



Original: English

No. ICC-01/12-01/18

Date: 6 January 2020

TRIAL CHAMBER X

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Kimberly Prost**

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
*THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD***

Public

Decision Setting the Commencement Date of the Trial

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

The Office of the Prosecutor

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**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

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**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER X ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, pursuant to Article 64(3) of the Rome Statute ('Statute') and Rules 101 and 132 of the Rules of Procedure and Evidence ('Rules'), issues this 'Decision Setting the Commencement Date of the Trial'.

1. On 12 December 2019, the Chamber held a status conference in order to set the date of the trial ('Status Conference').¹ This Status Conference was preceded by written submissions² from the Office of the Prosecutor ('Prosecution'),³ the Defence,⁴ the Legal Representatives for Victims ('LRVs')⁵ and the Registry.⁶
2. In the present decision, the Chamber will set the commencement date of the trial and fix the attendant calendar leading up to this date. The Chamber will address each part of the calendar in turn.

A. Provisional list of Prosecution witnesses

3. The Chamber observes that the Defence requests an up-to-date list of witnesses as soon as possible.⁷ The Chamber notes that although the Prosecution argues that early projections of its prospective witnesses may be subject to 'changes, additions, [and] deletions',⁸ it agrees to provide a provisional list of witnesses.⁹

¹ Transcript of hearing, 12 December 2019, ICC-01/12-01/18-T-008-ENG.

² See Order Scheduling First Status Conference, 26 November 2019, ICC-01/12-01/18-507, paras 2-4.

³ Observations de l'Accusation suite à l'Ordonnance de la Chambre de Première Instance relative à la conférence de mise en état du 12 décembre 2019, 6 December 2019, ICC-01/12-01/18-518-Conf-Exp ('Prosecution's Submissions') (the confidential redacted version was filed on 9 December 2019, ICC-01/12-01/18-518-Conf-Exp-Red2).

⁴ Submissions pursuant to 'Order Scheduling First Status Conference', 6 December 2019, ICC-01/12-01/18-519-Conf-Exp ('Defence's Submissions'), with *ex parte* confidential Annexes A-D available to the Defence only, and *ex parte* confidential Annex E available to the Defence and the Office of the Prosecutor only.

⁵ Observations des Représentants légaux suite à l'«Order Scheduling First Status Conference», 6 December 2019, ICC-01/12-01/18-516 ('LRVs' Submissions').

⁶ Registry Submissions in View of the 12 December 2019 Status Conference, 6 December 2019, ICC-01/12-01/18-517 ('Registry's Submissions'), with confidential *ex parte* Annex only available to the Registry and the Office of the Prosecutor.

⁷ ICC-01/12-01/18-T-008-ENG, p. 45, lines 7-9.

⁸ ICC-01/12-01/18-T-008-ENG, p. 43, lines 19-22.

⁹ ICC-01/12-01/18-T-008-ENG, p. 46, lines 2-4.

4. Accordingly, and bearing in mind the deadline set down below for the transmission of a final list of witnesses, the Chamber instructs the Prosecution to file on the record a provisional list of witnesses no later than **31 January 2020**.
5. This provisional list should indicate the type of witness to be called by the Prosecution (i.e. whether they are fact or opinion, expert, or insider witnesses); the intended mode of testimony (i.e. whether *viva voce* or Rule 68 statements); and, if and when possible, a brief summary of the anticipated testimony of each witness.

B. Disclosure of material in the Prosecution’s possession, final list of Prosecution witnesses (with summaries of anticipated witness testimony), and Prosecution list of evidence

6. The Prosecution has confirmed that it has already disclosed most of the evidence it intends to use at trial, including evidence under Rules 76 and 77 of the Rules.¹⁰ Nevertheless, it has stated that it would need four months (between January and April 2020) to fulfil its remaining disclosure obligations. The Prosecution notes that pursuant to its duty under Article 68(1) of the Statute, it still has to manage the security situation of 26 Prosecution witnesses and eventually some limited additional ones. The Prosecution therefore requests leave to finalise evidence disclosure by the end of April or mid-May 2020.¹¹
7. For its part, the Defence requests that a disclosure work plan is set to ensure that all outstanding evidence pursuant to Article 67(2) of the Statute and Rule 76 of the Rules is disclosed by the end of January 2020, at the latest, and that rolling disclosure deadlines are implemented in the lead-up to a final deadline it suggests should be set for the end of January 2020.¹²
8. Noting, on the one hand, the volume of information expected to be disclosed to the Defence for the first time in the coming months (including the identity and the

¹⁰ Prosecution’s Submissions, ICC-01/12-01/18-518-Conf-Exp-Red2, para. 27. Particularly, the Prosecution states that *‘l’Accusation a ainsi d’ores et déjà communiqué la plus grande partie de la preuve sur laquelle elle compte se fonder au procès, y compris le matériel qui tombe dans le champ des règles 76 et 77’*.

¹¹ ICC-01/12-01/18-T-008-ENG, p. 29, lines 9-17. *See also* Prosecution’s Submissions, ICC-01/12-01/18-518-Conf-Exp-Red2, para. 8.

¹² Defence’s Submissions, ICC-01/12-01/18-519-Conf-Exp, para. 22.

statements of a significant number of witnesses), but also, on the other hand, the reported security situation in this case, the Chamber must strike a balance between the competing interests of both parties, but also to guarantee a fair and expeditious conduct of proceedings. Bearing in mind the below date for the commencement of trial, as well as the separate date for the start of the presentation of evidence, the Prosecution shall disclose any incriminating material it intends to rely on at trial, in addition to any material in its possession falling under Article 67(2) of the Statute and Rule 77 of the Rules, no later than **14 April 2020**.

9. The Chamber also recalls that the deadline of **10 February 2020** was already set for the Prosecution to apply for any delayed disclosure of the identity of a witness after this date.¹³ Notwithstanding, the Chamber has emphasised ‘that it is desirable for the disclosure of material to be made on a rolling basis and, as such, expects the Prosecution to fulfil its disclosure obligations as soon as possible and not to wait until the last minute’.¹⁴ The Chamber considers that the intermediary deadlines set in its decision adopting an evidence disclosure regime should assist in meeting with the present deadline set for full disclosure.¹⁵
10. By **14 April 2020**, the Prosecution shall also file on the case record its final list of witnesses, as well as a list of evidence containing all non-testimonial items which the Prosecution intends to submit as evidence during trial. The list of witnesses should be accompanied by the following information:
 -) the witness code and identity (including dual status where applicable);
 -) known kinship or other relationship to other witnesses;
 -) estimated length of questioning by the Prosecution;
 -) summary of anticipated testimony;
 -) expected relevance to the charges;
 -) estimated order and timing of scheduling of testimony;
 -) expected protective measures to be sought, if any; and
 -) list of exhibits expected to be shown to / tendered through the witness.

¹³ Decision on the evidence disclosure protocol and other related matters, 30 December 2019, ICC-01/12-01/18-546, para. 20.

¹⁴ ICC-01/12-01/18-546, para. 8.

¹⁵ ICC-01/12-01/18-546, paras 20-22.

11. The aforesaid information will assist in the preparation of the trial. However, as it consists of anticipations and estimates, the Prosecution is encouraged to regularly review its estimates and make the necessary subsequent adjustments during the course of its case.¹⁶ The above summaries of the anticipated testimony are equally without prejudice to the evidence that might be produced in the course of the trial.
12. In the circumstances, the Chamber finds that the above disclosure deadline of three months prior to the commencement of trial, and over four months prior to the start of the evidentiary presentation, is sufficient notice for Mr Al Hassan to meaningfully prepare his defence.

C. Pre-Trial Brief

13. The Defence requests that the Prosecution files a pre-trial brief and the Chamber notes that the Defence namely ‘seeks clarity as to the operative charging section of the Confirmation Decision, particularly given its length and scope’.¹⁷ The Defence also submits that the Trial Chamber will require to ‘satisfy itself that Mr. Al Hassan understands the nature of the charges against him’.¹⁸
14. The Prosecution submits that a pre-trial brief is not necessary, in light of the confirmation of charges decision and the document containing the charges (‘DCC’). However, it states that it is ready to submit a new version of its DCC with updated hyperlinks to the evidence.¹⁹
15. As noted by the Presiding Judge during the Status Conference, the pre-trial brief ‘is a very useful document used here in this court to prepare the trial and such a document provides an explicit explanation of the manner in which the Prosecution intends to show the charges confirmed by the Pre-Trial Chamber’.²⁰ Moreover, the submission of such a pre-trial brief has been common practice in prior trials before this Court.²¹

¹⁶ In its decision pursuant to Rule 140 of the Rules, the Chamber will set out the content and timing of any further notice to be provided by the calling party prior to the calling of a witness.

¹⁷ Defence’s Submissions, ICC-01/12-01/18-519-Conf-Exp, para. 33.

¹⁸ Defence’s Submissions, ICC-01/12-01/18-519-Conf-Exp, para. 33.

¹⁹ Prosecution’s Submissions, ICC-01/12-01/18-518-Conf-Exp-Red2, paras 34-36. *See also* ICC-01/12-01/18-T-008-ENG, p. 39, line 20 to p. 40, line 19.

²⁰ ICC-01/12-01/18-T-008-ENG, p. 39, lines 13-16.

²¹ [Chamber’s Practice Manual](#), November 2019, para. 75.

16. Accordingly, the Prosecution is instructed to file a pre-trial brief no later than **14 April 2020**. Should the Defence or the LRVs wish to file their own pre-trial briefs by the same deadline as the Prosecution, they may also do so.
17. Notwithstanding, the Chamber reiterates that the Confirmation Decision ‘is the point of reference throughout the trial’.²² The Confirmation Decision thus remains the authoritative statement of the charges, ‘defines the parameters of the charges at trial’ and ‘serves as a basis for the trial’.²³
18. The Chamber also notes the Prosecution’s offer to file an updated DCC. However, as noted by the Appeals Chamber, ‘an “updated” document containing the charges is “neither appropriate nor compatible with the procedural regime set out in the Statute” as it undermines the authority of the decision on confirmation of charges to serve as the operative document for the trial’.²⁴ Accordingly, the Chamber considers that an updated DCC is neither necessary or appropriate.

D. Motions requiring resolution prior to the commencement of trial

19. As has been done in previous cases,²⁵ and in order to ensure that no issues affecting the commencement of the trial are unresolved by the commencement date, the Chamber considers it appropriate to set a deadline for the filing of all motions which require resolution prior to the commencement of trial. This deadline will be set at **1 June 2020**.

²² ICC-01/12-01/18-T-008-ENG, p. 42, lines 12-13.

²³ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”, 8 March 2018, ICC-01/05-01/13-2275-Red (*Bemba et al. Appeal Judgment*), para. 196. Referring to Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red (*Lubanga Appeal Judgment*), para. 124. See also ICC-01/12-01/18-T-008-ENG, p. 42, lines 12-13.

²⁴ *Bemba et al. Appeal Judgment*, ICC-01/05-01/13-2275-Red, para. 197. Referring to Trial Chamber VII, Decision on the Submission of Auxiliary Documents, 10 June 2015, ICC-01/05-01/13-992, paras 8-11.

²⁵ See e.g. Trial Chamber IX, *Ongwen* case, Decision Setting the Commencement Date of the Trial, 30 May 2016, ICC-02/04-01/15-449, para. 11; Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58, para. 28; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Order setting the commencement date for trial, 22 May 2015, ICC-01/05-01/13-960, para. 14; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on the conduct of proceedings, 2 June 2015, ICC-01/04-02/06-619, para. 8.

E. Agreed facts

20. The Chamber previously directed the Prosecution and the Defence to liaise with a view to reaching agreements about non-contentious issues, particularly regarding factual findings found in the ‘Judgment and Sentence’ in the case of *the Prosecutor v. Ahmad Al Faqi Al Mahdi*.²⁶ The Chamber encourages the filing of any joint submission on agreed facts by **1 June 2020**.

F. Commencement date of the trial

21. The Chamber had previously indicated an initial preference to start the trial before the summer recess.²⁷ The Chamber notes the Prosecution’s proposal to start the trial in September 2020,²⁸ while the Defence requests the commencement of the trial before the summer recess (i.e. in July 2020), provided that certain conditions are met, notably in terms of resources and disclosure.²⁹
22. The Chamber is mindful of its obligations under the Statute to ensure that the accused is tried without undue delay and that the trial is fair and expeditious. The Chamber has taken into consideration that the warrant of arrest was issued in this case in March 2018, the confirmation of charges hearing took place in July 2019, and a decision was rendered thereon in September 2019, providing the Prosecution sufficient time to prepare for trial. The Chamber has also considered that the accused has remained in custody throughout these proceedings.
23. In addition to the above, the Chamber has had regard to its duty to ensure the accused has adequate time and facilities for the preparation of his defence, but also its obligations with regard to the protection of victims and witnesses pursuant to Article 68(1) of the Statute. The Chamber thus considered the potential impact the security situation in Mali may have in the activities and obligations of the parties and participants in preparation for trial.

²⁶ ICC-01/12-01/18-T-008-ENG, p. 48, lines 11-16.

²⁷ ICC-01/12-01/18-507, para. 3.

²⁸ Prosecution’s Submissions, ICC-01/12-01/18-518-Conf-Exp-Red2, paras 4-13. *See also* ICC-01/12-01/18-T-008-ENG, p. 37, lines 22-23.

²⁹ Defence’s Submissions, ICC-01/12-01/18-519-Conf-Exp, paras 3, 5.

24. Accordingly, and noting the disclosure deadline set out above, the Chamber sets the trial commencement date for **14 July 2020**, in order to hear opening statements of the parties and participants. Thereafter, the Prosecution will commence its presentation of evidence in the case on **25 August 2020**.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES that the trial will commence on **14 July 2020** and that the Prosecution presentation of evidence will commence on **25 August 2020**; and

SETS the following deadlines leading up to the trial commencement:

31 January 2020: Provisional list of Prosecution witnesses.

14 April 2020: Disclosure of material in the Prosecution's possession, final list of Prosecution witnesses (with summaries of anticipated witness testimony), Prosecution list of evidence, and Prosecution pre-trial brief.

1 June 2020: Motions requiring resolution prior to the commencement of trial and any joint submission on agreed facts.

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

Judge Antoine Kesia-Mbe Mindua
Presiding Judge

Judge Tomoko Akane

Judge Kimberly Prost

Dated this 6 January 2020

At The Hague, The Netherlands