

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 May 2020

Date of Submission: 9 June 2020

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**

Public

Public redacted version of "Request for reconsideration of "Decision on conduct of the proceedings" (ICC-01/12-01-18-789) in relation to the presentation of opening arguments to be executed exclusively in open session", ICC-01/12-01/18-822-Conf, 20 May 2020

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

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Ms Melinda Taylor

Ms Marie-Hélène Proulx

Mr Thomas Hannis

Legal Representatives of the Victims

Mr Seydou Doumbia

Mr Mayombo Kassongo

Mr Fidel Luvengika Nsita

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section Other

I. Introduction

1. On 6 May 2020, Trial Chamber X (“Chamber”) filed its ‘Decision on the conduct of proceedings’ (“Decision”).¹
2. In its Annex A to the Decision, the Chamber ruled *inter alia* that “The opening statements shall be presented entirely in public session. The parties and participants are therefore instructed to prepare accordingly”.²
3. The Prosecution hereby requests Trial Chamber X (“Chamber”) to reconsider its Decision on the conduct of proceedings in relation to the presentation of opening arguments to be executed exclusively in open session,³ so as to allow the Prosecution

II. Confidentiality

4. The Prosecution files this request under regulation 23*bis*(2) of the Regulations of the Court as confidential since it contains information of a confidential nature.

III. Submissions

5. Although an exceptional remedy, the Court’s Pre-Trial and Trial Chambers have reconsidered their own decisions in some limited circumstances on a number of occasions. They have done so on different grounds, be it to prevent an injustice or when there was a clear error of reasoning on the Chamber’s part.⁴
6. In the Al Hassan case, the Chamber has recently ruled that it has the power to reconsider its decisions upon request of the parties or *proprio motu*. It added that new facts and arguments arising since the decision was rendered may be relevant to this

¹ ICC-01/12-01/18-789.

² ICC-01/12-01/18-789-AnxA, para.17

³ Decision on conduct of proceedings - ICC-01/12-01/18-789.

⁴ ICC-01/04-02/06-519, para. 12; ICC-02/04-01/15-1547, para. 7; ICC-02/04-01/15-468, para. 4; ICC-01/04-02/06-1049-Red, para. 12; ICC-01/05-01/08-3343, para. 30.

assessment.⁵

7. Further, a Chamber may depart from substantive decisions if they are manifestly unsound or their consequences are manifestly unsatisfactory.⁶

8. In the present instance, the Prosecution plans [REDACTED]
[REDACTED] as part of the opening of its case.

9. [REDACTED] offers detailed [REDACTED] from the city of Timbuktu,
[REDACTED] various locations and crime scenes, such as:

-) the *Banque Malienne de Solidarité* or “BMS”, and subsequently the *Gouvernorat*, which were used as Head-quarters of the Islamic police, and where the Accused was active and people were investigated and detained;
-) the *Hôtel La Maison*, seat of the Islamic Tribunal, where judgments were rendered;
-) the public squares where people were flogged;
-) the site where the amputation took place;
-) the cemeteries where the mausoleums were destroyed to the ground, etc.

10. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁵ ICC-01/12-01/18-734 at para. 11.

⁶ ICC-01/04-01/06-2705 at para. 18

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

11. [REDACTED]

[REDACTED]

[REDACTED]:

) [REDACTED]

[REDACTED]

[REDACTED];

) [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED];

) [REDACTED]

[REDACTED]

[REDACTED]

12. Although the Prosecution is in favor of respecting the principle of publicity of the proceedings, [REDACTED] [REDACTED] in public sessions would [REDACTED]

[REDACTED] The Prosecution refers to its previous filings on matters of [REDACTED]

13. It is therefore impossible to use entirely in open session [REDACTED] which is the result of long and intensive work and was specifically [REDACTED] from the outset with the view to presenting it at the opening statement.

14. Therefore, for the reasons outlined above, the Prosecution respectfully requests to be granted the opportunity to go into private or closed sessions for parts of its opening statement [REDACTED] [REDACTED]. The demonstration based on [REDACTED] [REDACTED] would be temporary: the Prosecution expects that using [REDACTED] would last around an hour and 15 minutes; that would leave plenty of time to present other arguments in open session.

15. Additionally, the Prosecution will do its utmost to try to identify, to the extent possible, parts of [REDACTED] that could be used in public session, bearing in mind the need to minimize unnecessary disruptions that could arise from switching too frequently from open to closed session.

IV. Requested Relief

16. For the foregoing reasons, the Prosecution requests that the Chamber reconsider its decision in relation to paragraph 17 of its Annex A to the Decision.



Fatou Bensouda, Prosecutor

Dated 20th May 2020

At The Hague, The Netherlands