



Original: **English**

No.: ICC-01/12-01/18
Date: 24 September 2020

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

**Prosecution's urgent request to designate a person authorised to witness a
declaration under rule 68(2)(b) of the Rules of Procedure and Evidence**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. To streamline the presentation of its case, the Office of the Prosecutor (“Prosecution”) intends to introduce the prior statements/testimony of certain of its witnesses at trial. The Prosecution thus requests that Trial Chamber X (“Chamber”) designate a person authorised to witness a declaration under rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”).

2. In view of the logistical arrangements necessary to obtaining the required declarations within the context of certain travel limitations associated with the current global pandemic, the Prosecution requests that the Chamber grant the requested relief as expeditiously as possible.

II. Submissions

3. The Prosecution envisages introducing in its case-in-chief the prior recorded statement/testimony of several witnesses under rule 68(2)(b) of the Rules. This may assist in a more concise and streamlined presentation of evidence, for witnesses whose appearance is not necessary, or may not otherwise materialise.

4. For such evidence to be admitted in a witness’ absence, the prior recorded testimony needs to be “accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person’s knowledge and belief.”¹

5. The declaration itself “must be witnessed by a person authorised to witness such a declaration by the relevant Chamber or in accordance with the law and procedure of a State. The person witnessing the declaration must verify in writing

¹ Rule 68(2)(b)(ii) of the Rules.

the date and place of the declaration, and that the person making the declaration:

- is the person identified in the prior recorded testimony;
- assures that he or she is making the declaration voluntarily and without undue influence;
- states that the contents of the prior recorded testimony are, to the best of that person's knowledge and belief, true and correct; and
- was informed that if the contents of the prior recorded testimony are not true then he or she may be subject to proceedings for having given false testimony.”²

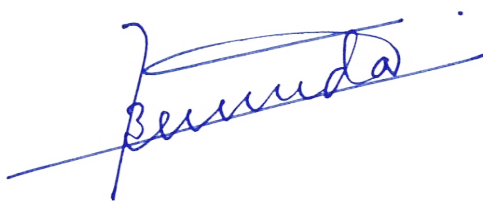
6. Although the rule equally permits persons so authorised under national laws and procedures to witness declarations, the Prosecution considers that the Chamber’s designation of such an individual (e.g., a staff member of the Registry) will promote efficiency in the case and ensure consistency with the Court-wide practice thus far.³

III. Relief Requested

7. Based on the foregoing, the Prosecution requests the Chamber to designate a person authorised to witness declarations made under rule 68(2)(b) of the Rules. The Prosecution is prepared to liaise directly with such person or unit to provide all necessary information, and logistical or practical arrangements concerning the relevant witnesses.

² Rule 68(2)(b)(ii) of the Rules.

³ See *e.g.* ICC-01/05-01/13-1109, ICC-01/04-02/06-729, and ICC-01/14-01/18-508.



Fatou Bensouda, Prosecutor

Dated this 24th day of September 2020

At The Hague, The Netherlands