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

Date: **14 April 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-2620 pursuant to Rule 68(3)”, 13 April 2022,
ICC-01/14-01/18-1361-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-2620, 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-2620’s prior recorded testimony comprises her 22 November 2019 and 14 January 2020 Witness Statements (“Prior Statements”).² Should the Chamber deem the Prior Statements 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-2620 was a child soldier who was conscripted [REDACTED] into the Anti-Balaka [REDACTED]. From her time with the Anti-Balaka [REDACTED], she can give evidence on how YEKATOM, the overall commander of the base, [REDACTED]. She can also give evidence on the training she received on the use of a Kalashnikov, the provision of drugs to her by the Anti-Balaka, how YEKATOM oversaw punishments at the base and how she was forced to witness a killing [REDACTED]. She is also able to give evidence on the [REDACTED].

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-2123-0057; CAR-OTP-2121-2567.

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 Statements 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 Statements 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 Statements 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 Statements 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 Statements, 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 Statements may be deemed formally submitted under rule 68(3). P-2620 will attest to their accuracy; she will be present in court; and she will be available for examination by the Defence, Participants, and the Chamber.

9. As described below, the Prior Statements are highly relevant and probative. They go to the organisation and structuring of the Anti-Balaka [REDACTED] under the leadership of YEKATOM, as well as to the conscription and use of children under 15 in hostilities. They also provide 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-2620's Prior Statements comprise 24 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 Statements.

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 Statements establish the following:

- P-2620 was a [REDACTED] when she was threatened and conscripted into the Anti-Balaka [REDACTED], becoming a child soldier among their ranks.
- She details how while in the group [REDACTED].
- She explains how [REDACTED] trained her in the use of a Kalashnikov, how she was provided with drugs including Tramol and marijuana and told to beat a man, how she was encouraged to kill, [REDACTED] forced her to witness a murder [REDACTED].
- She recounts how Anti-Balaka that broke the rules would be taken to YEKATOM, who would punish or imprison them in 'jail' at the base, [REDACTED], and how YEKATOM [REDACTED].
- She further describes how YEKATOM [REDACTED] she must work at the base, how she washed clothes and cooked, and how the Anti-Balaka manned barricades, where they killed Muslims and demanded money, which YEKATOM subsequently collected in person.

12. P-2620's proposed evidence that the Anti-Balaka recruited children under 15, and that some were subjected to sexual violence is corroborated by, *inter alia*, the evidence of P-2475, P-2476, P-2082, P-2511, P-2582, P-2442 and P-2083. Her evidence that drugs were provided to children by the Anti-Balaka to quell the fear of performing their often violent duties is corroborated by, *inter alia*, P-2475, P-2083 and P-2582. Her evidence that children in the Anti-Balaka were taught how to handle and use weapons is corroborated by, *inter alia*, P-2475, P-2082, P-2233 and P-2587. Her evidence that the Anti-Balaka extracted illegal tolls and targeted Muslims at checkpoints is corroborated by, *inter alia*, P-2475, P-2041, P-2389, P-2419, P-2353 and P-2233.

C. Associated exhibits

13. The Prosecution tenders five associated exhibits for formal submission. They comprise five documents mentioned in the Prior Statements, as listed in Confidential Annex A, namely i) [REDACTED], ii) a victim application, iii) a birth certificate, iv) medical records and v) a photograph.

14. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statements, 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. Each exhibit is an integral part of the Prior Statements and their submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2620's evidence.

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

15. The Prior Statements are brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-2620'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-2620 in its Final Witness List.¹¹ The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-2620 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel,

¹⁰ ICC-01/14-01/18-685, para. 36.

¹¹ ICC-01/14-01/18-724-Conf-AnxA, p. 33.

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-2620's evidence through the use of some of the associated exhibits, documents or other relevant evidence. The limited examination requested is necessary not only to fully understand and contextualise the Prior Statements, 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 Statements under rule 68(3), the Prosecution estimates that the witness's testimony on direct examination would require approximately six hours to present – three times as long.

E. Balance of interests

19. The projected shortening of P-2620's in-court-testimony by two-thirds is "considerable". On balance the introduction of P-2620's Prior Statements 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 Statements are 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.

¹² See *e.g.*, ICC-01/14-01/18-T-001-ENG ET, p. 6 ln. 18-25; see ICC-01/14-01/21-T-001-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 Statements of P-2620 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 this witness as indicated above.

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 14th day of April 2022
At The Hague, The Netherlands