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Pénale
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**International
Criminal
Court**

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Date: 23 February 2021

TRIAL CHAMBER V

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

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

Public

Public redacted version of “Yekatom Defence Response to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1962 pursuant to Rule 68(3)”, 4 December 2020, ICC-01/14-01/18-750-Conf”, 17 December 2020, ICC-01/14-01/18-776-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. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully request the Chamber to reject the introduction of P-1962’s prior recorded statements as it would infringe on the rights of Mr. Yekatom and on the fairness of the proceedings.
2. Indeed, the statements of P-1962 are central to core issues in the case and relate to issue that are materially in dispute at the heart of the charges and are not of a corroborative nature *per se*. Moreover, P-1962 was a direct eyewitness of certain events and speaks extensively about the situation in CAR during the temporal scope of the charges in key locations.

PROCEDURAL BACKGROUND

3. On 11 December 2019, the Pre-Trial Chamber issued its *Decision on the Confirmation of Charges Against Alfred Yekatom and Patrice-Edouard Ngaïssona* in which it confirmed some of the charges.¹ The Prosecution’s request for reconsideration or leave to appeal was sought,² opposed,³ and denied.⁴
4. On 11 March 2020, the Pre-Trial Chamber ordered that the Registry transmit the case file to the Presidency.⁵
5. On 16 March 2020, the Presidency assigned the case to Trial Chamber V.⁶
6. On 22 May 2020, the Trial Chamber ordered the Prosecution to file a Preliminary Witness List by 15 June 2020.⁷ The Prosecution complied.⁸

¹ [ICC-01/14-01/18-403-Red.](#)

² [ICC-01/14-01/18-437.](#)

³ [ICC-01/14-01/18-443.](#)

⁴ [ICC-01/14-01/18-447.](#)

⁵ [ICC-01/14-01/18-447.](#)

⁶ [ICC-01/14-01/18-451.](#)

⁷ [ICC-01/14-01/18-528.](#)

⁸ [ICC-01/14-01/18-553.](#)

7. The Trial Chamber held a status conference on 9 July 2020.⁹ On 16 July 2020, the Trial Chamber ordered the Prosecution to submit a Provisional Witness List indicating, *inter alia*, the intended mode of testimony,¹⁰ and to file its Final Witness List and List of Evidence by 9 November 2020.¹¹ The same decision scheduled the evidence presentation to start in March 2021.¹²
8. On 26 August 2020, the Trial Chamber ordered the Prosecution to submit applications under Rule 68(2) and (3) as soon as possible, latest by 9 November 2020.¹³ It also clarified that submitted expert report(s) must satisfy the procedural prerequisites of Rule 68 unless no such objections to the submission are raised.¹⁴ Furthermore, the Trial Chamber has allowed the Prosecution 400 hours to make the examination of its witnesses and 200 hours to each Defence to do the cross-examinations.¹⁵
9. On 31 August 2020, the Prosecution filed its Provisional Witness List, indicating its intention to call 44 witnesses through Rule 68(2) and 77 witnesses through Rule 68(3).¹⁶
10. In its *Request pursuant to Regulation 35 to vary the Time Limit for the Submission of Applications pursuant to Rule 68*, in regard to the Rule 68(3) applications, the Prosecution requested the change of the time limit for it to be not less than 45 days before the scheduled start of the witness' testimony,¹⁷ to which the Defence did not oppose.¹⁸
11. On 15 September 2020, the Prosecution filed its *Prosecution's Observations on its*

⁹ [ICC-01/14-01/18-T-012-ENG](#).

¹⁰ [ICC-01/14-01/18-589](#), para. 4.

¹¹ [ICC-01/14-01/18-589](#), para. 16.

¹² [ICC-01/14-01/18-589](#), para. 25.

¹³ [ICC-01/14-01/18-631](#), para. 33.

¹⁴ [ICC-01/14-01/18-631](#), para. 67.

¹⁵ [ICC-01/14-01/18-631](#), paras. 21, 24.

¹⁶ [ICC-01/14-01/18-642-Conf-AnxA](#); [ICC-01/14-01/18-652](#), para. 7.

¹⁷ [ICC-01/14-01/18-652](#).

¹⁸ [ICC-01/14-01/18-663](#).

intended approach to Rule 68(3) in the presentation of its case (the ‘Request’) stating that the Prosecution wishes for the Chamber to encourage the Rule 68(3) applications as a means of expediting the proceedings.¹⁹ The Defence response pointed that despite the fact that the Rule 68(3) applications shorten the Prosecution examination time, it increases greatly the Defence cross-examination obligation. Albeit it is not an issue at this stage *per se*, the 200 hours given by the Chamber in the Initial Directions could be too little and could result in a substantial prejudice to Mr. Yekatom.²⁰

12. On 16 October 2020, the Trial Chamber in its *Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules* (the ‘Decision’) noted that:

In light of the specific circumstances of this case, and noting the overall number of anticipated applications under Rule 68 of the Rules, namely for 121 out of 145 witnesses (44 of which pursuant to Rule 68(2) of the Rules and 77 pursuant to Rule 68(3) of the Rules), the Chamber considers that the Prosecution’s projected use of Rule 68 of the Rules appears, *prima facie*, disproportionate in light of the principles of orality and publicity and potentially prejudicial to the rights of the accused.²¹

[...]

The Chamber notes that, should the Prosecution decide to indeed submit 121 applications pursuant to Rule 68 of the Rules (and should they be granted), this may impact on the time allocated to the participants.²²

13. The Trial Chamber, in the *Decision*, partly granted the Prosecution’s Request, by allowing the Prosecution to “file its Rule 68(2) Applications on a rolling basis, latest by 11 January 2021, and its Rule 68(3) Applications not less than 45 days before the scheduled start of the witness’ testimony”.²³

¹⁹ [ICC-01/14-01/18-655](#), para. 15.

²⁰ [ICC-01/14-01/18-664](#), para. 6.

²¹ [ICC-01/14-01/18-685](#), para. 32.

²² [ICC-01/14-01/18-685](#), para. 35.

²³ [ICC-01/14-01/18-685](#).

14. On 10 November 2020, the Prosecution filed its Final Witness List, indicating its intention to call 55 witnesses through Rule 68(2) and 69 witnesses through Rule 68(3).²⁴
15. On 4 December 2020, the Prosecution filed its Formal Submission of the Prior Recorded Testimony of P-1962 pursuant to Rule 68(3) (the "*Submission*").²⁵

RELEVANT PROVISIONS

Article 67(2) – Rights of the accused

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the Defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Article 69 (2) – Evidence

2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of viva voce (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.

Rule 68 (3) – Prior recorded testimony

3. If the witness who gave the previously recorded testimony is present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony if he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.

²⁴ [ICC-01/14-01/18-724-Conf-AnxA.](#)

²⁵ [ICC-01/14-01/18-750-Conf.](#)

ARGUMENT

16. As a preliminary remark, the Defence recalls that in its *Response to the Prosecution's Intended Approach to Rule 68(3)* it underlined the impact on the adequacy of the allocated time for cross-examinations.²⁶ P-1962's statements are a perfect example of how extensive use of Rule 68(3) can greatly impact on the time allocated to the Defence for cross-examination. Whilst the Prosecution's examination time will diminish, the Defence will have no choice but to make an exhaustive cross-examination based on the outcome of the examination in chief and the written statement submitted under Rule 68(3). The burden imposed to the Defence will be substantial and consume an important part of the allotted time for cross-examination.
17. The jurisprudence of the Court has consistently held that the Chamber's decision to allow the introduction of prior recorded testimonies is a discretionary power.²⁷ Not only has this conclusion been upheld in different cases, but it was also partly used as a ground for rejecting a Prosecution's Rule 68(3) request in *Gbagbo & Blé Goudé*.²⁸
18. In its *Submission*, the Prosecutor asked for the admission of prior recorded testimonies of P-1962 and their associated annexes and mentioned that the balance of interest would be respected and that all factors for the admission of

²⁶ [ICC-01/14-01/18-664](#), para. 6.

²⁷ *Prosecutor v. Bemba and al.*, [Decision on Prosecution Rule 68\(2\) and \(3\) Requests](#), 12 November 2015, ICC-01/05-01/13-1478-Red-Corr, paras. 48, 50; *Prosecution v. Ongwen*, [Decision on Prosecution's Application to Introduce Prior Recorded Testimony and Related Documents Pursuant to Rule 68\(3\) of the Rules](#), 5 December 2016, ICC-02/04-01/15-621, para. 7.

²⁸ *Prosecutor v. Gbagbo and Blé Goudé*, [Decision on the "Prosecution's consolidated application to conditionally admit the prior recorded statements and related documents of various witnesses under rule 68 and Prosecution's application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses P-0087 and P-0088"](#), 6 June 2017, ICC-02/11-01/15-950-Red, para. 90.

the statements under Rule 68(3) are observed.²⁹

19. When deciding whether or not a Prosecution's Rule 68(3) request should be granted, the Chamber may consider certain factors including (i) whether the evidence relates to issues that are not materially in dispute; (ii) whether that evidence is not central to core issues in the case, but only provides relevant background information; and (iii) whether the evidence is corroborative of other evidence.³⁰
20. In addition, the Appeals Chamber in *Gbagbo & Blé Goudé*, ruled that a Chamber in its assessment of the possibility of a Rule 68 (3) application "must necessarily analyse the 'importance' of each witness statement in light of the charges and the evidence already presented or intended to be presented before it" with the consequence that "the more important the Chamber assesses the evidence in question to be, the more likely it is that the Chamber will have to reject any application under this provision".³¹
21. In the specific case of P-1962, an analysis of his statements through those criteria can only result in the conclusion that the subject matters for which he is relied upon are of too much importance for the application of Rule 68(3).

I. The importance of P-1962 statements is incompatible with the use of Rule 68 (3)

²⁹ [ICC-01/14-01/18-750-Conf](#), paras. 27-28, 31.

³⁰ *Prosecution v. Bemba*, [Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence"](#), 3 May 2011, ICC-01/05-01/08-1386, para. 78 citing the following decisions as examples: *Prosecutor v. Lubanga*, [Decision on the prosecutor's application for the admission of the prior recorded statements of two witnesses](#), 15 January 2009, ICC-01/04-01/06-1603, para. 24; *Prosecutor v. Katanag and Ngudjolo Chui*, [Corrigendum to the Decision on the Prosecution Motion for admission of prior recorded testimony of Witness P-02 and accompanying video excerpts](#), 27 August 2010, ICC-01/04-01/07-2289-Corr-Red, para. 14.

³¹ *Prosecutor v. Gbagbo and Blé Goudé*, [Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68\(2\)\(b\) and 68\(3\)"](#), 1 November 2016, ICC-02/11-01/15-744, para. 71.

22. The Prosecution in its Trial Brief relied on P-1962's statements for the contextual elements of the widespread attack against the civilian population in relation to the BODA attack and, more importantly for count 24 (Forcible transfer and deportation – Article 7(1)(d)) and count 25 (Displacement – Article 8(2)(e)(viii)) in relation to the advancement of Mr. Yekatom's Group from PK9 to MBAIKI that allegedly forced the Muslim civilians to flee.
23. P-1962 is referring to the attack on BODA [REDACTED] and the fleeing of Muslims around that time, supposedly triggered by the Anti-Balaka.
24. The witness' expected testimony is of great importance for the Prosecution's case in relation to the attack on BODA and its Muslim enclave. The Prosecution is going to great lengths to present evidence of Mr. Yekatom's alleged responsibility for the attack in BODA and the Muslim enclave therein. No less than 22 witnesses are expected to testify either on the BODA attack, its enclave, [REDACTED] and/or the fact that the BODA area fell under Mr. Yekatom's control and responsibility.³² [REDACTED]. On this basis alone the importance of his evidence cannot be understated.
25. In addition, [REDACTED]. On the one hand, in *Gbagbo & Blé Goudé*, the Chamber allowed Rule 68(3) applications on the merit that the witnesses had no insider knowledge of the situation.³³ On the other hand, it also ruled against an application under Rule 68(3) because the witness had the "ability to observe comprehensively the situation [...] in the entire time period relevant for the charges".³⁴

³² See in [ICC-01/14-01/18-724-Conf-AnxA](#) : P-2138, P-0974, P-2326, P-2324, P-1864, P-1773, P-1871, P-1576, P-1921, P-2432, P-0505, P-1647, P-1786, P-1719, P-0801, P-1193, P-2041, P-2328, P-1074, P-0952; P-1577, P-2027.

³³ *Prosecutor v Gbagbo and Blé Goudé*, [Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68\(2\)\(b\) and 68\(3\)](#), 9 June 2016, ICC-02/11-01/15-573-Red, para. 38; *Prosecutor v. Ongwen*, [Defence Submissions on Proposed Redactions to the Article 56 Transcripts](#), 20 October 2016, ICC-02/11-01/15-570, para. 8.

³⁴ *Prosecutor v Gbagbo and Blé Goudé*, [Decision on the "Prosecution's consolidated application to conditionally admit the prior recorded statements and related documents of various witnesses under rule 68 and Prosecution's application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of](#)

26. Based [REDACTED] who would have joined the attack with some 40 other elements,³⁵ the Chamber should insist on *viva voce* testimony from P-1962.

II. The evidence of P-1962 relates is central to core issues in the case and relates to issues that are materially in dispute

27. Further supported by the Prosecution in its Request, P-1962's statements constitute evidence related to core issues of the case and clearly do not depict mere background information, contrary to the Prosecution's Submission.³⁶ In his statements, P-1962 [REDACTED] in the area supposedly under Mr. Yekatom's control and speaks extensively about the situation in CAR during the temporal scope of the charges.³⁷
28. An application of Rule 68 (3) for Witness P-1962 as sought by the Prosecutor would be inconsistent with the rights of the accused as it would cause great prejudice to Mr. Yekatom. This prejudice derives directly from the core issues materially in dispute addressed in his statements and partly detailed below.
29. *First*, P-1962 mentions extensively how one of Mr. Yekatom's [REDACTED],³⁸ [REDACTED].³⁹ He stated that he heard on the radio that Coeur de Lion was burning houses and chasing Muslims away.⁴⁰ [REDACTED].⁴¹
30. Given that Mr. Yekatom's alleged deputy - Coeur de Lion - was killed around 3 February 2014,⁴² [REDACTED]. In order to preserve the principle of immediacy⁴³ and orality he should testify *viva voce*.

[proceedings relating to the evidence of Witnesses P-0087 and P-0088](#)", 6 June 2017, ICC-02/11-01/15-950-Red, para. 90.

³⁵ [CAR-OTP-2068-0037-R02](#), paras. 29-46; CAR-OTP-2071-0003-R01, paras. 72, 79-84 ; CAR-OTP-2071-0093 at 0139-0140 and 0146.

³⁶ [ICC-01/14-01/18-750-Conf](#), para. 31.

³⁷ See [CAR-OTP-2068-0037-R02](#), paras 27-38.

³⁸ [CAR-OTP-2068-0037-R02](#), para. 34.

³⁹ [CAR-OTP-2068-0037-R02](#), para. 33.

⁴⁰ [CAR-OTP-2068-0037-R02](#), para. 34.

⁴¹ [CAR-OTP-2068-0037-R02](#), para. 35.

⁴² [ICC-01/14-01/18-282-Conf-AnxB1](#), para. 475.

⁴³ [ICC-01/14-01/18-677](#), para. 23.

31. In light of the excerpts cited above, it is undeniable that P-1962 statements are linked to the acts, conducts and intents of Mr. Yekatom and some of his alleged elements. Moreover, on the basis of those excerpts alone, if believed, Mr. Yekatom could be convicted of Counts 24 and 25.⁴⁴
32. *Second*, P-1962 also discusses at length areas allegedly under Mr. Yekatom's control.⁴⁵ Additionally, [REDACTED].⁴⁶ Again such information is materially in dispute and central to the core issues of the case, including Mr. Yekatom's intention and sentiment towards Muslims.
33. The introduction of such damaging testimony through Rule 68(3) is undoubtedly prejudicial and inconsistent with the rights of the accused and the fairness of the trial. On such critical parts of his evidence, P-1962 should testify under oath *viva voce* in court as it would allow the Chamber and participants to "*hear natural and spontaneous accounts from witnesses, to directly and closely observe their reaction, demeanour and composure, and to immediately seek clarification*",⁴⁷ an aspect all the more important in light of P-1962's apparent tendency to underplay his own role in the events.⁴⁸ Consequently, submitting such evidence which could have such a direct impact on the verdict of the trial through Rule 68(3) would undeniably be inconsistent with the rights of the accused and cause prejudice.⁴⁹

III. The evidence of P-1962 is not corroborative of other evidence intended to be presented

⁴⁴ [ICC-01/14-01/18-403-Conf-Corr](#), pages 105-106.

⁴⁵ [CAR-OTP-2068-0037-R02](#), paras. 58, 106, 116, 121.

⁴⁶ [CAR-OTP-2068-0037-R02](#), paras. 122-123.

⁴⁷ [ICC-01/14-01/18-685](#), para. 33.

⁴⁸ [CAR-OTP-2068-0037-R02](#), para. 44.

⁴⁹ *Prosecutor v Gbagbo and Blé Goudé*, [Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68\(2\)\(b\) and 68\(3\)"](#), 1 November 2016, ICC-02/11-01/15-744, para. 71.

34. The alleged conversations the Witness has claimed to have had, either with Mr. Yekatom or with [REDACTED] regarding their alleged intention to kill all the Muslims, are uncorroborated. No other witness is present during those alleged conversations. P-1962 is the only Prosecution Witness expected to testify on those alleged conversations and interactions.
35. Furthermore, the witness' description of the [REDACTED] is at odds with witness P-2138's expected evidence through Rule 68(2).⁵⁰ While witness P-2138 places Mr. Yekatom [REDACTED], witness P-1962 never mentions Mr. Yekatom's presence nor his potential involvement in [REDACTED].⁵¹ On the contrary, P-1962 mentions that Mr. Yekatom was in PISSA during the time [REDACTED].⁵² Thus, as P-1962's statements are contradictory to P-2138's statement, accepting the Rule 68(3) application would deprive the Chamber of the possibility to hear from both witnesses on their recollections and to assess the credibility of both these key witnesses on [REDACTED].
36. P-1962's statements are therefore un-corroborated in relation to the various conversations he would have had with [REDACTED] and Mr. Yekatom as well as on the [REDACTED], contrary to the Prosecution's Submission.⁵³

CONCLUSION

37. As discussed, the cross-examination of this witness will be significantly more time-consuming than expected by the Chamber. As the Chamber observed, this will impact on the time allocated to the participants.⁵⁴
38. Should the Chamber accept the application under Rule 68(3), there will be a notable impact on the fairness of the Trial. The Defence recalls that, as

⁵⁰ [ICC-01/14-01/18-724-Conf-AnxA](#), Witness n°1 page 2.

⁵¹ [CAR-OTP-2092-4004-R01](#), pp. 4006-4009; [CAR-OTP-2068-0037-R02](#), paras 39-46; CAR-OTP- 2092-4143-R01, pp.1455-1464.

⁵² [CAR-OTP-2068-0037-R02](#), paras. 29, 58.

⁵³ [ICC-01/14-01/18-750-Conf](#), para. 31.

⁵⁴ [ICC-01/14-01/18-685](#), paras. 35-37.

mentioned by this Chamber in its *Decision*, Rule 68 represents an exception to the rule of orality.⁵⁵ *Viva voce* testimony should be the default mode of testifying.⁵⁶

39. Furthermore, the Defence underlines the Chamber's determination that: "as regards the fairness and integrity of the proceedings, the Chamber considers that a witness' recollection of the events should be first tested during the hearing in order to preserve the principle of immediacy"⁵⁷ and "[it] is possible that witnesses do not recall information provided by them in their statement or provide different information during their testimony. When that happens, the witness' natural reaction to such inconsistencies would also be significant in examining and evaluating their overall testimony."⁵⁸
40. Hence, the Chamber should apply its discretionary power and reject the submission of the Rule 68(3) application of P-1962 prior statements. The Chamber mentioned the importance of a case-by-case analysis and that it is crucial to assure the fairness of the Trial.⁵⁹
41. As underlined by the Appeals Chamber, given that the statements are related to issues that are materially in dispute, central to core issues of the case and are uncorroborated, extra vigilance should be exercise before granting the introduction of the prior recorded testimonies such as P-1962's.⁶⁰

⁵⁵ [ICC-01/14-01/18-685](#), para. 26.

⁵⁶ [ICC-01/14-01/18-685](#), para. 25; *Prosecution v. Bemba*, [Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence"](#), 3 May 2011, ICC-01/05-01/08-1386, para. 76; *Prosecutor v Ruto and Sang*, [Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V\(A\) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony"](#), 12 February 2016, ICC-01/09-01/11-2024, para. 84.

⁵⁷ [ICC-01/14-01/18-677](#), para. 23.

⁵⁸ [ICC-01/14-01/18-677](#), para. 24.

⁵⁹ [ICC-01/14-01/18-685](#), para. 28.

⁶⁰ *Prosecutor v. Gbagbo and Blé Goudé*, [Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68\(2\)\(b\) and 68\(3\)"](#), 1 November 2016, ICC-02/11-01/15-744, para. 69.

CONFIDENTIALITY

42. This pleading is filed confidentially because it responds to a motion that has been filed confidentially and for which no public redacted version has yet been filed. The Chamber is respectfully requested to issue a public redacted version of its decision and order the parties to file public redacted versions of its submissions.

RELIEF SOUGHT

43. In light of the above observations, the Defence respectfully requests the Trial Chamber to:

REJECT the Prosecution's formal submission of the Prior Statements of P-1962 together with their associated exhibits as set out at Annex A.

RESPECTFULLY SUBMITTED ON THIS 23RD DAY OF FEBRUARY 2021 ⁶¹



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⁶¹ The assistance of Legal Intern Ms Audrey Gagné Breton to the research of this motion is gratefully acknowledged.