



Original: English

**No. ICC-01/12-01/18
Date: 2 December 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 request for leave to submit *amicus curiae* observations

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
Fair Trials

TRIAL CHAMBER X ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Article 69(7) of the Rome Statute (the 'Statute') and Rule 103 of the Rules of Procedure and Evidence ('Rules'), issues the following decision.

1. On 25 November 2020, the Registry transmitted a request from 'Fair Trials' for leave to submit observations as *amicus curiae* pursuant to Rule 103 of the Rules on issues related to the exclusion of evidence under Article 69(7) of the Statute (the 'Request').¹ Specifically, Fair Trials seeks leave to make submissions on three main issues: '1) comparative overview of application of the exclusionary rule in jurisdictions around the world; 2) the different rationales for exclusion of evidence tainted by torture or cruel, inhuman and degrading treatment (CIDT); 3) exclusionary rule in the Rome Statute and the discretionary power of judges'.²
2. The Chamber recalls that in accordance with Rule 103(1) of the Rules, it may, at any stage of the proceedings, grant leave to a person to submit observations on any issue that the Chamber considers appropriate 'if it considers it desirable for the proper determination of the case'. The Appeals Chamber has previously noted that the relevant chamber has the discretion to determine whether to grant such a request.³ The Chamber notes that it expects to receive written submissions from the parties on the issue of exclusion of evidence allegedly tainted by torture and CIDT under Article 69(7) of the Statute in early 2021.⁴ The issues identified by Fair Trials in the Request are ones which the Chamber expects to be addressed by the parties in these submissions.⁵ Accordingly, on this occasion, the Chamber does not consider that the proposed *amicus curiae* observations are necessary in order to conduct a proper determination of the present case.

¹ Request pursuant to Rule 103 of the Rules of Procedure and Evidence for leave to submit observations as *amicus curiae*, ICC-01/12-01/18-1167 (notified on 27 November 2020).

² Request, ICC-01/12-01/18-1167, para. 2.

³ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on 'Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence', 22 April 2008, ICC-01/04-01/06-1289, para. 8.

⁴ See Decision on Prosecution request for variation of Decision on matters related to Defence challenges under Article 69(7) of the Statute, 24 November 2020, ICC-01/12-01/18-1160, para. 10.

⁵ See e.g., Defence request for page extension, 18 November 2020, ICC-01/12-01/18-1158-Conf, para. 4: in its submissions on Article 69(7) the Defence intends to address, *inter alia*, '[l]egal arguments on the inadmissibility of torture and CIDT-tainted evidence, including all derivative evidence'.

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 2 December 2020

At The Hague, The Netherlands