



GUIDELINES FOR THE JUDICIARY CONCERNING THE HOLDING OF COURT HEARINGS DURING THE COVID-19 PANDEMIC

DATE: 23 June 2020

The Presidency, in consultation with the judges, has prepared the following non-binding guidelines for the judiciary in order to facilitate the judges' consideration of the holding of hearings during the COVID-19 pandemic.

1. The responsibility for the fair and expeditious conduct of proceedings rests entirely with the Pre-Trial Chamber, Trial Chamber or Appeals Chamber vested of a case or situation, as applicable. The autonomy and independence of each Chamber to adopt the procedures considered necessary in respect of proceedings before it cannot be impeded.
2. During such time as the COVID-19 pandemic necessitates additional precautions to ensure physical safety, each Chamber may determine whether any hearings it deems necessary can take place by way of: physical hearing held in one or more of the ICC's courtrooms, a remote hearing facilitated through the use of communications technology not requiring physical presence in a courtroom or a combination thereof.
3. Each Chamber should consider the consistency of the proposed hearing format with the rights and protections guaranteed in the Rome Statute and the Rules of Procedure and Evidence, reaching its own independent conclusion in this regard, including in respect of the procedural steps to be followed during such consideration.
4. In considering the appropriateness of physical hearing, remote hearing or combination thereof, each Chamber should give due consideration to the situation and restrictions in place in the State(s) in which parties and participants in the proceedings are located.
5. The holding of any physical hearing, in whole or in part, should consider the issues set out in the attached Occupational Health and Safety Protocol and the Chamber should consult with the necessary sections of the Registry sufficiently in advance of the proposed hearing in order to ensure clarity as to the details of the occupational health and safety measures to be put in place for each specific hearing. Strict adherence to medical recommendations ensures that the Court upholds its

responsibility to all persons who may be required to be physically present at the Court due to the holding of hearings.

6. In the event of the holding of hearings remotely facilitated through the use of communications technology, the Chamber should consult with the necessary sections of the Registry sufficiently in advance of the proposed hearing to ensure clarity on all issues of technological capacity and procedure. The Chamber may consider ensuring that the scope of any non-physical hearings is strictly delineated and that contingencies are in place to address technical problems which may arise. Consideration may also be given as to the extent to which the attached Occupational Health and Safety Protocol may be relevant to minimise the safety risks to staff members who may be required to be physically present at the Court in order to support the holding of hearings remotely.
7. The present Guidelines are intended to be temporary in nature and may be modified or abolished by the Presidency, in consultation with the judges, at any time.

Occupational Health and Safety Protocol for the holding of Court hearings during the COVID-19 Pandemic

This occupational health and safety protocol identifies the key matters to be regulated when holding a physical hearing, in whole or in part, on the premises of the Court.

The present protocol is not legally binding, but, rather, provides facilitative practical guidance to enable a Chamber to prepare for hearings.

The manner in which this protocol applies in a specific physical hearing must be assessed on a case-by-case basis, by the Chamber concerned, in consultation with the Registry. It is essential that, before any physical hearing, in whole or in part takes place, the Occupational Health Unit ('OHU') should be given ample time to conduct a case-specific medical risk assessment of the hearing. The necessity of the measures contained herein will, in addition, vary depending on the phase of the Court's reopening during which the hearing occurs, the evolution or spread of COVID-19 pandemic and related measures adopted by the host State.

Unless otherwise expressly determined by a Chamber, all terms governing the access to the Court premises set out in the annex to Presidential Directive ICC/PRES/D/G/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'*) are applicable.

A. Presence on the Court premises

1. Access to the Court premises¹ will only be granted to relevant staff/persons who may be required to be physically present at the Court due to the holding of hearings onsite and/or in order to support the holding of hearings remotely.
2. The relevant persons must ordinarily be duly authorized and (pre) medically cleared, pursuant to the established procedures at in the annex to Presidential Directive ICC/PRES/D/G/2020/001.
3. All persons present on the Court premises must adhere to all operational, practical and hygiene instructions and terms,² including respecting a physical distance of 1.5 metres to the maximum extent possible and following all instructions given in relation to the use of shared spaces. Users shall observe coughing/sneezing etiquette at all times and frequently wash/disinfect their hands using materials provided.

B. Hearings inside the Courtroom (including the audio-visual booth, interpreters' booths and court reporters' booths)

1. All persons present in the courtroom are required to maintain 1.5 metres physical distancing.
2. As part of the physical distancing requirements there are a reduced number of designated seats available (on the Judges' bench, parties and participants' bar tables and Registry seating).
3. At the parties and participants' bar tables, only one person may sit per three-seat bar table.
4. Staggered entrance to, and exit from the courtroom by parties and participants may be necessary so as to maintain required physical distancing at all times.
5. The capacity of conducting hearings is limited to 1 hearing per day, consisting of 3 sessions of 1 hour maximum, with 2 breaks of 45 minutes in between.

¹ Oude Waalsdorperweg 10, 2597AK, The Hague, the Netherlands.

² See annex to Presidential Directive ICC/PRES/D/G/2020/001.

6. The 45-minutes breaks will provide for sufficient arrangements for regular cleaning of all flat surfaces touched by people in the courtroom.
7. The Courtroom(s) will be cleaned thoroughly on a daily basis. The bench and bar tables will be cleaned after each use.
8. Hand sanitizer, antibacterial wipes, gloves and masks will be available.
9. Cleaning products are available in the courtroom to enable court staff and lawyers to keep their immediate areas clean, when necessary.
10. Specific protocols on the movement by parties, participants and court support staff in the courtroom during hearings are to be agreed in consultation with the respective Chamber– in particular:
 - a. access protocol for Judge/Chamber, parties and participants entering and exiting the courtroom;
 - b. entering of witnesses in and out of courtroom;
 - c. presentation of evidence – exclusively through Ringtail e-court or alternatively scanned and shared by email at a time deemed appropriate;
 - d. close distance technical assistance (before and) during the hearing;
 - e. (privileged) communication between Defense Counsel and suspect/accused in courtroom.
11. Specific protocols on the movement by Chamber, in particular
 - a. deliberation by the Judges on the bench;
 - b. deliberation by the Judges in designated deliberation room(s).
12. Courtroom attendees are permitted to wear personal protective equipment (e.g. face masks and gloves) in the courtroom during the court hearings.
13. There will be no court-supplied water carafes provided in the courtroom.
14. Courtroom attendees shall immediately raise any concern in relation to deficiencies with cleaning, the availability of cleaning supplies or physical distancing.
15. Courtroom attendees shall inform the Registry should their ability to operate safely within the courtroom change over time, to enable additional measures if required.
16. Courtroom attendees shall take personal responsibility for their own health and wellbeing – including washing hands regularly, following hygiene practices and, if unwell, following OHU guidance.

Public

This protocol is created with the knowledge that, pursuant to para. 10 of the annex to Presidential Directive ICC/PRES/D/G/2020/001, the Court is closed to the general public.