



Original: English

**No. ICC-01/12-01/18
Date: 21 October 2020**

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 of P-0662's prior recorded testimony pursuant to
Rules 68(3) of the Rules**

Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Fatou Bensouda
James Stewart

Counsel for the Defence

Melinda Taylor
Kirsty Sutherland

Legal Representatives of Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparations

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

TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, pursuant to Articles 64(2), 67(1)(c) and 69(2) of the Rome Statute (the ‘Statute’), and Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the introduction of P-0662’s prior recorded testimony pursuant to Rules 68(3) of the Rules’.

I. Procedural history and submissions

1. On 6 May 2020, the Chamber adopted the ‘Directions on the conduct of proceedings’.¹
2. On 5 August 2020, the Chamber authorised the Office of the Prosecutor (the ‘Prosecution’) to call P-0662 as an expert witness.²
3. On 2 October 2020, the Prosecution filed a request for leave to introduce the prior recorded testimony of P-0662 pursuant to Rule 68(3) of the Rules (the ‘Request’).³
4. The Defence did not file any response to the Request.

II. Analysis

5. The Chamber incorporates by reference the applicable legal framework as set out in its previous Decision on Prosecution’s requests to introduce prior recorded testimonies under Rule 68(3) of the Rules,⁴ and the Directions on the conduct of proceedings.⁵

¹ Decision on the conduct of proceedings and Annex A, 6 May 2020, ICC-01/12-01/18-789 and AnxA (‘Directions on the conduct of proceedings’).

² Decision on Prosecution’s proposed expert witnesses, ICC-01/12-01/18-989-Conf, paras 43-45.

³ Prosecution application to introduce MLI-OTP-P-0662’s report and associated material into evidence under rule 68(3) of the Rules, ICC-01/12-01/18-1086-Conf (with confidential Annex, ICC-01/12-01/18-1086-Conf-Anx).

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-Conf.

⁵ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, paras 63-65.

6. The Chamber notes that the Prosecution requests leave to introduce the expert report (MLI-OTP-0069-9916), the expert's curriculum vitae (MLI-OTP-0059-9903) and the letter of instructions (MLI-OTP-0069-9914).⁶ The Prosecution estimates it will require two hours to examine the witness (from original four hours).⁷
7. The Chamber also observes that the Defence did not contest P-0662's expertise as an expert on trauma and post-traumatic stress disorder or her report,⁸ and has not objected to the introduction of her prior recorded testimony pursuant to Rule 68(3) of the Rules.
8. Nonetheless, the Chamber has given consideration to the rights of the accused, and particularly notes that the Defence will have full opportunity to question the expert witness during cross-examination, which remains unaffected by the introduction of the prior recorded testimony via Rule 68(3) of the Rules.
9. Accordingly, the Chamber considers that the introduction of P-0662's report and related material will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination.
10. The Chamber therefore authorises the introduction of P-0662's expert report and related material pursuant to Rule 68(3) of the Rules. However, bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's examination should be limited to one hour.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:

DECIDES, subject to the procedural pre-requisites of Rule 68(3) of the Rules being satisfied when P-0662 appears, that her prior recorded testimony and related materials are allowed to be introduced into evidence; and

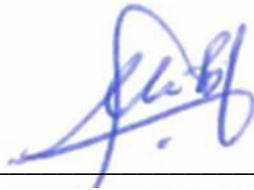
⁶ Request, ICC-01/12-01/18-1086-Conf-Anx.

⁷ Request, ICC-01/12-01/18-1086-Conf, paras 5, 14.

⁸ Defence response to the Prosecution expert witness requests, ICC-01/12-01/18-895-Conf, para. 32.

INSTRUCTS the Prosecution to file a public redacted version of the Request no later than 5 days after notification of the present decision.

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 21 October 2020

At The Hague, The Netherlands