

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **8 July 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 Filing of Observations in relation to the
Defence's Admissibility Challenge**

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

Competent authorities of the

Republic of Mali

**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 makes the following order.

1. On 8 May 2019, the Prosecutor filed the Document Containing the Charges (“DCC”) against Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”).²
2. On 11 May 2019, the Prosecutor filed an amended and corrected version of the DCC against Mr Al Hassan.³
3. On 29 May 2019, the Single Judge issued an “*Ordonnance portant sur l’organisation de l’audience de confirmation des charges*” in which he decided that the confirmation hearing (“Hearing”) would in principle be held from Monday, 8 to Friday, 12 July 2019 (“Order on Arrangements for the Hearing”).⁴ The Single Judge also directed observations from the parties and participants concerning arrangements for the Hearing.⁵
4. On 6 June 2019, the Prosecutor filed her observations on the arrangements for the Hearing (“Prosecutor’s Observations”).⁶
5. On 7 June 2019, the Legal Representatives of Victims filed their observations pursuant to the Order on Arrangements for the Hearing (“Observations of the Legal Representatives of Victims”).⁷

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 ICC-01/12-01/18-335-Conf.

³ ICC-01/12-01/18-335-Conf-Corr.

⁴ ICC-01/12-01/18-357, para. 18.

⁵ Order on Arrangements for the Hearing, p. 8.

⁶ ICC-01/12-01/18-363.

⁷ ICC-01/12-01/18-364.

6. On the same day, the Defence submitted its observations on the arrangements for the Hearing (“Defence Observations”).⁸ The Defence stated its intention to bring a challenge to the admissibility of the case under articles 17(d) and 19 of the Rome Statute (“Statute”) and argued that any Prosecution response thereto should be made orally at the Hearing.⁹

7. Also on the same day, the Prosecutor filed the DCC in Arabic.¹⁰

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

9. On 13 June 2019, the Prosecutor filed a request concerning the procedure to be followed in the event of a Defence challenge to the admissibility of the case (“Prosecutor’s Request in Response to the Defence Observations” or “Prosecutor’s Request”),¹² asking the Single Judge to reject the Defence’s motion to limit any submissions the Prosecutor might make on the admissibility of the case to oral observations at the Hearing.¹³ The Prosecutor also asked the Single Judge to direct the Defence to file its challenge to the admissibility of the case by 21 June 2019 should the Chamber think fit to receive observations from the Prosecutor on admissibility before the Hearing.¹⁴ In the alternative the Prosecutor argued that she should be accorded leave to file written observations within a reasonable time after the Hearing.¹⁵

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 “Response of the Legal Representatives of Victims”),¹⁶

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

⁹ Defence Observations, paras. 2-3.

¹⁰ ICC-01/12-01/18-366.

¹¹ ICC-01/12-01/18-370.

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

¹³ Prosecutor’s Request in Response to the Defence Observations, paras. 2, 16.

¹⁴ Prosecutor’s Request in Response to the Defence Observations, paras. 6, 14, 16.

¹⁵ Prosecutor’s Request in Response to the Defence Observations, paras. 6, 14, 16.

¹⁶ “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.

applying to the Chamber for reasonable time to respond in writing to the Defence admissibility challenge if and when made.¹⁷

11. On 21 June 2019, the Single Judge handed down the “Decision on the Schedule for Submissions”,¹⁸ determining that written observations on the admissibility of the case from the Prosecutor, the Government of Mali and the Legal Representatives of Victims would be invited if and when the Defence filed its challenge.¹⁹

12. On 24 June 2019, the Single Judge issued the “Scheduling Order for the Confirmation of Charges Hearing”,²⁰ in which he determined the arrangements for the confirmation hearing.²¹

13. On 27 June 2019, the Single Judge made an order varying the “Scheduling Order for the Confirmation of Charges Hearing”.²²

14. On 4 July 2019, the Defence lodged its submissions under rule 121(9) of the Rules of Procedure and Evidence (“Rules”) in which it challenged the admissibility of the case (“Defence Application Challenging the Admissibility of the Case” or “Defence Application”).²³

15. 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(2) of the Regulations of the Court.

16. The Single Judge notes rule 58(2) of the Rules, which states:

When a Chamber receives a[n] [...] application raising a challenge or question concerning [...] the admissibility of a case [...], it shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings.

17. The Single Judge also has regard to article 19(3) of the Statute, which provides:

The 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

¹⁷ Response of the Legal Representatives of Victims to the Defence Observations, para. 14.

¹⁸ ICC-01/12-01/18-381-tENG.

¹⁹ ICC-01/12-01/18-381-tENG, para. 20.

²⁰ ICC-01/12-01/18-385-tENG.

²¹ ICC-01/12-01/18-385-tENG, para. 31.

²² ICC-01/12-01/18-390.

²³ ICC-01/12-01/18-394, paras. 256-286.

referred the situation under article 13, as well as victims, may also submit observations to the Court.

18. Rule 59(1) of the Rules further provides that:

For 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.

19. The Single Judge notes that the Defence submissions under rule 121(9) of the Rules, including the Defence Application Challenging the Admissibility of the Case, have been made in English. The Single Judge therefore sees fit to direct the appropriate Registry section to prepare a French translation of paragraphs 256-286 of the Defence Application by 16 July 2019 so that the Government of Mali can respond.

20. Having regard to the foregoing, the Single Judge informs the Prosecutor, the Government of Mali and the Legal Representatives of Victims that they must submit their written observations, not exceeding 20 pages, on the admissibility of the case in response to the Defence Application by 30 July 2019 at 16.00. If the Defence wishes to submit observations, not exceeding 20 pages, in reply to the observations of the Prosecutor, the Government of Mali and the Legal Representatives of Victims, it must do so by 6 August 2019 at 16.00.

FOR THESE REASONS, the Single Judge

DIRECTS the appropriate Registry section to prepare a French translation of paragraphs 256-286 of the Defence Application by 16 July 2019;

DIRECTS the Registrar to provide that translation at the earliest opportunity to the Government of Mali and to the other participants in the proceedings should they so wish;

DIRECTS the Prosecutor, the Government of Mali and the Legal Representatives of Victims to submit their observations, not exceeding 20 pages, in response to the Defence Application by 30 July 2019 at 16.00; and

DIRECTS the Defence, should it so wish, to submit its written observations in reply, not exceeding 20 pages, by 6 August 2019 at 16.00.

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

[signed]

Judge Péter Kovács

Single Judge

Dated this 8 July 2019

At The Hague, Netherlands