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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 Statements of P-1847”, ICC-01/14-01/18-1971-Conf, 7 July 2023**

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

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Anta Guissé
Ms Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamai
Ms Marie-Hélène Proulx

Legal Representatives of Victims

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

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of P-1847’s prior statements (“Prior Statements”).¹ The introduction of the Prior Statements is warranted and justified pursuant to rule 68(2)(d) of the Rules of Procedure and Evidence (“Rules”), since P-1847 failed to testify with respect to material aspects of his Prior Statements as a result of unlawful interference.

2. The formal recognition of the Prior Statements is in the interests of justice, consistent with the fairness of the proceedings, and vital to the discharge of its statutory duty.² Failing to do so would reward an attempt to subvert the course of justice, and moreover deprive these proceedings of important evidence, as well as undermine the Chamber’s ability to consider and assess it fully.

3. *Confidential* Annex A (a Summary Chart) lists Prior Statements 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 the Prior Statements themselves. *Confidential* Annex C contains a Prosecution Investigation Report.

II. CONFIDENTIALITY

4. Pursuant to regulation 23bis(1) of the Regulations of the Court, this Request and its annexes are filed as “*Confidential*”, as they contain information concerning witnesses which cannot be made public. A “Public Redacted” version of the Request will be filed as soon as practicable.

III. SUBMISSIONS

5. As elaborated below, P-1847 failed to testify to material aspects of his Prior Statements as a consequence of unlawful influence and/or interference. As shown below, P-1847’s outing as a protected witness ahead of his appearance, was used a means of intimidation, coercion, and pressure, intended to and resulting in an adverse impact on his in-Court testimony. It

¹ See CAR-OTP-2061-1534, dated 30 September 2017 inclusive of two associated documents (CAR-OTP-2061-1576 and CAR-OTP-2061-1576); and CAR-OTP-2122-8251, dated 9 September 2020.

² See article 69(3).

moreover follows a pattern of conduct to which other Prosecution witness have been subjected during the course of the proceedings. The Prior Statements should thus be recognised as formally submitted and duly received in evidence in the interest of justice pursuant to rule 68(2)(d).

6. Rule 68(2)(d) was created specifically to address the situation presented here; that is to enable the Court to consider evidence despite witness's having been subject to improper influence or interference.³ It permits the introduction of prior recorded testimony when: (1) having attended the proceedings, a witness fails to give evidence regarding a material aspect of evidence included in their prior recorded testimony; (2) the failure was influenced by improper interference; (3) reasonable efforts were made to secure all facts known to the witness when testifying; (4) the prior recorded testimony bears sufficient indicia of reliability; and (5) the interests of justice are best served by introducing the prior recorded testimony.⁴

7. The provision was intended to “have a deterrent effect, in that there will be no benefit to interfering with a witness if their prior recorded testimony can be admitted to the Trial Chamber as evidence.”⁵ Accordingly, in the *Ruto and Sang* case — a case which involved serious allegations of pervasive witness interference — Trial Chamber V(a) recognised that the provision was meant to have broad application.⁶

8. As such, rule 68(2)(d) does not require that a witness fails to appear or wholly recants a prior statement. A witness who “recant[s] *fundamental* aspects of their prior recorded testimony”⁷ therefore “fail[s] ... to give evidence” within the meaning of rule 68(2)(d)(i). This is because applying a limited understanding of rule 68(2)(d)’s scope:

³ ICC-01/09-01/11-1938-Red-Corr, para. 41; *see also* ICTY Statement by Judge Patrick Robinson, President of the International Criminal Tribunal for the former Yugoslavia, to the Security Council on 18 June 2010, (June 18, 2010). Noting that, ICTY Rule 92 *quinqies* (the equivalent of Rule 68(2)(d)) was adopted at a time when the Šešelj trial had been delayed for nearly a year due to allegations of witness intimidation. ICTY Press Release, 13 January 2010 (“[the rule] enable core proceedings to go forward even where there are attempts to interfere with the administration of justice”).

⁴ *See* rule 68(2)(d) of the Rules; *see also* ICC-01/09-01/20-247-Red, para. 9.

⁵ *See* Working Ground on Amendments Recommendations, Rule 68, para. 34 (noting the prevalence of interference at the Court, and that it is “a live and ongoing issue in ICC cases, and may be more of an issue at the ICC than the ICTY”); *see also* Open Society Justice Initiative, Witness Interference in Cases before the International Criminal Court, November 2016 (noting, allegations of witness interference in eight of the nine trial stage cases in 2016), <https://www.justiceinitiative.org/uploads/8a5f5b90-7b75-44b6-ac31-2108a264fe97/factsheet-icc-witness-interference-20161116.pdf> [last accessed 7/07/2023].

⁶ *See* ICC-01/09-01/11-2027-Red-Corr, paras. 147-148; pp. 58 *passim* (Sep. Op. J. Fremr).

⁷ ICC-01/09-01/11-1938-Red-Corr, para. 41 (emphasis added).

“... could lead to a situation in which a person subject to interference could have his/her prior recorded testimony introduced if they were intimidated into silence, but not if this same intimidation prompted them to recant fundamental aspects of what they said previously.”⁸

9. Similarly, the provision does not require that improper ‘interference’ with the witness — which “may relate, *inter alia*, to the physical, psychological, economic or other interests of the person”⁹ be shown to be imputable to a defendant, or that it was carried out by others for his/her benefit.¹⁰ Rather, that a defendant’s involvement therein is a factor in determining whether the introduction of the prior recorded testimony is in the interests of justice.¹¹

A. The Prior Statements include material evidence

10. The Prior Statements contain a detailed and consistent narrative of the events concerning the Anti-Balaka and, particularly, material evidence on the Accused NGAISSONA’s role in the group’s formation, organisation, funding, equipping, and operations in 2013 and 2014.

i. Planning

11. For instance, P-1847’s Prior Statements describe NGAISSONA’s attendance of at least one key meeting in July 2013 in YAOUNDE together with BOZIZE and several other individuals close to, and associated with, the formation and organising of the Anti-Balaka. He describes:

« Une réunion restreinte s'est tenue à Résidence de BOZIZE à la Cité du Golf de YAOUNDE en Juillet 2013. Il y avait une dizaine de personnes qui étaient présentes parmi lesquelles ; Edouard Patrice NGAISSONA ... Il était question au cours de cette

⁸ ICC-01/09-01/11-1938-Red-Corr, para. 41.

⁹ Rule 68(2)(d)(ii).

¹⁰ See ICC-01/09-01/11-1938-Red-Corr, paras. 43, 44; see also ICC-01/09-01/20-247-Red, para. 15; see also, Study Group on Governance (Cluster I: Expediting the Criminal Process), Working Group on Lessons Learnt, Recommendation on a proposal to amend rule 68 of the Rules of Procedure and Evidence (Prior Recorded Testimony), 31 October 2013, ICC-ASP/12/37/Add.1, (‘WGLL Rule 68 Report’) Annex II.A, p. 28, para. 34.

¹¹ See ICC-01/09-01/11-1938-Red-Corr, para. 43 (*internal citations omitted*); see also ICTY Rule 92 *quinqüies* (B)(ii)(b) (noting that the ‘interests of justice’ includes, *inter alia*, consideration of “the apparent role of a party or someone acting on behalf of a party to the proceedings in the improper interference”). Significantly, ICTY Rule 92 *quinqüies* (adopted on 16 December 2009) is nearly identical to rule 68(2)(d) see [Rev44 amendments en](#) [last accessed 7/07/2023].

*réunion d'organiser leur coordination en vue d'engager et de mieux continuer la lutte politique pour le retour à l'ordre constitutionnel donc de BOZIZE au pouvoir. C'est BOZIZE lui-même qui a dirigé cette réunion ».*¹²

*« NGAISSONA, MOKOM père [i.e., Bernard MOKOM], KOKATE et YAKITE ont tenu une dernière réunion à résidence GOLF au CAMEROUN avant leur retour à BANGUI. Au cours de cette rencontre, ils avaient décidé que NGAISSONA serait le porte-parole des Anti-Balaka ... ».*¹³

ii. Financial support and assistance

12. The Prior Statements further recount NGAISSONA's involvement in providing financial and other material assistance to Anti-Balaka members in 2013, and moreover were directed toward facilitating the Group's operations. For instance, P-1847 states that:

*« Parfois aussi NGAISSONA et Bernard MOKOM effectuaient des transferts d'argent aux Anti-Balaka en RCA [REDACTED] ».*¹⁴

*« NGAISSONA est resté à la résidence de BOZIZE à YAOUNDE où il collaborait directement avec MOKOM père comme je l'ai expliqué. Je ne sais pas s'il y a eu des transferts d'armes, mais NGAISSONA a donné de l'argent à MOKOM père ou à Fred SEREFIO qui à leur tour, les transmettaient aux troupes Anti-Balaka. [REDACTED] ».*¹⁵

*« Je vous confirme que MOKOM père a fait des transferts à MOKOM fils [i.e., Maxime MOKOM] pour acheter des munitions artisanales. Je sais que NGAISSONA et MOKOM [Bernard] ont envoyé de l'argent, mais je ne peux pas vous dire s'ils ont soutenu les Anti-Balaka d'une autre manière notamment par des achats d'armements ».*¹⁶

*« Ce sont les Anti-Balaka et les FACA qui recevaient ces fonds ».*¹⁷

¹² CAR-OTP-2061-1534, 1546-1547, para. 84 (emphasis added); CAR-OTP-2061-1534, 1552, para. 116.

¹³ CAR-OTP-2122-8251, 8263, para. 113.

¹⁴ CAR-OTP-2061-1534, 1552, para. 116.

¹⁵ CAR-OTP-2122-8251, 8263, para. 115.

¹⁶ CAR-OTP-2061-1534, 1552, para. 116.

¹⁷ CAR-OTP-2061-1534, 1552, para. 116.

« [REDACTED] reçu de l'argent par divers moyens (soit par personne interposée qui transportaient physiquement les fonds, soit par Express Union) de NGAISSONA et de Bernard MOKOM en vue de perpétrer des attaques ». ¹⁸

« NGAISSONA contrôlait et vérifiait si l'argent qu'il transférait aux combattants, était bien arrivé à destination et avait été utilisé aux fins projetées, par exemple l'achat des munitions ». ¹⁹

« [REDACTED] des voyages fréquents de NGAISSONA et MOKOM père à la frontière pour rencontrer les éléments Anti-Balaka ainsi que les militaires qui s'y trouvaient ». ²⁰

« [REDACTED] ». ²¹

« NGAIKOSSET avait reçu de l'argent dont j'ignore le montant de NGAISSONA et de Bernard MOKOM ». ²²

iii. Orders and Instructions

13. The Prior Statements describe NGAISSONA's orders to Anti-Balaka elements on the ground and their reciprocal reporting during the relevant period. This includes evidence of NGAISSONA having forwarded attack plans in operations carried out in 2013, ahead of the group's seminal coordinated attack on BANGUI on 5 December:

« NGAISSONA donnait expressément des ordres et des plans d'attaques aux autres Anti-Balaka qui étaient restés sur le terrain en RCA et cela, par voie téléphonique ». ²³

« [Eugène] NGAIKOSSET a clairement reçu des instructions de NGAISSONA et Bernard MOKOM en vue de repartir combattre en RCA [REDACTED] ». ²⁴

¹⁸ CAR-OTP-2061-1534, 1555, para. 135.

¹⁹ CAR-OTP-2061-1534, 1546, para. 112.

²⁰ CAR-OTP-2122-8251, 8255, para. 31.

²¹ CAR-OTP-2061-1534, 1550, para. 104.

²² CAR-OTP-2061-1534, 1562, para. 179.

²³ CAR-OTP-2061-1534, 1546, para. 112.

²⁴ CAR-OTP-2061-1534, 1546, para. 177-178.

«[REDACTED] en 2014 que lorsqu'ils étaient au front lors des combats, il avait appelé téléphoniquement plusieurs fois Bernard MOKOM et NGAISSONA pour leur rendre compte du déroulement des opérations ».²⁵

« Je suis sûr que NGAISSONA était informé des attaques de BELOKO. Il résidait avec MOKOM père à YAOUNDE et les deux communiquaient avec GODONAM à la frontière. Ils communiquaient aussi beaucoup avec ceux de BELOKO ».²⁶

iv. Anti-Balaka Operations

14. The Prior Statements also reflect NGAISSONA's directions and/or instructions on the deployment of Anti-Balaka elements for the purposes of carrying out militarised attacks, in pursuit of the objective of returning BOZIZE to power. For instance, P-1847 states:

«[t]ous les FACA notamment les gardes présidentiels qui avaient quitté la base de BOUAR en abandonnant leur tenue militaire ... se sont aussi organisés pour attaquer les bases Seleka de BELOKO et ce jusqu'à BOUAR sur les ordres du Préfet Bernard MOKOM, de NGAISSONA [REDACTED] ».²⁷

« [REDACTED] cette attaque de BELOKO et il avait ajouté que lui-même s'apprêtait à attaquer BOUAR (qui était une base de la Seleka) suivant des instructions de Bernard MOKOM et de NGAISSONA notamment suite à leur rencontre de YAOUNDE ».²⁸

« Je souligne aussi que bien avant l'attaque du 05 Décembre 2013, NGAISSONA et Bernard MOKOM avaient fait venir en Novembre 2013 le Capitaine Eugène NGAIKOSSET de BRAZZAVILLE pour recevoir des instructions à YAOUNDE en vue de repartir sur le terrain à BANGUI pour coordonner les actions des Anti-Balaka ».²⁹

« NGAIKOSSET avait reçu de l'argent dont j'ignore le montant de NGAISSONA et de Bernard MOKOM ... ».³⁰

²⁵ CAR-OTP-2061-1534, 1557, para. 144.

²⁶ CAR-OTP-2122-8251, 8256, para. 40.

²⁷ CAR-OTP-2061-1534, 1555, para. 138.

²⁸ CAR-OTP-2061-1534, 1555, para. 138.

²⁹ CAR-OTP-2061-1534, 1561, para. 175.

³⁰ CAR-OTP-2061-1534, 1562, para. 179.

*« Bernard MOKOM et NGAISSONA [REDACTED]. Et les objectifs étaient clairs selon les instructions données ; lutter farouchement pour renverser la Seleka et faire revenir BOZIZE au pouvoir. Et c'est à ce niveau que la lutte prendra une autre allure outre le combat contre les Seleka et les musulmans, chercher à prendre le pouvoir pour BOZIZE. Et dans cette bataille, les FACA proches de BOZIZE ont rallié les Anti-Balaka et ils formaient un bloc commun ».*³¹

v. Preparatory field actions

15. The Prior Statements evidence NGAISSONA's direct involvement with Anti-Balaka fighters/commanders, including in preparation for the group's 5 December 2013 attack on BANGUI. In particular, that:

*« Lorsque NGAISSONA est arrivé à YAOUNDE en provenance de DOUALA, il était conduit par son jeune frère Frédérique. NGAISSONA se déplaçait entre DOUALA, GARAMBOULAI et BERTOUA pour rencontrer des anciens militaires, des GP qui se sont enfuis vers cette zone. Tous les gardes du corps étaient à BERTOUA sous la direction du colonel NGBOYA ».*³²

*« NGAISSONA se déplaçait souvent vers la frontière de la RCA, mais je ne sais pas à quelle fréquence. NGAISSONA se déplaçait toujours avec son frère Frédérique qui le conduisait ... quand il a déménagé à YAOUNDE, il se déplaçait avec MOKOM père. Je crois qu'il a déménagé à YAOUNDE au mois d'octobre ou novembre, 2013 ».*³³

*« En ce qui concerne la date du 05 Décembre 2013 pour l'attaque, je pense que NGAISSONA avait demandé aux troupes de se reposer pendant une semaine après une très longue distance parcouru en marchant. C'est toujours [REDACTED] ».*³⁴

³¹ CAR-OTP-2061-1534, 1570, para. 227 (emphasis added).

³² CAR-OTP-2122-8251, 8263, para. 115.

³³ CAR-OTP-2122-8251, 8264, para. 119.

³⁴ CAR-OTP-2061-1534, 1560, para. 165.

B. P-1847's failed to testify regarding material evidence included in his Prior Statements

16. P-1847 arrived at the seat of the Court on [REDACTED]. He began his direct examination on Friday, 26 March 2021. Under oath,³⁵ P-1847 testified that, having fully reviewed his Prior Statements during the statement reading process with VWS, he noted only small spelling errors, but nothing that changed their meaning.³⁶ P-1847 further confirmed the accuracy and truthfulness of the Prior Statements, which he signed contemporaneously under an acknowledgment of their truth, and adopted under oath in Court:³⁷

12 Q. At the time that you signed the statements, you also acknowledged

13 that they were truthful? Is that right?

14 A. Yes.

15 Q. And having read your statements over now before coming to court

16 before this Chamber, do you stand by what you said in those two statements?

17 A. Yes, I do.³⁸

He also affirmed that his Prior Statements were made voluntarily, without threat, force, coercion, or pressure,³⁹ and testified that they *accurately* reflected what he told Prosecution investigators at the time of his respective interviews.⁴⁰

³⁵ See Article 69(1); see also ICC-01/14-01/18-T-022-CONF-ENG CT, p. 3, lns. 14-20.

³⁶ See ICC-01/14-01/18-T-022-CONF-FRA-ET, p.16, lns.2-23 (confirming having re-read his Prior Statements « *dans leur intégralité* », P-1847 testified « *j'ai découvert de petites fautes orthographiques* ») (emphasis added).

³⁷ See CAR-OTP-2122-8251, at 8272; and see CAR-OTP-2061-1534, 1575 (attesting to having “read over this statement and it is true to the best of my knowledge and recollection). For elaboration of the principle of ‘*adoption*’ – which (unlike the conditions of rule 68(3)) requires that the witness testifies to the truth of the prior statement – which transforms its contents into their present in-Court testimony, see Advisory Committee's Notes on the Federal Rules of Evidence, Fed. Rule Evid. 801(d)(1), 28 U.S.C. App., p. 773 (elucidating the principle of ‘adoption’ – “(1) Prior statement by witness. Considerable controversy has attended the question whether a prior out-of-court statement by a person now available for cross-examination concerning it, under oath and in the presence of the trier of fact, should be classed as hearsay. If the witness admits on the stand that he made the statement and that it was true, he adopts the statement and *there is no hearsay problem*”); see e.g., *Stewart v. Baltimore Ohio R.R.*, 137 F.2d 527, 529 (2d Cir. 1943); *United States v. Klein*, 488 F.2d 481, 483 (2d Cir. 1973) (“when a witness “affirms the truth of a prior statement, the earlier statement is to be considered ‘not only as bearing on the credibility of the witness but as *affirmative evidence*’”) (emphasis added).

³⁸ ICC-01/14-01/18-T-022-CONF-ENG CT, p. 19; see also p. 14 ln.25 – p. 19, ln. 17 (for a fuller recitation of the relevant testimony regarding the veracity of the Prior Statements).

³⁹ ICC-01/14-01/18-T-022-CONF-ENG CT, p. 19, ln.18 – p. 20, ln. 4.

⁴⁰ See ICC-01/14-01/18-T-022-CONF-FRA-ET, p. 16, lns. 17-21 (emphasis added).

i. Recantation and inconsistent testimony on material aspects

17. After the intervening weekend following his first day of testimony, on Monday, 29 March 2021, P-1847 repudiated material aspects of his Prior Statements concerning NGAISSONA's involvement with the Anti-Balaka, particularly in 2013. On being directly confronted, the witness was unable to provide a rational explanation for his change in position and the inconsistencies with both his Prior Statements and his earlier trial testimony adopting them:

79:14 Q. So what is your explanation for the differences in what you're
15 testifying here today and what's in your statement [o]n everything in regard to
16 Mr Ngaïssona? What is your explanation for this?
17 A. When I was making this statement, Mr Prosecutor, I had said at the
18 beginning to the investigators I am not seeking to, you know, take one party's side,
19 but the Central African Republic has suffered too much. Those of us who are seeing
20 the truth and know the truth, if we know something, we have to bring our support so
21 that justice can be done legally to the benefit either of the victims or the Republic.
22 And my statement on Ngaïssona and I -- God knows I never met Ngaïssona,
23 not [REDACTED], we didn't meet. When we sat down
24 with Ngaïssona [REDACTED], he was
25 the president of the federation. [REDACTED]

80: 1 the time would -- wanted to remove him from the position of the presidency of the
2 federation [REDACTED]. That's why I went there. I listened to his point of view, in
order to then
4 be able to write up about it.
5 I did not discuss -- or I did not see Ngaïssona. I cannot say that I saw Ngaïssona
6 making the transfers. And this is on my conscience. You can verify everything that
7 I'm telling you here, to see the substance, so you can see the veracity of what I'm
8 telling you.⁴¹

18. The several material facts included in P-1847's Prior Statements to which he failed to testify or otherwise recanted are set out below.

ii. Meetings at the *Cite du Golf* Residence in YAOUNDE

19. P-1847 denied having seen NGAISSONA at the *Cite de Golf* Residence in YAOUNDE. He denied NGAISSONA's involvement in money transfers to, or exchanges involving, Anti-

⁴¹ See ICC-01/14-01/18-T-23-CONF-ENG-ET, p. 79, ln. 14-p. 80, ln. 8.

Balaka commanders. However, his Prior Statements belie this testimony. They were clear and detailed:

*« Lorsque BOZIZE était à la Résidence de la Cité du Golf à YAOUNDE, il se rencontrait très souvent NGAISSONA et Bernard MOKOM. Les autres que sont YAKITE et KOKATE voyageaient beaucoup, ils n'étaient pas toujours là ».*⁴²

*« [REDACTED] prendre de l'argent avec NGAISSONA à la Résidence de BOZIZE à la cite Golf à YAOUNDE ».*⁴³

*« NGAISSONA avait élu domicile à la Résidence de BOZIZE au Golf à YAOUNDE. Je n'ai pas le numéro de téléphone que NGAISSONA utilisait lors de son séjour au CAMEROUN. Je le voyais plutôt souvent à la Résidence de la Cité du Golf de YAOUNDE. Il dormait là-bas après le départ de BOZIZE au SUD-SOUDAN ».*⁴⁴

*« Je l'ai vu [NGAISSONA] une fois à la résidence du GOLF, mais nous n'avons pas échangé. NGAISSONA était avec les gardes du corps de BOZIZE. Je l'ai simplement salué et je suis parti »*⁴⁵

20. P-1847's testimony revealed other stark and material reversals of factual accounts regarding NGAISSONA provided in his Prior Statements. For instance, he testified regarding meetings involving, *inter alia*, BOZIZE and NGAISSONA⁴⁶ that:

50:24 ...So I cannot again say that Bozizé

25 was meeting with Ngaïssona, whereas he -- or, rather, when he was at the residence.⁴⁷

Again, his Prior Statements comprise not merely inconsistent evidence, but a stark contradiction.

⁴² CAR-OTP-2061-1534, 1552, para. 114; see ICC-01/14-01/18-23-CONF-ENG-ET, p. 48, ln. 12 – p. 51, ln. 3. (confronting the witness with the contradiction).

⁴³ CAR-OTP-2061-1534, 1552, para. 115.

⁴⁴ CAR-OTP-2061-1534, 1552, para. 115.

⁴⁵ CAR-OTP-2122-8251, 8264, para. 119.

⁴⁶ CAR-OTP-2061-1534, 1546-1547, para. 84.

⁴⁷ See ICC-01/14-01/18-23-CONF-ENG-ET, p. 50, ln. 24-25, see also, p.27, ln. 14 – p. 28, ln. 4.

« Lorsque BOZIZE était à la Résidence de la Cité du Golf à YAOUNDE, il se rencontrait très souvent NGAISSONA et Bernard MOKOM». ⁴⁸

iii. Financial support to the Anti-Balaka and money transfers

21. P-1847 similarly contradicted the evidence in his Prior Statements on NGAISSONA's provision of financial support to Anti-Balaka members. For instance, he testified:

68:12 ... So my answer to
13 your question then is that the information on Ngaïssona transferring funds, I – I
14 really didn't provide that information. I didn't have that information. ⁴⁹

He went further. When confronted with the specific representation in his Prior Statements of [REDACTED] NGAISSONA and Bernard MOKOM provide money to Anti-Balaka leader Achille GODONAM, P-1847 claimed:

40:12 ... In my statement I said I didn't see Ngaïssona give money to Achille Godonam.
13 Mokom did all the transactions. ⁵⁰

42: 4 ... I
5 insisted with the investigator that I never saw Ngaïssona do any transfers. ⁵¹

Yet again however, his reviewed, signed, and acknowledged Prior Statements (the accuracy of which he adopted under oath) detail exactly the opposite:

« [REDACTED] prendre de l'argent avec NGAISSONA à la Résidence de BOZIZE à la cite Golf à YAOUNDE » ⁵²

⁴⁸ CAR-OTP-2061-1534, 1552, para. 114.

⁴⁹ See ICC-01/14-01/18-T-23-Conf-Eng-ET, p. 68, ln. 12-14; *contra* e.g., CAR-OTP-2061-1534, 1552, para. 116.

⁵⁰ ICC-01/14-01/18-T-23-Conf-Eng-ET, p. 40, ln. 12-13.

⁵¹ ICC-01/14-01/18-T-23-Conf-Eng-ET, p. 40, ln. 12-13, and ICC-01/14-01/18-T-23-Conf-Eng-ET, p. 42, ln. 5; *contra* CAR-OTP-2061-1534, 1552, para. 115.

⁵² CAR-OTP-2061-1534, 1552, para. 115.

22. Moreover, as set out in the annexed Investigation Report,⁵³ the circumstances of P-1847's interviews involved no reticence on his part or material error and/or omission on the part of Prosecution investigators — as he affirmed at the start of his testimony.

iv. Operational instructions and orders

23. P-1847 denied having named NGAISSONA as having given orders to Anti-Balaka fighters to rest shortly before their attack on BANGUI. He testified instead that the order came from Bernard MOKOM.⁵⁴ His Prior Statements were nevertheless clear – and do not refer to Bernard MOKOM on this matter in any respect:

« En ce qui concerne la date du 05 Décembre 2013 pour l'attaque, je pense que NGAISSONA avait demandé aux troupes de se reposer pendant une semaine après une très longue distance parcouru en marchant. C'est toujours [REDACTED] m'avait donné cette information »⁵⁵

24. The witness's repudiation and denial of these material facts (and others) in his Prior Statement was so abrupt and apparent that the Chamber observed:

41:16 PRESIDING JUDGE SCHMITT: [11:59:15] Mr Witness, let me be blunt a little bit.
 17 According to the statement, this paragraph 115 I citated, you saw Mr Ngaïssona there.
 18 Now you say you didn't see him. This is not a tiny error. You know, there is an
 19 accused in detention, perhaps including because of such a statement, and now you're
 20 saying you didn't see him. So, actually, it is difficult to qualify these matters, these
 21 kind of things, as tiny errors. It's just a comment by me.
 22 THE WITNESS: (Interpretation) No. I said -- I said I did see Ngaïssona at
 23 the residence once. That's what I said in my declaration in 2020. That's when that
 24 question was put. I was asked when -- whether Ngaïssona was aware of the attack
 25 of 5 December, and I said: Just like Mokom he was informed, just like all the others,

 42: 1 about the attack. That's what I said in 2020.
 2 And the question whether I saw Ngaïssona give money, I said already the name of
 3 Bernard Mokom who made money transfers and who gave money to Achille
 4 Godonam. When I saw that statement -- or that sentence about transferring money, I
 5 insisted with the investigator that I never saw Ngaïssona do any transfers. But in
 6 2013 he did live together with Mokom, so he might have been aware of it, he might be

⁵³ CAR-OTP-00001666.

⁵⁴ ICC-01/14-01/18-T-23-Conf-Eng-ET, p.93, lns.1-10; *contra* CAR-OTP-2061-1534, 1560, para. 165.

⁵⁵ CAR-OTP-2061-1534, 1560, para. 165.

7 aware of the funding of Mokom. As Ngaïssona was part, he might have been aware
 8 of it. But I didn't speak about money with Ngaïssona and whether that was given
 9 via him to Achille.

42:10 PRESIDING JUDGE SCHMITT: [12:01:50] Then one additional question. This is
 11 the following paragraph, still on page 0120, 116, and it reads as your former
 12 statement:

13 "Sometimes Ngaïssona and Bernard Mokom also transferred money to the
 14 Anti-Balaka in the CAR via Express Union using intermediaries."

15 My question would be, with regard to what you said here in the courtroom now, how
 16 did you come to phrase this sentence like that in your statement at the time?

17 THE WITNESS: [12:02:40](Interpretation) I think my answer to that question, the
 18 investigators asked me a question, the presence of Ngaïssona in the Cité du Golf, and
 19 now the transfers which were carried out by Bernard Mokom. I told them that I
 20 didn't see Ngaïssona give money to Achille Godonam, but what I do know is that at
 21 the end of 2013 they were together and resided in the Cité du Golf. Mokom went
 22 there every day and Fred Serefio did the transfer. And one -- Serefio did a transfer
 23 with Express Union, and the Cameroon police knew that and stopped him and
 24 searched him. And I said that in my statement.

25 PRESIDING JUDGE SCHMITT: [12:03:41] Well, I think I leave it at that. But

43: 1 actually, you say you said that in the statement, yet it is not reflected like that in the
 2 statement, just as a comment⁵⁶

25. As the annexed Investigation Report shows, no such material exchange took place during the course of either of P-1847's interviews. Moreover, the witness's acknowledgement of the accuracy and truthfulness of his Prior Statements both contemporaneously and under oath at the start of his testimony, support this fact.

C. P-1847 recanted his Prior Statements due to improper interference

26. Based on information and evidence which became known to the Prosecution after the conclusion of P-1847's testimony, including through a debrief of the witness, it is clear that the

⁵⁶ ICC-01/14-01/18-T-23-Conf-Eng-ET, p. 41, ln.17- p. 43, ln. 2.

material omissions and inconsistencies in his trial testimony vis-à-vis his Prior Statements was due to unlawful influence and/or interference.

27. Briefly, the Prosecution's investigation into the circumstances surrounding P-1847's testimony has revealed the following:

28. Around two weeks before his [REDACTED] departure to The Hague, P-1847 was told by an individual with ties to NGAISSONA's circle⁵⁷ [REDACTED].⁵⁸ The witness denied the claim as untrue.

29. After arriving at the seat of the Court and during the statement reading process, in a call with his wife facilitated by VWS, P-1847 learned that [REDACTED].⁵⁹ [REDACTED].⁶⁰

30. P-1847 realised that, although he had denied the claim circulating about his cooperation and testimony in this case, people continued to hold suspicions. During the course of his testimony, several people reached out to him and he likewise communicated with people through, *inter alia*, Facebook claiming to [REDACTED],⁶¹ to dispel claims about his cooperation with the Prosecution in the case.

31. During his debriefing with Prosecution investigators, P-1847 noted concerns about the possibility that his testimony might be leaked, and further, its potential impact on his family situation, given the circumstance that arose in respect of his wife upon his travel to The Hague:

*“... quand ta famille est déstabilisée ... et que à cause de ... de quelque chose que tu es en train de ... de témoigner, tout ça, c'est ... c'est sûr que tu as l'impression que ... que ça vienne. »*⁶²

32. Although he denied having been directly influenced by anyone specifically during his debriefing,⁶³ he also falsely denied having been contacted by anyone during his stay in The

⁵⁷ CAR-OTP-00001659, lines 145-148, 168-172.

⁵⁸ CAR-OTP-00001659-000003, p. ln. 51-52, and 000004, ln. 66 ([REDACTED]).

⁵⁹ CAR-OTP-00001658-000025-000026, ln. 790-826.

⁶⁰ CAR-OTP-00001658-000026, ln. 829-838; CAR-OTP-0000162-000002, ln.26 - 000003, ln. 35.

⁶¹ CAR-OTP-00001660-000011, ln. 324-333.

⁶² CAR-OTP-00001658-000037, ln. 1192 – 000039, ln. 1293 (specifically, ln.1212-1215).

⁶³ CAR-OTP-2130-4047, at 4049.

Hague, including through social media. Moreover, there is clear evidence that P-1847 [REDACTED] after his debrief with Prosecution investigators.

i. The evidence

a. P-1847 was in near daily contact with Anti-Balaka supporters while at the seat of the Court

33. Although P-1847 denied ‘interference’ with his testimony,⁶⁴ information subsequently gathered by the Prosecution belies his claim. Rather the evidence shows that P-1847 was in contact with NGAISSONA’s and Anti-Balaka supporters on a near daily basis throughout his stay in The Hague. Significantly, the evidence shows that such contacts were also had during the intervening weekend between the start of P-1847’s direct examination and its continuation, wherein he repudiated material aspects of his Prior Statements as described.

a. P-1847 was aware that his status had been leaked

34. As noted, during his 31 March 2021 debriefing, P-1847 informed Prosecution investigators that [REDACTED],⁶⁵ [REDACTED].⁶⁶

35. P-1847’s [REDACTED] some two weeks before his arrival in The Netherlands to testify,⁶⁷ had told others of P-1847’s participation,⁶⁸ and that P-1847 was supposed to testify “against” NGAISSONA:

[REDACTED].⁶⁹

[REDACTED].⁷⁰

⁶⁴ ICC-01/14-01/18-T-022-CONF-ENG CT, p. 20, lns. 5-17 ; see ICC-01/14-01/18-T-022-CONF-ENG CT, p. 78, ln. 25 – p. 79, ln. 13.

⁶⁵ See Centrafrique Presse, [REDACTED] [last accessed 7/07/2023]. NGAISSONA was a « *témoign majeur* » at [REDACTED].

⁶⁶ CAR-OTP-2130-4047, at 4049; see CAR-OTP-00001659-000006, ln. 145-148.

⁶⁷ CAR-OTP-2130-4047, at 4049.

⁶⁸ CAR-OTP-00001659-000007, ln. 179-192.

⁶⁹ CAR-OTP-00001659-000003, ln. 51-52, and 64 – 000004, ln. 66.

⁷⁰ CAR-OTP-00001659-000005, ln. 109-114.

36. P-1847 believed that [REDACTED] had been circulated by supporters of the Anti-Balaka and NGAISSONA, in particular:

[REDACTED]⁷¹ [REDACTED].
[REDACTED].⁷²

37. Confronted with the assertion that his name had come up among Prosecution witnesses, P-1847 denied his involvement with the case,⁷³ obviously realising that he had been outed.

a. P-1847 was in contact with several individuals in CAR throughout his testimony

38. On 31 March 2021, Prosecution Investigators received information independently from another protected Prosecution witness P-2841 ([REDACTED]), refuting P-1847's claim that he had not been in contact with anyone when testifying.⁷⁴

39. In a routine conversation concerning witness security, P-2841 mentioned that he had been in contact with P-1847 on Sunday 28 March 2021 — the day before P-1847 recanted his testimony. P-2841 explained that, in March (or possibly late February 2021), he became aware [REDACTED] NGAISSONA's *Parti Centrafricain pour l'Unité et le Développement* ("PCUD"), were involved in circulating [REDACTED] and speaking to certain listed individuals.⁷⁵ [REDACTED],⁷⁶ [REDACTED]⁷⁷

⁷¹ Presumably, Igor LAMAKA, spokesperson for the Anti-Balaka – Ngaissona faction.

⁷² CAR-OTP-00001661-000005, ln. 126-132; *see also* CAR-OTP-00001659-000007, ln. 168-172 (noting, « *il a dit là-bas c'est les gens qui parlent et ce sont les proches de ... de NGAISSONA* »).

⁷³ CAR-OTP-00001659-000005, p. ln. 121-122 (« *parce que sa parole au milieu là, je voulais donner mon explication et il a vu que c'est clair et puis, il est convaincu, il est arrivé* »).

⁷⁴ *See* ICC-01/14-01/18-T-022-CONF-ENG CT, p. 78, ln. 25 – p. 79, ln. 13.

⁷⁵ CAR-OTP-2130-4051, at 4052.

⁷⁶ *See* ICC-01/14-01/18-906-Red2, para. 33; *see* CAR-OTP-2130-4051, at 4053.

⁷⁷ CAR-OTP-2130-4051, at 4053.

40. This transpired pursuant to a meeting [REDACTED]⁷⁸ [REDACTED].⁷⁹ Notably, both [REDACTED] would have known definitively that both P-1847 and P-2841 were protected Prosecution witnesses. On that occasion, [REDACTED],⁸⁰ following which [REDACTED].⁸¹

41. [REDACTED] that he was hurt by the fact that the Prosecution would call members of his *Gbaya* ethnicity to testify against him.⁸² He noted that [REDACTED] was not happy with the situation.⁸³ Later, [REDACTED].⁸⁴ Just as P-1847 did in respect of his outing as a Prosecution witness, P-2841 similarly denied his status, insisting that he was not cooperating with the ICC.⁸⁵

42. Around three weeks after the [REDACTED] (*i.e.*, around the time when P-1847 had just begun testifying), [REDACTED].⁸⁶ He then attempted to contact P-1847 through [REDACTED]⁸⁷ — the day before P-1847 suddenly recanted material aspects of his Prior Statements regarding NGAISSONA.

43. [REDACTED].⁸⁸ [REDACTED]. Nevertheless, he confirmed that they spoke particularly about [REDACTED] come up in the political circles in CAR as a person trying to divide BOZIZE’s *Kwa Na Kwa* (“KNK”) political party (one prominently associated with the Anti-Balaka) — which P-1847 denied.⁸⁹

44. [REDACTED] corroborate his communications with P-1847.⁹⁰ By contrast, [REDACTED].⁹¹

⁷⁸ CAR-OTP-2127-8340, at 3841; *see also* CAR-OTP-2127-8525.

⁷⁹ CAR-OTP-2127-8340, at 8341.

⁸⁰ To the Prosecution’s understanding, [REDACTED].

⁸¹ CAR-OTP-2127-9242 (CDR provided pursuant to Registry pursuant to the Order of Pre-Trial Chamber II (ICC-01/14-173-Conf-Exp), [REDACTED])

⁸² *See* CAR-OTP-2130-4051, at 4052.

⁸³ CAR-OTP-2130-4051, at 4052.

⁸⁴ CAR-OTP-2130-4051, at 4052.

⁸⁵ CAR-OTP-2130-4051, at 4052; *see* ICC-01/09-01/11-1938-Corr-Red2, para. 55 (recognising that improper interference can be inferred from a “pattern of interference” with other witnesses in the case).

⁸⁶ CAR-OTP-2130-4051, at 4053; CAR-OTP-2127-8525.

⁸⁷ CAR-OTP-2130-4051, at 4053.

⁸⁸ CAR-OTP-2130-4051, at 4053.

⁸⁹ CAR-OTP-2130-4051, at 4053.

⁹⁰ CAR-OTP-2127-8525; CAR-OTP-2134-0081, timestamp 28/03/2021 at 08:40 - 2 minutes 39; CAR-OTP-2134-0082, timestamp 28/03/2021 at 13:37 - 25 minutes 31 sec.

⁹¹ *See* CAR-OTP-2136-0019, at 0030 and CAR-OTP-2136-0070, at 0081 [REDACTED].

a. [REDACTED] and Call Data Records confirm P-1847's contact

i. Facebook

45. Facebook and call data records ("CDR") confirm that P-1847 was indeed in contact with several individuals in CAR prior to and throughout his testimony in The Hague.

46. As noted P-1847 arrived in The Hague [REDACTED], where he remained throughout his testimony. [REDACTED].⁹² [REDACTED] after his debrief by Prosecution Investigators. Nevertheless, through [REDACTED] P-1847's interlocutors, the Prosecution obtained evidence showing that apart from his contacts with P-2841,⁹³ the witness was also in contact with at least, [REDACTED],⁹⁴ [REDACTED],⁹⁵ and [REDACTED].⁹⁶ Each of these individuals is supportive of the Anti-Balaka and/or linked to and associated with, NGAISSONA.

ii. CDR

47. CDR obtained for [REDACTED]⁹⁷ also reflect consistent and regular activity and contact with several individuals in CAR on [REDACTED]⁹⁸ — before resuming his direct examination and his abrupt failure to provide material evidence included in the Prior Statements. Although P-1847 apparently [REDACTED],⁹⁹ CDR show that he was surreptitiously in constant external communication, notwithstanding.¹⁰⁰

iii. P-1847 had contacts with [REDACTED]

48. [REDACTED], communicated with P-1847 while he was in The Hague. As noted, before P-1847's departure for the Court, [REDACTED].

⁹² See is CAR-OTP-2136-0019, at 0020-0039 [REDACTED].

⁹³ See CAR-OTP-2134-2700, at 2976.

⁹⁴ CAR-OTP-00000089-000047, 000055 (note that communications are consistent throughout the witness's stay in The Hague *see e.g.*, 000040 *et seq.*)

⁹⁵ CAR-OTP-00000094-000015, 000017 [REDACTED].

⁹⁶ See CAR-OTP-00001631-000007 to CAR-OTP-00001631-000014 (messages from 15/03/2021 to 03/04/2021).

⁹⁷ See CAR-OTP-00000089-000033-000034 [REDACTED].

⁹⁸ See CAR-OTP-2130-9559, rows 5764 to 5773 [REDACTED].

⁹⁹ The relevant correspondence from the VWS is available on request.

¹⁰⁰ CAR-OTP-2130-4076, at 4076 [REDACTED].

49. Although it is unclear whether [REDACTED] are one and the same, the attendant circumstances demonstrate a pattern of witness interference and/or corrupt influence,¹⁰¹ including through the deliberate public revelation of their cooperation with the Court and of other confidential information.

50. In respect of [REDACTED] was also involved — P-0884 states that its dissemination involved [REDACTED].¹⁰² It appears however, that [REDACTED].¹⁰³ In any event, according to P-0884, [REDACTED].¹⁰⁴ [REDACTED].¹⁰⁵

51. Given [REDACTED], it is reasonably inferable, that P-1847 was seriously apprehensive that [REDACTED] was seeking to determine whether he was in fact cooperative with the investigation and trial. The content of numerous messages confirm this reticence and indicate that [REDACTED] where he was. [REDACTED]¹⁰⁶ [REDACTED].¹⁰⁷ P-1847's conduct demonstrates a clear concern for the potential adverse consequences should his status as a witness be discovered¹⁰⁸ - which was further reflected in other communications noted below, and ultimately impacted in his trial testimony.¹⁰⁹

52. In addition to text messages,¹¹⁰ [REDACTED] which lasted some 465 seconds or nearly eight minutes.¹¹¹

¹⁰¹ ICC-01/05-01/13-2170-Corr2-Red, para. 239 (holding that corrupt influence comprises “conduct that may have (or is expected by the perpetrator to have) an impact or influence on the testimony to be given by a witness” and “contaminating the witness’s testimony” and “compromising the reliability of the evidence”); See ICC-01/09-01/20-153-Red, para. 45 (interference denotes the subjection of a witness to conduct “seek[ing] to deter the witness from giving full evidence or seeks in any way to unduly influence the nature of the witness’s testimonial evidence”) citing ICC-01/05-01/13-1989-Red, para. 44.

¹⁰² CAR-OTP-2130-4156, at 4157.

¹⁰³ See *Radio Ndeke Luka, RCA* : [REDACTED].

¹⁰⁴ CAR-OTP-2130-4156; CAR-OTP-2130-4423.

¹⁰⁵ CAR-OTP-2030-0445, 0457; see CAR-OTP-2030-0445, 0447 [REDACTED].

¹⁰⁶ See CAR-OTP-00000089-000032 and CAR-OTP-00000089-000033, [REDACTED]; CAR-OTP-00000089-000039 and CAR-OTP-00000089-000040, 15/03/2021 from 07:19:11 to 07:22:12.

¹⁰⁷ CAR-OTP-00000089-000040, [REDACTED]; CAR-OTP-00000089-000045, [REDACTED].

¹⁰⁸ CAR-OTP-00001660-000011, ln. 324-333 [REDACTED].

¹⁰⁹ See ICC-01/05-01/13-1989-Red, para. 44 (noting that interference denotes conduct which seeks in any way “to unduly influence the nature of the witness’s testimonial evidence”); see also ICC-01/05-01/13-749, para. 30 (noting that article 70(1)(c) – which includes ‘interference’ as “proscribing any conduct that *may* have (or is expected by the perpetrator to have) *an impact or influence on the testimony* to be given by a witness, inducing the witness to falsely testify or *withhold information* before the Court”) (emphasis added).

¹¹⁰ [REDACTED], see CAR-OTP-00000089-000044 and CAR-OTP-00000089-000045.

¹¹¹ CAR-OTP-00000488 [REDACTED].

iv. P-1847 had contacts [REDACTED]

53. P-1847 was in regular contact [REDACTED] during his stay and testimony in The Hague.

54. [REDACTED] is a member of BOZIZE's KNK party. As other trial evidence has shown, he was a supporter of the Anti-Balaka and in YAOUNDE in 2013 along with [REDACTED], among others associated with BOZIZE, Bernard MOKOM, and NGAISSONA in the period leading up to the 5 December 2013 attack on BANGUI.

55. As P-0884 testified, [REDACTED] was a youth of Bozizé's party who was all the time *in contact with Ngaißona*.¹¹² His association with and/or support of the Anti-Balaka is further confirmed by P-2841, who noted that [REDACTED] that, although he did not know the planned date of the attack on BANGUI, it "would take place very soon."¹¹³

56. [REDACTED] communicated with P-1847 through [REDACTED] while P-1847 was in The Hague. P-1847 initially attempted to contact [REDACTED] on his arrival to The Hague on [REDACTED],¹¹⁴ followed by several voice communications beginning [REDACTED]¹¹⁵ and including, [REDACTED],¹¹⁶ [REDACTED],¹¹⁷ [REDACTED],¹¹⁸ [REDACTED],¹¹⁹ [REDACTED],¹²⁰ and [REDACTED].¹²¹

57. P-1847's messages [REDACTED] show him continuing to try to divert attention from his current whereabouts, claiming to be [REDACTED].¹²² In a [REDACTED] communication, [REDACTED].¹²³ It is reasonably inferable that, like the situation [REDACTED], P-1847 was

¹¹² ICC-01/14-01/18-T-034-ENG CT, p. 65, ln. 14-16, 21-23 (emphasis added).

¹¹³ ICC-01/14-01/18-T-029-CONF ENG, p. 84, ln. 3-9.

¹¹⁴ See CAR-OTP-00000094-000004, [REDACTED].

¹¹⁵ See CAR-OTP-00000094-000005, [REDACTED].

¹¹⁶ See CAR-OTP-00000094-000007, [REDACTED]; CAR-OTP-00001634, [REDACTED].

¹¹⁷ See CAR-OTP-00000094-000009, [REDACTED]; and CAR-OTP-00001634.

¹¹⁸ See CAR-OTP-00000094-000015, [REDACTED]; and CAR-OTP-00001634, [REDACTED].

¹¹⁹ See CAR-OTP-00000094-000015, timestamp 26/03/2021 16:34:14; and CAR-OTP-00001634, [REDACTED].

¹²⁰ See CAR-OTP-00000094-000017, [REDACTED]; and CAR-OTP-00001634, [REDACTED].

¹²¹ See CAR-OTP-00000094-000017, timestamp 29/03/2021 20:32:37; and CAR-OTP-00001634, [REDACTED].

¹²² See CAR-OTP-00000094-000004, [REDACTED]; and CAR-OTP-00000094-000012 [REDACTED].

¹²³ See CAR-OTP-00000094-000021, [REDACTED].

seriously apprehensive that [REDACTED] was also seeking to determine whether he was cooperative with the investigation and trial in this case.

58. On Sunday 28 March 2021 — the weekend after P-1847 began testifying¹²⁴ — the two were in contact again by WhatsApp.¹²⁵ The same day, P-1847 [REDACTED].¹²⁶ P-1847's denial of any contacts and [REDACTED] of his Facebook accounts after his debriefing by Prosecution Investigators, again strongly indicates both that their content was improper and his consciousness thereof.

59. Importantly, the Prosecution's investigation shows that [REDACTED] was in contact with NGAISSONA from The Hague, who apparently revealed confidential information concerning another protected witness P-2673 [REDACTED].¹²⁷ That witness was directly threatened by [REDACTED], as described below.¹²⁸

60. Facebook records reflect [REDACTED] to a correspondent,¹²⁹ stating: "[REDACTED]".¹³⁰ In the exchange, [REDACTED]»¹³¹

61. This conduct falls within a clear pattern of interference with witnesses in this case. And thus, has circumstantial bearing on the conduct to which P-1847 was subjected in the lead-up to and during his testimony.

¹²⁴ See CAR-OTP-00000094-000016, 000017.

¹²⁵ See CAR-OTP-00000094-000017, [REDACTED].

¹²⁶ See CAR-OTP-00000094-000017, [REDACTED].

¹²⁷ See all redactions applied to ICC-01/14-01/18-T-042-Red-ENG, p. 14, l. 22, p. 39, l. 24, p. 40, l. 7, p. 44, l. 1, 15, 18.

¹²⁸ See *infra*, paragraph 63.

¹²⁹ See Annex, p. 166-170: CAR-OTP-00000084-000033-000037.

¹³⁰ CAR-OTP-00000084-000033-000035.

¹³¹ CAR-OTP-00000084-000036 (emphasis added); [REDACTED].

v. P-1847 had contacts with [REDACTED]

62. While in The Hague, P-1847 was in contact [REDACTED] — another member of BOZIZE's KNK party¹³² and Anti-Balaka supporter.¹³³ This is significant, particularly given [REDACTED].

63. Facebook records show that about a week after P-2673's testimony, on 11 June 2021, [REDACTED].¹³⁴ Notably, [REDACTED]¹³⁵ [REDACTED].¹³⁶ Nonetheless, both the witness's identity and his confidential testimony were [REDACTED], which strongly suggests that the information he received is linked in its pattern [REDACTED] interaction with NGAISSONA or individuals operating in the Accused's circle.

64. In respect of P-1847, Facebook records show that the witness was in contact [REDACTED]. On that occasion P-1847 tried [REDACTED].¹³⁷ In a subsequent conversation [REDACTED].¹³⁸ [REDACTED].¹³⁹

65. These contacts, their timing and extent, as well as the collocutors involved and their association with NGAISSONA and/or the Anti-Balaka, demonstrate that P-1847's failure to testify to material aspects of his Prior Testimony was a product of improper interference.

D. The Prosecution made reasonable efforts to secure all facts known to P-1847 when testifying

66. During the course of P-1847's testimony, the Prosecution addressed several material discrepancies in relation to his Prior Statements, as described above. On being confronted and/or directed to clarify his position, the witness consistently testified at substantial variance with his Prior Statements. As such, the Prosecution put plainly to the witness the nature of the

¹³² See e.g., ICC-01/14-01/18-T-073-Red-ENG, p. 34, ln. 2-10; see also [REDACTED].

¹³³ See e.g. CAR-OTP-2102-3203, at 3348, 07:17:52 [REDACTED]; CAR-OTP-2102-2520, at 2725, 15:09:35-15:32:35 [REDACTED]; CAR-OTP-2101-9277, at 9347, 18:52:54 (describing the 5 December 2013 Anti-Balaka's attack on the Muslim population in the BORO neighbourhood of BOSSANGO – [REDACTED]).

¹³⁴ See CAR-OTP-00000077, at 000001.

¹³⁵ ICC-01/14-01/18-T-041-Red-ENG, p. 31, l. 14.

¹³⁶ See all redactions applied to ICC-01/14-01/18-T-041-Red-ENG, p. 17, l. 21-22, p. 31, l. 11; ICC-01/14-01/18-T-042-Red-ENG, p. 43, l. 24, p. 44, l. 15, 18, p. 65, l. 21, p. 82, l. 9-10.

¹³⁷ CAR-OTP-00001631-000007-000008.

¹³⁸ CAR-OTP-00001631-000009-000010; ICC-01/14-01/18-T-038-Red-ENG, p.34, [REDACTED].

¹³⁹ CAR-OTP-00001631-000009-000011.

material discrepancies, affording him an opportunity to explain his transparent efforts to distance himself from his Prior Statements as regards NGAISSONA's acts and conduct.¹⁴⁰

67. This manifestly satisfies the requirement that reasonable efforts be made to secure the facts known to the witness — in this instance, those which P-1847 affirmed contemporaneously when making his Prior Statements and to which he attested and adopted at the start of his evidence on 26 March 2021.¹⁴¹ Although P-1847 was specifically directed to and impeached with several material aspects of his Prior Statements in this case, rule 68(2)(d) does not require that every portion of the prior recorded testimony be specifically put to the witness¹⁴² — particularly. This is even more so where, as here, the overarching and core evidentiary issues are clear and have been directly addressed. It is moreover entirely consonant with the objective of rule 68(2)(d) to disincentivise witness interference by authorising the Court “to receive a witness's pre-trial statement where the witness at trial, following intimidation, disclaims all knowledge of events described in the pre-trial statement.”¹⁴³ Moreover, in this instance, the Prosecution prevailed on the Chamber to further instruct the witness as to his obligations pursuant to article 70:

82:19 Mr Witness, with regard to the fact that on Friday morning, being
20 asked by the Prosecutor if you had the chance to reread the transcripts of these two
21 statements that you gave previously to the Prosecution, you said yes, and then you
22 have -- you have been asked if they are correct and then you said yes with regard to
23 that. And looking today that there are differences, I would -- on behalf of
24 the Chamber I would ask you to reflect upon this and indeed would remind you that
25 you have to tell us the truth and nothing but the truth and that it is a -- an offence

83: 1 under the Statute if you don't do that¹⁴⁴

¹⁴⁰ See ICC-01/14-01/18-T-23-Conf-Eng-ET, p. 79, ln. 14-p. 80, ln. 8.

¹⁴¹ See *e.g.*, ICC-01/09-01/11-1938-Corr-Red2, paras. 42-50 (observing that [t]he diligence in exploring these deviations is relevant when deciding under Rule 68(2)(d)(i) whether 'reasonable efforts have been made [...] to secure from the witness all material facts known to the witness'; “extensive questioning conducted by the parties”; and that “the witness was examined and cross-examined in court about this aspect of [the Accused's] involvement”).

¹⁴² See ICC-01/09-01/11-1938-Corr-Red2, paras. 73-74.

¹⁴³ See F. Gaynor, Obstruction of Justice by Silencing Witnesses: Possible Remedies, International Criminal Justice Today, 17 April 2014, <https://www.international-criminal-justice-today.org/arguendo/obstruction-of-justice-by-silencing-witnesses-possible-remedies/> [last accessed 7/07/2023].

¹⁴⁴ See ICC-01/14-01/18-T-022-CONF-ENG CT, p. 82, ln. 9 – p. 83, ln. 3.

E. The Prior Statements bear sufficient indicia of reliability

68. The Prior Statements satisfy the formal requirements of reliability. Both statements were obtained by the Prosecution in the ordinary course of its investigations; the witness attested to the truth of the evidence he provided during his interviews, having read, corrected, and signed an acknowledgement to that effect contemporaneously;¹⁴⁵ the witness attested to the voluntariness of the Prior Statements; and, in accordance with rule 111(1), they were duly signed, and reflected the dates, times, locations, and the persons present during the interviews.¹⁴⁶

69. Moreover, P-1847 reaffirmed the truthfulness and accuracy of his Prior Statements under oath when questioned about the circumstances of his two statements.¹⁴⁷

70. The narrative that P-1847 provided in 2017 (only a few years after the events described) is fully consistent with his September 2020 interview, given under similarly reliable circumstances,¹⁴⁸ and provided only months before his trial testimony.

F. The interests of justice are best served by introducing the Prior Statements

71. The interests of justice weigh substantially in favour of the Chamber's recognition of the formal submission of the Prior Statements.

72. *First*, article 69(3) authorises a Chamber to take into account all evidence it considers necessary for the determination of the truth. This includes prior statements that are inconsistent with the witness's trial testimony. In this instance, although the Prior Statements go to the acts and conduct of the Accused, the Defence had a sufficient opportunity to examine the witness on the material aspects of his Prior Statements. Unlike circumstances wherein a witness fails to attend the proceedings altogether as a result of improper influence/interference, P-1847 was fully available to the Parties and Participants for examination, including on his Prior Statements. That the Defence may have strategically elected not to do so given the witness's

¹⁴⁵ See See CAR-OTP-2122-8251, 8251, 8271-8272; CAR-OTP-2061-1534, 1535, 1574-1575.

¹⁴⁶ See CAR-OTP-2061-1534, and CAR-OTP-2122-8251.

¹⁴⁷ See ICC-01/14-01/18-T-022-CONF-ENG CT, p. 19; *see also* p. 14 ln. 25 – p. 19, ln. 17 (for a fuller recitation of the relevant testimony regarding the veracity of the Prior Statements).

¹⁴⁸ See CAR-OTP-2122-8215, 8271, paras. 186-192, and 9336; *see also* CAR-OTP-2122-8273-R01 (detailing the remote interview process).

disposition does not amount to the diminution or deprivation of a procedural right or opportunity.

73. *Second*, a substantial amount of the evidence in the Prior Statements going to the Accused's acts or conduct is corroborated, including by, *inter alia*, witnesses P-0306, P-0801, P-0884, P-0889, P-0966, P-1521, P-2232, P-2328, P-2625, P-2763, P-2841, and P-2843 relating to several issues. These include NGAISSONA's presence at meetings in CAMEROON together with BOZIZE, Bernard MOKOM and others; his association with Bernard MOKOM and Maxime MOKOM; his provision of assistance, including financial assistance to Anti-Balaka elements; his knowledge and involvement in Anti-Balaka operations – including the 5 December 2013 Attacks on BANGUI and BOSSANGO, the objectives of the Group, its disposition, structure, organisation, and hierarchy.

74. *Third*, rule 68(2)(d) does not require that a link between the improper influence or interference and the Accused be shown to establish that the interests of justice are served by the introduction the prior recorded testimony.¹⁴⁹ Here, the submission of the Prior Statements is not unfairly prejudicial, particularly in view of the substantial countervailing interests in preserving the integrity of the trial proceedings and the Chamber's related statutory duty. With that said, all indications in this case are that the Accused and/or individuals within his circle of influence in CAR were involved in a pattern of interference with Prosecution witnesses, that includes P-1847.¹⁵⁰

75. Even assuming *arguendo* that the Accused was not personally involved with others in a pattern of interference with witnesses — which the evidence referenced herein rebuts — the Chamber's recognition of the formal submission of the Prior Statements manifestly serves the interests of rule 68(2)(d). It addresses the highly deleterious impact of such conduct on the Court's proceedings, as well as preserves the Chamber's statutory duty to determine the truth. Moreover, the receipt of such evidence in circumstances where a witness substantially recants their prior testimony is hardly anomalous. It is consistent with the practice of many jurisdictions which readily admit inconsistent statements for their truth¹⁵¹ as well as this Court's (and similar

¹⁴⁹ See ICC-01/09-01/11-1938-Corr-Red2, para. 81.

¹⁵⁰ See *supra*, paragraphs 59-63 above (concerning P-2673); see also paragraph 40 [REDACTED]. Note CAR-OTP-2122-9079, 9080 (detailing the witness's association with NGAISSONA, that he is known by Anti-Balaka chiefs, and his related security concerns).

¹⁵¹ See *e.g.*, *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.3, Decision on Appeals against Decision on Impeachment of a Party's Own Witness, 1 February 2008, para. 31 (affirming that the contents of a previous

international tribunals¹⁵²) entrenched broad approach to the submission of evidence.¹⁵³ As such, a Chamber has wide discretion to “assess any evidence, subject to the specified issues of ‘fairness’”,¹⁵⁴ similarly mirrored in continental systems.¹⁵⁵

76. As the Appeals Chamber has recently noted, “the paramount principle of free assessment of evidence as enshrined in article 69(4) of the Statute and rule 63(2) of the Rules [...] is ‘a core component of judicial activity both at the pre-trial stage of the case and at trial’.”¹⁵⁶ This principle empowers the Court’s Chambers — composed of professional judges — to evaluate and weigh prior recorded testimony holistically.

77. The circumstances described above evince a pattern of conduct which, in the ordinary course of events, would pressure, coerce, and intimidate a witness. Here, it resulted in materially interfering with P-1847’s substantive testimony. The interests of justice and basic fairness demand no less than the Chamber’s recognition of the formal submission of the Prior Statements.

inconsistent statement “may be admitted as hearsay evidence for the truth of its contents when it fulfils the criteria under the Tribunal’s Rules of being relevant and sufficiently reliable to be accepted as probative” and its consistency with other jurisdictions (internal citations omitted).

¹⁵² See *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Judgement, 16 November 2001, para. 37-38; Kosovo Specialist Chambers Rules of Procedure and Evidence, Rule 137(1) and (2); see ICTY Rule 89(C).

¹⁵³ See Rule 63(2) (“[a] Chamber shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted”).

¹⁵⁴ ICC-01/04-01/06-1399-Corr 2, paras. 23 and 24.

¹⁵⁵ See ICC-01/05-01/13-2170-Corr2-Red, para. 159 (noting the principle of the ‘free assessment of evidence’).

¹⁵⁶ ICC-02/05-01/20-982, para. 79.

IV. CONCLUSION

78. For the foregoing reasons, the Prosecution respectfully requests the Chamber to introduce the Prior Statements pursuant to rule 68(2)(d).



Karim A. A. Khan KC, Prosecutor

Dated this 13th day of October 2023

At The Hague, The Netherlands