



Original: English

No. ICC-01/12-01/18

Date: 24 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

Second 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

Counsel for Ammar Al Baluchi

TRIAL CHAMBER X (the ‘Chamber’) 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 69(7) of the Rome Statute (the ‘Statute’) and Rule 103 of the Rules of Procedure and Evidence (the ‘Rules’), issues the following decision.

1. On 9 December 2020, the Registry transmitted a request from ‘Counsel for Ammar Al Baluchi’ 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 The Request identifies Mr. al Baluchi as ‘a co-defendant before the military commission at Guantanamo Bay in the capital proceedings *United States v. Khalid Sheikh Mohammad et al* (the “9/11 case”)’.² Specifically, Counsel for Ammar Al Baluchi seeks leave to make submissions on the issue that ‘Evidence obtained following the torture of a suspect and/or while a suspect remains in prolonged incommunicado detention (as occurred with Mr. al Baluchi) is unreliable and inadmissible pursuant to Article 69(7) of the Rome Statute’.³ Particular subjects for submissions identified in the Request include, *inter alia*, ‘the deleterious impact of prolonged arbitrary and incommunicado detention on the reliability of evidence taken from interrogations in such detention’,⁴ and ‘legal analysis regarding the reliability of evidence obtained pursuant to incommunicado detention and other torture, in a similar situation to Mr. Al Hassan’s’.⁵
2. As recently noted by the Chamber in its ‘Decision on request for leave to submit *amicus curiae* observations’ of 2 December 2020 (the ‘First Rule 103 Decision’),⁶ 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

¹ Request for Leave to File *Amicus Curiae* Submission on Behalf of Ammar Al Baluchi, ICC-01/12-01/18-1200 (dated 7 December 2020, notified on 10 December 2020).

² Request, ICC-01/12-01/18-1200, para. 4.

³ Request, ICC-01/12-01/18-1200, para. 2.

⁴ Request, ICC-01/12-01/18-1200, para. 9.

⁵ Request, ICC-01/12-01/18-1200, para. 11.

⁶ Decision on request for leave to submit *amicus curiae* observations, 2 December, CC-01/12-01/18-1177, para. 2.

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.⁷

3. As noted in the First Rule 103 Decision⁸, the Chamber expects to receive written submissions from the parties on the issue of exclusion of evidence allegedly tainted by torture and cruel, inhumane and degrading treatment under Article 69(7) of the Statute in early 2021.⁹ The Chamber considers that the general issues identified in the Request are ones which will be addressed by the parties in these submissions.¹⁰ 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.

⁷ 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.

⁸ First Rule 103 Decision, ICC-01/12-01/18-1177, para. 2.

⁹ 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.

¹⁰ 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'.

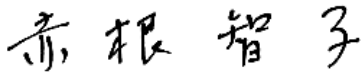
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

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 24 December 2020

At The Hague, The Netherlands