

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 24 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

Scheduling Order for the Confirmation of Charges Hearing

Order 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

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Péter Kovács, designated on 28 March 2018 by Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) as 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”),¹ orders as follows.

1. On 27 March 2018, the Chamber, acting pursuant to article 58 of the Rome Statute (“Statute”), issued a warrant of arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”).²
2. On 31 March 2018, Mr Al Hassan was surrendered to the Court. He is now in custody at the Court’s detention centre in The Hague.³
3. On 4 April 2018, Mr Al Hassan’s first appearance hearing was held. During the hearing, the Single Judge scheduled the start of the confirmation of charges hearing for Monday, 24 September 2018.⁴
4. On 16 May 2018, the Single Judge issued the “Decision on the Evidence Disclosure Protocol and Other Related Matters”⁵ directing the Prosecution to submit observations on a provisional schedule for the disclosure of evidence, taking into account any possible translation or witness protection requirements.
5. On 22 May 2018, the Single Judge issued the “Decision on the Prosecutor’s Application for the Issuance of a Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”.⁶
6. On 20 July 2018, the Single Judge delivered the “Decision Postponing the Date of the Confirmation Hearing”⁷ and scheduled the hearing for 6 May 2019. In the

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

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

³ ICC-01/12-01/18-11-US-Exp.

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

⁵ ICC-01/12-01/18-31-tENG-Corr.

⁶ ICC-01/12-01/18-35-Red2-tENG.

Decision, the Single Judge also instructed the Prosecutor to enter into the record, no later than 30 days before the date of the hearing for the confirmation of charges (“Confirmation Hearing”), an Arabic translation of the document containing the charges (“DCC”) and the list of the evidence which the Prosecutor intended to present at the Confirmation Hearing.⁸

7. On 5 October 2018, the Chamber delivered the “Decision on the Defence Request concerning the Time Limit for the Prosecutor to File the Document Containing a Detailed Description of the Charges”⁹ directing the Prosecutor to file the DCC and the list of evidence no later than 60 days before the date of the Confirmation Hearing,¹⁰ which had initially been scheduled for 6 May 2019.

8. On 9 November 2018, the Prosecutor filed information about the discharge of her disclosure and witness protection obligations.¹¹

9. On 7 February 2019, the Single Judge directed the Prosecutor to file precise submissions for her requests concerning the proceedings which she intended to file before the start of the Confirmation Hearing.¹² The Prosecutor filed submissions on 12 February 2019 requesting an extension of time for filing the DCC.¹³ The Defence responded on 19 February 2019, objecting to the requested extension of time and to the postponement of the Confirmation Hearing.¹⁴

⁷ ICC-01/12-01/18-94-Red-tENG.

⁸ “Decision Postponing the Date of the Confirmation Hearing”, 20 July 2018, ICC-01/12-01/18-94-Red-tENG, p. 12.

⁹ ICC-01/12-01/18-143-tENG.

¹⁰ “Decision on the Defence Request concerning the Time Limit for the Prosecutor to File the Document Containing a Detailed Description of the Charges”, 5 October 2018, ICC-01/12-01/18-143-tENG, para. 27 and p. 13.

¹¹ ICC-01/12-01/18-180-Red2.

¹² “Order Directing the Prosecutor to File Precise Submissions for Requests concerning the Proceedings which She Intends to File before the Start of the Confirmation of Charges Hearing”, ICC-01/12-01/18-236-tENG.

¹³ “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-Red2.

¹⁴ “Defence response to the Prosecution’s ‘Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demandes d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve’”, ICC-01/12-01/18-250-Red.

10. On 25 February 2019, the Single Judge issued the “*Ordonnance fixant une date butoir pour le dépôt des requêtes en vue du dépôt du document contenant les charges*”, instructing the Prosecutor to file all her applications with a view to submitting the DCC by 15 March 2019, postponing the date of the Confirmation Hearing and advising that a new date would be set after 15 March 2019.¹⁵

11. On 20 March 2019, the Single Judge issued 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*”, instructing the Registry to acknowledge the appointment by the victims of Mr Seydou Doumbia, Mr Mayombo Kassongo and Mr Fidel Luvengika as Common Legal Representatives in the instant case, and ruling that the Legal Representatives of Victims would be entitled to file written responses and replies to any document presented to the Chamber and make opening and closing statements at the Confirmation Hearing.¹⁶

12. On 18 April 2019, the Single Judge issued a decision instructing the Prosecutor to file the DCC by Wednesday, 8 May 2019 and rescheduling the Confirmation Hearing for Monday, 8 July 2019 (“*Decision of 18 April 2019*”).¹⁷

13. On the same day, the Single Judge granted the Prosecutor’s request¹⁸ to extend the page limit for filing the DCC to 500 pages.¹⁹

14. On 8 May 2019, the Prosecutor filed the DCC against Mr Al Hassan.²⁰

15. On 11 May 2019, the Prosecutor filed an amended and corrected version of the DCC against Mr Al Hassan.²¹

¹⁵ ICC-01/12-01/18-255, para. 15.

¹⁶ ICC-01/12-01/18-289-Red, paras. 48 and 51, p. 21.

¹⁷ “*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.

¹⁸ “*Requête de l’Accusation sollicitant l’augmentation du nombre de pages autorisées pour le dépôt du Document contenant les charges*”, 28 March 2019, ICC-01/12-01/18-296-Red.

¹⁹ “*Decision on the ‘Requête de l’Accusation sollicitant l’augmentation du nombre de pages autorisées pour le dépôt du Document contenant les charges’*”, ICC-01/12-01/18-310-tENG.

²⁰ ICC-01/12-01/18-335-Conf.

²¹ ICC-01/12-01/18-335-Conf-Corr.

16. On 29 May 2019, the Single Judge issued the "*Ordonnance portant sur l'organisation de l'audience de confirmation des charges*", instructing parties and participants in the Confirmation Hearing to file observations on the arrangements for the Confirmation Hearing, in particular concerning the time they would require for their oral submissions ("Order on Arrangements for the Confirmation Hearing").²²

17. On 6 June 2019, the Prosecutor filed submissions on the arrangements for the Confirmation Hearing ("Prosecutor's Submissions").²³

18. On 7 June 2019, the Legal Representatives of Victims filed their observations pursuant to the Order on Arrangements for the Confirmation Hearing ("Observations of the Legal Representatives of Victims").²⁴

19. On the same day, the Defence submitted its observations on the arrangements for the Confirmation Hearing ("Defence Observations").²⁵ ("Defence Observations").

20. Also on the same day, the Prosecutor filed the DCC in Arabic.²⁶

21. On 11 June 2019, the Prosecutor filed the DCC in Arabic with footnotes.²⁷

22. 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").²⁸

23. On 21 June 2019, the Single Judge delivered the "*Décision portant calendrier relatif au dépôt d'observations*", addressing certain issues relating to the filing of written submissions by parties and participants in the Confirmation Hearing before the hearing, and determining that written observations from the Prosecutor, the Government of the Republic of Mali and the Legal Representatives of Victims on the

²² ICC-01/12-01/18-357.

²³ ICC-01/12-01/18-363.

²⁴ ICC-01/12-01/18-364.

²⁵ "Defence Observations on the Confirmation of Charges Hearing", ICC-01/12-01/18-365.

²⁶ ICC-01/12-01/18-366.

²⁷ ICC-01/12-01/18-370.

²⁸ "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.

admissibility of the case would be invited if and when the Defence filed its challenge.²⁹

24. The Single Judge refers to articles 61, 67 and 68 of the Statute, rules 121 and 122 of the Rules of Procedure and Evidence (“Rules”), and regulation 53 of the Regulations of the Court.

25. The Single Judge notes that in the Decision of 18 April 2019, he had rescheduled the start of the Confirmation Hearing for Monday, 8 July 2019,³⁰ in view of the applications filed by the Prosecutor for the purpose of protecting the witnesses. In addition, in the Order on Arrangements for the Confirmation Hearing, the Single Judge decided that, in principle, the Confirmation Hearing would take place from Monday, 8 July to Friday, 12 July 2019.³¹

26. The Single Judge also recalls the principle of fairness which encompasses the notion of equality of arms and, *inter alia*, requires that the parties be placed on an equal footing and that the Defence always have the final word, in accordance with rule 122(8) of the Rules.

27. Further, the Single Judge notes that he has, to the extent possible, taken into consideration the submissions of the parties and participants,³² but recalls that, according to the wording of the second sentence of rule 122(1) of the Rules, “[t]he Presiding Judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented”.

28. Moreover, the Single Judge refers to the first sentence of rule 122(1) and to rule 122(3) of the Rules which provide as follows:

[...]

1. The Presiding Judge of the Pre-Trial Chamber shall ask the officer of the Registry assisting the Chamber to read out the charges as presented by the Prosecutor.

²⁹ ICC-01/12-01/18-381, p. 9.

³⁰ Decision of 18 April 2019, para. 20.

³¹ Order on Arrangements for the Confirmation Hearing, para. 18.

³² See Prosecutor’s Submissions; Observations of the Legal Representatives of Victims; Defence Observations; and the Response of the Legal Representatives of Victims to the Defence Observations.

[...]

3. Before hearing the matter on the merits, the Presiding Judge of the Pre-Trial Chamber shall ask the Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing.

29. In view of the above, the Single Judge considers it appropriate to allot the Prosecutor six sessions of one hour and 30 minutes each to present her oral submissions at the Confirmation Hearing; to allot the Legal Representatives of Victims one session of one hour and 30 minutes to present their oral submissions at the Confirmation Hearing, to be shared among them as they deem fit; and to allot the Defence six sessions of one hour and 30 minutes each to present its oral submissions during the Confirmation Hearing. The parties and participants shall each then have 30 minutes to present their closing statements.

30. The Single Judge recalls that, in conformity with the instructions set out in the Order on Arrangements for the Confirmation Hearing,³³ the oral submissions must comprise a *brief summary* of the respective submissions made by the parties and participants, and may also be used to respond to questions from the bench. In that regard, the Single Judge notes that a list of questions will be distributed to the parties and participants before the Confirmation Hearing.

31. Accordingly, the Single Judge orders that the Confirmation Hearing will commence on the afternoon of 8 July 2019, and will be scheduled as follows:

Monday, 8 July 2019

First session 14.00 –15. 30

Opening of the session by the Presiding Judge, reading out of the charges, and submissions in accordance with rule 122(3) of the Rules.

Second session 16.00 – 17.30

Oral submissions by the Prosecutor

Tuesday, 9 July 2019

³³ “Ordonnance portant sur l’organisation de l’Audience”, para. 20.

First session 9.30 – 11.00

Oral submissions by the Prosecutor

Second session 11.30 – 13.00

Oral submissions by the Prosecutor

Third session 14.30 – 16.00

Oral submissions of the Prosecutor

Wednesday, 10 July 2019

First session 9.30 – 11.00

Oral submissions by the Prosecutor

Second session 11.30 – 13.00

Oral submissions by the Prosecutor

Third session 14.30 – 16.00

Oral submissions by the Legal Representatives of Victims

Thursday, 11 July 2019

First session 9.30 – 11.00

Oral submissions by the Defence

Second session 11.30 – 13.00

Oral submissions by the Defence

Third session 14.30 – 16.00

Oral submissions by the Defence

Friday, 12 July 2019

First session 9.30 – 11.00

Oral submissions by the Defence

Second session 11.30 – 13.00

Oral submissions by the Defence

Third session 14.30 – 16.00

Oral submissions by the Defence

Tuesday, 16 July 2019

Session 9.30 – 11.00

No. ICC-01/12-01/18

9/11

24 June 2019

Official Court Translation

- i. 9.30 – 10.00 Closing statements by the Prosecutor
- ii. 10.00 – 10.30 Closing statements by the Legal Representatives of Victims
- iii. 10.30 – 11.00 Closing statements by the Defence

32. The Single Judge also decides that, should any of the parties or participants not use the time allotted to them in the schedule above, the Single Judge may decide, for the purpose of ensuring efficiency, to bring forward a presentation even if it was not scheduled for that session. The Single Judge points out, therefore, that the parties and participants must be always ready and flexible.

33. Moreover, the Single Judge considers it appropriate to invite the parties and participants to file written closing statements of no more than 30 pages after the Confirmation Hearing, concerning the issues examined during the hearing. The Single Judge points out that the submissions must not include any procedural history or annexes.

34. Lastly, the Single Judge informs the parties and participants that the Chamber will deliver the decision on the confirmation of charges within 60 days, in accordance with regulation 53 of the Regulations of the Court, with effect from the date of receipt of the Defence written closing statements.³⁴

FOR THESE REASONS, the Single Judge

DECIDES that the Prosecutor, the Legal Representatives of Victims and the Defence must conform to the schedule of the confirmation of charges hearing set forth in paragraph 31 of this order;

INSTRUCTS the Prosecutor and the Legal Representatives of Victims to file their written closing statements by 23 July 2019 at 16.00;

³⁴ *The Prosecutor v. Laurent Gbagbo*, Transcript of hearing, 28 February 2013, ICC-02/11-01/11-T-21-ENG, p. 51, lines 6-7.

INSTRUCTS the Defence to file its written closing statement by 30 July 2019 at 16.00;

INFORMS the parties and participants that, consequently, the decision on the confirmation of charges will be delivered by 30 September 2019.

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

[signed]

Judge Péter Kovács

Single Judge

Dated this 24 June 2019

At The Hague, Netherlands