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

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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

With confidential Annexes A and B

Public redacted version of “Prosecution application to call Witnesses MLI-OTP-P-0620, MLI-OTP-P-0621, and MLI-OTP-P-0657 as experts and to introduce their reports and associated material into evidence”, ICC-01/12-01/18-848-Conf, 1 June 2020

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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1. As foreseen in the Decision on the Conduct of Proceedings,¹ the Prosecution requests that Trial Chamber X² authorise calling Witnesses P-0620, P-0621, and P-0657 as experts (“Proposed Experts”) and, pursuant to articles 64(9), 69(2)-(4)³ and rules 63(2) and rules 63(2) and 68(3),⁴ introducing into evidence their reports and associated material and permit the Prosecution to conduct a streamlined supplementary examination (“Request”).

2. The Proposed Experts possess sufficient qualifications and expertise in relation to the subject matter of their proposed testimony, namely in handwriting analysis (P-0620), document analysis (P-0621), and forensic document and handwriting examination (P-0657). Their reports properly fall within the scope of expert testimony and are relevant to the issues in the case, namely the authenticity and author of Islamic Police reports and other documents which support the charges against the Accused.

3. The Prosecution seeks to introduce into evidence P-0620 and P-0621’s joint expert report (“Joint Report”),⁵ and another expert report from P-0657.⁶ In addition, it seeks to introduce into evidence:

- For P-0620 and P-0621: (i) the letter of instructions;⁷ and (ii) its addendum;⁸
- For P-0620: (iii) a note acknowledging the transfer of the seals;⁹ and (iv) two chain of custody forms;¹⁰
- For P-0657: (i) his resume;¹¹ (ii) the letter of instructions;¹² (iii) the methodology;¹³ (iv) a statement of acknowledgement from the witness;¹⁴ (v) a

¹ ICC-01/12-01/18-789-AnxA, para. 67.

² “Chamber”.

³ Rome Statute (“Statute”).

⁴ Rules of Procedure and Evidence (“Rules”).

⁵ This report is in two parts: [REDACTED]

⁶ [REDACTED]

⁷ [REDACTED]

⁸ [REDACTED]

⁹ [REDACTED]

¹⁰ [REDACTED]

contact note,¹⁵ (vi) chain of custody forms,¹⁶ and (vi) a letter of recommendation.¹⁷

4. The Proposed Experts' reports and related material are relevant to the charges in this case, particularly to the counts of torture (counts 1 and 3), other inhumane acts (count 2), cruel treatment (count 4), outrages upon personal dignity (count 5), passing of sentences without due process (count 6) and persecution (count 13).

5. The Proposed Experts will testify [REDACTED]. They will be asked to attest to the accuracy of their reports at the beginning of their testimony against the Accused and to confirm their availability and willingness to be examined by the Parties, Legal Representatives if applicable, and the Chamber.

6. The introduction into evidence of the Proposed Experts' reports and associated documents would not be prejudicial to the rights of the Accused and would enhance the expeditiousness of the proceedings by reducing the length of the experts' examination-in-chief by two hours each. Should this application be granted, the Prosecution's streamlined supplementary examination of the Proposed Experts would last two hours for P-0620, one hour 30 minutes for P-0621, and two hours and 30 minutes for P-0657, reducing the length of their examination by 5 hours.¹⁸

Confidentiality

7. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this submission as confidential because it contains identifying information

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]

¹⁸ See ICC-01/12-01/18-740-Conf-AnxB.

regarding these Prosecution witnesses, in addition to referring to filings classified as confidential. The Prosecution shall file a public redacted version in due course.

Prosecution's Submissions

Request to hear Witnesses P-0620, P-0621, and P-0657 as expert witnesses

8. The Prosecution requests that the Chamber hear the Witnesses P-0620, P-0621, and P-0657 as expert witnesses.
9. Pursuant to articles 64(9)(a) and 69(4) of the Statute, the Chamber has the discretion to hear a witness as an expert when it is satisfied that (i) the proposed testimony in the relevant area of expertise would be of assistance,¹⁹ (ii) the proposed witness is an expert,²⁰ giving due consideration to whether the person is included in the Registry's list of experts,²¹ and (iii) the anticipated testimony falls within the expertise of the witness and does not usurp the functions of the Chamber as ultimate arbiter of fact and law.²²

P-0620

10. Witness P-0620 is an expert in the field of her proposed testimony, namely as a handwriting expert. Her professional experience is relevant to the field of expertise.

[REDACTED]

[REDACTED]

[REDACTED]²³ [REDACTED]

[REDACTED]²⁴ [REDACTED]

[REDACTED]

¹⁹ ICC-01/04-01/06-1069, para. 25; ICC-01/05-01/08-2273, para. 8; ICC-01/09-01/11-844, para. 12.

²⁰ ICC-01/05-01/08-2273, para. 9; ICC-01/09-01/11-844, paras. 11, 12.

²¹ See also ICC-01/09-01/11-844, para. 20, noting that the placement of a particular witness on the Court's list of experts is an administrative act on the part of the Registrar that is not binding on the Chamber.

²² ICC-01/09-01/11-844, para. 12.

²³ [REDACTED]

²⁴ [REDACTED]

[REDACTED].²⁵ [REDACTED]

[REDACTED]

[REDACTED].²⁶ [REDACTED]

[REDACTED]

[REDACTED].²⁷

11. Witness P-0620 is therefore highly qualified and her testimony would be of assistance to the Chamber's understanding of the handwriting on some key documents.

P-0621

12. Witness P-0621 is an expert in the field of her proposed testimony, namely as a document analysis expert. Her professional experience is relevant to the field of expertise. [REDACTED]

[REDACTED]

[REDACTED].²⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].²⁹ [REDACTED]

[REDACTED]

[REDACTED].³⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].³¹ [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

31 [REDACTED]

[REDACTED]³² [REDACTED]

[REDACTED]³³

13. Witness P-0621 is therefore highly qualified and her testimony would be of assistance to the Chamber's understanding of key documents in the case.

14. In July 2018, P-0620 and P-0621 were instructed by the Prosecution to carry out a technical examination of 110 documents³⁴ in order to (1) detect any sign of falsification or other fraudulent manipulation, (2) analyse the graphic characteristics of the signatures of these documents, (3) compare these documents against other documents³⁵ containing a specific signature and make conclusions, (4) draw any other conclusion necessary to establish the truth; and to present their analysis in an expert report.³⁶

15. The Joint Report is relevant, as it provides a comparative examination of signatures on the basis of documents signed by the Accused (*ie*, the person of interest). This analysis aims to identify the author of the documents and therefore deals with attribution, which is essential to establish criminal responsibility.

16. The Joint Report is probative and reliable. It was prepared for the Prosecution by the Proposed Experts in the understanding that they could be used as evidence and that the authors could be selected as expert witness at trial. The letter of instructions was drafted in neutral terms. In particular, the letter requests that the experts make "*toutes observations utiles à la manifestation de la vérité*".³⁷ The sources on which it is based are clearly identified in the report and Proposed Experts thoroughly examined and compared them.

³² [REDACTED]

³³ [REDACTED]

³⁴ These documents are listed in the section III of the chart attached Annex A as documents necessary to understand the experts' report but which the Prosecution does not seek to introduce into evidence.

³⁵ These documents are listed in the section III of Annex A as documents necessary to understand the expert report but which the Prosecution does not seek to introduce into evidence.

³⁶ [REDACTED]

³⁷ [REDACTED]

P-0657

17. Witness P-0657 is [REDACTED] an expert in the field of forensic document and handwriting examination.

18. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³⁸ [REDACTED]
[REDACTED]
[REDACTED].³⁹

19. [REDACTED] Witness P-0657, who is [REDACTED] was tasked by the Prosecution to carry out a technical examination of 99 documents and photographs in order to (1) highlight evidence of their authenticity or falsification or other fraudulent manipulation, and (2) identify graphic elements or objective characteristics allowing to individualise the documents and identify their author or writer; and to present his analysis in an expert report. To conduct this analysis, he was provided with a list of documents to be analysed.⁴⁰ [REDACTED], he produced a report containing his analysis and conclusions on the questions submitted to him,⁴¹ together with a document describing the methodology used to reach these conclusions.⁴²

38 [REDACTED]
39 [REDACTED]
40 [REDACTED]
41 [REDACTED]
42 [REDACTED]

20. P-0657 was tasked to analyse the handwriting on the documents, since he is an Arabic speaker. (P-0620 was concentrating on signatures of some of these documents).

21. Witness P-0657's report is relevant, as it provides an analysis of Islamic Police documents, which are all of interest in the *Al Hassan* case. These documents include, for instance, Islamic Police reports that support the charges of passing sentences without due process (count 6),⁴³ some of which have also been authenticated by the Accused, and persecution (count 13).⁴⁴ Confirmation that these reports were written by the person of interest (ie, the Accused) is relevant to the Chamber's determination of his guilt on these counts.

22. The report is probative and reliable. It was prepared for the Prosecution by Witness P-0657 for use in the Prosecution's investigation. The letter of instructions was drafted in a neutral way.⁴⁵ It demands that the expert make any observations that would be useful for the manifestation of the truth.⁴⁶ The sources on which it is based – documents and photos of documents – are clearly identified in the report and P-0657 has thoroughly examined and compared them.

Request for authorisation to introduce Witnesses P-0620, P-0621, and P-0657's reports and associated material into evidence

23. The Prosecution identified the Proposed Experts as appropriate witnesses for the procedure under rule 68(3) of the Rules.⁴⁷

24. Rule 68(3) of the Rules provides that the Chamber may allow the introduction of the prior recorded testimony of a witness who is present before the Chamber

⁴³ ICC-01/12-01/18-819-Conf-AnxA, paras. 185 (fn. 599), 199 (fn. 628), 202 (fn. 633), 204 (fn. 638), and 213 (fn. 660).

⁴⁴ ICC-01/12-01/18-819-Conf-AnxA, para. 289 (fn. 975).

⁴⁵ [REDACTED]

⁴⁶ [REDACTED]

⁴⁷ In accordance with ICC-01/12-01/18-789-AnxA, para. 62, the Prosecution provided the Prosecution List of Witnesses on 15 April 2020, in which it indicated its intention to use rule 68(3) with these witnesses. See ICC-01/12-01/18-740-Conf-AnxA

where the individual does not object to the submission, and the Parties⁴⁸ and Chamber have the opportunity to examine the witness. Trial Chambers VI and IX have relied on rule 68(3) to receive evidence from expert witnesses, in the *Ntaganda* and *Ongwen* cases,⁴⁹ even absent a request from the calling party.⁵⁰ The Prosecution nonetheless notes that this is primarily a *mutatis mutandis* approach, since an expert report is not testimonial in nature, and in this sense, it is different from a statement obtained by the Prosecution under rules 111 or 112. Should the Chamber consider rule 68(3) to be inapplicable due to the documentary nature of the Proposed Experts' reports, the Chamber may admit the reports pursuant to its general powers under article 69 of the Statute.

25. In its Decision on the conduct of proceedings, the Chamber ordered the Prosecution to file motivated rule 68(3) applications together with copies of the previously recorded testimony, identifying the precise passages it wishes to tender into evidence, and other materials referred to in these passages that are available to the calling party and, without which, the passages would not be understandable.⁵¹

26. The material that the Prosecution seeks to admit for each of the Proposed Experts, set out herein, is relevant, probative and reliable. The Proposed Experts will be asked to attest to the authenticity and accuracy of their reports at the beginning of their testimony⁵² and to confirm their availability and willingness to be examined by the Parties, Legal Representatives if applicable, and the Chamber. Each witness will be asked whether they consent to the admission of their materials under the rule.

⁴⁸ ICC-02/11-01/15-744 OA 8, para. 69, stating that “rule 68 (3) of the Rules provides for the possibility for the Prosecutor, the defence and the Chamber to have the opportunity to examine the witness during the proceedings – this de facto includes the calling party, which in the instant case is the Prosecutor”.

⁴⁹ ICC-01/04-02/06-845, ICC-01/04-02/06-T-31-CONF-ENG, p.75, l.7-16.

⁵⁰ ICC-01/04-02/06-T-87-ENG CT, p. 3-4.

⁵¹ ICC-01/12-01/18-789-Conf-AnxA, para. 63(i) and (ii). Each item of evidence which the Prosecution seeks to introduce into evidence through the present application may be accessed by clicking on the ERN listed in Annexes A and B, which is hyperlinked to the item of evidence in eCourt, as authorised by the Chamber in its email of 28 May 2020 13:38.

⁵² ICC-01/12-01/18-789-AnxA, para.65.

The admission of the Proposed Experts' reports and associated material is not prejudicial to or inconsistent with the rights of the Accused.

27. Based on past practice, the Prosecution estimates that it will require two hours for P-0620 and one hour and 30 minutes for P-0621 for their examination-in-chief namely, approximately thirty to forty-five minutes each for the formalities associated with the admission of witness's materials, and additional one hour 15 for P-0620 and 45 minutes for P-0621 to conduct a streamlined supplementary examination to essentially elicit details of the methodology they used to compare documents and analyse their authenticity. P-0620 and P-0621 will discuss how they reached their conclusions as set out in the report.⁵³

28. As regards P-0657, the Prosecution estimates that it will require two hours 30 minutes for his examination-in-chief: namely, approximately thirty to forty-five minutes to address the formalities associated with the admission of a witness's prior recorded testimony and associated exhibits and additional one hour 45 minutes to conduct a streamlined supplementary examination within which he can comment on his report. P-0657 will provide details on the methodology he used to produce his report for the OTP and will present his findings as set out in his report.⁵⁴

P-0620 and P-0621

29. The Prosecution seeks to introduce in full P-0620 and P-0621's Joint Report⁵⁵ (together with the letter of instructions and its addendum⁵⁶) which is relevant, probative, and reliable. These materials are listed in sections I and II of Annex A to this application. As regards chain of custody, in which Proposed Expert P-0620 only was involved, the Prosecution seeks to introduce in full a note acknowledging the transfer of the seals from one member of the Office of the Prosecutor to P-0620⁵⁷ and

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two chain of custody forms.⁵⁸ This note and the forms are also listed in section II of Annex A.

30. Section III of Annex A lists the items used by P-0620 and P-0621 which are necessary to understand their Joint Report but which the Prosecution does not seek to introduce into evidence.

P-0657

31. The Prosecution seeks to introduce, in full, P-0657's expert report⁵⁹ and methodology,⁶⁰ which, as addressed above, are relevant, probative, and reliable, together with the Prosecution's letter of instruction dated 4 February 2020,⁶¹ a statement of acknowledgment by the expert,⁶² as well as 27 chain of custody notes related to this document examination.⁶³ The report is listed in section I of Annex B to this application and the other materials are listed in section II of the Annex.

32. It also seeks to introduce into evidence the materials necessary to establish P-0657's expertise, namely his *curriculum vitae*⁶⁴ and a letter of recommendation [REDACTED]

[REDACTED]

[REDACTED].⁶⁵ These materials are also listed in section II of Annex B.

33. Section III of Annex B lists the items associated with P-0657's report that are necessary to understand the said report.

58 [REDACTED]

59 [REDACTED]

60 [REDACTED]

61 [REDACTED]

62 [REDACTED]

63 [REDACTED]

64 [REDACTED]

65 [REDACTED]

Proposed procedure for the introduction of prior recorded testimony

34. Should this application be granted, the Prosecution submits that there will be no need to read into evidence the Proposed Experts' reports as they will be asked to confirm their accuracy and to provide corrections or amendments, if any.

35. During witness preparation, the Prosecution will ask the Proposed Experts, *inter alia*, to review their report and associated material, advise of any corrections or clarifications they wish to make, and to confirm the accuracy of the reports.⁶⁶ In accordance with the Witness Preparation Protocol this session will be video-recorded and the Prosecution will disclose a log of the session clearly indicating any changes or corrections which the witnesses make.⁶⁷

36. When the Proposed Experts appear in court, the Prosecution will seek to elicit, in principle by way of neutral questions, any clarifications noted by the witness during witness preparation.⁶⁸ The Prosecution will then ask the witnesses whether they have any further changes or clarifications to make to their reports and to confirm their consent to be questioned by the Parties and the Chamber.

37. In terms of further procedure, after tendering each report, with any changes or clarifications noted on the record, and the associated material, the Prosecution will then conduct a supplementary examination of each of the Proposed Experts as outlined above.

Conclusion

38. The abovementioned qualifications and experience establish Witnesses P-0620, P-0621, and P-0657's knowledge and expertise. The Chamber would be assisted in understanding the handwriting and signature on key documents of the case by the

⁶⁶ ICC-01/12-01/18-666-Anx, para. 18-19.

⁶⁷ ICC-01/12-01/18-666-Anx, para. 12, 14, 31.

⁶⁸ ICC-01/12-01/18-789-AnxA, para. 50.

introduction into evidence of the Proposed Experts' reports. Witnesses P-0620, P-0621, and P-0657's evidence does not usurp the function of the Chamber as the ultimate arbiter of fact and law.

39. Permitting the Proposed Experts' evidence to be introduced into evidence would not be prejudicial to or inconsistent with the rights of the Accused, as the witnesses would be available for questioning by the Defence, the Participants if applicable, and the Chamber. It would enhance the expeditiousness of the proceedings by reducing the length of the Proposed Experts' examination-in-chief as set out above.

40. For the foregoing reasons, the Prosecution asks that the Chamber grant its Request.



Fatou Bensouda, Prosecutor

Dated this 1 June 2020

At The Hague, The Netherlands