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Date: **26 October 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-2625 pursuant to Rule 68(3)”,
17 October 2022, ICC-01/14-01/18-1621-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-2625, in accordance with rule 68(3) of the Rules of Procedure and Evidence (“Rules”) and the “Initial Directions on the conduct of the proceedings”(“Directions”).¹ P-2625’s prior recorded testimony comprises his 24 November 2019 Witness Statement (“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, estimated at approximately five hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2625 is [REDACTED] NGAISSONA and François BOZIZE (“BOZIZE”), both of whom expressed an anti-Muslim animus and the desire for war. He details how the events of December 2013 and the attack on BANGUI were a logical consequence [REDACTED]. He is able to give evidence on NGAISSONA’s contacts with members of the Presidential Guard in CAMEROON and other elements in BANGUI and the BOSSANGO region, as well as on his financing of the Anti-Balaka. P-2625 can also provide evidence on Maxime MOKOM (“MOKOM”) and NGAISSONA’s communication in relation to events on the ground, and how the latter warned the witness of the upcoming attack on BANGUI.

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

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2123-0377.

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.

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 Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁶ 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.⁷

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, 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

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*").

⁶ See ICC-01/14-01/18-685, para. 31, 32.

⁷ 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).

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 the presentation of its case,⁸ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁹ and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).¹⁰

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-2625 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. The Prior Statement is highly relevant and probative, as outlined in the Prosecution’s 24 November 2020 Request under articles 64(6)(b) and 93 to Summons P-2625,¹¹ and as described below. It goes to the organisation and structuring of the Anti-Balaka, its links to NGAISSONA, and the planning and preparation of the 5 December attack on BANGUI and its aftermath, the subject of Counts 1-23. 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

⁸ 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’).

⁹ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

¹⁰ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

¹¹ ICC-01/14-01/18-739-Conf-Red, paras. 8-24, incorporated by reference herein.

intention to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014.

10. P-2625's Prior Statement comprises 34 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-2625 is [REDACTED] NGAISSONA, BOZIZE, and other relevant actors during the 2013-2014 crisis in the Central African Republic ("CAR").
- He describes how Levy YAKETE ("YAKETE") organised the distribution of machetes in BOY-RABE, with NGAISSONA's assistance.
- P-2625 recounts [REDACTED], *inter alia*, BOZIZE, NGAISSONA, YAKETE, and KOKATE, who were in favour of war, and how the events of December 2013 and the 5 December attack on BANGUI were a result of these exchanges.
- He describes how BOZIZE and NGAISSONA declared that all Muslims were "foreigners" and Seleka, how this rhetoric led to massive attacks on civilian Muslim Central Africans, how BOZIZE and his supporters' objective was to return to power whatever the cost, and how YAKATE indicated that he had elements ready in the field to fight.
- P-2625 [REDACTED] *Front pour le Retour à l'Ordre Constitutionnel en Centrafrique* ("FROCCA") [REDACTED] *inter alia* BOZIZE, NGAISSONA, KOKATE and Lin BANOUKEPA, who were all convinced of the necessity of an armed struggle. [REDACTED] Presidential Guard in CAMEROON, and other elements in BANGUI and the BOSSANGO region. He also heard BOZIZE ask that money be sent to military elements in CAMEROON.

- P-2625 recalls how NGAISSONA [REDACTED] financed the purchase of weapons for the Anti-Balaka.
- P-2625 [REDACTED].

11. P-2625's proposed evidence [REDACTED] CAMEROON is corroborated by, *inter alia*, the evidence of P-0801, P-2841, P-1719, P-0287 and P-1074. His evidence regarding the anti-Muslim rhetoric expressed by BOZIZE and his circle is corroborated by, *inter alia*, the evidence of P-0589. His evidence on NGAISSONA financing the Anti-Balaka is corroborated by, *inter alia*, P-0992, P-0954, P-0884, P-0458, P-2673 and P-2328.

C. Associated exhibits

12. The Prosecution tenders 31 associated exhibits for formal submission. They comprise twenty-nine documents mentioned in the Prior Statement and two associated exhibits, as listed in Confidential Annex A, namely: (i) the CV of P-2625; (ii) [REDACTED]; (iii) five media articles on *inter alia* BOZIZE and FROCCA; (iv) two reports on BOZIZE and the Anti-Balaka; (v) a copy of P-2625's [REDACTED]; (vi) [REDACTED]; (vii) four FROCCA press releases; (viii) three Facebook posts; (ix) ten pages from the Jeunesse Centrafricaine du FROCCA website; (x) a transcript and radio interview with Lin BANOUKEPA discussed in the statement; and (xi) an email from P-2625 to the Prosecution.¹²

13. 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

¹² ICC-01/14-01/18-907-Conf, para. 13.

Prior Statement and their submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2625's evidence.

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

14. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-2625's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

15. Mindful of the Chamber's direction concerning the Prosecution's need to "streamline its questioning considerably",¹³ and having carefully weighed converting P-2625's mode of testimony in this regard, the Prosecution estimates that it can complete P-2625's direct testimony in around five hours. This estimated supplemental examination of P-2625 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁴ and accounts for the prospect of appropriate redirect examination.

16. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2625'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.

¹³ ICC-01/14-01/18-685, para. 36.

¹⁴ 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).

17. 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 eight to ten hours to present – about twice as long.

E. Balance of interests

18. The projected shortening of P-2625's in-court-testimony by half is "considerable". On balance the introduction of P-2625'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

19. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2625 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 KC, Prosecutor

Dated this 26th day of October 2022
At The Hague, The Netherlands