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No.: **ICC-01/12-01/18**

Date: **20 May 2020**

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PRE TRIAL CHAMBER 1

Before: Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Alapini-Gansou

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
THE PROSECUTOR V. AL HASSAN AG ABDOUL AZIZ AG MOHAMED
AG MAHMOUD**

Public

With confidential Annexes A and B

Public redacted version of “Prosecution’s Amendment to its further observations regarding its request for corrections and amendments concerning the Confirmation Decision (ICC-01/12-01/18-625-Conf-Exp)”, ICC-01/12-01/18-823-Conf, 20 May 2020

Source: Office of the Prosecutor

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

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Introduction

1. On 31 January 2020, the Prosecution submitted its Request for corrections and/or amendments to the Decision on the confirmation of the charges (“Prosecution’s Request”).¹ On 5 February 2020 the Defence submitted a request for clarification regarding the time-limits applicable to the Prosecution’s Request, and an order requiring the Prosecution to provide an Arabic translation of its Request and all supporting evidence (“Defence’s Request”).² On 7 February 2020, Pre-Trial Chamber I (“Chamber”) granted the Defence’s request to suspend the time limits pending its decision on the Defence’s Request. On 13 February 2020, the Legal representatives of the victims submitted their observations regarding the Prosecution’s Request.³ On 17 February 2020, an Arabic translation of the Prosecution’s Request, and of the witness statements of [REDACTED] and [REDACTED] as communicated to the Defence.
2. On 21 February 2020, as regards part III of the Prosecution’s Request, the Chamber ordered the Prosecution to submit by 4 March 2020 supplementary observations explaining the circumstances and reasons for which the witness statements of [REDACTED] and [REDACTED] were obtained after the filing of the updated Document containing the Charges (“DCC”) on 11 May 2019.⁴
3. On 4 March 2020 the Prosecution submitted its supplementary observations, including regarding witness [REDACTED] (“Supplementary Observations”).⁵
4. The Prosecution submits this amendment to its Supplementary Observations.

¹ ICC-01/12-01/18-568-Conf, and four annexes ICC-01/12-01/18-568-Conf-AnxA, ICC-01/12-01/18-568-Conf-AnxB-Corr, ICC-01/12-01/18-568-Conf-AnxC, ICC-01/12-01/18-568-Conf-AnxD.

² ICC-01/12-01/18-580-Conf; and three annexes [REDACTED]
[REDACTED]

⁴ ICC-01/12-01/18-608-Conf, p.19, para.54, p.23.

⁵ ICC-01/12-01/18-625-Conf-Exp; ICC-01/12-01/18-625-Conf-Red.

5. The Prosecution has identified an error in the factual circumstances regarding witness [REDACTED] described in the Supplementary Observations. Nevertheless, there remains a reasonable justification as to why the witness statement of [REDACTED] was obtained after the filing of the updated DCC in May 2019, and after the hearing of the confirmation of charges in July 2019. In this amendment, the Prosecution describes below the nature of the error and provides additional information to explain why [REDACTED] was interviewed subsequent to [REDACTED]

6. The Prosecution erred when it stated that: “[i]t was only during the initial interview with [REDACTED] 2019, that the Prosecution obtained the name and contact details for [REDACTED]”.⁶ In fact, the Prosecution had in its possession the name of [REDACTED] and of her city of residence at the time, and a phone number, in the [REDACTED] [REDACTED] obtained in 2016.⁷ At the time of filing its Supplementary Observations, this document was unfortunately overlooked.⁸ Witness [REDACTED] provided certain background biographical information regarding [REDACTED] in 2016.⁹

7. However, it was only when the Prosecution interviewed [REDACTED] in person on [REDACTED] 2019, that the Prosecution assessed [REDACTED] as a priority witness for interview, as described in the Supplementary Observations, *inter alia* because:

) [REDACTED] indicated how she knew [REDACTED]
[REDACTED]¹⁰;

) [REDACTED] clarified that [REDACTED]
[REDACTED]¹¹ In contrast, in the [REDACTED] it was

⁶ See Supplementary Observations, para.24.

⁷ [REDACTED]

⁸ [REDACTED] ed to the Defence on 3 August 2018 in Pre-Confirmation INCRIM package 12.

⁹ See Annex A [REDACTED]; Annex B: [REDACTED]

¹⁰ See Annex A of the Supplementary Observations [REDACTED] tness statement of [REDACTED]

[REDACTED]

[REDACTED] ions: A lesser redacted version of the Witness statement of [REDACTED]

stated that members of Ansar Dine wanted [REDACTED] but facing [REDACTED]¹² No information about [REDACTED] [REDACTED] confirmed in her witness statement to the Prosecution that she [REDACTED] [REDACTED]¹³ and,

) (c) when [REDACTED] by the Prosecution during her interview, she identified [REDACTED] (confirming she was the person described as [REDACTED],¹⁴ which was not a name for [REDACTED] known to the Prosecution.

8. The Prosecution concluded after the interview of [REDACTED] that there was a sufficient basis to seek to contact and interview [REDACTED] [REDACTED] provided the Prosecution the contact details for [REDACTED] and the Prosecution was able to contact [REDACTED]

9. As the Prosecution explained in the Supplementary Observations, due to the very difficult security context of this case in Mali, contacts are only made when necessary and when individuals are properly confirmed and assessed as being individuals of potential interest, in full compliance with the Prosecution's obligations under article 54 and 68.¹⁵

10. Moreover, as described, the Prosecution was unable to interview [REDACTED] until [REDACTED] 2019.¹⁶ The Prosecution sought to interview [REDACTED] as soon as she was available.¹⁷

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tary Observations: a lesser redacted version of Witness Statement of [REDACTED]

Supplementary Observations, para.4, 17-21.

¹⁶ Supplementary Observations, para.22-23.

¹⁷ Supplementary Observations, para. 25.

Confidentiality

11. This Corrigendum and its Annexes A and B are filed on a confidential basis, as they contain confidential information that is potentially identifying of Prosecution witnesses and innocent third parties.



Fatou Bensouda, Prosecutor

Dated this 20 May 2020

At The Hague, The Netherlands