

Annex 14

Public Redacted

From: Trial Chamber X Communications
Sent: 26 August 2020 13:26
To: Dutertre, Gilles; [REDACTED] Taylor, Melinda; [REDACTED]
 [REDACTED]; Doumbia, Seydou; Kassongo, Mayombo; Nsita Luvengika, Fidel; [REDACTED]
Cc: Trial Chamber X Communications
Subject: RE: CONFIDENTIAL - Updated list of witnesses for the Month of September 2020
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsels,

The Chamber notes the Prosecution's updated list of witnesses for the month of September 2020, as well as the Defence's and Prosecution's subsequent submissions thereon, respectively received via email on 25 August 2020 at 17:35, 26 August 2020 at 8:28, and 26 August 2020 at 11:27.

The Chamber first recalls its prior directions provided at paragraph 42 of its Decision #789 on the conduct of proceedings (the 'CoP Decision'), whereby the Chamber decided that '[t]he cross-examination shall last no longer than the questioning by the calling party.' The Chamber's directions also provided that, '[u]pon request, the Chamber may decide, on a case-by-case basis, and only after having heard the questioning by the calling party, that additional time is warranted for the cross-examination.' The Chamber hereby clarifies that it is these principles which will be applied during the course of the proceedings, starting with the witnesses scheduled to appear first this September.

With regard to witnesses whose material is to be admitted pursuant to Rule 68(3) of the Rules, however, the Chamber recalls that other rules apply. Specifically, at paragraph 17 of its Decision #987 on the Prosecution's requests to introduce prior recorded testimonies under Rule 68(3) of the Rules, the Chamber determined that 'the Defence will still have full opportunity to question the witness in order to address any issue relating to these supporting materials'. At paragraph 18 of this decision, the Chamber further indicated that 'the Defence may address any concerns of credibility, incompleteness, and probative value during cross-examination' and that 'it will be afforded the opportunity to question the relevant witnesses in relation to matters of an exculpatory nature.' Accordingly, and in response to the Defence's expressed concerns as regards the timing of its cross-examination, particularly for Rule 68(3) witnesses, the Chamber hereby clarifies that, in principle, it shall be the Prosecution's initial time estimates (duration of the examination-in-chief without use of Rule 68(3)), and not the duration of its limited supplementary examination, which will serve as a point of reference for the calculation of the duration of the cross-examination. This is without prejudice to the Defence requesting later further time for cross-examination if it considers it necessary to address any issues relating to these witnesses or the material submitted pursuant to Rule 68(3) of the Rules.

Furthermore, the Chamber will decide on a case-by-case basis, and in line with its prior directions on the conduct of proceedings, on the appropriateness and duration of any re-examination by the calling party and opposing party (paragraphs 37-38 and 47 of the CoP Decision), as well as LRV examination (paragraph 93 of the CoP Decision). The inclusion or absence of these estimations from the table circulated by the Prosecution shall in no way impact the Chamber's determination in this regard.

Accordingly, and emphasising that the time and date included in the updated list provided are only estimations for planning and logistics purposes, including of the Registry and particularly the VWU, and, therefore, approximate, the Chamber does not find it necessary to order a recalculation of the relevant information as currently included in the table. In this regard, the Chamber again stresses that this information is only indicative at this stage and that the

Chamber will apply the above mentioned principles in the exercise of discretion during the course of the in-court proceedings.

The Chamber nevertheless reminds the Registry, and the parties and participants that, as already indicated at paragraph 20 of the CoP Decision, in principle, all should be prepared to continue with the following witness, even if the testimony of the previous witness has required less time than estimated.

Finally, the Chamber also directs that parties and participants' submissions on procedural issues related to upcoming witnesses be raised at the earliest opportunity and in writing, via email where appropriate. This will facilitate time management and ensure that sitting time is used to hear evidence.

Kind regards,

On behalf of Trial Chamber X

From: Dutertre, Gilles

Sent: 26 August 2020 11:27

To: [REDACTED] Trial Chamber X Communications; Taylor, Melinda; [REDACTED]
[REDACTED]; Doumbia, Seydou; Kassongo, Mayombo; Nsita Luvengika, Fidel; [REDACTED]
Subject: RE: CONFIDENTIAL - Updated list of witnesses for the Month of September 2020

Dear Trial Chamber X,

Dear Colleagues,

The Prosecution would like to clarify that on 30 July 2020, it sought an estimation from the Defence and Legal Representatives of Victims (LRVs) for the expected duration of their respective examination for the first ten witnesses and emphasized the importance of this information for planning the appearance of witnesses in consultation with VWS.

On 4 August 2020, the Prosecution sent another reminder on this issue.

On 6 August 2020, the LRVs responded that they should be allowed time for examining each witness, but at this point, they are not in a position to estimate the precise time for each particular witness.

Following another reminder, the Defence responded on 21 August 2020 stating “[a]s was the case with the LRV, we are not in a position to provide such an estimate. Please therefore assume that the entire time allocated by the Chamber will be used”.

Accordingly, the Prosecution prepared its Updated List of Witnesses for the month of September based on the information available to it, guided by the instructions of the Chamber. In particular, that “the cross-examination shall last no longer than the questioning by the calling party.” See *Decision ICC-01/12-01/18-789-AnxA, para. 42*.

While noting that for rule 68(3) witnesses, the Defence is not constrained to the amount of time used by the Prosecution and will be granted a reasonable amount of time to examine each witness (see *Decision, ICC-01/12-01/18-987-Conf, para. 61*), the Defence’s response that the Prosecution should “assume that the entire time allocated by the Chamber will be used” didn’t put the Prosecution in a position to make precise calculations of time.

The Prosecution, in the context of various constraints, is of course ready to make any further amendments as required by the Chamber.

Respectfully,

Gilles Dutertre

From: [REDACTED]
 Sent: 26 August 2020 08:28
 To: [REDACTED]; Trial Chamber X Communications; Taylor, Melinda; [REDACTED]; Dutertre, Gilles; [REDACTED]
 [REDACTED] Doumbia, Seydou; Kassongo,
 Mayombo; Nsita Luvengika, Fidel [REDACTED]
 Subject: RE: CONFIDENTIAL - Updated list of witnesses for the Month of September 2020

Honourable Chamber X, and Dear Colleagues,

The Defence again thanks the Prosecution for the Friday, 21 August 2020 Updated List of Witnesses and confirms that it neither has observations regarding P-0623 testifying at position 11 nor the taking of P-0623's testimony within the month of September.

The Defence would however like to clarify that its accord on these two points in regards of P-0623 should not alter or lessen the time foreseen for cross examination as originally estimated.

It further wishes to observe that even where the Prosecution estimates a reduced time for direct examination to that which it had originally calculated, this should not limit the Defence's reservation of the maximum examination time originally foreseen and now budgeted for by the Defence in its preparation for cross examinations.

The Defence's review of the Prosecution's time calculations demonstrates that no time for re-direct, re-cross or for the LRV has been taken into consideration. A time calculation that does so would be in the interest of not only time management and the avoidance of necessitating the recalling of a witness, but also guarantees the Defence's right to fully cross examine the Prosecution's witnesses on all evidence both material and testimonial that is pertinent to each testifying witness.

Attached please find Table 1. OTP Time estimates translated into hearing schedule (Rule 68(3) estimates) which provides a column for the LRV's estimate of its examination times, specifies the time missing from that which was originally foreseen to the Defence for its cross examinations, and includes a final column for Other Time Missing in order to calculate re-examination (re-direct and re-cross, inclusive) as well as the eventual need to address any procedural issues on any given witness.

The Defence therefore requests that a recalculation of the time required for each witness be made taking into account:

1. The time missing from that which was originally foreseen to the Defence for its cross examinations;
2. The time necessary for eventual re-examinations; and
3. The time necessary to address procedural issues.

Respectfully,

[REDACTED]

From: [REDACTED]
 Sent: 25 August 2020 17:35
 To: Trial Chamber X Communications; Taylor, Melinda; [REDACTED]; Dutertre, Gilles;
 [REDACTED] Doumbia, Seydou; Kassongo,
 Mayombo; Nsita Luvengika, Fidel; [REDACTED]
 Subject: CONFIDENTIAL - Updated list of witnesses for the Month of September 2020

Dear Trial Chamber X,
 Dear Colleagues,

In accordance with the supplemental decision on matters related to the conduct of proceedings (ICC-01/12-01/18-1004), the Prosecution provides its updated list of witnesses for the month of September 2020 in the attached document.

Given that the names of witnesses are listed in this document, the Prosecution respectfully requests that this list be treated as a confidential document.

Respectfully,

 (on behalf of Gilles Dutertre)

Trial Lawyer
Office of the Prosecutor

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