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**Cour
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**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 31 January 2023

TRIAL CHAMBER V

Before:

**Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

***THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Confidential

**Order regarding the Remainder of the Prosecution's Presentation of Evidence
and
Order pursuant to Article 64(6)(d) of the Statute**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 64(6)(b), (d) and 69(3) of the Rome Statute (the 'Statute'), Rules 68(3) and 140 of the Rules of Procedure and Evidence (the 'Rules') and Regulation 43 of the Regulations of the Court, issues this 'Order regarding the Remainder of the Prosecution's Presentation of Evidence and Order pursuant to Article 64(6)(d) of the Statute'.

I. Remainder of the Prosecution's Presentation of Evidence

1. On 15 March 2021, the Chamber started hearing witnesses called by the Office of the Prosecutor (the 'Prosecution').¹
2. On 15 November 2022, the Prosecution notified the Chamber and participants of the withdrawal of five witnesses from its anticipated calling order,² bringing the total number of live witnesses it anticipates calling to 86.³
3. At present, the Chamber has heard the evidence of 55 witnesses.
4. Bearing in mind the length of the proceedings to date, the average time spent on the questioning of witnesses until now,⁴ as well as the number of witnesses the Prosecution still intends calling, the Chamber considers it appropriate to take measures at this stage to further streamline the proceedings.
5. For this reason, the Chamber directs the Prosecution to review the number of witnesses it still intends to call, as well as the time estimates for their examination, with a view to identifying ways to reduce the duration of its remaining evidence presentation. The Prosecution should focus and streamline remaining testimony as much as possible, bearing in mind the evidence already before the Chamber. Importantly, the Prosecution is also directed to review its estimated questioning

¹ See Order Setting the Commencement Date of the Prosecution's Presentation of Evidence, 13 January 2021, ICC-01/14-01/18-817.

² Email from the Prosecution, 15 November 2022, at 13:38.

³ See email from the Prosecution, 6 January 2023, at 13:10. See also Final Witness List, 10 November 2020, ICC-01/14-01/18-724-Conf-AnxA.

⁴ With a total of 218 hours and 30 minutes questioning time used by the Prosecution at the end of the testimony of the 55th witness, this amounted to an average of approximately 3 hours and 58 minutes per witness.

time of those witnesses whose previously recorded testimonies are requested to be introduced pursuant to Rule 68(3) of the Rules, assuming pending applications are granted by the Chamber, and to focus its examination on matters which genuinely require clarification or are otherwise not covered in the previously recorded testimony.⁵ The Prosecution is directed to provide its revised estimates and revised Final Witness List no later than **10 March 2023**.

II. Order pursuant to Article 64(6)(d) of the Statute

6. P-0952 (the 'Witness') is a former mayor of Bangui and was chosen as interim President and head of the transitional government in the Central African Republic (the 'CAR') in 2014. In this role, the Witness referred the situation in the CAR to the Court.⁶
7. On 11 June 2021, the Witness appeared before the Chamber and refused to testify without in-court protective measures.⁷ Recalling the importance of the publicity of the proceedings and specifically to publicly hear the evidence presented, and bearing in mind that the Victims and Witnesses Unit did not recommend any in-court protective measures, the Chamber rejected the Witness's request for in-court protective measures.⁸ At the start of the hearing, the Witness reiterated the refusal to testify without in-court protective measures.⁹ At the time, the Chamber saw no reason to compel the Witness to testify on the basis of Articles 64(6)(b) and 71 of the Statute.¹⁰ The Chamber therefore did not hear the Witness's testimony at that point, while not precluding 'that perhaps at a later stage new developments might unfold' and that the Witness 'might perhaps reconsider at some point in time'.¹¹

⁵ See also Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631, para. 35.

⁶ Transcript of hearing, 11 June 2021, ICC-01/14-01/18-T-045-CONF-ENG (hereinafter: 'Transcript'), p. 4, line 13.

⁷ See email from the Prosecution, 8 June 2021, at 15:27.

⁸ Email from the Chamber, 9 June 2021, at 16:42.

⁹ Transcript, p. 3, line 21 – p. 4, line 3, p. 6, lines 9-18.

¹⁰ Transcript, p. 10, lines 10-24.

¹¹ Transcript, p. 10, lines 20-23.

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8. On 15 November 2022, the Prosecution 'invite[d] the Chamber to consider recalling [the Witness] as a Court witness, under article 69(3) and/or rule 68'.¹² In its subsequently notified anticipated witness order, the Prosecution no longer listed the Witness as one of the witnesses it intends to call.¹³
9. The Chamber notes that, in accordance with Article 64(6)(d) of the Statute, it can '[o]rder the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties'. Further, pursuant to Article 69(3) of the Statute, the Chamber has 'the authority to request the submission of all evidence that it considers necessary for the determination of the truth'.
10. Until now, the Chamber has received a substantial amount of evidence which may suggest a possible implication of the Witness in events relevant to the charges, including in relation to meetings attended by the Witness and one or both of the accused;¹⁴ meetings between the Witness and other witnesses;¹⁵ the Witness's involvement in events related to charged incidents;¹⁶ the Witness's alleged perceptions concerning the Anti-Balaka;¹⁷ the Witness allegedly providing

¹² Email from the Prosecution, 15 November 2022, at 13:38.

¹³ See email from the Prosecution, 1 December 2022, at 09:52.

¹⁴ See e.g. **P-0801**: ICC-01/14-01/18-T-035-Red-ENG, p. 25, line 6 – p. 27, line 9; ICC-01/14-01/18-T-036-ENG, p. 84, lines 12-23; **P-0808**: CAR-OTP-2025-0324-R05, at 0334-35, para. 72; ICC-01/14-01/18-T-069-Red-ENG, p. 78, line 24 – p. 81, line 2; **P-0884**: ICC-01/14-01/18-T-058-CONF-ENG, p. 41, lines 5-9, p. 43, line 6 – p. 45, line 23, p. 50, lines 1-21; **P-0876**: ICC-01/14-01/18-T-085-CONF-ENG, p. 62, line 10 – p. 64, line 17; **P-0954**: ICC-01/14-01/18-T-167-CONF-ENG, p. 79, line 15 – p. 81, line 2; **P-1839**: ICC-01/14-01/18-T-171-CONF-ENG, p. 76, line 5 – p. 77, line 20; ICC-01/14-01/18-T-172-CONF-ENG, p. 87, lines 21-25; ICC-01/14-01/18-T-173-CONF-ENG, p. 4, line 5 – p. 12, line 5. See also CAR-OTP-2087-9027; CAR-OTP-2014-0755, transcript CAR-OTP-2122-7370.

¹⁵ See e.g. **P-0801**: ICC-01/14-01/18-T-034-ENG, p. 52, line 10 – p. 53, line 9; ICC-01/14-01/18-T-035-Red-ENG, p. 30, line 22 – p. 34, line 2; ICC-01/14-01/18-T-036-ENG, p. 14, lines 8-14; ICC-01/14-01/18-T-037-Red-ENG, p. 8, line 24 – p. 9, line 1, p. 82, line 17 – p. 86, line 7; **P-0808**: CAR-OTP-2093-0010-R02, at 0035-36, paras 141-145; **P-0992**: CAR-OTP-2110-0048-R05, at 0066-67, para. 104; **P-0954**: ICC-01/14-01/18-T-167-CONF-ENG, p. 79, line 15 – p. 81, line 2; **P-1839**: ICC-01/14-01/18-T-171-CONF-ENG, p. 76, line 5 – p. 77, line 20; ICC-01/14-01/18-T-172-CONF-ENG, p. 87, lines 21-25; ICC-01/14-01/18-T-173-CONF-ENG, p. 4, line 5 – p. 12, line 5.

¹⁶ **P-0876**: ICC-01/14-01/18-T-085-CONF-ENG, p. 50, lines 1-6; **P-0884**: ICC-01/14-01/18-T-056-Red-ENG, p. 14, lines 17-24; ICC-01/14-01/18-T-057-CONF-ENG, p. 87, line 2 – p. 92, line 17. See also CAR-OTP-2042-1547, transcript CAR-D29-0006-0092.

¹⁷ See e.g. **P-0291**: ICC-01/14-01/18-T-053-ENG, p. 12, line 22 – p. 13, line 2; **P-0475**: ICC-01/14-01/18-T-091-Red-ENG, p. 73, lines 17-22, p. 76, line 19 – p. 77, line 17; **P-0808**: CAR-OTP-2025-0324-R05, at 0334, para. 69; **P-0884**: ICC-01/14-01/18-T-056-Red-ENG, p. 47, line 19 – p. 49, line 25; ICC-01/14-01/18-T-058-Red-ENG, p. 48, line 5 – p. 49, line 15; **P-0888**: ICC-01/14-01/18-T-121-ENG, p. 84, lines 3-11; ICC-01/14-01/18-T-123-ENG, p. 33, lines 16-19, p. 60, lines 22-25, p. 64, lines 1-6; **P-0992**: CAR-OTP-2110-0048-R05, at 0066-67, paras 103-104; CAR-OTP-2128-0288-R02, at 0309, para.

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money to Anti-Balaka members;¹⁸ as well as allegations about the Witness embezzling money.¹⁹

11. In light of the above, the Chamber is of the view that it would be assisted by hearing the Witness's testimony. The Registry is therefore ordered to take any and all measures necessary with a view to facilitating the appearance of the Witness before the Chamber.
12. The Chamber considers it appropriate to hear the Witness's testimony after the last Prosecution witness. To allow time for preparation without causing unnecessary delay, the Chamber will hear the Witness no later than two weeks after the end of the testimony of the last witness to be called by the Prosecution.
13. Upon appearance of the Witness, the Chamber will question the Witness first, followed by questioning by the Prosecution, the legal representatives of victims, as appropriate, the Yekatom Defence and the Ngaïssona Defence, in an order to be agreed upon among the defence teams.
14. Further, the participants are directed not to communicate with the Witness unless specifically authorised by the Chamber.
15. In addition, the Chamber considers that it may potentially be in the interest of expeditious proceedings to introduce the Witness's previously recorded testimony pursuant to Rule 68(3) of the Rules.²⁰ In order for the Chamber to make

129; ICC-01/14-01/18-T-092-Red-ENG, p. 70, line 25 – p. 71, line 18; ICC-01/14-01/18-T-093-Red-ENG, p. 54, line 12 – p. 55, line 1; ICC-01/14-01/18-T-095-Red-ENG, p. 15, lines 1-12; **P-1193**: ICC-01/14-01/18-T-125-Red-ENG, p. 35, line 19 – p. 36, line 2. *See also* CAR-OTP-CAR-OTP-2023-1863, at 00:07:31-00:08:30; CAR-OTP-2122-9401, at 9403-9404, lines 89-99; CAR-OTP-2087-9025.

¹⁸ *See e.g.* **P-0808**: CAR-OTP-2093-0010-R02, at 0023, para. 73; **P-0876**: CAR-OTP-2046-0500-R01, at 0507; **P-0884**: ICC-01/14-01/18-T-058-Red-ENG, p. 61, line 22 – p. 63, line 5; **P-0888**: ICC-01/14-01/18-T-123-ENG, p. 41, line 24 – p. 42, line 3; **P-0992**: ICC-01/14-01/18-T-095-Red-ENG, p. 27, line 11 – p. 28, line 5; **P-1521**: ICC-01/14-01/18-T-083-CONF-ENG, p. 47, line 24 – p. 48, line 11; **P-2232**: ICC-01/14-01/18-T-078-CONF-ENG, p. 52, line 1 – p. 53, line 4.

¹⁹ *See e.g.* **P-0889**: ICC-01/14-01/18-T-110-CONF-ENG, p. 81, line 20 – p. 82, line 14; **P-0954**: CAR-OTP-2048-0171-R02, at 0183, para. 71; ICC-01/14-01/18-T-166-CONF-ENG, p. 84, lines 16-25, p. 85, lines 11-22; ICC-01/14-01/18-T-169-CONF-ENG, p. 39, line 16 – p. 40, line 12; **P-0992**: ICC-01/14-01/18-T-093-Red-ENG, p. 56, line 8 – p. 57, line 7; ICC-01/14-01/18-T-095-Red-ENG, p. 25, line 25 – p. 27, line 9; **P-2232**: ICC-01/14-01/18-T-078-Red-ENG, p. 54, line 24 – p. 55, line 21.

²⁰ *See* CAR-OTP-2107-0732; CAR-OTP-2107-0754; CAR-OTP-2107-0784; CAR-OTP-2107-0819; CAR-OTP-2107-0847; CAR-OTP-2107-0871; CAR-OTP-2107-0897; CAR-OTP-2107-0925; CAR-OTP-2107-0936; CAR-OTP-2107-0950; CAR-OTP-2107-0988; CAR-OTP-2107-1025; CAR-OTP-2107-1070; CAR-OTP-2107-1108.

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a determination on this matter, the participants are ordered to provide their views no later than **10 March 2023**.

16. The Chamber emphasises that, to date, it has not received any information which could provide reason to reconsider its decision to reject the Witness's request for in-court protective measures. As mentioned above, the Witness's activities at the time of the events relevant to the charges, including her direct interactions with the accused, have been the subject of testimonies on numerous occasions. Given the Witness's unique position at the time of the crisis, the interest in the testimony being public is even higher than it might be under other circumstances or for some other witnesses. Bearing this in mind, the Witness, by testifying publicly, will be in a position to (i) contribute to the determination of the truth in the proceedings and the historical truth of the events in the CAR; (ii) send a clear signal of her continued support for dealing with the violence committed in the CAR; and (iii) be questioned – and give her account – in an open forum on matters such as her role within the transitional government or embezzlement allegations.²¹
17. The Chamber reminds the Witness that it has the power to compel the appearance of witnesses before the Court and thereby create a legal obligation for the individual concerned.²²

²¹ See also Transcript, p. 4, line 9 – p. 5, line 21.

²² Article 64(6)(b) of the Statute. See Appeals Chamber, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Judgment on the appeals of William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V (A) of 17 April 2014 entitled “Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation”, 9 October 2014, ICC-01/09-01/11-1598 OA7 OA8, paras 107, 113.

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FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the Prosecution to provide a revised Final Witness List, including revised time estimates for questioning no later than 10 March 2023;

DECIDES to hear witness P-0952 as a Chamber witness pursuant to Articles 64(6)(d) and 69(3) of the Statute;

ORDERS the Registry to take all measures necessary to facilitate the appearance of witness P-0952 before the Chamber no later than two weeks after the end of the testimony of the last witness called by the Prosecution;

ORDERS the Registry to inform witness P-0952 of this decision;

ORDERS the participants to refrain from communicating with witness P-0952 unless specifically authorised by the Chamber; and

ORDERS the participants to provide their views on the potential introduction of the previously recorded testimony of witness P-0952 pursuant to Rule 68(3) of the Rules no later than 10 March 2023.

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



Judge Bertram Schmitt

Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 31 January 2023

At The Hague, The Netherlands