

ANNEX 19

PUBLIC REDACTED

From: Trial Chamber X Communications
Sent: 23 March 2022 08:23
To: D28 Al Hassan Defence Team; Al Hassan Prosecution Team; V43 Victims Al Hassan Team
Cc: Associate Legal Officer-Court Officer; Trial Chamber X Communications; Chamber Decisions Communication
Subject: TC X: Decision on Defence regulation 35 request

Dear Counsels,

The Chamber notes the Defence's request sent via email on 21 March 2022 at 9:41 (confidential redacted version circulated at 11:21), as well as the responses received the following day from the LRVs and the Prosecution, respectively at 9:37 and 11:28.

The Chamber notes that, pursuant to Regulation 35 of the Regulations of the Court, the Defence seeks an extension of time with respect to deadlines set for the disclosure and communication of certain material and information in the lead up to the start of Defence presentation of evidence (Decision 1756, para. 11(ii) and (iv)). The request is formulated for three types of material. These are addressed in turn below, leaving aside any *ex parte* details. Indeed, while the Defence's request was submitted *ex parte*, the Chamber considers it appropriate to render the present decision 'confidential'.

With respect to the **first type of material**, the Chamber finds that any consideration of this part of the Request is premature. The Chamber takes note of the delays in the transmission of the material to the Defence, as well as the fact that introduction thereof, if any, will be sought by way of the bar table. The Chamber will consider, at the relevant time, whether or not addition of this material to the Defence's List of evidence is appropriate according to the relevant framework (*see* Decision 988, paras 6 and 8). The early notice provided by way of the Request is appreciated and the relevant circumstances shall be considered by the Chamber in ruling on any upcoming application. This part of the request is accordingly dismissed.

The Chamber finds that the request with respect to the **second type of material** is specific and sufficiently motivated, particularly in light of recent events which are outside the Defence's control. Notably, the Chamber considers that extending by 7 days the deadline for disclosure of this material is appropriate in the circumstances. The Chamber understands that the preparation of related witness summaries may be impacted, but considers that preparation thereof must be prioritised and should not be delayed. If necessary, the Chamber notes that the Defence could provide an amended version of any summary which would be impacted by the process of transcribing and translating the material. The Chamber therefore grants this part of the request.

With respect to Rule 68 candidates from which the Defence is yet to obtain **signed statements**, the Chamber agrees with the Defence that disclosure of additional signed statements will assist parties as well as the Chamber to prepare and have advance notice of the witnesses' testimony. Moreover, the Chamber recalls that the provision of any such statement is not mandatory and that summaries of the relevant witnesses' expected evidence, as well as a final list of witnesses, shall in any event be provided within the deadline set and with the required details (*see* Decision 1756, para. 11(i) and (ii)). Accordingly, the Chamber considers that extending the time limit to allow the Defence to continue its effort of preparing and disclosing further witness statements has the potential to contribute greatly to an efficient presentation of Defence evidence. In light of the above, the Chamber grants this part of the request and hereby authorises the Defence to continue disclosing and adding to its list of evidence *additional* witness statements. The Chamber however stresses that signed statements currently in the possession of the Defence ought to be disclosed within the original time limit and reiterates that any additional disclosure shall be done on a rolling basis and at the earliest opportunity. The Chamber will set a deadline for the disclosure of any remaining signed statements in due course but, in the circumstances, it considers it appropriate to set this deadline after having taken cognisance of the Defence's final List of Witnesses and relevant summaries. To facilitate this exercise, the Defence is instructed to clearly indicate in its upcoming list of witnesses, the statement of which

witnesses remain to be obtained, signed and/or disclosed (i.e. the scope of the Regulation 35 request). To allow sufficient time for preparation, the Chamber already informs that it expects this extended deadline will fall before the start of the Spring Judicial Recess on 14 April 2022. The Chamber further specifies that the present decision does not prejudice its determination of any upcoming application for the introduction into evidence of any such statement.

Finally, the Chamber hereby decides that all Defence material and information due four weeks from formal closure of the Prosecution's case can be provided by the end of the present week, that is at the latest by **C.O.B. this Friday 25 March 2022**.

Kind regards,

[REDACTED]

On behalf of Trial Chamber X

From: Dutertre, Gilles <[REDACTED]>

Sent: 22 March 2022 11:28

To: Trial Chamber X Communications [REDACTED]; D28 Al Hassan Defence Team

[REDACTED]; Al Hassan Prosecution Team [REDACTED]

V43 Victims Al Hassan Team [REDACTED]

Cc: Associate Legal Officer-Court Officer [REDACTED]

Subject: FW: TC X: Defence regulation 35 request

Dear Trial Chamber X,

The Prosecution responds to the Defence's three requests under regulation 35 as follows.

1. Registry Transcripts

First, as regards the Defence request regarding transcripts to be provided by the Registry, which they may seek to tender into evidence by way of bar table motion, the Prosecution observes that there are so many redactions in the Defence email request that it is not possible for the Prosecution to properly respond. There is no information as to the nature of the information or for what purpose it may be submitted. The Prosecution reserves its rights to make further submissions at the relevant time.

2. Arabic materials

Second, as regards the Arabic language materials, the Prosecution observes with concern that the Defence states that it has a "high volume of materials in the Arabic language", including materials only collected on 24 February 2022 and interviews with Arabic speaking witnesses.

The Prosecution recalls that the Defence has had at least four years to collect evidence during the course of the proceedings. No reason is provided for the late collection and disclosure of these materials, and thus late preparation of translations and transcripts. Nor is there any indication as to the nature of those documents (other than some of those relating to witness interviews) or the topics or matters to which they relate, or how lengthy or not these materials are. It is therefore very difficult to assess whether the Prosecution will be able to conduct a timely and appropriate review of such material in advance of the commencement of the Defence case. In any event, the Defence does not indicate whether it intends to disclose the original Arabic materials by the necessary deadline. In addition, it is unclear whether the translations will be completed by qualified translators, falling which the Prosecution will have to double check all of them.

Whilst the Defence states that it does not propose to use any of these materials during the “*first tranche of witnesses*”:

- (i) The Prosecution should not be precluded from using any of these disclosed materials for purposes of cross-examination with any of the Defence witnesses, including initial witnesses being called. It is not for the Defence to decide for the Prosecution what may or may not be of relevance for that purpose;
- (ii) There is no indication in the request as to who is included in the “*first tranche*” mentioned, and to what period of time is being referred;
- (iii) The Defence had been ordered to disclose material on a rolling basis. This has not been done. Disclosure only commenced on 14 March 2022, and only 58 items have been disclosed to date, a vast part of which are open source documents/articles.

3. Subsequent disclosure of signed witness statements

As regards the request to disclose subsequent signed witness statements, the Prosecution observes the following:

- (i) There is no indication from the Defence that it intends to disclose the witness summaries by the requisite deadline of 24 March 2022. The Defence states that it “is already disclosing summaries”. However, none have been disclosed to date.
- (ii) Any summaries must be sufficiently detailed to comply with the Chamber’s orders in this regard, including in providing sufficient prior notice of relevant topics as well as particulars like date of birth (this type of information was requested on several occasions since 2 February for Defence Witness MLI-D28-P-0524, but the Defence has yet to provide this information). Moreover any witness statement being relied upon must be disclosed sufficiently in advance of the witness’s testimony in order to allow for the Prosecution to prepare itself.
- (iii) There may be topics to be covered by witnesses in their statements, that will be relevant for witnesses testifying beforehand. Accordingly, prompt disclosure of witness statements is necessary for the Prosecution to prepare for cross-examination purposes. This is particularly the case if there is information contained in a Defence witness’s statement that is of relevance for other Defence witnesses.
- (iv) The Prosecution must have an opportunity to respond to any Defence request based on rule 68. It will be important to have the full body of the Defence witness statements in order for the Prosecution to adequately respond to any such applications.

Overall, in particular the significant amount of time that the Defence already had to conduct its investigation since the initial appearance of the Accused on 4 April 2018, the low volume of disclosed material so far, the high volume of announced material, and the fact that the Defence case will start relatively soon on 9 May 2022, the Prosecution objects to any additional time given to the Defence, and stresses that any delay would impact on the Prosecution’s preparation.

Kind regards

Gilles Dutertre

From: [REDACTED]

Sent: 22 March 2022 09:37

To: Taylor, Melinda [REDACTED] Trial Chamber X Communications [REDACTED]

[REDACTED] D28 Al Hassan Defence Team [REDACTED]

[REDACTED] Al Hassan Prosecution Team

[REDACTED] V43 Victims Al Hassan Team [REDACTED]

Cc: Associate Legal Officer-Court Officer [REDACTED]

Subject: RE: TC X: Defence regulation 35 request

Chère Chambre de première instance X,

Au regard de la motivation de la requête de la Défense ci-dessous, les Représentants légaux indiquent n'y formuler aucune opposition et s'en remettent au pouvoir discrétionnaire de la Chambre.

Respectueusement,

From: Taylor, Melinda <[REDACTED]>

Sent: 21 March 2022 11:21

To: Trial Chamber X Communications [REDACTED]; D28 Al Hassan Defence Team

[REDACTED]; Al Hassan Prosecution Team [REDACTED]

V43 Victims Al Hassan Team [REDACTED]

Cc: Associate Legal Officer-Court Officer <[REDACTED]>

Subject: RE: TC X: Defence regulation 35 request

Dear Trial Chamber X,

The Defence for Mr Al Hassan is working assiduously towards complying with the deadline imposed by the Fifth Decision on the Conduct of the Proceedings, which currently falls on 24 March 2022 (that is, four weeks from the notice of the closure of the OTP case on 23 February 2022). There are, however, certain aspects and developments falling outside the control of the Defence, which have impacted on the ability of the Defence to obtain evidence, or review it in in a working language.

Accordingly, pursuant to Regulation 35 of the Regulations of the Court, the Defence for Mr Al Hassan respectfully seeks the authorisation of the Chamber for an extension of time in relation to the following discrete issues/items:

First: the transcripts [REDACTED]

The Defence sought access to [REDACTED]. In August, the Registry indicated that they anticipate that full disclosure would be completed by the end of November. On 6 October, the Registry confirmed this date. However, on 10 November, the Defence was informed that the Registry had reallocated [REDACTED] interpreters to address [REDACTED]. On 21 December, the Registry indicated that they expected to complete disclosure by the end of February. On 18 March 2022, the Registry indicated that there are still 8 pending transcripts that have not been disclosed. The Defence has not been given an indication as to when it can expect to receive these.

Given that [REDACTED] are interlinked, it is necessary for the Defence and Al Hassan to review these [REDACTED] in their entirety in order to make an informed decision as to whether to add them to its list. For this reason, the Defence seeks a delay that falls 10 days after the disclosure of [REDACTED] to the Defence. This will cause no prejudice to the other parties as [REDACTED] will not be used with specific Defence witnesses but will be tendered from the bar at a later stage.

Second: specific Arabic language materials

The Defence has a high volume of materials in the Arabic language. This includes materials that it collected on 24 February 2022 [REDACTED] and interviews with Arabic speaking witnesses. The Defence was not able to obtain digital copies of the [REDACTED] until 15 March. The Registry has indicated that STIC cannot assist with the transcription and translation of these materials. This has created an unprecedented amount of work for the Defence, at a time when it is very low in capacity. Specifically, [REDACTED] between 7 -21 March. This [REDACTED] has itself generated more Arabic materials concerning the evidence of Defence witnesses and at the same time, [REDACTED] has been unable to assist with the backlog of transcriptions and translations in the office. [REDACTED] He will not be in a position to assist today or tomorrow due to [REDACTED].

The Defence has recruited another Arabic speaking assistant to assist [REDACTED], but the new staff member cannot commence full time work until 24 March (she is currently working part-time due to existing commitments).

[REDACTED] time has also been diverted from Arabic translation due to the fact that another key staff member – [REDACTED] fell ill with Covid and has been at home sick since 15 March. She continued to test positive as of yesterday although she hopes to return to the office tomorrow.

In terms of impacted materials, the Defence seeks an additional 7 days to complete its review, transcription and translation of the [REDACTED]. This will also cause no prejudice as the Defence will not use these [REDACTED] with the first tranche of witnesses.

The Defence hopes to complete all summaries of Arabic speaking witnesses by the existing deadline but is also raising the possibility that the above factors could impact on its ability to do so.

Third: disclosure of signed statements after the deadline

In its provisional list of witnesses the Defence indicated that it intended to use Rule 68(2) and (3) in order to shorten the length of proceedings and ensure efficiency. [REDACTED] Indeed, [REDACTED], the Defence was advised for security reasons to reduce the number of persons that it met. [REDACTED].

Given that the Defence is already disclosing summaries, the subsequent disclosure of signed statements for certain witnesses will cause no prejudice but to the contrary, will assist the parties and Chamber to prepare and have advance notice of the witness's testimony.

The above request has been submitted on an *ex parte* basis as it refers to existing investigations. It would also be contrary to the privilege against self-incrimination for the Defence to be required to disclose the description of evidence if the Defence does not ultimately include this on list.

Kind regards

Melinda Taylor, on behalf of the Al Hassan Defence

From: Trial Chamber X Communications [REDACTED]
Sent: 21 March 2022 11:04
To: D28 Al Hassan Defence Team [REDACTED]; Al Hassan Prosecution Team [REDACTED]; V43 Victims Al Hassan Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]; Trial Chamber X Communications [REDACTED]
Subject: TC X: Defence regulation 35 request

Dear counsel,

The Single Judge refers to the Defence's *ex parte* Regulation 35 request sent by email to the Chamber at 09:41am today.

The Defence is instructed to send a redacted version of the request, copying the Prosecution and LRVs by 12pm today.

Any responses to the redacted version of the request should be provided by email no later than 12pm tomorrow 22 March 2022.

Kind regards,


on behalf of the Single Judge of Trial Chamber X

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect