

ANNEX 19

PUBLIC REDACTED

From: Trial Chamber X Communications
Sent: 06 June 2022 13:59
To: D28 Al Hassan Defence Team; Al Hassan Prosecution Team; V43 Victims Al Hassan Team
Cc: Trial Chamber X Communications; Chamber Decisions Communication
Subject: TC X: Single Judge ruling on Prosecution request following provision of Witness preparation log for D-0512

Dear Counsels,

The Single Judge takes note of the below submissions. The Witness Preparation Protocol is clear that while the calling party can show exhibits and documents to a witness, including new material, during preparation sessions, discussion of the evidence of other witnesses, especially on possible contradictions, is not permitted. Any such discussion, especially on possible contradictions, should be addressed only when the relevant witness testifies under oath before the Chamber (see paragraph 30 of the Witness Preparation Protocol, -666-Anx). The statement by the Defence Counsel to the witness in this instance was a direct breach of the protocol which should not be replicated. The Single Judge reminds the Defence to abide by the required and permissible conduct with respect to its witness preparation sessions.

Turning to the below request, the Single Judge observes that D-0512 already provided relevant accounts via her prior statement, that the Defence response includes a verbatim transcription of the relevant excerpt of the preparation session of D-0512, and that both parties will be in a position to elicit further evidence and clarifications directly with the witness in court tomorrow.

Considering the above, the Single Judge considers that the disclosure of the video in these circumstances is not necessary and hereby rejects the Prosecution request.

Kind regards,
 On behalf of the Single Judge of Trial Chamber X

From: Dutertre, Gilles
Sent: 06 June 2022 12:45
To: Taylor, Melinda [REDACTED] Trial Chamber X Communications
 [REDACTED] D28 Al Hassan Defence Team
 [REDACTED] Al Hassan Prosecution Team [REDACTED] V43
 Victims Al Hassan Team [REDACTED]
Subject: RE: Witness preparation log for D-0512

Chère Chambre de Première Instance X,

L'Accusation souhaite distinguer ce qu'il est possible de faire en *witness preparation* d'une part et en contre-interrogatoire d'une part.

L'article 46 du protocole ICC-01/12-01/18-666-Anx stipule que « *the parties and participants may put to a witness another witness's testimony or previous statement, without providing the identity of the witness* ». Ceci vaut pour la salle d'audience avec le témoin sous serment.

Cela n'est pas une conduite permise et appropriée en *witness preparation*, car cela conduit à influencer le témoin.

Respectueusement,
 Gilles Dutertre

From: Taylor, Melinda [REDACTED]
Sent: lundi 6 juin 2022 12:33
To: [REDACTED]; Trial Chamber X Communications [REDACTED]
 [REDACTED] D28 Al Hassan Defence Team [REDACTED]; Al Hassan Prosecution Team

V43 Victims Al Hassan Team <

Subject: Re: Witness preparation log for D-0512

Dear Trial Chamber X,

The Witness Preparation Protocol allows the calling party to:

*22. Explain, in general and neutral terms, the topics on which, in the calling party's opinion, the witness may be questioned during cross-examination.
[...]*

24. Show the witness potential exhibits, regardless of whether or not the witness has previously seen them, and ask him or her to comment on them for the purpose of ascertaining whether the witness can usefully comment on them during testimony.

The decision on the conduct of the proceedings also allows the parties to put evidence from another witness to the testifying witness provided no information is given to the witness as concerns the identity of the witness. It would also appear that the purpose of paragraph 30 is not to lead the witness or provide information concerning the identity of other witnesses.

In its response to the Defence Rule 68(3) application, the Prosecution had already raised what they considered to be an apparent contradiction between D512 and D516 in that D516 had explicitly stated that [REDACTED] had given her consent but D512 had not addressed this issue.

In its decision on the Rule 68(3) application, the Trial Chamber had indicated that these issues could be addressed during the viva voce testimony of D-512.

Since the Prosecution had themselves indicated that this was relevant to the content and accuracy of D-512's statement, the Defence considered it necessary for this apparent contradiction to be put to the witness before the conclusion of the Rule 68(3) procedure in Court so that D-512 could make any corrections/clarifications before the statement is formally submitted into evidence. In order not to be leading in any way – the Defence not only mentioned evidence to the effect that [REDACTED] had consented -but also evidence that she had not consented. Indeed, since the Prosecution has placed the statement of [REDACTED] on its list of exhibits, it would appear that it does indeed intend to put information from this witness to D512.

The Defence did not refer to either individual as being Prosecution or Defence. The question was phrased neutrally in a way that included both possibilities without suggesting that either possibility was more credible than the other.

The specific wording is below:

Melinda: *Now one witness has said that [REDACTED] consented to the marriage, and another witness in this case said that [REDACTED] did not consent to the marriage. Do you have any comments on that?*

Interpretation

Witness / interpreter: You say that one witness say she accepted, another one say she didn't accept, of course she accepted if she haven't accepted she would not have gotten married.

Melinda: *reading of para 52*

Given the limited amount of information provided to D512 and the fact that it falls within the scope of information that could be put to her while she testifies, the Defence submits that there is no basis to order the disclosure of the video.

Kind regards

Melinda Taylor, on behalf of the Al Hassan Defence

From [REDACTED]
Sent: 06 June 2022 11:47
To: Trial Chamber X Communications <[REDACTED]> D28 Al Hassan Defence Team <[REDACTED]>; Al Hassan Prosecution Team <[REDACTED]> V43 Victims Al Hassan Team <[REDACTED]>
Cc: Taylor, Melinda [REDACTED]
Subject: Witness preparation log for D-0512

Dear Trial Chamber X,

The Witness Preparation Log for Witness D-0512 indicates at p. 6 that lead Defence counsel informed the Witness "that the Court had received evidence from a witness, who had stated that [REDACTED] had not consented to the marriage and there is evidence from another Witness, who had stated that she had consented [no further description of the other two witnesses was provided]. The Witness stated that [REDACTED] had accepted to get married otherwise the marriage would not have happened."

The Prosecution recalls that Witness D-0512's statement addresses the Issue of [REDACTED] marriage from MLI-D28-0006-2611 at 2618, par. 50 to 2620, par. 60.

This conduct is specifically prohibited by par. 30 of the Witness Preparation protocol (ICC-01/12-01/18-666-Anx) which states that the questioning lawyer "shall not inform the witness of the evidence of other witnesses (including oral testimony and prior recorded statements of other Witnesses)".

As a result of this serious breach and on the basis of par. 13 of the Witness Preparation protocol, the Prosecution requests the disclosure of the video recording of the Witness preparation session to determine exactly what was stated to the Witness in this regard.

Best regards,

[REDACTED]
Trial Lawyer

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