

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **24 July 2024**

TRIAL CHAMBER X

Before: Judge Kimberly Prost, President
Judge Tomoko Akane
Judge Keebong Paek

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF
THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED
AG MAHMOUD

Public

**Prosecution response to “Defence Request to admit the statement of
Mohamedou Ould Slahi pursuant to Rule 68(2)(b) for the Purposes of Sentencing”**

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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I. Introduction

1. The Prosecution opposes the Defence Request to introduce into evidence the statement (“Statement”) of Mohamedou Ould Slahi (“Witness”)¹ under rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”) for the purposes of determining the sentence for Al Hassan under rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”).²

2. The Defence submits that the Statement would assist Trial Chamber X (“Chamber”) in its determination on Mr Al Hassan’s sentence, as it centers on “the power of faith and forgiveness, and the need for compassion and reconciliation after prolonged detention”.³

3. The Defence Request should be rejected given the lack of relevance of such an issue/the Statement to the determination of the sentence for Al Hassan. Similarly, its admission would not serve the interest of justice.

4. According to this Statement, the Witness is a Mauritanian man who was detained, without charge, in Guantanamo Bay, Cuba, between 2002-2016.⁴ His Statement is entirely irrelevant to the facts and issues that the Chamber may consider for sentencing purposes in the present proceedings under the legal framework of the Court.

5. In particular, the Witness appears to have no personal knowledge of Al Hassan, Timbuktu or Mali. While the Defence attempts to assimilate Al Hassan’s situation with that of the Witness,⁵ the situations of the Witness and Al Hassan are not comparable at all.

6. There are obvious differences between the Witness experience and background and that of Al Hassan, who, since 2018, has been detained to face charges, and was

¹ MLI-D28-0006-9154-R01.

² ICC-01/12-01/18-2613 (“Defence Request”).

³ Defence Request, para. 1.

⁴ Statement, para. 8.

⁵ See *e.g.* Defence Request, paras. 3, 29.

convicted of war crimes and crimes against humanity, with all the rights guaranteed under the ICC framework.

7. Even if, *arguendo*, the Chamber were to consider as relevant the general issues described by the Defence, such as “the power of faith and forgiveness, and the need for compassion and reconciliation after prolonged detention”⁶, the introduction into evidence of the Statement would not serve the interests of justice or assist Trial Chamber X (“Chamber”) in its determination of sentence for Al Hassan.

8. Should the Chamber nevertheless decide to grant the Defence Request, very little, if any, weight should be afforded to the Statement.

II. Submissions

1) *The Statement is irrelevant to the determination of sentence for Al Hassan*

9. The Defence claims that the Witness’ “experience with detention, suffering, and building a life after trauma and loss, coupled with his first-hand knowledge of the power of faith in achieving forgiveness” should be considered to “contextualise[] the ‘circumstances of the convicted person’” or inform the Chamber’s assessment of mitigating factors under rule 145(1)(b) of the Rules.⁷ The Defence further submits that the Witness’ statement “provides a [...] complete overview of [...] the role faith can ostensibly have in helping Mr Al Hassan reintegrate and contribute to society [...]”.⁸

10. Such general issues are irrelevant to the determination of sentence at the ICC. In fact, apart from citing general principles set out in *Ntaganda* and *Ongwen* regarding mitigating circumstances,⁹ the Defence fails to provide any case law or other authority to support its proposition that such general issues may be considered as mitigating factors or circumstances.

⁶ Defence Request, para. 1.

⁷ Defence Request, paras. 1, 29.

⁸ Defence Request, para. 15.

⁹ Defence Request, fn. 11.

11. Even if the Chamber were to agree that such issues may be relevant, the Statement of the Witness is of no assistance in establishing circumstances specific to Al Hassan.

12. According to the Statement, the Witness is a Mauritanian man who was detained at Guantanamo Bay, Cuba, between 2002-2016.¹⁰ The Witness has no personal knowledge of Al Hassan, and does not appear to have spent time in Mali, let alone Timbuktu.¹¹

13. While the Defence attempts to present Al Hassan and the Witness as “torture survivors” with similar experiences,¹² there are clear differences between the two men. According to the statement, the Witness was abducted from his home in Mauritania, transported to Jordan and Afghanistan before he was taken to the US detention centre where he was detained without charge and presumably without the possibility to contact his family for 14 years.¹³

14. In contrast, following his detention in Mali between late April 2017-late March 2018 by the French army and then the Malian authorities¹⁴, Al Hassan has been detained at the ICC Detention Centre pursuant to a provisional arrest warrant issued by the ICC and to face charges of war crimes and crimes against humanity committed in Timbuktu in 2012-2013. In that context, he has enjoyed all the rights as guaranteed under the ICC legal framework, including the possibility to communicate with his family and to receive family and private visits, albeit with some restrictions due *inter alia* to temporary measures during the COVID-19 pandemic.¹⁵

15. The Defence relies on the example of the Acholi Chief, in the *Ongwen* case, whose statement was introduced under rule 68(2)(b) for the purpose of sentencing even

¹⁰ Statement, para. 8.

¹¹ Statement, para. 7.

¹² See e.g. Defence Request, paras. 3, 29.

¹³ Statement, paras. 8, 9, 12.

¹⁴ It should be noted that alleged torture occurred during his detention in Mali, before ICC proceedings, and as this Chamber already found (ICC-01/12-01/18-1009-Red, para. 117), is in no way attributable to the ICC Prosecution.

¹⁵ See e.g. regulations 97-106 of the Regulations of the Court.

though it was “unspecific to Ongwen personally and centred more generally on the Acholi people and culture and the availability of reconciliatory measures and restorative justice”.¹⁶

16. Yet, it is clear from the decision on the submission thereof that rather than recognising its relevance to sentencing, Trial Chamber IX simply focused on the mandatory issue of whether it goes to proof of “acts and conduct” of the accused within the meaning of rule 68(2)(b) of the Rules, and left the determination of its relevance and probative value to the subsequent judgement on sentence.¹⁷ In its judgement on sentence, it ultimately did not rely on the statement in addressing the Defence’s submissions concerning the Acholi traditional justice system.¹⁸

17. In any event, the Acholi Chief in *Ongwen* at least shared the same ethnicity and culture as Ongwen and lived through the war in Northern Uganda.¹⁹ In contrast, apart from being a Muslim from the Sahel region, the Witness’ background and experiences are markedly different from those of Al Hassan. The Defence’s claims that the Witness could provide “unique insight into Mr Al Hassan’s individual circumstances”²⁰ and “a more complete overview of the harm suffered by Mr Al Hassan as a result of his detention”²¹ are general and entirely unfounded.

18. As the Defence admits, the Statement “cent[ers] more generally on the necessity of healing and forgiveness after traumatic detention”.²² In light of the Witness lack of personal knowledge of Al Hassan and clear differences between the Witness and Al Hassan, his evidence is totally irrelevant to “Mr Al Hassan’s own experience [...]”.²³

¹⁶ Defence Request, paras. 13-14, referring to ICC-02/04-01/15-1801.

¹⁷ ICC-02/04-01/15-1801, paras. 12-15.

¹⁸ ICC-02/04-01/15-1819-Red, para. 28.

¹⁹ ICC-02/04-01/15-1783-Red2, para. 28.

²⁰ Defence Request, para. 29.

²¹ Defence Request, para. 15.

²² Defence Request, para. 14.

²³ *Contra* Defence Request, para. 14.

2) *The introduction of the Statement would not serve the interests of justice*

19. Given that the Statement is irrelevant to the facts and issues that may be considered for the purpose of sentencing at the ICC, the introduction into evidence of the Statement would not assist the Chamber in its determination of sentence for Al Hassan or serve the interests of justice.

III. Conclusion

20. For the foregoing reasons, the Prosecution requests the Chamber to dismiss the Defence Request.

21. Should the Chamber decide to grant the Defence Request, very little, if any, weight should be afforded to the Statement.



Karim A.A. Khan KC, Prosecutor

Dated this 24th day of July 2024

At The Hague, The Netherlands