

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **19 November 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 the “Yekatom Defence Response to the
“Prosecution’s Request for Submission of the Prior Recorded Testimony of
P-1654 pursuant to Rule 68(2)(c)”, ICC-01/14-01/18-1169-Conf, 8 November
2021”**

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. Defence Counsel for Mr. Alfred Rombhot Yekatom (“Defence”) hereby respond to the *Prosecution’s Request for Submission of the Prior Recorded Testimony of P-1654 pursuant to Rule 68(2)(c)* (“Request”).¹
2. The Defence submits that the Request, if granted, would greatly prejudice the rights of Mr. Yekatom and should be denied in light of (i) the lack of diligence of the Prosecution in relation to article 56 measures; (ii) the content of P-1654’s statement, which relates almost exclusively to the acts and conduct of Mr. Yekatom in relation to the “Yamwara School Base incident”, itself the direct subject of Counts 11 to 16; and, (iii) the lack of reliability of P-1654’s statement and its associated exhibit.
3. Alternatively, the Defence argues that the Chamber should consider the Request as premature, and requests that any ruling be deferred to after the in-court testimony of witnesses who allegedly will corroborate the evidence of P-1654; additionally, the Defence requests that it be given a further opportunity to be heard on the merits of the Request in light of the information provided during the testimony of the said witnesses.

PROCEDURAL BACKGROUND

4. On 3 April 2017, the Prosecution first met P-1654 for a screening interview.² During this meeting, the witness handed over a document consisting of a written complaint made a few days prior, on 20 March 2017, relating to the “Yamwara School Base incident”.³ Later the same month, between April 26th

¹ [ICC-01/14-01/18-1169-Conf](#). A public redacted version of the Request was filed on 11 November 2021, [ICC-01/14-01/18-1169-Red](#).

² [CAR-OTP-2050-0743-R01](#).

³ [CAR-OTP-2050-0737-R01](#).

and 28th, P-1654 was again met by investigators from the Office of the Prosecution and a written statement was produced.⁴

5. Between April 2017 and this year, 2021, the Prosecution and P-1654 had multiple discussions, during which the health situation of the witness was mentioned on several occasions.⁵
6. On 19 February 2020, the Defence held *inter partes* discussions with the Prosecution with a view to interviewing several witnesses, including P-1654.⁶ On 24 February 2020, the Prosecution responded that P-1654 “is not willing to meet with the Defence”.⁷
7. On 13 January 2021, the Defence filed its “Notification Pursuant to Rule 79 of the Rules of Procedure and Evidence”, indicating that it intends to raise an alibi in relation the Yamwara School Base incident.⁸
8. On 11 June 2021, the Prosecution met with P-1705, [REDACTED]. P-1705 informed the investigators that [REDACTED] for about one year and died on [REDACTED].⁹ During this meeting P-1705 also produced a document written by P-1654,¹⁰ purportedly another recollection by P-1654 of the “Yamwara School Base incident”.¹¹
9. On 24 June 2021, the Prosecution informed the Chamber, Parties and Participants of the passing of three witnesses, including P-1654, also indicating that they “may submit in due course a filing to convert them under rule 68(2)(c)”.¹²

⁴ [CAR-OTP-2053-0112-R03](#).

⁵ [ICC-01/14-01/18-1169-Conf](#), para. 10.

⁶ Email from the Defence to the Prosecution dated 19 February 2020 at 12:15, available upon request.

⁷ Email from the Prosecution to the Defence dated 24 February 2020 at 11:53, available upon request.

⁸ [ICC-01/14-01/18-818-Conf](#), para. 11. A public redacted version is also available [ICC-01/14-01/18-818-Red](#).

⁹ [CAR-OTP-2134-0139-R01](#), para. 2.

¹⁰ *Ibid*, para. 3.

¹¹ [CAR-OTP-2134-0141](#).

¹² Email from the Prosecution to the Chamber, Parties and Participants dated 24 June 2021 at 16:39.

APPLICABLE LAW

10. Article 67 (1) (e) of the Statute states that :

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

[...]

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

11. Rule 68 (1) and (2) (c) of the Rules of Procedure and Evidence states that :

(1) When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraphs 2 and 4, and after hearing the parties, allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that this would not be prejudicial to or inconsistent with the rights of the accused and that the requirements of one or more of the following sub-rules are met.

(2) (c) The prior recorded testimony comes from a person who has subsequently died, must be presumed dead, or is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally. In such a case:

(i) Prior recorded testimony falling under sub-rule (c) may only be introduced if the Chamber is satisfied that the person is unavailable as set out above, that the necessity of measures under article 56 could not be anticipated, and that the prior recorded testimony has sufficient indicia of reliability.

(ii) The fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it.

SUBMISSIONS

12. The Defence will address first the incompatibility of P-1654's statements for a submission under Rule 68(2)(c) (I); and second, in alternative, the premature nature of the Prosecution's Request in light of the future testimonies of several witnesses will be developed (II).

I. On the incompatibility of P-1654's statement for a Rule 68(2)(c) submission

13. The Defence will argue that the Request should be rejected in light of: first, the lack of diligence of the Prosecution in relation to Article 56 measures (A); second, the content of P-1654's statement, which goes to the acts and conduct of Mr. Yekatom and would prejudice his rights should it be submitted under Rule 68(2)(c) (B); and, third, the lack of reliability of P-1654's statement and its associated exhibit (C).

A. On the lack of diligence in relation to Article 56 measures

14. Rule 68(2)(c)(i) provides *inter alia* that a statement can only be introduced in evidence under this rule if the Chamber is satisfied "that the necessity of measures under article 56 could not be anticipated". In its Request, the Prosecution asserts that this criterion is met given that prior to his death "the Prosecution had no information within its possession that would prompt consideration of evidence preserving measures under article 56".¹³
15. In this regard, the Prosecution indicates that it was only informed of "minor health concerns" and provides one example, when the witness reported in September 2020 that he had a flu. The Prosecution also submitted that in February 2021, [REDACTED], who is [REDACTED] P-1654, indicated that P-1654 "was again not well" but dismissed the possibility that "it might be serious".¹⁴ No reports, investigation notes or detailed meeting notes were provided to support those assertions and allow the parties to properly analyse the content of the various contacts and the information in relation to the health situation of P-1654.
16. On 9 November 2021, the Defence sent the Prosecution an urgent request for disclosure of information on contacts between the Prosecution and several

¹³ [ICC-01/14-01/18-1169-Red](#), para. 10.

¹⁴ [ICC-01/14-01/18-1169-Conf](#), para. 10.

witnesses close to P-1654, in order to allow the Defence to make a meaningful and detailed response to the Request in relation to article 56 measures.¹⁵ On 12 November 2021, the Prosecution indicated that after a review of the material in its possession, including “contact note, investigation report, correspondence”, it had “provided all relevant information to the health status of P-1654” and that “there are no further disclosures to make on the matter”.¹⁶ In its answer, the Prosecution also indicated that in January 2020 the witness only mentioned [REDACTED]¹⁷ as medical concerns.

17. While the Defence acknowledges the Prosecution’s *inter partes* answer, and is thankful for the celerity of the reply, it nevertheless contends that the information provided in the Request does not support the Prosecution submission that the necessity of measures under article 56 could not be anticipated.
18. The Defence is particularly concerned with the information provided by P-1705 to the effect that P-1654 had died on [REDACTED] and had been sick for about a year with [REDACTED],¹⁸ which directly contradicts previous information [REDACTED].¹⁹ Equally concerning is the apparent absence of direct contact between the Prosecution and P-1654; [REDACTED], by limiting itself to contacts [REDACTED]²⁰ and not speaking directly with P-1654 the Prosecution might have missed an opportunity to seize the seriousness of his health situation and, consequently, the occasion to use article 56 evidence preserving measures.
19. This situation is even more regrettable as the Prosecution was aware of the importance of P-1654 in relation to the charges brought against Mr. Yekatom;

¹⁵ Letter ARY-2021-0192 sent on 9 November 2021 at 09:50, available upon request.

¹⁶ Email from the Prosecution to the Defence dated 12 November 2021 at 09:16, available upon request.

¹⁷ *Idem*.

¹⁸ [ICC-01/14-01/18-1169-Conf](#), para. 9; see also [CAR-OTP-2134-0139-R01](#).

¹⁹ [REDACTED]

²⁰ [REDACTED]

the (unfortunately rejected) Defence request to interview this witness in February 2020; and the Defence's intention to raise an alibi on those specific charges, notified in January 2021. These circumstances should have prompted the Prosecution to be more diligent in its assessment of the health situation of P-1654, himself one of the oldest Prosecution witnesses, from a country unfortunately afflicted with one of the world's lowest life expectancy.²¹ In this regard, the Defence notes that P-1654, at time of his death, was over one decade older than the average life expectancy in CAR.

20. Finally, the Defence submits that the Prosecution had several occasions to diligently inquire about the witness's health situation. The chronology provided in the Request seems to indicate that the last time the Prosecution directly spoke to P-1654 was in September 2020, when they were informed that he had a flu, in addition to the [REDACTED], information already available to the Prosecution since January 2020.²² In light of this, the Prosecution lacked diligence by not speaking directly to its witness to specifically inquire about his health, including in February 2020 when informing him of the Defence request to meet with him.
21. In light of the above, the Defence contends that the Prosecution did not discharge itself of its burden to demonstrate that it diligently inquired about the health situation of P-1654 and, consequently, that article 56 measures could not be anticipated. The Defence therefore respectfully invites the Chamber to reject the Prosecution's Request.

²¹ Per the World Health Organization "[World Health Statistics 2021](#)", in 2019 the life expectancy at birth for a Central African male was 50.2 years, with an healthy life expectancy at birth of only 44.5 years. See Annex 2 Part 1, p. 94.

²² Email from the Prosecution to the Defence dated 12 November 2021 at 09:16, available upon request.

B. On the content of P-1654's statement going to acts and conduct of Mr. Yekatom

22. Article 67 of the Statute enshrines the rights of the accused, including the right to "examine, or have examined, the witnesses against him or her". Article 69(2) provides that "[t]he testimony of a witness at trial shall be given in person" and is the foundation of the principle of orality at the International Criminal Court. Rule 68(2)(c), which authorizes the submission of a prior recorded statement of a witness that will not come to testify, is an exception to these two important principles and consequently should be used with extreme precaution.
23. The drafters, when amending Rule 68, chose to explicitly state in sub-rule (1) that use of this provision should "not be prejudicial to or inconsistent with the rights of the accused" to "draw attention expressly to this fundamental protection in the context of exceptions to the principle of orality".²³ In relation with the rights of the accused, a specific guidance was included in sub-rule (ii) regarding the use of Rule 68(2)(c): "[t]he fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it."
24. The Defence is conscious that this specific sub-rule of Rule 68(2)(c) does not *per se* prohibit the submission of testimony going to proof of acts and conduct of an accused under this provision. However, it is submitted that, in the case of the statement of P-1654, its submission would irremediably prejudice the rights of Mr. Yekatom and should therefore be rejected.
25. Indeed, as conceded by the Prosecution in its Request, P-1654's statement is "highly relevant and probative", particularly on the "charged Yamwara School Base incident and related counts 11 to 16".²⁴ His statement was expressly relied on by Pre-Trial Chamber II for its factual findings regarding this incident;

²³ [ICC-ASP/12/37/Add.1](#), Annex II.A, para. 12.

²⁴ [ICC-01/14-01/18-1169-Red](#), para. 14.

specifically, that “[a]fter threatening them with death, the Anti-Balaka elements took these persons to the Yamwara School”,²⁵ “[t]he Anti-Balaka members subsequently cut off Saint Cyr Lapo N’Gomat’s ears”,²⁶ and finally that “Saint Cyr Lapo N’Gomat was then taken away and has not been seen since”.²⁷

26. P-1654 claims in his statement to have gone to the Yamwara School Base on the day of the incident and discussed with Mr. Yekatom, including on the topic of Saint Cyr, in the presence of some of the alleged abductees.²⁸ By virtue of this statement, P-1654 asserts that Mr. Yekatom was present both at the time and location of the crime, was in the presence of some of the abductees, and had knowledge of the identity of Saint Cyr. P-1654’s statement also seems to provide a tentative motive for this incident when he indicates that during the discussion with Mr. Yekatom and some of his elements [REDACTED].²⁹ The link between the acts and conduct of Mr. Yekatom and the charged crimes in P-1654’s statement is undeniable and militates in favour of the Chamber following the cautious approach set out in Rule 68(2)(c)(ii) and rejecting the Request.
27. Moreover, the Defence recalls that on 13 January 2021 it notified the parties and participants of its intention to raise the existence of an alibi in relation to the Yamwara School Base incident,³⁰ indicating that “[o]n the afternoon of 24 December 2013, when the seven people, including three Muslim women, were allegedly kidnapped in or around CATTIN and brought to the YANWARA SCHOOL base, Mr. YEKATOM was not present at the YANWARA SCHOOL base as he was with some of his elements [REDACTED], about an hour away by foot from YANWARA SCHOOL. Mr. Yekatom did not return to YANWARA SCHOOL base until late that evening.”³¹

²⁵ [ICC-01/14-01/18-403-Conf-Corr](#), para. 114, fn. 279.

²⁶ [ICC-01/14-01/18-403-Conf-Corr](#), para. 115, fn. 282.

²⁷ [ICC-01/14-01/18-403-Conf-Corr](#), para. 115, fn. 284.

²⁸ [CAR-OTP-2053-0112-R03](#), paras. 32-38.

²⁹ *Ibid*, para. 38.

³⁰ [ICC-01/14-01/18-818-Conf](#). A public redacted version is also available [ICC-01/14-01/18-818-Red](#).

³¹ [ICC-01/14-01/18-818-Conf](#), para. 11.

28. The Defence contends that submitting under Rule 68(2)(c) a statement that almost entirely goes to the acts and conduct of the accused, in a specific charged incident for which an alibi notice was properly notified,³² without the possibility to examine the witness and to test his evidence against this alibi, would be a severe infringement of the rights of Mr. Yekatom enshrined in Article 67 (1) (e) of the Statute. This infringement, as prohibited in Rule 68 (1), should not be permitted.
29. Breach of Mr. Yekatom's rights without any remedy at this stage, as the Prosecution doesn't seem to be in possession of a potential supplementary statement of P-1654 where he could have been confronted with the fact that the Defence intends to raise an alibi on the charges that he is testifying about.
30. Finally, the Defence also contests the Prosecution's assertion, regarding P-1654's statement, that "the narrow scope of this corroborating evidence avoids any prejudicial effect caused to the Accused in this respect".³³ Indeed, as Judge Chile Eboe-Esuji indicated in his Partly concurring opinion" to the Ntaganda Appeal Judgement: "the value of corroboration is to strengthen the backbone of conviction. To derive that strengthening from evidence of acts and conduct of the accused is to violate what article 67(1)(e) guarantees for the accused as a minimum right".³⁴
31. Consequently, the Defence submits that allowing the submission of P-1654's statement, without the possibility for the Defence to challenge his evidence with him directly, would be inconsistent with the rights of Mr. Yekatom. In addition, the Defence submits that the Prosecution does not suffer any prejudice by not having P-1654's statement submitted into evidence as requested, given that the

³² See [ICC-01/14-01/18-911](#), para. 11.

³³ [ICC-01/14-01/18-1169-Red](#), para. 18.

³⁴ *Prosecutor v. Bosco Ntaganda*, ANNEX 5: Partly concurring opinion of Judge Chile Eboe-Osuji to the Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', 30 March 2021, [ICC-01/04-02/06-2666-Anx5](#), para. 10.

Prosecution intends to call seven other individuals to testify in-court on the Yamwara School Base incident, including [REDACTED].³⁵ As such, the balance of interests between the necessity for submission of P-1654's statement and the prejudice induced to Mr. Yekatom should tip in favour of the later.

32. In light of the above, the Defence respectfully requests the Chamber to find that submission of P-1654's statement would infringe Mr. Yekatom's rights and consequently reject the Prosecution's Request.

C. On the lack of reliability of the content of P-1654's statement and document CAR-OTP-2050-0737

33. Rule 68(2)(c)(i) states that before granting the submission of a prior recorded testimony, the Chamber must be satisfied it "has sufficient indicia of reliability".
34. The Defence contends that P-1654's statement and document CAR-OTP-2050-0737, submission of which the Prosecution is seeking in its Request, do not satisfy the reliability criteria.
35. Regarding P-1654's recollection of the Yamwara School Base incident in its statement, the Defence stresses that (i) P-1654, [REDACTED], [REDACTED], [REDACTED] and [REDACTED] are all relatives from the same family, and that [REDACTED] is close to them; and (ii) that they were all interviewed by the Prosecution in the same timeframe.³⁶ These circumstances which are likely to have led their statements to be affected by witness contamination, which can only be tested through in-court examination, something which is no longer possible in the case of P-1654.

³⁵ [ICC-01/14-01/18-1169-Conf](#), para. 8.

³⁶ P-1654 was interviewed between 26 and 28 April 2017 ([CAR-OTP-2053-0112-R03](#)); [REDACTED] was interviewed between [REDACTED] April and [REDACTED] May 2017 [REDACTED]; [REDACTED] was interviewed between [REDACTED] April and [REDACTED] May 2017 [REDACTED]; [REDACTED] was interviewed between [REDACTED] and [REDACTED] June 2017 [REDACTED]; [REDACTED] was interviewed between [REDACTED] and [REDACTED] June 2017 [REDACTED]; [REDACTED] was interviewed between [REDACTED] and [REDACTED] July 2017 [REDACTED].

36. The likelihood that witness contamination has occurred is further indicated by the Defence interview of [REDACTED], who raised the possible existence of a family meeting, before their interview with the Prosecution, where they “discussed and remembered so many things” including and not limited to the events [REDACTED].³⁷
37. Regarding document CAR-OTP-2050-0737, the Defence wishes to underline that doubts remain regarding its origin and therefore reliability. Indeed, during the same interview with the Defence, [REDACTED] indicated that the complaint might have been written by [REDACTED], [REDACTED], instead of P-1654 himself.³⁸ The Defence also notes that in his Screening Note dated 3 April 2017, it is indicated that P-1654 was introduced to the Prosecution by his [REDACTED];³⁹ an analysis of the Metadata shows that [REDACTED] whose name is redacted is none other than [REDACTED].⁴⁰ The complaint constituting document CAR-OTP-2050-0737 is dated 20 March 2017, i.e. over 3 years after the event but at a time when [REDACTED] appears to have been in contact with the Prosecution. The Defence thus contends that there are grounds to believe that the complaint was written by P-1654’s [REDACTED] and not P-1654 himself as indicated in his statement.⁴¹ In addition, the time line of the Prosecution’s first meeting with P-1654 appears to suggest that the complaint might have been written *after* a first contact with [REDACTED] to set up a meeting with P-1654 but prior to introducing P-1654 to the Prosecution investigators for his screening interview.⁴² The Defence further notes that it

³⁷ [REDACTED]

³⁸ [REDACTED]

³⁹ [CAR-OTP-2050-0743-R01](#), p. 0744.

⁴⁰ Ecourt Metadata shows that in [CAR-OTP-2050-0743-R01](#) P-1654’s [REDACTED] pseudonym is “B.2 – 0512”; the same pseudonym “B.2 – 0512” was lifted in paragraphs 13 and 34 of P-1654’s statement in which it is disclosed as [REDACTED].

⁴¹ [CAR-OTP-2053-0112-R03](#), para. 47. See also, Prosecution’s Request, para. 17.

⁴² [CAR-OTP-2050-0743-R01](#), p. 0744. The Defence notes that the Prosecution did not disclose, nor indicate, to the Defence when it first contacted General Lapo to set up the 3rd April 2017 meeting with P-1654. If this contact with General Lapo is prior to the complaint dated 20 March 2017, the reliability of the complaint is furthered affected.

would be unable to test the reliability of the document with its supposed author, P-1654.

38. In addition, the Defence wishes to voice its concerns regarding the number of witnesses who have testified to date and for whom the previous recorded testimony was in the form of a statement originally signed in English, a language that the witnesses do not speak or understand. It appears that several witnesses have recanted information contained in specific paragraphs of those statements when given the opportunity to do so.⁴³ The fact that P-1654 will not have this opportunity has a direct impact on the reliability of his statement.
39. In light of the above, the Defence respectfully submits that the doubts regarding the reliability of P-1654's statement and its associated exhibit militate in favour of the rejection of the Request.

II. On the premature nature of the Prosecution's Request

40. As underlined by the Prosecution, P-1654 mainly addressed the "Yamwara School Base incident" in his statement, and his evidence is purportedly corroborated by [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], who are [REDACTED], and P-2233 and P-1839, who are insider witnesses.⁴⁴
41. The Defence notes that of these seven individuals who are expected to provide information on the "Yamwara School Base incident", four are expected to provide their testimony fully *viva voce*,⁴⁵ while the three remaining are already indicated by the Prosecution as Rule 68(3) witnesses.⁴⁶

⁴³ P-0808: [ICC-01/14-01/18-T-072-ENG ET](#), p. 50, l. 6 to p. 51, l. 16; See also corrections made by P-0808 prior to his testimony: [CAR-OTP-2134-1737](#) and [CAR-OTP-2134-1742](#); See also P-2232: [CAR-OTP-2134-1693](#) where the witness indicates that one paragraph is false.

⁴⁴ [ICC-01/14-01/18-1169-Conf](#), paras. 7-8.

⁴⁵ [ICC-01/14-01/18-724-Conf-AnxA](#). [REDACTED]; for P-2233 see page 32 witness n°52; for P-1839 see page 14 witness n°4.

⁴⁶ *Ibid.* [REDACTED].

42. As the previous recorded statements of the four *viva voce* witnesses will not be submitted into evidence, the Defence argues that it is premature to consider that those witnesses are corroborative of P-1654's narrative of the "Yamwara School Base incident". Such an argument should only be entertained after the conclusion of their in-court testimony, the transcriptions of which will be the only testimonial material of these witnesses relied upon by the Chamber during its final deliberation.
43. As regards the three remaining witnesses, and notwithstanding the prospective Chamber's decision on any future Rule 68(3) applications, the Defence underlines that at the very least, it will be in a position to examine these witnesses, potentially bringing into light, for the Chamber's assessment, new important details or discrepancies in their recollection of the "Yamwara School Base incident".
44. The Defence is cognizant of the fact that corroboration with other evidence or witnesses is not a formal criterion of Rule 68(2)(c). However, should the Chamber take this criterion into consideration, it is the Defence's position that at this stage of the trial it is premature to assess whether or not P-1654's statement is corroborated by the witnesses mentioned in the Prosecution's Request.
45. In light of the importance of the Yamwara School Base incident to multiple charges brought against Mr. Yekatom, the Defence submits that the Chamber will be better informed and in a better position to rule on the merits of the Request after the in-court appearance of these witnesses. This would allow the Chamber to better assess where the evidence of P-1654's stands in relation to other witnesses of this incident and whether or not the submission of his statement would be both necessary and consistent with the respect of Mr. Yekatom's rights.

46. Nor would the Prosecution be prejudiced in any way by deferral of the Chamber's decision on the Request. Nothing necessitates the formal submission of the evidence of P-1654 at this stage of the trial – noting that at time of filing, no less than seventy-five Prosecution witnesses, including the entirety of the witnesses listed under “Yamwara School Base”,⁴⁷ remain scheduled to appear before the Chamber.
47. Consequently, in the event that the Chamber is not minded to reject the Request, the Defence respectfully requests the Chamber to find the Request premature, to defer its ruling to after the in-court testimonies of the witnesses mentioned in paragraph 8 of the Request, and to provide the Defence an opportunity to provide further submissions highlighting *inter alia* further inconsistencies or lack of corroboration after an assessment of those in-court testimonies.

CONFIDENTIALITY

48. This response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed in due course.

RELIEF SOUGHT

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

REJECT the Prosecution's Request

Alternatively, the Defence respectfully requests Trial Chamber V to :

DEFER its decision on the Request until after the in-court testimonies of witnesses [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], P-2233 and P-1839; and,

⁴⁷ See, email from Prosecution dated 1 November 2021 at 14:05 attaching the Prosecution's Revised Order of Remaining Witnesses.

GRANT leave to the Defence to make further submissions after the conclusion of the in-court testimonies of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], P-2233 and P-1839.

RESPECTFULLY SUBMITTED ON THIS 19th DAY OF NOVEMBER 2021



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