

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/14-01/21**

Date: **31 May 2022**

**TRIAL CHAMBER VI**

**Before:** Judge Miatta Maria Samba, Presiding Judge  
Judge María del Socorro Flores Liera  
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public  
with Confidential Annex A**

**Public Redacted Version of “Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(3)”, ICC-01/14-01/21-322-Conf, dated 20 May 2022**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

Mr Karim A.A. Khan QC

Mr Mame Mandiaye Niang

**Counsel for Defence**

Ms Jennifer Naouri

Mr Dov Jacobs

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparations**

**The Office of Public Counsel  
for Victims**

Ms Sarah Pellet

Tars Van Litsenborgh

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation  
and Reparations Section**

**Other**

## I. INTRODUCTION

1. The Prosecution hereby requests that Trial Chamber VI (“Chamber”) introduce into evidence the statement and associated material (“Prior Recorded Testimony”) of P-2573 (“Witness”) pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Request”).<sup>1</sup>

2. The Prior Recorded Testimony of the Witness is relevant, reliable, probative, and corroborated by other evidence. Granting the Request will enhance the expeditiousness of the proceedings by reducing the estimated length of the Witness’s direct examination from 6 hours to 1 hour, thus saving at least 5 hours of court time. Moreover, it would not prejudice the Defence, as the Witness will be fully available for cross-examination and any further questioning by the Chamber.

3. Should the Chamber grant the Request, the Prosecution further requests leave to conduct a streamlined supplementary examination of the Witness to clarify certain points and elaborate on specific issues highly relevant to this case.

## II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Request and its Annex are filed as confidential because they contain information that may identify Prosecution witnesses and refer to confidential items of evidence. A public redacted version will be filed as soon as practicable.

---

<sup>1</sup> Annex A lists the Prior Recorded Testimony of P-2573 which comprises his witness statement (at I) and associated material (at II). Where items are necessary to understand his prior recorded testimony, but the Prosecution does not seek to introduce those items into evidence, those items are also referenced (at III). These materials are all hyperlinked. *See* Directions on the conduct of the proceedings, ICC-01/14-01/21-251, para. 38(i)-(ii).

### III. APPLICABLE LAW

5. Rule 68(3) allows the introduction of prior recorded testimony when: (i) the witness is present before the Chamber; (ii) the witness does not object to the introduction of his or her prior recorded testimony; and (iii) both parties and the Chamber have the opportunity to examine the witness.

6. 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.<sup>2</sup> Trial Chamber VII in the *Bemba et al* case held that “the fact that in court-testimony of a witness can be considerably shortened through the admission of prior recorded testimony can be, *in itself*, a sufficient reason for granting a rule 68(3) request,” as long as its other mandatory requirements are met and the rights of the defence are fully respected.<sup>3</sup> Likewise, the Appeals Chamber has acknowledged that Trial Chambers can take into account “good trial management” and “considerations of expeditiousness and streamlining of the presentation of evidence” in making decisions under rule 68(3),<sup>4</sup> as they ultimately contribute to a fair trial.<sup>5</sup> Accordingly, other Chambers have encouraged the use of rule 68(3) to enhance the expeditiousness of the proceedings.<sup>6</sup>

7. The legal framework set out in the Rome Statute (“Statute”) requires that the introduction of prior recorded testimony must not be prejudicial to or inconsistent

---

<sup>2</sup> See *Gbabgo & Blé Goudé*, para. 60 (“*Gbabgo & Blé Goudé* Appeals Decision”); *Bemba et al.*, Decision on Prosecution Rule 68(2) and (3) Requests, ICC-01/05-01/13-1478-Red-Corr, 12 November 2015 (“*Bemba et al* Rule 68 Decision”), para. 51; *Yekatom & Ngaissona*, Decision on the Yekatom Defence Request for Leave to Appeal the Twelfth Rule 68(3) Decision regarding P-1704, ICC-01/14-01/18-1383, 29 April 2022 (“*Yekatom & Ngaissona* ALA Decision”), para. 11.

<sup>3</sup> *Bemba et al* Rule 68 Decision, para. 48 (emphasis added).

<sup>4</sup> *Gbabgo & Blé Goudé* Appeals Decision, paras. 59-62.

<sup>5</sup> *Yekatom & Ngaissona* ALA Decision, para. 11 (citing *Gbabgo & Blé Goudé* Appeals Decision, pp. 27-28, paras. 59-62).

<sup>6</sup> *Ntaganda*, Decision on Prosecution application under Rule 68(3) of the Rules for admission of prior recorded testimony of Witness P-0055, ICC-01/04-02/06-961, 29 October 2015, para. 13; *Gbabgo & Blé Goudé* Decision on Prosecutor’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3), ICC-02/11-01/15-573-Red, 9 June 2016, paras. 25, 42.

with the rights of the accused or with the fairness of the trial more generally.<sup>7</sup> In this regard, the *Al Hassan* Trial Chamber has observed that the rule 68(3) procedure “entails a low risk of interfering with the fair trial rights of the accused since the witness still appears before the Chamber in court and the Defence will have the opportunity to examine the witness.”<sup>8</sup> Similarly, the *Abd-al-Rahman* Trial Chamber has held that with the rule 68(3) procedure, “the Defence’s right to question the witnesses concerned, including to address any issues of credibility or probative value and matters of an exculpatory nature, remains unchanged.”<sup>9</sup> The *Yekatom & Ngaissona* Trial Chamber has further noted that there are “numerous procedural safeguards under the Court’s legal framework which aim at securing accurate and truthful witness evidence, before introducing a prior recorded testimony under Rule 68(3) or the Rules.”<sup>10</sup>

8. In relation to the principle of orality, the Appeals Chamber has noted that because the Prosecution, Defence, and Chamber have the opportunity to examine the witness, testimony given according to the rule 68(3) procedure “cannot be considered to be exclusively written as it is not necessarily intended to replace oral testimony but, rather, complement it.”<sup>11</sup> Furthermore, the Appeals Chamber held that “respect for the principle of orality cannot be reduced to a purely mathematical calculation of the percentage of witnesses providing their entire evidence orally.”<sup>12</sup>

---

<sup>7</sup> See *Gbagbo & Blé Goudé* Appeals Decision, paras. 2, 61-62 (referring to article 67 of the Statute and rule 68(1) of the Rules); *Abd-al-Rahman*, First Decision on the Prosecution’s request to introduce prior recorded testimonies under Rule 68(3), ICC-02/05-01/20-559-Red, 20 January 2022 (“*Abd-al-Rahman* First 68(3) Decision”), para. 16.

<sup>8</sup> *Al Hassan*, Decision on Prosecution’s requests to introduce prior recorded testimonies under Rule 68(3) of the Rules, ICC-01/12-01/18-987-Red, 21 October 2020 (“*Al Hassan* Rule 68(3) Decision”), para. 9. See also *Gbagbo & Blé Goudé*, Decision on the “Prosecution’s consolidated application to conditionally admit the prior recorded statements and related documents of various witnesses under rule 68 and Prosecution’s application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses P-0087 and P-0088”, ICC-02/11-01/15-950-Red, 6 June 2017, para. 76.

<sup>9</sup> *Abd-al-Rahman* First 68(3) Decision, para. 12.

<sup>10</sup> *Yekatom & Ngaissona* ALA Decision, para. 14.

<sup>11</sup> *Gbagbo & Blé Goudé* Appeals Decision, para. 79.

<sup>12</sup> *Gbagbo & Blé Goudé* Appeals Decision, para. 78.

9. A Chamber's determination whether to allow the introduction of prior recorded testimony under rule 68 is discretionary and requires a case-by-case assessment.<sup>13</sup> Some of the factors that have been considered relevant in granting rule 68(3) requests include: (i) that the evidence does not relate to issues that are materially in dispute; (ii) that the evidence is not central to core issues in the case, but rather provides relevant background information; (iii) that the evidence is corroborative of other evidence; (iv) that introduction of the evidence pursuant to rule 68(3) serves good trial management, particularly streamlining of the presentation of evidence and the expeditiousness of the proceedings; and (v) that introduction of the evidence pursuant to rule 68(3) may prevent potential re-traumatisation of a vulnerable witness.<sup>14</sup>

10. The above-cited factors are merely factors and not requirements. Of particular note, prior recorded testimony may still be introduced under rule 68(3) even if it relates to issues that are materially in dispute, central to core issues of the case or are uncorroborated (so long as the rights of the accused and the overall fairness of the trial are respected).<sup>15</sup> The same is true even if the witness does not identify the basis of his or her knowledge of the subject of his or her testimony,<sup>16</sup> or the evidence is hearsay.<sup>17</sup> Equally, introduction of prior recorded testimony of a key witness who refers to the

---

<sup>13</sup> *Abd-al-Rahman* First 68(3) Decision, para. 11; *Ongwen*, Decision on Prosecution's Application to Introduce Prior Recorded Testimony and Related Documents Pursuant to Rule 68(3) of the Rules, ICC-02/04-01/15-621, 5 December 2016 ("*Ongwen* Rule 68(3) Decision"), para. 7; *Yekatom & Ngaissona*, Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and the *Ngaissona* Defence Motion to Limit the Scope of P-2926's Evidence, ICC-01/14-01/18-907-Red, 1 April 2021 ("*Yekatom & Ngaissona* First 68(3) Decision"), para. 14.

<sup>14</sup> *Abd-al-Rahman* First 68(3) Decision, para. 15 (mentioning all five of the cited factors); *Ongwen* Rule 68(3) Decision, para. 7 (mentioning the first three factors only); *Yekatom & Ngaissona*, Tenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1595, P-2658 and P-2453, ICC-01/14-01/18-1282-Red, 15 February 2022, para. 22 (in relation to the second factor, stating that the alleged activities in question "do not form part of the charges, but rather support the contextual elements of the charged crimes").

<sup>15</sup> *Abd-al-Rahman* First 68(3) Decision, para. 16; *Ongwen* Rule 68(3) Decision, para. 7 (citing *Gbagbo & Blé Goudé* Appeals Decision, paras. 67, 69).

<sup>16</sup> *Abd-al-Rahman*, Decision on the Prosecutor's second and third requests to introduce prior recorded testimonies under Rule 68(3), ICC-02/05-01/20-588-Red, 8 February 2022 ("*Abd-al-Rahman* Second & Third 68(3) Decision"), paras. 22, 29-30.

<sup>17</sup> *Abd-al-Rahman* Second & Third 68(3) Decision, paras. 44-45, 52.

acts and conduct of the accused is not precluded under rule 68(3).<sup>18</sup> Indeed, as noted by the *Gbagbo & Blé Goudé* Trial Chamber, the opportunity to cross-examine the witness is “a sufficient counter-balancing factor to the relative importance of the witness.”<sup>19</sup>

11. The “prior recorded testimony” that may be introduced under rule 68 includes audio or video-taped testimony, transcripts of a testimony of a witness, and written statements taken under rules 111 and 112.<sup>20</sup> It also includes, in accordance with the jurisprudence of this Court, “any annex to a witness statement, or document otherwise associated with it, as long as it is used or explained by the witness in their statement and thereby forms an integral part of the testimony itself.”<sup>21</sup>

12. The Chamber’s assessment under rule 68(3) is preliminary and without prejudice to the weight that the Chamber will ultimately attach to a witness’s evidence, which indeed can only be determined once the Chamber has heard all of the evidence.<sup>22</sup>

#### IV. SUBMISSIONS

##### **A. The Prior Recorded Testimony should be conditionally introduced into evidence pursuant to rule 68(3)**

13. Subject to the fulfilment of the further conditions of rule 68(3), the Prior Recorded Testimony should be introduced into evidence pursuant to rule 68(3). It is relevant, reliable, probative, and corroborative of other evidence.

---

<sup>18</sup> *Yekatom & Ngaissona* ALA Decision, para. 10; *Abd-al-Rahman* First 68(3) Decision, para. 21.

<sup>19</sup> *Gbagbo & Blé Goudé*, Decision on the “Prosecution’s application to conditionally admit the prior recorded statements and related documents in relation to Witnesses P-0106, P-0107, P-0117 and P-0578 under rule 68(3)”, ICC-02/11-01/15-722-Red, 11 October 2016, para. 15. See also *Abd-al-Rahman* Second & Third 68(3) Decision, paras. 24, 39, 47, 53, 59, 66 (holding that the introduction of the witnesses’ prior recorded testimony will not occasion any prejudice to the accused since rule 68(3) allows for cross-examination, including on issues identified as core to its case, particularly the identity of the accused).

<sup>20</sup> *Yekatom & Ngaissona* First 68(3) Decision, para. 11.

<sup>21</sup> *Yekatom & Ngaissona* First 68(3) Decision, para. 13. See also *Ruto & Sang*, Decision on the Admission of Prior Recorded Testimony, ICC-01/09-01/11-1938-Corr-Red2, para. 33.

<sup>22</sup> *Al Hassan* Rule 68(3) Decision, para. 11.

(i) The Prior Recorded Testimony is Relevant and Probative

14. The Prior Recorded Testimony is relevant and probative to the present case as it relates to the chapeau elements of article 7 of the Statute, in relation to which the Prosecution bears the burden of proof. Specifically, P-2573 is [REDACTED] who provides information about the Seleka's attack on minibus passengers who were arbitrarily arrested at a checkpoint in the PK9 area of Bangui, on or around 13 July 2013 ("PK Minibus Incident").<sup>23</sup> The Prosecution has identified this incident as one of the Additional Incidents that are reflective of the Seleka's attack directed against the civilian population in Bangui perceived to be BOZIZE supporters.<sup>24</sup> [REDACTED],<sup>25</sup> his evidence is further relevant to the Seleka's operations in Boy Rabe which also form part of the attack.<sup>26</sup> Key aspects of the Witness's evidence are further highlighted below.

15. P-2573 [REDACTED] after their takeover of Bangui on 24 March 2013.<sup>27</sup> The Witness was initially [REDACTED] work at [REDACTED]<sup>28</sup> [REDACTED],<sup>29</sup> and was later posted at [REDACTED].<sup>30</sup> [REDACTED].<sup>31</sup> One day when the Witness visited the PK9 barrier [REDACTED], the Witness saw a number of men being arrested by [REDACTED] men for wearing BOZIZE T-shirts.<sup>32</sup> Thereafter, the Witness saw most of the important components of the PK9 Minibus Incident, [REDACTED].<sup>33</sup>

<sup>23</sup> P-2573, CAR-OTP-2119-0532 at 0547-0550, paras. 64-77.

<sup>24</sup> See Decision on the confirmation of charges against Mahamat Said Abdel Kani, ICC-01/14-01/21-218-Red, 9 Dec. 2021 ("Confirmation Decision"), para. 60.

<sup>25</sup> P-2573, CAR-OTP-2119-0532 at 0540, para. 36.

<sup>26</sup> Confirmation Decision, para. 60.

<sup>27</sup> P-2573, CAR-OTP-2119-0532 at 0534-0536, paras. 13, 17-25.

<sup>28</sup> P-2573, CAR-OTP-2119-0532 at 0536, para. 25.

<sup>29</sup> P-2573, CAR-OTP-2119-0532 at 0535-0538, 0543, paras. 19, 25, 29, 32, 46.

<sup>30</sup> P-2573, CAR-OTP-2119-0532 at 0546, paras. 57-58.

<sup>31</sup> P-2573, CAR-OTP-2119-0532 at 0547, para. 64.

<sup>32</sup> P-2573, CAR-OTP-2119-0532 at 0547, para. 64.

<sup>33</sup> P-2573, CAR-OTP-2119-0532 at 0547-0550, paras. 64-76.



16. Of particular note about the PK9 Minibus Incident, the Witness (i) saw six or eight men being arrested and tied up on the floor at PK9 checkpoint by [REDACTED] men;<sup>34</sup> (ii) heard from [REDACTED] men that these men had been arrested because two of these male passengers were wearing BOZIZE T-shirts;<sup>35</sup> (iii) saw [REDACTED] prisoners tied in *arbatachar* style [REDACTED];<sup>36</sup> (iv) talked with one of the prisoners [REDACTED] and [REDACTED] looking for BOZIZE's men so that he could kill them;<sup>37</sup> (v) saw [REDACTED] the PK9 prisoners whose hands were tied [REDACTED];<sup>38</sup> (vi) saw [REDACTED] putting bags over the heads of the PK9 prisoners and pushing them into the river;<sup>39</sup> (vii) [REDACTED];<sup>40</sup> (viii) was told [REDACTED];<sup>41</sup> and (ix) saw dead bodies found the next day in the river.<sup>42</sup>

17. The Witness further provides information relevant to the Seleka's policy to attack the civilian population. For example, prior to the PK9 Minibus Incident, at the PK9 barrier, the Witness heard the Seleka saying that "BOZIZE's men were the enemy."<sup>43</sup> On another occasion, the Witness saw [REDACTED] arresting two men possessing *pagne* cloth with pictures of BOZIZE in a bag, who were reportedly murdered [REDACTED] later the same day.<sup>44</sup> The Witness further [REDACTED] in one of the Seleka's large scale operations in Boy Rabe, searching for BOZIZE's men, during which he saw the Seleka's mass looting of household items and other civilian goods.<sup>45</sup>

<sup>34</sup> P-2573, CAR-OTP-2119-0532 at 0547, para. 64.

<sup>35</sup> P-2573, CAR-OTP-2119-0532 at 0547, para. 64.

<sup>36</sup> P-2573, CAR-OTP-2119-0532 at 0548, para. 66.

<sup>37</sup> P-2573, CAR-OTP-2119-0532 at 0548, para. 66.

<sup>38</sup> P-2573, CAR-OTP-2119-0532 at 0548-0549, paras. 67-70.

<sup>39</sup> P-2573, CAR-OTP-2119-0532 at 0549, paras. 70-71.

<sup>40</sup> P-2573, CAR-OTP-2119-0532 at 0549, para. 72.

<sup>41</sup> P-2573, CAR-OTP-2119-0532 at 0549-0550, para. 74.

<sup>42</sup> P-2573, CAR-OTP-2119-0532 at 0550, para. 75.

<sup>43</sup> P-2573, CAR-OTP-2119-0532 at 0537-0538, para. 29.

<sup>44</sup> P-2573, CAR-OTP-2119-0532 at 0539, para. 35.

<sup>45</sup> P-2573, CAR-OTP-2119-0532 at 0540-0543, paras. 36-37, 41-45.

(ii) Granting the Request Would Advance the Expeditionness of the Proceedings

18. The Prosecution estimates that a full direct examination would take approximately 6 hours for P-2573. If the Request is granted, the Prosecution would seek only 1 hour for a supplementary examination, as detailed further below. Thus, if the Request is granted, the Prosecution estimates a savings of at least 5 hours of court time.

(iii) The Prior Recorded Testimony Bears Sufficient Indicia of Reliability for Introduction into Evidence

19. The Prior Recorded Testimony has sufficient indicia of reliability for introduction into evidence. The Witness has signed his statement, attesting that his testimony was read back to them, was given voluntarily, and that its content was true to the best of his recollection of the events.<sup>46</sup> The Witness further confirmed that he read over the statement with the interpreter and confirmed its accuracy.<sup>47</sup> His statement also bears the signature of an interpreter, certifying that the Witness appeared to have heard and understood the translation.<sup>48</sup> The information in the Witness's statement is more detailed and forthcoming than what is recorded in his initial screening,<sup>49</sup> but the Witness provides a reasonable explanation for that, including the fact that he was understandably reticent to discuss sensitive material on the phone to unknown people.<sup>50</sup>

20. The events mentioned by the Witness are further corroborated by other evidence. This includes the evidence of witnesses whose testimony the Prosecution seeks to introduce through rule 68(2)(b) or (c)<sup>51</sup> as well as documentary evidence including

<sup>46</sup> P-2573, CAR-OTP-2119-0532 at 0558.

<sup>47</sup> P-2573, CAR-OTP-2119-0532 at 0558.

<sup>48</sup> P-2573, CAR-OTP-2119-0532 at 0558.

<sup>49</sup> P-2573, CAR-OTP-2115-0371.

<sup>50</sup> CAR-OTP-2130-6618.

<sup>51</sup> For PK9 Minibus Incident, these witnesses are P-0491, P-0510, P-0529 and P-1808 (*see* Prosecution's second request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-307-Conf, 13 May 2022

public reporting, complaints submitted by victims or their family members to NGOs, and documents produced by the government of the CAR in 2013.<sup>52</sup> The Witness generally distinguishes between information about which he has direct knowledge and information that he acquired from other sources.<sup>53</sup>

(iv) Introduction of the Prior Recorded Testimony is not Prejudicial To or Inconsistent with the Rights of the Accused

21. The introduction of the Prior Recorded Testimony into evidence would not prejudice the Accused. The Defence will have ample opportunity to cross-examine the Witness, and the fact that P-2573 is [REDACTED] does not itself preclude the introduction of his evidence via rule 68(3).<sup>54</sup>

22. Additionally, the Defence will have plenty of time to prepare its cross-examination. Indeed, the Defence has had the Prior Recorded Testimony in its possession since before the confirmation hearing.<sup>55</sup> The Prosecution has also highlighted the Witness's evidence in the Pre-Confirmation Brief dated 30 August 2021.<sup>56</sup> Furthermore, the Defence was notified on 29 April 2022 that the Prosecution intended to introduce the Prior Recorded Testimony of the Witness pursuant to rule 68(3).<sup>57</sup> This was almost five months prior to the commencement of the trial, thus

---

("Said Second Rule 68(2)(b) Request"), as well as P-0358 (see Prosecution's third request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-308-Conf, 13 May 2022). For Boy Rabe Operation, these witnesses are P-0100, P-1277, P-1424, P-1427, P-1523, P-1524, P-1563, P-1825, P-1970, P-2042 and P-2087 (see Prosecution's first request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-289-Red, 11 May 2022 ("Said First Rule 68(2)(b) Request")), as well as P-1297, P-1313 and P-1420 (see Prosecution Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses, ICC-01/14-01/21-290-Conf, 29 April 2022).

<sup>52</sup> For PK9 Minibus Incident, see, e.g., Said Second Rule 68(2)(b) Request, para. 36 (fn. 83). For Boy Rabe Operation, see, e.g., Said First Rule 68(2)(b) Request, para. 41 (fns. 91-93).

<sup>53</sup> See *supra*, para. 16.

<sup>54</sup> See *supra*, para. 10.

<sup>55</sup> Pre-Confirmation INCRIM package 027 28 June 2021; Pre-Confirmation INCRIM package 039 22 July 2021.

<sup>56</sup> Pre-Confirmation Brief, ICC-01/14-01/21-155-Conf, 30 August 2021, paras. 60, 64.

<sup>57</sup> Confidential Annex A to Prosecution's Request to vary the time limit for applications to introduce the prior recorded testimony of 20 witnesses pursuant to Rule 68, ICC-01/14-01/21-291-Conf-AnxA, 29 April 2022.

affording the Defence more than adequate time to prepare to cross-examine the Witness.

(v) *Factors Identified by other Trial Chambers are in Favour of the Introduction of the Prior Recorded Testimony of P-2573 via Rule 68(3)*

23. The factors identified by previous Trial Chambers<sup>58</sup> are in favour of the introduction of the Prior Recorded Testimony of P-2573 through rule 68(3). *First*, the evidence of P-2573, which relates to the PK9 Minibus Incident and attacks on Boy Rabe, does not relate to issues that are likely to be materially in dispute.<sup>59</sup> *Second*, the evidence of P-2573 does not relate to the central or core issues in the case, but rather is purely relevant to the contextual elements.<sup>60</sup> *Third*, P-2573's evidence is corroborative of other evidence.<sup>61</sup> *Fourth*, the introduction of the evidence pursuant to rule 68(3) serves good trial management as it allows the Chamber to save up to 5 hours of direct-examination time by the Prosecution.<sup>62</sup> *Last*, introduction of the evidence pursuant to rule 68(3) may help to prevent potential re-traumatisation of the witness [REDACTED].<sup>63</sup>

#### **D. The Prosecution should be allowed to conduct a focused supplementary examination of the Witness**

24. If the Request is granted, the Prosecution requests permission to conduct a limited supplementary examination of the Witness. In this regard, the Prosecution seeks only 1 hour for the supplementary examination of the Witness and would use the time to make any necessary clarifications and explore somewhat further the Witness's information in relation to the Boy Rabe attack in which he participated. The

---

<sup>58</sup> See *supra*, para. 9.

<sup>59</sup> See *Said* First Rule 68(2)(b) Request, para. 38; *Said* Second Rule 68(2)(b) Request, paras. 37-38.

<sup>60</sup> See *supra*, paras. 14-17.

<sup>61</sup> See *supra*, para. 20.

<sup>62</sup> See *supra*, para. 18.

<sup>63</sup> See *supra*, para. 16. See also CAR-OTP-2130-6618 (explaining the reason why the Witness did not provide all the information at his disposal during the screening (see his screening note at CAR-OTP-2115-0371) was because he was scared to [REDACTED] over the phone to unknown people).

Prosecution will endeavour to keep the supplementary examination as focused and efficient as possible and use less time where at all possible.

#### **E. RELIEF SOUGHT**

25. For the above reasons, the Prosecution requests that the Chamber:

- (a) Introduce into evidence the Prior Recorded Testimony, as set out in Annex A to this filing, subject to the fulfilment of the further conditions of rule 68(3); and
- (b) Grant leave for the Prosecution to conduct a limited supplementary examination of no more than 1 hour for P-2573.



---

**Karim A. A. Khan QC, Prosecutor**

Dated this 31<sup>st</sup> day of May 2022  
At The Hague, The Netherland