

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: French

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

Date: 21 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 DOCUMENT**

**Decision on the Schedule for Submissions**

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

**Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

**Counsel for the Defence**

Ms Melinda Taylor

Ms Marie-Hélène Proulx

**Legal Representatives of Victims**

Mr Seydou Doumbia

Mr Mayombo Kassongo

Mr Fidel Luvengika Nsita

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**States' Representatives**

**Office of Public Counsel for the  
Defence**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Relevant authorities of the Republic of  
Mali

**Judge Péter Kovács**, designated on 28 March 2018 by Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) as the Single Judge responsible for carrying out the functions of the Chamber in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Al Hassan case”),<sup>1</sup> rules as follows.

1. On 8 May 2019, the Prosecution filed the document containing the charges (“DCC”) against Mr Al Hassan.<sup>2</sup>
2. On 11 May 2019, the Prosecution filed an amended and corrected version of the DCC against Mr Al Hassan.<sup>3</sup>
3. On 29 May 2019, the Single Judge issued the “*Ordonnance portant sur l’organisation de l’audience de confirmation des charges*” (“Order on the Organization of the Confirmation Hearing”), in which it was decided, in principle, that the confirmation of charges hearing (“Confirmation Hearing”) would be held from Monday, 8 July to Friday, 12 July 2019.<sup>4</sup> The Single Judge also instructed the parties and participants to file observations on the organization of the Confirmation Hearing.<sup>5</sup>
4. On 6 June 2019, the Prosecution filed observations on the organization of the Confirmation Hearing (“Prosecution Observations”).<sup>6</sup>
5. On 7 June 2019, the Legal Representatives of Victims filed their observations in compliance with the Order on the Organization of the Confirmation Hearing (“Observations of the Legal Representatives of Victims” or “Observations of 7 June 2019”).<sup>7</sup>

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<sup>1</sup> “Decision Designating a Single Judge”, dated 28 March 2018 and reclassified as public on 31 March 2018, ICC-01/12-01/18-6-tENG.

<sup>2</sup> ICC-01/12-01/18-335-Conf.

<sup>3</sup> ICC-01/12-01/18-335-Conf-Corr.

<sup>4</sup> ICC-01/12-01/18-357, para. 18.

<sup>5</sup> “*Ordonnance portant sur l’organisation de l’Audience*”, p. 8.

<sup>6</sup> ICC-01/12-01/18-363.

<sup>7</sup> ICC-01/12-01/18-364.

6. On the same day, the Defence filed observations on the organization of the Confirmation Hearing (“Defence Observations”).<sup>8</sup> The Defence stated its intention to lodge written submissions under rule 121(9) of the Rules of Procedure and Evidence (“Rules”), amounting to 100 pages, and accordingly requested an increase of the page limit for filing the document.<sup>9</sup> The Defence further stated that it would challenge the admissibility of the case under articles 17(d) and 19 of the Rome Statute (“Statute”), and argued that any Prosecution response to the admissibility challenge would have to be done orally during the Confirmation Hearing.<sup>10</sup> In addition, the Defence contended that, under rule 121(9) of the Rules, only the Prosecution and Defence may be allowed to lodge written pre-confirmation submissions.<sup>11</sup>

7. On the same day, the Prosecution also filed the DCC in Arabic.<sup>12</sup>

8. On 11 June 2019, the Prosecution filed the Arabic version of the DCC including footnotes.<sup>13</sup>

9. On 13 June 2019, the Prosecution filed a request concerning the procedure to be followed in the event of a Defence challenge to the admissibility of the case (“Prosecution request in response to the Defence Observations” or “Prosecution Request”).<sup>14</sup> The Prosecution requested the Single Judge to reject the Defence request to limit the Prosecution submissions on any admissibility challenge to oral submissions during the Confirmation Hearing.<sup>15</sup> Furthermore, were the Chamber to consider it apposite for the Prosecution to lodge submissions on the admissibility of the case before the Confirmation Hearing, the Prosecution requested that the Single Judge instruct the Defence to file its admissibility challenge by 21 June 2019.<sup>16</sup>

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<sup>8</sup> “Defence Observations on the Confirmation of Charges Hearing”, ICC-01/12-01/18-365.

<sup>9</sup> Defence Observations, para. 2.

<sup>10</sup> Defence Observations, paras. 2-3.

<sup>11</sup> Defence Observations, para. 4.

<sup>12</sup> ICC-01/12-01/18-366.

<sup>13</sup> ICC-01/12-01/18-370.

<sup>14</sup> “Prosecution’s request for setting a procedure for the Defence’s potential admissibility challenge”, ICC-01/12-01/18-373.

<sup>15</sup> Prosecution Request, paras. 2, 16.

<sup>16</sup> Prosecution Request, paras. 6, 14, 16.

Alternatively, the Prosecution contended that it should be allowed to file its submissions within a reasonable period of time after the Confirmation Hearing.<sup>17</sup>

10. On 19 June 2019, the Legal Representatives of Victims filed a response to the Defence Observations (“Response of the Legal Representatives of Victims to the Defence Observations” or “Legal Representatives’ Response”).<sup>18</sup> The Legal Representatives of Victims reiterated that, as previously stated in their observations of 7 June 2019,<sup>19</sup> they would lodge written submissions before the Confirmation Hearing.<sup>20</sup> In addition, the Legal Representatives of Victims requested that the Chamber allow them a reasonable time limit to respond in writing to any prospective admissibility challenge raised by the Defence.<sup>21</sup>

11. The Single Judge refers to articles 17(1)(d), 19 and 61 of the Statute, rules 58, 59(1), 121 and 122(2) of the Rules, and regulation 38(3)(g) of the Regulations of the Court.

12. Considering the various documents filed by the parties and participants on this aspect of the procedure, the Single Judge finds it appropriate, at this stage, to examine the procedural issues raised in the Defence Observations, the Prosecution Observations and the Legal Representative’s Response regarding the lodging of submissions before the Confirmation Hearing and any Defence challenge to the admissibility of the case.

13. First, the Single Judge notes that the Defence challenges the possibility for victims to make written pre-confirmation submissions.<sup>22</sup> The Single Judge notes, however, that in the “Decision on Principles Applicable to Victims’ Applications for Participation, to Legal Representation of Victims, and to the Manner of Victim Participation in the Proceedings”,<sup>23</sup> he had authorized the victims, via their legal

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<sup>17</sup> Prosecution Request, paras. 6, 14, 16.

<sup>18</sup> “Réponse des Représentants légaux au document de la Défense intitulé ‘Defence Observations on the Confirmation of Charges Hearing’ (ICC-01/12-01/18-365)”, ICC-01/12-01/18-380.

<sup>19</sup> Observations of the Legal Representatives of Victims, para. 9.

<sup>20</sup> Legal Representatives’ Response to the Defence’s Observations, para. 8.

<sup>21</sup> Legal Representatives’ Response to the Defence’s Observations, para. 14.

<sup>22</sup> Defence Observations, para. 3.

<sup>23</sup> ICC-01/12-01/18-289-Red-tENG-Corr, 20 March 2019 (“Decision of 20 March 2019”).

representatives, to file written submissions on points of fact and law in accordance with rule 121(9) of the Rules.<sup>24</sup> It follows that the Single Judge considers that the Defence contention that only the Prosecution and the Defence should be allowed to lodge written submissions before the Confirmation Hearing<sup>25</sup> must be rejected. The Single Judge accordingly instructs the Legal Representatives of Victims to lodge written submissions, pursuant to rule 121(9) of the Rules, not exceeding 30 pages.

14. Further, the Single Judge finds that, owing to the substantial volume of the DCC presented by the Prosecution and the significant number of issues to be addressed at the Confirmation Hearing, it is appropriate to grant the Defence request<sup>26</sup> for an increase in the page limit for lodging the written submissions to 100 pages.

15. Regarding a potential challenge by the Defence to the admissibility of the case, the Single Judge notes that under article 19(4) of the Statute, “[a challenge to the admissibility of the case] shall take place prior to or at the commencement of the trial.” The Single Judge also cites article 19(6) of the Statute which states that “[p]rior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber.” Moreover, rule 122(2) of the Rules states that “[i]f a question or challenge concerning jurisdiction or admissibility arises, rule 58 applies.”

16. Mindful of the above, the Single Judge points out that, under the Statute, only the Defence is bound to lodge its challenge to the admissibility of a case before the trial. The Single Judge accordingly rejects the Prosecution request that he instruct the Defence to file its admissibility challenge by 21 June 2019.<sup>27</sup>

17. Regarding the applicable procedure, the Single Judge notes that rule 58(2) of the Rules states that “[w]hen a Chamber receives a request or application raising a challenge or question concerning [...] the admissibility of a case [...], it shall decide

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<sup>24</sup> Decision of 20 March 2019, para. 48.

<sup>25</sup> Defence Observations, para. 4.

<sup>26</sup> Defence Observations, para. 2.

<sup>27</sup> Prosecution Request, paras. 6, 14, 16.

on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings.”

18. The Single Judge also refers to article 19(3) of the Statute, which states that

[t]he Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

19. Additionally, rule 59(1) of the Rules provides that

[f]or the purpose of article 19, paragraph 3, the Registrar shall inform the following of any question or challenge of jurisdiction or admissibility which has arisen pursuant to article 19, paragraphs 1, 2 and 3:

- (a) Those who have referred a situation pursuant to article 13;
- (b) The victims who have already communicated with the Court in relation to that case or their legal representatives.

20. The Single Judge considers that the parties and participants mentioned in those provisions should be allowed to lodge written submissions on any challenge to the admissibility of a case before the Court. The Single Judge accordingly informs the Prosecution, the Government of the Republic of Mali and the Legal Representatives of Victims that he will issue an order directing them to lodge their written submissions on the admissibility of the case under article 17(1)(d) of the Statute once the Defence has made its submissions, if any, on the matter. The Single Judge therefore rejects the Defence request to limit any response to its application on the admissibility of the case to oral submissions at the Confirmation Hearing.<sup>28</sup>

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<sup>28</sup> Defence Observations, para. 4.

**FOR THESE REASONS, the Single Judge**

**DIRECTS** the Legal Representatives of Victims to lodge written submissions, pursuant to rule 121(9) of the Rules, not exceeding 30 pages;

**GRANTS** the Defence request to increase the page limit for lodging written submissions pursuant to rule 121(9) to 100 pages;

**REJECTS** the Prosecution request that the Single Judge instruct the Defence to file its observations on the admissibility of the case by 21 June 2019;

**REJECTS** the Defence request that responses to its prospective challenge of the admissibility of the case under article 17(1)(d) be restricted to oral submissions during the Confirmation Hearing; and

**RULES** that the Prosecution, the Government of the Republic of Mali and the Legal Representatives of Victims will be directed to lodge written submissions on the admissibility of the case if and when the Defence files an application on the matter.

Done in both English and French, the French version being authoritative.

[signed]

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**Judge Péter Kovács**

**Single Judge**

Dated this 21 June 2019

At The Hague, Netherlands