

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **30 November 2021**

Date of submission:
24 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) to introduce into evidence the prior recorded testimony and associated material of Prosecution Witness MLI-OTP-P-0582”, 1 December 2021, ICC-01/12-01/18-2014-Conf-Exp

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court*
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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-0582 (“P-0582”) in full and associated material, as set out in confidential Annex A.

2. The prior recorded testimony of Witness MLI-OTP-P-0582 and associated material are relevant and *prima facie* probative. In addition, the prior recorded testimony:

- comes from P-0582, 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 and [REDACTED] due to factors outside its control;
- has sufficient indicia of reliability; and
- its introduction is not prejudicial to or inconsistent with the rights of the Accused.

3. P-0582 is an insider witness who was a [REDACTED] [REDACTED] with whom he directly interacted in 2012 in Timbuktu. P-0582 was interviewed by the Prosecution pursuant to article 55(2) of the Statute during 10 days in [REDACTED] while he was [REDACTED] P-0582 has since become unavailable to testify orally before the Chamber as [REDACTED]

[REDACTED] and the armed groups, [REDACTED]. To date, his whereabouts are unknown.

II. Confidentiality

4. 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.

5. 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-0582, consisting of pseudonym, face and voice distortion and use of private/closed sessions.¹

¹ ICC-01/12-01/18-1414-Conf-Red, para. 69.

III. Background

6.

[REDACTED]

7.

[REDACTED]

[REDACTED]²

8.

[REDACTED]

[REDACTED]³

[REDACTED]

[REDACTED]⁴

9.

[REDACTED]

[REDACTED]⁵ [REDACTED]⁶

[REDACTED]

² [REDACTED]

³ [REDACTED]

⁴ [REDACTED]
⁵ [REDACTED]

⁶ [REDACTED]
[REDACTED]

10. [REDACTED]

11. [REDACTED]

12. 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 2020.¹⁰

13. In this context, on 14 January 2020, when requesting an extension of time in relation to the deadlines for reviewing redactions set by the Single Judge,¹¹ [REDACTED]

14. On 14 April 2020, the Prosecution filed its Prosecution List of Witnesses, listing P-0582 as a Prosecution Witness.¹⁴

15. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

¹⁰ ICC-01/12-01/18-548, para. 24, p. 9.

¹¹ ICC-01/12-01/18-546.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

[REDACTED]

15

16. [REDACTED]

[REDACTED]

[REDACTED] 16 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 17

17. [REDACTED]

[REDACTED] 18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 19

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 20

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

[REDACTED]

[REDACTED] 21

19. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 22

20. [REDACTED]
[REDACTED]
[REDACTED] 23 [REDACTED]
[REDACTED]

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

22. [REDACTED]
[REDACTED]
[REDACTED] 27 [REDACTED]
[REDACTED]

21 [REDACTED]
[REDACTED]
[REDACTED]

22 [REDACTED]
[REDACTED]

23 [REDACTED]
24 [REDACTED]
[REDACTED]
[REDACTED]

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
[REDACTED]

23. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] .²⁹ [REDACTED]

[REDACTED]

[REDACTED]

24. [REDACTED]

[REDACTED].³¹

26. [REDACTED]

32

[REDACTED] 33

27. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 34 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 35 [REDACTED]
[REDACTED] 36

28. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 37

29. [REDACTED]
[REDACTED]
[REDACTED] 38

30. [REDACTED]
[REDACTED]
[REDACTED] 39 [REDACTED] 40

IV. Applicable law

31. The Prosecution refers to the applicable law found in the Chamber's previous decisions

33 [REDACTED]
[REDACTED]
[REDACTED]
34 [REDACTED]
[REDACTED]
35 [REDACTED]
36 [REDACTED]
[REDACTED]
37 [REDACTED]
[REDACTED]
[REDACTED]
38 [REDACTED]
[REDACTED]
39 [REDACTED]
40 [REDACTED]

under rule 68(2)(c).⁴¹

V. Submissions

32. [REDACTED] P-0582 [REDACTED]
[REDACTED]
- [REDACTED] P-0582 was interviewed by the Prosecution pursuant to article 55(2) of the Statute. This interview constitutes a prior recorded testimony with the meaning of rule 68 of the Rules,⁴² and the Prosecution seeks the introduction thereof under rule 68(2)(c) in full together with the material associated to it.
33. P-0582's prior recorded testimony consists of audio-recordings and transcripts of interview with the Prosecution during 10 days [REDACTED] (together, "Statement").
34. The Associated Material is composed of three sketches made by P-0582 during his interview, as well as 62 photographs and 42 videos or video extracts discussed in his interview and the transcripts and translations accompanying these videos or video extracts (together "Associated Material"). As these items are used and explained by P-0582 in his interview and are necessary to understand it, the Chamber should authorise their introduction under rule 68(2)(c) together with the prior recorded testimony.
35. As mentioned above, the Chamber should authorise the introduction of P-0582's prior recorded testimony t and Associated Material under rule 68(2)(c) because:
- due to obstacles that cannot be overcome with reasonable diligence, P-0582 has become unavailable since the time when he gave his interview, and the Prosecution did anticipate the need for measures under article 56 of the Statute, [REDACTED];
 - his prior recorded testimony 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 rule 68(2)(c) 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 those made under rule 68(2)(c), should a witness become unavailable to testify orally during the

⁴¹ See ICC-01/12-01/18-1588-Conf, para. 8-11; ICC-01/12-01/18-1413, para. 6-7.

⁴² 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).

course of the Prosecution's case.⁴³

37. While P-0582 [REDACTED], it is appropriate for the Prosecution to file this rule 68(2)(c) application now and for the Chamber to receive it because P-0582's unavailability has been established [REDACTED] following the inability [REDACTED]. It would not have been appropriate for the Prosecution to file an application under rule 68(2)(c) before exhausting this avenue as under the relevant provision the Prosecution needs to show that the witness is unavailable "due to obstacles that cannot be overcome with reasonable diligence."

38. Additionally, in its fifth decision on matters related to the conduct of the proceedings, the Single Judge set the deadline to 1 December 2021 to submit any remaining request pursuant to Rule 68(2).⁴⁴

B. P-0582 is unavailable due to obstacles that cannot be overcome with reasonable diligence

39. As described above in paragraphs 6 to 910, because of the risk that [REDACTED] become unavailable to testify orally at trial, [REDACTED].

40. Also, as mentioned above in paragraphs 15 to 17, [REDACTED].

41. [REDACTED]⁴⁵. [REDACTED]⁴⁶ (see above paragraphs 18-19).⁴⁷

42. Since then, as described above in paragraphs 19 to 27, [REDACTED].

⁴³ See ICC-01/12-01/18-789, para. 80.

⁴⁴ ICC-01/12-01/18-1756, para. 3.

⁴⁵ See above paragraph 17.

⁴⁶ [REDACTED]

⁴⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁴⁸

C. The necessity of measures under article 56 of the Statute [REDACTED]

43. The requirement of anticipation of measures under article 56 of the Statute is to avoid introducing evidence through rule 68(2)(c)(i) when article 56 measures would have been a viable alternative at an earlier stage.⁴⁹

44. In this instance, as explained in paragraphs 6 to 13, the Prosecution [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁵⁰

D. P-0582's Statement is relevant

45. P-0582 is an insider witness. His prior recorded testimony is relevant to the charges in this case, such as torture and other inhumane acts. It also includes relevant evidence regarding the Accused's alleged role, authority and contribution. [REDACTED]

[REDACTED].⁵¹

46. *Inter alia*:

- P-0582 was a [REDACTED], with whom he directly interacted;⁵²
- P-0582,⁵³ upon arrival in Timbuktu,⁵⁴ [REDACTED],⁵⁵

⁴⁸ In *Ruto & Sang*, Trial Chamber V(a) found that a witness was unavailable to testify orally due to obstacles that cannot be overcome with reasonable diligence based in particular on the fact that all attempts to contact or trace the witness proved unsuccessful. The witness had not appeared for testimony on the scheduled date; 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. 138.

⁴⁹ 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.

⁵⁰ [REDACTED]

⁵¹ [REDACTED]

⁵² [REDACTED]

⁵³ [REDACTED]

- When he requested to see [REDACTED] [REDACTED] the armed groups were indeed in Timbuktu to apply Sharia law;⁵⁶
- [REDACTED].⁵⁷ Witness P-0582 described the functions of, and the interplay among, the structures established in Timbuktu, namely, the Islamic police, the Islamic Tribunal (“*la Justice*”), and the *Hesbah*;⁵⁸
- P-0582 stated that the [REDACTED] [REDACTED],⁵⁹
- P-0582 possesses first-hand knowledge [REDACTED] [REDACTED] [REDACTED] including during some incidents which he described;⁶⁰ and
- P-0582 also gave information on the upper echelons of the leadership of the armed groups that had occupied Timbuktu in 2012-2013, including Iyad Ag GHALY whom he referred to as the “*grand responsable*” of Ansar Dine,⁶¹ and Abou ZEID, Yahia Abou AL HAMAM and Abdallah AL CHINGUETTI as those of AQIM in Timbuktu.⁶²

E. Taking into account the circumstances in which it arose,⁶³ P-0582’s Statement has sufficient indicia of reliability

47. The *prima facie* reliability and probative value of P-0582’s prior recorded testimony are demonstrated by its *content*, as well as by all the procedural safeguards placed by the OTP investigators as required by article 55(2) of the Statute and rule 112 of the Rules.

48. P-0582 was interviewed by OTP investigators in [REDACTED]

54 [REDACTED]
 55 [REDACTED]
 56 [REDACTED]
 57 [REDACTED]
 58 [REDACTED]
 59 [REDACTED]
 60 [REDACTED]
 61 [REDACTED]
 62 [REDACTED]

⁶³ 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)).

pursuant to *article* 55 of the Statute, in the presence of his article 55(2) counsel. The interview was audio recorded⁶⁴ and then transcribed.⁶⁵

49. The interview was conducted in [REDACTED], which is his mother tongue,⁶⁶ and interpreted by a qualified interpreter⁶⁷ into French for the investigators.⁶⁸

50. At the first meeting on [REDACTED]:

- OTP investigators informed P-0582 about the voluntary nature of the interview and of all his rights in this context, including the right to remain silent;
- In particular, OTP investigators informed P-0582 about his right to have legal assistance.⁶⁹ After a private discussion with the Registry-assigned article 55(2) duty counsel, P-0582 indicated his decision to be assisted by this counsel;⁷⁰
- Other issues, including the principle of confidentiality and protection measures, were also explained in detail to P-0582.⁷¹

51. He stated that he understood that it may be used in legal proceedings before the Court.⁷² He then confirmed that he decided to proceed with the interview.⁷³ P-0582 was thus interviewed in the presence of his article 55(2) counsel.⁷⁴ At the end of this introduction, P-0582 confirmed that he understood everything which had been explained (*i.e.* the procedure and his rights).⁷⁵

52. The overall circumstances of the interview sessions show that P-0582 gave this interview voluntarily.⁷⁶ When asked: “*est-ce que vous avez répondu à nos questions de votre plein gré, volontairement?*”, P-0582 replied that he did.⁷⁷ P-0582 also confirmed that the interview was conducted in a good atmosphere; one in which he did not feel pressured.⁷⁸ In

64 [REDACTED]
 65 [REDACTED]
 66 [REDACTED]
 67 [REDACTED]
 68 [REDACTED]
 69 [REDACTED]
 70 [REDACTED]
 71 [REDACTED]
 72 [REDACTED]
 73 [REDACTED]
 74 [REDACTED]
 75 [REDACTED]
 76 [REDACTED]
 77 [REDACTED]
 78 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

fact, several times, the investigators asked him whether he answered questions on his own free will, and P-0582 replied affirmatively.⁷⁹ P-0582's interview was separate from any proceedings conducted against him [REDACTED] For the purpose of the OTP interview, P-0582 was [REDACTED] [REDACTED]⁸⁰ and the interview was conducted in the presence only of the two OTP investigators, his article 55 counsel and a [REDACTED] interpreter.⁸¹ P-0582 was also clearly informed [REDACTED].⁸²

53. As a matter of fact, the Witness' interview was conducted by the Prosecution in an open, constructive and respectful manner, reminding P-0582 of his rights and with P-0582 being given the opportunity to raise any issues if he wished to do so.⁸³

- P-0582 was reminded of his procedural rights throughout the course of the interview;⁸⁴
- He was told that he could consult with his lawyer at any time he deemed it necessary;⁸⁵
- The investigators invited him to raise any concerns he might have,⁸⁶ which he did ;⁸⁷
- Several times, the investigators asked him how he was, to which he responded he was well.⁸⁸

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54. P-0582 was also provided with breaks,⁸⁹ to pray,⁹⁰ to eat,⁹¹ and the duration of the interviews were tailored so as to not exhaust him.⁹² Most importantly, in the course of the interview:

- P-0582's transcripts show that he understood the questions put to him by the Investigators and that he was not hesitant in asking for clarifications when necessary. For example, on matters regarding his security, P-0582 asked: *"La question que j'ai en ce moment vous avez dit que...en cas [phon.] vous allez partager les informations, que vous allez évaluer...euh...ma sécurité. [...]"* [REDACTED]
[REDACTED]
[REDACTED]⁹³
- The investigators told P-0582 that if he did not know something, he should not hesitate to simply say so.⁹⁴ During the course of the interview, P-0582 clearly indicated when he did not understand a question;⁹⁵ did not know something;⁹⁶ could not remember information;⁹⁷ or could only remember it partially.⁹⁸
- Further, for the of completeness, the Witness was given the opportunity to add or clarify the matters that were broached with him. P-0582 was asked several times if there was anything he wished to clarify regarding what he had stated during the day's interview or the preceding days; whether he wanted to add something or if he had any questions.⁹⁹

55. Last, P-0582's statement is internally consistent. The Witness describes chronologically

[REDACTED]

89 [REDACTED]

90 [REDACTED]

91 [REDACTED]

92 [REDACTED]

[REDACTED]

93 [REDACTED]

94 [REDACTED]

95 [REDACTED]

96 [REDACTED]

[REDACTED]

97 [REDACTED]

98 [REDACTED]

99 [REDACTED]

[REDACTED]

[REDACTED]

his interaction with and [REDACTED] and provides details which are consistent with someone having an intimate knowledge of the subjects he broaches. Further, his evidence is consistent with and corroborates that of other reliable Witnesses.¹⁰⁰

F. The introduction of P-0582's statement into evidence is not prejudicial to or inconsistent with the rights of the Accused

56. 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.¹⁰¹

Background information

57. Certain aspects of P-0582's evidence provide relevant background information, for example his account about the leaders of Ansar Dine and AQIM;¹⁰² [REDACTED]
[REDACTED]¹⁰³ the way the leaders were communicating with the population.¹⁰⁴

Corroborative or cumulative nature of P-0582's evidence

58. In addition, evidence related to the following topics described in P-0582's Statement is also of a cumulative or corroborative nature, in that other witnesses have given or will give¹⁰⁵ testimony of similar facts, such as:

- That P-0582 [REDACTED];¹⁰⁶
- Regarding the application of "Sharia" by the armed groups in Timbuktu during the relevant period;¹⁰⁷

¹⁰⁰ See paras. 58, 60, 62 below.

¹⁰¹ 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.

¹⁰² [REDACTED]

¹⁰³ [REDACTED]

¹⁰⁴ [REDACTED]

¹⁰⁵ [REDACTED]

¹⁰⁶ [REDACTED]

¹⁰⁷ [REDACTED]

- Regarding Iyad Ag Ghaly, considered as the main leader of Ansar Dine;¹⁰⁸
- Regarding leaders of AQIM in Timbuktu during the relevant period;¹⁰⁹
- Regarding [REDACTED]
[REDACTED]),¹¹⁰
- Regarding [REDACTED];¹¹¹
- Regarding the way [REDACTED];¹¹²
- Regarding the [REDACTED];¹¹³
- Regarding the [REDACTED];¹¹⁴
- Regarding the women's march;¹¹⁵

108

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

109

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

110

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

111

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

112

[REDACTED]

113

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

114

[REDACTED]

115

[REDACTED]
[REDACTED]
[REDACTED]

already testified that [REDACTED] during the occupation of Timbuktu.¹²⁸ P-0150,¹²⁹ P-0654,¹³⁰ P-0099¹³¹, P-0065¹³², P-0623¹³³, P-0984,¹³⁴ P-0125¹³⁵ and P-0626¹³⁶ also testified that the Accused [REDACTED]. For his part, P-0099 testified that [REDACTED].¹³⁷

The Defence could cross examine other witnesses on the same topics/key issues

61. First, after the disclosure of the anonymous summary¹³⁸ before the confirmation of charges hearing, P-0582's Statement, together with his name, was disclosed on 24 January 2020.¹³⁹ A lesser redacted version was disclosed on 6 March 2020.¹⁴⁰ The Defence thus has had ample time to identify key issues and conduct any investigation in relation to P-0582,

121 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
122 [REDACTED]
[REDACTED]
123 [REDACTED]
[REDACTED]
124 [REDACTED]
[REDACTED]
125 [REDACTED]
[REDACTED]
126 [REDACTED]
[REDACTED]
[REDACTED]
127 [REDACTED]
[REDACTED]
128 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
129 [REDACTED]
[REDACTED]
130 [REDACTED]
131 [REDACTED]
132 [REDACTED]
[REDACTED]
133 [REDACTED]
134 [REDACTED]
135 [REDACTED]
136 [REDACTED]
137 [REDACTED]
138 [REDACTED]

¹³⁹ Pre-Trial INCRIM package 48 24 January 2020.

¹⁴⁰ Pre-Trial INCRIM package 57 06 March 2020.

who has always been included in the Prosecution's List of Witnesses.¹⁴¹

62. The Defence has also had ample opportunity to question Prosecution witnesses regarding P-0582 and his anticipated evidence, including the [REDACTED]. The Defence specifically questioned [REDACTED],¹⁴² [REDACTED],¹⁴³ [REDACTED],¹⁴⁴ [REDACTED],¹⁴⁵ [REDACTED],¹⁴⁶ [REDACTED],¹⁴⁷ [REDACTED],¹⁴⁸ and [REDACTED]¹⁴⁹ regarding [REDACTED]. P-0150 was questioned in detail regarding the [REDACTED] [REDACTED] at different stages during the occupation.¹⁵⁰ P-0099 was questioned extensively about whether [REDACTED] [REDACTED].¹⁵¹ P-0065 was questioned in detail regarding the differences [REDACTED] [REDACTED] [REDACTED].¹⁵²

63. Additionally, if introduced, the Defence would have ample opportunity to challenge P-0582's Statement and his credibility, including by requesting the introduction of its own evidence.

64. Last, 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-0582's Statement will be deferred to the Chamber's eventual deliberation for its judgment¹⁵³ and the introduction of P-0582'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.

G. Brief description of the Associated Material

65. Section II of confidential Annex A sets out the Associated Material which the Prosecution seeks to introduce with his Statement under rule 68(2)(c). Section II provides the

¹⁴¹ [REDACTED]
[REDACTED]
¹⁴² [REDACTED]
[REDACTED]
¹⁴³ [REDACTED]
¹⁴⁴ [REDACTED]
[REDACTED]
¹⁴⁵ [REDACTED]
¹⁴⁶ [REDACTED]
¹⁴⁷ [REDACTED]
¹⁴⁸ [REDACTED]
¹⁴⁹ [REDACTED]
¹⁵⁰ [REDACTED]
¹⁵¹ [REDACTED]
¹⁵² [REDACTED]
¹⁵³ [REDACTED]

references to the corresponding pages of P-0582's Statement where he commented on the photographs and videos or video excerpts as well as the relevant timestamps for the latter. In view of their content and P-0582's explanation, these photographs and videos are relevant to the case against the Accused and *prima facie* reliable. Given that all the items in the Associated Material were used with P-0582 and commented on in his Statement, they should be introduced under rule 68(2)(c) together with P-0582's Statement.¹⁵⁴

66. This Associated Material consists of three sketches made by P-0582 during his interview, as well as 42 videos or video extracts and 62 photographs discussed in his Statement and the transcripts and translations accompanying the videos or video extracts. While these videos and extracts of videos were shown to P-0582 without sound, the Prosecution also seeks the introduction into evidence of 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.¹⁵⁵

VI. Requested Relief

67. For the foregoing reasons, the Chamber should authorise the introduction into evidence pursuant to rule 68(2)(c) of P-0582's Statement in full and Associated Material (*cf.* Annex A).



Karim A. A. Khan QC, Prosecutor

Dated this 30th day of November 2021

At The Hague, The Netherlands

¹⁵⁴ However, the Prosecution does not seek to submit items, which have already been formally submitted. 69 of these videos and photographs have been formally submitted. The Annex A specifies when these items have already been formally submitted. Moreover, regarding videos or video excerpts which are part of the Associated Material (and which have not already been formally submitted), the Prosecution specifies that it seeks to submit these items in their entirety in light of the Trial Chamber's decision on this matter. *See* Decision on submitted material for P-0065 (part 1): Email from the Trial Chamber dated 18 December 2020, at 10:05 : "The Chamber notes that for some videos and their associated transcripts and translations, the Prosecution seeks to submit only those extracts used with the witness. For the sake of practicality and to avoid potential submission of the same video/transcript/translation multiple times for different witnesses with different extracts, the Chamber considers it more appropriate to authorise submission of the entire video and related transcript and translation. Obviously in assessing the evidence the Chamber would only consider those extracts actually used with a particular witness."

¹⁵⁵ Decision on Prosecution request to add items to the List of Evidence (P-0565 and P-0557), email from the Chamber dated 23 November 2020 at 11:22.