

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **16 March 2020**

Date of submission:
19 March 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

**Public redacted version of "Prosecution provisional request for extension
of judicial deadlines", 16 March 2020, ICC-01/12-01/18-665-Conf**

Source: Office of the Prosecutor

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

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Introduction

1. In light of the current situation relating to the spread of COVID-19 and the resulting measures implemented by the Court, the Prosecution provisionally requests an extension of 30 days of the judicial deadlines set by the Single Judge in the decisions listed below, pursuant to regulation 35 of the Regulations of the Court (“Regulations”).
2. On 6 January 2020, the Single Judge set the following deadlines:
 - **14 April 2020:** Disclosure of material in the Prosecution's possession, final list of Prosecution witnesses (with summaries of anticipated witness testimony), Prosecution list of evidence, and pre-trial brief; and
 - **1 June 2020:** Motions requiring resolution prior to the commencement of trial and any joint submission on agreed facts.¹
3. On 5 March 2020, the Single Judge granted the Prosecution request to vary the time limit to file its Pre-Trial Brief to **30 April 2020**.²
4. On 6 January 2020, the Single Judge also scheduled the opening of trial on **14 July 2020**, with the commencement of the presentation of Prosecution evidence on **25 August 2020**.³
5. The Prosecution considers that the current exceptional circumstances require variation of all these deadlines, including the opening of trial, which will similarly have to be postponed for 30 days.⁴
6. Being provisional in nature, the sufficiency of the requested 30-day postponement of judicial deadlines will have to be revisited as additional

¹ ICC-01/12-01/18-548, p. 9.

² ICC-01/12-01/18-629, p. 6.

³ ICC-01/12-01/18-548, p. 9.

⁴ The Prosecution notes that the requested extension, if granted, would mean that the trial would begin shortly after the end the summer recess (10 August 2020 being the first working day).

information is received, particularly as regards the extent of the COVID-19 outbreak in the host country and the host State's evaluation of any further measures which may be necessary to suppress the virus's propagation, bearing in mind that, reportedly, the Netherlands has not yet reached the peak of the contagion curve.

Confidentiality

7. This filing is classified as confidential, pursuant to regulation 23bis(1) of the Regulations as it refers to internal matters and procedures which should not be made public.

Background

8. On 12 March 2020, the Host State authorities announced measures aimed at restricting the further propagation of COVID-19 in the Netherlands, including encouraging all individuals to work from the home to the extent possible.
9. On 13 March 2020, the Management of the Court, on the advice from Host State and the ICC's own Crisis Management Team, decided to physically close the ICC Headquarters premises from Tuesday, 17 March 2020 until 31 March 2020. Staff members are expected to work remotely during this time, and possibly longer, if the measure is extended. Only critical staff will be authorised to access to the building.
10. On 16 March 2020, the Management of the Court informed staff that the Host State authorities announced the previous evening, on 15 March 2020, additional stricter measures, including the closure of crèches, schools and universities, restaurants, cafés and bars, until 6 April 2020.

Submissions

11. The Prosecution requests an extension of 30 days for the judicial deadlines set by the Single Judge as described below:
 - **14 April 2020**: Disclosure of material in the Prosecution's possession, final list of Prosecution witnesses (with summaries of anticipated witness testimony), Prosecution list of evidence, and pre-trial brief; and
 - **1 June 2020**: Motions requiring resolution prior to the commencement of trial and any joint submission on agreed facts.⁵

12. On 5 March 2020, the Single Judge granted the Prosecution request to vary the time limit to file its Pre-Trial Brief to **30 April 2020**.⁶

13. On 6 January 2020, the Single Judge also scheduled the opening of trial on **14 July 2020**, with the commencement of the presentation of Prosecution evidence on **25 August 2020**.⁷

14. The above deadlines have been imposed by the Single Judge and therefore fall within the scope of regulation 35(1) of the Regulations. Pursuant to regulation 35(2), the Chamber may extend a time limit if good cause is shown.

15. The Prosecution submits that the following circumstances, taken as a whole, amount to good cause to extend the judicial deadlines as requested:
 - [REDACTED]
[REDACTED];
 - The closure of crèches and schools in the Host State also has a negative impact on Prosecution staff's ability to work at home as efficiently and effectively as they would do at the ICC's premises: a large number of members of the Prosecution team have young children that must be

⁵ ICC-01/12-01/18-548, p. 9.

⁶ ICC-01/12-01/18-629, p. 6.

⁷ ICC-01/12-01/18-548, p. 9.

looked after. As a result, the team's effective work capacity is significantly reduced;

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- Moreover, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- In this challenging context, coordination will be more complex and time consuming, and tasks will take more time than usual to be completed; this applies to disclosure activities, completing witness summaries while effectively searching in Ringtail for all the exhibits the witnesses can introduce respectively⁸, or drafting the Pre-Trial Brief, a task that requires intensive drafting work on [REDACTED] and substantial searches in the evidence in the system (for example to find the last updated ERN numbers⁹), etc.;
- Additionally, as a result of travel restrictions imposed worldwide in an effort to suppress the propagation of COVID-19, the Prosecution was obliged [REDACTED]. [REDACTED]

⁸ For example, the searches for exhibits regarding [REDACTED] and [REDACTED] bring a large number of documents [REDACTED] which normally should be printed and discussed in meetings which cannot be held any more.

⁹ With regards *inter alia* to final translations.

[REDACTED]
[REDACTED]
[REDACTED]. This serious limitation necessarily impacts on the disclosure deadline even though the pending OTP activities are very focused;

- These travel restrictions likewise render it impossible for the Prosecution to be able to determine the final order of presentation of its evidence, chiefly witnesses, as restrictions vary by country, [REDACTED]

[REDACTED]
and are rapidly evolving;

- The Prosecution's Language Services Unit responsible for preparing translations of the Prosecution evidence is particularly impacted by the host State's COVID-19-related restrictions, [REDACTED]
[REDACTED]; this impacts on the Prosecution's ability to disclose those translations by the set deadline. ;

16. These factors are inter-related and produce a knock-on effect, further hampering the ability of the Prosecution to meet the Single Judge's deadlines.
17. This being said, the Prosecution will do its best effort to make progress in the coming weeks. Subject to the above mentioned factors, the Prosecution still intends to produce the majority of the witness summaries, a provisional list of evidence and one last provisional list of witnesses by 14 April 2020. Similarly, the Prosecution will identify other areas where it can make progress in the coming weeks, and will provide regular progress reports to the Single Judge in this regard.
18. The Prosecution submits that this request is provisional in nature. The Prosecution may have to revisit the sufficiency of the 30-day extension, as it receives additional information on the COVID-19 pandemic, particularly as

regards the extent of the outbreak in the host country and the host State's assessment of the necessity for any further measures to suppress the virus's propagation, as well as in the States where the witnesses are located.

19. This request is without prejudice to the Defence's right to sufficiently prepare for trial. The Prosecution acknowledges that the Defence should be granted a period of at least three months between the completion of disclosure of Prosecution evidence and the commencement of trial.

Relief Requested

20. The Prosecution provisionally requests an extension of 30 days of the following present judicial deadlines:
- **14 April 2020:** Disclosure of material in the Prosecution's possession, final list of Prosecution witnesses (with summaries of anticipated witness testimony) and Prosecution list of evidence;
 - **30 April 2020:** Prosecution Pre-Trial Brief;
 - **1 June 2020:** Motions requiring resolution prior to the commencement of trial and any joint submission on agreed facts; and
 - **14 July 2020:** commencement of trial.



Fatou Bensouda
Prosecutor

Dated this 16th day of March 2020

At The Hague, The Netherlands.