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**No. ICC-01/14-01/18
Date: 9 June 2023**

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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Twenty-Third Decision on the Prosecution Request for Formal Submission of
Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness
P-2389**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 67(1) and 69 of the Rome Statute, and Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Twenty-Third Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness P-2389’.

I. Procedural history

1. On 10 March 2021, the Chamber issued its first decision under Rule 68(3) of the Rules (the ‘First Rule 68(3) Decision’), in which it set out the applicable law for requests for the introduction of prior recorded testimonies under Rule 68(3) of the Rules.¹
2. On 10 May 2022, the Prosecution requested the introduction, under Rule 68(3) of the Rules, of the statement and associated item of P-2389 (the ‘P-2389 Request’).²
3. On 17 and 23 May 2022, the Ngaïssona Defence and the Yekatom Defence (jointly, the ‘Defence’), respectively, indicated that they do not intend to respond to the P-2389 Request and defer to the Chamber’s discretion.³

II. Analysis

4. The Chamber incorporates by reference the applicable law as previously set out.⁴

¹ Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16.

² Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2389 pursuant to Rule 68(3), ICC-01/14-01/18-1402-Conf (with confidential Annexes A and B) (public redacted version notified the same day, ICC-01/14-01/18-1402-Red).

³ Email from the Ngaïssona Defence, 17 May 2022, at 09:02; email from the Yekatom Defence, 23 May 2022, at 11:00.

⁴ Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence, 10 March 2021, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16. *See also* Decision on the Yekatom Defence Request for Leave to Appeal the Twelfth Rule 68(3) Decision regarding P-1704, 29 April 2022, ICC-01/14-01/18-1383, paras 4-17.

A. P-2389

1. Submissions

5. The Prosecution seeks to introduce the prior recorded testimony of witness P-2389, comprising one statement and one associated item.⁵ It submits that the introduction of P-2389's prior recorded testimony would reduce the presentation of the Prosecution's examination-in-chief and help to streamline the proceedings, reducing the time for its examination from 'at least four hours' to 'approximately two hours'.⁶ According to the Prosecution, P-2389's statement is 'highly relevant and probative',⁷ and corroborated by other evidence.⁸

2. The Chamber's determination

6. In his statement,⁹ P-2389 discusses, *inter alia*, (i) the town of Pissa and its composition; (ii) the arrival of the Seleka in Pissa and crimes allegedly committed by them against the local population; (iii) the Muslim population in Pissa and surrounding villages receiving news about the alleged Anti-Balaka attack on Bangui on 5 December 2013, and moving to Mbaïki out of fear; (iv) the Anti-Balaka allegedly killing two men in Bangui-Bouchia and another one in Sakoulou; (v) the witness leaving Pissa to Mbaïki out of fear of the Anti-Balaka; (vi) the situation in Mbaïki by the end of January 2014, including the difficulties in obtaining food; (vii) the Muslims who fled from Pissa and the villages between Bangui and Mbaïki mainly staying at the Baguirmi mosque; (viii) the witness hearing that all the Muslims were being stopped by the Anti-Balaka at the PK9 checkpoint, and that the latter destroyed the mosque in the 'ARAB' neighbourhood in Pissa; (ix) the witness seeing the Anti-Balaka arriving in Mbaïki and meeting with the Sangaris, Bishop 'RINO' and a Muslim delegation at the *Sainte-Jeanne d'Arc* church; (x) the Anti-Balaka wearing a mix of military and civilian clothes, as well as *gris-gris*, carrying weapons, being 'very aggressive and [...] threatening' the Muslims, and allegedly extorting Muslims

⁵ P-2389 Request, ICC-01/14-01/18-1402-Red, paras 1, 20; Annex A to the P-2389 Request, ICC-01/14-01/18-1402-Conf-AnxA.

⁶ P-2389 Request, ICC-01/14-01/18-1402-Red, paras 1, 3, 15-18.

⁷ P-2389 Request, ICC-01/14-01/18-1402-Red, paras 9, 11.

⁸ P-2389 Request, ICC-01/14-01/18-1402-Red, para. 12.

⁹ CAR-OTP-2104-0033; CAR-OTP-2122-4458 (French translation).

traders; (xi) the local Christian youth in Mbaïki supporting the Anti-Balaka and provoking the Muslims; and (xii) the evacuation of the Muslim civilians from Mbaïki on 6 February 2014, the conditions in the trucks and during the night spent at the Bangui airport, and a convoy being attacked by the Anti-Balaka at Damara.

7. In addition, the witness makes a number of references to Mr Yekatom, such as (i) the witness seeing Mr Yekatom on television being present at the standoff between the Anti-Balaka and the Seleka at the PK9 bridge, and engaging in discussions with the Sangaris; (ii) Mr Yekatom having a base near the Moyeye river, west of Pissa in the bush; (iii) the witness hearing that Mr Yekatom and his men had arrived in Pissa; (iv) the witness hearing that Mr Yekatom reportedly said that he and his men would enter Mbaïki but not harm anyone; and (v) the witness believing that, but for the presence of the Sangaris, Mr Yekatom and the Anti-Balaka would have attacked the Muslims in Mbaïki.¹⁰
8. The Chamber notes that the Defence does not oppose the introduction of P-2389's prior recorded testimony pursuant to Rule 68(3) of the Rules. It further notes that while P-2389's statement contains references to contextual elements, it also touches upon core issues of the case, including references to Mr Yekatom's acts and conduct. The witness does not mention Mr Ngaïssona. The Chamber recalls in this context that references to the accused's acts and conduct do not *per se* constitute an obstacle to the introduction of a prior recorded testimony pursuant to Rule 68(3) of the Rules, and that this provision also does not preclude the introduction of evidence that is central to core issues of the case.¹¹ In addition, the Defence will also have an opportunity to examine the witness in court. Finally, the Chamber notes that the introduction of P-2389's prior recorded testimony would cut the time for the Prosecution's examination of the witness at least by half, thereby promoting the expeditiousness of the proceedings.

¹⁰ CAR-OTP-2104-0033, at 0039, paras 34-35; at 0039-40, paras 37-38; at 0042, para. 49; at 0043, para. 55; at 0044, para. 63.

¹¹ See e.g. Corrected version of 'Eighteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1858, P-1823, P-1819, P-1813, P-2476, P-1786, P-2587 and P-0487', 11 November 2022, ICC-01/14-01/18-1661-Conf-Corr (corrected version notified on 18 November 2022), para. 20, and the references cited therein.

9. In light of the above, the Chamber considers that the introduction of P-2389's prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.
10. Accordingly, the Chamber grants the Prosecution's request to introduce P-2389's statement¹² and associated item¹³ under Rule 68(3) of the Rules.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that, subject to the fulfilment of the legal requirements of Rule 68(3) of the Rules, the prior recorded testimony of Witness P-2389 (CAR-OTP-2104-0033; CAR-OTP-2122-4458 (French translation)), together with its associated item (CAR-OTP-2104-0049) is introduced into evidence.

Done in both English and French, the English version being authoritative.

 Judge Péter Kovács	 Judge Bertram Schmitt Presiding Judge	 Judge Chang-ho Chung
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Dated 9 June 2023

At The Hague, The Netherlands

¹² CAR-OTP-2104-0033; CAR-OTP-2122-4458 (French translation).

¹³ CAR-OTP-2104-0049.