

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 3 July 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***

Confidential

Order instructing the Registry to lift certain measures imposed on Mr Al Hassan

Order to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:**The Office of the Prosecutor**

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The Presidency

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 Articles 64(2) and 67 of the Rome Statute (the ‘Statute’), issues the following ‘Order instructing the Registry to lift certain measures imposed on Mr Al Hassan’.

1. On 30 June 2020, the Single Judge held a status conference with the parties and participants where she heard submissions, *inter alia*, on physical visits to Mr Al Hassan by the Defence team and the possibility of Mr Al Hassan being physically present during the commencement of trial.¹
2. During the status conference, the Registry advised the Single Judge that in extending the existence of the current measures, the Presidency had instructed the Registry to find solutions to facilitate personal visits. The Registry informed it had requested that time be allotted for the preparation of a protocol to enable personal visits and, that the Presidency had granted such a request until 13 July 2020.²
3. As regards the physical presence of the accused in the courtroom, while the Registry assured the Single Judge that it is working on the matter, it also alluded to the fact that Mr Al Hassan would be asked to quarantine for 14 days after returning to the Detention Centre, if he were to be allowed to physically attend the hearings.³
4. The Single Judge, noting *inter alia* the stage of the proceedings, stressed that the case at hand is different from other proceedings that are pending before the Court, and urged the Registry to consider allowing physical meetings between Mr Al Hassan and his defence team. At the same time, the Single Judge informed that the Chamber would consult with the Presidency.⁴
5. Following the status conference, the Chamber consulted with the Presidency, in relation the aforementioned matters.

¹ ICC-01/12-01/18-T-015-CONF-ENG, p. 34 *et seq.*

² ICC-01/12-01/18-T-015-CONF-ENG, p. 35 line 19 – p. 36 line 8.

³ ICC-01/12-01/18-T-015-CONF-ENG, p. 36 lines 10-17. *See also* ICC-01/12-01/18-891-Conf-Exp, para. 12.

⁴ ICC-01/12-01/18-T-015-CONF-ENG, p. 43 lines 13-19.

6. The Presidency indicated that its approval of temporary suspensions to the Regulations of the Court and the Regulations of the Registry put in place by the Registrar pursuant to regulation 96(2) of the Regulations of the Court is intended to impact only the general entitlement of detained persons to make requests under the suspended regulations. The Presidency clarified that, hence, Chambers retain the power to issue orders or instructions that are necessary for ensuring that the right to a fair hearing is respected. In this context, the Presidency notes that section 4.3 of Presidential Directive ICC/PRES/D/G/2020/001 states that '[t]his Presidential Directive and its annex do not impede the power of a Chamber of the Court to regulate judicial proceedings. Any issue concerning the application of this Presidential Directive and its annex in connection with judicial proceedings shall be resolved by instruction from the Chamber in question'.⁵
7. The Chamber notes that due to the exceptional circumstances created by the COVID-19 pandemic, and the need for the Court to exercise its duty of care towards the detainees in its custody in these circumstances, measures including the temporary restriction on communications have been imposed at the Detention Centre. The Chamber furthermore is fully aware of, and respects, the Registry's obligation to protect the health and safety of detainees pursuant to Regulation 103 of the Regulations of the Court (the 'Regulations'). Hence, the Chamber strongly agrees with a recent decision of Trial Chamber V that similarly concluded that in principle, Chambers are to refrain from overriding the measures decided by the Registry and the Presidency.⁶
8. Nonetheless, it is ultimately the Chamber's responsibility under Article 64(2) of the Statute to ensure that the proceedings are conducted in a fair and expeditious manner with full respect for the rights of the accused. Regarding the case at hand, the Chamber notes the key fact that trial is due to commence soon. Furthermore, and with respect to physical visits by the Defence team, the

⁵ Policy concerning the physical reopening of the Court's Buildings and the related terms of access and use in connection with the COVID-19 Pandemic, 5 June 2020, ICC/PRES/D/G/2020/001.

⁶ See ICC-01/14-01/18-575-Conf, para. 24.

Registry has indicated that it expects this will in any case be available for all detainees shortly after 13 July 2020.

9. Having had regard to the aforementioned factors, the Chamber instructs the Registry to allow, on an exceptional basis, the Defence to meet physically with Mr Al Hassan as soon as possible, specifically no later than 8 July 2020. The Chamber leaves it to the Registry to arrange such visits in a manner that is respectful to the relevant safety regulations in place, including those of the Host-State, in order to ensure the safety of all persons involved. Furthermore, the Chamber clarifies that the present Order does not in any way expand the scope of privileged communications.⁷
10. Turning to the issue of Mr Al Hassan's presence in the courtroom during the upcoming trial hearings, the Chamber stresses again that, while Mr Al Hassan has waived participation for the preparatory hearings, participation in the trial proceedings is a significantly different matter.⁸
11. While noting that the present matter is already under consideration, the Chamber encourages the Registry to take all necessary steps to ensure that Mr Al Hassan's physical presence can be guaranteed for the start of the trial which is currently scheduled for 14 July 2020. In this regard, while fully respecting the Registry's mandate under Regulation 103 of the Regulations, the Chamber reiterates the need for the requirement of a 14-day quarantine to be reconsidered as it will present significant obstacles to the hearing.
12. In preparation for the trial commencement the Registry is instructed to report back to the Chamber by 10 July 2020 on the results of its efforts regarding the physical appearance of Mr Al Hassan on the trial commencement date and for the hearings scheduled to commence in late August.

⁷ See Decision on the scope of privileged visits and phone calls to Mr Al Hassan by medical experts and members of the Defence team, 22 January 2020, ICC-01/12-01/18-560.

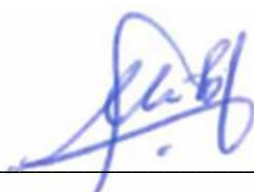
⁸ ICC-01/12-01/18-T-015-CONF-ENG, p. 44 lines 5-9.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

INSTRUCTS the Registry to allow, on an exceptional basis, the Defence to physically meet with Mr Al Hassan, as soon as possible, and in any event no later than 8 July 2020; and

INSTRUCTS the Registry to take all necessary steps to ensure that Mr Al Hassan will be physically present in the courtroom during the trial, and report back to the Chamber on the steps taken by 10 July 2020.

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 Friday, 3 July 2020

At The Hague, The Netherlands