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**No. ICC-01/12-01/18
Date: 20 March 2020**

TRIAL CHAMBER X

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Kimberly Prost**

SITUATION IN THE REPUBLIC OF MALI

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

Public

**Decision on the Prosecution request for extension of deadlines relating to the
disclosure of evidence and a postponement of the starting date for trial**

Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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**Unrepresented Applicants for
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Defence**

States Representatives

Amicus Curiae

REGISTRY

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**Victims Participation and Reparations
Section**

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Other

TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, issues this ‘Decision on the Prosecution request for extension of deadlines relating to the disclosure of evidence and a postponement of the starting date for trial’.

1. On 6 January 2020, the Chamber set the date for the commencement of trial on 14 July 2020 and adopted a calendar leading up to this date.¹
2. On 17 March 2020, the Prosecution provisionally requested, pursuant to Regulation 35 of the Regulations of the Court (the ‘Regulations’), an extension of 30 days as regards several judicial deadlines set by the Single Judge and the Chamber in preparation and leading to the commencement of trial based on factors related to current COVID-19 outbreak (the ‘Request’).² The relevant deadlines are:
 -) **14 April 2020:** Disclosure of material in the Prosecution's possession, final list of Prosecution witnesses (with summaries of anticipated witness testimony), and Prosecution list of evidence;
 -) **30 April 2020:** Prosecution Trial Brief;³
 -) **1 June 2020:** Motions requiring resolution prior to the commencement of trial and any joint submission on agreed facts;
 -) **14 July 2020:** start of trial; and
 -) **25 August 2020:** start of the presentation of Prosecution evidence.
3. According to the Prosecution, multiple factors justify an extension of time limits, as the current situation affects the working capacity of many Prosecution staff, who have to work remotely and are experiencing disruptions (and may experience more in the future) in the use of servers and databases which are crucial for Prosecution staff to perform its work and meet the imposed

¹ Decision Setting the Commencement Date of the Trial, ICC-01/12-01/18-548.

² Prosecution provisional request for extension of judicial deadlines, ICC-01/12-01/18-665-Conf (hereinafter: the ‘Request’). A public redacted version of the Request was filed on 19 March 2020.

³ The original deadline of 14 April 2020 was extended to 30 April 2020 upon a Prosecution request. See Decision on Prosecution request for a variation of the time limit to file Trial Brief, 5 March 2020, ICC-01/12-01/18-629.

deadlines. The Prosecution further states that travel restrictions have affected planned missions in preparation for the said deadlines.⁴

4. Also on 17 March 2020, the Single Judge, pursuant to Regulation 34 of the Regulations, shortened the deadline for responses to the Request to 19 March 2020.⁵
5. On 19 March 2020, the Defence and the legal representatives for victims (the 'LRVs') submitted their responses, the former opposing the Request (the 'Defence Response') and the latter submitting that the Request is justified in light of the circumstances (the 'LRV Response').⁶ On that same date, the Registry's Victims Participation and Reparations Section (the 'VPRS') submitted observations in support of the Request.⁷
6. The Chamber agrees with the Prosecution that the current circumstances are exceptional: the ICC premises are closed and the host country has adopted various measures that inevitably have an effect on the overall functioning of the Court. In this regard, the Chamber notes that, although the Court's principals took the decision to close the ICC premises from 16 to 31 March 2020, the measures taken by The Netherlands so far may affect the proper functioning of the Court beyond that date and at least until 6 April 2020. In sum, the situation remains an evolving one with much uncertainty at the moment.
7. Pursuant to Regulation 35(2) of the Regulations, the Chamber is satisfied that the Prosecution has shown good cause and in fact *force majeure* that goes beyond anyone's control. The Chamber therefore considers that it is necessary to reassess some of the above deadlines, bearing in mind the specific circumstances faced by the Court, the parties and the participants, as well as the 'extent of the COVID-19 outbreak in the host country and the host State's

⁴ Request, ICC-01/12-01/18-665-Conf, para. 15.

⁵ E-mail from Trial Chamber X Communications at 12:54.

⁶ E-mail to Trial Chamber X Communications at 7:39 (hereinafter: the 'Defence Response'). In order to have a complete record of the proceedings, the Response is attached in Annex A to this filing; E-mail to Trial Chamber X Communications at 10:29 (hereinafter: the 'LRV Response'), attached in Annex A to this filing.

⁷ E-mail to Trial Chamber X Communications at 13:41 (hereinafter: the 'VPRS Observations'), attached in Annex A to this filing.

evaluation of any further measures which may be necessary to suppress the virus's propagation'.⁸

8. At the same time, in its assessment in light of the extraordinary situation, the Chamber must also give full consideration to the fundamental rights of Mr Al Hassan, who remains in detention and also requires time to prepare his defence. The Defence has rightly highlighted this issue in its submissions. In this regard, the Chamber agrees with the Defence that the Prosecution must take alternative measures to minimise the effect of the circumstances on the progress of this case in which the accused is in pre-trial detention, such as prioritising 'the disclosure of lesser redacted versions of material in French or English, rather than Arabic material' and the deployment of 'staff from cases that do not involve a detained defendant to assist, on an exceptional basis'.⁹
9. The Chamber also notes, as submitted by the Defence, that the Prosecution has brought this motion along with others,¹⁰ shortly after the closure of the premises outlining the general impact on the work of the Prosecution as a result of these current circumstances. The Chamber fully understands that this was done responsibly to ensure that there was early warning of the difficulties. However the Chamber is of the view that with respect to this case, where the accused is detained awaiting trial, caution should be exercise in terms of adjusting any deadlines. As previously expressed,¹¹ the Chamber will consider requests on a case-by-case basis with regard to the specific facts. In light of this, and given the uncertainty as to the level of disruption, the Chamber does not consider that a blanket extension of all deadlines is appropriate at this stage. It will therefore assess the facts supporting each specific extension at this time.

⁸ Request, ICC-01/12-01/18-665-Conf, para. 6.

⁹ Defence Response attached in Annex A, p. 2.

¹⁰ *Situation on the Registered Vessels of the Union of Comoros, The Hellenic Republic and the Kingdom of Cambodia*, Prosecution's Urgent Request for Extension of Time, 16 March 2020, ICC-01/13-102; *Prosecutor v. Bosco Ntaganda*, Prosecution notice of intention regarding deadlines, 16 March 2020, ICC-01/04-02/06-2491; *Situation in the State of Palestine*, Prosecution's Urgent Request for Extension of Time, 16 March 2020, ICC-01/18-116; *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, 16 March 2020, Prosecution notice of intention to file a request for leave to reply pursuant to regulation 60, ICC-02/11-01/15-1317.

¹¹ See e-mail on behalf of the Single Judge to the parties on 16 March 2020 at 12:22.

10. In this regard, the Chamber is of the opinion that the circumstances at the moment do justify a reconsideration of the deadline for full disclosure. However, the Chamber recalls the Single Judge's directive that the disclosure of material must be made on a rolling basis and that the Prosecution is expected to fulfil its disclosure obligations as soon as possible and not to wait until the last minute.¹² The Chamber further observes that, on 10 March 2020, the Prosecution informed the Chamber that it had reviewed the material previously disclosed and lifted redactions that are no longer justified.¹³ In this same report, the Prosecution indicates that the identity of 77 incriminatory witnesses has been disclosed to the Defence (out of the 84 listed in its provisional list).¹⁴ Notwithstanding, the Chamber also accepts the Prosecution's submissions that it will only be able to finalise disclosure, notably the provision of the required Arabic translations, if granted additional time.
11. As noted by the Defence,¹⁵ and in light of the above, the Chamber understands that at this stage there should not be a significant amount of material which must be addressed to meet the disclosure obligation. Therefore while allowing an extension of time, the Chamber urges the Prosecution to take all available measures to disclose as much material as possible by the original deadline of 14 April 2020.
12. Moving to the Prosecution witness list, the Chamber considers that the circumstances do not justify delaying the provision to the Defence of a full list identifying exhaustively the individuals who will be called to testify by the Prosecution by the original deadline. The Prosecution should at this stage be sufficiently familiar with the case and evidence to make the necessary determinations as to its witnesses. In particular it should be able to identify what witnesses are needed and to eliminate those who are non-essential or overly

¹² ICC-01/12-01/18-546, para. 8.

¹³ Prosecution report regarding review of redactions applied to the evidence disclosed in Al Hassan case, 11 March 2020, ICC-01/12-01/18-648-Conf (the 'Prosecution Disclosure Report'), para. 5 and Annex A.

¹⁴ Prosecution Disclosure Report, ICC-01/12-01/18-648-Conf, para. 6. The Chamber notes that, pursuant to a recent decision of the Single Judge, the identity of one additional witness was disclosed to the Defence (ICC-01/12-01/18-676-Conf-Exp). The Prosecution's request for delayed disclosure of the identity of the six remaining witnesses is otherwise pending (ICC-01/12-01/18-646-Conf-Red).

¹⁵ See Defence Response attached in Annex A, p. 2.

duplicative. Moreover, the Prosecution can always modify this list in order to remove any named individual from it. The Chamber is further of the view that the list submitted should include concise witness summaries. In the view of the Chamber, this will ensure that the extension of the deadline for full disclosure does not unduly impact the accused's right to have sufficient time for the preparation of his defence.

13. With respect to the Trial Brief, the Chamber notes the deadline for its submission was already extended by the Single Judge from its original date of 14 April to 30 April 2020.¹⁶ The Chamber emphasises that especially in these circumstances, the Trial Brief need not duplicate the detailed information which is properly provided through full disclosure and the witness list. Its purpose is to outline in a concise way, the Prosecution case and provide some detail in relation to the charges. While optimally it is best to submit the Trial Brief after full disclosure, in these unusual circumstances it will further mitigate against unfairness if the Defence has this outline sooner rather than later. In all these circumstances, the Chamber does not consider it appropriate to alter the deadline for the Trial Brief. The Chamber reiterates that the Prosecution should consider if the deployment of resources from other cases would be useful particularly for the Trial Brief and the preparation of witness summaries.
14. Finally the Chamber has taken into consideration that the Prosecution undertakes it is ready 'to produce the majority of the witness summaries, a provisional list of evidence and one last provisional list of witnesses by 14 April 2020'.¹⁷ The Prosecution also states it will 'identify other areas where it can make progress in the coming weeks, and will provide regular progress reports to the Single Judge in this regard'.¹⁸
15. In light of the above, the Chamber considers that the schedule leading to the start of trial shall be modified as follows:

¹⁶ Decision on Prosecution request for a variation of the time limit to file Trial Brief, 5 March 2020, ICC-01/12-01/18-629.

¹⁷ Request, ICC-01/12-01/18-665-Conf, para. 17.

¹⁸ Request, ICC-01/12-01/18-665-Conf, para. 17.

-) **14 April 2020:** Prosecution to: (a) insofar possible, disclose any material in its possession; (b) provide a final list of Prosecution witnesses (with summaries of anticipated witness testimony), and (c) provide a provisional Prosecution list of evidence.
 -) **30 April 2020:** Prosecution to submit its Trial Brief.
 -) **12 May 2020:** Prosecution to: (a) disclose any remaining material in its possession, as well as (b) provide further detail in the list of witnesses (*i.e.* expected order of calling and mode of testimony); and (c) provide its final list of evidence.
- 16. With respect to the remaining deadlines, the Chamber considers that there is not a sufficient basis to warrant extending these deadlines at this time. The Chamber considers that parties and participants should continue to work towards the start of the trial before the summer judicial recess and for the first testimony by the end of August. Accordingly, all other deadlines, including the start of trial on **14 July 2020** and the start of the presentation of Prosecution evidence on **25 August 2020**, remain unchanged.
- 17. However acknowledging that the situation continues to evolve, the Chamber will examine any further discrete request in relation to the aforesaid deadlines on a case-by-case basis, if and when it becomes clear to either the Prosecution or the Defence that they cannot be met. This is also applicable to the observations made by the VPRS in relation to ‘VPRS deadlines as per the Chamber’s 12 March Decision’.¹⁹
- 18. As noted by the Defence,²⁰ this will allow the Chamber to consider the most recent information available at the time of adjudication. This will be of particular importance in assessing developments in terms of travel restrictions and access to witnesses and evidence.

¹⁹ VPRS Observations, *referring to* Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial, 12 March 2020, ICC-01/12-01/18-661, para. 29.

²⁰ Defence Response attached in Annex A, p. 2.

19. Moreover, as offered by the Prosecution, a progress reports to be provided to the Single Judge appears appropriate. Accordingly, and if possible, by way of filing, alternatively, by way of e-mail (available to all parties and participants and the Registry), the Prosecution shall file such a progress report by 14 April 2020.
20. Lastly, the Chamber reiterates that in spite these exceptional circumstances, the rights of Mr Al Hassan to be tried without undue delay and the interest of victims in the outcome of these proceedings must remain central to this case. The parties, participants and the Court as a whole must adapt to this new situation, which, as the Prosecution notes in its submission, may go beyond the current two-week closure of the ICC premises. The Chamber therefore agrees with the Defence submissions that alternative measures need to be taken to meet deadlines and to prioritise this case, which involves a detained person awaiting trial.²¹ In this regard, the Chamber notes that recently, and in view of the circumstances, the Single Judge authorised ‘the alternative method proposed by the Prosecution to proceed with disclosure outside eCourt, via RM links only’ to ‘ensure that disclosable material is provided to the Defence at the earliest opportunity’.²² The Chamber encourages the parties, the participants and the Registry to continue proposing alternative ways to move forward in the following months leading to the start of the trial.

²¹ See Defence Response attached in Annex A, p. 2.

²² Decision on the ‘Protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant’, the ‘Dual Status Witness Protocol’, and related matters, 19 March 2020, ICC-01/12-01/18-674, paras 7, 10.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

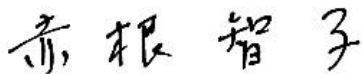
PARTLY GRANTS the Request;

EXTENDS some of the relevant deadlines and **MODIFIES** the schedule leading to the start of trial as set out in paragraph 15 above.

Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Kimberly Prost

Dated this 20 March 2020

At The Hague, The Netherlands