

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-55-ES
Date: 14 May 2020
Original: English

BEFORE THE PRESIDENT

Before: Judge Carmel Agius, President

Registrar: Mr. Olufemi Elias

Date: 14 May 2020

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**REGISTRAR'S SUBMISSION PURSUANT TO THE PRESIDENT'S
"DECISION ON REQUEST FOR REVIEW OF REGISTRAR'S
DECISION ON VIDEO COMMUNICATIONS" OF 16 APRIL 2020**

Pro Bono Counsel for Mr. Radovan Karadžić:
Mr. Peter Robinson

1. Pursuant to Rule 31(B) of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and further to the President’s “Decision on Request for Review of Registrar’s Decision on Video Communications” of 16 April 2020 (“President’s Decision”),¹ I respectfully file this submission in relation to the President’s order that I, no later than 14 May 2020, “implement an interim solution to make video communications available at the [United Nations Detention Unit (“UNDU”)], or, if an interim solution cannot be implemented by this date, report on the specific impediments and provide a timeline for subsequent implementation”².
2. Attached to my submission is a memorandum from the UNDU’s Commanding Officer, reporting on the current advanced status of the implementation of an interim video communication system in the UNDU (“Report”), which essentially means continuing to phase 3 of the VTC Pilot Project. As previously reported, it was discontinued in July 2019 because of security concerns, primarily related to the possibility of recording or live streaming of a video call by the remote participant, and the lack of mitigating factors against this risk.³
3. I recall that phase 3 of the VTC Pilot Project involves the testing of calls between detainees and approved family members.⁴ As explained in the Report, before such calls can be made, further testing must take place, including of components not previously tested, such as capacity, quality and work flows. Additionally, prior to any calls being made, it is important to have in place a robust administrative and governance framework, designed to manage and regulate the use of the video conferencing system and to reduce the risks associated with any potential misuse thereof. While work has progressed well also in this regard, additional time is required to finalize these documents and arrange for their translation.
4. I note that upon the system becoming operational, a number of uncertainties remain as observed by the Commanding Officer in his Report. As some of the issues are external to the Mechanism, it may not be possible to resolve them.

¹ *Prosecutor v. Radovan Karadžić (“Karadžić”)*, Case No. MICT-13-55-ES, Decision on Request for Review of Registrar’s Decision on Video Communications, confidential, 16 April 2020 (“President’s Decision”).

² President’s Decision, para. 50.

³ “*Karadžić*”, Registrar’s Submission on the Video Communication Pilot Project at the United Nations Detention Unit, public with confidential and *ex parte* annex, 23 July 2019 (“Pilot Project Submission”).

⁴ Pilot Project Submission, para. 3.

5. I also note that security concerns remain. Beside the risk that video calls may be recorded and/or live streamed, the monitoring of video calls in the UNDU can only be conducted from a recording and only after the call is complete. This obviously limits the UNDU's possibility to intervene in a timely manner should a detainee decide to use the system for purposes other than those for which it is intended.
6. The Registry will nevertheless continue its best efforts to implement the interim solution for video communications in the UNDU in accordance with the President's Decision. Subject to any major technical or operational issues, the Registry expects to have the interim solution in place by the end of May 2020. I note in this regard that in determining this estimated completion date, consideration had to be given to the fact that the UNDU is subject to restrictions aimed at preventing the spread of COVID-19 to the UNDU's vulnerable and aging population, which *inter alia* impacts the staff's ability to undertake the necessary testing and related activities.
7. Finally, I take this opportunity to recall the status of the detainee e-mail system referred to in the President's Decision.⁵ As reported in my memorandum of 28 October 2019,⁶ the detainee e-mail system was successfully implemented on 25 October 2019 as part of the UNDU's ongoing efforts to facilitate detainees' communications with their families.
8. The Registry remains available for any further information you may require.

Respectfully submitted,



Olufemi Elias
Registrar

Done this 14th day of May 2020
At The Hague,
The Netherlands.

⁵ President's Decision, para. 47.

⁶ Memorandum from Mr. Olufemi Elias, Registrar, to Judge Carmel Agius, President, confidential, 28 October 2019.

PUBLIC

ANNEX



INTERNAL MEMORANDUM - MÉMORANDUM INTÉRIEUR

Date: 14 May 2020

Ref.:

To: Registrar
À:

Copy: Chief of Registry, The Hague branch
Copie: Deputy Chief of Registry, The Hague branch
Deputy Commanding Officer, United Nations Detention Unit

From: Commanding Officer, United Nations Detention Unit
De:

Subject: **Video Calls for Detainees – Progress Report to Registrar on Implementation of**
Objet: **Interim Access - Operational Challenges and Technical Matters**

Further to the President's Decision on Request for Review of Registrar's Decision on Video Communications of 16 April 2020, requiring the implementation of an interim solution to make video communications available at the UNDU no later than 14 May 2020, or report on the specific impediments should this target be unattainable, including a timeline for subsequent implementation, I can advise that we are working hard on implementing the interim solution and expect that it will be ready for use by interested detainees by end of May 2020.

As we agreed, the interim solution for video communications for detainees will be the system the UNDU and ITSS previously developed for the VTC Pilot Project. In fact, the implementation of the interim solution will essentially become Phase 3 of the VTC Pilot Project. Since the issue of the President's Decision, UNDU personnel have been actively taking forward the implementation against the background of the COVID-19 restrictions.

It has been necessary to re-establish the testing of the system following the termination of the VTC Pilot Project in July 2019. There had been no further testing due to the determination that recording or live streaming of a video call by the remote participant was too great a risk to permit a continuation. Therefore, comprehensive testing has resumed on areas not yet tackled or completed to assess capacity of the system, quality of calls and work flows as well as to refresh and confirm earlier findings.

Additionally, since the VTC Pilot Project and the testing had been terminated, the groundwork to develop the administrative and governance framework had also stopped. This work was aimed at managing the system and reducing the risks in areas other than recording or live streaming at the remote participant's end. As you will see below, we are pressing ahead with the development also in these areas.

In order to give you a fuller picture of the framework, the operational challenges, the achievements and where we currently stand, I am providing an overview below.

Aim

The aim is to enhance existing communication facilities available to detainees at the UNDU to allow detainees to see their immediate family members face to face during the COVID-19 crisis which has resulted in the suspension of visits. The secondary aim is to consider whether this could be adapted for longer term use beyond the COVID-19 crisis.

Conclusion: When an interim facility such as this is made available to detainees, past experience has shown that it will be very difficult to withdraw it at a later stage without further and possibly protracted litigation.

Governance

It is recalled that the Rules of Detention and Regulations on the Supervision of Communications (Regulations) do not refer directly to video communications but allow for “means of communication other than those described in these Regulations” which “shall be subject to separate procedures and conditions of use determined and issued by the Commanding Officer, in consultation with the Registrar.” Consequently, as we previously discussed, it is envisaged that the procedures and conditions of use for video calls will use the Regulations on permissions and scheduling of non-privileged visits as a model along with those for the recording and monitoring of non-privileged telephone calls.

It is proposed to issue Procedures and Conditions of Use for Social Video Calls with the Detention Unit, which will be issued as a draft, living document due to the likely need for changes as use of the system dictates.

System

All need to be aware that the VTC system upon which we have based all testing and reporting in the UNDU is not an integrated one. The integrated options were deemed too expensive at approximately €30,000 to procure in 2018 when there were no budgetary resources. Consequently, it is a make do system of disparate hardware and software which increases the risk of more things going wrong.

Regardless of the type of system, and assuming the governance model above, we still need to record each call for monitoring purposes which adds an extra layer of complexity to this makeshift system. Even an integrated system would, most likely, require an add-on to allow for recording.

Conclusion: This is not a bespoke or a plug-and-play system, the expense of which could be qualified by a national prison system due to the prisoner numbers, and it therefore has obvious inherent limitations.

Testing

As indicated above, given that we terminated the VTC Pilot Project at Phase 2 last July, proceeding with the project should be regarded as Phase 3. The live testing of video calls to and from the Balkan region has not yet happened and therefore we do not know how stable the connectivity of the link will be and the additional variables that may impact upon it. We already experience issues with telephonic connections to the region due to inconsistency of network speeds and telecoms connections in the region.

Conclusion: The interim solution that we are putting in place will continue to be in a testing phase.

The selected app

The selected app needed to facilitate video calls is not as user friendly as other more widely used Voice over Internet Protocol (VoIP) apps. However, we cannot use the other available options for video calls over the internet due to the security requirements, such as end-to-end encryption, the requirement of recording of the video calls for monitoring purposes and the ability to control access and ensure user authentication, as well as making it available without cost to the remote end users.

As a consequence, we have had little choice but to utilise this app as the only viable app for the purpose. ITSS was consulted throughout the process, made it available to the project and set it up at the UNDU.

The app does fulfil the criteria mentioned above but at the cost of being relatively less user friendly with a cumbersome set up procedure and issues with consistency.

It should also be noted that the video call quality is further heavily dependent on the performance/condition of the devices at both ends of the video call, as well as the involved network infrastructure. These are aspects which we can provide for at the UNDU but not at the remote users' end.

Conclusion: The selected app is the best the UNDU/ITSS have been able to find which fulfils the above-mentioned criteria and which is within the Mechanism's resource constraints and retaining the cost neutral impact for family members.

Connection issues

The establishment of calls and service is inconsistent. A perfectly working video call tested on one day may not connect at all the next day without having changed any setting on any of the devices. ITSS partly attributes this to the Denial of Service (DOS) attacks and we have been advised by ITSS to reduce this risk by resetting the Video Communication Server Expressway (VCSe) server on the morning of each day of the scheduled video calls. While resetting VCSe may not fully address the issue it also runs the risk of interfering with Mechanism's other VTC commitments should it need to be reset again due to connection issues of a particular video call.

Earlier testing also exposed additional connection issues caused by some Internet Service Providers (ISPs) interpreting network addresses differently and thus not being accepted by the gatekeeper of the VTC system. As this is an issue external to the IRMCT, this issue may be partially managed but cannot be resolved.

Conclusion: Time will tell whether these connection issues can be resolved or managed and whether they will have any impact on the confidence in the system.

Troubleshooting

Due to so many variables in the setup of the system it is difficult to troubleshoot. For example, if one party cannot hear the other, there can be many places to look for the potential cause. If things do go wrong during a live video call then whilst local UNDU staff will try to address the issue, they are not audio/visual engineers and as there are so many parts to the system, interfering may cause further unforeseen consequences and therefore the likelihood is that it will not be possible to address the issue in house. This would inevitably lead to the video call being terminated with an uncertainty when a resumption would be possible. It would also not be cost effective or efficient to have ITSS specialized audio/visual staff available in the UNDU and, even if they were, it would not guarantee the swift resolution of the issue.

Conclusion: When reliability issues are exposed on live calls, troubleshooting might not be immediate, and this could lead to a lack of confidence or frustration in the system from detainees and family members.

Live monitoring

Live monitoring of the video calls poses a number of challenges, not least due to the need to monitor for both verbal and body language communication in real time.

Remote live monitoring of video calls (from an adjacent room) is not possible in the present system as it requires us to add a third participant to the conference call. Tests have shown that doing this considerably deteriorates the audio level of the detainee voice for the remote end user making two-way communication impossible. Multiple tests have confirmed that adjusting the audio level of the various devices does not help.

Live monitoring by a Language Assistant (LA) present in the video room is also not possible because, under the present configuration the detainee needs to wear headphones, the LA will not be able to listen to the audio of the remote end user.

Conclusion: Monitoring can only be conducted from a recording (with the risks inherent below) and after the call is complete.

Recording quality

Multiple tests have shown that the quality of video and audio is generally good and that video calls are recorded well.

Conclusion: Recordings can be made and used for monitoring in line with the Rules of Detention and the Regulations for recording and monitoring of telephone calls.

Recording system

The system records the video calls through a recording device to a flash drive, which is removed from the system after each video call day, taking the data manually to a storage device in the monitoring location. There is a risk that the flash drive will become corrupted which risks data loss, i.e. loss of the video call recording. The intention is for video call recordings to be archived for eight months, in line with the Regulations for telephone calls.

Conclusion: With this system there is a small but constant risk of data corruption.

Major security risk – Remote end

The recording/live streaming of a video call at the remote user end is a major risk. While it is very easy to record/live stream a video call at the remote user end it will be very difficult if not impossible, if discovered, to determine who carried it out. Multiple video calls may be recorded and archived for future use/release. Moreover, because of readily available video manipulation and editing software applications online, the potential threat continues to increase. Audio clips can be super imposed on the recorded video to create a new narrative, including with remarkable levels of lip-syncing to give added reality. Video can also be manipulated, e.g. to make a detainee look unwell or maltreated. The fact is that we may never be aware if a breach has taken place or who has done it until it is streamed online or transmitted on media outlets such as television. It is not possible to put in place tangible measures to prevent or mitigate this risk and therefore the risk has to be accepted if video calls are to progress as planned. Having family members/detainee sign an undertaking, whilst necessary, is not a guarantee of compliance and offers little deterrence if the release of the video occurs after the detainee has left the UNDU. It should be noted that if and when video calls are recorded and or live streamed, then they are likely to remain available online forever across a range of social media platforms.

Conclusion: There is an unmitigated risk that images and audio be recorded or live streamed and end up in the public domain. If so, this is likely to cause a backlash from victims' groups, media outlets in the region as well as the potential for diplomatic reactions, which may have a lasting reputational impact on the Mechanism.

Administrative issues

In addition to the governance issues discussed above, each video call will involve administrative tasks such as acceptance of conditions of use, screening the remote end users, scheduling, setting up for the call and transferring the data for monitoring. The following documentation in this regard has been prepared or is in the process of being prepared.

- Title: Procedures and Conditions of Use for Social Video Calls with the Detention Unit
Description: A set of regulations designed to govern the use of social video calls with the potential to issue as draft regulations to facilitate changes as use of the interim system dictates.
Status: Draft prepared in 2018, requires update according to the outcome of workflows.
- Title: Video Calls with Detainees: Information Package for Families
Description: An information package for immediate family members containing a) software: downloading to their device, installation and configuration; b) a letter to family members explaining the terms and conditions of use, the processes of each video call, advice on the limitations of the system, and c) an undertaking.
Status: Draft close to completion, requires translation.
- Title: Video Calls with Detainees: Information Package for Detainees
Description: An information package for each detainee containing a) an individualised letter including the terms and conditions of use plus a reminder on Rule 74, the processes of each video call, and advice on the limitations of the system, b) a Request to Participate form for signature, accepting the terms and conditions.
Status: Comprehensive draft, requires completion and translation.
- Title: Video Calls with Detainees: Workflow
Description: Task list for System Administrator of administrative and technical actions required for each cycle of implementation. Each multi week cycle is a full rotation to ensure fair distribution of video calls and times amongst all detainees, i.e. so one detainee cannot monopolise a single time slot.
Status: Second draft updated, requires completion.
- Title: Video Calls with Detainees: SOP
Description: Descriptive task list for i) Administrator and ii) Operator explaining how to perform administrative and technical actions required for each cycle of video call implementation. Each multi week cycle is a full rotation to ensure fair distribution of video calls and times amongst all detainees i.e. so one detainee cannot monopolise a single time slot.
Status: Draft requires update to include administration documents and monitoring, review and completion.
- Title: Video Calls with Detainees: SOP for Detention Officers
Description: Descriptive task list for Detention Officer explaining how to perform technical actions for each video call connection.
Status: Draft requires update, review and completion.
- Title: Video Calls with Detainees: Booking Form (master)
Description: Master form for administrative use to document details for all video call sessions during a cycle.
Status: Ready
- Title: Video Calls with Detainees: Booking Form (detainee)
Description: Request form for detainees to advise of immediate family members to be contacted at pre-set times.
Status: Ready

- Title: Video Calls with Detainees: Notification Form (detainee)
Description: Advisory to a detainee on the date, time and authorised participants at a booked video call including the PIN code for transmission to remote participant allowing access.
Status: Ready (may be incorporated into automated detainee visits system)
- Title: Video Calls with Detainees: email to Principal Officers (PO)
Description: Email stationery with advisory to PO to ensure preparations are made on the wing in advance of a video call.
Status: Ready
- Title: Video Calls with Detainees: email to ITSS
Description: Email stationery with advisory to ITSS to advise of VCSe Server reset. Reset required to reduce the risk of Denial of Service (DoS) failures of a video call. Done early in the morning to avoid the risk of interfering with other IRMCT business video calls.
Status: Ready

Resource implications

This assessment process has already cost a significant amount of working time in the design, build, assessment and testing phases over the past three years.

Preliminary workflow analysis shows a considerable amount of administrative and IT work for preparation, technical set up, recording transfer, documenting and monitoring of each video call session (one session is anticipated to be a 15-minute call for each detainee). Each video call session would therefore require approximately eight working hours for a video call session of up to one hour of calling time with a shorter call session having little impact upon this time.

Conclusion: The implementation of the interim solution will continue to impose a not inconsiderable burden upon the limited staffing resources in the UNDU (and ITSS).

COVID-19 implications

The COVID-19 precautionary measures in force in the UNDU were introduced in joint agreement between the Host Prison, the ICC Detention Centre and the KSC Detention Facility. Personal hygiene, social distancing and the exclusion of all non-essential personnel and all visitors from the UNDU are the key strategies and have, to date, helped to keep COVID-19 out of the building. The age and health profile of the detainees held in the unit means they are at a very much heightened risk of complications should they contract the virus.

Whilst the introduction of video communications between detainees and their immediate families offers the opportunity to enhance the communication options available during the COVID-19 crisis, it will also pose additional challenges in three main areas, in relation to:

- i) the setting up and recommencing the testing of the system, which has required staff to be recalled from remote working;
- ii) social distancing during supervision and potentially monitoring of calls; and
- iii) problem resolution of the system, where ITSS audio/visual engineers would be unable to enter the UNDU in the event of a major failure and would have to advise our in-house staff on possible resolution options. This has its own challenges as outlined in Troubleshooting above.

Conclusion: Whilst video calls are to be introduced as a mitigation for the effects of COVID-19, implementing and monitoring the video call system will necessarily pose additional challenges to maintaining the precautionary measures put in place to minimise the risk of COVID-19 entering the UNDU.

Overall conclusion

We are well on our way to implement the interim solution, despite the above-mentioned challenges, including the restrictions implemented in the UNDU aiming at preventing the spread of the COVID-19 in the unit. Whilst I feel obliged to reiterate my concerns about the likelihood of remote end dissemination of information and consider that the risk remains high despite the regulation being prepared, as noted, the expected implementation of the interim solution is end of May. Once live, the experiences of the interim solution will be evaluated on an ongoing basis to allow for amendments to the technical infrastructure and/or the governance, as necessary. I will make all findings available to you to assist in your re-consideration of Mr. Karadžić's complaint.



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DEPOT DE DOCUMENTS

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input type="checkbox"/> Arusha/ <i>Arusha</i>	<input checked="" type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> President / <i>Président</i>	<input type="checkbox"/> Chambers / <i>Chambre</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
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Case Name/ Affaire :	Karadzic	Case Number/ Affaire n° :	MICT-13-55-ES
Date Created/ Daté du :	14 May 2020	Date transmitted/ Transmis le :	14 May 2020
			No. of Pages/ Nombre de pages : 11
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S
			<input type="checkbox"/> Other/Autre (specify/préciser) :
Title of Document/ Titre du document :	Registrar's Submission pursuant to the President's "Decision on Request for Review of Registrar's Decision on Video Communications" of 16 April 2020		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
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II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

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Rev: August 2019/ *Rév. : Août 2019*