



Original: **English**

No.: **ICC-01/12-01/18**  
Date: **17 September 2020**  
Date of submission:  
**22 October 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**

**With confidential Annex A**

**Public redacted version of the “Prosecution application to introduce MLI-OTP-P-0598’s reports and associated material into evidence, and regulation 35 request “,  
17 September 2020, ICC-01/12-01/18-1051-Conf**

**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. The Prosecution requests Trial Chamber X's ("Chamber") authorisation to (i) introduce into evidence Witness P-0598's [REDACTED] expert report and supplementary expert report on evidence related to [REDACTED],<sup>1</sup> as well as associated material,<sup>2</sup> as specified in sections I and II of Annex A to the present application pursuant to rule 68(3) of the Rules of procedure and evidence ("Rules"); and (ii) conduct a succinct streamlined supplementary examination of Witness P-0598 ("Request").

2. Witness P-0598 ("P-0598") is [REDACTED].<sup>3</sup>  
[REDACTED]  
[REDACTED].<sup>4</sup> P-0598 produced a [REDACTED] expert report and supplementary report (together, the "reports") on the examination of [REDACTED]  
[REDACTED], a crime relevant to the charges, in particular torture (counts 1 and 3), other inhumane acts (count 2), cruel treatment (count 4), outrages upon personal dignity (count 5), passing of sentences (count 6) and persecution (count 13).

3. P-0598 is listed in the first block of witnesses, and scheduled to testify in October 2020. Should this Request be granted, he will be asked to attest to the accuracy of his reports at the beginning of his testimony and to confirm his availability and willingness to be examined by the Parties, Legal Representatives if applicable, and the Chamber.

4. Based on past practices, the Prosecution estimates that it will require in total twenty five minutes for the examination-in-chief of P-0598; namely approximately ten minutes for the formalities associated with the introduction into evidence of an

<sup>1</sup> [REDACTED]

<sup>2</sup> [REDACTED]

<sup>3</sup> ICC-01/12-01/18-842-Conf, 'Prosecution application related to proposed experts', para. 34.

<sup>4</sup> [REDACTED]

expert witness's prior recorded testimony and associated exhibits, and an additional fifteen minutes to conduct a succinct supplementary examination to elicit further focused *viva voce* evidence, notably about his methodology.

5. Granting the Request would not be prejudicial to the rights of the Accused and would enhance the expeditiousness of the proceedings by keeping the length of Expert Witness P-0598's in-court testimony very short.

6. Additionally, the Prosecution also requests pursuant to regulation 35(2) of the Regulations of the Court ("RoC") the Chamber's authorisation to add to its List of Evidence ("LoE")<sup>5</sup> P-0598's updated *curriculum vitae* (CV), [REDACTED]

[REDACTED].<sup>6</sup> As explained below, there is good cause and it is in the interests of justice to allow delayed addition of this document to the LoE.

### **Confidentiality**

7. Pursuant to regulation 23*bis*(1) of the RoC, the Prosecution files this submission and its accompanying annex as confidential because they contain confidential information including information regarding Prosecution witness P-0598, in addition to referring to filings classified as confidential. The Prosecution shall file a public redacted version in due course.

### **Prosecution's Submissions**

#### **Request for authorisation to introduce P-0598's material into evidence**

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

<sup>5</sup> [REDACTED]

<sup>6</sup> [REDACTED]

where the individual does not object to the submission, and the Parties and Chamber have the opportunity to examine the witness.

9. P-0598 produced a [REDACTED] expert report and a supplementary report to the Prosecution, [REDACTED]. The Prosecution has identified P-0598 as an appropriate witness for the procedure under rule 68(3) of the Rules.

10. As set out in section I of Annex A of this filing, the Prosecution seeks to introduce, in full, P-0598's reports.

11. The reports are relevant. They relate to [REDACTED] and provide an analysis of [REDACTED]

[REDACTED]

[REDACTED]. These matters are relevant to a number of crimes which the Accused has been charged with, in particular torture (counts 1 and 3), other inhumane acts (count 2), cruel treatment (count 4), outrages upon personal dignity (count 5), passing of sentences (count 6) and persecution (count 13).

12. The reports are probative and reliable. They were prepared voluntarily for the Prosecution by P-0598 in the understanding that they could be used as evidence of [REDACTED]. The sources of the reports are clearly identified therein.

13. Furthermore, P-0598 will be asked to confirm the accuracy of his testimony when he appears before the Chamber. As such, the parties, the participants if applicable, and the Chamber will have the opportunity to examine this witness during the proceedings and he will confirm whether he consents to the submission of his materials, in accordance with rule 68(3) of the Rules. Therefore, the submission of Witness P-0598's materials under rule 68(3) is not prejudicial to or inconsistent with the rights of the Accused.

14. The Prosecution also seeks to introduce into evidence the materials necessary to establish P-0598's expertise, namely his *curriculum vitae*<sup>7</sup> and the Prosecution's letters of instructions,<sup>8</sup> as specified in section II of Annex A. The Prosecution further seeks to introduce into evidence P-0598's updated *curriculum vitae*,<sup>9</sup> should the Chamber allow its late addition to the LoE (see paragraphs 20-23 below).

15. Section III of Annex A lists other materials necessary to understand P-0598's reports but which the Prosecution does not seek to introduce into evidence through this witness. These are all the items analysed in P-0598's reports that the Prosecution seeks to introduce, [REDACTED]

[REDACTED] This material will be introduced on the record via other witnesses. Section III also contains a contact note with P-0598 and his invoice,<sup>10</sup> which give context concerning the production of his reports.

*Proposed procedure for the introduction of the Proposed Experts' materials*

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

17. During witness preparation, the Prosecution will ask P-0598, *inter alia*, to review his reports and associated material, advice of any corrections or clarifications he wishes to make, and to confirm the accuracy of his reports.<sup>11</sup> In accordance with the Witness Preparation Protocol this session will be video-recorded and the Prosecution

<sup>7</sup> [REDACTED]

<sup>8</sup> [REDACTED]

<sup>9</sup> [REDACTED]

<sup>10</sup> [REDACTED]

<sup>11</sup> ICC-01/12-01/18-666-Anx, para.18-19.

will disclose a log of the session clearly indicating any changes or corrections which the witness makes.<sup>12</sup>

18. When P-0598 appears in court, the Prosecution will seek to elicit any clarifications noted by the witness during witness preparation.<sup>13</sup> The Prosecution will then ask the witness whether he has any further changes or clarifications to make to his reports and to confirm his consent to be questioned by the parties and the Chamber.

19. In terms of further procedure, after tendering the reports, with any changes or clarifications noted on the record, and the associated material, the Prosecution will then conduct a succinct supplementary examination of P-0598 as outlined above (see paragraph 4 *supra*).

**Request to allow amendment of the LoE with P-0598's updated *curriculum vitae* under regulation 35 of the Regulations**

20. The Prosecution further seeks pursuant to regulation 35 of the Regulations authorisation to amend its List of Evidence by adding P-0598's updated CV, [REDACTED]

[REDACTED].<sup>14</sup>

21. This item is only an updated version of P-0598's CV, which is already on the LoE, [REDACTED]

[REDACTED] This version was only communicated to the Prosecution

[REDACTED] It could therefore not be included in the LoE

as it was previously outside the Prosecution's control.<sup>15</sup> In addition, the updated CV

only offers a better reading of P-0598's profile and expertise, as already outlined in

his original CV, which is on the LoE.<sup>16</sup>

<sup>12</sup> ICC-01/12-01/18-666-Anx, para.12-15, 31.

<sup>13</sup> ICC-01/12-01/18-666-Anx, para. 50.

<sup>14</sup> [REDACTED]

<sup>15</sup> [REDACTED]

<sup>16</sup> [REDACTED]

22. The Prosecution recalls that a Chamber may extend a time limit under regulation 35(2) of the Regulations “if good cause is shown”,<sup>17</sup> or where it is in the “interests of justice”<sup>18</sup> to do so. Moreover, where conditions of regulation 35(2) are not met, the Chamber may authorise the late addition of incriminating evidence pursuant to its powers under articles 64(6)(d) and 69(3) of the Statute to allow admission of the evidence that it deems necessary for the determination of the truth.<sup>19</sup>

23. In this instance, it is in the interests of justice and determination of the truth that late disclosure of this material and its addition to the Prosecution List of Evidence be allowed. The disclosure of this item is necessary to give an up-to-date understanding of P-0598’s profile. There is no undue prejudice to the Defence as P-0598’s earlier version of the CV is already on the Prosecution’s LoE.

### **Conclusion**

24. Witness P-0598 is an expert in the subject matters to which his proposed testimony relates. The content of his reports falls within the scope of his expertise and his proposed testimony may assist the Chamber. Granting the application to introduce his reports and associated material as requested would not be prejudicial to the rights of the Accused and it would enhance the expeditiousness of the proceedings by reducing the length of P-0598’s examination-in-chief as set out above.

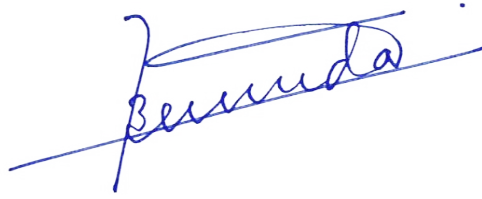
25. For the foregoing reasons, the Prosecution asks that the Chamber grant its application.

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<sup>17</sup> ICC-01/04-01/06-834, para.7.

<sup>18</sup> See ICC-01/04-01/10-505, para.11.

<sup>19</sup> ICC-01/04-01/07-2325, para.15. In *Prosecutor v Katanga*, where the Prosecution requested disclosure much later in the proceedings, Trial Chamber II still found that there was a basis to allow for the admission of the evidence.



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Fatou Bensouda, Prosecutor

Dated this 17 September 2020

At The Hague, The Netherlands