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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 *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-2251 pursuant to Rule 68(3)”,
(ICC-01/14-01/18-923-Conf), 19 March 2021**

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-2251, in accordance with rule 68(3) of the Rules of Procedure and Evidence (“Rules”) and the “Initial Directions on the conduct of the proceedings” (“Directions”).¹ P-2251’s prior recorded testimony comprises the witness statement of 20 October 2018 (“Prior Statement”), and its associated exhibits.² Should the Chamber deem the Prior Statement formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, estimated currently to take no longer than three hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2251 is an Anti-Balaka insider, who provides evidence, *inter alia*, on (i) the presence and activities of the Anti-Balaka in GOBERE in 2013; (ii) his personal involvement in Anti-Balaka attacks on BOSSANGO, BOUCA, BOGANGOLO, and the 5 December 2013 attack on BANGUI; (iii) the organisation of the Anti-Balaka in 2014, including bases, leaders, discipline, the issuance of ID cards to Anti-Balaka elements, and their demobilisation; and (iv) the role of the Anti-Balaka National Coordination and NGAISSONA’s role as the National Coordinator.

3. P-2251 further provides evidence of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka’s being an organised armed group, and their attacks on BOSSANGO, BOUCA, BOGANGOLO, and BANGUI, as part of the widespread Anti-Balaka attack carried out between September 2013 and December 2014 in the western Central African Republic (“CAR”), as set out in the Pre-

¹ ICC-01/14-01/18-631, para. 58.

² 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.

Trial Chamber's 11 December 2019 Decision on Confirmation of Charges.³ The Prior Statement further describes the position of the Anti-Balaka leadership within the framework of the group, as well as the respective roles of the Accused during the Relevant Period. The Prior Statement is thus *prima facie* relevant to and probative of material issues at trial.

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.⁴

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.⁵ Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁶ 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.⁷

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 exhibits or documents, and the sources of other corroborative evidence. *Confidential Annex A* (a Summary Chart) lists the relevant statement and the corresponding associated exhibits. It also identifies the relevant paragraphs of the Confirmation Decision to which the Witness's evidence

³ See ICC-01/14-01/18-403-Conf-Corr, paras. 64, 70, *et seq.*, and pp. 111, 107.

⁴ 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").

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

⁶ *See* ICC-01/14-01/18-685, para. 31, 32.

⁷ 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).

relates and, where applicable, any charged incidents the Witness discusses. *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

7. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), this Request and its annexes are filed as “Confidential”, as they contain information concerning witnesses 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

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,⁸ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁹ and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).¹⁰

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-2251 will attest to its accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

⁸ 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’).

⁹ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

¹⁰ ICC-01/14-01/18-710-Conf, paras.47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

10. As described below, the Prior Statement is highly relevant and probative. In addition to the issues described above at paragraph 2, the Prior Statement goes to proof of the nature and extent of the widespread attack carried out by the Anti-Balaka against the Muslim civilian population during the Relevant Period as a part of the contextual elements of Crimes against Humanity and War Crimes, under articles 7 and 8, respectively. It provides evidence of the campaign of retributive violence committed by the Anti-Balaka against Muslim perceived to be associated with the Seleka in towns and villages in western CAR pursuant to a criminal organisational policy,¹¹ particularly in BOSSANGO, BOUCA, BONGANGOLO, and BANGUI in 2013. P-2251's evidence further bears on the identity of the Anti-Balaka as an 'organisation' or 'group' involved in the commission of the article 7 widespread attack.

11. P-2251's Prior Statement of 20 October 2018 comprises approximately 38 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.

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

- P-2251 is an Anti-Balaka insider [REDACTED]. As member of the GOBERE (aka "NGOBERE") group, he participated in several Anti-Balaka attacks in the western Provinces in late 2013, including the 5 December 2013 attack on BANGUI. He later joined [REDACTED] Anti-Balaka group [REDACTED], and lived in the base [REDACTED], before moving to another base [REDACTED].

¹¹ See ICC-01/14-01/18-403-Conf-Corr, paras. 64, *see further* pp. 107, 111 (referencing paragraphs 90-114 of the Document Containing the Charges - ICC-01/14-01/18-286-Conf-AnxB1).

- The witness provides evidence on the emergence, structure, and organisation of the Anti-Balaka in GOBERE. He reports the presence of FACA in the GOBERE group.
- P-2251 provides evidence on (i) the strategy and aim of his GOBERE sub-group in the attacks on BOSSANGO, BOUCA, and BOGANGOLO in 2013, as well as his role within the sub-group; (ii) the descent of his sub-group to BANGUI, together with other GOBERE sub-groups, through the villages BENIMA, KPATA, and via the NGUITO hill; and (iii) the 5 December 2013 Anti-Balaka attack on BANGUI, including the coordination of several attack groups, and his participation in the attack.
- The witness provides evidence of the Anti-Balaka policy of targeting Muslims perceived to be associated with the Seleka.
- P-2251 describes joining the Anti-Balaka group [REDACTED] in BANGUI in 2014, and provides evidence on [REDACTED].
- P-2251 describes NGAISSONA's role as a National General Coordinator, which included (i) organising regular meetings with the Anti-Balaka chiefs; and (ii) providing financial contributions to the Anti-Balaka before and after the 5 December 2013 BANGUI attack.
- The witness describes the role of the Anti-Balaka National Coordination in 2014, which included (i) visiting the Anti-Balaka bases in BANGUI; and (ii) keeping contact with the Anti-balaka elements in BANGUI and the western Provinces for organizational matters, such as the numbers of elements in each base, the Community Violence Reduction ("CVR") process, and the BRAZAVILLE talks.

- The witness further provides evidence on (i) the issuance of ID cards to Anti-Balaka elements in BANGUI, and (ii) the creation of a unit to track down Anti-Balaka elements committing crimes against the population or individuals committing such crimes in the name of Anti-Balaka.
- P-2251 describes the organisation of the Anti-Balaka in BANGUI in December 2013 and in 2014, including the location of bases, leaders, discipline as well as criminality. Specifically, P-2251 confirms the authority of YEKATOM over the Anti-Balaka base in KOLONGO.
- P-2251 provides evidence on the demobilisation [REDACTED], and his involvement in that process.

13. P-2251's proposed evidence is corroborated by, *inter alia*, the evidence of P-2556, P-0889, P-0966, P-2232, P-0884, P-1074, P-2658, P-2841, P-0975, P-0801, and P-2012, as well as by documentary evidence included in the Prosecution's List of Evidence,¹² in relation to (i) the emergence and organisation of the Anti-Balaka in GOBERE, and their participation in the coordinated attack on BANGUI; and (ii) NGAISSONA's leadership over the Anti-Balaka and [REDACTED].

C. Associated Exhibits

14. The Prosecution tenders ten associated exhibits for formal submission, set out at Confidential Annex A, namely : (i) A map of CAR, where the witness marked several locations which he reached in the Provinces and on his descent to BANGUI (Annex A to P-2251's Statement); (ii) A map of BANGUI, where witness marked different routes taken by the Anti-Balaka sub-groups during the 5 December 2013 attack on BANGUI (Annex B to P-2251's Statement); (iii) Four lists of Anti-Balaka elements who were

¹² See for example CAR-OTP-2041-0802, CAR-OTP-2041-0783; CAR-OTP-2084-1331, from [00:02:06] to [00:03:40] and its transcript CAR-OTP-2107-1586, at 1587, l.26-41; CAR-OTP-2081-1769, from [00:02:55] to [00:04:15] and its transcript and translation CAR-OTP-2107-6939 and CAR-OTP-2122-2313, at 2316-2319, l.46-135; CAR-OTP-2084-1263, from [00:00:00] to [00:05:13] and its transcript CAR-OTP-2107-1565, at 1566-1569, l.1-113; CAR-OTP-2025-0396, at 0398.

involved in the CVR process (Annex C to P-2251's Statement); (iv) Caption [REDACTED], showing [REDACTED] an event on the demobilisation [REDACTED] (Annex D to P-2251's Statement); (v) Blank permission form used [REDACTED] to grant Anti-Balaka elements permission to leave the base (Annex E to P-2251's Statement); (vi) List of Anti-Balaka bases in BANGUI and their respective elements, upon which the witness comments;¹³ (vii) Article shown to the witness, [REDACTED], upon which P-2251 comments;¹⁴ (viii) Mission order [REDACTED], upon which P-2251 comments;¹⁵ (ix) List of FACA who gathered in GOBERE, upon which P-2251 comments;¹⁶ (x) List of Anti-Balaka ComZones in BANGUI and the western Provinces, upon which P-2251 comments.¹⁷

15. Although each exhibit referenced in the Prior Statements was discussed and may be helpful to contextualise and facilitate their understanding, the items tendered with this application are *narrowly* assessed as indispensable to their comprehension 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. As an integral part of the Prior Statements, each exhibit is directly relevant to and probative of material issues in dispute, and their admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2251's evidence.

¹³ CAR-OTP-2039-0031.

¹⁴ CAR-OTP-2001-4441.

¹⁵ CAR-OTP-2001-6251, at 6300.

¹⁶ CAR-OTP-2068-0118.

¹⁷ CAR-OTP-2030-0232.

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

16. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-2251's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

17. The Prosecution's three-hour estimated supplemental examination of P-2251¹⁸ takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁹ 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-2251's evidence through the use of some of the associated exhibits, other documents, or as concerns other relevant evidence. The limited examination requested is necessary not only to fully understand and contextualise the Prior Statement, in particular as regards 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 at least six hours to present – twice as long.

E. Balance of interests

20. The projected halving of P-2251's in-court-testimony is "considerable", and the Prosecution considers on balance that the introduction of P-2251'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

¹⁸ ICC-01/14-01/18-724, AnxA, p. 43.

¹⁹ See e.g., ICC-01/14-01/18-T-1-ENG ET, p.6 ln.18-25.

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 their 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-2251 together with their 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 these witnesses as indicated above.



James Stewart, Deputy Prosecutor

Dated this 24th day of March 2021
At The Hague, The Netherlands