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No. ICC-01/12-01/18

Date: 11 June 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

**Decision on the Prosecution's urgent request for an extension of the page limit
for Regulation 55 application**

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

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

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Kimberly Prost, acting as Single Judge on behalf of 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’s urgent request for an extension of the page limit for Regulation 55 application’.

I. Procedural history

1. On 18 May 2020, the Office of the Prosecutor (the ‘Prosecution’) filed its Trial Brief, indicating in the covering submission that it intended to make an application pursuant to Regulation 55 of the Regulations of the Court¹ (respectively the ‘Regulation 55 Application’ and the ‘Regulations’). The Prosecution also noted that it was considering other potential recharacterisations under Regulation 55, which it would either include in the aforementioned Application, or in a second application pursuant to Regulation 55, the latter to be filed in any event before the start of trial.²
2. On Friday 5 June 2020, the Prosecution filed an urgent request for a 30 page extension to the prescribed 20 page limit for the Regulation 55 Application (the ‘Request’).³ The Prosecution submits that there are ‘exceptional circumstances’ justifying the Request, namely: (i) the nature and number of issues to be addressed in Application – the Application will address several proposed recharacterisations of facts under additional modes of liability and counts, including numerous which stem from the Pre-Trial Chamber’s findings, and each proposed recharacterisation requires submissions with multiple references to the Confirmation Decision and the Pre-Trial Chamber’s decision amending the Confirmation Decision;⁴ and (ii) to accommodate one consolidated request for all proposed recharacterisations, which would be in the interests of efficiency and judicial economy.⁵ The Prosecution further submits that, if the

¹ Submission of Prosecution Trial Brief, ICC-01/12-01/18-819-Conf (with confidential Annex A; notified on 19 May 2020), para. 6.

² ICC-01/12-01/18-819-Conf, paras 7-8.

³ Prosecution’s urgent request for an extension of the page limit for regulation 55(2) application, ICC-01/12-01/18-863-Conf.

⁴ Request, ICC-01/12-01/18-863-Conf, paras 5-7.

⁵ Request, ICC-01/12-01/18-863-Conf, para. 8.

extension were granted, it would nevertheless make efforts to keep to less than the total of the extended page limit.⁶

3. On 10 June 2020, in accordance with the deadline set by the Single Judge,⁷ the Legal Representatives of Victims (the ‘LRVs’) and the Defence responded to the Request by email.
4. The LRVs do not oppose the Request.⁸
5. The Defence opposes the Request.⁹ It submits that: (i) the Prosecution has not demonstrated why its future request is ‘exceptional’; (ii) any Regulation 55 request should, by its nature, be short because it must remain within the facts and circumstances of the Confirmation Decision and should not re-litigate past factual findings or provide new evidential analysis; (iii) as a matter of fairness and procedural correctness, the Regulation 55 Application should not be an opportunity for the Prosecution to make *de facto* amendment submissions in circumstances where it has earlier filed its request to amend the charges and made submissions on that request; (iv) it should be possible for the Prosecution to make succinct arguments within the existing page limit, through cross-references to the extensive documents already on the case record;¹⁰ (v) Regulation 55 requests are not exceptional meriting extensions of page limits, drawing the Chamber’s attention to Regulation 55 requests in numerous other cases which were all within, or just over, 20 pages;¹¹ (vi) extending the page limit would impact the expeditiousness of the proceedings, not least by potentially impacting upon the time needed for the Defence to respond.

⁶ Request, ICC-01/12-01/18-863-Conf, paras 2, 8.

⁷ Email from the Single Judge to the parties and participants, 8 June 2020 at 12:02.

⁸ Email from the LRVs to the Chamber, 10 June 2020 at 14:05.

⁹ Email from the Defence to the Chamber, 10 June 2020 at 15:44.

¹⁰ ‘[D]ocument containing the charges (457 pages), a confirmation decision (467 pages), a request to amend the charges (32 pages), Prosecution submissions on the requested amendment (14 pages) and supplemental observations, and most recently a trial brief (123 pages) annexed to a filing that makes 7 pages of *ex ante* submissions to the Prosecution’s Regulation 55 request’.

¹¹ Referring to ‘Yekatom and Ngaïssona - 20 pages (ICC-01/14-01/18-503-Red); Bemba et al 6 pages and 20 pages (ICC-01/05-01/13-1538 and ICC-01/05-01/13-922); Gbabgo and Blé Goudé case - 20 pages (ICC-02/11-01/15-43); Ruto & Sang - 14 pages (ICC-01/09-01/11-1951); Ntaganda case - 14 pages and 12 pages (ICC-01/04-02/06-501 and ICC-01/04-02/06-646); Banda case - 17 pages (ICC-02/05-03/09-549)’.

II. Analysis

6. Pursuant to Regulation 37(2) of the Regulations, the Single Judge must determine whether exceptional circumstances exist to grant the extension of pages sought.
7. As recently stated by the Chamber, the rules relating to page limits are designed to ensure clear and focused arguments which will assist the relevant chamber in reaching a determination.¹²
8. Having regard to the reasons invoked by the Prosecution, the Single Judge does not consider that the requested 30-page extension is justified. In its Regulation 55 Application, the Prosecution should identify its proposed legal recharacterisations of facts, and demonstrate that they do not exceed the facts and circumstances described in the charges and the amendments to the charges. Although the Single Judge agrees with the Prosecution that it is in the interests of efficiency and judicial economy to accommodate the two foreshadowed Regulation 55 Applications into one, the Single Judge sees no reason why this requires more than double the prescribed page limit. This is especially having regard to the documents already on the case record in which Regulation 55 issues were raised and discussed,¹³ which the Prosecution can refer to by way of cross reference and need not repeat in its application. As stated by the Defence, a Regulation 55 application is not an opportunity for the Prosecution to re-litigate past factual findings or provide new evidential analysis. Nor is the application itself exceptional in nature, as demonstrated by the fact that similar motions in numerous of past cases have all been made within the prescribed page limit, as noted by the Defence.
9. However, the Single Judge notes that a number of recharacterisations are proposed, both in terms of additional modes of liability *and* counts, distinguishing the Prosecution's Regulation 55 Application from those in other

¹² Decision on the Defence request for extension of the time limit and page limit for the filing of pre-trial motions, 29 May 2020, ICC-01/12-01/18-833 (reclassified as public on 2 June 2020), para. 18.

¹³ See *Inter alia*, Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr; Prosecution Request for corrections and amendments concerning the Confirmation Decision, 30 January 2020, ICC-01/12-01/18-568-Conf; and cover submission for the Trial Brief, ICC-01/12-01/18-819-Conf, paras 6-8.

cases cited by the Defence, which dealt only with recharacterisations of modes of liability. The Single Judge further considers that it would be in the interests of efficiency, judicial economy, and the Defence for the Prosecution's two foreshadowed Regulation 55 Applications to be consolidated in one. For those reasons, the Chamber finds that a slight extension of 10 pages appears reasonable. As noted above, the Prosecution should refer to other relevant discussions by way of cross reference, and not repeat submissions which are already on the record.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

PARTIALLY GRANTS the Request; and

EXTENDS the page limit for the Prosecution's forthcoming Regulation 55 application to 30 pages.

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



Judge Kimberly Prost, Single Judge

Dated this Thursday, 11 June 2020

At The Hague, The Netherlands