



**Original: English**

**No. ICC-01/12-01/18  
Date: 28 January 2022**

**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 Prosecution application submitting 30 exhibits into evidence**

**To be notified in accordance with Regulation 31 of the *Regulations of the Court* to:****The Office of the Prosecutor**

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Defence****States Representatives*****Amicus Curiae*****REGISTRY****Registrar**

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**TRIAL CHAMBER X** of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, pursuant to Articles 64, 67(1), 69 and 74(2) of the Rome Statute (the ‘Statute’), Rules 63 and 64 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 39 of the Regulations of the Court (the ‘Regulations’), issues the following decision.

## **I. Procedural background**

1. On 6 May 2020, the Chamber issued the ‘Directions on the conduct of proceedings’, notably adopting a procedure for the submission of evidence other than through a witness.<sup>1</sup>
2. On 6 January 2022, the Office of the Prosecutor (the ‘Prosecution’) filed the ‘Prosecution’s third request for the admission of documentary evidence from the bar table’ (the ‘Request’).<sup>2</sup> In annexes to its Request, the Prosecution provides two tables which list the 30 items submitted and include relevant information, notably a description of their content, an index of the most relevant portions (where appropriate), a description of each items’ purported relevance and probative value, as well as preliminary comments and objections made by the Defence (where available).<sup>3</sup>
3. On 21 January 2022, the Defence filed its response to the Request.<sup>4</sup> With the prior authorisation of the Single Judge,<sup>5</sup> the Defence appends to its Response the tables provided by the Prosecution with an added a column including Defence submissions on each item submitted (together, the ‘Response’).<sup>6</sup> As further discussed below, the Defence opposes the submission into evidence of all the exhibits identified by the Prosecution.

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<sup>1</sup> Directions on the conduct of proceedings, 6 May 2020, ICC-01/12-01/18-789-AnxA, paras 77-78.

<sup>2</sup> ICC-01/12-01/18-2079-Conf.

<sup>3</sup> Annex A and B to the Request, ICC-01/12-01/18-2079-Conf-AnxA and ICC-01/12-01/18-2079-Conf-AnxB.

<sup>4</sup> Defence Response to Prosecution’s Third Request for the Admission of Documentary Evidence from the Bar Table, ICC-01/12-01/18-2091-Conf, with six confidential annexes.

<sup>5</sup> Email from the Single Judge to the parties and participants on 21 January 2022 at 10:43.

<sup>6</sup> Defence comments on List of documents proposed for admission from the bar table, Annex A, ICC-01/12-01/18-2091-Conf-AnxA; and Annex B, ICC-01/12-01/18-2091-Conf-AnxB.

4. On the same day, the Legal representatives of victims sent an email indicating they had no submission on the Request.<sup>7</sup>

## II. Analysis and determination

5. The Chamber recalls that, in line with the approach it adopted with respect to the submission of evidence, ‘the Chamber will not issue rulings on admissibility for each item of evidence during the course of proceedings. Rather, the Chamber will recognise the submission of items of evidence without a prior ruling on relevance and/or admissibility and will consider its relevance and probative value as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused’.<sup>8</sup>
6. The Chamber notes that the Prosecution first seeks to tender seven ICC official court documents and recordings of hearings which it submits are relevant to the Chamber’s authentication of evidence already submitted into the record, namely the signature, handwriting and voice and facial recognition of the accused.<sup>9</sup> The Prosecution then seeks to submit 23 open source items consisting of articles, videos and reports the Prosecution submits it collected from the United Nations, non-governmental organisations, and media.<sup>10</sup> Most of these items refer to alleged attacks against protected sites and their purported relevance ‘largely relates to providing a timeframe for the events occurring in Timbuktu’.<sup>11</sup>
7. The Chamber notes that, generally, the Defence opposes the submission into evidence of the items tendered from the bar table because ‘these documents cannot be considered sufficiently relevant or probative to be submitted into evidence’.<sup>12</sup> In this regard, the Defence states:

The documents tendered universally provide little to no information on the sources of the specific points of information, so there is no way for the reliability to be

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<sup>7</sup> Email from the Legal representatives of victims of 21 January 2022 at 16:02.

<sup>8</sup> Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 29.

<sup>9</sup> Request, ICC-01/12-01/18-2079-Conf, para. 11.

<sup>10</sup> Request, ICC-01/12-01/18-2079-Conf, para. 2. *See also*, ICC-01/12-01/18-2079-Conf-AnxA and ICC-01/12-01/18-2079-Conf-AnxB.

<sup>11</sup> Request, ICC-01/12-01/18-2079-Conf, paras 14, 15 (second bullet), 17, 20 (second bullet), 22 (third bullet).

<sup>12</sup> Response, ICC-01/12-01/18-2091-Conf, para. 1.

interrogated. In the absence of relevance and/or probative value, the documents do not qualify for submission from the bar table. The impossibility of assessment of reliability means that the prejudicial impact eclipses their probative value.<sup>13</sup>

8. The Chamber notes further objections from the Defence which are category-specific:
9. **Objection B.** The Defence objects to the submission of most exhibits because their submission would be prejudicial ‘due to non-attribution of the source of the information (e.g. anonymous hearsay)’.<sup>14</sup> In the view of the Defence, and in the absence of sufficient information as to their sources, the probative value of these documents, including NGO reports and news media publications, is either lacking or simply impossible to assess.
10. **Objection D.** The Defence objects to the submission of one item because it argues it would not assist the Chamber in adjudicating facts falling within the temporal and/or geographic scope of the charges.<sup>15</sup>
11. **Objection F.** The Defence also objects to the Request with respect to one item which, it argues, should have been submitted through a witness.<sup>16</sup> In this regard, the Defence submits that the prejudice occasioned by the submission of the relevant report outweighs any probative value that could be ascribed to it and that the Court’s jurisprudence is consistent in determining that such report is unsuitable for submission from the bar table.
12. **Objection G.** The Defence submits that three items submitted lack integrity and are not self-authenticating.<sup>17</sup>
13. **Objection H.** The Defence submits that the reliability of certain exhibits it describes as ‘political declaration[s] and political statement[s]’ is impacted by

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<sup>13</sup> Response, ICC-01/12-01/18-2091-Conf, para. 26.

<sup>14</sup> Category B objections are formulated in respect of Items 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20, 21 (ICC-01/12-01/18- 2091-Conf-AnxB). *See also*, Response, ICC-01/12-01/18-2091-Conf, paras 21-25.

<sup>15</sup> Category D objection is formulated in respect of Item 1 (ICC-01/12-01/18- 2091-Conf-AnxB).

<sup>16</sup> Category F objection is formulated in respect of Item 22 (ICC-01/12-01/18-2091-Conf-AnxB).

<sup>17</sup> Category G objections are formulated in respect of Items 15, 17, 23 (ICC-01/12-01/18-2091-Conf-AnxB).

their political nature and purpose, contends that it constitutes ‘opinion evidence’, and argues that their submission would therefore be prejudicial.<sup>18</sup>

14. **Objection to Category 14 material which are not relied upon in experts’ evidence.** The Defence objects to the submission of certain items which it submits improperly invites the Chamber to undertake unaided signature comparisons.<sup>19</sup> In the view of the Defence, this exercise lies beyond the proper judicial function of the Chamber and requires the conduct of highly specialised forensic analysis.
15. The Defence also formulates additional document-specific objections which, in the view of the Chamber, do not warrant further discussion for the purpose of the present ruling.<sup>20</sup> The only exception is Defence objection to the submission of Item 17 because of the lack of transcript and translation of the original material in Bambara. Consistent with Regulation 39 of the Regulations of the Court, and particularly since the Prosecution identifies as relevant an excerpt of this video which is not in a working language of the Court, the Chamber considers that Item 17 may only be recognised as formally submitted conditional to the provision of a transcript and translation in a working language of the Court of any audible parts of the relevant excerpt.<sup>21</sup>
16. The Chamber considers that all other Defence objections, including category and document-specific objections, relate to the relevance, probative value and potential prejudice of the evidence concerned. The Chamber further observes that, as directed,<sup>22</sup> the Prosecution provided specific submissions on the relevance and probative value of each document submitted via its Request. The Chamber

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<sup>18</sup> Category H objections are notably formulated in respect of Items 2, 3, and 23 (ICC-01/12-01/18-2091-Conf-AnxB). *See also*, Response, ICC-01/12-01/18-2091-Conf, paras 17-20.

<sup>19</sup> Response, ICC-01/12-01/18-2091-Conf, para. 15-16 and ICC-01/12-01/18-2091-Conf-AnxA.

<sup>20</sup> The Chamber specifies that, to the extent it previously rejected the submission of certain items where they were not shown to the relevant witnesses in court or were found not to be necessary to understand prior recorded testimonies introduced, these rulings have no bearing on the present assessment. With regard to the Defence’s submission that introduction of certain court documents and recordings violates Articles 67(g) and 69(7)(b) of the Statute (Response, ICC-01/12-01/18-2091-Conf, para. 12), the Chamber refers to its prior ruling dismissing this argument (Decision on Prosecution’s proposed expert witnesses, 5 August 2020 (public redacted version notified on 21 October 2020), ICC-01/12-01/18-989-Red, para. 59; and Second decision on requests related to the submission into evidence of Mr Al Hassan’s statements, 8 June 2021, ICC-01/12-01/18-1508, paras 16-17, 26-27).

<sup>21</sup> ICC-01/12-01/18-2079-Conf-AnxA, pp. 6-7, referring to the intervention of ‘a member of the groups’ at 00:00:58 – 00:01:12.

<sup>22</sup> Directions on the conduct of proceedings, 6 May 2020, ICC-01/12-01/18-789-AnxA, para. 77.

sees no reason to exceptionally consider these submissions and objections at this point in time and, having found that there are no procedural bars that preclude the admission of all remaining items, defers their consideration until the judgment. Indeed, the Chamber is convinced that consideration thereof will be better rendered in light of the entirety of the evidence brought before it.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:**

**GRANTS** the Request in its entirety;

**RECOGNISES** as formally submitted all items listed in ICC-01/12-01/18-2079-Conf-AnxA and ICC-01/12-01/18-2079-Conf-AnxB (upon condition for Item 17 – MLI-OTP-0001-6945 –, as specified at paragraph 15 above); and

**ORDERS** the Registry to reflect that these items have been so recognised in the eCourt metadata.

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 Friday, 28 January 2022

At The Hague, The Netherlands