

ANNEX 14

PUBLIC REDACTED

From: Trial Chamber X Communications
Sent: 24 May 2022 14:49
To: Al Hassan Prosecution Team; D28 Al Hassan Defence 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 requests to add items to its list of evidence pursuant to Regulation 35(2) of the Regulations

Dear counsels,

The Single Judge notes the Defence's two Regulation 35 requests (#2226, the 'First Request'; and email dated 23 May 2022 at 16:06, the 'Second Request') to add items to its list of evidence (the 'LoE') as well as the Prosecution and the LRV's response to the First Request below. The Single Judge further notes that the Prosecution does not oppose the Second Request (email dated 23 May 2022 at 16:49).

The Single Judge incorporates by reference the applicable law as set out in the Chamber's previous decision (ICC-01/12-01/18-988-Red, para. 6).

A. Three transcripts

The Defence requests the late addition of three transcripts (MLI-D28-0006-4829 being the transcript of MLI-OTP-0015-0495; MLI-D28-0006-4826 being the transcript of MLI-D28-0006-4465; and MLI-D28-0006-4824 being the transcript of MLI-D28-0006-4468). The Prosecution objects to the late addition of MLI-D28-0006-4829 on the basis that the original video is not on the LoE.

The Single Judge reiterates that submission of transcripts and translations of items already on the LoE is, as accessories to such items, ultimately for the benefit of all parties and the Chamber.

As regards transcript MLI-D28-0006-4829, the Single Judge notes that, while not on the LoE, the corresponding video was used by both parties during the Prosecution's presentation of evidence and was submitted into evidence via P-0065 and P-0125. The Single Judge considers that it is equally in the interest of all parties to have transcripts of items already on the evidentiary record of the case. Accordingly, and considering no prejudice arises, the late addition of **MLI-D28-0006-4829**, **MLI-D28-0006-4826** and **MLI-D28-0006-4824** to the LoE is granted.

B. Items related to D-0524 and D-0611

The Defence requests the addition of the signed statement of D-0524 (MLI-D28-0006-4469-R01) and the transcript of a read-through session with D-0611 of his statement (MLI-D28-0006-4287-R01). While deferring to the Chamber on the statement of D-0524, the Prosecution and the LRVs oppose the addition of MLI-D28-0006-4287-R01.

The Single Judge recalls the Chamber's previous decision inviting the Defence to 'submit any renewed request pursuant to Regulation 35 of the Regulation for the related material in a consolidated manner, i.e. addressing in a single filing delayed disclosure, late addition to the List of Evidence, as well as (if any) submission into evidence under Rule 68 of the Rules' (#2204 para. 15).

In line with the abovementioned directions, and since the Single Judge considers it more appropriate for this to be adjudicated in a consolidated manner, after any other relevant material has been disclosed and when the relevant Rule 68 applications are before the Chamber, the Single Judge defers her determination as regards this part of the First Request.

C. Items related to D-0502

The Defence requests the late addition of two items (MLI-D28-0006-4240-R01 and MLI-D28-0006-4260-R01) to its LoE, these being a corrigendum to D-0502's report and an explanatory letter. The Prosecution defers to the Chamber.

The Single Judge notes that, given that these items were provided by the witness himself on 21 April 2022, the late addition is sought for reasons outside of the Defence's control. Considering further that it is in the interest of justice and the determination of the truth to have any error in the witness's report rectified, the Single Judge grants this part of the Request and authorises the late addition of **MLI-D28-0006-4240-R01** and **MLI-D28-0006-4260-R01** to the LoE.

D. Items related to D-0516

The Defence requests the late addition of an investigation note (MLI-D28-0006-4838-R01) and an ID card (MLI-D28-0006-2781-R01) related to D-0516. The Prosecution objects to the addition of the investigation note on the basis that the leave to reply request (#2225-Conf), to which the Defence avers the item relates, was rejected by the Chamber.

The Single Judge recalls that in granting the Defence's Rule 68(3) application with respect to D-0516, the Chamber noted the possibility for the Defence to produce further evidence *inter alia* on 'the gathering process of D-0516's prior recorded testimony' (#2228-Red, para. 23). Notwithstanding the fact that supplemental information was not considered necessary for the Chamber's Rule 68(3) assessment, the Single Judge considers that it is in the interest of justice and the determination of the truth to allow the addition of the investigation note prepared to the LoE as it may assist in understanding and assessing D-0516's prior recorded testimony. Accordingly, the late addition of **MLI-D28-0006-4838-R01** and **MLI-D28-0006-2781-R01** is granted.

E. Item related to D-0539

MLI-D28-0006-4463 is an investigation note setting out the contents of the addendum to D-0539's prior recorded testimony.

Noting the Defence's Rule 68(2)(b) request concerning D-0539 (#2209-Conf), the Single Judge considers that it is in the interest of justice to authorise the late addition of **MLI-D28-0006-4463** to the LoE.

F. Two items recently obtained and their transcripts

As regards, the two medical records and their corresponding translations, the Single Judge notes the explanations provided by the Defence as to why they could not have been obtained earlier (#2226, para. 19; #2022 para. 28.) Further noting that the Prosecution and the LRVs do not oppose this part of the Request, the Single Judge authorises the late addition of **MLI-D28-0006-4262**, **MLI-D28-0006-4263-R01**, **MLI-D28-0006-4264** and **MLI-D28-0006-4266-R01**.

G. Items related to D-0025

In the Second Request, the Defence requests the late addition of seven items which relate to D-0025's professional activities and/or are referred to by D-0025 in her report. Noting that the Second Request is unopposed and that the Chamber authorised the introduction into evidence of D-0025's report pursuant to Rule 68(3) (#2206), the Single Judge considers that it is in the interest of justice to authorise the late addition to the LoE of the items sought (**MLI-OTP-0080-5674**, **MLI-D28-0006-4878**, **MLI-D28-0006-4946**, **MLI-D28-0006-4996**, **MLI-D28-0006-5160**, **MLI-D28-0006-5094** and **MLI-D28-0006-5122**).

The Single Judge hereby reiterates the Chamber's prior instruction for requests seeking late addition to the LoE to be formulated, to the extent possible, together with the submission of the relevant item is sought. In other words, where possible and appropriate (not for items it intends to use with and submit through a live witness), the Defence should seek the submission into evidence of the relevant items when seeking their late addition to the List of Evidence (whether it is a bar table motion or a request complementary to a pending or granted Rule 68 application).

Kind regards,

The Single Judge of Trial Chamber X

From: [REDACTED]
Sent: 24 May 2022 14:11
To: Dutertre, Gille [REDACTED]; Trial Chamber X Communications
Cc: D28 Al Hassan Defence Team [REDACTED]; V43 Victims Al Hassan Team [REDACTED]
 [REDACTED] Al Hassan Prosecution Team [REDACTED] >
Subject: RE: TC X - Decision shortening the deadline for responses to ICC-01/12-01/18-2226

Chère Chambre de première instance X,

Chers collègues,

Les Représentants légaux s'en remettent à la Chambre quant aux catégories A, C, D, E et F de la Requête de la Défense .

S'agissant de la catégorie B à savoir : « *B. Statements of Witnesses D-0524 and D-0611* », les Représentants légaux relèvent les points suivants :

- **Quant à MLI-D28-0006-4469-R01**, la Défense indique avoir transmis la déclaration signée aux parties : « MLI-D28-0006-4469-R01 signed on 05 May 2022 and disclosed under Trial Rule 78 D28 package 142 06 May » (note de bas de page n°7). Or les Représentants légaux n'ont pas été destinataires de cet envoi et, par ailleurs, comme le note l'Accusation dans son courriel du 20 mai 2022 (15h30), ils ne sont pas non plus en mesure d'apprécier les raisons de l'ajout tardif de la déclaration de D-0524 puisque la raison invoquée est caviardée dans la requête 2202 de la Défense.

- **Quant à MLI-D28-0006-4287-R01**, les Représentants légaux font leurs arguments de l'Accusation dans son courriel du 20 mai 2022 précité.

Très respectueusement,

Pour les Représentants légaux des victimes

[REDACTED] (*Case manager dans l'Affaire Al Hassan*)

From: [REDACTED]
Sent: 23 May 2022 16:06
To: Trial Chamber X Communications [REDACTED]
Cc: Al Hassan Prosecution Team [REDACTED]; V43 Victims Al Hassan Team
 <[REDACTED]>; Associate Legal Officer-Court Officer [REDACTED]
 D28 Al Hassan Defence Team [REDACTED]
Subject: Defence List of Material for Witness D-0025

Dear Trial Chamber X,
 Dear Colleagues,

Pursuant to paragraph 57 of ICC-01/12-01/18-789-AnxA, the Defence provides its List of Material for Witness D-0025, attached. The eBinder should be uploaded shortly on eCourt.

Pursuant to Regulation 35 (2), the Defence respectfully requests the amendment of its List of Evidence (ICC-01/12-01/18-2196-Conf-Anx1), and late addition therein of the following items. These items are directly relevant to D-0025's testimony and have already been cited in D-0025's report. The items have also been stamped and disclosed today. The addition of these items is necessary for the purpose of completion of the record, as well as the interest of justice and for the parties' preparation of D-0025.

The defence hereby provides the list of the relevant items in accordance with their order on the list of materials for Witness D-0025's testimony

2. MLI-OTP-0080-5674

Title: Proving torture

This report was disclosed by the Prosecution under Rule 77 on 6 May 2022 and the Defence wishes to use it for the examination of D-0025. As indicated in the report, at p. 5679, D-0025 has worked for years preparing clinical response letters and initial analysis of cases that provided foundation for the research in the report.

Further, as stated in D-0025 Curriculum Vitae, D-0025 was a keynote speaker in the Proving Torture conference.

See D-0025's report at, MLI-D28-0003-0031, p. 0066.

110. MLI-D28-0006-4878

Title: JUDGMENT KV (Sri Lanka) (Appellant) v Secretary of State for the Home Department (Respondent)

As mentioned in D-0025's Curriculum Vitae, D-0025 provided an expert testimony in the case of KV at the UK Supreme Court. It is therefore beneficial for the interest of justice and for the parties' preparations to provide the full content of the Judgment.

Cited in D-0025's report at, MLI-D28-0003-0031, p. 0067.

The following items have been cited in D-0025's report as part of her list of publications. The Defence has disclosed them and requests their addition to the List of Evidence for easier access to the parties and for the completeness of the record.

123. MLI-D28-0006-4946

Title: Quality Standards for healthcare professionals working with victims of torture in detention

Cited in D-0025's report at, MLI-D28-0003-0031, p. 0068.

180. MLI-D28-0006-4996

Title: A source book on solitary confinement

Cited in D-0025's report at, MLI-D28-0003-0031, p. 0033 (item 1.)

183. MLI-D28-0006-5160

Title: Debility, dependency and dread: On the conceptual and evidentiary dimensions of psychological torture

Cited in D-0025's report at, MLI-D28-0003-0031, p. 0034.

181. MLI-D28-0006-5094

Title: Protocol on Medico-Legal Documentation of Sleep Deprivation

Cited in D-0025's report at, MLI-D28-0003-0031, p. 0033

182. MLI-D28-0006-5122

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

Cited frequently in D-0025's report at, MLI-D28-0003-0031, p. 0038, 0044, 0049, 0051, 0057, 0060 and 0063.

Kind regards,

on behalf of Counsel Melinda Taylor

From: Dutertre, Gilles [REDACTED]
Sent: vendredi 20 mai 2022 15:31
To: Trial Chamber X Communications <[REDACTED]>
Cc: D28 Al Hassan Defence Team [REDACTED] V43 Victims Al Hassan Team
 [REDACTED] Al Hassan Prosecution Team [REDACTED]
Subject: RE: TC X - Decision shortening the deadline for responses to ICC-01/12-01/18-2226

Chère Chambre de première instance X, Chers Collègues,

L'Accusation s'en remet à la Chambre pour certains documents et s'oppose à la requête de la Défense pour certains autres (voir *infra*).

L'Accusation note tout d'abord que la Défense ne justifie pas, sur le fondement de la norme 35 du Règlement de la Cour, que des raisons échappant à son contrôle l'ont empêché d'ajouter à sa liste de preuves les documents contenus dans les catégories suivantes : catégorie A, catégorie E et catégorie F. Or, comme souligné par la Chambre, les demandes d'ajouts tardifs à la liste de preuves sont exceptionnelles et ne doivent en aucun cas devenir la norme pendant le procès (voir décision 988, para. 8).

Sur le fond, en ce qui concerne les documents évoqués par la Défense en **catégorie A** (voir para. 5 de sa requête 2226), l'Accusation note que le document MLI-OTP-0015-0495 ne fait *a priori* pas partie de la liste de preuves de la Défense, contrairement à ce qui est mentionné en note de bas de page 4. Il n'apparaît donc pas justifié d'inclure dans la liste de preuves de la Défense le transcrite correspondant (MLI-D28-0006-4829). Quant aux transcrits des vidéos MLI-D28-0006-4465 et MLI-D28-0006-4468, à savoir MLI-D28-0006-4826 et MLI-D28-0006-4824, l'Accusation s'en remet à la Chambre.

En ce qui concerne les documents mentionnés par la Défense en **catégorie B** (paras 7-9 de sa requête 2226), l'Accusation note qu'elle n'est pas en mesure d'apprécier les raisons de l'ajout tardif de la déclaration de D-0524 puisque la raison invoquée est caviardée dans la version qu'a reçue l'Accusation (requête 2202 de la Défense).

- L'Accusation s'en remet à la Chambre s'agissant de l'ajout tardif de cette déclaration MLI-D28-0006-4469-R01.
- L'Accusation exprime des réserves quant au témoignage préalablement enregistré MLI-D28-0006-4287-R01 (la Défense précise au para. 9 de sa requête 2022 qu'elle compte soumettre cet élément par le biais d'une requête sur le fondement de la règle 68). La Défense, qui renvoie au paragraphe 25 de sa requête 2202 (voir note de bas de page 10, requête 2226), ne justifie pas clairement pourquoi il n'était pas possible d'obtenir une déclaration de D-0611. Les transcrits ne contiennent pas les portions en tamasheq qui ont été traduites oralement. La Défense doit fournir les audios en tamasheq à l'Accusation pour que celle-ci puisse procéder à certaines vérifications tout comme l'Accusation avait en son temps communiqué à la Défense les bandes audio comprenant le bambara s'agissant de l'entretien avec le témoin P-0582 soumis la règle 68. En conséquence, l'Accusation se réserve le droit de se prononcer sur le bien-fondé de l'ajout de ce document (MLI-D28-0006-4287-R01) une fois que les bandes audios en tamasheq auront été communiquées et s'oppose donc, à ce stade et dans l'attente de recevoir lesdites bandes audio, à l'ajout tardif du "*transcript of the statement read-through session*" de D-0611 à la liste de preuves de la Défense.

En ce qui concerne les documents mentionnés dans la **catégorie C** qui concernent le témoin D-0502 (para. 10 de sa requête 2022), à savoir le rapport corrigé (MLI-D28-0006-4240-R01) et la lettre correspondante expliquant les trois erreurs (MLI-D28-0006-4260-R01), l'Accusation s'en remet à la Chambre.

S'agissant des documents mentionnés en **catégorie D**, l'Accusation s'en remet à la Chambre s'agissant de la carte NINA (MLI-D28-0006-2781-R01). En revanche, l'Accusation s'oppose à l'ajout tardif de la note d'enquêteur MLI-D28-0006-4838-R01. La Défense soutient que cette note d'enquêteur a été produit "*for the purpose of the Defence request for leave to reply of 16 May 2022*" (voir para. 14 de sa requête 2226). Or, la demande de réplique de la Défense a été rejetée par la Chambre (voir sa décision 2228, page 13). L'ajout tardif de cet élément n'est donc ni justifié ni approprié au regard de la décision qui a été prise par la Chambre, laquelle a considéré qu'elle ne serait pas davantage assistée par des arguments additionnels sur les sujets identifiés par la Défense (para. 10 de sa décision 2022).

S'agissant du document mentionné en **catégorie E**, l'Accusation note que la Défense compte divulguer dès que possible un *addendum* signé par D-0539 (para. 17 de sa requête 2226). L'Accusation s'en remet à la Chambre s'agissant de l'ajout tardif de cet élément.

S'agissant des documents contenus dans la **catégorie F**, l'Accusation n'est pas en mesure d'apprécier la raison invoquée pour l'ajout tardif des documents puisque l'information pertinente a été caviardée (voir sa requête 2202, para. 28). L'Accusation s'en remet à la Chambre en ce qui concerne l'ajout tardif de ces quatre documents (deux documents et leurs traductions corrélatives) qui concernent la famille de l'Accusé.

Respectueusement,

Gilles Dutertre

From: Trial Chamber X Communications

Sent: mercredi 18 mai 2022 08:07

To: Al Hassan Prosecution Team <

>

>; D28 Al Hassan Defence Team

<[REDACTED] 43 Victims Al Hassan Team [REDACTED]>
Cc: Associate Legal Officer-Court Officer <[REDACTED]>; Trial Chamber X Communications <[REDACTED]>

Subject: TC X - Decision shortening the deadline for responses to ICC-01/12-01/18-2226

Dear counsels,

The Single Judge notes the Defence Regulation 35 request filed on 17 May 2022 (ICC-01/12-01/18-2226).

Pursuant to Regulation 34 of the Regulations, the Single Judge decides that any response to the aforementioned request should be submitted by Tuesday, 24 May 2022.

Kind regards,

The Single Judge of Trial Chamber X