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**International
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Court**

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Date: 10 May 2024

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 with CONFIDENTIAL ANNEXES A, B & C

**Public Redacted Version of
'Consolidated Ngaißsona Defence Request for Formal Submission of Prior
Recorded Testimonies of Defence Witnesses P-4608 and P-4496 pursuant to Rule
68(3) of the Rules' (ICC-01/14-01/18-2360-Conf), filed on 13 February 2024**

Source: Defence of Patrice-Edouard Ngaißsona

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

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I. INTRODUCTION

1. Pursuant to Rule 68(3) of the Rules of Procedure and Evidence (the “Rules”), the Defence of Mr Ngaïssona (the “Defence”) hereby requests Trial Chamber V (the “Chamber”) to introduce the prior recorded testimonies and associated exhibits of P-4608 (“P-4608’s Proposed Evidence”) and P-4496 (“P-4496’s Proposed Evidence”), which together constitute the “Request”.
2. The prior recorded statements are relevant and cumulative of other evidence on the record, evidence submitted by the Prosecution as well as the Defence, and satisfy the requirements of Rule 68(3).
3. Were the Chamber to grant the Request, the Defence estimates that it will require 8 hours with witness P-4608, and 6 hours with witness P-4496 from the 9 hours originally estimated, thus reducing the number of hours of in-court examination.

II. CONFIDENTIALITY

4. The Request and its annexes are classified as “confidential” as they relate to evidence disclosed confidentially and proposed by Defence Witnesses whose identities need to remain confidential, at least for the time being. A public redacted version of the Request will be filed in due course.

III. PROCEDURAL HISTORY

5. On 16 October 2020, the Chamber issued its “Decision on the Prosecution Extension Requests and Initial Guidance on Rule 68 of the Rules”,¹ wherein it provided general guidance on the recourse of Rule 68(3) of the Rules and ordered, *inter alia*, the Prosecution “to submit its Rules 68(3) applications latest 45 days before the scheduled date of a witness’s testimony”.²

¹ ICC-01/14-01/18-685.

² *Ibid.*, para. 19.

6. On 10 March 2021, the Chamber issued its “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 [...]”³ (the “First Decision”) wherein it set out the applicable law on Rule 68(3) of the Rules.⁴
7. On 29 May 2023, the Chamber issued its “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)”⁵ whereby it set the deadline for the Defence to file its applications pursuant to Rule 68(2) and (3) of the Rules to 17 November 2023.⁶
8. On 1 November 2023, the Chamber partly granted the Defence Request for Extension of Time,⁷ and instructed, *inter alia*, the Defence to disclose the statements of its witnesses and file their corresponding applications pursuant to Rule 68(2) and (3) of the Rules until no later than 15 December 2023.⁸
9. On 17 November 2023, the Defence submitted its Final Witness List, indicating that it intended to have P-4496 testify under Rule 68(3) of the Rules⁹ whereas P-4608 would testify *viva voce*.¹⁰
10. On 12 December 2023, the Defence filed an “Urgent Consolidated Ngaïssona Defence request to extend the time limit for the submission of Rule 68(3) applications [...]”, requesting to submit its Rule 68(3) applications not less than 45

³ ICC-01/14-01/18-907-Red.

⁴ *Ibid.*, paras 8-16.

⁵ ICC-01/14-01/18-1892.

⁶ *Ibid.*, para. 21.

⁷ Defence Request pursuant to Regulation 35 to vary the time limit, ICC-01/14-01/18-2157-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence (confidential redacted version notified the same day, ICC-01/14-01/18-2157-Conf-Red) (with one confidential annex); Decision on the Ngaïssona Defence Request for Extension of Time, ICC-01/14-01/18-2181.

⁸ ICC-01/14-01/18-2181, paras 8-9.

⁹ ICC-01/14-01/18-2215-Conf-Anx1, p. 10, entry 14.

¹⁰ *Ibid.*, p. 13, entry 17.

days before the witnesses are scheduled to appear.¹¹ Additionally, the Defence submitted that, upon reassessment of its presentation of evidence, it “would be in the interest of the expediency of the proceedings to introduce D30-P-4608’s [...] prior recorded testimonies under Rule 68(3)”.¹²

11. On 14 December 2023, the Chamber granted the above extension request.¹³

IV. APPLICABLE LAW

12. The Defence incorporates by reference the applicable law set out by the Chamber in its First Decision.

V. SUBMISSIONS

A. P-4608’s Prior Recorded Testimony fulfils the requirements set out under Rule 68(3) of the Rules

13. The Defence seeks the introduction of P-4608’s written statement and associated exhibits. P-4608 is a fact witness. His statement is 15-page long and was signed by the witness and provided to the Defence on [REDACTED] (Confidential Annex A).¹⁴ The witness will attest to its accuracy and will be available for in-court examination by the Prosecution, the Participants, the Defence for Mr Yekatom, and the Chamber.

14. Were the Chamber to grant the Request, the Defence estimates that it will take approximately 8 hours to examine the witness. As mentioned above, the Defence reassessed P-4068’s proposed evidence and the time it needed to examine said evidence before the Chamber. Upon reassessment, a *viva voce* testimony would require the Defence to significantly exceed its initial estimation for examination as provided in its 17 November 2023 Final Witness List. Therefore, the sought change

¹¹ ICC-01/14-01/18-2256-Conf.

¹² *Ibid.*, para. 9.

¹³ ICC-01/14-01/18-2264.

¹⁴ CAR-D30-0017-0004-R01, at 0004.

in mode of testimony would allow the Defence to observe its initial estimate of 8 hours.

15. The Defence submits that the Chamber should grant the Defence's request to introduce P-4608's Proposed Evidence for the reasons substantiated below.

16. P-4608 is a [REDACTED].¹⁵ P-4608 was [REDACTED] during the Relevant Period, and [REDACTED]. P-4608's prior recorded testimony establishes, *inter alia*, the following :

- P-4608 describes the relationship between the Christians and Muslims in BOSSANGOA prior to the conflict and the sudden change in that relationship after the arrival of the Seleka;¹⁶
- P-4608 discusses the arrival of the Seleka in the OUHAM region, including BOSSANGOA, and the crimes they committed in the region from early 2013;¹⁷
- P-4608 recounts the life in BOSSANGOA under the Seleka occupation, notably the absence of State authorities and the location of Seleka's bases in town. Additionally, the witness discusses the difference of treatment between the Christians who were persecuted, and the Muslims who were under the protection, or were accomplices of the Seleka;¹⁸
- P-4608 explains the origins of the Seleka and describes their attire;¹⁹
- P-4608 recounts [REDACTED] following the arrival of the Seleka and the 5 December attack;²⁰
- P-4608 discusses [REDACTED];²¹

¹⁵ *Ibid.*, para. 8.

¹⁶ *Ibid.*, paras 12-13.

¹⁷ *Ibid.*, paras 14-16.

¹⁸ *Ibid.*, paras 17-21, 24-26, 28-29, 31-39 and 47.

¹⁹ *Ibid.*, para. 40.

²⁰ *Ibid.*, paras 23, 44, and 76-77.

²¹ *Ibid.*, paras 42-51.

- P-4608 explains the emergence of self-defence groups in the OUHAM region that were later known as the Anti-Balaka, their origins and motivations, and describes their attire;²²
- P-4608 discusses the various but uncoordinated offensives in the OUHAM region, and the September 2013 attack on BOSSANGOYA;²³
- P-4608 discusses the 5 December 2013 attack on BOSSANGOYA, the roles played by the Seleka, the Anti-Balaka and the FOMAC, including the attack [REDACTED]. The witness also describes the aftermath of the attack;²⁴
- P-4608 explains the reasons behind the voluntary departure of the Muslim population from BOSSANGOYA.²⁵

17. *First*, P-4608's written statement constitutes a prior recorded testimony pursuant to Rule 68(3) of the Rules. In this regard, the Defence recalls that :

“[a] statement can be considered prior recorded testimony if the person when providing the statement understands that they are ‘providing information which may be relied upon in the context of legal proceedings’. This is the case when the person is questioned in the capacity of a witness in the context of or in anticipation of legal proceedings.”²⁶

P-4608's written statement meets the above criteria as the witness i) was explained the context of his interview with the Defence;²⁷ ii) understood that his statement would be used in the context of the proceedings brought against Mr Ngaissona;²⁸ and iii) understood that the Defence may call him to testify in the present case and agreed to it.²⁹ The witness will be available to confirm his agreement to the introduction of his statement pursuant to Rule 68(3) and to confirm that it

²² *Ibid.*, paras 52-56.

²³ *Ibid.*, paras 57-65.

²⁴ *Ibid.*, paras 66-75.

²⁵ *Ibid.*, paras 83-84

²⁶ ICC-01/14-01/18-907-Red, para. 11.

²⁷ CAR-D30-0017-0004-R01, para. 3.

²⁸ *Ibid.*, at 0018 under “*ATTESTATION DU TEMOIN*”.

²⁹ *Ibid.*, para. 98.

accurately reflects what he said to the Defence team of Mr Ngaïssona in [REDACTED]. P-4608's written statement therefore constitutes a prior recorded testimony under Rule 68(3) of the Rules.

18. The witness was formally interviewed by the Defence team on [REDACTED] and the statement was read back to the witness on [REDACTED]. The interviews and statement were conducted and read in French, a language that the witness understands perfectly. Associate Counsel was present on every interviews and for the signature of the statement. The witness signed the statement and initialled every page of the statement, as well as the team members of the Defence that were present during the signature of the statement. The witness signed a certification attesting that the proposed evidence was provided voluntarily and represents the truth to the best of her recollection and knowledge.
19. The proposed statement is relevant and probative. The proposed evidence goes to charges against Mr Ngaïssona, to the context of the creation of the Anti-Balaka, the crimes committed against the civilian population in BOSSANGO by the elements of the Seleka. The witness does not personally know Mr Ngaïssona. His statement is internally coherent and consistent and the witness distinguishes the facts that he witnessed directly from what he heard from other people.
20. *Second*, the Defence recalls that :

“The notion of ‘prior recorded testimony’ also includes any annex to a witness statement, or document otherwise associated with it, as long as it is used or explained by the witness in their statement and thereby forms an integral part of the testimony itself”.³⁰

The Defence hereby tenders 453 associated exhibits for formal submission, as set out in Confidential Annex B. The associated exhibits are composed of

³⁰ ICC-01/14-01/18-907-Red, para. 13.

[REDACTED]³¹ [REDACTED]. As detailed below, the associated exhibits form an integral part of P-4608's prior recorded testimony.

21. The photographs depict the aftermath of the crimes committed by the Seleka, [REDACTED], and [REDACTED], and about which he provided explanations in his statement.³² As such, the selection of photographs form an integral part of P-4608's prior recorded testimony.
22. The [REDACTED] not only [REDACTED], but also [REDACTED]. As [REDACTED] during the relevant period,³³ P-4608's expected testimony will be uniquely centred around [REDACTED] of BOSSANGO. As such, [REDACTED] are essential to, and form an integral part of P-4608's prior recorded testimony.
23. *Third*, the Defence recalls that :

“[s]everal factors may guide the Chamber's decision to allow the introduction of such testimony. For example, depending on the relevant circumstances, the Chamber may consider, *inter alia*, whether the evidence relates to issues that are not materially in dispute, whether the evidence is not central to core issues in the case or whether it is corroborative of other evidence.”³⁴

The Defence further recalls that the above factors are not requirements nor are they determinative of the introduction of a prior recorded testimony under Rule 68(3) of the Rules.³⁵ P-4608's prior recorded testimony is nonetheless relevant, probative and corroborated by other evidence available in the case record.

³¹ P-4608 also provided the Defence with [REDACTED], registered under the ERN CAR-D30-0017-000 and disclosed by the Defence to the parties and participants on 24 November 2023 in Trial D30 Evidence Package 52. The Defence will seek the formal submission of CAR-D30-0017-0001 through another procedural avenue.

³² CAR-D30-0017-0004-R01, paras 48 and 97.

³³ CAR-D30-0017-0004-R01, para. 9.

³⁴ ICC-01/14-01/18-907-Red, para. 14.

³⁵ Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled “Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)”, 1 November 2016, ICC-02/11-01/15-744 (the ‘Gbagbo and Blé Goudé Appeals Judgment’), para. 68.

24. Indeed, P-4608's proposed evidence on : *i*) the crimes committed by the Seleka in the OUHAM region is corroborated by, *inter alia*, P-4953,³⁶ P-4514,³⁷ and P-4496;³⁸ *ii*) the location of Seleka bases in BOSSANGO is corroborated by P-4514³⁹, P-4496, P-2049,⁴⁰ and P-2453;⁴¹ *iii*) the absence of State authorities under the Seleka in BOSSANGO is corroborated by P-4496,⁴² P-2049,⁴³ and P-2453;⁴⁴ *iv*) the different treatment of the Muslim and Christian population by the Seleka, the complicity of Muslim civilians with the Seleka and the fact that they were armed is confirmed by the accounts of, *inter alia*, Defence witnesses P-4514,⁴⁵ P-4551,⁴⁶ P-4496,⁴⁷ and P-4953;⁴⁸ *v*) the attires of the Seleka and the Anti-Balaka is corroborated by, *inter alia*, P-4514,⁴⁹ P-4953,⁵⁰ P-4496,⁵¹ P-2049,⁵² P-2453,⁵³ and P-2657;⁵⁴ *vi*) the emergence of the Anti-Balaka in the OUHAM region as self-defence groups and their motivation is corroborated by, *inter alia*, P-4953,⁵⁵ and P-4514,⁵⁶ and *vii*) [REDACTED] is corroborated by P-4496⁵⁷ and P-[REDACTED].⁵⁸

B. P-4496's Prior Recorded Testimony fulfils the requirements set out under Rule 68(3) of the Rules

³⁶ CAR-D30-0026-0001-R01, paras 8-18.

³⁷ CAR-D30-0025-0001-R01, l. 376-386.

³⁸ CAR-D30-0022-0001-R02, paras 32-36.

³⁹ CAR-D30-0025-0001-R01, l. 319-330.

⁴⁰ ICC-01/14-01/18-T-102-CONF-ENG ET, p. 15, l. 11 – p. 20 l. 14.

⁴¹ ICC-01/14-01/18-T-137-CONF-ENG ET, p. 13, l. 7-25.

⁴² CAR-D30-0022-0001-R02, paras 20 and 25

⁴³ ICC-01/14-01/18-T-103-CONF-ENG ET, p. 50, l. 13-16.

⁴⁴ ICC-01/14-01/18-T-137-CONF-ENG ET, p. 13, l. 2-5.

⁴⁵ CAR-D30-0025-0001-R01, l. 364 – 374, 426-440, and 463-481.

⁴⁶ CAR-D30-0021-0001-R01, para. 8.

⁴⁷ CAR-D30-0022-0001-R02, paras 15-16 and 21-24.

⁴⁸ CAR-D30-0026-0001-R01, paras 15-18.

⁴⁹ CAR-D30-0025-0001-R01, l. 332-336.

⁵⁰ CAR-D30-0026-0001-R01, para. 12.

⁵¹ CAR-D30-0022-0001-R02, paras 17-19.

⁵² ICC-01/14-01/18-T-102-CONF-ENG ET, p. 12, l. 10-21.

⁵³ ICC-01/14-01/18-T-137-CONF-ENG ET, p. 10, l. 2-6.

⁵⁴ ICC-01/14-01/18-T-105-CONF-ENG ET, p. 12, l. 2-16.

⁵⁵ CAR-D30-0026-0001-R01, paras 34-35.

⁵⁶ CAR-D30-0025-0001-R01, l. 1127-1132.

⁵⁷ CAR-D30-0022-0001-R02, para. 31.

⁵⁸ CAR-D30-[REDACTED], l. 585-602, l. 754-776.

25. P-4496 is a fact witness. Her statement is 10-page long, and was signed by the witness and provided to the Defence on [REDACTED] (Confidential Annex C).⁵⁹ The witness will attest to its accuracy and will be available for in-court examination by the Prosecution, the Participants, the Defence for Mr Yekatom, and the Chamber.

26. P-4496 is expected to testify on the following:

- P-4496 is [REDACTED] in BOSSANGOA.⁶⁰
- P-4496 describes the peaceful relationship between Christians and Muslims in BOSSANGOA prior to the conflict;⁶¹
- P-4496 recounts the arrival of the Seleka in BOSSANGOA,⁶² and the incidents that happened following their arrival;⁶³
- P-4496 explains the Seleka's characteristics, detailing their attire and weaponry;⁶⁴
- P-4496 recounts life in BOSSANGOA under the Seleka's occupation, notably how the Seleka replaced the local authorities,⁶⁵ recruited people from BOSSANGOA to join them,⁶⁶ including Mahamat BICHARA and Fadil GARA,⁶⁷ and sold weapons to Muslims.⁶⁸ P-4496 describes when [REDACTED];⁶⁹
- P-4496 describes how the Christian population was living under the Seleka,⁷⁰ notably how [REDACTED],⁷¹ and then [REDACTED].⁷² P-4496 also describes [REDACTED];⁷³

⁵⁹ CAR-D30-0022-0001-R02.

⁶⁰ CAR-D30-0022-0001-R02, para. 11.

⁶¹ *Ibid*, para. 13.

⁶² *Ibid*, para. 14.

⁶³ *Ibid*, para. 16.

⁶⁴ *Ibid*, paras 17, 18, 19.

⁶⁵ *Ibid*, para. 20.

⁶⁶ *Ibid*, para. 21.

⁶⁷ *Ibid*, para. 28.

⁶⁸ *Ibid*, para. 22.

⁶⁹ *Ibid*, paras 25, 26, 27.

⁷⁰ *Ibid*, para. 29.

⁷¹ *Ibid*, paras 24, 30.

⁷² *Ibid*, paras 29, 30.

⁷³ *Ibid*, para. 31.

- P-4496 discusses the crimes committed by the Seleka,⁷⁴ notably how she and her family were victims of violent acts.⁷⁵ The witness also describes several killings committed by the Seleka;⁷⁶
- P-4496 discusses how [REDACTED], explaining why she did not witness the 5 December 2013 attack on BOSSANGOYA;⁷⁷
- P-4496 recounts [REDACTED]⁷⁸ and meeting with [REDACTED] who explained that there was no more Seleka elements in BOSSANGOYA;⁷⁹
- P-4496 explains not knowing Mr Ngaïssona personally but remembers seeing him once in 2016.⁸⁰ Additionally, P-4496 recounts being told by an Anti-Balaka element that Mr Ngaïssona asked them not to commit crimes once he was back in Bangui.⁸¹

27. The proposed statement is relevant and probative. The proposed evidence goes to charges against Mr Ngaïssona, to the context of the creation of the Anti-Balaka, the crimes committed against the civilian population in BOSSANGOYA by the elements of the Seleka. The witness does not personally know Mr Ngaïssona. Her statement is internally coherent and consistent. She was present in BOSSANGOYA during the arrival of the Seleka and she distinguishes the facts that she witnessed directly from what she heard from other people.

28. Further, P-4496's proposed evidence is corroborative of other evidence on the record, as set out in paragraph 24 of the Request. The proposed statement is also corroborative of expected Defence evidence and evidence put forward by Prosecution witnesses, such as *i*) the crimes committed by the Seleka in the

⁷⁴ *Ibid*, paras 32-38.

⁷⁵ *Ibid*, paras 33, 34.

⁷⁶ *Ibid*, paras 35-37.

⁷⁷ *Ibid*, para. 39.

⁷⁸ *Ibid*, para. 41.

⁷⁹ *Ibid*, para.42.

⁸⁰ *Ibid*, para. 43.

⁸¹ *Ibid*, para. 44.

OUHAM region;⁸² *ii*) the living conditions before and after the arrival of the Seleka in BOSSANGOA;⁸³ *iii*) the absence of State authorities under the Seleka in BOSSANGOA;⁸⁴ and *iv*) the characteristics of the Seleka.⁸⁵

29. All the requirements of Rule 68(3) of the Rules are met. P-4496 understood that her prior recorded testimony could be used in the context of these legal proceedings.⁸⁶ The witness also understood that she could be called to testify in this case and agreed to it.⁸⁷ The witness will be available to confirm her agreement to the introduction of her statement pursuant to Rule 68(3) and to confirm that it accurately reflects what she said to the Defence team of Mr Ngaïssona on 13 November 2023.

30. The witness was formally interviewed by the Defence team on [REDACTED] and the statement was read back to the witness on [REDACTED], by the same team members who conducted the interview. The statement was translated in a language that the witness fully speaks and understands by a qualified interpreter of the Court. The witness signed the statement and initialled every page of the statement, as well as the team members of the Defence that were present during the formal interview and the signature of the statement and the Court interpreter during the read back. The witness signed a certification attesting that the proposed evidence was provided voluntarily and represents the truth to the best of her recollection and knowledge. The proposed statement is also accompanied by a

⁸² **P-4953** : CAR-D30-0026-0001-R01, paras 8-18; **P-4514**: CAR-D30-0025-0001-R01, l. 376-386; **P-4608** : para.8; **P-4608**: CAR-D30-0017-0004-R01, paras 14-16.

⁸³ **P-4551**: CAR-D30-0021-0001-R01, para. 9 ;

⁸⁴ **P-2049** : ICC-01/14-01/18-T-103-CONF-ENG ET, p. 50, l. 13-16 ; **P-2453** : ICC-01/14-01/18-T-137-CONF-ENG ET, p. 13, l. 2-5 ; **P-4608** : CAR-D30-0017-0004-R01, paras 21 and 31.

⁸⁵ **P-4514**: CAR-D30-0025-0001-R01, l. 332-336 ; **P-4953** : CAR-D30-0026-0001-R01, para. 12 ; **P-2049** : ICC-01/14-01/18-T-102-CONF-ENG ET, p.12, l. 10-21 ; **P-2453** : ICC-01/14-01/18-T-137-CONF-ENG ET, p. 10, l. 2-6 ; **P-2657** : ICC-01/14-01/18-T-105-CONF-ENG ET, p. 12, l. 2-16.

⁸⁶ CAR-D30-0022-0001-R02, para. 7 and at 0010.

⁸⁷ *Ibid.*, at 0010.

certificate signed by the interpreter at the end of the statement attesting that the statement was read back to the witness in a language which she understood.

31. The Defence notes that during the screening interview, [REDACTED]. The Defence contends that this does not affect the credibility of the witness, as she was thoroughly interviewed by lawyers from the Defence team in [REDACTED] and her statement is based on the content of this interview. The witness confirmed that she provided her testimony voluntarily and freely. In any event, that any prejudice caused by her statement being admitted through Rule 68(3) is remedied by the fact that the Prosecution will be afforded an opportunity to examine her on any issues that might affect the reliability of her anticipated evidence and overall credibility.
32. The Defence therefore seeks the introduction of P-4496 prior recorded statement into evidence. The witness will attest to its accuracy and will be available for in-court examination by the Prosecution, the Defence for Mr Yekatom, the Participants and the Chamber. The Defence estimates that it will take approximately 6 hours to examine the witness, instead of the 9 hours initially envisaged, for the formalities associated with the introduction into evidence of his statement and to conduct a succinct supplementary examination.

C. The introduction of P-4608's and P-4496's Prior Recorded Testimonies is not prejudicial

33. The Defence recalls that the use of Rule 68(3) of the Rules "[...] aims at reducing the amount of time devoted to hearing oral testimony in court"⁸⁸ all the while complementing it.⁸⁹ Granting the Request will bear no prejudice to the parties and

⁸⁸ *Prosecutor v. Gbagbo & Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", 1 November 2016, ICC-02/11-01/15-744, para. 61.

⁸⁹ ICC-01/14-01/18-907-Red., para. 14, citing *Gbagbo and Blé Goudé Appeals Judgment*, ICC-02/11-01/15-744, para. 79. See also *Ongwen* Rule 68(3) Decision, ICC-02/04-01/15-621, para. 6.

participants or the expeditiousness of proceedings as a whole. On the contrary, as detailed above, several aspects of P-4608's and P-4496's prior recorded testimonies are corroborated by and/or cumulative to the evidence proposed by other witnesses. The introduction of their prior recorded testimonies would allow the Defence to focus its examination on the unique aspect of their proposed evidence, namely the complicity of the Muslim population and the Seleka as well as [REDACTED] during the relevant period. Further, both witnesses will be available in court for the examination by the Prosecution, the Participants, the Chamber and the Defence for Mr Yekatom should there be any aspect of their statements for which further examination is deemed necessary.

34. The submission of P-4608's and P-4496's Proposed Evidence would therefore be in the interest of the expeditiousness of the proceedings and of justice.

35. Moreover, the Prosecution cannot be prejudiced by the introduction of a testimony pursuant to Rule 68(3) of the Rules, as long as the requirements stipulated therein are met, as the provision provides fair trial guarantees to the sole benefit of the accused.⁹⁰

VI. RELIEF SOUGHT

The Defence respectfully requests Trial Chamber V to

- **GRANT** the present Rule 68(3) request and **ALLOW** the introduction of the statement and associated exhibits of P-4608, and the statement of P-4496.

Respectfully submitted,

⁹⁰ Rule 68(1) of the Rules of Procedure and Evidence (“*When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraphs 2 and 4, and after hearing the parties, allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that this would not be prejudicial to or inconsistent with the rights of the accused and that the requirements of one or more of the following sub-rules are met.*”) (emphasis added).



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaissona

Dated this 10 May 2024

At The Hague, the Netherlands.