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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

**Decision on the introduction into evidence of the prior recorded testimony of
P-0605 and P-0582 pursuant to Rule 68(2)(c) of the Rules**

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

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TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Articles 56, 64, 67(1), 68(1), and 69(2), (3) and (7) of the Rome Statute (the ‘Statute’), Rules 68(2)(c) and 87 of the Rules of Procedure and Evidence (the ‘Rules’), Regulation 24(5) of the Regulations of the Court, and Regulation 94 of the Regulations of the Registry, issues the following decision.

I. Procedural history

1. On 6 May 2020, the Chamber issued its ‘Decision on the conduct of proceedings’,¹ which relevantly instructed the Office of the Prosecutor (the ‘Prosecution’) to file any applications pursuant to Rule 68(2) of the Rules no later than by the end of the year 2020.² On that occasion, the Chamber also specified that this time limit did not exclude later applications, notably ‘should a witness become unavailable to testify orally during the course of the Prosecution’s case’.
2. On 3 November 2021, the Prosecution filed an updated list of its remaining witnesses indicating, amongst other things, that for P-0605 and P-0582, two insider witnesses, a request under Rule 68(2)(c) of the Rules would be filed.³
3. On 25 November 2021, and pursuant to Regulation 35 of the Regulations of the Court, the Single Judge granted a Defence request seeking an extension of time to file its responses to the forthcoming Prosecution applications to submit P-0605’s and P-0582’s evidence under Rule 68(2)(c) of the Rules.⁴

¹ ICC-01/12-01/18-789, with one public and two confidential annexes.

² Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, paras 79-80.

³ Annex A to the Updated Prosecution Remaining Witnesses’ List, ICC-01/12-01/18-1878-Conf-AnxA, p. 3.

⁴ Email decision from the Single Judge at 17:09. *See also* Defence Regulation 35 Request for Extension of Time to File Rule 68 Responses relating to P-0582 and P-0605, 23 November 2021, ICC-01/12-01/18-1981-Conf; and email from the Prosecution dated 23 November 2021 at 17:08.

4. On 25 November⁵ and 1 December 2021,⁶ the Prosecution filed its forecasted applications seeking to introduce into evidence P-0605's and P-0582's prior recorded testimony pursuant to Rule 68(2)(c) of the Rules (respectively the P-0605 and P-0582 'Application' or 'Applications', together).
5. On 21 and 28 January 2022, the Defence filed responses to the Applications (respectively the P-0605 and P-0582 'Response' or 'Responses', together).⁷ The Defence seeks that the Chamber rejects the Applications on a number of grounds, including pursuant to Article 69(7) of the Statute (the 'Article 69(7) Challenge'). Alternatively, and in the event the Applications are granted, the Defence submits that the incriminatory statements contained in the material submitted should not be afforded significant or any weight.
6. On 7 February 2022, and as authorised by the Single Judge,⁸ the Prosecution filed a consolidated response to the Article 69(7) Challenge formulated by the Defence (the 'Consolidated Response').⁹

⁵ Prosecution application under rule 68(2)(c) of the Rules to introduce into evidence the prior recorded testimony of Prosecution Witness MLI-OTP-P-0605, ICC-01/12-01/18-1995-Conf-Exp (with confidential Annex A). A confidential redacted version of the P-0605 Application was notified the following day (ICC-01/12-01/18-1995-Conf-Red). The material submitted is listed in Section I of ICC-01/12-01/18-1995-Conf-AnxA (pp. 2-3).

⁶ Prosecution application under rule 68(2)(c) to introduce into evidence the prior recorded testimony and associated material of Prosecution Witness MLI-OTP-P-0582, filed on 30 November and notified on 1 December 2021, ICC-01/12-01/18-2014-Conf-Exp (with confidential Annex A). A confidential redacted version of the P-0582 Application was notified on 3 December 2021 (ICC-01/12-01/18-2014-Conf-Red). The material submitted is listed in Sections I and II of ICC-01/12-01/18-2014-Conf-AnxA (pp. 2-28), with the exception of those which have already been submitted.

⁷ Defence response to 'Confidential Redacted Version of "Prosecution application under rule 68(2)(c) of the Rules to introduce into evidence the prior recorded testimony of Prosecution Witness MLI-OTP-P-0605"' (ICC-01/12-01/18-1995-Conf-Exp), ICC-01/12-01/18-2089-Conf, with one confidential annex; and Réponse de la Défense à 'Confidential Redacted Version of "Prosecution application under rule 68(2)(c) of the Rules to introduce into evidence the prior recorded testimony and associated material of Prosecution Witness MLI-OTP-P-0582"' (ICC-01/12-01/18-2014-Conf-Exp)', ICC-01/12-01/18-2095-Conf.

⁸ Email from the Single Judge dated 31 January 2022 at 10:32, ruling on a Prosecution request sent in an email dated 29 January 2022 at 11:51. *See also* Decision on matters related to Defence challenges under Article 69(7) of the Statute, 6 November 2020, ICC-01/12-01/18-1150, para. 15 and footnote 26.

⁹ Prosecution consolidated response to Defence challenges under article 69(7) regarding the prior recorded testimony of P-0605 and P-0582, ICC-01/12-01/18-2105-Conf (the 'Consolidated Response'). To the extent that the Prosecution's Consolidated Response contains submissions which go beyond the scope of a response to the Article 69(7) Challenge, and instead contain submissions in reply to the Defence's Response to the Applications, these were not considered by the Chamber. *See e.g.* Consolidated Response, paras 39-40.

7. On 11 February 2022, the Defence filed a request seeking leave to reply to the Consolidated Response on four identified issues (the ‘Leave to Reply Request’): (i) the scope of the voluntariness inquiry; (ii) the categorization of P-0605’s [REDACTED]; (iii) the coercive effects on P-0605 of [REDACTED]; and (iv) the coercive impact on witnesses of [REDACTED].¹⁰

II. Classification of relevant filings and information on the record

8. The Chamber notes that all relevant submissions are currently classified as ‘confidential’ and finds it appropriate for public redacted versions thereof to be put on the record on the case. Deadlines are set below for this process to be completed. Following this, the Chamber will issue a public version of the present decision and review the classification of other related decisions on the record of the case.
9. Concerning P-0605’s and P-0582’s evidence, the Chambers recalls that, having noted that the witnesses were ‘[REDACTED] and that an execution of summons [...] was pending’, it deferred its determination of the Prosecution’s application for in-court protective measures pursuant to Rule 87 of the Rules (the ‘Rule 87 Requests’).¹¹ In the present circumstances, particularly noting its conclusions below, the Chamber declares the Rule 87 Requests moot.
10. Nonetheless, and in light of the nature of their evidence and the fact that their whereabouts remain unknown, the Chamber finds that P-0605’s and P-0582’s identities should remain confidential and, accordingly, that their identifying information should not be revealed to the public. Parties and participants are therefore instructed to continue relying on the witnesses’ respective pseudonyms in any relevant submissions and to redact from public filings details which could lead to their identification.

¹⁰ Defence request for leave to reply to ‘Prosecution consolidated response to Defence challenges under article 69(7) regarding the prior recorded testimony of P-0605 and P-0582’, ICC-01/12-01/18-2111-Conf.

¹¹ Eighth Decision on in-court protective measures for witnesses, 14 April 2021, ICC-01/12-01/18-1414-Conf-Exp, paras 66-69, 101-105.

11. As to the content of their testimony, the Chamber refers to its prior instruction for the calling parties to prepare public redacted versions of their Rule 68 material introduced into evidence.¹² While it is of the view that the prior recorded testimony of P-0582 and P-0605 should be made available to the public to the extent possible, the Chamber does not consider it necessary, for the time being, to set a deadline for the completion of this exercise. The Prosecution should however continue its efforts in implementing the Chamber's instructions with respect to the publicity of all Rule 68 material still to be made available to the public. For the Chamber to monitor this exercise, the Prosecution is hereby instructed to report back on this process by 20 July 2022.

III. Analysis

12. Before its assessment of whether or not Rule 68(2)(c) of the Rules may be relied upon to introduce the evidence of P-0605 and P-0582, the Chamber will first deal with the Defence's Article 69(7) Challenge.

A. Exclusion of the evidence pursuant to Article 69(7) of the Statute

13. At the outset, the Chamber finds that its determination below would not be assisted by further submissions on any of the issues identified by the Defence¹³ and accordingly dismisses the Request for Leave to Reply.
14. The Chamber notes that the Defence requests the exclusion of P-0605's and P-0582's evidence pursuant to Article 69(7) of the Statute. In the view of the Defence, the Prosecution's reliance on [REDACTED] in its interview process with P-0605 and P-0582 constitutes a sufficient nexus for exclusion under Article 69(7) of the Statute. In support, the Defence points to the witnesses' [REDACTED] and the impact of these factors on the content of the witnesses' evidence, as well as the improper inducements affecting their ICC interviews.¹⁴

¹² Email from the Chamber dated 26 October 2020 at 14:41.

¹³ The Chamber however notes with concern that the Prosecution disclosed additional information regarding P-0605's BSQ on the same day as filing of the Consolidated Response (MLI-OTP-0080-4764). The Chamber has taken this additional information into account in its decision below, although it does not consider it necessary to receive further submissions on this matter.

¹⁴ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 3-7; P-0582 Response, ICC-01/12-01/18-2095-Conf, paras 5-10.

The Defence also argues that, absent [REDACTED], the Prosecution would not have been able to obtain the evidence of P-0605.¹⁵ Further, and also with respect to P-0605 specifically, the Defence suggests that reliance on information conveyed to P-0605 in [REDACTED] in itself fulfils the nexus requirement of Article 69(7) of the Statute.¹⁶

15. In response, the Prosecution argues that the Chamber should dismiss the Article 69(7) Challenge because the Defence has failed to establish a real risk that the Prosecution obtained the evidence of P-0605 and P-0582 by means of torture or CIDT.¹⁷ In support, the Prosecution notably submits that: (i) the relevant ICC interviews were [REDACTED]; (ii) the witnesses were afforded and made use of their rights under Article 55(2) and Rule 112; and (iii) the evidence of both P-0605 and P-0582 was obtained voluntarily and, contrary to what is alleged by the Defence, there was no improper inducement to testify. The Prosecution further argues that, in any event, alleged violations do not cast substantial doubt on the reliability of the evidence and their admission would not be antithetical to or seriously damage the integrity of the proceedings.¹⁸
16. The Chamber imports by reference the applicable law as set out in its prior decision.¹⁹ Specifically, the Chamber recalls that Article 69(7) envisages two consecutive inquiries, the first of which, in accordance with the *chapeau* of this provision, is whether the evidence at issue was ‘obtained by means of a violation of [the] Statute or internationally recognized human rights’.²⁰
17. Noting the allegations at hand and that it is the Defence seeking the exclusion of this evidence under Article 69(7), the Chamber recalls that the burden is on the Defence to show a real risk that the evidence in question was obtained by means of torture or cruel, inhuman and degrading treatment (‘CIDT’).²¹ Further, noting

¹⁵ P-0605 Response, ICC-01/12-01/18-2089-Conf, para. 6.

¹⁶ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 3-4.

¹⁷ Consolidated Response, ICC-01/12-01/18-2105-Conf, paras 2, 7-33.

¹⁸ Consolidated Response, ICC-01/12-01/18-2105-Conf, paras 33-43.

¹⁹ Decision on requests related to the submission into evidence of Mr Al Hassan’s statements, 17 May 2021, ICC-01/12-01/18-1475-Conf (a public redacted version was filed on 20 May 2021) (the ‘First Article 69(7) Decision’), paras 30-35, 37-45.

²⁰ First Article 69(7) Decision, ICC-01/12-01/18-1475-Red, para. 31.

²¹ First Article 69(7) Decision, ICC-01/12-01/18-1475-Red, para. 38.

that the testimony in question was gathered by the ICC Prosecution, the Chamber recalls that the relevant question for the assessment under Article 69(7) is whether the ICC Prosecution obtained the evidence in question by means of a violation of the Statute or internationally recognised human rights. The central issues in this analysis are what measures, if any, the ICC Prosecution put in place to ensure that any possible violations arising from the surrounding context and circumstances did not impact on, or facilitate, their evidence gathering process. This includes examining what steps, if any, were taken to ensure that the evidence gathering process afforded the necessary rights and protections to the person interviewed and safeguarded the product of the interview, pursuant to the applicable law under the Statute.²²

18. With regard to the circumstances of P-0605's and P-0582's ICC interviews, the Chamber notes that the procedure for recording the interviews under Rule 112 of the Rules was clearly explained to each of the witnesses at the start of their interviews, and that they both consented to the recording procedure.²³ The voluntary nature of these interviews was also repeatedly and consistently emphasised by the ICC Prosecution to the witnesses.²⁴ The Chamber further recalls that, in a way which is similar to the process by which the accused was interviewed: (i) the Prosecution duly informed both P-0605 and P-0582 that their interview was conducted in particular pursuant to Article 55(2) of the Statute, considering that there were grounds to believe that they had committed crimes under the Statute;²⁵ (ii) questions of procedure and rights in the context of their ICC interviews were clearly and thoroughly explained by Prosecution's investigators, and both P-0605 and P-0582 confirmed that they understood these and decided to proceed with their respective interview;²⁶ and (iii) the Prosecution

²² See First Article 69(7) Decision, ICC-01/12-01/18-1475-Red, para. 45 and generally 40-44.

²³ See e.g. **P-0605**: MLI-OTP-0062-2749-R02 at 2759-2761; **P-0582**: MLI-OTP-0062-3623-R02 at 3634-3639.

²⁴ See e.g. **P-0605**: MLI-OTP-0062-2733-R02, at 2736, 2744; MLI-OTP-0062-2820-R02 at 2825; MLI-OTP-0062-2828-R02 at 2829; MLI-OTP-0062-2936-R02 at 2948; **P-0582**: MLI-OTP-0062-3606-R02 at 3617; MLI-OTP-0062-3641-R02 at 3655; MLI-OTP-0062-3736-R02 at 3759; MLI-OTP-0062-4198-R02 at 4218.

²⁵ See e.g. **P-0605**: MLI-OTP-0062-2733-R02, at 2744-2748; MLI-OTP-0062-2828-R02 at 2829-2830; **P-0582**: MLI-OTP-0062-3606-R02 at 3617-3619.

²⁶ See e.g. **P-0605**: MLI-OTP-0062-2733-R02 at 2744-2748; MLI-OTP-0062-2749-R02 at 2750-2756; **P-0582**: MLI-OTP-0062-3606-R02 at 3610-3622; MLI-OTP-0062-3623-R02 at 3624-3634.

informed the witnesses of their right to silence and privilege against self-incrimination.²⁷ The Chamber also observes that the witnesses' respective interviews are characterised by open, respectful and constructive exchanges, and that they were consistently encouraged by the Prosecution to speak openly, ask questions and make clarifications throughout.²⁸

19. Further, the Chamber notes that the ICC Prosecution explained to both P-0605 and P-0582 their right to legal assistance and to be questioned in counsel's presence, and observes that both witnesses were indeed assisted by counsel throughout their interviews.²⁹ Both witnesses were also assisted, when needed, by an interpreter who was available throughout the interviews.³⁰
20. The Chamber notes in addition that the Prosecution also consistently emphasised [REDACTED], including to underline that it had no control over [REDACTED].³¹ Nevertheless, the Prosecution enquired with the witnesses whether they had anything to raise regarding [REDACTED] and encouraged them to raise issues.³² The Prosecution also noted that it would report the issues raised to [REDACTED].³³ Contrary to the arguments of the Defence,³⁴ the Chamber considers that nothing in the Prosecution's actions in this regard, when read together with the other elements of the interviews as highlighted above, as

²⁷ See e.g. **P-0605**: MLI-OTP-0062-2733-R02 at 2746; MLI-OTP-0062-2828-R02 at 2829-2830; **P-0582**: MLI-OTP-0062-3606-R02 at 3619-3620.

²⁸ See e.g. **P-0605**: MLI-OTP-0062-2749-R02 at 2758; MLI-OTP-0062-2762-R02 at 2787-2788; MLI-OTP-0062-2820-R02 at 2821; MLI-OTP-0062-2858-R02 at 2860; **P-0582**: MLI-OTP-0062-3657-R02 at 3663; MLI-OTP-0062-4198-R02 at 4211-4216.

²⁹ See e.g. **P-0605**: MLI-OTP-0062-2733-R02 at 2747-2748; MLI-OTP-0062-2749-R02 at 2750, 2756, 2758; MLI-OTP-0062-2789-R02 at 2790; MLI-OTP-0062-2800-R02 at 2801; MLI-OTP-0062-2820-R02 at 2825-2826; MLI-OTP-0062-2828-R02 at 2829-2830; MLI-OTP-0062-2858-R02 at 2859; MLI-OTP-0062-2936-R02 at 2949; **P-0582**: MLI-OTP-0062-3606-R02 at 3620-3622; MLI-OTP-0062-3623-R02 at 3624-3625.

³⁰ See e.g. **P-0605**: MLI-OTP-0062-2733-R02 at 2735, 2737; MLI-OTP-0062-2828-R02 at 2829; **P-0582**: MLI-OTP-0062-3606-R02 at 3611.

³¹ See e.g. **P-0605**: MLI-OTP-0062-2820-R02 at 2822-2826; MLI-OTP-0062-2936-R02 at 2945-2947; **P-0582**: MLI-OTP-0062-3606-R02 at 3617; MLI-OTP-0062-3641-R02 at 3655-3656; MLI-OTP-0062-3736-R02 at 3755-3759; MLI-OTP-0062-3623-R02 at 3634-3637; MLI-OTP-0062-3950-R02 at 3958-3960; MLI-OTP-0062-4340 at 4360-4364.

³² See e.g. **P-0605**: MLI-OTP-0062-2820-R02 at 2825-2826; MLI-OTP-0062-2828-R02 at 2830-2831; MLI-OTP-0062-2936-R02 at 2946; **P-0582**: MLI-OTP-0062-3641-R02 at 3655; MLI-OTP-0078-4214 at 4214-4217, 4221, 4223-4229, 4231-4232, 4235; MLI-OTP-0062-3657-R02 at 3660-3662; MLI-OTP-0062-4198-R02 at 4216-4218.

³³ See e.g. **P-0605**: MLI-OTP-0062-2820-R02 at 2822-2825; MLI-OTP-0062-2936-R02 at 2945-2948; **P-0582**: MLI-OTP-0062-3641-R02 at 3655-3656.

³⁴ P-0582 Response, ICC-01/12-01/18-2095-Conf, paras 9-10, 34; P-0605 Response, ICC-01/12-01/18-2089-Conf, para. 7.

well as having had particular regard to [REDACTED], could be regarded as improper inducements to testify from the ICC Prosecution.

21. In light of the above, notably the safeguards taken by the Prosecution in explaining and systematically reinforcing the witnesses' rights during the interviews, and consistently emphasising [REDACTED], the Chamber finds that Defence has not shown a real risk that the evidence in question was obtained by means of torture or CIDT. The Defence has therefore failed to substantiate its arguments that the evidence of P-0605 and P-0582 was obtained by means of a violation of the Statute or internationally recognised human rights, and the Chamber accordingly dismisses the Article 69(7) Challenge.
22. Relatedly, the Chamber also finds that consideration of the circumstances in which P-0605 obtained the information which he subsequently shared with the ICC Prosecution goes beyond the scope of the present assessment under Article 69(7) of the Statute. Indeed, these circumstances relate to the source and the reliability of discrete accounts of P-0605, which are to be considered by the Chamber in its ultimate assessment of P-0605's evidence, as opposed to its introduction. Accordingly, to the extent that the Defence seeks the exclusion of P-0605's prior recorded testimony because of the circumstances of and lack of reliability of the information he obtained in the context of his interactions with Mr Al Hassan, the Chamber dismisses this argument as irrelevant to the present assessment or moot as a result of the Chamber's findings in the Decision on Mr Al Hassan's Statements.³⁵

B. Introduction into evidence of the prior recorded testimony of P-0605 and P-0582 pursuant to Rule 68(2)(c) of the Rules

23. With respect to the procedural requirements under Rule 68(2)(c) of the Rules for the introduction into evidence of the prior recorded testimony of witnesses who are unavailable to testify orally, the Chamber incorporates by reference the

³⁵ First Article 69(7) Decision, ICC-01/12-01/18-1475-Red.

applicable law as set out in its prior decision.³⁶ These requirements, as well as relevant factors, are being considered by the Chamber in the section below.

1. Whether P-0605 and P-0582 are unavailable to testify orally

24. The Prosecution submits that P-0605 and P-0582 have been and remain unavailable to testify orally. In support, the Prosecution notably refers to: (i) its requests, including those denied by Pre-Trial Chamber I (the ‘PTC’), for measures to be taken under Article 56 of the Statute;³⁷ (ii) failed attempt (because of the restrictions resulting from the COVID-19 pandemic) to schedule their testimony among the first witnesses in the trial;³⁸ and (iii) the witnesses’ subsequent [REDACTED].³⁹ The Prosecution also submits that it has exercised due diligence in order to locate and regain contact with P-0605 and P-0582 following [REDACTED] in [REDACTED] 2020.⁴⁰ The Prosecution recalls that, as part of these efforts, it requested and obtained the issuance of summonses to appear for both P-0605 and P-0582, but that these could not be served as the Malian authorities were also unable to locate the witnesses.⁴¹
25. The Defence submits that the witnesses’ unavailability to testify has not been demonstrated to the requisite standard, arguing notably that there is insufficient evidence of unavailability connected with the summonses proceedings. In the view of the Defence, an attempt by the Malian authorities to locate the summoned witnesses over a period of less than six weeks does not, in the circumstances,

³⁶ Decision on the introduction into evidence of P-0570’s prior recorded testimony pursuant to Rule 68(2)(c) of the Rules, 13 July 2021, ICC-01/12-01/18-1588-Red (the ‘Second Decision under Rule 68(2)(c)’), paras 8-11; and Decision on the introduction into evidence of P-0125’s prior recorded testimony pursuant to Rule 68(2)(c) of the Rules, 14 April 2021, ICC-01/12-01/18-1413 (the ‘First Decision under Rule 68(2)(c)’), para. 6.

³⁷ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, paras 8-15, 41; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 6-13, 39.

³⁸ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, paras 17-19, 42; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 15-17, 40-41.

³⁹ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, paras 21-22; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 18-20, 41.

⁴⁰ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, paras 21, 44; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 19, 42.

⁴¹ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, paras 21-31, 44; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 19-29, 42.

represent ‘all reasonable efforts’.⁴² The Defence notably argues that there were insufficient time and resources allocated for the missing individuals to be found.

26. The Chamber notes the uncontested fact that both P-0605 and P-0582 were [REDACTED] in [REDACTED] 2020, which the Chamber observes was at an early stage of the Prosecution’s presentation of evidence. The Chamber further recalls that, after contacts with them could not be re-established, summonses were issued⁴³ and transmitted⁴⁴ to the relevant State authorities compelling these two witnesses to appear before the Court for testimony.⁴⁵ The Chamber emphasises that, already at the time of issuing the summonses, it found that ‘there [were] considerable difficulties in obtaining the testimony of the [w]itnesses, as reflected in the various reasonable and unsuccessful steps taken to date by the Prosecution’.⁴⁶ The Chamber further notes that the Registry recently reported that the relevant State authorities informed they have not been able to execute the summonses because P-0605 and P-0582 could not be located.⁴⁷
27. Finally, the Chamber recalls that the closure of the Prosecution’s presentation of evidence is imminent. Accordingly, and despite all the efforts undertaken by the Prosecution and the Registry, with the cooperation of the relevant State authorities, the Chamber observes that there is no prospect of being able to

⁴² P-0605 Response, ICC-01/12-01/18-2089-Conf, para. 10; and P-0582 Response, ICC-01/12-01/18-2095-Conf, para. 13.

⁴³ *Citation à comparaître adressée à [P-0582]*, 9 August 2021, ICC-01/12-01/18-1653-Conf; and *Citation à comparaître adressée à [P-0605]*, 9 August 2021, ICC-01/12-01/18-1654-Conf.

⁴⁴ *Demande de coopération adressée à la République du Mali aux fins de citation à comparaître de témoins*, filed on 9 August and notified on 10 August 2021, ICC-01/12-01/18-1657-Conf. *See also*, *Rapport du Greffe sur la mise en œuvre de la Décision relative à la requête urgente de l'Accusation aux fins de citation à comparaître de témoins*, ICC-01/12-01/18-1130-Conf-Exp-Corr, 20 October 2021, ICC-01/12-01/18-1828-Conf (the ‘Registry Report’), para. 17.

⁴⁵ *See* Corrigendum of ‘Decision on the Prosecution’s urgent request to summon witnesses’, original notified on 26 and corrigendum on 27 October 2020, ICC-01/12-01/18-1130-Conf-Corr (the ‘Summons Decision’); and Prosecution Urgent Request under Articles 64(6)(b) and 93 of the Rome Statute to Summon Witnesses, 19 October 2020, ICC-01/12-01/18-1117-Conf.

⁴⁶ Summons Decision, ICC-01/12-01/18-1130-Conf-Corr, para. 9.

⁴⁷ Registry Report, ICC-01/12-01/18-1828-Conf, paras 18-19, with Annexes IV, V, VI to the Registry Report (ICC-01/12-01/18-1828-SECRET-Exp-AnxIV, ICC-01/12-01/18-1828-SECRET-Exp-AnxV, and ICC-01/12-01/18-1828-SECRET-Exp-AnxVI). With respect to the Defence’s submission that the efforts deployed nationally were insufficient, the Chamber has no reason to believe that the State authorities failed to comply with their cooperation obligations and, in the circumstances, does not consider it necessary to examine further how the Chamber’s request for assistance was executed.

arrange and obtain P-0605 and P-0582's *viva voce* testimony at a reasonable stage of the trial proceedings.⁴⁸

28. Considering the above, the Chamber is satisfied that P-0605 and P-0582 have been and are currently unavailable to testify orally due to obstacles that cannot be overcome with reasonable diligence, within the meaning of Rule 68(2)(c) of the Rules.

2. *Whether the necessity of measures under Article 56 of the Statute could have been anticipated*

29. The Prosecution submits that the necessity of measures under Article 56 of the Statute were anticipated, requested, but not obtained with respect to P-0605 and P-0582 and it argues that these circumstances are sufficient to satisfy the Rule 68(2)(c) requirement regarding the anticipation of measures under Article 56.⁴⁹ The Prosecution specifies that measures under Article 56 for both P-0605 and P-0582 could not be implemented either due to the denial of its relevant requests by the PTC or other constraints subsequently faced.⁵⁰
30. The Defence submits that the Prosecution was under a duty to act in a diligent manner and take steps to address the risk that P-0605 and P-0582 [REDACTED] in a manner consistent with the rights of the accused and, in this regard, the Defence argues that the Prosecution has failed to explain why it did not submit new applications under Article 56 of the Statute before the Chamber.⁵¹
31. The Chamber agrees with the Prosecution and, consistent with the jurisprudence of Trial Chamber VII and Trial Chamber VI, is of the view that the *raison d'être* of this requirement is to avoid introducing evidence through Rule 68(2)(c) of the Rules when measures under Article 56 of the Statute 'would have been a viable

⁴⁸ See similarly, *The Prosecutor v. Bosco Ntaganda*, Public redacted version of 'Decision on certain requests related to the admission of the prior recorded testimony of Witness D-0080', 22 February 2018, ICC-01/04-02/06-2242-Red (the '*Ntaganda* Trial Decision introducing D-0080's testimony'), para. 32.

⁴⁹ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, paras 9-15, 45-46; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 6-13, 43-44.

⁵⁰ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, para. 46; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, para. 44.

⁵¹ P-0605 Response, ICC-01/12-01/18-2089-Conf, para. 9; and P-0582 Response, ICC-01/12-01/18-2095-Conf, para. 12.

alternative at an earlier stage'.⁵² In the present case, the Chamber considers that it has been established that, while such measures were contemplated, they simply could not be implemented due to [REDACTED]⁵³ and/or their subsequent unavailability. Accordingly, since their evidence could not be preserved under Article 56 of the Statute, the Chamber finds that the relevant requirement has been satisfied. For similar reasons, the Chamber takes no issue with the fact that the Prosecution did not submit new applications under Article 56 once the case was referred to this Chamber.

3. *Whether P-0605's and P-0582's prior recorded testimony have sufficient indicia of reliability*

32. The Prosecution seeks the introduction into evidence of the prior recorded testimony of P-0605 (two audio-recordings and twelve transcripts of his interview with the Prosecution),⁵⁴ as well as of the prior recorded testimony of P-0582 (ten audio-recordings and 47 transcripts of his interview with the Prosecution).⁵⁵
33. The Prosecution argues that the evidence of these two witnesses has sufficient indicia of reliability. In support, the Prosecution submits that: (i) all relevant safeguards were adopted in the context of the relevant interview processes, including those under Article 55(2) of the Statute and Rule 112 of the Rules; (ii) their respective testimony was obtained during a voluntary interview with full respect for their rights; and that (iii) [REDACTED].⁵⁶ In addition, and referring

⁵² *The Prosecutor v. Jean Pierre Bemba Gombo et al.*, Decision on 'Prosecution Submission of Evidence Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence', 12 November 2015, ICC-01/05-01/13-1481-Red-Corr, para. 19; and *Ntaganda* Trial Decision introducing D-0080's testimony, ICC-01/04-02/06-2242-Red, para. 37.

⁵³ See PTC, *Décision relative aux requêtes du Procureur aux fins de prendre des mesures nécessaires en application de l'article 56-2 du Statut pour les témoins MLI-OTP-P-0066, MLI-OTP-P-0004, MLI-OTP-P-0605, MLI-OTP-P-0582 et MLI-OTP-P-0537*, 13 December 2018, ICC-01/12-01/18-204-Secret-Exp (a redacted version available to the Defence was notified on the same day); and *Deuxième décision relative aux requêtes du Procureur aux fins de prendre des mesures nécessaires en application de l'article 56-2 du Statut pour les témoins MLI-OTP-P-0066, MLI-OTP-P-0004, MLI-OTP-P-0605, MLI-OTP-P-0582 et MLI-OTP-P-0537*, 7 February 2019, ICC-01/12-01/18-235-Secret-Exp (a redacted version available to the Defence was notified on the same day).

⁵⁴ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, para. 34.

⁵⁵ P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 32-33.

⁵⁶ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, paras 55-59, 61; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 47-54

to the contents of the relevant material, the Prosecution submits that their prior recorded testimony is clear, detailed, and internally consistent.⁵⁷

34. The Defence submits that there are a number of manifest and obvious issues in relation to P-0605's and P-0582's prior recorded testimony which cast serious doubt on the reliability of their evidence. Concerning P-0605's testimony, the Defence notably argues that: (i) his evidence is heavily reliant on hearsay and has been greatly impacted by public testimony;⁵⁸ (ii) his accounts on important issues remain uncorroborated and/or inconsistent with those of other witnesses;⁵⁹ and (iii) the information P-0605 claims to have obtained from Mr Al Hassan [REDACTED] is inherently unreliable.⁶⁰ Concerning P-0582's testimony, and to a lesser extent P-0605's, the Defence contends that the reliability of their evidence is affected by the fact that [REDACTED] prior to and during the course of their respective ICC interviews.⁶¹ For P-0582's ICC interviews, the Defence points to what it qualifies as suggestive and leading questioning by the Prosecution which it submits impacts the reliability of P-0582's accounts, especially his evidence on the role of Mr Al Hassan during the relevant period.⁶²
35. The Chamber first notes that P-0605's and P-0582's prior recorded testimony consists of the recordings and corresponding transcripts of hours of interviews. These interviews were recorded *verbatim* and in full, and it is the record of these interviews, which contains both the original and interpreted exchanges, that the Prosecution is now seeking to introduce into evidence. The Chamber notes that the introduction of this record in full will necessarily assist in the ultimate assessment to be made by the Chamber of the reliability of their accounts, as well as its assessment of relevant submissions by the parties. Accordingly, the Chamber takes no issue, at this stage, with the Prosecution's questioning of P-0582. The extent to which suggestive or leading questions may have impacted P-0582's accounts will be reviewed and assessed by the Chamber in its Article 74

⁵⁷ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, paras 60; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 54-55.

⁵⁸ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 14, 16-22.

⁵⁹ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 28-35.

⁶⁰ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 14-16.

⁶¹ P-0582 Response, ICC-01/12-01/18-2095-Conf, paras 26-28. *See also*, P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 7, 44.

⁶² P-0582 Response, ICC-01/12-01/18-2095-Conf, paras 21-25.

judgment. The excerpts referred to by the Defence in its relevant submissions fall short of impacting the Chamber's assessment that the prior recorded testimony as a whole bears sufficient 'indicia of reliability' within the meaning of Rule 68(2)(c)(i) of the Rules. Similarly, and as indicated above, consideration of the circumstances in which P-0605 allegedly obtained information from Mr Al Hassan [REDACTED] relates to the sources and reliability of specific accounts of P-0605, which the Chamber will be in a better position to assess ultimately, in light of the level of details as well as the importance of the matter for the case and the evidentiary record as a whole.

36. Concerning the process followed with respect to the witnesses' interviews, the Chamber refers back to its above findings.⁶³ Specifically, the Chamber recalls that P-0605 and P-0582 gave their statements with the (occasional) assistance of qualified interpreters, as well as in the presence of Counsels, who they consulted. While not taken under oath, the Chamber notes that: (i) the voluntary nature of the ICC interviews were repeatedly and consistently emphasised; (ii) the witnesses were explained, and appear to have understood, that the information they provided could be used in the context of judicial proceedings; and (iii) they consented to the recording procedure and took part in interviews that lasted the (many) days. The Chamber further recalls that it found no indication of improper inducements to testify from the ICC Prosecution's actions.
37. Notwithstanding, the Chamber also takes note of the related circumstances discussed in the context of the Article 69(7) Challenge.⁶⁴ Recalling its above finding that the Defence has not shown a real risk that the evidence in question was obtained by means of torture or CIDT, the Chamber considers that the circumstances underpinning the Defence's arguments are nonetheless of relevance to its ultimate assessment of the reliability of the testimony of P-0605 and P-0582. In this regard, the Chamber already acknowledges the necessary caution which shall be exercised when giving weight to the testimony of [REDACTED] witnesses for whom [REDACTED] may have existed for their

⁶³ See above Section III-A for the Chamber's assessment of the Article 69(7) Challenge.

⁶⁴ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 3-7; and P-0582 Response, ICC-01/12-01/18-2095-Conf, paras 5-10.

role in the alleged events, especially where such evidence cannot be tested by way of cross-examination.

38. As to the content of P-0605's testimony, the Chamber finds that the 'inconsistencies' identified by the Defence do not render his testimony so manifestly unbelievable or incoherent so as to render it unsuitable for introduction under Rule 68(2)(c) of the Rules. Instead, these are details which, in light of all evidence submitted, the Chamber will be in a position to assess and weigh. Accordingly, the Chamber is of the view that the Defence fails to explain how the issues for which contrary evidence could be identified in any way impact the reliability of P-0605's evidence as a whole. The Chamber further notes that the fact that a prior recorded testimony contains indirect evidence, including on issues of importance to the case, does not render it unsuitable for introduction but warrants the Chamber's ultimate careful consideration.
39. In light of the aforementioned considerations, the Chamber is satisfied that the Applications establish that the prior recorded testimony of P-0605 and P-0582 bear sufficient indicia of reliability of formal nature. The Chamber recalls in this regard that the absence of cross-examination is a factor which will be considered in the Chamber's ultimate assessment of the probative value and weight, if any, to be attributed this material, especially where inconsistencies are identified.⁶⁵
40. Turning to the associated material, the Chamber notes that the Prosecution seeks to introduce as necessary to understand P-0582's prior recorded testimony: (i) three sketches he made during his interview; (ii) 62 pictures which were shown to him during his interview; and (iii) 42 videos or video extracts discussed in his interview, together with their respective transcripts and translations.⁶⁶
41. Noting that P-0582 was shown each photograph and video submitted as associated material and that he discussed their contents during his interviews with the Prosecution, the Chamber considers that the associated material identified by

⁶⁵ See First Decision under Rule 68(2)(c), ICC-01/12-01/18-1413, para 18; and Second Decision under Rule 68(2)(c), ICC-01/12-01/18-1588-Red, para. 29.

⁶⁶ P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, para. 34.

the Prosecution can be introduced into evidence via this witness pursuant to Rule 68(2)(c) of the Rules, where they were not already formally submitted.

42. Finally, the Chamber notes the Defence's submission that the Applications are inappropriate because they exclude information which has significant implications for the reliability of the evidence submitted.⁶⁷ To the extent that the Defence seeks that the Chamber introduces additional evidence provided by P-0605 and P-0582 during the course of further interviews with ICC investigators, the Chamber agrees with the Defence and, consistent with its prior decision on the introduction of Mr Al Hassan's evidence,⁶⁸ authorises the submission of this additional material under Rule 68(2)(c) of the Rules. This additional material consists of: first, together with the prior recorded testimony of P-0605: (i) the (updated) transcript of a session with P-0605 devoted to the biographical and security questionnaires ('BSQ');⁶⁹ (ii) the transcript of a further interview during which he described [REDACTED];⁷⁰ and (iii) three investigators' notes recording information provided by P-0605 during the course of another session devoted to the BSQ;⁷¹ and second, together with the prior recorded testimony of P-0582: (i) an investigators' note which reproduces *verbatim* excerpts from the transcripts of various sessions with P-0582 devoted to the BSQ;⁷² as well as (ii) nine investigators' notes which record other information related to these same sessions.⁷³ Remaining material identified by the Defence is, in the view of the Chamber, beyond the scope of the present determination and, should it consider it necessary, the Defence may seek to introduce this additional evidence separately in the context of the presentation of its case.

⁶⁷ P-0605 Response, ICC-01/12-01/18-2089-Conf, para. 44; and P-0582 Response, ICC-01/12-01/18-2095-Conf, paras 33-36.

⁶⁸ First Article 69(7) Decision, ICC-01/12-01/18-1475-Red, footnote 5.

⁶⁹ MLI-OTP-0078-4262; and MLI-OTP-0080-4764.

⁷⁰ MLI-OTP-0078-2251.

⁷¹ MLI-OTP-0064-0799; MLI-OTP-0071-0004; and MLI-OTP-0076-0304.

⁷² MLI-OTP-0078-4214.

⁷³ MLI-OTP-0065-0194-R01, MLI-OTP-0065-0199-R01, MLI-OTP-0071-0026-R01, MLI-OTP-0071-0029, MLI-OTP-0071-0030, MLI-OTP-0071-0031, MLI-OTP-0071-0032, MLI-OTP-0071-0034, and MLI-OTP-0073-1221.

4. *Other relevant factors and consideration of any potential prejudice*

43. The Prosecution argues that the introduction of P-0605's and P-0582's evidence under Rule 68(2)(c) of the Rules is neither prejudicial nor inconsistent with the rights of Mr Al Hassan. In this regard, it notably submits that their prior recorded testimony is largely corroborated by the evidence of other witnesses and that the Defence has had the opportunity to cross-examine other witnesses on key issues mentioned by P-0605 and P-0582.⁷⁴ The Prosecution further argues that the fact that their evidence goes to the acts and conduct of the accused need not prevent their introduction under Rule 68(2)(c), as the provision merely provides that this 'may be a factor against its introduction, or part of it'.⁷⁵ With respect to P-0605, the Prosecution further submits that the relevant part of his testimony is 'relatively concise'⁷⁶ and to be relied upon 'primarily as corroboration of other evidence'.⁷⁷
44. The Defence contends that and illustrates how the witnesses' evidence: (i) discusses a wide array of matters and events which go beyond background information; (ii) concerns live and important issues in the case, which are all materially in dispute; and (iii) contains allegations that go to acts and conduct of the accused, and which are 'by no mean' peripheral or discrete.⁷⁸ In the Defence's view, it is of fundamental importance that the accused be given an opportunity to cross-examine P-0605 and P-0582, notably with respect to: (i) facts that go to Mr Al Hassan's acts and conduct, especially when based on hearsay;⁷⁹ (ii) any perceptions of inducement they had during their respective ICC interviews;⁸⁰ as well as (iii) the conditions under which Mr Al Hassan allegedly provided P-0605 with information [REDACTED].⁸¹ With respect to the above, the Defence submits that it is simply impossible for it to investigate or verify these accounts

⁷⁴ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, paras 66-72; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, paras 58, 60-62.

⁷⁵ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, para. 65; and P-0582 Application, ICC-01/12-01/18-2014-Conf-Red, para. 59.

⁷⁶ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, para. 64.

⁷⁷ P-0605 Application, ICC-01/12-01/18-1995-Conf-Red, para. 67.

⁷⁸ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 24-27, 37-38; and P-0582 Response, ICC-01/12-01/18-2095-Conf, paras 16-19.

⁷⁹ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 17-18; and P-0582 Response, ICC-01/12-01/18-2095-Conf, paras 18-19.

⁸⁰ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 15-16.

⁸¹ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 15-16.

and accordingly argues that introduction of P-0605's and P-0582's prior recorded testimony would be antithetical to Mr Al Hassan's right to have examined the witnesses against him and cause him undue prejudice.

45. From the outset, the Chamber recalls that Rule 68(2)(c) of the Rules provides one exception through which the Chamber can receive the testimony of witnesses by way of means other than in-court testimony. It is limited to cases where witnesses are unavailable to testify orally, such as for P-0605 and P-0582, and only to be authorised, as explained above, where such introduction is neither prejudicial to nor inconsistent with the rights of the accused. The Chamber further recalls that, pursuant to the relevant legal framework, the fact that such a testimony goes to acts and conduct and/or matters that are materially in dispute need not bar its introduction under Rule 68(2)(c) of the Rules. Rather, these are some of the factors which the Chamber shall take into account in the context of the present assessment.
46. Turning to the Applications, the Chamber first notes that the two prior recorded testimony sought by the Prosecution to be introduced go to the acts and conduct of the accused and address a number of matters which are materially in dispute. This is uncontested. Indeed, P-0605 and P-0582 are two insider witnesses whose evidence notably concerns the alleged role, authority, and contribution of the accused. Their prior recorded testimony may therefore be relevant to several charges, on key aspects of the case, and assist the Chamber in its determination of the truth.
47. With respect to P-0582's evidence, the Chamber observes that his testimony consists of especially dense and voluminous material and that he is a particularly important Prosecution witness. Indeed, P-0582 [REDACTED].
48. In this regard, the Chamber further notes the Defence's submission that P-0582's testimony contains potentially exculpatory statements as well as information of relevance to Defence's lines of inquiry, but that these were – in its view – not sufficiently addressed during the course of ICC Prosecution interviews.⁸² For the

⁸² P-0582 Response, ICC-01/12-01/18-2095-Conf, paras 4, 31-32.

purpose of the present determination, the Chamber takes note of these submissions and, further observing that the relevant details were often provided spontaneously by P-0582 to the ICC Prosecution, and contrary to the Defence's submission,⁸³ considers the presence of potentially exculpatory evidence as a further indicia of the reliability of his prior recorded testimony.

49. Furthermore, the Chamber notes that most of P-0605 and P-0582's relevant accounts, including those which go to the acts and conduct of the accused, concern topics which have already been discussed by other witnesses who testified in-court.
50. As noted above,⁸⁴ and in light of all relevant circumstances, the Chamber reiterates that caution will be warranted in its assessment of P-0605 and P-0582's evidence and credibility, especially on contested issues. The Chamber indeed recalls that, in line with the Appeals Chamber's guidance, a 'prior recorded testimony must not form the sole or decisive basis for the conviction for a particular crime as such'.⁸⁵ In addition, the Chamber emphasises that findings of facts are to be reached by professional judges, who are trained and fully able to assess and eventually exclude, as warranted, any portions of the evidentiary record. In the case at hand, the Chamber recalls that such assessment will be facilitated by the full and *verbatim* record of P-0605's and P-0582's respective interviews, as well as assisted by detailed submissions from the parties.
51. Finally, and with respect to potential prejudice arising, the Chamber finds that most of the related Defence's submissions will be better considered as part of the Chamber's ultimate assessment of the material's probative value and weight, if any, as well as the Defence's effective opportunity to challenge it. As things stand, the Chamber does not consider that the accused is unfairly impacted by the introduction sought under Rule 68(2)(c) of the Rules or that the unavailability of P-0605 and P-0582 for cross-examination makes it impossible for the Defence to

⁸³ P-0582 Response, ICC-01/12-01/18-2095-Conf, para. 26 ('[...] *le témoignage de P-0582 est marqué par une ambivalence entre les déclarations incriminantes et à décharge qui interroge sa fiabilité.*')

⁸⁴ See above paragraph 37.

⁸⁵ Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', 30 March 2021, ICC-01/04-02/06-2666-Red, paras 16, 629-630.

investigate and address the matters raised in their evidence. To the contrary, the Chamber is of the understanding that other sources of relevant information are available for the Defence to challenge the evidence and credibility of these two witnesses, including other evidence related to [REDACTED]. In addition to all the material disclosed to the Defence for its preparation in this respect, the Chamber also notes that two Prosecution insider witnesses, [REDACTED], were cross-examined by the Defence on these issues. While acknowledging that the Defence is impacted by the fact that it will not be given an opportunity to question P-0605 or P-0582 concerning its own lines of argument, the Chamber finds that the topics identified by the Defence⁸⁶ currently lack in specificity and/or do not appear unique to the two witnesses. As a result, and without prejudice to its determination in the context of its Article 74 judgment, the Chamber is of the view that the introduction of P-0605's and P-0582's evidence does not disproportionately or unduly impact the rights of the accused.

52. Accordingly, based on the information currently before it, and having found that the issues raised by the Defence do not have the capacity to prejudice the Chamber's fair assessment of the evidence, the Chamber considers that the *prima facie* probative value of the material submitted outweighs potential prejudice that admission may cause to a fair trial. Accordingly, and notwithstanding the fact that their evidence goes to Mr Al Hassan's acts and conduct, the Chamber is satisfied that the introduction of P-0605's and P-0582's evidence under Rule 68(2)(c) of the Rules is not incompatible with the accused' fair trial rights or unduly prejudicial.

IV. Conclusion

53. In light of the above, having dismissed the Defence's challenge under Article 69(7) of the Statute, found that all the procedural requirements are met, and considered that the introduction sought is neither prejudicial nor inconsistent with Mr Al Hassan's rights, the Chamber grants the Applications and authorises the Prosecution to introduce into evidence pursuant to Rule 68(2)(c) of the Rules

⁸⁶ P-0605 Response, ICC-01/12-01/18-2089-Conf, paras 39-43; and P-0582 Response, ICC-01/12-01/18-2095-Conf, para. 31.

the prior recorded testimony of P-0605 and P-0582, together with the associated material identified.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DISMISSES the Leave to Reply Request and the Article 69(7) Challenge;

GRANTS the P-0605 and P-0582 Applications;

AUTHORISES, pursuant to Rule 68(2)(c) of the Rules, the introduction into evidence of the prior recorded testimony of P-0605 and P-0582, as well as, for the later, the associated material submitted, as identified in footnotes 5-6 and 69-73 above;

ORDERS the Registry to reflect in the eCourt metadata the introduction of the relevant material;

ORDERS the Prosecution to file a public redacted version of the Applications and the Consolidated Response no later than two weeks after notification of the present decision;

ORDERS the Defence to file public redacted versions of its Responses and the Leave to Reply Request no later than two weeks after notification of the redacted versions of the Applications;

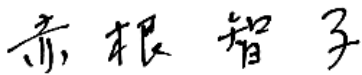
ORDERS the Prosecution to file a progress report by 20 July 2022 on the process of preparing and making available public redacted versions of Rule 68 material; and

DECLARES moot the Prosecution's Rule 87 Requests.

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 this Monday, 14 February 2022

At The Hague, the Netherlands