



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 requests to introduce prior recorded testimonies under
Rule 68(3) of the Rules**

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 requests to introduce prior recorded testimonies under Rule 68(3) of the Rules’.

I. Procedural history and submissions

1. On 6 May 2020, the Chamber adopted the ‘Directions on the conduct of proceedings’.¹
2. On 1 June 2020, in line with the deadline set by the Chamber,² the Office of the Prosecutor (the ‘Prosecution’) filed a series of requests pursuant to Rule 68(3) of the Rules of Procedure and Evidence (the ‘Rule 68(3) Requests’).³ The Prosecution asks the Chamber to introduce into evidence the prior recorded testimony and related documents (collectively, the ‘Material’) of the following nine witnesses, namely: P-0638, P-0623, P-0654, P-0150, P-0065, P-0004, P-0193, P-0055 and P-0057.

¹ Directions on the conduct of proceedings, 6 May 2020, ICC-01/12-01/18-789-AnxA.

² Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 63.

³ Prosecution application under rule 68(3) to introduce Witness MLI-OTP-P-0638’s prior recorded testimony and associated material, ICC-01/12-01/18-836-Conf (the ‘P-0638 Request’); Prosecution application under rule 68(3) to admit Witness MLI-OTP-P-0623’s prior recorded testimony and associated material, ICC-01/12-01/18-838-Conf (the ‘P-0623 Request’); Prosecution application under rule 68(3) to introduce into evidence Witness MLI-OTP-P-0654’s prior recorded testimony and associated material, ICC-01/12-01/18-839-Conf (the ‘P-0654 Request’); Prosecution application under rule 68(3) to introduce into evidence Witness MLI-OTP-P-0150’s prior recorded testimony and associated material, ICC-01/12-01/18-841-Conf (the ‘P-0150 Request’); Prosecution application under rule 68(3) to admit Witness MLI-OTP-P-0065’s prior recorded testimony and associated materials, ICC-01/12-01/18-844-Conf (the ‘P-0065 Request’); Prosecution application under rule 68(3) to introduce Witness MLI-OTP-P-0004’s prior recorded testimony and associated material, ICC-01/12-01/18-846-Conf (the ‘P-0004 Request’); Prosecution application to introduce Witness MLI-OTP-P-0193’s report and associated material into evidence, and regulation 35 request, 1 June 2020, ICC-01/12-01/18-840-Conf (the ‘P-0193 Request’); Prosecution application to introduce MLI-OTP-P-0055 and MLI-OTP-P-0057’s reports and associated material into evidence, 2 June 2020, ICC-01/12-01/18-849-Conf (the ‘P-0055 and P-0057 Requests’). Public redacted versions of all the Rule 68(3) Requests, except for P-0623 Request, were subsequently filed on 10-11 June 2020.

3. On 16 June 2020, the Defence filed a request to terminate the proceedings and seeking the immediate release of Mr Al Hassan (the ‘Termination Motion’).⁴
4. On 22 June 2020, the Defence filed its response in respect of P-0638, P-0623, P-0654, P-0150, P-0065, and P-0004 (the ‘Defence Response’).⁵ The Defence does not object in general to the introduction of evidence via Rule 68(3) of the Rules, but its specific objections are summarised below per witness.⁶ However, it opposes the introduction via Rule 68(3) of the Rules of identified paragraphs in the prior recorded testimonies of P-0638, P-0623, P-0654, P-0065, and P-0004.⁷ As regards, P-0150, the Defence opposes the introduction of his prior recorded testimony as premature, arguing that it should not be considered until after the resolution of the Defence Termination Motion.⁸ The Defence also filed submissions in relation to P-0193, P-0055 and P-0057 in the context of its response related to experts (the ‘Defence Expert Response’).⁹

II. Analysis

A. Preliminary considerations

5. The Chamber notes that in the Defence Response, the Defence makes submissions related to the order in which witnesses will be called. The Chamber

⁴ Defence Request to terminate the proceedings, ICC-01/12-01/18-885-Conf-Exp (confidential *ex parte*, available only to the Defence and Prosecution; with confidential Annexes A, B and G to I, confidential *ex parte* Annex C (available only to the Prosecution, Registry and Defence), and confidential *ex parte* Annexes D to F and J (available only to the Prosecution and Defence); a confidential redacted version of the main filing was notified simultaneously, ICC-01/12-01/18-885-Conf-Red; these filings were all notified on 17 June 2020; a corrigendum of the main filing was later notified on 25 June 2020, ICC-01/12-01/18-885-Conf-Exp-Corr; two public redacted versions of the main filing were also later notified and subsequently reclassified confidential; a final public redacted version was notified on 29 July 2020, ICC-01/12-01/18-885-Corr-Red3; a corrected version of Annex B to the Termination Motion was also filed, in accordance with the decision of the Chamber).

⁵ Defence response to the Prosecution Rule 68(3) applications, ICC-01/12-01/18-896-Conf-Exp (confidential *ex parte*, available only to the Registry and Defence; with confidential Annex A; notified on 23 June 2020; a confidential redacted version was filed on that same date, ICC-01/12-01/18-896-Conf-Red).

⁶ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 3-4.

⁷ Defence Response, ICC-01/12-01/18-896-Conf-AnxA.

⁸ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 2, 55-60.

⁹ Defence response to the Prosecution expert witness requests, ICC-01/12-01/18-895-Conf.

has dealt with this separately and will thus not address these submissions in the current decision.¹⁰

B. General considerations

6. In its Directions on the conduct of proceedings, the Chamber determined the following as regards the use of Rule 68(3) of the Rules:

63. Within 20 days of the provision of these details, the Prosecution shall file a first batch of motivated applications seeking the Chamber's authorisation to introduce any prior recorded testimony pursuant to Rule 68(3) of the Rules for witnesses expected to be called before the end of the year 2020. These applications shall be filed together with:

- i. copies of the previously recorded testimony, identifying precisely which passages thereof are tendered into evidence;
- ii. other material referred to in the passages tendered into evidence, without which the passages would not be understandable, if this material is available to the Prosecution; and
- iii. a specification as to whether the Prosecution seeks to ask questions to the witness, the specific time sought for such examination, and an indication of the topics to be addressed orally with the witness.

64. Objections, if any, shall be filed within 15 days of notification of any Rule 68(3) application.

65. The Chamber will issue preliminary rulings ahead of the relevant in-court testimony, but its final determination pursuant to Rule 68(3) will, in principle, only be made when the witness appears before the Chamber and attests to the accuracy of his or her prior recorded testimony sought to be introduced. The Chamber expects the calling party to streamline its questioning considerably when the introduction of the previously recorded testimony is allowed.¹¹

7. While Article 69(2) of the Statute establishes that witness testimony shall generally be given in person, at the same time it recognises possible exceptions as provided for elsewhere in the Statute or by the Rules. Rule 68(3) of the Rules is one such exception to the general rule.¹²

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.

¹¹ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, paras 63-65.

¹² Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence", 3 May 2011, ICC-01/05-01/08-1386 (hereinafter '*Bemba Appeals Judgment*'), para. 77. *See also* Appeals Chamber, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber

8. Rule 68(3) of the Rules allows the introduction of prior recorded testimony when: (i) the witness is present before the Chamber; (ii) the witness does not object to the introduction of his or her prior recorded testimony; and (iii) both parties and the Chamber have the opportunity to examine the witness.
9. As required under Rule 68(1) of the Rules, the introduction of prior recorded testimony must not be prejudicial to or inconsistent with the rights of the accused or the fairness of the trial generally.¹³ In relation to this requirement, the Appeals Chamber determined that '[w]hile expeditiousness is an important component of a fair trial, it cannot justify a deviation from statutory requirements'.¹⁴ In this regard, the Chamber emphasises that, as indicated above, introduction under Rule 68(3) of the Rules can only be authorised where the parties and the Chamber have the opportunity to examine the witness who gave the prior recorded testimony. As such, this procedure entails a low risk of interfering with the fair trial rights of the accused since the witness still appears before the Chamber in court and the Defence will have the opportunity to examine the witness.¹⁵
10. The Chamber's determination to allow the introduction of prior recorded testimony under Rule 68(3) of the Rules requires a case-by-case assessment and

V(A) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony", 12 February 2016, ICC-01/09-01/11-2024, para. 84. As determined by the Appeals Chamber, a testimony submitted under this provision cannot be considered to be exclusively written as it complements and does not replace oral testimony. See Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", 1 November 2016, ICC-02/11-01/15-744 (hereinafter '*Gbagbo and Blé Goudé Appeals Judgment*'), para. 79.

¹³ See *Bemba Appeals Judgment*, ICC-01/05-01/08-1386, para. 78. See also Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the "Prosecution's application to conditionally admit the prior recorded statements and related documents of Witnesses P-0108, P-0433, P-0436, P-0402, P-0438, P-0459 and P-0109 under rule 68(3) and for testimony by means of video-link technology for Witnesses P-0436, P-0402, P-0438, P-0459 and P-0109 under rule 67(1)", 7 April 2017, ICC-02/11-01/15-870 (hereinafter '*Gbagbo and Blé Goudé Decision*'), para. 7; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Public redacted version of 'Preliminary ruling on Prosecution request for admission under Rule 68(3) of the prior recorded testimony and associated material of Witness P-0761', 27 February 2017, ICC-01/04-02/06-1640-Red (hereinafter '*Ntaganda Decision*'), para. 7; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Prosecution's Application to Introduce Prior Recorded Testimony and Related Documents Pursuant to Rule 68(3) of the Rules, 5 December 2016, ICC-02/04-01/15-621 (hereinafter '*Ongwen Decision*'), para. 6.

¹⁴ *Bemba Appeals Judgment*, ICC-01/05-01/08-1386, para. 55.

¹⁵ *Gbagbo and Blé Goudé Decision*, ICC-02/11-01/15-870, para. 7.

is discretionary in nature.¹⁶ Accordingly, prior recorded testimony may still be introduced even if it relates to issues that are materially in dispute, central to core issues of the case, or are uncorroborated.¹⁷ However, the Chamber will take into account, on a case-by-case basis, that the introduction of the prior recorded testimony in question will not be prejudicial to or inconsistent with the rights of the accused or the fairness of trial generally.¹⁸

11. An assessment under Rule 68(3) of the Rules is preliminary and without prejudice to the weight that the Chamber will ultimately attach to a witness's evidence, which indeed can only be determined once the Chamber has heard all of the evidence.¹⁹ Accordingly, at this point in the proceedings, a determination whether a witness statement is suitable for introduction under Rule 68(3) of the Rules is a preliminary decision, subject to the satisfaction of the conditions of this provision during the trial, and once the witness appears before the Chamber.²⁰
12. The Chamber acknowledges that in the Directions on the conduct of proceedings it instructed the Prosecution to identify precise passages within the written statements it was tendering into evidence. This instruction was aimed towards a streamlined presentation of evidence, where the Prosecution would be able to identify precise passages within a witness's testimony that in its view support its case. However the expectation was that in most instances it would be the evidence in its entirety which was relied upon and the identification of

¹⁶ *Ongwen* Decision, ICC-02/04-01/15-621, para. 7. Factors that may be considered, include, *inter alia*, whether: (i) the evidence relates to issues that are not materially in dispute; (ii) the evidence is not central to core issues in the case, but instead provides relevant background information; (iii) the evidence is corroborative of other evidence; (iv) introduction serves good trial management, particularly streamlining of the presentation of evidence and the expeditiousness of proceedings; and (v) introduction may prevent potential re-traumatisation of a vulnerable witness. *See in this regard* Gbagbo and Blé Goudé Appeals Judgment, ICC-02/11-01/15-744, paras 1, 2, 59, 61, 71; Bemba Appeals Judgment, ICC-01/05-01/08-1386, para. 78; *Ntaganda* Decision, ICC-01/04-02/06-1640-Red, para. 9; Trial Chamber VI, *The Prosecutor v Bosco Ntaganda*, Decision on Prosecution application under Rule 68(3) of the Rules for admission of prior recorded testimony of Witness P-00100, 6 November 2015, ICC-01/04-02/06-988, para. 13.

¹⁷ *Gbagbo and Blé Goudé* Appeals Judgment, ICC-02/11-01/15-744, paras 2, 67, 69. *See also Ongwen* Decision, ICC-02/04-01/15-621, para. 7.

¹⁸ *Gbagbo and Blé Goudé* Appeals Judgment, ICC-02/11-01/15-744, paras 69-72.

¹⁹ *Gbagbo and Blé Goudé* Appeals Judgment, ICC-02/11-01/15-744, para. 72.

²⁰ *Gbagbo and Blé Goudé* Appeals Judgment, ICC-02/11-01/15-744, para. 72. *See also Ongwen* Decision, ICC-02/04-01/15-621, para. 9.

passages would be of value in limited instances where the prior recorded testimony of the witness was extensive and related to pertinent as well as irrelevant material.

13. The procedure set out by the Chamber must be read in light of what is provided for in Rule 68 of the Rules as a whole which is that the Chamber may allow the introduction of previously recorded testimony of a witness as a substitute – in whole or in part – for oral testimony of a witness. Under the structure of the Rule, the conditions for introduction of the prior recorded testimony will vary especially depending on whether the witness is present before the Chamber or not (namely whether introduction is sought under Rule 68(3) or Rules 68(2) of the Rules). As such, although the Prosecution may choose to rely on particular passages of a prior recorded testimony to present its case against the accused in some limited instances, it is the testimony as a whole which will be introduced pursuant to Rule 68 of the Rules. This is consistent with the intent and language of this provision and also is necessary because the Chamber in most instances will still need to review the totality of the testimony to assess the overall credibility and consistency of the evidence provided by a witness.²¹ For the same reasons, the Chamber does not agree with the Defence submissions that passages in a prior recorded testimony falling outside the scope of the charges may not be submitted under Rule 68(3) of the Rules.²² Although some passages may fall outside the scope of the charges, it would be inappropriate not to evaluate the testimonial evidence submitted under Rule 68(3) in its entirety.
14. Contrary to what was expected, the Prosecution has in almost all its applications to date been highly selective, referencing only small passages of evidence to be introduced from much lengthier statements. Moreover, the Prosecution seems to have interpreted the direction to mean that the introduction of the Rule 68(3) statement is not as an exception or alternative to examination-in-chief, but rather in addition to examination-in-chief. The Chamber notes in this respect the significant amount of hours requested to examine the witnesses, despite the use

²¹ *Gbagbo and Blé Goudé* Decision, ICC-02/11-01/15-870, para. 14.

²² Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 11-15.

of Rule 68(3) of the Rules. The Chamber considers this is not an appropriate use of Rule 68(3) of the Rules as it is inconsistent with its purpose, which is to expedite proceedings and avoid unnecessary litigation in court.²³ Only if time is saved by proceeding under this provision, will its use further the accused's right to a fair trial. The Chamber notes it is also not a practice adopted in previous cases.

15. The Chamber has therefore assessed the current applications bearing in mind the language and intention of Rule 68 of the Rules as outlined above and following the principle that it is the entirety of the statement which will be introduced pursuant to this provision, not excerpts of it.
16. However the Chamber acknowledges that the phrasing used in its Directions on the conduct of proceedings may have created ambiguity leading to the interpretation and approach adopted by the Prosecution.²⁴ For that reason, the Prosecution may wish to reconsider its approach to the use of Rule 68(3) of the Rules, bearing in mind that the entire statement will be introduced and the Prosecution will not be permitted to rely on the written material, as well as extensive examination-in-chief. The Chamber accepts that as a result of this clarification from the Chamber, the Prosecution may decide not to proceed with some of its planned Rule 68(3) applications or to make applications where it originally intended to adduce the evidence *vive voce* given how the applications will be approached by the Chamber.²⁵
17. The Chamber also notes that the Prosecution requests to introduce materials referred to by the witnesses in their interviews, including documents and audio-visual material. The Defence has raised objections to this, noting that Rule 68(3) of the Rules should not be used as a substitute or alternative to seeking the submission of evidence via the bar table.²⁶ While recognizing that this is the case, as the statement in its entirety will be before the Chamber it follows that

²³ *Gbagbo and Blé Goudé* Decision, ICC-02/11-01/15-870, para. 15.

²⁴ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 63(i).

²⁵ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 4(b), 16.

material used with the witness must also be introduced under Rule 68(3) to ensure that the Chamber has full understanding of the testimony. This will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination and the Defence will still have full opportunity to question the witness in order to address any issue relating to these supporting materials.

18. Lastly, the Chamber notes the Defence submission that for some of these witnesses, the submission of prior recorded testimonies is inappropriate as interviews were extensive and written statements are not a full account of their evidence and present an incomplete storyline, sometimes omitting exculpatory information.²⁷ Although the Chamber will rule on case-by-case basis whether the use of Rule 68(3) of the Rules is appropriate for a particular witness, it reiterates that this provision grants the Defence a full unaffected right to cross-examine the witness. Accordingly, the Defence may address any concerns of credibility, incompleteness, and probative value during cross-examination. Similarly, the Defence will be afforded the opportunity to question the relevant witnesses in relation to matters of an exculpatory nature.

C. The prior recorded testimonies

19. The Chamber will now turn to the prior recorded testimonies and related materials which are being considered for introduction under Rule 68(3) of the Rules:

i. P-0638

20. The Prosecution seeks authorisation to introduce into evidence [REDACTED] paragraphs of the written statement of P-0638.²⁸ Additionally, it requests leave to introduce [REDACTED] video [REDACTED] discussed by the witness in the witness statement. The Prosecution specifies that these videos [REDACTED] as they were shown to the witness.²⁹ The Prosecution seeks leave to examine the witness for three hours (instead of the five hours originally

²⁷ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 47-54.

²⁸ [REDACTED].

²⁹ P-0638 Request, ICC-01/12-01/18-836-Conf, paras 1, 12, 18-20. [REDACTED] .

estimated), in order to elicit more details to the witness's prior recorded testimony.³⁰

21. The Defence does not oppose the introduction of a number of paragraphs identified by the Prosecution, but opposes some other paragraphs that in its view either concern acts and conduct of the accused or issues of direct relevance to the charges, or where in its view there are issues of relevance, reliability or probative value.³¹ The Defence also states that given the format and length of P-0638's written statement ([REDACTED]), it is likely to miss details.³² The Defence also opposes the requested supplementary examination of the witness.³³ Lastly, the Defence opposes the submission via Rule 68(3) of the [REDACTED] shown to the witness.³⁴
22. P-0638's written statement discusses, among other issues: the arrival of the armed groups and people's lives in Timbuktu; the witness's personal experience as a victim [REDACTED]; the witness's accounts of other charged incidents [REDACTED] within the Islamic police.³⁵
23. Although the Prosecution requests introduction of only parts of the prior recorded testimony of P-0638 under Rule 68(3) of the Rules, it has provided no reasons as to why it has made such a selection. For example, the Chamber notes that some paragraphs omitted by the Prosecution are relevant to analyse the witness's testimony as a whole.³⁶ Moreover, the Prosecution has omitted paragraphs that appear to be directly relevant to the charges and the accused.³⁷ Although the Prosecution may want to elicit this evidence orally, as noted above, it would be inappropriate for the Chamber not to analyse the prior recorded testimony in its entirety.

³⁰ P-0638 Request, ICC-01/12-01/18-836-Conf, paras 5, 24-25.

³¹ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 50-52 and AnxA, p. 4.

³² Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 19, 48.

³³ Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 25.

³⁴ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 31-33, 45.

³⁵ [REDACTED].

³⁶ For example the Chamber notes that paragraphs [REDACTED] which are excluded by the Prosecution refer to the witness's motivation to testify, which is an important factor to eventually evaluate a witness's credibility and reliability. The Prosecution also excludes [REDACTED] is important to eventually evaluate whether the witness's statement is internally consistent.

³⁷ [REDACTED].

24. The Chamber notes that the Statute and the Rules clearly conceive of the introduction of prior recorded testimony, including by fact based witnesses and on issues concerning the acts and conducts of the accused, via Rule 68(3) of the Rules.³⁸ However, in the view of the Chamber, the limited number of paragraphs suggested by the Prosecution for the introduction via Rule 68(3) of the Rules, if accepted, would render Rule 68(3) entirely ineffective, particularly in light of the estimated time the Prosecution still requests for examination. The Chamber also observes that there appears to be agreement by the parties that significant parts of the written statement of P-0638 relating to core issues of the case, particularly the role of the accused in the Islamic police, are not to be introduced pursuant to Rule 68(3) of the Rules.³⁹ The Chamber also notes that the Defence has raised issues linked to the witness' alleged personal knowledge of Mr Al Hassan.⁴⁰ Moreover, the piecemeal introduction suggested by the Prosecution would not expedite proceedings. Hence, the evidence of this witness would be more appropriately presented orally in its entirety.
25. Accordingly, the Chamber rejects the Prosecution Request in respect of P-0638. However the Chamber urges the Prosecution to streamline the presentation of evidence, focusing its examination of the witness in an efficient manner. In the view of the Chamber, this could reduce the time needed for the examination-in-chief. In light of the decision, the Prosecution is permitted to provide a new estimate as to the length of examination in chief for this witness.

ii. P-0623

26. The Prosecution seeks authorisation to introduce into evidence [REDACTED] paragraphs of the written statement of P-0623.⁴¹ Additionally, it requests leave

³⁸ *Ongwen* Decision, ICC-02/04-01/15-621, para. 10; *Gbagbo and Blé Goudé* Decision, ICC-02/11-01/15-870, para. 14.

³⁹ The Chamber notes in particular that the parties appear to agree that paragraphs 95-109 of the witness statement should not be introduced via Rule 68(3) of the Rules.

⁴⁰ Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 52.

⁴¹ [REDACTED] P-0623 Request, ICC-01/12-01/18-838-Conf, para. 11 and AnxA.

to introduce [REDACTED],⁴² [REDACTED],⁴³ which were discussed by the witness in her interview. Additionally the Prosecution requests leave to introduce three documents containing [REDACTED].⁴⁴ The Prosecution seeks leave to examine the witness for two hours (instead of the four hours originally estimated), in order to elicit more details to the witness's prior recorded testimony.⁴⁵

27. The Defence does not oppose the introduction of a number of paragraphs identified by the Prosecution, but opposes some other paragraphs that in its view either concern acts and conduct of the accused or issues of direct relevance to the charges, or where evidence has issues of reliability and relevance.⁴⁶ The Defence also opposes the admission of [REDACTED], arguing that the fact that these were shown to P-0623 during the course of the interview does not constitute a sufficient basis to their admission. The Defence also contests some of [REDACTED] reliability, as well as the submission of the [REDACTED] via Rule 68(3) of the Rules.⁴⁷ Furthermore, the Defence opposes the suggested supplementary examination which in its view elicits new evidence.⁴⁸
28. P-0623's written statement relates to [REDACTED] at the relevant time of the charges.⁴⁹ The [REDACTED] and relate in particular to the alleged attack against protected objects.
29. The Chamber considers that the limited number of paragraphs suggested by the Prosecution for the introduction via Rule 68(3) of the Rules, if accepted, would render Rule 68(3) entirely ineffective, particularly in light of the estimated time the Prosecution still requests for examination. Moreover, there appears to be agreement by the parties that significant parts of the written statement of P-0623 relating to core issues of the case, particularly [REDACTED] are not to be

⁴² [REDACTED] P-0623 Request, ICC-01/12-01/18-838-Conf, para. 11 and AnxA.

⁴³ [REDACTED] P-0623 Request, ICC-01/12-01/18-838-Conf, para. 11 and AnxA.

⁴⁴ [REDACTED] P-0623 Request, ICC-01/12-01/18-838-Conf, para. 11 and AnxA.

⁴⁵ P-0623 Request, ICC-01/12-01/18-838-Conf, para. 5.

⁴⁶ Defence Response, ICC-01/12-01/18-896-Conf-AnxA, p. 3.

⁴⁷ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 31, 45.

⁴⁸ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 24-27.

⁴⁹ [REDACTED].

introduced pursuant to Rule 68(3) of the Rules.⁵⁰ The Chamber therefore considers that the partial introduction suggested by the Prosecution would not expedite proceedings. Considering that the Prosecution would still require two hours for the examination of this witness (instead of the four hours originally estimated), the introduction of the prior recorded testimony will not necessarily expedite the proceedings.

30. Accordingly, the Chamber rejects the Prosecution Request in respect of P-0623. In light of the decision, the Prosecution is permitted to provide a new estimate as to the length of examination in chief for this witness.

iii. P-0654

31. The Prosecution requests authorisation to introduce [REDACTED] paragraphs of the [REDACTED] written statements and annexes related to P-0654.⁵¹ Additionally, it requests authorisation to introduce associated material, namely one document, and [REDACTED] videos [REDACTED].⁵² The Prosecution also requests leave to introduce [REDACTED] that the witnesses commented on in the [REDACTED] written statement, and [REDACTED] it submits are necessary to understand his witness statement.⁵³ The Prosecution seeks leave to examine the witness for [REDACTED], in order to elicit more details to the witness's prior recorded testimony and show him [REDACTED] items not previously shown to or discussed with him.⁵⁴
32. The Defence does not oppose the introduction of a number of paragraphs identified by the Prosecution, but opposes some other paragraphs that in its view [REDACTED] the accused or where evidence has issues of reliability and relevance.⁵⁵ Although the Defence also generally opposes to the submission of

⁵⁰ The Chamber notes in particular that the parties appear to agree that paragraphs [REDACTED] of the witness statement, which refer to [REDACTED] should not be introduced via Rule 68(3) of the Rules.

⁵¹ [REDACTED] P-0654 Request, ICC-01/12-01/18-839-Conf, paras 1, 12 and AnxA.

⁵² P-0654 Request, ICC-01/12-01/18-839-Conf, paras 1,13 and AnxA, pages 3-29.

⁵³ P-0654 Request, ICC-01/12-01/18-839-Conf, paras 1, 13, 16 and AnxA, pages 30-33.

⁵⁴ P-0654 Request, ICC-01/12-01/18-839-Conf, paras 5, 43-46.

⁵⁵ Defence Response, ICC-01/12-01/18-896-Conf-AnxA, p. 5.

videos via Rule 68(3),⁵⁶ it does not refer specifically to the [REDACTED] related to P-0654. Lastly, the Defence opposes the suggested supplementary examination of the witness, which in its view elicits new evidence.⁵⁷

33. P-0654's written statements relate to [REDACTED] Timbuktu at the time of the charges. In his statements P-0654 refers to individuals and groups referred to in the charges,⁵⁸ including the accused,⁵⁹ as well as to events referred to in the charges [REDACTED].⁶⁰
34. The Chamber considers that the partial introduction of the written statements of P-0654 suggested by the Prosecution, if accepted, would render Rule 68(3) of the Rules entirely ineffective, particularly in light of the estimated time the Prosecution still requests for examination in court (10 hours). Moreover, there appears to be agreement by the parties that significant parts of the written statement of P-0654 should not be introduced via Rule 68(3) of the Rules.⁶¹ The Chamber therefore considers that the partial introduction suggested by the Prosecution would not expedite proceedings. Accordingly, the evidence of this witness would be more appropriately presented orally in its entirety. The Chamber however notes that there is a significant amount of material the Prosecution submits is related to this witness. The Chamber therefore urges the Prosecution to streamline its questioning, in order to focus on the material that is more appropriate to tender through this witness.
35. Accordingly, the Chamber rejects the Prosecution Request in respect of P-0654. In light of the decision, the Prosecution is permitted to provide a new estimate as to the length of examination in chief for this witness.

iv. P-0150

⁵⁶ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 31-46.

⁵⁷ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 16, 24-30.

⁵⁸ See for example the written statement [REDACTED].

⁵⁹ See for example the written statement [REDACTED].

⁶⁰ See for example the written statement [REDACTED] Referred to in P-0654 Request, ICC-01/12-01/18-839-Conf, paras 18, 21-26.

⁶¹ The Chamber notes in particular that the parties appear to agree that [REDACTED].

36. The Prosecution seeks leave to introduce, not the entirety of the prior recorded testimony,⁶² but only some parts of P-0150's evidence, namely those related to the Islamic Tribunal.⁶³ The Prosecution also requests leave to introduce related material, namely [REDACTED] shown to and commented upon by P-0150 [REDACTED].⁶⁴ The Prosecution estimates the submission under Rule 68(3) of the Rules of this portion of his prior recorded testimony will reduce examination to [REDACTED] hours (instead of the [REDACTED] hours estimated to examine the witness).⁶⁵
37. As noted above, the Defence opposes the introduction of P-0150's prior recorded testimony as premature. First, the Defence states that given the importance of his testimony and the Defence impediments to investigate and obtain instructions regarding this testimony, the evidence of P-0150 should be considered at a later stage. Second, the Defence submits that Rule 68(3) of the Rules should not be considered until after the resolution of the Defence Termination Motion.⁶⁶ The Defence also opposes the Prosecution's request for supplementary examination of P-0150 which in its view is for the purpose of eliciting new evidence.⁶⁷
38. The Chamber notes that although the Prosecution requests the introduction of evidence of P-0150 related to the Islamic Tribunal, it still foresees the need to examine the witness on that topic.⁶⁸ The Chamber also notes that the estimated amount of hours that would be saved is minimal. For that reason, his evidence would be more appropriately presented orally by the witness in its entirety.
39. Accordingly, the Chamber rejects the Prosecution Request in relation to P-0150. The Chamber however notes that there is a significant amount of material the Prosecution submits is related to this witness. The Chamber therefore urges the Prosecution to streamline its questioning, in order to focus on the material that

⁶² [REDACTED] P-0150 Request, ICC-01/12-01/18-841-Conf, paras 5, 16.

⁶³ P-0150 Request, ICC-01/12-01/18-841-Conf, para. 13.

⁶⁴ P-0150 Request, ICC-01/12-01/18-841-Conf, paras 1, 19-20 and AnxA.

⁶⁵ P-0150 Request, ICC-01/12-01/18-841-Conf, paras 5-9.

⁶⁶ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 2, 55-60.

⁶⁷ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 16, 24.

⁶⁸ P-0150 Request, ICC-01/12-01/18-841-Conf, paras 25-26.

is more appropriate to tender through this witness. In light of the decision, the Prosecution is permitted to provide a new estimate as to the length of examination in chief for this witness.

v. P-0065

40. The Prosecution requests leave to introduce portions of the [REDACTED] written statements of P-0065 and related annexes.⁶⁹ The Prosecution also requests leave to introduce materials provided by the witness to the Prosecution and on which he commented in his statements, namely [REDACTED].⁷⁰ The Prosecution also seeks to introduce [REDACTED] other items it submits are necessary to understand the written testimonies, which are included [REDACTED] statement.⁷¹ Among the evidence, the Prosecution submits there are videos, [REDACTED].⁷² The Prosecution also seeks leave to examine the witness for approximately [REDACTED] hours, to elicit further evidence, including the role of the accused (instead of [REDACTED] hours originally calculated).⁷³
41. The Defence contends that although Rule 68 of the Rules is an exception to the principle of orality, this provision was not drafted with the testimony of a witness like P-0065 in mind.⁷⁴ The Defence submits that this is an important witness, who should be heard live, [REDACTED].⁷⁵ Although the Defence does not oppose the submission via Rule 68(3) of the Rules of some paragraphs of the witness statement, it opposes some other paragraphs that in its view directly concern the accused or where evidence has issues of reliability and relevance.⁷⁶ However, it submits that because this witness [REDACTED], ‘the Defence must be afforded an opportunity [REDACTED] in advance of the trial

⁶⁹ [REDACTED] P-0065 Request, ICC-01/12-01/18-844-Conf, paras 1, 12-14, 16 and AnxA.

⁷⁰ P-0065 Request, ICC-01/12-01/18-844-Conf, paras 1, 17-18, 21 and AnxA.

⁷¹ P-0065 Request, ICC-01/12-01/18-844-Conf, para. 20 and Anx A.

⁷² P-0065 Request, ICC-01/12-01/18-844-Conf, para. 2.

⁷³ P-0065 Request, ICC-01/12-01/18-844-Conf, paras 1, 8, 25-28.

⁷⁴ Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 17.

⁷⁵ Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 18.

⁷⁶ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 18-19 and AnxA, p. 3.

testimony in order to overcome this prejudice'.⁷⁷ The Defence opposes the suggested supplementary examination of the witness, which in its view elicits new evidence and does not save time, but only generates more hardship to the Defence.⁷⁸ Lastly, the Defence opposes the introduction of videos which in its view the witness cannot verify or authenticate.⁷⁹

42. The written statements of P-0065 relate to [REDACTED].⁸⁰ His evidence relates to the armed groups in Timbuktu at the relevant time of the charges, including the structure, rules and ideology.⁸¹ He also provides evidence on the Islamic police and the role of the accused, [REDACTED].⁸²
43. The Chamber considers that the introduction of the written statements of P-0065 proposed by the Prosecution, if accepted, would render Rule 68(3) entirely ineffective, particularly in light of the estimated time the Prosecution still requests for examination (approximately nine hours). Moreover, there appears to be agreement by the parties that significant parts of the written statement of P-0065 are not to be introduced pursuant to Rule 68(3) of the Rules.⁸³ The Chamber also considers that the partial introduction suggested by the Prosecution would not expedite proceedings. Accordingly, the evidence of P-0065 would be more appropriately presented orally in its entirety.
44. In light of the above, the Chamber rejects the Prosecution Request in relation to P-0065. The Chamber however notes that there is a significant amount of material the Prosecution submits is related to this witness. The Chamber therefore urges the Prosecution to streamline its questioning, in order to focus on the material that is more appropriate to tender through P-0065. In light of the decision, the Prosecution is permitted to provide a new estimate as to the length of examination in chief for this witness.

⁷⁷ Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 23.

⁷⁸ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 16, 24-30.

⁷⁹ Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 31.

⁸⁰ P-0065 Request, ICC-01/12-01/18-844-Conf, paras 3-4.

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ The Chamber notes in particular that the parties appear to agree that the aforesaid paragraphs which refer to [REDACTED] should not be introduced via Rule 68(3) of the Rules.

vi. P-0004

45. The Prosecution requests leave to introduce into evidence parts of the [REDACTED] witnesses statements of P-0004,⁸⁴ as well as related material, namely [REDACTED] exhibits that include [REDACTED].⁸⁵ The Prosecution also seeks leave to introduce videos shown to the witness during his interview.⁸⁶ Lastly the Prosecution seeks to introduce two investigator notes that complement the witness statement.⁸⁷ The Prosecution also requests leave to examine the witness for five and a half hours to further details in relation to certain issues which were only briefly referred to during his interview (instead of the originally estimated seven hours).⁸⁸
46. Although the Defence does not oppose the submission of some paragraphs of the witness statements, it opposes some other paragraphs that in its view directly concern the acts and conduct of the accused or where evidence has issues of reliability.⁸⁹ The Defence opposes the suggested supplementary examination of the witness, which in its view elicits new evidence.⁹⁰ Lastly, the Defence opposes the introduction of videos which in its view the witness did not verify or authenticate.⁹¹ The Defence opposes to the introduction of a number of materials related to P-0004 that in its view relate to paragraphs it contends should not be introduced via Rule 68(3) of the Rules, or that he did not authenticate during his interview.⁹² The Defence particularly opposes the introduction of [REDACTED] which the Defence submits the witness conceded contain multiple errors. The Defence equally opposes the submission of videos shown to him [REDACTED].⁹³

⁸⁴ [REDACTED] P-0004 Request, ICC-01/12-01/18-846-Conf, paras 1, 8-11.

⁸⁵ P-0004 Request, ICC-01/12-01/18-846-Conf, paras 1, 12, 14, 16-25 and AnxA.

⁸⁶ P-0004 Request, ICC-01/12-01/18-846-Conf, paras 16-18 and AnxA.

⁸⁷ P-0004 Request, ICC-01/12-01/18-846-Conf, para. 26 and AnxA.

⁸⁸ P-0004 Request, ICC-01/12-01/18-846-Conf, paras 1, 4, 29-31.

⁸⁹ Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 2 and AnxA, p.1.

⁹⁰ Defence Response, ICC-01/12-01/18-896-Conf-Red, paras 16, 24.

⁹¹ Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 31.

⁹² Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 45.

⁹³ Defence Response, ICC-01/12-01/18-896-Conf-Red, para. 45.

47. The witness statements of P-0004, [REDACTED] at the time of the charges, refers to meetings with the armed groups, as well as with the local population and non-governmental organisations at the time of the charges. As with the other [REDACTED] Mr Al Hassan, [REDACTED] and will testify about his general role.⁹⁴ The Chamber notes that the Prosecution refers to this witness in several parts of its Trial Brief,⁹⁵ but that there are several witnesses who are also expected to testify in relation to [REDACTED].⁹⁶ The Chamber notes that other aspects of his testimony may be corroborative of other evidence expected to be relied on by the Prosecution, particularly in relation to the alleged destruction of protected objects and the alleged violence against women.
48. The Chamber notes that the Statute and the Rules clearly conceive of the introduction of prior recorded testimony, including by fact based witnesses and on issues concerning the acts and conducts of the accused, via Rule 68(3) of the Rules.⁹⁷ However, in the view of the Chamber, the limited number of paragraphs suggested by the Prosecution for the introduction via Rule 68(3) of the Rules, if accepted, would render Rule 68(3) entirely ineffective, particularly in light of the estimated time the Prosecution still requests for examination. The Chamber also observes that there appears to be agreement by the parties that significant parts of the written statement of P-0004 are not to be introduced pursuant to Rule 68(3) of the Rules.⁹⁸ Moreover, the piecemeal introduction suggested by the Prosecution would not expedite proceedings.
49. Accordingly, the Chamber rejects the Prosecution Request in respect of P-0004. The Chamber however notes that there is a significant amount of material the Prosecution submits is related to this witness. The Chamber therefore urges the Prosecution to streamline its questioning, in order to focus on the material that is more appropriate to tender through P-0004. In the view of the Chamber, this could reduce the time for the examination-in-chief. In light of the decision, the

⁹⁴ [REDACTED].

⁹⁵ See for example Annex A to the Prosecution Trial Brief, ICC-01/12-01/18-819-Conf-AnxA, [REDACTED].

⁹⁶ [REDACTED].

⁹⁷ *Ongwen* Decision, ICC-02/04-01/15-621, para. 10, *Gbagbo and Blé Goudé* Decision, ICC-02/11-01/15-870, para. 14.

⁹⁸ [REDACTED].

Prosecution is permitted to provide a new estimate as to the length of examination in chief for this witness.

vii. P-0193

50. In respect of P-0193, [REDACTED], the Prosecution requests authorisation to introduce the entirety of his report on geolocation of video and images and its three annexes, as well as two photographs and two notes associated with his report.⁹⁹ The Prosecution states it will require 50 minutes of supplementary examination.¹⁰⁰ The Prosecution explains that in respect of other material (57 videos, photographs, reports and a panoramic presentation and the witness's CV), it will not seek the introduction of these items, although they are necessary for a complete understanding of the report.¹⁰¹
51. The Defence does not oppose the submission of the report pursuant to Rule 68(3) of the Rules. However, it submits the witness and his report cannot constitute expert evidence. In its view, P-0193 can speak to the methods used but not the reliability of such methods.¹⁰²
52. The Chamber notes that the report authored by P-0193 relates to the geolocation of protected sites in Timbuktu,¹⁰³ and relates to the charges of destruction of protected objects and persecution.¹⁰⁴ The Chamber considers that although the witness has provided a report instead of a witness statement, this does not necessarily mean that he will testify as an expert. Instead, the Chamber considers that, [REDACTED] he is a technical fact witness who will present evidence on a very specific matter. In fact, the Chamber is of the view that in its submissions and expected supplementary examination the Prosecution appears

⁹⁹ [REDACTED] P-0193 Request, ICC-01/12-01/18-840-Conf, paras 1-2, 7-14, 18-19 and AnnexA.

¹⁰⁰ P-0193 Request, ICC-01/12-01/18-840-Conf, paras 4-5, 24.

¹⁰¹ P-0193 Request, ICC-01/12-01/18-840-Conf, para. 16 and AnxA.

¹⁰² Defence Expert Response, ICC-01/12-01/18-895-Conf, para. 64.

¹⁰³ P-0193 Request, ICC-01/12-01/18-840-Conf, para. 2.

¹⁰⁴ P-0193 Request, ICC-01/12-01/18-840-Conf, para. 2.

to share such a view, as it has indicated that it will ask neutral questions to the witness.¹⁰⁵

53. Accordingly, Chamber grants the Prosecution request in respect of P-0193 and authorises the introduction of his report, annexes and related material referred to above. The Prosecution is also authorised to complete the formalities under Rule 68(3) of the Rules and carry out the supplementary examination of the witness within the expected 50 minutes.

viii. P-0055 and P-0057

54. In respect of P-0055, [REDACTED] forensic doctor, and P-0057, [REDACTED] forensic police officer, the Prosecution seeks authorisation to introduce at the beginning of the testimony of these two witnesses five reports on a forensic mission these two witnesses carried out in Timbuktu [REDACTED].¹⁰⁶ The Prosecution also seeks to introduce material associated with the reports and their mission to Timbuktu, namely letters of instruction, photographs taken, objects obtained, a map indicating locations visited, a sketch and evidence bags relevant to the chain of custody of documents collected.¹⁰⁷ The Prosecution requests two and a half hours of supplementary examination for P-0055 and one and a half hours for P-0057.¹⁰⁸
55. The Defence opposes the introduction of the evidence related to P-0055 and P-0057 as experts. It submits that their reports should be introduced solely as concerns factual matters that arise from their direct knowledge in collecting or processing evidence.¹⁰⁹ The Defence also opposes the submission of accompanying evidence through these reports, as in its view these are items that

¹⁰⁵ P-0193 Request, ICC-01/12-01/18-840-Conf, para. 27.

¹⁰⁶ [REDACTED] P-0055 and P-0057 Requests, ICC-01/12-01/18-849-Conf, paras 1-2, 14-20, and AnxA.

¹⁰⁷ P-0055 and P-0057 Requests, ICC-01/12-01/18-849-Conf, paras 5, 21.

¹⁰⁸ P-0055 and P-0057 Requests, ICC-01/12-01/18-849-Conf, paras 8-9, 28-31.

¹⁰⁹ Defence Expert Response, ICC-01/12-01/18-895-Conf, paras 60-62.

the two witnesses appear to have collected [REDACTED] which was after the relevant events and with no analysis as to the integrity of the ‘crime scene’.¹¹⁰

56. The five reports, [REDACTED] describe the mission carried out by the Prosecution to Timbuktu, [REDACTED].¹¹¹ The Chamber also notes that the witnesses visited specific locations referred to in the charges against the accused, [REDACTED] and the mausoleums.
57. The Chamber notes that the Defence does not object to the introduction of the reports pursuant to Rule 68(3) of the Rules but to the nature of their evidence as experts. The Chamber considers that although the witnesses provided reports instead of witness statements, this does not necessarily mean that they will testify as experts. Instead, the Chamber considers that, [REDACTED] they are technical fact witness who will present evidence on a very specific matter. In fact, the Chamber notes that the Prosecution foresees that P-0055 and P-0057 will attest to the accuracy of photographs they took and to their observations in their reports,¹¹² and that the Prosecution will ask neutral questions during its examination.¹¹³
58. As regards the Defence’s objections to the introduction of objects and the sealed bags, the Chamber notes that the Prosecution states that P-0055 and P-0057 will testify about the provenance of objects collected, but that the documents placed in the sealed evidence bags will be introduced through other witnesses, who can speak to their contents.¹¹⁴ Moreover, the Defence will be able to raise any concerns as to the chain of custody of the said materials during its cross-examination, which, as stated above, remains unaffected by Rule 68(3) of the Rules.
59. Accordingly, the Chamber grants the Prosecution request in respect of P-0055 and P-0057 and authorises the introduction of their five reports, annexes and related material referred to above.

¹¹⁰ Defence Expert Response, ICC-01/12-01/18-895-Conf, para. 63.

¹¹¹ P-0055 and P-0057 Requests, ICC-01/12-01/18-849-Conf, para. 4.

¹¹² P-0055 and P-0057 Requests, ICC-01/12-01/18-849-Conf, para. 25.

¹¹³ P-0055 and P-0057 Requests, ICC-01/12-01/18-849-Conf, para. 34.

¹¹⁴ P-0055 and P-0057 Requests, ICC-01/12-01/18-849-Conf, para. 25.

60. However, bearing in mind the object and purpose of Rule 68(3) of the Rules, the Chamber considers that the Prosecution must focus its examination in order to complete the formalities under this provision and conduct any supplementary questioning of both witnesses in two hours total for both witnesses. The Chamber leaves it to the discretion of the Prosecution as to how it will divide this allotted time between the two witnesses. Noting that P-0057 and P-0055 co-authored the reports and took part in the same mission, the Chamber further urges the Prosecution to organise the examination of these two witnesses in a manner that avoids repetition of evidence. The Chamber will intervene, if necessary, to narrow the scope of the Prosecution's examination, so as to avoid undue repetition with material already introduced.¹¹⁵

D. Conclusions

61. In light of the above, and pursuant to Rule 68(3) of the Rules, the Chamber considers it appropriate to authorise the introduction of the prior recorded testimonies of witnesses P-0193, P-0055 and P-0057 and related materials as specified above, subject to the remaining conditions under Rule 68(3) being met. First, the nature and content of the evidence provided by these witnesses does not warrant *viva voce* testimony in its entirety. Second, the Chamber finds that introduction of the related materials will improve the efficiency of the proceedings. Third, the introduction of the related materials is not detrimental to the rights of the accused, particularly since the Defence will have full opportunity to cross-examine the witnesses, including on matters arising from the related materials. Moreover, while the Prosecution is granted the opportunity to conduct a limited focused supplementary examination of the witnesses, the Defence is not constrained to the amount of time used by the Prosecution and will be granted a reasonable amount of time to examine each witness.¹¹⁶ The Chamber further notes that the prior recorded testimonies and any related materials will be recognised as submitted only when the legal

¹¹⁵ See Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Preliminary ruling on Prosecution application under Rule 68(3) of the Rules for admission of prior recorded testimony of Witness P-0931, 21 September 2015, ICC-01/04-02/06-845, para. 10.

¹¹⁶ See *Ongwen* Decision, ICC-02/04-01/15-621, para. 32.

requirements are met, that is when the witnesses will appear before the Chamber and do not object to have their prior recorded testimony introduced.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:

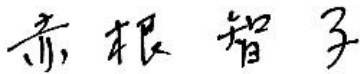
DECIDES, subject to the procedural pre-requisites of Rule 68(3) of the Rules being satisfied when witnesses P-0193, P-0055 and P-0057 appear, that their prior recorded testimonies and related materials are allowed to be introduced into evidence; and

REJECTS the introduction of the prior recorded testimonies and related materials pursuant to Rule 68(3) of the Rules of witnesses P-0638, P-0623, P-0654, P-0150, P-0065 and P-0004.

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