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No. ICC-01/12-01/18
Date of original: 06 July 2020
Date: 18 August 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

Public
with confidential Annexes A and B

**Public redacted version of ‘Corrigendum of “Decision on Prosecution requests
concerning the Defence motion to terminate the proceedings”’**

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

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

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 Prosecution requests concerning the Defence motion to terminate the proceedings’.

I. Procedural history

1. On 6 January 2020, the Chamber set the date for the commencement of trial at 14 July 2020, with the presentation of evidence to begin on 25 August 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 Some extensions to deadlines set in this decision were later granted by the Chamber at the request of the Office of the Prosecutor (the ‘Prosecution’), including a postponement to the Prosecution’s final disclosure deadline from 14 April to 12 May 2020.³
2. On 29 May 2020, the Chamber granted a Defence request to postpone the deadline for filing ‘the Defence Termination Request concerning the Prosecution’s reliance on information and evidence that was tainted by torture’⁴ to 16 June 2020, and partially granted a request for extension of page limit to 50 pages.⁵
3. On 16 June 2020, the Defence filed a request to terminate the proceedings and seeking the immediate release of Mr Al Hassan (the ‘Termination Motion’),⁶

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 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 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; reclassified public on 6 May 2020).

⁴ Defence request for extension of time and page limit, 27 May 2020, ICC-01/12-01/18-827-Conf, para. 1 (with confidential *ex parte* Annexes A and C (available only to the Prosecution and Defence) and confidential Annex B).

⁵ 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 public on 2 June 2020).

⁶ Defence Request to terminate the proceedings, ICC-01/12-01/18-885-Conf-Exp-Corr (confidential *ex parte*, available only to the Defence and Prosecution; with confidential Annexes A, B and G to I, confidential *ex parte* Annex C (available only to the Prosecution, Registry and Defence only), and confidential *ex parte* Annexes D to F and J (available only to the Prosecution and Defence); a

appending, *inter alia*, a 125-page-long ‘Timeline of the Prosecution investigation’ (‘Annex B’).⁷

4. On 25 June 2020, the Prosecution filed an urgent request in relation to the Termination Motion (the ‘Prosecution Request’) seeking:⁸

- a) to strike Annex B from the record⁹ (the ‘First Request’);
- b) an extension of time to respond to the Defence Termination Motion¹⁰ as follows: (i) a First Response by 17 July 2020 (the ‘Second Request’); and (ii) a Second Response in three to four months (the ‘Third Request’); and
- c) an extension of 30 pages across the two responses (the ‘Fourth Request’), and further 20 pages if the First Request is denied¹¹ (the ‘Fifth Request’).

5. In addition, the Prosecution seeks the Chamber’s guidance as to whether, in the present circumstances, it can interview counsel designated by the Pre-Trial Chamber under Article 56 of the Statute.¹²
6. On 30 June 2020, following a status conference held on the same day, the Defence sent an email to the Chamber setting out its position on timing of

confidential redacted version of the main filing was notified simultaneously, ICC-01/12-01/18-885-Conf-Red; these filings were all notified on 17 June 2020, having been filed after 4pm the day before, upon permission of the Single Judge: see email from the Single Judge to the Defence, 16 June 2020, at 12:48; a corrigendum of the main filing was later notified on 25 June 2020; a public redacted version of the main filing was also later notified on 26 June 2020, ICC-01/12-01/18-885-Corr-Red but was subsequently reclassified as confidential following a request from the Prosecution: see email from the Single Judge to the parties and participants, 29 June 2020, at 14:11).

⁷ ICC-01/12-01/18-885-Conf-AnxB.

⁸ Prosecution’s urgent request to strike Confidential Annex B to the Defence Request to terminate the proceedings, and request for extensions of the page and time limits to respond to the Defence Request, ICC-01/12-01/18-906-Conf (with confidential Annexes A and B; notified on 26 June 2020).

⁹ Prosecution Request, ICC-01/12-01/18-906-Conf, paras 2, 11-13.

¹⁰ Prosecution Request, ICC-01/12-01/18-906-Conf, paras 3-5, 14-29.

¹¹ Prosecution Request, ICC-01/12-01/18-906-Conf, paras 6-7, 38-40.

¹² Prosecution Request, ICC-01/12-01/18-906-Conf, paras 29-30, 41. The Prosecution’s submissions refer to Article 55(6) but the Chamber notes this appears to be a reference to Article 56.

adjunction of the Termination Motion.¹³ The Prosecution responded by email on the same day.¹⁴

7. On 1 July 2020, in accordance with the deadline set by the Single Judge,¹⁵ the Defence provided its response to the Prosecution Request (the ‘Defence Response’), submitting that it should be rejected in part.¹⁶
8. On 2 July 2020, the Prosecution sought leave to reply to the Defence Response on two issues: (1) fitness to stand trial; and (2) reliance on a Defence consultant’s provisional findings for the Defence’s proposition that the Prosecution could have instructed experts earlier in connection with the Termination Motion (the ‘Request for Leave to Reply’).¹⁷

II. Preliminary matter: Request for Leave to Reply

9. The Chamber considers that it would not be assisted by submissions on any of the issues identified in the Request for Leave to Reply and therefore rejects the request in its entirety.

III. Submissions and Analysis

10. The Chamber will determine each of the requests, in light of the relevant submissions and according to the applicable statutory provisions, set out below.

A. First Request - striking of Annex B from the record

1. Submissions

11. The Prosecution submits that Annex B includes purported factual descriptions from different sources that are ‘pieced together to form the Defence’s position on contested issues which – particularly when they are not limited to mere

¹³ Email from the Defence to the Chamber, 30 June 2020, at 15:52. This email is annexed at Annex A.

¹⁴ Email from the Prosecution to the Chamber, 30 June 2020, at 18:20. This email is annexed at Annex B.

¹⁵ Email from the Single Judge to the parties and participants, 26 June 2020, at 10:31.

¹⁶ Defence response to “Prosecution’s urgent request to strike Confidential Annex B to the Defence Request to terminate the proceedings, and request for extensions of the page and time limits to respond to the Defence Request” (ICC-01/12-01/18-906-Conf), ICC-01/12-01/18-915-Conf.

¹⁷ Prosecution’s request for leave to reply to the “Defence response to ‘Prosecution’s urgent request to strike Confidential Annex B to the Defence Request to terminate the proceedings, and request for extensions of the page and time limits to respond to the Defence Request’” (ICC-01/12-01/18-915-Conf), ICC-01/12-01/18-922-Conf.

quotations – amount to Defence submissions’, in violation of Regulation 36(2) of the Regulations of the Court (the ‘Regulations’). According to the Prosecution, the Defence repeatedly paraphrases the cited sources, comments or draws inferences, requiring the Prosecution to verify, respond to or correct these assertions, and further ‘intertwines’ factual descriptions with assessments from the Defence consultant in a purportedly argumentative manner.¹⁸

12. The Defence requests the Chamber to reject the First Request, on the basis that Annex B does not contain submissions in violation of the Rules of the Court. In support of its submission, the Defence notes that: (i) it is common practice to include procedural histories or timelines in annexes and annexes have been used for analysis and submissions in other cases;¹⁹ (ii) the sections identified by the Prosecution are not submissions or analysis, but either exact wording of facts taken from Prosecution or Defence evidence, summaries of evidence, or synthesis or context relevant to the timeline;²⁰ and (iii) exclusion of Annex B would be a disproportionate remedy because the Defence has filed its motion in good faith, and it would further be contrary to the interests of an expeditious resolution of the Termination Motion because Annex B was meant to assist the Chamber and the parties to situate the timing of specific evidential references.²¹

2. Analysis

13. Regulation 36(2)(b) of the Regulations provides that in order not to be counted in calculating page limits, an appendix shall be limited to ‘references, authorities, copies from the record, exhibits and other non-argumentative material’ and ‘shall not contain submissions’.
14. Annex B is a 125-page-long table, purportedly representing ‘Key Events’²² or a ‘Timeline of the Prosecution investigation’.²³ As conceded by the Defence, portions of this document constitute ‘summaries’ or ‘synthesis’ of evidence,

¹⁸ Prosecution Request, ICC-01/12-01/18-906-Conf, para. 12.

¹⁹ Defence Response, ICC-01/12-01/18-915-Conf, para. 7.

²⁰ Defence Response, ICC-01/12-01/18-915-Conf, para. 8.

²¹ Defence Response, ICC-01/12-01/18-915-Conf, para. 9.

²² ICC-01/12-01/18-885-Conf-AnxB, page 2.

²³ ICC-01/12-01/18-885-Conf-AnxA, page 2.

which, in the view of the Chamber, reflect, at least to some extent, the Defence's interpretation of circumstances, rather than a purely objective representation of facts. As such, the Chamber is not convinced by the Defence submission that Annex B contains 'simply relevant non-argumentative material'.²⁴

15. The Chamber is also unpersuaded by the Defence's assertion that it has submitted Annex B 'based on good faith understanding of the manner in which this provision has been interpreted in both other ICC cases, and the present case'. In this regard, the Chamber notes that the examples of filings by the prosecution or defence in other cases,²⁵ cited by the Defence in support of its submissions that it is common practice to include procedural histories or timelines in annexes,²⁶ were either considerably less extensive than Annex B,²⁷ or were filed as actual submissions by way of an annex to a cover filing, thus counting for the relevant page limits.²⁸ As for the references presented as examples for the interpretation of Regulation 36(2)(b) of the Regulations in the present case, the Chamber notes that the relevant documents are significantly shorter than Annex B,²⁹ and of a different nature since they constitute annexes to the amended corrected document containing the charges (the 'DCC'), including a single page telephone chart as well as two tables linking the submissions in the DCC to the related evidence.
16. In view of the above, the Chamber finds that Annex B violates Regulation 36(2)(b) of the Regulations. In this regard, the Chamber also recalls that it has explicitly limited a Defence request for page extension for the relevant motion to 50 out of a requested 120 pages, considering that '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

²⁴ Defence Response, ICC-01/12-01/18-915-Conf, para. 9.

²⁵ The Chamber notes that some of the examples cited correspond to filings made on behalf of victims.

²⁶ Defence Response, ICC-01/12-01/18-915-Conf, para. 7 and footnotes contained therein.

²⁷ *See for example* the references in Defence Response, ICC-01/12-01/18-915-Conf footnotes 9, 11, 13, 14, 15, and 20.

²⁸ *See for example* the references in Defence Response, ICC-01/12-01/18-915-Conf, footnotes 18, 19, 20 and 21.

²⁹ The three documents referred to by the Defence amount to a total of 34 pages.

restriction'.³⁰ The Chamber regrets that the Defence tried to circumvent the Chamber's directions by including substantive submissions in Annex B.

17. In these circumstances, the Chamber decides not to consider Annex B and therefore grants the First Request.³¹ That notwithstanding, the Chamber hereby advises the Defence that it is willing to consider an application for leave to refile an amended annex which is in full compliance with Regulation 36(2)(b) of the Regulations.
18. Having granted the First Request, the Chamber finds that a ruling on the Fifth Request is no longer required.

B. Second to Fourth Requests – extensions of time for the First Response and the Second Response and extension of page limits

19. Pursuant to Regulation 35 of the Regulations, the Chamber will next determine whether good cause has been shown to extend the time limit set for the Prosecution to file its proposed First Response and Second Response. The Chamber will also determine whether exceptional circumstances exist to grant the extension of pages sought pursuant to Regulation 37(2) of the Regulations.

1. Submissions

(a) Prosecution

20. The Prosecution submits that there is good cause justifying the requested extension of time, noting the timing, relief sought, and length of the Termination Motion, as well as the amount of evidence and nature of arguments, in particular as regards the allegations against the Prosecution.³² Concerning the request for the Second Response, the Prosecution submits that additional time is needed to conduct potential interviews with Defence

³⁰ 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, para. 18.

³¹ See, for a similar approach, *The Prosecutor v. Bemba et al.*, Appeals Chamber, Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", 8 March 2018, ICC-01/05-01/13-2275-Red, para. 778.

³² Prosecution Request, ICC-01/12-01/18-906-Conf, paras 14-21.

witnesses and other individuals, and analyse and evaluate, with the necessary expert assistance, the four reports relied upon in the Termination Motion, together with underlying material that has only recently or not yet been disclosed, and for its experts to examine Mr Al Hassan.³³ It further highlights that the potential experts contacted by the Prosecution have indicated that they would require approximately three to four months from the date of receipt of all relevant material to prepare their analysis.³⁴ Lastly in this regard, the Prosecution submits that the calculation of time limits should only start from the date when the Prosecution has received access to any disclosed evidence and requested disclosure.³⁵ The Prosecution's estimate of three to four months for the Second Response is said to be subject to outstanding disclosure being made immediately and to any COVID-19 related or other difficulties encountered by the Prosecution experts in accessing the accused.³⁶

21. Relatedly, the Prosecution states that the reasons relied upon in support of its requests for extension of time also amount to exceptional circumstances justifying the requested page extensions,³⁷ and that the combined total of pages for both responses would be equivalent to the number of pages granted for the Termination Motion.³⁸ More specifically, the Prosecution argues that 10 additional pages for the First Response are justified, *inter alia*, by the length of the application and its annexes even leaving aside reliance on the expert reports, and that the 20 pages of the Second Response are necessary to respond to the key assertions from Defence experts and to set out the conclusions of Prosecution experts and interviews of relevant individuals.³⁹

(b) Defence

22. The Defence 'accepts' that the Termination Motion requires 'a lengthy substantive response', and therefore 'does not disagree' with an extension of

³³ Prosecution Request, ICC-01/12-01/18-906-Conf, paras 22-26, 28-29.

³⁴ Prosecution Request, ICC-01/12-01/18-906-Conf, para. 27.

³⁵ Prosecution Request, ICC-01/12-01/18-906-Conf, para. 37.

³⁶ Prosecution Request, ICC-01/12-01/18-906-Conf, para. 27.

³⁷ Prosecution Request, ICC-01/12-01/18-906-Conf, para. 38.

³⁸ Prosecution Request, ICC-01/12-01/18-906-Conf, para. 39.

³⁹ Prosecution Request, ICC-01/12-01/18-906-Conf, para. 39.

time and page limit for the Prosecution to respond.⁴⁰ More specifically, the Defence urges the Chamber to grant the Prosecution's request for extension of page limit for its response to 50 pages in total, and to modify the time limit for the Prosecution's response to the Termination Motion to four to six weeks from the filing of the Termination Motion.⁴¹ However, the Defence considers that the Prosecution has not demonstrated good cause for the division of its responses to the First and Second Response, or the extension of three to four months for the Second Response. More specifically, the Defence argues that: (i) the evidence relied upon in the Termination Motion has largely been in the Prosecution's possession for a lengthy period of time;⁴² (ii) the Prosecution has been on notice for the upcoming Termination Motion for over a year before its filing;⁴³ (iii) the Prosecution has been on notice of the likely findings of one of the expert reports from 23 March 2020;⁴⁴ (iv) two expert reports rely primarily on the medical reports prepared by a Prosecution witness, and *verbatim* biographical and security questionnaires conducted by the Prosecution's investigators which were disclosed to the Defence as of January 2020;⁴⁵ and (v) it is unlikely that the information sought to be disclosed by the Prosecution is necessary to justify the requested extension of time.⁴⁶

2. Analysis

23. The Chamber notes that it is not disputed between the parties that the some extension of time and pages is required for the Prosecution to meaningfully respond to the Termination Motion. The Chamber agrees that there are objective reasons to grant an extension of time in this regard, notably the length and complexity of the Termination Motion, the nature of the allegations contained therein, and the volume of supporting material. In these circumstances, the

⁴⁰ Defence Response, ICC-01/12-01/18-915-Conf, paras 4, 37 and 46.

⁴¹ Defence Response, ICC-01/12-01/18-915-Conf, paras 37 and 46.

⁴² Defence Response, ICC-01/12-01/18-915-Conf, para. 14.

⁴³ Defence Response, ICC-01/12-01/18-915-Conf, para. 15.

⁴⁴ Defence Response, ICC-01/12-01/18-915-Conf, paras 18-20.

⁴⁵ Defence Response, ICC-01/12-01/18-915-Conf, paras 21-22.

⁴⁶ Defence Response, ICC-01/12-01/18-915-Conf, para. 24, referring to the 'letters of instruction' and totality of the material provided by the Defence mentioned in the Prosecution Request, ICC-01/12-01/18-906-Conf, paras 25-27.

Chamber considers that good cause has been shown for an extension of time for the Prosecution to respond.

24. However, with reference to the Third Request, the Chamber considers that, at this stage, the Prosecution has failed to demonstrate why its First Response would need to be followed by the suggested Second Response, and therefore considers that the Prosecution has failed to demonstrate good cause for an extension of three to four months for the submission of the Second Response. The Chamber is not convinced, at this stage, of the necessity of the Second Response, of the scope proposed by the Prosecution. Rather, the Chamber strongly encourages the Prosecution to address all relevant key issues in the context of the First Response, including the relevant applicable legal framework based on the jurisprudence of the Court. This determination is without prejudice to any future assessment by the Chamber that further information from the Prosecution may be required at a later stage.
25. In the view of the Chamber, an extension of time by four weeks would be appropriate for the filing of the Prosecution response in line with the aforementioned directions. Accordingly, and as suggested by the Defence, the Chamber extends the time limit for the filing of response to the Termination Motion until **27 July 2020**. For the avoidance of doubt, the Chamber notes that this deadline applies equally to any response by the LRVs. In the interest of expeditiousness, pursuant to Regulations 24(5) and 37, the Chamber further authorises the Defence to reply to such responses by **7 August 2020**, respecting the regular page limit of 20 pages under Regulation 37 of the Regulations. In this regard, the Chamber emphasises that in accordance with Regulation 24(5) of the Regulations, any reply shall be limited to new issues raised in the response which the Defence could not reasonably have anticipated.
26. As for the requested extension of page limit, the Chamber considers that in addition to constituting good cause for an extension of time, the length and complexity of the Termination Motion, the nature of the allegations contained therein, and the volume of supporting material also amount to exceptional circumstances warranting an extension of page limit. As for the precise scope of extension, the Chamber recalls its above finding that the Prosecution has failed

to demonstrate, at this stage, why a Second Response would be necessary, and its advice that the Prosecution address all relevant key issues in the context of the First Response. In these circumstances, the Chamber considers that an extension to a total 50 pages for the Prosecution to respond, corresponding to the page limit granted to the Defence for the Termination Motion, would be appropriate. For the avoidance of doubt, any response from the LRVs should comply with the regular prescribed page limit.

C. Whether the Prosecution should be authorised to interview Mr Al Hassan’s Article 55(2) and 56 counsel

27. The Chamber has taken note of the Prosecution’s submissions and request for guidance,⁴⁷ and the submissions of the Defence⁴⁸ on this point. However, in line with the Chamber’s determination above that it is not convinced, at this stage, of the necessity of the Second Response of the scope proposed by the Prosecution, it is not necessary, at this stage, to consider the questions raised on this matter.

D. Impact of the Termination Motion on the commencement of trial and related matters

1. Submissions

28. The Prosecution contends that the requested time extensions should not delay the trial. In its submission: (i) the Defence agrees that the Termination Motion be adjudicated after the opening statements; and (ii) the trial can proceed in parallel with an extension for the Second Response. According to the Prosecution, this would not cause prejudice to the accused, noting that: (i) the Chamber is comprised of professional Judges who will not be influenced by any allegedly tainted evidence; (ii) the trial is governed by a submission, not admission evidentiary regime; (iii) none of the [REDACTED] witnesses whose evidence has been challenged by the Defence are presently scheduled to testify during the first block; (iv) the Defence’s ‘failure’ to file the Termination Motion sooner should not be a reason for postponing the trial; and (v) the Prosecution

⁴⁷ Prosecution Request, ICC-01/12-01/18-906-Conf, paras 29-30, 41.

⁴⁸ Defence Response, ICC-01/12-01/18-915-Conf, paras 40-45.

must be given a reasonable opportunity to respond to the Termination Motion.⁴⁹ The Prosecution does, however, note that the Termination Motion concerns some of the witnesses scheduled to testify in the first block.⁵⁰

29. The Defence submits that the Termination Motion should be resolved in a timely manner in advance of the trial,⁵¹ and requests the Chamber to adjourn the Prosecution's presentation of evidence until after the resolution of the Termination Motion.⁵² The Defence further challenges the Prosecution's submission that there is no prejudice to the accused if the Second Response runs in parallel with the trial, on the basis that: (i) the Termination Motion unequivocally states that Mr Al Hassan is not fit to stand trial, an issue which needs to be resolved before the trial commences, and due to the restrictions on access to the Detention Unit as a result of the COVID-19 pandemic, the Defence is not in a position to discuss these issues with Mr. Al Hassan in person;⁵³ (ii) permitting the trial to commence would entail the parties and participants breaching the Convention against Torture by examining witnesses covered by the Termination Motion, which cannot be remedied by the fact that the Chamber will not be influenced by any allegedly 'tainted' evidence, and further risks resulting in an appearance of impartiality;⁵⁴ (iii) consideration of the Termination Motion opens up the risk of parallel litigation alongside the Prosecution's presentation of evidence, causing prejudice to the accused due to the limited resources of the Defence team;⁵⁵ (iv) while none of the [REDACTED] witnesses discussed in the Termination Motion are scheduled to testify during the first block, [REDACTED], whom the Defence states was 'a

⁴⁹ Prosecution Request, ICC-01/12-01/18-906-Conf, paras 31-37.

⁵⁰ Transcript of hearing, 30 June 2020, ICC-01/12-01/18-T-015-CONF-ENG, pp 16-17.

⁵¹ Defence Response, ICC-01/12-01/18-915-Conf, para. 26, referring to email from the Defence to the Chamber, 30 June 2020, at 15:52, in which the Defence states that its position is that the Termination Motion needs to be adjudicated in advance of the opening of the trial. In support, it submits that the opening of the trial has a 'host' of legal implications which are impacted directly by the Termination Motion insofar as the Defence has submitted arguments to the effect that: (i) Mr Al Hassan cannot be considered fit to stand trial as a result of the continuing effects of torture; (ii) the introduction of tainted evidence has impacted on the fairness and impartiality of the proceedings; and (iii) the charges themselves are directly based on tainted evidence, including allegations for which the sole source is the statement from Mr Al Hassan: see Annex A.

⁵² Defence Response, ICC-01/12-01/18-915-Conf, para. 46.

⁵³ Defence Response, ICC-01/12-01/18-915-Conf, paras 26-27.

⁵⁴ Defence Response, ICC-01/12-01/18-915-Conf, paras 28-32.

⁵⁵ Defence Response, ICC-01/12-01/18-915-Conf, paras 33-34.

victim of torture’ is scheduled to testify during that block. In addition, the Defence notes that the Prosecution has said that its proposed witness order for the first block is subject to change if the COVID-19 situation improves.⁵⁶

2. Analysis

30. In relation to the Defence’s submissions on the commencement of the trial, the Chamber notes that this matter is raised directly, as it must be, in the recently filed Defence Adjournment Request⁵⁷ which will be addressed in a separate decision.
31. The Chamber further notes that issues related to the fitness of Mr Al Hassan to stand trial have been alluded to in various filings by the Defence.⁵⁸ Alluding to such matters does not constitute a proper means of introducing the issue before this Chamber. In the same vein as the Chamber’s comment above, as a matter of principle, if a party or participant wishes to make a motion or place a request before the Chamber for determination, they should do so clearly and unequivocally.
32. Finally, the Defence requests the Chamber to convene a public evidentiary hearing, in advance of the commencement of substantive testimony,⁵⁹ to allow for testimony from its four proposed experts and the introduction and authentication of their expert reports, and further seeks the Chamber’s guidance as to whether Rule 68 applies to applications of this nature.⁶⁰ The Chamber is of the view that it is premature to address that issue at this stage prior to the submission of full pleadings on the Motion.

⁵⁶ Defence Response, ICC-01/12-01/18-915-Conf, para. 35-36.

⁵⁷ Defence adjournment request, 3 July 2020, ICC-01/12-01/18-927-Conf-Exp (confidential *ex parte*, available only to the Registry and Defence; with confidential *ex parte* Annex A, available only to the Registry and Defence; a confidential redacted version was notified simultaneously, ICC-01/12-01/18-927-Conf-Red).

⁵⁸ See, *inter alia*, Public redacted version of “Urgent Defence request for interim release”, 24 March 2020, ICC-01/12-01/18-680-Red2; Confidential redacted version of ‘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-01/12-01/18776’ 22 May 2020, ICC-01/12-01/18-825-Conf-Red (the ‘Defence COVID Submissions’), para. 10; Termination Motion, ICC-01/12-01/18-885-Conf-Red, paras 106-107; Defence Response, ICC-01/12-01/18-915-Conf, para. 27; transcript of hearing, 30 June 2020, ICC-01/12-01/18-T-015-CONF-ENG, pp 29-32, 47.

⁵⁹ See Defence COVID submissions, ICC-01/12-01/18-825-Conf-Red, para. 33(a).

⁶⁰ Termination Motion, ICC-01/12-01/18-885-Conf-Red, para. 8.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the First Request;

DIRECTS the Defence to file any application for leave to refile Annex B in accordance with this decision, by **10 July 2020**.

PARTIALLY GRANTS the Second and Fourth Requests;

EXTENDS the time limit for responses to the Termination Motion to **27 July 2020**;

EXTENDS the page limit for the Prosecution's response to the Termination Motion to 50 pages in total;

SETS the deadline for any reply from the Defence at **7 August 2020**;

FINDS that no ruling on the Fifth Request is required; and

REJECTS all other requests.

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 06 July 2020

At The Hague, The Netherlands