

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 29 May 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 Defence request for extension of the time limit and page limit for
the filing of pre-trial motions**

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
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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

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 the present decision.

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 1 June 2020 as the deadline for the filing of all motions which require resolution prior to the commencement of trial.²
2. On 23 April 2020, in addition to other extensions of deadline granted upon request from the Prosecution,³ the deadline initially set to 14 April 2020 for the Prosecution to finalise its evidence disclosure was postponed to 12 May 2020.⁴
3. On 6 May 2020, the Chamber issued its Decision on the conduct of proceedings, in which it relevantly set the deadline for the Prosecution and the Defence to raise any objections or observations within the meaning of Rule 134(2) of the Rules of Procedure and Evidence at 1 June 2020.⁵
4. On 27 May 2020, the Defence filed the 'Defence request for extension of time and page limit' (the 'Defence Request'),⁶ in which it seeks:
 - (i) an extension of time (from 1 to 16 June 2020) to file a pre-trial motion concerning the Prosecution's reliance on information and evidence that the Defence submits was tainted by torture (respectively the 'Forthcoming Pre-Trial Motion' and 'First Request');

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, para. 19.

³ The deadline set for the Prosecution to file its Trial Brief was postponed from 14 April 2020 to 30 April (Decision on Prosecution request for a variation of the time limit to file Trial Brief, 5 March 2020, ICC-01/12-01/18-629) and again to 18 May 2020 (Decision on Prosecution Request for a further extension of time limit to file the Trial Brief, 23 April 2020, ICC-01/12-01/18-770-Conf).

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 ICC-01/12-01/18-789-AnxA, para. 1.

⁶ ICC-01/12-01/18-827-Conf, with one confidential annex ('Annex B') and two confidential, *ex parte*, annexes (Prosecution and Defence only) ('Annex A' and 'Annex C').

- (ii) an extension of the page limit (from 20 to 120 pages) for the Forthcoming Pre-Trial Motion (the ‘Second Request’); and
- (iii) an extension of time (from 1 to 10 June 2020) to file other challenges under Rule 134 (the ‘Third Request’).
5. Concerning the First Request, the Defence submits that its Forthcoming Pre-Trial Motion is based primarily on information which was only disclosed in 2020, notably a series of investigators’ notes which were provided on 12 May 2020.⁷ The Defence also explains and provides details to attest that it did not have the means to obtain this information beforehand.⁸ The Defence informs that it has not been possible for its appointed experts to conduct a meaningful analysis of the material recently provided within the time available nor to incorporate the relevant findings into its Forthcoming Pre-Trial Motion.⁹ The Defence further submits that it has identified specific information which has yet to be disclosed by the Prosecution and indicates that it will need to file an urgent request for disclosure in light of the Prosecution’s recent apparent refusal to disclose this information.¹⁰ In its view, this upcoming litigation further impedes the Defence from completing sections of its Forthcoming Pre-Trial Motion that are directly affected by the information sought to be obtained.¹¹
6. Moreover, the Defence argues that the above has occurred at a time when its resources were, and continue to be, stretched by difficult working conditions, logistical issues, extended parallel litigation taking place simultaneously before the Trial Chamber and Pre-Trial Chamber I, as well as ongoing discussions concerning the modalities of Defence preparation and investigations during the COVID-19 pandemic.¹² Accordingly, the Defence estimates that it will not be in a position to submit its Forthcoming Pre-Trial Motion before 16 June 2020. It notes that the extension sought is minimal when viewed in light of the various

⁷ Defence Request, ICC-01/12-01/18-827-Conf, para. 2.

⁸ Defence Request, ICC-01/12-01/18-827-Conf, paras 2-8.

⁹ Defence Request, ICC-01/12-01/18-827-Conf, para. 9.

¹⁰ Defence Request, ICC-01/12-01/18-827-Conf, para. 10 and Annex A, ICC-01/12-01/18-827-Conf-Exp-AnxA.

¹¹ Defence Request, ICC-01/12-01/18-827-Conf, para. 10.

¹² Defence Request, ICC-01/12-01/18-827-Conf, para. 11 and Annex B, ICC-01/12-01/18-827-Conf-AnxB.

extensions of time granted to the Prosecution in the lead up to the start of trial and further refers to discrete measures it took in an attempt to minimise any prejudice that might be caused.¹³

7. With regard to the Second Request, the Defence submits that abuse of process applications are by their nature exceptional and argues that the Forthcoming Pre-Trial Motion is 'most analogous to a trial brief in the sense that the purpose is to set out how the evidential foundation of this case is tainted by torture'.¹⁴ It further refers to the complexity of the legal issues in question as well as the range of evidence, investigative acts, and procedural actions to be analysed and discussed therein.¹⁵ The Defence therefore estimates that 120 pages are necessary to ensure that all relevant legal and factual issues are ventilated in an effective and clear manner.
8. In support of its Third Request, the Defence recalls that the deadline for filing Rule 134 challenges was predicated on a series of prior deadlines that have now been varied, on average, by a month.¹⁶ It argues that these delays, as well as other recent developments, have had a knock-on effect as concerns the Defence's analysis regarding sufficiency of disclosure and defects in the manner in which the charges were pleaded. It further submits that granting a minimal postponement would allow the Defence to clarify a number of discrete matters with the Prosecution thereby allowing the Defence to avoid making challenges that are redundant or premature.¹⁷
9. On 28 May 2020, in accordance with the deadline set by the Single Judge,¹⁸ the Legal representatives of victims (the 'LRVs') and the Office of the Prosecutor (the 'Prosecution') provided their response.¹⁹

¹³ Defence Request, ICC-01/12-01/18-827-Conf, para. 12.

¹⁴ Defence Request, ICC-01/12-01/18-827-Conf, para. 13.

¹⁵ Defence Request, ICC-01/12-01/18-827-Conf, para. 13.

¹⁶ Defence Request, ICC-01/12-01/18-827-Conf, para. 15.

¹⁷ Defence Request, ICC-01/12-01/18-827-Conf, para. 16 and Annex C, ICC-01/12-01/18-827-Conf-Exp-AnxC.

¹⁸ Email from the Single Judge to the parties and participants dated 27 May 2020 at 12:14.

¹⁹ Email from the LRVs to the Chamber dated 28 May 2020 at 15:08; Réponse de l'Accusation à la demande délai en d'extension du nombre de page, 28 May 2020, ICC-01/12-01/18-823-Conf (the 'Prosecution Response'), with one confidential annex.

10. The LRVs submit that they do not oppose the Defence Request. They consider that the extension of time sought are justified and are of the view that the decision as to the extension of page limit falls completely within the Chamber's discretionary power.
11. The Prosecution does not oppose the extension of time sought in the First Request²⁰ and submits that the extension of page limit sought could be partially granted, suggesting that a total of 50 pages would be reasonable for the Forthcoming Pre-Trial Motion.²¹ The Prosecution however considers that the extension of time for other Rule 134 challenges is not justified. In its view, the Defence is in a position to formulate these challenges by the deadline initially set and did not provide good cause for the Third Request.²²

II. Analysis

12. Pursuant to Regulation 35 of the Regulations of the Court (the 'Regulations'), the Chamber will first determine whether good cause has been shown to extend the time limit set for the filing of motions which require resolution prior to the commencement of trial. The Chamber will then determine whether exceptional circumstances exist to grant the extension of page sought pursuant to Regulation 37(2) of the Regulations.
13. At the outset, the Chamber recalls its previous finding in relation to the exceptional circumstances and uncertainty arising out of the COVID-19 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.²³ 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.²⁴

²⁰ Prosecution Response, ICC-01/12-01/18-832-Conf, para. 4.

²¹ Prosecution Response, ICC-01/12-01/18-832-Conf, para. 7.

²² Prosecution Response, ICC-01/12-01/18-832-Conf, paras 11-16.

²³ Second Extension Decision, ICC-01/12-01/18-677, para. 6.

²⁴ Second Extension Decision, ICC-01/12-01/18-677, para. 17.

14. In this regard, the Chamber notes the Defence's submission that the extensions of deadlines granted to the Prosecution in the last weeks have had an effect on the Defence ability to finalise the Forthcoming Pre-Trial Motion and other Rule 134 applications. The Chamber acknowledges that the calendar leading to the start of trial has slipped forward by approximately one month. The Chamber also understands that the Defence does not currently find itself in a position to meet the deadline set and essentially cannot, alone, compensate for the recent variations in the schedule leading to the commencement of trial.
15. The Chamber also takes note of the other competing deadlines and ongoing litigation, both before this Chamber and the Pre-Trial Chamber, which necessarily impacted on the Defence ability to respect the schedule initially set. Further, and notwithstanding the fact that the bulk of the material in the Prosecution's possession was disclosed on a rolling basis, it appears that certain information was disclosed at the eve of the final deadline for the Prosecution to complete its disclosure and, on the basis of the Defence's submissions,²⁵ this concerns a significant number of witnesses who were interviewed on multiple occasions over the course of several years.
16. The Chamber however recalls that, 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. The Chamber notes in this regard that it is not foreseen that the extension of time granted will delay the start of trial.
17. In light of the above, and having considered that the First and Third Requests are minimal in the circumstances, the Chamber finds that good cause has been shown and authorises the two limited extensions of time requested by the Defence.
18. Finally, turning to the Second Request, and having had regard to the reasons invoked by the Defence, the Chamber considers that the 120-pages extension

²⁵ Defence Request, ICC-01/12-01/18-827-Conf, para. 8.

requested for the Defence Forthcoming Pre-Trial Motion is not justified. The Chamber notes that the rules relating to page limits are designed to ensure clear and focused arguments which will assist the relevant chamber in reaching a determination.²⁶ The Chamber further observes that the Defence already made substantive submissions on the record in relation to the abovementioned motion, notably concerning the legal principle²⁷ and the timing of this litigation.²⁸ There is no need to replicate those submissions within the motion. Moreover, the fact that the subject matter of the motion is a complex one does not constitute extraordinary circumstances which justifies increasing a page limit to five times the original restriction. To the contrary, in the view of the Chamber, direct and concise argumentation is even more desirable with respect to an issue of particular complexity. At the same time, the Chamber accepts that the motion is distinct in nature and may require some additional elaboration. For that reason, the Chamber finds that a more limited extension, of 50 pages in total, appears reasonable.

²⁶ See, e.g., Regulations 37-38 and 58-60.

²⁷ Defence Reply to Prosecution and Registry Responses to Interim Release Request, notified on 14 April 2020, ICC-01/12-01/18-737-Red, paras 4-7.

²⁸ Defence submissions pursuant to Trial Chamber X's "Order to provide information on methods of work to minimise the impact of COVID-19 and related measures on the conduct of proceedings" – ICC-01/12-01/18-776, notified on 22 May 2020, ICC-01/12-01/18-825-Conf-Red, paras 10-15.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the First Request and the Third Request;

EXTENDS the time limit of the filing of the Forthcoming Pre-Trial Motion to 16 June 2020 and for any other challenges under Rule 134 to 10 June 2020;

PARTIALLY GRANTS the Second Request; and

EXTENDS the page limit for the Forthcoming Pre-Trial Motion to 50 pages.

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 Friday, 29 May 2020

At The Hague, The Netherlands