



Original: English

No.: ICC-01/14-01/18

Date: 16 November 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-2587 pursuant to Rule 68(3)", ICC-01/14-01/18-1545,  
15 August 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-2587, 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”).<sup>1</sup> P-2587’s prior recorded testimony comprises a witness statement, dated 31 October 2019 (“Prior Statement”),<sup>2</sup> and its associated exhibits.<sup>3</sup> Should the Chamber deem the Prior Statement formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, estimated currently to take approximately two hours, elaborating specific issues therein and other matters highly relevant to the case.

2. P-2587 was a [REDACTED] P-2587’s evidence is relevant to the contextual elements for war crimes and crimes against humanity; the targeting of the Muslim population; and their mass displacement as a result of the Anti-Balaka’s actions. She further authenticates videos she provided to the Prosecution.

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.<sup>4</sup>

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

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<sup>1</sup> ICC-01/14-01/18-631, para. 58.

<sup>2</sup> See CAR-OTP-2120-0211 and CAR-OTP-2130-3069 (ENG Translation).

<sup>3</sup> 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.

<sup>4</sup> 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”).

to conduct the required case-by-case assessment.<sup>5</sup> Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,<sup>6</sup> 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.<sup>7</sup>

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 relevant statement 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. *Confidential* Annex B contains the Prior Statement itself. The associated exhibits and Prior Statement 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 ("RoC"), this Request and its annexes are filed as "Confidential", as they contain information concerning witnesses which should not be made public. A "Public Redacted" version of the Request will be filed as soon as practicable.

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<sup>5</sup> ICC-01/14-01/18-685, para. 34; *See* ICC-02/11-01/15-744, para. 69 ("*Gbagbo and Blé Goudé* Appeals Decision").

<sup>6</sup> *See* ICC-01/14-01/18-685, paras. 31, 32.

<sup>7</sup> 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).

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

#### 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-2587 will attest to its accuracy; she will be present in court; and 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 bears evidence of the 5 December 2013 Anti-Balaka attack on BANGUI and the forced displacement of the Muslim civilian population. It also goes to the proof of the contextual elements of war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group, and its intent to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014.<sup>11</sup>

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<sup>8</sup> 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’).

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

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

<sup>11</sup> *See* ICC-01/14-01/18-403-Conf-Corr, para. 64, *see further* pp. 107, 111 (referencing paragraphs 90-114 of the Document Containing the Charges - ICC-01/14-01/18-286-Conf-AnxB1).

10. P-2587's Prior Statement comprises 12 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 Testimony establishes the following:

- P-2587 was a [REDACTED].
- [REDACTED], the witness met YEKATOM and several Anti-Balaka elements. She describes seeing the military training of the Anti-Balaka elements at the YAMWARA School. P-2587 describes having seen 'very young' Anti-Balaka elements at the YAMWARA School.
- P-2587 provides evidence of YEKATOM describing how the Anti-Balaka were attacking SELEKA police officers to recover weapons.
- P-2587 describes the 5 December 2013 attack on BANGUI. The witness explains that many civilians fled BANGUI and sought refuge at the airport as a result of the 5 December attack. She further describes the Red Cross hospital treating wounded civilians from the displaced camp.
- P-2587 provides evidence of the pillaging of Muslim traders near a neighbourhood close to the airport.
- P-2587 describes the Muslim population being evacuated from BANGUI to CHAD. She further provides evidence of Muslims fleeing from BANGUI and other parts of CAR to BOUAR.
- Lastly, P-2587 authenticates the videos she provided to the Prosecution during her interview.

12. P-2587's proposed evidence is corroborated by, *inter alia*, the evidence of P-1838, P-1813, P-1558, P-1819, P-2475, P-2620, P-2233, and P-1839, in relation to (i) the Anti-Balaka attack on BANGUI on 5 December 2013; (ii) the forced displacement of

Muslims; (iii) the training provided to the Anti-Balaka elements at the YAMWARA School base, and (iv) the presence of children within the Anti-Balaka.

### C. Associated Exhibits

13. The Prosecution tenders seven associated exhibits for formal submission, set out at Confidential Annex A.<sup>12</sup> These comprise items detailed in P-2587's Prior Statement, namely videos [REDACTED] of: (1) the Red Cross hospital treating the wounded displaced population, filmed between 20 December 2013 and 10 January 2014;<sup>13</sup> (2) Muslims being attacked in a taxi, filmed on 1 March 2014;<sup>14</sup> (3) Muslims being evacuated from BANGUI to CHAD, filmed between 20 December 2013 and 10 January 2014;<sup>15</sup> (4) various reports of CAR for [REDACTED];<sup>16</sup> (5) a displacement camp near the airport, filmed on 7 December 2013;<sup>17</sup> (6) the Sangaris forces patrolling BOY-RABE, filmed between 20 December 2013 and 10 January 2014;<sup>18</sup> (7) a refugee camp for Muslims in BOUAR, filmed in March 2014.<sup>19</sup>

14. The items tendered with this application are *narrowly* 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.

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<sup>12</sup> The Prosecution notes that P-2587 provided a total of 12 videos during her interview. However, the Prosecution only hereby seeks to tender the seven videos that are: (i) directly relevant to and probative of material issues in dispute, and (ii) have not been deemed submitted in this case, as noted in Annex A.

<sup>13</sup> CAR-OTP-2120-0304.

<sup>14</sup> CAR-OTP-2120-0306.

<sup>15</sup> CAR-OTP-2120-0308, CAR-OTP-2118-4775 (Transcript).

<sup>16</sup> CAR-OTP-2120-0309, CAR-OTP-2118-4778 (Transcript).

<sup>17</sup> CAR-OTP-2120-0310.

<sup>18</sup> CAR-OTP-2120-0311.

<sup>19</sup> CAR-OTP-2120-0312, CAR-OTP-2118-4781 (Transcript).

15. As an integral part of the Prior Statement, the exhibits are directly relevant to and probative of material issues in dispute. As such, their admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-1042'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-2587'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",<sup>20</sup> the Prosecution has carefully reviewed its two-hour estimate given for P-2587 in its Final Witness List.<sup>21</sup> The Prosecution considers that it cannot further reduce the estimate. This estimated supplemental examination of P-2587 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,<sup>22</sup> 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-2587's evidence through the use of some of the associated exhibits, other documents, or as concerns other relevant evidence. The limited examination requested is necessary not only to fully understand and contextualise the Prior Statement, but also to advance the Chamber's fundamental truth-seeking function.

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<sup>20</sup> ICC-01/14-01/18-685, para. 36.

<sup>21</sup> ICC-01/14-01/18-724-Conf-AnxA, p. 44.

<sup>22</sup> See e.g., ICC-01/14-01/18-T-1-ENG ET, p. 6, ln. 18-25.



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 four hours to present – twice as long.

#### **E. Balance of interests**

20. The projected shortening of P-2587's in-court-testimony by half is considerable, and on balance that the introduction of P-2587'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 are supported and corroborated by other evidence to be tested at trial, warrants their formal submission in the fair exercise of the Chamber's broad discretion.

#### **IV. CONCLUSION**

21. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2587 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.



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**Karim A. A. Khan KC, Prosecutor**

Dated this 16<sup>th</sup> day of November 2022  
At The Hague, The Netherlands