

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/12-01/18**

Date: **31 August 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

Public redacted version of Defence request for leave to reply to “Prosecution response to “Defence Rule 68(2)(b) and Rule 68(3) applications” (ICC-01/12-01/18-2276-Conf)” (ICC-01/12-01/18-2280-Conf), ICC-01/12-01/18-2281-Conf, 18 July 2022

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:

The Office of the Prosecutor

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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
Nigel Verrill

Detention Section

**Victims Participation and
Reparations Section**

Other

I. Introduction

1. Pursuant to Regulation 24(5) of the Regulations of the Court ('Regulations'), the Defence seeks leave to reply to the Prosecution response to Defence Rule 68(2)(b) and Rule 68(3) applications ('Prosecution Response')¹ to address discrete issues raised by the Prosecution concerning the modalities of D-0611's interview due to the fact that it was conducted remotely. The Defence submits that a reply is warranted to address new issues on D-0611's identity raised by the Prosecution in its response, which could not have been reasonably anticipated by the Defence.

II. Level of confidentiality

2. Pursuant to regulation 23bis(1) of the Regulations, the Defence files this reply as confidential because it contains confidential information, including information regarding a Defence witness. The Defence will file a public redacted version in due course.

III. Submissions

3. The Defence seeks leave to present a focused and limited reply to the arguments contained in the Prosecution Response on the following points.
4. The Prosecution argues that the Defence did not take all the necessary steps to confirm D-0611's identity, as the read-back process was conducted by phone, with all members of the Defence and the interpreter present in the Hague, the Defence not being in a position to verify the identity of its witness.² The Defence seeks leave to reply on this particular aspect as the Prosecution made erroneous factual assertions on the manner the Defence conducted this interview/read back.
5. If leave to reply is granted, the Defence will be in a position to:
 - Correct the Prosecution's claim and confirm that it did verify D-0611's identity;
 - and

¹ Defence Application, [ICC-01/12-01/18-2276-Conf](#); Prosecution Response, [ICC-01/12-01/18-2280-Conf](#).

² [ICC-01/12-01/18-2280-Conf](#), paras. 3, 16-17.

- Provide email correspondence with CSS concerning the modalities of D-0611's interview and the corresponding mission to this purpose.
6. The Defence also seeks leave to reply concerning the Prosecution submissions on D-0611's [REDACTED],³ which also pertains to the verification of D-0611's identity. The Defence is in a position to address this particular point and stands ready to file further information on the issue raised.
7. The issues outlined above arise directly out of the Prosecution Response. A limited and tailored reply will assist the Chamber in its determination of the Defence Request, as it will correct misrepresentations made by the Prosecution and provide necessary additional information addressing the issues raised. The Defence accordingly seeks to assist the Chamber by correcting the record and submits that it is in the interest of clarity of the conduct of the proceedings that it be authorised to do so.

IV. Relief Sought:

8. For the foregoing reasons, the Defence respectfully requests Trial Chamber X to **GRANT** the present Request for leave to reply to Prosecution response to "Defence Rule 68(2)(b) and Rule 68(3) applications.



Melinda Taylor
Counsel for Mr. Al Hassan

Dated this 31st Day of August 2022
At The Hague, The Netherlands

³ [REDACTED].