

Annex 10

Public

[REDACTED]

From: Trial Chamber I Communications
Sent: 05 September 2022 10:47
To: [REDACTED]
Cc: Trial Chamber I Communications; D31 Abd-Al-Rahman Defence Team; Abd Al Rahman Prosecution Team; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: RE: P 129

Dear colleagues,

The Prosecution is allowed to speak to P-0129.

I am putting the parties here in Cc so that they are informed immediately of the witness's request.

As regards your e-mail below, and in consultation with the Chamber, it is not necessary for the VWU to amend the Protocol. However, the paragraph below, proposed by VWU, may be used as guidance for any future request such as the present one.

If a witness, before he starts testifying, tells VWU that there is something in his statement he would like to change, the Prosecution has permission to speak to him, even within the 24 hours before his court appearance. The Defence must be promptly informed of the witness's request to change his statement.

Best regards,

[REDACTED]
(on behalf of Trial Chamber I)

From: [REDACTED]
Sent: 05 September 2022 10:12
To: [REDACTED]
Cc: [REDACTED]
Subject: P 129
Importance: High

Dear [REDACTED],

I am forwarding you the below email and a request for P-129 in order to get the Chamber authorisation in order to derive form the protocol regarding the contact between a witness and OTP. This is in line with the wish of the Presiding Judge.

P-0129, tentatively scheduled to commence his testimony at 9.30 a.m. on Tuesday 6 September, requested to meet with the OTP to provide them with additional information that he recently recalled and want to include in his testimony. The plan is for the witness to meet with the OTP at 10 a.m. on Monday 5 September.

The familiarization protocol stipulates that "Non-substantive contact between the calling party and the witness in the 24 hours preceding the witness' testimony, should be allowed if authorised by the Chamber, appropriate in the circumstances and guided by due regard to professional responsibility."

However, in order to address this kind of situation in the future, it would be great to have a direction from the Chamber as addressed in the below email.

Thank you very much.

B.

From: [REDACTED]
Sent: 05 August 2022 17:17
To: [REDACTED]
Cc: [REDACTED]
Subject: New Rule in Al Rahman Witness Familiarisation Protocol

Dear [REDACTED]

Judge Korner made an oral pronouncement on 14 June 2022 which she appeared to have mitigated later (see below).

5:10

11 MS WHITFORD: [9:38:48] Indeed, your Honour to t
 12 he Trial Chamber I communications email address.
 13 It was only sent at 9.30 this morning, your Honour, when we were
 14 already in the courtroom.
 15 PRESIDING JUDGE KORNER: [9:39:.
 16 MR EDWARDS: [9:39:19] Is there any reason it couldn't be
 17 forwarded to us?
 18 MS WHITFORD: [9:39:23] I don't see any reason why not,
 19 your Honour, yes.
 20 MR EDWARDS: [9:39:27] Thank you.
 21 PRESIDING JUDGE KORNER: [9:39:28] (Microphone not activated)
 22 (Microphone not activated) (Microphone not activated).
 23 PRESIDING JUDGE KORNER: [9:39:42] Is this VWS saying that he
 24 couldn't talk to you, well, what on earth does VWS think it's
 25 playing at?

 6: 1 MS WHITFORD: [9:39:56] As I understand it they are referring to
 2 the protocol which would not allow substantive contact between
 3 the Prosecution and the witness within 24 hours of his testimony
 4 (Overlapping speakers).
 5 speakers).
 6 speakers).
 7 PRESIDING JUDGE KORNER: [9:40:07] I don't suppose anybody in
 8 this court, let alone Mr Edwards wants to be taken by surprise.
 9 PRESIDING JUDGE KORNER: [9:40:14] I'm sorry, the protocol, even
 10 if the witness asks he's then told by VWS, no you can't, because
 11 of the protocol.
 12 MS WHITFORD: [9:40:24] If it relates to a substantive matter,
 13 your Honour, that is my understanding, (Overlapping speakers).
 14 PRESIDING JUDGE KORNER: [9:40:30] Of course we'd allow it, and
 15 anybody with any sense would know you can't have if that's what
 16 a witness says and hasn't started his evidence and wants to
 17 correct something ...
 18 Right, yes, I give permission. How long is this going to take,

19 do we think.

20 MR NICHOLLS: [9:40:51] I mean you've got to notify the Defence
21 then of what the changes.

22 MS WHITFORD: [9:40:58] It's hard to estimate, your Honour but
23 we will meet with him right away and they can keep the Court

24 PRESIDING JUDGE KORNER: [9:41:04] Right, I am now making
25 a change to the protocol, which I want recorded.

7: 1 If this happens again and a witness in advance of his court
2 appearance says there is something I want to alter, add or
3 correct, permission is given for the Prosecution -- this is also
4 provided this is before his evidence starts, permission is given
5 to the Prosecution to speak to him, VWS should note that. And
6 the Defence should be promptly informed of the request and
7 obviously any changes made so that we do not waste time this
8 morning. in the morning.

9 Any observations, Mr Edwards?

10 All right, well I suppose you'd better just let us know how long
11 this is going to take.

12 MS WHITFORD: [9:41:57] Indeed, your Honour, we will keep
13 the Chamber informed.

14 PRESIDING JUDGE KORNER: [9:42:01] Thank you.

15 All right, we'll rise.

16 THE COURT USHER: [9:42:06] All rise.

17 (Recess taken at 9.42 a.m.) STPHOET

18 (Upon resuming in open se

8: 1 been done before. However, I was reminded, and I reread
2 the witness protocol that was agreed, and I think I somewhat
3 intemperately and I remember tabbably asked rhetorically what
4 witness the VWS thought ^ they were playing at. I shouldn't
5 have said that and I'm happy to see it wasn't actually said to
6 them, but I think publicly, as I said it publicly, I should make
7 it clear that the protocol is not clear and I will be raising
8 that.

However it appears from a recent discussion with the Judge that she would be willing to still amend the current existing Familiarisation protocol and in particular paragraph 30 on the limitation of contact between the witness and the calling party, which states as follows: "Non-substantive contact between the calling party and the witness in the 24 hours preceding the witness' testimony, should be allowed if authorised by the Chamber, appropriate in the circumstances and guided by due regard to professional responsibility".

The new rule would therefore be: If a witness, before he starts testifying, tells VWU that there is something in his statement he would like to change, the Prosecution has permission to speak to him, even within the 24 hours before his court appearance. The Defence must be promptly informed of the witness's request to change his statement.

In order to address this issue in the future in a non-controversial way, the VWU would be grateful to know whether the Chamber would like to have an amended version of the Familiarisation protocol filed in the record of the case or if an internal instruction in that respect would be considered as sufficient by the Chamber. In that case it would also be useful to know who should issue this instruction.

Thank you very much for your direction on this issue.

Kind regards,

