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Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **19 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-  
EDOUARD NGAÏSSONA***

**Public**

**with Confidential Annexes A and B**

**Public Redacted Version of "Prosecution's Request for the Formal Submission of  
the Prior Recorded Testimony of P-2442 pursuant to Rule 68(3)",  
ICC-01/14-01/18-1505-Conf, 8 July 2022**

**Source:** Office of the Prosecutor

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

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## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-2442, in accordance with rule 68(3) of the Rules of Procedure and Evidence (“Rules”) and the “Initial Directions on the conduct of the proceedings” (“Request”).<sup>1</sup> P-2442’s prior recorded testimony comprises her witness statement dated 14 April 2019 (“Prior Statement”)<sup>2</sup> and its associated exhibit.<sup>3</sup> Should the Chamber deem the Prior Statement formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, currently estimated at approximately two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2442 was around [REDACTED] years old when she joined the Anti-Balaka in [REDACTED]. The witness provides evidence on how the Anti-Balaka conscripted and enlisted children under the age of 15. She also provides evidence on YEKATOM’s role as an Anti-Balaka commander, and the arrival of YEKATOM’s Group in MBAIKI.

3. P-2442’s further provides evidence on the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka’s being an organised armed group, and its intent to target Muslims pursuant to a criminal organisational policy. The witness evidence also bears on other Anti-Balaka crimes, and on the killing of Djido SALEH. The Prior Statement is thus *prima facie* relevant to, and probative of material issues at trial.

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<sup>1</sup> ICC-01/14-01/18-631, para. 58.

<sup>2</sup> CAR-OTP-2105-0940.

<sup>3</sup> See ICC-01/05-01/08-1386, paras. 79-81 (“Bemba Appeals Decision”), confirming that written witness statements can be introduced as “previously recorded testimony”. See also ICC-01/09-01/11-1938-Red-Corr, paras. 30-33, analysing the term “previously recorded testimony” in light of the Rules’ *travaux préparatoires*, the Court’s prior case-law and the need to ensure language consistency within the rule in interpreting it; ICC-01/05-01/08-2012-Red, para. 136; ICC-01/05-01/08-886, para. 6; ICC-01/04-01/06-1603, para. 18; ICC-01/04-01/07-2289-Corr-Red; ICC-01/04-01/07-2362.

4. Granting the Request would reduce the presentation of the Prosecution's examination-in-chief and help to streamline the proceedings. Moreover, it would not unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.<sup>4</sup>

5. Having taken note of the Chamber's guidance, the Prosecution has carefully assessed the Prior Statement to provide the Chamber with the information necessary to conduct the required case-by-case assessment.<sup>5</sup>

6. The relevance and probative value of the Prior Statement is set out in a brief summary of the salient issues, along with the associated exhibit or document, and the sources of other corroborative evidence. *Confidential Annex A* lists the relevant portions of the Prior Statement being tendered for formal submission and the corresponding associated exhibit. It also identifies the relevant paragraphs of the Confirmation Decision to which the witness's evidence relates. *Confidential Annex B* contains the Prior Statement itself, with grey highlights identifying the portions on which the Prosecution does not seek to rely. The associated exhibit is available to the Defence and the Trial Chamber in e-Court.

## II. CONFIDENTIALITY

7. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Request and its annexes are filed as "Confidential", as they contain information concerning a witness which should not be made public. A "Public Redacted" version of the Request will be filed as soon as practicable.

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<sup>4</sup> See Rule 68(3); see also ICC-01/14-01/18-685, para. 29 (noting that, other than the specific requirements of the witness's presence and absent objection to the introduction of the prior statement, "[n]o further restrictions are imposed with regard to the instances under which Rule 68(3) of the Rules may be used").

<sup>5</sup> ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 ("*Gbagbo and Blé Goudé Appeals Decision*").

### III. SUBMISSIONS

#### A. Applicable Law

8. The Prosecution incorporates by reference its summary of the applicable law set out in paragraphs 4 to 8 of its observations on its intended approach to rule 68(3) in the presentation of its case,<sup>6</sup> its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),<sup>7</sup> and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).<sup>8</sup>

#### B. The Prior Recorded Testimony fulfils all Requirements of Rule 68(3)

9. The Prior Statement may be deemed formally submitted under rule 68(3). P-2442 will attest to its accuracy; she will be present in court; and she will be available for examination by the Defence, Participants, and the Chamber.

10. As described below, the Prior Statement is highly relevant and probative. It goes to the conscription and use of children under the age of 15. It also provides evidence of the contextual elements of war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group, and its intention to target the Muslim population pursuant to a criminal organisational policy between September 2013 and December 2014.

11. P-2442's Prior Statement consists of 22 pages. There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on the Prior Statement.

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<sup>6</sup> ICC-01/14-01/18-655 ("Rule 68(3) Observations"); *see also*, ICC-01/14-01/18-710-Conf, para. 8 (identifying the relevant jurisprudence on the nature of 'prior recorded testimony').

<sup>7</sup> ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

<sup>8</sup> ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

12. The witness's Prior Statement establishes the following:

- P-2442 was born in MBAIKI, and joined the Anti-Balaka in [REDACTED] when she was [REDACTED] years old. The witness describes that she went to visit her aunt in [REDACTED], where she heard about the Anti-Balaka from her [REDACTED] year old [REDACTED], who was a member of the group.
- Two weeks after her arrival in [REDACTED] introduced P-2442 to Anti-Balaka chiefs, who welcomed her to the group. P-2442 explains that when she joined the Anti-Balaka, their base was located in the middle of [REDACTED].
- The witness states that there were around three or four chiefs there, one of whom had overall control over the group. Initially, the chiefs did not ask about her age. Later, she informed the main chief that she was [REDACTED], who told her that her age was not a problem.
- P-2442 explains that, as [REDACTED] girl in her group, she was expected to cook and stay at the base. She was instructed to put drugs – particularly marijuana – in the food, which caused her headaches after eating.
- P-2442 describes being vaccinated as a part of her initiation into the Anti-Balaka, stating that she was punctured in her left arm and given a traditional medicine. P-2442 still has the scar from this vaccination process.
- P-2442 states that she participated in administering punishments, as ordered by Anti-Balaka chiefs. She explains that she took active part in beatings on at least five occasions. She explains that the main chief decided on punishment, carried out for different infractions such as theft, or violating the 18:00 to 05:00 curfew.
- P-2442 states that men and women were punished by the Anti-Balaka. For instance, the Anti-Balaka arrested some youngsters that were looting houses,

and would take them to their base in [REDACTED], where they would cut the soles of their feet with a knife or a machete.

- P-2442 states that mostly men were beaten, but she was also involved in the beating of three women. She explains that after being beaten, the women were raped by Anti-Balaka elements. P-2442 states that those punishments were regular and would sometimes happen three times a day.
- P-2442 recounts her rape by one of the Anti-Balaka elements while she was in the group. She describes the aftermath, including the consequences to her health, which ultimately led her to leave the group. She explains how after her rape, [REDACTED] travelled from MBAIKI to [REDACTED] to speak with the chiefs. Although [REDACTED] was threatened and insulted by the elements, the main chief finally allowed [REDACTED] to take P-2442 home.
- P-2442 states that while she was in [REDACTED], Muslims fled to MBAIKI because they feared for their lives. She explains that she came to the conclusion that after the Anti-Balaka attacked BANGUI, Muslims thought they would be killed by them.
- P-2442 recounts that when she was growing up there were many Muslims in MBAIKI, and local Christians had good relationships with them. However, with the prospective arrival of the Anti-Balaka in MBAIKI, Muslims fled in fear of Anti-Balaka attacks.
- P-2442 went back to MBAIKI after her time with the Anti-Balaka, and states that she observed the Muslims evacuating MBAIKI with the help of the Chadian forces. She states that she spoke to some Muslims, who expressed their fear of being killed by the Anti-Balaka.
- P-2442 states that when the Anti-Balaka arrived in MBAIKI they made their base at BOTO (near the cathedral) where they set up a checkpoint to stop vehicles along the road.

- P-2442 affirms that it was public knowledge that RAMBO was the leader of the Anti-Balaka in her area.
- P-2442 also recounts the killing of DJIDO Saleh. She explains she was in MBAIKI when DJIDO was murdered, and heard about the incident. P-2442 later saw the video in which an Anti-Balaka woman called CYNTHIA mutilated SALEH's genitals with a knife. P-2442 states that CYNTHIA was well known because she had fought many times for the Anti-Balaka in BANGUI, and affirms that SALEH's killing was because he was a Muslim and did not leave with the others.
- P-2511 also explains how she learned about [REDACTED] the *Enfants Sans Frontières* ("ESF") program, designed to assist former child soldiers. She states that [REDACTED]. She estimates that their ages varied between 12 to 19. The youngest child that she met was called [REDACTED].
- The witness further provides names and details about certain individuals, based on an ESF list.

13. P-2442's proposed evidence on the enlistment and conscription of children under the age of 15 in YEKATOM's Group is corroborated by, *inter alia*, the evidence of P-1921, P-2475, and P-1074. P-2442's proposed evidence on the forced displacement of Muslims is corroborated by, *inter alia*, the evidence of P-1838, and P-1813. P-2442's proposed evidence on how YEKATOM's Group perpetuated an increasingly hostile environment towards Muslims, targeting them and causing them to flee MBAIKI *en masse*, and leading to their evacuation by Chadian forces is corroborated by, *inter alia*, the evidence of P-0954, P-1647, P-1823, P-1839, P-2582, P-2196, P-2041, P-2354, P-2475 and P-2084. P-2442's proposed evidence on YEKATOM's leadership of his Group is corroborated by, *inter alia*, the evidence of P-1858, P-1074, P-0287, P-1974, P-1839, P-1921, and P-2328. P-2442's proposed evidence on YEKATOM Group's killing of DJIDO Saleh is corroborated by, *inter alia*, P-1823, P-1838, P-1595, P-2196, and P-2476.



### **C. Associated exhibit**

14. The Prosecution tenders one associated exhibit for formal submission. Comprising a document described in the Prior Statement, as listed in Confidential Annex A, namely a photograph of P-2442's birth certificate, "*Acte de Naissance*."

15. The item, tendered with this application, is assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish its probative value if excluded. The associated exhibit will assist the Chamber in its assessment of the relevant evidence in its article 74 decision. The exhibit is an integral part of the Prior Statement and its submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2442's evidence.

### **D. A supplementary examination-in-chief is necessary and appropriate**

16. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-2442's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

17. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",<sup>9</sup> the Prosecution has carefully reviewed its two-hour estimate given for P-2442 in its Final Witness List.<sup>10</sup> The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-2442 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel,

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<sup>9</sup> ICC-01/14-01/18-685, para. 36.

<sup>10</sup> ICC-01/14-01/18-724-Conf-AnxA, p. 33.

interpretation considerations,<sup>11</sup> and accounts for the prospect of appropriate redirect examination.

18. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2442's evidence through the use of the associated exhibit, document or other relevant evidence. The limited examination requested is necessary not only to fully understand and contextualise the Prior Statement, including those parts relating to the Accused's acts and conduct, but also to advance the Chamber's fundamental truth-seeking function.

19. Alternatively, in the absence of the formal submission of the Prior Statement under rule 68(3), the Prosecution estimates that the witness's testimony on direct examination would require approximately four hours to present – twice times as long.

#### **E. Balance of interests**

20. The projected shortening of P-2442's in-court-testimony by two-thirds is "considerable." On balance, the introduction of P-2442's Prior Statement under rule 68(3) is appropriate. Moreover, there is no resulting prejudice. The Chamber's and the Parties' interests in advancing this large and complex case efficiently, good trial management, the expeditious conduct of the proceedings, and that the Prior Statement is supported and corroborated by other evidence to be tested at trial, warrants its formal submission in the fair exercise of the Chamber's broad discretion.

#### **IV. CONCLUSION**

21. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2442 together with its associated exhibit

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<sup>11</sup> See *e.g.*, ICC-01/14-01/18-T-001-ENG ET, p. 6 ln. 18-25; see ICC-01/14-01/21-T-001-ENG ET, p. 3 ln. 14-22, p. 4 ln. 20-22 (noting practical complications involved in the live in-Court interpretation).

as set out at Annex A, subject to the fulfilment of the further conditions of rule 68(3). Should the Chamber do so, it should further grant the Prosecution leave to conduct a limited examination-in-chief of this witness as indicated above.



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**Karim A. A. Khan QC, Prosecutor**

Dated this 19<sup>th</sup> August 2022  
At The Hague, The Netherlands