

Annex 69

Confidential

From: Trial Chamber X Communications
Sent: 23 June 2021 13:19
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: Decision on Defence request relating to witness scheduling for the period August-October 2021

Dear Counsels,
 Dear colleagues,

The Chamber notes the Defence email of 18 June 2021 at 11:42 which seeks that the Chamber rule on two issues related to the witness schedule proposed by the Prosecution for the period of August to October 2021. The Chamber further notes the related response from the Prosecution (email on 22 June 2021 at 10:58; [REDACTED]).

The Chamber is of the view that the Prosecution's proposal as regards the timing of P-0603's testimony and [REDACTED] respects the careful balance previously reached by the Chamber between the witness's safety and the rights of the accused. Notably, as pointed out by the Prosecution, the Defence will benefit from a period which goes [REDACTED]. While the Chamber acknowledges that this period also encompasses the summer judicial recess, it notes that the proposal provides the Defence with approximately 6 weeks to prepare outside the judicial recess, including at least one week during which there are no hearings scheduled in the case. In the view of the Chamber, there is currently nothing before it suggesting that the time available will be insufficient for Defence preparation and the Chamber's prior indication that the Defence may revert to the Chamber to seek a postponement in order to have additional time to prepare [REDACTED] (ICC-01/12-01/18-1320-Conf, para. 25).

Concerning the Defence's request for a short adjournment prior to the testimony of P-0654, the Chamber recalls that P-0654 was scheduled to testify at the start of this year and that his testimony was postponed at short notice. The Chamber also notes that, while planning to sit continuously, there were already numerous adjournments during the first half of 2021 in addition to the upcoming 4-weeks break scheduled in July-August 2021. The Chamber considers that it has simply not been presented with reasons to plan for a further specific adjournment prior to the appearance of P-0654.

The Chamber therefore dismisses the Defence request in its entirety.

Kind regards,

[REDACTED]
 On behalf of Trial Chamber X

From: [REDACTED]
Sent: 22 June 2021 10:58
To: [REDACTED]; Trial Chamber X Communications
 <TrialChamberXCommunications@icc-01/12-01/18-1320-Conf>
Cc: Taylor, Melinda <mtaylor@icc-01/12-01/18-1320-Conf>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam@icc-01/12-01/18-1320-Conf>; Dutertre, Gilles <gildutertre@icc-01/12-01/18-1320-Conf>; Al Hassan Prosecution Team <AlHassanProsecutionTeam@icc-01/12-01/18-1320-Conf>; V43 Victims Al Hassan Team <V43LRVTeam@icc-01/12-01/18-1320-Conf>
Subject: RE: Request re witness scheduling August-October

Dear Trial Chamber X,
 Dear Colleagues,

The Defence's request that the Chamber instruct the Prosecution to schedule P-0603's testimony not before 12 October 2012 should be dismissed.

There are reasons of witness management for scheduling P-0603 on the dates (from 2 to 6 September 2021) and in the order currently envisaged by the Prosecution.

The Prosecution has previously explained the reasons rendering witness scheduling very complex in this case, and the Chamber has accepted the Prosecution's submissions regarding the many difficulties faced in its attempts to schedule the appearance of its remaining witnesses (ICC-01/12-01/18-1320-Conf, para. 18).

The Prosecution provides reasons concerning the personal circumstances of [REDACTED]

The Chamber has already found that "overall [...] the substance of P-0603's statement is available to the Defence, despite the redactions applied to her identifying information, and that the Defence already has substantive information available to investigate her potential evidence" (ICC-01/12-01/18-1320-Conf, para. 22 (footnotes omitted)). It has also found that [REDACTED] the Defence will have many weeks to review the information [REDACTED] conduct any complementary investigations, and prepare for P-0603's testimony" (ICC-01/12-01/18-1320-Conf, para. 23).

This notwithstanding, the Prosecution has additionally sought to accommodate the Defence concerns by indicating that it is prepared to disclose P-0603's identity on 1 July 2021 (rather than on 13 July 2021 [REDACTED]). This allows for sufficient preparation time, including cross-referring P-0603's evidence with other evidence or material disclosed, as well as investigations if warranted.

Contrary to the Defence argument, the Prosecution's position does not foreclose the Chamber's decision. Under the schedule currently envisaged by the Prosecution, the Chamber's finding stands that [REDACTED], and should the Defence identify specific investigative lead it wished to but could not explore [REDACTED] the Defence may revert to the Chamber to seek a postponement in order to have additional time to prepare" (ICC-01/12-01/18-1320-Conf, para. 25), and the Defence does not show otherwise.

The Prosecution takes no position on the Defence request for a small break before P-0654's testimony as it considers this is a matter for the Chamber.

Respectfully,

[REDACTED]
Trial Lawyer, Office of the Prosecutor

From: [REDACTED]

Sent: 18 June 2021 11:42

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

Cc: Taylor, Melinda [REDACTED] D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED];

Dutertre, Gilles <[REDACTED]>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED];

V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED]

Subject: Request re witness scheduling August-October

Your Honours,
Dear Colleagues,

The Prosecution has consulted with the Defence regarding its proposed schedule of witness for the first few weeks following the summer judicial recess (correspondence attached hereto). The Defence is grateful.

While largely in agreement, two issues arise which, in the view of the parties, warrant the Chamber's intervention. The first concerns whether the proposed scheduling of P-0603 affords the Defence adequate resources to prepare. The second concerns the provision of a small break before the testimony of P-0654 to afford the Defence adequate time to prepare.

P-0603

The Prosecution has notified the Defence of its intention to call P-0603 via AVL on 2-6 September 2021, and to disclose her identity and information regarding the role of the accused on 01 July 2021.

In its *Decision on Prosecution request concerning the scheduling of Witness P-0603 and related matters on the conduct of proceedings* (ICC-01/12-01/18-1320-Conf), the Chamber held that the scheduling of P-0603's testimony should be 'effected in a way which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial' (para. 20). In authorising the Prosecution to schedule P-0603's testimony before the 2021 summer judicial recess, the Chamber also held, *inter alia*:

- [REDACTED] *the Defence will have many weeks to review the information [REDACTED], conduct any complementary investigations, and prepare for P-0603's testimony.* (para. 23)
- Acknowledging that '*there have been many changes to the witness order and that both the Prosecution and the Defence have been required to adapt to these changes, often on little notice*': *The Chamber further notes that adjournments have been scheduled, in addition to gaps that can be expected between witnesses during the relevant period. In the view of the Chamber, the relief sought allows for sufficient preparation time, including cross-referring P-0603's evidence with other evidence or material disclosed, as well as investigations if warranted.* (para. 24)
- [REDACTED], *and should the Defence identify specific investigative lead[s] it wished to but could not explore [REDACTED], the Defence may revert to the Chamber to seek a postponement in order to have additional time to prepare.* (para. 25)

The Defence has emphasised that its resources are currently under extraordinary strain due to the testimony of [REDACTED], namely the ongoing preparations to cross-examine and the additional investigative burden arising from the novel material he is providing during his examination in chief. We have also emphasised that the Defence will be operating at reduced capacity during the upcoming judicial recess, noting that, like many others at the Court, team members will also be juggling the complexities of seeking to travel during these times of ever-shifting border rules. In short: the Defence will not have adequate resources to conduct the necessary elements of an effective cross-examination preparation during this period— that is, preparing and conducting investigations and evidential analyses (including cross-referencing her testimony to that of other witnesses). Experience has shown that even after the identity of the witness is disclosed, there will be follow up correspondence and potential litigation concerning related redactions in either P-0603's statements, evidence from related witnesses, or victim applications. The Defence should not be expected to divert its focus from [REDACTED] during the coming month in order to perform redaction audits, submit disclosure requests or prepare mission plans. The Defence notes in this regard that the Chamber has previously held that judicial recesses are not considered to be 'effective' court time for the purposes of deadlines (via email of 17:21 on 04 December 2020).

In response to the Defence's request to schedule P-0603 not before 12 October 2021 (i.e. 50 days following the end of the summer judicial recess), the Prosecution states that 'there are operational reasons for scheduling P-0603's testimony in the order in which it appears now.' In view of the exceptional measure of withholding her identity from the Defence for a significant period of the ongoing trial, as well as the remedy of a postponement to accommodate investigations envisaged by the Chamber (para. 25), the Prosecution's position forecloses the effective application of the Chamber's Decision.

For all the reasons set out above, the Defence requests that the Chamber instruct the Prosecution to schedule P-0603's testimony not before 12 October 2021 in order to afford the Defence 50 *effective* days to prepare.

P-0654

The proposed schedule is drawn to conform to the Chamber's indication that it expects to sit continuously between the summer judicial recess and the winter judicial recess. The Defence had requested a short break before the

