

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

**Cour
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**International
Criminal
Court**

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No. ICC-01/14-01/18

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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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA

Confidential

Decision on the Prosecution Request to Summon a Witness

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 64(6)(b), 93(1)(b), (d) and (l) and 99(1) of the Rome Statute (the 'Statute'), issues this 'Decision on the Prosecution Request to Summon a Witness'.

I. Procedural history and submissions

1. On 9 November 2020, the Office of the Prosecutor (the 'Prosecution') filed its Final Witness List.¹ This list includes witness P-2625, scheduled to testify 'live' and via video-link.²
2. On 25 November 2020, the Prosecution requested the Chamber to compel P-2625's appearance and direct the Registrar to prepare and transmit a request for assistance to the Canadian authorities, pursuant to Article 93(1)(b) and (d) of the Statute, to: (i) serve a summons on the witness; and (ii) compel and ensure the witness' attendance to give testimony before the Court *in situ* or via video-link at a date to be determined. It further urges the Chamber to request the Canadian authorities to take all available measures in accordance with the applicable national laws to ensure the witness' compliance with the summons pursuant to Article 99(1) of the Statute (the 'Prosecution Request').³
3. In support of its request, the Prosecution submits that the tripartite requirements of relevance, specificity and necessity are satisfied.⁴
4. As regards relevance, the Prosecution argues that P-2625's anticipated testimony is material and necessary for the determination of the truth, given that it shows or tends to show Mr Ngaïssona's: (i) close and early ties with François Bozizé and the plan to galvanise and instrumentalise supporting militias, including his personal involvement in the distribution of machetes and weapons to members of pro-Bozizé militia groups; (ii) involvement in the early planning of military

¹ Annex A to the Prosecution's List of Witnesses and Evidence, ICC-01/14-01/18-724-Conf-AnxA.

² Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 46.

³ Prosecution's Request under Articles 64(6)(b) and 93 of the Rome Statute to Summon a Witness, ICC-01/14-01/18-739-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified on 4 December 2020, ICC-01/14-01/18-739-Conf-Red), paras 30-31.

⁴ Prosecution Request, ICC-01/14-01/18-739-Conf-Red, paras 3, 7.

response to the Seleka regime; and (iii) direct involvement in the coordination of the 5 December 2013 attack and his instrumentalisation of the Anti-Balaka.⁵

5. The Prosecution further submits that the requirement of specificity is satisfied, noting that the witness is clearly identified and resides within the jurisdiction of the competent authorities of Canada.⁶
6. Concerning necessity, the Prosecution avers that a summons is necessary to obtain the testimony of the witness, as it has 'exhausted all avenues to secure P-2625's voluntary attendance'. As P-2625's refusal to cooperate with the Prosecution remains unchanged to date, the Prosecution submits that 'it is apparent that he will not testify in this trial unless compelled'.⁷
7. Lastly, the Prosecution argues that 'the interests of justice require [P-2625's] appearance and testimony', since '[a]bsent his compulsion, the Chamber will be deprived of key evidence bearing on the Accused's culpability and its ability to establish the truth concerning important issues in this case may be impaired'.⁸
8. On 8 and 9 December 2020, respectively, the Yekatom Defence and the Common Legal Representatives of the Former Child Soldiers and the Common Legal Representatives of Victims of Other Crimes informed the Chamber that they leave it to the discretion of the Chamber to assess the Prosecution Request and do not intend to file a response.⁹
9. On 16 December 2020, the Ngaïssona Defence (the 'Defence') responded to the Prosecution Request (the 'Defence Response').¹⁰ The Defence defers to the Chamber's discretion whether to compel P-2625's testimony and to request the Canadian authorities' cooperation in this regard.¹¹

⁵ Prosecution Request, ICC-01/14-01/18-739-Conf-Red, paras 8-24.

⁶ Prosecution Request, ICC-01/14-01/18-739-Conf-Red, para. 25.

⁷ Prosecution Request, ICC-01/14-01/18-739-Conf-Red, paras 26-28.

⁸ Prosecution Request, ICC-01/14-01/18-739-Conf-Red, para. 29.

⁹ Email from the Yekatom Defence, 8 December 2020, at 15:05; email from the Common Legal Representatives of Victims, 9 December 2020, at 14:31.

¹⁰ Defence Response to the "Confidential redacted version of 'Prosecution's Request under Articles 64(6)(b) and 93 of the Rome Statute to Summon a Witness, 24 November 2020, ICC-01/14-01/18-739-Conf-Exp'", ICC-01/14-01/18-774-Conf.

¹¹ Defence Response, ICC-01/14-01/18-774-Conf, paras 2, 11.

10. Should the Chamber grant the Prosecution Request, the Defence requests the Chamber to order P-2625 to testify in-person at the seat of the Court rather than via video-link (the 'Defence Request concerning Mode of Testimony'),¹² which, according to the Defence, is the only way to fully guarantee Mr Ngaissona's fair trial rights.¹³
11. In addition, the Defence requests the lifting of redactions in the email correspondence between the Prosecution and P-2625 in relation to the context and actual reasons for his decision to no longer cooperate with the Prosecution (the 'Defence Request for Lifting of Redactions').¹⁴ According to the Defence, the requested information is disclosable under Rule 77 of the Rules and Article 67(2) of the Statute, as it is relevant to the Defence's preparations for trial, and affects the credibility of the Prosecution's evidence.¹⁵

II. Analysis

A. Applicable law

12. Article 64(6)(b) of the Statute provides:

[i]n performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary: [...] (b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute.

13. As confirmed by the Appeals Chamber, this provision gives trial chambers the power to compel the appearance of witnesses before the Court, thereby creating a legal obligation for the individual concerned.¹⁶

¹² Defence Response, ICC-01/14-01/18-774-Conf, paras 2, 12 and 22.

¹³ Defence Response, ICC-01/14-01/18-774-Conf, paras 12-18.

¹⁴ Defence Response, ICC-01/14-01/18-774-Conf, paras 2, 22, *referring to* documents CAR-OTP-2127-4444 and CAR-OTP-2127-6432.

¹⁵ Defence Response, ICC-01/14-01/18-774-Conf, paras 19-21.

¹⁶ Appeals Chamber, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Judgment on the appeals of William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V (A) of 17 April 2014 entitled "Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation", 9 October 2014, ICC-01/09-01/11-1598 (the 'Summons Judgment'), paras 107, 113.

14. In addition, pursuant to Article 93(1)(b) of the Statute,¹⁷ States Parties shall comply with requests by the Court to assist in the taking of evidence, including by serving a summons upon a witness and compelling a witness to appear in-person before a trial chamber at the seat of the Court or via video-link.¹⁸
15. Any cooperation requests to a State Party must satisfy three cumulative requirements, namely: (i) relevance, (ii) specificity and (iii) necessity. In evaluating necessity in the context of whether to issue a summons to a witness, the Chamber has to consider whether: (a) the anticipated testimony of the witness is potentially necessary for the determination of the truth; and (b) a summons, as a compulsory measure, is necessary to obtain the testimony of the witness.¹⁹

B. Prosecution Request

16. For the reasons that follow, and noting that the other participants defer to the Chamber's discretion in this regard, the Chamber finds that the tripartite requirements of relevance, specificity and necessity are satisfied.
17. First, the Chamber notes that P-2625's anticipated testimony relates to a number of key elements of the Prosecution case, such as, *inter alia*: (i) Mr Ngaïssona's ties with François Bozizé and the plan to galvanise and instrumentalise supporting militias, including his personal involvement in the distribution of machetes and weapons to members of pro-Bozizé militia groups; (ii) Mr Ngaïssona's

¹⁷ Article 93(1)(b) of the Statute provides: 'States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions: [...] (b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court'.

¹⁸ Summons Judgment, ICC-01/09-01/11-1598, paras 114, 128-132.

¹⁹ Trial Chamber VII, *The Prosecutor v. Bemba et al.*, Decision on the 'Prosecution's Requests under Articles 64(6)(b) and 93 of the Rome Statute to Summon Witnesses', 6 October 2015, ICC-01/05-01/13-1343-Conf (public redacted version notified on 3 December 2015, ICC-01/05-01/13-1343-Red) (the '*Bemba et al.* Summons Decision'), para. 18, referring to Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation, 17 April 2014, ICC-01/09-01/11-1274-Corr2, para. 181; Trial Chamber V(B), *The Prosecutor v. Uhuru Kenyatta*, Decision on Prosecution's applications for a finding of non-compliance pursuant to Article 87(7) and for an adjournment of the provisional trial date, 31 March 2014, ICC-01/09-02/11-908, para. 100, n. 216; Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Decision on the third defence application pursuant to Articles 57(3)(b) and 64(6)(a) of the Statute, 12 September 2013, ICC-02/05-03/09-504-Conf-Exp (public redacted version notified the same day, ICC-02/05-03/09-504-Red), para. 4. See also Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request for Deadline Extension and Cooperation from Uganda, 4 May 2018, ICC-02/04-01/15-1254, para. 7.

involvement in the planning of a military response to the Seleka regime; and (iii) Mr Ngaïssona's direct involvement in the coordination of the alleged 5 December 2013 Bangui attack and his instrumentalisation of the Anti-Balaka. As a result, his expected testimony pertains to the issue of Mr Ngaïssona's individual criminal responsibility and is therefore relevant for the present case.

18. Second, the Chamber considers that the Prosecution Request is specific in that it relates to a witness who has been clearly identified by the Prosecution, including as regards his current location.
19. Third, the Chamber is satisfied that P-2625's anticipated testimony is potentially necessary for the determination of the truth, noting that he is expected to testify on issues directly relating to the individual responsibility of Mr Ngaïssona.
20. Lastly, the Chamber notes that the Prosecution provided detailed information on its attempts to obtain voluntary cooperation from the witness after the witness first conveyed his decision not to appear as a witness in this case. Despite these attempts, P-2625 indicated that he no longer wished to cooperate or receive correspondence from the Court, and, on 21 October 2020, the Canadian authorities 'formally confirmed' P-2625's decision to cease cooperation and advised the Prosecution to cease all attempts to contact the witness.²⁰ In these circumstances, the Chamber finds that a summons is necessary to obtain the testimony of this witness.
21. In view of the above, the Chamber grants the Prosecution's request to summon witness P-2625.

C. Defence Request concerning Mode of Testimony

22. The Chamber recalls its previous findings that 'in-person and video-link testimony are equal options to give *viva voce* testimony under the statutory framework', and that 'video-link testimony may in certain circumstances be even more conducive to the efficient administration of justice'. Accordingly, the participants were afforded 'a certain degree of flexibility in deciding whether they wish for witnesses to appear in-court or via video-link', subject to 'countervailing

²⁰ Prosecution Request, ICC-01/14-01/18-739-Conf-Red, paras 26-27.

considerations, including the logistical burdens on the Registry and the Chamber's overarching obligation to ensure a fair and expeditious trial'.²¹ In addition, the Chamber notes that the Appeals Chamber, in the context of a ruling on summonses, did not express any preference for either mode of testimony.²²

23. In the present case, and noting further that P-2625 was already scheduled to testify via video-link in the Final Witness List, the Chamber does not consider that video-link testimony would impact the fairness of the proceedings. As such, the Chamber finds no countervailing consideration warranting a departure from the flexibility afforded to the participants in deciding on the appropriate mode of testimony.

D. Defence Request for Lifting of Redactions

24. At the outset, the Chamber notes that the parties have not complied with the relevant directions in the Redaction Protocol, expecting the contesting party to approach the disclosing party directly, and requiring the parties to consult in good faith with a view to resolving the matter.²³
25. Nonetheless, in the interests of efficiency, the Chamber will rule on the disputed redactions in the context of this decision. In this regard, the Chamber notes that the redactions in documents CAR-OTP-2127-4444 and CAR-OTP-2127-6432 mostly concern information of a logistical nature, or other information falling under the standard redaction categories, and are neither material to the preparation of the Defence nor of an exculpatory nature. However, one discrete redaction in document CAR-OTP-2127-6432, at page 6433, first paragraph, relates to the reasons provided by P-2625 for his decision not to cooperate with the Prosecution. The Chamber finds that this information is material to the preparation of the Defence and, as such, disclosable under Rule 77 of the Rules.

²¹ Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631, paras 29-31.

²² Summons Judgement, ICC-01/09-01/11-1598, para. 132. *See also Bemba et al.* Summons Decision, para. 27; Trial Chamber V(a), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Prosecution Request for Issuance of a Summons for Witness 727, 17 February 2015, ICC-01/09-01/11-1817-Conf (public redacted version notified the same day, ICC-01/09-01/11-1817-Red), para. 30.

²³ Protocol governing the redaction of evidence at trial, Annex 3 to the Decision on Protocols at Trial, 8 October 2020, ICC-01/14-01/18-677-Anx3, para. 6.

26. The Chamber therefore orders the Prosecution to lift the redaction identified above in document CAR-OTP-2127-6432.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Prosecution Request;

REQUIRES the appearance of witness P-2625 to testify before the Chamber in-person on such dates and times and according to the modalities to be communicated to him by the Prosecution and/or the Registry;

REQUESTS the assistance of the Government of Canada, where necessary in consultation with the Court according to Article 93(3) of the Statute, in ensuring the appearance of witness P-2625 as indicated above, including by:

- (i) communicating to P-2625 the requirement of appearance as indicated above;
- (ii) serving the summons upon P-2625;
- (iii) facilitating, by way of compulsory measure as necessary, P-2625's appearance for testimony before the Chamber in-person on such dates and times and according to the modalities to be communicated to him by the Prosecution and/or the Registry; and
- (iv) making appropriate arrangements for P-2625's security, in consultation with the Registry in so far as possible, until his appearance and completion of testimony before the Chamber;

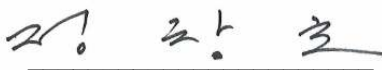
DIRECTS the Registry to prepare and transmit forthwith, in consultation with the Prosecution, the necessary summons to P-2625 (with or without the assistance of the Government of Canada) as well as the necessary cooperation request to the relevant authorities of Canada;

DIRECTS the Prosecution to lift redactions in document CAR-OTP-2127-6432 in line with paragraphs 25 to 26 of this decision; and

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DIRECTS the parties to file public redacted versions of the Prosecution Request and the Defence Response or to request reclassification as public.

Done in both English and French, the English version being authoritative.

 _____ Judge Péter Kovács	 _____ Judge Bertram Schmitt Presiding Judge	 _____ Judge Chang-ho Chung
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Dated 8 January 2021

At The Hague, The Netherlands