

Annex 65

Confidential

From: Trial Chamber X Communications
Sent: 11 June 2021 09:05
To: D28 Al Hassan Defence Team (D28AlHassanDefenceTeam [REDACTED]; V43 Victims Al Hassan Team (V43LRVTeam [REDACTED] Al Hassan Prosecution Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber X Communications
Subject: TC X - Decision on Defence 'Request for review of contact between OTP and [REDACTED]

Dear counsel,

The Single Judge has had regard to the below Defence request and the responses from the Prosecution and the LRVs. It is noted that the Defence has made an *inter partes* request that the Prosecution disclose “any and all records of contact’ between the OTP and [REDACTED] since the beginning of 2021”, in particular those that occurred after the conclusion of [REDACTED]’s witness preparation session, pursuant to Rule 77 of the Rules. The Defence is thus now requesting the Single Judge to review the correspondence in order to ensure that any disclosable material is duly identified and provided to the Defence (the ‘Request’).

The Single Judge considers that communications occurring between the Prosecution and [REDACTED] are not disclosable *per se*. While the Defence appears to suggest in the *inter partes* exchanges that such contacts are in addition disclosable under the Witness Preparation Protocol (ICC-01/12-01/18-666-Anx), the Single Judge does not consider that such an obligation arises from the Protocol. However, there may be instances where disclosure of discrete correspondence is warranted, pursuant to Article 67 of the Statute or Rule 77 of the Rules. The Single Judge recalls that the party seising the Chamber with a request for disclosure should be able to demonstrate materiality of the information sought, in particular how the information has a direct connection to the charges or a live issue in the case (ICC-01/12-01/18-768-Red, para. 13; ICC-01/12-01/18-859-Red, para. 9).

As regards the specific arguments developed by the Defence, the Single Judge considers the Defence arguments that such correspondence will ‘illuminate the contours of relationship between the OTP and [REDACTED]’ and ‘enable the Defence to streamline any necessary questioning’ or that they ‘may shed light on changes between the information provided during [REDACTED]’s preparation sessions and his ultimate testimony’ as being grossly speculative and not meeting the materiality threshold under Rule 77 of the Rules.

Further, the Single Judge takes note of the Prosecution’s explanation that [REDACTED] identified by the Defence ‘relate only to timing for [REDACTED] in connection with the witness preparation and testimony’. The Single Judge considers that correspondences pertaining to such logistical matters are in principle not disclosable under Rule 77 of the Rules.

The Single Judge also takes note of the Prosecution’s renewed assurance that it has disclosed all information subject to disclosure under Rule 77 of the Rules. In the absence of motivated reasons to do so, it is unnecessary for the Single Judge to review the correspondence and the Request is accordingly rejected.

Kind regards,

On behalf of the Single Judge of Trial Chamber X

From: [REDACTED]
Sent: 10 June 2021 12:38
To: [REDACTED] Trial Chamber X Communications
Cc: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Subject: RE: Request for review of contact between OTP and [REDACTED]

Chère Chambre de première instance X,

Les Représentants légaux n'ont pas d'observation particulière à formuler relativement à la demande de la Défense qui apparaît manifestement sans objet au vu des éléments fournis par l'Accusation [REDACTED] sur la période visée.

Très cordialement,

Pour les Représentants légaux,

[REDACTED]

From: [REDACTED]
Sent: 09 June 2021 16:51
To: Trial Chamber X Communications
Cc: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Subject: RE: Request for review of contact between OTP and [REDACTED]

Dear Trial Chamber X,

The Prosecution confirms [REDACTED] to which the Defence refers relate only to timing for [REDACTED] in connection with the witness preparation and testimony.

These are purely logistical matters that are not disclosable under rule 77. These are not matters relevant, or material to the preparations of the Defence, or in any way relevant to the substance of the witness's testimony.

As the Defence itself has confirmed, where the Prosecution has considered that information was relevant under rule 77, the Prosecution has proceeded to disclose it. This is not the case in this instance.

Kind regards,

[REDACTED] [REDACTED]

Trial Lawyer
 (On behalf of Gilles Dutertre)

From: [REDACTED]
Sent: 07 June 2021 19:33
To: Trial Chamber X Communications
Cc: Taylor, Melinda; Dutertre, Gilles; D28 Al Hassan Defence Team; Al Hassan Prosecution Team
Subject: Request for review of contact between OTP and [REDACTED]

Your Honours,
 Dear Colleagues,

The Defence regrets that it has become necessary to engage the Chamber; however, as demonstrated by the attached correspondence, our attempts at reaching an *inter partes* solution have been exhausted.

In line with Rule 77, the Defence has requested the disclosure of [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

The Defence considers that contact between the Prosecution and [REDACTED] is relevant to its preparations. This is emphasised by the admitted fact that the OTP was communicating directly with [REDACTED] and therefore communicating with [REDACTED]. Previously, the Prosecution has disclosed records concerning its reliance on [REDACTED]

██████████ In view of the proximity of these communications to ██████████'s testimony, these documents may shed light on changes between the information provided during his preparation sessions and his ultimate testimony.

Defence for Al Hassan

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