



Original: English

No. **ICC-01/12-01/18**
Date of original: **5 August 2020**
Date: **21 October 2020**

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
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 redacted version of the
Decision on Prosecution's proposed expert witnesses**

Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Fatou Bensouda
James Stewart

Counsel for the Defence

Melinda Taylor
Nicoletta Montefusco

Legal Representatives of Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

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

TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, pursuant to Articles 64(2), 67(1)(c) and 69(2) of the Rome Statute (the ‘Statute’), and Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s proposed expert witnesses’.

I. Procedural history and submissions

1. On 6 May 2020, the Chamber adopted the ‘Directions on the conduct of proceedings’.¹
2. On 1 and 2 June 2020, in line with the deadline set by the Chamber,² the Office of the Prosecutor (the ‘Prosecution’) filed a series of requests related to 27 proposed expert witnesses.
3. The Prosecution asks the Chamber to authorise that the following 10 witnesses testify as expert witnesses: P-0205, P-0206, P-0431, P-0555, P-0587, P-0590, P-0598, P-0617, P-0643 and P-0662.³ It also seeks leave to file an application pursuant to Regulation 35 of the Regulations of the Court (the ‘Regulations’) to introduce evidence past the aforesaid deadline, in respect of two proposed expert witnesses, namely P-0660 and P-0661 whose reports are pending, and makes applications pursuant to Regulation 35 in relation to other material related to P-0587, P-0617 and P-0662 and P-0643.⁴
4. The Prosecution also seeks the introduction of material pursuant to Rule 68(3) of the Rules in relation to 12 other proposed expert witnesses,⁵ notably P-0152,

¹ Decision on the conduct of proceedings and Annex A, 6 May 2020, ICC-01/12-01/18-789 and AnxA (‘Directions on the conduct of proceedings’).

² Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 67.

³ Prosecution application related to proposed experts, 1 June 2020, ICC-01/12-01/18-842-Conf (the ‘Experts Request’). A public redacted version was filed on 7 July 2020.

⁴ Experts Request, ICC-01/12-01/18-842-Conf, paras 3-4.

⁵ Prosecution application to call Witness MLI-OTP-P-0152 as an expert and to introduce his report and associated material into evidence, 1 June 2020, ICC-01/12-01/18-837-Conf (the ‘P-0152 Request’); Prosecution application to call Witnesses MLI-OTP-P-0653 and MLI-OTP-P-0655 as experts, to introduce their reports and associated material into evidence, and regulation 35 request, 1 June 2020, ICC-01/12-01/18-843-Conf (with confidential Annexes A and B) (the ‘P-0653 and P-0655 Request’); Prosecution application to call Witnesses MLI-OTP-P-0104 and MLI-OTP-P-0151 as experts and to introduce expert reports and prior recorded testimony and associated material into evidence, 1 June

P-0653, P-0655, P-0104, P-0151, P-0620, P-0621, P-0657, P-0102, P-0064, P-0635 and P-0075. The Prosecution also makes requests under Regulation 35 of the Regulations with regard to the *curriculum vitae* (the ‘CV’) of P-0653 and P-0655, two items related to P-0102 and three items related to P-0075.⁶

5. On 22 June 2020, the Defence filed its response to the Request (the ‘Defence Response’). The Defence does not object in principle to the calling as expert witnesses of P-0205, P-0206, P-0555, P-0660, P-0661 and P-0064. However, it challenges the expertise, relevance and/or probative value of P-0431, P-0587, P-0617, P-0590, P-0152 and P-0598. It is also opposed to the mode of testimony and/or methodology suggested for P-0643, P-0662, P-0653, P-0635, P-0075, P-0102, P-0104 and P-0151. As regards P-0655, P-0620 and P-0657, the Defence submits their testimonies should be suspended pending the outcome of the Defence Request to terminate the proceedings (the ‘Termination Motion’).⁷
6. On 8 July 2020, with the leave of the Chamber, the Prosecution filed a reply addressing some discrete issues raised in the Defence Response (the ‘Reply’).⁸

2020, ICC-01/12-01/18-845-Conf (with confidential Annexes A and B) (the ‘P-0104 and P-0151 Request’); Prosecution application to call Witnesses MLI-OTP-P-0620, MLI-OTP-P-0621, and MLI-OTP-P-0657 as experts and to introduce their reports and associated material into evidence, 1 June 2020, ICC-01/12-01/18-848-Conf+Conf-Anxs (the ‘P-0620, P-0621 and P-0657 Request’); Prosecution application to admit Witness MLI-OTP-P-0102’s reports and associated material, and regulation 35 request, 2 June 2020, ICC-01/12-01/18-850-Conf+Conf-AnxA (the ‘P-0102 Request’); Prosecution application to call Witnesses MLI-OTP-P-0064, MLI-OTP-P-0635 and MLI-OTP-P-0075 as experts and to introduce their reports and associated material into evidence, and regulation 35 request, 1 June 2020, ICC-01/12-01/18-851-Conf+Conf-Anxs (the ‘P-0064, P-0635 and P-0075 Request’); Subsequently, the Prosecution filed public redacted version of these filings (except for ICC-01/12-01/18-845-Conf, which is still pending).

⁶ P-0653 and P-0655 Request, ICC-01/12-01/18-843-Conf, para. 32; P-0102 Request, ICC-01/12-01/18-850-Conf, para. 5; P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, paras 51-54.

⁷ Defence response to the Prosecution expert witness requests, 23 June 2020, ICC-01/12-01/18-895-Conf (the ‘Defence Response’) (with Confidential *ex parte* Annexes A and B), paras 45, 47-48. *See also* Corrigendum to “Defence Request to terminate the proceedings”, 25 June 2020, ICC-01/12-01/18-885-Conf-Exp-Corr (‘Termination Motion’) (with Confidential Annexes A, B, G-I and Confidential *ex parte* Annexes C, D, F, J) (a confidential redacted version was filed that same date; a public redacted version was also filed).

⁸ Prosecution reply to Defence response to the Prosecution expert witness requests, 8 July 2020, ICC-01/12-01/18-937-Conf (‘Reply’). *See* Email from the Chamber, 2 July 2020, at 9:55, authorising the Prosecution request for leave to reply. *See also* Prosecution’s request for leave to reply to the Defence response to the Prosecution expert witness requests, 29 June 2020, ICC-01/12-01/18-911-Conf; Defence response to “Prosecution’s request for leave to reply to the Defence response to the Prosecution expert witness requests, ICC-01/12-01/18-895-Conf” (ICC-01/12-01/18-911-Conf), 1 July 2020, ICC-01/12-01/18-917-Conf.

II. Analysis

A. Preliminary considerations

7. At the outset, the Chamber notes that the Prosecution has incorporated in its requests applications under Regulation 35 of the Regulations in relation to several items of evidence. The Chamber has decided on these applications together in a separate decision.⁹
8. The Chamber also notes that in the Defence Response, the Defence makes submissions related to the order in which witnesses will be called. The Chamber has also dealt with this separately and will thus not address these submissions in the current decision.¹⁰

B. General Framework

9. The Chamber recalls that in its Directions on the conduct of proceedings, it adopted a procedure that enables the parties to raise any objections in relation to proposed expert witnesses at an early stage:

66. The Prosecution was instructed to provide, by 14 April 2020, its final list of witnesses, including any witnesses it wishes to call as an expert, and, by 12 May 2020 at the latest, disclosure of all evidence it intends to rely on. This includes the full statement and/or report of any expert witness to be called by the Prosecution.

67. At the latest 20 days after the full disclosure deadline, the Prosecution shall file motivated applications seeking the Chamber's authorisation to call any of its witnesses as an expert.

68. Objections, if any, shall be filed within 10 days of notification of any such application and shall set out:

- i. any challenge to the report prepared by a witness sought to be considered as an expert's report;
- ii. any challenge to the qualifications of a witness as an expert or to the relevance of the report; and/or
- iii. notice of the participant's wish to question the witness.

⁹ Decision on the Prosecution requests pursuant to Regulation 35 regarding P-0660 and P-0661 and to add 12 items to its Final List of Evidence, 5 August 2020, ICC-01/12-01/18-988-Conf.

¹⁰ Decision on the Prosecution's witness order and variation of time limit for filing applications for in-court protective measures, 22 July 2020, ICC-01/12-01/18-968.

69. Where the Defence accepts the statement and/or report of a proposed Prosecution expert witness and does not wish to question his or her, the Chamber may decide that the relevant materials can be tendered into evidence without calling the expert witness to testify in person.

70. The procedure set out in sections I.F.3 and I.F.4 in relation to the scope and mode of questioning of witnesses appearing in court shall, unless otherwise ordered, apply *mutatis mutandis* to the examination of expert witnesses.¹¹

10. As regards the use of Rule 68(3) of the Rules, the Chamber incorporates by reference the applicable legal framework as set out in the Chamber's Decision on Prosecution's requests to introduce prior recorded testimonies under Rule 68(3) of the Rules (the 'Rule 68(3) Decision'),¹² and the Directions on the conduct of proceedings.¹³
11. The main objective of the present decision is to decide whether the Prosecution is authorised to call certain witnesses as experts. The Chamber recalls that in the exercise of its discretion, it determined that as a general rule, it will not decide on the admissibility of evidence until the end of the trial.¹⁴ Hence, the Chamber will not decide on the admissibility of the proposed evidence. Instead, the Chamber will rule on those aspects of the Defence challenges that it considers necessary to ensure a fair and expeditious trial, in order to avoid unnecessary litigation during trial and in the course of the proposed expert testimonies. The Chamber considers that a preliminary ruling can inform the parties as to what kinds of anticipated testimony would be objectionable and clarify the circumstances under which the introduction of documentary evidence is appropriate.¹⁵ This preliminary ruling will also identify areas where there appear to be agreements and disagreements among the parties, either as regard the qualifications of the proposed expert witnesses or their reports.¹⁶

¹¹ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para.70 (footnotes omitted).

¹² Decision on Prosecution's requests to introduce prior recorded testimonies under Rule 68(3) of the Rules, 5 August 2020, ICC-01/12-01/18-987-Conf.

¹³ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, paras 63-65.

¹⁴ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, paras 27-30.

¹⁵ Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, 7 August 2013, ICC-01/09-01/11-844 ('*Ruto and Sang Expert Decision*'), para. 15.

¹⁶ Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the procedures to be adopted for instructing expert witnesses, 10 December 2007, ICC-01/04-01/06-1069, para. 16.

12. Hence, a final decision of the Chamber as to the admissibility of the expert evidence can only be made upon the submission of the evidence and the conclusion of the expert testimonies, having afforded the parties and participants with the opportunity to make any relevant submissions as regards the admissibility of the proposed expert evidence. The Chamber may still decide to rule on specific objections to the expert witness's testimony, including his/her qualifications as an expert, at a later stage, as they may arise during the trial.¹⁷
13. The Chamber will also make a preliminary decision in relation to those proposed experts for which the Prosecution requests their testimony be heard pursuant to Rule 68(3) of the Rules.

C. Expert witnesses and expert evidence

14. The Chamber considers that expert witnesses are persons 'who, by virtue of some specialised knowledge, skill or training can assist the Chamber in understanding or determining an issue of a technical nature that is in dispute'.¹⁸
15. Pursuant to Regulation 44(1) of the Regulations, the Chamber's decision as to whether a person is an expert is discretionary.¹⁹ Moreover, although the fact that a person is included in the Registry's List of Experts may be of relevance, it is not determinative or required.
16. In order to determine whether the testimony of a witness and his or her report may be introduced as expert evidence, the Chamber must consider whether: (i) the witness is an expert as defined above; (ii) the testimony in the subject area of expertise would be of assistance to the Chamber; (iii) the content of the report and/or the anticipated testimony falls within the area of expertise of the

¹⁷ *Ruto and Sang* Expert Decision, ICC-01/09-01/11-844, para. 25.

¹⁸ Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Decision on Defence preliminary challenges to Prosecution's expert witnesses, 9 February 2016, ICC-01/04-02-06-1159, para. 7 ('*Ntaganda* Expert Decision'); Trial Chamber V-A, *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, 7 August 2013, ICC-01/09-01/11-844, para. 11; *Referring to ICTY, Prosecutor v. Vujadin Popović et al.*, Decision on Joint Defence Interlocutory Appeal Concerning Status of Richard Butler as an Expert Witness, 30 January 2008, IT-05-88-AR73.2, para. 27 ('*Popović* Expert Appeal'); ICTY, *Prosecutor v. Ratko Mladić*, Decision on Defence Request to Disqualify Richard Butler as an Expert and Bar the Prosecution from Presenting his Reports, 19 October 2012, IT-09-92-T, para. 8 ('*Mladić* Expert Decision').

¹⁹ *Ruto and Sang* Expert Decision, ICC-01/09-01/11-844, para. 12.

witness; and (iv) the content of the report and/or the anticipated testimony does not usurp the functions of the Chamber as the ultimate arbiter of fact and law.²⁰

17. Unlike other witnesses, expert witnesses ‘are ordinarily afforded wide latitude to offer opinions within their expertise and their views need not to be based upon first-hand knowledge or experience’.²¹ However, expert witnesses are still under the obligation to testify with the ‘utmost neutrality and objectivity’.²² Bearing in mind the Chamber’s functions, opinion evidence provided by experts cannot go into issues such as the guilt or innocence of the accused or whether contextual, material or mental elements of the crimes charged are satisfied.²³

D. The proposed expert witnesses

18. The Chamber will now turn to the proposed expert witnesses, and where applicable, introduction of their testimony and reports under Rule 68(3) of the Rules.

1. P-0205 and P-0206

Submissions

19. The Prosecution submits that these two individuals, experts on data analysis, co-authored a report on the analysis of [REDACTED] that will be of assistance in identifying the date of entry of armed groups into the city of Timbuktu at the relevant time of the charges.²⁴

²⁰ *Ntaganda* Expert Decision, ICC-01/04-02/06-1159, para. 8. *Referring to Ruto and Sang* Expert Decision, ICC-01/09-01/11-844, para. 12; *Popovi* Expert Appeal, IT-05-88-AR73.2, para. 27; *Mladi* Expert Decision, IT-09-92-T, para. 8. *See also* ICTY, *Prosecutor v. Vujadin Popovi et al.*, Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas, 1 July 2008, IT-05-88-T, para. 7 (*‘Popovi Schabas Decision’*).

²¹ *Ntaganda* Expert Decision, ICC-01/04-02/06-1159, para. 9.

²² *Ntaganda* Expert Decision, ICC-01/04-02/06-1159, para. 9. *Referring to* ICTY, *Mladi* Expert Decision, para. 9, making reference to *Prosecutor v. Ferdinand Nahimana et al.*, Appeals Judgment, 28 November 2007, ICTR-99-52-A, para. 199.

²³ *Ruto and Sang* Expert Decision, ICC-01/09-01/11-844, para. 13.

²⁴ Experts Request, ICC-01/12-01/18-842-Conf, para. 8.

20. The Defence does not object to their qualifications or to the submission of their report.²⁵

Analysis

21. The Chamber notes that P-0205 and P-0206 have the relevant academic and professional expertise in information technology and specifically in the field of forensics in the context of police and judicial work.²⁶ It also notes the Defence does not oppose their proposed expert evidence. Accordingly, the Chamber finds that P-0205 and P-0206 may be called to testify as expert witnesses.

2. P-0431

Submissions

22. The Prosecution submits that P-0431, an expert on cultural heritage in Mali, and who testified as an expert in the case of the *Prosecutor v. Al Mahdi* (the ‘*Al Mahdi* case’), could provide testimony that could assist the Chamber’s assessment of the facts related to counts 7 and 13 of the charges, in particular the importance of the mausoleums and the legal regimes of protection of Timbuktu’s heritage.²⁷
23. The Defence submits that the fact P-0431 testified as an expert in the *Al Mahdi* case does not mean he satisfies the criteria to be recognised as an expert in this case.²⁸ The Defence also argues that since the Prosecution has not submitted an expert report and considering the lack of any technical information in his statement, his evidence should be qualified as opinion and thus excluded.²⁹ The Defence states that P-0431 lacks expertise and impartiality and that the evidence proposed is fact evidence that should not be adduced through an expert.³⁰ The

²⁵ Defence Response, ICC-01/12-01/18-895-Conf, para. 4.

²⁶ Experts Request, ICC-01/12-01/18-842-Conf, paras 9-10.

²⁷ Experts Request, ICC-01/12-01/18-842-Conf, para. 13.

²⁸ Defence Response, ICC-01/12-01/18-895-Conf, para. 5.

²⁹ Defence Response, ICC-01/12-01/18-895-Conf, para. 7.

³⁰ Defence Response, ICC-01/12-01/18-895-Conf, paras 8-11.

Defence also submits that the Prosecution only disclosed P-0431's statement [REDACTED] in February 2020.³¹

24. In its Reply, the Prosecution clarifies that P-0431's statement was first disclosed to the Defence on 11 September 2018. The Prosecution states that although the Defence did not have the identity of the witness until February 2020, it was already in a position to assess the evidence of the witness at that point in time.³²

Analysis

25. The Chamber notes that P-0431 has the relevant academic and professional expertise.³³ It also notes that P-0431 testified as an expert in the context of the *Al Mahdi* case, which shares contextual elements with this case. Accordingly, the Chamber disagrees with the submissions of the Defence and is of the view that P-0431 possesses sufficient qualifications to be called as an expert in this case. The Chamber also does not consider that expert evidence has to be technical in order to qualify as such. There may be areas of expertise that are not technical in nature, particularly as regards social sciences and specific areas such as culture. Accordingly, the Chamber finds that P-0431 may be called to testify as expert witnesses.

3. P-0555

Submissions

26. The Prosecution submits that P-0555, a forensic audio consultant [REDACTED].³⁴ The Prosecution further notes that it intends to submit P-0555's evidence via Rule 68(2)(b) of the Rules.³⁵
27. The Defence does not object to P-0555's qualifications. The Defence however submits that the Prosecution only disclosed P-0555's statement [REDACTED]

³¹ Defence Response, ICC-01/12-01/18-895-Conf, para. 12.

³² Reply, ICC-01/12-01/18-937-Conf, paras 8-11.

³³ Experts Request, ICC-01/12-01/18-842-Conf, para. 14.

³⁴ Experts Request, ICC-01/12-01/18-842-Conf, paras 16, 19.

³⁵ Experts Request, ICC-01/12-01/18-842-Conf, para. 20.

in February 2020.³⁶ The Defence also contends that P-0555 may be unreliable as he does not speak Arabic. It therefore submits that the witness should testify live.³⁷

Analysis

28. The Chamber notes that although the Defence raises issues of reliability, it does not object to P-0555's expertise or report. The Chamber however notes that the Defence wishes to cross-examine the witness.
29. Accordingly, the Chamber finds that P-0555 may be called to testify as an expert witness. The Chamber will decide in due course, and once the Prosecution formally requests the introduction of his evidence pursuant to Rule 68 of the Rules, on the appropriate mode of testimony for this witness.

4. P-0587 and P-0617

Submissions

30. The Prosecution submits that P-0587 and P-0617, experts on the analysis of call data records (hereinafter: 'CDRs'), [REDACTED] could assist the Chamber. [REDACTED].³⁸
31. [REDACTED].³⁹ The Defence also argues that the experts' conclusions are premised on assumptions (*i.e.* authenticity of CDRs). In its view, expert evidence that is based on unreliable or inadmissible evidence has no probative value.⁴⁰ The Defence also contends that it would be inappropriate to elicit expert evidence on issues of responsibility (*i.e.* the accused's contribution to the crimes charged).⁴¹ The Defence further submits that the report is of marginal

³⁶ Defence Response, ICC-01/12-01/18-895-Conf, para. 13.

³⁷ Defence Response, ICC-01/12-01/18-895-Conf, para. 14.

³⁸ Experts Request, ICC-01/12-01/18-842-Conf, paras 21, 24.

³⁹ Defence Response, ICC-01/12-01/18-895-Conf, paras 16-17.

⁴⁰ Defence Response, ICC-01/12-01/18-895-Conf, para. 18.

⁴¹ Defence Response, ICC-01/12-01/18-895-Conf, para. 19.

importance to the resolution of issues in this case and would not assist the Chamber.⁴²

Analysis

32. The Chamber notes that P-0587 and P-0617 have the relevant academic and professional expertise in the area of criminal analysis, including CDRs.⁴³ The Chamber further notes that the Defence does not dispute their general expertise in CDRs but the fact that this is based on [REDACTED]. Contrary to the submission of the Defence, the Chamber considers that the expertise of P-0587 and P-0617 may assist the Chamber, including in order to determine whether, as suggested by the Defence, [REDACTED]. Accordingly, the Chamber finds that P-0587 and P-0617 may be called to testify as expert witnesses.

5. P-0590

Submissions

33. The Prosecution submits that P-0590, a medical doctor [REDACTED],⁴⁴ [REDACTED] will be of assistance to the Chamber [REDACTED].⁴⁵ The Prosecution foresees the submission of his report via Rule 68(3) of the Rules.⁴⁶
34. The Defence opposes this expert and challenges his independence and expertise [REDACTED].⁴⁷ The Defence also submits that since it has extensive concerns as regards the examinations conducted, it should be afforded full opportunity to question P-0590.⁴⁸
35. In its Reply, the Prosecution submits that the Defence mischaracterises the report of P-0590 and [REDACTED].⁴⁹

⁴² Defence Response, ICC-01/12-01/18-895-Conf, para. 20.

⁴³ Experts Request, ICC-01/12-01/18-842-Conf, paras 21-23.

⁴⁴ P-0537, P-0582, P-0605, P-0626, P-0634, P-0647.

⁴⁵ Experts Request, ICC-01/12-01/18-842-Conf, paras 29-32.

⁴⁶ Experts Request, ICC-01/12-01/18-842-Conf, para. 33.

⁴⁷ Defence Response, ICC-01/12-01/18-895-Conf, para. 21.

⁴⁸ Defence Response, ICC-01/12-01/18-895-Conf, para. 22.

⁴⁹ Reply, ICC-01/12-01/18-937-Conf, paras 12-13.

Analysis

36. The Chamber notes that P-0590 has the relevant academic and professional medical and forensic expertise, including in the African context.⁵⁰ The Chamber notes that the Defence's challenges in relation to P-0590 are also related to another pending motion, namely its Termination Motion.⁵¹ Without prejudice to the Chamber's determination of the Termination Motion, the Chamber considers that P-0590 may be called to testify as an expert. The expertise of P-0590 may assist the Chamber, including in the determination, as suggested by the Defence, [REDACTED]. The Chamber will decide in due course, and once the Prosecution formally requests the introduction of his evidence pursuant to Rule 68 of the Rules, on the appropriate mode of testimony for this witness.

6. P-0598

Submissions

37. The Prosecution submits that P-0598, a medical doctor and forensic expert, [REDACTED], will assist the Chamber in the assessment of the facts related to this individual.⁵²
38. The Defence does not dispute P-0598's expertise. However, it disputes the need to call him to testify, given that his report is 'self-contained' and of a limited nature.⁵³

Analysis

39. The Chamber notes that the Defence does not object to this witness's expertise. However, in light of the Defence's observations, consideration should be given to the introduction of his evidence pursuant to Rule 68 of the Rules.⁵⁴ Accordingly, the Chamber considers that P-0598 may be called to testify as an

⁵⁰ Experts Request, ICC-01/12-01/18-842-Conf, paras 30-31.

⁵¹ Termination Motion, ICC-01/12-01/18-885-Conf-Exp-Corr, paras 84, 85, 90.

⁵² Experts Request, ICC-01/12-01/18-842-Conf, paras 34, 38.

⁵³ Defence Response, ICC-01/12-01/18-895-Conf, para. 23.

⁵⁴ See Annex A to the Dépôt de la Liste des témoins de l'Accusation, des résumés desdits témoins et de la Liste provisoire des éléments de preuve à charge, 15 April 2020, ICC-01/12-01/18-740-Conf-AnxA.

expert. The Chamber will decide in due course, and once the Prosecution formally requests the introduction of his evidence pursuant to Rule 68 of the Rules, on the appropriate mode of testimony for this witness.

7. P-0643

Submissions

40. The Prosecution submits that P-0643, an expert in public law and the legal framework and national laws [REDACTED], will assist the Chamber in its assessment of counts 6 and 13, [REDACTED].⁵⁵ The Prosecution notes that it does not have a witness statement yet for this witness and it has yet to determine the topics his testimony will cover. It indicates that it will submit a request under Regulation 35 of the Regulations in due course and suggests that the Chamber may decide then to qualify P-0643 as an expert on all topics or decide that for certain topics he testifies as a fact witness.⁵⁶
41. The Defence does not dispute that P-0643 may qualify as an expert [REDACTED]. The Defence submits that many of the issues proposed could intrude on ultimate issues before the Chamber. It also argues that P-0643 lacks independence and impartiality, and that late disclosure of material related to this witness may be prejudicial to the Defence.⁵⁷ The Defence also objects to P-0643 being called both as an expert and a fact witness.⁵⁸ It also raises issues as regards the sources used by P-0643 to obtain information.⁵⁹

Analysis

42. The Chamber notes that P-0643 has extensive academic and professional expertise in the area of law, [REDACTED].⁶⁰ It also notes that the Defence does not contest his expertise in law. However, the Chamber notes that the Prosecution is yet to obtain a witness statement from the witness and that until

⁵⁵ Experts Request, ICC-01/12-01/18-842-Conf, para. 40.

⁵⁶ Experts Request, ICC-01/12-01/18-842-Conf, para. 49.

⁵⁷ Defence Response, ICC-01/12-01/18-895-Conf, paras 24-26, 29-30.

⁵⁸ Defence Response, ICC-01/12-01/18-895-Conf, para. 27.

⁵⁹ Defence Response, ICC-01/12-01/18-895-Conf, para. 27.

⁶⁰ Experts Request, ICC-01/12-01/18-842-Conf, paras 41-45.

then, there is uncertainty as to the scope and nature of his testimony. Accordingly, the Chamber defers its decision in relation to P-0643. Only if and when the Prosecution obtains a witness statement and decides on the topics to be covered by P-0643, will the Chamber be in a position to determine whether his suggested expert testimony is appropriate.

8. P-0662

Submissions

43. The Prosecution submits that P-0662, an expert on trauma and post-traumatic stress disorder ('PTSD') who already testified in the case of *The Prosecutor v. Thomas Lubanga*, may assist the Chamber in understanding the impact of trauma on witnesses and victims' memory and testimonies.⁶¹
44. The Defence does not contest P-0662's expertise or her report.⁶²

Analysis

45. The Chamber notes that the Defence does contest P-0662's expertise or her report. It also notes her extensive academic and professional background in the area of PTSD.⁶³ Accordingly, the Chamber considers that the expertise of P-0662 may assist the Chamber in its assessment of the evidence in this case. It therefore finds that P-0662 may be called to testify as expert witness.

9. P-0660 and P-0661

Submissions

46. The Prosecution submits that P-0660, an expert in forensic medicine, and P-0661, a medical doctor and psychiatrist, will provide expert evidence on [REDACTED]. The Prosecution however notes that, although the experts already provided a report, another medical examination and report are pending.

⁶¹ Experts Request, ICC-01/12-01/18-842-Conf, para. 50.

⁶² Defence Response, ICC-01/12-01/18-895-Conf, para. 32.

⁶³ Experts Request, ICC-01/12-01/18-842-Conf, paras 51-54.

Accordingly, it is not yet in a position to provide the Chamber with all the information regarding these proposed expert witnesses.⁶⁴

47. The Defence does not dispute the experts' qualifications, but in the absence of specific information on the scope and content of their report, it submits it is impossible to assess their expert evidence.⁶⁵ The Defence also raises issues as to the relevance and utility of their evidence, as well as the content and drafting of the report already prepared.⁶⁶ It also argues that a second report does not appear necessary and may cause prejudice to the Defence, particularly as it relates to [REDACTED].⁶⁷
48. In its Reply, the Prosecution clarifies that P-0660 and P-0661 will prepare their report upon [REDACTED].⁶⁸

Analysis

49. The Chamber notes that the Defence does not object to the experts' qualifications. However, the Chamber observes that the Prosecution is yet to obtain a further report from the experts and that until then, there is uncertainty as to the scope and nature of their expert testimony. Accordingly, the Chamber defers the decision in relation to P-0660 and P-0661 until the Prosecution has a clear understanding of the scope and content of their testimony. Only then will the Chamber be able to determine whether the suggested expert testimonies are appropriate.

10. P-0152

Submissions

50. The Prosecution submits that P-0152, a political scientist, has sufficient qualifications and expertise in relation to the history and development of the

⁶⁴ Experts Request, ICC-01/12-01/18-842-Conf, paras 57-59.

⁶⁵ Defence Response, ICC-01/12-01/18-895-Conf, para. 33.

⁶⁶ Defence Response, ICC-01/12-01/18-895-Conf, paras 34-35.

⁶⁷ Defence Response, ICC-01/12-01/18-895-Conf, paras 36-38.

⁶⁸ Reply, ICC-01/12-01/18-937-Conf, para. 14.

conflict in 2012-2013 in Mali.⁶⁹ The Prosecution therefore submits that his report is relevant to the contextual elements of war crimes in this case.⁷⁰ The Prosecution seeks to introduce the expert report of P-0152, as well as related material (his CV, the letters of instructions and two investigation notes), pursuant to Rule 68(3) of the Rules. The Prosecution estimates an examination of one hour.⁷¹

51. The Defence contests the qualifications, relevance and reliability of P-0152's report. The Defence submits that P-0152 has limited experience in Mali and apparently only in Bamako. It also submits that the report is sparsely referenced, lacks dates and presents political opinions rather than an objective expert report. The Defence also opposes the introduction of related material not authored by P-0152.⁷²

Analysis

52. The Chamber notes that P-0152 has relevant experience in armed conflict, particularly the 2012-2013 armed conflict in Mali. In particular the Chamber notes that according to his CV, P-0152 did field work in [REDACTED].⁷³ Thus, the Chamber disagrees with the Defence's assertion that P-0152 lacks relevant experience. Accordingly, the Chamber considers that the expertise of P-0152 may assist the Chamber in its assessment of the evidence in this case, particularly in relation to the contextual elements of war crimes. It therefore finds that P-0152 may be called to testify as an expert witness.
53. Turning now to the request to introduce his report and related material pursuant to Rule 68(3) of the Rules, the Chamber notes the Defence's objections related to the reliability of his report, particularly the lack of references. The Chamber emphasises that the Defence will have a full opportunity to question the witness

⁶⁹ P-0152 Request, ICC-01/12-01/18-837-Conf, para. 2.

⁷⁰ P-0152 Request, ICC-01/12-01/18-837-Conf, paras 10, 12.

⁷¹ P-0152 Request, ICC-01/12-01/18-837-Conf, paras 3, 13-17. The report is at MLI-OTP-0031-0496. The related material is at MLI-OTP-0030-0962-R01, MLI-OTP-0030-1039, MLI-OTP-0030-1036 and MLI-OTP-0030-1037-R01.

⁷² Defence Response, ICC-01/12-01/18-895-Conf, paras 40-42.

⁷³ MLI-OTP-0030-0962-R01.

during cross-examination, which remains unaffected by the introduction of the prior recorded testimony via Rule 68(3) of the Rules. In particular, this provision affords the Defence the opportunity to address during its questioning any deficiencies it perceives in the expert's report. Moreover, as regards the related material, the Chamber notes that this is limited to his CV, the letters of instructions and investigators notes. Accordingly, the Chamber considers that the introduction of the expert's report will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination.

54. Accordingly, the Chamber allows the introduction of the expert report of P-0152 as well as the related materials, pursuant to Rule 68(3) of the Rules. Bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's estimated examination of one hour is appropriate.

11. P-0653

Submissions

55. The Prosecution submits that P-0653, an expert engineer in forensic analysis of images and videos and facial recognition, will be of assistance to the Chamber in its assessment of audio-visual material depicting alleged events in Timbuktu in 2012-2013, particularly in relation to images allegedly depicting the accused.⁷⁴ The Prosecution requests authorisation to introduce the report produced by P-0653 via Rule 68(3) of the Rules, as well as other related material, including the letters of instructions. The Prosecution clarifies that it will seek to introduce audio-visual material referred in the report through other witnesses.⁷⁵ The Prosecution estimates it will need two hours for examination of the expert (instead of the original three hours).⁷⁶

⁷⁴ P-0653 and P-0655 Request, ICC-01/12-01/18-843-Conf, paras 11, 15.

⁷⁵ P-0653 and P-0655 Request, ICC-01/12-01/18-843-Conf, para. 24. Annex A, sections I and II include items to be introduced via this expert, while section III includes items used by the expert but that will be introduced through other witnesses.

⁷⁶ P-0653 and P-0655 Request, ICC-01/12-01/18-843-Conf, para. 25.

56. The Defence firstly notes the late disclosure of this expert report [REDACTED]. It also contends that some images relate to incidents outside the scope of the charges. The Defence furthermore questions the legality of the report, as it relies on images generated through Mr Al Hassan's compulsory attendance at hearings, where no notice was given as concerns the use of these images for incriminatory purposes. The Defence therefore suggests that the Prosecution should first submit a reasoned application seeking the admissibility of these underlying materials.⁷⁷

Analysis

57. The Chamber notes that P-0653 has extensive academic and professional expertise in the area of forensic sciences, particularly the area of facial recognition.⁷⁸ The Chamber also considers that [REDACTED] report may be of assistance to the Chamber, particularly in light of the audio-visual material the Prosecution intends to rely on at trial to show the presence of the accused at relevant locations during the time of charges. The Chamber therefore finds that P-0653 may be called to testify as an expert witness.

58. Turning now to the request to introduce [REDACTED] report and related material pursuant to Rule 68(3) of the Rules, the Chamber notes the Defence's objections related to the relevance of some images, which it submits fall outside the scope of the charges. The Chamber emphasises that the Defence will have a full opportunity to question the witness during cross-examination, which remains unaffected by the introduction of the prior recorded testimony via Rule 68(3) of the Rules. In particular, this provision affords the Defence the opportunity to address during its questioning any deficiencies it perceives in the expert's report.

59. The Chamber disagrees with the Defence's submission as to the legality of the report, as it relies on images of Mr Al Hassan's attendance at court hearings. In particular, the Chamber notes that these images are publicly available.

⁷⁷ Defence Response, ICC-01/12-01/18-895-Conf, para. 44.

⁷⁸ P-0653 and P-0655 Request, ICC-01/12-01/18-843-Conf, paras 12-13.

Accordingly, the Chamber does not consider that the use of a recent publicly available image of the accused to compare it with other available images in the possession of the Prosecution, infringes the accused's rights, particularly in relation to self-incrimination. This is nevertheless without prejudice to the ultimate finding of the Chamber as regards the expert report's evidentiary weight and the admissibility of any audio-visual material, which as the Prosecution submits, will be introduced through other witnesses.

60. Accordingly, the Chamber considers that the introduction of P-0653's report will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination. Moreover, as noted above, the related audio-visual material will be introduced through other witnesses who will be better placed to indicate the time and place and any other explanation necessary to understand the context of these images and their relevance to the charges.
61. The Chamber therefore authorises the introduction of P-0653's expert report and related material pursuant to Rule 68(3) of the Rules. However, bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's examination should be limited to one hour.

12. P-0655

Submissions

62. The Prosecution submits that P-0655, an engineer specialised in sound and voice recognition and authentication, will assist the Chamber in the assessment of audio-visual materials concerning alleged events in Timbuktu in 2012-2013, particularly the identification of the accused in these audio-visual materials.⁷⁹ The Prosecution also seeks to introduce the report of P-0655, as well as related material, pursuant to Rule 68(3) of the Rules. The Prosecution clarifies that it will seek to introduce audio-visual material referred to in the report through

⁷⁹ P-0653 and P-0655 Request, ICC-01/12-01/18-843-Conf, paras 16, 19.

other witnesses.⁸⁰ The Prosecution estimates it will need two hours for examination of the expert (instead of the original three hours).⁸¹

63. The Defence submits that P-0655's report is based on tainted evidence and that as such, any judicial determination should be suspended pending the Chamber's determination of the Termination Motion. It also disputes the reliability of voice recognition and the system used by P-0655.⁸²

Analysis

64. The Chamber disagrees with the Defence and does not consider that the pending Termination Motion prevents the Chamber from making a judicial determination on the expertise of P-0655 or whether it is appropriate to call him as an expert in this case. Accordingly, the Chamber will assess whether P-0655 has sufficient expertise, whether his report would assist the Chamber, and whether introduction via Rule 68(3) of the Rules is appropriate.
65. The Chamber notes that P-0655 has relevant academic and professional expertise in computer sciences in the area of forensics and particularly, in voice recognition.⁸³ As with P-0653 above, the Chamber also considers that P-0655's report may be of assistance of the Chamber, particularly in light of the audio-visual material the Prosecution intends to rely on at trial to show the accused's presence and role at relevant locations during the time of the charges. The Chamber therefore finds that P-0655 may be called to testify as an expert witness.
66. Turning now to the request to introduce his report and related material pursuant to Rule 68(3) of the Rules, the Chamber notes the Defence's objections related to the admissibility of some of the evidence relied upon by the expert. However, the Chamber clarifies that any authorisation to introduce the expert report and

⁸⁰ P-0653 and P-0655 Request, ICC-01/12-01/18-843-Conf, para. 26. Annex B, sections I and II include items to be introduced via this expert, while section III includes items used by the expert but that will be introduced through other witnesses.

⁸¹ P-0653 and P-0655 Request, ICC-01/12-01/18-843-Conf, para. 27.

⁸² Defence Response, ICC-01/12-01/18-895-Conf, paras 45-46.

⁸³ P-0653 and P-0655 Request, ICC-01/12-01/18-843-Conf, paras 16-17. The CV is at MLI-OTP-0078-4924.

related material pursuant to this provision, is without prejudice to the Chamber's eventual determination on the admissibility of the evidence analysed by the expert, including pursuant to Article 69(7) of the Statute. In this regard the Chamber stresses that the Prosecution will introduce this related audio-video material through other witnesses. Moreover, as stated above, the Defence will have a full opportunity to question the expert witness during cross-examination, which remains unaffected by the introduction of the prior recorded testimony via Rule 68(3) of the Rules.

67. Accordingly, the Chamber considers that the introduction of P-0655's report will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination. Moreover, as noted above, the related audio-visual material, including the material the Defence submits relates to its Termination Motion, will be introduced through other witnesses and not through this expert.
68. The Chamber therefore authorises the introduction of P-0655's expert report and related material pursuant to Rule 68(3) of the Rules. However, bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's examination should be limited to one hour.

13. P-0104

Submissions

69. The Prosecution submits that P-0104, an architect [REDACTED], will assist the Chamber in its assessment of the evidence related to the destruction of protected objects (count 7 and count 13).⁸⁴ It also seeks to introduce his report and related material pursuant to Rule 68(3) of the Rules.⁸⁵ The Prosecution estimates it will

⁸⁴ P-0104 and P-0151 Request, ICC-01/12-01/18-845-Conf, paras 8, 11.

⁸⁵ P-0104 and P-0151 Request, ICC-01/12-01/18-845-Conf, paras 22-23. The report is at MLI-OTP-0024-0537, a supplementary report is at MLI-OTP-0028-05856 and an addendum at MLI-OTP-0033-0867. The Prosecution requests to introduce the latest report, MLI-OTP-0028-0586 and the addendum MLI-OTP-0033-0867. It additionally to introduce his CV, and instruction letters. The list of the material is available in Annex A, sections I and II.

need one and a half hours for examination of the expert (instead of the original two hours).⁸⁶

70. The Defence does not dispute P-0104's expertise on cultural property, but contests the reliability of his report, particularly taking into account the time period that elapsed between [REDACTED] and the relevant events. It also questions the methodology followed, as well as the Prosecution's decision not to seek the introduction of the first report.⁸⁷

Analysis

71. The Chamber notes that P-0104 has academic and professional background that could assist the Chamber in its assessment of the evidence, particularly in relation to the destruction of protected cultural objects under count 7.⁸⁸ The Chamber further notes that the Defence does not challenge P-0104's expertise. The Chamber therefore finds that P-0104 may be called to testify as an expert witness.
72. Turning now to the request to introduce his report and related material pursuant to Rule 68(3) of the Rules, the Chamber notes the Defence's objections related to the methodology of the expert in the preparation of the report. In this regard, and as stated above, the Defence will have a full opportunity to question the expert witness during cross-examination, which remains unaffected by the introduction of the prior recorded testimony via Rule 68(3) of the Rules. During cross-examination the Defence may address any issue related to the reliability of the expert report, including the methodology used, as well as the timeframe between the information relied upon and the charges in this case.
73. Accordingly, the Chamber considers that the introduction of P-0104's report will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination.

⁸⁶ P-0104 and P-0151 Request, ICC-01/12-01/18-845-Conf, para. 29.

⁸⁷ Defence Response, ICC-01/12-01/18-895-Conf, para. 68.

⁸⁸ P-0104 and P-0151 Request, ICC-01/12-01/18-845-Conf, para. 8. His CV is available at MLI-OTP-0028-0586.

74. The Chamber therefore authorises the introduction of P-0104's expert report and related material pursuant to Rule 68(3) of the Rules. However, bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's examination should be limited to one hour.

14. P-0151

Submissions

75. The Prosecution submits that P-0151, who testified in the *Al Mahdi* case, will assist the Chamber in its assessment of the evidence related to the destruction of protected objects (count 7 and count 13), as well as the contextual elements of the crimes.⁸⁹ It also seeks to introduce, pursuant to Rule 68(3) of the Rules, portions of the witness's transcripts of his testimony in the *Al Mahdi* case and portions of his witness statement, as well as 11 annexes to the statement (these to be submitted in full) and the expert's CV. The Prosecution also seeks to introduce other material which it says is necessary to understand P-0151's prior testimony, related particularly to the UNESCO World Heritage List.⁹⁰ The Prosecution estimates it will need 30-45 minutes for examination of the expert.⁹¹
76. The Defence submits that issues related to the legal protection of monuments in Timbuktu fall within the remit of the Chamber to determine. The Defence also submits that P-0151 should testify as a fact witness, rather than an expert witness. The Defence also argues that given that sections of his statement are heavily redacted, it is unable to analyse and prepare for this testimony.⁹²

Analysis

77. The Chamber notes that P-0151 has academic and professional background that could assist the Chamber in its assessment of the evidence, particularly in

⁸⁹ P-0104 and P-0151 Request, ICC-01/12-01/18-845-Conf, paras 2, 13, 16.

⁹⁰ P-0104 and P-0151 Request, ICC-01/12-01/18-845-Conf, paras 24-26. The list of material is included in Annex B. His witness statement is at MLI-OTP-0029-0843-R03.

⁹¹ P-0104 and P-0151 Request, ICC-01/12-01/18-845-Conf, para. 5.

⁹² Defence Response, ICC-01/12-01/18-895-Conf, para 69.

relation to the protection of objects pursuant to the treaties of the UNESCO World Heritage Convention.⁹³ The Chamber further notes that the Defence does not challenge P-0151's expertise but challenges the scope of his expert report, namely on legal issues and the nature of his testimony, which it states should be categorised as that of a fact witness. The Chamber disagrees with the Defence and does not consider that the Chamber is barred from hearing testimonies that will touch upon specific areas of the law, as in this case, of the UNESCO World Heritage. In fact, the Chamber notes that the expert testimony the Prosecution seeks to introduce was also provided in the context of the *Al Mahdi* case.

78. The Chamber considers that this expert's testimony, as delineated in the *Al Mahdi case*, is also appropriate in this case, namely as:

‘expert testimony on UNESCO’s roles and mission, including in Mali, the system, importance and meaning of World Heritage, the process of listing a property on the World Heritage List, the consequences, as well as the meaning of World Heritage in Danger as a term’.⁹⁴

79. Moreover, the Chamber considers that as former Director of the UNESCO World Heritage Centre, P-0151 has specialised legal expertise and practical knowledge and will be able to assist the Chamber. The Chamber therefore finds that P-0151 may be called to testify as an expert witness. This is obviously without prejudice to the ultimate finding of the Chamber as regards the evidentiary weight of P-0151's testimony.

80. Turning now to the request to introduce his written statement, his prior testimony in the *Al Mahdi* case and related material pursuant to Rule 68(3) of the Rules, the Chamber notes that the Defence has raised no objection in that regard. However, the Chamber observes that the Prosecution wishes to rely on portions and not the totality of the witness's transcripts in that case and portions of his written statement. The Chamber reiterates its previous findings that testimonial evidence submitted under Rule 68(3) of the Rules must be introduced in its entirety.⁹⁵ Although the Chamber notes that the witness

⁹³ P-0104 and P-0151 Request, ICC-01/12-01/18-845-Conf, para 13-14. His CV is available at MLI-OTP-0029-0864-R01.

⁹⁴ MLI-OTP-0069-4350 at 4371, which is the transcript of the hearing of 23 August 2016 in the *Al Mahdi* case, ICC-01/12-01/15-T-5-CONF-ENG, p. 22, lines 17-22.

⁹⁵ Rule 68(3) Decision, ICC-01/12-01/18-987-Conf, para 13.

statement is subject to redactions, it does not consider that these prevent the Defence from preparing for the testimony, and particularly to cross-examine the witness in order to address issues, such as the application of the 2015 operational guidelines, already raised in the Defence Response.⁹⁶

81. Accordingly, the Chamber considers that the introduction of P-0151's testimony in the *Al Mahdi* case, together with his witness statement and related material, will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination.
82. The Chamber therefore authorises the introduction of P-0151's prior testimony and related material pursuant to Rule 68(3) of the Rules. Bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's questioning of 30-45 minutes is appropriate.

15. P-0620 and P-0621

Submissions

83. The Prosecution submits that P-0620, a handwriting expert, and P-0621, a document analysis expert, who prepared a joint report for the Prosecution, will assist the Chamber in its assessment of documentary evidence the Prosecution intends to rely on, particularly as regards the alleged signature of Mr. Al Hassan.⁹⁷ The Prosecution estimates it will need two hours for its examination of P-0620 and one and a half hours for P-0621.⁹⁸
84. The Defence submits that the report of these experts is based on evidence obtained through interviews with Mr Al Hassan while he was detained in Mali. Accordingly, it submits that the underlying information of the report is based on

⁹⁶ Defence Response, ICC-01/12-01/18-895-Conf, para 69.

⁹⁷ P-0620, P-0621 and P-0657 Request, ICC-01/12-01/18-848-Conf, paras 10-16. The expert report is at MLI-OTP-0065-0183 and MLI-OTP-0065-0181.

⁹⁸ P-0620, P-0621 and P-0657 Request, ICC-01/12-01/18-848-Conf, para. 27.

tainted evidence and as such, any determination should therefore be deferred pending the outcome of the Termination Motion.⁹⁹

Analysis

85. The Chamber disagrees with the Defence and does not consider that the pending Termination Motion prevents the Chamber from making a judicial determination on the expertise of P-0620 and P-0621 or whether it is appropriate to call them as experts in this case. Accordingly, the Chamber will assess whether these individuals possess sufficient expertise, whether their joint report would assist the Chamber, and whether introduction via Rule 68(3) of the Rules is appropriate.
86. The Chamber notes that P-0620 and P-0621 have relevant academic and professional expertise in document and handwriting authentication in the context of police investigations and judicial proceedings.¹⁰⁰ The Chamber considers that their joint report may be of assistance to the Chamber, particularly in light of the documentary evidence the Prosecution intends to rely on at trial and their alleged link to the accused's role. The Chamber therefore finds that P-0620 and P-0621 may be called to testify as expert witnesses.
87. Turning now to the request to introduce their report and related material pursuant to Rule 68(3) of the Rules, the Chamber notes the Defence's objections as to the admissibility of some of the evidence relied upon by the experts. However, the Chamber clarifies that any authorisation to introduce the joint expert report and related material pursuant to this provision, is without prejudice to the Chamber's eventual determination on the admissibility of the evidence analysed by the experts, including pursuant to Article 69(7) of the Statute. In this regard the Chamber stresses that the Prosecution will introduce this documentary evidence material through other witnesses.¹⁰¹ Moreover, as stated

⁹⁹ Defence Response, ICC-01/12-01/18-895-Conf, para 47.

¹⁰⁰ P-0620, P-0621 and P-0657 Request, ICC-01/12-01/18-848-Conf, paras 10-13. The CVs of the experts are available at MLI-OTP-0064-0175.

¹⁰¹ The Prosecution submits that the 110 documents analysed by the experts, listed in Section III of Annex A, are necessary to understand the joint report, but will not be introduced through them. P-0620, P-0621 and P-0657 Request, ICC-01/12-01/18-848-Conf, footnote 34. *See also* para. 30.

above, the Defence will have a full opportunity to question the expert witnesses during cross-examination, which remains unaffected by the introduction of the prior recorded testimony via Rule 68(3) of the Rules.

88. Accordingly, the Chamber considers that the introduction pursuant to Rule 68(3) of the Rules of P-0620 and P-0621's joint report will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination. Moreover, as noted above, the related material, including the material the Defence submits relates to its Termination Motion, will be introduced through other witnesses and not through these experts.
89. Accordingly, the Chamber authorises the introduction of P-0620 and P-0621's expert report and related material pursuant to Rule 68(3) of the Rules. However, bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's examination should be limited to two hours in total for both expert witnesses. The Chamber leaves it to the discretion of the Prosecution as to how it will divide this allotted time between the two experts. The Chamber further notes that the examination of these two experts should be streamlined together with that of P-0657 below, in order to avoid unnecessary repetitive evidence.

16. P-0657

Submissions

90. The Prosecution submits that P-0657, [REDACTED] with experience in forensic document and handwriting examination, will assist the Chamber in the examination of documents in Arabic, particularly those that the Prosecution alleges contain handwriting of the accused, and are relevant to counts 6 and 13.¹⁰² The Prosecution also requests to introduce his full expert report and

¹⁰² P-0620, P-0621 and P-0657 Request, ICC-01/12-01/18-848-Conf, paras 17-21.

related material, pursuant to Rule 68(3) of the Rules.¹⁰³ It estimates it will need two and a half hours for the examination of P-0657.¹⁰⁴

91. The Defence submits that the report of P-0657 is based on evidence obtained through interviews with Mr Al Hassan while he was detained in Mali. Accordingly, it submits that the underlying information of the report is based on tainted evidence and as such, any determination should therefore be deferred pending the outcome of the Termination Motion. The Defence further submits that the report was disclosed very late (in March 2020).¹⁰⁵

Analysis

92. As noted above, the Chamber disagrees with the Defence and does not consider that the pending Termination Motion prevents the Chamber from making a judicial determination on the expertise of P-0657 or whether it is appropriate to call him as an expert in this case. Accordingly, the Chamber will assess whether this individual possesses sufficient expertise, whether his report would assist the Chamber, and whether introduction via Rule 68(3) of the Rules is appropriate.
93. The Chamber notes that P-0657 has relevant academic and professional expertise to report on document and handwriting authentication in the context of police investigations and judicial proceedings, as well as proficiency in Arabic.¹⁰⁶ It also notes that the Defence does not appear to contest his expertise. The Chamber considers that the report of P-0657 may be of assistance to the Chamber, particularly in light of the documentary evidence in Arabic the Prosecution intends to rely on at trial and their alleged link to the accused's role. The Chamber therefore finds that P-0657 may be called to testify as an expert witness.

¹⁰³ P-0620, P-0621 and P-0657 Request, ICC-01/12-01/18-848-Conf, paras 31-33. The expert report is available at MLI-OTP-0076-0216-R01. A document explaining the methodology is available at MLI-OTP-0076-0227-R01. The Prosecution also requests to introduce the letters of instruction, a statement of acknowledgement of the expert, 27 custody notes. The related material is listed in Section II of Annex B. Section III lists material that is necessary to understand the contents of the report but not to be introduced.

¹⁰⁴ P-0620, P-0621 and P-0657 Request, ICC-01/12-01/18-848-Conf, para. 28.

¹⁰⁵ Defence Response, ICC-01/12-01/18-895-Conf, para. 48.

¹⁰⁶ P-0620, P-0621 and P-0657 Request, ICC-01/12-01/18-848-Conf, paras 17-18. The CV of the expert is available at MLI-OTP-0069-6830-R01.

94. Turning now to the request to introduce his report and related material pursuant to Rule 68(3) of the Rules, the Chamber notes the Defence's objections regarding the admissibility of the evidence relied upon by the expert. However, the Chamber reiterates that any authorisation to introduce the joint expert report and related material pursuant to this provision is without prejudice to the Chamber's determination on the admissibility of the evidence analysed by the expert, including pursuant to Article 69(7) of the Statute. In this regard the Chamber stresses that the Prosecution will introduce this documentary evidence material through other witnesses.¹⁰⁷ Moreover, as stated above, the Defence will have a full opportunity to question the expert witness during cross-examination, which remains unaffected by the introduction of the expert report via Rule 68(3) of the Rules.
95. Accordingly, the Chamber considers that the introduction pursuant to Rule 68(3) of the Rules of P-0657's report will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination. Moreover, as noted above, the related material, including the material the Defence submits relates to its Termination Motion, will be introduced through other witnesses and not through this expert.
96. Accordingly, the Chamber authorises the introduction of P-0657's expert report and related material pursuant to Rule 68(3) of the Rules. However, bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's examination should be limited to one hour.

17. P-0102

Submissions

97. The Prosecution submits that P-0102, a ballistic forensic expert, will assist the Chamber in its assessment of evidence related to weapons. The Prosecution also submits that P-0102 will be able to testify as a fact witnesses, as he performed

¹⁰⁷ The Prosecution submits that the 99 documents analysed by the expert, listed in Section III of Annex B are necessary to understand the joint report, but will not be introduced through the expert: P-0620, P-0621 and P-0657 Request, ICC-01/12-01/18-848-Conf, paras 19, 33.

crime-investigation work [REDACTED] for the purpose of the *Al Hassan* and the *Al Mahdi* cases, where he collected evidence to be introduced in this case.¹⁰⁸

The Prosecution seeks authorisation to introduce the ballistic and crime investigation reports produced by P-0102, as well as related material pursuant to Rule 68(3) of the Rules.¹⁰⁹ The Prosecution expects it will need four hours to examine the expert witness (instead of the original five hours).¹¹⁰

98. The Defence submits that the evidence of P-0102 is either irrelevant to issues in this case or should be characterised as fact, rather than expert evidence. Although the Defence does not dispute P-0102's qualification on issues of ballistics, it submits this is not relevant to the case. The Defence also contends that the report [REDACTED]. It submits that using this report to elicit oral evidence concerning Mr Al Hassan would be inappropriate and prejudicial. The Defence questions P-0102's expertise in audio enhancement and photographs [REDACTED]. The Defence also submits that the reports have very low probative value, given they are based on [REDACTED].¹¹¹

Analysis

99. The Chamber notes that P-0102 has extensive academic and professional experience, not only in ballistics, but also in crime-scene investigations [REDACTED].¹¹² The Chamber does not agree with the Defence's submissions that the ballistic report produced by P-0102 in the context of the *Al Mahdi* case cannot be introduced in this case. [REDACTED]. Considering the overlap in some aspects between this case and the *Al Mahdi* case, the Chamber considers it appropriate and logical to consider the evidence of P-0102 [REDACTED]. For example, the Chamber notes that the crime-scene investigation report

¹⁰⁸ P-0102 Request, ICC-01/12-01/18-850-Conf, paras 7, 11-17.

¹⁰⁹ P-0102 Request, ICC-01/12-01/18-850-Conf, paras 18-21 and Annex A. Sections I and II list the materials the Prosecution seeks to introduce together with the reports. Section III lists the materials necessary to understand the report, but that are not to be introduced via the expert but through other witnesses. The related material to be introduced includes 81 videos, 2,585 photographs and letters of instructions, as well as annexes to the reports.

¹¹⁰ P-0102 Request, ICC-01/12-01/18-850-Conf, para. 25.

¹¹¹ Defence Response, ICC-01/12-01/18-895-Conf, paras 65-67.

¹¹² P-0102 Request, ICC-01/12-01/18-850-Conf, paras 9-10. P-0102 is in the ICC's List of Experts. He testified in the *Gbagbo and Blé Goudé* case, the *Al Mahdi* case, and the *Ongwen* case. He worked as forensic officer at the Prosecution between 2015 and 2018.

[REDACTED] focuses on the destruction of protected objects, which is related to the *Al Mahdi* case but also to this case.¹¹³

100. Although the Chamber notes that other aspects of P-0102's evidence are more technical in nature, particularly in relation to audio enhancement of videos, it does not consider that this warrants calling P-0102 as a fact witness. The Chamber also considers it artificial to divide his testimony into expert evidence and fact evidence, particularly considering P-0102's apparently vast experience in forensics in general. However, the Chamber will take this into consideration when assessing the weight to be given to P-0102's evidence in areas that may go beyond his expertise or that are not relevant to this case. Accordingly, the Chamber considers that P-0102 may be called to testify as an expert in accordance with the expert reports produced in the context of the *Al Mahdi* case and the present case.
101. Turning now to the request to introduce his report and related material pursuant to Rule 68(3) of the Rules, the Chamber notes that the Defence does not appear to object to this manner of introduction. The Chamber considers that the introduction pursuant to Rule 68(3) of the Rules of P-0102's reports and related materials will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination. As stated above, the Defence will have a full opportunity to question the expert witness during cross-examination, which remains unaffected by the introduction of the prior recorded testimony via Rule 68(3) of the Rules.
102. Accordingly, the Chamber authorises the introduction of P-0102's expert reports and related material pursuant to Rule 68(3) of the Rules. However, bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's examination should be limited to one hour.

18. P-0064

Submissions

¹¹³ P-0102 Request, ICC-01/12-01/18-850-Conf, para. 13.

103. The Prosecution submits that P-0064, an expert in satellite imagery, will assist the Chamber in assessing evidence related to the destruction of protected objects. The Prosecution states that these reports were produced in the context of the *Al Mahdi* case but are relevant to this case. Specifically, P-0064's reports relate to satellite imagery of Timbuktu, before and after the alleged destruction.¹¹⁴ The Prosecution also seeks to introduce the reports of P-0064, and related material, pursuant to Rule 68(3) of the Rules.¹¹⁵ The Prosecution estimates it will need one hour to examine the expert (instead of the original two hours).¹¹⁶
104. Although the Defence contends the Prosecution has failed to disclose the transcripts of testimonies of P-0064 in other cases before the Court, it does not contest P-0064's qualifications as an expert in satellite imagery or the submission of his report through Rule 68(3) of the Rules. However, it submits this should be for the sole purpose of establishing the reliability of the images.¹¹⁷

Analysis

105. The Chamber notes that the Defence does not have an issue either with the expertise or the reports produced by this witness in the context of the *Al Mahdi* case. Neither does the Defence object to the use of these reports and related material in this case or their introduction pursuant to Rule 68(3) of the Rules. The Chamber does not consider it necessary to limit the purpose of P-0064's, as suggested by the Defence. However, in its cross-examination, the Defence will have the opportunity to raise any issue, including whether the expert report can be used beyond the scope of 'establishing the reliability of images'.
106. Accordingly, the Chamber considers that P-0064 may be called to testify as an expert in this case. The Chamber also authorises the introduction of P-0064's

¹¹⁴ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, paras 2, 14-15.

¹¹⁵ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, paras 32-36. The reports are listed in Annex A, Section I. The related material is listed in Section II, includes 47 items related to the reports. A summary of the items is listed in Section III.

¹¹⁶ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, para. 36.

¹¹⁷ Defence Response, ICC-01/12-01/18-895-Conf, para. 49.

expert reports and related material pursuant to Rule 68(3) of the Rules. Bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's expected examination of one hour is appropriate.

19. P-0635

Submissions

107. The Prosecution submits that P-0635, a geolocation and forensic video expert, will assist the Chamber in the assessment of audio-visual material, related to sites relevant to the charges.¹¹⁸ The Prosecution seeks to introduce P-0635's report and its addendum, as well as eight annexes, and related material pursuant to Rule 68(3) of the Rules.¹¹⁹ The Prosecution estimates it will need one hour and 40 minutes for the examination of the witness.¹²⁰
108. The Defence submits that the CV is not clear as regards P-0635's relevant expertise. The Defence also contests the expert's relevance. The Defence further claims that the Prosecution's late delivery of the reports (in [REDACTED]) raises questions about the reports' core importance in this case.¹²¹
109. In its Reply, the Prosecution submits that the CV clearly indicates the expertise of P-0635 in [REDACTED], all relevant to geo-location. It also sought clarification from the expert, who explained how [REDACTED].¹²²

Analysis

110. The Chamber notes that P-0635 has academic and professional experience as an expert in judicial proceedings, and particularly in areas, as explained by the

¹¹⁸ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, paras 2, 16-21.

¹¹⁹ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, paras 37-40. The reports and related material are listed in Annex B. Section I lists the reports, Section II lists materials related to the expertise of P-0635, Section III lists other material necessary to understand the reports but which the Prosecution does not seek to introduce.

¹²⁰ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, para. 40.

¹²¹ Defence Response, ICC-01/12-01/18-895-Conf, paras 50-52.

¹²² Reply, ICC-01/12-01/18-937-Conf, paras 15-16.

Prosecution and the expert herself, relevant to geolocation analysis.¹²³ The Chamber considers that her expertise would be of assistance to the Chamber in its assessment of audio-visual material which allegedly depicts locations in Timbuktu at the relevant time of the charges, and particularly those where the accused was allegedly present. Accordingly, the Chamber considers that P-0635 may be called to testify as an expert in this case.

111. Turning now to the request to introduce [REDACTED] reports and related material pursuant to Rule 68(3) of the Rules, the Chamber notes that the Defence does not appear to object to this manner of introduction. The Chamber considers that the introduction pursuant to Rule 68(3) of the Rules of P-0635's reports and related materials will expedite proceedings, whilst not prejudicing the rights of the accused to test the expert evidence fully in cross-examination. As stated above, the Defence will have a full opportunity to question the expert witness during cross-examination, which remains unaffected by the introduction of the prior recorded testimony via Rule 68(3) of the Rules.
112. Accordingly, the Chamber authorises the introduction of P-0635's expert reports and related material pursuant to Rule 68(3) of the Rules. However, bearing in mind the object and purpose of this provision, the Chamber considers that the Prosecution's examination should be limited to one hour.

20. P-0075

Submissions

113. The Prosecution submits that P-0075, an expert in information technology and particularly in cyber investigation, [REDACTED] reports concerning metadata analysis, as [REDACTED]. The Prosecution submits that his reports are relevant to assess the reliability of [REDACTED] items that the Prosecution intends to rely on.¹²⁴ It also seeks to introduce the reports as well as related

¹²³ See CV at MLI-OTP-0072-0034-R01 as well as the expert's explanation of her expertise in the Reply cited above. *See also* P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, paras 16-18.

¹²⁴ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, paras 2, 22-25.

material of this expert pursuant to Rule 68(3) of the Rules.¹²⁵ The Prosecution estimates it will need two hours and 10 minutes for its examination (instead of the original four hours).¹²⁶

114. The Defence submits that P-0075 should be called as [REDACTED]. The Defence also submits that some of the reports [REDACTED], which fall within the sphere of the Chamber's ultimate determination. The Defence also submits that the relevance of some of the reports is unclear, and therefore reserves its right to raise further objections as to inadmissibility or irrelevance of material to be submitted. The Defence also contends that the volume of material encompassed by his reports is problematic, particularly considering the late disclosure of material. For example, the Defence notes that the report related to P-0150's hard drive was only requested in [REDACTED], although the Prosecution possessed this material before Mr Al Hassan's arrest. The Defence also submits that some reports were not authored, but requested, by P-0075. The Defence submits that the Prosecution is attempting to submit a body of material without explaining its relevance, and balance of probative value against prejudice to the accused.¹²⁷

Analysis

115. The Chamber notes that the reports authored by P-0075 relate to the authentication of material the Prosecution seeks to introduce in this case, particularly [REDACTED]. The Chamber considers that although P-0075 [REDACTED], he possesses the relevant expertise in information technology to give evidence as an expert [REDACTED]. Accordingly, the Chamber considers that P-0075 may be called to testify as an expert in this case.

¹²⁵ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, paras 41-45. The material to be introduced is contained in Annex C. Section I lists the reports. Section II lists the material related to the material and which the Prosecution intends to introduce as evidence. Section III lists the material necessary to understand the report, but which the Prosecution does not intend to introduce through this witness.

¹²⁶ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf, para. 46.

¹²⁷ Defence Response, ICC-01/12-01/18-895-Conf, paras 53-59.

116. Turning now to the request to introduce his reports and related material pursuant to Rule 68(3) of the Rules, the Chamber considers that in this case it must analyse the Prosecution's request in relation to: reports authored by P-0075, reports requested by P-0075 [REDACTED], and material related to the aforesaid reports.
117. As regards the reports authored by P-0075, the Chamber considers that their introduction pursuant to Rule 68(3) is appropriate, will expedite proceedings and will not prejudice the rights of the accused to test his reports fully in cross-examination, including on issues raised by the Defence in its Response. As stated above, the Defence will have a full opportunity to question the expert witness during cross-examination, which remains unaffected by the introduction of the prior recorded testimony via Rule 68(3) of the Rules. The Chamber also considers it appropriate to submit pursuant to this provision related material, such as annexes, CV and other information connected to the reports and technical knowledge of the witness.¹²⁸
118. Although the Chamber notes that the Defence objects to the introduction via P-0075 of reports he did not author, the Chamber does not consider, that in the instant case, this would necessarily be inappropriate or unduly prejudice the accused. The Chamber notes that P-0075 is [REDACTED]. Considering the technical nature of the reports, and the fact that these were created by [REDACTED], the Chamber considers these other reports may also be introduced through this witness pursuant to Rule 68(3) of the Rules.
119. In relation to the material related to the aforesaid reports, the Chamber agrees with the Defence that Rule 68(3) of the Rules is not a substitute or alternative to seeking the submission of evidence via the bar table. However, the Chamber notes that the Prosecution has provided a summary of how each physical item is linked to the reports. The Chamber also notes that most of the items listed in Annex C (particularly Section III) are not to be submitted through this

¹²⁸ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf-AnxC. Specifically, the Chamber refers to annexes to reports, including correspondence, instruction letters, etc., referred to in pages 3-6 of Annex C.

witness.¹²⁹ Accordingly, the Chamber authorises the Prosecution to submit through P-0075 the limited number of related material listed in Section II of Annex C.¹³⁰

120. Bearing in mind the object and purpose of Rule 68(3) of the Rules, the Chamber considers that the Prosecution's examination should be limited to one hour.

¹²⁹ Section III, which lists hundreds of items are not to be submitted via P-0075, but that are however necessary to understand his reports. P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf-AnxC, pp. 7-117.

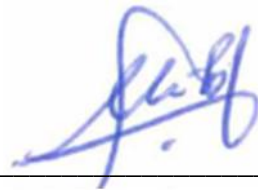
¹³⁰ P-0064, P-0635 and P-0075 Request, ICC-01/12-01/18-851-Conf-AnxC, pp. 3-6.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:

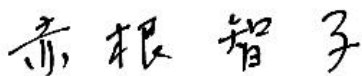
DECIDES that witnesses P-0205, P-0206, P-0431, P-0555, P-0587, P-0590, P-0598, P-0617, P-0662, P-0152, P-0653, P-0655, P-0104, P-0151, P-0620, P-0621, P-0657, P-0102, P-0064, P-0635 and P-0075 may be called to testify as experts in this case; and

DECIDES, subject to the procedural pre-requisites of Rule 68(3) of the Rules being satisfied when witnesses P-0152, P-0653, P-0655, P-0104, P-0151, P-0620, P-0621, P-0657, P-0102, P-0064, P-0635 and P-0075 appear, that their prior recorded testimonies and related materials are allowed to be introduced into evidence.

Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Kimberly Prost

Dated 5 August 2020

At The Hague, The Netherlands