



Original: **English**

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

Date: **01 June 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 with Confidential Annexes A & B**

**Public redacted version of the “Request for Translation”, 31 May 2018, ICC-  
01/12-01/18-39-Conf-Exp**

**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**  
Ms Fatou Bensouda, Prosecutor  
Mr James Stewart

**Counsel for the Defence**  
Mr Yasser Hassan

**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**

**Amicus Curiae**

---

---

**REGISTRY**

**Registrar**  
Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

## I. INTRODUCTION

1. On 16 May 2018, the Single Judge issued the “Décision relative au système de divulgation et à d’autres questions connexes”.<sup>1</sup> In this Decision, the Prosecution was ordered to provide, *inter alia*, in Arabic, the Document Containing Charges (DCC) as well as the list of evidence submitted pursuant to Article 61(3) of the Rome Statute and Rule 121(3) of the Rules of Procedure and Evidence.<sup>2</sup>
2. The Defence was also directed to submit a request to the Single Judge should it consider the translation of other documents into Arabic to be necessary.<sup>3</sup>
3. The Defence respectfully requests the Honourable Single Judge to order the translation of the Confidential *Ex Parte* version of the “Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”<sup>4</sup> into Arabic. The translation of the Application into Arabic is necessary to guarantee Mr Al Hassan’s fair trial rights.

## II. APPLICABLE LAW

4. Article 67(1) of the Statute provides that a suspect has the right:
  - (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which [he] fully understands and speaks;
  - (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused’s choosing in confidence;  
[...]
  - (f) To have, free of any cost, [...] such translations as are necessary to meet the requirements of fairness, if any of [...] the documents presented to the Court are not in a language which [he] fully understands and speaks.

<sup>1</sup> ICC-01/12-01/18-31 (the **Decision**).

<sup>2</sup> ICC-01/12-01/18-31, para. 26.

<sup>3</sup> ICC-01/12-01/18-31, para. 26.

<sup>4</sup> ICC-01/12-01/18-1-Conf-Exp-Red2 (the **Application**).

### III. PROCEDURAL HISTORY

5. On 4 April 2018, Mr Al Hassan appeared before the Single Judge and expressed, through Duty Counsel, his preference to use the Arabic language before the Court.<sup>5</sup>
6. [REDACTED].<sup>6</sup> [REDACTED].<sup>7</sup>
7. [REDACTED].<sup>8</sup>
8. In accordance with the Decision,<sup>9</sup> the Defence now raises the matter of obtaining an Arabic translation of the Application before the Honourable Single Judge.

### IV. SUBMISSIONS

9. Mr Al Hassan is guaranteed fair trial rights, pursuant to Article 67(1) of the Statue, that include being informed promptly and in detail of the nature, cause, and content of any allegations made against him. This must be done in a language he fully understands and speaks. He must also be provided with adequate time, facilities, and translations as necessary, in order to prepare his defence.
10. The Defence reiterates Mr Al Hassan's preference to use the Arabic language in the proceedings before the Court, as previously disclosed to the Single Judge in the initial appearance hearing.<sup>10</sup> Therefore, any document containing details on the material facts of the case, or that require Mr Al Hassan's comprehension, advice or approval, must be provided in Arabic.
11. The Application is a concrete example of such documents. It contains specific details on the basis of the allegations made against Mr Al Hassan. It also contains personal details of the Suspect, as well as conclusions drawn from witness statements and [REDACTED]. The Application further contains information on events, witnesses and evidence that allegedly concern Mr Al Hassan. This type of information constitutes an integral part of the "nature" and "cause" of the charges that Mr Al Hassan is suspected of having committed.

<sup>5</sup> ICC-01/12-01/18-T-1-Red-ENG, p. 7, lines 1-4.

<sup>6</sup> See Confidential Annex A, p. 4.

<sup>7</sup> See Confidential Annex A., p. 4.

<sup>8</sup> Confidential Annex B.

<sup>9</sup> ICC-01/12-01/18-31, para. 26.

<sup>10</sup> ICC-01/12-01/18-T-1-Red-ENG, p. 7, lines 1-4.

12. The Application has only been provided to Mr Al Hassan in the French language. The Defence wishes to clarify that Mr Al Hassan has not studied French at an academic level at any point in his life and has a rudimentary knowledge of French, which is in no way sufficient for him to understand the content of the Application. Thus, the Application's assertion that Mr Al Hassan "speaks" French<sup>11</sup> should not constitute grounds for imposing this language on him and denying him the right to fully understand the Application.
13. Mr Al Hassan's very presence in detention under the custody of this Court was decided on the basis of the Application. As such, Mr Al Hassan should be provided with a copy of the Application in a language that he fully understands. To date, the only document in the case file that has been provided to Mr Al Hassan in Arabic is the Warrant of Arrest.<sup>12</sup> The provision of a 10-page arrest warrant merely describing the charges against him is insufficient for the purposes of informing him of the cause and the nature of allegations made against him.
14. In *Bemba*, the Pre-Trial Chamber found that, "if the accused cannot fully understand or speak the language used in the court proceedings, for the purpose of participating effectively in his criminal trial, he has the right to be furnished with the translation of *all those documents* which are necessary for him to understand the nature, cause and content of those charges."<sup>13</sup> The Chamber further concluded that the provision of translations "as are necessary to meet the requirement of fairness", as prescribed in Article 67(1)(f) of the Statute, includes "the Prosecutor's application for a warrant of arrest and the Chamber's decision thereon".<sup>14</sup>
15. Furthermore, Mr Al Hassan has an inherent right to adequately prepare his defence before this Court. This includes being able to provide his version of events and challenge allegations made against him.
16. The failure to promptly enable Mr Al Hassan to fully understand the content of the Application is a clear violation of his fair trial right under Article 67(1)(b) as it has

---

<sup>11</sup> ICC-01/12-01/18-1-Conf-Exp-Red2, para. 14.

<sup>12</sup> ICC-01/12-01/18-2.

<sup>13</sup> ICC-01/05-01/08-307, para. 14 (internal citations omitted).

<sup>14</sup> ICC-01/05-01/08-307, para. 16.

constrained his ability to communicate freely with his counsel, and to provide instructions to his Defence team.

17. The Defence is mindful that the Single Judge ordered the provision, in Arabic, of the Document Containing Charges (DCC) and the list of evidence submitted pursuant to Article 61(3) of the Statute and Rule 121(3) of the Rules.<sup>15</sup> Further, following a Defence request dated 24 May 2018, the Registry has agreed to provide the Arabic translation of the Pre-Trial Chamber's Decision on the Prosecution's Application.<sup>16</sup>
18. However, the Decision on the Prosecution's Application will be provided by 22 June 2018,<sup>17</sup> and the Prosecution is only required to submit the DCC and list of evidence no later than 30 days before the date of the confirmation hearing, *i.e.* at the end of August provided that the said date is not postponed.<sup>18</sup>
19. If Mr Al Hassan is required to wait until these documents are provided, he would be obligated to remain limited to a 10-page Arrest Warrant and hence prevented from fully enjoying his right to understand the basis of his detention and his right to prepare his defence.

## **V. CONFIDENTIALITY**

20. This request has been classified as confidential *ex parte* as it refers to the content of a document classified as such. Further, the request and the Confidential Annexes A and B refer to secure correspondence between the Defence and the Registry.

---

<sup>15</sup> ICC-01/12-01/18-31, para. 26.

<sup>16</sup> ICC-01/12-01/18-35-Conf-Exp-Red.

<sup>17</sup> Confidential Annex B.

<sup>18</sup> Rule 121(3) of the Rules of Procedure and Evidence.

**VI. RELIEF SOUGHT**

With the greatest respect,

21. The Defence respectfully requests the Honourable Single Judge to order the translation of the Prosecution's Application for Arrest Warrant against Mr Al Hassan into Arabic (ICC-01/12-01/18-1-Conf-Exp-Red2.). The relief sought is necessary to enable Mr Al Hassan to exercise his right to a fair trial and to fully and promptly understand in detail the nature, cause and content of the allegations made against him.



---

Yasser Hassan  
Lead Counsel for Mr. Al Hassan

Dated this 1<sup>st</sup> Day of June 2018  
At, The Hague