

Pursuant to TC X's Decision ICC-01/12-01/18-2345, dated 23.09.2022, this document is reclassified as Public

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

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

Date: **12 September 2022**

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding
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**

Confidential

**Prosecution response to "Request for a Draft Arabic Translation of the Prosecution
Final Trial Brief and Suspension of Related Deadline"**

Source: Office of the Prosecutor

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

Court to:

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Detention Section

Victims Participation and Reparations Section Other

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I. Introduction

1. Trial Chamber X ("Chamber") should dismiss the Defence request for a draft Arabic translation of the Prosecution final trial brief and suspension of the related deadline.¹
2. A draft Arabic translation of the Prosecution final trial brief ("closing brief") is not necessary to meet the requirements of fairness because:
 - The closing brief has no independent evidentiary value, but rather is a summary and reiteration of the parties and participants' views and positions and the evidence submitted during the trial proceedings;
 - Mr Al Hassan is fully aware of the charges and evidence against him;
 - Mr Al Hassan has a Defence team composed of lawyers who fully understand English and Arabic speakers who can assist him; and
 - the Registry can provide interpreters for the Accused.
3. In any event, should the Defence consider that certain discrete aspects of the Prosecution closing brief require translation in order to prepare for its closing brief, it can liaise with the Registry.
4. Consequently, the Chamber should dismiss Mr Al Hassan's request for the suspension of the related deadline.
5. Last, should the Chamber grant the Defence's request for a draft Arabic translation of the Prosecution's closing brief, the Defence should not benefit from a full four weeks to file its closing brief after receipt of the translation. The Defence can already start its work at this stage of the proceedings and complement it once it

¹ ICC-01/12-01/18-2329-Conf ("Defence Request").

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takes notice of the English version of the Prosecution's closing brief as well as the draft Arabic translation.

II. Confidentiality

6. Pursuant to regulation 23bis(2) of the Regulations of the Court, this response is filed confidentially because the Defence Request was filed with this classification. A public redacted version will be filed in due course.

III. Applicable law

Standard for providing the Accused with translation of a document used in the context of proceedings in a language which the Accused 'fully understands and speaks'

7. The test underlined in the Court's jurisprudence for granting an accused's request for the translations of documents in proceedings in a language that he or she 'fully understands and speaks' is whether such translation is necessary to meet the requirements of fairness within the meaning of article 67(1)(f) of the Statute or to notify the Accused of the 'nature, cause and content of the charges' against him within the meaning of article 67(1)(a) of the Statute.²
8. In particular, in the *Ongwen* decision, the Chamber recalled previous jurisprudence on the issue of the rights of the Accused under Article 67(1)(f) of the Statute and repeated that the right to translations is not without limitations and is confined to translations necessary to 'meet the requirements of fairness'.³

² ICC-02/04-01/15-1226, para. 5, ICC-01/05-01/13-177, para. 6; ICC-02/11-01/15-1289, paras. 19, 20.

³ ICC-02/04-01/15-1226, para. 5.

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IV. Submissions

A. The Defence request for a draft Arabic translation of the Prosecution closing brief should be dismissed

i. The closing brief has no independent evidentiary value, but rather is a summary and reiteration of the parties and participants' views and positions and evidence submitted

9. The nature of the Prosecution closing brief is such that it has no independent evidentiary value.⁴ The Court's legal framework does not even require that a closing brief be received during trial proceedings.⁵ The material facts underlying the legal elements of the alleged crimes (including contextual) and modes of liability, and the legal characterisations of those facts are set out in the Confirmation Decision. The Prosecution closing brief is thus merely an additional assistance for the Chamber's benefit.⁶ It summarises and reiterates the Prosecution's views and positions and the main evidence in support of the charges as submitted during the trial proceedings, in which Mr Al Hassan has been participating for about two years. It assists the Chamber but cannot be considered a statutory document serving to inform the Accused of the "nature, cause and content of the charge".

10. In other words, the closing brief is only an auxiliary document. It is not an essential document, contrary to what the Defence claims.⁷ As stated in the *Ongwen* decision: "the closing brief[s] will merely be a summary and reiteration of the parties and participants' views and positions. [It] will therefore not contain anything substantially new."⁸

⁴ ICC-02/04-01/15-1226, para. 6.

⁵ ICC-02/04-01/15-1226, para. 6.

⁶ ICC-02/04-01/15-1226, para. 6.

⁷ Defence Request, para. 19.

⁸ ICC-02/04-01/15-1226, para. 7.

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ii. Mr Al Hassan is fully aware of the charges and evidence against him

11. Mr Al Hassan is fully aware of the charges against him and has been in possession of detailed information regarding the Prosecution's case against him from the beginning.

12. He has received an Arabic translation of the Arrest Warrant Application,⁹ the Warrant of Arrest,¹⁰ the Document Containing the Charges¹¹ and the Confirmation Decision.¹² No Arabic version of the Prosecution Trial Brief¹³ was notified to Mr Al Hassan and no Arabic version of the Prosecution's closing brief should be notified to the Accused, as Mr Al Hassan is already aware of the charges, just as he is aware of the evidence in the case against him. The witness statements on the Prosecution List of evidence have been translated into Arabic. Last, Mr Al Hassan has the opportunity to follow the court hearings in real-time through Arabic interpretation during his trial.

13. Mr Al Hassan is thus fully apprised of the case against him and all arguments raised during the trial. The information available to Mr Al Hassan by closure of submission of evidence will fully enable him to effectively participate in preparing the Defence closing brief.

iii. Mr Al Hassan has a Defence team composed of competent lawyers who fully understand English and of Arabic speakers who can assist the Accused

14. The fairness of the proceedings is also ensured by the fact that Mr Al Hassan has the assistance of a Defence team whose members can function effectively in English and/or Arabic. Lead Counsel and Associate Counsel on the Defence team of the Accused are native speakers of English, the language in which the Prosecution

⁹ ICC-01/12-01/18-1-Conf-Exp-Red2-tARB, notified on 5 December 2018.

¹⁰ ICC-01/12-01/18-2-tARB, reclassified as public on 31 March 2018.

¹¹ ICC-01/12-01/18-366-Conf-AnxA and ICC-01/12-01/18-366-Conf-AnxB, notified on 7 June 2019.

¹² ICC-01/12-01/18-461-Conf-Corr-tARB, notified on 19 August 2021.

¹³ ICC-01/12-01/18-819-Conf-AnxA.

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closing brief will be filed. Just as the Defence team, including the Arabic-speaking members on the team, have been able to consult their client on a continuous basis for the purpose of preparing court hearings and filings, the Defence team are in a position to discuss and analyse all relevant aspects of the Prosecution closing brief with the Accused, in order to prepare the Defence closing brief.

iv. The Registry can provide interpreters for the Accused

15. The Defence may work out language assistance arrangements in cooperation with the Registry, such as using Arabic interpreters to interpret portions of the Prosecution closing brief.

16. Overall, the Prosecution opposes Mr Al Hassan's request that the Chamber "*order the Prosecution*" (emphasis added) to provide him with a draft translation of the Prosecution final brief in Arabic.¹⁴ In line with the *Ongwen* Decision,¹⁵ the Defence can liaise with the Registry to obtain an Arabic translation of discrete parts of the Prosecution closing brief, for which they consider Arabic translation necessary in order to prepare the Defence closing brief.

B. The Defence request for suspension of the related deadline should be dismissed

17. Since the Defence's request for a draft Arabic translation of the Prosecution closing brief should be dismissed, the Chamber should also dismiss the request to suspend the deadline for filing the Defence closing brief.

18. If the Chamber is, however, minded to grant an extension of time to the Defence for filing its closing brief, it should take into consideration that the Defence is already able to start working on its closing brief at this stage of the case and will soon receive the Prosecution's closing brief in English. In keeping with the fairness

¹⁴ ICC-01/12-01/18-2329-Conf, para. 1.

¹⁵ ICC-02/04-01/15-1226, para. 8.

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of the procedures, any extension of time accorded to the Defence should therefore be limited to one or two weeks at the most from its receipt of the Arabic translation of the Prosecution's closing brief.

V. Conclusion

19. For the reasons set out above, the Defence Request should be dismissed.



Karim A. A. Khan KC, Prosecutor

Dated this 12th of September 2022

At The Hague, The Netherlands