

Annex 3

PUBLIC
REDACTED

From: Trial Chamber X Communications
Sent: 09 November 2020 11:25
To: 'D28AlHassanDefenceTea [REDACTED] Office of the Director DJSS
Cc: Al Hassan Prosecution Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber X Communications
Subject: RE: Index of Medical Record for the Panel

Dear Counsel
 Dear Colleagues,

The Single Judge notes that there appears to be miscommunication and misunderstanding among the Defence and the Registry. She therefore urges the Registry and the Defence to constructively discuss this matter in order to find a viable solution that will not delay this process any further.

The Single Judge reiterates her previous direction that the Registry must transmit to the Defence a complete index of all medical records of Mr Al Hassan at the Detention Centre. This, in order to allow the Defence to consult with the accused and determine whether he consents to the provision of the records.

Providing the aforesaid index is a prerequisite for Mr Al Hassan signing the consent form, as the accused cannot be expected to consent to the provision of documents without knowing its contents. Whether the final transmission of documents will be done by the Medical Officer is a distinct issue.

Kind regards,

[REDACTED]
 On behalf of the Single Judge of Trial Chamber X

From: [REDACTED]
Sent: 09 November 2020 09:55
To: [REDACTED]; Taylor, Melinda; Trial Chamber X Communications
Cc: Office of the Director DJSS; [REDACTED] Al Hassan Prosecution Team; V43 Victims Al Hassan Team; D28 Al Hassan Defence Team
Subject: RE: Index of Medical Record for the Panel
Importance: High

Dear Trial Chamber X,
 Dear Colleagues,

The Defence notes the communication from the Registry and states, in particular in relation to item (2), that neither the Defence nor Mr. Al Hassan has received an updated index of all Mr. Al Hassan's medical records. The Defence confirmed this fact with Mr. Al Hassan before the hearing this morning and, in any event, the medical records were to be provided to the Defence.

In this regard, the Defence notes the clear judicial instruction of the Single Judge *via* email on 6 November 2020 at 09:04, stating that the Single Judge:

'Clarifies that the Defence should be provided with a complete index of all medical records of Mr Al Hassan at the Detention Centre and directs the Registry to immediately transmit the complete index, in consultation with the Defence where necessary' (emphasis added)

The Registry has failed to comply with this judicial instruction by failing to provide the Defence, immediately or at all, with the index. The Defence is concerned about the impact which this will have on the examination of Mr. Al Hassan and the Panel's exercise of its important mandate, which exercise has already been delayed repeatedly.

The Defence requests that the Registry comply with the Single Judge's instruction of 6 November 2020 and **immediately** provide to **the Defence** a complete index of Mr. Al Hassan's medical records at the Detention Centre.

Best regards,

[REDACTED] (on behalf of the Al Hassan Defence)

From: [REDACTED]
 Sent: 09 November 2020 00:37
 To: Taylor, Melinda; Trial Chamber X Communications
 Cc: Office of the Director DJSS; [REDACTED] AI Hassan Prosecution Team; V43 Victims AI Hassan Team; D28 AI Hassan Defence Team
 Subject: RE: Index of Medical Record for the Panel

Dear Trial Chamber X,
 Dear Counsel,

The Registry takes note of the Defence's submissions and would like to clarify the following:

- (1) [REDACTED] works at the Occupational Health Unit (OHU) of the ICC. OHU is responsible for health matters related to staff members but not to detained persons at the Detention Centre. The Detention Centre has a Medical Unit where all the medical records of detained persons are stored, including those of Mr Al Hassan. OHU has no access to these documents and the documents should therefore be provided directly by the Medical Officer of the Detention Centre ([REDACTED]) to the appointed Experts without intervention of OHU.
- (2) The index that the Defence had attached to the email from 5 November 2020 was not the latest version of the index that the Medical Officer of the Detention Centre had provided Mr Al Hassan. To the contrary, he provided an updated index of all his medical records. This index was handed over to Mr Al Hassan together with a consent form to be signed by Mr Al Hassan for the transmission of the documents to the Experts.
- (3) As it is the normal practice with medical records, the consent form has been directly handed over to Mr Al Hassan. Mr Al Hassan has refused to sign the consent form. In absence of his consent, the Medical Officer cannot hand over the medical documents to the Experts.
- (4) The Medical Officer of the Detention Centre is currently in the process of comparing the index provided by the Defence with the medical records available and will inform the Registry if there are any documents that are not included in this index.
- (5) Should the transfer of the medical records be organized by the Defence through the Registry to the Experts instead of from the Medical Officer directly to the Experts, the Registry would like to emphasize that it has no way of ensuring that the documents are complete given that only the Medical Officer has access to the documents and would be able to determine this.

The Registry remains available for any further questions.

Best regards,

[REDACTED]
 On behalf of OD DJS

From: Taylor, Melinda
 Sent: 06 November 2020 18:13
 To: Trial Chamber X Communications
 Cc: Office of the Director DJSS; [REDACTED] AI Hassan Prosecution Team; V43 Victims AI Hassan Team; D28 AI Hassan Defence Team
 Subject: RE: Index of Medical Record for the Panel
 Importance: High

Dear Trial Chamber X,

In line with Chamber's ruling set out in the email of 9.04 this morning, the Defence has been attempting to obtain Mr. Al Hassan's medical records, as collated by the ICC medical unit.

At 11.41am, [REDACTED] sent the following message in response to the Defence request to receive Mr. Al Hassan's records (as *per* his request).

*Thanks, [REDACTED] this is fine.
We will look into the request forthwith.*

At 11. 45am, the Defence received a second email (set out below).

Dear [REDACTED]

On Behalf of [REDACTED],

Our assistance for the detainees in general is considered as an emergency response.

The medical unit in the detention is responsible of the medical state of Mr Al Hassan.

So if you need more details, please contact [REDACTED].

Best regards
[REDACTED]

The Defence indicated at 1.30pm that it required access to these records in order to ensure their timely transmission to the experts, and further alerted the Medical Unit to the Trial Chamber's instruction to this effect. The Defence has not received any response.

In light of the Medical Unit's opinion that such matters are regulated by [REDACTED], the Defence would be grateful if the Trial Chamber could confirm whether this request falls within the parameters of previous judicial decisions concerning the right of Mr. Al Hassan and the Defence to obtain access to his medical records.

Kind regards
Melinda Taylor, on behalf of the Defence for Mr. Al Hassan

From: Trial Chamber X Communications [REDACTED]
Sent: 06 November 2020 09:04
To: Taylor, Melinda; Trial Chamber X Communications
Cc: Office of the Director DJSS; [REDACTED]
[REDACTED] Al Hassan Prosecution Team; V43 Victims Al Hassan Team
Subject: RE: Index of Medical Record for the Panel

Dear Counsel,
Dear Colleagues,

Having had regard to the below email from the Defence, the Single Judge:

- (i) Clarifies that the Defence should be provided with a complete index of all medical records of Mr Al Hassan at the Detention Centre and directs the Registry to immediately transmit the complete index, in consultation with the Defence where necessary; and
- (ii) Confirms that, provided that Mr Al Hassan consents, all medical records of Mr Al Hassan as concerns any consultations that occur at the ICC building should be transmitted to the Panel of experts, and directs the Registry to provide all necessary assistance to the Defence to enable the latter to obtain Mr Al Hassan's consent.

The Defence is requested to consult with Mr Al Hassan as soon as practicable with a view to obtaining his consent for the provision of the medical records.

Upon receipt of Mr Al Hassan's consent, the Registry should immediately transfer the relevant medical records to the Panel of experts.

Kind regards,

On behalf of the Single Judge of Trial Chamber X

From: Taylor, Melinda
 Sent: 05 November 2020 15:36
 To: Trial Chamber X Communications
 Cc: Office of the Director DJSS; [REDACTED]
 [REDACTED] Al Hassan Prosecution Team; V43 Victims Al Hassan Team
 Subject: FW: Index of Medical Record for the Panel

Dear Trial Chamber X,
 Dear Colleagues,

As the Chamber is aware, for over a year, the Defence has been attempting to obtain access to Mr. Al Hassan's full medical file, and an index of this file, so that the Defence can verify that Mr. Al Hassan and the Defence have in fact received all medical documentation, and to facilitate Mr. Al Hassan's ability to provide informed consent to the disclosure of such documentation to medical experts.

In order to resolve such matters, on 27 October 2020, the Trial Chamber issued the following email directive:

*As regards the first issue, the Chamber was informed by the Registry on 23 October that the Medical Unit of the Detention Centre is currently in the process of compiling an index of Mr Al Hassan's medical records, and that this index will be provided to the Defence no later than 26 October 2020 (Email from the Registry to the Chamber and the parties and participants, at 12:21).
 On the understanding that the Defence is now in possession of an index of **all medical records** of the accused at the Detention Centre, the Single Judge invites the Defence to consult with Mr Al Hassan to determine whether he consents to the provision of the medical records to the Panel.*

This directive was not complied with by the Medical Unit of the Detention Unit. Instead, the Medical Unit provided Mr. Al Hassan and the Defence with the attached document, which clearly did not list "**all medical records** of the accused at the Detention Centre". Faced with this non-compliance, the Defence was then compelled to spend its own limited time and resources in compiling an index of the documents in its possession, and the linked translations (as the records are mainly in Dutch).

If either the Medical Officer or the Registry are of the view that this index is incomplete (which is entirely possible as the detention unit medical unit might not have transmitted recent records to the Defence), then, in line with the Trial Chamber's existing directive, the most appropriate solution would be for the medical officer to communicate

the full index to the Defence forthwith, so that any issues can be resolved rapidly, in advance of the arrival of the experts.

Conversely, it would not be consistent with the Trial Chamber's directive, or Mr. Al Hassan's right to medical privilege, for the medical officer to communicate an index to the Registry, which has never been communicated to Mr. Al Hassan or his Defence. The Defence has repeatedly emphasised that Mr. Al Hassan's cannot consent to the disclosure of unknown documents of unknown content (which are likely to be in Dutch or English): the delay in resolving this issue is wholly attributable to the failure of the medical officer to communicate a full index, in a timely manner.

It would also be contrary to fundamental fair trial rights to inveigle the Defence into further discussions on such issues on the eve of, or in the midst of its cross-examination of P-65.

The Defence therefore respectfully requests the Trial Chamber to confirm that, as per its existing directive, the full medical index should be transmitted to the Defence and Mr. Al Hassan forthwith. The Defence also remains available to speak directly with the medical officer as concerns the most efficacious manner of ensuring a complete transmission of the records to the experts, if the medical officer is willing to do so.

Finally, the Defence has verified that the medical records of Mr. Al Hassan as concerns any consultations that occur at the ICC building do not appear to be included in his detention unit medical file. After inquiring into the procedure for obtaining access to such records (so that they can be duly transmitted to the experts) – the Defence was informed today that Mr. Al Hassan's consent was required. This was duly provided, and transmitted to [REDACTED]. Given firstly, the expert's concern regarding the importance of receiving a full medical record, and secondly, the nexus between such records and Mr. Al Hassan's attendance at hearings, the Defence respectfully submits that these records should also be transmitted to the experts. The Defence is not yet in a position to provide Mr. Al Hassan's consent to their disclosure as he has yet to receive them, but it expects to be able to do so timeously, as soon as they have been transmitted to the Defence, by [REDACTED].

Kind regards
Melinda Taylor, on behalf of the Defence for Mr. Al Hassan

From: [REDACTED]
Sent: 05 November 2020 13:06
To: [REDACTED]
Cc: Trial Chamber X Communications; D28 Al Hassan Defence Team; Office of the Director DJSS; [REDACTED]
[REDACTED] V43 Victims Al Hassan Team; Court Management-Court Records
Subject: FW: Index of Medical Record for the Panel

Dear Counsel,

Thank you very much for your email and the documents.

The Medical Officer of the Detention Centre has provided Mr Al Hassan with an index of the medical documents and a respective consent form for the transmission of these documents by the Medical Officer directly to the Experts. However, to date Mr Al Hassan has not signed the form.

Regarding the procedure for the transmission of medical documents from the Detention Centre to the Experts, the Registry is of the view that the transmission should be organized between the medical professionals and that therefore, the Medical Officer should submit these documents directly to the Experts, and not via the Registry, to ensure the completeness of these documents.

The Registry will transmit the documents sent by the Defence to the Experts but would like to highlight that it has no way of ensuring the completeness of these documents. The Medical Officer of the Detention Centre is currently in

the process of comparing the index provided by the Defence with the medical records available and will inform the Registry if there are any documents that are not included in this index.

However, the Registry would also like to highlight that if the documents are not complete, this might have an impact on the medical examination by the Experts next week if there is substantial information missing that would have been relevant for their examination.

The Registry regrets that this procedure has been chosen as it would have been much easier if all the documents had been handed over directly by the Medical Officer as it was requested by the Experts.

We remain available for any further questions.

Kind regards,

[REDACTED]

On behalf of OD DJS

From: [REDACTED]
 Sent: 02 November 2020 18:27
 To: [REDACTED]
 Cc: Trial Chamber X Communications; D28 Al Hassan Defence Team; Office of the Director DJSS; [REDACTED]
 [REDACTED] Court Management-Court Records; V43 Victims Al Hassan Team; Al Hassan
 Prosecution Team
 Subject: Index of Medical Record for the Panel

Dear Miriam,

It seems that the attachments to the earlier email of 17:58 exceeded the allowed maximum for some recipients. The Defence has just granted access to a SharePoint folder containing the below mentioned .Zip files to those recipients for whom an error message was received ([Link](#)). The index itself can be found attached.

Kind regards,

[REDACTED]

On behalf of Counsel for Mr. Al Hassan

From: [REDACTED]
 Sent: 02 November 2020 17:58
 To: [REDACTED]
 Cc: TrialChamberXCommunications [REDACTED] D28 Al Hassan Defence Team; OfficeoftheDirectorDJSS [REDACTED]
 [REDACTED] Court Management-Court Records (judoc@icc-cpi.int); V43 Victims Al Hassan Team;
 AlHassanProsecutionTeam [REDACTED]
 Subject: Index of Medical Record for the Panel

Dear Miriam,

Please find attached an index of the medical records of Mr. Al Hassan to which the Panel may be provided access by the Medical Officer; with for each document noted whether or not Mr. Al Hassan consents to the document in question being relayed to the Panel, and in which form.

For the benefit of the Detention Centre Medical Officer, the Defence has attached a .Zip file containing those documents which:

- are undated and/or contain several dates, and for which a visual reference may help in identifying the correct document;
- may only be provided to the Panel in its redacted form (3 documents, for each of which the basis of redactions is provided in the index); or
- have been recently disclosed.

These documents (in folder: "Documents to the Panel of Experts") have been numbered in such a manner as to correspond to the line and description in the index provided. This, too, so that the Medical Officer may locate and transmit to the Panel with greater ease the documents in question.

A second .Zip file ("English Translations of Medical Records") can be found attached containing the translations in possession of the Defence. The index clarifies which translation corresponds to which original Dutch document.

The Defence is currently awaiting response from the Medical Unit with respect to any medical records of the ICC in-house doctor.

Should it be deemed more appropriate for the Defence to file the attached document, we will proceed accordingly.

Kind regards,



On behalf of Counsel for Mr. Al Hassan

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