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No.: ICC-01/04-02/06
Date: 23 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

With Public Annex 1 and Confidential Annexes 2-6

**Public redacted version of “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”,
2 December 2017, ICC-01/04-02/06-1668-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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Introduction

1. The Prosecution seeks the admission of the prior recorded testimony of Witnesses P-0020, P-0057 and P-0932 under rule 68(2)(b) of the Rules¹ ("Request"). The prior recorded testimony of Witnesses P-0020 and P-0057 comprises the entirety of their written statements, whereas Witness P-0932's prior recorded testimony consists of his testimony in *Lubanga*, the expert reports that he authored, and his *curriculum vitae*.
2. The prior recorded testimony of Witness P-0020 is relevant to the charges of pillaging, rape of civilians, murder and attempted murder, and the conscription, enlistment and use of child soldiers. Witness P-0057's prior recorded testimony is relevant to the background to the conflict as well as to the charges of conscription, enlistment and use of child soldiers. The prior recorded testimony of Witness P-0932 is relevant to issues concerning registration of civil status, naming conventions, family structures, and dates of birth.
3. The prior recorded testimony of all three witnesses is probative and goes to proof of matters other than the acts and conduct of the Accused as required by rule 68(2)(b). The prior testimony of Witnesses P-0020 and P-0057 is corroborative in nature of witnesses who have given and/or will give oral evidence on similar facts. The prior testimony of Witness P-0932 relates to issues that are relevant to the testimony of several witnesses who have testified in this case, in particular the alleged former child soldiers.

¹ Rules of Procedure and Evidence ("Rules").

4. All parties will benefit from an expedited presentation of the Prosecution's case. Admitting the prior recorded testimony of these witnesses under rule 68(2)(b) best serves the interests of justice and the determination of the truth.
5. The cumulative nature and limited purpose of the evidence of these witnesses makes it unnecessary for them to appear for cross-examination. Granting the Request would not cause any unfair prejudice to the Accused, who remains in a position to challenge the witnesses' evidence through means other than their cross-examination.
6. The Prosecution also provides Trial Chamber VI ("Chamber") with certified declarations in relation to the Prosecution's previous applications for the admission of the prior recorded testimony of Witnesses P-0773² and P-0551³ pursuant to rule 68(2)(b).
7. Lastly, the Prosecution notes that, contrary to its earlier indication,⁴ it will not be filing a rule 68(2)(b) application in relation to Witness P-0021.

Confidentiality

8. This filing and Annexes 2-6⁵ are classified as "Confidential" pursuant to regulation 23bis(1) of the Regulations of the Court since they refer to information not available to the public. The Prosecution will file a public redacted version of this filing.

² ICC-01/04-02/06-1611-Conf.

³ ICC-01/04-02/06-1601-Conf.

⁴ ICC-01/04-02/06-1471-AnxA.

⁵ The Prosecution notes that although the documents contained at Public Annex 1 were formally disclosed to the Defence without redactions, limited redactions to Expert Witness P-0932's contact information in his expert reports and *curriculum vitae* have been applied to the versions annexed to this filing in order to make these documents available to the public.

9. The Prosecution requested in-court protective measures for Witness P-0020.⁶ For the purposes of the rule 68(2)(b) application, the Prosecution maintains its request to use a pseudonym for this witness and to redact identifying information from the public. The Prosecution will similarly file requests for protective measures in the form of pseudonyms for Witnesses P-0057, P-0551, and P-0773.

Procedural Background

10. On 2 June 2015, in its Decision on the conduct of proceedings, the Chamber held that Parties that intend to request admission of prior recorded testimony pursuant to rule 68(2) “shall file the application together with copies of the previously recorded testimony and any supporting material, and [...] shall identify precisely which passages it wishes to tender into evidence”.⁷
11. On 29 July 2016, the Prosecution submitted an updated list of witnesses in which it indicated that it intended to make requests for the admission of witness evidence under rule 68(2)(b) of the Rules in relation to Witnesses P-0020, P-0021, P-0057, P-0039 and P-0932.⁸ On 19 October 2016, the Chamber set 2 December 2016 as the deadline for the submission of these requests.⁹
12. On 14 October 2016, the Prosecution requested the admission of Witness P-0039’s prior recorded testimony pursuant to rule 68(2)(b) of the Rules.¹⁰ The Defence opposed this request in its 8 November 2016 response.¹¹

⁶ ICC-01/04-02/06-1353-Conf-Exp with confidential redacted version at ICC-01/04-02/06-1353-Conf-Red and public redacted version at ICC-01/04-02/06-1353-Red2.

⁷ ICC-01/04-02/06-619, para.55.

⁸ ICC-01/04-02/06-1471-AnxA.

⁹ ICC-01/04-02/06-1588, para.6.

¹⁰ ICC-01/04-02/06-1585-Conf.

¹¹ ICC-01/04-02/06-1620-Conf.

13. On 19 October 2016, the Chamber indicated that rule 68(2) applications “may be made in advance of the required accompanying declarations having been obtained, while noting that any favourable ruling on such applications could only be made on a conditional basis”.¹²
14. On 1 November 2016, the Prosecution requested the admission, on a conditional basis, of Witness P-0551’s prior recorded testimony pursuant to rule 68(2)(b) of the Rules.¹³ On 16 November 2016, pursuant to a Defence request for an extension of time to respond to this request, the Chamber granted the Defence until 22 December 2016 to file its response.¹⁴
15. On 4 November 2016, the Prosecution requested the admission of Witness P-0773’s prior recorded testimony pursuant to rule 68(2)(b) of the Rules.¹⁵ The Defence opposed this request in its 21 November 2016 response.¹⁶

Prosecution’s Submissions

I. The prior recorded testimony of Witnesses P-0020, P-0057 and P-0932 should be admitted

16. Pursuant to rule 68(2)(b) of the Rules, the Prosecution seeks the admission of:
 - (i) Witnesses P-0020’s witness statement;¹⁷ (ii) Witness P-0057’s witness statement;¹⁸ and (iii) Expert Witness P-0932’s *Lubanga* transcripts,¹⁹ expert

¹² ICC-01/04-02/06-1588, para.7.

¹³ ICC-01/04-02/06-1601-Conf.

¹⁴ Email from Trial Chamber VI to the Parties and Participants dated 16 November 2016 at 13:36.

¹⁵ ICC-01/04-02/06-1611-Conf.

¹⁶ ICC-01/04-02/06-1642-Conf.

¹⁷ See Annex 2.

¹⁸ See Annex 3.

¹⁹ See Annex 1 containing the French and English transcripts of Expert Witness P-0932’s testimony in *Lubanga* from which the Prosecution seeks to admit the following excerpts: DRC-OTP-2098-0271, p.p.57-93, at 0327-0363; DRC-OTP-2098-0365, pp.2-22, at 0366-0386; DRC-OTP-2083-0402, pp.48-76, at 0449-0477; DRC-OTP-2083-0479, pp.2-16, at 0480-0494.

reports,²⁰ and *curriculum vitae*.²¹ The prior recorded testimony of all three witnesses should be admitted for the reasons set out below.

a. The material of Witnesses P-0020, P-0057 and P-0932 constitutes “prior recorded testimony” in the sense of Rule 68

17. The statements of Witnesses P-0020 and P-0057, recorded by the Prosecution in compliance with rule 111 of the Rules, constitute “prior recorded testimony”,²² as do the transcripts of Witness P-0932’s testimony in *Lubanga*²³ and his expert reports.²⁴ The Prosecution notes that Witness P-0932 was not asked to certify his *curriculum vitae* or the English versions of his *Lubanga* testimony for admission pursuant to rule 68(2)(b) and, as such, requests the admission of these documents pursuant to articles 64 and 69 of the Statute and rule 63 of the Rules.

b. The prior recorded testimony of all three witnesses goes to proof of matters other than the acts and conduct of the Accused

18. The acts and conduct of the Accused relate narrowly to his deeds and behaviour. In *Ongwen*, Trial Chamber IX stated that “[t]he expression ‘acts and conduct of the accused’ – which is not further qualified in Rule 68(2)(b) of the Rules – must be interpreted in its plain natural meaning, referring to the

²⁰ See Annex 1.

²¹ See Annex 1.

²² See ICC-01/05-01/08-1386, OA5 OA6, paras.79-81, confirming that written witness statements can be introduced as “prior recorded testimony” (stating that “[w]itness statements may only be introduced under rule 68 of the Rules of Procedure and Evidence if the strict conditions of that rule are met.”); See also ICC-01/09-01/11-1938-Red-Corr, paras.30-33, analysing the term “prior recorded testimony” in light of the Rules’ *travaux préparatoires*, the Court’s prior case-law and the need to ensure language consistency within the rule in interpreting it; ICC-01/05-01/08-2012-Red, para.136; ICC-01/05-01/08-886, para.6; ICC-01/04-01/07-2289-Corr-Red; ICC-01/04-01/07-2362; ICC-01/04-01/07-2635, paras.44-49; ICC-01/04-01/06-1603, paras.18-19; ICC-01/04-01/06-1399, paras.40-42; ICC-01/04-01/07-412; ICC-02/11-01/15-744 OA8, paras.6, 30-31, 63-65, 95-105; ICC-01/04-02/06-1205.

²³ [REDACTED].

²⁴ The Chamber has considered expert reports as prior recorded testimony, admitting them under rule 68(3) of the Rules, see, e.g. T-113-CONF-ENG ET, p.44, ln.8 – p.45, ln.7 (open session); See also ICC-01/04-02/06-1311, para.14, fn.26. Further, the Chamber ruled that rule 68 was the more appropriate basis for admitting the report of the medical expert that it appointed to conduct a medical examination of Witness P-0790, ICC-01/04-02/06-1311, para.15.

personal actions and omissions of the accused, rather than a broader normative meaning, extended to the actions and omissions of others which are attributable to the accused under the modes of liability charged by the Prosecution.”²⁵

19. Trial Chamber IX also noted that the ICTY adopted the same interpretation of the expression “acts and conduct of the accused” for essentially the same purpose.²⁶ Indeed, other international tribunals have construed the legal expression “acts and conduct” to refer plainly to the “deeds and behaviour of the accused”,²⁷ such that they seek to establish the accused’s responsibility under any applicable mode of liability.²⁸ Importantly, acts and conduct of the accused must be distinguished from acts and conduct of others who commit crimes for which the accused is alleged to be responsible- proof of the acts and conduct of others is admissible under rule 68(2)(b).²⁹

20. Trial Chamber IX went on to note that it:

will not exclude the application of Rule 68(2)(b) of the Rules when the prior recorded testimony contains evidence with respect to the acts and conduct of other persons, whether

²⁵ ICC-02/04-01/15-596-Red, para.11.

²⁶ ICC-02/04-01/15-596-Red, para.24.

²⁷ “The phrase ‘acts and conduct of the accused’ in rule 92bis is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and conduct by alleged co-perpetrators, subordinates or, indeed, of anybody else. Had the rule been intended to extend to acts and conduct of alleged co-perpetrators or subordinates it would have said so”, see *Prosecutor v. Milošević*, IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted under Rule 92 bis, 21 March 2002, para.22 (“*Milošević Decision*”); *Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on the Prosecution’s Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of Viva Voce Testimony Pursuant to Rule 92 bis (Witnesses for Sarajevo Municipality), 15 October 2009, para.5 (“*Karadžić Decision*”); *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 bis and Prosecution Motion to Admit GH-139’s Evidence Pursuant to Rule 92 bis, 24 January 2013, para.15 (“*Hadžić Decision*”).

²⁸ *Karadžić Decision*, para.5; *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 bis(C), 7 June 2002, para.10 (“*Galić Decision*”); *Hadžić Decision*, para.15; *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 bis, 22 August 2008, para.17 (“*Lukić Decision*”).

²⁹ *Karadžić Decision*, para.5; *Galić Decision*, para.9; *Hadžić Decision*, para.15; *Prosecutor v. Milutinović et al.*, IT-05-87-PT, Decision on Prosecution Rule 92bis Motion, 4 July 2006, para.6; *Lukić Decision*, para.17; *Milošević Decision*, para.22.

alleged co-perpetrators, subordinates or otherwise, which are attributed to the accused in the charges by reason of the mode of liability alleged. Furthermore, the Chamber considers that the expression ‘acts and conduct of the accused’ within the meaning of Rule 68(2)(b) of the Rules must be understood as referring exclusively to those actions of the accused which are described in the charges brought against him or her or which are otherwise relied upon to establish his or her criminal responsibility for the crimes charged.³⁰

21. Finally, Trial Chamber IX found that:

in certain circumstances, the party’s intended purpose in relying on a prior recorded testimony may be of relevance to the determination of whether such testimony goes to proof of the accused’s acts and conduct or not. In particular, the Chamber considers that the presence of a limited reference to the accused in a prior recorded testimony does not entail, in and of itself, that the testimony cannot be introduced under Rule 68(2)(b) of the Rules when (i) the calling party indicates that it does not intend to rely on that reference and (ii) this reference is not of significance to the case or is, in any event, of limited importance and does not constitute the core of the testimony. Any such reference would in any case not be considered by the Chamber to establish the acts and conduct of the accused for the purposes of its final judgment.³¹

22. The prior recorded testimony of all three witnesses does not relate to the acts and conduct of the Accused as defined in the jurisprudence of this and other courts.

³⁰ ICC-02/04-01/15-596-Red, para.12.

³¹ The Chamber went on to state that “With this limited exception concerning peripheral discrete references to the accused – which must be evaluated on a case-by-case basis – the Chamber otherwise agrees with the Defence that ‘statements cannot be submitted piecemeal’ as this approach ‘would lead to an artificial exercise’ and possibly ‘absurdity and re-litigation of the Rule 68 admission’. In other words, as submitted by the Defence, the Chamber must conduct its determination of whether a prior recorded testimony can be introduced under Rule 68(2)(b) of the Rules upon consideration of the whole testimony and, in turn, the whole testimony would be introduced under that provision”, ICC-02/04-01/15-596-Red, para.13.

P-0020

23. Witness P-0020 is a [REDACTED]. His prior recorded testimony concerns [REDACTED]: (i) [REDACTED]; (ii) UPC soldiers raping women and killing civilians in September 2002; and (iii) the March 2003 UPC attack on Bunia. The witness also stated that he saw child soldiers as young as eight years old in the UPC in Bunia. He [REDACTED].
24. The only mention that Witness P-0020 makes of the Accused is at [REDACTED]. The witness states that the only conversation he can recall having with the Accused occurred in [REDACTED]. This peripheral, discrete reference to the Accused, which cannot be relied upon to establish his criminal responsibility for the crimes charged, does not mean that the witness's statement relates to the acts and conduct of Bosco Ntaganda. However, should the Chamber find that this reference does refer to the Accused's acts and conduct, the Prosecution will not rely on this reference.

P-0057

25. Witness P-0057 was [REDACTED]. His prior recorded testimony primarily relates to [REDACTED]. This information relates to the background to the conflict- a factor that the Chamber must consider under rule 68(2)(b)(i) of the Rules. The witness also refers to the UPC's use of child soldiers and to the May 2003 attack on Bunia.
26. Certain paragraphs of Witness P-0057's statement refer to the Accused. However, these references are of limited importance and do not constitute the core of this witness's testimony. They do not relate to charged conduct, fall outside of the temporal scope of the charges or are general in nature.³² As such,

³² See [REDACTED].

the statement does not refer to the “acts and conduct of the Accused”, as defined by Trial Chamber IX and Chambers of the ICTY. However, should the Chamber find that these references do refer to the Accused’s acts and conduct, the Prosecution will not rely on these references.

P-0932

27. Expert Witness P-0932’s prior recorded testimony relates to registration of civil status, naming conventions, family structures, and dates of birth and does not relate to the acts and conduct of Bosco Ntaganda. His prior recorded testimony is relevant, in particular, to the evidence of alleged former child soldiers.

c. The prior recorded testimony is reliable

28. There is no finite list of possible criteria to determine whether an exhibit or prior recorded testimony should be admitted as evidence or the factors that inform a review of the reliability of the document.³³ Absence of certain indicia of reliability may be considered when assessing the weight of that evidence but should not be a reason for excluding the evidence.³⁴ It is only necessary to establish *prima facie* - not definitive - proof of reliability based on sufficient indicia.³⁵ The Chamber’s assessment of indicia of reliability requires an exercise of discretion, based on the circumstances of the case.³⁶

³³ ICC-01/04-01/06-1399, para.29.

³⁴ See e.g. *Prosecutor v Popović et al*, IT-05-88-T, Decision on Prosecution Motion for Admission of Evidence pursuant to rule 92quater, 21 April 2008, para.41, citing *Prosecutor v Rasim Delić*, IT-04-83-PT, Decision on Prosecution Motion for Admission of evidence pursuant to rule 92quater, 9 July 2007 and *Prosecutor v Miluntinovic et al*, IT-05-87-T, Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 92quater, 16 February 2007.

³⁵ ICC-01/09-01/11-1353, para.15. See also e.g. *Prosecutor v Popović et al*, IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para.22: “[p]rima facie proof of reliability on the basis of sufficient indicia is enough at the admissibility stage.”

³⁶ See e.g. *Prosecutor v Prlić et al*, IT-04-74-AR73.16, Decision on Jadranko Prlić’s Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009, para.27.

29. The prior recorded testimony of all three witnesses bears sufficient *prima facie* indicia of reliability because it is truthful, authentic, consistent, and was provided voluntarily. There is no indication of a motive for the witnesses to fabricate or distort their accounts.
30. The three witnesses have acknowledged the truthfulness and accuracy of their prior recorded testimony before certifying officers and the Prosecution submits certified declarations from the witnesses in accordance with rule 68(2)(b) (ii) and (iii).³⁷ The following factors also support the reliability of the evidence.

Witnesses P-0020 and P-0057

31. The statements of Witnesses P-0020 and P-0057 were given voluntarily and were signed by the witnesses, along with an acknowledgment that the content is true and accurate to the best of the witnesses' knowledge and recollection. The statements were taken by Prosecution investigators in compliance with the requirements of rule 111. Witness P-0020's statement was taken with the assistance of an interpreter who certified that the witness appeared to have heard and understood the translation of the statement and confirmed the veracity of the information contained in his statement to the best of his knowledge and recollection.
32. Witness P-0020 is well-placed to provide evidence on [REDACTED]. His prior recorded testimony relates to events that are consistent³⁸ with accounts of a number of other witnesses who have referred to pillaging by the UPC,³⁹ the

³⁷ See Annexes 2-4.

³⁸ See *e.g. Prosecutor v Karadžić*, IT-95-5/18-T, Decision on Accused's Motion for Admission of Evidence of Radislav Krstić Pursuant to Rule 92*quater*, 26 November 2013, para.12.

³⁹ See, *e.g.*, [REDACTED].

UPC's rape of civilian women⁴⁰ and killings,⁴¹ as well as the UPC's conscription, enlistment and use of child soldiers.⁴²

33. Witness P-0057 is well-placed to provide evidence on the specific events in which he was involved. A number of witnesses have referred to Witness P-0057 [REDACTED] during their testimony.⁴³
34. There are no inconsistencies sufficient to cast doubt as to the reliability of Witness P-0020's and Witness P-0057's overall evidence.

Expert Witness P-0932

35. Expert Witness P-0932's testimony in *Lubanga* was made under oath and the Chamber found that P-0932 may be called to testify as an expert witness,⁴⁴ noting that P-0932's *curriculum vitae* indicates that he appears to have long experience as a historian on matters related to Africa, including dealing with the *histoire des mentalités* of social and cultural groups in the DRC.⁴⁵ The Chamber also noted that Expert Witness P-0932 appears to have engaged in academic research, and acted as a consultant, on matters related to naming and social conventions in the DRC.⁴⁶ These factors all indicate that Expert Witness P-0932's prior recorded testimony is reliable.
36. Although Expert Witness P-0932 will not be available for cross-examination should the Chamber accept the application to admit his prior recorded

⁴⁰ See, e.g. Witness P-0901, ICC-01/04-02/06-T-29-CONF-ENG, p.25, ln.17 – p.26, ln.22 (open session); [REDACTED].

⁴¹ See, e.g. [REDACTED].

⁴² See, e.g. Witness P-0017, ICC-01/04-02/06-T-58-CONF-ENG CT p.24, ln.18 – p.26, ln.19 (open session); [REDACTED].

⁴³ See, e.g. [REDACTED].

⁴⁴ ICC-01/04-02/06-1159, para.17.

⁴⁵ ICC-01/04-02/06-1159, para.15.

⁴⁶ ICC-01/04-02/06-1159, para.15.

testimony under rule 68(2)(b), there is no undue prejudice as the Accused is still able to advance arguments on the weight to be attributed to his evidence.

d. The evidence is relevant and has *prima facie* probative value

37. The Chamber is empowered to admit evidence it considers relevant to the determination of the truth under articles 69(3) and (4) and 64(9)(a) of the Statute and rule 63(2).⁴⁷ Evidence is deemed relevant if it tends to prove or disprove a material issue or fact in question, making it more or less probable.⁴⁸
38. The prior recorded testimony of Witness P-0020 is relevant to the charges of pillaging, rape of civilians, murder and attempted murder, and the conscription, enlistment and use of child soldiers. Witness P-0057's prior recorded testimony is relevant to the background to the conflict as well as to the charges of conscription, enlistment and use of child soldiers. The prior recorded testimony of Witness P-0932 is relevant to issues concerning registration of civil status, naming conventions, family structures, and dates of birth.
39. As shown above, the prior recorded testimony has *prima facie* probative value because it bears sufficient indicia of reliability. Additionally, the prior recorded testimony has *prima facie* probative value as it is generally consistent with and corroborates the accounts of a number of *viva voce* witnesses.⁴⁹

e. The prior recorded testimony is corroborative in nature

40. One of the factors that the Chamber must consider in determining whether the introduction of prior recorded testimony that goes to proof of a matter other

⁴⁷ ICC-01/04-01/06-1399, para.24; ICC-01/04-01/06-2360, para.23.

⁴⁸ ICC-01/09-01/11-1353, para.15; ICC-01/04-01/07-2635, para.34.

⁴⁹ See fns.39-43, above.

than the acts of conduct of the accused may be allowed is whether other witnesses will give or have given oral testimony of similar facts.

41. Several witnesses have testified on similar facts to those referred to in Witness P-0020's and Witness P-0057's prior recorded testimony.⁵⁰ Further, the Prosecution expects to elicit information concerning these facts from a number of the witnesses that it intends to call during the eighth evidentiary block.⁵¹

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

42. By its terms, rule 68(2)(b) does not unfairly prejudice the Defence by permitting the introduction of evidence that will not be subject to cross-examination when this evidence is unrelated to the acts and conduct of an accused. That both Parties can avail themselves of this provision further underscores its inherent neutrality and that it advances the interests of justice.
43. Admitting the prior recorded testimony of Witnesses P-0020, P-0057 and P-0932 under rule 68(2)(b) would advance the interests of justice and contribute to a fair and expeditious trial by enabling the presentation of evidence in a more concise and streamlined manner without causing undue prejudice to the fair trial rights of the Accused. This aligns with the stated goal behind the rule's adoption which was to "reduce the length of ICC proceedings and streamline

⁵⁰ See fns.39-43, above.

⁵¹ In particular, Witnesses P-0863 (murder, rape, pillaging), P-0108 (murder), P-0116 (child soldiers), P-0005 (murder, rape, child soldiers), P-0016 (murder, pillaging, child soldiers), and P-0067 (murder, pillaging, child soldiers) see [REDACTED]. Witness P-0067 is expected to provide evidence in relation [REDACTED], see [REDACTED].

evidence presentation.”⁵² The admission of the prior recorded testimony of these witnesses under rule 68 complies with article 51(4) of the Statute.

g. Admission of the prior recorded testimony causes no undue prejudice to the Accused

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

II. Provision of certified declarations for Witnesses P-0773 and P-0551

45. The Prosecution previously requested that the Chamber admit the prior recorded testimony of Witnesses P-0773 and P-0551 on a conditional basis pending the submission of their certified declarations.⁵³ The Prosecution has now obtained certified declarations from these witnesses⁵⁴ and requests the admission of their prior recorded testimony.

⁵² Assembly of State Parties, Study Group on Governance, Working Group on Lessons Learnt: Recommendation on a proposal to amend rule 68 of the Rules of Procedure and Evidence (Prior Recorded Testimony), 31 October 2013, para. 11.

⁵³ ICC-01/04-02/06-1601-Conf; ICC-01/04-02/06-1611-Conf.

⁵⁴ See Annexes 5-6.

46. The Prosecution also attaches two Investigation notes relevant to Witness P-0773's certified declaration.⁵⁵
47. The Prosecution attaches all documents relevant to its request in relation to Witness P-0551 to this filing for ease of reference.⁵⁶

Conclusion

48. For all the foregoing reasons, the Prosecution asks that the Chamber grant its Request.



Fatou Bensouda
Prosecutor

Dated this 23rd day of January 2017
At The Hague, The Netherlands

⁵⁵ See Annex 5.

⁵⁶ See Annex 6.