



**Original: English**

**No. ICC-01/14-01/18  
Date: 6 October 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**

**Third Decision on the Prosecution Requests for Formal Submission of Prior  
Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules**

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

**The Office of the Prosecutor**

Karim A. A. Khan  
Mame Mandiaye Niang  
Kweku Vanderpuye

**Counsel for Alfred Yekatom**

Mylène Dimitri  
Thomas Hannis  
Anta Guissé  
Sarah Bafadhel

**Counsel for Patrice-Edouard Ngaïssona**

Geert-Jan Alexander Knoop  
Richard Omissé-Namkeamaï  
Marie-Hélène Proulx

**Legal Representatives of Victims**

Abdou Dangabo Moussa  
Elisabeth Rabesandratana  
Yaré Fall  
Marie-Edith Douzima-Lawson  
Paolina Massidda  
Dmytro Suprun

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

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

**States Representatives**

*Amicus Curiae*

**REGISTRY**

**Registrar**

Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**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(2) of the Rome Statute (the ‘Statute’) and Rule 68(2)(c) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Third Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules’.

## **I. Procedural history**

1. On 16 October 2020, following an extension request by the Office of the Prosecutor (the ‘Prosecution’),<sup>1</sup> the Chamber amended the deadlines for the submission of applications pursuant to Rule 68 of the Rules<sup>2</sup> and provided initial guidance for the Prosecution’s forthcoming applications under this provision (the ‘Initial Guidance’).<sup>3</sup>
2. On 9 November 2020, the Prosecution filed its Final Witness List, indicating (i) the witnesses it intended to call to testify fully *viva voce*; (ii) the witnesses it intended to call pursuant to Rule 68(3) of the Rules; and (iii) the witnesses whose testimony it sought to introduce pursuant to Rule 68(2) of the Rules.<sup>4</sup>
3. The Prosecution initially filed requests pursuant to Rule 68(3) of the Rules in respect of witnesses P-0975, P-1074, P-2511 and P-2602 (the ‘P-0975 Rule 68(3) Request’, ‘P-1074 Rule 68(3) Request’, ‘P-2511 Rule 68(3) Request’, and ‘P-2602 Rule 68(3) Request’, respectively).<sup>5</sup>

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<sup>1</sup> Prosecution’s Request pursuant to Regulation 35 to vary the Time Limit for the Submission of Applications pursuant to Rule 68, 14 September 2020, ICC-01/14-01/18-652 (the ‘Rule 68 Time Limit Request’). The Chamber further notes that, on 15 September 2020, the Prosecution submitted further observations, in particular, with regard to its intended use of Rule 68(3) of the Rules, *see* Prosecution’s Observations on its intended approach to Rule 68(3) in the presentation of its case, ICC-01/14-01/18-655.

<sup>2</sup> Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631 (the ‘Initial Directions’), para. 33.

<sup>3</sup> Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, ICC-01/14-01/18-685.

<sup>4</sup> Prosecution’s List of Witnesses and Evidence, ICC-01/14-01/18-724 (with confidential Annexes A-C) (corrigendum of Annex C notified on 8 January 2021, ICC-01/14-01/18-724-Conf-AnxC-Corr). Annex A to the Prosecution’s List of Witnesses and Evidence, ICC-01/14-01/18-724-Conf-AnxA, contains the Final Witness List.

<sup>5</sup> Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0975 pursuant to Rule 68(3), 9 April 2021, ICC-01/14-01/18-950-Conf (with confidential Annexes A and B) (public

4. On 15 November 2022, the Prosecution indicated in relation to witness P-2200, that it would file an application pursuant to Rule 68(2)(c) of the Rules as it had confirmed his passing.<sup>6</sup>
5. On 31 January 2023, the Chamber granted a Prosecution request to summons witnesses P-2269 and P-2602.<sup>7</sup>
6. On 10 March 2023, the Prosecution informed the Chamber that witness P-0975 was unavailable and that it intended to file a request pursuant to Rule 68(2)(c) of the Rules.<sup>8</sup>
7. On 16 May 2023, the Registry informed the parties and participants that according to the information received from the authorities tasked with notifying the summons to appear, witnesses P-2602 and P-2269 are deceased.<sup>9</sup>
8. On 29 May 2023, the Chamber directed the Prosecution to file any further requests pursuant to Rule 68(2)(c) of the Rules no later than 7 July 2023.<sup>10</sup>
9. On 1 June 2023, the Prosecution informed the Chamber that given the information received from the Registry, witnesses P-2269 and P-2602 have been removed from its list of remaining witnesses scheduled to testify.<sup>11</sup>

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redacted version notified on the same day, ICC-01/14-01/18-950-Red); Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-1074 pursuant to Rule 68(3), 22 April 2021, ICC-01/14-01/18-963-Conf (with confidential Annexes A-B) (public redacted version notified on 23 April 2023, ICC-01/14-01/18-963-Red); Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2511 pursuant to Rule 68(3), 7 July 2022, ICC-01/14-01/18-1503-Conf (with confidential Annexes A-B); Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2602 pursuant to Rule 68(3), 6 April 2023, ICC-01/14-01/18-1834-Conf (with confidential Annexes A and B).

<sup>6</sup> Email from the Prosecution, 15 November 2022, at 13:38.

<sup>7</sup> Decision on the Prosecution Requests to Summon Witnesses P-2602 and P-2269, ICC-01/14-01/18-1738-Conf (the 'Summons Decision').

<sup>8</sup> 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-01/14-01/18-1739-Conf, 31 January 2023, ICC-01/14-01/18-1791-Conf (with one confidential Annex), para. 6.

<sup>9</sup> Email from the Registry, 16 May 2023, at 16:17.

<sup>10</sup> Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), ICC-01/14-01/18-1892, para. 4.

<sup>11</sup> Email from the Prosecution, 1 June 2023, at 17:49.

10. On 28 June 2023, upon the request of the Prosecution,<sup>12</sup> the Registry provided further information in relation to the attempts to notify the summonses against witnesses P-2602 and P-2269 (the ‘Registry Information’).<sup>13</sup>
11. On 4, 6 and 7 July 2023, respectively, the Prosecution filed requests for the submission of the prior recorded testimonies of witnesses P-2269,<sup>14</sup> P-2602,<sup>15</sup> P-0975<sup>16</sup> and P-2200<sup>17</sup> (the ‘P-2269 Request’, ‘P-2602 Request’, ‘P-0975 Request’ and ‘P-2200 Request’, respectively).
12. On 12 July 2023, the Chamber issued a first decision on the requests by the Prosecution for formal submission of prior recorded testimonies pursuant to Rule 68(2)(c) of the Rules (the ‘First Rule 68(2)(c) Decision’), concerning other witnesses.<sup>18</sup>
13. On 17 July 2023, the Yekatom Defence and the Ngaïssona Defence (collectively, the ‘Defence’) filed their responses to the P-2269 Request,<sup>19</sup> the P-2602 Request<sup>20</sup> and the P-0975 Request<sup>21</sup> (the ‘Yekatom Defence Response to the P-2269 Request’, the ‘Ngaïssona Defence Response to the P-2269 Request’, the ‘Yekatom Defence Response to the P-0975 and P-2602 Requests’, the ‘Ngaïssona

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<sup>12</sup> Email from the Prosecution, 20 June 2023, at 09:29. The Single Judge ordered the Registry to provide observations on this request no later than 28 June 2023, *see* email from the Chamber, 23 June 2023, at 17:40.

<sup>13</sup> Email from the Registry, 28 June 2023, at 16:35.

<sup>14</sup> Prosecution’s Request for Submission of the Prior Recorded Testimony of P-2269 pursuant to Rule 68(2)(c), ICC-01/14-01/18-1957-Conf (with confidential Annex A).

<sup>15</sup> Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2602 pursuant to Rule 68(2)(c), ICC-01/14-01/18-1958-Conf (with confidential Annexes A and B).

<sup>16</sup> Prosecution’s Request for Submission of the Prior Recorded Testimony of P-0975 pursuant to Rule 68(2)(c), ICC-01/14-01/18-1965-Conf (with one confidential Annex).

<sup>17</sup> Prosecution’s Request for Submission of the Prior Recorded Testimony of P-2200 pursuant to Rule 68(2)(c), ICC-01/14-01/18-1967-Conf (with confidential Annexes A-C).

<sup>18</sup> First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules, ICC-01/14-01/18-1975-Conf (public redacted version notified the same day, ICC-01/14-01/18-1975-Red).

<sup>19</sup> Yekatom Defence Response to ‘Prosecution’s Request for Submission of the Prior Recorded Testimony of P-2269 pursuant to Rule 68(2)(c)’, ICC-01/14-01/18-1984-Conf; Defence Response to the ‘Prosecution’s Request for Submission of the Prior Recorded Testimony of P-2269 pursuant to Rule 68(2)(c)’, ICC-01/14-01/18-1986-Conf.

<sup>20</sup> Yekatom Defence Consolidated Response to Prosecution Rule 68(2)(c) Requests for Submission of Prior Recorded Testimony of P-0975 & P-2602, ICC-01/14-01/18-1985-Conf; Defence Response to the ‘Prosecution Request for the Formal Submission of the Prior Recorded Testimony of P-2602 pursuant to Rule 68(2)(c)’, ICC-01/14-01/18-1987-Conf.

<sup>21</sup> Defence Response to the ‘Prosecution’s Request for Submission of the Prior Recorded Testimony of P-0975 pursuant to Rule 68(2)(c)’, ICC-01/14-01/18-1988-Conf.

Defence Response to the P-2602 Request’ and the ‘Ngaïssona Defence Response to the P-0975 Request’, respectively), opposing all requests.

14. On 27 July 2023, the Ngaïssona Defence provided additional information regarding its response to the P-2602 Request.<sup>22</sup>
15. On 1 August 2023, the Ngaïssona Defence opposed the P-2200 Request (the ‘Ngaïssona Defence Response to the P-2200 Request’).<sup>23</sup> It filed an addendum to this response on 14 August 2023.<sup>24</sup>
16. On 11 August 2023, the Chamber issued a second decision on a request pursuant to Rule 68(2)(c) of the Rules.<sup>25</sup>

## II. Analysis

### A. Applicable law

17. The Chamber recalls the applicable law as previously set out.<sup>26</sup>
18. In particular, the Chamber recalls the formal requirements that it has previously considered when assessing the notion of a prior recorded testimony having ‘sufficient indicia of reliability’ (the ‘Formal Requirements’).<sup>27</sup>
19. Each request will be assessed on a case-by-case basis and with due regard to the specific nature and content of each prior recorded testimony.<sup>28</sup> The Chamber will

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<sup>22</sup> Email from the Ngaïssona Defence, 27 July 2023, at 16:22.

<sup>23</sup> Defence Response to the “Prosecution Request for Submission of the Prior Recorded Testimony of P-2200 pursuant to Rule 68(2)(c)”, ICC-01/14-01/18-2013-Conf. The Single Judge had granted the Ngaïssona Defence an extension of time to respond until 1 August 2023, *see* email from the Chamber, 13 July 2023, at 10:30.

<sup>24</sup> Addendum to “Defence Response to the “Prosecution Request for Submission of the Prior Recorded Testimony of P-2200 pursuant to Rule 68(2)(c)”, ICC-01/14-01/18-2013-Conf, filed on 1 August 2023, ICC-01/14-01/18-2025-Conf (the ‘Addendum to the Ngaïssona Defence Response to the P-2200 Request’).

<sup>25</sup> Second Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(c) of the Rules concerning Witness P-1819, ICC-01/14-01/18-2021 (the ‘Second Rule 68(2)(c) Decision’).

<sup>26</sup> First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, paras 17-39.

<sup>27</sup> *See* First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, paras 32-34.

<sup>28</sup> Initial Guidance, ICC-01/14-01/18-685, paras 28, 34.

be guided by the principles regarding Rule 68 of the Rules as set out previously and in its Initial Guidance.<sup>29</sup>

## **B. Analysis of the prior recorded testimonies**

20. The Chamber will now turn to its individual assessment of the requests, and address the participants' submissions, as necessary.

### *1. P-2269*

21. P-2269 was a member of the [REDACTED] who fled to Zongo upon the Seleka's arrival and then joined the Anti-Balaka in Govere.<sup>30</sup> P-2269 was initially listed on the Prosecution's Final Witness List as a witness expected to testify fully live.<sup>31</sup>

### *i. Submissions*

22. The Prosecution submits that it last had direct contact with P-2269 in October 2021 and eventually requested a summons to appear following repeated attempts to contact the witness.<sup>32</sup> It argues that, on the basis of information provided by the Registry,<sup>33</sup> 'the Chamber may appropriately rely on a presumption of [the witness's] death' for the purposes of its request.<sup>34</sup>
23. Further, the Prosecution submits that it could not have anticipated the need for measures under Article 56 of the Statute, since the witness was 39 years old at the time of his interview, did not report any serious health issues or voice any reluctance to cooperate, remained in contact with the Prosecution immediately following his interview and did not express any concerns when informed that he was on the witness list to testify.<sup>35</sup>

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<sup>29</sup> Initial Guidance, ICC-01/14-01/18-685, paras 23-34.

<sup>30</sup> P-2269 Request, ICC-01/14-01/18-1957-Conf, para. 3.

<sup>31</sup> Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 17.

<sup>32</sup> P-2269 Request, ICC-01/14-01/18-1957-Conf, paras 9-14.

<sup>33</sup> See paragraphs 7, 10 above.

<sup>34</sup> P-2269 Request, ICC-01/14-01/18-1957-Conf, para. 18.

<sup>35</sup> P-2269 Request, ICC-01/14-01/18-1957-Conf, para. 19.

24. In addition, the Prosecution argues that (i) the witness's prior recorded testimony is reliable;<sup>36</sup> (ii) it is relevant and probative;<sup>37</sup> and (iii) its introduction 'advances the interests of justice'.<sup>38</sup>
25. The Yekatom Defence opposes the P-2269 Request, arguing that the Prosecution has not established that P-2269 is either dead, presumed dead or otherwise unavailable to testify orally.<sup>39</sup> It further submits that the witness's prior recorded testimony contains unreliable allegations going to the acts and conduct of Mr Yekatom, which militate against its introduction.<sup>40</sup>
26. The Ngaïssona Defence equally opposes the P-2269 Request, arguing that the Prosecution failed to provide sufficient evidence that the witness is unavailable because he is dead or should be presumed dead.<sup>41</sup> It also argues that the witness's prior recorded testimony does not bear sufficient indicia of reliability.<sup>42</sup> Finally, the Ngaïssona Defence submits that the introduction of P-2269's prior recorded testimony would cause undue prejudice to the fair trial rights of Mr Ngaïssona, in light of its discussion of the alleged acts and conduct of Mr Ngaïssona.<sup>43</sup>

*ii. Chamber's determinations*

27. In his statement,<sup>44</sup> the witness describes, *inter alia*, fighting as a [REDACTED]; [REDACTED], leaving [REDACTED] before the Seleka arrived; the arrival of the Seleka in March 2013 and fleeing to Zongo; other people present in Zongo, including Francis and Pappy Bozizé, 'Rombhot', Maxime Mokom ('Mokom'), Sani and Dazoumi Yalo, Abel Denamganai, Hervé Ganazoui and Captain Ngaikosset; [REDACTED] being killed by the Seleka; his return to Bangui with more than 100 men and then [REDACTED]; Mokom telling [REDACTED] 'to fight the Seleka, to help lead the rebellion', [REDACTED] 'to cross with the men and attack the Seleka'; the formation of the Anti-Balaka; his contacts while he

<sup>36</sup> P-2269 Request, ICC-01/14-01/18-1957-Conf, paras 20-22.

<sup>37</sup> P-2269 Request, ICC-01/14-01/18-1957-Conf, paras 23-24.

<sup>38</sup> P-2269 Request, ICC-01/14-01/18-1957-Conf, paras 25-34.

<sup>39</sup> Yekatom Defence Response to the P-2269 Request, ICC-01/14-01/18-1984-Conf, paras 3, 4-39.

<sup>40</sup> Yekatom Defence Response to the P-2269 Request, ICC-01/14-01/18-1984-Conf, paras 3, 40-50.

<sup>41</sup> Ngaïssona Defence Response to the P-2269 Request, ICC-01/14-01/18-1986-Conf, paras 2, 7-18.

<sup>42</sup> Ngaïssona Defence Response to the P-2269 Request, ICC-01/14-01/18-1986-Conf, paras 19-30.

<sup>43</sup> Ngaïssona Defence Response to the P-2269 Request, ICC-01/14-01/18-1986-Conf, paras 3, 31-35.

<sup>44</sup> Statement, CAR-OTP-2111-0336.



was in Zongo, including with [REDACTED]; the organisation of the Anti-Balaka by areas; [REDACTED]; going to Gobere, [REDACTED], and planning the attack on Bangui on 5 December 2013 (the ‘Bangui Attack’); planning coordinated attacks in other regions, all of them to take place on 5 December 2013, including on [REDACTED] Bossangoa (the ‘Bossangoa Attack’); transporting weapons from Bangui [REDACTED], before the Bangui Attack; children under the age of 15 in the Anti-Balaka; the advance from Gobere to Bangui; the Bangui Attack; receiving money from ‘the Coordination’; the Anti-Balaka Coordination and role of ComZones; clashes between the Anti-Balaka and the Seleka in Bossangoa; and the Anti-Balaka not distinguishing between Muslim civilians or Seleka, while the Seleka would consider all Christians as Anti-Balaka.

28. The witness refers to ‘Rombhot’, mentioning him as one of the persons present in Zongo and that he was to take part in the Bangui Attack by taking the route from Mbaïki to Bangui. The witness says [REDACTED] was ‘in communication with ROMBHOT from GOBERE’, that he knew him since 2003 [REDACTED]. According to the witness, ‘ROMBHOT’s men’ attacked Berbérati, Boda and Mambere, though he indicates not knowing if Rombhot was present on those occasions. The witness also states that Mr Yekatom attended the Coordination meetings and ‘was under NGAISSONA, he was a subordinate’.
29. In relation to Mr Ngaïssona, the witness states that soon after Djotodia’s resignation, ‘we’ chose Mr Ngaïssona as National Coordinator; that Mr Ngaïssona helped them to buy food and medicine, and gave them money to buy coffins for those who died; that Mr Ngaïssona advised them ‘to take care of people’s properties’ and was against looting; that Mr Ngaïssona helped them while they were in Gobere, receiving money from him three times when he was in Cameroon; that Mr Ngaïssona was ‘not fully agreeing’ with Mokom who wanted to ‘re-establish the Constitutional order’; that Mr Ngaïssona, as General Coordinator of the Anti-Balaka, was ‘like a head of State or Prime Minister’; that Mr Ngaïssona approved the press releases; that the rules of the Anti-Balaka were created by Mr Ngaïssona ‘after discussing them with all of us’; and that appointments were made only by Mr Ngaïssona.

30. In his statement, the witness mentions a number of annexes (Annex A, CAR-OTP-2111-0362; Annex B, CAR-OTP-2111-0364; Annex C, CAR-OTP-2111-0365; Annex D, CAR-OTP-2111-0367) and further comments on several documents (CAR-OTP-2101-4059; CAR-OTP-2030-0245;<sup>45</sup> CAR-OTP-2030-0243; CAR-OTP-2025-0356; CAR-OTP-2029-0175; CAR-OTP-2001-5466;<sup>46</sup> CAR-OTP-2001-5467;<sup>47</sup> CAR-OTP-2001-6924; and CAR-OTP-2039-0031).
31. The Chamber finds that on the basis of the information available, it is not in a position to conclude whether P-2269 is in fact dead. The Chamber notes in this regard that the witness appeared to have simulated his own death in the past.<sup>48</sup> Further, the Chamber notes that according to the [REDACTED] report provided with the Registry Information, the [REDACTED] who tried to locate the witness for the purposes of executing the summons could not reach any family members of the witness to confirm the witness's death as reported thereafter.<sup>49</sup>
32. However, the Chamber does find that the information shows that P-2269 is unavailable to testify orally within the meaning of Rule 68(2)(c) of the Rules. The Chamber recalls that, when it granted the Prosecution's summons request, it already found at that time that the latter had exhausted all avenues in trying to contact the witness.<sup>50</sup> Further, as pointed out in the Registry Information and attached documentation, the CAR authorities failed to successfully locate the witness and the [REDACTED] attempting to execute the summons concluded that the witness had died, having received information thereon from [REDACTED].<sup>51</sup> In these circumstances, even assuming that the witness might be alive and that he is unwilling to testify, the Chamber finds that his unavailability would not stem from his mere reluctance, but rather obstacles that

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<sup>45</sup> The Chamber notes that the statement also mentions the witness discussing page 0247 of this item.

<sup>46</sup> The Chamber notes that while this ERN is mentioned in the statement, the item can be found at CAR-OTP-2001-5386, at 5466.

<sup>47</sup> The Chamber notes that while this ERN is mentioned in the statement, the item can be found at CAR-OTP-2001-5386, at 5467.

<sup>48</sup> See P-2269 Request, ICC-01/14-01/18-1957-Conf, para. 10.

<sup>49</sup> See email from the Registry, 28 June 2023, at 16:35.

<sup>50</sup> Summons Decision, ICC-01/14-01/18-1738-Conf, para. 15.

<sup>51</sup> See email from the Registry, 28 June 2023, at 16:35.

cannot be reasonably overcome, as it appears that he cannot be located and there is no further information available on his potential whereabouts.

33. Moreover, the Chamber is satisfied that no measures under Article 56 of the Statute could have been anticipated. In this regard, the Chamber notes the Prosecution's submissions on this point and agrees that the Prosecution indeed could not have predicted the witness's – at least at the time – unwillingness to re-establish contact or his otherwise becoming unavailable.<sup>52</sup>
34. The Chamber considers that P-2269's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
35. The Chamber recalls that under Rule 68(2)(c) of the Rules, the fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it. However, it is no absolute bar.<sup>53</sup> The Chamber notes in this regard that P-2269 discusses both accused's alleged acts and conduct, as described above.
36. The Chamber is of the view that the information provided by the witness in relation to the accused's alleged acts and conduct does not create prejudice to an extent which would preclude introduction of the prior recorded testimony. First, at least part of the information concerns events or allegations regarding which other witnesses who testified before the Chamber also provided information on.<sup>54</sup>

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<sup>52</sup> See P-2269 Request, ICC-01/14-01/18-1957-Conf, para. 19.

<sup>53</sup> See First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 38.

<sup>54</sup> See for example **P-2232**: transcripts of hearings, 11 November 2021, ICC-01/14-01/18-T-075-CONF-ENG; 12 November 2021, ICC-01/14-01/18-T-076-CONF-ENG; 16 November 2021, ICC-01/14-01/18-T-077-CONF-ENG; 17 November 2021, ICC-01/14-01/18-T-078-CONF-ENG; 18 November 2021, ICC-01/14-01/18-T-079-CONF-ENG; **P-1521**: transcripts of hearings, 29 November 2021, ICC-01/14-01/18-T-080-CONF-ENG; 30 November 2021, ICC-01/14-01/18-T-081-CONF-ENG; 2 December 2021, ICC-01/14-01/18-T-082-CONF-ENG; 3 December 2021, ICC-01/14-01/18-T-083-CONF-ENG; 6 December 2021, ICC-01/14-01/18-T-084-CONF-ENG; **P-0446**: transcripts of hearings, 21 February 2022, ICC-01/14-01/18-T-096-CONF-ENG; 22 February 2022, ICC-01/14-01/18-T-097-CONF-ENG; 23 February 2022, ICC-01/14-01/18-T-098-CONF-ENG; **P-2673**: statement, CAR-OTP-2127-6435; transcripts of hearings, 3 June 2021, ICC-01/14-01/18-T-041-CONF-ENG; 4 June 2021, ICC-01/14-01/18-T-042-CONF-ENG; **P-2251**: statement, CAR-OTP-2093-0045; transcripts of hearings, 7 June 2021, ICC-01/14-01/18-T-043-CONF-ENG; 8 June 2021, ICC-01/14-01/18-T-044-CONF-ENG; **P-0884**: transcripts of hearings, 15 July 2021, ICC-01/14-01/18-T-054-CONF-ENG; 16 July 2021, ICC-01/14-01/18-T-055-CONF-ENG; 19 July 2021, ICC-01/14-01/18-T-056-CONF-ENG; 22 July 2021, ICC-01/14-01/18-T-058-CONF-ENG; **P-0966**: statement, CAR-OTP-2031-0241; transcripts of hearings, 4 April 2022, ICC-01/14-01/18-T-116-CONF-ENG; 5 April 2022, ICC-01/14-01/18-T-117-ENG; 6 April 2022, ICC-01/14-01/18-T-118-CONF-ENG; and **P-0889**: transcripts of hearings, 9 March 2022, ICC-01/14-01/18-T-108-CONF-ENG; 14 March 2022, ICC-01/14-01/18-T-109-CONF-ENG.

Second, the information regarding Mr Yekatom is limited as the witness clarifies he does not even know if Mr Yekatom took part in the attacks which his group allegedly participated in. The remainder of the information concerning Mr Yekatom is either corroborative and/or cumulative to the evidence on the record, as mentioned, or will, in any event, not solely be relied upon for the purposes of the Chamber's findings. Finally, the Chamber will take into account the fact that P-2269 was not available for examination by the Defence and the rest of the participants, notably in relation to evidence that might be considered as unique. As regards the alleged internal and external inconsistencies of the witness's statement, the Chamber finds that they are not such that they would preclude the introduction of the statement, and will, in any event, be taken into account by the Chamber when assessing its weight and probative value.

37. In light of the above, the Chamber considers that the introduction of P-2269's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction.
38. Accordingly, the Chamber grants the introduction of P-2269's statement<sup>55</sup> and associated exhibits pursuant to Rule 68(2)(c) of the Rules, with the following exceptions: items CAR-OTP-2111-0365, CAR-OTP-2101-4059, CAR-OTP-2030-0243, CAR-OTP-2030-0245, CAR-OTP-2025-0356, CAR-OTP-2029-0175, CAR-OTP-2001-6924, CAR-OTP-2039-0031 and CAR-OTP-2001-5386 which have already been recognised as submitted and therefore the Chamber need not rule on them again.<sup>56</sup>

## 2. P-2602

39. P-2602 was [REDACTED], and one of the Anti-Balaka [REDACTED] in Gobere in 2013.<sup>57</sup> P-2602 was initially listed on the Prosecution's Final Witness List as a witness expected to testify pursuant to Rule 68(3) of the Rules.<sup>58</sup>

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<sup>55</sup> Statement, CAR-OTP-2111-0336; CAR-OTP-2118-2197 (Translation).

<sup>56</sup> Annex A (CAR-OTP-2111-0362), Annex B (CAR-OTP-2111-0364) and Annex D (CAR-OTP-2111-0367).

<sup>57</sup> P-2602 Request, ICC-01/14-01/18-1958-Conf, para. 3.

<sup>58</sup> Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 19.

*i. Submissions*

40. The Prosecution submits that it was last able to successfully contact P-2602 on 23 April 2021, as the witness withdrew his cooperation and evaded further contact since then. The Prosecution refers to the efforts undertaken to try to contact him,<sup>59</sup> but according to the information reported by the Registry,<sup>60</sup> P-2602 died on [REDACTED] 2023 as a result of illness. In this regard, the Prosecution argues that since the Registry indicated that the issuance of a death certificate by the CAR authorities would require further verification, the Chamber may appropriately rely on a presumption of his death for the purposes of this application.<sup>61</sup>
41. Further, the Prosecution submits that it could not have anticipated the need for measures under Article 56 of the Statute, since the witness was [REDACTED] years old at the time of his interview in October 2019 and did not voice any reluctance to cooperate or report any serious health issues, neither then nor in his subsequent contacts. The Prosecution also contends that since the execution of the summons failed, measures under Article 56 of the Statute would not have been feasible.<sup>62</sup>
42. In addition, the Prosecution argues that (i) the witness's prior recorded testimony is reliable;<sup>63</sup> (ii) it is relevant and probative;<sup>64</sup> and (iii) its introduction 'advances the interests of justice'.<sup>65</sup>
43. The Yekatom Defence opposes the P-2602 Request, arguing that the information provided by the Registry is insufficient to sustain a finding that the witness is dead or presumed dead, and that the Prosecution does not appear to have

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<sup>59</sup> See also Prosecution's Request under Articles 64(6)(b) and 93 of the Rome Statute to Summon a Witness, 8 December 2022, ICC-01/14-01/18-1690-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-1690-Conf-Red; lesser redacted version notified on 9 February 2023, ICC-01/14-01/18-1690-Conf-Red2), paras 16-19.

<sup>60</sup> See emails from the Registry, 16 May 2023, at 16:17 and 28 June 2023, at 16:35.

<sup>61</sup> P-2602 Request, ICC-01/14-01/18-1958-Conf, paras 10-15.

<sup>62</sup> P-2602 Request, ICC-01/14-01/18-1958-Conf, paras 16-18.

<sup>63</sup> P-2602 Request, ICC-01/14-01/18-1958-Conf, paras 19-22.

<sup>64</sup> P-2602 Request, ICC-01/14-01/18-1958-Conf, paras 24-27.

<sup>65</sup> P-2602 Request, ICC-01/14-01/18-1958-Conf, paras 28-40.

attempted to contact relevant individuals to complete its investigation.<sup>66</sup> It further submits that it appears that P-2602 is ‘simply unwilling’ to testify and thus not ‘unavailable’ within the meaning of the rule, that the summons was not ultimately served or executed ‘in any meaningful sense’ as the investigative inquiries on the witness’s death are not complete, and that as such the Prosecution did not exhaust ‘all reasonable avenues’ to secure his testimony.<sup>67</sup>

44. The Ngaïssona Defence similarly submits that the Prosecution failed to provide sufficient evidence that P-2602 is dead or presumed dead, and that his unwillingness to testify should not be considered as ‘unavailability’ for the purposes of the rule. It also indicates that it came across information ‘pointing in the direction of the witness still being alive’.<sup>68</sup> In addition, the Ngaïssona Defence argues that the introduction of P-2602’s prior recorded statement is unduly prejudicial, as it touches upon core issues of the case, is unique and uncorroborated in many aspects, and because his evidence could not be tested with other witnesses in court.<sup>69</sup>

*ii. Chamber’s determinations*

45. In light of the P-2602 Request, the Chamber considers the P-2602 Rule 68(3) Request moot.
46. In his interviews,<sup>70</sup> the witness describes, *inter alia*, fighting [REDACTED], his background and [REDACTED] career, including [REDACTED]; fighting with [REDACTED] FACA members against the Seleka in [REDACTED] at the beginning of the crisis, and [REDACTED]; the [REDACTED] self-defence

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<sup>66</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, paras 6-17.

<sup>67</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, paras 18-19, 29-33.

<sup>68</sup> Ngaïssona Defence Response to the P-2602 Request, ICC-01/14-01/18-1987-Conf, paras 2, 8-18. *See also* email from the Ngaïssona Defence, 27 July 2023, at 16:22.

<sup>69</sup> Ngaïssona Defence Response to the P-2602 Request, ICC-01/14-01/18-1987-Conf, paras 19-33.

<sup>70</sup> CAR-OTP-2118-9500; CAR-OTP-2118-9525; CAR-OTP-2118-9545; CAR-OTP-2118-9560; CAR-OTP-2118-9579; CAR-OTP-2118-9598; CAR-OTP-2118-9617; CAR-OTP-2118-9641; CAR-OTP-2118-9664; CAR-OTP-2118-9683; CAR-OTP-2118-9705; CAR-OTP-2118-9714; CAR-OTP-2118-9737; CAR-OTP-2118-9764; CAR-OTP-2118-9785; CAR-OTP-2118-9807 (French translation available at CAR-OTP-2122-5161; CAR-OTP-2122-5189; CAR-OTP-2122-5211; CAR-OTP-2122-5228; CAR-OTP-2122-5250; CAR-OTP-2122-5271; CAR-OTP-2122-5293; CAR-OTP-2122-5320; CAR-OTP-2122-5346; CAR-OTP-2122-5368; CAR-OTP-2122-5393; CAR-OTP-2122-5404; CAR-OTP-2122-5430; CAR-OTP-2122-5460; CAR-OTP-2122-5483; CAR-OTP-2122-5507).

group that was based in Ouham [REDACTED]; the formation of the Gobere Anti-Balaka group, including the recruiting and training of people coming from the surrounding villages, its structure and leadership; [REDACTED]; [REDACTED]; [REDACTED], where the Seleka were based and most of the Muslim population fled to; the witness seeing Muslim civilians bearing guns, and explaining that they could not remain in their neighbourhoods, as they would otherwise be killed by the ‘angry’ civilians who joined the Anti-Balaka; the witness claiming that the mosque and buildings in Bossangoa were destroyed by ‘fake’ Anti-Balaka elements and the local population who was angry at the Seleka.

47. Furthermore, the witness describes [REDACTED] information from [REDACTED] Anti-Balaka leaders who were carrying out the Bangui Attack; [REDACTED] telephone communication with Mokom, among others; his role [REDACTED] after the Bangui Attack, notably with regard to [REDACTED] the lifting of barricades; the issuing of Anti-Balaka ID badges in Bossangoa and in Bangui; the witness not participating in the national coordination of the Anti-Balaka in Bangui because he was [REDACTED] not a ‘politician’, and not knowing anything about the Brazzaville talks; and the witness and others leaving the Anti-Balaka movement because they did not agree with it becoming political.
48. In addition, the witness indicates that he did not know ‘anything about [Mr Ngaïssona] as the leader of the Anti-Balaka’, as he was only acquainted with the Gobere leadership. He states that he never participated in a meeting where Mr Ngaïssona was ‘recognised’ as the ‘Coordinator’ and was ‘surprised’ when he heard that he had become so. The witness also indicates not receiving ‘anything from the coordination’, despite some individuals saying that Mr Ngaïssona provided support to ComZones; not knowing anything about Mr Ngaïssona issuing a press release<sup>71</sup> on 23 January 2014 in which he allegedly announced the leadership of the Anti-Balaka, or anything about the PCUD established by Mr Ngaïssona.<sup>72</sup>

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<sup>71</sup> CAR-OTP-2001-3372.

<sup>72</sup> CAR-OTP-2118-9764, at 9769-72, 9775; CAR-OTP-2118-9785, at 9786, 9788, 9792.

49. As to Mr Yekatom, the witness states that he knew him to be the ‘chief corporal’ at the ‘chief of staff office’ back in 2007, but otherwise not knowing ‘anything about him’. He indicates that he and Mr Yekatom were not in communication during the crisis and that while he knew that FACA elements would gather elements and form self-defence groups, he did not know that Mr Yekatom had personally formed a group in his location. The witness also states that he does not know anything about a document<sup>73</sup> allegedly signed by Mr Yekatom and others on 8 May 2014 following a meeting, [REDACTED].<sup>74</sup>
50. In his interviews, the witness comments on an annotated map and two aerial images.<sup>75</sup> In addition, he discusses an investigative report by ‘FIDH’,<sup>76</sup> a document titled ‘*COMPOSITION DU BUREAU EXÉCUTIF NATIONAL DE LCADR*’,<sup>77</sup> and the aforementioned document allegedly signed by Mr Yekatom, titled ‘*Procès verbal de la réunion extraordinaire conjointe de concertation du bureau exécutif des AntiBalaka*’, which was already recognised as formally submitted.<sup>78</sup> Furthermore, the Chamber notes that the witness discusses other documents which the Prosecution did not seek to submit, namely (i) a second map consisting of a ‘closer-up map of OUHAM’ which is not identifiable;<sup>79</sup> (ii) two reports from Human Rights Watch, with ERNs CAR-OTP-2001-2056<sup>80</sup> (which was already recognised as formally submitted) and CAR-OTP-2005-0205;<sup>81</sup> and (iii) two pictures, with ERNs CAR-OTP-2061-4195 and CAR-OTP-2082-0796<sup>82</sup> (which were already recognised as formally submitted by the Chamber).<sup>83</sup> Lastly, it observes that the Prosecution requests the submission of items which were also

<sup>73</sup> The Chamber notes that while this document is mentioned with ERN CAR-OTP-2075-0763 in the statement, the item can be found at and is a duplicate of CAR-OTP-2079-0050.

<sup>74</sup> CAR-OTP-2118-9764, at 9780-82; CAR-OTP-2118-9785, at 9788-90.

<sup>75</sup> Annex A (CAR-OTP-2120-0261); Annex B (CAR-OTP-2120-0262); and Annex C (CAR-OTP-2120-0263).

<sup>76</sup> CAR-OTP-2001-6437. The Chamber notes that this item is a duplicate of CAR-OTP-2001-2769, which was already recognised as formally submitted.

<sup>77</sup> CAR-OTP-2101-0214.

<sup>78</sup> CAR-OTP-2079-0050.

<sup>79</sup> See CAR-OTP-2118-9525, at 9526, line 8 to 9527, line 51.

<sup>80</sup> The Chamber notes that while this ERN is mentioned in the statement, the item can be found at CAR-OTP-2001-2043.

<sup>81</sup> See CAR-OTP-2118-9714, at 9721; CAR-OTP-2118-9785, at 9804. The Chamber notes that while this ERN is mentioned in the statement, the item can be found at CAR-OTP-2005-0197.

<sup>82</sup> The Chamber notes that while this ERN is mentioned in the statement, the item can be found at CAR-OTP-2082-0793.

<sup>83</sup> See CAR-OTP-2118-9807, at 9822.



already recognised as formally submitted by the Chamber, and notes that it need not rule on them again.<sup>84</sup>

51. The Chamber finds that on the basis of the information available, it is not in a position to conclude whether P-2602 is in fact dead. The Registry Information in that regard is apparently based on information provided by the '[REDACTED]' in Bossangoa and 'confirmed' by the witness's wife. However, in addition to the Defence's submissions on the lack of 'evidence' concerning the witness's purported death,<sup>85</sup> the Chamber notes the '*rapport d'enquête*' provided by the Ngaïssona Defence, which states that, according to P-2602's brother, the witness is not dead, but rather '*en brousse [...] [REDACTED] [...]. Le dernier message reçu de la part de son frère date de la semaine dernière [mid-July 2023]*'.<sup>86</sup>
52. However, the Chamber does find that the information shows that P-2602 is unavailable within the meaning of Rule 68(2)(c) of the Rules. The Chamber recalls that, when it granted the Prosecution's summons request, it already found at that time that the latter exhausted all avenues in trying to contact the witness.<sup>86</sup> In that context, according to the Prosecution, the CAR authorities informed it in October and November 2022 that P-2602 was no longer an active member of the [REDACTED], 'making it equally impossible to locate and/or contact the witness through the [REDACTED]'.<sup>87</sup>
53. The Yekatom Defence argues that the 'actual execution of the summons remains a potential "further effort to contact" P-2602 that is yet to be effectively exhausted'.<sup>88</sup> However, the Chamber disagrees. According to the available information, the CAR authorities failed to successfully locate the witness, both prior to and after the summons request was issued. Furthermore, if the witness were in the bush [REDACTED], as reported by the Ngaïssona Defence, the

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<sup>84</sup> CAR-OTP-2068-0118; CAR-OTP-2030-0232; CAR-OTP-2029-0175; CAR-OTP-2039-0020; CAR-OTP-2001-3372; CAR-OTP-2030-0445; CAR-OTP-2001-6924; CAR-OTP-2088-2204; CAR-OTP-2081-1770; CAR-OTP-2061-4172; CAR-OTP-2061-4174; and CAR-OTP-2061-4176.

<sup>85</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, paras 8-15; Ngaïssona Defence Response to the P-2602 Request, ICC-01/14-01/18-1987-Conf, paras 12-16.

<sup>86</sup> Summons Decision, ICC-01/14-01/18-1738-Conf, para. 11.

<sup>87</sup> P-2602 Request, ICC-01/14-01/18-1958-Conf, para. 12.

<sup>88</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, para. 31.

execution of the summons would be unlikely at this point.<sup>89</sup> In these circumstances, even assuming that the witness might be alive and that he is unwilling to testify, the Chamber finds that his unavailability would not stem from his mere reluctance, but rather obstacles that cannot be reasonably overcome.

54. Moreover, the Chamber is satisfied that no measures under Article 56 of the Statute could have been anticipated. In this regard, the Chamber notes the Prosecution's submissions on this point and agrees that the latter indeed could not have predicted the witness's – at least at the time – unwillingness to re-establish contact. It also agrees that, given the unsuccessful execution of the summons, evidence preservation would not have been feasible.<sup>90</sup>
55. The Chamber considers that P-2602's transcribed statement shows sufficient indicia or reliability. Notably, it was obtained by fulfilling the Formal Requirements.
56. As to references to the acts and conduct of the accused, the Chamber notes that the witness briefly mentions Mr Ngaïssona and Mr Yekatom, mostly to point out that he does not know 'anything' about them in their respective alleged roles during the crisis.
57. The Chamber further takes note of the Ngaïssona Defence's submissions that P-2602's evidence is unique with regard to the 'Gobere group', [REDACTED]. Nonetheless, it observes that this is but one of the many topics touched upon by the witness in his interview, and that other witnesses – some of whom were also in Gobere – provided evidence and were examined in court concerning the relationship between the Anti-Balaka and the 'Gobere group'.<sup>91</sup> Furthermore, the

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<sup>89</sup> See also Thirteenth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, 25 August 2023, ICC-01/14-01/18-2063-Conf (with one confidential annex), para. 8.

<sup>90</sup> See P-2602 Request, ICC-01/14-01/18-1958-Conf, paras 16-18.

<sup>91</sup> See **P-0966**: transcripts of hearings, 4 April 2022, ICC-01/14-01/18-T-116-CONF-ENG; 5 April 2022, ICC-01/14-01/18-T-117-CONF-ENG; 6 April 2022, ICC-01/14-01/18-T-118-CONF-ENG; 7 April 2022, ICC-01/14-01/18-T-119-CONF-ENG; **P-1521**: transcripts of hearings, 30 November 2021, ICC-01/14-01/18-T-081-CONF-ENG; 2 December 2021, ICC-01/14-01/18-T-082-CONF-ENG; **P-2232**: transcripts of hearings, 12 November 2021, ICC-01/14-01/18-T-076-CONF-ENG; 17 November 2021, ICC-01/14-01/18-T-078-CONF-ENG; **P-2251**: transcripts of hearings, 7 June 2021, ICC-01/14-01/18-

Chamber observes that the Ngaïssona Defence currently expects to call [REDACTED] FACA member to testify about his experience in Gobere.<sup>92</sup>

58. The Chamber also notes that the extent to which P-2602's evidence is corroborated by other witnesses rather concerns issues of reliability and probative weight, which will be assessed during its judgment deliberations. Similarly, the Chamber will take into account the fact that P-2602 was not available for examination by the Defence and the rest of participants, notably in relation to evidence that might be considered as unique. As to the alleged internal inconsistencies of the transcribed statement pointed out by the Ngaïssona Defence, the Chamber finds that these are minimal and do not preclude the introduction of the witness's evidence.
59. In light of the above, the Chamber considers that the introduction of P-2602's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction.
60. Accordingly, the Chamber grants the introduction of P-2602's prior recorded testimony<sup>93</sup> and associated items<sup>94</sup> pursuant to Rule 68(2)(c) of the Rules.

### 3. P-0975

61. P-0975 was an Anti-Balaka member who joined at Gobere and later became the Anti-Balaka [REDACTED].<sup>95</sup> P-0975 was initially listed on the Prosecution's Final Witness List as a witness expected to testify pursuant to Rule 68(3) of the Rules.<sup>96</sup>

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T-043-CONF-ENG; 8 June 2021, ICC-01/14-01/18-T-044-CONF-ENG; **P-0884**: 16 July 2021, ICC-01/14-01/18-T-055-CONF-ENG.

<sup>92</sup> See **D30-4891**: Preliminary List of Witnesses, ICC-01/14-01/18-2055-Conf-Anx1, p. 17, entry 25.

<sup>93</sup> CAR-OTP-2118-9500; CAR-OTP-2118-9525; CAR-OTP-2118-9545; CAR-OTP-2118-9560; CAR-OTP-2118-9579; CAR-OTP-2118-9598; CAR-OTP-2118-9617; CAR-OTP-2118-9641; CAR-OTP-2118-9664; CAR-OTP-2118-9683; CAR-OTP-2118-9705; CAR-OTP-2118-9714; CAR-OTP-2118-9737; CAR-OTP-2118-9764; CAR-OTP-2118-9785; and CAR-OTP-2118-9807.

<sup>94</sup> Annex A (CAR-OTP-2120-0261); Annex B (CAR-OTP-2120-0262); Annex C (CAR-OTP-2120-0263); CAR-OTP-2101-0214; and CAR-OTP-2005-0197.

<sup>95</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, para. 24.

<sup>96</sup> Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 18.

*i. Submissions*

62. The Prosecution submits that it has not been able to communicate meaningfully with P-0975 since 2021. It submits that P-0975 first expressed his concern regarding his availability to testify in February 2021 and, following limited and interrupted contact with him, it has not been able to speak directly with him again.<sup>97</sup> The Prosecution submits that several subsequent efforts to contact him have been unsuccessful and it appears that he no longer uses the phone number used by the Prosecution to contact him.<sup>98</sup> Additionally, the Prosecution describes the several efforts it has made, together with the assistance of the field office in Bangui through the local authorities, to locate P-0975 and argues that it has exercised reasonable diligence in this regard.<sup>99</sup> The Prosecution submits that P-0975's whereabouts are unascertainable and, given the circumstances, there is 'no reasonable likelihood' that P-0975 can be contacted, located, or summonsed to secure his testimony.<sup>100</sup>
63. Further, the Prosecution submits that it could not have anticipated the need for measures under Article 56 of the Statute, since the witness was [REDACTED] years old at the time of his interview and did not report any serious health issues.<sup>101</sup> It further submits that although P-0975 became increasingly harder to reach over the years, the medical treatment received by the witness coupled with the questionable information received from the witness's brother did not trigger the need for these measures. It adds that, in any event, the application of any measures under Article 56 of the Statute would not have been feasible since the witness's location could not be determined and no reliable communication with him could be established.<sup>102</sup>

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<sup>97</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, para. 9.

<sup>98</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, paras 9-11.

<sup>99</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, paras 12, 15-16.

<sup>100</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, paras 13-16.

<sup>101</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, para. 17.

<sup>102</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, para. 18.

64. In addition, the Prosecution argues that the (i) the witness's prior recorded testimony is reliable;<sup>103</sup> (ii) it is relevant and probative;<sup>104</sup> and (iii) its introduction 'advances the interests of justice'.<sup>105</sup>
65. The Yekatom Defence opposes the P-0975 Request, arguing that the Prosecution has not established that P-0975 is unavailable to testify orally. In particular, it submits that (i) the Prosecution failed to request a summons in respect of P-0975, despite being aware of his whereabouts since June 2021;<sup>106</sup> (ii) the Prosecution's investigation report dated 12 July 2023 – setting out the efforts made to secure P-0975's testimony (the 'P-0975 Investigation Report')<sup>107</sup> – illustrates that the Prosecution did not exhaust all reasonable measures to secure his attendance;<sup>108</sup> and was therefore negligent.<sup>109</sup> Had the Prosecution contacted the local authorities in June 2021, there was a high likelihood that P-0975 would have been able to locate him, establish reliable communication, and possibly apply measures pursuant to Article 56 of the Statute.<sup>110</sup> It adds that the Prosecution should be barred from seeking to rely on that provision where its failure to secure a witness's testimony is based in substantial part on its own negligence.<sup>111</sup> It also submits that measures under Article 56 of the Statute could have been anticipated in respect of P-0975 given, *inter alia*, the information concerning his 'prolonged' medical treatments; and should have been anticipated as soon as the Prosecution received reliable information about his whereabouts and concerns expressed by the witness about his availability to testify.<sup>112</sup>

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<sup>103</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, paras 19-21.

<sup>104</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, paras 22-24.

<sup>105</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, paras 25-29.

<sup>106</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, para. 20.

<sup>107</sup> CAR-OTP-00001687.

<sup>108</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, paras 21-26.

<sup>109</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, paras 20-28.

<sup>110</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, para. 27.

<sup>111</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, para. 28.

<sup>112</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, paras 34-37.

66. The Ngaïssona Defence submits that the Prosecution has not sufficiently demonstrated P-0975's unavailability, *inter alia*, because (i) there is no contemporaneous documentation provided by the Prosecution in support of the P-0975 Request;<sup>113</sup> (ii) it is not possible to verify the accuracy of the information provided by the Prosecution as to the efforts made by it to locate the witness or the information provided to it by others regarding the witness's whereabouts;<sup>114</sup> and (iii) the provision of the P-0975 Investigation Report summarising the steps taken by the Prosecution to contact the witness upon request by the Yekatom Defence does not suffice to show unavailability pursuant to Rule 68(2)(c) of the Rules, as the underlying material is not available to the Defence.<sup>115</sup> It adds that further efforts and verifications should have been made to locate the witness in order to secure his testimony.<sup>116</sup> It, therefore, requests the Chamber to reject the P-0975 Request, without prejudice to resubmitting it at a later stage once the 'missing contemporaneous documentation becomes available'.<sup>117</sup>

*ii. Chamber's determinations*

67. In light of the P-0975 Request, the Chamber considers the P-0975 Rule 68(3) Request moot.
68. In his statement,<sup>118</sup> the witness describes, *inter alia*, his background and the exactions committed by the Seleka in [REDACTED]; men gathering in Gobere to prepare *gris-gris* and revolt against the Seleka; spending two months in Gobere receiving training on self-defence and use of weapons from FACA members who had fled into the bush; the involvement of Andjilo and FACA member Dedane in commanding the Anti-Balaka at Gobere; the Anti-Balaka plan to free villages from the Seleka, control the provinces and then advance to Bangui; establishment of Anti-Balaka control in the provinces after liberating them; the Anti-Balaka gathering behind the Boy Rabe hill and spending two weeks there planning the revolt; the 5 December attack and setting up of an Anti-Balaka base at

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<sup>113</sup> Ngaïssona Defence Response to the P-0975 Request, ICC-01/14-01/18-1988-Conf, paras 1, 8.

<sup>114</sup> Ngaïssona Defence Response to the P-0975 Request, ICC-01/14-01/18-1988-Conf, paras 9-13.

<sup>115</sup> Ngaïssona Defence Response to the P-0975 Request, ICC-01/14-01/18-1988-Conf, para. 14.

<sup>116</sup> Ngaïssona Defence Response to the P-0975 Request, ICC-01/14-01/18-1988-Conf, para. 15; *see also* para. 4.

<sup>117</sup> Ngaïssona Defence Response to the P-0975 Request, ICC-01/14-01/18-1988-Conf, paras 15-16.

<sup>118</sup> Statement, CAR-OTP-2033-7885.

[REDACTED]; fake Anti-Balaka; the structure and organisation of the Anti-Balaka in Bangui; and not being involved in Anti-Balaka operations but holding [REDACTED].

69. In respect of Mr Ngaïssona, P-0975 states not hearing about him prior to arriving in Bangui; that Mokom, Bozizé and Mr Ngaïssona are all relatives; Mr Ngaïssona and the others would send their own people of Gbaya ethnicity for ministerial positions in the Transitional Government; Mokom and Mr Ngaïssona fought about who should be coordinator; Mr Ngaïssona giving money to Anti-Balaka members so that they would not commit crimes and getting arrested ComZones released; and Mr Ngaïssona convening Anti-Balaka meetings with Section Chiefs, Battalion Chiefs and ComZones. P-0975 does not mention Mr Yekatom.
70. In his statement, the witness comments on item CAR-OTP-2006-1210, which has already been recognised as formally submitted.<sup>119</sup>
71. Before turning to its findings on the unavailability of the witness, the Chamber will first address the Ngaïssona Defence's submissions concerning the insufficiency of the P-0975 Investigation Report. It submits that there is no contemporaneous documentation substantiating the attempts made by the Prosecution to reach P-0975 and that the P-0975 Investigation Report, a *post facto* report summarising such attempts, is insufficient to demonstrate unavailability.<sup>120</sup>
72. In this regard, the Chamber notes that the statutory framework of the Court does not specify the standard of documentation required for a Chamber to assess the unavailability of a witness pursuant to Rule 68(2)(c) of the Rules. However, the Chamber notes that it has previously found an investigation report prepared by the Prosecution sufficient for the purpose of this assessment.<sup>121</sup> Given the detailed nature of the P-0975 Investigation Report, the Chamber does not consider it necessary to require further documentation from the Prosecution, contemporaneous or otherwise, to further demonstrate its efforts to secure the

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<sup>119</sup> Corrected version of 'Sixth Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness P-0808', 20 September 2021 (corrected version notified on 10 December 2021), ICC-01/14-01/18-1114-Conf-Corr, p. 10; Transcript of hearing, 1 November 2021, ICC-01/14-01/18-T-069-CONF-ENG, p. 23.

<sup>120</sup> Ngaïssona Defence Response to the P-0975 Request, ICC-01/14-01/18-1988-Conf, paras 1, 8, 14-15.

<sup>121</sup> See for example Second Rule 68(2)(c) Decision, ICC-01/14-01/18-2021, para. 11.

witness's testimony. The Chamber has no reason to doubt that the information recorded therein was done so accurately and in good faith. Accordingly, the Chamber does not consider it appropriate to reject the P-0975 Request solely on the basis of the purported lack of contemporaneous documents, as argued by Ngaïssona Defence.

73. Further, in the interest of expediency and efficiency, the Chamber considers that no further submissions from the Ngaïssona Defence are necessary to substantiate their arguments concerning the P-0975 Request. In this regard, in its assessment below, the Chamber has due regard to the Ngaïssona Defence's opposition to introducing P-0975's testimony pursuant to Rule 68(2)(c) of the Rules.
74. Having reviewed the P-0975 Investigation Report in light of the submissions by the parties, the Chamber is satisfied that P-0975 is unavailable within the meaning of Rule 68(2)(c) of the Rules as he cannot be located after numerous attempts and efforts.<sup>122</sup>
75. In this regard, the Chamber is persuaded that the Prosecution has not been able to meaningfully communicate with P-0975 since at least February 2021. The Chamber notes that, following its exchange with P-0975 in February 2021, the witness was reported to have received medical treatment in April 2021 that restricted his ability to communicate with the Prosecution; he subsequently moved to a region where the Prosecution was not able to reach him either via numerous phone calls or locate him with the assistance of the local authorities.<sup>123</sup> The Chamber also notes the Prosecution's additional attempts from May 2022 to December 2022 to analyse leads to link P-0975 to other phone numbers used by associates or family members that could be used to contact him, without any success.<sup>124</sup> Finally, the Chamber notes that, as per the information provided by the Prosecution, the witness's current whereabouts are also unknown.

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<sup>122</sup> First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 27.

<sup>123</sup> P-0975 Request, ICC-01/14-01/18-1965-Conf, paras 9-12.

<sup>124</sup> P-0975 Investigation Report, CAR-OTP-00001687-R01, at 000003-04.



76. The Chamber notes the Defence's arguments concerning the Prosecution's alleged lack of diligence in respect of P-0975.<sup>125</sup> The Chamber notes that P-0975 was reported to have received medical treatment and moved to another location soon after expressing 'some concerns about his availability to testify as he moved from market to market, did not have access to a network, and he did not know where he would be when required to testify';<sup>126</sup> the witness has since been unreachable. Further, as noted by the Yekatom Defence, the Chamber indeed has not received explicit information as to why the Prosecution did not contact the local authorities at least in early 2022 during a mission to Bangui.<sup>127</sup>
77. However, the Chamber finds that the Prosecution could not have effectively sought the cooperation of local authorities in locating the witness past June 2021 and/or requested summons against him or other forms of cooperation from the CAR authorities. In this respect, the Chamber has regard to the security situation in the region where the witness was suspected to be at the time, the remoteness of the location, the lack of contact with the witness or his associates, the lack of confirmed information about his whereabouts, and the limited reach of the local authorities to the village where he was suspected to be.<sup>128</sup>
78. The Chamber notes that, in the beginning of 2023, the Prosecution's field office in Bangui reported an 'absence of telephone network', difficult roads and 'volatile security situation' in the region where the witness was suspected to be at the time. In particular, the Chamber notes that the Prosecution was informed in June 2023 that the village that the witness was suspected to be at was shaken by the military and political crisis in 2020, triggering the departure of half of its population to other localities due to the volatile security situation; and that this village had no phone network. The Chamber further notes that, in the same month, the Prosecution was subsequently informed that the chief of this village confirmed that a person who had suffered a traffic accident had come to the village but that

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<sup>125</sup> Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, paras 21-26; Ngaïssona Defence Response to the P-0975 Request, ICC-01/14-01/18-1988-Conf, para. 15.

<sup>126</sup> P-0975 Investigation Report, CAR-OTP-00001687-R01, at 000002.

<sup>127</sup> P-0975 Investigation Report, CAR-OTP-00001687-R01, at 000003.

<sup>128</sup> See also P-0975 Investigation Report, CAR-OTP-00001687-R01, at 000004-000005.

this person left a year ago; and that he did not know anyone bearing the witness's last name as being present in the village.<sup>129</sup>

79. In light of the above and having regard to the present stage of the proceedings, the Chamber is also of the view that the challenges associated with securing this witness's testimony cannot be overcome within a reasonable time without unduly delaying the trial proceedings.<sup>130</sup>
80. Turning to whether measures under Article 56 of the Statute could have been anticipated, the Chamber notes that P-0975 first expressed concerns about his availability to testify in February 2021.<sup>131</sup> The Chamber is satisfied that, at least as of April 2021 when the Prosecution received information about the witness reportedly undergoing medical treatment resulting from an accident,<sup>132</sup> measures under Article 56 of the Statute could have been anticipated. However, having regard to the numerous unsuccessful attempts to reach P-0975 via telephone in the following year,<sup>133</sup> the Chamber is persuaded that even if such measures could have been anticipated, there was no reasonable prospect of applying them. In this regard, the Chamber recalls that no reliable contact was established with the witness past July 2021 and the witness's actual whereabouts at the time and since then have been unknown. In this respect, the Chamber finds that measures under Article 56 of the Statute were not a viable alternative at that stage as they could not have been implemented.<sup>134</sup>
81. The Chamber considers that P-0975's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
82. The Chamber notes that P-0975's statement contains limited references to the acts and conduct of Mr Ngaïssona. The Chamber recalls that while this may be a factor against its introduction, this is not an absolute bar.<sup>135</sup> The Chamber further notes

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<sup>129</sup> P-0975 Investigation Report, CAR-OTP-00001687-R01, at 000005.

<sup>130</sup> First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 27.

<sup>131</sup> P-0975 Investigation Report, CAR-OTP-00001687-R01, at 000002-000003.

<sup>132</sup> P-0975 Investigation Report, CAR-OTP-00001687-R01, at 000003.

<sup>133</sup> P-0975 Investigation Report, CAR-OTP-00001687-R01, at 000003.

<sup>134</sup> See First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 30 and the jurisprudence referred therein.

<sup>135</sup> See First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 38.

that while the Ngaïssona Defence opposed the P-0975 Request on grounds of unavailability, it did not provide its views on whether it considered these references to be prejudicial to Mr Ngaïssona.<sup>136</sup>

83. Nonetheless, having examined the references by P-0975 concerning Mr Ngaïssona, the Chamber considers that these are cumulative to and/or corroborative of other witness accounts on the record. In any event, these references are confined to the witness's perception of the events, which was limited and general in nature.
84. In light of the above, the Chamber considers that the introduction of P-0975's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction.
85. Accordingly, the Chamber grants the introduction of P-0975's prior recorded testimony pursuant to Rule 68(2)(c) of the Rules.<sup>137</sup>

#### *4. P-2200*

86. P-2200 was an [REDACTED] in Bossangoa when the conflict in the CAR broke out.<sup>138</sup> P-2200 was initially listed on the Prosecution's Final Witness List as a witness expected to testify fully live.<sup>139</sup>

##### *i. Submissions*

87. The Prosecution indicates in the investigation report (the 'P-2200 Investigation Report')<sup>140</sup> that, on 16 May 2022, the witness' son (P-2201) informed that his father died due to medical complications 'at the end of [REDACTED] [that] year'.<sup>141</sup> The Prosecution states that 'he eventually succumbed on [REDACTED] March 2022'.<sup>142</sup> The medical certificate attached as Annex C to the P-2200

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<sup>136</sup> See Ngaïssona Defence Response to the P-0975 Request, ICC-01/14-01/18-1988-Conf, paras 1, 9, 16.

<sup>137</sup> Statement, CAR-OTP-2033-7885.

<sup>138</sup> P-2200 Request, ICC-01/14-01/18-1967-Conf, para. 3.

<sup>139</sup> Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 33.

<sup>140</sup> CAR2b - Investigation Report - CAR-OTP-P-2200 - 13-06-2023.doc, CAR-OTP-00001606.

<sup>141</sup> P-2200 Investigation Report, CAR-OTP-00001606, at 000001.

<sup>142</sup> P-2200 Request, ICC-01/14-01/18-1967-Conf, para. 14.

Request (the ‘MCCD’),<sup>143</sup> dated [REDACTED] March 2023, indicates that P-2200 died on [REDACTED] March 2022.<sup>144</sup>

88. The Prosecution submits that it could not have anticipated the need for measures under Article 56 of the Statute, since at the time of P-2200’s interview, he did not report any serious health issues or voice any reluctance to cooperate, and his death was ‘thoroughly unforeseen’.<sup>145</sup> It further states that ‘the witness confirmed and reconfirmed his willingness to testify’, and that although ‘the witness’s back pain may have impeded his inability [*sic*] to travel in order to testify, the same issue would manifestly have defeated the feasibility of evidence preserving measures under [A]rticle 56’ of the Statute.<sup>146</sup>
89. In addition, the Prosecution argues that (i) the witness’s prior recorded testimony is reliable;<sup>147</sup> (ii) it is relevant and probative;<sup>148</sup> and (iii) its introduction ‘advances the interests of justice’.<sup>149</sup>
90. The Ngaïssona Defence opposes the P-2200 Request, arguing that the MCCD provided by the Prosecution to support P-2200’s death ‘does not display any *indicia* of authenticity and reliability and is thus devoid of probative value’.<sup>150</sup> It also ‘finds the contradiction between the date of death disclosed in the so-called MCCD and the phone calls detailed in the [P-2200] Investigation Report disturbing’.<sup>151</sup> It further submits that ‘the procedural precondition to Rule 68(2)(c) of the Rules’ has not been met ‘as the Prosecution fails to

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<sup>143</sup> Annex C to the P-2200 Request, ICC-01/14-01/18-1967-Conf-AnxC; CAR-OTP-00001616.

<sup>144</sup> P-2200 Request, ICC-01/14-01/18-1967-Conf, para. 14.

<sup>145</sup> P-2200 Request, ICC-01/14-01/18-1967-Conf, para. 15.

<sup>146</sup> P-2200 Request, ICC-01/14-01/18-1967-Conf, paras 15-16.

<sup>147</sup> P-2200 Request, ICC-01/14-01/18-1967-Conf, para. 18.

<sup>148</sup> P-2200 Request, ICC-01/14-01/18-1967-Conf, para. 22.

<sup>149</sup> P-2200 Request, ICC-01/14-01/18-1967-Conf, para. 26.

<sup>150</sup> Addendum to the Ngaïssona Defence Response to the P-2200 Request, ICC-01/14-01/18-2025-Conf, para. 24. *See also* Ngaïssona Defence Response to the P-2200 Request, ICC-01/14-01/18-2013-Conf, para. 2.

<sup>151</sup> Addendum to the Ngaïssona Defence Response to the P-2200 Request, ICC-01/14-01/18-2025-Conf, para. 14.

satisfactorily substantiate the reason for which P-2200 has become unavailable to testify'.<sup>152</sup>

*ii. Chamber's determinations*

91. In his statement,<sup>153</sup> the witness describes, *inter alia*, François Bozizé and 'his people' attacking Muslims before the Seleka entered the CAR; hearing Bozizé on the radio telling young people '*de s'armer avec des fusils ou alors avec des machettes et des gros bâtons pour aller déloger les Musulmans de maison en maison*'; Bozizé providing weapons to his supporters which led to the creation of the Anti-Balaka; some FACA joining and supporting the Anti-Balaka; the Seleka's arrival in Bossangoa; clashes between the Seleka and the Anti-Balaka; hearing from people that the Anti-Balaka were attacking several villages around Bossangoa and killing many Muslims between August and October 2013, including 70 Mbororo in Zere; the first attack in Bossangoa on 17 September 2013 and praying for each of the seven Muslim civilians killed during the attack; crimes allegedly committed by the Anti-Balaka; the Bossangoa Attack and taking refuge at '*l'école*'; that 18 Muslims were allegedly killed by the Anti-Balaka in the Bossangoa Attack, including [REDACTED]; seeing the bodies of 18 Muslims at the school and [REDACTED]; a list of Anti-Balaka leaders responsible for the Bossangoa Attack; hearing that Anti-Balaka were based and stored many weapons at the Catholic mission before the Bossangoa Attack; Anti-Balaka allegedly looting and destroying Muslim shops and houses; hearing that Anti-Balaka destroyed the two mosques of Bossangoa on 9 December 2013 and seeing one of the destroyed mosques; evacuation to and living conditions in Chad; and Anti-Balaka allegedly committing sexual crimes in Zere and Benzambé.
92. P-2200 mentions Mr Ngaïssona as member of Bozizé's party, that he was above all Anti-Balaka and very respected by the youth in Bossangoa, and was implicated with the Anti-Balaka in Bossangoa. The witness states that he does not know Mr Ngaïssona's first name or his job but knows that he is not a merchant, lives in

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<sup>152</sup> Ngaïssona Defence Response to the P-2200 Request, ICC-01/14-01/18-2013-Conf, paras 1, 3; Addendum to the Ngaïssona Defence Response to the P-2200 Request, ICC-01/14-01/18-2025-Conf, para. 24.

<sup>153</sup> Statement, CAR-OTP-2088-2146.

the centre of Bossangoa and is around 50 or 60 years old.<sup>154</sup> P-2200 does not mention Mr Yekatom.

93. In his statement, the witness comments on an article CAR-OTP-2079-1163 and on five pictures (CAR-OTP-2085-5082, CAR-OTP-2085-2972; CAR-OTP-2085-4082; CAR-OTP-2085-3832; and CAR-OTP-2085-3122) in which he, *inter alia*, identified some individuals and locations.<sup>155</sup> The Chamber notes that it has already recognised the five pictures as formally submitted and therefore, it need not rule on them again.
94. The Chamber notes that the Ngaïssona Defence contests P-2200's death by arguing that the MCCD is devoid of probative value and there are discrepancies in P-2200's date of death.<sup>156</sup> The Chamber, however, also notes that the Prosecution made several attempts to contact P-2200 but was unsuccessful and after being notified of his death through his son, it subsequently 'made numerous attempts to obtain official confirmation of' P-2200's death.<sup>157</sup> Considering the information provided by the parties, the Chamber finds that, even if the fact that the witness's death could not be established, he remains 'unavailable' within the meaning of Rule 68(2)(c) of the Rules since he cannot be reached or located after numerous attempts and efforts.<sup>158</sup>
95. Moreover, the Chamber is satisfied that no measures under Article 56 of the Statute could have been anticipated. In this regard, it notes that the Prosecution's submissions on this point and agrees that the latter could indeed not have predicted the witness's unforeseen unavailability.
96. The Chamber considers that P-2200's statement shows sufficient indicia of reliability. Notably, it was obtained by fulfilling the Formal Requirements.
97. With regard to the question of whether P-2200's statement goes to proof of Mr Ngaïssona's acts and conduct, the Chamber notes that it is unclear from the information provided by the witness whether he was in fact talking about, and

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<sup>154</sup> Statement, CAR-OTP-2088-2146, para. 85.

<sup>155</sup> Statement, CAR-OTP-2088-2146, paras 90-95.

<sup>156</sup> Ngaïssona Defence Response to the P-2200 Request, ICC-01/14-01/18-2013-Conf, paras 2, 15-23.

<sup>157</sup> P-2200 Request, ICC-01/14-01/18-1967-Conf, paras 13-14.

<sup>158</sup> First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 27.

knew of, Mr Ngaïssona. In any event, the Chamber notes that the information given is particularly limited, and that the Ngaïssona Defence does not raise any objections in this regard. The Chamber therefore considers that this is not a factor militating against the introduction of the statement.

98. In light of the above, the Chamber considers that the introduction of P-2200's prior recorded testimony is not prejudicial to or inconsistent with the accused's rights and that the interests of justice are better served by its introduction.
99. Accordingly, the Chamber grants the introduction of P-2200's statement<sup>159</sup> and the associated item<sup>160</sup> pursuant to Rule 68(2)(c) of the Rules.

#### *5. P-1074 and P-2511*

100. The Chamber notes that the Prosecution indicated its decision to withdraw witness P-2511<sup>161</sup> and further concluded its presentation of evidence without calling P-1074.<sup>162</sup> In this light, the Chamber considers the P-1074 Rule 68(3) Request and the P-2511 Rule 68(3) Request moot.

### **FOR THESE REASONS, THE CHAMBER HEREBY**

**DECIDES** that the prior recorded testimonies of the following witnesses are introduced into evidence, pursuant to Rule 68(2)(c) of the Rules:

- **P-2269:** Statement, CAR-OTP-2111-0336; CAR-OTP-2118-2197 (Translation), together with its associated items (Annex A, CAR-OTP-2111-0362; Annex B, CAR-OTP-2111-0364; Annex D, CAR-OTP-2111-0367);
- **P-2602:** Interview transcripts CAR-OTP-2118-9500; CAR-OTP-2118-9525; CAR-OTP-2118-9545; CAR-OTP-2118-9560; CAR-OTP-2118-9579; CAR-

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<sup>159</sup> CAR-OTP-2088-2146.

<sup>160</sup> CAR-OTP-2079-1163.

<sup>161</sup> 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-01/14-01/18-1739-Conf, 31 January 2023, ICC-01/14-01/18-1791-Conf, para. 6.

<sup>162</sup> See Prosecution's Notice of the Close of its Case-in-Chief, 11 September 2023, ICC-01/14-01/18-2089.

OTP-2118-9598; CAR-OTP-2118-9617; CAR-OTP-2118-9641; CAR-OTP-2118-9664; CAR-OTP-2118-9683; CAR-OTP-2118-9705; CAR-OTP-2118-9714; CAR-OTP-2118-9737; CAR-OTP-2118-9764; CAR-OTP-2118-9785; CAR-OTP-2118-9807 (French translation available at CAR-OTP-2122-5161; CAR-OTP-2122-5189; CAR-OTP-2122-5211; CAR-OTP-2122-5228; CAR-OTP-2122-5250; CAR-OTP-2122-5271; CAR-OTP-2122-5293; CAR-OTP-2122-5320; CAR-OTP-2122-5346; CAR-OTP-2122-5368; CAR-OTP-2122-5393; CAR-OTP-2122-5404; CAR-OTP-2122-5430; CAR-OTP-2122-5460; CAR-OTP-2122-5483; CAR-OTP-2122-5507), together with their associated items (Annex A, CAR-OTP-2120-0261; Annex B, CAR-OTP-2120-0262; Annex C, CAR-OTP-2120-0263; CAR-OTP-2101-0214; CAR-OTP-2005-0197);

- **P-0975:** Statement, CAR-OTP-2033-7885;
- **P-2200:** Statement, CAR-OTP-2088-2146, together with its associated item (CAR-OTP-2079-1163);

**FINDS** that the P-0975 Rule 68(3) Request, the P-1074 Rule 68(3) Request, the P-2602 Rule 68(3) Request and the P-2511 Rule 68(3) Request are moot;

**REMINDS** the Prosecution of its directions to publish public redacted versions of the aforementioned prior recorded testimonies;

**ORDERS** the Prosecution to file public redacted versions of the P-2511 Rule 68(3) Request, ICC-01/14-01/18-1503-Conf; the P-2602 Rule 68(3) Request, ICC-01/14-01/18-1834-Conf; the P-2269 Request, ICC-01/14-01/18-1957-Conf; the P-2062 Request, ICC-01/14-01/18-1958-Conf; the P-0975 Request, ICC-01/14-01/18-1965-Conf; and the P-2200 Request, ICC-01/14-01/18-1967-Conf, within one week of notification of the present decision;

**ORDERS** the Yekatom Defence to file public redacted versions of the Yekatom Defence Response to the P-2269 Request, ICC-01/14-01/18-1984-Conf and the Yekatom Defence Response to the P-0975 and P-2602 Requests, ICC-01/14-01/18-1985-Conf, within one week of notification of the present decision; and



**ORDERS** the Ngaïssona Defence to file public redacted versions of the Ngaïssona Defence Response to the P-2269 Request, ICC-01/14-01/18-1986-Conf; the Ngaïssona Defence Response to the P-2602 Request, ICC-01/14-01/18-1987-Conf; the Ngaïssona Defence Response to the P-0975 Request, ICC-01/14-01/18-1988-Conf; the Ngaïssona Defence Response to the P-2200 Request, ICC-01/14-01/18-2013-Conf; and the Addendum to the Ngaïssona Defence Response to the P-2200 Request, ICC-01/14-01/18-2025-Conf, within one week of notification of the present decision.

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

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| <br><hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Péter Kovács</b></p> | <br><hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Bertram Schmitt</b><br/> <b>Presiding Judge</b></p> | <br><hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Chang-ho Chung</b></p> |
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Dated 6 October 2023

At The Hague, The Netherlands