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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

With confidential Annexes A, B (corrected Annex B), C and D

Public redacted version of “Amendment and Correction to the Prosecution’s sixth request for the admission of documentary evidence from the bar table and Request under Regulation 35 of the Regulations of the Court to include additional items on the Prosecution’s List of Evidence (ICC-01/12-01/18-2102-Conf)”, 4 February 2022, ICC-01/12-01/18-2102-Conf

Source: The Office of the Prosecutor

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

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Introduction

1. The Office of the Prosecutor (“Prosecution”) seeks the formal submission and ultimate admission into evidence of 266¹ items of evidence from the bar table, in accordance with articles 64(9)(a), 69(3) and 69(4) of the Rome Statute (“Statute”), rule 63(2) of the Rules of Procedure and Evidence (“Rules”) and the Directions on the conduct of proceedings (“Directions”).² These documents are relevant to issues at trial, probative, and bear sufficient indicia of reliability to be admitted into evidence. Their admission would assist Trial Chamber X (“Chamber”) to determine the truth and contribute to an expeditious trial.
2. The 266 items include: 109 items corresponding to the final review of documents cited in the Pre Trial Brief and the Document Containing the Charges, consisting of media articles, reports, audio/video material, photographs and documents coming from NGOs (listed in Annex A); 34 documents on the Prosecution List of Evidence (“LOE”), such as reports, speeches, documents from UNESCO, audio/video material, correspondence and legislative documentation (listed in Annex B); 90 items (BTM additional LOE documents- Part 1) consisting of handwritten notes and reports of court proceedings, correspondence, audio-video material including interviews with members of the armed groups and of members of the civil society, videos related to the armed conflict and to the Islamic Police, media press articles, [REDACTED], communication emails, and reports (listed in Annex C); and 33 other items (BTM additional LOE documents- Part 2), consisting of *inter alia* documents from the armed groups (such as *laissez-passer* and permits to carry arms), documents from [REDACTED], documents from [REDACTED] and videos from [REDACTED] (listed in Annex D).
3. In accordance with paragraphs 77 and 78 of the Directions, the annexes contain the following information with respect to each item: (i) its evidence registration number (“ERN”); (ii) its main date; (iii) a short description of the content of each item; (iv) where the item is lengthy, an index of the most relevant portions; (v) a description of the item’s relevance; (vi) its *prima facie* probative value, including authenticity; and (vii) comments/objections made by the Defence, when available, regarding its admission into evidence from the bar table.³

¹ Annexes A, B, C and D contain a total of 270 items. However, the Prosecution does not seek to introduce through the bar table Items 1 or 17 Annex B, Items 27 and 35 of Annex D. Accordingly, the amount of items for which submission is sought totals 266.

² ICC-01/12-01/18-789-AnxA, para. 77-78. *See also* ICC-01/12-01/18-1756, para. 2.

³ The Prosecution left the columns blank given that the Defence did not provide its comments.

4. The Defence has not provided any comments regarding the admission of the items listed in Annexes A, B, C and D from the bar table. Annex B was provided on 21 January 2022. Due to time constraints, Annex A was provided on 25 January 2022 and Annexes C and D provided on 28 January 2022.⁴

Confidentiality

5. This filing and its annexes A, B, C and D are classified as confidential because they contain confidential information and details of *inter parte* communications.

Applicable Law

6. The admission of documentary evidence through a “bar table” motion is a well- established practice in the Court’s jurisprudence, particularly under articles 64(9)(a), article 69(4) of the Rome Statute and rule 63(2) of the Rules of Procedure and Evidence (“Rules”).⁵
7. Under article 64(9)(a) of the Statute, the Chamber is empowered to rule on the “admissibility or relevance of evidence”. Similarly, rule 63(2) of the Rules grants the Chamber the authority to “assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69”. Further, according to article 69(4) of the Statute, a Chamber may rule on “the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness”.
8. In its Directions on the conduct of proceedings the Chamber has already indicated that a party or participant wishing to tender evidence without it being introduced through a witness shall file an application accompanied by a table containing *inter alia*: (i) a short description of the content of each item; (ii) in case of a lengthy document, an index of the most relevant portions of the document or recording; and (iii) a description of its relevance, and *prima facie* probative value.⁶ It has further instructed the tendering participant to first inquire whether the opposing participant consents or objects to the tendering of items, and, if applicable, the grounds for any such objection, and to include them in the accompanying table.⁷

⁴ The Prosecution sent to Defence the table contained in Annex A, on 25 January 2022 at 23:45. The Prosecution sent to Defence the table contained in Annex B, on 21st January 2021 at 22:02. The Prosecution sent to Defence the table contained in Annex C and D, on 28st January 2021 at 15:01.

⁵ See e.g., ICC-01/04-02/06-1181, para. 6; ICC-01/09-01/11-1353, para. 13.

⁶ ICC-01/12-01/18-789-AnxA, para. 77.

⁷ ICC-01/12-01/18-789-AnxA, para. 78.

9. According to the case law, the admissibility of evidence “other than direct oral testimony”⁸ requires consideration of three key factors: the relevance of the evidence to the issues at trial, its probative value, and the prejudicial effect (if any) of its introduction as weighed against the probative value of the evidence.⁹ The assessment of both relevance and probative value is conducted on a *prima facie* basis.¹⁰

Submissions

10. The Prosecution seeks the admission into evidence of the items listed in Annexes A, B, C and D.

(i) The material is prima facie relevant to issues at trial

Annex A

11. The items listed in Annex A are all relevant to issues at trial, namely to the crimes of persecution on grounds of religion and/or gender, and attacks against protected objects (namely historical monuments and monuments dedicated to religion), to the contextual elements of the charged war crimes and crimes against humanity, and other crimes committed against the population of Timbuktu (e.g. floggings, cases of sexual violence and forced marriage).
12. The items in Annex A comprise:
- **media articles** related to - the destruction of protected buildings (Sidi Yahia mosque and the Three Saints’ cemeteries); interviews with members of the armed groups and key leaders (such as Sanda Ould Boumama and Iyad Ag Ghaly) during the occupation of Timbuktu describing their aims (relevant to common purpose/plan/organisational policy); the situation in Timbuktu during the charged period with the imposition of the Groups’ rules on the population of Timbuktu (relevant to persecution), the floggings (relevant to persecution and torture/ill treatment); the role of the Islamic police; the women’s demonstration (relevant to persecution on grounds of gender); and *communiqués* from the MNLA related to the armed conflict;¹¹

⁸ ICC-01/04-01/06-1399-Corr, para. 26.

⁹ See e.g., ICC-01/04-01/06-1399-Corr, para. 27-32; ICC-01/05-01/08-2012-Red, paras. 13-16; ICC-01/09-01/11-1353, para. 15; ICC-01/04-02/06-1181, para. 7.

¹⁰ ICC-01/04-01/06-1399-Corr, paras. 27-28; ICC-01/05-01/08-2012-Red, para. 13.

¹¹ Items 1 -4, 6 -10, 22-23, 33, 34, 49-52, 55-64, 66-67, 76-80.

- **audio/video news items** containing images relevant to persecution, namely concerning - destruction of traditional statues and amulets; burning of alcohol; floggings; burnt and hidden manuscripts; interviews of the inhabitants of Timbuktu describing their experiences throughout the occupation of Timbuktu by the armed groups during the charged period;¹²
- **reports, studies and audio item** relevant to the organisation and structure of the armed groups and the background of the armed conflict;¹³
- **lists/tables** [REDACTED] listing the mausoleums and the cemeteries, and items regarding the destruction of mausoleums (relevant to persecution and attacks on protected objects);¹⁴
- **a photograph** of the damaged or destroyed sites, relevant to persecution and attacks on protected objects;¹⁵
- a [REDACTED] related to the attack against the door of the Sidi Yahia mosque, thus relevant to persecution and attacks on protected objects;¹⁶
- specific **chapters of book** regarding the cultural heritage of Timbuktu, relevant to persecution and attacks on protected objects;¹⁷
- a **document titled “Al-Qaida papers: the multinational”** compiling handwritten notes of the armed groups regarding inter alia budgets allocated for different tasks, relevant to the organisation and structure of the groups, their military capacity, and their common purpose/plan/organisational policy;¹⁸
- [REDACTED] **judicial documents** [REDACTED] [REDACTED] during the relevant period - which were provided by the [REDACTED], relevant to persecution and other crimes; and, [REDACTED] judicial authorities relevant to forced marriage and persecution;¹⁹

¹² Items 13-16, 24 -31, 37, 38, 43-48, 72-74.

¹³ Items 5, 11, 12, 19, 53-54, 82, 104-106. Item 107 is the Forensic report linked to item 104.

¹⁴ Items 17, 18, 35, 36, 40-42, 83-85.

¹⁵ Item 20.

¹⁶ Item 32, MLI-OTP-0012-0259, for the analysis regarding [REDACTED], please see the fourth request for the admission of documentary evidence from the bar table, paras. 53 to 57.

¹⁷ Item 39.

¹⁸ Item 21.

¹⁹ Items 65, 68, 108, 109.

- one **audio extract** [REDACTED] regarding the prohibition of amulets, relevant to persecution;²⁰
- **8 videos** [REDACTED] of flogging sequences and of armed groups' members [REDACTED] in Timbuktu during the charged period, relevant to torture and ill-treatment, and persecution;²¹
- **correspondence regarding statistics** about the population of Timbuktu during the charged period, relevant to the context regarding impact of the persecution and other crimes on the population.²²

13. The Prosecution has not received any comments from the Defence in relation to the admission through the bar table of the items contained in Annex A, which due to time constraints was provided on 25 January 2022.²³

14. The Prosecution provides more specific submissions on the relevance of each document in the attached Annex A.

Annex B

15. The 34 items listed in Annex B are relevant to issues at trial, such as the attack against protected objects (namely historical monuments and monuments dedicated to religion), persecution on grounds of religion and/or gender (including on the basis of the new rules imposed by the armed groups), and other crimes committed against the population of Timbuktu (e.g. floggings, and cases of sexual violence). Some of them are also relevant to the common plan/purpose of the armed groups and to the contextual elements of war crimes and the crimes against humanity.

16. The items in Annex B comprise:

- **reports** [REDACTED] (Human Rights Fact-Finding Mission dated 18 February 2013-22 March 2013), [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] which are relevant to events in Timbuktu in the temporal and geographical period of the charges and pertinent to the common

²⁰ Items 69-71.

²¹ Items 86-103.

²² Items 75, 81.

²³ The Prosecution sent the table contained in Annex A to the Defence, on 25 January 2022 at 23:45.

purpose/plan/organisational policy of the groups and charged crimes including persecution;²⁴

- **UNESCO materials** relevant to persecution and attacks on projected objects, namely: speeches from UNESCO officials and foreign political members condemning the destruction of protected sites; presentations from UNESCO regarding the consequences of attacks on protected objects and regarding the destruction of manuscripts by the armed groups; audio/video material [REDACTED] [REDACTED] depicting visits from UNESCO officials and foreign political members examining the destroyed and burnt manuscripts; reports from UNESCO and collective work (UNESCO and other involved actors) containing descriptions of the cultural heritage of Timbuktu;²⁵
- **audio/video material** showing: the involvement of the Islamic Police in the destruction of protected buildings,²⁶ relevant to persecution, attacks on protected objects and the role of the Islamic police; one video regarding the attack on Aguelhoc,²⁷ relevant to existence of the armed conflict; [REDACTED] [REDACTED]²⁸ relevant to the groups common purpose/plan/organisational policy; a video interview of a singer from Timbuktu who fled because of her fear of being punished for playing music,²⁹ relevant to persecution; and a video with a speech by Iyad Ag Ghaly, the leader of Ansar Dine, relevant to the importance of Ansar Dine in Timbuktu events, and the groups' common purpose/plan/organisational policy;³⁰
- a **photograph** of the Islamic prison in Timbuktu, relevant to assessing crimes committed in detention;³¹
- and some **legislative material**, including the Constitution of Mali, relevant to context including regarding the crime of persecution (as the new rules applied were in contravention, not only of the Rome Statute – the relevant legal framework - but even in violation of national laws).³²

²⁴ Items 24, 28, 32.

²⁵ Items 2-16.

²⁶ Items 18-20.

²⁷ Items 21-23.

²⁸ Items 25-27.

²⁹ Items 29-31.

³⁰ Items 33-34.

³¹ Item 35.

³² Item 36.

17. The Prosecution provides more specific submissions on the relevance of each document in the attached Annex B.

Annex C

18. The items listed in Annex C are all relevant to issues at trial, *inter alia*, to the crime of persecution on grounds of religion and/or gender, attack against protected objects (namely historical monuments and monuments dedicated to religion), to the contextual elements of the charged war crimes and crimes against humanity, other charged crimes committed against the population of Timbuktu, the organisation and structure of the groups, scope of the activities of the Islamic Police and its leadership, and the common purpose or plan and organisational policy of the armed groups.

19. The items in Annex C comprise:

- **Documents** [REDACTED] such as handwritten reports found in a building occupied by the armed groups during the relevant period (*Hôtel la Maison*) and [REDACTED] relevant *inter alia* to the common purpose/plan/organisational policy of the groups and charged crimes; a request for a permit from Ansar Dine's public outreach committee to undertake a journalistic mission by [REDACTED] to the Media Committee of Ansar Dine in Timbuktu, collected at the BMS (*Banque Malienne de Solidarité*) (relevant to the controls applied by the groups, common purpose/plan/organisational policy and crime of persecution);³³
- **Video material of leaders** - members of the armed groups (including Iyad Ag Ghaly, Sanda Ould Boumama) relevant to the groups' common purpose/plan/organisational policy; of the [REDACTED] [REDACTED] relevant to meetings of community leaders with the groups;; videos related [REDACTED] (relevant to the war crime of mutilation, [REDACTED] [REDACTED] videos related to the armed conflict and to the control of Timbuktu by the armed groups; videos of floggings relevant to torture/ill treatment and persecution; a video of the Islamic Police relevant to the role/authority/scope of work of that institution; an [REDACTED] relevant to authentication of his materials collected from Timbuktu;³⁴
- **Media press articles** regarding the treatment of women during the charged period in Timbuktu, the bans and restrictions on freedoms, the destruction of protected

³³ Items 1-8; 67-68.

³⁴ Items Item 9-10, 11-13, 14-15, 17-19, 20-21, 22-30, 66, 69-80, 81-90.

buildings (relevant to persecution; and attacks on protected objects); *communiqués* from the MNLA (relevant to the armed conflict) and Sanda Ould Boumama (relevant to persecution and the groups’ common purpose/plan/organisational policy); press articles on Iyad Ag Ghaly (relevant to the importance of Ansar Dine and its leader);³⁵

- A [REDACTED] (relevant to the groups’ common purpose/plan/organisational policy); and **communication emails** regarding the armed conflict, and crimes committed in Timbuktu by the Islamic police;³⁶
- **A Report related to the armed conflict;**³⁷
- [REDACTED] reports depicting the [REDACTED] in Timbuktu during the charged period authored [REDACTED] which include references to charged incidents including the amputation [REDACTED] and physical injuries and harassment of women.³⁸

20. The Prosecution provides more specific submissions on the relevance of each document in the attached Annex C.

Regulation 35 request regarding 4 ancillary items in Annex C

21. In this Annex, there are three translations and one transcript that are not on the Prosecution’s List of Evidence (‘LoE’), although the related original items are on the LOE,³⁹ which the Prosecution seeks to include in its Final LOE pursuant to regulation 35 of the Regulations of the Court.

22. These documents are 3 translations and one transcript.⁴⁰ MLI-OTP-0078-6335 is the translation of MLI-OTP-0024-3059, which is a press article concerning the destruction of the Sidi Yahia mosque; MLI-OTP-0078-6341 is the translation of MLI-OTP-0024-3064, which is a press article concerning the destruction of protected mausoleums. Both items are relevant to persecution and attacks on protected objects. MLI-OTP-0078-4895 and MLI-OTP-0078-4904 are respectively the transcript and translation of MLI-OTP-0069-4626, which is a [REDACTED] regarding the documents he collected in Timbuktu in [REDACTED]. This assists in providing additional information relevant to authenticating those

³⁵ Items 16, 42-43, 51-60, 65.

³⁶ Items 31-32, 33-34, 36, 38-41, 44-50.

³⁷ Item 35, 37.

³⁸ Items 61-64.

³⁹ Items 56, 58, 82 and 83 of Annex C respectively MLI-OTP-0078-6335, MLI-OTP-0078-6341, MLI-OTP-0078-4895 and MLI-OTP-0078-4904.

⁴⁰ Items 56, 58, 82 and 83.

materials. [REDACTED] were created on 25 June 2020 and disclosed on 1 July 2020. [REDACTED] were created on 27 May 2020 and disclosed on 1 of June 2020. The Prosecution had good cause not to include these items in the LoE submitted on 12 May 2020, because they were all finalised after that date.⁴¹ The Prosecution also includes as part of this request under Regulation 35 the document MLI-OTP-0015-0080, which is the cover page of a report that was already disclosed and included in the LOE (MLI-OTP-0015-0081).⁴² This item is an integral part of the previously disclosed original item, but was not corrected uploaded in Ringtail. MLI-OTP-0015-0080 should have been uploaded as part of item MLI-OTP-0015-0081.

23. The Prosecution recalls that a Chamber may extend a time limit under regulation 35(2) of the Regulations ‘‘if good cause is shown’’,⁴³ or where it is in the ‘‘interests of justice’’⁴⁴ to do so. Moreover, where conditions of regulation 35(2) are not met, the Chamber may authorise the late addition of incriminating evidence pursuant to its powers under articles 64(6)(d) and 69(3) of the Statute to allow admission of the evidence that it deems necessary for the determination of the truth.⁴⁵
24. In this instance, it is also in the interests of justice and determination of the truth that late addition to the Prosecution Final List of Evidence be allowed as: the translations and transcripts are necessary for the parties as well as the Chamber in assessing the four items of evidence already on the LOE; and the cover page of MLI-OTP-0015-0080 is necessary to understand the date, and source of the item.
25. There is no undue prejudice to the Defence as these are merely ancillary documents, namely translations and transcripts and a cover page, of original items that are already on the LOE.

Annex D

26. The items listed in Annex D are all relevant to issues at trial, namely to the crime of persecution on grounds of religion and/or gender, attack against protected objects (namely historical monuments and monuments dedicated to religion), to the contextual elements of the charged war crimes and crimes against humanity, and other crimes committed against the population of Timbuktu.

⁴¹ See ICC-01/12-01/18-805-Conf.

⁴² See *infra* fn. 80.

⁴³ ICC-01/04-01/06-834, para.7.

⁴⁴ See ICC-01/04-01/10-505, para.11.

⁴⁵ ICC-01/04-01/07-2325-Red, para.15.

27. The items in Annex D comprise:

- [REDACTED] including regarding the approval of a financial support to Mali as emergency measures to protect its cultural goods in an armed conflict (relevant to attacks on protected objects and persecution); ⁴⁶
- **Documents from Ansar Dine/AQIM** and a related mission order from the NGO [REDACTED] during the relevant period such as *laissez-passer*, discharge documents, administrative and travel documents, a letter of establishment of a check point, a permit to carry arms (relevant to the groups' common purpose/plan/organisational policy; and controls in Timbuktu relevant to assessment of crimes perpetrated); ⁴⁷
- **Government documents** from the [REDACTED] judicial records concerning [REDACTED] (relevant to assessing [REDACTED] testimony, and the existence of the armed conflict); ⁴⁸
- **Letters sent** [REDACTED] to different agencies such as [REDACTED] during the period of occupation requesting humanitarian aid and to [REDACTED] regarding a.o. assistance [REDACTED] (relevant to the consequences of the groups' occupation in Timbuktu, including the humanitarian crisis, ill-treatment of the population, and crimes perpetrated); ⁴⁹ and two documents from [REDACTED] regarding the armed conflict;⁵⁰
- **An SD card** [REDACTED] **with two videos** related to floggings in Timbuktu during the relevant period – one with the scene prior to the flogging and the other with the scene during the flogging (relevant to torture/ill-treatment, and persecution); ⁵¹
- **Videos from** [REDACTED] regarding a plaintiff at the police, a patrol from the police, and a person speaking about the way the rules were applied in Timbuktu during the relevant period (relevant to the role and authority of the Accused, and Islamic police). ⁵²
- **Cover of a note book** collected [REDACTED] at *Hôtel La Maison* containing a list of names of people accused of crimes with the dates of their imprisonment (thus

⁴⁶ Items 1, 19.

⁴⁷ Items 2-11.

⁴⁸ Item 14.

⁴⁹ Item 15, 16, 17, 26.

⁵⁰ Items 12-13.

⁵¹ Items 20-22.

⁵² Items 28-34.

assists in authentication of another document relevant to the crimes of illegally constituted tribunals passing of sentences and persecution).⁵³

- **A cover letter from** [REDACTED] transmitting to the Prosecutor notes of the [REDACTED] [REDACTED] thus assists in authentication of crisis committee notes relevant to the meetings conducted by local leaders with the groups and the issues related to ill-treatment of the community).⁵⁴

28. The Prosecution provides more specific submissions on the relevance of each document in the attached Annex D. The Prosecution requests under Regulation 35 to add transcript MLI-OTP-0078-5584 and translation MLI-OTP-0078-5594 of video MLI-OTP-0069-3708 (item 28, which is on the list of evidence); and translation MLI-OTP-0078-7281 of document MLI-OTP-0055-0459 (item 24, which is on the list of evidence), to its list of evidence. All three items were only available after the Prosecution submitted its list of evidence. Accordingly there is good cause for the request. In any event it is in the interests of justice to include these items that are merely ancillary to the original items already on the list of evidence.

(ii) The material has prima facie probative value

Annex A

- All are **contemporaneous press articles** (except for MLI-OTP-0012-1150 (Item 34), which concerns the creation of the MNLA and MLI-OTP-0067-0270 (Item 80), and the designation of Abou Yahya as the AQIM leader of the Sahel region - but which are dated very closed to the events, respectively in October 2011 and February 2013⁵⁵; Items 64 and 77 are also outside the charged time period but nevertheless relevant to the charged events);
- The [REDACTED] is contemporaneous and corroborates other evidence on the record, including from witnesses, and audio-video images of the destruction, regarding the date and fact of that destruction;⁵⁶
- The **reports, presentation and items** from *inter alia* the Al Jazeera Centre for studies, Africa Center for Strategic Studies, from the [REDACTED] [REDACTED] the Islamic observatory, [REDACTED] Associated Press, Swedish Defence

⁵³ Item 23, 24, 25.

⁵⁴ Item 18.

⁵⁵ Items 34 and 80.

⁵⁶ Item 32, for the analysis of reliability regarding DSM documents, please see the fourth request for the admission of documentary evidence from the bar table, para. 34.

Research Agency (FOI), are reputable sources indicating key information including dates, times, locations; and the items include the metadata as to how the information was obtained. These items provide important information relevant to the structure and organisation of the armed groups and are relevant to the common plan/common purpose and organisational policy of the groups;⁵⁷

- The **video news items and audio** (open source like France 2, [REDACTED] [REDACTED] [REDACTED]) or from [REDACTED]) contain images of acts of persecution and/or interviews of individuals from Timbuktu who have been persecuted;⁵⁸ their accounts corroborate or are corroborated by evidence, which is already on the record;
- The **documents regarding the mausoleums**, and the damage caused to the protected mausoleums and the manuscripts⁵⁹ come from reliable sources such as [REDACTED]
- The **documents coming from the** [REDACTED] regarding crimes committed during the relevant period in Timbuktu⁶⁰ have indicia of authenticity as they include the format, dates and names for [REDACTED]. They are relied upon to corroborate other evidence that the armed groups committed crimes against the civilians of Timbuktu;
- The **documents containing statistical data** regarding the population of Timbuktu⁶¹ during the charged period have probative value and are reliable because as indicated by the metadata they have been provided to the OTP by the Malian government, which collects and records these statistics.

29. The items proposed for admission in the Annex A are probative of issues at trial and contain sufficient indicia of reliability, including authenticity, to be submitted into evidence.

30. These documents will assist the Chamber. For instance, the 8 videos from [REDACTED] and audio item [REDACTED] provide additional evidence relevant to the charged crimes. Other items, such as the book on cultural heritage and the statistical data, provide useful information relevant to the background or context to these crimes.

⁵⁷ Items 5, 11, 12, 19, 21, 22-23, 26-28, 49, 50-52, 53-54, 82, 104-106, 107 (linked to item 104).

⁵⁸ Items 13-14, 15-16, 24-25, 29-31, 37-38, 43-45, 46-48, 69-71, 72-74, 86, 87-88, 89-93, 94-95, 96-98, 99-101.

⁵⁹ Items 17, 18, 20, 35, 36, 39, 40, 41, 42, 83-85, 102-103.

⁶⁰ Items 65, 68, 108, 109.

⁶¹ Items 75, 81.

Annex B

31. The items proposed for admission in Annex B are probative of issues at trial. These documents all contain sufficient indicia of reliability, including authenticity, to be submitted into evidence. Most of the items from Annex B were prepared in the ordinary course of the activities of the organisations or media that published them, and most of them were prepared and published contemporaneously with, or close in time to, the period relevant to the charges.

- The **reports** are dated and contain the names of the organisation or country, which authored them⁶² and/or were given by the organisation to OTP⁶³ and/or are publicly available documents and bear the logo of their organisation and/or their URL at the bottom of the page;⁶⁴
- The **speeches and videos from UNESCO officials and political officials** of foreign countries, and presentations given by Malian officials, are almost contemporaneous as they are dated one month or a few months after the charged events;⁶⁵
- The **videos** were downloaded from public channels (such as *France 24*: MLI-OTP-0025-0113, Item 18) or from other specific local or regional news websites (such as MLI-OTP-0030-0159, MLI-OTP-0032-0200, MLI-OTP-0035-0073, MLI-OTP-0038-0863);⁶⁶
- The **photograph** was downloaded from a Twitter account [REDACTED]; it is a picture of the Islamic prison, which corroborates other evidence already on the record;
- The **Malian Constitution** was downloaded from an official legal website.⁶⁷

32. These factors provide sufficient basis for the Chamber to conduct an independent evaluation of the *prima facie* reliability of each item.

33. These documents corroborate or are corroborated by the evidence that is already on the record regarding, for instance, the crime of persecution, attacks on protected objects, the common purpose or plan of the armed groups, and existence of the armed conflict.

⁶² Items 12, 13, 16, 24, 28, 32.

⁶³ Items 11, 14.

⁶⁴ Item 15, MLI-OTP-0020-0127.

⁶⁵ Items 2, 3, 4, 5, 6, 7-8, 9-10.

⁶⁶ Items 19-21, 22-23, 25-27, 29-31, 33-34.

⁶⁷ Item 36.

Annex C

34. The items proposed for admission in Annex C are probative of issues at trial. These documents all contain sufficient indicia of reliability, including authenticity, to be submitted into evidence:

- The **documents collected by** [REDACTED] are contemporaneous to the events.⁶⁸ MLI-OTP-0001-7600 (Item 5) does not provide a date but it is apparent from its format that it comes from the Islamic Tribunal. MLI-OTP-0007-0420 (Item 7) is also not dated but it is apparent from the letterhead that it comes from the Ansar Dine group. Both testified regarding their collection of the materials from Timbuktu and the metadata confirms that these items come from these two witnesses;
- The **video interviews are contemporaneous**, as are the videos related to the armed conflict, such as the interviews and the video provided [REDACTED] (MLI-OTP-0041-0604, Item 66). The metadata confirms from whom the items are sourced;
- The **press articles** are also contemporaneous,⁶⁹ such as the interview of Abou Tourab explaining why Ansar Dine monitors women's clothing. The press articles are based on local or regional sources ([REDACTED] Mali Actualités);
- [REDACTED]⁷⁰ as the Facebook page [REDACTED] based in Timbuktu during the temporal period of the charges, has probative value with respect to the subject matters it deals with, such as the politics/aims of the groups, being to apply "sharia". He is recognisable, and his image was recognised in other photographs and videos by a number of Prosecution witnesses during testimony. The metadata confirms that this Facebook page was extracted directly from Facebook. The content of the Facebook page corroborates and is corroborated by other evidence concerning the [REDACTED]
[REDACTED]
- The **communication emails from** [REDACTED],⁷¹ which was [REDACTED]
[REDACTED]
[REDACTED]) are also contemporaneous;⁷²

⁶⁸ Items 1-8; 67-68.

⁶⁹ Items 16, 42-43, 51-60, 65.

⁷⁰ Items 31-32.

⁷¹ Items 33-35, 36-41, 44-50.

⁷² See Prosecution's fifth request for the admission of documentary evidence from the bar table, para. 58.

- The **report** [REDACTED] **on the situation in Timbuktu** after Ansar Dine took control of the city does not have a date but it is apparent from its content that it is related to the charged events and that is contemporaneous [REDACTED]
[REDACTED]
- The **medical reports** [REDACTED] regarding the [REDACTED] situation in Timbuktu are also contemporaneous to the events.⁷³ They come from [REDACTED]
[REDACTED] during the charged events and deal with subject matter (such as the harassment of women), which are relevant to the charge of gender based persecution. The [REDACTED] are dated and [REDACTED]
[REDACTED]
- The **video interview** [REDACTED] is not contemporaneous but it still has probative value because it deals with material he has collected. This video was not shown to [REDACTED] because of time constraints. It is however in the interest of justice to submit it as the video will assist the chamber in assessing the screenshots extracted from this video that was already submitted formally into evidence that is relevant to the material he collected in Timbuktu covering the charged period.⁷⁴

35. These documents will assist the Chamber, *inter alia*, to complement its analysis regarding the crime of persecution, the scope of the activities of the Islamic police, and the common purpose or plan, or organisational policy of the groups.

Annex D

36. The items proposed for admission in Annex D are probative of issues at trial. These documents contain sufficient indicia of reliability, including authenticity, to be submitted into evidence.

- Many **documents in this annex come from official entities** such as [REDACTED], and also the [REDACTED] as confirmed by the metadata, thus providing indicia of authenticity for the documents they provided;⁷⁵
- Many documents come from **Ansar Dine/AQIM** during the relevant period (such as *laissez-passer*, discharge documents, administrative and travel documents, letter of establishment of a check point, permit to carry arms), and it is apparent from the

⁷³ Items 61-64.

⁷⁴ Item 81-83.

⁷⁵ See e.g. Items 1, 14.

documents themselves and/or the place where they were collected that they come from these entities. They have probative value to show the level of organisation (and scope of their work and authority) of the groups occupying the city of Timbuktu during the relevant period, including the Islamic police;⁷⁶

- The **videos from** [REDACTED] have probative value as they deal with subject matter relevant to the charges and corroborate other evidence on the record, notable regarding the work of the Islamic Police. They have indicia of authenticity as the metadata clearly indicates the source, and date of the items;⁷⁷
- Two documents from [REDACTED],⁷⁸ giving an overview of the events, which took place in the North of Mali in 2012, and of the groups' structure and resources. They have probative value as they deal with subject matter relevant to the charges and corroborate other evidence on the record. They come [REDACTED], who has testified viva voce;
- The **letters sent** [REDACTED]⁷⁹ have probative value as they indicate the humanitarian, in particular the [REDACTED], crisis in Timbuktu during the charged period. They have clear indicia of authenticity, as the metadata confirms the source; they contain the dates, [REDACTED] [REDACTED] (Item 26);
- **The cover page of a notebook** containing lists of names of accused, their villages, their crimes and dates of their incarceration collected [REDACTED] at *Hôtel La Maison* and the cover letter from FIDH transmitting to the OTP notes from the Crisis committee also have probative value and clear indicia of authenticity. [REDACTED] testified as to the way he collected documents at the *Hôtel la maison* and at the BMS. This cover page of a notebook (item 23) is part of the materials collected by [REDACTED] at *Hôtel la maison* and which was put in the sealed bag MLI-OTP-0005-0025 and submitted following his testimony. Regarding item 18, the fact that it was the [REDACTED] directly to the OTP is indicated in the metadata. It is relevant to the chain of custody of the notes of the [REDACTED] [REDACTED]

⁷⁶ Items 2-11.

⁷⁷ Items 20-22, 28-34.

⁷⁸ Items 12 and 13.

⁷⁹ Items 15-17, 26.

(iii) There is no prejudice outweighing the probative value

37. The probative value of each of the items contained in Annexes A, B, C and D outweighs any potential prejudice arising from their admission into evidence from the bar table for the following reasons:

- as outlined in Annexes A, B, C and D, each proposed item is relevant to one or more discrete issues at trial;
- each of the proposed items possesses sufficient indicia of reliability to warrant its admission and to enable the Chamber to fairly evaluate it;
- Annex A: the Accused had sufficient notice for items listed in Annex A as the vast majority of these documents were disclosed in July 2018 and at the latest in February 2020 ([REDACTED]);⁸⁰
- Annex B: the Accused had sufficient notice for items listed in Annex B as the vast majority of these documents were disclosed in July 2018, [REDACTED] [REDACTED] was disclosed in April 2019 and the Constitution of Mali in January 2020;
- Annex C: the Accused had sufficient notice for items listed in Annex C, these items are mostly transcripts and translations and the latest one has been disclosed in October 2020;
- Annex D: the Accused had sufficient notice for items listed in Annex D, most of these items were disclosed in July or August 2018 and the latest one which has been disclosed in July 2020 is a translation.

38. The Defence did not return the charts with comments, which were provided between 21 and 28 January 2022 due to time constraints. However, the Prosecution draws the Chamber's attention to the following points:

- It is apparent from the exhibits themselves that their probative value outweighs any prejudicial effect. In any event, the Defence is entitled to raise arguments, which will be considered by the Chamber at the judgement stage, 'in light of the entirety of the evidence brought before it'.⁸¹ The evidence will be analysed by professional

⁸⁰ Other than item MLI-OTP-0015-0080 (Item 41), the cover page to MLI-OTP-0015-0081 (Item 40), which should have formed a part of that document when it was disclosed. The cover page is separately being disclosed as a matter of urgency.

⁸¹ ICC-01/12-01/18-1514, para. 18.

judges and the weight will be determined at the judgement stage.⁸² This finding was reiterated in its recent *Decision on Prosecution application submitting 30 exhibits into evidence*;⁸³

- The evidence presented in these four annexes will assist the Chamber in the determination of the truth by providing relevant information concerning some of the underlying acts of the crime of persecution (*inter alia* the prohibition of music, attack on protected buildings, sexual and gender based violence, burning of the ancient manuscripts), some of which also constitute stand-alone crimes . It will also assist the Chamber in assessing the contextual elements of the charged war crimes and crimes against humanity;
- Most of these items are within the geographical and temporal scope of the charges. For the items which are not, such as Item 11 and 12 of Annex A (MLI-OTP-0001-5776 and MLI-OTP-0001-6174, these items provide relevant background context and thus help in understanding nevertheless the common purpose or plan, or organisational policy of the groups as applied during the charged period;
- Some of the proposed items for submission have verifiable information (methodology and sources), in the body of those items, with independent evidential value. For instance, the items 12 of Annex B (MLI-OTP-0014-6070) and 15 of Annex B (MLI-OTP-0020-0127) provide clear, detailed and verifiable information concerning the methodology and their sources. Some items have the logo of the organisation and the standard layout of that organisation's documentation (see for instance [REDACTED];
- The photographs contain data enabling the Chamber to verify the origin, and location of these photographs (see for instance item 23 of Annex D, MLI-OTP-0055-0456);
- Some items were not submitted via witnesses who testified (such as [REDACTED] [REDACTED]) because of time constraints and for efficiency of the proceedings. However, as the Chamber underlined in its decision, "there is nothing prejudicial about submitting such evidence" through this procedure" (referring to the Bar table motion procedure).⁸⁵ Moreover, TC IX in *Ongwen* further held that the

⁸² ICC-01/12-01/18-1514, para. 4, 18.

⁸³ ICC-01/12-01/18-2097, paras. 5, 16.

⁸⁴ The Chamber refers to exhibits which should have been allegedly submitted through a witness, see para. 13 of ICC-01/12-01/18-1514.

⁸⁵ ICC-01/12-01/18-1514, para. 19.

admission of evidence via the “bar table” as opposed to through rule 68(2)(b) or 68(3) of the Rules of Procedure and Evidence (“Rules”) or in-court testimony does not in any way preclude the Defence from challenging the evidence, including by calling witnesses as appropriate and/or submitting any evidence in support of its challenge—even evidence that goes to critical elements of the charges.⁸⁶ The *Ongwen* Trial Chamber noted that documentary evidence introduced through an in-court witness or as materials associated with a Rule 68(2)(b) or 68(3) statement remains documentary evidence, as the manner of its introduction does not transform it into testimonial evidence.⁸⁷ It added that “[t]here is no requirement that evidence be tested with a witness in order for it to be submitted”;⁸⁸

- The documents proposed for submission are mostly self-contained documents, which are understandable without having to refer to the underlying material. For instance the reports authored [REDACTED] on the [REDACTED] situation in Timbuktu during the relevant period, which provide contemporaneous information relevant to charged crimes [REDACTED].
[REDACTED]. These are useful documents, which have indicia of reliability and authenticity without the need for witness evidence. It is therefore not necessary [REDACTED] to authenticate them as these documents are not testimonial in nature. The same applies to the [REDACTED] given by the [REDACTED] (see items [REDACTED]), which are documents with their own indicia of authenticity, which do not need to be submitted through a witness. The information therein is being relied upon for corroborative purposes to demonstrate a pattern of these types of crimes and for contextual elements of crimes against humanity;⁸⁹
- The method of creation of certain items (see for instance the [REDACTED] [REDACTED] provides sufficient indicia of their reliability;

⁸⁶ ICC-02/04-01/15-795, para. 15, 49.

⁸⁷ ICC-02/04-01/15-795, para. 14.

⁸⁸ ICC-02/04-01/15-795, para. 15.

⁸⁹ The Prosecution filed a Rule 68-2-b application with respect [REDACTED]. The Prosecution submits that this application provides additional information regarding the probative value and reliability of these items even though these items can be submitted and relied upon without going through any witness.

- In relation to items in Annexes A, B, C and D (except for the items subject to a regulation 35 in Annex C), the Accused had sufficient notice of both their content and the Prosecution's intention to rely on them as incriminatory evidence: all were disclosed⁹⁰ and (other than 5 items in Annex C that are the subject of a Regulation 35 request) were included in the confidential LoE filed before the confirmation of charges hearing in July 2019⁹¹ and also included in the final LoE filed in May 2020⁹²; and
- The proposed items largely corroborate the witnesses' testimonies and other evidence presented in the course of the trial.

39. Allowing the admission of these items from the bar table will not cause undue prejudice to the Defence, rather, it will contribute to determination of the truth and the expeditious conduct of the proceedings.

Conclusion

40. For the foregoing reasons, the Prosecution requests that all items listed in Annexes A, B, C and D be recognised as formally submitted into evidence.



Karim A. A. Khan, **Prosecutor**

Dated this 4th Day of February 2022
At The Hague, the Netherlands

⁹⁰ Other than MLI-OTP-0015-0080, which is being disclosed and is the cover page, and an integral part of item MLI-OTP-0015-0081 (namely as it is the cover page of the document providing information regarding the report titled 'Etude sur les mausolées de Tombouctou' from UNESCO dated 2014), which was previously disclosed in July 2018 and incorrectly uploaded in Ringtail prior to disclosure.

⁹¹ ICC-01/12-01/18-335-Conf-AnxI, filed on 8 May 2019.

⁹² ICC-01/12-01/18-805-Conf-AnxB filed on 13 May 2020.