

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 12 May 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 REDACTED VERSION

**With Confidential *EX PARTE* Annex only available to the Registry and the
Defence**

**Public Redacted Version of the Registry's Observations on the "Urgent Defence
Request for Interim Release" (ICC-01/12-01/18-680-Conf-Exp)**

Source: Registry

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

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I. Introduction

1. Pursuant to the email instruction issued by the Single Judge of Trial Chamber X ("Chamber") on 23 March 2020,¹ in the case of *The Prosecutor vs Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ("Mr Al Hassan"), the Registry submits its observations on the "Urgent Defence request for interim release"² filed on 23 March 2020 by the defence for Mr Al Hassan ("Request" and "Defence", respectively).
2. These observations are limited to matters regarding (A) the current situation [REDACTED] at the time of the Covid-19 pandemic and international cooperation aspects, (B) the detention conditions of Mr Al Hassan and (C) the anticipated impact of the Request on the situation of victims and witnesses.

II. Classification

3. In accordance with regulation 23 *bis*(2) of the Regulations of the Court ("RoC"), the present observations and related annex is classified as confidential *ex parte* only available to the Registry, as it refers to internal procedures with regard to (1) protection of victims and witnesses and (2) detention matters. Confidential redacted versions of the present observations are filed separately.

III. Submissions

A. The current situation [REDACTED] and international cooperation aspects

¹ Email from Trial Chamber X to parties and participants on 23 March 2020 at 19.18.

² Defence, "Urgent Defence Request for Interim Release", 23 March 2020, ICC-01/12-01/18-680-Conf-Exp, ("Request").

4. The Registry informs the Chamber that inbound and outbound flights [REDACTED] are suspended for an indefinite period.³ Therefore the Registry does not have at this stage the capacity to facilitate Mr Al Hassan's travel [REDACTED]. Furthermore, the Registry is not in a position to comment on whether Mr Al Hassan would be safer in [REDACTED] than at the International Criminal Court's Detention Centre ("Court" and "DC") during the Covid-19 pandemic.

5. With regard to the required state cooperation by both the host State and [REDACTED], pursuant to regulation 51 of the RoC and upon the Chamber's order, the Registry stands ready to transmit any Chamber's request for observations from [REDACTED]. [REDACTED]. With regard to the [REDACTED], the Registry believes that it would be beneficial for them to receive the [REDACTED] translation of the public redacted version of the Request as it details the modalities of Mr Al Hassan's sought release in [REDACTED]. This would enable the [REDACTED] to provide meaningful observations on the Request. The said translation in [REDACTED] could be made available by close of business Friday 3 April 2020.

6. In addition, should the Request be granted with conditions restricting Mr Al Hassan's liberty in accordance with rule 119 of the Rules of Procedure and Evidence, the Chamber may wish to seek additional observations of [REDACTED] on their capacity to implement those conditions as imposed by the Chamber. In this respect, the Registry draws the Chamber's attention to the fact that, due to the Covid-19 pandemic and related governmental efforts to face it, it may now take longer time than usual to obtain a response from [REDACTED].

³ [REDACTED].

B. The detention conditions of Mr Al Hassan

7. In the Request, the Defence submits that Mr Al Hassan is in “virtual isolation” at the Court’s DC since the start of the Covid-19 pandemic.⁴ In this respect, the Registry understands that the Defence takes issue, *inter alia*, with (i) the limited social interactions Mr Al Hassan has in detention including his limited contacts with his family, (ii) the temporary absence of spiritual visits and (iii) the alleged absence of appropriate medical treatment. Despite the timing of the Request, the Registry notes that points (i) and (iii) are not necessarily linked to the current pandemic. The Registry will address these three issues in turn.

(i) *Limited social interactions with his family and alleged delays for organising family visits*

Planned in person family visit

8. For the complete information of the Chamber and before turning to the specific case of Mr Al Hassan’s family visit, the Registry wishes to clarify the requirements to be met before an actual visit can take place. In organizing family visits funded by the Trust Fund for Family Visits (“TFFV”), the procedure is the same for all benefiting indigent detained persons.

9. [REDACTED]

10. However, in the specific case at issue, the Registry wishes to clarify that, for reasons beyond the Registry’s control, organising a family visit for Mr Al Hassan is a particular complex process. [REDACTED].

⁴ Request, para. 21.

11. As to the upcoming approved family visit, [REDACTED].
12. [REDACTED]. While the actual date of the upcoming family visit was still in discussion, the Malian government announced the suspension of inbound and outbound flights in Mali for an indefinite period rendering the travel of Mr Al Hassan's family to The Hague no longer possible for an unknown length of time.
13. Therefore, contrary to the Defence's assertions,⁵ the Registry has focused its efforts on facilitating the family visits. As soon as the suspension of inbound and outbound flights in Mali is lifted, the Registry will assist Mr Al Hassan's family members [REDACTED]. [REDACTED].
14. In light of the above, the Registry notes the Defence's submission of Mr Al Hassan's limited interactions with his family. However, it remains that the current delay for the planned family visit is caused by the suspension of inbound and outbound flights in Mali that is beyond the Registry's control.

Video-based communications between Mr AL Hassan and his family

15. The Defence refers to Mr Al Hassan's video-based communication.⁶ As to recorded video-messages to be sent to Mr Al Hassan by his family, following the Pre-Trial Chamber's decision allowing Mr Al Hassan for receiving such video-messages, the Registry communicated to the Defence on 23 August 2019 the modalities thereof.⁷ To date, and before the start of the pandemic, the Registry has yet to receive any further questions or clarifications on the said modalities. The Defence has never availed itself of the opportunity for such messages.

⁵ Request, para. 14.

⁶ Request, paras. 11-13.

⁷ Annex.

16. As to video-conferencing, the Registry recalls first that this option was initially discussed in the specific context of [REDACTED]. Second, as explained above and since the Registry focuses its efforts on the facilitation of family visits, [REDACTED].⁸

17. Third, the Registry met with [REDACTED].

18. This notwithstanding, and despite the complexity of this matter and related security challenges, should no family visits be possible in the future, the Registry is still contemplating the feasibility of video-conferencing communications, not only for Mr Al Hassan but for all detained persons. The limited capacity of all Registry country offices will have to be taken into account for the purpose of any feasibility assessment.

19. As a concluding remark on Mr Al Hassan's limited interactions with his family, the Registry informs the Chamber that, on the top of the usual 200 minutes of telephone-costs offered to each detained persons at the DC, each of them has recently received [REDACTED] as compensation for extra telephone-costs due to the fact that in-person visits have been suspended to avoid the spreading of the Covid-19.

(ii) *Temporary absence of spiritual visits*

20. The measures to prevent the spread of Covid-19 in the DC focus on reducing contacts from the outside world to the detained persons.[REDACTED]. Mindful of the importance for detained persons to have spiritual visits, the Registry is currently exploring alternative measures.

21. Accordingly, on 25 March 2020, the CCO decided [REDACTED].

⁸ Request, para. 12.

(iii) *Alleged absence of appropriate medical treatment*

22. The Registry first note that this matter has already been discussed during the pre-trial proceedings and that Mr Al Hassan's feeling of isolation was mainly linked to the monitoring regime in place.⁹ To the extent that the new psychological assessments referred to by the Defence¹⁰ would constitute new circumstances warranting the Chamber's reconsideration of the matter, the Registry notes that parties and participants are currently preparing separate observations on the monitoring regime, that are due on 8 April 2020.

23. Furthermore, as to the concerns raised by Mrs [REDACTED] in her first opinion, the Defence seems to take issue of the fact that the Registry did not further address these concerns. Based on Mrs [REDACTED] assessment, the medical information provided by the Defence is of twofold: first, it refers to a so-called "absence of appropriate medical treatment" at the DC and, second, Mr Al Hassan is "in state of isolation", which – in Mrs [REDACTED] view – is "likely to exacerbate his psychological distress."¹¹

24. As to the specific medical treatment that was allegedly not "appropriate", [REDACTED]. The Registry further submits that, as a neutral organ of the Court, it is not in a position to comment on an opinion made by a psychologist mandated by either party and, in the present case, by the Defence. In addition, the Registry notes that the Defence in the meantime has received on 20 March 2020 a second opinion by the same Defence appointed expert.¹² Before receiving any response from the Registrar on the first opinion, the Defence elected not to share this additional information with him, but rather filed it with the Chamber for its consideration in the context of the Request. This

⁹ Request, para. 11 and footnote 19, See for example ICC-01/12-01/18-340-Conf-Exp-Red, paras. 29 and 60.

¹⁰ Request, paras 15-18 and 23.

¹¹ Request, para. 17 and Annex F, last page.

¹² Request, para. 23.

shows the Defence's preference for having this matter considered by the Chamber, as opposed to getting the Registrar's views thereon.

25. To the extent that the Registry could have responded to Mrs [REDACTED] on her assessment relating to the state of isolation Mr Al Hassan would face, the Registry notes that the critical assessment and examination of Mr Al Hassan by the external expert dealing with sensitive and private medical information has not been shared or discussed with the Medical Officer at the DC ("MO"), in accordance with regulation 157(8) and (9) of the RoR. Furthermore, noting the seriousness of this matter relating to the health and safety of Mr Al Hassan, the Chamber may wish to decide that Mr Al-Hassan is to undergo a medical examination.¹³

26. In addition, the Registry wishes to clarify the following with regard to the "detention conditions of segregation" and "isolation" of Mr Al Hassan, which is pointed out by the Defence expert as elements, which will likely "exacerbate his psychological distress".¹⁴ [REDACTED].

27. Finally, the Defence states that the MO has not been present at the DC between 10-23 March 2020,¹⁵ and that he has not been to see Mr Al Hassan.¹⁶ This is incorrect as the MO has been substantially present at the DC, especially as he is leading the medical response and preparations for Covid-19 at the DC. However, as communicated to the detained persons orally and in written form the week of 16 March 2020, and again orally from the MO in person on 23 March 2020, all medical staff will avoid unnecessary visits to the detained persons in order to limit contact during the Covid-19 pandemic. This measure is in accordance with the guidelines for all of The Netherlands. However, at

¹³ See rule 135 of the Rules of Procedure and Evidence.

¹⁴ Request, para. 17 and confidential Annex F, section 2 of Mrs [REDACTED]'s annexed letter of 4 March 2020.

¹⁵ Request, para. 20.

¹⁶ Request, para. 43.

any time, should a detained person request to see the MO or a member of medical services they will visit them in person, and are also available on the telephone. That way, all medically necessary treatment continues to be offered to detained persons. [REDACTED].

C. Anticipated impact of the Request on the situation of victims and witnesses

28. The Victims and Witnesses Unit ("VWU") notes that Mr Al Hassan is currently subject to restrictions of contact including the monitoring of his phone communications and visits. The Chamber recently indicated in its "Decision on Mr Al Hassan's restrictions and accesses while in detention" that the current restrictions will remain in place and may be reviewed based on submissions of the Registry and the Prosecution respectively due on 8 and 23 April 2020, including information on the security situation of witnesses in [REDACTED].¹⁷ Should Mr Al Hassan be released [REDACTED], even with conditions, the monitoring controls currently imposed on Mr Al Hassan's communications for the purpose of witness protection would disappear. Absent any such controls and early warning, the VWU would not be in a position to detect potential threats which could be made against witnesses and victims and take necessary action.

29. [REDACTED]. [REDACTED].

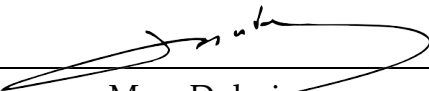
IV. Conclusion

30. The Defence requests to grant Mr Al Hassan's interim release "for the duration of the COVID-19 pandemic or such time as the Chamber deems appropriate".¹⁸ Accordingly, the Registry submits its observations on the

¹⁷ Trial Chamber X, "Decision on Mr Al Hassan's restrictions and accesses while in detention", 21 January 2020, ICC-01/12-01/18-557-Conf-Exp paras. 11 and 12.

¹⁸ Request, para. 48.

Request informing the Chamber on the current situation [REDACTED] and the potential impact of the Request on the situation of victims and witnesses in light of the Covid-19 pandemic. However, the Registry also provides the Chamber with further detailed information on Mr Al Hassan's detention conditions, which is not necessarily in direct link with the pandemic.



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

Dated this 12 May 2020

At The Hague, The Netherlands