

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-01/12-01/18  
Date: 30 November 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**

**Prosecution response to the “Defence request for leave to appeal the ‘Decision on  
Defence request for reconsideration of Decision on requests related to the  
submission into evidence of Mr Al Hassan’s statements’”**

**Source:** Office of the Prosecutor

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

Mr Karim A. A. Khan KC  
 Mr Mame Mandiaye Niang  
 Mr Gilles Dutertre

**Counsel for the Defence**

Ms Melinda Taylor  
 Ms Felicity Gerry KC

**Legal Representatives of the Victims**

Mr Seydou Doumbia  
 Mr Mayombo Kassongo  
 Mr Fidel Luvengika Nsita

**Legal Representatives of the Applicants****Unrepresented Victims****Unrepresented Applicants  
(Participation/Reparation)****The Office of Public Counsel for  
Victims****The Office of Public Counsel for the  
Defence****States' Representatives****Amicus Curiae****REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations  
Section****Other**

## Introduction

1. The Prosecution opposes the Defence request (“Defence Request”)<sup>1</sup> for leave to appeal the Chamber’s Decision (“Decision”)<sup>2</sup> dismissing the Defence request for reconsideration of the Decision on requests related to the submission into evidence of the Accused’s Statements (“Original Decision”)<sup>3</sup>.

## Submissions

### *There is no appealable issue arising from the Decision*

2. None of the five Issues raised in the Defence Request (“Issues”)<sup>4</sup> constitutes appealable issues arising from the Decision within the meaning of article 82(1)(d) of the Statute. The Defence’s arguments consist of mere disagreements with the Decision and/or are based on misunderstandings of the Chamber’s findings.
3. With respect to the First Issue, the Defence’s submissions that the Chamber failed to consider whether a reconsideration is necessary to prevent an injustice is based on a misunderstanding of the Decision. In paragraph 10 of the Decision, the Chamber observed that much of the evidence described as new by the Defence appears to be a mere reiteration of arguments previously advanced.<sup>5</sup> This is in line with the Appeals Chamber’s decision in *Ntaganda*, cited in footnote 9 of the Decision, where the Appeals Chamber found that the arguments advanced by Mr Ntaganda do not demonstrate that “the Extension Decision would cause an injustice, none of these arguments are novel and they were all apparent to some

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<sup>1</sup> ICC-01/12-01/18-2428.

<sup>2</sup> ICC-01/12-01/18-2414.

<sup>3</sup> ICC-01/12-01/18-1475-Conf.

<sup>4</sup> The five Issues are framed by the Defence as follows in para. 6 of the Defence Request: “**a) First issue:** Whether the Chamber erred in its assessment of evidence due to an improper application of the test for reconsideration and the real risk test; **b) Second Issue:** Whether Trial Chamber erred by failing to take into consideration evidence and argumentation concerning the impact of torture/CIDT on the reliability of Mr Al Hassan’s statements and/or the integrity of the proceedings; **c) Third Issue:** Whether the Trial Chamber erred in law and abused its discretion by ignoring expert opinion concerning the psychological sequelae of torture; **d) Fourth Issue:** Whether the Trial Chamber failed to comply with the obligation to provide a reasoned opinion as concerns its findings; **e) Fifth Issue:** Whether the Trial Chamber erred in failing to make an assessment as to whether the detention conditions at the General Directorate for State Security (DGSE) amounted to violations of the Statute/internationally recognized human rights and/or continuous forms of torture/CIDT.”

<sup>5</sup> Decision, para. 10.

degree from Mr Ntaganda's original request".<sup>6</sup> It is clear that in concluding that "[it] is not persuaded that the Request provides a justification for the Chamber to exceptionally reconsider the aforementioned findings",<sup>7</sup> the Chamber duly considered not only if a clear error of reasoning had been demonstrated, but also if a reconsideration is necessary to prevent an injustice.

4. The Second Issue regarding alleged failure to "take into consideration evidence and argumentation concerning the impact of torture/CIDT on the reliability of Mr Al Hassan's statements and/or the integrity of the proceedings"<sup>8</sup> does not arise from the Decision, which focused on the issue of reconsideration. In paragraph 9 of the Decision, which the Defence challenges in this regard, the Chamber was simply recalling its previous findings in the Original Decision.
5. The Third and Fourth Issues<sup>9</sup> represent mere disagreements with the Chamber's findings regarding the relevance of the evidence relied upon by the Defence to the specific assessment under article 69(7) of the Statute, which focused on the investigative activities of the Prosecution.
6. The Fifth Issue<sup>10</sup> only reiterates the previous arguments and constitutes a mere disagreement with the Chamber's approach to the article 69(7) challenge related to the submission of the Accused's Statements into evidence.

***The Issues do not meet the remaining criteria under article 82(1)(d) of the Statute***

7. In addition, the Issues raised by the Defence fail to meet the remaining cumulative criteria under article 82(1)(d) of the Statute.
8. None of the Five Issues affects the fair and expeditious conduct of the proceedings, particularly since the Accused's Statements have been admitted into evidence in

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<sup>6</sup> ICC-01/04-02/06-2426, para. 6.

<sup>7</sup> Decision, para. 10.

<sup>8</sup> Defence Request, para. 19.

<sup>9</sup> Defence Request, para. 20-29.

<sup>10</sup> Defence Request, para. 30-37.

written form and the Defence has had the opportunity to present evidence regarding its probative value during the Defence case.

9. In addition, the Issues do not affect the outcome of the trial. While the Chamber has admitted the Statements into evidence, it has yet to decide what weight, if any, to attribute to them. In fact, in paragraph 14 of the Decision, the Chamber specifically stated that it does consider the evidence cited by the Defence “may be of relevance in assessing the probative value and weight” of the Accused’s Statements, but indicated that it “will consider them at a later stage whilst considering its ultimate assessment of all submitted evidence”.<sup>11</sup> Any assumption regarding the impact on the outcome of the trial is premature and speculative at this stage.
10. For the same reasons, the Issues do not require immediate resolution by the Appeals Chamber to materially advance the proceedings. If and when the Chamber bases its conclusions on the Accused’s Statements as part of its final decision under article 74 of the Statute, the Defence may raise the Issues as part of an appeal pursuant to article 81 of the Statute.

### **Conclusion**

11. For the foregoing reasons, the Prosecution requests the Chamber to reject the Defence Request.



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Karim A. A. Khan KC, Prosecutor

Dated this 30<sup>th</sup> day of November 2022

At The Hague, The Netherlands

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<sup>11</sup> Decision, para. 14.