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Date: **19 August 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

with Confidential Annexes A and B

**Public Redacted Version of "Prosecution's Request for the Formal Submission of
the Prior Recorded Testimony of P-2082 pursuant to Rule 68(3)",
ICC-01/14-01/18-1520-Conf, 20 July 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-2082, 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-2082’s prior recorded testimony comprises her witness statement dated 14 May 2019 (“Prior Statement”)² and its associated exhibits.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-2082 was the Central African Republic (“CAR”) [REDACTED] from 2013 to 2015, before joining the [REDACTED] in 2015, overseeing all 16 Prefectures of CAR as well as BANGUI. The witness provides evidence on how the Anti-Balaka conscripted and enlisted children under the age of 15. She also provides evidence on YEKATOM’s role as an Anti-Balaka commander and his control of the LOBAYE region. P-2082 further provides evidence on the contextual elements for war crimes and crimes against humanity, in particular, the Anti-Balaka’s being an organised armed group, and its intent to target Muslims pursuant to a criminal organisational policy. The witness’s evidence also bears on other Anti-Balaka crimes, such as their involvement in the ransoming of civilians’ goods and looting. The Prior Statement is thus *prima facie* relevant to, and probative of material issues at trial.

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2109-0452.

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.

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

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 exhibits 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 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 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*").

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,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-2082 will attest to its 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 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-2082's Prior Statement consists of 18 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.

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.

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

- From 2013 to 2015, P-2082 [REDACTED] as the [REDACTED] in [REDACTED], before joining the [REDACTED] in 2015.
- P-2082 explains that [REDACTED] comprised OMBELLA-M'POKO and LOBAYE prefectures and their sub-prefectures. Respectively, for OMBELLA-M'POKO, the sub-prefectures BIMBO, BOALI, BOSSEMBELE, YALOKE, DAMARA, and BOGANGOLO; and for LOBAYE, the sub-prefectures MBAIKI, MONGOUMBA, BODA, and BOGANDA.
- P-2082 describes how, when the conflict broke out, all the Muslims in her neighbourhood fled for fear of the Anti-Balaka, leaving only the Christians living there.
- P-2082 recounts that in 2013, the Anti-Balaka destroyed a mosque in FOUH. She states that it was common knowledge across BANGUI that the Anti-Balaka, together with some local young men, were out to destroy the mosques in the area, reflecting their intent to target the Muslim population.
- P-2082 states that YEKATOM was very powerful in LOBAYE, and that it was common knowledge that YEKATOM ordered his elements, to pillage, to loot, among other.
- P-2082 states that YEKATOM was the supreme leader of the Anti-Balaka within his area of command and that other leaders were subject to his orders, analogising his position to that of a Prime Minister relative to other Ministers, and then to ordinary citizens. Among the 'ordinary citizens' (i.e., elements) there were children, whom the witness confirms were in YEKATOM's Group, and involved in their crimes.
- P-2082 describes how she learned about the work of the NGO *Enfants Sans Frontières* ("ESF"), and explains that ESF's aim was to release children from

armed groups such as the Anti-Balaka and to reintegrate them in civil society. ESF worked together with the UNICEF towards that goal.

- P-2082 describes a demobilisation meeting in PISSA in August 2014, at which [REDACTED]. She describes [REDACTED].
- P-2082 affirms that YEKATOM was already in contact with ESF, as he wanted to abandon the children because they cost him too much money. P-2082 states that [REDACTED], YEKATOM signed an agreement to release the children, who were then taken to a centre called *centre d'écoute d'enfants* in MBAIKI later in the afternoon.
- P-2082 recounts a second ceremony that took place at the centre in MBAIKI. YEKATOM was not present.
- P-2082 describes that [REDACTED] after they were demobilised from YEKATOM's Group, and [REDACTED] among them in particular, [REDACTED]. The ages of the children ranged between 11 and 17.
- P-2082 states that the children [REDACTED] there was a definite hierarchy in YEKATOM's Group and that they were under the authority of YEKATOM's men. P-2082 states that the children worked as in a military organisation. She was told that, in each group, there were leaders and there were assigned ranks, such as lieutenant and corporal.
- P-2082 explains that some children were forced to join the Anti-Balaka, and that usually those children were severely beaten by the ones who joined the group voluntarily. She also describes the tasks assigned to the children in YEKATOM's Group, such as carjacking, armed robbery, stealing, raiding villages, and stealing goats and chicken for their leaders to eat.
- P-2082 states that whenever the children returned from looting, they had to bring all looted items to the leaders, and if they did not bring enough, they

would be punished. Their punishment included beatings, being denying food, forced labour. Sometimes leaders would threaten their lives. P-2082 reports [REDACTED] the scars on the backs of a few children from beatings given by their superiors.

- P-2082 affirms that the children [REDACTED] that they suffered a lot in the Anti-Balaka.
- The witness further provides names and details about certain individuals, based on videos, documents and photographs.

12. P-2082'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. P-2082's proposed evidence on the forced displacement of Muslims is corroborated by, *inter alia*, the evidence of P-1838 and P-1813. P-2082's proposed evidence on how YEKATOM's Group perpetuated an increasingly hostile environment towards Muslims, targeting them and causing them to flee *en masse* is corroborated by, *inter alia*, the evidence of P-0954, P-1647, P-1823, P-1839, P-2582, P-2196, P-2041, P-2354, P-2475 and P-2084. P-2082's proposed evidence on YEKATOM's leadership of his Group is corroborated by, *inter alia*, the evidence of P-1858, P-1074, P-0287, P-1974, P-1839, P-1921, and P-2328. P-2082's evidence on the demobilisation ceremonies is corroborated by, *inter alia*, P-1974, P-2475 and P-2018. And her evidence on the role of YEKATOM in the demobilisation is corroborated by, *inter alia*, P-1974 and P-2475.

C. Associated exhibits

13. The Prosecution tenders two associated exhibits for formal submission. Comprising two documents provided by the witness and mentioned in the Prior Statement, as listed in Confidential Annex A, namely i) a report about a joint mission undertaken by UNICEF, COOPI, ESF and the government, in the activities of verifying and identifying child soldiers associated with the Anti-Balaka in PISSA from 11 to 13

June 2014, entitled “*Rapport de la Mission Conjointe UNICEF-COOPI-ESF-Gouvernement Dans le cadre des activités de Vérification et l’identification des enfants soldats associés aux Anti-Balaka à PISSA du 11 au 13 Juin 2014*”; ii) a report entitled “*Rapport des Activités du Project de Prise en Charge et de la Réinsertation des Enfants Associés aux Forces des Groupes Armés (AEFGA) de MBAIKI*.”

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. The associated exhibits will assist the Chamber in its assessment of the relevant evidence in its article 74 decision. The exhibits are 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-2082’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-2082’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-2082 in its Final Witness List.¹⁰ The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-2082 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel,

⁹ ICC-01/14-01/18-685, para. 36.

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

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-2082's evidence through the use of the associated exhibits, 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 four hours to present – twice as long.

E. Balance of interests

19. The projected shortening of P-2082's in-court-testimony by two-thirds is "considerable." On balance, the introduction of P-2082'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.

IV. CONCLUSION

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2082 together with its associated exhibits

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).

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 August 2022
At The Hague, The Netherlands