

Annex 46

Confidential

From: Trial Chamber X Communications
Sent: 30 September 2021 11:22
To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Cc: Office of the Director DJSS; [REDACTED] Associate Legal Officer-Court Officer; Chamber Decisions Communication; [REDACTED]; Trial Chamber X Communications
Subject: RE: TC X - Directions on the scheduling of witnesses in the month of November and Mr Al Hassan's family visit

Dear Counsels,
 Dear Colleagues,

The Chamber does not find it necessary nor warranted to re-consider its prior decision. However, in light of the newly provided information (which include that [REDACTED], the tentative witness schedule for November 2021 from the Prosecution, as well as the specific dates from the Registry for Mr Al Hassan's upcoming family visit), the Chamber finds it appropriate to also vacate the hearing on [REDACTED].

Accordingly, [REDACTED], the Prosecution should submit a witness schedule which proposes [REDACTED]. Finally, the Chamber informs that, if necessary to conclude the testimony of P-0538, it may sit for one or two morning sessions [REDACTED].

Best regards,

[REDACTED]
 On behalf of Trial Chamber X

From: Taylor, Melinda <mtaylor[REDACTED]>
Sent: 29 September 2021 10:26
To: Trial Chamber X Communications <TrialChamberXCommunications[REDACTED]>; Al Hassan Prosecution Team <AlHassanProsecutionTeam[REDACTED]>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam[REDACTED]>
Cc: Office of the Director DJSS <OfficeoftheDirectorDJSS[REDACTED]>; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer[REDACTED]>; Chamber Decisions Communication <ChamberDecisionsCommunication[REDACTED]>
Subject: RE: TC X - Directions on the scheduling of witnesses in the month of November and Mr Al Hassan's family visit
Importance: High

Dear Trial Chamber X,

The Defence is grateful for the Prosecution proposing specific dates for the scheduling of Mr Al Hassan's long awaited family visit. In accordance with the court schedule set out by the Chamber below, Mr Al Hassan would either be required to waive his right to participate in his trial, or sacrifice precious time with his family.

The Defence is therefore concerned that the proposed schedule would not accommodate Mr Al Hassan's right to family life and would, moreover, vitiate fundamental fair trial rights, including Mr Al Hassan's right to participate in person and the right of the Defence to adequate time and facilities. The Defence will address these considerations in turn.

Mr Al Hassan's right to family life

The purpose of the family visit is to allow Mr Al Hassan to spend meaningful time with [REDACTED]. The Chamber is aware that Mr Al Hassan was unable to be with his family when [REDACTED].

██████████ last year. He has had not opportunity to ██████████ with them in a meaningful manner. ██████████
 ██████████ It will take time for them to establish familiar bonds. This cannot occur in the space of a couple of days.

The Defence must emphasise that whereas ICC staff and officials were able to enjoy extended recess in order to travel to see family members during the pandemic, Mr Al Hassan was subjected to an intensely restrictive detention regime throughout. This family visit will be the first time that he has received a visit from anyone external to his defence team, in over **29 months**. It will also have been **four and a half** years since he last saw his wife. Recent network problems have also impeded his ability to enjoy telephone contacts.

While the Defence understands that the Chamber is concerned about breaks in the hearings, it was not possible to schedule the visit during the summer recess due to reasons beyond the control of the Defence. The Registry only announced the two person rule in the lead up to the recess and the Defence was not able to obtain a remedy in a timely manner.

Due to ██████████ ██████████ ██████████, the Defence was therefore compelled to dedicate a significant amount of time and effort into identifying ██████████ funds for ██████████'s travel so as to ensure that the visit could happen. Nonetheless, as long as the ██████████, it remains unclear as to whether it will be possible to facilitate future visits. It is therefore of paramount importance that Mr Al Hassan can spend as much time as possible ██████████ during the presaged visit.

If the Covid pandemic had not prevented family visits in 2020, there may also have been breaks in the hearings then. The cumulative impact of the proposed adjournment is thus minimal, taking into account that it represents several accumulated family visits. The hearing schedule has been vacated and modified at various points to allow for competing judicial activity, unavailability or further preparation. Mr Al Hassan's right to family life warrants the same, if not greater, consideration.

Mr Al Hassan's right to participate in person and the right of the Defence to adequate time and facilities

Mr Al Hassan cannot be asked to choose between being with his family and exercising his right to participate in the trial process: put simply, given the protracted length of their separation, any waiver would not be an informed and voluntary waiver.

The suggestion that Mr Al Hassan could participate from the detention unit and see his family also does not appear to be realistic, given that that visits are ██████████

██████████. The family visit process is absolutely necessary for detainees but also incredibly emotionally draining. It is not feasible for Mr Al Hassan to focus on the trial process in a meaningful manner while undergoing the emotional rollercoaster of a long postponed family reunion. As reflected by Mr Al Hassan's medical records, during the 2019 family visit, ██████████

██████████ Conversely, the distraction of the court hearings would undermine the quality of the family reunion for Mr Al Hassan, ██████████ (each of whom hold important rights to family life and, in the ██████████).

Family visits are also extremely work-intensive for the Defence team. Based on past experience, it will be necessary for several team members to be on call to escort them to and from the detention unit, and to ensure they have access to groceries and suitable clothing for the Dutch environment. The time and resources of the Defence will be diverted from trial preparation in a manner that will create a concrete disadvantage in terms of the principle of equality of arms.

For the reasons set out above, the Defence requests the Trial Chamber to vacate the court to allow for Mr Al Hassan to spend sufficient and meaningful time with his family.

Kind regards

Melinda Taylor on behalf of the Al Hassan Defence

From: Trial Chamber X Communications [<mailto:TrialChamberXCommunications>] [REDACTED]
 Sent: 28 September 2021 21:50
 To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
 Cc: Office of the Director DJSS; [REDACTED]; Trial Chamber X Communications; Associate Legal Officer-Court Officer;
 Chamber Decisions Communication; [REDACTED]
 Subject: TC X - Directions on the scheduling of witnesses in the month of November and Mr Al Hassan's family visit

Dear Counsels,
 Dear Colleagues,

Following-up on informal consultations concerning the scheduling of a break in the witness schedule to accommodate Mr Al Hasan's family visit [REDACTED], the Chamber directs the parties to consult with a view to identify how best to accommodate an adjournment of up to two additional days in the sitting schedule for that purpose.

So as to allow Mr Al Hassan to make the most of the family visit, the parties should, to the extent possible, attempt to agree on a schedule so that the family visit can be planned [REDACTED].

The Chamber also informs that, depending on the schedule and specific witnesses to testify during the relevant period, it is amenable to accept a waiver from the accused should he wish to be excused, or alternatively attend remotely from the Detention Centre, for hearings scheduled during the remainder of the family visit.

Kind regards,
 [REDACTED]

On behalf of Trial Chamber X

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