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Date: **9 August 2022**

TRIAL CHAMBER V

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

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

Public

Public redacted version of "Yekatom Defence Response to the "Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2511 pursuant to Rule 68(3)", ICC-01/14-01/18-1503-Conf, 7 July 2022", ICC-01/14-01/18-1518-Conf, 18 July 2022

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. The Defence for Mr Alfred Rombhot Yekatom ("Defence") hereby responds to the "Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2511 pursuant to Rule 68(3)"[1] ("Request").

2. The Defence submits that the Request should be rejected in light of the content of P-2511's statement, which goes over central issues of the case, and of the insufficient safeguards of Mr Yekatom's rights when submitting such statements pursuant to Rule 68(3).

PROCEDURAL HISTORY

3. On 16 October 2020, Trial Chamber V ("Chamber") issued its "Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules" in which it *inter alia* recalled that *viva voce* testimony should be the default mode of testifying,[2] and held that Rule 68 (3) may not be used without limits, noting that when considered against the specific circumstance of a case, its use might be disproportionate.[3]

4. On 10 November 2020, the Prosecution included P-2511 in its list of witnesses, expecting this individual to testify on core issues of the case, more particularly the presence of child soldiers in the Anti-Balaka.[4]

5. On 7 July 2022, the Prosecution's Request was notified.[5]

APPLICABLE LAW

6. Rule 68(3) of the Rules of Procedure and Evidence ('Rules') states:

[1] ICC-01/14-01/18-1503-Conf.
[2] ICC-01/14-01/18-685, para. 25.
[3] *Ibid*, para. 31.
[4] ICC-01/14-01/18-724-Conf-AnxA, pages 33-34, Witness #55.
[5] ICC-01/14-01/18-1503-Conf.

> If the witness who gave the previously recorded testimony is present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony if he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.

7. A Chamber must carry out an individual assessment of the evidence sought to be introduced under Rule 68(3), based on the circumstances of each case, which includes analysing the importance of this evidence in light of the charges and other evidence presented or intended to be presented; this assessment is part and parcel of the analysis a Chamber must undertake in determining whether it is not prejudicial to or inconsistent with the rights of the accused or with the fairness of the trial generally, to allow for the evidence in question to be introduced under Rule 68 (3).[6]

8. In conducting this analysis, a Chamber may take into account a number of factors, including the following: (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.[7]

SUBMISSIONS

9. The Defence will first submit that the current safeguards when tendering a statement pursuant to Rule 68(3) are insufficient to protect the rights of Mr Yekatom (I); it will then be argued that the content of P-2511's statement goes over central issues of the case (II).

[6] *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 Judgment'), para. 71.
[7] *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", 3 May 2011, ICC-01/05-01/08-1386, para. 78.

A. The promised counterbalancing 'safeguards' in Rule 68(3), as well as its promised benefit of expeditiousness, are overestimated.

10. The Defence submits that the recent appearance of witness P-1962, who testified from 24 to 29 June 2022, shows the limits of the 'safeguards' inherent in Rule 68(3), as well as the theoretical – or at the very least, overestimated – nature of its promised benefit to the expeditiousness of proceedings.

11. As the Chamber will recall, the Prosecution tendered the prior recorded testimony of P-1962 via Rule 68(3) on 4 December 2020 ('P-1962 Rule 68(3) Request'), submitting *inter alia* that allowing its introduction into evidence would expedite his examination-in-chief by three hours.[8]

12. The Defence opposed the P-1962 Rule 68(3) Request, citing the witness's allegation made in his statement, that Mr Yekatom had told P-1962 and [REDACTED] ('First Allegation'); and arguing that this claim was not only uncorroborated, but 'materially in dispute and central to the core issues of the case, including Mr. Yekatom's intention and sentiment towards Muslims'[9] – in other words, that all three key factors relevant to assessing Rule 68(3) requests were applicable, thereby militating against the introduction of P-1962's evidence via Rule 68(3), pursuant to established case law.[10] The Defence also cited P-1962's alleged interactions [REDACTED], which the Prosecution seeks to rely on as evidence underpinning Counts 24 and 25 ('Second Allegation'), arguing that P-1962 should testify *viva voce* on this matter.[11]

[8] ICC-01/14-01/18-750-Conf, paras 24, 26.
[9] ICC-01/14-01/18-776-Conf, paras 32-34; see also, CAR-OTP-2068-0037-R04, para. 123.
[10] See *supra*, para. 8
[11] ICC-01/14-01/18-776-Conf, paras 29-31.

13. Further, in his statement, P-1962 also made prejudicial, uncorroborated claims against [REDACTED] – including the allegation that, at some point prior to joining Mr Yekatom's group, [REDACTED] ('Third Allegation').[12]

14. In subsequently granting the P-1962 Rule 68(3) Request, the Chamber relied upon the promised three hours of estimated time-savings; and further, held that, 'as regards the Defence's submissions that P-1962's statements relate to core issues in the case that are materially in dispute, the Chamber recalls that the Defence will have the opportunity to examine the witness on these issues in court'.[13]

15. When P-1962 eventually appeared to testify, a substantial portion of the Defence's cross-examination of P-1962 consisted of a line of questioning that sought to highlight the incongruous nature of the witness's allegations as regards Mr Yekatom and [REDACTED]s intention and sentiment towards Muslims, by putting to P-1962 evidence demonstrating that both Mr Yekatom and [REDACTED] were publicly promoting and facilitating reconciliation and peace between Christians and Muslims in CAR during and after the crisis.[14]

16. Under cross-examination, P-1962 ultimately reversed his First and Third Allegation contained in his prior statement. His reversal of the First Allegation came in response to a question in which the allegation were simply posed in reverse:

> *[REDACTED].*[15]

17. Further, his reversal of the Third Allegation[16] was consistent with his evidence in examination-in-chief, in which he specifically stated that [REDACTED] was

[12] See, CAR-OTP-2068-0037-R04, para. 61.
[13] ICC-01/14-01/18-907-Conf, para. 24.
[14] See, ICC-01/14-01/18-T-140-CONF-FRA, 51:24-70:27; ICC-01/14-01/18-T-141-CONF-FRA, 3:15-11:12.
[15] See, ICC-01/14-01/18-T-141-CONF-FRA, 9:11-14.
[16] See, ICC-01/14-01/18-T-140-CONF-FRA, 62:18-65:6.

not among those who wished that the captured women and children be harmed.[17]

18. These reversals were made in spite of the fact that, as the Chamber will recall, at the commencement of his examination, P-1962 was duly taken through the formalities of the Rule 68(3) procedure, confirming *inter alia* that the content of his statements, including the express corrections he had made during his statement re-reading, reflected the truth.[18]

19. The exact circumstances giving rise to these reversals – and perhaps more importantly, the circumstances further to which the reversed allegations came to form part of P-1962's statement in the first place – remain unknown to the Defence. Notwithstanding this, the case of P-1962 aptly illustrates that the mere fact that Rule 68(3) formalities are met, should in no way be understood as a guarantee that a witness has properly re-read their statement; or indeed, that a witness fully appreciates the consequences that will flow from non-opposition to their statement being introduced into the trial record, i.e. that allegations made in their interview record may be relied on against an accused in the same way as *viva voce* allegations made in the presence of an accused, under the supervision of the Chamber.

20. Indeed, as Judge Henderson held in this regard in *Gbagbo & Blé Goudé*, '[t]here is a fundamental difference between giving sworn testimony in a formal courtroom setting in the presence of the accused and making incriminating allegations in response to questions by investigators for one of the parties.'[19]

[17] See also, ICC-01/14-01/18-T-139-CONF-FRA, 10:12-11:2, where Prosecution Counsel subsequently proceeded to read out five sentences in succession, including the Third Allegation, and asked P-1962 whether that corresponded with his memory of the event, to which the witness agreed; however, given that P-1962 twice reversed the Third Allegation, it can be inferred that P-1962's agreement was not in reference to the Third Allegation specifically, but to the other details of the event as read out to him.
[18] ICC-01/14-01/18-T-138-CONF-FRA, 63:26-67:6.
[19] *Prosecutor v. Gbagbo & Blé Goudé*, Corrected Version of Public Redacted Version of Partial Dissent of Judge Henderson, ICC-02/11-01/15-950-Anx-Red-Corr, 23 June 2017, para. 21.

21. By extension, the completion of Rule 68(3) formalities cannot be understood as a reliable guarantee that the statements reflect what the witness would have said under sworn *viva voce* testimony before the Chamber. Indeed, the specific reasons for these reversals is of secondary importance; what is material is the fact that the case of P-1962 should raise grave doubts as to the efficacy of the 'safeguards' within the Rule 68(3) procedure. Ultimately, there remains real potential for prejudice in allowing evidence containing disputed, material allegations to be introduced via Rule 68(3). In this regard, the Defence also notes P-1962 is not the first Rule 68(3) witness to have reversed, in cross-examination, a prejudicial allegation made against Mr Yekatom.[20]

22. In the same vein, P-1962's testimony also illustrated the real limitations of cross-examination as a 'remedy' purportedly counterbalancing the effect of Rule 68(3).

23. For example: the Second Allegation, and specifically, P-1962's claim [REDACTED], is materially disputed by the Defence.[21] During cross-examination however, the Defence was effectively precluded from testing an aspect of this account via an open-ended question, on the basis that P-1962 had already 'answered' the question in his interview.[22]

24. This procedural limitation applied to Rule 68(3) witnesses is prejudicial to fairness. As set out in established case law, the benefit of hearing *viva voce* accounts of events is that it 'enables the Chamber and the accused to hear natural and spontaneous accounts from witnesses, to directly and closely observe their reactions, demeanour and composure, and to immediately seek clarifications.'[23] If the Defence is precluded from attempting to re-create these conditions in cross-examination, in relation to disputed, material allegations,

[20] Specifically, P-0808 ; see, ICC-01/14-01/18-T-072-ENG ET, 50:6-51:16.
[21] See, CAR-OTP-2068-0037-R04, paras 26-38.
[22] See, ICC-01/14-01/18-T-141-CONF-ENG (Realtime), 17:9-24.
[23] See, ICC-01/14-01/18-685, para. 33, and reference cited therein.

the Chamber is deprived of the opportunity to fully assess the credibility of those allegations. In the same vein, the Defence is deprived of the opportunity to draw out material contradictions in these disputed accounts, between what is claimed in the statement, and what is stated in court – itself a critical instrument for demonstrating that a particular allegation is untruthful and therefore should not be relied upon by the Chamber.

25. In addition, this procedural limitation unduly equates information elicited (and as is often the case, interpreted, summarised, and re-organised) via undisclosed questions during Prosecution investigative interviews, with sworn testimony provided *viva voce* under the supervision of the Chamber.

26. Furthermore, as the Chamber will recall, the Prosecution twice sought to oppose Defence lines of questioning in relation to the First and Third Allegations – despite having previously argued that granting the P-1962 Rule 68(3) Request would not cause unfair prejudice 'as the witness will be fully available for cross-examination'.[24] While ultimately these Prosecution objections did not occasion prejudice, as in the event, the First and Third Allegations were reversed, they nonetheless illustrate the limitations of cross-examination as a 'remedy' to the introduction of disputed, material evidence under Rule 68(3).

27. In relation to the Third Allegation, Prosecution Counsel objected to a Defence inquiry as to what [REDACTED] intended be done with the captured women and children, on the basis that the question called for speculation as to [REDACTED] state of mind.[25] While the witness ultimately was able to provide evidence on the latter and reversed his Third Allegation, the fact that Prosecution Counsel's objection was in fact not unfounded is indicative of another problematic aspect of allowing disputed, material allegations into

[24] ICC-01/14-01/18-750-Conf, 3, 28, 30.
[25] See, ICC-01/14-01/18-T-140-CONF-ENG (Realtime), 75:1-77:18.

evidence via Rule 68(3): i.e. that procedural rules applicable in the courtroom, and specifically to modes of questioning, do not apply in an interview setting. In other words, under the Rule 68(3) procedure, the Prosecution was allowed to tender and rely on evidence going to [REDACTED] state of mind, and then to subsequently object to Defence attempts to elicit evidence on that very same issue in cross-examination.

28. Further, at the conclusion of the Defence's line of questioning regarding the above-mentioned incongruity between the First Allegation and Mr Yekatom's various public efforts to promote and facilitate reconciliation between Muslim and Christian communities in CAR, Prosecution Counsel objected to a Defence question, citing a purported repetitiveness, as well as a lack of clarity – despite the fact that in the question, the Defence did no more than directly suggest to P-1962 that the First Allegation was false.[26]

29. The Rule 68(3) procedure remains an important trial management tool for the purposes of promoting efficiency and expediency. However, the case of P-1962 nonetheless calls into question the purported efficacy of the 'safeguards' in the Rule 68(3) procedure; and whether the mere formal ability to cross-examine a witness is in reality sufficient to counterbalance the prejudice that is occasioned when statements containing materially disputed, uncorroborated claims going to core issues are introduced via Rule 68(3). By the same token, it demonstrates that cogent reasons exist for denying Rule 68(3) requests where the well-established key factors militating against introduction of statements apply.

30. Lastly, as the testimony of P-1962 illustrates, the promised promotion of expeditiousness, i.e. the sole benefit of Rule 68(3), is in reality a highly variable factor, of which the real beneficial effect is uncertain.

[26] See, ICC-01/14-01/18-T-141-CONF-ENG (Realtime), 9:8-13.

31. As noted above, the Prosecution had submitted that granting the P-1962 Rule 68(3) Request would expedite the proceedings by three hours: specifically, that it would allow the Prosecution to conduct its examination of P-1962 in 'about three hours and possibly less'; whereas hearing P-1962 testify *viva voce* in full would require 'at least six hours'.[27]

32. In the event, the Prosecution required roughly 3.5 hours to complete its examination-in-chief,[28] while the Defence dedicated roughly 40 minutes of cross-examination to addressing the First Allegation, which was ultimately reversed;[29] and 30 additional minutes were dedicated to eliciting details regarding P-1962's disputed account of his travel to [REDACTED].[30]

33. To be clear, the Defence is in no way questioning the good-faith nature of the Prosecution's estimations as regards the proposed time-savings. The Defence is also entirely cognisant of the inherently contingent and variable nature of the pace of in-court proceedings. The fact remains however, that had the Prosecution conducted an in-full examination of P-1962, that i) the First Allegation is unlikely to have been elicited, given the nature of P-1962's reversal thereof; and ii) the details the Defence sought in relation to P-1962's claimed travel [REDACTED] would have been elicited – any by extension, it is unlikely that the Defence would subsequently have spent as much time as it did in cross-examining P-1962 on these matters.

34. The contingent nature of the pace of hearings notwithstanding, the promised benefit of three hours of time-savings was substantially undercut by the knock-on effects on Defence cross-examination time.

[27] ICC-01/14-01/18-750-Conf, paras 24, 26.
[28] ICC-01/14-01/18-T-138-CONF-FRA, 59:22-82:25; ICC-01/14-01/18-T-139-CONF-FRA, 3:15-39:25.
[29] ICC-01/14-01/18-T-140-CONF-FRA, 65:18-70:27; ICC-01/14-01/18-T-141-CONF-FRA, 3:15-10:25.
[30] ICC-01/14-01/18-T-141-CONF-FRA, 12:9-19:20.

35. As the example of P-1962 illustrates therefore, the ultimately theoretical and variable nature of estimated time-savings under Rule 68(3) should be kept in mind when weighing the latter against the concrete, real prejudice that is occasioned by granting Rule 68(3) requests and declining the opportunity to hear disputed, material evidence *viva voce* in-full.

B. On the content of P-2511's statement which goes over central issues of the case

i) Allegations concerning Count 29

36. P-2511 is described by the Prosecution as an alleged child soldier who was approximately [REDACTED] years old when he joined the group led by Mr Yekatom,[31] his statement is considered as relevant for the "conscription and use of children under the age of 15"[32] which is the subject of Count 29.

37. P-2511 describes how he allegedly joined the Anti-Balaka while he was only [REDACTED] when they were stationed at [REDACTED], and the alleged presence of an Anti-Balaka named "[REDACTED]" who was fourteen.[33] P-2511 also mentions the possible presence of some children in Anti-Balaka groups based in Kapou, those groups potentially being led by Mr Yekatom.[34]

38. Those allegations are used by the Prosecution in its Trial Brief to argue the forcible conscription or voluntary enlistment of child soldiers in Mr Yekatom's group.[35] P-2511 is also relied upon by the Prosecution to argue the presence of child soldiers at the Yamwara School base,[36] in Kapou,[37] and in Pissa.[38]

[31] ICC-01/14-01/18-1503-Conf, para. 2
[32] ICC-01/14-01/18-1503-Conf, para. 9
[33] CAR-OTP-2114-0178-R02, paras 29-30.
[34] CAR-OTP-2114-0178-R02, para. 46.
[35] ICC-01/14-01/18-723-Conf, para. 484, fn. 1216.
[36] ICC-01/14-01/18-723-Conf, para. 378, fn. 986 ; para. 484, fn. 1217.
[37] ICC-01/14-01/18-723-Conf, para. 484, fn. 1221.
[38] ICC-01/14-01/18-723-Conf, para. 378, fn. 990 ; para. 484, fn. 1222.

39. In his statement, P-2511 also mentions activities that the alleged child soldiers were responsible for during their time in the group. He specifically indicates that they did not take part in the fighting that took place,[39] but were responsible for the carrying of ammunitions.[40] They were also allegedly tasked with spying on the Seleka[41] and preparing food.[42] Those allegations are notably used in the Prosecution's Trial Brief to support the assertion that child soldiers were used for spying or as a free workforce.[43]

40. P-2511 also provides evidence regarding the [REDACTED], which is central to Count 29, as the Decision on the Confirmation of Charges found that Mr Yekatom [REDACTED].[44] This witness is also relied upon in the Prosecution's Trial Brief to assert that [REDACTED].[45]

41. The Defence submits that the significance of P-2511's statement to a core charge such as Count 29 militates in favour of his testimony being heard fully *viva voce*.

ii) Allegations in relation to crimes allegedly committed on the PK9-Mbaïki axis

42. Serious allegations are also made by P-2511 in relation to the PK9-Mbaïki axis.

43. P-2511 alleges that Mr Yekatom wanted "to attack villages with Muslims present who were still supporting the Seleka, including MBAIKI, BODA and some other places".[46] P-2511 also indicates that he heard that Coeur de Lion "moved between villages and once he had chased out the Seleka and Muslims he would stay for a while before moving to the next one".[47] He further mentions that he heard that Muslims in Pissa fled when the Anti-Balaka were

[39] CAR-OTP-2114-0178-R02, para. 40.
[40] CAR-OTP-2114-0178-R02, paras 37, 40.
[41] CAR-OTP-2114-0178-R02, para. 36.
[42] CAR-OTP-2114-0178-R02, paras 36, 47.
[43] ICC-01/14-01/18-723-Conf, para. 485, fns 1225 and 1229 respectively.
[44] [REDACTED].
[45] [REDACTED].
[46] CAR-OTP-2114-0178-R02, para. 49.
[47] CAR-OTP-2114-0178-R02, para. 52.

approaching "because they knew that the Anti-Balaka would fight them and kill them".[48]

44. Those allegations go directly to the core of the war crime charge of displacement and of the crime against humanity charge of forcible transfer and deportation in relation to the "dislocation of the majority of the Muslim population from their towns and villages" in the context of the Anti-Balaka advance on the PK9-Mbaïki axis (Counts 24 and 25).[49] Moreover, the allegations are susceptible to support the charge of persecution (Count 28).

iii) Allegations on the acts and conduct of Mr Yekatom

45. The Defence highlights that P-2511 alleges to have joined the group [REDACTED] a few days [REDACTED][50] and was still present when the group moved on the PK9-Mbaïki axis.[51] It can be noted that P-2511 is one of the very few insider witnesses who alleges having been present at both the Yamwara School Base and the PK9-Mbaïki axis.[52] It is submitted that the presence of P-2511 at most of the relevant areas of the case, as well as during a substantial duration of the timeframe relevant to the charges, militates in favour of a fully *viva voce* testimony of this witness as he would arguably be in a position to provide direct information on multiple core issues of the case.

46. P-2511 describes in his statement an alleged event he directly witnessed where [REDACTED], [REDACTED], and shot [REDACTED] by Mr Yekatom, before [REDACTED].[53]

47. This allegation, if believed, could further the Prosecution position that Mr Yekatom "set an example for his elements through his own commission of

[48] CAR-OTP-2114-0178-R02, para. 54.
[49] ICC-01/14-01/18-403-Conf-Corr, pages 105-106.
[50] CAR-OTP-2114-0178-R02, paras 28-29.
[51] CAR-OTP-2114-0178-R02, paras 47-48.
[52] Other such witnesses being : [REDACTED].
[53] CAR-OTP-2114-0178-R02, para. 43.

indiscriminate acts of brutality, which promoted similar violent conduct throughout his Group. He was notorious for killing both Muslims and his own men […]".[54]

48. The Defence contends that such direct evidence that depict an image of a brutal man should be elicited fully *viva voce* in light of it potential importance on the Chamber's assessment of Mr Yekatom's personality and of his contribution to the charged crimes.[55] The mention by the witness of such a "supernatural" event during the alleged crime [REDACTED],[56] also militate in favour of the account to be heard fully viva voce in order to better assess his credibility.

CONCLUSION

49. The Defence submits that the Prosecution's Request should be denied.

50. As developed above, the 'safeguards' put in place when submitting a previous recorded testimony through Rule 68(3) application appear lacking. Indeed, one of the first safeguard, the possibility for the witness to re-read his statement in order to correct any error that it could contain has failed on multiple occasions. Those failures could have led to serious and incriminating evidence being included in the case record, despite being erroneous. On the other hand, one of the last safeguards, the ability for the Defence to examine the witness's evidence, might be effectively hampered which could by extension potentially lead to incriminating and untested evidence being included in the case record.

51. Those serious issues with the submission of previous recorded testimony pursuant to Rule 68(3) warrant a cautious approach when the statement being

[54] ICC-01/14-01/18-723-Conf, para. 369.
[55] ICC-01/14-01/18-723-Conf, Chapter VI, C, (b).
[56] CAR-OTP-2114-0178-R02, para. 43 : [REDACTED].

tendered contains disputed evidence that relates to core issues of the case or/and to the acts and conduct of an accused.

52. In light of the content of P-2511's statement, which goes to core issues of the case on multiple charges, the Defence contends that this cautious approach should prevail. The purported four hours of examination saved by the Prosecution should the Request be granted[57] is counterbalanced by the extra time the Defence will need to address all incriminating topics included in the statement, and, is outweighed by the potential prejudice that would result if incorrect information is added to the case record due to failing Rule 68(3) safeguards.

CONFIDENTIALITY

53. The present response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed forthwith.

RELIEF SOUGHT

54. In light of the above, the Defence respectfully requests Trial Chamber V to:

REJECT the Request.

RESPECTFULLY SUBMITTED ON THIS 9th DAY OF AUGUST 2022

Me Mylène Dimitri

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The Hague, the Netherlands

[57] ICC-01/14-01/18-1503-Conf, paras 16, 18.