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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

**Eighth Decision on the Prosecution Requests for Formal Submission of Prior
Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses
P-1193, P-0876, and P-0475**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, having regard to Articles 64(2), 67(1) and 69 of the Rome Statute, and Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Eighth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1193, P-0876, and P-0475’.

I. Procedural history

1. On 10 March 2021, the Chamber issued its first decision under Rule 68(3) of the Rules (the ‘First Rule 68(3) Decision’), in which it set out the applicable law for requests for the introduction of prior recorded testimonies under Rule 68(3) of the Rules.¹
2. On 21 June, 30 July and 27 October 2021, respectively, the Office of the Prosecutor (the ‘Prosecution’) requested to introduce under Rule 68(3) of the Rules the statements and associated documents of witnesses P-1193, P-0876, and P-0475 (the ‘P-1193 Request’,² the ‘P-0876 Request’,³ and the ‘P-0475 Request’,⁴ respectively).
3. On 26 June 2021, the Ngaissona Defence indicated that it defers to the Chamber’s discretion with regards to the P-1193 Request. On 2 July 2021, the Yekatom Defence filed its response.⁵ On 26 August 2021, the Yekatom Defence and

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

² Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1193 pursuant to Rule 68(3), ICC-01/14-01/18-1033-Conf (with confidential Annexes A and B) (public redacted version notified on 24 June 2021, ICC-01/14-01/18-1033-Red).

³ Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0876 pursuant to Rule 68(3), ICC-01/14-01/18-1082-Conf (with confidential Annexes A and B) (public redacted version notified on 6 September 2021, ICC-01/14-01/18-1082-Red).

⁴ Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0475 pursuant to Rule 68(3), ICC-01/14-01/18-1147-Conf (with confidential Annexes A and B).

⁵ See email from the Ngaissona Defence, 29 June 2021, at 08:11; Yekatom Defence Response to ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1193 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1033-Conf), ICC-01/14-01/18-1045-Conf (the ‘Yekatom Defence Response to the P-1193 Request’).

Ngaïssona Defence (jointly, the ‘Defence’) responded to the P-0876 Request.⁶ On 2 and 8 November 2021, respectively, the Defence indicated that they defer to the Chamber’s discretion with regards to the P-0475 Request.⁷

II. Analysis

4. The Chamber incorporates by reference the applicable law as set out in the First Rule 68(3) Decision.⁸

A. P-1193

1. Submissions

5. The Prosecution seeks to introduce the prior recorded testimony of witness P-1193, comprising one statement and 10 associated exhibits.⁹ It submits that the introduction of P-1193’s prior recorded testimony would help streamline the proceedings, reducing the time for its examination from at least six to three hours.¹⁰
6. According to the Prosecution, P-1193’s prior recorded testimony is corroborated by, *inter alia*, the evidence of (i) six witnesses in relation to Mr Ngaïssona’s role; (ii) seven witnesses in relation to Mr Yekatom’s role; and (iii) three witnesses in relation to the issuance of Anti-Balaka identity cards and the DDR process.¹¹
7. The Yekatom Defence takes no position on the introduction of P-1193’s statement, but opposes that of two associated exhibits (Annexes F and G).¹² It contends that these documents do not qualify as associated exhibits since they

⁶ Yekatom Defence Response to ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0876 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1082-Conf), ICC-01/14-01/18-1094-Conf (the ‘Yekatom Defence Response to the P-0876 Request’); Defence Consolidated Response to the ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0876 pursuant to Rule 68(3)’ and the ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0808, ICC-01/14-01/18-1096-Conf (public redacted version notified on 24 September 2021, ICC-01/14-01/18-1096-Red) (the ‘Ngaïssona Defence Response to the P-0876 Request’).

⁷ See email from the Ngaïssona Defence, 2 November 2021, at 15:08; email from the Yekatom Defence, 8 November 2021, at 10:26.

⁸ First Rule 68(3) Decision, ICC-01/14-01/18-907-Red, paras 8-16.

⁹ P-1193 Request, ICC-01/14-01/18-1033-Red, paras 1, 13, 20; Annex A to the P-1193 Request, ICC-01/14-01/18-1033-Conf-AnxA.

¹⁰ P-1193 Request, ICC-01/14-01/18-1033-Red, paras 3, 18-19.

¹¹ P-1193 Request, ICC-01/14-01/18-1033-Red, para. 12.

¹² Yekatom Defence Response to the P-1193 Request, ICC-01/14-01/18-1045-Conf, paras 2, 15.

were not ‘used or explained’ by P-1193 during his interview, neither in a meaningful sense, nor for the purposes of Rule 68(3) of the Rules.¹³ In particular, it submits that the two documents appear to have been provided to the Prosecution investigators ‘along with only the most cursory of descriptions’, in contrast with other documents tendered as associated exhibits.¹⁴ Moreover, the Yekatom Defence argues that their *prima facie* relevance remains unclear and that, in any event, their denial at this stage would not unduly prejudice the Prosecution.¹⁵

2. *The Chamber’s determination*

8. In his statement,¹⁶ P-1193 discusses, *inter alia*, (i) the emergence of the Seleka and the alleged commission of crimes against both Christians and Muslims; (ii) [REDACTED] and his decision to join the Anti-Balaka; (iii) Mr Yekatom’s role as the leader of the Anti-Balaka in the south of the country, including the areas he controlled and the discipline he exercised over his men, and the structure and functioning of the south wing; (iv) the Anti-Balaka in the north of the country being led by Mr Ngaïssona, and certain crimes allegedly committed by them; (v) [REDACTED]; (vi) the National Coordination, including the role of Mr Ngaïssona as National Coordinator; (vii) Mr Ngaïssona summoning Anti-Balaka members to meetings, sending messages over the radio and financing the National Coordination with his own resources; (viii) the role of other leaders and members of the Anti-Balaka National Coordination; (ix) the National Coordination contacting the concerned ComZones upon the commission of a crime by an Anti-Balaka member; (x) the formation of military police units within the Anti-Balaka to handle criminal acts committed by undisciplined elements; and (xi) the issuance of Anti-Balaka identity cards and the DDR process.
9. The Chamber observes that P-1193’s statement mainly contains references to the structure, functioning and leadership of the Anti-Balaka, including certain crimes allegedly committed by them. The witness also describes the roles of both Mr Ngaïssona and Mr Yekatom. However, the Chamber notes that the references to

¹³ Yekatom Defence Response to the P-1193 Request, ICC-01/14-01/18-1045-Conf, paras 6-9.

¹⁴ Yekatom Defence Response to the P-1193 Request, ICC-01/14-01/18-1045-Conf, para. 10.

¹⁵ Yekatom Defence Response to the P-1193 Request, ICC-01/14-01/18-1045-Conf, paras 11-13.

¹⁶ CAR-OTP-2045-0048; CAR-OTP-2051-0353 (English translation).

the accused are relatively limited and that the Defence did not oppose the introduction of P-1193's prior recorded statement under Rule 68(3) of the Rules.¹⁷ In any case, the Chamber stresses that the Defence will have an opportunity to examine the witness in court.

10. In relation to Annexes F and G, the introduction of which is opposed by the Yekatom Defence,¹⁸ the Chamber recalls that the notion of 'prior recorded testimony' 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, thereby forming an integral part of the testimony itself.¹⁹
11. In this regard, the Chamber notes that the witness stated that he provided initialled and dated documents attached as Annexes F and G.²⁰ Moreover, the Chamber notes that these annexes concern [REDACTED], a topic which has been discussed by the witness in his statement.
12. In light of the above, the Chamber considers that, for purposes of Rule 68(3) of the Rules, the documents have been used by the witness.²¹ In relation to the Defence's submission concerning the *prima facie* relevance of these annexes,²² the Chamber recalls that it will assess the standard evidentiary criteria (namely the relevance, probative value and potential prejudice) of each item as part of its holistic assessment when deliberating its judgment pursuant to Article 74(2) of the Statute.²³
13. Lastly, the Chamber notes that the introduction of P-1193's prior recorded testimony would cut the time for the Prosecution's examination of the witness

¹⁷ See, respectively, email from the Ngaïssona Defence, 29 June 2021, at 08:11; Yekatom Defence Response to the P-1193 Request, ICC-01/14-01/18-1045-Conf, para. 2.

¹⁸ Yekatom Defence Response to the P-1193 Request, ICC-01/14-01/18-1045-Conf, paras 2, 15.

¹⁹ See First Rule 68(3) Decision, ICC-01/14-01/18-907-Red, para. 13.

²⁰ CAR-OTP-2051-0353, at 0366, para. 84.

²¹ See, similarly, Sixth Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness P-0808, 20 September 2021, ICC-01/14-01/18-1114-Conf (the 'Sixth Rule 68(3) Decision'), paras 18-19.

²² See Yekatom Defence Response to the P-1193 Request, ICC-01/14-01/18-1045-Conf, paras 11-13.

²³ Initial Directions on the Conduct of the Proceedings, 26 August 2021, ICC-01/14-01/18-631, para. 53.

from at least six to three hours,²⁴ thereby promoting the expeditiousness of the proceedings.

14. In light of the above, the Chamber finds that it is not necessary for P-1193's testimony to be presented orally in its entirety, and considers that the introduction of the prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.
15. Accordingly, the Chamber grants the Prosecution's request to introduce the statement of P-1193²⁵ and associated documents,²⁶ under Rule 68(3) of the Rules.

B. P-0876

1. Submissions

16. The Prosecution seeks to introduce the prior recorded testimony of P-0876, comprising the transcribed statements of the witness's three-day interview and two associated exhibits.²⁷ It submits that the introduction of P-0876's prior recorded testimony would help to streamline the proceedings, reducing the time for its examination from at least nine to three hours.²⁸
17. According to the Prosecution, P-0876's prior recorded testimony is highly relevant and probative as it (i) goes to the proof of the contextual elements for war crimes and crimes against humanity, 'in particular the Anti-Balaka being an organised armed group, and its intent to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014'; and (ii) describes both 'NGAISSONA's role within the Anti-Balaka notably as a political leader, and the commission of crimes by YEKATOM's group targeting the Muslim population, notably in BANGUI and on the MBAIKI axis'.²⁹ The Prosecution further argues that P-0876's evidence is corroborated by, *inter alia*,

²⁴ P-1193 Request, ICC-01/14-01/18-1033-Red, paras 3, 18-19.

²⁵ CAR-OTP-2045-0048; CAR-OTP-2051-0353 (English translation).

²⁶ CAR-OTP-2039-0018; CAR-OTP-2039-0019; CAR-OTP-2039-0020; CAR-OTP-2039-0024; CAR-OTP-2039-0031; CAR-OTP-2039-0050; CAR-OTP-2039-0063; CAR-OTP-2039-0067; CAR-OTP-2057-0230 (English translation); CAR-OTP-2039-0071; CAR-OTP-2039-0072.

²⁷ P-0876 Request, ICC-01/14-01/18-1082-Red, paras 1, 14; Annex A to the P-0876 Request, ICC-01/14-01/18-1182-Conf-AnxA.

²⁸ P-0876 Request, ICC-01/14-01/18-1082-Red, paras 1, 3, 17, 19-20.

²⁹ P-0876 Request, ICC-01/14-01/18-1082-Red, para. 10.

(i) five witnesses and documentary evidence in relation to Bozizé’s anti-Muslim propaganda prior to the Seleka coup, and the distribution of machetes to pro-Bozizé youths in that period; (ii) four witnesses in relation to the Anti-Balaka’s structure of command at the time of the 5 December 2013 attack on Bangui (the ‘Bangui Attack’); and (iii) six witnesses in relation to Mr Ngaïssona’s contributions to the Anti-Balaka from Cameroon, notably as a ‘financier’.³⁰

18. The Yekatom Defence opposes the Request.³¹ It submits that P-0876’s statements (i) relate to issues that are both materially in dispute and central to core issues in this case; (ii) contain multiple references to Mr Yekatom’s acts and conduct, which ‘appear to go to a number of charges against [him], namely Counts 4-5, 8, 24-25 and 28’; and (iii) include allegations, some of which are ‘generalised and vague’, which the Prosecution has not demonstrated to be corroborative of other evidence in the case.³²
19. Moreover, the Yekatom Defence argues that other circumstances militate against granting the P-0876 Request, such as (i) P-0876’s former actions and [REDACTED] as a prominent Anti-Balaka member [REDACTED];³³ (ii) other witnesses’ testimonies, such as P-0884 and P-0808, who describe P-0876 as ‘a liar’ and ‘an opportunist’ and whose evidence contradicts certain aspects of P-0876’s proposed evidence;³⁴ and (iii) P-0876’s status as an Article 55(2) witness.³⁵ In addition, it argues, *inter alia*, that ‘two days of examination-in-chief for a prominent Anti-Balaka insider witness such as P-0876 is entirely proportionate, especially in light of the unique, important, and prejudicial nature of his evidence’, and that the purported reduced time for P-0876’s testimony does not take into consideration the fact that the Defence might need additional time should the P-0876 Request be granted.³⁶

³⁰ P-0876 Request, ICC-01/14-01/18-1082-Red, para. 13.

³¹ Yekatom Defence Response to the P-0876 Request, ICC-01/14-01/18-1094-Conf, paras 2, 29.

³² Yekatom Defence Response to the P-0876 Request, ICC-01/14-01/18-1094-Conf, paras 3, 8-11.

³³ Yekatom Defence Response to the P-0876 Request, ICC-01/14-01/18-1094-Conf, paras 3, 14-15.

³⁴ Yekatom Defence Response to the P-0876 Request, ICC-01/14-01/18-1094-Conf, paras 18, 20-21.

³⁵ Yekatom Defence Response to the P-0876 Request, ICC-01/14-01/18-1094-Conf, para. 19.

³⁶ Yekatom Defence Response to the P-0876 Request, ICC-01/14-01/18-1094-Conf, paras 24-27.

20. The Ngaïssona Defence also opposes the P-0876 Request, arguing that P-0876’s prior statement (i) is central to core issues in dispute; (ii) includes a significant number of references to the acts and conduct of Mr Ngaïssona and the charged crimes; and (iii) is not corroborated on many issues by any other witnesses expected to offer full in-court testimony.³⁷ Furthermore, it contests P-0876’s credibility ‘due to his clear bias against Mr Ngaïssona’ and submits that ‘his testimony should be given under oath in its entirety, under the Chamber’s supervision’.³⁸ It further argues that granting the P-0876 Request would impose a heavier burden on the Defence as regards cross-examination, ultimately limiting any time saved. It therefore submits that the prejudice caused to the accused’s fair trial rights outweighs any potential and limited promotion of the expeditiousness of the proceedings.³⁹

2. *The Chamber’s determination*

21. In his statements,⁴⁰ P-0876 discusses, *inter alia*, (i) the emergence of the Seleka and the Anti-Balaka; (ii) speeches by Bozizé against ‘*ihadists*’ and ‘*djandjawids*’ followed by the distribution of machetes to the youth, the establishment of check-points and the alleged killing of individuals from the Goula ethnic group; (iii) the Seleka’s arrival to Bangui and Djotodia’s regime; (iv) alleged crimes committed by the Seleka, including killings, pillaging and destruction of churches; (v) the witness’s encounters with the Seleka; (vi) [REDACTED] convince the civil society, as well as political and international figures, of the need for a political solution in the CAR; (vii) the existence of two Anti-Balaka branches, [REDACTED]; (viii) the structure, organisation and financing of the Anti-Balaka, [REDACTED]; (ix) Mr Ngaïssona’s role within the Anti-Balaka [REDACTED]; (x) Mr Yekatom’s role within the Anti-Balaka and alleged crimes committed by him and/or his group; (xi) the Bangui Attack, other alleged crimes committed by the Anti-Balaka, including the targeting and killing of Muslims, destruction of mosques, pillaging, and the consequent displacement of Muslims;

³⁷ Ngaïssona Defence Response to the P-0876 Request, ICC-01/14-01/18-1096-Red, paras 2, 7, 10.

³⁸ Ngaïssona Defence Response to the P-0876 Request, ICC-01/14-01/18-1096-Red, paras 2, 8-9.

³⁹ Ngaïssona Defence Response to the P-0876 Request, ICC-01/14-01/18-1096-Red, paras 2, 11-12.

⁴⁰ CAR-OTP-2046-0247; CAR-OTP-2046-0249; CAR-OTP-2046-0267; CAR-OTP-2046-0295; CAR-OTP-2046-0324; CAR-OTP-2046-0346; CAR-OTP-2046-0370; CAR-OTP-2046-0380; CAR-OTP-2046-0407; CAR-OTP-2046-0427; CAR-OTP-2046-0455; CAR-OTP-2046-0473; CAR-OTP-2046-0500; CAR-OTP-2046-0530; CAR-OTP-2046-0562.

and (xii) the Anti-Balaka's involvement with the transitional government [REDACTED].

22. At the outset, the Chamber recalls that while its decision to allow the introduction of a prior recorded testimony may be guided by several factors, including whether the testimony is corroborative of other evidence, these factors are not requirements pursuant to Rule 68(3) of the Rules.⁴¹ It further recalls that references to the accused's acts and conduct do not *per se* constitute an obstacle to the introduction of a prior recorded testimony pursuant to Rule 68(3) of the Rules.⁴²
23. In this regard, the Chamber observes that P-0876's statements include a number of references to Mr Ngaïssona's acts and conduct, including (i) his role in the Anti-Balaka as 'financier' and general coordinator, and (ii) certain acts allegedly committed by Mr Ngaïssona (such as [REDACTED] his participation in the robbery of cars and other assets). Similarly, the Chamber observes that P-0876's statements include a number of references to Mr Yekatom's acts and conduct, including (i) his role within the Anti-Balaka, and (ii) the alleged commission of crimes by him and/or his group and, in particular, the targeting and killing of Muslims. However, the Chamber notes that other witnesses either have given or are expected to give full in-court testimony on the majority of the abovementioned issues.⁴³ With regard to the acts allegedly committed by Mr

⁴¹ First Rule 68(3) Decision, ICC-01/14-01/18-907-Red, para. 14, and the jurisprudence referred to therein.

⁴² Fifth Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness P-0306, 20 August 2021, ICC-01/14-01/18-1088-Conf, para. 14; Sixth Rule 68(3) Decision, ICC-01/14-01/18-1114-Conf, para. 14.

⁴³ For Mr Ngaïssona, see e.g. **P-1839**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 15-16, entry 4; **P-2625**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 47, entry 90; **P-1719**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 23, entry 23; **P-2269**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 17, entry 7; **P-0458**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 22, entry 21; **P-1521**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 19-20, entry 14; **P-1339**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 20, entry 16; **P-0306**: Transcript of hearing, 27 September 2021, ICC-01/14-01/18-T-064-CONF-ENG; **P-2232**: Transcript of hearing, 16 November 2021, ICC-01/14-01/18-T-077-CONF-ENG. For Mr Yekatom, see e.g. **P-1839**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 14-15, entry 4; **P-2269**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 16, entry 7; **P-1339**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 19, entry 16; **P-2233**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 32-33, entry 52; **P-2475**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 34-35, entry 57; **P-1666**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, pp. 35-36, entry 60; **P-2196**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 37, entry 65; **P-0967**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA,

Ngaïssona, the Chamber notes that the witness's evidence is limited and emphasises that the Defence will have the opportunity to examine the witness on these issues in court and will be granted a reasonable amount of time for that purpose.⁴⁴

24. Furthermore, the Chamber notes that the remainder of P-0876's statements largely relate to contextual elements of the charged crimes, such as (i) the causes and circumstances of the crisis in the CAR; (ii) the emergence of the Seleka and the Anti-Balaka; (iii) crimes allegedly committed by both groups; and (iv) the Anti-Balaka's organisation, structure, financing and key figures within each of its branches.
25. With regard to the Yekatom Defence's submissions related to P-0876's status as an Article 55(2) witness and the consequent risk that he limits his role, or exaggerates or fabricates the roles of others during interviews,⁴⁵ the Chamber considers these arguments to be of general and speculative nature. Absent any substantiation as to why, in the specific case of P-0876, his status as an Article 55(2) witness would affect his credibility, the Chamber does not consider this argument to constitute an obstacle to the use of Rule 68(3) of the Rules. Similarly, the Chamber does not consider the fact that he is an insider witness, or that he held positions within the Anti-Balaka [REDACTED],⁴⁶ to militate against the introduction of his evidence under this provision.⁴⁷
26. Moreover, the Chamber notes the Yekatom Defence's submissions that two other witnesses described P-0876 as 'an opportunist' and 'a liar' and that the latter's evidence contradicts certain aspects of the evidence provided by another witness.⁴⁸ It further notes that the Ngaïssona Defence contests P-0876's credibility 'due to his clear bias against Mr Ngaïssona', arguing that the witness

p. 27, entry 34; **P-1705**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 28, entry 37; **P-2328**: Transcript of hearing, 6 July 2021, ICC-01/14-01/18-T-047-CONF-ENG; **P-0884**: Transcript of hearing, 19 July 2021, ICC-01/14-01/18-T-056-CONF-ENG.

⁴⁴ See also e.g. First Rule 68(3) Decision, ICC-01/14-01/18-907-Red, para. 24.

⁴⁵ Yekatom Defence Response to the P-0876 Request, ICC-01/14-01/18-1094-Conf, para. 19.

⁴⁶ CAR-OTP-2046-0473, at 0478.

⁴⁷ See, similarly, Sixth Rule 68(3) Decision, ICC-01/14-01/18-1114-Conf, para. 17.

⁴⁸ Yekatom Defence Response to the P-0876 Request, ICC-01/14-01/18-1094-Conf, paras 18, 20-21.

has ‘strong views about Mr Ngaïssona’ and appears to [REDACTED], and providing specific examples.⁴⁹ The Chamber, however, is not persuaded by these arguments, which it considers speculative at this stage, reiterates that the Defence will have the opportunity to examine the witness on these issues in court, and recalls that it will assess the probative value of P-0876’s evidence as part of its holistic assessment when deliberating on the judgment pursuant to Article 74(2) of the Statute.

27. Lastly, the Chamber notes that the introduction of P-0876’s prior recorded testimony would cut the time for the Prosecution’s witness examination by two thirds, thereby promoting the expeditiousness of the proceedings.
28. In light of the above, the Chamber finds that it is not necessary for P-0876’s testimony to be presented orally in its entirety, and considers that the introduction of the prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.
29. Accordingly, the Chamber grants the Prosecution’s request to introduce the statement of P-0876⁵⁰ and associated documents⁵¹ under Rule 68(3) of the Rules.

C. P-0475

1. Submissions

30. The Prosecution seeks to introduce the prior recorded testimony of witness P-0475, comprising one statement and five associated exhibits.⁵² It submits that the introduction of P-0475’s prior recorded testimony would help streamline the proceedings, reducing the time for its examination from at least five to three hours.⁵³

⁴⁹ Ngaïssona Defence Response to the P-0876 Request, ICC-01/14-01/18-1096-Red, paras 2, 8-9.

⁵⁰ CAR-OTP-2046-0247; CAR-OTP-2046-0249; CAR-OTP-2046-0267; CAR-OTP-2046-0295; CAR-OTP-2046-0324; CAR-OTP-2046-0346; CAR-OTP-2046-0370; CAR-OTP-2046-0380; CAR-OTP-2046-0407; CAR-OTP-2046-0427; CAR-OTP-2046-0455; CAR-OTP-2046-0473; CAR-OTP-2046-0500; CAR-OTP-2046-0530; CAR-OTP-2046-0562.

⁵¹ CAR-OTP-2035-0061; CAR-OTP-2035-0064.

⁵² P-0475 Request, ICC-01/14-01/18-1147-Conf, paras 1, 15, 22; Annex A to the P-0475 Request, ICC-01/14-01/18-1047-Conf-AnxA.

⁵³ P-0475 Request, ICC-01/14-01/18-1147-Conf, paras 4, 18-20.

31. According to the Prosecution, P-0475's prior recorded testimony is corroborated by documentary evidence and, *inter alia*, the evidence of (i) two witnesses regarding the Anti-Balaka's targeting and destruction of mosques; (ii) three witnesses in relation to the inability of Muslim civilians from Bangui to bury their dead in accordance with their religious principles; (iii) six witnesses in relation to the evacuation of Muslims from Bangui and the provinces; and (iv) four witnesses regarding Mr Yekatom allegedly killing his *aide de camp*.⁵⁴

2. *The Chamber's determination*

32. In his statement,⁵⁵ P-0475 discusses, *inter alia*, (i) the origins of the Seleka and Anti-Balaka, and the background of the conflict; (ii) the relationship [REDACTED]; (iii) the Bangui Attack; (iv) the location and destruction of mosques in Bangui by the Anti-Balaka and the local youth, and the difficulty to distinguish between them or their leaders at times; (v) the destruction of Muslim houses by the Anti-Balaka, and alleged killings committed by them; (vi) Mr Ngaïssona allegedly being the top leader of the Anti-Balaka and in charge of the Anti-Balaka in the 4th *arrondissement* in Bangui, and the presence of Mr Ngaïssona's group in Boeing; (vii) Mr Yekatom allegedly being in charge of the Anti-Balaka in Bimbo, Ombella-Mpoko and Lobaye, the location of the 'Rambo group' in PK9 on the road to Mbaïki, and Mr Yekatom allegedly killing his *aide de camp*, among other persons; (viii) the different Anti-Balaka groups associated with Maxime Mokom, and Emotion Namsio reporting to Mr Ngaïssona's 'central group'; (ix) the alleged targeting and harassment of Muslims civilians by the Anti-Balaka (especially in KM5, the 3rd and 5th *arrondissements*); (x) [REDACTED] the occasional release of Muslim civilians detained by the Anti-Balaka; and (xi) the displacement of the Muslim population and their evacuation from Bangui and the provinces.
33. The Chamber observes that P-0475's statement mainly contains general references to the background of the conflict, its impact on the local Muslim civilian population, and the leadership of the Anti-Balaka. It further notes that the references to Mr Yekatom and Mr Ngaïssona are of limited nature, that the

⁵⁴ P-0475 Request, ICC-01/14-01/18-1147-Conf, para. 14.

⁵⁵ CAR-OTP-2104-0116; CAR-OTP-2118-1122 (French translation).

Defence did not object to the request and that it will, in any case, have an opportunity to question the witness in court. Moreover, the Chamber notes that the introduction of P-0475's prior recorded testimony would cut the time for the Prosecution's examination of the witness from at least five to three hours, thereby promoting the expeditiousness of the proceedings.

34. In light of the above, the Chamber finds that it is not necessary for P-0475's testimony to be presented orally in its entirety, and considers that the introduction of the prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.
35. Accordingly, the Chamber grants the Prosecution's request to introduce the statement of P-0475⁵⁶ and associated documents,⁵⁷ under Rule 68(3) of the Rules.

FOR THESE REASONS, THE CHAMBER HEREBY

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

- **Witness P-1193** (CAR-OTP-2045-0048; CAR-OTP-2051-0353 [English translation]), together with its associated documents (CAR-OTP-2039-0018; CAR-OTP-2039-0019; CAR-OTP-2039-0020; CAR-OTP-2039-0024; CAR-OTP-2039-0031; CAR-OTP-2039-0050; CAR-OTP-2039-0063; CAR-OTP-2039-0067, CAR-OTP-2057-0230 [English translation]; CAR-OTP-2039-0071; CAR-OTP-2039-0072);
- **Witness P-0876** (CAR-OTP-2046-0247; CAR-OTP-2046-0249; CAR-OTP-2046-0267; CAR-OTP-2046-0295; CAR-OTP-2046-0324; CAR-OTP-2046-0346; CAR-OTP-2046-0370; CAR-OTP-2046-0380; CAR-OTP-2046-0407; CAR-OTP-2046-0427; CAR-OTP-2046-0455; CAR-OTP-2046-0473; CAR-

⁵⁶ CAR-OTP-2104-0116; CAR-OTP-2118-1122 (French translation).



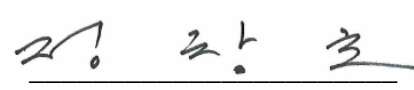
⁵⁷ CAR-OTP-2104-0149; CAR-OTP-2104-0151; CAR-OTP-2104-0152; CAR-OTP-2104-0153; CAR-OTP-2104-0156.

OTP-2046-0500; CAR-OTP-2046-0530; CAR-OTP-2046-0562), together with its associated documents (CAR-OTP-2035-0061; CAR-OTP-2035-0064);

- **Witness P-0475** (CAR-OTP-2104-0116; CAR-OTP-2118-1122 [French translation]), together with its associated documents (CAR-OTP-2104-0149; CAR-OTP-2104-0151; CAR-OTP-2104-0152; CAR-OTP-2104-0153; CAR-OTP-2104-0156); and

ORDERS the Prosecution and the Yekatom Defence, respectively, to file public redacted versions of the P-0475 Request, and the responses to the P-1193 Request and P-0876 Request, 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>Judge Péter Kovács</p>	 <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Bertram Schmitt Presiding Judge</p>	 <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Chang-ho Chung</p>
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Dated 17 June 2022

At The Hague, The Netherlands