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No.: ICC-01/12-01/18

Date: 9 July 2018

**PRE-TRIAL CHAMBER I**

**Before: Judge Péter Kovács, Single Judge**

**SITUATION IN THE REPUBLIC OF MALI**

**IN THE CASE OF  
*THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG  
MAHMOUD***

**Public**

**Public redacted version of Defence observations on postponing the date of the  
confirmation hearing**

**Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag  
Mahmoud**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

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**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the Defence**

**States Representatives**

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**Registrar**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

## **I. Introduction**

1. The Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud hereby submits its observations on the possibility of postponing the date of the confirmation hearing, in accordance with the “*Décision enjoignant aux parties de déposer des observations sur un éventuel report de l’audience de confirmation des charges*”.<sup>1</sup>
2. In the view of the Defence, there are a number of factors that warrant postponement of Mr Al Hassan’s confirmation hearing, not least of which include limited notice of the charges sought. However the length of postponement will largely depend on how and when the Prosecution sets out its case against him.

## **II. Confidentiality**

3. In accordance with regulation 23bis(1) of the Regulations of the Court, this document is classified as confidential as it refers to information that is not yet in the public domain. A public redacted version will be filed in due course.

## **III. Submissions**

4. Mr Al Hassan has a guaranteed right to a fair and expeditious trial. Articles 67(1)(a) and (b) of the Rome Statute provide, in particular, that he must “be informed promptly and in detail of the nature, cause and content of the charge, in a language which [he] fully understands and speaks”, and “have adequate time and facilities for the preparation of the defence”.
5. Nevertheless, Mr Al Hassan does not, at this point in time, have an understanding of the charges to be the subject of the confirmation hearing scheduled for 24 September 2018. Without a view of the Prosecution’s case, Mr Al Hassan is prevented from instructing his counsel and, in turn, prevented from starting meaningful preparation of his defence case.
6. The first batch of evidentiary material was disclosed three days ago, on 6 July 2018, and contained over 1300 documents – precisely 7487 pages – categorically labelled incriminating, with no indication as to their context or relevance to the charges

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<sup>1</sup> *Al Hassan*, *Décision enjoignant aux parties de déposer des observations sur un éventuel report de l’audience de confirmation des charges*, 2 July 2018, [ICC-01/12-01/18-64](#).

sought.<sup>2</sup> It is unclear how many documents will follow or whether [REDACTED] will produce more discloseable materials.<sup>3</sup> On this point, the Defence notes that the Prosecution has not fixed a calendar for disclosure, stating only in general terms that the bulk of its incriminating evidence *may* be disclosed by the end of August.<sup>4</sup>

7. The Prosecution submits that the DCC, filed 30 days before the confirmation hearing, will explain the relevance of the evidence it intends to rely on at the confirmation hearing, however this will only pertain to a small portion of disclosed materials.<sup>5</sup> The narrow timeframe between filing and the confirmation hearing is simply insufficient for any team to review the thousands of remaining unreferenced and un-indexed documents in the Prosecution's disclosure batches.
8. The filing of the DCC in English or French is also unhelpful to Mr Al Hassan who, although entitled to receive an Arabic translation of the DCC and the Prosecution's list of evidence, will still be waiting for an Arabic translation of the application for an arrest warrant. Indeed, according to the Prosecution's estimates, the translation of the application for an arrest warrant is unlikely to be available to Mr Al Hassan before the confirmation hearing, let alone with adequate time for him to instruct his counsel and prepare his defence.<sup>6</sup> The Defence also notes the confidential version of the Prosecution's application is heavily redacted, which will limit Mr Al Hassan's understanding of the charges sought.

<sup>2</sup> Première communication par le Bureau du Procureur d'éléments de preuve à charge divulgués à la Défense, 6 July 2018, [ICC-01/12-01/18-67](#); Deuxième communication par le Bureau du Procureur d'éléments de preuve à charge divulgués à la Défense, 6 July 2018, [ICC-01/12-01/18-68](#); Troisième communication par le Bureau du Procureur d'éléments de preuve à charge divulgués à la Défense, 6 July 2018, [ICC-01/12-01/18-69](#); Quatrième communication par le Bureau du Procureur d'éléments de preuve à charge divulgués à la Défense, 6 July 2018, [ICC-01/12-01/18-70](#); Cinquième communication par le Bureau du Procureur d'éléments de preuve à charge divulgués à la Défense, 6 July 2018, [ICC-01/12-01/18-71](#); Sixième communication par le Bureau du Procureur d'éléments de preuve à charge divulgués à la Défense, 6 July 2018, [ICC-01/12-01/18-72](#).

<sup>3</sup> See, for eg, [REDACTED]; and [REDACTED].

<sup>4</sup> Public redacted version of the "Prosecution's observations regarding the « *Décision relative au système de divulgation et à d'autres questions connexes* (ICC-01/12-01/18-31)", 24 May 2018, ICC-01/12-01/18-38-Conf-Exp, 25 May 2018, [ICC-01/12-01/18-38-Red2](#), paras 8 and 55.

<sup>5</sup> *ibid*, paras 6, 32 and 53.

<sup>6</sup> Prosecution's notice in relation to the implementation of the "*Décision relative à la requête de la défense sollicitant la traduction en arabe de la requête du Procureur aux fins de délivrance d'un mandat d'arrêt*", 14 June 2018, [ICC-01/12-01/18-49](#), paras 6-8 (stating that it will take six to eight weeks to translate the public redacted version of the application after sourcing a suitable external translator ; that LSU would require additional time to complete the confidential redacted version ; and that the Prosecution would prioritise the translation of witness statements pursuant to rule 76(3) of the RPE as these needed to be submitted 30 days before the confirmation hearing). See also [REDACTED].

9. Even more unhelpful is that, as stated by the Prosecution, the DCC may not strictly accord with the formulation of the charges set out in the application.<sup>7</sup> This means that Mr Al Hassan will not have a “comprehensive” and “up-to-date assessment” of the charges, underlying material facts and relevant evidence, in advance of the confirmation hearing.<sup>8</sup>
10. In light of the above, the Defence cannot provide an accurate or reasonable assessment on the length of postponement until: (i) the Prosecution has completed disclosure of its evidentiary material; (ii) the document containing the charges and Prosecution’s list of evidence have been filed; and (iii) Mr Al Hassan receives an Arabic translation of the Prosecution’s application for an arrest warrant, and an Arabic translation of the DCC and the Prosecution’s list of evidence.<sup>9</sup>
11. The Defence accordingly requests the Chamber to provide an opportunity for the parties to submit observations on the postponement of the confirmation hearing when Mr Al Hassan has notice of the charges and the Prosecution has completed disclosure of its evidentiary material.
12. As a final point, the Defence respectfully refers to its request for alternative measures to facilitate disclosure in the absence of an in-depth analysis chart, including use of an evidentiary table and early filing of the DCC, and considers that application of those measures would significantly expedite preparation for the confirmation hearing.<sup>10</sup>

#### **IV. Conclusion**

13. Mindful of Mr Al Hassan’s right to a fair and expeditious trial, the Defence considers that, given the current conditions for disclosure and the overall lack of notice concerning the charges sought, substantial postponement to the date of the confirmation hearing is warranted. The Defence however will not be in a position to comment on an appropriate or reasonable length for postponement until the criteria in paragraph 10 are met. In this case, the Defence respectfully requests that the parties be

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<sup>7</sup> *ibid*, paras 5 and 23.

<sup>8</sup> *ibid*, para 6.

<sup>9</sup> Décision relative au système de divulgation et à d’autres questions connexes, 16 May 2018, [ICC-01/12-01/18-31](#), para 26.

<sup>10</sup> Request for an alternative mechanism to facilitate disclosure or, in the alternative, request for leave to appeal the decision concerning in-depth analysis charts, 4 July 2018, [ICC-01/12-01/18-65](#), paras 13-22.

granted an opportunity to make further submissions on the date of the confirmation hearing after the Prosecution has set out its case against Mr Al Hassan.



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Yasser Hassan  
Lead Counsel for Mr Al Hassan

Dated this 9<sup>th</sup> Day of July 2018  
At The Hague, The Netherlands