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Date: **25 August 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Prosecution’s Request for the Formal Submission of the
Prior Recorded Testimony of P-1819 pursuant to Rule 68(2)(c)”,
ICC-01/14-01/18-1968-Conf, 7 July 2023**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of witness P-1819’s prior recorded testimony, pursuant to rule 68(2)(c) of the Rules of Procedure and Evidence (“rules”), the “Initial Directions on the Conduct of the Proceedings” (“Initial Directions”),¹ and the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (“Further Directions”).²

2. P-1819 is [REDACTED] YEKATOM and his Anti-Balaka Group (YEKATOM’s Group) several times [REDACTED], and documented their interactions. She provides evidence of the Anti-Balaka policy of targeting the Muslim community in the Central African Republic (“CAR”); the crimes committed by the Anti-Balaka against the Muslim civilians or perceived supporters of the Seleka in BANGUI and its surroundings; the Anti-Balaka attack on BANGUI on 5 December 2013; and the structure and functioning of YEKATOM’s Group, as well as the presence of children in YEKATOM’s Group. As listed in the Confidential Annex, P-1819’s prior recorded testimony comprises a witness statement, dated 10 November 2017,³ and its associated exhibits (“Prior Statement”).⁴ The Annex also identifies the relevant paragraphs of the Confirmation Decision to which P-1819’s evidence relates.

3. The Prior Statement is admissible under rule 68(2)(c) because P-1819 is unavailable to testify, and: (i) the Prosecution could not anticipate the need for article 56 measures to obtain her evidence; (ii) the evidence has sufficient indicia of reliability;

¹ ICC-01/14-01/18-631, para. 33.

² ICC-01/14-01/18-1892, paras. 3-4.

³ CAR-OTP-2065-0003, and its translation CAR-OTP-2093-0493.

⁴ See ICC-01/05-01/08-1386, paras. 79-81 (“Bemba Appeals Decision”), confirming that written witness statements can be introduced as “previously recorded testimony”. See also ICC-01/09-01/11-1938-Red-Corr, paras. 30-33, analysing the term “previously recorded testimony” in light of the Rules’ *travaux préparatoires*, the Court’s prior case-law and the need to ensure language consistency within the rule in interpreting it; ICC-01/05-01/08-2012-Red, para. 136; ICC-01/05-01/08-886, para. 6; ICC-01/04-01/06-1603, para.18; ICC-01/04-01/07-2289-Corr-Red; ICC-01/04-01/07-2362. ICC-02/04-01/15-596-Red, para. 10.

(iii) the evidence is relevant and probative; and (iv) there is no undue prejudice to either Accused from its submission.⁵ As detailed below, P-1819's Prior Statement meets all of these criteria.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this Request and its Annex are filed as "Confidential", as they contain information concerning a witness which should not be made public. A "Public Redacted" version of the Request will be filed as soon as practicable.

III. SUBMISSIONS

A. Applicable Law

5. The Initial Directions permits the Parties to file rule 68(2)(c) applications beyond the deadline set for the Final Witness List (*i.e.*, 9 November 2020), "should a witness become unavailable".⁶

6. Pursuant to rule 68(2)(c), the Chamber may allow the introduction of a prior recorded testimony from a person who has died, must be presumed dead, or is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally. In such a case, the Chamber must be satisfied that: (i) the necessity of measures under article 56 of the Statute could not be anticipated; (ii) the prior recorded testimony has sufficient indicia of reliability;⁷ (iii) the evidence is relevant and probative; and (iv) the submission is not prejudicial to or inconsistent with the rights of the accused.⁸

⁵ ICC-01/14-01/21-506-Conf, para. 9.

⁶ ICC-01/14-01/18-631, para. 33.

⁷ ICC-01/04-02/06-1029, para. 12; ICC-01/14-01/21-506-Red, para. 15.

⁸ ICC-01/12-01/18-1111-Conf, para. 7; ICC-01/05-01/08-1386, para. 78; ICC-01/14-01/21-506-Red, paras. 7-10.

7. Under rule 68(2)(c)(ii), “[t]he fact that prior testimony goes to the acts and conduct of an accused may be a factor against its introduction or part of it”. However, there is no *per se* bar to the introduction of a prior recorded testimony that goes to the acts and conduct of an Accused. In such instances, a Chamber may take into consideration *inter alia*: (i) whether it relates to issues that are not materially in dispute; (ii) whether the evidence is central to the allegations of the case; and (iii) whether the evidence is purportedly corroborative.⁹

B. P-1819’s Prior Recorded Testimony fulfils all Requirements of Rule 68(2)(c)

i. P-1819 is unavailable to testify due to obstacles that could not be overcome with reasonable diligence

8. Witness unavailability under rule 68(2)(c) is to be interpreted broadly,¹⁰ and includes ‘a situation in which it was not possible to secure or reach a witness, although that witness could, with reasonable diligence be traced.’¹¹ In the present case, and after having taken all reasonable steps, the Prosecution was unable to secure P-1819’s testimony as she recently confirmed her unwillingness to cooperate.

9. As set out in the Investigation Report,¹² the Prosecution has not been able to communicate meaningfully with P-1819 between January 2021 and April 2023 despite numerous attempts. P-1819 first hinted at her unwillingness to cooperate in this case on 25 January 2021, after the Prosecution informed her of the Defence’s request to meet her. Although at the time, the witness expressed her wish not to “*aller plus loin dans cette affaire,*” she nevertheless agreed to engage with the Prosecution about her

⁹ ICC-01/05-01/13-1481, paras. 21-22. See also ICC-01/04-02/06-1029, para. 13; ICC-01/14-01/21-506-Red, para. 10.

¹⁰ ICC-01/05-01/13-1481, para. 16.

¹¹ See ICC-01/05-01/13-1481, footnote 18, citing a report to the Assembly of States Parties in relation to the drafting of the amended rule 68(2)(c): Study Group on Governance: Working Group on Lessons Learnt: Second report of the Court to the Assembly of States Parties, 31 October 2013, ICC-ASP/12/37/Add.1, p. 26, para. 29.

¹² CAR-OTP-00001655.

testimony.¹³ After several (failed) attempts to contact P-1819 between 11 October and 14 December 2022, the witness finally informed the Prosecution on 16 December 2022, that she was no longer willing to cooperate due to a perceived 'lack of communication', and concerns for her safety and work.¹⁴ Despite the Prosecution's efforts to reach the witness to fully understand her decision and explore alternatives, P-1819 did not respond to any of the Prosecution's phone calls or text messages, until the Prosecution addressed her a formal letter on 4 April 2023.

10. In the 4 April 2023 letter, the Prosecution invited P-1819 to reconsider her decision not to cooperate. Following P-1819's immediate response, the Prosecution spoke with the witness the next day, addressing the concerns raised by the witness regarding: (i) the perceived 'lack of communication', (ii) the alleged contradiction between the [REDACTED] and her testimony, and (iii) the modalities of her testimony, *i.e.*, either in public or with protective measures.¹⁵ Following this phone conversation, it was understood that the witness had reconsidered her decision not to testify, and that only her concerns related to the risk of testifying publicly remained. It was agreed that P-1819 would inform the Prosecution, by 11 April 2023, of all aspects of her personal and professional life that would be affected by her testifying publicly;¹⁶ allowing the Prosecution to assess whether a request for reconsideration of the Chamber's 9 March 2021 Decision rejecting the in court protective measures for P-1819,¹⁷ would be justified.

11. Despite the witness's commitment to engage on 11 April 2023, the Prosecution was unable to reach her that day, or the next. On 13 April 2023, the witness finally responded that she preferred to communicate via text message. Accordingly, the Prosecution informed her by text message that a list of security questions would be

¹³ CAR-OTP-00001655, at 000001, para. 4.

¹⁴ CAR-OTP-00001655, at 000002, paras. 5-6.

¹⁵ CAR-OTP-00001655, at 000002, paras. 7-8.

¹⁶ CAR-OTP-00001655, at 000002, para. 8.

¹⁷ ICC-01/14-01/18-906-Conf, para. 8.

sent to her by email, which was done contemporaneously.¹⁸ P-1819 did not respond. When prompted to do so on 25 April 2023, the witness indicated that she was occupied professionally, and promised to call back, which she did not.¹⁹

12. On 2 May 2023, the Prosecution contacted the witness by email to enquire about her availability to testify in evidentiary block 23. The email also contained the list of security questions initially sent to the witness on 13 April 2023. Two weeks later, on 15 May 2023, following another (failed) attempt to call the witness, P-1819 finally indicated unequivocally her unwillingness to testify in the present case by e-mail.²⁰

13. At this stage of the proceedings, given (i) the repeated efforts by the Prosecution to secure P-1819's testimony through attempted phone contact, messages, e-mails, and a letter, resulting in the witness's unequivocal refusal to testify, and (ii) the unlikelihood of her being summoned to testify in due time, the Prosecution has exercised reasonable diligence to overcome the existing obstacles to secure P-1819's testimony at trial. P-1819 has thus become unavailable within the meaning of rule 68(2)(c).

ii. Article 56 measures could not be anticipated

14. P-1819 was interviewed in October and November 2017. At the time of the interview, she was [REDACTED] and did not report any serious health issues. The Prosecution remained in contact with P-1819 after her interview through phone calls and text messages, even though such contacts were, at times, difficult. When informed in October 2020 that she was scheduled as a Prosecution witness to testify, P-1819 was willing to testify preferably with protective measures.²¹ Moreover, it appears that she had taken steps to make herself available by committing to provide information on

¹⁸ CAR-OTP-00001655, at 000002-000003, para. 9.

¹⁹ CAR-OTP-00001655, at 000003, para. 10.

²⁰ CAR-OTP-00001655, at 000003, paras. 11-12.

²¹ CAR-OTP-00001655, at 000001, para. 3.

her security situation that may affect her ability to testify publicly. Under these circumstances, the Prosecution had no information within its possession that would prompt consideration of evidence preserving measures under article 56. This requirement of rule 68(2)(c)(i) is thus met.

iii. The tendered evidence is reliable

15. P-1819's Prior Statement is *prima facie* reliable. It is truthful, authentic, and consistent. The Prosecution obtained P-1819's Prior Statement in the ordinary course of its investigation in 2017.²² In accordance with rule 111, the Prior Statement was read by the witness before signature in a language she fully understood.²³ The witness's factual account was provided voluntarily and signed by her, as well as the investigators conducting the interview.²⁴ It contains an express acknowledgement attesting to its voluntariness and the truth of its contents, to the best of the witness' knowledge and recollection.²⁵ Further, the Prior Statement is internally consistent, and sufficiently corroborated by other evidence in the case.²⁶

16. As noted, the Prior Statement is limited to information within the witness's knowledge and experience. She was forthcoming in her interview about her lack of knowledge or lack of memory of certain events.²⁷ Further, P-1819 gave reasonable and logical explanations in her narrative of events without any apparent embellishments or speculation, stating for example that she did know why some of the planned attacks were aborted, as YEKATOM and members of his group were speaking in Sango, a language P-1819 does not understand.²⁸

²² See ICC-01/09-01/11-1938-Red-Corr, para. 66; see also ICC-01/05-01/13-1481-Red-Corr, para. 20.

²³ CAR-OTP-2065-0003, at 0004, para. 4 and at 0035.

²⁴ ICC-01/05-01/13-1481-Red-Corr, para. 20 See also ICC-01/14-01/21-506-Red, para. 11; ICC-02/04-01/15-596-Red, para. 9; ICC; ICC-01/09-01/11-1938-Corr-Red2, para. 32; ICC-01/05-01/13-1478-Red-Corr, paras. 29-31.

²⁵ CAR-OTP-2065-0003, at 0034, paras. 171-172 and at 0035.

²⁶ See paras. 24-25 *infra*.

²⁷ CAR-OTP-2065-0003, at 0010-0012, 0018, 0020, 0025, 0027, paras. 34, 44, 79, 92, 124-125, 132, 135.

²⁸ CAR-OTP-2065-0003, at 0027, para. 133.

17. In sum, the Prior Statement is reliable as per the requirements of rule 68(2)(c)(i) in that it (i) is signed; (ii) was given in a language the witness fully understands; (iii) contains an acknowledgement that it is accurate; (iv) is internally consistent; and (v) is predicated on information within the witness's actual knowledge, in that the witness readily admitted when she did not know certain information.²⁹

iv. The tendered evidence is relevant and probative

18. P-1819's Prior Statement is highly relevant and probative. It bears evidence of the 5 December 2013 Anti-Balaka attack on BANGUI, the targeting of the Muslim civilian population and the deployment of YEKATOM's elements in CATTIN and BOEING. The Witness describes crimes committed by the Anti-Balaka and discusses the functioning of YEKATOM's Group. It also goes to the proof of the contextual elements of war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group, and its intent to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014.³⁰

19. P-1819's Prior Statement comprises 33 pages. There are no agreements as to the facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on the Prior Statement.

20. The witness' Prior Statement established the following:

- As mentioned, P-1819 [REDACTED]. During [REDACTED], the witness [REDACTED] YEKATOM and members of his group in three bases, including (i) the first base located about 45 km from BANGUI where, [REDACTED], [REDACTED] several Anti-Balaka elements ready to conduct further attacks against the Seleka; (ii) the second base located in an empty village where

²⁹ ICC-01/04-02/06-1205, at 0197-0198, para. 16.

³⁰ See ICC-01/14-01/18-403-Conf-Corr, paras. 64, *see further* pp. 107, 111 (referencing paragraphs 90-114 of the Document Containing the Charges - ICC-01/14-01/18-286-Conf-AnxB1).

[REDACTED] with YEKATOM and members of his group; and (iii) the third base located at the YAMWARA school near BANGUI airport that she [REDACTED].

- The witness provides evidence of the Anti-Balaka's policy of targeting the Muslim community in villages of western CAR prior to 5 December 2013. On 3 December, P-1819 saw Peuhl victims of Anti-Balaka's attack in a village located about 42 kilometres away from BANGUI.
- P-1819 describes the 5 December 2013 attack on BANGUI and the Seleka's riposte which forced the Anti-Balaka to retreat. P-1819 explains how she later learnt from which positions the offensives were launched and the Anti-Balaka's groups involved in the attack. The witness indicates that she saw the dead bodies of Muslims civilians at the Mosque in PK5 following the 5 December attack. She also provides evidence of the commission of crimes by YEKATOM's Group, comprising the cruel treatment, torture and illegal detention of Muslim civilians or elements within the group suspected of disloyalty and perceived as supporters of the Seleka.
- P-1819's evidence establishes that YEKATOM's Group was well organised under YEKATOM's authority. Particularly, she describes (i) the composition of YEKATOM's Group which included former FACA as well as civilians; (ii) its leadership, comprising members of YEKATOM's inner circle such as 'Rodrigue' (presumably, Rodrigue MOMOKAMA), YEKATOM's *aide de camp*, and other leaders; (iii) the military training provided to new recruits by FACA group members; and (iv) the types of weapons available to YEKATOM's Group, including Kalashnikovs, FAMAS [assault rifle], heavy submachine guns, and mostly machetes, clubs, arrows, and other old wooden weapons.

- She provides evidence of YEKATOM's authority, recounting that YEKATOM introduced himself as the leader of the group, planned attacks, and gave orders to his elements who turned to him when they needed authorisations. She also describes YEKATOM's frequent interactions, including his multiple phone contacts, with French forces and other Anti-Balaka leaders in BOEING and BANGUI.
- P-1819 describes having seen 'young' Anti-Balaka recruits at the third base.
- She recounts [REDACTED] meetings and interviews with YEKATOM during which he often referred to the Seleka as "Arabs and foreigners" from whom he wanted to save CAR. He also claimed that he had over 1,500 elements under his command and [REDACTED] that he had spent seven months in the bush waiting for the right time to attack the Seleka.
- P-1819 authenticates [REDACTED]. She also authenticates the photographs and rushes videos she provided to the Prosecution during her interview.

v. Balance of interests

21. Granting the Request advances the interests of justice. By its terms, rule 68(2)(c) does not *per se* unfairly prejudice the Defence in permitting the submission of uncross-examined evidence unrelated to the acts and conduct of the Accused.³¹ On the contrary, although rule 68 is an exception to the principle of orality³² and publicity,³³ its application "is *per se* generally considered *compatible* with the rights of the

³¹ ICC-01/05-01/13-1478-Red-Corr, paras. 38-39.

³² ICC-01/05-01/08-1386, para.78.

³³ ICC-01/14-01/18-685, para. 25 (referencing articles 64(7) and 67(1)).

accused”³⁴ and all statutory rights because it is expressed in the Court’s procedural framework.

22. Additionally, the Chamber’s appropriate exercise of discretion in determining the evaluative criteria as defined in the Rules, among others, serves as a sufficient procedural safeguard against potential prejudice. Similarly, the fact that the Parties can avail themselves of the provision further underscores its inherent neutrality.³⁵ Thus, any claim of prejudice should only be entertained in light of the particular circumstances of the specific witness, their evidence, and the case — not presumptively, nor in the abstract, including when acts and conduct of the Accused may be concerned.

23. P-1819’s evidence is manifestly relevant to the proper adjudication of salient issues in this case. Its formal submission does not cause any unfair prejudice to the Accused either in respect of the nature of rule 68(2) itself, or as applied in these circumstances.³⁶ Importantly, P-1819’s testimony is not unique and the tendered evidence is cumulative to, and corroborated by, documentary evidence included in the Prosecution’s List of Evidence as well as the evidence of other witnesses.

24. P-1819’s proposed evidence on (i) the Anti-Balaka attack on BANGUI on 5 December 2013; (ii) the Anti-Balaka’s commission of crimes in BANGUI against the Muslim civilian population in 2013; (iii) the functioning of YEKATOM’s Group, including his leadership over the elements located in various bases in BANGUI, the structure of his group; (iv) the training provided at the YAMWARA School base; (v) the presence of young children in YEKATOM’s Group; and (vi) YEKATOM’s contacts with other Anti-Balaka leaders is cumulative to, and corroborated by, documentary

³⁴ ICC-01/14-01/18-685, para. 26.

³⁵ ICC-01/09-01/11-1938-Red-Corr, para. 25.

³⁶ ICC-01/09-01/11-1938-Red-Corr, para. 27.

evidence included in the Prosecution's List of Evidence.³⁷ It is further cumulative to and corroborated by, *inter alia*, the evidence of 22 other witnesses, namely P-0487, P-0505, P-0520, P-0808, P-0876, P-0884, P-0888, P-0954, P-1143, P-1339, P-1521, P-1528, P-1647, P-1786, P-1839, P-1962, P-2232, P-2354, P-2377, P-2472, P-2475, and P-2682. Out of the above mentioned 22 witnesses, 17 have testified and the Defence had the opportunity to cross-examine them. Additionally, the rushes videos filmed by P-1819 during her [REDACTED] have been extensively used at trial and discussed with at least 16 Prosecution witnesses, including P-0487, P-0876, P-0884, P-0888, P-1193, P-1339, P-1647, P-1666, P-1704, P-1705, P-1786, P-1839, P-1990, P-2475, P-2682, and P-2686.

25. Moreover, while parts of P-1819's Prior Statement relate to YEKATOM's acts and conduct, this has no preclusive effect, and their probative value outweighs any potential unfair prejudice. Indeed, the fact that YEKATOM was a leader who exercised control over his elements is independently supported by the rushes videos contemporaneously filmed by P-1819. By [REDACTED] YEKATOM and his elements [REDACTED], P-1819, was in position to observe and record YEKATOM's ability to

³⁷ See for example On the 5 December attack: CAR-OTP-2027-1631, at 1648; CAR-OTP-2001-0409, at 0409, para. 3; CAR-OTP-2042-5051, at 5051; CAR-OTP-2055-1987, at 2134; CAR-OTP-2001-0835, at 0875, para.3; CAR-OTP-2001-2769, at 2776; CAR-OTP-2101-8391, at 8432, 07:42:35; CAR-OTP-2101-9735, at 9885, 16:58:34. On the Anti-Balaka targeting the Muslim population: CAR-OTP-2117-1138; CAR-OTP-2117-1190; CAR-OTP-2117-1192; CAR-OTP-2117-1194; CAR-OTP-2117-1196; CAR-OTP-2117-1198; CAR-OTP-2117-1298. See also CAR-OTP-2095-9141, from [00:00:00] to [00:04:39] and its transcript and translation CAR-OTP-2127-6284, at 6285, and CAR-OTP-2127-6413, at 6415, l.1-34; , CAR-OTP-2108-0682, from [00:00:00] to [00:02:28], and its transcript and translation, CAR-OTP-2122-6026, at 6027-6028, l. 5-54, and CAR-OTP-2122-6035, at 6037-6038, l. 5-60; CAR-OTP-2108-1454, from [00:00:00] to [00:01:57] and its transcript and translation CAR-OTP-2122-9643, at 9644, l. 7-33, and CAR-OTP-2122-9712, at 9714, l. 7-32. On the organisation of the YEKATOM Group: CAR-OTP-2005-0129, from [00:20:50] to [00:24:40] and its transcript and translation CAR-OTP-2130-1184 and CAR-OTP-2130-1307, at 1319-1320, l. 394-415; CAR-OTP-2108-1474 from [00:00:00] to [00:02:36] and its transcript, CAR-OTP-2127-6799; CAR-OTP-2039-0063, at 0063-0066; CAR-OTP-2039-0050, at 0050-0062; CAR-OTP-2094-3642; CAR-OTP-2094-3627; CAR-OTP-2065-3212 from [00:00:00] to [00:01:32], and its transcript and translation, CAR-OTP-2127-3748 and CAR-OTP-2127-3662, at 3664, l.3-30. On the training provided to YEKATOM Group: CAR-OTP-2108-1474 from [00:00:00] to [00:02:36] and its transcript, CAR-OTP-2127-6799. On the presence of young children in YEKATOM Group: CAR-OTP-2087-2805 from [00:00:00] to [00:03:15] and its transcript CAR-OTP-2122-7413; CAR-OTP-2005-0129, from [00:21:25] to [00:23:30] and its transcript and translation CAR-OTP-2130-1184 and CAR-OTP-2130-1307, at 1320, l.416-428; CAR-OTP-2065-3843 from [00:00:00] to [00:01:17] and its transcript and translation CAR-OTP-2107-3077 and CAR-OTP-2118-5668. On YEKATOM's contacts with other Anti-Balaka leaders after 5 December: CAR-OTP-2055-2610, from [00:01:17] to [00:03:04] and its transcript and translation, CAR-OTP-2107-6906, at 6909-6910, l. 39-99 and CAR-OTP-2122-2271, 2275-2276, l. 39-99.

(i) plan and launch attacks;³⁸ (ii) issue orders to his elements who turned to him when they needed authorisations;³⁹ (iii) coordinate with other Anti-Balaka leaders in and around BANGUI;⁴⁰ (iv) voice his animus toward Muslims;⁴¹ and (v) self-proclaim his leadership and authority.⁴²

³⁸ CAR-OTP-2065-5324, from [00:00:00] to [00:01:44] and its transcript and translation CAR-OTP-2107-3128 and CAR-OTP-2118-5698, at l. 4-49; CAR-OTP-2065-0396, from [00:00:00] to [00:02:21] and its transcript and translation CAR-OTP-2107-6918 and CAR-OTP-2122-2284; CAR-OTP-2065-0726, from [00:00:00] to [00:01:53] and its transcript and translation CAR-OTP-2135-4349 and CAR-OTP-2135-4419; CAR-OTP-2065-2328, from [00:00:00] to [00:01:53] and its transcript and translation CAR-OTP-2127-3735 and CAR-OTP-2127-3639; CAR-OTP-2065-4849, from [00:00:00] to [00:02:21] and its transcript and translation CAR-OTP-2107-3106 and CAR-OTP-2118-5685.

³⁹ CAR-OTP-2065-1989, from [00:00:00] to [00:02:26] and its transcript and translation CAR-OTP-2127-4339 and CAR-OTP-2127-4438; CAR-OTP-2065-2017, from [00:00:00] to [00:01:23] and its transcript and translation, CAR-OTP-2127-3708 and CAR-OTP-2127-3599, at 3601, l. 4-29; CAR-OTP-2065-2009, from [00:00:54] to [00:01:56] and its transcript and translation, CAR-OTP-2127-3704 and CAR-OTP-2127-3593, at 3596-3598, l. 35-109; CAR-OTP-2065-2077, from [00:00:00] to [00:01:16] and from [00:01:16] to [00:01:52] and its transcript and translation CAR-OTP-2127-6532 and CAR-OTP-2127-6574, at 6576-6577, l. 25-42 and at 6577, l. 47-60; CAR-OTP-2065-2085, from [00:00:00] to [00:01:36] and its transcript and translation CAR-OTP-2127-3712 and CAR-OTP-2127-3605; CAR-OTP-2065-2097, from [00:00:00] to [00:00:37] and its transcript and translation CAR-OTP-2127-6535 and CAR-OTP-2127-6578, at 6580, l. 1-17; CAR-OTP-2065-2101, from [00:00:00] to [00:01:34] and its transcript and translation CAR-OTP-2127-6537 and CAR-OTP-2127-6581, at 6583-6584, l. 1-52; CAR-OTP-2065-2105, from [00:00:00] to [00:00:53] and its transcript and translation CAR-OTP-2127-3717 and CAR-OTP-2127-3612, at 3614, l. 1-14; CAR-OTP-2065-2177 from [00:00:00] to [00:03:37] and its transcript and translation CAR-OTP-2127-3725 and CAR-OTP-2127-3623, at 3625-3627, l. 1-86; CAR-OTP-2065-0730 from [00:00:00] to [00:01:50] and its transcript and translation CAR-OTP-2130-1081 and CAR-OTP-2130-1134; CAR-OTP-2065-3492 from [00:00:00] to [00:00:22] and its transcript and translation CAR-OTP-2127-3755 and CAR-OTP-2127-3672, at 3674, l. 1-7; CAR-OTP-2065-3692 from [00:00:00] to [00:00:40] and its transcript and translation CAR-OTP-2122-9617 and CAR-OTP-2122-9676, at 9678, l. 1-8; CAR-OTP-2065-3802, from [00:00:00] to [00:04:47] and its transcript and translation CAR-OTP-2127-3757 and CAR-OTP-2127-3675, at 3677-3679, l. 1-90; CAR-OTP-2065-4504 from [00:00:00] to [00:01:56] and its transcript CAR-OTP-2127-7232; CAR-OTP-2065-4508, from [00:00:00] to [00:00:40] and its transcript and translation CAR-OTP-2127-3774 and CAR-OTP-2127-3698, at 3700, l. 1-16; CAR-OTP-2065-4561, from [00:00:00] to [00:00:36] and [00:00:50] to [00:01:00] and its transcript and translation CAR-OTP-2127-6542 and CAR-OTP-2127-6588, at 6590, l. 1-20 and 28-31; CAR-OTP-2065-4565, [00:00:00] to [00:00:31] and its transcript and translation CAR-OTP-2127-6544 and CAR-OTP-2127-6591, at 6593, l. 1-8; CAR-OTP-2065-4569, [00:00:00] to [00:00:15] and its transcript and translation CAR-OTP-2127-6546 and CAR-OTP-2127-6594, at 6596, l. 1-9; CAR-OTP-2065-5082, from [00:00:00] to [00:01:20] and its transcript and translation CAR-OTP-2127-4499 and CAR-OTP-2127-4586, at 4588, l. 1-31; CAR-OTP-2065-5086, from [00:00:00] to [00:01:21] and its transcript and translation CAR-OTP-2127-4343 and CAR-OTP-2127-4388, at 4390, l. 3-24.

⁴⁰ CAR-OTP-2065-2292, from [00:00:00] to [00:02:18] and its transcript and translation CAR-OTP-2127-3732 and CAR-OTP-2127-3635; CAR-OTP-2065-3192, from [00:00:00] to [00:01:42] and its transcript and translation CAR-OTP-2127-4492 and CAR-OTP-2127-4547; CAR-OTP-2065-3220, from [00:00:00] to [00:04:30] and its transcript and translation CAR-OTP-2127-3752 and CAR-OTP-2127-3752; CAR-OTP-2065-4617, from [00:00:00] to [00:04:02] and its transcript and translation CAR-OTP-2130-1089 and CAR-OTP-2130-1146; CAR-OTP-2065-4902, from [00:00:00] to [00:01:24] and its transcript and translation CAR-OTP-2130-1093 and CAR-OTP-2130-1152; CAR-OTP-2065-4906, from [00:00:00] to [00:00:11] and its transcript and translation CAR-OTP-2130-1095 and CAR-OTP-2130-1155.

⁴¹ CAR-OTP-2065-0400, from [00:00:00] to [00:01:45] and its transcript and translation CAR-OTP-2107-6921 and CAR-OTP-2122-2288.

⁴² CAR-OTP-2065-3700, from [00:00:00] to [00:01:49] and its transcript and translation CAR-OTP-2130-1087 and CAR-OTP-2130-1143.

26. Consequently, and in the given circumstances, the Defence's inability to cross-examine P-1819 is not prejudicial to the Accused to an extent that would justify excluding the Prior Statement from the Chamber's consideration.

27. Moreover, any potential prejudice to the Accused resulting from a prospective conviction on any of the charges on the basis of the Prior Statement will be duly evaluated by the Chamber at the end of the trial during an assessment of its *weight*, as foreseen by the Chamber's adoption of the submission regime.⁴³ In that assessment, P-1819's Prior Statement should be accorded weight, bearing in mind its probative value and indicia of reliability, as well as the fact that it is corroborative of other documentary evidence and testimony. Notably, the Court's acknowledgement that a conviction may not rest to a 'decisive extent' on prior recorded testimony unexamined by an accused, serves as an additional safeguard.⁴⁴

28. The Prior Statement should thus be recognised as formally submitted and the Chamber further consider to what extent a conviction on any of the charges supported by P-1819's evidence is appropriate having regard to *all* relevant evidence at the end of the trial.

⁴³ See ICC-01/14-01/18-631, paras. 52-53.

⁴⁴ See *e.g.*, ICC-01/04-02/06-2666-Red, para. 630 (noting, "prior recorded testimony must not form the sole or decisive basis for the conviction for a particular crime as such"); see also ICC-01/04-01/06-803-tEN, paras. 102-103, and ICC-01/04-01/07-717, paras. 118-119.

IV. CONCLUSION

29. For the foregoing reasons, the Prosecution requests the Chamber recognise as formally submitted the Prior Statement of P-1819 pursuant to rule 68(2)(c).

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 25th day of August 2023
At The Hague, The Netherlands