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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)(c) to
introduce into evidence the prior recorded testimony and associated material
of Prosecution Witness MLI-OTP-P-0125”,
11 December 2020, ICC-01/12-01/18-1202-Conf**

Source: Office of the Prosecutor

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

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I. Introduction

1. Trial Chamber X (“Chamber”) should authorise the introduction into evidence pursuant to rule 68(2)(c) of the Rules of Procedure and Evidence (“Rules”) of the prior recorded testimony of deceased Prosecution witness MLI-OTP-P-0125 (“P-0125”) in full and associated material, as set out in confidential Annex A.
2. P-0125’s prior recorded testimony and associated material are relevant and *prima facie* probative. In addition, the prior recorded testimony:
 - comes from P-0125, for whom the necessity of measures under article 56 of the Rome Statute (“Statute”) could not be anticipated;
 - has sufficient indicia of reliability; and
 - its introduction is not prejudicial to or inconsistent with the rights of the Accused.
3. In the alternative, the Chamber should authorise the introduction into evidence of the prior recorded testimony of P-0125 and associated material, but not rely on certain parts of P-0125’s statement referring to the Accused for the purposes of establishing the Accused’s acts and conduct, as described in more detail in paragraph 11 below.

II. Confidentiality

4. Under regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this Request and its Annex A as confidential because they contain information about a Prosecution witness. The Prosecution will file a public redacted version in due course.

III. Applicable law

5. 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.¹

6. Under rule 68(2)(c) of the Rules, the Chamber may, after having heard the parties, allow the introduction of the previously recorded testimony coming from a person who has died, must be presumed dead, or is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally, provided that:

- (i) the Chamber is satisfied that the person is unavailable as set out above;
- (ii) the necessity of measures under article 56 of the Statute could not be anticipated;
- (iii) the prior recorded testimony has sufficient indicia of reliability;² and
- (iv) its introduction is not prejudicial to or inconsistent with the rights of the accused.³

7. Under rule 68(2)(c)(ii) of the Rules, “the fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it”.

8. Therefore, 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

¹ ICC-01/12-01/18-789-AnxA, Directions on the conduct of proceedings, para. 79-80.

² See ICC-01/04-02/06-1029, *Prosecutor v. Ntaganda*, Trial Chamber VI, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103, 20 November 2015, para. 12. See also, Rule 68(1) and 2(c) of the Rules.

³ Rule 68(1) of the Rules and article 69(2) of the Statute. See also ICC-01/12-01/18-1111-██████, Decision on the introduction of P-0598’s evidence pursuant to Rule 68(2)(b) of the Rules, para. 7 (“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”).

recorded testimony, in particular in terms of its relevance and probative value.⁴

9. Finally, in accordance with the Chamber's Directions on the conduct of proceedings,⁵ applications under rule 68(2)(c) of the Rules shall be filed together with:

- copies of the previously recorded testimony and any supporting material, identifying precisely which passages thereof are tendered into evidence; and
- other material referred to in the passages tendered into evidence, without which the said passages would not be understandable, if this material is available.

IV. Submissions

10. The Prosecution seeks the introduction under rule 68(2)(c) of the Rules of the prior recorded testimony of P-0125 in full as well as associated material. This consists of a statement,⁶ taken by the Prosecution in [REDACTED],⁷ and a handwritten note by P-0125⁸ and one sketch by P-0125 provided as annexes to his statement,⁹ (together, "Statement") as well as 16 videos or video extracts and 32 photographs discussed in his statement (together "Associated Material"). As these 48 items are used and explained by P-0125 in his Statement and are necessary to understand it,¹⁰ the Chamber should authorise their introduction under rule 62(2)(c) of the Rules, as Associated Material to P-0125's prior recorded testimony. The

⁴ See ICC-01/12-01/18-789-AnxA, Directions on the conduct of proceedings, para. 34(i) and (ii). See also ICC-01/12-01/18-1111-[REDACTED], Decision on the introduction of P-0598's evidence pursuant to Rule 68(2)(b) of the Rules, para. 7.

⁵ ICC-01/12-01/18-789-AnxA, Directions on the conduct of proceedings, para. 79. [REDACTED]

⁶ P-0125's Statement, [MLI-OTP-0023-0004-R03](#).

⁷ [REDACTED]

⁸ Annex 1 to P-0125's statement, [REDACTED].

⁹ Annex 2 to P-0125's statement, [REDACTED].

¹⁰ See further section E: Brief description of the Associated Material, below.

Prosecution also seeks the introduction of the transcripts and translations that accompany the videos or video extracts.

11. In the alternative, the Chamber should authorise the introduction into evidence of P-0125's Statement and Associated Material, but not rely on certain parts of P-0125's Statement referring to the Accused for the purposes of establishing the Accused's acts and conduct. These parts are: the name in one sentence in paragraph 51,¹¹ the entirety of paragraphs 53¹² and 54,¹³ one sentence in paragraph 121,¹⁴ and a phrase and a sentence in paragraph 165 ([REDACTED]).¹⁵

12. The Chamber should authorise the introduction of P-0125's Statement and Associated Material under rule 68(2)(c) of the Rules because:

- P-0125 died since he provided his Statement, whereas the Prosecution could not anticipate the need for measures under article 56 of the Statute; and
- the Statement has sufficient indicia of reliability, is relevant and has *prima facie* probative value, and its introduction is not prejudicial to or inconsistent with the rights of the Accused.

¹¹ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0015, para. 51 ("Hassan").

¹² P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0015, para. 53 ("Un autre responsable de la gendarmerie s'appelait Al Hassan. J' ai eu affaire a Hassan un jour, parce qu'il avait fait arreter et incarcérer [REDACTED] [REDACTED] avait ete trouve en train de fumer une cigarette. Les MUJAO l' ont frappe pendant son arrestation et [REDACTED] avait rendu les coups. Al Hassan l' a fait placer en detention et les islamistes l'ont bastonne avant de l' enfermer. Tous ceux qui etaient condamnes a des peines de prison par le Tribunal islamique relevaient de la competence de la gendarmerie.")

¹³ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0015-0016, para. 54 (" [REDACTED] est venu me voir juste avant la priere du soir et m'a raconte ce qui s'etait passe. Le lendemain matin, vers 07:00, je suis alle avec [REDACTED] a la gendarmerie, que nous avons trouvee fermee. Nous avons attendu et un agent nous a presentes a l'arrivee d'Al Hassan. J'ai demande a le voir. Il m'a recu et je lui ai demande de liberer [REDACTED] [REDACTED]. Al Hassan a dit [REDACTED] etait mal eduke et qu'il avait resiste a son arrestation lorsque les agents l'ont trouve en train de fumer. Je lui ai demande de le liberer en lui promettant que cela ne se reproduirait plus. Il m'a dit [REDACTED] etait enferme a la prison et que la voiture de police etait sortie en mission. Nous avons donc attendu le retour de la voiture de police. Des que je l'ai apercue, j'ai prevenu Al Hassan et il a demande au chauffeur d'aller chercher [REDACTED] a la prison. J'ai pleure quand j'ai vu [REDACTED] arriver menotte. Al Hassan lui a demande de repeter ce qu'il avait fait. Je lui ai dit que ce n'etait pas la peine. Al Hassan a dit que la prochaine fois, ils remettraient [REDACTED] au MUJAO et ce qu'ils lui feraient serait pire. J' ai ainsi pu ramener [REDACTED] [REDACTED] devait dorenavant eviter tout contact avec les MUJAO.")

¹⁴ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0029, para. 121 ("Pendant l' occupation par le MUJAO, Al Hassan etait responsable de la gendarmerie, sous TALHA.")

¹⁵ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0042, para. 165 ("le Commissaire de police [...] dont j' ai parle auparavant. Talha etait son chef"). Thus the text next to [REDACTED] would read: "C'est Al Hassan".

A. P-0125 is deceased and the necessity of measures under article 56 of the Statute could not be anticipated

13. P-0125's Statement constitutes prior recorded testimony with the meaning of rule 68 of the Rules.¹⁶

14. The Statement is relevant to the charges in this case, in particular to counts 1 to 7 and 13.

15. P-0125 was born and grew up in Timbuktu. Before he died [REDACTED]
[REDACTED]
[REDACTED].¹⁷

16. [REDACTED]
[REDACTED]¹⁸ [REDACTED]

[REDACTED]¹⁹ He was present in Timbuktu during the period relevant to the charges. In his Statement, P-0125 discussed the control of Timbuktu by the armed groups,²⁰ the institutions created,²¹ the individuals involved,²² and acts of violence and persecution he witnessed or heard about.²³

17. P-0125 died after giving his Statement. Investigators' notes are provided as proof of his death.

18. Two investigators' notes relate to communications taking place [REDACTED] between the Prosecution and relevant individuals:

¹⁶ See ICC-01/05/01/13-1481-Red-Corr, Decision on 'Prosecution Submission of Evidence pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence, T. Ch. VII, 12 November 2015, para. 15, citing ICC-01/05-01/13-1478-Red-Corr, Decision on Prosecution Rule 68(2) and (3) Requests, TC VII, para. 28-31 (finding *inter alia* that written statements taken under Rules 111 and 112 constitute prior recorded testimony).

¹⁷ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0008, para. 16-17.

¹⁸ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0008, para. 17.

¹⁹ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0008, para. 17.

²⁰ See generally, P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0008-0014, para. 18-45.

²¹ See generally, P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0014-0016, para. 46-57, p. 0044, para. 174.

²² See generally, P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0027-0030, para. 109-127.

²³ See generally, P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0017-0027, para. 58-108.

- P-0125's Statement was signed [REDACTED] As described in investigation note [REDACTED] Prosecution investigators contacted the known telephone number of P-0125 [REDACTED] [REDACTED] [REDACTED] answered and, when the investigators asked to speak to P-0125, told them that [REDACTED] fell sick, and died [REDACTED] [REDACTED]²⁴
- Confirmation of P-0125's death [REDACTED] from a different source is reflected in investigation note [REDACTED], according to which [REDACTED] [REDACTED], a Prosecution investigator inquired with [REDACTED] whether there were news about P-0125. [REDACTED] replied that P-0125 had passed away.²⁵

19. [REDACTED]
[REDACTED]
[REDACTED] the Prosecution did not continue its efforts to locate additional documentation. Since then, the Prosecution has been unable to contact [REDACTED]. As shown in investigation note [REDACTED] [REDACTED] a Prosecution investigator called the phone number formerly attributed to P-0125 but no-one answered the phone call and no ringtone was heard on the line as if the phone number was no longer in use.²⁶

20. On 7 May 2020, the Prosecution sent a request for assistance to the Malian authorities for them to transmit to the Prosecution a copy of P-0125's death certificate. This request for assistance remains outstanding.

21. Nevertheless, the Prosecution has obtained additional confirmation of P-0125's

²⁴ [REDACTED].
²⁵ [REDACTED].
²⁶ [REDACTED].

death. As shown in investigation note [REDACTED] [REDACTED] a Prosecution investigator contacted [REDACTED] by phone. When asked, [REDACTED] confirmed that he knew P-0125, but that to his knowledge, P-0125 died [REDACTED].²⁷

22. The need for measures under article 56 of the Statute could not reasonably have been anticipated. According to his Statement, [REDACTED] [REDACTED]²⁸ [REDACTED] [REDACTED] [REDACTED]²⁹ P-0125 died less than three months after he finished giving his Statement.

23. On this basis,³⁰ the Chamber should find that there is no indication that the necessity of measures under article 56 could have been anticipated by the Prosecution.

B. P-0125's Statement has sufficient indicia of reliability

24. Taking into account the circumstances in which it arose,³¹ P-0125's Statement bears sufficient indicia of reliability, as required under rule 68(2)(c) of the rules: the Statement was (i) obtained by the Prosecution in the ordinary course of its investigations; (ii) signed by P-0125 and by Prosecution investigators present;³² (iii) given voluntarily; (iv) declared to be accurate by P-0125 at the time of giving it; (iv) declared by P-0125 at the time of giving it that it may be used in legal proceedings

²⁷ [REDACTED]
²⁸ [REDACTED]
²⁹ [REDACTED]

³⁰ See e.g. ICC-01/04-02/06-1205, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of Witness P-0103, T. Ch. VI, 11 March 2016, para. 12 (Prosecution stated that P-0103, upon falling sick on account of his diabetes, spent only one day in hospital before he died, and Chamber found that in these circumstances the necessity of measures under article 56 could not reasonably have been anticipated).

³¹ See *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-1938-Corr-Red2, Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, para. 65 (in the context of rule 68(2)(d)).

³² [REDACTED] See P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0005.

before the Court; and (v) given in the presence of a qualified interpreter,³³ despite challenges with the interpretation during this particular interview.³⁴

25. It is also *prima facie* reliable taking into account its content, as the Statement is internally consistent, and also because in the Statement P-0125 acknowledged when he did not know something.³⁵ The Statement is also *prima facie* reliable because it is consistent with and corroborated by other evidence, including the Associated Material.

26. As an example, P-0125 described in detail his knowledge of the destruction by members of the armed groups of, *inter alia*, the Sheikh Sidi Ahmed Ibn Amar mausoleum and of the door of the Sidi Yahia mosque, which he witnessed first-hand.³⁶ P-0125 explained in his Statement that when he used the term “MUJAO”, he was referring to all the “Islamist rebels” (*rebelles islamistes*) that took control of Timbuktu and other towns in the North of Mali.³⁷ P-0125’s evidence of destruction of these two sites is consistent with and corroborated by the Associated Material, in addition to other evidence. For example:

- P-0125 was present at the cemetery [REDACTED]

[REDACTED] the mausoleum Sheikh Sidi Ahmed Ibn Amar.³⁸ [REDACTED]

[REDACTED]³⁹ [REDACTED]

[REDACTED]⁴⁰ [REDACTED]

[REDACTED]⁴¹ [REDACTED]

³³ See P-0125’s Statement, [MLI-OTP-0023-0004-R03](#), p. 0005, p. 0006, para. 5-7, p. 0045, para. 177, p. 0046-0047.

³⁴

³⁵ See generally P-0125’s Statement, [MLI-OTP-0023-0004-R03](#), p. 0041-0043, para. 165 (indicating where P-0125 said he did not know the person depicted in the photographs he was shown).

³⁶ P-0125’s Statement, [MLI-OTP-0023-0004-R03](#), p. 0017-0024, para. 59-95, p. 0043-0044, para.168-172.

³⁷ P-0125’s Statement, [MLI-OTP-0023-0004-R03](#), p. 0011, para. 29.

³⁸ P-0125’s Statement, [MLI-OTP-0023-0004-R03](#), p. 0020-0021, para. 75-80.

³⁹

⁴⁰

[REDACTED] Two of these three videos are referenced in P-0193's report as being shot in the Cimetière Zeyane Kaly ou des Trois Saints,⁴² where the mausoleum Sheikh Sidi Ahmed Ibn Amar is located.

[REDACTED]
[REDACTED]
[REDACTED]⁴³

- P-0125 was present [REDACTED]
[REDACTED]
[REDACTED] the door of the Sidi Yahia mosque.⁴⁴ [REDACTED]
[REDACTED]
[REDACTED]⁴⁵ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴⁶ This video is referenced in P-0193's report as being shot in the Sidi Yahia mosque.⁴⁷

- Furthermore, P-0125's Statement is consistent with and corroborated by the following additional videos shown to him:

- [REDACTED]: P-0125 said he was present at the cemetery where the Sheikh Sidi Ahmed Ibn Amar mausoleum can be found,
[REDACTED]
[REDACTED]⁴⁸

⁴¹ [REDACTED] [REDACTED].

⁴² P-0193's report, [REDACTED].

⁴³

⁴⁴ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0022, para. 81-86.

⁴⁵ [REDACTED] [REDACTED]
[REDACTED]).

⁴⁶ [REDACTED].

⁴⁷ P-0193's report, [REDACTED].

⁴⁸ P-0125's Statement, [REDACTED].

- [REDACTED] and [REDACTED]: P-0125 said he recognised the mausoleum Sheikh Sidi Ahmed Ibn Amar [REDACTED]
[REDACTED]
[REDACTED]⁴⁹ These videos are referenced in P-0193's report as showing the Cheikh Sidi Ahmed Ben Amar mausoleum in the Cimetière Zeyane Kaly ou des Trois Saints.⁵⁰
- [REDACTED]
[REDACTED]⁵¹: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵² In another extract, P-0125 said he saw the location of the wall of the mosque where the graves of the two Saints (Walîy) where.⁵³ This video is referenced in P-0193's report as being shot in the Djingareyber mosque.⁵⁴
- [REDACTED] P-0125 said these images were filmed in the Sheikh Sidi Ahmed Ibn Amar mausoleum.⁵⁵
- [REDACTED] P-0125 said that the extract he was shown showed the Sheikh Sidi El Mokhtar [REDACTED]
[REDACTED].⁵⁶

⁴⁹ P-0125's Statement, [REDACTED], [REDACTED].

⁵⁰ P-0193's report, [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED]
[REDACTED].

⁵³ P-0125's Statement, [REDACTED]
[REDACTED].

⁵⁴ P-0193's report, [REDACTED].

⁵⁵ P-0125's Statement, [REDACTED].

⁵⁶ P-0125's Statement, [REDACTED]
[REDACTED].

C. Other witnesses corroborate P-0125's evidence

27. Other witnesses corroborate P-0125's evidence of the destruction of mausoleums and mosques, such as [REDACTED], [REDACTED] and P-0064.⁵⁷ In addition to the destruction of the Sheikh Sidi Ahmed Ibn Amar mausoleum and the door of the Sidi Yahia mosque, P-0125 witnessed first-hand the destruction of the mausoleum Sheikh Sidi El Mokhtar by members of the armed groups with hammers and sticks.⁵⁸ He also gave an account of the damage to the mausoleum Sidi Mahmoud,⁵⁹ the Alpha Moya mausoleum,⁶⁰ and the graves of two Muslim Saints (*Walíy*) at the Djingareyber mosque.⁶¹

28. As explained earlier, P-0125's Statement (1) is relevant to the charges in this case, in particular to counts 1 to 7 and 13; and (2) has *prima facie* probative value, taking into account the circumstances in which it arose and its content.

D. Its introduction is not prejudicial to or inconsistent with the rights of the Accused

29. Factors that may be taken into account in ensuring that the introduction of prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused or with the fairness of the trial generally include whether the evidence provides relevant background information and whether the evidence is cumulative or corroborative of other evidence.⁶²

30. Certain aspects of P-0125's evidence provide relevant background information,

⁵⁷ See e.g. ICC-01/12-01/18-819-[REDACTED]-AnxA, Prosecution Trial Brief, para. 224-225 (regarding type of evidence for count 7), para. 226-228 (Sidi Mahmoud Ben Oumar Mohamed Aquit mausoleum), para. 231-232 (Cheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabit Al Kounti mausoleum), para. 233-234 (Sheikh Alpha Moya mausoleum), para. 235-236 (3 Saints cemetery), para. 237 (Sidi Yahia mosque), para. 238-239 (two mausoleums adjoining the Djingareyber mosque).

⁵⁸ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0019, para. 69.

⁵⁹ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0018, para. 62-67.

⁶⁰ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0043, para. 160-172.

⁶¹ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0023, para. 90-95.

⁶² See ICC-01/05-01/08-1386, Judgement 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", App. Ch., 3 May 2011, para. 78.

for example his account about life in Timbuktu before the arrival of the armed groups and about the mausoleums and their history.

31. In addition, evidence related to the following topics described in P-0125's Statement is also of a cumulative or corroborative nature, in that other witnesses will give or have given testimony of similar facts, such as ██████⁶³ ██████, ██████⁶⁴ ██████⁵ and ██████⁶⁶ regarding the armed groups which arrived in Timbuktu in 2012 and left in 2013, the members of the armed groups, the rules imposed by the armed groups such as women needing to cover themselves, the institutions established by the armed groups such as the Islamic police and the Islamic Tribunal, the carrying out by members of the armed groups of floggings, an amputation and an execution.

a. The Chamber should authorise the introduction of the prior recorded testimony of P-0125 in full

32. The fact that part of the Statement of P-0125 goes to proof of acts and conduct of the Accused should not prevent its introduction in full. Rule 68(2)(c)(ii) of the Rules does not prevent the introduction of this type of evidence, providing instead that this element “may be a factor against its introduction, or part of it.”

33. Whereas P-0125's Statement goes to the Accused's acts and conduct, it does not unfairly prejudice the Accused and should be introduced because the part going to the Accused's acts and conduct is of limited scope. The narrow scope of this evidence, which is corroborated in part, limits any prejudicial effect caused to the Accused in this respect.

63

64

65 [REDACTED]

66

34. According to P-0125, another leader of the Gendarmerie during the occupation was called AL HASSAN, and he was under Talha. [REDACTED]

[REDACTED] was arrested for smoking and beaten during his arrest, and placed in detention. P-0125 went to the Gendarmerie and asked to see AL HASSAN. AL HASSAN received him and P-0125 asked AL HASSAN to free [REDACTED]. AL HASSAN said that [REDACTED] had resisted his arrest. P-0125 promised it would not happen again. AL HASSAN told P-0125 that [REDACTED] was detained at the prison and that the police car was on mission, so they waited for the police car to return. AL HASSAN asked the driver to go fetch [REDACTED] in prison. When [REDACTED] arrived, handcuffed, AL HASSAN told P-0125 that the next time he would hand [REDACTED] over to the MUJAO and what they will do to him will be worse (*Al Hassan a dit que la prochaine fois, ils remettraient [REDACTED] au MUJAO et de qu'ils lui feraient serait pire*).⁶⁷ When shown photograph [REDACTED] P-0125 stated that it was the police commissary AL HASSAN, whom P-0125 had mentioned earlier, and that Talha was his boss (*son chef*).⁶⁸

35. In the Prosecution's submission, P-0125 was mistaken regarding AL HASSAN's role as leader of the Gendarmerie under Talha. In his Statement, P-0125 clarified that physically one could not distinguish a gendarme from an Islamic policeman, they dressed the same way.⁶⁹ In addition, when shown photograph [REDACTED], P-0125 stated that it was the *police commissary* AL HASSAN, whom P-0125 had mentioned earlier.⁷⁰ Finally, while P-0125 said that the Commissioner of the Islamic police—which institution P-0125 said was based at the BMS—was Mohamed MOUSSA, who reported to Sanda,⁷¹ P-0125 also said that he had never heard the term "hesbah".⁷²

⁶⁷ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0015-0016, para. 51, 53-54. *See also* p. 0029, para. 121 (during the occupation, Al Hassan was responsible for the gendarmerie, under Talha).

⁶⁸ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0042, para. 165.

⁶⁹ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0015, para. 51.

⁷⁰ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0042, para. 165.

⁷¹ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0014-0015, para. 47-50. *See also* p.0029, para. 119.

⁷² P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0044, para. 174.

36. However, P-0125's confusion regarding AL HASSAN's role does not undermine the reliability of the other parts of his Statement. In addition, P-0125's evidence that AL HASSAN was involved in the arrest and/or detention of individuals acting in contravention of the rules of the armed groups is corroborated by for example [REDACTED],⁷³ [REDACTED]⁷⁴ and [REDACTED].⁷⁵

b. In the alternative, the Chamber should authorise the introduction of the prior recorded testimony of P-0125 but not rely on certain parts referring to the Accused for the purposes of establishing the Accused's acts and conduct

37. These parts have been described in paragraph 11 above.

E. Brief description of the Associated Material

38. Section II of confidential Annex A sets out the Associated Material used with P-0125 in his Statement. Section II provides the references to the corresponding paragraphs of P-0125's Statement where he commented on the photographs and videos or video excerpts as well as the relevant timestamps for the latter. Given that all the items in the Associated Material were used with P-0125 and commented on in his Statement, they should be introduced under rule 68(2)(c) of the Rules together with P-0125's Statement.

39. This Associated Material consists of 16 videos or video excerpts and 32 photographs. Regarding the videos and extracts of videos, P-0125 was shown them twice, the first time without interruption and the second time being able to pause the video so as to comment on it.⁷⁶ While these videos and extracts of videos were shown to P-0125 without sound, the Prosecution also seeks the introduction into evidence of

⁷³ [REDACTED]
⁷⁴ [REDACTED]
⁷⁵ [REDACTED]

⁷⁶ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0030, para. 128.

the transcripts and translations that accompany those videos and extracts of videos, considering the unity of the evidence, and the fact that “transcripts and translations are to be regarded as accessories of the items included in the List of Evidence”.⁷⁷

40. P-0125 explained the videos and extracts of videos he was shown. According to him, they related to the following: (1) the destruction of mausoleums and mosques which he had mentioned in his Statement [REDACTED]

41. As explained in more detail in confidential Annex A, P-0125 recognised some of the individuals, objects and/or locations mentioned in his Statement in videos or extracts shown [REDACTED], [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED].

42. In view of their content and P-0125’s explanation, these videos are relevant to the case against the Accused and *prima facie* reliable.

43. [REDACTED]⁷⁸ [REDACTED]
[REDACTED]

⁷⁷ [REDACTED]
[REDACTED].

⁷⁸ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and [REDACTED].⁷⁹

44. P-0125 was shown 32 photographs of individuals and locations which he commented on. While he did not recognise the person depicted in several of them, these photographs and his explanation regarding them are necessary to understand his Statement,⁸⁰ and as the Statement will be before the Chamber the material used with the witness should also be introduced under the applicable rule.⁸¹ In some of the photographs shown to him, P-0125 said he recognised for example Oumar Ould Hamaha,⁸² Sandal BOUMAMA,⁸³ Talha,⁸⁴ Ayad AG GHALY⁸⁵ and TORAD.⁸⁶

V. Requested Relief

45. For the foregoing reasons, the Chamber should authorise the introduction into evidence pursuant to rule 68(2)(c) of P-0125's Statement in full and Associated Material, as set out in confidential Annex A. In the alternative, the Chamber should authorise the introduction into evidence of P-0125's Statement and Associated Documents, but not rely on certain parts of P-0125's statement referring to the Accused for the purposes of establishing the Accused's acts and conduct as detailed

⁷⁹ [REDACTED]

⁸⁰ See e.g. ICC-01/04-02/06-T-105-Red-ENG ET, *Prosecutor v. Ntaganda*, Trial Hearing of 20 June 2016, p.93, ln.24 - p.94, ln.7 (in the context of rule 68(3)). See also *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1205, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of Witness P-0103, para. 7 (in the context of rule 68(2)(c)); ICC-01/04-02/06-1029, para. 23, 35 (in the context of rule 68(2)(c)); *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-1938-Corr-Red2, Decision on Prosecution Request for Admission of Prior Recorded (in the context of rule 68 in general), para. 33.

⁸¹ See ICC-01/12-01/18-987-Red, Decision on Prosecution's requests to introduce prior recorded testimonies under Rule 68(3) of the Rules, para. 17 (in the context of rule 68(3)).

⁸² P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0041-0042, para. 165 [REDACTED].

⁸³ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0042, para. 165 [REDACTED].

⁸⁴ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0042, para. 165 [REDACTED].

⁸⁵ P-0125's Statement, Statement, [MLI-OTP-0023-0004-R03](#), p. 0042, para. 165 [REDACTED].

⁸⁶ P-0125's Statement, [MLI-OTP-0023-0004-R03](#), p. 0042, para. 165 ([REDACTED]).

above in paragraph 11.



Fatou Bensouda, Prosecutor

Dated this 11th of December 2020

At The Hague, The Netherlands