

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 24 May 2022

**TRIAL CHAMBER X**

**Before:** Judge Antoine Kesia-Mbe Mindua, Presiding  
Judge Tomoko Akane  
Judge Kimberly Prost

**SITUATION IN THE REPUBLIC OF MALI**

**IN THE CASE OF  
*THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG  
MAHMOUD***

**Public**

**With Confidential Annex A**

**Public Redacted Version of First Defence Rule 68(2)(b) Application**

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

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

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## **Introduction**

1. The Defence for Mr Al Hassan hereby requests the Trial Chamber to admit the statements of D-0511, D-0539, D-0553 and related materials through Rule 68(2)(b) of the Rules of Procedure and Evidence ('the Rule 68(2)(b) materials').<sup>1</sup>
2. The Rule 68(2)(b) materials are relevant to the charges against Mr Al Hassan, they were prepared in a reliable manner, and their introduction through this rule would occasion no prejudice to a fair resolution of the issues.
3. The content of the Rule 68(2) materials further complies with the requirements of Rule 68(2)(b) in the sense that it does not relate to the charged acts and conduct of the accused, is cumulative or corroborative of oral testimony, relates to background information, and is such that the interests of justice are best served by its introduction.
4. In event that the Trial Chamber grants these requests in whole or in part, the Defence will liaise with the Registry to obtain the certifications required by the terms of Rule 68(2)(b).

## **Level of confidentiality**

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Defence files this submission and its accompanying annex on a confidential basis as they contain confidential information including information regarding Defence witnesses, in addition to referring to filings classified as confidential. The Defence will file a public redacted version in due course.

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<sup>1</sup> Annex A. The Defence is submitting a separate Rule 68(3) application for D-0554, D-0516 and D-0512.

## Submissions

### *General observations concerning the scope of Rule 68(2)*

6. There is a distinction between evidence that relates to the charged acts and conduct of the accused, as compared to evidence that relates to the accused in general. Evidence concerning the background of the defendant, which might be relevant to potential defences (or mitigation) does not constitute ‘acts and conduct’ evidence,<sup>2</sup> nor does evidence from Defence witnesses concerning general impressions of the defendant,<sup>3</sup> or ‘good character’ evidence.<sup>4</sup> ICC Trial Chambers have also accepted evidence, through Rule 68(2)(b), concerning the general policy or objectives organisations.<sup>5</sup>
  
7. Due to COVID travel restrictions and the need to meet deadlines, the Defence was compelled to conduct investigations through remote and virtual means, supplemented with in-person interviews where possible. In order to ensure a complete record, the Defence has endeavoured to refer to the dates and participants of all such substantive interviews on the cover page, even if the interviews were interspersed over several months, or occurred in different locations or formats. This degree of completeness, and the fact of different time zones, made it very difficult to include specific times for each such interaction.

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<sup>2</sup> [ICC-02/04-01/15-1294](#), para. 7: “The written statements of witnesses D-8 and D-12 discuss Mr Ongwen’s childhood and subsequent abduction.<sup>13</sup> The Chamber is satisfied that the statements do not go to proof of Mr Ongwen’s acts and conduct as defined above, and are corroborative of D-6 and D-7’s anticipated testimonies. <sup>14</sup> It is also noted that the Prosecution does not object to the introduction of the statements into evidence.<sup>15</sup> The Chamber therefore, allows the introduction under Rule 68(2)(b) of the Rules of the prior recorded testimony of witnesses D-8 and D-12.”

<sup>3</sup> [ICC-02/04-01/15-1294](#), para. 9: “The statement also comments on D-20’s relationship with and his impression of Mr Ongwen. <sup>20</sup> However, given the general nature of these comments, the Chamber is satisfied that this does not go to proof of Mr Ongwen’s acts and conduct. The Prosecution does not object to the introduction of the statement into evidence. The Chamber therefore, allows the introduction under Rule 68(2)(b) of the Rules of the prior written testimony of witness D-20.”

<sup>4</sup> [ICC-01/05-01/13-1857](#), para. 12.

<sup>5</sup> [ICC-02/04-01/15-1294](#), paras. 15-16.

The Defence can nonetheless furnish this information if the Chamber considers it necessary for its adjudication. For D-0511, the Defence specifies that all interviews took place in person (although [REDACTED] participated through remote means during the meeting of 20 February 2022), [REDACTED].

*The statement and related materials of D-0511<sup>6</sup>*

8. D-0511 [REDACTED]. [REDACTED] in 2011 and 2012, [REDACTED] to provide evidence on the organizational objectives and activities of the MNLA, and its interactions with the Malian State, and other groups such as Ansar Dine and Al Qaeda. [REDACTED]. [REDACTED]. He was never a member of Ansar Dine and has no family or personal relationship to Al Hassan. He specifies his source of knowledge and his evidence is well-informed and disinterested. Given that the Prosecution did not introduce any evidence from [REDACTED], it is in the interests of justice to receive his evidence.
9. [REDACTED], D-0511 provides insight as concerns the customs and practices of the Touareg and Arab communities in Timbuktu in the years before 2012 in relation to the system for arranging marriages and the role of traditional justice ('the Cadi').<sup>7</sup> This is relevant to the charges of persecution and the underlying Prosecution argument that Ansar Dine sought to impose and apply 'new rules' that were not accepted by the local population. It is also relevant to defences of mistake of law/fact. This is corroborated by the oral evidence of Prosecution

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<sup>6</sup> The original statement in Arabic is [MLI-D28-0005-9310-R01](#). The English translation is [MLI-D28-0006-2629-R01](#). The Defence is also seeking the admission of related exhibits: [MLI-D28-0005-8491](#), [MLI-D28-0005-8820](#).

<sup>7</sup> [MLI-D28-0006-2629-R01](#) at 2632, paras. 15-17.

witnesses: [REDACTED],<sup>8</sup> [REDACTED],<sup>9</sup> P-0643,<sup>10</sup> P-0654,<sup>11</sup> P-0160,<sup>12</sup> [REDACTED].<sup>13</sup>

10. D-0511 further gives evidence concerning atrocities committed by the Malian army against the Touareg and Arab populations in the North of Mali (including Timbuktu) both before and after 2012.<sup>14</sup> Even if D-0511 did not personally witness such atrocities, the fact that he believed that they had occurred is relevant [REDACTED], that members of the Touareg and Arab populations held a genuine belief that the Malian army had and would target and kill them because of their skin colour. D-0511's description of the arrest of key MNA leaders also speaks to the fact that the Malian state was a source of threat rather than protection, for their communities. This evidence is relevant to defences of necessity/duress, and Mr Al Hassan's state of mind, and is corroborated by the oral evidence of Prosecution witnesses: P-0065,<sup>15</sup> [REDACTED]<sup>16</sup>, P-1086,<sup>17</sup> P-0654.<sup>18</sup>

11. D-0511 describes the absence of effective and fair State authorities and institutions in Timbuktu both before and during 2012.<sup>19</sup> This is relevant to the nature of the alleged common plan to apply Sharia, and the extent to which certain pre-existing formalistic deficiencies in the justice system can be attributed to Ansar Dine. This evidence is corroborated by the oral testimony

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<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> [ICC-01/12-01/18-T-083-CONF-ENG](#), pp. 52-53, 57-68 (the Cadi).

<sup>11</sup> [ICC-01/12-01/18-T-133-CONF-ENG](#), pp. 51-53.

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

<sup>13</sup> [REDACTED].

<sup>14</sup> [MLI-D28-0006-2629-R01](#) at 2632-3633, para. 18.

<sup>15</sup> [REDACTED]; [ICC-01/12-01/18-T-050-CONF-ENG](#), p.21, line 1 – p.22, line 7.

<sup>16</sup> [REDACTED].

<sup>17</sup> P-1086, [ICC-01/12-01/18-T-122-CONF-ENG](#), p.5, line 8 – p.6, line 4; (referring to previous waves of ethnic cleansing of Touaregs that motivated his exile); [REDACTED].

<sup>18</sup> [ICC-01/12-01/18-T-133-CONF-ENG](#), pp. 33-34 (speaking of arrest of MNA leaders).

<sup>19</sup> [MLI-D28-0006-2629-R01](#) at 2632, paras. 12, 13, 14, at 2633, para. 22, at 2634, para. 27.

of the following Prosecution witnesses: P-0152,<sup>20</sup> P-0004,<sup>21</sup> P-0654,<sup>22</sup> [REDACTED],<sup>23</sup> P-1086,<sup>24</sup> P-0608,<sup>25</sup> P-0643.<sup>26</sup>

12. D-0511 explains the way in which different groups entered Timbuktu, the absence of confrontation,<sup>27</sup> and the MNLA's presence, first in the city, then in the airport, after which MNLA members could continue to enter the city. This is relevant to the threshold for an armed conflict and nexus elements. It is corroborated by the oral testimony of the following Prosecution witnesses: P-0065,<sup>28</sup> P-0654,<sup>29</sup> P-1086.<sup>30</sup>

13. D-0511 gives evidence concerning his understanding of the MNLA-Ansar Dine agreement, including as concerns the shared agreement to rely on Sharia as a source of law in the North. Based on his interactions with the groups and personal observations, he also describes the difference in approach between Ansar Dine and Al Qaeda as concerns the interpretation and application of Sharia. It is corroborated by the oral testimony of the following Prosecution witnesses: P-0065,<sup>31</sup> P-0152,<sup>32</sup> and [REDACTED].<sup>33</sup>

14. D-0511 was present in Timbuktu, after the arrival of Ansar Dine, [REDACTED]. He provides a disinterested perspective on the positive aspects of the steps

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<sup>20</sup> [ICC-01/12-01/18-T-032-CONF-ENG](#), p. 47.

<sup>21</sup> [ICC-01/12-01/18-T-166-CONF-ENG](#), p.4.

<sup>22</sup> [ICC-01/12-01/18-T-133-CONF-ENG](#), pp. 36-37; [REDACTED].

<sup>23</sup> [REDACTED].

<sup>24</sup> [ICC-01/12-01/18-T-122-CONF-ENG](#), pp. 7-8.

<sup>25</sup> [ICC-01/12-01/18-T-154-CONF-ENG](#), p. 86 (police corruption in Bamako).

<sup>26</sup> [ICC-01/12-01/18-T-083-CONF-ENG](#), pp. 49-50.

<sup>27</sup> [MLI-D28-0006-2635-R01](#) at 2629.

<sup>28</sup> [REDACTED].

<sup>29</sup> [REDACTED]; [ICC-01/12-01/18-T-134-CONF-ENG](#), p. 15.

<sup>30</sup> [ICC-01/12-01/18-T-122-CONF-ENG](#), pp. 22-23.

<sup>31</sup> [ICC-01/12-01/18-T-046-CONF-ENG](#), p. 38, 64; [ICC-01/12-01/18-T-050-CONF-ENG](#), pp. 22-23, 37-38.

<sup>32</sup> [ICC-01/12-01/18-T-032-CONF-ENG](#), pp. 69, 71, 73-75.

<sup>33</sup> [REDACTED].

taken by Ansar Dine to ensure security and stability in Timbuktu, and the manner in which this contributed to the ability of the local population to conduct commerce and ensure their livelihoods.<sup>34</sup> Conversely, he describes the negative impact of the departure of Ansar Dine-Al Qaeda on the security and protection of the Arab community in Timbuktu - including extra-judicial killings and disappearances.<sup>35</sup> This is relevant to the nature of the alleged common plan, and the organizational aims and policies of Ansar Dine. It is corroborated by the oral testimony of the following Prosecution witnesses: P-0608,<sup>36</sup> P-0065,<sup>37</sup> P-0641,<sup>38</sup> P-0654, [REDACTED],<sup>39</sup> P-0099,<sup>40</sup> and P-0010.<sup>41</sup>

15. [REDACTED],<sup>42</sup> [REDACTED].<sup>43</sup> D-0511 also attests to collaboration between the Malian State and Al Qaeda in the years leading up to 2012,<sup>44</sup> and gives evidence as concerns the inability of any national groups to effectively confront and expel Al Qaeda from the North of Mali. This is relevant to defences of duress and necessity, and superior orders. It is corroborated by the oral testimony of the following Prosecution witnesses: P-0152,<sup>45</sup> [REDACTED],<sup>46</sup> P-0638,<sup>47</sup> P-0114,<sup>48</sup> P-0004,<sup>49</sup> P-1086,<sup>50</sup> and [REDACTED].<sup>51</sup>

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<sup>34</sup> [MLI-D28-0006-2629-R01](#) at 2636, paras. 40, 41.

<sup>35</sup> [MLI-D28-0006-2629-R01](#) at 2637, paras. 48, 49.

<sup>36</sup> P-0608, [ICC-01/12-01/18-T-154-CONF-ENG](#), p. 93, line 24 – p.94, line 7.

<sup>37</sup> P-0065, [ICC-01/12-01/18-T-050-CONF-ENG](#), p.60, lines 22–25.

<sup>38</sup> [ICC-01/12-01/18-T-139-CONF-ENG](#), pp. 56-57.

<sup>39</sup> [REDACTED].

<sup>40</sup> P-0099, [ICC-01/12-01/18-T-147-CONF-ENG](#), p.8, line 21 – p.9, line 3.

<sup>41</sup> [ICC-01/12-01/18-T-021-CONF-ENG](#), p.8, lines 20 – p.21, line 3 (referring to “cleansing” of Arab population “under the noses of the French and Malian forces”).

<sup>42</sup> [REDACTED].

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

<sup>44</sup> [MLI-D28-0006-2635-R01](#) at 2633, paras. 19-20.

<sup>45</sup> P-0152, [ICC-01/12-01/18-T-032-CONF-ENG](#), pp.69, 70, 75, p.79, lines 11-25.

<sup>46</sup> [REDACTED].

<sup>47</sup> [ICC-01/12-01/18-T-059-CONF-ENG](#), p.14-15.

<sup>48</sup> [ICC-01/12-01/18-T-060-Conf-ENG](#), p.58.

<sup>49</sup> [ICC-01/12-01/18-T-166-CONF-ENG](#), pp.31-32, p.53.

<sup>50</sup> [ICC-01/12-01/18-T-122-CONF-ENG](#), p.9-10.

<sup>51</sup> [REDACTED].



16. The Trial Chamber has, in past decisions concerning the application of Rule 68(2), restrained its evaluation to formal indicia of reliability.<sup>52</sup> The statement of D-0511 fulfils these indicia. It qualifies as pre-recorded testimony,<sup>53</sup> and was taken in the ordinary course of investigations, each page was signed by the witness, the persons who conducted the interview, and the persons present, the witness acknowledged the accuracy and truthfulness of its contents and further accepted that he could be prosecuted for false testimony if he provided information that he knew to be false.<sup>54</sup> Given that the statement was read and signed in Arabic – a language which the witness perfectly understands – there are no issues of interpretation.

17. The Defence further seeks to admit the following related exhibits into evidence: MLI-D28-0005-8491, which is the founding declaration of the MNA in French and MLI-D28-0005-8820, which is the Arabic version. The documents are from an open source facebook account attributed to the MNA. [REDACTED]. The contents further provide context as concerns the evidence provided by P-0511 concerning the goals and objectives of the MNA. There is therefore a sufficient nexus to justify the admission of these documents through Rule 68(2)(b).

18. Due to an administrative oversight, the French version was not disclosed or included on the Defence list of evidence. In line with previous rulings, which emphasise that the disclosure of translations assist the Chamber and parties, the Defence seeks the authorization of the Chamber to add the French version to its list of evidence, and to admit it into evidence.

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[REDACTED].

<sup>52</sup> ICC-01/12-01/18-1413-Conf, para.15.

<sup>53</sup> The original statement in Arabic is [MLI-D28-0005-9310-R01](#). The English translation is [MLI-D28-0006-2629-R01](#).

<sup>54</sup> These factors were cited by the Trial Chamber in ICC-01/12-01/18-1413-Conf, para. 15.

*The statement of D-0539*<sup>55</sup>

19. D-0539 [REDACTED].<sup>56</sup> During 2012, D-0539 was [REDACTED].<sup>57</sup> He also maintained contacts with [REDACTED]. He was never a member of Ansar Dine and has no family or personal relationship to Al Hassan. His evidence is well-informed and disinterested. D-0539 also explains his source of knowledge and distinguishes between information that he learned himself through his role in political negotiations, and information that he learned through interactions with persons who were present in Timbuktu during the time period of the charged events.
  
20. D-0539 provides evidence on the following matters that are relevant to the Chamber's disposition of the charges, but of a contextual and cumulative nature.
  
21. D-0539 and his family fled Mali in 1990 due to the conflict between the Malian army and rebel groups, which led to the massacre of many Arab and Touaregs. These massacres produced the fear among his community that they would be killed by the army if they stayed.<sup>58</sup> This history informed the response of his community and family in 2012: that many fled due to fear that they were again be massacred by the Malian army.<sup>59</sup> In 2012, after the start of the rebellion, D-0539 had to [REDACTED].<sup>60</sup> [REDACTED].<sup>61</sup> This evidence is relevant to defences of necessity/duress, and Mr Al Hassan's state of mind, and is

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<sup>55</sup> [MLI-D28-0005-9317-R01](#).

<sup>56</sup> [REDACTED].

<sup>57</sup> [REDACTED].

<sup>58</sup> [MLI-D28-0005-9317-R01](#), para. 8.

<sup>59</sup> [MLI-D28-0005-9317-R01](#), para. 15.

<sup>60</sup> [REDACTED].

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

corroborated by the oral evidence of Prosecution witnesses: P-0065,<sup>62</sup> [REDACTED],<sup>63</sup> P-1086,<sup>64</sup> and P-0608.<sup>65</sup>

22. [REDACTED], D-0539 provides evidence concerning the customs and practices of the Arab community in Timbuktu and surrounding areas. This includes their practices in relation to marriage, dress, and alcohol.<sup>66</sup> The existence of socially conservative beliefs and practices concerning marriage, dress and alcohol, similar to those applied by Ansar Dine, is corroborated by the oral testimony of the following Prosecution witnesses: P-0004,<sup>67</sup> [REDACTED],<sup>68</sup> P-0654,<sup>69</sup> P-0114,<sup>70</sup> P-0643,<sup>71</sup> P-0152.<sup>72</sup>

23. D-0539 further provides relevant evidence concerning [REDACTED] in Timbuktu as concerns the system of governance and security implemented in Timbuktu after April 2012. The measures taken by Ansar Dine to secure fuel, water and electricity, and assure security, were viewed in a positive manner by the Arab *commerçants*. The application of Sharia facilitated the larger goal of ensuring security and stability, and the protection of the local population from crimes and physical assaults.<sup>73</sup> This evidence is corroborated by the oral testimony of the following Prosecution witnesses: P-0638,<sup>74</sup> [REDACTED],<sup>75</sup> P-

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<sup>62</sup> [REDACTED]; [ICC-01/12-01/18-T-050-CONF-ENG](#), p.21, line 1 – p.22, line 7.

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

<sup>64</sup> P-1086, [ICC-01/12-01/18-T-122-CONF-ENG](#), p.5, line 8 – p.6, line 4; (referring to previous waves of ethnic cleansing of Touaregs that motivated his exile); [REDACTED].

<sup>65</sup> [ICC-01/12-01/18-T-154-CONF-ENG](#), p.84.

<sup>66</sup> [MLI-D28-0005-9317-R01](#), paras. 27, 28.

<sup>67</sup> [ICC-01/12-01/18-T-166-CONF-ENG](#), pp.6-16.

<sup>68</sup> [REDACTED].

<sup>69</sup> [ICC-01/12-01/18-T-132-CONF-ENG](#), pp. 51-52, 80-91.

<sup>70</sup> [ICC-01/12-01/18-T-060-CONF-ENG](#), pp.60, 62.

<sup>71</sup> [ICC-01/12-01/18-T-083-CONF-ENG](#), pp.39, 43-46, 77.

<sup>72</sup> [ICC-01/12-01/18-T-032-CONF-ENG](#), pp.39, 55, 56, 59-60.

<sup>73</sup> [MLI-D28-0005-9317-R01](#), paras. 34-35.

<sup>74</sup> [ICC-01/12-01/18-T-059-CONF-ENG](#), pp.14-16.

<sup>75</sup> [REDACTED].

0099,<sup>76</sup> P-0608,<sup>77</sup> [REDACTED],<sup>78</sup> P-0004,<sup>79</sup> P-0654,<sup>80</sup> P-641.<sup>81</sup> It is also corroborated by contemporaneous media accounts.<sup>82</sup>

24. D-0539 explains the system for communication and exchanges between Ansar Dine and the local Arab community, who were not represented in or by the 'Crisis Committee'.<sup>83</sup> His description is corroborated by the oral testimony of P-0004, who testified that the Arab communities were not represented in the Crisis Committee, and instead interacted with Ansar Dine through their chefs de faction.<sup>84</sup>

25. D-0539 further relays the information he received concerning marriages between members of the Arab community and the groups, which took place when Ansar Dine and AQIM were present in Timbuktu.<sup>85</sup> According to what he was told, the parents gave their consent to the marriages, and they were not viewed as forced marriages, although poverty was a factor.<sup>86</sup> This is relevant to the issue as to whether the commission of acts of forced marriage was a foreseeable consequence of the implementation of the common plan, and the question of knowledge/mistake of fact. Multiple Prosecution witnesses have given oral testimony that consensual marriages occurred between locals and members of Ansar-Dine/AQIM during this time period.<sup>87</sup>

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<sup>76</sup> P-0099, [ICC-01/12-01/18-T-147-CONF-ENG](#), p.8, line 21 – p.9, line 3;

<sup>77</sup> P-0608, [ICC-01/12-01/18-T-154-CONF-ENG](#), p.93, line 24 – p.94, line 7.

<sup>78</sup> [REDACTED].

<sup>79</sup> [ICC-01/12-01/18-T-166-CONF-ENG](#), pp.62-63.

<sup>80</sup> [ICC-01/12-01/18-T-135-CONF-ENG](#), pp.40-41.

<sup>81</sup> [ICC-01/12-01/18-T-139-CONF-ENG](#), pp.56-57.

<sup>82</sup> [REDACTED].

<sup>83</sup> [MLI-D28-0005-9317-R01](#), para. 36.

<sup>84</sup> [ICC-01/12-01/18-T-167-CONF-ENG](#), p.19.

<sup>85</sup> [MLI-D28-0005-9317-R01](#), para. 38.

<sup>86</sup> [MLI-D28-0005-9317-R01](#), para. 38.

<sup>87</sup> [REDACTED]; P-0626, [ICC-01/12-01/18-T-143-CONF-ENG](#), p.16, line 7 – p. 21, line 11; P-0152, [ICC-01/12-01/18-T-032-CONF-ENG](#), p.80.

26. [REDACTED] the position of the Malian government in Bamako towards Ansar Dine.<sup>88</sup> This evidence, which is relevant to the defence of mistake of law, is corroborated by *viva voce* evidence from Prosecution witnesses.<sup>89</sup>

27. D-0539's evidence was collected in a reliable manner: it was taken in the ordinary course of investigations, it was signed by the witness, the persons who conducted the interview, and the persons present, and the witness acknowledged the accuracy and truthfulness of its contents, and further indicated his awareness that he could be prosecuted for false testimony if he knowingly provided information that was false.<sup>90</sup> Given that the statement was read and signed [REDACTED] – a language which the witness perfectly understands – there are no issues of interpretation. [REDACTED].<sup>91</sup> The Defence was unable to obtain a signed version of this clarification by today's deadline, but will do so in the coming days to ensure that the Chamber has at its disposal all relevant information.<sup>92</sup>

*The statement and related materials of D-0553*<sup>93</sup>

28. D-0553, [REDACTED]. He was present in Timbuktu before and during the charged events. [REDACTED]. He has no tribal, family or personal relationship to Mr Al Hassan.<sup>94</sup> D-553's evidence is impartial and concerns corroborated

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<sup>88</sup> [REDACTED].

<sup>89</sup> P-0152, [ICC-01/12-01/18-T-032-CONF-ENG](#), p.63; P-0065, [ICC-01/12-01/18-T-048-CONF-ENG](#), pp.32-33. For the position of the local population towards independence (and related concerns regarding the MNLA), see P-641: [ICC-01/12-01/18-T-139-CONF-ENG](#), p.40; P-0654, [ICC-01/12-01/18-T-127-CONF-ENG](#), p.46; P-0004, [ICC-01/12-01/18-T-166-CONF-ENG](#), p.73.

<sup>90</sup> These factors were cited by the Trial Chamber in ICC-01/12-01/18-1413-Conf, para. 15.

<sup>91</sup> [REDACTED].

<sup>92</sup> The Defence will also submit a Regulation 35(2) application at that juncture to have the information included in this request. Since the substance of such information has already been disclosed [REDACTED], there will be no prejudice caused to the parties.

<sup>93</sup> Statement: [MLI-D28-0005-9325-R01](#). [REDACTED].

<sup>94</sup> [MLI-D28-0005-9325-R01](#) para. 43.

background issues that are relevant to the Chamber's appreciation of the context of the charges.

29. [REDACTED].<sup>95</sup> [REDACTED] women were well covered and to reduce the proliferation of bars that sold alcohol, in particular near schools or mosques. D-0553 explains that the local population and notables supported these initiatives. In the period leading up to 2012, local radio stations were also used as a vehicle for disseminating recommendations concerning moral conduct.<sup>96</sup> The HCI endorsed these initiatives.<sup>97</sup> This evidence is relevant to the Prosecution's central claim that the groups, Ansar Dine and Al Qaeda, imposed new rules against the wishes of the population, and that these rules were contrary to local customs and values. It is also relevant to defences of mistake of law/fact and superior orders (as concerns whether it was evident that the application of all such rules was manifestly unlawful).

30. D-0553's evidence on these points is corroborated by the oral testimony of the following Prosecution witnesses: P-0152,<sup>98</sup> P-0004,<sup>99</sup> P-0654,<sup>100</sup> and [REDACTED].<sup>101</sup> These issues were raised by the Defence during the beginning of the Prosecution case ([REDACTED]):<sup>102</sup> the Prosecution had a substantial opportunity to address these developments through its examination of these witnesses.

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<sup>95</sup> [REDACTED].

<sup>96</sup> [MLI-D28-0005-9325-R01](#) para. 21.

<sup>97</sup> [MLI-D28-0005-9325-R01](#) para. 23.

<sup>98</sup> [ICC-01/12-01/18-T-032-CONF-ENG](#), pp.58-59.

<sup>99</sup> [ICC-01/12-01/18-T-166-CONF-ENG](#), pp.6-16.

<sup>100</sup> [ICC-01/12-01/18-T-133-CONF-ENG](#), pp.10-32.

<sup>101</sup> [REDACTED].

<sup>102</sup> [REDACTED].

31. In terms of the events of 2012, D-0553 gives evidence that the Malian authorities had already abandoned Timbuktu before the arrival of Ansar-Dine or Al Qaeda.<sup>103</sup> The Malian state effectively handed Timbuktu to the Arab militia,<sup>104</sup> even though the local Songhai population were afraid of them.<sup>105</sup> The MNLA entered Timbuktu on 1 April and started destroying and stealing property.<sup>106</sup> Due to the history of ethnic conflict in Timbuktu (in past rebellions), the local population were afraid that the MNLA and Arab militia would embark on a settling of scores, and physically attack them.<sup>107</sup> For these reasons, the local population preferred Ansar Dine: they were religious and, unlike the MNLA, did not commit theft.<sup>108</sup> D-0553's evidence on these points is corroborated by the oral testimony of the following Prosecution witnesses: P-0654,<sup>109</sup> P-0099,<sup>110</sup> P-0065,<sup>111</sup> P-0608.<sup>112</sup>

32. D-0553 [REDACTED].<sup>113</sup> [REDACTED].<sup>114</sup>

33. D-0553 provides evidence concerning the steps taken by Ansar Dine to ensure the functioning of the hospital and the reopening of schools, including for girls.<sup>115</sup> This evidence is corroborated by multiple Prosecution witnesses,

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<sup>103</sup> [MLI-D28-0005-9325-R01](#) para. 24 (and 26).

<sup>104</sup> [MLI-D28-0005-9325-R01](#) para. 25.

<sup>105</sup> [MLI-D28-0005-9325-R01](#), para. 27.

<sup>106</sup> [MLI-D28-0005-9325-R01](#) para. 26.

<sup>107</sup> [MLI-D28-0005-9325-R01](#) paras. 26-28.

<sup>108</sup> [MLI-D28-0005-9325-R01](#) para. 27.

<sup>109</sup> P-0654, [ICC-01/12-01/18-T-127-CONF-ENG](#), p.49 line 4 – p.50, line 4.

<sup>110</sup> P-0099, [ICC-01/12-01/18-T-147-CONF-ENG](#), p.10, lines 9-15.

<sup>111</sup> P-0065, [ICC-01/12-01/18-T-045-CONF-ENG](#), p.15, lines 18-25.

<sup>112</sup> [ICC-01/12-01/18-T-154-CONF-ENG](#), pp.93-94.

<sup>113</sup> [REDACTED].

<sup>114</sup> [REDACTED].

<sup>115</sup> [MLI-D28-0005-9325-R01](#) para. 33.

including [REDACTED],<sup>116</sup> P-0654,<sup>117</sup> P-0610,<sup>118</sup> P-0641,<sup>119</sup> P-0065,<sup>120</sup> and evidence submitted into the case file.

34. D-0553 [REDACTED].<sup>121</sup> Conversely, D-0553 testifies that the presence of locals in the structures of Ansar Dine helped the local population to communicate their views on such matters during 2012 and thus facilitated the sought consultation processes.<sup>122</sup>

35. D-0553's testimony on these points is cumulative to that of [REDACTED] (P-0654).<sup>123</sup> [REDACTED]. [REDACTED].<sup>124</sup>

36. D-0553 provides evidence, which authenticates the contents of [REDACTED].<sup>125</sup>

37. D-0553 also provides an important [REDACTED].<sup>126</sup> They did not view Al Hassan as being among the leaders or chiefs:<sup>127</sup> his role and involvement was similar to that of many other locals, who were present in Timbuktu during this epoch.

38. [REDACTED] is relevant to the defences of necessity/duress and superior orders and any assessment as to whether Mr Al Hassan's return to Timbuktu would be viewed as a source of insecurity or risk by the religious leaders of Timbuktu. The Defence has the right to submit evidence that might be relevant

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<sup>116</sup> [REDACTED].

<sup>117</sup> [ICC-01/12-01/18-T-128-CONF-ENG](#), p.4.

<sup>118</sup> [ICC-01/12-01/18-T-158-CONF-ENG](#), p.14.

<sup>119</sup> [ICC-01/12-01/18-T-139-CONF-ENG](#), p.56 (making vehicles available to the hospital).

<sup>120</sup> [ICC-01/12-01/18-T-050-CONF-ENG](#), p.55.

<sup>121</sup> [REDACTED].

<sup>122</sup> [MLI-D28-0005-9325-R01](#) para. 39.

<sup>123</sup> P-654: [ICC-01/12-01/18-T-133-CONF-ENG](#), pp.43, 50-53; [REDACTED].

<sup>124</sup> [REDACTED]

<sup>125</sup> [REDACTED].

<sup>126</sup> [REDACTED].

<sup>127</sup> [MLI-D28-0005-9325-R01](#) para. 47.



to sentencing issues, during the trial phase,<sup>128</sup> and such evidence is most often received in written format through bar table applications or Rule 68(2),<sup>129</sup> even if the requirements of Rule 68(2) are not strictly fulfilled.<sup>130</sup> The Chamber has also accepted, through Rule 68(2), evidence that goes to issues of authentication.<sup>131</sup>

39. D-0553's statement fulfils formal indicia of reliability. D-0553 signed the statement 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 that was false.

40. D-0553 voluntarily [REDACTED] (although D-0553 indicated that it was not necessary).

41. It is in the interests of justice for the Chamber to admit D-0553's statement into evidence. [REDACTED] to provide evidence contextualizing such events. The Prosecution has also had the opportunity to examine other witnesses on the matters referred to in his statement.

42. The Defence further requests the Chamber to admit [REDACTED]. The contents do not pertain to specific factual allegations and the Chamber has a broad power, pursuant to Rule 93, to take cognizance of the views and concerns of victims, including when they are exculpatory or mitigating for the defendant.

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<sup>128</sup> [ICC-01/12-01/18-789-AnxA](#), para. 41.

<sup>129</sup> [ICC-01/04-02/06-2360](#), para. iv.

<sup>130</sup> [ICC-01/05-01/13-2025](#), paras. 6-7.

<sup>131</sup> [ICC-01/12-01/18-1314-Conf](#), para. 10; ICC-01/05-01/13-1262, para. 12: "The Chamber observes that, while P-0590 is not the author of the relevant documents and that his testimony does not relate to their content, his intervention is, as pointed out by the Prosecution, at the end of their 'chain of custody'".

## Relief Sought

43. For the reasons set out above, the Defence for Mr Al Hassan respectfully requests the Trial Chamber to:

- **GRANT** the Regulation 35(2) request to add MLI-D28-0005-8491, which is French translation of MLI-D28-0005-8820, to the Defence list of evidence; and
- **ADMIT** the statements and related materials of D-0551, D-0539 and D-0553 into evidence through Rule 68(2)(b) of the Rules of Procedure and Evidence.



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Melinda Taylor  
Counsel for Mr Al Hassan

Dated this 24<sup>th</sup> Day of May 2022  
At The Hague, The Netherlands