



Original: English

No. ICC-01/14-01/18

Date: 19 August 2022

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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public redacted version of

**Sixteenth Decision on the Prosecution Requests for Formal Submission of Prior
Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-
1042 and P-2354**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamai
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 67(1) and 69 of the Rome Statute (the ‘Statute’), and Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Sixteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1042 and P-2354’.

I. Procedural history

1. On 10 March 2021, the Chamber issued its first decision under Rule 68(3) of the Rules (the ‘First Rule 68(3) Decision’), in which it set out the applicable law for requests for the introduction of prior recorded testimonies under Rule 68(3) of the Rules.¹
2. On 25 March and 10 May 2022, the Office of the Prosecutor (the ‘Prosecution’) requested the introduction, under Rule 68(3) of the Rules, of the transcribed statement and associated documents of P-1042 (the ‘P-1042 Request’)² and the statement of P-2354 (the ‘P-2354 Request’),³ respectively.
3. On 1 and 5 April 2022, the Yekatom Defence and the Ngaïssona Defence (collectively, the ‘Defence’) indicated that they do not intend to respond to the P-1042 Request and defer to the Chamber’s discretion.⁴
4. On 17 May 2022, the Ngaïssona Defence indicated that it did not intend to respond to the P-2354 Request and defers to the Chamber’s discretion.⁵

¹ Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red).

² Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1042 pursuant to Rule 68(3), ICC-01/14-01/18-1334-Conf (with confidential Annexes A and B) (public redacted version notified on 7 April 2022, ICC-01/14-01/18-1334-Red).

³ Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2354 pursuant to Rule 68(3), ICC-01/14-01/18-1400-Conf (with confidential Annexes A and B) (public redacted version notified the same day, ICC-01/14-01/18-1400-Red).

⁴ Email from the Yekatom Defence, 1 April 2022, at 15:24; email from the Ngaïssona Defence, 5 April 2022, at 06:04.

⁵ Email from the Ngaïssona Defence, 17 May 2022, at 09:02.

5. On 23 May 2022, the Yekatom Defence responded to the P-2354 Request.⁶

II. Analysis

6. The Chamber incorporates by reference the applicable law as set out in the First Rule 68(3) Decision.⁷

A. P-1042

1. Submissions

7. The Prosecution seeks to introduce the prior recorded testimony of witness P-1042, comprising 16 transcripts of his four-day interview and several associated documents.⁸ It submits that the introduction of P-1042's prior recorded testimony would help streamline the proceedings, reducing the time for its examination from at least eight to three hours.⁹ According to the Prosecution, P-1042's statement is highly relevant and probative,¹⁰ and corroborated by several witnesses.¹¹

2. Chamber's determination

8. In his statement,¹² P-1042 discusses, *inter alia*, (i) the arrival of the Seleka in [REDACTED] in March 2013, and his alleged [REDACTED] mistreatment by the Seleka; (ii) the origins of the Anti-Balaka and the witness's role within the movement; (iii) the presence of women and children as young as ten years old within the Anti-Balaka; (iv) the weapons used and means of communication, and

⁶ Yekatom Defence Response to the "Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2354 pursuant to Rule 68(3)", 10 May 2022, ICC-01/14-01/18-1400-Conf, ICC-01/14-01/18-1421-Conf (public redacted version notified the same day, ICC-01/14-01/18-1421-Red) (the 'Response to the P-2354 Request').

⁷ First Rule 68(3) Decision, ICC-01/14-01/18-907-Red, paras 8-16. *See also* Decision on the Yekatom Defence Request for Leave to Appeal the Twelfth Rule 68(3) Decision regarding P-1704, 29 April 2022, ICC-01/14-01/18-1383 (the 'Decision on the Request for Leave to Appeal the Twelfth Rule 68(3) Decision'), paras 4-17.

⁸ P-1042 Request, ICC-01/14-01/18-1334-Red, paras 1, 14, 22; Annex A to the P-1042 Request, ICC-01/14-01/18-1334-Conf-AnxA.

⁹ P-1042 Request, ICC-01/14-01/18-1334-Red, paras 1, 3, 17-20.

¹⁰ P-1042 Request, ICC-01/14-01/18-1334-Red, para. 10.

¹¹ P-1042 Request, ICC-01/14-01/18-1334-Red, para. 13.

¹² CAR-OTP-2107-0159; CAR-OTP-2107-0202; CAR-OTP-2107-0243; CAR-OTP-2107-0262; CAR-OTP-2107-0297; CAR-OTP-2107-0330; CAR-OTP-2107-0370; CAR-OTP-2107-0402; CAR-OTP-2107-0427; CAR-OTP-2107-0462; CAR-OTP-2107-0496; CAR-OTP-2107-0554; CAR-OTP-2107-0591; CAR-OTP-2107-0623; CAR-OTP-2107-0660; CAR-OTP-2107-0691.

the provision of *gris-gris*; (v) the Anti-Balaka's goal to allegedly kill and chase all the Muslims out of the CAR; (vi) the role of Maxime Mokom, and the split amongst the Anti-Balaka; (vii) the alleged Anti-Balaka attack in [REDACTED], and the establishment of their base in [REDACTED] (the 'Location') thereafter; (viii) the recruitment of the youth in the Location; (ix) the Anti-Balaka allegedly attacking the Muslims in the Location and [REDACTED]; (x) crimes allegedly committed by 'fake' Anti-Balaka in the Location; (xi) the structure of the Anti-Balaka in the Location; (xii) meetings of the Anti-Balaka National Coordination in Bangui; (xiii) the issuance of ID badges for the Anti-Balaka elements in the Location; (xiv) Muslims from the Location and surrounding villages seeking refuge at the enclave at the Catholic church in the Location, and their subsequent evacuation therefrom; and (xv) the witness's efforts to promote social cohesion between Christians and Muslims.

9. In addition, the Chamber observes that P-1042 makes a number of references to Mr Ngaïssona, including, *inter alia*, (i) Mr Ngaïssona holding meetings with Anti-Balaka leaders at his place in Pougoulou, Bangui, as National Coordinator of the Anti-Balaka; (ii) [REDACTED] calling P-1042 on behalf of Mr Ngaïssona to inform him of [REDACTED] in the Location; (iii) Mr Ngaïssona asking the Anti-Balaka to stop committing exactions against the local population; and (iv) Mr Ngaïssona and the National Coordination being informed of the situation of the Muslims in the Location.¹³ The witness also recognises the name 'Yekatom' as being one of the Anti-Balaka leaders.¹⁴
10. The Chamber observes that P-1042's prior recorded testimony mainly contains references to contextual elements and incidents that do not form part of the confirmed charges,¹⁵ and that the references to the accused are limited, in particular with regard to Mr Yekatom. It further notes that the Defence does not

¹³ CAR-OTP-2107-0262, at 0273-0275, lines 376-416; CAR-OTP-2107-0496, at 0514, lines 587-613; at 0535-0536, lines 1319-1333; at 0538, lines 1411-1421; CAR-OTP-2107-0297, at 0302-0303, lines 144-192; at 0328-0329, lines 1039-1076.

¹⁴ CAR-OTP-2107-0591, at 0601-0608, lines 311-318, 565-566.

¹⁵ See Pre-Trial Chamber II, Corrected version of 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona', 11 December 2019, ICC-01/14-01/18-403-Conf-Corr (corrected version notified on 14 May 2020) (public lesser redacted version issued on 28 June 2021, ICC-01/14-01/18-403-Corr-Red), paras 64, 226, 233. See also Prosecution's Trial Brief, 10 November 2020, ICC-01/14-01/18-723-Conf (with confidential Annexes A to E) (public redacted version notified on 4 March 2021, ICC-01/14-01/18-723-Red), para. 153.

oppose the introduction of P-1042's prior recorded testimony under Rule 68(3) of the Rules, and that it will have an opportunity to examine the witness in court. Moreover, the Chamber notes that the introduction of P-1042's prior recorded testimony would cut the time for the Prosecution's examination of the witness by more than half, thereby promoting the expeditiousness of the proceedings.

11. Regarding the associated documents, the Chamber notes that items CAR-OTP-2030-0445, CAR-OTP-2012-0477, CAR-OTP-2023-1972, CAR-OTP-2001-7012 and CAR-OTP-2019-1359 have already been recognised as formally submitted, which thus includes their respective transcripts and translations (CAR-OTP-2107-6886, CAR-OTP-2122-2247,¹⁶ CAR-OTP-2130-1176, CAR-OTP-2130-1298, CAR-OTP-2130-1204 and CAR-OTP-2130-1332), and therefore the Chamber need not rule on them again.¹⁷
12. The Chamber also notes that the Prosecution identified certain documents in Annex A to the P-1042 Request which it does not seek to tender pursuant to Rule 68(3) of the Rules, given that they have either already been submitted¹⁸ or because it 'does not consider all documents mentioned in the statement sufficiently "discussed"' during the witness's prior recorded testimony.¹⁹ Having reviewed the latter set of items, the Chamber is however of the view that these have been discussed by the witness during his interview with the Prosecution investigators.²⁰

¹⁶ The Chamber notes that the Prosecution submitted two French translations, CAR-OTP-2107-7010 and CAR-OTP-2122-2247, but observes that the former translation constitutes an unrevised version, which should therefore not be recognised as formally submitted.

¹⁷ See Decision on Submitted Materials for P-0992, email from the Chamber, 9 June 2022, at 19:08; Fourteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-2556 and P-1077, 14 June 2022, ICC-01/14-01/18-1457-Conf (the 'Fourteenth Rule 68(3) Decision'), p. 12; transcript of hearing, 18 July 2022, ICC-01/14-01/18-T-145-CONF-ENG, p. 8; Decision on the Fourth Prosecution Submission Request from the Bar Table (Recruitment and Use of Children), 24 May 2022, ICC-01/14-01/18-1428, p. 10.

¹⁸ Annex A to the P-1042 Request, ICC-01/14-01/18-1334-Conf-AnxA, p. 4, nn. 1-5.

¹⁹ P-1042 Request, ICC-01/14-01/18-1334-Red, para. 15, n. 27. See also Annex A to the P-1042 Request, ICC-01/14-01/18-1334-Conf-AnxA.

²⁰ For CAR-OTP-2090-0492, CAR-OTP-2090-0493, CAR-OTP-2090-0494, CAR-OTP-2090-0495 and CAR-OTP-2090-0496, see CAR-OTP-2107-0159, at 0179-0180; for CAR-OTP-2090-0510, see CAR-OTP-2107-0496, at 0528-0529; for CAR-OTP-2088-0977, see CAR-OTP-2107-0660, at 0684; for CAR-OTP-2090-0522, see CAR-OTP-2107-0691, at 0724.

13. In light of the above, the Chamber considers that the introduction of P-1042's prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.
14. Accordingly, the Chamber grants the Prosecution's request to introduce P-1042's transcribed statements²¹ and associated documents²² under Rule 68(3) of the Rules.

B. P-2354

1. Submissions

15. The Prosecution seeks to introduce the prior recorded testimony of witness P-2354, comprising one statement.²³ It submits that the introduction of P-2354's prior recorded testimony would help streamline the proceedings, reducing the time for its examination from at least four to two hours.²⁴ According to the Prosecution, P-2354's statement is highly relevant and probative,²⁵ and is corroborated by several witnesses.²⁶
16. The Yekatom Defence opposes the P-2354 Request.²⁷ First, it submits that the witness's statement contains 'numerous references to acts and conduct of Mr. Yekatom on core issues of the case' related to the PK9-Mbaïki axis, linked to five counts brought against Mr Yekatom. It further submits that '[d]espite the importance of this crime base, [...] only one witness of the PK9-Mbaïki axis, P-

²¹ CAR-OTP-2107-0159; CAR-OTP-2107-0202; CAR-OTP-2107-0243; CAR-OTP-2107-0262; CAR-OTP-2107-0297; CAR-OTP-2107-0330; CAR-OTP-2107-0370; CAR-OTP-2107-0402; CAR-OTP-2107-0427; CAR-OTP-2107-0462; CAR-OTP-2107-0496; CAR-OTP-2107-0554; CAR-OTP-2107-0591; CAR-OTP-2107-0623; CAR-OTP-2107-0660; CAR-OTP-2107-0691.

²² CAR-OTP-2090-0481; CAR-OTP-2090-0482; CAR-OTP-2090-0483; CAR-OTP-2090-0484; CAR-OTP-2090-0487; CAR-OTP-2090-0490; CAR-OTP-2090-0497; CAR-OTP-2090-0498; CAR-OTP-2090-0499; CAR-OTP-2090-0500; CAR-OTP-2090-0501; CAR-OTP-2090-0513; CAR-OTP-2001-2247; CAR-OTP-2001-2306; CAR-OTP-2001-4330; CAR-OTP-2001-4401; CAR-OTP-2090-0492; CAR-OTP-2090-0493; CAR-OTP-2090-0494; CAR-OTP-2090-0495; CAR-OTP-2090-0496; CAR-OTP-2088-0977; CAR-OTP-2090-0510; CAR-OTP-2090-0522.

²³ P-2354 Request, ICC-01/14-01/18-1400-Red, paras 1, 18; Annex A to the P-2354 Request, ICC-01/14-01/18-1400-Conf-AnxA.

²⁴ P-2354 Request, ICC-01/14-01/18-1400-Red, paras 1, 3, 13-16.

²⁵ P-2354 Request, ICC-01/14-01/18-1400-Red, para. 9.

²⁶ P-2354 Request, ICC-01/14-01/18-1400-Red, para. 12.

²⁷ Response to the P-2354 Request, ICC-01/14-01/18-1421-Red, paras 2, 24.

1666, is currently scheduled to provide his testimony fully *viva voce*'.²⁸ Second, it argues that several Prosecution witnesses contradict P-2354's claims that he never heard about the Seleka distributing weapons to traders or Muslims nor about local Muslims' or Seleka's reprisals, which reflects the witness's 'attempt to hide his apparent link with the Seleka' and explains 'the bias against the Anti-Balaka and Mr. Yekatom'. Thus, according to the Yekatom Defence, the unreliability and uncorroborated nature of P-2354's statement strongly militates in favour of hearing P-2354's testimony fully *viva voce*.²⁹

2. *The Chamber's determination*

17. In his statement,³⁰ P-2354, discusses, *inter alia*, (i) the arrival of the Seleka in Mbaïki and crimes allegedly committed against the civilian population; (ii) not being a member of the Seleka and not seeing or hearing anything about them giving weapons to traders or Muslims; (iii) hearing that there were FACA members training in the bush at the end of November 2013 around Ngerengou; (iv) hearing gun fire during the alleged Anti-Balaka attack in Bangui on 5 December 2013 (the 'Bangui Attack'), at which point he was in Bangui, and seeing 'more than 35 corpses at the Ali Babolo Mosque on the same day of the attack', mostly in civilian clothes, including women and children; (v) hearing of the alleged killing of Muslims by the Anti-Balaka after the Bangui Attack, including of the Imam of Bagandou and Djido Saleh; (vi) Muslims fleeing to Mbaïki from nearby villages 'out of fear of being killed by the Anti-Balaka' and the Seleka encouraging them to do so, hearing that 'their houses and mosques were destroyed after they had left' and helping some of them to flee; (vii) the Anti-Balaka's arrival to Mbaïki after the Seleka left and '[l]ocal Christian youths' patrolling the neighbourhoods and issuing verbal threats against Muslims; and (viii) the evacuation of Muslims from Mbaïki to Chad in early February 2014, including the witness and his family, and subsequently learning that the Anti-Balaka had taken all their belongings in Mbaïki and 'emptied [the] shops'.

²⁸ Response to the P-2354 Request, ICC-01/14-01/18-1421-Red, paras 2, 10. *See also* paras 12-15.

²⁹ Response to the P-2354 Request, ICC-01/14-01/18-1421-Red, paras 2, 17-21.

³⁰ CAR-OTP-2105-0991; CAR-OTP-2122-4507 (French translation).

18. In addition, the Chamber observes that P-2354 makes a number of references to Mr Yekatom, including, *inter alia*, (i) learning that ‘RAMBO’ was at the time ‘the chief of the Anti-Balaka from PK9 to MBAIKI, in the entire LOBAYE’ and that ‘[t]here were many killings by RAMBO’s elements’; (ii) knowing that ‘RAMBO was in charge of th[e] Anti-Balaka elements who committed these crimes’ in relation to the alleged killings of certain Muslim individuals; (iii) hearing that ‘RAMBO’ participated in a meeting at the *Jeanne d’Arc* church during which he said that ‘he had no problems with the Muslim civilians and that he only came to MBAIKI to fight the Seleka’, and that he held a subsequent meeting in which he said that he would ‘kill any Anti-Balaka element who would not obey his order about not harming Muslims’; (iv) the witness and [REDACTED] to ‘RAMBO’, who accepted it, hoping that they would not be harmed; (v) the witness and others telling ‘RAMBO’ about threats against Muslims made by the elements who accompanied him, and ‘RAMBO’ giving them his phone number to call him if they had problems but ‘not do[ing] anything’ about it; (vi) Bishop Rhino and SANGARIS controlling ‘RAMBO’ and his elements; (vii) ‘RAMBO’ sending his deputy ‘Coeur de Lion’ to Boda ‘to kill Muslims’; and (viii) ‘RAMBO’s Anti-Balaka’ killing Djido Saleh, the Muslim second deputy mayor, after he refused to leave Mbaïki, of which the witness saw images on Facebook.³¹
19. The Chamber takes note of the Yekatom Defence’s submission that P-2354’s statement ‘goes into core issues underlying the PK9-Mbaiki Axis crime base charges, including the alleged *mens rea* and other acts and conduct of Mr. Yekatom’.³² In this regard, the Chamber recalls that references to the accused’s acts and conduct do not *per se* constitute an obstacle to the introduction of a prior recorded testimony pursuant to Rule 68(3) of the Rules, and that this provision also does not preclude the introduction of evidence that is central to core issues of the case.³³ With regard to the Yekatom Defence’s submission that only one

³¹ See, respectively, CAR-OTP-2105-0991, at 0997, para. 33; at 0998, para. 39; at 1000-1001, paras 51, 54; at 1001, para. 55; at 1002, paras 57-58; at 1002, para. 60; at 1002, para. 61; at 1003-1004, paras 67-68.

³² Response to the P-2354 Request, ICC-01/14-01/18-1421-Red, para. 15.

³³ See Fourteenth Rule 68(3) Decision, ICC-01/14-01/18-1457-Conf, para. 11, and the references cited therein. See also Fifteenth Decision on the Prosecution Request for Formal Submission of Prior Recorded

witness of the PK9-Mbaïki axis is currently scheduled to testify fully *viva voce*, the Chamber further recalls that its determination as to whether a prior recorded testimony is introduced pursuant to Rule 68(3) of the Rules is entirely discretionary, subject to the fulfilment of the requirements set out under this provision.³⁴ In this regard, the Chamber notes that other witnesses have already testified or are expected to provide evidence concerning alleged crimes committed at the PK9-Mbaïki axis and/or Mr Yekatom's and/or his group's alleged involvement in these crimes,³⁵ and does not find the number of witnesses testifying under either modality to be a determining factor in this instance.³⁶

20. Furthermore, the Chamber takes note of the Yekatom Defence's submissions concerning the 'uncorroborated and unreliable nature of P-2354's evidence', stemming from the witness's claims that he had never 'seen or heard anything about the Seleka giving weapons to traders or Muslims' nor that 'a group of Seleka or local Muslims had taken revenge or reprisal for the killings in BANGUI-BOUCHIA', which would contradict the evidence of other Prosecution witnesses and NGO reports. The Chamber is unpersuaded by these arguments. First, it recalls that Rule 68(3) of the Rules contains no requirement that the prior recorded testimony have sufficient indicia of reliability, contrary to other sub-

Testimony under Rule 68(3) of the Rules concerning Witness P-2353, 24 June 2022, ICC-01/14-01/18-1480-Conf (public redacted version notified the same day, ICC-01/14-01/18-1480-Red) (the 'Fifteenth Rule 68(3) Decision'), para. 14.

³⁴ See Decision on the Request for Leave to Appeal the Twelfth Rule 68(3) Decision, ICC-01/14-01/18-1383, paras 6, 9. See a similar approach applied in Fifteenth Rule 68(3) Decision, ICC-01/14-01/18-1480-Red, para. 14.

³⁵ See e.g. **P-1647**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 14, entry 3; **P-1839**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 14-15, entry 4; **P-1786**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 16-17, entry 8; **P-0954**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 17, entry 10; **P-2233**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 32, entry 52; **P-2476**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 33, entry 53; **P-1666**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 35-36, entry 60; **P-2041**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 36, entry 62; **P-2419**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 36-37, entry 63; **P-2389**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 37, entry 64; **P-1813**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 37-38, entry 66; **P-2353**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 38, entry 67; **P-2388**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 38, entry 69; **P-2084**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 38-39, entry 70; **P-1823**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 39, entry 71; **P-1838**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 41, entry 79; **P-1074**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 42, entry 81; **P-2328**: transcript of hearing, 6 July 2021, ICC-01/14-01/18-T-047-CONF-ENG; **P-2475**: transcript of hearing, 25 May 2022, ICC-01/14-01/18-T-130-CONF-ENG; **P-1962**: transcript of hearing, 27 June 2022, ICC-01/14-01/18-T-139-CONF-ENG.

³⁶ See Fifteenth Rule 68(3) Decision, ICC-01/14-01/18-1480-Red, para. 14.

rules of Rule 68 of the Rules.³⁷ Second, it highlights that the Defence will have the opportunity to fully examine P-2354 in court, including by challenging his credibility, as provided by Rule 68(3) of the Rules, and that the Chamber will then assess any probative value of his testimony in the context of its deliberations on the judgment.³⁸

21. Moreover, and in contrast to the Yekatom Defence's suggestions concerning P-2354's 'bias against the Anti-Balaka and Mr. Yekatom', the Chamber notes that the witness also indicates in his statement, *inter alia*, that (i) the Seleka in Mbaïki were 'pillaging houses and extorting people'; (ii) he heard that 'RAMBO' had said in meetings held in Mbaïki that 'he had no problems with the Muslim civilians', only with the Seleka, and that he had ordered not to harm Muslims, which 'reassured' the witness and other members of the Muslim population; and (iii) 'RAMBO' himself gave his phone number so that the witness and other individuals 'could call him if [they] had problems with his elements'.³⁹ In light of this, the Chamber does not find that the reliability of the statement is challenged to such an extent that it would warrant a fully *viva voce* testimony.⁴⁰
22. In addition, the Chamber notes that the introduction of P-2354's statement would cut the time for the Prosecution's examination of the witness by at least half, thereby promoting the expeditiousness of the proceedings.
23. In light of the above, the Chamber finds that it is not necessary for P-2354's testimony to be presented orally in its entirety, and considers that the introduction of the prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.

³⁷ See Fifteenth Rule 68(3) Decision, ICC-01/14-01/18-1480-Red, para. 16.

³⁸ See Decision on the Request for Leave to Appeal the Twelfth Rule 68(3) Decision, ICC-01/14-01/18-1383, para. 13. See also Fifteenth Rule 68(3) Decision, ICC-01/14-01/18-1480-Red, para. 17.

³⁹ See, respectively, CAR-OTP-2105-0991, at 0994, para. 17; at 1000-1001, paras 51-54; at 1002, para. 58.

⁴⁰ See also a similar approach applied in Fifteenth Rule 68(3) Decision, ICC-01/14-01/18-1480-Red, para. 17.

24. Accordingly, the Chamber grants the Prosecution's request to introduce the statement⁴¹ of P-2354 under Rule 68(3) of the Rules.

III. Clarification of the 'Initial Directions on the Conduct of Proceedings'

25. The Chamber observes that for some items which have been recognised as formally submitted, the code in JEM reflects only the item itself as formally submitted, but not the associated transcripts and translations.⁴² In this regard, the Chamber recalls that, '[i]n principle, recognising the formal submission of audio-visual material automatically includes recognising the formal submission of any associated transcripts or translations which were duly disclosed', irrespective of whether the latter are formally submitted.⁴³ Accordingly, once an audio-visual material is recognised as formally submitted, the Registry should also update the submission status of any associated transcripts and translations in the JEM code. The Chamber emphasises that this should be done regardless of whether the submission of the transcript or translation was requested by the submitting participant and/or whether the Chamber listed the ERN of transcript and translation in its decision.
26. The Chamber therefore reminds the Registry to update the JEM codes of transcripts and translations of items which have been recognised as formally submitted by the Chamber.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that, subject to the fulfilment of the legal requirements of Rule 68(3) of the Rules, the prior recorded testimonies of the following witnesses are introduced into evidence:

- **Witness P-1042** (CAR-OTP-2107-0159; CAR-OTP-2107-0202; CAR-OTP-2107-0243; CAR-OTP-2107-0262; CAR-OTP-2107-0297; CAR-OTP-2107-0330; CAR-

⁴¹ CAR-OTP-2105-0991; CAR-OTP-2122-4507 (French translation).

⁴² See *e.g.* the transcripts and translations mentioned in paragraph 11 above.



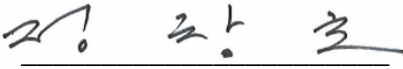
⁴³ Initial Directions on the Conduct of the Proceedings, 26 August 2022, ICC-01/14-01/18-631, para. 64.

OTP-2107-0370; CAR-OTP-2107-0402; CAR-OTP-2107-0427; CAR-OTP-2107-0462; CAR-OTP-2107-0496; CAR-OTP-2107-0554; CAR-OTP-2107-0591; CAR-OTP-2107-0623; CAR-OTP-2107-0660; CAR-OTP-2107-0691), together with its associated documents (CAR-OTP-2090-0481; CAR-OTP-2090-0482; CAR-OTP-2090-0483; CAR-OTP-2090-0484; CAR-OTP-2090-0487; CAR-OTP-2090-0490; CAR-OTP-2090-0497; CAR-OTP-2090-0498; CAR-OTP-2090-0499; CAR-OTP-2090-0500; CAR-OTP-2090-0501; CAR-OTP-2090-0513; CAR-OTP-2001-2247; CAR-OTP-2001-2306; CAR-OTP-2001-4330; CAR-OTP-2001-4401; CAR-OTP-2090-0492; CAR-OTP-2090-0493; CAR-OTP-2090-0494; CAR-OTP-2090-0495; CAR-OTP-2090-0496; CAR-OTP-2088-0977; CAR-OTP-2090-0510; CAR-OTP-2090-0522); and

- **Witness P-2354** (CAR-OTP-2105-0991; CAR-OTP-2122-4507 (French translation)); and

INSTRUCTS the Registry to update the JEM codes of transcripts and translations of items which have been recognised as formally submitted by the Chamber, as set out in paragraphs 25 and 26 above.

Done in both English and French, the English version being authoritative.

 <hr style="width: 25%; margin: 0 auto;"/>	 <hr style="width: 25%; margin: 0 auto;"/>	 <hr style="width: 25%; margin: 0 auto;"/>
Judge Péter Kovács	Judge Bertram Schmitt Presiding Judge	Judge Chang-ho Chung

Dated 19 August 2022

At The Hague, The Netherlands