

Annex 47

Confidential

From: Trial Chamber X Communications
Sent: 30 September 2021 16:33
To: D28 Al Hassan Defence Team; Al Hassan Prosecution Team
Cc: Trial Chamber X Communications; V43 Victims Al Hassan Team; Chamber Decisions Communication
Subject: Decision on Defence objections to use of material with P-0626

Dear counsel,

The Chamber notes the Defence's objection to two items on the Prosecution list of material for P-0626 (item 237 - [REDACTED]; item 239 - [REDACTED]; and their translations) on the basis that their use with P-0626 would violate the Defence's right to notice and adequate time and facilities to prepare, since the items have never been shown to P-0626 and are related to situations that have not been discussed with him before.

In relation to the Defence observation that these items were not listed as exhibits to be shown to P-0626 in the summary disclosed to the Defence [REDACTED], the Chamber recalls that these lists represent anticipations and estimates, and that summaries of anticipated testimony are without prejudice to the evidence that might be produced in the course of the trial (see Decision [ICC-01/12-01/18-548](#), para. 11). The intention to use these particular items with the witness has been communicated in accordance with the time limit set out in paragraph 57 of the Directions on the conduct of proceedings (see Email from the Chamber dated 30 August 2021 at 10:18). Further, those directions do not preclude the use of material not previously shown to the witness. The Chamber notes the items have been formally submitted and used with other witnesses with P-0150 [REDACTED]

[REDACTED] In view of all of the foregoing, the Chamber considers the Defence objections to be without foundation and they are accordingly rejected.

Kind regards,

[REDACTED]
on behalf of Trial Chamber X

From: Garcia, Lucio [REDACTED]
Sent: 29 September 2021 19:18
To: [REDACTED] Trial Chamber X Communications
<TrialChamberXCommunications[REDACTED]>; D28 Al Hassan Defence Team
<D28AlHassanDefenceTeam[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam[REDACTED]>
Cc: Al Hassan Prosecution Team <AlHassanProsecutionTeam[REDACTED]>; Dutertre, Gilles <Gilles.Dutertre[REDACTED]>
[REDACTED]
Subject: RE: P-0626's LOM and Highlighted Summary

Dear Trial Chamber X,
Dear Colleagues,

The Defence has not raised any legitimate grounds impeding the Prosecution from questioning the Witness in regards to [REDACTED] and [REDACTED].

The two items at issue are relevant and any questioning on these falls squarely within the scope of P-0626's anticipated testimony given that [REDACTED] during the relevant time period.

- (i) First, the Directions on the conduct of proceedings do not prohibit the Prosecution from including in its List of Material items that have not been seen before by the Witness;

- (ii) Further, the two items of evidence, [REDACTED] (which have already been formally submitted through Witness P-0007), [REDACTED] during the occupation;
- (iii) [REDACTED]
- (iv) During his testimony Witness P-0150 also testified that P-0626 [REDACTED]
[REDACTED].

Best regards,

Lucio Garcia
Trial Attorney

From: [REDACTED]
Sent: 29 September 2021 15:28
To: [REDACTED] Trial Chamber X Communications
[<TrialChamberXCommunications>](#); D28 Al Hassan Defence Team
[<D28AlHassanDefenceTeam>](#); V43 Victims Al Hassan Team [<V43LRVTeam>](#)
Cc: Al Hassan Prosecution Team [<AlHassanProsecutionTeam>](#); Dutertre, Gilles [<Gilles.Dutertre>](#)
Subject: RE: P-0626's LOM and Highlighted Summary

Dear Trial Chamber X,
Dear Colleagues,

Pursuant to paragraph 60 of ICC-01/12-01/18-789-AnxA, the Defence provides its objections to the Prosecution's List of Material for Witness P-0626.

The Defence objects to the use of item 237 (as well as item 238- translation) and item 239 (as well as item 240- translation) with witness P-0626. These items have never been shown to the Witness, and are related to situations that have not been discussed with the Witness before. The use of these items with the witness will essentially constitute new testimony obtained on the stand in violation of the Defence's right to notice. Furthermore these items were not listed as exhibits to be shown to P-0626 in the summary disclosed to the Defence [REDACTED].

Items 237 and 239 relates to specific incidents and facts that extend the scope of the testimony of P-0626. The Prosecution failed to provide sufficient notice to the Defence that P-0626 would be expected to testify [REDACTED] (item 237), [REDACTED] (Item 239). Should the Prosecution be allowed to questioned the witness on the basis of the content of these documents, it would constitutes new evidence obtained on the stand in violation to the defendant's right to adequate time and facilities to prepare a defence under Article 67(1)(b) of the Statute.

The Defence recalls the decisions rendered by the Appeals chambers of international courts and tribunals, including the ICTR (*Muvunyi v. Prosecutor*, ICTR-00-55A-A, [Judgement](#), 29 August 2008, para. 18; *Ntagerura v. Prosecutor*, ICTR-99-46-A, [Judgement](#), 7 July 2006, para. 27); the ICTY (*Prosecutor v. Kvočka et al.*, IT-98-30/1-A, [Judgement](#), 28 February 2005, para. 31; *Prosecutor v. Kupreškić*, IT-95-16-A, [Appeal Judgement](#), 23 October 2001, para. 92) and the European Court of Human Rights (*Pelissier and Sassi v. France*, 25444/94, [Judgment](#), 25 March 1999, para. 52) that have emphasised the importance of notice, recognising that the Prosecution is expected to know its case before

proceeding to trial and cannot mould the case against the accused during the course of trial depending on how the evidence unfolds.

For these reasons the Defence respectfully requests the Chamber not to permit the Prosecution to use items 237 to 240 with Witness P-0626.

Kind regards,

[REDACTED] on behalf of Al Hassan Defence

From: Garcia, Lucio [REDACTED]

Sent: 22 September 2021 19:09

To: Trial Chamber X Communications; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team

Cc: Al Hassan Prosecution Team; Dutertre, Gilles; [REDACTED]

Subject: P-0626's LOM and Highlighted Summary

Dear Trial Chamber X, Colleagues,

Please find attached the List of Material for Prosecution Witness P-0626 and his highlighted Witness summary regarding evidence that the Prosecution proposes should be elicited in private session.

Certain highlighted parts of Witness P-0626's summary could require closed sessions [REDACTED]
[REDACTED]

Best regards,

Lucio Garcia

Trial Lawyer

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