



Original: English

**No. ICC-01/12-01/18
Date: 24 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 Prosecution request for variation of Decision on matters related to
Defence challenges under Article 69(7) of the Statute**

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Melinda Taylor

Kirsty Sutherland

Legal Representatives of Victims

Seydou Doumbia

Mayombo Kassongo

Fidel Luvengika Nsita

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 Articles 64(2) and 67 of the Rome Statute (the ‘Statute’), issues the following decision.

1. On 6 November 2020, the Chamber issued its ‘Decision on matters related to Defence challenges under Article 69(7) of the Statute’ (the ‘Decision’),¹ *inter alia* instructing parties to prepare written submissions on allegations regarding torture and cruel, inhuman and degrading treatment (‘CIDT’) and the related Defence challenges under Article 69(7) of the Statute to contested items of evidence for witnesses P-0620 and P-0655 (the ‘Submissions’). The procedure provided for the Defence to file its Submissions by 24 November, followed by responses by 8 December and a reply by 22 December 2020.²
2. On 18 November 2020, the Defence requested an extension of 10 pages for its Submissions, to a total of 30 pages (the ‘Defence Request for Page Extension’).³
3. On 19 November 2020, in accordance with the deadline set by the Chamber,⁴ the Legal Representatives of Victims (the ‘LRVs’) responded that they did not object to the Defence Request for Page Extension.⁵
4. No response was received from the Office of the Prosecutor (the ‘Prosecution’). However, on the same day, the Prosecution filed an urgent application pursuant to Regulation 35 of the Regulations of the Court (the ‘Regulations’) for a variation of timelines in the Decision (the ‘Prosecution Request’).⁶ The Prosecution proposes an alternative procedure whereby it would first request the introduction of the totality of the audio recordings of interviews of the accused, their transcripts and related material, as soon as possible and at the latest by the

¹ Decision on matters related to Defence challenges under Article 69(7) of the Statute, ICC-01/12-01/18-1150.

² Decision, ICC-01/12-01/18-1150, paras 11-12.

³ Defence request for page extension, ICC-01/12-01/18-1158-Conf.

⁴ Email from the Chamber, 18 November 2020, at 15:15.

⁵ Email from the Legal Representatives of Victims, 19 November 2020, at 16:18.

⁶ Prosecution urgent application under regulation 35 for a variation of the timelines on submissions related to article 69(7) of the Statute, ICC-01/12-01/18-1159-Conf.

end of December 2020 (the ‘Request for Introduction’) and seek leave for additions to the Prosecution’s List of Evidence and Witnesses, and then the Defence may make any challenge on the basis of Article 69(7) of the Statute.⁷

5. On 20 November 2020, in response to a request from the Defence pursuant to Regulation 35 of the Regulations, the Chamber suspended the 24 November deadline for the Defence’s Submissions pending the Chamber’s decision on the Prosecution Request until either three working days from the decision, or a date set by the Chamber should the Prosecution Request be granted.⁸
6. On 20 November 2020, in accordance with the deadline set by the Single Judge,⁹ the Defence and LRVs responded to the Prosecution Request. The Defence does not oppose the Prosecution Request, without prejudice to future objections that might be made as concerns future Prosecution requests for additions to its List of Evidence and Witnesses.¹⁰ The LRVs also do not object to the Prosecution Request.¹¹
7. The Chamber notes that while formulated as a request for variation of timelines under Regulation 35 of the Regulations, the Prosecution Request is in effect a request for reconsideration of the Decision and will be considered according to the principles applicable to the latter. The Chamber recalls that it has the power to reconsider its decisions upon request of the parties or *proprio motu*, particularly in light of Articles 64(2) and 67 of the Statute. Nevertheless, reconsideration is exceptional and should only take place if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.¹²

⁷ Prosecution Request, ICC-01/12-01/18-1159-Conf, para. 4.

⁸ Email from the Chamber, 20 November 2020, at 09:57.

⁹ Email from the Single Judge, 19 November 2020, at 17:54.

¹⁰ Email from the Defence, 20 November 2020, at 16:38.

¹¹ Email from the LRVs, 20 November 2020, at 15:47.

¹² Decision on Defence request for reconsideration and, in the alternative, leave to appeal the ‘Decision on witness preparation and familiarisation’, 9 April 2020, ICC-01/12-01/18-734, para. 11; Decision on the Prosecution’s request for reconsideration regarding the presentation of opening statements, 9 June 2020, ICC-01/12-01/18-867, para. 5.

8. At the outset, and as already remarked by the Single Judge,¹³ the Chamber notes the Prosecution Request was filed late. The Prosecution is reminded to make such applications in a timely manner in the future.
9. The Chamber recalls that in the Decision, it noted that although the actual underlying material which was the focus of the Defence's objections had not yet been submitted into evidence, the Chamber would nevertheless consider the objections to this material in its forthcoming decision, and set the principles in relation to similar material.¹⁴ In this respect, the Prosecution submits that its proposed procedure would allow for a more comprehensive and consolidated discussion and determination regarding the admissibility of the totality of the record of the accused's interview and related material, and would be in the interests of clarity and the fair and expeditious conduct of the proceedings.¹⁵ The Chamber accepts these submissions and notes that this approach is unopposed by the Defence and the LRVs.
10. Accordingly, the Chamber vacates the schedule ordered in paragraph 11 of the Decision and orders the Prosecution to file its Request for Introduction and any related requests for additions to its List of Evidence or Witnesses **as soon as possible and no later than 31 December 2020**. The Defence is to file any motion based on Article 69(7) of the Statute in respect of the Request for Introduction and responses to any requests for additions to the List of Evidence and Witnesses **promptly thereafter**. Any such Defence motion should be self-contained and should not incorporate by reference extensive aspects of earlier submissions.
11. This decision is without prejudice to the Chamber's determination on any future Prosecution requests for additions to the Prosecution List of Evidence or Witnesses, and any Defence objections thereto.

¹³ Email from the Single Judge, 19 November 2020, at 17:54.

¹⁴ Decision, ICC-01/12-01/18-1150, para. 13.

¹⁵ Prosecution Request, ICC-01/12-01/18-1159-Conf, paras 3, 5.

12. In light of the present decision, the Defence Request for Page Extension is moot. This is without prejudice of the Defence seeking such an extension if and when the Prosecution files its Request for Introduction and any related requests.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

VACATES the schedule ordered in paragraph 11 of the Decision; and

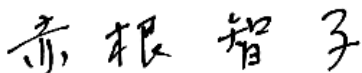
SETS the schedule set out in paragraph 10 above.

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 24 November 2020

At The Hague, The Netherlands