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No.: ICC-01/12-01/18
Date: 21 February 2020

PRE-TRIAL CHAMBER I

Before:

**Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adélaïde Sophie Alapini-Gansou**

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

**Decision on the Applicable Procedure following the Prosecutor's Filing of Her
Request for Corrections and Amendments of the Decision to Confirm the Charges**

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
Ms Sarah Bafadhel

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

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section Other**

Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) hereby issues the present decision:

I. Procedural history

1. On 27 March 2018, pursuant to article 58 of the Rome Statute (“Statute”), the Chamber issued a warrant of arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”).¹

2. On 31 March 2018, Mr Al Hassan was surrendered to the Court and he is currently in custody at its detention centre in The Hague.²

3. On 4 April 2018, the first appearance hearing was held; Mr Al Hassan appeared before the Single Judge in the presence of his counsel and the Prosecutor, and the Single Judge set the confirmation hearing to start on Monday 24 September 2018.³

4. On 16 May 2018, 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* since 28 March 2018 (“Single Judge” and “Al Hassan case”, respectively)⁴ issued the “Decision on the Evidence Disclosure Protocol and Other Related Matters” (“Decision on Disclosure Protocol”).⁵

5. On 20 July 2018, the Single Judge postponed the date of the confirmation hearing (“Hearing”) to 6 May 2019.⁶ On 12 February 2019, the Prosecutor filed her

¹ “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, dated 27 March 2018 and reclassified as public on 31 March 2018, ICC-01/12-01/18-2-tENG.

² ICC-01/12-01/18-11-US-Exp.

³ Transcript of the first appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-Red-FRA.

⁴ “Decision Designating a Single Judge”, dated 28 March 2018 and reclassified as public on 31 March 2018, ICC-01/12-01/18-6-tENG.

⁵ “Decision on the Evidence Disclosure Protocol and Other Related Matters”, ICC-01/12-01/18-31-tENG, and one annex.

⁶ “Decision Postponing the Date of the Confirmation Hearing”, ICC-01/12-01/18-94-Conf-Exp-tENG. That same day, the Single Judge issued a public redacted version of his decision, ICC-01/12-01/18-94-Red-tENG.

observations and requested a further postponement of the Hearing.⁷ On 18 April 2019, the Single Judge issued a decision rescheduling the Hearing for Monday, 8 July 2019.⁸

6. On 8 May 2019, the Prosecutor filed the document containing a detailed description of the charges against Mr Al Hassan.⁹ On 11 May 2019, the Prosecutor filed an amended and corrected version thereof (“DCC”).¹⁰ On 7 June 2019, the Prosecutor filed the DCC in Arabic.¹¹ On 11 June 2019, the Prosecutor filed the Arabic version of the DCC with footnotes.¹²

7. On 4 July 2019, the Defence for Mr Al Hassan (“Defence”) lodged written submissions pursuant to rule 121(9) of the Rules of Procedure and Evidence (“Rules”).¹³ That same day, the Legal Representatives of Victims filed their observations under rule 121(9) of the Rules.¹⁴

8. The Hearing was held on 8, 9, 10, 11 and 17 July 2019 in the presence of Mr Al Hassan, the Defence, the Prosecutor and the Legal Representatives of Victims.¹⁵

⁷ “Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demande d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve”, ICC-01/12-01/18-243-Secret-Exp. The Prosecutor filed a secret, *ex parte* redacted version of her application, which was made available to the Defence on 14 February 2019 (ICC-01/12-01/18-243-Secret-Exp-Red), and a public redacted version on 15 February 2019 (ICC-01/12-01/18-243-Red2).

⁸ “Decision Rescheduling the Date of Filing of the Document Containing the Charges and the Commencement of the Confirmation Hearing”, ICC-01/12-01/18-313-tENG, paras. 18-20.

⁹ ICC-01/12-01/18-335-Conf.

¹⁰ ICC-01/12-01/18-335-Conf-Corr. The Prosecutor filed a public redacted version of the document on 2 July 2019 (ICC-01/12-01/18-335-Corr-Red).

¹¹ ICC-01/12-01/18-366.

¹² ICC-01/12-01/18-370.

¹³ “Submissions for the confirmation of charges”, ICC-01/12-01/18-394-Conf (“Defence Written Submissions”). The Defence filed a public redacted version of the document on 9 July 2019, ICC-01/12-01/18-394-Red.

¹⁴ “Observations des Représentants légaux des victimes en vertu de la règle 121-9 du Règlement de procédure et de preuve”, ICC-01/12-01/18-395 (“Written Observations of the Legal Representatives of Victims”).

¹⁵ “Ordonnance portant calendrier du 24 juin 2019” and “Ordonnance modifiant l’Ordonnance portant calendrier de l’audience de confirmation des charges”, 27 June 2019, ICC-01/12-01/18-390. Transcript of the Hearing of 8 July 2019, ICC-01/12-01/18-T-003-Red-FRA; Transcript of the Hearing of 9 July 2019, ICC-01/12-01/18-T-004-Red-FRA; Transcript of the Hearing of 10 July 2019, ICC-01/12-01/18-T-005-

9. On 30 September 2019, the Chamber issued the “*Décision relative à la confirmation des charges portées contre M. Al Hassan*” (“Confirmation Decision”).¹⁶
10. On 18 November 2019, the Chamber rejected the Defence request for leave to appeal the Confirmation Decision and transmitted the record of the proceedings to the Presidency.¹⁷
11. On 21 November 2019, the Presidency of the Court constituted Trial Chamber X and assigned it the present case.¹⁸
12. On 6 January 2020, Trial Chamber X set the commencement date of the trial in the present case to 14 July 2020.¹⁹
13. On 31 January 2020, the Prosecutor filed a request for corrections and amendments to the Confirmation Decision (“Request” or “Prosecutor’s Request”).²⁰
14. On 5 February 2020, the Defence filed a motion for the Prosecutor’s Request and the new evidence presented by the Prosecutor also to be submitted in Arabic and

Red-FRA; Transcript of the Hearing of 11 July 2019, ICC-01/12-01/18-T-006-Red-FRA; Transcript of the Hearing of 17 July 2019, ICC-01/12-01/18-T-007-Red-FRA.

¹⁶ “*Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*”, 30 September 2019, ICC-01/12-01/18-461-Conf.

¹⁷ “*Décision relative à la requête de la défense aux fins d’autorisation d’interjeter appel de la Décision relative à la confirmation des charges et transmission du dossier à la présidence en vertu de la règle 129 du Règlement de procédure et de preuve*”, ICC-01/12-01/18-498-Red2. See also “Defence request for leave to appeal the Pre-Trial Chamber I’s ‘*Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*’ (ICC-01/12-01/18-461-Conf)”, 7 October 2019, ICC-01/12-01/18-463-Conf (“Request”). See also “Prosecution’s Response to ‘Defence request for leave to appeal the Pre-Trial Chamber I’s ‘*Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*’ (ICC-01/12-01/18-463-Conf)”, 11 October 2019, ICC-01/12-01/18-470-Conf; Response to the Defence document entitled “Defence request for leave to appeal the Pre-Trial Chamber I’s ‘*Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*’ (ICC-01/12-01/18-461-Conf)”, ICC-01/12-01/18-463-Conf, 17 October 2019, ICC-01/12-01/18-470-Conf.

¹⁸ Trial Chamber X, “Decision constituting Trial Chamber X and referring to it the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*”, ICC-01/12-01/18-501.

¹⁹ “Decision Setting the Commencement Date of the Trial”, 6 January 2020, ICC-01/12-01/18-548.

²⁰ “Prosecution Request for corrections and amendments concerning the Confirmation Decision”, dated 30 January and registered on 31 January 2020, ICC-01/12-01/18-568-Conf, and four annexes, ICC-01/12-01/18-568-Conf-AnxA, ICC-01/12-01/18-568-Conf-AnxB, ICC-01/12-01/18-568-Conf-AnxC and ICC-01/12-01/18-568-Conf-AnxD. On 17 February 2020, the Prosecutor filed a corrected version of Annex B, ICC-01/12-01/18-568-Conf-AnxB-Corr and ICC-01/12-01/18-568-Conf-AnxB-Corr-Anx.

for time limits to be set for response to the Prosecutor's Request ("Defence Motion").²¹

15. On 7 February 2020, the Chamber made a ruling, in part by email, on the Defence Motion, granting the Defence request for suspension of the time limits for submitting its response to the Prosecutor's Request, and specifying that it would set the time limits for response by the Defence and the Legal Representatives of Victims to the Prosecutor's Request in a subsequent decision.²²

16. On 12 February 2020, the Prosecutor informed the Chamber, the Defence and the Legal Representatives of Victims by email that the Arabic translations of the statements of Witnesses P-0636, P-0639, [REDACTED] and P-0524 would be filed in the record on 14 February 2020, and that the Arabic translation of the Request, to be undertaken by the Registry, should be filed on 17 February 2020.²³

17. On 13 February 2020, the Legal Representatives of Victims filed their "*Observations relatives à la requête du Bureau du Procureur intitulée 'Prosecution Request for corrections and amendments concerning the Confirmation Decision (ICC-01/12-01/18-568-Conf)'*" ("Observations of the Legal Representatives of Victims").²⁴

18. On 14 February 2020, the Prosecutor filed a response to the Defence Motion.²⁵

19. On 17 February 2020, the Arabic translation of the Prosecutor's Request was filed.²⁶

20. On 18 February 2020, the Defence filed a request for the Defence Motion to be reclassified as a public document.²⁷

²¹ "Defence motion for clarification relating to the time-limits applicable to filing ICC-01/12-01/18-568-Conf", ICC-01/12-01/18-580-Conf, and three annexes, ICC-01/12-01/18-580-Conf-Exp-AnxA, ICC-01/12-01/18-580-Conf-Exp-AnxB and ICC-01/12-01/18-580-Conf-Exp-AnxC. A public redacted version was filed on 20 February 2020, ICC-01/12-01/18-580-Red.

²² Email from the Chamber on 7 February 2020 at 16.59.

²³ Email to the Chamber on 12 February 2020 at 16.03.

²⁴ ICC-01/12-01/18-593-Conf.

²⁵ "Prosecution Response to Defence motion for clarification relating to time-limits (ICC-01/12-01/18-580-Conf)", ICC-01/12-01/18-594-Conf ("Prosecutor's Response").

²⁶ ICC-01/12-01/18-568-Conf-tARB.

21. On 19 February 2020, the Chamber sought, by email, confirmation from the Prosecutor as to whether the Arabic translations of the statements of Witnesses P-0636, P-0639, [REDACTED] and P-0524 had been notified to the Defence.²⁸ The Prosecutor confirmed by email that day that the Arabic translations of those documents had been notified to the Defence on 17 February 2020.²⁹

22. That same day, the Appeals Chamber, unanimously, delivered a judgment rejecting Mr Al Hassan's appeal against the "Decision on the Admissibility Challenge raised by the Defence for Insufficient Gravity of the Case"³⁰ and thus upheld the Chamber's decision, determining that the case against Mr Al Hassan was of sufficient gravity to justify further action by the Court.³¹

23. On 20 February 2020, the Chamber rejected by email the Defence request to reclassify the Defence Motion as a public document and directed it to file a public redacted version thereof.³²

II. Applicable law

24. The Single Judge has regard to articles 61(9), 67(1) and 74(2) of the Statute, rules 76(3), 121 and 128 of the Rules and regulation 34 of the Regulations of the Court.

²⁷ "Request for reclassification of ICC-01/12-01/18-580-Conf", 18 February 2020, ICC-01/12-01/18-600.

²⁸ Email from the Chamber on 19 February 2020 at 10.22.

²⁹ Email to the Chamber on 19 February 2020 at 10.29.

³⁰ "Decision on the Admissibility Challenge raised by the Defence for Insufficient Gravity of the Case", 27 September 2019, ICC-01/12-01/18-459-tENG.

³¹ "Judgment on the appeal of Mr Al Hassan against the decision of Pre-Trial Chamber I entitled 'Décision relative à l'exception d'irrecevabilité pour insuffisance de gravité de l'affaire soulevée par la défense'", 19 February 2020, ICC-01/12-01/18-601-Red.

³² Email from the Chamber on 20 February 2020 at 12.39.

III. Analysis

A. Submissions of the parties

25. The Prosecutor prays the Chamber to make three types of corrections or amendments to the Confirmation Decision, *viz.*: (i) “correct/amend”³³ some charges confirmed in the Confirmation Decision because of errors made by the Prosecutor (“Part I” of the Request);³⁴ (ii) “reconsider and correct/amend”³⁵ some existing charges on the basis of information already provided in the DCC (“Part II” of the Request);³⁶ and (iii) “to amend”³⁷ some charges to incorporate new facts on the basis, in part, of new evidence (“Part III” of the Request).³⁸

26. In Part I of her Request, the Prosecutor explains that the necessary corrections to the Confirmation Decision stem from errors on her part in the DCC and in her analysis of the incriminating evidence at the time the DCC was filed.³⁹

27. First, the Prosecutor requests the correction of a victim’s name [REDACTED] on account of an error in the English translation of a piece of evidence – a translation to which the Prosecutor referred in her DCC and on which the Chamber in turn relied in its Confirmation Decision.⁴⁰ Second, the Prosecutor refers to certain victims⁴¹ in respect of whom, according to a finding made by the Chamber, the Islamic Court had pronounced a judgment, leading the Chamber to confirm, on the basis of the mode of responsibility at article 25(3)(d) of the Statute, the charges against Mr Al Hassan under count 6 (passing of sentences without previous judgment). The

³³ Request, para. 1 (“the Prosecution requests Pre-Trial Chamber I [...] (a) to correct/amend the charges confirmed in the Confirmation Decision due to the Prosecution’s oversight”).

³⁴ Request, paras. 5-14.

³⁵ Request, para. 1 (“the Prosecution requests Pre-Trial Chamber I [...] (b) to reconsider and correct/amend the existing charges confirmed in the Confirmation Decision, based on information provided in the Document Containing the Charges”).

³⁶ Request, paras. 15-23.

³⁷ Request, para. 1 (“the Prosecution requests Pre-Trial Chamber I [...] (c) to amend the charges to include additional factual allegations [...] under [...] existing charges”).

³⁸ Request, paras. 24-77.

³⁹ Request, para. 5.

⁴⁰ Request, paras. 6-10.

⁴¹ [REDACTED]. See [REDACTED].

Prosecutor notes that, in the Confirmation Decision, upon finding with respect to one victim that there was not only a judgment of the Islamic Court but also a police report signed by Mr Al Hassan, the Chamber confirmed the charges under this count, on the basis of the modes of responsibility at article 25(3)(d) and (c) of the Statute.⁴² The Prosecutor now says that, after the DCC was filed, she realized that the evidence disclosed contained Islamic Police reports on other victims with respect to whom the Chamber has confirmed solely the mode of responsibility pursuant to article 25(3)(d) of Statute. Accordingly, she requests the Chamber to confirm the charges against Mr Al Hassan with respect to all those victims also on the basis of the mode of responsibility at article 25(3)(c) of the Statute.⁴³ Third and lastly, the Prosecutor asks the Chamber to correct the date stated in the Confirmation Decision for the arrest of the victim [REDACTED] by the Islamic Police and to do so with reference to evidence disclosed before the DCC was filed, i.e. Mr Al Hassan's own statements.⁴⁴

28. In Part II of her Request, the Prosecutor states that the Chamber committed errors of fact in its Confirmation Decision – “apparent errors” in her view – and she moves the Chamber to reconsider its findings so that the necessary corrections can be made.⁴⁵ The Prosecutor points out specifically that the Chamber overlooked information in the DCC and, had it taken that information into account, it would

⁴² Request, para. 10.

⁴³ Request, paras. 10-12.

⁴⁴ Request, para. 14 and footnote 45.

⁴⁵ Request, para. 15 and footnote 47, referring to Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the defence request to reconsider the ‘Order on numbering of evidence’ of 12 May 2010”, 30 March 2011, ICC-01/04-01/06-2705; Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006” 14 December 2006, ICC-01/04-01/06-772; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, “Decision on the Defence request for reconsideration and clarification”, 27 February 2015, ICC-01/04-02/06-483, para. 13; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Public Redacted Version of the Decision on the ‘Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo’ of 2 September 2011”, 6 September 2011, ICC-01/05-01/08-1691-Red.

have reached a different conclusion.⁴⁶ First, the Prosecutor refers to the victim [REDACTED], with respect to whom the Chamber confirmed the charges against Mr Al Hassan under counts 1 to 6 and on the basis of the modes of responsibility at article 25(3)(c) and (d) of the Statute but not, as sought by the Prosecutor in her DCC, on the basis of the mode of responsibility at article 25(3)(a) of the Statute.⁴⁷ The Prosecutor now adverts to evidence, such as extracts of Mr Al Hassan's statements cited in her DCC, to argue that the Chamber should also have confirmed the charges on the basis of that mode of responsibility of direct perpetration pursuant to article 25(3)(a) of the Statute.⁴⁸ Second, with regard to the case of [REDACTED] and the case of [REDACTED], the Prosecutor asserts that the Chamber should also confirm the charges on the basis of the mode of responsibility at article 25(3)(c) of the Statute in addition to the one at article 25(3)(d) of the Statute. In support, the Prosecutor cites two Islamic Police reports which she alleges were signed by Mr Al Hassan and which correspond to the Islamic Police judgments on which the Chamber relied to confirm the two cases.⁴⁹ The Prosecutor also points out that in the case of [REDACTED] a nexus was established, in her DCC and in the Confirmation Decision, between the Islamic Court judgment and the corresponding Islamic Police report signed by Mr Al Hassan.⁵⁰

29. In Part III of her Request the Prosecutor explains that, since the Hearing, she has interviewed Witnesses P-0524, P-0636, P-0639 and [REDACTED], who are themselves victims or who have provided information concerning new victims.⁵¹ The Prosecutor gives copies of the statements at Annexes A⁵² and B⁵³ to her Request ("New Evidence"). From that New Evidence and evidence disclosed before the DCC

⁴⁶ Request, para. 15.

⁴⁷ Request, para. 16.

⁴⁸ Request, paras. 17-19.

⁴⁹ Request, paras. 20-21.

⁵⁰ Request, para. 20, footnote 56.

⁵¹ Request, para. 24.

⁵² ICC-01/12-01/18-568-Conf-AnxA.

⁵³ ICC-01/12-01/18-568-Conf-AnxB.

was filed (such as Islamic Police reports or Islamic Court judgments), the Prosecutor has identified new victims (P-1134, P-1705, P-1706, P-0636, P-1674, P-1728, P-1707, P-1710, P-1711, P-1712, P-1721, P-1708, P-1717, P-0641, P-0609, P-0957 and [REDACTED]).⁵⁴ She moves the Chamber to make new factual findings about them in connection with the charges already confirmed in the Confirmation Decision.⁵⁵

30. The Prosecutor states that all of these amendments are suggested at this stage of the proceedings in the interests of efficiency and clarity and do not constitute the introduction of additional charges or the substitution of charges already confirmed for more serious charges.⁵⁶ They are, therefore, without prejudice to the Defence and do not require a further confirmation hearing.⁵⁷

31. The Defence underscores in the Defence Motion that the Prosecutor's Request seems to be a request for correction, a request for reconsideration, a request for leave to appeal and a request for amendment all rolled into one.⁵⁸ This confusion surrounding the nature of the Prosecutor's Request is prejudicial and creates uncertainty regarding the standards, the time limits for response and the page limits that apply.⁵⁹ The Defence contends that the legal basis argued by the Prosecutor to justify her Request suggests that the Request must be taken as a description of the charges in accordance with rule 121(3) of the Rules, that is, as a document containing the charges.⁶⁰ The Defence therefore requests the Chamber to clarify the applicable procedural rules.⁶¹

32. The Defence also submits that the Prosecutor's Request involves significant amendments to the charges beyond mere corrections, as the Prosecutor has put

⁵⁴ Request, paras. 24-77.

⁵⁵ Request, paras. 26, 30-77.

⁵⁶ Request, para. 2.

⁵⁷ Request, para. 2.

⁵⁸ Defence Motion, para. 2.

⁵⁹ Defence Motion, para. 3.

⁶⁰ Defence Motion, para. 2: "the legal basis referred to in the Request suggests that it is a 'description of the charges by the Prosecutor under rule 121, sub-rule 3', namely, a Document Containing the Charges".

⁶¹ Defence Motion, paras. 2-3.

forward 17 new “cases” or “incidents” that she is seeking to add to the charges brought against Mr Al Hassan.⁶² Furthermore, the Prosecutor’s Request invokes regulation 38(3)(g) of the Regulations of the Court, which applies only to a description of the charges by the Prosecutor, to justify the page count of her Request.⁶³ The Chamber must therefore ensure that the rights conferred upon Mr Al Hassan by article 67(1) of the Statute are respected.⁶⁴

33. The Defence explains that, at the time of filing the Defence Motion, an Arabic version of the Prosecutor’s Request and of the evidence in support had yet to be notified to the Defence, whereas Mr Al Hassan has an absolute right to be informed of the charges against him in a language that he fully understands and speaks, in this case Arabic.⁶⁵ It underscores that, as at 4 February 2020, no request for an official translation of the Prosecutor’s Request had been made to the Registry’s Language Services Section even though the Prosecutor had been planning to submit a request for amendment of the charges since November 2019.⁶⁶ Accordingly, the Defence asks the Chamber to order the Office of the Prosecutor to provide an Arabic version of the Prosecutor’s Request and of all the supporting evidence.⁶⁷

34. The Defence moreover explains that it needs adequate time to analyse the new charges and the evidence submitted in support and, at the same time, to prepare for the commencement of the trial set for 14 July 2020.⁶⁸ It requests the 30 days provided for in rule 121(3) of the Rules to respond to the Prosecutor’s Request.⁶⁹

35. Lastly, the Defence argues that, under article 61 of the Statute and rule 121 of the Rules and in line with the practice adopted by the Single Judge at the confirmation stage, the time limits for responding to the Prosecutor’s Request should

⁶² Defence Motion, paras. 7-8, 12, 14, 16.

⁶³ Defence Motion, para. 12.

⁶⁴ Defence Motion, para. 7.

⁶⁵ Defence Motion, paras 9-15, 17.

⁶⁶ Defence Motion, paras. 10, 18.

⁶⁷ Defence Motion, paras. 9-15, 17-18.

⁶⁸ Defence Motion, paras. 8, 14, 16.

⁶⁹ Defence Motion, paras. 8, 14-16.

start to run only as of the filing of the Arabic translation of the Request and the Arabic translation of the supporting evidence.⁷⁰

36. The Defence therefore requests the Chamber to: (i) order the Prosecutor to prepare and file an Arabic translation of her request; (ii) order the Prosecutor to disclose the Arabic versions of all the evidence cited in support of the new charges; (iii) order that the 30-day time limit for responding as to the merits of the Prosecutor's Request start to run upon the filing of the Arabic version thereof; (iv) order that the 30-day time limit start to run only as of at least 15 days after the Legal Representatives of Victims have filed their observations; and (v) suspend any time limit for responding to the Prosecutor's Request pending the Chamber's decision on the present Defence Motion.⁷¹

37. The Legal Representatives of Victims submit that they share the Defence's concerns about the need to afford the parties and the participants reasonable time in which to make submissions on the Prosecutor's Request in the light of its content.⁷²

38. In her response to the Defence Motion, the Prosecutor considers that the Accused is entitled to a translation or an interpretation of the Prosecutor's Request and a translation of the witness statements disclosed pursuant to rule 76 of the Rules.⁷³ The Prosecutor recalls that at the time she was ordered by the Single Judge in the case *sub judice* to provide an Arabic version of her DCC, the suspect had yet to receive the assistance of an interpreter but now that he has it, that assistance suffices to guarantee the right of the Accused to be informed of the nature, cause and content of the charges, as laid down at article 67(1)(a) of the Statute.⁷⁴ The Prosecutor nevertheless states that the Arabic translations of the witness statements will be disclosed by 17 February 2020 and that the Arabic translation of the Prosecutor's

⁷⁰ Defence Motion, paras. 1, 15, 18.

⁷¹ Defence Motion, para. 20.

⁷² Observations of the Legal Representatives of Victims, para. 11.

⁷³ Prosecutor's Response, para. 4.

⁷⁴ Prosecutor's Response, paras. 10, 12.

Request being undertaken by the Registry will be disclosed on 17 February 2020, or on 21 February at the latest.⁷⁵

39. That said, the Prosecutor contends that contrary to the Defence argument, the Accused is not entitled to a written translation of all the evidence cited in support of the Prosecutor's Request and that the Arabic interpreter provided to the Accused may take on that task.⁷⁶ The Prosecutor recalls that only the statements of Witnesses P-0524, P-0636, P-0639 and [REDACTED] were disclosed pursuant to rule 76 of the Rules.⁷⁷ The Prosecutor therefore requests the Chamber not to grant any Defence request for the written translation of evidence that does not fall within rule 76 of the Rules.⁷⁸

40. As to the time limits, the Prosecutor submits that she has no objection to the Defence's being allowed 30 days in which to respond to the Prosecutor's Request or to that time limit to start running as of the date the Defence receives the Arabic translation of said document, provided that the proceedings are not further delayed, for instance were a confirmation hearing to be held.⁷⁹

B. Determination of the Chamber

1. As to Parts I and II of the Request

41. The Chamber notes that in Part I of her Request, the Prosecutor, having re-analysed some evidence presented at the time of filing the DCC, moves the Chamber to "correct" in the Confirmation Decision the name of the victim

⁷⁵ Prosecutor's Response, paras. 7, 13, 15.

⁷⁶ Prosecutor's Response, paras. 5, 17-19.

⁷⁷ Prosecutor's Response, para. 16.

⁷⁸ Prosecutor's Response, para. 26.

⁷⁹ Prosecutor's Response, paras. 7-8, 20-26.

[REDACTED]⁸⁰ and the date of arrest of the victim [REDACTED].⁸¹ Similarly, as a result of re-analysing evidence submitted at the time of filing the DCC, the Prosecutor also moves the Chamber “to correct and/or amend” the mode of responsibility accepted by adding the one provided for under article 25(3)(c) of the Statute to the mode of responsibility under article 25(3)(d) of the Statute – the sole to have been accepted by the Chamber for the cases below:

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED]; and
- [REDACTED].⁸²

42. The Chamber notes that the Prosecutor, in Part II of her Request, asks the Chamber to “reconsider or correct” its analysis of the evidence presented at the time the DCC was filed and to accept, as requested in the DCC in respect of victim [REDACTED], not only the mode of responsibility under article 25(3)(c) and (d) of the Statute but also the mode of responsibility under article 25(3)(a) of the Statute;⁸³ she also asks it to accept, in addition to the mode of responsibility under article 25(3)(d) of the Statute, the mode of responsibility under article 25(3)(c) of the Statute for the two cases below:

- [REDACTED]; and
- [REDACTED].⁸⁴

43. The Chamber notes that, according to the Prosecutor, these requests for “correction” and “reconsideration” arise from errors in the assessment/evaluation of the evidence already presented in the DCC; some of the errors she attributes to

⁸⁰ See, above, para. 27.

⁸¹ See, above, para. 27.

⁸² See, above, para. 27.

⁸³ See, above, para. 28.

⁸⁴ See, above, para. 28.

herself (Part I of the Request)⁸⁵ and others to the Chamber (Part II of the Request).⁸⁶ In short, the Prosecutor requests the Chamber to correct those errors before the start of the trial, submitting that such corrections would correspond to an amendment of the charges within the meaning of article 61(9) of the Statute, hence her consistent use in her Request of the terms “correct/amend” in conjunction or interchangeably.⁸⁷

44. In that regard, the Chamber underlines that, following the confirmation hearing, the Prosecutor is permitted to go back to the Pre-Trial Chamber should there be new evidence to put forward in respect of charges which were not confirmed (article 61(8) of the Statute) or should she wish to amend charges already confirmed, whether by introducing additional charges or substituting the confirmed charges with more serious charges, in which case the Chamber must hold another hearing (article 61(9) of the Statute). The option of going back before the Pre-Trial Chamber – which would inevitably delay the proceedings as it requires the parties to be heard further following an initial decision on the confirmation of charges, and another decision by the Chamber – must be used only for the amendment, at the Prosecutor’s instigation, of charges already confirmed, in particular as concerns their factual scope, so as to delineate with the utmost accuracy the charges to which the Defence will have to respond at trial, and not be used to make corrections to the confirmation decision. Accordingly, the Chamber does not consider that article 61(9) of the Statute gives it the task of revisiting the facts as found or the assessment of evidence previously presented and included in its Confirmation Decision and of making “corrections” thereto, and it matters not that such corrections concern errors attributable to the Prosecutor (Part I of the Request) or to the Chamber (Part II of the Request). In this instance, the Chamber considers that the corrections requested by the Prosecutor in Parts I and II of her Request do not concern an amendment of the factual scope of the charges already confirmed within the meaning of article 61(9) of

⁸⁵ See, above, paras. 26-27.

⁸⁶ See, above, para. 28.

⁸⁷ See, for example, Request, paras. 1, 2, 78 and headings I, I(a), I(b).

the Statute. The Chamber has already confirmed the facts with respect to the victims [REDACTED].

45. However, the Chamber is of the view that the corrections requested by the Prosecutor on the facts as found by the Chamber could be canvassed at trial and considers that “errors”, if any, could be rectified by the Trial Chamber, if necessary. As set out at article 61 of the Statute, the task of the Pre-Trial Chamber, should it confirm charges and commit the suspect for trial, is to determine the factual scope of the charges which will circumscribe and form the basis of the trial.

46. While the Trial Chamber is barred under article 74(2) of the Statute from exceeding the “facts and circumstances described in the charges”, it may nonetheless “evaluate them differently”.⁸⁸ In that connection, it is accepted that the Prosecutor may, in support of her allegations, present evidence at trial that is new and different compared to that submitted at the pre-trial stage, specific regard being had to the fact that a more stringent standard of proof applies at trial than at the pre-trial stage.⁸⁹ The Chamber further notes that the presentation of evidence is fundamentally different at each of these successive phases of the proceedings before the Court: while such presentation essentially takes written form at the pre-trial phase, the oral presentation of evidence at trial could prompt new or different details to emerge. It falls within the Trial Chamber’s ultimate discretion to determine, within the bounds of the factual scope of the charges confirmed by the Pre-Trial Chamber, the sequence

⁸⁸ *Katanga and Ngudjolo* Decision, para. 21.

⁸⁹ *Katanga and Ngudjolo* Decision, para. 25. (“In the Chamber’s view, while the facts can no longer be amended once the Pre-Trial Chamber has rendered its decision on the confirmation of the charges, the evidence presented during the pre-trial phase can, by contrast, be amended or added to in the course of the trial. This distinction between the facts and the evidence is essential, for it enables the Prosecutor, at the confirmation hearing, to select at this stage only such evidence as appears to him to be “sufficient” to give the Pre-Trial Chamber substantial grounds to believe that an accused committed the crimes with which he is charged. It should be recalled that, under article 66 of the Statute, the evidentiary standard applicable in order for the Court to reach a guilty verdict requires that the judges be convinced beyond all reasonable doubt, as a result of which the Prosecutor may be impelled to produce in the course of the trial, subject to time limits fixed by the Trial Chamber, the new evidence which he considers decisive.”).

of events in detail on the basis of the evidence adduced and canvassed by the parties before the Bench.

47. Given that the Trial Chamber will assess new evidence presented by the parties and participants and hear *viva voce* witnesses, it is, in making a determination as to the truth, better placed than the Pre-Trial Chamber to establish the precise sequence of the events. It is thus conceivable that the Trial Chamber might make different determinations as to those facts, for example, regarding the exact date when an event might have taken place, the exact site where it might have occurred or the extent of the ill treatment inflicted on victims.⁹⁰ The victim's name itself could also be canvassed at trial, (a matter raised in the Prosecutor's Request),⁹¹ supposing that the congruence of the other circumstances of that "case" or "incident" as a whole were to make apparent that the incident in question is one and the same (and therefore part of the charges confirmed). Lastly, the additional modes of responsibility which were put forward by the Prosecutor in her Request in respect of charges already confirmed and with reference to evidence submitted to the Chamber alongside the DCC could also be canvassed before the Trial Chamber pursuant to regulation 55 of the Regulations of the Court.

48. Second, as regards Part II of the Request in particular, the Prosecutor, in addition to requesting an amendment of the charges, uses a specific lexicon to seek the "correction" of what she sees as errors in the Confirmation Decision: she requests the Chamber to "reconsider" its decision. Specifically, she submits that the Chamber committed certain errors of fact, which she views as "apparent errors", and that "exceptional circumstances" justify such reconsideration by the Chamber of its decision.⁹² In a footnote, the Prosecutor adverts to previous rulings by the Appeals

⁹⁰ To give a concrete example, the Trial Chamber may, for instance, on the basis of new videos available to it, find that a victim received 150 lashes, even if the Pre-Trial Chamber found in its Confirmation Decision that the victim had received 80.

⁹¹ See Prosecutor's Request, paras. 6-9.

⁹² Prosecutor's Request, para. 15. See also, above, para. 28.

Chamber and Trial Chambers on the matter of requests for reconsideration.⁹³ The Chamber nonetheless recalls that the legal framework established by the Statute and the Rules does not provide for motions for reconsideration as a procedural remedy against a decision taken by a Pre-Trial Chamber or Single Judge⁹⁴ and that Pre-Trial Chambers have consistently denied requests for reconsideration as having no statutory support.⁹⁵

49. Third, the Chamber notes that the Prosecutor had the opportunity to avail herself of the procedural remedy provided for by article 82(1)(d) of the Statute and to apply for leave to appeal the Confirmation Decision and thus raise before the Appeals Chamber any errors which she claims are contained in the decision. Yet she decided not to do so within the time afforded to her.⁹⁶

50. It follows that the Chamber rejects the Prosecutor's requests made in Parts I and II of her Request.

⁹³ See Request, para. 15, and footnote 47 and cited references.

⁹⁴ See Pre-Trial Chamber II, "Decision on a Request for Reconsideration or Leave to Appeal the 'Decision on the "Request for review of the Prosecutor's decision of 23 April 2014 not to open a Preliminary Examination concerning alleged crimes committed in the Arab Republic of Egypt, and the Registrar's Decision of 25 April 2014'"", 22 September 2014, translation registered on 2 October 2014, ICC-RoC46(3)-01/14-5, para. 5; *The Prosecutor v. Bosco Ntaganda*, "Decision on the 'Requête de la Défense sollicitant l'autorisation d'interjeter appel de la Décision sur la confirmation des charges datée du 9 juin 2014'", 4 July 2014, ICC-01/04-02/06-322, para. 27, "Decision on the Defence Request for Leave to Appeal", 13 January 2014, ICC-01/04-02/06-207, p. 16, footnote 50; *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, "Decision on the 'Defence Request for Leave to Appeal the 'Urgent Decision on the 'Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List Evidence'" (ICC-01/09-01/11-260)", 29 August 2011, ICC-01/09-01/11-301, para. 18; *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", 30 May 2011, ICC-01/09-01/11-101, para. 42; "Decision on the 'Prosecution's Application for Extension of Time Limit for Disclosure'", 10 May 2011, ICC-01/09-01/11-82, para. 11; Pre-Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the Prosecution Motion for Reconsideration and, in the Alternative, Leave to Appeal", 23 June 2006, ICC01/04-01/06-166, paras. 10-12.

⁹⁵ See Pre-Trial Chamber II, "Decision on a Request for Reconsideration or Leave to Appeal the 'Decision on the "Request for review of the Prosecutor's decision of 23 April 2014 not to open a Preliminary Examination concerning alleged crimes committed in the Arab Republic of Egypt, and the Registrar's Decision of 25 April 2014'"", 22 September 2014, ICC-RoC46(3)-01/14-5, para. 5, footnote 10 and references cited.

⁹⁶ See article 82(1)(d) of the Statute and rule 155(1) of the Rules.

2. As to Part III of the Request

51. The Chamber notes that in Part III of her Request, the Prosecutor requests the Chamber to confirm new facts relating to the charges already confirmed. According to the Court's previous rulings, and as the Prosecutor submits, the introduction of new criminal acts in support of charges already confirmed is akin to an "amendment" of the charges rather than an "addition of additional charges" or a "substitution of charges [already confirmed] with more serious charges".⁹⁷ In her Request, the Chamber notes that the Prosecutor seeks to add 17 new victims or new "cases" to charges 1 to 13, which have all already been confirmed.⁹⁸ No new charge is presented and no request is made to substitute more serious charges for those already confirmed.

52. The Chamber further recalls that, under article 61(9) of the Statute, "[a]fter the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges." The amendment of the charges, at this stage of the proceedings, is therefore subject to the judicial control laid down at article 61(9) of the Statute. A similar type of request was put before Pre-Trial Chambers by the Prosecutor on two previous occasions: one, in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*,⁹⁹ was granted and the other, in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap*

⁹⁷ Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Decision on the Filing of a Summary of the Charges by the Prosecutor", 21 October 2009, ICC-01/04-01/07-1547-tENG, para. 27(3) ("In the view of the present Chamber, any amendment of the charges, as contemplated by article 61(9) of the Statute, may *inter alia* be effected through the addition of new facts and circumstances, within the framework of the legal characterisations already accepted."); Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute'", 8 June 2018, ICC-01/05-01/08-3636-Red, para. 115 ("adding any additional criminal acts of murder, rape and pillage would have required an amendment to the charges [...] this was the only course of action that would have allowed additional criminal acts to enter the scope of the trial.").

⁹⁸ See Prosecutor's Request, paras. 24-77.

⁹⁹ Pre-Trial Chamber II, *The Prosecutor v. Uhuru Muigai Kenyatta*, "Decision on the 'Prosecution's Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute'", 21 March 2013, ICC-01/09-02/11-700 ("Kenyatta Decision").

Sang, was rejected.¹⁰⁰ According to these rulings, where a Pre-Trial Chamber rules on such a request, it must consider several factors:

The Chamber's permission is a *conditio sine qua non* for any amendment of the charges at this stage, as dictated by the Statute. This statutory requirement suggests that the Prosecutor should not benefit from an unfettered right to resort to article 61(9) of the Statute at her ease, particularly, if such permission will negatively affect other competing interests, such as the fairness and expeditiousness of the proceedings, which would result in causing prejudice to the rights of the accused.¹⁰¹

53. In those two cases, Pre-Trial Chamber II laid emphasis on the Prosecutor's obligation to support and state the grounds for her request ("a request for an amendment of the charges [...] needs to be supported and justified").¹⁰² The Chamber notes in particular that the Appeals Chamber considered "that ideally, it would be desirable for the investigation to be complete by the time of the confirmation hearing", even though the Statute does not so require.¹⁰³ On that point, however, Pre-Trial Chamber II has taken the view that if the evidence collected by the Prosecutor after the confirmation of charges was subsequently used to seek an amendment of the charges before the Pre-Trial Chamber, then the Prosecutor must set out why such evidence could not have been collected before confirmation:

[T]he Prosecutor is not granted *carte blanche* to conduct her investigation after the confirmation hearing with a view towards bringing further evidence in order to amend the charges, unless she shows that it "is necessary in order to establish the truth" or "certain circumstances" exist that justify doing so. The underlying *rationale* is that the continued investigation should be related only to such essential pieces of evidence which were not known or available to the Office of the Prosecutor prior to the confirmation hearing or could not have been collected for any other reason, except at a later stage. In these circumstances, the Prosecutor is expected to provide a proper justification to that

¹⁰⁰ Pre-Trial Chamber II, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, "Decision on the 'Prosecution's Request to Amend the Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute'", 16 August 2013, ICC-01/09-01/11-859 ("*Ruto and Sang* Decision").

¹⁰¹ *Ruto and Sang* Decision, para. 31.

¹⁰² *Kenyatta* Decision, para. 21. See also *Ruto and Sang* Decision, para. 31.

¹⁰³ Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, "Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges'", 30 May 2012, ICC-01/04-01/10-514, para. 54. See also *The Prosecutor v. Thomas Lubanga Dyilo*, "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence'", 13 October 2006, ICC-01/04-01/06-568, para. 44.

effect in order for the Chamber to arrive at a fair and sound judgment regarding any request for amendment put before it. In the context of the present case, the Prosecutor managed to furnish the Chamber not only with evidence supporting the existence of the factual allegation, but also with a reasonable justification for the continuation of her investigation subsequent to the confirmation hearing.¹⁰⁴

54. The Chamber adopts the reasoning set out in those previous decisions, save that it considers that, as a reference point for the “crystallization” of the charges by the Prosecutor, it would be more appropriate to take the date of filing of the DCC or its amended version (should the Prosecutor wish to avail herself of the option provided under rule 121(4) of the Rules) instead of the date of the confirmation hearing. Rather than at the hearing, it is really at the time of filing the DCC that the suspect is informed in detail of the charges against him or her. It is at that particular point in time, therefore, that it is crucial for the Prosecutor to have presented her charges as clearly and as conclusively as possible so that the Defence need not prepare first for the confirmation hearing and then again in the run-up to trial in respect of charges that are constantly changing. In this instance, the date of reference is therefore 11 May 2019 – the date on which the Prosecutor filed an amended and corrected version of the DCC against Mr Al Hassan.¹⁰⁵

55. The Chamber notes that, in the matter at hand, the Prosecutor failed to provide any explanation in her Request as to why she took the statements of Witnesses P-0524, P-0636, P-0639 and [REDACTED] after filing the amended and corrected version of her DCC, and even did so after the 15-day time limit preceding the confirmation hearing during which she could have filed a new amended version of the document under rule 121(4) of the Rules. So that it can rule on the merits of Part III of the Prosecutor’s Request and her request for the amendment of charges, the Chamber therefore directs the Prosecutor to file by 16.00 on 4 March 2020 additional submissions on the circumstances and reasons for taking those statements after filing her DCC.

¹⁰⁴ *Kenyatta* Decision, paras. 36-38.

¹⁰⁵ ICC-01/12-01/18-335-Conf-Corr.

56. Lastly, and without prejudice to future rulings the Chamber may render on the issue of whether the Prosecutor has provided the necessary support for her request to amend charges already confirmed, the Chamber wishes to dispose of here – in the interests of the proceedings as a whole and considering the constraints which have arisen over the course of the proceedings – the issues relating to the translations, the evidence disclosure and the time limits for response.

As to the translations

57. The Defence asks for the Arabic translation of (i) the Request and (ii) the New Evidence.

58. Regarding the Request, as the Defence has pointed out, the Single Judge in the case *sub judice* was of the view that “pursuant to article 67(1)(a) of the Statute, the suspect must be informed ‘in detail of the nature, cause and content of the charges’ brought against him or her” and therefore that “the Prosecution must, with the assistance of the Registry *if necessary*, enter in the record of the case an Arabic version of the document containing the charges”.¹⁰⁶ Thus expressed, it is clear that responsibility lay first and foremost with the Prosecutor to provide the Suspect with the DCC in a language that he fully understands and speaks. The Chamber considers that, as the Defence asserts, this reasoning is germane to the Request at hand. To be specific, in Part III of the Request, the Prosecutor asks the Chamber to make a finding, to the standard required under article 61(7) of the Statute, of new criminal acts concerning charges already confirmed, and the Prosecutor’s Request does, in this respect, constitute a document which informs the accused “in detail of the nature, cause and content of the charges” brought against him. Contrary to what the Prosecutor submits,¹⁰⁷ at stake here is the suspect’s right to receive a written translation of this document rather than the right to a “translation or interpretation”.

¹⁰⁶ Decision on Disclosure Protocol, para. 26, emphasis added.

¹⁰⁷ Prosecutor’s Response, para. 4.

59. Turning to the New Evidence, the Chamber recalls that the Single Judge in the case *sub judice* also considered that

pursuant to rule 76(3) of the Rules, “statements of prosecution witnesses shall be made available in the original language and in a language which the accused fully understands and speaks” – in the present case, Arabic. In the event that translating those statements in their entirety risks holding up the proceedings – which does not appear to be the case in view of the Observations in Response or the Supplementary Clarifications – the Prosecution must inform the Single Judge as soon as possible. The Prosecution may confer with the Defence to learn which extracts of those statements, once translated, might be sufficient to meet the needs the Defence considers essential for preparing the defence of Mr Al Hassan.¹⁰⁸ In the event of disagreement, the parties shall seek a ruling from the Single Judge. The Defence may also request of the Prosecution Arabic translations of evidence other than witness statements if it considers that to be essential for preparing the defence. In the event of disagreement between the Defence and the Prosecution, the Single Judge shall rule at the request of either party.¹⁰⁹

60. The Chamber considers that these instructions still stand and it therefore rejects the Defence request¹¹⁰ to order the Prosecutor to provide translations of *all* the evidence cited in support of her request for confirmation of the charges.

61. The Chamber notes that the Arabic version of the Prosecutor’s Request and the Arabic translations of the witness statements disclosed pursuant to rule 76 of the Rules were filed in the record on 17 February 2020. Accordingly, the Chamber considers that the Prosecutor has satisfied her obligations relating to the translations.

62. For want of a specific request for “Arabic translations of evidence other than witness statements”, the Chamber considers that the Prosecutor’s request that the Chamber reject any Defence motion for the written translation of evidence that does not come under rule 76 of the Rules has, for the time being, no basis.

¹⁰⁸ Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”, 27 February 2015, ICC-02/04-01/15-203, para. 35, footnote 33 and references cited. For the fact that a suspect does not have an absolute right to request translations of all the documents on record, see in particular paras. 31-33.

¹⁰⁹ Decision on Disclosure Protocol, para. 23.

¹¹⁰ Defence Motion, para. 20(2).

As to the time limits

63. As mentioned above,¹¹¹ the introduction of new criminal acts in support of the charges already confirmed is akin to an amendment of charges and not an introduction of additional charges. Accordingly, and contrary to what the Defence argues, rule 128(3) of the Rules, which concerns solely “new charges” or “more serious charges” does not find application here and neither do the time limits that that rule prescribes by reference to rule 121 of the Rules, *viz.*, the 30 days provided for under rule 121(3).

64. The Chamber notes that the Rules do not specify a time limit in such a situation and, therefore, the 10-day time limit pursuant to regulation 34 of the Regulations of the Court applies. The same regulation does, however, provide that these time limits may be modified “unless otherwise ordered”. In this specific instance, given the need to respect the rights of the Defence enshrined at article 67 of the Statute, specifically the right to have adequate time for the preparation of the defence, the Chamber hereby sets the following time limits.

65. In the light of the foregoing and the Defence request to file its response 15 days after that of the Legal Representatives of Victims and which the Chamber considers to have merit under rule 91(2) of the Rules, the Chamber orders the Legal Representatives of Victims to file their response to the Prosecutor’s Request by 28 February 2020 and the Defence to file its response by 16 March 2020.

As to the disclosure of the New Evidence

66. The Chamber notes that the Prosecutor includes as an annex to her Request copies of the evidence collected and cited in support of the new cases of victims which she requests the Chamber to confirm in Part III of her Request.¹¹² However, that evidence was not disclosed before the Chamber and is available to the Chamber

¹¹¹ See, above, para. 51.

¹¹² See ICC-01/12-01/18-568-Conf-AnxA and ICC-01/12-01/18-568-Conf-AnxB.

only through the aforementioned annexes. The Chamber cannot rule on evidence that was not disclosed in accordance with its Decision on Disclosure Protocol and the “Unified Technical protocol for the provision of evidence, witness and victims information in electronic form”.¹¹³ The Chamber therefore directs the Prosecutor to disclose, by 24 February 2020, the New Evidence and any other evidence cited in support of her request for amendment of the charges in Part III of her Request and not already disclosed at the pre-trial phase, and to do so in accordance with the procedure described in those two documents. In that respect, the Chamber recalls that, in the case *sub judice*, it decided that it would monitor the need for redactions and that, to that end, the Prosecutor must provide to the Chamber both the redacted version of the evidence as disclosed to the Defence as well as the non-redacted version.¹¹⁴

¹¹³ See annex to the Decision on Disclosure Protocol, ICC-01/12-01/18-31-Anx.

¹¹⁴ Decision on Disclosure Protocol, para. 32.

FOR THESE REASONS, the Chamber

REJECTS the Prosecutor's requests, set out in Parts I and II of her Request, for the correction and reconsideration of the charges;

DIRECTS the Prosecutor to file additional submissions, by 16.00 on 4 March 2020, on the circumstances and reasons why she took statements from Witnesses P-0524, P-0636, P-0639 and [REDACTED] after filing her DCC;

REJECTS the Defence request for 30 days, as of the filing of the Arabic version of the Prosecutor's Request, in which to respond to said document;

GRANTS the Defence request for at least 15 days, as of the filing of the response of the Legal Representatives of Victims, in which to respond to the Prosecutor's Request;

DIRECTS the Legal Representatives of Victims to file their response to the Prosecutor's Request by 28 February 2020 and the Defence to file its response by 16 March 2020;

REJECTS the Defence request to order the Prosecutor to provide translations of all the evidence cited in support of her request for amendment of the charges;

DECLARES that the Prosecutor's request that the Chamber not grant any Defence motion for the written translation of evidence which does not fall within rule 76 of the Rules has no basis;

ORDERS the Prosecutor to disclose, by 24 February 2020, the New Evidence and all other evidence cited in support of her request for amendment of the charges in Part III of her Request that may not have already been disclosed during the pre-trial phase, in accordance with paragraph 66 of the present decision; and

DIRECTS the Registry to reclassify the Observations of the Legal Representatives of Victims as a public document.

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

_____ [signed] _____

Judge Péter Kovács

Presiding Judge

_____ [signed] _____

Judge Marc Perrin de Brichambaut

_____ [signed] _____

Judge Reine Alapini-Gansou

Dated this 21 February 2020

At The Hague, Netherlands