



**Original: English**

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

**Date: 22 April 2022**

**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 Defence's request seeking an extension of time for certain disclosures  
and addition of other material to its List of Evidence**

**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*, pursuant to Articles 64(2), 67(1) and 69 of the Rome Statute (the ‘Statute’), Rule 68 and 78 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 35(2) of the Regulations of the Court (the ‘Regulations’), renders the present decision.

## **I. Relevant background and submissions**

1. On 22 September 2021, the Chamber issued directions on the conduct of proceedings in which it, *inter alia*, adopted a timeline for the start and efficient conduct of the Defence’s presentation of evidence.<sup>1</sup> The Chamber later specified that the Defence case was to start on 9 May 2022.<sup>2</sup>
2. On 23 March 2022, the Chamber rendered a decision granting, in parts, a Defence request seeking an extension of time for the disclosure of certain material.<sup>3</sup> In that decision, the Chamber notably authorised delayed disclosure of the signed statements – yet to be obtained – of certain witnesses whose evidence the Defence intends to submit pursuant to Rule 68 of the Rules.
3. On 25 March 2022, and as instructed, the Defence filed its Final List of Witnesses and its List of Evidence.<sup>4</sup> The Defence also completed, by that same deadline, its disclosure process, with the abovementioned authorised exception.
4. During an *inter partes* status conference held on 6 April 2022, after having heard from the parties, the Single Judge set to 14 April 2022 the deadline for the Defence to disclose any remaining signed statements.<sup>5</sup> This deadline was set without prejudice to the filing of specific requests for additional extension of

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<sup>1</sup> Fifth decision on matters related to the conduct of proceedings: presentation of evidence by the LRVs and Defence, ICC-01/12-01/18-1756 (the ‘Fifth CoP Decision’).

<sup>2</sup> Decision on the Prosecution’s fourth, fifth and sixth requests for the admission of evidence from the bar table, 23 February 2022, ICC-01/12-01/18-2127, para. 25.

<sup>3</sup> Email from the Chamber on 23 March at 8:23.

<sup>4</sup> Defence submission of its list of witnesses, ICC-01/12-01/18-2152-Conf, with a confidential annex (‘List of Defence Witnesses’, ICC-01/12-01/18-2152-Conf-Anx1); and Defence submission of its list of evidence, ICC-01/12-01/18-2154, with a confidential annex (‘Defence Final List of Evidence’, ICC-01/12-01/18-2154-Conf-Anx1).

<sup>5</sup> Transcript of hearing, ICC-01/12-01/18-T-171-FRA ET, page 6.

time, *i.e.* for the later disclosure of certain statements which would only become available at a later stage.

5. On 14 April 2022, the Defence filed the ‘Defence request for extension of time under Regulation 35’ (the ‘Defence Regulation 35 Request’),<sup>6</sup> seeking that the Chamber authorises: (i) late addition to its List of Evidence of the recently disclosed statements of D-0093, D-0240, D-0245, D-0272, D-0534, and D-0544, as well as of two additional items (the ‘First Request’)<sup>7</sup>; and a 45-day extension of time for the disclosure of five remaining statements, specifically those of D-0219, D-0243, D-0524, D-0530 and D-0533 (the ‘Second Request’)<sup>8</sup>. In support of the Second Request, and providing mostly *ex parte* details, the Defence submits that challenges were faced preventing the finalisation of the five individuals’ statements and further commits to completing and disclosing these statements at the earlier opportunity.
6. On 19 April 2022, the Prosecution sent an email in response informing that it defers to the Chamber on the Defence Regulation 35 Request.<sup>9</sup>

## **II. Determination of the First Request**

7. In adjudicating the First Request, the Chamber incorporates by reference to an earlier decision the relevant applicable legal framework.<sup>10</sup>
8. The Chamber notes that the Defence seeks authorisation to add the recently disclosed statements of six of its witnesses to its List of Evidence.<sup>11</sup> The Chamber refers back to its decision of 23 March in which it found that ‘extending the time limit to allow the Defence to continue its effort of preparing and disclosing further

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<sup>6</sup> ICC-01/12-01/18-2202-Conf-Exp. A confidential redacted version thereof was filed on 19 April 2022 (ICC-01/12-01/18-2202-Conf-Red).

<sup>7</sup> Defence Regulation 35 Request, ICC-01/12-01/18-2202-Conf-Red, paras 26-30.

<sup>8</sup> Defence Regulation 35 Request, ICC-01/12-01/18-2202-Conf-Red, paras 3-25. The Chamber understands that the reference to D-0272 in paragraph 4 of the Defence Regulation 35 Request is erroneous and that D-0530, instead, was meant to be listed.

<sup>9</sup> Email from the Prosecution on 19 April 2022 at 21:05.

<sup>10</sup> Decision on the Prosecution requests pursuant to Regulation 35 regarding P-0660 and P-0661 and to add 12 items to its Final List of Evidence, 5 August 2020, ICC-01/12-01/18-2021-988-Conf, para. 6.

<sup>11</sup> MLI-D28-0006-4212-R01, MLI-D28-0006-4222-R01, MLI-D28-0006-4141-R01, MLI-D28-0006-4181-R01, MLI-D28-0006-4188-R01, MLI-D28-0006-4204-R01, MLI-D28-0006-4206-R01, MLI-D28-0006-3342-R01.

witness statements has the potential to contribute greatly to an efficient presentation of Defence evidence'.<sup>12</sup> The Chamber observes that, already in the context of this ruling, and in addition to authorising delayed disclosure of these statements, reference was made by the Chamber to the Defence 'adding [this material] to its list of evidence'. In addition, and with respect to any potential prejudice arising, the Chamber notes that summaries of D-0093, D-0240, D-0245, D-0272, D0534, and D-0544's expected evidence were made available, as instructed, by the disclosure deadline on 25 March 2022.<sup>13</sup> Further considering that this part of the First Request is unopposed, and that the Defence's presentation of evidence is yet to start, the Chamber finds it appropriate to authorise late addition to the Defence's List of Evidence of the statements of these six witnesses.

9. Relatedly, the Chamber observes that the Defence referred to the procedure under Rule 68(2) of the Rules with respect to the testimony of D-0245, D-0272 and D-0534. To ensure efficient conduct of the proceedings, the Chamber finds it appropriate to instruct the Defence to file at the latest by 30 May 2022 any application to introduce their statements under Rule 68(2) or (3) of the Rules.
10. With respect to the other two items also sought to be added to the Defence's List of Evidence,<sup>14</sup> the Chamber observes that they are two one-page exhibits. The first one is a portion of an item already in evidence<sup>15</sup> and the Defence has provided the Chamber with explanations as to why the other could not have been obtained earlier.<sup>16</sup> Further noting that this part of the First Request is also unopposed, the Chamber finds it appropriate to authorise late addition of these two items to the Defence's List of Evidence.

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<sup>12</sup> Email from the Chamber on 23 March 2022 at 8:23.

<sup>13</sup> MLI-D28-0006-3037 (D-0093), MLI-D28-0006-3050 (D-0240), MLI-D28-0006-3056 (D-0245), MLI-D28-0006-3060 (D-0272), MLI-D28-0006-3080 (D-0534), and MLI-D28-0006-3086 (D-0544).

<sup>14</sup> MLI-D28-0006-4180 and MLI-D28-0006-4209.

<sup>15</sup> MLI-OTP-0080-4624.

<sup>16</sup> Defence Regulation 35 Request, ICC-01/12-01/18-2202-Conf-Red, para. 28.

### III. Determination of the Second Request

11. The Chamber notes that the Defence is seeking an additional 45 days to obtain and disclose the statements of D-0219, D-0243, D-0524, D-0530, and D-0533.
12. From the outset, the Chamber recalls that the provision of witness statements was not considered mandatory for Defence witnesses in the present case.<sup>17</sup> The Second Request concerns five statements which are proposed to be obtained by the Defence with a view to seek their respective introduction into evidence pursuant to Rule 68 of the Rules.<sup>18</sup>
13. The Chamber further recalls that, on 23 March 2022, it already granted an extension of time for the Defence to disclose certain witness statements. During the course of a status conference on 6 April 2022, the Single Judge set to 14 April 2022 the deadline for the disclosure of this material.<sup>19</sup> In this respect, the Chamber emphasises that, notably because the Defence informed that it may need more time to obtain and/or finalise some remaining statements, this deadline of 14 April 2022 was set without prejudice to further Regulation 35 requests being formulated in the future.
14. The Chamber however notes that the Second Request is effectively seeking the Chamber's authorisation to disclose, and – it is understood – subsequently add to its List of Evidence, the testimonial evidence of five fact witnesses after the start of the Defence's presentation of evidence. In the circumstances, and having further considered the expected evidence of these five witnesses,<sup>20</sup> the Chamber finds it necessary to review the statements themselves before pronouncing on whether or not each request for late disclosure, and the corresponding additions to the List of Evidence, can be authorised. Accordingly, bearing in mind the Single Judge's prior indication that the 14 April 2022 deadline was set without prejudice, and notwithstanding the fact that the Second Request was not opposed

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<sup>17</sup> Fifth CoP decision, ICC-01/12-01/18-1756, para. 11(ii).

<sup>18</sup> ICC-01/12-01/18-2152-Conf-Anx1.

<sup>19</sup> Transcript of hearing, ICC-01/12-01/18-T-171-FRA ET, page 6.

<sup>20</sup> MLI-D28-0006-3046 (D-0219), MLI-D28-0006-3053 (D-0243), MLI-D28-0006-3071 (D-0524), MLI-D28-0006-3078 (D-0530), and MLI-D28-0006-3079 (D-0533).

by the Prosecution, the Chamber considers it more appropriate for this matter to be adjudicated in a consolidated way and, therefore, at a later stage.

15. As per the above, the Chamber dismisses the Second Request, without prejudice. In the interest of efficiency, the Chamber invites the Defence to submit any renewed request pursuant to Regulation 35 of the Regulation for the related material in a consolidated manner, *i.e.* addressing in a single filing delayed disclosure, late addition to the List of Evidence, as well as (if any) submission into evidence under Rule 68 of the Rules. Noting that the Defence was requesting a 45-day extension of time for the disclosure of the relevant material, the Chamber specifies that it expects these renewed requests to be filed at the earliest opportunity during the course of June 2022.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:**

**GRANTS** the First Request;

**AUTHORISES** the Defence to file an amended version of its List of Evidence, adding the relevant material;

**SETS** to 30 May 2022 the deadline for any Rule 68(2) applications with respect to D-0245, D-0272 and D-0534; and

**REJECTS** the Second Request, without prejudice.

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 Friday, 22 April 2022

At The Hague, The Netherlands