

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/12-01/18
Date: 26 August 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 the introduction into evidence of the prior recorded testimony of
D-0544 pursuant to Rule 68(3) of the Rules**

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

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Registrar

Peter Lewis

Counsel Support Section**Victims and Witnesses Unit**

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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, 67(1) and 69(2) of the Rome Statute (the ‘Statute’) and Rule 68(3) of the Rules of Procedure and Evidence (the ‘Rules’), issues the following ‘Decision on the introduction into evidence of the prior recorded testimony of D-0544 pursuant to Rule 68(3) of the Rules’.

I. Procedural history

1. On 22 July 2022, the Chamber issued a decision rejecting a Defence application to introduce into evidence the prior recorded testimony of D-0544 pursuant to Rule 68(2)(b) of the Rules, without prejudice to any subsequent application under Rule 68(3) of the Rules.¹
2. On 26 August 2022, via email, the Defence submitted an application seeking the introduction into evidence of D-0544’s prior recorded testimony pursuant to Rule 68(3) of the Rules (the ‘Request’).²
3. On the same date, the Prosecution responded indicating that it ‘has no objection to D-0544’s statement being submitted into evidence under rule 68(3) of the Rules of Procedure and Evidence’³

II. Analysis

4. As a preliminary matter, the Chamber finds it in the interest of justice and the efficiency of the proceedings to entertain the Request notwithstanding that fact that it was filed outside the standard time limit.

¹ Decision on the introduction into evidence of the prior recorded testimony of D-0544, D-0611, D-0093 and D-0240 pursuant to Rule 68(2)(b) and (3) of the Rules, ICC-01/12-01/18-2288.

² Defence Rule 68(3) application for Witness D-0544, ICC-01/12-01/18-2305-Conf.

³ Email of 26 August 2022 at 14:38.

5. The Chamber incorporates by reference the applicable legal framework as set out in its earlier decisions on the introduction of prior recorded testimonies under Rule 68(3) of the Rules⁴ and the Directions on the conduct of proceedings.⁵
6. The Defence submits that D-0544's prior recorded testimony consists principally in explaining Mr Al Hassan's willingness to help in difficult situations, and his good character in general, which is corroborated by the evidence of other Defence witnesses.⁶ The Defence submits that, in view of the fact that D-0544 does not testify on issues that concern charged incidents, and of the fact that his evidence concerns peripheral issues, Rule 68(3) is the more appropriate and time-saving manner to receive it.⁷
7. The Chamber notes the Prosecution's position as cited above as well as that D-0544 gives evidence *inter alia* about Mr Al Hassan's good temperament and about two incidents for which Mr Al Hassan allegedly provided his help. The Chamber also notes that the Defence requests one and a half hours (instead of four hours) for the supplementary examination of D-0544, should introduction pursuant to Rule 68(3) be granted.⁸
8. The Chamber is satisfied that introduction into evidence of D-0544's prior recorded testimony will expedite the proceedings, while at the same time protecting their fairness. Accordingly, the Chamber authorises the introduction of D-0544's prior recorded testimony into evidence pursuant to Rule 68(3) of the Rules.
9. Bearing in mind the object and purpose of this provision, its previous determination on this matter⁹ and the topics proposed to be covered in the

⁴ Decision on Prosecution's requests to introduce prior recorded testimonies under Rule 68(3) of the Rules, 5 August 2020, ICC-01/12-01/18-987-Red, paras 6-18.

⁵ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, paras 63-70.

⁶ Request, ICC-01/12-01/18-2305-Conf, para. 11.

⁷ Request, ICC-01/12-01/18-2305-Conf, para. 12.

⁸ Request, ICC-01/12-01/18-2305-Conf, para. 2.

⁹ Decision on Defence request for the introduction into evidence of the prior recorded testimony of D-0512, D-0516 and D-0554 pursuant to Rule 68 of the Rules, 18 May 2022, ICC-01/12-01/18-2228-Red, para. 8.

supplementary examination,¹⁰ the Chamber considers it appropriate to allocate one and a quarter hours for the Defence's examination of D-0544 and 2 hours, as requested,¹¹ for the Prosecution's cross-examination.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

AUTHORISES, subject to the relevant procedural pre-requisites being satisfied when the witnesses appear in Court, introduction into evidence of the prior recorded testimony of D-0544 (MLI-D28-0006-3342-R01) pursuant to Rule 68(3) of the Rules; and

INSTRUCTS the Defence to file a public redacted version of the Request by Thursday, 8 September 2022.

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 Friday, 26 August 2022

At The Hague, The Netherlands

¹⁰ Request, ICC-01/12-01/18-2305-Conf, para. 13.

¹¹ Email of 26 August 2022 at 14:38; Email of 25 April 2022 at 22:29.