

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

**ICC-01/12-01/18**  
Date: **03 February 2022**  
Date of submission:  
**30 March 2022**

**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, B and C**

**Public redacted version of “Corrigendum to Prosecution’s fourth request for the admission of documentary evidence from the bar table (ICC-01/12-01/18-2101-Conf)”, 3 February 2022, ICC-01/12-01/18-2101-Conf**

**Source:** The Office of the Prosecutor

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

**The Office of the Prosecutor**

Mr Karim A. A. Khan QC  
Mr Mame Mandiaye Niang  
Mr Gilles Dutertre

**Counsel for the Defence**

Ms Melinda Taylor

**Legal Representatives of Victims**

Mr Seydou Doumbia  
Mr Mayombo Kassongo  
Mr Fidel Luvengika Nsita

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Section**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. The Office of the Prosecutor (“Prosecution”) seeks the formal submission and ultimate admission into evidence of 62<sup>1</sup> items of evidence from the bar table, 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”).<sup>2</sup> 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. The 62 items consist of documents obtained from the Malian and ██████ government authorities that are described below and in Annexes A, B and C.
3. In accordance with paragraphs 77 and 78 of the Directions, Annexes A, B and C contain the following information concerning each of these items: (i) its evidence 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, when available, regarding its admission into evidence from the bar table.
4. Indeed, the Defence provided its comments to the first batch of 29 government documents sent by the Prosecution<sup>3</sup> but not to the second batch of 33 documents. Due to time constraints, the Prosecution was only able to send Annex C to the Defence on 28 January 2022.<sup>4</sup>

## Confidentiality

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

---

<sup>1</sup> The Prosecution is not seeking to submit Item 9 of Annex B (MLI-OTP-0078-2464), a translation of Item 8 (MLI-OTP-0007-0346), into evidence, as it is only seeking to submit two pages (0354 and 0355) of Item 8 of Annex B (MLI-OTP-0007-0346) into evidence, which two pages are in French in the original document.

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

<sup>3</sup> The Prosecution sent to the Defence the table containing the details provided in Annexes A and B on 5 January 2022 at 17:24, requesting that the Defence provide their comments by 12 January 2022. The Defence responded on 7 January 22 at 15:18, proposing that they revert by 19 January. The Defence provided their comments on 21 January 2022 at 16:41.

<sup>4</sup> The Prosecution sent to the Defence the table containing the details provided in Annex C on 28 January 2022 at 16:21, requesting that the Defence provide their comments by lunchtime of 31 January 2022.

### **Applicable Law**

6. 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.<sup>5</sup>
7. The Prosecution further recalls the Chamber’s decision on the Prosecution’s second bar table motion, where the Chamber held that there was no prejudice to the Defence in submitting evidence from the bar table rather than through a witness.<sup>6</sup> In particular, 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.”<sup>7</sup>
8. Similarly, TC IX in *Ongwen* held that the admission of evidence *via* the “bar table” as opposed to through rule 68(2)(b) or 68(3) of the Rules of Procedure and Evidence (“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 is relevant to critical elements of the charges.<sup>8</sup> 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 remain documentary evidence, as the manner of its introduction does not transform it into testimonial evidence.<sup>9</sup> It added that “[t]here is no requirement that evidence be tested with a witness in order for it to be submitted.”<sup>10</sup>

### **Submissions**

9. The Prosecution seeks the admission into evidence of the items listed in Annexes A, B and C. Annex A and B consist of 29 documents, to which the Defence provided comments. Annex A lists the six items to which the Defence raises no or limited objections, while Annex B contains the remaining 23 items to which the Defence does object on both grounds of relevance and probative value. These items in Annexes A and B can be categorised as follows for ease of reference:

---

<sup>5</sup> 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.

<sup>6</sup> ICC-01/12-01/18-1514-Conf, para. 13, 19.

<sup>7</sup> ICC-01/12-01/18-1514-Conf, para. 19.

<sup>8</sup> ICC-02/04-01/15-795, para. 15, 49.

<sup>9</sup> ICC-02/04-01/15-795, para. 14.

<sup>10</sup> ICC-02/04-01/15-795, para. 15.

Annex A contains:

- a) The referral letter from the government of Mali to the ICC Prosecutor, the corresponding Malian government report on crimes in northern Mali, and a list of members of the working group involved in the referral of the Mali situation to the Court [**Category A: Malian referral documents**];<sup>11</sup> and
- b) Timbuktu hospital records relating to injuries as a result of corporal punishment of local civilians by the Islamists [**Category B: Hospital records**].<sup>12</sup>

Annex B contains:

- a) Malian government reports on crimes in northern Mali [**Category A: Malian referral documents**];<sup>13</sup>
- b) Audio recording of Iyad Ag Ghaly's speech in northern Mali, its transcription and French translation [**Category C: Iyad Ag Ghaly Speech**];<sup>14</sup>
- c) Compilation of news articles of 26 and 31 January 2012 relating to the attacks of 24 and 25 January 2012 on Aguelhok [**Category D: News Reports**];<sup>15</sup>
- d) Seven military intelligence reports in 2012 from the archives of the *Direction de la Sécurité Militaire* ("DSM") monitoring developments in northern Mali, including Timbuktu, in 2012, including regarding Iyad Ag Ghaly [**Category E: DSM Documents**];<sup>16</sup>
- e) A civil party complaint in Malian courts against crimes against humanity and war crimes committed in the regions of Kidal, Gao and Timbuktu, including crimes perpetrated by Ansar Dine and AQMI in Timbuktu [**Category F: Civil Complaints**];<sup>17</sup>
- f) A list of banks in Timbuktu, noting the closure of banks in Timbuktu, including BMS, between 2 April 2012 and the end of September 2013 [**Category G: Banks**];<sup>18</sup>
- g) Two Malian laws [**Category H: Malian Laws**];<sup>19</sup>

---

<sup>11</sup> Items 1, 2, and 3 of Annex A: MLI-OTP-0001-0003, MLI-OTP-0001-0006, and MLI-OTP-0001-0024.

<sup>12</sup> Items 4, 5 and 6 of Annex A: MLI-OTP-0002-0741, MLI-OTP-0039-0027 and MLI-OTP-0041-0021.

<sup>13</sup> Items 1, 3 and 4 of Annex B: MLI-OTP-0001-0031, MLI-OTP-0001-0167, and MLI-OTP-0001-0172.

<sup>14</sup> Items 5, 6 and 7 of Annex B: MLI-OTP-0002-0257, MLI-OTP-0056-0881 and MLI-OTP-0063-1002.

<sup>15</sup> Item 8 of Annex B: MLI-OTP-0007-0346 at 0354-0355. The Prosecution is seeking to submit only these two pages 0354 and 0355, and is not submitting Item 9, the translation MLI-OTP-0078-2464, into evidence.

<sup>16</sup> Items 10, 11, 12, 13, 14, 15 and 16 of Annex B: MLI-OTP-0012-0157, MLI-OTP-0012-0177, MLI-OTP-0012-0186, MLI-OTP-0012-0187, MLI-OTP-0012-0189, MLI-OTP-0012-0192 and MLI-OTP-0012-0223.

<sup>17</sup> Item 18 of Annex B: MLI-OTP-0029-0217.

<sup>18</sup> Item 19 of Annex B: MLI-OTP-0054-0118.

<sup>19</sup> Items 23 and 24 of Annex B: MLI-OTP-0070-1057 and MLI-OTP-0070-1168.

- h) Materials relevant to the chain of custody of data on phone antennas in the Timbuktu region provided by the Malian government to the OTP and a list of phone numbers of Ansar Dine members (“CDRs”) [**Category I: Phone Records**];<sup>20</sup> and
- i) List of mausoleums destroyed in Timbuktu [**Category J: Mausoleum list**].<sup>21</sup>

10. Annex C contains the additional 33 documents the Prosecution sent to the Defence for their comments. These all consist of **Category E: DSM Documents**.<sup>22</sup>

11. Below are detailed the Prosecution’s submissions regarding the relevance and probative value of Annex A category documents.

### **Annex A**

*(i) The materials in Annex A are prima facie relevant to issues at trial*

12. The Prosecution provides specific submissions on the relevance of each document in the attached Annex A, to which the Defence made partial objections.

#### Category A: Malian referral documents

13. The Category A (Malian referral) documents are relevant as they describe crimes being committed in northern Mali, including those committed within the temporal period of the charges.

14. As regards MLI-OTP-0001-0003 and MLI-OTP-0001-0006, the Defence does not object to their introduction on the grounds of their relevance insofar as these establish that there was a referral of the Mali situation to the ICC.<sup>23</sup> The Defence has no objection at all to the introduction of MLI-OTP-0001-0024, including on the grounds of relevance.<sup>24</sup>

15. Contrary to the Defence qualification of their relevance, these documents are relevant not only to the fact of referral of the Mali situation to the Court, but also to the characterisation of the crimes being committed in northern Mali in 2012.

---

<sup>20</sup> Items 17, 20, 21 and 22 of Annex B: MLI-OTP-0022-0203, MLI-OTP-0056-0022, MLI-OTP-0064-0786 and MLI-OTP-0064-0787.

<sup>21</sup> Item 2 of Annex B.

<sup>22</sup> Items 1 to 33 of Annex C.

<sup>23</sup> See Defence Comments relating to Items 1 and 2 of Annex A.

<sup>24</sup> See Defence Comment relating to Item 3 of Annex A.

Category B: Hospital records

16. The Defence does not object to the introduction of these documents on the grounds of relevance.<sup>25</sup>

17. The Category B (Hospital records) documents MLI-OTP-0002-0741, MLI-OTP-0039-0027 and MLI-OTP-0041-0021 are all relevant as they corroborate evidence concerning injuries inflicted upon members of the population in Timbuktu by the armed groups during their occupation of the town. At the bottom of all these documents, it is specified that the injuries from corporal punishment were meted out by jihadists, for instance, upon those listening to music, watching television, wearing transparent clothing or non-shortened trousers, for shaving off their beards, or for smoking cigarettes.<sup>26</sup> [REDACTED]

[REDACTED] This corroborates the testimony of various witnesses, and other evidence, regarding the amputation that the armed groups carried out in Timbuktu (relevant *inter alia*, to the charges of the crime of persecution and the war crime of mutilation).<sup>27</sup>

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

18. The Prosecution provides specific submissions on the probative value of each document in Annex A.

Category A: Malian referral documents

19. These Category A documents are probative of crimes being committed by armed groups in northern Mali in 2012, particularly in Timbuktu. Contrary to the Defence objection, the content and value of these documents are not limited to establishing that Mali referred the situation to the ICC.

20. The Defence does not object to the introduction of MLI-OTP-0001-0003 and MLI-OTP-0001-0024 on the grounds of their probative value.<sup>28</sup> [REDACTED]

<sup>25</sup> See Defence Comment relating to Items 4, 5 and 6 of Annex A.

<sup>26</sup> See the bottom of the last page of each of these three documents.

<sup>27</sup> See, e.g., [REDACTED]

<sup>28</sup> See Defence comments in relation to Items 1 and 3 of Annex A.

- [REDACTED]
- [REDACTED].<sup>29</sup>
21. MLI-OTP-0001-0003 and MLI-OTP-0001-0006 bear sufficient indicia of reliability. Both contain official stamps, seals and signatures and were furnished directly to the Office of the Prosecutor (“OTP”) by the Malian Ministry of Justice, as indicated by the metadata.
22. The Defence does not object to the probative value of [REDACTED].<sup>30</sup>
23. Contrary to the Defence objection to the probative value of [REDACTED],<sup>31</sup> introduction of [REDACTED] does not require the testimony of Malian government officials in order to establish the crimes that the government considered were being committed in its territory, leading to their referral of the situation to the Court. The Defence’s arguments instead relate, if anything, to the question of the weight to be attributed to the report. However, the report is corroborated by and corroborates other evidence on the record.

#### Category B: Hospital records

24. As regards the Category B: (Hospital records) documents, they all bear sufficient indicia of reliability as contemporaneous hospital records so as to be probative of injuries suffered by members of the population of Timbuktu during the town’s occupation in 2012. They bear official headings of the Malian Ministry of Health or the Malian Ministry of Justice, contain the dates on which they were written, and were provided by the Malian Ministry of Justice to the OTP.
25. Moreover, in MLI-OTP-0039-0027, [REDACTED]<sup>32</sup> corroborates the date the amputation took place according to various Prosecution witnesses.<sup>33</sup> Additionally, the injuries to victims described on pages 0028 to 0029 are probative of other crimes allegedly committed in Timbuktu during the occupation in 2012. The other pages

<sup>29</sup> See [REDACTED].

<sup>30</sup> See Defence comments in relation to Items 1 and 3 of Annex A.

<sup>31</sup> See Defence comments in relation to Item 2 of Annex A.

<sup>32</sup> MLI-OTP-0039-0027 at 0028.

<sup>33</sup> See, e.g., [REDACTED].



of the document attest to injuries sustained by people in other parts of northern Mali, such as Gao, Mopti, Segou and Kati.<sup>34</sup> These are probative of the context elements of war crimes and crimes against humanity.

26. Moreover, the argument that the reasons for punishment constitute anonymous hearsay is not a reason for denying their admission from the bar table. There is no bar in the Court's legal framework to the introduction or reliance on hearsay evidence of the Court.<sup>35</sup> For instance, the Appeals Chamber in *Ngudjolo* acknowledged that the fact that evidence is hearsay does not necessarily deprive it of probative value. The weight or probative value afforded to it will depend upon "the infinitely variable circumstances which surround hearsay evidence".<sup>36</sup> Information based on anonymous sources may also be considered as corroborative evidence.

27. Below are detailed the Prosecution's submissions regarding the relevance and probative value of Annex B and C documents.

### **Annexes B and C**

(i) ***The material in Annexes B and C is prima facie relevant to issues at trial***

28. The Prosecution provides specific submissions on the relevance of each individual document in the attached Annexes B and C.

#### **Category A: Malian referral documents**

29. The three Category A (Malian referral) documents in Annex B<sup>37</sup> possess similar relevance as the Category A documents in Annex A. The Defence object to the probative value of these documents, and not their relevance.

---

<sup>34</sup> MLI-OTP-0039-0027 at 0030-0041.

<sup>35</sup> ICC-01/05-01/13-2275-Red, para. 874.

<sup>36</sup> ICC-01/04-02/12-271-Corr, para. 226.

<sup>37</sup> Items 1, 3 and 4 of Annex B: MLI-OTP-0001-0031, MLI-OTP-0001-0167, and MLI-OTP-0001-0172.

Category C: Iyad Ag Ghaly speech

30. The Category C (Iyad Ag Ghaly speech) materials are relevant, because the late 2012 speech refers to the common purpose of Ansar Dine and AQIM and his knowledge of the commission of crimes by the two armed groups in northern Mali.<sup>38</sup>

31. Contrary to the Defence's objection,<sup>39</sup> these materials are not duplicative of previously submitted material. MLI-OTP-0002-0257 [REDACTED]

[REDACTED] MLI-OTP-0038-0888 [REDACTED] MLI-OTP-0002-0257 [REDACTED]

Moreover, it is submitted that this speech was delivered in late 2012 in northern Mali, well within the relevant temporal and geographic scope of the present case.

Category D: News Reports

32. The Category D News Reports are relevant as they provide evidence of the existence of a non-international armed conflict and of a widespread or systematic attack in northern Mali, specifically as regards the attacks of 24 and 25 January 2012 on Aguelhok. The article of 31 January 2012 refers to the involvement of AQIM and MNLA in these attacks.<sup>40</sup> The Prosecution is seeking to submit only two pages of MLI-OTP-0007-0346<sup>41</sup> into evidence, pages 0354 and 0355, and is not seeking to submit the translation MLI-OTP-0078-2464,<sup>42</sup> as these two pages are in French in the original document MLI-OTP-0007-0346. The Prosecution is not seeking to submit the remaining pages in MLI-OTP-0007-0346, which appear to be Islamic police reports from Gao.

33. These documents are therefore relevant to establishing the contextual elements of war crimes and crimes against humanity and the involvement of the armed groups in the January 2012 attacks on Aguelhok.<sup>43</sup>

<sup>38</sup> See, e.g., MLI-OTP-0063-1002, p. 1007-1008, l. 145-152; p. 1011-1012, l. 295-30; p. 1013, l. 344-347; p. 1013-1015, l. 373-422.

<sup>39</sup> Defence Objection D.

<sup>40</sup> MLI-OTP-0007-0346 at 0355.

<sup>41</sup> Item 8 of Annex B.

<sup>42</sup> Item 9 of Annex B.

<sup>43</sup> See Defence Comments in relation to Item 8 of Annex B.

Category E: DSM documents (from both Annexes B and C)

34. The Category E documents are relevant as these are contemporaneous Malian military intelligence reports on the movements and actions of Ansar Dine, including its leader Iyad Ag Ghaly, in Timbuktu and neighbouring areas in 2012. For instance, the documents provide information regarding:

- The groups common purpose or plan, and organisational policy such as MLI-OTP-0012-0157 that records Ansar Dine's declared goal of establishing Sharia law;<sup>44</sup>
- Crimes of persecution and attacks on protected objects: such as MLI-OTP-0012-0177 that notes the indignation of the youth in Timbuktu following profanation of graves and other acts by the Islamists;<sup>45</sup> MLI-OTP-0012-0187 that reported the destruction of the *Monument des Martyrs* in Timbuktu.<sup>46</sup>
- Crime of persecution and torture: such as MLI-OTP-0012-0230 relating to the flogging of a couple accused of adultery on 20 June 2012;<sup>47</sup>
- The structure, military capacity and organisation of the armed groups; and alliance between AQIM and Ansar Dine: e.g. MLI-OTP-0012-0192 that notes that Iyad Ag Ghaly met with AQIM leader Oumar Ould Hammaha in Ber on 25 May 2012;<sup>48</sup> MLI-OTP-0012-0223 stating that as at 18 June 2012, the AQIM members in Timbuktu number 50, including AQIM leaders Abou Zeid, Oumar Ould Hamaha and Yahia Abou Hamam, and 50 AQIM members in Kidal. It further records that AQIM was also present in Tigharghar and Gao, while Ansar Dine ran Bourem;<sup>49</sup> MLI-OTP-0012-0245 reporting as at June 2012, that Yahia Abou Hamam was present in Timbuktu and was the chief of the Al Fourqane brigade;<sup>50</sup> MLI-OTP-0012-0393 reporting on activities of Ansar Dine in Douentza in May 2012;<sup>51</sup>
- The importance of Iyad Ag Ghaly, including as the founder of Ansar Dine.

35. The Defence does not make objections on the grounds of relevance to introduction of the Category E documents contained in Annex B.

---

<sup>44</sup> See Item 10 in Annex B.

<sup>45</sup> See Item 11 in Annex B.

<sup>46</sup> See Item 13 in Annex B.

<sup>47</sup> See Item 1 of Annex C.

<sup>48</sup> See Item 15 in Annex B.

<sup>49</sup> See Item 16 in Annex B.

<sup>50</sup> See Item 2 of Annex C.

<sup>51</sup> See Item 4 of Annex C.

Category F: [REDACTED]

36. The Category F: [REDACTED] document, to which the Defence does not object on grounds of relevance, is relevant as this [REDACTED] filed in a Bamako court alleges crimes against humanity and war crimes committed in the regions of Timbuktu, Gao and Kidal, including alleged crimes by Ansar Dine and AQIM in Timbuktu.<sup>52</sup> This corroborates and is corroborated by evidence of many of the crimes charged against the Accused,<sup>53</sup> and also corroborates evidence that establishes the contextual elements of the war crimes and crimes against humanity.

Category G: Bank document

37. The Category G document MLI-OTP-0054-0118, to which the Defence does not object on grounds of relevance, is relevant as it includes BMS among the banks in Timbuktu during the occupation, and states that they were closed from 2 April 2012 until the end of September 2013.<sup>54</sup>

Category H: Malian laws

38. The Category H( Malian laws documents, to which the Defence does not object on grounds of relevance,<sup>55</sup> are relevant as they establish the judicial framework and penal code of Mali, including provisions regarding the secular and democratic nature of the State that run counter to the *imposition* of Sharia law by the armed groups in Timbuktu during its occupation in 2012.<sup>56</sup>

39. These are also relevant to the war crimes charge of passing of sentences. P-0643, an expert witness on Malian law, explained that Sharia law, in particular in the context of sanctions, did not apply within the criminal field.<sup>57</sup> He also explained that cadis only decided civil

---

<sup>52</sup> See Item 18 in Annex B.

<sup>53</sup> See MLI-OTP-0029-0217 at 0219, 0221-0222. The [REDACTED] lists murder, torture, rape sexual slavery and persecution, among other crimes. [REDACTED]

<sup>54</sup> See Item 19 in Annex B.

<sup>55</sup> See Defence Comments on Items 23 and 24 of Annex B.

<sup>56</sup> See Items 23 and 24 of Annex B.

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

disputes, and even then, their role was purely voluntary, and could not impose their authority on people.<sup>58</sup>

Category I: Phone records

40. The Category I documents relate to the phone numbers of Ansar Dine members and information about mobile telephone sites in Timbuktu and Kidal in 2012 to 2013, which are relevant for CDR analysis establishing communications and coordination among these members.<sup>59</sup> Contrary to the Defence objection to MLI-OTP-0022-0203,<sup>60</sup> the numbers and any analysis of the phone numbers, contributes to establishing the common purpose and common plan of the Accused and the armed groups occupying Timbuktu, and the organisation and structure of the armed groups.<sup>61</sup>

41. The Defence does not object on the grounds of relevance to the introduction of the remaining three Category I documents, MLI-OTP-0056-0022, MLI-OTP-0064-0786 and MLI-OTP-0064-0787.<sup>62</sup>

Category J: Mausoleum list

42. MLI-OTP-0001-0084 is a Malian government list of mausoleums in Timbuktu which were destroyed in 2012. This document was furnished by the Malian Ministry of Justice to the OTP on 3 September 2012. This document is relevant to the war crime charge of destroying protected objects. The Defence does not object to the relevance of this list but contests its probative value.<sup>63</sup>

*(ii) The materials in Annexes B and C have prima facie probative value*

43. The Prosecution provides specific submissions on the probative value of each category of document in Annexes B and C.

<sup>58</sup> [REDACTED]

<sup>59</sup> See, e.g., [REDACTED]

<sup>60</sup> See Defence Comments on Item 17 of Annex B.

<sup>61</sup> See items 17, 20, 21 and 22 of Annex B.

<sup>62</sup> See Defence Comments on Items 20, 21 and 22 of Annex B.

<sup>63</sup> See Defence Comment on Item 2 of Annex B.

Category A: Malian referral documents

44. The Category A documents listed in Annex B,<sup>64</sup> similar to the Category A documents in Annex A,<sup>65</sup> are probative of the crimes being committed in northern Mali at the time of the referral and the contextual elements that elevate these crimes to war crimes and crimes against humanity. They all bear sufficient indicia of reliability, including stamps of ministries, such as that of the *Ministère de la sécurité intérieure et de la protection civile*, and signatures of officials such as [REDACTED]. They are contemporaneous records of Malian government of these crimes. Moreover, the OTP was directly furnished these materials by the Malian government and the *Commission Nationale des Droits de l'Homme*.
45. Contrary to the Defence objection,<sup>66</sup> the Prosecution did not need to produce MLI-OTP-0001-0031, the Malian government report accompanying the referral, through a witness so that it can be considered probative of the issues for which is it relevant. The Prosecution recalls in this regard the jurisprudence cited above, confirming that there is no requirement that such evidence be introduced through a witness.<sup>67</sup>
46. The Defence is also incorrect in claiming that MLI-OTP-0001-0031 was prepared by a party to the events. This is a report by the *Commission Spéciale d'Enquête*, under the auspices of the Malian *Ministère de la Sécurité Intérieure et de la Protection Civile*, which is distinct from the Malian Ministry of Defence which covers the army.<sup>68</sup>
47. The Defence's Objection<sup>69</sup> that MLI-OTP-0001-0167, the Malian government report on the security situation in northern Mali dated 15 May 2012, amounts to anonymous hearsay and is unreliable goes to the eventual weight to be accorded by the Chamber to this document, the Malian government report on the security situation in northern Mali dated 15 May 2012, and does not prevent its submission and eventual admission into evidence the bar table.
48. Contrary to the Defence objection<sup>70</sup> that this document is not self-authenticating, this report MLI-OTP-0001-0167 has sufficient indicia of reliability based on its chain of custody as indicated in the metadata: this was provided directly by the Malian authorities to the OTP

<sup>64</sup> See Items 1, 3 and 4 of Annex B.

<sup>65</sup> See Items 1, 2, and 3 of Annex A.

<sup>66</sup> Defence Objection F.

<sup>67</sup> See ICC-01/04-02/06-1838, para. 13.

<sup>68</sup> See the letterhead on page 0031 and [REDACTED].

<sup>69</sup> Defence Objection B.

<sup>70</sup> Defence Objection G.

[REDACTED] that this note was prepared by the Malian National Assembly.

49. Similar to the Defence objection to MLI-OTP-0001-0167 discussed above, the Defence's objection<sup>71</sup> characterises the content of MLI-OTP-0001-0172, the human rights report by the Malian *Commission Nationale des Droits de l'Homme*, as anonymous hearsay. As with MLI-OTP-0001-0167, this objection goes to the eventual weight to be accorded by the Chamber to this document and does not prevent its submission and eventual admission into evidence from the bar table. The various crimes broadly described in the human rights report have been corroborated by the evidence presented during the Prosecution case.

Category C: Iyad Ag Ghaly speech

50. The Category C: Iyad Ag Ghaly speech materials are probative of the common purpose and common plan of Ansar Dine and AQIM, as they record Iyad Ag Ghaly's speech referring to, among others, the four principles on which Ansar Dine was created, and referring to acts that amount to the crimes Ansar Dine committed along with AQIM in the name of application of sharia law. Audio recording MLI-OTP-0002-0257 bears sufficient indicia of reliability as [REDACTED]  
[REDACTED]. This recording was obtained directly from the Malian authorities [REDACTED] and was produced in response to a Request for Assistance ("RFA") of the OTP to the Malian authorities.<sup>72</sup>

51. Contrary to the Defence's Objection G that the Category C materials are not self-authenticating, these can be authenticated through [REDACTED]  
[REDACTED] submitted into evidence [REDACTED] accepted for submission by the Chamber.<sup>73</sup>  
[REDACTED]

[REDACTED].<sup>74</sup>

<sup>71</sup> Defence Objection B.

<sup>72</sup> See Chain of custody notes in the metadata of MLI-OTP-0002-0257.

<sup>73</sup> [REDACTED].

<sup>74</sup> [REDACTED].

Category D: News reports

52. The Category D News Reports are two news reports from Maliweb.net<sup>75</sup> of 26 and 31 January 2012 relating to the attacks of 24 and 25 January 2012 on Aguelhok and the involvement of AQIM and MNLA in these attacks. Maliweb.net is a locally-based source of information about political developments in Mali. These documents were obtained from the [REDACTED] authorities on 7 November 2013 pursuant to an RFA from the OTP to the [REDACTED] government. Moreover, these news reports are corroborated by P-0081, who testified as regards the attack on Aguelhok and the involvement of Ansar Dine in this attack.<sup>76</sup> The Prosecution submits that there are sufficient indicia of reliability so as to enable their admission from the bar table.

Category E: DSM documents

53. The Category E (DSM) documents in Annexes B and C are probative of the activities of the armed groups Ansar Dine, AQIM and MNLA in Timbuktu and other parts of northern Mali as recorded by DSM agents (“*capteurs*”) in the field.

54. Contrary to the Defence objection,<sup>77</sup> as confirmed in previous jurisprudence including from this Chamber, there is no requirement that such evidence be introduced through a witness.<sup>78</sup> The identification of documents to introduce through a witness entails various factors, including the expeditiousness of the proceedings, judicial economy and weight. As regards [REDACTED]

55. It is nevertheless in the interests of justice and the determination of the truth that these documents be submitted into evidence from the bar table. All of the items are of probative value because these are contemporaneous records of events in Timbuktu and northern Mali documented by the DSM, the Malian military intelligence service. These record the activities of the armed groups Ansar Dine, AQIM and MNLA in Timbuktu and other parts of northern Mali.

<sup>75</sup> Pages 0354 and 0355 of MLI-OTP-0007-0346, Item 8 of Annex B.

<sup>76</sup> See, e.g., [REDACTED]

<sup>77</sup> Defence Objection F.

<sup>78</sup> See ICC-01/04-02/06-1838, para. 13.



56. Moreover, these documents bear sufficient indicia of reliability and authenticity. They are either DSM *messages portés* or *bulletins de renseignement*. They contain the same format, including official letterhead [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]<sup>79</sup> [REDACTED]  
[REDACTED]

[REDACTED]<sup>80</sup>

57. [REDACTED] the sources were reliable. [REDACTED] the intelligence contained in these DSM documents were gathered by highly trained and specially selected agents (“*capteurs*”) in the field and that this intelligence was relied upon by Malian soldiers in planning and conducting their operations, particularly to avoid excessive combat casualties.<sup>81</sup> [REDACTED] troops’ lives depended on the quality of intelligence gathered.<sup>82</sup>

Category F: [REDACTED]

58. The Category F ([REDACTED]) document is probative of the crimes against humanity and war crimes it alleges were committed in the regions of Timbuktu, Gao and Kidal, including alleged crimes by Ansar Dine and AQIM in Timbuktu.<sup>83</sup> This corroborates and is corroborated by other evidence on the record of many of the crimes charged against the Accused in Timbuktu,<sup>84</sup> and of the contextual elements of the war crimes and crimes against humanity. Evidence of crimes committed outside Timbuktu, by the armed groups and/or allied groups further corroborates or is corroborated by evidence of the groups’ common purpose, or a plan, and of the widespread or systematic nature of the attack on the civilian population in these areas.

<sup>79</sup> See, for instance, [REDACTED].

<sup>80</sup> See, for instance, [REDACTED].

<sup>81</sup> [REDACTED].

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

<sup>83</sup> See Item 18 in Annex B.

<sup>84</sup> See [REDACTED] at 0219, 0221-0222. The [REDACTED] lists murder, torture, rape sexual slavery and persecution, among other crimes. [REDACTED]

59. This complaint also on the face of the document appears to be an authentic civil complaint in a Bamako court, because it has the header and footer of the Cabinet O.B.K., official stamp on the filing on page 0217, and signatures of the various counsel on page 0232.

Category G: Banks

60. The Category G (Banks) document is probative of the fact that the BMS, a key headquarter of the armed groups (Islamic Police and Hesbah), did not operate as a bank in Timbuktu from 2 April 2012 until the end of September 2013. It corroborates and is corroborated by other evidence on the record of this fact. This document contains sufficient indicia of reliability and authenticity, as it contains the letterhead, watermark and contact details of the *Association professionnelle des banques et établissements financiers du Mali* (“APBEF”), and the metadata confirms that it was provided by the Malian government to the OTP on 16 February 2018.

61. Contrary to the Defence objection<sup>85</sup> that this item does not assist the Chamber in adjudicating facts falling within the temporal and geographic scope of this case, this document’s reference to the closure of the BMS in Timbuktu does fall squarely within the temporal and geographic scope of the present case. As regards Defence Objection G that this item is not self-authenticating, there is no need for an official of APBEF to testify solely in relation to this document. There is no indication that this document is forced or has tampered with in any way. The indicia of reliability referred to above enable the Chamber to assess the authenticity of the document.

Category H: Malian laws

62. The Category H (Malian laws) documents are the Malian statute of the judiciary and the Malian penal procedural code. These are probative as regards the war crime charge of passing sentences and the crime against humanity of persecution. Although the relevant legal framework for the Chamber is the Rome Statute, these laws show that – the new rules imposed and conduct of the occupation of Timbuktu by the armed groups – was also contrary to existing Malian law.

63. These documents bear sufficient indicia of reliability: they bear the signature of the Malian president along with a stamp of the date it was signed and both were provided by the Malian

---

<sup>85</sup> Defence Objection D.

Ministry of Justice to the OTP. MLI-OTP-0070-1168 also bears the letterhead of the National Assembly on page 1168 and of the Malian Presidency on page 1169. The fact that these appear to be photocopies is irrelevant to their reliability and authenticity as they were provided directly by the Malian Ministry of Justice to the OTP. These two laws are also clearly dated well in advance of 2012, leaving no doubt that these were not laws passed after 2012: MLI-OTP-0070-1057 bears the stamped date of 16 December 2002 at page 1058, while MLI-OTP-0070-1168 bears the stamped date of 20 August 2001 at page 1169.

#### Category I: Phone records

64. The Category I(phone records) documents are probative of the coordination that took place between members of armed groups during their occupation of Timbuktu. This is relevant to an assessment of the organisation, structure, hierarchy, of the groups and their capacity to coordinate perpetration of the crimes as charged.

65. MLI-OTP-0022-0203, a list of phone numbers of Ansar Dine members, bears sufficient indicia of reliability, bearing the stamp of [REDACTED] and a stamp that it is a certified true copy of the original. This document was provided by [REDACTED]

66. Contrary to the Defence objection to the remaining Category H documents,<sup>86</sup> these documents are evidently authentic without requiring a witness through which they be submitted, as the metadata makes it clear it was obtained from [REDACTED]

#### Category J: Mausoleum list

67. The sole document in this category, MLI-OTP-0001-0084, is a Malian government list of mausoleums in Timbuktu, which were destroyed in 2012. Having been furnished by the Malian Ministry of Justice to the OTP on 3 September 2012, this list is *prima facie* reliable and authentic, and probative of the identity of the mausoleums in Timbuktu that were destroyed during the occupation in 2012.

---

<sup>86</sup> See Defence Comments on Items 20, 21 and 22 of Annex B: The Defence argues that the “Prosecution should have called the telecom service provider to testify to the collection of this data. In circumstances in which neither the telecoms service provider nor investigator Seye have testified, this is unsuitable for submission from the bar table or at all”.

68. Contrary to the Defence objection to this list,<sup>87</sup> there is no need for a list of destroyed mausoleums to specify any methodology utilised in compiling the names. The destroyed mausoleums are well-established by other sources of evidence, including witness testimony.<sup>88</sup>

*For Annexes A, B and C: there is no prejudice outweighing the probative value*

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

- a. as outlined in Annexes A, B and C, each proposed item is relevant to one or more discrete issues at trial;
- b. each of the proposed items are of probative value and possess sufficient indicia of reliability to warrant its admission and to enable the Chamber to fairly evaluate it in the context of the entire evidence;
- 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 List of Evidence.

---

<sup>87</sup> Defence Objection G.

<sup>88</sup> See, e.g., [REDACTED]

### **Conclusion**

70. For the foregoing reasons, the Prosecution requests that all items listed in Annexes A and B be recognised as formally submitted into evidence.

A handwritten signature in blue ink, appearing to be 'K.A.A. Khan', with a horizontal line underneath it.

---

Karim A. A. Khan QC, Prosecutor

Dated this 3<sup>rd</sup> Day of February 2022  
At The Hague, the Netherlands