

# **ANNEX 11**

**Public redacted**

**From:** Trial Chamber X Communications  
**Sent:** 18 August 2020 10:01  
**To:** Taylor, Melinda; Craig, Paddy; [REDACTED]  
 [REDACTED]; Office of the Director DJSS; [REDACTED]  
**Cc:** Trial Chamber X Communications  
**Subject:** TC X - Single Judge decision on Defence request related to Detention visits

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Counsel,

The Single Judge notes the Defence's request contained in its email of 14 August 2020 at 18:51, as well as the Registry's views and decisions as described in the emails of 14 August 2020 at 16:45 and 17 August 2020 at 10:29.

In rendering the present decision, the Single Judge has had due regard to the nature of the issue at stake. The Defence seeks that, exceptionally, the Chamber conduct a review of a series of decisions taken by the Detention Centre's Chief Custody Officer on a matter which falls within the Registry's mandate. These decisions are being brought to the Chamber's attention because of the impact they have on Defence preparation in the lead up to the start of the evidentiary phase of trial and, as such, will be assessed by the Single Judge pursuant to Articles 64(2) and 67 of the Rome Statute.

The first part of the Defence request seeks the Chamber's intervention so that Mr Al Hassan be allowed to receive a visit from Counsel before 24 August. The Single Judge understands that, at the moment, and until 24 August 2020, the measures adopted by the Registry, and the way they are being applied, effectively prevent all members of the Defence team, with one exception – [REDACTED], from meeting with Mr Al Hassan in person.

The Single Judge notes that, on 3 July 2020, the Chamber had instructed the Registry to allow, on an exceptional basis, the Defence to meet with Mr Al Hassan in person. It is recalled that this decision clearly indicated that it was for the Registry 'to arrange such visits in a manner that is respectful to the relevant safety regulations in place, including those of the Host-State, in order to ensure the safety of all persons involved' (decision 925-Conf, para. 9).

The Single Judge is of the view that the Chamber has done all within its own discretion to contribute to the setting up of this alternative, and, in the circumstances, preferred, means of communication. It cannot however intervene with regard to the specifics of the discrete rulings rendered by the Chief Custody Officer which result in four members of the Defence team being prevented from meeting Mr Al Hassan in person for a remaining period of four days. The Single Judge recalls the Chamber's prior indication that it is 'to refrain from overriding the measures decided by the Registry' as regards its obligation to protect the health and safety of detainees pursuant to Regulation 103 of the Regulations of the Court (decision 925-Conf, para. 7). Indeed, while they unfortunately limit the Defence's ability to rely on in-person visit to the Detention Centre in their preparation for the upcoming hearings, the Single Judge considers that the decisions rendered by the Registry as regards the specific circumstances at hand fall entirely within the Registry's discretion. In line with this, the Single Judge is also of the view that it is not appropriate for the Chamber to now provide its own appreciation or to review more generally the Detention Centre's broader interpretation as to the standing risks and its application of precautionary safety measures. The Single

Judge finally recalls that other means of communication are in place and remain available to facilitate exchanges between Mr Al Hassan and the various members of his defence team.

The second part of the Defence request seeks that the Chamber intervene in order to allow [REDACTED] to access the ICC building so that [REDACTED] can assist with key tasks in preparation for upcoming evidentiary hearings, notably the stamping and disclosing of document. The Single Judge understands that, while the Defence wishes to rely on [REDACTED] to do a number of tasks which can only be performed from the ICC's premises, [REDACTED] is not to share the same office space as [REDACTED] other members of the Defence team in order to maintain [REDACTED] access to the Detention Centre. Noting the circumstances described above, and giving due weight to the fact that [REDACTED] access to both the ICC building and the Detention Centre are considered by the Defence as crucial to its preparation, the Single Judge is of the view that the Registry should assist and provide adequate alternatives, as required and warranted per its mandate. In light of the information available to the Single Judge, it appears that, exceptionally, and subject to [REDACTED] receiving a positive medical clearance for [REDACTED] access to the ICC building, a separate office space could be made available in order to allow [REDACTED] to respect the Detention Centre's policy while still performing essential tasks required to be performed from inside the Court's premises. The Single Judge trusts that this, or another suitable measure, can be facilitated within a short notice and instructs the Registry to report back to the Chamber on this matter within one working day.

Kind regards,

[REDACTED]r

On behalf of the Single Judge of Trial Chamber X

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From: Taylor, Melinda  
Sent: 14 August 2020 18:51  
To: Trial Chamber X Communications

[REDACTED]

Subject: FW: Detention visits

Dear Trial Chamber X,

We are bringing the matter below to your attention, as the interpretation of the detention unit means that it will be effectively impossible for us to maintain access to Mr. Al Hassan throughout the course of the next months.

Specifically, the position of Mr. Craig is that if anyone from the defence team is in the same room as someone who has travelled from an orange country, we cannot enter the detention unit for 14 days. As things stand, this means that only one member of the team can see Mr. Al Hassan – that is [REDACTED] – who is not a Counsel, who has not been involved in preparing for the upcoming witnesses (as [REDACTED] was away in [REDACTED]). In order to maintain [REDACTED] access to the detention unit, Mr. Craig has decreed that [REDACTED] cannot enter the ICC office, on the argument that [REDACTED] would be contaminated through [REDACTED] contact with myself, and that I myself am contaminated by virtue of having been in the same general office area as someone who had tested negative for COVID, and who had travelled from a country where there are far less COVID cases than the Netherlands (on 9 August, there were 486 cases in The Netherlands as compared to 167 in [REDACTED] – according to WHO - <https://covid19.who.int/region/emro/country> [REDACTED] – [REDACTED] had also believed that on the basis of the advice on the Dutch government website, that apart from the fact that the quarantine measures were not mandatory for [REDACTED] they did not apply to persons travelling to the Netherlands for the purpose of work related to international organisations). [REDACTED] had two tests (nasal swab and throat) before [REDACTED] travelled back to The Netherlands (see attached), and has not presented any symptoms since.

On 13 August, we requested Mr. Craig to reconsider his decision in light of the impact of these measures on critical Defence preparation in the lead up to the start of witness testimony (see attached email) but he declined to do so (see below).

Please note we are not contesting that [REDACTED] cannot enter the detention unit, but the notion that [REDACTED] cannot meet with us (while socially distancing/wearing masks), and assist with certain disclosure tasks that can only be done in the office, the week before witness testimony is scheduled to commence, is disproportionately prejudicial (particularly as we are already one member short, as another team member was ill, had to have emergency surgery this week, and is recovering).

As mentioned previously, this position re tertiary contamination is contrary to the advice from RVIM (who confirmed again today, that apart from [REDACTED], we are not considered to be a risk –this advice is confirmed on the website which specifies that if the ‘risk patient’ does not present symptoms within 48 hours of contacts with third persons, the third persons are not then considered to be at risk - <https://lci.rivm.nl/COVID-19-bco> ) Whereas Mr. Craig refers to all team members as close contacts, the definition of a close contact under RVIM guidelines is someone who had contact of less than 1.5 metres for more than 15 minutes – this definition does not apply to persons who socially distance in an office environment . Indeed, for the latter, the RVIM guidelines impose no restrictions other than to be alert.

This position also departs from the instructions that were communicated to the Defence as concerns entry to the Detention Unit. It will also have significant implications going forward. For example, if the Defence attends witness familiarisation meetings with any individual who has travelled from an orange zone, or is in the same zone in the courtroom, we will forego our right to meet with Mr. Al Hassan for two weeks, each time this occurs, and this prohibition will also extend to anyone we contact as well. The absence of clear guidelines from the detention unit as to the definition of secondary/tertiary contamination also creates further risks that our contact may be cut, at any point.

Although Mr. Craig states that we have visited Mr. Al Hassan on [REDACTED] occasions, since the current situation was unexpected, we did not have the possibility to structure these meetings accordingly. Given that the deadlines that applies to the disclosure and submission of Defence exhibits for cross-examination for the first witness falls on the 24 August, the notion that this will be the first day that a Counsel or Arabic speaking member of the team [REDACTED] can meet with him is highly problematic. [REDACTED]

Given the impact that these two measures ( 1: the finding that [REDACTED] can either enter the detention unit or the ICC office but not both, and 2: the finding that anyone who was in the ICC office space with [REDACTED] on the morning of 10 August, cannot enter the detention unit until [REDACTED]’s quarantine period has expired) impact directly on Defence preparation at a critical time period, we are respectfully requesting the Chamber to request the Registry to take measures that would allow Mr. Al Hassan to receive a visit from Counsel before 24 August, and which would allow [REDACTED] to access the ICC building in order to assist with Defence preparation (including stamping and disclosing documents).

Kind regards

Melinda Taylor, on behalf of the Al Hassan Defence

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From: Craig, Paddy [REDACTED]  
 Sent: 14 August 2020 16:45  
 To: Taylor, Melinda; Detention Visits

Subject: RE: Detention visits

Dear Ms Taylor

As previously mentioned, [REDACTED] may have physical visits with Mr Al Hassan on behalf of the defence team. On 24 August the other [REDACTED] members (Taylor, [REDACTED]) may resume physical visits again. The information you have provided to me is that [REDACTED] has not been in contact with [REDACTED] or the other team members, therefore it logically follows that [REDACTED] may have physical visit Mr Al Hassan at the DC. It is up to your DT to organize your work plans, work locations, remote working possibilities and modalities as you see fit. However you are correct that if the modality chosen is that [REDACTED] will share the office or close space with any of the other four members mentioned then it would also be for [REDACTED] to wait for 14 days until [REDACTED] next physically visits the DC again.

Regarding Ms Taylor's email of 13 August at 17:39, I have carefully considered the information provided and the circumstances of the entire incident. My decision remains unchanged, also considering the following-

Our policy remains consistent, and it's up to your team to choose the way to organize your work given the alternatives presented to your team for privileged communications. As a reminder, privileged video conferencing remains available, and for this lead Counsel needs to [REDACTED], which remains outstanding. Furthermore, as you know we have exceptionally allowed privileged conference telephone calls to take place for defence teams. There is also the privileged computer network for sharing documents and videos, which can be used simultaneously with the telephone should that be helpful for you.

I consider these decisions to be proportionate to the COVID-19 risk posed to all detained persons at the ICC. Furthermore, exceptional physical visits have been ongoing by your DT for over a month now. Mr Al Hassan has received [REDACTED] days of physical visits by his Defence team during this time, nearly [REDACTED]. Due to my decision, in order to mitigate the COVID-19 threat caused by the breach of one of your defence team members, the time period under discussion is the limited period of five additional days (next week) where only one member of the DT is currently authorized to have physical visits. Physical visits by your DT are still taking place, and alternatives are available for the other [REDACTED] members of the defence team for those five remaining days.

It is also worth noting that the ICC main building also denied access to [REDACTED] in the afternoon of 10 August, right after he had been denied access at the DC. This is also after the [REDACTED] explained to [REDACTED] that [REDACTED] is a high risk country, and that [REDACTED] could endanger the detained persons and [REDACTED] colleagues. I therefore remind your team and you as lead counsel that the ICC Registry, Presidency, DS and medical staff are working very hard to ensure the health and safety of all detained persons and staff members at the DC, and we therefore request your upmost cooperation and respect for this task.

As a reminder, the current measure is necessary, due to the close contact of the other three defence members with [REDACTED], who did not respect the self-quarantine at home measures for 14 days following international travel [REDACTED], which is not on one of the 13 countries excepted from self-quarantine. Thereafter, by meeting in close contact at the ICC main building with these three defence members, while not respecting the quarantine, these three individuals were also exposed. As a precautionary safety measure, they have not and will not be allowed inside the DC until the 24th August. Then they will also need to then pass the medical triage at the DC as per the usual practice.

The Chamber has ordered the Registry to arrange these exceptional physical visits in a manner respectful to the relevant safety regulations in place, and it is within the Registry's purview to impose necessary conditions, in order to ensure that such visits are conducted in a manner that is as safe as possible.

As previously mentioned, [REDACTED] is currently an "orange" country, which is regarded by the Dutch authorities to be unsafe for travel due to concerns on the increased risks for COVID-19 transmission. The Dutch policy is clear on this, coming from an orange country the strict advice is to stay at home and self-quarantine for 14 days. Taking into account the intelligent lockdown in the Netherlands, contrary to a forced lockdown, a strict advice should be regarded as obligatory, that is, an appeal to the moral obligations and responsibilities of individuals to protect

others, especially those who are vulnerable and susceptible to contract COVID-19, [REDACTED]

Had [REDACTED] followed this strict advice and discharged [REDACTED] obligations you would not now find yourself facing these self-inflicted difficulties. As lead counsel I submit on matters such as these that you also have obligations to ensure your team members also comply with their obligations which includes not putting detained persons, ICC DC staff, HQ staff and the rest of your team at risk of contracting COVID 19.

Regards

Paddy Craig

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From: [REDACTED]  
 Sent: 14 August 2020 15:29  
 To: Craig, Paddy; Detention Visits

[REDACTED]  
 Subject: RE: Detention visits

Dear Mr Craig,

I'm writing regarding [REDACTED]'s access to the ICC premises and the Detention Centre.

As we already mentioned [REDACTED] arrived this Monday from [REDACTED] and has not come to the ICC premises or been in contact with any other defence team members yet.

On 12 and 14 of August, we've sent two emails asking whether [REDACTED] can share the ICC office with the rest of the team knowing that [REDACTED] is working from home for the next 2 weeks and we still haven't received any response yet.

The defence needs to organise its work, and having another team member who cannot come to the office for an additional week will have a significant impact on defence preparation for trial.

Therefore, and since in accordance with the Dutch current policy and ICC current policy, people who have been in contact with people who have been exposed to someone from an Orange country do not have to quarantine and since we have not received any confirmation regarding this issue from the Detention Centre, we have added [REDACTED] to the list of people who can access the ICC premises on Monday with Ms. Taylor, [REDACTED].

If the Detention Centre has any objections, please inform us today and as soon as possible. If the team will not receive a response by the end of the day, we will consider that we can follow the general rules set by the Dutch government, and the ICC regarding access to the ICC and the ICC Detention Centre and accordingly, [REDACTED] is permitted to come to the ICC premises from Monday, 17 August 2020 without this affecting [REDACTED] right to visit Mr. Al Hassan at the Detention Centre next week.

Finally, would it be possible to have a decision regarding our request for reconsideration of the decision regarding Ms. Taylor's access and my access to the Detention Centre?

Regards,

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From: [REDACTED]  
 Sent: 14 August 2020 09:47  
 To: 'Craig, Paddy'; 'Detention Visits'

Subject: RE: Detention visits

Dear Mr Craig,

I'm writing to follow up on our request below. Would [REDACTED] be able to share the ICC office with the team?

Regards,

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From: [REDACTED]  
Sent: 12 August 2020 18:06  
To: Craig, Paddy; Detention Visits

Subject: RE: Detention visits

Dear Mr Craig,

Thank you very much for your response.

Would [REDACTED] be able to share the ICC office with the rest of the team knowing that [REDACTED] is working from home for the next 2 weeks?

Regards,

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From: Craig, Paddy [REDACTED]  
Sent: 12 August 2020 17:51  
To: [REDACTED]; Detention Visits

Subject: RE: Detention visits

Dear [REDACTED]

[REDACTED] is eligible to visit Mr Al Hassan as both the Dutch current policy and ICC current policy exempt [REDACTED] from 14 days of self-quarantine.

Should either of those policy positions change with regard to the stance with regard to [REDACTED] or any other country for that matter, and a Defence team travels from a country not exempt then the DS will follow any policy advice and instructions or amendments. Clearly, this is something your defence team may wish to take into consideration for the future.

The visit request for [REDACTED] is therefore approved. Please ensure that [REDACTED] brings a mask with [REDACTED].

Regards

Paddy Craig

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From: [REDACTED]  
Sent: 12 August 2020 16:13  
To: Detention Visits

Subject: Detention visits

Dear [REDACTED]

We would like to ask whether [REDACTED] would be eligible to visit Mr Al Hassan at the Detention Centre. [REDACTED] arrived this Monday from [REDACTED] and has not come to the ICC premises or been in contact with any other defence team members yet. Please also note that travellers from [REDACTED] are exempt from the self-quarantine rules as [REDACTED] is one of the country exempted from quarantine in line with the Government of Netherlands directives (<https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands/travel-and-holidays/visiting-the-netherlands>).

If [REDACTED] is the only person that will be allowed to visit Mr Al Hassan at the Detention Centre and if your position regarding contact continue to apply, [REDACTED] would not be able to work from the ICC premises with the rest of the team for the next 2 weeks which would have a significant impact on the defence's preparation for trial.

Regards,  
[REDACTED]

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