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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 second application under rule 68(3) to introduce into evidence prior recorded testimony of witnesses P-0008, P-0044, P-0105, P-0114, and P-0755” 12 January 2022

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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, and rule 68(3) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests that Trial Chamber I (“Chamber”): (i) introduce into evidence the statements and associated material (“Prior Recorded Testimonies”)¹ of witnesses P-0008, P-0044, P-0105, P-0114, and P-0755 (“Five Witnesses”); and (ii) grant the time requested in the paragraphs below for *viva voce* questioning of each witness (“Application”).²

2. Granting the Application will enhance the expeditiousness of the proceedings by reducing the length of the Five Witnesses’ in-court testimony from 17 hours to five, thus saving approximately 12 hours of court time.³

3. As set out below, the Prior Recorded Testimonies of the Five Witnesses are relevant, reliable and probative. The Prior Recorded Testimonies of the Five Witnesses relate primarily to the charged crimes in Mukjar and surrounding areas in February-March 2004, and also in Deleig and surrounding areas in March 2004.⁴ In particular, they provide evidence on, *inter alia*, specific events relating to charged crimes, such as torture (Counts 12-13), other inhumane acts (Count 14), cruel treatment (Count 15) and outrages upon personal dignity (Count 16) in Mukjar and surrounding areas, and crimes such as torture (Counts 22-23), other inhumane acts (Count 24), cruel treatment

¹ Annex A (A1 to A5) lists the prior recorded testimonies of the Five Witnesses which comprise their witness statements (at I) and associated material (at II). The material related to the witness’s prior recorded testimony which the Prosecution does not seek to introduce into evidence is also included (at III). Hyperlinks to this material are also included. See Conduct of Proceedings Directions, ICC-02/05-01/20-478, 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 Confirmation Decision, ICC-02/05-01/20-433-Corr, paras. 97, 104, 106, 113.

(Count 25) and outrages upon personal dignity (Count 26) in Deleig and surrounding areas. They also provide evidence related to the crime of persecution (Counts 11, 21, and 31).

4. Should the request to conduct a supplementary examination be granted, the Prosecution would elicit further focused *viva voce* evidence of certain issues that require clarification or elaboration as set out below. The Prosecution will ensure that the Five Witnesses are not asked merely to repeat information already provided in their Prior Recorded Testimonies.

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, *inter alia*, for cross examination by the Defence and any further questioning by the Chamber.

II. CLASSIFICATION

6. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Application and Annex A are classified as confidential, since they contain confidential information that identifies the Five Witnesses. A public redacted version of the Application will be filed as soon as practicable.

III. SUBMISSIONS

7. The Prosecution relies on its previous submissions on the legal framework for the introduction into evidence of prior recorded testimony under rule 68(3) of the Rules, as set out in paragraphs 7 to 10 of its first application under rule 68(3).⁵

A. Overview of the Prior Recorded Testimonies of Witnesses P-0008, P-0044, P-0105, P-0114, and P-0755

(i) *Prior Recorded Testimony of P-0008*

⁵ 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, ICC-02/05-01/20-547-Conf ("First Application").

8. The Prosecution seeks to submit into evidence P-0008's prior recorded testimony, comprising a single witness statement, as listed in Annex A (A1) to this Application. The Prosecution does not seek to tender into evidence any of P-0008's associated material. P-0008's prior recorded testimony is relevant to, *inter alia*, the charges of [REDACTED],⁶ as well as the contextual elements of the crimes.⁷ P-0008, a Fur civilian, provides information on the background of the armed conflict in Darfur⁸ and the structure of the Sudanese Armed Forces ("SAF") in Mukjar as well as of the Militia/*Janjaweed*, including Mr Ali Muhammad Ali Abd-Al-Rahman ("ABD-AL-RAHMAN")'s position of authority and role as head of the *agids*.⁹ The witness also provides information on [REDACTED]¹⁰ and [REDACTED].¹¹

9. P-0008 further indicates that [REDACTED],¹² [REDACTED],¹³ [REDACTED].¹⁴ [REDACTED],¹⁵ [REDACTED].¹⁶ [REDACTED].¹⁷

10. P-0008 further details the role of [REDACTED]¹⁸ [REDACTED].¹⁹ [REDACTED].²⁰

11. Lastly, P-0008 recounts [REDACTED],²¹ [REDACTED].²²

The Prosecution requests one hour for its limited supplementary examination of P-0008

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

12. Should P-0008'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.²³

13. The Prosecution would explore and clarify aspects of P-0008's evidence during the limited supplementary examination, in particular: [REDACTED].²⁴

14. The Prosecution estimates that it would require 3.5 hours for direct examination of P-0008, 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-0044*

15. The Prosecution seeks to submit into evidence P-0044's prior recorded testimony, inclusive of the associated material listed in Annex A (A2) to this Application. P-0044's prior recorded testimony comprises a single witness statement and one associated item (an investigation note).

16. P-0044 was [REDACTED].²⁵ He provides information on [REDACTED],²⁶ [REDACTED],²⁷ as well as [REDACTED].²⁸ P-0044 also mentions [REDACTED].²⁹ The witness further describes [REDACTED],³⁰ as well as [REDACTED]).³¹ P-0044 provides

²³ *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.

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

information on [REDACTED],³² including [REDACTED].³³ P-0044 also provides testimony relating to [REDACTED].³⁴

17. P-0044's prior recorded testimony is relevant, *inter alia*, to the charges of torture, other inhumane acts, and outrages upon personal dignity both in Mukjar³⁵ and in Deleig,³⁶ as well as the contextual elements of war crimes³⁷ and crimes against humanity.³⁸ The witness provides background information about the conflict in Darfur³⁹ as well as evidence relevant to modes of individual criminal responsibility.⁴⁰

18. P-0044's associated material comprises an investigation note⁴¹ prepared by investigators of the Office of the Prosecutor following a meeting with P-0044. [REDACTED]. Even though this note is not used or explained by the witness in the statement, it is complementary to it, as the note provides a clarification and an update on the information contained therein and, as such, is necessary to understand the contents and context of the prior recorded testimony.

The Prosecution requests one hour for its limited supplementary examination of P-0044

19. Should P-0044'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.⁴²

20. The Prosecution would explore and clarify aspects of P-0044'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 [REDACTED].

⁴² See FN 23.

21. The Prosecution estimates that it would require 2.5 hours for direct examination of P-0044, if his prior recorded testimony is not introduced through rule 68(3). The 1 hour required for the limited supplementary examination would shorten the in-court testimony of this witness by 1.5 hours, should this Application be granted.

(iii) *Prior Recorded Testimony of Witness of P-0105*

22. The Prosecution seeks to submit into evidence P-0105's prior recorded testimony, inclusive of the associated material listed in Annex A (A3) to this Application. P-0105's prior recorded testimony comprises a single witness statement, and a [REDACTED].

23. P-0105, a Fur civilian, provides testimony on [REDACTED],⁴³ [REDACTED]⁴⁴ [REDACTED].⁴⁵ P-0105 also describes [REDACTED].⁴⁶ P-0105 further recounts [REDACTED];⁴⁷ hearing about [REDACTED]⁴⁸ and [REDACTED].⁴⁹

24. P-0105 provides testimony relating to the identity of the Accused, who he knows by the name Ali Kushayb, stating that he was retired from the Sudanese army.⁵⁰ P-0105's prior recorded testimony is relevant to, *inter alia*, the charges of [REDACTED],⁵¹ as well as to the contextual elements of crimes against humanity⁵² and modes of individual criminal responsibility.⁵³

25. P-0105's associated material comprises (i) [REDACTED].⁵⁴

The Prosecution requests one hour for its limited supplementary examination of P-0105

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

26. Should P-0105'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

27. The Prosecution would explore and clarify aspects of P-0105's evidence during the limited supplementary examination, in particular: [REDACTED].

28. The Prosecution estimates that it would require 3.5 hours for direct examination of P-0105, 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.

(iv) *Prior Recorded Testimony of Witness of P-0114*

29. The Prosecution seeks to submit into evidence P-0114's prior recorded testimony, inclusive of the associated material listed in Annex A (A4) to this Application. P-0114's prior recorded testimony comprises a single witness statement, and 11 associated materials relating to information and events discussed in the statement.

30. P-0114, a Fur [REDACTED].⁵⁶ [REDACTED].⁵⁷

31. The witness [REDACTED].⁵⁸ [REDACTED].⁵⁹

32. P-0114 also provided information on [REDACTED].⁶⁰

⁵⁵ See FN 23.

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

33. In his testimony, P-0114 [REDACTED].⁶¹

34. Regarding [REDACTED].⁶² [REDACTED].⁶³

35. P-0114's prior recorded testimony is relevant to, *inter alia*, the charges of [REDACTED]⁶⁴ and [REDACTED].⁶⁵ P-0114's testimony also relates to the contextual elements of crimes against humanity⁶⁶ and persecution.⁶⁷

36. P-0114's associated material comprises [REDACTED]⁶⁸ [REDACTED] (i) [REDACTED],⁶⁹ (ii) [REDACTED],⁷⁰ (iii) [REDACTED],⁷¹ (iv) [REDACTED]⁷² (v) [REDACTED],⁷³ and (vi) [REDACTED].⁷⁴

37. P-0114's material also comprises [REDACTED]⁷⁵ [REDACTED]. Lastly, included in the associated material is a [REDACTED],⁷⁶ [REDACTED].⁷⁷

The Prosecution requests one hour for its limited supplementary examination of P-0114

⁶¹ [REDACTED]. The document was submitted to the OTP by UNCOI but authenticated by P-0114. The ERN referred to by the witness in his statement matches the registration label in the original version of the document, [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ Summaries and notes of interviews prepared by a witness have been admitted as evidence tendered by the same witness in prior cases. See *Yekatom and Ngaïssona*, Second Decision on the Prosecution requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-2012, P-0801, P-2027 and P-2841, 22 April 2021, ICC-01/14-01/18-964-Conf, paras. 8, 11-13; ICTY, *Haradinaj et al.*, Decision on Admission into Evidence of Documents Tendered During Testimony of Witness 69, 28 November 2007, Trial Chamber, IT-04-84-T, para. 12; ICTY, *Sainovic et al.*, Decision of Evidence tendered through Sandra Mitchell and Frederick Abrahams, 1 September 2006, Trial Chamber, IT-05-87-T, paras. 16, 19, 20, 23, 32; ICTY, *Hadžić*, Decision on Prosecution motion for admission of exhibits cited in expert report of Christian Nielsen, 9 May 2013, Trial Chamber, IT-04-75-T, paras. 22-25.

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

38. Should P-0114'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.⁷⁸

39. The Prosecution would explore and clarify aspects of P-0114's evidence during the limited supplementary examination, in particular: [REDACTED].⁷⁹

40. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0114, 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.

(v) *Prior Recorded Testimony of Witness of P-0755*

41. The Prosecution seeks to submit into evidence P-0755's prior recorded testimony, inclusive of the associated material listed in Annex A (A5) to this Application. P-0755's prior recorded testimony comprises a single witness statement, that refers to eight associated items that were used and explained by the witness in his interview and relate to information and events discussed in the statement.

42. P-0755, a Fur civilian, provides testimony on the rebel attack on Mukjar police station in August 2003⁸⁰ and the arrival of Militia/*Janjaweed* forces,⁸¹ following an increase in the presence of security forces in Mukjar.⁸² P-0755 reports attacks against displaced civilians in Mukjar⁸³ and the arrival of ABD-AL-RAHMAN and HARUN in February 2004, where the latter made a speech prior to the troops leaving for an operation in Sindu around the end of February -early March 2004.⁸⁴

⁷⁸ See FN 23.

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ [REDACTED]

43. The witness also refers to [REDACTED].⁸⁵ P-0755 mentions [REDACTED].⁸⁶

44. P-0755 provides information [REDACTED]⁸⁷ [REDACTED].⁸⁸ P-0755's prior recorded testimony relates, *inter alia*, to the charges of [REDACTED],⁸⁹ as well as to the common elements of modes of individual criminal responsibility.⁹⁰

45. P-0755's associated material comprises (i) [REDACTED];⁹¹ (ii) [REDACTED];⁹² (iii) [REDACTED];⁹³ and (iv) [REDACTED].⁹⁴

The Prosecution requests one hour for its limited supplementary examination of P-0755

46. Should P-0755'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.⁹⁵

47. The Prosecution would explore and clarify aspects of P-0755's evidence during the limited supplementary examination, including, in particular: [REDACTED] .

48. The Prosecution estimates that it would require three hours for direct examination of P-0755, if his prior recorded testimony is not introduced through rule 68(3). The Prosecution assesses that it would require one hour for its limited supplementary examination, which would significantly shorten the in-court testimony of this witness by two hours, should this Application be granted.

⁸⁵ [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ [REDACTED].

⁹⁰ [REDACTED].

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ [REDACTED].

⁹⁴ [REDACTED].

⁹⁵ See FN 23.

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

49. The Prior Recorded Testimonies of the Five Witnesses on the charged crimes are cumulative in nature and are corroborative of the evidence,⁹⁶ as described in the paragraphs below.

50. The evidence provided by P-0008, P-0044, P-0105 and P-0755 on the charges of [REDACTED] are corroborative of, and cumulative to, the evidence to be provided by, among others, *viva voce* witnesses [REDACTED].⁹⁷ Notably P-0008⁹⁸ and P-0114⁹⁹ also refer to [REDACTED] will testify *viva voce*. P-0114 also mentions [REDACTED], who will also expected to testify *viva voce*.

51. The evidence provided by P-0044 on the charges of [REDACTED] are corroborative of, and cumulative to, the evidence to be provided by, among others, *viva voce* witnesses [REDACTED].¹⁰⁰

52. P-0114's evidence relating to the [REDACTED]¹⁰¹ and [REDACTED]¹⁰² is also corroborative of, and cumulative to, the evidence provided by, among others, *viva voce* witnesses [REDACTED]¹⁰³ and *viva voce* witness [REDACTED].¹⁰⁴

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

53. 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 they speak to the identity of the Accused and his acts

⁹⁶ See *Bemba*, Rule 68 AD, para. 78.

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

⁹⁹ [REDACTED].

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

¹⁰² [REDACTED].

¹⁰³ [REDACTED].

¹⁰⁴ [REDACTED].

and conduct.¹⁰⁵ These factors, however, do not militate against the admission into evidence of the Prior Recorded Testimonies.¹⁰⁶ In addition, as previously ruled by the Appeals Chamber, the mention of acts and conducts of the accused is only one factor that may be considered by the Chamber, but not a requirement, and it does not preclude *per se* the introduction of prior recorded testimony under rule 68(3) of the Rules.¹⁰⁷

54. 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,¹⁰⁸ that he was a member of the Sudanese Armed Forces until early to middle 1990s, and upon 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-0044 and P-0105,¹⁰⁹ thus narrowing the scope of the contested issue of the Accused's identity.

55. In addition to the agreed facts relating to biographical details of the Accused, all Five Witnesses provide evidence that the Accused was the leader of the *Militia/Janjaweed*.¹¹⁰ However, this evidence is corroborative of and cumulative to the evidence to be provided by *viva voce* witnesses.¹¹¹ 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.¹¹²

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

¹⁰⁵ See Email from the Defence, "RE: Provisional list of Rule 68 witnesses," 13 December 2021 11:34.

¹⁰⁶ *Ongwen*, Public Redacted Version of Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 16 August 2018, ICC-02/04-01/15-1322-Red, paras. 7, 9, 10.

¹⁰⁷ *Gbagbo and Blé Goudé*, rule 68 AD, para. 69.

¹⁰⁸ *Abd-Al-Rahman*, Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, 9 November 2021, ICC-02/05-01/20-504-AnxA, facts 10, 11 and 15, respectively.

¹⁰⁹ [REDACTED].

¹¹⁰ [REDACTED].

¹¹¹ [REDACTED].

¹¹² *Gbagbo and Blé Goudé*, AD, para. 69.

56. 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.

57. As for the further conditions applicable under rule 68(3), the Five Witnesses will appear before the Chamber where they will be asked if they 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 them.

E. *The Prior Recorded Testimonies of the Five Witnesses are relevant, reliable and probative to the case*¹¹³

58. 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.

59. 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.¹¹⁴ 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.¹¹⁵ Accordingly, the Prior Recorded Testimonies have the necessary indicia of reliability, for introduction into evidence.¹¹⁶

IV. CONCLUSION

¹¹³ See paras. 3, 8-11, 16-18, 23-25, 30-37, 42-45, 50-52.

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ *Ntaganda*, Preliminary decision on rule 68(3), ICC-01/04-02/06-1640-Red, para. 9.

60. 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 14th day of January 2022

At The Hague, The Netherlands