

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**

Date: **6 April 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 with Confidential Annex A

Public Redacted Version of the “Corrigendum to “Yekatom Defence Response to ‘Prosecution’s Sixth, Seventh and Eighth Formal Submissions of Rule 68(2) Applications’ (ICC-01/14-01/18-802-Conf, ICC-01/14-01/18-808-Conf and ICC-01/14-01/18-812-Conf)” (ICC-01/14-01/18-845-Conf)”, (ICC-01/14-01/18-845-Conf-Corr)

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor

Ms. Fatou Bensouda

Mr. James Stewart

Mr. Kweku Vanderpuye

Counsel for Mr. Yekatom

Me Mylène Dimitri

Mr. Thomas Hannis

Counsel for Mr. Ngaïssona

Me Geert-Jan Alexander Knoops

Me Richard Omissé-Namkeamai

Legal Representatives of Victims

Mr. Dmytro Suprun

Mr. Abdou Dangabo Moussa

Ms. Elisabeth Rabesandratana

Mr. Yaré Fall

Ms. Marie-Edith Douzima-Lawson

Ms. Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Me Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. Counsel representing Mr. Alfred Rombhot Yekatom (the 'Defence') respectfully submit this consolidated response to the *Prosecution's Sixth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)*¹, the *Prosecution's Seventh Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)*² and the *Prosecution's Eighth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)*³ (respectively, 'Sixth Request', 'Seventh Request' and 'Eighth Request').
2. The Defence does not oppose the formal submission of the prior recorded testimony of P-0505, P-2133, and P-0567 as well as the associated exhibits as requested in the Sixth Request. Likewise, the Defence does not oppose the submission of the prior recorded testimony of P-1576,⁴ P-1739 and P-1530 and associated exhibits presented in the Seventh Request. Finally, the Defence does not oppose the submission of the prior recorded testimony of P-2050, P-2432, P-2467 and P-2652 as set out in the Eighth Request.
3. The Defence does not oppose the formal submission of the prior recorded testimony of P-0342 on the understanding that specified paragraphs are excluded from his tendered witness statements in accordance with the Eighth Request. In the event that the Trial Chamber is not minded to exclude these paragraphs in accordance with the Eighth Request, the Defence respectfully reserves its right to be heard on these specific matters. In addition, the Defence draws the attention of the Trial Chamber to the fact that several paragraphs of the proposed P-0342 statement contains substantial comments on several [REDACTED] to the Prosecution. The Defence informed the Prosecution

¹ [ICC-01/14-01/18-802-Conf-Corr.](#)

² [ICC-01/14-01/18-808-Conf.](#)

³ [ICC-01/14-01/18-812-Conf.](#)

⁴ The Defence notes that CAR-OTP-2061-4304, identified at page 2 of [ICC-01/14-01/18-808-Conf-AnxA](#), has not been disclosed by the Prosecution to the Defence.

during *inter partes* communication that [REDACTED] were never disclosed, which rendered part of the statement incomprehensible.⁵

4. The Defence does not oppose the formal submission of the prior recorded testimony of P-1921 on the condition that a supplementary statement taken during an interview conducted by the Defence be included with the testimony.
5. The Defence, however, requests the Chamber to reject the formal submission of the prior recorded testimony of P-0365, P-1442, P-1503, P-2138, P-2671, P-1932 and P-2973 as well as the associated exhibits as it would infringe on Mr. Yekatom's rights and on the fairness of the proceedings.

PROCEDURAL BACKGROUND

6. The Defence incorporates by reference the Procedural Background outlined in its Consolidated Response to Prosecution's Fourth and Fifth Submissions of Rule 68(2) Applications.⁶
7. On 8 January 2021, the Prosecution filed its Sixth Request for the admission of the prior recorded testimony of seven witnesses,⁷ mentioning that "[t]hey are limited to evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity".⁸
8. On 11 January 2021, the Prosecution filed the Seventh Request, seeking the formal submission of prior recorded testimony of a further five witnesses,⁹ and the Eighth Request, seeking the formal submission of prior recorded testimony of an additional seven witnesses.¹⁰

⁵ Phone conversation and email to the Prosecution on the 19 January 2021, available upon the Chamber request.

⁶ [ICC-01/14-01/18-823-Conf](#).

⁷ These comprise witnesses P-0365, P-2671, P-0505, P-2133, P-1442, P-0567 and P-1503.

⁸ [ICC-01/14-01/18-802-Conf-Corr](#), para. 4.

⁹ Specifically, P-1576, P-1739, P-1530, P-1932, and P-2973.

¹⁰ Namely P-0342, P-1921, P-2050, P-2138, P-2432, P-2467 and P-2652.

RELEVANT PROVISIONS

Rule 68 (2)(b)(i) – Prior recorded testimony

2 If the witness who gave the previously recorded testimony is not present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony in any one of the following instances:

(b) The prior recorded testimony goes to proof of a matter other than the acts and conduct of the accused. In such a case:

(i) In determining whether introduction of prior recorded testimony falling under sub-rule (b) may be allowed, the Chamber shall consider, *inter alia*, whether the prior recorded testimony in question:

- relates to issues that are not materially in dispute;
- is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts;
- relates to background information;
- is such that the interests of justice are best served by its introduction;
- and
- has sufficient indicia of reliability.

PRELIMINARY ISSUES

9. As stated above, the Defence does not oppose the submission of the prior recorded testimony of P-0342 on the understanding that paragraphs 292-314 of CAR-OTP-2127-7319 are excluded from his tendered witness statement, as stated in Annex A to the Eighth Request.¹¹
10. Further, the Defence's non-opposition to the formal submission of 12 witnesses¹² should in no way be understood as a concession as to the reliability or probative value of their evidence, nor as to the veracity of any Prosecution allegations based thereon. The Defence's position as regards the Rule 68(2) applications for the 12 witnesses is based solely on the interests of

¹¹ [ICC-01/14-01/18-812-Conf-AnxA](#), p. 1.

¹² *Supra*, paras 2-4; the Defence emphasises the caveats contained therein.

expediting these proceedings, in accordance with Mr. Yekatom's fair trial rights.

11. The Defence intends to challenge the evidence of a number of these witnesses and/or the relevant Prosecution allegations at a later stage.¹³
12. As regards those witnesses not specifically challenged in this response, for whom the Prosecution seeks formal submission of evidence pursuant to Rule 68(2), the Defence defers to the position(s) taken by the Ngaïssona Defence.
13. As regards P-1921, the Defence defers to the Ngaïssona Defence position concerning the appropriateness of formal submission via Rule 68(2) of her evidence. However, if the Trial Chamber is minded to grant the Prosecution application in respect of P-1921, the Defence requests that a supplementary statement and its annexes, containing additional information relevant to the Defence, be submitted to supplement P-1921's statement.¹⁴
14. The statement in question pertains to an interview conducted by the Defence on 17 February 2020 ('Supplementary Statement'). Formal submission of the Supplementary Statement would be in the interests of justice. *First*, the Defence recalls that in *Ongwen*, Trial Chamber IX considered the ability of the Defence to obtain statements to supplement the evidence of Prosecution Rule 68(2) witnesses was a relevant factor in assessing the merits of such applications;¹⁵ it is in this spirit that the Defence obtained the Supplementary Statement. *Second*, it would act to expedite the proceedings, as it would obviate the need to cross-examine P-1921 or alternatively, to call P-1921 as a

¹³ In conformity with the Chamber's adoption of the 'Submission Approach' and the two-step approach to Rule 68 applications outlined in the Chamber's 'Initial Directions on the Conduct of Proceedings; see, [ICC-01/14-01/18-631](#), paras 53, 56.

¹⁴ The supplementary statement and its annexes can be found in Annex A to this response. .

¹⁵ *Prosecutor v. Ongwen*, [Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68\(2\)\(b\) of the Rules](#), ICC-02/04-01/15-596-Red, 18 November 2016, para. 498.

Defence witness. *Third*, the formal submission of the Supplementary Statement would provide a more complete picture of the evidence of P-1921.

ARGUMENT

15. In the *Ongwen* case, Trial Chamber IX underlined that “under no circumstances can prior recorded testimonies be introduced when this is prejudicial to the fairness of the proceedings and, more specifically, the rights of the accused”.¹⁶
16. Trial Chamber IX added that for prior recorded testimony to be admitted under Rule 68(2)(b) it should not relate ‘to matters which are soundly and conceivably disputed between the parties, and are crucial, or of at least sufficient significance for the Chamber’s eventual determination of the charges against the accused in its judgment under Article 74 of the Statute’;¹⁷ and that the potential impacts that those prior recorded statements would have on material matters actually contested should be objectively assessed.¹⁸
17. Trial Chamber IX reiterated that prior recorded testimony under Rule 68(2)(b) must not relate to acts and conducts of the accused: ‘[t]he expression “acts and conduct of the accused” is understood as referring exclusively to those actions of the accused which are described in the charges brought against him or her or which are otherwise relied upon to establish the accused’s criminal responsibility for the crimes charged’.¹⁹
18. The jurisprudence of the Court is consistent with regard to prior recorded statements related to a core issue of the Prosecution’s charges. The Court has ruled on many occasions that Rule 68(2)(b) applications must be denied where

¹⁶ *Prosecutor v. Ongwen*, [Decision on the Prosecution’s Applications for Introduction of Prior Recorded Testimony under Rule 68\(2\)\(b\) of the Rules](#), 18 November 2016, ICC-02/04-01/15-596-Red, para. 16.

¹⁷ *Ibid*, para. 15.

¹⁸ *Ibid*.

¹⁹ *Prosecutor v. Ongwen*, [Decision on Defence Request to Introduce Previously Recorded Testimony Pursuant to Rule 68\(2\)\(b\) of the Rules of Procedure and Evidence](#), 2 July 2018, ICC-02/04-01/15-1294, para. 4.

they relate to information of central significance to the case.²⁰

19. Finally, if the witness statement could have an influence on the credibility of another witness, the Defence should have the right to challenge the credibility in cross-examination.²¹
20. The admission of prior testimony of P-0365, P-1442, P-1503, P-2138, P-2671, P-1932 and P-2973 under Rule 68(2)(b) would be prejudicial to the fairness of the proceedings as they attest to the acts and conducts of the accused and are material to core issues of the Prosecution's case; and their evidence should be elicited *viva voce* so as to allow the Defence to use it to challenge the credibility of other witnesses.

I. P-0365

21. In addition to the usual criteria of Rule 68(2), in *Ongwen*, Trial Chamber IX stated that in the case of crucial evidence, the witness can be brought to the Court to testify on the evidence collection and explanation.²²
22. P-0365 is [REDACTED]. [REDACTED].²³
23. P-0365's [REDACTED]. In his statement he provides information about [REDACTED].²⁴ [REDACTED].²⁵ The witness has stated that during the events

²⁰ I.e. *Prosecutor v. Ongwen*, [Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68\(2\)\(b\) of the Rules](#), 18 November 2016, ICC-02/04-01/15-596-Red, para. 13; *Prosecutor v. Ongwen*, [Decision on Defence Request to Introduce Previously Recorded Testimony Pursuant to Rule 68\(2\)\(b\) of the Rules of Procedure and Evidence](#), 2 July 2018, ICC-02/04-01/15-1294, para. 5; *Prosecutor v. Katanga*, [Decision on Prosecutor's request to allow the introduction into evidence of the prior recorded testimony of P-166 and P-219](#), 3 September 2010, ICC-01/04-01/07-2362, para. 15; *Prosecutor v. Bemba*, [Decision on the "Prosecution Application for Leave to Submit in Writing Prior- Recorded Testimonies by CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080, and CAR-OTP-WWWW-0108"](#), 16 September 2020, ICC-01/05-01/08-886, para. 3; *Prosecutor v. Gabgbo 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. 11.

²¹ *Prosecutor v. Ongwen*, [Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68\(2\)\(b\) of the Rules](#), 18 November 2016, ICC-02/04-01/15-596-Red, paras 53-54.

²² *Ibid*, paras 208 and 212.

²³ CAR-OTP-2122-9042-R02, para. 13.

²⁴ CAR-OTP-2122-9042-R02, para. 14.

in 2013 the Seleka looted and damaged sections of [REDACTED].²⁶

24. P-0365 was shown a copy of [REDACTED], purportedly to pertaining to an OTP witness alleged to be a [REDACTED] in this case.²⁷ The witness noted that it appeared to be [REDACTED]. However, he noted that [REDACTED].²⁸ When he had [REDACTED]. There are no [REDACTED]. [REDACTED].²⁹
25. A thorough cross-examination would allow the Defence to explore several issues that were left out of his proposed evidence, such as the relevant [REDACTED],³⁰ [REDACTED].³¹ In addition, the Defence intends to cross-examine P-0365 on the various discrepancies in the evidence disclosed regarding [REDACTED].³² Further, the Defence should be allowed the opportunity to put to P-0365 several [REDACTED]. As has previously been submitted, the Defence has reason to believe that some alleged [REDACTED];³³ and as such the Defence should be granted to pursue this aspect of its case through P-0365 and as generally acknowledged by the Chamber.³⁴
26. In addition, P-2620's identity and statement has been very recently disclosed to the Defence, after the disclosure deadline. As a consequence, the Defence only recently started to investigate the allegations contained in her statement, including her purported [REDACTED] at the time of the events. It is therefore premature to rule out at this stage any opportunity for the Defence to cross examine P-0365 on the accuracy of the information provided in [REDACTED]

²⁵ CAR-OTP-2122-9042-R02, para. 20.

²⁶ CAR-OTP-2122-9042-R02, para. 20.

²⁷ CAR-OTP-2122-9042-R02, para. 21; where P-0365 was shown CAR-OTP-2121-2577, [REDACTED].

²⁸ CAR-OTP-2122-9042-R02, paras. 22-26.

²⁹ CAR-OTP-2122-9042-R02, paras. 22-26.

³⁰ The Defence notes that [REDACTED].

³¹ For instance, see 3 different type [REDACTED] disclosed by the prosecution, some are electronic and others are handwritten: CAR-OTP-2121-2577, CAR-OTP-2128-1197, CAR-OTP-2126-0413.

³² See below paras. 58-59.

³³ See [ICC-01/14-01/18-681-Conf](#).

³⁴ [ICC-01/14-01/18-740-Conf](#), para.19.

given the very early stage of investigation by the Defence on that matter.

i) *Core of the Disputed issues*

27. P-0365 has crucial information that is necessary for the Defence, especially pertaining allegations according to Count 29.
28. P-0365's evidence directly concerns a specific issue in this case: [REDACTED] of [REDACTED], a witness alleged to be [REDACTED]. In addition to the internal inconsistency within the document purported to be her official birth certificate, there is evidence from another witness, [REDACTED] at the time of the relevant events in this case.³⁵ His information about [REDACTED] done by Seleka in 2013 should be heard by the Trial Chamber to assist in weighing the Prosecution's evidence about the actual age of many of the individuals who claimed or were reported to have been [REDACTED] in 2013-2014.

ii) *Credibility of Another Witness*

29. P-0365's evidence would also assist the Trial Chamber in evaluating the evidence of other witnesses in the case, including P-2671, [REDACTED]. Given the knowledge that P-0365 has about the [REDACTED], the Defence would need a chance to cross-examine the witness on the various [REDACTED] that the Prosecution intends to submit to support its own witnesses' claim that they were [REDACTED].

II. P-1442

30. P-1442's evidence is insufficiently reliable for formal submission under Rule 68(2).
31. It is well established that bias is an important factor in assessing witness credibility. P-1442 displays his pro-Seleka bias by not only downplaying

³⁵ CAR-OTP-2125-0348-R03, paras 11-12 (“[REDACTED].”)

Seleka crimes but also disregarding them, thereby creating doubt as regards the reliability of his evidence.³⁶

32. P-1442 appears to consider the Seleka as heroes who saved Central Africans from BOZIZE's men.³⁷ For P-1442, the few "Seleka crimes" were committed by uncontrolled elements, and not by actual Seleka groups. Further the Defence also has reason to believe that P-1442 was part of the Seleka. At one point in his statement, he mentioned being part of a self-defence group that was helped by the Seleka.³⁸ The Defence should be granted the opportunity to cross-examine P-1442 so as to determine the extent to which his bias negatively affects the reliability of his evidence.
33. Moreover, P-1442 claims that Mr. Yekatom was responsible for the attack on Boeing, on the basis of a video in which he claims that Mr. Yekatom was shown coordinating all the attacks on Boeing and KM5.³⁹ Yet this account is manifestly an exaggeration of the role of Mr. Yekatom, as is evident from the video itself, which has since been disclosed by the Prosecution.⁴⁰ While the relevant paragraph has been excluded by the Prosecution, it nonetheless demonstrates the lack of reliability of P-1442's evidence.
34. In addition, P-1442 mentions that Mr. Yekatom was allied with the Seleka and was freely walking in Makambo when it was under Seleka control.⁴¹ This uncorroborated information contradicts the Prosecution's timeline in which Mr. Yekatom supposedly was in Zongo during this time,⁴² thereby casting further doubt about the reliability of P-1442's evidence.

³⁶ CAR-OTP-2077-0520-R01.

³⁷ CAR-OTP-2077-0520-R01, para. 32.

³⁸ CAR-OTP-2077-0520-R01, para. 53.

³⁹ CAR-OTP-2077-0520-R01, para. 50.

⁴⁰ CAR-OTP-2012-0523; disclosed in batch Pre-Confirmation INCRIM 2 on 22 February 2019.

⁴¹ CAR-OTP-2077-0520-R01, para. 56.

⁴² [ICC-01/14-01/18-723-Conf](#), paras. 84, 86, 88.

35. Likewise, P-1442's statement that 'he thinks' Mr. Yekatom's elements were responsible for the abduction of [REDACTED] is not only highly prejudicial, it is of dubious reliability given P-1442's apparent uncertainty; the Defence should be granted the opportunity to thoroughly test his evidence on this matter.

i) *Core of the Disputed issues*

36. P-1442's prior recorded testimony concerns issues which are in themselves materially disputed between the parties and of central importance in the present case. The Prosecution in its Trial Brief relied on P-1442's statement for counts 1 to 6 in relation to the 5th of December attack and the destruction of the Boeing mosque.⁴³

37. The allegation that unarmed Muslim merchants were killed in Boeing Market is heavily disputed between the parties. The Defence has previously and repeatedly noted that many pieces of evidence tend to indicate that some merchants were in fact Seleka and that they fired weapons.⁴⁴ This issue has a direct impact on Counts 1 to 3.⁴⁵ In this regard the Defence notes that the Trial Chamber recently held that the Defence would be able to explore issues relevant to *inter alia* Counts 2 and 3 during the testimony of witnesses who will testify on these counts.⁴⁶

38. Further, the alleged murder of Hassan MAHAMAT at the Boeing Market is directly related to Counts 2-3 and comprises a core disputed issue.⁴⁷ Yet considerable uncertainty surrounds not only the circumstances of his death,

⁴³ [ICC-01/14-01/18-723-Conf](#), pp. 156-160.

⁴⁴ E.g. ARY-2019-0066 dated 6 September 2019 can be provided upon request; ARY-2019-0093 dated 13 December 2019 can be provided upon request; [ICC-01/14-01/18-284](#), para. 22; [ICC-01/14-01/18-554-Conf](#), para. 19; [ICC-01/14-01/18-753-Conf](#), para. 45.

⁴⁵ Directing attacks against the civilian population (article 8(2)(e)(i)), Murder (article 7(1)(a)) and Murder (article 8(2)(c)(i)).

⁴⁶ [ICC-01/14-01/18-829](#), para.18.

⁴⁷ [ICC-01/14-01/18-723-Conf](#), para. 399.

but his very identity. Specifically, P-1437 and P-2652, [REDACTED], both allege that the latter was murdered during the 5 December 2013 attack.⁴⁸ Yet they appear to be referring to different individuals, and they describe differing manners of their death(s).⁴⁹⁵⁰ Given that P-1442 claims [REDACTED] a merchant named Hassan who was murdered by the Anti-Balaka during the 5 December 2013 attack, the Defence should be provided the opportunity to test the allegations regarding Hassan MAHAMAT's death, as well to seek clarity regarding his identity, in light of the pictures provided by both P-1437 and P-2652.⁵¹

39. Moreover, the destruction of the Boeing mosque is a roundly-disputed issue between the parties, as is evidenced by previous Defence submissions thereon,⁵² and is crucial to the determination of Count 6. The alleged timing and the means of the destruction differ between witnesses. P-2682, P-1437, P-1616, P-1528, P-1339, P-1342 and P-2125 indicate that the destruction of the Boeing mosque occurred between 5 and 27 December 2013.⁵³ Indeed, even on the Prosecution's own case, the Boeing mosque was destroyed 'by 20 December 2013 at the latest'.⁵⁴ Yet P-1442 states that the mosque was still intact [REDACTED] on 31 January 2014.⁵⁵ In light of the lack of clarity arising from contradictory Prosecution evidence on this disputed issue, the Defence should

⁴⁸ See, CAR-OTP-2047-0257-R02, paras 45, 71; CAR-OTP-2122-8968-R01, paras 4, 9; CAR-OTP-2126-0205-R01, paras 17, 23.

⁴⁹ Citation removed.

⁵⁰ See CAR-OTP-2126-0205-R01, para. 74, [REDACTED]; and CAR-OTP-2122-8968-R01, para. 5, where P-1437 is shown the same photo and states that she does not remember the name of the individual in question; see also CAR-OTP-2126-0205-R01, para. 68, where P-2652 [REDACTED] (Hassan) in the photo with ERN CAR-OTP-2082-0434, and CAR-OTP-2122-8968-R01, para. 6, where P-1437 is shown the same photo (CAR-OTP-2082-0434) but is unable to recall the name of the individual. See also, CAR-OTP-2126-0205-R02 paras 53-54; CAR-OTP-2047-0257-R02, para. 69; and CAR-OTP-2122-8968-R01, para. 8.

⁵¹ CAR-OTP-2077-0520-R01, paras 37-40.

⁵² See e.g. [ICC-01/14-01/18-753-Conf](#), para. 13, citing [ICC-01/14-01/18-T-008-CONF-ENG](#), p. 62, line 8 – p. 63, line 9; Public redacted version: [ICC-01/14-01/18-T-008-Red2-ENG](#); [ICC-01/14-01/18-376-Conf-Corr](#), para.123; Public redacted version: [ICC-01/14-01/18-376-Corr-Red](#); [ICC-01/14-01/18-383-Conf](#), paras. 73-75; Public redacted version: [ICC-01/14-01/18-383-Red](#).

⁵³ CAR-OTP-2126-0205-R01, para. 56; CAR-OTP-2047-0257-R01, paras 73-77; CAR-OTP-2054-1038-R01, para. 20; CAR-OTP-2048-0757-R03, para. 47; CAR-OTP-2041-0741-R01, para. 53; CAR-OTP-2116-0304-R01, para. 56; CAR-OTP-2082-0299-R03, para. 102.

⁵⁴ [ICC-01/14-01/18-282-Conf-AnxB1](#), para 254; [ICC-01/14-01/18-723-Conf](#), para. 403.

⁵⁵ CAR-OTP-2077-0520-R01, paras 70-72.

have the opportunity to explore this part of his evidence in court given that P-1442 claims that the Anti-Balaka were responsible for its destruction and not the local population.⁵⁶ In addition the Defence notes that the Chamber recently considered that during the testimony of witnesses who will testify on Count 6 the Defence *inter alia* ‘will be able to explore any issue relevant to’ the Mosque.⁵⁷

III. P-1503

40. While the Prosecution submits that P-1503’s prior recorded testimony is cumulative to, and corroborated by, *inter alia*, witnesses who will testify at trial regarding the 5 December 2013 attack on Bangui, the Anti-Balaka base in Sekia and the roles of Anti-Balaka members such as SATAN, OUANDJO and ANDJILO⁵⁸, P-1503 has nevertheless a unique view on many issues.
41. Further, P-1503’s statement contains exculpatory information that the Prosecution seeks to exclude.⁵⁹ Specifically, paragraphs 58 and 59 of the statement mention that Mr. Yekatom gave his number to the witness to assure the proper behavior of his men. He told the witness to “call him if any of his elements was going to cause any trouble”.⁶⁰
42. To the extent that the statement as tendered unjustifiably and unfairly severs paragraphs beneficial to Mr. Yekatom, and therefore does not serve the interests of justice, it is inappropriate for submission under Rule 68(2)(b)(i).⁶¹
43. Further, P-1503 has refused to participate in an interview with the Defence.⁶²
44. The fact that the Defence has not been provided the opportunity to

⁵⁶ CAR-OTP-2077-0520-R01, para.71.

⁵⁷ [ICC-01/14-01/18-829](#), para.18.

⁵⁸ [ICC-01/14-01/18-802-Conf-Corr](#), paras. 45-48.

⁵⁹ [ICC-01/14-01/18-802-Conf-AnxA](#), pp. 5-7.

⁶⁰ CAR-OTP-2046-0571-R03, para. 59.

⁶¹ *Supra* para. 16.

⁶² Correspondence between Defence and Prosecution exchanged in February 2020 and available upon the Chamber’s request.

supplement P-1503's statement with additional relevant information beneficial to the Defence further militates against the formal submission of his evidence under Rule 68(2).⁶³

i) *Credibility of Another Witness*

45. Witness P-1503 was [REDACTED], during the time of the charges.⁶⁴ He was [REDACTED]. His [REDACTED] gave him the opportunity to cross paths with Anti-Balaka members and to have relevant information about many of them.⁶⁵
46. Indeed, [REDACTED], the Defence needs to cross-examine P-1503 by putting to him the various allegations of purported crimes at PK9 part of the Prosecution's case. Two major OTP witnesses, and Anti-Balaka members, [REDACTED]: P-0954 [REDACTED],⁶⁶ and P-1858 [REDACTED].⁶⁷
47. P-1503's knowledge pertaining to the PK9 area is of critical importance. According to P-1864, there were two Anti-Balaka barricades in PK9; the Defence should therefore be provided the opportunity to test the credibility of P-0954 on this issue – specifically, [REDACTED].⁶⁸ The Defence has strong reasons to believe that a number of Prosecution witnesses have confused P-0954's [REDACTED].
48. More broadly, given that many alleged events are relevant to [REDACTED] under Mr. Yekatom's control, the Defence should be given the opportunity to put these allegations to P-1503. Not giving the Defence the opportunity to cross-examine P-1503, who is in a unique position to clarify these matters, would be highly prejudicial to Mr. Yekatom.

⁶³ Supra, para. 13.

⁶⁴ CAR-OTP-2046-0571-R03, para. 53.

⁶⁵ *Ibid.*

⁶⁶ CAR-OTP-2048-0171-R02, paras 60-61 “ 60. [REDACTED]”.

⁶⁷ CAR-OTP-2063-0050-R02, paras. 29, 49.

⁶⁸ CAR-OTP-2064-0860-R02, paras. 49-50 “[REDACTED]”.

49. Further, a number of witnesses have alleged that P-1503 was part of the Anti-Balaka in Sekia. Indeed, P-1839 states that P-1503 [REDACTED].⁶⁹ Further, P-2233 states that P-1503 was [REDACTED].⁷⁰
50. Yet, in his statement P-1503 is clear about the fact that [REDACTED].⁷¹ The Defence should thus be provided the opportunity to challenge the credibility of P-2233 and P-1839, especially on their allegations involving P-1503 [REDACTED], through P-1503.
51. Additionally, the Prosecution relies on a purported list of Anti-Balaka members which includes the name and service number of P-1503.⁷² The Defence should be granted the opportunity to test the reliability of this list through P-1503, who claims not to have been an Anti-Balaka member.
52. Finally, P-2233 mentions P-1503 as the [REDACTED].⁷³ As P-1503, [REDACTED], never mentions this event, the Defence should be granted the opportunity to cross-examine him on those allegations so as to challenge the highly prejudicial allegation of P-2233 and by extension, the credibility of the latter.

IV. P-2138

53. The witness statement of P-2138 is insufficiently reliable for formal submission under Rule 68(2).
54. P-2138's statement directly contradicts multiple Prosecution witnesses, especially on the Boda attack. Specifically, Prosecution witnesses P-2476, P-1647, P-1962, P-2475, P-1786 and P-1792 state that Mr. Yekatom was not in

⁶⁹ CAR-OTP-2122-6680 at 6687, 6699-6701.

⁷⁰ CAR-OTP-2118-5930 at 5952.

⁷¹ CAR-OTP-2046-0571-R03, para. 47.

⁷² CAR-OTP-2039-0063, at 0064, line 33.

⁷³ CAR-OTP-2118-5902, at 5912-5914.

Boda during the Boda attack.⁷⁴ Further, the evidence of P-2138 regarding the manner in which the Boda attack unfolded, including the role of ‘Coeur de Lion’, diverges from that of P-1962, who himself claims to have [REDACTED] and whom P-2138 claims to know.⁷⁵ Indeed, it is notable that, as it is evident from P-2138’s interview transcript, Prosecution investigators repeatedly sought confirmation that P-2138 personally saw Mr. Yekatom [REDACTED].⁷⁶ Although the Prosecution excluded the excerpts of P-2138’s interview transcript referring to Mr. Yekatom’s presence, it nevertheless included the [REDACTED] in which he indicated Mr. Yekatom’s alleged position at the time. The Defence equally opposes the submission of the sketch in evidence without an opportunity to cross-examine P-2138 thereon.⁷⁷

55. Further, P-2138 appears to have information regarding the presence of legitimate targets at Cattin crossroad, as briefly mentioned to his interview transcripts.⁷⁸ Given that Mr. Yekatom faces three counts of attacking and murdering civilians in Cattin, P-2138 should be cross-examined on this issue.
56. Similarly, the newly-disclosed witness P-2582 alleges that Mr. Yekatom and his elements committed crimes in Fatima, including in relation to the destruction of the Fatima mosque, and had a base in this location.⁷⁹ As these alleged events occurred when P-2138 was living in Fatima, the Defence seeks to cross-examine him thereon.⁸⁰ Lastly, P-2138 was in [REDACTED] and claims that the latter is one of the main chiefs in the Lobaye region; he describes several attacks against Muslims committed by [REDACTED] and

⁷⁴ CAR-OTP-2114-0149-R01, para. 39; CAR-OTP-2050-0654-R01, para. 51; CAR-OTP-2068-0037-R01, paras 27-29; CAR-OTP-2110-0556-R02, para. 168; CAR-OTP-2058-0200-R01, para. 50; CAR-OTP-2069-0003-R01, paras 29, 32.

⁷⁵ See, [ICC-01/14-01/18-776-Conf](#), para. 35 and references cited therein; see also, CAR-OTP-2092-4340, at 4344.

⁷⁶ See e.g. CAR-OTP-2092-4004-R01, at 4008-4009; CAR-OTP-2092-4188, at 4205-4206; CAR-OTP-2092-4143-R01, at 4162.

⁷⁷ CAR-OTP-2082-0529.

⁷⁸ CAR-OTP-2092-3949, pages 3954-3955.

⁷⁹ CAR-OTP-2117-0605, paras 45-55, para. 67.

⁸⁰ CAR-OTP-2092-3949, pages 3955-3956.

insists that [REDACTED] be arrested by the Court.⁸¹

V. P-2671

57. The Defence submits that the evidence of P-2671 should not be formally submitted under Rule 68(2).
58. The evidence of P-2671 is directly relevant to the issue of whether P-2620, [REDACTED] at the time of the events in question in this case. Specifically, P-2671, [REDACTED], states that [REDACTED] P-2620; yet she claims that P-2620 [REDACTED]; and further still, P-2620's [REDACTED].⁸² The Defence should be provided the opportunity to seek clarification of these internal inconsistencies relating to [REDACTED], which itself goes directly to an element of Count 29 and comprises a matter soundly in dispute.⁸³ Further, the Defence seeks the opportunity to challenge the evidence of P-2620, regarding [REDACTED] by an Anti-Balaka member, through P-2671 who, [REDACTED] would be in a position to provide evidence thereon.
59. As stated above, the Defence recently received disclosure of P-2620 and P-2671 and their identity after the disclosure deadline. The Defence's investigation on the allegations contained in their statements, the [REDACTED] of P-2620 [REDACTED], is therefore in its early stages. It is therefore premature to rule out at this stage any opportunity for the Defence to cross examine P-2620's [REDACTED].

VI. P-1932 and P-2973

60. The Prosecution is effectively using the evidence of witnesses from two [REDACTED] in CAR to bootstrap the reliability of the entirety of their telecommunications evidence. While there may be broad similarities in how

⁸¹ CAR-OTP-2092-4004, page 4032; CAR-OTP-2092-4386, pages 4395-4397.

⁸² CAR-OTP-2125-0348-R03, paras 11-12, 21.

⁸³ See above para.25.

providers produce call data records ('CDRs') and cell site data, there are a number of particular differences which impact the form and content of the varied and multitudinous records disclosed. Should the Prosecution wish to rely on data from [REDACTED], it should call witnesses from [REDACTED]. The remarks from [REDACTED] are general at best, and do not assist the Trial Chamber in ascertaining how that data was generated, stored, and produced.

61. The Defence requires the cross-examination of both P-1932, [REDACTED], and P-2973, [REDACTED]. Both witnesses can provide evidence as to the generation, storage, and extraction of the CDRs which may be tendered by the Prosecution. The methods by which each [REDACTED] generated, stored, and extracted data differs greatly, judging by the varied quality of the CDRs disclosed by the Prosecution. There are specific examples of CDRs that the Defence wishes to put to the witnesses, in particular P-1932, in order to assist the Trial Chamber in establishing the 'integrity and reliability' of the CDRs.
62. The Defence also wishes to question the witnesses about the cell site data produced [REDACTED], and their ability to assist the Trial Chamber given their personal knowledge and experience, especially with regard to the suitability of P-2973 to discuss the possibility of a user's 'geo-location'.
63. This questioning is all the more necessary in light of a disclosed, but not relied upon, Prosecution report into the quality of the telecommunications data.⁸⁴ An experienced investigator has already raised serious issues with regard to the integrity of the data,⁸⁵ the difficulty in reading the different CDR formats,⁸⁶ and the ambiguity and vagueness of the cell site data.⁸⁷ Only the tendered witnesses can assist the Trial Chamber by addressing these shortfalls.

⁸⁴ CAR-OTP-2126-2529.

⁸⁵ CAR-OTP-2126-2529, CAR-OTP-2126-2529.

⁸⁶ CAR-OTP-2126-2529, CAR-OTP-2126-2561.

⁸⁷ CAR-OTP-2126-2529, CAR-OTP-2126-2534 and CAR-OTP-2126-2561.

i) Documents and CDRs Tendered

64. The Prosecution has tendered eight CDRs alongside the statements of P-1932 and P-2973. The Prosecution, as yet, has not indicated their relevance to the case beyond being ‘examples’ of CDRs. The Defence takes no position on their status as examples, but requests that they not be formally submitted for the truth of their contents. The CDRs do not need to be submitted to preserve the witness’ explanation of their difficulties. Further, the submission of the eight CDRs for the truth of their contents would occur prior the Trial Chamber being satisfied as to their relevance or probative value, not least given the lack of Prosecution submissions in this regard. Unless and until the Prosecution does so, the CDRs should not be formally submitted.
65. The Prosecution has tendered three documents annexed to P-2973’s statement. The statement does not explain how the documents were produced, stored, and accessed, nor their purpose. The list of CDR data type, Annex A, bears little relationship to the CDR example, Annex D. As for Annex D, there is nothing in the statement to explain when the list of cell sites was produced or the coordinates, including the azimuths, measured. The timeliness of the measurements greatly impacts the weight and reliability that the Trial Chamber can give to the cell site information. Absent further detail, the documents annexed to P-2973’s statement should not be formally submitted.

CONFIDENTIALITY

66. 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 their respective submissions.

CONCLUSION

67. 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 witnesses P-0365, P-1442, P-1503, P-2138, P-2671, P-1932 and P-2973 together with their associated exhibits as set out at Annex A of the Sixth Request and Annex A of the Eight Request.

INTRODUCE the additional material beneficial to the Defence for P-1921.

RESPECTFULLY SUBMITTED ON THIS 6TH DAY OF APRIL 2021

Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

Mr. Thomas Hannis
Associate Counsel for Mr. Yekatom

The Hague, the Netherlands