present Request is made 'in absence of a resolution via inter partes methods'. Nonetheless, the Defence also states that it 'is currently awaiting disclosure from the Prosecution of the index of the contents of this case file following an inter partes request of 31 May 2021'. The Single Judge recalls that, for such a request, the Defence needs to demonstrate that the information sought is : (i) specifically identified; (ii) relevant to the case at hand; and (iii) likely to materially assist the preparation of the Defence.' [REDACTED]; Email from the Chamber dated 24 May 2021 at 13:43).

In relation to the present Request, the main question that arises from the Request is whether the information sought from the Registry (whether or not [REDACTED]), is material for the preparation of the Defence, and particularly whether, as submitted by the Defence, the information is necessary to 'appropriately [REDACTED] [REDACTED] in relation to any issues arising out of [REDACTED]'.

The Single Judge considers that the arguments developed by the Defence, that [REDACTED]

[REDACTED], are grossly speculative and do not meet the requisite materiality threshold. Although the Defence generally refers to the credibility of [REDACTED], it has failed to identify a specific issue that would require the disclosure of the information sought for [REDACTED]. Although the Request is limited in scope – as it seeks a 'yes or no answer' from the Registry, the Single Judge considers that the Request is a mere fishing expedition based on nothing more than conjectures.

Accordingly, the Single Judge rejects the Request.

Kind regards,

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

From: [REDACTED]
Sent: 08 June 2021 17:32
To: Trial Chamber X Communications <TrialChamberXCommunications@icc-01/12-01/18-1660-Anx64-Red>
Cc: D28 Al Hassan Defence Team <D28AlHassanDefenceTeam@icc-01/12-01/18-1660-Anx64-Red>; Office of the Director DJSS <OfficeoftheDirectorDJSS@icc-01/12-01/18-1660-Anx64-Red>
Subject: Defence ex parte request for information relating to [REDACTED]

Dear Honourable Single Judge of Trial Chamber X,
Dear Colleagues,

Request

The Defence refers to the attached correspondence with the Registry whereby it sought confirmation of whether [REDACTED] has access to [REDACTED]. The Registry indicated that it was not in a position to respond to the request, advising: '*As the calling party for this witness is the Office of the Prosecutor, you may wish to address your question directly to them. As the neutral organ, the Registry is unable to answer questions pertaining to the witness of another party.*' In the absence of a resolution via *inter partes* methods, the Defence respectfully requests that the Single Judge order the Registry to confirm whether [REDACTED] [REDACTED]

Submissions

[REDACTED]. The Defence is currently awaiting disclosure from the Prosecution of the index of the contents of [REDACTED] following an *inter partes* request of 31 May 2021. Furthermore, [REDACTED]

[REDACTED]. The Defence notes in this regard that [REDACTED] advised the Prosecution that [REDACTED] in preparation for his meeting with the Prosecution [REDACTED]-1231-R03 at 1233-1234), which could suggest that [REDACTED]

Normally, after the conclusion of the preparation sessions, witnesses do not have access to the documents shown to them during these sessions. [REDACTED]. If items were placed on [REDACTED]

[REDACTED]. [REDACTED] ability to access to such documents may impact on the credibility of his testimony. The existence of [REDACTED] is therefore relevant to Defence lines of inquiry. For this reason, the Defence requests confirmation of whether [REDACTED] so that it may appropriately [REDACTED] in relation to any issues arising out of [REDACTED] access to [REDACTED].

The Defence submits (i) that the request for information is justified and sufficiently specific such that disclosure is appropriate given the threshold previously identified by the Single Judge in other requests for *ex parte* disclosure is met, and (ii) that the arguments raised by the Registry in its response regarding [REDACTED] are misplaced.

In relation to (i), the Single Judge has articulated a threshold in respect of similar requests for information related to [REDACTED], where the information requested must be 'sufficiently specific and justified' or 'specific and substantiated' (see. e.g. Email from the Chamber dated 24 May 2021 at 13:43; [REDACTED]). The Single Judge has also noted [REDACTED]

[REDACTED]. Similarly, the information requested is of a discrete limited nature, and is directly relevant to [REDACTED] sources of information for the purposes of his testimony, as [REDACTED] access to [REDACTED] is relevant to his sources of knowledge for the purposes of Prosecution, LRV and Defence questioning on the charged events and Mr. Al Hassan in general. The Defence notes further as a final point that no risk of harm or compromise to [REDACTED] safety or security, or the safety or security of any other persons, arises from the disclosure of this information. The Defence is not seeking access to information concerning the content of [REDACTED]

[REDACTED]. The request relates to issues concerning [REDACTED], which is generally a matter of public record.

In relation to (ii), the Defence's request concerns [REDACTED] a witness; it is therefore appropriate that this information be provided by the Registry in the context of [REDACTED]. Furthermore, the Defence's ability to access important information concerning [REDACTED] sources of knowledge for the purposes of his testimony cannot be contingent on the willingness of the Prosecution to provide such information, given the adversarial nature of proceedings and the statutory framework which does not require the Defence to disclose its strategy or lines of cross-examination and investigation to the Prosecution in advance.

Confidential *ex parte* status of request

The Defence has submitted this request to the Single Judge on a confidential *ex parte* Defence and Registry only basis, as it contains sensitive information relating to ongoing Defence investigations and strategy. This classification is consistent with the classification in respect of filings of a similar nature [REDACTED]

As the Defence noted in its filing ICC-01/12-01/18-1482-Conf-Exp, in upholding the *ex parte* status of the request filed in respect of the [REDACTED] between [REDACTED] and [REDACTED], the Single Judge noted that disclosure to the Prosecution, [REDACTED] or his Counsel of the request would [REDACTED]

[REDACTED]. Similarly here, disclosure of this request to either the Prosecution or Counsel for [REDACTED] would compromise the confidentiality of Defence lines of questioning.

In the event that the Single Judge determines that the grounds for *ex parte* classification of this request do not or no longer exist, the Defence requests to be heard in relation to any reclassification, and to be permitted to withdraw this request, before it is notified to [REDACTED], his counsel, or any other parties or participants.

Kind regards,

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

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