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TRIAL CHAMBER X

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

SITUATION IN THE REPUBLIC OF MALI

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

Public

With Confidential, *ex parte*, Annexes A to D [Prosecution and Defence only]

Public Redacted Version of “Defence Request for Leave to Appeal ‘Third Decision on notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court’”, 15 November 2021, ICC-01/12-01/18-1923-Conf

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. The Defence for Mr Al Hassan requests leave to appeal the ‘Third Decision on notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court’¹ (‘Third Decision’) in relation to:
 - a. **First**, the issue as to whether Trial Chamber X abused its discretion, and acted unreasonably, by making judicial determinations based on the testimony of P-0547, given the particular developments that arose during her testimony; and#
 - b. **Second**, whether the Chamber erred in procedure by failing to afford the Defence an opportunity to make oral or written submissions on this matter, before rendering the Third Decision.

II. Confidentiality

2. This request has been filed confidentially because it refers to the identity of Witness P-0547, a matter the subject of protective measures,² and consequentially elicited in private session. A public redacted version will be filed forthwith.

III. Procedural history

Procedural developments concerning the potential application of the charge of inhumane treatment in connection with P-0547

3. The corrected and amended Document Containing the Charges, as filed on 15 May 2019, contained an explicit strike through (deletion) as concerns the allegation that P-0547 fell under Article 8(2)(c)(i).³ The Prosecution also explicitly averred that it did not intend for the allegations of rape to be included in charges under Counts 1 to 5 for these victims.⁴
4. The Pre-Trial Chamber expressly declined to confirm the charges of other inhumane acts in relation to P-0547, due to the fact that it was not satisfied that the Prosecution

¹ [ICC-01/12-01/18-1897](#).

² ICC-01/12-01/18-1414-Conf-Red, paras 47-49.

³ ICC-01/12-01/18-347-Conf-Anx, p. 253.

⁴ ICC-01/12-01/18-461-Conf-Corr, para. 676.

had satisfied its evidential burden of demonstrating that the degree of suffering met the threshold of other inhumane acts as a crime against humanity.⁵ The case of P-0547 was thus distinguishable from other victims, where the Pre-Trial Chamber had confirmed this count on the basis of alleged facts that did not include rape.

5. In its First Decision on Regulation 55, the Trial Chamber reached the conclusion that it was not necessary to invoke Regulation 55 in order to incorporate additional confirmed facts into other confirmed charges (i.e. to rely on allegations of sexual violence in count 4).⁶ The Trial Chamber also noted that the Pre-Trial Chamber had declined to confirm Count 2 for P-0547 on the grounds that it found that the evidential threshold for inhumane treatment was not met.⁷ The Trial Chamber further observed that the Pre-Trial Chamber's conclusion had not taken into account allegations of sexual violence that were charged under Count 13: had the Chamber considered such matters, its conclusion may have differed.⁸ The Trial Chamber therefore indicated that it would be in a better position to assess whether the confirmed facts should be requalified to include this count, after hearing the testimony of P-0547.⁹
6. The Appeals Chamber found that the Trial Chamber had erred when it concluded that it was not necessary to rely on Regulation 55 in order to rely on allegations of sexual violence in connection with counts 1 to 4:¹⁰

When it appeared to the Trial Chamber, at any time during the trial, that it might consider the acts of rape under counts 1 to 5, the Trial Chamber ought to have followed the procedure set out in regulation 55(2) of the Regulations, with due regard to the rights of the accused person.

7. The Appeals Chamber further underscored that the application of Regulation 55 constitutes a procedural safeguard for rights of the Defence insofar as Regulation 55(3) requires the Chamber to take into account the defendant's right to time and facilities for

⁵ ICC-01/12-01/18-461-Conf-Corr, para. 335.

⁶ ICC-01/12-01/18-1211-Conf, para. 68.

⁷ ICC-01/12-01/18-1211-Conf, para. 72.

⁸ ICC-01/12-01/18-1211-Conf, para. 73.

⁹ ICC-01/12-01/18-1211-Conf, para. 74.

¹⁰ [ICC-01/12-01/18-1562-Red](#), para. 48.

the preparation of his defence or the right to examine again a previous witness or call a new witness.¹¹

8. On 20 September 2021, the Trial Chamber issued its Second Regulation 55 Decision, which gave notice that allegations of sexual violence could be included in count 4 in relation to P-0547.¹²
9. P-0547 testified just over one month later, from 26 to 28 October 2021.
10. On 8 November 2021, the Trial Chamber issued its ‘Third Decision on notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court’, in which the Chamber gave notice of its position that the requalified count 4 could be requalified to satisfy the elements of count 2, which specifically concerned the evidence of P-0547.¹³ The Chamber referred to its First Regulation 55 Decision, in which it had deferred its decision as to whether to provide notice of a possible requalification as concerns P-0547 until after it had heard P-0547’s testimony,¹⁴ and further found that since it had heard P-0547’s testimony, it was now in a position to make such a determination.¹⁵ The Chamber further found that the Defence was not prejudiced because:¹⁶

First, the Chamber deemed it necessary to hear the relevant evidence before making its definitive assessment on the Regulation 55 notice. Second, the Chamber notes that the Defence is informed in detail of the facts and circumstances relied upon for the proposed re-characterisations. Third, the Chamber observes that the Defence has been aware of the possibility of a Regulation 55(2) notice in light of PTC I’s clear indication to that effect, as well as the First Decision which indicated that a further assessment would be conducted upon hearing the testimony of the witness.

¹¹ [ICC-01/12-01/18-1562-Red](#), para. 66.

¹² ICC-01/12-01/18-1739-Conf.

¹³ [ICC-01/12-01/18-1897](#).

¹⁴ [ICC-01/12-01/18-1897](#), para. 10, referring to [ICC-01/12-01/18-1211-Red](#), para. 74.

¹⁵ ICC-01/12-01/18-T-153-CONF-ENG ET, p. 35.

¹⁶ [ICC-01/12-01/18-1897](#), para. 14.

Procedural developments concerning P-0547

11. Within the context of the Prosecution request to amend the charges to include additional incidents, the Prosecution disclosed first [REDACTED], and then [REDACTED], being investigators' notes purporting to contain the contents of exchanges between the Prosecution and [REDACTED] in relation to various individuals, including P-0547. The second investigator's note avers that:¹⁷

[REDACTED]

12. This investigator's note was the subject of correspondence and litigation in relation to the amendment request concerning [REDACTED]. Specifically, the Defence expressed concern regarding the vague and misleading manner in which the information in this note had been compiled and therefore requested the Prosecution to disclose the underlying original correspondence concerning this witness in order to avoid such issues.¹⁸ The Pre-Trial Chamber, in turn, found that the Prosecution had a proactive duty to correct erroneous factual assertions concerning its witnesses, and further, that:¹⁹

le Procureur aurait dû divulguer, comme il le lui était demandé par la défense, [REDACTED], même si pour ce faire elle aurait eu à expurger une grande partie du document, pour ne laisser visible que la partie concernant ce témoin (la « Troisième erreur »). Si la défense pense que le Procureur a fourni à la Chambre des informations erronées, sur la base desquelles, de surcroît, la Chambre a confirmé [REDACTED] à l'encontre de l'accusé, il est plus que légitime pour la défense, en charge de défendre les intérêts de M. Al Hassan, de chercher à faire la lumière sur ce point. Il était du devoir du Procureur de l'y aider et de répondre à ses sollicitations. Il ne revient pas au Procureur d'essayer, ou en donner l'apparence, de soustraire à la connaissance de la défense une erreur du Bureau du Procureur, qui révélerait une négligence dans la mise en œuvre de ses obligations, au premier rang desquelles son obligation de loyauté envers la défense et envers la Chambre.

¹⁷ [REDACTED].

¹⁸ ICC-01/12-01/18-847-Conf, paras. 18-20.

¹⁹ ICC-01/12-01/18-888-Conf, para. 35.

13. On 7 May 2020, pursuant to a disclosure request, the Prosecution sent the Defence table linking the Malian complaint pseudonyms to the ICC pseudonyms [REDACTED].²⁰
14. After the commencement of trial, the Defence again requested the Prosecution to disclose the original correspondence [REDACTED]. The Prosecution again rejected this request and avowed that the Defence could and should rely on the information contained within [REDACTED], [REDACTED], and the Prosecution's Amendment to its further observations regarding its request for corrections and amendments concerning the Confirmation Decision (ICC-01-/12-01/18-823-Conf).²¹
15. The statement [REDACTED].²² Since [REDACTED] and the Defence has not received the original recordings of this interview, it is not clear whether [REDACTED], or if this connection was made by the investigators who drafted the statement for signature.
16. On 26 October 2021, the Defence emailed the Prosecution to ask them to lift a redaction in [REDACTED]'s statement concerning [REDACTED], on the grounds that it related directly to the testimony of P-0547.²³ The paragraph in question referred exclusively to [REDACTED]. The Prosecution granted the request,²⁴ thus underscoring the belief of the Defence that this information pertained to a Prosecution witness – namely, P-0547.
17. On 27 October 2021, the Prosecution lifted the redactions to [REDACTED].²⁵ The names [REDACTED] correspond to [REDACTED]. The timing (during the testimony of P-0547) appeared to further affirm the connection between this document and P-0547.
18. The Defence included the [REDACTED] on its list of material for P-0547, which was communicated to the Prosecution on 26 October 2021. The Prosecution did not challenge or query the inclusion of this item on grounds of relevance before the commencement of Defence cross-examination. Rather, at the very end of Defence

²⁰ Annex A, p. 2.

²¹ Annex B, p. 2.

²² [REDACTED]. The evidence disclosed by the Prosecution uses both [REDACTED]. When this request refers directly to Prosecution documents, the spelling adopted in that document is used, but [REDACTED] is adopted in all other places given that it is consistent with the spelling used [REDACTED] in multiple documents.

²³ Annex C, p. 2 [REDACTED].

²⁴ Annex C, Email of 26 October 2021.

²⁵ [REDACTED].

cross-examination, at the point where the Defence attempted to put this document to P-0547, the Prosecution intervened in the following manner:²⁶

[REDACTED].

19. The position conveyed by the Prosecution explicitly contradicted the information set out in [REDACTED], namely that [REDACTED]. The Prosecution's claim that the accounts were so different so as to put the Defence on notice that they were different persons was also at odds with:

- a. the fact that both the Prosecution and [REDACTED] had referred to them as being the same person; and
- b. that both P-0547 and [REDACTED] gave very similar accounts, something which the Prosecution itself acknowledged in subsequent correspondence.²⁷

20. Article 71(g) of the Prosecutor's Code of Conduct specifies that the Prosecution shall "not deceive or knowingly mislead the Court, judge, counsel, or the Registry and take all necessary steps to correct an error or inaccuracy as soon as possible after it has been discovered": as soon as the Prosecution had reached a 'position' that [REDACTED] was not P-0547, this position should have been conveyed to the Defence and the Prosecution should have corrected the incorrect statements [REDACTED]. Since this did not occur, the Defence had no prior notice as concerns this change in 'position', and consequently conducted its investigations and cross-examination preparation on the basis of the Prosecution's prior avowal that P-0547 and [REDACTED] were the same person.²⁸ The tardy nature of this disclosure prevented the Defence from recalibrating its approach in its preparation for P-0547. The Defence therefore indicated to the Chamber that "there's a risk that we will have to recall this witness. We cannot conclude our cross-examination under the current circumstances."²⁹ After deliberating, the Chamber ruled that:³⁰

[REDACTED].

²⁶ [REDACTED].

²⁷ Annex D, p. 4 [REDACTED].

²⁸ ICC-01/12-01/18-T-153-CONF-ENG, p. 36 lines 5-26: [REDACTED].

²⁹ ICC-01/12-01/18-T-153-CONF-ENG ET, p.38, lns. 4-6.

³⁰ [REDACTED].

21. Following this hearing, the Defence sought additional disclosure from the Prosecution.

Rather than furnishing a clear and evidentially founded explanation as concerns when and how the Prosecution reached the position that P-0547 and [REDACTED] were different persons, the Prosecution furnished contradictory and/or incorrect information, namely:

- a. the Prosecution repeated incorrect information set out in [REDACTED] i.e. it averred that the names of the victims referred to in [REDACTED] were not known to the Prosecution at the time they contacted [REDACTED],³¹ even though the Pre-Trial Chamber expressly found that the Prosecution had [REDACTED];³²
- b. in an email dated 3 November 2021, the Prosecution wrote that it had concluded that [REDACTED], but on 5 November 2021, the Prosecution wrote that [REDACTED];³³ and
- c. the Prosecution claimed that it had [REDACTED],³⁴ even though [REDACTED] does exactly that.

22. Following these exchanges, the Prosecution disclosed late on Friday 12 November 2021 (with no contemporaneous accompanying letter or list), additional documentation suggesting that [REDACTED] are the same person, namely an email [REDACTED] attesting to this fact.³⁵ Additional elements were also disclosed concerning P-0547's interaction with [REDACTED], not as a victim, but as someone who was tasked with looking after other victims.³⁶ It would appear from this correspondence that the Prosecution did not attempt to conduct such checks [REDACTED] before advancing its in-court position that [REDACTED] were different persons.

³¹ [REDACTED].

³² ICC-01/12-01/18-888-Conf, paras. 33, 37. [REDACTED].

³³ Annex D, p. 2.

³⁴ Annex D, p. 2.

³⁵ [REDACTED].

³⁶ [REDACTED].

23. As things stand, if [REDACTED] are different persons, then there are grounds for concern as regards the circumstances [REDACTED] and the related risk of evidence contamination or fraudulent testimony.
24. Conversely, if they are the same person, then it is a matter of considerable concern that the Prosecution's unfounded objections led to the Defence being prevented from putting a prior account to P-0547 during her testimony and from laying a foundation for drawing adverse conclusions regarding her credibility [REDACTED].³⁷
25. In any event, pursuant to the Presiding Judge's determination, the Defence had an expectation that it would be afforded sufficient time to clarify and investigate such matters, with a view to determining whether P-0547 should be recalled to question her on such matters, or on the basis of the recalibrated Defence position concerning P-0547.

IV. Submissions

The Issues arise from the Third Decision

26. The central development underpinning the Third Decision was the Chamber's consideration of P-0547's testimonial account of being taken to the BMS and raped there. The Chamber conducted a factual evaluation of P-0547's testimony and reached a conclusion regarding her testimony, even though cross-examination could not be concluded, for reasons that were attributable to the conduct of the Prosecution. The Third Decision nonetheless makes no reference to the Defence concerns raised during the testimony of P-0547, which impact on the extent to which P-0547's testimony can be considered to have been 'heard', in a full and fair adversarial sense. The issue thus arises from the Decision as to whether the Trial Chamber abused its discretion, and acted unreasonably, by making judicial determinations concerning the degree of harm suffered by P-0547, based on the testimony of P-0547 ('the First Issue').
27. Since the Trial Chamber relied on the testimony of P-0547, its conclusion was informed by factual elements and procedural developments that were not in existence at the time that the Prosecution filed its Regulation 55 request or, when the First and Second Regulation 55 Decisions were issued. The Defence therefore had no opportunity to be heard in relation to whether the testimonial evidence of P-0547 could support

³⁷ [REDACTED].

requalification in question or whether such a requalification was consistent with Mr Al Hassan's fair trial rights. The issue therefore arises from the Decision as to whether the Chamber erred in procedure by failing to afford the Defence an opportunity to make oral or written submissions on this matter, before rendering the Third Decision ('the Second Issue').

The Issues significantly impact on the fair and expeditious conduct of the proceedings

28. The Trial Chamber listed three elements in support of its conclusion that the Defence were not prejudiced by the requalification: first, that the Chamber had 'heard' the testimony of P-0547 before making its determination; second, that the Defence was informed of the facts and circumstances relied upon for the proposed requalification; and third, that the Defence had been on notice of this possibility since the Pre-Trial Chamber indicated this possible course of action.³⁸ The Chamber thus considered that there was a direct nexus between 'hearing' the testimony of P-0547 and the fairness of the proceedings (in the sense of a lack of prejudice). Since the First Issue speaks directly to the question as to whether the testimony of P-0547 was actually 'heard', in the sense of being elicited in a procedurally fair and complete manner, the First Issue necessarily impacts on the fairness of the proceedings.
29. Since the Third Decision is predicated on the testimony of P-0547, the Chamber evidently evaluated P-0547's testimony for the purpose of assessing whether the elements of Count 2 are satisfied. This means that the Chamber has already reached factual determinations concerning her evidence. This impacts on the Chamber's ability impartially to assess a future request to recall P-0547 or strike aspects of her testimony that were affected by the Prosecution's conduct. In effect, the Defence will be compelled not only to meet the Prosecution's case led in examination-in-chief, but also to counter the conclusions that the Chamber has already reached as concerns the legal implications of this testimony.
30. The Second Issue concerns whether the Defence was afforded an effective opportunity to be heard on a key element that informed the Chamber's ultimate determination (that is, the testimony of P-0547). The right to be heard is a key aspect of the right to a fair

³⁸ [ICC-01/12-01/18-1897](#), para. 14.

trial since it ensures that the Chamber's rulings are informed by legal, procedural and factual arguments from the parties. As underlined by the ICTY Appeals Chamber in the *Jelusic* case:³⁹

The fact that a Trial Chamber has a right to decide *proprio motu* entitles it to make a decision whether or not invited to do so by a party; but the fact that it can do so does not relieve it of the normal duty of a judicial body first to hear a party whose rights can be affected by the decision to be made. Failure to hear a party against whom the Trial Chamber is provisionally inclined is not consistent with the requirement to hold a fair trial. The Rules must be read on this basis, that is to say, that they include a right of the parties to be heard in accordance with the judicial character of the Trial Chamber. The availability of this right to the prosecution and its exercise of the right can be of importance to the making of a correct decision by the Trial Chamber: the latter could benefit in substantial ways from the analysis of the evidence made by the prosecution and from its argument on the applicable law.

31. Indeed, since the Third Decision was issued while disclosure issues were still being resolved with the Prosecution, the Defence was given no opportunity to be heard on critical matters concerning the implications of these developments on P-0547's testimony and Mr Al Hassan's due process rights.

32. Both Issues also affect the expeditious conduct of the proceedings: the Appeals Chamber has described a change of this type as "significant", and one which "may in principle require additional preparations on the part of the Defence."⁴⁰

The Issues impact on the outcome of the trial

33. For this aspect of Article 82(1)(d), the Chamber "must ponder the possible implications of a given issue being wrongly decided on the outcome of the case. The exercise involves a forecast of the consequences of such an occurrence".⁴¹ The Chamber must

³⁹ [Appeals Judgment](#), para. 27.

⁴⁰ [ICC-01/12-01/18-1562-Red](#), para. 46.

⁴¹ [ICC-01/04-168](#), para. 13.

therefore consider what the implications for the trial could be if the Defence arguments concerning the First and Second Issue are founded.

34. For the First Issue, the Defence has argued that the testimony of P-0547 cannot be considered to have been heard, since the Defence was prevented from investigating and cross-examining P-0547 on issues concerning [REDACTED] and the evidence provided by this person.
35. This error affected the outcome of the Chamber's assessment as to whether the constituent elements of Count 2 appear to be met. Specifically, the evidence provided by [REDACTED] controverted key aspects of P-0547's testimony that were relevant to the Chamber's Regulation 55 requalification. For example, [REDACTED].⁴² This deviation is directly relevant to the question as to whether P-0547's rape can be tied to a common plan or organizational policy. The Chamber's findings concerning the 'unity of experience' were also predicated on the incident taking place at the BMS.⁴³ In contrast, [REDACTED] refers to being taken to [REDACTED].⁴⁴ These aspects undercut the linkage to both a common plan (concerning the application of aspects of Islamic law) and Mr Al Hassan's own position in Timbuktu. The Prosecution's failure to fulfil its investigative and disclosure duties in a timely and accurate manner also impeded the Defence from raising key credibility issues that relate to the reliability of P-0547's account of detention and rape.
36. As concerns the Second Issue, the Defence was afforded no opportunity to make arguments as concerns whether the actual testimony of P-0547 supported the Prosecution's charged case concerning Count 2, to a standard that would support a Regulation 55 requalification. There were, in this regard, critical inconsistencies concerning the timing of the incident,⁴⁵ and P-0547 provided an entirely implausible description of the BMS, which suggests that she has never been inside.⁴⁶ Her reliance

⁴² [REDACTED].

⁴³ [ICC-01/12-01/18-1211-Red](#), para. 61.

⁴⁴ [REDACTED].

⁴⁵ For example, whereas P-0547 claimed that the incident occurred [REDACTED] (ICC-01/12-01/18-T-151-CONF-ENG ET p. 21), she also testified that it [REDACTED] (ICC-01/12-01/18-T-153-CONF-ENG ET, p.4), and after [REDACTED] (ICC-01/12-01/18-T-153-CONF-ENG ET, p. 4), and further testified that [REDACTED] (ICC-01/12-01/18-T-153-CONF-ENG ET, p.8; ICC-01/12-01/18-T-152-CONF-ENG ET, p. 52).

⁴⁶ For example, P-0547 claimed to have [REDACTED] ICC-01/12-01/18-T-152-CONF-ENG ET, pp. 73; ICC-01/12-01/18-T-153-CONF-ENG ET, pp. 4, 17.

on descriptions [REDACTED] also points to testimonial contamination.⁴⁷ In order to tie her account to this specific case, there also needs to be a link to the defendant in the sense of there being *mens rea* and a contribution to the *actus reus*. P-0547 nonetheless testified that [REDACTED].⁴⁸ The fact that P-0547 was [REDACTED] also undermines allegations of foreseeability.

37. The Chamber's conclusion concerning the inclusion of rape in Count 2 was also premised on its finding that:⁴⁹

It is impossible in practice to dissociate [the act of rape and the other conditions of a victim's detention as a whole] and reach the conclusion that the victim suffered inhumane acts and cruel treatment "on the one hand" and a rape "on the other", because it was the same victim, the same person, who experienced those events at the same time or within a very short space of time' and that accordingly '[t]he act of rape does not exist separately from the context of other inhumane acts and cruel treatment but aggravates that context.

38. This finding derived from the First Regulation 55 Decision,⁵⁰ where the Chamber evaluated the position of P-0574, a witness for whom the Pre-Trial Chamber had already confirmed the charge of Count 2 in connection with the P-0547's arrest and the conditions of her detention. In contrast, the Pre-Trial Chamber found that the conditions of P-0547's arrest and detention (by her own account, she was only held for a matter of hours) did not satisfy this threshold. Given this dissonance, the Defence should have been granted an opportunity to advance submissions as concerns:

- a. whether P-0547's testimony constituted a basis for reversing the Pre-Trial Chamber's conclusions concerning the degree of suffering triggered by P-0547 being taken to the BMS and held there over the course of a matter of hours;
- b. whether the allegations of sexual violence (committed by an unknown perpetrator, who was not involved in P-0547's apprehension) were directly related to the confirmed facts underpinning P-0547's apprehension;

⁴⁷ ICC-01/12-01/18-T-153-CONF-ENG ET, pp. 14-15.

⁴⁸ ICC-01/12-01/18-T-152-CONF-ENG ET, pp. 16-17.

⁴⁹ [ICC-01/12-01/18-1897](#), para. 12.

⁵⁰ [ICC-01/12-01/18-1211-Red](#), para. 61.

- c. the specific scope of the confirmed facts underpinning the new requalified count; and
- d. the degree of prejudice ensuing from the Chamber's decision to both enlarge the factual parameters of the count and requalify the severity of the factual allegations as a whole.

39. If both Issue 1 and Issue 2 were wrongly decided, the Chamber's conclusion concerning the application of Count 2 to P-0547 (via Regulation 55) would be invalidated. Both Issue 1 and 2 therefore affect the outcome of the trial in the sense that they affect the question as to whether Mr Al Hassan can be tried and convicted for Count 2 in relation to P-0547.

An immediate decision of the Appeals Chamber would materially advance the proceedings

40. The Regulation 55 requalification to the incidents pertaining to P-0547 affect the gravity of the charges linked to this witness. The Third Decision heightens the importance of this witness at a time when the Defence has very limited time and resources to prepare the Defence case. An immediate appellate resolution would provide much needed clarity, which would help structure and focus Defence investigations and preparation.

41. Both Issues turn on the extent to which the Chamber adhered to adversarial requirements in evaluating the testimony of P-0547 and deciding on the application of Regulation 55. An immediate appellate adjudication of these issues would avoid the risk of reopening evidential issues on appeal or, voiding the Trial Chamber's ultimate findings concerning P-0547 due to the taint of partiality or the lack of due process afforded to the Defence to contest her evidence.

V. Relief Sought

42. For the reasons set out above, the Defence for Mr Al Hassan respectfully requests the Honourable Trial Chamber to grant leave to appeal in relation to the issues identified above (Issues 1 and 2).



Melinda Taylor
Counsel for Mr Al Hassan

Dated this 15th Day of November 2021
At The Hague, The Netherlands