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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

**Public redacted version of “Prosecution’s Request for the Formal Submission of the
Prior Recorded Testimony of P-2602 pursuant to Rule 68(3)”,
ICC-01/14-01/18-1834-Conf, 6 April 2023**

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-2602, 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-2602’s prior recorded testimony comprises his interview statement (“Prior Statement”) provided on 26 October to 29 October 2019 and sixteen associated exhibits.² 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 four hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2602 worked for several years as a [REDACTED]. *First*, P-2602 joined the BOZIZE’s ‘liberators’ in 2002-2003. He later joined the *Forces Armées Centrafricaines* (“FACA”) [REDACTED]. He served [REDACTED]. In 2013, P-2602 joined the Anti-Balaka, and became [REDACTED]. P-2602 provides evidence, *inter alia*, on (1) the creation (recruitment, organisation, and armament) of the Anti-Balaka [REDACTED]; its controlled areas, and bases, and the role of former FACA leaders; including Danboy DEDANE (“DEDANE”), *Caporal* Florent KEMA (“KEMA”), and Alexis MANDAGO (“MANDAGO”); (2) the coordination and planning of the Anti-Balaka attacks on BOSSANGO, BANGUI and BOUAR; (3) [REDACTED] Anti-Balaka attacks on BENZAMBE, BOSSEMBELE, and BOSSANGO, and prior attacks in OUHAM prefecture; (4) [REDACTED] Maxime MOKOM and other Anti-Balaka leaders, including on 5 December 2013; and (5) [REDACTED] the Anti-Balaka National coordination. P-2602’s evidence is relevant to the contextual elements of war crimes

¹ ICC-01/14-01/18-631, para. 58.

² 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.

and crimes against humanity. His Prior Statement is *prima facie* relevant to, and probative of material issues at trial.

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

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.⁴

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 documents, and the sources of other corroborative evidence. *Confidential Annex A* (a Summary Chart) lists the interview transcripts, and the corresponding associated exhibits. It also identifies the relevant paragraphs of the Confirmation Decision to which the witness's evidence relates and, where applicable, any charged incidents the witness discusses.

6. Due to the length of the Prior Statement,⁵ the transcripts have been summarised and organised topically. This summary is attached as *Confidential Annex B* to facilitate the Parties', Participants', and Chambers' understanding of their content, and to more easily identify their relevance and probative value ("Summary"). The Summary is not tendered for formal submission. Rather, it clearly and concisely sets out the substance of the transcripts comprising the Prior Statement tendered.

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

⁵ The Prior Statement comprises 16 interview transcripts totalling approximately 326 pages.

II. CONFIDENTIALITY

7. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), 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

8. 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)

9. The Prior Statement may be deemed formally submitted under rule 68(3). P-2602 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.

10. As described below, the Prior Statement is highly relevant and probative. It provides evidence of the organisation of the Anti-Balaka, including of the [REDACTED] command and control; [REDACTED] the 5 December 2013 attack on BOSSANGO. It also goes to proof of the contextual elements for war crimes and

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.

crimes against humanity, in particular the Anti-Balaka being an organised armed group between September 2013 and December 2014 (“Relevant Period”).

11. P-2602’s Prior Statement comprises 326 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.

12. The witness’s Prior Statement establishes the following:

- [REDACTED].
- P-2602’s evidence explains how [REDACTED] was established and organised. Specifically, that it was divided into camps or *companies*, reflecting the military structure. P-2602 provides evidence of the importance of [REDACTED], as well as a considerable number of elements [REDACTED]. [REDACTED] former FACA, like Yvon KONATE, Florent KEMA, as well as Dieudonné HOURONTI, who [REDACTED], or coordinated activities with the group. P-2602 provides information on civilians who joined the Anti-Balaka [REDACTED], like Thierry LEBENE (“12 Puissances”), and their respective roles in the Anti-Balaka.
- P-2602 provides evidence of the organisation and structure [REDACTED], as well as the areas under its control, bases, and roadblocks;
- He describes the [REDACTED] involvement in the Anti-Balaka’s attacks in OUHAM prefecture in the latter half of 2013, and the 5 December 2013 coordinated attacks on BOSSANGO and BANGUI;

- [REDACTED] Maxime MOKOM prior to and after the 5 December 2013 attacks until approximately April 2014, and MOKOM's requests to receive information regarding locations where hostilities were ongoing.
- Finally, P-2602 gives evidence of his Anti-Balaka functions and [REDACTED] ComZones in BANGUI and in prefectures.

13. P-2602's proposed evidence on the structure and leadership of [REDACTED], the areas under its control, and the role of former FACA members is corroborated by, *inter alia*, the evidence of P-0966, P-1521, P-2027, and P-2658. [REDACTED] MOKOM's involvement in the 5 December 2013 attacks on BOSSANGO and BANGUI is corroborated by, *inter alia*, P-0966 and P-2027. Last, [REDACTED] Anti-Balaka leaders, especially with Maxime MOKOM, including on 5 December 2013 and after, is corroborated by, *inter alia*, the evidence of P-0966, P-1521, and P-2027.

C. Associated exhibits

14. The Prosecution tenders 16 associated exhibits for formal submission. They comprise documents described in the Prior Statement, as listed in Confidential Annex A, namely: 1) a copy of a map [REDACTED], showing the [REDACTED] route [REDACTED] (Annex A to P-2602's Statement), 2) an aerial image of BOSSANGO, [REDACTED] (Annex B to P-2602's Statement), 3) an aerial image of BOSSANGO, [REDACTED] (Annex C to P-2602's Statement), 4) a document listing FACA elements [REDACTED] shown to P-2602 during the interview, 5) a June 2014 FIDH report shown to P-2602 during the interview, 6) a document listing Anti-Balaka ComZones shown to P-2602 during the interview, 7) a document named 'Titre Reconnaissance', shown to P-2602 during the interview, 8) a document with the title 'Ordre de Mission' showed to P-2602 during the interview, 9) a 23 January 2014 press article shown to P-2602 during the interview, 10) an 8 May 2014 document reflecting an Anti-Balaka meeting shown to P-2602 during the interview, 11) a 10 December 2014 PCUD

document shown to P-2602 during the interview, 12) a 21-24 July 2014 document concerning the Brazzaville Forum shown to P-2602 during the interview, 13) a document of *Leaders Combattants d'Auto Défense et de Résistance* shown to P-2602 during the interview, 14) a video recording on the 5 December 2013 attack shown to P-2602 during the interview, 15) a video recording shown to P-2602 during the interview on the Anti-Balaka's policy, and 16) three photographs shown to P-2602 during the interview.

15. 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. As an integral part of the Prior Statement, they are directly relevant to and probative of material issues in dispute, and their submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2602's evidence.

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

16. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-2602's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

17. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",⁹ the Prosecution has carefully reviewed its four-hour estimate given for P-2602 in its Final Witness List.¹⁰ The Prosecution considers that it cannot further reduce the estimate. This estimated supplemental examination of P-2602 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. 15.

interpretation considerations,¹¹ and accounts for the prospect of appropriate redirect examination.

18. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2602's evidence through the use of the associated exhibit, other documents, or as concerns 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.

19. 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 nine hours to present – a significantly longer period.

E. Balance of interests

20. The projected shortening of P-2602's in-court-testimony by over half is "considerable", and on balance the introduction of P-2602'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.

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).

IV. CONCLUSION

21. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2602 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 11th day of October 2023
At The Hague, The Netherlands