

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **17 May 2022**

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

Request for late addition to Defence List of Evidence

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. Pursuant to Regulation 35 of the Regulations of the Court and the ‘Decision on Defence’s request seeking an extension of time for certain disclosures and addition of other material to its List of Evidence’,¹ the Defence respectfully requests the addition of the following items to its List of Evidence :

- 1) MLI-D28-0006-4829
- 2) MLI-D28-0006-4826
- 3) MLI-D28-0006-4824
- 4) MLI-D28-0006-4287-R01
- 5) MLI-D28-0006-4469-R01
- 6) MLI-D28-0006-4262
- 7) MLI-D28-0006-4263-R01
- 8) MLI-D28-0006-4264
- 9) MLI-D28-0006-4266-R01
- 10) MLI-D28-0006-4240-R01
- 11) MLI-D28-0006-4260-R01
- 12) MLI-D28-0006-4463
- 13) MLI-D28-0006-4838-R01
- 14) MLI-D28-0006-2781-R01

II. Submissions

2. On 22 April 2022, Trial Chamber X invited the Defence to submit any renewed request under Regulation 35 of the Regulation for last disclosure, late addition to the List of Evidence and any submission under Rule 68 of the Rules.²
3. The Defence will address the reasons for the sought inclusion of each item in accordance with their respective category of relevance.

¹ ICC-01/12-01/18-2204. The Defence filed its List of Evidence on 25 March 2022, ICC-01/12-01/18-2154-Conf-Anx1.

² ICC-01/12-01/18-2204, para. 15.

A. Items pertaining to the Defence Opening Statement of 09 May 2022

4. On 04 May 2022, the Single Judge granted the Defence email request to, *inter alia*, add MLI-D28-0006-4465 and MLI-D28-0006-4468 to its List of Evidence.³
5. During the Defence Opening Statement, the Defence presented, *inter alia*, the following videos: MLI-OTP-0015-0495;⁴ MLI-D28-0006-4465; MLI-D28-0006-4468. Their corresponding transcripts are, respectively: **MLI-D28-0006-4829; MLI-D28-0006-4826; MLI-D28-0006-4824**. The Defence requests the inclusion of these transcripts to its List of Evidence.
6. The inclusion of these items is without prejudice to the parties' preparations as they are limited in size and nature and their contents were provided through court interpreters and transcripts during the Opening Statement.⁵ Further, as the excerpts were used for the purpose of the Opening Statement, their delayed inclusion does not prejudice the parties' preparations of, for example, a cross-examination or oral debates.

B. Statements of Witnesses D-0524 and D-0611

7. The Defence requests the inclusion in its List of Evidence of the transcript of D-0611's statement (**MLI-D28-0006-4287-R01**) and the signed statement of D-0524 (**MLI-D28-0006-4469-R01**).
8. D-0524: the Defence had experienced delays in finalising the statement of D-0524, as explained in its Regulation 35 Request of 14 April 2022.⁶ The delays persisted for reasons beyond the Defence's control and the Defence obtained the signed statement as soon as these reasons no longer applied. The signed statement was disclosed to the parties immediately.⁷ The Defence refers further to the Trial Chamber's Decision of 22 April 2022,⁸ and accordingly seeks to include D-0524's statement in its List of Evidence

³ Email of the Single Judge on 04 May 2022, at 07:34.

⁴ This item is already on the Defence's List of Evidence.

⁵ ICC-01/12-01/18-T-172-CONF-ENG.

⁶ See Defence Regulation 35 Request of 14 April 2022, ICC-01/12-01/18-2202, paras 16-17.

⁷ MLI-D28-0006-4469-R01 signed on 05 May 2022 and disclosed under Trial Rule 78 D28 package 142 06 May 2022.

⁸ ICC-01/12-01/18-2204, paras 8 and 14.

with the view to submit, in due course, an application under Rule 68 of the Rules of Procedure and Evidence for the Chamber's assessment.

9. D-0611: the Defence takes note of the Single Judge's recommendation in the Status conference of 6 April 2022,⁹ and has accordingly sought to obtain a statement from D-0611. Due to the difficulties previously identified by the Defence,¹⁰ the Defence has only been able to provide a transcript of the statement's read-through session with D-0611 as an alternative to a signed statement. The Defence respectfully seeks to include this item in its List of Evidence with the view to submitting, in due course, a Rule 68 Application for the Chamber's assessment.

C. Items related to the testimony of D-0502

10. The Defence requests the inclusion in its List of Evidence the following items: **MLI-D28-0006-4240-R01** and **MLI-D28-0006-4260-R01**.
11. On 21 March 2022, the Defence disclosed D-0502's report and included it in its List of Evidence.¹¹ On 21 April 2022, D-0502 provided a corrigendum of the report¹² and an explanatory letter¹³ identifying three recently discovered typographical errors including one that significantly affects the meaning of the relevant assertion.
12. The Defence disclosed these two items expeditiously, on 25 April, for the purposes of accuracy and in order to provide ample time for the examination of the three errors well in advance of D-0502's testimony scheduled on 01 June 2022. Further, the three errors are limited in nature and the corrections therein do not prejudice the preparations for D-0502's in-court testimony and understanding of the relevant materials.

D. Items related to D-0516

13. The Defence requests the inclusion in its List of Evidence the following items: **MLI-D28-0006-4838-R01** and **MLI-D28-0006-2781-R01**.

⁹ ICC-01/12-01/18-T-171 RT, p. 14, lns 5-25.

¹⁰ ICC-01/12-01/18-2202, para. 25.

¹¹ MLI-D28-0005-9967-R01, already on the Defence's List of Evidence.

¹² MLI-D28-0006-4240-R01.

¹³ MLI-D28-0006-4260-R01, p. 4260

14. MLI-D28-0006-4838-R01 is an investigation note produced for the purpose of the Defence Request for Leave to Reply of 16 May 2022,¹⁴ as a result of arguments raised by the Prosecution which could not have been reasonably anticipated by the Defence.¹⁵
15. MLI-D28-0006-2781-R01 was disclosed for the purpose of the Defence Rule 68(3) application of 29 April 2022.¹⁶ The Defence refers to its previous submissions pertaining to the relevance of MLI-D28-0006-2781-R01.¹⁷

E. Item related to D-0539

16. The Defence requests the inclusion of **MLI-D28-0006-4463** in its List of Evidence. This item, as explained therein, is complementary to the statement of D-0539 and refers to an addendum to the statement.¹⁸ The Defence has disclosed the item expeditiously for the purposes of accuracy and to avoid any prejudice to the parties' preparations.
17. The Defence has thus far been unable to obtain a signed or transcribed version of the addendum referred to in MLI-D28-0006-4463 and will disclose it as soon as this is made possible.

F. Other items obtained recently by the Defence

18. The Defence requests the inclusion in its List of Evidence the following items: **MLI-D28-0006-4262**, **MLI-D28-0006-4263-R01** and their corresponding translations, **MLI-D28-0006-4264** and **MLI-D28-0006-4266-R01**, respectively.
19. These items are complementary to one item included on the List of Evidence pursuant to the Chamber's Decision on the Defence Regulation 35 of 14 April 2022.¹⁹ The items were disclosed as soon as they were obtained by the Defence and the reason for their delay is set out in the Defence's Regulation 35 Request of 14 April 2022.²⁰

¹⁴ ICC-01/12-01/18-2225-Conf, fn. 4.

¹⁵ ICC-01/12-01/18-2225-Conf, para. 5.

¹⁶ ICC-01/12-01/18-2208-Conf-Red.

¹⁷ ICC-01/12-01/18-2208-Conf-Red, fn. 23.

¹⁸ MLI-D28-0005-9317.

¹⁹ ICC-01/12-01/18-2204, para. 10; *see also* related Defence Regulation 35 Request ICC-01/12-01/18-2202-Conf-Red, para. 28.

²⁰ Defence Regulation 35 Request, ICC-01/12-01/18-2202-Conf-Red, para. 28.

20. The Defence intends to request the inclusion in its List of Evidence several items pertaining to the testimony of D-0025 scheduled on 28 May 2022. In the interests of expediency, the Defence will submit this request separately.

III. Relief Sought

21. For the reasons set out above, the Defence respectfully seeks Trial Chamber X's authorisation to include in its List of Evidence the items identified in these submissions.²¹



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Dated this 17th day of May 2022
At The Hague, The Netherlands

²¹ See above, para. 1.