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No. ICC-01/12-01/18

Date: 5 March 2020

TRIAL CHAMBER X

Before: Judge Kimberly Prost, 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

Decision on Prosecution request for a variation of the time limit to file Trial Brief

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

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**Unrepresented Applicants for
Participation/Reparations**

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

Judge Kimberly Prost, acting as Single Judge of Trial Chamber X (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, issues this ‘Decision on Prosecution request for a variation of the time limit to file Trial Brief’.

I. Procedural history

1. On 6 January 2020, having considered written and oral submissions,¹ the Chamber rendered a decision setting the commencement date of the trial to 14 July 2020 and adopting a calendar leading up to this date (the ‘Trial Date Decision’).² Notably, it set 14 April 2020 as the deadline for the Office of the Prosecutor (the ‘Prosecution’) to: (i) disclose the material in its possession; and provide (ii) a final list of Prosecution witnesses with summaries of anticipated witness testimonies, (iii) a list of evidence, and (iv) a Trial Brief.³
2. On 21 February 2020, and pursuant to Regulation 35 of the Regulations of the Court (the ‘Regulations’), the Prosecution filed an urgent confidential request to vary the time limit set in the Trial Date Decision to file its Trial Brief, asking the Single Judge to defer this filing from 14 April to 30 April 2020 (the

¹ Observations des Représentants légaux suite à l’« Order Scheduling First Status Conference » (ICC-01/12-01/18-507), 6 December 2019, ICC-01/12-01/18-516; Registry Submissions in View of the 12 December 2019 Status Conference, 6 December 2019, ICC-01/12-01/18-517 (with a confidential *ex parte* Annex available to the Registry and the Prosecution only); Observations de l’Accusation suite à l’Ordonnance de la Chambre de Première Instance X relative à la conférence de mise en état du 12 décembre 2019, 6 December 2019, ICC-01/12-01/18-518-Conf-Exp (confidential *ex parte*, available to the Prosecution and the Victims and Witnesses Unit only; a confidential *ex parte* redacted version also available to the Defence and a public redacted version were each filed on 9 December 2019, respectively ICC-01/12-01/18-518-Conf-Exp-Red2 and ICC-01/12-01/18-518-Red); Submissions pursuant to ‘Order Scheduling First Status Conference’, 6 December 2019, ICC-01/12-01/18-519-Conf-Exp (confidential *ex parte*, available to the Prosecution and Defence only; with confidential *ex parte* Annexes A to D, available to the Defence only, and confidential *ex parte* Annex E, available to the Prosecution and Defence only; a public redacted version of the main filing was filed on the same day, ICC-01/12-01/18-519-Red). See also transcript of hearing of the status conference held on 12 December 2019, ICC-01/12-01/18-T-008-ENG.

² Decision Setting the Commencement Date of the Trial, ICC-01/12-01/18-548.

³ Trial Date Decision, ICC-01/12-01/18-548, paras 8, 10, 16. Although it has previously referred to this document as the ‘pre-trial brief’, the Chamber finds it appropriate to continue referring to it using the term ‘Trial Brief’. See Chambers Practice Manual (2019), para. 75, <https://www.icc-cpi.int/iccdocs/other/191129-chamber-manual-eng.pdf>. See also Regulation 38(1) of the Regulations of the Court.

‘Request’).⁴ The Prosecution argues that there exists good cause because ‘it is in fact impossible to comply with [...] [the] numerous and important time limits producing in parallel [...] the pre-trial brief’.⁵ Particularly, the Prosecution bases its Request on the following four grounds: (i) work volume and concomitant time limits; (ii) the Trial Brief drafting; (iii) the impact of languages; and (iv) absence of prejudice to the Defence. Regarding its first three arguments, which are closely connected, the Prosecution essentially submits that it has a ‘considerable amount of work’, particularly referring to the deadline for full disclosure set at 14 April 2020.⁶ Regarding the work on the Trial Brief itself, the Prosecution alleges that this brief will require, ‘in qualitative and quantitative terms, an important drafting work’, which will include references to ‘new witnesses interviewed and other elements of evidence gathered after the hearing on the confirmation of charges’, as well as to outstanding medical reports of certain victims of sexual violence.⁷ The Prosecution also stresses that the preparation of this document in English will necessarily entail ‘some delays’ as its francophone drafters will need to translate the evidence in its possession before referring to it in the brief.⁸ Regarding its fourth argument, the Prosecution asserts that its Request is ‘reasonable’ considering that the Trial Brief is not a statutory requirement and that the Defence already has ‘a clear and detailed vision of the charges against the Accused’.⁹ The Prosecution argues that granting the requested time extension will enable the production of a ‘clear, well-argued, and detailed brief in English’, which will be in the ultimate interest of the Chamber and the Defence.¹⁰ Finally, the Prosecution contends that granting the requested time extension will not have a detrimental impact on the

⁴ Requête de l’Accusation sollicitant une extension de délai pour déposer le mémoire de première instance, ICC-01/12-01/18-609-Conf (a public redacted version was filed on 24 February 2020, ICC-01/12-01/18-609-Red).

⁵ Prosecution Request, ICC-01/12-01/18-609-Red, para. 16.

⁶ Prosecution Request, ICC-01/12-01/18-609-Red, paras 7-8.

⁷ Prosecution Request, ICC-01/12-01/18-609-Red, paras 10-13.

⁸ Prosecution Request, ICC-01/12-01/18-609-Red, para. 14.

⁹ Prosecution Request, ICC-01/12-01/18-609-Red, para. 18.

¹⁰ Prosecution Request, ICC-01/12-01/18-609-Red, para. 20.

Defence, as it is not requesting the time extension of any other deadline set in the Trial Date Decision.¹¹

3. On 28 February 2020, in accordance with the Single Judge's directives pursuant to Regulation 34 of the Regulations,¹² the Defence informed the Chamber by email that it 'does not object to the requested extension, on the understanding that it will not impact on other deadlines established by the Single Judge, which the Prosecution will remain obliged to comply with'.¹³

II. Analysis

4. Pursuant to Regulation 35 of the Regulations, the Single Judge will assess whether good cause has been shown to extend the time limit set for the Prosecution to file its Trial Brief.
5. At the outset, the Single Judge notes the Prosecution's submission that meeting the deadlines set for 14 April 2020 implies such an amount of work that it is prevented from completing the Trial Brief on time.¹⁴ The Single Judge observes that, amongst other things, the Prosecution relies on a number of new facts or changes in circumstances, including outstanding witnesses and reports.¹⁵ The Single Judge further notes that the Prosecution mentions in its Request other competing deadlines and priorities, some of which only became apparent after the Trial Date Decision.¹⁶
6. In the case at hand, the Single Judge is satisfied that the Request, as the Prosecution itself assures, will not impact i) the commencement date of the trial, ii) the three-month period between full disclosure and the start of the trial, nor iii) the (almost) four-month period between the filing of the Trial Brief and the start date of the Prosecution's presentation of evidence.¹⁷ On the contrary, a

¹¹ Prosecution Request, ICC-01/12-01/18-609- Red, para. 17.

¹² Email from the Single Judge to the parties and participants on 24 February 2020, at 12:00, informing them of the shortening of the deadline for any responses to the Prosecution Request to 16:00 on Tuesday, 3 March 2020.

¹³ Email from the Defence to the Chamber, 28 February 2020, at 16:04.

¹⁴ Prosecution Request, ICC-01/12-01/18-609-Red, paras 7-8.

¹⁵ Prosecution Request, ICC-01/12-01/18-609-Red, paras 12-13.

¹⁶ Prosecution Request, ICC-01/12-01/18-609-Red, para. 8.

¹⁷ Prosecution Request, ICC-01/12-01/18-609-Red, paras 16-17.

two-week extension of time will allow the Prosecution, according to its own submissions, to provide the Defence with all the material in support of its case so that the Accused make the necessary preparations prior to the start of trial, thus ensuring that the proceedings are conducted with full respect for his rights.¹⁸

7. Importantly, the Single Judge further notes that the Defence, which did not expressly request production of a Trial Brief in the first place,¹⁹ does not object to the extension of time sought by the Prosecution. Consequently, considering that there are objective reasons justifying the Prosecution's inability to meet the initial deadline and that the requested two-week extension is relatively *de minimis* in the circumstances, the Single Judge finds it appropriate to grant the Request and provide the extension of the time limit set for the filing of the Trial Brief as requested.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request; and

EXTENDS the time limit to file the Trial Brief to 30 April 2020.

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



Judge Kimberly Prost, Single Judge

Dated this Thursday, 5 March 2020

At The Hague, The Netherlands

¹⁸ Prosecution Request, ICC-01/12-01/18-609-Red, para. 16.

¹⁹ See transcript of hearing, ICC-01/12-01/18-T-008-ENG, p. 42, lines 7-9.