



Original: English

**No. ICC-01/12-01/18
Date: 23 September 2022**

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 on the Defence and Prosecution requests in relation to the sixth
decision on matters related to the conduct of proceedings**

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

The Office of the Prosecutor

Karim A. A. Khan
Nazhat Shameem Khan
Mame Mandiaye Niang

Counsel for the Defence

Melinda Taylor

Legal Representatives of Victims

Seydou Doumbia
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Articles 64(2) and 67(1)(a) and (f) of the Rome Statute (the ‘Statute’), Rules 42 and 141 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 35(2) of the Regulations of the Court (the ‘Regulations’), issues the following decision.

I. Procedural history

1. On 29 August 2022, the Chamber issued its sixth decision on matters related to the conduct of proceedings (the ‘Decision’),¹ in which it *inter alia* instructed (i) the Defence to file its final brief 4 weeks after notification of the Prosecution’s and LRVs’ final briefs; (ii) that responses to the Prosecution, LRVs and Defence final briefs be filed 2 weeks after notification of the Defence’s final brief; and (iii) that the final briefs of the Prosecution and the Defence shall be drafted in English.²
2. On 2 September 2022, the Defence requested that the Prosecution be ordered to provide a draft translation of its final brief in Arabic and that the Defence’s four week time limit to file its own final brief after notification of that of the Prosecution begin to run only after notification of the draft Arabic translation (the ‘First Defence Request’),³ submitting that such a request (i) is necessary to meet the statutory requirements of fairness, as Mr Al Hassan has minimal comprehension of the English language and would be unable to participate in his own defence if a translation is not provided,⁴ and (ii) is supported by good cause in accordance with Regulation 35(2) of the Regulations.⁵
3. On 5 September 2022, the Prosecution filed a request for clarification regarding the Decision (the ‘Prosecution Request’),⁶ in which it informed the Chamber of

¹ Sixth decision on matters related to the conduct of proceedings: end of Defence case, potential rebuttal/rejoinder evidence, and closure of evidence, ICC-01/12-01/18-2308.

² Decision, ICC-01/12-01/18-2308, paras 11-12.

³ Request for a Draft Arabic Translation of the Prosecution Final Trial Brief and Suspension of Related Deadline, ICC-01/12-01/18-2329-Conf (a public redacted version of the request was filed on the same date and notified on 5 September 2022, ICC-01/12-01/18-2329-Red).

⁴ First Defence Request, ICC-01/12-01/18-2329-Red, paras 1-2, 4, 14-27.

⁵ First Defence Request, ICC-01/12-01/18-2329-Red, paras 1, 3-4, 28-31.

⁶ Prosecution’s request for clarification regarding the Sixth decision on matters related to the conduct of proceedings, ICC-01/12-01/18-2330.

its intention to draft its final brief in English and sought confirmation that the Chamber's instruction that its final brief shall be drafted in English did not limit its latitude to use either working language of the Court.

4. On 12 September 2022, the Prosecution filed a response to the First Defence Request, submitting that it should be dismissed (the 'Prosecution Response').⁷ The Prosecution submits that a draft Arabic translation of the Prosecution final brief is not necessary to meet the requirements of fairness because (i) the closing brief has no independent evidentiary value, but rather is a summary and reiteration of the parties and participants' views and positions and the evidence submitted during the trial proceedings;⁸ (ii) Mr Al Hassan is fully aware of the charges and evidence against him;⁹ (iii) Mr Al Hassan has a Defence team composed of lawyers who fully understand English and Arabic speakers who can assist him;¹⁰ and (iv) the Registry can provide interpreters for the accused.¹¹ The Prosecution further submits that should the Defence request for a draft Arabic translation be granted, the Defence should not benefit from a full four weeks to file its final brief after receipt of the translation.¹²
5. On 19 September 2022, the Defence sent an email requesting that the Chamber (i) grant the Defence, in advance, a right to file a consolidated response and reply to the Prosecution and LRVs final briefs and responses; and (ii) set the deadline for the Defence consolidated response and reply five days after the filing of the Prosecution and LRVs responses (the 'Second Defence Request').¹³
6. On 19 September 2022, the Prosecution sent an email seeking that the Chamber orders the reclassification to 'public' of the Prosecution Response.¹⁴

⁷ Prosecution response to "Request for a Draft Arabic Translation of the Prosecution Final Trial Brief and Suspension of Related Deadline", ICC-01/12-01/18-2338-Conf.

⁸ Prosecution Response, ICC-01/12-01/18-2338-Conf, paras 2, 9-10.

⁹ Prosecution Response, ICC-01/12-01/18-2338-Conf, paras 2, 11-13.

¹⁰ Prosecution Response, ICC-01/12-01/18-2338-Conf, paras 2, 14.

¹¹ Prosecution Response, ICC-01/12-01/18-2338-Conf, paras 2-3, 15-16.

¹² Prosecution Response, ICC-01/12-01/18-2338-Conf, paras 5, 18.

¹³ Email at 13:41.

¹⁴ Email at 13:53.

II. Analysis

7. Regarding the First Defence Request, the Chamber considers that the right of the accused to receive translations, in light notably of his rights under Article 67(1)(a) and (f) of the Statute, is not without limitations and is confined to translations necessary to ‘meet the requirements of fairness’.¹⁵
8. In this instance, the Chamber does not find it necessary for the fairness of the proceedings to order that a draft Arabic translation of the Prosecution final brief be provided before the filing of the Defence final brief.
9. The Chamber first notes that Mr Al Hassan received Arabic translations of the key charging documents in this case and has been in possession of detailed information regarding the Prosecution’s case against him for some time. Mr Al Hassan was notified of an Arabic translation of the Arrest Warrant Application on 5 December 2018;¹⁶ the Warrant of Arrest on 29 March 2018;¹⁷ the Document Containing the Charges on 7 June 2019;¹⁸ and the Confirmation Decision on 19 August 2021.¹⁹ Mr Al Hassan has also heard the evidence presented in court in Arabic during the entire course of the trial and the Prosecution confirms that he has had access to the Arabic translations of the witness statements that appear on the Prosecution’s list of evidence.²⁰ In the view of the Chamber, Mr Al Hassan is fully aware of the case brought against him and of all the arguments raised in the proceedings.
10. Concerning the Prosecution final brief, the Chamber considers that this document is mainly intended to provide a summary of the Prosecution’s views, positions and arguments in relation to the evidence presented during trial, in support of the charges brought against the accused and of his alleged individual criminal

¹⁵ See Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Directions on Closing Briefs and Closing Statements, 13 April 2018, ICC-02/04-01/15-1226, para. 5.

¹⁶ Arabic translation of Version confidentielle expurgée de la « Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan Ag ABDOUL AZIZ Ag Mohamed Ag Mahmoud », ICC-01/12-01/18-1-Conf-Exp-Red2-tARB.

¹⁷ Arabic translation to « Mandat d’arrêt à l’encontre d’Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud », ICC-01/12-01/18-2-tARB.

¹⁸ Dépôt du Document contenant les charges en langue arabe, ICC-01/12-01/18-366 (with confidential Annexes A, ICC-01/12-01/18-366-Conf-AnxA, and B, ICC-01/12-01/18-366-Conf-AnxB).

¹⁹ Arabe translation of Rectificatif à la 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-Corr-tARB.

²⁰ Prosecution Response, ICC-01/12-01/18-2338-Conf, para. 12.

responsibility. While final briefs are useful documents and provide additional assistance for the Chamber, they have no independent evidentiary value and, as a summary of the Prosecution's position, the Prosecution final brief will not contain substantially new and key information. For this reason, the Chamber also notes that an official Arabic translation of the Prosecution trial brief was not filed before the commencement of the Prosecution's presentation of evidence.

11. Furthermore, Mr Al Hassan is assisted by a Defence team who fully understands the language in which the Prosecution final brief will be filed and some of whom are in a position to convey to him in Arabic and will be able to consult with him on all relevant aspects of the Prosecution final brief and its contents.
12. In light of the above, the Chamber considers that the information already available to Mr Al Hassan, in addition to the assistance provided by his Defence team, will enable him to effectively participate in the preparation of the Defence final brief. Therefore, the Chamber finds that the circumstances before it do not show any prejudice to the rights of Mr Al Hassan and the fairness of the trial.
13. In view of the foregoing, it is also not necessary to suspend the time limit for the Defence to file its final brief. Accordingly, the Chamber rejects the First Defence Request.
14. Nevertheless, while being mindful of the Court's limited resources, should the Defence consider that certain discrete parts of the Prosecution final brief require urgent draft translation in order to prepare its response thereto or for the closing statements, the Chamber suggests that it liaises with the Registry accordingly.
15. Regarding the Second Defence Request, the Chamber recalls that it set the modalities and adopted a specific schedule for the presentation of final briefs and closing statements in its Decision, after having considered the nature and scope of the parties' respective cases and responsibilities.²¹ In setting these modalities, the Chamber decided that the Defence shall not have an automatic right to reply in writing to any responses from the Prosecution and the LRVs to the final briefs.

²¹ Decision, ICC-01/12-01/18-2308, paras 10-11.

16. The Chamber considers that, in requesting the schedule to be modified for the Defence to file a consolidated response and reply to the Prosecution and LRVs final briefs and responses five days after the filing of such responses, the Second Defence Request amounts to a request for reconsideration.
17. The Chamber notes that, although the Defence does not have ‘the last written word’, it does have the opportunity to reply orally to any responses from the Prosecution or the LRVs to the final briefs during its closing statements, which shall take place approximately within 2 weeks of notification of the responses. In this regard, the Chamber notes that Rule 141(2) of the Rules prescribes the Defence the opportunity to speak last during the closing statements. The Chamber therefore considers that the schedule adopted in its Decision does not deprive the Defence of the opportunity to speak last. Further, as noted in its submissions,²² the Defence retains the right to seek leave to reply to the LRVs and Prosecution responses should it deem it appropriate at the relevant time. Consequently, the Chamber finds that the Defence has not shown any grounds that warrant the exceptional remedy of reconsideration of this aspect of the Decision.
18. Finally, regarding the Prosecution Request, the Chamber notes that the Prosecution confirmed its intention to draft its final brief in English.²³ Should the Prosecution wish to quote or refer to discrete parts of the evidence in French, the Chamber confirms that the Prosecution is not prevented from doing so, provided that the corresponding English translation, if available, is referenced as well.

²² Second Defence Request, email at 13:41.

²³ Prosecution Request, ICC-01/12-01/18-2330, para. 3; Prosecution Response, ICC-01/12-01/18-2338-Conf, para. 14.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

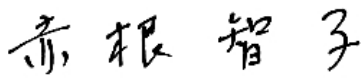
REJECTS the First Defence Request and the Second Defence Request; and

ORDERS the Registry to reclassify to ‘public’ the Prosecution Response (ICC-01/12-01/18-2338-Conf).

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 Friday, 23 September 2022

At The Hague, The Netherlands