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

Date: **24 March 2021**

**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-2841 pursuant to Rule 68(3)”,  
(ICC-01/14-01/18-919-Conf), 18 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-2841, 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”).<sup>1</sup> P-2841’s prior recorded testimony comprises his 21 October 2020 Witness Statement (“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, currently estimated at approximately two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2841 was a member of [REDACTED] and [REDACTED]. Throughout 2013, following the Seleka coup, the witness was in contact with Anti-Balaka members and BOZIZE’s supporters involved with the Anti-Balaka, from whom he received information regarding the group’s organisation, coordination, and military operations. In particular, he obtained information about NGAISSONA’s contributions to the Anti-Balaka prior to the 5 December 2013 attack of BANGUI.

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>

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

<sup>2</sup> CAR-OTP-2127-4238.

<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”).

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.<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, 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

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 a witness which should not be made public. A "Public Redacted" version of the Request will be filed as soon as practicable.

## III. SUBMISSIONS

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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, para. 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).

## 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-2841 will attest to its accuracy; he 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 goes to key events in 2013, *inter alia* the emergence, structuring, and coordination of the Anti-Balaka, the presence of Anti-Balaka members in CAMEROON (including NGAISSONA and Bernard MOKOM) and in ZONGO, and NGAISSONA's contributions to the Anti-Balaka's activities. P-2841 further provides evidence of the contextual elements for 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 ("Relevant Period").

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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.

10. P-2841's Prior Statement of 21 October 2020 comprises 40 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 consists of the following:

- P-2841 was a [REDACTED], a [REDACTED].
- In 2013, following the Seleka coup, the witness received information from various sources such as [REDACTED], about the Anti-Balaka's operations and organisation by BOZIZE's supporters, including NGAISSONA, and by FACA elements. In particular, he obtained information from [REDACTED] and [REDACTED] through Facebook.<sup>11</sup> These two Facebook threads are included in this Request as Associated Exhibits.
- He reports on YAKETE's role in organising the *Coalition citoyenne d'opposition aux rébellions armées* militia ("COCORA") prior to the Seleka coup.
- He recounts the widespread commission of crimes by the Seleka in BANGUI and the provinces in 2013.
- The witness describes the genesis of the Anti-Balaka as a spontaneous self-defence movement at first, and explains how it was organised, structured, and coordinated from CAMEROON and ZONGO by supporters of BOZIZE, including NGAISSONA, Bernard MOKOM, and Maxime MOKOM, as well as by FACA elements. In particular he:
  - provides information on planning meetings held in CAMEROON in 2013, which were attended by, *inter alia*, NGAISSONA, Bernard MOKOM and YAKETE;

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<sup>11</sup> CAR-OTP-2101-9735 and CAR-OTP-2101-8109, included in this Request as Associate Exhibits: *see* para. 14 below.

- comments on Facebook messages received from [REDACTED] referring to [REDACTED];
  - reports that NGAISSONA and Bernard MOKOM contributed to the funding of the Anti-Balaka and their provision of supplies, notably ammunition. They would mobilise resources and send money to Anti-Balaka in the field, including to FACA elements;
  - [REDACTED],<sup>12</sup> [REDACTED].<sup>13</sup> [REDACTED];
  - describes NGAISSONA's motivation for supporting the Anti-Balaka, using it to gain political control in CAR and to forward his business interests;
  - provides information on a number of Anti-Balaka figures, their whereabouts and activities in the Relevant Period.
- P-2841 discusses the creation of the *Front pour le Retour à l'Ordre Constitutionnel en Centrafrique* ("FROCCA"), and the roles of YAKETE and Lin BANOUKEPA in the organisation.
  - He further provides information on the Anti-Balaka's military operations in 2013, up to their attack of BANGUI on 5 December 2013, including in BOUCA, GAGA, and BOSSANGO. He states that the Anti-Balaka went "too far" even prior to December 2013, and that he knew the conflict would be "bloody and violent".<sup>14</sup>
  - He explains that the Anti-Balaka's hatred of Muslims was based on their perceived association with the Seleka, and that the Anti-Balaka targeted the Muslim population out of retaliation for the Seleka's crimes.

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<sup>12</sup> CAR-OTP-2124-0899, included in this Request as Associate Exhibits: see para. 15 below.

<sup>13</sup> CAR-OTP-2124-0900, included in this Request as Associate Exhibits: see para. 15 below.

<sup>14</sup> CAR-OTP-2127-4238, at 4270, para. 177.

- He refers to the forcible displacement of the Muslim population in BANGUI and the provinces, notably from MBAIKI and BOSSANGOA, as a consequence of the Anti-Balaka's violence. He refers in particular to the Anti-Balaka attacking convoys of evacuated Muslims.
- Finally, P-2841 provides information on the circumstances of NGAISSONA's appointment as the Anti-Balaka National Coordinator. He states that NGAISSONA organised the different factions of the Anti-Balaka coalition, and discusses the structure of the Anti-Balaka movement.

12. P-2841's proposed evidence is corroborated by, *inter alia*, the evidence of P-0801, P-1074, P-1719, P-1847, and P-2625, as well as by documentary evidence,<sup>15</sup> in relation to the planning meetings that took place in CAMEROON before the 5 December 2013 attack on BANGUI, and NGAISSONA's attendance at these meetings. His evidence on the organization, coordination, and funding of the Anti-Balaka by BOZIZE's supporters, including NGAISSONA, in the same period, is corroborated by, *inter alia*, the evidence of P-0458, P-0808, P-0876, P-0884, P-0954, P-0992, P-1074, P-1719, P-1847, P-2232, P-2328, P-2556, P-2625, and P-2673, as well as by documentary evidence.<sup>16</sup>

### C. Associated Exhibits

13. The Prosecution tenders five associated exhibits for formal submission, set out at Confidential Annex A.

<sup>15</sup> See for example CAR-OTP-2088-1179, at 1194; CAR-OTP-2001-5739, at 5782-5783, 5793.

<sup>16</sup> See for example CAR-OTP-2100-3030, at 3040, 06:35:12; CAR-OTP-2101-6428, at 6449, 11:03:08; CAR-OTP-2101-8599, at 8707-8710, 07:52:31-08:19:25; CAR-OTP-2101-8524, at 8535, 06:38:16, 09:41:20-09:51:09; CAR-OTP-2101-9117, at 9156-9158, 10:36:56-12:28:32; CAR-OTP-2101-9735, at 9780, 20:50:52, at 9805, 12:56:16-13:00:25, at 9811-9812, 10:12:33-10:40:21; at 9817, 10:53:16-10:59:15, at 9818-9819, 09:22:53-09:32:34, at 9829, 19:07:55; CAR-OTP-2102-2520, at 2689, 21:11:04-21:12:08; CAR-OTP-2102-5143, at 5165, 15:40:54; CAR-OTP-2102-5471, at 5633-5634, 18:45:54-19:15:24; CAR-OTP-2102-7681, at 7701, 14:48:00-14:55:23; CAR-OTP-2102-8338, at 8345-8347; CAR-OTP-2124-0892; CAR-OTP-2124-0894; CAR-OTP-2124-0896; CAR-OTP-2124-0899; CAR-OTP-2124-0900; CAR-OTP-2124-0903.



14. Two of these are Facebook Messenger threads extracted from Facebook accounts collected by the Prosecution.<sup>17</sup> They comprise: (i) a thread between the witness and user [REDACTED], with messages sent between [REDACTED] and [REDACTED];<sup>18</sup> and (ii) a thread between the witness and user [REDACTED], with messages sent between [REDACTED] and [REDACTED].<sup>19</sup>

15. Three of these are email chains from NGAISSONA's Yahoo! email account collected by the Prosecution.<sup>20</sup> They comprise: (i) the email of [REDACTED]; (ii) the email of [REDACTED]; and (iii) an email from sender [REDACTED].<sup>21</sup>

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-2841'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-2841's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

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<sup>17</sup> The standard evidentiary criteria for the Facebook Messenger collection will be addressed in a forthcoming bar table motion.

<sup>18</sup> CAR-OTP-2101-9735.

<sup>19</sup> CAR-OTP-2101-8109.

<sup>20</sup> The standard evidentiary criteria for the Yahoo! email collection will be addressed in a forthcoming bar table motion.

<sup>21</sup> CAR-OTP-2124-0903.

18. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",<sup>22</sup> the Prosecution has carefully reviewed its two-hour estimate given for P-2841 in its Final Witness List.<sup>23</sup> The Prosecution considers that it cannot further reduce the estimate of two hours. This estimated supplemental examination of P-2841 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>24</sup> 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-2841'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, including those parts relating to the Accused's acts and conduct, but also to advance the Chamber's fundamental truth-seeking function.

20. 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 six hours to present – three-times as long.

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

21. The projected shortening of P-2841's in-court-testimony by two thirds is "considerable", and the Prosecution considers on balance that the introduction of P-2841'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

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<sup>22</sup> ICC-01/14-01/18-685, para. 36.

<sup>23</sup> ICC-01/14-01/18-724-Conf-AnxA, p. 41.

<sup>24</sup> See e.g., ICC-01/14-01/18-T-1-ENG ET, p. 6 ln. 18-25; see ICC-01/14-01/21-T-1-ENG ET, p. 3 ln. 14-22, p. 4 ln. 20-22 (noting practical complications involved in the live in-Court interpretation).

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-2841 together with its associated exhibits as set out at Annex A, noting those on which the Prosecution intends to rely, 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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**James Stewart, Deputy Prosecutor**

Dated this 24<sup>th</sup> day of March 2021  
At The Hague, The Netherlands