



Original: **English**

No.: **ICC-01/12-01/18**
Date: **23 March 2020**
Date of submission: **24 March 2020**

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

Public

Public redacted version of “Urgent Defence request for interim release”

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
Thomas Paul Hannis

Legal Representatives of the Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

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

Paddy Craig

**Victims Participation and
Reparations Section****Other**

I. Introduction

1. Mr. Al Hassan's right to a speedy trial has been radically imperiled by recent events. His detention no longer serves the purpose of ensuring his presence for participation in active proceedings. It has, moreover, become harmful, due to the introduction of severe restrictions concerning his ability to maintain meaningful social contacts and interactions with his Defence team, and the unavailability of appropriate forms of psychological treatment. The causes are, in part, exceptional, but fundamental liberty rights continue to apply throughout exceptional times. Indeed, Mr. Al Hassan's right to be with his family is of heightened importance at a time when his children and parents are at risk.
2. In line with Article 60(2) of the Statute,¹ as modified by internationally recognized human rights law, the Chamber cannot countenance Mr. Al Hassan's ongoing detention in circumstances where:
 - He has very limited social interactions such that he is in virtual isolation for the greater part of his day;
 - He is unable to speak to a religious adviser/Imam;
 - His continued detention places him at greater risk of catching the Coronavirus ('COVID-19'), and at the same, separates him from his family in their time of need;
 - He is not receiving appropriate medical/psychological treatment; and
 - There are likely to be significant delays in the proceedings.
3. The above factors are aggravated by the fact that as a torture survivor, Mr. Al Hassan falls within a particularly vulnerable category of detainees. The cumulative impact of these circumstances overrides any considerations (which have been evidentially unfounded) concerning possible flight risks, or a risk of interference with witnesses. In any case, the current movement and travel restrictions mitigate such risk: specifically, Mr. Al Hassan would agree to reside in his house, with his family, and to comply with any specific conditions imposed by the Court. It is no longer necessary or proportionate to maintain Mr. Al Hassan's detention: the pendulum has swung towards a right to release, in order to maintain the Court's commitment to ensuring and respecting internationally recognized human rights.

¹ This is the first release request filed by Mr. Al Hassan. As such, the standards under Article 60(2) apply, and there is no obligation on the part of the Defence to justify a change in circumstances.

II. Submissions

A. Mr. Al Hassan's status, as a vulnerable detainee/defendant, and the procedural history of his detention in this case

4. Mr. Al Hassan's status, as a torture survivor, should have been a critical factor in the Pre-Trial Chamber's initial determination as to whether it was necessary and proportionate to issue an arrest warrant against him. Nonetheless, although the Prosecution was aware of Mr. Al Hassan's vulnerabilities when they requested the Pre-Trial Chamber to issue the arrest warrant, they did not disclose this information concerning his background to the Chamber. In light of this omission, there is now a heightened obligation on the part of the Trial Chamber to exercise rigorous scrutiny as concerns the necessity and proportionality of maintaining Mr. Al Hassan's pre-trial detention during the current COVID-19 pandemic.
5. Torture survivors are considered by human rights law to be a 'vulnerable group':² in practice, this triggers a right to an increased level of human rights protection, and a lower margin of appreciation as concerns any restrictions of such rights.³ This concept of vulnerability applies to detention decisions; when assessing the necessity and proportionality of detention, there is a heightened obligation to consider the impact of such measures on the individual, taking into consideration their particular circumstances of 'vulnerability'.⁴ If the detainee suffers from a particular medical condition, including post-traumatic stress disorder ('PTSD'), this extends to a particular obligation to ensure that the person is detained in conditions compatible with respect of human dignity which do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and which adequately secure his health and wellbeing.⁵
6. The Prosecution was aware that Mr. Al Hassan falls within this vulnerable group, from the first day they met him, on 13 July 2017. At that point, he had been detained at the Sécurité d'État for

² *Gisayev v. Russia*, [14811/04](#), para. 116; *Aydin v. Turkey*, [23178/94](#), para. 103.

³ Y. Al Tamimi, [The protection of vulnerable groups and individuals by the European Court of Human Rights](#), p. 40, concerning the lessened margin of appreciation as concerns restrictions imposed on vulnerable groups.

⁴ *Florea v. Romania*, [37186/03](#), para. 50.

⁵ *Novak v. Croatia*, [8883/04](#), para. 44: "The person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure(s) do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. [30210/96](#), §§ 93-94, ECHR 2000-XI)."

72 days, without being brought before a judge, and had no access to a lawyer or the outside world. His detention was therefore on its face, illegal and arbitrary. From the outset, Mr. Al Hassan informed the Prosecution that:

- He had been questioned by Malian, French and American interrogators throughout his detention, and he had been blindfolded during these interviews,⁶ which is itself, a form of torture;⁷
- He had no rights in detention, had been threatened and beaten severely by the Malian authorities, was afraid of being killed by them, and had been told that he would be killed unless he said the ‘truth’;⁸
- He had no ability to communicate with his family;⁹
- He was detained with five other persons, in a cell which measured four by three metres; and
- Since his arrival at the Sécurité d’État, he had been handcuffed/shackled continuously (24 hours a day).¹⁰

7. In later interviews, Mr. Al Hassan informed the Prosecution of the following indicia of ongoing torture:

- 2 October 2017: he is detained by secret services, his psychological state does not allow him to do many things, and he can be tortured at any moment;¹¹
- 6 December 2017: Detainees were beaten by the security officers because they were tapping on the doors to demand to be transferred to a tribunal because some had been there for years (i.e. 4 years).¹² Detainees were also deprived of proper food for three days;¹³
- 16 January 2018: Mr. Al Hassan informs the ICC Prosecution that he is suffering from “erhak nafsi [إرهاق نفسي]” (psychological exhaustion/depression) as a result of being ill (having an enormous headache). He also has fever and tooth pain.¹⁴

8. On 20 March 2018, the Prosecutor requested the Pre-Trial Chamber to issue an ‘urgent’ provisional arrest warrant against Mr. Al Hassan due to the risk that he might be released.¹⁵ The Prosecution did not alert the Chamber to the severe physical and mental abuse that Mr. Al Hassan had experienced in detention. Consequently, neither the provisional arrest warrant

⁶ [REDACTED].

⁷ ECHR: *El Haski v. Belgium*, [649/08](#), para. 98; *Lenev v. Bulgaria*, [41452/07](#), para. 116. “The practice of blindfolding detainees in police custody should be expressly prohibited as a form of oppressive conduct which may frequently be considered as amounting to psychological ill-treatment even where no actual physical ill-treatment has occurred (it is clear to the committee that the practice is normally adopted to ensure that detainees are prevented from being able to identify law-enforcement officials who inflict actual ill-treatment, despite conflicting or even contradictory justifications from police officers to the contrary)”: J. Murdoch, R. Roche, [The European Convention on Human Rights and Policing](#), The Council of Europe, December 2013, p. 84. See also [Istanbul Protocol Statement on Hooding](#).

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ ICC-01/12-01/18-1-Red.

decision, nor the ultimate decision, addressed Mr. Al Hassan's status as an extremely vulnerable torture survivor.

9. The Prosecution did not disclose the audio records, and transcripts, in which Mr. Al Hassan gave various descriptions of his torture and mistreatment in detention, until 20 February 2019 (audio), and 3 May 2019 (transcripts).¹⁶ The Defence also first received extracts from Mr. Al Hassan's medical file in late March 2019. These extracts described Mr. Al Hassan as experiencing PTSD and severe depression.¹⁷
10. On the basis of these reports,¹⁸ the Defence requested the Pre-Trial Chamber to modify specific aspects of Mr. Al Hassan's detention regime, namely, that:
 - a. he be allowed to receive private visits with his wife;
 - b. the prohibition on discussion of public aspects of his case be lifted;
 - c. the hourly allotment for speaking with his family be increased;
 - d. he be allowed to communicate with his family *via* video-conferencing; and,
 - e. he be allowed to send video messages to his family, and to receive such messages from them.
11. The Chamber rejected the first three requests, and in so doing, noted that Mr. Al Hassan receives psychological treatment at the Detention Centre.¹⁹ The Chamber granted him the right to receive video-messages,²⁰ but found that the issue of video-conferencing fell within the purview of the Registry.²¹
12. The Defence subsequently requested the Registry to implement video-conferencing. This request, which was initially rejected by the Commanding Officer of the Detention Centre ('CO'), was accepted by the Registrar, subject to the feasibility of implementing it in a manner consistent with the monitoring conditions imposed by the Chamber.²² In the last nine months, the Registry has not found a 'feasible' solution.
13. On 4 November 2019, the Single Judge increased Mr. Al Hassan's hourly allotment for communications with his family with the proviso that the third hour could be used for video-

¹⁶ [REDACTED], Pre-Confirmation INCRIM package 31 (3 May 2019), [ICC-01/12-01/18-326](#).

¹⁷ ICC-01/12-01/18-352-Conf-Exp-Anx, refiled as Annex A.

¹⁸ ICC-01/12-01/18-343-Conf-Exp-Corr, ICC-01/12-01/18-352-Conf-Exp, ICC-01/12-01/18-352-Conf-Exp-Anx.

¹⁹ ICC-01/12-01/18-367-Conf-Exp-Red, para. 120; ICC-01/12-01/18-368-Conf-Exp-Red3, para. 54

ICC-01/12-01/18-340-Conf-Exp-Red.

²⁰ ICC-01/12-01/18-340-Conf-Exp-Red, para. 62.

²¹ ICC-01/12-01/18-481-Conf-Exp.

²² Annex B: First Decision on Mr Al Hassan's Requests for Videos and Videoconferencing, 26 June 2019.

conferencing.²³ In the absence of a viable option for video-conferencing, Mr. Al Hassan has never been able to avail himself of this third hour.

14. Throughout the two years that Mr. Al Hassan has been detained at the ICC, he has only received one family visit, which did not comprise all members of his family. On 24 July 2019, the Defence requested a second visit, so that he could see the remaining members, [REDACTED].²⁴ After significant delays in responding to the request, the CO rejected it, due to a lack of funds.²⁵ The Defence successfully contested this decision before the Registrar, and, after delays (attributable to the CO's refusal to proceed with the preparatory steps for the visit)²⁶ was in the process of organizing the travel documents for certain family members when the COVID-19 pandemic occurred.
15. In order to obtain an independent evaluation of Mr. Al Hassan's psychological condition, the Defence appointed an expert – [REDACTED], who specializes in assessing and treating victims of torture, including detained individuals. [REDACTED] conducted an assessment of Mr. Al Hassan from 27 July to 2 August 2019. During their meetings, Mr. Al Hassan expressed the view that the psychological treatment provided by the in-house doctors ('EMDR therapy') was making him worse, and giving him severe nightmares. Mr. Al Hassan had also previously communicated his concerns to the doctors in question.²⁷ Mr. Al Hassan therefore discontinued this treatment, but was not provided any alternative forms of therapy.
16. Dr. [REDACTED]'s ability to complete her evaluation of Mr. Al Hassan and write a related report was then impeded by the Detention Centre Medical Officer's refusal to convey Mr. Al Hassan's medical file to either Mr. Al Hassan, his Defence, or Defence medical experts.²⁸
17. Out of concern regarding the impact of this delay on Mr. Al Hassan's situation, the Defence requested Dr. [REDACTED] to prepare an abridged version, addressing his current conditions of detention, including her assessment of the psychological treatment made available to him at the Detention Centre. On 4 March 2020, the Defence conveyed Dr. [REDACTED]'s findings on

²³ ICC-01/12-01/18-481-Conf-Exp, para. 10.

²⁴ ICC-01/12-01/18-519-Conf-Exp-AnxC, p. 2.

²⁵ Annex C.

²⁶ ICC-01/12-01/18-519-Conf-Exp-AnxA, paras. 7-8; ICC-01/12-01/18-519-Conf-Exp-AnxD.

²⁷ Annex A, Annex D.

²⁸ ICC-01/12-01/18-543-Conf-Exp; [REDACTED]

these matters to the Registrar, the Director of Judicial Affairs, and the CO, including the following opinions:²⁹

Mr. Al Hassan is diagnosed with Post-traumatic Stress Disorder, with dissociative symptoms (PTSD). He suffers from multiple symptoms of PTSD. This condition stems from Mr. Al Hassan's capture, imprisonment and torture while held in Malian prisons from April 2017 until March 2018, when he was transferred to Scheveningen Prison, UN Unit in the Hague.

(...)

It is my clinical opinion that Mr. Al Hassan is currently impaired and suffering with the moderate to severe symptoms of PTSD. My reason for this conclusion is that he was severely symptomatic when I saw him in July 2019, something that was also confirmed by medical notes from the prison psychological staff. Since that time, I understand that he has continued to report similar experiences and a high level of distress, as well as discontinue therapy.

Regarding his therapeutic needs, I have reviewed medical records from the Scheveningen Prison medical staff. It is clear that there has been a good faith effort to understand and address Mr. Al Hassan's difficulties. First of all, the medical staff have noted that Mr. Al Hassan is a survivor of torture and they have attempted to address his problems that stem from torture, namely, the symptoms I described above.

Despite this, it is my opinion that treatment of torture survivors requires a specialized knowledge of the types of psychological, physical and emotional symptoms that are prevalent in survivors of this type of trauma. Additionally, a clinician must be aware of the best practices of care for this population, which is comprised of individuals with unique needs. For this reason, it is my opinion that, despite their attempts to provide treatment to Mr. Al Hassan, the psychology staff has not been able to successfully treat his condition.

(...)

It is my belief that, despite good faith intentions, the use of EMDR with Mr. Al Hassan was in fact triggering for him in a way that inadvertently worsened his condition.

(...)

It is my clinical opinion that Mr. Al Hassan's current detention conditions of segregation, monitored contact with his family and no opportunity for private visits in the future are likely to exacerbate his psychological distress. With little to no private interpersonal contact with trusted individuals and isolation in his confinement, he is likely to continue to be highly symptomatic.

18. The Defence requested that this opinion be given due consideration as a matter of urgency, and further proposed convening a meeting to discuss possible responses. Although the Registrar acknowledged receipt, to date, the Defence has not received a response.
19. On 10 March 2020, Mr. Al Hassan received the remaining elements of his medical dossier from [REDACTED], the Medical Officer. These elements, in Dutch, have been sent for urgent translation. It will also be necessary for the Defence to audit them to identify whether there are further records that might be held by third parties (hospitals or external specialists). [REDACTED].³⁰
20. On 13 March 2020, at 4.38pm, the Director of DJSS informed external teams that pending further notice, it would not be possible to conduct physical visits with detainees (privileged or

²⁹ Annex E (Email dated 4 March 2020); Annex F ('First [REDACTED] Opinion').

³⁰ [REDACTED].

non-privileged): all contacts would be restricted to telephone contacts.³¹ The Defence understands, from speaking to the Director of DJSS, that exceptions might be permitted for emergency situations (i.e. if the detainee is feeling suicidal), but this would require a prior recommendation from [REDACTED], who did not visit the Detention Unit between 10-23 March 2020. From that point onwards, the Detention Centre also banned the import of any materials (privileged or non-privileged), and suspended the transmission of all correspondence. The Defence was given no prior notice as to the possibility that these measures could be implemented. In order to alleviate the impact on Mr. Al Hassan's right to meaningful contacts, and subject to the approval of the Chamber, the Defence requested the Registry to investigate whether it would be technically feasible to increase Mr. Al Hassan's hourly allotment for family calls.³² The Defence followed up by telephone on 16 March 2020, but received no response.

21. Since then, Mr. Al Hassan has informed the Defence that he is in a state of virtual isolation. All Detention Centre activities have been cancelled, and the guards have been instructed to maintain only the bare minimum of contact or interactions with detainees. As Mr. Al Hassan is detained in a wing by himself, this has resulted in a drastic and deleterious reduction of social activity. The weekly visits of the Imam have been suspended pending further notice.
22. The Defence requested the Detention Centre to communicate, in writing, the specific measures that were being implemented to address COVID-19 and the legal basis for these measures.³³ It received a copy of these measures on 19 March 2020.³⁴
23. On 20 March 2020, Dr. [REDACTED] issued an updated version of her prior assessment, taking into account the changes in Mr. Al Hassan's detention regime, in which she expressed the following view:³⁵

It is my clinical opinion that the current conditions under which Mr. Al Hassan is being held are notably and substantially worse for his psychological well-being. The combination of isolation, lack of stimulation and lack of meaningful contact with trusted team members and family is directly in opposition to what he needs for even a modicum of emotional stability.

It is my understanding that Mr. Al Hassan's defense is seeking his temporary release to reside with his family and abide by any conditions imposed by the Court. It is my opinion that Mr. Al Hassan's psychological condition would be improved by being with his family and that he would benefit from contact with, support and care from his family, as well as from attending to their welfare and needs during the stress of this current global health crisis.

³¹ Annex G.

³² Annex H.

³³ Annex I.

³⁴ Annex J.

³⁵ Annex K ('Second [REDACTED] Opinion')

I share this opinion, given my concern that Mr. Al Hassan's current detention conditions have become even more isolating and unstimulating and that he is at risk because of his PTSD of serious psychological deterioration. This is a critical matter, as I noted in my previous letter, given that Mr. Al Hassan is not receiving adequate psychological treatment for his condition of PTSD.

B. Mr. Al Hassan's detention fails to satisfy the criteria set out in Article 58(1) of the Statute
i. Mr. Al Hassan's detention is not necessary to ensure his presence at trial

24. Liberty is the rule; detention, the exception.³⁶ This principle obliges the Court to exercise careful oversight over the necessity and proportionality of maintaining pre-trial detention during periods where key aspects of the proceedings have ground to a halt, and the defendant cannot meaningfully participate in the process. Trial Chamber I recognized such in its decision to release Mr. Lubanga, due to the suspension of the proceedings in that case *sine die*.³⁷ Similarly, the existence of judicial adjournments of a few months constitutes a “a factor to be weighed in favour of the Accused”.³⁸ And, while there is no right to provisional release during periods of judicial recess, judicial recess may be an opportune time to grant provisional release due to the absence of judicial activity;³⁹ the defendant's ability to be with his family during important holidays can constitute humanitarian grounds weighing in favour of provisional release.⁴⁰

25. It is highly relevant, in this regard, that Mr. Al Hassan is seeking release so that he can be with his family and look after his young children and his aged parents. Given the age and poor health of his parents (and their attendant susceptibility to the virus), this may indeed be his last chance to see them. These strong family ties mitigate any flight risk,⁴¹ as does the concrete assurance that he will abide by all conditions imposed by the Trial Chamber, pursuant to Rule 119.⁴² Mr. Al Hassan has, in particular, agreed to wear an electronic monitoring bracelet, which will allow

³⁶ [ICC-02/11-01/11-454](#), para. 55.

³⁷ [ICC-01/04-01/06-1418](#), para. 30: “the Chamber's Decision stayed the proceedings sine die because of the present impossibility of trying the accused fairly (...) the detention of the accused cannot be justified in order to ensure his appearance at trial or to safeguard the investigation, because the trial (which was the result of the investigation) has been stayed. Furthermore, in the absence of the prospect of a trial, the accused cannot be held in custody or subjected to provisional release as purely preventative measures to deter him from committing further crimes.”

³⁸ *Prosecutor v. Milutinovic et al.*, Decision on General Ojdanic's Fourth Application for Provisional Release, 14 April 2005, Case No. IT-99-37-PT, at para. 34.

³⁹ *Prosecutor v. Prlic et al.*, ‘[Decision on Prosecution's Appeal Against the Trial Chamber's Decision on Slobodan Prljak's Motion for Provisional Release](#)’, 8 July 2009, at para. 10.

⁴⁰ See *Prosecutor v. Haradinaj*, ‘[Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release](#)’, 14 December 2007, at para. 22 “The Trial Chamber is mindful of the personal situation of Mr. Haradinaj, who would like to visit his wife and children aged 1 and 3 years over the holiday period. These humanitarian considerations weigh in favour of granting the requested provisional release”.

⁴¹ [ICC-01/05-01/13-558](#), para. 111.

⁴² Annex L: See [ICC-02/11-01/15-1251-Red2](#), para. 60. See also [ICC-01/05-01/13-2291](#), para. 26, where the Trial Chamber found that the submission of a signed undertaking, in which the defendant undertook to comply with the conditions imposed by the Chamber, further mitigated any risks. For ICTY, see *Prosecutor v. Delic*, [Decision on Defence Request for Provisional Release](#), 6 May 2005, p. 2; *Prosecutor v. Halilovic*, Trial Chamber, ‘[Decision on Request for Pre-Trial Provisional Release](#)’, 13 December 2001, p. 3.

his location to be tracked in real time, and remain confined at his family residence, such that his conditions will be tantamount to a form of house arrest.

ii. Mr. Al Hassan's detention is not necessary to ensure that he does not obstruct or endanger the investigations, or continue the commission of any crimes

26. There is no indication that Mr. Al Hassan would engage in witness intimidation or otherwise obstruct the conduct of the proceedings. The burden falls on the Prosecution to establish the contrary,⁴³ based on relevant and concrete evidence,⁴⁴ which, to the extent possible, has been disclosed to the Defence in advance of the resultant decision.⁴⁵ This assessment cannot be made on the basis of abstract or generic risks,⁴⁶ or mere conjecture.⁴⁷ Rather, the Prosecution must demonstrate that these risks stem from the conduct or profile of the defendant, and not the general security situation, the status of disclosure, or pending/actual commencement of the trial.⁴⁸ The threshold must give due deference to Mr. Al Hassan's presumption of innocence, the severe consequences of detention for someone who is presumed innocent, and the fact that "there will never be a total guarantee that an accused will appear for trial and, if released, will not pose a danger to sources of evidence".⁴⁹

27. Mr. Al Hassan also has no affiliation with Iyad Ag Ghaly, the current iterations of Ansar Dine, or armed Islamic groups in the Magreb (such as JNIM or Al Qaeda).⁵⁰

28. The assurances provided by Mr. Al Hassan also mitigate any such risks, insofar as he has agreed not to reveal confidential information, discuss the case, or contact, directly or indirectly, any victims or witnesses, or persons associated with armed groups. He would also agree to maintain the confidentiality of his release, and location of release. [REDACTED].⁵¹ Mr. Al Hassan is also willing to comply with any further conditions imposed by the Chamber. Put simply, Mr. Al

⁴³ [ICC-01/04-01/07-330](#), pp. 5-7.

⁴⁴ *Becciev v. Moldova*, [9190/03](#), para. 59.

⁴⁵ [ICC-01/05-01/08-323](#), paras. 1, 28-32.

⁴⁶ *Prosecutor v. Haradinaj et al.*, '[Decision on Lahi Brahimaj's Application for Provisional Release](#)', para. 24.

⁴⁷ *Hill and Hill v. Spain*, [526/93](#), para. 12.3; See also ICC-01/12-01/18-557-Conf-Exp-Red, para. 10: "the general security situation in Mali, [REDACTED], and the fact that there is a general threat to Prosecution witnesses cannot be the sole basis to continue to impose all of the restrictions ordered by the PTC I Single Judge on Mr Al Hassan".

⁴⁸ *Prosecutor v. Milutinovic et al.*, '[Decision on Joint Motion for Temporary Provisional Release During Summer Recess](#)', 1 June 2006; *Prosecutor v. Simatovic*, '[Decision on Provisional Release](#)', 26 May 2008, at paras. 55-57; *Prosecutor v. Prlic et al.*, '[Decision on Prosecution's Appeal Against the Trial Chamber's Decision on Slobodan Praljak's Motion for Provisional Release](#)', 8 July 2009, at para. 10.

⁴⁹ *Prosecutor v. Hadzihasanovic et al.*, '[Decision Granting Provisional Release to Amir Kubura](#)', 19 December 2001, para. 9.

⁵⁰ ICC-01/12-01/18-520-Conf-Exp, paras. 15-18.

⁵¹ Annex M.

Hassan wants to be with his family during this exceptional period of global concern, has no intention of interacting with other persons, and is willing to comply with any conditions that would make this happen. If ever there was a case for release, it is the present circumstances, and the present defendant; conversely, if these circumstances are insufficient to trigger a right to release, then Article 60(2) is a dead letter for defendants, who do not enjoy financial means or State support.

iii. The existence of humanitarian factors, and unreasonable delay, which militate in favour of release during this period.

29. Mr. Al Hassan's detention has transformed into an overly prejudicial and disproportionate situation due to the cumulative impact of the following factors:

- a. His current detention conditions;
- b. The overall length of his pre-trial detention, and the significant delays that will be engendered as a result of COVID-19; and
- c. The impact of the above factors on his mental well-being, as a highly vulnerable detainee.

30. The Defence understands that the Court, The Netherlands and the Detention Centre are facing exceptional circumstances, and that the new Detention Centre measures are directed towards ensuring the health and safety of detainees, and the persons who work at this facility. Nonetheless, while a degree of deference is accorded to States to implement measures to regulate a public health crisis, these measures must be human rights compliant,⁵² and, under no circumstances is it possible to derogate from the duty to protect detainees from conditions that amount to inhuman and degrading treatment. This absolute prohibition applies, irrespective of the gravity of the offences relied upon to justify the detention order: the nature of the charges against the detainee are, in this sense, entirely irrelevant.⁵³

⁵² The UN High Commissioner for Human Rights Michelle Bachelet issued a statement on 6 March 2020 stating that: "[l]ockdowns, quarantines and other such measures to contain and combat the spread of COVID-19 should always be carried out in strict accordance with human rights standards and in a way that is necessary and proportionate to the evaluated risk -- but even when they are, they may have serious repercussions on people's lives" '[Coronavirus: Human rights need to be front and centre in response, says Bachelet](#)'.

A group of United Nations human rights experts issued a statement on 16 March 2020 "urg[ing] to avoid overreach of security measures in their response to the coronavirus outbreak" and "urgently remind[ing] States that emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory." '[COVID-19: States should not abuse emergency measures to suppress human rights – UN experts](#)'.

⁵³ *Ramírez Sanchez v. France*, (Grand Chamber), [59450/00](#), para. 116: "the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *Chahal*, cited above, § 79). The nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3 (see *Indelicato v. Italy*, no. [31143/96](#), § 30, 18 October 2001)."

31. Accordingly, if it is not possible to reconcile COVID-19 measures with Mr. Al Hassan's fundamental human rights, then the appropriate and legally correct response would be to release Mr. Al Hassan, rather than countenance the ongoing and indefinite violation of key rights, for a highly vulnerable detainee. This would be in line with the measures that are currently being undertaken at a domestic level. Iran has released 54,000 prisoners in response to the COVID-19 pandemic⁵⁴ and Australia,⁵⁵ Egypt⁵⁶ and the United States⁵⁷ have been urged to consider supervised release and other non-custodial alternatives for detainees by academics, Human Rights Watch and a group of elected prosecutors, including for detainees held in pre-trial detention like Mr. Al Hassan. Italy initially restricted contact with the outside world in response to the pandemic, which led to protests and riots within Italian prisons, before tribunals ordered home detention and 'semi-freedom' measures for certain detainees.⁵⁸

a. The current conditions are not compatible with fundamental human rights

32. Persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty.⁵⁹ A detainee must be "detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance."⁶⁰ This is in turn reflected in the Regulations of the Court.⁶¹ An assessment as concerns the compatibility of the detention regime with these principles must take into consideration "the cumulative effects of those conditions, as well as the specific allegations made by the applicant".⁶²

⁵⁴ [‘Coronavirus: Iran temporarily releases 54,000 prisoners to combat spread’](#), 3 March 2020.

⁵⁵ [‘Why releasing some prisoners is essential to stop the spread of coronavirus’](#), 17 March 2020.

⁵⁶ [‘Egypt’s Prisons Could Spare Disaster with Conditional Releases’](#), 16 March 2020.

⁵⁷ [‘US: COVID-19 Threatens People Behind Bars’](#), 12 March 2020, [‘Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody’](#), March 2020.

⁵⁸ [Antigone, ‘Prisons in Italy at the Time of the Coronavirus’](#).

⁵⁹ [General Comment No. 21: Article 10 \(Human treatment of persons deprived of their liberty\)](#), paras. 3-4; *Shadurdy Uchetov v. Turkmenistan*, [CCPR/C/117/D/2226/2012](#), para. 7.4; *Kayum Ortikov v. Uzbekistan*, [CCPR/C/118/D/2317/2013](#), para. 10.4.

⁶⁰ *Kudla v. Poland*, [30210/96](#), para. 94.

⁶¹ Regulations of the Court, regulation 91(1): "All detained persons shall be treated with humanity and with respect for inherent dignity of the human person."

⁶² *Ramírez Sanchez v. France*, [59450/00](#), para. 119.

33. The current conditions exceed the acceptable level of suffering inherent in pre-trial detention. Mr. Al Hassan is detained in a situation of virtual isolation. Given that he can only speak to his family twice a week (for one hour each time), for most days, his only social interactions are with limited members of his Defence team, *via* telephone. These conditions impede the Defence from reviewing evidence with Mr. Al Hassan, and taking instructions, or from gauging his well-being through in person interactions. It would also appear that Mr. Al Hassan's family will not be able to visit him for several more months.
34. Under internationally recognized human rights law, solitary confinement is defined as "the confinement of prisoners for 22 hours or more a day without meaningful human contact":⁶³ this definition would still be met even if the detainee in question is released from his or her cell on a daily basis (i.e. for one hour of solitary exercise).⁶⁴ The notion of 'meaningful human contact' is not just "quantitative but also qualitative"; a qualitative reduction in stimuli would be characterized by contacts that are monotonous, and not freely chosen.⁶⁵ Prolonged solitary confinement of more than 15 consecutive days amount to a form of torture.⁶⁶ This type of reduction in meaningful social stimuli can have particularly invidious consequences as concerns detainees with psychological conditions.⁶⁷
35. The Defence is not asserting that Mr. Al Hassan's current conditions amount to solitary confinement, but the fact that the quantitative and qualitative reduction of his interactions falls just under the bar does not lessen the impact of these measures on his right as a detainee,⁶⁸ and his particular need, as a torture survivor⁶⁹ to have meaningful, regular, and empathetic interactions. This is in line with the position of the European Court of Human Rights ('ECHR') that "[a] prolonged absolute prohibition of visits from individuals from outside the prison causes suffering "clearly exceeding the unavoidable level inherent in detention".⁷⁰ Mr. Al Hassan's

⁶³ Report of the Special Rapporteur on Torture, 20 March 2020, [A/HRC/43/49](#), para. 57.

⁶⁴ Report of the Special Rapporteur on Torture, 5 August 2011, [A/66/268](#), para. 25.

⁶⁵ [A/66/268](#), para. 25.

⁶⁶ [A/HRC/43/49](#), para. 57; [A/66/268](#), para. 26: "15 days is the limit between "solitary confinement" and "prolonged solitary confinement" because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible".

⁶⁷ [A/66/268](#), paras. 32, 35; M. Campbell, 'Vulnerable and Inadequately Protected: Solitary Confinement, Individuals with Mental Illness, and the Laws That Fail to Protect' (2016) 45 Hofstra L Rev 263, at 275.

⁶⁸ *Aliev v. Ukraine*, [41220/98](#), para. 148, taking in consideration (among other factors) "that there was little or no opportunity for activities to occupy himself or for human contact".

⁶⁹ Annexes F and K.

⁷⁰ *Onoufriou v. Cyprus*, [24407/04](#), para. 92.

medical history, and the current absence of appropriate psychological treatment,⁷¹ also increases the risk that Mr. Al Hassan will experience irreversible mental harm from such measures.⁷²

36. Of further concern, there is no clear picture as to when the situation is likely to improve. This lack of certainty causes mental anguish,⁷³ and imbues the measures with an indefinite character: the ECHR has found in this regard that the indefinite imposition of even partial forms of isolation can reach the threshold of Article 3 of the Convention (i.e. torture, or inhuman and degrading treatment).⁷⁴ The presumption of liberty, written into the Statute, also imposes a positive obligation on the Chamber to take measures (including release) to avoid unreasonably lengthy periods of detention from occurring.⁷⁵ The ICTY has underlined the necessity of considering the factual circumstances that exist at the time of the release requests, and during the projected period of release.⁷⁶ It follows, therefore, that rather than adopting a ‘wait and see’ approach, the Chamber should err on the side of predicting that these restrictive measures will continue for several more months.⁷⁷

37. The cessation of physical visits between the Defence and Mr. Al Hassan also impedes the right to effective legal preparation, and undercuts the rationale for his presence at the seat of the Court. In terms of this latter aspect, although the right to be brought promptly before a judge is a non-derogable right,⁷⁸ it is particularly concerning that hearings might be suspended, since it eliminates the possibility of Mr. Al Hassan being heard in relation to the legality of his detention, his mental welfare, or particularly problematic aspects of his detention.⁷⁹ Human

⁷¹ Annex F.

⁷² [A/66/268](#), paras. 32, 35, 55, 62-63. See also para. 68: “Research has shown that with respect to mental disabilities, solitary confinement often results in severe exacerbation of a previously existing mental condition. Prisoners with mental health issues deteriorate dramatically in isolation.” *Kudla v Poland*, [30210/96](#), para. 99: “The Court accepts that the very nature of the applicant’s psychological condition made him more vulnerable than the average detainee and that his detention may have exacerbated to a certain extent his feelings of distress, anguish and fear.”

⁷³ [A/66/268](#), para. 59: “The feeling of uncertainty when not informed of the length of solitary confinement exacerbates the pain and suffering of the individuals who are subjected to it.”

⁷⁴ *Ramírez Sanchez v. France*, [59450/00](#), paras. 105, 106 and 135. See also [A/66/268](#), para. 36 citing this case law with approval.

⁷⁵ Article 60(4) “The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period of trial (...)” (emphasis added).

⁷⁶ *Prosecutor v. Hadzic*, ‘[Decision on Urgent Motion for Provisional Release Filed on 28 April 2015](#)’, 21 May 2015, para. 24.

⁷⁷ This has been the case with countries/provinces, which initiated similar measures in advance of The Netherlands, and it has recently been predicted that aspects of the pandemic could last until Spring 2021: ‘[UK coronavirus crisis 'to last until spring 2021 and could see 7.9m hospitalised'](#)’, 15 March 2020.

⁷⁸ See UN Working Group on Arbitrary Detention, [Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court](#).

⁷⁹ Although the Defence foreshadows its concerns regarding this possibility, it does not rely upon it for the purposes of substantiating the basis for release, due to the lack of clear information on this point.

rights law also recognizes that verbal communications are not an adequate substitute for meaningful face-to-face or physical contacts. This applies first and foremost to family visits,⁸⁰ but also resonates as concerns the ability of the Defence to seek instructions and review particularly sensitive documents with Mr. Al Hassan, such as medical documents, and reports.⁸¹ The lack of such interactions is aggravated by the fact that Mr. Al Hassan cannot receive religious succor from a religious advisor, as the weekly visits of the Imam have been cancelled, pending further notice. Such visits are an integral plank of the detainee's right to religious right,⁸² and, as acknowledged by the Single Judge, ensure that the ICC pre-trial detention regime is compatible with fundamental human rights standards.⁸³ The current suspension of all activities also falls foul of the positive obligation "to occupy detainees during the day by providing various types of activities."⁸⁴

38. The combined impact of these measures amounts to a situation of degrading treatment, and causes suffering, which exceeds the level that is acceptable in lawful forms of detention for an individual, such as Mr. Al Hassan, who is presumed innocent.

b. The overall length of his pre-trial detention, and the significant delays that will be engendered as a result of COVID-19

39. The Defence appreciates the efforts being made by the Chamber, and the parties/participants to move the proceedings forward. Nonetheless, the right to speedy trial, and the right to protection against unreasonably lengthy pre-trial detention, are not alternative rights: the defendant is entitled to the protection of both.⁸⁵ And it is now clear that the measures adopted by the ICC, and by States, to address COVID-19 will have a severe impact on the conduct of proceedings, Defence preparation, and the rights of Mr. Al Hassan as a detained individual. At present, there

⁸⁰ [Cantoral-Benavides v. Peru](#), Series C, No. 69, (2000), p. 24, citing the fact that although the prisoner was allowed to see his family once a month, he "could have no physical contact with them". See also '[Guidance Document on the Nelson Mandela Rules](#)', August 2018, p. 122, concerning the position that "other forms of remote communication are not substitutes for in-person visits."

⁸¹ '[Guidance Document on the Nelson Mandela Rules](#)', p. 135: "While phone calls and other remote forms of communication are important means of communicating with legal representatives they must never be considered a substitute for in-person meetings unless (...) specifically requested by a prisoner. Direct contact with a lawyer or legal aid provider is essential for establishing client-lawyer trust and for effective representation."

⁸² The ECHR has held that it may be consistent with the European Convention on Human Rights for a prisoner to be denied access to participate in religious services provided that the prisoner has access to a religious adviser (e.g. an Imam): *Childs v. United Kingdom*, 9813/82, para. 4); see also *Poltoratskiy v Ukraine*, [38812/97](#), paras. 166-167. This is consistent with the European Prison Rules (rule 29.3) and the Nelson Mandela Rules (rule 65(2)).

⁸³ ICC-01/12-01/18-624-Conf-Exp, para. 6.

⁸⁴ '[Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies](#)', Report of the UN Voluntary Fund for Victims of Torture, p. 10.

⁸⁵ *Wemhoff v. Germany*, [2122/64](#), paras. 4-9.

is no indication as to when the current restrictions on travel and social interactions are likely to be lifted. As a result of delayed disclosure measures, the Defence was not able to conduct effective investigations during the pre-confirmation phase. Essential forms of preparation were necessarily deferred to the current phase of the proceedings. And yet, at the very point where Defence investigations are crucial, the Defence lacks any ability to carry them out. Apart from the physical impossibility of travelling to certain locations, the Defence's ability to travel to certain areas was contingent on State approval, which was pending at the time of the outbreak, and now, likely to be a low priority for national authorities. The same holds true as concerns various Requests for Assistance sent to States and the United Nations. The Defence had hoped to conduct key missions before Ramadan (23 April-23 May). Given the preparatory work involved, this now appears highly unlikely. Accordingly, even if the parties continue to adhere to the current schedule for filings and disclosure, delays are inevitable, and incompatible with Mr. Al Hassan's right to protection against unreasonably lengthy pre-trial detention.

40. These delays cannot be assessed in isolation, but should be assessed by reference to the extraordinarily long pre-confirmation phase in this case - 18 months, as compared to the 90 day period envisaged during the drafting of the Rome Statute.⁸⁶ These delays constitute a "serious departure from the rules of respect for individual liberty and of the presumption of innocence",⁸⁷ and were squarely attributable to the fact that the Prosecutor was not ready to proceed swiftly to a confirmation hearing, at the time that it requested Mr. Al Hassan's 'urgent' arrest.⁸⁸ The right to protection against unreasonably lengthy detention must be interpreted and applied in a manner that is consistent with internationally recognized human rights: the Chamber may thus "determine that a detained person has been in detention for an unreasonable period, even in the absence of inexcusable delay by the Prosecutor, in its decision pursuant to article 60 (2) of the Statute."⁸⁹

41. The protection against unreasonably lengthy pre-trial detention also goes hand in hand with the right to seek judicial relief, in a timely manner, as concerns any alleged violation of this right.

⁸⁶ Article 28(2) of the 1994 ILC Draft Statute of the International Criminal Court specified that 90 days was a reasonable amount of time to be held before confirmation of the indictment: if no charges were brought against the suspect during this time period, the suspect was to be released: [Yearbook of the International Law Commission, 1994, vol. II \(Part Two\)](#). A 1998 Preparatory Committee draft proposed that the appropriate limit for detention before the confirmation of the charges should be 60 days with the possibility of extending this to a maximum of 90 days: Report of the Preparatory Committee on the Establishment of an International Criminal Court, [A/Conf.183/2/Add.1](#), 14 April 1998.

⁸⁷ *Stogmuller v. Austria*, [1602/62](#), para. 4.

⁸⁸ [ICC-01/12-01/18-552-Conf-Red2](#); ICC-01/12-01/18-559-Conf-Exp; ICC-01/12-01/18-639-Conf-Red; [ICC-01/12-01/18-665-Conf](#).

⁸⁹ [ICC-01/05-01/13-970](#), para.2. See also paras. 1, 22-23.

Mr. Al Hassan's ability to promptly seek a judicial remedy was, however, improperly and unfairly delayed and obstructed by firstly, the Prosecution's delayed disclosure of Mr. Al Hassan's security assessment, and secondly, the refusal of Dr. [REDACTED] to comply with repeated judicial directives to disclose Mr. Al Hassan's medical records to his Defence.⁹⁰

42. Several Defence requests for assistance to States/organisations are outstanding, and the Prosecution has failed to disclose RFAs and correspondence related to interactions with national authorities in relation to Mr. Al Hassan's detention and interrogation in Mali.⁹¹ It is, therefore, premature for the Defence to litigate the issue as to whether Mr. Al Hassan's detention in Mali should be formally included in any calculation as concerns the length of Mr. Al Hassan's detention, and nothing in these submissions should be deemed to constitute waiver as concerns the Defence's right to raise this point as and when the disclosure process is complete. In any case, irrespective as to whether Mr. Al Hassan's detention in Mali is in any way attributable to the ICC, it is a factor that necessarily informs the Chamber's consideration as the reasonableness of the overall length of detention, and the impact of the current conditions of detention on Mr. Al Hassan's well-being, as an individual who has now been detained for three years, and separated from his family for three years.⁹²

c. The impact of the above factors on Mr. Al Hassan's mental well-being, as a highly vulnerable detainee

43. Mr. Al Hassan is not receiving appropriate psychological treatment and support, and the degree of medical assistance afforded to him is likely to significantly decrease due to the need for health care providers to focus on fighting the pandemic,⁹³ which has now entered Dutch detention facilities, including the Scheveningen penitentiary.⁹⁴ The new Detention Centre conditions specify that all "non-acute" medical visits have been suspended.⁹⁵ From 10 March until 23 March, the only medical personnel that Mr. Al Hassan saw was a nurse; and on 23 March, Dr.

⁹⁰ See paras. 16, 19 above.

⁹¹ Annex N.

⁹² [R. v. M. \(C.A.\)](#), [1996] 1 SCR 500, 1996 CanLII 230 (SCC), paras. 42-43, concerning the obligation, under the totality principle, to consider the aggregate 'effect' of multiple custodial periods, with a view to avoiding 'crushing' consequences for the defendant; *Morrison v. Jamaica*, 635/1995, paras. 22.2-22.3, concerning calculation of reasonable delay by reference to detention based on separate offences; *Kalashnikov v Russia*, 47095/99, para. 96, concerning the obligation to assess the *effect* of the entire period of detention on the individual, even if certain periods fell outside the jurisdiction of the Court.

⁹³ Annex J.

⁹⁴ ['First Dutch Prison Inmate Diagnosed With Coronavirus'](#), NL Times, 19 March 2020.

⁹⁵ Annex J.

[REDACTED] informed Mr. Al Hassan that he has not been visiting the detainees in order to protect them.

44. The medical conditions of a detained person can play a role in interim release decisions in at least two ways, namely: (1) the medical condition may have an effect on the risks under Article 58(1)(b) of the Statute, potentially negating those risks; and (2) the medical condition may be a reason for a Pre-Trial Chamber to grant interim release with conditions.⁹⁶ The availability of appropriate care in The Netherlands is also a relevant factor, as is the possible advantage of obtaining care in a more familiar linguistic, social and familial setting.⁹⁷
45. The absence of appropriate medical treatment in the Detention Centre on the one hand, militates in favour of his release to an environment that would be more conducive to his well-being, and on the other, renders his detention incompatible with the protection against inhumane and degrading treatment.⁹⁸ And, as noted above, the current detention conditions are worsening his condition, and impeding his right to rehabilitation as a torture survivor.⁹⁹ Although the medical services in [REDACTED] are unlikely to be better, a house environment is less risky than a detention setting (as demonstrated by domestic practice concerning the release of prisoners as a preventative measure). He would also benefit from the salutary effects of family contact, which plays a critical role in the rehabilitation of torture survivors.¹⁰⁰
46. Mr. Al Hassan's mental well-being is also adversely affected by the ever-present fear that his loved ones could catch the virus, and the anguish, as a son and a father, of being powerless to provide his family with moral support and physical assistance, in their time of need. [REDACTED] At the best of times, this is extremely difficult. Now, with the COVID-19 pandemic on their doorstep, it is virtually impossible. In addition to the above factors and justifications, Mr. Al Hassan is therefore seeking release for the duration of the current pandemic, due to these compelling humanitarian circumstances.

⁹⁶ [ICC-02/11-01/11-278-Red](#), paras. 87, 90; [ICC-02/11-01/15-992-Red](#), para. 55.

⁹⁷ *Prosecutor v. Gvero et al.*, '[Decision on Gvero's Motion for Provisional Release with Judge Agius' Dissenting Opinion and Judge Prost's Separate Declaration](#)', 17 December 2009, para. 22.

⁹⁸ *Kudla v Poland*, [30210/96](#), para. 94; *Bamouhammad v. Belgium*, [47687/13](#), paras. 115-155.

⁹⁹ '[Quality Standards for HCPs working with victims of torture in detention](#)', Faculty of Forensic & Legal Medicine of the Royal College of Physicians, May 2019, p. 26: "Victims of torture have a right to rehabilitation without delay, which is not achievable in detention. For the period that they are in detention, victims of torture are entitled to equivalent services and treatment as are available in the community. (...) Being detained may contribute to a deterioration in mental health for victims of torture and trigger past trauma for them. The impact is • exacerbated the longer such detention continues • worse for those with pre-existing trauma and • likely to persist long after detention is ended".

¹⁰⁰ Annexes F and K.

iv. The requested duration of release is proportionate, and mitigates any risks

47. Mr. Al Hassan is requested to be released for the duration of the COVID-19 pandemic; the requested duration is thus directly proportionate to the circumstances giving rise to the request.¹⁰¹ The limited duration, and COVID-19 related travel and contact restrictions (i.e. ‘social distancing’) also mitigate any alleged risk that he might abscond or interfere with the proceedings. Commercial flights are still flying from The Netherlands to [REDACTED],¹⁰² and the Defence has also identified reliable, commercially available GPS trackers that are of minimal cost.¹⁰³ Although previous decisions concerning temporary humanitarian release cited the defendant’s willingness to meet associated costs, this condition is clearly inappropriate and unfair as concerns an indigent defendant, who enjoys no support from political, military or religious groups. Indeed, the very fact that Mr. Al Hassan lacks such support speaks to the absence of any risk that he, or his non-existent supporters, would jeopardise the proceedings upon release.

III. Relief Sought

48. Pursuant to Articles 21(3) and 60(2) of the Statute, and subject to all conditions imposed by the Trial Chamber, the Defence for Mr. Al Hassan urgently requests the Honourable Trial Chamber to grant Mr. Al Hassan interim release, for the duration of the COVID-19 pandemic or such time as the Chamber deems appropriate.

¹⁰¹ *Prosecutor v. Gvero et al.*, ‘[Decision on Gvero's Motion for Provisional Release with Judge Agius' Dissenting Opinion and Judge Prost's Separate Declaration](#)’, 17 December 2009, para. 10: “Where provisional release is found to be justified on humanitarian grounds, the duration of provisional release should be proportional to the period of time necessary to carry out the humanitarian purpose of the release”.

¹⁰² Annex O.

¹⁰³ See for example, <https://www.attentigroup.com/intl/products/two-piece-gps/>



Melinda Taylor
Lead Counsel for Mr Al Hassan



Marie-Hélène Proulx
Associate Counsel for Mr Al Hassan



Thomas Hannis
Associate Counsel for Mr Al Hassan

Dated this 23rd Day of March 2020
At The Hague, The Netherlands