

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: **24 February 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 redacted version of

**Decision on Prosecution application under Rule 68(2)(c) for admission of prior
recorded testimony of Witness P-0016**

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 Luc Boutin

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

Mr Nigel Verrill

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* ('Ntaganda case'), having regard to Articles 51(4), 56, 64 and 67-69 of the Rome Statute ('Statute'), Rules 63(2) and 68(2)(c) of the Rules of Procedure and Evidence ('Rules'), and Regulation 23 *bis* of the Regulations of the Court, issues the following 'Decision on Prosecution application under Rule 68(2)(c) for admission of prior recorded testimony of Witness P-0016'.

I. Procedural history

1. On 22 December 2016, the Office of the Prosecutor ('Prosecution') filed a request ('Request')¹ seeking the admission of the prior recorded testimony and associated documents of Witness P-0016 ('Witness'), under Rule 68(2)(c) of the Rules and Articles 64(9)(a) and 69(2), (3) and (4) of the Statute.
2. On the same day, the defence team for Mr Ntaganda ('Defence') requested an extension of time until 17 January 2017 to respond to the Request ('Extension Request').²
3. Also on 22 December 2016, the Victims and Witnesses Unit ('VWU') transmitted to the Chamber a psychosocial assessment report of the Witness ('Report').³
4. On 27 December 2016, the Chamber granted the Extension Request, and transmitted to the parties and participants a summary of the Report.⁴
5. In accordance with instructions issued by the Chamber,⁵ on 23 January 2017, the VWU filed into the record, *ex parte* Chamber only: (i) a copy of the Report; and (ii) a related medical report of the Witness.⁶

¹ Prosecution's application under rule 68(2)(c) to admit the prior recorded testimony and related documents of Prosecution Witness P-0016, ICC-01/04-02/06-1698-Conf, with confidential annexes 1, A.1-A.3, B.1-B.10, and public annex 2.

² E-mail communication from the Defence to the Chamber on 22 December 2016 at 14:57.

³ E-mail communication from VWU to the Chamber on 22 December 2016 at 14:40.

⁴ E-mail communication from the Chamber to parties and participants on 27 December 2016 at 11:20.

6. On 16 February 2017, in accordance with the Chamber's ruling granting a further extension of time,⁷ the Defence filed its response to the Request ('Response').⁸

II. Analysis

7. The Chamber incorporates by reference the applicable law set out in previous decisions on applications for admission of evidence under Rule 68(2)(c) of the Rules.⁹
8. Turning to the Request, the Chamber notes that the Prosecution seeks the admission of the following material set out in Annex 1 to the Request, comprising: (i) the Witness's 2005 statement ('Statement');¹⁰ (ii) the transcripts of [REDACTED], in both English and French;¹¹ (iii) two hand-drawn maps which are annexed to the Statement ('Maps');¹² (iv) a sketch created [REDACTED] ('Sketch');¹³ (v) a document shown to the Witness [REDACTED] ('Document');¹⁴ and (vi) the audio-visual material excerpts which were shown to the Witness [REDACTED] ('Videos'),¹⁵ (collectively, 'Materials').
9. In support of its Request, the Prosecution submits that: (i) the Witness has 'recently become unavailable to testify due to a significant medical condition

⁵ Email communication of 12 January 2017 from the Chamber to the VWU at 16:08.

⁶ Victims and Witnesses Unit Transmission of Psychosocial Assessment and Medical Report of Witness DRC-OTP-P-0016, ICC-01/04-02/06-1737-Conf-Exp, with two confidential *ex parte* annexes, Chamber and Registry only.

⁷ See Email communication from Defence to the Chamber on 11 January 2017 at 18:18; Email communication from the Chamber to the parties and participants on 12 January 2017 at 15:34.

⁸ Response on behalf of Mr Ntaganda to the "Prosecution's application under rule 68(2)(c) to admit the prior recorded testimony and related documents of Prosecution Witness P-0016", ICC-01/04-02/06-1788-Conf.

⁹ See, for example, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103, 20 November 2015 ('Decision of 20 November 2015'), ICC-01/04-02/06-1029, paras 12-15.

¹⁰ Annex A.1 to the Request, ICC-01/04-02/06-1698-Conf-AnxA1.

¹¹ Annexes B.1 to B.8 to the Request, ICC-01/04-02/06-1698-Conf-AnxB1 to ICC-01/04-02/06-1698-Conf-AnxB8, as set out in Annex 1 to the Request, ICC-01/04-02/06-1698-Conf-Anx1.

¹² Annexes A.2 and A.3 to the Request, ICC-01/04-02/06-1698-Conf-AnxA2 and ICC-01/04-02/06-1698-Conf-AnxA3.

¹³ Annex B.9 to the Request, ICC-01/04-02/06-1698-Conf-AnxB9.

¹⁴ Annex B.10 to the Request, ICC-01/04-02/06-1698-Conf-AnxB10.

¹⁵ DRC-OTP-0082-0016, minutes 3:00 to 5:10 and DRC-OTP-0082-0016, minutes 7:00-9:00.

[REDACTED]’;¹⁶ (ii) it could not have anticipated the need to rely on Article 56 of the Statute;¹⁷ (iii) the Materials are relevant, reliable, and have probative value;¹⁸ (iv) the Materials are eligible for admission under Rule 68(2)(c) of the Rules;¹⁹ and (v) while certain of the Materials relate to the acts and conduct of Mr Ntaganda, their probative value outweighs any potential prejudice to the accused.²⁰

Whether the witness is unavailable to testify

10. The Prosecution submits that the Witness is unavailable to testify due to the fact, *inter alia*, that, according to the assessment of the VWU psychologists of 6 December 2016, as reflected in the Report, the Witness suffers from ‘several medical conditions, [REDACTED]’.²¹ The VWU psychologists conclude in the Report that ‘the [W]itness is unavailable for testimony now and in the future’.²²
11. In light of this, and noting: (i) the further report filed by the VWU attesting to the Witness’s medical issues;²³ and (ii) that the Defence has not expressed any objection to the conclusion as to the Witness’s present condition, the Chamber is satisfied that the Witness is unavailable to testify before the Chamber.

Whether the necessity of measures under Article 56 of the Statute could have been anticipated

12. The Prosecution submits that it did not anticipate the need to take measures under Article 56 of the Statute as the medical issues of the Witness were unexpected.²⁴

¹⁶ Request, ICC-01/04-02/06-1698-Conf, paras 3 and 10-13.

¹⁷ Request, ICC-01/04-02/06-1698-Conf, paras 3 and 14-21.

¹⁸ Request, ICC-01/04-02/06-1698-Conf, paras 3 and 22-30.

¹⁹ Request, ICC-01/04-02/06-1698-Conf, paras 39-41.

²⁰ Request, ICC-01/04-02/06-1698-Conf, paras 6 and 31-38 and 42-49.

²¹ Request, ICC-01/04-02/06-1698-Conf, para. 12.

²² Report, ICC-01/04-02/06-1737-Conf-Exp-AnxI, page 5.

²³ See ICC-01/04-02/06-1737-Conf-Exp-AnxII.

²⁴ Request, ICC-01/04-02/06-1698-Conf, para. 14.

13. By way of a chronology, the Prosecution indicates that, due to concerns of investigators who met with the Witness to obtain his consent to be re-interviewed after [REDACTED], on 14 October 2013, a psychologist met with the Witness and assessed him to be fit to be interviewed ('2013 Assessment'). Accordingly, the Witness was re-interviewed between 23 and 26 March 2014 ('March 2014 Interview'). The Prosecution indicates it subsequently made several attempts to contact the Witness, and was finally successful in meeting him in person on 30 November 2015, at which point the Witness advised investigators of a medical condition for which he was being treated, and was observed by investigators to have '[REDACTED]', and that he may require assistance to travel.²⁵
14. The Prosecution states that, following further meetings with the Witness on 9 December 2015 and 29 February 2016, it submitted a support referral request to the VWU in July 2016, and Prosecution field staff, after numerous attempts, finally succeeded in meeting with the Witness on 11 November 2016, at which point it was observed that the Witness's 'general health condition was poor'.²⁶ Having subsequently conducted a medical and psychological evaluation of the Witness, the VWU informed the Prosecution on 13 December 2016 that the Witness had '[REDACTED]' and would be unable to testify.²⁷
15. The Defence argues that the Prosecution 'not only *could* have anticipated, but *did* anticipate, the decline of the [W]itness's condition', and that, rather than triggering Article 56 measures upon observing that the Witness was '[REDACTED]' in March 2014, it elected 'not to contact the [W]itness for twenty months'.²⁸ The Defence submits that, despite these early indications, the Prosecution failed to seise the Chamber of a request for Article 56 measures or

²⁵ Request, ICC-01/04-02/06-1698-Conf, paras 14-16.

²⁶ Request, ICC-01/04-02/06-1698-Conf, paras 17-19.

²⁷ See Request, ICC-01/04-02/06-1698-Conf, paras 20-21.

²⁸ Response, ICC-01/04-02/06-1788-Conf, para. 1.

to schedule the Witness to testify immediately, and that this ‘lack of diligence’ continued in the Prosecution’s dealings with the Witness even after it managed to obtain a meeting with him in November 2015.²⁹ The Defence avers that the burden of proof that Article 56 measures could not have been anticipated rests with the Prosecution, and ought to be adjudicated on the balance of probabilities.³⁰

16. The Chamber is of the view that the Prosecution could indeed have exercised a greater degree of diligence in its approach to the apparent health issues faced by the Witness, including by making a referral to the VWU at an earlier point. In this connection, the Chamber notes that health concerns relating to the Witness were raised as early as 2013.³¹ However, at that point, the Chamber observes that the Witness was clearly assessed by a psychologist as being fit to be interviewed.³² The Chamber notes further that there were numerous reported difficulties in contacting the Witness during both 2015³³ and 2016,³⁴ and that, as a result of meeting the Witness in November 2015 and noting he appeared ‘[REDACTED]’,³⁵ investigators took certain steps to obtain his medical record³⁶ and, later in 2016, to secure VWU assistance.³⁷

17. In light of these circumstances, the Chamber is satisfied that, while greater diligence could have been exercised by the Prosecution to secure a diagnosis of the Witness, the need for Article 56 measures could not have been concretely anticipated prior to the Prosecution’s receipt of the Report in December 2016, which concluded that the Witness was not capable of testifying, and by which

²⁹ Response, ICC-01/04-02/06-1788-Conf, paras 10-12.

³⁰ Response, ICC-01/04-02/06-1788-Conf, para. 14.

³¹ Request, ICC-01/04-02/06-1698-Conf, para. 11.

³² Request, ICC-01/04-02/06-1698-Conf, para. 11, DRC-OTP-2099-0372 and DRC-OTP-2099-0374.

³³ DRC-OTP-2099-0500.

³⁴ Request, ICC-01/04-02/06-1698-Conf, para. 18.

³⁵ DRC-OTP-2099-0501.

³⁶ Request, ICC-01/04-02/06-1698-Conf, paras 16-17; DRC-OTP-2089-1194, DRC-OTP-2089-1196, DRC-OTP-2091-0126, DRC-OTP-2091-0128.

³⁷ Request, ICC-01/04-02/06-1698-Conf, para. 18.

time it was too late for such measures to be effective. In such circumstances, and emphasising the repeated difficulties faced in contacting the Witness by both the Registry and the Prosecution, and noting that actions were taken by the Prosecution to obtain further clarity around the Witness's state of health, the Chamber is satisfied that this requirement in Rule 68(2)(c)(i) of the Rules is met.

Whether the prior recorded testimony has sufficient indicia of reliability

18. The Prosecution submits that the Materials bear sufficient indicia of reliability on the basis that they are 'authentic, truthful and voluntarily provided'.³⁸ In its view, the Statement is 'coherent and is consistent with [REDACTED]', and its reliability is demonstrated by the Witness explaining the basis of his knowledge and indicating areas when he did not know something, for example, stating that he was not aware of the exact date of a UPC/FPLC attack on Lipri or [REDACTED].³⁹ The Prosecution also avers that the Maps bear sufficient indicia of reliability as they were created during his 2005 interview, and are explained and annexed to the Statement.⁴⁰
19. The Prosecution submits further that the Witness's [REDACTED] is also sufficiently reliable as [REDACTED].⁴¹ The Prosecution also avers that the Sketch, Document and Videos used with the Witness during his [REDACTED] are sufficiently reliable for admission in the *Ntaganda* case as the Witness 'authenticated and provided further information about them'.⁴² The March 2014 Interview is not sought to be admitted due to issues around its reliability, based

³⁸ Request, ICC-01/04-02/06-1698-Conf, para. 25 (footnotes omitted).

³⁹ Request, ICC-01/04-02/06-1698-Conf, para. 27.

⁴⁰ Request, ICC-01/04-02/06-1698-Conf, para. 26.

⁴¹ Request, ICC-01/04-02/06-1698-Conf, para. 28.

⁴² Request, ICC-01/04-02/06-1698-Conf, para. 29.

on a retrospective assessment of the Witness's suspected medical condition at that time.⁴³

20. The Prosecution further avers that the Materials are relevant to and are *prima facie* probative of a number of issues in the proceedings.⁴⁴ The Prosecution submits that, in particular, [REDACTED], the Witness can provide unique evidence in the present proceedings.⁴⁵
21. The Defence submits that the Materials lack sufficient indicia of reliability and as such, ought not to be admitted under Rule 68(2)(c) of the Rules. In particular, the Defence argues that the Statement 'goes to acts and conduct [of Mr Ntaganda], is ostensibly incriminating, was never cross-examined, consists substantially of hearsay, and lacks any attributes that would permit the Trial Chamber to assess weight'.⁴⁶ The Defence argues, notably, that the Statement addresses a range of issues much broader than that addressed in [REDACTED], and that certain of the Witness's sources of information appear unreliable⁴⁷ or are unspecified.⁴⁸ The Defence also avers that the Witness's account in the Statement of certain events is neither plausible nor corroborated by evidence on the record,⁴⁹ and that the transcripts of the March 2014 Interview, which the Prosecution does not seek to tender, contradict the Statement, which denotes a 'general lack of reliability'.⁵⁰ The Defence also submits that that the associated documents are not 'authentic and truthful' as advanced by the Prosecution.⁵¹
22. In conducting its assessment of the reliability of the Materials under Rule 68(2)(c) of the Rules, the Chamber has taken into consideration, *inter alia*, the

⁴³ Request, ICC-01/04-02/06-1698-Conf, para. 30.

⁴⁴ Request, ICC-01/04-02/06-1698-Conf, paras 22-23.

⁴⁵ Request, ICC-01/04-02/06-1698-Conf, para. 22.

⁴⁶ Response, ICC-01/04-02/06-1788-Conf, page 9.

⁴⁷ Response, ICC-01/04-02/06-1788-Conf, para. 15.

⁴⁸ Response, ICC-01/04-02/06-1788-Conf, para. 16.

⁴⁹ Response, ICC-01/04-02/06-1788-Conf, para. 18.

⁵⁰ Response, ICC-01/04-02/06-1788-Conf, paras 19-22.

⁵¹ Response, ICC-01/04-02/06-1788-Conf, para. 23.

fact that: (i) the Statement is signed by the Witness on every page, is stated to have been given voluntarily, in anticipation of potentially being called as a witness before the Court, contains a detailed narrative of events that appears to be based on the Witness's own experience [REDACTED], and was given in 2005, and therefore has relative temporal proximity to the events described therein; (ii) [REDACTED]; (iii) the Witness's Statement is internally coherent and appears to be, on the whole, consistent with [REDACTED]; and (iv) in both his Statement and [REDACTED], the Witness indicated when he was not in a position to know certain information, [REDACTED].⁵²

23. The Chamber does not consider that the Defence arguments on the Statement⁵³ go to the *reliability* of the Statement but rather to the *weight* the Chamber may ultimately attach to it, if admitted. The Chamber is also not convinced, as argued by the Defence,⁵⁴ that any purported inconsistencies between the March 2014 Interview and the Statement indicate a 'general lack of reliability' of the latter, in light of the findings of the Report in relation to the Witness's [REDACTED].

24. Turning to the remainder of the Materials, the Chamber notes that the Maps were created by the Witness at the time of taking his statement and are signed, dated, and explained by the Witness in the Statement.⁵⁵ Further, [REDACTED]: (i) the Witness indicated that he created the Sketch, and explained what it was;⁵⁶ (ii) the Witness indicated that he personally signed the Document, and

⁵² See Annex B.3 to the Request, ICC-01/04-02/06-1698-Conf-AnxB3, page 72: [REDACTED].

⁵³ See Response, ICC-01/04-02/06-1788-Conf, paras 15-18.

⁵⁴ See Response, ICC-01/04-02/06-1788-Conf, paras 19-22.

⁵⁵ See Request, ICC-01/04-02/06-1698-Conf, para. 26; Statement, ICC-01/04-02/06-1698-Conf-AnxA1 at paras 139 and 146.

⁵⁶ See Request, ICC-01/04-02/06-1698-Conf, para. 29 and Annexes B.5 and B.9, ICC-01/04-02/06-1698-AnxB5 and B9.

explained its purpose;⁵⁷ and (iii) the specific portions of the Videos were both used with the Witness and commented upon by him.⁵⁸

25. In light of the above, the Chamber finds that the Materials bear sufficient indicia of reliability for the purposes of Rule 68(2)(c) of the Rules.

Whether any prejudicial effect outweighs the probative value of the prior recorded testimony

26. Concerning the Defence's argument that the probative value of the Materials is significantly outweighed by the prejudicial effect their admission would cause, based, *inter alia*, on the extent to which the Statement relates to the acts and conduct of the accused,⁵⁹ the Chamber observes that the Statement indeed contains extensive references to the acts and conduct of Mr Ntaganda. In this regard, the Chamber recalls that Rule 68(2)(c) does not prohibit the introduction of prior testimony which goes to the acts and conduct of an accused, but rather stipulates that it 'may be a factor' against its introduction.⁶⁰

27. The Chamber concurs with the Defence that certain references to Mr Ntaganda in the Statement appear to be potentially prejudicial and of limited probative value, insofar as they implicate Mr Ntaganda in certain conduct without explaining the source of the Witness's purported information, some of which does not relate to charged conduct. The Chamber observes further that large portions of the Statement also include frequent further references to acts and conduct of the accused, including, amongst other things, details, according to the Witness, [REDACTED].

28. However, noting: (i) [REDACTED], which renders him well-placed to provide information in relation to such issues; (ii) the fact that the Witness states that

⁵⁷ See Request, ICC-01/04-02/06-1698-Conf, para. 29 and Annexes B.5 and B.10, ICC-01/04-02/06-1698-AnxB5 and B10.

⁵⁸ See Request, ICC-01/04-02/06-1698-Conf, para. 29 and Annexes B.5 and B.7, ICC-01/04-02/06-1698-AnxB5 and ICC-01/04-02/06-1698-AnxB7.

⁵⁹ Response, ICC-01/04-02/06-1788-Conf, paras 24-26.

⁶⁰ See, in this regard, Rule 68(2)(c)(ii); Decision of 20 November 2015, ICC-01/04-02/06-1029, para. 37.

during certain periods of time that [REDACTED];⁶¹ and (iii) the fact that the Statement is internally consistent, the Chamber considers the *prima facie* probative value of the Statement to be sufficiently established.

29. In balancing this with potential prejudice to the Defence should the Statement be admitted, the Chamber shall, in accordance with its previous rulings and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia,⁶² consider the nature of the evidence provided by the Witness, particularly whether it is direct evidence, whether it goes to the acts and conduct of the accused, and the extent to which the evidence contained therein is corroborated by any other evidence admitted into the record.⁶³ The Chamber further indicates that, in accordance with its previous rulings,⁶⁴ while any references to conduct for which the accused is not charged (such as alleged killings referred to in the Statement)⁶⁵ may have potential relevance, including in relation to various modes of liability and to *mens rea*, and are thus not in principle inadmissible, the Chamber's focus shall be on matters within the scope of the charges.
30. Accordingly, noting that: (i) the Chamber has had the benefit of hearing from several other [REDACTED] witnesses on the topics referred to in the Statement, concerning certain alleged acts and conduct of the accused; (ii) the ultimate

⁶¹ Statement, ICC-01/04-02/06-1698-Conf-AnxA1, para. 269 – [REDACTED].

⁶² See in this regard *Prosecutor v. Stanisić and Simatović*, Decision on Prosecution's Motion for Admission of Evidence of Witness Milan Babić pursuant to Rule 92 *quater*, IT-03-69-T, para. 43 in particular (for considerations applying to prior recorded testimony going to acts and conduct of the accused). See also *Prosecutor v. Perišić*, Judgment, IT-04-81-T, 6 September 2011, para. 44, referring to, *inter alia*, *Prosecutor v. Dragomir Milošević*, Judgment, IT-98-29/1-A, 12 November 2009, para. 215 and *Prosecutor v. Galić*, Decision on interlocutory appeal concerning Rule 92bis(c), IT-98-29-AR73.2, 7 June 2002, footnote 34.

⁶³ See in this regard Rule 63(4) of the Rules; Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, ICC-01/09-01/11-1938-Corr-red2, paras 60, 81, 111 and 128, referred to in Decision of 20 November 2015, ICC-01/04-02/06-1029, para. 27; Decision on Defence Applications for Judgments of Acquittal, 5 April 2016, ICC-01/09-01/11-2027-Red-Corr, para. 56.

⁶⁴ See Transcript of hearing on 6 June 2016, ICC-01/04-02/06-T-96-CONF-ENG ET, page 61, line 19, to page 62, line 17.

⁶⁵ See for example Statement, ICC-01/04-02/06-1698-Conf-AnxA1, paras 184 and 271-272.

weight to be attributed to the Statement shall be assessed in light of the evidence as a whole; and (iii) the Chamber will approach the Statement with caution in accordance with the considerations noted above at paragraph 29, particularly noting that cross-examination has not occurred to test such information,⁶⁶ the Chamber is satisfied that the probative value of admitting the Statement under Rule 68(2)(c) outweighs its prejudicial effect. In so doing, the Chamber finds it appropriate to also admit any disclosed transcripts and translations of the records of interview forming the basis of the Statement, and orders the Prosecution to identify the ERNs of these to the Registry in order to facilitate their admission.

31. The Chamber notes that the Defence arguments on prejudice are predominantly directed at the Statement rather than the [REDACTED]. However, the Defence submits that, due to the 'fundamentally different concerns' [REDACTED].⁶⁷ Notwithstanding, noting the discrete issues [REDACTED], and the other evidence before it on these issues, the Chamber considers the [REDACTED] to be *prima facie* probative of issues in the present case upon which other witnesses have also testified before the Chamber. Accordingly, noting its reliability findings above at paragraph 22, the Chamber is satisfied that admission of the [REDACTED] under Rule 68(2)(c) of the Rules will not be unduly prejudicial to the accused.

III. Conclusion

32. In light of the Chamber's analysis related to the indicia of reliability of the Materials, the Chamber considers that the *prima facie* probative value of the Materials as a whole outweighs any prejudicial effect to the accused caused by

⁶⁶ See further in this regard, International Criminal Tribunal for former Yugoslavia, *Prosecutor v. Martić*, Decision on Appeal against the Trial Chamber's Decision on the Evidence of Milan Babić, IT-95-11-AR73.2, 14 September 2006, para. 12.

⁶⁷ Response, ICC-01/04-02/06-1788-Conf, para. 27.

their introduction, noting the analysis above in relation to the Statement. In this regard, the Chamber recalls that such introduction is without prejudice to the weight, if any, which will be attached to the evidence admitted.⁶⁸ Accordingly, and having found the requirements of sub-rule (2)(c) of Rule 68 and Article 69(4) to be met, the Chamber decides to admit the Materials into evidence as Prosecution exhibits.

⁶⁸ Decision of 20 November 2015, ICC-01/04-02/06-1029, paras 27 and 38, referring to Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, ICC-01/09-01/11-1938-Red-Corr, paras 60, 81, 111 and 128.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

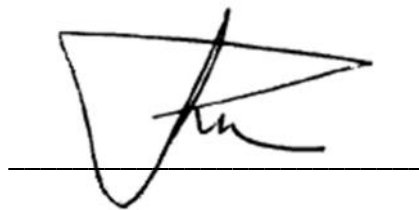
ADMITS INTO EVIDENCE the Materials and any transcripts and translations as described in paragraph 30 above;

DIRECTS the Prosecution to identify any disclosed transcripts of the records of interview forming the basis of the Statement, and orders the Prosecution to forthwith identify the ERNs of these to the Registry in order to facilitate their admission;

DIRECTS the Registry to modify the metadata of all exhibits admitted pursuant to the present decision, including by indicating their status as evidence admitted, as well as noting that they have been admitted by way of the present decision; and

ORDERS the parties to file public redacted versions of the Request (ICC-01/04-02/06-1698-Conf) and the Response (ICC-01/04-02/06-1788-Conf) within two weeks of the present decision being issued.

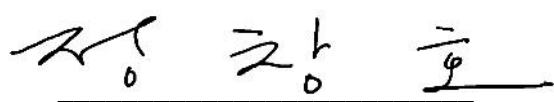
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 24 February 2017

At The Hague, The Netherlands