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No.: **ICC-01/12-01/18**
Date: **24 December 2019**
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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

Public redacted version of ‘Response to “Request for Reconsideration”’

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**

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1. On Friday 13 December 2019, the Registry informed the Single Judge that the Registry agreed that:¹
 - a. Mr. Al Hassan was entitled to receive his entire medical records/data/file; and
 - b. A judicial order might be required to ensure that this occurs.
2. After the Defence requested and obtained such a judicial order, the Registry has now sought reconsideration as concerns the very order that it proposed.²
3. The request appears to be based solely on *ex parte* information provided in a sealed envelope from Dr. [REDACTED].
4. There is no indication that Mr. Al Hassan – the privilege owner – has consented to his doctor communicating with his Trial Chamber on an entirely *ex parte* basis. The lack of overt consent from Mr. Al Hassan (the patient) as concerns this process should in itself invalidate Dr. [REDACTED]’s overtures to the Chamber. Dr. [REDACTED] is also not a party to these proceedings and lacks standing to request reconsideration of a judicial order. The Registry also cannot evade its responsibility as the primary custodian of Mr. Al Hassan’s detention by: (i) on the one hand, claiming to be entirely ignorant of the grounds on which reconsideration is being sought;³ and (ii) on the other hand, using this *ex parte* ‘secret information’ as the basis for its justification for not executing the Single Judge’s order.⁴
5. It is also entirely unfair, prejudicial, and inappropriate for a doctor to oppose express written requests emanating from the patient in question, particularly in light of:
 - a. Firstly, the fact that Dr. [REDACTED] initially provided Mr. Al Hassan with unfettered access to his medical file (as acknowledged by Registry submissions which note that Dr. [REDACTED] gave full access in January 2019),⁵ and only claimed that such access was not possible (‘due to Dutch ethics’) after the Defence filed submissions concerning the Mr. Al Hassan’s psychological and medical vulnerabilities as a detainee;
 - b. Secondly, repeated attempts by the Defence to convene a meeting or hearing in the presence of Mr. Al Hassan, the Defence and Dr. [REDACTED], in order to ensure

¹ ICC-01/12-01/18-T-010-Conf-Exp-Eng, p.4, lines 13-15.

² ICC-01/12-01/18-540-Conf-Exp (“Request”).

³ Request, para. 10.

⁴ Request, para. 11.

⁵ ICC-01/12-01/18-T-010-Conf-Exp-Eng, p.3, lines 24-25. See also Annex A, paras. 16-17.

clarity as concerns Mr. Al Hassan's wishes and consent procedures – attempts which have all been opposed by Dr. [REDACTED];⁶

- c. Thirdly, the fact that Mr. Al Hassan lacks any alternative remedy as concerns his ability to request information and data collected from him, while detained under the authority of the ICC; and
 - d. Fourthly, the fact that Dr. [REDACTED] is aware that limiting Mr. Al Hassan's access to such information and data will impede the ability of Mr. Al Hassan to obtain an informed and independent assessment of his physical condition, while he was held as a detainee at the ICC detention unit, and as such, Dr. [REDACTED] has a clear conflict of interest as concerns whether he should act as the 'gate keeper' regarding the ability of Mr. Al Hassan or his Defence to access the requested information.
6. Finally, the Defence would like to underscore that over the past four months, both the Registry and Dr. [REDACTED] have repeatedly averred that information would be provided as long as certain conditions were complied with. Each time that the Defence and Mr. Al Hassan have complied with these conditions, the bar has been raised, and new conditions have been imposed. Last Friday 13 December 2019, the Registry even went so far as to aver that Dr. [REDACTED] had in fact provided full access, and that if the Defence was of the position that information was missing, it should provide a list of documentation that had not been provided.⁷ This list was provided on Wednesday 18 December 2019⁸ – which begs the question as to why litigation is still ongoing. If the Registry and Dr. [REDACTED] accept the premise of providing full access – then there is no basis for requesting reconsideration. In any case, the Defence should not be forced to jump through hoops for no purpose.
7. The Defence is not interfering with or infringing Mr. Al Hassan's relationships with his medical providers – it is giving effect to clear and unambiguous wishes that have been expressed by Mr. Al Hassan on multiple occasions. If Dr. [REDACTED] had attended the Status Conference on 13 December – Mr. Al Hassan would have affirmed his wishes in his presence. Given Mr. Al Hassan's vulnerability, it is to be hoped and expected that medical providers will respect these wishes, and the role of the Defence in voicing these wishes.

⁶ ICC-01/12-01/18-Conf-Exp, Annex B, pp. 4-5.

⁷ Annex A, para. 23.

⁸ Annex B.



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Dated this 24th Day of December 2019
At The Hague, The Netherlands