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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-2673 pursuant to Rule 68(3)”,
(ICC-01/14-01/18-917-Conf), 17 March 2021**

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-2673, 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-2673’s prior recorded testimony comprises one Witness Statement (“Prior Statement”), dated 29 October 2020 and its associated exhibits.² 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 no longer than two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2673 is [REDACTED]. He describes the meetings that were held in CAMEROON in 2013, and that were led by NGAISSONA and Bernard MOKOM. He provides evidence on the individuals involved, and their communication and coordination with elements on the ground, including those stationed, or sent to different areas (including BELOKO, BERTOUA, BOUAR, BOSSANGOA, BOUCA, and GARAM BOULAI). He also describes the involvement of NGAISSONA and Bernard MOKOM in the financing, and the provision of weapons, ammunition, and Thurayas, including to elements in BANGUI, BERTOUA, BOSSANGOA, BOUAR, BOUCA, GARAM BOULAI, and GOBERE. P-2673 further discusses the coordination in respect of the 5 December 2013 attack.

3. P-2673’s further provides evidence on the anti-Muslim animus expressed by members of the Anti-Balaka, equating Muslims with the Seleka, and on Anti-Balaka

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.

attacks committed in various locations as part of the widespread Anti-Balaka attack carried out between September 2013 and December 2014 in the western CAR, as set out in the Pre-Trial Chamber's 11 December 2019 Decision on Confirmation of Charges.³ He provides evidence 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 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 organisational policy.⁴

4. The Prior Statement further describes the position of the Anti-Balaka leadership within the framework of the group (an organisation), as well as the role of NGAISSONA during the Relevant Period. In particular, P-2673 describes coordination meetings attended by NGAISSONA, and NGAISSONA's role in organising and supplying the Anti-Balaka. P-2673 also briefly refers to YEKATOM's role [REDACTED]. The Prior Statement is thus *prima facie* relevant to and probative of material issues at trial.

5. 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

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, Bossempaté, 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. 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.⁶ Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁷ 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.⁸

7. 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, with grey highlights identifying the portions on which the Prosecution does not seek to rely. The associated exhibits are available to the Defence and the Trial Chamber in e-Court.

II. CONFIDENTIALITY

8. 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

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.

⁸ 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).

A. Applicable Law

9. 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,⁹ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),¹⁰ and in its first and second requests for the formal submission of prior recorded testimony under Rule 68(2)(b).¹¹

B. The Prior Recorded Testimony fulfils all Requirements of Rule 68(3)

10. The Prior Statement may be deemed formally submitted under rule 68(3). P-2673 will attest to its accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

11. As described below, the Prior Statement is highly relevant and probative. It goes to proof 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"). P-2673'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. It also 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.

12. P-2673's Prior Statement comprises 33 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.

⁹ 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').

¹⁰ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

¹¹ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

13. The Witness's Prior Testimony establishes the following:

- P-2673 is [REDACTED].
- P-2673 recounts hearing about meetings held by NGAISSONA, Bernard MOKOM and others in CAMEROON to discuss organising the Anti-Balaka into an armed group with the aim to oust DJOTODIA and regain power.
- The Witness provides evidence of NGAISSONA financing elements in YAOUNDE through Bernard MOKOM, and instructing them to go to BOUAR, via GARAM BOULAI, to join the Anti-Balaka in their fight against the Seleka.
- P-2673 provides information on the Anti-Balaka attack on BELOKO, including its objective to target the Muslim civilian population.
- The Witness provides information on the anti-Muslim animus within the Anti-Balaka, and describes that the targeting of the Muslim population was one of the objectives of the movement.
- The Witness provides evidence of NGAISSONA [REDACTED].
- P-2673 provides evidence of NGAISSONA sending money and ammunition to BOUAR, [REDACTED] and provides evidence of its use in the BOUAR attack. He also describes that NGAISSONA sent ammunition to BOUCA.
- The Witness describes that money and ammunition were sent to BANGUI prior to the 5 December 2013 attack [REDACTED].
- P-2673 further describes that NGAISSONA was in contact with the Anti-Balaka in BOUAR, BOSSANGO and BOUCA.
- The Witness provides evidence of NGAISSONA and Bernard MOKOM sending Thurayas to BOUAR, BOSSANGO, GOBERE, and BOUCA.

- The Witness provides evidence of NGAISSONA and Bernard MOKOM going to GAROUA-BOULAI, and then to BERTOUA, to meet with [REDACTED] the ‘archers’ they were aiming to mobilise.
- P-2673 provides information on the organisation and coordination of the 5 December 2013 Anti-Balaka attack on BANGUI. He describes that [REDACTED].
- P-2673 briefly refers to YEKATOM’s role [REDACTED].
- P-2673 also [REDACTED].

14. P-2673’s proposed evidence is corroborated by, *inter alia*, the evidence of P-0487, P-0801, P-0808, P-0884, P-0889, P-1074, P-1719, P-1847, P-2027, P-2232, P-2328, and P-2841, as well as by documentary evidence included in the Prosecution’s List of Evidence,¹² in relation to (i) the Anti-Balaka’s creation, structure and leadership; (ii) meetings between NGAISSONA, Bernard MOKOM, and other members of BOZIZE’s inner circle in CAMEROON in mid-2013; (iii) NGAISSONA’s leadership role within the Anti-Balaka; (iv) NGAISSONA and Bernard MOKOM’s liaison with and support of Anti-Balaka elements, including at the border area, and their meeting with the ‘archers’ from BOUAR; (v) the Anti-Balaka’s objective of targeting the Muslim civilian population; (vi) provenance of Anti-Balaka’s funding, weapons and ammunition; and (vii) the Anti-Balaka 5 December 2013 attack on BANGUI.

C. Associated Exhibits

15. The Prosecution tenders several associated exhibits for formal submission, set out at Confidential Annex A. These comprise a selection of items detailed with precision in P-2673’s Prior Statement, namely: (1) a photograph provided by P-2673,

¹² See for example CAR-OTP-2124-0823; CAR-OTP-2101-6428, at 6449, 11:03:08; CAR-OTP-2101-8599, at 8707-8710, 07:52:31-08:19:25; CAR-OTP-2101-9117, at 9156-9158, 10:36:56-12:28:32; CAR-OTP-2100-9923, at 9927, 12:53:51-13:46:52; CAR-OTP-2102-4062, at 0465, 13:57:29.

where [REDACTED]; (2) excerpts of [REDACTED]; (3) excerpts of [REDACTED]; and (4) excerpts of [REDACTED].

16. 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. 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 Statement, 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-2673's evidence.

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

17. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-2673's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

18. The Prosecution's two hour estimated supplemental examination of P-2673¹³ 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 accounts for the prospect of appropriate redirect examination.

19. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2673's evidence through the use of some of the associated exhibits, other documents, or as concerns other

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.

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, particularly as regards the Accused's acts and conduct.

20. 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 – four times as long.

E. Balance of interests

21. The projected shortening of P-2673's in-court-testimony by a quarter is "considerable", and the Prosecution considers on balance that the introduction of P-2673'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

22. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2673 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 this Witness as indicated above.



James Stewart, Deputy Prosecutor

Dated this 23rd day of March 2021
At The Hague, The Netherlands