

Annex 6

Public

[REDACTED]

From: Trial Chamber I Communications
Sent: 16 December 2021 13:43
To: Wistinghausen, Natalie; Trial Chamber I Communications; V47 LRV Team
Cc: Abd Al Rahman Prosecution Team; Associate Legal Officer-Court Officer; Court Management-Court Sessions; D31 Abd-Al-Rahman Defence Team; OTR Counsel Support Section; Chamber Decisions Communication; Amin, Nasser
Subject: RE: Decision on Ms von Wistinghausen's e-mail on remote attendance

Dear Ms von Wistinghausen,
 I acknowledge receipt of your e-mail, which has been transmitted to the Chamber.
 Best regards,

From: Wistinghausen, Natalie [REDACTED]
Sent: 16 December 2021 13:10
To: Trial Chamber I Communications [REDACTED] V47 LRV Team
Cc: Abd Al Rahman Prosecution Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED] Court Management-Court Sessions [REDACTED] D31 Abd-Al-Rahman Defence Team [REDACTED] OTR Counsel Support Section [REDACTED] Chamber Decisions Communication [REDACTED] Amin, Nasser [REDACTED]
Subject: RE: Decision on Ms von Wistinghausen's e-mail on remote attendance

Dear Ms. [REDACTED]

Kindly transmit the following message to the judges of Trial Chamber I:

Dear Trial Chamber I,

Thank you for sending your decision on remote attendance of which I respectfully took note.

I understand that I am to be the Lead Counsel and I will make sure that our clients are adequately represented by counsel in the courtroom during every hearing.

I also note that the Trial Chamber has made it clear several times that, given the language difficulties, it does not consider that my colleague Mr. Abdalla can appropriately represent victims' views in court. I therefore wish to respectfully inform the Trial Chamber that I will choose a co-counsel from the list of counsel working alongside me who also possesses full right to audience and the competence and experience to properly represent our clients. I will do so in a timely manner for co-counsel to prepare, under my guidance, for the commencement of the trial. I have already undertaken the first steps.

Should the necessity for my remote attendance become relevant, I will of course seek permission from the Trial Chamber and I will give reasons. Moreover, such a request for my remote attendance will exclusively be based on the premise that the physical presence in the courtroom of co-counsel with full right to audience will be guaranteed at the same time.

I kindly ask the Trial Chamber to give me some time to further discuss the matter with Mr. Abdalla before I can move on with the appointment of an additional co-counsel.

I very much hope that this response adequately addresses the Trial Chamber's concerns.

Kind regards,

Natalie v. Wistinghausen
CLRv

From: Trial Chamber I Communications [REDACTED]
Sent: 14 December 2021 09:18
To: Wistinghausen, Natalie [REDACTED]; V47 LRV Team [REDACTED]
Cc: Abd Al Rahman Prosecution Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED] Court Management-Court Sessions [REDACTED] [REDACTED]; D31 Abd-Al-Rahman Defence Team [REDACTED] OTR Counsel Support Section [REDACTED] Chamber Decisions Communication [REDACTED] Trial Chamber I Communications [REDACTED]
Subject: Decision on Ms von Wistinghausen's e-mail on remote attendance

Dear Ms von Wistinghausen,

The Chamber notes your e-mail of 10 December 2021, in which the common legal representative for victims (Ms von Wistinghausen, the 'CLRv'): (a) seeks to clarify that 'remote attendance allows for oral submissions'; (b) clarifies that the case manager, Mr Anbari, will not speak on behalf of the CLRv; and (c) informs the Chamber that the CLRv will not be able to attend physically (any or some of) the hearings scheduled between April-July 2022, but that Mr Abdalla and a Legal Assistant/Associate Counsel (still to be recruited) will represent victims in court.

The Chamber notes, with regret, that the CLRv does not seek any authorisation from the Chamber, despite its repeated instructions that physical presence to trial hearings remains the rule (E-mail from Trial Chamber I Communications on 9 November 2021 at 15:14). Instead the CLRv simply notes, as a *fait accompli*, that she will not be able to attend any or some of the hearings scheduled in 2022.

Notwithstanding the above, the Chamber will deal with the e-mail below as a request, so it can be ruled upon, and subsequently followed by the CLRv, as instructed.

As regards (a) above, the Chamber clarifies that in the specific instance of the status conference of 17 December, and since the CLRv's request to attend remotely was granted, oral submissions by counsel attending remotely will be allowed, as appropriate.

In relation to (b) above, the Chamber takes note that Ms von Wistinghausen, as lead counsel, will introduce the CLRv team during the status conference of 17 December.

Turning to point (c), the Chamber observes that the CLRv justifies her absence from the courtroom on the basis of 'personal reasons'. She also fails to identify whether she seeks to attend remotely a limited amount of days or the entirety of the trial hearings scheduled so far between April-July 2022.

Ms von Wistinghausen does not specify whether Mr Abdalla will replace her and attend the hearings in person during her absence. However, the Chamber reiterates its previous ruling that Ms von Wistinghausen, as lead counsel, is the primary responsible in the representation of her clients interests in court (e-mail from Trial Chamber I Communications on 10 December 2021 at 16:15). Particularly considering Mr Abadalla's previous request to have Arabic translation and interpretation, the Chamber does not consider he can appropriately represent victims' views in Court as lead counsel would (particularly considering she is fluent in both working languages of the Court). If the suggestion is that a Legal Assistant will be the only counsel present in court, the Chamber has already made it clear that representation of the victims during the proceedings must be by either leading or co-counsel.

Lastly, the Chamber notes that although it authorised, exceptionally, counsel's remote attendance during status conferences, it must be extremely vigilant if and when authorising remote attendance during trial. Bearing in mind its duty to guarantee the protection of witnesses and the integrity of the proceedings, the Chamber considers that

such evidence must be heard, as a rule, within the secured facilities of the ICC courtroom. Although the Registry may be able to facilitate secure transmission to a remote location, the Chamber cannot guarantee the safety of witnesses at the other end of the video-link transmission (*see recently Yekatom and Ngaissona case*, ICC-01/14-01/18-T-076-CONF-ENG ET, p. 71, lines 8-20). Considering the expected subject matter of the status conference scheduled for 7-11 February 2022, which is to discuss the list of trial witnesses to be disclosed on 5 January 2022, the Chamber considers, for the same reasons, that remote attendance is not appropriate.

Lastly, the Chamber notes that although the COVID-19 pandemic is an ongoing and continuing challenge, travel is possible and in-court attendance can be facilitated. If counsel wish to attend hearings, the Chamber expects their presence in court.

Accordingly, the Chamber is not prepared to allow lead and/or co-counsel to attend remotely save in exceptional circumstances. Ms von Wistinghausen is to inform the Chamber orally during the status conference, or in writing no later than 17 December 2021, if she is able to continue representing victims in this case under the aforesaid circumstances.

Kind regards,

[REDACTED]
(on behalf of Trial Chamber I)

From: Wistinghausen, Natalie [REDACTED]
Sent: 10 December 2021 19:00
To: Trial Chamber I Communications [REDACTED] V47 LRV Team
[REDACTED] D31 Abd-Al-Rahman Defence Team [REDACTED]
Cc: Abd Al Rahman Prosecution Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED] Court Management-Court Sessions [REDACTED]
[REDACTED]; OTR Counsel Support Section [REDACTED]
Subject: RE: Requests to attend remotely the status conference on 17 December

Dear [REDACTED]

Thank you very much for transmitting the Trial Chamber's decision.

I would just like to clarify that it is my understanding that remote attendance allows for oral submissions, which of course I will make when appropriate. I merely intended to inform the Trial Chamber of the presence of Mr. Anbari in the courtroom and I will of course introduce him. I was not suggesting that he was going to speak on behalf of the team or of our clients.

For the sake of transparency, I also want to address the following: In reference to the Trial Chamber's request that I will have to be present in the courtroom during all the weeks in which trial hearings have been scheduled, I can already tell that – mainly for very personal reasons - this will not be possible. But between Mr. Abdalla and myself (in presence and remotely, if granted) as well a Legal Assistant/Associate Counsel who I intend to take on board of our team, I will guarantee that our client's interests will be represented at all times and the Trial Chamber can trust that I won't fail in fulfilling the obligations that I have towards my clients. Those, in my view, do not necessarily implicate my personal physical presence in the courtroom at all times.

If you were kind enough to pass this on to the Trial Chamber, I would be very grateful.

I also take the opportunity to wish a good and healthy week-end to all!

Kind regards,

Natalie v. Wistinghausen

CLRV

From: Trial Chamber I Communications [REDACTED]
 Sent: 10 December 2021 16:15
 To: V47 LRV Team [REDACTED]; D31 Abd-Al-Rahman Defence Team [REDACTED]
 Cc: Abd Al Rahman Prosecution Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; Court Management-Court Sessions [REDACTED]; OTR Counsel Support Section [REDACTED]; Trial Chamber I Communications [REDACTED]
 Subject: Requests to attend remotely the status conference on 17 December

Dear counsel,

The Chamber notes that Ms von Wistinghausen and Mr Edwards have requested leave to attend remotely the status conference scheduled on 17 December 2021. Mr Abadalla has not made such a request.

The Chamber notes that Ms von Wistinghausen does not wish to add any items to the agenda. Although she does not state whether she expects to make oral submissions during the hearing, she states that a new case manager (working in the case as of 1 December 2021) will be present in the courtroom.

As regards Mr Edwards, the Chamber notes that neither Mr Laucci nor Mr Edwards envisage an intervention during the status conference. Mr Laucci, in a separate e-mail, has indicated the he will be present in the courtroom and ready to deal with any other incidental matter.

In light of the above, and considering the limited nature and duration of the status conference, and also bearing in mind the current evolving situation of the COVID-19 pandemic, the Chamber grants both requests.

In relation to Ms von Wistinghausen, the Chamber reminds her that she, as lead counsel in the team of common legal representatives, is under the obligation vis-à-vis her clients to represent their interests in court. The Chamber considers that a case manager cannot replace her representation of victims' interests in court.

Lastly, the Chamber reminds counsel they must take the appropriate measures to physically attend the next status conference, scheduled on 7-11 February 2022. Likewise, bearing in mind the advance notice given to the parties and participants as to the trial's sitting schedule as of 5 April 2022, counsel must be physically present in the courtroom during the weeks in which trial hearings have been scheduled.

Kind regards,

[REDACTED]
 (on behalf of Trial Chamber I)

From: Wistinghausen, Natalie [REDACTED]
Sent: 10 December 2021 19:00
To: Trial Chamber I Communications [REDACTED]; V47 LRV Team [REDACTED]; D31 Abd-Al-Rahman Defence Team [REDACTED]
Cc: Abd Al Rahman Prosecution Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; Court Management-Court Sessions [REDACTED]; OTR Counsel Support Section [REDACTED]
Subject: RE: Requests to attend remotely the status conference on 17 December

Dear [REDACTED]

Thank you very much for transmitting the Trial Chamber's decision.

I would just like to clarify that it is my understanding that remote attendance allows for oral submissions, which of course I will make when appropriate. I merely intended to inform the Trial Chamber of the presence of Mr. Anbari in the courtroom and I will of course introduce him. I was not suggesting that he was going to speak on behalf of the team or of our clients.

For the sake of transparency, I also want to address the following: In reference to the Trial Chamber's request that I will have to be present in the courtroom during all the weeks in which trial hearings have been scheduled, I can already tell that – mainly for very personal reasons - this will not be possible. But between Mr. Abdalla and myself (in presence and remotely, if granted) as well a Legal Assistant/Associate Counsel who I intend to take on board of our team, I will guarantee that our client's interests will be represented at all times and the Trial Chamber can trust that I won't fail in fulfilling the obligations that I have towards my clients. Those, in my view, do not necessarily implicate my personal physical presence in the courtroom at all times.

If you were kind enough to pass this on to the Trial Chamber, I would be very grateful.

I also take the opportunity to wish a good and healthy week-end to all!

Kind regards,

Natalie v. Wistinghausen
CLRV

From: Trial Chamber I Communications [REDACTED]
Sent: 10 December 2021 16:15
To: V47 LRV Team [REDACTED] D31 Abd-Al-Rahman Defence Team
 [REDACTED]
Cc: Abd Al Rahman Prosecution Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED] Court Management-Court Sessions [REDACTED]
 [REDACTED] OTR Counsel Support Section [REDACTED] Trial Chamber I Communications [REDACTED]
Subject: Requests to attend remotely the status conference on 17 December

Dear counsel,

The Chamber notes that Ms von Wistinghausen and Mr Edwards have requested leave to attend remotely the status conference scheduled on 17 December 2021. Mr Abadalla has not made such a request.

The Chamber notes that Ms von Wistinghausen does not wish to add any items to the agenda. Although she does not state whether she expects to make oral submissions during the hearing, she states that a new case manager (working in the case as of 1 December 2021) will be present in the courtroom.

As regards Mr Edwards, the Chamber notes that neither Mr Laucci nor Mr Edwards envisage an intervention during the status conference. Mr Laucci, in a separate e-mail, has indicated that he will be present in the courtroom and ready to deal with any other incidental matter.

In light of the above, and considering the limited nature and duration of the status conference, and also bearing in mind the current evolving situation of the COVID-19 pandemic, the Chamber grants both requests.

In relation to Ms von Wistinghausen, the Chamber reminds her that she, as lead counsel in the team of common legal representatives, is under the obligation vis-à-vis her clients to represent their interests in court. The Chamber considers that a case manager cannot replace her representation of victims' interests in court.

Lastly, the Chamber reminds counsel they must take the appropriate measures to physically attend the next status conference, scheduled on 7-11 February 2022. Likewise, bearing in mind the advance notice given to the parties and participants as to the trial's sitting schedule as of 5 April 2022, counsel must be physically present in the courtroom during the weeks in which trial hearings have been scheduled.

Kind regards,

[REDACTED]
(on behalf of Trial Chamber I)

From: Laucci, Cyril [REDACTED]
Sent: 09 December 2021 14:53
To: Edwards, Iain [REDACTED] Trial Chamber I Communications [REDACTED]
[REDACTED] Abd Al Rahman Prosecution Team [REDACTED] D31 Abd-Al-Rahman
Defence Team [REDACTED] V47 LRV Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED] Court Management-Court
Sessions [REDACTED]
Subject: RE: Scheduling and other related matters

Dear [REDACTED]
I also wish to confirm that Counsel Edwards' remote attendance will have no impact on the representation of Mr Abd-Al-Rahman. I will attend in person.
Yours Sincerely,
Cyril Laucci,
Lead Counsel for the Defence of Mr Abd-Al-Rahman.

From: Edwards, Iain [REDACTED]
Sent: 09 December 2021 14:30
To: Trial Chamber I Communications [REDACTED] Abd Al Rahman Prosecution
Team [REDACTED] D31 Abd-Al-Rahman Defence Team
[REDACTED]; V47 LRV Team [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED] Court Management-Court
Sessions [REDACTED]
Subject: Re: Scheduling and other related matters

Dear [REDACTED]

Would you please be kind enough to pass on the following application to the Trial Chamber?

All the best,

Iain

Your Honours,

In accordance with the Trial Chamber's policy regarding remote attendance at trial hearings, I write to seek your leave exceptionally to appear at the next status conference, scheduled for next Friday, 17 December, remotely. Neither Dr Laucci nor I envisage that I will intervene during the next status conference. We have also been in contact with the Prosecution over the last week or so and it seems to be common ground that the hearing will primarily focus on the Prosecution providing updates to the Trial Chamber on its activities in Sudan. Dr Laucci will be physically present and will deal with any other incidental matters that may need to be addressed.

I do not argue that time, expense or pandemic-related issues prevent me from traveling to The Netherlands from my home and place of work (Côte d'Ivoire). However, pre-existing family obligations mean that travelling to The Netherlands for 17 December would cause difficulties of a personal nature. If the Trial Chamber, Prosecution and LRV wish to hear of these difficulties, I will of course be happy to provide details in a further email.

Please accept my thanks for Your Honours' sympathetic consideration.

Yours faithfully,

Iain Edwards

From: Wistinghausen, Natalie [REDACTED]

Sent: 09 December 2021 11:20

To: Trial Chamber I Communications [REDACTED]

Cc: Anbari, Idriss [REDACTED] Amin, Nasser [REDACTED]

Subject: Status conference on 17 December 2021

Dear [REDACTED]

I'm seeking leave from the judges of Trial Chamber I to attend the Status Conference on 17 December 2021 remotely, from my office in Berlin. Given the pandemic, rising cases in Germany and in The Netherlands as well as potential additional restrictions, it doesn't seem sensible to travel if not absolutely necessary. I hope you understand that given the current circumstances, I prefer not to take any risks.

Our new case manager since 1st December 2021, Idriss Anbari, will be present in the courtroom. Mr. Abdalla will most probably also attend remotely.

Furthermore, I do not intend to file additional suggestions to the agenda of the status conference. Of course, the security situation in Darfur also seriously affects the communication with our clients which may influence our ability to file a Trial Brief by 7 February 2021, as requested by the Trial Chamber. For various reasons, there are huge difficulties to fill the position of field officers (focal points) and to establish safe and reliable communication channels. Also, the suggested protocol on the contact between parties and participating victims may be a matter to discuss, if so wished by the Trial Chamber.

Thank you in advance for conveying this message to the judges of Trial Chamber I and please let me know if you require any more information at this stage.

Kind regards,

Natalie v. Wistinghausen
CLRV

From: Trial Chamber I Communications [REDACTED]
Sent: 26 November 2021 08:12
To: Abd Al Rahman Prosecution Team [REDACTED] D31 Abd-Al-Rahman Defence Team [REDACTED] V47 LRV Team [REDACTED]
Cc: Trial Chamber I Communications [REDACTED] Associate Legal Officer-Court Officer [REDACTED] Court Management-Court Sessions [REDACTED]
Subject: Scheduling and other related matters

Dear counsel,
Dear colleagues,

Noting that a status conference is scheduled on 17 December 2021 at 9:30, and in order to plan the hearing schedule, the parties and participants are invited to suggest any items to the agenda by COB, 9 December 2021. The parties and participants are to indicate whether any of the items require an ex parte session.

Noting the upcoming winter judicial recess, and in accordance Article 64(2) of the Rome Statute and Regulation 19(2) bis of the Regulations of the Court, the Chamber decides that time limits falling between 17 December 2021 and 4 January 2022 are suspended.

In case any urgent matter arises during the judicial recess, the Chamber will assess on a case-by-case basis whether earlier submissions are indispensable.

Lastly, the Chamber hereby informs the parties and participants that after the commencement of trial on 5 April 2021, the trial hearings will be scheduled as follows (until the summer judicial recess):

5-14 April– Opening statements and start of presentation of evidence by the Prosecution
25-29 April (27 April ICC holiday)
7-17 June
30 June-22 July

Kind regards,

[REDACTED]
(on behalf of Trial Chamber I)

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