

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/04-02/06
Date: **19 January 2017**

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for
admission of prior recorded testimony of Witness P-0551**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64(2) and (9)(a), 67, and 69(2), (3) and (4) of the Rome Statute ('Statute'), Rule 68 of the Rules of Procedure and Evidence ('Rules'), and Regulation 35 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for admission of prior recorded testimony of Witness P-0551'.

I. Procedural history

1. On 9 October 2014, the Chamber ordered the Office of the Prosecutor ('Prosecution') to file its final list of witnesses, and disclose remaining incriminatory material by 2 March 2015.¹
2. On 1 November 2016, the Prosecution sought the conditional admission under Rule 68(2)(b) of the Rules and Regulation 35 of the Regulations of the prior recorded testimony of Witness P-0551 ('Request'),² pending submission of the required accompanying declaration.³ The prior recorded testimony of Witness P-0551, who was not previously included in the Prosecution's list of witnesses,⁴ comprises: (i) a statement from March 2010 ('2010 Statement'), together with

¹ Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, ICC-01/04-02/06-382. A corrigendum was filed on 28 November 2014 (ICC-01/04-02/06-382-Corr).

² Prosecution's application under rule 68(2)(b) and regulation 35 to admit the prior recorded testimony of Witness P-0551, ICC-01/04-02/06-1601-Conf with confidential Annexes 1, 1.1 to 1.7, 2, and 2.1 to 2.3. The Request was notified on 2 November 2016.

³ Request, ICC-01/04-02/06-1601-Conf, paras 1, 15 and 40. For the accompanying declaration, the Prosecution refers to the Chamber's ruling that Rule 68(2)(b) applications 'may be made in advance of [such] declarations having been obtained, while noting that any favourable ruling on such applications could only be made on a conditional basis': Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution, 19 October 2016, ICC-01/04-02/06-1588, para. 7. A corrigendum was filed on 12 December 2016 (ICC-01/04-02/06-1588-Corr).

⁴ Confidential redacted Annex A to Prosecution's Lists of Witnesses, Summaries, and Evidence, 2 March 2015, ICC-01/04-02/06-491.

seven annexes;⁵ and (ii) a statement from August 2016 ('2016 Statement'), together with three annexes.⁶

3. On 2 December 2016, the Prosecution submitted an accompanying declaration for P-0551,⁷ and requests the (unconditional) admission of P-0551's prior recorded testimony.⁸
4. On 22 December 2016, in line with the extended time limit granted by the Chamber,⁹ the defence team for Mr Ntaganda ('Defence') filed its response ('Response'),¹⁰ in which it opposes the Request.
5. On 16 January 2017, the Prosecution filed an addendum to its filing of 2 December 2016, providing confirmation that the certifying officer is duly authorised in accordance with the law and procedure of the Democratic Republic of the Congo ('DRC'), indicating his role, official function and delegated authority.¹¹

II. Submissions and Analysis

Applicable law

6. In line with the approach taken by other chambers of this Court when faced with similar requests,¹² the Chamber considers that additions to a list of

⁵ Annexes 1 and 1.1 to 1.7 to the Request.

⁶ Annexes 2 and 2.1 to 2.3 to the Request.

⁷ Confidential Annex 6 to Prosecution's application under rule 68(2)(b) to admit the prior recorded testimony of Witnesses P-0020, P-0057 and P-0932, and provision of certified declarations for Witnesses P-0551 and P-0773, ICC-01/04-02/06-1668-Conf.

⁸ ICC-01/04-02/06-1668-Conf, para. 45.

⁹ Email from a Legal Officer of the Chamber to the parties and participants on 16 November 2016 at 13:36.

¹⁰ Response on behalf of Mr Ntaganda to "Prosecution's application under rule 68(2)(b) to admit the prior recorded testimony of Witness P-0551", ICC-01/04-02/06-1699-Conf.

¹¹ Addendum to the Prosecution's applications under rule 68(2)(b) to admit the prior testimony of Witnesses P-0551, P-0020, P-0057 and P-0932, ICC-01/04-02/06-1719-Conf, paras 3-6.

¹² See for example Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Prosecution's Application to Add P-317 to the Prosecution Witness List (ICC-01/04-01/07-1537), ICC-01/04-01/07-1590, para. 12 ('Katanga Addition of Witness Decision'); Trial Chamber V(B), *The Prosecutor v. Uhuru Muigai Kenyatta*, Decision on Prosecution Request to add P-548 and P-66 to its witness list, 23 October 2013, ICC-01/09-02/11-832 ('Kenyatta Addition of Witnesses Decision'), paras 10 and 11; Trial Chamber V(A),

witnesses after the relevant deadline may, in principle, be made when the terms of Regulation 35(2) of the Regulations¹³ are met or, even where the terms of that regulation have not been met, where to do so would nonetheless be in the interests of justice and the determination of the truth, and be consistent with the Chamber's obligation to ensure the fairness of the proceedings, under Articles 64 and 69 of the Statute.

7. Pursuant to Regulation 35(2), in addition to showing 'good cause' for a variation of the time limit, the Prosecution is required to demonstrate that it was 'unable to file the application within the time limit for reasons outside [its] control', which, as held by the Appeals Chamber, requires the existence of 'exceptional circumstances'.¹⁴ The Chamber agrees with Trial Chamber V(B) that this condition will 'generally not be satisfied' when a party or participant requests to add evidence 'many months after the expiration of a deadline set in accordance with Rule 84 of the Rules.'¹⁵
8. When the terms of Regulation 35 are not met, a case-by-case assessment which balances the justification for the addition of new evidence against the potential prejudice which may be caused to the other party is required.¹⁶ In this context, the Chamber may consider a broad variety of factors, including: (i) the time elapsed since the original deadline and the stage of the proceedings at which

The Prosecutor v. William Samoei Ruto and Joshua Arap Sang, Decision on the Prosecution's Requests to Add New Witnesses to its List of Witnesses, 3 September 2013, ICC-01/09-01/11-899-Red ('*Ruto* Addition of Witnesses Decision'). See also Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on "Prosecution's Application to Submit Additional Evidence", 2 April 2014, ICC-01/05-01/08-3029, paras 17 and 23 ('*Bemba* Addition of Evidence Decision').

¹³ Regulation 35(2) of the Regulations provides that: '[t]he Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control'.

¹⁴ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Reasons for the "Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007" issued on 16 February 2007, 21 February 2007, ICC-01/04-01/06-834, paragraphs 9 to 10.

¹⁵ *Kenyatta* Addition of Witnesses Decision, ICC-01/09-02/11-832, para. 10.

¹⁶ *Kenyatta* Addition of Witnesses Decision, ICC-01/09-02/11-832, para. 11.

admission of new evidence is sought; (ii) the reasons provided for not seeking addition of the new evidence at an earlier stage; (iii) the evidence already before the Chamber; (iv) the relevance and significance of the additional evidence to matters for determination by the Chamber; (v) whether the new evidence would bring to light a previously unknown fact which has a significant bearing upon the case;¹⁷ and (vi) the impact of the addition of the new evidence on the fairness and expeditiousness of the trial and rights of the accused.¹⁸ In respect of the rights of the accused, Trial Chambers V(A) and V(B) have emphasised the need to ensure the right of the accused to have adequate time and facilities for the preparation of the defence, as set out in Article 67(1)(b) of the Statute,¹⁹ and to determine ‘whether the other party can be given adequate time to investigate the proposed new witnesses, bearing in mind the need to conduct the trial fairly and expeditiously’.²⁰

9. In relation to Rule 68(2)(b), the Chamber incorporates by reference the applicable law as previously set out by it.²¹

Whether the terms of Regulation 35(2) are met

10. According to the Prosecution, there is ‘good cause’ to vary the 2 March 2015 time limit for the submission of the Prosecution’s list of witnesses and related evidence to allow admission of P-0551’s prior testimony.²² The Prosecution submits that the importance of P-0551’s testimony ‘only became entirely clear’ after the testimony of a specific witness,²³ because it showed that the Chamber

¹⁷ See similarly *Bemba* Addition of Evidence Decision, ICC-01/05-01/08-3029, para. 29.

¹⁸ See *Kenyatta* Addition of Witnesses Decision, ICC-01/09-02/11-832, para. 11; *Bemba* Addition of Evidence Decision, ICC-01/05-01/08-3029, para. 29; *Katanga* Addition of Witness Decision, ICC-01/04-01/07-1590, para. 12.

¹⁹ *Ruto* Addition of Witnesses Decision, ICC-01/09-01/11-899-Red, para. 17.

²⁰ *Kenyatta* Addition of Witnesses Decision, ICC-01/09-02/11-832, para. 11.

²¹ Decision on admission of prior recorded testimony of Witness P-0773 under Rule 68, 2 December 2016, ICC-01/04-02/06-1667-Conf, paras 6-8.

²² Request, ICC-01/04-02/06-1601-Conf, paras 5 and 16 to 21.

²³ Request, ICC-01/04-02/06-1601-Conf, para. 19.

would benefit from having detailed evidence in relation to the school system in the DRC, the creation and use of school reports in Ituri during the 2002-2003 period, the operation of schools during the conflict and the impact of the conflict on school attendance, the types of school records used in Ituri schools, the DRC school system, and information about the schools attended by certain alleged child soldier witnesses.²⁴

11. The Defence argues that the request for addition of Witness P-0551 is 'manifestly untimely'²⁵ and that the Prosecution has failed to establish good cause for the late addition and for not having disclosed the Statements and identified P-0551 as an intended witness until November 2016.²⁶ According to the Defence, the Prosecution 'knew perfectly well' the anticipated testimony of certain alleged child soldier witnesses, and was therefore, unlike the Defence, in a position to assess the relevance of P-0551's potential testimony to those witnesses.²⁷
12. With reference to the applicable standard articulated above, the Chamber finds that the Prosecution's submission that 'the importance of P-0551's evidence only became entirely clear' after a specific witness's testimony,²⁸ does not qualify as an exceptional circumstance,²⁹ and, accordingly, the terms of Regulation 35(2) for a variation of the time limit have not been met.

²⁴ Request, ICC-01/04-02/06-1601-Conf, paras 19 and 23.

²⁵ Response, ICC-01/04-02/06-1699-Conf, para. 2.

²⁶ Response, ICC-01/04-02/06-1699-Conf, page 5 and paras 2 and 11.

²⁷ Response, ICC-01/04-02/06-1699-Conf, para. 12.

²⁸ Request, ICC-01/04-02/06-1601-Conf, para. 19.

²⁹ See, in this regard, Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Motion for leave to disclose and add the investigator's report concerning Witness P-268 to the List of Incriminating Evidence, ICC-01/04-01/07-2325-Red, para. 17, where the Chamber held: 'The Chamber considers that it is inherent in a criminal trial that unforeseen issues may arise. Therefore, as a matter of principle, the Chamber is of the view that the fact that the Prosecution could not initially expect that the information contained in the Report would become important to its case does not, as such, constitute exceptional circumstances which Regulation 35(2) of the Regulations envisages.'

Whether admission of P-0551's prior recorded testimony is warranted in the interests of justice or for the determination of the truth

13. Claiming that the admission of P-0551's prior recorded testimony is in the interests of justice and the determination of the truth, the Prosecution submits that it could also be admitted under Articles 64(6)(b) and (d) and 69(3) of the Statute,³⁰ and that P-0551 may be treated as either a Prosecution or a Chamber witness.³¹
14. The Defence claims that it would be prejudiced by the late addition of P-0551's testimony, given that, contrary to the Prosecution who knew about the prior recorded testimony since March 2010,³² it has conducted its cross-examinations 'in ignorance' of the Prosecution's intention to call P-0551 and the existence of P-0551's Statements which are 'manifestly relevant' to the testimony of other witnesses, and was thus deprived of the possibility to address relevant issues in order to test those witnesses' and P-0551's credibility.³³ The Defence further argues that the prejudice would 'be even greater' if the prior recorded testimony was admitted without cross-examination.³⁴
15. The Chamber notes that the addition of P-0551 was requested almost 20 months after the original deadline and only one week before the commencement of the second-last evidentiary block of the Prosecution case. As already observed, the Chamber is unpersuaded by the Prosecution's justification that 'the importance of P-0551's evidence 'only became entirely clear' after the testimony of a specific witness. Indeed, the Chamber notes that the 2010 Statement has been in the Prosecution's possession since March 2010 and that school records of alleged former child soldiers already appeared in the Prosecution's initial list of

³⁰ Request, ICC-01/04-02/06-1601-Conf, para. 21.

³¹ Request, ICC-01/04-02/06-1601-Conf, para. 22.

³² Response, ICC-01/04-02/06-1699-Conf, para. 11.

³³ Response, ICC-01/04-02/06-1699-Conf, paras 7, 13 – 15.

³⁴ Response, ICC-01/04-02/06-1699-Conf, para. 16.

evidence.³⁵ In these circumstances, the Chamber is of the view that the Prosecution could well have anticipated the potential importance of school records for issues at stake in this case, and decided whether additional evidence to that effect would be required at an earlier stage of the proceedings.

16. Concerning the nature of P-0551's evidence and its potential relevance and significance to the matters for the Chamber's determination, the Chamber notes that it relates mainly to general issues of the school system and of school records in the DRC and their handling in the context of the 2002-2003 conflict. The Chamber considers that P-0551, on account of his position and functions, can provide relevant contextual and background information in relation to these issues and may also be well-placed to comment on individual school records of alleged child soldier witnesses. Noting that these issues have been addressed during the testimony of a number of witnesses in this case, both in examination-in-chief and cross-examination, as well as through questions asked by the Chamber,³⁶ the Chamber is of the view that P-0551's proposed testimony would be of assistance to the Chamber in its assessment of other evidence.

17. Turning to potential prejudice, the Chamber notes that the Prosecution disclosed and sought admission of P-0551's statements on 1 November 2016, i.e. *after* the completion of the testimony of one of the alleged child soldier witnesses referred to by the Defence, but *before* the testimony of the other alleged child soldier witnesses referred to by the Defence. Accordingly, the Defence's 'ignorance' of the statements and the Prosecution's intention to add P-0551 should not have significantly affected the Defence's preparation for and cross-examination of those witnesses. Further, for the testimony which preceded the disclosure of the statements, the Chamber emphasises that the

³⁵ Confidential Annex C to Prosecution's Lists of Witnesses, Summaries, and Evidence, 2 March 2015, ICC-01/04-02/06-491.

³⁶ See, for example, Transcript of hearing dated 24 June 2016, ICC-01/04-02/06-T-109-CONF-ENG ET, page 31, lines 16-19.

2016 Statement was only created *after* that testimony, meaning that at that time, the Prosecution only knew of the 2010 Statement, which, in the Chamber's view, is of a more general nature than the 2016 Statement and, on its own, of a lesser informative value for this case. In addition, the Chamber notes that the specific documents shown to P-0551 for the purpose of his 2016 Statement relate to a witness who appeared after the disclosure of the statements and the Defence was therefore in a position to cross-examine this witness on the basis of P-0551's comments thereon.

18. In these circumstances, noting also the nature of the testimony which is largely factual and related to background information which would be accessible through other sources, and, in respect of names and documents potentially presented when registering at school, partly overlaps with the evidence that was disclosed in relation to Witness P-0932,³⁷ the Chamber is of the view that the late addition of P-0551 to the Prosecution's witness list would have only a limited impact on the Defence's preparation, and can be further remedied by ensuring appropriate conditions for the admission of P-0551's testimony.
19. Having balanced all these factors, the Chamber finds that it would be appropriate in the interest of justice and for the determination of the truth to grant the request for addition of P-0551 to the Prosecution's list of witnesses.

Whether Rule 68(2)(b) is appropriate for the admission of P-0551's prior recorded testimony

20. In the Prosecution's submission, the admission of P-0551's prior testimony under Rule 68(2)(b) is appropriate for a number of reasons, including that: (i) the testimony goes to proof of a matter other than the acts and conduct of the

³⁷ See Confidential Annex 2 to Prosecution's application under rule 68(2)(b) to admit the prior recorded testimony of Witnesses P-0020, P-0057 and P-0932, and provision of certified declarations for Witnesses P-0551 and P-0773, ICC-01/04-02/06-1668-Conf.

accused;³⁸ (ii) it would contribute to a more concise and streamlined presentation of evidence;³⁹ (iii) it bears sufficient indicia of reliability, which is further supported by a number of factors including that, due to his role during the conflict, P-0551 is well-placed to provide evidence regarding school records, his prior recorded testimony is consistent internally and in comparison with the accounts given by other witnesses in this case;⁴⁰ (iv) it is relevant and has *prima facie* probative value;⁴¹ and (v) its admission causes no undue prejudice to the accused because the inability to cross-examine does not deprive him of his right to challenge the evidence.⁴²

21. The Defence avers that the requirements and discretionary factors under Rule 68(2)(b) are not met.⁴³ Specifically, the Defence submits that the prior recorded testimony is not limited to evidence related to school records and the school system but also includes accusations that encompass the actions of the accused's subordinates and could give rise to liability under Article 28, and absent any affirmation by the Prosecution that this part of the testimony will not be relied upon, could 'trespass' on the 'acts and conduct of the accused' prohibition.⁴⁴ For the discretionary factors listed in Rule 68(2)(b)(i), the Defence argues that the prior recorded testimony: (i) is 'neither cumulative nor corroborative';⁴⁵ (ii) relates to matters that are disputed, noting that the issue of school records has been discussed 'extensively' with several witnesses and that the Prosecution has challenged their reliability when the Defence used them, while has tried to rely on records which are favourable to its case;⁴⁶ and (iii)

³⁸ Request, ICC-01/04-02/06-1601-Conf, paras 24- 28.

³⁹ Request, ICC-01/04-02/06-1601-Conf, paras 29-30.

⁴⁰ Request, ICC-01/04-02/06-1601-Conf, paras 31-35.

⁴¹ Request, ICC-01/04-02/06-1601-Conf, paras 36- 38.

⁴² Request, ICC-01/04-02/06-1601-Conf, para. 39.

⁴³ Response, ICC-01/04-02/06-1699-Conf, paras 17-27.

⁴⁴ Response, ICC-01/04-02/06-1699-Conf, paras 17-18.

⁴⁵ Response, ICC-01/04-02/06-1699-Conf, page 10 and paras 19-21.

⁴⁶ Response, ICC-01/04-02/06-1699-Conf, paras 22 – 24.

‘meets – barely – the minimum threshold of reliability for admission pursuant to Rule 68(2)(b)’.⁴⁷

22. For the Defence’s argument that P-0551’s prior recorded testimony cannot be considered as being limited to proof of matters ‘other than the acts and conduct of the accused’, the Chamber recalls that the ‘acts and conduct of the accused’ should be given its ordinary meaning and refers to the ‘personal acts and omissions of the accused, which are described in the charges against him or her or which are otherwise relied upon to establish his or her criminal responsibility for the crimes charged’.⁴⁸ Noting that neither of P-0551’s statements make any reference to the accused, and considering their nature and content, the Chamber finds that P-0551’s prior recorded testimony does not relate to Mr Ntaganda’s acts and conduct within the meaning of Rule 68(2)(b).
23. Turning to the factors listed under Rule 68(2)(b)(ii), the Chamber notes that the statements mainly relate to background information regarding the issue of the school system and school records in the DRC and their handling in the context of the 2002-2003 conflict, and partly complement or corroborate testimony given by other witnesses on these matters. However, the Chamber also takes cognisance of the Defence’s argument that the issue of school records has been ‘materially in dispute’ with respect to the testimony of several witnesses and the alleged prejudice resulting from the lateness of the disclosure of the statements and of the Request, which, according to the Defence, would be ‘even greater’ if the prior recorded testimony was admitted without cross-examination. In this connection, the Chamber is mindful that P-0551’s comments on specific school records were exclusively elicited by the Prosecution, without any opportunity for the Defence to ask additional

⁴⁷ Response, ICC-01/04-02/06-1699-Conf, paras 25-27.

⁴⁸ Decision on admission of prior recorded testimony of Witness P-0773 under Rule 68, 2 December 2016, ICC-01/04-02/06-1667-Conf, para. 11.

questions, challenge the witness's account or ask him to comment on other documents. In these circumstances, the Chamber finds that admitting the prior recorded testimony without giving the Defence an opportunity to cross-examine P-0551 would cause prejudice to the accused.

Whether Rule 68(3) would be an appropriate basis for the admission of the Statement

24. Having found that recourse to Rule 68(2)(b) is not appropriate for the admission of P-0551's testimony, the Chamber has, in light of its finding in paragraph 16 above that the proposed testimony would be of assistance to the Chamber in its assessment of other evidence, and although not requested by the Prosecution, proceeded to consider whether Rule 68(3) would provide an appropriate alternative. In this regard, it is recalled that under Rule 68(3) of the Rules, a chamber may allow the introduction of the prior recorded testimony of a witness who is present before the Chamber: (i) where the individual does not object to the introduction of his or her prior recorded testimony; and (ii) if both parties and the Chamber have an opportunity to examine the witness. The Chamber further recalls that it previously held that 'a cautious, case-by-case assessment is [...] required', and that introduction of the prior recorded testimony must not be prejudicial to or inconsistent with the rights of the accused and 'the fairness of the proceedings more generally'.⁴⁹
25. In the present case, the Chamber finds that the 2010 Statement and the 2016 Statement are *prima facie* reliable, including being internally consistent, being signed by P-0551, and containing an acknowledgement that they were given voluntarily and are true to the best of his knowledge and recollection. The Chamber further notes that P-0551 indicates where he does not know, or cannot

⁴⁹ Preliminary ruling on Prosecution application under Rule 68(3) of the Rules for admission of prior recorded testimony of Witness P-0931, 21 September 2015, ICC-01/04-02/06-845, para. 6. *See also* Rule 68(1).

remember, certain information.⁵⁰ Finally, the Chamber notes that P-0551 would be available to be questioned by both parties and the Chamber. Accordingly, the Chamber considers it appropriate for the statements to be introduced pursuant to Rule 68(3) of the Rules, and that admission in this context would not be prejudicial to or inconsistent with the rights of the accused.

26. Concerning the documents attached to the 2010 Statement, the Chamber notes that they were used and explained by the witness in the context of his 2010 interview, and are therefore necessary to contextualise his 2010 Statement. Accordingly, the Chamber considers that these documents are appropriate for admission as associated documents. For the annexes to the 2016 Statement, the Chamber observes that they were previously admitted into evidence.⁵¹
27. For the purpose of the admission of P-0551's prior recorded testimony, the Prosecution is permitted one hour to conduct the formalities associated with the procedure under Rule 68(3) and to ask any supplemental questions. The Chamber further indicates that the Defence will be strongly encouraged to complete its cross-examination of P-0551 within three hours.
28. Finally, the Chamber considers that the use of video-link may be appropriate for the testimony of P-0551, in view of the nature of the expected testimony, limited time expected to be required for the testimony, and potential logistical difficulties which the Victims and Witnesses Unit ('VWU') may encounter at this stage, and therefore invites the parties and the VWU to file any relevant submissions on this issue.

⁵⁰ See, for example, 2016 Statement, ICC-01/04-02/06-1601-Conf-Anx2, paras 27, 31 and 33.

⁵¹ See transcript of hearing on 8 November 2016, ICC-01/04-02/06-T-153-CONF-ENG ET, p. 42, p. 45 and transcript of hearing on 1 December 2016, ICC-01/04-02/06-T-169-CONF-ENG ET, p. 72.

III. Conclusion

29. In light of the above, the Chamber grants the Prosecution's request for addition of P-0551 to its list of witnesses and considers that use of Rule 68(3) of the Rules, rather than Rule 68(2)(b) is, in principle, appropriate for admission of the testimony.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the request for addition of P-0551 to the Prosecution's list of witnesses;

DECIDES that the use of Rule 68(3) of the Rules is, in principle, appropriate for admission of P-0551's prior recorded testimony;

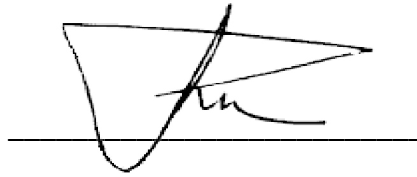
DEFERS its final ruling in respect of the admission of P-0551's prior recorded testimony until the conditions set out in Rule 68(3) of the Rules have been satisfied;

DIRECTS the parties and the VWU to file any submissions on the possibility of hearing P-0551's testimony via video-link by 24 January 2017;

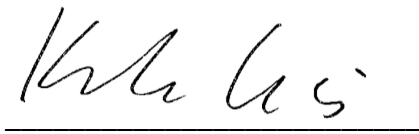
DIRECTS the parties to file public redacted versions of their submissions within two weeks from the date of this decision; and

REJECTS all other requests.

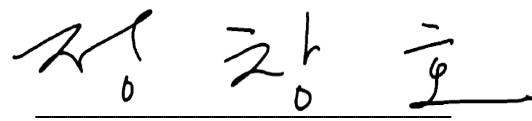
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by a cursive 'remr', written over a horizontal line.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to read 'Kuniko Ozaki' in a cursive script, written over a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of three distinct cursive characters, written over a horizontal line.

Judge Chang-ho Chung

Dated this 19 January 2017

At The Hague, The Netherlands