

Annex 59

Confidential

From: Trial Chamber X Communications
Sent: 02 June 2021 10:36
To: D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Al Hassan Prosecution Team
Cc: Chamber Decisions Communication; Trial Chamber X Communications; Associate Legal Officer-Court Officer
Subject: TC X - Single Judge second decision on Defence request for access to a photograph of each witness during testimony and related requests

Dear Counsel,
 Dear colleagues,

Pursuant to her email ruling of 26 May 2021 at 8:15, the Single Judge hereby instructs the Registry to release access to the witnesses' photographs saved on Ecourt (for previous and upcoming witnesses) to all parties and participants. [REDACTED]

Concerning the Prosecution's request seeking clarification of the prior ruling on this (email of 26 May 2021 at 12:20), the Single Judge finds that her decision provides sufficient instructions concerning restrictions on access, as well as use, of this material. The Single Judge is of the view that Defence Counsel will be best placed to appreciate whether, in line with her prior instruction, [REDACTED]. Accordingly, the Single Judge considers that no clarification is warranted.

Finally, the Single Judge notes the Defence's request for reconsideration of the decision [REDACTED] the Prosecution's response thereto, and related request from the Defence seeking leave to reply (emails of 26 May 2021 at 13:05, 13:41 and 14:13). The Single Judge finds that the Defence has not demonstrated that the exceptional remedy that is reconsideration is warranted in the case at hand. Notably, the Single Judge is of the view that the Defence request does not point to a clear error nor convincingly argue that an injustice would arise. Accordingly, the Defence's request for reconsideration and its related request for leave to reply are dismissed.

Kind regards,

On behalf of the Single Judge of Trial Chamber X

From: Trial Chamber X Communications <TrialChamberXCommunications@[REDACTED]>
Sent: 26 May 2021 08:15
To: D28 Al Hassan Defence Team <D28AlHassanDefenceTeam@[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam@[REDACTED]>; Al Hassan Prosecution Team <AlHassanProsecutionTeam@[REDACTED]>; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer@[REDACTED]>
Cc: Trial Chamber X Communications <TrialChamberXCommunications@[REDACTED]>; Chamber Decisions Communication <ChamberDecisionsCommunication@[REDACTED]>
Subject: TC X - Single Judge decision on Defence request for access to a photograph of each witness during testimony

Dear Counsel, Dear colleagues,

The Single Judge has taken note of the submissions received on Friday 21 May 2021 via email from the LRVs (at 14:55 and 15:47), Prosecution (at 15:13 and 18:56), CMS (at 15:40), VWU (at 16:06), and

Defence (at 17:01 and 19:31) in relation to the Defence oral request for access to a photograph of each witness taken during in-court testimony (T-086, pp. 41-43).

The Single Judge sees no impediment to the parties and participants having access to a single undistorted photograph image of the witnesses after completion of their respective in-court testimony. The Single Judge does not consider that this would be inconsistent with in-court protective measures which prevent revealing *to the public* an image of certain protected witnesses nor that it is a specific source of concern for the witnesses' protection or well-being. Indeed, the photographs are being generated as part of the regular record taking of their in-court testimony by the Registry. Further, all individuals with access to these photographs would be bound by their respective confidentiality obligations, including safe handling and storage practices.

The Single Judge however specifies [REDACTED]

[REDACTED]. With this finding in mind, the Single Judge considers that the Defence's requested reply is not necessary to render the present determination. Indeed, the prohibition on use of these sorts of images during investigation is valid notwithstanding the timing with respect to an individual's in-court testimony. Concerning the Defence's proposal that the Registry be ordered to prepare 'edited stills' of images recorded in order to address some of the concerns raised, the Single Judge does not find that, [REDACTED]

[REDACTED]. Because of related concerns, this part of the request is dismissed.

The Single Judge further notes that the Defence also seeks to be provided with unpixellated video-recordings of all in-court testimony. The Single Judge recalls that the Defence is already in the possession of transcriptions of all hearings and understands that it is receiving, upon request, and where in-court protective measures in the form of facial distortion were granted, pixelated video-recordings of in-court testimony (including any private or closed sessions). The Single Judge is not convinced that provision of this material to the Defence, even with the condition that usage be limited to encrypted devices from ICC HQ, is appropriate. [REDACTED]

[REDACTED] In rendering this decision, the Single Judge had particularly regard to the material and information already in the Defence's possession (including that both the Defence team and the Accused can see the witnesses' faces clearly *during and throughout* their in-court testimony). The Single Judge also finds that the alleged need for the Defence to obtain unpixellated video-recordings 'to assess the witnesses' demeanour' is abstract and unsubstantiated. This part of the request is therefore dismissed.

In light of the above, the Single Judge grants the Defence request in part and will instruct (during the course of next week) the Registry to release access to the witnesses' photographs saved on Ecourt (for previous and upcoming witnesses) to all parties and participants. The Single Judge however considers that access should be restricted to the parties and participants' legal team and finds that this material should not be shared with resource persons or intermediaries. If the parties or participants have any such person on their Ecourt distribution list, they should inform the Chamber by C.O.B. on Friday 28 May 2021. To assist, the Single Judge instructs the Registry to provide Counsel for Mr Al Hassan and the three Legal Representatives of Victims, via separate emails to be sent by C.O.B. today (26 May 2021), a list of the individuals on their respective Ecourt distribution list for review.

Kind regards,

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