

# Annex 22

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**From:** Trial Chamber X Communications  
**Sent:** 26 January 2021 10:22  
**To:** 'D28AlHassanDefenceTeam'; Al Hassan Prosecution Team; 'V43LRVTeam'  
**Cc:** Trial Chamber X Communications; Chamber Decisions Communication; Associate Legal Officer-Court Officer  
**Subject:** Decision on Defence request in relation to P-0626

Dear counsel,

The Chamber notes the Defence's objection to witness P-0626 being called to testify first when hearings re-commence in February (see email from the Prosecution 22 January at 16:48, email from the Defence 25 January at 10:16, and Defence motion [1256](#) in particular at para. 17(c)).

The Defence's objection is based on notably the following grounds: (i) that the Chamber should adjourn the testimony [REDACTED] until the Chamber has issued its first determination on Article 69(7) exclusion issues to avoid breaching the requirement in Article 15 of the Convention Against Torture (First Ground); (ii) that the moving up of P-0626 10 places in Block 2 has a significant impact on Defence preparation, notably P-0626 will now testify before P-0150, P-1086 and P-0111 and before the Defence has had an opportunity to conduct critical investigations including its interview of P-0111 (Second Ground); and (iii) that litigation on issues [REDACTED] may impact Mr Al Hassan's ongoing fitness to stand trial or at least his rights to a fair trial and equality of arms (Third Ground).

At the outset, the Chamber recalls that, when formulating the Forthcoming Witnesses Lists, the Prosecution should first schedule the appearance of witnesses listed under Block 1 and only subsequently move on to the scheduling of Block 2, and then Block 3 witnesses, and that where possible, the schedule should be determined in consultation with the, *inter alia*, the Defence ([Decision 1004](#), para. 11). Notwithstanding, the Chamber notes that there have been significant disruptions to the Prosecution's schedule recently as a result of the urgent and last minute suspension of hearings. This, together with the challenges to witness scheduling in the current pandemic situation, necessitates some flexibility. The Chamber notes that this is consistent with the approach taken to date, where some witnesses from Block 2 have been called early before the exhaustion of the Block 1 list.

In relation to the First Ground, the Chamber considers there to be no need at present to adjourn the hearing of P-0626 [REDACTED] pending its resolution of forthcoming Article 69(7) matters. This is because first, as previously stated, the Chamber has as yet made no findings on the Defence's allegations of torture and CIDT but rather took those findings at their highest for the purpose of the termination litigation, without prejudice to any future determinations by the Chamber on these matters ([Decision 1009](#), para. 80). Second, because the Chamber has competing information and arguments currently before it from the Prosecution and Defence on this subject (see, *inter alia*, the termination litigation filings and most recently filings [1213](#), [1215](#), [1218](#), [1226](#) and [1256](#)), has set a procedure and a timetable for resolution of these Article 69(7) matters (see Decisions [1150](#) and [1160](#)), and is essentially awaiting the Defence's consolidated application to exclude certain evidence of the basis of arguments of torture and CIDT (subject to resolution of the other matters raised in motion [1256](#)). The Chamber's conclusion is consistent with its approach taken to date (see in particular Decisions [1150](#) and [1160](#) and email decisions of the Chamber 14 October 2020 at 18:52 and 6 November 2020 at 09:21). The Chamber will issue its decision on the remainder of the relief requested in the Defence's motion [1256](#) in due course.

In relation to the Second Ground, the Chamber notes that the Defence has been on notice that P-0626 would testify ahead of witnesses P-0150, P-1086 and P-0111 since at least 11 December 2020 (see email from the Prosecution, 11 December 2020 at 9:54). The Chamber also notes that as a result of the recent adjournment of hearings for 2021 the parties have in effect benefited from an additional three weeks of preparation than they would have otherwise had. For these reasons, the Chamber considers that an adjournment is not warranted, in light of the information presently available. The Chamber is of course mindful however that last minute changes to the schedule impact on

Defence preparation. Therefore, following the examination in chief, if strictly necessary, the Defence may make a concrete request for a discrete postponement to the start of its cross examination.

In relation to the Third Ground, the Chamber notes that the Panel of Experts' report has only today been ordered to be made available to the Prosecution (see email from the Chamber 26 January at 09:33) and considers therefore that *inter partes* arguments based on this report are premature. However, once again, should the Defence consider that specific measures should be taken to mitigate any adverse impact on Mr Al Hassan during the testimony of P-0626, it should make a concrete request to the Chamber at the appropriate time.

The Chamber finally notes that the Prosecution requests the authorisation of the Chamber to communicate the complete schedule for March 2021 on 8 rather than 1 February given the recent changes to the hearing schedule and remaining uncertainties. The request is granted having regard to those factors, also noting that notice has been given for the two witnesses who will testify at the beginning of March.

Kind regards,

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