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4 February 2021

**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 "Prosecution application under rule 68(3) to introduce MLI-OTP-P-0595's prior statement and associated material into evidence" , 26 October 2020, ICC-01/12-01/18-1131-Conf**

**Source:** Office of the Prosecutor

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

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**Victims Participation and Reparations Section Other**

1. Pursuant to articles 64(9), 69(2)-(4) of the Statute and rules 63(2) and 68(3) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests Trial Chamber X’s (“Chamber”) authorisation to (i) introduce into evidence Witness P-0595’s (“P-0595”) prior recorded statement and associated material as specified in sections I and II of Annex A (“Annex”) to the present application; and (ii) conduct a streamlined supplementary examination of Witness P-0595 (“Request”).
2. P-0595 [REDACTED] In his prior recorded statement and associated material, P-0595 provides information on the situation in Timbuktu under the control of the armed groups in 2012-2013, the restrictions imposed on the population, the events and circumstances pertaining to the amputation of MAIGA’s hand and the key members of the armed groups who were involved in this incident.  
[REDACTED]
3. P-0595’s evidence is therefore relevant to the charges of torture both as a crime against humanity and war crime (counts 1 and 3), other inhumane acts as a crime against humanity (count 2), cruel treatment as a war crime (count 4), outrages upon personal dignity as a war crime (count 5) passing of sentences as a war crime (count 6) and persecution as a crime against humanity (count 13).
4. Should this Request be granted, P-0595 will be asked to attest to the accuracy of his prior recorded statement and associated material at the beginning of his testimony and to confirm his availability and willingness to be examined by the Parties, the Legal Representative of Victims (“LRVs”) if applicable, and the Chamber.
5. Based on past practices, the Prosecution estimates that it will require in total about one hour for the examination-in-chief of P-0595; namely approximately 30 minutes to cover the formalities associated with the introduction into evidence of the witness’s prior recorded testimony and associated exhibits, and an additional 30 minutes to conduct a supplementary examination to elicit further focused *viva voce*

evidence of certain issues, including the events [REDACTED] to the amputation of MAIGA's hand.

6. Granting the Request would not be prejudicial to the rights of the Accused and would enhance the expeditiousness of the proceedings by keeping the length of Witness P-0595's in-court testimony considerably shorter than the originally projected three hours.

### **Confidentiality**

7. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this submission and its accompanying Annex as confidential because they contain confidential information and refer to filings of the same classification. The Prosecution shall file a public redacted version in due course.

### **Prosecution's Submissions**

#### **Request for authorisation to introduce P-0595's material into evidence**

8. Rule 68(3) of the Rules provides that the Chamber may allow the introduction of the previously recorded testimony of a witness present before the Chamber where the individual does not object to the submission, and the Parties and the Chamber have the opportunity to examine the witness.

9. The Prosecution identified P-0595 as an appropriate witness for the procedure under rule 68(3) of the Rules.

10. P-0595 is listed in the second block of witnesses and his date of testimony is not scheduled for this year.<sup>1</sup> This Request is therefore filed in accordance with the

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<sup>1</sup> ICC-01/12-01/18-805-Conf-AnxA, p. 3.

Chamber's instruction that rule 68(3) applications relating to any witnesses due to appear beyond the end of this year be filed by 30 November 2020.<sup>2</sup>

11. Sections I and II of the Annex appended to this application list the materials which the Prosecution seeks to introduce into evidence for P-0595, and section III lists other items necessary for the understanding of P-0595's prior recorded statement, which the Prosecution does not seek to introduce into evidence through this witness.

12. More precisely, section I of the Annex contains the witness statement.<sup>3</sup> Section II lists: 1) [REDACTED] (titled Annex A in P-0595's statement);<sup>4</sup> 2) [REDACTED] (titled Annex B in P-0595's statement);<sup>5</sup> 3) thirty-two photographs and one video shown to P-0595 by the OTP investigators during the interview<sup>6</sup> and 4) [REDACTED]<sup>7</sup> as well as an investigation note.<sup>8</sup>

13. The materials listed in section I and II of the Annex relate to the situation in Timbuktu during the events of 2012-2013 including the restrictive rules imposed on the population and the amputation of MAIGA's hand. They are therefore relevant to the charges of torture both as a crime against humanity and war crime (counts 1 and

<sup>2</sup> ICC-01/12-01/18-1004, para. 21.

<sup>3</sup> Section I: [REDACTED]

<sup>4</sup> Annex A [REDACTED]

<sup>5</sup> Annex B [REDACTED]

<sup>8</sup> [REDACTED]

3), other inhumane acts as a crime against humanity (count 2), cruel treatment as a war crime (count 4), outrages upon personal dignity as a war crime (count 5) passing of sentences as a war crime (count 6) and persecution as a crime against humanity (count 13).

14. The materials in sections I and II are probative and reliable. P-0595 was interviewed by the OTP investigators [REDACTED]

[REDACTED] His statement was taken in compliance with the formalities of rule 111 of the Rules.<sup>9</sup> P-0595 [REDACTED]

[REDACTED] P-0595 has direct knowledge of the events leading to MAIGA's hand amputation [REDACTED]

15. [REDACTED]

[REDACTED] MAIGA was sentenced to amputation, and his hand was amputated in implementation of this sentence.<sup>12</sup> [REDACTED]

[REDACTED]<sup>13</sup>

16. [REDACTED]

<sup>9</sup> Section I: [REDACTED]  
<sup>10</sup> [REDACTED]

<sup>11</sup> [REDACTED]  
<sup>12</sup> [REDACTED]  
<sup>13</sup> [REDACTED]

<sup>14</sup> Titled as Annex A in P-0595's statement, see [REDACTED] f  
the Annex to the present application: [REDACTED]

<sup>15</sup> [REDACTED]

his interview.<sup>17</sup>

17. P-0595 gives [REDACTED] of MAIGA [REDACTED]

[REDACTED]<sup>18</sup> and [REDACTED]

[REDACTED]<sup>19</sup>

18. During P-0595's interview, the OTP investigators showed P-0595 thirty-two photographs of persons of interest and one video.<sup>20</sup>

19. Whilst P-0595 was able to comment on ten of the photographs shown to him,<sup>21</sup> the Prosecution requests that all the photographs are introduced into evidence under rule 68(3) of the Rules since all of them constitute an integral part of the statement.<sup>22</sup> When shown these photographs, P-0595 identified and named Houka Houka<sup>23</sup> and Sanda OULD BOUAMAMA<sup>24</sup> [REDACTED]

<sup>16</sup> ICC-01/12-01/18-805-Conf-AnxA, p. 3.

<sup>17</sup> [REDACTED].

<sup>18</sup> [REDACTED].

<sup>19</sup> Titled as Annex B in P-0595's statement, see [REDACTED]

Point 3 of section II of the Annex to the present application: [REDACTED]

See ICC-01/12-01/18-987-Conf, 'Decision on Prosecution's requests to introduce prior recorded testimonies under Rule 68(3) of the Rules', para. 12, 13 and 15.

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

<sup>24</sup> [REDACTED].

[REDACTED]  
 P-0595 also identified two known figures in Timbuktu at the time of the occupation, Oumar OULD HAMAHA<sup>27</sup> and Mohamed Ag MOUSSA.<sup>28</sup> .

20. P-0595 stated that the video ([REDACTED]) [REDACTED]

[REDACTED] He identified MAIGA in the video [REDACTED]

21. Point 4 of section II in Annex A contains Dedeou MAIGA [REDACTED] investigation note dated 4 May 2018. These two documents are relevant since they are connected to MAIGA [REDACTED].

22. During a [REDACTED] meeting with the OTP, P-0595 stated [REDACTED]

[REDACTED]<sup>0</sup> and [REDACTED] the investigators

MAIGA [REDACTED]<sup>1</sup> [REDACTED]. The

[REDACTED]  
 Timbuktu municipality.

23. The Prosecution seeks to introduce all of these materials into evidence. They are relevant to the charges as outlined in paragraph 13 *supra*.

24. Section III of the Annex contains videos and photographs concerning MAIGA [REDACTED] at the site where his hand was amputated [REDACTED] and an investigation note concerning information provided by P-0595 to the OTP investigators after the taking of his statement.<sup>32</sup> The Prosecution does not seek to

25 [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED]  
 29 The video is [REDACTED]  
 30 [REDACTED]  
 31 [REDACTED]  
 32 [REDACTED]



introduce these items into evidence through P-0595 but only lists them as material necessary for the understanding of P-0595's prior recorded statement.

*Proposed procedure for the introduction of P-0595's prior statement and associated material*

25. Should this Request be granted, the Prosecution submits that there will be no need to elicit all the information provided by P-0595 in his prior statement as the witness will be asked to confirm its accuracy and to provide corrections or amendments if any.

26. During witness preparation, the Prosecution will ask P-0595, *inter alia*, to review his statement and associated material, to advise of any corrections or clarifications he wishes to make, and to confirm the accuracy of his prior recorded testimony.<sup>33</sup> In accordance with the Witness Preparation Protocol, this session will be video-recorded and the Prosecution will disclose a log of the session clearly indicating any changes or corrections made by the witness.<sup>34</sup>

27. When P-0595 appears in court, the Prosecution will seek to elicit any corrections or clarifications noted by the witness during witness preparation.<sup>35</sup> The Prosecution will then ask the witness whether he has any further corrections or clarifications to make to his prior statement or associated material, and to confirm his consent to be questioned by the Parties and the Chamber.

28. After tendering his prior recorded statement and associated materials, with any changes or clarifications noted on the record, the Prosecution will conduct a succinct supplementary examination of P-0595 to elicit further focused *viva voce* evidence of certain issues, including the events [REDACTED] to the amputation of Dedeou MAIGA's hand.

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<sup>33</sup> ICC-01/12-01/18-666-Anx, para.18-19.

<sup>34</sup> ICC-01/12-01/18-666-Anx, para.12-15, 31.

<sup>35</sup> ICC-01/12-01/18-666-Anx, para. 50.

29. Finally, P-0595 will be asked to confirm the accuracy of his prior recorded statement and whether he consents to the submission of the prior statement and associated material, in accordance with rule 68(3) of the Rules. The Parties, the LRVs if applicable, and the Chamber will have the opportunity to examine this witness during the proceedings.

30. As the Defence will have the opportunity to cross-examine the witness, the admission of P-0595's prior statements and associated material under rule 68(3) of the Rules will neither be prejudicial to nor inconsistent with the rights of the Accused.

31. The Prosecution estimates that without recourse to rule 68(3) of the Rules, it would require approximately three hours for the examination-in-chief of P-0595 in order to cover all the details provided in his prior statement as well as to elaborate on the materials associated to his statement. Granting this Request would enhance the expeditiousness of the proceedings by reducing the length of P-0595's examination-in-chief by two hours.

### **Conclusion**

32. For the foregoing reasons, the Prosecution requests the Chamber to authorise the introduction into evidence of Witness P-0595's statement pursuant to rule 68(3) of the Rules and to authorise the Prosecution to conduct a succinct supplementary examination-in-chief of Witness P-0595.



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Fatou Bensouda, Prosecutor

Dated this 26<sup>th</sup> day of October 2020

At The Hague, The Netherlands