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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public with Confidential Annex

Public redacted version of "Prosecution's Request for a Variation of Time Limit pursuant to Regulation 35 to seek the Submission of the Prior Recorded Testimonies of P-0460, P-0732, P-1779, P-1864, and P-1871 pursuant to Rule 68(2)(c)", 22 December 2023, ICC-01/14-01/18-2285-Conf

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”) seeks the formal submission of the prior recorded testimonies of P-0460, P-0732, P-1779, P-1864, and P-1871 and their respective associated items (“Prior Statements”),¹ pursuant to rule 68(2)(c) of the Rules of Procedure and Evidence (“Rules”) and the “Initial Directions on the Conduct of the Proceedings” (“Initial Directions”).²

2. The Chamber authorised the introduction of the Prior Statements pursuant to rule 68(2)(b), subject to the receipt of the witnesses’ certifying declarations in its 6 April 2023 decision (“6 April 2023 Decision”).³ The Prosecution has since exhausted all reasonable measures to contact and locate the witnesses concerned in order to proceed with the signature of these certifying declarations.

3. As a result, the Prosecution now seeks to convert the submission of the Prior Statements under Rule 68(2)(c), together with an extension of time pursuant to Regulation 35 of the Regulations of the Court (“Regulations”) for the same (if deemed necessary), given that: (i) the witnesses are unavailable to certify their statements due to obstacles that could not be overcome with reasonable diligence; (ii) the Prosecution could not anticipate the need for article 56 measures to obtain their evidence; and (iii) the Prior Statements have sufficient indicia of reliability.⁴

4. The Prior Statements are furthermore relevant and probative, and there is no undue prejudice to either Accused from their submission, as the evidence does not go

¹ Listed in Annex 1 to this request.

² ICC-01/14-01/18-631, para. 33.

³ ICC-01/14-01/18-1833-Conf-Corr: for **P-0460**: para. 262; for **P-0732**: para. 225; for **P-1779**: para. 205; for **P-1864**: para. 117; and for **P-1871**: para. 128.

⁴ ICC-01/14-01/18-1833-Conf-Corr: for **P-0460**: para. 259; for **P-0732**: para. 222; for **P-1779**: para. 202; for **P-1864**: para. 114; and for **P-1871**: para. 125.

to the acts and conduct of the Accused and/or do not concern issues that are materially in dispute.⁵

5. Moreover, there is good cause to grant the requested extension, given that the unavailability of the witnesses to certify their Prior Statements can only be properly established now. After the Chambers 6 April 2023 Decision, the Prosecution started the certification process. At the time of the Chamber's 7 July 2023 deadline to submit all rule 68(2)(c) requests,⁶ the Prosecution believed it could and should continue to make efforts in the exercise of reasonable diligence to locate the witnesses and/or to proceed to the certifications of their Prior Statements, precluding as such any request to seek their submission pursuant to rule 68(2)(c).⁷

II. CONFIDENTIALITY

6. Pursuant to regulation 23*bis*(1) , this Request and its Annex are filed as "Confidential", as they contain information concerning witnesses 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

7. Pursuant to rule 68(2)(c), the Chamber may allow the introduction of the 'prior recorded testimony' of a person who (i) has subsequently died; (ii) must be presumed dead, or (iii) is unavailable to testify orally due to obstacles that cannot be overcome with reasonable diligence. If such is the case, the prior recorded testimony may only

⁵ See ICC-01/14-01/18-1833-Conf-Corr: for **P-0460**: paras. 255-262; **P-0732**: paras. 219-225; for **P-1779**: paras. 200-205; for **P-1864**: paras. 106-117, and for **P-1871**: paras. 118-128.

⁶ ICC-01/14-01/18-1892, para. 4.

⁷ ICC-01/14-01/18-1975-Red, para. 28.

be introduced if (i) the person is unavailable, which must be interpreted broadly, and includes situations where a witness cannot be located after numerous attempts and efforts;⁸ (ii) the necessity of measures under article 56 could not be anticipated; and (iii) the prior recorded testimony has sufficient indicia of reliability.

B. The Prior Statements fulfil the requirements of Rule 68(2)(c)

a) P-0460's Prior Statement

i. P-0460 has become unavailable due to obstacles that could not be overcome with reasonable diligence

8. P-0460 is a Muslim woman, [REDACTED], Central African Republic ("CAR"). In her Prior Statement, P-0460 described that her husband, her [REDACTED] son, and her [REDACTED] nephew were killed on [REDACTED] in front of her house, while she was hiding [REDACTED], she discovered their bodies.⁹ P-0460 also explained that her [REDACTED] niece was raped by [REDACTED] Anti-Balaka and that she died of her injuries.¹⁰

9. Following those events, P-0460 fled to CAMEROON. [REDACTED].

10. On 2 May 2023, after several exchanges, [REDACTED] provided the Prosecution with the phone number of P-0460's [REDACTED]. The Prosecution did not manage to establish direct contact with her.

⁸ ICC-01/14-01/18-1975-Red, para. 27.

⁹ CAR-OTP-2013-0536, paras. 36-37.

¹⁰ CAR-OTP-2013-0536, para. 45.

11. On 12 May 2023, in view of the Chamber's 6 April 2023 Decision, the Prosecution requested the assistance [REDACTED] to reach out to P-0460. Following their intervention, P-0460 accepted to speak with the Prosecution.

12. On 27 July 2023, P-0460 was reached on [REDACTED] phone. [REDACTED]. The certification process of P-0460's Prior Statement was explained to them. P-0460 confirmed her Prior Statement was made voluntarily and was true to the best of her knowledge. However, she also informed the Prosecution that she was physically ill and unable to go through the formal certification process of her Prior Statement. According to [REDACTED], the Prosecution's attempts to contact P-0460 were a source of anxiety for P-0460 and negatively affected her health, as they were bringing back traumatic memories.

13. On 18 September 2023, the Prosecution called [REDACTED]. Despite several attempts, no further contacts could be established directly with P-0460 or through [REDACTED].

14. As set out above, the Prosecution has made repeated efforts to engage with P-0460 in regard to the certification of her Prior Statement.

15. Summoning the witness is not an appropriate alternative. Indeed, the Prosecution closed its case in September 2023, and P-0460's Prior Statement has already been authorised under rule 68(2)(b). The vulnerability of P-0460 is undisputable, and summoning her would put her at risk of re-traumatization and cause unnecessary hardship, disproportionate to the purported significance of her evidence.

16. In sum, the Prosecution has exercised reasonable diligence to overcome the existing obstacles to certify P-0460's Prior Statement. There is no reasonable prospect that P-0460 would proceed therewith in the future, or that a summons to secure her

testimony would be successful. P-0460 has thus become unavailable within the meaning of rule 68(2)(c).

17. Finally, and in respect of the requested extension on the basis of Regulation 35, there is good cause justifying such extension, as its necessity is caused by reasons outside of the Prosecution's control: after the Chamber's 6 April 2023 Decision granting the introduction of P-0460's Prior Statement,¹¹ the Prosecution started the certification process. On 7 July 2023, the Prosecution was still of the view that it had not exhausted all available means to certify P-0460's Prior Statement, precluding as such its submission pursuant to rule 68(2)(c). Only after having engaged extensively with P-0460 it became clear that she had become unavailable in the sense of rule 68(2)(c).

ii. Article 56 measures could not be anticipated

18. P-0460 was interviewed between 31 August 2015 and 3 September 2015. At the time of the interview, the witness was [REDACTED] years old and did not report any life-threatening health issues. Under these circumstances, the Prosecution had no information that would prompt consideration of evidence preserving measures under article 56.

iii. The tendered evidence has sufficient indicia of reliability

19. In its 6 April 2023 Decision, the Chamber acknowledged that P-0460's Prior Statement is suitable to be introduced under rule 68(2)(b), and confirmed that it shows sufficient indicia of reliability.¹²

b) P-0732's Prior Statement

¹¹ ICC-01/14-01/18-1833-Conf-Corr, para. 262.

¹² ICC-01/14-01/18-1833-Conf-Corr, para. 259.

iv. P-0732 has become unavailable due to obstacles that could not be overcome with reasonable diligence

20. P-0732 is a Muslim woman, [REDACTED]. The Prosecution has not been able to contact her since 2 September 2019. At that time, she was living in [REDACTED], CAMEROON.

21. In her Prior Statement, P-0732 explained that, following the Anti-Balaka attacks [REDACTED] during which her husband was killed,¹³ she was displaced by the Anti-Balaka to [REDACTED].¹⁴ There, she was held captive for about 2 months with [REDACTED] other Muslim women.¹⁵ During her captivity, P-0732 was raped on two occasions.¹⁶

22. The Prosecution has tried calling P-0732 on multiple occasions since December 2022 in order to inform her of the 68(2) procedure, without success. Attempts were also made to reach her through a possible neighbour.

23. Since August 2023, the Prosecution has been engaging with intermediary P-1231 about the matter. Despite his best efforts, P-1231 could not find any information about P-0732.

24. On 11 August 2023, an RFA was sent to [REDACTED] requesting the authorities to assist in localising and contacting P-0732 in view of the certification of her Prior Statement. The [REDACTED] authorities undertook to act on this RFA but did not manage to localise the witness.

¹³ CAR-OTP-2061-0003, paras 49-54.

¹⁴ CAR-OTP-2061-0003, para. 57.

¹⁵ CAR-OTP-2061-0003, paras. 60 and 102.

¹⁶ CAR-OTP-2061-0003, paras. 78-79 and 85-87.

25. In parallel to this, staff members of the Prosecution's field office in BANGUI engaged with various local authorities in [REDACTED], and with intermediary [REDACTED] to try localising P-0732.

26. On 23 November 2023, the Prosecution was informed by [REDACTED] that P-0732 was allegedly [REDACTED] and no longer had a phone. P-0732 would have left the village the next day following the Prosecution's attempt to contact her [REDACTED]. The Prosecution cannot confirm whether the individual was indeed P-0732.

27. On 11 December 2023, P-0595 informed the Prosecution that P-0732 would be working in [REDACTED]. However, no contact could be established.

28. As set out above, the Prosecution has made repeated efforts to contact and locate P-0732, including through several attempts to call her and her neighbour. Efforts have been made on the ground and information was gathered [REDACTED]. The Prosecution has engaged with the [REDACTED] authorities and intermediaries without success. At the time of writing, the information collected is not actionable.

29. Summoning the witness is not an appropriate alternative. Indeed, the Prosecution has closed its case, and P-0732's Prior Statement has already been authorised under rule 68(2)(b). Moreover, summoning her would put her at risk of re-traumatization. In addition, the potential execution of a summons to appear would be impossible given the unavailability of information regarding P-0732's whereabouts.

30. In sum, the Prosecution has exercised reasonable diligence to overcome the existing obstacles to certify P-0732's Prior Statement. There is no reasonable prospect that P-0732 can be contacted, located, or relatedly, that a summons to secure her

testimony could be successfully executed in these circumstances. P-0732 has thus become unavailable within the meaning of rule 68(2)(c).

31. Finally, and in respect of the requested extension on the basis of Regulation 35, there is good cause justifying such extension, as its necessity is caused by reasons outside of the Prosecution's control: after the Chamber's 6 April 2023 Decision granting the introduction of P-0732's Prior Statement,¹⁷ the Prosecution started the certification process. On 7 July 2023, the Prosecution was still of the view that it had not exhausted all available means to localise the witness, precluding as such its submission pursuant to rule 68(2)(c).¹⁸ Only after having sent an RFA to the [REDACTED] authorities in August 2023, and engaging with [REDACTED] authorities and intermediaries unsuccessfully in the months thereafter, it became clear that P-0732 had become unavailable in the sense of rule 68(2)(c).

v. Article 56 measures could not be anticipated

32. P-0732 was interviewed between 7 and 10 September 2017. At the time of the interview, the witness was [REDACTED] years old, and did not report any serious health issues. Under these circumstances, the Prosecution had no information within its possession that would prompt consideration of evidence preserving measures under article 56.

vi. The tendered evidence has sufficient indicia of reliability

33. In its 6 April 2023 Decision, the Chamber acknowledged that P-0732's Prior Statement is suitable to be introduced under rule 68(2)(b), and confirmed that it shows sufficient indicia of reliability.¹⁹

¹⁷ ICC-01/14-01/18-1833-Conf-Corr, para. 225.

¹⁸ ICC-01/14-01/18-1975-Red, para. 28.

¹⁹ ICC-01/14-01/18-1833-Conf-Corr, para. 222.

c) *P-1779's Prior Statement*

vii. P-1779 has become unavailable due to obstacles that could not be overcome with reasonable diligence

34. P-1779 was an imam [REDACTED] before and during the conflict. The Prosecution has not managed to reach him since 1 December 2021. At that time, P-1779 was living in a refugee camp in [REDACTED], CAMEROON.

35. In his Prior Statement, P-1779 described the two Anti-Balaka attacks on the village of [REDACTED].²⁰ He explained how he fled with a group of Muslims from [REDACTED],²¹ describing his journey during which they were attacked by the Anti-Balaka.²²

36. On 7 October 2020, P-1779 was informed of the Prosecution's intention to use his Prior Statement at trial. P-1779 confirmed that his Prior Statement was truthful and that he did not have any objection to its use at trial.

37. On 1 December 2021, P-1779 confirmed his willingness to certify his statement. He informed the Prosecution that he was working in the fields and that it might be difficult to contact him on short notice. He confirmed his phone numbers, and shared the phone number of [REDACTED], as an alternative contact.

38. The Prosecution tried calling P-1779 on several occasions between August and September 2022. In September 2022, various unsuccessful attempts were also made to reach P-1779 [REDACTED]

²⁰ CAR-OTP-2087-9894, paras. 50-80.

²¹ CAR-OTP-2087-9894, paras. 81-105.

²² CAR-OTP-2087-9894, paras. 94-100.

39. Following the Chamber's 6 April 2023 Decision granting the introduction of P-1779's Prior Statement,²³ the Prosecution tried calling P-1779 on multiple occasions to organize the certification of his statement. All those attempts were unsuccessful.

40. Since August 2023, the Prosecution has been engaging with intermediary P-1231 about the matter. P-1231 informed the Prosecution that P-1779 would have returned to BANGUI (i.e., [REDACTED]) but that he had travelled to [REDACTED]. Despite his best efforts, the intermediary was not able to find P-1779's (new) phone contacts, or obtain more detailed information.

41. On 11 August 2023, an RFA was sent to [REDACTED], requesting the authorities to assist the Prosecution in localising and contacting P-1779 in view of the certification of his Prior Statement. [REDACTED] authorities undertook to act on this RFA but did not manage to localise the witness.

42. In parallel to this, staff members of the Prosecution's [REDACTED] engaged with various local authorities in [REDACTED] to try to localise P-1779.

43. As set out above, the Prosecution has made repeated efforts to contact and locate P-1779, including through several attempts to call him [REDACTED]. Efforts have been made on the ground to contact him and gather information in [REDACTED]. The Prosecution has engaged with [REDACTED]. At the time of writing, the information collected is not actionable.

44. Summoning the witness is not an appropriate alternative. Indeed, the Prosecution has closed its case, and P-1779's Prior Statement has already been authorised under rule 68(2)(b). Moreover, the potential execution of a summons to

²³ ICC-01/14-01/18-1833-Conf-Corr, para. 205.

appear would be impossible given the unavailability of information regarding P-1779's whereabouts.

45. In sum, the Prosecution has exercised reasonable diligence to overcome the existing obstacles to certify P-1779 Prior Statement. There is no reasonable prospect that P-1779 can be contacted, located, or relatedly, that a summons to secure his testimony could be successfully executed in these circumstances. P-1779 has thus become unavailable within the meaning of rule 68(2)(c).

46. Finally, and in respect of the requested extension on the basis of Regulation 35, there is good cause justifying such extension, as its necessity is caused by reasons outside of the Prosecution's control: after the Chamber's 6 April 2023 Decision granting the introduction of P-1779's Prior Statement,²⁴ the Prosecution started the certification process. On 7 July 2023, the Prosecution was still of the view that it had not exhausted all available means to localise the witness, precluding as such its submission pursuant to rule 68(2)(c).²⁵ Only after having sent an RFA to the [REDACTED] authorities in August 2023, and engaging with [REDACTED] authorities and intermediaries unsuccessfully in the months thereafter, it became clear that P-1779 had become unavailable in the sense of rule 68(2)(c).

viii. Article 56 measures could not be anticipated

47. P-1779 was interviewed between 4 and 7 August 2018. At the time of the interview, the witness did not report any serious health issues. In December 2021, the witness confirmed his willingness to certify his statement. Under these circumstances, the Prosecution had no information within its possession that would prompt consideration of evidence preserving measures under article 56.

²⁴ ICC-01/14-01/18-1833-Conf-Corr, para. 205.

²⁵ ICC-01/14-01/18-1975-Red, para. 28.

ix. The tendered evidence has sufficient indicia of reliability

48. In its 6 April 2023 Decision, the Chamber acknowledged that P-1779's Prior Statement is suitable to be introduced under rule 68(2)(b), and confirmed that it shows sufficient indicia of reliability.²⁶

d) P-1864's Prior Statement

x. P-1864 has become unavailable due to obstacles that could not be overcome with reasonable diligence

49. P-1864 is a Muslim woman who resided in [REDACTED]. In her Prior Statement, P-1864 described how she was raped by a group of Anti-Balaka, whilst they killed [REDACTED].²⁷ She lost consciousness during the assault.²⁸

50. On 24 June 2020, the Prosecution informed P-1864 that the [REDACTED] Defence had requested to speak with her. This triggered a strong emotional response from the witness [REDACTED].

51. Following this, a Prosecution psycho-social expert met with the witness. During this encounter, P-1864 complained about physical symptoms that kept reminding her of her rape, such as [REDACTED].

52. On both 23 September 2022 and 4 August 2023, on discussing the certification process, P-1864 confirmed her willingness to certify her statement.

²⁶ ICC-01/14-01/18-1833-Conf-Corr, para. 202.

²⁷ CAR-OTP-2064-0860, paras. 32-42.

²⁸ CAR-OTP-2064-0860, paras. 42-43.

53. On 18 August 2023, P-1864 again met with the psycho-social expert in view of the certification of her Prior Statement. The expert observed that P-1864 was still grieving for her losses. [REDACTED].

54. On 21 August 2023, P-1864 met with the Prosecution to review the content of her Prior Statement and prepare the readback log.²⁹ P-1864 had an emotional breakdown during the meeting, [REDACTED]. She still signed the readback log, confirming that her declarations were truthful to the best of her knowledge.³⁰

55. After the meeting however, the witness refrained from any further contact with the Prosecution: she did not come to the follow-up meeting scheduled with the psycho-social expert and stopped answering her phone. The Prosecution has tried calling the phone number of [REDACTED] several times, but the respondent alleges not knowing P-1864. On 13 December 2023, [REDACTED]. No one seemed to know P-1864.

56. As set out above, the Prosecution has made repeated efforts to contact and locate P-1864 in view of the certification of her Prior Statement.

57. Summoning the witness is not an appropriate alternative in the present case. Indeed, the Prosecution has closed its case, and P-1864's Prior Statement has already been authorised under rule 68(2)(b). The vulnerability of P-1864 is undisputable, and summoning her would put her at risk of re-traumatization and cause unnecessary hardship, disproportionate to the purported significance of her evidence.

58. In sum, the Prosecution has exercised reasonable diligence to overcome the existing obstacles to certify P-1864's Prior Statement. There is no reasonable prospect that P-1864 would proceed therewith in the future or that a summons to secure her

²⁹ CAR-OTP-0000-1834.

³⁰ CAR-OTP-0000-1834.

testimony could be successfully executed in these circumstances. P-1864 has thus become unavailable within the meaning of rule 68(2)(c).

59. Finally, and in respect of the requested extension on the basis of Regulation 35, there is good cause justifying such extension, as its necessity is caused by reasons outside of the Prosecution's control: after the Chamber's 6 April 2023 Decision granting the introduction of P-1864's Prior Statement,³¹ the Prosecution started the certification process. On 7 July 2023, the Prosecution was still of the view that it had not exhausted all available means to certify P-1864's Prior Statement, precluding as such its submission pursuant to rule 68(2)(c). Only after having engaged extensively with P-1864 it became clear that P-1864 had become unavailable in the sense of rule 68(2)(c).

xi. Article 56 measures could not be anticipated

60. P-1864 was interviewed between 8 and 11 November 2017. At the time of the interview, the witness was [REDACTED] years old and did not report any life threatening health issues. In addition, the Witness confirmed her willingness to certify her statement on two occasions, and had renewed her passport for that purpose. Under these circumstances, the Prosecution had no information within its possession that would prompt consideration of evidence preserving measures under article 56.

xii. The tendered evidence has sufficient indicia of reliability

61. In its 6 April 2023 Decision, the Chamber acknowledged that P-1864's Prior Statement is suitable to be introduced under rule 68(2)(b) and confirmed that it shows sufficient indicia of reliability.³²

³¹ ICC-01/14-01/18-1833-Conf-Corr, para. 117.

³² ICC-01/14-01/18-1833-Conf-Corr, para. 114.

e) *P-1871's Prior Statement*

xiii. P-1871 has become unavailable due to obstacles that could not be overcome with reasonable diligence

62. P-1871 is a Muslim woman who used to reside in [REDACTED] during the relevant period. The Prosecution has not been able to contact her since 14 October 2020. At that time, she was living in [REDACTED], CAMEROON.

63. In her Prior Statement, P-1871 described how she was raped by two Anti-Balaka elements whilst they killed [REDACTED] with a machete.³³ She eventually managed to reach BANGUI and received medical treatment.³⁴ She remained at the Central Mosque in BANGUI for 2 years with her children.³⁵

64. On 14 October 2020, the Prosecution informed P-1871 that it intended to use her Prior Statement as evidence. P-1871 confirmed her willingness to certify her statement.

65. The Prosecution made several unsuccessful attempts to contact P-1871 in September 2022 and March 2023.

66. Following the Chamber's 6 April 2023 Decision granting the introduction of P-1871's Prior Statement,³⁶ from August 2023 onwards, the Prosecution has been engaging with intermediary P-1231 about the matter. Despite his best efforts, P-1231 was not able to find any information about P-1871.

67. On 11 August 2023, an RFA was sent to [REDACTED], requesting the authorities to assist the Prosecution in localising and contacting P-1871 in view of the certification

³³ CAR-OTP-2064-0884, paras. 34-39.

³⁴ CAR-OTP-2064-0884, para. 46.

³⁵ CAR-OTP-2064-0884, para. 48.

³⁶ ICC-01/14-01/18-1833-Conf-Corr, para. 128.

of her Prior Statement. [REDACTED] authorities undertook to act on this RFA but did not manage to localise the witness.

68. In parallel to this, staff members of the Prosecution's [REDACTED] engaged with intermediary [REDACTED] and various local authorities in [REDACTED] to try localising P-1871.

69. On 7 November 2023, the Prosecution was informed that P-1871 was allegedly in [REDACTED]. On 23 November 2023, the Prosecution was also informed that P-1871 no longer had a phone. P-1871 would have left the village the next day following the Prosecution's attempt to contact her via [REDACTED]. The Prosecution cannot confirm whether the individual was indeed P-1871.

70. As set out above, the Prosecution has made repeated efforts to contact and locate P-1871. Efforts have been made on the ground to contact her and gather information, both in [REDACTED]. The Prosecution has engaged with [REDACTED] authorities and intermediaries without success. At the time of writing, the information collected is not actionable.

71. Summoning the witness is not an appropriate alternative. Indeed, the Prosecution has closed its case, and P-1871's Prior Statement has already been introduced as evidence under rule 68(2)(b). Moreover, summoning her would put her at risk of re-traumatisation. In addition, the potential execution of a summons to appear would be impossible given the unavailability of information regarding P-1871's whereabouts.

72. In sum, the Prosecution has exercised reasonable diligence to overcome the existing obstacles to certify P-1871's Prior Statement. There is no reasonable prospect that P-1871 can be contacted, located, or relatedly, that a summons to secure her

testimony could be successfully executed in these circumstances. P-1871 has thus become unavailable within the meaning of rule 68(2)(c).

73. Finally, and in respect of the requested extension on the basis of Regulation 35, there is good cause justifying such extension, as its necessity is caused by reasons outside of the Prosecution's control: after the Chamber's 6 April 2023 Decision granting the introduction of P-1871's Prior Statement,³⁷ the Prosecution started the certification process. On 7 July 2023, the Prosecution was still of the view that it had not exhausted all available means to localise the witness, precluding as such its submission pursuant to rule 68(2)(c).³⁸ Only after having sent an RFA to the [REDACTED] authorities in August 2023, and engaging with [REDACTED] authorities and intermediaries unsuccessfully in the months thereafter, it became clear that P-1871 had become unavailable in the sense of rule 68(2)(c).

xiv. Article 56 measures could not be anticipated

74. P-1871 was interviewed between 11 and 15 November 2017. At the time of the interview, the witness was [REDACTED] years old, and did not report any serious health issues. In addition, in October 2020, the witness expressed her willingness to certify her statement. Under these circumstances, the Prosecution had no information within its possession that would prompt consideration of evidence preserving measures under article 56.

xv. The tendered evidence has sufficient indicia of reliability

³⁷ ICC-01/14-01/18-1833-Conf-Corr, para. 128.

³⁸ ICC-01/14-01/18-1975-Red, para. 28.

75. In its 6 April 2023 Decision, the Chamber acknowledged that P-1871's Prior Statement is suitable to be introduced under rule 68(2)(b), and confirmed that it shows sufficient indicia of reliability.³⁹

C. The Prior Statements are relevant and probative

76. In its 6 April 2023 Decision, the Chamber assessed the Prior Statements, and granted their introduction pursuant to rule 68(2)(b).⁴⁰ In other words, they were found relevant and probative by the Chamber. The Prosecution refers to the Chamber's motivation in this regard.⁴¹

D. The Rights of the Accused and respected

77. Granting the Request does not cause any prejudice to either of the Accused, as confirmed by the Chamber in its 6 April 2023 Decision for the following reasons.

78. *First*, as noted by the Chamber, neither the Defence nor the Common Legal Representatives of the Victims have objected to the introduction of the Prior Statement of P-0460, P-0732, and P-1779 pursuant to rule 68(2)(b). The Chamber therefore concluded that such a measure was not inconsistent with the Accused's rights and that the interests of justice are better served by the introduction of the prior testimony.⁴² Regarding P-1864 and P-1871's Prior Statements, given the interests at stake, the objections of the Defence did not suffice to warrant rejecting their introduction pursuant to rule 68(2)(b).⁴³

³⁹ ICC-01/14-01/18-1833-Conf-Corr, paras. 124-125.

⁴⁰ ICC-01/14-01/18-1833-Conf-Corr, for **P-0460**: para. 262; for **P-0732**: para. 225; for **P-1779**: para. 205, for **P-1864**: para. 117; and for **P-1871**: para. 128.

⁴¹ ICC-01/14-01/18-1833-Conf-Corr: for **P-0460**: paras. 255-262; for **P-0732**: paras. 219-225; for **P-1779**: paras. 200-205, for **P-1864**: paras. 106-117; and for **P-1871**: paras. 118-128.

⁴² ICC-01/14-01/18-1833-Conf-Corr, for **P-0460**: para. 261; for **P-0732**: para. 224; and for **P-1779**, para. 204.

⁴³ ICC-01/14-01/18-1833-Conf-Corr, for **P-1864**: paras. 110-115; and for **P-1871**: paras. 122-126.

79. *Second*, the Prior Statements relate to issues that are not materially in dispute and do not go to proof of matters concerning the acts and conduct of the Accused.⁴⁴ The Prosecution does not intend to rely on paragraph 23 of P-1864's Prior Statement, nor on paragraph 51 of P-1871's Prior Statement.⁴⁵

80. The same considerations apply to the introduction of the Prior Statements pursuant to rule 68(2)(c).⁴⁶

IV. CONCLUSION

81. For the foregoing reasons, the Prosecution requests the Chamber to recognise the formal submission of the Prior Statements of P-0460, P-0732, P-1779, P-1864, and P-1871 pursuant to rule 68(2)(c).



Karim A. A. Khan KC, Prosecutor

Dated this 30th July 2024

At The Hague, The Netherlands

⁴⁴ ICC-01/14-01/18-1833-Conf-Corr: for **P-0460**: 255-262; **P-0732**: paras. 219-225, for **P-1779**: paras. 200-205, and for **P-1871**: paras. 118-128.

⁴⁵ ICC-01/14-01/18-1833-Conf-Corr, for **P-1864**: para. 112; and for **P-1871**: para. 124.

⁴⁶ ICC-01/12-01/18-1111-Red, para. 7.