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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

with Confidential Annexes A and B

**Public Redacted Version of Prosecution's Request for the Formal Submission of the
Prior Recorded Testimony of P-2511 pursuant to Rule 68(3),
ICC-01/14-01/18-1503-Conf, 7 July 2022**

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 Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Landry Omissé-Namkeamaï
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

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-2511, 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-2511’s prior recorded testimony comprises his witness statement dated 16 July 2019 (“Prior Statement”)² and its associated exhibit.³ 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-2511 was approximately [REDACTED] years old when he joined YEKATOM’s Group at the YAMWARA School, shortly after [REDACTED]. The witness provides evidence on how the Anti-Balaka, in particular YEKATOM’s Group, conscripted and enlisted children under the age of 15, and their treatment. He also provides evidence on YEKATOM’s role as an Anti-Balaka commander. P-2511’s evidence also bears on other Anti-Balaka crimes, such as the targeting of Muslims.

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.⁴

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2114-0178.

³ 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.

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”).

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.⁵

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 exhibit or document, 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 exhibit. 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 exhibit is 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.

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

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

the presentation of its case,⁶ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁷ and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).⁸

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-2511 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 conscription and use of children under the age of 15. 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 the Muslim population pursuant to a criminal organisational policy between September 2013 and December 2014.

10. P-2511's Prior Statement consists of 14 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.

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

- P-2511 describes Anti-Balaka's arrival in BANGUI on 5 December 2013. He explains how he and his family fled [REDACTED] to the CARRIÈRE neighbourhood, as there were shootings all over [REDACTED].

⁶ 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').

⁷ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

⁸ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

- P-2511 describes how he learned that [REDACTED] after returning home [REDACTED] on the evening of the attack.
- P-2511 describes how he joined the Anti-Balaka through [REDACTED] who, [REDACTED], asked him whether he wanted to join the Anti-Balaka at the YAMWARA School.
- P-2511 explains that he was [REDACTED] years old when he joined the Anti-Balaka in YAMWARA, and that [REDACTED] never asked his age, but instead told him that they “were all men now”. The witness states that he understood that [REDACTED] meant that regardless of age, he was a part of the group and had to act like a man.
- P-2511 states that he knew that YEKATOM was the overall leader of the Anti-Balaka, as YEKATOM was the one giving orders to Anti-Balaka leaders and other Anti-Balaka chiefs.
- P-2511 states that he met two other children in his group who encouraged him to stay, one was called [REDACTED], who was [REDACTED] years old; the other was called [REDACTED], who was [REDACTED] years old.
- P-2511 states that he was in a group with [REDACTED], and 10 men. He explains that at the YAMWARA School, he was introduced to another leader called [REDACTED], and that he and [REDACTED] were the leaders of and gave orders to their group.
- He explains that he did not receive training in at the YAMWARA School, but that there were rules, and tasks were shared amongst the children.
- P-2511 describes that anyone who tried to escape or desert the group would be killed if caught. He explains that they were not allowed to speak to anyone outside of the group about Anti-Balaka activities, and that all information had to be treated as confidential.

- P-2511 describes that there were punishments for those who did not obey their respective leaders, and that he was [REDACTED].
- P-2511 describes the move to PLATEAU School in preparation to the attack on PK5, and the plan to attack the neighbourhoods of GBAYA and KINA before PK5. He explains that the Anti-Balaka managed to attack GBAYA and KINA. However, they were not able to attack PK5 as they lacked ammunition.
- P-2511 explains that when moving with the Anti-Balaka, children were given tasks such as carrying ammunition and backpacks, and that they were given marijuana to smoke along the way.
- P-2511 recounts the killing of [REDACTED]. P-2511 explains that [REDACTED] when the man started to scream. He later saw the man's body buried next to the YAMWARA School.
- P-2511 describes the move from PLATEAU School to KAPOU, and how the group later moved to PISSA. P-2511 recounts how he and his fellow children cared for each other on the way to PISSA, while other elements did not care for their well-being.
- P-2511 explains that he did not see Muslims in PISSA, and suspected that this was because the Muslim population knew the Anti-Balaka would fight and kill them. He states that Muslims were not in a position to fight back and that the mosque in PISSA was destroyed, and the Muslim shops were occupied by the local population.
- P-2511 explains that his [REDACTED] to negotiate his release. That is how he was able to leave the group. He notes that he was released sometime before [REDACTED].
- P-2511 explains how he learned about and later [REDACTED]. He states that his two Anti-Balaka friends [REDACTED] were not [REDACTED].

- The witness identifies YEKATOM in a video and in a photo, as well as other child soldiers in YEKATOM's Group. He further provides names and details about certain, individuals, events, and locations of relevance.

12. P-2511's proposed evidence on the enlistment and conscription of children under the age of 15 in YEKATOM's Group is corroborated by, *inter alia*, the evidence of P-1921, P-2475 and P-1074. His evidence on YEKATOM's control of the base and the group is corroborated by, *inter alia*, P-2475.

C. Associated exhibit

13. The Prosecution tenders one associated exhibit for formal submission. Comprising a document described in the Prior Statement, as listed in Confidential Annex A, namely a copy of P-2511's birth certificate, "*Acte de Naissance*".

14. The item tendered with this application is assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish its probative value if excluded. As tendered, the associated exhibit avoids 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. The exhibit is an integral part of the Prior Statement and its submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2511'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-2511'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",⁹ the Prosecution has carefully reviewed its two-hour estimate given for P-2511 in its Final Witness List.¹⁰ The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-2511 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹¹ 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-2511's evidence through the use of the associated exhibit, document 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 approximately six hours to present – three times as long.

E. Balance of interests

19. The projected shortening of P-2511's in-court-testimony by two-thirds is "considerable". On balance, the introduction of P-2511'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

⁹ ICC-01/14-01/18-685, para. 36.

¹⁰ ICC-01/14-01/18-724-Conf-AnxA, p. 33.

¹¹ 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).

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.

IV. CONCLUSION

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2511 together with its associated exhibit 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 19th day of August 2022
At The Hague, The Netherlands