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**No. ICC-01/14-01/18
Date: 3 May 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***

Public redacted version of

**Twenty-Second Decision on the Prosecution Requests for Formal Submission of
Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses
P-2084, P-2620, P-2041 and P-2442**

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), 67(1) and 69 of the Rome Statute, and Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Twenty-Second Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-2084, P-2620, P-2041 and P-2442’.

I. Procedural history

1. On 14 December 2021, 14 April, 20 May and 8 July 2022, respectively, the Office of the Prosecutor (the ‘Prosecution’) requested the introduction, under Rule 68(3) of the Rules, of the statements and associated items of P-2084, P-2620, P-2041 and P-2442 (the ‘P-2084 Request’, the ‘P-2620 Request’, the ‘P-2041 Request’ and the ‘P-2442 Request’, respectively).¹
2. On 28 December 2021,² the Ngaïssona Defence indicated that it does not intend to respond to the P-2084 Request.³ On 10 January 2022, the Yekatom Defence responded to the P-2084 Request.⁴

¹ Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2084 pursuant to Rule 68(3), 14 December 2021, ICC-01/14-01/18-1210-Conf (with confidential Annexes A and B) (public redacted version notified the same day, ICC-01/14-01/18-1210-Red); Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2620 pursuant to Rule 68(3), 14 April 2022, ICC-01/14-01/18-1361-Conf (with confidential Annexes A and B) (public redacted version notified on 19 April 2022, ICC-01/14-01/18-1361-Red); Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2041 pursuant to Rule 68(3), 20 May 2022, ICC-01/14-01/18-1418-Conf (with confidential Annexes A and B) (public redacted version notified on 15 June 2022, ICC-01/14-01/18-1418-Red); Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2442 pursuant to Rule 68(3), 8 July 2022, ICC-01/14-01/18-1505-Conf (with confidential Annexes A and B) (public redacted version notified on 23 August 2022, ICC-01/14-01/18-1505-Red).

² Upon the Yekatom Defence’s request, the Single Judge granted an extension to respond to the P-2084 Request to 10 January 2022 for all participants (*see* email from the Yekatom Defence, 14 January 2021, at 15:28; email from the Chamber, 20 December 2021, at 09:27).

³ Email from the Ngaïssona Defence, 28 December 2021, at 10:35.

⁴ Yekatom Defence Response to ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2084 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1210-Conf), ICC-01/14-01/18-1237-Conf (public redacted version notified the next day, ICC-01/14-01/18-1237-Red) (the ‘Yekatom Defence Response to the P-2084 Request’).

3. On 14 and 25 April 2022,⁵ the Common Legal Representative of the Victims of Other Crimes and the Ngaïssona Defence, respectively, indicated that they do not intend to file a response to the P-2620 Request, the latter deferring to the Chamber's discretion.⁶ On 29 April and 6 May 2022, the Common Legal Representative of the Former Child Soldiers (the 'CLRV1') and the Yekatom Defence, respectively, responded to the P-2620 Request.⁷
4. On 10 June 2022,⁸ the Ngaïssona Defence indicated that it does not intend to respond to the P-2041 Request and defers to the Chamber's discretion.⁹ On 13 June 2022, the Yekatom Defence responded to the P-2041 Request.¹⁰
5. On 18 July 2022, the Ngaïssona Defence indicated that it does not intend to file a response to the P-2442 Request and defers to the Chamber's discretion.¹¹ On 22 July 2022, the Yekatom Defence responded to the P-2442 Request.¹²
6. On 10 March 2023, the Prosecution, pursuant to an order from the Chamber concerning the remainder of the Prosecution's presentation of evidence, informed the participants that it withdrew, among other witnesses, P-2620 and P-2442.¹³

⁵ Upon the Yekatom Defence's request, the Single Judge granted an extension to respond to the P-2620 Request to 6 May 2022 for all participants (*see* email from the Yekatom Defence, 25 April 2022, at 08:20; email from the Chamber, 25 April 2022, at 12:02).

⁶ Email from the Common Legal Representative of the Victims of Other Crimes, 14 April 2022, at 13:37; email from the Ngaïssona Defence, 25 April 2022, at 09:35.

⁷ Response of the Common Legal Representative of the Former Child Soldiers to the "Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2620 pursuant to Rule 68(3)", ICC-01/14-01/18-1382-Conf; Yekatom Defence Response to the 'Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2620 pursuant to Rule 68(3)' (ICC-01/14-01/18-1361-Conf), ICC-01/14-01/18-1393-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Ngaïssona Defence (confidential redacted version notified the same day, ICC-01/14-01/18-1393-Conf-Red) (public redacted version notified on 16 May 2022, ICC-01/14-01/18-1393-Red2).

⁸ Upon the Yekatom Defence's request, the Single Judge granted an extension to respond to the P-2041 Request to 13 June 2022 for all participants (*see* email from Yekatom Defence, 20 May 2022, at 15:48; email from the Chamber, 24 May 2022, at 09:48).

⁹ Email from the Ngaïssona Defence, 10 June 2022, at 09:56.

¹⁰ Yekatom Defence Response to the "Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2041 pursuant to Rule 68(3)", 19 May 2022, ICC-01/14-01/18-1418-Conf, ICC-01/14-01/18-1453-Conf (public redacted version notified the same day, ICC-01/14-01/18-1453-Red) (the 'Yekatom Defence Response to the P-2041 Request').

¹¹ Email from the Ngaïssona Defence, 18 July 2022, at 11:20.

¹² Yekatom Defence Response to 'Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2442 pursuant to Rule 68(3)' (ICC-01/14-01/18-1505-Conf), ICC-01/14-01/18-1522-Conf (public redacted version notified on 8 August 2022, ICC-01/14-01/18-1522-Red).

¹³ Prosecution's Observations pursuant to the Chamber's "Order regarding the Remainder of the Prosecution's Presentation of Evidence and Order pursuant to Article 64(6)(d) of the Statute", ICC-

II. Analysis

7. The Chamber incorporates by reference the applicable law as previously set out.¹⁴

A. P-2084

1. Submissions

8. The Prosecution seeks to introduce the prior recorded testimony of witness P-2084, comprising one statement.¹⁵ It submits that the introduction of P-2084's prior recorded testimony would reduce the presentation of the Prosecution's examination-in-chief and help to streamline the proceedings, reducing the time for its examination from 'at least four hours' to approximately two hours.¹⁶ According to the Prosecution, P-2084's statement is 'highly relevant and probative',¹⁷ and corroborated by other evidence.¹⁸
9. The Yekatom Defence opposes the P-2084 Request.¹⁹ It submits that (i) the witness's statement contains allegations that are central to core issues in the case and materially disputed, namely allegations regarding child soldiers and forcible displacement along the PK9-Mbaïki axis;²⁰ (ii) the estimated time saved would be minimal and 'outweighed by the prejudicial effect' of its formal submission;²¹ and (iii) [REDACTED] against P-2084 affect the reliability of certain aspects of his statement.²²

01/14-01/18-1739-Conf, 31 January 2023, ICC-01/14-01/18-1791-Conf (with one confidential annex, ICC-01/14-01/18-1791-Conf-Anx), para. 6, n. 9.

¹⁴ 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 Ngaïssona Defence Motion to Limit the Scope of P-2926's Evidence, 10 March 2021, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16. *See also* Decision on the Yekatom Defence Request for Leave to Appeal the Twelfth Rule 68(3) Decision regarding P-1704, 29 April 2022, ICC-01/14-01/18-1383 (the 'Decision on Request for Leave to Appeal Twelfth Rule 68(3) Decision'), paras 4-17.

¹⁵ P-2084 Request, ICC-01/14-01/18-1210-Red, paras 1, 18; Annex A to the P-2084 Request, ICC-01/14-01/18-1210-Conf-AnxA.

¹⁶ P-2084 Request, ICC-01/14-01/18-1210-Red, paras 1, 3, 13-16.

¹⁷ P-2084 Request, ICC-01/14-01/18-1210-Conf, paras 9, 11.

¹⁸ P-2084 Request, ICC-01/14-01/18-1210-Red, para. 12.

¹⁹ Yekatom Defence Response to the P-2084 Request, ICC-01/14-01/18-1237-Red, paras 1-2, 37.

²⁰ Yekatom Defence Response to the P-2084 Request, ICC-01/14-01/18-1237-Conf, paras 2, 6-25.

²¹ Yekatom Defence Response to the P-2084 Request, ICC-01/14-01/18-1237-Red, paras 26-29.

²² Yekatom Defence Response to the P-2084 Request, ICC-01/14-01/18-1237-Conf, paras 30-35.

2. *The Chamber's determination*

10. In his statement,²³ P-2084 discusses, *inter alia*, (i) the local administration of Pissa and of the Lobaye region, and the political context surrounding the arrival of the Seleka in the Central African Republic and in Pissa; (ii) the demographic composition of Pissa prior to the arrival of the Seleka, and the relationship between the latter, the local Muslims and Christians; (iii) the Seleka taking over Pissa on 27 March 2013, their treatment of the local population and their interactions with P-2084; (iv) the killing of two Muslims in Bangui-Bouchia in early October 2013, following which the Seleka committed acts of reprisal against the non-Muslim population; (v) the location of Seleka bases; (vi) the killing of two Seleka on 12 October 2013 at the 'PALMEX plantation', about 12 kilometres from Pissa; (vii) the geographical provenance of the Anti-Balaka movement; and (viii) the witness's interactions with a Seleka leader and the Sangaris.
11. Moreover, the witness discusses (ix) hearing on the radio that the Anti-Balaka staged the attack on Bangui on 5 December 2013 (the 'Bangui Attack'), during which the witness was in [REDACTED], from where he could hear gunshots in Boy-Rabé, Combattants and PK5; (x) the Muslims fleeing from several villages to Mbaïki, fearing the advance of the Anti-Balaka along the PK9-Mbaïki axis; (xi) a meeting at the *Sainte Jeanne-d'Arc* church in Mbaïki on 30 January 2014; (xii) the evacuation of the Muslim civilians from Mbaïki on 6 February 2014, during which the witness was in [REDACTED]; (xiii) the Anti-Balaka manning barricades that were abandoned by the Seleka in Pissa, Mbaïki, Sekia, Batalimo and PK9, where 'a toll was levied sometimes'; and (xiv) the witness seeing armed children 'from 10 years old upwards' and wearing *gris-gris* with the Anti-Balaka in Pissa and Mbaïki on 30 January 2014, the 'very young' ones performing 'small jobs', but not knowing the circumstances in which they joined the Anti-Balaka ranks.

²³ CAR-OTP-2094-0968; CAR-OTP-2122-4905 (French translation).

12. In addition, the witness also makes a number of references to Mr Yekatom, including that (i) Mr Yekatom was in charge of the Anti-Balaka ‘of Bimbo, Boeing, all the way up to [...] in LOBAYE’, his name being known ‘everywhere in the country’; (ii) Mr Yekatom made a public statement during the meeting at the *Sainte Jeanne-d’Arc* church concerning the fate of local Muslims; (iii) [REDACTED]; (iv) Mr Yekatom had 3,000 elements, some of whom were armed with firearms and others with bladed weapons, and controlled the route between Bangui and Mbaïki; (v) Mr Yekatom was a ‘great personality’ and a ‘patriot’, who had ‘positive sides’ and a ‘bad side’, indicating that when ‘he takes a drink and is drunk, he becomes nervous and gets angry and ready to react’, that he would ‘cause problems’ and hit people; (vi) Mr Yekatom maintained discipline over his elements; and (vii) Mr Yekatom negotiated with ‘*Enfants Sans Frontières*’ and UNICEF for the release of the children, and attended a ceremony in Pissa in 2014.²⁴
13. The witness also refers to Mr Ngaïssona as the leader of the Anti-Balaka who proclaimed himself as such ‘a few days’ after the Bangui Attack, ‘while in fact the real actors were on the ground’. He also indicates that, had Mr Yekatom received a ‘proper education’, he would have followed Djotodia ‘as Presidential candidate, not [Mr Ngaïssona]’.²⁵
14. The Chamber observes that about half of P-2084’s statement refers to background or contextual information, as well as his personal opinion on the crisis. To the extent that the rest of the statement seems to contain ‘extensive, highly prejudicial [or disputed] allegations’ as regards the presence of alleged child soldiers within Mr Yekatom’s group and the displacement of the Muslim population along the PK9-Mbaïki axis, the Chamber recalls that Rule 68(3) of the Rules does not preclude the introduction of evidence that is central to core issues of the case.²⁶

²⁴ CAR-OTP-2094-0968, at 0977, para. 50; at 0980-81, paras 61, 67-68; at 0983-86, paras 74-77, 79-86, 89-90.

²⁵ CAR-OTP-2094-0968, at 0980, para. 61; at 0985, para. 85.

²⁶ See e.g. Twelfth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1704, P-1528, and P-0314, 14 April 2022, ICC-01/14-01/18-1364-Red (the ‘Twelfth Rule 68(3) Decision’), para. 14 and the references cited

15. Similarly, while the Chamber notes that the witness makes a series of references to Mr Yekatom, it also recalls that references to the accused's acts and conduct do not *per se* constitute an obstacle to the introduction of a prior recorded testimony pursuant to Rule 68(3) of the Rules.²⁷ As to the alleged acts and conduct of Mr Ngaïssona, the Chamber observes that the witness only made passing references to his role in the Anti-Balaka.
16. The Chamber also takes note of the Yekatom Defence's submissions that the introduction of P-2084's statement under Rule 68(3) of the Rules should be denied 'specifically [because] the lack of clarity as regards the source of P-2084's allegations regarding child soldiers; the extent to which these allegations may have been contaminated by other Prosecution witnesses; and [...] the critical ambiguity in the terminology employed by P-2084 [when referring to 'children' and 'child soldiers'] [...] would unduly prejudice these proceedings'.²⁸ However, the Chamber notes that the Yekatom Defence may explore these issues with P-2084 in court and/or confront him with evidence provided by other witnesses.²⁹ In this regard, the Chamber notes that P-2018, whose evidence is 'strongly disputed', recently testified fully *viva voce*, and that the Yekatom Defence will have the opportunity to question P-2084 on the information [REDACTED].
17. Moreover, the Chamber notes the Yekatom Defence's submission that P-2084 was [REDACTED].³⁰ In particular, the Yekatom Defence argues that '[w]hile the existence [REDACTED] do not *per se* preclude the formal submission of their evidence under Rule 68(3) or affect their reliability, in the particular

therein. *See also* Decision on Request for Leave to Appeal Twelfth Rule 68(3) Decision, ICC-01/14-01/18-1383, para. 10 and the references cited therein.

²⁷ *See e.g.* Twelfth Rule 68(3) Decision, ICC-01/14-01/18-1364-Red, para. 14.

²⁸ Yekatom Defence Response to the P-2084 Request, ICC-01/14-01/18-1237-Red, para. 22.

²⁹ *See e.g.* Yekatom Defence Response to the P-2084 Request, ICC-01/14-01/18-1237-Red, paras 10-17 referring, *inter alia*, to **P-0876**: transcripts of hearing, 7 December 2021, ICC-01/14-01/18-T-085-CONF-ENG; 9 December 2021, ICC-01/14-01/18-T-086-CONF-ENG; 10 December 2021, ICC-01/14-01/18-T-087-CONF-ENG; 14 December 2021, ICC-01/14-01/18-T-088-CONF-ENG; 15 December 2021, ICC-01/14-01/18-T-089-CONF-ENG; **P-2018**: transcripts of hearing, 17 April 2023, ICC-01/14-01/18-T-222-CONF-ENG; 18 April 2023, ICC-01/14-01/18-T-223-CONF-ENG; 19 April 2023, ICC-01/14-01/18-T-224-CONF-ENG; 20 April 2023, ICC-01/14-01/18-T-225-CONF-ENG; 24 April 2023, ICC-01/14-01/18-T-226-CONF-ENG.

³⁰ Yekatom Defence Response to the P-2084 Request, ICC-01/14-01/18-1237-Conf, para. 31, referring to CAR-OTP-2092-1536.

circumstances, it is submitted that these allegations comprise a further factor militating against the granting of the Request'.³¹

18. The Chamber further notes the Yekatom Defence submissions concerning P-2084's connection with P-2582 and the lack of clarity as regards the source of his information.³² The Chamber recalls that P-2582 was withdrawn by the Prosecution.³³
19. Having assessed the available information and the witness's statement, the Chamber is not persuaded that the above factors preclude, in this instance, the introduction of P-2084's statement under Rule 68(3) of the Rules. It further finds the Yekatom Defence's submissions as to a potential motivation for P-2084 to provide an untruthful account to be speculative. The Chamber stresses that the Yekatom Defence remains, in any event, free to further explore these issues with the witness in court. It further recalls that it will assess all of the evidence holistically during its judgment deliberation, including the reliability of P-2084's testimony.
20. Lastly, the Chamber observes that the introduction of P-2084's statement would cut the time for the Prosecution's examination of the witness at least by half, thereby promoting the expeditiousness of the proceedings.
21. In light of the above, the Chamber considers that it is not necessary for P-2084's testimony to be presented orally in its entirety and that the introduction of P-2084's prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.
22. Accordingly, the Chamber grants the Prosecution's request to introduce P-2084's statement³⁴ under Rule 68(3) of the Rules.

³¹ Yekatom Defence Response to the P-2084 Request, ICC-01/14-01/18-1237-Conf, para. 32.

³² Yekatom Defence Response to the P-2084 Request, ICC-01/14-01/18-1237-Conf, paras 18-22.

³³ Email from the Prosecution, 15 November 2022, at 13:38.

³⁴ CAR-OTP-2094-0968; CAR-OTP-2122-4905 (French translation).

B. P-2041

1. Submissions

23. The Prosecution seeks to introduce the prior recorded testimony of witness P-2041, comprising one statement and three associated exhibits.³⁵ It submits that the introduction of P-2041's prior recorded testimony would reduce the presentation of the Prosecution's examination-in-chief and help to streamline the proceedings, reducing the time for its examination from 'approximately six hours' to two hours.³⁶ According to the Prosecution, P-2041's statement is 'highly relevant and probative',³⁷ and corroborated by other evidence.³⁸
24. The Yekatom Defence opposes the P-2041 Request.³⁹ It submits that the witness's statement contains allegations central to core issues in the case that are materially in dispute, including the acts and conduct of Mr Yekatom, and uncorroborated, namely allegations concerning Mr Yekatom's involvement in an attack in Mbaïki and his control over the Anti-Balaka in that area.⁴⁰ Moreover, the Yekatom Defence raises issues of reliability, noting that there are 'contradictions between P-2041's statement and the evidence of other Prosecution witnesses, as well as uncorroborated information regarding notable events in MBAIKI'.⁴¹

2. The Chamber's determination

25. In his statement,⁴² P-2041 discusses, *inter alia*, (i) the relationship between the Christian and Muslim population in the Bagandou district before the events of 2014; (ii) the arrival of Seleka and arrests carried out by Seleka; (iii) P-2041's involvement in trying to secure the release of those arrested and return of vehicles that were taken; (iv) the Anti-Balaka attack against Bouca on 9 September 2013

³⁵ P-2041 Request, ICC-01/14-01/18-1418-Red, para. 1; Annex A to the P-2041 Request, ICC-01/14-01/18-1418-Conf-AnxA.

³⁶ P-2041 Request, ICC-01/14-01/18-1418-Red, paras 1, 3, 15-18.

³⁷ P-2041 Request, ICC-01/14-01/18-1418-Red, paras 9, 11.

³⁸ P-2041 Request, ICC-01/14-01/18-1418-Red, para. 12.

³⁹ P-2041 Request, ICC-01/14-01/18-1418-Red, paras 1-2, 25.

⁴⁰ Yekatom Defence Response to the P-2041 Request, ICC-01/14-01/18-1453-Red, paras 12-15.

⁴¹ Yekatom Defence Response to the P-2041 Request, ICC-01/14-01/18-1453-Red, paras 16-22.

⁴² CAR-OTP-2104-0003; CAR-OTP-2122-4398 (French translation).

and names of those who were killed; (v) the effect of the attack against Bouca on P-2041's relatives; (vi) the Bangui Attack; (vii) [REDACTED]; (viii) P-2041's departure from Bagandou to Mbaïki; (ix) the killing of Imam Matar on 25 January 2014 by the youth of Bagandou who then also attacked the Bagandou mosque; (x) the arrival of the Anti-Balaka to Mbaïki on 30 January 2014; (xi) the Christian youth in Mbaïki mixing with Anti-Balaka and becoming threatening immediately after their arrival; (xii) [REDACTED]; (xiii) armed Christian youths setting up barriers to prevent Muslims from entering and leaving Mbaïki; (xiv) the attack on Mbaïki by the Anti-Balaka, which was stopped by the Sangaris forces; (xv) the attack on Boda led by 'Coeur de Lion'; and (xvi) P-2041's evacuation to Chad and subsequent return.

26. In addition, the witness also makes a number of references to Mr Yekatom, including (i) Mr Yekatom and Mr Ngaïssona being referred to as leaders of the Anti-Balaka on the radio; (ii) Mr Yekatom's presence at [REDACTED]; (iii) Mr Yekatom's role in the attack on Mbaïki; and (iv) money being given to Mr Yekatom by the Muslim community with the hope that the said payment would keep the Anti-Balaka from attacking them.⁴³
27. While the Chamber takes note of the Yekatom Defence's submissions on the references to the acts and conduct of Mr Yekatom and issues that are materially in dispute, as noted above, neither such references would *per se* constitute an obstacle to the introduction of a prior recorded testimony pursuant to Rule 68(3) of the Rules. The Chamber also recalls that several witnesses have already testified or are expected to provide evidence on the crimes allegedly committed on the PK9-Mbaïki axis and/or Mr Yekatom's and/or his group's alleged involvement in these crimes, and that the Yekatom Defence has had or would have the opportunity to examine these witnesses in court.⁴⁴

⁴³ CAR-OTP-2104-0003, at 0008, para. 36; at 0011-14, paras 52-57, 59, 62.

⁴⁴ See e.g. **P-1595**: transcripts of hearings, 7 March 2022, ICC-01/14-01/18-T-106-CONF-ENG; 8 March 2022, ICC-01/14-01/18-T-107-ENG; **P-2353**: transcripts of hearings, 19 September 2022, ICC-01/14-01/18-T-161-CONF-ENG; 20 September 2022, ICC-01/14-01/18-T-162-CONF-ENG; **P-1839**: transcripts of hearings, 27 October 2022, ICC-01/14-01/18-T-170-CONF-ENG; 28 October 2022, ICC-01/14-01/18-T-171-CONF-ENG; 31 October 2022, ICC-01/14-01/18-T-172-CONF-ENG; 1 November 2022, ICC-01/14-01/18-T-173-CONF-ENG; 2 November 2022, ICC-01/14-01/18-T-174-CONF-ENG;

28. Further, the Chamber takes note of the Yekatom Defence's argument that there are 'contradictions between P-2041's statement and the evidence provided by other Prosecution witnesses present in MBAIKI at the time of the relevant events'. Noting the Chamber's approach to evidence,⁴⁵ whereby it will assess and weigh all of the evidence holistically whilst deliberating on the judgment, the Chamber is of the view that the alleged contradictions do not constitute a bar to the introduction into evidence of P-2041's prior recorded testimony. Similarly, with respect to the Yekatom Defence's contention that 'P-2041's statement exhibits negative bias against Mr. Yekatom and the Anti-Balaka',⁴⁶ the Chamber recalls that this factor does not preclude hearing the witness under Rule 68(3) of the Rules.⁴⁷ Moreover, the Chamber emphasises that the Yekatom Defence will have the opportunity to fully examine P-2041 in court on these issues.
29. Finally, the Chamber observes that the introduction of P-2041's statement would cut the time for the Prosecution's examination of the witness by two-thirds, thereby promoting the expeditiousness of the proceedings.
30. In light of the above, the Chamber finds that it is not necessary for P-2041's testimony to be presented orally in its entirety and that the introduction into evidence of the prior recorded testimony of P-2041 is not prejudicial to or inconsistent with the rights of the accused.

3 November 2022, ICC-01/14-01/18-T-175-CONF-ENG; **P-2419**: transcripts of hearings, 21 November 2022, ICC-01/14-01/18-T-176-CONF-ENG; 22 November 2022, ICC-01/14-01/18-T-177-CONF-ENG; **P-1813**: transcripts of hearings, 28 November 2022, ICC-01/14-01/18-T-180-CONF-ENG; 30 November 2022, ICC-01/14-01/18-T-181-CONF-ENG; 1 December 2022, ICC-01/14-01/18-T-182-CONF-ENG; **P-1823**: transcript of hearing, 2 December 2022, ICC-01/14-01/18-T-183-CONF-ENG; **P-1647**: transcripts of hearings, 25 January 2023, ICC-01/14-01/18-T-194-CONF-ENG; 26 January 2023, ICC-01/14-01/18-T-195-CONF-ENG; 27 January 2023, ICC-01/14-01/18-T-196-CONF-ENG; **P-1786**: transcripts of hearings, 31 January 2023, ICC-01/14-01/18-T-197-CONF-ENG; 1 February 2023, ICC-01/14-01/18-T-198-CONF-ENG; **P-2354**: transcripts of hearings, 1 March 2023, ICC-01/14-01/18-T-210-CONF-ENG; **P-1838**: transcripts of hearings, 20 March 2023, ICC-01/14-01/18-T-215-CONF-ENG; transcripts of hearings, 20 March 2023, ICC-01/14-01/18-T-215-CONF-ENG; **P-1666**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 36-37, entry 60; **P-2389**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 37, entry 64.

⁴⁵ Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631, paras 52-59.

⁴⁶ Yekatom Defence Response to the P-2041 Request, ICC-01/14-01/18-1453-Red, paras 20-21.

⁴⁷ See Twentieth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1838 and P-2018, 3 March 2023, ICC-01/14-01/18-1783-Conf, para. 11.

31. Accordingly, the Chamber grants the Prosecution's request to introduce into evidence P-2041's statement⁴⁸ and associated exhibits⁴⁹ pursuant to Rule 68(3) of the Rules.

C. P-2620 and P-2442

32. The Chamber takes note of the Prosecution's notice that it no longer intends to call P-2620 and P-2442 to testify. The Chamber therefore considers that the P-2620 Request and the P-2442 Request are moot and will not address the submissions made in this regard.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that, subject to the fulfilment of the legal requirements of Rule 68(3) of the Rules, the prior recorded testimonies of the following witnesses are introduced into evidence:

- **P-2084** (CAR-OTP-2094-0968; CAR-OTP-2122-4905 (French translation));
and
- **P-2041** (CAR-OTP-2104-0003; CAR-OTP-2122-4398 (French translation)),
together with its associated exhibits (CAR-OTP-2104-0019; CAR-OTP-2104-0020; CAR-OTP-2104-0021);

DECLARES the P-2620 Request and the P-2442 Request moot; and

ORDERS the CLRV1 to file a public redacted version of its response to the P-2620 Request, ICC-01/14-01/18-1382-Conf, within one week of notification of the present decision.

⁴⁸ CAR-OTP-2104-0003; CAR-OTP-2122-4398 (French translation).

⁴⁹ CAR-OTP-2109-0470; CAR-OTP-2109-0473; CAR-OTP-2071-0308.

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



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 3 May 2023

At The Hague, The Netherlands