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Date: **21 November 2024**

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 *THE PROSECUTOR* v.
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of the ‘Second Yekatom Defence Request to Present
Additional Evidence for Potential Sentencing’, 4 October 2024, ICC-01/14-
01/18-2718-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. Pursuant to Trial Chamber V's "Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings",¹ the Defence hereby requests the introduction of the written statements of four new witnesses ("Testimonial Material")² which it submits are relevant to the Chamber's determination of Mr Yekatom's sentence in the event of conviction pursuant to Article 76(1) of the Statute. The statements are probative, bear sufficient *indicia* of reliability for admission, and are not repetitive of evidence already on the record. They are therefore suitable and appropriate for admission for potential sentencing.
2. The Defence respectfully submits that the testimonial material of the four witnesses can be introduced for the purposes of potential sentencing without the procedural prerequisites of Rule 68 needing to have been met given the nature and purpose for which the statements are relied upon.
3. In the alternative, should the Chamber be minded to apply the framework under Rule 68, the Defence submits that the requirements are fulfilled for the Testimonial Material to be recognised as formally submitted under Rule 68(2)(b). However, the Defence requests to be dispensed from the requirement under Rule 68(2)(b)(ii) to have a member of the Registry witness the declarations accompanying the prior recorded testimony given the challenges in reaching the witnesses who, for three of them, reside in Cameroon, a non-state party which requires special authorizations before any official work being performed on its territory. In the alternative, and noting that completing Rule 68(2)(b)(ii) certifications requires significant time and resources from the Defence which are otherwise necessary to complete closing arguments, the Defence requests that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

PROCEDURAL BACKGROUND

4. On 18 July 2024, Trial Chamber V ("Chamber") issued its "Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings"

¹ ICC-01/14-01/18-2600.

² D29-P-8024 ; D29-P-8026 ; D29-P-8023 ; D29-P-8025.

(“Sentencing Procedure Decision”) deciding to render any potential decision on sentencing pursuant to Article 76 of the Statute simultaneously with its judgement under Article 74 and setting a calendar for sentencing.³ *Inter alia*, the Chamber set the deadline for parties and participants to file any requests to present additional evidence for potential sentencing by 6 September 2024.⁴ The Chamber emphasised that “given the abundance of evidence already on the record, the Chamber will intervene in the selection and presentation of such evidence in order to ensure the fair and expeditious conduct of the present proceedings”.⁵

5. On 4 September 2024, the Defence requested a variation of the time limit to present additional evidence for potential sentencing to 15 October 2024 due to several unanswered cooperation requests and the challenges in organizing missions to meet with specific potential witnesses.⁶
6. On 5 September 2024, the Chamber partially granted the Defence’s request for a variation of time, extending the deadline to submit additional statements to 4 October 2024.⁷
7. On 6 September 2024, the Yekatom Defence Request to Present Additional Evidence for Potential Sentencing (“First Request”), in relation to twelve witnesses, was notified.⁸

SUBMISSIONS

A. Preliminary matter: On the challenges faced by the Defence to collect material necessary for a potential sentencing

8. In its 4 September 2024 request for an extension of time limit to present additional evidence for potential sentencing, the Defence identified three categories of persons of interest whom it sought to interview: i) witnesses who require special authorization to meet with the Defence; ii) Mr Yekatom’s former partner in Douala, Cameroon and

³ ICC-01/14-01/18-2600.

⁴ ICC-01/14-01/18-2600, para. 5.

⁵ ICC-01/14-01/18-2600, para. 7.

⁶ ICC-01/14-01/18-2671-Conf.

⁷ Email from the Chamber to the Parties titled “Decision on the Yekatom Defence Request for Variation of Time Limit pursuant to Regulation 35 to Present Additional Evidence for Potential Sentencing” sent on 5 September 2024 at 15:17.

⁸ ICC-01/14-01/18-2678-Conf.

members of her family; and, iii) witnesses who could testify to Mr. Yekatom's efforts towards social cohesion in CAR.⁹

9. The Testimonial Material of the four witnesses included in the present request was either obtained during a mission in Cameroon for three of them (P-8024 , P-8026 and P-8023) and from one witness in the Central African Republic (P-8025) who did not require authorization for an interview.
10. For a better understanding of the operational challenges and time-consuming process involved in the organization of those interviews, the Defence details below the steps undertaken to obtain the statements of P-8023, P-8024 and P-8026.
11. On 12 August 2024 the Defence sent a request for Assistance in the Planification of a Mission in Cameroun¹⁰. On 20 August 2024, CSS informed the Defence that [REDACTED].¹¹ On 22 August 2024, the Defence sent a mission request with flight details and passenger,¹² and a few minutes later CSS had informed the Defence that [REDACTED].¹³ On August 26, 2024, CSS informed the Defence that JCSS had advised a change of itinerary and a postponement of the travel dates to allow for more time. They requested that the mission be rescheduled to the end of September. CSS also apologized on behalf of JCSS for the delayed response, citing other commitments. Furthermore, they indicated that upon receiving the new itinerary and passenger list from the Defence, JCSS would [REDACTED].¹⁴ On 27 August 2024 the Defence sent to CSS the amended mission planned with the dates that had been relayed by JCSS to CSS.¹⁵ In the meantime, the Yekatom Defence organised the security clearance, the interpretation, the visa requirement, in order to avoid any delay in the mission. On 11 September 2024 the Defence inquired to CSS as to whether their colleagues from JCSS had obtained any update on the mission and its approval;¹⁶ CSS inquired with JCSS, and JCSS responded that the note verbale requesting

⁹ ICC-01/14-01/18-2671-Conf.

¹⁰ Email from Yekatom Defence to Counsel Support Section ('CSS') dated 12 August 2024 at 12:26.

¹¹ Email from CSS to Yekatom Defence dated 20 August 2024 at 12:19.

¹² Email from Yekatom Defence to CSS dated 22 August 2024 at 16:41.

¹³ Email from CSS to Yekatom Defence dated 22 August 2024 at 17:01.

¹⁴ Email from CSS to Yekatom Defence dated 26 August 2024 at 10:35. See also Email from CSS to Yekatom Defence dated 26 August 2024 at 17:22 in which they informed the Yekatom Defence that JCSS suggests the mission to be planed for the week of 23-27 September 2024.

¹⁵ Email from Yekatom Defence to CSS dated 27 August 2024 at 13:30.

¹⁶ Email from Yekatom Defence to CSS dated 11 September 2024 at 10:59.

approval for the mission had been sent by the Embassy of Cameroon at the end of the previous week.¹⁷ On 16 September 2024 the Defence inquired with CSS as to whether there was any development with the authorities of Cameroon given that the mission was a week away. The Yekatom Defence asked CSS to relay its concerns to their JCSS colleagues¹⁸ to which CSS responded that they had forwarded our request for update to JCSS.¹⁹ On September 17, 2024, the Yekatom Defence was informed that the Registry had organized a seminar from September 16-18 with national focal points at the Court's headquarters to meet with Registry personnel, Chambers, and the Prosecution.²⁰ Following discussions between CSS and JCSS, CSS invited the Yekatom Defence to meet in person with the Cameroonian focal point at the Court, accompanied by CSS and JCSS.

12. During the meeting, the Cameroonian focal point asked about the mission's objectives, the authorities the Defence intended to meet, and the overall context. JCSS could not provide an answer, so the Yekatom Defence sought permission to clarify. They explained that, as stated in their request for assistance to CSS, the purpose was to meet private individuals with no official authority, with no intention of discussing events in Cameroon from 2013-2014.
13. The Defence clarified that the meetings were simply to inquire about the Mr Yekatom's personal relationships with these individuals, who were family and friends, and that no investigation or document collection was planned. The focal point acknowledged that this simplified matters, as no officials would be involved and no documents required. She mentioned responding by having sent a letter requesting [REDACTED].
14. The Defence explained that, per Court protocol, they are not copied on JCSS communications, which go through CSS, and had not been informed of Cameroon's latest inquiry. However, [REDACTED]. The Defence assured this could be completed within three hours and asked that CSS deliver it to the focal point before her departure from The Hague.

¹⁷ Phone call between CSS and Yekatom Defence on 11 September 2024 around 15:00.

¹⁸ Email from Yekatom Defence to CSS dated 16 September 2024 at 11:51.

¹⁹ Email from CSS to Yekatom Defence dated 16 September 2024 at 16:00.

²⁰ See [ICC holds Ninth Seminar on Cooperation in The Hague with national focal points](#)

15. The focal point agreed to reference the meeting in the letter and regretted that the Defence had not been informed earlier. CSS committed to delivering the letter before her departure.
16. Less than two hours after the meeting,²¹ the Defence transmitted to CSS the letter containing the information sought by the Cameroonian's authorities and CSS staff handed a copy of this letter directly to the focal point.
17. Without the coincidental presence of the focal point of Cameroon at the seat of the court, and the initiative of some CSS staffs, the Defence would not have received on 18 September 2024 the authorization to proceed with the mission scheduled on 23 September 2024.²² This left only two working days for the Defence to organize some aspects of the mission, such as the obtention of visas on an expedited basis or reservation of accommodations.
18. Unfortunately, serendipity only struck once and no such meeting was held with the focal point of the Central African Republic during the Seminar despite the Defence verbal request. Despite the Defence's best efforts, only little and belated progress has been made in relation to the request for assistance sent to the government of the CAR to obtain authorization to interview [REDACTED].²³ On Friday 27 September the Defence asked in person to CSS whether anyone from COCAR could go to the focal point's office and discuss the pending request in order to obtain the requested signature. Those requests were sent by the Defence to CSS for transmission to the CAR authorities through the official channels on [REDACTED]²⁴ and [REDACTED] 2024.²⁵
19. Only [REDACTED] ago, on the afternoon of [REDACTED] 2024,²⁶ did the Defence received the authorisation, signed by the competent authorities on [REDACTED] 2024, to meet one of the individuals. The Registry is still following up with the authorities as regards the last two authorisations.²⁷

²¹ [REDACTED]

²² Email from CSS to the Defence dated 18 September 2024 and titled "Mission to Cameroon authorised by the local authorities, no P&Is".

²³ ICC-01/14-01/18-2671-Conf, paras 8-9.

²⁴ [REDACTED]

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ Emails from CSS to the Defence dated 2 October 2024 at 14:32 and 15:08.

20. For further context, the Defence underlines that it requested updates on those requests *inter alia* on [REDACTED],²⁸ [REDACTED]²⁹ and [REDACTED]³⁰ before finally receiving updates on [REDACTED] to the effect that the “CAR Country Office has been following up with the focal point but no response has yet been received”.³¹ In the [REDACTED] update, the Defence received recommendations to amend one of its requests to speed up its processing.³² The Defence acceded to this proposal within 90 minutes,³³ and sent further requests for updates on 24 September 2024.³⁴
21. On 25 September 2024 the Defence was finally made privy to the efforts made by the Registry to obtain responses to the requests for assistance.³⁵ It became apparent that the Defence’s requests were transmitted to the CAR focal point 9 days after it was sent, [REDACTED], and the first apparent follow-up was done on [REDACTED] when the letters were again handed over to the CAR focal point by the Chief of CAR Country Office. On [REDACTED], the focal point indicated that he still did not transmit the requests to the Minister of Justice, some follow-ups were done on [REDACTED] but without concrete responses.³⁶
22. Despite the concrete and timely steps undertaken by the Defence including *inter alia* requests for updates and push for reminders, no responses to the last two requests for assistance were received as of the filing of the present request. While cognizant of the Single Judge’s indication “*that the Chamber will not entertain further extension requests in this regard after the 6 September 2024 Deadline*” and of the 4 October 2024 deadline,³⁷ the Defence, pursuant to Counsel’s code of conduct, will continue to endeavour with the Registry in order to obtain the last two necessary authorizations and conduct the interviews.

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED]

³⁵ [REDACTED]

³⁶ [REDACTED].

³⁷ Email from the Chamber to the Parties titled “Decision on the Yekatom Defence Request for Variation of Time Limit pursuant to Regulation 35 to Present Additional Evidence for Potential Sentencing” sent on 5 September 2024 at 15:17.

23. Upon reception of the single authorization on [REDACTED], the Defence immediately undertook actions in order to interview the individual in question, and was informed by competent authorities that the individual will only be available in Bangui [REDACTED]. The Defence will diligently follow-up to have an interview and potential statement as soon as possible.
24. Should the remaining interviews occur after 4 October 2024, the Defence reserves its right to request a limited reconsideration of the deadline set by the Single Judge to present further evidence that would be deemed necessary for the proper assessment of a sentence in the event of Mr Yekatom's conviction.
25. The Defence underlines that, due to the unfortunate internal systems of the Registry, it is not in direct contact with JCSS, [REDACTED]. The Defence must therefore transmit all its requests through CSS to obtain information which necessarily adds delays in the processing of its requests for assistance. JCSS, [REDACTED], unfortunately sometimes omits key details. For example, in the latest note verbale to the CAR authorities, [REDACTED]. When the note verbale is transmitted to the Defence, it's often too late to request clarifications, as the note has already been sent. Since the Defence cannot communicate directly with JCSS and only receives the notes through CSS, this limits opportunities to correct or refine the information in a timely manner.
26. Within this context the Defence seeks to properly inform the Chamber of the development of its investigations concerning sentencing evidence and to stress that whilst the Defence is doing its utmost best to respect the deadlines set by the Chamber, such delays in obtaining the authorization to meet the three persons of interest are inevitably outside its control.

B. The Testimonial Material is relevant for sentencing purposes

27. The Defence submits that the Testimonial Evidence is relevant to the Chamber's determination of Mr Yekatom's sentence in the event of conviction pursuant to Article 76(1) of the Statute. Moreover, the statements are probative, bear sufficient *indicia* of reliability for admission, and are not repetitive of evidence already on the record. They are therefore suitable and appropriate for admission for potential sentencing.

28. In order to assist the Chamber's assessment of the Testimonial Material, the Defence provides below (i) a comprehensive overview of the salient issues arising within the prior recorded testimony for each of the witnesses which it submits satisfy the relevance requirement stipulated in Article 76(1), and (ii) an indication of how the proposed additional evidence relates to factors under Article 78 of the Statute and Rule 145 of the Rules.

29. The Defence emphasises that where statements cover similar Rule 145 sub-factors, their comprehensive and collective consideration is essential to illustrate that Mr Yekatom's positive actions were not singular or isolated occurrences, but rather indicative of a consistent pattern of conduct. This further demonstrates the genuineness of Mr Yekatom's intent and actions and must therefore be considered in a cumulative manner.

i. AISSATOU ISSA Aicha (P-8024)

30. The Defence tenders for formal submission P-8024's statement collected on 27 September 2024 totalling 7 pages,³⁸ including one annex.³⁹

31. The witness's proposed testimony establishes the following:

- P-8024 is Mr Yekatom's ex-partner, they have a daughter together, and remains on good terms with Mr Yekatom;
- P-8024 is Muslim and indicates that Mr Yekatom was always respectful of her faith, as well as of her family;
- P-8024 also indicates that she was welcomed in Mr Yekatom's family and that her religion was never an issue;
- P-8024 explains that despite their separation Mr Yekatom has always provided for their daughter, [REDACTED], and has always been respectful and supportive of his daughter's Islamic faith as he was of hers.

32. P-8024's evidence is relevant for the purpose of determining a sentence in accordance with Article 78(1) and Rule 145(1)(b) which state that the individual circumstances of the convicted person shall be taken into account. In this respect the statement is

³⁸ CAR-D29-0009-0909.

³⁹ CAR-D29-0009-0926.

relevant for the judges to be fully appraised of Mr Yekatom's character, his conduct towards his family, and of his family situation.

33. This statement is also relevant in demonstrating Mr. Yekatom's consistently showed respect toward Muslims, including during religious ceremonies. Other Defence witnesses, such as P-5014 and P-8014, have testified to Mr. Yekatom's positive relationships with Muslims. P-8024 offers a unique perspective as someone who shared Mr. Yekatom's personal life and was part of his family, further corroborating this.

34. The statement provides the Chamber with information as to the life of Mr Yekatom before and after the events of 2013/2014, and assists in understanding his character. In addition, the fact that Mr Yekatom is actively involved in the education of his daughter is relevant as such implication is a positive step towards rehabilitation after any eventual conviction and sentence.

ii. ISSA Seydou (P-8026)

35. The Defence tenders for formal submission P-8026's statement collected on 26 September 2024 totalling 5 pages.⁴⁰

36. The witness's proposed testimony establishes the following:

- P-8026 is the brother of P-8024 and is Mr Yekatom's former brother-in-law;
- P-8026 indicates that his family had a good relationship with Mr Yekatom after he began dating his sister, and that he wished to meet Mr Yekatom to assess for himself if he was a good person;
- P-8026 met Mr Yekatom in Bozoum and provides information as to his respect of Islam and of the people under his watch in the context of his military work ;
- P-8026 indicates that Mr Yekatom helped the family financially and that he took care of the daughter he had with P-8024.

37. P-8026's evidence is relevant for the purpose of determining a sentence in accordance with Article 78(1) and Rule 145(1)(b) which state that the individual circumstances of the convicted person shall be taken into account.

⁴⁰ CAR-D29-0009-0916

38. This witness' evidence is relevant for the judges to be fully apprised of the character of Mr Yekatom, as viewed by a member from the family of his ex-partner, who is of Muslim faith. It is also evidence of Mr Yekatom's behaviour towards others. The statement is relevant as it provides the judges with information as to the life of Mr Yekatom before and after the events of 2013/2014, and assists in understanding his character and his family situation as regard to his daughter.

iii. ESSOMBA Alfred (P-8023)

39. The Defence tenders for formal submission P-8023's statement collected on 25 September 2024, totalling 5 pages.⁴¹

40. The witness' proposed testimony establishes the following:

- P-8023 is a childhood friend of Mr Yekatom, as well as a neighbour when they were living in CATTIN;
- P-8023 indicates that both he and Mr Yekatom came from families which did not have a lot of money;
- P-8023 explains the small trading jobs they did in their youth to make ends meet and help their families;
- P-8023 indicates that Mr Yekatom, when he was 22-year-old, expatriated himself to Congo Brazzaville to work and do trading;
- P-8023 indicates that Mr Yekatom tried to help people from the neighbourhood by employing youths from there, as well as giving out small amounts of money when he could;
- P-8023 indicates that he is surprised that Mr Yekatom is accused of harming Muslims as they had Muslims friends in their youths. He adds that Mr Yekatom had at one point a Muslim girlfriend and that he has a Muslim wife and daughter in Cameroon (i.e. P-8024).

41. P-8023's evidence is relevant for the purpose of determining a sentence in accordance with Article 78(1) and Rule 145(1)(b) which state that the individual circumstances of the convicted person shall be taken into account.

⁴¹ CAR-D29-0009-0921.

42. The witness's evidence is relevant for the Chamber to gain a full understanding of Mr. Yekatom's youth, including his family's material circumstances. These details will help the Chamber to better comprehend Mr. Yekatom's life story and how it has influenced the person he is today. The statement will also assist the Chamber in assessing his personality, as well as his familial background.

iv. MODOUA Saturnin (P-8025)

43. The Defence tenders for formal submission P-8025's statement collected on 30 September 2024, totalling 7 pages.⁴²

44. The witness's proposed testimony establishes the following:

- P-8025 has been the Chief of Bokoumou village in the 2nd arrondissement of PISSA since 2001;
- P-8025 explains how the arrival of Seleka in PISSA made the population of his village flee to the forest, his family included. They feared being beaten and pillaged by the Seleka men and only went back to their village after the arrival of Mr Yekatom's group in SEKIA;
- One day, when P-8025 was coming out of the forest to buy food supplies at the village; he saw men in military uniforms getting out of a pick-up who introduced themselves as 'Rombhot's elements'. When P-8025 tried to flee, they reassured him that they came to free the country. Rombhot's elements asked P-8025 to tell the population to get out the forest and come back to the village;
- Two days later, P-8025 encountered Mr Yekatom as he was personally going village to village to introduce himself to the village chiefs. He spoke to the population in order to convince them not to stay in the forest because he was concerned for their health in the unsafe environment. Mr Yekatom also pleaded for them to go back to their normal activities. Mr Yekatom gave money to the village chiefs so they could buy medication, salt and soap for the population;
- P-8025 also states that after the population came back to the villages, Rombhot kept distributing salt and soap to the population. He also assisted sick persons to go to the hospital or pay for their medical bills and assisted their families;
- P-8025 also witnessed, on several occasions, the help and assistance that Mr Yekatom provided to families when there was a death in the village;

⁴² CAR-D29-0009-0927-R01.

- P-8025 also describes how Mr Yekatom bought “*pagnes*” (wax fabric) to the old women and widows of the area for Mother’s day and bought school supplies for orphans identified by the village chief at each beginning of the school year until his arrest.
- P-8025 also testifies about football matches organized by Mr Yekatom for the population in different “communes” of Pissa. The witness also explains how Mr Yekatom’s men were getting along well with the population.

45. P-8025’s evidence is relevant for the purpose of determining a sentence in accordance with Article 78(1) and Rule 145(1)(b) which state that the individual circumstances of the convicted person shall be taken into account. In this respect the statement is relevant for the judges to be fully apprised of the character of Mr Yekatom and of the way he behaved with the population of PISSA and the area during and after the charged crimes. This witness’ evidence is also relevant in accordance with Rule 145(2)(a)(ii) as regard to Mr Yekatom’s conduct after the acts.

46. Indeed, the statement shows that Mr Yekatom was doing what was in his power to assist and help the population of the area. It shows he was concerned by the well-being of the people who had suffered during their flight to the forest, did gestures such as distributing small supplies, and assisted the poorest of the villagers when they faced sickness, death and other important events. The witness also gives insight on the way Mr Yekatom insisted on the population to get back to their normal activities after the events, even organizing sport events to bring a social life back to the community.

47. The statement provides the Chamber with information on the interactions of Mr Yekatom with the population of PISSA and the area, his concern for the women and children of the villages, and more generally assists in understanding his character.

C. The procedural prerequisites of Rule 68 are not applicable in the context of sentencing

48. The Defence requests the Chamber to find that for the purpose of sentencing Rule 68(2)(b) procedural requisites are not a procedural bar in the same way they were during the trial. Instead, in evaluating the introduction of the Testimonial Material for sentencing, the Chamber should limit itself as to whether the statements satisfy the

relevancy requirement set out in Article 76(1) and how they relate to the various factors outlined in Article 78 and Rule 145.

49. In the spirit of judicial economy, the Defence fully refers to its submissions formulated in its First Request on this matter.⁴³ It further notes that this position is shared by the Prosecution.⁴⁴

D. Should the Chamber apply the Rule 68 framework, the Testimonial Material meets the admissibility criteria under Rule 68(2)(b)

50. Should the Chamber be minded to apply the framework under Rule 68, the Defence requests that the Testimonial Material be recognised as formally submitted under Rule 68(2)(b) as all the requirements therein are fulfilled. However, bearing in mind the more flexible sentencing framework as argued above, the Defence submits that the Chamber should adopt a more lenient interpretation of the Rule 68(2)(b) requirements.⁴⁵

51. In addition, as previous Chambers have determined it appropriate, the Defence requests to be dispensed from the requirement to have a member of the Registry witness accompanying declarations with any prior recorded testimony, pursuant to Rule 68(2)(b)(ii) and (iii). In the alternative, and noting that completing the certifications requires significant time and resources from the Defence which are otherwise crucial to prepare closing arguments, the Defence requests that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

a) The Testimonial Material is appropriate for introduction through Rule 68(2)(b)

i. The Testimonial Material is correctly identified as 'prior recorded testimony' for the purposes of Rule 68(2)(b)

52. The Testimonial Material comprises the written statements collected from the four witnesses, as well as one associated exhibit which was used and explained by P-8024 and which therefore constitutes an integral part of her testimony.⁴⁶ As reflected in the statements, each of the witnesses understood at the time that the information they

⁴³ ICC-01/14-01/18-2678-Conf, paras 6-16.

⁴⁴ ICC-01/14-01/18-2679-Conf, paras 19-21.

⁴⁵ Ibid.

⁴⁶ ICC-01/14-01/18-1833-Conf-Corr, para. 24. A public redacted version is available: ICC-01/14-01/18-1833-Corr-Red.

provided may be relied upon in the context of legal proceedings specifically with regard to sentencing submissions and that they may be called upon to provide their testimony in public.⁴⁷

ii. The Testimonial Material has been prepared in a reliable manner

53. The Testimonial Material has sufficient *indicia* of reliability for the purposes of formal submission pursuant to Rule 68(2)(b).⁴⁸ For each of the witnesses, the prior record testimony was: (i) taken in the ordinary course of proceedings, (ii) signed by the witness and the investigator(s) conducting the interview, (iii) given voluntarily, (iv) verified by the witness at the time of the statement and, (v) includes information that the witness was given an explanation of the procedure before the ICC and was informed of the significance of providing the statement to the Defence. In this regard, each statement contains an express acknowledgement attesting to the voluntariness and the truth of its contents to the best of the witness' knowledge.

54. Each statement was obtained in a language understood by each of the witnesses, namely French and/or Sango, and read back by a qualified interpreter assigned by the Registry in the case of P-8024. In doing so, each of the witnesses was informed of their right to make corrections and clarifications to their statement.

55. Nor do the statements exhibit any issues pertaining to the credibility of the information therein that are so manifest and of such nature that questioning the witnesses would be necessary.

iii. The Testimonial Material does not relate to matters concerning the charged acts and conduct of the accused

56. Further, the Defence submits that the Testimonial Material goes to proof of a matter other than the acts and conduct of the Accused. References to Mr Yekatom therein do not relate to the charged acts and conduct of the Accused as described in the confirmed charges or which are otherwise relied upon by the Prosecution to establish the Accused's criminal responsibility for the crimes charged.⁴⁹

⁴⁷ ICC-01/14-01/18-1833-Conf-Corr, para. 23.

⁴⁸ ICC-01/14-01/18-1833-Conf-Corr, para. 42.

⁴⁹ ICC-01/14-01/18-1833-Conf-Corr, para. 28.

57. Indeed, the testimonies of P-8023, P-8024 and P-8026 are limited to the matter of Mr Yekatom's character in his youth, inside the familial circle, as well as his relationship with people of Muslim faith. The testimony of P-8025 relates to the conduct of Mr Yekatom with the village chiefs, and does not relate to the conduct of Mr Yekatom as described in the confirmed charges.

58. In any event, to the extent that any part of the Testimonial Material is deemed to pertain to the acts and conduct of the accused, it should not preclude the introduction of the written statements as part of the Chamber's holistic assessment to determine an appropriate sentence.

iv. The introduction of the Testimonial Material through Rule 68(2)(b) best serves the interests of justice

59. The interests of justice are best served by the introduction of the testimonial material through Rule 68(2)(b).⁵⁰ Its introduction would streamline the presentation of evidence during the sentencing phase and safeguard expeditiousness. It would also save the Chamber and Parties' resources that may instead be utilised for other activities, notably those related to the Defence preparation of closing briefs and arguments, including analysing the Prosecution and the CLRV's brief upon notification.

b) Request to dispense with certification requirement under Rule 68(2)(ii) and (iii)

60. The Sentencing Procedure Decision instructed the parties to submit "any proposed arrangement for the obtention of accompanying declaration(s) under Article 68(2)(b)(ii) of the Statute" at the time of filing any request for additional written testimonial evidence.⁵¹ In response to the Chamber's query, the Defence respectfully submitted in its First Request a detailed overview of the steps undertaken to secure the accompanying declaration for the witnesses. In the spirit of judicial economy the Defence respectfully refers to this overview provided in the First Request,⁵² and notes that it fully encompasses P-8025's situation.

61. As regard to P-8023, P-8024 and P-8026, the Defence additionally submits that specific challenges linked to their location of residence, in Cameroon, would arise

⁵⁰ ICC-01/14-01/18-1833-Conf-Corr, paras 40-41.

⁵¹ ICC-01/14-01/18-2600.

⁵² ICC-01/14-01/18-2678-Conf, paras 88-92.

should the Chamber order the production of an accompanying declaration made before a Registry's officer.

62. Indeed, as Cameroon is not a state party to the ICC, special authorizations would have to be obtained from the national authorities in order to allow the Court to perform official work on its territory.
63. The absence of a field office would also cause issues as the witnesses would not have at their disposal Court personnel that could assist in the setup of a video link; nor would a secure location with a computer and internet connection to establish a video link with the Registry's officer be readily available. This issue is compounded by the fact that the witnesses are in two different locations: [REDACTED].
64. In these circumstances, securing the certification of those three witnesses in Cameroon would entail significant expenses of time and resources should Defence team members be required to do another mission for this purpose.
65. Lastly, the Defence submits that dispensing with the certification requirement would not cause undue procedural prejudice. The Defence confirms that all written statements sought to be tendered for potential sentencing were given under declaration confirming the witness's identity; have been signed and given voluntarily; have been given under declaration of honour and conscience that their content is accurate. Further, the statements are internally consistent and coherent and therefore show sufficient *indicia* of reliability.
66. In the alternative, and noting that completing the certifications requires significant time and resources from the Defence which is otherwise necessary to complete closing arguments, the Defence requests that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

CONFIDENTIALITY

67. This request is filed on a confidential basis as it contains information Defence's investigations as well as identities of witnesses. A public redacted version will be filed in due course.

RELIEF SOUGHT

68. In light of the above, the Defence respectfully requests Trial Chamber V to:

INTRODUCE the Testimonial Material for the purposes of potential sentencing;

or, in the alternative;

RECOGNISE the Testimonial Material as formally submitted under Rule 68(2)(b); and

ORDER that the Defence be dispensed from the requirement to have a member of the Registry witness the accompanying declarations pursuant to Rule 68(2)(b)(ii), with respect to the prior recorded testimony sought to be introduced through Rule 68(2)(b) for sentencing purposes;

or, in the alternative,

ORDER that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

RESPECTFULLY SUBMITTED ON THIS 21st DAY OF NOVEMBER 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands