

Annex 67

Confidential

From: Trial Chamber X Communications
Sent: 15 June 2021 11:39
To: D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Al Hassan Prosecution Team
Cc: Chamber Decisions Communication; Trial Chamber X Communications
Subject: TC X: Single Judge decision on request for variation of time limit for Defence response to Prosecution request ICC-01/12-01/18-1408-Conf

Dear Counsel,

The Single Judge finds that the Defence has identified good cause for the extension of time sought and therefore grants the below request pursuant to Regulation 35 of the Regulations of the Court. The Defence response to Prosecution request ICC-01/12-01/18-1408-Conf may be filed by C.O.B. on 25 June 2021.

Best regards,

On behalf of the Single Judge of Trial Chamber X

From: Dutertre, Gilles <[REDACTED]>
Sent: 14 June 2021 18:20
To: [REDACTED]; Trial Chamber X Communications <TrialChamberXCommunications@[REDACTED]>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam@[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam@[REDACTED]>; Al Hassan Prosecution Team <AlHassanProsecutionTeam@[REDACTED]>
Cc: Chamber Decisions Communication <ChamberDecisionsCommunication@[REDACTED]>
Subject: RE: TC X: Single Judge decision on timeline for implementation of Third Decision of the Single Judge on the disclosure of information related to P-0572 - Confidential

Chère Chambre de Première Instance,
 L'Accusation ne s'oppose pas à cette demande.
 Respectueusement,
 Gilles Dutertre

Dévouement - Intégrité - Respect
 Dedication - Integrity - Respect

From: [REDACTED]
Sent: 14 June 2021 18:18
To: Trial Chamber X Communications; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Al Hassan Prosecution Team
Cc: Chamber Decisions Communication
Subject: RE: TC X: Single Judge decision on timeline for implementation of Third Decision of the Single Judge on the disclosure of information related to P-0572 - Confidential

Your Honour,
 Dear Colleagues,

Pursuant to the email of the Single Judge of 25 May 2021, the Defence hereby requests a discreet extension of time to submit its response to the Prosecution's Rule 68(2)(c) application in respect of P-0570, to 25 June 2021.

On 7 June 2021, the Prosecution disclosed a large volume of documents pertaining to P-0570 and P-0572 (Trial Rule 77 Package 149 and Trial INCRIM Package 131, both disclosed *via* email on 7 June 2021 at 18:43). On 8 June 2021,

the Addendum was reclassified as confidential (email from CMS dated 8 June 2021 at 11:00) and the LRV filed the confidential redacted versions of its submissions (ICC-01/12-01/18-1485-Conf-Red). The Defence was thus in possession of the material subject to the Single Judge's decision of 19 May 2021 only by 8 June 2021. Following an initial review of the newly disclosed material, the Defence requested that the Prosecution review and lift specified redactions applied to 13 documents (email to the OTP dated 10 June 2021 at 11:50).

In view of: (i) the delays that have accompanied disclosure of relevant material in relation to the Rule 68(2)(c) Application, which have frustrated Defence investigations in relation to the Application; (ii) the materiality of the material disclosed therein; (iii) the status of this application under Rule 68(2)(c) meaning that this is the Defence's only opportunity to raise issues concerning this witness; (iv) [REDACTED]; and (v) the absence of prejudice to the parties or the expeditiousness of the trial associated with an extension of time being accorded to the Defence, the Defence respectfully seeks an extension of time to 25 June 2021 to file its response to the Rule 68(2)(c) Application.

Taking each of these justifications in turn:

First, there have been substantial delays in disclosure of important material relating to the Rule 68(2)(c) Application. As noted above, following significant *inter partes* litigation, 21 documents relating to P-0570 and P-0572 were disclosed only on 7 June 2021 [REDACTED]

[REDACTED] Of this disclosure, only four are documents in respect of which redactions were lifted [REDACTED]

The remainder are entirely new documents. Furthermore, the material disclosed is of a substantive nature, totalling some five [REDACTED]

[REDACTED]. These documents disclose the existence, although not the identities, of other relevant persons [REDACTED]

Nine of the 17 documents which are entirely new have been in the possession of the Prosecution for extensive periods of time, including prior to the confirmation of charges: [REDACTED]

A number of redactions remain in the disclosed material and reference is made to [REDACTED]. The Defence will have to invest significant time and resources in tracing the individuals described in these materials across the case as a whole.

Second, these delays in disclosure are material as they have hampered Defence efforts to respond to the allegations made in the Rule 68(2)(c) Application. It is necessary for the Defence to conduct *in situ* investigations concerning P-0572 and her involvement with the Office of the Prosecutor, [REDACTED]. These endeavours are subject to factors beyond the Defence's control, including the currently unstable security and political situation in Mali, weather conditions, availability of interpretation and transportation on the ground. The Defence requests a short extension of time to enable it to seek to undertake necessary investigative activities. The Defence respectfully submits that this would be consistent with the principles of justice and equality of arms.

Third, the Defence's ability to seek properly to challenge the Prosecution's request to introduce P-0570's testimony under Rule 68(2)(c) is of especial importance given the potential impact on the Defence. If granted, the Defence will

have no ability to cross-examine the witness or raise issues as concerns her credibility or her interactions with individuals including P-0572, [REDACTED] and/or other witnesses involved in this case. The Defence's response to the Rule 68(2)(c) Application represents its only opportunity to present its case, which requires in turn adequate time and facilities to do so. For those reasons, the Defence requests a short extension of time to file its response.

Fourth, the Defence is, along with the Court, currently engaged in continuous court sittings and preparation in connection with the testimony of [REDACTED]

[REDACTED] In order properly to review, analyse and map links between the newly disclosed material and the rest of the case during this particularly draining period, the Defence requires a short extension of time to file its response.

Fifth, as this concerns a Rule 68(2)(c) Application, no prejudice is occasioned to the Prosecution or LRVs by further time being accorded to the Defence to respond to the Application. There is furthermore no impact on the trial schedule or the expeditiousness of the proceedings overall. The Defence therefore submits that it would be in the interests of justice for a short extension to file its response be granted.

For all these reasons, the Defence respectfully requests that the Single Judge grant an extension of time for the Defence to file its response to the Rule 68(2)(c) Application to 25 June 2021.

Respectfully,

[REDACTED]

Defence for Al Hassan

From: Trial Chamber X Communications [<mailto:TrialChamberXCommunications>] [REDACTED]

Sent: 25 May 2021 15:55

To: D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Al Hassan Prosecution Team

Cc: Trial Chamber X Communications; Chamber Decisions Communication

Subject: TC X: Single Judge decision on timeline for implementation of Third Decision of the Single Judge on the disclosure of information related to P-0572 - Confidential

Dear Counsel,

With respect to the below requests from the Prosecution and Legal Representatives of Victims, the Single Judge takes notes [REDACTED]. In light of this, she finds it appropriate to grant the requests and is agreeable to delaying by two weeks disclosure of P-0572's identity and identifying information, as well as the provision to the Defence of confidential redacted versions of related filings. Further, as a result, the Single Judge is open to granting a reasonable extension of time for the filing of any Defence response to the related Prosecution application under Rule 68(2)(c) of the Rules for P-0570, but prefers to await such a request from the Defence before setting any specific deadline. [REDACTED]

[REDACTED]

Kind regards,

[REDACTED] [REDACTED]

On behalf of the Single Judge of Trial Chamber X

From: [REDACTED]

Sent: 25 May 2021 10:43

To: Trial Chamber X Communications <TrialChamberXCommunications> [REDACTED]

Cc: D28 Al Hassan Defence Team <D28AlHassanDefenceTeam> [REDACTED]; V43 Victims Al Hassan Team

<V43LRVTeam> [REDACTED]; Al Hassan Prosecution Team <AlHassanProsecutionTeam> [REDACTED]

[REDACTED] Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer> [REDACTED]

Subject: RE: TC X: Third Decision of the Single Judge on the disclosure of information related to Prosecution intermediary P-0572 - Confidential

Chère Chambre de première instance X,

Les Représentants légaux partagent les préoccupations du Bureau du Procureur et se rallient à sa demande.

Revenant à leur courriel du 24 mai 2021 à 16h06, et au vu de la requête de l'Accusation, ils sollicitent de pouvoir déposer la version confidentielle expurgée de leurs observations [REDACTED] une fois que le Bureau du Procureur aura déposé la version confidentielle expurgée ou sollicité la reclassification de son Addendum [REDACTED].

Respectueusement,

Pour les Représentants légaux,
[REDACTED]

From: [REDACTED]

Sent: 25 May 2021 10:09

To: Trial Chamber X Communications <[TrialChamberXCommunications](#)[REDACTED]>; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)[REDACTED]>

Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)[REDACTED]>; V43 Victims Al Hassan Team <[V43LRVTeam](#)[REDACTED]>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)[REDACTED]>

Subject: FW: TC X: Third Decision of the Single Judge on the disclosure of information related to Prosecution intermediary P-0572 - Confidential

Confidential

Dear Trial Chamber X,

The Prosecution has made initial submissions to the Chamber [REDACTED]. The Prosecution is now copying a confidential version of its request, to the other parties and participants, which is identical [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The Prosecution requests an additional two weeks prior to disclosure of her name to the Defence, in order to seek to put in place mitigation measures to support P-0572.

The Prosecution further requests the Chamber that:

- (a) P-0572's [REDACTED]
[REDACTED];
- (b) the Prosecution be granted as well an additional two weeks within which to file a confidential redacted version, or seek reclassification of, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

On 24 May 2021, the Prosecution explained to the Single Judge that due to oversight, it had been unable to file within the time-limit the confidential redacted version of the Addendum which was due on 24 May 2021. It also indicated that it would file it as soon as possible. The Prosecution seeks an additional two weeks within which to file it or seek reclassification thereof for the reasons explained above.

The Prosecution is aware that this delay in disclosure of P-0572's identity will impact on the date the Defence was due to make its submissions regarding the Prosecution's application to admit P-0570's statement under rule 68(2)(c)

("Application") and proposes an additional week after the disclosure of the identity of P-0572 in order for the Defence to submit its response to the Application.

Kind regards,

[REDACTED]

Trial Lawyer

From: Trial Chamber X Communications <[TrialChamberXCommunications](#) [REDACTED]>
Sent: 24 May 2021 14:17
To: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#) [REDACTED]> D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#) [REDACTED]>; [V43LRVTeam](#) [REDACTED]
Cc: Chamber Decisions Communication <[ChamberDecisionsCommunication](#) [REDACTED]>; Trial Chamber X Communications <[TrialChamberXCommunications](#) [REDACTED]>
Subject: TC X: Third Decision of the Single Judge on the disclosure of information related to Prosecution intermediary P-0572 - Confidential

Dear Counsel,

The Single Judge issues the present ruling [REDACTED] of the 'Second Decision on the disclosure of information related to Prosecution intermediary P-0572' (ICC-01/12-01/18-1487-Conf, the 'Decision'). In light of the below ruling, [REDACTED], the Single Judge finds it appropriate to render the present email decision 'confidential'.

The Single Judge appreciates the LRVs' efforts [REDACTED] The Single Judge also takes note of the updated information provided by the LRVs [REDACTED] While the Single Judge accepts that this information is of relevance to the determination rendered in the Decision, and deserves her consideration, and having in mind this Chamber's standard threshold for reconsideration requests, she finds that the information newly provided does not warrant reversing the Decision.

The Single Judge emphasises that the disclosure was not ordered because of a reliance by the Prosecution on an 'intermediary status' for P-0572. Quite to the contrary, at paragraph 8 of the Decision, it was found that 'beyond her role as a Prosecution intermediary, most notably in light of her involvement vis-à-vis Witness P-0570, [materiality] has been established'. This finding was reached in light of all information available at the time, including the additional information provided in the Addendum. Most notably, and while it was not specifically referred to in the Decision - out of an abundance of caution -, the Single Judge finds it appropriate to now indicate that the information considered includes, notably, the fact that P-0572's name already appears in the material disclosed in relation to P-0570 [REDACTED]. The Single Judge also recalls that she gave consideration to the fact that 'the Defence expressed a particular interest in tracing P-0572's involvement in relation to the evidence in this case' (Decision, para. 9), referring to the Defence's submissions which in turn refer to P-0572 by name [REDACTED] (ICC-01/12-01/18-1466-Conf, para. 14).

Finally, and in light of the specifications [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Accordingly, the LRVs' Request is dismissed.

Kind regards,

[REDACTED]

On behalf of the Single Judge of TC X

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