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TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
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 Annexes A and B

Public redacted version of “Corrigendum to Prosecution’s fifth request for the admission of documentary evidence from the bar table (ICC-01/12-01/18-2098-Conf”, 3 February 2022, ICC-01/12-01/18-2098-Conf

Source: The Office of the Prosecutor

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

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Introduction

1. The Office of the Prosecutor (“Prosecution”) seeks the formal submission and ultimate admission into evidence of 108 items of evidence,¹ along with 51 transcripts and/or translations, from the bar table, contained in Annexes A and B, in accordance with articles 64(9)(a), 69(3) and 69(4) of the Rome Statute (“Statute”), rule 63(2) of the Rules of Procedure and Evidence (“Rules”) and the Directions on the conduct of proceedings (“Directions”).² These documents are *prima facie* relevant to issues at trial, probative, and bear sufficient indicia of reliability to be admitted into evidence. Their admission would assist Trial Chamber X (“Chamber”) to determine the truth and contribute to an expeditious trial.

2. 105 items consist of reports and press releases from various organisations and/or armed groups, media articles, videos obtained from news sites and other sources, Malian laws, and other materials which are fully described in Annex A. The remaining 50 items in Annex A are transcripts and/or translations of some of these 105 items.

3. Three items, plus one document being a translation, are documents that the Prosecution sought to introduce through ██████████ under a request under rule 68(2)(b) of the Rules of Procedure, including one translation (“Rules”). As the Chamber has denied the two requests the Prosecution filed for this witness, and the four documents do not require admission through a witness, the Prosecution seeks to submit them from the bar table. These are fully described in Annex B.

4. In accordance with paragraphs 77 and 78 of the Directions, Annexes A and B contain the following information concerning each of these items: (i) its evidence

¹ The Prosecution is not seeking to submit Items 132 and 133 of Annex A into evidence: ██████████ and ██████████.

² ICC-01/12-01/18-789-AnxA, para. 77-78. *See also* ICC-01/12-01/18-1756, para. 2.

registration number (“ERN”); (ii) its main date; (iii) a short description of the content of each item; (iv) where the item is lengthy, an index of the most relevant portions; (v) a description of the item’s relevance; and (vi) its *prima facie* probative value, including authenticity and (vii) comments/objections made by the Defence, where available, regarding its admission into evidence from the bar table.

5. The Defence has not provided its comments on these open source documents. Due to time constraints Annex A was only able to be provided to the Defence on 24 January 2022 and Annex B on 25 January 2022.³

Confidentiality

6. This filing and its Annexes A and B are classified as confidential because they contain confidential information and details of *inter parte* communications.

Procedural History relating to ██████████ materials in Annex B

7. On ██████████ the Prosecution filed a request seeking to introduce ██████████ prior statement and associated material under rule 68(2)(b) of the Rules.⁴
8. On ██████████ the Chamber denied this request, without prejudice to the Prosecution filing another application pursuant to rule 68(2) of the Rules for ██████████ at a later stage, if considered necessary.⁵

³ The Prosecution sent to Defence the table relating to open source documents in Annex A on 24 January 2022 at 14:42, requesting that the Defence provide their comments by close of business on 26 January 2022. The Defence sent an email on 25 January 2022 at 10:52 stating that “[w]hile we will endeavour to respond with all due and reasonable celerity, it will unfortunately not be feasible for the Defence to provide comments on each of these documents by COB 26 January 2022.” The Prosecution sent to Defence the table relating to P-0113 in Annex B on 25 January 2022 at 15:40, requesting that the Defence provide their comments by close of business on 27 January 2022.

⁴ ██████████

⁵ ██████████

9. On [REDACTED] the Prosecution filed a [REDACTED]
[REDACTED]⁶
10. On [REDACTED] the Chamber [REDACTED]
[REDACTED]⁷
11. Following the rejection of its rule 68(2)(b) request, and without prejudice to the related pending appeal, the Prosecution seeks the submission and ultimate admission from the bar table of four out of the nine documents it sought to introduce through the rule 68(2)(b) request, which do not require admission through any witness as they have sufficient indicia of reliability on their face and/or as indicated in the related metadata.⁸

Applicable Law

12. The Prosecution recalls and incorporates by reference the applicable law as presented in previous requests for the admission of documentary evidence from the bar table.⁹
13. Moreover, in its decision on the Prosecution's second bar table motion, this Chamber held that there was no prejudice to the Defence in submitting evidence from the bar table rather than through a witness.¹⁰ The Chamber found that "[t]his method of submission of documentary evidence causes no shift in burden and has no bearing on how the Chamber will eventually evaluate and weigh the evidence."¹¹

⁶ [REDACTED]

⁷ [REDACTED]

⁸ See Annex.

⁹ ICC-01/12-01/18-2079-Conf, para. 6-9; ICC-01/12-01/18-1412-Conf, para. 6-8 ; ICC-01/12-01/18-1213-Conf, para. 12-14.

¹⁰ ICC-01/12-01/18-1514-Conf, para. 13, 19.

¹¹ ICC-01/12-01/18-1514-Conf, para. 19.

14. TC IX in *Ongwen* further held that the admission of evidence via the “bar table” as opposed to through rule 68(2)(b) or 68(3) of the Rules or in-court testimony does not in any way preclude the Defence from challenging the evidence, including by calling witnesses as appropriate and/or submitting any evidence in support of its challenge—even evidence that goes to critical elements of the charges.¹² The *Ongwen* Trial Chamber noted that documentary evidence introduced through an in-court witness or as materials associated with a Rule 68(2)(b) or 68(3) statement remains documentary evidence, as the manner of its introduction does not transform it into testimonial evidence.¹³ It added that “[t]here is no requirement that evidence be tested with a witness in order for it to be submitted.”¹⁴

Submissions

15. The Prosecution seeks the admission into evidence of the items listed in Annexes A and B. Annex A lists 105 open source documents¹⁵ and 50 related transcripts and/or translations, while Annex B lists four documents that the Prosecution originally sought to introduce through [REDACTED] one of which is a translation.

16. The factors of relevance and probative value of the items in Annexes A and B will be addressed separately, while the items in both annexes will be covered jointly as regard the third factor of there being no prejudice to the Defence outweighing the materials’ probative value.

Annex A: Open Source Documents

17. The Prosecution is not seeking to submit Items 132 and 133 of Annex A into evidence: [REDACTED] and [REDACTED]. The 105 open source

¹² ICC-02/04-01/15-795, para. 15, 49.

¹³ ICC-02/04-01/15-795, para. 14.

¹⁴ ICC-02/04-01/15-795, para. 15.

¹⁵ The Prosecution is not seeking to submit Items 132 and 133 of Annex A into evidence: [REDACTED] and [REDACTED].

documents the Prosecution seeks to submit from the bar table can be divided into five categories:

- a. Category A – Persecution on both religious and gender grounds;
- b. Category B – Gender Persecution;
- c. Category C - Armed conflict;
- d. Category D - Capacity and structure of armed groups;
- e. Category E - Destruction of cultural property.

(i) The material in Annex A is *prima facie* relevant to issues at trial

Category A – Persecution on both religious and gender grounds

18. These 17 documents consist of a Malian law, media articles, videos found on news sites, NGO reports, among others.¹⁶ These are relevant as they discuss, describe and/or depict the numerous persecutory acts on both religious and gender grounds, to which the armed groups subjected the Timbuktu population during their occupation of the town in 2012.

19. While all items are fully described in Annex A, some documents in each category will be briefly described to illustrate their relevance.

20. MLI-OTP-0001-7077 is a video documentary entitled “*Mali au nom de la charia*” broadcast by France 2 on 7 December 2012.¹⁷ This establishes the contextual elements of war crimes in relation to participation of the armed groups in the hostilities. [REDACTED] is also featured in this programme, beginning at [REDACTED]. This evidence corroborates and is corroborated by other evidence (testimonial and documentary) [REDACTED] carried out in Timbuktu during the occupation.¹⁸

¹⁶ Items 4, 29, 91, 97, 99, 101, 105, 107, 110, 122, 123, 125, 126, 129, 130, 131 and 155 of Annex A.

¹⁷ See Item 155 of Annex A.

¹⁸ See, e.g., [REDACTED]

21. Another illustrative item in this category is MLI-OTP-0047-0931, a news article from the British newspaper *The Telegraph*, [REDACTED]

[REDACTED]¹⁹

Category B – Gender persecution

22. There are 21 open-source materials that document persecutory acts targeting women by the armed groups in Timbuktu.²⁰ These consist of a UN report dated 6 June 2013 on the human rights situation in Mali, various press articles, and two videos.

23. MLI-OTP-0033-4375 is the UN report.²¹ Paragraphs 43 to 48 specifically address violence against women.

24. MLI-OTP-0033-4427 is a press article [REDACTED] on sexual violence against women in Mali.²²

25. MLI-OTP-0056-0270 is an [REDACTED] where [REDACTED]
[REDACTED]²³

Category C – Armed conflict

26. The 12 items in this category²⁴ relate to the existence of a non-international armed conflict in northern Mali in 2012, in the context of which Timbuktu was occupied.

27. These materials consist of videos from news channels such as France 24 and Al Jazeera, press releases by ICRC and the MNLA, and news articles.

¹⁹ Item 126 of Annex A.

²⁰ Items 5, 30, 33, 60, 61, 77, 79, 85, 87, 94, 98, 100, 102, 103, 104, 108, 109, 111, 127, 150 and 152 of Annex A.

²¹ See Item 100 of Annex A.

²² See Item 102 of Annex A.

²³ See Item 152 of Annex A.

²⁴ Items 9, 15, 18, 24, 41, 66, 72, 73, 106, 115, 116 and 134 of Annex A.

28. MLI-OTP-0024-2289, for example, is an ICRC press release dated 18 January 2013 regarding the alarming humanitarian situation in central and northern Mali.²⁵ The ICRC refers to civilians who have fled combat zones in Konna and Diabali, and notes its coordination with the Malian Red Cross and its volunteers in Timbuktu, Mopti, Gao and Kidal.
29. MLI-OTP-0001-6962²⁶ and MLI-OTP-0011-0283²⁷ are video reports by France 24. The first video is dated 12 June 2012, relating to the preparation of the Malian army for the liberation of the north of the country. The second video is dated 6 April 2012, and contains an interview by France 24 of the MNLA spokesperson regarding its proclamation of independence of the Azawad region.

Category D - Capacity and structure of armed groups

30. There are 28 open source documents that relate to the capacity and structure of the armed groups involved in the non-international armed conflict in northern Mali in 2012, including Timbuktu.²⁸ These consist of media articles, videos from reputable online sources, press releases by armed groups and the UN, and US government statements.
31. These documents are relevant to the present case, as they corroborate the involvement of these armed groups in the armed conflict, particularly their common purpose or common plan, or organisational policy, that led to perpetration of the charged crimes.

²⁵ See Item 73 of Annex A.

²⁶ Item 9 of Annex A.

²⁷ Item 41 of Annex A.

²⁸ Items 12, 19, 20, 27, 38, 46, 47, 54, 57, 62, 64, 68, 90, 92, 114, 117, 120, 136, 139, 140, 141, 142, 143, 144, 145, 146, 147 and 148 of Annex A.

32. MLI-OTP-0011-0318, for instance, is a propaganda video dated 9 January 2013 of AQIM demonstrating their preparations for an attack in northern Mali.²⁹ This video is relevant to demonstrate AQIM's capabilities and the common plan and purpose they shared with Ansar Dine.
33. MLI-OTP-0033-2990 is an article dated 5 February 2013 published on Maliweb.net describing the different armed groups involved in the non-international armed conflict in northern Mali, namely, MNLA, AQIM, Ansar Dine, MUJAO, and the *katibas*.³⁰ This analysis is relevant to the armed groups involved in the present case and is contemporaneous with the events relevant to this case.

Category E - Destruction of cultural property

34. There are 27 open source documents³¹ which describe, discuss and/or depict the destruction of cultural property in Timbuktu in 2012, one of the crimes charged in the present case. These consist of videos, press releases by the UN, UNESCO and regional organisations, and media articles.
35. For instance, MLI-OTP-0001-7008, a video dated 10 July 2012, shows the destruction of the door of the Sidi Yahia mosque and of the Alpha Moya and Sidi Mahmoud mausoleums.³²
36. Another example is MLI-OTP-0007-0201, a UNESCO press release dated 19 October 2012 in which its Director-General condemns renewed destruction of mausoleums in Timbuktu.³³

²⁹ Item 47 of Annex A.

³⁰ Item 90 of Annex A.

³¹ Items 1, 2, 3, 6, 7, 11, 21, 22, 23, 25, 35, 43, 50, 52, 67, 71, 74, 75, 76, 78, 81, 83, 89, 95, 96, 112 and 149 of Annex A.

³² Item 11 of Annex A.

³³ Item 22 of Annex A.

(ii) The materials have *prima facie* probative value

37. The 105 documents, along with the 50 transcripts and/or translations, have *prima facie* probative value. The items proposed for admission are probative of issues at trial and contain sufficient indicia of reliability, including authenticity, to be submitted into evidence.

Category A – Persecution

Probative value

38. These 17 items,³⁴ consisting of a Malian law, media articles, videos found on news sites, NGO reports, among other materials, discuss, describe and/or depict many of the persecutory acts that the armed groups carried out against the population during their occupation of Timbuktu in 2012, as well as similar acts they carried out in Gao and other towns of northern Mali during this period.

39. Video MLI-OTP-0011-0031, for instance, is a France 2 report of 12 April 2012 on the armed group's imposition of Sharia law in Timbuktu, and the acts of persecution this entailed, such as the destruction of the *Flame de la Paix* monument, the destruction of all stocks of alcohol when bars were previously permitted to operate in Timbuktu, and the prohibition of amulets and other traditional beliefs.³⁵

40. MLI-OTP-0001-2882 is a copy of the Malian Constitution, which guarantees all Malians' rights to freedom of religion and assembly, which were disregarded by the armed groups when they occupied Timbuktu.³⁶

³⁴ Items 4, 29, 91, 97, 99, 101, 105, 107, 110, 122, 123, 125, 126, 129, 130, 131 and 155 of Annex A.

³⁵ Item 29 of Annex A.

³⁶ Item 4 of Annex A.

Reliability and Authenticity

41. These 17 items all bear sufficient indicia of reliability and *prima facie* appear authentic.
42. Video MLI-OTP-0011-0031, for example, was produced by France 2, a well-established French news agency, and is contemporaneous with the occupation of Timbuktu.³⁷ The persecutory acts depicted in this news report have been corroborated by various witnesses and other sources.³⁸
43. MLI-OTP-0001-2882 is a copy of the Malian Constitution obtained online.³⁹ Like the constitutions of other nations, the Malian constitution is one which is readily available online. Moreover, P-0643, [REDACTED] confirmed that Malians enjoyed freedom of religion, such that Islam could not be imposed on them, nor by violence.⁴⁰
44. The Prosecution therefore submits that these materials, which *prima facie* appear reliable and authentic, are probative of the persecutory acts of the armed groups in Timbuktu and other areas of northern Mali in 2012.

Category B – Gender persecution*Probative value*

45. These 21 open-source materials⁴¹ are probative of persecution on the grounds of gender as they describe, discuss and/or depict acts targeting women carried out by the armed groups during their occupation of Timbuktu.

³⁷ Item 29 of Annex A.

³⁸ See, e.g., [REDACTED].

³⁹ Item 4 of Annex A.

⁴⁰ [REDACTED].

⁴¹ Items 5, 30, 33, 60, 61, 77, 79, 85, 87, 94, 98, 100, 102, 103, 104, 108, 109, 111, 127, 150 and 152 of Annex A.

46. [REDACTED]⁴² for instance, is a press article [REDACTED] [REDACTED] on sexual violence against women in Timbuktu, Gao and Kidal, and their failed attempts at redress.

47. MLI-OTP-0033-4375 is a 6 June 2013 report on the human rights situation in Mali of the UN High Commissioner for Human Rights (“UNHCR”),⁴³ paragraphs 43 to 48 specifically discuss violence against women.

48. MLI-OTP-0056-0270 is an Associated Press [REDACTED] [REDACTED] where [REDACTED]
[REDACTED]
[REDACTED]⁴⁴ [REDACTED]
[REDACTED]
[REDACTED].⁴⁵ The Prosecution recalls in this regard the jurisprudence cited above finding that there is no requirement that evidence of this kind be introduced through a witness.⁴⁶

Reliability and authenticity

49. These 21 items are *prima facie* reliable and authentic, having been obtained from or issued by dependable sources such as the UNHCR or from witnesses who confirmed their content.

50. In relation to [REDACTED]⁴⁷ for instance, [REDACTED] emphasised that she always tried to get as many sources on the groups as possible, such as people who

⁴² See Item 102 of Annex A.

⁴³ See Item 100 of Annex A.

⁴⁴ See Item 152 of Annex A.

⁴⁵ [REDACTED]
[REDACTED].

⁴⁶ See ICC-01/04-02/06-1838, para. 13.

⁴⁷ See Item 102 of Annex A.

fled Timbuktu and other northern cities, as well as people who were still there.⁴⁸ [REDACTED] and [REDACTED] were her journalistic sources in Timbuktu.⁴⁹ While this article could have been introduced through [REDACTED], there was insufficient time to do so; the Prosecution recalls again the jurisprudence discussed above finding that there is no requirement that evidence related to a witness be necessarily introduced through that witness.⁵⁰ In this instance, [REDACTED] evidence regarding her methodology and journalistic activities provides additional evidence relevant to assess this item's probative value, including its reliability.⁵¹

51. These 21 items are *prima facie* reliable and authentic and are probative of the gender persecution carried out by the armed groups in Timbuktu in 2012.

Category C – Armed conflict

Probative value

52. The 12 items in this category⁵² consist of contemporaneous videos from news channels and media articles, along with press releases of the ICRC and MNLA. They discuss or depict various aspects of the non-international armed conflict in northern Mali in 2012 and are therefore probative of its existence.

53. For instance, MLI-OTP-0012-1125,⁵³ is a contemporaneous communication directly from the MNLA, one of the armed groups involved in this conflict, about an event it directly brought about: its takeover of a military camp in Tessalit.

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ See ICC-01/04-02/06-1838, para. 13.

⁵¹ [REDACTED].

⁵² Items 9, 15, 18, 24, 41, 66, 72, 73, 106, 115, 116 and 134 of Annex A.

⁵³ Item 66 of Annex A.

Reliability and authenticity

54. These materials are *prima facie* reliable and authentic as they originate from authoritative sources. The ICRC's widely respected mandate to monitor armed conflicts and the compliance of armed groups with international humanitarian law renders its press releases on the humanitarian situation surrounding armed conflicts such as MLI-OTP-0024-2289⁵⁴ particularly reliable including as to the truth of their contents.

55. France 24 is highly respected for its news coverage, particularly in the francophone world including Mali. Its news coverage would also be drawn from reliable sources in the field. [REDACTED]

[REDACTED].⁵⁵ Its video reports MLI-OTP-0001-6962⁵⁶ and MLI-OTP-0011-0283⁵⁷ on the armed conflict in Mali in 2012 are thereby *prima facie* reliable. Moreover, various aspects of these reports corroborate or have been corroborated by other evidence on the record.

56. These 21 items are thus *prima facie* reliable and authentic, and are probative of the existence of a non-international armed conflict in northern Mali and related elements.

Category D - Capacity and structure of armed groups*Probative value*

57. The 28 documents in this category⁵⁸ consist of articles from news sites documenting or discussing the objectives and hierarchy of AQIM and Ansar Dine, propaganda materials and communiqués of two of these armed groups, AQIM and the MNLA,

⁵⁴ See Item 73 of Annex A.

⁵⁵ [REDACTED]

⁵⁶ Item 9 of Annex A.

⁵⁷ Item 41 of Annex A.

⁵⁸ Items 12, 19, 20, 27, 38, 46, 47, 54, 57, 62, 64, 68, 90, 92, 114, 117, 120, 136, 139, 140, 141, 142, 143, 144, 145, 146, 147 and 148 of Annex A.

as well as UN and US State Department designations of Ansar Dine and AQIM members as terrorists in recognition of their capacity to plan and carry out armed attacks aimed at civilian populations. These are therefore probative of the capacity, and structure, common purpose or plan or organisational policy, of the armed groups.

Reliability and authenticity

58. These 28 documents are *prima facie* reliable and authentic given their reputable and authoritative sources. The media articles are from sites such as RFI, Sahara Media and Maliweb.net, which various Prosecution witnesses have referred to as media agencies that covered the events during the occupation of Timbuktu. [REDACTED]

[REDACTED]⁵⁹ [REDACTED]

[REDACTED].⁶⁰ The UN and US designations of terrorists and placement of individuals on financial sanctions lists are presumed to have gone through a thorough internal vetting process on the basis of their assessments of the capability and threat posed by the individuals' armed groups. The propaganda materials and communiqués of AQIM and MNLA are authentic insofar as they indicate, at a minimum, what these groups claimed that they were capable of and what acts they claimed to have carried out.

59. These 28 items are thus *prima facie* authentic, and are probative of the capacity and structure of armed groups involved in the non-international armed conflict in northern Mali in 2012, encompassing the occupation of Timbuktu.

Category E – Destruction of cultural property

Probative value

59

60

60. The 27 open source materials in this category⁶¹ are probative of the destruction of cultural property in Timbuktu in 2012 as these videos, press releases by the UN, UNESCO and regional organisations, and media articles discuss and/or depict this destruction.

Reliability and authenticity

61. These materials are *prima facie* reliable and authentic. MLI-OTP-0007-0195, MLI-OTP-0007-0201, MLI-OTP-0011-0370 and MLI-OTP-0014-4667,⁶² for instance, are [REDACTED] UNESCO, whose mandate and expertise render it authoritative as regards the documentation of events relevant to the preservation of cultural property.

62. Other documents have sufficient indicia of reliability on the basis of other factors. Video [REDACTED],⁶³ for instance, contains video clips that have been authenticated and formally submitted through [REDACTED]. MLI-OTP-0011-0223, a video of an interview of Sanda Ould Boumama dated 6 July 2012,⁶⁴ appears reliable and authentic as his appearance and comments about various events in Timbuktu, including the destruction of cultural monuments, have been established through various Prosecution witnesses and other evidence. [REDACTED]

[REDACTED].⁶⁵

63. These 27 items are thus *prima facie* reliable and authentic, and are probative of the destruction of cultural property in Timbuktu by the armed groups during the occupation in 2012.

⁶¹ Items 1, 2, 3, 6, 7, 11, 21, 22, 23, 25, 35, 43, 50, 52, 67, 71, 74, 75, 76, 78, 81, 83, 89, 95, 96, 112 and 149 of Annex A.

⁶² Items 21, 22, 52 and 67 of Annex A.

⁶³ Item 11 of Annex A.

⁶⁴ Item 35 of Annex A.

⁶⁵ [REDACTED].

Regulation 35 request in relation to three translations

64. The Prosecution notes that three translations were inadvertently omitted from its List of Evidence (“LoE”): MLI-OTP-0078-7329, an English translation of MLI-OTP-0012-1096;⁶⁶ MLI-OTP-0078-7331, an English translation of MLI-OTP-0012-1104 [Category D – Capacity and structure of armed groups];⁶⁷ and MLI-OTP-0080-1688, a French translation of the transcript (MLI-OTP-0069-2402) of the video MLI-OTP-0056-0270 [Category B – Gender persecution].⁶⁸

65. MLI-OTP-0078-7329 and MLI-OTP-0078-7331 were disclosed on 1 July 2020,⁶⁹ and MLI-OTP-0080-1688 was disclosed on 19 February 2021.⁷⁰ All the original items, namely, MLI-OTP-0012-1096, MLI-OTP-0012-1104 and MLI-OTP-0056-0270, as well as the transcript MLI-OTP-0069-2402 of MLI-OTP-0056-0270, were all included in the updated LoE of 28 June 2021, as well as in the LoE filed before the confirmation of charges hearing in July 2019⁷¹ and also included in the final LoE filed in May 2020.⁷²

66. The Prosecution submits that while it did not include these three items⁷³ in its LoE due to oversight, it is nevertheless in the interests of justice for them to be included in the LoE at this late juncture as these translations enable the parties and the Chamber to properly assess the four relates items already in the LoE.⁷⁴

67. The Prosecution recalls that a Chamber may extend a time limit under regulation 35(2) of the Regulations where it is in the “interests of justice”⁷⁵ to do so. Moreover,

⁶⁶ Items 62 and 63 of Annex A.

⁶⁷ Items 64 and 65 of Annex A.

⁶⁸ Items 152, 153 and 154 of Annex A.

⁶⁹ Pre-Trial INCRIM package 85.

⁷⁰ Trial INCRIM package 110.

⁷¹ [REDACTED]

⁷² [REDACTED]

⁷³ Items 63, 65 and 154 of Annex A: MLI-OTP-0078-7329, MLI-OTP-0078-7331 and MLI-OTP-0080-1688.

⁷⁴ Items 62, 64, 152 and 153 of Annex A: MLI-OTP-0012-1096, MLI-OTP-0012-1104 and MLI-OTP-0056-0270, as well as the transcript MLI-OTP-0069-2402.

⁷⁵ See ICC-01/04-01/10-505, para.11.

where conditions of regulation 35(2) are not met, the Chamber may authorise the late addition of incriminating evidence pursuant to its powers under articles 64(6)(d) and 69(3) of the Statute to allow admission of the evidence that it deems necessary for the determination of the truth.⁷⁶

68. There is no undue prejudice to the Defence as these are merely ancillary documents, namely translations, of items that are already on the LoE.

Annex B: [REDACTED] Materials

69. The four documents originally sought to be introduced through [REDACTED] which do not require introduction through a witness, are as follows:

- a. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁷⁷
- b. [REDACTED]
[REDACTED]
[REDACTED].⁷⁸ and
- c. [REDACTED]
[REDACTED].⁷⁹

(i) *The material is prima facie relevant to issues at trial*

⁷⁶ ICC-01/04-01/07-2325-Red, para.15.

⁷⁷ Items 1 and 2 of Annex B: [REDACTED].

⁷⁸ Item 3 of Annex B: [REDACTED].

⁷⁹ Item 4 of Annex B: [REDACTED].

70. Three out of the four items⁸⁰ demonstrate the level of control exercised by Ansar Dine over [REDACTED]
[REDACTED]
[REDACTED].⁸¹ These are relevant to the charge of religious and gender persecution.

71. The remaining item⁸² relating to [REDACTED] in Mali provides details relevant to the existence of an armed conflict in Mali dating back to 2012 while Timbuktu was still occupied, and the organisational policy of the armed groups. [REDACTED] how the Timbuktu region has suffered by the acts of armed groups associated with terrorists and drug traffickers and refers to the MNLA and its efforts to create an independent Azawad state.⁸³

(ii) The materials in Annex B have prima facie probative value

Probative value

72. The two items (and one translation)⁸⁴ are probative of Ansar Dine's actions and beliefs during their occupation of Timbuktu [REDACTED]
[REDACTED].
[REDACTED], and [REDACTED]
[REDACTED]. Both of these documents are highly probative.

73. These two documents are reliable and authentic because, as indicated by the metadata, they were provided to the Prosecution [REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]. [REDACTED].

⁸⁰ Items 1, 2 and 3 of Annex B.

⁸¹ See [REDACTED].

⁸² Item 4 of Annex B.

⁸³ [REDACTED].

⁸⁴ Items 1, 2 and 3 of Annex B.

[REDACTED]

[REDACTED].

74. Moreover, [REDACTED] [REDACTED] third item, [REDACTED]⁸⁵ which he provided directly to the Prosecution. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

75. [REDACTED] is probative of the continuing existence of an armed conflict in northern Mali, [REDACTED]. [REDACTED] socio-economic difficulties faced by returning displaced persons and refugees,⁸⁶ corroborating the evidence on record that many people left Timbuktu. [REDACTED] [REDACTED] also describes how the Timbuktu region has suffered by the acts of armed groups associated with terrorists and drug traffickers and refers to the MNLA and its efforts to create an independent Azawad state.⁸⁷

76. These three items (and one translation) are self-contained documents that can be appreciated on their own and do not require introduction through [REDACTED] or any other witness. The Prosecution recalls in this regard the jurisprudence cited above finding that there is no requirement that such evidence be introduced through a witness.⁸⁸

For both Annexes A and B: there is no prejudice outweighing the probative value

⁸⁵ Item 4 of Annex B.

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ See ICC-01/04-02/06-1838, para. 13.

77. The probative value of each of the items contained in Annexes A and B outweighs any potential prejudice arising from their admission into evidence from the bar table for the following reasons:

- a. as outlined in Annexes A and B, each proposed item is relevant to one or more discrete issues at trial;
- b. each of the proposed items possesses sufficient indicia of reliability to warrant its admission and to enable the Chamber to fairly evaluate it;
- c. the proposed items largely corroborate the witnesses' testimonies and other evidence presented in the course of the trial; and
- d. the Accused had sufficient notice of both their content and the Prosecution's intention to rely on them as incriminatory evidence: all were disclosed and included in the final LoE, except for the three items subject of its regulation 35 request.

Conclusion

78. For the foregoing reasons, the Prosecution requests that:

- a. All items listed in Annexes A and B be recognised as formally submitted into evidence and
- b. MLI-OTP-0078-7329, MLI-OTP-0078-7331 and MLI-OTP-0080-1688 be added to its LoE.



Karim A. A. Khan QC, Prosecutor

Dated this 3rd Day of February 2022
At The Hague, the Netherlands