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Date: **11 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 *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-2602 pursuant to Rule 68(2)(c)”,
ICC-01/14-01/18-1958-Conf, 4 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 the prior recorded testimony of witness P-2602, in accordance with 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 P-2602’s prior recorded testimony comprises the transcribed statement of the witness’s four day interview of 26-29 October 2019 (“Prior Statement”), and its associated exhibits.³

2. The Prior Statement may be introduced under rule 68(2)(c) because: (i) P-2602 was unavailable to testify due to obstacles that could not be overcome with reasonable diligence, and is now presumed dead; (ii) the Prosecution could not anticipate the need for article 56 measures to obtain his evidence; (iii) the evidence has sufficient indicia of reliability, and (iv) its submission would not be unfairly prejudicial to the Accused.

3. P-2602 is an insider witness and former FACA [REDACTED], and one of the Anti-Balaka [REDACTED] in 2013. P-2602’s Prior Statement provides evidence on, *inter alia*, (i) the creation, structure, organisation, recruitment, training, and armament of Anti-Balaka elements [REDACTED]; (ii) the planning and execution of Anti-Balaka attacks on villages around BOSSANGO prior to 5 December 2013; (iii) the planning and execution of Anti-Balaka attacks on BANGUI and BOSSANGO on 5 December 2013, including [REDACTED]; and (iv) [REDACTED] Maxime MOKOM (“MOKOM”)

¹ ICC-01/14-01/18-631, para. 33.

² ICC-01/14-01/18-1892, paras. 3-4.

³ 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.

and other Anti-Balaka leaders, including on 5 December 2013. P-2602's Prior Statement is thus *prima facie* relevant to, and probative of, material issues at trial. It does not concern the acts or conduct of the Accused.

4. The relevance and probative value of the Prior Statement are set out in more detail in a brief summary below of the salient issues, along with the associated exhibits, and the sources of other corroborative evidence. *Confidential* Annex A (a Summary Chart) lists the interview transcripts and the corresponding associated exhibits. It also identifies the relevant paragraphs of the Confirmation Decision to which the witness's evidence relates. *Confidential* Annex B contains a summary of the 16 transcripts of P-2602's 26-29 October 2019 interview which comprise the Prior Statement. The summary is intended to facilitate the Parties', Participants', and Chamber's understanding of the transcripts' content, and to more easily identify their relevance and probative value. It is not intended for submission *in lieu* of the interview transcripts.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this Request and its annexes 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

6. Rule 68(2)(c) allows a Chamber to admit or deem formally submitted a witness's prior recorded testimony where they have subsequently died, must be presumed dead or, due to obstacles that cannot be overcome with reasonable diligence, are unavailable to testify orally.

7. Such prior recorded testimony may be introduced where the Chamber is satisfied that the person is ‘unavailable’; the necessity of measures under article 56 could not be anticipated; the prior recorded testimony has sufficient indicia of reliability;⁴ and its introduction is not prejudicial to or inconsistent with the rights of the Accused.⁵ These requirements must be met in addition to the standard admissibility criteria.⁶

8. Under rule 68(2)(c)(ii), “[t]he 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”.⁷ But, it is not dispositive.

B. The Prior Recorded Testimony fulfils all Requirements of Rule 68(2)(c)

9. P-2602’s Prior Statement may be recognised as formally submitted under rule 68(2)(c) because it fulfils all of the requirements: P-2602 was unavailable to testify due to obstacles that could not be overcome with reasonable diligence, and is now presumed dead; the Prosecution could not anticipate the need to use article 56 to preserve his evidence; and the Prior Statement bears sufficient indicia of reliability. Moreover, it does not concern the acts or conduct of the Accused and its formal submission would not cause any unfair prejudice.

i. P-2602 was unavailable to testify due to obstacles that could not be overcome with reasonable diligence, and is now presumed dead

10. P-2602 was unavailable to testify due to obstacles that could not be overcome with reasonable diligence, and is now presumed dead. P-2602 withdrew his cooperation and had evaded further contact with the Prosecution since April 2021. His

⁴ Rule 68(1) and (2)(c) of the Rules; *see also* ICC-01/04-02/06-1029, para. 12.

⁵ Rule 68(1) of the Rules and article 69(2) of the Statute; *See also* ICC-01/12-01/18-1111-Conf, para. 7; ICC-01/05-01/08-1386, para. 78 (“*Bemba Appeals Decision*”).

⁶ ICC-01/04-02/06-1325, para. 8; *see also* ICC-01/14-01/18-631, paras. 52-59.

⁷ *See also* ICC-01/04-02/06-1029, para. 13.

recalcitrance ultimately precipitated the Prosecution's request for a summons,⁸ [REDACTED].⁹ [REDACTED] he reportedly died.¹⁰

11. As detailed in the Summons Request,¹¹ Prosecution investigators were last able to successfully contact P-2602 on 23 April 2021 by phone. On that occasion, it was agreed that investigators would call him again on 26 April 2021, [REDACTED]. However, all subsequent attempts to contact the witness by phone between April 2021 and June 2022¹² were unsuccessful. The witness's interactions with the Prosecution in the lead-up to his last contact in April 2021 suggest that he was deliberately avoiding further contact.¹³

12. On 24 October 2022, the Prosecution made inquiries with [REDACTED], who was unaware of the witness's whereabouts. Following formal inquiries in October and November 2022, [REDACTED] advised the Prosecution that P-2602 was [REDACTED].

13. In the above circumstances, [REDACTED]¹⁴ [REDACTED]. As such, the Prosecution has exercised reasonable diligence in seeking to secure the witness's appearance.

14. [REDACTED]¹⁵ [REDACTED]¹⁶ [REDACTED]¹⁷ [REDACTED].

15. [REDACTED], the Prosecution considers that the Chamber may appropriately rely on a presumption of his death for the purposes of this application.

⁸ ICC-01/14-01/18-1690-Conf ("Summons Request").

⁹ ICC-01/14-01/18-1738-Conf.

¹⁰ See [REDACTED].

¹¹ ICC-01/14-01/18-1690-Conf.

¹² ICC-01/14-01/18-1690-Conf, para. 16.

¹³ ICC-01/14-01/18-1690-Conf, para. 18.

¹⁴ ICC-01/14-01/18-1738-Conf, para. 11 (emphasis added).

¹⁵ See [REDACTED].

¹⁶ See [REDACTED].

¹⁷ See [REDACTED]

ii. Article 56 measures could not be anticipated

16. The Prosecution could not have anticipated any need to take testimony or evidence under article 56 because it reasonably expected P-2602 to be available to testify orally. The witness was cooperative during his October 2019 interview. He was [REDACTED] years old at the time, and did not report any serious health issues or voice reluctance to cooperate with the Prosecution. He also did not report any serious health concerns in his subsequent contacts with the Prosecution.

17. As detailed in the Summons Request, P-2602 expressed reservations about testifying for the first time during a phone conversation with Prosecution representatives on 14 October 2020¹⁸ and, on 1 April 2021, informed investigators that [REDACTED].¹⁹ In an effort to [REDACTED] the Prosecution (i) [REDACTED]²⁰ and; (ii) [REDACTED].²¹ It was agreed with the witness that the investigators would call him again on 26 April 2021, providing P-2602 with time [REDACTED]. However, as stated above, the witness did not respond to the 26 April 2021 call, nor to any other attempts to reach him since. For this reason the Prosecution was left to resort to the Summons Request.

18. Under these circumstances, the Prosecution could not have predicted that it would be unable to re-establish contact with the witness when last communicating with him in April 2021. Thus, consideration of evidence preserving measures under article 56 could not be anticipated. Even if it had been, [REDACTED], it is clear that an article 56 procedure would not have been feasible.

¹⁸ ICC-01/14-01/18-1690-Conf, para. 18(a).

¹⁹ ICC-01/14-01/18-1690-Conf, para. 18(c).

²⁰ ICC-01/14-01/18-1690-Conf, para. 18(d).

²¹ ICC-01/14-01/18-1690-Conf, para. 18(f).

iii. *The tendered evidence is reliable*

19. P-2602's Prior Statement is *prima facie* reliable. It was obtained by the Prosecution in the ordinary course of its investigation,²² when the witness was interviewed on 26-29 October 2019 pursuant to article 55(2) of the Statute and rule 112 of the Rules, in the presence of his article 55(2) counsel. P-2602 was interviewed [REDACTED].²³ The audio-recording of the interview was then transcribed, resulting in 16 interview transcripts forming the Prior Statement.

20. For the purposes of the interview with P-2602, the Prosecution observed all safeguards required by article 55(2) and rule 112 of the Rules:

- Prior to being questioned, P-2602 was informed about the voluntary nature of the interview and of his rights, including the right to remain silent and to have legal assistance;²⁴
- P-2602 was informed of his right to consult with his counsel in private at any point, and to clarify any issues before the end of the interview.²⁵ The witness exercised this right and consulted with his counsel when necessary;²⁶
- Other issues, including the principle of confidentiality and protection measures, were also explained to P-2602 in detail;²⁷

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-2118-9500, at 9503, l. 79-89.

²⁴ CAR-OTP-2118-9500, at 9504-9506, l. 115-193.

²⁵ CAR-OTP-2118-9500, at 9506, l. 180-193, at 9511, l. 379-383; CAR-OTP-2118-9560, at 9561, l. 16-17.

²⁶ CAR-OTP-2118-9500, at 9506, l. 194-200; CAR-OTP-2118-9617, at 9618, l.15-19.

²⁷ CAR-OTP-2118-9500, at 9510, l. 319-345.

- P-2602 confirmed that he understood the procedure and his rights, as explained by the investigators, and agreed to proceed with the interview.²⁸

21. The interview, as a whole, was conducted in an open, constructive, and respectful manner:

- P-2602 was provided with regular breaks, including for lunch.²⁹ He was also informed of the possibility to request a break if he wished;³⁰
- The witness was given the opportunity to make clarifications and to raise any concerns, which he did.³¹ At the start of the interview, the Prosecution reassured P-2602 that if he did not know something, he should not hesitate to say so;³² and
- At the conclusion of the interview, P-2602 confirmed that he answered the questions of the investigators of his own free will, and had no complaints about the way the interview was conducted.³³

22. During the interview, P-2602 provided detailed answers and distinguished between what he experienced himself and what he heard from other individuals.³⁴ The witness readily admitted when he did not know certain information.³⁵ Further, the

²⁸ CAR-OTP-2118-9500, at 9504, l. 123-131, at 9505-9506, l. 169-179.

²⁹ CAR-OTP-2118-9500, at 9511, l. 376-378, at 9523-9524, l. 804-810.

³⁰ CAR-OTP-2118-9500, at 9511, l. 376-378.

³¹ CAR-OTP-2118-9500, at 9511-9512, l. 370-403; CAR-OTP-2118-9807, at 9823-9825, l. 541-588.

³² CAR-OTP-2118-9500, at 9512, l. 411-418.

³³ CAR-OTP-2118-9807, at 9825, l. 593-607.

³⁴ CAR-OTP-2118-9545, at 9555, l. 335-345; CAR-OTP-2118-9705, at 9712, l. 221-231; *See also* CAR-OTP-2118-9500, at 9512-9513, l. 422-427.

³⁵ CAR-OTP-2118-9500, at 9516, l. 551-556; CAR-OTP-2118-9579, at 9580-9581, l. 32-39; CAR-OTP-2118-9598, at 9613, l. 511-517; CAR-OTP-2118-9683, at 9686, l. 91-99, p. 9700, l. 574-584; CAR-OTP-2118-9737, at 9755, l. 594-599.

Prior Statement is also sufficiently corroborated by other evidence in the case, as detailed in paragraphs 31-35 below.

iv. The Prior Statement does not concern the Accused's acts or conduct

23. Although P-2602's Prior Statement relates to a number of key elements of the case, he provides only minimal and peripheral information regarding the Accused,³⁶ which does not relate to their acts and conduct.³⁷ The evidence does not go to the Accused's participation in, or sharing in the intent of the perpetrator or perpetrator group concerning, the charged crimes. As such, rule 68(2)(c)(ii) is not a consideration here.

C. P-2602's prior recorded testimony is relevant and probative

24. As described below, P-2602's Prior Statement is highly relevant and probative. It provides evidence on, *inter alia*, the organisation of the Anti-Balaka, including [REDACTED], and on [REDACTED] the 5 December 2013 attack on BOSSANGO. It also goes to proof of the contextual elements for war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group between September 2013 and December 2014 ("Relevant Period").

25. P-2602's Prior statement comprises 326 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.

26. The witness's Prior Statement describes the following:

- [REDACTED];

³⁶ See Summary at Annex B, paras. 121-122, 126 (regarding Ngaissona) and para. 134 (regarding Yekatom).

³⁷ See ICC-01/04-02/06-1667-Red, para. 11 (citing ICC-02/04-01/15-596-Red, paras. 11-12); see also ICC-01/14-01/18-710-Conf, para.9.

- P-2602's evidence explains how [REDACTED] was established and organised. Specifically, that it was divided into camps or companies, reflecting military structure. P-2602 describes that a considerable number of elements [REDACTED];
- [REDACTED] former FACA, like Yvon KONATE, Florent KEMA, as well as Dieudonné HOURONTI, who [REDACTED], or coordinated activities with the group. P-2602 also provides information on civilians who joined the Anti-Balaka [REDACTED], like Thierry LEBENE ("12 Puissances"), and their respective roles in the Anti-Balaka;
- P-2602 provides evidence of the organisation and structure of [REDACTED], as well as information about the areas under its control and its bases;
- He describes [REDACTED] involvement in the Anti-Balaka attacks in OUHAM prefecture in the latter half of 2013, and the 5 December 2013 coordinated attacks on BOSSANGO and BANGUI;
- [REDACTED] MOKOM prior to and after the 5 December 2013 attacks until approximately April 2014, and MOKOM's request to receive information regarding locations where hostilities were ongoing;
- Finally, P-2602 gives evidence of his Anti-Balaka functions and [REDACTED] ComZones in BANGUI and in prefectures.

27. The Prosecution also tenders 16 associated exhibits for formal submission together with the Prior Statement, as set out in Annex A. These associated exhibits are assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish its probative value if excluded.

D. Balance of interests

28. 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 introduction of uncross-examined evidence unrelated to the acts and conduct of the Accused.³⁸ On the contrary, although rule 68 is an exception to the principles of orality³⁹ and publicity,⁴⁰ its application “is *per se* generally considered *compatible* with the rights of the accused”⁴¹ and indeed all statutory rights because it is express in the Court’s procedural framework. 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.⁴² 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.

29. P-2602’s evidence is manifestly relevant to the proper adjudication of salient issues in this case and in the search for and establishment of the truth. Importantly, 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.⁴³

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

³⁹ ICC-01/05-01/08-1386, para. 78.

⁴⁰ ICC-01/14-01/18-685, para. 25 (referencing articles 64(7) and 67(1)).

⁴¹ ICC-01/14-01/18-685, para. 26.

⁴² ICC-01/09-01/11-1938-Red-Corr, para. 25.

⁴³ ICC-01/09-01/11-1938-Red-Corr, para. 27.

i. Corroborative and cumulative nature of P-2602's evidence

30. P-2602's evidence is cumulative to, and corroborated by, other evidence in the case, including on several issues on which the Defence has been afforded a full opportunity to cross-examine Prosecution witnesses.

31. P-2602's evidence on the structure and leadership of [REDACTED], the areas under its control, and the role of former FACA members is cumulative to, and corroborated by, *inter alia*, the evidence of P-0884,⁴⁴ P-0889,⁴⁵ P-0966,⁴⁶ P-1521,⁴⁷ P-2232,⁴⁸ P-2251,⁴⁹ and P-2658.⁵⁰ It is further corroborated by video and documentary evidence in the case.⁵¹

32. The witness's evidence regarding the Anti-Balaka attacks in OUHAM prefecture in the latter half of 2013, is cumulative to, and corroborated by, *inter alia*, the evidence of P-0966,⁵² P-2049,⁵³ P-2453,⁵⁴ and P-2657.⁵⁵ It is further corroborated by video and documentary evidence in the case.⁵⁶

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ See, *inter alia*, [REDACTED].

⁵² CAR-OTP-2031-0241, at 0248-0250, paras.40-53; ICC-01/14-01/18-T-117-Eng CT, p.43, l.9 – p.48, l.22 (cross-examination).

⁵³ ICC-01/14-01/18-T-100-Conf-Eng CT, p. 28, l. 24 – p. 29, l. 10, p. 34, l. 15 – p. 60, l. 2; ICC-01/14-01/18-T-102-Conf-Eng ET, p. 29, l.15 – p. 51, l. 23 (cross-examination).

⁵⁴ CAR-OTP-2111-0415 at 0420-0425, para. 27-46; ICC-01/14-01/18-T-136-Conf-Eng ET, p. 77, l. 7 – p. 80, l. 23; ICC-01/14-01/18-T-137-Conf-Eng ET, p. 31, l. 10-25, p. 33, l. 24 – p. 47, l. 7 (cross-examination); ICC-01/14-01/18-T-138-Conf-Eng ET, p. 3, l. 21 – p. 7, l. 5 (cross-examination).

⁵⁵ ICC-01/14-01/18-T-104-Conf-Eng CT2, p. 10, l. 11 – p. 11, l. 20.

⁵⁶ See, *inter alia*, CAR-OTP-2001-0391 at 0394, para. 9; CAR-OTP-2084-1271, from [00:00:50] to [00:03:33] and its transcript CAR-OTP-2107-1570 at 1571-1573, l.16-83; CAR-OTP-2084-1275, from [00:00:00] to [00:05:13] and its transcript and translation CAR-OTP-2107-6973 and CAR-OTP-2107-7117.

33. P-2602's evidence on the involvement of [REDACTED] in the 5 December 2013 attack on BOSSANGO, during which the latter [REDACTED], is cumulative to, and corroborated by, *inter alia*, the evidence of P-2049,⁵⁷ P-2453,⁵⁸ and P-2462.⁵⁹

34. His evidence on MOKOM's involvement in the 5 December 2013 attack on BOSSANGO and BANGUI is cumulative to, and corroborated by, *inter alia*, P-0884,⁶⁰ P-0966,⁶¹ P-1719,⁶² and P-2232.⁶³

35. Further, [REDACTED] Anti-Balaka leaders, especially with MOKOM, including on 5 December 2013 and after, is cumulative to, and corroborated by, *inter alia*, the evidence of P-0889,⁶⁴ and P-1521.⁶⁵

36. In relation to the corroborative evidence cited above, the Prosecution notes that it is not necessary that "the accounts accord in every detail", but that it is sufficient that the testimony is provided on similar facts.⁶⁶ Notably, in considering a similar application under ICTY Rule 92 *quater*, Trial Chamber I considered the cumulative nature of submitted evidence regarding "live and important issues of the case" as dispositive when deciding that "no prejudice (...) arises for the Accused by the lack of cross-examination" in relation to evidence contained in the Statements of Witness RM-012.⁶⁷

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ ICC-01/14-01/18-T-055-Conf-Eng ET, p. 47, l. 2 – p. 48, l.6.

⁶¹ ICC-01/14-01/18-T-117-Eng CT, p. 37, l. 22 – p. 39, l. 2 (cross-examination).

⁶² ICC-01/14-01/18-T-142-Conf-Eng CT, p. 21, l. 2-12.

⁶³ ICC-01/14-01/18-T-075-Conf-Eng ET, p. 41, l. 19 – p. 42, l. 23, p. 45, l. 10 – p. 49, l. 14, p. 69, l. 20 – p. 70, l.3; ICC-01/14-01/18-T-076-Conf-Eng ET, p. 7, l. 23 – p. 8, l. 5, p. 12, l. 17-21, p. 48, l. 12 – p. 49, l. 15; ICC-01/14-01/18-T-077-Conf-Eng CT, p. 8, l. 1-14; See extensive Defence cross-examination at ICC-01/14-01/18-T-078-Conf-Eng CT and ICC-01/14-01/18-T-079-Conf-Eng ET.

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ ICC-01/12-01/2114-Conf, para. 39.

⁶⁷ ICTY, *Prosecutor v. Ratko Mladić*, Decision on Prosecution Rule 92 *quater* motion (Witness RM-012), 13 December 2013, IT-09-92-T, para. 11.

ii. *P-2602's unavailability for cross-examination is mitigated by other means*

37. The inability to cross-examine P-2602 on his evidence does not deprive the Accused of their right to challenge the evidence provided in his prior recorded testimony.

38. P-2602's Prior Statement was disclosed on 20 July 2020,⁶⁸ well before the March 2021 commencement of evidence in the Prosecution's case-in-chief. The Defence had ample time to identify key issues and conduct investigations in relation to P-2602, who had always been included in the Prosecution's List of Witnesses.⁶⁹ As noted in paragraphs 30-35 above, the Defence were also in a position to question other witnesses, including those corroborating his evidence, on the basis of information contained in P-2602's Prior Statement. Thus, the Defence could challenge the accuracy and credibility of P-2602's evidence through other sources, including through the cross-examination of other witnesses who testified on the same issues. Additionally, if deemed formally submitted, the Defence would also retain the right to challenge P-2602's Prior Statement and his credibility by leading, or requesting the introduction of evidence during the Defence case.

39. Further, the Court's jurisprudence prohibiting a Chamber from entering a conviction on any charge founded to a 'decisive extent' on unexamined testimony serves as an additional safeguard against unfair prejudice. Moreover, the Chamber will undoubtedly consider the appropriate *weight* to be accorded the Prior Statement at the end of trial as the submission regime foresees,⁷⁰ bearing in mind its probative value, extrinsic and intrinsic reliability, as well as the fact that it is corroborative of other documentary evidence and cross-examined testimony.

⁶⁸ See Pre-Trial INCRIM package 41, disclosed on 20 July 2020.

⁶⁹ ICC-01/14-01/18-724-Conf-AnxA, p. 18.

⁷⁰ See ICC-01/14-01/18-631, paras. 52-53.

40. P-2602's Prior Statement should thus be recognised as formally submitted, and the Chamber duly consider the extent to which it may support a conviction on any of the charges on the basis of *all* relevant evidence at the end of the trial.

IV CONCLUSION

41. For the foregoing reasons, the Prosecution requests the Chamber to deem as formally submitted the Prior Statement of P-2602, together with its associated exhibits, pursuant to rule 68(2)(c).



Karim A. A. Khan KC, Prosecutor

Dated this 11th day of October 2023
At The Hague, The Netherlands