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**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**

**Decision on the Prosecution Request for Formal Submission of Prior Recorded  
Testimony pursuant to Rule 68(2)(d) of the Rules**

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  
Sarah Bafadhel

**Counsel for Patrice-Edouard Ngaïssona**

Geert-Jan Alexander Knoops  
Richard Omissé-Namkeamaï  
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**

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**Registrar**

Oswaldo Zavala Giler

**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(2) and (4) of the Rome Statute (the ‘Statute’) and Rule 68(2)(d) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules’.

## **I. Procedural history**

1. On 16 October 2020, following an extension request by the Office of the Prosecutor (the ‘Prosecution’),<sup>1</sup> the Chamber amended the deadlines for the submission of applications pursuant to Rule 68 of the Rules<sup>2</sup> and provided initial guidance for the Prosecution’s forthcoming applications under this provision (the ‘Initial Guidance’).<sup>3</sup>
2. On 26, 29 and 30 March 2021, witness P-1847 (the ‘Witness’) testified, fully live, before the Chamber.<sup>4</sup>
3. On 7 July 2023, the Prosecution filed a request for the introduction of the Witness’s prior recorded testimony (the ‘Prior Recorded Testimony’) pursuant to Rule 68(2)(d) of the Rules (the ‘Request’).<sup>5</sup> According to the Prosecution, formal recognition of the Prior Recorded Testimony ‘is in the interests of justice, consistent with the fairness of the proceedings, and vital to the discharge of its statutory duty’.<sup>6</sup> The Prosecution submits that ‘[f]ailing to do so would reward an

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<sup>1</sup> Prosecution’s Request pursuant to Regulation 35 to vary the Time Limit for the Submission of Applications pursuant to Rule 68, 14 September 2020, ICC-01/14-01/18-652.

<sup>2</sup> Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631 (the ‘Initial Directions’), para. 33.

<sup>3</sup> Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, ICC-01/14-01/18-685.

<sup>4</sup> Transcript of hearing, ICC-01/14-01/18-T-022-CONF-ENG (‘T-022’); transcript of hearing, ICC-01/14-01/18-T-023-CONF-ENG (‘T-023’); transcript of hearing, ICC-01/14-01/18-T-024-CONF-ENG. The French versions of these transcripts are, as necessary, referred to with ‘-FRA’ added to the designation.

<sup>5</sup> Prosecution’s Request for the Formal Submission of the Prior Statements of P-1847, ICC-01/14-01/18-1971-Conf (with confidential annexes A-C, ICC-01/14-01/18-1971-Conf-AnxA, ICC-01/14-01/18-1971-Conf-AnxB, ICC-01/14-01/18-1971-Conf-AnxC). The Single Judge granted an extension of the page limit for this application, granting the same extension to the other participants for their responses; *see* email from the Chamber, 5 July 2023, at 15:02.

<sup>6</sup> Request, ICC-01/14-01/18-1971-Conf, para. 2.

attempt to subvert the course of justice, and moreover deprive these proceedings of important evidence, as well as undermine the Chamber's ability to consider and assess it fully'.<sup>7</sup>

4. On 20 July 2023, the Yekatom Defence responded, indicating its objection to the introduction of paragraphs which go to the acts and conduct of Mr Yekatom or are otherwise prejudicial, while not taking a position on the remainder of the Request (the 'Yekatom Defence Response').<sup>8</sup>
5. On 14 August 2023,<sup>9</sup> the Ngaïssona Defence opposed the Request (the 'Ngaïssona Defence Response').<sup>10</sup>

## II. Analysis

6. The Chamber will first set out the applicable law before turning to its analysis of the Request, which will be assessed with due regard to the specific nature and content of the Prior Recorded Testimony.<sup>11</sup> The Chamber will be guided by the principles regarding Rule 68 of the Rules as set out below<sup>12</sup> and in its Initial Guidance.<sup>13</sup>
7. Where a prior recorded testimony is introduced pursuant to Rule 68(2)(d) of the Rules, full consideration of the standard evidentiary criteria, particularly in terms

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<sup>7</sup> Request, ICC-01/14-01/18-1971-Conf, para. 3.

<sup>8</sup> Yekatom Defence Response to 'Prosecution's Request for the Formal Submission of the Prior Statements of P-1847', ICC-01/14-01/18-1994-Conf.

<sup>9</sup> The Single Judge granted two requests for extension of time to respond. *See* email from the Chamber, 13 July 2023, at 10:31; email from the Chamber, 2 August 2023, at 14:25.

<sup>10</sup> Defence Response to the Prosecution's Request for the Formal Submission of the Prior Statements of P-1847, ICC-01/14-01/18-2026-Conf.

<sup>11</sup> Initial Guidance, ICC-01/14-01/18-685, paras 28, 34. *See also* First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies Pursuant to Rule 68(2)(b) of the Rules, 17 April 2023, ICC-01/14-01/18-1833-Conf-Corr (public redacted version notified the next day, ICC-01/14-01/18-1833-Corr-Red) (the 'First Rule 68(2)(b) Decision'), para. 14; First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies Pursuant to Rule 68(2)(c) of the Rules, 12 July 2023, ICC-01/14-01/18-1975-Conf (public redacted version notified the same day, ICC-01/14-01/18-1975-Red) (the 'First Rule 68(2)(c) Decision'), para. 15.

<sup>12</sup> *See* Section II.A.

<sup>13</sup> Initial Guidance, ICC-01/14-01/18-685, paras 23-34.

of its relevance and probative value, is deferred to the Chamber's eventual deliberation of its judgment.<sup>14</sup>

#### **A. Applicable law**

8. Rule 68(1) of the Rules gives the Chamber discretion to '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'.<sup>15</sup>
9. Pursuant to Rule 68(2)(d) of the Rules, the Chamber may allow the introduction of the 'prior recorded testimony' of a person 'who has been subjected to interference', if the Chamber is satisfied that (i) the person has failed to attend as a witness or, having attended, has failed to give evidence with respect to a material aspect included in their prior recorded testimony; (ii) the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, or coercion; (iii) reasonable efforts have been made to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness; (iv) the interests of justice are best served by the prior recorded testimony being introduced; and (v) the prior recorded testimony has sufficient indicia of reliability.
10. Further, pursuant to Rule 68(2)(d)(iv) of the Rules, 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.
11. The Chamber notes that its determination as to whether a prior recorded testimony can be introduced pursuant to Rule 68 of the Rules depends on its consideration of the testimony as a whole.<sup>16</sup>

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<sup>14</sup> The Chamber recalls the Presiding Judge's directions in this regard, *see* Initial Directions, ICC-01/14-01/18-631, section M.(1), Submission Approach.

<sup>15</sup> *See* Initial Guidance, ICC-01/14-01/18-685, para. 27.

<sup>16</sup> *See also* First Rule 68(2)(b) Decision, ICC-01/14-01/18-1833-Corr-Red, para. 18 *with further references*; First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 20 *with further references*.

12. In the following section, the Chamber will provide its interpretation of the abovementioned requirements and factors governing its assessment of requests pursuant to Rule 68(2)(d) of the Rules.

*1. Requirements under Rule 68(2)(d) of the Rules*

*i. Notion of ‘prior recorded testimony’*

13. The Chamber recalls the applicable law in respect of the notion of ‘prior recorded testimony’ as set out in its earlier decision.<sup>17</sup>

*ii. Failure to attend or failure to give evidence with respect to a material aspect*

14. Rule 68(2)(d)(i) of the Rules provides as the first requirement that the Chamber must be satisfied that ‘the person has failed to attend as a witness or, having attended, has failed to give evidence with respect to a material aspect included in his or her prior recorded testimony’.

15. The Chamber considers that, in principle, the requirement can be satisfied by persons who appear and either do not testify at all or recant material aspects of their prior recorded testimony.<sup>18</sup> The Chamber agrees that a more limited understanding of the rule could lead to a situation in which a person subject to interference could have their prior recorded testimony introduced if they were intimidated into silence, but not if the same intimidation prompted them to recant fundamental aspects of what they said previously.<sup>19</sup>

16. The Chamber agrees that any explanations provided for the change in testimony may, however, be relevant and will be considered when conducting its case-by-case assessment.<sup>20</sup>

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<sup>17</sup> First Rule 68(2)(b) Decision, ICC-01/14-01/18-1833-Corr-Red, paras 23-25. *See* First Rule 68(2)(b) Decision, ICC-01/14-01/18-1833-Corr-Red, para. 54 *with further references*. *See also* First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 23.

<sup>18</sup> *See also* Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto & Joshua Arap Sang*, Decision on the Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, ICC-01/09-01/11-1938-Conf-Corr (public redacted version notified the same day, ICC-01/09-01/11-1938-Corr-Red2) (the ‘*Ruto & Sang* Rule 68 Decision’), para. 41.

<sup>19</sup> *Ruto & Sang* Rule 68 Decision, ICC-01/09-01/11-1938-Corr-Red2, para. 41.

<sup>20</sup> *Ruto & Sang* Rule 68 Decision, ICC-01/09-01/11-1938-Corr-Red2, para. 41.

iii. *Notion of ‘materially influenced by improper interference’*

17. Rule 68(2)(d)(i) of the Rules further requires that ‘the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, or coercion’.
18. According to the drafting history of Rule 68(2)(d) of the Rules, the term ‘materially’ was used to require a threshold level of influence on the witness which is caused by improper interference.<sup>21</sup> The Chamber notes in this regard that the term ‘materially’ was used in a way comparable to the same term as used in Article 83(2) of the Statute.<sup>22</sup> Therefore, taking the jurisprudence of the Appeals Chamber on the interpretation of the notion ‘materially’ in that context as guidance,<sup>23</sup> the Chamber considers that the mentioned failure was ‘materially’ influenced by improper interference, if, had it not been for that interference, the witness would have given substantially different testimony – or testified at all, if the witness failed to attend.
19. Pursuant to Rule 68(2)(d)(ii) of the Rules, improper interference may relate, *inter alia*, to the physical, psychological, economic, or other interests of the person. The relevant interference to the witness could be direct or indirect in character.<sup>24</sup>
20. The Chamber notes that Rule 68(2)(d) of the Rules does not require that the interference be attributable to the accused.<sup>25</sup> Interpreting the provision as being applicable to interference by supporters of a party to proceedings – without the

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<sup>21</sup> See Working Group of Lessons Learnt: Second report of the Court to the Assembly of States Parties, 31 October 2013, ICC-ASP/12/37/Add.1, Recommendation on a proposal to amend rule 68 of the Rules of Procedure and Evidence (Prior Recorded Testimony), Annex II.A (the ‘Working Group Report’), para. 35.

<sup>22</sup> See Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 35.

<sup>23</sup> See Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58”, 13 July 2006, ICC-01/04-169, para. 84; Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, para. 19.

<sup>24</sup> See Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 36.

<sup>25</sup> See Trial Chamber III, *The Prosecutor v. Paul Gicheru*, Decision on the Prosecution’s Request to Admit Prior Recorded Testimony under Rule 68(2)(d), 14 December 2021, ICC-01/09-01/20-247-Conf (public redacted version notified the same day, ICC-01/09-01/20-247-Red), para. 15; *Ruto & Sang* Rule 68 Decision, ICC-01/09-01/11-1938-Corr-Red2, para. 44; Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 34.

party's direct involvement – is consistent with the deterrent effect intended by the drafters with the aim of creating a broader disincentive for interested persons to interfere with witnesses before the Court.<sup>26</sup> The Chamber agrees that the accused's involvement – or lack thereof – can nonetheless be a factor in determining whether the introduction of the prior recorded testimony is in the interests of justice.<sup>27</sup>

*iv. Reasonable efforts to secure attendance or all material facts known*

21. Rule 68(2)(d)(i) of the Rules also provides that 'reasonable efforts have been made to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness'.
22. In determining what constitutes 'reasonable efforts' to secure the attendance of a witness, the Chamber notes the drafting history of Rule 68(2)(d) of the Rules, where it was highlighted that 'reasonable efforts' must have been 'exhausted'.<sup>28</sup> A submission that 'reasonable efforts' have been exhausted may be subject to changed circumstances.<sup>29</sup>
23. The Chamber notes in this regard that Trial Chamber V(A) considered that while it is possible that a witness who recants their prior recorded testimony in fundamental aspects was not sufficiently prompted by the submitting party to testify on these matters, the diligence in exploring such deviations is relevant to determining whether 'reasonable efforts' have been made in the sense of Rule 68(2)(d)(i) of the Rules.<sup>30</sup>

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<sup>26</sup> See Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 34.

<sup>27</sup> *Ruto & Sang* Rule 68 Decision, ICC-01/09-01/11-1938-Corr-Red2, para. 44; Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 34.

<sup>28</sup> See Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 35.

<sup>29</sup> See Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 35.

<sup>30</sup> *Ruto & Sang* Rule 68 Decision, ICC-01/09-01/11-1938-Corr-Red2, para. 42.



v. *Interests of justice are best served by the introduction*

24. The Chamber recalls that the Court’s legal framework does not define the concept of ‘interests of justice’, and that its meaning must therefore be interpreted in the specific context of Rule 68(2)(d) of the Rules.<sup>31</sup>
25. The understanding of ‘interests of justice’ under Rule 68(2)(d) of the Rules needs to reflect the specific purpose behind admitting the prior recorded testimony of a person who has been subjected to interference.
26. In this regard, the Chamber finds it informative that Rule 92 *quinquies* of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, on which Rule 68(2)(d) was based,<sup>32</sup> included in the notion of ‘interests of justice’, *inter alia*, the apparent role of a party or someone acting on behalf of a party to the proceedings in the improper interference.
27. The Chamber further considers that Rule 68(2)(d) of the Rules is one measure available under the Court’s legal framework to address witness interference.<sup>33</sup> Article 70 of the Statute provides for reactive measures to criminally sanction witness interference in separate proceedings regarding offences against the administration of justice. The Chamber is of the view that Rule 68(2)(d) of the Rules, as another reactive measure to potential witness interference, shares the purpose of contempt proceedings by protecting the integrity of the proceedings before the Court by reacting to the behaviour of persons that impedes the discovery of the truth and the Court’s ability to fulfil its mandate.<sup>34</sup>

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<sup>31</sup> See also First Rule 68(2)(b) Decision, ICC-01/14-01/18-1833-Corr-Red, para. 40.

<sup>32</sup> See Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, n. 26.

<sup>33</sup> See also Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 34.

<sup>34</sup> See, for the purpose of contempt proceedings, Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Sentence pursuant to Article 76 of the Statute, 22 March 2017, ICC-01/05-01/13-2123-Corr, para. 19. See also Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute”, 8 March 2018, ICC-01/05-01/13-2276-Red, para. 189.

*vi. Notion of 'sufficient indicia of reliability'*

28. The Chamber recalls its earlier decision setting out the jurisprudence concerning 'sufficient indicia of reliability' in respect of Rule 68(2)(b) of the Rules.<sup>35</sup>
29. In particular, the Chamber recalls its findings concerning the fulfilment of formal requirements at the time the prior recorded testimony is taken. The Chamber recalls that formal requirements previously considered by chambers of this Court included the following: whether the prior recorded testimony (i) was obtained by the Prosecution in the ordinary course of its investigations; (ii) was signed by the witness and the investigator(s) conducting the interviews; (iii) was given voluntarily; (iv) was obtained in the presence of a qualified interpreter; (v) was verified by the witness at the time; and (vi) includes information that the witness was given an explanation of the procedure and was informed of the significance of providing the statement to the Prosecution (the 'Formal Requirements'). Consistent with previous decisions of other chambers, the Chamber clarifies that no single indicator is, in and of itself, conclusive or mandatory to establish the presence of 'sufficient indicia of reliability', but their presence may militate in favour of the introduction of a prior recorded testimony.<sup>36</sup>
30. The Chamber considers that the Formal Requirements equally apply to the assessment of 'sufficient indicia of reliability' as a requirement under Rule 68(2)(d) of the Rules. Thus, in its determinations below, the Chamber will limit its assessment to the Formal Requirements unless the Defence raises specific objections.<sup>37</sup>

*vii. Absence of prejudice to or inconsistency with the rights of the accused*

31. As generally required in all instances under Rule 68 of the Rules, the introduction of a prior recorded testimony is not permitted if it is prejudicial to or inconsistent with the rights of the accused, as specified in Rule 68(1) of the Rules.

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<sup>35</sup> First Rule 68(2)(b) Decision, ICC-01/14-01/18-1833-Corr-Red, paras 42-47 *with further references*.

<sup>36</sup> First Rule 68(2)(b) Decision, ICC-01/14-01/18-1833-Corr-Red, para. 45.

<sup>37</sup> *See also* First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 34.

32. The Chamber may consider a number of factors in this assessment, such as:
- (i) whether the evidence relates to issues that are materially in dispute;
  - (ii) whether the evidence provides background information or is central to core issues in the case; or (iii) whether the evidence is cumulative or corroborative of other evidence.<sup>38</sup>

2. *Factors guiding the Chamber's discretion in assessing applications pursuant to Rule 68(2)(d) of the Rules*

33. Provided that a prior recorded testimony meets the abovementioned requirements, the Chamber's decision as to whether to allow the introduction of a prior recorded testimony pursuant Rule 68(2)(d) of the Rules is discretionary. Each prior recorded testimony must be assessed case-by-case and on the basis of the circumstances before the chamber.
34. When making this assessment, the Chamber may also consider whether a prior recorded testimony goes to the 'acts and conduct' of the accused. While Rule 68(2)(d)(iv) of the Rules does not preclude the introduction of prior recorded testimony going to proof of the acts and conduct of the accused, it provides that this may be a factor against the introduction of the evidence.
35. The Chamber notes in this regard that according to the drafting history of the provision, and in light of the additional burden placed on parties when faced with an intimidated witness, including the need to establish interference, it was considered that this provision should be more permissive of 'acts and conduct' evidence when compared to Rule 68(2)(b) of the Rules.<sup>39</sup>
36. In assessing which portions of a prior recorded testimony constitute acts and conduct of the accused, the Chamber will apply the same criteria as set out in its earlier decision concerning Rule 68(2)(b) of the Rules.<sup>40</sup> Further, when allowing the submission of prior recorded testimony referring to acts and conduct of the accused, the Chamber has ensured that this introduction is not prejudicial to or inconsistent with the rights of the accused.

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<sup>38</sup> First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, para. 36 *with further references*.

<sup>39</sup> See Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 38.

<sup>40</sup> First Rule 68(2)(b) Decision, ICC-01/14-01/18-1833-Corr-Red, paras 26-28 *with further references*.

## B. Analysis of the Prior Recorded Testimony

37. The Chamber will now turn to its assessment of the Request, and address the participants' submissions, as necessary.
38. In his statements,<sup>41</sup> the Witness discusses, *inter alia*, his background; the circumstances of his leaving Bangui after the Seleka take-over on 24 March 2013; [REDACTED] François Bozizé's activities while staying at the Hilton hotel and later at the *Cité du Golf* in Yaoundé, including the meetings held there; the presence of members of the Central African armed forces ('FACA') in Cameroon; François Bozizé's departure to South Sudan in August 2013; a meeting held in Paris, likely at the beginning of September 2013, attended amongst others by Joachim Kokaté, Levy Yakité and Adrien Poussou, at which the '*Front pour le Retour à l'ordre constitutionnel en Centrafrique*' (FROCCA) was created; the formation, organisation and activities of groups in Cameroon; the Anti-Balaka hierarchy being led by François Bozizé, followed by Mr Ngaïssona and then Bernard Mokom; individuals that financed the Anti-Balaka; the overall objective of the Anti-Balaka; meetings of FACA and others in Douala; an attack on Beloko in November 2013; the organisation of the Anti-Balaka and it being split into two factions; Anti-Balaka 'subversive' actions before the attack on Bangui on 5 December 2013 (the 'Bangui Attack'), including attacks in Bossangoa, Bouca, Bossembélé, Beloko, Bouar; alleged exactions of the Anti-Balaka against the Muslim population; the preparations for and the execution of the Bangui Attack, with Konaté, Andjilo, '*12 Puissances*', Mazimbelet, Bawa, Pacom Azounou, Emotion Namsio, Florent Kema, Rambot and Dedane being the 'brains' behind this attack; violence committed by the Seleka; [REDACTED] a rally held by François Bozizé at PK0; his knowledge of several individuals, associated or not with the Anti-Balaka; and the '*coalition citoyenne d'opposition aux rébellions armées*' (COCORA) and its activities.
39. The Witness also mentions Mr Ngaïssona, indicating that François Bozizé received Mr Ngaïssona at his residence in Yaoundé; Mr Ngaïssona attended a meeting at François Bozizé's residence at *Cité du Golf* in Yaoundé in July 2013,

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<sup>41</sup> First Statement, CAR-OTP-2061-1534; Second Statement, CAR-OTP-2122-8251.

alongside Joachim Kokaté, Vincent Wapounaba and others; Mr Ngaïssona resided, at some stage, at the residence of François Bozizé at the *Cité du Golf* in Yaoundé; Mr Ngaïssona gave orders and attack plans to other Anti-Balaka who had stayed on the ground in the CAR through the telephone; François Bozizé often met Mr Ngaïssona and Bernard Mokom while at the *Cité du Golf* in Yaoundé; Mr Ngaïssona provided money to the Anti-Balaka through intermediaries; Mr Ngaïssona together with Bernard Mokom coordinated the Anti-Balaka in the north (Bossangoa-Bouca-Batangafu-Bocaranga-Bozoum-Bouar), meaning that the Anti-Balaka of the north reported directly to Mr Ngaïssona and Bernard Mokom, taking directions and instructions from them; Mr Ngaïssona intervened to have property taken by Andjilo returned to the affected individuals; Mr Ngaïssona, in 2014, accommodated at his residence members of the Anti-Balaka who had come from the provinces to Bangui and had nowhere else to stay; Anti-Balaka fighters attacked Seleka bases in Beloko and Bouar following orders of Bernard Mokom, Mr Ngaïssona [REDACTED]; Mr Ngaïssona asked Anti-Balaka elements to rest for one week before the Bangui Attack, as they had walked long distances; Mr Ngaïssona was designated as the Anti-Balaka spokesperson at a last meeting at the *Cité du Golf* residence with Bernard Mokom, Kokaté and Yakité, before their return to Bangui; Mr Ngaïssona travelled between Douala, Garamboulai and Bertoua to meet former soldiers, Presidential Guard who had fled there; Mr Ngaïssona was fully involved in coordinating Anti-Balaka activities also before returning to the CAR; and Mr Ngaïssona pronounced himself as general coordinator of the Anti-Balaka after his return to Bangui.

40. The Witness further mentions Mr Yekatom, indicating that ‘Caporal YEKATOM alias RAMBOT’ commanded the Anti-Balaka in the south, meaning he led and directed military operations on the ground; ‘Rambot’ was one of the brains behind the Bangui Attack; the Anti-Balaka under the lead of ‘Rambot’ launched attacks against strategic locations of the Seleka up to the border of PK9 and around KM5; ‘Rambot’ and his elements were financed by Sani Yalo and his brother Colonel Danzoumi; ‘Rambot’ and his elements set up illegal roadblocks and extorted the population on their axis of operation; and Alfred Yekatom controlled the zone

south of Bangui and coordinated the attacks towards the 3<sup>rd</sup> arrondissement, PK5, PK9 up to the exit of Bangui.

41. As part of his statements, the Witness provides his CV (Annex A, CAR-OTP-2061-1576) and a copy of his [REDACTED] passport (Annex B, CAR-OTP-2061-1578).

1. *Whether the Witness failed to give evidence with respect to material aspects in the Prior Recorded Testimony*

i. *Submissions*

42. The Prosecution argues that despite confirming the accuracy and truthfulness of his Prior Recorded Testimony, the Witness, after an intervening weekend, ‘repudiated material aspects’ of his Prior Recorded Testimony concerning Mr Ngaïssona’s alleged involvement with the Anti-Balaka, particularly in 2013.<sup>42</sup> According to the Prosecution, the Witness ‘was unable to provide a rational explanation for his change in position and the inconsistencies with both his [Prior Recorded Testimony] and his earlier trial testimony adopting them’.<sup>43</sup>
43. According to the Prosecution, the ‘material facts’ included in the Prior Recorded Testimony ‘to which [the Witness] failed to testify or otherwise recanted’,<sup>44</sup> include the topics of (i) meetings at the *Cité du Golf* residence in Yaoundé, and Mr Ngaïssona’s involvement therein;<sup>45</sup> (ii) Mr Ngaïssona’s alleged role in providing financial support to the Anti-Balaka;<sup>46</sup> and (iii) Mr Ngaïssona’s alleged role in giving instructions to the Anti-Balaka before the 5 December 2013 attack on Bangui.<sup>47</sup>
44. The Ngaïssona Defence submits ‘that Rule 68(2)(d)(i) does not apply in situations where a witness does attend trial, and under oath, tells the Chamber that certain material aspects included in his prior recorded statement were incorrect’.<sup>48</sup>

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<sup>42</sup> Request, ICC-01/14-01/18-1971-Conf, paras 16-17.

<sup>43</sup> Request, ICC-01/14-01/18-1971-Conf, para. 17.

<sup>44</sup> Request, ICC-01/14-01/18-1971-Conf, para. 18.

<sup>45</sup> Request, ICC-01/14-01/18-1971-Conf, paras 19-20.

<sup>46</sup> Request, ICC-01/14-01/18-1971-Conf, paras 21-22.

<sup>47</sup> Request, ICC-01/14-01/18-1971-Conf, para. 23.

<sup>48</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 7.

According to the Ngaïssona Defence, '[p]roviding different evidence with respect to material aspects included in a prior recorded statement does not constitute a failure to give evidence'.<sup>49</sup> In any event, the Ngaïssona Defence submits, 'the Prosecution cannot demonstrate how [the Witness] testified differently on the first day compared to the second or third day with respect to the same alleged fact'.<sup>50</sup>

*ii. Chamber's determination*

45. The Chamber recalls at the outset its view, as outlined above, that Rule 68(2)(d) of the Rules may be applicable in situations in which a witness does appear in court but recants fundamental aspects of their prior recorded testimony.<sup>51</sup>
46. The Chamber disagrees with the Ngaïssona Defence's interpretation that Rule 68(2)(d) of the Rules does not apply in situations where a witness testifies, under oath, that material aspects of their prior recorded testimony are incorrect. Failure to testify on material aspects included in a prior recorded testimony does not only refer to cases in which a witness, once called to testify, does not provide any information at all with regard to such material aspects. It can equally apply to cases in which a witness substantially deviates from, or outright contradicts, such material aspects once under oath.
47. In the view of the Chamber, two aspects are of significance for its determination: (i) at the beginning of his testimony, the Witness stated, unequivocally and under oath, that at the time he signed his Prior Recorded Testimony, he acknowledged that it was truthful, and that, having re-read it before his testimony, he stands by what he said therein;<sup>52</sup> and (ii) at the same moment, the Witness indicated, when asked whether he discovered any errors while re-reading his Prior Recorded Testimony, including any that changed the meaning, that he found 'a small error',

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<sup>49</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 8.

<sup>50</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 14.

<sup>51</sup> See paragraph 15 above.

<sup>52</sup> T-022, p. 19, lines 12-17.

‘a tiny, tiny error’, ‘small errors’, which concerned ‘only the name of a person that wasn’t written properly, things like that’.<sup>53</sup>

48. Yet on the second day of his testimony, after an intervening weekend, the Witness provided answers which obviously did not accord with parts of his Prior Recorded Testimony. Specifically, having considered the Witness’s testimony in court alongside the Prior Recorded Testimony, the Chamber notes that specific divergences within the Witness’s evidence include the following:

- (i) whether individuals at checkpoints set up by COCORA went around with knives and machetes<sup>54</sup> or rather they were not armed and had only sticks;<sup>55</sup>
- (ii) whether François Bozizé and Mr Ngaïssona met at the *Cité du Golf* in Yaoundé<sup>56</sup> or rather Mr Ngaïssona arrived only after François Bozizé had left;<sup>57</sup>
- (iii) whether a meeting was held in July 2013 and attended by Mr Ngaïssona (together with Joachim Kokaté, Vincent Wapounaba, and others) at which it was discussed how to organise their coordination to continue the political fight for a return to the constitutional order and for François Bozizé to return to power<sup>58</sup> or rather Mr Ngaïssona did not meet with François Bozizé and with Levy Yakete, Francis Bozizé and Joachim Kokaté in July 2013;<sup>59</sup>

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<sup>53</sup> T-022, p. 16, line 15 – p. 17, line 5. In French, the Witness’s answer was transcribed as follows (T-022-FRA, p. 16, lines 17-23): ‘Oui, j’ai découvert de petites fautes orthographiques... d’orthographe, oui... orthographe dans le... dans le truc, que j’avais cernées [*sic.*] l’autre jour. Les petites erreurs dans le truc, mais, sinon, j’ai découvert des petites erreurs sur le... sur la déclaration que j’ai mentionnées [*sic.*], mais c’est... la forme est bonne, quoi.’; ‘Non, c’est seulement les noms de la personne mal écrits et... et tout ça’.

<sup>54</sup> Second Statement, CAR-OTP-2122-8251, at 8270, para. 182.

<sup>55</sup> P-1847: T-023, p. 5, line 23 – p. 6, line 8.

<sup>56</sup> First Statement, CAR-OTP-2061-1534, at 1545, para. 75; Second Statement, CAR-OTP-2122-8251, at 8254, para. 24.

<sup>57</sup> P-1847: T-023, p. 21, line 15 – p. 22, line 3.

<sup>58</sup> First Statement, CAR-OTP-2061-1534, at 1546, para. 84.

<sup>59</sup> P-1847: T-023, p. 27, line 14 – p. 29, line 10.



- (iv) whether François Bozizé, when he was at the *Cité du Golf* residence in Yaoundé, met with Mr Ngaïssona and Bernard Mokom, ‘très souvent’,<sup>60</sup> or not;<sup>61</sup>
  - (v) whether the Witness saw Achille Godonam collect money from Mr Ngaïssona on three or four occasions at François Bozizé’s residence at the *Cité du Golf* in Yaoundé<sup>62</sup> or rather he did not see Mr Ngaïssona when he arrived and also did not see Mr Ngaïssona giving money to Achille Godonam;<sup>63</sup>
  - (vi) whether Mr Ngaïssona and Bernard Mokom were involved in transferring funds to the Anti-Balaka<sup>64</sup> or rather Bernard Mokom was the only one making such transfers;<sup>65</sup> and
  - (vii) whether Mr Ngaïssona was involved in giving instructions to the elements on the ground<sup>66</sup> as well as passing on instructions by François Bozizé<sup>67</sup> or rather Mr Ngaïssona did not give any orders to the elements on the ground.<sup>68</sup>
49. When asked to explain some of these differences, the Witness stated that (i) he had pointed out that there were a few mistakes in his statement;<sup>69</sup> (ii) what is said in his written statement concerning Mr Ngaïssona’s presence at *Cité du Golf* in Yaoundé was towards the end of 2013;<sup>70</sup> (iii) he had corrected his written statement but the investigators did not take his correction into consideration;<sup>71</sup> and (iv) what he had said about Mr Ngaïssona being involved in issuing instructions concerned in/after 2014, when he was the coordinator.<sup>72</sup>

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<sup>60</sup> First Statement, CAR-OTP-2061-1534, at 1552, para. 114.

<sup>61</sup> P-1847: T-023, p. 48, line 16 – p. 49, line 13, p. 50, line 10 – p. 51, line 1.

<sup>62</sup> First Statement, CAR-OTP-2061-1534, at 1552, para. 115.

<sup>63</sup> P-1847: T-023, p. 39, line 25 – p. 40, line 14.

<sup>64</sup> First Statement, CAR-OTP-2061-1534, at 1552, para. 116, at 1555, para. 135.

<sup>65</sup> P-1847: T-023, p. 42, lines 10-24, p. 67, line 3 – p. 68, line 15.

<sup>66</sup> First Statement, CAR-OTP-2061-1534, at 1551, para. 112, at 1553, para. 121.

<sup>67</sup> First Statement, CAR-OTP-2061-1534, at 1558, para. 152.

<sup>68</sup> P-1847: T-023, p. 43, lines 5-17.

<sup>69</sup> See P-1847: T-023, p. 6, line 9 – p. 7, line 11.

<sup>70</sup> See P-1847: T-023, p. 26, line 21 – p. 27, line 5.

<sup>71</sup> See P-1847: T-023, p. 40, lines 9-14.

<sup>72</sup> See P-1847: T-023, p. 46, line 21 – p. 47, line 11, p. 62, line 23 – p. 64, line 16.

50. The Chamber notes that none of the answers provided by the Witness in this regard explain as to why, at the beginning of his testimony, he attested to the truthfulness of his Prior Recorded Testimony and affirmed that he had noticed only minor errors in his Prior Recorded Testimony upon re-reading it before appearing – and yet the discrepancies amount to plain contradictions.
51. The Chamber further notes that all but one of the points mentioned above concern the alleged role and involvement of Mr Ngaïssona in the charged events. Importantly in this regard, the Chamber notes that for purposes of confirming the charges against Mr Ngaïssona, Pre-Trial Chamber II found Mr Ngaïssona’s contributions to the charged crimes to have consisted in: (i) taking steps to structure the Anti-Balaka; (ii) financing the Anti-Balaka, including for the purchase of weapons; (iii) issuing instructions to Anti-Balaka members, including with regard to the Bangui Attack and attacks preceding it; and (iv) liaising with Anti-Balaka members exercising key functions, including Bernard Mokom and Maxime Mokom.<sup>73</sup> Significantly, the matters on which the Witness provided contradictory testimony concern all of these points.
52. The Chamber cannot sustain the Ngaïssona Defence’s submission that the witness’s ‘failure’ to testify on material aspects is not demonstrated because the discrepancies pointed out by the Prosecution do not concern discrepancies between the first and the second day of the testimony after an intervening weekend. While the Prosecution argues that the Witness started repudiating material aspects of his Prior Recorded Testimony following a weekend break, in the Chamber’s view, the comparison between the first and second day of testimony is inconsequential for purposes of the current determination. What matters for a determination under the first sub-point of Rule 68(2)(d)(i) of the Rules is that the person attending ‘failed to give evidence with respect to a material aspect included in his or her prior recorded testimony’. Whether such ‘failure’ starts at the beginning of a testimony, or comes into play only after a break, of whichever length, may, at most, be of interest for the discussion of

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<sup>73</sup> Pre-Trial Chamber II, Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, 14 May 2020, ICC-01/14-01/18-403-Conf-Corr (lesser redacted version notified on 28 June 2021, ICC-01/14-01/18-403-Corr-Red), p. 111.

whether any failure was materially influenced by improper interference – a point discussed below. However, to determine whether the witness failed to give evidence with respect to a material aspect ‘included in his or her prior recorded testimony’, the Chamber must compare a witness’s in-court testimony and the related prior recorded testimony – not a witness’s evidence given on two different days of testimony.

53. In any event, the Chamber notes that the Witness was in fact not asked about the matters regarding which he deviated in comparison to his Prior Recorded Testimony during his first day of testimony. Indeed, all topics broached in relation to which the Chamber identified discrepancies above were brought up on the Witness’s second day of testimony. As regards specifically Mr Ngaïssona’s alleged activities, the Witness, on his first day of testimony, was merely asked (i) whether and how long he knew Mr Ngaïssona;<sup>74</sup> (ii) whether he had any direct contacts with him during the relevant period,<sup>75</sup> (iii) about the relationship between Levy Yakete and Mr Ngaïssona;<sup>76</sup> and (iv) whether he saw Mr Ngaïssona in Yaoundé.<sup>77</sup>
54. In light of the above, the Chamber is satisfied that the Witness, having attended with a view to providing testimony before the Chamber under oath, failed to give evidence with respect to material aspects included in his Prior Recorded Testimony.

2. *Whether any failure to give evidence has been materially influenced by improper interference*

i. *Submissions*

55. The Prosecution argues that ‘it is clear’ that the argued differences between the Witness’s in-court testimony and his Prior Recorded Testimony were ‘due to unlawful influence and/or interference’.<sup>78</sup> The Prosecution bases this submission on (i) the Witness hearing, two weeks before his departure to The Hague for

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<sup>74</sup> P-1847: T-022, p. 21, line 21 – p. 22, line 4.

<sup>75</sup> P-1847: T-022, p. 22, lines 8-11.

<sup>76</sup> P-1847: T-022, p. 49, lines 2-9.

<sup>77</sup> P-1847: T-022, p. 77, lines 16-24.

<sup>78</sup> Request, ICC-01/14-01/18-1971-Conf, para. 26.

purposes of his testimony, ‘from an individual with ties to [Mr Ngaïssona’s] circle’ that his cooperation with the Court and prospective testimony [REDACTED];<sup>79</sup> (ii) the Witness being informed by his wife, during the statement reading process [REDACTED];<sup>80</sup> (iii) individuals reaching out to the Witness, and the Witness communicating with individuals through different channels, throughout his presence in The Hague;<sup>81</sup> and (iv) the Witness, during the debriefing after his testimony, noting concerns about the possibility that his testimony might have been leaked and its potential impact on his family situation.<sup>82</sup> According to the Prosecution, although the Witness denied having been directly influenced by anyone, he also ‘falsely denied’ having been contacted by anyone during his stay in The Hague and [REDACTED] after his debriefing with the Prosecution.<sup>83</sup>

56. The Ngaïssona Defence submits that the Prosecution’s allegations of interference with the Witness ‘are based on evidence that is devoid of probative value, is known to be untrue, or even if accepted as true, makes no showing of an impact on the testimony of [the Witness] or any other Prosecution witness’.<sup>84</sup> According to the Ngaïssona Defence, the Witness categorically denied having been influenced,<sup>85</sup> and that the incidents mentioned by the Prosecution as having influenced the Witness did not impact the Witness’s testimony.<sup>86</sup> The Ngaïssona Defence further argues that the Prosecution failed to produce evidence of sufficient specificity and probative value to show interference,<sup>87</sup> because (i) the evidence in support of the Witness having outside communications is contradictory and therefore inconclusive,<sup>88</sup> and (ii) even assuming the Witness did communicate as alleged, he stayed consistent in his claims that he was not interfered with and the content of his communications is consistent with what he

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<sup>79</sup> Request, ICC-01/14-01/18-1971-Conf, paras 28, 34-37, 48.

<sup>80</sup> Request, ICC-01/14-01/18-1971-Conf, para. 29.

<sup>81</sup> Request, ICC-01/14-01/18-1971-Conf, paras 30, 33, 38, 45-47, 51-58, 62-65.

<sup>82</sup> Request, ICC-01/14-01/18-1971-Conf, para. 31.

<sup>83</sup> Request, ICC-01/14-01/18-1971-Conf, para. 32.

<sup>84</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 17.

<sup>85</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, paras 18-21.

<sup>86</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, paras 22-25.

<sup>87</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 30.

<sup>88</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, paras 31-35.

had told the Prosecution.<sup>89</sup> In addition, the Ngaïssona Defence presents arguments as to why, in its view, the evidence fails to show any association between the collocutors and Mr Ngaïssona or anyone [REDACTED], or that the Witness feared his identity as witness had been revealed.<sup>90</sup>

*ii. Chamber's determination*

57. At the outset, the Chamber is of the view that the Witness's alleged communications with individuals during his stay in The Hague, in particular over the weekend intervening between the start and continuation of his testimony, are not determinative in the situation at hand.
58. Indeed, having reviewed the communications provided by the Prosecution, the Chamber can conclude, at best, that the Witness may have been exchanging with others at the time of his testimony – which he should not have done – through means as yet unclear to the Chamber.<sup>91</sup> Further, the content of these discussions does not suggest that the Witness was influenced in providing evidence as a result of these exchanges. On the contrary, it appears that the Witness, when asked about his whereabouts, stated that he was [REDACTED], without giving any impression of being somehow involved with activities at the Court.<sup>92</sup> Aside from whether it was in fact the Witness communicating in this way,<sup>93</sup> the Chamber finds these messages inconclusive for the purposes of determining whether the Witness's failure to give evidence with respect to material aspects in his Prior Recorded Testimony was materially influenced by improper interference.
59. However, the Chamber does find instructive two incidents which the Witness provided information on whilst talking to Prosecution investigators after his testimony, and of which he had knowledge before the start of his testimony.

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<sup>89</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, paras 36-37.

<sup>90</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, paras 38-59.

<sup>91</sup> The Chamber notes that the Prosecution indicates that the Witness [REDACTED]. *See* Request, ICC-01/14-01/18-1971-Conf, para. 47.

<sup>92</sup> *See* CAR-OTP-2130-4051; CAR-OTP-00000089, at 000045; CAR-OTP-00000094, at 000004, 000012; CAR-OTP-00001631, at 000007, 000009, 000010.

<sup>93</sup> *See also* Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, paras 31-35.

60. First, the Witness explained that two weeks before travelling to The Hague for his testimony, [REDACTED]. According to the Witness, [REDACTED] had told ‘them’ that the Witness was to testify ‘against Ngaïssona’. The Witness further explained that he denied this [REDACTED].<sup>94</sup>
61. Importantly, the Witness spontaneously indicated that initially, this incident had unsettled him and made him want to call the Prosecution, [REDACTED].<sup>95</sup>
62. Second, the Witness stated – when directly asked whether he was influenced by anyone in relation to his testimony – that before the start of his testimony, at the time of his statement reading, his wife, [REDACTED].<sup>96</sup>
63. Significantly, when asked how this made him feel, the Witness indicated that it concerned him,<sup>97</sup> [REDACTED].<sup>98</sup> [REDACTED].<sup>99</sup> The Witness also seemed to have concerns about having had to state his name at the beginning of the testimony – despite this taking place in private session [REDACTED].<sup>100</sup> [REDACTED].<sup>101</sup> When further asked whether this may have affected his ‘morale’, he stated that [REDACTED].<sup>102</sup>
64. The Chamber also finds of significance in this context that, according to an investigator’s report provided by the Prosecution, another witness, at the time of the Witness’s testimony, heard [REDACTED]. This other witness [REDACTED] – the day before the Witness’s second day of testimony.<sup>103</sup> It was on this second

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<sup>94</sup> CAR-OTP-00001679, at 000002-000007, lines 27-193; CAR-OTP-00001680, at 000015-000016, lines 481-503 *et seq.* The Chamber notes that, in its Request, the Prosecution relies on what seem to be the unrevised versions of the relevant transcripts (CAR-OTP-00001658 through CAR-OTP-00001665). For purposes of its determinations, the Chamber has relied on the revised versions of these transcripts (CAR-OTP-00001678 through CAR-OTP-00001685). The underlying audio files can be found at CAR-OTP-2130-4044, CAR-OTP-2130-4074 and CAR-OTP-2130-4075.

<sup>95</sup> CAR-OTP-00001679, at 000008, lines 221-233.

<sup>96</sup> CAR-OTP-00001678, at 000024-000027, lines 746-851, at 000033, lines 1050-1077; CAR-OTP-00001682, at 000002, lines 27-29.

<sup>97</sup> CAR-OTP-00001678, at 000028, lines 895-906.

<sup>98</sup> CAR-OTP-00001678, at 000034, lines 1079-1085.

<sup>99</sup> CAR-OTP-00001678, at 000036, lines 1166-1173.

<sup>100</sup> CAR-OTP-00001678, at 000037-000038, lines 1203-1222.

<sup>101</sup> CAR-OTP-00001681, at 000021, lines 666-687.

<sup>102</sup> CAR-OTP-00001682, at 000002-000003, lines 32-36.

<sup>103</sup> See CAR-OTP-2130-4051. See also CAR-OTP-2127-8340; CAR-OTP-2127-8525; CAR-OTP-2134-2700.

day of testimony that the Witness started deviating from his Prior Recorded Testimony.

65. The Chamber notes that, upon questioning by the Prosecution after his testimony, the Witness denied having been personally interfered with or directly influenced in relation to his testimony.<sup>104</sup> The Witness also denied, under oath before the Chamber, having been approached by anyone in relation to his testimony.<sup>105</sup> However, the Chamber is of the view that this does not alter its conclusion with regard to the interference with the witness's testimony.
66. First, the Chamber recalls that Rule 68(2)(d) of the Rules is one measure available within the statutory framework to address potential witness interference and preserve the integrity of the proceedings. Assuming a witness was subject to improper interference, the likelihood of such a person openly admitting to such interference is close to nil. As such, if Rule 68(2)(d) of the Rules were applicable only in cases where a witness explicitly admits to having been interfered with, its field of application would be extremely limited, perhaps even non-existent, and its insertion as an amendment to the original Rule 68 of the Rules pointless. Yet, this was clearly not in the mind of the drafters.<sup>106</sup>
67. Second, as outlined above, the Witness was clear in indicating that the incidents [REDACTED] and him being confronted with his upcoming testimony being rumoured about [REDACTED] were of significant concern to him. These concerns were clearly of a nature to intimidate the Witness, as he was [REDACTED].
68. Third, the Chamber observed an obvious change in the attitude of the Witness, comparing his appearance on the first and second day of testimony. In the observation of the Chamber when seeing the witness on the stand, on his first day of testimony the witness appeared friendly and answered questions openly. The witness's demeanour on his second day of testimony was strikingly different, with the witness appearing closed and clearly feeling uncomfortable. In the

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<sup>104</sup> CAR-OTP-00001681, at 000002-000003, lines 31-34; CAR-OTP-00001685, at 000002, lines 19-29.

<sup>105</sup> T-022, p. 20, lines 5-17; T-023, p. 79, line 1 – p. 81, line 20.

<sup>106</sup> See also Working Group Report, ICC-ASP/12/37/Add.1, Annex II.A, para. 34.

Chamber's view, the witness's forthcoming manner at the beginning stood in stark contrast to his reluctance thereafter, making it clear that the Witness had changed his disposition in relation to his testimony. As pointed out above, it was on the second day of his testimony that the Witness was asked more detailed questions in particular about Mr Ngaïssona.<sup>107</sup>

69. The Chamber emphasises that, for the purposes of determining whether a failure of a witness to give evidence has been materially influenced by improper interference, said interference may be indirect.<sup>108</sup> In the case of the Witness, the Chamber is of the view that the interference was both direct, through him being confronted by others with information circulating [REDACTED] about him testifying 'against Ngaïssona', and indirect [REDACTED].
70. The Chamber further recalls that interference under Rule 68(2)(d) of the Rules need not be attributable to the accused.<sup>109</sup>
71. The Chamber is further of the view that the Witness's failure to testify on material aspects was 'materially' influenced by the improper interference. Initially, the Witness affirmed, at the beginning of his testimony, that his Prior Recorded Testimony was correct and contained his truthful recollection. Yet, he failed to testify in relation to material aspects in his Prior Recorded Testimony with regard to the one person who he was rumoured to be testifying 'against' – Mr Ngaïssona. The answers proffered by the Witness, when asked for explanations of the discrepancies, were inconclusive and inconsistent, at best. At the same time, the Witness did not fail to testify on other material aspects contained in his Prior Recorded Testimony, such as a meeting in Yaoundé in April 2013 which, according to the Witness, was not attended by Mr Ngaïssona.<sup>110</sup> Taking these factors into account, the Chamber is satisfied that, had it not been for the improper interference, the Witness's testimony concerning the material aspects identified above would have been substantially different.

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<sup>107</sup> See paragraph 53 above.

<sup>108</sup> See paragraph 19 above.

<sup>109</sup> See paragraph 20 above.

<sup>110</sup> T-022, p. 81, line 13 – p. 85, line 20; T-023, p. 13, line 25 – p. 15, line 20 *compare with* First Statement, CAR-OTP-2061-1534, at 1540-41, paras 34-38.



72. In light of the above, the Chamber is satisfied that the Witness, in his failure to give evidence with respect to material aspects included in his Prior Recorded Testimony, was materially influenced by improper interference.

3. *Whether reasonable efforts have been made to secure from the Witness all material facts known*

i. *Submissions*

73. The Prosecution argues that in the course of its questioning of the Witness, it addressed several discrepancies, and that ‘the witness consistently testified at substantial variance’ with his Prior Recorded Testimony.<sup>111</sup> In the Prosecution’s submission, Rule 68(2)(d) of the Rules does not require that every portion of the prior recorded testimony be specifically put to a witness, ‘even more so where, as here, the overarching and core evidentiary issues are clear and have been directly addressed’.<sup>112</sup>

74. The Yekatom Defence submits that the requirement for the Prosecution to make ‘reasonable efforts’ to secure from the witness all material facts known is ‘self-evidently unmet’ as concerns ‘all material facts relating to Mr. Yekatom’.<sup>113</sup> According to the Yekatom Defence, allegations as to Mr Yekatom’s acts and conduct contained in the Prior Recorded Testimony were not elicited from the Witness, ‘nor was the topic of Mr Yekatom broached in any meaningful way’.<sup>114</sup>

75. The Ngaïssona Defence does not address whether the Prosecution made reasonable efforts to secure from the Witness all material facts.<sup>115</sup>

ii. *Chamber’s determination*

76. The Chamber notes that in the course of his questioning by Prosecution counsel, the Witness was asked on several occasions about apparent discrepancies

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<sup>111</sup> Request, ICC-01/14-01/18-1971-Conf, para. 66.

<sup>112</sup> Request, ICC-01/14-01/18-1971-Conf, para. 67.

<sup>113</sup> Yekatom Defence Response, ICC-01/14-01/18-1994-Conf, para. 21.

<sup>114</sup> Yekatom Defence Response, ICC-01/14-01/18-1994-Conf, para. 19.

<sup>115</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 5.

between his in-court evidence and his Prior Recorded Testimony.<sup>116</sup> In fact, the Prosecution even requested the Chamber to admonish the Witness and remind him of his obligation to tell the truth under oath, with reference to Article 70 of the Statute, stating that it was ‘well-established’ that the Witness had impeached himself.<sup>117</sup> The Presiding Judge reminded the Witness of his obligation to tell the truth, and that it is an offence should he not do so, stating:<sup>118</sup>

Yet, especially, Mr Witness, with regard to the fact that on Friday morning, being asked by the Prosecutor if you had the chance to reread the transcripts of these two statements that you gave previously to the Prosecution, you said yes, and then you have – you have been asked if they are correct and then you said yes with regard to that. And looking today that there are differences, I would – on behalf of the Chamber I would ask you to reflect upon this and indeed would remind you that you have to tell us the truth and nothing but the truth and that it is a – an offence under the Statute if you don’t do that.

The Presiding Judge also enquired with the Witness about apparent inconsistencies on more than one occasion,<sup>119</sup> including by pointing out the following:

Mr Witness, let me be blunt a little bit. According to the statement, this paragraph 115 I cited, you saw Mr Ngaïssona there. Now you say you didn’t see him. This is not a tiny error. You know, there is an accused in detention, perhaps including because of such a statement, and now you’re saying you didn’t see him. So, actually, it is difficult to qualify these matters, these kind of things, as tiny errors.<sup>120</sup>

77. The Chamber considers that the Prosecution did not pose any meaningful questions as concerns Mr Yekatom. However, it will assess the impact thereof in the context of assessing whether the introduction of the Prior Recorded Testimony, to the extent it concerns matters going to proof of Mr Yekatom’s acts and conduct, is prejudicial to or inconsistent with his rights.

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<sup>116</sup> See T-023, p. 5, line 23 – p. 7, line 11, p. 27, line 14 – p. 29, line 10, p. 48, line 16 – p. 51, line 1, p. 54, line 13 – p. 56, line 12, p. 63, line 5 – p. 64, line 16, p. 65, line 19 – p. 66, line 16, p. 67, line 3 – p. 68, line 25.

<sup>117</sup> T-023, p. 82, lines 9-15.

<sup>118</sup> T-023, p. 82, line 16 – p. 83, line 1.

<sup>119</sup> See T-023, p. 26, line 21 – p. 27, line 5, p. 38, lines 14-21, p. 39, line 13 – p. 43, line 2, p. 46, line 12 – p. 47, line 11. See also T-023, p. 47, line 19 – p. 48, line 2.

<sup>120</sup> T-023, p. 41, lines 16-21.

78. The Chamber is therefore satisfied that reasonable efforts were made to secure from the Witness all material facts known to him.

4. *Whether the interests of justice are best served by the Prior Recorded Testimony being introduced*

i. *Submissions*

79. The Prosecution argues that the interests of justice ‘weigh substantially in favour’ of introducing the Prior Recorded Testimony.<sup>121</sup> It submits that (i) Article 69(3) of the Statute authorises a Chamber to take into account all evidence it considers necessary for the determination of the truth, including prior statements that are inconsistent with a witness’s trial testimony;<sup>122</sup> (ii) the Defence had sufficient opportunity to examine the Witness on the material aspects of the Prior Recorded Testimony, and although the Defence may have strategically elected not to do so given the Witness’s ‘disposition’, this does not amount to the diminution or deprivation of a procedural right or opportunity;<sup>123</sup> (iii) a substantial amount of the evidence in the Prior Recorded Testimony is corroborated;<sup>124</sup> (iv) Rule 68(2)(d) of the Rules does not require that a link between the improper interference and the accused is established, and that, in this context, introduction is not unfairly prejudicial in light of the ‘substantial countervailing interests in preserving the integrity of the trial proceedings’;<sup>125</sup> and (v) in any event introduction of the Prior Recorded Testimony ‘manifestly’ serves the interests of Rule 68(2)(d) of the Rules, addressing the highly deleterious impact of interfering conduct on the Court’s proceedings.<sup>126</sup>

80. The Yekatom Defence submits that the Prosecution not seeking to introduce the Prior Recorded Testimony in a timely manner is contrary to the interests of justice, as timely introduction ‘would have mitigated the prejudice inherent in introduction of the [Prior Recorded Testimony], including by allowing the

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<sup>121</sup> Request, ICC-01/14-01/18-1971-Conf, para. 71.

<sup>122</sup> Request, ICC-01/14-01/18-1971-Conf, para. 72.

<sup>123</sup> Request, ICC-01/14-01/18-1971-Conf, para. 72.

<sup>124</sup> Request, ICC-01/14-01/18-1971-Conf, para. 73.

<sup>125</sup> Request, ICC-01/14-01/18-1971-Conf, para. 74.

<sup>126</sup> Request, ICC-01/14-01/18-1971-Conf, para. 75.

Defence to examine other witnesses on certain material aspects'.<sup>127</sup> According to the Yekatom Defence, the untimeliness of the Request deprives the Defence of the opportunity to mitigate prejudicial extracts of the Prior Recorded Testimony.<sup>128</sup>

81. The Ngaïssona Defence argues that the interests of justice would not be served by the introduction of the Prior Recorded Testimony since (i) Rule 68(2)(d)(iv) of the Rules 'specifically cautions against the use of the rule in matters that pertain to the acts and conduct of the accused';<sup>129</sup> (ii) introducing a Rule 111 statement is highly problematic and inconsistent with the principle of orality enshrined in Article 69(2) of the Statute;<sup>130</sup> (iii) introduction of the Prior Recorded Testimony would unduly infringe on the accused's right to remain silent under Article 67(1)(g) of the Statute or their right to cross-examine witnesses under Article 67(1)(e) of the Statute;<sup>131</sup> (iv) the Defence did not have the opportunity to meaningfully examine the Witness, and since he categorically denied the accuracy of his Prior Recorded Testimony, it did not serve a purpose for the Defence to go fully through it;<sup>132</sup> (v) its introduction is not consistent with the submission regime;<sup>133</sup> and (vi) the integrity of the proceedings would not be preserved because the Request is manifestly incapable of showing any interference on the Witness's testimony caused by Mr Ngaïssona or anyone close to him.<sup>134</sup> The Ngaïssona Defence requests that, should the Chamber grant the Request, the Witness be recalled for the Defence to examine him on the material aspects in his Prior Recorded Testimony (the 'Request to Recall').<sup>135</sup>

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<sup>127</sup> Yekatom Defence Response, ICC-01/14-01/18-1994-Conf, para. 34.

<sup>128</sup> Yekatom Defence Response, ICC-01/14-01/18-1994-Conf, para. 35.

<sup>129</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 61.

<sup>130</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, paras 62-63.

<sup>131</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 64.

<sup>132</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, paras 64-65.

<sup>133</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 67.

<sup>134</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, paras 68-70.

<sup>135</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 66.

*ii. Chamber's determination*

82. The Chamber recalls that the underlying purpose of Rule 68(2)(d) of the Rules is to provide a means to address potential witness interference and preserve the integrity of the proceedings.<sup>136</sup>
83. At the outset, the Chamber clarifies that it will not address the alleged conduct or activities of any individuals [REDACTED], to the extent such matters are discussed in the various submissions.
84. The Chamber considers that in the case at hand, being satisfied that the failure of the Witness to testify on material aspects included in his Prior Recorded Testimony has been materially influenced by improper interference, introduction of the Prior Recorded Testimony is appropriate and called for under the circumstances to preserve the integrity of the proceedings and is, as such, in the interests of justice.
85. The Chamber's conclusion is not affected by the Yekatom Defence's submission as to the untimeliness of the Request. While the Chamber agrees that the Prosecution could have considered presenting the Request sooner, there was no statutory requirement for it to do so. The Defence will still be in a position to address any aspects it may wish to explore further in the context of other submissions or during the questioning of witnesses it will call in the course of its own presentation of evidence.
86. As for the Ngaïssona Defence arguments according to which the introduction of the Prior Recorded Testimony would be against the interests of justice, the Chamber notes, first, that Rule 68(2)(d)(iv) of the Rules does not prohibit the introduction of a prior recorded testimony which goes to proof of acts and conduct of the accused. Even more so, it was clear in the mind of the drafters of the rule that this factor would have to be interpreted with more flexibility than the comparable requirement under Rule 68(2)(b) of the Rules.<sup>137</sup>

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<sup>136</sup> See paragraph 27 above.

<sup>137</sup> See paragraph 35 above.

87. Second, the Chamber recalls its position as to the nature of ‘prior recorded testimonies’ which may be introduced under Rule 68(2)(d) of the Rules, which, by long-standing jurisprudence, includes statements taken pursuant to Rule 111 of the Rules.<sup>138</sup> The Chamber sees no reason to deviate from this in the current instance.
88. Third, the Chamber considers that the Ngaïssona Defence had sufficient opportunity to question the Witness. As outlined above, both Prosecution counsel and the Presiding Judge pointed out to the Witness, on several occasions, that he seemed to not be testifying in the same manner as in his Prior Recorded Testimony, while having initially affirmed that such testimony was true. In the view of the Chamber, it is clear that both versions cannot be correct. Therefore, the Chamber does not consider that, on this basis, it was sufficient for the Ngaïssona Defence to choose not to further question the Witness and to now argue that it did not have sufficient opportunity to examine the Witness. Clearly, as regards the alleged acts and conduct of Mr Ngaïssona, the Prosecution did try to elicit the relevant incriminating evidence, and the Ngaïssona Defence as such had the opportunity to question the Witness thereon.
89. The Chamber notes in this regard the Request to Recall. Since the Chamber is of the view that the Ngaïssona Defence had sufficient opportunity to question the Witness, the Request to Recall is rejected.
90. Fourth, the Chamber is satisfied that, as outlined above, the failure of the Witness to testify on material aspects in the Prior Recorded Testimony has been materially influenced by improper interference.<sup>139</sup> While linking such interference to an accused or someone close to him may be a factor in determining whether introduction of a prior recorded testimony is in the interests of justice, such a link is not required.<sup>140</sup>

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<sup>138</sup> See paragraph 13 above *referring to* First Rule 68(2)(b) Decision, ICC-01/14-01/18-1833-Corr-Red, para. 23 *with further references*.

<sup>139</sup> See paragraphs 57-72 above.

<sup>140</sup> See paragraph 20 above.

91. The Chamber also notes with concern the information provided by the Prosecution, according to which [REDACTED].<sup>141</sup>
92. Finally, the Chamber considers that, in particular in relation to the parts of the Prior Recorded Testimony discussing the alleged acts and conduct of Mr Ngaïssona, the Chamber has received other evidence relating to these matters. This includes evidence discussing (i) whether the youth manning checkpoints established by COCORA were armed;<sup>142</sup> (ii) meetings involving François Bozizé and Mr Ngaïssona at the *Cité du Golf* in Yaoundé;<sup>143</sup> (iii) Mr Ngaïssona allegedly providing funds to the emerging Anti-Balaka while in Yaoundé;<sup>144</sup> and (iv) Mr Ngaïssona allegedly giving instructions to the Anti-Balaka in 2013.<sup>145</sup>
93. In conclusion, the Chamber is satisfied that the interests of justice are best served by the Prior Recorded Testimony being introduced.

5. *Whether the Prior Recorded Testimony has sufficient indicia of reliability*

i. *Submissions*

94. The Prosecution argues that (i) the Prior Recorded Testimony satisfies the Formal Requirements; (ii) the Witness reaffirmed its truthfulness and accuracy under oath; and (iii) the narrative provided by the Witness in his 2017 and 2020 statements is fully consistent.<sup>146</sup>
95. The Ngaïssona Defence does not contest that the formal requirements of taking the Witness's statement were met but submits that this 'does not translate to the

<sup>141</sup> See CAR-OTP-2130-4051; CAR-OTP-00000077; CAR-OTP-00000084.

<sup>142</sup> See P-0884: T-054, p. 35, lines 7-18; P-0291 Statement, CAR-OTP-2024-0036, at 0056-57, para. 130.

<sup>143</sup> See P-2673 Statement, CAR-OTP-2127-6435, at 6442-43, paras 44-48, at 6449, para. 86; P-0801: T-034, p. 27, line 6 – p. 29, line 29; T-037, p. 73, line 4 – p. 76, line 19; T-038, p. 29, line 1 – p. 30, line 7.

<sup>144</sup> See P-2673 Statement, CAR-OTP-2127-6435, at 6443, paras 53-54, at 6444, para. 56, at 6449, para. 90, at 6450, para. 94; P-2673: T-041, p. 18, line 20 – p. 20, line 7; T-042, p. 30, line 6 – p. 31, line 4; P-2841 Statement, CAR-OTP-2127-4238, at 4253-54, paras 87-90; P-2841: T-029, p. 42, lines 3-25; T-030, p. 15, lines 9-13, p. 25, line 17 – p. 26, line 4; P-2625: T-189, p. 10, line 13 – p. 11, line 11.

<sup>145</sup> See P-2673 Statement, CAR-OTP-2127-6435, at 6442, para. 44; P-0801: T-034, p. 58, line 17 – p. 59, line 9; T-037, p. 87, line 3 – p. 89, line 6.

<sup>146</sup> Request, ICC-01/14-01/18-1971-Conf, paras 68-70.

Defence conceding to the statements' reliability, which is outside the scope of the present response'.<sup>147</sup>

*ii. Chamber's determination*

96. The Chamber does not, at this stage, consider it necessary to assess the reliability of the substance of the information contained in the Prior Recorded Testimony. Due to the fact that introduction of the Prior Recorded Testimony is discussed on the basis of the premise that the Witness 'failed to testify to a material aspect' included therein due to improper interference, the Chamber considers that it would defeat the purpose of the Rule to exclude introduction of such statement if inconsistencies between an in-court testimony and a prior recorded testimony are identified.
97. However, the Chamber is satisfied that the Prior Recorded Testimony has sufficient indicia of reliability by fulfilling the Formal Requirements.

*6. Whether the Prior Recorded Testimony concerns the acts and conduct of the accused and whether introduction of the Prior Recorded Testimony is prejudicial to or inconsistent with the rights of the accused*

*i. Submissions*

98. The Yekatom Defence submits that the Prosecution's claim as to the Defence's opportunity to examine the Witness is 'without merit'.<sup>148</sup> According to the Yekatom Defence, its decision not to cross-examine the Witness was not based on his purported 'disposition', but rather on the fact that the Prosecution did not elicit any evidence in relation to Mr Yekatom.<sup>149</sup> The Yekatom Defence argues that introduction of the paragraphs of the Prior Recorded Testimony concerning the acts and conduct of Mr Yekatom and certain chapeau elements would be contrary to the fairness of the proceedings and Mr Yekatom's right to examine witnesses brought against him.<sup>150</sup>

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<sup>147</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, para. 5.

<sup>148</sup> Yekatom Defence Response, ICC-01/14-01/18-1994-Conf, paras 25-26.

<sup>149</sup> Yekatom Defence Response, ICC-01/14-01/18-1994-Conf, paras 27-29.

<sup>150</sup> Yekatom Defence Response, ICC-01/14-01/18-1994-Conf, paras 30-33.



ii. *Chamber's determination*

99. The Chamber notes that the Prior Recorded Testimony makes extensive reference to the alleged acts and conduct, in particular, of Mr Ngaïssona and, to a more limited extent of Mr Yekatom.<sup>151</sup>
100. At the outset, the Chamber recalls that the fact that the Prior Recorded Testimony refers to the acts and conduct of the accused is no absolute bar to its introduction.<sup>152</sup>
101. Turning to the references to the alleged acts and conduct of Mr Yekatom, the Chamber notes that the Appeals Chamber has found that in cases in which witnesses recant their prior recorded testimony and incriminating evidence is not elicited by the calling party, even if the accused had an opportunity to question these witnesses, such questioning does not amount to meaningful cross-examination.<sup>153</sup> The Chamber further notes that the only information concerning Mr Yekatom elicited by the Prosecution in its questioning was limited to asking the Witness whether he knew Mr Yekatom and whether he was in contact with him at the relevant time.<sup>154</sup>
102. Bearing in mind the Appeals Chamber's position, the Chamber is of the view that relying on the paragraphs in the Prior Recorded Testimony which mention alleged acts and conduct of Mr Yekatom would be unduly prejudicial to the accused. The Chamber therefore will not rely on CAR-OTP-2061-1534, paragraphs 120, 131, 174, 181, 183 and 190 and CAR-OTP-2122-8251, paragraphs 29 and 137, for the purposes of establishing Mr Yekatom's acts and conduct. However, the Chamber does not consider Mr Yekatom to be similarly prejudiced by the Chamber

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<sup>151</sup> See paragraphs 39-40 above.

<sup>152</sup> See paragraphs 34-35 above.

<sup>153</sup> Appeals Chamber, *The Prosecutor v. William Samoei Ruto & Joshua Arap Sang*, Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V(A) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony", 12 February 2016, ICC-01/09-01/11-2024, para. 93.

<sup>154</sup> See T-022, p. 22, lines 5-7, 12-14.

potentially relying on the paragraphs containing information on the ‘chapeau elements of the crimes charged’.<sup>155</sup>

103. At the same time, the situation as regards references to the alleged acts and conduct of Mr Ngaïssona can be distinguished. As outlined above, the Prosecution attempted to elicit relevant incriminating information as regards Mr Ngaïssona also contained in the Prior Recorded Testimony.<sup>156</sup> Prosecution counsel, and at times the Presiding Judge, confronted the Witness with relevant extracts of the Prior Recorded Testimony when the Witness’s answers in court deviated from the content of the Prior Recorded Testimony.<sup>157</sup> It was clear and unambiguous from such questioning that while the Prosecution tried to elicit the relevant evidence, the Witness plainly failed to give evidence on material aspects, as outlined above. The essential difference in information given by the Witness while in court and in his Prior Recorded Testimony, as well as the repeated seeking of explanations for such differences by both the Prosecution and the Presiding Judge left no doubt as to what the material aspects at issue were, and that they concerned the incriminating evidence the Prosecution attempted to elicit. As such, the Chamber finds that the Ngaïssona Defence was put in a position to fully and meaningfully question the Witness.<sup>158</sup>
104. In any event, in the context of its deliberations on the judgment pursuant to Article 74 of the Statute, the Chamber will weigh the probative value and reliability of the Prior Recorded Testimony, considering the nature of the evidence provided by the Witness, any references to the acts and conduct of the accused, and whether the evidence contained in the Prior Recorded Testimony is corroborated by any other evidence submitted before the Chamber.<sup>159</sup>

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<sup>155</sup> See Yekatom Defence Response, ICC-01/14-01/18-1994-Conf, paras 30-33.

<sup>156</sup> See paragraph 48 above.

<sup>157</sup> See paragraph 49 above.

<sup>158</sup> See also paragraph 88 above.

<sup>159</sup> See also *Ruto & Sang* Rule 68 Decision, ICC-01/09-01/11-1938-Corr-Red2, para. 60. See also para. 81.

105. In light of these considerations, the Chamber considers that the introduction of the Prior Recorded Testimony is not prejudicial to or inconsistent with the rights of the accused.
106. Accordingly, the Chamber grants the introduction of the Witness's statements<sup>160</sup> and associated items<sup>161</sup> pursuant to Rule 68(2)(d) of the Rules.

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<sup>160</sup> First Statement, CAR-OTP-2061-1534; CAR-OTP-2107-0102 (Translation); Second Statement, CAR-OTP-2122-8251.

<sup>161</sup> CV, CAR-OTP-2061-1576; Passport, CAR-OTP-2061-1578.

**FOR THESE REASONS, THE CHAMBER HEREBY**



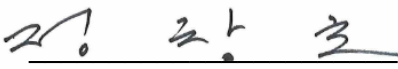
**DECIDES** that the Prior Recorded Testimony of the Witness, consisting of the First Statement, CAR-OTP-2061-1534 and associated items CAR-OTP-2061-1576 and CAR-OTP-2061-1578, with translation CAR-OTP-2107-0102, and the Second Statement, CAR-OTP-2122-8251, is introduced into evidence pursuant to Rule 68(2)(d) of the Rules. However, it will not rely on the First Statement, CAR-OTP-2061-1534, paragraphs 120, 131, 174, 181, 183 and 190 and the Second Statement, CAR-OTP-2122-8251, paragraphs 29 and 137, for the purposes of establishing Mr Yekatom's acts and conduct;

**REJECTS** the Request to Recall;

**REMINDS** the Prosecution of its directions to publish public redacted versions of the Prior Recorded Testimony; and

**ORDERS** the Prosecution, the Yekatom Defence and the Ngaïssona Defence to file public redacted versions of the Request, ICC-01/14-01/18-1971-Conf, the Yekatom Defence Response, ICC-01/14-01/18-1994-Conf, and the Ngaïssona Defence Response, ICC-01/14-01/18-2026-Conf, respectively, within one week of notification of the present decision.

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

 <hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Péter Kovács</b></p>	 <hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Bertram Schmitt</b>  <b>Presiding Judge</b></p>	 <hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Chang-ho Chung</b></p>
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Dated 31 October 2023

At The Hague, The Netherlands