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No. ICC-01/12-01/18

Date: 08 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***

Public

**Second decision on requests related to the submission into evidence of Mr Al
Hassan's statements**

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

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**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 21(3), 55, 64, 66, 67 and 69(7) of the Rome Statute (the ‘Statute’), Rules 63, 64, 111 and 112 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 35 of the Regulations of the Court (the ‘Regulations’), issues the following decision.

I. Procedural history

1. On 15, 19 and 21 October 2020, following the respective testimony of expert witnesses P-0620,¹ P-0653² and P-0655,³ the Defence objected by email to the Prosecution’s submission of various items through the witnesses, *inter alia*, requesting the Chamber to exclude evidence pursuant to Article 69(7) of the Statute. Some of the objections related to P-0620’s and P-0655’s reliance on evidence provided by Mr Al Hassan during his interviews with the ICC Prosecution (the ‘ICC Interviews’). The Prosecution replied to these objections on 16,⁴ 21⁵ and 22⁶ October 2020 respectively.
2. On 6 November 2020, the Chamber issued decisions on the submission of items for witnesses P-0620 and P-0621,⁷ and P-0653 and P-0655,⁸ accepting for submission some of the objected items, but noting that the challenges made by the Defence pursuant to Article 69(7) referred to the admissibility of the expert reports and the legality of the underlying materials relied upon therein, and that the Chamber would render a ruling on these matters in due course.⁹
3. On 18 December 2020, following a procedure established by the Chamber,¹⁰ the Prosecution filed a request for the introduction into evidence, pursuant to Article

¹ Email from the Defence, 15 October 2020, at 15:39 (the ‘Defence P-0620 Submissions’).

² Email from the Defence, 19 October 2020, at 13:50 (the ‘Defence P-0653 Submissions’).

³ Email from the Defence, 21 October 2020, at 15:03 (the ‘Defence P-0655 Submissions’).

⁴ Email from the Prosecution, 16 October 2020, 18:24 (the ‘Prosecution P-0620 Reply’).

⁵ Email from the Prosecution, 21 October 2020, at 14:43 (the ‘Prosecution P-0653 Reply’).

⁶ Email from the Prosecution, 22 October 2020, at 15:20 (the ‘Prosecution P-0655 Reply’).

⁷ Email from the Chamber, 6 November 2020, at 09:21 (the ‘P-0620/P-0621 Submission Decision’).

⁸ Email from the Chamber, 6 November 2020, at 15:56 (the ‘P-0653/P-0655 Submission Decision’).

⁹ P-0620/P-0621 Submission Decision; P-0653/P-0655 Submission Decision.

¹⁰ Decision on matters related to Defence challenges under Article 69(7) of the Statute, 6 November 2020, ICC-01/12-01/18-1150; Decision on Prosecution request for variation of Decision on matters

69 of the Statute, of the totality of the evidence provided by Mr Al Hassan during his ICC Interviews (the ‘Request for Introduction’).¹¹ The evidence consists of: (i) the audio recordings and transcripts of Mr Al Hassan’s security assessments and interviews (altogether, the ‘Statements’); (ii) materials signed or produced by Mr Al Hassan during the interviews (the ‘Related Material’);¹² and (iii) material commented on by Mr Al Hassan during his interviews that are not yet submitted into evidence (the ‘Other Material’).¹³

4. On 18 and 23 December 2020, the Prosecution filed three requests related to the Request for Introduction: (i) a request to add medical forms to its List of Evidence pursuant to Regulation 35 of the Regulations, and to submit them into evidence via the bar table;¹⁴ (ii) a request pursuant to Regulation 35 of the Regulations to call psychiatrist and forensic doctor P-0661 as an expert witness and to add the prior recorded testimony and associated material of P-0661 and forensic doctor P-0598 to its List of Evidence, and to introduce this material into evidence pursuant to either Rule 68(2)(b) or Rule 68(3) of the Rules;¹⁵ and (iii) a request pursuant to Regulation 35 of the Regulations to add P-0165 to its List of Witnesses, to add P-0165’s prior recorded testimony and associated material to its List of Evidence, and to introduce that material into evidence pursuant to either

related to Defence challenges under Article 69(7) of the Statute, 24 November 2020, ICC-01/12-01/18-1160.

¹¹ Prosecution request to introduce evidence preserved under article 56 of the Statute, ICC-01/12-01/18-1218-Conf-Exp (confidential *ex parte*, available only to Prosecution and Defence; with confidential *ex parte* Annexes A to C, available only to Prosecution and Defence; public redacted version notified on 29 March 2021, ICC-01/12-01/18-1218-Red).

¹² See ICC-01/12-01/18-1218-Conf-Exp-AnxB.

¹³ See ICC-01/12-01/18-1218-Conf-Exp-AnxC.

¹⁴ Prosecution’s first request for the admission of documentary evidence from the bar table, and regulation 35 request, 18 December 2020, ICC-01/12-01/18-1213-Conf (with one confidential annex; public redacted version notified on 26 April 2021, ICC-01/12-01/18-1213-Red).

¹⁵ Prosecution requests to add five items to its List of Evidence pursuant to regulation 35 of the Regulations of the Court and for the introduction of P-0598’s and P-0661’s prior recorded testimony and associated material into evidence pursuant to rule 68 of the Rules of Procedure and Evidence, 18 December 2020, ICC-01/12-01/18-1215-Conf (with two confidential *ex parte* annexes, available only to the Prosecution and the Defence; public redacted version notified on 30 April 2021, ICC-01/12-01/18-1215-Red).

Rule 68(2)(b) or Rule 68(3) of the Rules¹⁶ (together the ‘Related Evidentiary Requests’). These Requests were all opposed by the Defence.¹⁷

5. On 17 February 2021, the Chamber issued a decision, *inter alia*, deferring its determination of the Prosecution’s Related Evidentiary Requests (the ‘17 February Decision’).¹⁸
6. On 17 May 2021, the Chamber issued the ‘Decision on requests related to the submission into evidence of Mr Al Hassan’s statements’ (the ‘Decision on Mr Al Hassan’s Statements’),¹⁹ in which it: (i) rejected a Defence request to exclude Mr Al Hassan’s ICC Interviews under Article 69(7) of the Statute (the ‘Exclusion Request’) based on allegations relating to torture and cruel, inhuman and degrading treatment (‘CIDT’); and (ii) granted the Prosecution’s Request for Introduction in relation to the Statements.

II. Analysis

A. Scope of this decision

7. In the Decision on Mr Al Hassan’s Statements the Chamber noted that it would issue a subsequent decision on the Prosecution’s Request for Introduction of the Related Material and the Other Material in due course, and also on the Defence

¹⁶ Prosecution request to add P-0165 to its List of Witnesses and to add P-0165’s prior recorded testimony to its List of Evidence pursuant to regulation 35 of the Regulations, and request for the introduction of P-0165’s prior recorded testimony and associated material into evidence pursuant to rule 68 of the Rules of Procedure and Evidence, 23 December 2020, ICC-01/12-01/18-1226-Conf (with one confidential annex; public redacted version notified on 28 April 2021, ICC-01/12-01/18-1226-Conf).

¹⁷ Defence Response to ‘Prosecution’s first request for the admission of documentary evidence from the bar table, and regulation 35 request’, 22 January 2021, ICC-01/12-01/18-1264-Conf (public redacted version notified on 30 April 2021); Defence response to ‘Prosecution requests to add five items to its List of Evidence pursuant to regulation 35 of the Regulations of the Court and for the introduction of P-0598’s and P-0661’s prior recorded testimony and associated material into evidence pursuant to rule 68’, 21 January 2021, ICC-01/12-01/18-1254-Conf (public redacted version notified on 30 April 2021); Defence response to ‘Prosecution request to add P-0165 to its List of Witnesses and to add P-0165’s prior recorded testimony to its List of Evidence pursuant to Regulation 35 of the Regulations, and request for the introduction of P-0165’s prior recorded testimony and associated material into evidence pursuant to rule 68 of the Rules of Procedure and Evidence’, 21 January 2021, ICC-01/12-01/18-1255-Conf (with two confidential *ex parte* annexes available only to the Defence, Prosecution and Registry; public redacted version notified on 30 April 2021).

¹⁸ Decision on Prosecution and Defence procedural requests related to Article 69(7) of the Statute, ICC-01/12-01/18-1304-Conf (public redacted version issued on 20 May 2021, ICC-01/12-01/18-1304-Red).

¹⁹ ICC-01/12-01/18-1475-Conf (public redacted version issued on 20 May 2021, ICC-01/12-01/18-1475-Red).

requests under Article 69(7) of the Statute in relation to the witnesses P-0620, P-0653 and P-0655.²⁰ The present decision contains the Chamber's determinations on these matters. It also contains the Chamber's determination on the Prosecution's Related Evidentiary Requests, which was previously deferred in the 17 February Decision.

B. The P-0620, P-0653 and P-0655 reports, the Related Material and the Other Material

1. Applicable law

8. The Chamber recalls the applicable law on Article 69(7) of the Statute set out in the Decision on Mr Al Hassan's Statements.²¹ In particular, the Chamber recalls that Article 69(7) envisages two consecutive inquiries. First, in accordance with the *chapeau* of this provision, the Chamber must determine whether the evidence at issue was 'obtained by means of a violation of [the] Statute or internationally recognized human rights'. If the conditions of the *chapeau* of Article 69(7) are met, the second step is to consider whether: (i) the 'violation casts substantial doubt on the reliability of the evidence' under Article 69(7)(a); or (ii) the 'admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings' under Article 69(7)(b).²²

2. Submissions and determinations

9. The Defence requests exclusion of portions of P-0620's expert handwriting report (the 'P-0620 Report')²³ pursuant to Article 69(7) of the Statute.²⁴ It submits that the Report relies on underlying material allegedly written or signed by Mr Al Hassan during his ICC Interviews which were obtained by means of a violation of internationally recognised human rights and the Statute, namely Mr Al Hassan's privilege against self-incrimination, and, with the exception of one

²⁰ Decision on Mr Al Hassan's Statements, ICC-01/12-01/18-1475-Red, n. 55, para. 76.

²¹ Decision on Mr Al Hassan's Statements, ICC-01/12-01/18-1475-Red, paras 30-37.

²² Decision on Mr Al Hassan's Statements, ICC-01/12-01/18-1475-Red, para. 31.

²³ MLI-OTP-0064-0175, MLI-OTP-0064-0332, and MLI-OTP-0066-0200 (page 0209). While this is a joint report co-authored by P-0620 and P-0621, the Defence clarified that the request for exclusion of the Report concerns P-0620's findings alone: see Defence P-0620 Submissions.

²⁴ Defence P-0620 Submissions.

item,²⁵ obtained while he was held in arbitrary detention and subjected to torture. The objected underlying materials are some of the Related Material,²⁶ and an appointment of counsel form,²⁷ and were used by P-0620 for signature comparison in her Report. The Defence further objects, in relation to some of the items, that the Prosecution cannot rely on evidence which is ‘not recorded’.

10. The Defence further requests exclusion of P-0655’s expert voice recognition report (the ‘P-0655 Report’)²⁸ pursuant to Article 69(7) of the Statute.²⁹ It submits that the Report relies for an incriminating purpose on underlying material obtained by means of a violation of internationally recognised human rights and the Statute, namely Mr Al Hassan’s right to privacy and privilege against self-incrimination, and, for some of the material, obtained while Mr Al Hassan was held in arbitrary detention and subjected to torture. The objected underlying materials are: (i) some of the audio recordings forming part of the Statements (the ‘Statement Recordings’);³⁰ and (ii) video recordings of public court hearings in this case showing Mr Al Hassan (the ‘Court Recordings’),³¹ used by P-0655 for voice analysis. The Court Recordings themselves were not accepted for submission into evidence through P-0655 following his testimony.³²

²⁵ Appointment of counsel form, MLI-OTP-0061-0950.

²⁶ The specific objected items are items 1, 3-8 in section 1 of ICC-01/12-01/18-Conf-Exp-AnxB (MLI-OTP-0049-0241; MLI-OTP-0056-0421; MLI-OTP-0056-0424; MLI-OTP-0056-0426; MLI-OTP-0056-0428; MLI-OTP-0056-0430; MLI-OTP-0057-0002) and all of the items in section 2 of ICC-01/12-01/18-Conf-Exp-AnxB (MLI-OTP-0048-0014; MLI-OTP-0048-0016; MLI-OTP-0048-0018; MLI-OTP-0048-0766; MLI-OTP-0048-0769; MLI-OTP-0048-0772; MLI-OTP-0048-0775; MLI-OTP-0049-0245; MLI-OTP-0049-0249; MLI-OTP-0051-0093; MLI-OTP-0051-0097; MLI-OTP-0052-0411; MLI-OTP-0052-0417; MLI-OTP-0052-0419; MLI-OTP-0052-0421; MLI-OTP-0056-0003; MLI-OTP-0056-0006; MLI-OTP-0056-0009; MLI-OTP-0056-0012). See Defence P-0620 Submissions, email from the Defence 7 October 2020 at 15:47, and email from the Prosecution 24 September 2020, at 23:18.

²⁷ MLI-OTP-0061-0950.

²⁸ MLI-OTP-0069-9833.

²⁹ Defence P-0655 Submissions.

³⁰ The specific objected items are items 1-6 in ICC-01/12-01/18-Conf-Exp-AnxA (MLI-OTP-0048-0024; MLI-OTP-0048-0025; MLI-OTP-0048-0026; MLI-OTP-0048-0790; MLI-OTP-0048-0791; MLI-OTP-0048-0792); see Defence P-0655 Submissions and email from the Defence, 13 October 2020, at 15:35.

³¹ MLI-OTP-0072-0413; MLI-OTP-0072-0414; MLI-OTP-0072-0415; MLI-OTP-0072-0416; MLI-OTP-0072-0417; MLI-OTP-0072-0418; MLI-OTP-0072-0419; MLI-OTP-0072-0420; MLI-OTP-0072-0421; MLI-OTP-0072-0422; MLI-OTP-0072-0423; MLI-OTP-0072-0424; MLI-OTP-0072-0425; MLI-OTP-0072-0426; MLI-OTP-0072-0427; MLI-OTP-0073-0751; MLI-OTP-0074-0040.

³² P-0653/P-0655 Submission Decision. The Chamber noted, *inter alia*, that this material was not comprised within the material to be submitted pursuant to Rule 68(3) of the Rules, and was not otherwise shown to the witness in court.

11. Finally, the Defence requests exclusion of P-0653's expert facial recognition report (the 'P-0653 Report')³³ pursuant to Article 69(7) of the Statute.³⁴ It submits that the Report relies for an incriminating purpose on underlying materials obtained by means of a violation of internationally recognised human rights and the Statute, namely Mr Al Hassan's right to privacy and privilege against self-incrimination. The objected underlying materials are three of the aforementioned Court Recordings,³⁵ used by P-0653 for facial recognition analysis.
12. At the outset, the Chamber notes that all Defence objections made on the basis of allegations of torture and CIDT are moot as a result of the Chamber's findings in the Decision on Mr Al Hassan's Statements. Those arguments are accordingly not discussed further in this decision. In addition, the Chamber will not address in this decision other general Defence arguments which go to the reliability and weight of the experts' reports. In line with its previous decisions, the Chamber will consider the relevance and probative value of these items as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused, having due regard to the parties' submissions.
13. Noting the overlapping nature of the remaining objections, the Chamber will proceed by reference to the categories of the relevant underlying material: (1) the Court Recordings; (2) the Statement Recordings; (3) the Related Material; and (4) the Other Material.

3. Court Recordings

14. The Defence submits, *inter alia*, that the use of the Court Recordings to instruct facial recognition expert P-0653 was done without Mr Al Hassan's knowledge or consent, and in the absence of any legal order authorising such use.³⁶ The Prosecution submits that the Defence's arguments are meritless, arguing, *inter alia*, that the right to privacy does not arise in relation to the use of publicly-

³³ MLI-OTP-0066-2198.

³⁴ Defence P-0653 Submissions.

³⁵ MLI-OTP-0072-0413, MLI-OTP-0073-0751, and MLI-OTP-0074-0040.

³⁶ Defence P-0653 Submissions.

recorded Court hearings and that the use of publicly-recorded Court hearings does not impinge upon Mr Al Hassan's privilege against self-incrimination.³⁷

15. The Defence makes similar submissions about the use of Court Recordings by voice recognition expert P-0655, although in relation to the use of voices in those Recordings rather than images.³⁸ In addition, in relation to the P-0655 Report the Defence submits that the use of the interpreter's voices from the Court Recordings also represents an interference with the right to privacy.³⁹ The Prosecution submits that the use of the Court Recordings for the purposes of P-0655's expert voice recognition assessment does not impinge upon the accused's right to privacy or privilege against self-incrimination.⁴⁰
16. The Chamber recalls that it already rejected earlier, similar submissions from the Defence as to the legality of the P-0653 Report.⁴¹ In particular, the Chamber noted that the images of Mr Al Hassan's attendance at court hearings were publicly available, and did not consider that the use of a recent publicly available image of the accused to compare it with other available images in the possession of the Prosecution infringed the accused's rights, particularly in relation to self-incrimination.⁴²
17. The Chamber reiterates these findings, and considers that they apply equally to the use of the voice of the accused (and interpreters) from the public Court Recordings. The Chamber finds no violation for the purpose of Article 69(7) of the Statute and accordingly dismisses the Defence objections to the P-0653 Report and the P-0655 Report on the basis of the Court Recordings. In relation to the Defence's objections to the P-0620 Report on the basis of the appointment of counsel form, which is a public document,⁴³ the Chamber applies the same approach and dismisses this objection.

³⁷ Prosecution P-0653 Reply.

³⁸ Defence P-0655 Submissions.

³⁹ Defence P-0655 Submissions.

⁴⁰ Prosecution P-0655 Reply.

⁴¹ Public redacted version of the Decision on Prosecution's proposed expert witnesses, 21 October 2020, ICC-01/12-01/18-989-Red, para. 59.

⁴² ICC-01/12-01/18-989-Red, para. 59.

⁴³ MLI-OTP-0061-0950 (ICC-01/12-01/18-19-AnxI).

4. *The Statement Recordings*

18. The Defence submits that P-0655's use in his report of Mr Al Hassan's and the interpreter's voices from some of the Statement Recordings represents interferences with their rights to privacy.⁴⁴ The Prosecution submits that the accused's right to privacy is not violated by P-0655's use of the recordings.⁴⁵
19. The Defence further submits, *inter alia*, that the Prosecution did not inform Mr Al Hassan that his voice on the recording could be used for an incriminating purpose, constituting a violation of Mr Al Hassan's privilege against self-incrimination and that furthermore, no such warning was provided to the interpreter present at the interview.⁴⁶ The Defence further submits that since Rule 111 of the Rules requires the recording of questioning, it would be contrary to the integrity of the proceedings to allow the Prosecution to use this evidence for this purpose.⁴⁷ The Prosecution submits that the accused's privilege against self-incrimination was not violated by P-0655's use of the recordings.⁴⁸
20. The Chamber notes that the Statement Recordings were prepared for use in these proceedings and have now been admitted into evidence. The Chamber notes that the procedure for recording the ICC Interviews under Rule 112 of the Rules was clearly explained to Mr Al Hassan on his first day of interviews, and that Mr Al Hassan consented to the recording procedure.⁴⁹ The Chamber further recalls its previous findings that: (i) the Prosecution duly informed Mr Al Hassan that the interview was conducted in particular pursuant to Article 55(2) of the Statute, considering that there were grounds to believe that he had committed crimes under the Statute; (ii) questions of procedure and rights in the context of Mr Al Hassan's ICC interviews were clearly and thoroughly explained by the Prosecution, and Mr Al Hassan confirmed that he understood these and decided to proceed with the interview; and (iii) the Prosecution systematically informed

⁴⁴ Defence P-0655 Submissions.

⁴⁵ Prosecution P-0655 Reply.

⁴⁶ Defence P-0655 Submissions.

⁴⁷ Defence P-0655 Submissions.

⁴⁸ Prosecution P-0655 Reply.

⁴⁹ 13 July 2017 MLI-OTP-0051-1257 from 1261 to 1263.

Mr Al Hassan of his right to silence and his privilege against self-incrimination, giving general and specific warnings.⁵⁰ In this context, since the information available indicates that Mr Al Hassan consented to the recording of an interview in which he freely participated, the Chamber finds no foundation in Defence's argument that subsequent use of the audio recordings to instruct a Prosecution expert to prepare a report in these proceedings constitutes a violation of Mr Al Hassan's (or the interpreter's) right to privacy, or Mr Al Hassan's privilege against self-incrimination. The Chamber finds no violation for the purpose of Article 69(7) of the Statute and accordingly dismisses the Defence objections to the P-0655 Report on the basis of the Statement Recordings.

5. *The Related Material*

21. The Chamber recalls that the Related Material comprises a number of items purportedly written or signed by Mr Al Hassan during his ICC interviews, and some of their translations.⁵¹ These items are sought to be submitted into evidence by the Prosecution for the purpose of authenticating Mr Al Hassan's signature.⁵²

(a) Recording of evidence

22. In relation to the sealed bags containing the audio-recordings of the ICC Interviews purportedly signed by Mr Al Hassan,⁵³ the Defence submits, in relation to the P-0620 Report, that the Prosecution cannot rely on evidence which is not recorded.⁵⁴ The Defence notes that the relevant items are all seals of interview tapes allegedly signed by Mr Al Hassan after being interviewed by the Prosecution,⁵⁵ but submits that the process by which the signature and sealing happened is not recorded for all of the individual sessions.⁵⁶

⁵⁰ Decision on Mr Al Hassan's Statements, ICC-01/12-01/18-1475-Red, paras 55, 57.

⁵¹ ICC-01/12-01/18-1218-Conf-Exp-AnxB.

⁵² Request for Introduction, ICC-01/12-01/18-1218-Red, para. 23.

⁵³ All items in section 2 of ICC-01/12-01/18-Conf-Exp-AnxB (MLI-OTP-0048-0014; MLI-OTP-0048-0016; MLI-OTP-0048-0018; MLI-OTP-0048-0766; MLI-OTP-0048-0769; MLI-OTP-0048-0772; MLI-OTP-0048-0775; MLI-OTP-0049-0245; MLI-OTP-0049-0249; MLI-OTP-0051-0093; MLI-OTP-0051-0097; MLI-OTP-0052-0411; MLI-OTP-0052-0417; MLI-OTP-0052-0419; MLI-OTP-0052-0421; MLI-OTP-0056-0003; MLI-OTP-0056-0006; MLI-OTP-0056-0009; MLI-OTP-0056-0012).

⁵⁴ Defence P-0620 Submissions.

⁵⁵ Defence P-0620 Submissions and email from the Defence 7 October 2020 at 15:47.

⁵⁶ Defence P-0620 Submissions.

23. The Chamber finds the Defence objection to be without merit. First, in the case relied on by the Defence, the ICTY Appeals Chamber excluded a record of interview with the defendant in part because there was a break in the record during which the Prosecution discussed substantive matters with the defendant which affected his agreement to be interviewed.⁵⁷ This is distinguishable from the present case where the issue concerns the process by which Mr Al Hassan signed his interview tapes, and the sealing of those tapes, as opposed to a challenge related to the content thereof.
24. Second, nothing on the record indicates to the Chamber that there was any issue with this procedure and the Chamber considers it reasonable to infer that all seals were in fact signed by Mr Al Hassan as indicated. This inference is based on the fact that: (i) the procedure for recording the interview under Rule 112 of the Rules was clearly explained to Mr Al Hassan on his first day of interviews, including the procedure for sealing the memory cards and signing of the seals, and Mr Al Hassan consented to the recording procedure;⁵⁸ (ii) reference was made at the end of more than half of the interviews about the sealing of the memory cards, which, from the language used, was clearly intended to take place after the recording was stopped;⁵⁹ (iii) the language used during these exchanges indicates that the memory cards were sealed at the close of the interviews as a matter of course;⁶⁰ and (iv) on one occasion, following an issue with the memory cards which was detected on 8 December 2017, the transcripts indicate that Mr Al Hassan's Article 55(2) counsel was informed immediately on the same day, and at the start of the interview that followed, the issue was corrected and the bag was sealed and signed by Mr Al Hassan during the interview of 15 January 2018.⁶¹ The Defence objection to these items is therefore dismissed.

⁵⁷ ICTY, Appeals Chamber, *Prosecutor v. Halilovic*, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the bar table, 19 August 2005, IT-01-48-AR73.2.

⁵⁸ 13 July 2017 MLI-OTP-0051-1257 from 1261 to 1263.

⁵⁹ See 13 July 2017, MLI-OTP-0051-1257 at 1294; 8 September 2017 MLI-OTP-0051-0557 at 0570; 13 September 2017 MLI-OTP-0051-0790 at 0797; 2 October 2017 MLI-OTP-0051-0886 at 0890; 6 December 2017 MLI-OTP-0060-1453 at 1483; 8 December 2017 MLI-OTP-0060-1565 at 1577; 15 January 2018 MLI-OTP-0060-1631 at 1659; 16 January 2018 MLI-OTP-0060-1705 at 1726; 5 March 2018 MLI-OTP-0062-0988 at 1013; 7 March 2018 MLI-OTP-0062-1187 at 1189.

⁶⁰ See e.g. 8 September 2017 MLI-OTP-0051-0557 at 0570.

⁶¹ 15 January 2018 MLI-OTP-0060-1580 from 1583 to 1585.

(b) Privilege against self-incrimination

25. The Defence submits, *inter alia*, that Mr Al Hassan's privilege against self-incrimination was violated in circumstances where the Prosecution obtained certain handwriting samples from him during his ICC Interviews and failed to expressly explain to him the reason why they were being obtained, did not inform him that they could be used for an incriminating purpose or explained to him that evidence was obtained for another purpose (i.e. for the purpose of his security questionnaire), and failed to inform him of his right to silence and privilege against self-incrimination in the provision of real evidence.⁶² The Prosecution submits, *inter alia*, that the Defence fails to substantiate that the right against self-incrimination covers Mr Al Hassan's handwriting samples in this instance.⁶³
26. At the outset, the Chamber is not convinced that the right against self-incrimination applies to Mr Al Hassan's handwriting samples in this instance, noting the fact that the objected items were used by expert P-0620 for signature comparison, rather than for purposes relating to their substantive content. Furthermore, the Chamber again recalls its previous findings that: (i) questions of procedure and rights in the context of Mr Al Hassan's ICC interviews were clearly and thoroughly explained by the Prosecution, and Mr Al Hassan confirmed that he understood these and decided to proceed with the interview; (ii) the Prosecution duly informed Mr Al Hassan that the interview was conducted in particular pursuant to Article 55(2) of the Statute, considering that there were grounds to believe that he had committed crimes under the Statute; and (iii) the Prosecution systematically informed Mr Al Hassan of his right to silence and his privilege against self-incrimination, giving not only general but also specific warnings.⁶⁴ In addition, the Chamber further observes that, as noted by the Defence, Mr Al Hassan was given specific warnings about the privilege against self-incrimination in relation to four of the objected handwriting samples.⁶⁵ In particular, the Prosecution stated that the purpose of the exercise was to be more

⁶² Defence P-0620 Submissions.

⁶³ Prosecution P-0620 Reply.

⁶⁴ Decision on Mr Al Hassan's Statements, ICC-01/12-01/18-1475-Red, paras 55, 57.

⁶⁵ See 8 March 2018 MLI-OTP-0062-1268 from 1271 to 1272.

precise in the authentication of the documents, advised Mr Al Hassan that he had the choice to accept or refuse to do this and reminded Mr Al Hassan that he could consult his counsel.⁶⁶ Mr Al Hassan indicated he had no problem with this exercise.⁶⁷ In view of all of these factors, the Chamber considers that there is no violation of the Statute or internationally recognised human rights for the purpose of Article 69(7) of the Statute.

27. The Chamber is similarly unconvinced that the second step of the Article 69(7) test would be satisfied. Under Article 69(7)(a), the assumed violation would have, in the view of the Chamber, no impact on the reliability of the handwriting samples. In relation to Article 69(7)(b), against the factors set out in the preceding paragraph, and having due regard to the importance of the privilege against self-incrimination as a corollary to the presumption of innocence as enshrined in Article 66 of the Statute, the Chamber does not consider authorising the submission of this evidence (or the use of this evidence by the expert P-0620) to be in any way antithetical to or seriously damaging to the integrity of these proceedings.
28. The Defence's objections to the P-0620 Report on the basis of the Related Material, and objections to the Related Material are accordingly dismissed and the Chamber considers that the Related Material can be submitted into evidence.

6. The Other Material

29. The Other Material consists of 17 items which the Chamber notes were shown to and commented on by Mr Al Hassan during his ICC Interviews and which have not yet been submitted into evidence.⁶⁸ The Defence made no submissions in relation to these items. The Chamber considers that the Other Material can be submitted into evidence.

⁶⁶ 8 March 2018 MLI-OTP-0062-1268 from 1271 to 1272.

⁶⁷ See 8 March 2018 MLI-OTP-0062-1268 at 1272.

⁶⁸ ICC-01/12-01/18-1218-Conf-Exp-AnxC.

C. The Related Evidentiary Requests

30. The Chamber recalls that in the 17 February Decision, it relevantly noted that formal submission into evidence of the Related Evidentiary Requests material was not required for the Chamber to determine the Defence's Article 69(7) challenges, rather the material 'is relevant to any eventual assessment by Chamber of the weight and probative value to be accorded to Mr Al Hassan's Interview Material'.⁶⁹
31. The Chamber notes that the Related Evidentiary Requests material is not related to the facts and circumstances of charges, but was sought to be introduced into evidence by the Prosecution in support of the voluntary nature of Mr Al Hassan's Statements.⁷⁰ In the Decision on Mr Al Hassan's Statements, in which the Chamber not only determined the Defence's Article 69(7) request but also admitted the Statements into evidence,⁷¹ the Chamber found that it was satisfied of the voluntary nature of Mr Al Hassan's Statements for the purpose of that determination.⁷² The Chamber did not consider it necessary in that Decision to refer at all to the Medical Documents Request material or the reports of P-0598 and P-0661, and only relied in an extremely limited manner on P-0165's statement.⁷³ Accordingly, although recalling that the assessment of Mr Al Hassan's Statements for the purposes of admissibility is distinct from the question of evidentiary weight,⁷⁴ the Chamber is not convinced that the introduction into evidence of the Related Evidentiary Requests material, is necessary for the determination of the truth. The Related Evidentiary Requests are therefore rejected, without prejudice.

⁶⁹ 17 February Decision, ICC-01/12-01/18-1304-Red, para. 28.

⁷⁰ Medical Documents Request, ICC-01/12-01/18-1213-Red, para. 4; P-0598 and P-0661 Request, ICC-01/12-01/18-1215-Red, paras 3, 44; P-0165 Request, ICC-01/12-01/18-1226-Conf, para. 28.

⁷¹ Decision on Mr Al Hassan's Statements, ICC-01/12-01/18-1475-Conf, paras 23-27, 73-77.

⁷² Decision on Mr Al Hassan's Statements, ICC-01/12-01/18-1475-Red, para. 75.

⁷³ Decision on Mr Al Hassan's Statements, ICC-01/12-01/18-1475-Conf, paras 47, 51, 67.

⁷⁴ Decision on Mr Al Hassan's Statements, ICC-01/12-01/18-1475-Red, para. 29.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:

REJECTS the Defence requests under Article 69(7) of the Statute in relation to P-0620, P-0653 and P-0655 and some of the Related Material;

AUTHORISES the submission into evidence of the Related Material and the Other Material;

INSTRUCTS the Registry to reflect the submission of the Related Material⁷⁵ and the Other Material⁷⁶ in the eCourt metadata; and

REJECTS the Related Evidentiary Requests, without prejudice.

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 08 June 2021

At The Hague, The Netherlands

⁷⁵ See ERNs listed in ICC-01/12-01/18-1218-Conf-Exp-AnxB.

⁷⁶ See ERNs listed in ICC-01/12-01/18-1218-Conf-Exp-AnxC.