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5 February 2021

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding
Judge Tomoko Akane
Judge Kimberly Prost

SITUATION IN THE REPUBLIC OF MALI

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

Public

With confidential Annex A

**Public redacted version of “Prosecution application under rule 68(3) to introduce
MLI-OTP-P-0639’s prior statement and associated material into evidence”,
27 November 2020, ICC-01/12-01/18-1166-Conf**

Source: Office of the Prosecutor

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

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Introduction

1. Pursuant to articles 64(9), 69(2)-(4) of the Statute and rules 63(2) and 68(3) of the Rules of Procedure and Evidence ("Rules"), the Prosecution requests Trial Chamber X's ("Chamber") authorisation to (i) introduce into evidence Witness P-0639's ("P-0639") prior recorded statement and associated material as specified in sections I and II of Annex A ("Annex") to the present application; and (ii) conduct a streamlined supplementary examination of one hour of Witness P-0639 ("Request").
2. P-0639 is a [REDACTED] Malian citizen who was in Timbuktu at the time of the events. In his prior recorded statement and associated material, P-0639 provides information on the situation in Timbuktu while under the control of the armed groups in 2012-2013, the restrictions imposed on the population and relevant incidents, which he either witnessed or has knowledge of.
3. P-0639 relates [REDACTED] for not obeying a request by the groups,¹ the arrest and imprisonment of [REDACTED] [REDACTED] for not being veiled,² the attempted arrest of [REDACTED] for not being completely covered,³ the flogging of [REDACTED] [REDACTED] for adultery,⁴ the destruction of the Sidi Mahamoud mausoleum,⁵ the amputation of Dédéou MAIGA's hand for theft⁶ and the arrest and detention of [REDACTED] [REDACTED] for violation of the dress code.⁷
4. P-0639's evidence is therefore relevant to the charges of torture both as a crime against humanity and war crime (counts 1 and 3), other inhumane acts as a crime against humanity (count 2), cruel treatment as a war crime (count 4), outrages upon

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

personal dignity as a war crime (count 5) passing of sentences as a war crime (count 6) and persecution as a crime against humanity (count 13).

5. Should this Request be granted, P-0639 will be asked to attest to the accuracy of his prior recorded statement and associated material during his testimony and confirm that he does not object to their submission into evidence.

6. Based on the Witness' evidence, the Prosecution estimates that it will require about one hour in total for the examination-in-chief of P-0639; in order to cover the formalities associated with the introduction into evidence of the witness's prior recorded testimony and associated material, and to conduct a supplementary examination to elicit further focused *viva voce* evidence of the particular incidents



7. Granting the Request would not be prejudicial to the rights of the Accused and would enhance the expeditiousness of the proceedings by keeping the length of Witness P-0639's in-court testimony considerably shorter than the originally projected five hours.

Confidentiality

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

Prosecution's Submissions

Request for authorisation to introduce P-0639's material into evidence

9. Rule 68(3) of the Rules provides that the Chamber may allow the introduction of the previously recorded testimony of a witness present before the Chamber where

the individual does not object to its submission, and the Parties and the Chamber have the opportunity to examine the witness.

10. The Prosecution identified P-0639 as an appropriate witness for the procedure under rule 68(3) of the Rules.

11. P-0639 is not scheduled to testify this year.⁸ This Request is therefore filed in accordance with the Chamber's instruction that rule 68(3) applications relating to any witnesses due to appear beyond the end of this year be filed by 30 November 2020.⁹

12. Sections I and II of the Annex appended to this application list the materials which the Prosecution seeks to introduce into evidence through P-0639. More precisely, section I of the Annex contains: 1) the witness statement¹⁰ and 2) Annexes 1 to 6 to the witness statement.¹¹ Section II contains: 1) thirty-three photographs¹² and four videos shown to P-0639 by the OTP investigators during the interview¹³ and 2) one Investigation Note.¹⁴

13. The materials listed in section I and II are relevant to the charges of torture both as a crime against humanity and war crime (counts 1 and 3), other inhumane acts as a crime against humanity (count 2), cruel treatment as a war crime (count 4), outrages upon personal dignity as a war crime (count 5) passing of sentences as a

⁸ ICC-01/12-01/18-805-Conf-AnxA, p. 1.

⁹ ICC-01/12-01/18-1004, para. 21.

¹⁰ Section I:

[REDACTED]

war crime (count 6) and persecution as a crime against humanity (count 13). They are also reliable and probative as further explained below.

(i) *Section I: The prior recorded statement*

14. P-0639's statement was taken in compliance with the formalities of rule 111 of the Rules.¹⁵ In his statement, P-0639 describes the crimes he witnessed while residing in Timbuktu and his knowledge of other crimes that also occurred during the occupation of the city.

15. P-0639 states that he was living in Timbuktu when the jihadists, who he also addresses as "les *malfauteurs*" arrived in April 2012.¹⁶ He recounts the imposition of a fundamentalist view of Sharia by the armed groups, which included the prohibition for men and women to be together while unmarried or mingling, on drinking alcohol, smoking cigarettes and listening to music.¹⁷ P-0639 states that while the Coran prohibited drinking alcohol, adultery or mingling between men and women even before the occupation of Timbuktu, this type of behaviour was not sanctioned.¹⁸ It was announced on the radio that patrols were being conducted in order to control the city and that those who did not abide by the newly imposed rules would be brought to the police at the *Commissariat* for the application of the Sharia law.¹⁹ P-0639 states that the population was unaccustomed to this type of strict imposition of the Sharia law,²⁰ which spread terror among the inhabitants of Timbuktu.²¹ As a result of the new regime, women stopped gathering in order to avoid problems.²²

16. P-0639 describes how there was an increase in the number of marriages. In contrast with the unattainably high rates of dowries prior to the occupation, which

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discouraged people from marrying, the armed groups imposed a ceiling on dowries.²³

17. P-0639 witnessed in person or has direct knowledge of the imposition of the Sharia law in Timbuktu, [REDACTED]

18. One morning, [REDACTED]
[REDACTED] when armed men ²⁴ arrived on a pick-up and chased [REDACTED] into the house for not wearing a veil. She was beaten during the arrest and imprisoned [REDACTED] Following her release she [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] P-0639 doesn't know what happened to [REDACTED] while in prison but he states: "*je sais qu'elle a subi des choses en prison*".²⁵

19. P-0639 [REDACTED] the arrest of [REDACTED] for not being fully covered. Two armed men, who were patrolling the streets on a late afternoon, saw [REDACTED]
[REDACTED] and irrupted into the house in order to arrest her. [REDACTED]

²⁶

20. P-0639 also witnessed the flogging of [REDACTED]
[REDACTED] for adultery. P-0639 first heard of the arrest and imprisonment [REDACTED]
[REDACTED]
[REDACTED] He went to see and witnessed the reading of the sentence and the flogging [REDACTED] but it was too much from him so he left before the 100 lashes were finished. [REDACTED]

²⁴ The Witness uses the term *malfaiteurs* to describe the armed men. Previously in the statement (at 0295, para. 23) the Witness indicates that he uses the term *malfaiteur* interchangeably with the terms *Djihadiste* and *bandits* to describe the armed men who occupied Timbuktu and wanted to apply Sharia law.

²⁵

[REDACTED]

[REDACTED] P-0639 states that the couple was imprisoned in the *Commissariat* because they were not married.²⁷

21. P-0639 did not see [REDACTED] but he [REDACTED]. He was told of the details concerning [REDACTED] 10 minutes later [REDACTED] who was present [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]²⁸

22. P-0639 also witnessed the destruction of the Sidi Mahamoud mausoleum²⁹ and Dédéou MAIGA's amputation. P-0639 knew Dédéou MAIGA, heard the announcement of the amputation of his hand for theft on the radio [REDACTED]

[REDACTED]³⁰

23. P-0639 also has relevant information regarding other incidents such as the flogging of a 50/60 years old man in the Youbou Tao market. P-0639 saw the man crying and was told that he had just been given 10 lashes for smoking.³¹ P-0639 was told by his friend [REDACTED] that he and [REDACTED]

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²⁸
²⁹
³⁰
³¹

29. Although P-0639 was only able to comment on seven of the photographs shown to him,⁴² the Prosecution requests that all of the remaining photographs should also be introduced into evidence under rule 68(3) of the Rules since all of them were shown to him and therefore constitute an integral part of the statement.⁴³ When shown these photographs, P-0639 identified and named amongst others Houka Houka,⁴⁴ whom he saw in a Television reportage⁴⁵ and Oumar OULD HAMAH⁴⁶ whom he saw [REDACTED] preaching the application of Sharia law.⁴⁷ Amongst the photographs, P-0639 also recognised the BMS as the headquarters of the “*malfaiteurs*”⁴⁸ and identified [REDACTED]
[REDACTED].⁴⁹

30. P-0639 was shown two still images from two videos where he identified the [REDACTED] in one⁵⁰ and the Sankoré neighbourhood in the other.⁵¹ In the other two videos he was shown, P-0639 identified the Youbou Tao market⁵² and the BMS⁵³ - both of which P-0639 speaks of in his statement.

(iv) *Section II: the Investigation note*

31. Soon after P-0639's statement was registered, a typographical error was noted in the ERN of one of the videos shown to the witness during the interview. The

⁴¹ [REDACTED]

⁴² [REDACTED]

⁴³ See ICC-01/12-01/18-987-Conf, ‘Decision on Prosecution’s requests to introduce prior recorded testimonies under Rule 68(3) of the Rules’, para. 12, 13 and 15.

⁴⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

mistake was promptly corrected in an Investigation note which was disclosed to the Defence.⁵⁴

Proposed procedure for the introduction of P-0639's prior statement and associated material

32. Should this Request be granted, the Prosecution submits that there will be no need to elicit all of the information provided by P-0639 in his prior statement as the witness will be asked to confirm its accuracy and to provide any necessary corrections or amendments.

33. During witness preparation, the Prosecution will ask P-0639, *inter alia*, to review his statement and associated material, to advise of any corrections or clarifications he wishes to make, and to confirm the accuracy of his prior recorded testimony.⁵⁵ In accordance with the Witness Preparation Protocol, this session will be video-recorded and the Prosecution will disclose a log of the session clearly indicating any changes or corrections made by the witness.⁵⁶

34. During P-0639's testimony the Prosecution will elicit any corrections or clarifications made by the witness during witness preparation.⁵⁷ The Prosecution will then ask the witness whether he has any further corrections or clarifications to make to his prior statement or associated material.

35. After tendering his prior recorded statement and associated materials, with any changes or clarifications noted on the record, the Prosecution will conduct a succinct supplementary examination of P-0639 to elicit further focused *viva voce* evidence of the incidents [REDACTED]

⁵⁴ [REDACTED]

⁵⁵ ICC-01/12-01/18-666-Anx, para.18-19.

⁵⁶ ICC-01/12-01/18-666-Anx, para.12-15, 31.

⁵⁷ ICC-01/12-01/18-666-Anx, para. 50.

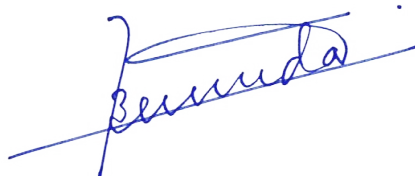
36. Finally, P-0639 will be asked to confirm the accuracy of his prior recorded statement and whether he consents to the submission of the prior statement and associated material, in accordance with rule 68(3) of the Rules. The Parties, the LRVs if applicable, and the Chamber will then have the opportunity to examine this witness during the proceedings.

37. As the Defence will have the opportunity to cross-examine the witness, the admission of P-0639's prior statements and associated material under rule 68(3) of the Rules will neither be prejudicial to nor inconsistent with the rights of the Accused.

38. The Prosecution estimates that without recourse to rule 68(3) of the Rules, it would require approximately five hours for the examination-in-chief of P-0639 in order to cover all the details provided in his prior statement as well as to elaborate on the materials associated to his statement. Granting this Request would enhance the expeditiousness of the proceedings by considerably reducing the length of P-0639's examination-in-chief.

Conclusion

39. For the foregoing reasons, the Prosecution requests the Chamber to authorise the introduction into evidence of Witness P-0639's statement as well as the material listed under sections I and II in the Annex pursuant to rule 68(3) of the Rules and to authorise the Prosecution to conduct a one hour supplementary examination-in-chief of Witness P-0639.



Fatou Bensouda, Prosecutor

Dated this 27th day of November 2020
At The Hague, The Netherlands