

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **29 September 2022**

TRIAL CHAMBER X

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

SITUATION IN THE REPUBLIC OF MALI

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

Public with confidential Annex 1

**Public redacted version of Defence Rule 68(2)(b) applications for Witnesses D-0219
and D-0312, ICC-01/12-01/18-2328-Conf, 2 September 2022**

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

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

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I. Introduction

1. Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence ('Rules'), the Defence for Mr Al Hassan respectfully requests Trial Chamber X to admit into evidence Witness D-0219 and Witness D-0312's statements and associated exhibits.¹
2. Both statements are relevant and cumulative of other Defence evidence (oral testimony) and satisfy the requirements of Rule 68(2)(b). They were prepared in a reliable manner, and their introduction will occasion no prejudice to a fair resolution of the issues as their content provide background information and facts which does not relate to the charged acts and conduct of the accused.

II. Level of confidentiality

3. Pursuant to regulation 23bis(1) of the Regulations of the Court, the Defence files this application and its accompanying annex as confidential, because they contain sensitive information regarding witnesses and refers to confidential documents. The Defence will file a public redacted version in due course.

III. Applicable law

4. The Defence incorporates by reference the applicable legal framework and jurisprudence as set out in its previous applications under Rule 68(2)(b).²

IV. Submissions

*The statement and associated documents of D-0219*³

5. D-0219 is a fact and overview witness who is [REDACTED]. D-0219's testimony is of a background nature, as he will principally give evidence on State negotiations and

¹ MLI-D28-0006-5593-R01 and *see* Annex 1.

² [ICC-01/12-01/18-2209-Conf](#), paras. 6, 16, 27, 38; [ICC-01/12-01/18-2256-Conf](#), paras. 4-7.

³ *See* Annex 1.

agreements concerning the status of Northern regions and promises of autonomy, leading up to 2012.

6. D-0219's statement indeed mostly focuses on the issues between the Azawad communities and the Malian government. He describes the repression of the Tuareg people imposed by the State and the rebellions and massacres that follow suit, as well as the peace agreement and *Pacte National* signed in 1991 and 1992 respectively.⁴
7. D-0219 also gives details concerning Al Qaida's presence in the North of Mali since 2002 and the negotiations with the Malian State to free hostages and allow Al Qaida to settle in the North. [REDACTED].⁵
8. D-0219 further testifies on the political and legal context which led to the establishment of different groups, such as the MNA, the MNLA, and Ansar Dine. He describes the reason why he joined Ansar Dine, as well as the political and legal vacuum that existed in Timbuktu at the time of the arrival of Ansar Dine, and their objectives at that time to defend and protect the Azawad population and to advocate for its autonomy. [REDACTED].⁶
9. D-0219's statement also relates to the collaboration between Ansar Dine and Al Qaida and Ansar Dine and the MNLA in the North of Mali, and in particular, to the customs of Ansar Dine in relation to marriage, testifying that Ansar Dine never allowed forced marriage for its members. D-0219 explains the role of traditional justice and the Cadi to solve disputes, and the fact that people respected and followed the decisions taken by religious judges, whereas they did not have confidence in the Malian justice system, which was corrupted and not available in the North.⁷ D-0219's statement also confirms that Azawad people practice moderate Islam.⁸
10. D-0219 was only in Timbuktu in 2012 for a period of two days, which means he is not acquainted with what happened during the charged period specifically. Indeed, he explains that he "thinks" Al Qaida's presence in Timbuktu changed the approach to

⁴ MLI-D28-0006-5593-R01 at 5595-5597, paras. 9-22.

⁵ MLI-D28-0006-5593-R01 at 5597, paras. 23-26.

⁶ MLI-D28-0006-5593-R01 at 5598, paras. 28-34. See *also* at 5599-5600, paras. 42-46.

⁷ MLI-D28-0006-5593-R01 at 5599, paras. 35-41, and at 5600, paras. 47-50.

⁸ MLI-D28-0006-5593-R01 at 5601, paras. 52-54.

traditional justice, and in some cases led to a stricter interpretation of Sharia law, but is not in a position to provide more details as to what happened in Timbuktu.⁹

11. Finally, D-0219 testifies about [REDACTED].¹⁰
12. D-0219 [REDACTED] the issues of this organisation, its customs and practices and its history. His testimony is relevant to the alleged common plan to apply Sharia, the contextualisation of the justice system before and during the presence of Ansar Dine, the organisational aims and policies of Ansar Dine, 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 questions of knowledge and defence of mistake of fact and law.
13. D-0219's testimony, as to its relevance to common plan, and the organisational aims and policies of Ansar Dine, is corroborated by the oral testimony of the following Prosecution witnesses: P-0608,¹¹ P-0065,¹² P-0641,¹³ [REDACTED],¹⁴ P-0099,¹⁵ and P-0010.¹⁶ It is also corroborated by D-0540, D-0272, and D-0511, who are also relevant for the contextualisation of the justice system and the questions of knowledge and defence of mistake of fact and law.¹⁷ Furthermore, multiple Prosecution witnesses have given oral testimony that consensual marriages occurred between locals and members of Ansar Dine/AQIM during this time period.¹⁸
14. It is also to be noted that [REDACTED],¹⁹ [REDACTED]²⁰ and [REDACTED].²¹ [REDACTED],²² [REDACTED] and does not constitute new evidence.

⁹ MLI-D28-0006-5593-R01 at 5599, para. 39, 5601, para. 51.

¹⁰ [REDACTED].

¹¹ [ICC-01/12-01/18-T-154-CONF-ENG](#), p.93, line 24 – p.94, line 7.

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

¹³ [ICC-01/12-01/18-T-139-CONF-ENG](#), pp.56-57.

¹⁴ [REDACTED].

¹⁵ [ICC-01/12-01/18-T-147-CONF-ENG](#), p.8, line 21 – p.9, line 3.

¹⁶ [ICC-01/12-01/18-T-021-CONF-ENG](#), p.8, lines 20 – p.21, line 3.

¹⁷ [ICC-01/12-01/18-T-183-CONF-ENG](#); [ICC-01/12-01/18-T-182-CONF-ENG](#); MLI-D28-0006-2629-R01.

¹⁸ [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.

¹⁹ [REDACTED];

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

15. D-0219's evidence is relevant to the case but does not relate to charged incidents. His account is not unique but instead concerns circumstances and background information which have been or will be described and discussed by many other equally informed witnesses. It does not therefore require testing in Court, as the Chamber previously indicated that consideration of the standard evidentiary criteria is deferred to its eventual deliberation for its judgment.²³ Therefore, no prejudice arises from its admission through Rule 68(2)(b), as consistently found by this Chamber as the more appropriate and court-time saving manner to admit witness' evidence mainly relating to background information.²⁴
16. D-0219's statement bears sufficient indicia of reliability. It was obtained voluntarily, and the Witness confirmed that the statement was read back to him in French, a language he perfectly understands, and was true to the best of his knowledge.²⁵
17. The Defence further seeks to admit into evidence related exhibits listed in Annex 1. These documents are relevant and necessary to read and understand D-0219's prior recorded testimony [REDACTED]. They are of a background nature. Documents concerning Ansar Dine are also relevant to the organisational aims and policies, and items of a similar nature have been tendered through P-0065 and found as relevant by this Trial Chamber.²⁶ The Prosecution therefore had the opportunity to examine its own witness about their content.

*The statement of D-0312*²⁷

18. D-0312 is a fact witness who was present in Timbuktu during 2012. He worked [REDACTED].

²³ [ICC-01/12-01/18-789-AnxA](#), para. 34(i) and (ii).

²⁴ See e.g. [ICC-01/12-01/18-2241](#), paras. 9, 17; [ICC-01/12-01/18-2277](#), paras. 5-7, 9; [ICC-01/12-01/18-2288](#), para. 13.

²⁵ MLI-D28-0006-5593-R01 at 5594, paras. 1-6, and at 5605.

²⁶ Email from Trial Chamber X Communications of 18 December 2020 at 10:05.

²⁷ MLI-D28-0006-5584-R01.

19. D-0312 describes the corruption of the state justice and the reliance in the North on a system based on traditional judges and Cadis well before 2012. He himself called upon a Cadi [REDACTED].²⁸
20. D-0312 describes the arrival of the MNLA in Timbuktu and the fear this created among the local population. The population was afraid that there was going to be a settling of scores. The MNLA searched for people that they suspected to be with the Malian army. When Ansar Dine arrived, the MNLA were forced to go to the airport.²⁹
21. D-0312 testifies about [REDACTED] after the arrival of Ansar Dine. [REDACTED]. The objective of the meeting was to reassure them that there would be no issues and that laws would be respected. Iyad informed the notables about what behavior was expected of the population, and asked people to report any thefts and complaints and gave money to some victims.³⁰
22. D-0312's testimony also relates [REDACTED]. [REDACTED] was friends with Adama. D-0312 explains that during the first weeks of the occupation, there was a misunderstanding and the police thought that [REDACTED] had stolen some [REDACTED] equipment, even though he was only hiding it to protect it against theft. [REDACTED] was only at the police for a couple of hours as Adama helped him to be released.³¹
23. Finally, D-0312 [REDACTED]. Adama was very sociable and was available for anyone who had a problem, which was really appreciated by the population. [REDACTED]. Concerning Mr Al Hassan, D-0312 explains that he was very kind and courteous. D-0312 mentions an incident [REDACTED] which Mr Al Hassan helped with.³²
24. D-0312's prior recorder testimony does not touch upon charges, matters regarding the acts and conduct of Mr Al Hassan or key factual aspects of the case. It is contextual and relevant for the common plan, contextualisation of the justice system and the questions

²⁸ [REDACTED].

²⁹ MLI-D28-0006-5584-R01 at 5587-5588.

³⁰ MLI-D28-0006-5584-R01 at 5588-5589.

³¹ MLI-D28-0006-5584-R01 at 5590-5591.

³² MLI-D28-0006-5584-R01 at 5591-5592.

of knowledge and defence of mistake of fact and law. It is corroborated by many Prosecution and Defence witnesses, including *viva voce* testimony.³³

25. Furthermore, D-0312's statement is concise and very limited in scope and its introduction into evidence through Rule 68(2)(b) will reduce the extent of in-court time by 6 hours.³⁴
26. As concerned the incident related by the Witness about [REDACTED] (who has been assigned the code P-1707), it is relevant as Prosecution Witness P-0641 testified about the same event,³⁵ claiming that [REDACTED].³⁶ In view of the fact that the Prosecution chose to elicit evidence on an incident that the Pre-Trial Chamber refused to confirm³⁷ and that, moreover, should be considered as hearsay as [REDACTED] never testified, the Defence should be allowed to submit sworn evidence to rebut it. Indeed, in the event the Chamber were to place any weight or accord any relevance to this incident, the Defence should indeed also be afforded a full and fair opportunity to present evidence concerning this account.
27. The incident mentioned concerning Mr Al Hassan's help in resolving [REDACTED]³⁸ does not pertain to a charged incident and D-0312 does not give evidence concerning Mr Al Hassan's role or position in the Islamic Police; he in fact confirms that he was not in position to know Mr Al Hassan's position or the structure of the police.³⁹ The Chamber can and should rely on D-0312's perception of the utility of particular services provided by the Islamic Police to the local population and the manner in which these services were provided, without entering the territory of the charged acts and conduct in this case.
28. D-0312's statement bears sufficient indicia of reliability. It was obtained voluntarily, read back to him in French, and the Witness confirmed that each information given was the truth and correct to the best of his knowledge and memory.

³³ See above para. 13.

³⁴ [ICC-01/12-01/18-2152-Conf-Anx1](#).

³⁵ In Decision rendered by email from Trial Chamber X Communications on 22 September 2021 at 16:49, the Prosecution was explicitly granted authorisation to [REDACTED].

³⁶ [REDACTED].

³⁷ [ICC-01/12-01/18-767-Conf-Corr](#), paras 55-57.

³⁸ [REDACTED].

³⁹ MLI-D28-0006-5584-R01 at 5592, lines 11-12.

V. Relief requested

29. For the foregoing reasons, the Defence respectfully requests Trial Chamber X to **GRANT** the present Rule 68(2) request and **ADMIT** Witness D-0219 and Witness D-0312's statements and associated exhibits into evidence.



Melinda Taylor
Counsel for Mr. Al Hassan

Dated this 29th Day of September 2022
At The Hague, The Netherlands