

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 23 April 2020

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
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

**Decision on the Prosecution request for a further extension of the time limit to
file the Trial Brief**

Decision 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 Hannis

Legal Representatives of Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

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

TRIAL CHAMBER X 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 the Prosecution request for a further extension of the time limit to file the Trial Brief'.

I. Procedural history

1. On 6 January 2020, the Chamber set the date for the commencement of trial on 14 July 2020 and adopted a calendar leading up to this date.¹ 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.² Upon a request from the Prosecution, the deadline for the Prosecution to file its Trial Brief was postponed to 30 April 2020.³ The deadline for the Prosecution to finalise its evidence disclosure was later also postponed to 12 May 2020.⁴
2. On 17 April 2020, pursuant to Regulation 35 of the Regulations of the Court (the 'Regulations'), the Prosecution filed an urgent request to vary once more the time limit set to file its Trial Brief, asking the Chamber to amend the deadline for this filing from 30 April to 29 May 2020 (the 'Prosecution Request').⁵ The Prosecution argues that there exists good cause because 'the situation relating to the COVID-19 pandemic and resulting measures implemented by the Host State and the Court simply make it unfeasible for the Prosecution to comply with the given deadline for completing the obligation of filing the Trial Brief'.⁶ Particularly, the Prosecution submits that, due to the situation arising from the COVID-19 pandemic, it faces staff resourcing,

¹ Decision Setting the Commencement Date of the Trial, ICC-01/12-01/18-548.

² Decision Setting the Commencement Date of the Trial, ICC-01/12-01/18-548, paras 8, 10, 16.

³ Decision on Prosecution request for a variation of the time limit to file Trial Brief, 5 March 2020, ICC-01/12-01/18-629 (the 'First Extension Decision').

⁴ Decision on the Prosecution request for extension of deadlines relating to the disclosure of evidence and a postponement of the starting date for trial, 20 March 2020, ICC-01/12-01/18-677 (the 'Second Extension Decision').

⁵ Urgent Third Prosecution Request for variation of the time limit to file Trial Brief, ICC-01/12-01/18-760-Conf.

⁶ Prosecution Request, ICC-01/12-01/18-760-Conf, paras 2, 7.

technical and coordination difficulties, which produce a cumulative, knock-on effect, and severely impact on its work and its ability to comply with judicially imposed deadlines, including the time limit for filing the Trial Brief.⁷ The Prosecution further submits that, due to operating under this situation for a significant period of time, it has had to focus all its resources into meeting the judicially imposed deadline of 14 April 2020, and argues that the preparation of the Trial Brief will need to continue amid this situation and concurrently with its efforts to meet the other judicially imposed deadline of 12 May 2020.⁸ Finally, the Prosecution argues that the requested extension is both necessary and reasonable, as it is designed to address the amount of work still required to prepare the Trial Brief under the current situation and in light of concurrent deadlines, and submits that a lesser extension would be insufficient for the proper completion of a comprehensive document truly capable of assisting the Chamber as well as the other parties and participants.⁹

3. On 21 March 2020, in accordance with the Single Judge's directives pursuant to Regulation 34 of the Regulations,¹⁰ the legal representatives of victims (the 'LRVs') submitted their response, supporting the Request in light of the circumstances (the 'LRVs Response').¹¹
4. On the same day, the Defence also submitted its response, opposing the Prosecution Request (the 'Defence Response').¹² The Defence argues that: (i) the requested extension is unnecessary and disproportionate; (ii) granting the Request would prejudice the Defence and cause further delay to the proceedings; and (iii) Mr Al Hassan's conditions in detention and rights as a defendant would be prejudiced by the extension sought.¹³ Regarding its first argument, the Defence submits that the Prosecution has not demonstrated that

⁷ Prosecution Request, ICC-01/12-01/18-760-Conf, paras 2, 31-55.

⁸ Prosecution Request, ICC-01/12-01/18-760-Conf, paras 5-6, 36-38, 56-60.

⁹ Prosecution Request, ICC-01/12-01/18-760-Conf, paras 7, 61-65.

¹⁰ Email from the Single Judge to the parties and participants on 20 April 2020, at 10:54, informing them of the shortening of the deadline for any responses to the Prosecution Request to Tuesday 21 April 2020, close of business.

¹¹ Email from the LRVs to the Chamber, at 14:36.

¹² Defence Response to "Urgent Third Prosecution Request for variation of the time limit to file Trial Brief", ICC-01/12-01/18-762-Conf (confidential, with confidential *ex parte* annexes A to D, only available to the Defence and the Registry, and confidential annex E).

¹³ Defence Response, ICC-01/12-01/18-762-Conf, paras 2, 10.

the circumstances caused by the COVID-19 pandemic are insurmountable and argues that any delays the Prosecution is facing in relation to the drafting of its Trial Brief are also attributable to its conduct of the case.¹⁴ In this regard, the Defence argues that, given the length of the document containing the charges, the Prosecution's obligation to undertake rolling disclosure, the resources available to the Prosecution to prepare multiple lengthy filings and the previous extension granted, the work for the Prosecution in preparing the Trial Brief need not necessitate such a substantial delay to the proceedings.¹⁵ Regarding its second argument, the Defence submits that the provision of the Trial Brief in a timely manner is essential for its preparation, the need of which has been enhanced by the situation arising out of the COVID-19 pandemic and the restrictions ensuing from it, and argues that any extension of time would compromise its ability to prepare for trial and/or entail the necessity of further extensions of time concerning the other timeframes set for the proceedings.¹⁶ Regarding its third argument, the Defence argues that any further delays to the proceedings resulting from the extension would have a particular impact on Mr Al Hassan, given his current conditions of detention and in light of his rights as a defendant, notably his right to be tried without undue delay.¹⁷ Finally, the Defence submits that the cumulative effect of the events in the case since the original setting of the timetable, notably the fact that two extensions were granted to the Prosecution to enable it to comply with its disclosure obligations, requires that the Request be rejected.¹⁸

II. Analysis

5. Pursuant to Regulation 35 of the Regulations, the Chamber will assess whether good cause has been shown to extend the time limit set for the Prosecution to file its Trial Brief.
6. At the outset, the Chamber recalls its previous finding in relation to the exceptional circumstances and uncertainty arising out of the COVID-19

¹⁴ Defence Response, ICC-01/12-01/18-762-Conf, paras 11-20.

¹⁵ Defence Response, ICC-01/12-01/18-762-Conf, para. 20.

¹⁶ Defence Response, ICC-01/12-01/18-762-Conf, paras 21-29.

¹⁷ Defence Response, ICC-01/12-01/18-762-Conf, paras 30-38.

¹⁸ Defence Response, ICC-01/12-01/18-762-Conf, paras 39-40.

pandemic, and the potential impact any measures taken by the Host State may have on the proper functioning of the Court for a prolonged period of time.¹⁹ Notably, the Chamber found that it would examine any further discrete request in relation to the deadlines in preparation and leading to the commencement of trial on a case-by-case basis, if and when it becomes clear to either the Prosecution or the Defence that they cannot be met.²⁰

7. In this regard, the Chamber notes the Prosecution's submission that the situation arising out of the COVID-19 pandemic, notably the staff resourcing, technical and coordination difficulties it faces, makes it unfeasible to comply with the deadline for filing the Trial Brief.²¹ The Chamber further notes the Prosecution's submission that meeting the deadlines set for 14 April 2020 under the current restrictions involved such an amount of work that it had to devote all its resources to comply with that deadline and was unable to sufficiently progress on the Trial Brief.²² The Chamber also takes note of the other competing deadlines the Prosecution mentions in its Request, notably the ones set for 12 May 2020.²³
8. The Chamber finds that most of the reasons invoked by the Prosecution to justify the sought extension are very general in nature and these include surprising matters of inconvenience which are irrelevant.²⁴ Moreover, most were already invoked in its previous request seeking an extension of time for several judicially imposed deadlines, which was notified on the day of the closure of the premises.²⁵ They are also predominantly the same difficulties faced by other sections of the Court including Chambers and by the Defence and are not unique to the Prosecution. Additionally, the Chamber notes that the Prosecution has not identified any specific measures it has taken to prioritize the

¹⁹ Second Extension Decision, ICC-01/12-01/18-677, para. 6.

²⁰ Second Extension Decision, ICC-01/12-01/18-677, para. 17.

²¹ Prosecution Request, ICC-01/12-01/18-760-Conf, paras 2, 7, 31-55.

²² Prosecution Request, ICC-01/12-01/18-760-Conf, paras 5, 36-37, 56-58.

²³ Prosecution Request, ICC-01/12-01/18-760-Conf, paras 6, 38.

²⁴ See e.g. Prosecution Request, ICC-01/12-01/18-760-Conf, para. 46, first bullet point.

²⁵ See Prosecution provisional request for extension of judicial deadlines, 17 March 2020, ICC-01/12-01/18-665-Conf. A public redacted version of the request was filed on 19 March 2020.

needs of the team working on one of the few ongoing proceedings which involve detained individuals.

9. Nonetheless, the Chamber is satisfied that the Prosecution is facing difficulties linked to the situation arising out of the COVID-19 pandemic and its continued duration, which impact on its ability to complete its competing tasks in an ordinary fashion. Consequently, the Chamber finds that there are objective reasons justifying the Prosecution's inability to meet the deadline set for the filing of the Trial Brief, constituting a good cause within the meaning of Regulation 35 of the Regulations.
10. However, the Chamber notes that the Prosecution has been aware of the need for a Trial Brief since January 6.²⁶ The deadline for the filing of the Trial Brief was already extended by the Single Judge on 5 March 2020, from its original date of 14 April to 30 April 2020,²⁷ and the Chamber subsequently considered it inappropriate to further alter the deadline for the Trial Brief in the circumstances.²⁸ Although the Chamber is mindful of the challenges faced by the Prosecution, it must also bear in mind its obligation to ensure a fair and expeditious trial. Specifically with respect to this case, particular caution should be exercised in terms of adjusting any deadlines, giving full consideration to the fundamental rights of Mr Al Hassan, who remains in detention and is entitled to sufficient time to prepare his defence.²⁹
11. Weighing the reasons invoked by the Prosecution, as well as the usefulness of the Trial Brief in relation to trial preparations,³⁰ and the fundamental rights of Mr Al Hassan, the Chamber considers that the 29-day extension requested by the Prosecution to file its Trial Brief is not justified under the current circumstances. The Chamber nonetheless finds that a more limited extension of time, until 18 May 2020, appears reasonable and necessary so as to allow the Prosecution to complete its Trial Brief preparations, while ensuring that the

²⁶ Decision Setting the Commencement Date of the Trial, ICC-01/12-01/18-548, para. 16.

²⁷ First Extension Decision, ICC-01/12-01/18-629.

²⁸ Second Extension Decision, ICC-01/12-01/18-677, para. 13.

²⁹ Second Extension Decision, ICC-01/12-01/18-677, paras 8-9.

³⁰ Decision Setting the Commencement Date of the Trial, ICC-01/12-01/18-548, para. 15.

Defence is not unduly hindered in terms of its preparations prior to the start of trial, the date of which remains unchanged.

12. However, the Chamber wishes to reiterate that the Trial Brief must be a concise document, limited to an outline of the Prosecution case containing some details in relation to the charges, and should not replicate extensive information already provided by the Prosecution through full disclosure or its witness list.³¹ Given the delays in its preparation, this is particularly essential so that it will serve as a useful tool for the Defence in its preparations and for the Trial Chamber. In that respect, the Chamber is of the view that the limited extension granted is sufficient for the proper completion of such a document.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

PARTIALLY GRANTS the Request; and

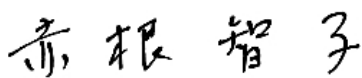
EXTENDS the time limit to file the Trial Brief to 18 May 2020.

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



Judge Antoine Kesia-Mbe Mindua

Presiding Judge



Judge Tomoko Akane



Judge Kimberly Prost

Dated this Thursday, 23 April 2020

At The Hague, The Netherlands

³¹ Second Extension Decision, ICC-01/12-01/18-677, para. 13.