

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/14-01/18**  
Date: **22 December 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  
Prior Recorded Testimony of P-2658 pursuant to Rule 68(3)", 21 December 2021,  
ICC-01/14-01/18-1228-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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## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-2658, 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-2658’s prior recorded testimony comprises his 11 February 2020 Witness Statement (“Prior Statement”).<sup>2</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-2658 [REDACTED] members of the Anti-Balaka based in GOBERE (“GOBERE Group”). [REDACTED], he is able to give evidence on the organisation and structure of the Group under Danboy DEDANE’s leadership, their 17 September 2013 attack on BOSSANGO and other attacks committed by the Group in the surrounding area in the lead-up. He also gives evidence on the Anti-Balaka’s 5 December 2013 attack on BOSSANGO and the subsequent displacement of the Muslim population.

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 unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.<sup>3</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>4</sup> Additionally, mindful of the

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

<sup>2</sup> CAR-OTP-2126-0012.

<sup>3</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>4</sup> ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 (“*Gbagbo and Blé Goudé Appeals Decision*”).

concerns regarding the amount of written evidence to be tendered,<sup>5</sup> the Prosecution has identified portions in the Prior Statement on which it does not seek to rely, which may assist the Chamber's assessment of the relevant and contested issues, and reduce (as much as possible) the volume of extraneous material in the case, as a whole.<sup>6</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 sources of other corroborative evidence. *Confidential Annex A* lists the relevant portions of the Prior Statement being tendered for formal submission. 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.

## II. CONFIDENTIALITY

6. 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.

## 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>7</sup> its submissions in its first request for the formal

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<sup>5</sup> See ICC-01/14-01/18-685, para. 31, 32.

<sup>6</sup> Consistent with the Chamber's decision: ICC-01/14-01/18-907-Conf, para. 16 (even though the entire Prior Statement as a whole is submitted).

<sup>7</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').

submission of prior recorded testimony under rule 68(3),<sup>8</sup> and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).<sup>9</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-2658 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 GOBERE Group, as well as their links to NGAISSONA, and to the 5 December 2013 attack on BOSSANGO the subject of Counts 30-35; 37-42. 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 Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014.

10. P-2658's Prior Statement comprises 29 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.

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

- P-2658 [REDACTED].
- He describes [REDACTED].
- He recounts [REDACTED].
- The witness gives a description of GOBERE as a training place for more than 400 Anti-Balaka, including former militaries, and gives details of their structure

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

<sup>9</sup> ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

and training regime. The elements were divided into groups, and among the chiefs of the groups were ANDJILO (*i.e.* Rodrigue NGAIBONA), Théophile DANGBA, and 12 *Puissances*.

- The witness refers to the Anti-Muslim sentiment of the GOBERE Group, members of which told him that the Seleka and Muslims were the same, and that they did not want them around.
- P-2658 describes DEDANE's planning of the 17 September 2013 attack on BOSSANGO, including communications of DEDANE [REDACTED], and DEDANE's attempts to procure ammunition and weapons. According to the witness, DEDANE was in communication with three persons called KOMAS, YONGO, and CHARLY, who would pass on NGAISSONA's messages to DEDANE, including that he (NGAISSONA) would send ammunition and equipment for the battle. The witness did not see the Anti-Balaka receive any equipment, but knew that DEDANE brought ammunition back from BOSSANGO.
- The witness also details how DEDANE divided up the GOBERE Group into three groups to attack BOUCA, BOWAI and ultimately BOSSANGO.
- The witness describes the 17 September 2013 attack on BOSSANGO, [REDACTED].
- The witness was in BOSSANGO during the Anti-Balaka's 5 December 2013 attack. He was [REDACTED], and describes the conditions faced there.
- [REDACTED]. He recounts the killing of three Muslims who had left the ECOLE.

12. P-2658's proposed evidence on the structure and organisation of the GOBERE Group is corroborated by, *inter alia*, the evidence of P-0966, P-2602, P-2269, P-2251, P-

0975 and P-1521. His proposed evidence on the 17 September 2013 attack on BOSSANGO is corroborated by, *inter alia*, the evidence of P-2200, P-2409, P-2453, P-2462, P-2657; and on the 5 December attack on BOSSANGO by, *inter alia*, the evidence of P-0966, P-2602, P-2200, P-2409, P-2453, P-2657 and P-1577.

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

13. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-2658's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

14. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",<sup>10</sup> the Prosecution has carefully reviewed its four-hour estimate given for P-2658 in its Final Witness List.<sup>11</sup> The Prosecution considers that it can further reduce its estimate to two hours. This estimated supplemental examination of P-2658 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>12</sup> and accounts for the prospect of appropriate redirect examination.

15. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2658's evidence through the use of 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.

<sup>10</sup> ICC-01/14-01/18-685, para. 36.

<sup>11</sup> ICC-01/14-01/18-724-Conf-AnxA, p. 38.

<sup>12</sup> See e.g., ICC-01/14-01/18-T-1-ENG ET, p. 6 ln. 18-25; see ICC-01/14-01/21-T-1-ENG ET, p. 3 ln. 14-22, p. 4 ln. 20-22 (noting practical complications involved in the live in-Court interpretation).

16. 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 at least six hours to present – three times as long.

#### **D. Balance of interests**

17. The projected shortening of P-2658's in-court-testimony by two-thirds is "considerable". On balance the introduction of P-2658'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**

18. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2658 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 22<sup>nd</sup> day of December 2021  
At The Hague, The Netherlands