

ANNEX 4

PUBLIC REDACTED

From: Trial Chamber X Communications
Sent: 12 January 2022 09:25
To: D28 Al Hassan Defence Team
Cc: Al Hassan Prosecution Team; Trial Chamber X Communications; Chamber Decisions Communication
Subject: TC X: Single Judge instructions on the classification of Defence provisional list of witnesses

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsels,

The Single Judge recalls the Chamber's previous determination that redacting information in the preliminary list from the other participants may be done *if strictly necessary* (ICC-01/12-01/18-1756, para. 10). Having considered the submissions received, the Single Judge is of the view that the *ex parte* classification of the Defence's provisional list of Witnesses *in its entirety* is not justified.

Accordingly, and pursuant to Regulation 23 *bis* of the Regulations of the Court, the Single instructs the Defence to:

- seek reclassification to 'confidential', or file a confidential redacted version of, cover filing ICC-01/12-01/18-2078-Conf-Exp by C.O.B. tomorrow; and
- file a confidential redacted version of ICC-01/12-01/18--2078-Conf-Exp-Anx identifying any witnesses whose identity it can disclose at this juncture and provide the Chamber with specific motivations for the *ex parte* classification of any remaining information, by Monday 17 January 2022.

Kind regards,

On behalf of the Single Judge of Trial Chamber X

From: [REDACTED]
Sent: 11 January 2022 14:47
To: Dutertre, Gille [REDACTED] Trial Chamber X Communications
Cc: Al Hassan Prosecution Team [REDACTED] D28 Al Hassan Defence Team
Subject: RE: TC X: Chamber instruction concerning its order of 22 September 2021 for the Defence to submit a provisional list of witnesses

Honourable Trial Chamber X, Dear Colleagues,

The Chamber is apprised of the bases for the *ex parte* submission of the Provisional List of Defence Witnesses, which persist. For the information of the Prosecution, these include specific issues of security of witnesses and the logistics of Defence investigations.

Court precedent is consistent in maintaining the *ex parte* nature of such lists until the filing of a final *inter partes* list a reasonable time before the commencement of the Defence case (*see, for example:* Katanga, [ICC-01/04-01/07-2388](#), Disposition, paras (b)(ii) and (iii) [identities or pseudonyms and other details of all witnesses to be disclosed not less than two weeks prior to commencement of the Defence case]; Bemba, [ICC-01/05-01/08-2141](#), para. 23; Ntaganda, [ICC-01/04-02/06-1588-Corr](#), para. 11 [provisional list is to be submitted on *ex parte* basis], and [ICC-01/04-](#)

[02/06-1862](#), para. 14 [list to be disclosed one month prior to commencement of Defence case]; Bemba II, [ICC-01/05-01/13-1518](#), para. 5 [deadline for provisional list of witnesses complied with while Defence witnesses not yet identified and thus unable provide specific names, see [ICC-01/05-01/13-1508](#), para. 2 and [ICC-01/05-01/13-1509](#), paras 7-8]; Ongwen, [ICC-02/04-01/15-1021](#), para. 3 [information in provisional lists may be withheld from other participants where strictly necessary]).

The Defence cannot be required to disclose to the Prosecution the information of witnesses it might not ultimately call, as this would potentially constitute assisting the Prosecution and thus violate Mr Al Hassan's rights to remain silent and not to have imposed on him any reversal of the burden of proof or onus of rebuttal (Article 67(1)(g) and (i)) (Bemba II, [ICC-01/05-01/13-907](#), para. 14).

Once individual security assessments have been completed, the Defence will be in a position to disclose the names of its witnesses *inter partes*. The Defence will disclose this information on a rolling basis and in full compliance with the applicable deadlines, allowing for any necessary delayed disclosure measures for specific individuals. As was the case for the Prosecution, this will be taken into consideration when determining the order in which the Defence will call its witnesses.

Respectfully,

[REDACTED]

Defence for Al Hassan

From: Dutertre, Gilles [REDACTED]
Sent: 11 January 2022 11:54
To: Trial Chamber X Communications
Cc: Al Hassan Prosecution Team; D28 Al Hassan Defence Team
Subject: RE: TC X: Chamber instruction concerning its order of 22 September 2021 for the Defence to submit a provisional list of witnesses

Chère Chambre de Première Instance X,
L'Accusation n'a à ce jour été destinataire d'aucune liste préliminaire de témoins de la Défense.
A supposer que la Défense ait déposé une telle liste *ex parte*, l'Accusation en sollicite la reclassification pour lui permettre d'avoir le temps de se préparer comme il est nécessaire.

Respectueusement,
Gilles Dutertre