

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 7 June 2021

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**

Confidential

**Decision on Defence request for reconsideration of, or leave to appeal, the
decision on ‘Urgent Defence Request for Disclosure related to Witness
Preparation Sessions with Witness P-0150’**

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

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(7), 67 and 82(1)(d) of the Rome Statute (the ‘Statute’), issues the following ‘Decision on Defence request for reconsideration of, or leave to appeal, the decision on “Urgent Defence Request for Disclosure related to Witness Preparation Sessions with Witness P-0150”’.

I. Procedural history and submissions

1. On 11 May 2021, the Defence filed a request for disclosure related to the witness preparation sessions with P-0150 (the ‘Disclosure Request’).¹
2. On 18 May 2021, the Office of the Prosecutor (the ‘Prosecution’) filed its response opposing the Disclosure Request.²
3. On 19 May 2021, the Single Judge issued an email decision rejecting the Disclosure Request (the ‘Impugned Decision’).³
4. On 25 May 2021, the Defence filed a request seeking reconsideration of or, in the alternative, leave to appeal the Impugned Decision (the ‘Request’).⁴ The Defence submits that reconsideration is warranted as the Impugned Decision, in particular the Single Judge’s finding that the Log contains mainly clarifications or specifications, is based on a clear error of reasoning. In the alternative, the Defence requests leave to appeal the following two issues: (i) whether new information, including but not limited to clarifications or specifications, concerning the witness’ knowledge of the case provided during preparation sessions constitutes a ‘statement’ within the meaning of Rule 76 of the Rules of Procedure and Evidence (the ‘Rules’) and thus triggers the protections and obligations provided therein (in circumstances where the information is not duplicated elsewhere (the ‘First Issue’); and (ii) whether the Prosecution has an

¹ Urgent Defence Request for Disclosure related to Witness Preparation Sessions with Witness P-0150, ICC-01/12-01/18-1468-Conf.

² Prosecution response to Urgent Defence Request for Disclosure related to Witness Preparation Sessions with Witness P-0150, ICC-01/12-01/18-1483-Conf.

³ Email from the Chamber dated 19 May 2021 at 16:30.

⁴ Defence request for reconsideration of, or leave to appeal, ‘Decision on Defence request for leave to reply to Prosecution’s filing 1483’, ICC-01/12-01/18-1499-Conf (with confidential annexes A and B).

obligation to disclose records generated by the preparation session that are material to the preparation of the Defence pursuant to Rule 77 of the Rules, and that the Single Judge has an obligation to review materiality (the 'Second Issue').

5. On 31 May 2021, the Prosecution filed its response to the Request, in which it requests the Chamber to reject the Request (the 'Response').⁵

II. Analysis

6. The Chamber recalls that it has the power to exceptionally reconsider its decisions if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.⁶ The Chamber also incorporates by reference the legal framework applicable to the assessment of requests for leave to appeal pursuant to Article 82(1)(d) of the Statute.⁷
7. At the outset, the Chamber observes that prior to the issuance of the Impugned Decision, the Defence requested leave to reply to the Response to Disclosure Request and to make additional submissions 'including a table with concise references to the relevant portions of the Witness Preparation Log which the Defence considers contain new and substantial information'.⁸ The Single Judge rejected the leave to reply as unnecessary for her determination on the Disclosure Request.⁹ The Chamber accordingly does not consider Annex B to the Request – which includes a Defence table setting out specific extracts and comments on the log - as being 'a new factor'. Rather, and as noted by the Prosecution,¹⁰ the Single Judge had duly taken into account the content of the

⁵ Réponse de l'Accusation à la "Defence request for reconsideration of, or leave to appeal, 'Decision on Defence request for leave to reply to Prosecution's filing 1483'", ICC-01/12-01/18-1504-Conf.

⁶ 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.

⁷ Decision on Defence request for reconsideration and, in the alternative, leave to appeal the 'Decision on witness preparation and familiarisation', ICC-01/12-01/18-734, para. 12; Decision on Defence request for leave to appeal the 'Decision on Mr Al Hassan's ongoing fitness to stand trial', 28 May 2021, ICC-01/12-01/18-1503, para. 7.

⁸ Email from the Defence dated 19 May 2021 at 12:11. *See also* Email from the Defence dated 19 May 2021 at 16:15.

⁹ Email from the Chamber dated 19 May 2021 at 16:03; Impugned Decision.

¹⁰ Response, ICC-01/12-01/18-1504-Conf, para. 8.

log, including the portions identified by the Defence, in deciding that they do not contain 'entirely new information'.¹¹

8. Accordingly, as regards the request for reconsideration and the First Issue, the Chamber considers that the Defence is merely expressing its disagreement with the Single Judge by mischaracterising the scope of the Impugned Decision. The Chamber considers that this neither warrants the exceptional remedy of reconsideration, nor does it constitute an appealable issue.
9. The Second Issue identified by the Defence simply does not arise from the Impugned Decision and as such is not an 'appealable issue'.
10. It is accordingly unnecessary to address the remainder of the cumulative requirements of Article 82(1)(d) of the Statute.

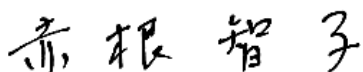
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

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 Monday, 7 June 2021

At The Hague, The Netherlands

¹¹ Impugned Decision.