

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/12-01/18

Date: **25 November 2021**

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17 February 2022

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) of the Rules
to introduce into evidence the prior recorded testimony of
Prosecution Witness MLI-OTP-P-0605", 25 November 2021, ICC-01/12-01/18-1995-
Conf-Exp**

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. Pursuant to rule 68(2)(c) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests Trial Chamber X (“Chamber”) to authorise the introduction into evidence of the prior recorded testimony of Prosecution Witness MLI-OTP-P-0605 (“P-0605”) in full, as set out in confidential Annex A.

2. The prior recorded testimony of Witness P-0605 and associated material are relevant and *prima facie* probative. In addition, the prior recorded testimony:

- comes from P-0605, a Prosecution witness who is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally and for whom the necessity of measures under article 56 of the Rome Statute (“Statute”) were anticipated, [REDACTED];
- has sufficient indicia of reliability; and
- its introduction is not prejudicial to or inconsistent with the rights of the Accused.

3. P-0605 is an insider witness who joined the armed groups operating in Mali [REDACTED]
[REDACTED]
[REDACTED] P-0605 had direct contact with key leaders of the armed groups that had been active in 2012 in Timbuktu, [REDACTED]
[REDACTED].

4. P-0605 [REDACTED] [REDACTED] [REDACTED]
[REDACTED].¹ [REDACTED]
[REDACTED]
[REDACTED].² [REDACTED] the Accused spoke to P-0605 about the events that took place in Timbuktu in 2012/2013, including his role as the *commissaire* of the Islamic Police and the leaders of the armed groups. P-0605 also asked the Accused about the reported practice of forced marriage in Timbuktu during the relevant period, which the latter denied.

5. P-0605 was interviewed by the Prosecution pursuant to article 55(2) of the Statute and rule 112 of the Rules [REDACTED]. P-0605 has since become unavailable to testify orally before the Chamber [REDACTED]
[REDACTED]

¹ [REDACTED].

² [REDACTED].

[REDACTED]

[REDACTED]

II. Confidentiality

6. Under regulation 23bis(1) and (2) of the Regulations of the Court (“Regulations”), the Prosecution files this Application as confidential and *ex parte* (available only to the Prosecution, Registry and the Victims and Witnesses Unit (“VWU”)) to accord with the classification of a decision referred to. A confidential redacted version is being prepared.³

7. Annex A is classified confidential because it contains information identifying a Prosecution witness. The Prosecution recalls that the Chamber deferred its decision on the Prosecution’s request for in-court protective measures for P-0605, consisting of pseudonym, face and voice distortion and use of private/closed sessions.⁴

III. Background

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁶

10. [REDACTED]

[REDACTED]

[REDACTED]

³ The Prosecution will file a public redacted version of this Application in due course.

⁴ ICC-01/12-01/18-1414-Conf-Red, para. 105.

⁵ [REDACTED]

[REDACTED]

⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁸

11. [REDACTED]⁹

[REDACTED]¹⁰ [REDACTED]

[REDACTED]

[REDACTED].¹¹

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹²

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹³

14. On 6 January 2020, the Chamber issued a decision setting the trial commencement date for 14 July 2020, in order to hear opening statements of the parties and participants, with the Prosecution starting its presentation of evidence on 25 August 2020.¹⁴

15. In this context, on 14 January 2020, when requesting an extension of time in relation to

⁷ [REDACTED]

[REDACTED]

[REDACTED]

⁸ [REDACTED]

⁹ [REDACTED]

¹⁰ [REDACTED]

[REDACTED]

¹¹ [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

¹² [REDACTED]

[REDACTED]

¹³ [REDACTED]

[REDACTED]

¹⁴ ICC-01/12-01/18-548, para. 24, p. 9.

the deadlines for reviewing redactions set by the Single Judge,¹⁵ [REDACTED]

[REDACTED]

[REDACTED].¹⁶ [REDACTED]

[REDACTED].¹⁷

16. On 14 April 2020, the Prosecution filed its Prosecution List of Witnesses, listing P-0605 as a Prosecution Witness.¹⁸

17. [REDACTED]

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]¹⁹

18. [REDACTED]

[REDACTED]

[REDACTED].²⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].²¹

19. [REDACTED]

[REDACTED],²² [REDACTED]

[REDACTED]

¹⁵ ICC-01/12-01/18-546.

¹⁶ [REDACTED].

¹⁷ [REDACTED]

¹⁸ [REDACTED]

¹⁹ [REDACTED]

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

[REDACTED]

[REDACTED]²³

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁴

20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁵

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁶

22. [REDACTED]

[REDACTED]

[REDACTED]²⁷

23. [REDACTED]

[REDACTED]²⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁹.

24. [REDACTED]

[REDACTED]

[REDACTED]³⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³¹

25. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³² [REDACTED]

[REDACTED]

[REDACTED]³³

29 [REDACTED]

30 [REDACTED]

31 [REDACTED]

32 [REDACTED]

33 [REDACTED]

26. [REDACTED]
[REDACTED] 34

27. [REDACTED]
[REDACTED]
[REDACTED] 35

28. [REDACTED]
[REDACTED]
[REDACTED] 36

29. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 37 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 38 [REDACTED]
[REDACTED] 39

30. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 40

31. [REDACTED]
[REDACTED]

34 [REDACTED]
[REDACTED]

35 [REDACTED]
[REDACTED]

36 [REDACTED]
[REDACTED]

37 [REDACTED]

38 [REDACTED]

39 [REDACTED]

[REDACTED]

40 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ⁴¹

32. [REDACTED]

[REDACTED] ⁴², [REDACTED] ⁴³

IV. Applicable law

33. The Prosecution refers to the applicable law found in the Chamber's previous decisions under rule 68(2)(c) of the Rules.⁴⁴

V. Submissions

34. The Prosecution seeks the introduction under rule 68(2)(c) of the Rules of the prior recorded testimony of P-0605 in full. P-0605's prior recorded testimony consists of audio-recordings and transcripts of interview with the Prosecution during two days in [REDACTED] (together, "Statement").⁴⁵

35. As mentioned above, the Chamber should authorise the introduction of P-0605's Statement under rule 68(2)(c) of the Rules because:

- due to obstacles that cannot be overcome with reasonable diligence, P-0605 has become unavailable since he provided his Statement to the Prosecution in [REDACTED] whereas the Prosecution did anticipate the need for measures under article 56 of the Statute but these could not be implemented;
- the Statement has sufficient indicia of reliability; and
- its introduction is not prejudicial to or inconsistent with the rights of the Accused.

A. Preliminary issue: the present Application is receivable

36. The Chamber's Directions on the conduct of proceedings establish that the deadline of end of 2020 for rule 68(2) applications does not exclude later applications, notably under rule 68(2)(c), should a witness become unavailable to testify orally during the course of the Prosecution's case.⁴⁶

37. P-0605 [REDACTED]

⁴¹ [REDACTED]

⁴² [REDACTED]

⁴³ [REDACTED]

⁴⁴ See ICC-01/12-01/18-1588-Red, para. 8-11; ICC-01/12-01/18-1413, para. 6-7.

⁴⁵ See Annex A, section I.

⁴⁶ See ICC-01/12-01/18-789, para. 80.

[REDACTED]
[REDACTED]
[REDACTED]. In light of the requirement to show that the witness is unavailable “due to obstacles that cannot be overcome with reasonable diligence”, [REDACTED]
[REDACTED].

38. Additionally, in the decision issued on 22 September 2021, the Chamber set 1 December 2021 as the deadline for the Prosecution to submit any remaining request pursuant to rule 68(2) of the Rules.⁴⁷ This Application is filed within the time-limit established by this Decision.

B. P-0605 is unavailable due to obstacles that cannot be overcome with reasonable diligence

39. P-0605 is unavailable to testify orally, due to obstacles that cannot be overcome with reasonable diligence.

40. P-0605 [REDACTED] [REDACTED].⁴⁸ He was interviewed by the Prosecution pursuant to article 55(2) of the Statute and rule 112 of the Rules [REDACTED]
[REDACTED].⁴⁹

41. As described above in paragraphs 8 to 11, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

42. Also, as mentioned above, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

43. [REDACTED]
[REDACTED]
[REDACTED]⁵⁰ [REDACTED]
[REDACTED]

⁴⁷ ICC-01/12-01/18-1756, para. 3.

⁴⁸ [REDACTED]
⁴⁹ [REDACTED]

[REDACTED]
[REDACTED]
⁵⁰ [REDACTED]

[REDACTED]⁵¹ [REDACTED]

[REDACTED]⁵²

44. [REDACTED]

[REDACTED]⁵³

C. The necessity of measures under article 56 of the Statute was anticipated but they could not be implemented

45. The requirement regarding the anticipation of measures under article 56 of the Statute is to avoid introducing evidence through rule 68(2)(c)(i) of the Rules when article 56 measures would have been a viable alternative at an earlier stage.⁵⁴

46. In this instance, as explained in paragraphs 9-13, the Prosecution anticipated the need to take measures under article 56 of the Statute before the start of the trial. However, they could not be implemented [REDACTED]

[REDACTED]⁵⁵

D. P-0605's Statement has sufficient indicia of reliability

47. P-0605's Statement is relevant to the charges in this case, in particular to the responsibility of the Accused. It has sufficient indicia of reliability, taking into account its content and the procedure followed in its collection.

51 [REDACTED]

52 [REDACTED]

53 [REDACTED]

⁵⁴ See *Prosecutor v. Bemba et al.*, 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, 12 November 2015, para. 19.

55 [REDACTED]

Relevance

48. [REDACTED], his evidence will assist the Chamber in its determination of the truth because of: a) his knowledge of the leaders of the armed groups and information he received from them; and b) the discussions he had with the Accused [REDACTED].

49. P-0605 explained that he joined the armed groups [REDACTED]
[REDACTED],⁵⁶ [REDACTED]
[REDACTED]⁵⁷ [REDACTED]
[REDACTED].⁵⁸

50. P-0605 further stated that he then met with key leaders of Ansar Dine and AQIM who had been active in Timbuktu during its occupation in 2012/2013. [REDACTED]
[REDACTED]⁵⁹ [REDACTED].⁶⁰ [REDACTED]
[REDACTED],⁶¹ [REDACTED],⁶²
[REDACTED]
[REDACTED]⁶³

51. P-0605 also made clear that [REDACTED]
[REDACTED].⁶⁴ P-
0605 stated that [REDACTED].⁶⁵
[REDACTED]
[REDACTED].⁶⁶ [REDACTED]
[REDACTED].⁶⁷ [REDACTED]

⁵⁶ [REDACTED]
⁵⁷ [REDACTED]
[REDACTED]
[REDACTED]
⁵⁸ [REDACTED]
⁵⁹ [REDACTED]
[REDACTED]
⁶⁰ [REDACTED].
⁶¹ [REDACTED]
⁶² [REDACTED]
⁶³ [REDACTED]
[REDACTED]
[REDACTED]
⁶⁴ [REDACTED]
⁶⁵ [REDACTED]
⁶⁶ [REDACTED].
⁶⁷ [REDACTED]

[REDACTED].⁶⁸ [REDACTED]
 [REDACTED].⁶⁹

52. Most importantly, P-0605 provided valuable evidence coming from the Accused himself.

[REDACTED]⁷⁰ and had discussions about what happened in Timbuktu.⁷¹

- the Accused told P-0605 that he joined the groups at the beginning of the occupation;⁷²
- the Accused further told P-0605 that he was the *commissaire* of the Islamic Police in Timbuktu;⁷³
- the Accused told P-0605 that Iyad Ag GHALY was the “big chief” but if he could not find him to resolve an issue, he would consult with Abou ZEID or YAHIA for advice;⁷⁴
- the Accused told P-0605 that he was representing leaders as *commissarie* but in reality, it was Abou ZEID and YAHIA who would take decisions;⁷⁵
- the Accused also told P-0605 that most of the members of the police were foreigners or those brought by [REDACTED];⁷⁶
- the Accused further told that [REDACTED] had been at the Islamic Police with the Accused;⁷⁷
- the Accused and P-0605 also talked about forced marriages.⁷⁸ In this discussion, the Accused denied that there were forced marriages in Timbuktu.⁷⁹

53. P-0605 also corroborated [REDACTED]
 [REDACTED]

⁶⁸ [REDACTED]
⁶⁹ [REDACTED]
 [REDACTED]
 [REDACTED]
⁷⁰ [REDACTED]
 [REDACTED]
⁷¹ [REDACTED]
⁷² [REDACTED]
⁷³ [REDACTED]
⁷⁴ [REDACTED]
⁷⁵ [REDACTED]
⁷⁶ [REDACTED]
⁷⁷ [REDACTED]
⁷⁸ [REDACTED]
⁷⁹ [REDACTED]
 [REDACTED]
 [REDACTED].

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Reliability

54. P-0605 was interviewed by investigators of the Office of the Prosecutor (“OTP”) on [REDACTED] pursuant to article 55(2) of the Statute and rule 112 of the Rules, in the presence of his article 55(2) counsel.⁸² The *prima facie* reliability and accuracy of P-0605’s prior recorded testimony is shown both by its content, as well as by the procedure that was followed prior to and during his interview.

55. P-0605 was interviewed in [REDACTED],⁸³ in the presence of, and with occasional assistance by, a [REDACTED] interpreter.⁸⁴ The audio-recording of the interview was then transcribed [REDACTED].

56. For the purpose of the interview with P-0605, the OTP placed all safeguards as required by article 55(2) of the Statute and rule 112 of the Rules:

- At the first meeting with OTP investigators on [REDACTED], OTP investigators informed P-0605 about the voluntary nature of the interview and of his rights in this context, including the right to remain silent, and to have legal assistance;⁸⁵
- After a private discussion with the Registry-assigned article 55(2) duty counsel, P-0605 indicated his decision to be assisted by this counsel;⁸⁶
- Other issues, including the principle of confidentiality and protection measures, were also explained in detail to P-0605;⁸⁷
- At the end of the introduction, P-0605 confirmed that he understood all the questions of procedure and his rights as explained by the investigators and that he had decided to proceed with the interview;⁸⁸

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[REDACTED] At the beginning of the second day of the interview on [REDACTED], P-0605 was also reminded of his rights under article 55 of the Statute. [REDACTED]

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- P-0605 was informed of the right to consult with his counsel in private at any point, and to clarify any issues before the end of the interview.⁸⁹ P-0605 exercised this right and consulted with his counsel during breaks.⁹⁰

57. The interviews by the Prosecution as a whole were conducted in an open, constructive and respectful manner:

- P-0605 was provided with regular breaks, including for lunch and prayers,⁹¹ and food.⁹² He was also informed of the possibility to request a break, water or anything if he wished;⁹³
- P-0605 was given the opportunity to make statements or clarifications and to raise any issues, which he did.⁹⁴ At the beginning of the interview, the Prosecution reassured P-0605 that if he did not know or remember something, he should not hesitate to say so.⁹⁵ At the end of each day of the interview, the investigators also asked P-0605 whether he wanted to clarify or add to what he had stated;⁹⁶ and
- In the audio-recordings of his interview, P-0605 can be heard laughing and joking with OTP investigators.⁹⁷

58. The Prosecution also repeatedly emphasised the voluntary nature of P-0605's interviews.⁹⁸ At the end of each day of the interview, P-0605 confirmed that he had answered questions from OTP investigators voluntarily, stating, for example, that: [REDACTED]
[REDACTED].⁹⁹ He also confirmed that he could consult with his counsel when necessary and freely.¹⁰⁰ At the end of the two-day interview, he additionally

89 [REDACTED].
90 [REDACTED].
91 [REDACTED]
[REDACTED]
[REDACTED].
92 [REDACTED]
93 [REDACTED]
94 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
95 [REDACTED]
96 [REDACTED]
97 [REDACTED]
[REDACTED]
98 [REDACTED].
99 [REDACTED], when P-0605 stated that: [REDACTED]
[REDACTED].
100 [REDACTED]

confirmed that he had no problem or complaint with regard to the manner in which the interview had been conducted.¹⁰¹

59. [REDACTED]
[REDACTED]
[REDACTED]¹⁰² [REDACTED]
[REDACTED]
[REDACTED]¹⁰³ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰⁴

60. Last, P-0605's prior recorded testimony is clear and internally consistent. In the course of the Prosecution's interaction with P-0605, he clearly demonstrated his ability to describe the facts of which he had knowledge and decided to talk about. For example, P-0605 described in detail [REDACTED] stressing that: [REDACTED]
[REDACTED]¹⁰⁵ P-0605 answered questions from the investigators clearly and in detail, and even actively made clarifications in the course of his interview.¹⁰⁶ He also clearly distinguished between what he experienced himself and what he heard from other individuals, including the Accused.¹⁰⁷

61. All of the above demonstrates that P-0605's Statement was obtained in a voluntary interview process, with full respect for his rights. Accordingly, his Statement has sufficient indicia of reliability to be introduced pursuant to rule 68(2)(c) of the Rules.¹⁰⁸

¹⁰¹ [REDACTED]
¹⁰² [REDACTED]
¹⁰³ [REDACTED]
¹⁰⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
¹⁰⁵ [REDACTED]
¹⁰⁶ [REDACTED]
[REDACTED]
¹⁰⁷ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
¹⁰⁸ [REDACTED]
[REDACTED]
[REDACTED]

E. The introduction of the Statement is not prejudicial to or inconsistent with the rights of the Accused

62. Introduction of P-0605's Statement would not be prejudicial to or inconsistent with the rights of the Accused or the fairness of the trial.

63. According to the Appeals Chamber, relevant factors to be taken into account generally include whether the evidence provides relevant background information and whether the evidence is cumulative or corroborative of other evidence.¹⁰⁹

64. The relevant part of the prior recorded testimony of P-0605 is relatively concise since a large part of P-0605's Statement, collected during a two-day interview, relates to his meetings and conversations he had with various members of the armed groups between [REDACTED] after the period relevant to the charges.

65. Additionally, the fact that part of the Statement of P-0605 goes to proof of acts and conduct of the Accused does not prevent the introduction of the Statement or part thereof under rule 68(2)(c) of the Rules. Instead, rule 68(2)(c)(ii) of the Rules provides that the fact that the Statement goes to proof of the Accused's acts and conduct "may be a factor against its introduction, or part of it."¹¹⁰

66. Whereas P-0605's Statement goes to the Accused's acts and conduct, its introduction under rule 68(2)(c) of the Rules does not unfairly prejudice the Accused. In particular, his evidence going to the Accused's acts and conduct is largely corroborated by the Accused himself and other witnesses; and the Defence has had the opportunity to cross-examine other witnesses on key issues mentioned by P-0605.

67. The Prosecution is seeking the introduction into evidence of P-0605's Statement primarily as corroboration of other evidence.

Corroborative evidence

68. Most of the evidence corroborating P-0605's account is already part of the case record. For example:

¹⁰⁹ 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", 3 May 2011, para. 78.

¹¹⁰ See e.g. ICC-01/12-01/18-1413, para. 21.

evidence provided by [REDACTED],¹²⁴ and the Accused himself¹²⁵;

- P-0654¹²⁶ testified about the Islamic Police comprising of individuals of various ethnicity and nationality; and
- The Accused¹²⁷ named [REDACTED]¹²⁸ as a member of the Islamic Police.¹²⁹

69. Furthermore, in his interview on 14 July 2017, the Accused himself stated that [REDACTED]

[REDACTED]
[REDACTED],¹³⁰ [REDACTED]
[REDACTED].¹³¹

70. P-0605's evidence regarding the Accused's role within the Islamic Police will also be corroborated by other witnesses whose evidence is pending submission, such as [REDACTED]¹³² and

¹²⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹²⁵ [REDACTED]
[REDACTED]

¹²⁶ P-0654, ICC-012/12-01/18-T-128-CONF-ENG ET, p. 34, l. 23 – p. 35, l. 8, stating, *inter alia*, that: “they're all different types of ethnic groups among the Islamic police, but the majority were Tuareg. But there were Songhai, Bambara, Peulh,” and when asked about their nationalities, responding that: “generally, in the Islamic police, there were Burkinabe. You had Senegalese, Franco-Senegalese, Nigerians, Chadians. So there were mainly nationals from the Sahel.” *See also* [REDACTED]
[REDACTED]
[REDACTED]

¹²⁷ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹²⁸ [REDACTED]
[REDACTED]

¹²⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹³⁰ [REDACTED]

¹³¹ [REDACTED].

¹³² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Key issues were subject to cross examination

71. First, after the disclosure of anonymous summaries¹³⁴ before the confirmation of charges hearing, P-0605's Statement, together with his name, was disclosed on 3 February 2020.¹³⁵ A lesser redacted version was disclosed on 6 March 2020.¹³⁶ The Defence thus has had ample time to identify key issues and conduct any investigation in relation to P-0605, who has always been included in the Prosecution's List of Witnesses.¹³⁷

72. Most importantly, the Defence has had the opportunity to challenge most of corroborative evidence cited above. In particular, with regard to key issues covered in P-0605's Statement, such as the Accused's role within the Islamic Police, the Defence has had ample opportunities to cross-examine other witnesses who testified *viva voce*, including ██████,¹³⁸ ██████,¹³⁹ ██████,¹⁴⁰ ██████,¹⁴¹ ██████,¹⁴² ██████,¹⁴³ ██████,¹⁴⁴ and ██████¹⁴⁵. For example, the Defence questioned ██████ in detail about the Accused's role and responsibilities within the Islamic Police at different stages during the occupation.¹⁴⁶ ██████ was questioned extensively about whether the Accused was always the second in command of the Islamic Police, or if he replaced Adama as the chief, instead of Khaled.¹⁴⁷ The Defence also questioned ██████ in detail regarding the differences between the Accused, whom he had described as a person with "administrative functions" within the Islamic Police, and Adama, whom he had described as the "head" of the Islamic Police.¹⁴⁸

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134 [REDACTED]

¹³⁵ Pre-Trial INCRIM package 49 03 February 2020.

¹³⁶ Pre-Trial INCRIM package 57 06 March 2020.

137 [REDACTED]

138 [REDACTED]
[REDACTED]
[REDACTED]

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144 [REDACTED]

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73. Additionally, if introduced, the Defence would have ample opportunity to challenge P-0605's Statement and his credibility, including by requesting the introduction of its own evidence.

74. Overall, as noted by the Chamber in its decision on the rule 68(2)(c) application regarding P-0125, full consideration of the probative value, if any, of P-0605's Statement will be deferred to the Chamber's eventual deliberation for its judgment¹⁴⁹ and the introduction of P-0605's Statement pursuant to rule 68(2)(c) of the Rules will thus not cause prejudice to the Chamber's fair assessment of his evidence.

F. Brief description of the material related to P-0605's Statement

75. Section II of Annex A refers to items that the Prosecution does not seek to submit into evidence, but which are related to P-0605's Statement. These include: (i) transcripts of meetings conducted in [REDACTED] regarding procedural matters; (ii) [REDACTED]; (iii) [REDACTED] related to P-0605; (iv) investigation notes related to P-0605, including those related to [REDACTED]; and (v) items related to the unavailability of P-0605.

VI. Requested Relief

76. For the foregoing reasons, the Chamber should authorise the introduction of P-0605's Statement into evidence pursuant to rule 68(2)(c) of the Rules in full, as set out in confidential Annex A.



Karim A. A. Khan QC, Prosecutor

Dated this 25th day of November 2021
At The Hague, The Netherlands

¹⁴⁹ See e.g. ICC-01/12-01/18-1413, para. 21.