



Original: **English**

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

Date: **3 March 2022**

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-2556 pursuant to Rule 68(3)”, 3 March 2022**

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-2556, 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”).¹ P-2556’s prior recorded testimony comprises his 30 June 2019 Witness Statement (“Prior Statement”).² 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-2556 is [REDACTED] civilian who joined the Anti-Balaka in CARNOT (“CARNOT Group”). The witness can give evidence on i) the structure and organisation of the CARNOT Group and the appointment of regional coordinators at NGAISSONA’s request; ii) National Coordination and local meetings, and NGAISSONA’s instructions that badges be issued to Anti-Balaka members; iii) crimes committed by Anti-Balaka in CARNOT, including the killing, injuring and forcible displacement of Muslims; iv) Anti-Balaka punishments for certain categories of crimes; v) the financing and provision of weapons by NGAISSONA to Anti-Balaka from BOSSANGO and BENZABE [BENZAMBE].

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.³

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2112-1300.

³ 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”).

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.⁴ Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁵ 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.⁶

5. 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 lists the relevant portions of the Prior Statement being tendered for formal submission and the corresponding associated exhibits. 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. The associated exhibits are available to the Defence and the Trial Chamber in e-Court.

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.

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

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

⁶ 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).

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,⁷ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁸ and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).⁹

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-2556 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 Anti-Balaka CARNOT Group, as well as their links to the National Coordination and NGAISSONA. 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-2556's Prior Statement comprises 28 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.

⁷ 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').

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

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

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

- P-2556 was [REDACTED] resident of CARNOT prior to the events related.
- The witness explains that he travelled to BENZABE for *gris-gris* in order to join the Anti-Balaka, around the end of 2013 or beginning of 2014.
- He recounts how he joined the CARNOT Group, whose leaders included Aimé Blaise [ZAOROYANGA], Sylvain [SINAKOLO] and Barthélemy [NAMSENMO]. Following a request from NGAISSONA to designate regional Anti-Balaka Coordinators, Sylvain and Barthélemy were appointed Coordinator and Deputy Coordinator respectively, and participated in meetings with NGAISSONA during which he instructed them to issue badges for Anti-Balaka elements.
- P-2556 also describes local meetings held by the CARNOT Group, and how Muslim residents of CARNOT were injured, killed, and forcibly displaced by the Anti-Balaka. He also recounts moving [REDACTED].
- He details how the Anti-Balaka leadership in CARNOT would mete out punishments for certain crimes, such as stealing or pillaging.
- The witness explains that NGAISSONA was financing the Anti-Balaka in BOSSANGO and BENZABE, as well as providing them with weapons that BOZIZE had hidden.
- The witness also provides evidence on crimes committed by the Anti-Balaka in GUEN.

12. P-2556's proposed evidence on the structure and organisation of the CARNOT Group is corroborated by, *inter alia*, the evidence of P-2326, P-1042, P-2393, P-2132, P-0289, P-1719, P-0966, P-0808 and P-0889. His proposed evidence on the killing and forced displacement of Muslims in CARNOT is corroborated by, *inter alia*, P-0289, P-2132, P-1042, P-1074, P-1719, P-2393 and P-2328. His proposed evidence on

NGAISSONA providing money and weapons to the Anti-Balaka is corroborated by, *inter alia*, P-0458, P-0808, P-0992, P-0954, P-0884, P-2625, P-2673, P-0808, P-0965, P-1074, P-2232 and P-1339.

C. Associated exhibits

13. The Prosecution tenders fifteen associated exhibits for formal submission. They comprise five documents tendered by the witness, and ten videos and photographs mentioned in the Prior Statement, as listed in Confidential Annex A.

14. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish its 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. Each exhibit is an integral part of the Prior Statement and their submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2556's evidence.

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

15. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-2556's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

16. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹⁰ the Prosecution has carefully reviewed its two-hour estimate given for P-2556 in its Final Witness List.¹¹ The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-

¹⁰ ICC-01/14-01/18-685, para. 36.

¹¹ ICC-01/14-01/18-724-Conf-AnxA, p. 18-19.

2556 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹² and accounts for the prospect of appropriate redirect examination.

17. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2556's evidence through the use of some of the associated exhibits, other 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.

18. 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.

E. Balance of interests

19. The projected shortening of P-2556's in-court-testimony by two-thirds is "considerable". On balance the introduction of P-2556'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.

¹² 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).

IV. CONCLUSION

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2556 together with its 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 this witness as indicated above.



Karim A. A. Khan QC, Prosecutor

Dated this 3rd day of March 2022
At The Hague, The Netherlands