

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **27 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 with Confidential Annex A

**Public Redacted Version of Defence application under Rule 68(3) to introduce
Witness D-0272 statement and associated exhibit into evidence and for examination
of this Witness, 18 May 2022, ICC-01/12-01/18-2229-Conf-Red**

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:

The Office of the Prosecutor

Karim A. A. Khan QC
Nazhat Shameem Khan
Mame Mandiaye Niang

Counsel for the Defence

Melinda Taylor
Michiel Pestman

Legal Representatives of the Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Counsel Support Section

Victims and Witnesses Unit
Nigel Verrill

Detention Section

**Victims Participation and
Reparations Section**

Other

I. Introduction

1. Pursuant to Rule 68(3) of the Rules of Procedure and Evidence ('Rules'), the Defence for Mr Al Hassan respectfully requests Trial Chamber X to allow the Defence to (i) introduce into evidence Witnesses D-0272 statement ('proposed statement')¹ and associated exhibit² and; (ii) conduct a brief supplementary examination of this Witness.
2. The Defence estimates that it will require 1 ¼ hours to examine D-0272 from original 4 hours,³ thus reducing the extent of in-court time expended in the examination of witnesses.⁴
3. The proposed statement is also relevant and cumulative of other Defence evidence and satisfy the requirements of Rule 68(3).
4. The Defence is aware that it submits this application less than 30 days prior to the start of the scheduled testimony of D-0272. However, in its email dated 10 May 2022,⁵ Trial Chamber X invited the Defence to propose new dates for the calling of additional Defence witnesses for the second half of June 2022. Consequently, the Defence had to brought D-0272 forward to the beginning of June as [REDACTED].

II. Level of confidentiality

5. Pursuant to regulation 23bis(1) of the Regulations of the Court, the Defence files this submission and its accompanying annex as confidential *ex parte* Defence and VWU only, because it contains sensitive *ex parte* information regarding the witness. The Defence will file a confidential redacted version immediately and a public redacted version in due course.

¹ MLI-D28-0006-4181-R01.

² MLI-D28-0006-4180.

³ [ICC-01/12-01/18-2152-Conf-Anx1](#).

⁴ See [ICC-01/12-01/18-1756](#), para. 14; [ICC-01/12-01/18-T-171-ENG](#), p.11, line 25 – p.12, line 7.

⁵ Email from Trial Chamber X communications sent on 10 May 2022 at 13:58.

III. Applicable law

6. The Defence incorporates by reference the applicable legal framework and jurisprudence as set out in its previous application under Rule 68(3).⁶
7. Exhibits associated with a previous recorder testimony have been found to be admissible if the witness “uses or explains them in the prior recorded testimony, and particularly when these are necessary to read and understand the prior recorded testimony being introduced.”⁷

IV. Submissions

8. The Proposed Evidence satisfies the requirements of Rule 68(3) because the witness will be (i) present in court; (ii) available for cross-examination by the Prosecution and questioning by the Legal Representatives of Victims and Trial Chamber X; and (iii) able to confirm his agreement to the introduction of the Rule 68(3) statement and to confirm that it accurately reflects what he has said. The Defence also requests the introduction of associated exhibit [REDACTED] which was shown to the witness. The Defence will additionally conduct a direct examination amounting to 1 ¼ hours to clarify and contextualise his evidence.
9. D-0272’s statement is short and contextual. [REDACTED].⁸ D-0272 was not present in Timbuktu during the period of the alleged charges, and therefore only provides peripheral testimony. The Defence submits that Rule 68(3) is the more appropriate and time-saving manner to hear the testimony of D-0272, as the fact that his testimony discusses [REDACTED]⁹ will be able to be tested by the parties and participants in Court.
10. D-0272 [REDACTED].¹⁰ His prior recorded testimony relates the situation of development in the North of Mali and Timbuktu before 2012, the insecurity and

⁶ [ICC-01/12-01/18-2208-Conf-Red](#), paras. 5-7.

⁷ [ICC-01/09-01/11-1938-Corr-Red2](#), para. 33; [ICC-01/04-02/06-1205](#), para. 7; [ICC-01/04-02/06-1029](#), para. 23, 35.

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ MLI-D28-0006-4181-R01 at 4182, 4185, paras. 6, 27.

stigmatisation, and justice in Mali, as relevant to the charges of passing sentences without due process (count 6), and for contextualization of the justice system before and during the presence of Ansar Dine.¹¹ It is also relevant to the nature of the alleged common plan to apply Sharia. Furthermore, it relates to the defence of mistake of law/facts. This evidence is corroborated by D-0219, D-0511, and D-0539. *Viva voce* evidence will also be presented on this point by D-0540.¹²

11. In 2012, just before the arrival of the MNLA, D-0272 [REDACTED]. From there, he remained in contact with people who stayed in Timbuktu.¹³ In his statement D-0272 discusses him reaching out to [REDACTED] in order to obtain the intervention of Mr Al Hassan in a matter of goods seized. D-0272 did not talk directly to Mr Al Hassan at that time but was informed afterwards that the problem had been resolved.¹⁴
12. Finally, D-0242 also testifies that [REDACTED] V-0001 and that she was not in a forced marriage with an Islamist, and had in fact accepted to marry because she had no money and it was a good situation for her.¹⁵ [REDACTED]¹⁶ was shown to the witness [REDACTED].¹⁷ Consequently, this exhibit is relevant to D-0242's prior recorded testimony and the Defence requests its introduction into evidence.
13. The Defence estimates that it will require in total 1 ¼ hours for the examination-in-chief of D-0272, for the formalities associated with the introduction into evidence of his statement and to conduct a succinct supplementary examination on the situation of Timbuktu before the arrival of the armed groups, [REDACTED] with Mr Al Hassan and the issue of forced marriages to further clarify his evidence.

V. Relief requested

14. For the foregoing reasons, the Defence respectfully requests Trial Chamber X to **GRANT** the present Rule 68(3) request and **ALLOW** the introduction of the

¹¹ MLI-D28-0006-4181-R01 at 4183, paras. 9-13.

¹² See [ICC-01/12-01/18-2203-Conf](#), para. 19.

¹³ MLI-D28-0006-4181-R01 at 4184-4185, paras. 18-21, 23, 25-27.

¹⁴ MLI-D28-0006-4181-R01 at 4184, para. 22.

¹⁵ MLI-D28-0006-4181-R01 at 4185, para. 28.

¹⁶ [REDACTED].

¹⁷ [REDACTED].

proposed statement and associated exhibit of D-0272 pursuant to Rule 68(3) of the Rules.



Melinda Taylor
Counsel for Mr. Al Hassan

Dated this 27th Day of May 2022
At The Hague, The Netherlands