

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: **25 January 2021**

**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 Expert Reports and Associated Materials of P-0925, P-2193, P-2926, and P-2927 pursuant to rule 68(3) and article 69(4)”, 19 January 2021, (ICC-01/14-01/18-834-Conf)**

**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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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
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**Other**

## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the reports and associated materials<sup>1</sup> (“Report” or “Reports”) of witnesses P-0925, P-2193, P-2926, and P-2927 (“Experts”), in accordance with rule 68(3) of the Rules of Procedure and Evidence (“Rules”), article 69(4), and/or the “Initial Directions on the conduct of the proceedings” (“Directions”).<sup>2</sup> *First*, the Reports were drafted by qualified experts, their content falls squarely within the Experts’ respective areas of specialisation, and the Reports are reliable, relevant and probative. *Second*, the Experts will attest to the content of the Reports, accede to their submission, and the Parties and Participants, including Trial Chamber V (“Chamber”), will have an opportunity to examine the Experts in Court.

2. The Prosecution notifies the Chamber that it is confident that it can further reduce the direct examination of each of the Experts to one and a half hours instead of two if this request is granted, saving two hours cumulatively from its original estimate.

3. Finally, the Prosecution requests the Chamber issue an order giving effect to the conditions on [REDACTED].

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<sup>1</sup> These are the items listed in Annex A, namely the *Curricula vitae* of the Experts, the letters of instructions drafted by the Office of the Prosecutor) and, in respect of Expert P-2193, the satellite imagery obtained by the [REDACTED].

<sup>2</sup> ICC-01/14-01/18-631, paras. 32-35, 66-67. *See also* 6 October 2020 Email from Trial Chamber V, *Decision on Prosecution Request pursuant to Regulation 35 to vary the Time Limit for the Submission of Applications pursuant to Rule 68 and information on other pending matters* (granting the deadline extension for Rule 68(3) applications until not less than 45 days before the scheduled start of the witnesses’ testimony). The Experts were included in the Prosecution’s Final List of Witnesses: ICC-01/14-01/18-724, para. 4; ICC-01/14-01/18-724-Conf-AnxA, p. 39. Two Experts (P-2193 and P-2926) are listed to testify during the first evidence block which is currently scheduled to start on 15 March 2020. The other two Experts are listed in the next-to-last evidence block (P-2927), and in the last evidence block (P-0925): *see* ICC-01/14-01/18-724-Conf-AnxB.

## II. CONFIDENTIALITY

4. Pursuant to regulation 23bis(1) of the Regulations of the Court (“RoC”), the Prosecution files this submission and its accompanying annex as ‘*Confidential*’ because they contain confidential information regarding Prosecution witnesses, and refers to confidential filings. A public redacted version will be filed as soon as practicable.

## III. SUBMISSIONS

### **A. The Reports should be deemed formally submitted under rule 68(3) and/or article 69(4)**

5. As detailed below, the Reports were drafted by Experts. Each possesses sufficient qualifications in their respective areas of expertise: cross-cultural trauma psychiatry and conflict-related trauma (P-0925); geospatial, remote sensing, and satellite imagery analysis and interpretation (P-2193); political science and conflict analysis, and the background of the CAR conflict (P-2926); as well as anthropology and African history and culture, including the phenomenon of child soldiers in CAR (P-2927). The content of each Report clearly falls within the Experts’ respective fields of expertise. Furthermore, the Reports are relevant to and probative of important matters at issue in the case, and reliable.

6. The Reports meet the criteria set out in rule 68(3). The Experts will not object to the submission of their Reports, and will be present in court and available for examination by the Chamber, the Parties, and the Participants. The formal submission of the Reports is thus not prejudicial to the rights of the Accused, given that both Defence teams will have the opportunity to examine each Expert.

## B. Expert P-0925 (Trauma Evidence)

### a. P-0925 is a qualified Expert and the content of his Report falls squarely within his area of expertise

7. P-0925 has the skills, training, and experience to be of assistance to the determination of the issues explored in his Report, including the intergenerational transmission of trauma and the long-term psychological and physical impact on victims of child soldiering, forcible displacement, and sexual violence. As detailed below, he has previously provided expert reports and testimonies for the ICC.

8. P-0925 is a qualified Expert and the content of his Report falls squarely within his area of expertise. As detailed in his *curriculum vitae*,<sup>3</sup> P-0925 is a certified psychiatrist with considerable national and international expertise in cross-cultural trauma of survivors of mass atrocities and human rights abuses. He has published numerous articles, and lectured extensively on the matter.<sup>4</sup>

9. [REDACTED].<sup>5</sup> He is also a [REDACTED]<sup>6</sup> and [REDACTED].<sup>7</sup>

10. [REDACTED],<sup>8</sup> [REDACTED],<sup>9</sup> [REDACTED].<sup>10</sup>

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<sup>3</sup> CAR-OTP-2122-9975.

<sup>4</sup> CAR-OTP-2122-9975, at 9982-9990.

<sup>5</sup> CAR-OTP-2122-9975, at 9975.

<sup>6</sup> CAR-OTP-2122-9975, at 9975. Note that the information on P-0925's qualifications as an expert in light of his *curriculum vitae* have also been elicited in the *Bemba and the Ongwen cases* case – see respectively: ICC-01/05-01/08-T-368-ENG ET, 16 May 2016, p. 75, l. 5-p. 77, l. 2; ICC-02/04-01/15-T-175-Red-ENG, 14 May 2018, p. 16-17.

<sup>7</sup> CAR-OTP-2122-9975, at 9978.

<sup>8</sup> CAR-OTP-2122-9975, at 9979.

<sup>9</sup> CAR-OTP-2122-9975, at 9976.

<sup>10</sup> CAR-OTP-2122-9975, at 9981.

11. [REDACTED].<sup>11</sup> [REDACTED],<sup>12</sup> [REDACTED].<sup>13</sup> [REDACTED]<sup>14</sup>  
[REDACTED]<sup>15</sup> [REDACTED].<sup>16</sup>
12. [REDACTED].<sup>17</sup> [REDACTED].<sup>18</sup>

**b. P-0925's Report meets the minimum standard of relevance, reliability,  
and probative value**

13. P-0925's Report is relevant. As noted, it addresses the mental health outcomes of trauma suffered by direct and indirect victims of child soldiering, forcible displacement, rape, and sexual violence in CAR.<sup>19</sup> Given that these crimes are charged in this case, P-0925's Report is relevant to assess the extent of harm and damage caused to victims of these crimes. In addition, the Report is relevant in view of the threshold of article 7 crimes, as reflected in article 7(1)(k) which requires that other inhumane acts cause 'great suffering, or serious injury to body or to mental or physical health'.

14. P-0925's Report has significant probative value. It is based on the Expert's review of a comprehensive and comparative literature on the psychosocial impact of extreme trauma on individuals, families, and communities in conjunction with a review of case-specific information, including the Confirmation Decision, summaries of victims statements, and other contemporaneous open source documents from the period relevant to the charges.<sup>20</sup> Therefore, the findings in the Report will help the

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<sup>11</sup> CAR-OTP-2122-9975, at 9975.

<sup>12</sup> CAR-OTP-2122-9975, at 9976-9977.

<sup>13</sup> *Bemba case*: ICC-01/05-01/08-T-368-ENG ET, 16 May 2016, p. 70, l. 10-p. 116; ICC-01/05-01/08-T-369-Red-ENG, 17 May 2016; *Ongwen case* ICC-02/04-01/15-T-175-Red-ENG, 14 May 2018, p. 13, l. 10- p. 76, l. 12.

<sup>14</sup> *See Prosecutor v. Jean-Pierre Bemba Gombo ('Bemba case')*, Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing, ICC-01/05-01/08-3384, para. 15.

<sup>15</sup> ICC-02/04-01/15-T-175-Red-ENG, 14 May 2018, p. 21, l. 9-20.

<sup>16</sup> *See Bemba case*, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/05-01/08-3399, para. 37.

<sup>17</sup> CAR-OTP-2122-9975, at 9976-9977.

<sup>18</sup> CAR-OTP-2122-9975, at 9976-9978.

<sup>19</sup> CAR-OTP-2127-6805.

<sup>20</sup> CAR-OTP-2127-6805, at 6806.

Chamber to appreciate the significance of the scale of the trauma experienced by victims of the charged crimes.

15. P-0925's Report is reliable. It was prepared voluntarily for the Prosecution in the understanding that it could be used as evidence and that P-0925 could be called to testify at trial.<sup>21</sup> The Report has a clear methodology and the sources on which it is based are explicitly identified.<sup>22</sup> The analysis conducted by P-0925 falls within his area of expertise, as laid out above.

### C. Expert P-2193 (Satellite Evidence)

#### a. P-2193 is a qualified Expert and the content of his Report falls squarely within his area of expertise

16. P-2193 has the skills, training, and experience to be of assistance to the determination of the issues explored in his Report, including the analysis of satellite imagery to determine the full or partial destruction of buildings (e.g. the BOEING Mosque), and the presence of gatherings of individuals (e.g. the IDP camp in BOSSANGO). He is an expert in geospatial, remote sensing, and satellite imagery analysis and interpretation.

17. P-2193 is a qualified Expert and the content of his Report falls squarely within his area of expertise. [REDACTED],<sup>23</sup> [REDACTED],<sup>24</sup> [REDACTED].<sup>25</sup> [REDACTED].<sup>26</sup>

<sup>21</sup> See the description of P-0925's mandate in his report and letter of instructions: CAR-OTP-2127-6805, at 6806, 6869-6871, CAR-OTP-2122-8997.

<sup>22</sup> CAR-OTP-2127-6805, at 6860-6867.

<sup>23</sup> ICC-01/04-02/06-T-175-Red-ENG, p. 74.

<sup>24</sup> ICC-01/04-02/06-T-175-Red-ENG and ICC-01/04-02/06-T-176-Red-ENG.

<sup>25</sup> The Prosecutor v. Bosco Ntaganda, Judgment, 8 July 2019, ICC-01/04-02/06-2359, para. 454 (fn. 1293). See also, ICC-01/04-02/06-T-175-Red-ENG, p. 76, l.19 to p. 77, l. 1.

<sup>26</sup> ICC-01/12-01/18-989-Red.

18. As noted in his *curriculum vitae*, since 2010, P-2193 has been working [REDACTED].<sup>27</sup> P-2193's has been responsible for the analysis of satellite imagery and geospatial data at [REDACTED].<sup>28</sup>

19. [REDACTED].<sup>29</sup>

20. [REDACTED]. He has published a number of relevant academic publications.<sup>30</sup>

**b. P-2193's Report and associated materials meet the minimum standard of relevance, reliability, and probative value**

21. P-2193's Report and associated materials are relevant. He produced a Report with two annexes for the Prosecution in the context of the current proceedings, containing analysis of satellite imagery of various locations in Western CAR.<sup>31</sup> The Report aims to show, through comparison of satellite imagery between target dates, *inter alia*, property damage or gatherings of people (which the Prosecution submits are IDP camps) in various locations in and around, for example, BANGUI and BOSSANGO during the Anti-Balaka's operations there.<sup>32</sup> The Report, which confirm the full or partial destruction of property during the relevant period, relate to charges such as attacks against a building dedicated to religion (count 6), forcible transfer (count 37), and displacement (count 38).

22. The associated materials, and more specifically the satellite images described in the Report and listed in Annex A to this filing, are also relevant in that they provide

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<sup>27</sup> CAR-OTP-2130-0304, at 0304. Note that the information on P-2193's qualifications as an expert in light of his *curriculum vitae* have also been elicited in the *Ntaganda* case – see, ICC-01/04-02/06-T-175-Red-ENG, p. 71-76.

<sup>28</sup> CAR-OTP-2130-0304, at 0304-0305.

<sup>29</sup> CAR-OTP-2130-0304, at 0305.

<sup>30</sup> CAR-OTP-2130-0304, at 0304, 0306.

<sup>31</sup> CAR-OTP-2127-6617 (report); CAR-OTP-2127-6626 (annex 1); CAR-OTP-2127-6634 (annex 2).

<sup>32</sup> The list of these target locations and dates were specified by the Prosecution in its letters of instruction – see, CAR-OTP-2122-8986 (March 2020) and CAR-OTP-2122-8984 (June 2020). An earlier letter of instruction from CAR-OTP-2127-3932 (August 2018) was not relied upon by P-2193.



the basis for the Expert's comparison analysis. As noted in the Prosecution's first request for the formal submission of prior recorded statements pursuant to rule 68(2)(b) and incorporated herein,<sup>33</sup> the Court's jurisprudence establishes that exhibits/documents associated with prior testimony are "admissible so long as the witness uses or explains them in the prior recorded testimony, and particularly when these are necessary to read and understand the prior recorded testimony being introduced".<sup>34</sup>

23. P-2193's Report and associated materials have significant probative value. [REDACTED] collected satellite imagery from various neutral and reputable sources including DigitalGlobe, Airbus, and GoogleEarth Pro. [REDACTED] also obtained open source geospatial and satellite imagery analysis relevant to the crimes charged, as mentioned in the June 2020 Letter to the Expert.<sup>35</sup> The Report's analysis of this material is probative in that it proves the destruction of certain buildings and gatherings of people at incident locations during the relevant period. These include both charged incidents (BANGUI, BOSSANGO) and those related to contextual elements, such as the widespread and systematic attack on the civilian population (BERBERATI, BODA).

24. P-2193's Report and associated materials are reliable. The Report was prepared voluntarily for the Prosecution with the understanding that it could be used as evidence, and that P-2193 could be called to testify at trial. His report has a clear methodology and the sources on which it is based are explicitly identified. P-2193 explains these sources of [REDACTED] relevant satellite imagery in his report<sup>36</sup> and second annex.<sup>37</sup> The underlying satellite data was directly obtained from reliable

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<sup>33</sup> ICC-01/14-01/18-710-Conf, para. 11.

<sup>34</sup> ICC-01/09-01/11-1938-Corr-Red2, para. 33; *see also* ICC-02/04-01/15-1288, para. 9 (*citing* ICC-02/04-01/15-596-Red, paras. 9-10); *see also* ICC-02/04-01/15-1288, para. 10.

<sup>35</sup> CAR-OTP-2122-8984, at 8985.

<sup>36</sup> CAR-OTP-2127-6617 at 6618.

<sup>37</sup> CAR-OTP-2127-6634, at 6636, 6639-6643.

sources. It comes in two file formats: JPEG and TIFF. Images obtained from DigitalGlobe and Airbus came in high-resolution TIFF files that are too large to be supported in Ringtail, so per the Chamber's instruction,<sup>38</sup> they were provided separately to the Parties and Participants and preserved on the case record in coordination with CMS. Smaller thumbnail JPEG versions of each of these TIFF files are currently viewable in Ringtail, as detailed in Annex A to this filing. In addition, images obtained from Google Earth Pro are in lower-resolution JPEG form and viewable in Ringtail. The analysis of these images conducted by P-2193 falls within his area of expertise, as laid out above.

#### **D. Expert P-2926 (Historical Background Evidence)**

##### **a. P-2926 is a qualified Expert and the content of his Report falls squarely within his area of expertise**

25. P-2926 has the skills, training, and experience to be of assistance to the determination of the issues explored in his Report, including the historical background and analysis of the 2013-2014 conflict in CAR.

26. P-2926 is a qualified Expert and the content of his Report falls squarely within his area of expertise. [REDACTED].

27. [REDACTED].

28. [REDACTED],<sup>39</sup> [REDACTED].<sup>40</sup>

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<sup>38</sup> 05 November 2020 Email from Trial Chamber V, "re: Disclosure in advance of the 9 November 2020 deadline"

<sup>39</sup> [REDACTED].

<sup>40</sup> [REDACTED].

**b. P-2926's Report meets the minimum standard of relevance, reliability, and probative value**

29. P-2926's Report is relevant. The Report presents a comprehensive analysis of the political and security situation in the country in 2013-2014, including of the circumstances and causes of the *coup d'Etat* in 2013 and of the root causes and motivations of the crimes committed by the Anti-Balaka against the Muslim civilian population. P-2926's Report is particularly relevant to the contextual elements of the charged crimes, including the nature of the armed conflict.

30. P-2926's Report has significant probative value. Hearing P-2926 as an expert witness at the beginning of the trial will facilitate the Chamber's understanding of the roots of the conflict, the reasons and the motivation behind the formation of the Anti-Balaka, as well as the recurrence of certain actors across conflicts. P-2926 will provide an objective account of the background and context of the conflict, thereby giving the Chamber a framework for the subsequent evidence in the Prosecution's case. This will also allow the Chamber and the participants to clarify a number of disputed facts, which can be better understood against the background of the conflict.

31. P-2926's Report is reliable. It was prepared for the Prosecution by P-2926 in the understanding that it could be used as evidence and that P-2926 could be called to testify at trial.<sup>41</sup> His report has a clear methodology and the sources on which it is based are explicitly identified, [REDACTED]. The analysis conducted by P-2926 falls within his area of expertise, as laid out above.

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<sup>41</sup> CAR-OTP-2122-8978, at 8978.

**E. Expert P-2927 (Child Soldier Evidence)**

**a. P-2927 is a qualified Expert and the content of her Reports falls squarely within her area of expertise**

32. P-2927 has the skills, training, and experience to be of assistance to the determination of the issues explored in her Reports, including the Anti-Balaka's enlistment and use of child soldiers in CAR in 2013 and 2014.

33. P-2927 is a qualified Expert. She co-authored two Reports for the Prosecution [REDACTED].<sup>42</sup> [REDACTED].<sup>43</sup>

34. [REDACTED],<sup>44</sup> [REDACTED],<sup>45</sup> [REDACTED].<sup>46</sup>

35. [REDACTED],<sup>47</sup> [REDACTED].<sup>48</sup>

**b. P-2927's Reports meet the minimum standard of relevance, reliability, and probative value**

36. P-2927's Reports are relevant. They provide the historical context of the enlistment and use of child soldiers in CAR in general, and in particular, the Anti-Balaka's enlistment, conscription and use of child soldiers during the relevant period.

37. P-2927's Reports have significant probative value. The first report, [REDACTED],<sup>49</sup> [REDACTED],<sup>50</sup> [REDACTED]The latter report details the multi-

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<sup>42</sup> The two reports were co-authored with Dr. Jonna Both, whose *curriculum vitae* is available at CAR-OTP-2122-9897.

<sup>43</sup> CAR-OTP-2122-9908.

<sup>44</sup> CAR-OTP-2122-9908.

<sup>45</sup> CAR-OTP-2122-9908, at 9909.

<sup>46</sup> [REDACTED].

<sup>47</sup> CAR-OTP-2122-9908, at 9910.

<sup>48</sup> CAR-OTP-2122-9908, at 9910-9911.

<sup>49</sup> CAR-OTP-2122-9082.

<sup>50</sup> CAR-OTP-2122-9155.

layered, long-term effects that membership within the Anti-Balaka had on these children.

38. P-2927's Reports are reliable. She and her co-author prepared them in the understanding that they could be used as evidence in the present case, and that they could be called to testify at trial.<sup>51</sup> The Reports have a clear methodology and the sources on which they are based are explicitly identified. The first report is based on a review of academic literature about the history of CAR and NGO and UN reports published over the last 15 years. It also relies partly on interview data collected by the authors together with a research team in CAR from [REDACTED].<sup>52</sup> The second report is based primarily on information obtained during the course of extended field research in CAR carried out in [REDACTED]. Individuals, including primarily former child soldiers, members of their families, and other relevant actors, [REDACTED], were interviewed during this project. In order to build rapport and approach complex and sensitive issues, former child soldiers and their family members had regular interactions with members of the research team for a period of time extending over the entire duration of the research project, lasting for over two years.<sup>53</sup> The analysis conducted by P-2927 falls within her area of expertise, as laid out above.

#### **F. Notification of the reduction of hours of direct examination**

39. As requested in the Directions,<sup>54</sup> all four experts were included as rule 68(3) witnesses in the Prosecution's List of Witnesses filed on 9 November 2020.<sup>55</sup> For each, the Prosecution assessed their direct examination to last two hours.<sup>56</sup> Upon further

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<sup>51</sup> CAR-OTP-2122-8992.

<sup>52</sup> CAR-OTP-2122-9082, at 9088.

<sup>53</sup> CAR-OTP-2122-9155, at 9159-9162.

<sup>54</sup> ICC-01/14-01/18-631, para. 66.

<sup>55</sup> ICC-01/14-01/18-724, para. 4; ICC-01/14-01/18-724-Conf-AnxA, p. 39.

<sup>56</sup> ICC-01/14-01/18-724-Conf-AnxB. The two hours originally estimated for each Proposed Experts' examination-in-chief were based on the formal submission of their Reports under rule 68(3), as required in the Directions, paras. 66-67.

reflection and in an effort to streamline its presentation of evidence, the Prosecution estimates that it can further reduce the time of direct examination to one and a half hours per Expert.<sup>57</sup>

40. Presenting the evidence of each expert absent the rule 68(3) submission of their Reports would likely take around four hours per witness to cover the witness's background, qualifications, the salient topics covered, the basis of their conclusions, and the underlying methodologies sufficiently. Thus, granting the application will permit the presentation of the Expert's evidence in around six hours cumulatively — easily less than half the amount of time otherwise required — saving the Court as much as ten hours overall.

#### **G. [REDACTED]**

41. [REDACTED].

42. [REDACTED].

43. [REDACTED].

44. [REDACTED].

#### **IV. CONCLUSION**

45. For the above reasons, the Prosecution requests the Chamber formally submit, under Rule 68(3) and/or article 69(4), the Reports and associated materials of Experts P-0925, P-2193, P-2926, and P-2927 as detailed in the Annex A to this filing, including the satellite imagery of P-2193.

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<sup>57</sup> If the application is not granted, the Prosecution may need more than the two hours allotted to each expert in ICC-01/14-01/18-724-Conf-AnxB.

46. The Prosecution further requests an order from the Chamber giving effect to the above-described [REDACTED].

A handwritten signature in black ink that reads "James K. Stewart." The signature is written in a cursive, flowing style.

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**James Stewart, Deputy Prosecutor**

Dated this 25<sup>th</sup> day of January 2021  
At The Hague, The Netherlands