

Annex 2

Public

From: Trial Chamber I Communications
Sent: 23 May 2022 16:54
To: Chamber Decisions Communication
Subject: FW: Updated Calling Order until 1 July 2022 - further update

From: Trial Chamber I Communications [REDACTED]
Sent: 23 May 2022 16:53
To: D31 Abd-Al-Rahman Defence Team [REDACTED]; V47 Abd Al Rahman LRV Team [REDACTED] Abd Al Rahman Prosecution Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED] Trial Chamber I Communications [REDACTED]
Subject: RE: Updated Calling Order until 1 July 2022 - further update

Dear counsel,
 Dear colleagues,

The Chamber has taken note of the Prosecution's updated calling order and subsequent clarifications, as well as the Defence's responses thereto.

First, while the Chamber understands that plans have been made for the preparation of cross-examination of witnesses, it is well known that parties have to be flexible enough to make changes, if the needs of the case so dictate.

Second, whilst, ideally 30 days notice should be given for any change in the running order of witnesses, at no stage did the Chamber suggest this is a standard which cannot be departed from. However, there must be good reason for such a change. Although a little more detail would have been helpful, the Chamber accepts that good reason has been shown for changing the calling order in respect of witnesses P-0987 and P-0007.

In the case of P-0547, the fact that the Prosecution has not calculated the hours allocated to each of its witnesses with sufficient precision, does not justify changing the calling order.

The impact, if any, of consecutive interpretation on the time limits imposed on all sides will be considered if and when an issue arises.

The Chamber has examined the statements of the new witnesses proposed by the Prosecution (P-0726, P-0850, P-0012 and P-0892) and is satisfied that as witnesses are not called simultaneously and given the staffing level of the Defence team, ample time remains, (before the witnesses are due to testify), for proper preparation to take place.

The Chamber therefore grants the Prosecution's request to call P-0987 and P-0007 at a later stage of the proceedings, but rejects the request in respect of P-0547. Consequently, the Chamber instructs the Prosecutor to provide a new calling order for the period 6 June 2022 to 1 July 2022.

Kind regards,

[REDACTED]
 (on behalf of Trial Chamber I)

From: Nicholls, Julian [REDACTED]
Sent: 23 May 2022 16:17
To: Laucci, Cyril [REDACTED] Sachithanandan, Pubudu [REDACTED] Trial Chamber I Communications [REDACTED] Jeremy, Edward [REDACTED] [REDACTED] Sabatini, Claire [REDACTED]
Cc: D31 Abd-Al-Rahman Defence Team [REDACTED]; V47 Abd Al Rahman LRV Team [REDACTED] Abd Al Rahman Prosecution Team [REDACTED] [REDACTED] Associate Legal Officer-Court Officer [REDACTED] [REDACTED]; [REDACTED]
Subject: RE: Updated Calling Order until 1 July 2022 - further update

Honourable Judges, Dear Colleagues,

The Prosecution opposes the Defence request to “to deny the proposed appearance of witnesses P-0726, P-0850, P-0012 and P-0892 on 10-17 June” (“Defence Request”) for the following reasons:

1. The Prosecution provided a complete list of witnesses for the upcoming block, prior to the 30 day deadline set by the Chamber. It would be unrealistic to expect such “block” lists to remain completely unchanged for every witness. This is especially the case in light of **a)** the logistical challenges of organising the appearance of witnesses from a variety of countries, **b)** the continuing cooperation-related challenges faced by the Prosecution, **c)** the fact that witnesses will, on occasion, face unexpected personal issues, outside the control of the Prosecution, which delays testimony and **d)** the significant changes made to the Prosecution’s original order of appearance, in order to adjust to the lack of Fur interpretation.
2. It would be unreasonable to “to deny the proposed appearance” of each witness regarding whom there is an unexpected change in the order of appearance. Such denial should be predicated on there being actual demonstrable prejudice to the Defence due to the change. There is no such prejudice here since the Defence have received reasonable notice of the “new” witnesses, and the Prosecution has scheduled the new witnesses at the end of the block, with the exception of P-0726, [REDACTED]. [REDACTED] The Prosecution regrets that any changes to the witness order were necessary, but has acted reasonably and appropriately to ensure adequate time to the Defence to prepare its cross-examinations. Under the schedule, the Defence since notification has the following notice and time to prepare: P-0726: 20 days; P-0850: 24 days; P-0012: 25 days; P-0892: 27 days.
3. Adopting the approach proposed by the Defence will set unrealistic standards for the operations of both the Prosecution and VWS, and will result in additional and unnecessary gaps within blocks of witnesses.

In light of the above, the Prosecution respectfully requests the Chamber to reject the Defence Request.

Thank you.

Best regards,

Julian Nicholls



Julian Nicholls
 Senior Trial Lawyer
 Office of the Prosecutor
 International Criminal Court

[REDACTED]
 [REDACTED]
 [REDACTED]

From: Laucci, Cyril [REDACTED]
Sent: 23 May 2022 13:02
To: Sachithanandan, Pubudu [REDACTED] Trial Chamber I Communications
 [REDACTED] Jeremy, Edward [REDACTED] Sabatini, Claire
 [REDACTED]
Cc: D31 Abd-Al-Rahman Defence Team [REDACTED]; V47 Abd Al Rahman LRV
 Team [REDACTED] Abd Al Rahman Prosecution Team
 [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED]
Subject: RE: Updated Calling Order until 1 July 2022 - further update
Importance: High

Honourable Judges, Dear Colleagues,

In light of the below explanations provided by the Office of the Prosecutor, it appears that the last –minute reprogramming of Witness P-0547’s appearance is devoid of any valid reason: the Office of Prosecutor unilaterally took the responsibility of jeopardizing the whole Defence’s preparation and hearing schedule for the sole purpose of saving examination hours. This cannot be acceptable and it places the Defence in an extremely difficult position for no valid purpose. Should the OTP happen to be short on examination time at any future stage of the proceedings, it will have the opportunity to seek an extension by demonstrating good cause. But it cannot unilaterally vary the appearance of witnesses after the 30-days time limit and jeopardize the proceedings for that sole purpose. The Trial Chamber is hereby requested to discourage any such practice in the future.

The justifications regarding witnesses P-0987 and P-0007 are unclear. Although Witness P-0007 is more remote and less problematic, P-0987 should have been informed in advance of the dates of his appearance and should have taken measures to ensure his availability. The Defence has full sympathy for Witness P-0987 [REDACTED] – although these remain unclear -, but cannot be requested to support alone the consequences of this unfortunate situation. For the foregoing reasons, the Defence reiterates its earlier request to deny the proposed appearance of witnesses P-0726, P-0850, P-0012 and P-0892 on 10-17 June and rule that these four witnesses shall be called on a later date with the required 30-day notice.

Yours Sincerely,

Cyril Laucci,

Lead Counsel for the Defence of Mr Ali Muhammad Ali Abd-Al-Rahman.

From: Sachithanandan, Pubudu [REDACTED]
Sent: 23 May 2022 11:58
To: Trial Chamber I Communications [REDACTED] Jeremy, Edward
 [REDACTED] Sabatini, Claire [REDACTED]
Cc: D31 Abd-Al-Rahman Defence Team [REDACTED] V47 Abd Al Rahman LRV
 Team [REDACTED] Abd Al Rahman Prosecution Team
 [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED]
Subject: RE: Updated Calling Order until 1 July 2022 - further update

Dear Trial Chamber I,
 Dear Colleagues,

As instructed by the Chamber, the Prosecution sets out below the reasons for the changes in the calling schedule:

- J P-0987: On [REDACTED] 2022, P-0987 informed the Prosecution that he was not able to testify as originally scheduled on [REDACTED] owing to a significant personal issue [REDACTED]. P-0987 stated that he was unable to travel for testimony [REDACTED]. Due to the uncertainty regarding P-0987’s current situation, the Prosecution decided to delay the testimony of P-0987 until after the summer recess. The Prosecution apologises for the delay in notifying the Defence about this change.

-) P-0547: Following an extensive review of the hours allocated to each Prosecution witness, the Prosecution recently took the decision to delay the testimony of P-0547, who was originally scheduled to testify on 13-15 June. This decision was based on the following: while the Prosecution has made every effort to ensure that gaps in the court schedule are avoided, this must also be balanced against the need to ensure that the time allocated to the Prosecution in this case is maximised (on 17 May the Registry confirmed the Prosecution has already used 20 hours 37 minutes of its time). This is of particular importance given the Registry's recent confirmation that Fur interpretation will be consecutive, rather than simultaneous. P-0547 was originally scheduled to testify towards the end of the case (on 5 January 2022, P-0547 was listed at number 79 in the order of appearance, and on 18 February, at number 81) but like many other witnesses, was advanced (on 19 April) [REDACTED]. However, P-0547's evidence has the potential to be duplicative of other witnesses in this case, [REDACTED]. Therefore, in the interests of efficiency, the Prosecution took the decision to delay the testimony of P-0547, with a view to reducing the duration (currently 7 hours for direct examination) of his testimony by a substantial amount if the other witnesses come up to proof.
-) P-0007: On 20 May the Prosecution was informed by the VWS that P-0007 was not able to testify as originally scheduled (30 June to 1 July) because [REDACTED]. The VWS advised that P-0007 should testify after 20 July.

The Prosecution apologises for the inconvenience caused by the rescheduling of these witnesses. To mitigate the impact of the new witnesses, the Prosecution has scheduled the new witnesses at the end of the block, with the exception of P-0726, who is only available on or around 10 June.

Best,
Pubudu Sachithanandan (on behalf of Julian Nicholls)

From: Trial Chamber I Communications [REDACTED]
Sent: 23 May 2022 09:48
To: Jeremy, Edward [REDACTED]; Sabatini, Claire [REDACTED] Trial Chamber I Communications [REDACTED]
Cc: D31 Abd-Al-Rahman Defence Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED] Abd Al Rahman Prosecution Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Updated Calling Order until 1 July 2022 - further update

Dear counsel,
Dear colleagues,

The Chamber would like to receive clarifications about the reasons for the changes in the calling schedule from 6 June to 1 July 2022. The Chamber hereby instructs the Prosecution to provide these clarifications by **noon today**.

Kind regards,

[REDACTED]
(on behalf of Trial Chamber I)

From: Jeremy, Edward [REDACTED]
Sent: 20 May 2022 14:49
To: Sabatini, Claire [REDACTED] Trial Chamber I Communications [REDACTED]
Cc: D31 Abd-Al-Rahman Defence Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED] Abd Al Rahman Prosecution Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED]

Subject: RE: Updated Calling Order until 1 July 2022 - further update

Dear all,

With further apologies, a correction to the below: It is P-0987 and P-0007 who are not available. P-0012 is available, per the below table.

Best,

Ed

From: Jeremy, Edward [REDACTED]
Sent: 20 May 2022 14:41
To: Sabatini, Claire [REDACTED] Trial Chamber I Communications
 [REDACTED]
Cc: D31 Abd-Al-Rahman Defence Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED] Abd Al Rahman Prosecution Team [REDACTED]
 [REDACTED]
Subject: RE: Updated Calling Order until 1 July 2022 - further update

Dear Trial Chamber I,

Dear Colleagues,

The Prosecution has recently been informed that P-0987 and P-0012 are no longer available to testify as originally scheduled. In addition, P-0547 will now be called to testify later in the case.

The Prosecution has therefore revised the list of witnesses for June, as set out below. This remains subject to final confirmation from VWS in relation to witness availability. The Prosecution apologises for any inconvenience these changes may cause.

Order of appearance	P-code	Appearance date	Expected length of testimony	Language of testimony	Mode of testimony
1.	P-1042	6-8 April	6 hrs	English	68(3)
2.	P-0029	8 and 12 April	9 hrs	Standard Arabic	Viva voce
3.	P-0903	13-14 April	9 hrs	Standard Arabic	Viva voce
4.	P-0651	25 April	4.5 hrs	Standard Arabic	68(3)
5.	P-0736	26 April	4.5 hrs	Arabic (Sudanese and Egyptian)	68(3)
6.	P-0712	28 April	4.5 hrs	Standard Arabic	68(3)
7.	P-0120	29 April	4.5 hrs	Standard Arabic	68(3)
8.	P-0119	9 May	4.5 hrs	Standard Arabic	68(3)
9.	P-0922	10 May	4.5 hrs	Standard Arabic	68(3)
10.	P-0990	11-12 May	9 hrs	Standard Arabic	Viva voce
11.	P-0020	13 May	4.5 hrs	Standard Arabic	68(3)
12.	P-0720	6-7 June	5.5 hrs	Standard Arabic	68(3)
13.	P-0980	7-8 June	5.5 hrs	Standard Arabic	68(3)
14.	P-0718	8-9-10 June	9 hrs	Fur or Sudanese Arabic, Standard Arabic as last option	Viva voce but the Prosecution intends to make an application for 68(3)
15	P-0726	10 June	5.5 hrs	Standard Arabic	68(3)

16.	P-0850	13-14 June	5.5 hrs	Fur or Sudanese Arabic	68(3)
17.	P-0012	14-16 June	9 hrs	Sundanese Arabic or Standard Arabic	Viva voce but the Prosecution intends to make an application for 68(3)
18.	P-0892	16-17 June	5.5 hrs	Fur (able to testify in Arabic)	68(3)
19.	P-0877	30 June-1 July	9 hrs	Fur (able to testify in Arabic)	Viva voce

Best,
Ed



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Criminal
Court



Edward Jeremy

Trial Lawyer
Prosecution Division, Office of the Prosecutor
International Criminal Court



From: Sabatini, Claire [REDACTED]
Sent: 06 May 2022 13:52
To: Trial Chamber I Communications [REDACTED]
Cc: D31 Abd-Al-Rahman Defence Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED]; Abd Al Rahman Prosecution Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: Updated Calling Order until 1 July 2022

Dear Trial Chamber I,
Dear colleagues,

The Prosecution intends to call witness P-0720 to give evidence in person in The Hague on 6 June 2022.

Please see below the updated list of witnesses and the expected dates of their testimony between now and 1 July 2022.

Thank you.

Best,
Claire

Order of appearance	P-code	Appearance date	Expected length of testimony	Language of testimony	Mode of testimony
1.	P-1042	6-8 April	6 hrs	English	68(3)
2.	P-0029	8 and 12 April	9 hrs	Standard Arabic	Viva voce
3.	P-0903	13-14 April	9 hrs	Standard Arabic	Viva voce

4.	P-0651	25 April	4.5 hrs	Standard Arabic	68(3)
5.	P-0736	26 April	4.5 hrs	Arabic (Sudanese and Egyptian)	68(3)
6.	P-0712	28 April	4.5 hrs	Standard Arabic	68(3)
7.	P-0120	29 April	4.5 hrs	Standard Arabic	68(3)
8.	P-0119	9 May	4.5 hrs	Standard Arabic	68(3)
9.	P-0922	10 May	4.5 hrs	Standard Arabic	68(3)
10.	P-0990	11-12 May	9 hrs	Standard Arabic	Viva voce
11.	P-0020	13 May	4.5 hrs	Standard Arabic	68(3)
12.	P-0720	6 June	4.5 hrs	Standard Arabic	68(3)
13.	P-0987	7 to 9 June	13.5 hrs	Standard Arabic	Viva voce
14.	P-0980	10 June	4.5 hrs	Standard Arabic	68(3)
15.	P-0547	13 to 15 June	13.5 hrs	Standard Arabic	Viva voce
16.	P-0718	16-17 June	9 hrs	Standard Arabic	Viva Voce
17.	P-0007	30 June-1 July	9 hrs	Fur or Sudanese Arabic, Standard Arabic as last option	Viva voce

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