

ANNEX 17

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From: Trial Chamber X Communications
Sent: 03 June 2022 08:01
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 request to add one item to its list of evidence

Dear counsels,

The Chamber has had regard to the exchange between the parties relating to the testimony of D-0502 and the Defence's request to add MLI-D28-0006-5259 to its list of evidence. Without prejudice to its ultimate assessment of D-0502's evidence, the Chamber considers that the late addition is in the interest of justice and may assist the Chamber in its determination of the truth. The Chamber accordingly authorises the late addition of MLI-D28-0006-5259 to the Defence list of evidence.

Kind regards,
Trial Chamber X

From: [REDACTED]
Sent: 02 June 2022 11:34
To: Taylor, Melinda [REDACTED] Trial Chamber X Communications [REDACTED]
[REDACTED]
Cc: D28 Al Hassan Defence Team [REDACTED]; Al Hassan Prosecution Team
<[REDACTED]>; V43 Victims Al Hassan Team [REDACTED] Nowak, Antonia
[REDACTED]
Subject: RE: OTP submissions

Dear Trial Chamber X

The Prosecution would like to clarify for the Chamber's information, the Prosecution's position.

First, the questions posed to Dr Morgan related to his methodology and whether he requested access to [REDACTED] or the Accused, or requested of the Defence access to their medical records.
Second, it is important to understand the context of the request of the Defence for Dr Crosby to meet with [REDACTED], which was not for an assessment but to be present during a requested interview by the Defence of [REDACTED]. The Protocol does not envisage the presence of a medical doctor in an interview, which the Prosecution stated at the time. This was not raised with the Chamber. And in any event, this is not relevant to the Prosecution's question of Dr Morgan, who is now testifying at trial, whether he requested to meet with these individuals.
Third, the extract about the photograph is being used out of context – the Prosecution was clarifying that the image of the woman being flogged in the photograph was [REDACTED]
Fourth, the Prosecution already stated for the record and explained to the witness that a video showing him flogging another person was shown and when asked whether he was involved in any other flogging incident, [REDACTED]
[REDACTED]

The Prosecution strenuously rejects any suggestion that it has sought to mislead the witness or the Chamber.

Kind regards

[REDACTED]
Trial Lawyer

From: Taylor, Melinda [REDACTED]
Sent: 02 June 2022 11:25
To: Trial Chamber X Communications [REDACTED]
Cc: D28 Al Hassan Defence Team [REDACTED]; Al Hassan Prosecution Team
<[REDACTED]>; V43 Victims Al Hassan Team [REDACTED]>; Nowak, Antonia

██████████
Subject: OTP submissions

Dear Trial Chamber X,

The Defence would like to respectfully express its concern regarding the following submission by the Prosecution. The Defence invited the Prosecution to clarify or correct its position, but the Prosecution declined to do so.

This morning, the Prosecution pursued a line of questioning as to why the Defence had not sought to arrange for Dr Morgan to meet with and assess Mr Al Hassan and ██████████.

In June 2020, the Defence wrote to Mr Duterte pursuant to the witness contact protocol to arrange for the Defence expert, Dr Sondra Crosby, to meet with and evaluate ██████████. Mr Duterte responded, opposing the request. When the Defence brought this to ██████████ attention, she claimed not to be aware of this exchange even though she was copied to it.

The Defence notes that in the past, the Trial Chamber has underscored the importance of there being a reliable factual foundation to the questions put to witnesses. The Prosecution's line of questioning was predicated on the assumption that such an examination could have been possible - even though they rejected it outright (and before any consultation with ██████████).

Secondly, at the latter part of today's hearing - at p. 38 - when referring to December 2017 transcript= the Prosecution first asserted that no videos or photos were used in this transcript (even though they were).

The Prosecutor then asserted at page 39 lines 15 to 18, that "its the Prosecution's case, I dont believe that the Defence will disagree that this does not relate to the flogging of ██████████r". In fact. the Prosecution's case - as disclosed and pleaded before this point - has been that this photograph was taken on the same day ██████████ and they have used this photograph to allege Mr Al Hassan's presence at the event.

Given the volume of materials and transcripts involved, the Defence respectfully submits that it is of the utmost importance that the Prosecution does not advance characterisations of the materials or the procedures in this case that are misleading or counterfactual.

For these reasons, the Defence is seeking to add MLI-D28-0006-5259 (attached email) to its overall list of evidence so that the Chamber can assess the Prosecution's claims in light of this information.

Kind regards

Melinda Taylor on behalf of the Al Hassan Defence

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