

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 16 May 2023

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 Defence's request for authorisation to file a corrigendum to its closing brief and to strike a reference from the Prosecution's response to the closing briefs

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

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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*, having regard to Articles 64(2) and 69 of the Rome Statute (the ‘Statute’) and Regulation 35(2) of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on the Defence’s request for authorisation to file a corrigendum to its closing brief and to strike a reference from the Prosecution’s response to the closing briefs’.

I. Background

1. On 9 March 2023, the Office of the Prosecutor (the ‘Prosecution’)¹ and the LRVs² filed their closing briefs.
2. On 17 April 2023, the Defence filed its closing brief.³
3. On 2 May 2023, the Prosecution,⁴ the Defence⁵ and the LRVs⁶ filed their responses to the closing briefs.
4. On 8 May 2023, the Defence filed a request (the ‘Request’) seeking: (i) authorisation to file a corrigendum to its closing brief replacing incorrect references with the correct citations; and (ii) an order striking references in the Prosecution’s closing brief to a document not recognised as formally submitted (the ‘Non-Submitted Material’).⁷

¹ Second corrigendum to the “Prosecution closing brief”, 9 March 2023, ICC-01/12-01/18-2475-Conf, ICC-01/12-01/18-2475-Conf-Corr2 (with confidential annexes 1-4; corrigenda were filed on 5 and 17 April 2023; a public redacted version was filed on 24 April 2023).

² Corrigendum – Conclusions finales des Représentants légaux des victimes, 9 mars 2023, ICC-01/12-01/18-2476-Conf, ICC-01/12-01/18-2476-Conf-Corr (a corrigendum was filed on 12 April 2023; a public redacted version was filed on 24 April 2023).

³ Corrigendum to Final Defence Brief, ICC-01/12-01/18-2485-Conf-Corr (with confidential annexes A and B; a corrigendum was filed on 18 April 2023).

⁴ Prosecution’s response to the Defence Final Brief, ICC-01/12-01/18-2491-Conf.

⁵ Defence Response to the Closing Briefs of the Prosecution and the Legal Representative of Victims, ICC-01/12-01/18-2490-Conf (with confidential annex A).

⁶ Réponse des Représentants légaux des victimes au « CORRIGENDUM TO FINAL DEFENCE BRIEF » (ICC-01/12-01/18-2485-Conf-Corr), ICC-01/12-01/18-2489-Conf.

⁷ Defence Request for Authorisation to File Corrigendum and for an Order that the Prosecution Strike a Reference from its Response, ICC-01/12-01/18-2492-Conf.

5. On 10 May 2023, in accordance with the time limit set by the Single Judge,⁸ the Prosecution filed its response to the Request (the ‘ Prosecution Response’).⁹ The Prosecution submits that, while disagreeing with the Defence’s interpretation of the relevant evidence, it does not object to the Defence making the proposed corrections, save for the Defence’s proposal to replace a sentence in paragraph 184 of its closing brief regarding P-0533 (the ‘Contested Correction’).¹⁰ With respect to the Non-Submitted Material, the Prosecution notes that its inclusion was an oversight and confirms that it will not rely on the item nor on another similar document, also cited in its response.¹¹ However, it observes that the Defence’s closing brief cites many items that are not submitted into evidence, including those that are testimonial in nature, and submits that they should equally be disregarded by the Chamber.¹²
6. On the same date, the LRVs responded to the Request.¹³ With reference to the Contested Correction, the LRVs observe that the Defence’s proposal would amount to introducing new examples concerning the Defence’s allegations set out in the relevant paragraph. However, noting that this correction would have no direct impact on the testimony of V-0001, the LRVs defer to the Chamber.
7. On 12 May 2023, the Defence requested leave to reply to the Response (the ‘Leave to Reply Request’).¹⁴ First, the Defence accepts that the non-submitted interview transcripts impugned in the Response should be disregarded. Second, the Defence seeks leave to address the point as to whether reports that have been submitted to address legal points, and not the facts and circumstances of the confirmed charges pertaining to the events in Timbuktu, need to be tendered into evidence.

⁸ Email from the Chamber, 8 May 2023, at 16:07.

⁹ Prosecution response to the “Defence Request for Authorisation to File Corrigendum and for an Order that the Prosecution Strike a Reference from its Response”, ICC-01/12-01/18-2493-Conf.

¹⁰ Prosecution Response, ICC-01/12-01/18-2493-Conf, paras 3, 8-9.

¹¹ Prosecution Response, ICC-01/12-01/18-2493-Conf, paras 2, 5.

¹² Prosecution Response, ICC-01/12-01/18-2493-Conf, para. 6.

¹³ Email from the LRVs, 10 May 2023, at 15:47.

¹⁴ Email from the Defence, 12 May 2023, at 14:30.

8. On 13 May 2023, the Prosecution responded opposing the Leave to Reply Request.¹⁵

II. Analysis

A. Request to file a corrigendum

9. The Chamber considers that the purpose of corrigenda are to correct typographical errors and that they may not be used to add or alter the substance of the submissions made in a document.¹⁶ As such, where corrections go to the substance of their submissions, the parties must seek leave from the Chamber prior to the filing of a corrigendum.
10. With respect to the Contested Correction, the Chamber considers that the Defence's proposal seeks to replace erroneous citations and, while containing examples that were previously not cited, it is fundamentally a correction. Further, the Chamber accepts that the Contested Correction was triggered by the Defence's inadvertent reliance on a non-submitted piece of evidence, rather than it being an attempt to circumvent the time or page limit for the filing of its closing brief.
11. The Chamber does not subscribe to the Prosecution's position that the Contested Correction would amount to a 'new factual allegation [...] [that] would prejudice the Prosecution'.¹⁷ It observes that, while the Defence seeks to add new examples and a reference that the testimony of the relevant witnesses are 'replete with similar phrases', the essence of the Defence's allegation at paragraph 184 of its closing brief - that there are demonstrated similarities in the accounts of witnesses for whom P-0533 interpreted - remains the same. The Chamber further recalls that the Prosecution has had sufficient notice of the Defence's broader arguments concerning the alleged contamination by the NGOs¹⁸ and that the Contested

¹⁵ Email from the Prosecution, 13 May 2023, at 20:15.

¹⁶ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa", 2 December 2009, ICC-01/05-01/08-631-Red, para. 38.

¹⁷ Prosecution Response, ICC-01/12-01/18-2493-Conf, para. 9.

¹⁸ *See for example* Defence Trial Brief, 14 April 2022, ICC-01/12-01/18-2203-Conf, paras 99-104.

Correction is based on evidence that is recognised as formally submitted. In light of the aforementioned considerations, the Chamber finds that authorising the Defence to make the Contested Correction would not unduly prejudice the Prosecution. Indeed, should the inclusion of the Contested Correction warrant additional submissions from its part, the Prosecution may make any supplementary submissions during the closing statements.

12. In these circumstances, and considering the Chamber's interest to fully understand the arguments raised by the parties and participants, the Chamber considers that it may exceptionally permit this discrete addition to the Defence closing brief. Accordingly, pursuant to Regulation 35(2) of the Regulations of the Court, the Chamber authorises the Defence to file an amended version of its closing brief, implementing the Contested Correction as suggested.
13. In relation to the remainder of the corrections the Defence seeks to make, the Chamber is satisfied that they fall within the confines of corrections that may be made by way of a corrigendum. Accordingly, and noting the position of the Prosecution on this matter, the Chamber authorises the Defence to implement these corrections.

B. Non-Submitted Material

14. In relation to the Defence's request to issue an order striking the Non-Submitted Material from the Prosecution's response as well as the Prosecution's submissions concerning references to non-submitted documents in the Defence's closing brief, the Chamber has considered the Defence's submissions contained in the Leave to Reply Request. It does not consider that it would be assisted by further detailed submissions on this matter and accordingly rejects the Leave to Reply Request.
15. The Chamber recalls that the purpose of the closing briefs is to provide a summary of the parties and participants' views and arguments on the confirmed charges as well as the evidence presented at trial and that the parties were instructed to ensure that their closing briefs point to the relevant evidence which support the

arguments they assert.¹⁹ As such, and noting that the submission of evidence has concluded,²⁰ the Chamber considers inapposite any reference to non-submitted material in relation to the factual arguments made in the closing briefs of the parties and participants or responses thereto.

16. In any case, irrespective of the parties' and participants' citations to evidence that are not submitted, the Chamber will only consider the evidence that has been formally submitted in order to establish the facts for the purposes of its evaluation under Article 74(2) of the Statute. Accordingly, the Chamber finds it unnecessary to issue a judicial order striking these references.
17. With respect to the Defence's citations to UN reports,²¹ the Chamber considers the Prosecution's submissions unmeritorious. In the relevant parts of the Defence's closing brief, the Defence refers to these reports to support its interpretation of the law, rather than to advance arguments on the facts.²² The Chamber finds that it is not necessary for the parties and participants to submit into evidence items they seek to use in support of their legal arguments.

¹⁹ Seventh decision on matters related to the conduct of proceedings: closing briefs, 8 February 2023, ICC-01/12-01/18-2466, para. 8.

²⁰ Declaration of the closure of the submission of evidence, 8 February 2023, ICC-01/12-01/18-2468.

²¹ Prosecution Response, ICC-01/12-01/18-2493-Conf, para. 6 (n. 11).

²² Corrigendum to Final Defence Brief, ICC-01/12-01/18-2485-Conf-Corr, paras 48, 355 (n. 1290), 504 (n.1837 and 1839), 505 (n. 1841-1842).

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Leave to Reply Request;

PARTIALLY GRANTS the Request;

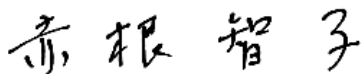
AUTHORISES the Defence to file a corrigendum of its closing brief, in accordance with the present decision, within three days of notification of the present decision; and

REJECTS the remainder of the Request.

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 Tuesday, 16 May 2023

At The Hague, The Netherlands