

Annex A

Defence Response

From: Proulx, Marie-Hélène

Sent: 19 March 2020 07:39

To: [REDACTED]

Subject: Re: TC X - Shortening deadline for responses to OTP Request 665-Conf

Dear Trial Chamber X,

The Al Hassan Defence submits the present response to Prosecution motion ICC-01/12-01/18-665-Conf via email, as permitted by the Trial Chamber's email of 17 March at 12.54.

The Defence understands that the current circumstances are challenging for the parties and participants. However, these circumstances are not an overnight development, but rather, a situation that could have been anticipated and planned for by the Prosecution. Unfortunately, it seems like this wasn't the case.

The Defence is also feeling the limitations of mandatory remote work, although as external legal teams, we routinely face similar limitations and do not benefit from the same degree of institutional support in carrying out our mandate. Yet, we are expected to meet the time-limits imposed by the Court's legal framework and by the Chamber.

In the Defence's view, although the current circumstances are exceptional and a degree of flexibility is necessary, a blanket extension of time for all deadlines listed in the Prosecution's motion is not the appropriate remedy. The Prosecution does not show that this approach is necessary, or that it is the only option available.

A blanket postponement seems disproportionate and will cause grave prejudice to Mr. Al Hassan, who has been in detention for nearly three years, and who is under strict monitoring measures. The Prosecution is requesting a 30-day extension, to counter the effect of an 11-working day measure which was not designed to fully suspend judicial proceedings. The requested extension is therefore three times the length of the Court's scheduled remote-work measure.

The Defence is particularly concerned by the Prosecution's statement that the requested postponement is 'provisional' and will have to be 'revisited' as new information becomes available. In other terms, the 1-month postponement currently requested could be extended indefinitely depending on the success (or lack thereof) of COVID-19 containment measures. This is unreasonable given that Mr. Al Hassan, who is presumed innocent, has been in detention since 2017, is no longer allowed visits from his legal team, cannot currently receive family visits, and is subject to a strictly limited communication regime.

The Defence notes that on 16 March 2020, the Prosecution filed a similar request for a 30-day extension of time in the Situation on the Registered Vessels of the Union of the Comoros, in which they argued that "as no accused person would be affected by the request requested, the Prosecution believes that a one month extension for all parties and participants is reasonable in the circumstances" (ICC-01/13-102, para. 6). This constitutes an implicit admission that such extension would be unreasonable and prejudicial where an individual is facing accusations and is detained.

Instead of the requested blanket postponement, the Chamber should examine the different deadlines on a case-by-case basis, if and when it becomes clear that they cannot be met. This will allow the Chamber to consider the most recent information available at the time the specific postponement is requested.

The Defence notes that the 14 April deadline is still almost 4 weeks away, while the Court is currently scheduled to be closed for 9 more working days. Since the Prosecution was ordered to disclose material on a rolling basis, rather than waiting for the deadline, the current circumstances should not affect a significant amount of material. Alternative measures could also be taken in order to meet this deadline - for example, the Prosecution could prioritise the disclosure of lesser redacted versions of material in French or English, rather than Arabic material, and could pull staff from cases that do not involve a detained defendant to assist, on an exceptional basis. The filing deadline of 4pm could also be shifted to midnight, to better accommodate the ability of staff with children, to work in a more flexible manner.

The same principle should apply for the other time-limits which the Prosecution is requesting to postpone. This is because the situation could evolve quickly, thereby rendering some extensions necessary, or to the contrary, superfluous.

The Defence is mindful of the challenges faced by the Prosecution and will not automatically oppose discrete extensions, where justified. However, in its current form, the postponement request overreaches and should be denied. The Defence nonetheless remains available to discuss any further suggestions for facilitating the disclosure process, and streamlining the conduct of litigation over the coming weeks.

Thank you and kind regards,

Al Hassan Defence team

LRV Response

From: Biyeke Dipanga, Prisque

Sent: 19 March 2020 10:29

To: [REDACTED]

Subject: RE: TC X - Shortening deadline for responses to OTP Request 665-Conf

Chère Chambre de première instance X,

Les Représentants légaux des victimes dans l'affaire Al Hassan soumettent la présente réponse à la requête de l'Accusation ICC-01/12-01/18-665-Conf, suivant le courriel de la Chambre de première instance du 17 mars 2020.

Au vu des circonstances actuelles, les Représentants légaux estiment que les arguments avancés par l'Accusation, et donc sa requête, se justifient amplement.

De plus, les Représentants légaux sont d'avis que l'extension provisoire demandée de 30 jours ne portera pas préjudice aux droits de la Défense.

En conséquence, les Représentants légaux n'ont pas d'objection à la requête de l'Accusation.

Respectueusement,

Les Représentants légaux des victimes.

VPRS Observations

From: Ambach, Philipp

Sent: 19 March 2020 13:41

To: [REDACTED]

Subject: The Prosecutor v. Al Hassan: VPRS submission in support of Prosecution provisional request for extension of judicial deadlines

Dear Trial Chamber X,

Many thanks for giving VPRS access and the possibility to react to the “Prosecution provisional request for extension of judicial deadlines” of 16 March 2020 (ICC-01/12-01/18-665-Conf). VPRS respectfully submits to the Chamber the observations below:

VPRS supports the Prosecution provisional request for extension of the judicial deadlines in the *Al Hassan* case due to the outbreak and spread of COVID-19, since it will impact negatively also on relevant Registry workflows in the field as well as at the ICC Headquarters.

Specifically, delays are likely to be incurred through the multiple knock-on effects of the COVID-19 crisis and related restrictions and counter-measures taken by various countries and institutions (including the ICC), notably the following ones:

- J For VPRS to collect and transmit victim applications as ordered by the Chamber in its 12 March Decision (ICC-01/12-01/18-661, para. 29), it will require VPR Country Office staff on the ground and VPRS staff from HQ to operate together in order to travel to and meet relevant victim groups; yet, the Registry’s mission travel is being severely reduced or even completely impeded due to:
 - Travel restrictions issued by the COVID-19 CMT;
- J [REDACTED]

Meetings with victim groups are not any more possible due to health-related restrictions; virtual meetings are impossible due to low to non-existent internet connectivity.

VPRS also notes that the Malian local context [REDACTED] already render VPRS activities on the ground challenging; the above factors relating to COVID-19 will inevitably lead to disruptions and delays in activities.

In light of the above, VPRS respectfully fully supports the Prosecution request for extension of relevant deadlines, and particularly of the trial commencement date in the *Al Hassan* case as that date triggers relevant VPRS deadlines as per the Chamber’s 12 March Decision (para. 29).

Kind regards,

Philipp Ambach
(Chief, VPRS)