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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 Redacted with Confidential Annex A

Public Redacted Version of Defence application under Rule 68(3) to introduce
Witnesses D-0554, D0516 and D-0512 statements into evidence and for examination of
these Witnesses

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

Karim A. A. Khan QC
Nazhat Shameem Khan
Mame Mandiaye Niang

Counsel for the Defence

Melinda Taylor
Michiel Pestman

Legal Representatives of the Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Counsel Support Section

Victims and Witnesses Unit
Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

I. Introduction

1. Pursuant to Rule 68(3) of the Rules of Procedure and Evidence ('Rules'), the Defence for Mr Al Hassan respectfully requests Trial Chamber X to allow the Defence to (i) introduce into evidence Witnesses D-0554, D-0516, and D-0512 statements ('proposed statements')¹ and; (ii) conduct a brief supplementary examination of these Witnesses.
2. The proposed statements are relevant and cumulative of other Defence and/or Prosecution evidence, and furthermore satisfy the requirements of Rule 68(3). Introduction of the proposed statements will enable the Defence to present its evidence in an efficient and expeditious manner by reducing the length of Witnesses D-0554, D-0516 and D-0512's examination-in-chief by at least 11 hours,² and allow Trial Chamber X to ensure the fairness of the proceedings and rights of the Mr Al Hassan.
3. This request is also consistent with the spirit of the Decision of Trial Chamber X, encouraging the Defence to limit the extent of in-court time expended in the examination of witnesses.³

II. Level of confidentiality

4. Pursuant to regulation 23bis(1) of the Regulations of the Court, the Defence files this submission and its accompanying annexes as confidential *ex parte* Defence, VWS only because they contain confidential information including information regarding Defence witnesses, in addition to referring to filings classified as confidential. The Defence will file a confidential redacted version immediately and a public redacted version in due course.

¹ D-0554, [MLI-D28-0006-2623-R01](#); D-0516, [MLI-D28-0006-2783-R01](#); D-0512, [MLI-D28-0006-2611-R02](#).

² [ICC-01/12-01/18-2152-Conf-Anx1](#). D-0516 would be examined for 1 ½ hours instead of 4, D-0512 would be examined for 2 ¼ hours instead of 8, and the Defence proposes to examine D-0554 for 1¼ hours instead of 4.

³ [ICC-01/12-01/18-1756](#), para. 14; ICC-01/12-01/18-T-171-ENG RT, p.14.

III. Applicable law

5. Pursuant to Rule 68(3) of the Rules, the Chamber may allow the introduction of the previously recorded testimony of a witness if he or she does not object to it and if the parties and the Chamber have the opportunity to examine the witness.
6. The notion of “previously recorded testimony” also extend to written statements, when the witness who provides this statement understands that they are “providing information which may be relied upon in the context of legal proceedings”.⁴
7. The application of Rule 68(3) of the Rules is aimed at ensuring an effective and expeditious trial in accordance with the rights of the accused. The Appeals Chamber emphasised on the importance of Rule 68(3) for expeditiousness of the proceedings, founding that its use “aims at reducing the amount of time devoted to hearing oral testimony in court”.⁵

IV. Submissions

8. The Proposed Evidence satisfies the requirements of Rule 68(3) because each 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 their agreement to the introduction of the Rule 68(3) statements and to confirm that they accurately reflect what each have said. The Defence will additionally conduct a direct examination amounting to 8,5 hours to clarify and contextualise their evidence.
9. While being internally consistent and corroborative, the proposed statements are further corroborated or cumulative of other Defence or Prosecution evidence, further favouring their introduction through Rule 68(3) of the Rules.

D-0554

10. D-0554’s statement, which is relevant to the organisational objectives of the ‘Islamists’, is cumulative and corroborative of Prosecution *viva voce* evidence and other items

⁴ [ICC-01/04-01/07-2362](#), para. 13; [ICC-01/04-01/07-2635](#), para. 49; [ICC-01/05-01/13-1478-Red-Corr](#), para. 32.
⁵ [ICC-02/11-01/15-744](#), para. 61.

entered into the evidential record. [REDACTED]. The statement is relevant and reliable and fulfils the criteria for submission through Rule 68(2). [REDACTED]. In the event that the Chamber considered it necessary to hear D-554, the Defence seeks the admission of his statement through Rule 68(3), in which case examination in chief would be reduced to an hour and a half.

11. D-0554 worked [REDACTED] in Timbuktu in 2012. He was present in Timbuktu during 2012, [REDACTED], so it was not possible for him to leave Timbuktu.⁶ He provides evidence concerning the positive steps taken by the Islamists to ensure the provision of electricity and water throughout the year, and his experience of daily life during this period.
12. D-0554 provides evidence concerning the MNLA's arrival in Timbuktu, which was followed by acts of destruction and theft directed against public entities such as the EDM and SOMAGEP.⁷ These entities were then protected after the Islamists arrived and took steps to secure the locations.⁸
13. D-0554 describes the steps taken by the Islamists to reduce violence and install order among the local population. This included distributing a 'green number', which the locals could call if they wished to obtain assistance. According to D-0554, the Islamists would only intervene if it was necessary to do so, *i.e.* if the local population was unable to resolve matters themselves.⁹ This evidence is corroborated by the oral testimony of the following Prosecution witnesses: P-0004,¹⁰ P-0641,¹¹ [REDACTED]¹² and P-0654.¹³
14. D-0554 [REDACTED], [REDACTED], and the importance of electricity to the health and well-being of the local population.¹⁴ [REDACTED].¹⁵

⁶ [MLI-D28-0006-2623-R01](#), at 2625, para. 10.

⁷ [MLI-D28-0006-2623-R01](#), at 2625, para. 11.

⁸ [MLI-D28-0006-2623-R01](#), at 2625, para. 12.

⁹ [MLI-D28-0006-2623-R01](#), at 2625, paras. 13-15.

¹⁰ [ICC-01/12-01/18-T-166-CONF-ENG](#), pp.62-63.

¹¹ [ICC-01/12-01/18-T-139-CONF-ENG](#), p.56.

¹² [REDACTED].

¹³ [ICC-01/12-01/18-T-134-CONF-ENG](#), p.10.

¹⁴ [MLI-D28-0006-2623-R01](#), at 2626, paras. 16-20.

¹⁵ [REDACTED].

15. D-0554 interacted with Adama during the course of the year and describes him as someone who was kind and helpful,¹⁶ a description that is corroborated by other Prosecution witnesses.¹⁷
16. D-0554 describes Hamed Moussa, a Touareg preacher from Hamabangou, as the chief of the Islamic Police at the BMS.¹⁸ Although this title is wrong, D-0554's evidence is probative as concerns the extent to which the local population wrongly conflated Hamed Moussa with the Islamic Police, because he worked at the BMS. This same error was reflected in the testimony of other Prosecution witnesses, including P-0608,¹⁹ P-0004,²⁰ P-0641²¹ and P-0984.²²
17. D-0554's statement complies with formal indicia of reliability. After it was read to him in French, a language which he understands perfectly, he signed and acknowledged the truthfulness of its contents and further indicated his awareness that he could be prosecuted for false testimony if he knowingly provided information was that was false.
18. Should Witness D-0554's prior testimony be introduced into evidence, the Defence requests leave to conduct a streamlined supplementary examination of 1¼ hours in accordance with Rule 68(3). The Defence would elicit further details in relation to certain issues not referred to in detail during Witness D-0554's prior testimony, including matter related to the contextual background to the 2012 events and the Islamists' management of Timbuktu. The Defence would also ensure that the Witness is not merely asked to repeat information which he already provided in his testimony.

D-0516

19. D-0516, [REDACTED]. The Defence seeks leave to introduce her statement into evidence, through Rule 68(3), with a view to reducing the length of her examination-in-chief and expediting the proceedings.

¹⁶ [MLI-D28-0006-2623-R01](#), at 2626, para. 22.

¹⁷ P-0641, [ICC-01/12-01/18-T-139-CONF-ENG](#), p.59; [REDACTED].

¹⁸ [MLI-D28-0006-2623-R01](#), at 2627, para. 26.

¹⁹ [ICC-01/12-01/18-T-154-CONF-ENG](#), pp.64-65.

²⁰ [ICC-01/12-01/18-T-166-CONF-ENG](#), pp.90, 92-93.

²¹ [ICC-01/12-01/18-T-137-CONF-ENG](#), p.18; [ICC-01/12-01/18-T-139-CONF-ENG](#), p.69.

²² [ICC-01/12-01/18-T-068-CONF-ENG](#), p.58.

20. D-0516 is [REDACTED].²³ D-0516 has the same [REDACTED],²⁴ lived next to her during the events of 2012 and interacted with her regularly.
21. Although P-0610 initially [REDACTED],²⁵ under cross-examination, P-0610 testified that [REDACTED].²⁶ [REDACTED], who was familiar with the circumstances of her marriage.²⁷
22. According to D-0516, [REDACTED] mother gave her consent for P-0610's marriage and did not report receiving any threats.²⁸ D-0516 also gives evidence that P-0610 also consented to the marriage,²⁹ and did not report any complaints after the marriage.³⁰ D-0516 describes P-0610's husband as an Arab, who visited Timbuktu frequently,³¹ and further testifies that the marriage ended at the request of the husband.
23. The statement was read out to D-0516 in a language she fully understood (Songhai), by a Registry appointed interpreter. She confirmed its accuracy, signed each page, and further requested that a discrete change be made to reflect [REDACTED] the statement was signed more accurately.³²
24. Her testimony is also duplicative to many aspects of P-0610's own evidence, and that of D-0512.
25. While D-0516 has expressed her willingness to testify before the Chamber, there are a number of logistical issues that need to be resolved. [REDACTED].³³ The Defence therefore obtained a statement from her and included Rule 68(2) as a possibility on its witness list, in case it is not possible to resolve these logistical issues.
26. If the Rule 68(3) application is granted, the Defence wishes to examine D-0516 for 1 ½ hours. This time is necessary to address aspects of P-0610's evidence that are not

²³ See [REDACTED]. In the event that such information is relevant to the Chamber's determination, the Defence seeks leave, pursuant to Regulation 35 of the Regulations of the Court, to add the document to its list of evidence on the grounds that it will assist the Chamber in the determination of the truth. [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [MLI-D28-0006-2783-R01](#), at 2785, paras. 15-22.

²⁹ [MLI-D28-0006-2783-R01](#), at 2785, paras. 15-16, 18.

³⁰ [MLI-D28-0006-2783-R01](#), at 2785, para. 19.

³¹ [MLI-D28-0006-2783-R01](#), at 2785, para. 15.

³² [MLI-D28-0006-2783-R01](#), at 2786.

³³ [REDACTED].

addressed in D-0516's short statement (for example, P-0610's evidence concerning alleged forced marriages involving [REDACTED]). The Defence also anticipates that given that D-0516 [REDACTED] to ensure the accuracy of the record.

D-0512

27. D-0512 is a fact witness. She does not know Al Hassan and does not discuss him in her statement. Her testimony generally discusses the contextual elements of the crimes charged and Prosecution evidence. It also relates to torture and other inhumane acts or cruel treatment (count 1 to 4), forced marriage (count 8), rape (count 11-12), and persecution (count 13), but does not touch upon the alleged role of Mr Al Hassan in these crimes. Other witnesses are expected to offer full in-court testimony on the same issues.³⁴ The Defence submits that the best approach concerning this witness is the introduction of her prior recorded testimony as a whole, pursuant to Rule 68(3), as it does not concern the Accused directly and will allow the Prosecution to examine her on the other issues in court.
28. D-0512 was born [REDACTED]. In 2012, and throughout the period the Islamists were in Timbuktu, [REDACTED]. [REDACTED].
29. D-0512's prior recorded testimony relates first to the beginning of the rebellion and the arrival of the groups in Timbuktu in 2012, the insecurity and discrimination, and the interaction between the Islamists and the MLNA, as relevant to the armed conflict threshold, and nexus elements. She also provides some information about the Islamists presence and the actions of Hamed Moussa and Adama.³⁵ Her testimony will be corroborated and supplemented by *inter alia* witnesses D-0213, D-0312, D-0093, D-0514 and D-0551, who are expected to testify in court.³⁶
30. Like D-0554, D-0512 incorrectly describes Hamed Moussa as working for the Islamic Police, and further expresses her belief that everyone who was based at the BMS during the year worked for the Islamic Police.³⁷ D-0554's evidence is also probative as

³⁴ *E.g.* D-0093, D-0213, D-0312, D-0514, D-0551.

³⁵ [MLI-D28-0006-2611-R02](#) at 2613-2616, paras. 10-31.

³⁶ See e.g. [ICC-01/12-01/18-2203-Conf](#), paras. 26, 30, 36.

³⁷ [MLI-D28-0006-2611-R02](#) at 2614-2615, paras. 19-20.

concerns the extent to which the local population wrongly conflated Hamed Moussa with the Islamic Police, because he worked at the BMS.

31. D-0512's prior recorded testimony also explains the involvement of victims' associations ([REDACTED]) and the manner which they identified and interacted with victims.³⁸ It is therefore relevant as to the credibility of the Prosecution evidence. This evidence is cumulative as to the evidence of D-0240 and D-0524. *Viva voce* evidence will also be presented on this point by D-0006 and D-0514.³⁹
32. Furthermore, D-0512's statement relates to several persons of interest in this case, and is cumulative of Defence evidence and/or responsive to Prosecution evidence submitted through Rule 68(2) (*i.e.* P-0570) and Rule 68(3) (*i.e.* P-0622, P-0639). For instance, D-0512 gives evidence in relation to P-0610's marriage in 2012, which is also addressed by D-0516.⁴⁰
33. D-0512's statement also contradicts [REDACTED],⁴¹ while it is cumulative as concerns the evidence of [REDACTED]⁴² and P-0641's⁴³ evidence on other persons of interest in the case ([REDACTED]).
34. D-0512's testimony does not necessitate oral presentation in full. Her statement is detailed, probative and reliable. It was read back to her by a Registry appointed interpreter, who is proficient in [REDACTED]. The witness provided her statement voluntarily and will be asked to confirm its accuracy when she appears before the Chamber.
35. The introduction of D-0512's statement would reduce the Defence's examination of the witness by more than half, thereby promoting the expeditiousness of the proceedings. The Defence indeed intends to conduct a supplementary examination of Witness D-0512 of 2 ¼ hours. The Defence would elicit specific evidence on the arrival of the groups and the impact on the Songhai community, arranged marriages that pre-existed in Timbuktu and consensual marriages that happened in 2012-2013, and the

³⁸ [MLI-D28-0006-2611-R02](#) at 2616-2617, paras. 32-36.

³⁹ See [ICC-01/12-01/18-2203-Conf](#), para. 103.

⁴⁰ [MLI-D28-0006-2611-R02](#) at 2618-2620, paras. 50-60.

⁴¹ [MLI-D28-0006-2611-R02](#), para. 41; [REDACTED].

⁴² [MLI-D28-0006-2611-R02](#), para. 39; [REDACTED].

⁴³ [MLI-D28-0006-2611-R02](#), para. 46; [REDACTED].

involvement of NGOs with victims after the events. Therefore, 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. Since the witness will be testifying [REDACTED].

V. Conclusion and relief requested

36. Through the introduction of the proposed statements pursuant to Rule 68(3), the Defence seeks to present the evidence of D-0554, D0516 and D-0512 in a concentrated manner, and enable the presentation of its case as efficiently as possible. Furthermore, no prejudice will arise for the Prosecution as it will retain the ability to test the evidence of these witnesses by cross-examining them in court, and the LRVs and the Chamber will have the opportunity to ask questions to the witness
37. For the foregoing reasons, the Defence respectfully requests Trial Chamber X to **GRANT** the present Rule 68(3) and Regulation 35(2) request and **ALLOW** the introduction of the proposed statements of D-0554, D0516 and D-0512 pursuant to Rule 68(3) of the Rules.



Melinda Taylor
Counsel for Mr. Al Hassan

Dated this 24th Day of May 2022
At The Hague, The Netherlands