

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/12-01/18**
Date: **11 December 2019**

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding
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

Confidential *Ex Parte*, Prosecution, Defence and Victims and Witnesses Unit

Urgent request for extension of time limit to respond to “Confidential redacted version of ‘Prosecution Motion for authorisation to withhold information identifying Witnesses MLI-OTP-P0636, MLI-OTP-P0638, MLI-OTP-P0639, MLI-OTP-P0641, and MLI-OTP-P0642 from their statements’, ICC-01/12/-01/18-487-Conf-Exp, 13 November 2019”

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

Fatou Bensouda
James Stewart

Counsel for the Defence

Melinda Taylor
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

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and
Reparations Section**

Other

I. Introduction

1. The Defence for Mr. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (the 'Defence') respectfully requests a minor extension of the time limit to respond to "Confidential redacted version of 'Prosecution Motion for authorisation to withhold information identifying Witnesses MLI-OTP-P0636, MLI-OTP-P0638, MLI-OTP-P0639, MLI-OTP-P0641, and MLI-OTP-P0642 from their statements', ICC-01/12-01/18-487-Conf-Exp, 13 November 2019" (the 'Motion'),¹ pursuant to Regulation 35 of the Regulations of the Court.
2. This Request is filed urgently, given the upcoming original deadline of Monday 16 December to respond to the Motion.

II. Classification

3. Pursuant to Regulation 23bis(2) of the Regulations of the Court, this request is filed confidential *ex parte*, Prosecution, Defence and the Victims and Witnesses Unit only, as it refers to a filing of the same classification.

III. Submissions

4. The Defence respectfully submits that there exists good cause, per Regulation 35(2) of the Regulations of the Court, to extend the deadline to respond to the Motion by three days – i.e. until Thursday 19 December 2019.
5. The Defence's capacity to respond to legal submissions is currently under considerable strain. As the Trial Chamber is aware, the Defence has prepared and filed detailed and extensive written submissions pursuant to the Trial Chamber's 'Order Scheduling First Status Conference' of 26 November 2019.² It is also currently preparing oral submissions in response to the Prosecution's written submissions pursuant to said Order, further to the Trial Chamber's 'Order Setting the Agenda for the First Status Conference'.³ The Status Conference scheduled for Thursday 12 December 2019 will itself require the presence of the Defence Team members in court for most of the day, further limiting the Defence's capacity to prepare its response to the Motion.

¹ ICC-01/12-01/18-487-Conf-Exp-Red ('Motion').

² ICC-01/12-01/18-519-Conf-Exp; ICC-01/12-01/18-507.

³ ICC-01/12-01/18-518-Conf-Exp-Red2; ICC-01/12-01/18-521.

6. In addition, the Defence has this week alone prepared and filed three motions; specifically, two responses to Prosecution applications (the 'Defence response to Prosecution urgent application to maintain restrictions on Mr. Al Hassan's contacts and access to others while in detention'⁴ and the 'Response to "Addendum to Prosecution Request for Access to the Identity of and Applications of Participating Victims, 21 November 2019, ICC-01/12-01/18-502"'⁵) filed Monday 9 December, and today, 6 December 2019, respectively; and its 'Request to access audio files from the detention unit recordings',⁶ also filed today, 6 December 2019.
7. The potential significance of the subject matter of the Motion is itself further reason to grant the sought extension. In the Motion, the Prosecution seeks to withhold information identifying four⁷ witnesses who, according to the Prosecution, provide both inculpatory and exculpatory information, in relation to multiple alleged crimes.⁸ At least two of the witnesses provide evidence allegedly directly in relation to Mr Al Hassan.⁹ The importance of these four witnesses to the Prosecution's case cannot be controversial, especially given that the Prosecution has stated that its upcoming request to amend the charges in this case is based in part on evidence provided by these witnesses.¹⁰ Should the Motion be granted, the prejudice occasioned to Defence preparation and investigation would therefore be significant, adding as it would to the already significant tally of Prosecution witnesses the identities of whom the Prosecution has withheld, and intends to continue to withhold, from the Defence.¹¹ It is therefore submitted that, considering what is at stake in the Motion, it is in the interests of justice to grant the sought extension.
8. Lastly, the Defence submits that the sought time limit extension, being only three days, cannot realistically prejudice Prosecution preparations, especially in light of the fact that the period of deliberations on the Motion will fall within the Judicial Break.

⁴ ICC-01/12-01/18-520-Conf-Exp.

⁵ ICC-01/12-01/18-524-Conf.

⁶ ICC-01/12-01/18-525-Conf-Exp.

⁷ The Prosecution has withdrawn the Motion insofar as it concerns Witness P-0642; see, ICC-01/12-01/18-514-Conf-Exp.

⁸ Motion, para. 11, 18-38.

⁹ Motion, paras 23-29, 34-38.

¹⁰ Motion, para. 11.

¹¹ The Defence notes that the Prosecution has signalled its intention to withhold identifying information from the Defence for at least 26 witnesses until 'end April to mid-May 2020'; see, ICC-01/12-01/18-518-Conf-Exp-Red2, paras 7-8.

IV. Conclusion

9. The Defence respectfully requests that the Trial Chamber extend the time limit to respond to the Motion until Thursday, 19 December 2019.



Melinda Taylor
Lead Counsel for Mr Al Hassan



Marie-Hélène Proulx
Associate Counsel for Mr Al Hassan

Dated this 11th Day of December 2019
At The Hague, The Netherlands