

Annex 43

Public

From: Trial Chamber X Communications
Sent: 01 March 2021 11:06
To: D28 Al Hassan Defence Team
Cc: Al Hassan Prosecution Team; V43 Victims Al Hassan Team; Trial Chamber X Communications; Chamber Decisions Communication
Subject: RE: Requests for extensions of time and page limit for Article 69(7) motion

Dear counsel,

The Chamber notes the Defence's requests for an extension of time and pages for its forthcoming Article 69(7) motion pursuant to Regulations 35 and 37(2) of the Regulations of the Court respectively (the Regulations).

Having regard to the court schedule for this and last week, the workload of the parties, and the limited nature of the requested time extension, the Chamber considers that good cause has been demonstrated and grants the request pursuant to Regulations 35 of the Regulations for an extension of time to submit the motion to **Monday, 8 March 2021.**

As regards the request for extension of pages, the Chamber does not consider that any exceptional circumstances exist to grant the extension of 10 pages sought pursuant to Regulation 37(2) of the Regulations. Although the submissions will address the application of the exclusionary rule in Article 69(7) of the Statute based on allegations of torture and CIDT, the Chamber considers that the Defence should be able to address these matters within the standard limit of 20 pages. Accordingly, the Chamber rejects the request for the extension of 10 pages sought pursuant to Regulation 37(2) of the Regulations. The Chamber further takes this opportunity to remind the parties that any annexes should not contain submissions, pursuant to Regulation 36(2)(b) of the Regulations.

Kind regards,

[REDACTED], on behalf of Trial Chamber X

From: [REDACTED]
Sent: 25 February 2021 13:28
To: Trial Chamber X Communications <TrialChamberXCommunications@[REDACTED]>; Al Hassan Prosecution Team <AlHassanProsecutionTeam@[REDACTED]>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam@[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam@[REDACTED]>; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer@[REDACTED]>
Subject: Requests for extensions of time and page limit for Article 69(7) motion

Dear Trial Chamber X,
Dear Colleagues,

The Defence refers to the Chamber's 'Decision on Prosecution and Defence procedural requests related to Article 69(7) of the Statute' (ICC-01/12-01/18-1304-Conf) notified Wednesday, 17 February 2021 ('Decision'). In paragraph 32 of the Decision, the Chamber 'direct[ed] the Defence to file its Article 69(7) motion, if any, within two weeks of this decision.' This deadline would be Wednesday, 3 March 2021.

Request for extension of time

Pursuant to Regulation 35 of the Regulations of Court, the Defence respectfully requests a discrete extension of this deadline by three working days from Wednesday, 3 March 2021, until **Monday, 8 March 2021.** There is good cause to extend the deadline for two reasons.

First, before finalising the Article 69(7) motion, the Defence is required to consult with Mr. Al Hassan, and obtain his instructions on the final draft of the motion. This will be very difficult to achieve in the time remaining until the original deadline as the Defence is:

- filing its responses to filings 1196, 1207, 1210 and 1217 tomorrow, Friday 26 February 2021;
- engaged with examination of four witnesses over the next week: Witness P-0554 (25 to 26 February 2021); Witness P-0160 (1 to 3 March 2021); Witness P-0984 (3 to 4 March 2021); and Witness P-0595 (5 March 2021) (which witness order recently changed following the Prosecution's email of 23 February 2021 at 11:42);
- managing shortened breaks (totalling 1.5 hours in total, rather than the usual 2 hours) over the next two days which compress the already limited time available to consult with Mr. Al Hassan during the court hearings;
- required to prepare and respond to various evidentiary items in connection with these witness testimonies resulting in multiple overlapping deadlines over the next week; and
- otherwise engaged in:
 - o preparing redactions to the Report of the Panel of Experts to enable the Prosecution to disclose the Report to the Ongwen Defence Team in *Prosecutor v. Ongwen* (which requires extensive consultation with Mr. Al Hassan),
 - o preparing a public redacted version of 'Corrigendum to 'Defence Appeal of the Trial Chamber's "Decision on the urgent Defence request for a custodial visit on compassionate grounds" (ICC-01/12-01/18-1227-Conf)' (ICC-01/12-01/18-1249-Conf-Exp-Corr) following decision 1311 (due 4 March 2021), and
 - o its response to 'Demande en reconsidération de la décision ICC-01/12-01/18-992 rejetant la qualité de victime participante à a/45535/18' (ICC-01/12-01/18-1310-Conf) (due 5 March 2021).

The schedule of hearings not only represents a significant impact on Counsel and Mr. Al Hassan's time, but also constitutes a significant drain on Mr. Al Hassan's ability to engage with his Counsel regarding the case, and to provide useful instructions on the testimony of sensitive fact witnesses. The Article 69(7) motion too requires Counsel to obtain detailed instructions from Mr. Al Hassan given the nature of the request, and the current schedule of witness preparation and testimony makes this very difficult.

Ordinarily, there are 2 hours of break in the court day (11:00am to 11:30am and 1:00pm to 2:30pm), which includes time for the Defence to travel to and from court, time for Mr. Al Hassan to conduct his prayers, and time for Mr. Al Hassan and the Defence to eat. Following court, Mr. Al Hassan is quickly transported to the Detention Unit for the purposes of having his phone calls with his family and fresh air time, and when he is available, Mr. Al Hassan is usually very fatigued from the day of attending the hearing. The recently modified sitting hours for 25 and 26 February 2021 (which results in a longer afternoon session of 2 hours on Thursday 25 February 2021, and shorter lunch breaks on both 25 and 26 February 2021 of 1 hour, rather than 1.5 hours) will not only exacerbate Mr. Al Hassan's fatigue but further compress the time available for consultation between Mr. Al Hassan and his Defence, during this crucial period leading up to the filing of the Article 69(7) motion. Providing the Defence this extension would permit Counsel to consult with Mr. Al Hassan over the weekend following the next full week of hearings, and finalise the filing on 8 March 2021 (the first day in the next week where no hearings are scheduled).

Second, the extension would not prejudice the Prosecution. The extension represents three working days, and would not represent an unreasonable delay given the complex and important issues to be considered by the Chamber in connection with this motion.

Request for extension of page limit

Pursuant to Regulation 37(1) of the Regulations of Court, a document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, the Rules or the Regulations or ordered by the Chamber. The Defence requests, pursuant to Regulation 37(2) of the Regulations of Court, that the Chamber extend the page limit applicable to the Article 69(7) motion by 10 pages, for a total of **30 pages**. There is good cause for the Chamber to extend the page limit to a total of 30 pages for three reasons.

First, the Defence had previously requested an extension of 10 pages in its [REDACTED]. The Legal Representatives for Victims had confirmed that they did not oppose the request and no response was received from the Prosecution (decision 1160, para 3). Given

that the Chamber, in response to a Prosecution request received shortly after the page extension request, modified the regime applicable to the Article 69(7) motion, the Chamber considered the page extension request moot but noted that this was 'without prejudice of the Defence seeking such an extension if and when the Prosecution files its Request for Introduction and any related requests' (decision 1160, para 12). The Defence therefore respectfully submits this request in line with the Chamber's indication in that decision.

Second, the Defence notes that the Article 69(7) motion must be 'self-contained' and not incorporate by reference extensive aspects of earlier submissions (Decision, para 31; decision 1160, para 10). The motion requires detailed and complete submissions in relation to torture and CIDT perpetrated against Mr Al Hassan, and the impact on particularly lengthy transcripts. The scope of the Article 69(7) motion has also expanded beyond what was originally envisaged in decision 1150, as it now includes the material filed and disclosed by the Prosecution in the intervening period (including the material annexed to the Request for Introduction (filing 1218) and the evidence of P-0165 (filing 1226)). The Chamber has also recently noted that the Article 69(7) motion will be used to 'properly frame' the issues before the Chamber, for the purpose of the Chamber's appreciation of whether any *voir dire* hearing is necessary (Decision, para 33).

Notwithstanding the expansion of the relevant material beyond the scope of the original Article 69(7) motion envisaged at the time of the filing of the previous page extension request, the Defence, consistently with the Chamber's instructions, will endeavour to keep its submissions concise and as such, is only seeking an additional 10 pages to make these important and sensitive submissions.

Third, the extension would not prejudice the Prosecution, as the Defence would not oppose any similar extension being provided to the Prosecution for any response to the Article 69(7) motion.

Relief sought

The Defence requests that the Chamber:

- grant the Defence an extension of time to file its Article 69(7) motion until Monday, 8 March 2021; and
- grant the Defence an extension of the page limit applicable to its Article 69(7) motion to a total of 30 pages.

Best regards,

██████████ (on behalf of the Al Hassan Defence)

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