

ANNEX 12

Public redacted

[REDACTED]

From: Trial Chamber X Communications
Sent: 23 December 2019 10:53
To: Taylor, Melinda; Dubuisson, Marc; Office of the Director DJSS; [REDACTED]
Cc: Trial Chamber X Communications
Subject: RE: Medical records

Follow Up Flag: Follow up
Flag Status: Flagged

Dear colleagues,
 Dear counsel,

Noting the Registry's request for reconsideration of the Single Judge's order (filing 533)(e-mail dated 20 December 2019 at 11:55), but in the absence of any material in support of the aforesaid request for reconsideration, the Single Judge rejects it *in limine*.

In line with the Single Judge's guidance provided in the e-mail below (19 December 2019 at 10:51), it is recalled that the court orders stands.

Any further submission to the Chamber shall be filed on the record, pursuant to Regulations 23*bis* and 24*bis* of the Regulations of the Court.

Regards,

[REDACTED]
 On behalf of Judge Kimberly Prost

From: Trial Chamber X Communications
 Sent: 19 December 2019 10:51
 To: [REDACTED]
 Cc: Trial Chamber X Communications; Dubuisson, Marc; [REDACTED]
 Lewis, Peter
 Subject: TC X - Implementation of Trial chamber X decision ICC-01/12-01/18-533-Conf-Exp - disclosure of medical records

Dear [REDACTED]

Please find below guidance on behalf of the Single Judge of Trial Chamber X:

With regard to the email sent yesterday at 13:36, the Single Judge notes your request [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED] The Single Judge finds it appropriate for any further and more specific information and explanations that you may have as Medical Officer to be provided to the Registrar. It will be for the Registrar, having received this supplementary information, to decide, where appropriate, whether or not to request reconsideration of the decision issued on 17 December 2019 on the basis of the newly provided information. **Until then, the aforesaid court order stands and must be followed.**

Kind regards,

[REDACTED]

From: Taylor, Melinda
 Sent: 20 December 2019 15:47
 To: Trial Chamber X Communications
 Cc: Dubuisson, Marc; Office of the Director DJSS; [REDACTED]
 Subject: FW: Medical records
 Importance: High

Dear Trial Chamber X communications,

In light of the limited time available and the urgency of the issue, the Defence for Mr. Al Hassan respectfully addresses you by email. The Defence will however set out these arguments in a filing – if required – as soon as it has time to do so.

The Defence notes that at the Status Conference held on Friday 13 December 2019, the Registry expressed the position that it supported Mr. Al Hassan's right to receive a full copy of his medical file. After the Single Judge issued her decision on Tuesday 17 December, the Defence contacted the Registry legal officer [REDACTED] in order to inform the Registry of the decision, and to note that in light of this decision, the Defence would not be availing itself of further complaint mechanisms. On Wednesday morning at 11.33, the Defence email [REDACTED], the CCO, and the Director of the DJSS, in order to:

- a) Notify them of the decision and the deadline;
- b) Highlight certain categories of information and records which were missing; and
- c) Seek further information concerning the modalities of the transmission of this information.

The Defence received a read receipt from [REDACTED] at 1.23pm.

At no point in time did [REDACTED] or anyone from the Registry express their disagreement with this decision or convey any information concerning their ability to execute it.

Throughout Thursday afternoon and Friday morning, the Defence attempted to contact various persons in the Registry to obtain further information concerning the transmission of these records, to no avail. At 10.45, the Defence emailed the Director of the DJSS and various other legal officers, and at 11.24 – was informed that the Registry was looking into it as a matter of priority.

Bearing in mind that the deadline for transmission expired yesterday, the Defence is surprised and highly concerned to receive the email below. If the Registry was of the view that the grounds for reconsideration were met – this should have been brought to the attention of the Chamber immediately. Otherwise – as per the Appeals Chamber clear position on such matters (see ICC-01/04-01/06-2582, para 1) – the Registry remained obliged to execute the order within the terms of the order. This lack of diligence constitutes grounds to dismiss the request in limine. Any further litigation is also likely to defeat the purpose of the Defence request. The Defence has throughout the course of litigation and correspondence on this issue underscored the urgency of receiving a complete record as soon as possible. This is particularly the case given that records are in Dutch. Given the impossibility of obtaining a formal translation by 2 January – Defence interns have kindly agreed to provide draft translations. It is not fair or feasible to expect them to translate any documents received after 23rd December. Finally, since the Defence has not been provided this 'confidential' information, it lacks the ability to respond to the substance of the request. Even if this is disclosed on the 23rd, the Defence will also be at a reduced capacity during this period, and should not be compelled to engage in unnecessary litigation during this period. The fact that [REDACTED] [REDACTED] should not prejudice Mr. Al Hassan's right to obtain an effective remedy in such matters, and to have this remedy enforced in a timely manner.

In light of the above considerations, the Defence for Mr. Al Hassan respectfully requests the Honourable Single Judge to:

- Reject the request for reconsideration in limine; and
- Order that all medical records be transmitted to Mr. Al Hassan and the Defence by no later than Monday 23rd at noon.

Kind regards

Melinda Taylor
On Behalf of Mr. Al Hassan

From: [REDACTED]
Sent: 20 December 2019 15:24
To: [REDACTED] Dubuisson, Marc; Office of the Director DJSS
Cc: [REDACTED] Taylor, Melinda; [REDACTED]
Subject: RE: Medical records

Dear Ms [REDACTED]

On behalf of Marc Dubuisson, kindly note that today, the Registry requested reconsideration of the Chamber's decision issued on 17 December 2019 (ICC-01/12-01/18-533-Conf-Exp). The Registry has done so by way of email in order to notify the Chamber of this request on an expedited basis. The Defence was not copied on this email because it contains confidential information pertaining to matters internal to the Registry.

The Registry will file the request on Monday, 23 December 2019.

Kindly further note that we have informed the Chamber of our communication to you earlier today, and will do so too as regards the present one.

With my best,

[REDACTED]

From: [REDACTED]
Sent: 20 December 2019 11:24
To: [REDACTED]; Dubuisson, Marc; Office of the Director DJSS
Cc: [REDACTED] Taylor, Melinda; [REDACTED]
Subject: RE: Medical records

Dear Ms [REDACTED]

On behalf of Marc Dubuisson, thank you kindly for your email.

The matter is currently being addressed. We will come back to you as a matter of priority.

With my best,

[REDACTED]

From: [REDACTED]
Sent: 20 December 2019 10:45
To: Dubuisson, Marc; Office of the Director DJSS
Cc: [REDACTED] Taylor, Melinda; [REDACTED]
Subject: FW: Medical records

Dear Marc,

The Al Hassan defence is still waiting to receive Mr. Al Hassan's full medical records, as ordered by the Single Judge on 17 December. As you know the deadline was close of business yesterday.

No one from the detention section answered my phone calls, or the email below. My multiple attempts to reach [REDACTED] this morning all failed.

I would be grateful to hear back from you on this issue urgently.

Many thanks,

[REDACTED]

Associate Counsel for Mr. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

[REDACTED]

From [REDACTED]
 Sent: 19 December 2019 17:07
 To: [REDACTED]
 Cc: Taylor, Melinda; [REDACTED]
 Subject: Medical records

Dear [REDACTED],

I have tried to reach you and [REDACTED], unsuccessfully. We would be grateful to know when we can expect to receive Mr. Al Hassan's medical records pursuant to the Single Judge's decision of 17 December.

Many thanks in advance,

[REDACTED]

Associate Counsel for Mr. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

[REDACTED]

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