

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 13 March 2023

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's response to the Defence "Request for admission of evidence and fair trial remedy"

Source: Office of the Prosecutor

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

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Introduction

1. The Prosecution opposes the Defence's "Request for admission of evidence and fair trial remedy" ("Request").¹ The Defence has not demonstrated that the reopening of the submission of evidence phase² of this case, which was declared closed by Trial Chamber X ("Chamber") on 8 February 2023,³ is justified. The two articles⁴ and a video⁵ ("Documents") that it requests be added to the evidence are inadmissible for lack of relevance and are unnecessary for the determination of the truth in this case. Further, the Defence's requests for a "declaration" by the Chamber "acknowledging that Mr Al Hassan's fair trial rights have been violated"⁶ and an order to rectify the content of the articles are unwarranted. In sum, the Defence's submissions regarding alleged violations of the Accused's rights are unsubstantiated and without merit.

Confidentiality

2. This filing is classified as confidential, pursuant to regulation 23*bis*(2) of the Regulations of the Court, because it responds to a confidential Defence filing.

Submissions

3. Given that the submission of evidence phase of the trial was closed by the Chamber on 8 February 2023,⁷ the submission of new evidence can only be allowed if it goes to the determination of the truth where "(i) the evidence is fresh or when the party requesting fresh hearings was unable, despite the use of reasonable diligence, to identify and produce the evidence beforehand, (ii) where the conditions for admissibility of evidence are satisfied and (iii) where the potential contribution of the evidence to the determination of the truth is sufficiently significant to justify fresh hearings, with the possible implication for the fairness of the trial or the integrity of the proceedings".⁸ None of these conditions are met by the Request. The documents

¹ ICC-01/12-01-18-2473-Conf.

² Rule 141(1) of the Rules of Procedure and Evidence.

³ ICC-01/12-01/18-2468.

⁴ MLI-D28-0006-9200 and MLI-D28-0006-9214.

⁵ MLI-D28-0006-9204.

⁶ ICC-01/12-01/19-2473-Conf, p. 3, para.1.

⁷ ICC-01/12-01-18-2468.

⁸ ICC-01/04-01/07-3279-tENG, p. 9, para. 14.

which the Defence seeks to have admitted could have been discovered earlier and are unnecessary for the determination of the truth: they are irrelevant to this case.

4. First, the Defence did not exercise due diligence in the discovery of the Documents. Although the Defence claims that it has only "recently been given notice" of the ICC Registry's Outreach Unit's mission,⁹ information about the mission was already published on the ICC website as of July and August 2022.¹⁰

5. Second, the Defence has failed to demonstrate that the Documents are relevant to the matters at issue in this case or have any probative value, let alone that they are sufficiently significant to justify admission at this stage of the proceedings. The Documents describe a mission conducted by the Outreach Unit to Timbuktu, presumably in May 2022,¹¹ which has no bearing on the conduct and outcome of this case, and which is unnecessary for the determination of the truth.

6. The article authored by (Outreach officer) Margot Tedesco entitled "If we don't have peace" ("Tedesco Article")¹² is an eight-page document detailing the author's outreach mission to Timbuktu. It describes the precarious security situation, the mission's engagement with the communities and different visits in Timbuktu's old quarters.

7. The second article entitled "The ICC and the communities of Timbuktu meet: a first in the fabled city", authored by Outreach Officer Mohamed Salaha ("Salaha Article")¹³ is a four-page article in which the author describes an ICC Outreach "ten-day awareness mission about the work of the Court in Mali".¹⁴ The author details meetings with different participants, the security situation and the feedback received.

8. The third document described by the Defence as a "video" is a Twitter Tweet, regarding the publication of the two articles described above, with a video showing

⁹ ICC-01/12-01/18-2473-Conf, p. 8, para. 23.

¹⁰ Activity information published on 31 July 2022, available at <https://www.icc-cpi.int/about/outreach/activities/activity/destination-timbuktu> (last accessed on 7 March 2023); Activity information published on 5 August 2022, available at <https://www.icc-cpi.int/about/outreach/activities/activity/meeting-local-media-timbuktu> (last accessed on 7 March 2023).

¹¹ MLI-D28-0006-9206, p. 9206.

¹² MLI-D28-0006-9206.

¹³ MLI-D28-0006-9214.

¹⁴ MLI-D28-0006-9214, p. 9214.

the images of Timbuktu and the mission conducted by the Outreach Unit there.¹⁵ Neither the text of the Tweet nor the video contains information relevant to the trial proceedings in this case.

9. The Defence's claim that the documents are relevant to the proceedings because they allegedly relate to the "protection of Mr Al Hassan's fair trial rights" is unsubstantiated. The Defence states that the Outreach Unit's activities "had the ability to interfere with the preparation of the Defence's case at a crucial time of the trial",¹⁶ but fails to cite any evidence to support this claim.

10. The same applies to the Defence's contention that the Outreach Unit's activities further restricted its "ability to obtain uncontaminated" evidence.¹⁷ This allegation is also unsupported by any evidence.

11. Similarly, the Defence's claim that the "language utilised" by the Registry in the documents "undermine Mr Al Hassan's right to be presumed innocent as enshrined in Article 66 of the Statute"¹⁸ is without merit. The Documents were produced and published by the Registry – a neutral organ which is not a party to the proceedings regarding the Accused, not by the Prosecution as was the case in the authorities cited by the Defence.¹⁹

12. The subjects broached in these documents and the language used therein do not violate the Accused's rights under article 66 of the Statute. The Tedesco Article²⁰ clearly indicates from the start that Al Hassan "is facing charges for crimes against humanity and war crimes, **allegedly** committed in Timbuktu...", "is **alleged** to have been an Ansar Dine member...".²¹ The article also states that there will be a screening of Al Mahdi's admission of guilt and his sentence²² – information that was already publicly known since September 2016.²³ Contrary to what is suggested by the

¹⁵ MLI-D28-0006-9204.

¹⁶ ICC-01/12-01/18-2473-Conf, p. 18, para. 8.

¹⁷ ICC-01/12-01/18-2473-Conf, p. 10, para. 32.

¹⁸ ICC-01/12-01/18-2473-Conf, p. 8, para. 25.

¹⁹ ICC-01/12-01/18-2473-Conf, p. 13, para. 36.

²⁰ MLI-D28-0006-9206.

²¹ MLI-D28-0006-9206, p. 9207 (emphasis added).

²² MLI-D28-0006-9206, p. 9207.

²³ ICC-01/12-01/15-171.

Defence,²⁴ the article does not conflate the *Al Mahdi* and *Al Hassan* cases; there is a clear delineation between both. Further, the Defence fails to show how the screening of the *Al Mahdi* judgment could have had a bearing on the Accused's presumption of innocence in this case. The remainder of the article focuses mainly on the author's visit to the old quarters of Timbuktu.

13. The Salaha Article²⁵ states from the outset that the Registry's mission consists of raising public awareness of the mandate of the ICC and that to this end, it holds information sessions with the various communities.²⁶ The Defence's fails to explain how the comment in the article²⁷ that "community members were 'shocked' by the good conditions of Mr Al Hassan's detention condition" is "suggestive that he [Al Hassan] is deserving of punishment."²⁸

14. Given the foregoing, a "declaratory relief"²⁹ pursuant to article 64 (2) of the Statute as well as an order to the Outreach Unit to rectify the content of the articles are unwarranted.

Conclusion

15. For the foregoing reasons, the Prosecution respectfully requests the Chamber to reject the Request.



Karim A. A. Khan KC, Prosecutor

Dated this 13th day of March 2023

At The Hague, The Netherlands

²⁴ ICC-01/12-01/18-2473-Conf, p. 11, para. 34.

²⁵ MLI-D28-0006-9214.

²⁶ MLI-D28-0006-9214, p. 9214.

²⁷ ICC-01/12-01/18-2473-Conf, p. 11, para. 34.

²⁸ MLI-D28-0006-9214, p. 9216.

²⁹ ICC-01/12-01/18-2473-Conf, p. 11, para. 33.