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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-1577 pursuant to Rule 68(3)”,
1 February 2021, (ICC-01/14-01/18-871-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-1577, 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-1577’s prior recorded testimony comprises two Witness Statements (“Prior Statements”), dated 28 June 2018 and 30 August 2018 (respectively “First Statement” and “Second Statement”) and their associated exhibits.² Should the Chamber deem the Prior Statements formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, estimated currently to take no longer than five hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1577 is [REDACTED] who provides evidence of the Anti-Balaka policy of targeting the Muslim community in the Central African Republic (“CAR”) in 2013-2014. He describes the commission of crimes by the Anti-Balaka against the Muslim population in BOSSANGO and surroundings between October and December 2013 comprising killings, forcible displacement, and the destruction of property. He also describes the Anti-Balaka attack on BOSSANGO on 5 December 2013 and the aftermath of the attack. He provides evidence on YEKATOM’s elements [REDACTED] as well as on the children he saw at Anti-Balaka checkpoints.

3. P-1577 further provides evidence concerning the crimes committed in BANGUI, BOALI, BOYALI, BODA, YALOKÉ, BOSSEMPTELE and other villages, as part of the widespread Anti-Balaka attack carried out between September 2013 and December

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.

2014 in the western CAR, as set out in the Pre-Trial Chamber's 11 December 2019 Decision on Confirmation of Charges.³ They cover evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka's engagement in an armed conflict between September 2013 and December 2014 ("Relevant Period"), the group's course of conduct involving the multiple commission of crimes and acts against the Muslim civilian population in western CAR, including the pattern and intensity of their protracted mistreatment in various localities, pursuant to a criminal organizational policy.⁴ The Prior Statements are thus *prima facie* relevant to and probative of material issues at trial.

4. 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.⁵

5. Having taken note of the Chamber's guidance, the Prosecution has carefully assessed the Prior Statements to provide the Chamber with the information necessary to conduct the required case-by-case assessment.⁶ Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁷ the Prosecution has sought narrowly to identify the associated exhibits on which it intends to rely, in

³ See ICC-01/14-01/18-403-Conf-Corr, paras. 64, 70, *et seq.*, and pp. 111, 107.

⁴ See ICC-01/14-01/18-703-Conf, para. 45, 48 (observing that "several non-confirmed incidents fall within the 'facts and circumstances' of the case", and that the facts concerning crimes allegedly committed by the Anti-Balaka in Yaloké, Gaga, Zawa, Bossemtélé, Boda, Carnot, Berbérati and Guen "pertain to the contextual elements of the charged crimes and form part of the 'facts and circumstances' of the case"); *see also* article 7(2); ICC-01/04-02/06-309, para. 23; See ICC-01/14-01/18-403-Conf-Corr, paras. 64, 70, *et seq.*, and pp. 111, 107; *see* para. 164 (noting that the perpetrator groups committing acts and crimes as part of the article 7(1) attack lasting from September 2013 to December 2014 "were formally and politically under the umbrella of the National Coordination").

⁵ 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").

⁶ ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 ("*Gbagbo and Blé Goudé Appeals Decision*").

⁷ See ICC-01/14-01/18-685, para. 31, 32.

order to reduce (as much as possible) the overall volume of such material in the case as a whole.

6. The relevance and probative value of the Prior Statements 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. A *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 Statements themselves. The associated exhibits and Prior Statements are available to the Defence and the Trial Chamber in e-Court.

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 witnesses 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,⁸ its submissions in its first request for the formal

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').

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)

9. The Prior Statements may be deemed formally submitted under rule 68(3). P-1577 will attest to their accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

10. As described below, the Prior Statements are highly relevant and probative. They go to proof of the nature and extent of the widespread attack carried out by the Anti-Balaka against the Muslim civilian population during the Relevant Period as a part of the contextual elements of Crimes against Humanity and War Crimes, under articles 7 and 8, respectively. They provide evidence of the campaign of retributive violence committed by the Anti-Balaka against Muslim civilians in towns and villages in western CAR pursuant to a criminal organisational policy,¹¹ particularly in BANGUI, BOALI, BOYALI, BODA, YALoke, BOSSEMPTELE and other villages. P-1577's evidence further bears on the identity of the Anti-Balaka as an 'organisation' or 'group' involved in the commission of the article 7 widespread attack.

11. P-1577's Prior Statements of 28 June 2018 and 30 August 2018 comprise approximately 63 pages and 14, respectively. 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 Statements.

12. The witness's Prior Testimony establishes the following:

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

- P-1577 is [REDACTED].
- The witness provides evidence of the Anti-Balaka policy of targeting the Muslim community in Western CAR.
- P-1577 describes the attacks against the Muslim community and neighbourhoods in BOSSANGOA by the Anti-Balaka [REDACTED]. He describes the commission of crimes by the Anti-Balaka against the Muslim population, comprising killings, forcible displacement, and the destruction of property.
- P-1577 provides evidence of the 5 December 2013 attack on BOSSANGOA, [REDACTED] Muslims were killed by the Anti-Balaka.
- His evidence establishes that the *Ecole de la Liberté* became a place of shelter where thousands of Muslims sought refuge during and after the Anti-Balaka attack on BOSSANGOA.
- P-1577 provides evidence of the targeting of the Muslim population by the Anti-Balaka in BANGUI in January and February 2014, and describes its commission of acts and crimes against the Muslim population, comprising killings, pillaging, forcible displacement, and the destruction of property, including a mosque.
- The witness provides further evidence of Muslim enclaves in the PK12 and PK13 neighbourhoods in BANGUI, and describes the dire living conditions inside the enclaves. He further describes the Muslims in PK13 being evacuated to CHAD by a Chadian convoy.

- The witness describes Muslims and Peuhls seeking refuge from the Anti-Balaka at a Church in BOALI and being evacuated by Chadian forces to both CHAD and BANGUI in February 2014.
- He provides evidence of the attack led by the Anti-Balaka against the Muslim population in BOYALI, and the crimes committed, including killings, pillaging, forcible displacement, and the destruction of Muslim property, including a mosque and religious artefacts.
- P-1577 describes Anti-Balaka attacks against the enclaved Muslim population in BODA.
- The witness provides evidence of the crimes committed by the Anti-Balaka against the Muslim population in YALoke, including pillaging, and the destruction of property. He describes Muslims fleeing YALoke *en masse* under threat from the Anti-Balaka.
- The witness provides evidence of the Peuhl enclave in YALoke, and describes that many trapped Peuhls died of malnourishment.
- P-1577 explains having seen 'young' elements at check-points.
- P-1577 describes Muslim refugees still living in refugee camps, or having returned to their houses in 2015.
- He describes [REDACTED] Anti-Balaka leaders in BOEING named [REDACTED]¹² and [REDACTED].¹³

¹² Referred to as '[REDACTED]' in P-1577's First Statement but identified by the Office as [REDACTED].

¹³ Referred to as '[REDACTED]' in P-1577's First Statement but identified by the Office as [REDACTED].

- P-1577 describes [REDACTED], and meeting Muslim and Peuhl refugees who had been forced by the Anti-Balaka to flee [REDACTED].
- P-1577 identifies, authenticates, and describes [REDACTED] during [REDACTED] the CAR.

13. P-1577's proposed evidence is corroborated by, *inter alia*, the evidence of P-0884, P-0952, P-0966, P-1074, P-1193, P-1339, P-1576, P-1847, P-1962, P-2049, P-2138, P-2200, P-2205, P-2269, P-2325, P-2328, P-2416, P-2453, P-2486, P-2546, P-2657, and P-2658, in relation to (i) the Anti-Balaka attacks on BOSSANGO (including on 5 December 2013); (ii) the Anti-Balaka's commission of crimes in BANGUI, BOALI, BOYALI, BODA, YALOKÉ, and BOSSEMPTELE against the Muslim civilian population; (iii) the circumstances regarding the creation and perpetuation of their enslaving — which comprised a significant part of the Anti-Balaka's continuing widespread attack on Muslim civilians; (iv) YEKATOM's leadership over the elements located in MBAIKI; and the presence of children amongst the Anti-Balaka.

C. Associated Exhibits

14. The Prosecution tenders several associated exhibits for formal submission, set out at the Confidential Annex A. These comprise a selection of items detailed with great precision in P-1577's Prior Statements, namely: (1) a selection of [REDACTED] dated between 31 October 2013 and 2 November 2016; (2) ten [REDACTED], dated between 3 November 2013 and 24 January 2014; (3) [REDACTED]; (4) a selection of [REDACTED] and commented on in P-1577's First Statement; and (5) a selection of Satellite Images of various locations in Western CAR.

15. Although each exhibit referenced in the Prior Statements was discussed and may be helpful to contextualise and facilitate their understanding, the items tendered with this application are *narrowly* assessed as indispensable to their comprehension or

would otherwise diminish their 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. As an integral part of the Prior Statements, each exhibit is directly relevant to and probative of material issues in dispute, and their admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-1577's evidence.

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

16. Although the Prior Statements are comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-1577's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

17. The Prosecution's five-hour estimated supplemental examination of P-1577¹⁴ take into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁵ 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-1577'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 Statements, but also to advance the Chamber's fundamental truth-seeking function.

¹⁴ ICC-01/14-01/18-724, AnxA, p. 43.

¹⁵ 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 Statements under rule 68(3), the Prosecution estimates that the witness's testimony on direct examination would require at least eight hours to present – almost twice as long.

E. Balance of interests

20. The projected shortening of P-1577's in-court-testimony by nearly half is "considerable", and the Prosecution considers on balance that the introduction of P-1577's Prior Statements 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 Statements 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 Statements of P-1577 together with their 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 these witnesses as indicated above.



James Stewart, Deputy Prosecutor

Dated this 15th day of March 2021
At The Hague, The Netherlands