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No.: **ICC-02/05-01/20**

Date: **6 January 2022**

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

Public Redacted Version of “Prosecution’s first application under rule 68(3) to introduce into evidence prior recorded testimony of witnesses P-0717, P-0757, P-0834, P-0868 and P-0882” 24 December 2021

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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. Pursuant to article 69(2) and (4) of the Rome Statute (“Statute”) and rule 68(3) of the Rules of Evidence and Procedure (“Rules”), the Prosecution requests that Trial Chamber I (“Chamber”): (i) introduce into evidence the statements and associated material (“Prior Recorded Testimonies”)¹ of P-0717, P-0757, P-0834, P-0868, and P-0882 (“Five Witnesses”) and (ii) grant the time required in the paragraphs below for a focused *viva voce* supplementary examination of each witness (“Application”).²

2. Granting the Application will enhance the expeditiousness of the proceedings by reducing the length of the Five Witnesses’ direct examination from 19.5 hours to 5 hours, thus saving at least 14.5 hours of court time.³

3. The Prior Recorded Testimonies of the Five Witnesses relate to the charged crimes primarily in Kodoom, Bindisi and surrounding areas on or about 15 and 16 August 2003 and also in Mukjar and surrounding areas in February/March 2004, as confirmed by Pre-Trial Chamber II.⁴

4. As set out below, the Prior Recorded Testimonies of the Five Witnesses are relevant, reliable and probative. These Five Witnesses provide direct eyewitness testimony of specific events relating to charged crimes, such as the attack against the civilian population (Count 1), murder (Counts 2 and 3), pillage (Count 4), destruction of property (Count 5), and forcible displacement (Count 10) in Kodoom, Bindisi and surrounding areas and, torture (Counts 12-13), other inhumane acts (Count 14), cruel

¹ [REDACTED]. See, *Abd-Al- Rahman* (“*Ali Kushayb*”), Directions on the conduct of proceedings, ICC-02/05-01/20-478, (“Directions on the Conduct of Proceedings”), para. 47.

² This Application is submitted in accordance with Directions on the Conduct of Proceedings, paras. 46-48.

³ Article 64 (3)(a), the Chamber shall, “[c]onfer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of proceedings.” See also; Chambers Practice Manual (2019), p. i (“The overall question of the expeditiousness of proceedings is one of considerable complexity and the conduct and readiness of all parties and participants to Court proceedings play a crucial role—the commitment to expediency must, in this regard, be a collective one.”); *Katanga* Judgment on the Appeal Against the Decision on Unlawful Detention and Stay of Proceedings, ICC-01/04-01/07-2259 OA10, para. 43, (“The Appeals Chamber observes that expeditiousness is a recurrent theme in the Court’s legal instruments. The Statute and the Rules of Procedure and Evidence place an onus on all those involved in the trial to act in a diligent and expeditious manner in the performance of their obligations. The duty applies to the Chambers of the Court, the parties and participants.[...]”). See also, *Ntaganda* Decision on Prosecution application under Rule 68(3), ICC-01/04-02/06-961, para 13. *Gbagbo & Blé Goudé* Decision on Prosecutor’s application under Rules 68(2)(b) and 68(3), ICC-02/11-01/15-573, paras. 25, 42.

⁴ *Abd-Al- Rahman* Confirmation Decision, ICC-02/05-01/20-433-Corr, paras. 86, 94, 97, 104.

treatment (Count 15) and outrages upon personal dignity (Count16) in Mukjar and surrounding areas.

5. The introduction into evidence of the Prior Recorded Testimonies is not prejudicial to or inconsistent with the rights of the Accused, as the Five Witnesses will be available for cross examination by the Defence and any further questioning by the Chamber, the Parties and the Common Legal Representatives of Victims (“CLRv”).

II. CLASSIFICATION

6. Pursuant to regulation 23bis(1) of the Regulations of the Court, this Application and [REDACTED] are filed as “*Confidential*”, as they contain confidential information that relates to the Five Witnesses. A public redacted version of the Application will be filed as soon as practicable.

III. LEGAL BASIS

7. Rule 68(3) of the Rules provides that the Chamber may allow the introduction of the prior recorded testimony of a witness who is present before the Chamber where the individual does not object, and the Parties and CLRv have the opportunity to examine the witness.⁵

8. Rule 68(3) allows for more streamlined proceedings, while fully respecting the rights of the Accused to a fair trial, as the witnesses whose prior recorded testimonies are tendered into evidence are asked to confirm their accuracy, and the defence has the opportunity to examine them in Court. In these circumstances, the Appeals Chamber has ruled that such testimony “cannot be considered to be exclusively written as it is not necessarily intended to replace oral testimony but, rather, complement it.”⁶

⁵*Bemba* Appeals Decision on the admission into evidence of materials contained in the prosecution's list of evidence (“*Bemba* Rule 68 AD”), ICC-01/05-01/08-1386, para. 78. *See also Gbagbo & Blé Goudé* Decision on Prosecution’s application under rule 68(3), ICC-02/11-01/15-870, para. 7; *Ntaganda* Preliminary decision on rule 68(3), ICC-01/04-02/06-1640-Red, para. 7; *Ongwen* Decision on Prosecution’s rule 68(3) Application, ICC-02/04-01/15-621, para. 6.

⁶ *Gbagbo & Blé Goudé* Appeals decision on rules 68(2)(b) and 68(3) (*Gbagbo & Blé Goudé* AD”), ICC-02/11-01/15-744, para. 79.

9. The main purpose of rule 68(3) is to streamline the presentation of evidence and conduct the proceedings in a more effective and expeditious way.⁷ Trial Chamber VII noted in the *Bemba et al* case that the central motivation for introducing rule 68(3) testimony is to save time,⁸ and concluded that the fact that in court-testimony can be considerably shortened by admitting prior recorded testimony is, in itself a sufficient reason for granting a rule 68(3) request, as long as its other mandatory requirements are met.⁹ Likewise, the Appeals Chamber has further acknowledged that Trial Chambers can take good trial management into account in making decisions under rule 68(3).¹⁰ Accordingly, other Chambers have encouraged the use of rule 68(3) to enhance the expeditiousness of the proceedings.¹¹

10. The associated material which the Prosecution seeks to introduce into evidence for each of the Five Witnesses¹² forms an integral part of their prior recorded testimonies.¹³ These items are also necessary to fully comprehend the accounts of the Five Witnesses, as they discuss the items and when required, clarify them in their statements. The introduction of this material is supported by Trial Chamber VI's finding in *Ntaganda* that "exhibits associated with a previously recorded testimony are admissible if the witness uses or explains them in the prior recorded testimony, and particularly when these are necessary to read and understand the prior recorded testimony being introduced."¹⁴

⁷ See *Gbagbo & Blé Goudé AD*, para. 60; *Bemba et al.* Decision on Prosecution Rule 68(2) and (3) Requests, ICC-01/05-01/13-1478-Red-Corr, para. 51.

⁸ *Bemba et al.* Decision on Prosecution Rule 68(2) and (3) Requests, para. 51.

⁹ *Bemba et al.* Decision on Prosecution Rule 68(2) and (3) Requests, para. 48.

¹⁰ *Gbagbo & Blé Goudé AD*, para. 62.

¹¹ *Ntaganda* Decision on Prosecution application under Rule 68(3), ICC-01/04-02/06-961, para 13. *Gbagbo & Blé Goudé* Decision on Prosecutor's application under Rules 68(2)(b) and 68(3), ICC-02/11-01/15-573, paras. 25, 42.

¹² See Annex A (Part II of A1 to A5). Where applicable, the Prosecution includes in the Annex, the English translations of items referred to in the Associated Material.

¹³ See *Yekatom & Ngaissona* Decision on the Prosecution Requests under Rule 68(3), ICC-01/14-01/18-907-Red, para. 26.

¹⁴ *Ntaganda* Transcript of 20 June 2016, ICC-01/04-02/06-T-105-Red-ENG ET, p. 94, l. 2-7. See also, *Ntaganda* Decision on Prosecution application under Rule 68, ICC-01/04-02/06-1205, para.7; *Ntaganda* Decision on Rule 68, ICC-01/04-02/06-1029, para. 23, 35; *Ruto & Sang* Decision on the Admission of Prior Recorded Testimony, ICC-01/09-01/11-1938-Corr-Red2, para. 33.

IV. SUBMISSIONS

A. Overview of the Prior Recorded Testimonies of P-0717, P-0757, P-0834, P-0868 and P-0882

11. The Prior Recorded Testimonies of the Five Witnesses relate primarily to the charged crimes in Kodoom, Bindisi and surrounding areas on or about 15 and 16 August 2003 and also to Mukjar and surrounding areas between late February and early March 2004.¹⁵

12. All Five Witnesses provide direct eyewitness testimony of specific events relating to charged crimes in Kodoom, Bindisi and surrounding areas, such as the attack against the civilian population,¹⁶ murder,¹⁷ pillage,¹⁸ destruction of property¹⁹ and forcible displacement.²⁰

13. Two of the Five Witnesses, [REDACTED], also provide direct eyewitness testimony of specific events relating to charged crimes in Mukjar and surrounding areas, such as torture, cruel treatment and outrages upon personal dignity.²¹

(i) Prior Recorded Testimony of P-0717

14. The Prosecution seeks to submit into evidence P-0717's prior recorded testimony, inclusive of the associated material [REDACTED] to this Application. P-0717's prior recorded testimony comprises a single witness statement, which refers to five associated items that were used and explained by the witness in his statement and relate to information and events discussed in the statement.

¹⁵ *Abd-Al- Rahman* Confirmation decision, ICC-02/05-01/20-433-Corr, paras. 86, 94, 97 and 104.

¹⁶ [REDACTED].

¹⁷ [REDACTED]; [REDACTED]; [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

²¹ [REDACTED]; [REDACTED].

15. P-0717, a Fur civilian, [REDACTED],²² [REDACTED],²³ [REDACTED],²⁴ [REDACTED].²⁵ [REDACTED].²⁶

16. P-0717's associated material comprises *inter alia*: (i) [REDACTED]; (ii) [REDACTED], (iii) [REDACTED];²⁷ (iv) [REDACTED]; and (v) [REDACTED].

17. [REDACTED].²⁸ [REDACTED].²⁹ [REDACTED].³⁰

The Prosecution requests one hour for its limited supplementary examination of P-0717

18. Should P-0717's prior testimony be introduced into evidence, the Prosecution requires approximately one hour to conduct a streamlined supplementary examination, in accordance with rule 68(3) of the Rules and the prior jurisprudence of this Court.³¹

19. The Prosecution would explore and clarify aspects of P-0717's evidence during the limited supplementary examination, in particular: [REDACTED].

20. The Prosecution estimates that it would require 3.5 hours for direct examination of P-0717, if his prior recorded testimony is not introduced through rule 68(3). The one hour required for the limited supplementary examination would shorten the in-court testimony of this witness by 2.5 hours, should this Application be granted.

(ii) *Prior Recorded Testimony of P-0757*

21. The Prosecution seeks to submit into evidence P-0757's prior recorded testimony, inclusive of the associated material [REDACTED]. P-0757's prior recorded

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ *Lubanga* Decision on the admission of the prior recorded statements, ICC-01/04-01/06-1603, para. 25; *Lubanga* Transcript of 7 July 2009, ICC-01/04-01/06-T-205-Red3, p. 19, l. 11 *et seq*; *Katanga* Decision on Request to admit prior recorded testimony, ICC-01/04-01/07-2233-Corr, paras.16-17; *Ntaganda* Transcript of hearing, ICC-01/04-02/06-T-110-Red2-ENG, p. 34, l. 8-13; *Gbabgo & Blé Goude* Annex A to Decision on amended and supplemented directions on the conduct of the proceedings, ICC-02/11-01/15-498-AnxA, para. 40.

testimony comprises a single witness statement, which refers to five associated items that were used and explained by the witness in his interview and relate to information and events discussed in the statement.

22. P-0757, a Fur civilian, [REDACTED],³² [REDACTED].³³ [REDACTED].³⁴ [REDACTED].³⁵

23. P-0757's associated material comprises (i) [REDACTED], (ii) [REDACTED], (iii) [REDACTED], (iv) [REDACTED] and (v) [REDACTED].

24. P-0757 explains in his statement that the hawk depicted [REDACTED] was seen on vehicles being driven by members of the GoS Forces.³⁶ The Headdress board shows the type of hats that P-0757 saw being worn by members of the GoS Forces.³⁷ P-0757 further explained in his statement that the Witness Colour Chart, shows the colours of the uniforms and vehicles of the Militia/*Janjaweed* and GoS Forces.³⁸ P-0757 also provided a hand-drawn sketch of [REDACTED].³⁹ [REDACTED].⁴⁰

The Prosecution requests one hour for its limited supplementary examination of P-0757

25. Should P-0757's prior testimony be introduced into evidence, the Prosecution requests approximately one hour to conduct a streamlined supplementary examination, in accordance with rule 68(3) of the Rules and the prior jurisprudence of this Court.⁴¹

26. The Prosecution would explore and clarify aspects of P-0757's evidence during the limited supplementary examination, in particular: [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ See fn 31.

27. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0757, if his prior recorded testimony is not introduced through rule 68(3). The one hour required for the limited supplementary examination would shorten the in-court testimony of this witness by 3.5 hours, should this Application be granted.

(iii) *Prior Recorded Testimony of Witness of P-0834*

28. The Prosecution seeks to submit into evidence P-0834's prior recorded testimony, inclusive of the associated material [REDACTED]. P-0834's prior recorded testimony comprises a single witness statement, that refers to four associated items that were used and explained by the witness in his statement and relate to information and events discussed in the statement.

29. P-0834, a Fur civilian, [REDACTED]. P-0834's prior recorded testimony is relevant to, *inter alia*, the charge of [REDACTED],⁴² [REDACTED],⁴³ [REDACTED]⁴⁴ and [REDACTED].⁴⁵

30. P-0834's associated material comprises (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; and (vi) [REDACTED].

31. P-0834 drew a map of [REDACTED].⁴⁶ P-0834 also uses the Witness Colour Chart to identify and explain in her statement the uniforms worn by members of the Militia/*Janjaweed* and GoS Forces⁴⁷ and identified the headgear worn by them during the attack, using the Headdress Board. P-0834 used the Aircraft Chart [REDACTED].⁴⁸

The Prosecution requests one hour for its limited supplementary examination of P-0834

20. Should P-0834's prior testimony be introduced into evidence, the Prosecution requires approximately one hour to conduct a streamlined supplementary

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

examination, in accordance with rule 68(3) of the Rules and the prior jurisprudence of this Court.⁴⁹

32. The Prosecution would explore and clarify aspects of P-0834's evidence during the limited supplementary examination, in particular: [REDACTED]."⁵⁰

33. The Prosecution estimates that it would require 3.5 hours for direct examination of P-0834, if her prior recorded testimony is not introduced through rule 68(3). The one hour required for the limited supplementary examination, would shorten the in-court testimony of this witness by 2.5 hours, should this Application be granted.

(iv) *Prior Recorded Testimony of Witness of P-0868*

34. The Prosecution seeks to submit into evidence P-0868's prior recorded testimony, inclusive of the associated material [REDACTED]. P-0868's prior recorded testimony comprises a single witness statement, that refers to one associated item that was used and explained by the witness in his interview and relate to information and events discussed in the statement.

35. P-0868, a Fur civilian, [REDACTED]. P-0868's prior recorded testimony is relevant to, *inter alia*, the charge of [REDACTED],⁵¹ and [REDACTED].⁵² P-0868, also provides direct eyewitness testimony on [REDACTED].⁵³

36. P-0868's associated material comprises a Headdress Board, discussed in his statement. It depicts the style of the headgear of members of the Militia/*Janjaweed* and GoS Forces.⁵⁴

The Prosecution requests one hour for its limited supplementary examination of P-0868

⁴⁹ See fn 31.

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

37. Should P-0868's prior testimony be introduced into evidence, the Prosecution requires approximately one hour to conduct a streamlined supplementary examination, in accordance with rule 68(3) of the Rules and the prior jurisprudence of this Court.⁵⁵

38. The Prosecution would explore and clarify aspects of P-0868's evidence during the limited supplementary examination, in particular: [REDACTED].

39. The Prosecution estimates that it would require 3.5 hours for direct examination of P-0868, if his prior recorded testimony is not introduced through rule 68(3). The one hour required for the limited supplementary examination would shorten the in-court testimony of this witness by three hours, should this Application be granted.

(v) *Prior Recorded Testimony of Witness of P-0882*

40. The Prosecution seeks to submit into evidence P-0882's prior recorded testimony, inclusive of the associated material [REDACTED]. P-0882's prior recorded testimony comprises a single witness statement, that refers to one associated item that was used and explained by the witness in his interview and relates to information and events discussed in the statement.

41. P-0882, a Fur civilian, [REDACTED]. P-0882's prior recorded testimony is relevant to, *inter alia*, the charge of [REDACTED],⁵⁶ [REDACTED]⁵⁷ and [REDACTED].⁵⁸ P-0882 also provides direct evidence relating to [REDACTED],⁵⁹ [REDACTED]⁶⁰ [REDACTED].⁶¹

⁵⁵ See fn 31.

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

42. Witness P-0882's associated material comprises [REDACTED]⁶² [REDACTED].⁶³

The Prosecution requests one hour for its limited supplementary examination of P-0882

43. Should P-0882's prior testimony be introduced into evidence, the Prosecution requires approximately one hour to conduct a streamlined supplementary examination, in accordance with rule 68(3) of the Rules and the prior jurisprudence of this Court.⁶⁴

44. The Prosecution would explore and clarify aspects of P-0882's evidence during the limited supplementary examination, in particular: [REDACTED].

45. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0882, if his prior recorded testimony is not introduced through rule 68(3). The one hour required for the limited supplementary examination would shorten the in-court testimony of this witness by 3.5 hours, should this Application be granted.

B. The Prior Recorded Testimonies of the Five Witnesses are cumulative and corroborative of evidence to be provided by viva voce witnesses

46. The Prior Recorded Testimonies of the Five Witnesses on the charged crimes are cumulative in nature and are corroborative of the evidence,⁶⁵ as described in below paragraphs.

47. P-0717's evidence relating to the [REDACTED] is corroborative of, and cumulative to, the evidence to be provided by, in particular, *viva voce* witnesses [REDACTED].⁶⁶ P-0717's evidence relating to the [REDACTED] is corroborative of the evidence to be provided in particular by *viva voce* witnesses [REDACTED].⁶⁷

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ See fn 31.

⁶⁵ See *Bemba* Rule 68 AD, para. 78.

⁶⁶ See also, [REDACTED].

⁶⁷ See also, [REDACTED].

48. The evidence of P-0717, P-0868 and P-0882 relating to [REDACTED]⁶⁸ is corroborative of, and cumulative to, the evidence to be provided by, in particular, *viva voce* witnesses [REDACTED].

49. The evidence of P-0717 and P-0757 relating to [REDACTED] is corroborative of, and cumulative to, the evidence to be provided by, in particular, *viva voce* witnesses [REDACTED].⁶⁹

50. P-0834's evidence relating to [REDACTED] is corroborative of, and cumulative to, the evidence to be provided by, in particular, *viva voce* witnesses [REDACTED].⁷⁰

51. The evidence of P-0717, P-0834, P-0868 and P-0882, relating to the forcible displacement of the civilian population is corroborative of, and cumulative to, the evidence to be provided by, in particular, *viva voce* witnesses [REDACTED].⁷¹

C. The Prior Recorded Testimonies are admissible under rule 68(3)

52. The Defence has been consulted on the Prosecution's application for the admission into evidence of the Prior Recorded Testimonies of the Five Witnesses, pursuant to rule 68(3). However, the Defence does not agree to the use of rule 68(3) for these witnesses, on the basis that their evidence relates to the identity of the Accused and his acts and conduct.⁷² These factors do not militate against the admission into evidence of prior recorded testimony, pursuant to rule 68(3), as previously ruled by the Appeals Chamber.⁷³

53. On the issue of the Accused's identity, the Defence and the Prosecution have agreed on at least three biographical facts related to the Accused,⁷⁴ that he was a member of the Sudanese Armed Forces until early to middle 1990s, and upon

⁶⁸ See also, [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ See also, [REDACTED].

⁷¹ See also, [REDACTED].

⁷² See Email from the Defence, [REDACTED].

⁷³ *Gbagbo and Blé Goudé* AD, para. 69.

⁷⁴ *Abd-Al-Rahman* Annex A to the Third Joint Submission on Agreed facts, ICC-02/05-01/20-504-AnxA, facts 10, 15 and 11, respectively.

retirement from the Sudanese Armed Forces lived in Garsila, where he also opened a shop, from which he sold medication. These agreed facts are supported by P-0717,⁷⁵ P-0868⁷⁶ and P-0882,⁷⁷ thus narrowing the scope of the contested issue of the Accused identity.

54. In addition to the agreed facts relating to biographical details of the Accused, P-0717, P-0757 and P-868 provide evidence that the Accused was the leader of the *Militia/Janjaweed*.⁷⁸ However, this evidence is corroborative and cumulative of the evidence to be provided by *viva voce* witnesses.⁷⁹ The Defence will be able to fully examine the witnesses on these issues. Moreover, rule 68(3) does not preclude the admission of evidence which goes to the acts and conduct of the Accused for charged crimes.⁸⁰

D. The introduction of the Prior Recorded Testimonies of the Five Witnesses is not prejudicial to or inconsistent with the rights of the Accused

55. The introduction of the Prior Recorded Testimonies of the Five Witnesses into evidence would not be prejudicial to or inconsistent with the rights of the Accused, as the Defence will have ample opportunity to cross-examine the witnesses. Additionally, the Defence was notified on 2 December 2021, that the Prosecution intended to introduce the Prior Recorded Testimonies of the Five Witnesses, pursuant to rule 68(3), well in advance of the commencement of the trial, thus affording them adequate time to prepare for cross-examinations of these witnesses.

56. As for the conditions under rule 68(3), the Prosecution will present the Five Witnesses before the Chamber, canvass their consent to the introduction of their evidence via rule 68(3) and the Parties, the CLRV and the Chamber will have the opportunity to examine the witnesses during proceedings.

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ [REDACTED].

⁸⁰ *Gbagbo and Blé Goudé* AD, para. 69.

E. *The Prior Recorded Testimonies of the Five Witnesses are relevant,⁸¹ reliable and probative to the case⁸²*

57. The Prior Recorded Testimonies that the Prosecution seeks to introduce into evidence, pursuant to rule 68(3) of the Rules are relevant, reliable and probative.

58. All Five Witnesses have signed their Prior Recorded Testimonies, attesting to the fact that they were voluntarily given and records their best recollection of events.⁸³ These Prior Recorded Testimonies also bear the interpreters' signature and certification that each witness appeared to have heard and understood the translation, and an indication that the prior recorded testimony was read to each witness who affixed his/her signature attesting to its true contents.⁸⁴ Accordingly, the Prior Recorded Testimonies have the necessary indicia of reliability, for introduction into evidence.⁸⁵

⁸¹ See paras. 45-50.

⁸² See paras. 14, 16, 21, 23, 28, 30, 34-35.

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ *Ntaganda* Preliminary decision on rule 68(3), ICC-01/04-02/06-1640-Red, para. 9.

V. CONCLUSION

59. For the foregoing reasons, the Prosecution requests that the Chamber grant the Application subject to the fulfilment of the further conditions of rule 68(3) of the Rules.



Karim A. A. Khan QC

Prosecutor

Dated this 29th day of December 2021

At The Hague, The Netherlands