



Original: English

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

Date: 22 October 2018

Submission: 10 October
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

With confidential *ex parte* Annex

**Public redacted version of the Request for the implementation of certain
measures relating to Mr Al Hassan's detention**

**Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
Mahmoud**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart

Counsel for the Defence

Ms Melinda Taylor
Ms Marie-Hélène Proulx

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Patrick Craig

**Victims Participation and
Reparations Section**

Other

I. Introduction

1. On 27 March 2018, the Chamber issued a warrant of arrest for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud.¹
2. On 31 March 2018, Mr Al Hassan was surrendered to the Court. Since this time, Mr Al Hassan has been subject to restrictive measures on his communication with the outside world including active monitoring of his non-privileged telephone calls and visits.²
3. On 22 May 2018, the Registry filed its first and, presently, only report on the implementation of the restrictive measures ordered by the Single Judge,³ which provided information on Mr Al Hassan's compliance with the measures and his ability to exercise his right to family life.
4. On 25 September 2018, the Defence requested the Registry, via email, to implement a reporting procedure on Mr Al Hassan's compliance with the conditions of his detention. On 2 October 2018, the Registry informed the Defence that it could not implement a reporting procedure without instruction from the Chamber.⁴
5. The Defence hereby submits its request to the Single Judge for the implementation of a procedure for regular reporting on the application of the restrictive measures on Mr Al Hassan's contact with other persons, his compliance with these measures, and his behaviour in detention. In addition, the Defence requests that the Registry be directed to ensure that, notwithstanding the labour intensity of active monitoring, Mr Al

¹ Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, 27 March 2018, ICC-01/12-01/18-2-tENG.

² Decision on the Prosecution's Application under Regulation 101 of the Regulations of the Court, 5 April 2018, ICC-01/12-01/18-16-Conf-Exp-tENG (the **First Decision**). See, also, Second Decision on the Restrictions on Contact with Other Persons during the Pre-Trial Proceedings, 20 July 2018, ICC-01/12-01/18-93-Conf-Exp-Red-tENG (the **Second Decision**); and Third Decision on the Measures to Restrict Contact throughout the Pre-Trial Phase of the Proceedings, 20 July 2018, ICC-01/12-01/18-95-Conf-Exp-Red-tENG (the **Third Decision**).

³ Registry Report on the Implementation of the Monitoring Measures Ordered by the Single Judge, 21 May 2018, ICC-01/12-01/18-34-Conf-Exp (the **Registry Report**).

⁴ See Annex, email from Marc Dubuisson to Yasser Hassan dated 2 October 2018 at 11:29.

Hassan is able to speak to his family via telephone for two hours per week, as per the instructions of the Single Judge.⁵

II. Classification

6. In accordance with regulation 23*bis*(1) of the Regulations of the Court, this request and its annex are classified as confidential *ex parte*, available to the Defence, the Registrar and the Detention Section, as it contains sensitive information concerning the Suspect's private life and conditions of detention.

III. Submissions

(A) *Reporting procedure*

7. Mr Al Hassan is, at present, subject to serious restrictions on his contact with other persons. These include, *inter alia*, restricting telephone calls and visits to a limited list of individuals whose identities have been verified and with whom any discussion related to the case is prohibited; active monitoring of non-privileged telephone calls and visits; restricting the language of communication to French, Arabic and Tamasheq; and restricting the duration of non-privileged telephone calls to two hours per week.⁶ Given the severity of these measures and the fact that they are to remain in place throughout the pre-trial proceedings,⁷ the Chamber and the Defence should remain apprised of their application during this time.
8. Although not explicitly set out in the ICC statutory framework, the Single Judge has the discretion to direct the Registry to implement reporting procedures in respect of individuals in the care and custody of the ICC. Indeed this is necessary in view of his power to impose restrictive measures on individuals in ICC detention and to make decisions that otherwise affect their rights.⁸
9. The right to privacy and family life is an internationally recognised human rights principle enshrined in a number of important human rights instruments, including the

⁵ First Decision, para 36(iii); and Second Decision, p 29 (in deciding to maintain active monitoring as set forth in the First Decision).

⁶ First Decision, paras 17-21; Second Decision, para 87; and Decision on the 'Request to allow Mr Al Hassan to communicate in the Tamasheq language', 30 April 2018, ICC-01/12-01/18-24-Conf-Exp-tENG, para 13.

⁷ Second Decision, para 87.

⁸ For example, pursuant to regulation 101 of the Regulations of the Court or article 68(1) of the Rome Statute.

International Covenant on Civil and Political Rights and the European Convention on Human Rights.⁹ The Single Judge has also underscored ‘the importance for a detained person to be able to maintain personal and emotional ties with his or her family.’¹⁰

10. Regular reporting on Mr Al Hassan’s monitoring and detention will assist the Chamber in its continued assessment on the proportionality of the restrictive measures, their impact on Mr Al Hassan’s family and private life, and whether they remain fit for purpose.¹¹ In fact, in his Second Decision, the Single Judge directed the Registrar ‘to keep him closely informed of the implementation of the restrictions and of any difficulties he may encounter in their implementation’,¹² indicating that the Chamber would benefit from regular reporting on Mr Al Hassan’s detention.
11. In addition, a reporting procedure will ensure that the Defence is routinely informed on matters that pertain to Mr Al Hassan’s welfare, and assist the Defence should it seek, for example, to vary the conditions of Mr Al Hassan’s detention or make an application for interim release.¹³
12. To this end, the Defence respectfully requests that the Chamber authorise the Registry to carry out regular reporting on: (i) the use of restrictive measures; (ii) Mr Al Hassan’s compliance with those measures; and (iii) his ability to exercise the rights afforded to him while in detention. The Defence suggests that the Registry provide such reports to the Chamber on an *ex parte*, Chamber and Defence only, basis. These reports should be submitted every three months, following the format of the Registry Report dated 21 May 2018. The Defence does not consider it necessary or appropriate for these reports, which will contain sensitive information relating to Mr Al Hassan’s family life, to be provided directly to the Prosecution.¹⁴

⁹ Article 17 of the ICCPR, and article 8 of the ECHR. See also Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts, 18 August 2015, [ICC-01/04-02/06-785-Red](#), para 42.

¹⁰ Second Decision, para 50.

¹¹ Second Decision, para 51 (‘any interference by a public authority with the exercise of a detained person’s right to private and family life and to correspondence must [...] remain proportionate to the legitimate aim pursued.’)

¹² Second Decision, p 30. See also para 90.

¹³ Article 60 of the Rome Statute; rule 118 of the Rules of Procedure and Evidence.

¹⁴ Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts, 18 August 2015, [ICC-01/04-02/06-785-Red](#), para 68.

(B) *Non-privileged telephone calls*

13. Mr Al Hassan is permitted to talk on the telephone with his family for two hours per week, pursuant to the Single Judge's First and Second Decisions. However, in practice, he is only afforded one hour per week to make telephone calls due to the labour intensive nature of active monitoring.¹⁵
14. In its Report, the Registry indicated that, should the Single Judge decide to maintain the restrictions on Mr Al Hassan throughout the pre-trial stage of the proceedings, it would 'actively and urgently search for an interpreter'.¹⁶ The appointment of a permanent interpreter would likely rectify the discrepancy between the time that Mr Al Hassan is permitted to make telephone calls and the time he is actually given per week, but it is unclear whether the Registry has taken steps to do so following the rendering of the Second Decision.
15. Since his arrival at the Detention Centre, Mr Al Hassan has complied with the restrictions on his contact with others and has not needed to be reminded of the measures in place.¹⁷ Yet one of the few entitlements he is given is unfairly constrained due to operational issues. The Registry should, at a minimum, ensure that Mr Al Hassan, who is already under severe restrictions, is able to exercise the rights he is afforded. The Defence therefore requests that the Chamber direct the Registry to ensure that Mr Al Hassan is able to contact his family via telephone for two hours each week.

IV. Conclusion

16. In view of the above, the Defence considers that regular reporting on the application of the measures restricting Mr Al Hassan's contact with others will ensure that the Chamber and the Defence remain apprised of Mr Al Hassan's behaviour in detention and his capacity to exercise the limited rights he is afforded to contact his family.

¹⁵ Registry Report, paras 3 and 5.

¹⁶ Registry Report, para 10.

¹⁷ Registry Report, para 4. See also Annex, email from M Dubuisson to Y Hassan dated 2 October 2018 at 11:29, [REDACTED].

17. The Defence further requests that the Registry be directed to ensure that Mr Al Hassan is able to contact his family via telephone for two hours per week, fully respecting the limited right to family life that he has been given.



Melinda Taylor
Lead Counsel for Mr Al Hassan



Marie-Hélène Proulx
Associate Counsel for Mr Al Hassan

Dated this 22nd Day of October 2018
At The Hague, The Netherlands