

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No: **ICC-01/12-01/18**  
Date: **2 September 2022**

**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 Redacted Version**

**Request for a Draft Arabic Translation of the Prosecution Final Trial Brief and  
Suspension of Related Deadline**

**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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Defence****States' Representatives****Amicus Curiae****REGISTRY****Registrar**

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## I. INTRODUCTION

1. Mr Al Hassan respectfully requests, pursuant to Articles 67(1)(a), (b) and (f) of the Statute, that the Chamber order the Prosecution to provide him with a draft translation of its final trial brief in Arabic, the only official language of the Court which Mr Al Hassan fully speaks and understands.<sup>1</sup> He also requests that the Defence's four-week time limit to file its final brief after notification of that of the Prosecution begins to run only after notification of the Arabic translation. Such a request is necessary to meet statutory requirements of fairness and is supported by good cause in accordance with Regulation 35(2) of the Regulations of the Court.
2. On 29 August 2022, the Chamber set out the briefing schedule for the closing submissions, in which it ordered the parties to draft their final briefs in English.<sup>2</sup> Mr Al Hassan does not speak, read, or write English and has minimal comprehension of the language. If a translation is not furnished, he would be wholly unable to understand the Prosecution's brief, and *a fortiori*, to participate at all – much less effectively – in his own defence. A translation into Arabic would secure his rights under Article 67(1)(f) and would be in accordance with the case law of this Court.
3. Furthermore, a departure from the briefing schedule established in the Decision is supported by good cause, is appropriate, and is consistent with ICC precedent, which regularly stays deadlines until notification of the relevant translation. Granting a translation without an accompanying deferral of the present deadline would render the order meaningless as the Defence would still be obliged to draft the final trial brief without Mr Al Hassan's participation until provision of the translation. This would not only greatly disadvantage the Defence but would put it in breach of its professional obligations and, more importantly, make illusory Mr Al Hassan's fair trial rights.
4. Ordering an Arabic translation and suspending the Defence's four-week time limit until the translation is notified is in the interests of justice. The present request is consistent

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<sup>1</sup> This is a public redacted version of a confidential Defence submission filed on the same day.

<sup>2</sup> *Al Hassan*, Sixth decision on matters related to the conduct of proceedings: end of Defence case, potential rebuttal/rejoinder evidence, and closure of evidence, ICC-01/12-01/18-2308, 29 August 2022 ("Decision"). Hereinafter, all references are to the *Al Hassan* case unless otherwise specified.

with ICC practice and neither unfairly burdens the Prosecution nor affords the Defence any advantage; accordingly, the Prosecution will suffer no prejudice.

## II. PROCEDURAL HISTORY

5. On 4 April 2018, Mr Al Hassan appeared in front of Pre-Trial Chamber I for his initial appearance, where he emphasised his preference to “use [the] Arabic language” during his Court proceedings.<sup>3</sup> He underscored this preference in subsequent applications to the Pre-Trial Chamber,<sup>4</sup> noting he could not speak any English<sup>5</sup> and requesting Arabic translations for certain critical documents.<sup>6</sup> Mr Al Hassan further clarified that he “ha[d] not studied French at an academic level at any point in his life and ha[d] a rudimentary knowledge of French”.<sup>7</sup> Recognising Mr Al Hassan’s inability to understand the basis of his detention or prepare his defence in French or English,<sup>8</sup> the Pre-Trial Chamber ordered an Arabic version of the Prosecution’s application for an arrest warrant.<sup>9</sup>
6. On 8 March 2019, Mr Al Hassan requested, without success, the Presidency to authorise Arabic as a working language in his proceedings.<sup>10</sup>
7. On 29 August 2022, the Chamber issued its sixth decision on the conduct of the proceedings, in which it ordered the Prosecution and Legal Representative of Victims to submit their briefs four weeks after the official closure of evidence submission, and the Defence to file its final brief four weeks thereafter.<sup>11</sup> The Chamber also ordered the

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<sup>3</sup> ICC-01/12-01/18-T-001-RED-ENG, p. 7, line 3.

<sup>4</sup> Defence request to authorise the use of Arabic as a working language, ICC-01/12-01/18-268, 8 March 2019 (“Authorisation Request”); Request for Translation, ICC-01/12-01/18-39-Red, 31 May 2018 (“Translation Request”).

<sup>5</sup> Authorisation Request, para. 4 (“Mr Al Hassan does not speak or understand English”); 8 (indicating that Arabic was the only common language between Mr Al Hassan and his then-Counsel, the latter of whom also spoke English).

<sup>6</sup> Translation Request; ICC-01/12-01/18-T-008-ENG, p. 51, lines 10-11 (“[t]he Chamber wishes to stress that Mr Al Hassan has made a request to receive Arabic translation of the hearing transcripts”); 17-19 (“a transcript in Arabic should be provided so that Mr Al Hassan can follow the proceedings in a language that he fully understands”).

<sup>7</sup> Translation Request, para. 12; ICC-01/12-01/18-T-008-ENG, p. 53, lines 15-17 (“Mr Al Hassan studied at a university in Tripoli in Arabic, not in French. So yes, he can speak French, he can understand French, he cannot read or write in French to the level required under the Statute”).

<sup>8</sup> Decision on the Defence Request for an Arabic Translation of the Prosecution Application for the Issuance of a Warrant of Arrest, ICC-01/12-01/18-42-tENG, 1 June 2018 (ordering an Arabic translation of the Prosecution Application for the Issuance of a Warrant of Arrest, which had been provided to Mr Al Hassan in French).

<sup>9</sup> *Id.* para. 13.

<sup>10</sup> Authorisation Request, para. 7.

<sup>11</sup> Decision, para. 11 (i) and (ii).

Prosecution and the Defence to draft their briefs in English, prescribing a page limit of two hundred pages per brief and fifty pages for each party's response brief.<sup>12</sup>

8. No provision was made for any translation into Arabic.

### III. APPLICABLE LAW

9. Article 67(1) of the Rome Statute sets out the minimum guarantees afforded to an accused before this Court. In the determination of any charge, the accused shall not only be entitled to a public hearing, but shall also

(a) [...] be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused **fully** understands and speaks;

(b) [...] have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence; and

(f) [...] have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, **if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks.**

(emphasis added)

Chambers have consistently emphasised that the provision of any translation under this Article must be for the benefit of the accused,<sup>13</sup> a fair trial right that is consistent with international human rights jurisprudence.<sup>14</sup> These rights and guarantees of language and notice are “so fundamental as to outweigh considerations of judicial economy”, even where the accused has an adequate understanding of the language used in court.<sup>15</sup>

<sup>12</sup> Decision, para. 12 (i).

<sup>13</sup> *Mahamat Said Abdel Kani*, Decision on Defence Request for Suspension of Deadline for Response to the Trial Brief and Postponement of Commencement of Trial pending Translation of Trial Brief, ICC-01/14-01/21-408, 14 July 2022 (“*Said* Postponement Decision”), para. 15; *Bemba*, Decision on the Defence's Request Related to Language Issues in the Proceedings, ICC-01/05-01/08-307, 4 December 2008, para. 12, 14 and 16 (“entitled to receive the French translation of such documents that inform him in detail of the nature, cause and content of the charges brought against him”).

<sup>14</sup> ECHR, *Kamasinski v. Austria*, App. no. 9783/82, Judgment, 19 December 1989, para. 74 (“should be such as to enable the defendant to have knowledge of the case against him and to defend himself”); *Luedicke, Belkacem and Koç v Germany*, App. no. 6210/73, 6877/75, 7132/75, Judgment, 1978, para. 48 (holding that an accused who cannot understand or speak the language used in court has the right to free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings of which it is necessary for him to have an understanding in order to have the guarantee of a fair trial).

<sup>15</sup> *Milosevic*, IT-02-54, Decision on Prosecution motion for permission to disclose witness statements in English, 19 September 2001 (finding that an accused's minimum rights to be informed promptly and in detail in a language

10. In its interpretation of the standard to be applied under Articles 67(1)(a) and (f), the ICC Appeals Chamber has emphasised the need to take into consideration “the importance of the fact that the word ‘fully’ is included in the text, and the article’s full legislative history”,<sup>16</sup> finding the applicable threshold to be a very high one,

higher, for example, than that applicable under the European Convention on Human Rights and the ICCPR. To give effect to this higher standard must mean that an accused’s request for interpretation into a language other than the Court’s language must be granted as long as he or she is not abusing his or her rights under article 67 of the Statute.<sup>17</sup>

The Appeals Chamber further held that where there exists “any doubt as to whether the person fully understands and speaks the language of the Court, the language being requested by the person should be accommodated” and emphasised the Chamber’s responsibility in ensuring the fair trial of the accused.<sup>18</sup>

11. In implementing the Appeals Chamber’s ruling, the *Lubanga* Pre-Trial Chamber ordered the Registry to provide to the Defence the services of a French translator to assist the defence with documents available only in English.<sup>19</sup> Similarly, other ICC Chambers have found that translation is warranted or necessary to protect the fairness of the proceedings where the material will be filed in the case record and intended to be relied upon by the parties<sup>20</sup> and where the documents are critical to the Defence’s ability to challenge or rely on them,<sup>21</sup> including for the purposes of preparing an

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which he understands of the nature and cause of the charge against him outweigh considerations of judicial economy and that translations must be provided even where the accused speaks, reads, writes, and understands English adequately).

<sup>16</sup> *Katanga and Ngudjolo*, Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled “Decision on the Defence Request Concerning Languages”, ICC-01/04-01/07-522, 27 May 2008, para. 37.

<sup>17</sup> *Id.* para. 62.

<sup>18</sup> *Id.* para. 61.

<sup>19</sup> *Lubanga*, Decision on the Requests of the Defence of 3 and 4 July 2006, ICC-01/04-01/06-268, 4 August 2006.

<sup>20</sup> *Mbarushimana*, Decision on issues relating to disclosure, ICC-01/04-01/10-87, 30 March 2011, para. 16 (“[a]s regards the Defence’s request for the translation of all intercepted communications, the Chamber is of the view that since [...] the material on which the parties do not intend to rely on at the confirmation hearing does not need to be filed in the record of the case, the language requirement set out in regulation 39 of the Regulations does not apply to such material. Consequently, the Prosecutor is not obliged to provide the translation of this material to the Defence, unless he intends to rely on any of those intercepted communications for the purposes of the confirmation hearing”) (emphasis added).

<sup>21</sup> *Bemba et al.*, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, ICC-01/05-01/13-749, 11 November 2014, para. 21 (“as many as ten of these documents consist of call logs (consisting to a large extent to digits) and chain-of-custody documents. As such, “translation” of these documents cannot be said to be critical to the Defence’s ability to challenge or otherwise rely on them [...] Accordingly, the Chamber [...] does not consider that the translation of the items concerned was necessary to meet the requirements of fairness.”)

appeal.<sup>22</sup> The *Lubanga* Chamber especially underscored the injustice of expecting an accused who does not speak English to prepare for appellate proceedings where the English-language decision would “run to many hundreds of pages [...] [and] involve detailed consideration of a large number of complex legal and factual issues”.<sup>23</sup> Notably, ICC Chambers have, consistent with practice of the *ad hoc* tribunals,<sup>24</sup>

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<sup>22</sup> *Lubanga*, Decision on the translation of the Article 74 Decision and related procedural issues, ICC-01/04-01/06-2834, 15 December 2011 (“*Lubanga* Article 74 Translation Decision”), para. 19 (“the essential requirement is for the Chamber to ensure that the accused is provided with a translation of the Article 74 Decision in circumstances that protect the fairness of the proceedings”); 21 (“certain minimum safeguards need to be in place to ensure that the accused and his counsel are able adequately to prepare for this next phase if the accused is convicted [and] the Chamber agrees with the defence that the timing of the next phase [...] will depend on the translation into French of those parts of the judgment (as identified by the defence) which the Chamber considers essential for these purposes”); 23 (“[a]s far as the Chamber is aware the accused has either no, or limited, ability as regards reading English. If he is convicted, he will need to prepare for the appellate stage of the case [...] [t]he Chamber is of the view that it would be unfair on the accused, and it would constitute a breach of Article 67(1)(f) of the Statute (his entitlement to translations in order to secure fairness), as well as contravening the objective of Rule 144(2)(b) of the Rules, to require the accused to prepare for this particular stage of the proceedings when he is effectively unable to read the judgement in English”).

<sup>23</sup> *Id.* para. 23.

<sup>24</sup> *Šešelj*, IT-03-67-PT, Decision on Form of Disclosure, 4 July 2006, para. 15 (finding that despite Rule 68’s silence on the language of disclosure, “from a fair-trial perspective, [...] the Prosecution must disclose to the Accused exculpatory material in a language which the Accused understands”); *Ljubičić*, IT-00-41-PT, Decision on the Defence Counsel’s Request for Translation of All Documents, 20 November 2002, p. 3 (holding the accused was to be provided in a language he understood, *inter alia*, the supporting material accompanying the indictment; all prior statements obtained by the Prosecutor from the accused, irrespective of whether they would be offered at trial; all statements of all witnesses the Prosecutor intended to call to testify at trial along with all Rule 92bis written statements; discovery material which appeared in a language understood by the accused at the time it came under the Prosecution’s custody or control; and exculpatory material disclosed by the Prosecution); *Naletilić et al.*, IT-98-34-T, Decision on Defence’s Motion Concerning Translation of all Documents, 18 October 2001, p. 3 (requiring all exhibits which the parties intend to submit for admission to be provided in a language the Accused understood); *Milošević*, IT-02-54, Decision on Prosecution motion for permission to disclose witness statements in English, 19 September 2001 (denying a Prosecution motion to provide its witness statements in English only, given that the native language of the self-representing accused was not English); *Delalić et al.*, IT-96-21-T, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, paras. 6, 8.

extended an accused's right to translations beyond Court decisions to include Prosecution filings,<sup>25</sup> including final trial briefs.<sup>26</sup>

12. The Appeals Chamber has also consistently granted accommodations of the briefing schedule where a convicted person was facing language difficulties.<sup>27</sup> Indeed, where translations have been deemed appropriate, Chambers in all phases of proceedings have consistently stayed the running of the applicable deadlines until notification of the translation in order to be consistent with the requirements of fairness and preserve the

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<sup>25</sup> *Gbagbo and Blé Goudé*, Decision on Defence requests relating to the Prosecution's Pre-Trial Brief, ICC-02/11-01/15-224, 16 September 2015 ("*Gbagbo and Blé Goudé* Translation Decision"), paras. 20, 21 (finding translations of the Prosecution's pre-trial brief into French were appropriate and would be to the benefit of the accused); *Mbarushimana*, Decision on Mr Mbarushimana's request for time extension, ICC-01/04-01/10-497, 9 March 2012, para. 6 ("[g]iven the specific circumstances at hand, namely the particular nature, importance and possible impact of a decision on the confirmation of charges on a suspect, the fundamental importance of the document in support of the appeal to the merits of the appeal, the fact that the Prosecutor's document in support of the appeal is likely to be filed in English and the fact that the Pre-Trial Chamber has considered that Mr Mbarushimana fully understands and speaks French, the Appeals Chamber considers that good cause has been shown for an extension of the time limit prescribed under regulation 65 (5) of the Regulations of the Court"); *Banda and Jerbo*, Reasons for the Order on translation of witness statements (ICC-02/05-03/09-199) and additional instructions on translation, ICC-02/05-03/09-214, 12 September 2001 ("*Banda* Translation Decision"), para. 36 (providing the Defence with translations in Zaghawa of relevant sections of the Prosecution's Document Containing Charges despite the Decision on the Confirmation of Charges being the relevant document defining the scope of the trial proceedings).

<sup>26</sup> *Lubanga*, Order on the timetable for closing submissions, ICC-01/04-01/06-2722, 12 April 2011 ("*Lubanga* Closing Submissions Order").

<sup>27</sup> See e.g. *Ongwen*, Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation, ICC-02/04-01/15-1781, 24 February 2021; *Ntaganda*, Decision on Mr Bosco Ntaganda's and the Prosecutor's requests for time extension for the notice of appeal and the appeal brief, ICC-01/04-02/06-2364, 19 July 2019, para. 5; *Ntaganda*, Decision on Mr Ntaganda's request for an extension of the page and time limit for the filing of the appeal brief and related matters, ICC-01/04-02/06-2415, 20 September 2019, paras. 12-15; *Gbagbo and Blé Goudé*, Decision on Mr Gbagbo's requests for extension of time, translations and correction of transcripts, ICC-02/11-01/15-1289, 26 November 2019, paras. 18, 20-21, 23-26.



accused's rights.<sup>28</sup> This aligns with the mainstream judicial practice of the *ad hoc* tribunals.<sup>29</sup>

13. Rule 42 of the ICC Rules of Procedure and Evidence similarly affirms the Court's obligation to arrange for those translation services necessary to ensure the implementation of its obligations under the Statute and the Rules.

#### IV. SUBMISSIONS

##### A. Translation into Arabic of the Prosecution's Final Trial Brief is Necessary to Protect the Fairness of the Proceedings

14. The prevailing practice of this Court – and a basic requirement of the fairness of any adversarial proceeding – has been to require the Prosecution to present its final submissions before the Defence.<sup>30</sup> This accords with the Defence's right to have the

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<sup>28</sup> **Pre-Trial:** *Abu Garda*, Decision on the Confirmation of Charges, ICC-02/05-02/09-243-Red, 8 February 2010, p. 98 (“DECIDES that the five-day period for the parties to present an application for leave to appeal in accordance with rule 155(1) of the Rules shall start to run with effect from the date of notification of the Arabic translation of this Decision”); *Bemba*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08-424, 15 June 2009, p. 185 (“decides that the five-day period to present an application for leave to appeal set out in rule 155(1) shall start running for the Defence as of the date of notification of the French translation of this decision”); *Bemba*, ICC-01/05-01/08-T-12-Red-ENG, 15 January 2009, p. 142, lines. 4-9 (“[f]inally, I would like to say that as the decision will be prepared in English, in the event the Defence wishes to appeal the final decision of the Chamber on the charges it should be aware that the five-day's period for leave to appeal does not begin to run until Mr. Bemba is notified of a French translation of the decision. For the Prosecution, the deadline will be the issuance of the decision”). **Trial:** *Lubanga* Article 74 Translation Decision, para. 23 (“[t]he Chamber is of the view that it would be unfair on the accused, and it would constitute a breach of Article 67(1)(f) of the Statute (his entitlement to translations in order to secure fairness), as well as contravening the objective of Rule 144(2)(b) of the Rules, to require the accused to prepare for this particular stage of the proceedings when he is effectively unable to read the judgement in English”); 24 (“[a]ccordingly [...] the Chamber determines that the accused will have been “notified” of the Article 74 Decision in the event of a conviction [...] when the French translation is effectively sent from the Court by the Registry”).

<sup>29</sup> *Ljubicic*, IT-00-41-PT, Decision on the Defence Counsel's Request for Translation of all Documents, 20 November 2002, p. 3; *Muhimana*, ICTR-95-IB-I, Decision on the Defence Motion for the Translation of Prosecution and Procedural documents into Kinyarwanda, the Language of the Accused, and into French, the Language of his Counsel, 6 November 2001, para. 33(c); *Delalic et al*, IT-96-21-T, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, para. 11.

<sup>30</sup> *Ntaganda*, Order providing directions related to the closing briefs and statements, ICC-01/04-02/06-2170, 28 December 2017, paras. 13, 15 (requiring the Defence to file its brief eight weeks after that of the Prosecution and LRV, followed by a two-week time limit for the Prosecution and LRV response briefs, and two weeks after that for the Defence's reply briefs); *Bemba*, Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/08-3343, 21 March 2016, para. 14 (Prosecution and LRV briefs on 2 June 2014; the Defence brief 12 weeks later on 25 August 2014; followed by Prosecution and LRV response briefs three weeks after that on 15 September 2014; and ending with a Defence reply brief two weeks later on 29 September 2014); *Bemba*, Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case, ICC-01/05-01/08-2731, 16 July 2013, para. 32; *Lubanga*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, 14 March 2012, fn. 30 (requiring Prosecution and LRV briefs on 1 June 2011; the defence brief over 6 weeks later on 15 July 2011; a Prosecution response more than 2 weeks later on 1 August 2011; and finally a Defence reply brief 2 weeks after that on 15 August 2011); *Katanga and Ngudjolo*, Public redacted version of

last word<sup>31</sup> and to know the entirety of the Prosecution case before presenting their own evidence and being required to adopt written final submissions.<sup>32</sup> This practice also promotes more focused and responsive submissions, which, in turn, is likely to facilitate the drafting of written reasons by the Trial Chamber.

15. The only way to meaningfully accomplish this is to afford Mr Al Hassan an Arabic translation of the Prosecution's trial brief. Mr Al Hassan has repeatedly underscored his inability to understand English, noting in several submissions that he speaks no English<sup>33</sup> and understands French to an insufficient degree to follow Court proceedings.<sup>34</sup> He has affirmed that "Tamasheq and Arabic [are] his main languages", going so far as to appeal to the Presidency, albeit unsuccessfully, to authorise Arabic as a working language for oral submissions in his proceedings.<sup>35</sup> He has not wavered from his stated position that Arabic translations are necessary for those documents requiring his "comprehension, advice or approval" and for him to exercise his right to a fair trial.<sup>36</sup>
  
16. It is settled law at the ICC that translations are necessary to protect the fairness of the proceedings. Article 67(1)(f) guarantees the accused's right to necessary translations to preserve the fairness of the proceedings, if any documents are not in a language he fully understands and speaks. English is precisely such a language; if Mr Al Hassan cannot

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Order on the arrangements for the submissions of the written and oral closing statements (regulations 54 of the Regulations of the Court) (ICC-01/04-01/07-3218-Conf), ICC-01/04-01/07-3218-Red-tENG, 4 January 2012, paras. 8-9; *Lubanga* Closing Submissions Order, para. 3.

<sup>31</sup> ICC RPE 141(2): "The defence shall always have the opportunity to speak last." *See also* *Lubanga* Closing Submissions Order, para. 2 ("the logic underlying Rule 141(2) of the Rules that establishes the right of the defence to examine witnesses last also applies to these final written submissions. The defence is therefore entitled to file its closing submissions once the arguments of the prosecution and the legal representatives have been submitted"); *Bemba et al.*, Further Directions on the Conduct of the Proceedings in 2016, ICC-01/05-01/13-1518, 9 December 2015, para. 22 ("[t]he Defence has the right to present closing statements last").

<sup>32</sup> *Lubanga* Closing Submissions Order, para. 2 ("the Chamber is of the view that it is necessary for the Prosecutor to file his written closing statement first. The accused is entitled to know, once the evidence has closed, the legal and factual basis on which the Prosecutor maintains he is guilty.")

<sup>33</sup> ICC-01/12-01/18-T-001-RED-ENG, p. 7, line 3; Translation Request; Authorisation Request, para. 8 (indicating that Arabic was the only common language between Mr Al Hassan and his Counsel, the latter of whom also spoke English).

<sup>34</sup> Authorisation Request, para. 4 ("Mr Al Hassan does not speak or understand English, while his capacities in French are limited").

<sup>35</sup> *Id.* para. 7.

<sup>36</sup> Translation Request, paras. 5, 10, 21.

speak, read, write, or understand English to any degree, he cannot be expected to engage with 200 pages of a complex submission in that very language.

17. ICC Chambers have sometimes declined to order official translations where it considers that the Defence counsel is able to function in both French and English and could assist the accused with questions on the submission.<sup>37</sup> These refusals, however, have consistently occurred where the accused was seeking a translation into the other working language of the Court, as opposed to a third language;<sup>38</sup> where the defence team had bilingual capabilities;<sup>39</sup> where draft translations had or would be provided;<sup>40</sup> and where the Lead Counsel shared a third language with the accused.<sup>41</sup> Regrettably, Counsel for Mr Al Hassan does not speak Arabic and Mr Al Hassan knows no English.
18. While Mr Al Hassan's Defence team has consistently communicated with the Court in English on his behalf, it has done so through the provision of concomitant internal translation by Arabic-speaking team members to enable Mr Al Hassan to fully engage with the proceedings. This measure, however, would be quite unworkable in the context of closing submissions. The tight briefing schedule, combined with the sheer volume of documentary material that will likely be referenced in two hundred pages of arguments, will require the Defence team to wholly focus its finite resources into the brief. It will have neither the time nor the ability to provide Mr Al Hassan with what would, in any event, likely be piecemeal oral translation by team members. Such an

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<sup>37</sup> *Gbagbo and Blé Goudé* Translation Decision, para. 20.

<sup>38</sup> See e.g. *Bemba et al.*, Decision on the Defence application for judicial review of the decision of the Registrar on the allocation of resources during the trial phase, ICC-01/05-01/13-955, 21 May 2015, para. 41(a) (“[t]he necessity of ensuring English-French bilingual competence within the teams in the person of either the lead counsel or associate counsel; in order to minimise, as much as possible, avoidable difficulties arising from the language demands of the Case”). Cf. *Bemba et al.*, Further Directions on the Conduct of the Proceedings in 2016, ICC-01/05-01/12-1518, 9 December 2015 (ordering the Prosecution to simultaneously file both English and French versions of its closing submissions).

<sup>39</sup> *Gbagbo and Blé Goudé* Translation Decision, paras. 20, 21 (“the accused persons are aided in discussing, analysing and preparing their defence by their counsel, who are able to function effectively in both working languages of the Court [...] the Chamber does not consider it necessary to modify the commencement date of the trial subject to the notification of an *official* French translation of the Pre-Trial Brief”) (emphasis in original).

<sup>40</sup> *Gbagbo and Blé Goudé* Translation Decision, para. 20. See also *Said* Postponement Decision.

<sup>41</sup> *Ongwen*, Prosecution's Response to Defence's “Request for a suspension of its notice of its intent to appeal Trial Chamber IX's Trial Judgment”, ICC-02/04-01/15-1775, 16 Feb 2021, para. 5 (Prosecution arguing that Mr Ongwen's request for a full translation was undermined by the fact that “counsel for Mr Ongwen is fluent in English and, like other members of the Defence team, speaks Acholi”); *Ongwen*, Decision on the Prosecution's Applications for the Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, ICC-02/04-01/15-596-Red, 18 November 2016, para. 28 (“Mr Ongwen is assisted by a Defence team whose members, including the lead counsel, who are fluent in both English and Acholi”); Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, 23 March 2016, para. 22 (“Dominic Ongwen is assisted by a Defence team with members, including counsel, fluent in English and Acholi”).

exercise would be at great cost with little benefit: Not only would it strain the Defence and disadvantage it *vis-à-vis* the Prosecution, but in the absence of a written document he could study, Mr Al Hassan would, in practical effect, be deprived of an adequate opportunity of reply.

19. The final trial brief is an essential document, not merely an auxiliary one. Final submissions are a party's only chance to distil tens of thousands of pages of trial record, crystallise its final positions and focus its core arguments. In this case, they are so important that leave has already been granted for responsive briefs.<sup>42</sup> The Office of the Prosecutor at the Special Tribunal for Lebanon has called the final trial brief a "milestone document"<sup>43</sup> and "the single most important submission filed by [a party] in [a] case", and one that is critical to the proceedings as a whole.<sup>44</sup> Unlike the pre-trial brief – which is sometimes considered the accompaniment to a Confirmation Decision that already sufficiently sets out the material facts and legal elements<sup>45</sup> and which does not always prompt a Defence response<sup>46</sup> – the final brief provides a succinct summary of the views, positions, and arguments on the confirmed charges and the evidence presented during trial.
20. By the time it submits its final brief, the Prosecution will have published almost 1000 pages of substantive submissions in the DCC,<sup>47</sup> the Pre-Trial Brief,<sup>48</sup> and its Opening Statement.<sup>49</sup> It will have generated more than 10,000 pages of transcripts during its case presentation alone and will have included at least [redacted] items in its list of

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<sup>42</sup> Decision, para. 11(iii) ("[r]esponses to the above briefs are due **2 weeks** after notification of the Defence's final brief").

<sup>43</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Prosecution Submission for All Final Trial Briefs to be Filed No Earlier Than 27 July 2018", 5 April 2018, para. 3.

<sup>44</sup> *Id.* para. 1.

<sup>45</sup> *Banda* Translation Decision, paras. 34-36 (finding the Decision on the Confirmation of Charges to be the relevant document defining the scope of the trial proceedings and providing a translation thereof in Zaghawa to the accused).

<sup>46</sup> *Said* Postponement Decision, para. 12 (reproducing the OPCV's observation that a written response from the Defence to the Prosecution's pre-trial brief was not originally envisaged by the Chamber).

<sup>47</sup> Amended and Corrected Version of the Document Containing the Charges, ICC-01/12-01/18-335-Conf-Corr, 11 May 2019: [Redacted]; Annex A, ICC-01/12-01/18-335-Conf-AnxA-Corr: [Redacted]; Annex B, ICC-01/12-01/18-335-Conf-AnxB-Corr: [Redacted]; Annex C, ICC-01/12-01/18-335-Conf-AnxC-Corr: [Redacted]; Annex D, ICC-01/12-01/18-335-Conf-AnxD-Corr: [Redacted]; Annex E, ICC-01/12-01/18-335-Conf-AnxE: [Redacted]; Annex F, ICC-01/12-01/18-335-Conf-AnxF: [Redacted]; Annex G, ICC-01/12-01/18-335-Conf-AnxG: [Redacted]; Annex H, ICC-01/12-01/18-335-Conf-AnxH: [Redacted]; Annex I, ICC-01/12-01/18-335-Conf-AnxI: [Redacted].

<sup>48</sup> Prosecution Trial Brief, ICC-01/12-01/18-819-Conf-AnxA, 19 May 2020: [Redacted].

<sup>49</sup> ICC-01/12-01/18-T-017-RED-ENG ET, 14 July 2020, p. 44-82 [Redacted]; ICC-01/12-01/18-T-018-RED-ENG, 15 July 2020, p. 3-37 [Redacted] [Redacted].

evidence.<sup>50</sup> The closing submissions will curate this tremendous amount of material and set out the specific evidence on which the Prosecution is relying to discharge its burden of proof and in its theory of the case. It is an essential document in every sense of the word and will require rigorous scrutiny by Mr Al Hassan.

21. That, however, is impossible without a translation into a language he can understand. The absence of such a translation puts him in the unenviable position of being powerless to forward arguments in his own defence. It would prevent meaningful discussion between himself and his defence team of the content of the party briefs and would force his team to write the final brief without his engagement, an outcome that is manifestly unreasonable and could not have been the intention of this Chamber.
22. A similar issue arose in *Gbagbo and Blé Goudé* with respect to translation of a pre-trial brief the Chamber had invited the Prosecution to submit. Both Defence teams requested an official translation of the document into French, a language fully spoken and understood by each Accused.<sup>51</sup> The Chamber considered that a French version of the Pre-Trial Brief would be useful “particularly in light of the fact that the Prosecution intends to call 137 witnesses to testify and has listed 4,790 items of evidence in the List of Evidence.”<sup>52</sup> While the Chamber ultimately found that the existing legal framework provided the Accused with sufficient disclosure as to safeguard their Article 67(1) rights without warranting an official translation of the pre-trial brief,<sup>53</sup> the Chamber based its finding on the fact that both Defence teams had already been provided with a draft translation by the Court Interpretation and Translation Section, which allowed them to assist in the preparation of their defences.<sup>54</sup> Incidentally, Mr Blé Goudé could speak both French and English and counsels for both accused were “able to function effectively in both working languages of the Court” and, as noted by the Chamber,

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<sup>50</sup> There are 148 English-language transcripts (T-19 to T-167) from the Prosecution’s presentation of evidence alone (8 September 2020 to 8 December 2021), totalling more than **10,350** pages. The Prosecution also updated its list of evidence in June 2021, in the midst of its case presentation, amounting to **[redacted]** and **[redacted]**. See Confidential Annex A to the Prosecution Submission of its June 2021 Updated List of Evidence, ICC-01/12-01/18-1554-Conf-AnxA, 28 June 2021.

<sup>51</sup> *Gbagbo and Blé Goudé*, Requête en suspension des délais de réponse au mémoire préliminaire jusqu’à transmission de la traduction française du mémoire préliminaire déposé par le Procureur le 16 juillet 2015 (ICC-02/11-01/15-148-Conf-Anx2-Corr), ICC-02/11-01/15-174, 31 July 2015; *Gbagbo and Blé Goudé*, Request for the Translation of the Pre-Trial Brief to French under article 67(1)(a), ICC-02/11-01/15-176, 5 August 2015.

<sup>52</sup> *Gbagbo and Blé Goudé* Translation Decision, para. 20. By way of comparison, the Prosecution in this case had intended to call, prior to the start of trial, **[redacted]** (see ICC-01/12-01/18-740-Conf-AnxA) and had submitted a list of **[redacted]** (ICC-01/12-01/18-805-Conf-AnxB).

<sup>53</sup> *Gbagbo and Blé Goudé* Translation Decision, para. 17.

<sup>54</sup> *Id.* para. 20.

could aid the accused in “discussing, analysing and preparing their defence”;<sup>55</sup> nevertheless, a draft translation of the Prosecution’s brief was deemed necessary and appropriate.

23. This finding was also reflected in the *Mahamat Said Abdel Kani* case, where the Chamber – despite ultimately declining to grant the relief requested by the Defence – placed significant emphasis on the accused’s ability to effectively participate in the preparation of his defence through provision of draft translations provided soon after notification of the original filing.<sup>56</sup>
24. Indeed, the *Lubanga* Chamber issued its timetable for closing submissions in the expectation that the Prosecution would “liaise with the translation unit to assist the Registry with the draft translation” of its final brief. The prosecution was ordered to file its 250-page brief on 1 June 2011 with the understanding that the draft translation would be available to the Defence by 23 June 2011, thus allowing the Defence to file its own brief approximately one month later and circumventing any unnecessary delay to the briefing schedule.
25. Mr Al Hassan suggests a similar mechanism be implemented in this case, whereby the Prosecution liaise with the Registry to provide a draft Arabic translation soon after notification of the English brief. This would be in line with the Prosecution’s own proposition in June 2022 in *Said* that draft translations would be sufficient where found useful to the defence,<sup>57</sup> and consistent with its recent practice of providing draft – and even official – translations notwithstanding the absence of such a requirement in the framework of the Court.
26. Having closed its case in December 2021, the Prosecution is now in a position to draft its closing brief and has ample time to ensure an unofficial translation can be notified to the defence soon after its brief is filed. The absence of a need for an official translation would minimise any delay to the schedule set by the Chamber. Incidentally, the Prosecution in the *Lubanga* case had less time between the issuance of the closing

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<sup>55</sup> *Id.*

<sup>56</sup> *Said* Postponement Decision (rejecting the Defence request to postpone the commencement of the trial in part because “a draft translation of the Trial Brief was provided on 1 July 2022 and [...] this will allow Mr. Said to actively participate in his Defence”).

<sup>57</sup> *Said*, Prosecution’s response to the Defence requests to vary the time limit and for postponement of the trial (ICC-01/14-01/21-367-Conf), ICC-01/14-01/21-381, 28 June 2022, para. 4.

directions on 12 April 2011 and submission of their closing brief on 1 June 2011 (50 days) to plan for a draft translation than does the Prosecution in this case, who, having been put on notice in August 2022 of a likely mid-January 2023 deadline, has almost five months to liaise with the Registry on this issue.

27. Furthermore, Mr Al Hassan would not require translation of all footnotes and references and asks only that the substantive evidential arguments on his alleged guilt be translated. Granting the present request for an unofficial draft translation of only part of the Prosecution brief would strike a comfortable balance between the sometimes-competing interests of judicial economy and the accused's right to a fair trial and would be consistent with the more recent practice of this Court.

**B. The Four Weeks Allotted to the Defence Should Begin to Run From The Date the Draft Translation is Provided to the Defence**

28. Should his request for translation be granted, Mr Al Hassan requests that the four weeks allotted to the Defence to draft its brief after the Prosecution's submission start to run after provision of the Arabic translation. Granting the translation request without an accompanying deferral of the present deadline would render the translation order futile as Mr Al Hassan's defence team would either be forced to wait until after receipt of the translation to consult with him (thereby greatly reducing the time available to draft the brief) or would be obliged to draft the brief without his involvement at all. In either case, Mr Al Hassan would not be afforded the full four weeks intended by the Chamber.
29. Mr Al Hassan's request is manifestly reasonable and can be distinguished from similar requests that have not been granted in light of the comparatively modest delay it would occasion.<sup>58</sup> The *Said* Defence, for example, recently requested the postponement of the commencement of trial until more than three months after notification of the official French translation of the Prosecution's trial brief. That Chamber's rejection of the request was predicated in part on the fact that the accused had already received a draft translation of the Prosecution brief within two weeks of notification and would also be receiving an official translation almost two months before the commencement of trial.

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<sup>58</sup> The trial began on 14 July 2020 and the current briefing schedule envisages the Defence final trial brief to be filed, at earliest, around 14 February 2023. This amounts to 135 weeks. Assuming a translation would likely take approximately two weeks, this is a delay of approximately 1.48%.

The Chamber found that this was a sufficient amount of time to effect the accused’s “active participat[ion] in his defence, since he is able to read and understand the Trial Brief and provide relevant input and instructions in relation to the preparation of his defence”.<sup>59</sup> It also stressed the accused’s ability to effectively participate in the preparation of his defence through provision of both the draft and official translations,<sup>60</sup> finding that Mr Said was not prevented “from setting out the elements and strategy of his defence”, thus prejudicing neither his rights nor the fairness of the trial.<sup>61</sup> Finally, the Chamber considered that the provision of any translation must be for the benefit of the accused, and not his defence team, as the latter had argued.<sup>62</sup>

30. The *Said* considerations are inapposite to the present case. Absent an affirmative ruling on the present request, Mr Al Hassan, for whose benefit the Arabic translation is indeed being requested, will not be able to “actively participate” in the drafting of his final trial brief within the meaning intended by the *Said* Chamber. On the contrary, given his complete inability to read or understand English, Mr Al Hassan will be at a loss to understand or counter the Prosecution brief, suggest elements and arguments in his defence, or provide his Defence with appropriate input and instructions. In short, he would be quite unable to participate – never mind effectively so – in the key preparation of his defence as envisioned by Article 67(1)(b). Furthermore, the *Said* Defence was requesting not only a postponement but also an extension of the time limit it had been granted. Mr Al Hassan does not wish a variation to the four weeks he has been afforded; rather, his request is a simple one: that the four weeks begin to run only from the date he receives the Prosecution’s submission in a language he understands and which would allow him to appreciably participate in his own defence.

31. In *Ongwen*, the Single Judge found that his decision not to issue translations of the parties’ final briefs into Acholi for the accused did not curtail his fair trial rights in part because of the deliberately extended length of time afforded to the parties to prepare their closing submission, which amounted to more than one year for each.<sup>63</sup> Indeed, the

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<sup>59</sup> *Said* Postponement Decision, para. 16.

<sup>60</sup> *Id.* para. 14.

<sup>61</sup> *Id.* para. 17.

<sup>62</sup> *Id.* para. 15.

<sup>63</sup> *Ongwen*, Decision on Defence Request for Reconsideration of or Leave to Appeal the Directions on Closing Briefs and Closing Statements, ICC-02/04-01/15-1259, 11 May 2018, para. 14 (“[o]n the Defence’s own estimation, the Directions end up providing the Prosecution with over one year to write its closing brief. The Defence ends up with the exact same timeframe to write its own brief”) (internal citations omitted); 20 (“[t]he



directions on the briefing schedule had been issued very early in the proceedings – at the end of the Prosecution’s presentation of evidence and twenty months before the end of trial – specifically with a view to enabling the parties and participants to plan their workload accordingly and prepare their closing submissions well in advance.<sup>64</sup> This is not the case here; the current briefing schedule, issued four months before the anticipated end of trial, provides the Defence with five months to prepare at most. Given that it is still in the middle of its presentation of evidence, it is not in a position to dedicate resources or personnel to advancing the final brief at this time. Nor is Mr Al Hassan, who is presently engaged in the ongoing proceedings, in a position to contribute to the Defence’s final trial brief and certainly less so without an understanding in his own language of what the Prosecution will argue. Given the unfeasibility of drafting closing submissions amid its case presentation, a deferment of the time limit until receipt of the draft translation would be appropriate and would allow the Defence to fully benefit from the four weeks the Chamber had intended it.

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Directions are also rendered so far in advance as to give the Defence more than ample time to liaise with the Registry for translations of other materials”).

<sup>64</sup> *Id.* para. 14 [citing *Ongwen*, Directions on Closing Briefs and Closing Statements, ICC-02/04-01/15-1226, para. 2 (“[t]he directions are given at this early point in time to provide the parties and participants with the maximum amount of time to organise and plan their workload”).].

**V. CONCLUSION AND RELIEF REQUESTED**

32. Mr Al Hassan's request for an unofficial Arabic translation of the Prosecution brief is reasonable and appropriate. By eschewing the need for a full, official translation, Mr Al Hassan is narrowly tailoring his request to that which is strictly necessary for his effective participation in his defence and is minimising any delay to the judicial calendar. The Prosecution will suffer no prejudice by the granting of this application whereas Mr Al Hassan would be greatly disadvantaged if unsuccessful. Furthermore, the Chamber's stay of the four-week time limit until provision of the Arabic translation is necessary to give practical effect to any translation order it issues. It would also be of benefit to the Chamber, as affording the Defence the opportunity to make full use of its allotted time will allow it to present the best possible brief it can, which will, in turn, assist the Chamber in its ultimate task of organising its final judgement of the evidence presented.

33. Trial Chamber X is respectfully requested to:

**GRANT** Mr Al Hassan's request for an unofficial draft Arabic translation of the Prosecution's final trial brief, excluding all footnotes and references; and

**ORDER** the four weeks allotted to the Defence for submitting its trial brief to run only upon its receipt of the Arabic translation.



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**Melinda Taylor**  
**Lead Counsel for Mr. Al Hassan**

Respectfully submitted this 2 September 2022,  
At The Hague, The Netherlands