

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **15 March 2023**

**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**

**Public redacted version of Defence Request for admission of evidence and fair trial  
remedy, ICC-01/12-01/18-2473-Conf, 1 March 2023**

**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:**

**The Office of the Prosecutor**

Mr Karim A.A. Khan KC  
Ms Nazhat Shameem Khan  
Mr Mame Mandiaye Niang

**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**

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**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

## I. INTRODUCTION

1. The Defence respectfully requests to admit further evidence pursuant to Articles 64(9) and 69(3) of the Rome Statute ('Statute'); and, pursuant to Article 64(2) for the Chamber to issue a declaration acknowledging that Mr Al Hassan's fair trial rights have been violated following the publication of two articles by the Court's Outreach Unit, and an order that steps be taken to rectify their partiality.
2. Despite the closure of its case, the Defence has recently been made aware of two articles published by the Court's Outreach Unit ('Articles') and a video,<sup>1</sup> which recount their activities while on mission to Timbuktu which occurred a week after the opening of the Defence's case, being approximately mid-May 2022. This is the first time the Defence has been made aware of a mission to Timbuktu undertaken by the Outreach Unit at that time and the activities conducted.
3. The Defence submits that the Articles undermine Mr Al Hassan's fair trial rights, both in substance and perception. The Outreach Unit's activities, as evidenced by the Articles, had the capacity to interfere in the ability for the Defence to prepare and present its case, and occurred at a crucial time of the trial – being shortly after the Defence opened its case and while the Defence was finalising evidence and taking steps to call witnesses. Further, the language used in the Articles by a neutral public official of the Court undermines Mr Al Hassan's fundamental right to be presumed innocent. Altogether, such actions are a flagrant violation of the accused's fair trial rights and consequently have adversely impacted the fairness and integrity of the proceedings, and ought be considered by the Chamber.

## II. LEVEL OF CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Defence files this application as confidential, because it contains sensitive information regarding a Defence witness and refers to confidential documents. The Defence will file a public redacted version in due course.

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<sup>1</sup> MLI-D28-0006-9206 ('[REDACTED] Article'); MLI-D28-0006-9214 ('[REDACTED] Article'); MLI-D28-0006-9204 ('video').

5. The Defence files Annex 2 as a confidential *ex parte* (Defence and Chamber only) exhibit, on the basis that it contains sensitive details of security logistics with respect to the Defence's mission to Timbuktu.

### III. RELEVANT FACTUAL HISTORY

6. On 30 September 2019, the Pre-Trial Chamber issued a confidential decision confirming the charges as against Mr Al Hassan.
7. On 17 October 2019, the Outreach Unit informed the Defence that there was an 'ongoing Outreach mission organised by the Outreach Unit and Mali Country Office in Bamako',<sup>2</sup> in which one member of the Prosecution was invited to attend. The Outreach Unit advised the Defence that it would be able to participate in future Outreach activities. To date, the Defence has not had any further communication from the Outreach Unit as to any outreach missions being conducted in Mali.
8. On 14 July 2020, the trial opened and resumed on 8 September 2020 with the Prosecution starting to present its evidence and call its witnesses. On 9 May 2022, the Defence made its opening statement before the Chamber.
9. In mid-May 2022, pursuant to the Articles, the Outreach Unit undertook an outreach mission to Timbuktu, unbeknownst to the Defence.
10. On 3 November 2022, the last defence witness completed their testimony.
11. On 3 February 2023, the Chamber instructed the Defence to 'notify the formal closure of its presentation of evidence by Monday, 6 February 2023'.<sup>3</sup> The Defence did so,<sup>4</sup> while the Prosecution submitted a notice that it did not intend to seek leave to present rebuttal evidence.<sup>5</sup> The Chamber issued its decision on the closure of submission of

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<sup>2</sup> See Confidential Annex 1

<sup>3</sup> Email, Trial Chamber X to Defence and Prosecution, "TC X: Decision on Defence request to defer the closure of its presentation of evidence", 3 February 2023, 18:40.

<sup>4</sup> Defence Notice Concerning the Close of Evidence, ICC-01/12-01/18-2465, 6 February 2023.

<sup>5</sup> Prosecution final notice regarding potential rebuttal evidence, ICC-01/12-01/18-2467, 8 February 2023, para. 1.

evidence on the same day,<sup>6</sup> triggering the running of the final brief deadlines in accordance with the Chamber's decision on 29 August 2022.<sup>7</sup>

12. On 10 February 2023, the Defence filed its Request for Variation of Time Limit to the Final Briefing Schedule.<sup>8</sup> On 15 February 2023, the Chamber instructed the parties that the Chamber would suspend any deadline falling within the spring judicial recess.<sup>9</sup> Consequently, the Prosecution's final brief is to be filed on 9 March 2023, the Defence is to file on 17 April 2023 and both parties' responses are now due 2 May 2023.
13. On 15 February 2023, the Articles were brought to the attention of the Defence from a post on the ICC's Twitter account dated the same day.<sup>10</sup> The Articles consist of the [REDACTED] Article<sup>11</sup> and the [REDACTED] Article.<sup>12</sup> On further inspection of the Twitter account, the Defence came to know that the relevant video had been posted on 14 February 2023.<sup>13</sup>
14. In the [REDACTED] Article, Ms [REDACTED] outlines that, as part of the mission, the team were to 'meet affected communities to inform them' about the commencement of the Defence's case and planned to 'screen Al Mahdi's admission of guilt'. The [REDACTED] Article provides that the team met an extensive number of local community members during their mission, including journalists, civil society, religious leaders, and neighbourhood leaders.
15. The [REDACTED] Article states that the mission was 'the first time that an ICC outreach team has met the communities of Timbuktu who bore the full brunt of the occupation at the hands of Ansar Eddine and Al-Qaida in Islamic Maghreb. The Court is now trying the grave crimes that were committed then.' It outlines that '[o]n the agenda were screenings of footage from the hearings in The Hague, information sheets on the Al Hassan and Al Mahdi cases and discussion sessions to enable the participants to understand developments in the hearings.' Further, it further provides that '[t]he

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<sup>6</sup> Declaration of the closure of the submission of evidence, ICC-01/12-01/18-2468, 8 February 2023.

<sup>7</sup> Sixth decision on matters related to the conduct of proceedings: end of Defence case, potential rebuttal/rejoinder evidence, and closure of evidence, ICC-01/12-01/18-2308, 28 August 2022.

<sup>8</sup> Request for Variation of Time Limit to the Final Briefing Schedule, ICC-01/12-01/18, 10 February 2023.

<sup>9</sup> Email, Trial Chamber X to Defence and Prosecution, "TC X: Decision on Prosecution request for extension of pages (Filing 2469) and on Defence request for variation of time limit (Filing 2470), 15 February 2023, 16:26.

<sup>10</sup> MLI-D28-0006-9200.

<sup>11</sup> MLI-D28-0006-9206

<sup>12</sup> MLI-D28-0006-9214.

<sup>13</sup> MLI-D28-0006-9204.

description of the situation in Timbuktu during the armed groups' occupation in 2012 by former Prosecutor Fatou Bensouda in her opening statement in the Al Hassan case made a deep impression on one of the pastors', and some participants were 'shocked at the "good conditions"' in which Mr Al Hassan is held at the detention centre.

16. On 27 February 2023, the Defence disclosed the Articles, video and Twitter posts as MLI-D28-0006-9200, MLI-D28-0006-9202, MLI-D28-0006-9204, MLI-D28-0006-9206, and MLI-D28-0006-9214 ('the Disclosed Documents').

#### IV. APPLICABLE LAW

17. In accordance with Article 64(9)(a) of the Statute, the Chamber may rule on the admissibility or relevance of evidence on application by a party or on its own motion. Further, pursuant to Article 69(3) of the Statute, the parties may submit evidence relevant to the case, and the Court has the authority to request the submission of all evidence that it considers necessary for the determination of the truth.
18. The Court has previously outlined that granting a request for the admission of evidence following the closing of a case, will result in oral proceedings being reopened for adversarial submissions as to the appropriate weight to be attached in light of the whole case file.<sup>14</sup> The Court has outlined that evidence which goes to 'the determination of truth' may justify the reopening of oral submissions, and will apply where:<sup>15</sup>
- a. The evidence in question is fresh, or when the party requesting fresh hearings was unable, despite the use of reasonable diligence, to identify and produce the evidence beforehand;
  - b. Where conditions for admissibility of evidence are satisfied; and
  - c. Where the potential contribution of the evidence to the determination of the truth is sufficiently significant to justify fresh hearings, with the possible implications for the fairness of the trial or the integrity of the proceedings.

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<sup>14</sup> Trial Chamber II, *Prosecutor v. Katanga*, Decision on the request by the Defence for Germain Katanga seeking to admit excerpts from the judgment rendered in *Lubanga*, 26 April 2012, [ICC-01/04-01/07-3279-tENG](#), para. 14.

<sup>15</sup> Trial Chamber II, *Prosecutor v. Katanga*, Decision on the request by the Defence for Germain Katanga seeking to admit excerpts from the judgment rendered in *Lubanga*, 26 April 2012, [ICC-01/04-01/07-3279-tENG](#), para. 14.

19. The Defence notes that the Court’s power under Article 69(3) is otherwise discretionary in nature. In exercising this power, the Court has outlined that it will have ‘regard to a broad range of factors, including the evidence already before it, the potential impact on the fairness and expeditiousness of the trial and rights of the accused, and the centrality of relevance of the additional evidence to the core matters for determination by the Chamber.’<sup>16</sup>
20. Further, pursuant to Articles 67 and 64(2) of the Statute, the Chamber’s functions extend to ensuring that the trial is conducted with full respect of the rights of the accused. The Chamber has broad powers under Article 64(2) to do ‘justice in each individual case’ which implies a ‘measure of flexibility in the management of proceedings.’<sup>17</sup> Accordingly, as the guarantor of the accused’s rights at the trial stage, the Chamber has the power to take all appropriate measures to protect and uphold the accused’s rights, including where the presumption of innocence is alleged to have been violated.<sup>18</sup> The Defence submits that this extends to issuing a declaration or order acknowledging the violation of these rights and rectification of the same.

## V. SUBMISSIONS

21. The Defence submits that the Disclosed Documents go to the determination of truth and justify the reopening of oral submissions.

*The evidence in question is ‘fresh’*

22. The first time the Defence came to know of the Articles was by way of a Twitter post dated 15 February 2023. The Defence is not aware that the Articles were published before this date (the Articles are not dated), and was not notified by the Outreach Unit of their existence or their intention to publish. Accordingly, the Defence could not have been able to identify or produce the Disclosed Documents before the closure of the case despite the use of reasonable diligence.

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<sup>16</sup> Trial Chamber III, *The Prosecutor v. Bemba*, Decision on “Prosecution’s application to submit additional evidence”, 2 April 2014, [ICC-01/05-01/08-3029](#), para. 29.

<sup>17</sup> Appeals Chamber, *The Prosecutor v. Ruto and Sang*, Judgement on the appeal of the Prosecutor against the decision of Trial Chamber V(a) of 18 June 2013 entitled “Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial”, 25 October 2013, [ICC-01/09-01/11-1066](#), para. 50.

<sup>18</sup> See Pre-Trial Chamber I, *The Prosecutor v. Mbarushimana*, Decision on the Defence Request for an Order to Preserve the Impartiality of the Proceedings, 31 January 2011, [ICC-01/04-01/10-51](#), para. 6.

23. The timing of the publication of the Disclosed Documents is of significant concern to the Defence – being one week after the close of the case. Given the Outreach Unit’s mission to Timbuktu occurred in approximately mid-May 2022, it is unacceptable that the Defence has only recently been given notice of this mission and the activities conducted at that time. This is especially in light of the fact that the Outreach Unit had previously advised that the Defence would be able to participate in future outreach activities.<sup>19</sup> This has required the Defence to bring this application at an extremely inopportune time for all parties involved, being subsequent to the closure of the submission of evidence and during the drafting of its final brief.

*The conditions of admissibility are satisfied*

24. The Defence submits that the Disclosed Documents satisfy the three prong test for the admission of evidence being relevancy, probative value and lack of prejudice.

25. The Disclosed Documents are relevant to the proceedings as they relate to the protection of Mr Al Hassan’s fair trial guarantees. The Disclosed Documents provide a contemporaneous recount of the Outreach Unit’s activities whilst in Mali in or around mid-May 2022. The Defence submits that these activities had the ability to interfere with the preparation of the Defence’s case at crucial time of the trial – being the finalisation of evidence and taking steps to call witnesses. Such activities undermine the Defence’s right to conduct its own defence and the right to adequate facilities to prepare its defence. Further, the language utilised in the Disclosed Documents, having been published by a neutral organ of the Court, undermine Mr Al Hassan’s right to be presumed innocent as enshrined in Article 66 of the Statute, and also impact the perception of Mr Al Hassan receiving a fair trial at this Court.

26. The Disclosed Documents have probative value. The Disclosed Documents have a significant bearing on determining the individual criminal responsibility of Mr Al Hassan,<sup>20</sup> as they directly relate to his ability to have prepared his defence, including the ability to obtain fulsome exculpatory evidence to be considered by the Chamber. The Defence submits that such evidence of interference is reliable, having been

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<sup>19</sup> See Confidential Annex 1.

<sup>20</sup> ICTY, Trial Chamber, *The Prosecutor v. Milosevic*, Decision on Application for a Limited Re-Opening of the Bosnia and Kosovo Components of the Prosecution Case with Confidential Annex, [IT-02-54-T](#), 13 December 2005, para. 37.



reported by the Court's own Outreach Unit. They are also probative as they are the source of Mr Al Hassan's deprivation of fair trial guarantees.

27. Otherwise, the Defence submits that the admission of the Disclosed Documents will not be prejudicial to a fair and expeditious trial. Indeed, it raise issues relating to the violation of Mr Al Hassan's fair trial rights that are sought to be rectified, which must considered alongside the need for expeditious proceedings. The Defence submits that any prejudice suffered by the Prosecution is outweighed by the significance of the issues raised by the Disclosed Documents.

*The contribution of the evidence to the determination of the truth is sufficiently significant*

28. The Disclosed Documents are sufficiently important to determine the truth as they illustrate a disregard of Mr Al Hassan's fair trial rights which must be considered in light of all the evidence in the proceeding. In this respect, the Defence submits that the evidence indicates a violation of Mr Al Hassan's presumption of innocence and fair trial rights both in substance and perception. The Disclosed Documents highlight the ongoing adverse effects experienced by the Defence in order to present its case under the conditions by which it was able to.

29. In respect of substantive interference into Mr Al Hassan's rights, the activities reportedly undertaken by the Outreach Unit interfered with the Defence's right to conduct its own defence including the right to adequate facilities to prepare its defence. This right has been interpreted as having 'the opportunity to organise his defence in an appropriate way and without restriction as to the possibility to put all relevant defence arguments before the trial court'.<sup>21</sup>

30. The Defence submits that the actions of the Outreach Unit, such as screening the Al Mahdi judgment and disseminating information sheets of the same, resulted in a heavy Prosecutorial influence, which affected witnesses recollections with respect to Mr Al Hassan and the ability for the Defence to put all relevant defence arguments before the Court. As the Defence was not notified or given the ability to participate in any planned Outreach missions, the material which was provided is highly reflective of the Prosecution's position. For instance, a photo in the [REDACTED] Article illustrates

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<sup>21</sup> European Commission of Human Rights, *Can v Austria*, Application No. 9300/81, 12 July 1984, Report of the Commission, para. 53.

the information sheet provided by the Outreach Unit for Mr Al Hassan's trial states that Mr Al Hassan '*aurait été commissaire de facto de la Police islamique; associé au travail du Tribunal islamique*',<sup>22</sup> suggestions which are firmly contested by the Defence. Accordingly, the material given to participants by the Outreach Unit was highly prejudicial as it failed to reflect the Defence's position, especially as no Defence material could be provided for dissemination and representative of the Defence in attendance. [REDACTED], is also extremely prejudicial to the interests of the Defence being capable of impacting witness' views vis-à-vis Mr Al Hassan. Indeed, the comment contained in the [REDACTED] Article that the Prosecutor's opening statement in this case had made a 'deep impression' on a pastor highlights a strong Prosecution influence on community members in Timbuktu.

31. These issues are further exacerbated when considered within the overall context of the Defence being granted limited travel to Mali by the Registry throughout the period of the proceedings – having been approved for a one week mission [REDACTED], who had restricted access to interact with community members at only one location whilst there.<sup>23</sup> To highlight this impact, the Defence was unable to meet and take evidence from a critical witness (P-533), who was unable to meet the Defence at the security vetted location due to health constraints.<sup>24</sup> Altogether, these issues illustrate the restrictions on the Defence to have gathered all relevant defence evidence to put before the Chamber for consideration.
32. The Outreach Unit mission in May 2022 occurred at a critical time when the Defence was finalising its evidence and taking steps to call witnesses who were in Timbuktu. Given the small community of Timbuktu, the visits by the Outreach Unit would have had an appreciable impact on its community members, in particular as concerns the terminology used by members of the local population to describe the 2012 events and the positions held by various individuals, including Mr Al Hassan. Such activities had the impact of further restricting the Defence's ability to obtain uncontaminated evidence and its ultimate case sought to be put.

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<sup>22</sup> <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/al-hassanFra.pdf>

<sup>23</sup> See Confidential Ex Parte Annex 2.

<sup>24</sup> See Confidential Ex Parte Annex 2.

33. On this basis, the Defence submits that the Outreach Unit's activities had the capacity to undermine the Defence's right to have adequate facilities to prepare its case, as it restricted the ability for the Defence to put all relevant defence evidence before the Chamber. The Defence submits that the violation to Mr Al Hassan's rights with respect to the Outreach Unit's activities in Timbuktu cannot now be retroactively cured and accordingly seeks declaratory relief to recognise that such violations have occurred.
34. In respect of Mr Al Hassan's fair trial rights having been perceived to be interfered with, the Defence points to the language used by the Outreach Unit - a neutral organ of the Court - in its Articles which is of serious concern. The [REDACTED] Article in particular describes that the communities of Timbuktu had borne 'the full brunt of the occupation of Ansar Eddine' and that the Court was 'trying the grave crimes that were committed'. The Defence will not restate the issues between the parties at length, but it is sufficient that whether there was an 'occupation of Ansar Eddine' and whether grave crimes have been 'committed' with respect to Mr Al Hassan are legal arguments which are resolutely contested by the Defence. Further, the comment that community members were 'shocked' by the good conditions of Mr Al Hassan's detention is suggestive that he is deserving of punishment of these crimes. The [REDACTED] Article also appears to conflate the Al-Mahdi judgment and the case as against Mr Al Hassan. Her article outlines that the destroyed mausoleums which they visited on mission were protected historic and religious buildings and their destruction found to be a war crime 'when the Court prosecuted the offence for the first time.' Needless to say, such war crimes have not yet been found by this Chamber with respect to Mr Al Hassan.
35. Courts have consistently emphasised the importance of the choice of words used by public officials in their statements before a person has been tried and found guilty of an offence. Accordingly, an accused's right to be presumed innocent will be violated if a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law.<sup>25</sup>

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<sup>25</sup> *Isoilov & Ors v Russia*, Application no. 2947/06, [Judgment](#), 24 April 2008, paras. 160-161, 166; *Butkevičius v Lithuania*, Application no. 48297/99, [Judgment](#), 26 March 2002, para. 49; *Alenet de Ribemont v. France*, Application no. 15175/89, [Judgment](#), 10 February 1995, paras 39-41; *Fatullayev v. Azerbaijan*, Application no. 4098/07, [Judgment](#), 22 April 2010, paras 36-37, 157-163. See also United Nations Human Rights Committee, *CCPR General Comment 13*, 13 April 1984, HRI/GEN/1/Rev.9 (Vol.1), para. 7; ICTR, Trial Chamber II, *The Prosecutor v. Munyakazi*, Decision on the Prosecutor's Request for Referral of Case to the Republic of Rwanda, 28 May 2008, [ICTR-97-36-R11bis-736](#), paras 33-49 (relating to statements made by government authorities

The Trial Chamber of the Special Court for Sierra Leone aptly outlined the effects of such comments, in that ‘an institution before which an accused appears to testify that already characterises the accused as a ‘perpetrator’ logically places the burden of disproving his guilt or proving his innocence’.<sup>26</sup> Accordingly, the presumption of innocence is an obligation on all organs of this Court.<sup>27</sup>

36. The imperative that public officials do not make statements that prejudge the outcome of criminal proceedings, in order to preserve an accused’s right to be presumed innocent, has also been reiterated by the Appeals Chamber in this Court.<sup>28</sup> In *Gaddafi*, the Appeals Chamber found that comments made by the Prosecutor in an interview with Vanity Fair, including that certain incidents were ‘a crime against humanity’, ‘gave the impression that factual issues yet to be determined by the judges had been determined or could not be contested.’<sup>29</sup> The Chamber considered that this behaviour was ‘clearly inappropriate in light of the presumption of innocence [and] may lead observers to question the integrity of the Court as a whole.’<sup>30</sup> It outlined that statements which may be inappropriate in light of the presumption of innocence may be subject to measures by the Trial Chamber responsible for the case, including a judicial reprimand or expression of discontent.<sup>31</sup> In *Lubanga*, the Appeals Chamber expressed its ‘strongest disapproval’ of comments made by a prosecution representative in a

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impacting on the accused’s fair trial guarantees); ICTY, Trial Chamber, *The Prosecutor v. Milosevic*, Decision Concerning an Amicus Curiae, 10 October 2002, [IT-02-54-T](#) (relating to statements made by the representative of an amicus curiae impacting on the accused’s presumption of innocence).

<sup>26</sup> Special Court for Sierra Leone, Trial Chamber, *The Prosecutor v. Samuel Hinga Norman*, Decision on the Request by the Truth and Reconciliation Commission of Sierra Leone to Conduct a Public Hearing with Samuel Hinga Norman, 29 October 2003, [SCSL-2003-08-PT\(3258\)](#), para. 13.

<sup>27</sup> Otto Triffterer and Kai Ambos (eds.), *Rome Statute of the International Criminal Court: A Commentary* (2016), p. 1640.

<sup>28</sup> Appeals Chamber, *The Prosecutor v. Gaddafi and Al-Senussi*, Decision on the Request for Disqualification of the Prosecutor, 12 June 2012, [ICC-01/11-01/11-175](#), paras 25-28; Appeals Chamber, *The Prosecutor v. Lubangaa*, Decision on the press interview with Ms Le Fraper du Hellen, 12 May 2010, [ICC-01/04-01/06-2433](#), paras. 39-41, 49, 52.

<sup>29</sup> Appeals Chamber, *The Prosecutor v. Gaddafi and Al-Senussi*, Decision on the Request for Disqualification of the Prosecutor, 12 June 2012, [ICC-01/11-01/11-175](#), para. 33.

<sup>30</sup> Appeals Chamber, *The Prosecutor v. Gaddafi and Al-Senussi*, Decision on the Request for Disqualification of the Prosecutor, 12 June 2012, [ICC-01/11-01/11-175](#), para. 33.

<sup>31</sup> Appeals Chamber, *The Prosecutor v. Gaddafi and Al-Senussi*, Decision on the Request for Disqualification of the Prosecutor, 12 June 2012, [ICC-01/11-01/11-175](#), para. 35.

public interview.<sup>32</sup> The Chamber found those comments to be misleading and inaccurate and expressed views on matters awaiting resolution by the Chamber.<sup>33</sup>

37. Not only does the language of the Articles raise concerns of what was discussed by the Outreach Unit whilst on mission, but as a neutral organ of the Court, the Outreach Unit should not be expressing any preconceived assessment of his criminal responsibility. Indeed, if the very institution where Mr Al Hassan faces trial is publicly pronouncing a predetermined view of his criminal responsibility, the public's perception that he will in fact receive a fair trial will be undermined. These comments also severely compromise his presumption of innocence in the eyes of the public, including Mr Al Hassan's own community. It is for the Prosecution to prove the charges against Mr Al Hassan beyond reasonable doubt. However, adverse comments suggesting his criminal liability seemingly places the burden on Mr Al Hassan of disproving his guilt or proving his innocence, and deprives him of his fundamental presumption to innocence as guaranteed by the Universal Declaration of Human Rights. Such results are antithetical to the statutory protections under Article 66 of the Statute.
38. These effects are extremely difficult for the Defence to counteract, and remain ongoing while the Disclosed Documents remain in the public domain and until final judgment or appeal is handed down. For clarity, the Defence does not assert that Mr Al Hassan will not receive a fair and impartial hearing before this Chamber. Rather, these issues go to the general protection of Mr Al Hassan's fair trial rights and to alleviate any impact on the perceived legitimacy of the Court by the public. The Defence also concedes that the language used by the Outreach Team in the Articles may have been due to a genuine mistake. This notwithstanding, due to its effects, the Defence seeks that the Chamber issue a declaration acknowledging a violation of his fair trial rights and that the Outreach Unit rectify the Articles to the extent that they are impartial.
39. In sum, the Disclosed Documents are highly relevant to the Chamber's determination of the truth in this proceeding, as they go to the Chamber's consideration of the Defence's ability to conduct its case in all the circumstances and possible restrictions imposed on it. This includes attention to the violation of Mr Al Hassan's fair trial rights

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<sup>32</sup> Appeals Chamber, *The Prosecutor v. Lubanga*, Decision on the press interview with Ms Le Fraper du Hellen, 12 May 2010, [ICC-01/04-01/06-2433](#), para. 53.

<sup>33</sup> Appeals Chamber, *The Prosecutor v. Lubanga*, Decision on the press interview with Ms Le Fraper du Hellen, 12 May 2010, [ICC-01/04-01/06-2433](#), paras 52-53.

both in substance and in perception, which have the ultimate impact of undermining the integrity of the proceedings. The Disclosed Documents are therefore sufficiently significant to warrant admission with appropriate weight to be considered and attached in light of the entire case file.

*Further factors to be considered in exercising the Chamber's discretion*

40. The Defence reiterates that, notwithstanding the closure of the case and the Court's obligation to ensure expeditious hearings, this should not come at the expense of undermining the accused's fair trial rights. The Chamber is obliged to ensure the integrity of the proceedings with full respect for the rights of the accused. The content of the Disclosed Documents illustrate a flagrant violation of the accused's fair trial rights. In this respect, the issues raised by the Articles directly affect core issues to be determined by the Chamber in the case. The Articles therefore meet the threshold of 'exceptional circumstances'<sup>34</sup> required to admit evidence following the closure of the case.

## **VI. Conclusion**

41. The Defence for Mr Al Hassan hereby respectfully requests:

- a. for the admission of the Disclosed Documents in to evidence pursuant to Articles 64(9) and 69(3) of the Statute; and
- b. the Chamber to issue a declaration acknowledging that Mr Al Hassan's fair trial rights have been violated, including his presumption of innocence, pursuant to Article 64(2) of the Statute, and
- c. order the Outreach Unit to rectify the content of the Articles to the extent necessary to be impartial pursuant to Article 64(2) of the Statute.

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<sup>34</sup> Trial Chamber III, *The Prosecutor v Bemba*, Second Redacted version of "Decision on 'Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169' (ICC-01/05-01/08-3138-Conf-Red) and 'Defence Urgent Submissions on the 5 August Letter (ICC-01/05-01/08-3139-Conf)'" of 2 October 2014, 11 December 2014, ICC-01/05-01/08-3154-Red2, para. 25.



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Melinda Taylor  
Counsel for Mr Al Hassan

Dated this 15<sup>th</sup> Day of March 2023  
At The Hague, The Netherlands