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Date: **17 June 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-2476 pursuant to Rule 68(3)”, 15 June 2022, ICC-
01/14-01/18-1461-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-2476, 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-2476’s prior recorded testimony comprises his witness statement dated 17 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-2476 was born on [REDACTED], and was approximately [REDACTED] years old when he joined YEKATOM’s group in MBAIKI, shortly before the evacuation of Muslims by the Chadian forces. The witness provides evidence on how the Anti-Balaka, and in particular YEKATOM’s group, conscripted and enlisted children under the age of fifteen in the group’s activities, and how those children were treated. He provides evidence on YEKATOM’s role as a commander of the Anti-Balaka. P-2476’s evidence also bears on other Anti-Balaka crimes, such as looting, the targeting of Muslims, and the murder of DJIDO Saleh.

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-2114-0149.

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

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 23bis(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-2476 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 fifteen years, as well as DJIDO's killing. 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-2476's Prior Statement consists of 13 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:

- P-2476 explains how he learned about the 5 December 2013 attack on BANGUI and how he heard that subsequently, the Anti-Balaka were coming to MBAIKI.
- P-2476 describes the day that YEKATOM and his group arrived in MBAIKI, how they looked, how they were armed, and how they behaved.
- P-2476 states that it was public knowledge that RAMBO was the leader of the Anti-Balaka in the region, and that all people in MBAIKI were aware of that.
- He explains that after YEKATOM's group arrival, Muslims who lived in his neighbourhood were evacuated by the Chadian forces, and that, after they left, the Anti-Balaka looted and destroyed their houses.
- He also explains that Muslims who lived in the villages of SEKIA, KAPOU and PISSA fled to MBAIKI, out of fear of the Anti-Balaka.
- P-2476 explains that after [REDACTED], and before the evacuation of Muslims in MBAIKI by the Chadian forces, he went to [REDACTED] to join YEKATOM's group. He states that he was never asked how old he was.
- P-2476 explains that [REDACTED] accepted him in the group and instructed him to stay with the other children to guard the base, while older Anti-Balaka elements would go out to patrol the barrier on the outskirts of MBAIKI.
- P-2476 describes his interactions with two other children in YEKATOM's group, [REDACTED]. He states that despite not knowing their ages, he (P-2476) was probably a year older than them.
- P-2476 states that in the base, children were given cigarettes and marijuana to smoke, and were subjected to ill-treatment by members of the Anti-Balaka, especially YEKATOM. The children did not like RAMBO, who treated them badly. He explains that YEKATOM gave orders to his elements to punish –

with beatings – some children, [REDACTED] YEKATOM giving these kinds of orders.

- The witness describes the day that [REDACTED], [REDACTED]. P-2476 was present when the attack was planned, and explains that the intent was to target and fight Muslims.
- P-2476 states that life for children in YEKATOM's group became even more difficult after [REDACTED], who used to give them money for food. He explains that the children were hungry, and were used to being shouted at and punished by the elements. P-2476 explains how he decided to leave the group.
- P-2476 recounts the killing of DJIDO, and describes how the events unfolded. He describes the video he later saw of the event.
- P-2476 explains how he [REDACTED].
- The witness recognises YEKATOM in videos and photographs, as well as child soldiers that were in YEKATOM's group, providing some names and details on events and locations.

12. P-2476'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 and P-1074. His evidence on YEKATOM's control of the base and the group is corroborated by, *inter alia*, P-1792. And, his evidence on the killing of DJIDO is corroborated by, *inter alia*, P-1813.

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 (1) copy of 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-2476'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-2476'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-2476 in its Final Witness List.¹⁰ The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-2476 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-2476's evidence through the use of the associated exhibit, document or other relevant evidence. The limited

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).

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-2476's in-court-testimony by two-thirds is "considerable". On balance, the introduction of P-2476'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-2476 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.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan QC, Prosecutor

Dated this 17th June 2022

At The Hague, The Netherlands