

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **13 June 2019**

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

**Prosecution's request for setting a procedure for the Defence's potential
admissibility challenge**

Source: Office of the Prosecutor

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

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Introduction

1. In its Observations on the confirmation of charges hearing,¹ the Defence expressed its intention to challenge the admissibility of the case pursuant to articles 17(1)(d) and 19 of the Rome Statute and requested that “[a]ny Prosecution response on the Defence’s limited admissibility challenge should be done orally during the confirmation hearing.”²
2. This request to limit the Prosecution’s potential submissions on the admissibility challenge to oral submissions alone should be rejected. It disregards rule 58 (3) of the Rules of Procedure and Evidence (“Rules”), which expressly allows the Prosecution to submit written observations to a request or application raising a challenge to the admissibility of a case.
3. The Defence has not indicated the time by which it would file its intended challenge of the admissibility of the case. It stated however that such a challenge will be included in its written submissions pursuant to rule 121(9) of the Rules³, which can be filed three days before the confirmation hearing.
4. If the intention of the Defence is to file its admissibility challenge three days before the hearing, this will effectively deprive the Prosecution from any meaningful opportunity to respond before or at the confirmation hearing.
5. For this reason, the Prosecution requests the Chamber to set a procedure for the potential admissibility challenge in accordance with rule 58 of the Rules and in light of the date of the confirmation hearing currently set for 8 July 2019, in order to give the Prosecution a reasonable opportunity to file its submissions.

¹ ICC-01/12-01/18-365.

² ICC-01/12-01/18-365, para. 3.

³ ICC-01/12-01/18-365, para. 2.

6. In this respect, should the Chamber wish the Prosecution to respond before the confirmation hearing, the Prosecution requests that the Defence be instructed to file its admissibility challenge by 21 June 2019. Alternatively, the Prosecution should be allowed to file its submissions within a reasonable period of time after the confirmation hearing.

Background

7. On 29 May 2019, the Single Judge issued the “*Ordonnance portant sur l’organisation de l’audience de confirmation des charges*”.⁴
8. On 7 June 2019, the Defence filed its Observations on the confirmation of charges hearing”.⁵

Submissions

A. The Prosecution is entitled to respond in writing to the admissibility challenge of the case

9. The Defence’s request that any Prosecution response on the Defence’s admissibility challenge be done orally during the confirmation hearing⁶ contradicts the express terms of rule 58(3)⁷ of the Rules, which require that the Prosecution be allowed to submit written observations to the request or application raising a challenge concerning the admissibility of the case.⁸
10. As established by the jurisprudence of the Court:

⁴ ICC-01/12-01/18-357.

⁵ ICC-01/12-01/18-365.

⁶ ICC-01/12-01/18-365, para. 3.

⁷ Rule 58(3) of the Rules of Procedure and Evidence states that: “The Court shall transmit a request or application received under sub-rule 2 to the Prosecutor and to the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons, and shall allow them to submit written observations to the request or application within a period of time determined by the Chamber.”

⁸ See e.g. ICC-01/11-01/11-641, para. 7-8

“[Rule 58] requires that this request be transmitted to the Prosecutor and the person concerned, who shall be given an opportunity to make written submissions. Save for these express stipulations, the Pre-Trial Chamber enjoys broad discretion in determining how to conduct the proceedings relating to challenges to the admissibility of a case.”⁹

11. The requirement that such observations must be done in writing is consistent with the significant nature of an admissibility challenge and its potential implication on a case.
12. This way, the Prosecution would be able to properly and meaningfully respond to assist the Pre-Trial Chamber in deciding on this important matter.

B. The Prosecution's request for the Chamber to set a procedure for the Defence's potential admissibility challenge

13. The Defence's intention to file its admissibility challenge together with its rule 121(9) submissions—which can be filed three days before the confirmation hearing—raises serious concerns on the potential impact that this may have on the Prosecution ability to respond in a meaningful manner, should the Prosecution be required to respond before or during the confirmation hearing.
14. In order to avoid any undue prejudice to the Prosecution responding to the admissibility challenge of the Defence, the Prosecution respectfully requests that the Chamber instruct the Defence to file its admissibility challenge by 21 June 2019 to enable the Prosecution to file its written submissions prior to the confirmation hearing. Alternatively, the Prosecution should be allowed to file its submissions within a reasonable period of time after the confirmation hearing.

⁹ ICC-01/09-01/11-307, para. 89; ICC-01/09-02/11-274, para. 87. Similarly see also ICC-01/11-01/11-159, para. 6.

Conclusion

15. For the foregoing reasons, the Prosecution emphasizes its right, under rule 58(3) of the Rules, to respond in writing to the admissibility challenge. The Defence's request to limit the Prosecution submissions on admissibility to oral submissions alone should be dismissed.

16. Further, the Prosecution requests that the Chamber instruct the Defence to file its admissibility challenge by 21 June 2019 in order to give the Prosecution a reasonable opportunity to file its written submissions prior to the confirmation hearing. Alternatively, the Prosecution should be allowed to file its submissions within a reasonable period of time after the confirmation hearing.



Fatou Bensouda, Prosecutor

Dated this 13th day of June 2019
At The Hague, the Netherlands