



Original: English

**No. ICC-01/12-01/18
Date: 18 November 2020**

TRIAL CHAMBER X

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
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

**Decision on the Defence request for orders concerning the conduct of
proceedings**

Order to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Fatou Bensouda
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Counsel for the Defence

Melinda Taylor
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Legal Representatives of Victims

Seydou Doumbia
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Article 64(8)(b) of the Rome Statute and Rule 140(1) of the Rules of Procedure and Evidence, issues the following ‘Decision on the Defence request for orders concerning the conduct of proceedings’.

I. Procedural history and submissions

1. On 6 May 2020, the Chamber adopted the ‘Directions on the conduct of proceedings’.¹ Supplemental directions were issued on 19 August 2020,² and subsequently on 4 September 2020.³
2. On 26 October 2020, the Defence filed a request seeking additional orders concerning the conduct of proceedings (the ‘Request’).⁴ First, the Defence requests the Chamber to clarify that the non-calling party shall be permitted to put to a witness the substance of its case which in its view conflicts with the evidence of the witness and that doing so does not form a valid basis for objection. In the submission of the Defence, the clarification is necessary as the Prosecution’s assertions of argumentativeness so far have disrupted the flow of the Defence’s questioning.⁵ Second, the Defence contends that the ‘Prosecution has provided substantial hints or answers in the form of objections during the Defence’s cross examinations. It requests that the Prosecution be directed to refrain from making substantive submissions in its objections,⁶ notably before the Chamber has had the opportunity to determine whether such submissions should be made in the presence of the witness.’⁷

¹ Annex A to the Decision on the conduct of proceedings, 6 May 2020, ICC-01/12-01/18-789, ICC-01/12-01/18-789-AnxA.

² Supplemental decision on matters related to the conduct of proceedings, ICC-01/12-01/18-1004.

³ Third decision on matters related to the conduct of proceedings, ICC-01/12-01/18-1040.

⁴ Defence request for orders concerning the conduct of proceedings, ICC-01/12-01/18-1128-Conf.

⁵ Request, ICC-01/12-01/18-1128-Conf, paras 4-12.

⁶ Request, ICC-01/12-01/18-1128-Conf, paras 13-17.

⁷ Request, ICC-01/12-01/18-1128-Conf, para. 18.

3. On 30 October 2020, the Prosecution filed its response to the Request (the ‘Response’).⁸ The Prosecution submits that the Request should be rejected as the Directions on the conduct of proceedings already regulate the issues at hand,⁹ and that any objections should be decided on a case-by-case basis.¹⁰

II. Analysis

4. The Chamber recalls that paragraph 51 of the Directions on the conduct of proceedings provides as follows:¹¹

The non-calling party shall put to a witness the substance of its case which in its view conflicts with the evidence of the witness, as well as any facts or evidence upon which the non-calling party intends to rely to impeach his or her credibility in order to give the witness an opportunity to respond thereto. Failure to do so may result in the Chamber disregarding or assigning less weight to the impeaching evidence.

5. Also of relevance is paragraph 53 of the Directions on the conduct of proceedings which stipulates that:¹²

Objections by a party to a question must be brief, specific and raised with the Chamber at the time the question is asked. The party making the objection has the responsibility to indicate, before making any substantive submission on its objection, whether it is appropriate to discuss the reasons for objecting in the presence of the witness, and provide the Chamber with an opportunity to decide if the matter is best dealt with in the absence of the witness. The Chamber will decide on a case-by-case basis on any objections.

6. The Chamber considers that these directions provide sufficient guidance on the issues raised by the Defence and that therefore the sought orders are not warranted. The Request is accordingly rejected.
7. The Chamber will continue to decide upon any objections raised in-court on a case-by-case basis and in accordance with the relevant provisions of the Directions on the conduct of proceedings.

⁸ Prosecution response to Defence request for orders concerning the conduct of proceedings, ICC-01/12-01/18-1134-Conf.

⁹ Response, ICC-01/12-01/18-1134-Conf, paras 5-7.

¹⁰ Response, ICC-01/12-01/18-1134-Conf, paras 8-14.

¹¹ Annex A to the Decision on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 51.

¹² Annex A to the Decision on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 53. *See also* e-mail of Trial Chamber X Communications to the parties and participants on 16 November 2020 at 10:14, reminding the parties of this same provision.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

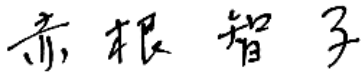
REJECTS the Request.

Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua

Presiding Judge



Judge Tomoko Akane



Judge Kimberly Prost

Dated this Wednesday, 18 November 2020

At The Hague, The Netherlands