



Presidential Directive

ICC/PRESG/2020/001

Date: 5 June 2020

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:

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

The purpose of this Presidential Directive is to establish the policy governing the reopening of the Court’s Buildings, and their access and use, following the emergency physical closures caused by the COVID-19 pandemic. This Presidential Directive may also be applied as relevant in comparable health crises, as decided by the President, the Prosecutor and the Registrar, in consultation.

Section 2

Definitions

For the purpose of this Presidential Directive and its annex, the terms below are defined as follows:

- 2.1 “Court’s Building” means the building of the Court located at Oude Waalsdorperweg 10, 2597AK, in The Hague, the Netherlands;
- 2.2 “Court’s Buildings” means the Country Offices’ Buildings, the Liaison Office and the Court’s Building collectively;
- 2.3 “Country Offices’ Buildings” means the buildings available to, maintained, occupied, leased or used by the Court in the different situation countries, which form part of the Court’s premises for the purpose of the Agreement on Privileges and Immunities of the International Criminal Court and other arrangements concluded with the concerned States;
- 2.4 “Liaison Office” means the office available to, maintained, occupied, leased and used by the Court in New York;
- 2.5 “Users” means elected officials, staff members, interns, visiting professionals, counsel, members of defence teams, legal representatives of victims and members of their teams, legal advisers pursuant to rule 74(10) of the Rules of Procedure and Evidence, victims, witnesses, suspects, accused, consultants, individual contractors and all other individuals who are given the right to access and use the Court’s Buildings by the Court.

Section 3

Principles

- 3.1 The Court’s decision-making in the context of the COVID-19 pandemic with respect to access to, and use of, the Court’s Buildings, aims to protect the safety – including, notably, public health – and well-being of Users, while ensuring the Court’s ongoing work to the extent possible.

3.2 Decision-making in the context of the COVID-19 pandemic concerning access to, and use of, the Court's Buildings fully takes into account, *inter alia*, the advice and recommendations of the Crisis Management Team (which includes the Head of the Occupational Health Unit), the recommendations made and measures adopted by the States where the Court's Buildings are physically located, the practice of other international organisations and other reputable sources of information.

Section 4

Decision-making

- 4.1 Noting the urgent and fluid nature of the situation caused by the COVID-19 pandemic, and the need to ensure a prompt response by the Court, decisions concerning access to, and use of, the Court's Buildings shall be taken by the President, Prosecutor and Registrar, in consultation, and shall be communicated on their behalf to all concerned via email or through any other means deemed appropriate for notification purposes.
- 4.2 The Registrar shall implement and ensure compliance with the decisions taken under section 4.1, including the measures set out in this Presidential Directive and its annex.
- 4.3 This Presidential Directive and its annex do not impede the power of a Chamber of the Court to regulate judicial proceedings. Any issue concerning the application of this Presidential Directive and its annex in connection with judicial proceedings shall be resolved by instruction from the Chamber in question.

Section 5

Gradual access to, and use of, the Court's Buildings

- 5.1 Access to, and use of, the Court's Building will occur gradually, under the terms set out in the annex to this document.

- 5.2 Further operational guidance related to the matters set out in the annex, including precise dates, will be communicated to all Users via email or through any other means deemed appropriate for notification purposes.
- 5.3 Access to, and use of, Country Offices' Buildings and the Court's Liaison Office will be regulated in accordance with the decision-making process set out in section 4 above and will be communicated to affected Users.
- 5.4 The Court reserves the right to condition the access to, and use of, the Court's Buildings to the completion by Users of medical clearance procedures and/or medical examinations, as considered necessary by the Court's Medical Officer in connection with COVID-19, and to subsequent medical clearance granted by her or him. All medical records pertaining to such medical clearance and/or medical examinations, in whatever form or shape, that are accessed or collected by, and/or provided to, the Court's Medical Officer, shall be classified as confidential and shall only be available to her or him and to any other person under her or his authority.
- 5.5 Notwithstanding this policy and its annex, access to, and use of, the Court's Buildings may be denied, discontinued or subject to conditions or limitations as required by security and safety considerations – including, notably, public health – as decided by the President, the Prosecutor and the Registrar, in consultation. This may include any immediate urgent closures of the Court's Buildings which may be deemed necessary, which may be effected by the Registrar, following consultation with the President and Prosecutor.
- 5.6 Users may be refused access to, and use of, the Court's Buildings in accordance with the terms of the present Presidential Directive and/or its annex, as well as in cases of non-compliance.

Section 6

Final provisions

- 6.1 In case of conflict between this Presidential Directive and the Presidential Directive ICC/PRES/D/G/2016/001, the former shall prevail.
- 6.2 This Presidential Directive shall enter into force from 8 June 2020.
- 6.3 The content of this Presidential Directive and its annex shall be kept under constant review, and amended as deemed necessary in the circumstances.

A handwritten signature in black ink, appearing to be 'Chile Eboe-Osuji', with a long horizontal line extending to the left.

Chile Eboe-Osuji

President

ANNEX TO ICC/PRESG/2020/001

Terms governing the phased physical reopening of the Court's Building

1. The present annex applies only to the Court's Building as defined in section 2.1 of the Presidential Directive, 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 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.
 -) 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.
5. The precise dates at which each phase will be implemented shall be communicated to Users via email or through any other means deemed appropriate for notification purposes.

Phase 1

- Official physical reopening 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 (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.

Phase 3

- Remove limitations on the number of persons physically present at the Court's Building.
- Accelerated but controlled build up to full capacity.
- Continue to maintain remote working arrangements for those who, for reasons established in this annex, are unable to return to the Court's Building.

- Assess possibility of lifting approval measures.¹
- Opening of cafeteria and coffee corners, gym and library.
- Re-opening of the Court to visitors.

Gradual reopening 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.
7. Return during phases 1 and 2 shall be kept to a minimum number of persons, and only for the time necessary to complete tasks which are required to be conducted on premises. 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, including availability of Personal Protective Equipment ('PPE').
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

¹ Some factors to be considered: the evolution and spread of the virus, number of people in the building, testing options.

annex, in so far as Registrar, in consultation with the Secretariat of the ASP and the CMT, has determined that such meetings are absolutely necessary.

11. The following prerequisite conditions must be satisfied before the Court's Building can officially reopen. These conditions are to be kept under review and adjusted as necessary in accordance with the evolution and/or spread of the virus:

-) 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.

Selection of Users to be physically present at the Court's Building during phases 1 and 2

12. In order to limit the number of Users accessing and using the Court's Building, 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

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.

- 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.
- 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, 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 believes she or he falls under (i) or (ii) of sub-paragraph (c) above, she or he shall not be eligible to return. Users must inform their managers in good faith that they fall within the scope of any of those two categories. Strict

confidentiality applies in relation to the information provided.

- 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. The categories set out in sub-paragraph (c) above shall also continue to be applicable in phase 3, unless the President, Prosecutor and Registrar, in consultation, determine otherwise and communicate to Users in this regard.
- h. Following consultations with possible Users, managers shall 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 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.

³ Or equivalent.

⁴ Or equivalent.

- i. At the direction of the Registrar, the Court's Medical Officer shall proceed with the medical clearance process, on the basis of the validated list of Users, to return to the Court's Building.
 - j. For the purpose of sub-paragraph (i) above, 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', which shall enable the Registrar in implementing the Court's reopening measures. 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.
 - k. 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, including an advance booking system available to medically cleared Users. Access to, and use of, the Court's Building is subject to advance booking. That advance booking system will allow for prioritisation of Users, as necessary, in the event that maximum capacity at any one time is exceeded.

Working conditions at the Court's Building

14. The following shall apply to the Court's Building upon its reopening, the necessity of which may be reviewed and adjusted as necessary:

-) Users working in an office shall work alone;⁵ those working in an open plan environment shall maintain a physical distance of 1.5 metres. Occupancy in an open plan office environment shall not be less than 15 m² per person.
-) Users entering the Court's Building shall be provided with a face mask. Unless a User has been granted an exception by the Registrar (on the advice of the OHU), the use of a face mask shall be obligatory in common areas and in those circumstances where the observance of a physical distance of 1.5 metres is not possible.
-) Any rules or restrictions on movement in and around the Court's Building shall be marked or communicated in advance to Users (e.g. maximum occupancy of confined spaces such as elevators, direction of foot traffic flow in busy areas, use of elevators/stairs, as necessary etc.)
-) The continued use of technology to conduct all internal meetings virtually is strongly encouraged. In-person meetings may occur when absolutely necessary for technical or operational reasons, and when no other alternative solutions can be pursued provided attendees can observe a physical distance of 1.5 metres. In-person meetings must be kept to a strict minimum in frequency, size and duration. Any restrictions on gathering size in place in the host State must be adhered to. In order to minimise the time Users spend in close proximity to each other, meeting durations shall be kept to the minimum possible.

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

15. 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.

⁵ Where this is not possible (including e.g. by means such as alternating presence in the office in shared non-open plan offices or using alternative vacant office space), a User shall not be required to return to the Court's Building during phases 1 and 2.

16. 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.
17. 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.
18. Users physically present at the Court are required to respect a physical distance of 1.5 m to the maximum extent possible and follow all instructions given in relation to the use of shared spaces 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.
19. Any User with suspected COVID-19 symptoms is required to immediately report to OHU (by telephone or e-mail), self-isolate at home, consult with an authorised medical practitioner, receive proper medical care, and have written medical clearance prior to returning to the premises. This measure shall continue to be reviewed and adjusted as necessary.
20. 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.
21. 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).⁶

⁶ 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.