

Annex 14

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From: Trial Chamber X Communications
Sent: 23 November 2020 09:15
To: Chamber Decisions Communication
Cc: Trial Chamber X Communications
Subject: FW: Impact of quarantine on upcoming witness schedule

For the record.

From: Trial Chamber X Communications
 Sent: 20 November 2020 19:40
 To: Dutertre, Gilles; Taylor, Melinda; Trial Chamber X Communications
 Cc: D28 Al Hassan Defence Team; Al Hassan Prosecution Team; V43 Victims Al Hassan Team
 Subject: RE: Impact of quarantine on upcoming witness schedule

Dear counsel,

Dear colleagues,

The Chamber takes note of the Registry's report, stating that Mr Al Hassan will remain in quarantine until 28 November 2020 and that for the time being, visits to the Detention Centre are not possible given the current COVID-19 situation there.

The Chamber also observes the Defence's submissions, indicating, inter alia, that given the aforesaid situation, it cannot consult in person with the accused. In particular the Chamber notes the Defence's submissions that there 'is a significant qualitative difference between in-person consultations, and consultations occurring through other means'.

At the same time, the Chamber notes that the next two witnesses are already in The Hague and that witness preparation is due to commence tomorrow. The Chamber also notes that both witnesses have family obligations to attend to and that their permanence in The Hague must therefore be limited to what is strictly necessary .

Moreover, the Chamber notes that the Registry has confirmed that 'Privileged Video Conferencing and privileged telephone calls for privileged communications between Mr Al Hassan and his Defence team remain available and the Registry will continue facilitating the appearance of Mr Al Hassan during the hearings via video-links'.

Accordingly, the Chamber considers that in balancing all of the above factors, adjournment of the testimonies of P-0565, P-0557 and P-0638 in the terms requested by the Defence is not an appropriate measure. Instead, the Chamber is of the view that the testimony of P-0565 must commence on 25 November as planned. However, bearing in mind that video conferencing may be more time consuming and may not always be as direct as in-person communication, the Chamber will consider whether a limited adjournment is necessary between the end of the examination-in-chief and the cross-examination. Accordingly, the Chamber will consider such a request from the Defence at the appropriate time.

Kind regards,


 (on behalf of Trial Chamber X)

From: Dutertre, Gilles
Sent: 20 November 2020 17:25
To: Taylor, Melinda; Trial Chamber X Communications
Cc: D28 Al Hassan Defence Team; Al Hassan Prosecution Team; V43 Victims Al Hassan Team
Subject: RE: Impact of quarantine on upcoming witness schedule

Dear Trial Chamber X,

The Prosecution refers to the Defence request for a postponement of the hearing of the next upcoming witnesses P-0565, P-0577 and P-0638.

Although the Defence request is unclear they appear to be requesting a postponement till after the end of the quarantine period on 28 November 2020. Presumably the Defence is thus seeking a postponement until 30 November 2020 for the commencement of the testimony of P-0565. The Prosecution is concerned that there be sufficient time to hear all three witnesses before the end of the year. Whilst the impact on the timing would need to be clarified it is likely that the time available for all three witnesses will be tight if we delay until 30 November 2020, unless we sit longer in Court every day.

The Prosecution also observes that, if the Chamber is minded to grant this request, it requests an urgent decision is made before witness preparation is due to commence tomorrow morning with Witness P-0565.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Kind regards

Gilles Dutertre

Dévouement - Intégrité - Respect

Dedication - Integrity - Respect

From: Taylor, Melinda
Sent: 20 November 2020 16:49
To: Trial Chamber X Communications
Cc: D28 Al Hassan Defence Team; Al Hassan Prosecution Team; V43 Victims Al Hassan Team
Subject: Impact of quarantine on upcoming witness schedule

Dear Trial Chamber X,
Dear Colleagues,

The Defence has been informed by the Registry at 4.01pm today that the current detention unit quarantine will continue until 28 November 2020. In order to reduce the impact on essential Defence rights, the Defence respectfully requests the Trial Chamber to postpone the testimony of P-0565 and P-0557 until after the Defence has had the opportunity to meet Mr. Al Hassan in person.

The Defence is aware that the circumstances precipitated by the COVID-19 pandemic are exceptional, and further, that the health and well-being of the detainees is of paramount importance. Nonetheless, Article 64(2) of the Statute impels the Chamber to devise a solution, which avoids or minimises the impact of restrictions placed on Mr. Al Hassan's fundamental right to meet his Defence in person, and to attend hearings in person. This is consistent with the following findings issued by the Trial Chamber, before the start of this trial (ICC-01/12-01/18-925-Conf, paras. 7-11):

7. The Chamber notes that due to the exceptional circumstances created by the COVID-19 pandemic, and the need for the Court to exercise its duty of care towards the detainees in its custody in these circumstances, measures including the temporary restriction on communications have been imposed at the Detention Centre. The Chamber furthermore is fully aware of, and respects, the Registry's obligation to protect the health and safety of detainees pursuant to Regulation 103 of the Regulations of the Court (the 'Regulations'). Hence, the Chamber strongly agrees with a recent decision of Trial Chamber V that similarly concluded that in principle, Chambers are to refrain from overriding the measures decided by the Registry and the Presidency.

8. Nonetheless, it is ultimately the Chamber's responsibility under Article 64(2) of the Statute to ensure that the proceedings are conducted in a fair and expeditious manner with full respect for the rights of the accused. Regarding the case at hand, the Chamber notes the key fact that trial is due to commence soon. Furthermore, and with respect to physical visits by the Defence team, the Registry has indicated that it expects this will in any case be available for all detainees shortly after 13 July 2020.

9. Having had regard to the aforementioned factors, the Chamber instructs the Registry to allow, on an exceptional basis, the Defence to meet physically with Mr Al Hassan as soon as possible, specifically no later than 8 July 2020. The Chamber leaves it to the Registry to arrange such visits in a manner that is respectful to the relevant safety regulations in place, including those of the Host-State, in order to ensure the safety of all persons involved. Furthermore, the Chamber clarifies that the present Order does not in any way expand the scope of privileged communications.

10. Turning to the issue of Mr Al Hassan's presence in the courtroom during the upcoming trial hearings, the Chamber stresses again that, while Mr Al Hassan has waived participation for the preparatory hearings, participation in the trial proceedings is a significantly different matter.

11. While noting that the present matter is already under consideration, the Chamber encourages the Registry to take all necessary steps to ensure that Mr Al Hassan's physical presence can be guaranteed for the start of the trial which is currently scheduled for 14 July 2020. In this regard, while fully respecting the Registry's mandate under Regulation 103 of the Regulations, the Chamber reiterates the need for the requirement of a 14-day quarantine to be reconsidered as it will present significant obstacles to the hearing.

These considerations are equally applicable to the current juncture of the proceedings. The Defence seeks to obtain instructions and input from Mr. Al Hassan on an ongoing basis, depending on the order of witnesses. The current quarantine was entirely unexpected and occurred before the Defence had consulted with Mr. Al Hassan in relation to the upcoming testimony of P-0565, P-0557, and P-0638. Defence consultation with Mr. Al Hassan was, moreover, substantially curtailed over recent weeks due to the intensive schedule of medical examinations that occurred throughout P-0065's testimony. There is a significant qualitative difference between in-person consultations, and consultations occurring through other means. Given the restricted nature of Mr. Al Hassan's communication regime, in person communication with his Defence is also of vital importance to Mr. Al Hassan's well-being, which in turn, affects his ability to provide effective input to his Defence case.

The Defence liaised with the Prosecution after the hearing, who advised the Defence to submit a concrete proposal based on the recommendations of the Registry.

The requested adjournment is of a limited nature, and is consistent with the Trial Chamber's decision to adjourn the testimony of P-0065 to take into account COVID-19 quarantine measures that were imposed on him, and which potentially impacted on the mode of his testimony.

The Defence is extremely grateful for the Trial Chamber's attentiveness to issues related to the detention quarantine, and the impact thereof on Mr. Al Hassan's participation in his trial.

Kind regards

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

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