

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **21 January 2021**

Date of submission:

30 April 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 *ex parte* [Defence, Prosecution and Registry only] Annexes A and B

Public redacted version of “Defence response to ‘Prosecution request to add P-0165 to its List of Witnesses and to add P-0165’s prior recorded testimony to its List of Evidence pursuant to Regulation 35 of the Regulations, and request for the introduction of P-0165’s prior recorded testimony and associated material into evidence pursuant to rule 68 of the Rules of Procedure and Evidence’”

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

Fatou Bensouda
James Stewart

Counsel for the Defence

Melinda Taylor
Kirsty Sutherland

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. On 23 December 2020, the Office of the Prosecutor ('Prosecution') filed its 'Prosecution request to add P-0165 to its List of Witnesses and to add P-0165's prior recorded testimony to its List of Evidence pursuant to Regulation 35 of the Regulations, and request for the introduction of P-0165's prior recorded testimony and associated material into evidence pursuant to rule 68 of the Rules of Procedure and Evidence' ('Request').¹
2. By the Request, the Prosecution seeks authorisation pursuant to Regulation 35 of the Regulations of Court ('Regulations') to add [REDACTED], Witness P-0165 who [REDACTED] to its List of Witnesses, and to add P-0165's prior recorded testimony and its associated material to the List of Evidence.²
3. At the outset, the Defence notes that, **as acknowledged by the Prosecution:**³
 - a. the Chamber may extend a time limit pursuant to Regulation 35(2) of the Regulations where '**good cause**' is shown; and
 - b. where an application to extend a time limit is made after the expiration of the original deadline (as the Request is), pursuant to Regulation 35(2) of the Regulations, the applicant must demonstrate that acting within the original time limit **was not possible for reasons outside of their control.**
4. The Defence opposes the Request. For the reasons given below, the Prosecution has failed to demonstrate that acting within the original time limit for addition of P-0165 and his testimony was not possible for reasons outside of its control. Furthermore, the proposed modality of P-0165's testimony (pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence) is inappropriate in all the circumstances.

¹ ICC-01/12-01/18-1226-Conf.

² ICC-01/12-01/18-1226-Conf, para 1.

³ ICC-01/12-01/18-1226-Conf, para 15.

II. Confidentiality

5. Pursuant to Regulation 23bis(2) of the Regulations, this response has been filed confidentially as it refers to filings and decisions of the same classification.

III. Submissions

The Prosecution has failed to demonstrate good cause to justify its failure to include P-0165 on its List of Witnesses, or his evidence on the List of Evidence

6. As acknowledged by the Prosecution,⁴ the Defence announced that it would bring an application concerning allegations that Mr. Al Hassan had been subjected to torture and CIDT during the pre-trial proceedings on **8 July 2019**.⁵ However, the Defence in fact raised those issues earlier, on **6 June 2019**, when the Defence requested [REDACTED] and [REDACTED] in relation to an ‘abuse of process application concerning Mr. Al Hassan’s arrest, detention and interrogation in Mali’⁶ and the Prosecution had acknowledged its awareness of these ‘allegations of torture’ as early as **24 May 2019**.⁷
7. The Prosecution agreed, on **24 March 2020**, [REDACTED] [REDACTED]) ‘[REDACTED], [REDACTED], [REDACTED]; [REDACTED], [REDACTED]’.⁸ On **6 April 2020**, the Prosecution advised that ‘[t]he Prosecution does not oppose [REDACTED].’⁹
8. Furthermore, the Prosecution did include [REDACTED] in the List of Witnesses submitted on **15 April 2020**, [REDACTED],¹⁰ [REDACTED], including [REDACTED],¹¹ [REDACTED],¹² [REDACTED],¹³ [REDACTED],¹⁴

⁴ ICC-01/12-01/18-1226-Conf, para 19.

⁵ ICC-01/12-01/18-T-003-ENG CT2, p. 9, l. 2 to p. 10, l. 24.; ICC-01/12-01/18-T-007-CONF-ENG CT, p. 33, l. 21 to p. 34, l. 13.

⁶ Annex A, pgs. 2-3.

⁷ Annex B, pg. 6.

⁸ Annex A, pg. 3.

⁹ Annex A, pg. 1.

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

[REDACTED],¹⁵ and [REDACTED].¹⁶ It would have been clear to the Prosecution at this stage, and [REDACTED], to include P-0165 in its List of Witnesses.

9. Contrary to the Prosecution's submission,¹⁷ these matters—and the relevance of Witness P-0165 to these matters—was clear to the Prosecution **prior to** the expiry of the time limit for the filing of the Prosecution's List of Witnesses and List of Evidence on **12 May 2020**. It was therefore fully within the power of the Prosecution to comply with the time limit.
10. Furthermore, even after the expiry of the time limit applicable to the List of Witnesses and List of Evidence, the Prosecution did not act expeditiously in filling the Request. The Defence identified the specific grounds of these allegations in subsequent filings made in June 2020¹⁸ and October 2020.¹⁹ The Chamber instructed the parties to submit 'detailed and complete written submissions on the allegations regarding torture and CIDT and the related challenge under Article 69(7) of the Statute' on **6 November 2020**²⁰ and accepted the Prosecution's proposal concerning the procedure to be adopted concerning such challenges on **24 November 2020**.²¹ However, the Prosecution only filed this Request on **23 December 2020**.
11. In the premises of the above, the Prosecution has failed to demonstrate good cause for why it was not possible for the Prosecution to comply with the time limit and has failed to act with expedition even after the expiry of the time limit.

Introduction of P-0165's testimony and associated material pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence is inappropriate in all the circumstances

12. Furthermore, the Prosecution's proposed method of introducing P-0165's testimony pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence²² is wholly inappropriate. Introduction of P-0165's testimony and associated material, in circumstances where there is no opportunity by the Defence to cross-examine this

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ ICC-01/12-01/18-1226-Conf, para 19.

¹⁸ ICC-01/12-01/18-885-Conf-Exp-Corr, filed 16 June 2020.

¹⁹ [REDACTED].

²⁰ ICC-01/12-01/18-1150, paras 10-11.

²¹ ICC-01/12-01/18-1160.

²² ICC-01/12-01/18-1226-Conf, para 23.

witness, would be prejudicial to or inconsistent with the rights of the accused, and would be contrary to the Chamber's duty to ensure a fair and expeditious trial²³ pursuant to Articles 64(2) and 67(1) of the Statute.

13. The proposed material for introduction is:

- a. a declaration by P-0165 dated [REDACTED] totalling six pages,²⁴
 - b. an drafted by [REDACTED] dated [REDACTED] totalling three pages,²⁵ and
 - c. an [REDACTED] drafted by P-0165 dated [REDACTED] totalling two pages,²⁶
- (‘Proposed Material’).

14. Introduction of the Proposed Material would be prejudicial to and inconsistent with Mr. Al Hassan's rights as a defendant, and the fairness and expedition of the trial, for seven reasons.

15. *First*, the scope of the testimony is wholly inappropriate. As indicated above, the Prosecution had consented to [REDACTED], [REDACTED], [REDACTED], [REDACTED]. By contrast, the declaration was confined to responses to five points listed in a request of the Prosecution,²⁷ being:

- a. « [REDACTED] » ;
- b. « [REDACTED] » ;
- c. « [REDACTED] » ;
- d. « [REDACTED] » ; and
- e. « [REDACTED] ».

16. Furthermore, as further detailed below, the declaration discusses these matters in a surface level manner, with only one brief reference to [REDACTED],²⁸

²³ ICC-01/12-01/18-1111-Red, para 7.

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED] (third paragraph).

²⁸ [REDACTED] (fifth paragraph): ‘[REDACTED].’

[REDACTED]²⁹ and about which the witness would be in a position to testify. Introduction of the Proposed Material pursuant to Rule 68(2)(b) would prejudice the Defence as the Proposed Material is impermissibly narrow in scope, and introduction pursuant to this Rule would deprive the Defence of the right to cross-examine the witness on matters falling outside the scope of these five matters, but relevant to the Chamber's appreciation of the issues under Article 69(7), [REDACTED].

17. ICC Chambers in *Prosecutor v. Lubanga*³⁰ and *Prosecutor v. Katanga & Ngudjolo*³¹ have previously taken inclusive, rather than artificially restrictive, approaches to the scope of testimony [REDACTED] where there were live issues concerning [REDACTED]. In particular, in *Prosecutor v. Lubanga*, in the context of an abuse of process argument, Trial Chamber I indicated:³²

Turning to the position of 581, the Chamber is slightly concerned at the final sentence of paragraph 13, in which the following is set out, and I quote: "He is not being called to give evidence on matters related to other intermediaries, other witnesses unrelated to the abuse of process issue, or trial witnesses unconnected to intermediary 321."

As the Chamber indicated during the course of submissions last week, in our judgment, **the witnesses now being called at this closing stage of the abuse of process evidence can be questioned by either the Prosecution or the Defence on any issues concerning the abuse of process application that are relevant and admissible.** Of course, it is necessary for the witness to be able to

²⁹ [REDACTED].

³⁰ [ICC-01/04-01/06-T-299-CONF-ENG](#), pg. 9, line 7 to pg. 15, line 10; [ICC-01/04-01/06-T-300-Red2-ENG](#), pg. 2, lines 4 to 1; [ICC-01/04-01/06-T-302-Red2-ENG](#), pg. 61, line 9 to pg. 62, line 3.

³¹ [ICC-01/04-01/07-1603-tENG](#), para 17:

‘The Chamber further considers it necessary to order the appearance of the person in the Office of the Prosecutor in charge of investigations in this case (“the Lead Investigator”), in addition to the Prosecution witnesses already due to testify. The Chamber believes that it would be helpful, now that the hearings on the merits are about to commence, to give the Lead Investigator the opportunity to explain:

- how the investigation into the events of 24 February 2003 at Bogoro was conducted, and to describe any difficulties encountered by the investigators;

- how statements were taken from the various Prosecution witnesses;

- the methods used to investigate exonerating circumstances as provided in article 54(1)(a) of the Statute, as well as the procedure for reviewing the evidence gathered in the course of the investigation in order to identify potentially exculpatory material. On this point, the Chamber would refer participants to their filings of 19 January and 9 February 2009 as regards the Prosecutor, and of 2 February 2009 for the two Defence teams; and

- **any other item of information that he considers might be helpful with a view to the Chamber's being properly informed before hearing the first witnesses.**

³² [ICC-01/04-01/06-T-300-Red2-ENG](#), pg. 2, lines 4 to 18.

assist on the issue that is raised by counsel, but **it is not appropriate for either party to seek to impose artificial restrictions on the matters that can be dealt with by witnesses in this and possibly any other category.**

18. Further, Trial Chamber I repeatedly rejected any attempts by the Prosecution to limit the scope of the questions put by the Defence:³³

Ms Samson, thank you very much for the intervention. I don't immediately have before me the exact words that were spoken in court during the course of last week and, therefore, I'm not able immediately to check whether there was some kind of expressed or implied indication that the focus of this questioning was to be limited to child soldiers and intermediaries.

Whatever the answer is to that, either way - and it may be you are right - in our view, this has been an essentially organic process which has resulted in material being put before the Chamber which, viewed generally, we consider it is appropriate for us to look at. I'd put it no higher than that. But the way in which this has been explored by the Defence so far has, within proper limits, revealed matters which it is in the interests of justice for the Chamber at the very least to look at as part of our duty to ensure that the truth is found in the case.

Now, in those circumstances, given that this procedure has generally been conducted responsibly on both sides so far, **we are not minded in some way to limit the ambit of the inquiry, particularly not artificially, so long as the Chamber is not detained by extensive and fruitless fishing expeditions.**

19. This clear judicial direction was given at multiple stages of the testimony by Prosecution investigators in the *Lubanga* case:³⁴

The next issue is the scope of the individual's evidence. **Now, you will know, not least from this trial, that witnesses can be called on one issue, but are then questioned about another issue which may not work entirely to the interests of the party that originally called the witness. However, the**

³³ [ICC-01/04-01/06-T-302-Red2-ENG](#), pg. 61, line 9 to pg. 62, line 3.

³⁴ [ICC-01/04-01/06-T-299-CONF-ENG](#), pg. 9, line 7 to pg. 15, line 10.

evidence may nonetheless be relevant and admissible in the course of these proceedings.

Now, it may be that the Prosecution wishes for the field operations liaison coordinator to focus on a particular area, but that of itself is not going to be determinative of whether or not the Defence are entitled to ask the witness about other relevant matters which are within this individual's knowledge.

[...]

PRESIDING JUDGE FULFORD: Ms Samson, I think we need to go back to basics on this and, again, the Chamber is in an odd position because, as I mentioned only a few moments ago, we actually know almost nothing about this particular individual. But first principles are that a party who is either calling a witness of their own accord or who've been asked by the Bench to call a witness, of course, can ask that witness to address certain specific issues that they believe he's best able to deal with.

Thereafter, those who have an interest in this witness and, in this case, most particularly, the accused, is entitled to ask the witness about matters which are relevant, and which are admissible, and on which the witness will be able to contribute in some meaningful way to the trial process that's currently unfolding.

Whether or not this individual can provide any kind of meaningful assistance in relation, for instance, to 316, will depend on what he says about 316. If he says, "I only met 316 once in a transit lounge at an airport for five minutes," well, it may be we will indicate to Mr Biju-Duval that's not a profitable line of inquiry to follow. If, on the other hand, he were to say, "I have had many dealings with 316, and I can give a lot of information or relevant information about it," the likelihood is we're going to say that this properly can be explored by Mr Biju-Duval, because something said by this individual about 316 may not coincide with the evidence that is to be given by the individual that you have identified as being the right person to address issues concerning 316.

Now, if he says, having been asked about 316, he needs some time to reflect on the issue so that he can sort out his thoughts and memories and remind himself as to when those meetings took place and the extent of them, I'm sure the Chamber will not put the witness under undue pressure and will allow him such reasonable time as he requests.

So I think this is going to have to be a very much wait and see issue. [...]

20. *Second*, the format of the 'declaration' allegedly provided by P-0165 raises concerns about whether this is in fact an item which represents P-0165's own prior recorded testimony. Rule 68(2)(b) requires that prior recorded testimony demonstrate 'sufficient indicia of reliability'. The declaration appears closer to [REDACTED], as indicated by the prolific use of footnotes in the declaration (in a document totalling six pages and 32 paragraphs, there are 25 footnotes, many citing to **multiple** [REDACTED]) and the failure to refer to the basis of the witness's knowledge. [REDACTED], ('[REDACTED]'³⁵ and '[REDACTED]'³⁶) [REDACTED]. [REDACTED] '[REDACTED]' [REDACTED],³⁷ [REDACTED].³⁸ This is not only concerning in terms of the reliability of this declaration as the witness's own testimony, but its references to [REDACTED], given that P-0165 (if indeed he authored this declaration) is not in a position to testify [REDACTED]. The declaration makes only very sparing references to [REDACTED] observations and impressions of [REDACTED],³⁹ which are usually based on, and refer to, documentary evidence.⁴⁰ For example, in relation to [REDACTED], a live issue in relation to the Article 69(7) litigation,⁴¹ the declaration does not refer to any personal knowledge or impressions of the witness but rather refers to [REDACTED].⁴² [REDACTED]⁴³ [REDACTED]. Introduction of the Proposed Material would prejudice the Defence, as the declaration does not bear sufficient indicia of reliability or *prima facie* probative value.⁴⁴ Furthermore, introduction of the

³⁵ [REDACTED].

³⁶ [REDACTED]. (**emphasis added**)

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED] (fifth paragraph) to [REDACTED] (first paragraph).

⁴³ [REDACTED]

⁴⁴ Cf ICC-01/12-01/18-1226-Conf, para 29.

Proposed Material would deprive the Defence of the opportunity to establish the witness's personal knowledge of the matters discussed in the declaration.

21. *Third*, the declaration was drafted in circumstances where there had been extensive adversarial proceedings regarding the matters the very subject of the declaration. The impact of these adversarial proceedings is clear in the declaration, given its references to [REDACTED].⁴⁵ [REDACTED], [REDACTED]. This is particularly significant because in the Chamber's decision upholding a regime whereby the [REDACTED], the Chamber relied on the Defence's ability [REDACTED].⁴⁶
22. Introduction of the Proposed Material would prejudice the Defence, as it would permit the Prosecution to [REDACTED].
23. *Fourth*, one of the items⁴⁷ sought to be submitted pursuant to Rule 68(2)(b) through P-0165 was not drafted by P-0165 and the Prosecution has not established any personal knowledge by P-0165 of the contents of this item. Introduction of this particular item of the Proposed Item, particularly in circumstances where there is no opportunity to establish P-0165's personal knowledge through *viva voce* examination, would prejudice the Defence.⁴⁸
24. *Fifth*, the Prosecution stated in the Request that P-0165 is '[REDACTED]'.⁴⁹ This raises further questions as concerns P-0165's extensive reliance on [REDACTED], during a period when the witness [REDACTED], and the likely conclusion that P-0165 did not in fact author the declaration. In *Prosecutor v. Lubanga*, the Prosecution was ordered to provide the list of documents provided to the witness in preparing his statement to the Defence, even where those documents were not used in preparing his statement.⁵⁰ In circumstances in which the witness has clearly relied on documentary evidence, it would be consistent with the Prosecution's disclosure obligations, and principles of fairness, that the Defence be given an opportunity to fully question the witness, as concerns the provision and use of the documentary evidence. Introduction of the Proposed Material, in these circumstances, would not only prejudice the Defence

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [ICC-01/09-01/11-1938-Corr-Red2](#), para. 33; [ICC-02/04-01/15-596-Red](#), para. 10.

⁴⁹ ICC-01/12-01/18-1226-Conf, para 30.

⁵⁰ [ICC-01/04-01/06-T-334-Red-ENG](#), pg. 75, line 13 to pg. 76, line 18.

by permitting an item lacking indicia of reliability, but would also deprive the Defence of an opportunity to question the witness on the modalities of the preparation of the declaration.

25. *Sixth*, the practice of other international courts and tribunals, [REDACTED]⁵¹ [REDACTED]. Furthermore, the SCSL in *Prosecutor v. Sesay et al*, even with the assistance of the transcripts, and audio and video recordings of the interviews,⁵² considered that:⁵³

the Chamber cannot, at this stage, conclude there is sufficient material before it to allow for a proper determination of the voluntariness or otherwise of the statements at this stage. In the Chamber's opinion, a fuller exploration of the circumstances surrounding the Accused's waiver of his right to counsel and statements is therefore required, and would best be achieved by the holding of a voir dire.

26. Similarly, the Proposed Material which rely heavily on [REDACTED], are not sufficient for the Chamber to appreciate the issues before it.

27. [REDACTED]:⁵⁴

[REDACTED].

[REDACTED].

28. [REDACTED],⁵⁵ [REDACTED]:⁵⁶

[REDACTED];

[REDACTED];

[REDACTED];

⁵¹ [REDACTED]

⁵² *Prosecutor v. Sesay et al*, [Ruling on Voir Dire – Written Reasons](#), para 5.

⁵³ *Prosecutor v. Sesay et al*, [Ruling on Voir Dire – Written Reasons](#), para 19.

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

[REDACTED];

29. *Seventh*, P-0165's testimony relates to issues which are materially in dispute, and soundly and conceivably disputed between the parties⁵⁷ (e.g. the allegations of torture and CIDT at the Sécurité d'État, and thus the voluntariness of Mr. Al Hassan's statements in the context of such detention). These are therefore live and important issues, in respect of which prior recorded testimony pursuant to rule 68(2)(b) has previously been found to be inadmissible.⁵⁸
30. Oral testimony, as occurred in [REDACTED], or a full *voir dire* hearing, as occurred in *Prosecutor v. Sesay et al* and *Prosecutor v. Zigiranyirazo*⁵⁹, are justified in all the circumstances, and are necessary, but not sufficient, preconditions to the Chamber being in a position to fully consider the issues the subject of the Article 69(7) litigation, particularly in terms of the Defence's ability to cross-examine the witness. This need to cross-examine the witness arises not only out of the Defence's duty to protect Mr. Al Hassan's interests, but also out of the principle of fairness which would allow P-0165 to respond to any Defence questions or allegations as concerns the credibility, integrity and probity of his testimony.
31. Granting the Request, in the premises of the prejudice to the Defence detailed above, would be in violation of the Chamber's duty to ensure Mr. Al Hassan's right to a fair trial.

Introduction of P-0165's testimony and associated material pursuant to Rule 68(3) of the Rules of Procedure and Evidence is inappropriate in all the circumstances

32. The Prosecution seeks, in the alternative to its request 'to introduce P-0165's prior recorded testimony and associated material pursuant rule 68(2)(b) [*sic*]', that the Chamber authorise the introduction of these materials pursuant to Rule 68(3).
33. While introduction of the Proposed Material pursuant to Rule 68(3) would permit the Defence to cross-examine P-0165, the Defence nevertheless objects to the introduction of the Proposed Material pursuant to this Rule. As detailed above in terms of the application under Rule 68(2)(b), there are very serious shortcomings in the declaration,

⁵⁷ [ICC-02/04-01/15-596-Red](#), para 15.

⁵⁸ [ICC-01/04-01/07-2362](#), paras 27-28, 33-34; [ICC-02/04-01/15-596-Red](#), paras 214-215.

⁵⁹ *Prosecutor v. Zigiranyirazo*, [Decision on the Voir Dire Hearing of the Accused's Curriculum Vitae](#), para 1.

including its scope, its content (and the associated failure to identify personal knowledge on behalf of the witness concerning this content), and concerns regarding the modalities of the preparation of the declaration, both in terms of the adversarial proceedings currently underway and the concerns about authorship. Contrary to the Prosecution's submission,⁶⁰ the abovementioned matters mean that the declaration lacks the *prima facie* probative value necessary for acceptance.

34. Furthermore, in addition to the matters discussed above in regard to the introduction of the Proposed Material pursuant to Rule 68(2)(b) which apply, *mutatis mutandis* to Rule 68(3), introduction of the Proposed Material under Rule 68(3) would further be inappropriate, because, contrary to the Prosecution's submission,⁶¹ the granting of the application would be contrary to the expeditiousness of the proceedings. As detailed above, there is a significant volume of material which the Defence will have to cross-examine the witness concerning in terms of establishing the witness's personal knowledge of the matters discussed in his statement, the matters falling outside the scope of the questions provided by the Prosecution in the original request which are relevant to the adjudication of the Article 69(7) challenges (including P-0165's personal knowledge of [REDACTED]), the modalities of the preparation of the declaration, and any other matters pertaining to the declaration's reliability. This need to cross-examine the witness arises not only out of the Defence's duty to protect Mr. Al Hassan's interests, but also out of the principle of fairness which would allow P-0165 to respond to any Defence questions or allegations as concerns the credibility, integrity and probity of his testimony.

IV. Relief sought

35. The Defence respectfully requests that the Trial Chamber **REJECT** the Request.



Melinda Taylor
Counsel for Mr. Al Hassan

Dated this 21st Day of January 2021
At The Hague, The Netherland

⁶⁰ ICC-01/12-01/18-1226-Conf, para 40.

⁶¹ ICC-01/12-01/18-1226-Conf, paras 41-42.