



Original: **English**

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

Date: **2 October 2020**

Date of submission:  
**26 October 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**

**With confidential Annex**

**Public redacted version of the "Prosecution application to introduce MLI-OTP-P-0662's report and associated material into evidence under rule 68(3) of the Rules", 2 October 2020, ICC-01/12-01/18-1086-Conf**

**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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**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Detention Section**

**Victims Participation and Reparations Section Other**

1. The Prosecution requests Trial Chamber X's ("Chamber") authorisation to: (i) introduce into evidence Witness P-0662's expert report<sup>1</sup> and associated material,<sup>2</sup> as specified in the Annex appended to the present filing, pursuant to rule 68(3) of the Rules of procedure and evidence ("Rules"); and (ii) conduct a succinct streamlined supplementary examination of Witness P-0662 ("Request").
2. Witness P-0662 is an expert on trauma, including post-traumatic stress disorder ("PTSD"), who already testified in the case of the *Prosecutor v. Thomas Lubanga*.<sup>3</sup> On 5 August 2020, the Chamber decided that P-0662 may be called to testify as an expert.<sup>4</sup>
3. The material that the Prosecution seeks to introduce pursuant to rule 68(3) of the Rules includes P-0662's expert report on the impact of trauma on witnesses' and victims' memory and testimonies, as well as the letter of instruction addressed to her and her *curriculum vitae* (CV). These documents are relevant, probative and reliable.
4. P-0662's testimony [REDACTED]<sup>5</sup> [REDACTED] [REDACTED],<sup>6</sup> and she is currently expected to testify on [REDACTED]. Should this Request be granted, P-0622 will be asked to attest to the accuracy of her report at the beginning of her testimony and to confirm her availability and willingness to be examined by the Parties, Legal Representatives of Victims (LRVs) if applicable, and the Chamber.
5. Based on past practice, the Prosecution estimates that it will require in total 2 hours for the examination-in-chief of P-0662; namely approximately 30 minutes for the formalities associated with the introduction into evidence of an expert witness's prior recorded testimony and associated exhibits, and an additional 1 hour and 30

<sup>1</sup> [REDACTED].

<sup>2</sup> See Annex: The mission letter dated 6 March 2020, [REDACTED], and P-0662's CV, [REDACTED].

<sup>3</sup> [REDACTED].

<sup>4</sup> [REDACTED].

<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

minutes to conduct a succinct supplementary examination to elicit further focused *viva voce* evidence, notably about her methodology and conclusions in particular to further elaborate upon the range of responses to traumatic experiences; PTSD (e.g. whether PTSD is inevitable; the impact of types of traumatic events on PTSD, dissociative subtype of PTSD and complex PTSD); relevance of the type of traumatic event (e.g. sexual crimes and torture); relevance of individuals' characteristics (including age, gender, and culture); the issue of stigma; and, the storage and retrieval of memories of traumatic events (e.g. nature and types of memories, tools for recovering memories, impact of trauma on memories and recall, fragmentation of memory and fragmentary reporting).<sup>7</sup>

6. Granting the Request would not be prejudicial to the rights of the Accused and would enhance the expeditiousness of the proceedings by reducing the length of Expert Witness P-0662's examination-in-chief by approximately 2 hours.

### **Confidentiality**

7. Pursuant to regulation 23*bis*(1) of the RoC, the Prosecution files this submission and its accompanying Annex as confidential because they contain confidential information including information regarding Prosecution witness P-0662, in addition to referring to filings classified as confidential. The Prosecution shall file a public redacted version in due course.

### **Prosecution's Submissions**

#### **Request for authorisation to introduce P-0662's material into evidence**

8. Rule 68(3) of the Rules provides that the Chamber may allow the introduction of the previously recorded testimony of a witness who is present before the Chamber

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<sup>7</sup> The Prosecution observes that in *Prosecutor v Ntaganda* a similar expert witness, ██████████ testified and elaborated on a similar range of topics and for the same length of time of **2 hours** that included submission of his expert report under rule 68(3). The Prosecution envisages that P-0662 will be able to elaborate in her testimony on these topics, like ██████████, to assist the Chamber's better understanding of the complex issues arising from P-0662's report.

where the individual does not object to the submission, and the Parties and Chamber have the opportunity to examine the witness.

9. P-0662 produced an expert report for the Prosecution in April 2020. The Prosecution has identified P-0662 as an appropriate witness for the procedure under rule 68(3) of the Rules.

10. As set out in section I of Annex to this filing, the Prosecution seeks to introduce, in full, P-0662's report. The Prosecution also seeks to introduce into evidence the materials necessary to establish P-0662's expertise, namely her CV<sup>8</sup> and the Prosecution's letter of instruction,<sup>9</sup> as specified in section II of the Annex.

11. P-0662's report is relevant. It relates to, *inter alia*: (a) the notions of trauma and PTSD; (b) the symptoms of PTSD; (c) the causes and impact of PTSD, including depending on the nature of the trauma and factors related to the victim; (d) the impact or consequences of trauma on the storage and retrieval, or recall, of memories; and (e) the particular impact of trauma associated with sexual crimes and torture. P-0662's report may assist the Chamber in its assessment of the evidence in this case.<sup>10</sup>

12. P-0662's report is also probative and reliable. The content of her report falls within the scope of her expertise, which the Chamber has already recognised.<sup>11</sup> It was prepared voluntarily for the Prosecution by P-0662 in the understanding that it could be used as evidence in this case. The references used by P-0662 in preparation of her report are clearly identified therein.<sup>12</sup>

13. When she appears before the Chamber, P-0662 will be asked to confirm the accuracy of her report and whether she consents to the submission of her report and

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associated material, in accordance with rule 68(3) of the Rules. The Parties, the LRVs if applicable, and the Chamber will have the opportunity to examine this witness during the proceedings. Therefore, the introduction of Witness P-0662's material under rule 68(3) of the Rules is not prejudicial to or inconsistent with the rights of the Accused.

14. The Prosecution estimates that without recourse to rule 68(3) of the Rules, it would require approximately 4 hours for the examination-in-chief of P-0662 in order to cover all the issues discussed in her report, as well as issues related to her expertise. Granting this Request would enhance the expeditiousness of the proceedings by reducing the length of P-0662's examination-in-chief by half.

*Proposed procedure for the introduction of P-0662's report and associated material*

15. Should this Request be granted, the Prosecution submits that there will be no need to read into evidence the report of P-0662 as the witness will be asked to confirm its accuracy and to provide corrections or amendments, if any.

16. During witness preparation, the Prosecution will ask P-0662, *inter alia*, to review her report and associated material, advise of any corrections or clarifications she wishes to make, and to confirm the accuracy of her report.<sup>13</sup> In accordance with the Witness Preparation Protocol, this session will be video-recorded and the Prosecution will disclose a log of the session clearly indicating any changes or corrections made by the witness.<sup>14</sup>

17. When P-0662 appears in court, the Prosecution will seek to elicit any corrections or clarifications noted by the witness during witness preparation.<sup>15</sup> The Prosecution will then ask the witness whether she has any further corrections or clarifications to

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<sup>13</sup> ICC-01/12-01/18-666-Anx, para.18-19.

<sup>14</sup> ICC-01/12-01/18-666-Anx, para.12-15, 31.

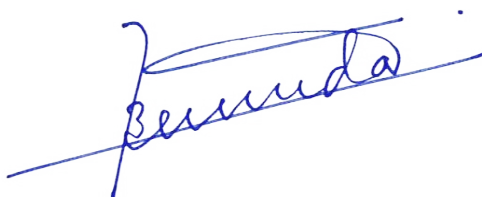
<sup>15</sup> ICC-01/12-01/18-666-Anx, para. 50.

make to her report and to confirm her consent to be questioned by the Parties and the Chamber.

18. After tendering her report and associated material, with any changes or clarifications noted on the record, the Prosecution will conduct a succinct supplementary examination of P-0662 as outlined above (see paragraph 5 *supra*).

### **Conclusion**

19. For the foregoing reasons, the Prosecution requests the Chamber to grant this Request.

A handwritten signature in blue ink, appearing to read 'Bensouda', is written over a horizontal line. The signature is stylized and slanted.

Fatou Bensouda, Prosecutor

Dated this 2 October 2020

At The Hague, The Netherlands