



Original: English

No. ICC-01/12-01/18

Date: 19 August 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

Supplemental decision on matters related to the conduct of proceedings

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

The Office of the Prosecutor

Fatou Bensouda
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Melinda Taylor
Nicoletta Montefusco

Legal Representatives of Victims

Seydou Doumbia
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Fidel Luvengika Nsita

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

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*, having regard to Article 64(8)(b) of the Rome Statute (the ‘Statute’) and Rule 140 of the Rules of Procedure and Evidence (the ‘Rules’), issues the following ‘Supplemental decision on matters related to the conduct of proceedings’.

I. Procedural history

1. On 6 January 2020, the Chamber set the date for the commencement of trial at 14 July 2020, with the presentation of evidence to begin on 25 August 2020, and adopted a calendar leading up to this date.¹
2. On 28 January 2020, the Chamber invited the Office of the Prosecutor (the ‘Prosecution’), the Defence, and the LRVs to submit observations on matters relevant to the conduct of proceedings, including on a set of items identified by the Chamber, by 27 February 2020.²
3. On 29 April 2020, the Chamber issued an order for the parties, participants and the Registry to discuss and submit joint proposals on the organisation of the trial proceedings in light of the current COVID-19 measures.³
4. On 6 May 2020, the Chamber issued its ‘Decision on the conduct of proceedings’, in which it provided directions on the conduct of proceedings pursuant to Rule 140 of the Rules, while postponing its determination on issues such as the scheduling of witnesses.⁴

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

² Order setting deadline for observations on the conduct of proceedings, ICC-01/12-01/18-566.

³ Order to provide information on methods of work to minimise the impact of COVID-19 and related measures on the conduct of proceedings, ICC-01/12-01/18-776.

⁴ Decision on the conduct of proceedings, ICC-01/12-01/18-789 (with Annex A and confidential Annexes B and C).

5. On 22 July 2020, the Chamber issued a decision confirming the Prosecution's witness order with respect to its first ten witnesses (the 'Witness Order Decision' and the 'Original List')).⁵
6. On 4 and 14 August 2020, the Single Judge exceptionally accepted certain changes requested by the Prosecution in the order of appearance of the first ten witnesses (the 'Amended List').⁶
7. On 18 August 2020, the Chamber decided to adjourn the trial until 8 September 2020.⁷

II. Directions

A. The Prosecution Presentation of Evidence

8. The Chamber understands that as a consequence of the Chamber's decision to adjourn the trial until 8 September 2020, changes to the Prosecution's witness order might be warranted. The Chamber appreciates the Prosecution's recent commitment to maintain as much as possible the changes to the scheduled order⁸ and kindly requests the Prosecution to provide an updated list of witnesses who will testify during the month of September 2020 at the latest by 25 August 2020. The Prosecution's proposal should be as close as possible to the Original List or, alternatively, the Amended List, and, to the extent feasible, changes should be limited to the order of appearance of witnesses who were already listed as part of the first 10 witnesses.
9. In light of the adjournment of hearings, the Chamber also considers that the Prosecution need not file the order for the remaining Block 1 witnesses by 10 September 2020, as ordered in the Witness Order Decision.⁹

⁵ Decision on the Prosecution's witness order and variation of time limit for filing applications for in-court protective measures, ICC-01/12-01/18-968.

⁶ Email from the Chamber to the parties and participants, 4 August 2020, at 13:09; Email from the Chamber to the parties and participants, 14 August 2020, at 13:05.

⁷ Decision adjourning the evidentiary hearings, ICC-01/12-01/18-999.

⁸ Email from the Prosecution to the Chamber, 18 August 2020, at 12:13.

⁹ See Witness Order Decision, ICC-01/12-01/18-968, para. 20.

10. Instead, on the first working day of every month, starting on 1 September 2020, the Prosecution shall provide a list of witnesses who will be testifying the month after (the 'Forthcoming Witnesses List'). The Forthcoming Witnesses List and the list due by 25 August 2020 should be provided via email and include:
- a) the names and pseudonyms of the relevant witnesses;
 - b) whether an application to introduce the previously recorded testimony of the witness under Rule 68(2) or (3) of the Rules was made or granted;
 - c) a time estimate for the examination-in-chief of each witness;
 - d) the order in which it intends to call the witnesses and approximate date of testimony;
 - e) the expected language of testimony;
 - f) an indication of the status of the witness (i.e. dual status, vulnerability, potential self-incrimination, etc.);
 - g) the expected mode of testimony (i.e. in person or via video-link);
and
 - h) details of any in-court protective and/or special measures sought or granted.
11. When formulating the Forthcoming Witnesses List, the Prosecution should first schedule the appearance of witnesses listed under Block 1 and only subsequently move on to the scheduling of Block 2, and then Block 3 witnesses.¹⁰ Moreover, where possible, the schedule should be determined in consultation with the Defence and taking into account the views of the Registry, particularly the Victims and Witnesses Unit, as to the logistics and any other

¹⁰ See Order of Prosecution Witnesses, 12 May 2020, ICC-01/12-01/18-805-Conf-AnxA.

issues that may have an impact on the availability of witnesses to testify at the seat of the Court or via video-link.¹¹

12. In the interests of fairness and expeditiousness, the Chamber expects any changes to the schedule contained in the Forthcoming Witnesses List to be minimal. The Prosecution must inform the Defence, LRVs and Chamber of any changes immediately. Where possible the change should be made on the basis of an agreement between the parties.

B. Hearing Schedule

13. The standard schedule for the hearings shall be, as per standard practice at the Court, of 4.5 hours per day, divided in three sessions: 9:30-11:00; 11:30-13:00; and 14:30-16:00. In principle, the Chamber will sit during all working days of the week.
14. The present directions are subject to review and adjustments, taking into consideration *inter alia* the situation of the COVID-19 pandemic in the Host State and any related safety regulations.

C. Filing deadlines

15. The Chamber notes that, pursuant to Regulation 33(2) of the Regulations of the Court (the 'Regulations'), filings must be made between 9:00 and 16:00 on working days, save for situations where Regulation 24(3) of the Regulations of the Registry applies.
16. The Chamber recalls that, in an email decision of 17 March 2020,¹² the Chamber noted 'the exceptional nature of the current circumstances', which were mainly the result of the closing of the Court's premises, and indicated that it understood that 'flexibility will be required from all in the coming weeks'. The Chamber further specified that it would 'accept requests and submissions made via email' and that it was 'amenable to consider other facilitating

¹¹ Witness Order Decision, ICC-01/12-01/18-968, para. 20.

¹² Email from the Chamber to the Registry dated 17 March 2020 at 11:04.

measures which could assist the Registry's various units in complying with their respective mandates'.

17. From that moment on, the Chamber routinely granted requests seeking a last-minute extension of time limits which *in concreto* resulted in numerous one-day delays being authorised. Filings due on a certain date were notified the subsequent day while courtesy copies were provided on the due date, but after 16:00, and often late in the night.
18. In light of the forthcoming start of the evidentiary phase of trial, considering that remote working has significantly improved since March 2020, and partial access to the Court premises is now possible, the Chamber considers that it is no longer appropriate to continue seeking, at the last-minute, leave to be granted a few more hours to file submissions. Hereafter, the parties and participants are expected to follow strictly the Regulations, notably Regulation 33(2) which requires that filings be submitted by 16:00.
19. As regards the title of filings, for ease of reference, the Chamber requests the parties and participants, including the Registry, to refer to the main issue at stake in the title of the filing. In particular, when filing a response or reply, the parties and participants should refrain from including the document number of the original document in the title of the filing which responds or replies.

D. Remaining Rule 68(3) applications

20. The Chamber recalls that in its directions on the conduct of proceedings, the Chamber instructed the Prosecution to file, within 20 days of the provision of the final witness list, a first batch of motivated applications seeking the Chamber's authorisation to introduce any prior recorded testimony pursuant to Rule 68(3) of the Rules for witnesses expected to be called before the end of the

year 2020.¹³ On 5 August 2020, the Chamber issued its decision on the Prosecution's Rule 68(3) applications (the 'Rule 68(3) Decision').¹⁴

21. With respect to any remaining witnesses, and in conformity with the Chamber's initial directions¹⁵ and subsequent clarifications as to the relevant procedure,¹⁶ the Chamber finds it appropriate for the Prosecution to submit any remaining applications to introduce prior recorded testimony pursuant to Rule 68(3) of the Rules by 30 November 2020.
22. Objections, if any, shall be filed within 15 days of notification of any Rule 68(3) application.

¹³ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 63.

¹⁴ Decision on Prosecution's requests to introduce prior recorded testimonies under Rule 68(3) of the Rules, ICC-01/12-01/18-987-Conf.


¹⁵ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 63.

¹⁶ Rule 68(3) Decision, ICC-01/12-01/18-987-Conf, paras 9-18.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

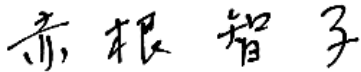
ADOPTS the aforementioned supplementary directions on the conduct of proceedings.

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 Wednesday, 19 August 2020

At The Hague, The Netherlands