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**International
Criminal
Court**

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

Date: **22 April 2022**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Public Redacted Version of "Yekatom Defence Request for Leave to Appeal the 'Twelfth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1704, P-1528, and P-0314' (ICC-01/14-01/18-1364-Conf)"

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. Pursuant to Article 82(1)(d) of the Statute, Rule 155 of the Rules of Procedure and Evidence, and Regulation 65 of the Regulations of the Court, the Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby respectfully requests leave to appeal, in part, Trial Chamber V's 'Twelfth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1704, P-1528, and P-0314';¹ specifically, with respect to the Chamber's decision to allow the introduction into evidence of the prior recorded testimony of P-1704 ('Statement') via Rule 68(3) ('Impugned Decision').
2. The Defence seeks leave to appeal the Impugned Decision with respect to the following issue:

Whether Trial Chamber V's decision to allow the introduction into evidence of the prior recorded testimony of P-1704 via Rule 68(3) was so unfair or so unreasonable so as to constitute an abuse of its discretion, in that the Chamber placed undue weight on the two hours of anticipated in-court time that would be saved ('Issue').

3. Further, noting that the Prosecution has indicated its intention to call P-1704 to testify during the upcoming evidentiary block,² the Defence respectfully requests a Chamber order barring P-1704 from appearing to testify before this Request is ruled upon and this matter is resolved in full, including (should the Request be granted) until the Appeals Chamber has issued a decision on any ensuing appeal.³

¹ [ICC-01/14-01/18-1364-Conf](#), paras 10-20; Public redacted version: [ICC-01/14-01/18-1364-Red](#).

² See, Email from Prosecution Counsel to Trial Chamber V, Parties and Participants of 21 April 2022 at 16.31.

³ The Defence is cognisant of the applicable procedure as regards suspensive effect of appeals as set out in Rule 156(5); however, noting that according to that rule, suspensive effect is to be requested 'When filing the appeal', given the possibility that P-1704's testimony will fall within the ten-day period between (should this request be granted) any granting of this request and the deadline to file an appeal, the sought order is necessary to prevent any appeal from being rendered moot by the appearance of P-1704 prior to the resolution of the matter.

PROCEDURAL HISTORY

4. On 16 November 2021, the Prosecution requested the formal submission of the prior recorded testimony of P-1704 ('Prosecution Request').⁴
5. On 7 December 2021, the Defence responded to the Prosecution Request. ('Defence Response').⁵
6. On 7 December 2021, the Ngaissona Defence fully joined and supported the Defence Response.⁶
7. On 14 April 2022, the Chamber issued the Impugned Decision.

APPLICABLE LAW

8. Article 82(1)(d) of the Statute states that:

(1) Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

9. In order for a request for leave to appeal to be granted, the party seeking leave to appeal should identify specific 'issues' which were dealt with in the relevant decision and which constitute the appealable issue.⁷
10. With respect to the meaning of an 'appealable issue', the Appeals Chamber has stated:

An issue is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion. [...]

⁴ [ICC-01/14-01/18-1176-Conf](#). Public redacted version: [ICC-01/14-01/18-1176-Red](#).

⁵ [ICC-01/14-01/18-1203-Conf](#). Public redacted version: [ICC-01/14-01/18-1203-Red](#).

⁶ See, Email from Ngaissona Defence to Trial Chamber V, Parties and Participants of 7 December 2021 at 14:35.

⁷ [ICC-01/14-01/18-525](#), para. 16, citing *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, [ICC-01/04-168](#) ('DRC Appeals Judgment'), para. 9.

An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.⁸

11. Therefore, a mere disagreement or conflicting opinion cannot form an appealable issue.⁹

SUBMISSIONS

I. The Issue constitutes an ‘appealable issue’.

12. A Chamber’s assessment of Rule 68(3) applications is a discretionary one.¹⁰
13. In the Impugned Decision, the Chamber addressed the factors weighing for and against granting the Prosecution Request.¹¹
14. As is clear from the Chamber’s reasoning, in reaching the Impugned Decision, the Chamber placed undue weight on the anticipated in-court time saving of two hours, given that the latter is the sole factor that can be understood as weighing in favour of the introduction of the Statement (as distinguishable from factors that merely mitigate its prejudice); and placed insufficient weight on the multiple prejudicial factors applicable to the Statement, set out in detail below.¹²
15. It is respectfully submitted that, in the context of these proceedings – i.e. a multi-accused, international criminal trial, involving multiple charges of war crimes and crimes against humanity; for which, at time of writing, Mr Yekatom, who is presumed innocent, has been incarcerated for three and a half years; and where, roughly 13 months into the Prosecution’s presentation of evidence, two-thirds of the Prosecution’s anticipated witnesses are yet to be heard – two hours

⁸ [ICC-01/14-01/18-525](#), para. 17, citing [DRC Appeals Judgment](#), para. 9.

⁹ [ICC-01/14-01/18-525](#), para. 18, citing [DRC Appeals Judgment](#), para. 9.

¹⁰ *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)”, [ICC-02/11-01/15-744](#), 1 November 2016 (“Gbagbo & Blé Goudé Appeals Judgment”), para. 69.

¹¹ [ICC-01/14-01/18-1364-Conf](#), paras 10-20.

¹² See *infra*, paras 26-29.

is a negligible amount of in-court time, and does not outweigh the prejudicial effect of the introduction of the Statement.

16. The Chamber's exercise of its discretion in this regard was thus so unfair and so unreasonable so as to constitute an abuse of its discretion.¹³
17. This abuse of discretion – and therefore the Issue – thus forms the very basis for the Impugned Decision; and resolution of the Issue is essential for the correct determination of the Prosecution Request.
18. Nor does the Issue constitute mere disagreement with the Impugned Decision. On the contrary, the Issue is discrete, distinct, and identifiable, focusing simply on the question of whether the Chamber 'failed to exercise its discretion judiciously'.¹⁴ It is by now well-established that the latter condition, i.e. where a decision is so unfair and so unreasonable as to constitute an abuse of discretion, is one that justifies appellate intervention.¹⁵

II. The Issue would significantly affect the fair and expeditious conduct of the proceedings.

19. As has been previously held by the Appeals Chamber:

The term "fair" in the context of article 82 (1) (d) of the Statute is associated with the norms of a fair trial, the attributes of which are an inseverable part of the corresponding human right, incorporated in the Statute by distinct provisions of it (articles 64(2)¹⁶ and 67(1)¹⁷) and article 21(3)¹⁸[.]¹⁹

¹³ *Prosecutor v. Ntaganda*, Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', [ICC-01/04-02/06-2666-Red](#), 30 March 2021, para. 46, and references cited therein.

¹⁴ *Ibid.*

¹⁵ See e.g. *ibid.*; *Prosecutor v. Lubanga*, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the "Decision on Sentence pursuant to Article 76 of the Statute", [ICC-01/04-01/06-3122](#), 1 December 2014, para. 41, and references cited therein.

¹⁶ Article 64(2) states, 'The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights.'

¹⁷ Article 67(1) states in relevant part, 'In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing[.]'

¹⁸ Article 21(3) states in relevant part, 'The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights.'

¹⁹ [DRC Appeals Judgment](#), para. 11.

20. There is a fundamental tension between the principle of orality, itself a fundamental component of a fair trial, enshrined in Article 69(2),²⁰ and the mechanism set out in Rule 68(3). Allowing the introduction of written testimony into the trial record is thus inherently a matter that affects the fairness of proceedings.
21. It is in recognition of this nexus between Rule 68 and the fair conduct of proceedings that the drafters of the Statute and Rules established legal safeguards to ensure that use of Rule 68(3) does not unduly impact the fairness of proceedings before the Court. For instance, inbuilt in Rule 68 is the express requirement that the introduction of evidence under that rule must ‘not be prejudicial to or inconsistent with the rights of the accused’;²¹ this requirement is mirrored in Article 69(2).²²
22. This nexus is also recognised in the jurisprudence of this Court. For instance, the *Katanga & Ngudjolo Chui* Trial Chamber held that, ‘[i]n certain cases there may also be prejudice to the Defence if the witness does not make his or her allegations against the accused in open court’.²³ In these proceedings, the Chamber has previously noted the overall number of anticipated Prosecution Rule 68 applications and found that the Prosecution’s projected use of Rule 68 appeared ‘prima facie, disproportionate in light of the principles of orality and publicity and potentially prejudicial to the rights of the accused.’²⁴

²⁰ Article 69(2) states in relevant part, ‘The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. [...] These measures shall not be prejudicial to or inconsistent with the rights of the accused.’; see also, *Prosecutor v. Bemba Gombo*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence", [ICC-01/05-01/08-1386](#), 3 May 2011 (‘Bemba Appeals Judgment’), para 78.

²¹ Rule 68(1); see also, Articles 67(1) and 69(2).

²² See *supra*, fn. 20.

²³ *Prosecutor v. Katanga & Ngudjolo Chui*, Decision on prosecution’s request to allow the introduction into evidence of the prior recorded testimony of P-166 and P-219, [ICC-01/04-01/07-2362](#), 3 September 2010, para. 19; cited in [Bemba Appeals Judgment](#), para 78, fn. 131.

²⁴ [ICC-01/14-01/18-685](#), para. 32.

23. Successive chambers of the Court, in recognising the inherent tension between the principle of orality and Rule 68, have further elaborated the legal safeguards around Rule 68(3), in the form of guiding principles. According to the Appeals Chamber, a chamber's duty to ensure that the use of Rule 68 is not prejudicial to or inconsistent with the rights of an accused 'requires a cautious assessment',²⁵ which requires a chamber to 'analyse the "importance" of each witness statement in light of the charges and the evidence already presented or intended to be presented before it.'²⁶ The Appeals Chamber has also expressly set out factors that may be taken into account in conducting this analysis, including (i) whether the evidence relates to issues that are not materially in dispute; (ii) whether that evidence is not central to core issues in the case, but only provides relevant background information; and (iii) whether the evidence is corroborative of other evidence.²⁷
24. The nexus between the Issue, itself the basis for the Impugned Decision, and the fair conduct of these proceedings is therefore clear.
25. Further, the fact that the Issue significantly affects the fairness of the proceedings, in accordance with the test under Article 82(1)(d), is clear from the content of the Statement itself. Specifically, the features of the Statement, when assessed alongside the jurisprudential guiding principles set out above, demonstrate the prejudicial nature of the Statement, and by extension, the extent to which the Issue affects the fair conduct of the proceedings.
26. As the Defence has previously submitted, and as noted by the Chamber, the Statement contains extensive, specific references to Mr Yekatom's alleged acts

²⁵ [Bemba Appeals Judgment](#), para. 78.

²⁶ [Gbagbo & Blé Goudé Appeals Judgment](#), para. 71.

²⁷ [Bemba Appeals Judgment](#), para. 78.

and conduct as charged.²⁸ The Chamber's findings on this matter are illustrative in this regard, and are set out in full as follows:

[REDACTED].²⁹

27. The allegations of P-1704 are materially and fundamentally disputed; indeed, the Defence contests the very presence of Mr Yekatom at the scene of the alleged incident.³⁰
28. Further, key allegations in the Statement – including the presence of Mr Yekatom during the alleged incident, and P-1704's claim that Mr Yekatom ordered the [REDACTED] to cut off [REDACTED] – are contradicted by or inconsistent with the evidence of other Prosecution witnesses who themselves claim to have been present during the incident.³¹
29. Lastly, the evidence of P-1704 is of central importance to the Prosecution case with respect to the alleged Yamwara School Incident, which itself underpins seven of the 21 charges brought against Mr Yekatom, as demonstrated by Pre-Trial Chamber II's repeated – and on two occasions, exclusive – reliance on the Statement in its findings on the alleged incident.³²
30. In sum, all of the above-outlined factors relevant for assessing the extent of the undue prejudice that would ensue should the Statement be introduced via Rule 68(3) are applicable; the Statement 'ticks all the boxes', as it were.
31. Nor does the fact that P-1704 will appear for cross-examination mitigate the impact of the Issue on the fairness of the proceedings. As the Defence maintains, P-1704's allegations in his Statement are fundamentally untruthful. If the Impugned Decision remains uncorrected, the Chamber will have relinquished

²⁸ [ICC-01/14-01/18-1203-Conf](#), paras 15-19; [ICC-01/14-01/18-1364-Conf](#), paras 13, 15.

²⁹ [ICC-01/14-01/18-1364-Conf](#), para. 11.

³⁰ [ICC-01/14-01/18-1203-Conf](#), paras 21-24.

³¹ *Ibid*, paras 20-24.

³² [ICC-01/14-01/18-1203-Conf](#), para. 18.

its opportunity to hear this account in full *viva voce*, spontaneously, under oath, and under its oversight.³³ The Prosecution's supplementary examination will not remedy this lost opportunity;³⁴ nor would it be permissible or proper to shift the onus of eliciting P-1704's account onto the Defence.

32. In light of these deeply prejudicial characteristics of the Statement, the fair conduct of these proceedings is significantly affected by the Issue.
33. The expeditiousness of the proceedings is also significantly affected by the Issue.
34. While the Defence respectfully disagrees with the Chamber's suggestion that the hypothetical ability to bring a defence case would meaningfully mitigate the prejudice occasioned by the Impugned Decision, it is submitted that this suggestion of the Chamber aptly illustrates the fact that the Impugned Decision will inevitably influence the Defence's decision as to the necessity of bringing a defence case in support of Mr Yekatom's anticipated alibi defence.³⁵
35. It cannot be controversial that bringing a defence case or bringing defence witnesses to establish this alibi, is a matter that would significantly affect the expeditiousness of the proceedings.
36. In this regard, the Defence recalls that, in granting a previous Prosecution Rule 68(3) request, the Chamber deemed three hours of saved in-court time to be a 'significant' factor;³⁶ and further, in granting similar Prosecution requests (including in the Impugned Decision), the Chamber has repeatedly found that anticipated in-court time savings of two hours would promote the

³³ [ICC-01/14-01/18-685](#), para. 33.

³⁴ *Ibid*, para. 36; see e.g., [ICC-01/14-01/18-T-114-CONF-ENG](#), 28:4-5; 30:21-22; 34 :22-23 (where the Presiding Judge repeatedly directed Prosecution counsel to refrain from eliciting evidence already contained in the testifying witness's statement, which had previously been introduced under Rule 68(3)).

³⁵ [ICC-01/14-01/18-1364-Conf](#), para. 16.

³⁶ [ICC-01/14-01/18-1317-Conf](#), para. 18.

expeditiousness of proceedings.³⁷ Similarly, in a previous Rule 68(3) request, the Prosecution has characterised an anticipated in-court time saving of one and a half hours as ‘considerable’.³⁸ Needless to say, it would be deeply unfair to measure the impact of the Issue on the expeditiousness of these proceedings by a different yardstick.

37. Nor is it speculative to suggest that the Issue would directly impact the Defence’s determination as to the necessity of leading a defence case or defence witnesses.
38. As submitted above, the Defence maintains that Mr Yekatom was not present during the incident, contrary to P-1704’s allegations, and contrary to the Prosecution narrative. Critically, the Prosecution case is far from solid on this matter. As set out in the Defence Response, the [REDACTED] who, according to P-1704, was instructed by Mr Yekatom to cut off [REDACTED],³⁹ is in fact a principal witness for the Prosecution, who has indicated to Prosecution investigators that it was in fact Freddy Ouandjo (a.k.a. ‘Coeur de Lion’) who instructed her to do so; and more importantly, that Mr Yekatom was not present during this incident.⁴⁰
39. Further, P-1811, who was involved in the alleged Yamwara School Incident, recently provided testimony consistent with Mr Yekatom’s alibi. As the Chamber will recall, P-1811 stated that Mr Yekatom was not at the base when the [REDACTED] arrived;⁴¹ and moreover, she stated that she first saw Mr Yekatom later that evening, when night had fallen, and that ‘It took a bit of

³⁷ See e.g., *ibid.*, paras 21, 29; [ICC-01/14-01/18-1364-Conf](#), paras 7, 18, 21, 28; [ICC-01/14-01/18-1282-Conf](#), para. 15.

³⁸ [ICC-01/14-01/18-1218-Conf](#), paras 16, 19; see also, where the Prosecution has characterised anticipated in-court time savings of two hours as ‘considerable’ in further Rule 68(3) requests, [ICC-01/14-01/18-1204-Conf](#), para. 19; [ICC-01/14-01/18-1217-Conf](#), para. 18; [ICC-01/14-01/18-1266-Conf](#), paras 17, 12.

³⁹ See *supra*, para 26; [ICC-01/14-01/18-1203-Conf](#), para. 22.

⁴⁰ [ICC-01/14-01/18-1203-Conf](#), para. 22.

⁴¹ [ICC-01/14-01/18-T-114-CONF-ENG](#), 20:3-8.

time' (in French, '*Ça a un peu duré*') between the moment when she could no longer hear the sounds of [REDACTED], and her meeting with Mr Yekatom.⁴²

40. In the circumstances therefore, i.e. where accounts of the Prosecution's own witnesses would appear to directly corroborate, or are materially consistent with Mr Yekatom's alibi, the necessity of bringing a defence case or defence witnesses on the matter is yet to crystallise. This would no longer be the case however, should the Impugned Decision remain uncorrected, given that as a consequence, evidence alleging Mr Yekatom's presence during the Yamwara School Incident will form part of the trial record.

III. The Issue would significantly affect the outcome of the proceedings.

41. The Statement contains extensive factual allegations that, according to the Prosecution case, underpin the legal elements of seven of the 21 crimes of which Mr Yekatom is accused.⁴³
42. Should the Issue remain uncorrected, and the Impugned Decision be allowed to stand, the Statement would be introduced into the trial record and thus form part of the evidence to be evaluated by the Chamber in any eventual Article 74(2) judgment.
43. On this basis, the Issue can be understood as one that significantly affects the outcome of the proceedings. The 'significance' threshold is met in a qualitative sense, on account of the importance of the Statement to the Prosecution case regarding the 'Yamwara School Incident' as confirmed by PTC II;⁴⁴ it is also met in a quantitative sense, given the sheer number of charges underpinned by the Statement, i.e. amounting to one-third of the Prosecution case brought against Mr Yekatom.⁴⁵

⁴² [ICC-01/14-01/18-T-114-CONF-ENG](#), 28:18-23; [ICC-01/14-01/18-T-114-CONF-FRA](#), 28:21-25.

⁴³ See *supra*, para. 29.

⁴⁴ *Ibid.*

⁴⁵ Counts 11-17 of these proceedings.

44. Nor is it unduly speculative to suggest as much. To approach the matter from the reverse angle, by way of theoretical illustration: if the Chamber were to decide to exclude evidence integral to the Prosecution case, such as that of P-1704, and therefore compromise the Prosecution's ability to prove said case, it would be reasonable to argue that such a decision would significantly affect the outcome of the proceedings for the purposes of Article 82(1)(d). Much in the same way, a decision introducing such integral evidence into the trial record, thereby potentially allowing the Chamber to convict, significantly affects the outcome of the proceedings.

45. Lastly, it is submitted that it would be contrary to the interests of justice to argue that the arguments set out in this Request are premature, on the basis that the Statement will only be formally introduced into the trial record when P-1704 appears before the Court. Rule 68(3) applications, by their nature, are a two-step procedure, whereby the substantive Rule 68(3) litigation is completed separately from and prior to the witness's appearance; at which point, following the fulfilment of the Rule 68(3) conditions (themselves little more than formalities) the witness's prior recorded testimony is introduced into the trial record. Given the statutory deadline for seeking leave to appeal, undue emphasis on the delayed impact of decisions on Rule 68(3) applications would have the effect of appeal-proofing such decisions, no matter how erroneous, on the basis of what is effectively a mere technicality. This would be contrary not only to a Party's statutory right to seek interlocutory appeal, as well as to basic fairness.

IV. An immediate resolution of the Issue would materially advance the proceedings.

46. The Impugned Decision will have a direct impact on the conduct of the trial proceedings – specifically, on the manner and form in which the evidence of P-1704 will be introduced onto the trial record.

47. Should the Issue remain unresolved, and should P-1704 testify in accordance with the Impugned Decision, the various effects could not be reversed or remedied on appeal. The Chamber will have relinquished any opportunity to hear an in-full *viva voce* account from the witness, as well as the concomitant benefits with regard to the Chamber's credibility-assessment function.⁴⁶ Moreover, the Defence's lines of cross-examination of P-1704 will necessarily have been informed by the contours of his prior examination by the Prosecution, and therefore would inevitably have been conducted differently should he have testified *viva voce* in full. Unnecessary time and resources may have been expended in calling Defence witnesses to counter the allegations contained in the Statement, contrary to the expeditiousness of the proceedings. Further, should the Impugned Decision remain uncorrected, it is highly likely that P-1704's written prior recorded statement will have been improperly considered for the purpose of any eventual Article 74 judgment, given its importance to the Prosecution case on the Yamwara School Incident.
48. Lastly, in light of the 'prima facie disproportionate' number of Rule 68(3) applications that the Prosecution is anticipated to file over the course of this trial, the Issue has wider implications for the material advancement of the proceedings. Specifically, should the Impugned Decision be found to have been erroneous on appeal, ensuing appellate guidance on the Issue will have a corrective influence on the Chamber's exercise of its discretion in its assessment of the 'high number' of upcoming Rule 68(3) applications. On the contrary, if the Chamber's exercise of its discretion in the Impugned Decision remains uncorrected, and the Chamber continues to place undue weight on time saving in its assessment of future Rule 68(3) applications, a considerable amount of prior recorded testimony will have improperly been introduced into the trial

⁴⁶ [ICC-01/14-01/18-685](#), para. 33.

record, which will itself have detrimental consequences for the integrity of these proceedings.

49. Immediate resolution of the Issue would thus materially advance the proceedings, in that it would reduce the risk that these aspects of the trial proceedings be invalidated as a consequence of the Impugned Decision.

CONFIDENTIALITY

50. The request is filed on a confidential basis due to the references made therein to confidential evidence. A public redacted version will be filed forthwith.

RELIEF SOUGHT

51. In light of the above, the Defence respectfully requests that Trial Chamber V: **GRANT** leave to appeal the Impugned Decision with respect to the Issue; and **ORDER** that P-1704 be barred from testifying before this Request and (in the event this Request is granted) any ensuing appeal are resolved in full.

RESPECTFULLY SUBMITTED ON THIS 22ND DAY OF APRIL 2022



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