

ANNEX 6

PUBLIC REDACTED

From: Trial Chamber X Communications
Sent: 04 May 2022 20:22
To: D28 Al Hassan Defence Team; Al Hassan Prosecution Team
Cc: Trial Chamber X Communications; Chamber Decisions Communication
Subject: TC X: Single Judge decision on Prosecution Urgent Request for Disclosure - Witnesses D-0020, D-0025, D-0500, D-0501 and D-0502

Dear Counsels,

The Single Judge notes the below Prosecution request seeking disclosure orders related to the upcoming testimony of five Defence Expert Witnesses (the 'Request'), which notably seeks the production of additional evidence related to Expert witnesses D-0020, D-0025, D-0500, D-0501 and D-0502. The Single Judge also takes note of the Defence's email sent in response (also below).

The Single Judge refers to Rule 78 of the Rules of procedure and evidence and the Chamber's related orders on Defence disclosure (ICC-01/12-01/18-1756, paragraphs 8 and 11(iv)). The Single Judge recalls that Rule 78 stipulates that the Defence shall permit the Prosecution to inspect material in its possession or control which are intended for use at trial. The Single Judge notes that the Request is not formulated on this basis, as it is not suggested that all the information sought is in the Defence's possession, but instead seeks an intervention under the Chamber's broader power to order the disclosure and/or production of *additional* evidence, notably under Article 64(3)(c) and (6)(d) and Rule 84 of the Rules.

Concerning the first part of the Request - the provision of 'any outstanding letters of instruction', the Single Judge observes that the Defence confirmed that it has complied with its Rule 78 obligations in *inter partes* emails which preceded the Request. In its response, the Defence further specified that two instruction letters were provided to the Prosecution and otherwise indicated that it is 'not in possession of any other instruction letters'. Recalling the applicable legal framework set out above, this part of the Request is declared moot.

Turning to the second part of the Request - the provision of 'copies of any draft expert reports' and information concerning 'any contacts between [...] Defence expert witnesses', the Single Judge finds that the Prosecution has not presented information to establish a foundation for either request.

The Single Judge notes that the third part of the Request concerns additional information and evidence sought to be obtained with respect to D-0020 specifically, mostly material related to other professional commitments listed in her CV, which is itself an exhibit submitted into evidence under Rule 68(3) of the Rules. The Single Judge considers that the Prosecution has not demonstrated the relevance and/or necessity of the additional information sought in the context of a disclosure request. Accordingly, and based on the information available, the Single Judge finds that the Chamber's intervention under Rule 84 of the Rules is not warranted at this stage.

Finally, the Single Judge is not convinced by the Prosecution's general argument that the production of the additional information sought is necessary for its preparation or for the Chamber's upcoming assessment of the witnesses' expertise and evidence or that the lack of this same information or material would be detrimental to the fairness of proceedings or the determination of the truth. Further noting that the Expert Witnesses are due to testify in May or June 2022, the Single Judge observes that, should the Prosecution wish to address any of these issues, it will have an opportunity to question the relevant witnesses during their respective in-court testimony regarding the same.

Accordingly, since all Rule 78 disclosures have been effected, and because the Prosecution has not identified a disclosure issue nor missing information or evidence which would warrant the Chamber's intervention under Article 64(6)(d) of the Statute, the Single Judge hereby dismisses the Request in full.

Kind regards,

On behalf of the Single Judge of Trial Chamber X

From: Taylor, Melinda [REDACTED]
Sent: 04 May 2022 15:36
To: Trial Chamber X Communications [REDACTED] D28 Al Hassan Defence Team [REDACTED]; Al Hassan Prosecution Team [REDACTED]
Subject: Re: TC X: Single Judge directions for responses to Prosecution Urgent Request for Disclosure - Witnesses D-0020, D-0025, D-0500, D-0501 and D-0502

Dear Trial Chamber X,

The Defence respectfully submits that the Prosecution's request for disclosure and/or a judicial order constitutes a tardy fishing expedition and fails to comply with the basic requirements for a disclosure request. It should therefore be dismissed *in limine*.

The Prosecution has failed to:

- clearly describe the requested material and their foundation for believing that it exists;
- articulate the relevance of the requested materials to Defence disclosure obligations set out in Rule 78;
- demonstrate that the requested materials are in the possession of the defence or have not otherwise been disclosed;
- utilise the correct processes for obtaining information directly from a defence expert;
- act with diligence or exhaust investigative avenues for obtaining information that is available to the Prosecution.

The Prosecution's request is tardy and they have failed to diligently utilise the appropriate channels available to them

The Prosecution has been aware of Dr Porterfield's appointment as an independent psychological expert for the Defence since March 2020 (ICC-01/12-01/18-680-Red2, para. 20). The Prosecution received her main report in May 2020. It also received additional disclosure during the course of litigation concerning the Defence termination request, in June and July 2020. The Prosecution was in possession of her cv from March 2020, and also were familiar with her background and qualifications from an earlier date (given that the Prosecution appointed and paid her to participate in an OTP training programme).

The Prosecution was notified of Dr Morgan's status as a Defence expert in January 2022. It then received the Defence list of experts, with Dr Porterfield and Dr Cohen, on 25 March 2022. The Prosecution was informed, during the status conference of 6 April, that the Defence would commence its case with its experts. The Defence filed its Rule 68(3) application concerning Drs. Porterfield, Cohen and Morgan on 8 April.

On 28 April, the Defence wrote to the Chamber and parties to seek clarification of the preparation process. At the same time, the Defence notified the Chamber that D-20 [REDACTED] the Defence wished to commence preparation as soon as possible so that she would have to review the materials.

On 29 April, the Prosecution started to send a series of extremely vague and sometimes overlapping requests. The Prosecution provided no explanation as to why it believed that the Defence was in possession of these items, why the items were relevant to the issues addressed in Dr Porterfield's report, or the legal basis for requesting disclosure.

The Prosecution also included in its email to the Chamber items that had never been requested from the Defence (in her email of 18:13pm, [REDACTED] requests "any contacts between witnesses D-0020 and D-0025 and any contact amongst any other proposed Defence expert witnesses (D-0020, D-0025, D-0502, D-500 and D-502).

The witness contact protocol sets out a clear procedure that can be used by opposing parties that wish to obtain information or evidence from a witness. The Prosecution has used this procedure in other cases to interview Defence experts, in a timely manner.

Notwithstanding the fact that the Prosecution has been aware of Dr Porterfield's appointment since March 2020, the Prosecution has never requested to contact Dr Porterfield, through the procedure set out in the contact protocol. It has also not requested to meet with any other experts that are the subject of its request.

Given the different Statutory roles of the Defence and the Prosecution, it is also not appropriate to transform the Defence into an investigative arm of the Prosecution, by asking or ordering the Defence to obtain information and evidence from its witnesses. This is effectively what would occur if the Defence is required to interview its witnesses on the behalf of the Prosecution.

Similarly, it would not be appropriate for the Defence to give evidence itself on issues that fall within the personal knowledge of witnesses and which are likely to be put to the witnesses during their testimony. Unlike many OTP expert witnesses, the Defence experts are not 'inhouse staff members': the Defence does not supervise or collate their communications.

If the Prosecution wishes to obtain information on such matters and has a reasonable foundation for believing that Dr Porterfield is in a position to answer, then it may put these questions to Dr Porterfield through cross-examination. This is the approach that has been adopted by this Chamber in connection with Defence requests for Prosecution disclosure (see for example: email of 30 June 2021, 9.15am). Given that OTP disclosure obligations are broader than those of the Defence, there is no basis for imposing a more rigorous standard on the Defence.

As concerns tangible items, the Defence is not in possession of the requested presentations or transcripts. Dr Porterfield also did not rely on these materials to prepare her report or testimony.

The Defence also notes that some of the requested presentations were delivered jointly with a Prosecution expert.

Apart from the fact that the Prosecution has failed to follow the proper procedures of the witness contact protocol, it has also failed to include any explanation or justification as to why a judicial order is necessary to obtain information that it can readily obtain itself, and which is not in the custody of the Defence.

The Prosecution failed to adequately describe the requested materials or describe their relevance

Whereas the Prosecution has claimed that the Defence has not disclosed all instructions letters concerning Dr Porterfield, it has not identified any letters that have not been disclosed.

The Prosecution has received MLI-D28-0003-1881 and MLI-D28-0003-1622. The Defence is not in possession of any other instruction letters.

Apart from vague claims that materials are relevant to Dr Porterfield's 'neutrality', the Prosecution has also failed to provide a substantiated explanation as to how the requested materials are relevant to the specific subject matter of D-0020's testimony or her expertise to provide this testimony.

The Prosecution has, for example, requested:

- various presentations that do not concern the case – including two dating from 2012 (that is, 7 years prior to her appointment on the case) and which appears to have been co-delivered with an OTP expert - Ms Adeyinka M. Akinsulure-Smith - who presumably addressed 'The Hague' perspective;
- the particulars of certain charity organisations that are unknown to the Defence and which do not appear to have any linkage to the charges in this case.

None of these materials fall within the scope of Defence disclosure obligations.

The Prosecution's requests fall outside Defence disclosure obligations and would impose an unnecessary and undue burden on the Defence

In a decision issued in this case (ICC-01/05-01/13-1820 para. 6), the Single Judge underscored the different disclosure obligations between the Prosecution and the Defence:

The Single Judge reiterates the findings of this and other Chambers that the disclosure obligations of the defence differ significantly from those of the Prosecution.11 Rule 78 of the Rules provides that objects 'which are intended for use by the defence as evidence' have to be disclosed. From the wording of Rule 78 of the Rules, it is clear that only an item which the defence 'intends to use' falls under its disclosure obligations. The scope of the Rule 78 of the Rules is accordingly limited to the defence's choice of evidence. This narrow interpretation of the defence's disclosure obligations is in accordance with the required protection of the rights of the defence. In the words of Trial Chamber I in the Lubanga case, '[t]he starting-point for consideration of this issue [of ordering the defence to disclose evidence] is that the fundamental rights of the accused not to incriminate himself or herself and to remain silent must not be undermined by any obligations imposed on the defence'.

This finding is consistent with ICC case law, confirming that in line with the defendant's right to silence and privilege against self-incrimination, Defence disclosure obligations are limited to the items that the Defence intends to introduce as evidence: See Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on defence disclosure and related issues, 24 February 2012, para. 18, stating that '...Rule 78 obligations apply 'as soon as the defence makes a decision to use an item as evidence,...'. 13 Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on disclosure by the defence, 20 March 2008, ICC-01/04-01/06-1235-Anx1, para. 12.

In terms of the specific context of experts, the golden rule is that the parties must have sufficient information concerning the methodology, sources and assumed or established facts used by the expert to prepare the report: other issues can be addressed through cross-examination. For this reason, both ICC and ICTY case law confirms that the Defence is not obliged to disclose drafts or correspondence with experts. See for example:

- ICC-01/05-01/13-1707, paras 7-9, in which Trial Chamber VII rejected an OTP request for access to correspondence between the defence expert and the Defence, and emphasised that “[t]he Prosecution has the opportunity to resolve any remaining uncertainties in respect of the production of the report, the methods used to prepare it and the assumptions on which the Witness relied on during its in-court examination of the Witness”;
- *Lubanga*, Oral decision of 7 January 2010, ICC-01/04-01/06-T-223-ENG, pages 1-2, 7, where Trial Chamber I ruled that the personal notes of an expert witness are not disclosable, what counts is the witness's evidence and not their personal notes: Oral decision of 7 January 2010, ICC-01/04-01/06-T-223-ENG, pages 1-2, and 7;
- *Prosecutor v. Gotovina*, the Prosecution requested from the Defence all the information provided to their proposed expert witnesses, any communications between the Defence and their proposed expert witnesses, and any draft reports circulated between the proposed experts and the Defence. The Trial Chamber ruled that there was “no obligation for the Defence to disclose to the Prosecution the material sought in the Request” (para. 9); “With regard to communications between the proposed experts and the Defence, as well as prior drafts of expert reports, the Chamber considers that the parties are able to raise these matters with the proposed experts during their examinations.” (para. 11). *Prosecutor v. Gotovina et al.*, ‘Decision on Disclosure on Expert Materials’, 27 August 2009; and
- In the *Prosecutor v. Stanisic and Simatovic*, the Trial Chamber determined that the rule concerning expert witnesses did “not entail any obligation to disclose communication (...) in preparation of [the expert report] or early drafts thereof. To find otherwise would be an unreasonable broadening of the rule”. ‘Decision On Stanisic Request For Order Of Disclosure Of Materials Related To The Admissibility Of The Expert Report of Reynard Theunens, 11 March 2011, para. 20

The Defence has disclosed the materials that it intends to use with Dr Porterfield. It has also disclosed the information that D-20 relied upon to prepare her report. This includes her personal notes that were taken during her interviews with Mr Al Hassan.

The Prosecution has provided no argument – in fact or law – to suggest that the Defence has not fulfilled its obligations or that a judicial order is required.

Finally, the Defence expresses its concern that the imposition of additional obligations to meet these tardy requests would impact on the right of the defence to adequate time and facilities to prepare its case. Whereas the Prosecution had almost a two month break between its opening statement and the commencement of oral testimony, the D-20 is scheduled to testify the day after Defence opening statements. The current time-table imposes a heavy burden on Defence organization and preparation. The ability of the Defence to meet this schedule would be compromised further if Defence time and resources are diverted to conducting last-minute investigations for the Prosecution on matters than can and should be raised in accordance with the proper procedures (that is, through the witness contact protocol or through cross-examination).

Kind regards
Melinda Taylor, on behalf of the Al Hassan Defence

From: Trial Chamber X Communications [REDACTED]
Sent: 03 May 2022 12:23
To: D28 Al Hassan Defence Team [REDACTED]; Al Hassan Prosecution Team [REDACTED]
Cc: Trial Chamber X Communications <[REDACTED]>
Subject: TC X: Single Judge directions for responses to Prosecution Urgent Request for Disclosure - Witnesses D-0020, D-0025, D-0500, D-0501 and D-0502

Dear Counsels,

With respect to the below request from the Prosecution, the Single Judge hereby shortens the deadline for any responses to C.O.B. on Wednesday 4 May 2022.

Kind regards,
On behalf of the Single Judge of TC X

From: [REDACTED]
Sent: 02 May 2022 18:13
To: Trial Chamber X Communications [REDACTED]
Cc: D28 Al Hassan Defence Team [REDACTED]; Al Hassan Prosecution Team [REDACTED]
Subject: Urgent: Request for Disclosure - Witnesses D-0020, D-0025, D-0500, D-0501 and D-0502
Importance: High

Dear Trial Chamber X,

The Prosecution refers to the Chamber's powers to require disclosure of any information or documents necessary to enable the parties to prepare for trial and to facilitate the fair and expeditious conduct of the proceedings, including under article 64(2), (3)(a) and (c), (6)(a) and (b), (d) and (f), (8)(b), of the Rome Statute; and rule 84 of the Rules of Procedure and Evidence.

The Prosecution recalls that in the Chamber's decision regarding the Defence request concerning witnesses being called as experts, the Chamber indicated that its assessments were being conducted "on a preliminary basis at this stage" and that the "Chamber may still decide to rule on specific objections to the experts' testimony, including their

qualifications or admissibility of their reports, at a later state, as they may arise during the trial” (p.6, para. 11, ICC-01/12-01/18-2206-Conf).

The Prosecution further recalls as regards witness D-0020, that the Chamber stated that: “related parties’ submissions, including those challenging the reliability, relevance or neutrality of her expert opinion, will be duly considered as part of the Chamber’s ultimate assessment or earlier on if warranted” (p.8, para 17). Similarly, as regards Witness D-0025, the Chamber indicated that: “[r]elated parties’ submissions, including those challenging the reliability of her expert opinion or parts thereof, will be duly considered as part of the Chamber’s ultimate assessment, or earlier on during the course of the trial if warranted” (p.10, para.22). As regards D-0500, the Chamber indicated that it would leave it to itself to “assess the credibility or reliability of any related evidence in a holistic manner” (p.12, para 26).

The Prosecution observes that it has requested disclosure from the Defence of specific information and documentary evidence, relevant to the upcoming testimony of its witnesses D-0020, D-0025, D-0500, D-0501 and D-0502. The Prosecution submits that as these witnesses are being called as experts, who must objectively assist the Chamber in its determination of the truth - it is necessary that this information and evidence be available in order for the Chamber to properly assess the credibility of these witnesses and/or their testimony or reliability of their reports, and as regards D-0020, an assessment of her neutrality and objectivity. The information and evidence that the Prosecution requested, and which the Defence has not agreed to provide or has not provided at this stage, is as follows:

- Any outstanding letters of instruction (the Prosecution has received some but not all such letters of instruction);
- Copies of any draft expert reports including any comments or edits proposed by the Defence;
- Any contacts between witnesses D-0020 and D-0025; and any contacts amongst any other proposed Defence expert witnesses (D-0020, D-0025, D-0502, D-0500, D-0501);

As regards D-0020, in light of her upcoming testimony next week, the Prosecution further requests, for an assessment of her neutrality and objectivity, and her credibility, or reliability of her report, disclosure of the following information and evidence:

- Information as to whether she has testified as an expert witness before the US Federal District Courts and before any US Military Commission Trial – as she describes her role as an “evaluator/consultant” in such cases, in her CV (Document MLI-D28-0003-1624). If she has testified as an expert witness in any such cases, the names of those cases in which she testified as an expert witness and transcripts of her testimony. This prior evidence is relevant to assess her credibility and reliability as an expert witness before this Court.
- Specific presentations made by D-0020 mentioned in her CV, as requested by the Prosecution, relevant to an assessment of her reliability, credibility and neutrality as an expert witness, namely:
 - p.1634: *Impact of Psychological Torture – Perspectives from Guantanamo and the Bellevue/NYU Program for Survivors of Torture*;
 - p.1634: *Interviewing Survivors of Trauma and Torture in a Human Rights Context*;
 - p.1636: *Human Rights and the Role of Psychologists: A View from Guantanamo*;
 - p.1637: *Human Rights Abuses- impunity and advocacy: The View from Guantanamo and The Hague* (both presentations dated 6 December 2012 and 26 October 2012).
- Additional information regarding two organisations (Warrior Relief and Hands of Change) that D-0020 states in her CV she was a board member of (relevant to an assessment of her reliability, credibility and neutrality as an expert witness) – namely their full names, addresses and any website links to those organisations.

The Defence has requested the legal basis for any such requests, to which the Prosecution responded in the chain of emails below. The Defence has still not provided this information and evidence as requested *inter partes*.

The Defence further indicated its concerns that no contacts could be made with D-0020 until the Defence meets with her in The Hague, as she has commenced her witness preparation by reading her materials.

The Prosecution requests that the Chamber:

First, order the Defence to disclose the information as listed above by Thursday, 5 May 2022 at the latest, pursuant to article 64 of the Rome Statute and rule 84 of the Rules of Procedure and Evidence; and,
Second, authorise the Defence to make contact with D-0020 for the specific purpose of only requesting the information above, record any such interactions with her, and disclose a record of those interactions as part of the Witness Preparation Note and Log.

The Prosecution makes this request on an urgent basis because of D-0020's testimony due to commence on 10 May 2022 next week.

Kind regards

[REDACTED]
Trial Lawyer (On Behalf of the Prosecution)

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

From: [REDACTED]
Sent: 02 May 2022 15:19
To: D28 Al Hassan Defence Team [REDACTED]
Cc: Al Hassan Prosecution Team [REDACTED]
Subject: FW: Urgent: Disclosure

Dear Ms. Taylor

Thank you for your email.

The Prosecution refers to the Chamber's powers to require disclosure of any information or documents necessary to enable the parties to prepare for trial and to facilitate fair and expeditious conduct of the proceedings, including under article 64 of the Rome Statute and rule 84 of the Rules of Procedure and Evidence.

Whilst the Prosecution is able to approach the Chamber for such a disclosure order, we consider it more efficient and expeditious to seek to resolve this matter *inter partes* if possible, as the Single Judge has stated on numerous occasions is her preference. In particular, when D-0020 is expected to testify next week, it becomes more urgent. The Prosecution recalls that as expert witnesses, any relevant information for the assessment of them as witnesses, their testimony and their reports, should be disclosed and is of pertinence ultimately for the Chamber's assessment, for the determination of the truth.

The information requested regarding the experts is relevant to a proper assessment of the credibility and reliability of the experts and/or their expected testimony, and their reports: including –

- their letters of instruction,
- draft reports as provided to the Defence and any comments made by the Defence on those reports;
- communications between experts;
- as regards D-0020, the following information requested is relevant to her stated expertise, the credibility and reliability of her upcoming testimony, and a proper assessment of her necessary objectivity and neutrality as an expert witness:
 - o information regarding any prior testimony – namely, names of cases and transcripts of testimony from those prior cases;
 - o copies of the specific presentations as mentioned in her CV, as previously requested;
 - o details as requested regarding two named organisations [REDACTED] that D-0020 says she was a board member of.

Provided the exchanges with D-0020 and the Defence are properly recorded, for instance electronically, and then disclosed, the Prosecution would consider that there is nothing precluding the Defence from sending the request in advance to D-0020, under the terms of the Witness Preparation Protocol. In any event, the Single Judge's authorisation could be requested by the Defence (to which the Prosecution would agree), for any such recorded contacts – strictly only for disclosure purposes - to be made prior to audio-video recording of the preparation session once it commences.

Kind regards

[REDACTED]

Trial Lawyer

Dévouement - Intégrité - Respect
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From: Taylor, Melinda [REDACTED]
Sent: 02 May 2022 14:24
To: [REDACTED]; D28 Al Hassan Defence Team
[REDACTED]
Cc: Al Hassan Prosecution Team [REDACTED]
Subject: Re: Urgent: Disclosure

Dear Ms Luping,

Thank you for your emails.

On 30 March, I asked Mr Dutertre to provide further particulars concerning the legal basis for these requests. I have not yet receive any such information.

As the Prosecution is aware from my email last week, D-20, [REDACTED] has commenced her review of materials pursuant to the preparation session, and the Defence will not conduct any substantive discussions with her until she travels to The Hague.

The Defence has complied with its obligations under Rule 78 of the RPE.

Kind regards
Melinda

From: [REDACTED] <[REDACTED]>
Sent: 02 May 2022 09:58
To: D28 Al Hassan Defence Team [REDACTED]
Cc: Al Hassan Prosecution Team <[REDACTED]>
Subject: Urgent: Disclosure

Dear Defence

In her CV, MLI-D28-0003-1624, Katherine Porterfield states that she was an “evaluator/consultant”, in a number of US Military Commission Trials in Guantanamo Bay on behalf of Defence teams. She also states that she served as an “evaluator/consultant” in the US Federal District Court for several cases.

Could you please clarify if she has ever testified in any such trials, and if so please disclose the names of those cases and transcripts of her testimony in those cases.

Bearing in mind she testifies next week, please treat this – and all other outstanding requests for disclosure as a matter of urgency. We note that we have not had disclosure, or any response, to our other requests related to Katherine Porterfield and the other Defence witnesses called as experts.

If we do not have a response by 4pm today, we will have no choice but to approach the Chamber to request the outstanding disclosure.

Kind regards,

[REDACTED]
Trial Lawyer

From: [REDACTED]
Sent: vendredi 29 avril 2022 14:21
To: D28 Al Hassan Defence Team [REDACTED]
Cc: Al Hassan Prosecution Team [REDACTED]
Subject: FW: Defense witnesses
Importance: High

Dear Defence

As a follow-up to the Prosecution's email below, could we please receive as a matter of urgency by the end of today, the following presentations that were listed by Katherine Porterfield, in her CV MLI-D28-0003-1624:

- p.1634: Impact of Psychological Torture – Perspectives from Guantanamo and the Bellevue/NYU Program for Survivors of Torture;
- p.1634: Interviewing Survivors of Trauma and Torture in a Human Rights Context;
- p.1636: Human Rights and the Role of Psychologists: A View from Guantanamo;
- p.1637: Human Rights Abuses- impunity and advocacy: The View from Guantanamo and The Hague (both presentations dated 6 December 2012 and 26 October 2012).

Kind regards,

[REDACTED]
Trial Lawyer

From: Dutertre, Gilles [REDACTED]
Sent: 29 April 2022 10:08
To: D28 Al Hassan Defence Team [REDACTED] >
Cc: Al Hassan Prosecution Team [REDACTED]
Subject: RE: Defense witnesses
Importance: High

Dear Defense,

Besides the English translation of the report of P-0620 and P-0621, MLI-D28-0006-4010, on 6 April 2022, the only item received relevant to our disclosure request below is D-0245's witness statement, MLI-D28-0006-4141-R01, disclosed on 14 April 2022.

All other requests remain unaddressed.

We insist on the importance of receiving copies of any draft reports provided by experts to the Defence and any comments or edits if any made by the Defence to these reports; letters of instruction.

We also need Mrs Porterfield's co-presentation that was mentioned in her CV: "*Human Rights Abuses: Impunity and Advocacy: The View from Guantanamo and The Hague*".

Communications between experts are also highly relevant and disclosable.

Please disclose that material by COB today.

This becomes particularly late and does prevent the Prosecution from properly prepare for cross-examination.

Best regards,

Gilles Dutertre

From: Dutertre, Gilles
Sent: mardi 5 avril 2022 15:00
To: [REDACTED]
Cc: Al Hassan Prosecution Team [REDACTED]
Subject: RE: Defense witnesses
Importance: High

Chère Madame Taylor,

Je vous prie de bien vouloir faire suite à l'email ci-dessous dans les meilleurs délais.

Nous souhaitons également :

- savoir qui est l'auteur de la draft translation en anglais du rapport de P-0620 et P-0621 ; et
- avoir communication de ladite traduction aussi vite que possible.

Cordialement,

Gilles Dutertre

From: Dutertre, Gilles [REDACTED]
Sent: jeudi 31 mars 2022 10:21
To: [REDACTED]
Cc: Al Hassan Prosecution Team [REDACTED]
Subject: RE: Defense witnesses

Chère Madame Taylor,

1) Après vérification (voire commentaires en rouge et vert ci-dessous dans le courriel du mercredi 23 mars 2022 à 15:27), quasiment aucune des informations demandées n'a été communiquée.

- Comme vous le savez, les communications avec des témoins experts touchent le cadre, les paramètres et les conditions de leur travail, le fond de leur rapport, etc. et sont pertinentes et par nature communicables. C'est tout autant important pour la Chambre afin d'apprécier la portée des rapports en cause ;
- S'agissant des photographies, il convient au minimum d'indiquer de quoi il s'agit. Faute de quoi, notamment, cela empêche *de facto* l'Accusation de se préparer utilement et constitue un frein à la célérité des procédures.

Nous restons dans l'attente d'une *disclosure* rapide de toutes ces informations.

2) Par ailleurs nous attendons toujours les éléments demandés dans l'email ci-dessous du mercredi 2 février 2022 à 15:58 (voir commentaire en rouge dans cet email).

Cordialement,

Gilles Dutertre

From: Taylor, Melinda
Sent: mercredi 30 mars 2022 09:01
To: Dutertre, Gilles [REDACTED]; D28 Al Hassan
 Defence Team [REDACTED]
Cc: Al Hassan Prosecution Team <[REDACTED]>
Subject: RE: Defense witnesses

Dear Mr Dutertre,

Thank you for your email. I believe you refer to correspondence that predates our last disclosure. I therefore suggest that you review that disclosure, and if you believe you have a firm legal basis to request additional items, provide that basis to us.

Kind regards
 Melinda

From: Dutertre, Gilles <[REDACTED]>
Sent: 29 March 2022 17:24
To: [REDACTED] Taylor, Melinda [REDACTED] D28 Al Hassan Defence
 Team <[REDACTED]>
Cc: Al Hassan Prosecution Team [REDACTED]
Subject: RE: Defense witnesses

Chère Défense,
 Sauf erreur, nous restons en attente d'une réponse de votre part.
 Cordialement,
 Gilles Dutertre

From: [REDACTED] <[REDACTED]>
Sent: mercredi 23 mars 2022 15:27
To: Taylor, Melinda <[REDACTED]> D28 Al Hassan Defence Team [REDACTED]
Cc: Dutertre, Gilles <[REDACTED]>; Al Hassan Prosecution Team [REDACTED]
 [REDACTED]
Subject: RE: Defense witnesses

Dear Ms Taylor,

The Prosecution has not yet received information regarding MLI-D28-P-0524, as detailed in its email of 2 February 2022. The Prosecution would be grateful to receive disclosure of the information requested as soon as possible and/or an update on when we can expect disclosure.

The Prosecution additionally requests the Defence to disclose the following items/information:

MLI-D28-P-0500

- (i) The Prosecution requests the Defence to disclose any mission letter or other communications between the Defence and MLI-D28-P-0500 specifying his mandate; and
 MLI-D28-0006-2788, disclosed in package 128, contain only email exchanges between the Prosecution and the Defence regarding the physical examination of Prosecution witnesses. No communications between the Defence and MLI-D28-P-0500 has been disclosed to date.
- (ii) His reports on P-0520, P-0538, P-0557, P-0565 and P-0642 indicate that excerpts from court transcripts had been shared with him, but without specifications as to the version, page and line numbers of relevant transcripts provided. In addition, his report on P-0565, MLI-D28-0006-2734-R01, mentions that he has seen "the medical report by the Netherlands Forensic Institute report by Dr W Karst", but no ERN is provided. The Prosecution requests a list of all the items shared with MLI-D28-P-0500, including specifications regarding transcript excerpts.

MLI-D28-0006-3004, disclosed in package 128, lists all items relied upon by the Defence expert.

MLI-D28-P-0501

(i) His report, MLI-D28-0005-9928-R01, only includes one email from the Defence dated 3 December 2021 regarding his "initial appointment for 5 hours" at p. 9964. The Prosecution requests the Defence to disclose any mission letter or other communications between the Defence and MLI-D28-P-0501 specifying his mandate; and

No additional communications between the Defence and MLI-D28-P-0501 has been disclosed to date.

(ii) The Prosecution also requests a list of the items shared with MLI-D28-P-0501 via Dropbox, referred to in the above-mentioned email by the Defence.

The list has not been disclosed to date.

MLI-D28-P-0502

In relation to his report, MLI-D28-0005-9967-R01, the Prosecution requests the Defence to disclose:

(i) any mission letter or other communication between the Defence and him specifying his mandate; and

No communications between the Defence and MLI-D28-P-0501 has been disclosed to date.

(ii) a list of the items which have been provided to him by the Defence, or confirm that footnote 1 of his report exhaustively lists all items provided.

No list has been disclosed to date.

Photographs provided by MLI-D28-P-0245

Trial Rule 78 D28 package 126 disclosed today includes 174 photographs, which, according to the metadata, had been provided by MLI-D28-P-0245 to the Defence on 28 October 2020. These photographs, dated between 2 and 8 March 2012, have been disclosed without any description. The Prosecution kindly requests the Defence to disclose any witness statement or other document that would clarify their relevance to the case.

The witness summary, MLI-D28-0006-3056, disclosed in package 129, refers to photographs taken of the trip to Timbuktu MLI-D28-P-0245 took with journalists including [REDACTED] escorted by MNLA combatants, which appear to be the 174 photographs from MLI-D28-P-0245 disclosed earlier. No further details are provided.

Kind regards,

[REDACTED]
On behalf of the Prosecution

From: Dutertre, Gilles

Sent: lundi 7 mars 2022 11:23

To: 'Taylor, Melinda' [REDACTED] D28 Al Hassan Defence Team [REDACTED]

Cc: Al Hassan Prosecution Team [REDACTED] >

Subject: RE: Defense witnesses

Chère Défense,

L'Accusation constate que vous retenez toujours cette information qui, suivant le cours normal d'une enquête, devrait déjà être en votre possession.

Avec ma considération distinguée,

Gilles Dutertre

From: Taylor, Melinda [REDACTED] >

Sent: jeudi 10 février 2022 18:49

To: Dutertre, Gilles [REDACTED] >; D28 Al Hassan Defence Team [REDACTED]

Cc: Al Hassan Prosecution Team [REDACTED]

Subject: Re: Defense witnesses

Dear Mr Dutertre,

I will revert to you in the coming days.

Kind regards,
Melinda

From: Dutertre, Gilles [REDACTED]
Sent: 10 February 2022 14:35
To: D28 Al Hassan Defence Team [REDACTED]
Cc: Al Hassan Prosecution Team <[REDACTED]>
Subject: RE: Defense witnesses

Dear Defense,
Sauf erreur, l'Accusation n'a pas reçu de réponse à cette demande.
Cordialement,
Gilles Dutertre

From: Dutertre, Gilles
Sent: mercredi 2 février 2022 15:58
To: D28 Al Hassan Defence Team [REDACTED] >
Cc: Al Hassan Prosecution Team [REDACTED]
Subject: Defense witnesses

Dear Defence

We refer to Defence Witness MLI-D28-P-0524, whose name that was provided is [REDACTED]

For the purposes of ensuring that we have the correct identity of the individual, whose name is extremely common, could you please provide to the Prosecution the following:

1. All names of D28-P-0524 including any nicknames;
2. What is his date of birth and place of birth?
3. What are the names of his parents?
4. What is his profession and the name of his employer?
5. Does he belong to any association or organisation? If so which ones?

With respect to the personal details of the witness, such as nickname, DOB, parents' names, associations, requested in our email of 2 February 2022, the witness summary does not provide any answers, apart from mentioning that he was [REDACTED]

Could you please provide this information as soon as possible for any Witness that you intend to call in the Defence case.

Best regards,

Gilles Dutertre

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