

Annex 16

Confidential

From: Trial Chamber X Communications
Sent: 23 April 2021 12:48
To: 'D28AlHassanDefenceTeam'; 'V43LRVTeam'; VWS Legal; VWS Planning Team; Al Hassan Prosecution Team
Cc: Chamber Decisions Communication; Associate Legal Officer-Court Officer; Trial Chamber X Communications
Subject: TC X - Decision on in-court protective measures for P-0127 and P-0631 (Confidential)

Dear Counsel,

The Chamber notes the Prosecution's request seeking in-court protective measures for P-0127 and P-0631 (ICC-01/12-01/18-1418-Conf, the 'Request'), as well as the related responses received via email from the Defence and the Legal Representatives (respectively at 17:20 and 18:58 on 20 April 2021) and VWU's in-court protective measures report in relation to P-0127 (email of 22 April 2021 at 17:13).

Concerning the timing of this request, the Chamber recalls its prior direction that applications for in-court protective measures 'be made as soon as possible' (ICC-01/12-01/18-789-AnxA, paras 75-77). On that occasion, the Chamber set a time limit before the start of the presentation of evidence for the Prosecution to file such applications for witnesses for whom 'it [was] reasonably foreseeable that protective measures [were] required'. The Chamber hereby clarifies that, where Rule 68(2)(b) applications were anticipated by the Prosecution, and the relevant witnesses were therefore not scheduled to appear in court, no application seeking in-court protective measures were expected by the aforementioned deadline as the latter simply did not apply. Accordingly, the Chamber finds that no specific ruling under regulation 35(2) of the Regulations of the Court is warranted in the present circumstances and will proceed to entertain the Request on the merits.

The Chambers notes P-0127 and P-0631's personal circumstances as well as the requirements of Prosecution's ongoing investigations. The Chamber notes in particular the Prosecution's submission [REDACTED]

[REDACTED] The Chamber also takes note of VWU's protection analysis, including its assessment that [REDACTED]. Further, the Chamber also gives regard to VWU assessment that '[t]he application of ICPMs in this instance may also assist in maintaining the integrity of previously issued ICPMs for other witnesses, who are also staff members, in this case'.

In light of the information provided, the Chamber is satisfied that revealing the identity and employment of P-0127 and P-0631 to the public gives rise to an objectively justifiable risk and, having had regard to the way these measures can be implemented in the case at hand, finds that they are not prejudicial to or inconsistent with the rights of Mr Al Hassan. However, the Chamber considers that the necessity of facial distortion has not been established since associated risks are only speculative. Accordingly, and pursuant to Rule 87 of the Rules of Procedure and Evidence, the Chamber grants the Request, in parts, and authorises the following in-court protective measures with respect to P-0127 and P-0631: use of a pseudonym and use of private/closed sessions.

The parties and participants are reminded to fully comply with the Chamber's recent directions on the use of private and/or closed sessions (ICC-01/12-01/18-1265). The Chamber emphasises that 'identifying information' must be interpreted strictly, particularly since P-0127 and P-0631 are technical witnesses. Specifically, while the name and specific conditions of the employment of these two witnesses shall remain confidential, information related to the witnesses' expertise and their work product should be elicited in public session. Further, the parties and participants are reminded that any item used in court, including videos and photographs, should be broadcasted to the public unless maintaining a confidential classification is strictly required (see ICC-01/12-01/18-1265, para. 10). In that case, the parties and participants must justify the need to go into private session or not to publically broadcast such material.

Kind regards,

[REDACTED]

On behalf of Trial Chamber X