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

Date: **22 July 2024**

TRIAL CHAMBER X

Before: Judge Kimberly Prost, Presiding Judge
Judge Tomoko Akane
Judge Keebong Paek

SITUATION IN THE REPUBLIC OF MALI

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

Public with Public Annex A

**Defence Request to admit the statement of Mohamedou Ould Slahi pursuant to Rule
68(2)(b) for the Purposes of Sentencing**

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

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

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I. INTRODUCTION

1. Mr Al Hassan respectfully requests, pursuant to Articles 64(9)(a), 69(3), 69(4) and 76(2) of the Rome Statute, as well as Rules 63(2) and 68(2)(b) of the ICC Rules of Procedure and Evidence, the admission of a witness statement by Mr Mohamedou Ould Slahi¹ for the purposes of Trial Chamber X's upcoming determination on Mr Al Hassan's sentence. Mr Ould Slahi's statement is relevant, probative, was prepared in a reliable manner, and bears sufficient indicia of reliability for admission. It does not address or seek to relitigate matters or factual findings already dealt with in the Trial Judgment² nor does it offend the notion of judicial economy by being cumulative of evidence already on the record.³ On the contrary, its admission would assist the Chamber in its determination on Mr Al Hassan's sentence by speaking to the power of faith and forgiveness, and the need for compassion and reconciliation after prolonged detention. This testimony contextualises the "circumstances of the convicted person" envisaged under Rule 145(1)(b) and should be admitted at this stage to facilitate the Chamber's final determination on sentence.
2. Mr Ould Slahi occupies a rare and unenviable position in international criminal law. A former prisoner at the Guantanamo Bay facility in Cuba, he was held by the United States government without charge for 14 years before his release in 2016. During his detention, he was subjected to threats, including of harm to his family, sleep deprivation, isolation, temperature extremes, beatings, and sexual humiliation, as well as a mock execution at sea. The prosecuting officer recognised that the evidence against Mr Ould Slahi had been obtained through coercive interrogation and refused to prosecute the case. A federal district judge subsequently granted Mr Ould Slahi's *habeas corpus* petition because the government did not have sufficient evidence against him to justify detention. In 2016, Mr Ould Slahi was released, 14 years after his

¹ See Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01.

² Al Hassan, [Trial Judgment](#), ICC-01/12-01/18-2594-Red, 26 June 2024 ("TJ" or "[Trial Judgment](#)").

³ Bemba, Public redacted version of "Decision on 'Defence Motion concerning 'Information on contacts [of] Witnesses 169 and 178 with other witnesses'", 11 December 2014, ICC-01/05-01/08-2924-Red, para. 35 ("judicial economy demands that recall [including for purposes of sentencing] should be granted only in the most compelling circumstances where the evidence is of significant probative value and not of a cumulative nature".) See also Bemba, Second Redacted version of "Decision on 'Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169' (ICC-01/05-01/08-3138-Conf-Red) and 'Defence Urgent Submissions on the 5 August Letter (ICC-01/05-01/08-3139-Conf)'" , 11 December 2014, ICC-01/05-01/08-3154-Red, para. 27.

detention had begun and 10 years after the military commission had refused to prosecute.

3. Mr Ould Slahi (who, like Mr Al Hassan, comes from the Sahel) speaks to the very specific experience of detention both during and subsequent to torture, as well as the grim realities of how detention is experienced as a torture survivor, regardless of the conditions thereafter. He articulates, for those who have never experienced a deprivation of their liberty, its devastating import, particularly when torture has taken place in a detention environment. Importantly, he understands the concomitant difficulty – but also the possibility – of healing once freedom and family are regained; the role played by faith in forging forgiveness and reconciliation; and, finally, the ability to transition to a life that is constructive and hopeful after such a traumatic ordeal. In short, his statement provides the Court with the unique perspective of someone with a similar cultural background as Mr Al Hassan, who has experienced torture and emerged from years of detention to find a positive path forward as a free person.

II. PROCEDURAL HISTORY

4. Mr Al Hassan was arrested by Barkhane forces on 21 April 2017,⁴ and was transferred on or around 2 May 2017 to the Malian *Forces de défense et de sécurité maliennes*, who then transferred him to the Malian *Direction Générale de la Sécurité d'Etat*. He was detained in difficult conditions until his transfer on 31 March 2018 to the ICC pursuant to a provisional arrest warrant issued by the ICC on 27 March 2018.⁵
5. While in ICC custody, his daughter Fatima died of malaria in December 2020. In 2023, Mr Al Hassan's family were forced to abandon their home due to severe instability in the region and their vulnerability in his absence.
6. On 26 June 2024, Trial Chamber X, in its former composition, rendered the Trial Judgment in this case, convicting Mr Al Hassan of eight (8) counts of crimes against humanity and war crimes and acquitting him of six (6) counts, including all sexual and gender-based crimes.

⁴ Statement of D-0627, MLI-D28-0006-5699-R01, paras. 30-95. *See also* Statement of D-0628, MLI-D28-0003-2049-R01, paras. 11-37.

⁵ *See Al Hassan*, Mandat d'arrêt à l'encontre d'Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-2, 27 March 2018.

7. Two days later, on 28 June 2024, the Trial Chamber issued its Decision on the sentencing procedure,⁶ setting out deadlines for the sentencing phase. These deadlines were suspended by the Single Judge by email on 3 July 2024,⁷ following the re-composition of the Trial Chamber for the purposes of sentencing.
8. On 17 July 2024, the Single Judge issued a decision by email informing the parties of a 22 July 2024 deadline for the submission of any request to submit non-oral sentencing evidence, and 25 July 2024 as the deadline for any responses thereto.⁸

III. APPLICABLE LAW

9. A Trial Chamber has broad discretion in deciding what evidence and submissions may be of assistance, and to hear any additional evidence or submission it deems relevant,⁹ in determining the appropriate sentence.¹⁰ Rule 145(1)(b) requires the Court to consider any mitigating factors and to consider the circumstances of the convicted person. Mitigating factors need not relate to the crimes of which the person has been convicted, are not limited by the scope of the charges, or the findings in the Trial Judgment.¹¹
10. Rule 68 governs the admission of prior recorded testimony. Broadly speaking, prior recorded testimony tends to be admitted into evidence where it has sufficient indicia of reliability, relates to background information, does not concern issues materially in

⁶ *Al Hassan*, Decision on the sentencing procedure, [ICC-01/12-01/18-2595](#), 28 June 2024.

⁷ Trial Chamber Communications, Email decision of 3 July 2024 at 11:46. *See also Al Hassan*, Second decision on the sentencing procedure, ICC-01/12-01/18-2600, 9 July 2024, para. 9.

⁸ Trial Chamber Communications, “TC X: Information regarding upcoming deadlines related to the sentencing procedure”, 17 July 2024, 9:56am.

⁹ Rome Statute, Art. 76(2).

¹⁰ Rome Statute, Arts. 76, 78. *See also* ICC Rules of Procedure and Evidence, Rs. 68, 145.

¹¹ *Ntaganda*, Sentencing Judgment, ICC-01/04-02/06-2442, 7 November 2019, para. 24; *Ongwen*, Sentence, ICC-02/04-01/15-1819-Red, 6 May 2021, para. 54.

dispute, tends to be cumulative or corroborative, and serves the interests of justice by its introduction.¹²

11. This submission incorporates the legal framework on the admission of evidence as set out in its Defence Request to submit additional evidence on sentencing, filed on 22 July 2024 in parallel with the present submission.

IV. SUBMISSIONS

12. Chambers have found relevant, and admitted through Rule 68(2)(b), evidence based on an individual's specific experience,¹³ including in relation to traditional justice and reconciliation,¹⁴ as well as non-evidentiary pleadings on relevant sentencing factors by organisations distinct from the parties and participants.¹⁵
13. The *Ongwen* Chamber granted a Defence request to admit via Rule 68(2)(b) evidence by a "traditional Acholi Chief of the Pawel Clan who lived through the war in Northern Uganda and understands the problems caused by the war."¹⁶ It was argued that the Acholi Chief "understand[s] the culture of the Acholi people" and had "**personally [gone] through** the ritual [cleansing process] of Mato Oput."¹⁷ This testimony, albeit unspecific to Mr Ongwen personally and centring more generally on the Acholi people and culture¹⁸ and the availability of reconciliatory measures and restorative justice,¹⁹

¹² Rule 68(2)(b)(i). *See also Yekatom and Ngaïssona*, First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, ICC-01/14-01/18-1833-Corr-Red, 17 April 2023, para. 36 (factors militating in favour of the admission of such evidence include "whether the prior recorded testimony in question relates to issues that are not materially in dispute; is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts; relates to background information; is such that the interests of justice are best served by its introduction; and has sufficient indicia of reliability.")

¹³ *Ongwen*, Decision on the 'Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence', ICC-02/04-01/15-1801, 19 March 2021, paras. 8(ii), 15.

¹⁴ *Ongwen*, Decision on the 'Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence', ICC-02/04-01/15-1801, 19 March 2021, paras. 17(iii), 21-22.

¹⁵ *Ongwen*, Decision on the 'Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence', ICC-02/04-01/15-1801, 19 March 2021, para. 26.

¹⁶ *Ongwen*, Second Public Redacted Version of "Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence", filed on 26 February 2021, ICC-02/04-01/15-1783-Red2, 25 March 2021, para. 28.

¹⁷ *Ongwen*, Second Public Redacted Version of "Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence", filed on 26 February 2021, ICC-02/04-01/15-1783-Red2, 25 March 2021, para. 28 (emphasis added).

¹⁸ *Ongwen*, Decision on the 'Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence', ICC-02/04-01/15-1801, 19 March 2021, paras. 8(ii), 15.

¹⁹ *Ongwen*, Decision on the 'Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence', ICC-02/04-01/15-1801, 19 March 2021, paras. 17(iii), 21-22.

was of sufficient relevance to Mr Ongwen’s case to be admitted without live testimony. The Chamber found that even if the testimony provided information *concerning* Dominic Ongwen, it was not procedurally barred from admission so long as it did not go to his “acts and conduct” within the meaning of Rule 68(2)(b).²⁰ In its subsequent sentencing judgment, the Chamber found that the relevance of the Rule 68(2)(b) material, including the Chief’s testimony, “is logically connected to the relevance of the corresponding Defence submissions to the determination of the sentence to be imposed on Dominic Ongwen.”²¹

14. Mr Ould Slahi’s testimony parallels that of the Acholi Chief in *Ongwen*. It relates to “information [...] attributable to a specific individual providing relevant testimony to the Chamber”²² and does not go to the acts and conduct of Mr Al Hassan. By his own admission, and despite sharing a cultural milieu which adds weight to his observations,²³ Mr Ould Slahi knows neither Mr Al Hassan nor the details of his case. His testimony, although centring more generally on the necessity of healing and forgiveness after a traumatic detention, is relevant to Mr Al Hassan’s own experience in that regard. He “understand[s] not only what it’s like to be physically and mentally abused, but also the overall feeling of being detained for years and cut off from one’s family [...]”²⁴ Perhaps more importantly, he appreciates “what it’s like to make the transition to a life that is constructive and hopeful after such a traumatic ordeal.”²⁵ Like the Acholi chief in *Ongwen* who had undergone Mato Oput, Mr Ould Slahi is able to speak to a specific, *lived* experience: learning to heal and forgive after release from protracted detention in traumatic – and later, excellent – conditions.
15. Mr Ould Slahi’s statement also provides a more complete overview of the harm suffered by Mr Al Hassan as a result of his detention, and the role faith can ostensibly have in helping Mr Al Hassan reintegrate and contribute to society, and in finding positivity subsequent to a manifestly traumatic series of experiences. It demonstrates the possibility of forgiveness of and by all parties. Incidentally, on this point, the Trial

²⁰ *Ongwen*, Decision on the ‘Defence request to submit additional evidence for Trial Chamber IX’s determination of the sentence’, ICC-02/04-01/15-1801, 19 March 2021, para. 13.

²¹ *Ongwen*, Sentence, ICC-02/04-01/15-1819-Red, 6 May 2021, para. 16.

²² *Ongwen*, Decision on the ‘Defence request to submit additional evidence for Trial Chamber IX’s determination of the sentence’, ICC-02/04-01/15-1801, 19 March 2021, para. 26.

²³ Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 7.

²⁴ Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 9.

²⁵ Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 7.

Chamber has recognised that the High Islamic Council for Timbuktu has forgiven Mr Al Hassan.²⁶

A. Arrest and Detention

16. As with Mr Al Hassan, Mr Ould Slahi was abducted by governmental authorities pursuant to an inter-governmental agreement, and held for many months without knowledge of the reasons underpinning his arrest and detention. Their torture – and subsequent suffering and trauma – cannot reasonably be disputed. As stated by Mr Ould Slahi,

the military prosecutor assigned to my case refused to prosecute me because the statements I had made, which formed the core of the government's case against me, had been obtained under torture. My torture has been extensively documented, including by multiple U.S. government sources.²⁷

Trial Chamber X has similarly addressed Mr Al Hassan's conditions of detention in the Trial Judgment, finding that during the course of his interviews with the Prosecution, "Mr Al Hassan raised on several occasions issues about his conditions of detention, medical state and needs to the Prosecution [...] report[ing] that he was not well or was in need of medication, or recounted an instance of mistreatment."²⁸ The Trial Chamber also found credible and relied on the testimony of D-0627²⁹ and D-0628³⁰ in the

²⁶ [Trial Judgment](#), para. 1087 ("[t]he Chamber notes that the President of the High Islamic Council of Timbuktu (*Haut Conseil Islamique*), Abderahman Ben Essayouti, on behalf of the Muslim community of Timbuktu, granted forgiveness to Mr Al Hassan and communicated their hope that Mr Al Hassan be back to the community"), citing to Undated handwritten letter of Imam Essayouti, MLI-D28-0005-8901 (stating '*Nous attestons par cette note, au nom de toute la communauté musulmane de Tombouctou, notre sincère pardon à l'endroit de notre fils et frère en Islam Al Hassan Ag Abdoul Aziz, et nous espérons son retour parmi nous, ses parents et coreligionnaires pour le reste de sa vie. Car nous savons que notre prophète prône [sic] le pardon et le vivre ensemble*'). See *Al Hassan*, [Public Redacted Version of "Defence Trial Brief", ICC-01/12-01/18-2203-Conf, 14 April 2022](#), ICC-01/12-01/18-2203-Red, 10 October 2023, para. 47, footnote 101.

²⁷ Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 8. See also [Transcript, Interview with Lt. Col. Stuart Couch, Senior Prosecutor, Office of Military Commissions](#) (9 October 2007) (MLI-D28-0007-0690).

²⁸ [Trial Judgment](#), para. 322 (internal citations omitted), citing to Mr Al Hassan's statements MLI-OTP-0051-0798, at 0803; MLI-OTP-0060-1662, at 1664, 1665; MLI-OTP-0060-1729, at 1732; MLI-OTP-0062-0940, at 0946; MLI-OTP-0060-1374, at 1378-1379. See also *Al Hassan*, [Decision regarding Mr Al Hassan's Statements](#), ICC-01/12-01/18-1475-Red 2, 20 May 2021, paras. 65-66.

²⁹ [Trial Judgment](#), fn 1019 ("[b]ased on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0627 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence, in particular the limited relevance of much of his evidence to the period of the charges. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate").

³⁰ [Trial Judgment](#), fn. 3743, citing to D-0628's statement, MLI-D28-0003-2049-R01, paras. 5-9.

Judgment, both of whose statements recounted in detail their and Mr Al Hassan's arrests and subsequent mistreatment during their extended detention at the DGSE.³¹

17. The equivalences between Mr Ould Slahi's experience and Mr Al Hassan's own will assist the Chamber in contextualising the latter, which, in turn, will aid its determination on sentence. For example, Mr Ould Slahi emphasises that it is not only the torture *per se* or appalling detention conditions that is traumatic; it is the denial of freedom itself subsequent to torture. He explains the hopelessness of explaining "freedom" to someone who has never lost it,³² and that, irrespective of how exceptional one's detention conditions may be, "a prison is still a prison."³³ In short, however gilded the cage, one cannot begin the process of healing so long as one is not free.

B. Loss and Healing Through Faith and Family

18. Beyond the obvious parallels in respect of their arrests, detention, and torture, Mr Ould Slahi and Mr Al Hassan both suffered profound loss during their respective detentions. Putting aside the loss of his liberty, Mr Ould Slahi also lost his mother and brother while imprisoned at Guantanamo Bay. Mr Al Hassan, meanwhile, lost one of his daughters while in ICC custody, and has not yet been able to care for his family in the aftermath.

19. Both found solace through their faith, with Mr Ould Slahi revealing:

[d]espite all that I endured, I was able to keep my faith in humanity alive. Religion can be an important part of the healing process, as it was for me. I am Muslim, but it doesn't matter what religion a person follows. The most important thing is believing that there is a higher power, something we can continue to place our faith in for a better future and turn to for guidance and emotional support. That is something essential not just to Islam, but to all religions.

Mr Al Hassan has similarly relied on his faith, not only in the aftermath of his daughter's death, but also to guide his general belief system.³⁴ Both men have referred

³¹ Statement of D-0627, MLI-D28-0006-5699-R01, paras. 30-95; Statement of D-0628, MLI-D28-0003-2049-R01, paras. 11-37.

³² Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 20.

³³ Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 19.

³⁴ Sentencing Statement of Mr Al Hassan, MLI-D28-0007-0640, para. 49.

to their faith as a source of good and of support, as opposed to one endorsing vengeance, anger,³⁵ or extremism.³⁶

This is consistent with the Trial Chamber's finding that Mr Al Hassan did not ever express any extremist opinions to D-0211 during their interactions.³⁷

20. Both have also underscored their reliance on and need for their family. Mr Ould Slahi highlighted the fundamental role his family played in helping him keep his faith during and in the aftermath of his detention:

The bonds I formed with some of my guards at Guantanamo helped me keep my faith. So did my close relationship with my lawyers. And most of all, the emotional connection to my family. All of this supported me while I was in prison, and it supports me today.

Mr Al Hassan has likewise indicated that his focus is his family, including his children, wives, and parents,³⁸ and that he hopes upon his release to be able to "*vivre la belle vie avec ma famille*"³⁹ and to teach his children how to live a peaceful existence.⁴⁰ Mr Ould Slahi has accomplished just that, and his testimony will demonstrate the feasibility of finding peace after experiencing violence and pain.

C. The Path Forward

21. Perhaps most significantly, Mr Ould Slahi underscores that the healing process cannot begin until **after** release from detention; true healing cannot begin until one is free:

I also know that one cannot begin the healing process until after one is free. My torture stopped relatively early on in my detention. After around August 2005, I was no longer tortured or threatened with torture. In fact, over time my conditions of confinement became excellent, better than most prisoners, not just at Guantanamo but anywhere. But **a prison**

³⁵ Sentencing Statement of Mr Al Hassan, MLI-D28-0007-0640, para. 45 ("je ne chercherais pas à me venger. Je n'ai pas de vengeance dans mon cœur. J'ai déjà demandé à Dieu de juger ces gens. Peut-être que Dieu va les remettre sur la bonne route, ou ils seront punis, mais c'est à Dieu de décider, ce n'est pas moi")

³⁶ Sentencing Statement of Mr Al Hassan, MLI-D28-0007-0640, para. 9 ("[e]t surtout, je ne suis pas quelqu'un qui est extrémiste, soit religieusement ou socialement, et je ne suis pas raciste. J'essaie d'appliquer ce que je considère qui est bon, j'essaie d'appliquer ce que je peux, et c'est ce que notre religion nous conseille de faire, de faire du bien, et de faire ce que tu peux. Ce n'est pas tout le temps facile, mais j'essaie de faire de mon mieux").

³⁷ [Trial Judgment](#), fn. 3751. See also Statement of D-0627, MLI-D28-0006-5699, para. 22.

³⁸ Sentencing Statement of Mr Al Hassan, MLI-D28-0007-0640, para. 46.

³⁹ Sentencing Statement of Mr Al Hassan, MLI-D28-0007-0640, para. 8.

⁴⁰ Sentencing Statement of Mr Al Hassan, MLI-D28-0007-0640, para. 51.

is still a prison, no matter how nice the surroundings. I didn't truly begin the healing process until after I was released in 2016.⁴¹

22. Indeed, even after his release, he continued to be haunted by his experiences and the hardship he had faced: “[a]fter my release from Guantanamo, I was returned to Mauritania. At first, it was difficult. [...] I was free in one sense but still a prisoner in another”.⁴²
23. Notwithstanding his years of torture and detention, Mr Ould Slahi has now become a powerful advocate for reconciliation and human rights, as Mr Al Hassan hopes to be for his community.⁴³ He has exchanged views on crucial issues such as the right to a fair trial and the application of the principle of non-refoulement in such fora as the Subcommittee on Human Rights of the European Parliament.⁴⁴
24. In his talk at the Cambridge Union in 2022,⁴⁵ he discussed the importance of understanding and forgiveness in the face of severe injustice, remarking that despite the unimaginable suffering he endured, he has chosen to focus on reconciliation, empathy, and understanding rather than revenge. In other interviews,⁴⁶ such as on Good Morning Britain,⁴⁷ he detailed the crucial role of his Islamic faith in his resilience and compassion, including by providing him with a framework for forgiveness and patience, and by allowing him to maintain hope and dignity throughout his ordeal. He explained the power of his faith, including how it helped him form unexpected bonds, recounting, for instance, his friendship with his former Guantanamo guard, Steve Wood, and the transformative power of empathy and forgiveness.⁴⁸

⁴¹ Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 19.

⁴² Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 16.

⁴³ Sentencing Statement of Mr Al Hassan, MLI-D28-0007-0640, para. 56 (“[j]e ne sais pas encore où je vais pouvoir rentrer lorsque je serais libéré, mais je sais que Tombouctou, c’est une ville que j’aime, et j’aimerais pouvoir y retourner si la population accepte que j’y revienne. Cela dit, à tout ceux que j’ai causé du tort, je leur demande pardon”).

⁴⁴ Subcommittee on Human Rights, [2019-2024 Activity Report](#) (MLI-D28-0007-0701), p. 53.

⁴⁵ YouTube, Video Broadcast, Cambridge Union, [Talk at Cambridge Union](#), 8 March 2022 (MLI-D28-0008-0001).

⁴⁶ See The New York Times, [The Legacy of America’s Post-9/11 Turn to Torture](#) (MLI-D28-0007-0819); CNN, [Former Guantanamo prisoner: ‘I feel amazing’](#) (MLI-D28-0007-0819); Al Jazeera, The Mauritanian: [AJ Public Liberties speaks to Mohamedou Ould Slahi](#) (MLI-D28-0007-0829); Pen International, [Life outside Guantanamo Bay: an interview with Mohamedou Ould Slahi](#) (MLI-D28-0007-0835); DeBalie, [A friendship in Guantánamo Bay with Mohamedou Ould Slahi and Steve Wood](#) (MLI-D28-0008-0003).

⁴⁷ YouTube, Video Broadcast, Good Morning Britain, [“The ‘Most Tortured Man In Guantanamo Bay’ Explains How His Diary Became A Movie”](#), 1 April 2021 (MLI-D28-0008-0004).

⁴⁸ The Guardian, [My Brother’s Keeper: a former Guantánamo detainee, his guard and their unlikely friendship](#) (MLI-D28-0008-0005).

25. It is perhaps this point that will be of greatest relevance to the Chamber in its sentencing determination. Mr Ould Slahi was arrested on the basis of his ethnicity, his cultural milieu, and his religion. He was held without reason or charge for 14 years, during which time he was grossly mistreated by virtue of his background and circumstances. He should, by all accounts, have been hardened by his experience and seek vengeance afterward for all that he had suffered; it would have been entirely unsurprising to hear that he had been driven into extremism after the fact. And yet, he is proof that there is another way; that faith, healing, and forgiveness is more powerful than hate and vengeance, and that one's experiences, however appalling, need not define one's future:

“[w]hile I still live with the emotional effects of my mistreatment and imprisonment, I do not let the past define me.”⁴⁹

26. This is critical to the Chamber's assessment of Mr Al Hassan's own circumstances. It cannot be reasonably refuted that Mr Al Hassan has suffered mistreatment and torture in the early month subsequent to his arrest, even if he is now well looked after. It cannot be denied that he suffered, and continued to suffer, the physical and emotional effects of his mistreatment and continuing detention. It is incontrovertible that he has suffered great loss while in detention. But what Mr Ould Slahi demonstrates is that these devastating circumstances can lead to positive outcomes; one can choose to focus on forgiveness and direct one's energies into reconciliation, and eventually, healing.
27. Mr Al Hassan has expressed similar sentiments, indicating a desire not only to grant forgiveness to those who physically hurt him, but, importantly, to seek it. He wishes to commence the process of repairing and healing the harm he may have caused.⁵⁰ Like Mr Ould Slahi, he has emphasised the importance of sincere forgiveness, noting the importance of reconciling with those who have been hurt by his actions.
28. Mr Al Hassan has expressed his desire for a productive future: to provide for his children and to pursue a career in healthcare after his release.⁵¹ He has communicated his commitment to continue to live by the values of kindness and respect, which he intends to instil in his children, and which, as the Trial Chamber found in its Judgment, endeared him to those around him: “[h]e was generally well liked by the population,

⁴⁹ Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 18.

⁵⁰ Sentencing Statement of Mr Al Hassan, MLI-D28-0007-0640, paras. 45, 56-59.

⁵¹ Sentencing Statement of Mr Al Hassan, MLI-D28-0007-0640, para. 52.

notably because he was considered by many as someone who would (try to) help the people who sought him out.⁵² Mr Ould Slahi's statement will demonstrate that this desire for a quiet, family-oriented, and constructive life after sustained detention is indeed possible. It reflects one's ability, despite unimaginable difficulty and pain, to maintain a positive outlook, to envision a better future, and to live each day with hope: "I do not let the past define me."⁵³

V. CONCLUSION AND RELIEF REQUESTED

29. Mr Ould Slahi's testimony is, in all respects, a clear example of a "situation[] in which the prior recorded testimony provided by a witness is [...] of such nature that it is unnecessary that the witness be called to testify live, and examination by the parties may rather be dispensed of without prejudicing the rights of the accused."⁵⁴ His experience with detention, suffering, and building a life after trauma and loss, coupled with his first-hand knowledge of the power of faith in achieving forgiveness, speaks to Mr Al Hassan's own experiences, and would provide this Chamber with knowledge of a type and to a degree it would likely not otherwise be privy. This unique insight into Mr Al Hassan's individual circumstances may also well inform the Chamber's assessment of mitigating factors within the meaning of Rule 145(1)(b) and lead to a more just determination on sentence.
30. The proposed testimony does not involve issues "materially in dispute";⁵⁵ would serve the interests of justice as it is neither prejudicial to nor inconsistent with the rights of the accused – or with the fairness of the proceedings – as mandated by Rule 68(1) of the Rules;⁵⁶ is reliable and is an informed statement, consented to, signed by, and declared accurate by the witness;⁵⁷ and is credible and not so manifestly deficient or problematic such that the questioning of the witness at trial would be more

⁵² [Trial Judgment](#), para. 1070, fn. 3667, citing Statement of D-0627, MLI-D28-0006-5699-R01, para. 22.

⁵³ Annex A, Statement of Mohamedou Ould Slahi, MLI-D28-0007-0546-R01, para. 18.

⁵⁴ *Ongwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, ICC-02/04-01/15-596-Red, 18 November 2016, para. 20.

⁵⁵ *Ongwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, ICC-02/04-01/15-596-Red, 18 November 2016, para. 15.

⁵⁶ *Ongwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, ICC-02/04-01/15-596-Red, 18 November 2016, para. 16.

⁵⁷ *Ongwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, ICC-02/04-01/15-596-Red, 18 November 2016, para. 18.

appropriate.⁵⁸ It is entirely unique and is not duplicative in any way of evidence already admitted in the case record, and will assist the Chamber in balancing the dual goals of detention, that is to say, the aim of punishment balanced with successful rehabilitation and reintegration, a key consideration in determining the appropriate sentence.

31. For the reasons set out above, Trial Chamber X is respectfully requested to **ADMIT** into evidence the statement of Mr Mohamedou Ould Slahi through Rule 68(2)(b) of the Rules of Procedure and Evidence.



Melinda Taylor
Counsel for Mr Al Hassan

Respectfully submitted on this 22nd day of July 2024

At The Hague, The Netherlands

⁵⁸ *Onghwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, ICC-02/04-01/15-596-Red, 18 November 2016, para. 19.