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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-0627 pursuant to Rule 68(3)”,
11 February 2021, (ICC-01/14-01/18-879-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-0627, 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-0627’s prior recorded testimony comprises the transcribed statement of 13 to 17 July 2018 (“Prior Statement”). Should the Chamber deem the Prior Statement formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, estimated to take no longer than three hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-0627 is a Central African businessman who provides evidence, *inter alia*, on (i) the presence and activities of Anti-Balaka members in 2013 [REDACTED]; (ii) the anti-Muslim discourse [REDACTED]; (iii) the emergence and structuring of the Anti-Balaka in 2013; and (iv) the organisation and leadership of the Anti-Balaka in 2014, including NGAISSONA’s role and activities as the Anti-Balaka National Coordinator, and superior relationship to YEKATOM and his elements within the Anti-Balaka structure; and (v) YEKATOM’s control of the MBAIKI region.

3. P-0627 further provides evidence of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka’s being an organised armed group, and its intent to target Muslim civilians pursuant to a criminal organizational policy between September 2013 and December 2014 (“Relevant Period”).² The Prior Statement further describes the position of the Anti-Balaka leadership within the framework of the group, as well as the respective roles of the Accused during the Relevant Period. The Prior Statement is thus *prima facie* relevant to and probative of material issues at trial.

¹ ICC-01/14-01/18-631, para. 58.

² See article 7(2); ICC-01/14-01/18-403-Conf-Corr, paras. 64, 70, *et seq*, and pp. 111, 107.

4. Granting the Request would reduce the presentation of the Prosecution's examination-in-chief and help to streamline the proceedings by cutting the time needed for P-0627's examination by more than half. 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

5. 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 Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁵ the Prosecution has sought narrowly to identify the portions of the Prior Statement on which it intends to rely, in order to reduce (as much as possible) the overall volume of such material in the case as a whole. In this instance, the Prosecution is submitting approximately half of the witnesses' four days of transcripts for consideration. The remaining half was the subject of redactions the Chamber approved under rule 81(2).⁶ [REDACTED],⁷ the Prosecution expects to be able to lift these redactions and disclose a lesser redacted version of this statements in the near future.

6. *Confidential Annex A* is a Chart a listing the relevant portions of the Prior Statement being tendered for formal submission, as well as the lines of the transcripts which the Prosecution is excluding from this application. *Confidential Annex A* also identifies the relevant paragraphs of the Confirmation Decision to which the witness's evidence relates. Due to the length of the Prior Statement, a summary is attached at *Confidential Annex B* to facilitate the Parties', Participants', and Chambers' understanding of its content, and to more easily identify its relevance and probative

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

⁶ ICC-01/14-01/18-249-Conf-Red.

⁷ [REDACTED].

value. It is not tendered for formal submission, rather, it is a clear and concise summary of the transcripts in the Prior Statement, organised by topic for the reader's convenience.

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 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 Statement may be deemed formally submitted under rule 68(3). P-0627 will attest to its 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 Statement is highly relevant and probative. In addition to the issues described above at paragraph 2, the Prior Statement goes to proof of the nature the widespread attack carried out by the Anti-Balaka against the

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').

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.

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. It provides evidence of the campaign of retributive violence committed by the Anti-Balaka against Muslim civilians pursuant to a criminal organisational policy.¹¹ P-0627'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-0627's Prior Statement of 13 to 17 July 2018 comprises approximately 432 pages. There are no agreements as to facts contained in the charges, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on the Prior Statement.

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

- P-0627 is a Central African businessman, [REDACTED].
- P-0627 describes [REDACTED].
- The witness provides evidence on [REDACTED].
- The witness provides evidence of the Anti-Balaka policy of targeting the Muslim community in western CAR, including the expression of anti-Muslim animus by (i) BOZIZE, during his public statements before his overthrow, and [REDACTED].
- P-0627 provides evidence on [REDACTED].
- P-0627 provides evidence on the emergence and structure of the Anti-Balaka in 2013, including [REDACTED].

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).

- The witness describes [REDACTED].
- P-0627 further describes the organisation and structure of the Anti-Balaka in 2014, *inter alia* NGAISSONA's leadership role and activities as the National General Coordinator, and (ii) YEKATOM's control of the MBAIKI region.

13. P-0627's proposed evidence is corroborated by, *inter alia*, the evidence of P-2625, P-0589, P-1719, P-2232, P-2012, P-0966, P-0889, P-0884, P-1521 as well as by documentary evidence included in the Prosecution's List of Evidence,¹² in relation to the origins of the Anti-Balaka, and specifically on [REDACTED]; (ii) the anti-Muslim rhetoric expressed by the Anti-Balaka; (iii) MOKOM's role as the Anti-Balaka *de facto* Coordinator; and (iv) NGAISSONA's leadership of Anti-Balaka.

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

14. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-0627's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

15. The Prosecution's three-hour estimated supplemental examination of P-0627¹³ takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁴ and the prospect of re-direct examination.

16. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-0627's evidence. The

¹² See for example CAR-OTP-2101-9451, at 9552, 17:08:17; CAR-OTP-2001-4446, at 4448; CAR-OTP-2065-5468, from [00:02:08] to [00:03:36] and its transcript and translation CAR-OTP-2107-6932 and CAR-OTP-2122-2303; CAR-OTP-2083-0332, from [00:02:40] to [00:03:47] and its transcript and translation CAR-OTP-2122-9548 and CAR-OTP-2122-9575; CAR-OTP-2081-1770, from [00:05:00] to [00:18:08], see in particular at [00:13:35] to [00:18:08] and its transcript and translation CAR-OTP-2107-6945 and CAR-OTP-2122-2320; CAR-OTP-2084-1279, from [00:00:00] to [00:01:02], and its transcript and translation CAR-OTP-2107-6977, at 6978, 1.4-19, and CAR-OTP-2107-7122, at 7124, 1.4-19; CAR-OTP-2049-0141, from [00:00:37] to [00:01:22] and its transcript and translation CAR-OTP-2074-1954 and CAR-OTP-2074-1958, at 1960, 1.18-35.

¹³ ICC-01/14-01/18-724, AnxA, p. 43.

¹⁴ See e.g., ICC-01/14-01/18-T-1-ENG ET, p. 6 ln. 18-25; ICC-01/14-01/21-T-1-ENG ET, p. 3 ln. 14-22, p. 4 ln. 20-22.

limited examination requested is necessary to fully understand and contextualise the Prior Statement, in particular as regards the Accused's acts and conduct, but also to advance the Chamber's fundamental truth-seeking function.

17. 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 eight hours to present – more than twice as long.

18. Although this witness has been flagged for testimony via audio-visual link ("AVL"), the Prosecution hereby informs the Chamber that it received information that [REDACTED]. The Prosecution will update the Chamber and VWU with more information as it becomes available.

D. Balance of interests

19. The projected shortening of P-0627's in-court-testimony by more than half is "considerable", and the Prosecution considers on balance that the introduction of P-0627'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 their 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-0627 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.



James Stewart, Deputy Prosecutor

Dated this 22nd day of February 2021

At The Hague, The Netherlands