

ANNEX 21

Public redacted

From: Trial Chamber X Communications
Sent: 24 September 2020 12:39
To: D28 Al Hassan Defence Team
Cc: Dutertre, Gilles; [REDACTED] V43
 Victims Al Hassan Team; [REDACTED]
Subject: TC X - Decision on Defence request seeking leave for legal assistant to conduct cross-examination
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel,

The Chamber considers that while it is common for staff members of the Office of the Prosecutor (“OTP”) other than the Prosecutor herself or (senior) trial attorneys to appear in Court, no analogy can be drawn with the situation prevailing in Defence teams. All staff within OTP are appearing on behalf of the Prosecutor and they are subject to a supervisory system where they are all ultimately answerable in a chain of supervisory structures leading up to the Prosecutor. Defence counsel are independent and appear on behalf of the accused. In fact, the Chamber considers that the accused’s right to legal representation is ensured, *inter alia*, by the appearance in court, questioning of witnesses or the of making submissions only by counsel who meet the requirements for designation as such. This should be the rule. At the same time, the Chamber is mindful of the necessity for Counsel to balance various imperatives, notably the team’s workload, and that this can warrant deviating from the rule, on a case by case basis, with approval from the Chamber.

In the present case, the Chamber notes Mr Rowse’s qualification, the anticipated technical nature of P-0064’s testimony, the fact that Mr Rowse has prepared and will be conducting the cross-examination under the supervision and in the presence of the Lead Counsel. Accordingly, the Chamber grants the request. As noted in the below request, the Chamber refers to the Code of Professional Conduct, in particular Articles 7(4) and 32.

Going forward, the Chamber considers that the present procedure (that is a request made by email sufficiently in advance of the testimony and containing the reasons for it) should be resorted to when the Defence wishes to seek that a legal assistant cross-examine a witness or make submissions in Court.

Kind regards,

[REDACTED]
 On behalf of Trial Chamber X

From: [REDACTED]
Sent: 22 September 2020 13:29
To: Trial Chamber X Communications
Cc: Dutertre, Gilles; [REDACTED]; D28 Al Hassan Defence Team;
 V43 Victims Al Hassan Team
Subject: Request - Leave to conduct cross-examination

On behalf of Counsel Melinda Taylor;

Dear Trial Chamber X,

I am writing to respectfully request that [REDACTED] be granted leave to conduct the cross-examination of witness P-64.

In support of this application, the Defence submits the following considerations that are specific to P-064, and background case law concerning other precedents where legal assistances and support staff (including [REDACTED]) have been permitted to conduct cross-examinations.

[REDACTED] has the practical experience necessary to examine P-64. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] At the present moment he has over five years of experience working at the ICC and has prepared and indirectly participated in court during numerous Defence cross-examinations.

Leave is requested for [REDACTED] to present the cross-examination due to him having previously pursued a career in the field of ICT, multi-media, and programming and development. I believes that with his background, knowledge and familiarity with technical matters, including some knowledge of satellite imagery, he is best suited to examine P-64 given [REDACTED]'s capacity to most quickly understand the responses given by the witness.

I would also like to underscore the issues of trial preparation raised on Monday. The capacity to delegate in-court examinations in appropriate circumstances to more junior staff is essential for Defence teams to be able to balance their workload and resources. I do also note that this occurs in the framework of Article 7(4) (responsibility to ensure staff comply with the Code of Professional conduct) and Article 32 (liability for conduct of assistants or other staff) of the ICC Code of Professional Conduct for Counsel.

It may also re-assure the Trial Chamber to know that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I reiterate that preparation of questions with respect to P-64 will be conducted under my supervision, direction, and review and [REDACTED] will be supervised by myself in court and as in other cases, should certain legal issues arise – particularly those of wider application to the case beyond the formulation of given question for example – I will be in a position to intervene should it be necessary.

Kind regards,
Melinda Taylor

Legal assistants conducting witness examination in court

Gbagbo & Ble Goude case

- J Dov Jacobs (reference: [ICC-02/11-01/15-T-169-Red-ENG WT 30-06-2017 27/106 NM T](https://www.icc-cpi.int/CourtRecords/CR2017_05753.PDF)). Please see filing https://www.icc-cpi.int/CourtRecords/CR2017_05753.PDF of 3 July 2017, not mentioning Mr Jacobs as counsel in the second page)
- J Ms Jennifer Naouri (legal assistant on Mr Gbagbo's team at the time):
 - o Conducted examination of witness: [ICC-02/11-01/15-T-161-Red-ENG WT 24-05-2017](https://www.icc-cpi.int/CourtRecords/CR2017_05753.PDF), p. 12 et seq.
 - o Conducted examination of witness: [ICC-02/11-01/15-T-188-Red-ENG WT 07-09-2017](https://www.icc-cpi.int/CourtRecords/CR2017_05753.PDF), p. 26 et seq.
 - o Jennifer was a legal assistant at the time: [ICC-02/11-01/15-T-1-Red-ENG WT 21-04-2015](https://www.icc-cpi.int/CourtRecords/CR2017_05753.PDF), p. 2, line 17, and she was appointed associate counsel only on 2 August 2018: [ICC-02/11-01/15-1201](https://www.icc-cpi.int/CourtRecords/CR2017_05753.PDF).

Ntaganda case, Chloe Grandon (reference: [ICC-01/04-02/06-T-132-Red-ENG WT 15-09-2016 7/90 CVZ T](https://www.icc-cpi.int/CourtRecords/CR2016_06645.PDF)) – Please see filing https://www.icc-cpi.int/CourtRecords/CR2016_06645.PDF of 16 September 2016, not mentioning Ms Grandon as counsel in the second page.

Ongwen case, Michael Rowse (reference: [ICC-02/04-01/15-T-119-Red-ENG WT 05-10-2017 13/48 SZ T](https://www.icc-cpi.int/CourtRecords/CR2017_05995.PDF)). Please see filing https://www.icc-cpi.int/CourtRecords/CR2017_05995.PDF of 6 October 2017, not mentioning Michael Rowse as counsel in the second page.

Katanga & Ngudjolo case, Caroline Buisman (reference: [ICC-01/04-01/07-T-226-Red2-ENG WT 01-12-2010 3/77 PV T](https://www.icc-cpi.int/CourtRecords/CR2012_05857.PDF)). Please see filing https://www.icc-cpi.int/CourtRecords/CR2012_05857.PDF of 1 December 2010, not mentioning Buisman as counsel in the second page.

Ruto & Sang case

- J Ms Logan Hambrick (legal assistant for Mr Joshua Arap Sang's team):
 - o Tacitly granted leave to conduct testimony. She had no questions for cross-examination in the end, but dealt with all procedural matters during examination of witness by OTP and others e.g. objections, admission of documents, appearances for defence. See [ICC-01/09-01/11-T-121-Red-ENG WT 24-06-2014](https://www.icc-cpi.int/CourtRecords/CR2014_02406.PDF), p. 11, lines 11–13, until [ICC-01/09-01/11-T-122-Red-ENG WT 25-06-2014](https://www.icc-cpi.int/CourtRecords/CR2014_02506.PDF), p. 71, line 18.
 - o Logan was a legal assistant: [ICC-01/09-01/11-T-75-Red-ENG WT 17-01-2014](https://www.icc-cpi.int/CourtRecords/CR2014_01701.PDF), p. 2, line 11.
- J Ms Leigh Lawrie (legal assistant on Mr Ruto's team):
 - o Leigh conducted cross-examinations for Mr Ruto: [ICC-01/09-01/11-T-106-Red-ENG WT 03-04-2014](https://www.icc-cpi.int/CourtRecords/CR2014_00304.PDF), p. 13, l. 19 et seq. And again: [ICC-01/09-01/11-T-108-Red-ENG WT 07-04-2014](https://www.icc-cpi.int/CourtRecords/CR2014_00704.PDF), p. 2, line 18 et seq.
 - o Leigh was a legal assistant: [ICC-01/09-01/11-T-75-Red-ENG WT 17-01-2014](https://www.icc-cpi.int/CourtRecords/CR2014_01701.PDF), p. 1, line 25 to p. 2, line 1.

Legal assistants making legal submissions in court

- J Ms Yaël Vias Gvirsman, not designated as Counsel in Mbarushimana, and she presented in 2011 confirmation of charges proceedings (<https://www.legal-tools.org/doc/e2d898/pdf/>, page 16, lines 15-20);
- J Mr Seth Engel, not designated as Counsel in Ble Goude, and he presented 2014 confirmation of charges proceedings (<https://www.legal-tools.org/doc/66dcba/pdf/>, page 62, lines 12-15);
- J Mr Thomas Obhof, not designated as Counsel in Ongwen, and he presented in 2016 confirmation of charges proceedings (https://www.icc-cpi.int/Transcripts/CR2016_02439.PDF, page 23, lines 2-8).
- J Ms Logan Hambrick (legal assistant on Mr Joshua Arap Sang's team), presented legal submissions during confirmation of charges proceedings:
 - o Legal submissions by Logan: [ICC-01/09-01/11-T-10-Red-ENG WT 06-09-2011](https://www.icc-cpi.int/CourtRecords/CR2011_00609.PDF), p. 24 line 21 to p. 48, line 8.
 - o Logan was a legal assistant: [ICC-01/09-01/11-T-19-ENG-CT WT 14-02-2013](https://www.icc-cpi.int/CourtRecords/CR2013_01402.PDF), p. 2, lines 12–13; and [ICC-01/09-01/11-373](https://www.icc-cpi.int/CourtRecords/CR2011_0373.PDF) (not listed as counsel on CoC decision).
- J Ms Marion Carrin, legal assistant on Mr Ble Goude's team,
 - o As legal assistant presented legal submissions: [ICC-02/11-01/15-T-34-Red-ENG WT 26-04-2016](https://www.icc-cpi.int/CourtRecords/CR2016_02604.PDF), pp 16–18
 - o And presented legal submissions again: [ICC-02/11-01/15-T-231-Red-ENG WT 13-12-2018](https://www.icc-cpi.int/CourtRecords/CR2018_01312.PDF), p. 60

- J Dr Dov Jacobs, legal assistant on Mr Gbagbo's team:
 - o Presented legal submissions: [ICC-02/11-01/15-T-226-Red-ENG WT 14-11-2018](#), p. 1 et seq.
 - o Tricky to find official record that he was legal assistant, but he mentions it on his professional chambers page: [9 Bedford Row profile](#).
- J Ms Chloe Grandon, legal assistant on Mr Ntaganda's team,
 - o Presented legal submissions : [ICC-01/04-02/06-T-85-Red2-ENG CT WT 19-04-2016](#), p. 23.
 - o Chloe was legal assistant at the time: same transcript, p. 2, line 5.
- J Ms Jennifer Naouri (legal assistant on Mr Gbagbo's team at the time):
 - o Presented legal submissions: [ICC-02/11-01/15-T-1-Red-ENG WT 21-04-2015](#), p. 25 et seq.
 - o Was legal assistant at the time: same transcript, p. 2, line 17.

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