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

Date: 10 March 2023

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

Public redacted version of "Prosecution's Request for the Formal Submission of the  
Prior Recorded Testimony of P-2018 pursuant to Rule 68(3)",  
ICC-01/14-01/18-1416-Conf, 19 May 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-2018, 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-2018’s prior recorded testimony comprises his witness statement dated 12 March 2018 (“Prior Statement”)<sup>2</sup> and its associated exhibits.<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-2018 was the [REDACTED], and from 2014 onwards he worked with [REDACTED]. The witness provides evidence on how the Anti-Balaka, and in particular YEKATOM’s group, conscripted and enlisted children to participate actively in hostilities. He provides evidence on YEKATOM’s role in the recruitment and use of children, as well as his role as a commander of the Anti-Balaka. P-2018’s evidence also bears on other Anti-Balaka crimes in the LOBAYE area, such as pillaging and the destruction of Muslims’ houses.
3. Granting the Request would reduce the presentation of the Prosecution’s examination-in-chief and help to streamline the proceedings. Moreover, it would not

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

<sup>2</sup> CAR-OTP-2071-0259.

<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.

unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.<sup>4</sup>

4. 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>
5. The relevance and probative value of the Prior Statement is set out in a brief summary of the salient issues, along with the associated exhibits or documents, 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 exhibits. 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 exhibits are available to the Defence and the Trial Chamber in e-Court.

## **II. CONFIDENTIALITY**

6. Pursuant to regulation 23bis(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**

7. 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)**

8. The Prior Statement may be deemed formally submitted under rule 68(3). P-2018 will attest to its accuracy; he will be present in court; and he will be available for examination by the Defence, Participants, and the Chamber.

9. As described below, the Prior Statement is highly relevant and probative. It goes to the organisation and structuring of the Anti-Balaka in LOBAYE under the leadership of YEKATOM, as well as to the conscription and use of children under the age of fifteen years in hostilities. 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.

10. P-2018's Prior Statement consists of 18 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.

11. The witness Prior Statement establishes the following:

- P-2018 became the [REDACTED] in 2012, and started to work with [REDACTED] in 2014 in the [REDACTED].
- He details how it was assessed whether [REDACTED], and that he saw children wearing uniforms and *gris-gris* at the Anti-Balaka checkpoints. In this regard, P-2018 remarks that children “[...] were behaving as though they were military, carrying out checks on vehicles, assisting in stopping the vehicles and questioning the occupants”.<sup>9</sup>
- P-2018 explains how he informed [REDACTED].
- P-2018 describes how he contacted and met YEKATOM. He recounts [REDACTED], who informed him that YEKATOM was the leader of the Anti-Balaka in LOBAYE.<sup>10</sup>
- He also recounts that YEKATOM stated that his group was entitled to take the children,<sup>11</sup> and later suggested [REDACTED].<sup>12</sup>
- P-2018 describes a few meetings he had [REDACTED], such as the meeting of the [REDACTED] 2014.
- P-2018 explains [REDACTED]. He also provided [REDACTED].<sup>13</sup>
- The witness recognises YEKATOM in a video of him signing a document for the release of children from the Anti-Balaka groups in LOBAYE, and [REDACTED]. He states that [REDACTED].<sup>14</sup>

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<sup>9</sup> CAR-OTP-2071-0259, at 0263, para. 25.

<sup>10</sup> CAR-OTP-2071-0259, at 0263, para. 28.

<sup>11</sup> CAR-OTP-2071-0259, at 0264, para. 32.

<sup>12</sup> CAR-OTP-2071-0259, at 0264, para. 33.

<sup>13</sup> CAR-OTP-2071-0259, at 0262, para. 23.

<sup>14</sup> CAR-OTP-2071-0259, at 0267-0268, para. 56.

- P-2018 also recounts crimes committed by the Seleka. He, states that, after they left, the Anti-Balaka also looted and destroyed houses that belonged to Muslims, which is evidence of their intent to target the Muslim population.
12. P-2018's proposed evidence that children under the age of 15 in YEKATOM's Group were stationed at checkpoints under his control is corroborated by, *inter alia*, the evidence of P-1974, P-2475, and P-2082. His evidence on the [REDACTED] is corroborated by, *inter alia*, P-1974, P-2475, and P-2082. And, his evidence on the role of YEKATOM in [REDACTED] is corroborated by, *inter alia*, P-1974.

### C. Associated exhibits

13. The Prosecution tenders thirteen associated exhibits for formal submission. They comprise documents described in the Prior Statement, as listed in Confidential Annex A, namely i) [REDACTED]; ii) [REDACTED]; iii) [REDACTED]; iv) a list of Anti-Balaka zone commanders in the area of LOBAYE and some of their phone numbers; v) [REDACTED]; vi) [REDACTED]; vii) [REDACTED]; viii) [REDACTED]; ix) a map of LOBAYE with locations of the Anti-Balaka bases in the region, and the bases under YEKATOM's command that the witness personally visited; x) [REDACTED]; xi) [REDACTED]; xii) [REDACTED]; and xiii) [REDACTED].

14. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish their probative value if excluded. As tendered, the associated exhibits avoid flooding the Parties, Participants, and the Chamber with material that is superfluous or tangential to the import of the witness's testimony, while assisting the Chamber in its assessment of the relevant evidence in its article 74 decision. Each 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-2018's evidence.

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

15. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-2018's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

16. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",<sup>15</sup> the Prosecution has carefully reviewed its two-hour estimate given for P-2018 in its Final Witness List.<sup>16</sup> The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-2018 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,<sup>17</sup> and accounts for the prospect of appropriate redirect examination.

17. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2018's evidence through the use of some of the associated exhibits, documents 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.

18. 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 six hours to present – three times as long.

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<sup>15</sup> ICC-01/14-01/18-685, para. 36.

<sup>16</sup> ICC-01/14-01/18-724-Conf-AnxA, p. 33.

<sup>17</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).

#### E. Balance of interests

19. The projected shortening of P-2018's in-court-testimony by two-thirds is "considerable". On balance the introduction of P-2018'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

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2018 together with its associated exhibits 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 KC, Prosecutor

Dated this 10<sup>th</sup> day of March 2023  
At The Hague, The Netherlands