

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/12-01/18**
Date: **18 February 2022**
Date of submission: **28**
March 2022

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 Annexes A, B, C and D

Public Redacted Version of “Defence Response to ‘Amendment and Correction to the Prosecution’s sixth request for the admission of documentary evidence from the bar table and Request under Regulation 35 of the Regulations of the Court to include additional items on the Prosecution’s List of Evidence (ICC-01/12-01/18-2102-Conf)’”, 18 February 2022, ICC-01/12-01/18-2122-Conf

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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I. Introduction¹

1. The Defence opposes the submission into evidence of 104 of the items in Annex A, all 36 items in Annex B, 88 of the items in Annex C and 33 of the items in Annex D identified by the Office of the Prosecutor ('Prosecution') in its Sixth Request for the Admission of Documentary Evidence from the Bar Table ('Request').² These documents cannot be considered sufficiently relevant or probative to be submitted into evidence. Their submission will not assist the Trial Chamber in its determination of the truth, nor contribute to the expeditiousness of the proceedings. The Defence does not oppose the submission of Documents 22-23, 33-34 and 39 of Annex A, Documents 46-47 of Annex C or Documents 9-10 of Annex D subject to the provisos contained therein.

II. Submissions

2. The Defence notes the Chamber's previous finding that it 'will not issue rules on admissibility for each item of evidence during the course of proceedings' and will instead '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.'³ The Defence also notes the finding of the Chamber that documents that are testimonial in nature may be submitted only through satisfying the procedural requirements of Rule 68 of the Rules of Procedure and Evidence.⁴
3. Relevance, probative value, and prejudicial effect are the central issues to be considered by the Chamber in assessing whether documentary material may be submitted in this manner and at this stage of the proceedings.⁵ The Chamber is to assess, first, whether the proffered item is relevant to a live issue in the case, and, only if so, turn to determining whether it holds sufficient probative value. If and only if the item is found to be sufficiently probative, the Chamber will then need to examine whether the submission of the item would be unduly prejudicial to the non-calling party.

¹ Pursuant to Regulation 23bis(2) of the Regulations of the Court, this filing is submitted confidentially as it responds to a filing of the same classification.

² [ICC-01/12-01/18-2102-Conf-Corr](#), notified on 4 February 2022, with Confidential Annexes A, C and D and Confidential and Corrected Annex B.

³ [ICC-01/12-01/18-1514](#), para. 4.

⁴ [ICC-01/12-01/18-1514](#), para. 17.

⁵ [ICC-01/12-01/18-2079-Conf](#), para. 9.

4. No burden can be shifted to the Defence. In the event that the Prosecution subsequently submits material that contributes to the establishment of the applicable criteria to the requisite standard, the Defence retains the right to ‘raise issues of relevance or admissibility in light of all the information, either at the time of submission or subsequently within the confines of rule 64(1) of the Rules.’⁶ This rule thus dictates that the Defence must be afforded notice and an opportunity to respond to any evidence and arguments that might be relied upon by the Trial Chamber to establish the relevance and reliability of Prosecution evidence, before such evidence can be relied upon in the judgment.

Relevance

5. It is incumbent upon the tendering party to demonstrate, with sufficient clarity and precision, and at the point of tendering, the relevance of each document to a material fact of the case and ‘how the item of evidence tendered makes this factual proposition more probable or less probable.’⁷ The Prosecution fails to do so in respect of a number of the documents it seeks to submit.

Probative value

6. It is also incumbent upon the tendering party to demonstrate that each document holds sufficient probative value to be relied upon in the judgment. Indicia of authenticity include whether there is sufficient information to establish the authenticity of the document (for open source: verifiable information regarding source; for official records: letter-heads, signatures *et cetera* and documentation of chain of custody; for electronic data: evidence of originality and integrity of content).⁸ The Prosecution makes little effort to demonstrate these elements beyond stating basic indicia of authenticity, which is rudimentary and does not enhance probative value.⁹ Reliability must be demonstrated through information concerning the nature and characteristics of the evidence, the purpose of creation, contemporaneousness, and whether there is sufficient information to allow for a proper evaluation of sources, including whether the source was in a position to accurately and

⁶ Gbagbo, [ICC-02/11-01/15-995](#), para. 56.

⁷ Katanga and Ngudjolo, [ICC-01/04-01/07-2635](#), para. 16. See also: Katanga and Ngudjolo, [ICC-01/04-01/07-3184](#), para. 16; Ruto and Sang, [ICC-01/09-01/11-373](#), para. 66, and [ICC-01/09-01/11-1943-Red](#), para. 9; Ntaganda, [ICC-01/04-02/06-1838](#), para. 9.

⁸ Katanga and Ngudjolo, [ICC-01/04-01/07-2635](#), para. 24; Ntaganda, [ICC-01/04-02/06-1181](#), para. 11.

⁹ Katanga and Ngudjolo, [ICC-01/04-01/07-2635](#), para. 22.

objectively record or recollect information concerning the facts and circumstances of the case, and the means used to compile the data or information in question.¹⁰

7. For hearsay to be accorded any probative value by a Trial Chamber, it ‘at the very least requires the Chamber to be provided with adequate information regarding the reliability and credibility of the original source.’¹¹ It is well-established that no reasonable trier of fact can reach a conclusion to the requisite criminal standard solely on the basis of anonymous or insufficiently detailed hearsay.¹² Assessment of the probative value of anonymous hearsay requires an extremely cautious approach because the source of the information is, by definition, unknown and cannot be evaluated.¹³ While such material might not be automatically ruled out by this court, in its eventual assessment of the probative value, the Chamber will need to take ‘into account the context and conditions in which such evidence was obtained, with due consideration of the impossibility of questioning the information source in court.’¹⁴ Further, the authorities relied on by the Prosecution refer to: the evidentiary weight given to intercepted communications in light of the evidentiary record as a whole, and therefore not to probative value;¹⁵ and hearsay evidence provided by witnesses providing *viva voce* testimony subject to examination by the parties (and which was accordingly afforded ‘only very low probative value’).¹⁶ This is not the nature of the items tendered.
8. Where insufficient or indeed *no* information is provided as to the circumstances in which the information is collected, including but not limited to where sources are not

¹⁰ *Katanga and Ngudjolo*, [ICC-01/04-01/07-2635](#), para. 27.

¹¹ *Gbagbo*, [ICC-02/11-01/15-1263-AnxB-Red](#), para. 42.

¹² *Ntaganda*, [ICC-01/04-02/06-2359](#), para. 453, fn. 1283, specifically: ‘Noting that the only mention of the use of mines comes from HRW report, DRC-OTP-0074-0797, at 0827, in which the source of this specific allegation is anonymous, and that no eyewitnesses confirmed their usage, the Chamber is unable to conclude beyond reasonable doubt that the UPC used land mines during this assault on Songolo.’ See also: ICTR, *Ndindabahizi*, [Appeal Judgement](#), para. 115; *Kalimanzira*, [Appeal Judgement](#), paras 77-80; *Muvunyi*, [Appeal Judgement](#), paras 68-70; and, ECCC, [Case 002/01 Appeal Judgement](#), paras 434 and 442.

¹³ *Gbagbo*, [ICC-02/11-01/15-1263-AnxB-Red](#), 16 July 2019, para. 43. See also, *Katanga and Ngudjolo*, [ICC-01/04-01/07-2635](#), para. 29: ‘Insofar as [United Nations] reports emanate from independent observers who were direct observers of the facts being reported, the Chamber considers them to be *prima facie* reliable. However, if the author’s identity and the sources of the information provided are not revealed with sufficient detail, the Chamber is unable to determine whether the contents of the report have been imparted by an eyewitness or some other reliable source. If such particulars are not available, either from the reports themselves or from their author(s), the Chamber cannot assess the reliability of the content of the reports; it is therefore unable to qualify those documents as sufficiently reliable to be admitted into evidence. Moreover, where such reports are based, for the most part, on hearsay information, especially if that information is twice or further removed from its source, the reliability of their content is seriously impugned.’

¹⁴ *Bemba*, [ICC-01/05-01/08-3343](#), para. 238.

¹⁵ *Bemba et al.*, [ICC-01/05-01/13-2275-Red](#), paras 874-875.

¹⁶ *Ngudjolo*, [ICC-01/04-02/12-271-Corr](#), para. 226; [ICC-01/04-02/12-3-tENG](#), paras 440 and 496.

unidentifiable, the Prosecution places the Chamber in a position in which it is unable to assess the reliability and authenticity of the information, and thus ultimately unable to assess probative value such that it may determine whether to admit the material.¹⁷

9. Reliance on ‘corroboration’ or a deferred determination of evidentiary weight is also insufficient. Corroboration is proposition specific and requires each item to hold probative value in its own right.¹⁸ It is perfectly possible that two items independently carrying little to no probative value say the same thing without being more useful in determining the truth. Worse, falsehoods can swiftly build on each other; such is the nature of rumour or promoted narratives. These do not properly assist the Chamber.

Prejudicial impact

10. While the Rome Statute allows for the submission of evidence ‘from the bar’, it is nonetheless necessary to exercise ‘caution when items are submitted without any corresponding witness to comment on them’.¹⁹ The prejudice caused through the inability of examine the source of information is particularly aggravated in the current instance as first, several items could and should have been submitted through a witness,²⁰ and second, the majority of the tendered documents deny any assessment of the source/s of information.²¹ Without any means to verify even whether the hearsay is, for example, first-hand, third-hand, rumour circling in the civilian or military populations, a comment spreading on social media, or a government-promoted narrative fed to international agencies, the Court is unable to discharge its mandate and the Defence is unable to mount any challenge. In such circumstances the prejudice eclipses the probative value.
11. The Defence provides category-specific objections below, and document-specific objections in the annex to this filing. For ease of reference in assessing the totality of material whose submission is sought through the mechanism of bar tables, the Defence retains the numbering of the ‘Categories’ employed in its submissions in response to the

¹⁷ ICTY, [Prlić](#), para. 26.

¹⁸ *Gbagbo*, [ICC-02/11-01/15-1263-AnxB-Red](#), 16 July 2019, paras 48 and 49.

¹⁹ *Ongwen*, [ICC-02/04-01/15-615](#), para. 10.

²⁰ For example, Documents 2 and 43-52 of Annex A ought to have tendered [REDACTED]. Document 1 of Annex B ought to have tendered [REDACTED] and Documents 4, 12 and 13 of Annex B ought to have tendered [REDACTED]. Documents 9-10, 14-15 of Annex C ought to have been tendered [REDACTED], Documents 16-60 of Annex C ought to have been tendered [REDACTED], and Documents 61-64 of Annex C ought to have been tendered [REDACTED]. Documents 2-11 of Annex D ought to have been tendered [REDACTED]. See: *Ntaganda*, [ICC-01/04-02/06-1838](#), para. 46; *Ruto and Sang*, [ICC-01/09-01/11-1353](#), para. 42.

²¹ See e.g. Documents 1, 5-7, 9, 11-12, and 14 of Annex A, Documents 2-6, 12, 16, 18, 21, 24, 28 and 32 of Annex B and Documents 35 and 65 of Annex C.

Prosecution's previous requests for the admission of documentary evidence from the bar table.²² The Defence notes that it has created additional Categories 14, 15, 16 and 17 for its response to the Prosecution's Fourth Request, and has created additional Categories 18, 19, 20 and 21 for its response to the Prosecution's Fifth Request. The Defence has created additional categories for this response to the Prosecution's Sixth Request: Category 22: Domestic Court Documents, Category 23: Documents allegedly collected at the *Banque Malienne de Solidarité*, Category 24: [REDACTED] and Category 25: Private Documents.

Category 4: United Nations Office of the High Commissioner for Human Rights

12. Document 24 of Annex B is a report prepared by the UNHCHR. The Defence repeats and relies on its submissions previously provided concerning documents falling within Category 4.²³

Category 6: United Nations Educational, Scientific and Cultural Organisation

13. Documents 17, 18, 35, 36, 40-42, 83-85 of Annex A, Documents 2-16 of Annex B and Documents 1 and 19 of Annex D emanate from UNESCO. The Defence repeats and relies on its submissions previously provided concerning documents falling within Category 6.²⁴ The Defence further notes that in *Bemba et al*, the Appeals Chamber found that documents similarly requested and produced for the purposes of the Prosecution's use in ICC proceedings were of a testimonial nature and ought to have been submitted through Rule 68.²⁵

²² [ICC-01/12-01/18-1446](#); [ICC-01/12-01/18-2091-Conf](#).

²³ [ICC-01/12-01/18-1446](#), para. 14.

²⁴ [ICC-01/12-01/18-1446](#), paras 16-17.

²⁵ *Bemba et al.*, [ICC-01/05-01/13-2275-Red](#), paras 303-304:

'303. The Appeals Chamber notes that Mr Smetana testified before the Trial Chamber from 2 until 4 November 2015.⁶⁸⁴ Document CAR-OTP-0092-0018, which, as noted, is dated 3 November 2015, was thus prepared, in the midst of Mr Smetana's testimony at trial. As also noted, this document was prepared by and, the two investigators of the Office of the Prosecutor who directly accessed information in the Western Union database in October and November 2012. It provides an account of certain facts, primarily on a meeting between them a senior public prosecutor from the Austrian Ministry of Justice allegedly held on 16 March 2011, during which access to Western Union financial information was discussed "in general terms". It was about these same circumstances – in particular, on the direct access to Western Union financial information by the two investigators concerned – that Mr Smetana was testifying before the Trial Chamber when the document at issue was prepared and disclosed.

304. The Appeals Chamber considers that document CAR-OTP-0092-0018 cannot be considered to be a mere internal document of the Office of the Prosecutor, or a document prepared for purposes other than being relied upon in the context of the legal proceedings before the Trial Chamber. Rather, it was written, at that particular point in time (on the second day of Mr Smetana's testimony at trial) for the purpose of being submitted in the present proceedings, that is, to be presented with a view to proving or disproving the facts in issue before the Trial Chamber. Indeed, the Appeals Chamber considers that the content of the document, as well as the timing and context of its preparation and submission in the proceedings, reveal that its exclusive purpose was to

Category 12: Non-Governmental Organisation Reports

14. Documents 5, 11-12, and 82 of Annex A, Documents 28 [REDACTED] and 32 [REDACTED] of Annex B are NGO reports. The Defence repeats and relies on its submissions previously provided concerning documents falling within Category 12.²⁶

Category 13: News media publications

15. Documents 1-4, 6-10, 13-16, 22-31, 33-34, 37-38, 43-64, 66-67, 72-74, 76-80 of Annex A and Documents 16, 42-43, 51-60, 65 of Annex C are media and press articles. The Defence repeats and relies on its submissions previously provided concerning documents falling within Category 13.²⁷

Category 14: [REDACTED]

16. Documents 19, 75 and 81 of Annex A are documents allegedly prepared by [REDACTED]. The Defence repeats and relies on its submissions provided in its response to the Prosecution's Fourth Request concerning documents falling within Category 14.²⁸

Category 16: [REDACTED]

17. Document 32 of Annex A is a document allegedly deriving from [REDACTED]. The Defence repeats and relies on its submissions provided in its response to the Prosecution's Fourth Request concerning documents falling within Category 16.²⁹

Category 17: Audio and Video Recordings

18. Documents 69-71 [REDACTED], 86-103 [REDACTED] and Items 104-106 [REDACTED] of Annex A, Items 33-34 of Annex B, Items 9-10, 11-13, 14-15, 17-19, 20-21, 22-30, 66, 69-80, 81-90 of Annex C, and Documents 20-22 [REDACTED], and 28-34 [REDACTED] of Annex D are all video and audio recordings. The Defence repeats and relies on its submissions in its response to the Prosecution's Fourth Request concerning documents falling within Category 17.³⁰

provide the Trial Chamber with the account of [REDACTED] and [REDACTED] of certain relevant facts on which the Prosecutor, in turn, intended to rely. In the view of the Appeals Chambers, these circumstances indicate that document CAR-OTP-0092-0018 is testimonial in nature.'

²⁶ [ICC-01/12-01/18-2091-Conf](#), paras 21-23.

²⁷ [ICC-01/12-01/18-2091-Conf](#), paras 24-25.

²⁸ Defence Response to the Prosecution's Fourth Request, filed simultaneously, para. 12.

²⁹ Defence Response to the Prosecution's Fourth Request, filed simultaneously, paras 14-15.

³⁰ Defence Response to the Prosecution's Fourth Request, filed simultaneously, paras 16-21.

Category 18: Documents deriving from the armed groups

19. Documents 2-11 of Annex D are documents allegedly deriving from the armed groups. The Defence repeats and relies on its submissions provided in its response to the Prosecution's Fifth Request concerning documents falling within the Category 18.³¹

Category 22: Domestic Court Documents

20. Documents 65, 68, 108-109 of Annex A [REDACTED] and Documents 15-17 and 26 of Annex D [REDACTED] are all court documents filed in domestic proceedings relating to the same facts and individuals as the present case. The attempt to rely upon the domestic proceedings [REDACTED] to support the charges at the Court falls afoul of the Statutory principles of *ne bis in idem*³² and complementarity,³³ as well as international legal principles of *lis pendens*,³⁴ which prohibits multiple legal bodies from simultaneously dealing with applications which are substantially the same. It is particularly dangerous for the Prosecution to rely on domestic proceedings [REDACTED] where the safeguards concerning Mr Al Hassan's Statutory rights do not apply in those domestic proceedings. Concretely, the submissions made in relation to these [REDACTED] could be used in violation of his privilege against self-incrimination and right to silence in those domestic proceedings. Rejection of the submission of domestic court documents through the bar table would reflect the consistent practice of this Court and the ad hoc tribunals:

- a. in *Nzabonimpa*, the ICTR Trial Chamber rejected submission of material taken from gacaca proceedings in Rwanda;³⁵

³¹ Defence Response to the Prosecution's Fifth Request, filed simultaneously, paras 19-20.

³² [Rome Statute](#), Article 20.

³³ [Rome Statute](#), preamble and Article 1.

³⁴ *Selhattin Demirtaş v. Turkey (No. 2)*, [14305/17](#), para. 180: 'The Court observes at the outset that what is in issue is the second part of Article 35 § 2 (b) of the Convention, which reflects the principle of *lis pendens*. Its purpose is to avoid a situation where several international bodies are simultaneously dealing with applications which are substantially the same; this would be incompatible with the spirit and the letter of the Convention, which seeks to avoid a plurality of international proceedings relating to the same cases (see *Radomilja and Others v. Croatia* [GC], nos. [37685/10](#) and [22768/12](#), § 119, 20 March 2018).' See also *Varnava v. Turkey*, [16064/90](#), p. 15; *UCA v. Turkey*, [73489/12](#); *Peraldi v. France*, [2096/05](#).

³⁵ *Nzabonimpa*, [Decision on Dick Prudence Munyeshuli's Motion for Admission of Evidence from the Bar Table](#), disposition: 'CONSIDERING that whether or not individuals mentioned in gacaca proceedings that Ngirabatware "was involved in the events" has no bearing on whether Munyeshuli committed the alleged violations advanced in Count 3 of his indictment and is neither relevant to nor probative of the credibility of the material aspects of his testimony in relation to the charges against him; FINDING that Munyeshuli has not established that the gacaca attestations are sufficiently probative and relevant to meet the requirements for admission under Rule 10S(C) of the Rules'.

- b. in *Ongwen*, Trial Chamber IX held that statements from alleged victims that were ‘taken by the Ugandan police during their investigation into [an] alleged LRA attack’ and ‘appear to have been transcribed by a police officer and are each a first person account of a victim alleging that they had been criminally harmed by the LRA’ could not be submitted³⁶ because the ‘accounts, alleging wrong-doing by the LRA, taken in the course of a police investigation, must be viewed as fitting within the definition of a prior recorded statement. Such materials are indeed testimonial in nature and they cannot be recognised as submitted through the ‘bar table’;³⁷
- c. in *Ruto and Sang*, a report containing statements of witnesses was sought to be tendered into evidence through bar table. Trial Chamber V(A) upheld Defence objections that these documents were testimonial and should therefore be introduced according to Rule 68 and declined to admit the statements;³⁸ and
- d. in *Katanga and Ngudjolo*, Trial Chamber II noted that ‘[o]nce the Chamber has determined that an out-of-court statement is testimonial, that statement can only be allowed into evidence under the conditions provided in rule 68. Therefore, unless the accused persons have either waived their right to examine the witness or had the opportunity to do so when the testimony was recorded, the statement will not be admitted unless the witness is available for examination at trial.’³⁹

21. The Defence notes especially that the nature of the [REDACTED], as it reflects legal analysis and conclusions [REDACTED] contained therein, fits precisely within the definition of a document which is testimonial in nature.⁴⁰

³⁶ *Ongwen*, [ICC-02/04-1/15-795](#), para. 20.

³⁷ *Ongwen*, [ICC-02/04-1/15-795](#), para. 20.

³⁸ *Ruto and Sang*, [ICC-01/09-01/11-1353](#), paras 86-88.

³⁹ *Katanga and Ngudjolo*, [ICC-01/04-01/07-2635](#), para. 50.

⁴⁰ *Katanga and Ngudjolo*, [ICC-01/04-01/07-2635](#), paras 48-49:

‘48. Thus, in principle, statements given to private persons or entities will not be considered as testimony unless there are exceptional reasons for doing so. By contrast, a statement given to representatives of an intergovernmental organisation with a specific fact-finding mandate may be considered as testimony if the manner in which the statement was obtained left no doubt that the information might be used in future legal proceedings. The Chamber observes, in this regard, that, generally speaking, analytical reports based on the personal stories of several individuals are not to be considered as testimony. In the Chamber's view, even if the factual allegations contained in the report are based exclusively on a combined analysis of statements made by identified individuals, the allegations contained in the report are not those of the individual persons but the conclusions drawn from their statements by the author of the report.

49. The second key factor in determining whether an out-of-court statement qualifies as testimony in the sense of article 67(l)(e) and rule 68 is that the person making the statement understands, when making the statement,

Category 23: Documents allegedly collected at the Banque Malienne de Solidarité and Hotel La Maison

22. Documents 1-8 and 67-68 of Annex C and Documents 23-25 of Annex D were allegedly collected [REDACTED] at the Banque Malienne de Solidarité and Hotel La Maison. The Defence repeats and relies on its submissions previously made concerning the integrity of these documents.⁴¹

Category 24: Sanitary Reports [REDACTED]

23. Items 61-64 of Annex C are [REDACTED]. These documents, being testimonial in nature, may be submitted only through satisfying the procedural requirements of Rule 68⁴² and further contain inappropriate opinion evidence and anonymous hearsay.

Category 25: Private Documents

24. Documents 31-32, 33-41, 44-45 and 48-50 of Annex C are all private documents which have not been authenticated, [REDACTED]. These items have not been authenticated and are inappropriate for submission through the bar table given their private nature.⁴³

Regulation 35 Request

25. The Prosecution, by its Request, seeks authorisation under Regulation 35 to add eight items (being Document 41 of Annex A, Documents 56, 58, 82 and 83 of Annex C and Documents 25, 29 and 30 of Annex D) to its List of Evidence.⁴⁴ The Prosecution has failed to establish good cause for its failure to add and disclose these items within the ample time provided to it and the Regulation 35 Request should be rejected. Most notably, Document 41 of Annex A is not accessorial in nature, is relied upon to demonstrate [REDACTED] and the Prosecution's failure to include it in on its List of Evidence is, by its own admission, due to its own error in the disclosure process.⁴⁵

Conclusion

26. The Prosecution's descriptions of relevance do not identify the way in which the tendered documents uniquely contribute to making these facts more or less probable. The documents

that he or she is providing information which may be relied upon in the context of legal proceedings. It is not necessary for the witness to know against whom his or her testimony may be used, or even for the witness to know which particular crime is being investigated or prosecuted.'

⁴¹ [ICC-01/12-01/18-1866-Conf-Anx4](#) (see Objection D); [ICC-01/12-01/18-1867-Conf-Anx1](#), pp. 5-11; [ICC-01/12-01/18-2076-Conf](#), paras 18-24.

⁴² [ICC-01/12-01/18-1514](#), para. 17.

⁴³ *Katanga and Ngudjolo*, [ICC-01/04-01/07-2635](#), para 24.

⁴⁴ Request, [ICC-01/12-01/18-2102-Conf-Corr](#), paras 21-25 and 28.

⁴⁵ Request, [ICC-01/12-01/18-2102-Conf-Corr](#), paras 22 and 24.

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 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.

27. Ultimately, the submission of material of unestablished or questionable relevance, authenticity and probative value is inherently prejudicial and undermines the fairness, efficiency and expeditiousness of the proceedings.⁴⁶ The recycling of reports such as those tendered – almost uniformly based on anonymous hearsay – does not assist the Chamber. It merely risks further entrenching narratives which may well be false.

III. Relief sought

28. For all the reasons herein, the Defence respectfully requests that the Chamber **REJECT** the Request.



Melinda Taylor
Counsel for Mr Al Hassan

Dated this 18th Day of February 2022
At The Hague, The Netherlands

⁴⁶ See, for example: *Bemba et al.*, [ICC-01/05-01/13-2275-Anx](#), paras 43-46.