

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **31 August 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 with confidential Annex 1**

**Public redacted version of Defence Rule 68(2)(b) and Rule 68(3) applications, ICC-01/12-01/18-2276-Conf, 5 July 2022**

**Source:** Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

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

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**Detention Section**

**Victims Participation and  
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## I. Introduction

1. Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence ('Rules'), the Defence for Mr Al Hassan respectfully requests Trial Chamber X to admit into evidence Witness D-0544 and Witness D-0611's statements.<sup>1</sup>
2. Both statements are relevant and cumulative of other Defence evidence (oral testimony) and satisfy the requirements of Rule 68(2)(b). They were prepared in a reliable manner, and their introduction will occasion no prejudice to a fair resolution of the issues as their content provide background information which does not relate to the charged acts and conduct of the accused.
3. Furthermore, pursuant to Rule 68(3) of the Rules, the Defence also respectfully requests Trial Chamber X to allow the Defence to (i) introduce into evidence Witnesses D-0093 and D-0240's statements and Witness D-0240's associated exhibit<sup>2</sup> and; (ii) conduct a brief supplementary examination of these Witnesses.
4. The Defence estimates that it will require 2 hours to examine D-0093 and 2 ¾ hours for D-0240 from original 16 hours,<sup>3</sup> thus reducing the extent of in-court time expended in the examination of witnesses.<sup>4</sup> The proposed statements are also relevant and cumulative of other Defence evidence and satisfy the requirements of Rule 68(3).<sup>5</sup>

## II. Level of confidentiality

5. Pursuant to regulation 23bis(1) of the Regulations of the Court, the Defence files this application and its accompanying annex as confidential, because it contains sensitive

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<sup>1</sup> Annex 1.

<sup>2</sup> *Id.*

<sup>3</sup> [ICC-01/12-01/18-2152-Conf-Anx1](#).

<sup>4</sup> See [ICC-01/12-01/18-1756](#), para. 14; [ICC-01/12-01/18-T-171-ENG](#), p.11, line 25 – p.12, line 7.

<sup>5</sup> The Defence is also mindful of the Chamber's order at para. 21 of [ICC-01/12-01/18-2241](#) and submits that, given that its new Associate Counsel has not been given access rights to the case yet, it is not in a position and needs additional time to provide an updated version of its List of Witnesses, specifying its remaining witnesses and the estimated duration of their testimonies. The Defence has nevertheless taken steps to reduce in-court time through the filing of these combined Rule 68(2) and (3) applications, and will endeavour to file other similar applications.

information regarding witnesses and refers to confidential documents. The Defence will file a public redacted version in due course.

### III. Applicable law

6. The Defence incorporates by reference the applicable legal framework and jurisprudence as set out in its previous applications under Rule 68(2)(b)<sup>6</sup> and Rule 68(3).<sup>7</sup>

### IV. Submissions

#### A. Rule 68(2) application

*The statement of D-0544*<sup>8</sup>

7. D-0544 is a fact witness. [REDACTED] before 2012 and was present in Timbuktu during the events. His evidence is short and focused on very discreet points, and he does not provide information on key factual aspects of the case.
8. D-0544 gives evidence about Mr Al Hassan's good temperament<sup>9</sup> and about two incidents for which Mr Al Hassan provided his help. In the first incident, Mr Al Hassan helped to protect houses and personal goods against theft.<sup>10</sup> In the second, he provided his assistance [REDACTED].<sup>11</sup> This evidence does not concern a charged incident and is corroborated by the testimony of D-0093,<sup>12</sup> thus being duplicative in nature.
9. Furthermore, even if D-0544 testifies about Mr Al Hassan's assistance [REDACTED] members of the population, he explains that he knows nothing about Mr Al Hassan's work at the Islamic police in 2012.<sup>13</sup> D-0544's evidence does not touch upon matters regarding the acts and conduct of Mr Al Hassan. His prior recorded testimony consists

<sup>6</sup> [ICC-01/12-01/18-2209-Conf](#), paras. 6, 16, 27, 38; [ICC-01/12-01/18-2256-Conf](#), paras. 4-7.

<sup>7</sup> [ICC-01/12-01/18-2208-Conf-Red](#), paras. 5-7; [ICC-01/12-01/18-2229-Conf-Exp](#), para. 7.

<sup>8</sup> MLI-D28-0006-3342-R01.

<sup>9</sup> MLI-D28-0006-3342-R01 at 3344-3345, paras. 14, 21.

<sup>10</sup> MLI-D28-0006-3342-R01 at 3345-3346, paras. 16-18.

<sup>11</sup> [REDACTED].

<sup>12</sup> See [REDACTED]. D-0093's evidence is submitted under Rule 68(3) therefore allowing the possibility of cross-examination.

<sup>13</sup> MLI-D28-0006-3342-R01 at 3345, paras. 15, 20.

principally in explaining Mr Al Hassan's willingness to help in difficult situations, and his good character in general. It is corroborated by evidence from Defence witnesses that will testify *viva voce*.<sup>14</sup>

10. Furthermore, the Witness has no information about the groups, and does not recall anything in particular about their arrival in Timbuktu, nor is he able to describe the MNLA, Ansar Dine or the Arab militias.<sup>15</sup> In view of the fact that D-0544 does not testify on issues that concern charged incidents, and of the fact that his evidence concerns peripheral issues, the Defence submits that Rule 68(2)(b) is the more appropriate and time-saving manner form to receive it.
11. D-0544's statement bears sufficient indicia of reliability. It was obtained voluntarily, and the Witness confirmed that the statement was read back to him in French, a language he perfectly understands, and was true to the best of his knowledge.<sup>16</sup>

*The statement of D-0611*<sup>17</sup>

12. D-0611 [REDACTED].<sup>18</sup> His evidence relates to background and political context prior to and after 2012.
13. D-0611 testifies about the lack of resources and basic services (police, judges, lawyers) [REDACTED] before 2012, and about going to tribal or religious leaders or Cadis to solve problems and complaints, such as thefts, divorces and physical violence.<sup>19</sup> D-0611 explains that people respected and followed the decisions taken by religious judges, whereas they did not have confidence in the Malian justice system, which was corrupted and only available in big cities.<sup>20</sup>
14. This is relevant to the charge of persecution and the underlying Prosecution argument that Ansar Dine sought to impose and apply 'new rules' that were not accepted by the local population. It is also relevant to defences of mistake of law/fact. It is corroborated

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<sup>14</sup> D-0605, D-0312, and D-0147.

<sup>15</sup> MLI-D28-0006-3342-R01 at 3344, paras. 8-11.

<sup>16</sup> MLI-D28-0006-3342-R01 at 3347.

<sup>17</sup> MLI-D28-0006-4287-R01.

<sup>18</sup> [REDACTED].

<sup>19</sup> MLI-D28-0006-4287-R01 at 4295-4296.

<sup>20</sup> MLI-D28-0006-4287-R01 at 4297-4298.

by the oral evidence of Prosecution witnesses [REDACTED],<sup>21</sup> [REDACTED],<sup>22</sup> P-0643,<sup>23</sup> P-0654,<sup>24</sup> and P-0160.<sup>25</sup>

15. D-0611's prior recorded testimony also relates to the lack of development and the marginalisation of the North which lead to the creation of the MNA/MNLA by young people seeking to obtain fundamental rights for the people in the North.<sup>26</sup> The Witness explained the past massacres based on people's skin colour and the fear [REDACTED] people had of the Malian army.<sup>27</sup> As a result, members of D-0611's family fled to refugee camps where living conditions were very difficult.<sup>28</sup> The Witness also explained that for those who stayed, they had to join the groups to survive.<sup>29</sup> This part of his testimony is relevant to the defence of duress.<sup>30</sup>
16. D-0611 also testifies that [REDACTED], and gives evidence concerning the shared principles between the MNLA and the HCUA.<sup>31</sup> D-0611 explains [REDACTED], Mr Al Hassan's good temperament and his impression of him.<sup>32</sup> Furthermore, D-0611 provides information [REDACTED].<sup>33</sup>
17. Mr Al Hassan's [REDACTED], are corroborated by the testimony of [REDACTED],<sup>34</sup> [REDACTED],<sup>35</sup> [REDACTED],<sup>36</sup> and [REDACTED].<sup>37</sup> Furthermore, D-0611's evidence on this point relates to issues that do not concern charged incidents. It does not therefore require testing in Court, as the Chamber previously indicated that

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<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> [ICC-01/12-01/18-T-083-CONF-ENG](#), pp.52-53, 57-68.

<sup>24</sup> [ICC-01/12-01/18-T-133-CONF-ENG](#), pp.51-53.

<sup>25</sup> [ICC-01/12-01/18-T-067-CONF-ENG](#), pp.33-43.

<sup>26</sup> MLI-D28-0006-4287-R01 at 4299.

<sup>27</sup> MLI-D28-0006-4287-R01 at 4300.

<sup>28</sup> MLI-D28-0006-4287-R01 at 4301.

<sup>29</sup> MLI-D28-0006-4287-R01 at 4302-4308.

<sup>30</sup> Several Prosecution witnesses testified on previous waves of ethnic cleansing of Touaregs that gave rise to exile, *see* P-1086, [ICC-01/12-01/18-T-122-CONF-ENG](#), p.5, line 8 – p.6, line 4; [REDACTED]; P-0065, [REDACTED]; [ICC-01/12-01/18-T-050-CONF-ENG](#), p.21, line 1 – p.22, line 7. And *see e.g. viva voce* evidence of D-0211, D-0243, D-0529 and D-0540, and prior recorded testimonies of D-0219, D-0511, D-0534 and D-0539.

<sup>31</sup> MLI-D28-0006-4287-R01 at 4309-4311.

<sup>32</sup> MLI-D28-0006-4287-R01 at 4312-4314.

<sup>33</sup> MLI-D28-0006-4287-R01 at 4317-4321.

<sup>34</sup> [REDACTED].

<sup>35</sup> [REDACTED].

<sup>36</sup> [REDACTED].

<sup>37</sup> [REDACTED].

consideration of the standard evidentiary criteria is deferred to its eventual deliberation for its judgment.<sup>38</sup> Therefore, no prejudice arises from its admission through Rule 68(2)(b).

18. D-0611's statement bears sufficient indicia of reliability. It was obtained voluntarily, interpreted to him in Tamasheq, and the Witness confirmed that each information given was the truth and correct to the best of his knowledge and memory.

### **B. Rule 68(3) application**

*The statement of D-0093*<sup>39</sup>

19. D-0093 is [REDACTED]. He was present in Timbuktu in 2012 and [REDACTED]. D-0093 provides evidence on the following matters that are relevant to the Chamber's disposition of the charges, but of a contextual and cumulative nature.
20. D-0093 testifies about the departure of the Malian authorities in 2012, the arrival of the MNLA and the destruction that followed with the complicity and participation of the Arab militia.<sup>40</sup>
21. He has had interactions with the Islamists, and in particular the Islamic police and the security section, [REDACTED]. [REDACTED], and the Islamists continued to secure and protect these facilities. The Islamists also provided free fuel and fertiliser to the farmers and supervised the distribution of aid to the population, in order to ensure that it was distributed in a fair manner throughout the community.<sup>41</sup>
22. D-0093 describes [REDACTED]. When the Islamists were present, everything was free.<sup>42</sup> [REDACTED].<sup>43</sup> Prosecution witnesses also corroborated the distribution of free fuel, water and electricity, [REDACTED] under the occupation of the Islamists.<sup>44</sup>

<sup>38</sup> [ICC-01/12-01/18-789-AnxA](#), para. 34(i) and (ii).

<sup>39</sup> MLI-D28-0006-4212-R01.

<sup>40</sup> MLI-D28-0006-4212-R01 at 4214, paras. 11-13.

<sup>41</sup> MLI-D28-0006-4212-R01 at 4215, paras. 15-20.

<sup>42</sup> MLI-D28-0006-4212-R01 at 4218-4219, paras. 33-39.

<sup>43</sup> [REDACTED].

<sup>44</sup> See e.g., [REDACTED]; [ICC-01/12-01/18-T-050-CONF-ENG](#), p.56, lines 11-19; P-0638, [ICC-01/12-01/18-T-059-CONF-ENG](#), p.16, lines 1-8; [REDACTED].

23. More generally, D-0093 provides information about the situation of corruption that prevailed before the arrival of the Islamists, and how it changed after the departure of the MLNA when the Islamists took over.<sup>45</sup> D-0093 will describe the complaint system at the police which was used by locals. This system contributed to security and stability and avoided people taking matters into their own hands.<sup>46</sup>
24. This evidence is relevant to the charge of persecution, the alleged common plan, and the organisational aims and policies of Ansar Dine. It is corroborated by the oral testimony of the following Prosecution witnesses: P-0608,<sup>47</sup> P-0065,<sup>48</sup> P-0641,<sup>49</sup> P-0654, [REDACTED],<sup>50</sup> P-0099,<sup>51</sup> and P-0010.<sup>52</sup>
25. D-0093's evidence also relates to [REDACTED]. D-0093 describes Mr Al Hassan as a caring person and well respected. [REDACTED]. D-0093 also establishes a difference in terms of how people were treated by Adama and Al Hassan as compared to Hamed Moussa, [REDACTED].<sup>53</sup>
26. D-0093 does not have any knowledge about Mr Al Hassan's role in 2012, he only heard in town that he was Adama's deputy.<sup>54</sup> Due to the relatively limited amount of information D-0093 possesses about Mr Al Hassan and the Islamic police, the most appropriate form of testimony for this Witness would be through Rule 68(3), as the Prosecution will retain the ability to test his evidence by cross-examining him in court. D-0093's testimony does not necessitate oral presentation in full as his statement is detailed, probative and reliable and is or will be corroborated on this point by *viva voce* evidence.<sup>55</sup>
27. Finally, D-0093 relays the information he received concerning marriages between members of the Arab community and the groups, which took place when Ansar Dine

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<sup>45</sup> MLI-D28-0006-4212-R01 at 4215-4216 at 21-22.

<sup>46</sup> MLI-D28-0006-4212-R01 at 4217-4218, paras. 29-32.

<sup>47</sup> [ICC-01/12-01/18-T-154-CONF-ENG](#), p.93, line 24 – p.94, line 7.

<sup>48</sup> [ICC-01/12-01/18-T-050-CONF-ENG](#), p.60, lines 22–25.

<sup>49</sup> [ICC-01/12-01/18-T-139-CONF-ENG](#), pp.56-57.

<sup>50</sup> [REDACTED].

<sup>51</sup> [ICC-01/12-01/18-T-147-CONF-ENG](#), p.8, line 21 – p.9, line 3.

<sup>52</sup> [ICC-01/12-01/18-T-021-CONF-ENG](#), p.8, lines 20 – p.21, line 3.

<sup>53</sup> [REDACTED].

<sup>54</sup> MLI-D28-0006-4212-R01 at 4214-4215, paras. 14, 17.

<sup>55</sup> *E.g.*, D-0147, D-0213, D-0312, D-0514, D-0529, D-0605, D0231.



and Al Qaida were present in Timbuktu. According to what he was told, the parents gave their consent to the marriages, [REDACTED].<sup>56</sup> This is relevant to the issue as to whether the commission of acts of forced marriage was a foreseeable consequence of the implementation of the common plan, the charges of sexual slavery and rape and the question of knowledge/mistake of fact. Multiple Prosecution witnesses have given oral testimony that consensual marriages occurred between locals and members of Ansar-Dine/AQIM during this time period.<sup>57</sup>

28. The Defence estimates that it will require in total 2 hours for the examination-in-chief of D-0093, for the formalities associated with the introduction into evidence of his statement and to conduct a succinct supplementary examination on the situation of Timbuktu during the presence of the armed groups, the administration of the city by the Islamists, especially as concerns [REDACTED] Mr Al Hassan and the few interactions he had with the Islamic police.
29. The Proposed Evidence satisfies the requirements of Rule 68(3) because the Witness will be (i) present in court; (ii) available for cross-examination by the Prosecution and questioning by the Legal Representatives of Victims and Trial Chamber X; and (iii) able to confirm his agreement to the introduction of the Rule 68(3) statement and to confirm that it accurately reflects what he has said.

*The statement and related material of D-0240*<sup>58</sup>

30. D-0240 is a fact Witness from [REDACTED].
31. D-0240 testifies about the development issues in the North of Mali, and the lack of roads, hospitals and schools, making conditions of living difficult for the people in the North. D-0240's evidence also relates to the corruption of the state justice system and the fact that traditional justice was always applied in the North, even before 2012. Traditional justice could address land problems, financial problems, debts, marital

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<sup>56</sup> MLI-D28-0006-4212-R01 at 4219-4220, paras. 41-44.

<sup>57</sup> [REDACTED]; P-0626, [ICC-01/12-01/18-T-143-CONF-ENG](#), p.16, line 7 – p. 21, line 11; P-0152, [ICC-01/12-01/18-T-032-CONF-ENG](#), p.80.

<sup>58</sup> See statement MLI-D28-0006-4222-R01. The Defence is also seeking the admission of related exhibits: MLI-D28-0006-3002-R01.

problems, and even criminal problems. [REDACTED] Houka Houka who was highly respected by the people of the neighbourhood, and sought after to settle disputes.<sup>59</sup>

32. This evidence is relevant for contextualisation of the justice system before and during the presence of Ansar Dine. It also relates to the nature of the alleged common plan to apply Sharia and to the defences of mistake of law/facts. It is corroborated by D-0272, D-0219, D-0511, and D-0539. *Viva voce* evidence will also be presented on this point by D-0540.<sup>60</sup>
33. At the beginning of March 2012, D-0240 was [REDACTED]. After the coup d'état, [REDACTED] due to the insecurity in the North. After the arrival of MNLA and Ansar Dine in Timbuktu, D-0240 returned to Timbuktu [REDACTED] to help deal with issues [REDACTED]. He came back for roughly two months but was also [REDACTED]. D-0240 was able to come to Timbuktu because [REDACTED].<sup>61</sup> D-0240's evidence on this point is relevant to the defence of necessity/duress.<sup>62</sup>
34. D-0240 testifies that [REDACTED]. [REDACTED].<sup>63</sup> This evidence is relevant to the charges of persecution and the alleged common plan, and the organisational aims and policies of Ansar Dine.<sup>64</sup>
35. During his time in Timbuktu, D-0240 also [REDACTED].<sup>65</sup>
36. In another occasion, D-0240 went to the BMS to ask about [REDACTED]. On this occasion, he met with Mr Al Hassan who asked him questions about [REDACTED].<sup>66</sup>
37. D-0240 also testifies about [REDACTED], who told him that she had married someone from the group of the Islamists, [REDACTED]. The Islamist has asked her to cook for him, and that is how they got to know each other. He then asked her to marry him and she accepted. [REDACTED]. A few years later, D-0240 met [REDACTED] in a

<sup>59</sup> MLI-D28-0006-4222-R01 at 4225-4226.

<sup>60</sup> See [ICC-01/12-01/18-2203-Conf](#), para. 19.

<sup>61</sup> [REDACTED].

<sup>62</sup> See above, fn. 15.

<sup>63</sup> [REDACTED].

<sup>64</sup> See above, para. 24.

<sup>65</sup> [REDACTED].

<sup>66</sup> [REDACTED].

meeting with an association that was looking for victims of 2012 [REDACTED].<sup>67</sup> This is relevant to the charges of forced marriage and sexual slavery and rape, and the question of knowledge/mistake of fact. Multiple Prosecution witnesses have given oral testimony that consensual marriages occurred between locals and members of Ansar-Dine/AQIM during this time period.<sup>68</sup>

38. A few years after the events, D-0240 participated in a few meetings with NGOs. He participated in workshops with [REDACTED]. [REDACTED] of discussing SGBV violence.<sup>69</sup> This aspect of D-00240's testimony is relevant as to the credibility of the Prosecution evidence. It is cumulative as to the evidence of D-0512 and D-0524. *Viva voce* evidence will also be presented on this point by D-0006 and D-0514.<sup>70</sup>
39. Finally, D-0240 clarifies the limited role he played for the Defence as a resource person. [REDACTED].<sup>71</sup>
40. A limited examination is necessary for the fair evaluation of the Witness and the determination of the truth, as this Witness will be responding to the Prosecution's evidence on several points. The Proposed Evidence satisfies the requirements of Rule 68(3) because the Witness will be (i) present in court; (ii) available for cross-examination; and (iii) able to confirm his agreement to the introduction of the Rule 68(3) statement and to confirm that it accurately reflects what he has said. The Defence intends to conduct a supplementary examination of Witness D-0240 of 2 ¾ hours instead of the 7 hours initially envisaged.<sup>72</sup> The Defence would elicit specific evidence on [REDACTED], D-0240's interactions with the Islamic police, and his knowledge about the consensual marriage of [REDACTED]. This may include showing video evidence that the Defence was not able to show D-0240 due to [REDACTED]. The Defence will ensure that the Witness is not merely asked to repeat information which he already provided in his prior recorded testimony.

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<sup>67</sup> [REDACTED].

<sup>68</sup> [REDACTED]; P-0626, [ICC-01/12-01/18-T-143-CONF-ENG](#), p.16, line 7 – p. 21, line 11; P-0152, [ICC-01/12-01/18-T-032-CONF-ENG](#), p.80.

<sup>69</sup> [REDACTED].

<sup>70</sup> See [ICC-01/12-01/18-2203-Conf](#), para. 103.

<sup>71</sup> [REDACTED].

<sup>72</sup> [ICC-01/12-01/18-2152-Conf-Anx1](#).

41. The Defence further seeks to admit into evidence related exhibits MLI-D28-0006-3002-R01, [REDACTED]. This document is relevant to show that D-0240 was notified on the end of his appointment [REDACTED].

**V. Relief requested**

42. For the foregoing reasons, the Defence respectfully requests Trial Chamber X to:

- **GRANT** the present Rule 68(2) request and **ADMIT** Witness D-0544 and Witness D-05611's statements into evidence; and
- **GRANT** the present Rule 68(3) request and **ALLOW** the introduction of the proposed statements of Witness D-0093, and the proposed statements and associated exhibits of Witness D-0240.



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Melinda Taylor  
Counsel for Mr. Al Hassan

Dated this 31<sup>st</sup> Day of August 2022  
At The Hague, The Netherlands