

**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 with confidential *ex parte* Defence and VWU only Annexes 1, 2, 3 and 4

Public redacted version of Defence 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-01/12-01/18-2287-Conf-Exp, 20 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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

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**Victims Participation and
Reparations Section**

Other

I. Introduction

1. On 5 July 2022, the Defence filed its “Defence Rule 68(2)(b) and Rule 68(3) applications”,¹ in which it seized Trial Chamber X with a request to admit Witness D-0544 and Witness D-0611’s statements into evidence pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence (‘Rules’), and to allow the introduction of the proposed statements of Witness D-0093, and the proposed statements and associated exhibits of Witness D-0240 pursuant to Rule 68(3) of the Rules.
2. The Prosecution opposed the Defence motion on several aspects, especially as concerns the introduction of the evidence of D-0544 and D-0611 under Rule 68(2)(b) of the Rules.² In particular, the Prosecution asserted that:³

“With respect to D-0611, the Defence seeks to introduce a transcript of the read-back of his statement (“D-0611’s Transcript”), which was conducted by phone. There is no indication in D-0611’s Transcript that the Defence took any steps to properly verify his identity during the main interview or read-back. D-0611’s Transcript accordingly lacks indicia of reliability even of a formal nature.”

3. On 18 July 2022, the Single Judge granted the Defence request for leave to reply⁴ to the above argument.⁵ Pursuant to that decision, the Defence files the below reply.

II. Level of confidentiality

4. Pursuant to regulation 23bis(1) of the Regulations of the Court, the Defence files this reply and its annexes as confidential *ex parte*, Defence and VWU only, because they contain confidential and sensitive information, including information concerning Defence investigations and logistical arrangements for witness interview. The Defence will file a confidential redacted version forthwith and a public redacted version in due course.

¹ [ICC-01/12-01/18-2276-Conf.](#)

² [ICC-01/12-01/18-2280-Conf.](#)

³ [ICC-01/12-01/18-2280-Conf.](#), para. 3 (footnotes omitted).

⁴ [ICC-01/12-01/18-2281-Conf.](#)

⁵ Email from Trial Chamber X Communications dated 18 July 2022 at 14:42. The Single Judge granted the leave to reply request and authorised the Defence to file a reply on the issues identified at paragraphs 5 and 6 of [ICC-01/12-01/18-2281-Conf.](#)

III. Defence Reply

5. The Prosecution claims that there is no sufficient confirmation “at all” as to the identity of D-0611 and submits, *inter alia*, that it is unclear from D-0611’s Transcript whether [REDACTED] during the interview before the read-back of the statement on 21 April 2022.⁶
6. The Defence took steps to verify the identity of its witness. As indicated in the witness Transcript, [REDACTED],⁷ and has been in possession of a copy of his identity card since July 2020.
7. D-0611 resides in an area [REDACTED]. In light of multiple competing deadline and the need to conduct trial preparation in The Hague, [REDACTED] [REDACTED]. In order to meet the Chamber’s deadline for submitting Rule 68 statements, the Defence requested CSS to approve [REDACTED] [REDACTED] interviews with the Defence.⁸
8. [REDACTED].
9. D-0611 travelled separately to [REDACTED]. [REDACTED], D-0611 signed the expense form.⁹
10. Given that [REDACTED]. For that reason, the Defence decided to take a transcript in accordance with the procedure approved by the Single Judge.¹⁰
11. On 20 April, D-0611 [REDACTED] the Defence and the interview took place, with the read back being on 21 April. On 20 April, at the beginning of the interview, the Defence asked D-0611 [REDACTED]. The personal information subsequently provided by D-0611 (in terms of date of birth, names of parents) corresponds to the information on the identity card in the possession of the Defence. [REDACTED], D-0611 did not have his identity card on him but offered to furnish the number afterwards. During the interview and read back, the Defence was assisted by an official interpreter of the Court, appointed by CSS. The requested languages were English, French and Tamasheq.¹¹ The

⁶ [ICC-01/12-01/18-2280-Conf](#), para. 17.

⁷ MLI-D28-0006-4287-R01 at 4294.

⁸ Annex 1.

⁹ Annex 2.

¹⁰ See Single Judge’s email sent to the Defence *ex parte* dated 31 March 2022 at 16:25, notified to the Prosecution on 7 July 2022 at 12:34.

¹¹ Annex 3.

process therefore was done through official channels and the Defence made sure to take steps to respect the integrity of the process, and that it sufficiently was acquainted with its witness D-0611.

12. The Defence is attaching a copy of his identity card, as provided by D-0611.¹² The Defence only realised after D-0611 [REDACTED] [REDACTED] that it cannot clearly read the number as [REDACTED].

IV. Relief Sought:

13. For the foregoing reasons, the Defence respectfully requests Trial Chamber X to **GRANT** the “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

¹² Annex 4.