

Annex 30

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From: Trial Chamber X Communications
Sent: 30 October 2020 10:25
To: Office of the Director DJSS
Cc: 'D28AlHassanDefenceTeam'; Al Hassan Prosecution Team;
 'V43LRVTeam'; Associate Legal Officer-Court Officer; Chamber
 Decisions Communication; Trial Chamber X Communications
Subject: Response to the Panel's request for access and related matters

Dear Counsel,
 Dear Colleagues,

On 22 October 2020, the Chamber received an email from the Panel dated 21 October 2020 at 18:48 by way of an annex to the Registry report (ICC-01/12-01/18-1124-Conf-AnxB).

The Panel makes the following enquiries:

- (i) Whether Mr Al Hassan consents to meeting with the Panel;
- (ii) Whether there are any other documents which the Panel should be receiving;
- (iii) Whether the Panel's mandate is redundant given the fact that the trial has commenced and evidentiary hearings are ongoing.

On 29 October 2020, the Chamber was informed by the Registry that the Panel is requesting access to additional documents in particular:

- (i) 'An indexed record of all the interviews where the ICC investigators were either present in or conducting/leading the interviews with Mr Al Hassan when he was detained Mali.'
- (ii) Regarding the hearings: '(a) the number of court sessions since the request for an assessment of Mr. Al-Hassan's fitness to plead; (b) the number of sessions during which he was present in court or followed them remotely; (c) the court protocols from these sessions.'
- (iii) 'The OTP' full indictment, as well as the list of the appointed witnesses/other material that will appear in court or any other documents that help us to anticipate what Mr. Al Hassan might face during the court proceedings.' In this context, the Experts further requested the following: 'If any of these documents may not be revealed to us, we kindly ask you to at least provide us with the information on what documents we are not supposed to access.'

The present email will dispose of the aforementioned enquiries and requests from the Panel.

Mr Al Hassan's consent to meet with the Panel

The Defence for Mr Al Hassan has confirmed in writing that Mr Al Hassan is willing to meet with the members of the Panel in person. With respect to Dr Mezey who was scheduled to interview Mr Al Hassan remotely, the accused's position is that he does not wish to discuss matters pertaining to his fitness while being recorded in front of a camera. The Single Judge requested that Mr Al Hassan and Dr Mezey communicate over the phone to discuss the appropriate way forward.

The Single Judge is fully aware that international travel during these extraordinary times entails significant complications and greatly appreciates the two experts on the Panel for agreeing to meet with Mr Al Hassan in person.

The Panel's mandate

The Single Judge recalls the two decisions that are relevant in this regard: the 'Decision on the Defence notice on Mr Al Hassan's unfitness to stand trial' of 13 July 2020 (ICC-01/12-01/18-952-Conf); and the 'Decision appointing experts for the purpose of a medical examination pursuant to Rule 135 of the Rules of Procedure and Evidence' of 21 August 2020 (ICC-01/12-01/18-1006-Conf).

As set out in these decisions, fitness to stand trial does not concern, in and of itself, whether the accused has particular medical conditions, but relates to whether the accused is able to exercise effectively his fair trial rights in the proceedings. It is the exclusive responsibility of the Chamber to satisfy itself that the accused is not unfit to stand trial, and the Chamber, in its decision of 13 July 2020, found that based on available information Mr Al Hassan was not unfit to stand trial. The Panel is not tasked with reviewing the Chamber's decision of 13 July.

The Chamber is however fully aware that proceedings before the Court could potentially last for several years, and that therefore, it may also be necessary to ascertain Mr Al Hassan's ongoing fitness to stand trial. In other words, the Chamber will duly assess whether any adjustments/additional measures are required in order to ensure that Mr Al Hassan is not unfit in the long term. The decision of 21 August 2020 appointed the Panel to seek assistance in carrying out this exercise. The concrete assistance sought from the Panel is set out in paragraph 37 of the 21 August decision.

The Single Judge appreciates the Panel seeking clarification regarding its mandate. The Single Judge expects that the aforementioned explanations reassure the members of the Panel that in establishing the Panel's mandate, the Chamber carefully considered that trial proceedings would be ongoing. Thus, the fact that the trial has started does not diminish the importance of the Panel's mandate. However, bearing in mind that proceedings are ongoing, the Single Judge emphasises the need to keep the established deadline for the submission of the Panel's report.

Additional documents/information

Mr Al Hassan is charged with multiple counts of war crimes/crimes against humanity as confirmed by Pre-Trial Chamber I of the Court.

The Single Judge considers that it is not only unnecessary, but also highly impracticable for the Panel to go through the entire case record. The document number of the Registry report to which the Panel's letter is annexed is [REDACTED], which indicates that this is the [REDACTED] document filed in the present case, many of which are in French. The Public version of the [Confirmation of Charges decision](#) and the Prosecution's [Trial brief](#) are 467 and 123 pages respectively, and the Chamber's deadline of 8 December was set with the understanding that the Panel need not review the entire case record in order to conduct its assessment. It is for the Chamber, not the medical experts, to assess the legal aspects (both substantive and procedural) related to the accused's fitness.

In fact, as held in the decision of 21 August, the Panel is requested to assist the Chamber by providing information *inter alia* on any condition that the accused suffers from, so that the Chamber can make its determination on the accused's ongoing fitness.

In this context the Single Judge again emphasises that it will be for the Chamber to assess and determine ultimately what measures, if any, have to be taken or adjustments made in the proceedings with reference to any fitness issues based on the opinion provided by the panel.

However to the extent relevant, the Single Judge provides the following general information about the hearings. Regarding the hearing hours, the Single Judge can confirm that to date since the 21 August decision appointing the experts, there have been 18 hearing days during which 15 witnesses were heard. Mr Al Hassan attended all hearings in person, save for one day on which he attended only part of the hearing. At the moment, the Chamber generally sits for a maximum of 4.5 hrs per day (3 sessions of 1.5hrs with a 30min break in between the first and the second session and a 90 min break between the second and third session), although the full 4.5hrs was not used on many days due to the early conclusion of the witness's testimony.

The Chamber was also informed that the Detention Centre might be in possession of certain medical records that could be relevant to the present examination. The Chamber, with the cooperation of the Defence, Detention Centre and the Registry is in the process of confirming whether there are any additional medical records that should be provided to the Panel.

Other than these, the Single Judge does not consider that the provision of any further 'filings' or information is necessary for the Panel to start exercising its specific mandate as instructed by the Chamber.

Further the Single Judge notes the Registry capacity to provide translation assistance with respect to documents is extremely limited given the high demands arising from regular judicial activity. The Single Judge therefore requests that such assistance is sought by the experts only when essential to the specific mandate and invites the Registry to bring to her attention any issues in that regard.

The Single Judge reiterates her appreciation for the Panel working to fulfil its mandate notwithstanding difficulties that may exist due to the COVID-19 pandemic. Should there be any further queries over the course of its examination, the Panel may convey its concern to the Chamber through the Registry.

Kind regards,

[REDACTED]

On behalf of the Single Judge of Trial Chamber X