

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

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

**Public Redacted Version of “Registry’s Observations on the “Defence notice of its
intention to raise unfitness to stand trial and request for a status conference”
(ICC-01/12-01/18-942-Conf)”, filed on 18 August 2020**

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 an email instruction issued by the Single Judge of Trial Chamber X of the International Criminal Court (“Chamber” and “Court”, respectively) on 9 July 2020 (“Instruction”),¹ in the case of *The Prosecutor vs Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Mr Al Hassan”), the Registry provides its views on the “Defence notice of its intention to raise unfitness to stand trial and request for a status conference” (“Defence” and “Defence Notice”, respectively).² As per the Instruction, the Registry provides a report on “the physical and mental health conditions of Mr Al Hassan”.

II. Classification

2. In accordance with regulation 23 *bis*(2) of the Regulations of the Court (“RoC”), the present submissions are classified as confidential *ex parte* only available to the Defence and the Registry, as they contain private medical and detention related information for Mr Al Hassan. The Registry will prepare simultaneously a confidential redacted version.

III. Applicable Law

3. For the present report, the Registry has considered, *inter alia*, rule 135 of the Rules of Procedure and Evidence (“Rules”), regulation 103(4) of the Regulations of the Court, regulations 155, 157 and 187 of the Regulations of the Registry (“RoR”).

IV. Submissions

4. The Registry limits its observations to specific matters raised in the Defence Notice and notes that, to the extent that the issue of whether or not Mr Al Hassan is fit to stand trial is concerned, only a medical expert from the list of

¹ Email from the Legal Officer of Trial Chamber X to the Registry on 9 July 2020 at 16.19.

² Defence, ‘Defence notice of its intention to raise unfitness to stand trial and request for a status conference’, 9 July 2020, ICC-01/12-01/18-942-Conf (“Defence Notice”).

experts may, upon judicial order, perform this examination under rule 135 of the Rules.

5. The Defence expert submits that “[REDACTED]”.³ The Registry clarifies that Mr Al Hassan has been making his regularly scheduled telephone calls, two days a week, and that he talks to [REDACTED] during those telephone calls.
6. To further update the Chamber, the Registry recalls previous Defence submissions on Mr Al Hassan’s conditions of segregation,⁴ to which the Registry clarified that [REDACTED].⁵ The Registry informs the Chamber that [REDACTED]. As part of his responsibility under regulation 187 of the RoR, the Chief Custody Officer (“CCO”) has observed that Mr Al Hassan also appears to be well integrated onto the wing at this time.
7. The CCO receives regular and daily briefings from detention staff and custody officers as to interactions at the Detention Centre (“DC”) between all detained persons. As invited by the Chamber, the CCO observes that Mr Al Hassan appears to have normal interactions with the other detained persons, the custody officers, the principal officers, and the management of the DC. His rhythms which can be observed on a day to day and week to week basis highlight no concerns whatsoever from the CCO’s perspective. All opportunities presented to assist Mr Al Hassan to reinforce and enhance his psychosocial wellbeing have been taken and exploited. His interactions with the other detained persons appear to be normal and demonstrate clear cognitive skills and a good sense of humour.

³ Defence Notice, Annex.

⁴ Defence, “Urgent Defence Request for Interim Release”, ICC-01/12-01/18-680-Conf-Exp, 23 March 2020, para. 17.

⁵ Registry, “Registry’s Observations on the “Urgent Defence Request for Interim Release”(ICC-01/12-01/18-680-Conf-Exp)”, ICC-01/12-01/18-698-Conf-Exp, 30 March 2020, para. 26.

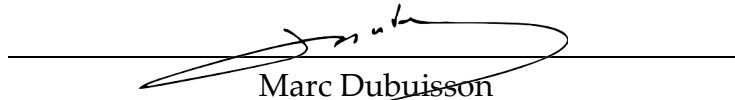
8. As a general observation, it is also the CCO's opinion that in the lead up to trial all detained persons experience a certain amount of uncertainty and anxiety, as this is an important event in the detention cycle. It is also one that the detention staff and custody officers always watch closely and they pay special attention to detained persons who are starting trial. Detention staff are well versed in the rhythm and routine of all detained persons going through the cycles of detention. As far as Mr Al Hassan is concerned, while the COVID-19 measures require social distancing, this does not stop custody officers from actively engaging with him on a daily basis, [REDACTED].

9. As regards medical observations, under regulation 155 (3) of the RoR, the Medical Officer of the Detention Centre ("MO") is obligated to report to the CCO whenever he considers that "the physical or mental health of a detained person has been adversely affected by a condition or treatment in detention". [REDACTED] The CCO is in regular if not daily contact with the MO on the health and safety of all detained persons. [REDACTED] however, it is for Mr Al Hassan to decide to accept or refuse medical treatment.

10. To that end, the Registry notes with concern that thus far neither the Defence Expert [REDACTED] nor the Defence have provided the MO with the reports from [REDACTED] medical evaluations of Mr Al Hassan. It is noted that the Defence has placed these [REDACTED] medical reports on the confidential record of the case and yet failed to disclose them to Mr Al Hassan's treating physician and medical team at the DC in violation of regulation 157(7) of the RoR.⁶ Pursuant to said provision (second sentence), external medical practitioners are required to share these reports with the MO. Indeed the Registry has alerted at least twice the Defence on this issue of the sharing obligation of [REDACTED] reports with the MO, to no avail. Since the MO is

⁶ In accordance with regulation 157(10) of the RoR, sub-regulation 157(7) applies in the case of a detained person visited by or consulting an external medical practitioner of his or her choice and at his or her own expense.

the treating physician of Mr Al Hassan, and noting the Defence concerns as to the wellbeing of Mr Al Hassan, in making its determination on the Defence Notice, the Chamber may wish to order the Defence and/or the Defence Expert to share the medical reports and letters with the MO.



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

Dated this 18 August 2020

At The Hague, The Netherlands