



Presidential Directive

ICC/PRESG/2021/001

Date: 27 September 2021

The President, pursuant to section 2 of the Presidential Directive ICC/PRESG/2003/001 (*“Procedures for the Promulgation of Administrative Issuances”*) and with the concurrence of the Prosecutor, promulgates the following:

Updated Annex to the Policy concerning the physical reopening of the Court’s Buildings and the related terms of access and use in connection with the COVID-19 Pandemic

Section 1

Purpose

- 1.1 The purpose of this Presidential Directive is to update and replace the annex of Presidential Directive ICC/PRESG/2020/001 (*“Policy concerning the physical reopening of the Court’s Buildings and the related terms of access and use in connection with the COVID-19 Pandemic”*) entitled *“Terms governing the phased physical reopening of the Court’s Building”*.
- 1.2 The annex to the Presidential Directive ICC/PRESG/2020/001 has been amended in accordance with section 6.3 of the said presidential directive and shall herewith be replaced as per the annex attached hereto.

Section 2

Final provisions

- 2.1 This Presidential Directive, including its annex, shall enter into force on the date of its promulgation. The attached annex shall replace the former annex of Presidential Directive ICC/PRESG/2020/001 as of this date.
- 2.2 All other terms of Presidential Directive ICC/PRESG/2020/001 shall remain in full force.

A handwritten signature in black ink, appearing to read 'Piotr Hofmański', with a large, stylized flourish at the end.

Piotr Hofmański

President

ANNEX TO ICC/PRESG/2020/001¹

Terms governing the phased physical re-opening of the Court's Building

1. The present annex applies only to the Court's Building as defined in section 2.1 of Presidential Directive ICC/PRESG/2020/001, namely the building of the Court located at Oude Waalsdorperweg 10, 2597AK, in The Hague, the Netherlands.
2. The content of the present annex shall be kept under review and adjusted as necessary.
3. The implementation of the phased access to, and use of, the Court's Building following its initial emergency physical closure on 17 March 2020 intends to:
 - Protect the safety and wellbeing of Users so as to reduce the risks associated with COVID-19 in the workplace environment;
 - Respect those host State recommendations and measures which are applicable to the functioning of the Court; and
 - Ensure a return, to the extent possible, to full operation in the Court's Building at a pace that is adapted to the Court's ability to respect safety and wellbeing aspects, while ensuring that core activities can, gradually, and in a controlled manner, resume.
4. The following is applicable:
 - Remote working remains the *modus operandi* in phases 1 and 2 (as set out below); it shall only be deviated from, if and to the extent necessary for the efficient and effective delivery of operations. Voluntary return of non-essential staff in phase 2 is possible as long as the necessary safety measures can be respected and implemented.
 - A phased approach concerning the access to, and use of, the Court's Building will be introduced, building up to the maximum capacity and allowing for the implementation of all necessary safety and wellbeing requirements. The pace of the phasing will be determined by the evolution or spread of COVID-19, as well as the recommendations made, and measures adopted by the host State.

¹ As amended by Presidential Directive ICC/PRESG/2021/001.

5. The precise dates at which each phase will be implemented shall be communicated to Users at least one week in advance via email or through any other means deemed appropriate for notification purposes. The Court may move back and forth between the below-mentioned phases and implement interim phases as necessary as long as the necessary safety and wellbeing measures can be respected and implemented.

Phase 1

- Official physical re-opening of the Court's Building.
- Gradual increase of Users physically present to a safe maximum number, as determined from time to time by the Registrar also on behalf of the President and the Prosecutor (taking into account the Crisis Management Team's ('CMT') advice and recommendations).
- Users shall be approved to return to the Court's Building in adherence with the terms set out in the present annex.
- Users approved to be physically present in the Court's Building shall be on premises only for as long as required to perform tasks required to be conducted on premises and shall otherwise continue to work remotely.
- Continue remote working arrangements for all other Users.

Phase 2

- Remains as phase 1 except that a larger number of Users is expected to be authorised to work at the Court's Building, while maintaining a safe maximum number, as determined from time to time by the Registrar also on behalf of the President and the Prosecutor (taking into account the CMT's advice and recommendations).
- Users shall be approved to return to the Court's Building in adherence with the terms set out in the present annex.
- Continue to maintain remote working arrangements for all other Users.
- Gradual re-opening of parts of the catering facilities at the Court's Building.

Phase 3

- Accelerated, but controlled, build up to full capacity.
- Continue to maintain remote working arrangements (a) for those who, for reasons established in this annex, are unable to return to the Court's Building; and (b) in other circumstances as determined by the President, the Prosecutor and the Registrar, in consultation.
- Gradual re-opening of other parts of the catering facilities at the Court's Building.
- Gradual re-opening of the Court to visitors.

Gradual re-opening of the Court's Building

6. For Users who return in phases 1 and 2, presence on premises remains the exception rather than the rule. Priority shall be given to those Users performing functions that are required for the resumption of Court proceedings and other core activities. Users required to be present on premises shall only be present for the time necessary to complete tasks which must be conducted on premises. In addition, notwithstanding the above, in phase 2, voluntary return of non-essential staff is possible as long as the necessary safety measures can be respected and implemented.
7. Return during phases 1 and 2 shall not exceed the occupancy limit established by the President, the Prosecutor and the Registrar, in consultation. Such occupancy limits may be adjusted on a regular basis depending on the evolution of the COVID-19 pandemic. Under no circumstances should a person falling within the scope of categories indicated at paragraph 12(c) below be directly or indirectly pressured to be physically present. Furthermore, no User may be requested to be physically present at the Court to perform a(n) (essential) task, if it is not possible to observe all applicable COVID-19 precautionary measures, which may include availability of Personal Protective Equipment ('PPE') as appropriate.
8. In identifying Users whose functions require them to return to the premises in phases 1 and 2, priority shall be given to those who volunteer for early return, to the extent possible.

9. Careful consideration shall be given to any concerns expressed by Users about being required to be physically present on premises. No direct or indirect detrimental action may be taken against any User merely for having raised any concerns in this regard and seeking resolution in good faith, including, but not limited to, within the context of the performance appraisal system.
10. The Court shall remain closed to all visits in phases 1 and 2, unless an exception is made by the Registrar also on behalf of the President and the Prosecutor. State Party representatives attending meetings on premises under the auspices of the Assembly of States Parties ('ASP') shall be permitted access to, and use of, the Court's Building in accordance with the present annex, in so far as the Registrar, in consultation with the Secretariat of the ASP, has determined that such meetings are absolutely necessary.
11. The following prerequisite conditions must be satisfied before the official implementation of phase 1:
 - Procurement and confirmed delivery of the PPE and other identified material requirements deemed necessary to ensure the safety and wellbeing of all those present at the Court's Building.
 - Defining and implementing measures to secure a safe working space within the Court's Building. This includes: physical distancing in the office environment, including for traffic within the Court's Building; enhanced cleaning of the building; availability of sanitizers at entrances, in kitchenettes, and close to bathrooms; structural changes and/or additional signage identified for implementation (including, where applicable, the use of protective screens); minimising where possible the need to touch surfaces such as door handles and ensuring enhanced cleaning where this is not possible.
 - Managers to select Users to return to the Court's Building and Occupational Health Unit ('OHU') to clear Users to be 'allowed in the Court's building' (see paragraph 12 below).
 - Communication to Users concerning the Court's approach to access to, and use of, the Court's Building.

Phases 1 and 2

12. In order to manage the number of Users accessing and using the Court's Building during phases 1 and 2, it is essential that the identification of persons allowed to return is done in a careful and consistent way. Where managers are asked to select Users to return to the Court's Building, the following steps shall be taken:²

- a. When identifying possible Users to return to the Court's Building, managers shall, in consultation with a User, assess the absolute need to work on premises. This shall be based primarily on the need to be physically present to carry out essential functions and core activities which cannot be performed remotely and secondarily, for those individuals whose well-being or productivity is seriously affected by continued remote working arrangements. Priority amongst those who need to work on premises should be given to Users who volunteer to return to the Court's Building. Notwithstanding the above, during phase 2, Users who do not fall within sub category (i) or (ii) of sub-paragraph (c) below may return, on a voluntary basis, to the Court's Building to perform work which does not need to be done on premises, as long as the necessary safety measures can be respected and implemented.
- b. Users may raise any concerns in respect of returning to the Court's physical premises in accordance with paragraph 9 above.
- c. For the purpose of identifying Users to return to the Court's Building during phases 1 and 2, due consideration shall be given to the following key factors and circumstances:
 - i. Those with risk factors for severe or critical illnesses, including age >65, underlying co-morbidities (as defined by the World Health Organization ('WHO')); e.g. diabetes,

² These steps may be revisited as the spread of the virus and local conditions evolve, and will depend, *inter alia*, on the measures adopted and recommendations made by the host State.

- cardiovascular disease, chronic lung disease, cancer and immunocompromised individuals;
- ii. Pregnant women;
 - iii. Parents of (pre)school age children where children are not physically attending (pre)school due to closures and require parental supervision, as well as women who are breastfeeding;
 - iv. Caregivers of vulnerable/sick/elderly household members.
- d. Without prejudice to sub-paragraph (e) below, if a User falls under (i) or (ii) of sub-paragraph (c) above, as determined by the Court's Medical Officer, she or he shall not be eligible to return.
 - e. Any elected official falling within category (i) or (ii) of sub-paragraph (c) above may voluntarily choose to return to the Court's Building. Notwithstanding implementation of applicable COVID-19 precautionary measures, such User assumes, in this case, full personal risk and liability for her or his decision to return to the Court's Building in these circumstances. The provision in this sub-paragraph is also applicable to counsel, members of defence teams, legal representatives of victims and members of their teams, and legal advisers pursuant to rule 74(10) of the Rules of Procedure and Evidence.
 - f. Users falling within categories (iii) and (iv) of sub-paragraph (c) above may not be required to return, unless they voluntarily choose to do so.
 - g. Unless otherwise determined by the President, Prosecutor and Registrar, in consultation, managers shall consult with possible Users and submit their list of selected Users to Directors³ for review and prioritisation, followed by submission to the Registrar (assisted by the CMT) in order to ensure Court wide numerical compliance. In the event that the numbers requested exceed the authorised limit, the Registrar (assisted by the CMT) will engage with the

³ Or equivalent.

Directors⁴ of the different Organs to further prioritise their list of Users. The Registrar also on behalf of the President and the Prosecutor and assisted by the CMT, shall approve a final list of Users who may be granted access to, and use of, the Court's Building, subject to medical clearance being granted. Unless otherwise determined by the President, Prosecutor and Registrar, in consultation, Users returning to the Court's Building in phase 1 and 2 shall undergo a medical clearance process. Users shall undergo any medical examinations required by the Court's Medical Officer, including by completing a questionnaire (this may cover, *inter alia*, information on the User and members of the User's household who are sick or may have had COVID-19 or have a pre-existing medical condition) and returning it to OHU. If a User is subsequently medically cleared by the Court's Medical Officer, she or he shall be placed on the list of 'Users medically cleared for re-entry to the building'. All medical records, in whatever form or shape, pertaining to Users shall be classified as confidential and shall only be available to the Court's Medical Officer and to any other person under her or his authority.

- h. The list of medically cleared Users - without the medical records and/or medical information - shall be maintained by the Registrar (assisted by the CMT). A regularly updated list of names shall be circulated to both Facilities Management Unit and the Safety and Security Section ('SSS') for authorised access to, and use of, the Court's Building.

13. The Registrar (assisted by the CMT) will introduce a system to ensure adherence to the maximum number of persons allowed on premises at any one time. Prioritisation of Users may be applied, as necessary, in the event that maximum capacity at any one time is exceeded, with prioritisation to be given to Users whose presence on premises is essential to Court proceedings or who are performing other essential functions.

⁴ Or equivalent.

Phase 3

14. During phase 3 the Court will engage in an accelerated, but controlled, build up to full capacity, during which working on premises will become the *modus operandi* for most Users, as determined by the President, the Prosecutor and the Registrar, in consultation.
15. Without prejudice to paragraph 16, the categories of non-eligibility for return set out in sub-paragraph (d) of paragraph 12 above shall not apply in phase 3, unless the President, Prosecutor and Registrar, in consultation, determine otherwise and communicate to Users via email or through any other means deemed appropriate for notification purposes.
16. The situation of pregnant or breast-feeding women or persons with a compromised immune system may be considered on a case-by-case basis and affected Users should discuss their individual cases with their authorised medical practitioner and supply the OHU with a written medical report.
17. Temporary use of remote working arrangements will be permitted in connection with any temporary inability of children to attend school or childcare facilities in connection with COVID-19 or in case of the need to care for a household member with COVID-19.
18. From phase 3 onwards medical clearance of Users will not be conducted. If it becomes necessary, the President, Prosecutor and Registrar, in consultation, may reinstate the medical clearance procedures referred to in sub-paragraphs (g) and (h) of paragraph 12 above.

Working conditions at the Court's Building

19. The following shall apply to the Court's Building, the necessity of which may be reviewed and adjusted as necessary in accordance with the evolution and/or spread of the virus:
 - Decisions concerning (a) the wearing of face masks in the Court's Building and (b) the conditions on the use and the maximum occupancy of both open plan and non-open offices in the Court's Building, shall be taken by the President, the Prosecutor and the Registrar, in consultation. Such decisions shall be implemented by the Registrar and communicated to Users via email or through any other means deemed appropriate for notification purposes.

- Measures to secure a safe working space within the Court's Building will be kept under review and implemented as necessary. This may include, but not be limited to: physical distancing in the office environment, including for traffic within the Court's Building; enhanced cleaning of the building; availability of sanitizers at entrances, in kitchenettes, and close to bathrooms; structural changes and/or additional signage identified for implementation (including, where applicable, the use of protective screens); minimising where possible the need to touch surfaces such as door handles and ensuring enhanced cleaning where this is not possible.
- The decisions concerning the movement in and around the Court's Building, including the use of specific parts of the premises, in connection with Presidential Directive ICC/PRES/D/G/2020/001 shall be clearly communicated in advance to Users, including through appropriate marking (e.g. maximum occupancy of confined spaces or catering facilities, direction of foot traffic flow in busy areas, use of elevators/stairs, as necessary etc.).
- Decisions concerning the gym and library facilities shall be taken by the President, the Prosecutor and the Registrar, in consultation, including whether to reopen and the establishment of any necessary terms and conditions.
- PPE will be provided by the Court to the extent that it is specifically necessary in view of the actual functions performed by a User.
- Decisions regarding the organisation, conditions and requirements of in-person and virtual meetings in the Court's Building shall be taken by the President, the Prosecutor and the Registrar, in consultation. Such decisions shall be implemented by the Registrar and communicated to Users via email or through any other means deemed appropriate for notification purposes.

20. As necessary, the President, Prosecutor and Registrar, in consultation, may introduce lists of Users who may be granted access to, and use of, the Court's Building. This will be communicated to Users via email or through any other means deemed appropriate for notification purposes.

Measures to be taken by Users entering the Court's Building

21. To ensure safety and wellbeing within the Court's Building all Users must act with due consideration for their own safety and that of others.
22. No User shall enter the Court's Building while displaying signs or symptoms of COVID-19 or feeling unwell. Users should follow all host State's and OHU's guidance concerning quarantine and self-isolation. Users showing potential signs or symptoms of COVID-19 or who are in quarantine or isolation, and who are not using any form of applicable leave, may temporarily work remotely.
23. Users shall familiarise themselves with all communications from the Court concerning the operational, practical and hygiene measures to be observed in connection with their physical presence at the Court's Building.
24. Users shall respect all instructions given by the General Services Section, OHU or SSS, as appropriate, which aim to implement the decisions taken by the Court's administration. Security screening protocols for entry may be modified from ordinary practices in order to adequately protect the safety of SSS staff.
25. Users physically present at the Court are required to follow and adhere to all decisions taken, and instructions given, in relation to maintain required physical distance, and concerning those situations where it is not possible to keep the required physical distance. Users shall observe coughing/sneezing etiquette at all times and frequently wash/disinfect their hands using materials provided, especially upon entry on premises and before and after touching objects used by others.
26. Any User with a positive PCR test shall follow the GGD (Dutch Institute for Public Health) recommendations and report to their supervisor (or other relevant focal point) and OHU immediately (by telephone or e-mail).
27. In accordance with rule 104.13 of the Staff Rules, staff members may from time to time be required to undergo a medical examination satisfying the Court's Medical Officer that she or he is free from any ailment likely to impair his or her efficiency or the health of others. Furthermore, staff members are urged to abide by the advice of authorised medical practitioners to test for current and/or past COVID-19 infection, whenever deemed necessary. Other Users are also urged to abide by requests of the Court's Medical Officer and other authorised medical practitioners to test for current and/or past COVID-19 infection, whenever deemed necessary.
28. All Users are strongly encouraged to avail themselves of available COVID-19 vaccinations.

29. The President, the Prosecutor and the Registrar, in consultation, may require that staff members whose functions do not allow sufficient management of exposure and/or in certain occupational groups be vaccinated in order to fulfil their role. Vaccination will only be required for limited categories of staff members and such requirement will be communicated in advance. The identification of those for whom vaccination is required is based on the work environment and requirements and the risk exposure (e.g. ability to perform functions while wearing a mask, ability to distance from individuals with unknown status). Exemptions to this requirement may be made on medical grounds. In addition, the Court may collect anonymised data on vaccination status from Users.
30. In addition, Users may be required to undertake additional screenings at the point of access to the Court's Building as deemed necessary by the Court's Medical Officer (e.g. temperature checks).⁵

⁵ Any retention of data to be in alignment with Administrative Instruction ICC/AI/2007/001 ("ICC Information Protection Policy") and ICC/AI/2011/005 ("Certified Sick Leave and Emergency Leave"), as applicable.