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TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding
Judge Tomoko Akane
Judge Kimberly Prost

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
THE PROSECUTOR V. AL HASSAN AG ABDOUL AZIZ AG MOHAMED
AG MAHMOUD**

Public

With confidential Annex A

**Public redacted version of "Prosecution application under rule 68(2)(b) to
introduce MLI-OTP-P-0113's statement and associated material into evidence",
16 December 2020, ICC-01/12-01/18-1207-Conf**

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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. Pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests Trial Chamber X’s (“Chamber”) authorisation to introduce into evidence Witness P-0113’s (“P-0113”) previously recorded statement¹ and associated material, as specified in sections I to II of Annex A to the present application, in lieu of his *viva voce* testimony in this case.

2. P-0113 [REDACTED] during the time when Timbuktu was under the control of Ansar Dine/AQMI in 2012-2013. In his statement, P-0113 described the situation in Timbuktu before and during the fall of Timbuktu, and the roles of the various armed groups and the main actors from these groups [REDACTED]. He also described incidents of violence he witnessed or heard about, including the destruction of mausoleums, floggings and amputation.²

3. The material associated with P-0113’s statement which the Prosecution seeks to introduce into evidence is comprised of seven videos he was shown during his interview and in which he was able to identify people and places.³ Other associated materials include [REDACTED]

[REDACTED]⁴ [REDACTED]
[REDACTED]
[REDACTED]⁵ [REDACTED]⁶ [REDACTED]
[REDACTED]
[REDACTED]⁷

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]
[REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

4. P-0113's evidence is relevant to the charges of persecution (count 10), destruction of protected monuments (count 7), torture (counts 1 and 3), cruel and inhumane treatment (counts 4 and 5), and rape (counts 11 and 12), and to the contextual elements of crimes against humanity and war crimes.

5. P-0113's evidence is *prima facie* reliable, as his statement relates to matters which he observed first-hand or learned [REDACTED]

[REDACTED]

[REDACTED].

6. The Prosecution seeks to introduce the portions of P-0113's statement which goes to proof of matters other than the acts and conduct of the Accused: conscious of this requirement of rule 68(2)(b) of the Rules, the Prosecution does not seek to introduce nine paragraphs of P-0113's statement which relates to acts and conduct of the Accused, [REDACTED].⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁹

7. The determinative issue under rule 68(2)(b) of the Rules is not whether a witness needs to testify at trial, but whether the information he provided in a prior recorded testimony can be introduced without the need for his appearance before the Chamber and being subject to questioning by the participants. The Prosecution submits that P-0113 can benefit from this provision [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ [REDACTED].

⁹ [REDACTED].

[REDACTED]

[REDACTED].¹⁰

8. Should this Request be granted, P-0113 will execute a declaration that the contents of his statement are true and correct to the best of his knowledge and belief, in accordance with the requirements under rule 68(2)(b)(ii) and (iii) of the Rules. The Chamber has designated that the Registry Senior Legal Advisor, or a person designated by him, witness declarations in this case pursuant to rule 68(2)(b).¹¹

Confidentiality

9. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this Request and its annex as confidential because they contain information identifying P-0113. The Prosecution's request for in-court protective measures for P-0113¹² remains pending with the Chamber.¹³ The Prosecution shall file a public redacted version in due course.

Applicable Law

10. In its Directions on the conduct of proceedings, the Chamber determined that parties may file applications for the admission of prior recorded testimonies pursuant to rule 68(2) of the Rules.¹⁴

11. Pursuant to rule 68(2)(b) of the Rules, the Chamber may allow the introduction of the previously recorded testimony of a witness who is not present before the Chamber when that prior recorded testimony: (i) goes to proof of "a matter other than the acts and conduct of the accused"; and (ii) is accompanied by a declaration by the testifying person, witnessed by a person authorised by the Chamber or in

¹⁰ [REDACTED].

¹¹ ICC-01/12-01/18-1111 [REDACTED], para. 16.

¹² [REDACTED].

¹³ ICC-01/12-01/18-1067 [REDACTED], para. 9, 14, p. 12; ICC-01/12-01/18-1113 [REDACTED], para. 9, 16, p. 11.

¹⁴ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 80.

accordance with the law and procedure of a State, as detailed in rule 68(2)(b)(ii) and (iii) of the Rules.

12. The International Criminal Tribunal for the former Yugoslavia (“ICTY”) has construed the expression “acts and conduct” to refer plainly to the “deeds and behaviour of the accused”,¹⁵ such that they seek to establish the accused’s responsibility under any applicable mode of liability.¹⁶ Importantly, acts and conduct of the accused must be distinguished from acts and conduct of others who commit crimes for which the accused is alleged to be responsible.¹⁷ Proof of the latter is admissible under rule 68(2)(b) of the Rules. Trial Chamber IX has similarly held that “‘acts and conduct of the accused’...must be interpreted in its plain natural meaning, referring to the personal actions and omissions of the accused, rather than a broader normative meaning, extended to the actions and omissions of others which are attributable to the accused under the modes of liability charged by the Prosecution.”¹⁸

13. As generally required in all instances of introduction of prior recorded testimony under rule 68 of the Rules, this introduction must also not be prejudicial to or inconsistent with the rights of the accused.¹⁹ The decision of whether to introduce

¹⁵ “The phrase ‘acts and conduct of the accused’ in Rule 92bis is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and conduct by alleged co-perpetrators, subordinates or, indeed, of anybody else. Had the rule been intended to extend to acts and conduct of alleged co-perpetrators or subordinates it would have said so”, see *Prosecutor v. Milošević*, IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted under Rule 92 bis, 21 March 2002, para.22 (“*Milošević Decision*”); *Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on the Prosecution’s Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of Viva Voce Testimony Pursuant to Rule 92 bis (Witnesses for Sarajevo Municipality), 15 October 2009, para.5 (“*Karadžić Decision*”); *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 bis and Prosecution Motion to Admit GH-139’s Evidence Pursuant to Rule 92 bis, 24 January 2013, para.15 (“*Hadžić Decision*”).

¹⁶ *Karadžić Decision*, para.5; *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 bis(C), 7 June 2002, para.10 (“*Galić Decision*”); *Hadžić Decision*, para.15; *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 bis, 22 August 2008, para.17 (“*Lukić Decision*”).

¹⁷ *Karadžić Decision*, para.5; *Galić Decision*, para.9; *Hadžić Decision*, para.15; *Prosecutor v. Milutinović et al.*, IT-05-87-PT, Decision on Prosecution Rule 92 bis Motion, 4 July 2006, para.6; *Lukić Decision*, para.17; *Milošević Decision*, para.22.

¹⁸ ICC-02/04-01/15-596-Red, para. 11.

¹⁹ ICC-01/12-01/18-1111-Red, Decision on the introduction of P-0598’s evidence pursuant to Rule 68(2)(b) of the Rules, para. 7.

a prior recorded testimony pursuant to this provision is a discretionary one, and the entire purpose of rule 68(2)(b) of the Rules is to identify situations where it is not necessary to examine witnesses, while preserving a fair and expeditious trial.²⁰

14. Trial Chamber IX has held that “the purpose of a determination under Rule 68(2)(b) of the Rules is not whether a person shall testify at trial, but whether the information provided by a witness in a prior recorded testimony can be introduced without the need that the witness appears live at trial and be subject to questioning by the participants.”²¹

15. When such situations are identified and in accordance with the criteria set out in rule 68(2)(b) of the Rules, prior recorded testimony may be introduced pursuant to this provision. In doing so, the Chamber will defer to its eventual deliberation for its judgment, the full consideration of the standard evidentiary criteria for such prior recorded testimony, in particular in terms of its relevance and probative value.²²

16. This Request is filed in accordance with the Chamber’s instruction that rule 68(2) applications be filed by the end of 2020.²³

Submissions

I. The prior recorded testimony of Witness P-0113 should be introduced into evidence pursuant to rule 68(2)(b) of the Rules

17. [REDACTED]
[REDACTED]
[REDACTED]

²⁰ ICC-01/12-01/18-1111-Red, Decision on the introduction of P-0598’s evidence pursuant to Rule 68(2)(b) of the Rules, para. 7.

²¹ ICC-02/04-01/15-711, para. 10.

²² ICC-01/12-01/18-1111-Red, Decision on the introduction of P-0598’s evidence pursuant to Rule 68(2)(b) of the Rules, para. 7, citing *inter alia* Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para.34(i) and 34(ii).

²³ ICC-01/12-01/18-789-AnxA, para. 80.

[REDACTED]²⁴

18. In that context, given that the criteria set by rule 68(2)(b) are met, the Prosecution seeks to introduce his statement and associated material into evidence under rule 68(2)(b) of the Rules.

a. The material of Witness P-0113 constitutes “prior recorded testimony” in the sense of rule 68 of the Rules

19. The term “previously recorded testimony” includes statements and transcripts of interviews taken pursuant to rules 111 and 112 of the Rules, respectively, together with the associated exhibits.²⁵

b. The prior recorded testimony of P-0113 goes to proof of matters other than the acts and conduct of the Accused

20. The Prosecution seeks to introduce the portions of P-0113’s statement which concern proof of matters other than the acts and conduct of the Accused.

21. In his statement, P-0113 recalls that until 2012, there was much commercial activity in Timbuktu.²⁶ He then describes how hostilities arose in neighbouring regions, leading the civil and military authorities to abandon Timbuktu.²⁷ He discusses in detail how the attack on Timbuktu on 1 April 2012 unfolded, and the various armed groups involved in the attack and subsequent occupation.²⁸ He points out how Ansar Dine occupied all buildings of the State in town, to use them as

²⁴ [REDACTED].

²⁵ See ICC-01/05-01/08-1386, OA5 OA6, paras.79-81, confirming that written witness statements can be introduced as “previously recorded testimony”. See also ICC-01/09-01/11-1938-Red-Corr, paras.30-33, analysing the term “previously recorded testimony” in light of the Rules’ *travaux préparatoires*, the Court’s prior case-law and the need to ensure language consistency within the rule in interpreting it; ICC-01/05-01/08-2012-Red, para.136; ICC-01/05-01/08-886, para.6; ICC-01/04-01/06-1603, para.18; ICC-01/04-01/07-2289-Corr-Red; ICC-01/04-01/07-2362.

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

offices or lodgings for their men: the *Direction régionale de l'Institut National de Prévoyance Sociale*, the *Direction régionale du budget et du contrôle financier*, the *Banque malienne de solidarité* ("BMS"), the *Hôtel La Maison*, the Governor's Residence, the *Service des domaines*, the Regional Assembly, etc.²⁹

22. P-0113 recounts that the *Service des domaines* was used as Abou Zeid's lodging for a time. The BMS was first used by the Islamic police before moving to the Gouvernorat. When the police moved, the Hesbah (*Brigade des Mœurs*) established themselves at the BMS. The *Hôtel La Maison* served as the tribunal.³⁰

23. P-0113 explained the relationship between the different armed groups involved in the attack and occupation of Timbuktu, such as how the MNLA and Ansar Dine first cooperated, but later on their relationship soured, and the local population complained of MNLA abuses. Ansar Dine ultimately kicked the MNLA out of Timbuktu.³¹

24. P-0113 [REDACTED]

[REDACTED]³²

[REDACTED]³³ As mentioned above, however, the Prosecution will not seek to introduce the nine paragraphs in P-0113's statement which refer to the Accused [REDACTED]

[REDACTED]³⁴

25. The Prosecution submits that the remaining portions of P-0113's evidence which do not refer to the Accused can be introduced through rule 68(2)(b) of the

29 [REDACTED]

30 [REDACTED]

31 [REDACTED]

32 [REDACTED]

33 [REDACTED]

34 [REDACTED]

Rules. As discussed in the applicable law section above, “acts and conduct of the accused”, insofar as this provision is concerned, are limited to the personal actions and omissions of the accused.³⁵ Accordingly, evidence relating to the actions and omissions of others which may be attributable to the Accused under various modes of liability remain permissible under rule 68(2)(b) of the Rules.³⁶ In this regard, P-0113 describes the work of the various organs established by the occupiers in Timbuktu: the Islamic police,³⁷ *Hesbah*,³⁸ and Islamic tribunal.³⁹ [REDACTED]

[REDACTED]⁴⁰ [REDACTED]
 [REDACTED]⁴¹ [REDACTED]⁴² [REDACTED]⁴³ [REDACTED]⁴⁴ The Prosecution will be seeking to introduce such evidence which do not relate to the acts and omissions of the Accused but remain highly relevant to and probative of the charges against the Accused.

26. As regards the Islamic tribunal, P-0113 observed that the tribunal issued decisions leading to the sanctions imposed during the occupation,⁴⁵ such as detentions⁴⁶ and floggings,⁴⁷ as well as one incident of stoning,⁴⁸ amputation⁴⁹ and execution,⁵⁰ respectively. He also heard of one case of rape by a member of the Islamic police or *Hesbah*.⁵¹

27. P-0113 also describes Timbuktu as the religious capital of Mali, where the Djingareyber, Sankoré and Sidi Yahia mosques are several centuries old and

³⁵ ICC-02/04-01/15-596-Red, para. 11.

³⁶ ICC-02/04-01/15-596-Red, para. 11.

³⁷ [REDACTED]
³⁸ [REDACTED]
³⁹ [REDACTED]
⁴⁰ [REDACTED]
⁴¹ [REDACTED]
⁴² [REDACTED]
⁴³ [REDACTED]
⁴⁴ [REDACTED]
⁴⁵ [REDACTED]
⁴⁶ [REDACTED]
⁴⁷ [REDACTED]
⁴⁸ [REDACTED]
⁴⁹ [REDACTED]
⁵⁰ [REDACTED]
⁵¹ [REDACTED]

classified as world heritage sites by UNESCO.⁵² He recounts how the occupiers first prevented access to the mausoleums, and later destroyed several of them.⁵³ He explained the religious value these mausoleums of saints had to the local population.⁵⁴

28. [REDACTED]

.⁵⁵

c. The prior recorded testimony has sufficient indicia of reliability

29. P-0113's evidence is *prima facie* reliable, as his statement relates to matters which he observed first-hand or learned about [REDACTED]
[REDACTED],⁵⁶ during its occupation by Ansar Dine/AQMI. The Prosecution does not seek to introduce into evidence videos and photos shown to P-0113 wherein he was unable to identify people and/or places depicted.

d. The prior recorded testimony is relevant and has *prima facie* probative value

30. The prior recorded testimony is relevant: as discussed above, P-0113's evidence is relevant to charges of persecution (count 10), destruction of protected monuments (count 7), torture (counts 1 and 3), cruel and inhumane treatment (counts 4 and 5), and rape (counts 11 and 12), and to the contextual elements of crimes against humanity and war crimes.

31. The prior recorded testimony has probative value: as mentioned above, P-0113

52. [REDACTED]

53. [REDACTED]

54. [REDACTED]

55. [REDACTED]

56. [REDACTED]

[REDACTED] In his statement, P-0113 described the situation in Timbuktu before and during the fall of Timbuktu, and the roles of the various armed groups and the main actors from these groups [REDACTED]

[REDACTED] He also described incidents of violence he witnessed or heard about, including the destruction of mausoleums, floggings and amputation.⁵⁷ His evidence has *prima facie* probative value as his statement and associated materials relate to matters which he observed first-hand or learned [REDACTED]

[REDACTED]

e. Additional rule 68(2)(b)(i) factors militate in favour of introducing Witness P-0113's prior recorded testimony under rule 68(2)(b) of the Rules

i. P-0113's evidence is of a cumulative and corroborative nature

32. P-0113's evidence is of a cumulative and corroborative nature, in that other witnesses will give or have given similar testimonies relating to the situation in Timbuktu before and during its occupation, and the roles of the various armed groups and the main actors from these groups [REDACTED] Other witnesses will describe or have described incidents of violence they witnessed or heard about, including the destruction of mausoleums, floggings and amputation.

Destruction of protected monuments (count 7)

33. [REDACTED],⁵⁸ P-0114,⁵⁹ [REDACTED],⁶⁰ P-0064,⁶¹ P-0431,⁶² and [REDACTED],⁶³ along with substantial video evidence,⁶⁴ will all establish the fact of their destruction and their

⁵⁷ [REDACTED]

⁵⁸ [REDACTED]

⁵⁹ [REDACTED]

⁶⁰ [REDACTED]

⁶¹ See, for instance, Expert report of P-0064, "Analysis of Satellite Imagery for Timbuktu, Republic of Mali", 13 July 2014, [MLI-OTP-0017-0029](#), p. 0039 and 0043; Expert report of P-0064, "Analysis of Satellite Imagery for Timbuktu and Kabara, Republic of Mali", 3 November 2014, [MLI-OTP-0021-0006](#), p. 0013-0016, p. 0018-

value as cultural heritage to both the local populace and the international community.

Torture and cruel and inhumane ill-treatment (counts 1, 3, 4 and 5)

34. P-0565 has already testified on the inhumane conditions in which she was detained⁶⁵ [REDACTED]⁶⁶ [REDACTED]
[REDACTED]⁶⁷ [REDACTED]⁶⁸ and [REDACTED]⁶⁹ and [REDACTED] will also will provide evidence of floggings and amputation.

Rape (counts 11 and 12)

35. Witnesses [REDACTED]⁷⁰ [REDACTED]⁷¹ [REDACTED]⁷² [REDACTED]⁷³ and [REDACTED]⁷⁴ are among a number of Prosecution witnesses who will speak of their victimisation of rape and sexual crimes.

Persecution (count 10)

36. The witnesses referred to above have presented, or will present, evidence which is also relevant to persecution in general. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] and [REDACTED] all being crime base witnesses, have provided, or will be presenting, evidence regarding how they directly suffered under the newly imposed persecutory rules imposed by the armed groups during their occupation of

0020, p. 0022; Satellite images of P-0064, [MLI-OTP-0021-0041](#), [MLI-OTP-0021-0042](#), [MLI-OTP-0021-0043](#)

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⁶⁵ ICC-01/12-01/18-T-054-[REDACTED]-ENG, p. 24, l. 8-11 (open session).

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Timbuktu. P-0557, for instance, has already testified on how life in Timbuktu changed during the occupation.⁷⁵ He recounted, for instance, how men could no longer wear long trousers, and could no longer talk to their girlfriends, lest they be apprehended and beaten.⁷⁶ P-0065 described, among others, how the armed groups imposed a dress code upon women, requiring that their entire bodies be covered, whereas prior to the occupation women could dress as they pleased.⁷⁷

Contextual elements of crimes against humanity and war crimes

37. P-0065⁷⁸ and expert witness P-0152⁷⁹ have already testified on the armed groups involved in the conflict. [REDACTED] also describes the armed groups in details, along with the details of how the occupation of Timbuktu came about.⁸⁰

How life in Timbuktu changed in 2012 after the occupation

38. During his testimony, P-0557 described, among others, how life in Timbuktu changed during the occupation.⁸¹ P-0065 did the same. P-0638 has also testified on the impact of the occupation on the daily life of Timbuktu's inhabitants.⁸² Other witnesses such as P-0114 also provide evidence in this regard.⁸³

[REDACTED]

39. [REDACTED]
[REDACTED]
[REDACTED]

⁷⁵ See, for instance, ICC-01/12-01/18-T-054-[REDACTED]-ENG, p. 13, l. 22-25, p. 14, l. 1-25, p. 15, l. 1 (open session).

⁷⁶ See, for instance, ICC-01/12-01/18-T-054-[REDACTED]-ENG, p. 14, l. 9-25, p. 15, l. 1, 4-10 (open session).

⁷⁷ See, for instance, ICC-01/12-01/18-T-037-[REDACTED]-ENG, p. 13, l. 9-17 (open session).

⁷⁸ See, for instance, ICC-01/12-01/18-T-037-[REDACTED]-ENG, p. 13, l. 18-22, 25; p. 14, l. 1-20; p. 15, l. 5-15 (open session).

⁷⁹ See, for instance, ICC-01/12-01/18-T-032-[REDACTED]-ENG ET, p. 20, l. 20-25, p. 21, l. 1-10 (open session); ICC-01/12-01/18-T-032-[REDACTED]-ENG ET, p. 21, l. 17-21 (open session); ICC-01/12-01/18-T-032-[REDACTED]-ENG ET, p. 24, l. 7-14 (open session).

⁸⁰ [REDACTED]

⁸¹ See, for instance, ICC-01/12-01/18-T-054-[REDACTED]-ENG, p. 13, l. 22-25, p. 14, l. 1-25, p. 15, l. 1 (open session).

⁸² See, for instance, ICC-01/12-01/18-T-057-[REDACTED]-ENG, p. 58, l. 13-25, p. 59, l. 1-2, 13-25, p. 60, l. 1-25, p. 61, l. 1-3 (open session).

⁸³ [REDACTED]

[REDACTED]

[REDACTED] 4 [REDACTED] 5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 86 [REDACTED]

[REDACTED] 87

Islamic Police, *Hesbah* and Islamic tribunal

40. Several other witnesses have provided, and will provide, evidence relating to the roles of the various organs established by the armed groups in Timbuktu: Islamic police, *Hesbah* and Islamic tribunal. P-0065, for instance, has already testified on the roles of these three organs [REDACTED]

[REDACTED] 88 Witnesses [REDACTED] are all expected to provide additional evidence on the role of the Islamic police.⁸⁹ In particular, [REDACTED]

[REDACTED] 90 [REDACTED] will all be able to testify on the role of the *Hesbah*.⁹¹ [REDACTED] will provide evidence on the Islamic tribunal, particularly on how it operated and the control leaders of the armed groups had over the outcome of important judgments.⁹² [REDACTED]

84 [REDACTED].

85 [REDACTED].

86 [REDACTED].

87 [REDACTED].

88 See, for instance, ICC-01/12-01/18-T-038-[REDACTED]-ENG, p. 46, l. 1-25 (open session); p. 47, l. 1-15 (open session); [REDACTED].

89 [REDACTED].

90 [REDACTED].

91 [REDACTED].

92 [REDACTED].

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ii. The interests of justice are best served by the admission of the prior recorded testimony

41. By its terms, rule 68(2)(b) of the Rules does not unfairly prejudice the Defence by permitting the introduction of evidence that will not be subject to cross-examination when this evidence is unrelated to the acts and conduct of an accused. That both Parties can avail themselves of this provision further underscores its inherent neutrality and that it advances the interests of justice.

42. Introducing into evidence the prior recorded testimony of P-0113 under rule 68(2)(b) of the Rules would advance the interests of justice by allowing the introduction of his statement and associated material into evidence in the present case, [REDACTED], without requiring his appearance before the Chamber. As discussed above, the determinative issue under rule 68(2)(b) of the Rules is not whether a witness needs to testify live at trial, but whether the information he provided in a prior recorded testimony can be introduced without the need for his appearance before the Chamber and being subject to questioning by the participants. The Prosecution submits that [REDACTED] [REDACTED]⁹⁴ outweighs the interest in having him appear before the Chamber, particularly as his evidence does not go to proof of acts and conduct of the Accused, and given its cumulative and corroborative nature.

f. Introduction into evidence of the prior recorded testimony causes no undue prejudice to the Accused

43. As required under rule 68(1) of the Rules, the introduction into evidence pursuant to rule 68(2)(b) of the Rules of P-0113's prior recorded testimony "would

⁹³ [REDACTED]

⁹⁴ [REDACTED].

not be prejudicial to or inconsistent with the rights of the accused". The inability to cross-examine P-0113 on his evidence, and the admission of the evidence at this stage of the proceedings, does not deprive the Accused of his right and opportunity to challenge the evidence. The Defence retains the possibility to cross-examine other *viva voce* witnesses on the basis of information contained in the prior recorded testimony of P-0113, lead contradictory evidence during the Defence case, or—to the extent that discrepancies would exist with any other evidence—address the prior recorded testimony during closing submissions and advance arguments on the weight to be attributed to the prior recorded testimony.

44. As P-0113's evidence goes to proof of matters other than the acts and conduct of the Accused, and is of a cumulative and corroborative nature, granting the Request would not be unduly prejudicial to the fair trial rights of the Accused.⁹⁵

II. Brief description of the associated material

45. Attached as Annex A to this application is a table which lists material necessary to understand P-0113's prior recorded testimony which the Prosecution seeks to introduce into evidence.⁹⁶ Annex A also contains a table which lists material necessary to understand P-0113's prior recorded testimony but which the Prosecution does not seek to introduce into evidence.⁹⁷

- Listed in section I of Annex A is P-0113's witness statement.⁹⁸
- Listed in section II of Annex A are materials necessary to understand P-0113's prior recorded testimony which the Prosecution seeks to introduce into evidence under rule 68(2)(b) of the Rules. This is comprised of ten videos and one photo he was shown during his interview, along with transcripts and

⁹⁵ [REDACTED].

⁹⁶ Annex A, Section II.

⁹⁷ Annex A, Section III.

⁹⁸ [REDACTED].

translations thereof.⁹⁹ Other associated materials include [REDACTED]

[REDACTED]

[REDACTED]¹⁰⁰ [REDACTED]

[REDACTED]¹⁰¹

[REDACTED]¹⁰² and [REDACTED]

[REDACTED]

[REDACTED]¹⁰³

- Listed in section III of annex A are materials necessary to understand P-0113's prior recorded testimony which the Prosecution does not seek to introduce under rule 68(2)(b) of the Rules. These consist of [REDACTED]¹⁰⁴ [REDACTED]

[REDACTED]¹⁰⁵ and [REDACTED]

[REDACTED]¹⁰⁶

The Prosecution also does not seek to introduce into evidence [REDACTED]

[REDACTED]¹⁰⁷

as it is relevant only in relation to the present Request and does not amount to evidence against the accused. Conscious that evidence introduced under rule 68(2)(b) of the Rules must not go to proof of acts and conduct of the Accused, the Prosecution does not seek to introduce [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁰⁸

⁹⁹ Annex A, Section I, Items 1-29. [REDACTED]

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III. Provision of certified declaration for P-0113

46. The Prosecution requests that the Chamber authorise the introduction into evidence under rule 68(2)(b) of the prior recorded testimony of P-0113 and associated material on a conditional basis pending the submission of the certified declaration of this witness. The Chamber has designated that the Registry Senior Legal Advisor, or a person designated by him, witness declarations in this case pursuant to rule 68(2)(b) of the Rules.¹⁰⁹.

Conclusion

47. For the foregoing reasons, the Prosecution requests that the Chamber conditionally authorise the introduction into evidence of Witness P-0113's prior recorded testimony and associated material, pending submission of the certified declaration.



Fatou Bensouda, Prosecutor

Dated this 16 December 2020

At The Hague, The Netherlands

¹⁰⁹ ICC-01/12-01/18-1111 [REDACTED], para. 16.