

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/12-01/18**

Date: **15 March 2021**

Date of submission:

29 April 2021

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 “Defence response to ‘Requête sollicitant l’accès à l’annexe D de la requête de la Défense fondée sur l’article 69(7) (ICC-01/12-01/18-1346-Conf) et à plusieurs éléments de preuve déposés par la Défense”

Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Unrepresented Applicants
(Participation/Reparation)**

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The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

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I. Introduction

1. On 8 March 2021, the Defence filed its ‘Article 69(7) Application’.¹
2. On 11 March 2021, the Legal Representatives for Victims (‘LRV’) filed their ‘Requête sollicitant l’accès à l’annexe D de la requête de la Défense fondée sur l’article 69(7) (ICC-01/12-01/18-1346-Conf) et à plusieurs éléments de preuve déposés par la Défense’² (‘Request’).
3. By the Request, the LRV requested that the Chamber:
 - a. reclassify Annex D to the Defence’s Article 69(7) Application as confidential;³ and
 - b. order disclosure of ‘MLI-D28-0003-2186, MLI-D28-0003-2272, MLI-D28-0003-1203-R01, MLI-D28-0003-0417-R01, MLI-D28-0003-0017 and MLI-D28-0003-2272’ [*sic*] to the LRV.⁴
4. On 11 March 2021, the Single Judge shortened the deadline for any responses to the Request to the close of business on 15 March 2021.⁵
5. The Defence opposes the Request on the basis that:
 - a. The reclassification request is unjustified and should be rejected; and
 - b. The disclosure requests are either moot, as these items have been disclosed to the LRV, or should be rejected, on the basis of the sensitive personal information contained within the items.
6. Furthermore, in accordance with standard disclosure procedures, the Defence invites the LRV to first contact the Defence with its disclosure requests before seizing the Chamber, in order to avoid unnecessary litigation and to expedite matters.

¹ ICC-01/12-01/18-1346-Conf.

² ICC-01/12-01/18-1354-Conf.

³ ICC-01/12-01/18-1354-Conf, para 6.

⁴ ICC-01/12-01/18-1354-Conf, paras 7-12. The Request lists MLI-D28-0003-2272 twice.

⁵ Annex A.

II. Confidentiality

7. Pursuant to Regulation 23bis(2) of the Regulations of the Court, this response has been filed confidentially as it responds to a filing of the same classification.

III. Submissions

The reclassification request is unjustified and inappropriate

8. The requested annex, Annex D, is an email exchange between the Prosecution and the Defence concerning an outstanding *inter partes* investigative request for the Defence [REDACTED]. The LRV have not demonstrated any justification for access to this information and disclosure would not be necessary where the Article 69(7) Application sufficiently describes the content of the Annex.⁶

The disclosure requests are either moot, or should be rejected to protect sensitive personal information pertaining to Defence sources

9. Three of these items requested (MLI-D28-0003-2186, MLI-D28-0003-2272 and MLI-D28-0003-1203-R01) were released to the LRV on 15 March 2021. The requests regarding these items are therefore moot.
10. The remaining two items (MLI-D28-0003-0417-R01 and MLI-D28-0003-0017) have not been released to the LRV. These documents are of peripheral relevance to the allegations contained in the Article 69(7) Application, but contain sensitive, personal information relating to Defence sources. Continuing non-disclosure is therefore sought on the basis of the principles set out by the Single Judge in the ‘Decision on Defence request regarding LRVs’ access to material submitted in support of Defence motion to terminate the proceedings’⁷, in relation to specific material.

11. The Single Judge noted in that decision that:⁸

[REDACTED]

⁶ The Article 69(7) Application describes ‘[the Prosecution’s] failure to make [REDACTED] prior to the submission of this application’: ICC-01/12-01/18-1346-Conf, para 20.

⁷ ICC-01/12-01/18-958-Conf-Red.

⁸ ICC-01/12-01/18-958-Conf-Red, paras 8-10.

12. The Defence notes that the redactions to MLI-D28-0003-1203-R02 and the non-disclosure of MLI-D28-0003-0417-R01 and MLI-D28-0003-0017 are particularly necessary, as the Defence has not been able to obtain the consent of the individuals covered in these documents given the short amount of time between the date of the Request (11 March 2021) and the date on which this response was due (15 March 2021). In this regard, in accordance with standard disclosure procedures, the Defence invites the LRV to first contact the Defence with its disclosure requests before seizing the Chamber, in order to avoid unnecessary litigation and to expedite matters.

IV. Relief sought

13. The Defence respectfully requests that Trial Chamber X:

- a. **REJECT** the request for the reclassification of Annex D to the Article 69(7) Application;
- b. **DECLARE MOOT** the disclosure requests for MLI-D28-0003-1203-R01, MLI-D28-0003-2186 and MLI-D28-0003-2272; and
- c. **REJECT** the disclosure requests for MLI-D28-0003-0417-R01 and MLI-D28-0003-0017.



Melinda Taylor
Counsel for Mr. Al Hassan

Dated this 15th Day of March 2021
At The Hague, The Netherlands