

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/18
Date: 12 February 2020

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua
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 REDACTED VERSION OF

"Registry Observations to Defence Request to Access Audio Files (ICC-01/12-01/18-525-Conf-Exp) and the Prosecutor's Application on Restrictions on Contact (ICC-01/12-01/18-505-Conf-Exp)" filed on 13 January 2020, ICC-01/12-01/18-550

Source: Registry

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

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Legal Representatives of the Applicants

Legal Representatives of the Victims

Unrepresented Applicants

(Participation/Reparation)

Unrepresented Victims

**The Office of the Public Counsel for
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**Victims Participation and Reparations
Section**

I. Introduction

1. Following the invitation by Trial Chamber X ("Chamber")¹ to provide observations to the "Request to access audio files from the detention unit recordings" ("Defence Request"),² submitted by the Defence of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ("Mr Al Hassan") on 11 December 2019, and the "Prosecution's urgent application to maintain restrictions on Mr AL HASSAN's contacts and access to others whilst in detention" ("Prosecution's Application"),³ the Registry hereby submits its Observations.

II. Procedural history

2. Since 31 March 2018, Mr Al Hassan has been in the custody of the Detention Centre of the International Criminal Court ("Detention Centre") where he has been subject to restrictive measures on his communication pursuant to the relevant decisions of the Pre-Trial Chamber ("Decisions on Restrictions").⁴

¹ Email Correspondence from the Legal Officer of Trial Chamber X to the Registry on 19 December 2019 at 17:20; A request for extension of time was submitted, Email Correspondence from the Registry to the Legal Officer of Trial Chamber X on 6 January 2019 at 11:25; Extension of time was granted until 13 January 2020, Email Correspondence from the Legal Officer of Trial Chamber X of the Registry on 6 January 2020 at 13:51.

² Defence, "Request to access audio files from the detention unit recordings" ("Defence Request"), 11 December 2019, ICC-01/12-01/18-525-Conf-Exp.

³ Office of the Prosecutor, "Prosecution's urgent application to maintain restrictions on Mr AL HASSAN's contacts and access to others whilst in detention" ("Prosecution's Application"), 21 November 2019, ICC-01/12-01/18-505-Conf-Exp.

⁴ Pre-Trial Chamber I, "Decision on the Prosecution's Application under Regulation 101 of the Regulations of the Court" ("Decision on Regulation 101"), 5 April 2018, ICC-01/12-01/18-16-Conf-Exp-tENG; Pre-Trial Chamber I, "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; Pre-Trial Chamber I, "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-tENG; and Pre-Trial Chamber I, « *Quatrième*

3. On 22 November 2018, the Single Judge issued the “Decision on the Defence Request for the Implementation of Certain Measures Relating to Mr Al Hassan’s Detention,” ordering the Registry to submit quarterly reports on the implementation of the measures restricting Mr Al Hassan’s contacts.⁵
4. [REDACTED],⁶ [REDACTED].
5. On 19 November 2018, the Pre-Trial Chamber issued its [REDACTED],⁷ [REDACTED].⁸
6. On 19 March 2019, the Registry [REDACTED],⁹ [REDACTED].¹⁰
7. On 26 March 2019, the Registry [REDACTED],¹¹ [REDACTED]¹² [REDACTED].¹³
8. On 12 April 2019, the Registry submitted [REDACTED].¹⁴
9. On 7 June 2019, the Single Judge issued the [REDACTED].¹⁵ [REDACTED].¹⁶ [REDACTED],¹⁷ [REDACTED].¹⁸

décision sur les mesures de restriction des contacts non privilégiés de M. Al Hassan », 9 May 2019, ICC-01/12-01/18-340-Conf-Exp.

⁵ Pre-Trial Chamber I, “Decision on the Defence Request for the Implementation of Certain Measures Relating to Mr Al Hassan’s Detention” (“22 November 2018 Decision”), 22 November 2018, ICC-01/12-01/18-189-Conf-Exp-tENG, paras. 25-27.

⁶ [REDACTED].

⁷ [REDACTED].

⁸ *Ibid.*, p. 13.

⁹ [REDACTED].

¹⁰ *Ibid.*, para. 14.

¹¹ [REDACTED].

¹² *Ibid.*, para. 17.

¹³ *Ibid.*, para. 18.

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Ibid.*, para. 111.

10. On 22 August 2018, the Registry submitted its "Third Registry Report on the Implementation of the Measures Restricting Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud's Contact",¹⁹ [REDACTED].
11. On 21 November 2019, the Registry submitted its "Fourth Registry Report on the Implementation of the Measures Restricting Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud's Contact", [REDACTED].²⁰
12. On 21 November 2019, the Office of the Prosecutor submitted the Prosecution's Application,²¹ requesting the Chamber to maintain the current communications restrictions and "grant the additional restriction to limit the Accused's list of non-privileged contacts to his immediate family members and exclude any person who is a member of, affiliated with, or in contact with Groups of any nationalist armed group".²²
13. On 17 December 2019, the Defence for Mr Al Hassan submitted the "Confidential redacted version of the 'Defence response to Prosecution urgent application to maintain restrictions on Mr. Al Hassan's contacts and access to others while in detention' 9 December 2019, ICC-01/12-01/18-520-Conf-Exp" ("Defence Response").²³
14. On 11 December 2019, the Defence for Mr Al Hassan submitted the Defence Request,²⁴ requesting the Chamber to direct the Registry to provide Mr Al

¹⁹ Registry, Third Registry Report on the Implementation of the Measures Restricting Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud's Contact, ICC-01/12-01/18-457-Conf-Exp.

²⁰ Registry, Fourth Registry Report on the Implementation of the Measures Restricting Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud's Contact, ICC-01/12-01/18-503-Conf-Exp.

²¹ Prosecution's Application.

²² *Ibid*, para. 92.

²³ Defence, "Defence response to Prosecution urgent application to maintain restrictions on Mr. Al Hassan's contacts and access to others while in detention", 9 December 2019, ICC-01/12-01/18-520-Conf-Exp-Red.

²⁴ Defence Request.

Hassan with access to any audio-recordings of Mr Al Hassan's detention communications.²⁵

III. Classification

15. In accordance with regulation 23 *bis* (1) of the Regulations of the Court ("RoC"), the present report is classified as confidential *ex parte* only available to the Detention Section and the Victims and Witnesses Unit, as it refers to confidential *ex parte* decisions and filings of the same classification, and further as the report contains sensitive information regarding Mr Al Hassan's private life and detention-related matters. Confidential redacted versions will be made available to the Prosecution and the Defence.

IV. Applicable law

16. For the present report, the Registry has considered, *inter alia*, regulations 99(1)(h), (i) and 100 of the RoC, and regulations 173, 174, and 175 of the Regulations of the Registry ("RoR").

V. Submissions

Observations on the Defence Request

17. The Defence Requests access to Mr Al Hassan's audio—recordings from the Detention Centre.²⁶ In their submissions, the Defence appears to request both

²⁵ *Ibid.*, para. 13(i).

²⁶ *Ibid.*, paras. 1, 13.

that it be provided with specific audio-recordings,²⁷ and also that it be provided with all audio-recordings upon request.²⁸ The Defence further submits that it is entitled to receive the audio-recordings which correspond to any transcripts held by the Detention Centre.²⁹ The Registry does not, in principle, oppose access to Detention Centre audio- recordings, but submits that the request should specific and justified, based on audio- recordings of conversations that are at issue or that are specifically requested and justified, rather than open ended requests for access to all audio- recordings.

18. The Language Services Section (“LSS”) of the Registry is tasked with neutrally providing language services to the Court. This includes providing translation and interpretation services for active monitoring orders emanating from any of the Chambers. These services are provided relying on the Registry’s mandate as the neutral organ of the Court. [REDACTED].

19. [REDACTED].

20. The Registry therefore wishes to clarify that should the Defence be requesting ongoing access to all audio-recordings, whether or not they correspond to transcripts, this would be an extremely burdensome task for the Registry. Furthermore, it would be unprecedented to provide unqualified access to Detention Centre held audio-recordings when these recordings are not at issue.

21. The Defence Request relies on several decisions in the case of the Prosecutor vs. Jean-Pierre Bemba Gombo *et al.*³⁰ The Registry recalls that one cited Decision concerns correspondence between the Registrar, Deputy Registrar

²⁷ *Ibid.*, paras. 2, 6

²⁸ *Ibid.*, paras. 1, 13.

²⁹ Defence Request, para. 10.

³⁰ Defence Request, footnotes 7 and 8.

and Counsel Support Section and current and former members of the Defence of Mr Bemba.³¹ This is distinguishable from the current request, which concerns audio-recordings created as part of an active monitoring order. In another cited Decision, the Chamber in Bemba ordered the Defence to be given access to materials reviewed by the Independent Counsel,³² which were specific materials at issue in the case.

22. As a practical matter, if the Registry is ordered to provide audio-recordings to a Defence team, audio-recordings are provided directly to the Defence team, [REDACTED].

23. As regards the Registry practice to request an order from the Chamber,³³ as a matter of policy, when a conversation is at issue before a Chamber, the Registry considers the matter to be within the competence of the Chamber to decide. The Registry takes this approach in all other cases, past and current. This is also considering that some issues are *ex parte* not available to the Registry therefore the Registry may not always be the best place to determine on these requests. [REDACTED],³⁴ [REDACTED].

24. The Registry clarifies for the Chamber that the two audio-recordings requested by the Defence³⁵ [REDACTED].³⁶ [REDACTED],³⁷ [REDACTED].

³¹ Trial Chamber VII, "Decision on Bemba Defence request for Access to Communications", ICC-01/05-01/13-1095, 20 July 2015, para. 5.

³² Trial Chamber VII, "Decision Providing Materials in Two Independent Counsel Reports and Related Matters", ICC-01/05-01/13-947, 9 April 2015, paras. 39-41.

³³ Defence Request, para. 7.

³⁴ Defence Request, Annex B.

³⁵ Defence Request, Annex A.

³⁶ [REDACTED].

³⁷ [REDACTED].

Observations on the Prosecution's Application regarding Restrictions of Contact

25. At the Chamber's invitation,³⁸ the Registry will provide some observations to the Prosecution's Application, regarding the current implementation of restrictions on Mr Al Hassan's contacts.

26. The Registry informs the Chamber that, [REDACTED],³⁹ [REDACTED].⁴⁰ None of the contacts on Mr Al Hassan's current non-privileged contact list, [REDACTED], have been found to have thus far violated any restrictions on contact.

27. In reference to the Prosecution's submissions regarding [REDACTED],⁴¹ [REDACTED].

28. [REDACTED].⁴² [REDACTED].

29. The Prosecution's Application refers to [REDACTED].⁴³ [REDACTED].

30. [REDACTED].⁴⁴ The Registry wishes to clarify that, following procedures on telephone calls within the Detention Centre, detained persons are approved to talk to specific individuals assigned to specific phone numbers, and it is common practice that more than one individual shares a telephone number. [REDACTED]. Mr Al Hassan has not, to date, been breached for his interlocutors passing the telephone to unauthorized persons.

³⁸ Email Correspondence from the Legal Officer of Trial Chamber X of the Registry on 6 January 2020 at 13:51.

³⁹ [REDACTED].

⁴⁰ [REDACTED].

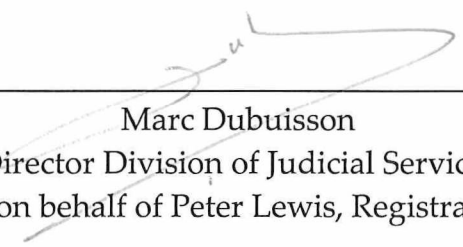
⁴¹ Prosecution's Application, para. 8.

⁴² [REDACTED].

⁴³ Prosecution's Application, para. 57.

⁴⁴ Prosecution's Application, para. 7.

31. Finally, the Registry wishes to inform the Chamber that contact with the outside world is important for the psychosocial wellbeing of all detained persons, including Mr Al Hassan. Family visits, and visits in general, are important positive events for all detained persons at the Court.



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 12 February 2020

At The Hague, The Netherlands