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

Date: **30 June 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 leave to add P-2687 to its Final
Witness List and for the formal submission of his prior recorded testimony
pursuant to Rule 68(2)(b)”, ICC-01/14-01/18-1043-Conf, 29 June 2021**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan QC
Mr James Stewart
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamai
Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Ms Marie-Hélène Proulx

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) seeks leave from Trial Chamber V (“Chamber”) to add P-2687 to its Final Witness List¹ in accordance with the Decision Setting the Commencement Date of the Trial,² and for the formal submission of P-2687’s prior recorded testimony pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Request”). Should the Request be allowed, the Prosecution additionally seeks to withdraw P-1932 from its Final Witness List, as well as the formal submission of P-1932’s prior recorded testimony (“Additional Request”).³

2. P-2687 is [REDACTED]. On 17 May 2021, he signed a *Déclaration Technique* detailing [REDACTED] process for generating, preserving and producing Call Data Records (“CDR”).⁴ *Confidential Annex A* (a Summary Chart) lists P-2687’s Declaration and the corresponding associated exhibits. The Declaration itself is appended at *Confidential Annex B*.

3. The addition of P-2687 to the Final Witness List and the formal submission of his Declaration are warranted and appropriate in the circumstances. *First*, it is in the interests of justice and the Chamber’s determination of the truth, as the Declaration would assist the Chamber, Parties, and Participants in their assessment of the CDR evidence tendered in the proceedings. The Chamber would otherwise be deprived of compelling evidence bringing to light facts that may not otherwise be shown or demonstrable.⁵ *Second*, it does not infringe the fair and expeditious conduct of the

¹ ICC-01/14-01/18-724-Conf-AnxA.

² ICC-01/14-01/18-589, para. 16: “Witnesses and evidence may be added to the lists after the deadline only with leave of the Chamber.”

³ See ICC-01/14-01/18-808-Red (“Seventh Request”), paras. 35-39.

⁴ CAR-OTP-2134-0124 (“P-2687’s Declaration”).

⁵ See, e.g., ICC-01/04-01/07-3059, para. 21.

proceedings, as the Declaration contains the same substantive information as P-1932's unsigned statement, and incorporates the same associated exhibits.⁶

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this Request and its annexes are classified as "Confidential" because they contain information identifying Prosecution witnesses, which should not be made public. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

5. A determination of whether leave to add witnesses to the Final Witness List should be granted is not a decision under regulation 35 of the RoC.⁷ It does not involve the enlargement of a time limit, but rather, the amendment of a Final Witness List *timely filed*. Even if regulation 35 were to be applied, the Court's jurisprudence holds that the non-fulfilment of the conditions of that regulation is not necessarily fatal. Rather, a witness may be added to the Final Witness List where doing so would "be in the interests of justice and the determination of truth, and be consistent with the Chamber's obligation to ensure the fairness of the proceedings, under Articles 64 and 69 of the Statute."⁸

A. Timing of request

6. As evident from the Prosecution's Final Witness List and its Seventh Request under rule 68(2), the Prosecution originally planned to present P-1932 – [REDACTED] – to explain [REDACTED] process for generating, preserving and producing CDR. As

⁶ CAR-OTP-2122-9950.

⁷ ICC-02/04-01/15-600, paras. 14 and 22.

⁸ ICC-01/04-02/06-1733, para. 6; ICC-01/04-01/07-1590, para. 12. *See also*, in relation to adding items to the List of Evidence, ICC-02/11-01/15-183-Red, para. 20; ICC-01/05-01/13-1191, paras 10 and 11; ICC-02/04-01/15-600, para. 14.

at the 9 November 2020 disclosure deadline however, P-1932's statement remained unsigned. After further discussions with P-1932 in the following months, it became apparent that P-1932 would not sign the statement at any future point [REDACTED]. Accordingly, the Prosecution took steps to obtain a Declaration from another appropriately positioned employee of [REDACTED]: ultimately [REDACTED], P-2687. Due to travel restrictions related to the COVID-19 pandemic and the security situation in the Central African Republic ("CAR") leading into and following the general Presidential elections, missions to CAR ceased between late January and early April 2021. While the Prosecution established contact with P-2687 to discuss the practicalities of the Declaration, it was only possible for it to be signed in the presence of a Prosecution investigator on 17 May 2021. The original Declaration was registered in Ringtail on 17 June 2021, upon the investigator's return to headquarters.

B. P-2687 provides relevant and probative evidence

7. The addition of P-2687 to the Final Witness List and submission of his Declaration under rule 68(2) are in the interests of justice and the Chamber's determination of the truth, as the Declaration would assist the Chamber, Parties, and Participants in their assessment of the CDR evidence to be tendered in the proceedings. The Declaration contains compelling evidence in this regard and puts forward facts that may not otherwise be shown or demonstrable, of which the Chamber would otherwise be deprived given P-1932's refusal to sign his statement due to [REDACTED].

8. P-2687's Declaration contains the same substantive information as P-1932's unsigned statement, and incorporates the same associated exhibits. It provides information on [REDACTED] automated processes for generating, preserving and producing CDR, the basis content of [REDACTED] CDR (including the short-hand terminology used), and the functioning and reach of [REDACTED] cell towers in CAR.

While the form of the Declaration is subject to some appropriate adjustments – including by direct reference to what P-1932 (“[REDACTED]”) had stated or explained⁹ – P-2687 nevertheless agrees with and adopts these explanations. [REDACTED], P-2687 is in the best position to adopt these explanation and proffer them to the Chamber.

9. The Prosecution incorporates by reference the submissions it made as to the relevance and probative value of P-1932’s evidence in its Seventh Request under rule 68(2)(b) as equally applicable to P-2687’s evidence.¹⁰ It also tenders under rule 68(2)(b) the same seven associated exhibits, as set out in *Confidential* Annex A to the Seventh Request.¹¹

C. No undue prejudice to the Defence

10. The Prosecution’s reliance on P-2687 does not cause undue prejudice to the procedural rights of the Defence in the present circumstances. The material contained in P-2687’s Declaration is in no way new; it was already provided to the Defence by the disclosure deadline of 9 November 2020 through P-1932’s unsigned statement. Further, the Prosecution has brought this effective request to substitute P-1932’s evidence for that of P-2687 as early as practicable, and still within the early stages of the trial.

⁹ See, for e.g., para. 40 of P-2687’s Declaration.

¹⁰ ICC-01/14-01/18-808-Red, paras. 36-38.

¹¹ ICC-01/14-01/18-808-Red, para. 39; ICC-01/14-01/18-808-Conf-Anx-A, p. 9. These seven associated exhibits are referred to in P-2687’s Declaration at para. 41 (CAR-OTP-2019-1364); para. 46 (CAR-OTP-2019-2839); para. 48 (CAR-OTP-2046-0714); para. 52 (CAR-OTP-2046-0734); para. 58 (CAR-OTP-2089-1748); para. 59 (CAR-OTP-2112-1431), and paras. 71 and 75 (CAR-OTP-2054-1481). They are summarised in Confidential Annex A to the present Request.

IV. CONCLUSION

11. For the foregoing reasons, the Request and the Additional Request should be granted.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan QC, Prosecutor

Dated this 30th day of June 2021
At The Hague, The Netherlands